RECENT LICENSING CASES
EXCLUDED INDIVIDUAL DECISIONS

[based on a paper presented at the 2011 BSA conference]

Litigation Lawyers

INTRODUCTION

1. In this paper, it is proposed to provide a general outline of the provisions pursuant to which decisions are made to classify a person as an Excluded Individual and to discuss cases within that framework.

2. The *Queensland Building Services Authority Act* provides a system whereby a licensee who suffers an insolvency event is excluded from holding a licence for 5 years. If the Authority considers that a person should be excluded, then section 56AF(2) requires the Authority to give a notice regarding that decision.

THE DECISION TO CATEGORISE AS EXCLUDED INDIVIDUAL

3. A decision that a person is an excluded individual is made pursuant to S. 56AF(2), based upon the definition contained in S. 56AC. Section 56AC of the Act provides:

> **Excluded individuals and excluded companies**
>
> (1) This section applies to an individual if--
> (a) after the commencement of this section, the individual takes advantage of the laws of bankruptcy or becomes bankrupt (relevant bankruptcy event); and
> (b) 5 years have not elapsed since the relevant bankruptcy event happened.
> (2) This section applies to an individual if-
> (a) after the commencement of this section, a 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) 5 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 company; or
> (ii) was, at any time after the commencement of this section and within the period of 1 year immediately before the relevant company event happened, a director or secretary of, or an influential person for, the 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."
> (5) An excluded individual for a relevant bankruptcy event (the first event) does not also become an excluded individual for another relevant bankruptcy event (the other event) if the first event and the other event are both consequences flowing from what is, in substance, the one set of circumstances applying to the individual.
> (6) An excluded individual for a relevant company event (the first event) does not also become an excluded individual for another relevant company event (the other event) if the first event and the other event are both consequences flowing from what is, in substance, the one set of circumstances applying to the company.
> (7) A company is an excluded company if an individual who is a director or secretary of, or an influential person for, the company is an excluded individual for a relevant event.

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RELEVANT BANKRUPTCY EVENT

4. The wording of section 56AC makes it clear that, in the bankruptcy context, there are 2 situations in which the section applies, namely:

   (a) Where an individual "*takes advantage of the laws of bankruptcy*"; and

   (b) Where an individual "*becomes bankrupt*".

"takes advantage of the laws of bankruptcy"

5. There is no definition in the QBSA Act for the expression "takes advantage of the laws of bankruptcy".

6. This was considered at length in the Appeal Tribunal appeal decision of *QBSA v Meredith* [2010] QCATA 50. In that decision Justice Wilson stated:

> [15] Whatever the proper meaning of the expression "takes advantage of the laws of bankruptcy", it was plainly intended to have a different meaning from "becomes bankrupt".
> [16] The phrase "take advantage of" is, in its ordinary meaning, synonymous with "use". Here, Mr Meredith entered into bankruptcy but then, as is uncontentious, his creditors voted in favour of accepting a composition under s 73 of the BA, leading to annulment. In the context of s 56AC, then, applying the ordinary meaning of the phrase can lead to results that are unreasonable: for example, that a person might find themselves categorised as an excluded individual if they use the laws of bankruptcy to have their bankruptcy annulled.
> [17] The *Acts Interpretation Act 1954* permits consideration of extrinsic material capable of assisting interpretation if the ordinary meaning of words leads to a result that is unreasonable.

7. Accordingly, His Honour Justice Wilson quoted the Explanatory Note and the Second Reading Speech, when the sections were first introduced in the QBSA Act by amendments made in 1999. The explanatory memorandum to the Bill relevantly provided:

> Clause 27 inserts a new Part 3A – Excluded and Permitted Individuals and Permitted Companies. A major deficiency with the existing regulatory structure has been the ability of defaulting contractors to restructure their corporate structure to re-emerge as a 'phoenix' company following cancellation of a licence. **This new part is designed to remove individuals who have demonstrated their incapacity to manage finances from the building industry for a 5-year period**.(emphasis added)

8. The following was said by the Honourable JC Spence in the Second Reading speech:

> …the Bill contains provisions to prevent bankrupts and persons associated with bankruptcy from holding or being associated with a building contractor's licence for a period of 5 years ... The scheme introduced by the Bill provides for `excluded individuals' who may not hold a licence. These are bankrupts or **individuals who take advantage of the laws of bankruptcy such as through entering into a `part X arrangement' with creditors** or who are associated with a failed company. They will be "excluded individuals" for five years from the relevant event. (emphasis added)

