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**Geotechnical Engineering
and the Law
Australian Geomechanics
Society
Victorian Chapter**

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8 February 2012**

Overview

Topics we will cover

- Without prejudice settlement discussions
- Liquidated damages
- Latent conditions
- Proportionate liability
- Expert evidence
- Dispute resolution processes
- Drafting effective ADR clauses
- Administering contracts to minimise disputes

Without prejudice settlement discussions



Without prejudice settlement discussions

Without prejudice privilege

- Prevents what is said in settlement negotiations from being used against you later in court.
- The general rule is that communications between the parties which are genuinely aimed at settling a dispute, cannot, should negotiations fail, be put in evidence.

Without prejudice settlement discussions

Without prejudice privilege

- Legislation provides for without prejudice privilege, e.g., s131(1)(a) of the *Evidence Act 2008* (Vic) prevents adducing evidence of ‘a communication that is made between persons in dispute ... in connection with an attempt to negotiate a settlement of the dispute’.
- Public policy rationale: encourage settlement of disputes outside court.

Without prejudice settlement discussions

Protection for concessions

- To avoid the cost and inconvenience of litigation, you may be willing to make concessions during negotiations.
- Make concessions on a 'without prejudice' basis, so, if negotiations fail, the concessions can't be used against you in court.
- For example
 - A builder claims \$500,000 from a designer for alleged breach of contract.
 - The designer is willing to pay \$250,000 to settle the dispute and decides to write to the builder accordingly.
 - The designer's letter should be marked 'without prejudice'.
 - If it isn't, the builder may be able to rely on the letter in court as evidence that the designer admitted liability for at least \$250,000 of the \$500,000 claimed.

Without prejudice settlement discussions

Making without prejudice communications

- How do I communicate on a without prejudice basis?
 - Mark letters and emails ‘without prejudice’.
 - During phone calls and meetings, say ‘Can we speak on a without prejudice basis for a moment?’ Get consent, make a file note.
- The substance of a communication attracts without prejudice privilege:
 - The words ‘without prejudice’ do not automatically attract protection.
 - Similarly, their absence will not necessarily preclude protection.

Without prejudice settlement discussions

Making without prejudice communications

- ‘Without prejudice’ is often used for any dispute related communication, e.g., a request for documents or a denial of liability.
- The term is meaningless if the communication is not directed at settling a dispute.
- Without prejudice discussions can be useful for:
 - Settlement negotiations
 - Discussions about whether work is defective

Without prejudice settlement discussions

The limits of without prejudice privilege

- Exceptions to without prejudice privilege include:
 - Where there is a dispute as to whether without prejudice communications have resulted in a binding settlement agreement.
 - Where without prejudice communications indicate that a purported settlement agreement should be set aside for misrepresentation, fraud or undue influence (*Pihiga Pty Ltd v Roche* [2011] FCA 240).
- A party cannot engage in misleading and deceptive conduct in the course of without prejudice negotiations and seek to hide behind without prejudice privilege.

Liquidated damages



Liquidated Damages

What are liquidated damages?

- Suing for damages involves establishing:
 - Liability; and
 - Quantum of loss – can be complex, time consuming and expensive.
- Liquidated damages allows a party to know what it will need to pay if it breaches a particular contractual obligation. In the construction context, usually for delay in completion.
- Advantages of liquidated damages:
 - Provides some certainty as to liability in the event of breach.
 - Reduces delay and expense by avoiding the need to establish quantum of loss.
- Ensure a contract with a liquidated damages provision has an extension of time clause.

Liquidated damages

Must be genuine pre-estimate of loss

- To be enforceable, liquidated damages must be a genuine pre-estimate of loss. A provision will not be enforceable if it is held to be a penalty.
- Factors courts consider when determining whether a liquidated damages provision constitutes a penalty:
 - Are the stipulated damages out of all proportion to the loss actually suffered?
 - A mere discrepancy between the loss suffered due to a breach and the amount of damages stipulated is not sufficient to amount to a penalty.

Ringrow Pty Ltd v BP Australia Pty Ltd [2005] HCA 71 and *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC79

Liquidated damages

Enforceability

- *State of Tasmania v Leighton Contractors Pty Ltd* [2005] TASSC 133
 - Leighton failed to complete 13.65 kilometres of a new highway on time
 - The Tasmanian Government deducted \$1,832,000 as liquidated damages (\$8,000/day x 229 days)
 - The project was fully funded by the Commonwealth Government and it was generally understood that the State would be reimbursed for the cost of the project
 - The Tasmanian Supreme Court found the sum to be a penalty – the estimated delay costs were too high
 - The State appealed.

