

# Performance of the Dispute Review Board in Melbourne Construction projects: Is it suitable?

Ling-Ye She

Melbourne School of Design  
The University of Melbourne, Australia  
School of Property, Construction and Project Management  
RMIT University, Australia

Email: [l.she@pgrad.unimelb.edu.au](mailto:l.she@pgrad.unimelb.edu.au); [ling-ye.she@rmit.edu.au](mailto:ling-ye.she@rmit.edu.au)

## Abstract:

Currently litigation and arbitration are too time consuming, costly and damaging in business relationships whilst Alternative Dispute Resolution (ADR) methods such as mediation and conciliation are increasing becoming formal and costly. This research examined the stakeholders' perception of the Dispute Review Board (DRB) in managing conflicts in construction projects and assessed whether the performance of DRB may achieve a better dispute resolution outcome than other dispute resolution methods. This research involved construction professionals with experience in dispute resolution. Survey questionnaire was used to find out the perception on the use of the DRB using the ten criteria, namely cost, speed, outcome, enforceability, privacy and confidentiality, open and fairness, control, flexibility, creative remedies and relationships. The results found that DRB is perceived to have a comparative advantage in nearly all criteria over litigation and arbitration and has a higher comparative advantage in the capacity to maintain relationships when compared with mediation and conciliation. Structured interviews were also used to examine the perception of the DRB and found concerns regarding the use of DRB are costs, distrust as well as the general attitude of resistance to change in the adversarial Melbourne construction industry. Recommendations for areas where DRB can be improved are discussed to suit the Melbourne construction industry. This paper demonstrates that the suitability of the Dispute Review Board in Melbourne requires more than good faith and willingness to implement the mechanism as the Dispute Review Board is still an external party representing formal authority and governance over the complex process of the construction management.

## Keywords:

dispute review board, alternative dispute resolution, Melbourne construction industry, performance of dispute review board, comparative advantage

## 1 Introduction

Disputes are a significant factor that causes project delays. Less than 50% respondents are satisfied that the dispute resolution methods used were effective in terms of cost, outcome, time and process (Dawson, 2007). Project level negotiation and executive negotiation resolution methods were resolved disputes in less than three month and 16% of disputes using other methods such as mediation took over 12 months to resolve (Dawson, 2007). Litigation and arbitration are notoriously cost inefficient and time consuming but above all, it breaks goodwill between business relationships, which is detrimental to the nature of the construction industry, heavily reliant on collaborative teamwork (Sprague, 2006). Another problem associated with litigation and arbitration is that it can also have adverse effects on the construction programme and the quality of the works, irrespective of the size of the project (Cheung, 1995) (Bailey, 1998). Combined with the increasing formality of Alternative Dispute Resolution (ADR) these systems will eventually increase in the

costs involved hence in future, most disputes will need to be resolved on site (Miles, 1996). For these reasons, the Dispute Review Board (DRB) may improve the current dispute resolution system if it is implemented in Melbourne.

The Dispute Review Board (DRB or DB) is a Dispute Avoidance Procedure method to settle various construction dispute claims (Gerber, 2001). Other ADR techniques include voluntary negotiations between the parties; third party assisted negotiations such as mediation, conciliation and adjudication; and adversarial approaches such as arbitration or litigation (Sprague, 2006). The Melbourne construction industry is based more on relationships than most others and as a result dispute resolution using ADR methods, such as mediation allow flexibility in addressing technical issues and preservation of relationships as well as minimising adverse publicity (Sprague, 2006) (Megens, 2005). However, sufficient attention should be directed to the dispute resolution clauses at the time of contract preparation to avoid costly, time consuming as well as distracting and ineffective dispute resolution processes later on. (Gould, 2006).

This research aims to explore the construction industry's stakeholders' perception regarding the use of the Dispute Review Board in managing conflicts in Melbourne construction projects. Additionally, this research aims to examine the potential effects of these conflict management mechanisms when compared with the other dispute resolution methods currently in use.

## **2 Conflict and Dispute**

Conceptually a *conflict* is a difference between two or more beliefs, ideas, or interests (Collin *et al.* 1996). Based on the above definition conflict in construction may include dissatisfaction, disagreements over contract administrator's decisions, anger, hostility, and negative attitudinal propensities by parties (Aibinu *et al* 2008).

