

SUPREME COURT OF QUEENSLAND

CITATION: *Midson Construction (Qld) Pty Ltd & Ors v Queensland Building and Construction Commission & Ors* [2018] QSC 199

PARTIES: **MIDSON CONSTRUCTION (QLD) PTY LTD**
ACN 135 951 549
(first applicant)
AND
MICHAEL ANTHONY VICKERS
(second applicant)
AND
BRUCE GEORGE BENNETT
(third applicant)
v
QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION
(first respondent)
AND
BRETT BASSETT AS THE COMMISSIONER OF THE QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION
(second respondent)
AND
MARK E WILSON
(third respondent)

FILE NO/S: BS No 3696 of 2018

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 31 August 2018

DELIVERED AT: Brisbane

HEARING DATE: 20 August 2018

JUDGE: Crow J

ORDER: **1. Application dismissed.**
2. I will hear submissions on costs.

CATCHWORDS: STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PARTICULAR WORDS AND PHRASES – GENERALLY – where Midson Construction (NSW) Pty Ltd was placed into liquidation – where Midson Construction (NSW) Pty Ltd had not at any relevant time

carried on construction or building services in Queensland – where Midson Construction (Qld) Pty Ltd and Midson Construction (NSW) Pty Ltd had one common director – where a result of Midson Construction (NSW) going into liquidation the first, second and third applicant were sent a Notice of Reasons for a proposed cancellation of a builder’s licence pursuant to ss 56AF and 56AG of the *Queensland Building and Construction Commission Act 1991* (Qld) – whether Midson Construction (NSW) Pty Ltd was a construction company within the meaning of s 56AC of the *Queensland Building and Construction Commission Act 1991* (Qld)

STATUTES – ACTS OF PARLIAMENT – VALIDITY OF LEGISLATION GENERALLY – where the applicants submit that a question arises as to whether s 56AC of the *Queensland Building and Construction Commission Act 1991* (Qld) purports to regulate conduct in another State which offends the proscription against extraterritorial regulation – where the Attorney-General for the State of Queensland submits that the *Queensland Building and Construction Commission Act 1991* (Qld) seeks to protect Queensland consumers rather than purport to regulate building work in any other State – whether s 56AC of the *Queensland Building and Construction Commission Act 1991* (Qld) is constitutionally invalid

STATUTES – ACTS OF PARLIAMENT – STATUTORY POWERS AND DUTIES – EXERCISE – DELEGATION OF POWER CONFERRED BY ACT – where the applicants contend that the purported delegation to the third respondent is ineffective as it is not in accordance with s 115A of the *Queensland Building and Construction Commission Act 1991* (Qld) – whether the appropriate delegations have been made

Acts Interpretation Act 1954 (Qld) s 9, s 14B, s 27A, 32C, s 35

Building Industry Fairness (Security of Payment) Act 2017 (Qld) s 271

Constitution Act 1867 (Qld) s 2

Constitution of Queensland 2001 (Qld) s 8, s 51

Judicial Review Act 1991 (Qld) s 12, s 13, s 48

Judiciary Act 1903 (Cth) s 78A, s 78B

Queensland Building and Construction Commission Act 1991 (Qld) s 3, s 33, s 56AC, s 56 AF, s 56AG, s 67AAA, s 86, s 87, s 115A

Uniform Civil Procedure Rules 1999 (Qld) r 658

Amalgamated Society of Engineers v Adelaide Steam Ship Co Ltd (The Engineers’ Case) (1920) 28 CLR 129, cited

Amos v Brisbane City Council (2018) QCA 11, cited

Baker v The Queen (2004) 223 CLR 513, cited

Barcelo v Electrolytic Zinc Co of A/asia Ltd (1932) 48 CLR 391, cited

Barkworth v Sidhu

Duncan v Independent Commission Against Corruption (2015) 256 CLR 83, cited

Lacey v Attorney-General (Qld) (2011) 242 CLR 573, cited

Monadelphous Engineering Pty Ltd v Wiggins Island Coal Export Terminal Pty Ltd [2014] QCA 330, considered

Project Blue Sky Inc & Ors v Australian Broadcasting Authority (1998) 194 CLR 355, cited

Sweedman v Transport Accident Commission (2006) 226 CLR 362, cited

The Commissioner of Stamp Duties NSW v Millar (1932) 48 CLR 618, cited

Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1, cited

COUNSEL: B E Codd for the applicants
S E Seefeld for the respondents
A D Keyes for the Attorney-General for the State of Queensland

SOLICITORS: Axia Litigation Lawyers for the applicants
Queensland Building and Construction Commission for the respondents
Crown Law for the Attorney-General for the State of Queensland

