



DISPUTE RESOLUTION BOARD AUSTRALASIA INC

ABN: 14 196 085 859

2nd AGM, 30 November 2005

PRESIDENTS REPORT

The DRBA is the Australasian chapter of the international Dispute Resolution Board Foundation based in Seattle. DRBA was formally incorporated in Australia on 18 June 2003.

An interim committee guided the initial establishment of the chapter until election of the first committee in accordance with the Association Rules at the 1st AGM held in Sydney on 6 August 2004. Office bearers were subsequently elected by the incoming committee at the first meeting held on 23 September 2004. Thus the committee became:

Norman Reich (President), Graeme Peck (Vice President), Ron Finlay (Secretary/Treasurer), Barry Ireland (Vic Representative), Alan McClennan (Qld representative), Philip Loots (WA representative), Ernesto Henriod (NZ representative), Jim Barrett (ACA representative). Max Tonkin was subsequently appointed by the Committee as Principal's representative.

Shortly after election, Norman Reich was diagnosed with advanced cancer, and following a short illness, passed away in late February 2005.

His passion for the DRB concept was a substantial factor in getting the DRBA off the ground and his passing was a sad loss to DRBA as well as his family and personal friends.

Committee changes during 2005.

I was elected President on 16 March 2005 at the first committee meeting following Norm's passing.

Doug Jones was invited by the committee to fill the casual vacancy caused by Norm's death. Doug agreed and took office shortly after 16 March 2005. Doug is well known to all involved in the Construction industry throughout Australia and SE Asia, and adds considerably to the depth of experience within the Committee. I also thank Doug on behalf of members for agreeing to the use of Clayton Utz facilities for this AGM.

Barry Ireland advised his retirement during May 2005 and the Victorian membership was requested to nominate a replacement representative. Professor David Young agreed to take up the role, and was formally appointed as Vic Representative at the committee meeting held on 16 June 2005. David is a very capable replacement for Barry Ireland. He has been the holder of the Sir John Holland Chair of Construction Management at the University of Melbourne since it was set up in 1992. Prior to that he was for many years a senior construction manager with the John Holland group. His recent appointments include Independent member of the Victorian Department of Infrastructure Review Committee - which advises the government on procurement strategies for major infrastructure within Victoria.

During the June committee meeting, Ernesto Henriod also advised his intention to retire from active professional duties. The replacement by the NZ group was Michael Weatherall, who was formally confirmed at the committee meeting on the 10 October 2005. Michael is an Engineer and lawyer who heads up the construction group of the Auckland based NZ legal firm of Simpson Grierson. He has been responsible for setting up at least 2 major contracts in NZ with DRB's or modifications thereof. Both of these have proceeded to completion without the need for serious legal proceedings. The DRB for the Manapouri second tailrace tunnel contract was credited with successfully closing out a very significant differing site conditions dispute after a 2 week DRB hearing. Michael is a firm believer in the value of the DRB concept and his direct involvement as a contract drafter and witness of performance is a valuable asset to the Committee.

DRBA management procedures

The affairs of the DRBA have been managed via full committee meetings held at nominal 3 monthly intervals supported by regional subcommittees with responsibility for initiating and following up contacts within their areas of interest.

The day to day administration of the group has been largely left to individual committee members on an ad hoc basis. In particular, Ron Finlay has dealt with general administration and he and his Personal Assistant Soulange have carried most of the administrative load while at the same time endeavouring to carry on a very busy consulting practice. Their efforts are greatly appreciated. However, I have maintained a view that as acceptance of the DRBA concepts grow, it is unreasonable to expect that DRBA administration should be allowed to impact on the normal demands of a busy professional practice.

By agreement with the committee, discussions have proceeded during the past year with like organisations with a view to outsourcing of routine administration. Agreement has been reached with IAMA for them to take on the routine administration role. DRBF in Seattle have also agreed to fund the cost of this (\$2,400 pa). It had been hoped to commence this service from 1 November 2005. However, contact will be largely electronic, so the first step has been establishing an email address linked to IAMA. Initial server problems have delayed the commencement but it is now near finalisation. Contact is expected to be admin@drba.com.au but will be finally confirmed once operational.

I take this opportunity to thank all committee members for their contributions during the past year.

Business Plan

The agreed business plan is attached hereto as an Appendix.

The fundamental requirements are to increase the awareness of DRB concepts and practices within the Construction industry generally, and to encourage project Owners to include DRB provisions in all their contracts where the value and/or complexity warrants the fixed expense.

The international growth of the use of DRB's via FIDIC, the Multi lateral Development banks, ICC and a growing number of satisfied users provides ample evidence of the benefits. Notwithstanding, the Australian industry in particular has been slow to grasp the concept. NZ at this time has more examples of DRB's than Australia.

It is the regional subcommittees which must be at the forefront of the concept marketing and development of awareness.

Funding Limitations & membership growth

There is a limit to what we can achieve as a group with a small membership and limited funding. We presently have 34 financial members of DRBA. Membership growth over the past year has been insignificant. We are faced with a 'chicken and egg' situation – awareness will encourage new members; but usage will develop awareness much more rapidly than presentations and marketing. However, in the short term we must encourage as many entities and individuals as possible to become financial members. If we are to remain viable as an organisation, we must endeavour to achieve a membership which provides a sufficient income base to support basic training sessions and seminars for potential board members and interested project owners.

DRB successes during 2005

The notable successes achieved during the past year have been the adoption of DRB's on two projects in Queensland.

