

CPD Webinar series

DEEP DIVE INTO SYSTEMIC RISKS IN THE AUSTRALIAN ARCHITECTURE SECTOR

D&C Procurement

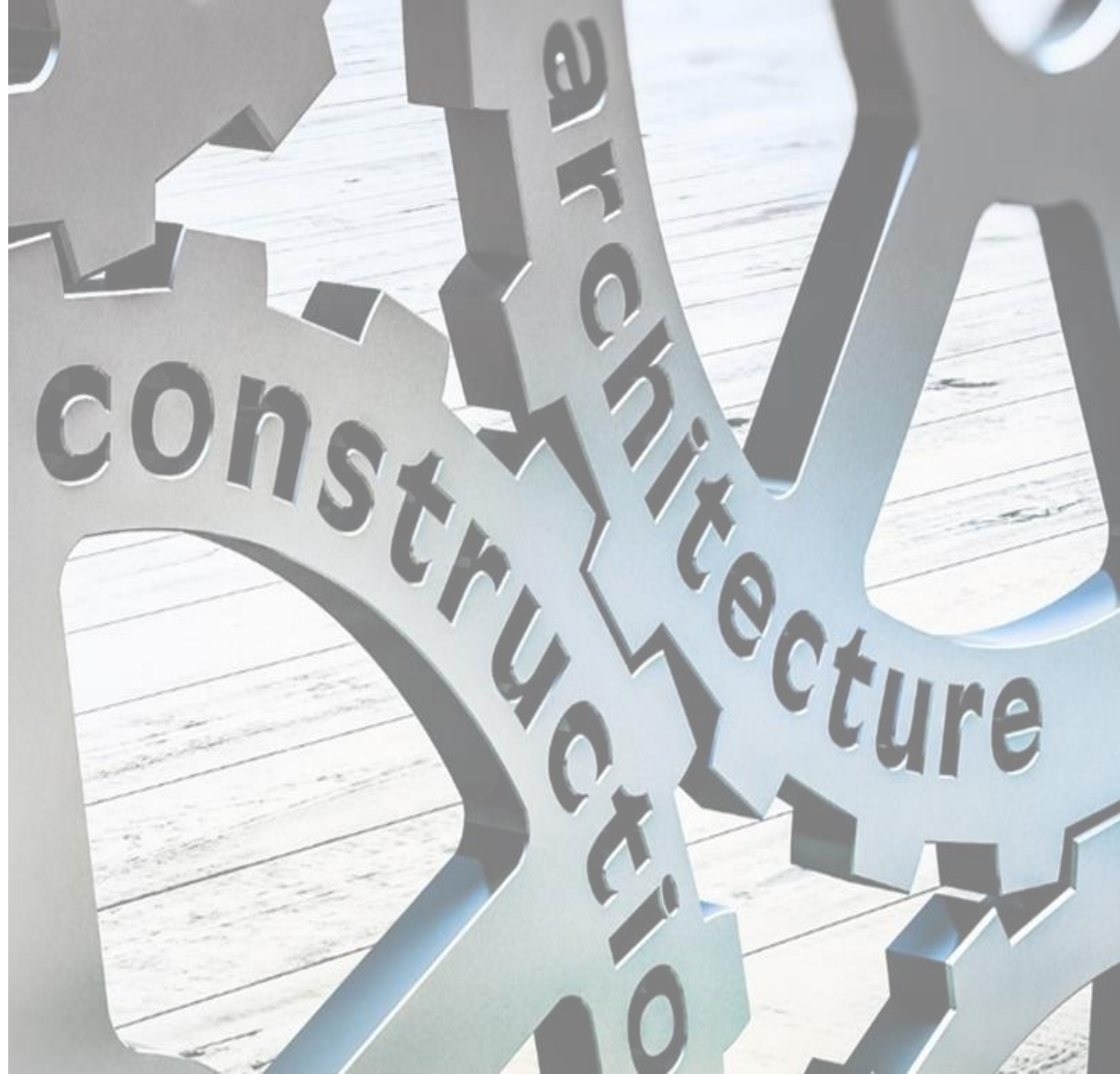
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Architects
Registration Board
of Victoria



Acknowledgment of Traditional Owners

This presentation is being delivered on the lands of the Wurundjeri People and I wish to acknowledge them as Traditional Owners.

