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# 8th Annual Contract Law Masterclass

Reducing risk through  
enforceable contracts

16 - 18 July 2008  
Stamford Plaza  
Melbourne

## Don't miss the opportunity to:

**MINIMISE** your clients'  
exposure through  
indemnities and exclusions

**MASTER** the technicalities of risk allocation

**GAIN** the advantage when deciding on choice  
of law and jurisdictions

**PROTECT** IP rights in contractual arrangements

**DISCOVER** the latest developments in online  
contracts, alliance contracting and much more!

### Plus workshops to hone your commercial skills:

#### Driving successful government procurement for your clients

St John Frawley, Partner, Holding Redlich

#### Drafting essential clauses - indemnities, exclusions and liquidated damages provisions

Nick Rudge, Partner, Allens Arthur Robinson

### Expert speakers include:

Jeffrey Goldberger, Special Counsel,  
Blake Dawson Waldron

Peter Wood, Special Counsel, Minter Simpson

Phillip Greenham, Partner, Minter Ellison Lawyers

George Golvan QC, Owen Dixon Chambers West

Register today

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Professional Development

## Pre-conference workshops: Wednesday 16 July 2008

### 8:30 **Workshop registration**

#### **Workshop A 9:00am - 12:30pm**

##### **Driving successful government procurement for your clients**

In seeking a foolproof way to systemise the tender process managers are in danger of doubling up on issues unnecessarily as well as permitting loopholes to creep into what may otherwise appear to be a coherent system.

This workshop takes delegates step-by-step through a tender management process that will give them greater confidence in ensuring their projects are not getting lost in the system.

##### **Key learnings from this workshop include:**

- Understanding the procurement process
- Effectively evaluating tenders
- Multi-attribute decision analysis
- The process contract
- Implied terms and acting in good faith
- Avoiding the pitfalls of tendering
- Disclosure
- Developing compliance procedures
- The procurement framework
- Documentation supporting the tender process
- Contract finalisation
- Freedom of information – what can a tenderer access?
- Complaints and whistleblowers

By the end of the workshop, monitoring tender compliance and progress will be simplified and delegates will be apprised of how to incorporate a compliant tender process and evaluation method into their workplace.

**Manik Meah, Senior Associate, Minter Ellison Lawyers**

### 12:30 **Networking lunch for facilitators and delegates**

#### **Workshop B 1:30pm - 5:00pm**

##### **Drafting essential clauses – indemnities, exclusions and liquidated damages provisions**

This workshop offers both in-house and private practice lawyers as well as commercial and contract managers up to the minute and comprehensive advice on latest techniques and practice in the drafting of these classes of contractual clauses.

Plain English drafting techniques are a skill set that requires updating as often as new legal developments occur. While some lawyers unwittingly allow their techniques to go rusty, others lack exposure to changes in the law that require a new approach to drafting.

##### **Key learnings from this workshop include:**

- Understanding the mechanics of these clauses
- Working with your client to elicit all relevant information and providing useful advice
- Drafting commercially acceptable and legally effective indemnity, exclusion and liquidated damages clauses

In this workshop contract drafting skills will receive a complete overhaul. Delegates will leave with fresh information and well-honed skills – more confident in their drafting ability and armed with the knowledge of exactly how to achieve accurate and effective contractual clauses.

