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POLICY, PROCESS AND PROCEDURES

POLICY AND PROCEDURE - SELECTING APPROPRIATE CONTRACT

- Procurement strategy and contract selection for building projects is required, among other things, to achieve value for money. Achieving value for money typically involves comparing alternatives for the supply of goods and services to get the best mix of quality and effectiveness for the lowest cost over the required term, using performance specifications, innovation , flexibility to secure scope changes at a reasonable cost, better outcomes, required skills and capabilities to deliver the planned project outcomes. Importantly, it involves an appropriate allocation of risk, making the selection of a suitable procurement strategy and contract a critical factor in determining whether value for money is achieved
- The method of selecting an appropriate procurement strategy and associated contracts will:
  - assist in securing planned project outcomes
  - encourage the appropriate allocation of risk
  - reduce the risk of project duration and budget overruns
  - reduce the likelihood of contractual disputes and litigation.
- The selection of appropriate procurement strategies and contracts requires knowledge of:
  - the key objectives of, and constraints on, the building project
  - the risks (both typical and specific) that might impact upon or be encountered at each stage in the delivery of the project, and how best to deal with those risks
  - the level of complexity of the project
  - the key processes and activities that must be performed in delivering the project
  - the available procurement strategies and contracts
- Before selecting procurement strategies and contracts for building projects, it is important to understand the difference between these terms:
  - ‘procurement strategy' refers to the process used to take a building project from its early planning phases to completion and occupation by the building’s users
  - ‘consultancy contract' means the written agreement between either the principal and a consultant or the building contractor and a consultant, for the delivery of consultancy services (such as design, documentation, cost planning and project scheduling) related to a building project
  - ‘building contract' means the written agreement between the principal and the contractor for the construction of the project. The terms of the agreement may provide for the design and documentation of the project by the contractor, and may also include ongoing maintenance obligations.
- As a project moves through the phases in the process, knowledge of the project increases. During the project development phase (i.e. project evaluation and program formulation), decisions should be made about the type of building that is required, when it is needed, and what funds might be available to build it. This is the ideal time to consider the procurement strategy or strategies that might be best suited to deliver the required project outcomes. The key objectives here will include the scope, cost, time, budget, quality, sustainability , innovation, stakeholder expectations and project outcomes.
- By the time the project reaches the project delivery phase, project knowledge will be at a level where a preferred procurement strategy can be readily identified and actioned upon.
- Identify the factors which will determine the most suitable procurement strategy for the project. These factors are:

  - the key objectives and constraints of the project
  - the risks that may arise during the delivery of the project and how those risks might best be dealt with
  - the level of complexity of the project.
- We have to be wary of the constraints, which may include:
  - Time constraints
  - Budget constraints
  - Labour resources
  - Skills, capability and capacity outcomes and resources
  - Market conditions
  - Legislative requirements
- This critical objective or constraint should then be used to determine the most suitable procurement strategy for the project
- Another factor that may influence selection of a procurement strategy is the risk associated with the building project. Risks are events, both known and unforeseen, that might occur during the delivery of a building project and which will usually adversely affect the project outcomes. One should consider and determine the most suitable method to deal with the identified risks prior to selecting a procurement strategy for the particular project. As a guidance, responsibility for managing a particular risk should be allocated to the party best able to deal with that risk. Inappropriate risk allocation is likely to result in project budget overruns (as contractors can reasonably be expected to make allowances in their tenders for the risks for which they are responsible) and increase the likelihood of contractual disputes and litigation.
- Having defined the key objectives and constraints of the building project, identified the risks, broadly determined the preferred risk allocation and identified the level of complexity of the project, the procurement strategy can be selected.
- The procurement strategy best suited to the project will be the one that best aligns with the key objectives and constraints of the project, that deals most appropriately with the identified risks, and that suits the level of complexity of the project.
- Residential Contact – Lump sum: The principal engages consultants to design the building project and prepare documentation which fully describes the work to be undertaken. The contractor then constructs the building project in accordance with the project documentation prepared by the principal's consultants, for the agreed lump sum price. This procurement strategy is best suited to projects where there is a high degree of certainty regarding the specific project requirements.
- The contracts should not be amended in any way without prior consultation and agreement with the Director and the Contract Administration. Consultation should also be made for High Risk Building Projects.
- With the contract selection, the optimum building contract for a particular project will:
  - be suitable for use with the chosen procurement strategy
  - be in alignment with the key objectives and constraints of the project
  - deal most appropriately with the identified risks
  - be suited to the level of complexity of the project.

POLICY AND PROCEDURE – PREPARING AND FINALIZING THE CONTRACT

The purpose of the contract management framework is to provide a clear and standardised approach to managing and administering contracts we undertake.

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Activities performed prior to contract award have strong impact on the contract management process. Ensuring that key requirements are fulfilled before the contract starts is fundamental for effective contract management. These requirements are as follows:

- contract terms and conditions developed and agreed by all parties
- performance management activities and reporting agreed
- contract owner appointed
- contract management plan implemented.

There are three essential roles and responsibilities for managing contracts effectively.

Contract owner/Client:

- Person accountable for the budget/cost centre that funds the contract
- Employee with delegation to approve contract payments and variations
- Appoint contract management roles
- Recommended to be a senior employee from the business who is impacted by the contract outcomes

Contract Manager:

- Manage contracts through post-award lifecycle as the single point of contact for suppliers on all contract matters
- Contract set-up –
    - To define clear roles and responsibilities for managing the contract
    - To classify the contract depending on its value and risks
    - To define and agree the necessary activities for managing the contract
- Monitor contract performance and compliance
- Recommended to be a representative within the business unit with the relevant commercial skills

Contract Administrator:

- Perform administrative activities over the contract management lifecycle (e.g. information management, cost control, etc.)
- Recommended to be a representative from the procurement team (local, regional or state-wide)

POLICY AND PROCEDURE – PROCUREMENT

This involves:

- After the tendering process is complete and selected
- Create and submit a purchase request
- Procurement planning and selection of type of procurement route – considerations that may affect the selection of a procurement route and look for speed, cost, quality, any constraints, risks, ownership and financing abilities
- Identify suppliers
- Requisition review
- Negotiate terms of contract with selected supplier
- Solicitation process
- Evaluation and contract
- Finalize the purchase order
- Order management
- Invoice approvals and disputes
- Record keeping

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- In selecting the appropriate type of procurement route for the project involved, mainly contractor led or design and build, lump sum contracts, management contracts, etc
- After recognizing the need for the product or services and consulting with the appropriate team and/or procurement managers, a budget will be set and spending assessed
- A purchase request is submitted and reviewed. Once approved it becomes a purchase order
- Assess and select appropriate vendors that meet the key requirements. Send a request for quotation to the various vendors, so that the procurement team can compare the prices and select the appropriate option. This does not only include prices, but also check if the vendor can offer good communication, have good company ethics, are accountable and have good production capabilities. Ensure building good relationships with the supplier as this unlocks better savings, service and delivery gaining maximum value in the long term
- Negotiate contracts with the selected vendor. You must outline and agree to pricing as well as details like delivery schedules, specific terms and conditions.
- After the final contract is approved then finalize the purchase order ensuring it contains the total costs/price, detailed description of the goods/services, the quantity and any other specific terms and conditions
- Once goods/services delivered, a responsible person(s) should check that all standards have been met including delivery times/deadlines, product quality, product quantity. If any issues are noted, then one can reject the delivery and discuss solutions with the supplier. Clear communication with the vendor is key in the event of any delivery problems

POLICY AND PROCEDURE – STORAGE OF RECORDS AND DOCUMENTATION FOR CONTRACTS/CONSTRUCTION DOCUMENTS

Each business area must maintain its own Contract Register. The information that must be maintained on the Contract Register. Contract Registers can be further developed with additional information to help suit the individual business area needs. Folders should be labelled with first 6 letters of the address starting with house/lot number, street name then 001 onwards for each stored document

The Contract Register should be used to help manage and plan for contracts and ensure adequate attention and resourcing is applied for ease of reference.

POLICY AND PROCEDURE - BILLING

This involves:

- Send invoices to client as per contract agreement and on time
- Ensure invoices are clear and accurate
- Practice short payment terms unless agreed on contract terms
- Encourage early payment and penalize late payments
- Follow-up on invoices
- Ensure contracts cover penalties on late payments and back charges where applicable
- Ensure good record keeping is maintained
- This indicates the sale or supply from the business to the client

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- Ensure invoices are clear and accurate including dates, names, addresses of both parties, description of goods/services, price and quantities and terms of payment
- Ensure to check contractor/subcontractor hours worked and priced accurately by verifying the work, scope of works as per their contract document and checking for any double payments made. Where required you may request for supporting documentation for the records
- Send invoices on a timely manner
- Ensure to state the terms or credit terms on the invoice and prevent longer payment terms as this can lead to higher debt ratios affecting the company's finances
- Encourage early payment and penalize late payments
- Follow-up on invoices in a timely manner as these can easily get missed, lost in a pile with other invoices or forgotten. Follow up with phone calls or emails and keep a record of the same, for future references.
- If invoices are unpaid, ensure to follow up or make payment demands and take action accordingly as they may have breached the contract

POLICY AND PROCEDURE - COMMUNICATION

This involves:

- Verbal communication in person or phone
- Nonverbal communication in texts or signs or signals
- Written communication via email or write ups
- For any Projects, establish a communication chain of command that is easily identifiable in contracts for any communication between the client, ourselves and any other third parties involved eg) engineer or architects
- Ensure to choose the right communication method for relaying the message
- Methods of communication for specific tasks and information sharing should be established early on in the project and agreed upon by all stakeholders.
- Listen carefully
- Avoid confusion, be clear and concise and professional
- Effective communication is vital to the successful completion of any construction project. Good communication can improve teamwork and lead to better project collaboration. Poor communication can result in misunderstandings, delays, and issues down the road
- Communication of command is to be followed precisely.
- The architect is responsible for communicating with its consultants
- The Contractor is responsible for communicating information to its suppliers, subcontractors and workers.
- The contract documents, including the drawings, specifications, change order forms and requests for information establish the basis for all construction communication. It is important that any direct communication not outlined in the contract documents receives proper authorization and any changes to the scope or schedule that need to be made are documented and reported through the proper channels.
- Establishing a clear line of communication that includes identifying points of contact with contact information for key team members is vital to ensuring that information is getting to the right people in a timely manner.
- In Projects and on the construction site, we communicate through signs, drawings, hand signals, and meetings. We compile daily reports, take photos, create requests for information (RFIs) and review

change orders. Items like RFIs, change orders and daily reports are usually laid out in the contract documents with their own specific forms and submittal procedures that have to be followed. Ensure this is adhered to, if it is the case.

