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Liquidated damages — the importance of getting it right

While liquidated damages clauses have been a common feature of building and engineering contracts for well over a century, especially in relation to late completion, the fundamental importance of getting such clauses right continues to be emphasised by the courts.

A properly drafted liquidated damages clause quantifies the damages payable on breach of the contractual obligation to which the clause relates at the time the contract is made. It has benefits for both parties of:

- providing contractual certainty
- not requiring proof of loss
- simplifying disputes
- inducing performance
- providing a cap on liability

However to be enforceable the quantified amount of liquidated damages must be a genuine pre-estimate of loss, because if a court considers that the amount is excessive it may categorise it as being a penalty, then the liquidated damages clause will become unenforceable and its benefits will be lost.

The applicable principles in distinguishing between an enforceable liquidated damages and an unenforceable penalty were recently re-stated by the High Court in *Ringrow v BP Australia* [2005] when the High Court once again adopted the long established legal principles set out in *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915]:

- 1) The use of the words 'penalty' or 'liquidated damages' are not conclusive, and a court is not bound by the terminology that the parties may use in their contract.
- 2) A penalty is the threat intended to pressure performance, whilst liquidated damages are a genuine pre-estimate of damage.
- 3) Whether a sum is a penalty or liquidated damages is a matter to be judged at the time of making the contract and not at the time of breach.
- 4) A penalty will be extravagant and unconscionable when compared with the greatest loss that could conceivably be proved to have followed from the breach;
 - i) It may be a penalty if the breach consists only of a failure to pay a sum of money and the sum stipulated as payable is a sum greater than the sum which ought to have been paid;

Liquidated damages — the importance of getting it right (Continued)

ii) It may be a penalty if a single lump sum is made payable on the occurrence of one or more or all of several events, some of which may cause serious and other but trifling damage;

iii) It can still be a genuine pre-estimate even if the consequences of breach make precise pre-estimation almost impossible.

When considering whether the parties in *Ringrow* had agreed on a genuine and reasonably accurate pre-estimate, the High Court used the words of Mason and Wilson JJ in *AMEV-UDC Finance Ltd v Austin* [1986]:

"The comparison calls for something 'extravagant and unconscionable'... It calls for a 'degree of disproportion' sufficient to point to oppressiveness."

On the facts in *Ringrow* the High Court held that the provisions were not 'extravagant' or 'oppressive' and were therefore enforceable as liquidated damages.

'Extravagance' and 'Disproportionality'

What then will characterise extravagance and oppression?

State of Tasmania v Leighton Contractors Pty Ltd (2005) was decided shortly after *Ringrow*. It concerned the seven month late completion of a highway. At the trial the contractor argued that \$8,000 per day liquidated damages was in fact a penalty and therefore not enforceable.

The trial judge agreed, and throughout his judgment described the pre-estimate as 'quite extravagant', 'quite exorbitant', 'extremely high', 'totally disproportionate', 'not a genuine pre-estimate', 'speculative' and 'unconscionable'.

However the Full Court of the Supreme Court of Tasmania overturned the decision on appeal and held that the sum was not an unreasonable estimate and that "some component for loss of public utility or delay in access to infrastructure ought to have been considered...". The Full Court also considered that the trial judge should have considered the "cost of maintenance... infrastructure costs... and transfer of resources" when considering whether the \$8,000 per day sum was a genuine pre-estimate.

The decision of the Full Court is significant as it highlights:

- the test applied by the court is an objective test; and
- the importance of properly estimating the likely damages at the time of entering into the contract, and keeping full details of how the estimate is arrived at.

The Victorian case *Yarra Capital Group Pty Ltd & Anor v Sklash Pty Ltd* [2006] noted that liquidated damages claims can be 'opportunistic' and that ultimately a judge has the discretion to make a judgment on penalties or liquidated damages where:

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Liquidated damages — the importance of getting it right (Continued)

"... the judge perceives the defence to be 'shadowy', 'insubstantial', 'tricky', 'suspicious', or 'almost one in which summary judgment should be ordered."