### **2.1 Disputes- When conflicts are unresolved**

Dispute arises in a situation when a claim or assertion made by one party is rejected by another party and this rejection is not accepted (Kumaraswamy, 1998). A claim is an assertion of a right to money, and property, or a remedy and can be made under the contract itself, for breach of the contract, or for breach of a duty in common law (Powell-Smith and Stephenson, 1989). Construction claims can be in the form of money and time claims by the main contractor against the project owner for extension of contract time and additional payment arising from a specified event in the contract (Aibinu *et al* 2008). The claim can be any application to the project management team pursuant to any relevant clause of the contract including any variation to payments, extension of time and or damages for any alleged breach of duty by the employer or employer's management team (Kumaraswamy, 1998).

## **3 Dispute Resolution Methods**

The common dispute resolution methods operating in Melbourne are litigation, arbitration, mediation, conciliation, adjudication, mini-trials, facilitated negotiation, partnering and expert determination.

### **3.1 Litigation**

Litigation is a legal proceeding in a court or a judicial context to determine and enforce legal rights (Hill, 2008). This is the least preferred method in the construction industry as the courts act on the adversary system (Bailey, 1998) and damage business relationships (Sprague, 2006). Besides the slow, expensive, time consuming, risky and stressful procedure which litigation brings, there is no real certainty of results other than a certainty of at least one loser (Merritt, 2006).

### **3.2 Arbitration**

Arbitration is a mini-trial for a law suit ready to go to trial, held in an attempt to avoid a trial and is conducted by an independent person, usually with some relevant skill or knowledge, to determine the dispute (Bailey, 1998). During the arbitration process, parties make submission to an arbitrator and are bound by the arbitrator's decision (ACDC, 2005).

### **3.3 Mediation**

Mediation is a prominent ADR method used in the Melbourne construction industry and is now a firmly established preferred dispute resolution tool for construction claims (Megens, 2005). Mediation is an attempt to settle a legal dispute through an active participation of a third party, a mediator, who works to find points of agreements and make those in conflict agree on a fair result (Hill, 2008). Resolution is attempted but settlement is not always achieved (Hill, 2008).

### **3.4 Conciliation**

Conciliation is similar to mediation however the main goal is to conciliate by seeking concessions.

### **3.5 Adjudication/Security of Payment**

Adjudication is the process where an independent person, the adjudicator, makes a determination as to the amount, if any, which the respondent owes to the claimant, on a specific date it was (or will be due) to be paid and on what interest applicable (IAMA, 2006). The objective is to impose a settlement on parties.

### **3.6 Mini-Trials**

Mini-trials are a structured information exchange attended by representatives authorised to settle the dispute and are used where a dispute exists between the key decision makers of both parties (Sprague, 2006).

### **3.7 Facilitated Negotiation**

Facilitated negotiation involves an independent and objective person which enters the negotiation session to assist the parties in reaching agreement (Berman, 1995). The purpose is to facilitate a mutual understanding of both parties rather than settlement (Sprague, 2006).

### **3.8 Expert Determination/Appraisal**

Expert determination is a person who a specialist in a technical subject who may present his or her expert opinion without having been a witness to any occurrence relating to the lawsuit or criminal case (Hill, 2008). The critical areas of importance for the 'expert' are to remain independent of, and act fairly and impartially between parties and to adopt a suitable procedure whilst avoiding unnecessary delay and expense in the given circumstances (Sprague, 2006).

### **3.9 Partnering in Alliance Contracting- towards proactive dispute avoidance**

Partnering is a project procurement method where the parties to the contract share a common goal aim to complete the project successfully (Sprague, 2006). This is achieved by sharing both the benefits and risks of the project. Partnering is a proactive dispute avoidance technique. It is based on relationships and trust that all parties share a common goal (Eilenberg, 1996). Under this procurement method, a contract is set up with an agreed target price and incentives for parties.

## **4 Dispute Review Board-Overview of the structure, components and use**

The Dispute Review Board (DRB) consists of three *qualified* members committee, nominated by *both parties*, formed at the *start of the project* and meet periodically *on\_site* to discuss issues (DRBF, 2007). Then they form non-binding recommendations. If the parties are *unsatisfied*, they can turn to other methods of binding or non-binding methods of such as mediation and conciliation or any other ADR methods (DRFB, 2007).

