

This article was written in 2004 for the Newsletter of the Dispute Resolution Board Australasia Inc at the invitation of Norm Reich, the inaugural President of DRBA. Norm Reich died shortly afterwards and the article was never published.

### **Single Dispute Advisor Agreements on small projects.**

Whilst Dispute Resolution Boards have been operating on larger contracts in the USA for almost 10 years, little has been published about the relevance of the DRB concept to small contracts. The DRB Foundation has prepared a generic guide Specification for single person Dispute Review Boards, and there are existing models for Single Dispute Resolution Advisors developed for public sector projects in Hong Kong.

A review of General Conditions of Contract for Construction Works carried out in 1998 for the Government of Hong Kong, recommended that dispute resolution advisors should be used widely on projects of "size or complexity". The report was prepared by Jesse B. Grove III and suggested that "because it adds expense to the process, it cannot be used on every project, and it should not be needed on routine public works, but large complicated projects should all be considered candidates for a DRA" ( Dispute Resolution Advisor).

This attitude is consistent with practices in the USA and recently in Australia where the promotion of DRB or DRA processes has generally been limited to large projects.

This may suggest that DRA procedures are not suitable for small projects (less than \$10mill.), but in my opinion suitably modified procedures are equally applicable to small projects.

The vigor with which the NSW BCISOP Act 2002 has been embraced by the industry suggests that there is a great need for some form of continuous adjudication process to be in place for a range of contracts.

The new WA Construction Contracts Bill 2004 (CCB 2004 - not yet enacted) goes further than the NSW Act and gives the parties to a contract the option of appointing an Adjudicator at the start of the contract before any disputes have arisen. This is a fundamental principle of the DRB concept and the WA CCB 2004 is providing the basis for a new approach to dispute resolution for construction contracts in WA.

The NSW BCISOP Act does not provide for an easy co-existence of a contractual Dispute Resolution Board or a single Dispute Advisor Agreement because a claimant may submit an adjudication application to an ANA under the Act regardless of what dispute resolution procedures are in place under the contract.

Many of us will have practiced some form of informal Dispute Advisory service on construction and building contracts outside the normal role of the

Superintendent, and in my personal experience this has been very successful on dozens of smaller contracts none of which have had a dispute continue beyond the contract completion date.

I was recently asked to prepare a specification and rules for a Single Person Dispute Advisor for a Civil Engineering contract in NSW. This in itself is an indication that the DRB concept is gaining recognition and acceptance by the industry.

With some assistance from the DRB Foundation in USA, I prepared Dispute Adjudication Rules for a Single Dispute Advisor, a three party Dispute Advisor's Agreement and made changes to Clause 42.0 in AS 4000 - 1997 to provide for the new procedures. Whilst for a number of reasons the DA concept was not incorporated into this particular contract, it was a useful exercise and has provided documentation which may be a starting point for similar provisions in future contracts.

As a new professional group we should take some time to consider constructive changes to the Security of Payment legislations in the various states and territories and to relevant sections of General Conditions of Contract which will help to streamline Dispute Resolution procedures. The WA legislation sets a benchmark and provides defacto DRB rules for the industry in that state.

The Dispute Adjudication Rules, Agreement and proposed changes to Clause 42.0 of AS 4000 - 1997 referred to above may be downloaded from my website, [www.dalland.com.au](http://www.dalland.com.au) and comments will be appreciated.

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