Introduction

- [1] On 3 January 2018 Midson Construction (NSW) Pty Ltd (“Midson NSW”) was placed into liquidation. Midson NSW had not, at any relevant time, carried out any building work, or building work services in Queensland. The first applicant, Midson Construction (Qld) Pty Ltd (“Midson Qld”) and Midson NSW had one common director, Michael Vickers. Michael Vickers is the second applicant.
- [2] As a result of Midson NSW going into liquidation, the third respondent, Mr Wilson,¹ sent a Notice of Reasons for a proposed cancellation of a builder’s licence to the first, second and third applicant. This was done on 13 March 2018 pursuant to ss 56AF and 56AG of the *Queensland Building and Construction Commission Act 1991* (Qld) (QBCC Act).
- [3] As the first applicant’s substantial business was placed in jeopardy, the applicants on 5 April 2018 filed an originating application in this Court seeking in total, 22 orders for declaratory relief, injunctive relief and judicial review. On 6 April 2018, the applicants filed a merit’s review in QCAT under ss 86(1)(k) and 87 of the QBCC Act.

¹ A Licence Entitlement Officer.

- [4] On 3 May 2018, the respondents, being the Queensland Building and Construction Commission (“QBCC”), its Commissioner, Mr Bassett, and its Licence Entitlement Officer, Mr Wilson, filed a counter application seeking dismissal of the applicants’ application pursuant to r 658 of the *Uniform Civil Procedure Rules* 1999 (Qld) and ss 12, 13 and 48 of the *Judicial Review Act* 1991 (Qld). In response to that application, the applicants alleged that some provisions of the QBCC Act were unconstitutional. As a result, notices were sent pursuant to s 78B of the *Judiciary Act* 1903 (Cth) to the Attorney General for the Commonwealth and each of the States. On 6 August 2018, the Attorney General for the State of Queensland intervened in these proceedings. This was done pursuant to Section 78A of the *Judiciary Act* 1903 (Cth).
- [5] On 13 August 2018, the QBCC informed the applicants’ solicitors that it no longer considered:
- (a) Mr Bennett (the third applicant) to be an influential person of Midson Construction (NSW) Pty Ltd.
 - (b) Mr Hayes to be an influential person of Midson Constructions (Qld) Pty Ltd; and
 - (c) Midson Constructions (Qld) Pty Ltd to be an excluded company.
- [6] As a result of these concessions, several issues are no longer in contest. Rather the dispute between the parties and the intervenor is now limited into three defined issues. They are as follows:
- (a) Whether Midson Construction (NSW) Pty Ltd (in liquidation) was a construction company within the meaning of s 56AC of the QBCC Act;
 - (b) Whether s 56AC of the QBCC Act is constitutionally invalid; and
 - (c) Whether the decisions ought to be quashed on the basis that the purported delegation to the third respondent was ineffective as it was not in accordance with s 115A of the QBCC Act.

Issue 1: Whether Midson Construction (NSW) Pty Ltd (in liquidation) was a construction company within the meaning of s 56AC of the QBCC Act

- [7] Section 56AC of the QBCC Act provides:

56AC Excluded individuals and excluded companies

- (1) This section applies to an individual if—
 - (a) the individual takes advantage of the laws of bankruptcy or becomes bankrupt ("relevant bankruptcy event"); and
 - (b) 3 years have not elapsed since the relevant bankruptcy event happened.
- (2) This section also applies to an individual if—
 - (a) a construction company, for the benefit of a creditor—
 - (i) has a provisional liquidator, liquidator, administrator or controller appointed; or
 - (ii) is wound up, or is ordered to be wound up; and

- (b) 3 years have not elapsed since the event mentioned in paragraph (a)(i) or (ii) ("relevant company event") happened; and
- (c) the individual—
 - (i) was, when the relevant company event happened, a director or secretary of, or an influential person for, the construction company; or
 - (ii) was, within the period of 2 years immediately before the relevant company event happened, a director or secretary of, or an influential person for, the construction company.
- (3) If this section applies to an individual because of *subsection (1)* , the individual is an "excluded individual" for the relevant bankruptcy event.
- (4) If this section applies to an individual because of *subsection (2)* , the individual is an "excluded individual" for the relevant company event unless the individual can satisfy the commissioner that at the time the individual ceased to be an influential person, director or secretary for the construction company the company was solvent.
- (5) An excluded individual for a relevant event does not also become an excluded individual for another relevant event if the commission is satisfied that both events are consequences flowing from what is, in substance, the one set of circumstances.
- (6) A company is an "excluded company" if an individual who is a director or secretary of, or an influential person for, the construction company is an excluded individual for a relevant event.
- (7) In this section—
 - "construction company" —
 - (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.²

[8] The applicants argue that s 56AC(7):³

“definition of ‘*construction company*’ is necessarily limited by the definitions of ‘building’, ‘building work’, ‘building work services’ and ‘carry out’, so as to confine the definition to a company which undertakes activities in respect to ‘building(s)’ constructed on land within the State of Queensland.”

