

AN AUSTRALIAN PERSPECTIVE OF THE SUITABILITY OF THE SCL PROTOCOL'S PROVISIONS FOR DEALING WITH FLOAT FOR ADOPTION AND USE BY THE AUSTRALIAN CONSTRUCTION INDUSTRY

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ABSTRACT: During the negotiation and resolution of delay and disruption disputes on construction projects, the use and misappropriation of float, and the question of float ownership, are considered to be a major concern to those involved. Most practitioners and authors are of the opinion that it is an issue that should be clearly defined and addressed within the provisions of the contract. However, the terms “float” or “ownership of float” are rarely mentioned (if at all) in most of the standard forms of Australian construction contracts, giving little guidance to those involved as to how this issue should be addressed. In October 2002 the United Kingdom Society of Construction Law (SCL) published a Delay and Disruption Protocol (the Protocol) that contains a suggested approach to the issue. The aim of this research was to obtain an Australian opinion of the suitability of the SCL’s Delay and Disruption Protocols suggested approach to the issue of float and ownership of float for use by the Australian construction industry. Qualitative interviews were carried out with Australian construction industry experts experienced in the administration, negotiation, and resolution of delay and disruption disputes to obtain their opinions of the suitability of the SCL’s proposed approach. Results indicate general confusion and uncertainty as to how the issue of float and float ownership should be addressed in general, with the SCL’s approach adding further to that confusion.

Keywords: Float, Ownership, Protocol, Delay

1. INTRODUCTION

The issue of ownership of float during delay and disruption disputes is well recognized and appreciated amongst construction industry practitioners and professionals. Typically the contract documents attempt to address the issue, either expressly or impliedly within their provisions. Industry norms have evolved in an attempt to rationalize and standardize procedures. In the USA and the UK the courts have attempted to clarify and give guidance on the issue. Yet there is no single approach to the issue recognized, accepted, or applied. In Australia the standard forms of construction contracts typically allocate float ownership to the Contractor. In October 2002 the Society of Construction Law published a Delay and Disruption Protocol that contained a proposed approach to the issue of float and float ownership that they hoped would be adopted and applied on construction projects in the UK that is contrary to the position of float ownership in Australia. This research obtains the opinions of Australian construction professionals of the suitability of the Protocols approach to the issue of float and float ownership for adoption and use by the Australian construction industry.

1.1 What is Float?

The word float is considered to have no meaning outside of the context of the critical path network in which it appears [1], and that before the invention of CPA by

Kelly and Walker in 1957, there was no notion of a critical path or float in any form [2]. The existence of a ‘critical path’, non critical activities, and any associated ‘float’, grew out of the science of CPM scheduling [2], with the genesis of float being the matrix of activities, their durations, and their predecessor and successor relationships in a CPM network [1].

The term “float” itself is considered to be one that “causes many communication difficulties” [3] due to the inconsistent use of the term itself, and the inconsistent use and interpretation of the associated terminology used to define its meaning and application in the dispute resolution process and profession [1]. In the literature there are a number of suggested definitions. De La Garza [4] considers total float to represent “the total length of time an activity’s finish date may be delayed without it affecting the completion date of the entire project”, whilst Stephenson [5] considers float to be the “the period by which a non-critical activity can be delayed before that activity becomes critical”, and defines it further as “the period by which non critical activity can be delayed before the delay to that activity adversely affects the planned date for completion (that is, not the contractual date for completion)”.

The above definitions reflect both how float is considered to be generated, as a by-product of a Critical Path Method (CPM) calculation [1-2, 4], and the perceived benefits of float, that it is, extra time available for use as a

contingency to be used to cope with unanticipated conditions, and/or circumstances on a project [2, 4, 6], thereby acting as a safety net against project risks [7].

