





Welcome

...to our latest edition of **ORACLE** – a Delphi Partners publication, bringing you updates & insights regarding our firm, clients, deals and corporate & commercial matters.

In this edition:

- **Deal Sheet** – we feature some of our deals & projects in the last 12 months
- **Key Point** – we focus on contract management issues
- **mycontracts** – we introduce our cloud-based contracts management platform

We trust that you will enjoy this latest edition of **ORACLE**, we welcome and encourage your feedback.



Wayne Penning | Managing Principal

w.penning@delphipartners.com.au


Below is a selection of clients that Delphi Partners has recently acted for:



Rental Equipment You Can Depend On





Below are a selection of key deals Delphi Partners has recently acted on:



ALLSPORTS
PHYSIOTHERAPY & SPORTS MEDICINE CLINICS

**Allsports Physiotherapy
sale to Healthia**


Sellside
Legal Adviser



**SUNCOAST
ASPHALT**
ALL ASPECTS OF ASPHALTING

**Suncoast Asphalt
sale to Hanson**


Sellside
Legal Adviser



**STRATEGIC MINERALS
CORPORATION N.L.**

**QGold on-market
takeover bid of Strategic
Minerals**


Bidder
Legal Adviser



LUCAS

**Lucas Drilling Pty Ltd
Drilling Services
Acquisitions**


Legal Adviser



IMPREGLON
SURFACE TECHNOLOGY GROUP

**Impreglon Australia
sale to Decorative
Imaging**



Sellside
Legal Adviser



**STRATEGIC
MINERALS**

**Acquisition of Leigh
Creek Copper**


Buyside
Legal Adviser



clipp

**PNI Financial Services
purchase of Clipp**


Buyside
Legal Adviser



TLOU ENERGY

**Underwritten
Entitlements Offer**

Offeror
Legal Adviser



Why is Contract Management important?

Most contracts contain important **milestones**, **critical dates** and **obligations** that should be actively monitored.

Valuable rights won in the negotiation stage can be lost as a result of poor contract management or inadvertent omission.

Failure to properly manage these milestones, critical dates and obligations can lead to breach of contract and damages claims.

Poor contract management can also result in:

- ✘ missed deadlines & lost rights (e.g. options, claim periods & warranties)
- ✘ unexpected renewals and expirations
- ✘ overlooked penalties and saving opportunities
- ✘ a deterioration of the relationship between contracting parties

Some critical and current contract management issues include:



1. Contract: Beware contract expiry dates and deadlines



2. PPSR: Lapsing registrations



3. Option Periods: Missing the date to exercise option



4. Auto-renewal clauses: The cost of poor contract management



5. Systems: Deficiencies in contract & document management protocols

1. Contract: Beware Contract Expiry Dates

If you do not monitor the expiry dates of contracts they may continue on the same terms.

Caselaw Update

Case: *CSR Limited v Adecco (Australia) Pty Limited* [2017] NSWCA 121

Issue: The Court considered whether an expired agreement continued on as an implied contract on the same terms between two parties, and whether an indemnity provision continued as part of that implied contract.

Held: It should be inferred from the parties' conduct that they intended the expired contract to continue on the same terms and conditions, including the indemnity provision.

Strategy:

- Ensure all contract expiry dates are recorded and diarised (with alerts) in a central system.
- If necessary, communicate that the contract has expired and/or seek to negotiate the terms of any proposed renewal.

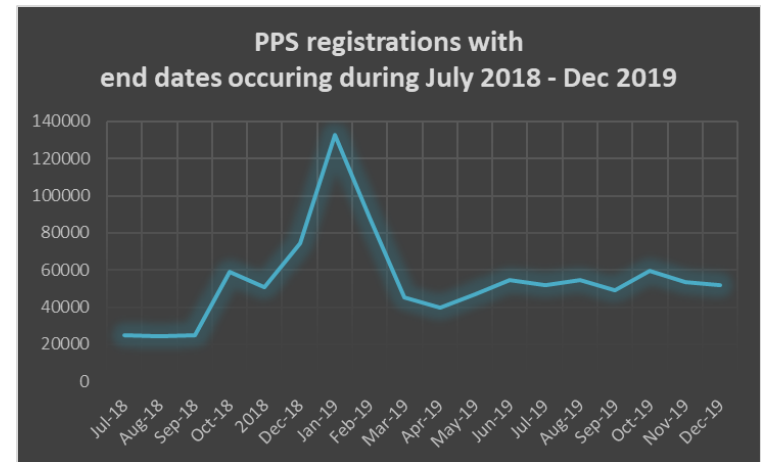
2. PPSR: Lapsing Registrations

As most PPSR registrations are registered for a period of 7 years, many registrations which were registered at commencement of the PPSR (January 2012) are due for expiry in January 2019.

