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CHAMBER OF COMMERCE

NEWS

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A Word from the President



Dear Members and Friends,

My message for this edition of the Chamber Magazine is unlike earlier messages, due to the recent loss of my dear brother George, whose sudden passing had an enormous impact on my family as a whole, and on all our friends. I take this opportunity to express my sincere thanks and appreciation to everyone that came to offer their sympathy, and to give comfort to our family, in our time of deep sorrow.

Your presence and your prayers have somewhat eased the pain of the Khattar family. My sincere thanks to Ray Hadley whose comments, over 2GB radio, made us all feel a great sense of pride in both Australia and Lebanon.

Once again, thank you all, and best wishes for continued good health to you and your families.

I would like to acknowledge the messages which the family received from International friends, for their thoughts and condolences. It is greatly appreciated.

Joe Khattar

President

The Australian Lebanese Chamber of Commerce Ltd.

AUSTRALIAN LEBANESE CHAMBER OF COMMERCE Board Members

Name	Title	Name	Title
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Dr Anthony Hasham	1st Vice President	Elie Touma	Director
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YOUNG ENTREPRENEURS NETWORKING EVENT



On the evening of March 24th, the ALCC had the pleasure of Hosting Aussie Home Loans Executive Chairman John Symond. John has long been associated with the chamber via his older brother Michael, a current board member and former president of the chamber. John Symond is the highest profile business person from the Australian Lebanese community and is seen as an example for many of the Chamber's younger members. Many of our young members relished the opportunity to listen to a successful and charismatic entrepreneur offer some advice. The evening was the first of what the Chamber Board hope will be a regular event on our calendar.

Addressing 100 plus young professionals from the community, John gave a deep insight into his professional life, detailing how he was able to build Aussie Home Loans into a major Australian mortgage lender. Some of the key points John raised were:

Family – John stressed that his family were an important element and were critical to the success of Aussie Home Loans. Even at his worst times John looked to his family for support and strength.

The Storm before the rainbow – John spoke to the young crowd on the need for a storm before the rainbow stressing that in hard economic times businesses can be created.

Plan were you are going – A key element to building a successful career was to plan where you want to be, if you don't know where you want to be how will you know how to get there.

Back yourself – In order to get ahead in business you need to back yourself. John detailed how on several occasions he had the confidence in his own abilities to take a risk.

The need to adapt to the environment around John detailed that in order to survive, Aussie Home Loans had adapted or changed their business strategy 5

times. John stressed this is critical if you are looking for long term success in any business.

Overall the audience listened closely as John spoke open and honestly about his career. Afterwards many of the audience commented on John's honesty and expressed great appreciation that he was able to take the time to assist the chamber.

On behalf of the Board of the Australian Lebanese Chamber of Commerce we would like to thank John for his continued support over the years. Our next Young Entrepreneurs function is scheduled for the 18th of August with Mr Sam Haddad, Director General of the Department of Planning as the Key Note speaker. We look forward to hearing Mr Haddad's keen insights into planning and property issues in NSW.



LEBANON'S PROPERTY PRICES RISING STRONGLY



Arab investors and wealthy Lebanese expatriates have pushed real estate prices upward by close to 40%, particularly in the Beirut Central District. Lebanon has undoubtedly attracted many property buyers following the economic unrest in the Gulf Region. The country's ideal climate and all the other wonderful attributes Lebanon has to offer are also a major contributing factor. Stability is essential to sustain this trend and this summer season looks very promising. Large numbers of Lebanese living abroad as well as Arab and international visitors are expected to be in Lebanon for most of the summer this year.

This will further strengthen the economy which has grown by a spectacular 8.5%, the highest rate in 15 years. Inflation is expected to drop dramatically to be less than 2.5%. All in all, this small nation has proved time again, if given the chance to be peaceful, is capable of producing great results allowing its people to live in peace and prosperity and give others the chance to enjoy the natural beauty of this wonderful land.

Please feel free to contact me at anytime in regard to any business matter between Australia and Lebanon and vice versa, or if you are thinking about an investment in Lebanon. I would be happy to help as much possible by giving you the right advice. Our ultimate aim is to strengthen economic and trade relations between Australia and Lebanon.

