

New REIQ residential contracts to be released 20 January 2022

New editions of the **Contract for Houses and Residential Land** (17th ed.) and **Contract for Residential Lots in a Community Title Scheme** (13th ed.) will be released by the REIQ and QLS on Thursday, 20 January 2022.

A number of changes to the contract terms have been made to accommodate new case law, new and updated legislation and **most significantly to provide a party faced with the inability to settle due to the actions of their financier the ability to obtain a short extension to remedy the inability.**

To allow the profession time to understand the impact of the most significant changes to the contract, below is a summary, rationale for the change and the impact on conveyancing practice. A more detailed table of all changes will be provided in January 2022 when the new contracts are released.

Changes to the terms with the most significant impact on conveyancing practice are highlighted first.

New Clause 17 th ed	Rationale	Impact on Conveyancing Practice
Smoke Alarms – new clause 7.8		
<p>7.8 Compliant Smoke Alarms</p> <p>(1) The Seller must install smoke alarms in any domestic dwelling on the Land in accordance with the Smoke Alarm Requirement Provision by the Settlement Date.</p> <p>(2) If the Seller fails to comply with clause 7.8(1), the Buyer is entitled to an adjustment at settlement equal to 0.15% of the Purchase Price but only if claimed by the Buyer in writing on or before settlement. This is the Buyer's only remedy for non-compliance with clause 7.8(1).</p>	<p>From 1 January 2022, dwellings or residential units offered for sale must have smoke alarms installed in accordance with the <i>Fire and Emergency Services Act 1990</i> and <i>Building Fire Safety Regulation 2008</i>.</p> <p>New clause 7.8 imposes a contractual obligation on the seller to install smoke alarms complying with these new requirements in any dwelling on the Land or a Lot prior to settlement.</p> <p>If smoke alarms are not installed the buyer will be entitled to an adjustment on the price payable at settlement of 0.15% of the purchase price. The buyer will need to claim this adjustment prior to settlement. There is no right to terminate or claim damages for a breach of clause 7.8(1).</p> <p>A right to access the property with notice to inspect the smoke alarms has been added to clause 8.2.</p>	<p>A seller should be advised of this obligation as soon as possible and warned of the adjustment to the price if complying smoke alarms are not installed. A buyer should be advised to check compliance prior to settlement as the right to seek an adjustment must be claimed in writing prior to settlement. The buyer will be required to install compliant smoke alarms after settlement if the seller has not complied.</p>

