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## A new direction for Australian media policy?

On 14 March, the Federal Government released its long-awaited proposal for the reform of media regulation in Australia. Entitled *Meeting the Digital Challenge: Reforming Australia's media in the digital age*, the discussion paper sets out a series of "preferred options" for changes to interrelated aspects of the regulation of Australia's media sector. It seeks responses from industry by 18 April.

Although the discussion paper provides a strong indication of the likely outcome on specific regulatory issues, the Minister has emphasised that the reform plan is not final and industry reaction may have a role in the ultimate outcome. Initial responses to the announcements have been mixed.

As was widely anticipated, the policy reforms rest squarely on the platforms of:

- encouraging investment and merger activity in the media sector by removing media-specific foreign investment restrictions and relaxing cross-media ownership rules;
- encouraging the provision of new digital services to push digital television take-up ahead of analogue switch off; and
- protecting the position of the three commercial television licensees, both in rejecting the immediate need for a fourth commercial television licence and in the continuing policy that other regulated delivery mechanisms should not be used as a de-facto fourth network.

While some commentators have applauded particular aspects of the policy and the general trend towards deregulation, many have expressed concern at the potential for increased concentration in media ownership. Some supporters have portrayed the policy as a major change in direction designed to position Australian media for the digital age, others have described the statement as extremely cautious and overly protective of existing commercial interests.

While the difficulty of balancing the powerful and competing vested interests in the media arena cannot be underestimated, the Government has delayed these reforms until it could practically do so no more. With analogue television

*The Federal Government has released its "preferred options" for reforming Australian media regulation*

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*Legislation is expected well before the end of 2006*

signals in metropolitan areas due to be switched off by 31 December 2008 and the television licensees spending millions on their digital conversion, policy changes designed to dramatically escalate digital take up are overdue, together with the inevitable postponement of the switch off date.

Whether the plan will drive take-up to the degree necessary to truly “meet” the challenge its name suggests, remains to be seen. We will not have long to wait as legislation to implement these changes is expected well before the end of this year.

The key policy changes in the paper are summarised in the table at the end of this article.

## **The broader digital context**

*Despite its title, this is not broad-based regulation for a digital age*

The discussion paper is keen to situate media regulation in the broader context of the new world of convergent digital media and technologies and stresses that the current regulatory settings have largely been designed for an analogue sector. To its credit, the Government recognises both the opportunities which exist with the “*new services to be offered and...additional sources of content for audiences from both new and existing players*” and the challenges presented by the converged environment in which “*it will become increasingly difficult to regulate the emergence of new players and new services*”.

However, despite acknowledging this context, the new policies do not change the current structures and categorisations in the *Broadcasting Services Act 1992* (Cth). Although some of the proposed changes will undoubtedly affect the traditional media players, the Government is not introducing a broad-based policy for digital media regulation at this stage.

## **Future realities for media licensing**

It is important to bear in mind that the discussion paper is a high-level indication of policy direction. As always, the devil will be in the detail. In particular, the paper provides little guidance on the criteria which will be applied on particular issues or decisions to be taken under the new policies. For example:

*A Digital Action Plan will be released later this year*

- the planning process and timing of analogue switch off will be determined by the Digital Action Plan, to be released during the course of 2006. The only timing detail released is that switch off will “commence” in 2010 to 2012;
- the grant of a fourth commercial television licence will be an issue to be determined by the government of the day. While the paper suggests that no such licence would be issued prior to the end of the simulcast period, the criteria for such a grant have yet to be determined;
- the intention is to facilitate use of unused datacasting spectrum for two new digital channels carrying “new and innovative services”. Although, on its face, this represents a significant potential investment opportunity, the parameters for such services and how they might differ from current narrowcast services are currently unclear. The government is careful to note that these channels will not be able to become de-facto commercial television broadcasting services, meaning that some form of content or audience based restrictions will

presumably be imposed and therefore, that the attractiveness and commercial viability of the new channels remains to be seen; and

- no detail has been provided of the criteria and processes for the application of the so-called “use it or lose it rule” for the anti-siphoning list.

