



Caution Contractors: Time bars can pack-a-punch!

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Time has become an increasingly common theme in construction disputes in Australia.

At some stage, most participants in the construction industry will encounter a dispute about a time limit. Judges of the Queensland Courts are giving clear warnings to be wary of time restrictions, whatever their form.

Generally, there are three key timeframes and time limits to be mindful of when performing construction work. These are:

1. CONTRACTUAL NOTICE PERIODS

Time bar provisions in construction contracts are extremely common. They usually operate to require a party ("**Party A**") to give notice to the other party ("**Party B**") of an event (eg possible delay in reaching practical completion by the date for practical completion) within a stipulated time period. The Notice is usually a precondition to Party A having any further rights in respect of the matter for which notice is required (eg claim an extension of time ("**EOT**") or delay costs).

In *CMA Assets Pty Ltd v John Holland [No 6]*, CMA was prevented from claiming an EOT because its notices of possible delay required under its construction contract with John Holland ("**JH**") were issued out of time. Despite finding

that JH was responsible for various delays, the court ultimately found that JH was entitled to reject CMA's EOT claim because it had failed to comply with the clear terms of the subcontract.

2. BCIPA TIMEFRAMES

While the timeframes can vary between the construction contract and BCIPA, the BCIPA timing is more critical to a successful application.

Missing a date could mean losing a right to make a payment claim on a particular date or, for contractors, becoming liable for the full sum of a payment claim which may not in fact be payable (whether due to defects or the work not having been completed).

Timeframes imposed by BCIPA can be found in Annexure A to our earlier article "[BCIPA Update: Further Amendments & Time Considerations](#)" ([CLICK HERE](#) to view article).

3. QBCC TIME LIMITATIONS

If your contract was entered into before 10 October 2014, and structural defects become evident, then a complaint must be made within 3 months of noticing the defect (that appears within 6 years and 3 months from the practical completion date). Alternatively, for non structural

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defects, the time frame is 7 months to make a complaint.

If the contract was entered into on or after 10 October 2014, then a complaint must be lodged as soon as possible but no later than 12 months after noticing any structural defect. For non structural defects, noticed within the first 6 months after the work was completed, contractors are required to fix the defect after notice is received in writing within those first 6 months. If the work is not completed in 6 months, then the owner can lodge a complaint with the QBCC within 12 months from the completion of the work.

WHAT TO DO

When administering a contract, it is crucial to ensure that you are working off the correct timeframes provided either under the contract or under BCIPA or the Queensland

Building and Construction Commission Act 1991. It is also important, when on the receiving end of a notice, to act promptly and respond appropriately to the notice to avoid a finding of a breach of the contract or alternatively to avoid liability for a large payment claim which would otherwise not be payable as claimed.

If you have any queries about time frames or limitations when negotiating a contract or administering the contract, then contact ClarkeKann for assistance or guidance.

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