



DLA PHILLIPS FOX

EVERYTHING MATTERS

***Society of Construction Law
Alliance Contracting – Reshaping Australian
Infrastructure***

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Overview

- Origins, development, current context
- Structure and operation of alliance contracting
- Successful Delivery
- Unique interdependence
- Critical success factors and challenges

Australian origins of Alliance Contracting

- Early 1990's – North Sea BP Andrew and Hyde Project – Bob Scott
“Partnering Alliance Contracts; a Company Viewpoint” (1994)
 - a new way forward not a “nice to have but necessarily a matter of survival for BP”
 - existing practice with contractors characterised by:
 - short term and essentially adversarial in nature
 - unaligned objectives
 - accountabilities not clearly defined
 - risks placed on those unable to influence or manage them
 - skills not recognised and/or ineffectively utilised
- Mid 1990's – Ampolex's Wandoo Project, WMC's East Spar Project & BHP HBI Project
- From 1997 – concentrated in large civil infrastructure projects developed or sponsored by state government departments or public sector agencies

Early Understandings

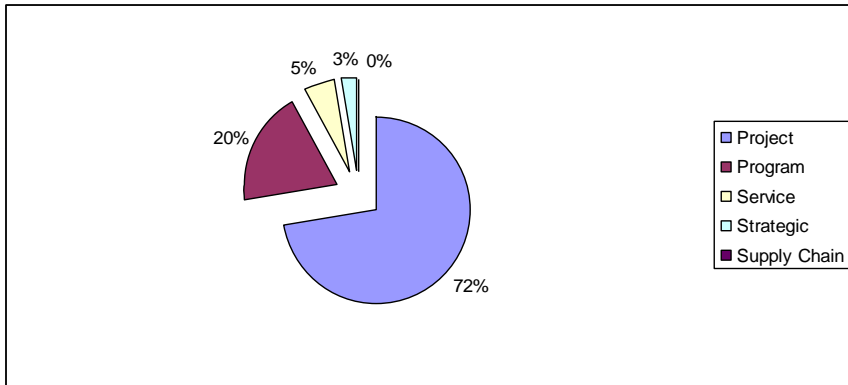
- 1999 - A process to establish and manage relationships between parties that aims to remove barriers, encourage maximum contribution and allow all parties to achieve success
- 2000 - In simple terms a project alliance is where an owner forms an alliance with one or more service providers for the purposes of delivering outstanding results on a specific project
- 2001 - Project alliancing turns upon the formation of a performance based contract structure, the alignment of the commercial interests of parties, and a genuine no blame culture between the parties

Alliance Contracting

A commercial/legal framework between an owner and one or more service providers for delivering works/services characterised by:

- collective assumption of all project risks;
- no fault, no blame and no dispute between the alliance participants (except in very limited cases of wilful default);
- payment under a compensation model comprising:
 - reimbursement of all direct costs on 100% open book basis;
 - a fee/margin as contribution to corporate overheads and profit;
 - a Gainshare Regime that equitably rewards the value of alliance performance;
- unanimous principle-based decision-making on all key project issues; and
- an integrated project team selected on the basis of best person for each position.

Australian Application – 1996 to 2008

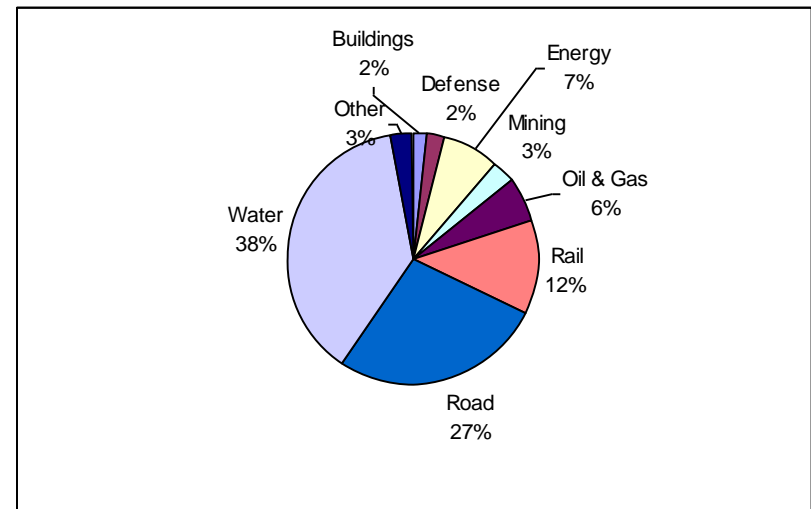


Alliance by Sector

AAA current Inventory of alliances in Infrastructure include, at June 2008:

- 179 Project/Program alliances
- 11 Service alliances
- Inventory completeness: >80%

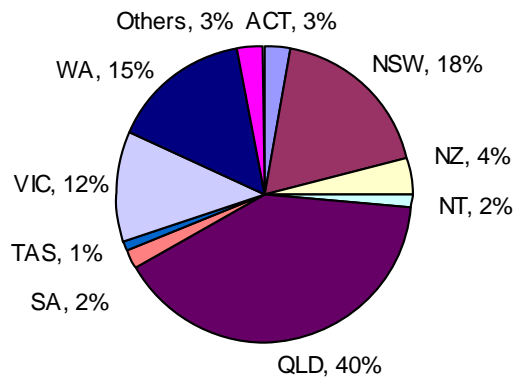
Alliances by Type



Information and stats based on a record of 190 project and service alliances 1996-2008 – Data as accurate as can be when obtained from public sources – All care taken to make data and stats as accurate as possible

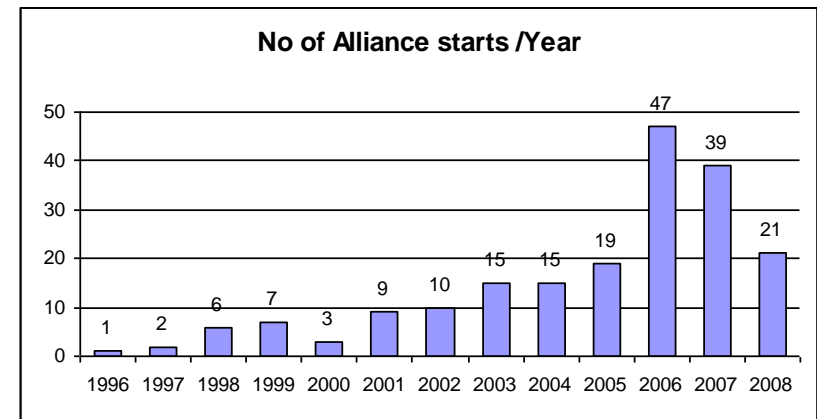
Australian Application – 1996 to 2008

Alliances by State + NZ



Alliances by State and New Zealand

Number of Alliance Started Per Year 1996-2008



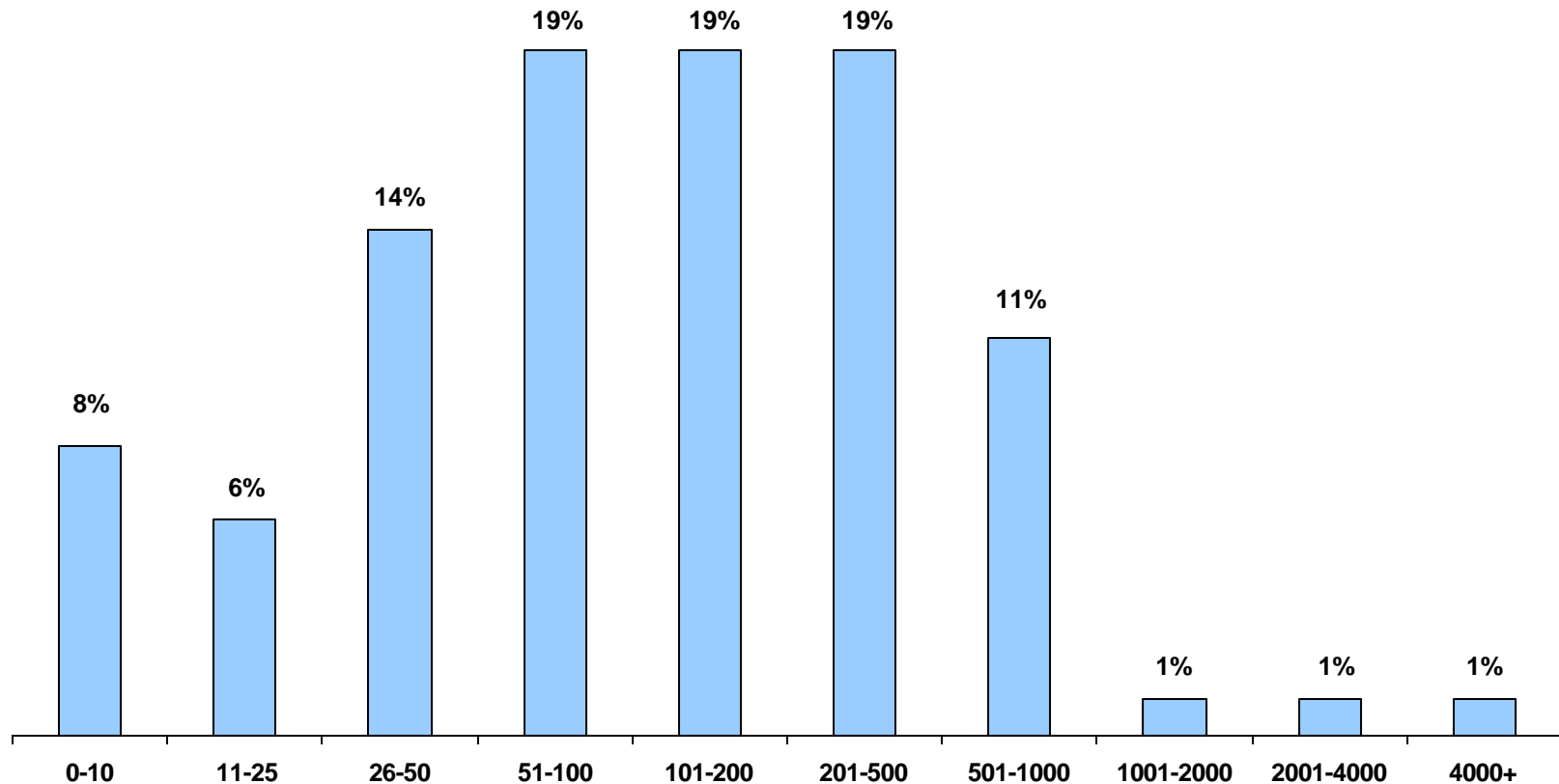
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Australian Application – 1996 to 2008