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Deposit by direct debit – grace period - New cl 2.2(3)-(5)		
<p>(3) Subject to clause 2.2(4), if the Buyer,</p> <ul style="list-style-type: none"> (a) effects an electronic transaction to pay all or part of the Deposit to the account of Deposit Holder on a day; (b) provides written evidence to the Deposit Holder that the electronic transaction has occurred; and (c) does not take any action to defer the payment to the Deposit Holder to a later day, <p>the payment is taken to be received by the Deposit Holder on the day the Buyer effects the electronic transaction even if, because of circumstances beyond the Buyer's control, the payment to the Deposit Holder's account happens on a later day.</p> <p>(4) If the Buyer has complied with clause 2.2(3) but the Deposit Holder has not received the payment by the due date :</p> <ul style="list-style-type: none"> (a) the Seller may give the Buyer notice that the payment has not been received by the Deposit Holder; and (b) if the payment has not been paid into the account of the Deposit Holder by 5pm on the date 2 Business Days after the Seller's notice under clause 2.2(4)(a) is given to the Buyer then clause 2.2(3) will not apply and the Buyer will be in default. <p>(3) (5) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.</p>	<p>Express provision is made in clause 2.2 for the payment of the deposit by direct debit.</p> <p>New clause 2.2(3) is a deeming provision that may apply when the deposit is paid by an electronic transaction.</p> <p>If clause 2.2(3) applies the buyer will be deemed to have paid the deposit on the day the buyer instructs their financial institution to pay the funds from their account. If this day is on or before the due date for the deposit then the buyer will be deemed to have paid on time.</p> <p>A buyer may rely on the deeming provision if:</p> <ul style="list-style-type: none"> a. The deposit is paid electronically; b. the buyer provides evidence of the payment to the Deposit Holder; and c. the buyer does not take any action to delay the payment. <p>The buyer must comply with all of (a)-(c) before the deeming provision takes effect.</p> <p>There is no time requirement for the provision of the evidence of payment, but until the buyer provides the evidence the deeming provision in clause 2.2(3) is not activated. This means up until the time of providing evidence of payment clauses 2.2(1) and 2.2(2) will apply unaffected by the deeming provision. If the deposit has not been received in the account of the Deposit Holder by the due date, the payment may be late, and the seller may take action under clause 9.</p> <p>If the deeming provision in clause 2.2(3) is activated:</p> <ul style="list-style-type: none"> a. it does not matter when a payment, deemed paid on time, is received by the Deposit Holder <p>BUT</p>	<p>A buyer should be advised to provide a copy of the receipt for payment of the deposit by direct debit to the Deposit Holder as soon as possible.</p> <p>A seller should request confirmation of receipt of the deposit from the Deposit Holder on the due date.</p> <p>If <u>payment has not been received by the due date</u> in the Deposit Holder's account, the seller should confirm with the Deposit Holder if evidence of payment has been received:</p> <ul style="list-style-type: none"> a. If evidence has been provided that confirms the payment was made by electronic means <u>on or before the due date</u>, the seller may only take action to terminate the contract for late payment if the seller first gives a notice under clause 2.2(4) requiring payment within 2 Business Days. If the payment is not received in the Deposit Holder's account by this date, the buyer will be in default and the seller will be entitled to exercise their right to terminate; or b. If evidence of payment by electronic means on or before the due date has not been provided to the Deposit Holder: <ul style="list-style-type: none"> a. clause 2.2(3) will not apply; b. the buyer will be in default because the deposit is not paid when required (clause 2.2(2)); c. the seller may terminate under clause 9.1 without first giving a notice under clause 2.2(4); <p>BUT</p> <p>If at any time prior to the seller giving notice of termination to the buyer, the Deposit Holder receives evidence from the buyer of payment by</p>

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	<p>b. if the deposit is not received in the account of the Deposit Holder by the due date in the contract, a seller may only terminate the contract for late payment of the deposit if the seller first gives the buyer a notice requiring payment within 2 business days and payment is not received in that time. If the payment is not received within the 2 business days stated in the notice, the buyer will be in breach.</p> <p>The purpose of the clause is to address the impact of delays in the deposit of money to accounts when using direct debit. The clause seeks to reach a balance between allowing time for the money to be credited after payment by the buyer and allowing a seller to take action if the payment is not received. The 2 business days' notice is to allow the buyer time to remedy the late payment.</p>	<p>an electronic transaction that was made on or before the due date, clause 2.2(3) will be immediately activated and the seller must give a notice under clause 2.2(4) as a precondition to termination for late payment of the deposit.</p> <p>c. If evidence is provided, but the date of payment is <u>after the due date in the contract</u>, clause 2.2(3) will deem the payment to be made on that date. As this is after the due date, the buyer will be in default (see clause 2.2(2)(a)) and the seller may exercise their rights under clause 9.1. No notice under clause 2.2(4) is required prior to terminating for late payment in this case.</p>
Pool Compliance Certificate – clause 1.1(w) and 5.3(1)(e) (Note clause 4.2 is deleted)		
<p>Clause 1.1 (w) “Pool Compliance Certificate” means: (i) a Pool Safety Certificate under section 231C(a) of the <i>Building Act 1975</i>; or (ii) a building certificate that may be used instead of a Pool Safety Certificate under section 246AN(2) of the <i>Building Act 1975</i>; or (iii) an exemption from compliance on the grounds of impracticality under section 245B of the <i>Building Act 1975</i>.</p> <p>New clause 5.3(1)(e) (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement: (e) a copy of a current Pool Compliance Certificate for each regulated pool on the Land unless:</p>	<p>Clause 4.2 has been deleted.</p> <p>A seller is required to hand over a Pool Compliance Certificate for a non-shared pool on the Land at settlement under new clause 5.3(1)(e). The only exception to this obligation is if a Notice of No pool Safety Certificate is given to the buyer prior to contract. In the case of a lot in a CTS a seller will be required to hand over a certificate for a non-shared pool on the lot.</p> <p>This is consistent with the disclosure obligations imposed on the seller of land or a lot with a non-shared pool under the <i>Building Act 1975</i>, s 246ATF and s 246ATM and <i>Building Regulation 2021</i>, s 28 continue to apply.</p> <p>In the case of a shared pool on the common property for a CTS in which the lot is located, there is no contractual</p>	<p>Sellers of land or lots with non-shared pools continue to be obliged to disclose prior to the contract if the pool has a Pool Safety Certificate.</p> <p>If there is no certificate a seller must provide a Notice of No Pool Safety Certificate.</p> <p>If a Notice of No Pool Safety Certificate is not provided to the buyer prior to contract, the seller will be required to provide a Pool Compliance Certificate (as defined) at settlement in exchange for the purchase price. A failure to hand over the certificate at settlement will allow a buyer to terminate the contract.</p> <p>Practitioners acting for sellers of properties with non-shared pools should confirm at an early stage if there is a Pool Safety Certificate or if a Notice of No Pool Safety</p>