Decision of the Full Court of the Tasmanian Supreme Court

- The liquidated damages of \$8,000 per day was not a penalty
- The figure of \$8,000 per day was not arbitrarily chosen
- Delay on completion would impact public utility and quantification of that impact would be problematic.

Latent conditions



Latent conditions

BMD Major Projects Pty Ltd v Victorian Development Authority
[2009] VSCA 221

Facts

- VicUrban engaged BMD to excavate and fill a former quarry site using materials from the site's overburden stockpiles.
- Contract was a lump sum AS2124-1992 with amendments.
- VicUrban gave tenderers drawings and a geotechnical report. BMD (but not the other tenderers) obtained the 'Boral file'.
- The true level of the ground turned out to be lower than the level shown in VicUrban's tender documents.
- BMD claimed this level discrepancy was a latent condition and sought to recover additional excavation and processing costs.

Latent conditions

BMD Major Projects Pty Ltd v Victorian Development Authority
[2009] VSCA 221

Facts

- VicUrban argued that the Boral file should have alerted a reasonable contractor to the level discrepancies.
- On cross-examination, BMD's expert witness admitted that certain parts of the Boral file allowed one to identify the level discrepancy.
- Latent Conditions (clause 12.1(a)): 'physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially from physical conditions which should reasonably have been anticipated by [BMD] at the time of [BMD's] tender...'

Latent conditions

BMD Major Projects Pty Ltd v Victorian Development Authority [2009] VSCA 221

Facts

- VicUrban argued that BMD failed to give notice of the Latent Condition 'forthwith' as required by the clause 12.2 of the contract.
- Clause 12.2: 'If...the Contractor becomes aware of a Latent Condition, the Contractor shall forthwith...give written notice thereof to the Superintendent.'
- BMD wrote a formal notification letter on 2 August 2002 but this was not faxed until 6 August 2002.
- The four day delay was not explained, although BMD submitted exploratory drilling continued during these four days.

Latent conditions

BMD Major Projects Pty Ltd v Victorian Development Authority [2009] VSCA 221

Victorian Supreme Court of Appeal's decision: Latent Condition?

- The level discrepancy was a Latent Condition.
 - Correct test: 'what a competent and suitably qualified contractor would expect to encounter by way of physical conditions in the execution of the works'.
 - VicUrban's expert witness admitted that one would have needed to hire a geotechnical engineer to appreciate the Boral file's geotechnical significance.
 - The admission of BMD's expert witness was obtained with the benefit of hindsight. Without the benefit of hindsight, it would have been difficult to know what to look for in the Boral file.

Latent conditions

BMD Major Projects Pty Ltd v Victorian Development Authority
[2009] VSCA 221

Victorian Supreme Court of Appeal's decision: notice 'forthwith'?

- The written notice was delivered forthwith.
- The Court did not disturb the trial judge's finding that:
'provisions like clause 12.2 must be construed with business common sense...A stricter construction would encourage, if not compel, contractors to be more concerned with anxiously satisfying a formal temporal requirement of notification rather than to explore the underlying needs and circumstances of the situation.'

Proportionate liability



Proportionate liability

Existing legislation

- Proportionate liability legislation replaces the common law system of joint and several liability under which a plaintiff could recover 100% of its loss from any one of the people who caused and were liable for that loss.
- Proportionate liability legislation:
 - Legislation introduced into each jurisdiction between about 2002 and 2004.
 - Liability for loss is divided between ‘concurrent wrongdoers’ according to their degree of responsibility.
 - Proportionate Liability applies to ‘apportionable claims’ which in Victoria includes a ‘claim for economic loss or damage to property in an action for damages (whether in tort, in contract, under statute or otherwise) arising from a failure to take reasonable care ...’ (*Wrongs Act 1958* (Vic) section 24AF(1)).

Proportionate liability

Existing legislation

- Issues with existing legislation
 - Differences between jurisdictions:
 - Definitions of ‘concurrent wrongdoer’ and ‘apportionable claim’.
 - Contracting out:
 - › Expressly permitted: NSW, WA, Tas
 - › Silent: Vic, SA, NT, ACT
 - › Express prohibition: Qld
 - Lack of clarity – e.g., does the legislation cut across contractual indemnities?

