dictability of labour costs which would inevitably result. Nevertheless, it might be the only avenue left, if the union movement (and employers) prove themselves unable to regulate the industry effectively in a collective way.

Some form of collective self-regulation is the third option and it seems certain at least to be given a fair trial. Virtually all the major parties have supported the concept of a secondary wage or over-award payment to apply on major commercial and industrial building projects. It is also common ground that this payment should be the exclusive source of wages and allowances over and above those provided by the relevant awards. There are different views within the industry about exactly how this should be done and what role (if any) should be played by the Arbitration Commission. But these are essentially points of detail, not principle, and will ultimately be resolved by discussion or force of circumstance.

It is likely then that within 12 months there will be quite a new approach to wage-fixing on major building work. It is quite possible that site allowances and site agreements as they are known today will disappear for new projects. In their place may be a regional agreement covering much the same matters, but fixing payments for all sites for a period of perhaps two years at a time.

These changes will have major consequences. For the first time, it will be possible for specialist contractor organisations to have direct input in the negotiation of over-award agreements. It will also be possible for owners and investors to be advised and consulted about the level of labour cost increases.

These changes will pose questions for government. The codes of conduct currently imposed by the Federal and some State Governments require contractors not to pay any wage or allowance which has not been ratified by the Commission. This will obviously be an inappropriate prescription, if the Commission itself endorses the widespread negotiation of over-award payments.

Conditions of contract will also have to be reviewed, particularly rise and fall clauses. The industry will have to decide whether it wants to encompass over-award payments in its price escalation calculations, or exclude them. If a new system of fixing wages has its intended effect of improving stability and predictability of labour costs, then it may be practicable to rely far more on fixed price contracts, or to incorporate escalation provisions which rely on a single index of industry or community prices.

The momentum of reform is now so firmly established that it cannot be stopped completely. There will be significant changes in the way wages are regulated on major building work. The industry must now await the outcome of the Building Industry Inquiry to see whether change is going to be half-hearted and fragmented, or enthusiastic and thorough. Only the Commission can take a decisive lead. If it does not, the current moves to manage industrial relations in the major building sector in a totally different way to the rest of the industry can only gather pace.

- Ken Lovell, Director, Industrial Relations, AFCC

2. CLAIMS AND DISPUTES

The next issue of the Newsletter shall contain a detailed outline of the findings of the industry research project, convened by AFCC, into claims and disputes in the construction industry.

In the meantime, it may be interesting for readers to note the findings of one public sector client's internal survey into the causes of claims and disputes, which it has experienced during the 1980s. These findings are set out below:

Analysis Of Disputes Requiring Superintendent's Decision 1980 - 1987

Classification	%
• Errors In Bill Of Quantities And Conflicts Between Bill Of Quantities And Other Documents	22
• Extension Of Time Including Consequent Delay Costs	22
• Discrepancies Between Specification And Drawings	19
• Rejection Of Work And Materials	13
• Pricing Of Variation Orders	12
• Latent Conditions (Earthworks)	6
• Late Nomination Of Subcontractors	4
• Other	2

3. CONFERENCE OVERLOAD

In additions to the regular training courses offered by organisations such as The Institute of Arbitrators, Australia, the Australian Commercial Disputes Centre, AFCC etc. and sessions at conventions held by industry organisations, there would seem to be an abundance of opportunities presented to the industry to attend seminars and conferences on all manner of topics related to the industry.

To a large extent, these conferences reflect the problems and concerns of the industry, e.g. in relation to contract formation, contract administration, claims and disputes and dispute resolution. However, there is a significant extent of overlap and duplication in the courses offered, to the point where it is possible to question which industry is serving which.

Over the last twelve months, offers to attend seminars and conferences on the following subjects have come across just one desk:

- Acquisition, Divestment and Privatisation
- Administration of Contracts
- Advanced Arbitration Course
- Alternative Dispute Resolution
- Alternative Dispute Resolution In Construction Contracts
- AS2124-1986 General Conditions of Contract
- Competitive Tendering And Contracting Out
- Construction Claims
- Construction Claims Management (four courses)
- Design and Construct Contracts
- Engineering Contracts
- Financial Risk Management In Real Estate Construction And Development
- Fundamentals of Estimating
- General Arbitration Course
- Improved Project Management Through Computer Assisted Information Management
- Legal Aspects of Subcontracts In The Building Industry
- Local Government and Building Law
- Management of Construction Contracts
- National Cost Adjustment Provision Edition 2
- Negotiation Workshop

- Project Management
- Property Finance Packages
- Property Joint Ventures
- Property Refurbishment
- Property Trust Update
- Realising The Design, Contractual Choices And Responsibilities
- Reducing + Resolving Construction Claims
- The Revised FIDIC Conditions of Contract
- Scheduling For Claims + Project Control
- Specifications For Construction Projects
- Subcontractors' Conference

Attendance at all of the above seminars and conferences would have involved 57 days out of the office and a total direct cost (not including salary and overheads) of $19,145. The cheapest conference was $80 for an half day seminar and the dearest was $1,250 for a three day course. The majority of conferences were of two day duration and cost in the order of $675 - $795. Generally, the speakers are not paid.