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(i) the Seller has done this before settlement; or (ii) the Seller has given the Buyer a notice under section 28 of the <i>Building Regulation 2006</i> (Notice of No Pool safety Certificate) before entry into this contract.	obligation for the seller to hand over a copy of the pool compliance certificate for the shared pool in exchange for the price. But, the disclosure obligations imposed on the seller under the <i>Building Act 1975</i> , s 246ATF and s 246ATM and <i>Building Regulation 2021</i> , s 28 in relation to shared pools continues to apply.	Certificate was given prior to contract. If not, the seller should be advised that a safety certificate is required for settlement.
Right to extend settlement date – new clause 6.2		
<p>6.2 Extension of Settlement Date</p> <p>(1) Either party may, at any time up to 4pm on the Settlement Date, extend the Settlement Date by giving a notice under this clause nominating a new date for settlement which must be no later than 5 Business Days after the Scheduled Settlement Date.</p> <p>(2) The Settlement Date will be the date specified in the Extension Notice and time is of the essence in respect of this date.</p> <p>(3) More than one Extension Notice may be given under clause 6.2(1) but the new date for settlement nominated in an Extension Notice may not be a date later than 5 Business Days after the Scheduled Settlement Date.</p> <p>(4) In this clause 6.2, "Scheduled Settlement Date" means the Settlement Date specified in the Reference Schedule as extended:</p> <p>(a) by agreement of the parties; or (b) under clause 6.3 or 11.4,</p> <p>but excludes any extension of the Settlement Date as a result of the operation of this clause 6.2.</p>	<p>New clause 6.2 allows either party to give a notice extending the date for settlement up to 5 business days after the Scheduled Settlement Date.</p> <p>QLS and REIQ have updated these provisions relating to time of the essence, to alleviate the difficulties and potentially unfair result for a buyer who is unable to settle on the settlement day as a result of delays by financiers. The new clause 6.2 will allow a buyer to extend settlement for up to 5 business days to enable the financier time to be ready for settlement.</p> <p>New clause 6.2 can only be used to extend the settlement date and will not apply to extend other dates in the contract, for example, under contingent conditions such as finance or building and pest inspections. However, if there is a condition which requires performance 'at settlement', the time for performance will become the new settlement date set under the Extension Notice.</p>	<p>This is a significant change to conveyancing practice. Either party will be able to extend the settlement date at any time up to 4pm on the settlement date.</p> <p>To use this unilateral extension right a party must:</p> <ol style="list-style-type: none"> give a notice in writing prior to 4pm on the scheduled settlement date (The notice should be given in accordance with clause 10.4); nominate a new settlement date in the notice; the settlement date in the notice must be no more than 5 business days after the scheduled settlement date; time will be of the essence of the nominated settlement date. <p>The unilateral right to an extension cannot be exercised after the scheduled settlement date.</p> <p>The nominated settlement date will be the settlement date for all purposes under the contract.</p> <p>More than one Extension Notice may be given but the settlement date nominated in the notice cannot be later than 5 business days after the Scheduled Settlement Date.</p> <p>The definition of Scheduled Settlement Date does not include a settlement date set by an Extension Notice under cl 6.2 but does include:</p> <ol style="list-style-type: none"> a new settlement date agreed by the parties; or