Michael Rizk
Head of Trade Relations
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LEBANON'S ECONOMY CONTINUES TO THRIVE AGAINST ALL ODDS

Lebanon's economy is expected to grow at least 8% this year owing to improved domestic stability and prudent policies, according to the International Monetary Fund (IMF)

Beirut hotels witnessed the highest year-on-year growth rate in revenue per available room in the Middle East region in the first quarter of 2010, as per Ernest & Young's survey.

Stability was the main feature characterizing Lebanese capital markets recently. On the Treasury bills market, interest rates continued their downward journey, supported by a high level of BDL's international reserves, with the five-year category falling by 20 basis points to 6.28%. Within this context, the IMF recommended, in its latest report released early June 2010, a cautious approach to further policy rate reductions, as interest rates reached a breakeven point. On the foreign exchange market, there was a stronger flow of conversions in favor of Lebanese Pound. The Central Bank of Lebanon intervened as a buyer of the green currency surpluses at the lower end of its intervention bracket (LP1,501). On the equity market, the BSE price index retreated slightly by 0.3% to 142.68. The total trading value amounted to US\$13 million this week, with Solidere shares capturing 43% of the total followed by Bank Audi shares and DGRs that accounted for 32% of the total. As to the Eurobond market, modest local demand for medium-term and long-term categories appeared this week that was met by foreign offer. Within this context, bond prices remained stable week-on-week, and the average spread stood at 247 basis point.

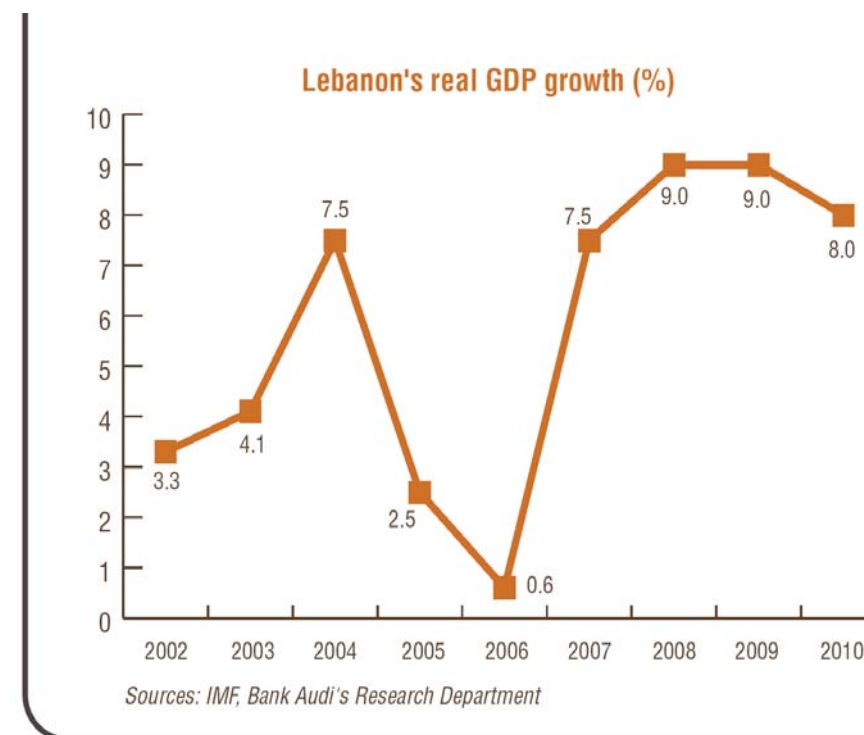
IMF revised Lebanon's real GDP growth up to 8% in 2010.

Lebanon's economy is expected to grow at least 8% this year owing to improved domestic stability and prudent policies, the International Monetary Fund (IMF) said this in its Article IV Consultation Mission Concluding Statement. According to the IMF, Lebanon is reaping the benefits of improved domestic stability and prudent policies, and the strong momentum witnessed in 2009 has carried over into 2010.

The statement also included several policy recommendations for Lebanon, the most important of which was the need to aggress fiscal vulnerabilities in the country. The IMF noted that despite the resilience of its banking sector, Lebanon's national debt currently tops US\$ 50 billion. Some 153% of GDP< accumulated since the end of the 1975-1990 civil war. However, the fund commended the reduction in the debt-to-GDP ratio and noted that a combination of high growth and rising primary surplus have resulted in a 30% drop in the government's debt-to-GDP ratio from a peak of 180% in 2006.

