

MEMBER UPDATE

Important Contractual Issues for NECA Members to be aware of in the changing Coronavirus landscape

The impact of the Coronavirus pandemic can have severe financial consequences if your construction contract risks are not properly managed.

Liquidated damages, increases in the price of labour (due to inefficiencies caused by social distancing and now having to work 7 days a week in some cases), increased costs for materials or equipment used or ordered (for example in some cases cabling prices have increased by over 20% in a month) for incorporation in or associated with the project are some of the major reasons for future and/or current cost overruns.

NECA Legal has produced a webinar on [Managing Contracts in the changing Coronavirus landscape](#) which is designed for national use. The webinar was held on Friday 27 March 2020.

Liquidated damages exposure

The majority of construction contracts have liquidated damages clauses exposing subcontractors to substantial damages, calculated on a daily rate, should construction projects not be completed by the date for practical completion.

In the current Coronavirus pandemic environment contractor's exposure to liquidated damages may be affected by suspension of works or parts of the site being shut down, productivity and progression of the works may also be diminished due to inefficiencies caused by social distancing or stringent OHS requirements further delaying projects.

****DO NOT WALK OFF SITE BEFORE GETTING PROPER LEGAL ADVICE****

NECA has received numerous enquiries from members on the verge of walking off site, because of compounding Coronavirus pandemic issues making site conditions untenable. Walking off site may expose you to substantial Liquidated Damages and significant damages for breach of contract. Some contracts even make provision for the Principal/ Builder to claim general damages over and above Liquidated Damages.

Should you be faced with such a drastic situation, contact NECA Legal in NSW or WA to obtain legal advice. NECA has developed a team of solicitors with substantial construction contract law experience.

Extension of time claims

A site shutdown caused by the Coronavirus pandemic may allow you to claim an Extension of Time (EOT). A change in legislation restricting work methods (i.e. social distancing on site) may be grounds for claiming an EOT or variation. Delayed supply of material caused as a result of the Coronavirus pandemic may also be a Force Majeure event under your contract, allowing you to claim an extension of time. These all depend on the terms of your contract.

We ask NECA members to ensure that any claims for EOTs, delay damages, disruption costs and costs of suspending works (if the contract provides for these) are made within the strict

timeframes provided by the contract and made in the proper form. Failure to make any EOT claims or claims for additional costs incurred in a timely manner may result from you being barred from making such claims at a later stage.

Read your contracts and get advice

The NECA Legal teams and other NECA resources are available in all states to assist you in putting together EOT claims, which in respect of some contracts may include you claiming costs due to a site being closed down through no fault of your own.

Please note: this is general advice and should you have any issues which require legal advice, contact NECA Legal NSW or NECA Legal WA for advice relating your specific circumstances and specific contractual provisions.

Contacting NECA Legal

NECA Legal will be able to assist you with questions relating to the above. Should you require contracts to be reviewed, contracts amended or new clauses drafted to protect you in this changing environment, NECA's experienced solicitors (at subsidised legal rates for NECA members only) can provide cost effective legal services to you, which may substantially reduce your risk profile within the contractual chain during these uncertain times.

NECA Legal ACT, NSW, QLD, TAS and VIC

1300 361 099

law.clerk@neca.asn.au

NECA Legal WA

(08) 6241 6129

necalegalwa@ecawa.org.au

NECA SA and NT

Members can contact either organisation above.