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		<p>b. a settlement date under clause 6.3 or clause 11.4.</p> <p>For example, if a seller is prevented from attending settlement due to a delay event under clause 6.3, the date for settlement may be reset under clause 6.3(6). This will become the Scheduled Settlement Date. If on the date set under clause 6.3 the buyer's financier is not ready for settlement, the buyer may give an Extension Notice nominating a new settlement date of up to 5 business days after the settlement date set under clause 6.3.</p> <p>The unilateral right to an extension cannot be exercised after the scheduled settlement date and does not preclude the parties from agreeing to a longer extension.</p> <p>In the case of an electronic settlement an extension notice can be given at any time up to 4pm. In most cases the workspace will not lock as the required information or signing for settlement has not been completed. After an Extension Notice the settlement can be rescheduled.</p> <p>If the workspace does lock, but due to an error, rather than an inoperative computer system under clause 11.4, it does not settle by 4pm, an extension notice can be given, but must be given prior to 4pm. An extension notice may be given after locking but will not be effective unless the workspace unlocks. If settlement fails due to the unavailability of a computer system listed in clause 11.4, settlement will roll over to the next business day under that clause.</p>
Seller warranties - clause 7.4		
<p>(1) The Seller's warranties in clauses 7.4(2) and 7.4(3) apply except to the extent disclosed by the Seller to the Buyer:</p> <p>(a) in this contract; or</p> <p>(b) in writing before the Buyer signed this contract.</p>	<p>The warranties in clause 7.4 have been reorganised into two categories: (i) warranties accurate on the contract date (cl 7.4(2)) and (ii) warranties accurate on the settlement date (7.4(3)). Most of the warranties currently in clause 7.4(1), (2) and (3) have remained the same.</p>	<p><i>Change of practice:</i></p> <p>If acting for a buyer a search of the building records and other registers of the local government will be important. If acting for a seller prior to contract, requesting information from the seller about any correspondence that may lead to further orders to do work, will be important.</p>

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<p>(2) The Seller warrants that, at the Contract Date:</p> <ul style="list-style-type: none"> (a) there is no outstanding notice under section 246AG, 247 or 248 of the <i>Building Act 1975</i> or section 167 or 168 of the <i>Planning Act 2016</i> that affects the Property; (b) the Seller has not received any communication from a competent authority that may lead to the issue of a notice referred to in clause 7.4(2)(a) or a notice or order referred to in clause 7.6(1); (c) there are no current or threatened claims or proceedings which may lead to a Court order or writ of execution affecting the Property; (d) there is no outstanding obligation on the Seller to give notice to the administering authority under the <i>Environmental Protection Act 1994</i> of a notifiable activity being conducted on the Land; (e) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of the <i>Environmental Protection Act 1994</i>. <p>(3) The Seller warrants that at settlement:</p> <ul style="list-style-type: none"> (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property; (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property; (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and 	<p>The significant changes are:</p> <ul style="list-style-type: none"> a. The right to terminate if a show cause or enforcement notice remains unsatisfied at the contract date is now under cl 7.4(4), not clause 7.6. b. A new warranty is included: the seller warrants as at the contract date that they have not received communication from a competent authority that may lead to the issue of a show cause or enforcement notice or a notice to do work referred to under clause 7.6. This will require a seller to disclose communications with the local government about work to be done on the property. <p>The reason for adding the new warranty is that in practice, local governments correspond with owners for a considerable period without issuing a formal non-compliance notice. On becoming aware of the proposed sale of a property (usually when a buyer does a search) council may issue a formal notice, which under the present clause 7.6 is the buyer's responsibility. This seems an unfair result and the new clause is intended to overcome this issue.</p>	

