



DISPUTE RESOLUTION BOARD AUSTRALASIA INC
 (ABN: 14 196 085 859)

Seventh Annual General Meeting: 8 September 2010

President's Report

DRBA Overview 2009-2010

Business plan

The DRBA business plan continues to focus on three main objectives:

- expansion of the understanding of the DRB concepts as an extremely cost effective and efficient process for, in the first instance, **dispute avoidance** on construction projects, and where that outcome proves impractical, timely and economic dispute resolution;
- promoting the use of DRBs as the preferred dispute prevention and resolution model for significant projects;
- providing assistance to parties within the industry for the establishment and application of DRBs, including the provision of general advice and suggestions for tailoring to suit particular needs.

As you will see below, the DRBA's focus on these objectives in 2009-2010 has been relatively successful.

DRBA Committee

The following were confirmed as elected at the AGM in September 2009

Name	Representation
Don Charrett	Victoria
James D Barrett	Member representing Australian Constructors Association
Raj Ratneser	Western Australia and South Australia
Alan McLennan	Queensland
Michael Weatherall	New Zealand
Tom Fenwick	Member representing Principals
Ron Finlay	New South Wales
Doug Jones	New South Wales
Dick Kell (alternate Nicola Grayson)	Member representing ACEA

In accordance with the amended Rules, the retiring President, Graeme Peck, continued as an ex officio member of the Committee as Immediate Past president.

At the DRBA Committee meeting following the AGM, the following executive positions were agreed:

President:	Doug Jones
Vice-President:	Alan McLennan
Past President: & DRBF Country Representative:	Graeme Peck
Secretary/Treasurer:	Ron Finlay

Graham Easton continued in the second term of his appointed role as DRBF Country Representative Co-ordinator.

DRBA management procedures

Routine management is the responsibility of the Executive group.

Full committee meetings have been held at nominal 3 month intervals.

Regional subcommittees meet on an ad hoc basis to identify prospects and initiated follow up contacts within their geographical areas of responsibility.

Membership

Membership of DRBA now stands at 81, which is an increase of 13 since the last AGM in September 2009. Approximately 50% of our members are also full members of DRBF. All DRBA members who have not as yet joined DRBF are urged to consider the benefits of doing so.

Current, new and pending DRB Projects

The economic downturn resulted in several projects identified as 'prospective' in 2009 being cancelled or put on hold. In addition, the proposed Sydney Metro was cancelled for political reasons. This was unfortunate as tenders were close to closing when this occurred and DRB nominees had already been put forward by bidders. It would have been a substantial coup for DRBA had this project continued.

However, acceptance of the DRB concepts has continued to grow. The table following identifies those current, new and definite pending projects of which DRBA is presently aware.

AUSTRALIA									
DRBs comprised 3 Independent parties except where noted otherwise									
DRBA No	Project Name	Type	City	State	Start Year	Finish Year	Owner / Principal	Contractor	Contract Value nearest \$10mAUD\$
10	Gateway Arterial Upgrade	D,C&M	Brisbane	QLD	Nov-06	Dec-10	Queensland Motorways Ltd	Leighton Contractors / Abigroup Joint Venture	\$1,500M
13	Sydney Port Upgrade	D & C	Sydney	NSW	2008	Mar-11	Sydney Ports Corporation	Baulderstone Hornibrook~jan de Nul JV	\$560M
14	Adelaide Desalination Project (2 contracts)	DBOM, Plant	Adelaide	SA	Apr-09	Dec-11	SA Water Corporation	AdelaideAqua Consortium, Plant	\$1,824M combined value of plant & TPS
		D & C, Transfer Pipeline System						MDBE jv, Transfer Pipeline	
15	Townsville Waste Water Upgrade Program- stage 2	Competitive ECI, Construct only	Townsville	Qld	Sep-09	Dec-10	Townsville City Council	Baulderstone Pty Ltd	\$180m
16	Flinders Street Mall **	Competitive ECI, Construct only	Townsville	Qld	Mar-10	Jun-11	Townsville City Council	Watpac Pty Ltd	\$35m
17	Pacific Motorway Upgrade - Section B	Competitive ECI, D & C	Qld Gold Coast	Qld	Oct-09	Dec-11	Dept Transport & Main Roads	Bielby Hull Albern Joint Venture	\$200m
18	Bruce Highway - Cooroy to Curra Section B	Competitive ECI, Construct only	Qld country	Qld	Nov-09	Dec-10	Dept Transport & Main Roads	Abigroup Pty Ltd	\$100m
19	Digital Train Radio System	Design, supply, Install, Commission; ECI converted to Lump sum	NSW Electrified network	NSW	Jan-10	Oct-12	Rail Corporation of NSW	United Group Infrastructure Pty Ltd	\$180m
20	New Outer Suburban Rail Cars, Stage 3	Design, Build & Commission: Cost Reimbursable, Target price with pain share/gain share arrangements	Sydney	NSW	Sep-09	Apr-12	Rail Corporation of NSW	United Group Rail Services Limited	\$320m
21	Liverpool Turnback Project	Management Contract, for main line extensions, new station works, new signalling system,	Sydney	NSW	Jun-10	TBA	Transport Infrastructure & Development Corporation	John Holland Constructions	\$75m

