

UNCLASSIFIED

UPDATE

DATE	3/12 /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 10 meetings to date. The tenth committee meeting was a two-day, in-person meeting, which was held in Auckland.

This progress update will be circulated to the committee members, who are encouraged to inform their nominating organisations.

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: 10 committee meetings took place between February and November 2022. Four meetings were held in-person (two days each). The remaining six meetings were held online.

Upcoming meetings:

1. Committee meeting 11: January 2023 (4-hour online meeting).
2. Committee meeting 12: April 2023 (2 x 4-hour online sessions).

SUMMARY OF MEETING 10 – KEY POINTS

The P3910 committee convened in Auckland on November 29 and 30 for a two-day meeting. Nineteen committee members attended in person, while two members joined online. Two members were excused due to health issues.

Key points discussed

1. Extension of time

The committee had extensive discussion on Section 10: Time for completion. The committee agreed on the following:

- Regarding the method for calculation of the due date for completion, the preference was for the inclusion of commencement date and duration, rather than fixed date.
- Extension of time:
 - Additional wording was added to include consequences of a war or pandemic.
 - The process and timeframes for the notice, provision of details, and the decision for extension of time claims were agreed upon.

2. Subcontracts, Variations, Defects Liability

Non-contentions improvements and minor clarifications in respect of each topic were agreed.

3. Obligation (Section 5)

A discussion was held on the use and meaning of drawings and specifications and in particular “As Built” information, with particular reference to digital information. The committee agreed on the following language for incorporation into drafting:

- Design information (being components that are part of the contract)
- Asset information (being contract deliverables).

4. Final account

The committee agreed to add amendments to the final payment claim and final account process.

5. Dispute resolution

This topic was the subject of considerable debate. The committee agreed on a process for management of disputes which sets out mandatory and optional steps to simplify and clarify the dispute process.

6. Engineer’s powers and responsibilities

Minor updates were made to the Engineer’s role to reflect the steps that need to be taken to confirm Contractor agreement.

7. Indemnities

The appropriateness of the current Indemnities section was discussed. An alternative ‘fault-based’ indemnity regime has been proposed, and a strawman for committee consideration invited.

8. Revision of NZS 3916/3917 (3915)

The committee agreed that the revision of the NZS 3915, 3916, and 3917 suite of contracts should be updated to align them with the new NZS 3910. The timing of this update would ideally align

with, or shortly after, the publication of the new NZS 3910. The commissioners together with Standards New Zealand and the Chair will follow up on this discussion and set up an implementation plan.

9. Plain language

The committee made the decision to retain the overall structure of the current standard. The plain language principles will be incorporated into the revision before its release for public consultation.

10. Public consultation period postponed till May 2023

The public consultation period initially scheduled for February 2023 has been postponed till May 2023. This decision was made to allow the working groups to finalise their drafts, the individual drafts to be consolidated into one master draft, and the committee to review the master draft before it is released for public consultation.

The publication of the revised NZS 3910 is now scheduled for October 2023.

David Wilkie

Chair – P3910 Conditions of contract committee

Copies to:

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