



The SOPA *Tabletop.*

One project. Three payment fights.

DATE

Thursday 24 September

TIME

12:00 pm AEST

MONTHLY WEBINAR · ADVANCED SESSION

FORMAT

60 minutes · 4 live polls



BEFORE WE START

General information, not legal advice.

The scenario, parties, documents and figures are entirely fictitious - built from real matters, sanitised.

The Act referred to throughout is the Building and Construction Industry Security of Payment Act 1999 (NSW). Timeframes and rights differ in other States and Territories.

The contracts are amended AS 4902-2000 and AS 4903-2000. Take advice on your own facts.

This presentation contains copyright

Six movements, four decision points

Three teaching blocks and three acts of one story, running side by side. Four times in the hour a poll opens and the room decides.

01.	First principles	What the Act does, the five steps of the machinery, and the two tracks it runs on. Ninety seconds of foundations, so everyone argues from the same map.
02.	The scenario	Riverton: \$85m, month 23 of 27, every package about ninety per cent built. Seven parties, two contracts, and a chain that carries money down and claims up.
03.	Act 1 · The claims go in	What makes a payment claim valid, when it can be served, how it is served, and two deeming clauses the Act does not read. Then three claims in one week.
04.	Act 2 · The payment schedules come back	Ten business days, and what happens when you miss them. Good reasons, bad reasons, an unquantified set-off, and a schedule that lands one day late.
05.	Act 3 · Everyone is out of time	Three parties, three notices, all of them months late. Construction, section 34 and estoppel by convention - in the order they cost money.
06.	What you keep	Four playbook pages containing some take away tips

“ Scheduled amount: *NIL*.
Reasons: see attached. ”

WHAT YOU WILL LEAVE WITH

Five things to get right

01.	Payment Claims	Payment Claims that hold their full value; served on the right date, split into components a respondent must answer, with the evidence attached and or incorporated by reference..
02.	Payment Schedules	Payment Schedules that preserve every available reason for withholding payment. The most important document that you will prepare.
03.	Evidence	The records that decide disputes: baseline, direction, event, consequence, cost.
04.	Staying ahead of the clock	The notices, deadlines and response periods that often decide disputes before they begin.
05.	Time bars	What can be done when you're already late, and when a missed deadline is not the end of the story.

What the Act does

Four things the Act gives you, whatever your contract says. Two of them get misremembered constantly.

01. A right to be paid

Anyone who carries out construction work is entitled to progress payments- s8 whether or not the contract says so. The right sits beside the contract, not inside it.

02. Payment terms capped, one way only

Pay-when-paid is void. 15 business days to a head contractor (s 11(1A)), 20 to a subcontractor (s 11(1B)). A contract can bring those dates forward. It can never push them out.

03. Pay now, argue later

An interim entitlement on a statutory timetable - claim, schedule, due date, and a debt if the due date passes. Final rights survive: nothing done under Part 3 affects your civil rights (s 32).

04. You cannot contract out

Section 34 voids any provision that excludes, modifies or restricts the operation of the Act. But it protects the machinery, not the bargain. Remember that limit.

Two tracks, and where they collide

The Act runs alongside your contract, not instead of it. Almost all the complexity is in the places where the rails converge.

THE STATUTORY TRACK

Payment claim → payment schedule → due date → statutory debt if it is not paid. Fast. Interim. Cannot be contracted out of. Section 34 protects it.

THE CONTRACTUAL TRACK

Direction → notice → claim → assessment → certificate → dispute → arbitration or court. Slow. Final. Governed entirely by what you signed — including every time bar in it.

RUNNING TOGETHER



AND WHERE THEY CROSS



“This dual payment system was described as a dual railroad track system.”

Macready AJ in Transgrid v Siemens & Anor [2004] NSWSC 87 at [56] — at first instance, not on appeal.

The collision zone: variations, set-offs, preconditions to payment, contractual time bars , defects and work is valued in accordance with the terms of your contract (s 10(1)(a)). The collision can also see the reversal of successful SOPA outcomes if recovery proceedings are commenced (s32).

JUL 24 · START

ROCK

CERTIFICATE

REV C

THE TABLETOP

COMPLETION

2024

2025

2026

The machine: five steps, four clocks

Every fight in today's story happens somewhere on this line.

01.	Payment claim	On and from the last day of the named month (s 13(1A)) - or an earlier date if the contract gives you one (s 13(1B)). One claim per named month (s 13(5)). Reference dates are gone.
02.	Payment schedule	Within the contract period or 10 business days after service, whichever expires earlier (s 14(4)). Every reason for withholding goes in it (s 14(3)) - it is the position you are then stuck with.
03.	Payment	Due 15 business days after the claim for a head contractor (s 11(1A)); 20 for a subcontractor (s 11(1B)). A contract can bring the date forward. It can never push it out.
04.	Non-payment	No schedule means liability for the whole claimed amount on the due date (s 14(4)). A schedule served and then not paid fixes the claimant on the scheduled amount (s 16).
05.	Recovery	A debt in any competent court (ss 15(2)(a)(i), 16(2)(a)(i)) - no cross-claim, no defence under the contract. Plus suspension on 3 business days' notice (s 27).