² My underlining.

³ See paragraph 103 of the applicants’ written submissions. Footnotes omitted.

- [9] The applicants assert that s 35 of the *Acts Interpretation Act 1954* (Qld) assists them. Section 35 of the *Acts Interpretation Act 1954* (Qld) provides as follows:

35 References to Queensland to be implied

- (1) In an Act—
- (a) a reference to an officer, office or entity is a reference to such an officer, office or entity in and for Queensland; and
 - (b) a reference to a locality, jurisdiction or other thing is a reference to such a locality, jurisdiction or other thing in and of Queensland.
- (2) In an Act, a reference to an office or entity established by or under an Act need not include the words ‘Queensland’ or ‘of Queensland’ merely because the words form part of its name or title.

- [10] Section 35 of the *Acts Interpretation Act 1954* (Qld) cannot assist the applicants as s 56AC(7) does not make reference to a “locality” or a “thing”. But rather, the reference to “this... State” pursuant to s 35(1)(b), is a reference to the jurisdiction of Queensland. The effect of s 35(1)(b) is to make it clear⁴ that “in this or another State” is to be interpreted as “in Queensland or another State”.

- [11] Furthermore, s 9(1) of the *Acts Interpretation Act 1954* (Qld) provides:

9 Interpretation of Act in relation to Parliament’s legislative power

- (1) An Act is to be interpreted as operating—
- (a) to the full extent of, but not to exceed, Parliament’s legislative power; and
 - (b) distributively.

- [12] The power of the Queensland Parliament is set out in s 2 of the *Constitution Act 1867* (Qld) which provides:

“Within the said Colony of Queensland Her Majesty shall have power by and with the advice and consent of the said Assembly to make laws for the peace welfare and good government of the colony in all cases whatsoever.”

- [13] Section 8 of the *Constitution of Queensland 2001* (Qld) provides:

8 LAW – MAKING POWER

The Constitution Act 1867, section 2 provides for the law – making power in Queensland.

- [14] Section 51 of the *Constitution of Queensland 2001* (Qld) provides:

⁴ If it was not already clear.

51 POWERS OF THE STATE

- (1) The Executive Government of the State of Queensland (the *State*) has all the powers, and the legal capacity, of an individual.
- (2) The State may exercise its powers—
 - (a) inside and outside Queensland; and
 - (b) inside and outside Australia.
- (3) This part does not limit the State’s powers.

Example: This part does not affect any power a Minister has apart from this part to bind the State by contract.

- [15] The applicants submit that it would be absurd if one were not to adopt an interpretation which confines the definition of “construction company” in s 56AC to the performance of construction in Queensland. The reason, it is submitted, is because if the definition were not so confined, then the QBCC would have been vested with the legislative power to investigate and regulate building services work in other states. That argument cannot be accepted.
- [16] As has been demonstrated by the early High Court decisions of *Barcelo v Electrolytic Zinc Co of A/asia Ltd*⁵ and *The Commissioner of Stamp Duties NSW v Millar*⁶, State legislation which attempts to regulate matters which have no or insufficient connection to the State will be constitutionally invalid. Such legislation cannot be seen to be for the “peace, welfare and good government” of the State. Hence pursuant to s 9(1)(a) of the *Acts Interpretation Act 1954 (Qld)*, the QBCC Act is to be interpreted as operating to the full extent of, but not exceeding, Queensland Parliament’s legislative power. If one is to accept the applicants’ submission outlined above, it would require an interpretation which is directly contrary to s 9(1)(a) of the *Acts Interpretation Act 1954 (Qld)*.
- [17] The reasons of Higgins J in *Amalgamated Society of Engineers v Adelaide Steam Ship Co Ltd (The Engineers’ Case)*⁷ is often referred to when considering the literal approach or rule to statutory construction in Australia. In that case Higgins J stated the following:⁸

“The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it; and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning, even if we think the result to be inconvenient or impolitic or improbable.”

- [18] In *Project Blue Sky Inc & Ors v Australian Broadcasting Authority*⁹ the plurality said:

⁵ (1932) 48 CLR 391.

⁶ (1932) 48 CLR 618.

⁷ *Amalgamated Society of Engineers v Adelaide Steam Ship Co Ltd (The Engineers’ Case)* (1920) 28 CLR 129.