Proportionate liability

Proposed legislative reforms

- Significant changes in draft model legislation
 - Contracting out permitted if contract value exceeds \$5million or \$10million (to be determined).
 - Concurrent wrongdoers who settle with a plaintiff benefit from increased certainty that they cannot be joined back into proceedings by another concurrent wrongdoer.

Expert evidence



Expert evidence

What is expert evidence?

- Generally, lay witnesses are limited to giving evidence about what they have seen, heard, touched, tasted or smelt.
- Expert witnesses are permitted to give opinion evidence.
- The expertise rule:

‘If relevant, expert or opinion evidence is admissible with respect to matters about which ordinary persons are unable to form sound judgment ... without the assistance of [those] possessing special knowledge or experience ... which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience.’

HG v The Queen (1999) 197 CLR 414, per Gaudron J.

Expert evidence

What is expert evidence?

- An expert is ‘a person who has specialised knowledge based on the person’s training, study or experience’ (*Supreme Court (General Civil Procedure) Rules 2005 (Vic)* (**Supreme Court Rules**), Order 44.01)
- In an engineering context, expert evidence may be required in relation to:
 - The cause of equipment failure – materials of construction, manner of use, conditions of use, qualities of materials introduced to the equipment.
 - The assessment of loss and damage suffered – the value of manufactured items that could not be produced and sold.

Expert evidence

Rules of the Victorian Supreme Court - impartiality

- Expert witness must agree to be bound by the Expert Witness Code of Conduct (Supreme Court Rules, Order 44.03(2)).
- The Expert Witness Code of Conduct states:
 - ‘[a]n expert witness has an *overriding duty* to assist the Court *impartially* on matters relevant to the area of expertise of the witness.’ [emphasis added]
 - ‘An expert witness is not an advocate for a party’.

Expert evidence

Rules of the Victorian Supreme Court – report contents

- Your opinion.
- The basis of your opinion, e.g., literature, tests and investigations.
- A declaration that:
 - You have made all appropriate enquiries.
 - No matters you regard as significant have been withheld from the Court.
- Failure to satisfy these requirements threatens admissibility. In *Commonwealth Development Bank of Australia Pty Ltd v Cassegrain* [2002] NSWSC 980, Einstein J refused to admit the report of an expert who had failed to acknowledge he had complied with the relevant guidelines and was not even aware of them when he had written his report.

Expert evidence

Civil Procedure Act 2010 (Vic) (the Act)

- The Act's overriding purpose is to facilitate just, efficient, timely and cost-effective dispute resolution (section 7(1)).
- Expert witness must:
 - Act honestly at all times (section 17)
 - Not engage in conduct which is misleading or deceptive, or likely to mislead or deceive (section 21)
 - Use reasonable endeavours to ensure that legal and other costs are reasonable and proportionate to the complexity or importance of the issues and amounts in dispute (section 24)
 - Use reasonable endeavours to minimise delay to ensure the prompt conduct of a civil proceeding (section 25).

Expert evidence

Expert reports – tips and traps

- Set out qualifications and experience in detail to establish technical expertise. Attach a CV that focuses on academic and technical matters.
- Plain English:
 - Present information in a simple, logical and easy to follow way.
 - Minimise the use of technical expressions wherever possible.
- Use tables, graphs and diagrams where appropriate.
- If another person has helped prepare the report, identify the person, his or her qualifications, and the nature of the assistance provided.

Expert evidence

Evidence in chief and cross-examination

- Evidence in chief
 - Counsel will ask you to confirm that the opinions contained in your report remain your view.
 - Sometimes, counsel may take you through the report, concentrating on issues of particular importance to a party's case.
 - Explain your evidence in a simple and easily understood manner.
- Cross-examination
 - There should be no apparent change in your demeanor.
 - Remain polite even under hostile cross-examination.
 - Where a barrister focuses on the limits of your opinions or analysis, concede those limits.
 - Do not object to questions – leave that to your client's counsel.
 - Don't argue with cross-examining counsel.
 - Don't appear in every case to be reluctant to agree to facts which are adverse to your client's interests.