The statement also noted that the favorable financing environment should allow further progress toward a safer public debt structure. The Ministry of Finance is strengthening its debt management capacity and seeking to reduce financing cost by mobilizing the disbursement of remaining Paris III Pledges. Looking forward, the government could continue, in coordination with the Banque du Liban (BdL), funding in local currency some of its foreign currency debt service, while safeguarding an adequate level of international reserves.

The IMF also recommended a gradual and moderate increase in both the VAT and corporate income tax rate. It also indicated that the BdL's balance sheet should be strengthened as lower interest rates and a slower pace of reserve accumulation are helping to ease the drain of sterilization operations on the BdL's finance. Phasing our exemptions from reserve requirements



would also be beneficial. Also of key importance to the Lebanese economy, according the IMF is maintaining the focus of monetary policy on moderating the pace of deposit inflows, given the comfortable level that international reserves have reached. To ensure a smooth adjustment, a cautious approach to further policy interest rate reductions seems warranted.

In conclusion, looking ahead, the fund noted that the key challenges are managing the buoyant economy to avoid overheating risks, and seizing the momentum to implement reforms that will promote sustained medium-term growth and macro-financial stability.

Capital inflows up by 16% in the first four months of 2010

Capital flowing into Lebanon in the first four months of 2010 remained solid, and it managed to more than fully cover Lebanon's structural trade deficit, thereby resulting in a substantial balance of payments surplus in the said period. As a matter of fact, capital inflows in the latter period were at a record high when compared to the same period of previous years, reaching US\$5.8 billion, rising by a healthy 15.6% relative to the same period of 2009.

It is worth noting, however, that the pace of growth of capital inflows has somewhat moderated especially when compared to the growth of 43.3% witnessed in the first four months of 2009. This could be attributed to the already high base recorded in 2009 and to the current global recovery, which has left other countries in the region attracting capital inflows, contrary to the situation in 2009 when Lebanon was one of the few countries that escaped the ravages of the crisis. As a matter of fact, the growth in capital inflows in the first four months of 2010 is in line with the growth of deposits in the same period, which was at 3.5% moderating from the 6.2% witnessed in the first four months of 2009.

Capital flowing into the country was buoyed by the increased confidence in the Lebanese economy, be it by Lebanese expatriates or by non-Lebanese investing in Lebanon, as capital inflows include remittances, foreign direct investment (FDI), and spending of tourists in Lebanon. No official data on the former two are currently available, yet the IMF anticipated in its latest report on Lebanon that remittances and FDI flowing into the country would increase in 2010 as countries across the region and the globe begin to recover from the global financial crisis.

**Adapted from The Lebanon Weekly Monitor of June 7
by Bank Audi**

IN MEMORY OF GEORGE KHATTAR



1966-2010

George Khattar – Loss of a great Australian/Lebanese. The Lebanese and business community lost a most respected and generous human being. George Khattar passed away at the prime age of 44, leaving behind his wife, Carol and two young daughters, Georgia and Alana.

“It really is like a dream at the moment. We keep thinking he is still in Melbourne,” “My parents are coping because of their strong faith, accepting God’s will, while his daughters are still not sure what has happened. My brother was a generous man, always giving to organizations, and always helping.” Joe Khattar.

On behalf of the members of the ALCC, we extend our respect and condolences to the entire Khattar family, at this time of sadness.

George will be greatly missed, but will remain in the hearts of his family and friends forever. May he rest in peace.

RAY HADLEY, AM – HONORARY MEMBER OF THE ALCC

Members of the Australian Lebanese Chamber of Commerce Executive Committee, hosted a luncheon, to endorse and honor the memory of George Khattar for his contribution to the Community, through his long standing relationship with Ray Hadley AM.

The occasion was to honor a pledge made by George to Ray Hadley, shortly before his death, and that was to have Ray, as an Honorary member of the Lebanese community one day for his strong participation in various community events.

This promise was fulfilled in the presence of Monsignor Shora Maree, Reverend Father Antoine Taraby, Dr Mustapha Alameddine, Mr Anwar Harb, the President of the ALCC, and Board members, when he was made an Honorary Member of the ALCC.