⁸ At 161 – 162.

⁹ (1998) 194 CLR 355 at 384 [78] per McHugh, Gummow, Kirby and Hayne JJ. Footnotes omitted.

“However, the duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning.”

- [19] Preceding the plurality’s identification of the literal rule and under the heading “Conflicting Statutory Provisions Should be Reconciled so far as Possible” the plurality said:¹⁰

“The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined ‘by reference to the language of the instrument viewed as a whole’. In *Commissioner for Railways (NSW) v Agalianos*, Dixon CJ pointed out that ‘the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed’. Thus, the process of construction must always begin by examining the context of the provision that is being construed.

A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court ‘to determine which is the leading provision and which the subordinate provision, and which must give way to the other’. Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme.

Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision. In *The Commonwealth v Baume* Griffith CJ cited *R v Berchet* to support the proposition that it was ‘a known rule in the interpretation of Statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent’.”

¹⁰ At 381 - 382 [69] – [71]. Footnotes omitted.

[20] More recently in *Lacey v Attorney-General (Qld)*¹¹ the High Court said:

“The application of the rules will properly involve the identification of a statutory purpose, which may appear from an express statement in the relevant statute, by inference from its terms and by appropriate reference to extrinsic materials. The purpose of a statute is not something which exists outside the statute. It resides in its text and structure, albeit it may be identified by reference to common law and statutory rules of construction.

In this context, reference should be made to s 14A(1) of the *Acts Interpretation Act 1954 (Qld)*, which requires a purposive construction of Queensland statutes and is in the following terms:

“Interpretation best achieving Act's purpose

(1) In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.”

The term ‘purpose’ is defined to include ‘policy objective’. Section 14A(1) was introduced into the *Acts Interpretation Act* in 1991 but may be taken, as required by s 2 of the Act, to apply to all Acts, including those which predated its enactment. Neither party placed any reliance upon s 14A, which was surprising given that an area of contest in the appeal was about statutory purpose.

Section 14A requires preference to be given to that interpretation which will best achieve the purpose of the Act...”

[21] The applicant’s argument is essentially that the words “or another” in s 56AC(7)(a) and (b) cannot have their literal meaning because “the consequences of a literal or grammatical construction” and/or “the purpose of the statute” required a reading “in a way that does not correspond with the literal or grammatical meaning”.

[22] The applicants contend that a literal interpretation would be punitive as it disentitles a reputable and solvent construction company in Queensland from building work or building work services if a director or influential person in that corporation is also a director or influential person in a company in another State which is placed into provisional liquidation or liquidation. The applicants argue that Midson NSW, having not ever performed any work in Queensland, has no connection to any relevant activity in Queensland and its poor financial status in New South Wales cannot logically impact upon the applicants’ abilities to perform building work pursuant to its licence in Queensland. Thus, the applicants contend that they are being unfairly punished for the financial misconduct of a corporation of which it has little association.¹²

[23] The applicants point out, pursuant to s 56AC(2)(c)(ii) that if there are any common directorships or influential persons not only current at the time the impugned company

¹¹ (2011) 242 CLR 573 at 592 - 593 [44] – [46] per French CJ, Gummow, Hayne, Crennan, Keifel and Bell JJ. Footnotes omitted.

¹² The only common director, the second applicant, having resigned his directorship of Midson NSW.

suffers its provisional liquidation, but even within a period of two years prior to that event, then the serious and irremediable guillotine provisions of Part 3A of the QBCC Act apply, causing cancellation of the Queensland Building Licence. The applicants argue that this is unreasonable and that this can be contrasted with the broader and fairer provisions of ss 48 and 49 which allows the commission to take into account all relevant considerations bearing upon the perceived failure or financial mishap.

[24] The applicants also call in aid the purpose of the Act set out in s 3(a)(ii). It is their submission that a literal interpretation cannot achieve a reasonable balance between the interests of building contractors and consumers. It is argued that this is demonstrated in the present case where a cancellation of the applicants' licence has a serious deleterious effect upon the applicants' clients, the consumers that the Act endeavours to protect.

[25] Sections 3(a) and 3(f) of the QBCC Act provide:

3 Objects of Act

The objects of this Act are—

- (a) to regulate the building industry—
 - (i) to ensure the maintenance of proper standards in the industry; and
 - (ii) to achieve a reasonable balance between the interests of building contractors and consumers; and
- ...
- (f) to provide for the proper, efficient and effective management of the commission in the performance of its functions.