Dispute resolution processes



Dispute resolution processes

Litigation and alternate dispute resolution

- Court litigation
- Alternative dispute resolution (**ADR**) processes such as:
 - Negotiation
 - Mediation
 - Expert Determination
 - Arbitration

Dispute resolution processes

Court litigation

- Time consuming
- Formal
- Expensive
- Court controls the process
- Disruptive – distracts staff from their normal roles
- Public process:
 - Dirty laundry aired in public.
 - Reputational damage.
 - Difficult to maintain business relationships.

Dispute resolution processes

Court litigation – overview of main steps

- Pleadings: e.g., plaintiff's statement of claim & defendant's defence and counter claim.
- Document discovery: parties provide to each other all of the documents which are in their possession, custody or power relating to any matter in question.
- Evidence: sworn affidavits by key project players such as the project director, project manager, engineers, etc. Expert witness affidavits.
- Trial: Court examines evidence, hears cross examination and hands down a judgement.

Dispute resolution processes

Negotiation

- Discussions between the parties, unaided by third parties.
- Flexible process – parties control the process.
- Cheap.
- Quick.
- May perpetuate existing power imbalances between the parties.
- Lack of objectivity may make settlement difficult.

Dispute resolution processes

Mediation

- An independent person assists the parties to reach a negotiated settlement.
- Mediator does not impose a decision on the parties.
- Early assessment of the strengths and weaknesses of the parties' position – even if dispute is not settled.
- Confidential.
- Flexibility of outcome.

Dispute resolution processes

Mediation

- Role of Mediator
 - Acts as ‘devil’s advocate’.
 - Reality tests the parties’ positions.
 - Explores settlement options.
- Mediation agreement
 - Mediator’s fees equally shared between the parties.
 - All communications should be made on a without prejudice basis.
 - Confidentiality provision.
- Who should attend a mediation?
 - Parties’ representatives with authority to settle the dispute.
 - Lawyers can and often do attend (depending on the complexity of a dispute).
- Mediation may be:
 - Voluntary: at the instigation of the parties.
 - Compulsory: according to a contractual or statutory obligation or a court order.

Dispute resolution processes

Mediation conference

- Preliminary comments by the mediator.
- Opening statements by each party (based on their mediation position papers which are typically exchanged before the mediation conference).
- Parties go into separate rooms and the mediator speaks to the parties separately about the issues in dispute and their possible resolution.
- The mediator may call the parties together for joint sessions, including, hopefully, to develop a settlement.
- Parties sign a heads of agreement either at the mediation conference or shortly afterwards. The heads of agreement may be developed and recorded in a settlement agreement. Both heads of agreement and settlement agreements are legally binding and enforceable contracts between the parties.

Dispute resolution processes

Expert determination

- Parties agree to refer disputes to an expert for determination.
- The parties can agree:
 - The expert's powers in the conduct of the process.
 - The procedure the expert must follow.
 - Whether the expert's determination will be binding.
- Quick, cheap, informal, flexible, and confidential.

Dispute resolution processes

Expert determination

- Potential difficulties with expert determinations:
 - Is the ‘determination’ really an arbitration? Indicia of arbitration include:
 - Parties have a right to be heard (procedural fairness).
 - Parties entitled to see the evidence of their opponents.
 - Parties entitled to test the opposing case by cross-examination.

Santos Ltd v Pipelines Authority of South Australia (1996) 66 SASR 35
 - The binding nature of the process has been attacked as an attempt to oust the jurisdiction of the courts.
 - ‘not an attempt to oust the jurisdiction of the court, but to limit...the matters which the court can consider’ *Straits Exploration (Australia) Pty Ltd v Murchison United* [2005] WASCA 241 (unreported, delivered 14 December 2005)
 - Determination susceptible to challenge where it has not been made in accordance with the contract, or there is fraud or collusion.

Dispute resolution processes

Arbitration

- An arbitrator hears and decides a dispute.
- Like a private trial – typically includes pleadings, document discovery, evidence, hearing and a decision.
- Parties may select the decision maker. Not so in court.
- Flexible – arbitration is created by contract so parties can tailor the process to their needs.
- Can be cheaper and faster than court litigation.
- Binding decision.
- Private and confidential.
- Leading form of dispute resolution for international disputes.

Drafting effective ADR clauses



Drafting effective ADR clauses

Tiered application of ADR processes

- A series of steps is required before a party can commence litigation or arbitration.
- An example of a useful initial step is without prejudice negotiations conducted by senior representatives of each party.
- Ideally the senior representatives will not be involved in the day to day management of the project and so will not have emotional baggage.
- If negotiations fail, the next step could be mediation under the rules of a recognised body such as the Institute of Arbitrators and Mediators Australia or the Australian Centre for International Commercial Arbitration.
- These two initial steps force the involvement of management and encourage the parties to consider, before litigation or arbitration commences, the strengths and weaknesses of their positions.

