

Early bird expires 15 August

Separate  
property &  
construction  
days

CPD  
points  
applicable

# Minimising contractual risks in Property Transactions & Reducing risks of time & cost overruns in Construction & Infrastructure Projects

Property Masterclass  
23 September

Workshops  
24 September

Construction Masterclass  
25 September

Marriott Hotel  
Brisbane

## Don't miss this opportunity to:

- Examine structuring issues relating to **foreign investments in Qld**
- Identify how **credit market conditions** are affecting funding for **large scale developments**
- Discover **risk minimisation strategies** for contracting
- Consider what **green buildings** mean for construction projects
- Tracking **alliance contracting** and the push for **relationship based models**
- Administering **time-related claims** under different contractual models

**Register Today! Ph: 1800 772 772  
or [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd)**

## Accredited & specialist experts from:

David Colenso, Partner, **Malleons Stephen Jaques**  
Scott Budd, Partner, **Malleons Stephen Jaques**  
Ian Hazzard, Partner, **McCullough Robertson**  
Mark Foy, Partner, **McCullough Robertson**  
Matthew Austin, Senior Associate, **Malleons Stephen Jaques**  
Daniel O'Brien, Senior Associate, **Malleons Stephen Jaques**  
Chris Boge, Partner, **Clayton Utz**  
Frazer Moss, Partner, **Clayton Utz**  
Stephen Fall, Special Counsel, **Clayton Utz**  
Denise Kelly, Special Counsel, **Clayton Utz**  
Karen Mungomery, Senior Associate, **Minter Ellison**  
Jonathon Williams, Special Counsel, **Minter Ellison**  
Andrew Johnson, Partner, **Holding Redlich**  
Michael Byrom, Managing Partner, **Holding Redlich**  
Scott Lambert, Partner, **Holding Redlich**  
Troy Lewis, Partner, **Holding Redlich**  
Richard Schulte, Barrister, **Queensland Bar**

Product of:

Supported by:



**LexisNexis**  
Professional Development

# Minimising contractual risks in P Reducing risks of time & cost over

## Property Transactions Conference: Tuesday 23 September 2008

8.30	<b>Conference registration</b>	12.00	<b>Networking lunch for Speakers and Delegates</b>
9.00	<b>Opening remarks from the Chair</b>	1.00	<b>Explaining the definition and purpose of put and call options</b> <i>Stepping through the options of when to use and how to draft.</i> <ul style="list-style-type: none"><li>• Flagging the ways that put and call options can be used in dealings with residential property</li><li>• How they have been used in contracts for sale in residential developments</li><li>• Noting the potential advantages and disadvantages of using either a put and call option</li><li>• Understanding the implications for the payment of stamp duty</li><li>• Looking at how to actually draft conditions to include in a put or call option</li></ul> <i>Ian Hazzard, Partner, McCullough Robertson</i>
9.05	<b>Following the influx of foreign investment into the Queensland property market</b> Acting for foreign investors and looking at structuring issues by: <ul style="list-style-type: none"><li>• Going through the background on foreign investment in the property sector, and</li><li>• Looking at the market drivers of property transactions in Queensland</li><li>• Having particular regard to why investors are coming here and what hurdles need to be negotiated</li></ul> <p>*** <b>Hypothetical involving foreign investment in a residential development</b> *** *** <b>Hypothetical involving foreign investment in a CBD office tower</b> ***</p> <ul style="list-style-type: none"><li>• Modelled on current issues concerning investors, debt, equity and lending</li><li>• With particular focus on lending to foreign entities and the different consideration for residential and commercial property</li></ul> <i>David Colenso, Partner, Mallesons Stephen Jaques</i>	1.45	<b>Contracting for risk minimisation strategies when the economy is contracting</b> <ul style="list-style-type: none"><li>• Being on top of claims for material prejudice associated with high density developments</li><li>• Highlighting variations prior to completion as a point of exposure to risk</li><li>• Practical tips on minimising client's exposure to risk as a result of variations</li><li>• Taking into account the period of construction and life of a contract</li><li>• Having regard to how material prejudice is being argued in off-the-plan apartment sales</li></ul> <i>Mark Foy, Partner, McCullough Robertson</i>
10.00	<b>Morning Tea</b>	2.30	<b>Afternoon Tea</b>
10.15	<b>Profiling the changing face of residential environments</b> <ul style="list-style-type: none"><li>• Looking at how climate change is impacting on sustainable development sales</li><li>• Capturing emissions issues that are beyond carbon trading</li><li>• How water issues are likely to surface from a planning point of view</li><li>• Generating energy in a market that has downward pressure on costs and consumption</li></ul> <i>Matthew Austin and Daniel O'Brien, Senior Associates, Mallesons Stephen Jaques</i>	2.45	<b>Pre-development due diligence techniques as more than a mere procedure</b> <i>Knowing what to include in the report that is often cited but far from standardised.</i> <ul style="list-style-type: none"><li>• Providing properly informed advice as to whether the project is viable</li><li>• Mitigating the risks for pre-construction and identifying all entities involved</li><li>• Scoping the project and the project location in both planning and development phases</li><li>• Having regard to pre-construction projects that have gone bust</li><li>• Anticipating problems with finding a market for the end product</li><li>• Looking at specific examples of minimising exposure to unacceptable risks</li></ul> <i>Chris Boge, Partner, Clayton Utz</i>
11.15	<b>Building Companies in extremis: how to anticipate, identify and respond to the risk of liquidation</b> <ul style="list-style-type: none"><li>• Identifying the signs and knowing what to look for when suspecting and investigating risks of insolvency.</li><li>• Minimise the risk of exposure to preference claims by liquidators<ul style="list-style-type: none"><li>– Addressing the construction industry defence and negotiating with liquidators</li></ul></li><li>• Anticipate set off and other problems associated with subcontractors' charges claimed shortly before and after liquidation</li><li>• Update on statutory demands - when to and when not to use them.</li></ul> <i>Richard Schulte, Barrister, Queensland Bar</i>		

