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Chamber NEWS

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Chamber NEWS

AUSTRALIAN LEBANESE CHAMBER OF COMMERCE

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A WORD FROM THE PRESIDENT

Dear Members & Friends of the ALCC

It is my pleasure to inform you that my recent visit to Lebanon was of great benefit because it gave me the opportunity to see the actual situation on the ground and not from a distance. Although the whole region is experiencing a difficult period, remarkably Lebanon is still stable and moving slowly but surely towards a better future.

With the ALCC's permanent presence on the ground in Beirut, headed by Michael Rizk, we are confident that the future holds a promising period for Lebanon. Through our office in Beirut we are now in a much stronger position to help Australian companies gain access to the wider Middle East market.

Once again, it is our ultimate goal to see that Australia has a fair share of the Middle East market and at the same time help Lebanese manufacturers and exporters gain further access to the Australian market.

Joe Khattar, AM
ALCC President

SAVE THE DATE
19 NOVEMBER 2016
FOR THE ALCC ANNUAL AWARDS GALA DINNER

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LEBANESE DIASPORA CONFERENCE 2016

Distinguished guests, ladies and gentlemen allow me to begin by saying how good it is to be here and to feel some of the vibration that existed in this wonderful city Beirut up to the early seventies…a period I look back on and from which I derive my strength to move forward with the intention to seeing Lebanon back On its feet with the same vibration and will to Play its natural role on the world stage.

Ever since our chamber was established thirty years ago, it has always been our desire to see This magical small country rise and be the peaceful and vibrant business place it was and we all want it to be…..we have never ever given up on Lebanon even in the most difficult of times and can proudly say that we have kept a permanent business and physical presence in Beirut in the most difficult of times and to date….we have always promoted Beirut as a launching pad for Australian products and services in the middle east region and beyond…in fact and I'm proud to inform you that while Lebanon was still suffering terribly as a result of the war that was going on, the chamber through seminars and constant meetings with the business community and Australian government officials maintained a strong belief in Lebanon's ability to rise from the ashes and move forward…this strong belief in Lebanon gained a lot of respect from both the business community and governments.. At present we are working very closely with major Australian companies by having them visit Lebanon to meet with key business leaders with whom we have great old relationships and who are heavily involved in the Middle East region ….

We have a very strong partnership business relationship with the Australian business chamber which is the oldest and largest and most effective chamber in Australia…together we work hand in hand in all matters related to trade & services…. We are currently working on the 2017 congress of World chambers.

We have made a lot of ground in promoting Beirut as the ideal location and most suitable city to launch Australian products and services in readiness for the new emerging markets in the region….I can honestly tell you that all the delegations we have so far brought to Lebanon, were highly impressed with the professionalism of those that they have met and were able to see for themselves the great potentials that do exist.

Definitely there is a lot of hard work to be done but we are confident that with perseverance and strong belief in what we do, the end result is positive for both Lebanon and the Australian business community.

I must point out that we are well aware that Lebanon's various problems have accumulated over the years and must be seriously addressed , particularly in matters related to the business world where other countries in the region have developed excellent modern systems to help the business community transact with ease and efficiency…although we are aware of Lebanon's woes ,the government however must do all it could to modernize Lebanon's bureaucratic system in order to attract the international Business community.

Lebanon has all the attributes to make it a great place to transact but it definitely needs to shape up its bureaucratic services in all sectors.

On another note the chamber has accompanied the success of promoting and marketing Lebanese foodstuffs on the Australian market and there are many wonderful stories on Lebanese manufacturers' ability to export in the most difficult periods with the chamber's help in logistics right here in Beirut..

We can proudly say that over the last thirty years the chamber was behind the launching of many Lebanese products on the Australian market thru exhibitions and promotions, among them the introduction of Lebanese wine, beer and arak.

Our ongoing and immediate exercise is to have fresh Lebanese produce on the Australian market based on viable studies and seasonal differences.

