



## Top 6 causes of construction disputes

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Disputes are unfortunately a common feature in construction projects. Many studies have been done in the industry to understand their possible causes. The reality of construction projects is that there are usually a variety of stakeholders involved. They each have different (and competing) work disciplines and different interests, often making conflicts between the parties inevitable. Understanding the causes of disputes is one step that construction professionals can take in order to implement proactive measures to avoid (or at least minimise) disputes at each stage of the project.

## Research has identified the top 6 causes of construction disputes

We have had a look at the research and have compiled what we believe are the top 6 causes of conflict or dispute in construction projects.

1. Variations and changes
2. Delays by a contractor
3. Errors and ambiguities in design and planning
4. Customer preventing progress
5. Client's unrealistic expectations
6. Late or inadequate reviews by the engineer

## Variations and changes

[Construction contracts](#) will typically contain clauses that allow a party to vary the contract without altering the spirit and purpose of the contract. Usually, a variation is the process of changing the quality, quantity (cost) or schedule of work. Variations can be caused by a change in scope, differing site conditions, delays, suspensions, and acceleration.

Disputes will usually arise when there are:

- external factors such as site limitations which have not been factored into the design;
- process factors such as errors in concept design and planning;
- lack of construction materials, equipment and spare parts due to shortages or delays in delivery; and
- changes in design by the customer or their engineering consultant which were not considered in the tender or scope.

## Delays by contractor

There are many internal and external factors that contribute to a dispute caused due to delays by a contractor.

The major ones include:

- Severe weather events or acts of God which are typical external sources of disputes in construction contracts. Often, contracts will excuse the contractor or supplier when the project or delivery is late, only if the specific severe weather has affected the site. This can be a cause for dispute because in some cases, weather events can have a ripple effect and cause a project delay even if the severe weather was elsewhere. For example, severe weather events at sea can cause a shipping delay for equipment required at the site.
- The process of scheduling where project float\* is often a cause for differing views between the client and contractor when assessing delays;
- Contractor's own negligence which can be detrimental for the relationship with the customer; and
- An inexperienced contractor who is unable to demonstrate their capability.

*\* Project float is how much extra time or flexibility is calculated into the project schedule that allows the project to absorb a delay without causing a delay to the overall completion date*

## Errors and ambiguities in design and planning

Design and planning are important processes in a construction project because of the potential to cause a significant negative impact on the overall construction if not done effectively.

If errors and ambiguities in design are not rectified during the design phase, they eventually appear in a construction phase. One example of such an error would be the reporting of incorrect soil class, which is vital information for civil contractors to factor into the bulk earthworks.

Disputes frequently occur for reasons such as:

- the lack of time to finalise the design phase in a proper and thorough way;
- inadequate feedback cycle in the design stages (schematic, preliminary, detailed and final); and

- poor communication among all project partners and stakeholders.

Engineering and design consultants are normally the party responsible for errors and ambiguities in design and planning. It is therefore imperative for the party responsible for the design to acknowledge their major role in solving design problems before the construction phase starts and ensure that the changes are properly communicated amongst all the project stakeholders.

## Customer preventing progress

Clients themselves can be a major cause of disputes in construction projects when they prevent progress of the works.

Some of the reasons that would cause this type of dispute to arise include:

- Poor coordination by the customer; for example, where a customer is responsible for obtaining licences and permits required and they fail to properly communicate these to the project stakeholders;
- A customer who has failed to properly plan their finances prior to the start of the project. This can result in them being unable to approve variations which are critical to the success of the project; and
- Poor management of the customer's project team and lack of support by the executive management team. This lack of support at the customer side can be especially problematic if there is an issue that needs to be escalated to management for resolution.

## Client's unrealistic expectations

This is a type of "people" dispute in construction projects. Unrealistic expectations by the customer (or engineering consultant) arise in construction projects in situations where:

- the customer assumes a position of supremacy which can in turn lead to opportunistic behaviour. This type of customer is likely to make unrealistic demands that cannot be accommodated within the price and time constraints quoted for that project;
- the client is unfamiliar with the local conditions of the site. This site risk can be significant where the contractor has limited scope and opportunity to invest in thorough geotechnical surveys before committing to the project; and
- the client lacks experience with the type of project they are engaged in, or they lack experience in the type of contracting model to use for the work required.

## Late or inadequate reviews and approvals by the engineers

In recent times, it is common for the head contract to state that the construction contractor is required to progress at their own risk regardless of engineering review or approval of drawings. If the engineering review or approval of a drawing is late or inadequate, this can breed disputes between the parties involved.

Some of the reasons this dispute arises is due to:

- unclear responsibilities set for the role of the reviewing engineer;

- vague contract clauses that deal with variation;
- poor management of the work by the engineer;
- complex design and construction requiring detailed and lengthy reviews; and
- errors in concept and design which then requires new drawings, rework and scope changes.

## Get help

Wambeti Legal can assist you with avoiding and managing (and minimising) disputes by:

- providing advice on [contract terms in your construction project](#);
- conducting a review of your contract management processes to ensure that your performance obligations are being met; and
- providing guidance and support in dispute management.

## Contacting Wambeti Legal

[0423 825 235](tel:0423825235)

[hello@wambetilegal.com.au](mailto:hello@wambetilegal.com.au)

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