

# Alert

CORPORATE & COMMERCIAL

## Termination of the Naval Group's Australian Contract: What It Means for Local Subcontractors

By Sandy Donaldson & Navar Amici

The Morrison Government's decision to terminate the Naval Group's contract for the construction and delivery of 12 attack-class Submarines came with little warning, although it has been evident for some time that the Australian Government has not been happy with the progress. Numerous Australian and overseas companies have spent years negotiating and preparing to implement subcontracts to assist with the submarine build. This has come at the expense of millions of dollars and thousands of hours. So where to now? How can that money and the loss of fees or profits for work already undertaken be recovered?

We have advised on the legal ramifications of this decision and can assist both international and Australian subcontractors to Naval Group on the possible consequences of the termination of contracts.

### What is the contract situation?

So far as we are aware from announcements that have been made, there has not yet been any formal termination of the Naval Group contract and no notices for termination by Naval Group of its subcontracts.

If a subcontractor has a contract with the Naval Group, this is the first port of call in considering the possible consequences of termination.

In most cases, subcontracts contain a termination clause that specifies the circumstances under which a party may bring the contract to an end. Those circumstances will be different in each contract, and the scope of the clauses will depend on how they have been drafted. The continuation of some contracts may be dependent upon the contract of Naval Group with the Australian Government continuing, while others may have clauses permitting termination by Naval Group without cause or no right to terminate until the term of the contract has expired.

### What can be recovered?

If a subcontract is terminated under an express provision of the contract, this will usually determine amounts that may be recovered for work done to the date of termination.

If there has been no valid termination of the subcontract under one of its clauses, then it will be open to the injured party to claim damages for a breach of contract. The types of damages which can be recovered will be entirely dependent on the length and terms of each contract and may be prescribed by a specific formula under a liquidated damages clause. These clauses must be based on a genuine pre-estimate of loss.

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If there has been a valid termination of the subcontract, then the contract may provide that a certain amount of money is payable as a consequence of termination. A contract may have a notice period, which requires a terminating party to provide a certain amount of notice or permit termination at specified times or milestones. A contract will usually stay in force for the period between notice being given and the date of termination specified in the notice. During this time, all obligations owed under the contract continue between the parties, and a failure to meet those obligations will amount to a breach of the contract.

Please get in touch with us if you have any questions about your next moves in relation to the submarine contracts.



[MORE INFO](#)

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