I would also like to pay my respects to their Elders, past and present, and Aboriginal Elders of other communities who may be here today.



CPD Questionnaire

- Attending this webinar live and submitting this form will qualify you for 1 Hour Formal CPD. Certificates will be sent to the email address used to complete this form, please ensure your name and contact details are correct. This form will close 24 hours after the webinar has commenced.
- <https://forms.office.com/r/LLFYUMgi4A>

Deep dive into D&C Procurement



ABOUT THE RESEARCH



What are systemic risks and why is the ARBV concerned about them?

- Systemic risks are risks that:
 - Extend across the sector
 - Can compromise architects' ability to comply with their professional standards' obligations
 - Can cause widespread harm to clients, users, the public and architects themselves
- Systemic risks may be difficult to address:
 - May be latent
 - Difficult to identify in advance
 - Too widespread for the regulator to tackle at once or without assistance from other bodies

What is the purpose of the research?

- Joint research project undertaken by the ARBV and the NSW ARB:
 - To identify key current, emerging and future systemic risks facing the architectural profession in Australia
 - To assist the ARBV and NSW ARB to better target proactive regulatory activity
 - To support architects to navigate systemic risks while discharging their regulatory obligations

- Work undertaken by the ARBs:
 - **Systemic Risks in the Australian Architecture Sector (2022)** – largely based on a desktop review
 - **Deep Dive Report into Systemic Risks in the Australian Architecture Sector (2024)** – insights gained from focus groups with broad range of sectoral participants from Vic and NSW

Using a systemic lens



D&C PROCUREMENT AND DESIGN



Impact of D&C procurement on the design process



Findings: Various features that characterise D&C procurement can result in a shift in responsibility for, and control of, the design delivery process away from architects



Insights: This shift in responsibility and control may have an impact on the level of detail in design documentation, the quality of design, and the translation of the design into the built outcome



Implications: Mechanisms to ensure that architects retain adequate control over the design process and are able to manage design intent during the construction process are critically important

Impact of D&C procurement on the design and delivery of architectural services

- Design process may be de-prioritised in a novated D&C context when the contractor is managing time efficiency & costs
- Architects face the challenge of maintaining design intent whilst delivering quality designs and meeting regulatory compliance during construction
- Architects' ability to forecast risk and prepare for other demands of D&C procurement:
 - Research, coordination and assessment of RFIs
 - Coordinate drawings
 - Shop drawing reviews
 - Sample / prototype reviews and sign off
 - Value Management [VM] proposals and changes
 - Contractor led design proposals and material substitutions

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Question 1: Which of the following statements is true in the D&C context?

- (a) Architects' professional standards obligations don't apply if they are given a limited design role
- (b) Architects' professional standards obligations don't vary, regardless of the extent of their design role
- (c) Contractors are responsible for discharging architects' professional standards obligations when they assume responsibility for design

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CONTRIBUTING FACTORS



Factors that contribute to adverse outcomes for architects in the context of D&C procurement



Findings: There are various contributing factors, including limited budgets, unreasonable expectations, and inadequate collaboration



Insights: Many of the contributing factors are largely outside architects' control, particularly the culture and approach among project participants



Implications: More education is needed for all sectoral participants to raise awareness of the impact of cultural issues on design and built outcomes

Factors that contribute to adverse outcomes for Architects in the D&C context

- Mismatch between the procurement method selected to deliver the project, it is common to not know which contractor will be selected at the time of entering into a contract with client, relationship (or lack of) and communication with the original client / principal upon novation
- Architects have the responsibility as a lead consultant and yet have reduced influence to maintain the integrity of the design and built outcomes, for example:
 - Diminished authority in decision making
 - Lack of access to critical information such as cost plan or contractor's brief
 - Not included in strategic decision-making processes at PCG meetings
 - Limited free access / attendance on site
 - No knowledge of the scope of work agreed to by other project consultants
 - Unfair and less than satisfactory contractual terms placing too much responsibility on architects and can compromise on insurance coverage

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Question 2: Which factors would excuse an architect from complying with their professional standards obligations in the D&C context?