### **4.1 Selecting, nominating and appointing Board Members**

The three members nominated by both parties (Gould, 2006) :

They must not have any financial ties to any party either directly or indirectly involved in the contract, not be currently employed by any party directly or indirectly in respect of the contract, and Not have a close professional or personal relationship with a key member of any party directly or indirectly involved in the contract that could give rise to the perception of bias

Each party selects one member which is approved by the other party and then a third member is chosen by the two selected members. The three DRB members then selects one as the chair with the approval of both the contractor and the owner.

Members must be qualified in both the technical and legal facets of construction practices and methods.

### **4.2 Formation of DRB clause into the contract at the commencement of the project (Gaitskell, 2005)**

When DRB is established before the commencement of the project, the members will have the relevant design documentations, specifications and project scope as well as understanding the contract conditions.

### **4.3 Periodic visits on site to resolve issues (Gaitskell, 2005)**

Meeting 3 to 4 times a year or more frequently as agreed by both parties

Issues are seen, heard and resolved as they arise on site.

### **4.4 Issuing non-binding recommendations (Gaitskell, 2005)**

DRB can act as a flexible and informal advisory panel. Before issuing a recommendation, the DRB may be asked for general advice on any particular matter. The DRB would then look at documents and or visit the site as appropriate and most usually, provide an informal oral recommendation, which the parties may choose to adopt.

If the parties were not satisfied, the DRB would follow the formal procedure of exchange of documents and a hearing and afterwards issue a formal written recommendation.

The decisions made by the board are non-binding but are generally accepted by the parties due to the merit of the expert opinion been admissible of the matter proceeds to arbitration or litigation.

### **4.5 Costs associated to implement the Dispute Review Board (DRBF, 2007)**

The fees will be shared by both parties.

The fees will range between 0.05%- 0.25% of the project value and will act as an insurance premium against potential hefty dispute costs if the claim progresses to litigation and arbitration.

## **5 Factors which impact upon the performance and selection of Dispute Resolution Methods**

There are ten factors used to test the performance and selection of dispute resolution methods namely, cost, speed, outcome, enforceability, privacy and confidentiality, open and fairness, control, flexibility, creative remedies and relationships as identified by Cheung *et al*, (2002).

### **5.1 Cost**

The direct fees for the DRB ranging from 0.05% to 0.25% of the total construction cost. The fees are shared by both parties which mitigate the conflict of interest and perception of bias that *all three* DRB members will take one particular side. In mediation, conciliation and other current ADR methods operating in Melbourne, there is only *one* member facilitating the negotiation for settlement between two parties.

### **5.2 Openness, Neutrality and Fairness**

Neutrality, openness and fairness are the core values of the DRB. The board members must not have financial ties with any party. If there is a conflict of interest, it must be disclosed to all parties. The selection process for the DRB members is a consensus approach.

### **5.3 Speed**

The DRB is established before the commencement of the project. It will involve the experts every early on the project and potential claims dispute may be identified *before* the issues surfaces as the conflict is resolved as they arise *on site* where as the current ADR methods in Melbourne resolve disputes *after* the event has occurred. This solves the problem of delaying the time to sort out missing documentation and historical information to make an accurate determination. Additionally, the periodic site visit will improve the adversarial nature between conflicting parties when liability can be determined before the conflict turns into a dispute.

### **5.4 Outcome**

The DRB has the flexibility of acting as an advisor as well as issue non-binding recommendations. The use of lawyers on the board is discouraged to avoid an adversarial climate however the question of liability is ruled upon by *three* members. This should encourage the parties to accept the board decisions especially if the contract language includes a provision for the admissibility of a DRB recommendation into any subsequent arbitration or legal proceeding.

### **5.5 Privacy and Confidentiality**

The code of ethics for DRB stipulates that the DRB must keep all information arising from the DRB review and hearing confidential and since the dispute is resolved on site, no external party will know that an issue exists. This should preserve business relationships and prevent any unnecessary complexity which may arise from external parties after hearing about the dispute.

### **5.6 Enforceability**

The DRB is non-binding however, the goal of the DRB is facilitate the conflicting parties to resolve their differences so that construction works can continue on site.

### **5.7 Preservation of Relationships**

Both parties agree on the selection of the DRB members at the appointment of the board. This means that all parties are willing to cooperate with each other in good faith and trust the board's decision making abilities when a conflict arises. If the parties are unsatisfied with the decisions of the DRB, they are free to sort dispute resolution methods.

