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# New South Wales: 7th Annual Contract Law Masterclass

**Applying contract law principles  
in a changing environment**

**10-12 February 2009  
Crowne Plaza  
Darling Harbour  
Sydney**

## Don't miss this opportunity to:

- Examine the latest developments in courts' interpretations of exclusion, indemnity, liquidated damages and termination provisions
- Discover the most recent views on the application of the doctrine of good faith
- Learn from the experts on best practice contract drafting
- Keep up to date with emerging international contract law trends
- Consolidate your understanding of the impacts of impending policies on contract drafting

## Plus essential workshops on:

### Driving successful government procurement for your clients

Scott Aiden, Partner, DLA Phillips Fox

Alyson Eather, Senior Associate, DLA Phillips Fox

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

Joern Schimmelfeder, Partner and Edward Gomes, Lawyer, Middletons

## Hear from over 12 experts including:

Expert Author: **Dr Elisabeth Peden**, Professor  
Faculty of Law, **The University of Sydney** and  
Barrister

**Scott Aiden**, Partner, **DLA Phillips Fox**

**Brian Ambler**, Partner, **TressCox**

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

**Peter Leonard**, Partner, **Gilbert & Tobin**

**Rashda Rana**, Partner, **Holding Redlich**

**Keith Robinson**, Partner, **Minter Ellison Lawyers**

**Dr Nicholas Seddon**, Special Counsel,  
**Blake Dawson**

*....and more inside!*

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# New South Wales: 7th Annual Conference

## Applying contract law principles in a changing world

### Day One: Tuesday 10 February 2009

8:30 **Conference registration**

8:50 **Opening remarks from the Chairperson**  
**Dr Malcolm Quirey**, *Special Counsel and General Counsel, Piper Alderman*

9:10 **Reducing liability by drafting exclusion, indemnity and liquidated damages provisions**



Hot Topic

- Examining enforceable exclusion and limiting of liability for tort, equitable and statutory losses
  - Preventing the use of unenforceable methods of prohibition and control of liabilities
  - Ensuring indemnities for breach of contract are effective
  - One year on – *Environmental Systems Pty Limited v Peerless Holdings Pty Ltd* [2008] VSCA 26 – categorising losses intended to be covered by provisions
  - Comparing a breach of a duty of care with the failure to take reasonable care
  - Analysing how proportionate liability schemes affect drafting considerations
  - Securing your clients' position with effective liquidated damages provisions
  - Preventing unenforceability of a liquidated damages provision
  - *State of Tasmania v Leighton Contractors Pty Ltd* [2005] TASSC 133 – is there a special rule for government contracts?
  - Drafting indemnities against liquidated damages
- Keith Robinson**, *Partner, Minter Ellison Lawyers*

10:10 **Minimising risk of breach of good faith in negotiating and performance**



Expert Author

- Applying common law good faith to contract negotiations
  - Common law good faith in performance of contracts
  - When can good faith legitimately be used to prevent someone enforcing a contractual right?
- Dr Elisabeth Peden**, *Professor Faculty of Law, The University of Sydney and Barrister*

11:00 **Morning tea**

11:30 **Key developments in contract law cases**



Case Law Update

- Breach and fundamental breach after *Koompahtoo Local Aboriginal Land Council v Sandpine Pty Ltd* [2007] HCA 61 and *Gumland Property Holdings Pty Ltd v Duffy Bros Fruit Market (Campbelltown) Pty Ltd* [2008] HCA 10
  - Restitution and *Matthew Lumbers v W Cook Builders (in liquidation)* [2008] HCA 27
  - Remoteness and contractual damages after *Transfield Shipping Inc v Mercator Shipping Inc* [2008] 3 WLR 345 (House of Lords)
  - Managing the pitfalls of contract termination: *Chint Australasia Pty Ltd v Cosmoluce Pty Ltd* [2008] P 635
  - Interpreting contractual indemnities in light of *Erect Safe Scaffolding (Australia) Pty Ltd v Sutton* [2008] NSWCA 114
- Jeffrey Goldberger**, *Special Counsel, Blake Dawson*