9. Further His Honour Justice Wilson said:

> [23] Even without the assistance of the extrinsic material it is tolerably clear from the provision itself that it is intended to be a broad catch-all for persons who, by whatever means, relieve themselves of the whole or part of their debts by going into bankruptcy; and that, by the phrase, the legislature intended that any use of the laws of bankruptcy to that end would be caught, and lead to the licensee becoming an excluded individual.
> [28] The learned member fell into error, with respect, in deciding the question whether or not Mr Meredith had taken advantage of the laws of bankruptcy when, for the reasons given here, that was apt to describe what had occurred and sufficient to warrant the QBSA to consider, under s 56AF, that he was an excluded individual by reason of what had occurred (the relevant bankruptcy event).

10. Clearly therefore, a person takes advantage of the laws of bankruptcy:

    (a) If they enter a Part IX or Part X arrangement;

    (b) Lodge a debtor's petition;

    (c) If they achieve an annulment by putting forward a composition which is accepted by his or her creditors in accordance with either s. 74 or 153A of the *Bankruptcy Act*.

11. Note it is possible to annul a bankruptcy pursuant to S 153B *Bankruptcy Act* if the bankruptcy order ought not to have been made. Such an annulment is probably not "taking advantage of" the laws of bankruptcy.

'becomes bankrupt"

12. The term "becomes bankrupt" is interpreted in the context of licensing legislation to refer to the fact that a person did, in fact, become bankrupt. Bankruptcy law in respect of annulment is to the effect that, upon annulment, the bankruptcy is retrospectively removed. That however is irrelevant, as legal fictions do not change what occurred.

13. In *QBSA v Meredith* (cited above) Justice Wilson indicated that

> [24] … Mr Meredith is in any event caught by the phrase "becomes bankrupt". An annulment has the effect of putting the bankrupt back in the position they would have been in if the bankruptcy had never occurred but, as Hill J observed in Oates v Commissioner of Taxation [1990] FCA 510, the fact that legislation uses the words "becomes bankrupt" does not mean that the phrase has the same meaning as it does in the BA. The meaning of the phrase must be discovered in the context of the legislation in which it appears, and the purpose of that legislation.
> [25] The question becomes, then, whether the expression as it is used in s 56AC is properly understood to mean "becomes bankrupt and the bankruptcy has not subsequently been annulled" or whether the words are to be construed as applying whether or not an annulment has occurred.
> [26] The phrase falls to be considered in the context of legislation focussing upon the qualities to be exhibited by a person who ought properly be licensed under it. The focus is upon the act itself, not its legal effects; the only question to be asked under the subsection is whether or not the individual has "become" bankrupt.
> [27] Again, the focus of the legislation is upon the contractor's suitability to hold a licence, by reference to his or her capacity for financial management and, in particular, demonstrated ability to remain liquid. It is this financial ability upon which the subsection focuses. Once that is appreciated, the phrase "becomes bankrupt" in this discrete legislation refers not to the provisions of the BA, or the consequences of annulment under it but, rather, to the fact of bankruptcy.
> [28] The learned member fell into error, with respect, …. In addition, because the alternative phrase "becomes bankrupt" also applies the Authority was entitled, too, to form the conclusion that he was again an excluded individual.

14. There is also a careful analysis of the issues, consideration of the cases and conclusion of Giles JA in *Union Club v Lord Battenberg* (2006) 66 NSWLR 1 as set out in paragraphs 21 to 81 of his decision as to the effect at law of the annulment of a bankruptcy.

15. As Hill J did in *Oates* (cited above), the question may be tested by example:

    (a) Where an individual who has been the subject of a sequestration order subsequently successfully appeals that order, the conclusion to be reached is that the person should never have become bankrupt in the first place. Such a situation may arise where there was a mistake made as to the identity of the person or for some reason inconsistent with the person having demonstrated their incapacity to manage their finances. Should the expression "becomes bankrupt" be construed as applying whether or not an annulment of the bankruptcy has occurred this would result in an unintended consequence, namely that a person who had not demonstrated their incapacity to manage their finances being an excluded person;

    (b) The alternative case to be considered is that such as the present where an individual is made bankrupt but obtains an annulment in circumstances where a composition was accepted by that person's creditors. In such a situation the person has demonstrated their incapacity to manage their finances. If the construction of the expression "becomes bankrupt" is understood to mean "becomes bankrupt and the bankruptcy has not subsequently been annulled" this would have the effect that the person was not an excluded individual by reason of the fact of becoming bankrupt. However, the person would nevertheless be an excluded individual because the alternate condition that the person had "take[n] advantage of the laws of bankruptcy" would have been satisfied.

