



Tips to help manage problems associated with practical completion in a building contract

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Practical completion of a construction project occurs when an architect or other person given the contractual mandate certifies the works relating to a construction project as having been finished. For large projects the contract may provide for a detailed testing and commissioning process prior to certifying the works practically complete. This serves to ensure that the works are in keeping with the contractual specifications of the project.

Under some contracts for works to be certified as practically complete, the contractor is required to provide various documents which may include:

- all executed collateral warranties that the building contract requires the contractor to provide itself or procure from others
- as-built drawings for the works
- operation and maintenance manuals for the works
- the health and safety file for the works

It is noteworthy that although the architect certifying may issue a practical completion certificate, many times there will be minor defects in the works. The contractor

will be required to rectify these within a specified period referred to as the defects liability period following practical completion. Such defects do not affect the ability to use the works as intended and are recorded in a 'snagging list', which is issued to the contractor alongside the practical completion certificate.

The following practical tips will go some way in managing some of the disputes that arise in relation to practical completion:

1. The parties to a construction project should ensure that a full and clear definition of practical completion that suits the nature and needs of their project appears in all of their contracts at the outset. Such definition should be clear as to the state that the works must reach in addition to providing for any tests or other requirements for works to be practically complete.
2. The construction contract should contain a provision, which requires the contractor to provide advance warning to the employer when it anticipates that practical completion will be achieved. This enables the employer to start inspecting the project in advance of actual completion and also to plan accordingly noting that it is required to release a proportion of the retention as set out in the contract to the contractor.
3. Advance warning of practical completion also helps to advise any interested third parties that have approval and/or inspection rights (such as purchaser and prospective tenants) that practical completion is imminent hence enabling the parties plan for their financial obligations and avoid payment disputes.

At AIP Advocates, we have lawyers who will guide you on legal matters arising from construction contracts while ensuring your interests are protected.

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