

Article Information

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Related company insolvency can affect ability to maintain Queensland builder's licence

A recent Supreme Court of Queensland decision as to what constitutes a "construction company" under the QBCC Act brings consequences for construction groups who undertake works under different State entities.

The Supreme Court of Queensland recently considered whether a company that carried out building work in New South Wales constituted a "construction company" for the purposes of section 56AC of the *Queensland Building and Construction Commission Act 1991* (Qld) (Act).

Background

Midson Construction (NSW) Pty Ltd (**Midson NSW**) undertook construction work in New South Wales only. As a result of that company being placed in liquidation, the QBCC proposed to cancel the director of that company's QBCC licence along with the licence of the Queensland arm, Midson Construction (Qld) Pty Ltd (**Midson Qld**), pursuant to sections 56AF and 56AG of the Act.

Midson Qld and the director sought injunctive relief and judicial review of the QBCC's proposal. The QBCC cross-applied seeking dismissal of Midson Qld's and the director's application. Given issues raised the constitutional validity of the Act, the State of Queensland also intervened. The Court considered the following issues:

1. Whether Midson NSW was a "construction company" within the meaning of section 56AC;
2. Whether section 56AC of Act is constitutionally valid;
3. Whether the delegation of the QBCC officer was ineffective.

Section 56AC of the Act allows an individual to be excluded from holding a QBCC licence for 3 years if within 2 years of a construction company being placed into receivership, administration or liquidation or wound up, the individual was a director, secretary, or influential person for that construction company. By section 56AC(6) of the Act, a company may be categorised as an "excluded company" if its director, secretary or an influential person is considered to be an excluded individual.

Section 56AC(7) of the Act defines a "construction company" as follows:

- (a) means a company that directly or indirectly carries out building work or building work services in this or another State; and
- (b) includes a company that, within 2 years immediately before a relevant company event for the company, directly or indirectly carries out building work or building work services in this or another State.

What constitutes a "construction company" under the Act?

Midson Qld and the director submitted that the definition of "construction company" in section 56AC(7) of the Act is limited to a company that carries out building activities in Queensland. This was rejected, the Court finding that the Act is to be interpreted as operating to the full extent of, but not exceeding, Queensland Parliament's legislative power and that "in order to fulfil its purpose in protecting consumers of building work or building work services in Queensland, Parliament considered it important to protect Queensland consumers from interstate individuals who go bankrupt, and interstate companies which are placed in liquidation".

Given their plain and ordinary meaning, the words in section 56AC(7) rendered Midson NSW a “construction company” for the purposes of the Act.

Can a Queensland Act regulate an “interstate” construction company?

Midson Qld submitted that if Midson NSW was considered to be a “construction company”, that allowed the QBCC to regulate the conduct of a construction company in another State and that was constitutionally invalid.

The Court held that the Act does not regulate the conduct of building work or anything else in any other State, rather it seeks to protect Queensland consumers through the ability to cancel a Queensland building licence if sufficient connection to financial instability of an associated entity operating in another State is established. The Court also found that the requirement that QBCC licensees be fit and proper persons would necessarily require consideration of the financial status of any licensee.

In those circumstances, the Court held that section 56AC of the Act is constitutionally valid.

Construction companies must be cognisant that their financial stability as a licensee in one State (albeit under a separate entity) may affect their ability to maintain or obtain a licence to undertake construction work in another State.