- There is also a host of project collaboration software solutions available that will allow you to quickly share and disseminate information to all stakeholders on a project. All changes and project documentation can easily be stored and updated so everyone has access to the most up-to-date information. These software solutions and mobile applications can be a great tool for effective communication as long as all stakeholders have access to it, have been properly trained, and are committed to using it. If this is being used for any Project, then ensure all parties concerned are informed so that all communication goes through this path.
- Methods of communication for specific tasks and information sharing should be established early on in the project and agreed upon by all stakeholders. Any deviations from the prescribed methods of communication could result in messages not being received by the intended parties in a timely manner causing delays in the project.
- Your message should be focused and to the point. Keep it short and simple as much as possible. If you are working on multiple projects with the same owner or architect, focus on only one project at a time to avoid confusion. Proofread all written messages before sending them to see if you can edit them down without altering the meaning or leaving out any critical information. Be Professional.

POLICY AND PROCEDURE – QUALITY AND QUANTITY OF MATERIALS USED

Refer to the contract wordings to ensure quantity and quality of material used are consistent with this agreement:
10.4 Warranties relating to suitability of materials
Subject to Clause 10.5, the Contractor warrants that all materials to be supplied by the Contractor for use in the Works:
a) will be good and, having regard to generally accepted practices or standards applied in the building and construction industry for the materials, or the specifications, instructions or recommendations of manufacturers or suppliers of the materials, suitable for the purpose for which they are to be used; and
b) unless expressly stated otherwise elsewhere in this Contract, will be new.
10.5 Applicability of Clause 10.4
Clause 10.4 does not apply if:
a) an architect is the Owner's Agent, or this Contract is to be administered by an architect engaged by the Owner, and the Contractor is subject to the direction of the architect for the materials that are to be s supplied by the Contractor; or
b) the Owner is responsible for specifically nominating the materials to be supplied by the Contractor for use in the Works without any recommendation, representation, suggestion or other approach having been made to the Owner by the Contractor:
i) supporting, or approving, the use of the materials; or
ii) criticising, or disapproving the use of, other materials that could be considered to be appropriate for use for the purpose for which the materials nominated by the Owner are to be used,
and there are no reasonable grounds for not using the materials or, if there are reasonable grounds for not using the materials, the Owner insists on the materials being used despite written advice to the contrary given to the Owner by the Contractor.

POLICY AND PROCEDURE – WORK CONDITIONS

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To ensure work conditions are consistent with contract agreements and to follow the Work Health and Safety Regulation 2011 and preparation of SWMS
Duties will include:

- signage identifying principal contractor
- preparation of the work health and safety (WHS) management plan (includes site rules)
    - duty to inform all persons of plan before they commence
    - duty to review – must remain up-to-date
    - must obtain safe work method statement (SWMS) before high risk construction work commence
    - put in place arrangements for ensuring compliance with specified requirements such as facilities and amenities
    - manage risks associated with construction materials and waste, plant, traffic and essential services.
    - Prepare company SWMS document for every project
    - Reference to the Code of Practice and Australian standards must always be met

The Work Health and Safety Management plan should include:

- responsibilities for each of the agency/manager site personnel
- use of site diaries
- surveillance and auditing of the service provider activities including any design
- management of OHS records
- site safety committees (where applicable)
- personal protection equipment
- reviewing contractor OHS submissions, including OHS management plans and Safe Work Method Statements (SWMS)
- identifying, assessing and controlling safety hazards and risks associated with the contract management work, including to employees, and work site users/neighbours and the public.

POLICY AND PROCEDURE – MANAGING CONTRACT VARIATIONS

These general principles apply to contracts for construction work and to agreements for related services. For simplicity, the following terminology is used:

- 'contract' encompasses both construction contracts and service agreements
- 'contractor' includes contractors, consultants and project managers
- 'principal's representative' means the principal's authorised person or the principal's representative as applicable.

The general conditions in each standard form of contract define what constitutes a variation in that particular standard form.

Variations are the changes by addition, alteration or omission to scope of works, with such variations changing the costs or schedule of the project. In general, contracts provide procedures to follow when variations are needed. Variations may be identified through consultations and meetings with relevant personnel. Some of the reasons for variations include the following:

- An addition or omission from the scope of work
- Changes in the quality or quantity of materials needed for construction

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- Changes in design
- Changes in working conditions
- Changes in the commencement or completion date and the schedule

In general terms:

- A variation is a change to the work required under the contract. Each standard form contract also includes other provisions relating to variations and their management, which should be read in conjunction with these general principles and any variations made is always in writing and agreed by all parties concerned.
- A variation becomes part of the contract and all the contract conditions apply to the changed work, including provisions for extensions of time and site conditions (if applicable).
- A variation instruction will often lead to claims from the contractor for additional payment and for an extension to the period for completion. The additional payment may include additional costs for delay, acceleration or disruption associated with the variation.
- Variations are one of the main reasons for cost and time overruns in construction contracts. It is therefore important to manage variations effectively in order to reduce the risk of exceeding the budget and completing the works late.
- Negotiating the variations will require communicating with the contracting parties and presenting evidence of its necessity or inevitability. If the changes cause delay, a request for extension of time needs to be filed, approved, signed, and dated, as well.

There are three types of variations:
1. Unavoidable variations
These are necessary in order to minimise adverse effects due to unexpected events or circumstances. They may be required to avoid health, safety or security problems. They do not result in a change to the scope of the work.
Examples of unavoidable variations are:

- a variation to minimise the increase in cost or other adverse impact of a latent condition (for example, unanticipated ground conditions, hazardous materials or existing services)
- a variation to overcome a fault (for example, an error, ambiguity or inconsistency other than an omission or lack of completeness which may be the responsibility of the contractor) in the principal's design or documentation which, unless it is remedied, could result in health, safety or security problems or prevent work from continuing
- a variation to overcome a change in statutory requirements that has occurred since tenders closed.

A failure to give an instruction in the above circumstances may prevent the contract from being completed and may therefore be a breach of contract by the principal.

The client must be made aware of the consequences of failing to respond promptly to situations generating unavoidable variations. If an instruction is not given promptly in response to the circumstances giving rise to the necessity for the variation additional extra costs will often be incurred, for example for delays or rework.

It may be necessary to give an oral instruction if a variation is unavoidable and urgent action is required due to event/s or circumstances, for example if there is a safety hazard that requires elimination.

If an oral instruction is given, confirm the instruction in writing as soon as possible under the authorisation protocols (including confirmation of funding) agreed with the client.

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Variations for the convenience of the client:

- Variations for the convenience of the client are variations requested by the client due to a change in the client's requirements. They are not unavoidable variations in that it is possible to complete the contract without making the changes requested.
- Variations for the convenience of the client will change the scope of the work and almost always increase the cost of the work.
- Even variations that appear to reduce the scope may increase the cost. This is because variations are valued by adding the cost of the extra work, plus a margin, and subtracting the contractual value of the work taken out of the contract.
- The actual cost of the added work can often be greater than the contractual value of the work taken out of the contract. There may also be associated costs for rework, delays and disruption.
- Variations for the convenience of the client cannot be instructed unless adequate funds are available and have been approved. The funds must be sufficient to cover all costs associated with the variation, including all the contractor's costs and associated fees and charges.
- Before instructing the contractor to carry out a variation for the convenience of the client, advise the client that it will be necessary to ask the contractor for the full cost and time impacts of the variation and request the contractor to provide these details.
- If the contractor provides these details, pass them on to the client for authorisation of the additional expenditure and time, if applicable, before instructing the contractor to carry out the variation. If the contractor is unable or refuses to advise the full cost and time impacts, then inform the client.

Variations for the convenience of the contractor

- Variations for the convenience of the contractor are variations that are requested by the contractor. They are not unavoidable variations.
- There is no obligation on the principal to agree to a variation for the convenience of the contractor. However, it may be beneficial to the project.
- When a request is made, it should be considered if only to maintain good contractual relationships. The contractor should be required to provide sufficient detail to permit proper evaluation.
- Variations for the convenience of the contractor are not to be instructed until the full impacts have been agreed and the contractor has taken responsibility for ensuring there are no adverse impacts on the rest of the work.
- When the client instructs the contractor to carry out a variation, the resulting change to the work becomes part of the contract.
- If the contractor requests approval to a variation, before instructing the variation, ask the contractor to advise whether the variation is an unavoidable variation or a variation for the convenience of the client or the contractor.
- The following principles should be applied to all variations:
    - Instruct a variation only within the general scope of the contract, unless the contractor agrees otherwise.
    - An instruction can only be given by the principal's representative.
    - The instruction must be in writing.
    - Before instructing a variation, unless the instruction is required urgently in order for the work to proceed, request the contractor to advise the cost and time impacts of the proposed variation.

