

**ice-sa**  
**NEC Forum 7**

0.2  
SAICE CPD  
Points

NEC training sponsored by  **ecs**

**FREE**

**Thursday 14th August**  
**4 pm - 6 pm**

**NEC4 ECC Dispute Avoidance**

**Presented by Sharmraj Bauchoo**  
**Accredited NEC Tutor**

# 10 NEC Jam Sessions Topics for 2025

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13 <sup>th</sup> February	The NEC4 Family of Contracts - Introduction
13 <sup>th</sup> March	Procurement and Contract Strategies
10 <sup>th</sup> April	ECC4 - Core Clauses
8 <sup>th</sup> May	PSC4 - Introduction
12 <sup>th</sup> June <small>Presented by Dr Jon Broome</small>	Contract Strategy: Choosing the Main Options under the NEC4 Engineering & Construction Contract (with reference to other members of family + filling in Contract Data entries) and how to incorporate Early <i>Contractor</i> Involvement (ECI)
10 <sup>th</sup> July	ECC4 - Early Warnings and Compensation Events
14 <sup>th</sup> August	ECC4 – Dispute Avoidance
11 <sup>th</sup> September <small>Presented by Richard Patterson</small>	Contract Strategy: The use of Option X29 : Climate Change
9 <sup>th</sup> October <small>Presented by Dr Jon Broome</small>	Contract Strategy: The Secondary Option 'X' clauses including preparation of the associated Contract Data.
13 <sup>th</sup> November	ECC4 – Tendering and Contract Finalisation



# Objectives of 10 NEC Jam Sessions

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- Delegates should leave with
  - an understanding of the NEC philosophy, its associated culture change and how it contributes to the effective management of a project;
  - a basic understanding of how to prepare, tender to, and administer the ECC4 (Engineering and Construction Contract)
  - basic knowledge of the PSC4 (Professional Service Contract)

## Vision

To be recognised as a leading, fully-empowered organisation that delivers the most effective professional contract and project management services in the engineering and construction environment.

## Mission

We deliver solutions to our clients by combining expert knowledge, practical experience, and best practices. Through collaboration, we respond proactively to their needs, supporting their business endeavours and overcoming challenges.

## Values



**Integrity**



**Professionalism**



**Collaboration**



**Courage**

# ECC4

# Dispute Avoidance

# About disputes in construction

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- **Dispute:** A disagreement, argument or conflict of opinion and views pertaining to an unresolved topic or issue
- **Construction dispute resolution** refers to the process of resolving conflicts and disagreements that arise in the construction industry.
- **Construction projects** are complex undertakings that involve multiple parties such as owners, contractors, subcontractors, architects, and suppliers.

