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# Recent Developments in Contract Law

Minimising risk through  
contracting excellence

16 September  
Crowne Plaza Darling  
Harbour, Sydney



## Don't miss this opportunity to:

- Discover how to **control liability through contracts**
- Learn how to **protect your legal risks and liabilities** through contract drafting
- Examine how to determine a contractual duty of **good faith**
- Find out how to **leverage commercial convenience** through ADR

## Expert speakers include:

**Jeffrey Goldberger**,  
Special Counsel, Blake Dawson

**Owen Hayford**, Partner, Clayton Utz

**Geoff Wood**, Partner,  
Mallesons Stephen Jacques

**Geoff Sutherland**, Partner, Deacons

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Product of:

# Recent Developments in Contract

## Minimising risk through contracting excellence

### Conference program: 16th September 2008

- 8:30 **Conference registration**
- 9:00 **Welcome and opening remarks from the Chair**  
*Jonathan Simpkins SC, Barrister, Seven Wentworth Chambers*
- 9:10 **Controlling liability through contracts – exclusion clauses and indemnities**
- Drafting of exclusion clauses and liabilities caps: are there any limits?
  - Construction and interpretation of exclusion clauses in Australian law
  - Indemnities following *Erect Safe Scaffolding (Australia) Pty Ltd V Sutton [2008] NSW CA 114*
  - Direct and consequential loss: implications of *Environmental Systems Pty Ltd V Peerless Holdings Pty Ltd [2008] VSCA 26*  
*Jeffrey Goldberger, Special Counsel, Blake Dawson*
- 9:55 **Proportionate liability and risk allocation in contracts**
- The proportionate liability regime and its judicial application in NSW
  - Exercising reasonable care and skill in applying proportionate liability to claims under services contracts
  - Protecting your legal risks and liabilities through competent contract drafting
  - The consideration of the courts' in apportioning liability  
*Owen Hayford, Partner, Clayton Utz*
- 10:40 **Morning tea**
- 11:00 **Good faith and its implied duty in contract law**
- Determining contractual duty of good faith
  - Establishing "reasonable standards of conduct" and the objectivity test – the legal implication in contracts of what is reasonable
  - The concept of "good faith" in applying a "termination for convenience" clause  
*Geoff Wood, Partner, Mallesons Stephen Jacques*
- 11:45 **Realising value by leveraging your intellectual assets - is contract law overtaking copyright as a means of "locking up" IP?**
- Identifying and developing IP rights
  - Managing IP throughout the contract
  - Examining the IP indemnity clause and fairness
  - IP protection – assessing your options  
*John Gray, Partner, Corrs Chambers Westgarth*
- 12:30 **Networking lunch for speakers and delegates**
- 1:30 **Termination of contracts: examining convenience and repudiation**
- Providing for unforeseen risks when drafting commercial agreements
  - Applying case law in drafting an enforceable termination for convenience clause
  - Using repudiation to renegotiate the terms of termination
  - Establishing entitlement to compensation where the right of termination has been exercised  
*Alec Christie, Partner, DLA Phillips Fox*
- 2:15 **Law, jurisdiction and alternative dispute resolution clauses**
- Exploring the "alternatives" of dispute resolution – avoiding the costly legal battle through well-drafted legal documentation
  - Leveraging commercial convenience through ADR
  - Exploiting the three key concepts of ADR in obtaining maximum benefit for your client:
    - arbitration
    - mediation
    - conciliation*Durham Grigg, Principal, Tres d'Marque IP*
- 3:00 **Afternoon tea**
- 3:20 **Insolvency – an overview of recent case law**
- Contractual issues arising from the court decisions in the collapse of the margin lenders
  - Administrators and retention of title clauses following the recent amendments to Part 5.3A of the *Corporations Act*
  - Litigation Lending contracts after *Meadow Springs v Balanced Securities, Green (Arimco) v CGU, and Hall v Poolman*.  
*Geoff Sutherland, Partner, Deacons*
- 4:05 **Online contracts – ensuring management, IT and lawyers work together**
- Scrutinising formation of electronic contracts
  - Maximising your ability to enforce an electronic contract - systems implications of evidence laws
  - Security and privacy issues - proposals to introduce data breach notification laws  
*Patrick Gunning, Partner, Mallesons Stephen Jacques*
- 4:50 **Contractual rights and the Trade Practices Act – locking horns**
- Overview of trade practices considerations in commercial contracting
  - Examining Predatory Pricing Prohibition – considering "relevant cost"
  - Derivative Crown Immunity and commercial contracts: examination and implications of the High Court's *Baxter Health Care* decision
  - Section 52 of the TPA and the consequences of failing to disclose material information: lessons learned from the *Warragamba and BAL* Cases  
*Kate Watts, Special Counsel, Minter Ellison*
- 5:30 **Closing remarks from the Chair**
- 5:40 **Close of conference**

