

# Melbourne University Law School

## Construction Masters Programme

### Reimagining Risk

Guest presentation by

**Professor Doug Jones AO**

and

**Professor Janet Walker CM**

[www.dougjones.info](http://www.dougjones.info)

[www.janet-walker.com](http://www.janet-walker.com)



# Outline

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**Identifying the risks**



**Allocating the risk**



**Managing the risks**

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# Our perspectives

# Identifying the risks

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Clear identification of project objectives

Who are the stakeholders in achieving these objectives?

Collaboratively  
plan the  
preparation of a  
risk matrix



Use the matrix as  
a living document  
with the  
stakeholders

# Allocating the risk

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- Choice of project delivery model
- Contract structure – bespoke, standard form or hybrid
- Interrelationships – Designers, project managers, suppliers, subcontractors, end users
- Some key risks – cost, time, performance/quality

# Managing the risk

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Extracting heads  
from the sand

The living risk matrix

Do the contracts  
manage risk?

How can lawyers  
help?

Issue and dispute resolution – its place in the  
process

# Managing the risk

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## Institutional Guidelines

- IBA Rules on Taking of Evidence 2010
- CIArb Protocol 2007
- Expert Codes of Conduct

2

## Expert Witness Conferencing

- Also known as 'hot-tubbing'
- Experts engage in a simultaneous forum-like discussion about differences in their conclusions

3

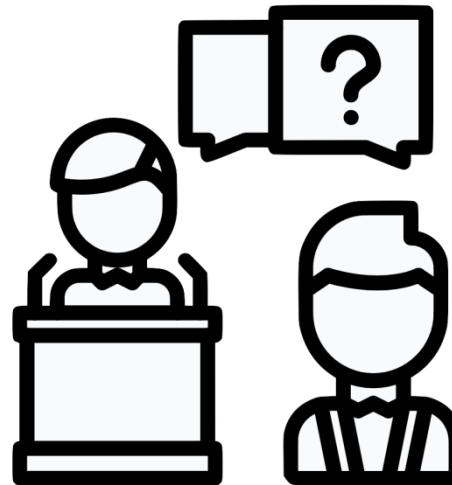
## Tribunal Appointed Experts

- Prague Rules
- Less perceived bias from parties
- Nevertheless disadvantages

# The role of the expert witness



Provide opinions based on witness evidence and documents

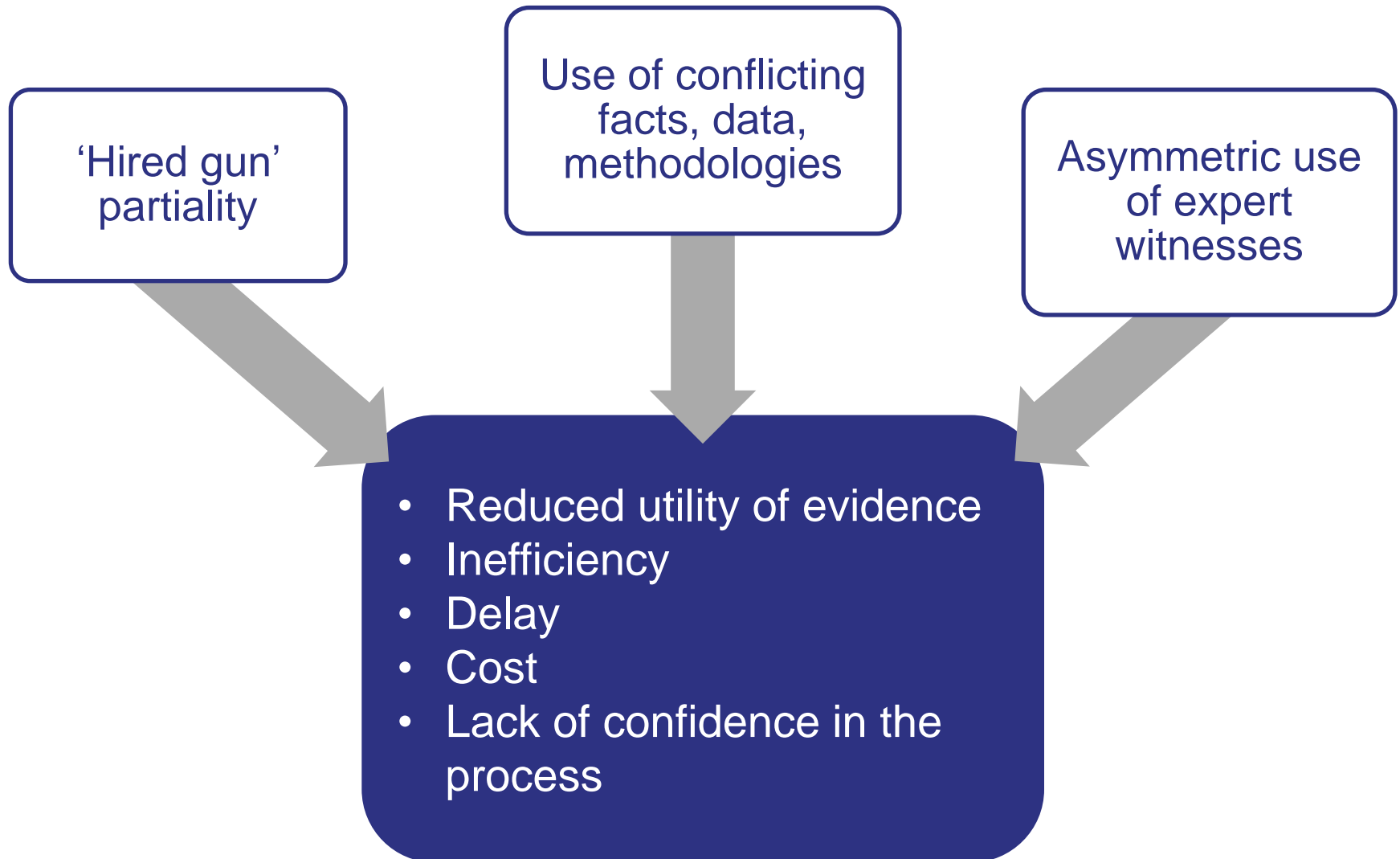


Assist Tribunals in a field of unique complexity



# What are the challenges?

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# What can be done better?

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1. Early identification of disciplines and experts
2. Common list of questions
3. Deferral of expert reports until factual evidence is available
4. Common data set
5. First - joint expert reports identifying areas of agreement and disagreement
6. Then - individual expert reports on areas on disagreement only
7. Experts providing alternative views on the other's assumptions and methodologies

# Proactive case management

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Experts



Issues



Reports

Active Tribunal engagement

# Use of experts for calculations

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## Delivering the experts to the Tribunal *after* the hearing





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