THE SCENARIO

Riverton Commercial Precinct

A \$85m mixed-use development in Western Sydney. Two towers over a retail podium. All parties fictitious. Money flows down the chain; claims flow up it.



PRINCIPAL

Harbourgate Developments

Holds the purse. Superintendent: Calder Project Services.



HEAD CONTRACTOR

Meridian Build

Amended AS 4902, \$85m. Claims up on the last day of the month; schedules down.



CIVIL SUB

Terraform Civil

Amended AS 4903, \$9.15m. Earthworks, piling, drainage. Claims on the 25th.



MECHANICAL SUB

Aircell Mechanical

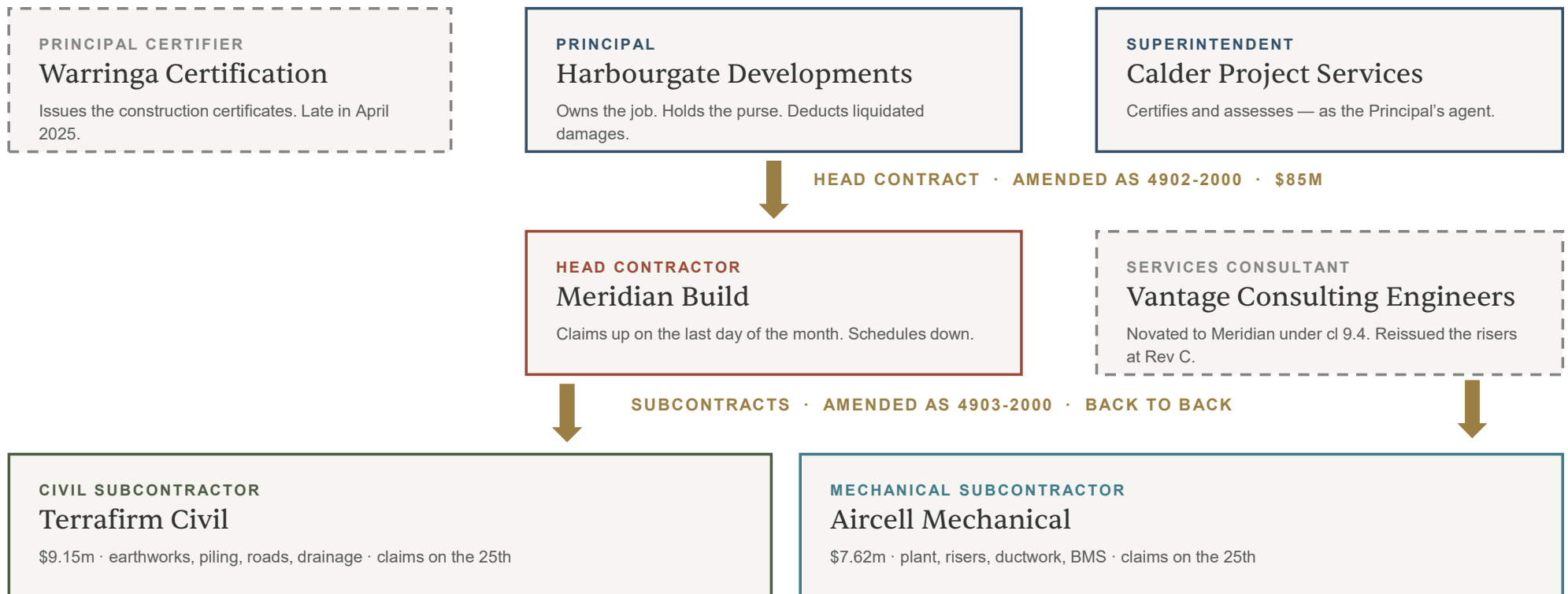
Amended AS 4903, \$7.62m. Plant, risers, ductwork. Claims on the 25th.

Two more names cause problems without being party to anything: Vantage Consulting Engineers, the services consultant novated to Meridian, and Warringa Certification, the certifier.

Money flows down the chain; claims flow up it

Seven names, two contracts that matter, and one consultant who is a party to neither. Meridian sits in the middle of both directions - claimant on Tuesday, respondent on Thursday.

▼ **MONEY FLOWS DOWN**
▲ **CLAIMS FLOW UP**



Vantage is a party to neither subcontract — but its drawing revisions reach Aircell through Meridian, and that is the crack the redesign falls into.

Ninety per cent complete

All three packages are about 90% done..

