

# Resolution over disputation

A reform thread from *Unravelling Risk*

Australia's construction industry has a reputation as being marred by adversarial, problematic and uncollaborative contracting arrangements. We see inappropriate and uncommercial risk allocation, especially within the design and construct contracting model. A focus on resolution over disputation (in addition to the other reform threads proposed in *Unravelling Risk*) would help bring stability back to professional indemnity market.

The resolution of issues rather than disputation is best for project, relationship and business outcomes.

The reform threads from *Unravelling Risk* will assist in avoiding disputes. However, there will never be a project without issue – therefore we need ways to resolve potential disputes instead of continuing the cycle of disputation.

Standing dispute boards on projects (see case study below) is a potential circuit breaker in the design, construct and litigate cycle, if extended to include consultants.

## WHO & HOW

*Clients* should incorporate standing dispute boards which actively include the project consultants on all design and contract projects.

## CASE STUDY – Dispute boards

The International Federation of Consulting Engineers (FIDIC) is the global representative body for national associations of consulting engineers and its standard contract suite adopts a 'multi-tier dispute resolution mechanism' which is designed to avoid disputes or to resolve them as early as possible, ideally during the currency of the project. A key feature of this is the dispute board.<sup>8</sup> A standing dispute board is established at the start of a project, populated by independent experts who help facilitate the parties' avoidance of disputes. Where that is not possible, the experts engage in the expeditious, efficient, and cost-effective resolution of those disputes.

The NEC4 suite of contracts also includes an option for dispute boards to decide the outcome of any dispute under the relevant contract.

As the industry voice for design, advisory and engineering consulting businesses and the connector between industry and government, Consult Australia can help you improve your procurement and project processes.

W: [consultaaustralia.com.au](http://consultaaustralia.com.au) E: [info@consultaaustralia.com.au](mailto:info@consultaaustralia.com.au)

