



## **DISPUTE RESOLUTION BOARD AUSTRALASIA INC**

**ABN: 14 196 085 859**

**6th AGM, 9<sup>th</sup> September 2009**

### **PRESIDENTS REPORT**

#### **DRBA OVERVIEW 2008-09**

Progress during the first nine months of 2008-2009 was detailed in an interim review issued to all members on 9 July 2009 and posted on the website shortly thereafter.

For completeness, this annual report repeats a significant component from that review. I apologise in advance to those of you who are already aware of much of the content of this annual report.

#### **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 major contracts;
- 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.

#### **Committee since September 2008.**

At the AGM, the following members were elected to the Committee:

<b>Name</b>	<b>Representation</b>
David Young	Victoria
James D Barrett	Member representing Australian Constructors Association
Phillip Loots	Western Australia and South Australia
Alan McLennan	Queensland
Michael Weatherall	New Zealand
Max Tonkin	Member representing Principals
Graeme Peck	New South Wales
Ron Finlay	New South Wales
Doug Jones	New South Wales
Dick Kell (Alternate – Nicola Grayson)	Member representing ACEA

The executive positions were settled at the committee meeting on 30 October 2008 as follows:

President: Graeme Peck

Vice President            Alan McLennan

Secretary/Treasurer    Ron Finlay

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

### **DRBA management procedures**

During the course of the year, four committee meetings have been held at nominal three month intervals.

Regional subcommittees met on an ad hoc basis and continue to remain responsible for initiating and following up contacts within their geographical areas of responsibility.

Ron Finlay and his Personal Assistant Karen Harrison have continued to carry most of the administrative load. That load has been added to by the administration of the website. Their efforts are greatly appreciated.

I once again extend my thanks to all elected committee and co-opted sub-committee members for their support and assistance during the past year.

### **Membership**

Membership of DRBA now stands at 69 which is an increase of 11 since the last AGM in September 2008 (15 new members and 4 retirements).

At the present time, slightly above half of our members are also full members of DRBF. It is a requirement of our Chapter registration that members of DRBA be actively encouraged to become full members of DRBF. All DRBA members who have not as yet joined DRBF are urged to consider the benefits of doing so and to proceed accordingly.

### **New DRB Projects**

It was noted in my September 2008 report that .. *it appears likely that a significant number of substantial contracts with requirements for DRB members will be forthcoming within the next 12-18 months.*

Unfortunately, the very rapid impact of the economic downturn resulted in a number of the expected DRB projects referred to in that report being cancelled or put on hold.

TIDC's South West rail link was significantly curtailed and proceeded as an Alliance, the proposed rail link from the Surat Basin coal field into the existing rail infrastructure to export coal via Gladstone was put on indefinite hold, and a number of major mineral developments which were seen as potential DRB projects have been cancelled.

Despite the difficult circumstances, there have been some new DRB projects, as follows:

- The contract recently awarded by RailCorp for the 'Outer Suburban Cars, Stage 3' (OSCar 3) includes provision for a three person DRB. An initial meeting has been held between the contract parties and the DRB nominees.
- Townsville City Council is proceeding with a major project including a water treatment plant and a 30km+ pipeline. The contract has been modelled on the successful Ross River dam project and includes a three person DRB. The DRB has now been confirmed.
- The recently awarded DCO&M contract for the new Adelaide desalination plant includes provision for a three person DRB. The Board members have been confirmed. None of the three appointees were DRBA members at the time of their nomination, but action has been taken to encourage them to join. DRBA has arranged to meet with

the DRB members and brief them on experiences gained to date from operating Boards.

- Queensland Main Roads is proceeding with another major road project on the Pacific Motorway involving a three person DRB.
- It is understood that the Metro Authority has decided to use a three person DRB for the construction contract for the civil component of the Sydney Metro and this project is currently out to tender.
- New Zealand has reported that an upgrade of the HVDC link between the North and South Islands by the national grid operator Transpower, has recently gone to tender with provision for a DRB.
- **DRBs in Insurance Contracts:** DRBA representatives were approached by a major Australian contracting group in February 2009, to assist it with convincing the London Insurance market that the inclusion of a DRB in a major Contract Works Insurance umbrella insurance policy was a desirable step in avoiding ongoing disputes over claims under the policy.

This process was successfully concluded in May 2009 with acceptance by the Insurers of DRB provisions in the insurance contract. The policy has now been implemented with the DRB inclusion. It is probable that the DRB will involve appropriately experienced nominees from Australia (1) and Europe or SE Asia (1) with a Chairperson based in London.