[26] Fraser JA recently summarised the correct approach to statutory interpretation as follows:¹³

“As the appellant submitted, the focus must be upon the statutory text: ‘[t]he language which has actually been employed in the text of legislation is the surest guide to legislative intention’. Of relevance in this case are the related principles that ‘[t]he primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute’ and ‘a court construing a statutory provision must strive to give meaning to every word of the provision ... it [is] ‘a known rule in the interpretation of Statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void or insignificant, if by any other construction they may all be made useful and pertinent’.”

Considering the proper approach to statutory interpretation

[27] When the proper approach to statutory interpretation is considered, it may be observed that the applicants face a number of hurdles. Firstly, meaning must be given to every word including the words “or another”. The ordinary literal meaning of the words “or another” in s 56AC(7)(a) and (b) means that the definition of construction company is

¹³ *Amos v Brisbane City Council* (2018) QCA 11 at [42]. Footnotes omitted.

extended not only to a company that directly or indirectly carries out building work in Queensland, but also to a company that directly or indirectly carries out building work or building work services in another State, such as, in this case, New South Wales. Thus, the literal rule, and given meaning to each word, as is required, has the consequence that the applicants' submission cannot be accepted.

- [28] Furthermore, the Act needs to be construed as a whole. Section 56AC is the definition section for Part 3A, "Excluded individuals and excluded companies". Parliament therefore has deliberately inserted a broader definition of construction company in Part 3A by its definition in s 56AC. Parliament could have, but did not, include the definition of construction company in its broader form in the Schedule 2 Dictionary to the Act. The only other section of the Act which contains an explicit jurisdictional reference is s 67AAA which provides:

67AAA Meaning of *building contract*

- (1) For this part, a ***building contract*** means a contract or other arrangement for carrying out building work in Queensland but does not include—
- (a) a domestic building contract; or
 - (b) a contract exclusively for construction work that is not building work.
- (2) In this section—
- construction work*** see the *Building and Construction Industry Payments Act 2004*, section 10.

- [29] It is important to note that 67AAA forms part of the definitions specifically applicable to Part 4A, building contracts other than domestic building contracts. It is the ordinary literal meaning of the definition in s 67AAA that Parliament intended Part 4A only to apply to non-domestic building contracts or building work to be carried out within Queensland. That section was interpreted by Fraser JA in *Monadelphous Engineering Pty Ltd v Wiggins Island Coal Export Terminal Pty Ltd*.¹⁴ In that case, reference was made to s 14B(1) and s 14B(3)(f) of the *Acts Interpretation Act 1954* (Qld).

- [30] Sections 14B(1) and 14B(3)(f) of the *Acts Interpretation Act 1954* (Qld) provide:

14B Use of extrinsic material in interpretation

- (1) Subject to subsection (2), in the interpretation of a provision of an Act, consideration may be given to extrinsic material capable of assisting in the interpretation—
- (a) if the provision is ambiguous or obscure—to provide an interpretation of it; or
 - (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or

¹⁴ [2014] QCA 330 at [15].

- (c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

...

- (3) In this section—

extrinsic material means relevant material not forming part of the Act concerned, including, for example—

...

- (f) the speech made to the Legislative Assembly by the member when introducing the Bill...

[31] The respondents and the intervener call in the aid of s 14B(1)(c) of the *Acts Interpretation Act 1954* (Qld) namely that s 56AC(7) of the QBCC Act is not ambiguous nor obscure nor does the provision lead to any manifestly absurd or unreasonable result and the second reading speech confirms the interpretation conferred by the ordinary meaning of the provision.

[32] The definition of a construction company within Part 3A in its expanded form was inserted into the QBCC Act by section 271 of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld). With respect to that amendment, the Minister said, *inter alia*, in Queensland Parliament Hansard 22 August 2017:¹⁵

“An important amendment in the bill is increased rigor around the ‘excluded individual’ provisions so that a person who was involved in a company failure in other jurisdictions, or who was the director of a company up to two years prior to a failure, will be excluded from obtaining a QBCC licence. Also the definition of ‘influential person’ in the Bill is intended to capture a person in a position to substantially influence or control the company’s affairs but who is not a director or secretary of the company. In short, our new laws will allow a ban on anyone who has been secretly involved in running a construction company that goes bankrupt or has its building licence revoked...”

[33] In interpreting the QBCC Act as a whole, it may be seen that s 56AC is the key definitional provision of Part 3A of the Act. The definitional provisions are machinery provisions which allow the Commission to cancel a builder’s licence. The legislation is remedial and is for the purposes of protection of consumers of building work and building work services. It would seem plain 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.

[34] The plain and ordinary words of s 56AC(7) “in this or another State” must be given their plain and ordinary meaning. It follows, given that Midson NSW carried out building work services in New South Wales prior to being placed into liquidation, that Midson NSW was a “construction company” within the meaning of s 56AC of the QBCC Act.

