

Earn up to
18 CLE points!

6th annual contract law conference

26 - 28 February 2008 **Amora Jamison** Sydney

Essential for anyone needing critical analyses of new legal developments and cutting-edge management techniques in the field of contract law.

Back by popular demand!
Jeffrey Goldberger
Scott Alden

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Lawyers Weekly

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Professional Development

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Day 1 Tuesday 26 February 2008

advanced legal skills

A review of recent developments and current issues in contract law. Designed for:

- Private practitioners
- In-house counsel
- Government lawyers
- All delegates attending Day 2

A valuable pre-cursor to Day 2

8:30

Conference Registration

9:00

Welcome and Opening from the Chair

MEET YOUR
CHAIR

Elizabeth Olsson SC, Barrister, **Garfield Barwick Chambers**, was admitted to practice as a solicitor in 1984 and was employed as a legal officer by the Builders' Licensing Board (later the Building Services Corporation). Since being called to the Bar in 1988, she has practised extensively in building and construction law and is a regular speaker for the College of Law CLE Centre on construction topics, in particular on residential building law and associated legislation. Liz was appointed silk in 2003.

Dissecting Issues in Contractual Liability and Damages

9:10

Controlling Liability via Contract – The Laws of Indemnity and Exclusion Clauses

- Examining courts' interpretation of indemnity and exclusion clauses
- Avoiding pitfalls and spotting weak points
- Drafting an indemnity clause in relation to consequential loss
- The golden rules of indemnity and exclusion clauses

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

10:00

Proportionate Liability and Risk Allocation in Contracts

- Considering liability – operation of the proportionate liability regime
- Exploring the issues
- Avoiding the application of the regime
- Practical considerations – risk allocation in contracts

Barbara McDonald, *Associate Professor*, **University of Sydney**

10:50 Morning Tea

11:20

Exploring Liquidated Damages

- Unliquidated damages v liquidated damages
- Problems enforcing liquidated damages provisions
- Effective drafting of liquidated damages provisions

Rachel Watts, *Senior Associate*, **Sparke Helmore**

Examining Clauses: Intellectual Property, Boilerplate, Termination and Jurisdiction

12:10

Intellectual Property: Your Most Important Corporate Asset

- Differing species of intellectual property – the pros and cons of each
- Identifying IP rights – how do they develop during the life of a contract?
- The erroneous insistence on IP assignment in development contracts
- The IP indemnity clause - what is fair?
- Troubleshooting - when things go wrong

Philip Argy, *Partner*, **Mallesons Stephen Jaques**

1:00 Networking Lunch for Speakers and Delegates

1:50

Termination of Contracts: Examining Convenience and Repudiation

- Mastering convenience clauses: why the increase in termination for convenience clauses?
- Termination for convenience – is there an implied duty of good faith?
- What are the limitations of the termination for convenience entitlement?
- Termination for repudiation – using repudiation to renegotiate
- Economic duress and repudiation

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

2:40

Law, Jurisdiction and Alternative Dispute Resolution Clauses – Current Trends and Future Directions

- Examining law and jurisdiction clauses - what are they and how do they work?
- Investigating ADR clauses - what are they and how do they work?
- Using arbitration clauses in
 - Domestic contracts;
 - International contracts: Australia, China, United States
- Clarifying courts' rules

John Levingston, *Barrister*

3:30 Afternoon Tea

4:00

Realities of Boilerplate Clauses

- Defining the range of practical uses for boilerplate clauses
- Keeping your boilerplate within legal limits
- Mating commercial purpose with legal effect: waiver and set-off
- Identifying invalid clauses and the consequences of them
- Understanding how to use precedents
- Rules for drafting commercially effective and legally enforceable clauses

James Miller, *Barrister*

4:50

Closing Remarks from the Chair

5:00

Close of Day One

Here's what your colleagues had to say about previous LexisNexis Contracts Conferences:

"Fantastic two-day course representing good value for money. Good practical and legal perspectives given. Excellent speakers!"

Carolyn Gibbons, Legal Counsel, Vline Passenger Pty Ltd

"Refreshingly informative."

Craig Williams, Project Services Manager, Lycopodium Engineering Pty Ltd

"Excellent conference, relevant content, well presented and organised"

Karen Alexander, Director, Legal and Commercial, Department of Infrastructure

management and commercial skills

A review of recent developments and current issues in contract management. Designed for:

- Contract managers
- Procurement managers
- Contract administrators
- In-house counsel
- All executives who authorise or manage contracts
- All delegates attending Day 1

A practical application of the concepts discussed on Day 1

8:30

Conference Registration

8:50

Opening Remarks from the Chair

MEET YOUR CHAIR

Lesley Bentley is the National Vice President of the **Australian Institute for Project Management** and Managing Director of **Living Planit**. She is a regular guest lecturer on project management at various Sydney universities and has been involved in projects such as the Wood Royal Commission Reform Agenda and the NSW Rural Fire Service Organisational Change Program. Ms Bentley has authored numerous publications and presented at international conferences on project management issues.

