

# NPWC/NBCC No Dispute Report

- Comment By John Tyrriil

The National Public Works Conference and National Building and Construction Council Joint Working Party has now published its report entitled "No Dispute - Strategies For Improvement In The Australian Building And Construction Industry". This report is particularly intended to address the high incidence of claims and disputes in the industry.

Subscribers have been informed previously of the claims and disputes Joint Working Party established by the National Public Works Conference and the National Building and Construction Council, predominantly in response to the findings of the 1988 industry claims and disputes research project. See Issues #7 at page 8, #8 at page 5 and #12 at page 9.

Put simply, the task of the Joint Working Party was to further investigate and report on the matters raised in the research report "Strategies For The Reduction Of Claims And Disputes In The Construction Industry" - and also other related matters.

The establishment of the NPWC/NBCC Joint Working Party involved recognition of the importance to the industry of the issues raised in the Strategies report. Importantly, the Joint Working Party has taken that work further.

The NPWC/NBCC Joint Working Party's work will prove to be of significance to the industry for years to come. Immediate developments include:

- the No Dispute report itself, which was launched to the industry in July at a series of seminars held in the capital cities;
- the publication of a Tender Code of Ethics and a Tender Code (both contained in the report), which should assist in rationalising tendering policies, practices, procedures and documentation in both the public and private sectors of the industry;
- the clever and eminently usable risk allocation model (contained in the report), which is a further development of a concept some years old now by noted construction lawyer Max Abrahamson;
- the concept of a data-bank of optional clauses for a future standard contract to take into account differing policies, perceptions, procurement methods and both individual user and project needs, rather than expecting one contractual approach to satisfy all;
- the establishment of a Standards Australia committee to prepare a simpler quality assurance code more directly attuned to the building industry's needs than AS2990 (see Issue #12 at page 34 for further details);
- the development (at this stage, preliminary) of an uniform, nationally coordinated industry

training scheme to respond to many of the problems currently experienced in the industry, particularly those of contract formation and contract administration, which lead frequently to claims and disputes.

Work is also currently underway on the development of an NPWC/NBCC Consultancy Agreement and on a Concise Method of Measurement. Barring problems, both of these documents should be available early in 1991.

These are all significant developments. Yet, more is required. The greatest claims and disputes challenge for the industry is the necessary change in human attitudes and behaviour. The industry is a tough one in which the pressures lead, on occasions, to aggression, advantage and unprincipled behaviour. It is not an industry for the faint hearted, nor is it particularly noted for ADR notions of "win/win". Yet, mutuality of interest holds the key to improvement and there are examples from which the industry can draw.

Similarly, education can only result in greater efficiency in decision making and performance. Eventually, the proposed national industry training scheme may prove to be the most significant Joint Working Party achievement.

Whilst difficult, behavioural change is not impossible. Witness the change in smoking in the USA and Australia, compared with many European and Asian countries, which have not experienced educated change in habits.

By the kind permission of the National Public Works Conference and the National Public Works Conference, various of the No Dispute papers shall be reprinted in the Newsletter in this and future issues, in some cases in versions slightly abbreviated from the original (e.g. by the exclusion of summaries).

The complete No Dispute report is available from:

Mr Noel Mathews  
Executive Director  
The National Public Works Conference  
P.O. Box 103  
(470 Northbourne Ave)  
Dickson ACT 2602

Phone 062 43 6677  
Fax 062 43 6528

The price is a mere \$15, or Aus\$50 for overseas purchasers, including airmail postage.

In slightly modified form, the Introduction to the No Disputes report is set out below. The Introduction is then followed by lists of the report's Appendices and of the papers contained in the report.

## NPWC/NBCC No Disputes - Introduction

During the late 1980's there developed a widespread view in the Australian building and construction industry that there had been a very large increase in the incidence of contractual claims and disputes in the industry in the previous ten years. There seemed to have been a change in attitudes which led parties to pursue or resist claims vigorously and often with little regard to the particular merits of the claims.

This trend towards increased disputation and litigation, and the changes in attitudes which promoted increasingly aggressive and confrontational relationships, was seen as tending to adversely affect the efficiency and well being of the industry. The result was to put at risk the co-operative attitudes which are necessary to achieve timely and efficient completion of building and construction projects.

These concerns led to the formation of a Research Group made up of senior management people from the Australian Federation of Construction Contractors, the Australian Institute of Quantity Surveyors and Federal and State Government Construction Authorities.

The Research Group visited a number of countries in Europe, America, Asia and the Pacific. It published its findings in a Report - "Strategies for the Reduction of Claims and Disputes in the Construction Industry - A Research Report" - in November 1988 (in the rest of this Report referred to as "The Research Report").