4. EXPEDITED ARBITRATION

The significant advantages of arbitration as a system of resolving disputes are privacy and the finality of the process, subject to limited recourse to the court.

However, the process is not necessarily more time or cost effective than litigation. There are horror stories of the costs of particular arbitrations, which led disputants to settle on the basis that continuance of the arbitration was not an option. There are also stories of extraordinary periods of time involved in cross examination of project managers. Often these problems arise from the aggressively adversarial manner in which disputants conduct their cases. However, the problems also arise from the difficulties arbitrators have in controlling the process, due to the potential for challenge to the arbitrator or the arbitral award, on the basis of misconduct or denial of natural justice.

Whatever the causes, these problems have led to some questioning of the efficiency of the process and to the use of Alternative Dispute Resolution strategies.

There can be limitations on Alternative Dispute Resolution methods, where there is a need for a binding independent determination of the dispute. Accordingly, AFCC made a submission to The Institute of Arbitrators, Australia suggesting the need to develop a streamlined or "fast-track" system of arbitration to overcome the problems of costs and delay in arbitration. This submission was supported by the National Building and Construction Council.

In August 1988, the Institute of Arbitrators, Australia published Expedited Commercial Arbitration Rules, which give a great deal of power and flexibility to the arbitrator to conduct the proceedings in an efficient manner. These Rules can be invoked by the agreement of the parties.

However, once the disputants have agreed to invoke these Rules, the control of the detail and nature of the proceedings is in the hands of the arbitrator. Rule 18 provides that "the arbitrator may conduct the arbitration proceedings in such manner as he thinks fit and, in particular, **he may in his absolute discretion** direct that:

- there be no pleadings;
- there be limited pleadings;
- there be limited discovery;
- there be no opening address by the parties or that opening addresses be limited in time;
- there be no final addresses or that final addresses be limited in time;
- pre-hearing submissions to be lodged by the parties accompanied by sworn statements of witnesses and documentation upon which the parties wish to rely with the parties having a right of reply and to require that any deponent of a sworn statement attend for cross examination;
- the number of expert witnesses to be called to be limited in number;
- the report of experts to be relied upon in the arbitration be exchanged at least seven days prior to the hearing com mencing;
- there be no oral evidence;
- the above steps to be taken within strict time limits"

(Note, emphasis added.)

Rule 19 provides that the arbitrator may determine any question which arises by reference to general justice and fairness. This may not suit the parties, who may wish for a determination strictly in accordance with the law.

Rule 20 provides that the arbitrator shall have power to attempt to achieve a settlement by conciliation and/or mediation and that such attempts shall not be adduced in any subsequent Court proceedings as evidence of partiality or bias or a breach by the arbitrator of the rules of natural justice.

Rule 21 provides that the arbitrator shall not be required to include in the award a statement of the reasons for making the award. This may not suit the parties.

No doubt many of these provisions would have the effect of expediting the arbitration and of controlling costs. However, the disputants may be comfortable with some, but not all of them.

The Institute's Rules will be most helpful in situations where the parties choose to rely upon the arbitrator's experience for guidance as to the most efficient manner of conducting the particular dispute.

However, in most instances, the parties would probably choose to retain control of the process themselves and consciously decide the manner in which the dispute should be resolved. Consequently, the approach taken in the Institute's Rules, in its current form, may mitigate against its use. It is questionable whether many disputants will choose to empower the arbitrator to the extent that these Rules allow and, more particularly, to divest themselves of control of the process. Nevertheless, the Institute's Rules may serve as a checklist for the parties to develop an agreement (perhaps in conjunction with the arbitrator) on a procedure for expedited arbitration in relation to a particular dispute, or perhaps to be inserted in the agreement.

In response to similar concerns in the United Kingdom with respect to costs, delays and problems arising out of arbitrations, the U.K. Joint Contracts Tribunal published Arbitration Rules in July 1988, which provide three optional approaches to arbitration. These are:

1. Arbitration **without hearing**, based upon provision of statements of particulars to a strict timetable, rather than pleadings and a hearing. If the timetable is not met, then the claim or counterclaim can be dismissed.
2. Arbitration based upon a **short procedure with a**