The Ross River dam contract includes a DRB. The contract is a form of Alliance, with some risk remaining with the Contractor member of the Alliance. The Board has been established and is now operating.

The Gateway duplication project, with a budget of the order of \$1.5Bn, includes provision for establishment of a DRB. The project is currently in the bid stage.

The Queensland subcommittee under the Chairmanship of Alan McClellan is to be congratulated on their efforts in convincing the relevant authorities of the benefits of a DRB.

At time of this report, no other successes have been reported.

The way forward.

In the short term, I see no way other than continuation and expansion of the present efforts to increase industry awareness and encourage usage by way of the example of the rapid international growth of the DRB concepts.

Any member thoughts or suggestions as to improved or alternative directions would be welcomed by myself and the Committee in general.

Graeme Peck
30 November 2005

Dispute Resolution Board Australasia Inc

Business Plan

1 August 2005

1. Background

The Dispute Resolution Board Foundation Inc (**DRBF**) is a well-established foundation promoting the implementation and use of Dispute Resolution Boards (**DRBs**) in the building, construction and engineering industry. DRBF has its headquarters in Seattle, Washington, USA.

The DRB concepts have spread widely across the International scene since their first development in the USA in the early 1970's. The membership of the DRBF is now international. The concept is now used in a number of countries and has been adopted as the primary 'work-front' dispute resolution mechanism in the well known FIDIC suite of International contracts.

For some years, a relatively small group of Australian and New Zealand persons and organisations have been interested in the potential benefits of the concepts, and have participated in the DRBF as international members.

Notwithstanding the International growth of the concept, to date it has been little used in Australia and New Zealand.

The Australasian Chapter of the DRBF was formed in 2004 [under the name – 'Dispute Resolution Board Australasia Inc' (**DRBA**)] to expand the knowledge and promote the use of the DRB concepts within the Australian and New Zealand construction community. [See Attachment #1]

2. Context

Many modern construction projects are complex and are made more difficult with non-technical demands such as environmental regulations, governmental and social-economic requirements and public interest group pressures.

The management of the construction risks in these circumstances is also complex and difficult. Disputes are common and are extremely wasteful in terms of time and money.

Both Owners (who need to manage time and costs in their construction programs) and Contractors (who may be expected to price some or all of these factors) have to effectively manage these risks. They need a mechanism for efficiently resolving a range of disputes encountered during the execution of projects. One of the most effective risk management tools is the DRB.

It is in this context that DRBA operates.

3. DRBA Primary Objectives

The primary objectives of DRBA are to:

1. expand the understanding of the DRB concepts as an extremely cost effective and efficient process for dispute avoidance and for dispute resolution on construction projects;
2. promote the use of DRB as the preferred dispute prevention and resolution model;
3. provide 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

4. Promotional Strategy:

Regional Subcommittees

Regional subcommittees are to be formed under the Chairmanship of the elected committee representative with responsibility for the state or region. Present groups include:

NZ
NSW
Queensland & NT
Victoria, SA & Tasmania

These subcommittees are to have the primary responsibility for identifying and following up on groups within the ambit of the primary objectives of DRBA.

DRBA Marketing Material:

- DRBA has prepared a DRB brochure providing a background to the use of the process including some examples of its use in Australia and New Zealand.
- In addition to the brochure, DRBA has developed supporting documentation that is being sold (at \$110 each, including GST) as an information kit.

The DRB information kit includes:

- ◆ Model Operating Guidelines for Dispute Resolution Boards,
- ◆ Model DRB Three-Party Agreement,
- ◆ Model DRB contract clause,
- ◆ Other supporting material determined suitable for inclusion.

DRBA News Letter

A 6 monthly news letter is to be produced by DRBA for reporting of progress, news of new projects and wider circulation of relevant articles from DRBF Forum” which may be of local relevance.

5. Membership and Finances:

Much of the present committee effort is unfunded, and that is expected to remain necessary for several years. However, routine administration tasks require funding.

It is envisaged that DRBA will need a budget of \$5000 per year in 2005 rising to \$10,000 per year by the end of 2007 to be able to fund typical envisaged activities such as meetings, promotions, marketing, workshops (covering examples of Board operation and experiences), communication, stationery, postage and other administrative expenses.

Potential revenue sources:

| Calendar Year | 2005 | 2006 | 2007 |
|------------------------|-------------|-------------|-------------|
| Membership subs | \$800.00 | | |
| Sale Information kits: | Nil | | |
| Subsidy from DRBF | \$2,221.05 | ?? | ?? |

Attachment #1

Establishment of DRBA:

- DRBA was incorporated in June 2003.
- The assistance and co-operation of DRBF has been provided for the following:
 - (a) The DRBF by-laws and constitution have been provided by DRBF and have been used, so far as possible and applicable, for the formation of DRBA.
 - (b) The DRBF logo has been licensed to DRBA for its use.
 - (c) DRBF has agreed to amend its website to have a link created to the "Australasian Chapter".
- DRBA has been incorporated in New South Wales as an incorporated Association under the NSW Associations Incorporation Act 1984. The structure chosen is the simplest, cheapest and most effective one for the DRBA's needs.
- DRBA has been registered for GST and operates a bank account with the National Australia Bank.
- An Interim Committee was formed in late 2003 to manage the affairs of the new entity until formal election of office bearers by the DRBA membership.
- An election was held in August 2004 in accordance with the requirements of the Associations Incorporation Act, and office bearers duly appointed for a two year term as agreed by the membership.