1.2 Ownership of Float – The Issue

The issue of ownership of float is concerned with who has the right to use the perceived spare time present in a non critical or chain of non critical activities in a CPM network. Its use by either party may be to increase the efficacy of their operations, or to alleviate the effects of an individual party's unexpected risk event, causing the appropriation of the float. The consequence of the misappropriation of such float by a party not perceived to be entitled to its use may result in a claim for some form of compensation from the party who is considered to "own" the float, or as a result of its use, non critical activities becoming critical, or even extending or delaying the project completion date, resulting in delay and/or disruption disputes or liquidated damages claims that need to be resolved by an assessment of causation. There is no generally accepted standard approach to the issue of float and float ownership in Australia. Typically, Australian standard forms of construction contract rarely address the issue expressly or directly, favoring it being implied into, and interpreted through, the terms of the contract [8], leaving the contracting parties at liberty to, at best, attempt to negotiate the issue as a separate specification document, or at worst, ignore the issue altogether in the hope that there will be no project delays, relying on the interpretation of the events, project records, and contract documents should things go wrong.

1.3. Approaches to Ownership of Float

Al-Gahtani [7] has identified a number of recognised or proposed approaches to the issue of ownership of float that have been introduced over the last three decades by various authors and practitioners. These are the:

- i. Owner ownership approach [9];
- ii. Contractor ownership approach [7];
- iii. Project float approach [10];
- iv. Bar approach [11];
- v. 50/50 Allocation approach [9];
- vi. Commodity approach [4];
- vii. Contract risk approach [12];
- viii. Path distribution approach [13];
- ix. Day-by-day approach [14-15];
- x. Total risk approach [7].

2. THE DELAY AND DISRUPTION PROTOCOL

The Delay and Disruption Protocol was launched on the 16th of October 2002 by the UK's Society of Construction Law (SCL) that contains a number of specific definitions and suggested provisions concerning float and how the issue of ownership of float should be approached.

2.1 The Society of Construction Law

The SCL (UK) are an organisation founded in 1983, of lawyers and surveyors, engineers, architects and others with an interest in the subject of law as applied to

construction projects [16]. Their objective as an organisation is "to promote the study and understanding of construction law amongst all those involved in the construction industry" [17-18].

2.2 Objective, Purpose, and Aims of the Protocol

The Protocol's objective is "to provide useful guidance on some of the common issues that arise in construction contracts, where one party wishes to recover from the other an extension of time and/or compensation for the additional time spent and the resources used to complete the project" [1, 10, 19-20], whilst its purpose "is to provide a means by which the parties can resolve those matters and avoid unnecessary dispute" [1, 10, 21].

The Protocol is not intended to be a contract document (although one of the aims of those responsible for the drafting of the Protocol, is that in time, most contracts will follow or adopt the Protocol's philosophies and guidance as the best way to deal with delay and disruption issues [1, 10, 16, 19, 22-25].

It is intended to provide assistance to those negotiating and managing contracts to avoid, or handle efficiently, delay and/or disruption disputes should they arise [24], by providing materials that, should the parties agree, can be used as an aid in deciding issues that are not clearly covered by the contract [19].

Its contents are not framed with the intention of it ever forming part of the contract, nor is its content ever meant to take precedence over the express terms of a contract [16], nor is it intended to be a statement of law. It is a proposed "scheme for dealing with delay and disruption issues" [10, 16] as a means of resolving those matters and avoid unnecessary delay [21] in a balanced and viable way that is available for:

- "Adoption by the parties to a construction contract, in order to provide the means to avoid extension of time and disruption disputes;
- An aid to deciding issues that are not clearly covered by an existing contract;
- An aid to decision makers ... in dealing with delay and disruption issues" [26].

Carmichael and Murray [27] cite Black and Caletka [28] as identifying the principle objectives of the Protocol as being to promote:

- An agreed critical path at time of delay;
- Agreed float available at time of delay;
- Agreed extension of time (EOT) entitlement at time of delay;
- Agreed compensation at time of delay.

And to prevent:

- A "wait and see" approach to determining an EOT;

- Excessive cost of formal dispute resolution;
- Excessive cost of establishing cause-effect nexus forensically; and
- Disruption to operations management.