Almost **1 million** registrations will automatically expire between 1 July 2018 and 31 December 2019 – more than **130,000** of these expire during January 2019 alone.

Note:

- ❖ The register's software automatically discharges a registration on its end date unless it is renewed before then. A secured party is **not notified before this occurs**.
- ❖ Once discharged, the registration **cannot be re-enlivened** and a secured party will lose its registered security interest (and any priority).



Strategy:

- Review the expiry date on all existing PPSR registrations (and renew registration, if applicable).
- Implement a central system of notifications for when PPSR registrations are due for renewal.

3. Lease Option Periods: Missing the date to exercise option

Remember:

An option under a lease gives rise to a binding contractual right if, *and only if*, the conditions set out in the option are **strictly complied with**.

Once the date for exercising an option passes, the doctrine of waiver cannot operate (i.e. the other party cannot waive the missing of the date) since there is no longer a contractual right to waive.

Accordingly, if you miss the date for when an option may be exercised, ***even by one day***, the right to an option is **extinguished**.

When it comes to options “***it is a cold hard world***”.

– Windeyer J, *Burrell v Cameron* (1997) 8 BPR 15, 443

Strategy:

- Review all existing leases for relevant option period exercise dates.
- Ensure all option period exercise dates are recorded and diarised (with alerts) in a central system.

4. Auto-renewal clauses: The cost of poor contract management

When entering auto-renewing contracts, such as supply or rental agreements, it is critical to ensure **reminders** are set for term expiry dates so that contracts are not rolled-over without your knowledge or without an opportunity to re-negotiate.

Caselaw Update

Case: *Electric Life Pty Ltd v Unison Finance Group Pty Ltd* [2015] NSWSC 170

Facts:

- Electric Life entered a hire-purchase arrangement under which electronic equipment would become its property after the expiry of a 4 year term.
- However, the agreement was drafted as a rental arrangement which would automatically roll over at the end of the initial 4 year term.
- This resulted in quarterly rental payments being deducted from Electric Life's bank account for 9 years after the expiry of the initial term, amounting to payments more than \$57,600.40.

Held: While acknowledging that the result in this case was harsh, the Court held the wording in the agreement was clear and **upheld the auto-renewal clause**.

5. Systems: deficiencies in document/ contract management



Common approaches:

- Documents are often stored in a disjointed manner, including:
 - isolated networks;
 - differing software platforms; and
 - local PCs/ laptops.
- Deadlines and key dates are often individually managed (using single-entry Outlook, excel spreadsheet etc).

Common problems:

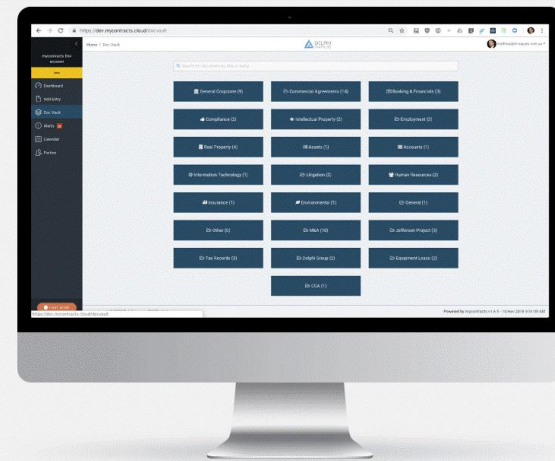
- ✗ Documents/contracts are not coherently ordered, named and categorised. Creates difficulty, time and expense locating documents, versions, parties and key terms.
- ✗ Does not provide visibility across personnel or the organisation.
- ✗ Results in significant risk when key personnel leave, as important knowledge is lost.

mycontracts

In response to the contract management issues faced by many of our clients, Delphi Partners, in conjunction with M-Square, has taken a unique approach of developing its own cloud-based Contracts Management solution.

Designed for:

- ✓ Company Secretarial & CFOs
- ✓ Procurement & Contract Managers
- ✓ In-house legal
- ✓ Property & asset managers
- ✓ Administration support
- ✓ Human resources
- ✓ Start-ups



Upload. Search. Find. Remind.

Intuitive

Designed with easy and natural workflows in mind. We worked with our clients to design a seamless operation that requires minimal navigation.

Connective

Accessible by all users in an organisation, or by select users or clients at your choice. Instant integration with Outlook and third-party platforms.

LegalASSIST

Supported by a legal helpdesk which can assist with the management, use, upload and processing of documents and data.