16. Therefore, based upon the *Meredith* decision:

    (a) "Becomes bankrupt" has its ordinary meaning;

(b) Annulment by payment of creditors does not change the fact that a person was bankrupted;

(c) Annulment or overturning of a sequestration order where it should not have occurred in the first place does not fall within "becomes bankrupt". [Note this last point is not tested by any decision.]

RELEVANT COMPANY EVENT

17. In relation to a Relevant Company Event, a person is an Excluded Individual if:

(a) A company suffers an insolvency appointment;

(b) That event was "*for the benefit of a creditor*";

(c) The event was within the last 5 years; and

(d) The person was a director, secretary or influential person at the time or within the previous 12 months of that company;

"Provisional liquidator, liquidator, administrator or controller appointed"

18. A liquidator or provisional liquidator is appointed in any winding up.

19. An administrator is appointed by the directors of the company pursuant to S. 436A of the Corporations Act:

> **Company may appoint administrator if board thinks it is or will become insolvent**
>
> (1) A company may, by writing, appoint an administrator of the company if the board has resolved to the effect that:
> (a) in the opinion of the directors voting for the resolution, the company is insolvent, or is likely to become insolvent at some future time; and
> (b) an administrator of the company should be appointed.

20. A controller is defined by S. 9 of the Corporations Act to be:

> ***"controller"*** , in relation to property of a corporation, means:
> (a) a receiver, or receiver and manager, of that property; or
> (b) anyone else who (whether or not as agent for the corporation) is in possession, or has control, of that property for the purpose of enforcing a charge;
> (c) and has a meaning affected by paragraph 434F(b) (which deals with 2 or more persons appointed as controllers).

21. Accordingly "a controller" means a Receiver or a Controller. A Receiver could be appointed either by a court or by a secured creditor pursuant to a security document.

"For the benefit of a creditor"

22. Whilst these words appear simple, in practice they raise a number of complicated issues. Eg what if there were no assets and it was not intended that any creditor benefit from the winding up?

23. Recent cases discussing the meaning of these words are:

(a) *Gallagher v QBSA* [2010] QCAT 383 at [57] to [61], in which the Tribunal stated:

> Creditors can benefit in many ways as a consequence of the appointment of liquidators. It is obviously a benefit to creditors just to have liquidators investigate the company's accounts to ascertain if there are any assets available to creditors, preference payments or debtors. In my view the very appointment of a liquidator can be said to be a benefit to creditors.

(b) *Marangone v QBSA* [2011] QCAT 210 from [26], in particular:

> [32] I am of the view that to add any additional words into the interpretation of the phrase should be avoided without good cause. I therefore do not consider that it is appropriate to

> look the purpose of the winding up, particularly in the manner suggested by Mr Killian. It seems to me that if one were to seek the actual intention of the person seeking the winding up it would be rare that the test would apply as there could be many purposes behind any winding up and it would be most difficult to determine on a subjective basis what this really was.
> [35] I consider it quite appropriate to consider general benefits and not simply pecuniary benefits. Furthermore I do not accept that there has to be direct evidence of those benefits before they can be considered. If it was intended that only direct pecuniary benefits are intended to be considered it would be easy for the legislation to state that unequivocally. But in the context of the relevant section it would seem strange if it a person could only become an Excluded Individual in circumstances where creditors obtain a direct pecuniary benefit from the winding up and not where there is no dividend payable.
> [46] … it is appropriate to consider the facts as they were known at the date of the appointment of the liquidator. Certainly it was known by the Applicant that Marangone Constructions had very significant creditors and little in the way of assets. That is clear from the terms of his affidavit and that of Mr Anjoul. It is further clear that, by virtue of the fact that no declaration of solvency pursuant to section 494 of the *Corporations Act 2001* was possible, the liquidator would inevitably form the view that the company was insolvent and it would become a voluntary winding up by creditors.
> [47] As a result it was certain that the winding up would have the advantages to creditors that accrue by virtue of it being that type of winding up.
> [48] It appears to me that there were also benefits to creditors in this case apart from those directly accruing by virtue of the application of *the Corporations Act 2001* and the manner in which a liquidator approaches a creditor's winding up. In this respect I note that from the Statement of Affairs it is clear that no pecuniary benefit would accrue to creditors, however, apart from anything else, they do have the benefit of being able to crystallise their losses and that is not insignificant.

