



MASTERCLASS SERIES

Construction Law

MASTERCLASS 2010

The ALB Masterclass Series is proud to present the premier learning event for construction lawyers and industry professionals focusing on the latest cases, legislative reform and new trends emerging in construction law.

Earn up to 6 CPD points!

PROGRAM HIGHLIGHTS

- Essential update on contract risk allocation following *Aquagenics v Break O'Day* and *Environmental Systems v Peerless*
- Discover new strategies in dealing with the government in light of the recent Alliancing benchmarking study
- Focus on the growing use of dispute resolution to solve construction disputes quickly and efficiently
- Hear from leading in-house counsel on their growing strengths and capabilities and what this means for the future of construction law
- Analyse the emerging trend towards hybrid contracting strategies using innovation and flexibility to deliver cost-efficient projects
- Spotlight on the strength of Arbitration as a dispute resolution mechanism in light of the recent amendments to the *International Arbitration Act 1974 (Cth)*
- In-depth analysis of notice requirements and time bars after *BMD Major Projects v Victorian Urban Development Authority*

All sessions run 8:30am-4:30pm

Brisbane: Thursday 7th October 2010
Brisbane Marriott Hotel, 515 Queen St

Sydney: Tuesday 19th October 2010
Sydney Harbour Marriott Hotel
at Circular Quay, 30 Pitt St

Melbourne: Thursday 21st October 2010
Rendezvous Hotel Melbourne, 328 Flinders St

YOUR MELBOURNE SPEAKER FACULTY



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HOW TO REGISTER

Visit: www.albmasterclass.com

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Construction Law

MASTERCLASS 2010

Melbourne Agenda: Thursday 21st October

8:30am **Registration opens**

9:00am **Welcome & opening remarks from the Chair**

- Commenting on the state of the construction industry
- Inviting contributions from delegates regarding what they expect to get out of the day

Mario Siles, manager legal operations – APAC – senior legal counsel, **Aurecon**

9:10am **Key updates on contract case law: Drafting tips to achieve desired contractual risk allocation**

- Considering the national proportionate liability scheme: Can you contract out of proportionate liability?
 - > *Aquagenics Pty Ltd v Break O'Day Council* [2010] TASFC
- Update on consequential loss in light of *Environmental Systems v Peerless* [2008] VSCA 26 : recent legal developments and drafting tips to address liability for consequential loss
- Drafting indemnities to achieve desired risk allocation

St John Frawley, partner, **Holding Redlich**

9:55am **Dealing with the government: The new focus**

- Analysing the recent government report on alliancing:
 - > *In Pursuit of Additional Value: A benchmarking study into alliancing in the Australian public sector* (NSW, VIC, QLD, WA)
- The emergence of ECI and ETI contracting models
- The future for PPPs for social and economic infrastructure
- Probity, process and audits - Increasingly under the microscope
- The increasing emphasis on sustainability

Phillip Greenham, partner, **Minter Ellison**

10:40am **Refreshment & networking break**

11:00am **Keeping it out of the courts: Cost-effective dispute resolution**

- Important update on dispute resolution issues
 - > Genuine and good faith negotiation: Recent view from the courts *United Group Rail Services Limited v Rail Corporation New South Wales* [2009] NSW
- Choosing the best dispute resolution process for your project
- Practical issues in resolving disputes

Paul Graham, partner, **HWL Ebsworth**

11:45am **Examining the introduction of the Australian Consumer Law and its effect on the Construction Industry**

- Background to the introduction of the *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*
- Structure and key provisions of the Act, including:
 - > What contracts the new provisions apply to?
 - > What terms are likely to be found to be unfair?
 - > What exclusions do the new provisions contain?
- How to draft to minimise the risk of terms later being found unfair and subsequently invalid?
- Status of the second ACL bill and the future of Australia's consumer law

Josh Marchant, partner, **Herbert Geer**

12:30pm **Networking lunch for speakers & delegates**

1:15pm **Keeping it in-house: Focusing on the increasing strengths of in-house counsel**

- The growing role and capabilities of in-house counsel: The challenges and opportunities

• Challenges:

- > Breaking old habits and gaining confidence of business in the in-house legal team
- > Early involvement and pre-emptive actions – Targeted practical training, good legal tools and alternative dispute resolution
- > Finding cost-effective and innovative ways to work with external lawyers
- > Ensuring legal professional privilege – The tension between being an independent legal adviser and providing commercial input in decision making

• Opportunities:

- > Using your unique knowledge to your advantage
- > The benefits of becoming integrated with the business
- > Getting your company on the ethical front foot

• What does it mean for the future direction of legal services in the construction industry?

Janette van Kernebeek, senior legal counsel, **Bovis Lend Lease**

2:00pm **Innovative and flexible strategies to deliver projects: The move towards a 'hybrid' model**

- Examining innovative strategies for project delivery and delivering value for money
 - > Successful models for a cost-efficient project while protecting your stakeholders from risk
 - > Considering the new focus on problem-solving, innovation and flexibility
- Benefits of the hybrid approach: Drawing on the best of alliancing, ECI, PPPs, and traditional delivery methods
- Analysis of a case study

David Fabian, partner & **Mike Krsticevic**, senior associate, **Lander & Rogers**

2:45pm **Refreshment & speed networking break**

3:00pm **Spotlight on an emerging trend: Arbitration**

- Considering the recent amendments to the *International Arbitration Act 1974* (Cth)
 - > Reviewing the changes and their impact on the national and international landscape
 - > Examining the increased powers of the arbitrator
- Understanding the growing importance of arbitration as a means to solving construction disputes

Peter Megens, partner, **Mallesons Stephen Jaques**

3:45pm **Analysing notice and construction contract claims: A practical guide to the operation of notice requirements and time bars**

- Brief introduction to procedural requirements and time bars in construction contracts, and some examples
- Issues which arise in relation to notice requirements:
 - > Time at which notice was in fact required
 - > What amounts to 'notice'?
 - > *BMD Major Projects Pty Ltd v Victorian Urban Development Authority* [2007] VSC 409; [2009] VSCA 221 – A 'common sense' approach?
- Relevant defences – Is a failure to comply with notice requirements fatal to a claim?

Brigid Lloyd, associate director, **MolinoCahill Lawyers**

4:30pm **Closing remarks from the Chair and Conclusion of Masterclass**

KEY BENEFITS

- Earn up to 6 CLE/CPD points
- Hear the latest case law updates and legislative reforms
- Develop new strategies and innovative practices
- Receive comprehensive course notes
- Increase your industry contacts through networking

