

## AMCA VIEWS

August 2008

### Australian Emissions Trading

#### The Government's eagerly awaited Green paper on its climate change strategy has been released

The Green Paper confirms that the Government's climate change strategy encompasses not only mitigation (ie reducing Australia's greenhouse gas emissions), but also covers adaptation (ie responding to climate change that cannot be avoided) and contributing to a global solution.

The Government has reaffirmed its intention to start an emissions trading scheme in 2010, which it considers is the key mechanism to achieve substantial emissions reduction "in a responsible and flexible manner and at the lowest possible cost".

The permits issued under the scheme will be known as 'carbon pollution permits', and it is intended that the majority of permits will be auctioned, rather than given out freely. Ultimately, the Government will move to auctioning all permits.

Permits will be able to be banked (ie used in future years). There will also be limited borrowing allowed of permits from the following year, with the limit yet to be determined. It is also proposed that there be an initial cap on the price of permits (up to 2015), which will be set at a level above the estimated market price.

The Government proposes that the scheme should cover all 6 greenhouse gases. It will apply to stationary energy, transport, fugitive emissions, industrial processes, and the waste and forestry sectors. This is a slightly different approach to that taken by Professor Garnaut in his draft report, who proposed excluding the waste and forestry sectors.

The Government has committed to using every cent raised through the trading scheme to assist households and businesses to adjust to a lower carbon economy. Low income households will be provided with assistance through the existing tax and payment systems. Business will be assisted through the establishment of a Climate Change Action Fund (CCAF), which will provide funding for activities such as innovative new low emissions processes and industrial energy efficiency with long payback periods.



### COAG takes steps to National Trade Licensing

In seven key occupations there are in excess of 850 licences. These 7 occupations are mostly in building and construction.

The Council of Australian Governments (COAG) believes that arrangements of this nature are inefficient and damage the national economy.

COAG has instituted a process that it hopes will rationalise this problem through a national trade licensing system.

Of the 7 occupations listed for rationalisation 2 are important to AMCA - namely, plumber and air-conditioning and refrigeration mechanic.

If the goal is achieved a national licence will simplify licences for tradespeople. Once a licence is issued, the licence holder will be able to work anywhere in Australia without added paperwork and cost.

The Department of the Prime Minister and Cabinet is coordinating State governments and industry consultations. A series of meetings has already been held in most states.

The first important step in the process is for an intergovernment agreement to be established. This should form the basis upon

which each of the State licensing and regulatory bodies will need to follow when implementing the COAG intent.

There does seem to be some confusion between occupational and business licences. For example, the government officials said that it is not intended to introduce licences in states where they do not already exist -- but this is hardly a national approach.

The State regulatory and licensing bodies have shown a determination to protect their empires in the past and they are likely to do so once again.

To achieve the COAG objective will be a complex issue.

The motivation to achieve a national system is reasonable. If achieved it will:

- Help move towards a seamless national economy;
- Aid labour mobility;
- Reduce business compliance costs;
- Remove the need for multiple licences; and
- Achieve consistent regulator behaviour.

## My Say:

### Geoff Sheldon

#### THE RISE AND FALL OF MATERIAL COST INDEXES

As price volatility continues for basic materials like steel and copper, rise and fall (...or rise and rise...) clauses in contracts and tenders look like they are on the way back. Writing the words in a clause like that is not difficult, but working out the numbers for a price variation claim is another thing altogether.

Government agencies in several states have set up committees to draft rise and fall clauses for government-funded construction work. In at least one state, an advisory group is beavering away at a rise and fall clause for home building contracts. Industry and professional associations across the building and construction industry are struggling with the same task. In every case, their work has run up against the same snag: it has been five or six years since anyone published the kind of reliable building materials price index which used to be the basis for calculating rise and fall claims.