- (a) Fees too low
- (b) Limited time to complete design
- (c) Limited on-site presence
- (d) None of the above

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RISK, LIABILITY AND INSURANCE



Impact of D&C contracts on the allocation of risk, liability and insurance



Findings: D&C contracts can be used to unfairly allocate risk and responsibility to architects, which can increase their exposure to liability



Insights: Allocation of risk and indemnities under D&C contracts may be designed to secure project finance, but may compromise insurance coverage for architects



Implications: Architects are unlikely to have sufficient leverage to negotiate more favourable terms

Impact of D&C contracts on the allocation of risk, liability and insurance

- Various types of D&C contracts including bespoke professional services agreement - Architects should always carefully review and understand clauses, key terms & conditions, inclusions and exclusions as part of contract review and negotiation process with the client
- Watch out for contract terminology such as 'fit for purpose', 'warrant', 'guarantee' and 'set off' as they may be unfair terms and impose risk that could compromise PI insurance coverage
- Currently Architects are facing a challenging PI insurance market overall with sharp rise in PI insurance premiums annually and coverage exclusions
- Do not sign a contract that unfairly disadvantage the Architect. Always seek advice from insurer, lawyer or other appropriate professionals for matters pertaining contracts, insurance and sound risk management practice

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Question 3: Which statement about D&C contracts is true?

- (a) D&C contract indemnities override architects' professional standards obligations
- (b) D&C contracts do not change architects' professional standards obligations
- (c) Architects' insurance obligations don't apply if the design role under a D&C contract is limited

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MITIGATION MECHANISMS



Mechanisms that can mitigate adverse impacts on design and delivery of architectural services



Findings: Core mechanisms to mitigate adverse impacts relate to communication, engagement and collaboration among the key protagonists in a construction project – namely, client, contractor and designers.



Insights: Early collaboration between designers and those with trade intelligence is likely to deliver the best results.



Implications: Sector-wide cultural change that focuses on early engagement and collaboration coupled with appropriate regulatory support through practitioner regulation may help to drive better outcomes from D&C procurement.

Mechanism that can mitigate adverse impact on design and delivery of architectural services

- Clear and open communication on a regular basis between all participants
- Early engagement of contractor ie. ECI process, allows contractors to have input into a project much earlier. This model can foster a closer, collaborative and less adversarial approach and benefits include:
 - Ability to maximise innovation
 - Program flexibility
 - Increased project transparency
 - Opportunity to identify cost savings
 - Improved project quality by obtaining contractor's input regarding major design components

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Question 4: Which mechanisms that could mitigate adverse outcomes in the D&C context are supported by the regulatory framework?

- (a) Clear design process
- (b) Effective communication between client and architect
- (c) Detailed design documentation
- (d) All of the above

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Question 4: Which mechanisms that could mitigate adverse outcomes in the D&C context are supported by the regulatory framework?

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- (c) Detailed design documentation
- (d) All of the above**

EDUCATION AND TRAINING



Education and training to improve D&C outcomes



Findings: There is a need for more education and training for architects about procurement models, negotiating and navigating D&C contracts, and risk management



Insights: A stocktake and analysis of current education and training about D&C procurement could be beneficial to ensure that future education and training is appropriately targeted.



Implications: There may be benefit in providing sectoral participants with case studies to illustrate good practice in the context of D&C procurement.

Education and training to improve D&C outcomes

- Support, education and training is vital to Architects to understand the various procurement methods, in particular D&C and how to navigate
- Continuous improvement via a robust Quality Management system – learnings, feedback, what went well / what went wrong and debriefing process
- Knowledge exchange – share and provide mutual support across different areas of expertise and central resource that is readily available for Architect's reference

Q&A



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