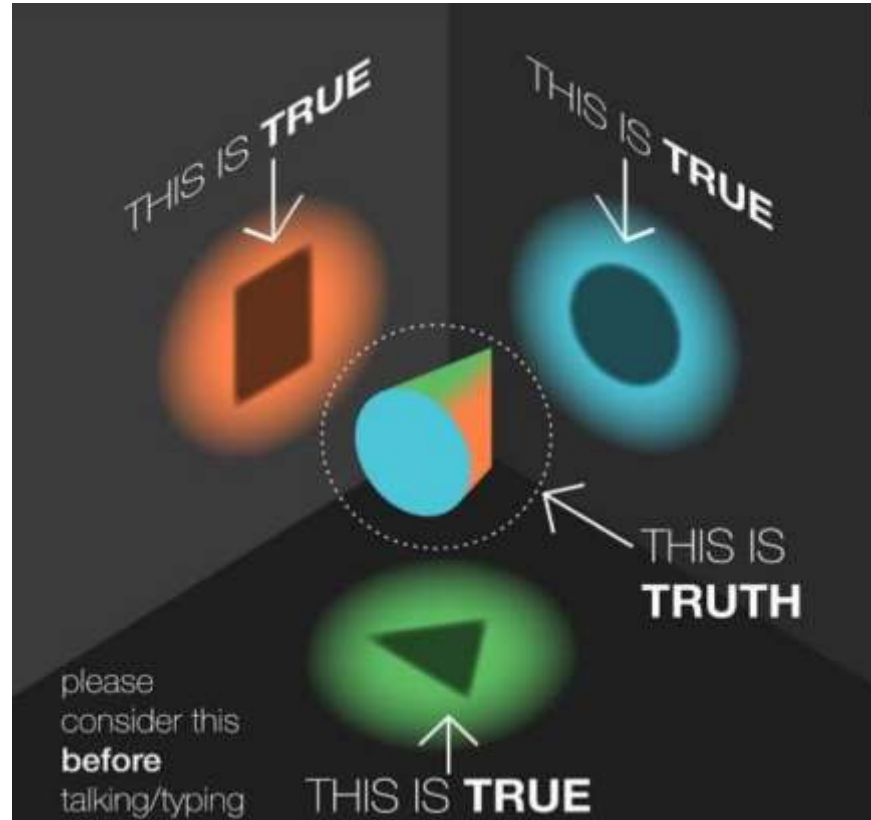
# About disputes

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- Due to the nature of the industry, disputes can arise from various sources, including contract interpretation, delays, cost overruns, design changes, quality issues, and payment disputes.
- Means to solve disputes effectively and efficiently become crucial in achieving the end goal = project completion in the shortest time at the least cost

# Why do we have disputes?

Very often  
we have  
**DIFFERENT**  
**POINTS OF**  
**VIEW**



# Causes of Disputes

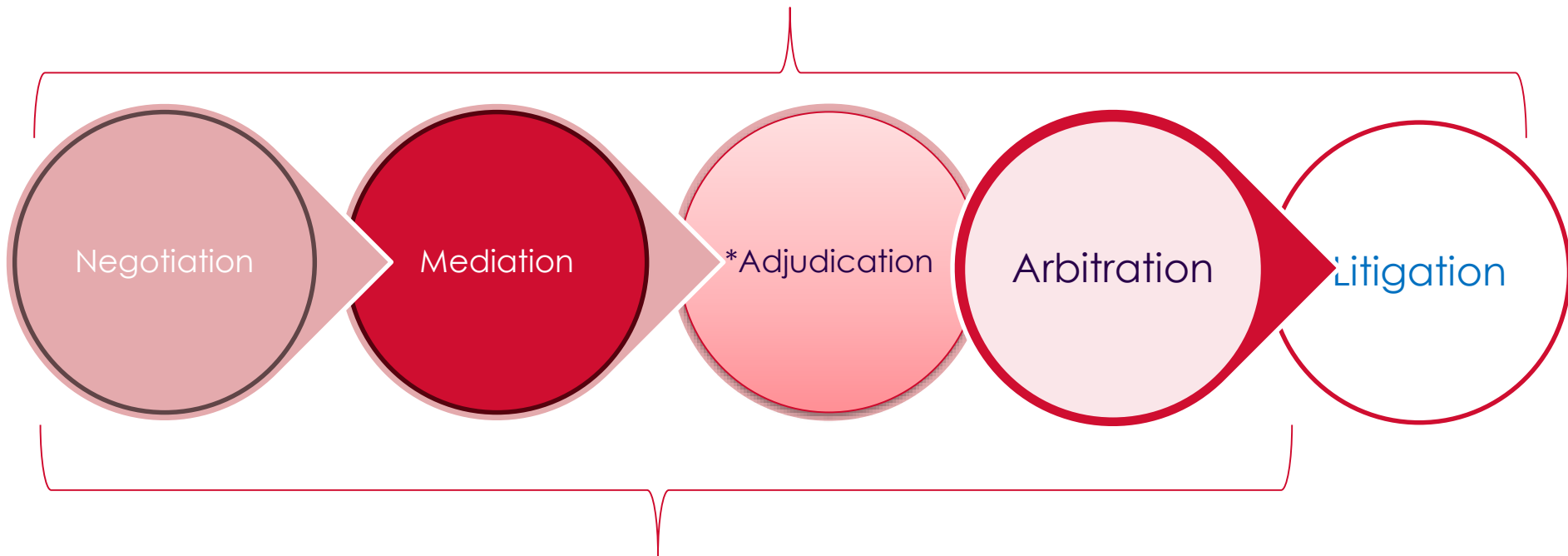
- Complexity of projects
- Changes to Standard Forms of Contract
- Poor Communication and/or contract administration
- Adversarial nature of industry
- Scope changes/ interpretation
- Delays
- Defective Work etc.