Having a reliable material price index is central to cost adjustment claims. AMCA's legal advisers have offered numerous versions of rise and fall clauses in contracts. The ones that have actually been effective in the past have used cost adjustment calculation formulas that require the claimant to state the percentage of the total payment claim that is attributable to the cost of materials, and also to state as an index figure the cost of those materials at the time the original tender price was submitted, compared against the index for the same quantity of the same materials at the time the claim for payment is submitted. Here's a typical formula:

$$A = \frac{V \times M \times NM - TM}{TM}$$

where -

"A" is the amount of the cost adjustment claimed.

"V" is the value of the contract sum progress payment claimed.

"M" is the Materials Factor stated as a percentage of the total Contract agreed to be attributable to the cost of the subject material.

"TM" is the Materials Index Number stipulated below for the month in which the project was tendered.

"NM" is the Materials Index Number for the month prior to the month in which the claim is being made.

When the client accepts a tender and agrees the contract price, the M factor for all materials can be stated as a single "omnibus" number, or there can be a whole list of M factors listed in a schedule to show the percentage factors for each individual material or class of materials. If you take the omnibus route, your single M factor needs a corresponding NM and TM index to enable you to make a cost adjustment claim. If you have a whole list of M factors for different materials, then you need a whole series of corresponding NM and TM index figures for each of those materials. What's more, those indexes have to be acknowledged and accepted as reliable by both the contractor and the client. For the contractor to simply state that "x" was the estimated material price at the time of tender and "y" was the price I actually paid at the time my claim is dated, is just not going to cut it.

And there's the rub! There is no longer a published, acknowledged, independent, reliable "omnibus" single index for building material cost adjustments. There are, however, some indexes still being published for certain classes of materials. But do they reliably reflect what is really happening to prices actually paid by contractors for particular kinds of materials? For example, the Australian Bureau of Statistics (ABS) publishes separate price movement indexes for "Copper and Brass", "Aluminium" and "Iron and Steel". Ask any AMCA member what happened to steel prices in Australia between September 2007 and March 2008 and they will tell you that everything went up sharply. Go to the ABS Iron and Steel index and you'll be told that in September 2007 the index stood at 160.1 points, and that by March 2008 it had FALLEN to 157.5.

Perhaps it is time for organisations like AMCA to start collecting data to calculate and publish industry-sector-specific materials cost indexes that record the movements of the actual prices being paid by actual contractors for the actual classes of materials being used on actual HVAC projects. That would require a model of the typical breakdown of the basket of materials used on a typical HVAC installation project. But what's "typical"? What volume of what materials on what size and what type of project? Next, identify "indicative" suppliers for those materials and regularly check their publicly listed "trade" prices. Supplement that by surveying AMCA members (anonymously) to check the prices actually being paid for those same materials in the "typical" quantities. From them on it's simple arithmetic to calculate and recalculate and regularly publish the "AMCA HVAC Materials Price Index".

Is it possible? I think so. Would it be worth the effort? The parallel task would be to promote the AMCA index, both to AMCA members and to their clients, to have it accepted AND USED by both groups as a reliable and acceptable measure for cost adjustment claim purposes. If that could be achieved, then, yes, it could be energy well spent.

## What's on in NSW?

### Date

1 Sept 08  
11 Sept 08  
24 Sept 08  
29 Sept 08

### Event

Understanding Project Estimating  
NSW Council Meeting  
Jerry Bauers Seminar  
Understanding Project Estimating

### Contact

Martin Dennison  
Geoff Sheldon  
Geoff Sheldon  
Martin Dennison

## My Say: David Eynon

### INDUSTRY PRODUCTIVITY UP

Industrial relations reforms in the building industry have raised productivity by as much as 10% according to Econtech.

Econtech is an independent economic research company who were engaged by the ABCC to assess the economic impact of the Building Construction Industry Improvement Act on industry productivity.

This recent study was released in July and provides an update on a 2007 report.

