

## **Contract Administration System Manual: Procedure – CAP008M**

# **Extension of Time for Practical Completion**

**February 2022**

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## 1 Introduction

### 1.1 Purpose

The purpose of this procedure is to maintain consistency and compliance in executing the Administrator's functions under the Contract in regard to Extensions of Time for Practical Completion.

This procedure defines actions required to satisfy provisions of Clause 35.5 *Extension of Time for Practical Completion, of the General Conditions of Contract (GCoC)* for notifying, claiming and granting an extension of time to the Date for Practical Completion.

**Note: This Procedure discusses the process for dealing with Extensions of Time for Practical Completion but does not give contract law advice which is project and case specific and outside the scope of the Contract Administration System (CAS) Manual.**

### 1.2 Scope

The scope of this procedure is to provide guidance for the Administrator to receive, acknowledge, assess, determine and certify whether an Extension of Time for Practical Completion should be granted according to the Clause 35.5 *Extension of Time for Practical Completion, of the GCoC* and particularly, to meet the prescribed time frames set out by Clauses 35.5 *Extension of Time for Practical Completion of the GCoC* and Clause 46 *Time for Notification of Claims and Disputing Administrator's Direction of the GCoC*.

The scope also includes for the Administrator to direct an Extension of Time for Practical Completion without a claim being received from the Contractor.

### 1.3 Definitions, Abbreviations and Acronyms

Abbreviation	Description
Administrator	The person appointed as the Administrator for the contract by the Principal.
Contractor	The person identified as the Contractor in the contract.
Date for Practical Completion	Where the Annexure provides a date for Practical Completion that date, where the Annexure provides a period of time for Practical Completion, the last day of the period but if any extension of time for Practical Completion is granted by the Administrator or allowed in any arbitration or litigation, it means the date resulting from this.
Department / Departmental	Department of Transport and Main Roads.
EOT	Extension of Time.
GCoC	General Conditions of Contract –TIC.
PM	Project Manager – appointed by the Principal to manage the overall project of which the TIC may be one of a number of separate contracts under the project.
Principal	The Principal stated in the Annexure (state of Queensland acting through the department).
TIC	Transport Infrastructure Contract.

## 2 Claims and Notices

### 2.1 *Referenced clauses of General Conditions of Contract – Extensions of Time for Practical Completion*

While there are a number of clauses that provide a basis for an Extension of Time for Practical Completion, the evaluation occurs using Clause 35.5 *Extension of Time for Practical Completion of the General Conditions of Contract*.

For example, the following clauses are those commonly encountered (but not limited to):

- Clause 12.3 *Extension of Time and Cost* – provides for the ability to claim and the basis for the Extension of Time for Latent Conditions.
- Clause 14.1 *Complying with Legislative Requirements* – where there is a variance with the provisions of the Contract (operates through Clause 40.1 *Variations to the Work, of the General Conditions of Contract*).
- Clause 33.5 *Acceleration* – provides for substitution of Extension of Time for Practical Completion with acceleration of Works.
- Clause 35.5 *Extension of Time for Practical Completion* – requires the notice for the claim to be in writing and endorsed “Contractor’s Notice of Possible Delay under Clause 35.5”.
- Clause 36 *Delay Costs* – the Contractor may be eligible for the costs of the delay or disruption under specific circumstances.
- Clause 40.1 *Authority to vary the work* (due to a direction by the Administrator) – may also include time components associated with variations.

Other clauses referenced in this procedure include:

- Clause 7 *Service of Notices*, provides information on what constitutes a notice and how a notice should be served.
- Clause 47 *Dispute Resolution* – refers to a notice of dispute by either the Principal or the Contractor with a determination by the Administrator or arbitration.

### 2.2 *Preliminary*

The notice of claim by the Contractor for an Extension of Time for Practical Completion usually initiates the actions which follow, but it needs to be noted that the Administrator may, before the issue of the *Final Certificate* (Form C7882), extend the Date for Practical Completion for any reason.

To allow the Administrator to know what is being claimed and subsequently assessed, and to comply with the time bar provisions, the Contractor’s notice(s) must comply with the requirements of the Contract. A failure to comply means the claim may be rejected by the Administrator.

In order for the Contractor to submit a valid claim for an extension of time there are two types of notice required to be issued. Firstly, under Clause 35.5 (a) the Contractor may notify the Administrator of any possible delay and the cause of such delay by issuing a notice endorsed “Contractors Notice of *Possible* Delay under Clause 35.5”. The second type of Notice is one in which the Contractor may seek an extension of time for *actual* delay and this Notice should be endorsed “Contractors Extension of Time Claim under Clause 35.5”

### 2.3 General

Clause 35.5 *Extension of Time for Practical Completion*, defines causes of delays to Works for which the Contractor is entitled to Extension of Time for Practical Completion.