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<p>there will be no unsatisfied Court order or writ of execution affecting the Property.</p> <p>(4) If the Seller breaches a warranty in clause Error! Reference source not found. or 7.4(3), the Buyer may terminate this contract by notice to the Seller given before settlement.</p>		
Clause 7.5 – Services unrelated to the land		
<p>(2) If:</p> <p>(a) there is an error in the boundaries or area of the Land;</p> <p>(b) there is an encroachment by structures onto or from the Land;</p> <p>(c) there are Services that pass through the Land which do not service the Land and are not protected by any Encumbrance disclosed to the Buyer in this contract; or</p> <p>(d) there is a mistake or omission in describing the Property or the Seller’s title to it;</p> <p>which is material, the Buyer may terminate this Contract by notice to the Seller given before settlement.</p> <p>(3) If a matter referred to in clause 7.5(2) is:</p> <p>(a) immaterial; or</p> <p>(b) material, but the Buyer elects to complete this contract;</p> <p>the Buyer’s only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.</p> <p>(4) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(3).</p>	<p>A new right to terminate is added to clause 7.5. Under clause 7.5 a buyer may terminate if infrastructure unrelated to delivery of services (gas, electricity, water, sewerage) to the Land pass through the Land and are not protected by a registered easement, BMS or statutory authority that has been disclosed to the buyer. A new definition of ‘Services’ for the purpose of this clause is included in clause 1.</p> <p>The same clause was also added to the Residential CTS contract, but any services infrastructure protected by a statutory easement under part 6A of the <i>Land Title Act 1994</i> is exempted from the operation of the clause.</p>	<p>A seller will need to disclose the existence of infrastructure located on or under the land that does not provide a service to the land. A search of all services infrastructure prior to contract will be required to ensure the seller complies with this obligation. A search of Dial before You Dig should provide the location of services infrastructure on or over the land.</p> <p>If there is infrastructure on the land and it is protected by a registered easement, BMS or statutory authority these encumbrances must be noted under Title Encumbrances in the Reference Schedule. In the case of a lot in a CTS scheme, statutory easements under the <i>Land Title Act 1994</i> do not need to be listed under Encumbrances.</p> <p>If there is no disclosure of Title Encumbrances related to services or disclosure of the existence of unprotected services infrastructure prior to contract, a buyer may terminate if the impact of the service infrastructure is material: clause 7.5(2). The test in <i>Flight v Booth</i> will apply. If not material, compensation is available if notice is given by the buyer prior to settlement.</p>

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Clause 7.6 – notices to do work		
<p>(1) Any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property must be fully complied with:</p> <p>(a) if issued before the Contract Date, by the Seller before the Settlement Date unless clause 7.6(4) applies; or</p> <p>(b) if issued on or after the Contract Date, by the Buyer unless clause 7.6(3) applies.</p> <p>(2) If the Seller fails to comply with clause 7.6(1)(a), the Buyer is entitled to claim the reasonable cost of complying with the notice or order from the Seller after settlement as a debt.</p> <p>(3) If any notice or order referred to in clause 7.6(1)(b) is required to be complied with before the Settlement Date:</p> <p>(a) the Seller must comply with the notice or order; and</p> <p>(b) at settlement, the Buyer must pay the reasonable costs incurred by the Seller in doing so,</p> <p>unless the Buyer directs the Seller not to and indemnifies the Seller against any liability incurred for failure to comply with the notice or order.</p> <p>(4) The Buyer must comply with any notice or order referred to in clause 7.6(1) which is disclosed by the Seller to the Buyer:</p> <p>(a) in this contract; or</p> <p>(b) in writing before the Buyer signed this contract.</p>	<p>Under clause 7.6 the responsibility for notices to do work has changed:</p> <p>a. A seller is required to comply with notices to do work in relation to the Property issued prior to contract unless the notice is disclosed to the buyer in the contract or in writing prior to signing;</p> <p>b. If the seller fails to comply with the notice the buyer is entitled to claim the reasonable cost of complying with the notice from the seller as a debt after settlement</p> <p>c. A buyer is required to comply with notices to do work issued after contract unless the notice requires compliance prior to settlement, in which case the seller must comply with the notice and can claim the reasonable costs incurred from the buyer as an adjustment at settlement;</p> <p>d. The seller is not required to comply with a notice in c. above if the buyer requests the seller not to comply and indemnifies the seller against all liability incurred for failing to comply.</p>	<p>A seller can be relieved of the obligation to comply with a notice, issued prior to contract, to do work on the Property by disclosing the notice to the buyer prior to contract.</p> <p>If not disclosed the position remains the same as currently applies, that is, the seller must comply by settlement. If the seller fails to comply the buyer can: (i) settle and claim the cost as a debt after settlement or (ii) terminate if the notice meets the test of being a material defect in title. This is also not a change to practice.</p> <p>If the notice is issued after contract, the position remains that the buyer is required to comply unless the notice is required to be satisfied prior to settlement. In this case the seller must comply unless the buyer requests the seller to not comply and provides an indemnity for liability. If the seller complies, the seller may claim the reasonable costs at settlement.</p>