We have now elevated this exercise to ministerial level in both ministries of agriculture in Australia and Lebanon, channeling all correspondence through the Lebanese Embassy in Canberra and foreign affairs in Beirut…I'm happy to advise that recently, serious meetings in this regard were held here in Beirut by an Australian agricultural official, Lebanon foreign affairs and the Lebanese ministry of agriculture…this is a major leap forward in seeing this exercise come to fruition…while in Beirut I'll be pursuing this major exercise with all the relevant parties in the hope we can now move to execution.

Ladies and gentlemen the responsibility to see our beloved homeland be the place we all aspire it to be, lies on all of us and not just officialdom…..

Let us speak out when necessary but not always concentrating on the negative and not seeing the positive aspects….Lebanon has proved time again that it has a tremendous will to survive and a never ending desire and appetite for a peaceful good living.

I must also mention that regardless of the great help of those in the diaspora, Lebanon wouldn't have survived if it weren't for our people that remained here in Lebanon and faced all the wars and hardships that this small country has suffered over the years.

I must conclude by saying that Lebanon has a great Friend called Australia….this wonderful land that has received our people with open arms over the last 150 years, deserve our deep respect. The performance of Australia's ambassador to Lebanon Mr. Glenn miles, is a living proof of this great relationship.

Ladies and gentlemen let us all resolve to work together hand in hand for the wellbeing of our people and this wonderful homeland of ours.

This was a speech presented by Mr Michael Rizk at the Lebanese Diaspora Conference 2016

CORRESPONDENCE FROM BEIRUT

The ALCC office & continuous physical presence in Lebanon have made an incredible difference in expediting chamber business in Lebanon and elsewhere in the region.

We have offered genuine business advice to both Lebanese exporters and manufacturers particularly in the food and wine industries as well as other miscellaneous products and services.

We have helped several Australian companies gain access to the Lebanese market as well as other markets in the region in both the food industry and a variety of Australian products & services. Our office in Beirut is proudly promoting Australia thru conferences, seminars and regular meetings with the business community from Lebanon and other Middle East countries as a safe haven for long term investments.

Australia enjoys enormous respect in Lebanon and we as a chamber are doing what is possible to make sure that Australian products and services do have a fair share in the Lebanese and other markets in the region.

For those who are interested in doing business in Lebanon and other countries in the region please feel free to contact our office in Beirut.