The intention is that if the parties to a contract agree, either before entering into the contract, or later, on the adoption of the recommendations of the Protocol, it can then be used as an aid to the interpretation of the delay and disruption provisions contained in standard form civil engineering and building contracts [25], and to assist in the resolution of delay and disruption issues that are not clearly covered by the contract.

In this capacity, the Protocol is to prevail over any conflicting case law, but where the Protocol is in conflict with any terms of the contract, the contract term is to take precedence [1, 10, 23].

Until such time that the guidance given in the Protocol is adopted into the standard forms of contract, it is acknowledged that it will have limited application to contracts that have been drafted and negotiated without the guidance of the Protocol in mind [1].

2.3 The History and Development of the Protocol

The initial idea for the development of the Protocol came about in June 2000 following a presentation given by Jeremy Winter (of Baker & McKenzie, UK) and Peter Johnson (of Linacre Associates, UK) to members of the SCL in London, England [1], entitled “Resolving Complex Claims” [29] concerning a major dispute about a project delay that was eventually resolved in arbitration.

A view was expressed by the majority of those present that many of these types of dispute arose simply because the parties did not understand the ways delays occurred, how their consequences could be avoided, or the phraseology used by the industry to describe the methods used in the proof of causation, or their application.

As a result, a working party of fifty construction professionals was established to research and draft suitable guidelines for dealing with these issues [30-32].

A first consultation draft entitled “Protocol for determining extensions of time and compensation for delay and disruption” was published in November 2001 [1] and issued for public debate on the 4th of December 2001 [29, 33].

An updated second draft version of the Protocol was made available for consultation, and a consultation workshop was arranged in London, England on the 22nd of May 2002. The workshop was attended by over 150 people who discussed the comments received, following which the SCL drafting committee met to review the collected observations [18, 34] and make any final changes.

The final version of the Protocol was launched in the UK on the 16th of October 2002 at an event attended by almost 200 senior representatives of the UK Construction Industry and Legal Profession [16, 35-36].

A summary by the Chairman of the SCL Protocol drafting committee of the main changes to the Protocol concerning “float” from the consultation edition (November 2001) and the Workshop edition (May 2002) to the final version published in October 2002 is duplicated in Table 2.1.

2.4 Structure of the Protocol

The published Protocol contains 82 pages and is made up of four main sections:

- i. Introduction;
- ii. Core principles relating to delay and compensation;
- iii. Guidance Notes;
- iv. Appendices.

The introduction section of the Protocol consists of two pages and outlines the aims, objectives, and purpose of the Protocol. Emphasis is placed on the importance of the contract for providing the mechanism for managing delay events and determining compensation for disruption, but recognition is given to their shortcomings due to their inconsistent way of dealing with delay and disruption events.

The Protocol attempts to address these inconsistencies by introducing “*a transparent and unified approach to the understanding of programmed works, their expression in records, and identifying the consequences of delay and disruption*” [10].

The core principles section of the Protocol consists of five pages and contains twenty-one statements that provide the framework of suggested good practice for dealing with delay and disruption events.

The guidance notes section of the Protocol consists of four sub-sections:

Guidance notes section one of the Protocol consists of 25 pages and contains guidelines on the Protocol’s position on Core Principles and on other matters relating to delay and compensation that explain and clarify the Protocol’s position on the Core Principles;

Guidance notes section two of the Protocol consists of seven pages and contains guidelines for preparing and maintaining programmes and records recommended to be kept by the Protocol as a means of providing evidence for the validation of delay and/or disruption claims, and assist in avoiding delay and/or disruption disputes;

Guidance notes section three of the Protocol consists of four pages and contains guidelines for dealing with

extensions of time during the course of the project using the programmes and records recommended to be kept in guidance section two;

Guidance notes section four of the Protocol contains guidelines for dealing with disputed extension of time issues after completion of the project – retrospective delay analysis and recommends a number of methods suitable for the retrospective analysis of delay and disruption events, as well as suggesting suitable sources of evidence.