As a result of Ray’s tributes aired publicly on Radio 2GB at the time of George Khattar’s farewell, many of the program listeners, had the opportunity to gain a broader understanding, from what Ray Hadley delivered, that there are Lebanese who have made major contributions to this great country, and have enormous loyalty to both Australia and Lebanon.

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SAUDI PRINCE INVESTS \$1.5B IN LEBANON FOUR SEASONS HOTEL OPENS IN BEIRUT

BEIRUT: Chairman of the Kingdom Holding Company (KHC), Saudi Prince Al-Walid Bin Talal pledged on Tuesday to support the Lebanese economy during the coming years and said that his total investments in Lebanon will amount to \$1.5 billion.

“My investments in the tourism sector in Lebanon amount to \$0.5 billion in addition to other investments in the media and banking sectors,” he said during the opening of the Four Seasons Hotel, adding that the projects totaled \$1.5 billion.

The opening took place in the presence of President Michel Sleiman, Prime Minister Saad Hariri and Speaker Nabih Berri, in addition to other prominent political figures.

KHC is one of world’s largest and most diversified private investment companies, with holdings in a large number of Saudi Arabian, Middle Eastern and International companies. In particular, KHC is a leading hotel investor, with a portfolio of hotels and majority interests in international hotel management companies.

KHC owns a 47.5 percent in the administration of the Four Seasons Hotels which is one of the world’s leading managers of luxury hotels and resorts with a portfolio of 74 luxury hotels and resort properties containing 18,090 guest rooms as of March 2007.

These properties are marketed under the brand name Four Seasons in 30 countries.

KHC also has a stake in Movenpick hotels and resorts which opened in Lebanon during 2002 as well. “We also have a share in the Movenpick Hotel in Beirut and we are planning to keep on investing in this sector in the future,” Talal said.

He added that the inauguration of the Four Seasons Hotel in Beirut reflects the continuous growth of Lebanon’s hospitality sector.

“These projects highly contribute to the economic growth in Lebanon and create a lot of job

opportunities for the Lebanese youths,” he said. “They will also increase investors’ confidence in the Lebanese economy.”

Bank Audi Chairman Raymond Audi said on the same day but during a different occasion that the hospitality industry in Lebanon provides around 200,000 job opportunities. “It employs 38 percent of the total labor in the country,” he said.

He added that hotel reservations reached 73 percent during 2009, an increase of 20 percent compared to the year 2008.



The recent political and security stability in the country, according to Audi, is attracting a lot of investors and Lebanon is expected to witness the opening of 20 new international hotels that are currently under construction which will add 1100 additional rooms.

Lebanese Tourism Minister Fadi Abboud previously told local newspapers that he expects tourism activity in the country to grow by a further 10 to 20 percent in 2010.

During his speech, Talal praised Leila El Solh who is the vice Chairman of Alwaleed Bin Talal Humanitarian Foundation in Beirut, for her continuous efforts in supporting the social sector in Lebanon.

“She is always keen on supporting and offering the foundation’s services to all the Lebanese regardless of their religion or sect,” she said.

He concluded his speech by promising to support Lebanon in the future and during its time of prosperity the way he was supporting it in its difficult time.

Courtesy of Daily Star – Lebanon



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CONSTRUCTION UPDATE - NSW AND ACT

New South Wales Construction Update Two key recent decisions under the Building and Construction Industry Security of Payment Act (1999) (NSW) (Act)

As we commence the beginning of a financial year, it is timely to review the latest decisions on the Act and take away some practical lessons. The most important point that the decisions highlight is how complex the administration of payment claims under the Act has become.

As the decision in *Watpac Constructions Pty Ltd v Austin Corp Pty Ltd* [2010] NSWSC 247 (*Watpac*) illustrates, the process of preparing payment claims is fraught with risks for those who are not specialists in the area. The risks remain high when looking at methods of service. The *Owners Strata Plan 5687 v Consolidated Projects* [2009] NSWSC 1476 highlights that informal ways of doing business outside of what is allowed under a contract can actually harm a party when defending a payment claim.

