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# Victoria: 9th Annual Contract Law Masterclass

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

**17-19 February 2009  
Stamford Plaza  
Melbourne**

## Don't miss this opportunity to:

- Examine the latest developments in courts' interpretations of exclusion, indemnity, liquidated damages and termination
- 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

*Jane Hider, Partner, DLA Phillips Fox*

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

*Ellen Williamson, Partner, DLA Phillips Fox*

## Hear from experts including:

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

**Emeritus Professor Jim Davis**,  
**ANU College of Law**

**St John Frawley**, Partner,  
**Holding Redlich**

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

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

**Charles Scerri**, Queens Counsel,  
**Chancery Chambers**

**Anna Sharpe**, Lawyer, **Communications,  
Technology & Corporate Advisory**

**Peter Wood**, Partner,  
**Minter Ellison Lawyers**

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# Victoria: 9th Annual Contract Law

## Applying contract law principles in a changing world

### Day One: Tuesday 17 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**



- 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
- Peter Wood, Partner, Minter Ellison Lawyers**

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



- 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**



- 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
  - The application of *Hadley v Baxendale* 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] NSWSC 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

**Tom McAvaney, Senior Associate, Middletons**

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

2:20 **Avoiding Trade Practices Act 1974 encroachments on 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 *Trade Practices Act* in mind
- Scrutinising the scope of permissible disclaimers, conduct, warranties and representations

**Charles Scerri, Queens Counsel, Chancery Chambers**

3:10 **VIDEO PRESENTATION PLUS Q&A SESSION: People's Republic of China - contracting with confidence**



- 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 Sydney**

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

**Emeritus Professor Jim Davis, ANU College of Law**

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

5:30 **Close of Day One**

### Day Two: Wednesday 18 February 2009

8:30 **Conference registration**

8:50 **Opening remarks from the Chairperson**  
*Douglas Meagher, Queens Counsel, Melbourne*

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

*Matthew Howard, Barrister, Francis Burt Chambers Perth*



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

*Peter Little, Barrister, Owen Dixon Chambers East*

10:35 **Morning tea**

## Commercial contracts essentials

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

### Construction stream

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

**A**

- 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

*St John Frawley, Partner, Holding Redlich*

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

*Trevor Thomas, Senior Associate, Construction and Major Projects, 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

*Anna Sharpe, Lawyer, Communications, Technology & Corporate Advisory*

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

*Teresa Torcasio, Partner, Herbert Geer*



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**

Hot Topic

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****Kenneth Eagle, Senior Executive Lawyer,****Australian Government Solicitor****Emma Warren, Partner, Allens Arthur Robinson**

Panel Discussion

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:****Administrative Law Conference**

26 November 2008, Crowne Plaza, Canberra

**Privacy Law Conference - NSW**1 December 2008, Amora Hotel Jamison, Sydney  
Preparing for the imminent reforms.**Conveyancing & Property Law Toolkit**

3 December 2008, Melbourne

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

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

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## Day Three: Thursday 19 February 2009

### Practical Workshops

8:30 **Workshop A registration**

9:00 **Workshop A:  
Driving successful government procurement for  
your clients**

- Reviewing *Financial Management and Accountability Act 1997* and its relevance
- Understanding the procurement process
- The process contract
- Implied terms and acting in good faith
- Avoiding the pitfalls of tendering
- Developing compliance procedures
- The procurement framework
- Documentation supporting the tender process
- Contract finalisation
- Freedom of information – what can a tenderer access?
- Complaints and whistleblowers

**Jane Hider, Partner, DLA Phillips Fox**

*Jane advises clients on all aspects of the delivery of major projects and transport infrastructure, from documentation and tendering through to delivery, including:*

- *Procurement of government projects ranging from major institutional and iconic projects to infrastructure projects such as water pipelines. Government major project procurement*
- *The policy and legislative framework for Victorian and Commonwealth procurement*
- *Transport infrastructure (especially road and rail)*
- *Dispute resolution*

*Jane also acts as a probity auditor and adviser to government agencies. She has experience in both the public and private sector and focuses on advising government agencies (both State and Commonwealth) on project procurement options, risk management, documentation, project advice and dispute management and minimisation.*

*In addition, Jane regularly prepares:*

- *Project specific construction documentation for major private sector developers*
- *Template construction and tender documentation for government agencies*

*Jane has advised several Victorian government agencies on the delivery of many significant road and rail projects with particular expertise in the preparation of framework agreements for stakeholders.*

12:00 **Close of workshop A**

12:00 **Networking lunch for facilitators and delegates**

12:30 **Workshop B registration**

1:00 **Workshop B:  
Drafting essential clauses – indemnities, exclusions  
and liquidated damages provisions**

- 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

**Ellen Williamson, Partner, DLA Phillips Fox**

*Ellen has specific expertise in infrastructure developments and major commercial procurement. She advises clients in the defence, state government, roads, education and health and aged care industries and sectors. Ellen focuses on:*

- *Complex and strategic procurement for government, including for Defence in its major capital acquisition and sustainment projects (this includes advising on acquisition and contracting strategies)*
- *Infrastructure developments in education and roads which involve private funding, construction and operation of publicly owned assets*
- *Tendering and probity (acting as probity advisor on Defence projects, including rapid acquisitions)*
- *Drafting and adapting standard form construction agreements, consultancy agreements, management agreements and a broad range of commercial deeds, guarantees, indemnities and tripartite agreements (all part of the extended package of project documentation)*
- *Helping clients manage and avoid contract dispute*
- *Delivering contract management training workshops*

4:30 **Close of workshop B**

# Priority registration form Victoria: 9th Annual Contract Law Masterclass

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to register**

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

Conference code: PD0509 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: \_\_\_\_\_

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

## Delegate 3 details

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

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

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

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\*\* to send conference confirmation

3rd Delegate FREE!

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

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<input type="checkbox"/> Commercial litigation and ADR	<input type="checkbox"/> Insolvency & restructuring
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	<input type="checkbox"/> Other: _____

**C** CONFERENCE RESOURCES

I am unable to attend but would like to purchase a set of conference papers for Victoria: 9th Annual Contract Law Masterclass \$360.00 + GST = \$396.00

### TEAM DISCOUNTS\*

Register a team of 2 for Victoria: 9th 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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Standard Pricing* (register and pay after 19 December 2008)	
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<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):  
 Stream A  Stream B  Stream C  Stream D

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