

## SPEED.VALUE.QUALITY.COMMITMENT

June 2008 Newsletter

### >> KYOTO PROTOCOL UPDATE

#### **The Australian government announced its ratification of the Kyoto Protocol at the Bali Conference of the United Nations Framework Convention on Climate Change (UNFCCC) in Bali in late 2007.**

While it is important that Australia returned to the international fold it is also critical to look to the future. The present Protocol runs until 2012. Negotiations are presently underway to develop a successor framework and it is hoped that such a plan will be agreed at the 2009 UNFCCC conference in Copenhagen.

There are two possible market based approaches that can be taken by Australia to meet its obligations under the Kyoto Protocol. Each approach involves the setting of any emission's price.

The first is an emissions tax.

The second, and more likely to be introduced, is an emissions trading scheme that places caps on total emissions over specified periods of time. Permits are issued for emissions in quantities that correspond to the caps. A business will be required to hold a permit for any emissions that they generate. The system allows for trading of permits amongst the business community.

In emission trading schemes that have been set up in Europe and parts of the United States there has been a reluctance to include forestry or land use schemes because of the difficulty that can be faced with these schemes. The difficulties arise out of unknowns such flood and fire that cause problems with calculation of benefit.

Because Australia has considerable potential for sequestering large amounts of carbon through changes in land, forest management and agricultural practices Professor Garnaut is urging that these sectors be included in a trading scheme at the earliest possible time. It should be noted that New Zealand has brought all business sectors into the emissions trading scheme at the commencement of their scheme.

It is hoped that exactly how the trading scheme will be commenced will be announced by the Australian Government later in 2008.



### >> Signatory Authority

#### **Is Signing the Signature of Someone Else Always Forgery?**

When can a person sign a document for someone else and bind them to the agreement ...

- If a person has authority to sign for someone else, that signing may not be a forgery and may bind the person to a contract.
- However, if the person signing also witnesses the signature that he put in the document, it may be forgery.
- If the document commits the party to matters beyond the authority given to the person making the signature, the signing will be a forgery.

The authority to sign documents must be conveyed by the principal, not the agent.



The articles contained in this newsletter are in the nature of general comment only. The articles are neither intended nor should be taken to be, advice in respect of any particular matter. Advice should be sought in relation to particular circumstances.

We welcome feedback about the newsletter items and if you wish to comment please do so at [info@jacksonlalic.com.au](mailto:info@jacksonlalic.com.au)

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## >> The Right To Inspect a Will

### Who Has The Right To Inspect The Will Of a Deceased Person?

The Succession Act 2006 in New South Wales provides that if a person died after 1 March 2008 and left a Will, the following persons are allowed to inspect or ask for a copy of the Will.

- Any person named or referred to the Will whether as a beneficiary or not.
- Any person named or referred to in an earlier Will as a beneficiary of the deceased person.
- The surviving spouse, defacto partner whether the same or of the opposite sex (or issue of the deceased person).
- A parent or guardian of the deceased person.



- Any person who would be entitled to a share of the estate of the deceased person if the deceased person had died intestate.
- Any parent or guardian of a minor referred to in the will or who would be entitled to a share of the estate of the person who made the will if that person had died without leaving a Will.
- Any person (including a creditor) who has or may have a claim at law or in equity against the estate of the deceased person.
- Any person committed with the management of the deceased persons estate under the Protected Estates Act 1983 immediately before the death of the person.
- Any attorney under an enduring power of attorney made by the deceased person.



## >> Short Case Note - Banking Code

**In the case of Middleton Nominees v Westpac Banking Corporation one of the guarantors, Mr Volkov relied on clause on 28 of the Code of Banking Practice. He argued that the terms of the Code were conditions of his contract with Westpac and because Westpac breached the Code his guarantee to Westpac should be set aside.**

Clause 28.4 of the Code of Banking Practice provides a bank must do certain things before they take a guarantee of a loan.

The bank must give a prominent notice to the guarantor telling him:

- That he or she should seek independent legal and financial advice on the effect of the guarantee.
- That the guarantor can refuse to enter into the guarantee.
- That there are financial risks involved in giving the guarantee.
- That the guarantor has the right to limit liability in accordance with the Code and as allowed by law; and
- That they can request information about the transaction or facility to be guaranteed.

The Code also provides that the bank must give certain documents to the guarantor.

The Court examined the facts in the case of Mr Volkov's guarantee and decided that the bank had complied with the Code and had given the documents to him and because Mr Volkov had the benefit and advice of an independent solicitor all of the advice required to be given to Mr Volkov had been received by him.

In this case the guarantor did not benefit by arguing the Code of Banking Practice but the position may be different in cases in the future where the facts support the claims being made by a guarantor.

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