12:25 **Ensuring the commercial utility of your contracts through negotiating and implementing durable terms**

- Ensuring you understand your client's environments and desired outcomes
- Eliciting all the information you need – the client, its customer and the business

- Drafting the contract with enduring commercial relationships in mind – recognising the potential for changing conditions over the life of the contract
- Offering practical solutions for threats to the operation of the contract
- Ensuring valid formation and avoiding misrepresentation and mistake
- Advising your client prior to contract formation:
  - Admissibility of extrinsic evidence in contract cases
  - Conduct rendering a contract voidable
  - How equitable mistake can operate

**Peter Leonard**, *Partner, Gilbert & Tobin*

1:20 **Networking lunch for speakers and delegates**

2:10 **Avoiding Trade Practices Act 1974 encroachments on the enforcement of contracts**

- Reviewing the scope of the *Trade Practices Act 1974*:
  - Misleading and deceptive conduct - sections 52 and 53
  - Unconscionable conduct s 51AA(1) s 51AB(1) and s 51AC
- Investigating the consequences of the state Fair Trading Acts
- Comparing contractual warranties with statutory liability for breach of warranty
- Examining personal liability for breaches - *Houghton v Arms* [2006] HCA 59
- Drafting damages provisions with the *Trade Practices Act* in mind
- Scrutinising the scope of permissible disclaimers, conduct, warranties and representations

**Kate Watts**, *Special Counsel, Minter Ellison Lawyers*

3:10 **People's Republic of China - Contracting with confidence**



International Focus

- Brief introduction to contract law in the PRC
- Major features of PRC contract law
- Examining the political context and its impact on contractual transactions
- Understanding the cultural issues which feature in PRC commerce
- Tips for doing business in China

**King & Wood, China and Julian Courtney-Stubbs**, *Partner, Gilbert & Tobin*

4:00 **Afternoon tea**

4:30 **Applying international law to contract drafting**

- Analysing whether exclusive or non-exclusive jurisdiction is appropriate
- Selecting choice of law – what is the scope of permissible election?
- Incorporating the application of the Free Trade Agreements
- Scrutinising the special relationship with New Zealand - the proposals of the Trans Tasman Working Group on Jurisdiction and Enforcement of Judgments
- Using anti-suit injunctions
- Preventing the enforcement of foreign judgments with the *Trade Practices Act*
- Enforcement of Australian judgments overseas and foreign judgments in Australia
- Enforcement of foreign arbitral awards in Australia and Australian arbitral awards overseas

**Rashda Rana**, *Partner, Holding Redlich*

5:20 **Closing remarks from the Chair**

5:30 **Close of Day One**

### Day Two: Wednesday 11 February 2009

8:30 **Conference registration**

8:50 **Opening remarks from the Chairperson**  
*Grant Parker, Partner, Holding Redlich*

9:00 **Five principles you need to know when terminating contracts**

- When is termination for convenience valid?
- Analysing the types of breaches – material, intermediate or innominate terms
- Advising your client on the consequences of termination and entitlement to damages
- What happens when you elect to accept termination – when does this become wrongful repudiation?
- Using good faith in termination action

*Terry Grace, Consultant, TressCox Lawyers*



Hot Topic

9:50 **Discovering the best remedies for breach of contract**

- Steps of terminating a contractual relationship
- Utilising rescission
- Obtaining performance standards through the use of a court order
- Looking at the differences between interim and mareva injunctions
- Understanding the appropriate usage
- Minimising expense through resolving contractual breach disputes out of court
- Utilising restitution in order to restore and outline rights

*Elisabeth Maryanov, Senior Associate Projects Dispute Resolution, Freehills*

10:35 **Morning tea**

## Commercial contracts essentials

Select two sessions from these four for the topics which best complement your practice:

### Construction stream

11:05 **Preparing construction documentation with clarity and purpose**

**A**

- Introduction – risk allocation principles
- Examining the document suite governing the whole of project:
  - Effective use of standard form and bespoke contract documents
  - Identifying and managing the risk of inconsistency between project documents
- Focussing on key issues in project documentation:
  - Exclusions and limitations of liability
  - Warranties and indemnities
  - Liquidated damages
  - Variations
  - Extension of time
  - Termination
  - Dispute resolution

*Scott Aiden, Partner, DLA Phillips Fox*

*Alyson Eather, Senior Associate, DLA Phillips Fox*

12:00 **Drafting, enforcing and avoiding time bars**

**B**

- Drafting challenge-proof time bar clauses
- Protecting the enforceability of time bars through proper administration of delay, disruption, variation and other claims
- Challenging or avoiding time bars
- Time bars and security of payment legislation
- Time bars and statutory causes of action.

