



# 5 common errors in contracts used in infrastructure and construction projects

**Date: Monday August 26, 2024**

When working on infrastructure and construction projects, a [well-drafted contract](#) establishes the legal, financial, and operational frameworks within which projects are executed. However, common errors in these contracts often lead to significant challenges, including disputes, delays and cost overruns. This article explores 5 prevalent errors found in construction and infrastructure project contracts.

## 1. Ambiguous project requirements

Project specifications need to be detailed and precise, covering all aspects of the project requirements. The Scope of Work (SoW) is also critical as it defines the tasks, deliverables and responsibilities of each party.

Construction contracts with vague or incomplete project requirements can lead to:

- misinterpretations;
- delivery of substandard work;
- costly revisions; and

In Australia, there is a growing number of infrastructure projects which involve complex engineering and technical requirements. In such projects, all parties need to have a shared understanding of their obligations; therefore, such projects need clear and complete project requirements to deliver a successful project.

## 2. Inadequate risk allocation

In the context of construction and infrastructure projects, [allocating risk](#) involves determining which party (whether the project owner, contractor, or subcontractor) will bear the financial, legal and operational impacts of various risks, such as delays, cost overruns or unforeseen events.

## Imbalanced risk distribution in the contract

Contracts should clearly allocate risks to the party best able to manage them. Improper risk allocation is considered a common error in infrastructure contracts. Where a contract inappropriately transfers risks to a party that is not equipped to handle them, this leads to disputes and project failures.

Best practice for risk involves a [balanced approach to risk allocation](#), where risks are shared equitably among all parties, and appropriate risk management strategies are implemented.

## Failure to address unforeseen risks

Another frequent issue is the failure to adequately address unforeseen risks, such as changes in regulatory requirements or unexpected environmental conditions. Contracts that do not include provisions for managing these risks can leave parties vulnerable to significant financial and operational impacts.

Construction and infrastructure contracts will usually require contingency clauses and [force majeure](#) provisions, which need to be carefully drafted. This is essential to mitigate the effects of unforeseen events.

## 3. Poorly defined payment terms

Poorly defined payment terms in infrastructure contracts present significant challenges, even in the presence of Security of Payment (SoP) legislation in Australia. While SoP legislation provides a framework for ensuring timely payments and resolving disputes, its effectiveness is heavily dependent on the clarity of the underlying contract terms.

### Inadequate payment schedules

Payment terms are a critical component of infrastructure contracts, but they are often a source of errors. One common mistake is the inclusion of inadequate or unrealistic payment schedules.

For instance, payment schedules that do not align with the project's cash flow requirements can lead to financial strain on contractors, resulting in delays or compromised quality. It is essential to ensure that payment schedules are realistic and provide adequate cash flow throughout the project lifecycle.

## Inadequate and poorly defined documentation

Poorly defined payment terms can also lead to issues with the documentation required to support payment claims. SoP legislation requires that claims be substantiated with appropriate documentation, such as invoices, schedules of work and evidence of completed milestones or tasks.

If the contract does not clearly outline what documentation is necessary or how payment amounts should be justified, contractors may struggle to provide the required evidence, leading to rejected claims and delayed payments.

## Lack of clarity on payment milestones

Contracts that do not clearly define payment milestones can lead to disputes over when payments are due. Each payment milestone should be linked to specific deliverables or project stages that are objectively measurable. Clear and enforceable payment milestones help ensure that payments are made on time and in accordance with the progress of the work.

To fully realise the benefits of SoP legislation, it is essential that contracts are drafted with clear and precise payment terms that minimise the potential for disputes and ensure that all parties understand their obligations. This approach not only facilitates smoother project delivery but also strengthens the overall financial health of the construction industry.

## 4. Insufficient change management processes

Change management refers to a systematic approach to managing transitions within the project.

### Undefined variation procedures

Construction and infrastructure projects often involve changes in scope or design which must be managed through contract variations. A common error is a confusing or poorly defined process for managing these variations. Best practice requires that the contract includes detailed procedures for requesting, approving, and implementing variations.

### Failure to document changes

Another related error is the failure to properly document changes to the contract. All variations should be formally recorded with clear documentation of the agreed changes, including their impact on cost and schedule. It is important to maintain comprehensive records of all contract changes to keep the project on track.

## 5. Errors in contractual language and interpretation

Contract language refers to the specific wording and terminology used in a contract. It includes the precise definitions, phrases, and clauses.

### Use of ambiguous or complex language

The use of ambiguous or overly complex language in contracts is a common error that can lead to misinterpretation and disputes. Contracts should be written in clear, concise language that is easily understood by all parties.

Luckily, in Australia, our legal standards generally require contracts to be fair and transparent and use plain language. This helps to ensure that all parties have a clear understanding of their rights and obligations.

### Inconsistent terminology

Inconsistent use of terms and definitions throughout the contract can also lead to confusion and errors. Consistency is important, particularly when describing key concepts such as deliverables, milestones and responsibilities. This consistency helps to avoid misunderstandings and ensures that the contract is interpreted as intended.

## Get help from a lawyer with infrastructure project experience

Wambeti Legal promotes best practice by ensuring that contracts are clear, detailed and aligned with your project objectives. We are flexible enough to align our efforts where you need it. Whether it is focusing on the clarity of the Scope of Work, proper risk allocation, well-defined payment terms, effective dispute resolution mechanisms, or compliance with regulatory requirements, we help you avoid the nitty gritty and contribute to your project's success.

### Contacting Wambeti Legal

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### Further reading

• [Cause and effect: how errors affect construction projects](#)

• [Top 6 causes of construction disputes](#)

•[Construction project management plans](#)

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