(c) *Corcoran v QBSA* (No2) [2011] QCATA 158 from [9], in particular:

> [17] The words in s 56AC(2) 'for the benefit of a creditor' are clear and unambiguous. There is no warrant to give them other than their ordinary and grammatical meaning. Application of that principle does not lead to any result that is inconvenient or unjust. A consideration of the context within which the words are used confirms that conclusion.
> [26] There is no warrant for the plain meaning of the words 'for the benefit of a creditor' to be read down as proposed by Mr Corcoran to mean that an appointment of an administrator or liquidator must be initiated by a creditor, nor does any question of the provision being 'penal' alter the appropriateness of applying a broad threshold test to 'benefit of a creditor'.
> [36] For the reasons previously stated both the text of the words used and the use of the words in the context of the legislative scheme within which they are found justify an easily satisfied benefit requirement of an appointment of a liquidator, administrator or controller. Such ensures the affairs of a company will be scrutinised and vigilance brought to bear on internal company management as was intended by Pt 3A of the Act.

24. Based upon these cases, it is the case that:

(a) The words "*for the benefit of a creditor*" do not depend upon the purpose or intention behind the event;

(b) There does not need to be receipt of money by a creditor;

(c) The words of a statute should interpreted based upon their meaning and not be substituted for a test based on other words;

(d) The insolvency does not have to be instigated by a creditor; and

(e) The nature of the benefit to creditor *might* be monetary, but it might also be the comfort of knowing that an independent administrator or liquidator has been appointed to manage the company in the interests of creditors.

25. I also make the following comments:

(a) Creditors will receive the benefit of the ability to write off a debt as irrecoverable for tax purposes.

(b) Upon liquation, the ATO no longer has to monitor the debt of a delinquent company and to expend resources assessing interest and penalties. Hence when the ATO is a creditor, it receives a benefit of closure, whether or not a dividend is received.

26. I consider is helpful to apply the effect of the words "*for the benefit of a creditor*" in relation to different types of corporate insolvency events:

(a) Winding up in insolvency by the Court: Clearly such a winding up is at the request of a creditor. There is no need to embark upon an enquiry to see if the liquidator recovers funds and pays a dividend.

(b) Administration of a Company: By S. 436A(1) of the *Corporations Act*, for the directors of a company to appoint an administrator, they must consider that the company is insolvent or likely to become insolvent at some time in the future. Therefore there must be creditors. One of the objectives of an administration of a company, as defined in S. 435A, is to administer the affairs of the company in a way that results in a better return to creditors. Consequently, the appointment of an administrator must be for the benefit of creditors.

(c) Appointment of Receiver by a secured creditor: Clearly, this would be for the benefit of a creditor.

(d) Appointment of Receiver by a court: The Supreme Court has inherent jurisdiction to appoint a receiver where it appears to the Court to be just or convenient to do so. This is usually done on an interim basis to secure assets pending the outcome of litigation. Unless there are no creditors, it can be seen that the securing of assets benefits creditors.

(e) Creditors' Voluntary Liquidation: In a creditors' voluntary liquidation, the company must be insolvent, by application of the *Corporations Act*.

(f) Members' Voluntary Liquidation: A members' voluntary wind up is not for the benefit of a creditor. That is, in a members' voluntary winding up there is a declaration of solvency, hence all creditors are paid. Hence the winding up is not for the benefit of a creditor;

(g) Winding up due to oppression or deadlock: Where a company is wound up due to deadlock between directors or perhaps oppression of a minority shareholder, the winding up may or may not be for the benefit of a creditor. Where deadlock or oppression has prevented or delayed payments to creditors, then the winding up would benefit those creditors.

"Director or secretary or influential person for the Company within the 12 months prior to the Relevant Event"

27. The term "director" is not defined by the QBSA Act. In the *Corporations Act* the definition of director is extended to include what people commonly known as "shadow directors":

> ***"director"*** of a company or other body means:
> (a) a person who:
> (i) is appointed to the position of a director; or
> (ii) is appointed to the position of an alternate director and is acting in that capacity; regardless of the name that is given to their position; and
> (b) unless the contrary intention appears, a person who is not validly appointed as a director if:
> (i) they act in the position of a director; or
> (ii) the directors of the company or body are accustomed to act in accordance with the person's instructions or wishes.