If the Contractor is or will be delayed in reaching Practical Completion, the Contractor may be entitled to an Extension of Time for Practical Completion upon meeting requirements of Clause 35.5 *Extension of Time for Practical Completion*, which includes:

- a) Within 10 business days it becomes evident to the Contractor that it may be delayed the Contractor shall notify the Administrator in writing, the notice shall be endorsed “Contractor’s Notice of Possible Delay under Clause 35.5”
- b) Giving a notice to the Administrator within 20 business days after the commencement of the cause of delay and endorsed “Contractor’s Extension of Time Claim under Clause 35.5” and including facts of which the claim is based
- c) The cause being an event/s occurring on or before the Date for Practical Completion which are beyond the reasonable control of the Contractor including but not limited to:
  - i. Industrial Matters
  - ii. Inclement weather, and
  - iii. not attributed to any delay, breach, act or omission by any Subcontractor or any of the Contractor’s employees.
- d) The cause being any of the following events whether occurring before, on or after the date for Practical Completion:
  - i. Delays caused by –
    - The Principal
    - The Administrator, and
    - The Principal’s employees, consultants other contractors or agents.
  - ii. Actual quantities of work in the Schedule of Rates being greater than the quantities determined by reference to the upper limit of accuracy stated in *Item 44C of the Annexure of the General Conditions of Contract* (otherwise than by reason of a variation directed under Clause 40 *Variations, of the General Conditions of Contract*)
  - iii. Latent Conditions
  - iv. Variations directed under Clause 40 *Variations*; Repudiation or abandonment by a Nominated Subcontractor
  - v. Change in the law (which occurs after the Date of Acceptance of Tender and could not have been anticipated by an experienced and competent Contractor
  - vi. Directions by any Authority but not where the direction arose from the failure of the Contractor to comply with a legislative requirement
  - vii. Delays by any Authority not caused by the Contractor
  - viii. Delays arising as a result of the Contractor’s compliance with Clause 27.7.2 *Public Utility Plant* identified during the Contract

- ix. Claims referred to in Clause 17.1(b)(iv) *Indemnity by Contractor, of the General Conditions of Contract*
- x. Any breach of the Contract by the Principal, and
- xi. Any other cause which is expressly stated in the Contract to be a cause for Extension of Time for Practical Completion.

Where more than one event causes overlapping delays and the cause of at least one of those events, but not all of them, is not a cause referred to in (d) of the Clause 35.5 *Extension of Time for Practical Completion*, (see list above), then to the extent that the delays overlap, the Contractor shall not be entitled to an Extension of Time for Practical Completion. In other words if one or more of the causes for overlapping delays is attributed to the Contractor or is for the Contractor's convenience then the number of days for such delay is excluded from the time extension entitlements when it is concurrent or overlapping with delays caused by events listed in Clause 35.5 *Extension of Time for Practical Completion*.

### **3 Actions and responsibilities**

#### **3.1 General**

The timely treatment of an Extension of Time for Practical Completion is important. The time periods for actions/responses by the Contractor and Administrator are a critical part of managing Extensions of Time for Practical Completion to avoid time bars.

It is particularly important for Administrators to be prompt in their responsibilities. Late decisions inevitably lead to further claims for time and/or costs and delay (Clause 36 *Delay Costs*). There may always an opportunity to make changes and adjustments later, after further information becomes available.

Where there is a time component to a cost variation, it is highly advantageous to the Contractor and the Administrator to resolve these at the same time to minimise the potential for further claims.

The Administrator and the Contractor should resolve to settle outstanding variations and Extension of Time claims throughout the Contract whilst the details are fresh in both parties' minds rather than at the end of the Contract. It is recommended that variations and Extension of Time for Practical Completion should be discussed at claim specific meetings to focus attention on the purpose of the meeting. The progress or blockages should be reported at the monthly meeting, for which the minutes are circulated through the Project Manager to the Principal.

##### **3.1.1 The Contractor**

The Contractor should at all times apply principles of good relationship management and immediately consult with the Administrator about any situation which may lead to a potential claim.

- The Contractor, within 10 business days of it becoming evident to the Contractor that anything may delay the work under the Contract, must notify the Administrator in writing, including details of the possible delay and cause according to Clause 35.5 *Extension of Time for Practical Completion*. The notice must be endorsed "Contractor's Notice of Possible Delay under Clause 35.5".
- The Contractor within 20 business days after the commencement of the cause of delay gives the Administrator a written claim for Extension of Time for Practical Completion according to Clause 35.5 *Extension of Time for Practical Completion*.