## **5.8 Flexibility**

The DRB can act as a flexible panel acting as an advisor which will facilitate the negotiation process more than the current ADR methods which can only act as a neutral facilitator as with mediation or act to make a judgement of a technical issue as with expert determination. Litigation and arbitration are the least flexible methods as it is only interested in the issue which relate to a point of law and does not take into account of any other factors.

## **5.9 Creative Remedies**

The DRB is a panel of three experts with different but relevant qualifications, skills and more than ten years of experience within the construction industry. The blend of qualifications and experience of the three-person DRB can provide a powerful combination of decision-making abilities than one person trying to make a judge within their limits of understanding and experience which is the case with expert determination.

## **5.10 Degree of Control**

As mentioned before, the DRB members are agreed upon by both parties and the board resolves issues on site. The board can also act as an advisory panel which is not possible with the current operation of ADR methods. These factors give both parties a feeling of being control of the outcome and processes involved to reach an agreement.

# **6 Methodology**

The entire process comprised of a structured interview and a questionnaire.

**Questionnaire:** There were 10 survey questions asking the respondents to rank from the likert scale of 1 to 5 (1 for extremely disagree, 5 for extremely agree) using the ten criteria factors, the respondents were asked to rank each of the criterion on whether they agree or disagree that the performance of DRB has a comparative advantage over the eight other dispute resolution methods.

**Interview Questions:** The respondents were asked to read some information regarding the use of DRB and they were asked questions regarding their perception of the DRB as well as any concerns regarding the implementation of the mechanism in the Melbourne construction industry.

## **6.1 Population and Sample**

The population sample was restricted to the Melbourne industry. The research sample consisted of twenty one respondents which undertook both the structured interview and questionnaires. The research sample included: five architects, three engineers, three quantity surveyors, two development managers, three project managers, one project director, one CEO, one site foreman and two construction managers. Fifteen of these participants had over ten years of experience in their respective field of work. Eighty percent of the respondents answered that the project size their company generally undertake is in excess of \$10 million. The average number of disputes that each building professional had been involved in over the last five years was five which confirms that these respondents have had a reasonable level of experience.

## **6.2 Data Analysis Tool**

### **6.2.1 Structured Interview Analysis**

The structured interview has been analysed using the ‘grounded theory’ approach, an example can be referred in Strauss and Corbin (1998).

### 6.2.2 Questionnaire Survey data analysis

To measure the performance of the conflict management mechanisms of the DRB in comparison with other dispute resolution methods two mathematical equations were used for the analysis of the quantitative data. There are Relative Performance Index (RPI) and Relative Attractiveness (RA) for each dispute resolution method.

#### Step 1. Relative Performance Index

To determine the performance of any dispute resolution method when compared with DRB on each criterion, the respondents' ratings are transformed in Relative Performance Index (RPI) for each criterion. RPI is computed using the following mathematical expression:

$$RPI = \sum W_i / (A \times n) \dots \dots \dots \text{equation 1}$$

Where  $\sum W_i$  is the total score assigned importance of a decision criterion by all the respondents;

A is the highest weight (5; and

n is the number of respondents

The computed RPI are then ranked for each dispute resolution method on each criterion. The areas of comparative advantages of the DRB over dispute resolution method on each criterion were identified.

#### Step 2. Relative Attractiveness

The next step is to evaluate the relative attractiveness (RA) of each dispute resolution method on each of the 10 criteria. This may be obtained by combining the Relative Importance Index (RII) of a criterion and the Relative Performance Index of that criterion. This may be obtained using the following model:

$$RA_a = (RII_a) (RPI_a) / 25 (\%) \dots \dots \dots \text{equation 2}$$

Where:

$RA_a$  = Relative Attractiveness of a dispute resolution method on criterion  $a$

$RII_a$  is the Relative Importance Index of criterion  $a$

$RPI_a$  is the Relative Performance Index (RPI) of a dispute resolution method on criterion  $a$

## 7 Results

### 7.1 Interview responses-Perception and concerns of the Dispute Review Board method

After reading the information regarding the structure, components and use of the DRB, sixty two percent of the respondents had concerns regarding the practicality of achieving the qualities of neutrality, impartiality and independence in the selection, nomination and appointment of the DRB members. These respondents felt that the Melbourne construction industry is relatively small therefore it is even more reliant on relationships than compared with the US market. One respondent had concerns regarding the adequate knowledge of the DRB members. The construction process is made up of different stages requiring different specialists in each stage. The three members may not be knowledgeable for all facets and stages of project management.