The more recent NSW case of *Medfin Australia Pty Ltd v Ian Lester Rafter and Ors* [2007] referred to the principles in *AMEV*, saying that:

"The test to be applied would depend on a number of circumstances including not only the alleged disproportion in the sum recovered but also the nature of the relationship between the contracting parties. The question of whether the sum stipulated is a penalty is a question of construction to be decided upon the terms and inherent circumstances of each particular contract, when considered at the time of entering into the contract and not at the time of the breach. The court fundamentally had to strike a balance between freedom to contract and public interest concerns."

From these cases it is clear that the courts will continue to formulate their own criteria to characterise liquidated damages clauses, taking into consideration the unique circumstances and the status of the parties in each specific case.

Pre-estimate too low

If the pre-estimate is too high, there is a real risk that it will be classified by a court as a penalty.

On the other hand, if the pre-estimate is too low, it may mean that no adequate compensation will be payable for the failure to perform.

From the principal's perspective, there are real dangers in agreeing liquidated damages clauses which only provide for nominal or "nil" damages, or which state that the liquidated damages clause is "not applicable".

As liquidated damages can be a cap on liability, such clauses may have the completely unintended effect that the contractor is absolved from any liability for damages for late completion or non-performance.

In those circumstances, rather than inserting nominal or very low liquidated damages provision, the interests of the principal may best be served by completing striking out the liquidated damages clause altogether and instead relying on general damages.

Conclusions

It is well recognised that a claim for liquidated damages must be a genuine pre-estimate of loss or damage to be enforceable.

The recent Australian decisions discussed above make it clear that the courts will look to the *substance* of liquidated damages clauses to decide whether the content of the clause corresponds to the name that it has been given in the contract.

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Liquidated damages — the importance of getting it right (Continued)

It is important therefore to think carefully about what is the reason for using a liquidated damages clause and whether that aim is actually being achieved by the use of the clause. It may be best in certain circumstances to have no clause at all.

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Once is enough

If, up until now it has been your practice to submit a payment claim, indeed any payment claim made under the Building and Construction Industry *Security of Payment Act* (the Act) no matter how well prepared with the expectation that any deficiencies can be fixed in a subsequent payment claim, think again.

Section 22(4) of the Act prohibits a subsequent adjudicator from departing from the valuation of any construction work carried out in accordance with the Act by a previous adjudicator. In other words, once an adjudicator determines the value of certain construction work, it becomes binding on every subsequent adjudicator where the adjudicator is called upon to consider the same construction work.

The operative word here is “valuation”.

The valuation of any claim could involve questions of entitlement, quantification or both.

The obvious question is, does the Act in section 22(4) apply only where there has been quantification carried out or does it also include a situation where there has been a determination of entitlement against the Claimant and hence no need for any further valuation?

The Court determined, until recently, that section 22(4) operates to bind any subsequent adjudicator only where there has been a quantification exercise carried out. In other words, where entitlement is determined against the Claimant and logically there has been no valuation, the Claimant is free to make the claim again in a subsequent payment claim and refer it to a new adjudicator: see *Roghner v Quasar & Ors* [2004] NSW SCW151; *John Goss Projects v Leighton Constructions & Anor* [2006] NSW SC978; (2006) 66 NSWLR707.

In recent decisions made by the Court of Appeal in *Dualcorp Pty Limited v Remo Construction Pty Limited* [2009] NSW CA601 and the Supreme Court in *Perform (NSW) Pty Limited v Mev-Aus Pty Limited t/as Novatech Construction Systems* [2009] NSW SC416 and *University of Sydney v Cadence Australia Pty Limited & Anor* [2009] NSW SC635, the Court has extended the scope of claims that cannot be re-submitted.

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Once is enough (Continued)

The Courts have held that in addition to section 22(4), consideration must also be given to section 13(5) and (6) of the Act which states as follows:

(5) A claimant cannot serve more than one payment claim in respect of each reference date under the construction contract.

(6) However, subsection (5) does not prevent the claimant from including in a payment claim an amount that has been the subject of a previous claim."

A common theme in the decisions is that a Claimant is not permitted to endlessly submit or re-agitate the same claim or the same issues. The purpose of the Act is to permit a Claimant one claim for work carried out during one reference period.

In other words, when a party has submitted a payment claim for work carried out in a reference period, that party is stuck with the claim even if there are flaws in the way in which the claim has been prepared and submitted. It cannot seek to rectify those flaws in any subsequent payment claim.