¹⁵ At page 2286.

Issue 2: Is s 56AC of the QBCC Act constitutionally invalid?

[35] The applicants submit:¹⁶

“If the applicants are incorrect on the construction of s 56AC operating with a limitation to ‘*building(s)*’ constructed in the State of Queensland, a question then arises as to whether or not the section purports to regulate conduct in another State in a manner which offends the proscription against extraterritorial regulation of another jurisdiction.

The ordinary approach to interpretation is that the operation of an Act is confined to the territorial limits of the State.”

[36] As the Attorney-General for the State of Queensland points out, the difficulty with the applicants’ submission is that the QBCC Act does not, by s 56AC, or any other section, purport to “regulate” the conduct of building work or anything else in any other State. Rather, the Act seeks to protect Queensland consumers of building work and building work services by allowing a mechanism for a building licence to be cancelled in Queensland if there is sufficient connection to financial instability of an associated entity in another State. Thus the QBCC Act does not attempt to regulate anything in any other State, but rather control, for the benefit of Queensland consumers, building work services within the State of Queensland.

[37] The applicants cite several cases in support of a submission that it is beyond the lawful legislative power of the Queensland Parliament, insofar as s 56AC(7) attempts to effect or regulate the conduct of persons or corporations in other States. The cases, properly construed, do not support the applicant.

[38] *Barcelo v Electrolytic Zinc Co of A/asia Ltd*¹⁷ deals with principles of private international law relating to the ascertainment or governing law of a contract. The applicants also rely upon *The Commissioner of Stamp Duties NSW v Millar*¹⁸ however that case deals with the imposition of stamp duty upon the estate of a deceased who passed away in Victoria. The deceased in that case owned shares in a company registered in Victoria but held mining interests in New South Wales. Gavan Duffy CJ and Evatt J, in the minority, formed an opinion that “...the holding of shares in a company carrying on business within the State, furnishes a connection between the holder and the State which is sufficient to found a taxing jurisdiction”.¹⁹

[39] The majority, Rich, Dixon and McTiernan JJ, disagreed, holding:²⁰

“What the Legislature fastens upon as the subject of taxation is the share, not the economic advantage derived by the connection with New South Wales. It does not supply the measure, the quantum, of tax by reference to the share and impose the tax so measured upon some act occurring or thing situate within its jurisdiction. It assumes to tax the share as property out of the jurisdiction, but does so because of the

¹⁶ See paragraphs 119 and 120 of the applicants’ written submissions.

¹⁷ (1932) 48 CLR 391.

¹⁸ (1932) 48 CLR 618.

¹⁹ At 629.

²⁰ At 632.

existence of the company's business within the jurisdiction. In doing so, it adopts a connection which is too remote to entitle its enactment to the description a law 'for the peace, welfare, and good government of New South Wales': sec. 5 of the *Constitution Act* 1902. Or, to state the matter in another way, although some connection between the shareholder and New South Wales may be discovered in the existence there of part of the company's undertaking, the enactment goes beyond legislating in respect of that connection..."

- [40] The applicants also rely upon *Barkworth v Sidhu*²¹ which concerned an argument that s 32 of the *Trade Measurement Act* 1990 (Qld), the offence of packing or selling short measure, was outside the legislative power of the Queensland Parliament. In that case, when the offending product was sold in Queensland, the person who packed the article out of the State of Queensland was convicted of a s 32 offence in Queensland. Holding the provision to be within the jurisdictional power of the Queensland Parliament, Fraser JA said:²²

"There is no reason to doubt that the Queensland legislature was empowered to legislate to that effect: the occurrence in Queensland of a short measure fulfils the undemanding constitutional requirement that there be a connection between the offence and the State of Queensland."

- [41] Fraser JA then cited the authority of *Union Steamship Co of Australia Pty Ltd v King*²³. In that case the Court said:²⁴

"...it is sufficient for present purposes to express our agreement with the comments of Gibbs J. in *Pearce* where his Honour stated that the requirement for a relevant connexion between the circumstances on which the legislation operates and the State should be liberally applied and that even a remote and general connexion between the subject-matter of the legislation and the State will suffice."

- [42] In *Sweedman v Transport Accident Commission*²⁵, the plurality stated the following:²⁶

"There is nothing necessarily antithetical to the system of federation established and maintained under the *Constitution* in the legislation of one State having legal consequences for persons or conduct in another State. There are three relevant corollaries to that general proposition. First, it is sufficient for the validity of a law such as s 104(1) that it has any real connection between its subject matter and the State of Victoria. Plainly, s 104(1) meets that criterion. The appellant does not assert lack of State power to legislate with extra-territorial operation."

