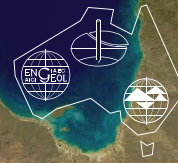
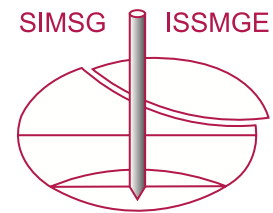


AGS QLD Chapter Seminar 2021



**AUSTRALIAN
GEOMECHANICS
SOCIETY**



www.australiangeomechanics.org

Legal View of Geotechnical Issues

SPEAKERS:

Heidi Schweikert

Legal Practitioner Director,
Schweikert Harris

Sean Brady

Forensic Engineer,
Brady Heywood

Consulting Engineering Firms around the world operate:

- in a number of very different legal systems; and
- a variety of investigative processes (initial investigation into the cause of an incident, commission of inquiry, common law adversarial litigation, civil law adversarial litigation).

This presentation explores some very common themes across that broad range of systems.

The presenters consider the various reasons technical matters get 'lost in translation' within and as between the various layers of experts / legal teams and ultimate decision makers, regardless of the jurisdiction or nature of investigation.

A complex example of the potential for matters to be lost in translation is below, but the potential for matters to become confused and unclear exists in even a very simple investigation.

1. Any complex geotechnical investigation team is likely to need multiple subject matter experts (eg geomorphology, geotechnical investigation design and interpretation, laboratory testing specialist, numerical modelling expert, GIS specialist and potentially expert in the local geology in respect of the above areas as well as a local expert in the

contractual framework for the particular project). There is real potential for each of these experts to be given different information, make different assumptions, use different methodologies or tools for interpretation etc, resulting in the risk of technical matters being lost in translation at this level.

2. Any geotechnical investigation that includes a structural element in its design (tunnels, embankments) or structures that are affected by the failure will have a second investigation team in the structural experts required to analyse the failure and the original design. There is a further layer of potential for disparate assumptions, information, approaches etc as above:
 - within this structural team; and
 - between this team and the geotechnical team.
3. The legal team instructing / guiding the technical experts is unlikely to have the technical expertise or understanding to manage all (or potentially any) of the above complexities and the potential for matters to be lost in translation begin to be exponential – eg:
 - the briefs and questions for each team of experts and each expert within the teams;
 - as between the experts in each team;
 - as between the expert teams;
 - as between the expert teams and the legal team.

WHEN

Thursday 11 Nov 2021

TIME

4:30 to 6:00 AM GMT
10:00 to 11:30 AM IST
(India)
2:30 PM to 4 PM AEST -
Brisbane
3:30 PM to 5 PM AEDT
Sydney and Melbourne.

WHERE:

Online Seminar

RSVP:

Please RSVP via: <https://australiangeomechanics.org/meetings/legal-view-of-geotechnical-issues/>

COST:

Free

EVENT CONTACT:

For further information, please contact David Lacey via dlacey@fsg-geotechnics.com.au or Bindumadhava Aery via Bindumadhava.Aery@arecongroup.com

This is a webinar event co-hosted with TC 302 - Forensic Geotechnical Engineering, International Society for Soil Mechanics and Geotechnical Engineering (<https://www.issmge.org/committees/technical-committees/impact-on-society/forensic->)

CPD:

Engineers Australia (EA) members participating in AGS technical sessions can record attendance on their personal Continuing Professional Development (CPD) logs. Members should refer to EA's CPD policy for details on CPD types, requirements and auditing guidelines.

4. The ultimate decision maker is generally informed by:

- the legal team;
- documents and evidence produced by the legal team; and / or
- documents and evidenced produced by the experts with guidance from the legal team.

Therefore, it is critical that the legal team has sufficient understanding to adequately and accurately present the case to the ultimate decision maker in accordance with the obligations of the jurisdiction.

The aim of the discussion is to walk through the challenges in any investigation process that requires interaction between lawyers and technical teams and how teams can be understood and managed to produce the most accurate, streamlined and reliable legal outcome for all concerned.

This analysis emphasises the need for the technical team to educate and work with the legal team so that they can ask the best questions, obtain the best and most reliable information and improve the processes involved, regardless of the vagaries of the individual jurisdiction and investigative process.

There are, of course, very valid legal constraints on the expert investigation and evidence process, which must be navigated with clarity through any legal jurisdiction and we will address those duties of both expert and lawyer as part of the discussion.

SPEAKERS

Heidi Schweikert

Legal Practitioner Director, Schweikert Harris



Heidi has more than 25 years' experience advising on dispute resolution in infrastructure, engineering and construction, commercial and resource matters.

Many of her disputes have involved complex questions relating to geology, geotechnical investigations and engineering, including tunnels, underground structures and significant embankments and bridges.

[Lexology Client Choice Awards](#)

recognised Heidi in 2018 and 2021 for her expertise in construction law in Australia. Nominations for these awards can only be made by clients.

Prior to establishing her own firm in 2005, Heidi worked at Ashurst (then Blake Dawson Waldron) and Corrs Chambers Westgarth, both leading Australian law firms.

During her career, Heidi has run large and complex claims up to \$960 million. She has also designed and facilitated successful informal dispute resolution processes. She has managed large claims teams of up to 40 lawyers and paralegals, 5 counsel and 6 international engineering, construction, programming and estimating experts.

Heidi is an active contributor to the legal and construction communities. As well as being the Deputy Chair of the Executive, Federal Litigation & Dispute Resolution Section of the Law Council of Australia and Chair of its Legal Technology Committee, Heidi delivers a 2 day course "Managing Projects for Disputes and Claims" for Consult Australia with former Arup General Counsel, Kiri Parr and has guest lectured at the Queensland University of Technology and Bond University in engineering law and Masters of Laws subjects.

Clients regularly engage Heidi to deliver risk identification and training on major projects, helping them to build both the identified risks and the terms of the contract into their delivery systems and processes to minimise risk and maximise the likelihood of successful delivery.

[Doyle's Guide to Leading Lawyers](#) has regularly recognised Heidi as one of Queensland's leading construction and litigation lawyers since 2012.

Sean Brady

Forensic Engineer, Brady Heywood



Sean is a forensic engineer and works with business, government and the legal sector to investigate and resolve complex issues that typically require a systems approach.

Sean has acted as an expert witness in numerous proceedings involving a wide range of constructed facilities. He is a director of the Society of Construction Law Australia and a member of the Singapore International Mediation Centre's Panel of Experts.

In 2020 Sean completed the Brady Review, an investigation into the causes of fatalities in the mining industry in Queensland, Australia. This review analysed 20 years of incident and fatality information, was data driven, and culminated in 11 recommendations for both industry and the regulator on how to lower the fatality and incident rate.

Sean speaks, podcast, and writes on the subject of failure, human behaviour, data analytics and engineering disasters.

Specialties: Forensic structural engineering, preliminary investigations, evidence collection, litigation/arbitration support, and expert witness services.