01.	Leverage inverts	At 20% you can walk (but not without consequence). At 90% the work left is least valuable and the money owed is at its peak.
02.	Retention is live	Roughly \$457,000 on Terraform and \$381,000 on Aircell, with nothing left to trade for it.
03.	The final account is visible	Everything parked is now written up - exactly when time bars bite, because the direction was a year ago.
04.	LDs have crystallised	Late completion is no longer a forecast. LDs are deducted, not threatened.
05.	Every red flag is showing	Package nearing completion. Claim format changed. Large new claims. New backup. Mechanical and civil. out of pocket and relationship is now less important



The events that created the dispute

The Riverton programme runs 27 months, July 2024 to October 2026. Every dispute in this session was created in the first 15 months and fought in the last three weeks.

MONTH 5 · THU 5 DEC 2024

Terrafirm hits rock

Bulk excavation and services trenches. Sandstone harder and shallower than the tender geotech predicted. Methodology changed at the excavation face - verbally.

MONTH 23 · THU 25 JUN 2026

Both claims served

Approximately 90% complete. Terrafirm \$892k at 2:04pm; Aircell \$744k at 7:12pm. Every contractual notice window closed months ago.

MONTH 9 · APR-MAY 2025

The certificate delay

In-ground structure stopped 28 business days waiting on the construction certificate. Meridian excavates the whole site, seals the basement, and abandons its staged sequence.

MONTH 23 · 9-14 JUL 2026

Three schedules

Terrafirm at NIL on day 10. Aircell on day 11 - one day late. Harbourgate refuses Meridian's resequencing claim as time barred.

MONTH 15 · FRI 10 OCT 2025

Aircell's redesign

Consultant reissues the riser layout at Rev C. Meridian's site manager emails Aircell: "proceed per consultant markup". He is not an appointed Representative.

MONTH 27 · FRI 30 OCT 2026

Date for practical completion

The determinations land in August, two months before the job is due to finish. The documents that decided them were written in 2024 and 2025.



four clocks that matter in this project

01.

Latent conditions notice - 5 business days

cl 25.2 as amended. Starts the day you become aware of the condition. Missed: no EOT and no additional cost. A condition precedent.

02.

EOT claim - 10 business days

cl 34.3 as amended. Starts when you should reasonably have become aware of the causation. Missed: no extension of time. A condition precedent.

03.

General claims notice - 10 business days

cl 41.1 as amended by SC 19. Starts when you became, or ought to have become, aware. Missed: the claim is absolutely barred.

04.

Payment schedule - 10 business days

s 14(4)(b)(ii). Starts on ACTUAL service of the claim. Missed: liability for the full claim.



The clauses that decide these claims

Two identical subcontracts, heavily amended and different clauses bite on each package. The full text is in your handout, section four. Read the words, not the numbers.

TERRAFIRM · CIVIL

cl 25.1 / 25.2 · Latent conditions

Notice within 5 business days, a condition precedent and SC 11 takes rock hardness out of the definition.

cl 36.4(c) · Re-measurement

Variations priced at schedule rates where it is reasonable to use them. The survey trail is the claim.

SC 27 · Assessment

Quantity and percentage complete are conclusive unless objected to in writing within 10 business days.

cl 34.9 / SC 15 · Delay damages

Direct on-site time-related preliminaries only. No profit, no off-site overhead - which is why 12 days runs at \$8,500 a day.

AIRCELL · MECHANICAL

cl 36.1 / SC 16 · Authority

Only the Subcontract Superintendent or a cl 21 representative can direct a variation. A site manager's email is not a direction.

cl 9.4 · Novation

Vantage was Harbourgate's consultant, novated to Meridian. A Vantage revision is not, without more, a Principal-side act.

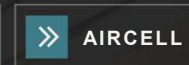
SC 27 / SC 28 · Commissioning

Percentage complete conclusive absent objection in 10 business days, and nothing certified for plant until commissioning records arrive.

cl 24.1 / cl 32 · Access

Possession of sufficient of the site only, and late possession is not a breach - so the access claim runs through cl 32.

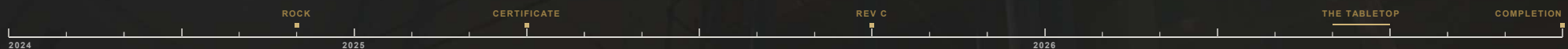
Across both subcontracts: cl 41 / SC 19 is the global bar - fail to give the prescribed notice within 10 business days and "the claim shall be absolutely barred". The printed cl 41.2 says the opposite. And cl 32.1 lets the Superintendent direct the order and timing of the work, with the difference added to or deducted from the contract sum.



ACT 1

The claims go in.

It is 25 June. TerraFirm has hit rock; AirCell has built to a redesign; Meridian has fourteen months of resequencing cost it has never claimed. The way these documents are drafted will decide fights nobody can see yet.



The payment claim is the vehicle

Everything in this session travels inside one document. If it is invalid, nothing inside it is recoverable.

