Transparent timing

A reform thread from *Unravelling Risk*

Claims data indicates that claims for delay occurred in over 21% of disputed design and construct (D&C) projects. Claims in respect of delay arise against a consultant in a D&C model because consultant timeframes are significantly impacted by other parties. This is despite timing often being beyond the consultant's control, and reliant on actions by other parties. Claims for delay are more frequent when programming is a contractual clause requiring strict compliance. This can limit parties working together to resolve issues to get the project 'back on track'.

Complex projects require a better way of managing time than deadlines in party-to-party contracts that attract strict liability.

In complex projects, it is not always clear where the delays originated and the resultant flow on impacts. More transparency and better coordination is needed.

Consult Australia intentionally avoids references to programs, timelines, and deliverables in our Contract Suite. This is because strict liability for contractually embedded timelines can conflict with the ability to deliver the services with the appropriate skill, care, and diligence. Also, as demonstrated above, can often lead to disputation between the parties. Further, consultants may not be able to access PI insurance to cover a liability arising from a provision focussed on program, timeline, or deliverables because the insurer could consider this as going beyond the common law duty or standard of care.

Prioritising collaboration and transparency to deal with issues and resultant delays – instead of penalising parties for changes to the program would alleviate claims and improve outcomes for all parties. The 'early warning' and programming approach in the NEC4 Contract Suite is a good way to achieve 'transparent timing'.

> **WHO & HOW**
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> *Clients* should ensure there is an agreed program for each project that is a working tool for *all parties.* There should be clear processes for the program to be amended in collaboration between all parties.

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W: consultaustralia.com.au   E: info@consultaustralia.com.au

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