Another respondent stated that the selection process was open but did not necessary achieve fairness as humans are always influenced by political interests. Ten percent of the respondents perceive the DRB's function being very similar to a panel three expert witnesses providing technical knowledge therefore they do not have full faith in the impartiality of the board members although the board is paid by both parties. The negative attitudes highlight the lack of trust among the parties within the highly adversarial Melbourne construction industry. However, twenty percent of the respondents felt that independence could be achieved as the board members have no financial ties with any party. Furthermore, the both parties agree on the other party's chose of member so fairness is achieved in this extent.

Eighty five percent of the respondents agreed that the formation of the DRB clause into the contract at the commencement for the project will involve the experts very early on the project as they will have the relevant design documentations, specifications and project scope as well as understand the contract conditions. It will also incorporate a spirit of cooperation among the parties. However,

twenty percent of the respondents also noted that for potential claims dispute to be identified before the issue surfaces is dependent on the particular job, type of contract used, the parties involved as well as the effective management of the board. The use of Design and Construct contracts may not be suitable for the DRB as the selection of the board members may be time consuming and delay the commencement of the works. Furthermore, in a Design and Construct contract, design is not fully documented before the construction starts therefore the experts' knowledge of the design documentation is limited.

Fifty percent of the respondents felt that the periodic site visits needed to be weekly and at the end of every milestone to effectively mitigate conflicts transforming into disputes.

No respondent felt that the adversarial nature between conflicting parties will improve with the DRB members settling conflicts quickly whilst the job is in progress when the liability can be determined as the notion of liability is subjective. Thirty percent of the respondents expected the project manager to be able to identify any risks which may develop into a dispute.

Ninety five percent of the respondents felt that the DRB member's fee of 0.05%-0.25% of the total project costs was too high to be factored into the overall construction cost planning budget. However, one respondent believed that a lump sum would be viable.

Eighty percent of the respondents feel that the DRB will enhance cooperation among the project manager, the owner and the contractor as all parties have the intention to abide by the board's ability to make decisions and investigate any unreasonable behaviour when the board is formed at the start of the project. However, the preservation of relationships is not a strong enough incentive for most respondents to implement the DRB at the current cost structure. Thirty percent of the respondents argued that certain small matters can inflate unnecessary with the existence of the DRB whereas before, the matter could have been resolved through private negotiation. All the respondents felt positive that the use lawyer is discouraged.

## **7.2 Performance of Dispute Resolution Methods on the 10 criteria**

Results from the analysis of the Relative Performance Indices (RPI) are displayed in table 7.1



Table 7.1 Performance of any dispute resolution method in relation DRB on each criterion

Dispute Resolution Methods	Cost		Open and Fairness		Speed		Privacy and Confidentiality		Outcome		Enforceability		Relationships		Flexibility		Creative remedies		Control	
	RPI*	Rank*	RPI	Rank	RPI	Rank	RPI	Rank	RPI	Rank	RPI	Rank	RPI	Rank	RPI	Rank	RPI	Rank	RPI	Rank
Mediation	0.562	5	0.676	5	0.676	5	0.686	5	0.676	3	0.552	3	0.752	3	0.705	3	0.705	3	0.676	5
Conciliation	0.562	5	0.676	5	0.676	5	0.686	5	0.676	3	0.552	3	0.752	3	0.705	3	0.705	3	0.676	4
Mini-Trail	0.591	3	0.714	3	0.714	4	0.705	3	0.657	6	0.561	2	0.733	5	0.705	3	0.686	6	0.657	6
Expert Determination	0.581	4	0.705	4	0.724	3	0.7143	4	0.676	3	0.6	1	0.672	7	0.705	3	0.705	3	0.705	3
Litigation	0.752	1	0.752	1	0.752	1	0.8	1	0.695	1	0.467	7	0.762	1	0.724	1	0.724	1	0.724	1
Arbitration	0.752	1	0.752	1	0.752	1	0.8	1	0.695	1	0.467	7	0.762	1	0.724	1	0.724	1	0.724	1
Partnering (Procurement Method)	0.552	7	0.638	8	0.552	7	0.629	7	0.6	7	0.513	6	0.695	6	0.657	7	0.6	8	0.543	7
Negotiation	0.391	8	0.676	7	0.448	8	0.6	8	0.572	8	0.543	5	0.6	8	0.439	8	0.657	7	0.533	8

\*RPI= Relative Performance Index factors. \*Rank=The higher the ranking, the higher the DRB has comparative advantage over other dispute resolution methods on the criterion.