- Where possible, instruct a variation only after the full cost and time implications have been evaluated and agreed in writing with the contractor (the instruction will constitute approval to the cost and time impacts agreed with the contractor).
- Do not alter a contractor's written quotation without the agreement of the contractor. If there is a change agreed, it is preferable to have the contractor submit a revised quotation. Alternatively, if verbal agreement is reached, confirm that agreement in writing.
- Include in the instruction a brief description of the variation work and a requirement that the work is to be undertaken in accordance with the identified instruction, the contract documents or any other document referred to in the instruction. It is sufficient for the instruction to give only a short summary of the variation if reference is made to other documents describing the agreement in detail.
- Instruct a variation only if it is within the authority delegated by the client and sufficient funds have been confirmed as available.
- If agreement to cost and time cannot be reached before the commencement of an unavoidable variation, attempt to reach agreement at the earliest possible time.
- If agreement cannot be reached on a variation that is not unavoidable, consider whether it may be preferable to defer the change to the works to a later date so it can be more economically done by others.
- Do not instruct a variation after completion unless the variation is for the purpose of dealing with defects.

It is most important that variations for the convenience of the contractor are not approved unless the contractor agrees as a minimum, in writing, that:

- the contractor will not be entitled to additional remuneration (no increase in the contract price) on account of the variation or its impacts on the work under the contract
- the contractor will not be entitled to an extension of time as a result of the variation
- the work under the variation will be fit for purpose, and
- the variation will not result in any other variations being required.

Grant approval to variations requested by the contractor for the contractor's convenience only after it has been agreed in writing that there will be no increase in the time to complete, and either no extra cost or a reduction in the cost of the works.

The cost of a variation can be considered to have 3 components: direct costs, indirect costs and consequential costs.

- Direct costs are the costs of the actual performance of the work and usually include the costs of labour, plant, materials and subcontract work.
- Indirect costs might include overheads, administration, supervision, attendance and profit. These are often covered by a margin prescribed in the contract.
- Consequential costs might be incurred as a result of disruption to the work, delay to the program or some critical activity in it, or inefficiency created by undertaking work out of the planned sequence.
- Valuation of Variations - Variations may be identified by all parties involved through observations or as a result of quality control processes. All variations, whether submitted by the company or the contractor, need to be recorded and approved, as this can be a cause of dispute among parties. Valuations in variations are necessary to provide the right expense in connection to the variation

stated.

An assessment of the total cost of the variation takes into account all the above components. A variation instruction may be to carry out additional work, to delete work or a combination. To properly assess the contractor's quotation, details of the cost of the extra work and the cost of the deleted work should be identified separately.

Given the large implications variations may cause, negotiations on variations may be valued through the following:

- An agreement by the business or company and the contractor
- An external consultant hired for computing costs
- A contractor may prepare a quotation on variation to be submitted to the company
- A different method agreed upon by the company and the contractor

During negotiations, it is important to take into consideration the effects of the variation on the contractor and the client. Increased rates and prices may cause significant reduction to the initial benefits expected. It is important that your expectations and perceptions are managed.

Variations deleting work from the contract

If the variation involves omitting or deleting work from the original scope of work, the method of determining its value will depend on whether:

- the value of the deleted work is not identified in the contract
- the deleted work has a separate lump sum price identified in the contract (for example, in a schedule of rates and lump sums).

If the deleted work has to be valued from first principles because its cost is not identified in the contract, then a margin should be added to the calculated direct costs to determine the amount to be deducted from the contract price. This allows for the supervision and associated costs that will not be incurred by the contractor if the work is not carried out.

If the deleted work has a separate lump sum price, then the amount deducted due to its omission would be less than the lump sum price. This is because the tendered lump sum price is assumed to cover some indirect costs that will be incurred by the contractor whether or not the work is carried out.

Section 41 of Schedule 1B defines what needs to be included in the written variation notice.

The document evidencing the variation complies with the formal requirements if it—

(a) is readily legible; and

(b) describes the variation; and

(c) states the date of the request for the variation; and

(d) if the variation will result in a delay affecting the subject work—states the building contractor's reasonable estimate for the period of delay; and

(e) states the change to the contract price because of the variation, or the method for calculating the change to the contract price because of the variation; and

(f) if the variation results in an increase in the contract price—states when the increase is to be paid; and

(g) if the variation results in a decrease in the contract price—states when the decrease is to be accounted for.

Sample template letter to clients

Email sent to Client:

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From:
To:
Date: Time:
Subject: Variations from the contract - Update on Construction Project and Key Personnel

Dear (CLIENT NAME)

Hope this email finds you well.

Following our phone call this morning regarding (ENTER REASON HERE EG)the key personnel) matter at hand, I am writing to provide you with an update on our construction project and to address your concerns regarding changes in working conditions due (ENTER REASON HERE EG) to an accident involving our key personnel.)

Unfortunately, one of (ENTER REASON HERE EG) our key personnel recently had an accident)and was unable to work on the project. However, I want to assure you that we have taken immediate action (ENTER SOLUTION HERE EG) to replace the personnel with someone who has the required experience and expertise) to take over the work without causing any delays or changes in the construction project's scope.

We understand the importance of maintaining continuity and quality in our work, and we are confident that the replacement personnel will be able to continue the work seamlessly, without any adverse impact on the project's progress or completion date. We therefore confirm that there will be no measures required to / measures required to make any changes to the contract in regard to this matter.

We are committed to ensuring that the construction project proceeds safely, efficiently, and to the highest standards, and we appreciate your concern regarding the matter. If you have any further questions or concerns, please do not hesitate to reach out to us.

Thank you for your continued support and cooperation on this project and looking forward to hearing back from you soon.

Kind regards

POLICY AND PROCEDURE – DISPUTE RESOLUTION

Dispute resolution: These refer to disagreements between contracted parties regarding payment claims (e.g. amount of money propose to be paid, full or partial payment, etc.) and should be resolved by the Project owner and Contractor initially; if all fails, in Court, as this is a breach of contract

Even one dispute can substantially increase project cost and duration and consume an enormous amount of project resources and time.

It is in the interests of all parties to work proactively to prevent disagreements and disputes festering and to resolve them fairly at the earliest opportunity.

Fair Work Australia defines dispute resolution as the processes by which disputes are resolved and ended. Disputes resolution can occur through:

- a negotiated outcome, where the parties concerned sort out the issues themselves,

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- a mediated outcome, where the parties use the services of an independent mediator to help them agree, or
- an arbitrated or adjudicated outcome, where an independent arbitrator or court determines how the dispute is to be resolved and makes a binding decision or order to this effect.

Not every difference of opinion that occurs between the contractor and the project manager becomes a dispute. Most differences of opinion are resolved between the contractor and the project manager and do not become the subject of a formal dispute resolution process.

A building and construction dispute is a dispute in relation to a building and construction contract.
A building and construction contract is contract or other arrangement for carrying out building work in Queensland.

Building work can include:

1. The erection or construction of a house or building;
2. Renovations, alterations, extensions, improvements or repairs to a house or building;
3. The provision of lighting, heating, ventilation, air-conditioning, water supply, sewerage or drainage;
4. Any site work (including the construction of retaining structures);
5. The demolition, removal or location of a house or building;
6. The preparation of plans or specifications for the performance of building work;
7. Contract administration in relation to the construction of a building designed by the person;
8. Fire protection work or carrying out a completed building inspection.

The dispute resolution process outlined in this guide is aimed at achieving resolution as quickly and simply as possible, but it recognises that in some cases a resolution may not be achieved easily and additional dispute resolution resources may be required.

Disputes may occur due to:

- Financial matters
- Interpretation of contract documentation
- Unanticipated events
- Unrealised expectations
- Variations requested by clients whereby the client when requesting a variation to the contract, may expect that the impact on time and cost will be minor. The contractor may view the requested variation differently.

The Dispute Resolution Process

Deal with disagreement

- Disagreements and differences of opinion are common in contracts, but they don't need to escalate to disputes. Addressing them promptly can prevent future problems. Obtaining advice at this early stage can assist.
- Negotiations are driven by the project manager.
- The project manager is generally the first person to become aware of any disagreement with the contractor and is in an ideal position to resolve the matter before it escalates into a dispute.

- If the dispute proceeds to expert determination, the project manager will continue to provide information and advice but the responsibility for resolution transfers to the dispute manager.

Senior executives confirm

- A dispute is defined as when one party formally notifies the other that it wishes to pursue a disagreement. Then the principal's and contractor's senior executives confer and try to resolve the issue. Many disputes are resolved at this level.
- Negotiations are driven by senior executives.
- The senior executives have a key contractual role when a disagreement becomes a formal dispute to try to resolve the dispute. Experienced and respected senior executives have proven to be very successful at resolving disputes through negotiation.
- Senior executives can also take a proactive role, promoting a good working relationship between the parties and heading off contract disputes before they arise. They may attend progress meetings and provide informal advice to the project manager. Such a role can be effective at minimising disputes, and is to be encouraged.

Intensive Negotiation

- The contract allows for disputes that are not settled at level 2 to proceed to expert determination.

