

ALB

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)
- Assess recent Security of Payment court decisions including *Dualcorp v Remo*

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 SYDNEY SPEAKER FACULTY



John Cooper
partner
Allens Arthur Robinson



Paul Deschamps
partner
Herbert Geer



David Fabian
partner
Lander & Rogers



Ian Gordon
senior legal counsel
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HOW TO REGISTER

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Construction Law

MASTERCLASS 2010

Sydney Agenda: Tuesday 19th 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

Ian Gordon, senior legal counsel, **Stockland**

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: Recent legal developments and drafting tips to address liability for consequential loss
 - > Important update: *Allianz v Waterbrook* [2009] NSWCA
- Drafting indemnities to achieve desired risk allocation

Avendra Singh, partner, **Colin Biggers & Paisley**

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

John Cooper, partner, **Allens Arthur Robinson**

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

Scott Laycock, partner, **Gadens Lawyers**

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

Paul Deschamps, 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?

Rashda Rana, general counsel asia pacific, **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 delivering 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

Lindsay Stirton, partner, **DLA Phillips Fox**

3:45pm **Understanding the implications of recent Security of Payment decisions**

- Analysis of recent cases: *Dualcorp v Remo* [2009] NSWCA to *Titans v Simcorp* [2010] QLDSC
 - > *Urban Traders v Paul Michael* [2009] NSWSC
 - > *The University of Sydney v Cadence Australia Pty Limited & Anor* [2009] NSWSC
 - > *Perform (NSW) Pty Limited v Mev-Aus Pty Limited t/as Novatech Construction Systems* [2009] NSWSC
 - > *Watpac Constructions v Austin Corp* [2010] NSWSC
 - > *AE&E Australia Pty Ltd v Stowe Australia Pty Ltd* [2010] QSC
 - > *John Holland Pty Ltd v Schneider Electric Buildings Pty Ltd* [2010] QSC

- Why you can't re-agitate your claim: The "one shot" rule
- How to manage a claim and avoiding dubious claims
- Has the High Court reopened the door to challenge adjudications? – *Kirk v Industrial Relations Commission* [2010] HCA

Peter Pether, partner, **Mallesons Stephen Jaques**

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

