



## Check the fine print for carbon pitfalls

Businesses have been urged to review current contracts to ensure that they are able to pass on higher costs associated with the federal government's carbon price scheme that comes in effect on July 1 next year. Energy and resources lawyer Julian Mellick, a senior associate with Sydney law firm CBP Lawyers, warns that companies should not assume that their ability to pass on additional costs is protected by standard "change-in-law" clauses in their existing contracts. Change-in-law clauses allow prices to be adjusted where there has been a regulatory change but Mellick says these may not apply to the carbon tax because the clauses typically require the change to be "not reasonably anticipated". Mellick says change-in-law clauses often only cover situations where reforms require payment of a fee or charge. "While the large carbon emitters who are directly liable for the tax may fall into this category, every other downstream business saddled with higher input costs . . . would be left out in the cold," he says. Mellick recommends that businesses consider the inclusion of specific "carbon pass-through" clauses into new contracts. "When tailoring a carbon pass-through clause, companies should consider the scope of the costs that may be passed on, such as whether both direct and indirect costs are covered as well as any incidental compliance costs," he says.