The Protocol contains four appendices:

- i. Definition and glossary;
- ii. Model specification clause;
- iii. Model records clause;
- iv. Graphics illustrating points in the Protocol.

Appendix A consists of eleven pages and contains an “impressive” [32] glossary and definitions of words and expressions commonly used in construction delay and disruption situations.

Appendix B consists of eight pages and contains a model specification clause for a large complex project (whose principles could be applied to smaller projects [10]) to be included in the specification section of the project’s tender documents, describing the requirements for the preparation, submittal, updating, and revising of the contractors programme.

Appendix C consists of two pages and contains two model records clauses (one suitable for small projects and one suitable for medium to high value projects) to be included in the specification section of the projects tender documents or contract conditions.

Appendix D consists of ten pages and contains nine figures illustrating the principles and practice set out in the Protocol.

It is considered that improvements will need to be made in subsequent editions of the Protocol to enable it to metamorphise from its current “guidance” form into a document that will truly benefit the industry in this problematic area [25].

2.5 The Protocols Approach.

The Society of Construction Law’s Delay and Disruption Protocol [10] propose a number of specific definitions and suggested provisions concerning float and how the issue of ownership of float should be approached.

The Protocol recommends that the issue of “ownership” of float be addressed in the contractual provisions, but where this is not done recommends that “*an extension of time should only be granted to the extent that an employer delay is predicted to reduce below zero the total float on the activity paths affected*”.

2.5.1 Float as it relates to an extension of time.

With regard to float in relation to an extension of time, the Protocol states “*Unless there is express provision to the contrary in the contract, where there is remaining float in the programme at the time of the Employer risk event, an extension of time should only be granted to the extent that the Employer Delay is predicted to reduce below zero the total float on the activity paths affected by the Employer delay*” [10].

3. METHODOLOGY

The research was conducted in accordance with the Commonwealth of Australia’s National Statement on Ethical Conduct in Research Involving Humans (1999), following procedures approved by the University of Newcastle’s Research Ethics Committee.

A literature review to determine current Australian industry practice and position on the issue was undertaken, together with semi-structured qualitative interviews with seventeen Australian construction industry practitioners specialising in the negotiation and resolution of construction delay and disruption disputes, to obtain their opinions of the suitability of the Protocols approach to the issue of float and float ownership, for adoption and use by the Australian construction industry.

Background details of those who were interviewed are contained in Table 2.

Participants were given a clarifying statement and then asked for their opinion of the statement. The participants’ responses were then identified as being in agreement or disagreement with the Protocols approach. In an attempt to measure the respondents “degree” of agreement or disagreement with the statement, categories were established based on the following:

- Total agreement;
- Agreement with > 1 clarifying comments;
- Agreement with 1 clarifying comment;
- Neutral response;
- Disagreement with 1 clarifying comment;
- Disagreement with more than 1 clarifying comment;
- Total disagreement.

Other than a clear total agreement or disagreement with the question statement, the respondents “degree” of conviction was interpreted to be represented by the number of clarifying comments used to justify their position. The more comments put forward was considered to indicate a higher degree of resolve to their response.

Using these criteria a ranked order of responses was determined.

The clarifying statement and question are included below. A summation of the responses are included in table 3, with a selection of edited responses included in table 4.

4. RESULTS AND DISCUSSION

Clarifying statement: Ownership of float concerns “who” is entitled to the use of project float, the client or the contractor? The guidance section of the protocol recommends that the parties address this issue in the wording of the contract. Where they have failed to do so, the protocol recommends that the float is not for the exclusive benefit of either the employer or the contractor, but is available for use by those who need it first, and that an extension of time should only be “... granted to the extent that the Employer Delay is predicted to reduce to below zero the total float on the activity paths affected by the Employer delay.”

Question: What is your opinion of how the protocol deals with this issue?

Overall the participants’ responses gave no clear indication either in favour of, or against the Protocols position on float. Approximately 41% of the participants’ responses expressed overall agreement with the Protocols approach, whilst approximately 53% of the participants’ responses expressed overall disagreement with the Protocol’s approach.