**Nick Rudge, Partner, Allens Arthur Robinson**

## **Future events:** Visit [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd) for brochures

### **Commercial Litigation & ADR Conference**

7-9 May 2008 Sydney  
12-14 May 2008 Melbourne  
14-16 May 2008 Brisbane

### **5th Annual Family Law Conference**

16 June 2008 Sydney  
17 June 2008 Brisbane  
18 June 2008 Melbourne

### **ACLA National Conference 2008**

6-7 November 2008, Sydney

# Law Masterclass - Reducing risk through enforceable

Day one: Thursday 17 July 2008

8:30	<b>Conference registration</b>	10:40	<b>Morning tea</b>
8:50	<b>Welcome and opening from the Chair</b>	11:10	<b>Preserving commercial outcomes through binding liquidated damages provisions</b>
9:00	<b>Minimising your clients' exposure through indemnities and exclusions</b> <ul style="list-style-type: none"><li>• <i>Environmental Systems Pty Limited v Peerless Holdings Pty Ltd</i> [2008] VSCA 26</li><li>• <i>BI (Contracting) Pty Limited v AW Baulderstone Holdings Pty Limited</i> [2007] NSWCA 173</li><li>• Limits to the enforcement of contractual obligations</li><li>• Protection from tort, equitable and other liabilities</li><li>• Examining courts' interpretation of indemnity and exclusion clauses</li><li>• Common law damages and indemnities</li><li>• Avoiding pitfalls and spotting weak points</li><li>• Drafting an indemnity clause in relation to consequential loss</li><li>• The golden rules of indemnity and exclusion clauses</li></ul> <p><b>Peter Wood, Special Counsel co-presenting with Stewart Nankervis, Partner, Minter Ellison Lawyers</b></p>	<ul style="list-style-type: none"><li>• Unliquidated damages v liquidated damages</li><li>• Contemplating liquidated damages in relation to the right to and quantum of general damages</li><li>• Effective drafting of liquidated damages provisions<ul style="list-style-type: none"><li>- genuine pre-estimate of damage assessed at time of making, and drafting, the contract</li><li>- proportionality</li><li>- defining breaches</li><li>- formulae, mechanisms and components in clauses</li><li>- certainty</li></ul></li><li>• Conditions precedent for termination in clauses</li><li>• Problems enforcing liquidated damages provisions</li><li>• Unconscionability as a separate ground <i>Yarra Capital Group Pty Ltd v Sklash Pty Ltd</i> [2006] VSCA 09</li><li>• <i>Ringrow Pty Ltd v BP Australia Pty Ltd</i> [2005] HCA 71</li><li>• <i>State of Tasmania v Leighton Contractors Pty Ltd</i> [2005] TASSC 133</li></ul> <p><b>George Golvan QC, Owen Dixon Chambers West</b></p>	
9:50	<b>Mastering the technicalities of risk allocation</b> <ul style="list-style-type: none"><li>• Operation of the proportionate liability regime Wrongs Act 1958 Vic Part IVA - the scope for loss or damage in tort or contract arising from failing to take care and through misleading and deceptive conduct</li><li>• Breaches of contractual duty concurrent with tort duty of care</li><li>• Sections 46 and 70 Wrongs Act 1958 (Vic) exclusion of proportionate liability</li><li>• Considering joint and several liability and contribution</li><li>• Factors taken into account when apportioning liability</li><li>• Exclusion for fraud and intentional wrongdoing <i>Dartberg Pty Ltd v Wealthcare Financial Planning Pty Ltd</i> [2007] FCA 1216</li><li>• <i>Atkins v Interprac Financial Planning Pty Ltd &amp; Anor</i> [2007] VSC 445</li><li>• Contemplating the legitimacy of choice of law clauses</li><li>• Practical considerations – risk allocation in contracts and drafting alerts</li></ul> <p><b>St John Frawley, Partner, Holding Redlich</b></p>	12:00	<b>Protecting your client's most important corporate asset - intellectual property</b> <ul style="list-style-type: none"><li>• Differing species of intellectual property – the pros and cons of each</li><li>• Identifying IP rights – how do they develop during the life of a contract?</li><li>• The erroneous insistence on IP assignment in development contracts</li><li>• The IP indemnity clause - what is fair?</li><li>• Troubleshooting - when things go wrong how can ADR help?</li></ul> <p><b>Philip N Argy, Principal &amp; Chief Executive, ArgyStar.com</b></p>
		12:50	<b>Networking lunch for speakers and delegates</b>

To register now ph: 1800 772 772 or visit: [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd)