Michael Rizk
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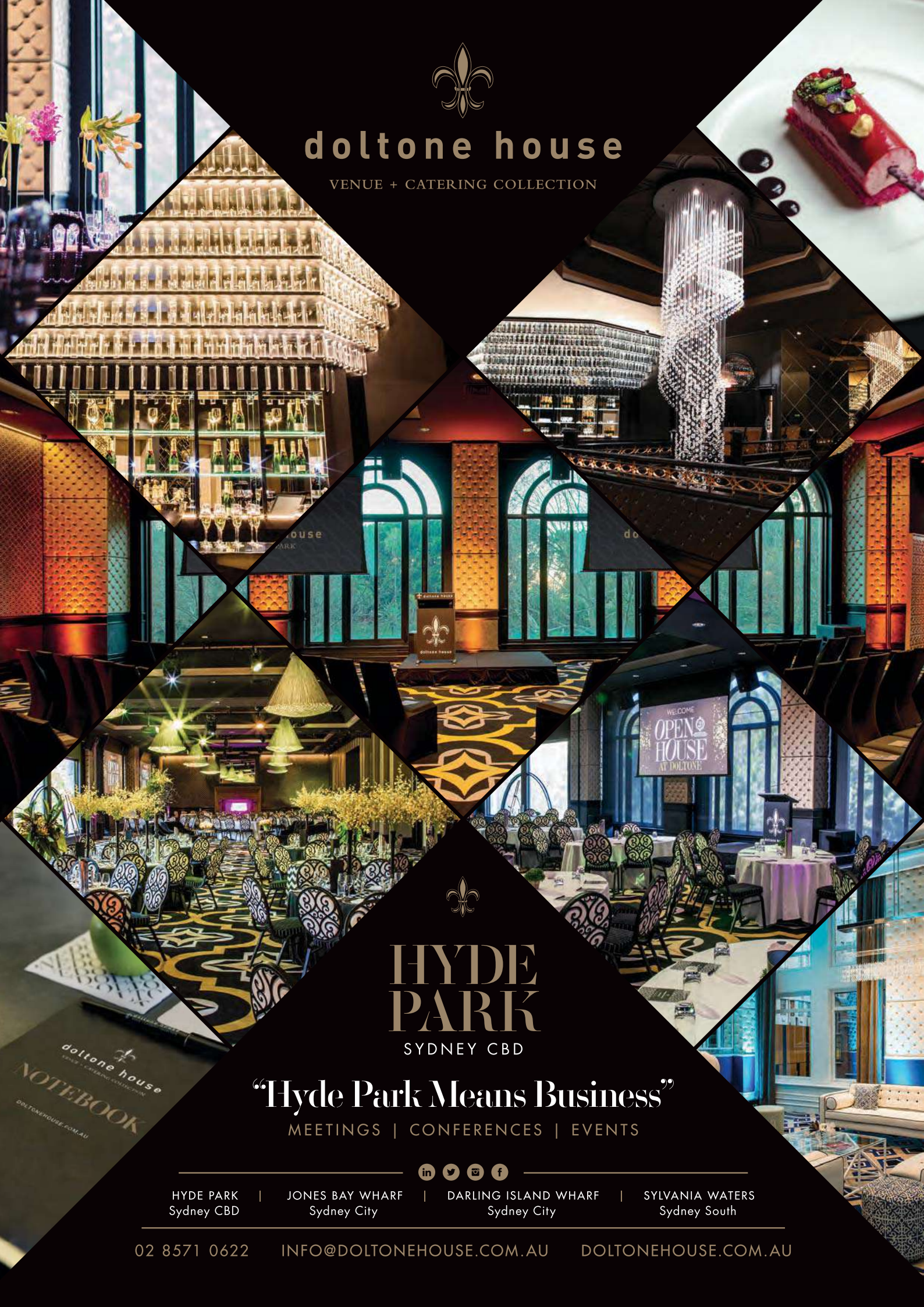
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SPONSORS' LUNCH

On July 28th 2016, The Australian Lebanese Chamber of Commerce hosted its annual Luncheon in recognition to the sponsors of the ALCC. The luncheon was held at The Loft, Doltone House Function Centre, Pyrmont.

The luncheon was also attended by The Consul General of Lebanon, Mr George Bitar-Ghanem, and Mr Giscard El Khoury, Charge de Affaires of Lebanon. Mr El Khoury provided the audience with an overview of his recent visit to Lebanon, giving some important highlights which are reflected in the article below.

Below is the speech by the Charge d'Affaires of Lebanon Giscard El Khoury at ALCC Sponsors and Supporters Luncheon, at the Loft.

A while ago I had the pleasure to meet with ALCC board in Canberra and later here in Sydney; and being my first time in Australia, I was full of pride, to see their commitment and dedication to enhance Lebanon Australia business relations.

If I could talk a little bit about what makes us, Lebanese, feel proud, so maybe you can understand our psychology. Well I say it is certainly not the strong economy that we don't have yet, neither the political stalemate that sometimes makes us rather angry. What makes us proud are two things: first) our value system that we developed and fine-tuned throughout 6000 years of our known history, and second) the sense of freedom and the spirit of free initiative that has been a characteristic of us who migrated all over the world and made many a success story from Brazil up to US, to Europe, Africa, the Gulf, and of course Australia. Everywhere descendents of Lebanese had their bright fingerprints on societies, sciences, philosophy, politics, and businesses. I need not remind of such big names like Khalil Gibran, Carlos Slim, Michael Debakey, Michel Temer, David Maalouf, Marie Bashir, and also Joe Khattar to name a few.