It is believed this is the first such example of this kind internationally.

## **MARKETING & EDUCATIONAL ACTIVITIES**

### **Conferences and Seminars**

#### **NZ Seminar**

The NZ industry presentation organised by Michael Weatherall and hosted by Simpson Grierson proceeded as planned on 12 November 2008. There were about 80 attendees on the day.

Graeme Peck, Graham Easton and Michael Weatherall gave presentations followed by an active Q & A session and an ongoing interchange throughout the social gathering that followed.

Michael Weatherall reported on 31 March 2009 that.. *"We have seen an increased interest in DRBs on several large projects in NZ..."*

#### **DRBF International Conference in London, May 2009**

A paper entitled *"The use of DBs in Special Purpose Contracts in Australia and New Zealand"*<sup>1</sup> was presented to the DRBF International Conference in London held in early May 2009.

The paper was presented by Graham Easton, who was one of five DRBA representatives at the conference. It was reportedly well received, and was the subject of several questions and favourable comments. The feedback since has been very positive and the view has been expressed that although our opportunities are limited in number, the breadth of our market development of the use of DBs compares very favourably with that in either the USA or Europe.

All papers presented at the conference are now available on the members section of the DRBA website.

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<sup>1</sup> Co-authored by Graham Easton, Ron Finlay and Graeme Peck

## **IAMA Conference, Melbourne, May 2009**

A paper entitled "*Dispute Boards in Major Infrastructure Projects – An Australian Perspective*", was presented to the IAMA Conference in Melbourne from 29-31 May 2009. The paper was modelled along the same lines as that presented at the London conference. Presenters were the co-authors, G Peck and G Easton.

The complete paper is included in the IAMA conference proceedings, available as a CD. Selected papers are also to be published in the IAMA journal *The Arbitrator and Mediator*. The full paper is available on the DRBA website.

## **FOCUSSED PRESENTATIONS.**

### **NSW Department of Transport:**

As the result of some very positive support of the DRB concepts by the Australian Constructors Association president, Wal King, at an ACA luncheon attended by the NSW Minister for transport, the Hon. David Campbell, Jim Barrett organised a meeting between himself as ACA representative, Ron Finlay as DRBA representative, Ryan Park, Chief of Staff and Minister David Campbell, to outline the benefits of DRBs.

A meeting was held at Parliament House on 4 June 2009. Ryan Park subsequently advised that "*the Minister was clearly interested in the approach and proposes to challenge a number of his agencies as to why they would not trial the use of a DRB on a major project.*"

We are confident that the Transport Minister will seek to adopt DRBs for major transport projects with contract values in excess of about \$50m. As already noted, the first of the Sydney Metro contracts appears likely to include the use of DRBs.

### **Other Prospects outside the Construction Industry:**

DRBA members may be aware that the ICC has for several years been promoting the use of DRBs in industries other than construction.

On 29 May 2009 at a breakfast session hosted by John Cooper of Allens Arthur Robinson, Ron Finlay presented the concept of DRBs to a widely represented group of AAR's clients. Actual attendance approached 100 and the presentation generated considerable interest.

It was subsequently suggested by John Cooper that the DRBA endeavour to promote the use of DRBs within a major AAR client group involved with long term large value contracts.

As at August 2009, Ron and Graeme Peck are working closely with John Cooper with a view to presenting the benefits of DRBs to this industry group. This represents an opportunity to extend DRB concepts into a high value sector of the procurement market outside the traditional construction field.

### **Incoll Management private breakfast session:**

On 5 June 2009, Ron Finlay was invited to make a presentation to 30 key public sector and private sector clients of Incoll Management at a working breakfast in Brisbane. Amongst other things, Ron spoke at length on the use of DRBs in major projects. He has reported that a number of promising leads eventuated and follow ups are to be made with the assistance of Queensland members.

### **Victorian Presentation**

Since taking over the Victorian representative role, Donald Charrett has been actively spreading the word. He and George Golvan QC are presenting a talk on DRBs to a joint meeting of the Victorian Bar, Society of Construction law and DRBA on 20 October at Owen Dixon Chambers.

With the assistance of a Melbourne based partner at a leading international law firm, he is also endeavouring to arrange a presentation on the DRB concepts to a selected group of senior government representatives.

Victoria remains the only eastern state where we have so far not managed to achieve acceptance of the DRB concepts, but we hope that these initiatives will lead to some positive results in the near future.

### **Oil & Gas Projects:**

Given the massive expenditure involved in the Gorgon gas project alone, this industry sector is considered worthy of considerable focus in the immediate future.