Expert determination

- In preparing for this, new information may come to light, providing an opportunity for fresh and intensive negotiations, run in parallel with the expert determination process.
- Negotiations are driven by the dispute manager.
- A person other than the project manager must be assigned the role of dispute manager for disputes with a value greater than $250,000.
- For disputes less than $250,000 the project manager may take on the role of dispute manager unless:
    - there is an actual or perceived conflict of interest in relation to the particular dispute
    - the unresolved dispute is affecting the day to day running of the contract (for example, due to acrimony between parties)
- the dispute becomes excessively protracted.
- A dispute manager would generally be appointed after the senior executive has completed its contractual role to confer to try to resolve the dispute. However, if the senior executive is still involved in the resolution process the dispute manager is required to work cooperatively with the senior executive.

Litigation

- Litigation is an expensive and time-consuming process. Careful consideration is required before initiating litigation. It is generally an option of last resort.
- New negotiations are directed by the project director with advice from the litigation overview team. The litigation overview team monitors progress and cost and provides advice to the project director regarding instructions that are required to be given to the legal team.
- Negotiations are driven by the litigation overview team.

Making a Contract or Deed of Settlement

- If the negotiated agreement includes consideration, then the agreement can be documented in a formal contract.
- If there is no consideration, then the agreement must be documented in a formal deed of settlement.
- If the building dispute cannot be resolved informally then the parties may need to resort to formal resolution of the building dispute.

Resolving Building Disputes Formally

- If the parties need to formally resolve the building dispute, they can do a number of things, namely:
    1. Make a complaint to the QBCC;
    2. Seek an adjudication of the dispute;
    3. File proceedings in Court or QCAT.

You must resolve disputes in a way that achieves the objectives of:

1. Promptness - Speedy action can resolve issues before they become formalised into disputes. The resolution process must be deliberately driven and not allowed to stall
2. Cost effectiveness - the time, money and resources invested in defending a position should be relative to the magnitude of the amount in dispute
3. Probity - Probity includes adhering to public sector standards of behaviour, such as fairness, impartiality, consistency and accountability. Probity is not only about outcome but is also about process: probity is doing things the right way and being seen to do things the right way.

Claims against Builders and Homeowners

The types of residential building claims that can arise include:

1. Disputes in relation to defective building work;
2. Disputes in relation to delay;
3. Residential building contract breaches;
4. Disputes in relation to debt recovery;
5. Disputes in relation to negligence;
6. Defects liability periods and retentions;
7. Disputes in relation to non-completion of work; and
8. Claims against unlicensed builders.

Claims against contractors and subcontractors

The type of contractor / subcontractor claims that can arise include:

1. Making payment claims pursuant to the Building Industry Fairness (Security of Payment) Act 2017 Qld ("BIFA");
2. Making payment schedules pursuant to the BIFA;
3. Making subcontractors' charges claims pursuant to the BIFA;
4. Terminating or suspending the construction contract;
5. Enforcing payment against companies and people;
6. Enforcing adjudication decisions;
7. Setting aside adjudication decisions;
8. Making and defending debt recovery claims;

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9. Breaches of the contract or subcontract;
10. Defects liability periods and retention money;
11. Seeking injunctive relief from the Court;
12. Issuing statutory demands; and
13. Setting aside statutory demands.

Claims against third parties

1. Claims against architects and/or architectural companies;
2. Claims against electricians and/or electrical contractors;
3. Claims against engineers and/or engineering companies;
4. Claims against quantity surveyors, surveyors or surveying companies;
5. Claims against building certifiers and pest inspectors;
6. Claims against liquidators and bankruptcy trustees;
7. Claims against suppliers or manufacturers of materials used in the building.

Conflicts of Interest

The project manager, senior executive, project director or dispute manager involved in the assessment of the claim should be aware of any potential conflicts of interest that they may have and declare them.
For example, if the project manager prepared the documentation and the particular dispute concerns the interpretation of the documents or allegations of negligence in the preparation of the documents then a second written assessment should be sought from an appropriate party independent of the conflict of interest (for example, from a senior executive).

Record the disputes

A record of the disputes must be maintained and updated accordingly. This should include:

- a description of the dispute and all contributing factors. You should discuss:
  - What is the issue in dispute?
  - What is the amount claimed by the contractor?
  - What justification is the contractor providing for this claim?
  - Is the amount claimed by the contractor likely to increase with time?
  - With regard to this contractor on this project, are there other related disputes, related claims, or related potential claims?
  - With regard to this contractor on this project, are there other unrelated disputes, unrelated claims, or unrelated potential claims?
- a consideration of the possible sources of liability and the likelihood of each being accepted by an expert. You should discuss:
  - What clauses of the contract is the contractor relying on to support its claim?
  - What is the likelihood of the claimed basis of liability being accepted by an expert?
  - Does the contract entitle the contractor to extra payment, or extra time, in relation to this matter?
  - If, in your opinion, the contract does not entitle the contractor to extra payment, or extra time, what is the possibility that an expert would disagree?

    - Has there been a breach of the contract, by the principal, that could give rise to payment for an additional amount?
    - If, in your opinion, there has not been a breach of the contract, by the principal, that could give rise to payment for an additional amount, what is the possibility that an expert would disagree?
- an estimation of the range of possible amounts involved, most probable outcome and worst-case scenario. You should discuss:
  - Is the right to extra payment or time extinguished, barred or reduced by any provision of the contract, set-offs or cross-claims or the like?
  - If, in your opinion, the right to extra payment or time is extinguished, barred or reduced by a provision of the contract, a set-off or a cross-claims or the like, what evidence do you have to support your position. What is the possibility that an expert would disagree?
  - When considering a worst-case scenario, consider:
    - the possibility that an expert does find that the principal has a liability, even if, in your opinion, a liability does not exist
    - the costs the contractor has been able to substantiate to date, as well as other costs the contractor may be able to substantiate reasonably in the future
    - the amounts that have been claimed to date by the contractor as well as amounts the contractor may be able to claim reasonably under additional or alternative heads of claim related to the circumstances of this dispute
    - the potential cost involved in related disputes and related potential disputes
    - the possibility that the amount associated with this dispute may increase over time.
- a discussion of the options available to resolve the dispute and the costs associated with each. You should discuss:
    - Has the contractor supported the claim with sufficient information that allows you to evaluate it reasonably?
    - If so, are the contractor's rates and prices reasonable? (obtain quantity surveyor's advice)
    - If you do not have sufficient information to evaluate the claim, use first principles and site records to estimate the value of the claim. Discuss the degree of uncertainty in your estimate.
    - Has the contractor supported its claim by sufficient evidence, facts and specific detail, rather than anecdotes? Would an expert be in a reasonable position to award the contractor compensation, if due?
    - If not, what is the likelihood that the contractor will be able to support its claim by sufficient evidence, facts and specific detail should the matter proceed to expert determination?
- identify issues that can be separated out and resolved in order to limit the number and scope of issues that may be escalated to the next level
- a recommendation for the next step in the dispute resolution process. You should discuss:
      - What further costs are likely to be incurred by the principal in the expert determination process? Consider the following potential costs associated with expert determination:
        - costs of a building/construction industry professional with experience in expert determinations, to manage the process and prepare submissions (this will usually be the dispute manager)
        - costs of legal advisers with experience in construction contract disputes to assist in preparation of submissions and to prepare sections of the submissions
        - costs of technical experts such as quantity surveyors and programmers to prepare expert reports to support submissions

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        - costs of project personnel and others representing the principal who may have to prepare statements, assist in preparing submissions or review submissions, and
        - the proportion of the expert's cost that will be borne by the principal.
    - Also estimate the costs that the contractor is likely to incur in the expert determination process?
- an estimate of the costs of engaging any necessary extra resources.
  Estimate a range of possible amounts payable and calculate accordingly. You should discuss:
    - optimistic estimate of amount payable
    - most likely scenario of amount payable
    - pessimistic (worst-case scenario) estimate of amount payable
    - the assumptions used when calculating these amounts.

Disputes not managed properly can lead to damaging precedents within the industry and costly escalation.
A review is needed when:

A dispute resolution specialist will be required to review position papers in high-risk cases, that is when either:

- the value of the dispute is in excess of a threshold value:
    - if the project manager is acting as the dispute manager - $100,000
    - if the project manager comes from the same firm as the dispute manager - $100,000
    - otherwise - $250,000, or
- when one or both parties are considering or likely to become involved in:
    - liquidation, administration, insolvency
    - show cause notice
    - termination
    - termination for convenience
    - litigation.

Warning Signs of Potential Building Disputes

If you have doubts about the other party to a building dispute, then there are a few warning signs to consider. The warning signs include:

1. A number of changes to major subcontractors;
2. An excessive amount of quality issues;
3. Badly worded scope of work / inclusions / exclusions;
4. Constant key milestone dates are being missed;
5. Constant requests to change the sequence of work;
6. Disputes resolution clauses that do not read well and are badly thought out;
7. Late delivery of building materials & building equipment;
8. Payment claims not in accordance with progress;
9. Subcontractors contacting the homeowner requesting payment not been paid;
10. The builder or contractor going slow on site, or not attending the site;
11. The builder requesting payment in advance before doing the work;
12. The contract being substantially followed;
13. The contract not being administered correctly;
14. The contractor or homeowner constantly missing payment dates; and
15. Unrealistic and undeliverable schedule of work.

Make a Complaint to the QBCC

The Queensland Building and Construction Commission ("the QBCC") is the first place that a party to a building dispute should go.

The QBCC can resolve the following disputes:

1. Complaints relating to building design;
2. Complaints relating to pre-purchase and termite inspections;
3. Complaints in relation to building certifiers;
4. Complaints in relation to defective work;
5. Complaints in relation to non-completed work; and
6. Complaints in relation to unlicensed contractors.