Participant 1 considered this to be a difficult statement to address and acknowledged that even though the contract norm in Australia was for the contractor to “own” the float, the Australian construction industry exhorted a great deal of effort trying to change this position.

Participant 2 and Participant 9 were of the opinion that the Protocol’s position would be difficult to implement in practice.

Participant 3 considered the issue to be related to who dictated the project programme, and that the party responsible for the programme should be perceived to “own” the float. This was supported by Participant 5.

Participant 4, 6, and 8 were of the opinion that the Protocol’s approach was a reasonable, balanced, and fair, but expressed reservations as to the effectiveness the concept.

Participant 7 expressed an opinion that the project should own the float, and that it didn’t need to be expressly addressed in the contract as it was generally implicit.

Participant 10 was critical of the first come first served approach, suggesting that it was a “smoke and mirrors” trick employed by the contractor.

Participants 11 and 12 expressed the opinion that the matter should be expressly dealt with within the contract documents. Of the participants’ interviewed, 47% (eight out of 17) supported this view. Participant 16 however, suggested the Protocol’s approach was an attempt to impose a compromise on what the contract intended, and that the outcome may not be what the contract actually intended. Participant 17 went further, questioning the integrity of Australian standard forms of contract on the issue.

Participant 13 and 14 indicated agreement with the Protocols approach of dealing with the issue, however, Participant 15 considered the approach to be somewhat unfair for principal caused delays that erode float causing activity paths to become critical prior to any contractor caused delay occurring.

5. CONCLUSIONS

The issue of ownership of float still causes confusion and uncertainty as to how it should be addressed.

The SCL’s suggested approach to the issue of float and float ownership is at odds with the contractual provisions of the Australian standard forms of contract, and the Australian construction industry norms, however, it was acknowledged that attempts to change the Australian position in an attempt to clarify the parties’ contractual position were often made.

The SCL’s approach to float and float ownership was considered to be reasonable, balanced, and fair, but the concept was considered to be difficult to implement in practice in the Australian construction industry environment.

The issue of float ownership was closely related to who had prepared/dictated the contract programme.

Overall there was general uncertainty as to the Protocols’ approach, with suspicion of the reasoning behind the first come first served theory, and general disagreement over whether the issue should be expressly dealt with in the contract documents.

Table 1. Part summary by the Chairman of the SCL Protocol drafting committee of the main changes to the Protocol concerning “float” from the consultation edition (November 2001) and the Workshop edition (May 2002) to the final version published in October 2002, published 15th October 2002 (www.eotprotocol.com/responses.shtml, accessed @10.00am on 17th December 2008)

Contractors were concerned about our approach to the “ownership” of float, so we have thoroughly reviewed our position on this important topic. We emphasize that the question of how float is treated should be specifically and clearly addressed in contracts (since it is not clearly dealt with in most of the standard forms).

Table 2. Participant Profiles.