It seems that not only would determination of the value of work carried out become binding but findings about "issues" will also be binding on future claims and adjudications. If this is the case, then, for example, if in an adjudication the adjudicator has to decide the terms of the contract in making the valuation, this suggests that for all future claims under the Act, the parties are bound by that finding as to the contractual terms. This would have far-reaching implications.

Indeed, it appears that the Courts would even be prepared to hold a payment claim to be invalid (that is not a payment claim for the purposes of the Act) if that payment claim has included elements of a previous payment claim in a way that cannot be conveniently excised by an adjudicator.

These recent decisions establish that:

- 1) the Act gives the Claimant one shot and only one shot at submitting a payment claim under the Act in respect of work that has been carried out during one reference period;
- 2) constant re-agitation of the same claim or issues may be struck down for being an abuse of process;
- 3) a previous claim re-submitted in a later payment claim may render the subsequent payment claim invalid.

Put simply, the lesson for Claimants is:

- 1) all progress claims must be prepared with great care, thought and with thoroughness;
- 2) if there is any doubt about the thoroughness of a claim or its completeness, serious consideration should be made to whether a claim should be made under the Act at all. In other words, the claim may simply be submitted under the Contract and a later payment claim may be submitted under the Act which is prepared with completeness;

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- 3) a Claimant should be careful about what issues it puts before an adjudicator, for example, interpretation of the contract or complex legal questions. If the adjudicator gets it wrong, it would nevertheless be binding on how future claims may be construed.

A more detailed consideration of the recent decisions can be found at www.cbp.com.au.

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Construction safety — no duty to train subcontractors

Is it unfair to expect a principal contractor to provide the employee of every subcontractor with specific training in relation to the safe work practices across a vast spectrum of specialist trades and professions?

The High Court in *Leighton Contractors v Fox* recently found that there is no common law duty requiring a principal contractor to provide a subcontractor with training in the safe methods of carrying out the subcontractor's specialised task. The case is a cautionary tale. Had the Principal contractor not exercised careful adherence to management systems, it could easily have become liable for the injuries suffered by a subcontractor's employee.

The relevant incident occurred during the construction works at the Hilton Hotel in Sydney. Leighton was the Principal contractor. Leighton had subcontracted the concreting works, including reinforcement and formwork, to Downview Pty Limited (Downview). Downview, in turn had subcontracted the concrete pumping works to Warren Stewart Pty Limited (Warren Stewart). A concrete pump had been set up on level 4 to pump concrete for a pour on level 12. After operations were complete, the employees proceeded to clean the lines. They did this by attempting to blow through a hessian bag filled with dacron (a composite material used as insulation). The end of the pump line was positioned over a waste bin. The pump line was not secured to that bin with chains, or otherwise. During the cleaning operation, the bag became blocked in the pipe, and the employees decided to increase the air pressure in an effort to clear it. Before this was done, the employee in attendance at the end of the pipe, Mr Fox, was directed to move away, and he took up a position around 30 feet away from the pipe. When the pressure was increased the bag was expelled with force, causing the pipe to "whiplash" striking Mr Fox. Mr Fox suffered injuries, on which the Court placed a damages value of \$472,562.00.

The District Court of New South Wales dismissed the claim against Leighton and Downview, holding Warren Stewart entirely responsible.

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Construction safety — no duty to train subcontractors (Continued)

Mr Fox pressed the matter against Leighton and Downview in the New South Wales Court of Appeal (damages could not be recovered from Warren Stewart because it had been deregistered). The Court of Appeal held that Leighton and Downview did have a duty of care for Mr Fox's safety with respect to the pumping activities. The High Court disagreed.

Although the use of the hessian bag was considered a contributing factor, the focal point was the failure to secure the end of the pipe to the waste bin. This failure was considered negligent. But negligent by whom? Leighton was able to demonstrate that it had in place, and adhered to, an extensive occupational health and safety regime, including inductions and work method statements.

The subcontract between Leighton and Downview took particular care to make explicit what was required of the subcontractor with respect to safe work management and systems. For example, Leighton required all persons engaged on the site to attend a site induction prior to commencing work, the contract stated:

"The site induction to be conducted by Leighton is intended to outline procedures and requirements that will generally apply to all persons working on the site and does not relieve the Contractor of its responsibility to properly induct persons engaged to perform the work ... as to particular procedures and requirements relevant to that work."