9:10

Contractor Performance Reports and *Eden Constructions Pty Ltd v New South Wales*

CASE STUDY

- Examining the facts – Eden's claim
- Querying the issues and considering the questions raised
- Summarising the decision and discussing its consequence for contractors

The Honourable Justice Graham, Judge, Federal Court of Australia

Exploring Contemporary Issues in Contract Law

10:00

Contracting Across Cultures: Contract Law and Practice in Japan and China

- Examining the importance of China and Japan to the Australian economy and business
- Overcoming myths and stereotypes: the place of culture in negotiating business deals in China and Japan
- The implications of rapid legal reform on contract law and practice in China and Japan: evidence of convergence on a global standard?

Leon Wolff, Associate Professor, University of New South Wales

10:50 Morning Tea

11:30

Contractual Rights and the Trade Practices Act – Locking Horns

- 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
- Section 52 of the TPA and the consequences of failing to disclose material information: lessons learned from the *Warragamba* and *BAL* Cases

Mark McCowan, Senior Associate, Corrs Chambers Westgarth

12:10

Online Contracts – Ensuring Management, IT and Lawyers Work Together

- Scrutinising formation of electronic contracts
- Why your web designer needs to work closely with your lawyer - lessons from the *Big Day Out* case
- 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 Jaques

1:00 Networking Lunch for Speakers and Delegates

Tender Management and Associated Issues

1:50

Examining Alliance Contracting

- Clarifying client and alliance objectives
- Ensuring team behaviour delivers alliance objectives – issues in team selection, clarity of roles and responsibilities, reward mechanisms
- Governing an alliance
- Aligning KRA's and KPIs to client objectives
- Selecting alliance tools – clarity of requirements
- Discussing alliance leadership – what does it really mean?

Rob Cooper, Principal, Evans & Peck Consultants

2:40

Mitigating Risks and Considering Management Frameworks

- Reducing the impact of risk exposure - how to minimise the risk of contractual disputes arising
- Risk allocation during negotiations - when is the best time to agree?
- Risk management frameworks for:
 - Project work
 - Outsourced services and
 - Goods procurement

Allen Dickson, Director, Engineering and Projects, Yokogawa Australia and New Zealand

3:30 Afternoon Tea

4:00

Disclosure Obligations in the Tender Process – Why it is Important and What Can be Done

- 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*
- Transparency of contractual dealings between government and private sector
 - changes to the *Freedom of Information Act 1989*
- Public disclosure of information arising from NSW government tenders and contracts
 - Premier's Memorandum M2007/01

Scott Alden, Partner, Tresscox Lawyers

4:50

Closing Remarks from the Chair

5:00

Close of Conference

Post Conference Workshop A Thursday 28 February 2008 - 9:00 - 12:30

running a compliant tender process and evaluating tenders

8:30

Workshop Registration

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:

- The stages of a tender process
- Risks in dealing with tenderers directly and how to avoid/manage them
- Effectively evaluating tenders
- Multi-attribute decision analysis
- Disclosure

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.

Workshop Facilitator

ABOUT YOUR FACILITATOR

Scott Alden, Partner, **Tresscox Lawyers** has over nine years' experience in both contentious and non-contentious commercial transactions. Scott advises on State Government infrastructure projects, NSW Government capital and services procurement, infrastructure contracts and performance based contracting, public transport infrastructure and IT requirements. In addition he advises on tender processes including drafting reports and methodology documents and tender evaluation, contract negotiation, legislative advice work and legislative compliance and audit services.

12:30 - 1:30

Close of Workshop A and Networking Lunch for Delegates Attending Both Workshops

Post Conference Workshop B Thursday 28 February 2008 - 1:30 - 5:00

mastering contracts: best practice in drafting

1:30

Workshop Registration

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 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:

- How to draft good faith clauses
- Understanding termination clauses
- Developing contract structures and regimes to incentivise better performance
- Understanding proportionate liability regimes and the impact on drafting

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.

Workshop Facilitator

ABOUT YOUR FACILITATOR

Ren Niemann, Partner, **Allens Arthur Robinson** is a specialist construction and infrastructure lawyer who has acted on large construction and infrastructure projects in the Australia and Asia Pacific region. His work focuses on construction and infrastructure projects across all sectors and industries. He has recently acted on large property developments, power stations and processing plants projects, transport infrastructure projects (such as roads and rail) and contract mining. He is experienced in all forms of contract structures and procurement (including alliances, public private partnerships (PPPs), design, construct and maintain (DCM), design, build, operate and maintain (DBOM) and design and construct (D&C) contracts), as well as tendering documentation and issues. He also has extensive experience in using standard form construction contracts.