TRUSTED BY:

 **LUCAS** **LACEY GROUP** **DOM Distribution**

DASHBOARD

Collapsible sidebar takes you to key actions with 1 click

See all important information at a glance

Reach-out and start talking to humans right from wherever you are

Name	Category	Parties	Updated	Activity	Action
CA - General	Commercial Agreements Client Agreements Engagement-Mandate Letter	Delphi Partners (Advisor) CommStream Capital (Client)	14 Nov 2018	Last update 3 hours ago	[Icons]
180629-DEC QLD Sugar FOB Sales Contract 2018 season WSAL and WST	Commercial Agreements Third Party Suppliers Supply Agreements	Wilmar Sugar (Supplier) Protech Group (Customer)	31 Oct 2018	Last update 14 days ago	[Icons]
Client Engagement Letter - Pushys	Commercial Agreements Client Agreements Engagement-Mandate Letter	Pitcher Partners Brisbane (Accountants) Pushys (Client)	30 Oct 2018	Last update 15 days ago	[Icons]
Design & Construction Agreement (Caltex)	Commercial Agreements Client Agreements Construction Contracts	Force Fire & Safety (Supplier) Caltex Australia Limited (Buyer)	22 Oct 2018	Last update 23 days ago	[Icons]
Delphi Program Agenda Licence	Commercial Agreements Client Agreements License Agreements	Delphi Partners (Delphi)	22 Oct 2018	Last update 23 days ago	[Icons]
Nous - Delphi Services Agreement (ID 1234)	Commercial Agreements Third Party Suppliers Supply Agreements	Nous Group - Brisbane (Supplier) Delphi Partners (Customer)	11 Oct 2018	Last update a month ago	[Icons]
Scarlett Financial (Buyer) Delphisquare Pty Ltd (Seller)	Commercial Agreements Client Agreements Sale Agreements	Scarlett Financial (Buyer) Delphisquare Pty Ltd (Seller)	10 Oct 2018	Last update a month ago	[Icons]
Labour Hire Agreement - Downer EDI	Commercial Agreements Third Party Suppliers Supply Agreements	Protech Group (Supplier) Downer EDI (Hirer)	03 Oct 2018	Last update a month ago	[Icons]
Car Fleet Sale Agreement	Commercial Agreements Client Agreements Sale Agreements	Llewellyn Toyota Service Center (Seller) Avis Car & Truck Rental (Buyer)	21 Sep 2018	Last update 2 months ago	[Icons]
CRM Procedures	Commercial Agreements Other Term Sheets	Delphi Partners (Delphi)	19 Sep 2018	Last update 2 months ago	[Icons]

Easy quick-action reports

FEATURES



DEADLINES

manage key terms, dates, deadlines & time periods



ALERTS

email, text, calendar & prompts for 'action' with full Outlook / third-party software integration