- The Contractor must state the number of days claimed by the particular claim, or as soon as practicable thereafter, a written notice stating the number of days claimed for an Extension of Time for Practical Completion with a reference to the particular claim.
- The Contractor must also demonstrate to the Administrator they have taken all reasonable steps to preclude the cause and minimise the delay.
- The Contractor must comply with the Administrator's direction to substitute whole or part of the granted Extension of Time for Practical Completion with an accelerated performance of Works under Clause 33.5 *Acceleration*.
- The Contractor may be entitled to extra costs resulting from the Administrator's direction to substitute an Extension of Time for Practical Completion with acceleration in accordance with Clause 33.5 *Acceleration*.
- The Contractor can either accept the Administrator's decision on the Extension of Time for Practical Completion or give a notice of dispute under the Clause 47.1 Notice of Dispute, . The Contractor must proceed with the performance of the Contract (subject to Clause 44 *Default or Insolvency*).
- The Contractor is entitled to claim delay costs when the delay is caused by events specified in Clause 35.5 (d)(ii)(a) *Extension of Time for Practical Completion*, (in accordance with Clause 36 *Delay Costs*).

### 3.1.2 The Administrator

The Administrator must identify situations which may lead to a potential claim from the Contractor for an Extension of Time for Practical Completion, or a reason for an Extension of Time for Practical Completion to be granted notwithstanding a lack of a claim from the Contractor.

- The Administrator, upon receiving a notice from the Principal about possible Principal's delays in meeting requirements under the Contract, must immediately notify the Contractor, in writing, of the extent of the likely delay.
- The Administrator is to enter details of any potential claim for an Extension of Time for Practical Completion in the *Extension of Time Register* (CAF028M).
- The Administrator is to liaise, as necessary, with the Contractor and the Principal to determine the best possible outcome to address a situation which may lead to a potential claim.
- The Administrator, in determining if the Contractor is or will be delayed in achieving Practical Completion, must disregard:
  - Whether the Contractor can reach Practical Completion by the Date for Practical Completion without an Extension of Time for Practical Completion.
  - Whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost.
- The Administrator, upon receiving the Contractor's claim for an Extension of Time for Practical Completion, should assess the claim against the following criteria:
  - Whether the claim strictly meets the requirements of Clause 35.5(c) *Extension of Time for Practical Completion*.
  - That the cause of the delay is a valid one.



- The time the cause of delay has actually happened or commenced.
- Whether one or more events causing concurrent delays is attributed to the Contractor's fault or convenience.
- Whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.
- Whether a notice stating a number of days claimed for delay is provided.
- The Administrator within 20 business days after receipt of the notice of the number of days claimed for extension may:
  - Grant a reasonable Extension of Time for Practical Completion, or
  - If the full claim of Extension of Time for Practical Completion is not granted give the Contractor a notice in writing of the reasons, or
  - Decline the claim and give a notice in writing to the Contractor of the reasons.

In the alternative, where the Contractor is entitled to an Extension of Time for Practical Completion, the Administrator may in accordance with Clause 33.5 *Acceleration*, direct the Contractor in writing to accelerate performance of the Work under the Contract.

- The Administrator, according to Clause 33.5 *Acceleration*, must allow for additional costs incurred by the Contractor following the Administrator's direction to accelerate in substitution of an Extension of Time for Practical Completion.
- The Administrator, according to Clause 36 *Delay Costs*, must allow for claim delay costs to the Contractor if the delay is caused by events specified in Clause 35.5 (d)(ii)(a) *Extension of Time for Practical Completion*.
- The Administrator is to regularly check and enter relevant claim information on *Extension of Time Register* (CAF028M).

### 3.1.3 Principal

Clause 35.5 (d)(ii) *Extension of Time for Practical Completion*, includes causes by the Principal's employees, consultants, other contractors or agents, and this can include the Project Manager or the department's technical advisors. They must be very careful in engagement with the Contractor as they could inadvertently, by going around the Administrator directly to the Contractor, be the basis of claim for delay and disruption for anything said or done that could be reasonably acted upon by the Contractor. To avoid such potential occurrences the Principal's employees (including the Project Manager), the department's technical advisors, consultants, contractors or agents should always work through the Administrator.

- The Principal should at all times apply principles of good relationship management and immediately consult with the Administrator in any situation which may lead to a potential claim. This means the Principal is accorded the same access to the Administrator as the Contractor but the independent assessor role of the Administrator in dealing with the claim is preserved.
- The Principal, as soon as it becomes evident that anything required from the Principal under the Contract may be delayed, must give notice to the Administrator and provide details.
- The Principal may be liable for extra costs incurred by the Contractor for delay caused by events specified in Clause 35.5 (d)(ii) *Extension of Time for Practical Completion*.

- The Principal may be liable for the cost differences resulting from the substitution of an Extension of Time for Practical Completion with accelerated performance of works under the Contract (Clause 33.5 *Acceleration*).