If your building dispute relates to the above, then the QBCC can assist with the dispute. Seek an Adjudication of Building Disputes

If the dispute relates to an unpaid progress payment, then the parties may opt to have the debt dispute adjudicated.

A BIFA adjudication is a fast and cost-effective way of resolving building and building disputes without resorting to the Court or QCAT.

Once a decision has been made, the adjudicator will issue an adjudication certificate which can be registered in the Court and enforced as if it were a decision of that Court.

Very strict time limits apply to BIFA claims, so it is vital that you act now to protect your rights.

Commencing Proceedings in QCAT

The QCAT Building Disputes department has jurisdiction to hear building disputes.

The jurisdiction is conferred by section 77 of the QBCC Act says:

(1) A person involved in a building dispute may apply, as provided under the QCAT Act, to the tribunal to have the tribunal decide the dispute.

(2) However, the person may not apply to the tribunal unless the person has complied with a process established by the commission to attempt to resolve the dispute.

So, to enable QCAT to hear the dispute, the Applicant must have been referred by the QBCC after applying for their dispute resolution process.

Domestic Building Dispute is defined as a dispute arising:

1. Between a building owner and a building contractor;
2. Between 2 or more building contractors;
3. In negligence, nuisance or trespass; or
4. Between a building owner or a building contractor and any 1 or more of the following:

a. an architect;
b. an engineer;
c. a surveyor;
d. a quantity surveyor;
e. an electrician or an electrical contractor;
f. a supplier or manufacturer of materials used in the tribunal work.

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Once QCAT decides, and it is not appealed, then the QCAT decision can be registered in the Court and enforced as if it were a judgment of that Court.

Alternatively, the parties might just file proceedings in the Court.

Commencing Proceedings in Court

- Alternatively, the parties can commence legal action in the Court with jurisdiction.
- A proceeding is usually commenced by claim and statement of claim.
- The objective of the Court process is to have the Court decide the building dispute and give a judgment.
- Avoid and Manage Building Disputes in Queensland
- This article provides information in relation to avoiding and managing building disputes in Queensland.
- If you follow this information (if it related to your building dispute) then you would have done everything you can to avoid or manage the dispute.
- However, some people are just unreasonable and will not act reasonably however reasonably you act.

POLICY AND PROCEDURE – PROCESSING PROGRESS PAYMENTS

Progress payments are payments from the business or company to the contractor made at a scheduled time or each stage of a project.

Under the Building and Construction Industry Security of Payment Act 1999, progress payments must be made to:

- Must identify the construction work (or goods and services) that will be paid
- Must state the amount of progress payments due
- Must explain that the progress payment is made under the Building and Construction Industry Security of Payment Act 1999

The Progress payments are made as Payment Stages and Procedure for payment claim

The progress payments are made in stages as below:

Deposit 5%
The Deposit Stage payment secures your construction booking.
BOOKING PROCESS
On receipt of payment, we will schedule your job for a start date to proceed. This begins the process of preparing and lodging the required documentation, booking in subcontractors and ordering materials for construction.
SITE MEETINGS
If you require to visit the site or require a site meeting, please contact us to arrange a day and time. Construction industry occupational health & safety regulations require us to accompany you through the job site.

Site Establishment Stage 15%

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Claim will be submitted to cover cost related to site establishment and for deposits required for subcontractor and supplier deposits.

Base and Slab Stage 20% - Duration usually 1-2 weeks
The Ground Floor Base Stage has been completed.
WORKS COMPLETED
1) Ground Floor – Concrete footings/base brickwork/stumps/Main Concrete Slab & Timber Subfloor
2) We have received a Concrete Slab & Footings Certificate of Approval from the Building Certifier.
SITE MEETING
Please contact us ASAP to book a site meeting if you require to see the completed works.
Available times are Monday-Friday 7:00am to 5:00pm.

Frame Stage 20% - Duration usually 3-4 weeks
The Frame Stage has been completed.
WORKS COMPLETED
- Installation of Wall Frames, Roof Frames and Subfloor Frames.
- We have received a Frame Certificate of Approval from the Building Certifier.

SITE MEETING
Please contact us ASAP to book-in a site meeting if you require to see the completed works.
Available times are Monday-Friday 7:00am to 5:00pm.

Lockup or Enclosed Stage 20% - Duration usually 4 weeks
The building Lockup Stage has been completed.
WORKS COMPLETED
All roofing, brickwork, cladding, structural flooring
External Windows & Doors, Entrance Door, Garage Door
We have received a satisfactory inspection report
SITE MEETING
Please contact us ASAP to book-in a site meeting if you require to see the completed works. Available times are Monday-Friday 7:00am to 5:00pm.

Fitout Stage 15% - Duration usually 5-6 weeks
The Fitout Stage has been completed.
WORKS COMPLETED
Internal Linings, Plastering, Kitchen, Vanity Units, Baths, Showers, Built-in shelves, cabinets, cupboards, Tiling, Carpentry Fixout.
Walls, Plaster, Architraves, Skirtings, Doors, Wet areas,
Plumbing and Electrical facilities
SITE MEETING
Please contact us ASAP to book-in a site meeting if you require to see the completed works. Available times are Monday-Friday 7:00am to 5:00pm.

Practical Completion 5% - Duration usually 7-8 weeks
The Practical Completion stage has been completed.
WORKS COMPLETED
All major works has been completed including Painting & Floor Coverings.
FINAL COMPLETION / HANDOVER NOTIFICATION

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Over the next 2 weeks we will be finalising all unfinished minor works and outstanding defects within the terms and conditions of the contract and verbally agreed.
Following the final completion invoice date, an industry standard defects period will apply of 6 months.
Form 21 Council (QLD) being the Certificate of Occupancy
Copy of all variations
Satisfactory Inspection Report
SITE MEETING
Please contact us ASAP to book-in a site meeting if you require to see the completed works. Available times are Monday-Friday 7:00am to 5:00pm.

Payment for the works
• Anticipated progress payments
• General: At commencement of the works, submit a schedule of anticipated progress claims which will be made throughout the contract. Submit a revised schedule with each progress claim.
We can use progressive stage payments or monthly instalments depending on the agreed method at time of contract

Progress billing.
This is the invoice you will prepare and submit to the company when you complete the different stages or percentages of the project as agreed upon. The date when you will send the invoice must also be agreed upon by all parties involved.
The progress billing includes the original contract amount, the amount that needs to be paid, how this was calculated, and the percentage of the job that has been completed to accompany said payment.

Invoice Particulars
• Invoices shall be submitted in accordance with the contract in the amount certified
• All relevant sections of the form shall be completed and all scheduled and unscheduled items shall be shown separately, where applicable.
• Invoices with any returned works order copies shall be submitted to the Client for approval for payment within thirty (30) days of completion of the work. Only invoices for completed work shall be submitted. Claims for part payment will not be accepted.
• Should the Contractor fail to submit invoices with works order copies within the specified time, the extent and value of payment may be determined and paid by the Client
• The Client reserves the right to inspect original invoices.
This payment scheme allows contractors to be paid in portions; they do not have to wait until the project is completed for payment and cease construction operations if they are not being paid
Under the Building and Construction Industry Security of Payment Act 1999, a valid payment claim may be made and enforced as a right and protection when the payer does not respond under the set period and make payments to the payee. Contractors are entitled to payment when:

- Whether a contract is written, verbal or absent, and;
- Even if a contract states that the contractor cannot claim such payments.

A payment schedule is sent to serve as information regarding the amount the payer will pay to the payee on the set date for payment.

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A payment claim process using the old BCIPA – Building & Construction Industry Payments Act 2004 (Qld) has been repealed and replaced with Building Industry Fairness (Security of Payment) Act 2017 (Qld) ("BIFA").
The provisions of the repealed legislation have been amended and incorporated into BIFA.
Progress Payments and Payment Claims from the previous BCIPA – Building & Construction Industry Payments Act 2004 (Qld) are dealt with in Chapter 3 of BIFA.

"Construction contract" means a contract, agreement or other arrangement under which 1 party undertakes to carry out construction work for, or to supply related goods and services to, another party.

Construction Work is defined at section 65 of BIFA and are quite extensive, but includes:
the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, forming, or to form, part of land … of any works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection

In BIFA Construction Work does not include:
the drilling for, or extraction of, oil or natural gas; the extraction, whether by underground or surface working, of minerals, including tunnelling or boring, or constructing underground works, for that purpose.
Related Goods and Services are defined at section 66 of BIFA and include the following goods:
materials and components to form part of any building, structure or work arising from construction work … plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work;

And also include the following services:
the provision of labour, architectural, design, surveying or quantity surveying serviceS, building, engineering, interior or exterior decoration or landscape advisory services, soil testing services and goods and services, relating to construction work, of a kind prescribed by regulation.

Right to a BIFA Progress Payment
If you contract contains a payment provision which is not a void payment provision, you are entitled to a progress payment on the day on which the payment becomes payable under the provision.
Section 70 of BIFA says:

From each reference date under a construction contract, a person is entitled to a progress payment if the person has carried out construction work, or supplied related goods and services, under the contract.

A Reference Date under BIFA is defined at section 67 and says:
A "reference date" for a construction contract, means … a date stated in, or worked out under, the contract as the date on which a claim for a progress payment may be made for construction work carried out, or related goods and services supplied, under the contract

Alternatively, if you contract does not contain a reference date then the reference date is the last day of the month in which the construction work was first carried out, or the related goods and services were first supplied, under the contract and the last day of each later month.

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If you have an eligible construction contract for work defined as construction work, or the provision of related goods and services, and you have a right to a progress payment, then you may be able to make a BIFA payment claim.