*Scott Robertson, Senior Associate, Clayton Utz*

12:55 **Networking lunch for speakers and delegates**

### Commercial stream

11:05 **Key contractual intellectual property issues**

**C**

- Understanding and applying the intellectual property fundamentals
- Properly scoping intellectual property contracts
- Understanding the impact of timing issues
- Identifying key areas of intellectual property contractual risk
- What cannot be excluded or limited?
- Disclaimers - when are they relevant and how effective are they?
- Contractual clauses to manage infringements:
  - By licensees
  - Of licensed products
  - By third parties
- Types of remedies provided for by the contract and how they can be used by both suppliers and customers as part of a risk management system

*Patrick Gunning, Partner, Mallesons Stephen Jaques*

12:00 **Managing vendors through practical contracts**

**D**

- Structuring effective supply agreements
- “Just put it on one page” - drafting Plain English terms and conditions
- Describing essential terms:
  - Price and price adjustments
  - Delivery
  - Specifications and quality
  - Title and Romalpa clauses
- Tips for avoiding inconsistencies in original versions and amendments to the contract

*Christine Lithgow, Partner, Corrs Chambers Westgarth*



1:55

#### Dissecting the impact of the Emissions Trading Scheme on contract provisions

- Overview of the Emissions Trading Scheme
- Which contract party will be liable for emission permit compliance?
- Passing through emission costs
- How do you deal with non-reviewable existing contracts?
- Drafting and enforcing change of law provisions - will they work?
- How do you price future carbon costs into contracts to be entered now?

**Graeme Dennis**, Partner, **Clayton Utz**



2:45

#### Managing government contracts

(stretch break/afternoon tea 3:30-4:00 pm)

- Understanding the relevance of the government procurement guidelines
- Negotiating with government entities – what aspects are negotiable?
  - Standard form agreements
  - Process and procedure implementation
  - Processes for amending or updating the contract
  - Liquidated damages
  - Termination for convenience
- Government immunities and derivative immunity
- Questions from the floor

#### Panellists:

**Dr Nicholas Seddon**, Special Counsel, **Blake Dawson  
Simon Konecny**, Senior Executive Lawyer,  
**Australian Government Solicitor**  
**Brian Ambler**, Partner, **TressCox Lawyersw**



4:40

**Closing remarks from the Chair**

4:45

**Close of Day Two**

#### Who Should Attend?

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

#### Upcoming events:

##### Privacy Law Conference NSW

1 December 2008, Amora Jamison, Sydney

##### Conveyancing & Property Law Toolkit

1 December, Portside Centre, Sydney

Session 3: Tax Implications when dealing with property (1/2 day)

Session 4: Drafting effective property documents  
- Masterclass (1/2 day)

##### Carbon Risk Management Conference

18-19 March 2009, Crowne Plaza, Sydney

For more information please visit

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## Day Three: Thursday 12 February 2009