1:50 **Avoiding wrongful termination of contracts: focussing on convenience and repudiation**

- *Gumland Property Holdings Pty Limited v Duffy Bros Fruit Market (Campbelltown) Pty Limited* [2008] HCA 10
- *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Limited* [2007] HCA 61
- *Kellogg Brown & Root Pty Ltd v Australian Aerospace Ltd* [2007] VSC 200
- Why the increase in termination for convenience clauses?
- Is there an implied duty of good faith in termination for convenience?
- What are the limitations of the termination for convenience entitlement?
- Economic duress, renegotiation and repudiation in context of termination

**Peter Little, Barrister, Owen Dixon Chambers East**

2:40 **Strategic choice of law, jurisdiction and alternative dispute resolution – current trends and future directions**

- Examining law and jurisdiction clauses
  - what are they
  - how do they work – judicial interpretations
  - why use them - ramifications and commercial considerations
- Domestic and international jurisdictions – points of difference and preference affecting choices
- *Fluor Australia Pty Ltd v ASC Engineering Pty Limited* [2007] VSC 262
- Investigating ADR clauses - what are they and how do they work?
- Using arbitration clauses in
  - Domestic contracts – interstate trade and commerce issues
  - International contracts: Australia, China, United States – conventions and treaties

**George Triantopoulos, Principal, GTR Lawyers**

3:30 **Afternoon tea**

4:00 **Discovering how boilerplate clauses can be critical to your clients' best interests**

- Defining the range of practical uses for boilerplate clauses
  - Types of clauses
  - General acceptance and jurisdictional issues
- Keeping your boilerplate within legal limits
- The meeting of the minds requirement in context of boilerplate clauses
  - thresholds of judicial interpretation
  - click-wrap agreements
- Aligning commercial purpose with legal effect: waiver and set-off
- Identifying invalid clauses, their consequences and remedies
- Understanding how to use precedents
- Rules for drafting commercially effective and legally enforceable clauses

**Sebastian Greene, Partner, Middletons**

4:50 **Closing remarks from the Chair**

5:00 **Close of day one**



## Day two: Friday 18 July 2008

8:30 **Conference registration**

8:50 **Opening remarks from the Chair**

9:00 **Your vital case law update**

Case law intensive forum

- Act constituting repudiation – *Sopov v Kane Constructions Pty Ltd* [2007] VSCA 257
- Exclusions for consequential loss - *Environmental Systems Pty Limited v Peerless Holdings Pty Ltd* [2008] VSCA 26
- Liquidated damages - *State of Tasmania v Leighton Contractors Pty Ltd* [2005] TASSC 133
- Tortious breach of duty - *Eden Construction Pty Ltd v New South Wales (No 2) 9 May 2007* [2007] FCA 689
- Negotiating in good faithw *Jobern Pty Ltd v BreakFree Resorts (Victoria) Pty Limited* [2007] FCA 1066; *Laing O'Rourke (BMC) Pty Ltd v Transport Infrastructure Development Corp* [2007] NSWSC 723
- Current issues

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

10:30 **Implementing practical and enforceable requirements for contractor performance reports – the undervalued art**

- Your client's instructions: negotiating payment schedules contingent on performance measure
- Assessing provisions for legal and logical efficacy
- Understanding the impacts of fairness and relationship maintenance on your client's behalf
- Comprehensive assignment of reporting, measuring and recording obligations in the agreement
- Querying the issues and considering the questions raised
  - Risk and safety issues
  - Tortious breach of duty
- Is an independent assessor provision advisable or required?
- Understanding the extent of protection offered by contemporary agreements and considering who pays if the project falls over before completion
- Managing performance based contract reviews