## New opportunities for investment

### Foreign ownership

*Foreign ownership caps to be lifted*

Investment by foreigners in substantial Australian businesses has long been subject to review by the Australian Treasurer under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the Government’s *Foreign Investment Policy*. While few sectors are singled out for special treatment, the “media” sector is one of these. As a result, under current law, any investment in the Australian media sector is subject to review and the *Foreign Investment Policy* requires prior approval for portfolio investments of 5% or more and non-portfolio investments of any size. The particular sensitivity of the newspaper sector is recognised in the *Foreign Investment Policy* by the inclusion of a foreign investment cap of 25% per investor (30% in aggregate) in metropolitan newspapers. Foreign investment caps applying to investments in commercial television (15/20%) and subscription television licensees (20/35%) are contained in the *Broadcasting Services Act 1992* (Cth). No such restrictions exist in the radio sector.

As was widely anticipated, all of these foreign investment caps are to be removed, on the basis that the coverage of foreign investment in the media sector in the general *Foreign Investment Policy* should suffice to protect the national interest.

This follows the abolition of foreign investment caps in the UK in 2003, but leads the way over the US, France and Canada which have retained investment caps in the media sector for the time being.

### Cross media

*Cross media ownership rules to be relaxed*

The more difficult decision for the Government has been whether to loosen the traditional prohibition on a person controlling more than one of a television broadcaster, radio broadcaster or newspaper in a licence area. While there was general support for some change in this area across key players in the sector, the scope of the change and alternative methods to implement the change have been under discussion in Australia for some years.

In 2002, the Government unsuccessfully tried to introduce changes to the cross media rules by retaining restrictions on cross media, but permitting exemptions if editorial separation between the different “media” could be established. While the Government no longer advocates this approach, opponents of this proposal may seek to resurrect editorial separation as an alternative way forward.

*Regional market limits remain, but with significant scope for consolidation*

The Government is not seeking to abandon the regulation of cross media holdings. Its new approach is designed to limit the concentration of ownership among the traditional media outlets of television, radio and newspapers by:

- retaining the prohibition on a person controlling more than one commercial television license or two commercial radio licenses in a market;
- retaining the prohibition on a person controlling more than 75% national audience reach for commercial television; and
- permitting cross media transactions *but if and only if* there remain four “commercial media groups” in a regional market and five in a mainland state capital.

“Commercial media groups” will be measured using existing classifications. They will not include new media groups or new “digital” television licensees but will be limited to commercial television licensees, commercial radio licensees and newspapers. As it is suggested that there are currently twelve such groups in Sydney, eleven in Melbourne and more than five or six in most regional areas, the opportunities for consolidation are evident. With fewer opportunities to consolidate media “voices” in regional areas, consolidation may start in those regions.

This simple measurement of the number of “groups” based on control tests and classifications from the current legislation has little of the complexity found in cross media prohibitions in other markets. For example, the UK *Communications Act 2003* was designed to “provoke consolidation of radio, TV and printing entities”, yet it retains prohibitions on a television licensee having a stake of more than 20% in a newspaper. It also requires at least three commercial media proprietors to be retained in each market. Interestingly, in the UK, cross media mergers may be subject to a public interest test and prohibited if considered to be a threat to the plurality of ownership, diversity of content or freedom of expression. By contrast, in future, Australian media mergers will be examined on a purely economic basis.

### Role of the ACCC

*The focus will move to the ACCC*

The end of the prohibitions on cross media holdings and of the limits on foreign ownership are expected to drive consolidation and foreign investment in both metropolitan and regional media markets.

Merger activity will be monitored by the Australian Competition & Consumer Commission, under its general power to police unauthorised mergers: those which have the likely effect of substantially lessening competition in a substantial market for goods or services in Australia. However, due to the existing prohibitions, the ACCC has limited experience to date in regulating mergers in the media sector. Its experience has focused on distinctions in geographical markets and traditional media platforms.

*Market definition is the key and is unclear*

The ACCC has acknowledged that it is already considering how media markets might be defined in the “new” digital world and has stated that convergence has made traditional distinctions between the markets of TV, radio and newspapers and print and electronic media “largely irrelevant”. Its Chairman, Graeme Samuel, has stated that “in the future” media markets might be defined by content, rather than by the media used to convey the content. He has quoted predictions that Google’s and Yahoo’s U.S. advertising revenues may this year match those of the ABC, CBS and NBC networks combined and that within 5 years worldwide internet advertising revenue may exceed worldwide

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newspaper advertising revenue. He concluded from this that, in such a world, classified advertising (or even different types of advertising such as employment or real estate) may be a market in itself, no matter the delivery platform.