** Single Person DRB, appointed at time of Contract signing

PROSPECTIVE DRBs

Transport Infrastructure & Development Corporation (2 projects)

Sydney South West Rail Link - \$650m+ D & C, multi disciplinary. DRB definite. Commence by end 2010.

Energy Australia:

City East Cable Tunnel, ECI, Construct Only. Stage 1 awarded. Stage 2 with DRB to proceed by Dec 2010.

Brisbane City Council

Brisbane Northern Link Project \$2.0bn budget. Tenders closed, DRB definite. Expected to proceed late 2010

Brisbane Airport Authority

Brisbane Airport expansion program - dredging and pavement construction (2 substantial contracts); 2011
Gorgon LNG project- DRB(s) under consideration for Onshore works

NEW ZEALAND DRBs							
Project Name	Type	City	Country	Start Year	Finish Year	Owner / Principal	Contract Value (\$NZ)
Christchurch Sewerage Outfall Project	Construct only	Christchurch	NZ	2007	2010	Christchurch City Council	\$90m
Britomart Underground Station##	Construct only	Auckland	NZ	TBA	TBA	TBA	TBA
HVDC Link, North to South islands	Design & Construct	Wellington	NZ	2009	2013	Transpower	\$400m

One person DRB

PROSPECTIVE DRBs

The NZ government has decided to adopt FIDIC conditions of Contract on major infrastructure projects.

Transpower has indicated that it will be implementing DRBs in future contracts

Other medium term prospects

1. **Australian Capital Territory.** Committee member Tim Sullivan is assisting the ACT Government in redrafting their construction contracts. They have indicated a willingness to incorporate a DRB in appropriate major contracts, and to include one man DRBs in contracts of < \$20million (which cover the majority of their work scope).
2. **Victoria:** Although Victoria is the second most populous state in Australia, it has remained a "DRB free" zone since DRBA inception. The state construction authorities (including VicRoads) have preferred instead to utilise 'pure Alliances' for their major projects. This practice has recently been the subject of scrutiny and subsequent criticism by the State Treasury, the view having been expressed that Alliances were being over utilised. VicRoads has been a major target and DRBA made a presentation to VicRoads CEO and other senior executives on 30 June 2010 focussing on improving 'value for money' project outcomes through alternative forms of contract in association with DRBs. The presentation was well received and we are hopeful that this may finally achieve a breakthrough with the use of DRBs in Victoria.
3. **New South Wales.** The Roads and Traffic Authority of NSW (RTA) has remained a major construction authority who has not as yet been convinced of the benefits of DRBs. A presentation was made to RTA senior executives on 12 July 2010 and was well received, but no short term trials of contracts with DRBs have been identified.
4. **North West Shelf LNG Projects.** The massive expenditure involved in the Chevron (actual) and Woodside (imminent) gas projects has led DRBA to focus efforts on convincing the oil and gas industry players of the benefits of DRBs in their major onshore contracts. The headquarters of the major industry participants is Perth in WA. An industry seminar on DRBs was held in early December 2009, hosted by major legal firm Allens Arthur Robinson. Graeme Peck and Donald Charrett from DRBA eastern states were lead presenters. During the same visit, private presentations were made to Woodside Petroleum and Chevron. All sessions were very well received and follow-ups with Chevron have been promising. Hill International (ex USA) has recently established offices in Perth and Sydney to service their role as one of the lead legal advisor groups to Chevron for the Gorgon project. DRBA members Don Charrett and John Sharkey contributed presentations on DRB operational procedures at a luncheon seminar in Perth on 17 June 2010.
5. **Defence Department projects;** The Department of Defence has been a focus of attention for the past year. Several presentations have been made to senior executive groups outlining the potential benefits of DRBs in their long term contracts. These have finally produced positive results, and at a recent meeting with very senior representatives of the contracts legal group, Defence confirmed as

follows:

- i. DMO intended to convert a current maintenance contract for the maintenance of a significant component of their naval fleet from a “cost plus” to a risk shared contract with KPIs. The new contract would incorporate a DRB.
- ii. DRBA has assisted with;:
 - submissions to the DMO Secretary and Minister supporting the reasons for this change;
 - educating the present holder of the maintenance contract in the benefits of the revised process;
 - selection of appropriate experienced DRB members; and
 - training of individuals with appropriate defence contract experience in the requirements for effective DRB members.