Results from the RPI demonstrate that for the criterion of cost, the DRB was perceived to have comparative advantage over litigation and arbitration, followed by mini-trial and expert determination. However, when compared with negotiation, the DRB was perceived to have no comparative advantage.

For the criterion of open and fairness, the DRB was perceived to have a comparative advantage over litigation and arbitration, followed by mini-trial and expert determination. But when compared with partnering, the DRB was perceived to have no comparative advantage.

For criterion of speed, the DRB was perceived to have a comparative advantage over litigation and arbitration, followed by mini-trial and expert determination. Again when compared with negotiation, the DRB was perceived to have no comparative advantage.

For the criterion of outcome, the DRB was perceived to have a comparative advantage over expert determination, litigation and arbitration but have no comparative advantage over negotiation and partnering.

For the criterion of enforceability, DRB has no comparative advantage over litigation and arbitration but when compared with expert determination, followed by mini-trial and mediation and conciliation the DRB has a comparative advantage. The non-binding nature of DRB was perceived to be similar to the non-binding nature of mediation and conciliation but preservation of relationships was perceived to have a higher comparative advantage in DRB than mediation and conciliation.

For the criterion of privacy and confidentiality the DRB was perceived to have a comparative advantage over litigation and arbitration but no comparative advantage over mediation, conciliation, negotiation and partnering.

For the criterion of creative remedies the DRB was perceived to have a comparative advantage over litigation, arbitration, conciliation and mediation but no comparative advantage over partnering, negotiation followed by mini-trial. Mini-trial allows parties to get an insight into the potential outcome which might be generated if the case progressed into a real litigious trial which may explain why the DRB was perceived to have no comparative advantage.

For the criterion of degree of control, the DRB was perceived to have a comparative advantage over litigation, arbitration, mini-trial, expert determination, as well as mediation and conciliation but have no comparative advantage over negotiation and partnering. This is due to the perception that board members are agreed by both parties upon the appointment of the board. However negotiation and partnership is a private process where there are no set rules, process and outcome of dispute resolution therefore 80% of respondents still feel more in control in the 'muddy pool' of negotiation.

For the criterion of relationships, the DRB was perceived to have a comparative advantage when compared with litigation, arbitration, mediation and conciliation. This demonstrates that resolving issues on site is perceived to enhance the cooperation between parties to settle issues quicker than resorting to an external third party.

For the criterion of flexibility, the DRB was perceived to have a comparative advantage over litigation, arbitration, followed by expert determination, mediation, conciliation and mini-trial but no comparative advantage over negotiation and partnering. This result confirms that the DRB can act as a flexible panel acting as an advisor which will facilitate the negotiation process more than the current ADR methods which can only act as a neutral facilitator as with mediation or act to make a judgement of a technical issue as with expert determination. Litigation and arbitration are the least flexible methods as it is only interested in the issue which relate to a point of law and does not take into account of any other factors.

For the ten criteria, there is a pattern that the DRB has no comparative advantage over negotiation and partnering but has a comparative advantage over litigation, arbitration and mini trial. The pattern demonstrates that the respondents still perceive the conflict management mechanisms of negotiation and partnering potentially performing a better dispute resolution using all ten criteria excluding enforceability.

