

ALB

MASTERCLASS SERIES

# Liquidated damages

WORKSHOP

Melbourne: Wednesday 17 March 2010  
Stamford Plaza, 111 Little Collins St

## agenda

### 9:00 Overview of liquidated damages

- Clarifying what liquidated damages clauses are and how best to utilise them
- How to decide whether a liquidated damages clause is a penalty?
- Indemnity, liquidated damage or insurance, which is the right clause for your contract?
- Lessons learnt from *Ringrow Pty Ltd v BP Australia Pty Ltd [2005]*

**Teresa Torcasio, executive counsel, Freehills**

### 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]*

**Sam Golding, special counsel, Blake Dawson**

- **Practical drafting exercises to ensure your liquidated damages clauses are watertight**
- **Case study reviews: How to use precedents set 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

**Jacinda de Wits, partner, Minter Ellison**

*Note. Includes 20min refreshment break*



**Teresa Torcasio**  
executive counsel  
Freehills



**Sam Golding**  
special counsel  
Blake Dawson



**Jacinda de Wits**  
partner  
Minter Ellison

### 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

## WORKSHOP

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### agenda

#### 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

**David Brewster, partner, Allens Arthur Robison**

#### 2:20 Enforcement power and remedies under the Australian Consumer Law

- Exploring the new enforcement “superpowers” and remedies available under the new Australian Consumer Law
  - 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

**Joanne Daniels, partner, Clayton Utz**

- **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

**Stephen Newman, partner, Cornwall Stodart Lawyers**

*Note. Includes 20min refreshment break*



**David Brewster**  
partner  
Allens Arthur Robison



**Joanne Daniels**  
partner  
Clayton Utz



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