# Generic Stages of Dispute Resolution in Construction

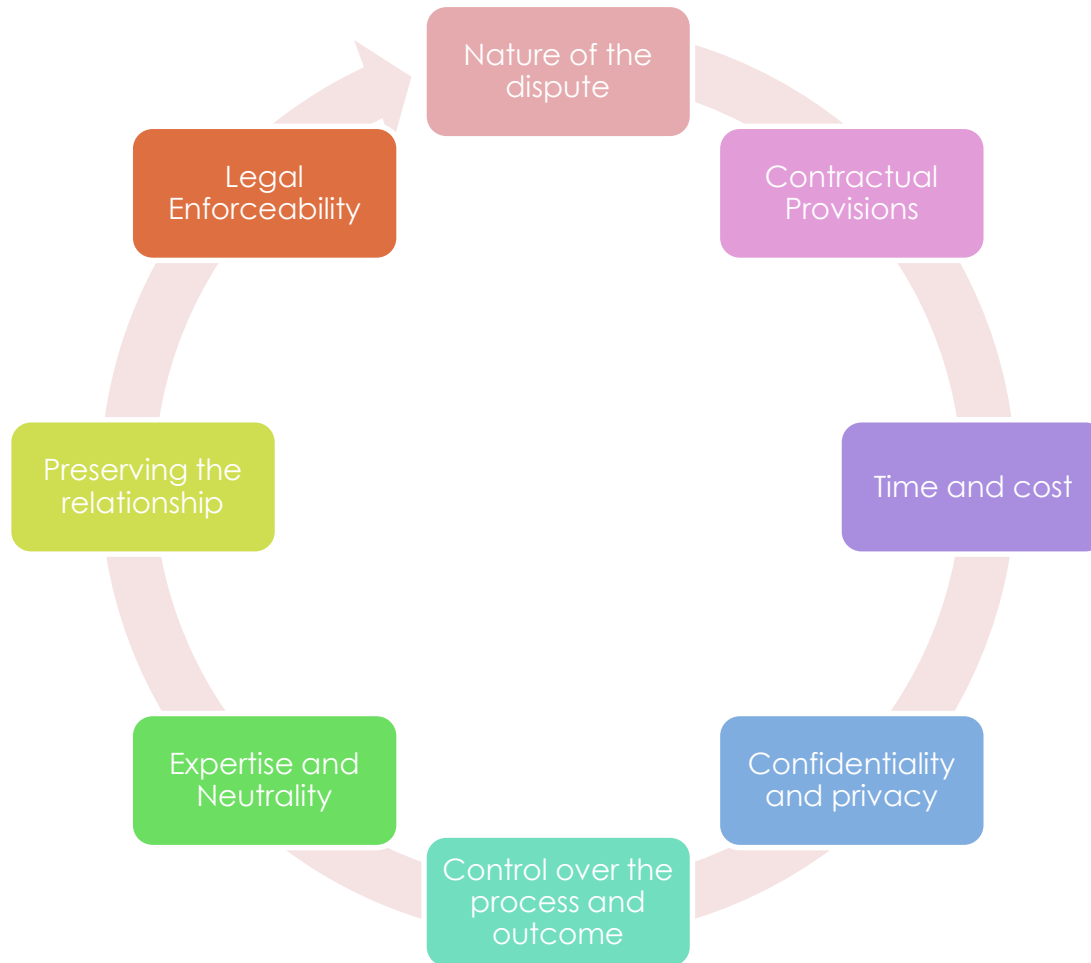
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- Issue identification
- Notice of claim
- Submission of claim
- If no resolution → notice of dispute issued
- Adjudication
- If dissatisfaction, issue notice
- Arbitration

# Dispute Resolution Mechanisms



# The Dispute Cycle



# Conflict Avoidance Pledge (March 2025)

## THE CONFLICT AVOIDANCE PLEDGE

We believe in collaborative working and the use of early intervention techniques throughout the supply chain, to try to resolve differences of opinion before they escalate into disputes.

We recognise the importance of embedding conflict avoidance mechanisms into projects with the aim of identifying, controlling and managing potential conflict, whilst preventing the need for formal, adversarial dispute resolution procedures. We commit our resources to embedding these into our projects.

We commit to working proactively to avoid conflict and to facilitate early resolution of potential disputes.

We commit to developing our capability in the early identification of potential disputes and in the use of conflict avoidance measures. We will promote the value of collaborative working to prevent issues developing into disputes.