The productivity improvements in the construction industry are largely attributable to the industrial relations reforms that were introduced by the Howard government. The significant reduction in what one might call "wildcat" actions taken by the unions and the CFMEU in particular, is the primary reason for the productivity improvement.

The publication of this data is timely as Justice Murray Wilcox commences his review of the ABCC as a precursor to its functions being taken over by an inspectorate located within Fair Work Australia.

It is fundamentally important for the construction industry in Australia that the reforms which have been introduced and are policed by the ABCC remain in place. Any reduction in the powers that are contained within the Building Construction Industry Improvement Act to enforce compliance with the law and industrial agreements will inevitably lead to an increase in industrial action and a reduction in industry productivity.

AMCA will be making a submission to the Wilcox inquiry supporting the maintenance of the current powers exercised by the ABCC.

### NEW PLUMBING REGULATIONS

The proposed Plumbing Regulations 2008 were released for public comment on 17 July 2008. Accompanying the proposed regulations is a Regulatory Impact Statement, which provides key analysis, considers alternative arrangements and details the economic and community benefits and costs of the proposed regulations. If you would like to download a copy of the proposed regulations and accompanying Regulatory Impact Statement, you can visit the Department of Planning and Community Development website at <http://www.dse.vic.gov.au/DSE/nrenpl.nsf>

The proposed regulations will replace the Plumbing Regulations 1998, which are due to sunset in November 2008. The proposed regulations will:

- define the meaning of plumbing work, and specify classes of plumbing work and specialised plumbing work, for the purposes of Part 12A of the Building Act 1993;
- specify the qualifications and experience required for a person to be eligible to be registered or licensed to carry out plumbing work;
- incorporate the PCA and prescribe other standards that relate to plumbing work; and
- specify fees for the purposes of Part 12A of the Building Act 1993.

In this context, the proposed regulations seek to support the contribution plumbing services make to public health, safety, amenity, the environment and infrastructure and to ensure that there is clear accountability and transparency for plumbing certification and authorisation.

### AMCA RECOGNISES ACHIEVEMENT

*Grant Warren an apprentice plumber with A G Coombs has been awarded the prestigious AMCA training achievement award for 2008.*



*Grant Warren (far right) with Alex Hall, President AMCA Victoria (centre) and Russell Telford, Managing Director AG Coombs (far left)*

Grant was named as the winner of the award at AMCA's gala industry dinner on 2 August. "Grant is an outstanding apprentice", said David Eynon, AMCA Executive Director.

Grant is a former winner of the Allan Coombs company training award.

A graduate of the Holmesglen Institute of TAFE plumbing department, Grant has worked on a wide variety of projects.

A G Coombs sent him interstate for work on two different projects. In Canberra he worked on a tendency fit out and in Sydney on a co-generation project. Right now Grant is working on the new ANZ Bank headquarters in the Melbourne Docklands precinct.

David Eynon said Grant was selected as the apprentice of the year from a particularly strong field of apprentices. Others who made the final and all had claims to the award were:

- Lonny Hore - plumber -- A G Coombs.
- Marcus Bleumink -- plumber -- D&E Air-Conditioning.
- Steve Kozik -- draftsman -- A E Smith

"When you look at the quality of the young people coming through the apprenticeship system we can all be confident that the industry is in good hands", he said.

## What's on in VIC?

### Date

15 Aug 08  
19 Aug 08  
20 Aug 08

### Event

2008 Leadership Program  
Vic Executive Board meeting  
Certificate IV Assessment training

### Contact

Laura Steedman  
David Eynon  
Laura Steedman

## My Say:

### Graham MacKrell

#### KEEPING YOUR BEST PEOPLE

Retention and Attraction Strategies are essential especially in an environment where skill and people shortages continue to develop as a part of our business environment.

An individual who is attracted to a new position has often seen more than a financial gain in the offer.

The role of senior management is critical in the Retention and Attraction Strategy, as the cost to business of replacing staff is significant. The decision to engage a new person is often the most significant business decision made in any year.

