



Delay Analysis — A Common Sense Approach

Demonstrating Cause and Effect in Delay Analysis

Delay analysis is not the “dark art” it is often perceived to be. It is simply how to prove the purported delaying events impact (the *cause*) on time (the *effect*). The analysis must provide a clear and succinct distinction of the chain of events that have hindered progress and ultimately caused the delay(s) to completion.

Comprehensive and contemporaneous evidence that substantiates the causal events and their consequence is key. The facts should dictate the experts analysis and opinion.

“Facts are stubborn things, but statistics are pliable” – Mark Twain

The facts take precedence over the analysis. All too often, the expert's focus is on the method of delay analysis used, rather than assessing the facts, meaning causation is inferred rather than proven. A true delay expert demonstrates the delay events' cause and effect by using factual evidence and following a logical approach.

Delay reports are often overly complex and incomprehensible to anyone other than their author. Delay experts should present their findings so that anyone can understand them while being reinforced by a thorough analysis and supporting evidence.



Delay Analysis Methodologies

There are two main types of delay analysis methodologies, retrospective (effect and cause) or prospective (cause and effect).

The methodology selected is usually dictated by the availability of records and the analysts competency and/or time constraints.

Prospective or cause-and-effect analysis (time impact analysis, as-built-but-for, time slice) models the likely impact of the delaying event at the approximate time the delay occurred. Retrospective or effect-and-cause analysis (longest path, impacted-as-planned) analyses the delay impact in hindsight.

The UK Society of Construction Law Delay and Disruption Protocol (2nd Ed) has recently changed its stance on the time impact analysis (TIA) being the preferred form of analysis. It is still the preferred method of prospective, contemporary analysis, but not retrospective analysis. However, just because a method of analysis is mentioned in "The SCL Protocol", it does not necessarily mean its applicable to the matter in question.

In the recent case of *White Constructions Pty Ltd v PBS Holdings Pty Ltd [2019] NSWSC 1166*, a court appointed delay expert was deemed necessary to distinguish the facts due to the discrepancies between the two opposing parties delay expert reports.

Hammerschlag J stated:

"The court appointed expert opinion, upon which I propose to act, is that for the purpose of any particular case, the fact that a method appears in the Protocol does not give it any standing, and the fact that a method, which is otherwise logical or rational, but does not appear in the Protocol, does not deny its standing."

Although this is a common law case in Australia, it is logical that the cause and effect of alleged delay event(s) must be identified in any delay analysis undertaken, rather than on an effect and cause basis.

Regardless of the delay analysis methodology deployed, the independent and impartial experts should come to the same conclusion given they have the same facts. They rarely do. Primarily because any retrospective analysis requires the Expert to infer causation, as opposed to proving it. In comparison, a prospective analysis relies on the underlying facts and evidence to demonstrate the chain of causation, albeit on a somewhat theoretical time model.

How to determine if an analysis is credible?

1

Does the analysis follow a factual, common-sense approach?

2

Does the analysis prepared on behalf of either party identify the respective parties' own proportionality of the alleged delays?

3

Do the impartial experts come to the same (or very similar) conclusion concerning the quantum of delay days, with or without a differing interpretation as to proportionality?

If the delay experts come to different conclusions regarding the quantum of time in delay, it is more than likely **that the analysis methodology has dictated the outcome, rather than proving the cause and effect of the delaying event(s).**



Andrew McKenna

Director of Delay and Planning

e: contact@accuraconsulting.com

Download our Capability Statement

➤ accuraconsulting.com/capabilitystatement

Learn more about us

➤ accuraconsulting.com

 linkedin.com/company/accuraconsulting