Drafting effective ADR clauses

Select appropriate ADR processes

- **Horses for courses** – consider the likely types of disputes and the parties involved and select ADR techniques accordingly.
- **Expert determination** can be useful for disputes of a technical nature. For example:
 - Disputes involving construction or building issues can be referred to engineers.
 - Disputes involving financial instruments can be referred to accountants, economists or actuaries.

Drafting effective ADR clauses

Tailoring ADR clauses

- Allow sufficient time for each ADR process.
- Consider who should attend each ADR process, e.g., CEO, CFO, project manager, project director, etc.
- Consider where the relevant ADR process (e.g., negotiations, conciliations and mediations) will be held. Where are the parties located? Where is the project located?

Drafting effective ADR clauses

Tailoring ADR clauses

- Sophisticated ADR clauses can include provisions setting out procedural and other details of the ADR processes adopted.
- Expert determination and arbitration clauses can set out procedural details:
 - Ensuring there is no general right to discovery.
 - Where discovery is allowed, limiting discovery by categories.
 - Requiring evidence in chief to be given only in writing (where appropriate).
 - Limiting hearing to defined periods, e.g. 5 days.

Drafting effective ADR clauses

Tailoring ADR clauses

- Expert determination clauses can specify:
 - Whether parties may be represented by lawyers at any hearings.
 - Whether an expert may cross examine witnesses.
 - Whether the expert has an express power to rectify minor errors or even material errors in her or his determination.
 - Whether the expert's decision will be binding or non-binding.
 - If the decision is non-binding, whether it can be admitted into evidence in subsequent litigation or arbitration.
 - Imposing a time limit for the expert to make a determination.

Drafting effective ADR clauses

Drafting an arbitration clause

- Consider relevant opt in & opt out provisions of the Commercial Arbitration Acts.
- Arbitral rules.
- Scope of disputes.
- Venue for any hearings.
- Number of arbitrators.
- Appointment of arbitrators.
- Language of arbitration (for international arbitrations).

Drafting effective ADR clauses

Typical tiered dispute resolution clause

1.1 Negotiation

If there is a dispute or difference (***Dispute***) between the parties arising out of or in connection with this Agreement, then within five business days of a party notifying the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions. All communications during these discussions are confidential and shall be treated as being made on a without prejudice basis.

1.2 Mediation

(a) If the Dispute is not settled within seven business days of written notification under clause 1.1, the parties will, if mutually agreed, submit the Dispute to mediation administered by the Institute of Arbitrators and Mediators Australia (***IAMA***) in accordance with, and subject to, the then current Mediation Rules developed by the IAMA.

Drafting effective ADR clauses

Typical tiered dispute resolution clause

- (b) The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the President of IAMA.
- (c) Any mediation meetings and proceedings under this clause must be held in Melbourne.
- (d) All communications during the mediation are confidential and shall be treated as being made on a without prejudice basis.

1.3 Arbitration

- (a) If, within 28 business days (or any other period agreed in writing between the parties) after written notification under clause 1.1:
 - (i) the Dispute is not settled by mediation under clause 1.2; or
 - (ii) no agreement is reached to refer the Dispute to mediation under clause 1.2, either party may by written notice to the other refer the Dispute to arbitration in accordance with, and subject to, the IAMA Arbitration Rules developed by the IAMA.

Drafting effective ADR clauses

Typical tiered dispute resolution clause

- (b) The arbitrator will be an independent person agreed between the parties or, failing agreement, an arbitrator will be appointed by the President of the IAMA. The arbitrator may not be the same person as the mediator appointed under clause 1.2.
- (c) Subject to clause 1.3(a), the arbitration will be conducted and held in accordance with the laws of Victoria.
- (d) Any arbitration meetings and proceedings under this clause must be held in Melbourne.

1.4 Continuation of rights and obligations

Despite the existence of a Dispute or difference each party must continue to perform this Agreement.

Administering contracts to minimise disputes



Administering contracts to minimise disputes

Outline

- Key first step: getting the contract right
- Next step: effective contract management – this is our focus
- Key points:
 - Role of the contract administrator.
 - Communications and documents.
 - Events during the term.