THE CARGO - CLAIMS UNDER THE CONTRACT

The rock variation. The re-measured drainage. The EOT and delay costs. The riser redesign. The disputed percentage. Each has its own clause, its own notice, its own time bar.

THE VEHICLE - THE PAYMENT CLAIM UNDER s 13

One statutory document that carries the cargo into the Act's machinery. It has five requirements of its own, its own service rules and its own window. Get it wrong and the strongest variation claim is not recoverable under the Act - you are left with the contract, and years rather than weeks.

It runs both ways. An invalid payment claim sinks good cargo. A perfect payment claim does not improve bad cargo - the Act carries your contractual entitlement, it does not create one. The next three slides are the vehicle; everything after them is the cargo.



What a valid claim needs, and how it goes wrong

Three requirements sit on the face of the document. Two sit outside it. And the errors on the right are the same five requirements, failing.

WHAT THE ACT REQUIRES

In writing, and a document

A document - not a link to a document.

s 13(2)(a) · Identify the work

Identify the construction work the payment relates to. The only requirement regularly litigated. Objective, not exacting, but real.

s 13(2)(b) · State the amount

The amount of the progress payment the claimant claims to be due.

s 13(2)(c) · The magic words

It must state that it is made under the Building and Construction Industry Security of Payment Act 1999 (NSW). No endorsement, no payment claim.

s 13(7) and s 31 · Outside the page

The supporting statement, head contractor to principal, and valid service. The two that most often fail.

WHERE CLAIMS ACTUALLY FAIL

Wrong entity

A trading name, an old ACN, or the director instead of the company.

No endorsement

Missing, or the wrong Act named. Fatal, and free to fix.

Wrong timing

Served early, twice in one named month, or outside the s 13(4) window.

No breakdown

A lump sum with no reference to a contract item or rate.

Service

A link instead of the document, or an address nobody specified.

No supporting statement

Head contractor to principal, missing or unsigned.

When you can serve it, and two clauses that pretend otherwise

One window, with a floor and a ceiling. Reference dates are gone for every contract from 21 October 2019.

THE WINDOW

On and from

The last day of each named month in which work was carried out (s 13(1A)) - or an earlier date your contract gives you (s 13(1B)). At Riverton, both subcontracts say the 25th; the head contract is silent, so month end.

One per named month

One claim per named month (s 13(5)) unless the contract says otherwise. s 13(6) lets one claim cover several payments and re-claim old amounts.

The outer limit

Within the contractual period, or 12 months after work was last carried out, whichever is later (s 13(4)). Twelve months is a floor, not a cap.

Too early is fatal

Serve before the date and the claim does not engage the Act. Re-serve. Never rely on a deeming clause to fix it.

TWO CLAUSES THE ACT DOES NOT READ

The early claim

"An early progress claim shall be deemed to have been made on the date for making that claim." The actual words of unamended AS 4903 cl 37.1 - and the Court of Appeal has rejected them.

The after-hours claim

"A notice received after 5:00pm is deemed given at 9:00am the next business day." SC 24. It may bind the parties and may supply the manner of service. It cannot lengthen the respondent's 10 business days.

The principle behind both: a deeming clause can regulate the bargain and supply a manner of service. It cannot manufacture a service that never happened, and it cannot extend a statutory period. If a claim goes out early, re-serve it.



How it’s served, and how the other side attacks it

Section 31 sets the permitted methods, and the last one is your contract - where most of the trouble lives. On the right, the five grounds a respondent actually runs.

FIVE WAYS TO SERVE

Personally, or at the office

Lodged during normal office hours at the ordinary place of business - office hours, not site hours.

By post

Service is effected when the document is received at that place (s 31(2)).

By email, if specified

Specified for documents of that kind. Express or inferred - a business card is not enough.

As the contract provides

s 31(1)(e). Manner, not time. A project platform qualifies if the contract says so.

Serve the document, not a link

A hyperlink to Dropbox, Procore or Aconex is a pointer. Service needs the document to arrive.

FIVE GROUNDS OF ATTACK

No contract

No construction contract between this claimant and this respondent. Jurisdictional, and rare.

Not identified

The work is not identified with enough precision and particularity - s 13(2)(a). The one that is actually litigated.

Out of time

Served early, twice in the month (s 13(5)), or outside the s 13(4) window.

Not served

Not at all, not by a permitted method, or only a link went out.

No statement

Head contractor to principal with no supporting statement - s 13(7). Authority is divided; never run it alone.

And the answer to the big one: incorporation by reference. Work can be identified by reference to other documents - variation claims, annexed build-ups, earlier dealings - so long as they are identifiable and they actually explain. The claim stays readable and the detail travels with it. An unexplained balance still fails.