- [43] In the present case, the conduct which is sought to be regulated is the conduct of building work in Queensland which, pursuant to the QBCC Act, requires a licence and

²¹ [2011] 1 Qd R 419.

²² At [25]. Footnote omitted.

²³ (1988) 166 CLR 1.

²⁴ At 14 per Mason CJ, Wilson, Brennan, Deane, Dawson, Toohey and Gaudron JJ. Footnote omitted.

²⁵ (2006) 226 CLR 362 at 398 [18]. Footnotes omitted.

²⁶ At 398 [18] per Gleeson CJ, Gummow, Kirby and Hayne JJ. Footnotes omitted.

requires its licensee to be a fit and proper person, which may be judged, amongst other things, by reference to the financial stability of the licensee.²⁷ It cannot be said when financial stability of a licensee is an important matter in determining whether a licence ought to be granted, that a measure of financial instability by admission to bankruptcy or by a company being placed into liquidation or provisional liquidation in another State, is an insufficient or an unreal connection between the subject matter of the legislation²⁸ and the State of Queensland.

[44] There is no novelty in the legislator selecting whatever factum as a trigger of a particular legislative consequence.²⁹ Section 56AC of the QBCC Act is constitutionally valid.

Issue 3: The delegation issue

[45] The applicants argue that the decisions ought to be quashed on the basis that they were not made pursuant to any authority properly delegated in accordance with the QBCC Act. The applicants contend that the purported delegation to the third respondent is ineffective as it is not in accordance with s 115A of the QBCC Act.

[46] The applicants submit that their purported delegation is invalid as:³⁰

- (a) “section 115A of the Act requires the delegation be made to an officer, and there was no such delegation – rather the delegation was to a range of positions;
- (b) the ultimate delegatee is not objectively ascertainable by reference to any decision of the second respondent;
- (c) the delegation cannot be ‘*implied*’;
- (d) the delegation was expressed to be to give a notice and not, as required by ss 56AF(1) and 56AG(1) to ‘*consider*’ the status of persons as directors, secretaries, or influential persons;
- (e) the third respondent was not appropriately qualified.”

[47] Section 115A of the QBCC Act provides:

115A Delegations

- (1) The board or commissioner may delegate their functions or powers under an Act to an appropriately qualified relevant officer of the commission.
- (2) In this section—
appropriately qualified includes having the qualifications, experience or standing appropriate to perform the function or exercise the power.
 Example of standing— a person’s seniority level in an entity.

²⁷ See *Queensland Building and Construction Commission Act* 1991 (Qld) s 33(3).

²⁸ The regulation of building licensees.

²⁹ *Duncan v Independent Commission Against Corruption* (2015) 256 CLR 83 at 101 [42] Gaeger J citing *Baker v The Queen* (2004) 223 CLR 513 at 532 [43] per McHugh, Gummow, Hayne and Heydon JJ.

³⁰ See paragraph 156 of the applicants’ written submissions. Footnotes omitted.

[48] Schedule 2 of the Act contains a number of definitions which include:

“*relevant officer*, of the commission, means—

- (a) an employee of the employing office or of another government entity performing work for the commission under a work performance arrangement; or
- (b) an officer or employee of the commission.”

[49] As to point (a) raised by the applicants, this may be readily dismissed by having reference to s 27A(1) and (2) of the *Acts Interpretation Act 1954* (Qld) which provides:

27A DELEGATION OF FUNCTIONS OR POWERS

- (1) If an Act authorises a person or body to delegate a function or power, the person or body may, in accordance with the *Act* and any other applicable law, delegate the function or power to—
 - (a) a person or body by name; or
 - (b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.
- (2) The delegation may be—
 - (a) general or limited; and
 - (b) made from time to time; and
 - (c) revoked, wholly or partly, by the delegator.

[50] Furthermore by s 32C of the *Acts Interpretation Act 1954* (Qld), words in singular include words in plural and accordingly the delegation pursuant to s 115A(1) may be made to “appropriately qualified relevant officers of the commission”. Thus delegation to the holders of a specific office is permissible pursuant to s 27A of the *Acts Interpretation Act 1954* (Qld). It is therefore entirely unsurprising and lawful for the board or commissioner to delegate their functions and powers to appropriately qualified employees (in the broader sense). Indeed, it is difficult to understand how there can be effective government unless this was so.³¹

[51] As to the second point raised by the applicants, given s 27A of the *Acts Interpretation Act 1954* (Qld) and the permissible delegation to officers who are appropriately-qualified as well as the evidence of the process of delegation as set out in the delegations manual,³² it can be determined that appropriate delegations have been made. However, there is no legislative requirement³³ for all delegation instruments to specifically identify each “appropriately qualified” officer by name.