Administering contracts to minimise disputes

Contract Administrator: know the contract

- The contract governs the parties' legal relationship
- Parties' rights under the contract
 - Valuable assets.
 - Must be protected, just like contractor's plant or owner's know how.
- Role of the Contract Administrator
 - Guardian of the parties' rights under the contract.
 - Must understand the mechanics of the contract.
- Contract Administrator within the organisation
 - Must have regular access to the Project Manager.
 - Must be able to access management as required.

Administering contracts to minimise disputes

Contract Administrator: know the contract

- Contracts Administrator must know key aspects of the Contract
 - Scope of work.
 - Standards for the contractor's performance (eg, timing and program).
 - Allocation of risk.
 - Processes and procedures:
 - What notices must be given, when, how, and to whom?
 - When should security be released?
 - How are change orders/variations made?
 - Payment of contractor
 - Claims
 - Remedies in event of breach
- Contract Administrator must understand security of payments legislation.

Administering contracts to minimise disputes

Contract Administrator: seeking legal advice

- Legal assistance for the Contract Administrator
 - In-house counsel or external lawyer.
 - Ensure the Contract Administrator knows what options are available.
- When should the Contract Administrator seek legal advice?
 - If a claim is rejected.
 - Where questions of contractual interpretation arise.
 - For any significant correspondence.
- What value does legal assistance add?
 - Minimise the risk of having to change the party's position later.
 - Checking or even 'ghost writing' correspondence.
 - Maximise the evidentiary value of correspondence.
 - Minimise the risk posed by correspondence.

Administering contracts to minimise disputes

Communications and documents: document everything

- Maintaining written records is critical
 - Preserves your rights in the event of a dispute escalating.
 - Provides a narrative to help make your case, if necessary.
 - Substantiates your position – making formal disputes less likely.

Administering contracts to minimise disputes

Communications and documents: communicating effectively

- Golden rule: be reasonable
 - Do not take extreme, unreasonable, or untenable positions.
 - Be polite; do not personalise.
 - ‘Front page of the newspaper’ test.
- Communicate in writing
 - Important communications must be in writing.
 - Confirm important conversations in writing.
 - Once it’s in writing, you can’t take it back – this applies to emails.
- Before communicating, review the contract
 - Identify any provisions relevant to the issue at hand.
 - Understand any formal requirements for communications.

Administering contracts to minimise disputes

Communications and documents: communicating effectively

- Be concise
 - Always consider why you are writing.
 - Include everything you need to – but nothing more.
- Avoid arguments in correspondence
 - Rarely helpful - often unhelpful.
 - If you continue to receive repetitive correspondence.
 - Is it really necessary to respond?
 - Simply refer to your previous correspondence.
 - Meaningful written negotiations can occur: consider marking ‘without prejudice’.
- Correcting other parties
 - If another party confirms a discussion in writing, ensure they have done so accurately, and if not, give a response pointing this out.

Administering contracts to minimise disputes

Communications and documents: lenders and insurers

- Lenders
 - The relationship with the lenders needs to be managed.
 - Lenders do not like surprises.
 - They need to be made aware of significant issues as they arise.
- Insurers
 - Many insurance agreements require prompt notice soon after the loss.
 - Maintain communication with insurers throughout the period of performance.

Administering contracts to minimise disputes

Communications and documents: personal factors

- Do key people on each side have ‘history’ or ‘baggage’?
- Organisational culture
 - Foster a collaborative not adversarial ethos.
 - Claims or disputes must be dealt with; not ‘swept under the table’.
- Importance of escalating if necessary
 - Brings a fresh set of eyes to the project.
 - Contract Administrator may be blinded by detail or personal conflict.
- When are issues escalated to management?
 - Schedule regular ‘health checks’.
 - Alert list: management is notified if defined thresholds exceeded.

Administering contracts to minimise disputes

Events during the term: claims, practical completion and security

- How can you help your people understand the process?
 - Develop a ‘cheat sheet’ – quick reference to the process.
 - Have a standard set of forms for making/responding to claims.
- Requirements for practical completion
 - Know them.
 - Ensure they are met.
 - Keep a check list of the requirements.
- Contractor’s security
 - Principal: ensuring it remains in place until the contract permits release.
 - Contractor: be aware of procedure for release - is a request needed?

Your thoughts and questions