Terrafirm’s claim \$892k

Served 2:04pm Thursday 25 June 2026 - the earlier date under the subcontract (s 13(1B)). Rock \$410k, drainage \$214k, delay costs \$102k, assessment \$118k, retention \$48k.

Rock in detailed excavation – \$410,000	Encountered Thursday 5 December 2024 - month five of a 27-month job. Sandstone at 2.1–2.9m; the tender geotech predicted 4.2–5.8m.
Assessment in dispute – \$118k	93% claimed; Meridian assessed 87%. No SC 27 objection, ever.
Delay costs – \$102,000	12 days at \$8,500. On-site preliminaries only, per cl 34.9 as amended.

CONTRACT NOTICES

None issued, in 18 months. No cl 25.2 notice (due 12 Dec 2024). No cl 34.3 or cl 41 notice (due 19 Dec 2024).



Aircell’s claim \$744k

Served 7:12pm Thursday 25 June 2026 via the agreed platform - hold that timestamp. Risers \$285k, assessment \$134k, disruption \$185k, retention \$114k, balance \$26k.

Riser redesign - \$285,000

Vantage reissued the riser layout at Rev C on Thursday 9 October 2025 - month 15. Aircell had fabricated to Rev B.

Assessment in dispute - \$134,000

91% claimed; assessed at 84%, and nil certified for plant under SC 28.

Disruption from late access - \$185,000

Plant rooms released 3 and 5 weeks late. 1,480 hours asserted, not built up.



CONTRACT NOTICES

No cl 41 notice for the redesign (due 24 Oct 2025). The cl 34.3 EOT claim went in on 14 July 2026 - eight months late.



Asserted, or built up?

The same \$185,000, two ways. Disruption is the most claimed and least recovered head in the industry.

WHAT AIRCELL SERVED	WHAT IT NEEDED
“Aircell has been disrupted by late access to plant rooms on levels 6 and 9 and claims \$185,000.” One sentence and a number.	Baseline: the programmed access dates and the planned labour histogram. Actual: when access was released, from the access register. Measure: planned versus actual hours in an undisrupted zone. Cost: 1,480 hours at \$125 plus supervision - \$185,000, every hour traceable. Causation: the reason sits above Aircell.

Note what is not on that list: an expert report. All five come from documents that already existed on the project in June. Nobody had to create anything - somebody had to collect it. The right-hand column costs about a day of somebody’s time. The left-hand column costs most of \$185,000.



The quiet fight: percentage complete

Both subcontractors have a variation in the headlines and an assessment dispute underneath it. Together, the assessment dispute is worth more than any single variation.

WHAT THEY CLAIMED

TERRAFIRM: 93% of the earthworks, roads, drainage and in-ground services package. AIRCELL: 91% of the plant, riser and ductwork package.

WHAT MERIDIAN ASSESSED

TERRAFIRM: 87% on a QS inspection - \$118,000 written down.

AIRCELL: 84%, with no percentage certified for plant because commissioning records were not provided under SC 28 - \$134,000 written down.

Combined: \$252,000, more than either subcontractor’s delay or disruption claim.

And then the clause. Under SC 27 the Subcontract Superintendent’s assessment of percentage complete is conclusive unless the Subcontractor objects in writing within 10 business days. Neither subcontractor objected to any monthly assessment. Every month nobody objected, the assessment hardened - and this is the most common unclaimed loss in the industry.



DECISION POINT 1

POLL OPENS NOW



The story so far - TerraFirm hit rock on 5 December 2024, month five of the job. The instruction to change methodology was given verbally at the excavation face. The only writing is TerraFirm's own same-day email. The claim is served 18 months later.

Is “confirming today’s instruction” enough to carry a \$410,000 variation?

A

Yes: the email trail is evidence of the direction

B

No: SC 16 demands a written direction from the right person

C

It depends on the evidence supporting the email and the Contractual notices that followed



Meridian claims up and claims for itself

30 June: Meridian serves \$3.42m on Harbourgate on the last day of the named month (s 13(1A)), with the signed supporting statement.

01.

The roll-up - \$695,000

Terrafirm’s rock variation (\$410k) and Aircell’s risers (\$285k), passed up at full value - the same claims Meridian is about to schedule at nil and at \$88k.

02.

The supporting statement

Signed declaration under s 13(7) that subcontractors have been paid amounts that have become due and payable. Penalties attach (s 13(8)).

03.

Its own claim - \$620,000

Change of sequence from the construction certificate delay, under cl 32.1. New this month. The direction was fourteen months ago.



Change of sequence - \$620,000 under cl 32.1

Harbourgate was late procuring the construction certificate in April 2025 - month nine. Meridian was paid an EOT for the stoppage. This is what the EOT did not pay for.