5:00

Close of Workshop B

To register now ph: 1800 772 772 or visit: www.lexisnexis.com.au/aus/conferences

about the presenters

Scott Alden, Partner, **Tresscox Lawyers** has over nine years' experience in both contentious and non-contentious commercial transactions. Scott advises on State Government infrastructure projects, NSW Government capital and services procurement, infrastructure contracts and performance based contracting, public transport infrastructure and IT requirements. In addition he advises on tender processes including drafting reports and methodology documents and tender evaluation, contract negotiation, legislative advice work and legislative compliance and audit services.

Philip Argy, Senior Partner, **Mallesons Stephen Jaques**, a partner of Mallesons Stephen Jaques for 24 years, specialises in intellectual property, science, technology and competition law. He is a renowned strategist in both commercial negotiations and commercial litigation, bringing his enormous breadth of legal experience and deep technical expertise to bear on activities as diverse as food and drug regulation; patent, copyright and trade mark litigation; outsourcing; electronic commerce and digital signatures. He is an experienced mediator and is on the World Intellectual Property Organisation (WIPO) panel of arbitrators for the resolution of intellectual property disputes. Euromoney's *Best of the Best* has repeatedly listed Philip as one of the best information technology lawyers in the world.

Rob Cooper, Principal, **Evans & Peck Consultants** has 30 years experience in the construction industry. Rob's engineering and management skills are further enhanced by expertise in change management, project management, commercial issue resolution, risk opportunity management and marketing strategies. He has consulted on strategy, risk management, conflict resolution and contract formation; project management on design, design and construct, Build Own Operate and Transfer and alliance contracting; civil engineering - particularly tunnelling in complex ground conditions; roads, water, wastewater systems; ship building and maintenance of transmission systems. He has particular expertise in the areas of procurement, project delivery services and risk management.

Allen Dickson, Director, Engineering and Projects, **Yokogawa Australia and New Zealand** has extensive experience in the construction industry. He has worked nationally and internationally as an Instrumentation and Control Systems Consultant in his own business, was Construction Manager for Rail Infrastructure Corporation County Western and Construction Manager for Enetech Lanham.

Jeffrey Goldberger, Senior Counsel, **Blake Dawson Waldron**, 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.

The Honourable Justice Graham, Judge, Federal Court of Australia, was sworn in as a Judge of the Federal Court of Australia on 24 May 2005 and was appointed as an Additional Judge of the Australian Capital Territory Supreme Court with effect from 1 March 2007. He studied Arts and Law at the University of Sydney, graduating with Honours in 1963. In 1963-4 he took a Master of Laws degree at Harvard University. He worked as a solicitor with what was then Allen, Allen & Hemsley before being called to the Bar in 1966. He was appointed as a Queen's Counsel in 1982.

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.

John Levingston, Barrister, Arbitrator and Mediator, **Queens Square Chamber, Sydney** has been in practice as a commercial lawyer since 1982 and prior to that worked for the Commonwealth in Trade and Resources and the Trade Practices Commission. He is also an Adjunct Professor at the School of Law, University of Canberra and Conjoint Professor at the School of Law, Newcastle where his interests include Admiralty and International Trade Law. He is a regular speaker at International Conferences.

Mark McCann, Senior Associate, **Corrs Chambers Westgarth**, is a competition and trade practices law specialist. He has extensive experience advising and representing clients in relation to merger clearances, restrictive trade practices issues, applications for ACCC immunity for cartel conduct and the application of consumer protection laws. Mark has advised a wide range of clients across the healthcare, property and construction, manufacturing, consumer products and IT sectors on the competition and trade practices law issues raised by their commercial arrangements and contracts.

Barbara McDonald, Associate Professor, **University of Sydney**, currently teaches in the undergraduate areas of torts, equity, contracts and media law as well as law of obligations, legal reasoning and common law systems and joint and proportionate liability in the postgraduate programme. A full time member of the faculty since 1991, Barbara is the editor of various books and articles, including commercial law co-editor of the monograph series of the Ross Parsons Centre of Commercial, Corporate and Taxation Law within the Faculty of Law.

James Miller, Barrister, **Blackstone Chambers** was a lecturer in political science at the University of Sydney and a lecturer in law at the University of Newcastle from 1989 to 1999. He is the author of two books: *Shoot and Demonise, the Death of Roni Levi & Getting Into Law*. Admitted to the NSW Bar in 2002, he mainly appears in commercial cases but maintains a general advocacy practice.

