

Why Australia Needs the NEC

for the
Queensland Major Contractors Association

by
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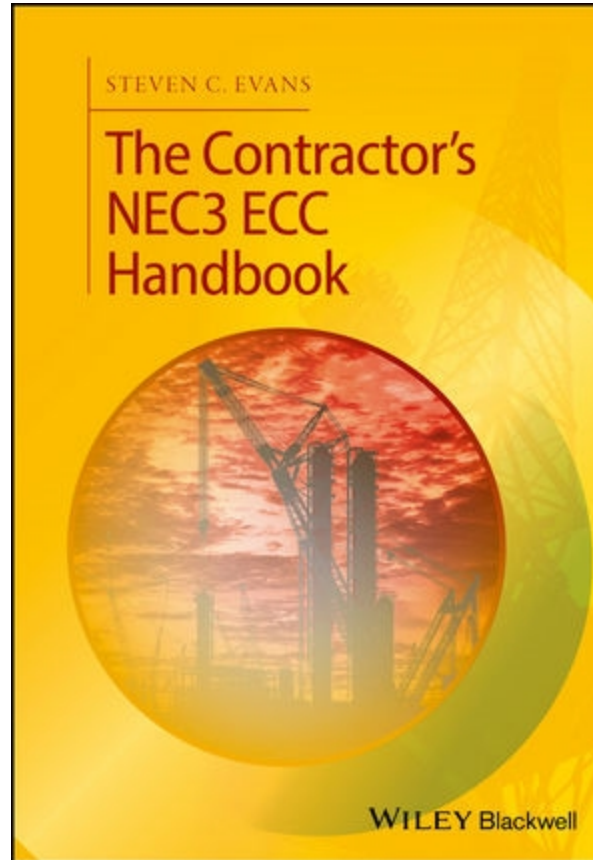
About Me

- Live in Australia having emigrated from the UK over 3 years ago
- Worked in Construction and Engineering for almost 30 years
- Dual qualified in Construction and Law
- Previously a Quantity Surveyor and Commercial Manager for top tier construction companies
- Now own and run consultancy practices in Australia and the UK with business partner in New Zealand,
- Advised range of clients from small subcontractors through to multinationals and government in Europe, Middle East, Australia and New Zealand.

About Me and NEC

- NEC is the 'go-to' contract for all publically funded projected in the UK and Hong Kong
- Advised over 100 clients on its use and operation and acted in dispute resolution procedures on many occassions
- Consult to the NEC providing training services
- Lectured on NEC forms of contract (and many other topics) for over 13 years,
- Advising a software company in the development of NEC3 and 4 specific software.

The Contractor's NEC3 ECC Handbook



Why does Australia need something different?

- Immersed myself in Australian (particularly Queensland) construction industry over the last 3 years
- Have advantage of looking in from the outside
- Professionals are saying:
 - AS contracts are out of date and now heavily amended
 - AS11000 has been abandoned
 - Alliance contracts are falling out of favour and have complex contractual arrangements
 - Increase in desire for more collaborative agreements
- Appetite for something different,
- Which may or may not be the NEC.

What is the NEC?

- Produced by the Institution of Civil Engineers
- A suite of contracts that promote and encourage collaborative working to the benefit of the project
- Suite includes:
 - Head Contract
 - Subcontract
 - Supply Contract
 - Dispute Resolution Contract
 - many others for the entire supply chain,
- Consistent drafting across all contracts.

What is the NEC?

- Used in many countries including UK, Ireland, South Africa, New Zealand, China, Hong Kong, Singapore
- And Australia, currently being trialed by Main Roads in WA
- Encourages good management through collaborative working
- Flexible (use of options)
- Language is 'clear and simple' – more straightforward than other, traditional, standard forms of contract,
- Can be used for large, complex projects as well as smaller simple projects
- Takes focus from traditional adversarial approach and refocuses on efficient construction,
- Proven to reduce the cost and time of construction projects.

What makes it different?

- “The Parties, the Project Manager and Supervisor act in a spirit of mutual trust and co-operation.”
- Underpins all NEC contracts
- But, so what?
- NEC not only encourages collaboration, but makes it happen by:
 - Early Warning
 - Early Warning Register
 - Programme
 - Pain/Gain
 - Sanctions

Collaboration enforced - Programme

- Contractor issues first programme by stated time or 25% of amount due is withheld
- Contractor updates programme at stated intervals
- Programme must comply with requirements of the Contract
- Project Manager must accept or reject a programme
- If Contractor does not update a programme or its programme is rejected then various sanctions are imposed on the Contractor including:
 - Making it more difficult to demonstrate some delays;
 - Losing the right to assess the effect of a change or other delay,
- Ensures up to date and accurate programme is maintained.

Collaboration enforced – Early Warning

- The Project Manager keeps an Early Warning Register recording risks notified by the PM or the Contractor which could affect time, price or quality or could affect the amount paid by the Contractor
- Parties or interested people collaborate to resolve the warned matters at an early warning meeting
- If the Contractor does not issue an early warning of a matter when he should have then various sanctions are imposed including:
 - Assessment of variation decreased
 - Cost not fully reimbursed (for cost reimbursable and target contracts),
- Ensures any risks are dealt with early and appropriately.

Collaboration enforced – Pain/Gain

- Target Cost contracts (main option C and D)
- Contractor is reimbursed its 'cost' for all works including variations plus its fee percentage
- Target is moved by the valuation of changes and variations
- Any overspend or underspend is shared between the Parties based on a formula included in the Contract Data,
- Motivates both Parties to complete the works properly and efficiently.

~~Changes and Variations~~ Compensation Events

- Compensation events are:
 - events which are listed in the Contract which entitle the Contractor to be compensated for the effect on the Prices and Completion Dates
- Compensation events take the place of variations, extension of time and prolongation/disruption costs
- The entire effect of the event is wrapped up in a single, all-encompassing adjustment,
- Assessment governed by a strict procedure.

Compensation Events:

- Notified by either the Contractor or the Project Manager
- For certain compensation events, the Contractor must notify within 8 weeks of being aware, or will lose any right to claim
- Project Manager must respond to a notification within a strict timescale otherwise the matter notified will be deemed to be a compensation event
- Contractor must assess the compensation event within a strict timescale or the event is assessed by the Project Manager,
- Project Manager must respond to a quotation by the Contractor within a strict timescale or the quote is deemed to be accepted.

Assessment of compensation events

- Effect on Contractor's 'cost' plus the Fee
- Effect on planned Completion,
- Because of the quotation timescale, some of the above will need to be forecast.

Dispute Resolution

- Contract contains a detailed dispute resolution process,
- Referral of any dispute to the resolution process is encouraged so that differences do not fester and impact upon the project.

Other Advantages

- Well used in other countries
- Organisations dedicated to information about and training on the NEC suite
- LinkedIn groups where questions can be asked and answers debated
- Integrated contract in a way that few others match
- My recent LinkedIn post resulted in very positive responses, and some negative ones including:
 - “it’s a pommie contract”
- Understandable, like others it has its fault, but its benefits to construction procurement, management and efficiency far outweighs those.

In the spirit of collaboration:

FREE

- I'm offering to spend 1-2 hours at your office free of charge and in whatever format you like (mentoring, project evaluation, dispute advice, training etc) on any legal or commercial issue including,
 - Dispute avoidance or resolution;
 - Better commercial management;
 - Time and Quantum claims;
 - Contract advice;
 - etc
- Talk to me later to make the arrangements or call me on 0455 449488.

The End

Contact

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