Recognising that uncertainty around likely market definitions is undesirable, the ACCC has flagged that it will attempt to provide some guidance in the area as soon as the cross media and foreign investment changes have commenced.

### Summary of key policy changes

CURRENT	PROPOSED
<ul style="list-style-type: none"> <li>• <b>Foreign person</b> limited to 15% interest in a commercial TV broadcaster and 20% in a subscription TV broadcaster.</li> <li>• Aggregate interests by foreign persons capped at 20% and 35%.</li> </ul>	<ul style="list-style-type: none"> <li>• Caps to be lifted as early as 1 January 2007. However, all investments in media remain subject to examination under Australia's foreign investment policy and can be blocked if contrary to the national interest.</li> </ul>
<ul style="list-style-type: none"> <li>• Shareholdings by a foreigner in national and metropolitan newspapers capped at 25% (and 30% in aggregate). Aggregate for provincial and suburban newspapers is 50%.</li> </ul>	<ul style="list-style-type: none"> <li>• Caps to be lifted as early as 1 January 2007. However, all proposals to acquire an interest of 5% or more in any mass circulation newspaper must be examined (and any proposal to establish a new newspaper).</li> </ul>
<ul style="list-style-type: none"> <li>• A person may not <b>control more than one commercial TV licence</b> in a licence area.</li> </ul>	<ul style="list-style-type: none"> <li>• No change.</li> </ul>
<ul style="list-style-type: none"> <li>• A person may not <b>control more than two commercial radio licences</b> in the same area.</li> </ul>	<ul style="list-style-type: none"> <li>• No change.</li> </ul>
<ul style="list-style-type: none"> <li>• A person may not control commercial TV licences covering <b>75%</b> of Australia's population.</li> </ul>	<ul style="list-style-type: none"> <li>• No change.</li> </ul>
<ul style="list-style-type: none"> <li>• A person may control only one of a <b>commercial TV licence, a radio licence or a newspaper</b> in a licence area.</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibition to be abolished as early as 1 January 2007. However, a minimum of 5 (4 in regional markets) commercial media groups must remain in the relevant market.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Analogue switchover</b> scheduled to end in 2008 to 2011.</li> </ul>	<ul style="list-style-type: none"> <li>• Switchover to commence in 2010 to 2012.</li> </ul>
<ul style="list-style-type: none"> <li>• Moratorium on <b>new commercial TV licences</b> expires 31 December 2006.</li> </ul>	<ul style="list-style-type: none"> <li>• No change but new licensees unlikely in the simulcast period.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>ACMA</b> allocates new commercial TV licences.</li> </ul>	<ul style="list-style-type: none"> <li>• The Government to allocate.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Datacasting</b> licences unattractive due to genre restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>• Genre restrictions lifted from 1 January 2007.</li> </ul>
<ul style="list-style-type: none"> <li>• Commercial TV licensees cannot control datacasting licensees.</li> </ul>	<ul style="list-style-type: none"> <li>• No change.</li> </ul>
<ul style="list-style-type: none"> <li>• Commercial TV licensees cannot <b>multichannel</b> until end of simulcast period.</li> </ul>	<ul style="list-style-type: none"> <li>• No change.</li> </ul>

CURRENT	PROPOSED
<ul style="list-style-type: none"> <li>National TV broadcasters can multichannel but are hampered by genre restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>Genre restrictions to be removed as soon as practicable.</li> </ul>
<ul style="list-style-type: none"> <li>TV licensees must show 1040 hours of <b>HDTV</b> each year.</li> </ul>	<ul style="list-style-type: none"> <li>No change.</li> </ul>
<ul style="list-style-type: none"> <li>HDTV must be simulcast in SDTV.</li> </ul>	<ul style="list-style-type: none"> <li>To be removed from 1 January 2007.</li> </ul>
<ul style="list-style-type: none"> <li>Important sporting events on the <b>anti-siphoning</b> list are unavailable to subscription TV unless also available on free to air. The list expires on 31 December 2010.</li> </ul>	<ul style="list-style-type: none"> <li>No change to the current list or its expiry date but a “use it or lose it” scheme will be introduced from 1 January 2007.</li> </ul>

## Technological protection measures and the Australia - US Free Trade Agreement

Copyright content is now digitised and distributed on an unprecedented scale, both lawfully and unlawfully. It is used in an increasing number of formats and in conjunction with an expanding array of devices. This presents copyright owners and the content industries with significant challenges.