The Research Report identified the principal causes of claims and disputes, and made a large number of recommendations intended to encourage a change in attitudes and practices in the Australian building and construction industry which would reduce the incidence of claims, and facilitate the settlement of legitimate claims quickly and fairly. The report also suggested ways in which the incidence of disputes might be reduced, and those which did occur be settled quickly and at the minimum cost to the parties.

The Research Report was widely acclaimed by the industry as making a major contribution to the solution of problems which were seen as causing great difficulty. The Report was discussed by senior representatives of all sectors of the industry at a Meeting between Government and Private Construction Industry Organisations in April 1989.

The Meeting agreed that the recommendations in the Research Report were of such significance that more work should be done to explore how they might be implemented in the industry in Australia.

The Meeting in April 1989 established the Joint Working Party (JWP), comprising representation from all the major groups in the industry, with the objective of developing co-operatively proposals for changes in the practices of the building and construction industry which would lead to improved practices, and better quality work, with the over-riding aim of achieving a reduction in claims and disputes.

Membership of the JWP was drawn from senior repre-

sentatives of all segments of the industry, including government Public Works Authorities, construction industry Contractors and Subcontractors, building owners, and industry and professional associations.

The Joint Working Party was chaired by Mr. Harvey Jacka, Executive General Manager of Australian Construction Services.

The meetings of JWP and of its Sub-Groups provided the opportunity for extensive discussion of the problems of the industry in an atmosphere of mutual respect. A wide range of views were expressed and debated.

These discussions identified, in particular, that the factors which promote efficient performance of projects are also the factors which eliminate or minimise the incidence of claims and disputes. The JWP is strongly of the view that no party benefits from circumstances that cause claims and disputes, and that greater emphasis should be given to those factors which promote the efficient performance of projects.

On this basis JWP has identified strategies which would lead to more efficient management and performance of projects through the various stages of project delivery.

JWP wishes to record the fact that frank and open discussion of the problems of the industry has been possible. The matters referred to the JWP are critical to the future efficiency and profitability of the industry. This Report presents the results of a great deal of work carried out by all members of JWP in the twelve months of its existence.

Each of the thirteen papers comprising this Report has been prepared based upon detailed analysis and debate of the topic by the members of the respective sub-groups, with detailed review and criticism by the JWP as a whole. This analysis and review process went through four cycles during which many important concepts and ideas were identified, debated and crystallised. The format of the various papers vary somewhat, reflecting the drafting styles of the sub-group co-ordinators.

A number of topics are discussed in more than one paper. The repetitiveness reflects the fact that many of the topics discussed have an effect on more than one aspect of project delivery. The retention of repetitive elements has been deliberate so that the papers can stand alone.

Whilst it has not been possible for agreement to be reached on every point by all parties, this Report does reveal a wide area in which consensus was possible. In those areas in which full agreement could not be reached, all participants have a better understanding of the industry's problems, and this in itself should assist the industry to achieve its aim of reducing claims and disputes.

JWP suggests that similar co-operation should be encouraged in the future when the industry is confronted with the need for change.

This Report is intended to encourage discussion and debate in the industry, and to contribute to the development of changed practices which will result in better

performance and fewer disputes. None of the Findings in this Report are intended to be prescriptive. Readers are encouraged to adopt, adapt or amend the contents of the Report as need and experience dictate.

Throughout this Report the term "Principal" is used to include the Proprietor, the Client, Owner, or Principal, as appropriate. The term "Contractor" is used to include the term Builder. Quotations from "Strategies for the Reduction of Claims and Disputes in the Construction Industry - A Research Report" are in italics.

Appendices to the Report set out:

- the Terms of Reference for the Joint Working Party;
- a list of the members of the JWP;
- membership of the JWP's thirteen Sub-Groups;
- a list of abbreviations used in the Report.

The Report contains papers on the following topics:

1. Risk Allocation  
Risk / Obligation Allocation Model
2. Selection of Contractors
- 2A Tender Code and Code of Ethics
3. Quality of Documents  
Appendices
  - A Guide to Documentation
  - B Building Design Guidelines
  - B Functional Brief Checklist
  - B2 Design Brief Checklist
  - B3 Site Information Checklist
  - B4 Approvals Checklist
4. Roles of the Parties
5. Cost Management
6. Nominated Sub-Contractors
7. Time Management
8. Variations
9. Claims Administration
10. Dispute Resolution
11. Alternative Contract Strategies
12. Quality Assurance
13. Training

Several of these papers are set out elsewhere in this Issue.