Participant	Profile
Part 1	A lawyer and arbitrator who is a Partner in a leading Australian law firm whose areas of expertise are Construction, Dispute Resolution, and Litigation.
Part 2	A lawyer and Partner in a leading Australian law firm with over seventeen years legal experience specialising in construction law.
Part 3	A director and co-founder of a specialist Australian construction and asset cost consulting Quantity Surveying Practice with expertise in commercial construction, procurement, and dispute resolution.
Part 4	An assistant contracts manager in the Legal and Contractual Department of one of the Australian States Department of Public Works.
Part 5	A lawyer and arbitrator who is a Partner with a leading Australian law firm, a Fellow of the Institute of Arbitrators Australia, and a Member of the Australian Institute of Judicial Administration, whose areas of practice include construction law and ADR.
Part 6	A director of an Australian Quantity Surveying Practice representing clients and contractors, with over fifteen years construction industry experience.
Part 7	A claims consultant who was trained as a civil engineer, with 5 years experience working in engineering and contract management, and 9 years experience involved in construction claims, with the last 6 years specialising in time related claims.
Part 8	A solicitor and partner of a NSW law firm (with degrees in construction management and law) who has been practising and specialising in construction law for twelve years
Part 9	A partner in a leading Australian law firm with over 20 years of experience, specialising in major projects work and construction and engineering law, primarily as an advisor to major contractors, major developers and Governmental authorities in the Australian and Asia-Pacific region.
Part 10	A chartered quantity surveyor, contractual claims consultant, and arbitrator, with over forty years of experience of working in the construction industry in a variety of cost planning, commercial management, and director positions, advising on contractual and commercial matters for a leading engineering and construction contract consultancy.
Part 11	A delay analyst from a mining engineering background who has over twenty years experience of working on heavy civil engineering projects who has been involved in dispute resolution for over ten years.
Part 12	A Barrister and Solicitor of the Supreme Court of Western Australia experienced in the negotiation of construction contracts, and the resolution of construction disputes in Australia, the UK, Hong Kong, and the Middle East.
Part 13	The founding Managing Director of an Australian claims consultancy involved in dispute resolution, production planning and analysis, and risk management in the construction and defence industries, specialising in construction delay disputes, and co-editor of a leading delay and disruption textbook.
Part 14	A construction lawyer with a leading Australian construction law firm, and author of several articles in Australian and international construction law journals, with over nine years experience of all forms of dispute resolution including litigation, arbitration, adjudication, expert determination, conciliation and mediation, who specialises in the practice of building and construction law, advising private and public owners, financial institutions, and contractors on large-scale domestic and international projects, through all phases of projects from conception, tendering, documentation, contract and claim administration, and dispute resolution.
Part 15	The manager of an Australian branch of a leading International Planning, Programming, and Claims Consultancy, with over 17 years experience as a professional in the Building and Construction

	Industry, involved in the front end planning and programming of construction and engineering projects, as well as forensic planning and delay analysis of time-related construction claims, and the preparation and analysis of expert witness reports in the value of over \$1 Billion (Aus) for national and international disputes in the construction, infrastructure and energy sectors.
Part 16	A Barrister and Grade 1 Arbitrator specialising in construction disputes and engineering claims, with over twenty five years experience of practising law, and a further ten years experience as a practising Architect involved in the design and construction of commercial and industrial buildings, and an author of several construction law textbooks.
Part 17	A Chartered Engineer with one of Australia's leading construction consultancy firms with over thirty years of experience involved in the managing, planning, and programming of construction projects in Australia and Internationally, specializing in the analysis and resolution of construction claims.

Table 3. Participant Comments on the Protocols Approach to the Issue of Ownership of Float

Total Agreement	Agreement + >1 Comment	Agreement + 1 Comment	Neutral	Disagreement + 1 Comment	Disagreement + >1 Comment	Total Disagreement
3	1	3	1	2	4	3
17.6%	5.9%	17.6%	5.9%	11.8%	23.5%	17.6%