### 7.3 Attractiveness of DRB when compared with other dispute resolution methods.

Results from the analysis of the Relative Attractiveness (RA) of each ADR methods are displayed in table 7.2

Table 7.2 Evaluation of the Relative Attractiveness (RA) of the dispute resolution methods on each criterion

Dispute Resolution Methods	Cost		Open and Fairness		Speed		Privacy and Confidentiality		Outcome		Enforceability		Relationships		Flexibility		Creative remedies		Control	
	RA *	Rank	RA	Rank	RA	Rank	RA	Rank	RA	Rank	RA	Rank	RA	Rank	RA	Rank	RA	Rank	RA	Rank
Mediation	2.248	5	2.523	5	2.523	5	1.699	5	2.523	3	1.744	3	2.521	3	1.692	3	1.371	3	1.804	4
Conciliation	2.248	5	2.523	5	2.523	5	1.699	5	2.523	3	1.744	3	2.521	3	1.692	3	1.371	3	1.804	4
Mini-Trial	2.364	3	2.665	3	2.665	4	1.746	4	2.452	6	1.773	2	2.457	5	1.692	3	1.277	6	1.753	6
Expert Determination	2.324	4	2.631	4	2.702	3	1.768	3	2.523	3	1.896	1	2.253	7	1.692	3	1.371	3	1.881	3
Litigation	3.008	1	2.806	1	2.807	1	1.981	1	2.594	1	1.476	7	2.554	1	1.738	1	1.408	1	1.932	1
Arbitration	3.008	1	2.806	1	2.807	1	1.981	1	2.594	1	1.476	7	2.554	1	1.738	1	1.408	1	1.932	1
Partnering (Procurement Method)	2.208	7	2.381	8	2.06	6	1.558	7	2.239	7	1.621	6	2.33	6	1.577	7	1.056	7	1.449	7
Negotiation	1.564	8	2.522	7	1.672	7	1.486	8	2.135	8	1.716	5	2.011	8	1.054	8	1.036	8	1.422	8

\*RA= Relative Attractiveness of factors

Results from RA indicates that for the criteria of cost, open and fairness, speed, privacy and confidentiality and outcome, respondents perceived the DRB as relatively more attractive when compared with litigation, arbitration, followed by mini-trial and expert determination. But for the criteria of negotiation and partnering, the DRB has no comparative advantage in terms of attractiveness of preference.

For the criterion of enforceability the DRB was perceived as relatively more attractive when compared with expert determination, mini-trial, mediation and conciliation but have no comparative advantage over litigation, arbitration, partnering and negotiation.

For the criteria of creative remedies and degree of control the DRB was perceived as relatively more attractive when compared with litigation, arbitration, expert determination, mediation and conciliation but have no comparative advantage over mini-trial, negotiation and partnering.

Results combining the RPI and RII together demonstrated a perception of the respondents' preference in the selection of dispute resolution methods.

## 8 Conclusion

The results from the analysis of interview responses and questionnaire survey demonstrates that when compared with litigation and arbitration the DRB is perceived to have a comparative advantage in 9 out of 10 criteria which are namely cost, open and fairness, speed, privacy and confidentiality, outcome, relationships, flexibility, creative and control. The DRB is perceived to have a comparative advantage in the capacity to maintain relationships when compared with mediation and conciliation. This indicates that the building professionals feel that *on site* resolution

of issues improves communication and cooperation between parties. When compared with negotiation and partnering the DRB was perceived to perform have no comparative advantage indicating that informal negotiation is still the preferred method of dispute resolution in Melbourne. The concerns which building professionals in Melbourne have regarding the use of DRB arise from the high costs of employing DRB members, a lack of faith in the board's ability to achieve qualities of neutrality and impartiality in the selection of board members resulting from the perception that Melbourne construction industry is so reliant on networks and relationship, and as well as the general attitude of resistance to change in the adversarial construction industry.

If DRB is to be implemented successful in the Melbourne construction industry, site managers and site foreman will need to be directly involved in the process of decision making for dispute resolution to effectively resolve issues on site. The advantage is that they understand the subcontractors as a large proportion have a trade background in their training. This will improve the adversarial climate between conflict parties as lot of subcontractors do not like to deal with office personnel but will communicate with the site managers because they feel that site managers are the only ones who understand how a building is physically built.

The DRB will not be very effective if the project manager with the power of decision making and reporting obligations only found out about an arising conflict at the same time the DRB was informed to investigate an issue. This may involve an adjustment in the organisational structure of decision making and consequently, pose challenges for the project managers to accept a partial proportion of their decision making power to be shared by site managers.

Industry bodies such as Masters Builder Association Victoria (MBAV) and the Housing Institute of Australia (HIA) need to get involved to convince the government to initiate a DRB project. The DRB may have some impact to how the union currently operates in construction. Any potential conflict of interest in power will require legislation to resolve any potential clash.

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