We didn't succeed because we were pursuing dogma, but because we represented that history of us, and we were pursuing life and wealth instead. Lebanon is not a country that runs on ideology, we are not a country that runs on promoting nationalistic interests. We have neither. We are rather a country that runs on goodwill, on open engagement with the world; we are a "country of Message" as John Paul 2 said once, and we Lebanese are people who do what we know best: "Build" (here I quote an AFR reporter referring to Lebanese construction companies). Yes we build houses, but we also build relationships. We build a way of life.

So, reconnecting with Lebanon is in fact a reconnection with this way of life, with multiculturalism, with religious diversity and tolerance. To some it is a biblical connection, to other it is an acknowledgment of a Phoenician trait being alive up to this day. True, we have been through ups and downs but in the process we learned. Now we see the world falling into what we have been through in the past but that we got over it and the world didn't.

The Syrian civil war next door poses a great risk to Lebanon to be frank. The situation is not ideal at this stage. The spillover effects are awesome. We host generously a 1.5 million Syrian displaced and less than half a million Palestinian refugee representing together almost 50 % of Lebanon's population. A huge strain, to a breaking point, is placed on every sector of the Lebanese economy namely education, health, infrastructure, but also security with the ongoing threats of terrorist acts. Of course though we will not break.

It is unfortunate that facts of war argue louder than hopes of peace. But peace is humanity's default feeling. It is believed that Lebanon will stand to fairly benefit from a post war reconstruction of Syria. We have the business savvy and the necessary relationships for it. The oil and gas boom that will

eventually see the light in Lebanon will by itself change the business dynamics in the region. I need not mention that we are water rich country – though sometimes wasted – in a fresh water scarce region. Our banking sector is solid and well capitalized relative to our GDP, our location is very central, and of course our people are very resilient and they are our best bet for a better future. Investment opportunities are there.

The Lebanese Diaspora businesses are invited to reconnect with Lebanon and find their place in this overall picture. And I am here to ask you to, and maybe offer some glimpses as to where you can have a first step.

The Ministry of Foreign Affairs of Lebanon has been for the last three years organizing a conference called Lebanese Diaspora Energy LDE. One of its aims is to provide avenue for Diaspora businesses, those big businesses like you are now, to interact, to explore possibilities, and to seek ways of cooperation. This year featured expert sessions on the opportunities in different countries including Australia, but also Latin America, Africa, and Iran after the lifting of sanctions.

LDE builds on the established presence of the Lebanese Diaspora all over the world to create relationships and generate wealth through possible joint business ventures. Each would be the other's gateway into his market. By getting together during the conference, the possibility of agreeing on joint activities by those who pertain to the same line of business but to different countries is highly likely. All the competent ministers also attend the LDE to personally engage with the participants. It is hard to put in words the pulse of the gathering, only those who attended could really feel it.

Some might have some remarks on the red tape, and the rule of law. There will always be issues, and everywhere. Lebanon is an open society, we have free press. You have these remarks, do not hesitate to say it as they are, and push for reform. Lebanese Diaspora has equal stake in Lebanon as do Lebanese residents.

As an embassy we plan to re-start soon discussions with Australia on a couple of agreements: protection of investments, and the avoidance of double taxation. We hope we can finish them at some point in the near future. We reckon these will boost your confidence, and protect your money and investments. Your assistance as a chamber will be much appreciated and welcome. As is now welcome your assistance in importing Lebanese produce form Lebanon to here.

Mr. Chairman, once again I invite you to lead an expanded delegation for next year's conference. Maybe you can co-lead a delegation from the wider business community in Australia who might have the interest in venturing out. In preparation thereto, we are ready to supply you with all the necessary information, the proper recommendation, and all contacts for a successful visit.

Thank you all.