Co-presentation

# Property Transactions & Arrangements in Construction & Infrastructure Projects

## 3.30 Financing issues arising under development leases and joint venture agreements

- Examining Development Leases with specific regard to:
  - What the common issues are for a construction financier that the developer should be aware of;
  - Which particular issues arise during staged developments;
  - How will the construction financier's security requirements differ from those where the developer owns the freehold;
  - Which provisions will the construction financier require in its side deed with the lessor.
- While there is no 'standard' type of Joint Venture Agreement,
  - What are the issues that commonly arise for a construction financier that the developer should be aware of.

*Karen Mungomery, Senior Associate, Minter Ellison*

## 4.15 How market conditions are affecting funding for large scale developments

- Structuring and sourcing the funding for large scale developments
- Working through specific financing issues for integrated and multiple stage developments
- Identifying how credit market conditions are affecting funding for large scale developments.

*Jonathon Williams, Senior Associate, Minter Ellison*

## 5.00 Closing remarks from the Chair

## 5.10 Close of conference

## Property & Construction Workshops: Wednesday 24 September 2008

### 8.30 Property workshop registration

#### 9.00 Property Development Workshop A Converting pre-sales to sales and minimising risk in off-the-plan projects

- An overview of key documentation and traps when collating off-the-plan contract and disclosure documentation:
- The importance of special conditions and Buyer's Acknowledgements
- Tips and Tricks to ensure compliance with the legislative framework
- Contract signing and contract exchange processes.

*Andrew Johnson, Partner, Holding Redlich*

### 10.00 Morning tea

#### 10.30 Property Development Workshop B Addressing the importance of due diligence on retail transactions.

- An overview of key documentation and traps when collating off-the-plan contract and disclosure documentation
- The importance of special conditions and Buyer's Acknowledgements
- Tips and Tricks to ensure compliance with the legislative framework
- Contract signing and contract exchange processes.

*Michael Byrom, Managing Partner, Holding Redlich*

### 12.30 Construction workshop registration

#### 1.00 Construction Workshop A Strategies to being a winner in the Green War

- Understanding Green ratings systems including Greenstar and NABERS – what they mean and what you get
- Looking into the future at what ratings systems the market will be looking to adopt
- Managing the green risk and risk allocation under:
  - Construction contracts
  - Design contracts
  - Leases, and
  - Facilities management agreements
- Protecting yourself from unexpected green liabilities

*Scott Lambert, Partner, Holding Redlich*

### 2.00 Afternoon tea

#### 2.30 Construction Workshop B Looking at recent developments in security of payment to ensure that you are adequately protected

- Highlighting recent developments in the BCIPA
- Applying the BCIPA
- Looking at the effect of BCIPA on contract drafting
- Practical tips to enhance your prospects of succeeding under BCIPA