*Technological protection measures are on the rise*

In response, content providers are increasingly using technological protection measures (TPMs) designed to prevent copyright material from being either accessed or copied, or both. TPMs range from the simple (such as serial numbers for activating software) to the more complex (such as content encryption and Apple’s “Fairplay” technology which restricts the use of music files downloaded from iTunes). However, it is no surprise that for every new TPM released, a corresponding hack, crack or device appears shortly afterwards to circumvent, disable or remove it and gain unrestricted access to the “protected” content.

*AUSFTA requires Australia to protect TPMs*

For some time now the *Copyright Act 1968* (Cth) has contained provisions relating to TPMs, including a prohibition on dealing in circumvention devices. Australia’s obligations under the Australia-US Free Trade Agreement (AUSFTA) require these provisions to be substantially revised by 1 January 2007 by the implementation of a new liability scheme to introduce effective technical measures (ETMs) to control access to copyright material, including:

- civil and criminal sanctions against the **use** of a circumvention device to access a copyright work;
- civil and criminal sanctions against the importation, manufacture or supply of devices for circumventing TPMs which **control access** to copyright works; and
- substitution of the existing “permitted purposes” provisions with a narrower list of exceptions to the liability scheme, which permit circumvention for purposes which do not otherwise infringe copyright.

## Exceptions to the liability regime

The AUSFTA lists a number of exceptions to be implemented with the new TPM liability regime, including:

- reverse engineering for the purpose of achieving interoperability;
- security testing of encryption technologies and computers/networks;
- law enforcement and national security; and
- libraries for making acquisition decisions.

It also contemplates the introduction of additional exceptions, if any are recommended following an appropriate inquiry. The Government has tasked the House of Representatives Standing Committee on Legal and Constitutional Affairs with this inquiry and with reviewing submissions from interested bodies. Its report was published in February 2006.

## Committee recommendations

The Committee members unanimously agreed a set of 37 recommendations for consideration by the legislature when enacting the TPM liability regime in Australia. Of particular interest are:

- The definition of TPM (or ETM in the AUSFTA terminology) should link access control and copyright protection. In the AUSFTA, an ETM is anything that either *controls access to a protected work or protects any copyright*. This is substantially broader than the definition of TPM under domestic copyright law as it subsumes access control technologies as well as technologies for preventing or inhibiting copyright infringement. In other words, it creates a new access right of the type already considered to have been implemented in the US under the *Digital Millennium Copyright Act 1998*. This is a concept not otherwise recognised by Australian copyright law. It is therefore significant that the Committee recommended some nexus be maintained between access control and the rights actually granted as part of the copyright. This should theoretically limit the scope and effect of whatever type of “access right” could be said to be created in Australia.
- TPMs for region coding should be specifically excluded from the definition of TPM. Region coding TPMs are used extensively in the consumer DVD movie and games industries so that DVDs or games encoded for designated geographical regions are inoperable except on hardware sold for use within the relevant regions. In reaching this recommendation, the Committee had the benefit of the reasoning of the High Court in a recent case brought by Sony against an individual dealing in devices which circumvent these TPMs and allow games purchased anywhere to be played on Sony consoles: *Stevens v Kabushiki Kaisha Sony Computer Entertainment* (2005) HCA 58. The Committee was not persuaded that region coding is essential for piracy prevention or that it amounts to genuine copy protection.

*Recommendations for TPM liability regime have been released*

- Exceptions to the TPM liability scheme should be implemented to cover TPM circumvention for:
  - making back-up copies of computer programs, or reproduction or adaptation of computer programs for interoperability or error correction purposes;
  - fair dealing with copyright material for criticism, review, news reporting, judicial proceedings, professional advice;
  - access purposes, where a software or hardware TPM is obsolete, lost, defective, malfunctioning, damaged or defective and where support or a replacement has not been provided; and
  - access purposes, where the TPM interferes with or causes damage or malfunction to a product or where circumvention is necessary for repair.