**Phillip Greenham**, *Partner*, **Minter Ellison**

11:15 **Morning tea**

11:45 **Harmonising contractual rights and the Trade Practices Act**

- Overview of trade practices considerations in commercial contracting
- Examining Predatory Pricing Prohibition – relevant cost and other factors to consider
- Derivative Crown Immunity and commercial contracts: examination and implications of the High Court's *Baxter Health Care* decision
- Component pricing and bundling
- Section 52 of the TPA and the consequences of failing to disclose material information: lessons learned from the *Warragamba* and *BAL* Cases

**Katrina Howie**, *Senior Associate*, **Mallesons Stephen Jaques**

12:30 **Aligning the management, IT and the practitioner perspectives in online contracts**

- Scrutinising formation of electronic contracts
- Why your web designer needs to work closely with your lawyer – lessons from recent cases
- Maximising your ability to enforce an electronic contract – electronic document management and evidence laws
- Security and privacy issues - proposals to introduce data breach notification laws

**Michael Park**, *Senior Associate*, **Deacons**

1:15 **Networking lunch for speakers and delegates**

2:15 **Getting the best out of alliance contracting for your client**

- Identifying the alliance contract process
- Understanding the *raison d'être*
- Overviews of the legal and commercial fundamentals
- Examining other important features of the alliance contract relationship
- Contemplating the financier's perspective
- A comparative examination of alliances in context of the alternatives
- Vital implications for legal advisors

**Marko Misko**, *Partner Major Projects*, **Clayton Utz**

3:00 **Reducing the impact of risk exposure during project life cycles**

- Risk allocation during negotiations - when is the best time to agree?
- Due diligence – impact on risk allocation and effective risk transfer
- Minimising the risk of contractual disputes arising
- Risk management frameworks for:
  - Project work
  - Outsourced services and
  - Goods procurement

**Josh Marchant**, *Partner Construction and Major Projects*, **Maddocks**

3:40 **Afternoon tea**

4:10 **Complying with disclosure obligations in the tender process**

- The process contract and mandatory evaluation criteria in the tender process
  - the decision in *China Harbour Engineering v The Secretary for Justice*
- Competitor access to commercial-in-confidence information:
  - the decision in *Griffin Energy Pty Ltd v Western Power Corporation*

**Emma Warren**, *Partner*, **Allens Arthur Robinson**

4:50 **Closing remarks from the Chair**

5:00 **Close of conference**

# Priority registration form

## 8th Contract Law Masterclass

16-18 July 2008

Stamford Plaza Melbourne  
111 Little Collins Street  
Melbourne, Vic 3000  
Telephone: +61-3 9659 1000  
Facsimile: +61-3 9659 0999  
Email: sales@spm.stamford.com

Please complete sections A, B C and D

Conference code: PD6208 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 (for additional delegates please photocopy form)

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

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

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

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

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

\*\* to send conference confirmation

3rd Delegate FREE!

### B Early Bird Pricing (Expires 4 June 2008)

<input type="checkbox"/> Two Day Conference + 2 Workshops	\$2399.09+GST = \$2639.00
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<input type="checkbox"/> Two Day Conference + 2 Workshops	\$2699.09+GST = \$2969.00
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# I would like to attend  Day1  Day 2  Workshop A  Workshop B

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| <input type="checkbox"/> Banking & Finance            | <input type="checkbox"/> Family Law                               |
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|   | <input type="checkbox"/> Other: _____                             |

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

### CONFERENCE RESOURCES

I am unable to attend but would like to purchase a set of conference papers for the 8th Annual Contract Law Masterclass \$300.00 + GST = \$330.00

### TEAM DISCOUNTS

Register a team of 2 for the 8th Annual Contract Law Masterclass 2008 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

### I would like to purchase a copy of:

Contract Law in Australia 5th Edition, JW Carter, E Peden, GJ Tolhurst for \$250.00 (Hardcover) ISBN 9780409323597 (PDB00K07)

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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 18 June 2008. If we receive written notification between 19 June 2008 and 2 July 2008 you will receive a 50% refund and conference documents. No cancellation requests will be accepted after 2 July 2008. You may nominate a replacement, however no refund will be issued.

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Online: [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd)

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