

Risk & Dispute Management

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At some stage you will face the need to deal with an unexpected critical incident or dispute. This can significantly impact on your organisation in terms of direct costs, reputational issues, trading disruption, cash flow interruption, management time, or damage to commercial and stakeholder relationships.

Finlaysons' Risk and Dispute Management team provides pragmatic, strategic advice and assistance aimed at containing the scope of problems and disputes and preventing unwanted further escalation.

We work with our clients to identify their desired outcomes and priorities. We evaluate the risks and key outcomes. We then formulate an appropriate risk or dispute management plan and strategy, tailored to your specific needs and the circumstances.

Our depth of experience across areas of commercial risk, critical incident response and dispute management assists our clients to best protect and pursue their interests and objectives.

Risk management

We provide:

- risk assessments, audits and "health checks";
- risk management strategies;
- commercial document and policy development and review;
- contracting protocols and templates;
- compliance advice, checklists and systems;
- education and training programs;
- probity reviews; and
- corporate governance advice.

We have, for example:

- completed a risk assessment of contracting and safety protocols and updated contract and policy documents for two major South Australian public events;
- provided compliance advice and developed compliance systems and checklists for a publicly listed resources company with regard to licensing requirements, conditions and approvals and environmental obligations;
- advised a large property development consultant company on probity issues associated with a significant land acquisition and associated development project which also involved government interests; and
- developed and provided training on updated internal policies for a large Australian sporting association and also advised on compliance with respect to player contracting and recruitment.

Critical incident and crisis response

Despite the best risk management processes, critical incidents can and do occur. If these are not managed promptly and effectively, the impacts on your organisation can be substantial.

We have experience in helping clients manage and respond to a variety of incidents, such as:

- industrial accidents;
- internal and external investigations by public authorities;
- fatalities and other catastrophic events; and
- equipment failure and accident response.

We can help with the immediate response stage (including on site attendance where appropriate), negotiating with emergency services, ensuring compliance with relevant reporting obligations, liaising with insurers and notifying claims. We also provide urgent advice on immediate steps and the implications of and risks and exposures arising from the incident and mitigation strategies, without compromising any insurance indemnity claim or cover.

Following the initial response stage, we can assist with management of industrial and work health and safety issues (including prosecutions) and with general claims management advice.

We also provide representation in respect of any prosecutions, coronial enquiries and claims that may eventuate.

We work with our clients both in the immediate aftermath and throughout the process to effectively manage their internal response, including crisis management, internal investigations or remedial steps, maintaining legal professional privilege, stakeholder relations and reporting to and advising the Board or management team.

Disputes

We have a substantial depth of experience in the effective conduct of litigation and dispute matters.

Our clients' circumstances and preferences are central to our consideration of budgeting, cost, resourcing and project management options and choices.

We manage commercial litigation of varying scale and complexity across Federal, State and local Courts.

Our dispute management practice is not confined to courts and tribunals. Alternative dispute resolution techniques, particularly mediation, arbitration and expert determination, form a key part of our practice. Employing these processes at suitable junctures helps clients obtain the best outcome and to limit (and leverage) the potential cost, distraction and uncertainty to which parties to ongoing litigation are exposed.

We regularly assist with:

- contractual disputes;
- negligence claims;
- statutory liability matters, including Competition and Consumer Act claims;

- product liability, product recalls and resulting claims;
- commercial leasing and other property-related disputes;
- engineering, building and construction disputes, including security of payment claims;
- fraud and other recovery actions;
- trade mark, patent, copyright and other intellectual property disputes;
- directors' and officers' liability;
- professional indemnity claims;
- defamation and related "damage to reputation" matters;
- disputed estates, testamentary matters and contentious administration and guardianship issues; and
- judicial review and AAT appeals.

We have:

- managed the defence of Supreme Court proceedings and successfully negotiated a settlement at mediation in a matter involving allegations of employee theft of confidential information and breach of contractual employment restraints, alleged to have resulted in substantial loss of profits;
- achieved a favourable outcome for a US-based manufacturing group in an international product liability dispute in the Supreme Court, involving contract, design, manufacture, warranty, negligence and trade practices issues and involving the evidence of more than 50 witnesses across 5 continents;
- resolved a claim on behalf of a subsidiary of the Swiss government in respect of claims arising out of the acquisition of an Australian defence contractor, including claims against the vendors for breach of various warranties and disclosure obligations and claims against third parties in India arising out of certain joint venture arrangements in place;
- advised an ASX-listed energy and resources company and operator of a gas pipeline following a major gas flare incident, including in respect of emergency incident response and the recovery of resulting losses;
- obtained an urgent freezing order in the Supreme Court preventing any dealing, disposal or encumbering of assets in the context of a substantial employee fraud to seek to preserve our clients' ability to recover the moneys through a recovery action;
- acted for vendors of a business in respect of alleged breach of warranties in a share sale and purchase agreement relating to a large consulting firm in the property and development sector;
- advised and assisted on aspects of two major Gas Price Arbitrations and various other price reviews under gas supply agreements for major listed energy and resources companies;
- obtained urgent injunctive relief in the Federal Court on behalf of receivers & managers in connection with a large administration in the agricultural sector;
- represented a major South Australian sporting association in a range of tribunal disciplinary hearings;

- defended and successfully resolved Federal Court proceedings for a major Australian hospitality group concerning the design, construction and management of a hotel complex, operated as a managed investment scheme, involving contractual, negligence, trade practices and Corporations Act issues;
- acted in multiple party, multiple matter litigation arising out of two separate interstate train derailments, one of which also involved a major rail infrastructure collapse (including advising on emergency incident response, commercial exit/settlement strategies and third party claims);
- assisted a major supermarket chain resolve a number of development and leasing disputes, including Competition and Consumer Law issues, lease disputes and applications for urgent injunctions, in the Supreme and Federal Courts;
- helped a Commonwealth statutory authority (and its Commonwealth insurer) to negotiate a successful resolution at mediation of claims arising from the engineering, construction and installation of off-shore maritime navigational aid structures, involving multiple parties and management of related arbitration and court proceedings;
- negotiated the resolution of several disputes for major smelter operators in relation to the design, supply and installation of major capital item plant and equipment, including design, cost accounting and warranty dispute issues; and
- assisted a major accounting firm to resolve Supreme Court proceedings involving audit liability claims brought by a major transport company, arising from thefts from company accounts by that company's employee and associated third party claims.

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We work in partnership with you to develop a long-term and productive working relationship that is built on mutual trust and respect. Clients come to us because of our reputation; they stay because of the experience.

Finlaysons' Practice Areas

Industry Areas

- Agribusiness
- Banking and Finance
- Defence
- Education and Research
- Energy
- Family Business & Private Wealth Management
- Health
- Insurance
- Property and Development
- Resources
- Wine

Specialty Areas

- China
- Corporate
- Environment, Climate Change and Planning
- Intellectual Property
- Planning
- Risk and Dispute Management
- Tax and Revenue
- Wills, Estates and Succession Planning
- Workplace Relations, Management and Safety

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