Watpac - Double Dipping is a Failed Strategy

The recent decision of *Watpac* dealt with a case where an adjudicator had made a determination that *Watpac Constructions Pty Ltd (Watpac)* owed *Austin Corp Pty Ltd (Austin)* a sum that included an amount that had already been the subject of a previous payment claim. In other words, in a second attempt to gain payment of the monies claimed, Austin had had a go at “double dipping”, and had won by gaining a determination result on the previously assessed monies.

The Facts

Watpac and *Austin* were parties to a subcontract whereby *Austin* agreed to carry out air conditioning services for *Watpac*. *Austin* served a number of payment claims under the Building and Construction Industry Security of Payment Act (1999) NSW (“the Act”). One of these claims (“the December claim”) included claims for variations that had been part of a previous payment claim.

Watpac sought relief on the basis that *Austin*’s “double dipping” was an abuse of process from the Supreme Court of New South Wales.

Injunctive relief was granted by *MacDougall J* which prevented *Austin* from including the variations claim in its December claim.

However *Watpac* wanted to take the matter further, and sought to have the entire determination result struck out altogether. This would have been a serious loss for *Austin*, which would have seen their double dipping efforts backfire altogether and they could have recovered nothing at all in their payment claim.

Watpac supported their case with the argument that the repetition of the claim was an “abuse of process”. *Watpac* argued that meant that the claim was void.

However *MacDougall J* found that “the consequence of a finding of issue estoppel or abuse of process (not extending to the whole of the later payment claim) is that the claimant (ie *Austin*) (sic) might be restrained from enforcing its rights

under a subsequent determination to the extent to which that subsequent determination allows, in whole or in part, the impermissibly re-agitated claim.”

On this basis, *Watpac*’s attempt to have the whole claim struck out was not successful.

In the end *Austin*’s “double dipping” was not a significant sum and they were successful in upholding the majority of their determination result.

However the decision remains a stark warning to those that put together payment claims. Careful attention must be given to what can and cannot be claimed. Even with a favourable determination in hand, *Austin*’s double dipping did not provide it with any advantage in the end.

The Owners Strata Plan 5687 v Consolidated Projects [2009] NSWSC 1476 : Old Habits Can Harm

The *Owners Strata Plan 5687 v Consolidated Projects* [2009] NSWSC 1476 (*Consolidated Projects*) is an important decision because it indicates that previous habits regarding payment claims, even if not allowed under the contract between the parties, may be used to validate service of a payment claim.

The Facts

In this case, the owners corporation entered into a contract with *Consolidated Quality Projects (CQP)* to carry out remedial works on an apartment building.

The construction contract did not authorise the service of payment claims under the Act on the superintendent (**RHM**).

However, twenty five payment claims were made prior to the disputed payment claim. These payment claims were served on **RHM** but since no disputes arose regarding the first twenty five payment claims there was never any discussion about the fact that the payment claims were being improperly served both for the purposes of the contract and the Act.

In the end, a dispute arose regarding the final payment claim served on **RHM**. The matter was referred to an adjudicator who determined that the owners corporation was liable to pay **CQP** the progress claim amount of more than \$470,000.

The owners corporation argued that the service of the payment claim was invalid as it was not served on the owners corporation which was the party responsible for payment of the claim and took the matter to the Supreme Court of NSW.

They argued that the payment claim did not comply with the legislative requirements under section 31 of the Act, and so, as a consequence, the adjudication was invalid.

McDougall J agreed that a superintendent was not an agent to the principal under the construction contract as this would compromise the Superintendent’s ability to perform his functions in accordance with Clause 15 of the construction contract.

However, His Honour held that it does not follow from this that the service of payment claims via the Superintendent were ineffective.

He held that the payment claim was served in a manner authorised by Clause 23 of the contract and was validly served for the purposes of s 31 of the Act. The main reason for his decision was that payment claims had been served in this manner on 25 previous occasions.

His Honour found that there was an arrangement that encompassed the practice of serving the payment claims via the Superintendent, and it was this continuous arrangement that made such service was effective.

It is important to note that if the Owners Corporation insisted on proper service of the payment claim at the outset, none of the confusion would have arisen.

Lessons from Watpac and Consolidated Projects decisions

The lesson most evident from the *Watpac* and *Consolidated Projects* decisions is that the process of preparing and serving an effective payment claim is becoming increasingly complex.