Having the right level of dialogue with existing staff to retain them often invokes the "fear factor".

Telling someone that they are not ready for promotion is not an easy discussion or on the other hand, helping someone to grow may see them grow beyond the capability of the company to retain them.

It has been recognised that a talented employee who receives no encouragement from management to stretch or develop may perceive that management does not value the individual's potential.

Finding ways of overcoming the fear of communicating at this level is a vital element of an effective Retention Strategy.

Companies who seek to be "employers of choice" have leaders who are great communicators of vision and are willing to engage in both challenging and exciting conversations to ensure that they are fully aware of the employee's aspirations and concerns.

Assisting employees to chart a career path is a key aspect of an effective Retention Strategy.

#### THE IMPORTANCE OF HAVING AN EFFECTIVE CREDIT POLICY

Regardless of what State you are in, it is important that you know and understand how to use your rights under the security of payments legislation. For those contractors in Queensland, it is much more likely that you will need to use or be faced with a subcontractor's charge under the Queensland Subcontractor's Charges Act.

In this article, McKays Solicitors give some tips on some things you can do to avoid bad debt problems and to increase the prospects of being paid.

Essentially, avoiding bad debts and improving your prospects of successfully being able to use either the security of payments legislation or a subcontractor's charge to recover your money, comes down to the basic strategies:

- **Have a written credit policy and train your staff in its use.** If you have a written credit policy which you ensure that your staff use, it will help eliminate misunderstandings and better enable you to win arguments in court.
- **Have written contracts.** The Queensland Building Services Authority Act makes it the law that building contracts covered by that Act must be in writing. In the case of domestic building contracts they must be in writing if they are for over \$3,300.00. But there is a very good practical reason for having contracts in writing – it is that if your contract is not in writing your chances of winning in court are very slim.
- **Ensure that your contract is clear.** It must state exactly what you will do and what you will not do (that is, set out the exclusions clearly).

It must state how much you will charge or in the case of variable costs, by what method you intend to calculate your costs. And if you are asked to do a variation, make sure you get the agreement in writing as well.

- **Terms and conditions are very important.** If you have a written agreement that includes things like retention of title clauses, personal guarantees, charging clauses, the right to stop work and the right to charge interest, you will be in a much better position.
- **Don't start work** if the contract is not signed.
- **Stop the work** the moment you are not paid, where you have the right to do so;
- **Call them** on the day the money is due and make them keep their promise.
- **Solicitors' letters of demand can work** – Use them now and not in two years' time

#### ENVIRONMENTAL POLICY

There are growing requests from Builders seeking Contractor compliance with the Australian Environmental Protection and Biodiversity Conservation Act and in addition compliance with the requirements as set down in ISO 14001.

The Association has available as a first step, a generic Environment Policy provided by our OH&S service provider, Stack Masula Pty Ltd. Please contact the Association should you require a copy.

## What's on in QLD?

#### Date

3, 10, 17, 24 Sept 08  
15 Sept 08  
18 Sept 08  
25 Sept 08

#### Event

Drafting Cert IV Assessments  
Golf Day  
Council Meeting  
NEBB - Green Buildings Seminar  
with Gerry Bauers

#### Contact

Graham MacKrell  
Graham MacKrell  
Graham MacKrell  
Graham MacKrell

## My Say: Alan Layton

After attending the information session in Perth on the proposed national trade licensing system I was left with the distinct impression that the intention is more to 'de-license' than to 'license'. I have no particular difficulty with that approach. Licensing as a remedy for 'market failure' has to be keenly assessed in terms of the costs and benefits for industry and the community at large. Licensing is one remedy among others to address 'market failure' and may or may not be the best option in a given situation.