LUNCHEON IN HONOUR OF MR GISCARD EL KHOURY LEBANON'S CHARGE D'AFFAIRES

The Chamber held a luncheon recently to welcome Lebanon's Charge D'affaires in Canberra Mr Giscard El Khoury which was attended by Mr George Bitar Ghanem Lebanon's consul General and a number of business Leaders and professionals from the community. ALCC president Joe Khattar welcomed Mr El Khoury and those attending while head of trade Michael Rizk touched on the excellent ongoing working relationship with both the Consulate General in Sydney and the Lebanese Embassy in Canberra.

ALCC BREAKFAST WITH JOANNE MASTERS, ANZ BANK

The ALCC held a business breakfast on 11 March 2016 at the Novotel Sydney Olympic Park, with special guest speaker Joanne Masters, Senior Economist in the Australian Economics team at ANZ. The breakfast was well-attended, with over 200 members and guests from all industry sectors, as well as government bodies and authorities.

Ms. Masters gave a comprehensive presentation on the state of the Australian economy, from a macroeconomic viewpoint, and also in relation to specific sectors such as property investment and construction. The presentation provided a sound platform for a lively and engaging Q&A session, during which many matters of mutual interest were discussed.

The breakfast was graciously sponsored by Deicorp, and proudly supported by the Chamber's principal partners, Arab Bank Australia and Etihad Airways.

LAUNCHING OF KHAN EL SABOUN ECO VILLAGE

Launching date of the village with a strong official presence.

The ALCC, who has supported the Khan for more than 20 years in its efforts to export the Khan's unique products, was represented by ALCC president Joe Khattar and Head of Trade Relations Michael Rizk.

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SHOULD THE PENALTY FIT THE CRIME?

Danny Arraj
Managing Partner
Blackstone Waterhouse Lawyers

Veno Panicker
Partner, Construction & Major Projects
Blackstone Waterhouse Lawyers

ENFORCING LIQUIDATED DAMAGES AND TIME BARS IN BUILDING CONTRACTS

VENO PANICKER, PARTNER & DANNY ARRAJ, MANAGING PARTNER BLACKSTONE WATERHOUSE LAWYERS

IMPACT

The recent decision of the High Court in *Paciocco v ANZ*[1] held that late payment fees charged by a bank on a consumer credit card were not unenforceable as a 'penalty'– nor did such fees contravene statutory prohibitions against unconscionable conduct, unjust transactions and unfair contract terms.

So what does a case about late payment fees on a credit card have to do with construction contracts?

It turns out, quite a lot!

The decision means that it will be much harder for parties to argue that a clause is unenforceable as a 'penalty'. This will provide greater certainty for construction contracts including provisions relating to liquidated damages and time bars.

WHAT IS A PENALTY

It is common for commercial agreements to include liquidated damages triggered by a breach of one party under an agreement (for example for delay in completing a project) as a way of ensuring certainty as to the recoverable amount.

Similarly, it is common for those agreements to contain time bar stipulations (to manage variations, extensions of time etc). The purpose of such clauses is to ensure if there is a change or delay, a head contractor or developer has control over how any additional costs or options are managed.

Historically, the test for whether such clauses were enforceable were based on whether the clause provided 'a genuine pre-estimate of the damage suffered by a breach'.

For example:

a) if the rate of liquidated damages was 'out of all proportion' to that measure, the clause was held to be 'penal' and as a result deemed void; and

(b) if a notice for a Variation required within 5 days was, for example, a day late, the argument might be that such a clause could constitute a penalty.

The latter of these arguments was always a difficult position to try and argue.

Prior to this case, the often cited test was established in *Dunlop* – a clause could be penal if:

1. the sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach;

2. the breach consists only in not paying a sum of money, and the sum stipulated is a sum greater than the sum which ought to have been paid; and

3. there is a presumption that the sum is a penalty when a single lump sum is made payable by way of compensation on the occurrence of one or more or all of several events, some of which may occasion serious and others but trifling damage. The key was that weight was given to whether the breach could cause damage which was comparable to the amount of liquidated damages prescribed in a contract.