Australia (public sector projects)

Alliance by \$ Cost in \$m



Data extracted from a presentation by Jim Ross (PCI) at the IQPC Alliance Contracting Excellence Summit, Sydney May 2008 and reformatted by DLA Phillips Fox

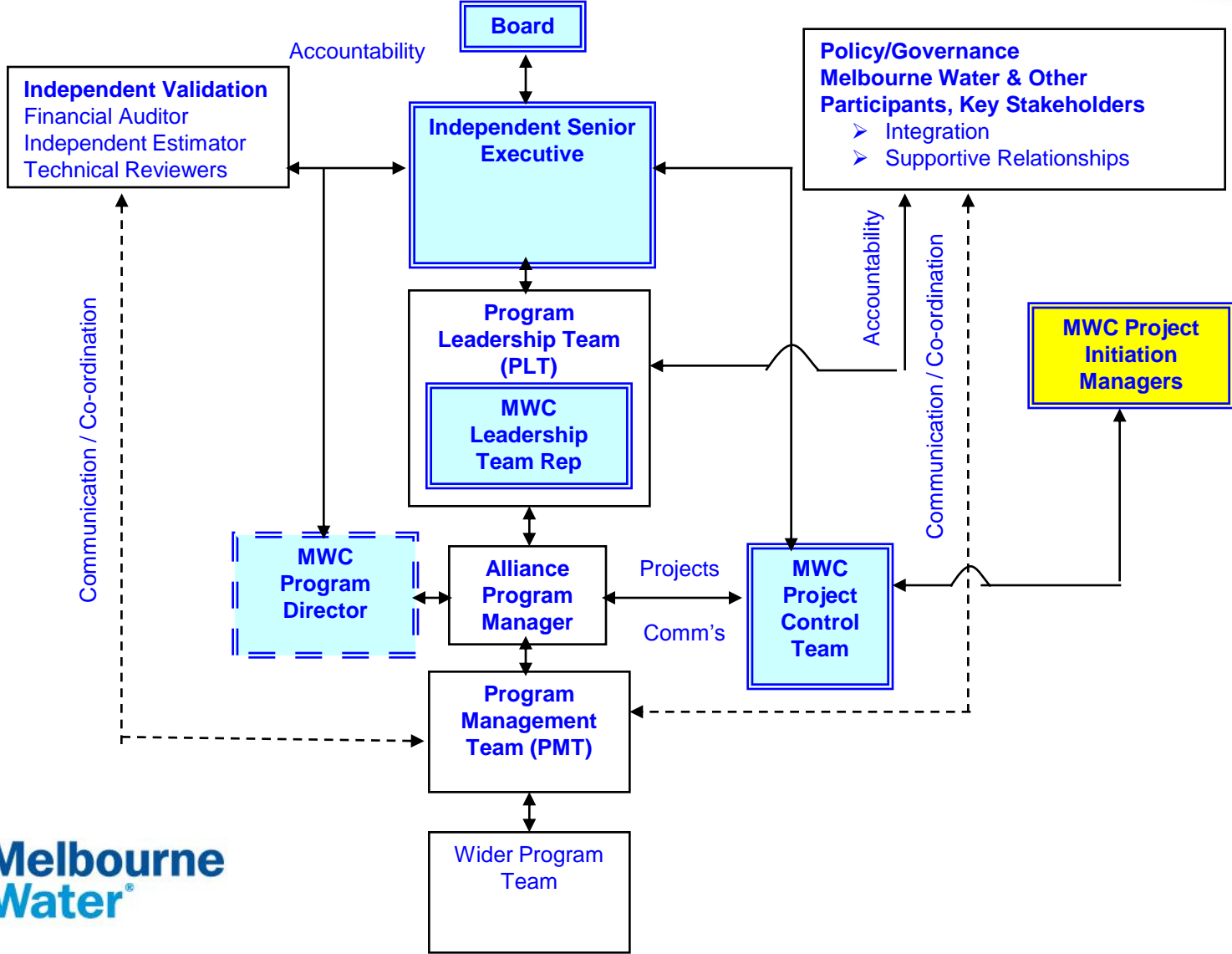
Structure and Operation

- Single agreement signed by all participants
 - typically 3-5 participants – no natural maximum – governance maximum
- Sharing all project risks
 - typically no risk allocation and no risk exclusions – allocation may evolve on value for money basis around the target outturn cost
 - collective obligations, commitments and principles – some separate entitlements – e.g. payment, owner reserve powers and directions
 - language of “we”, “us” and “our”
- Genuine No Fault, No Blame, No Dispute
 - *any act or omission which:*
 - *amounts to a wilful default will give rise to enforceable obligations, entitlements, rights or remedies at law or in equity; and*
 - *does not amount to a wilful default will not give rise to any enforceable obligations, entitlements, rights or remedies at law or in equity*
 - initial scepticism, caution and alarm – now settled practice

Structure and Operation (continued)

- Unanimous decision making
 - must achieve unanimity at leadership team
 - genuine dispute elevation – no external/third party resolution process
 - no documented case of alliance or leadership team deadlock or frustration
- Integrated project team