WORKFLOW

delegation, access permissions and reporting



SUMMARIES

auto pro-forma summaries of documents



LegalASSIST

supported by legal helpdesk & data entry service



SECURITY

encrypted access and storage with audit logs



VERSIONS

keep track of all versions



SEARCH

search and find all data easily



COLLABORATION

collaborate with team members or clients



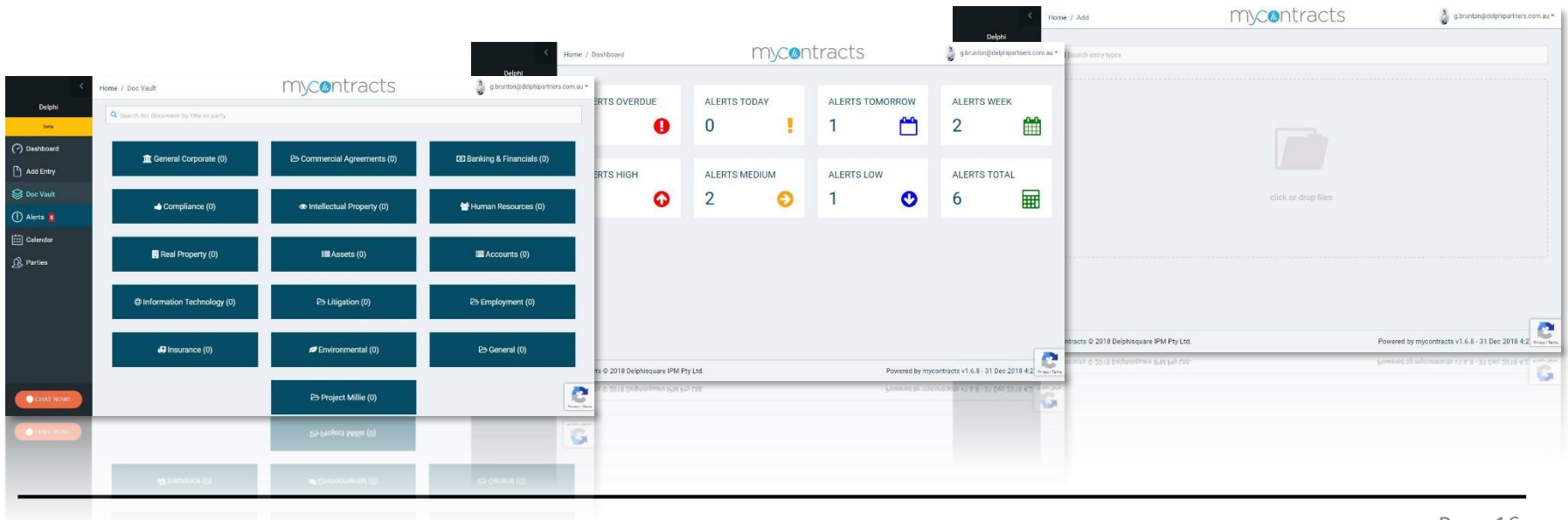
STORAGE

secure cloud storage with long term Tape storage options (+7 years)

Smart management for documents & contracts.



Visit website





Who we are

Delphi Partners is an independent corporate & commercial law firm in Brisbane, Sydney & Melbourne - with a team of lawyers that bring leading national and international law firm experience



Our Industries

Our industry focus includes: Agribusiness, Education, Energy, Mining & Resources, Financial Services, Health, Hospitality, Manufacturing, Property, Technology & Intellectual Property



Our Experience

We act for an enviable list of [clients](#), comprising SMEs, private companies, Australian & offshore listed entities, private equity, venture capital funds, advisory groups, investment banks, lead managers, stockbrokers, and NFPs



Why Delphi Partners?

We help our clients achieve certainty and manage risk
We keep the complex, simple and strategic
We focus on value-based outcomes & meeting our client's objectives



Wayne Penning – Managing Principal
w.penning@delphipartners.com.au

Wayne Penning is the Managing Principal of Delphi Partners and leads the firm's Corporate & Commercial group. He has worked for leading international law firms in Sydney (Minter Ellison), Brisbane (Ashurst) and Hong Kong (Clifford Chance).

He has been recognized as a '*leading and recommended lawyer*' by the Australasian Legal Business review panel and has also been recognised as a 'leading lawyer' in the ALB Mergers & Acquisitions Guide.

Wayne specializes in: [Private Equity](#), [Capital Markets](#), [Mergers & Acquisitions](#) and [Corporate & Commercial](#).

He is a former Non-Executive Director of Moreton Resources Limited (ASX:MRV). He is a Founding Member and Director of the Liz Ellis Foundation. He is the former Deputy Chair of Bravehearts.



Sebastian Hempel – Special Counsel
s.hempel@delphipartners.com.au

Sebastian is a leading securities and corporate lawyer. He has acted for issuers as well as investment banks and has extensive practical knowledge as well as significant legal experience and expertise in the workings of the stock market and in floats/IPOs, prospectus law, employee share schemes, acquisitions and takeovers. He has broad experience in advising companies of all sizes on corporate matters, in particular in the resources sector.

Sebastian has been repeatedly listed in the Asia Pacific Legal 500 as 1 of 10 'leading individuals' in equity capital markets in Australia. He was named as a '*leading lawyer*' for ECM in Chambers Global. He was listed in several editions of The Legal Media Group Guide to the World's Leading Capital Markets Lawyers (www.expertguides.com).

He is also the Chairman of Carpentaria Cattle and is a Non-executive Director of Prosperity Resources Ltd (ASX:PSP).



Andrew Williams - Senior Associate
a.williams@delhipartners.com.au

Andrew has extensive experience in a broad range of commercial and corporate transactions. His areas of expertise include mergers and acquisitions, joint ventures, structuring, franchising, initial public offerings, capital raisings, business/asset sales and acquisitions, shareholder/unitholder agreements, and other general commercial agreements.

Andrew also has extensive experience in advising clients on a range of property-related transactions/issues, including acquisitions and disposals of commercial and residential property, residential and commercial property subdivisions and developments, leasing, property management and maintenance agreements, and body corporate/community titles schemes issues.



Grace Brunton-Makeham - Lawyer
g.brunton@delhipartners.com.au

Grace has experience in both corporate and commercial transactions, as well as in commercial litigation. Her areas of expertise include business sales and acquisitions, franchising, shareholders agreements, structuring advice, and other general commercial agreements.

Grace also has experience in property-related transactions such as commercial property sales and acquisitions, commercial leasing, and body corporate/community titles schemes issues. Grace has acted for clients in a broad range of litigation matters including construction and mining contract disputes, professional negligence claims, trademark disputes and residential building contract matters.



Contact

Level 23,
307 Queen Street
Brisbane QLD 4000
Australia

GPO Box 278
Brisbane QLD 4001

+ 61 (0) 7 3077 7167
www.delhipartners.com.au