*Troy Lewis, Partner, Holding Redlich*

### 4.30 Close of Workshops

12:00  
Networking  
lunch for full  
day delegates

## Construction & Infrastructure Projects Masterclass: Thursday 25 September 2008

- 8.50 **Conference registration**
- 9.00 **Opening remarks from the Chair**
- 9.05 **Contracting for green outcomes with ABGR ratings**  
*What green buildings mean for contracts.*
- Looking at the practical issues associated with what's being promised
  - Understanding the key features of the ABGR and Green Star as the current rating tools
  - How to allocate the risk of achieving the ratings between various project participants
  - Identifying the inter-relationship between ratings and key provisions of building contracts
- Comparing the use of different contractual models for green building projects**
- Knowing which contractual model best suits a green building having regard to regulation
  - Highlighting the misconceptions about green stars and what they lead to
- What green star ratings lead to during construction and beyond**
- Having regard to approaches for occupation and regulation of green buildings
  - Measuring and regulating how the tenants operate the building
  - Seeing how defects and the defect liability period is unique for green buildings
- Scott Budd, Partner, Mallesons Stephen Jaques**
- 10.00 **Morning Tea**
- 10.15 **Getting the best overview on how public infrastructure delivery models are being used**  
*From hard dollar contracting to what's next in the credit constrained future.*
- Advising on the right combination of construction, operation, finance and ownership
  - Looking at experiences with projects of the Build-Own-Operate-Transfer (BOOT)
  - Comparing BOOT with not facilities to the government under the Build-Own-Operate (BOO) model
  - How elements of different Public Private Partnerships (PPP) have played out in Queensland
- Mallesons Stephen Jaques**
- 11.15 **Tracking alliance contracting and the push for relationship-based models**  
*Moving to a brave new world of the Early Contractor Involvement (ECI) model.*
- Choosing the right contractual delivery method by:
  - Defining and allocating risk for the duration of a project and beyond
  - Knowing what the particular characteristics of the project require in contract form
  - Identifying the features of standard form contracts used
  - Highlighting when non-standard clauses that vary depending on the project
- Mallesons Stephen Jaques**
- 12.00 **Networking lunch for Speakers and Delegates**
- 1.00 **Managing claims for variation and keeping defects at bay**  
*When prevention is better than the cure.*
- Examining the typical risks that lead to variation claims
  - Reviewing the standard claims process from both principal and contractor perspective
  - Distinguishing between variation claims and claims for defect rectification, and
  - Enforcing contractual rights upon the failure to perform defect rectification work.
- Denise Kelly, Special Counsel, Clayton Utz**
- 1.45 **Administering time-related claims under different contractual models**
- Reviewing the common time-related claims for
    - Extensions of time
    - Disruption
    - Acceleration
  - Analysing how time-related claims are dealt with under different contract models
  - Identifying the implications for planned early completion of works
  - Maintaining entitlements to liquidated damages
- Frazer Moss, Partner, Clayton Utz**
- 2.30 **Afternoon Tea**

### Future events:

**Contract Law Masterclass**, 20-22 August 2008  
**Legal EA and PA Conference**, 20 - 21 August 2008  
**Conveyancing Essentials and Masterclass**, 20-22 August 2008  
**Legal Drafting Training Series:**  
Workshop 4 - Alliance Agreements, 14 August 2008  
Workshop 8 - Employment Contracts, 21 October 2008  
**Estate Planning Toolkit**, 22 October & 12 November 2008  
For information visit [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd) or phone 1800 772 772



2.45 **Spitting the dummy in the context of terminating construction contracts**

**Case study on the operation of termination for convenience clauses.**

- *Kellogg Brown & Root Pty Ltd v Australian Aerospace Ltd* [2007] VSC 200
- Injunction proceedings seeking to prevent a principal from relying upon a termination for convenience clause
- Is there an implied obligation to act in good faith when purporting to use a termination for convenience clause? If so, did the principal breach that obligation?
- Consideration of other issues that might arise in such a case, such as whether the principal is entitled to terminate the contract for the purpose of having the work undertaken by another contractor, and whether the principal may be able to rely upon a constructive termination for convenience.

*Addressing the "He Said - She Said!" scenario*

**Case study where one party alleges the other has repudiated the contract while the other maintains that the contract remains on foot**

- *Sopov v Kane Constructions Pty Ltd* [2007] VSCA 257.
- Did the principal refusing to pay a progress payment and calling up a bank guarantee amount to a repudiation of the contract?
- If so, did the contractor validly terminate the contract in reliance upon that repudiation?
- What are the consequences for the principal if it is held to have repudiated the contract?
- Highlighting other issues that might arise in such a case, such as waiver and exercising contractual rights to terminate.

**Stephen Fall, Special Counsel, Clayton Utz**

3.30 **Contracting for State lands when developments involve transport infrastructure**

Knowing the real world distinction between freehold and non-freehold land

- Making sure that you don't do a U-turn on advice for developments near railways and Busways
- Being clear on what arrangements need to be made
- What the differences are when dealing with State lands
- Stepping through a case study analysis of a Busway on State land
- Operating with a perpetual lease granted to the state
- What you need to do to develop near it or cross over it
- What the considerations to statutory instruments need to include, and
- What approvals or applications for an easement need to be made and how

**Chris Boge, Partner, Clayton Utz**

Feature Infrastructure Presentation

5.00 **Close of conference**

**Register 2 and 3rd attends FREE!**

Register a team of 2 for the Property, Construction & Infrastructure Conference at the same time, from the same organisation and receive a **free pass** for the 3rd delegate.