## Your Speaker Panel

**Jeffrey Goldberger**, Special Counsel, **Blake Dawson**, specialises in construction and contracts law. He principally advises government agencies on all aspects of construction and procurement including advice on contract preparation, analysis of construction and project risk, contract provisions, liquidated damages, termination of contracts, and force majeure. Jeff regularly presents on contract and construction law at seminars and conferences throughout Australia.

**Owen Hayford**, Partner, **Clayton Utz** practices in the specialist area of privately and publicly funded infrastructure projects and has had significant involvement in a number of major infrastructure projects, equipment procurement projects (particularly Defence projects) and the outsourcing of maintenance and other services. Owen has extensive experience in the structuring, tendering, documentation and contract administration of major projects involving multiple stakeholders.

**Geoff Wood**, Partner, **Mallesons Stephen Jaques** is the national head of practice for Construction. He has extensive experience in all aspects of the negotiation, documentation and administration of major construction, civil engineering, resources, defence and privately funded infrastructure projects. Geoff was recently named by 'Best Lawyer International' as one of Australia's best construction lawyers in their inaugural (2008) publication.

**John Gray**, Partner, **Corrs Westgarth Chambers** has extensive experience in advising on the legal aspects of strategic technology projects for banks and other financial institutions, corporations, government departments and their service providers. He has practised in IT and telecommunications law for over 13 years, including two years as an in-house solicitor at IBM Australia and Unisys Australia.

**Alec Christie**, Partner, **DLA Phillips Fox** has a diverse cross-border Asia Pacific practice with an emphasis on commercial IT and IP and general commercial. He has been recognised as a 'Leading Lawyer' in each of these practice areas every year since 1998.

**Durham Grigg**, Principal, **Tres d'Marque IP** started his firm after completing an 18-month locum role as the Head of the Intellectual Property team for a major national UK law firm. Durham is a LEADR trained mediator, who has been appointed to the panel of 'Neutrals' of the World Intellectual Property Organisation - Arbitration and Mediation Centre.

**Geoff Sutherland**, Special Counsel, **Deacons** has acted in all aspects of corporate and structured financing facilities and securities, syndications, insolvency, partnership law, property financing and joint ventures. Throughout his consistently successful career, his depth of skill and range of experience has been relied upon by a long list of banks, financial institutions and accountants. Geoff was Chairman of the Insolvency Committee of the Inter Pacific Bar Association from 2002-2005.

**Patrick Gunning**, Partner, **Mallesons Stephen Jaques** is experienced in dealing with a wide range of technology and business process contracts, including outsourcing, software development and licensing and distribution agreements. His practice extends over the full life cycle of technology projects and includes assisting clients to resolve disputes. Patrick is also an experienced general commercial lawyer, with an emphasis on procurement by corporate groups.

**Kate Watts**, Special Counsel, **Minter Ellison** has advised and acted in a number of large commercial, competition and regulatory matters in several jurisdictions, including the Australian Competition Tribunal. Her practice involves advising and acting in a range of areas including competition law, telecommunications, gas, information technology, and commercial disputes.