[52] As to the applicants’ third point that the delegation cannot be implied, the respondent correctly submits that the delegation is explicit as set out in the delegations manual.

[53] The applicants’ fourth point is that the delegation is confined to a delegation to give the notice, not to consider the status of persons as required by ss 56AF(1) and 56AG(1). This cannot be accepted. The delegations manual, which is set out at page 132 of the

³¹ See *Owendale Pty Ltd v Anthony* (1967) 117 CLR 539 at 563 to 564 per Windeyer J.

³² See affidavit of Jennifer Lauren Raphael affirmed 30 May 2018 at pages 107-108.

³³ Again it would be practically impossible in any model of effective government.

affidavit of Ms Raphael³⁴ relevantly shows that it contains three columns. They are classification, delegation and description. In the present case, the classification is B28 (Licence Entitlement Officer). The middle column of delegation shows that B28 Licence Entitlement Officers are delegated powers and relevantly in the present case, powers pursuant to ss 56AF and 56AG. Importantly, the delegation is not limited to any particular subsection of ss 56AF or 56AG, but rather the entirety of those sections. This is important because the sending of notices is a delegation pursuant to ss 56AF(2) and 56AG(2) and so is it plain that powers delegated which have statutory effect are broader than the powers simply to send the notices pursuant to ss 56AF(2) and 56AG(2). The right hand column is entitled description and is merely a short hand description of the same delegated powers.

- [54] The delegation manual is appropriately a practical document produced by the QBCC used to inform its employee delegates in the carrying out of its broad range of important statutory functions.
- [55] Finally the applicants have submitted that the third respondent, Mr Wilson, is not “appropriately qualified”. It may be observed pursuant to s 115A(2) that the definition of appropriately qualified officer is a broad definition.
- [56] Mr Wilson’s employee records have been annexed to Ms Raphael’s affidavit filed 18 July 2018³⁵ and are contained from pages 15 to 18 of the affidavit.³⁶
- [57] In summary, Mr Wilson completed his formal education, achieving an Australian Senior Level in Maths 1, 2, Chemistry and Physics in 1989 and then post his secondary education, received a Certificate IV in Government Investigations. Mr Wilson has been in varied employment for the past 22 years, within government and within private industry, within Australia and overseas.
- [58] Without detailing all of Mr Wilson’s experience he has:
- (a) Approximately six years as a Deputy Registrar in the Civil Registry of the Magistrates Court in Queensland, employed by the Department of Justice and Attorney-General;
 - (b) Approximately two and a half years in business as an employee of EPM Services Pty Ltd in Australia and Europe which involved working in sales, marketing, budgeting controls, problem solving, customs and excise procedures as well as quarantine regulations;
 - (c) Approximately a year and a half with Adept Recruitment in London;
 - (d) Over 4 years as an archivist with S J Berwin, a law firm in London;
 - (e) One year at Rawlinson and Hunter, an accountancy firm in the Grand Cayman, with tasks including the training of staff, developing best practice methods and writing procedural policies and a staff manual;

³⁴ See affidavit of Jennifer Lauren Raphael affirmed 30 May 2018.

³⁵ Court document 22.

³⁶ Also described as Attachment 10.

- (f) Several months in an Australian law firm in administration account and information technology;
- (g) For over a decade³⁷ been employed by QBCC.

[59] Mr Wilson has information technology skills, is highly computer literate and has broad national and international experience. Within three years of commencing his employment at the QBCC, Mr Wilson was employed as an acting compliance officer³⁸ (since July 2008) before being appointed as a permanent compliance officer in May 2009. Following this, he then received a promotion to a licence entitlement officer in June 2014. Mr Wilson has served in that role since then, except for periods where he was acting on higher duties.

[60] Therefore on the material provided and in terms of the definition within s 115A(2) it can be concluded that Mr Wilson has relevant qualifications. Mr Wilson has completed his senior education and one post-school qualification in investigation. In addition to this he has considerable and impressive experience. Whilst there is no explicit evidence concerning Mr Wilson's standing, having worked nationally and internationally and having achieved promotion along the way, it can be inferred that he is a person of good standing. The Act by s 115A(2) specifically gives an example of obtaining seniority level in an entity as amounting to a person of good standing. Mr Wilson has achieved a level of seniority within the QBCC.

[61] I conclude that Mr Wilson is an appropriately qualified officer.

Conclusion

[62] The application is dismissed.

³⁷ Since November 2007.

³⁸ Since July 2008.