BIFA Payment Claim

If you tick all of the boxes above, then you may be able to make a payment claim.

Section 68 of BIFA says that a payment claim:

- Identifies the construction work or related goods and services; and
- States the amount (the claimed amount) of the progress payment that the claimant claims; and
- Requests payment of the claimed amount; and
- Includes the other information prescribed by regulation.

Section 68 of BIFA also mentions that a written document bearing the word 'invoice' is taken to be a request for payment.

There are strict requirements in BIFA for the issuing and serving of payment claim. Contact our solicitors today to get legal assistance with issuing a payment claim.

Time Requirements for Payment Claims

Section 75 of BIFA defines the time requirements for making a payment claim.

If the payment claim is not related to a final payment, then the claim must be served the later of:

1. The time allowed for in the construction contract; or
2. Six (6) months after the work to which the claim relates was last carried out; or
3. The related goods and services to which the claim relates were last supplied.

If the payment claim is related to a final payment, then the claim must be served the later of

1. The time allowed for in the construction contract; or
2. Twenty-eight (28) days after the end of the last defects liability period; or
3. Six (6) months after the completion of the works; or
4. Six (6) months after the complete supply of related goods and services to be supplied under the construction contract.

Summary of Eligibility

In summary to the above a party:

1. Who has a written or oral construction contract;
2. Who has provided construction work or related goods and services;
3. Who has given an eligible payment claim (an invoice) to the other party; and
4. Who has complied with the time requirements of BIFA.

Then that party is entitled to the protections offered under the new BIFA legislation.

After the party has validly served a BIFA payment claim, the respondent will then have to give a BIFA payment schedule.

Very strict time limits apply to the different stages of BIFA. Ensure that you do not miss out on a claim by contacting our building and construction lawyers today.

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Payment Schedules after Payment Claim

Once you have validly served the BIFA payment claim Section 76 of BIFA mentions:
A respondent must respond to the payment claim by giving the claimant a payment schedule within whichever of the following periods ends first … the period, if any, within which the respondent must give the payment schedule under the relevant construction contract … or 15 business days after the payment claim is given to the respondent.

Consequences for not Giving a Payment Schedule

Section 77 of BIFA mentions:

- If a respondent given a payment claim does not respond to the claim by giving the claimant a payment schedule as required under section 76, then the respondent is liable to pay the amount claimed under the payment claim to the claimant on the due date for the progress payment to which the payment claim relates.
- If the debtor does not pay the amount in the payment claim by the due date then you can recover that amount as a debt in the Court with jurisdiction

Consequences for Non-payment of Payment Schedule

Section 78 of BIFA mentions:
If a respondent given a payment claim for a progress payment does not pay the amount owed to the claimant in full on or before the due date for the progress payment, then The claimant may either a) recover the unpaid portion of the amount owed from the respondent, as a debt owing to the claimant, in a court of competent jurisdiction or b) apply for adjudication of the payment claim.

Section 78 of BIFA defines Amount Owed to mean:

"amount owed" to a claimant for a payment claim, means:
(a) if the respondent did not respond to the payment claim with a payment schedule as required under section 76 —the amount claimed under the payment claim; or
(b) if the respondent did respond to the payment claim with a payment schedule as required to do so under section 76 —the amount proposed to be paid under the payment schedule.

Notice before Commencing Court Proceedings

- If you intend to recover the amount mentioned above as a debt in the Court with jurisdiction, then:
- Before proceeding you need to give the debtor a notice under Section 99 of BIFA; and
- The five (5) business days for the debtor to serve the payment schedule, as stated in the notice, has ended.
- Section 99 mentions that the notice must be given to the debtor within 30 business days immediately following the due date for the progress payment; and it must be in the approved form.
- The approved form for this notice is the Form S99 – Warning Notice - Notice Of Intention To Start Legal Proceedings.
- If you correctly serve this notice, and the 5 business days have elapsed, you are then able to recover the amount of the payment claim as a debt in the Court with jurisdiction.

- The benefit of commencing legal action in the Court with jurisdiction is that the respondent debtor is statute-barred from raising a defence or bring any counterclaim.
- Section 100(3) of BIFA mentions in relation to proceedings to recover the unpaid amount as debt:
- The respondent is not, in those proceedings, entitled (a) to bring any counterclaim against the claimant; or (b) to raise any defence in relation to matters arising under the construction contract.

Valid Service under BIFA
Section 102 of BIFA mentions that a notice or other document under this chapter can be served pursuant to a term or terms in the construction contract; or pursuant to section 39 which mentions:

- If an Act requires or permits a document to be served on a person, the document may be served—
- On an individual—by delivering it to the person personally; or by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document; or
- On a body corporate—by leaving it at, or sending it by post, telex, facsimile or similar facility to, the head office, a registered office or a principal office of the body corporate.
- If the claimant does not want to commence legal action to recover the debt in the Court, then the claimant can apply for an adjudication application.

POLICY AND PROCEDURE – DELAYS AND APPLYING EXTENSION OF TIME

Unforeseeable delays are inevitable in construction projects and warrants an application for an extension of time (EOT). Example of unforeseeable events are the following:

- Force majeure
- Strikes
- Changes in the law or requirements
- Political unrest or terrorism
- Delays from the part of the subcontractor

Delays caused by other parties when the contractor has exercised due diligence. An extension of time usually signals a movement in the schedule and a consequential delay, which can also trigger a change order request.

A change order is an addition or omission to the original contract and its scope of work which either advances or delays the completion date. Change orders are usually generated by a project manager accompanied by the price of such changes (especially when there is new work to be done). Once the change order has been approved, it becomes part of the contract.

The contractor sends a written notice to the project management or administrator with the details of what caused the delay and documents or evidence to support it. Submitting the request involves filling out a form with details such as contract title, details of the delay, reason for EOT entitlement, the needed time for the extension in working days, the amount (or costs) accompanying the delay, and the supporting documents to prove that an EOT is necessary.

The management then determines if the reason for the delay is valid and warrants an extension of time. If the reason is considered valid, then the schedule and completion date will be adjusted.

There may be more than a single instance of delay, and some of them may be the fault of other parties.

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Filing a claim for extension of time must be done immediately since recording all the details necessary for the claim may be time-consuming. To file a claim for extension of time, the following details must be included:

- When the delay occurred
- Why it occurred
- The tasks and scheduled activities that the delay affected
- Resources that were needed for the tasks involved
- Other activities on or off site that had to be carried out as a result
- Due diligence exercised by the contractor to have avoided or minimise such delay
- A solution for the delay and the affected plan
- Communications between the management and building team to avoid or minimise such delay

A claim for an extension of time must be clear, direct, accurate, and supported by records and photos. The claim must narrate what happened to have caused the delay and the consequences of the event.

There are three possible results to this:

1. The extension is granted, and a change order is issued.
2. The project manager submits a request for information to know more about the event and decide appropriately.
3. The request is denied.

Concurrent delays

There may be 2 concurrent causes of a delay, one that may justify an extension of time (for example, wet weather) and the other that does not (for example, a strike over a safety issue where the responsibility lies with the contractor).

In this situation, irrespective of which cause arose first, an extension of time should not be granted for any days on which the delay was not because of an event that entitles the contractor to an extension.

When concurrent events cause a delay in reaching Completion and one or more of the events is within the control of the Contractor, then to the extent that the events are concurrent, the Contractor will not be entitled to an extension of time for Completion notwithstanding that another cause of the delay is such that the Contractor would have had an entitlement to an extension of time.

Liquidated damages refer to the amount paid by the contractor when practical completion is not achieved at the completion date set in the contract. Liquidated damages in construction contracts are necessary to clarify real costs of delay including its consequences. It also outlines the liability for damages of both parties.

DELAYS AND EXTENSION OF TIME CLAIMS (AS PER CONTRACT TERMS)

Contractor's claim for an extension of time can be made if the progress of the Works is delayed as a result of any of the following causes:

a) a variation of the Works under this Contract;

b) a failure by the Owner, or the Owner's Agent, to give to the Contractor a written notice agreeing to a variation in accordance with Clause 12.5, 13.3 or 14.3;

c) an act or omission of the Owner, the Owner's Agent, the Owner's consultants, other agents or other contractors, or authorised representatives of the lender stated in Item 11 of the Schedule;

d) a Latent Condition;

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e) a breach of this Contract by the Owner;
f) a lawful suspension of the Works;
g) proceedings being taken, or threatened by, or disputes with, adjoining neighbouring owners or residents;
h) an act of prevention by the Owner not otherwise covered by this Clause;
i) inclement weather, or any conditions arising as a result of inclement weather;
j) a Christmas Shutdown;
k) industrial action or civil commotion affecting the Works, any persons employed in respect of the Works, or the manufacture or supply of materials for the Works;
l) the unavailability of any labour (whether under a subcontract or a contract of employment) necessary for the Contractor to carry out the Works with reasonable diligence;
m) the unavailability of any materials necessary to carry out the Works; or
n) any other cause not reasonably foreseeable at the date of the formation of this Contract, and beyond the reasonable control of the Contractor, the Contractor must, within ten (10) Business Days of the Contractor becoming, or ought reasonably to have become, aware of the cause and extent of the delay, give to the Owner a written claim, signed by or on behalf of the Contractor, for a reasonable extension of the Date for Practical Completion that sets out the cause and consequences of the delay.

Extension for delays which have been allowed, where a cause of delay (such as, for example, inclement weather) has been allowed for by the Contractor, the Contractor is not entitled to an extension of the Date for Practical Completion for any delays resulting from that cause until the allowance for that cause in the construction period has been fully exhausted.