The contract also provided for work method statements, and the parties obviously adhered to that requirement, because Leighton rejected the first work method statement provided by Downview as inadequate. The revised work method statement identified the potential hazard of a "blockage in line". The stated control measure for meeting that hazard was stated to be the provision of training "by owner of pump", and having "a competent person in charge of the pump". It did not descend to the detail of specifying the securing of the pump to a waste bin during cleaning.

The High Court held that Leighton could not be liable.

In what was perhaps a closer call, the Court also held that Downview was not liable, even though the contractual relationship between Downview and its concrete pumping subcontractor was described as "extraordinarily haphazard". The underlining rationale was that concrete pumping, as an activity requiring specialised equipment, lent itself to be carried out by independent contractors who should be responsible for specific safety details. The activity was capable of being a self-contained operation that did not require co-ordination with other activities on the site.

From a management perspective one can readily appreciate the broader implications of the *Occupational Health & Safety Act* to principal contractors.

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Construction safety — no duty to train subcontractors (Continued)

For example, at the time of the incident there were Leighton employees on level 12 with Mr Fox. Had the pump line struck any of them, rather than Mr Fox, then there would have been a strong case to suggest that Leighton had a strict liability under the Act for the failure to ensure the safety of an employee. Of course, obligations under the Act extend beyond employees to others effected by the Principal contractor's activities. Whilst one may pause for thought as to how this statutory obligation would break down in circumstances such as this case, that was not a matter directly relevant to Mr Fox's common law action.

The essence of this care does NOT mean that a principal contractor can avoid implementing and enforcing workplace safety policies and procedures. Indeed, it must. What it does appear to establish, however, is that this obligation may not always require a principal contractor to micromanage every subcontract, especially where that subcontractor brings to the project specialist skills and knowledge that may not be possessed by the Principal Contractor.

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This new green regime

If you are in the construction, development or property industries, you need to know about the Federal Government's initiatives on climate change. These initiatives have been generating a lot of heat (if you pardon the expression) in the run-up to Copenhagen. But remarkably, there has been very little coverage of how the initiatives will affect business on a day to day level.

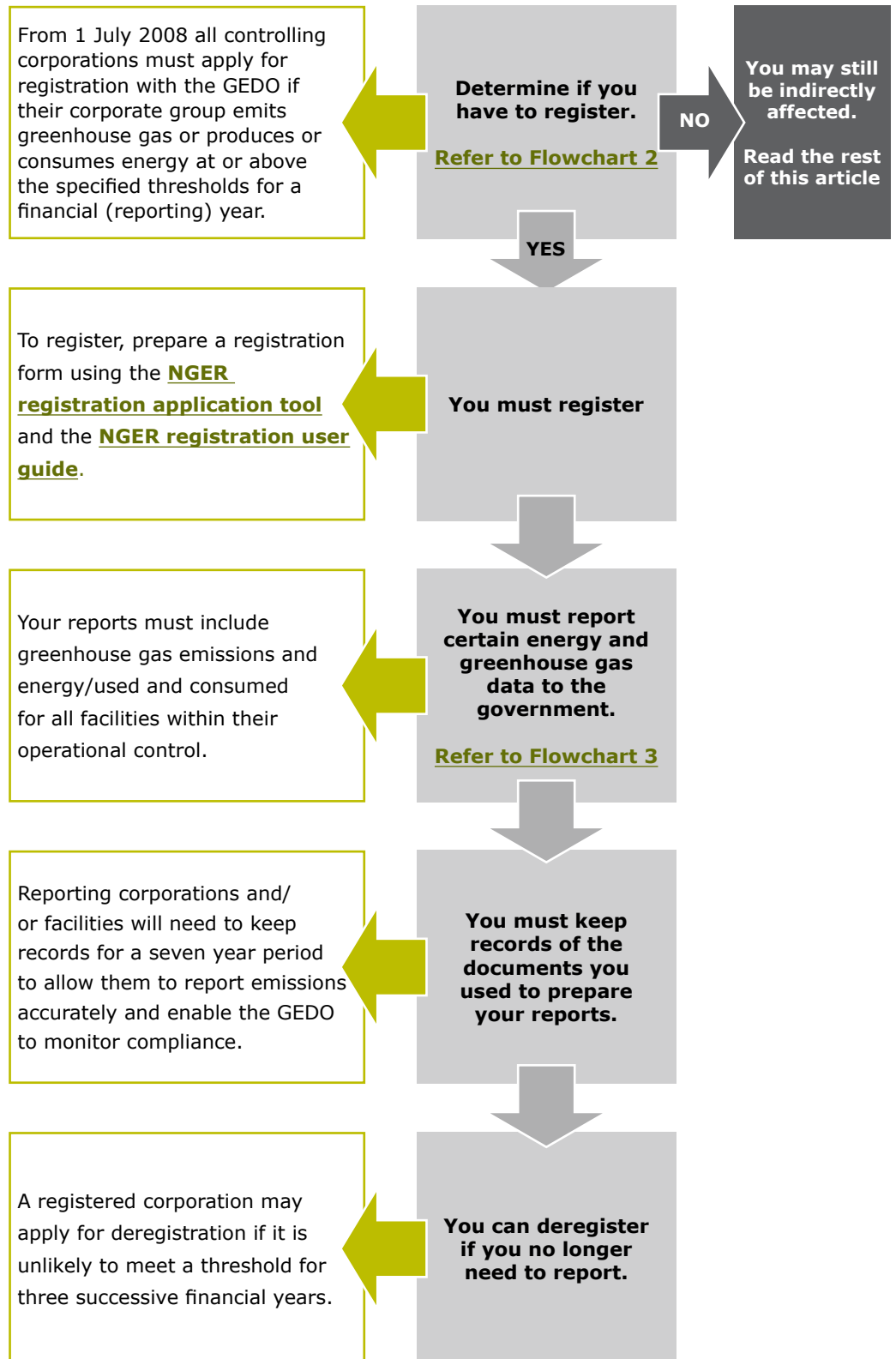
You are already required to report greenhouse/energy data to the government