### Practical Workshops

8:30	<b>Workshop A registration</b>	12:45	<b>Workshop B registration</b>
9:00	<b>Workshop A: Driving successful government procurement for your clients</b>	1:00	<b>Workshop B Drafting essential clauses – indemnities, exclusions and liquidated damages provisions</b>
	<ul style="list-style-type: none"><li>• Reviewing <i>Financial Management and Accountability Act 1997</i> and its relevance</li><li>• Understanding the procurement process</li><li>• The process contract</li><li>• Implied terms and acting in good faith</li><li>• Avoiding the pitfalls of tendering</li><li>• Developing compliance procedures</li><li>• The procurement framework</li><li>• Documentation supporting the tender process</li><li>• Contract finalisation</li><li>• Freedom of information – what can a tenderer access?</li><li>• Complaints and whistleblowers</li></ul> <p><b>Scott Alden, Partner, DLA Phillips Fox</b> <i>Scott is a partner in the construction team of DLA Phillips Fox in the Sydney Office. Scott has practised in both the private and public sector in on a range of strategic projects and infrastructure projects as well as advising clients generally in relation to procurement and probity. Scott is the chair of the Business Law Committee of the Law Society of NSW and is also the Immediate Past President of NSW Young Lawyers.</i></p> <p><b>Alyson Eather, Senior Associate, DLA Phillips Fox</b> <i>Alyson is a senior associate in the construction team of DLA Phillips Fox in the Sydney Office. Alyson's expertise lies in advising public and private sector in relation to major projects including complex contract risk review and advising in relation to strategic procurement and probity.</i></p>	<ul style="list-style-type: none"><li>• Understanding the mechanics of these clauses</li><li>• Working with your client to elicit all relevant information and providing useful advice</li><li>• Drafting commercially acceptable and legally effective indemnity, exclusion and liquidated damages clauses</li></ul> <p><b>Joern Schimmelfeder, Partner, Middletons</b> <i>Joern joined Middletons as a partner in the Transport, Logistics &amp; Defence team in 2007. Joern boasts significant expertise in the legal issues affecting the transport and engineering industries. He has dealt with a broad spectrum of clients including contactors, owners, manufacturers, builders, subcontractors and industry professional advisors. His speciality has been dealing with engineering contractors, government bodies and developers.</i></p> <p>Joern has expertise in:</p> <ul style="list-style-type: none"><li>- Preparation and negotiation of contracts for the supply of aircraft parts, provision of outsourced defence services, major infrastructure works, long-term infrastructure maintenance, mining infrastructure maintenance</li><li>- Acting on litigious and non-litigious settlement of disputes advising on mining infrastructure and consortium transaction agreements and project finance documents.</li></ul> <p><i>Joern has undertaken projects in all states of Australia as well as advising on international transactions applying English, French, American, Canadian and Japanese law.</i></p> <p><b>Edward Gomes, Lawyer, Middletons</b> <i>Ed Gomes is a senior lawyer with Middletons' Transport, Logistics &amp; Defence Group. Ed specialises in legal issues affecting the construction, infrastructure and aviation industries. Prior to joining Middletons, Ed worked as a solicitor with a top-tier law firm in its construction and property group and prior to that with the United Nations in The Hague. Ed is a lecturer and course convenor in Aviation Law at the University of New South Wales and as part of that role teaches contract law at both undergraduate and postgraduate levels. He regularly presents and delivers papers in the areas of contract and transport law and has produced a number of articles regarding the aviation and infrastructure sectors.</i></p>	
12:00	<b>Close of Workshop A</b>		
12:00	<b>Networking lunch for facilitators and delegates attending both workshops</b>		
		4:30	<b>Close of Workshop B</b>

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## NSW: 7th Annual

### Contract Law Masterclass

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Please complete sections A, B, C, D, E

Conference code: PD0409 ABN: 70 001 002 357

**A** 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: \_\_\_\_\_

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### Delegate 3 details

Mr/Ms/Dr: \_\_\_\_\_  
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**C CONFERENCE RESOURCES**

I am unable to attend but would like to purchase a set of conference papers for NSW: 7th Annual Contract Law Masterclass \$360.00 + GST = \$396.00

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Register a team of 2 for NSW: 7th Annual Contract Law Masterclass 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

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**D Event Pricing (please tick your selection)**

Early Bird Special* (register and pay before 19 December 2008)	
<input type="checkbox"/> Two day conference + 2 workshops	\$2600.00 + GST = \$2860.00
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<input type="checkbox"/> One day conference only#	\$1150.00 + GST = \$1265.00
<input type="checkbox"/> Workshops only#	\$650.00 + GST = \$715.00

# I would like to attend:  Day One  Day Two

# If attending only one workshop:  Workshop A  Workshop B

Stream sessions (Choose two only):  
 Session A  Session B  Session C  Session D

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