This is not what as contemplated by the Parliament when debating the Act. However unfortunately, despite being a relatively quick way to obtain payment from a recalcitrant creditor, the payment claim process needs legal assistance.

Australian Capital Territory Construction Update The ACT Parliament Adopts a Security of Payment Regime

In a recent development, the ACT is following NSW and most other Australian States and Territories and bringing in a payment claim regime. On 26 November 2009, the ACT parliament assented to the Building & Construction Industry (Security of Payment) Act [ACT SOPA].

It is important to note:

- (1) Contractors completing work under affected contracts will now have the rights to progress payments, regardless of whether or not the contract provides for them.
- (2) The ACT regime is broadly similar to the New South Wales scheme.
- (3) The ACT SOPA provides a robust and quick system via adjudication for the recovery of progress payments.
- (4) Importantly, the opportunity to appeal an adjudication decision is limited.
- (5) In certain circumstances, contactors now have the right to suspend work.

Progress Payments

As with the comparable legislation in New South Wales, the ACT SOPA grants an entitlement to progress payment. The ACT SOPA applies to contracts whether they are written or oral.

Progress payments become payable on one of two dates:

- Where a date progress payments have already been agreed in a contract; or
- On the last date of the month in which the construction work was undertaken, and on the last day of each following month. (Section 10 ACT SOPA).

Progress payments are payable on either:

- The date set out in a contract; or
- 10 business days after a payment claim is made.

Recovery of Progress Payments

Section 14 of the ACT SOPA prevents “pay when paid” provisions taking effect.

Recovery of progress payment is set out by the ACT SOPA:

- First step is to make a payment claim for the work completed. (Section 15 ACT SOPA).
- A payment schedule can be provided by the respondent. (Section 106 ACT SOPA).
- Upon an unsatisfactory Schedule, a claimant may apply for adjudication (Section 17 ACT SOPA).

Judicial Review

Section 43 of the ACT SOPA does not allow a court jurisdiction to set aside or remit an adjudication decision unless:

- The decision ‘substantially affect[s]’ the rights of a party; and
- There is a ‘manifest error of law of the face’ of the decision or there is ‘strong evidence’ that the adjudicator made an error of law and that determination of the question may add ‘substantially’ to the certainty of the law.

Section 44 of the ACT SOPA grants the ACT Supreme Court jurisdiction to determine a question of law arising in an application subject to the adjudicator’s consent, or the parties’ consent.

Right to suspend work

- When no payment schedule is provided, as set out in section 17; or
- When the claimant is not paid, in accordance with a payment schedule; or
- If there is a failure by the respondent to pay the adjudicated amount,

The Claimant may suspend works on a site section 29(4) of the ACT SOPA precludes the claimant from being liable for loss or damage as a result of suspension of Works. This is a powerful tool for a claimant in bringing a resolution of cash flow issues on a site.

Conclusion

The ACT SOPA is a welcome step towards establishing a security of payment scheme across all States or Territories. However each State and Territory with SOPA have slightly different regimes. The practical result of this is that contractors and developers alike are inevitably dependant on specialist lawyers to navigate through the differences. In our view, a simplified national regime should be introduced in this area to minimise the dependence on lawyers in this area and to make it more accessible for those using the regime.

This would go a long way towards satisfying the original intention of SOPA: to help those in the building industry get paid in a quick, cheap and easy process.

For all your building and construction law advice and requirements, please contact Danny Arraj (Managing Partner) or Harriet Warlow-Shill at Blackstone Waterhouse Lawyers on (02) 9279 0288



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- 15 copies of our "Chamber News" newsletter for every issue
- Mention (your Company logo) in Chamber News
- Exposure on ALCC Website with links to your own website
- Free Corporate Membership with ALCC

Total Cost: A\$5,000 (including GST)

Package includes:

- 1 table of 10 at the Annual Business Awards Dinner.
- 1 table of 5 at the Annual Business Lunch
- Tickets to Business Seminar or similar event.
- 10 copies of our "Chamber News" newsletter for every issue.
- Exposure at all functions by way of corporate signage and official acknowledgement.
- Exposure on our website, with links to your own website.
- Free Corporate Membership – valued at \$250

Total Cost: A\$3,500 (including GST)

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