## **4 Process of evaluating extensions of time for Practical Completion**

### **4.1 Timeframes**

The preceding sections discussed the contractual requirements for the Extension of Time for Practical Completion claim to be submitted and evaluated in the prescribed timeframes specified in the Contract. The *Claims Analysis Worksheet* (CAF025M) has been developed to provide an in-built checklist to allow the status of all claims to be quickly evaluated.

There are a number of prescribed times to act that apply in Clause 35.5 *Extension of Time for Practical Completion*, that must be strictly adhered to by the Contractor, that if breached, will deny the Contractor a basis to claim under the Contract (see Clause 35.5(a) *Extension of Time for Practical Completion*, which in turn refers to the time bar contained in Clause 35.5(c)).

The Contractor must give the endorsed notice “Contractor’s Extension of Time Claim under Clause 35.5” within 20 business days of the commencement of the cause of the delay, otherwise the Contractor will be time barred.

The notice may or may not include the number of days claimed. It is not until the receipt of the number of days claimed that the 20 business days period in which the Administrator is to reply commences.

### **4.2 Supply of details of the Extension of Time for Practical Completion Claim**

In the event that the notice is made in time, but not all the facts are supplied by the Contractor in support of its claim, the Administrator may reject the claim as the Administrator’s determination can only be made in the specified timeframe and a reasonable assessment based on those facts, experience and considered opinion in the absence of information to the contrary.

The Contractor has the responsibility to make its claim and the Administrator has the responsibility to assess the claim within scope of the Contractors obligations under the Contract.

If further details are eventually submitted by the Contractor, an evaluation can be made provided timeframe requirements have been met.

### **4.3 Evaluation of the Extension of Time for Practical Completion Claim**

The evaluation will depend upon the specific details and events of the cause of the claimed delay and of the particulars of the Contract, but the general approach is as follows.

It is the Contractor’s responsibility to demonstrate that any claim for delay is caused by an event for which a claim is permissible under the Contract.

The delay must then also have delayed the Contractor from reaching Practical Completion.

There are many types of delays that can occur, which due to the sequencing of works, do not at first appear to impact the achievement of Practical Completion especially if they have first been identified as being off the critical path for the Contractor’s construction program.

It is not uncommon for claims for delay to show revised critical path upon which the delay now occurs.

Depending upon the types of works and the particulars of the Contract there may be number of “near” critical paths that are not easy to identify. Small changes in activity durations do have the ability to dramatically change where the critical path is particularly sensitive.

The status of the Contractor’s program is very important. Under the Contract the submitted Construction Program, or Current Program once a Construction Program has been deemed suitable for use, is not part of the Contract but may be used by the Administrator to monitor progress and to assess claims for Extensions of Time for Practical Completion. Program status, obligations and requirements of the Contractor are detailed in Clause 33 *Progress and Programming of the Works*.

The assessment of the Extension of Time for Practical Completion may be assisted by reference to the Construction Program or Current Program by the Administrator.

In view of its use for assessing Extension of Time for Practical Completion, the Administrator needs to be aware when notifying that a Contractor’s working program is suitable for use, that the submitted program conforms to the requirements specified in the Contract. As “programming” can be a fine art in “claimsmanship”, specialist advice may need to be sought from experienced schedulers to examine the software features used by the Contractor in preparing its program.

During assessment, the Contractor is likely to raise issues about who “owns” the float on various activities, float being inactive time in activity duration; specialist advice is also required in such circumstances. Contact Prequalification and Contracts Unit in such circumstances.

Where a suitable Current Program shows an earlier completion date than the Date for Practical Completion, the Administrator needs to be cautious in granting an Extension of Time for Practical Completion particularly where the Contractor can reach Practical Completion by the Date for Practical Completion even without an extension of time. This could give rise to a further claim for costs in accordance with Clause 36 *Delay Costs*.

#### **4.4 Costs of the Extension of Time for Practical Completion Claim**

It is likely that following the granting of an Extension of Time for Practical Completion that the Contractor may submit a further claim for costs in accordance with Clause 36 *Delay Costs*, when the Extension of Time for Practical Completion is due to one of the events referred to in Clause 35.5(d)(ii)(a) *Extension of Time for Practical Completion*.

#### **4.5 Variations causing an Extension of Time for Practical Completion Claim**

When issuing directions varying the work under the Contract, it is important that the Administrator give consideration to both the cost of the variation to the works under the Contract, and the cost of any time implications (both under Clause 40.1 *Authority to vary the work*, and Clause 40.2 *Contractor’s obligations concerning proposed variations*).

### **5 Reference documents**

- [CAS TIC Procedures \(CAP prefix\)](#)
- [CAS TIC Standard Forms \(CAF and SF prefix\)](#)
- [Transport Infrastructure Contract](#)