Owner's assessment of claim, within ten (10) Business Days after receiving the Contractor's written claim for an extension of the Date for Practical Completion, the Owner must assess the claim and give written notice to the Contractor:
a) accepting the claimed extension of the Date for Practical Completion; or
b) rejecting the whole or any part of the claimed extension of the Date for Practical Completion, and setting out the Owner's reasons for the rejection.

Copy of claim to be provided to the Owner where accepted and if the Owner accepts the Contractor's claim for an extension of the Date for Practical Completion, in whole or in part, in accordance with the above, the Contractor must, within five (5) Business Days of the Owner's acceptance, give to the Owner a signed copy of the accepted claim for an extension of the Date for Practical Completion.

Consequence of Owner's rejection or failure to accept and if the Owner fails to give written notice in accordance with the above, or gives notice rejecting the whole or any part of the Contractor's claim for an extension of the Date for Practical Completion, then the dispute arising as a result is to be resolved in accordance with contract wording under Clause 28.

DELAY COSTS:
These include conditions for completion at the cost of the contractor and a contractor can forward a delay claim to a company or subcontractor, meant to recover additional costs incurred in building a project.
24.1 Entitlement to delay costs
If the progress of the Works is delayed as a result of any of the causes set out in subparagraphs (a) to (h) (inclusive) of Clause 15.1, the Contractor is entitled to:
a) if a rate is stated for delay costs in Item 17 of the Schedule, delay costs at that rate for each Day that the progress of the Works is delayed as a result of the relevant cause; or

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b) if a rate is not stated for delay costs in Item 17 of the Schedule, the reasonable costs (including any additional administration, management or supervisory costs, and overhead) the Contractor incurs as a consequence of the delay resulting from the relevant cause, provided that the Contractor gives to the Owner, or the Owner's Agent, a written claim for such delay costs, and which sets out the relevant cause of the delay, the time during which the progress of the Works was delayed as a result of that cause, and if Clause 24.1(b) applies, details of the reasonable costs incurred by the Contractor, by no later than the date that is thirty-five (35) Days after the Date of Practical Completion.
24.2 Payment of delay costs
If the Contractor gives to the Owner, or the Owner's Agent, a written claim for delay costs in accordance with Clause 24.1:
a) the delay costs claimed are added to the Contract Price; and
b) the Owner must pay the Contractor the delay costs claimed within five (5) Business Days after receiving the written claim for delay costs.
24.3 Right not subject to claim for extension of time
To avoid doubt, the Contractor's right to delay costs under Clause 24.1 is not subject to the Contractor claiming an extension of the Date for Practical Completion in accordance with Clause 15.1.

Here is a sample letter/template to use for such matters:

Email sent to Contracting Party:

From:
To: client email
Date: Time:
Subject: Request for Extension of Time for Completion of Construction Project

Dear (Client name)

I am writing to request an extension of time for the completion of our construction project, which was originally scheduled to be finished by (Date). Unfortunately, due to delays caused by (add reason here – eg) the delay in the possession of the site from your end,) we have been unable to commence the construction work on time and this has caused a delay in the completion of the project.

As you are aware, the success of any construction project is dependent on the cooperation and collaboration of all parties involved. Despite our best efforts, we have experienced significant delays because of the late possession of the site from your end. We have collated evidence of this delay, including correspondence and documents related to (add reason here) the transfer of the site, of which you had shared with us earlier.

Furthermore, we have attempted to mitigate these delays wherever possible, including rescheduling our team's work and rearranging our construction plans to ensure that we can complete the project as soon as possible. However, these delays have caused a ripple effect on our progress, and we are now unable to complete the project by the original deadline.

Considering these circumstances, we respectfully request an extension of time to complete the project. We understand the importance of adhering to project timelines and will make every effort to expedite the remaining work to minimize further delays. Kindly refer to the attached document for the excerpt on 'Delays and Extension of Time Claims' clause on the contract for your ease of reference to this matter.

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We propose that the new completion date be set to (enter new date here) which will allow us to complete the project to the high standards that we have set for ourselves while ensuring that the construction proceeds in a safe and efficient manner and if accepted, we will arrange to make the amendments to the contract accordingly.

We would appreciate your prompt consideration of our request and look forward to continuing our collaboration with you to achieve a successful outcome for the project.

Thank you for your time and attention and looking forward to hearing back from you soon

Kind regards

POLICY AND PROCEDURE – SITE INSPECTIONS

Notifiable Inspections:

The Contractor is responsible for organising with the Building Certifier the required Notifiable Inspections listed on the Building Permit. Give sufficient notice so that Notifiable Inspections may be made. Where follow-up inspections are required due to non approval by the Building Certifier, the Contractor will be responsible for organising and paying for the additional inspections.

Quality Assurance:

Where applicable, insert hold points for the Notifiable Inspections into the inspection and test plans of the relevant trades.

POLICY AND PROCEDURE – PROJECT TIMELINES AND PERFORMANCE

For a successful and timely project:

1. Plan for the construction project
2. Create a detailed schedule for the project
3. Create and sign the paperwork and keep documentation records
4. Do prep work before breaking ground
5. Make a list of all supplies
6. Gather the team
7. Oversee the project
8. Provide the client with regular progress reports
9. Find solutions when problems arise

Review Plans, Specs, & Project Documents

- To keep your construction project on schedule, you need to go over every detail of the scope of work. Carefully review and understand the construction drawings, spec book, and other project documents. Use site drawings to layout the jobsite for optimal performance by determining placement for material laydown areas, equipment storage, jobsite trailer, break areas, access points for employees, etc. Coordinate with your building project manufacturers and material suppliers to ensure they can deliver the proper quantities of all building materials.

Create & Coordinate a Master Schedule

- To deliver your project on time, you need to create a master schedule to guide your project through to completion. Break each project down into phases to manage your project. Phases can then be broken down into tasks that can be broken down further into individual activities.
- Scheduling involves assigning estimated start and completion dates for the various tasks and activities. Determine the time required to finish each task or work activity and make sure you can allocate the resources, labor, and equipment, necessary to complete them on your scheduled timeline.
- Sequence out tasks and trades during each phase of the project.

Create Contingency Plans

- There are so many ways a project can get off track. Carefully review your master schedule and identify potential risks that could disrupt your schedule. Crafting contingency plans that can easily be executed will go a long way in mitigating and resolving issues before they get out of control.
- You may need to assign overtime if you are running behind schedule. Weather delays might require you to bring in extra labor and equipment to get your project back on track. Brainstorm possible schedule delays with the rest of the project team and build contingency plans for each situation. Once construction starts, the goal is to make keep the project on schedule as much as possible. Typically, a project will get derailed by lots of minor issues rather than one huge problem. Carefully analyzing daily progress reports, keeping an eye on the budget and schedule, and managing risks require a high level of attention to detail.

Communicate & Collaborate

- Good communication is key to staying on schedule and the successful completion of projects. Establish procedures and protocols for your subs to alert you when they are falling behind or experiencing delays. This will allow you to start adjusting your schedule before the issues snowball into something unmanageable that will cause you to miss your scheduled deadline.
- Determine how often, and by what means, information regarding the progress of the project needs to be communicated. When problems arise, work with your subs to troubleshoot issues and resolve delays to keep your project on schedule. Good communication can improve teamwork, lead to better project collaboration and increase jobsite productivity.
- Project collaboration is more than just everyone completing tasks on schedule. It involves building a relationship with all stakeholders based on trust and respect, working together to successfully complete a project. Being able to cooperate and coordinate efforts is essential to maintaining your construction schedule.

Monitor & Document Progress

- Keep track of progress with detailed daily reports. Keep an eye on how close you are sticking to your schedule. Watch for any red flags that might indicate you are falling behind schedule. Measure how well your actual timeline for completing tasks matches up with your master schedule.

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- Pay particular attention to areas that ran over or were completed earlier than scheduled. Try and determine the causes of these discrepancies with your master schedule. This allows you to improve your planning and scheduling for future projects and compare this project to past performances on similar projects.
- Reviewing daily reports can help you identify aspects of your project where you are falling behind schedule. It's rare that a project adheres exactly to your master schedule.

The objectives of performance reporting are to:

- encourage contractors and consultants to implement a business culture of continuous improvement to benefit themselves and their clients
- provide performance data from past and current contracts to identify the best performing contractors and consultants
- participation in regular performance monitoring and formal performance reporting encourages a cooperative relationship through proactive and constructive discussion at the project level

Contractor and consultant performance reporting process

The reporting officer, a representative of the principal (usually the project manager), prepares the contractor or consultant performance reports. Reports should be prepared during regular face-to-face meetings with the representative of the contractor or consultant.

When the report is prepared, the reporting officer:

- provides a copy of the performance report (completed and signed) to the contractor or consultant representative

If the contractor or consultant disagrees with the performance report, the representatives of the parties should attempt to resolve the disagreement in the first instance.

Following an unsuccessful attempt to resolve a disagreement, the disagreement is to be resolved by the contractor or consultant referring the report, with written reasons for the disagreement, to the executive officer.

The executive officer is required to:

- meet with the contractor or consultant and the reporting officer to consider the report and reasons
- decide on the disagreement
- if necessary, amend the report
- forward a copy of any amended performance report (completed and signed) to the contractor or consultant representative

Content of performance reports

The standard performance report form is comprised of 5 parts:

- contractor, consultant or project manager performance report
- industry data (not used for monitoring performance)
- executive officer's comments (if evaluation differs significantly in any aspect from the reporting officer's evaluation)
- performance reporting system guidance

- performance evaluation criteria.