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## Where to from here?

It will be interesting to see if the legislature adopts the Committee's recommendations later this year. The Federal Attorney General has a number of amendments to existing copyright legislation on the legislative program for this year and it is expected that some of these will relate to the fair use of copyright works. The Federal Attorney General has previously indicated that the concept of fair dealing in copyright works may be expanded. If so, there will be consequences for the TPM liability regime and in particular, whether there will be an exception for circumvention of TPMs for the purposes of fair use of copyright material.

## Blogging – a balancing act

In recent years, we have seen the emergence of online diaries called blogs (short for Weblogs) as a means of communication. This new medium has given millions an inexpensive but robust means of recording and sharing experiences and opinions. While blogs can often be personal and innocuous, many have more public or political aims and have become unexpectedly influential.

The success of the medium has led to many commercial websites joining the bandwagon. It is not unusual for mainstream online operations to offer links to independent blogs, or to publish their own. However, given that the very nature (and attraction) of blogs is that they should be personal and irreverent, blog publishers must consider carefully the potential pitfalls of encouraging or participating in blogging.

## Blogging as a public relations tool

Many companies have embraced blogging as an effective public relations tool. Australia has been slower than the US to move into corporate blogging, but now local companies are beginning to see advantages in offering customers a channel for online conversation with representatives. The medium allows even the biggest businesses to present a more sensitive image. Corporate blogging sites allow large organisations, who are sure to be the source of much

*Corporate blogging – an unexpected marketing opportunity*

conversation on independent blogs, to set up their own conversations on their own terms with their own team of bloggers.

## What can go wrong?

The same legal constraints apply to a blog as apply to print publications. However, within the blogging framework, a document will cross any number of jurisdictions in an instant and may evolve very quickly.

Online content is published wherever it is downloaded. In the case of *Dow Jones and Co Inc v Gutnick* (2002) 210 CLR 575, Joseph Gutnick accessed an article online that he considered defamatory. The article was published online in the US, but was accessed by Gutnick and others in Australia. Dow Jones tried, unsuccessfully, to persuade the High Court that it would not be practical to impose global defamation laws against all content that is to be published. Justice Callinan stated: *“If people wish to do business in, or indeed travel to, or live in, or utilise the infrastructure of different countries, they can hardly expect to be absolved from compliance with the laws of those countries. The fact that publication might occur everywhere does not mean that it occurs nowhere.”*

*Major blogging risks include defamation and misleading or deceptive conduct*

While *Gutnick* outlines the dangers of publishing defamatory material online, there is also a risk that material published on a blog could be misleading or deceptive in breach of section 52 of the *Trade Practices Act 1974* (Cth), or give rise to an action for injurious falsehood. Further, the fact that blogs are intended to operate as live conversations means that companies operating blogging sites face the additional risks associated with becoming a publisher of the opinions of others.

The democratic nature of the blog is a big risk factor for corporate users. Blogs can cause problems in that they often bypass normal approval processes for public comments. The live nature of blogs can push organisations to make overly hasty announcements.

The blogging medium allows employees, or others, to blog on independent sites, outside work hours. Blogging allows individuals to say what might normally be said over dinner or at the pub to a live audience of (potentially) millions. In the US, a number of blogging-related dismissals have been reported where employers did not have blogging policies in place and employee bloggers voiced opinions and observations about their employers online. In one case, a former Delta Air Lines flight attendant claimed she was fired over pictures she posted on her personal blog that the airline allegedly deemed inappropriate. She has since filed a discrimination complaint against the airline.

Clearly, the marketing opportunities offered by blogging are not without risk.

## Protecting against the risks

While the number of bloggers continues to grow, workplace policies setting out rules on blogging remain lacking. Blogging does not alter existing legal rights or obligations: it simply offers a new forum for existing ideas. However, a number of issues are largely blog-specific.

*Companies should not blog without clear blogging policies*

A blogging policy increases certainty for employees and assists in avoiding incidents where employees are sacked for posting material on blogs. It can also be used as a means of setting out a company's blogging strategy.