## Who Should Attend:

### Non-Legal Professionals

- Contract Managers and Officers
- Procurement Managers
- Purchasing Managers and Buyers
- Commercial and Business Development Managers
- Supply Chain and Logistics Managers
- Project Managers and Officers
- Alliance Managers
- Construction and Engineering Managers

### Legal Professionals

- In-house Counsel / General Counsel / Legal Counsel
- Government Lawyers
- Partners
- Solicitors
- Barristers
- Associates
- Senior Associates
- Litigators
- Dispute Resolution Specialists

## Why attend this event:

Lexis Nexis Recent Development in Contract Law is a premier event for professionals seeking a relevant and practical approach to contemporary contract law.

We offer:

- An outstanding speaker faculty
- Practical skills guidance
- Up-to-date expertise on legal developments
- Risk assessment strategies
- Contract drafting techniques
- Tips for streamlining management processes

... and more. It is the ultimate forum and authority on contract law and commercial contract management.

## Upcoming events:

**Risk Management Conference**  
28-31 July

**Conveyancing Conference**  
13-14 October

**Legal EA & PA Conference**  
20-21 August

**Insolvency Conference**  
20-21 August

**Corporate Tax Conference**  
3-5 September

**Property & Construction Law Conference**  
24-26 September

Visit [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd) for the full program and registration

# Priority registration form Recent Developments in Contract Law

**4 easy ways  
to register**

**Phone:** 1800 772 772  
**Fax:** (02) 9422 2338  
**Online:** [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd)  
**Mail:** Conference Co-ordinator, LexisNexis  
Locked Bag 2222,  
Chatswood Delivery Centre, Chatswood NSW 2067  
or: DX 29590 Chatswood

Please complete sections A, B, C, D

Conference code: PD1318 ABN: 70 001 002 357

## A Delegate 1 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Organisation: \_\_\_\_\_

Postal address: \_\_\_\_\_

Suburb Postcode State

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

## Delegate 2 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

## Delegate 3 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

\*\* to send conference confirmation

**3rd Delegate FREE!**

## B Please tick as many practice areas you work in which apply:

- |   |   |
|---|---|
| <input type="checkbox"/> Banking & finance            | <input type="checkbox"/> Family law                               |
| <input type="checkbox"/> Commercial litigation & ADR  | <input type="checkbox"/> Insolvency & restructuring               |
| <input type="checkbox"/> Corporate and commercial law | <input type="checkbox"/> Insurance and risk                       |
| <input type="checkbox"/> Criminal law                 | <input type="checkbox"/> Property                                 |
| <input type="checkbox"/> Energy and resources         | <input type="checkbox"/> Wills & estates                          |
| <input type="checkbox"/> Environment and planning     | <input type="checkbox"/> Workplace relations, employment & safety |
|   | <input type="checkbox"/> Other: _____                             |

This will help us keep you informed about topics relevant to your business needs.

## C Event Pricing (please tick your selection)

### Early Bird Special\* (register & pay before 5 August 2008)

One day conference \$850.00 + GST = \$935.00

### Standard Price (register & pay after 5 August 2008)

One day conference \$950.00 + GST = \$1045.00

### CONFERENCE RESOURCES

I am unable to attend but would like to purchase a set of conference papers for NSW Contract Law Conference \$300.00 + GST = \$330.00

### TEAM DISCOUNTS\*

Register a team of 2 for NSW Contract Law Conference at the same time, from the same organisation and receive a free pass for the 3rd delegate.

\* Early Bird, team discounts and any other discount cannot be taken concurrently

## D Payment details Payment is due upon registration

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Name of approving manager: \_\_\_\_\_

### PROGRAM CHANGES

Details regarding this conference were confirmed and correct at the time of printing. LexisNexis reserves the right to cancel or amend the conference details at any time if required.

### CANCELLATION

Your registration will be confirmed in writing when full payment is received. We will refund your registration in full less a \$165 administration fee if notification is received in writing by 19 August 2008. If we receive written notification between 19 August 2008 and 2 September 2008 you will receive a 50% refund and conference documents. No cancellation requests will be accepted after 2 September 2008. You may nominate a replacement, however no refund will be issued.

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