The *National Greenhouse and Energy Reporting Act 2007* (NGERA) is already law. If you are caught by its provisions you must register with the Greenhouse and Energy Data Officer (GEDO) and then collect and report data about energy production/usage and greenhouse gas emissions. The first tranches of reports fall due on 31 October 2009 and thereafter reports will be required annually. Failure to comply can result in fines of up to \$220,000 plus \$11,000 per day (as well as director and officer liability). It is therefore critical to understand if your business is affected.

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*This new green regime
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Flowchart 1 below is an overview of the NGERA.



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*This new green regime
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To find out if you are required to register, refer to [flowchart 2](#) or follow the following four steps.

1. Identify your corporate group

Your corporate group is the highest constitutional corporation in your corporate tree that does not have a holding company in Australia (controlling corporation), together with all of its subsidiaries, and any joint ventures and partnerships of the company or its subsidiaries.

2. Identify your facilities

Your facilities (you may have more than one) are the activities of members of your corporate group that produce greenhouse gas emissions or produce/consume energy. Each enterprise that occurs at a single site, is part of a production process and is attributable to a single industry as a separate facility (for example a construction site, factory or building).

3. Determine whether you have operational control of any facilities

Having identified your facilities, you then need to know whether you have "operational control" over any of them. You may have operational control of a facility if a member of your corporate group has the authority to introduce and implement the operating, health and safety and/or environmental policies at that facility.

If more than one corporation could satisfy this test, then the corporation which has the greatest authority to introduce and implement operating policies and environmental policies (health and safety policies are not relevant) will be deemed to have operational control.

4. Determine whether any of your facilities or your corporate group is over a threshold

If a member of your corporate group has operational control over a facility which produces over 25 kt (kilotonnes) of greenhouse gas emissions or produces or consumes over 100 TJ (terrajoules) of energy in any financial year, then that facility will be over the "facility threshold".

It's important to realise that this is a pro-rata threshold. For example, if you only have operational control over a facility for a day, and the facility produces 25/365 kt of greenhouse gas emissions or produces or consumes 100/365 TJ of energy during that day, then you will have had operational control of a facility which is over the threshold.

If jointly the facilities that you (or a member or members in your corporate group) have operational control over produced a total of more than 125 kt of greenhouse gas emissions or produced or consumed a total of more than 500 TJ of energy in the last financial year (ratcheted down to 87.5 kt of greenhouse gas and 350 TJ of energy this financial year and 50 kt of greenhouse gas and 200 TJ of energy next financial year), then your corporate group will be over the "corporate threshold".

