



# Time and Again – the Importance of Time in Construction Contracts

Contract Administration Article Series

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This is article three in our 6-part series on contract law and administration. We commenced our series with a contract law refresher followed by a high-level summary of contractual variations, with articles on payment and security of payment, legal implications of contract breaches and post contract award contract management still to come.

## Time and Again – The Importance of Time in Construction Contracts

The concept of 'time' is fundamental to every construction project. Principals want projects completed on time to avoid missed opportunities and financial setbacks. Contractors and subcontractors want to work without interference and to finish the project as soon as possible to maintain profitability and good reputation. Whether you are a Principal seeking timely project delivery or a Contractor or Subcontractor aiming to avoid costly delay penalties, managing time effectively under a construction contract is vital.

This article discusses how the concept of 'time' is handled in construction contracts, while highlighting how a structured approach to contractual time management can mitigate risks and ensure successful (and on time) project completion.

### Defining Time

A well-drafted construction contract will outline and define clear time obligations to ensure all parties understand their respective and shared responsibilities concerning the project timeframes, deadlines and key/critical dates. These obligations typically include at least the following:

- Commencement Date: the date indicating when the Contractor/Subcontractor must begin work after receiving possession of the Site;
- Date for Practical Completion: the date by which the Contractor/Subcontractor must complete the works (except for minor defects which would not prevent the Principal from accepting the works);
- Date of Practical Completion: the date by which the Contractor/Subcontractor actually complete the works, which may be after the Date for Practical Completion if the project is delayed;
- Working Days/Hours: the set hours of the day and days of the week in which the Contractor/Subcontractor is required to perform the works; and
- General administrative timeframes: such as the date and time by which the Contractor/Subcontractor must submit payment claims, or how long the Principal has to respond to the Contractor's/Subcontractor's request for an extension of time.

The timely delivery of the project should also be expressly recognised by each party to the construction contract. In the commonly used Australian Standard contracts, time obligations are clearly defined, requiring Contractors/Subcontractors to execute work "regularly, diligently, and without undue delay".

It is important that your construction contracts clearly define key time obligations, particularly the Commencement Date and Date for Practical Completion, in order to prevent uncertainty and potential disputes. If a contract does not specify a completion date, Courts will generally imply a requirement for completion within a "reasonable time".

## Positive Programming

But how do the parties keep on top of changing timeframes for projects, particularly where there are multiple work fronts and separate deliverables? Through effective programming.

Programming refers to the detailed schedule of activities that outlines the sequence, timing, and duration of tasks necessary to complete a construction project. A well-prepared program is a critical component of project management and helps to ensure that the project is completed on time and within budget. Construction programs will often take the form of a Gantt Chart, a visual representation of a project schedule, displaying the start and finish dates of each task in a project inside the commencement date and the date for practical completion for the project, to help the parties keep track of progress.

An effective construction program can serve as a key contract management tool by:

- providing the Principal and Superintendent with visibility over how the Contractor/Subcontractor plans to execute the work and to ensure that there is a clear understanding of milestones and deadlines;
- ensuring the timely completion of work;
- identifying potential delays so they can be addressed before they materialise and escalate; and
- serving as a reference point in contract disputes.

In some contracts, the program itself becomes a 'contract document'. This means that the program is not just a planning or contract management tool, but also a binding contractual document that must be adhered to by the parties throughout the project. If the program is incorporated into the contract, any departure from it may be treated as a breach of contract or trigger penalties such as liquidated damages or delay costs, making adherence essential.

## Extending Deadlines

Delays are inevitable in construction projects, but not all delays are the Contractor's/Subcontractor's fault! Principal-caused delays, neutral delays (such as force majeure), or variations can all cause the original project timeline to blow out significantly. As such, construction contracts should include a clear mechanism by which extensions of time (or 'EOT' for short) are granted.

Extensions of time to the Date for Practical Completion awarded in accordance with the contract will typically relieve the Contractor/Subcontractor from liquidated damages if the project is delayed beyond the Date for Practical Completion due to a qualified reason. By adopting an effective process for granting EOTs, project timelines can be swiftly extended if and when necessary.

A failure by the parties to follow the EOT process under the contract can cause further delays and open grounds for significant disputes, so it is imperative that the parties understand the process for extending time under the contract.

## Key Takeaways

- Time is a fundamental element in construction contracts. Clear definitions of time obligations and requirements, together with a mutual recognition by the parties that time is of the essence can help prevent delays.
- Programming is critical for project management. A well-planned and maintained program schedule can greatly assist the management of project timelines. Consider making the program a contractual document.
- Extensions of time (EOTs) are a great way to extend project timelines without the need for dispute. However, strict compliance with the contract's EOT mechanisms is required to prevent new or lengthening of existing delays.

## Contract Administration Series

In our next article in this series, we will cover perhaps the greatest cause of disputes in the construction industry – payment and security of payment. Understanding the process which underpins payment and the often complex security of payment legislative framework are both critical for good contract administration and ensuring that parties are paid for their works fairly under the contract without dispute.

Muscat Tanzer offers a comprehensive contract administration training program comprised of 6 sessions delivered either remotely or in person (depending on your preference) on topics including a contract law refresher, variations, time, payment and security of payment, legal implications of contract breaches and the dos and don'ts of contract administration. Each session provides participants with practical knowledge and examples for proper contract administration and is designed to be interactive to maximise retention of the training. If you would like further information on the training program, please do not hesitate to contact us.

In the meantime, if you have any questions in relation to this article or the concept of time in construction contracts generally, please do not hesitate to contact us.



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