At time of this report, the committee is endeavouring to arrange a joint DRBA/ACEA/ACA seminar in Perth on the benefits of DRBs in significant contracts and at the same time to have direct discussions with the Chevron contracts group.

Clough in WA has trialled several contracts in this market sector using single person Dispute Adjudicators. Clough has indicated they have experienced some difficulties agreeing single person adjudicators post contract, and are considering revisiting the three person DRB concept. We intend progressing discussions with Clough in conjunction with the Perth seminar objective.

### **Federal Government Stimulus packages and DRBs**

The need for sensible control and effective administration of the contracts being rushed onto the market as part of the various federal and State government stimulus packages has been recognised by DRB chapters both here and in the USA.

DRBA has initiated contacts with the NSW and Queensland governments to encourage consideration of DRBs as an effective method of avoiding downstream difficulties with hastily prepared documentation and contracts.

The NSW initiatives with Minister Campbell already referred to have emphasised this problem. The Queensland group has also followed up with the Queensland Department of Works. Interest has been expressed by each in both three person and one person DRBs.

## **DRBF INTERNATIONAL ACTIVITIES**

### **Participation by DRBA as a member of Region 2**

DRBA became a member of Region 2 (*Europe & the Rest of the World*) with formal establishment of the new DRBF structure in October 2008. Since November 2008, DRBA has been an invited attendee at regular Region 2 monthly Board meetings. Three different DRBA committee members have participated to date.

We have been an active contributor to the redrafting of the DRBF Rules to suit Region 2. Our own experience in establishing DRBA has also been very useful as a guide to several of the Chapters now also considering formation under the Region 2 banner.

G Peck has been appointed as a member of the Chapter Committee set up by the DRBF board to consider and assist with applications from groups wishing to form their own Chapter under the relevant Region banner.

### **Future DRBF International Conferences**

DRBA declined an invitation to be considered as the host country for the 2010 International conference. Amongst other things it was felt that in the current economic circumstances, travel costs to Australia for the major membership located in Europe or USA would be an

excessive imposition. It has now been decided that the next DRBA International conference will be held in Istanbul in mid May 2010.

Invitations have been issued by Region 2 for expressions of interest for the 2011 conference. The DRBA Committee has considered the possibility of submitting an EOI, but has decided we would be better served to forego 2011, but indicate a strong interest in hosting the international conference in May 2012. We have now advised the Region 2 Board to that effect. A subcommittee is to be formed under the guidance of the incoming committee to investigate possible venues, sponsorships, etc so that we are in a position to make a serious submission mid next year.

The probable location of the 2011 conference is Sao Paulo in Brazil.

#### **Private visit by DRBF International President, Jim Brady**

The DRBF International President, Jim Brady advised us in mid March that he would be in Sydney with his wife Susie for a private visit later in that month, then flying on to NZ.

A successful dinner was arranged in Sydney at short notice for a group of six DRBA members plus wives to meet with Jim and Susie on 24 March 2009. Mike Weatherall and his wife were also able to catch up with the Bradys in Auckland.

These functions have established some very useful direct lines of communication between DRBA and DRBF Seattle.

#### **DRBA WEBSITE**

##### **DRBF Forum magazine:**

Members who are also DRBF members will regularly receive an electronic copy of Forum. DRBF has consented to it also being published to DRBA members. The first "publically available" Forum was issued to DRBA members by email in February 2009.

Each future edition of Forum will be lodged on the DRBA website with direct access by DRBA members.

##### **Communications from members:**

All members of the DRBA Committee give of their time freely, but there is a limit to what is achievable within the constraints imposed by individual business commitments.

Constructive ideas or suggestions as to how your DRBA Committee may improve the service to members, or increase the spread of knowledge regarding the benefits of the DRB process and concepts, are particularly welcomed.

#### **RELATED CONSTRUCTION INDUSTRY ACTIVITY**

##### **CRC Research project – *"DISPUTE AVOIDANCE AND RESOLUTION"***

The 'Cooperative Research Centre for Construction Innovation' is an organisation based in Brisbane at University of Queensland with a charter to undertake studies aimed at improving the efficiency of the Australian Construction Industry. It undertakes studies in areas considered by industry groups to be in need of significant improvement.

The research is undertaken by a team involving a combination of academics and industry professionals. Funding is in large part by industry contributions assisted by government grants.

In mid 2007, a project entitled "Dispute Avoidance and Resolution" (the DAR project) was initiated at industry request.

