

# Liquidated damages

## WORKSHOP

Brisbane: Wednesday 24 March 2010  
Saxons Training Facilities, Level 11, 300 Adelaide Street

### agenda

- 9:00 Overview and use of liquidated damages provisions**
- Clarifying what liquidated damages clauses are and how best to utilise them
  - Understanding how indemnity clauses in a Standard Form Contract override your liquidated damages clause and what you can do to minimise overlap between the two clauses
  - Indemnity, liquidated damage or insurance, which is the right clause for your contract?
  - Defining the two part process of liquidated damages from a litigation point of view: Establishing liability and getting the money.

**Michael Creedon, special counsel, Minter Ellison**

- 9:50 Case studies of decisions and clause examples: Uncovering problem areas**
- Cases to be examined include:
- *Peerless Holdings Pty Ltd v Environmental Systems Pty Ltd* [2008]
    - *Hadley v Baxendale* [1854]
    - *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd* [1915]
  - *GEC Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd* [2003]

**Scott Budd, partner, Mallesons Stephen Jaques**

- **Practical drafting exercises to ensure your liquidated damages clauses are watertight**
- **Case study reviews: How to use precedents in your own liquidated damages clauses**
- **How to protect your clauses from being interpreted as a penalty and calculating loss in the event of a contractual breach**

- 11:00 Practical drafting workshop: Make sure your clauses are clear, binding and legal.**

- The distinction between penalty and liquidated damages
- Drafting your clause to include;
  - Formula for calculating loss when breach occurs
  - Inclusion of calculation for fixed by scale damages i.e per day, week, month of delay
  - Inclusion of estimated lump sum payment
- How to ensure you have genuine support for the lump sum amount
- How to ensure your LD clauses don't suggest arbitrariness and penalty

**Stephen Humphreys, partner, Carter Newell**

*Note. Includes 20min refreshment break*



**Michael Creedon**  
special counsel  
Minter Ellison



**Scott Budd**  
partner  
Mallesons Stephen Jaques



**Stephen Humphreys**  
partner  
Carter Newell

### Key benefits

- Earn up to 3 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

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# Australian Consumer Law

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- 1:30 Understanding the new Australian Consumer Law**
- Understanding what the proposed Australian Consumer Law means for negotiating and drafting consumer contracts
  - Defining the term “consumer” as it is referred to under the legislation
  - Exploring how the new legislation will affect the legal profession
- Alicia Hill, partner, DibbsBarker**

- 2:20 Enforcement power and remedies under the Australian Consumer Law and Trade Practices Act**
- Exploring the new enforcement “superpowers” and remedies available under the new Australian Consumer Law and *Trade Practices Act*
    - Changes to the civil penalties regime
    - Substantiation notices and how to respond to them
    - Infringement notices and disqualification orders
    - Examining the new powers of the ACCC and ASIC, including the public warning powers
- Charles Sweeney, partner, Cooper Grace Ward**

- **Be a frontrunner in understanding the new legislative regime overhauling the Australian consumer contract process**
- **New enforcement “superpowers”:** Explore the remedies available to you under the new Australian Consumer Law
- **Examine the new powers granted to the ACCC and ASIC**
- **Unfair terms: How to comply with the new definitions**

- 3:30 July 1, 2010 and beyond**
- Tranche 2: What to expect in the second stage of Australian Consumer Law reforms – product safety obligation
  - Examining the broader test for bans and recalls under the new legislation
  - Understanding the changes to section 53 of the *Trade Practices Act*
  - Reviewing other proposed changes under Tranche 2, including:
    - Telemarketing and door-to-door
    - Bills and receipts
    - Lay-by sales
    - Dual pricing
- Eddie Scuderi, partner, Corrs Chambers Westgarth**

*Note. Includes 20min refreshment break*



**Alicia Hill**  
partner  
DibbsBarker



**Charles Sweeney**  
partner  
Cooper Grace Ward



**Eddie Scuderi**  
partner  
Corrs Chambers Westgarth

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