This opportunity represents a potential major breakthrough for the use of DRBs in Australia and is being actively pursued by the executive.

OTHER MARKETING & EDUCATIONAL ACTIVITIES

Victorian Seminar, Oct 2009.

A seminar jointly hosted by the Victorian Bar, Society of Construction Law and DRBA was held in Victoria on 20 October 2009. This was one of a number of steps being taken by DRBA to endeavour to convince Victoria to accept the DRB concepts.

Papers were presented by Don Charrett (Engineer/Barrister & DRBA committee member) and George Golvan, QC. George has been Chairman of the very successful DRB for the recently completed Sydney Desalination facility, and has become a staunch supporter of DRB concepts as the result of his experience on that project, which was his first exposure to any DRB.

Papers from that seminar were sent to senior Victorian government representatives.

DRBA Workshop 2010

The 2010 full day Workshop titled “*Dispute Resolution Boards: Lessons Learned*” was attended by the target maximum of 25 individuals.

The workshop format was interactive, and coverage was structured for the benefit of individuals already experienced in dispute management and resolution generally, legal representatives interested in introducing DRBs to their clients and Owner/Employer groups with an active interest in utilising DRBs in their major contracts. It was particularly pleasing to have a strong representation from the latter two groups.

In addition to the sessions lead by DRBA representatives, two sessions were led by separate Owner representatives and one session was led by a prominent solicitor responsible for drafting of several major contracts which have included DRBs.

The participation of all attendees was excellent and some very useful cross fertilisation of ideas was achieved. Solicitor attendees requested that a workshop specifically for education of legal representatives would be extremely beneficial.

Plans for that workshop are well advanced, with an emphasis on when to consider DRBs and how best to set up contracts incorporating appropriate provisions as well as specific legal issues arising from DRBs.

Papers presented at the seminar have been uploaded onto the DRBA website

Forum article, May 2010.

Doug Jones and Graeme Peck provided a paper titled “*Compatibility of Dispute Boards with Australia's Security of Payment Regime*”, for publication in the May Forum. This article was prompted by an apparent view in several countries where SoP regimes are in place that DRBs have no place. That is certainly not the experience within Australia, where a quite strict SoP regime has become established.

It is hoped that the Australian experiences may encourage other country representatives to modify their approach.

DRBF International Conference in Istanbul, May 2010

Five DRBA representatives attended the conference.

A paper entitled “*Experiences with DRBs in Relationship Contracts in Australia*” co-authored by Graeme Peck and Alan McLennan was presented on day 2 of the conference.

Graham Easton chaired a Workshop session on day 3.

DRBF INTERNATIONAL ACTIVITIES

Participation by DRBA as a member of Region 2

DRBA has continued to participate in monthly Region 2 Board meetings as an invited guest. We believe our own experience in establishing DRBA has been very useful as a guide to several of the Chapters now also considering formation under the Region 2 banner.

Australia and New Zealand as Region 3

At the request of the DRBF International President, a teleconference proceeded in early 2010 between representatives of each of the DRBF executive and DRBA executive. The focus of the teleconference was the possibility of DRBA becoming Region 3 as soon as practical.

DRBA has indicated that it believed it would need until about 2012 to become sufficiently established to take on the larger role likely to flow from becoming Region 3.

Since then there have been a number of exchanges dealing with affiliation rules and some practical issues. Compulsory membership of DRBF is one issue which has been discussed. From DRBA's point of view, this presents some legal problems under Australian law which governs our Constitution.

For the time being, we strongly recommend that DRBA members who are not already members of DRBF avail themselves of the additional benefits available from separate membership of DRBF.

DRBF International Conference, 2012

DRBA indicated to the Region 2 Board during third quarter 2009 that it would be interested in hosting the 12th international conference in May 2012.

A subcommittee was formed in late 2009 under the Chairmanship of Graeme Peck to investigate possible venues, sponsorships and the like. The subcommittee includes Jim Barrett who is the Executive Director of ACA, and Dick Kell who served two years as President of FIDIC.

The subcommittee is progressing investigation of suitable venues, budgets and the like and is due to submit a preliminary report to DRBF prior to their next Executive Board meeting in early October 2010.

DRBA FINANCIALS

You will see from the Financial Report provided with the AGM papers that the DRBA is in good financial health and utilises its funds primarily for the promotion of DRBA's core activities.

Doug Jones
President
DRBA - September 2010