28. In view of the inclusion of an influential person in the QBSA Act, it is not necessary to consider whether it is intended that this meaning of director apply.

29. The dictionary in Schedule 2 to the Act includes a definition of "influential person":

> "*influential person, for a company, means an individual, other than a director or secretary of the company, who is in a position to control or substantially influence the conduct of the company's affairs, including, for example, a shareholder with a significant shareholding, a financier or a senior employee.*"

30. A number of cases discuss what "influential person" means:

(a) In *McClintock v QBSA* [2010] QCAT 340 Member, Peta Stilgoe stated (my underlining added):

> [21] Mr McClintock admits that he was a substantial shareholder in the company but has provided a statement from the director at the time as evidence that he did not, in fact, influence the conduct of the company' affairs. That is not the point. The Act talks about a person in a **position** (my emphasis) to control the company. Whether or not the person actually exercised that control is irrelevant. I find that, because of his substantial shareholding, Mr McClintock was a person in a position to control the company and, therefore, was an "influential person" within the terms of the Act.

(b) In *McClintock v QBSA* [2010] QCATA 68 per Judge Kingham and Member Rick Oliver, the Appeal Tribunal stated (my underlining added):

> [11] In the submissions filed in this appeal by Mr McClintock the issues of whether he was a creditor or an influential person have been further addressed. It does seem arguable that, at a final hearing, both of these criteria may not be satisfied by the Authority. Mr McClintock was not a director of the company within 12 months of the appointment of the Administrator and therefore, prima facie, had no control over the company's affairs, even though a director is answerable to shareholders. By reason of his substantial shareholding it was considered he was in a position to exercise control over the director of the company, it remains a question of fact as to whether he did actually exercise independent control of the company. Also of importance are the particular circumstances of the company and its relationship with its shareholders. Mr McClintock explores this relationship in his affidavit and submissions, and denies he had any influential control over the company.

(c) In *McClintock v QBSA* [2011] QCAT 47 Member Jim Allen stated (my underlining added):

> [38] The decision for the Company to make voluntary disclosure to the ATO was only one option that it had. It could have waited for the ATO to investigate the deductibility of the expenses and then objected to the assessments by the ATO. The advantage gained by making voluntary disclosure was a substantial reduction in penalties of 80%. This decision created a liability in a company which was not trading and had no assets to pay the inevitable amended assessments. By section 252 of the *Income Tax Assessment Act* 1936 (Cth) the public officer shall be answerable for the doing of all such things as are required to be done by the Company under the Act and everything done by the public officer which he is required to do in his representative capacity shall be deemed to be done by the company. By the signing of the voluntary disclosure, Mr McClintock bound the Company to the issuing of amended assessments by the ATO at a time when he was not a director and when there was no evidence before the Tribunal that the director had any knowledge of the decision to make such disclosure. The Tribunal does not accept the evidence put to it by the Applicant and his counsel's submissions, that he has not exercised control over the Company; he has done so by executing the voluntary disclosure to the ATO. It is also clear that at least in respect of the voluntary disclosure there must have been some communication between Mr McClintock and Mr Ahrens. Mr Ahrens is stated to be the signatory on the letter dated 18 April 2008 forwarding the voluntary disclosure signed by Mr McClintock to the ATO. There is no need to determine whether the mere fact of being a substantial shareholder is sufficient to characterise an individual as an influential person. In this case Mr McClintock has exercised control over the Company by his dealing with the ATO and the Tribunal is satisfied he was within one year of the relevant company event happening an influential person for the Company.

(d) *In McClintock v QBSA* [2011] QCATA APL094-11 26 August 2011 Members Rick Oliver and Michelle Howard stated:

> [34] The Authority shifted ground somewhat in its submissions on this point in the appeal. It submitted that it "is unnecessary to go so far as to say that every shareholder with a "significant shareholding" is an influential person' in order to make a finding that Mr McClintock was an influential person. We accept that it is necessary to consider the facts of the particular case.
>
> [35] The Authority not only relies on the significant shareholding, but also the factual basis that he funded the costs of the company's administration; that Mr McClintock put into effect advice that he should resign as a director; a new director was appointed; and the decision was made to put the company into administration. The last point is contentious because the changeover of directors was outside the relevant 12 month period and the decision to put the company into administration was that of Mr Hughes. However, it is reasonable to infer the instructions would have come from Mr McClintock.
>
> [36] It is questionable whether the funding of the administration could be regarded as conducting the affairs of the company. The critical decision is the one made to put the company into administration and once that was done, the directors and shareholders, significant or otherwise, are not in any position to conduct the affairs of the company.

