



NEC4 Y(Aus)1 Clause

Optional contract clause and guidance for the **Alliance Contract** for use in Australia on contracts which are subject to security of payments legislation

Clauses and guidance are also provided for other NEC4 contracts. These are available for download from neccontract.com.

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Guidance

- 1 This optional clause should be incorporated into the contract by including it in Contract Data as a Secondary Option as "Y(Aus)1 Security of Payment".
- 2 The relevant *security of payment legislation* is defined by where the work is carried out. The relevant legislation should be entered in the Contract Data; for each state it is the following.
 - Building and Construction Industry Security of Payment Act 1999 (NSW),
 - Building and Construction Industry Security of Payment Act 2002 (Vic),
 - Building and Construction Industry Security of Payment Act 2009 (SA),
 - Building and Construction Industry Security of Payment Act 2009 (Tas),
 - Building and Construction Industry (Security of Payment) Act 2009 (ACT),
 - Building Industry Fairness (Security of Payment) Act 2017 (Qld),
 - Construction Contracts Act 2004 (WA) and
 - Construction Contracts (Security of Payments) Act 2004 (NT).
- 3 To comply with the relevant *security of payment legislation*, an application for payment must
 - be in writing,
 - be addressed to the *Client*,
 - state the name of the Partners,
 - identify the work to which the claimed payment relates, in sufficient detail to enable the *Client* to assess the claim,
 - indicate the amount of the progress payment that the Alliance Manager claims to be due (the "claimed amount"),
 - request payment of the claimed amount,
 - state that it is made under the relevant *security of payment legislation* and
 - where made in New South Wales, be accompanied by a 'supporting statement' prescribed by the New South Wales *security of payment legislation*.
- 4 If the *Client* informs the Alliance Manager of an error in the Alliance Manager's assessment, the information must
 - identify the claim to which it relates,
 - identify the amounts of the payment (if any) which the *Client* proposes to make (the "scheduled amounts"),
 - if the work is performed in Victoria, identify amounts which the *Client* alleges are an "excluded amount" and
 - if the scheduled amount is less than the claimed amount, indicate why the scheduled amount is less and (if it is less because the *Client* is withholding payment for any reason) the *Client's* reasons for withholding payment. (Should a dispute as to the scheduled amounts proceed to adjudication, the *Client* will generally be held to the reasons which it provided in the payment schedule (and, generally, not be able to provide new reasons)).

- 5 In all states, the Alliance Manager may be entitled to submit a payment claim after termination. If the Alliance Manager submits a payment claim following termination, it should be dealt with as any other application for payment. If termination is due to the Partners' default, and the cost to the *Client* resulting from termination is greater than the amount claimed, the Alliance Manager must identify in broad terms what those costs are to justify a payment certificate of nil. The final assessment will assess the amount the Partners are due to pay to the *Client*.
- 6 If the *Client* does not inform the Alliance Manager of an error in the Alliance Manager's assessment within the relevant timeframe, the *Client* will become liable to pay the claimed amount on the due date for that progress payment. If the *Client* fails to make payment of this claimed amount by that due date, the Partners could obtain a judgement debt against the *Client*. If the work is in Queensland, the *Client* will also have committed an offence. The *Client* should therefore ensure that it has adequate contract management procedures in place to deal with payment claims within the required time frames.
- 7 If the period within which payments are made is changed, it must not be greater than
 - 6 weeks from the date of the payment claim where the works are performed in Western Australia or
 - 30 business days where the works are performed in the Northern Territory (a business day is defined in the *security of payment legislation*).

In Queensland, the period for payment has been changed in Contract Data to comply with the *security of payment legislation*. They should not be otherwise changed.

- 8 In all states except Western Australia and the Northern Territory, interest is payable at the greater of the rate prescribed in the *security of payment legislation* and the contract. In Western Australia and the Northern Territory, interest will be payable at the rate set out in the contract, and if no rate is set out, at the rate prescribed by the *security of payment legislation* in those states.

NEC4 Y(Aus) Clause

Y(AUS)1: SECURITY OF PAYMENT

Payment application and assessment (ACT, South Australia, Tasmania and Victoria)	<p>Y1.1 Where the <i>works</i> are carried out in Australian Capital Territory, South Australia, Tasmania or Victoria</p> <ul style="list-style-type: none"> • an application for payment is submitted not more than one week before the assessment date, • an application for payment is a payment claim, • the date for making an application for payment is the reference date, • the <i>Client's</i> communication to the Alliance Manager informing it of an error in the assessment of the amount due is a payment schedule, • the date for the assessment of the final amount due is a reference date, • the Alliance Manager's assessment of the final amount due is a payment claim and • if, at the date of issue of a termination certificate, the Alliance Manager was entitled to submit an application for payment but had not yet done so, the Alliance Manager may submit the application for payment, and the date the submission is made is an assessment date.
Payment application and assessment (New South Wales)	<p>Y1.2 Where the <i>works</i> are carried out in New South Wales</p> <ul style="list-style-type: none"> • an application for payment is a payment claim, • clause 50.1 is deleted and replaced by 50.1 The Alliance Manager, in consultation with the Partners, assess the amount due and submits an application for payment to the <i>Client</i> setting out the amount the Alliance Manager considers is due at the assessment date. There is an assessment date on the last day of each month until the final assessment. • the first sentence of clause 51.1 is deleted and replaced by Payment is made within three weeks of the date of the application for payment. • the <i>Client's</i> communication to the Alliance Manager informing it of an error in the assessment of the amount due is a payment schedule and • if a termination certificate is issued, the Alliance Manager may submit an application for payment on and from the issue of a termination certificate, and the date the submission is made is an assessment date.
Payment application and assessment (Queensland)	<p>Y1.3 Where the <i>works</i> are carried out in Queensland</p> <ul style="list-style-type: none"> • an application for payment is submitted not more than one week before the assessment date, • an application for payment is a payment claim, • the date for making an application for payment is the reference date, • the <i>Client's</i> communication to the Alliance Manager informing it of an error in the assessment of the amount due is a payment schedule, • the final reference date is the date for the assessment of the final amount due and

- if a termination certificate is issued, the Alliance Manager may submit an application for payment on and from the issue of a termination certificate, and the date the submission is made is an assessment date.

Payment application and assessment (Western Australia)	Y1.4	Where the <i>works</i> are carried out in Western Australia, if a termination certificate is issued, the Alliance Manager may submit an application for payment on and from the issue of a termination certificate, and the date the submission is made is an assessment date.
Suspension of performance	Y1.5	If a Partner exercises its right under the <i>security of payment legislation</i> to suspend performance, it is a compensation event.

ADDITIONAL CONTRACT DATA ENTRIES

If option Y(Aus)1 is used The *security of payment legislation* is

In section 5 of Contract Data part one insert the following

Against "The *assessment interval* is" state "monthly"

If the contract is a commercial building contract in Queensland, against "the period within which payments are made is" state "two weeks after the assessment date"