MANAGING CHANGE FOR PROJECTS

Lee Wilson of Wilson Partners Law shares his insights on managing legislative change for projects and programs.

Change Management for Projects and Programs – Legislative Change

Parliament has just finished sitting and guess what? There are a bunch of new laws that you now need to know about, think about or pretend aren’t there. Let me be exact, 3 Acts passed, 22 regulations passed, 37 statutory instruments amended, which are all concisely summarised in the 627 pages of Bills and Regulations.

Before you get your abacus out to determine what those changes mean to your bottom dollar figure, it is timely to stop and think about how law affects the science, engineering, design and our other technical disciplines and what that means within our contract documents.

A well scoped out project will be able to ensure change does not result in a variation, or at least a variation which is not capable of being absorbed into the contingency. Whereas a project where the scope is less clear, will need to manage the change more closely. In the latter case, a contractor will typically agitate a variation for a risk that is a legislative change if the procurement documents are insufficient.

In this article, we talk about scoping for legislative change and management of change.

Scoping and Benchmarking

For the project to be able to manage change, it needs to be aware of the obligation against which change will be identified and managed. If you are unaware of the risk, then we are not talking about a variation, we are talking about something you simply missed. This is a variation which you cannot avoid.

Let’s start with the normal situation. Normally, contracts will include a variation clause which allows negotiation where there is a change in the scope of the works arising from an increase, decrease, addition, substitution or omission of work from the works. This presumes that there is something which causes a “change” later. But what if you missed it? Let’s deal with scoping first.

Broadly speaking, a well-defined scope is essential to define and control project planning, cost estimating, time estimating and scheduling, budgeting, time and cost reporting, developing work packages such as design briefs, construction contracts and so on, reporting on progress against requirements, and finalisation and project evaluation.

These are the core elements for program management frameworks, but they are also the elements upon which we benchmark our delivery and behaviours to assess the overall question, “has this project or program succeeded”.

To take a look at how Department of Transport and Main Roads benchmarks its risk for legislative change, we know it is largely via the Project Cost Estimating Manual. In this document legislative changes are required to be included entirely within the project risk and contingencies portion of the schedule. This takes the form of contingencies for design changes, standards changes, third party influences, project delay and unmeasured and unidentified items.

In the context of scope management for legislative change, we rarely benchmark a complete picture of the legislative
risk scope. Benchmarking exercises by Wilson Partners Law has determined there are around 5,000 legislative trigger points which can affect project or program delivery in Queensland alone. I know what you are thinking, because I think the same thing, how do the regulators expect a single program manager, in a regional office with 6 staff, to scope out, manage and implement compliance across our program? How do they expect a single estimator to grasp time and cost of such a vast unknown, to ensure their federal funding application is sufficient, and to dissect those changes into the individual contingency types under the Cost Estimating Manual?

Across the billions of dollars of projects and programs we have been involved in, we have not ever observed a fully scoped out and benchmarked legislative compliance regime prior to our involvement. Program management tends to focus on common legislative areas at a high level, and this might include 20 – 100 Acts and regulations. This is a great job, but there are over 300 Acts and regulations affecting delivery. So we know for current best practice projects only 10% - 30% of risks are placed into the known known bucket, whereas 70% - 90% remain in the unknown unknown or the known unknown bucket.

We do this, and often get away with it, because often we don’t get pulled up by third parties on scope, because for the project team it is hard, and believe me, it is harder for third parties who might not fully understand the intricacies of legal frameworks, or the difference between an exempt tree clearing activity vs self-assessable clearing vs a tree clearing that requires a permit.

For the P90 estimate, an example of an appropriate contingency range is 30% to 40% (table 3.6 of TMR’s Estimating Manual) of the Project.

The challenge here is marrying together the lack of scope clarity (legislative benchmarking) as a function of the overall project contingency. This process will be advised by those with expert knowledge of triggers, timeframe assumptions and cost assumptions for compliance within projects, and feeding those directly into the estimate. Only then will you get a reasonable picture of the time / cost assumptions prior to funding, and delivery.

In this space, we have observed that estimators tend to assess the contingency, based on their expert judgement, knowing what common issues have materialised in the past, then implementing this estimation based on common issues, into the program. Alternatively, project estimators would conduct a comparative assessment or assess the project against an analogous situation.

The challenge with these approaches is that they are counterproductive to change management, because the change to which you seek to manage, primarily arises from the unknown unknown bucket, meaning it is inside that area of contract management where we hold our breath, the dreaded variation.

TMR for example, has implemented an Environmental Management System which seeks to scope out environmental, planning and natural resource legislation triggers for the purposes of all project phases, including for estimators. This is a great step towards identifying legislative issues which later allows benchmarking for change management during later project phases.

This leaves us with a particular taste in our mouths. I hear you saying “well it is too hard, so I wont bother”. However, it is not too hard. All we need to do, is to understand that we are managing 10% – 30 % of the risks via our expert judgement or comparison method, and that upon a risk materialising, having a clear path to managing the change.

MANAGEMENT OF CHANGE for known known risks

Talking about management of external change, this is typically implemented as a variation which the contingency has to absorb.

This whole methodology and approach has a massive assumption, that changes are identified and not insurmountable. An example of how incorrect these assumptions are, was the introduction of Wild Rivers legislation in Queensland, resulting in many water sources and quarry resources to become prohibited. In turn, these changed increased haulage by over 10 – 50 km on some projects, which made funding allocations be reallocated.

This means our estimators, program managers and others simply make an assumption (or proceed on the basis without any thought) that no one will notice, there will be no legislative change, the legislative change will not be a material one or the legislative
change can be absorbed into the existing contingency.

Once your program systems are in place, which has benchmarked project legislative issues, the question becomes, what systems do you have in place which trigger a workflow when a known legislative issue is subject to change? This is often triggered by the contractor saying “hey, legislation change means we get a variation”. This is not always the case, particularly if your tendering documents have identified the risk and implement it appropriately.

Even in TMR, this is left to the accountable officer, to identify and implement these changes. There are systems in place, such as regular legislation change updates sent across the program, and other actions, but there is no relationship between those systems and the project management systems. It relies on manual labour of staff.

WHERE DO WE go?

There are 3 core elements which can reduce the risk and demand on project resources to identify change risks and how they affect delivery. Those are:

• A system which benchmarks legislative compliance
• That system using common language to project or asset management systems
• That advice being fed into planning, estimating, scheduling, tendering and delivery.

There is only one system in existence which achieves this presently, but it still in its evaluation phase.

The overall message I hope for anyone reading this is, don’t be worried or ignore this. Remember the word “yes”. There are experts to help. Find experts who use the word “yes” – and this is your team. This is what collaborative engineering is all about.

Lee specialises in infrastructure, project and program evaluation for legal risk and compliance. He will be presenting at the IPWEAQ State Conference in November about bringing together law, science and engineering.