We commit to work with our industry partners to identify, promote and utilise conflict avoidance mechanisms.

- First refer a dispute to the *Senior Representatives* in accordance with Dispute Reference Table within 4 weeks of becoming aware of the matter
- The *Senior representatives* meet over 3 weeks and list matters agreed and not agreed.
- Matters not agreed then referred to and decided by the *Adjudicator*
  - Notice of adjudication within 2 weeks of producing the list
  - Dispute referred to *Adjudicator* within 1 week of notice of adjudication

- W1.2 The *Adjudicator* ideally appointed at time Parties conclude their contract or in Contract Data by the *Client* state: The *Adjudicator* is ...

or “the person selected from the ICE-SA’s (or its successor body) Panel of Adjudicators by the Party intending to refer a dispute to it. (see [www.ice-sa.org.za](http://www.ice-sa.org.za))”

- Not used unless dispute arises
- Paid equally by the Parties
- The *Adjudicator nominated body* is: “the chairperson of the ICE-SA (or its successor body) a Joint Division of the Institution of Civil Engineers (ICE) and the South African Institution of Civil Engineering (SAICE) (see [www.ice-sa.org.za](http://www.ice-sa.org.za))”

**W1.3(1) Notice of adjudication within 2 weeks of the *Senior Representatives* producing the list, then refer to the *Adjudicator* within a further one week**

**W1.3(2) If a disputed matter is not notified or referred on time neither Party may refer to the *Adjudicator* or the *tribunal***

**W1.3(3) Other information within 4 weeks of initial referral**

# The Adjudicator's actions **ice-sa**

- The *Adjudicator* decides on basis of written submissions; hearings discouraged
- May seek advice from others; e.g. legal Counsel

**W1.2(2) Makes decision as an independent adjudicator not as an arbitrator (i.e. not regulated by an Act)**

**W1.3(10) Decision is binding and enforceable**

- If a Party is dissatisfied it may notify intent to proceed to the *tribunal*, which is typically arbitration and very seldom a court of law
- If no notice decision is also final

## Dispute Avoidance Board (DAB)

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- Board of 1 to 3 members named in Contract Data
  - Appointed under NEC4 Dispute Resolution Service Contract
- Board members visit Site at stated intervals to become aware of the works and potential disputes
- Disputes referred to the DAB who provide a recommendation (not a decision!!!) for resolving it
- If not settled then refer to the *tribunal*
  - typically arbitration

# Best Practice Approaches ice-sa For Dispute Avoidance – NEC4

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## Reference NEC Contracts - Article 11 August 2025

- Understanding the contract process; formal training required.
- Moving to the construction phase too quickly.
- Misuse or overuse of Z clauses.
- The correct mindset – ethos of collaborative contracts.
- Ensure that NEC Contracts mechanisms are used correctly from the start to minimise the risk of dispute.

# Practical steps for dispute avoidance and resolution **ice-sa**



- 1) Prepare a contract with a well defined and drafted Scope, realistic programme and budget, and equitable risk allocation
- 2) Manage the project and administer the contract as intended
- 3) Work in collaboration. Talk to each other and try to avoid and/or resolve disputes on a project level
- 4) Ask your senior managers to resolve and/or avoid a dispute
- 5) Use the *Adjudicator*
- 6) Still not happy? Are you sure you want to go to arbitration? Sure, sure?
- 7) Is it worth it and you have a strong case? – Then, go to arbitration
- 8) Still no joy? Then, find another job... or emigrate...

# Conflict Avoidance Pledge **ice-sa**



The Conflict Avoidance Pledge was launched on the Royal Institution of Chartered Surveyors (RICS) website in January 2018.

There are currently more than 400 signatories.

**ECS is one of them!**

Signing the pledge identifies an organisation as being committed to taking the necessary steps to deal with problems early and amicably, recognising that this can result in better delivery.

Signing results in being listed on the Conflict Avoidance Directory.

# The end of NEC Jam Session 7



# Next NEC Jam Session **ice-sa**

11 September 2025

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## The use of Option X29: Climate Change

By

Richard Paterson

Technical Director, NEC and Procurement

Mott MacDonald (UK)

**Thank you for your  
participation**

**Feedback is welcome**

**[communication@ice-sa.org.za](mailto:communication@ice-sa.org.za)**

**[admin@ecs.co.za](mailto:admin@ecs.co.za)**