



**Submission by Leighton Holdings Limited on the
National Greenhouse and Energy
Reporting System
Regulations Policy Paper**

27 February 2008

Leighton Holdings Limited
ABN 57 004 482 982
472 Pacific Highway
St Leonards NSW 2065, Australia
www.leighton.com.au

Contents

| | |
|---|---|
| Executive Summary | 3 |
| Detailed Commentary | 4 |
| 1.0 The Definition and Concept of Operational Control | 4 |
| 2.0 Treatment of Joint Ventures | 6 |
| About the Leighton Group | 7 |

Executive Summary

Leighton Holdings makes this submission in response to the National Greenhouse and Energy Reporting System Regulations Policy Paper (the Policy Paper).

The Policy Paper released on 4 February 2008 has clarified some of the areas raised in the NGERs Discussion Paper which was released in October 2007. However, LHL continues to have some serious concerns about aspects of the Policy Paper. These aspects potentially raise additional layers of complexity to the NGERs and will require significant additional government and industry resources to implement.

The key points of our submission relate to:

1. The process to determine Operational Control will require intense effort and resources from the GEDO, government and industry to be able to analyse complex mining contracts – which is contrary to the object of providing transparency of emissions and reducing red tape. We maintain that in practice the mine owner has the greatest ability to influence the establishment and profitability of a mining operation
2. The proposed treatment of Joint Ventures is different to the practical and legal treatment of Joint Ventures in many other areas of the construction and mining industries.

Leighton Holdings is a member of the Australian Constructors Association (ACA) and fully supports the submission being made by the ACA in response to the Policy Paper.

Detailed Commentary

1.0 The Definition and Concept of Operational Control

The Leighton Group is the largest contract miner in Australia, operating many open-cut mines throughout Australia, and mining hundreds of millions of tonnes of coal, iron ore, gold and other minerals each year.

'Operational Control' is difficult to define on a mine site. A mine owner might own a mining lease and all of the crushing and processing equipment, and award separate contracts for the other activities necessary to establish and operate the mine.

Section 11 of the NGER Act defines a corporation as having 'Operational Control' over a facility if it has the authority to introduce and implement operating, health and safety and environmental policies.

The Policy Paper proposes that in the circumstances where more than one corporation could be considered to have some ability to satisfy the tests, a facility operator will generally be taken to have operational control in preference to the facility owner. LHL maintains that the mine owner should be responsible for the reporting of mining GHG emissions, energy production and energy usage for the following reasons:

- The mine owner is responsible for a mine for the duration of its life. The mine owner generally obtains the licences and permits necessary to operate the mine and is responsible to market and sell the product. The mine owner is free to determine the methods and contract structures to mine the product and change miners during the life of the mine. The mine owner receives payment for the product and pays royalties to state governments, and can decide when to close the mine or to suspend operations, or to terminate a contract and award a new contract to another operator. In all circumstances, a mine owner makes decisions and determines the ongoing viability of a mine site.
- Contracts for the operation of a mine can be very complex documents and may run to many volumes and hundreds of pages. The analysis of each contract to determine operational control is a specialist activity, and would require the GEDO to dedicate a large number of staff to this function, with these staff needing to be familiar with the contract law for each state of Australia. The time taken to review the documentation and to make a decision on who has operational control for a particular facility may result in uncertainty and delays in reporting.
- In many cases, the mine owner is responsible for the mine planning, that is, determining in what sequence the mine will be developed and the quantities of product that will be mined.
- By making the mine owner liable for reporting the emissions expended during the mining of the coal, the emissions are most closely linked with the party that has promoted, paid for and benefited from the sale of the mined product.
- Despite the fact that a mine operator may introduce its own policies for safety, environmental and operations, these policies must be compatible with the over-

arching policies that the mine owner has established for the entire facility. A mine owner has the right of approval for an operator's policies and can force an operator to change his policies to comply with the owner's requirements.

- As diesel fuel makes up a substantial proportion of their operating costs, contract miners do not need any further encouragement or enforcement to find additional efficiencies in their mining fleets and reducing their fuel bill in the process. A contract miner is always striving to increase efficiency and reduce the energy costs of its equipment fleets.
- If the mine owner is not deemed to have operational control and therefore is not required to report emissions, there would be a clear disconnect with the NGERs aim of providing public transparency and accurate information about the source of emissions. It would be absurd if contractors are obliged to report emissions, whilst mine owners, subcontractors and clients are reporting zero emissions for the same project.