(See registration page for details)

**Who should attend**

- Property practice groups
- Infrastructure and finance practice groups
- Construction and development practice groups
  - Principal
  - Partner
  - Senior Associate
  - In-house counsel



# Priority registration form Property Law Transactions & Construction Law Conference

**4 easy ways  
to register**

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

Please complete sections A, B, C, D

Conference code: PD1018 CPD reference no: CPD532 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: \_\_\_\_\_

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

## Delegate 3 details

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

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

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

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

\*\* to send conference confirmation

3rd Delegate FREE!

## B Payment details Payment is due upon registration

Enclosed is my cheque for: \$ \_\_\_\_\_ made payable to LexisNexis

Pay by credit card: Please charge \$ \_\_\_\_\_ to

Mastercard  Visa  American Express

Card number: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Expiry: \_\_\_\_/\_\_\_\_

Name of cardholder: \_\_\_\_\_

Signature of cardholder: \_\_\_\_\_

Charge to my LexisNexis account: \$ \_\_\_\_\_

Account number: \_\_\_\_\_

Signature: \_\_\_\_\_

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

### TEAM DISCOUNTS\*

Register a team of 2 to the conference at the same time, from the same organisation and receive a free pass for the 3<sup>rd</sup> delegate.\*

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

## C Event Pricing *(please tick your selection)*

### Early Bird Special\* (register & pay before 15 August 2008)

<input type="checkbox"/> Two Day Conference + 4 Workshops	\$2300.00 + GST = \$2530.00
<input type="checkbox"/> Two Day Conference + 2 Workshops#	\$2100.00 + GST = \$2310.00
<input type="checkbox"/> Two Day Conference Only	\$1850.00 + GST = \$2035.00
<input type="checkbox"/> One Day Conference# + 4 Workshop	\$1650.00 + GST = \$1815.00
<input type="checkbox"/> One Day Conference + 2 Workshops#	\$1300.00 + GST = \$1430.00
<input type="checkbox"/> One Day Conference#	\$950.00 + GST = \$1045.00
<input type="checkbox"/> Workshop Only#	\$450.00 + GST = \$495.00

### Standard Price (register & pay after 15 August 2008)

<input type="checkbox"/> Two Day Conference + 4 Workshops	\$2500.00 + GST = \$2750.00
<input type="checkbox"/> Two Day Conference + 2 Workshop#	\$2250.00 + GST = \$2475.00
<input type="checkbox"/> Two Day Conference Only	\$1950.00 + GST = \$2145.00
<input type="checkbox"/> One Day Conference# + 4 Workshop	\$1850.00 + GST = \$2035.00
<input type="checkbox"/> One Day Conference# + 2 Workshop	\$1450.00 + GST = \$1595.00
<input type="checkbox"/> One Day Conference#	\$1050.00 + GST = \$1155.00
<input type="checkbox"/> Workshop Only#	\$500.00 + GST = \$550.00

# I would like to attend:

- Property Transactions – 23 September  Property Workshops  
 Construction, Infrastructure Masterclass – 25 September  Construction Workshops

### CONFERENCE RESOURCES

I am unable to attend but would like to purchase a set of conference papers for the Property, Construction & Infrastructure Conference \$300.00 + GST = \$330.00

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

- Banking & finance  Family law  
 Commercial litigation & ADR  Insolvency & restructuring  
 Corporate and commercial law  Insurance and risk  
 Criminal law  Property  
 Energy and resources  Wills & estates  
 Environment and planning  Workplace relations, employment & safety  
 Other: \_\_\_\_\_

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

### 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 up to but not including 1 month prior to the date of the event. If we receive written notification – any time up to but not including 2 weeks prior to the date of the event, you will receive a 50% refund & seminar documents. No cancellation requests will be accepted during the period 2 weeks prior to the event. You may nominate a replacement, however no refund will be issued.

### IMPORTANT PRIVACY NOTICE:

The information you provide on this form is collected by Reed International Books Australia Pty Limited for the purposes of processing your registration or enquiry and keeping you informed of upcoming products, services and events. The information is disclosed from time to time to our related bodies corporate for these purposes. The provision of this information by you is voluntary but if you do not provide some or all of the requested information we may be unable to properly process your registration. You have both a right of access to the personal information we hold about you and to ask us to correct it if it is inaccurate or out of date. Please direct your enquiries to [privacy@lexisnexis.com.au](mailto:privacy@lexisnexis.com.au)

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