



The role of financial instruments and regulatory frameworks in ensuring the polluter pays

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Presentation Summary

Context

Moving beyond political solutions

Funding remediation – what gets in the way?

Where are we now with securing funding?

Thinking outside the box – pathways to explore

Thinking long-term – a life cycle approach

The start of a conversation...

The context – key economic trends

- ◆ Decline of heavy industry
- ◆ Sliding commodity prices – aftermath of the resources boom
- ◆ Pressure to transition away from coal-fired power stations
- ◆ Higher risks of insolvency in economic downturns

FINANCIAL REVIEW

"There is no doubt the steel industry is an important contributor to the national economy and is particularly important to the Illawarra."

Debate about the future of Port Kembla is, in part, a tale of the broad shifts in both the Australian and the global economies.

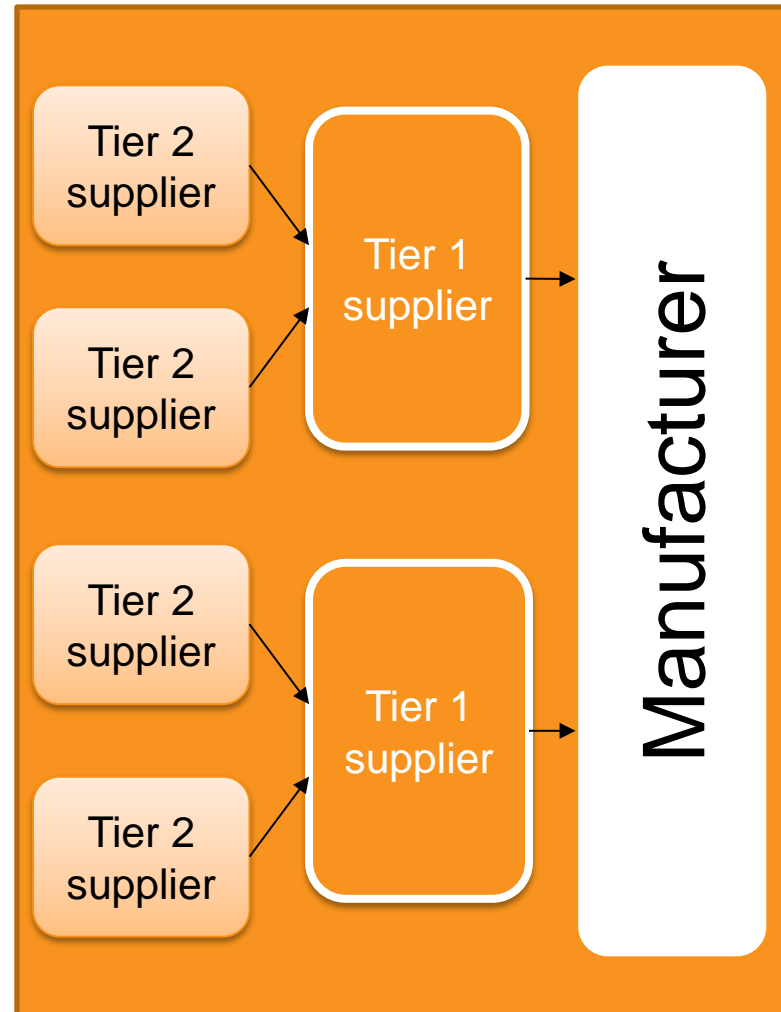
China's rapid urbanisation over the past decade drove a boom in steel-industry infrastructure investment.

The surge in demand for steel-making raw materials, iron ore and coal has made Australia a once-in-a-generation mining boom.

But the spike in commodity prices put a rocket under the Australian steel industry, decimating the competitiveness of BlueScope and Arrium against their Chinese rivals. At the same time they were paying very high prices for raw materials.

Context – Impact of these trends

- ◆ Potential for significant contamination legacies with the plant closure
- ◆ Flow-on impacts to supply chain – additional contamination legacies, eg, metal plating businesses
- ◆ Clean up costs can exceed the value of the assets



Moving beyond political solutions...

- ◆ Historical approach for high profile / high value sites – political solutions

Union Carbide
chemical plant,
Rhodes,
Sydney

2001



2014



...to a systematic and transparent process...

- ◆ NSW has introduced new powers to require a financial assurance to secure remediation actions
- ◆ Commenced using financial assurances for contaminated land management
- ◆ The start of an examination of how best to assist industry to provide for remediation funding.

...that gives space to market forces to drive remediation

- ◆ Brownfields developments in strategic locations can drive remediation and ensure its full funding
- ◆ Examples include:
 - ❖ the complete redevelopment of the airport corridor in Sydney
 - ❖ the proposed redevelopment of the Fishermen's Bend precinct in Melbourne
- ◆ Want to continue to harness market forces

Funding remediation – what gets in the way?

◆ Company does not have sufficient funds to remediate

- ❖ Operations stopped → no cash flow
- ❖ \$\$ from asset sales not enough
- ❖ Balance-sheet provision insufficient

◆ Liability is quarantined in shell companies

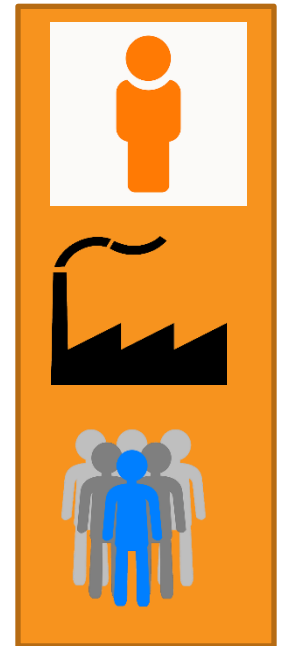
- ❖ Assets transferred out of the company
- ❖ Company becomes/made insolvent
- ❖ ‘Phoenixing’ – rebirth of same business shorn of liabilities

◆ Insolvency law does not protect the environment

- ❖ A duty to remediate is not a ‘debt’
- ❖ Not amongst the class of debt that is prioritised for payment

Where are we now with securing funding for remediation?

- ◆ Current regulatory instruments attaching to:
 - ❖ a person / company: security deposits / bank guarantees
 - ❖ the land: public positive covenants
 - ❖ the sector: Western Australia mining sector pooled fund
- ◆ Regulatory tools to affix liability in the corporate context can be evaded



Thinking outside the box – pathways to explore

Insurance

Scaling up the use of environmental insurance for both incidents and gradual release

New instruments

New financial instruments or the combination / application of existing instruments in new ways

Regulating differently

Regulating differently – finding ways of linking together regulatory regimes for better outcomes

National / international consistency

A national / international drive for consistency

A life cycle approach

Taking a facility life-cycle approach to managing prospective liabilities

Thinking long-term: a life cycle approach

- ◆ Planning for remediation from the start
- ◆ Working out how best to support industry to make provision for remediation funding
- ◆ Ensuring appropriate regulatory requirements and powers in support



The start of a conversation



A life cycle approach to remediation

The challenge of corporate structures

The opportunities presented by financial instruments

Where does government responsibility start and end?

Converging towards similar national and international approaches