



# MASTERCLASS SERIES

## Contractual Risk MASTERCLASS 2010

The ALB Masterclass Series is proud to present the latest **Contractual Risk Masterclass**, the premier learning event focusing on both front-end and back-end contract risk management and the key legal issues involved.

Earn up  
to 6 CPD  
points!

### PROGRAM HIGHLIGHTS

- Update on avoiding misleading and deceptive conduct during pre-contractual negotiations
- Minimise risk in the tender process by managing the process contract effectively
- Analyse legal developments and common problems in expert determination, arbitration and dispute boards
- Minimise project risk by selecting the right contract model
- Get the balance right between insurance and indemnity clauses
- Refine your drafting and negotiation skills
- In-depth analysis of liquidated damages from both sides of the bargaining table
- Negotiate and draft effective proportionate liability clauses and allocation of damages
- Update on consequential loss exclusions and life after *Peerless Holdings*

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

**Sydney:** Tuesday 24 August 2010  
Sydney Harbour Marriott Hotel  
at Circular Quay, 30 Pitt St

**Melbourne:** Thursday 26 August 2010  
Rendezvous Hotel Melbourne, 328 Flinders St

**Brisbane:** Thursday 9 September 2010  
Marriott Hotel, 515 Queen St

### YOUR BRISBANE SPEAKER FACULTY



**Ian Briggs**,  
partner,  
Minter Ellison



**Joanna Jenkins**  
partner  
Blake Dawson



**Jeremy Chenoweth**  
senior construction/  
commercial lawyer  
Santos Ltd



**Jay Leary**  
partner  
Freehills



**Sophie Evans**  
corporate solicitor  
Parmalat Australia Ltd



**Ren Niemann**  
partner  
Allens Arthur  
Robinson



**Brett Heath**  
special counsel  
Carter Newell



**Greg Richards**  
special counsel  
Minter Ellison



**Alicia Hill**  
partner  
DibbsBarker



**David Pearce**,  
senior associate,  
Minter Ellison

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# Contractual Risk

## MASTERCLASS 2010

### 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

### Brisbane Agenda: Thursday 9 September 2010

8:30am **Registration opens**

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

- Opening remarks reflecting on the topic of contractual risk
- Inviting contributions from delegates about what they expect to get out of the conference

**Sophie Evans**, corporate solicitor, **Parmalat Australia Ltd**

9:10am **Avoiding misleading and deceptive conduct during pre-contractual negotiations - an overview and update on the current legal position and relevant case examples**

- Case studies on what constitutes "misleading and deceptive conduct"
- Role of tort of negligence in pre-contractual negotiations
- Lessons for lawyers from the UK: *BSkyB Limited v HP Enterprise Services UK Limited* [2010] EWHC 86

**Joanna Jenkins**, partner, **Blake Dawson**

9:55am **Selecting the right contract model for your project – minimising contractual risk by using the right model and having a clear understanding of what is involved**

- Comparing different contract models
  - > Fixed time/price model
  - > Relationship and performance based models
  - > Managing contractor model
  - > Cost plus contract model
- Selecting the right contract model – essential criteria to consider from project scope to risk distribution
- Strategies to facilitate innovation in contract performance
- Myths and minefields in contract selection and structure
- Avoiding disputes from the outset

**Ian Briggs**, partner, **Minter Ellison**

**David Pearce**, senior associate, **Minter Ellison**

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

11:00am **Minimising risk in the tender process – considering whether the process is still relevant, and an analysis of Australian and international case law**

- Understanding the process from a commercial and legal stand point
- Considering probity and procedure
- Managing the process contract effectively
- Analysing case study examples

**Ren Niemann**, partner, **Allens Arthur Robinson**

11:45am **Contrasting three Alternate Dispute Resolution methods for resolving commercial and construction disputes – analysing the legal developments in expert determination, dispute boards and arbitration**

- Analysis of expert determination
  - > Common problems in drafting expert determination clauses
  - > The role of expert determination in the dispute resolution process – using experts effectively
- Analysis of dispute boards
  - > Types of Dispute Boards and their application
  - > Dispute Adjudication Boards- the good, the bad and the ugly
- Arbitration
  - > Contrasting Australian and international attitudes to arbitration
  - > Striving for relevance and reform – uniformity, efficiency, effectiveness and value
  - > The standard of reasoning required in arbitral awards – divergent views

**Jeremy Chenoweth**, senior construction / commercial lawyer, **Santos Ltd**

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

1:15pm **Managing risk with indemnity clauses and insurance – making sure that your drafting is effective and updating on current law**

- Common problems in drafting indemnity clauses
- Insurance and indemnity clauses – getting the balance right
- Discussion of legal developments including *Westina Corporation Pty Ltd v BGC Contracting Pty Ltd* [2009] WASCA 213; *Zurich Australian Insurance Ltd v Metals Minerals Insurance Pty Ltd* [2009] HCA 50

**Brett Heath**, special counsel, **Carter Newell Lawyers**

2:00pm **Negotiating and drafting effective proportionate liability clauses and allocation of damages under the proportionate liability regime**

- Drafting – ensuring your clauses are enforceable
- Allocation of damages under the proportionate liability regime - *Reinhold v NSW Lotteries Corporation (No. 2)* [2008] NSWSC 187 and subsequent cases
- Negotiating liability clauses down and liability cap clauses
- Case study of current legal developments in proportionate liability

**Alicia Hill**, partner, **DibbsBarker**

2:45pm **Refreshment break**

3:00pm **Analysis of liquidated damages from both sides of the bargaining table**

- Brief refresher on relevant principles, including a recent High Court case, *viz Ringrow* [2005] HCA including a brief retrospective on the seminal case, *Dunlop Pneumatic Tyre Co* [1915] AC 79
- Application of general principles in the context of building and construction law: consideration of cases such as *Multiplex Constructions v Abgarus* (1992) NSWSC
- Consideration of impact of above cases on drafting liquidated damages clauses
  - > *J-Corp Pty Ltd v Mladenis* [2009] WASCA 157
  - > Ensuring that a liquidated damages clause does not constitute a cap on damages
- Forensic considerations by reference to the "ultimate submission" in a claim for liquidated damages
  - > Relevance of discovery, including preliminary discovery
  - > Pleading a claim for liquidated damages
  - > Defending a claim for liquidated damages (including using the Notice of Categories for Discovery as a scalpel)

**Greg Richards**, special counsel, **Minter Ellison**

3:45pm **Update on consequential loss exclusion clauses – analysis of your clauses, what in-house counsel need to know and life after *Peerless Holdings***

- Analysis of your exclusion clauses to ensure that their operation is not affected by current legal developments
- What you really need to know about exclusion clauses
- The situation after *Peerless Holdings: Allianz Australia Insurance Ltd v Waterbrook at Yowie Bay Pty Ltd* [2009] NSWCA 224

**Jay Leary**, partner, **Freehills**

4:30pm **Closing remarks from the Chair & conclusion of Masterclass**

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