Table 4. Selected Edited Participant Responses

Part 1	That's a more difficult one because comparing it to the Australian regime, in Australia float, as a starting point, is generally considered to be owned by the builder, but I get the impression that most of the Australia industry spends most of it's time trying to change that situation. The protocol I think adopts a sensible approach. My concern would really be to comment that to begin to amend the protocol or to change the methodology that's adopted here would be a dangerous thing. I think you either have to adopt the protocol or you don't. If you are going to use the protocol then you have to use it un-amended. I think to start to fiddle with it and change it would be to reduce its efficacy.
Part 2	I struggled to understand how it's going to be applied in practice in that I'm not sure that the guidance principle splits the allocation of float between both parties. It seems to me that if you only get an extension of time when the float would go down to zero, or to the extent that it would go below zero, you are effectively saying that float belongs to the principal. The only comment I would make is that I don't understand why it is that they have sought to say that the float doesn't belong to the contractor.
Part 3	Float, traditionally I would think was owned by the builder. I suppose a lot of it depends on who's dictated the programme. Typically I guess in Australia it's the builder who dictates the programme... I would say that float should be owned by the contractor, if that makes sense. I think project float, the client should allow that within their own financial contingency, they should allow their own float without necessarily telling the contractor what they've allowed.
Part 4	I'm not entirely convinced of the concept that it's available for use by those who need it first, albeit I think what the protocol attempts to achieve in practice is a very reasonable and balanced approach... In general I think it's a very balanced approach.
Part 5	I believe that the float should belong to the contractor because by enlarge the contractor prepares his programme and accepts what is invariably quite a tight time frame dictated by the principal, on the assumption that he has a certain amount of time which he can use to address neutral delays that he maybe can't get extensions of time for under the terms of the contract, or problems which are his problems under the contract even though they may not be his fault. I am firmly of the view that the float should, in the absence of some express agreement, belong to the contractor... I would prefer to see a duration were the float belongs to the contractor which is more standard in Australian construction contracts.
Part 6	I think its fair, to talk about between the employer and the contractor, I think it tries to give a clear guidance as to float ownership. In what circumstances the employer or the contractor should give up their float, in an equitable way depending on who has the ownership of the delay I suppose.
Part 7	I think that is correct. Ownership belongs to the project... I'm not to keen on having that prescribed in the contract because I think it's generally implicit.

Part 8	That's certainly one way of dealing with the ownership of float. I think it's certainly a reasonable way of dealing with the issue.
Part 9	... it's constructive. My problem I think is that even if a contract provides that the contractor is not to have ownership of the float either in a scenario where they're really entitled to an extension of time, or alternatively, where there's some sharing of the allocation of time because of collateral or concurrent event, ... I think most contractors endeavor to hide the float anyway and protect it through I suppose a shroud of secrecy or lack of transparency in their programming make up... but what I'm really saying is that even if the contract might provide its principal eventually owns float, it's going to be very difficult to determine whether or not that can be captured by the principal as a matter of practical reality in terms of interpreting the events and flow on effect in the programme after its adjusted for extension events.
Part 10	... at least in English (and probably in South African) law, float probably does not belong to the first party that needs it (unless the contract specifically provides for this), ... and that the "first come first served" approach to float entered by the contractor is a smoke and mirrors trick. It should also be remembered that the Employer, in all cases, may provide for a float which is reserved for his own use.
Part 11	If the entitlement of float isn't discussed in the contract, then I believe that the contractor is entitled to it as the Employer is able to specify the length of the contract.
Part 12	Firstly I agree that the parties should address it in their contractual negotiations. My view is that where they don't, the contractor should have the benefit of the float. So logically, that would say that if the Principal wants the benefit of the float, he should say so in the contract. But I agree that it is a fair outcome if it is agreed in the contract that the project owns the float. So the first party that has need of that float essentially has the benefit of that float.
Part 13	I agree that that's an appropriate way of dealing with the question of float. It's essentially the float belongs to whoever gets it.
Part 14	I agree with the way the Protocol addresses it. In my view there is a contractual date for practical completion, and the purpose of an extension of time is to preserve the principal's right to deduct liquidated damages. So the purpose of an extension of time is to avoid the prevention principle applying.
Part 15	The way that the Protocol views float is that in the absence of float being addressed in the contract, the project owns the float. Therefore, float is not there for the exclusive use or benefit of either party, its there for whoever needs to use it first, until that float has been eroded, before liability and responsibility of critical delays to project completion can be attributed. My view on that approach is that it can be unfair to look at ownership of float that way for principal-caused delays, particularly where the principal-caused delays erode the float and make the activity or activity path critical before a contractor caused-delay occurs, where a contractor would be held responsible for any critical delays to the programme / project.
Part 16	That's a fine process, but it may not necessarily be the legal consequences or what the contract says, and that's an attempt to impose a compromise on what the contract would otherwise say.
Part 17	The answers in the contract of course. The contracts in Australia have gone off the rails.

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