The decision in *Paciocco* provides that a liquidated clause will be upheld even if its effect goes beyond the consequences of damages flowing from a breach of contract. A Court will have regard to a party's broader commercial interests and losses that may flow from non-compliance generally. This is a significant narrowing of the scope of the penalties doctrine.

WAY FORWARD

The Courts will be reluctant to interfere with clauses providing for liquidated damages. Similarly, strict time bar provisions will have greater certainty – as the same principles

The decision followed other High Court[2] and Supreme Court[3] decisions relating to the circumstances in which a clause will be deemed unenforceable as a penalty.

[1] *Paciocco v Australia and New Zealand Banking Group Limited* [2016] HCA 28
[2] *Andrews v Australia and New Zealand Banking Group Limited* (2012) 247 CLR 205
[3] *Grocon Constructors Pty Ltd v Juniper Developer No. 2 Pty Ltd* [2015] QSC 102

A clause will be enforceable even if out of all proportion to the damages suffered by a breach of a clause – except in the most extreme of circumstances, for example where there is a disparity of bargaining power. For parties in major construction projects, this means avenues to argue a clause is void as penal will be very limited – as a Court will permit evidence if such clauses are challenged to justify the amount of agreed damages or rationale for a time bar. For developers, this decision is a welcomed assurance that the Court will take all steps to give effect to a party's bargain rather than try and deem a clause void as a penalty – if a consumer has difficulty arguing this point against a multi-national bank, parties with equal bargaining power, assisted by lawyers, will have almost no scope to try and argue a clause is penal in a major project agreement.

The Courts in Australia are extremely cautious about invoking the penalty doctrine in a commercial deal between commercial (and even non-commercial) parties particularly where these contracts are rigorously negotiated between parties. For builders, this *Paciocco* decision is an important reminder that you get what you bargained for, so if you think that a liquidated damages or time bar clause is overly strict or excessive, be sure to negotiate it before signing on the dotted line or you may be held to the terms of the contract.

The penalty need not fit the crime – damages flowing from a breach of contract are not the only criteria when considering whether a provision is penal. The Court will have regard to the wider impact on a business, including operational costs, capital costs or running costs of a business. It does not matter if these sums would not have been recoverable in an action for damages for breach of contract.

BLACKSTONE WATERHOUSE

Blackstone Waterhouse Lawyers are happy to provide you with legal advice on the matters or comments contained in this article.

If you have any queries in relation to any aspect of this article please contact Danny Arraj (Managing Partner), or Veno Panicker (Partner) on +612 9279 0288

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ALCC PROFESSIONAL NETWORKING LUNCHEON WITH THE NSW TREASURER GLADYS BEREJIKLIAN

The ALCC held a professional networking luncheon on 18 May 2016 at Doltone House, Hyde Park, with special guest speaker, the Honourable Gladys Berejiklian MP, Treasurer of NSW. The luncheon was well attended, with over 300 members and guests from all industry sectors, as well as government bodies and authorities.

The Treasurer provided the audience with many important insights into how the NSW Government is stimulating growth and prosperity in NSW through a number of key infrastructure initiatives, and what this means in practical terms regarding jobs, urban and regional development and the place of Sydney and NSW on the world stage.

The luncheon was graciously sponsored by Lefand Group, and proudly supported by the Chamber's principal partners, Arab Bank Australia and Etihad Airways.

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ALCC ANNUAL BUSINESS AWARDS DINNER & 30TH ANNIVERSARY CELEBRATIONS

The ALCC was proud to hold its annual business awards dinner, recognising and celebrating the achievements of those in the business community who have excelled in a number of different industries. The dinner this year had particularly special significance, being the 30th anniversary of the establishment of the ALCC in 1985 as a forum to enhance trade and investment relations between Australia and Lebanon, a hallmark of the ALCC which continues to this day and remains unparalleled.