 - leadership team – leadership and governance – equal participation – no voting – no owner veto
 - management team – real integration – colocation essential – no surveillance – genuine implementation
- Governance Framework
 - express identification of accountabilities and responsibilities for owner – leadership team – alliance manager – management team
 - single uniform and consistent project systems, management plans and reporting regime collectively implemented

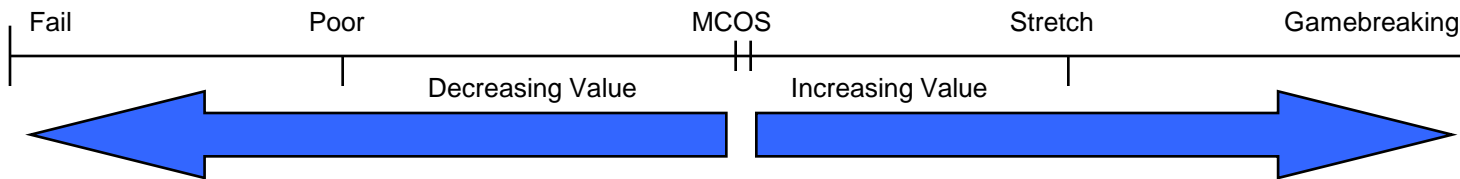
Leadership & Governance Structure



Commercial Structure

Direct Cost	Fee/Margin	Gainshare
<ul style="list-style-type: none"> - 100% reimbursement - 100% open book - subject to establishment audit, verification and accounting audit - reimbursement subject to agreed principles and exclusions - definitions of what is/is not Direct Cost is critical 	<ul style="list-style-type: none"> - agreed after establishment audit - alignment either through contestable/non-contested process - must deliver to owner a discount on historical performance - flexibility to accommodate alternative business models and sectors - liability capped at Margin 	<ul style="list-style-type: none"> - value focus - aligns commercial interests of participants with owner's project objectives - participants equitable share of increasing/decreasing value to owner of alliance performance - structured around key result areas of value to owner - equitable not equal