Ren Niemann, Partner, **Allens Arthur Robinson** is a specialist construction and infrastructure lawyer who has acted on large construction and infrastructure projects in the Australia and Asia Pacific region. His work focuses on construction and infrastructure projects across all sectors and industries. He has recently acted on large property developments, power stations and processing plants projects, transport infrastructure projects (such as roads and rail) and contract mining. He is experienced in all forms of contract structures and procurement (including alliances, public private partnerships (PPPs), design, construct and maintain (DCM), design, build, operate and maintain (DBOM) and design and construct (D&C) contracts), as well as tendering documentation and issues. He also has extensive experience in using standard form construction contracts.

Rachel Watts, Senior Associate, **Sparke Helmore**, is a member of Sparke Helmore's Construction, Projects & Infrastructure team. She acts for developers, government entities and construction, engineering and mining companies in a wide range of projects. Rachel advises and acts for clients in relation to contract negotiation and drafting, contract administration and dispute resolution, including mediation, arbitration, expert determination and litigation.

Leon Wolff, Associate Professor, Faculty of Law, **University of New South Wales** is the Convenor of the Masters stream in Asian and Comparative Law. His primary area of research is Japanese law. Current research topics include corporate governance reform in Japan, Japanese labour law and policy and empirical approaches to Japanese law and legal institutions. A member of the faculty since 2001, Leon is the Co-Director of the Australian Network for Japanese Law (ANJEL) and Director of Asian Law.

Dates for your diary:

Government Tendering

12 – 13 March 2008, Sydney

Equip your business to be the partner which government agencies prefer – understanding and winning business with the public sector customer.

Project Management for Lawyers - NEW

March 2008, Sydney, Melbourne, Brisbane

Discover why project management is the basis of future profitability for law firms.

why attend this event

LexisNexis Annual Contract Law Conference, now in its 6th year, is the premier annual 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.

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

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

TEAM DISCOUNTS*

Register a team of 3 for the 6th Annual Contract Law Conference 2008 at the same time, from the same organisation and receive a free pass for the 4th delegate.

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

CONFERENCE DATE AND VENUE

26-28 February 2008
Amora Jamison Sydney
11 Jamison Street
Sydney NSW 2000,
Australia
Tel: (02) 9696 2500
Fax: (02) 9696 2600

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 29 January 2008. If we receive written notification between 30 January 2008 and 13 February 2008 you will receive a 50% refund and conference documents. No cancellation requests will be accepted after 13 February 2008. You may nominate a replacement, however no refund will be issued.

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Tick here if you DO NOT wish to receive information about upcoming events

4 easy ways to register

Phone: 1800 772 772
Fax: (02) 9422 2338
Online: www.lexisnexis.com.au

Mail: Conference Co-ordinator, LexisNexis
Locked Bag 2222,
Chatswood Delivery Centre, Chatswood NSW 2067

Please complete sections A, B and C

Conference code: **PD0508** ABN: 70 001 002 357

A I would like to register for 6th annual contract law conference 2008

Early Bird* (expires 19 December 2007)

	Early Bird*	Standard Price
<input type="checkbox"/> Two-day conference + both workshops	\$2090.91 + GST = \$2300.00	\$2300.00 + GST = \$2530.00
<input type="checkbox"/> Two-day conference + 1 workshop	\$1850.00 + GST = \$2035.00	\$2050.00 + GST = \$2255.00
<input type="checkbox"/> Two-day conference only	\$1600.00 + GST = \$1760.00	\$1800.00 + GST = \$1980.00
<input type="checkbox"/> One-day conference + 1 workshop#	\$1200.00 + GST = \$1320.00	\$1350.00 + GST = \$1485.00
<input type="checkbox"/> One-day conference only#	\$850.00 + GST = \$935.00	\$950.00 + GST = \$1045.00
<input type="checkbox"/> Two workshops only		\$863.64 + GST = \$950.00
<input type="checkbox"/> One workshop only**		\$500.00 + GST = \$550.00

If only attending one-day conference, please indicate which day Day One Day Two
**If only attending one workshop, please indicate which workshop Workshop A Workshop B

CONFERENCE RESOURCES

I am unable to attend but would like to purchase a set of conference papers for 6th Annual Contract Law Conference 2008 \$270 + GST = \$297

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 (PDBOOK07)

^Prices of books were correct at the time of printing. LexisNexis reserves the rights to amend the prices at any time if required.

B Payment details Payment is due upon registration

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Please charge \$ _____ to Mastercard Visa Amex
Card number _____
Expiry ____/____
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Signature of cardholder _____
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C Delegate details (for additional delegates please photocopy form)

Mr/Ms/Dr _____
First name Last name

Position _____

Organisation _____

Postal address _____

Suburb Postcode State

Telephone _____

Fax _____

Email _____

YES! I would like to receive information on upcoming events via email