

## Ministerial Direction No. 2: Contractual Provisions for Public Construction

Effective from: 1 December 1996

*I, Robert Maclellan, Minister for Planning and Local Government in the State of Victoria, hereby issue the following Direction pursuant to Section 30 of the Project Development and Construction Management Act 1994 (the Act).*

In accordance with Section 31 of the Act, to the extent that this Direction is inconsistent with a provision of a supply policy within the meaning of the Financial Management Act 1994, this Direction is to prevail.

This Direction applies to public construction as defined in Section 3 of the Act.

The following requirements must be adhered to when entering into any contract to undertake building and construction works or for the supply of related consultancy services.

1.
  - a) General conditions of contract standard in the industry and where possible Australian Standards are to be used.
  - b) Special conditions of contract are to be kept to a minimum and are not to be onerous.
  - c) Contract conditions shall, as far as practicable, allocate risks to the party best able to manage the risk.
  - d) Where applicable, the head contract shall require the use of standard subcontract conditions, compatible with the head contract, unamended other than to reflect head contract conditions.
  - e) General conditions of contract including special conditions must be in a form approved by the Secretary, Department of Infrastructure or a person authorised in writing by the Secretary ("the Secretary").
  - f) A least six months notice shall be given by the Secretary for the withdrawal of approval to use a form of contract.
  - g) Contract values applicable to particular forms of contract and other matters shall be specified in the "Guide to Contractual Provisions for Public Construction" published from time to time by the Secretary which is hereby incorporated into this Direction.
2.
  - a) Contracts must provide for:
    - fair entitlement to payment
    - prompt payment
    - proof of payment to subcontractors and suppliers - at a minimum, mandatory standardised statutory declarations stating payments have been made
    - the use of bank guarantees as an alternative to cash securities
    - alternative dispute resolution
  - β) Contracts must prohibit the:
    - use of "pay when paid" or "pay if paid" clauses in subcontracts
    - amendment of clauses relating to payment timing in subcontracts

For the purposes of this Direction, a reference to an Act or subordinate instrument is a reference to that Act or subordinate instrument as amended from time to time.

ROBERT MACLELLAN

Minister for Planning and Local Government