Remarks of the Hon. Marilyn Warren AC
Chief Justice of Victoria
on the occasion of the
Opening of the Fourth International
Construction Law Conference
Monday, 7 May 2012

Welcome to you all to the Fourth International Construction Law Conference here in Melbourne.

I congratulate the Societies of Construction Law of Australia and New Zealand for hosting the conference. It promises to be an exciting and challenging few days with much to consider and debate.

It is well understood that the construction industry is of immense importance to the economies of the globe. Politicians world-wide tremble at the specter of the release of the latest statistics revealing the performance of the industry.

The UK 'Guardian' of Friday 2 March 2012 led with the headline: '*UK construction growth bolsters economic recovery hopes*'.

In Summer 2011 a leading economic forecaster EC Harris Research wrote this about the Indian construction sector:

> *The Indian construction industry is an integral part of the economy and is poised for solid growth due to industrialisation, urbanisation and economic development together with people's expectations of improved living standards. The construction sector employs approximately 31 million people, accounts for some 6-8% of GDP*

and, after agriculture, is the largest employment sector in the country.

It is against this back-drop that the critical contribution of construction law must be considered. It provides the legal framework within which this vital industry must operate.

Construction law, certainly in Victoria and I suspect in common with many other jurisdictions, has always been at the forefront of innovation in litigation and contract law. This is not only due to the technical complexity of construction cases and the projects which spawn them, but also the factually rich context in which these disputes arise. For that read the potential for massive expense and seemingly interminable periods of time in the resolution of disputes once they arise.

The common problems arising in litigation generally tend to be concentrated and exacerbated in the construction field. It is this syndrome which acutely focuses attention on how to deal with these problems in construction law perhaps more than in any other area. In this way construction law is the natural incubator for new ideas. It provides a powerful engine room for experimentation and change in contemporary case management.

In the area of contract drafting for construction projects we are also witnessing spearheads of welcome innovation. I cite as an example recent developments in the area of dispute avoidance processes.

For some considerable time now, construction contracts have included dispute resolution clauses, or alternative/appropriate dispute resolution clauses as they have become known. These provide various now well accepted mechanisms for the resolution of disputes once they have erupted with a view to avoiding the cost and expense of the final arbiter – the courts.

However, the ADR process is reactive, being implemented only *after* parties are entrenched in a dispute, and generally not until after the project is complete.

Enter the Dispute Boards (or DBs).We are now seeing contract *dispute solution clauses* which provide proactive mechanisms to sort out differences 'on-the-job' quickly and efficiently by a pre-determined panel of experts as the project proceeds. This reduces the potential for disruption to the project and enables the parties to devote their resources to the central contractual objectives.

DBs are panels of, generally, three independent and experienced persons who are jointly chosen and appointed by the contracting parties at the commencement of a project. The DB members become familiar with the construction project, and remain up-to-date with developments through regular site visits and meetings with the parties. The DB's expert competence in the type of construction being performed enables them to understand potential technical complexities in the project, and their involvement with the parties and the project on an ongoing basis places them in a position where their site specific expertise may be readily accepted by the parties. In this way they may work to assist the parties to

resolve issues as they arise, thereby avoiding them escalating into disputes.

Thus the DB plays a proactive role in the early identification and resolution of potential problems. Supplemented by pre-determined dispute avoidance processes (or DAPs), the parties are aided in proactively managing conflict 'on-site' as the project progresses, facilitating completion of their project on-time, within budget and with no outstanding disputes.

This is but one example of an exciting development in contract law, which could well find a place in contracts beyond construction.

The conference theme "Global Challenges, Shared Solutions" has been well chosen by the organizers.

You will be deliberating on a range of common issues which are not only of direct relevance to construction law, but which will undoubtedly have a flow on effect to the way the courts and the profession do their business in other areas of litigation.

In the field of contract law, your work will make an important contribution towards developing even more efficient methods of project delivery in a range of other technical areas such as complex IT projects.

With these thoughts in mind, it is with much pleasure that I open the Fourth International Construction Law Conference, and wish you well with your deliberations.