Each project is guided by a Steering Committee (SC) of senior industry participants whose role is to guide the project team towards achieving the project objectives, then to

communicate the outcome of the research project to key industry stakeholders and encourage adoption of the findings across the industry.

The SC for the DAR project was charged with *"communicating to key industry stakeholders recommended change management strategies to avoid dispute between clients, contractors and other industry stakeholders, and where dispute cannot be avoided, to manage disputes more effectively."*

I accepted an invitation to take on the role of Chair of the SC for the DAR project in August 2007. The other members of the initial Taskforce comprised:

- Tony Barry, Managing Director, Connell Wagner (now renamed Aurecon), representing ACEA.
- Terrence Cole, AO, RFD, QC
- Robert Dahan, National President, Civil Constructors Federation.
- David Hudson, Executive General Manager, Risk Management, Leighton Holdings; representing ACA.
- Jane Montgomery-Hribar, Executive Director, Australian Procurement and Construction Council
- Alan Tesch, Director General, Queensland Department of Main Roads

In mid 2008, the Task Force was joined by

- Menno Henneveld, Director General, WA Department of Main Roads

I continued in the role of SC Chair until I resigned due to personal health problems in September 2008. Tony Barry took over at that time as Chair. However, I have remained a member of the SC.

The research has been done by various universities under CRC auspices (Curtin, RMIT and earlier Newcastle) and the collation and report preparation is under the guidance of an industry committee made available by the various organisations sponsoring the study.

The project report was originally scheduled for release in May 2009 but for various reasons has been put back. The release date is now mid November. It is expected that there will be a national campaign to present the study findings and conclusions to all industry sectors at the time of the report release.

There will be a number of recommendations which at this stage I cannot comment upon, but the pro-active dispute resolution procedures embodied in the DRB concepts and practices receive very positive support amongst the findings.

#### **COMMITTEE NOMINATIONS, 2009-2010:**

Several of our past committee members have decided not to renominate due to pressure of other commitments.

During the course of the year, David Young tendered his resignation as Victorian representative because of certain personal business conflicts. The committee appointed Dr Donald Charrett as to take on David's role pending the 2009 election. Donald has indicated his willingness to continue in that role and has been nominated as a candidate for the Victorian representative role.

Philip Loots, the present WA representative, is not offering for election this year because of pressure of business. New candidates are sought for the WA representative position.

Max Tonkin has advised that due to work commitments he is unable to continue his committee membership. Max occupied the position of Client representative.

Each of the above has devoted considerable personal time and effort during their time on the committee, and their efforts are acknowledged with thanks.

Tom Fenwick, who held a number of senior government roles in the Queensland water resources industry, and remains a Director of several semi-government water authorities, has been indicated a willingness to serve on the committee and his nomination has been confirmed. Tom has served on two DRBs and would be an ideal Client representative to replace Max.

In my own case, I have been a member of the DRBA committee since its inception in 2003 – firstly as Vice president then President since March 2005 after the untimely death of Norm Reich in early 2005. Thus I have now completed 4.5 years in this role. I have decided that given my time as President, it is time for me to stand aside from that role.

The Region 2 Bylaws provide that the President effectively serves a three year term as a member of the Executive group– 1 year as President-elect, 1 year as President and 1 year as past-President ex-officio. This procedure ensures that elected officers continue to bring a variety of backgrounds and fresh ideas to the DRB executive positions and at the same time provide for the essential continuity in direction and strategy.

As members are aware, our present rules provide that the President is elected by the newly elected committee from the successful candidates. This is consistent with the rules for local chapters. Article VIII, section 3 of the Region 2 Bylaws provides that "*Subject to local law, these bylaws and the affiliation agreement, any regional Dispute Board organization is free to establish their own rules*".

Item 6 of the AGM agenda seeks member approval for a DRBA rules amendment providing that the Past President remain an ex-officio member of the committee for a period of between one and two years, depending on their term as President. This amendment is to align the DRBA rules on this matter with those of both Regions 1 (USA & North America) and 2. Assuming the amendment receives the necessary member support, I would be able to continue as an active 'ex-officio' member of the committee for up to two years without impacting on opportunities for others to participate as elected members of the committee. On that premise, I have decided not to renominate.

Apart from the above changes, all other current Committee members have agreed to stand for re-election for the coming year.

Any member wishing to stand for election is encouraged to do so, subject only to submitting a completed nomination form in accordance with the rules identified in the circular attached to the AGM notice

**G Peck**  
**President, DRBA**  
**4 September 2009**