It is recommended that reporting officers:

- always refer to the performance evaluation criteria – detailed considerations and the contractor or consultant performance reporting system guidance whenever preparing a contractor or consultant performance report
- apply the principles set out in this guide to performance reporting on construction contractors and all categories of consultants
- provide the contractor or consultant with a copy of the fully completed and signed performance report as well as the portions of the report describing the performance reporting system guidelines, performance evaluation criteria and steps for completing a performance report
- submit the completed performance report to the address indicated on the form.

POLICY AND PROCEDURE – PREVENT BREACH OF CONTRACT

A breach happens when one party violates any of the agreements embodied in the contract, or when one party "repudiates" the contract.

- Violation means "going against." In the example above, the contractor, by his actions, violated the agreements in their contract.
- Repudiation means that one party evinces an intention to no longer be bound by the terms of the contract; or that they are unable to perform the obligations under the contract. In short, when one party refuses (or becomes unable) to perform his obligations under the contract, there is repudiation. An example would be abandonment of the project.

Breach of contract can occur due to and not limited to:

- Defective building work;
- Delayed building work or abandonment of work;
- Breaches of building contracts;
- Unclear or confusing ambiguous contractual language;
- Variations that have not been agreed, nor put in writing;
- Disagreements as to payment claims and schedules;
- Debt recovery and non-payment of money;
- Significant differences in contract price;
- Builder trying to charge more than the fixed price for materials and labour;
- Negligence claims for bad quality of workmanship against a builder; and
- Non-completion of building work.
- use of inferior materials
- different materials than those agreed upon
- incomplete scope of works
- constant or unreasonable delays
- substandard quality of work
- invoices requesting payment for delayed or incomplete work

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Defective Building Work

Defective building work is usually separated into two (2) groups:

1. Structural defects; and
2. Non-structural defects.

A structural defect can be identified to the QBCC within six (6) years and six (6) months from the date of completion of the work.

A non-structural defect can be identified to the QBCC within 12 months from the date of completion of the work.

Eg) of defective building work in Queensland can include:

1. Slab and footing failures and category 3 and 4 cracks in concrete;
2. Incorrect dimensions of bedrooms, dining rooms, lounge and living rooms, family rooms, studies, halls, entries and stairways;
3. Incorrect dimensions of garages, carports, verandas, decks, patios etc;
4. Visible Cracks in mouldings and/or other architectural features and joints greater than 1mm;
5. Defects and cracking in plasterboard sheeting, other sheeting and cornices;

Delayed Building Work

- A builder has an obligation to bring the work to practical completion on the date for practical completion.
- This does not include delay because of storms / heavy rains, floods, bush fires, etc. or things outside of the control of the builder.
- The non-breaching party must issue a notice to remedy breach for the delay.
- But, if the builder does not remedy the breach by bringing the building works to completion on the date of practical completion without a reasonable explanation, then they may be in breach of the building contract and may allow the non-breaching party to terminate and sue for damages.
- A party may terminate for delay if the following criteria are met:
  1. The building works are seriously incomplete at the time the notice to remedy breach is served; and
  2. There did not exist any circumstances which would have prevented the builder from having completed the works on time.

Liquidated damages refer to the amount paid by the contractor when practical completion is not achieved at the completion date set in the contract. Liquidated damages in construction contracts are necessary to clarify real costs of delay including its consequences. It also outlines the liability for damages of both parties.

Breaches of Building Contracts

- A breach of contract occurs when a party to a contract does not perform their obligations under the contract.
- Not all breaches of contract give rise to the right to terminate the contract and so care should be taken, and advice should be sought before attempting to terminate a contract.

- However, all breaches allow for the innocent party to claim damages (if damages have been incurred).
- There will usually be a clause in the building contract which will provide a framework for breaches and substantial breaches of the building contract.
- There could be any number of breaches that could occur under a building contract, and it is vital to get qualified legal advice.

Unclear or Confusing Ambiguous Contractual Language

- Entering into a building contract which has unclear or confusing ambiguous contractual language could lead to an expensive building dispute.
- For example, if a party believes that something is included in the price, or not included in the price, a badly worded clause could lead to a building dispute which could cost both time and money.
- If a definition, clause, phrase, specific term, or word is vague, ambiguous, or unclear then this could cause serious problems.

Variations that have not been Agreed, nor put in Writing

- It is essential that all variation to building contracts be properly documents in writing.
- Section 40 of Schedule 1B of the Queensland Building and Construction Commission Act says:
- The building contractor must give the building owner a copy of the variation in writing
- Disagreements as to Payment Claims and Schedules
- A payment claim is a claim made under the Building Industry Fairness (Security of Payment) Act 2017 (Qld)("BIFA").
- Very strict time limits apply to the different stages of BIFA. Ensure that you do not miss out on a claim by contacting our building and construction lawyers today.
- If the parties disagree about the amount of the payment claim, there is a relatively straightforward and structured process allowing a party to seek / dispute payment for the goods and/or services provided.
- This will include issuing a payment claim, a payment schedule, the correct notice, and then proceeding to either Court or a seeking a determination from an adjudicator.

Debt Recovery and Non-Payment of Money

- Debt disputes are very common in the building and construction industry.
- They can arise in any number of ways and for any number of reasons. Perhaps there is a dispute as to the quality of the work, or the inclusions / exclusions in the contract. Or, perhaps they arise because of an insolvent party.
- Commonly, these debt disputes arise because of a difference in the contract price where the parties did not vary the price correctly (if at all), or the varying party trying to recoup unforeseen expenses.
- Whatever the reason, building disputes in relation to debt can be resolved by:
    1. Issuing a BIFA payment claim;
    2. Issuing a BIFA subcontractor's charge;
    3. Issuing a creditor's statutory demand; or
    4. Commencing legal action for breach of contract.
- As litigators, one of our main jobs is to avoid litigation and going to Court. If possible, we would almost always recommend informal or alternative dispute resolution before going to Court.

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- Negligence Claims for Bad Quality of Workmanship Against a Builder
- A builder owes a duty of care to a homeowner / landowner / contractor to construct and/or supervise the building works to the standard of a reasonably competent builder.
- A homeowner / landowner / contractor will rely on the skill and expertise of the builder as a licensed builder registered with the Queensland Building and Construction Commission.
- A builder will breach their duty of care the homeowner / landowner / contractor if they fail to ensure that the building works at the property were carried out in a proper and workmanlike manner.
- The other party can sue in negligence for damages sustained because of the breach.
- Penalties are similar in the sense that they require payment. Penalties are imposed as financial payments when a breach of contract occurs. These can be very damaging as this can lessen profit and increase costs.
- A well drafted contract is one of the best ways to prevent this. To minimise liquidated damages and penalties it is crucial to:
    - Set clear expectations with the roles and responsibilities of the parties involved. It is important that everyone understands what their rights are and what is expected of to perform.
    - Ensure common understanding from all parties. Everyone involved needs to have a similar interpretation of the contract stipulations and the scope of the work required.
    - Be open with any concerns as soon as they are raised.

How to Avoid a Building Dispute in Queensland

- Building a house, or any kind of building and development project, is a big commitment and can incur significant costs.
- It is vitally important that you spend some time and money at the beginning, to avoid any stressful building disputes along the way.
- There a number of things that a party to a building contract can do to attempt to avoid a building dispute. These include things like:
    1. Seek legal advice before entering into the contract;
    2. Do some due diligence on the builder / other party;
    3. Keeping good lines of communication open;
    4. Ensure that the contracts (and all variations) are in writing;
    5. Take notes and photographs & keep a diary;
    6. Ensure the parties have realistic expectations;
    7. Seek help from a professional early before the disagreement escalates; and
    8. Properly review all of the facts of the disagreement.

Depending on the type and extent of breach, but regardless of the type of contract, if your rights have been breached, you have the following options:

Sue for Damages

This remedy entitles you to an amount of money from the erring contractor, to compensate you for your loss. The amount is variable; you could claim, among others, actual damages, which requires proof of actual loss, and is computed to reflect the same. The Pros are it entitles one to a sum of money and is commonly resorted to. The Cons however is that it should be filed in court, proceedings can take time, money and energy and will involve a litigation fee.

Terminate the Contract

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This depends on several factors including and not limited to:

- There was a breach of an essential term; or
- There was breach of an innominate term, where the effect of the breach has serious consequences; or
- The erring party repudiated the contract; or
- When a party has a right to terminate under the contract.
- The Pros are it is commonly resorted to and one requires to serve a Notice of Breach
- The Cons however is that it should be filed in court, proceedings can take time, money and energy and will involve a litigation fee.

- POLICY AND PROCEDURE – HANDOVER ACTIVITIES

PRE HAND-OVER ACTIVITIES

Contractor establishes commissioning program

Contractor calibrates, tests and runs building equipment, services and systems

Project Sponsor dreviews diesignated contract deliverables

Project Sponsor identifies and documents defects

Contractor rectifies defects impacting on safety and service delivery

Contractor submits building documentation to Project Sponsor

Project Sponsor and Building owners confirm maintenance arrangements with providers

Contractor commences handover training with building owner

Contractor prepares and submits handover report

Project Sponsor and contractor undertakes Practical completion inspection with building owners

POST HAND-OVER ACTIVITIES

Project Sponsor identifies documents defects

Contractor rectifies defects

Project Sponsor and building owner monitor service maintenance and maintain defect rectification records

Contractor arranges final completion inspection to ensure satisfactory rectification of all outstanding defects

Project sponsor and building owner accept final handover report

handover training completed

PROJECT CLOSE ACTIVITIES

Porject sponsor closes project files

Project sponsor releases final payment to contractor

Project sponsor closes financial accounts