At its meeting on 3<sup>rd</sup> July the Council of Australian Governments (COAG) agreed to establish a national trade licensing system that 'will remove inconsistencies across State borders'. The new system will initially apply to 'economically important trades', including air conditioning, refrigeration, building, electrical and plumbing. (Air conditioning and refrigeration was selected, I was advised, because it showed up in migrant intake statistics.) During the latter part of July COAG committees conducted a series of information sessions on what is being proposed at capital city venues.

Arising from the question-and-answer session following the Perth presentation it emerged that the objective is to reduce regulation not to impose more. It is not the intention to introduce licensing of trades where none currently exists. Furthermore, where a trade is licensed in one jurisdiction and not in another, there will not be any pressure applied to introduce licensing where none existed before. If industries or consumers seek to have a trade licensed they will need to convince their particular State or Territory government via a rigorous process, involving a regulatory impact statement and benefit / cost analyses, that licensing is warranted and beneficial. The States and Territories will administer and regulate the new national licensing system.

It was noted by one panel member at the presentation that in New South Wales fencepost cappers are licensed. I got the distinct impression that the COAG Skills Task Force is yet to be convinced that fencepost cappers in the 21<sup>st</sup> century require to be licensed in the interests of protecting the consumer!

### WONG REASSURES INDUSTRY

Climate Minister Penny Wong reassured industry it won't bear the brunt of the push to reduce greenhouse gases. The Minister foreshadowed that the government would reveal by the end of the year the detail of an emissions trading scheme, which it plans to have in place by 2010. Draft laws are intended to be finished this year, enabling parliament to deal with the proposed legislation in 2009.

Senator Wong also recommitted the government to setting a medium term target to cut emissions, indicating it planned to announce by year's end 'a firm indication of the planned medium term emissions trajectory for the scheme'.

### 'BOOM AND GLOOM' FOR BUILDERS

Construction executives reportedly fear the cost and availability of key materials such as steel and concrete and a chronic shortage of labour, at a time when the Commonwealth prepares to spend \$ 20b from the Building Australia Fund and the States are significantly increasing their expenditures on new infrastructure. The WA Government is planning to spend \$ 26b on new State infrastructure over the next four years.

A survey by Deloitte and the Property Council of Australia warned that the mining boom, an aging workforce and growing global competition is shrinking the workforce available to commercial property. Almost three-quarters of chief executives surveyed are looking overseas to recruit staff, in particular project managers, designers, engineers, infrastructure specialists and surveyors.

### SCISSOR LIFT FATALITY

The decision by the National Council of AMCA to focus industry attention on the safe operation of scissor lifts has been brought into focus by a tragic fatality at a Western Australian mine site.

A worker was killed after a scissor lift fell on him at the Nelson Point operations of BHP Billiton in Port Hedland. The worker was conducting maintenance work on the scissor lift. Both the company and WorkSafe investigated the incident.

AMCA has nominated September as the appropriate time this year to encourage employees of member companies to operate and work from scissor lifts in a safe manner. There have been a number of safety incidents in recent months involving scissor lift operation.

### UNIONS CALL FOR END TO ABCC

Construction unions are conducting a nationwide campaign to bring an end to the Australian Building & Construction Commission (ABCC). The AMWU, CFMEU, ETU and Plumbers' Union are lobbying Federal MPs to put pressure on Kevin Rudd and Julia Gillard.

According to CFMEU National Secretary, Dave Noonan - "The ABCC laws are left over from John Howard's IR disaster and they need to be brought to an immediate end. No other body in Australia has such sweeping powers. No other workers are faced with this sort of heavy-handed and undemocratic assault on their human rights."

Julia Gillard, the Minister for Employment & Workplace Relations, has announced the 'final terms of reference for consultations relating to the creation of the Specialist Division for the building and construction industry within the inspectorate of Fair Work Australia'. The Specialist Division will replace the Australian Building & Construction Commission (ABCC) from 1st February 2010. Murray Wilcox QC will conduct the inquiry. He will consult with industry and consider the matters outlined in the terms of reference before reporting to the Minister by the end of March 2009.