The dinner was held at Doltone House, Darling Island Wharf, and was attended by over 800 members and guests, including Arab ambassadors, government officials, representatives from all industries and media outlets. Our special guest speakers were the Honourable Barnaby Joyce MP, Federal Minister for Agriculture, who spoke of his affinity for Lebanon and the trade and investment potential between the two countries, and His Excellency Nabil Al-Saleh, Ambassador to Australia for the Kingdom of Saudi Arabia, who urged Australians and Australian companies to capitalise on the myriad opportunities between Australia and the Kingdom of Saudi Arabia.

The highlight of the evening was the announcement of our award winners, who were all very deserving in their respective categories. The winners were as follows:

- DKM Blue Group – for Branding & Marketing.
- Growthbuilt – for Construction.
- Pierre Bouantoun, Chemist Warehouse – for Retail.
- Dr. Eddy Kizana – for Medical Research.

The event was graciously sponsored by Madison Marcus Lawyers, and proudly supported by the ALCC's Principal Partners, Arab Bank Australia and Etihad Airways.

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We are able to provide proactive support in all aspects of project delivery, including drafting and negotiating project documentation, including project deeds, design and construct and operation and maintenance contracts, services agreements, subcontracts and consultancy agreements.

We can also assist with contract administration issues, including security of payment disputes, dispute resolution processes and claim preparation and responses.

We emphasise the importance of an integrated approach to each project, ensuring early identification of objectives and uniformity of documentation.

PROPERTY DEVELOPMENT

Colin Biggers & Paisley's expertise in property law goes back more than a century. We work with our clients on every phase of property projects, from acquisition of buildings and sites, through to development, amalgamation of portfolios, sales and leasing. As laws and economic conditions change, we help our clients to ensure that they comply with all legal requirements and take the best advantage of the available opportunities. We are known for being practical and solution-focussed in our approach to property matters.

The lawyers in our property and development team are regularly involved in the acquisition, disposal and leasing of development sites. We also have extensive experience in land occupancy arrangements, including agreements for lease and leases.

Our property and planning and environment teams also regularly advise local governments and private developers on easements, covenants and other land use and control arrangements.

We have extensive experience acting on large and complex development projects for developers, landowners, government authorities and corporations. We work closely with our clients' executives and internal counsel, supporting them in negotiating and documenting often complex commercial transactions and providing general commercial legal advice. Our team's broad range of experience enables us to understand the key issues across the full spectrum of commercial transactions. This means we can assist our clients in a comprehensive range of areas, especially property developments.

We have significant experience in the preparation of commercial contracts, including development agreements, agreements for lease and any contracts for the sale of land that may be required.

We are closely involved with key property associations such as the Urban Development Institute of Australia, the Property Council of Australia, the Green Building Council of Australia and the Australian Property Institute.

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We are extremely proud to be a sponsor of the Australian Lebanese Chamber of Commerce and look forward to developing strong connections with members.

> I've had the pleasure of working with Andrew Ferguson, Executive Director at Coverforce over the past few years. Andrew and the Coverforce team always go above and beyond to provide the best cover and consistently add value to clients. Andrew and his team understand construction.

DANY ARRAJ - PRINCIPAL BLACKSTONE WATERHOUSE SOLICITORS,
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- We win business by providing better price
- We offer insurance solutions to your needs
- We provide quality products – due to our access to local and international insurance markets
- We provide a no obligation, free insurance review for your business.

Our specialised team of construction brokers can provide you with project specific or annual construction insurance and insure all risks - public liability, professional indemnity, plant, motor fleet and workers' compensation, as well as provide owner builder and developer insurance.

Our Construction Experience

We have a diverse range of clients in the construction industry primarily involved in commercial and residential construction (including multi- unit and high rise) and small to medium sized civil and industrial projects. Our clients include builders, sub-contract companies, suppliers and professional service providers

If you are interested in hearing more about what Coverforce can do for you, contact:

Andrew Ferguson
andrew_ferguson@coverforce.com.au
0412 511 994.

Nathan Brown
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