01.	Planned: three zones, in sequence	Zone 1, then Zone 2, then Zone 3 - the basis of trade engagement, resourcing and pricing.
02.	Actual: the whole site at once	With the certificate outstanding from 10 April to 23 May 2025, Meridian excavated the entire site before structure could start, then sealed four acres of exposed subgrade.
03.	The cost: duplication	Two waterproofers. Two partitioners. Three metalworkers. Extra supervisors and engineers.
04.	And the cycle was lost	Meridian never finished a zone and rolled its crews into the next. It started everything.
05.	cl 32.1 - not cl 34, not cl 36	A cost adjustment for a direction as to the order and timing of the work.





ACT 2

The payment schedules come back.

It is 9, 10 and 14 July. Three payment schedules land within four days. One is on time and thin. One is a day late. One rejects a \$620,000 claim in a single line.



Ten business days, and what happens if you miss them

Miss the schedule and you do not lose an argument. You lose the right to have one.

WHAT YOU LOSE

The whole claimed amount
You become liable for all of it on the due date - s 14(4).

Every defence
In debt recovery you cannot bring a cross-claim, and you cannot raise any defence arising under the contract - s 15(4)(b).

Control of the site
The claimant can give notice under s 15(2)(b) and suspend under s 27 three business days later.

THE CLOCK

The earlier of
The time your contract requires, or 10 business days after the claim was served - whichever expires first (s 14(4)).

Shorter, never longer
A contract can shorten the 10 business days. It cannot lengthen them - Roberts Co v Sharvain [2025] NSWCA 161 at [37].

Count from actual service
Not from the date a deeming clause nominates. Diarise it the day it lands.

At Riverton
Terraform scheduled on Thursday 9 July, in time. Aircell on Friday 10 July - day 11, counting from actual service.

Not theoretical: one business day late cost Roberts Co \$3,207,999.03. There is no partial credit and no discretion to extend.



What a good reason looks like, and what isn't one

Three requirements, and the third is where every fight happens. The standard is lower than people fear - but the three failures on the right have each been run and lost.

WHAT MUST BE IN IT

s 14(2) · The claim and the amount
Identify the payment claim, and state the amount you propose to pay. "If any" includes nil.

s 14(3) · Say why, even at nil
If the scheduled amount is less, indicate why; and if you are withholding for any reason, give your reasons - Style Timber Floor v Krivosudsky [2019] NSWCA 171 at [48].

The standard
"Some want of precision and particularity is permissible as long as the essence is made known." Enough for the claimant to know the case it must meet. Not a pleading.

Item by item
Answer each claim head - each variation, each EOT, each set-off, each retention amount. Silence on an item is no reason for that item.

WHAT DOES NOT WORK

The bare position
"We again refute all of your claims." A position, not a ground for withholding: Pacific General v Soliman & Sons [2006] NSWSC 13 at [71].

The opaque answer
An email answering seven invoices across five sites, citing "many emails, photos, back charges", identifying no site and no invoice, was not a payment schedule: Style Timber [2019] NSWCA 171.

The global cross-reference
"We rely on our historic correspondence and previous payment schedules." The reader should not be left to guess - Style Timber, Bell P at [6].

And the six ordinary failures
Diarised from a deeming clause; nil with no reasons; bare assertion; a global cross-reference; set-offs with no calculation; served on the Superintendent or to an address nobody specified.



Terrafirm opens the schedule: *NIL*

Thursday 9 July 2026, business day 10, the last day. Five reasons - and one of them is half good, which is the most interesting kind.

01.	"Within scope – assessed at nil"	The rock was foreseeable; excavation risk sits with the Subcontractor. A real reason.
02.	"No written direction, and no notice"	cl 36.1 and SC 16 require a written direction; there is none. And no notice in 18 months.
03.	"Assessed at 87%, balance subject to survey"	Half a real reason, half a deferral. The percentage is assessed under SC 27, which TerraFirm never objected to. The re-measure is parked pending Meridian's own survey.
04.	"No EOT granted"	Circular if the EOT claim sits unassessed in Meridian's own inbox.
05.	Backcharge – unquantified	No amount. No calculation. No contractual basis. Fix this one on your own schedules this month.



Rewriting the reason

Same position, two drafts. The formula never changes: basis, clause, fact, quantum, document reference.

"Does not comply"	→ "Not entitled under cl 25.2. Aware 5 Dec 2024; no notice by 12 Dec 2024."
"Work defective"	No defect identified, no correspondence specified. → "Works at grid C-F, level 2, defective per section 4.3 of the Scope. Detailed in Aconex ref MER-TFC-0912."
"Excessive charge"	No detail, no calculation. → "Works assessed at 55% complete per site inspection dated 3 July 2026; claim seeks 100%; adjusted accordingly."
"Discussed at the meeting"	Oral discussions are not written reasons. → "Not entitled because [reasons]. Detailed in email from J Curran dated 2 July 2026 titled 'PC22 assessment - variation 14', attached."
"Backcharge"	No amount, no calculation. → "Set-off of \$47,850 under SC 25, being the Contractor's genuine estimate of rectifying the Zone 2 invert. Calculation attached."