Performance Spectrum



Performance = Value = Equitable Reward

Suspension and Termination

- Suspension
 - by owner at convenience – adjustment event
 - by alliance for risks to safety – no adjustment event
 - by participants – owner failure to pay – adjustment event, no entitlement to terminate
- Termination for Convenience
 - owner discretion – adjustment event
 - no break payments or opportunity costs
- Exclusion/Termination for Wilful Default (including Insolvency)
 - typically exclusion of defaulting participant
 - remedy – very broad uncapped unlimited liability – typically no exclusion for consequential type losses – may extend to termination
 - owner default – only remedy is indemnity – no entitlement for participants to terminate

Successful Delivery

- Analysis of 34 alliance projects completed prior to 2006
 - cost analysis – reliable data set of 34 projects
 - time analysis – reliable data set of 18 projects
 - pre 2006 – 87 alliances commenced – AAA data
 - 57% in range \$50M - \$500M – AAA data
- Cost
 - 88% on or below target out turn cost
 - remaining - +3%, +4% and +28% (time of the essence)
- Time
 - 73% delivered ahead of scheduled time
 - 27% delivered on time
 - 5% average improvement on alliance program
- Typical experience of traditionally contracted (non PPP) projects in Australia
 - cost +10%
 - time 90% of projects overrun on schedule

Unique interdependence

Our experience over 10 years is that each element is critical to ensure the probability of delivering what is possible

Collective assumption of risk	- supports No Dispute, empowers the common objectives, permits genuine integration, converges with the Commercial Framework – particularly Gainshare Regime
No Dispute	- relies on and supports unanimity, common objectives frame decision making, alliance principles shape decision making, Commercial Framework pre ordains outcomes
Unanimity	- only possible through collective assumption of risk, common objectives and genuine principled based decision making and alignment of interests

Unique interdependence (continued)

Common objectives	- enables single focus (Best for Project) for integrated team, distils areas of value to owner, provides reality to unanimity and No Dispute
Alliance Principles	- behavioural compact for the alliance and shapes for unanimous decision making, guide for all performance
Integration	- genuine integration possible through collective assumption of risk and No Dispute – provides collective effort to deliver value and reward through Commercial Framework

Alliance Contracting – Critical Success Factors

- **Strategic Fit** – committed senior leadership and support from within all organisations
- **First Principles** – consistency in all elements e.g. objectives – principles relationship – value proposition – no dispute – commercial framework – legal framework – liability – termination
- **Governance** – responsible but not restrictive
- **Accountability** – clear accountability and responsibilities with a focus on efficient and effective delivery
- **Value** – must be able to identify, ensure and deliver value – protection and improvement
- **Commercial Appetite** – performance = value = reward
- **Behavioural Context** – recognise and establish the “shift” in behaviour that will be necessary for success

Why an Alliance Contracting delivery strategy?

- Generally accepted that alliance contracting typically suited to:
 - numerous complex and/or unpredictable risks with complex interfaces
 - Design/technology/construction/operations
 - Stakeholders – regulators/community/environment
 - Political – governments/community opposition/need
 - complex interactive approval and consent issues
 - complex external threats or opportunities that can only be effectively managed collectively and collaboratively
 - very tight timeframes driven by – project risks, organisational capacity, policy directives, political need/fix
 - output specifications which cannot be clearly defined and/or a high likelihood of scope changes during design and construction
 - owner involvement
 - owner has unique skill set or understanding of an asset
 - owner has capacity and expertise to add value
 - transformation or legacy

Alliance Contracting – Benefits

For Owner

- Deliberate alignment of owner's objectives and participants commercial interests (performance = value = reward)
- Greater opportunity to manage risks through sharing and collaboration
- Broader allocation – through collective assumption – of all risks
- Integration of teams reduces resources burden – “More for Less”
- Earlier participation of expertise can lead to improved decision making and project outcomes
- Genuine focus on enabling high performance and innovation
- Transparency of all governance and commercial issues
- No disputation – but healthy creative conflict

Alliance Contracting – Benefits

For Participants

- Opportunity for greater returns for delivering improved value
- Greater opportunity to more effectively influence and manage the “whole” rather than “parts”
- Whilst broader exposure to risks – including risks with no ability to influence or control – liability is capped
- Improved staff engagement through opportunities for genuine career/skills enhancement
- Reputational benefits – selection relying upon capability not tender and recognition for success



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