The simplest way to find out if you are (or will be) over one of these thresholds is to use the [Department of Climate Change's \(DCC\) calculator](#).

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This new green regime (Continued)

If you find out that you are over a “corporate threshold” or one of more of your facilities is over a “facility threshold” then your controlling corporation must register.

If you are required to register because you are over a threshold, you should complete the **NGER registration application tool** as soon as possible. Registrations were due by 31 August 2009 for companies over the threshold in the previous financial year.

Remember, the threshold is being lowered annually. If you escaped registration this year, will you need to register next year or the year thereafter?

So what are the consequences of registration?

1. Data collection

Any data which will help you to calculate the greenhouse gas emissions and energy use and production from the operation of all facilities under your (or any members of your corporate group’s) control must be recorded. These records must be stored for seven years in case the GEDO decides to audit your reports.

2. Reporting

At the end of each financial year, you must report this data to the GEDO through an online reporting tool called **OSCAR**.

The government has provided:

- **NGER guidelines;** and
- **NGER determination**

to streamline this task.

Refer to **flowchart 3** for an overview of the reporting requirements.

Bear in mind that your data will be made public by the GEDO unless you request that it be withheld because it discloses a trade secret or commercially sensitive matter.

Even if the NGERA does not affect you directly, it may affect you indirectly if you do any work for an entity that is directly affected by the NGERA (see the table of entities above). This is since a registered company which needs to report its greenhouse gas and energy data for all facilities under its operational control will generally need to include data from the activities of contractors and subcontractors at those facilities.

For example, let’s say a principal is required to register and you do work at one of its facilities. Even if you don’t have operational control of the facility, it is likely that the principal will ask you for your greenhouse/energy data in relation to your work on the facility, so that it can incorporate it into its report under the NGERA. If you don’t provide that data, then the GEDO could compel you to report it.

Similarly, even if you don’t exceed the thresholds in the NGERA, if you enter into a joint venture with someone who does, you will ordinarily still be required to register and report.

As the DCC has not yet published the data for the 2008–2009 financial year, it is difficult to determine whether a particular company was required to be registered.

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*This new green regime
(Continued)*

To give some guidance, we have prepared a sample list of companies that are likely to have been required to register based upon prior greenhouse gas and energy figures they have published.

ENTITY	FACILITY or GROUP	ENERGY (TJ)	PERIOD	SECTOR
BHP	Total	305.7	07-08	Mining/Refining
Alcoa	Pinjarra Refinery	29,000	07	Mining/Refining
Boral	Total	15,509	07-08	Manufacturing
Incitec Pivot	Gibson Island	13,010	07-08	Manufacturing
Orica	Kooragang Island	12,130	07-08	Mining/Manufacturing
Thiess	Total	9,013	07-08	Mining/Construction
Leighton Contractors	Total	8,890	07	Mining/Construction
Nyrstar	Port Pirie	5,230	05-06	Smelting
Linfox	Total	3,400	08	Transportation
Australia Post	Total	2,038	07-08	Post
Origin Energy	Bass Gas	1,900	07-08	Energy
Midland Bricks	Total	1,620	07-08	Manufacturing
Australia Post	Air Express	1,643	07-08	Post
Origin Energy	Spring Gully	1,600	07-08	Energy
Golding Contractors	Total	1,551	07-08	Construction/Mining
Telstra	Strategic Buildings	1,233	07-08	Telecoms
Mirvac	Total	1,199	07-08	Construction/Property
AMP	Capital Holdings	992	07-08	Property
Queensland Rail	Regional Freight	902	06-08	Railways
Brickworks	Austral Bricks Horsley	848	07-08	Manufacturing
Bunker Freight Lines	Total	780	06	Transportation
Tyco Water	Yennora	660	07-08	Manufacturing
Perilya	Total	650	06-07	Mining
Perilya	Broken Hill	627	06-07	Mining
McCain Foods (Aust)	Ballarat, Victoria	609	07-08	Manufacturing
Origin Energy	Denison	500	07-08	Energy
Xstrata Copper	Townsville Refinery	500	06-07	Metals and Mining
Origin Energy	Surat	400	07-08	Energy
James Hardy	Rosehill Site	275	06-08	Manufacturing
James Hardy	Carole Park Site	275	06-08	Manufacturing
Origin Energy	Peat	220	07-08	Energy

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This new green regime (Continued)

If you are affected by the NGERA, it's important to be proactive.