DECISION POINT 2

POLL OPENS NOW



MERIDIAN



TERRAFIRM

The story so far - Meridian has scheduled TerraFirm's \$892,000 claim at NIL on five reasons: two merits arguments, a deferral, a circular EOT point, and an unquantified backcharge.

Which of the following presents the greatest risk to the validity of Meridian's payment schedule?

- A The "within scope" reason relating to the rock claim
- B The reliance on the absence of notices
- C The reference to works being "subject to survey verification"
- D The unqualified back charge



DECISION POINT 3

POLL OPENS NOW



The story so far - Aircell served \$744,000 at 7:12pm on Thursday 25 June. SC 24 deems a notice received after 5:00pm to be given at 9:00am the next business day, and Meridian diarised from there.

The claim arrived at 7:12pm. The contract deems it received next morning. Meridian scheduled on Friday 10 July. Is the schedule in time?

A Yes, applying the contractual deeming clause

B No, because the statutory clock ran from actual service





Meridian sets off LDs against Aircell

Inside Aircell’s late schedule: Meridian deducts head-contract LDs pro rata, plus a backcharge for rectified ductwork.

01.

The deduction

Under SC 25, \$6,200 per day for 19 days - \$117,800 - plus a backcharge of \$47,850. Neither is calculated in the schedule.
02.

The problem

The programme slipped after the consultant redesign and late plant-room access. Both causes sit above Aircell.
03.

The amendment

SC 15 says the unilateral EOT power in cl 34.5 is for the Principal’s sole benefit. The printed form has no such words.



Act 3: Everyone is out of time

Every claim here has substance. Not one is fictional or opportunistic. Every one is out of time - by months, not days.

Terrafirm - rock	<i>\$410,000. cl 25.2 notice due Thu 12 Dec 2024. Never given. 18.5 months.</i>
Terrafirm - delay costs	<i>\$102,000. cl 34.3 and cl 41 / SC 19 notices both due Thu 19 Dec 2024. Neither given - 18.2 months before the claim was served.</i>
Meridian - resequencing	<i>\$620,000. SC 14 and cl 41 / SC 19 notices due Tue 29 Apr 2025. Claimed Jun 2026. 13.9 months out of time.</i>
Aircell - riser redesign	<i>\$285,000. cl 41 / SC 19 notice due Fri 24 Oct 2025. Never given. 8.0 months out of time. The EOT went in 14 Jul 2026.</i>
All three - assessment	<i>\$252,000 between the two subcontractors. SC 27 required written objection within 10 business days of each monthly assessment. Neither ever objected: twenty-three windows, twenty-three misses.</i>

Three possible ways out.

Run them in this order, because they cost money in this order. None of them is a substitute for giving the notice - and the third one turns entirely on what the project file happens to record.

01.

The clause does not apply

On its words it is not a condition precedent, or this claim falls outside it, or the trigger never happened. Cheapest, decided on the text, and most often skipped.
02.

The clause is void

Section 34 bites on the statutory machinery. It rarely touches the bargain - the next slide draws the line.
03.

You cannot rely on it

Estoppel, waiver or election. Fact-heavy. It wins on a recorded course of conduct and loses on silence.

Estoppel by convention needs five things: a common assumption, adopted by both sides, each knowing the other would act on it, actual reliance, and detriment that cannot be reversed. Recorded conduct, not sympathy.

TERRAFIRM · THE ROCK CLAIM

One unanswered email on 5 December 2024. No minute, no report, nothing in which Meridian acknowledges the claim. Silence is not a course of conduct, so there is no realistic estoppel case.

MERIDIAN · THE RESEQUENCING CLAIM

A standing item on the fortnightly WIP agenda for six months and in four consecutive PCG reports, minuted as “claim to be prepared and submitted” and “for Superintendent review”, circulated and never corrected.



Is the time bar void under s 34?

The argument is run constantly and usually run wrongly. Section 34 protects the statutory machinery. It does not generally rewrite the bargain.

LIKELY VOID - IT ATTACKS THE MACHINERY

A clause deeming service later than it occurred, so as to extend the schedule period - SC 24. A clause allowing payment later than s 11(1A) or s 11(1B) - SC 17. A clause redefining a business day, or the time for serving a claim.

LIKELY VALID - IT LIMITS THE ENTITLEMENT

A clause requiring notice within a stated period as a condition precedent to a contractual entitlement to a variation, an EOT or delay costs - cl 25.2, cl 34.3, SC 19. Such a clause says nothing about when a payment claim may be made; its concern is to limit entitlement.

Two questions left open in the leading case: whether s 34 affects a clause making written authority a precondition to a variation - which is exactly SC 16, and exactly Aircell's problem; and whether a bar with which a party "could not possibly or reasonably comply" stands differently.