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<p>Contract Date - definition clause 1.1(j)</p> <p>“Contract Date” or “Date of Contract” means: (i) the date inserted in the Reference Schedule as the Contract Date; or (ii) if no date is inserted, the date on which the last party signs this contract;</p>	<p>New definition of Contract Date – the definition of Contract Date in clause 1 is amended to accommodate signing of electronic contracts in Realworks using DocuSign.</p> <p>If signed using Realworks the date is not automatically added to the Reference Schedule. If no date appears in the Reference Schedule the Contract Date will be the date the last party signed the contract.</p>	<p>Practitioners should ascertain this date and note it on the file if the date is not inserted.</p>

There are **other changes to the contract terms** that do not have significant impacts on conveyancing practice.

New Cyber Warning appears in the Reference Schedule warning the buyer to confirm the details of the deposit holder’s trust account before paying any money electronically.

Adjustment of outgoings: Clause 2.6 and the definition of Balance Purchase Price are altered to overcome the interpretation given to clause 2.6 in the decision in *Sentinel/Citilink Pty Ltd v PS Citilink Pty Ltd* [2018] QSC 239. The amendment clarifies that outgoings are apportioned between the parties and discharged from the purchase price. These amounts are not adjustments to the agreed consideration for the property.

Place of settlement: Clause 5.1 is amended to clarify the requirement to settle at the office of a solicitor, financial institution or agent as directed by the seller and the obligation of the seller to advise of a place for settlement at least 2 Business Days before the Settlement Date. If no place is nominated in that time frame, settlement will be required to take place in accordance with s 61(2)(c) of the Property Law Act 1974. Under this section settlement must take place at the office of the land registry under the Land Title Act 1994 at which the document relating to the conveyance may be lodged or, if there are 2 or more such offices, the office that is nearest to the land. It should be noted that this clause does not apply to an electronic settlement.

New Delay event: a new event is added to the definition of Delay Event in clause 6.3. Clause 6.3(8)(b)(v) will now include if the “computer system operated by the ATO for the GST Withholding notifications referred to in clause 2.5(5)(c) is inoperative”.

Services not protected by easement: Under clause 7.7(1)(d) the buyer may terminate a contract if any services to the land pass through other land and are not protected by a registered easement, BMS or statutory authority. There is no materiality test. This change to clause 7.7(1)(d) provides clarification of the buyer’s right. In the 16th ed of the contract, a buyer was entitled to terminate if services passed ‘unlawfully’ through other land.

Information provided to buyer on request: Under clause 8.4 a new requirement for the seller to provide the local government rate account number for the land upon request is added.

Right to terminate: clause 9.1 is redrafted for clarity. There is no intention to change the rights of the parties.

Business days: Clause 10.5 is amended to include the days where the Reserve Bank of Australia is closed in both Sydney and Melbourne for a public holiday. This applies only to the settlement date for electronic settlement.

Calculating time: New clause 10.9(6) is added to assist parties with the counting of time provisions in the contract.

Computer system unavailable for electronic settlement: Clause 11.4 is amended to provide for a roll-over of the settlement date where a computer system required for settlement is either 'inoperative or unavailable'. This will provide a broader operation of the clause to include where a computer system may be working but not available for settlement on that day.