In order to effectively minimise blogging-associated risks, a blogging policy should, at least:

- outline who is entitled to blog: whether all employees may blog or only specified personnel (for example, those in certain positions or who have attended appropriate training sessions);
- make clear to employees that blogging constitutes a personal communication of that employee, for which they are responsible. Ideally, the policy should require the employee to use a disclaimer on the blog to this effect;
- inform employees of the relevant authorisation processes for the publishing of blogs (particularly marketing blogs);
- notify employees of any monitoring of the blogging of employees that the company will carry out in accordance with the *Workplace Surveillance Act 2005* (NSW);
- provide that the company's confidential information must not be disclosed;
- provide that employees must not make use of the company's intellectual property without obtaining authorization;
- require employees to ensure the accuracy of any information published;
- make employees aware of the law of defamation and prohibit employees from making defamatory statements and/or statements that are contrary to the strategic and commercial interests of the enterprise;
- prohibit employees from making discriminatory comments; and
- prohibit employees from using blogs to engage in illegal conduct.

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## Back page Bytes #1: Liability clauses

Back page Bytes, a regular feature of *The ITC Edge*, gives practical reminders and drafting tips for everyday use. This first edition provides useful drafting tips on liability clauses.

### Why liability clauses?

At the heart of ITC contracts is the allocation of value against the apportionment of risk.

Exclusion and limitation of liability clauses play a key role in this. They typically **exclude**, **limit** and **restrict** or make conditional, a party's liability for certain types of loss and damage or events.

### Drafting reminders

In drafting or reviewing these clauses, it is important to bear in mind:

#### *They are construed strictly*

As a general rule, courts look at the natural and ordinary meaning of words, consider them in the context of the contract as a whole and generally endeavour to uncover the underlying commercial intent, even if the drafting is defective. Courts see their role as to give effect to commercial bargains and intentions.

That is not the case for exclusion and limitation clauses. Although courts will still try to discern their meaning and intent, they will not hesitate to frustrate the clauses if there is any ambiguity which justifies doing so, and will "read down" and construe them strictly against the person trying to rely on them.

#### *They need to be clear*

Clarity and certainty are critical. Avoid using any words which are open to misinterpretation or ambiguity. Define clearly what a particular expression means in context. For example, if you are using a cap on liability expressed other than as a fixed sum, such as a formula based on sums paid, make sure the cap can be ascertained with certainty at any given time.

#### *Exclusions should be listed*

1. Any exclusion or limitation of liability for negligence must be expressed.
2. Clearly state what causes of action any exclusion or limitation covers, whether in contract or tort and subject to the comments below, under statute or on any other basis.
3. List separately (and not as a subset of any exclusion of consequential or indirect loss) any types of unusual economic loss (such as loss of profit, revenue, savings or goodwill) for which you wish to exclude or limit liability. These categories of loss will not be automatically considered as consequential or indirect and may constitute direct loss.
4. Consider the exclusion of payment obligations from any limitation on liability.

#### *Liability clause drafting tips*

##### *Remember:*

- *They are construed strictly*
- *They need to be clear*
- *Exclusions should be listed*
- *There are statutory limits*

5. Consider whether or not indemnities should be subject to agreed exclusions and caps or to separate conditions or limits.
6. Consider whether certain liability should be excluded for example liability relating to breaches of confidence, personal injury, death, fraud or unlawful acts.

### *There are statutory limits*

Consider whether legislation imposes obligations which cannot be excluded or limited.

In particular the *Trade Practices Act 1974* (Cth) (TPA) and corresponding state and territory fair trading laws impose various constraints upon suppliers as a result of implied terms, liability under which may not be excluded or limited.

Consider fairness. The *Fair Trading Act 1999* (VIC) permits terms in consumer contracts to be declared void if they are “*unfair*”.

Clauses contravening these rules run the risk of having the offending portions rendered unenforceable. When using broad exclusions and limitations, it is therefore prudent to preface clauses with the words “*to the fullest extent permitted by law...*”.

Remember, it is not possible to exclude or limit liability for misleading or deceptive conduct under section 52 of the TPA or corresponding state or territory fair trading laws. Any attempt to do so may, in itself, be misleading or deceptive or in breach of section 53 of the TPA.

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