The story so far - Terrafirm never gave a notice; there is one unanswered email. Meridian never gave one either, but the claim was a standing agenda item for six months, minuted and never corrected.

What should you consider first when you discover a claim is out of time?

- A Is the clause void under Section 34?
- B Has the other party waived the time bar?
- C Does the clause actually apply to this claim?
- D Do I ignore the time bar and proceed under SOPA?



The Riverton countdown

Every clock in this story started the day something happened on site - in December 2024, April 2025 and October 2025. All of them had closed before anyone wrote a claim.

Same day	<i>CLAIM: confirming email on every direction. SCHEDULE: answer it if you disagree.</i>
+5 business days	<i>CLAIM: latent conditions notice, if your clause has one. Terraform's was due Thu 12 Dec 2024, seven days after the rock. SCHEDULE: note whether it arrived.</i>
+10 business days	<i>CLAIM: EOT claim and general claims notice, both conditions precedent. Due 19 Dec 2024, 29 Apr 2025 and 24 Oct 2025. All three missed. SCHEDULE: respond in writing and reserve rights NOW.</i>
Every month - assessment day	<i>CLAIM: read the progress certificate the day it arrives and object in writing within 10 business days under SC 27. Twenty-three chances; nobody took one.</i>
Claim day, day 10	<i>CLAIM: serve on your date, by a permitted method, and record the time. SCHEDULE: diarise day 10 from ACTUAL receipt, whatever the hour. The one date with no rescue path.</i>

Subcontractors: six lines

1. Serve on or after your date - s 13(1A) or s 13(1B). One claim per named month.
2. Confirm every direction in writing, the same day, to the Superintendent.
3. Diarise the notice windows the moment a direction is given.
4. The claim is the brief. Attach the evidence or incorporate by way of reference; build entitlement and quantum.
5. A thin payment schedule is leverage. Price it in before you negotiate.
6. An LD deduction is a claim, not a fact. Ensure that you comply with NOD and EOT provisions through the project.

Head contractors: six lines

1. Diarise 10 business days from ACTUAL receipt. Nothing else matters if you miss it.
2. Answer every component. Every reason in; every set-off quantified.
3. If you think a claim lacks merit, don't stop there, give reasons why claim fails on merits. Don't say claim is invalid without reasons.
4. Apportion before passing LDs down. Put the causation in the payment schedule.
5. Control who directs. Answer confirming emails the same week.
6. If you will rely on a time bar, say so while they can still comply.

The evidence schedule: six categories

1. BASELINE - tender documents, geotech, clarifications, priced rates, the programme.
2. DIRECTION - who, what, when, in what form, with what authority. Confirming emails.
3. EVENT - diaries, dated photographs, survey, inspections, dockets, access registers.
4. CONSEQUENCE - which activity, on the critical path, for how long. Ask monthly.
5. COST - a build-up tied to the dockets, with excluded items identified.
6. CONDUCT - minutes with the claim as a standing item, uncorrected. This one is free.

The countdown: six moments

1. SAME DAY - confirming email on every direction. If you receive one, answer it.
2. +2 BUSINESS DAYS - open the claim file, or the assessment file.
3. +5 BUSINESS DAYS - latent conditions notice, if your clause has one.
4. +10 BUSINESS DAYS - EOT claim and general claims notice. Reserve rights now.
5. PAYMENT CLAIM DAY - serve, record the time; or diarise day 10 from actual receipt.
6. DAY 11 - if nothing arrived, or you missed it, call your lawyer today.

THE TAKEAWAY

“The payment fight is won or lost before anyone knows there is one.”

At the claim, if you are the subcontractor. At the schedule, if you are the head contractor. At the notice, if you are anybody. Everything after is amplification.

IF THIS SOUNDED FAMILIAR · THE SITUATION ROOM · FIXED FEE

The Situation *Assessment.*

One contract. One payment issue. An hour with a construction lawyer, and a plan. Built for the dealing with disputes you watched today: a claim paid short, a schedule due on day ten, a set-off you have been handed, a notice window that has closed.

01.

Situation Assessment

Send us the contract and describe the issue. We read one against the other: what you can do, what it requires of you, what the other side may do, and what happens if nothing changes. In matrix form, before the session.

02.

The Situation Room

An hour with a Kreisson construction lawyer and your team. A working session, not a presentation. The assessment sets the agenda, your questions drive the hour, and the thing you most want resolved is dealt with before it ends.

03.

Action Plan

What was agreed, who is doing it and by when, sent after the session. Every deadline stated with its working: trigger date, counting method, resulting date.



Scan the QR code for more info or head to:
kreisson.com.au/situation-room-onboarding



Thank you.

The replay, the slides will be shared with every registrant.

NEXT SESSIONS

watch this space – Modern Methods of Construction; Part 2 of this series; new Building Reforms; Managing Contract Risk and the “Gotch ya clauses”.