The concern about operational control also applies to the large infrastructure projects where a Leighton Group company may be contracted to design, construct, operate and maintain an infrastructure project. Examples of such contracts include tunnels, toll roads, bridges and pipelines.

To ensure transparency, the emissions involved in construction and operation of the infrastructure must be clearly linked with the whole project and must be considered in any project cost: benefit evaluation. If the emissions and energy use are reported by a contractor, it is not readily apparent that they are a consequence of the whole infrastructure project. Accordingly, we believe the issue of emissions should form part of project planning approval conditions and this should be reported by the project owner.

LHL is prepared to work with the Department of Climate Change to develop a streamlined national reporting system to ensure it is transparent and achieves the objective of minimising red tape. We can provide case studies, scenarios and examples from our businesses relevant to the operation of the NGER. We propose working with government to develop an industry code of practice to cover construction and contract mining.

2.0 Treatment of Joint Ventures

The proposed treatment of Joint Ventures (JV) in the Policy Paper is different to the practical and legal treatment of JV in many other areas in the construction and mining industry. The established commercial principle is for JV to be treated as partnerships – that is responsibility is shared according to the proportions of the JV. In a 50:50 JV, for example, cost, profit, losses and performance statistics are shared in the same 50:50 proportion between the two members of the JV.

JV that are in place at the time of introducing reporting in accordance with the NGER Act will require legal review and preparation of auxiliary deeds to cover the changes in the apportionment of responsibility.

We suggest there be transition arrangements covering existing contracts, which were entered into before NGER Act's requirements were known and which will require costly review and amendment to meet the increased legislative obligations. Across the Leighton Group's Australian operations, there are in excess of 30 such contracts with a total reported value exceeding \$17 billion.

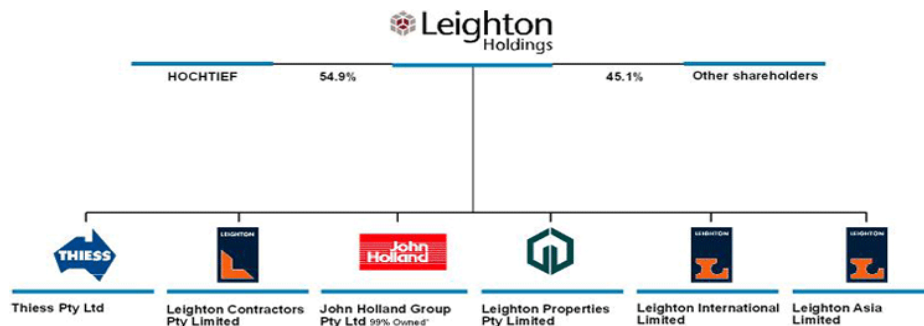
About the Leighton Group

The Leighton Group is a diversified service provider to a range of private and public sector clients. The Group utilises its financial and intellectual capital to provide integrated solutions to clients' infrastructure and project requirements.

Leighton Holdings Limited is the parent company of Australia's largest project development and contracting group. Founded in Victoria in 1949, the organisation has grown from a small, privately owned civil engineering firm into a dynamic group that includes Thiess, John Holland, Leighton Properties, Leighton Contractors, Leighton International and Leighton Asia. With almost 28,000 employees, the Group's operations are spread all around the Asia-Pacific region on projects in Australia, New Zealand, Hong Kong, Indonesia, Malaysia, Singapore, the Philippines, Thailand, Vietnam, China, Taiwan, Sri Lanka, Macau, India and the Gulf Region. Leighton Holdings is listed on the Australian Stock Exchange and has its head office in Sydney.

Leighton Holdings' purpose is to maintain and further develop a diversified contracting and project development business which creates wealth for shareholders and adds value for clients and other stakeholders. Its geographic limits are Australia and the Asia-Pacific region. In 2007 year, the Group earned revenue of \$11.9 billion.

Leighton Group companies offer a broad range of project development and contracting services and skills to public and private sector clients from a wide range of industries. Project development skills – infrastructure, property or resources-based – and project management of construction and property developments complement the Group's contracting activities. These activities include construction, contract mining and services. Key resources include an experienced, long-serving management team, a strong balance sheet and the largest fleet of mobile plant and equipment in Australia.



Thiess and Leighton Contractors are making separate submissions regarding the NGER System Discussion Paper.