- Take advantage of contractual opportunities to shift the burden for compliance onto other parties or compel other parties to give you the data which you need to comply.
- Implement procedures to streamline reporting and record keeping tasks.
- Update management practices to take advantage of "due diligence" defences and minimise director and officer liability .

If you don't, there can be serious consequences for your company and its directors.

Another Tax! Can this be good? The Carbon Pollution Reduction Scheme

The NGERA is only the beginning of the Federal Government's new green regime. The second stage, a comprehensive national carbon pollution reduction scheme (CPRS), will have an even more significant financial impact upon businesses in a number of sectors, particularly construction.

Why is this so? Well, while the final version of the CPRS may differ from what is presently on the table, some things are clear.

- Legislation will almost certainly be passed.
- That legislation will cap the total amount of carbon pollution that can be emitted within Australia and reduce that cap each year.

- Businesses will get issued and/or will need to purchase permits that represent the right to emit a specific amount of carbon pollution (with the total emissions allowed by all permits equalling the government cap).
- Permits will be tradable to allow businesses that emit more to purchase additional permits from businesses that emit less (and vice versa).
- The intention is to encourage businesses to reduce emissions by making the cost of doing so viable as an alternative to the cost of purchasing a permit.

In terms of the construction industry, emissions are a by-product of the manufacture of many construction materials (for example, steel, aluminium and concrete). This is why manufacturers of these products (such as Alcoa, James Hardy and Midland Bricks) feature prominently on the list of companies potentially over the NGERA thresholds. Construction equipment and building methods are also often emission intensive, and this is also reflected in the list. In many instances, there are few viable alternatives in terms of low emission materials, equipment and construction methods.

While the CPRS may include some measures to prevent cost blowouts in relation to these types of items (for example, via concessions to Emission Intensive Trade Exposed Industries, many of whom supply the construction industry), it seems likely that the CPRS will lead to increased construction costs.

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This new green regime (Continued)

Whatever ones view may be about the politics of global warming and climate change, a practical approach would be to realise that the CPRS will operate as a tax upon business and the common person.

In this regard, the scheme contains many similarities with the introduction of the GST and presents to the property, development and construction industry many of the similar challenges in understanding it, anticipating its introduction, implementing and monitoring it.

Philosophically, the scheme should not present too much of a surprise to particularly the higher end of the construction and development industry in Australia. Sustainability has been a constant theme for the last few years and in the recent past has influenced many of the more prominent developments through the Green Star Scheme. Admittedly, the Green Star Scheme is a voluntary code and suffers from being State based, but in many respects those familiar with the Green Star Scheme should find the transition to a statute based scheme of sustainability not so troublesome.

What is likely to create greater difficulty with the statutory based scheme is the implementation of the various regulatory steps.

Another aspect will be the penalties for not complying. These penalties may not just be in the nature of fines imposed by the relevant legislation but also liability in common law.

Attached is a useful article "**Climate change: the next wave of corporate liability**", prepared by CBP Partner Linda Murphy and CBP Senior Associate Lindsay Lau on the implications for directors' and officers'.

In many respects, the property, development and construction industry is ahead of the pack in that it has already began chanting the mantra of sustainable development and environmentally friendly projects.

Participants in the construction industry need to make a vision for the implementation of the scheme and the sharing of the costs that will inevitably arise in their contracts. Like every other cost of carrying out a development, the question is who will carry the cost?

The challenges for the construction industry in this regard are as follows:

- Not assuming that it will be unaffected by the scheme.
- Understanding the regulatory scheme.
- Determining if compliance is required compulsorily under the legislation.
- Regardless of whether the legislation compels it, whether an organisation wishes to embrace the values of sustainability.
- Where, in the procurement of a project, the responsibility for the implementation of the scheme should lie.

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This new green regime (Continued)

- Developing a regime.
- Implementation of the regime on a corporate and project basis.

The most obvious manifestation of the implementation of this scheme will be in the contract. It is for this reason that we at CBP are already introducing clauses into our contracts to anticipate its arrival. As policy becomes legislation, you can be sure that CBP will provide you with the solutions to stay one step ahead.

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