## What's on in WA?

### Date

20 August 08  
29 October 08

### Event

AMCA WA General Meeting  
AMCA / AIRAH Awards Night

### Contact

Alan Layton  
Jane Dennis

# SANEWS

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## My Say: Chris Rankin

### U.S.A. HOME MORTGAGE CRISIS FLOWS ON TO AUSTRALIA

Over the past several months Australians have listened to news reports of the US home mortgage collapse, sending housing prices down as much as 40% and threatening the stability of the two major home mortgage insurance companies.

The immediate flow on has been a series of announcements from international and now Australian banks of value write downs of their stocks and a tightening of funds available for commerce (including building and construction).

This tightening of funds and a lack of confidence by investors in the short term, is coinciding with a substantial numbers of projects in South Australia being delayed anywhere from two to six months and a slow down in the number of projects coming out for tender.

While the levels of work look good throughout 2009, the next six months could see a lack of work, as a number of major existing projects draw to a close.

### MANAGING METAL PRICES

In the period from February through to the 1st July, steel products such as pipe and RHS have increased over 50%. One Steel and other suppliers have indicated that there is no expectation that the rising steel prices will not continue to escalate for the rest of this year or next year.

Some metal suppliers have indicated that they will no longer fix a price on forward orders, in such a tight supply market.

While the AMCA will continue to develop a price escalation clause, members should consider the advice that other associations have suggested to their members as options when tendering for work:

1. Restrict the validity period of any tender or quote to 30 days at which time the tender/quote will be subject to review, particularly where steel price increases may have occurred or advice by suppliers have been given that they may occur;
2. Nominate a PC (Prime Cost) item on the basis of a Schedule of Rates for the cost of the steel at the rate tendered, which will be subject to adjustment on the supplier invoiced rate, progressively throughout a project;
3. Include a Contingency Sum in the contract for the purpose of agreed adjustments to the contract sum for the supplied cost of steel being adjusted against the Contingency Sum; or
4. Include an amount in the tender/quoted price based on your assessment of what the price increases may be over the duration of the intended contract;

Members are also advised to check the terms and conditions of your contract to see if you have any contractual right to claim material price increases.

### EXECUTIVE COMMITTEE UPDATE: JULY

- At the July meeting, Adam Percy on behalf of Climate Air Control & Energy, was nominated as representative on the Executive Committee. Adam was unanimously voted onto the Executive. Adam's position on the Executive follows on from the appointment of Michael Gilroy of S.A.M. Air Conditioning in June.
- Security of Payment Legislation continues to be worked on by a number of industry associations, including the AMCA.
- Training: John Pilley has been approached to deliver a second round of training based on his recently updated Mechanical Contractors Handbook. The training will take place in September / October. The delayed Energy Efficiency Training course will now take place in late August and registration documents will be sent out soon. Progress on the development of a mechanical drafting course is still yet to be finalised, and as soon as it is, a registration document will be sent to members.
- The much awaited Code Of Practice is being finalised and should be sent to members in August for review and approval.

### SCISSOR LIFT -- SAFETY BLITZ

In response to a number of incidents involving scissor lifts over recent months, the AMCA has decided nationally to have a major focus on safe working on scissor lifts. The incidents have occurred in a number of states and whilst people were injured, the outcome could have been much more serious.

The first week of September has been identified as the appropriate time to have a major push on ensuring that employees of our members work from and operate scissor lifts in a safe manner. More details will be provided about the activities to be undertaken in coming weeks.

## What's on in SA?

Date	Event	Contact
18 Aug 08	Women in Air Conditioning meeting	Chris / Maureen
1 Sept 08	LDO	
2 Sept 08	Annual General Meeting	Chris / Maureen
2 Sept 08	Executive and General Meeting	Chris / Maureen
15 Sept 08	RDO 9	

