

UPDATE

DATE	25/05/2022
TO	P3910 Committee and nominating organisations
FROM	David Wilkie, Chair – P3910 Conditions of contract committee
SUBJECT	Update on the revision of NZS 3910.

PURPOSE OF THIS UPDATE

The committee revising NZS 3910 has had 3 meetings to date. The 3rd committee meeting was a 2-day in-person meeting which was held in Wellington. Due to the ongoing disruption of COVID-19, some committee members attended this meeting online.

This is an update of progress to date, which is intended to be circulated to the committee members, who, in turn, are encouraged to update their nominating organisation on the progress of this project.

It needs to be noted that committee deliberations are confidential. This is to ensure, among other things, that committee members are not subjected to undue pressure and that assumptions are not made by members of the public as to what may be published.

Nominating organisations are also encouraged to provide feedback to their committee member(s) on any proposed changes.

COMPLETED & UPCOMING MILESTONES

The following milestones have been completed:

1. Initiation phase – completed February 2022.
2. Development phase
 - a. Kick off meeting (committee meeting 1) completed.
 - b. Committee meeting 2 completed (2-hour online meeting)
 - c. Committee meeting 3 completed (2-day in-person meeting)

Upcoming milestones:

1. Committee meeting 4 (3-hour online meeting 9th June)
2. Committee meeting 5 (2-day in- person meeting to be held in Auckland on 5 & 6 July)

SUMMARY OF MEETING 3 – KEY POINTS

After so many virtual gatherings it was with great pleasure and excitement that the committee convened in Wellington on the 3rd and 4th May for a two-day in person meeting.

24 out of 25 committee members were in attendance, of these three people joined the meeting online.

Key points discussed:

- Principles of the review were discussed and confirmed (refer Chair update #1)
- An update was provided on the Working Groups progress
- Interim review: the committee reviewed the scope and intent of the interim review in respect of liability caps and pandemic clauses.

Direction was provided on the non - controversial components for inclusion in the interim review. It was decided that some initial non-controversial components needed more consideration. These components have been added to the scope of the working groups for further discussion and will be part of the full review.

The decision was made to postpone the publication date of the Interim Standard from August '22 to September '22 to ensure that the committee has sufficient time to deliver a quality output.

3910 development approach:

This project has a wide scope. To make it more manageable, topics and content have been assigned to specific working groups. Some of these topics however are of interest to the full committee and relevant to other working groups. To avoid siloed thinking and obtain full consultation, the committee has decided to bring these key topics to the full committee for initial consideration.

These 'all-in' topics currently include:

1. *The Role of the Engineer to the Contract*
2. *Programme/EoT*
3. Variations
4. Early Contractor Involvement
5. Collaboration
6. Disputes

The committee considered and sought direction on the first two important topics.

The approach was to consider the scope and context of the topic (including reference to past studies, reports and industry comment, and common special conditions), then seek to clarify the specific problem and how/if the review can address it.

1. The Role of the Engineer to the Contract (ETC)

In respect of the role of the ETC, the committee discussed and agreed that the following problems can be addressed by the review:

- The need to simplify and clarify the role of the Engineer
- The lack of recourse/ability for the contractor to object to bias
- The ability of the ETC to review their own decisions

Currently, NZS 3910 refers to the role of the Engineer at least 130 times. In each of these occasions the ETC may be required to act independent and impartially, and/or as the principal's representative, and/or as the contract administrator. In many instances some of these 130 roles are performed by third parties.

2. Programme and Extension of Time (EOT)

The discussion identified and prioritised industry concerns. Key issues identified include the lack of clarity in the contract in respect of:

- the purpose, use, role, relevance of the programme
- concurrency and ownership of float
- time bar use and fairness

Outcome of the discussions:

The working groups responsible for ETC, Programme and EOT were provided with direction to develop and formulate options which will be presented at a future full committee meeting.

In conclusion

It was apparent that (whilst there is still a great deal of work to be done) the discussions and debate over the two days greatly assisted in progressing and aligning views on the development of the new standard, and that we are on track to achieve our objectives.

Thank you to all the participants and their nominating organisations for the energetic and active engagement, and their considered and thoughtful contributions. We are well underway.



David Wilkie

Chair – P3910 Conditions of contract committee

Copies to:

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