



The Legal Implications of Contract Breaches

Contract Administration Article Series

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Ideally, parties to a contract would always fulfil all their obligations. Unfortunately, for often entirely innocent reasons, that is not always the case. Contract breaches remain a common challenge, with potential legal, financial and reputational consequences depending on their severity. This article explores the implications of contract breaches and strategies to address and mitigate any resulting issues effectively.

Please keep in mind that this article is not intended to constitute detailed legal advice or a one-size fits all approach to managing contract breaches and/or disputes. These issues can be complex, so while this article provides a helpful overview of some things to keep in mind, we encourage you to seek legal advice if these kinds of issues arise.

Repercussions of breaches

The repercussions of a breach usually depend on its severity and the terms of the contract.

Damages, specific performance and termination are common remedies in contract law, each serving a distinct purpose in addressing breaches of contract.

Damages

Damages can generally be divided into three categories.

1. Compensatory damages

Compensatory damages are designed to cover actual losses suffered due to a breach and put the non-breaching party back into the position they would have been in if not for the breach. These are often calculated by reference to the direct costs incurred by the non-breaching party as a result of the breach. For example, the extra costs incurred to rectify defects in the other party's work.

2. Consequential damages

Consequential damages, by contrast, cover indirect losses such as reputational harm or business interruptions. For example, a breach might result in reputational damage, or a loss of business caused by delays. It is common for contractors to attempt to exclude liability for consequential damages in their contracts. If so, 'consequential loss' should be clearly defined in the contract.

3. Punitive damages

Punitive damages are rarely awarded in contract cases and are typically reserved for instances of egregious misconduct. For example, if one party knowingly delivers defective goods with the intent to harm the other party, punitive damages may be considered to punish the wrongful behaviour.

Specific performance

Specific performance is another remedy that may be ordered by the Court, requiring a party to fulfill their contractual obligations. This remedy is typically only applied in cases involving unique goods, services or real estate, where monetary damages would not adequately compensate the non-breaching party.

Termination

Termination of a contract is a remedy which may be available to the non-breaching party depending on the terms of the contract and the nature of the breach. If the non-breaching party becomes entitled to terminate the contract and does so, they will usually be able to seek damages to cover costs incurred as a result of the termination, such as those associated with engaging a replacement contractor to complete the relevant work.

It is important to consider the mechanisms for, and effects of, both termination under the contract and termination at common law. Termination under the contract typically needs to follow specific procedures and conditions outlined in the contract itself. In contrast, a right to terminate at common law may arise if there is a breach of a substantial term, a serious breach of a non-essential term, or repudiation of the contract. The effects of these two forms of termination often differ, with contract-based termination providing remedies as specified within the contract, while common law termination relying on broader principles to determine damages and consequences.

Termination is a particularly high-risk step to take which can result in significant liability if not done correctly, so please carefully consider your position and seek legal advice before attempting to terminate any contract.

Defences to breach of contract claims

When facing a breach of contract claim, several legal defences may be available to a party, depending on the circumstances of the matter. Some common defences are outlined below.

No breach

This is a factual question. A common example is where one party alleges defects exist while the other disputes their existence.

Waiver and Estoppel

- **Waiver** can occur when a party abandons a contractual right by acting in a manner inconsistent with that right.
- **Estoppel** typically involves a party being precluded from asserting something contrary to what is implied by a previous action or statement by that party, particularly when another party has relied on that statement or action to their detriment.

For example, a contract might require that all extension of time claims be provided by the Contractor in writing within a certain time period. The Contractor submits their first few EOT claims to the Principal, and the Principal tells the Contractor that they would like to receive EOT claims verbally from then on to reduce administration costs. The Contractor does so and the Principal verbally confirms receipt and validity of those EOT claims. The project then turns pear-shaped and the Principal sues the Contractor for liquidated damages, without accounting for the extra time available to the Contractor by virtue of the verbal EOT claims. The Contractor may be able to defend that claim on the basis that the Principal waived its right to rely on the contractual requirement that EOT claims be in writing, or that the Principal is estopped from relying on that clause, such that the Contractor is not late in delivering the works.

That all being said – we strongly recommend ensuring your contract administration complies with the strict requirements of the contract in order to minimise the chances of this kind of dispute in the first place.

Frustration

This can occur when a contractual obligation becomes incapable of being performed due to circumstances that would render the performance radically different from what was agreed upon. It is typically applicable when an unforeseen event not caused by either party fundamentally changes the nature of the contractual obligations.

For example, a purchase contract for a house is signed, then before settlement an earthquake destroys the house. The vendor likely won't be liable for the failure to provide the house to the purchaser because the sale contract has probably been frustrated

Statute of Limitations

Legal proceedings must be brought within legislatively prescribed time frames. In Queensland the Limitation of Actions Act 1974 (Qld) sets out the maximum period within which different types of legal proceedings must be commenced after the cause of action arises. If a claim is made outside this period, it may be statute-barred.

Limitation of liability and exclusion of consequential loss

Limitation of liability and exclusion of consequential loss clauses are common features in contracts, and may provide the basis for defending or limiting a claim. Keep in mind though that to effectively exclude liability for negligence a contract must state that exclusion specifically, and many agreements carve out exceptions for specific liabilities like personal injury or amounts covered by insurance.

These kinds of clauses also will not always be able to limit liability for claims which arise under equity or legislation that are outside the boundaries of the contract. Broadly speaking, these kinds of protections can be a helpful way to manage risk, but they are not perfect.

Mitigating risk of breach

To minimise exposure to liability, it is essential to:

- conduct a thorough contract review before signing;
- consider the need for a contract administration plan for significant projects;
- ensure compliance with contractual obligations; and
- maintain clear and open communication with the counterparty.

Promptly addressing potential breaches can prevent disputes from escalating. Seek legal advice when necessary to ensure proper handling of disputes and preserve your rights under the contract.

Preserving your ability to make claims

Strict compliance with the contract is crucial, particularly when dealing with variation and extension of time claims (since those requirements often lead to disputes). Even if compliance seems overly technical, maintaining it or explicitly stating why a deviation is allowed in a specific instance can avoid potential defences of waiver or estoppel being made out against you.

Taking swift action to resolve issues

Addressing issues early, ideally with legal advice, can prevent them from escalating into costly litigation. Timely intervention allows for negotiation and resolution before problems become unmanageable.

Conclusion

Contract breaches are a complex but manageable aspect of contract administration. By understanding the potential repercussions of breaches, possible defences, and risk mitigation strategies, parties can navigate disputes effectively and safeguard their interests.

Contract Administration Series

In the next article of this series, we will explore the dos and don'ts of effective contract administration, focusing on key elements essential for project success, such as clear communication, compliance with contractual terms, proactive issue resolution, and accurate record-keeping.

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 applications 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 contract administration generally, please do not hesitate to contact us.



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