> [37] If the Authority's approach is adopted, then irrespective of the involvement in the company of the type of individual described in the definition, they would automatically become excluded individuals under s.56AC(2)(c). This includes any third party financier or senior employee. We consider this approach too broad. Generally there would need to be some evidence of the individual's position within the company to establish they were in fact in a position to exercise the necessary control.
>
> [38] It is trite to say that the directors of the company are responsible for its management. So much is provided for in [Section 198A of] the *Corporations Act 2001* (Cth) and is consistent with the general law [*Foss v. Harbottle* (1883) 67 ER 189].
>
> [39] The correctness of adopting the Authority's submission was queried by the former Commercial and Consumer Tribunal. In *Nation v. QBSA* [(2006) QCCTB 114], the Chairperson said:
>
> *"the BSA's decision relied on the applicant being a substantial shareholder. The fact that the definition of influential person includes by way of example a person who has a substantial shareholding is not determinative of the issue. It does not mean that in every case a substantial shareholder is an influential person. The Macquarie Concise Dictionary defines "influential" as "having or exerting great influence".*
>
> [40] As a general observation, we accept what the Chairperson said because there will be situations where, even with a significant shareholding an individual may not be able to exercise influence over the conduct of the company. Each case must be considered on its own facts.
>
> [41] However it is not relevant here because, given the level of Mr McClintock's shareholding, he was clearly in a position to control the affairs of the company if he so wished. There is no evidence that Mr McClintock attempted to exert influence over Mr Hughes conduct of the company even though he was in a position to do so by removing him. However, Mr Hughes was answerable to Mr McClintock for this actions.
>
> [42] Even though Mr McClintock was of the opinion that the company was finished and he had no reason to influence the conduct of its affairs he was in a position to do so, if he so chose. He is therefore caught by the definition of influential person.

31. Accordingly, it can be seen that divergent opinions have been expressed by different members. As the last decision was an appeal decision, it clearly holds the most weight as to the meaning of "influential person".

DECISION UNDER REVIEW – IS REVIEW SOUGHT OF THE EXCLUDED OR PERMITTED DECISION? ARE THERE ONE OR MULTIPLE EVENTS?

32. As QCAT has jurisdiction to review "the Decision Under Review", it cannot make decisions in relation to matters not being reviewed. This can be important to ensure that the correct decision is being reviewed.

33. In *Beerling v QBSA* [2011] QCAT 25 Member Bridget Cullen Mandikos stated:

> [12] A situation such as this, where there are 4 relevant events, which form the subject matter of 2 distinct review applications, warrants careful examination. There are serious occupational consequences leading to permanent exclusion for individuals that have been twice excluded for a relevant event (s58 QBSA Act). However, this is an application seeking review of the decisions rejecting Mr Beerling's applications to become a "permitted individual". Mr Beerling has not reviewed the decisions by the QBSA declaring him to be an "excluded individual".
> [14] As the excluded individual decision is not before QCAT on review, I am not able to make a decision with respect to whether the exclusion notices should have issued with respect to all 4 relevant events. Had these decisions been reviewed, it would have been open to the Member hearing those applications to determine whether the domino effect of DWBC's demise upon Mr Beerling's other companies was such that s56AC(6) of the QBSA Act could be interpreted to have been enlivened. That would involve a decision by the Member as to whether the term "company" as used in s56AC(6) of the QBSA Act must necessarily involve the same company, or whether it might be interpreted to apply to different companies that fall under the banner of one group, as is the case here.
> [15] As there is no application seeking review of the excluded individual decisions, I must necessarily accept that there are 4 relevant events that were the basis for the exclusion notices issued by the QBSA.

34. In relation to the multiple events, S. 56AC(6) provides:

> (6) An excluded individual for a relevant company event (the first event) does not also become an excluded individual for another relevant company event (the other event) if the first event and the other event are both consequences flowing from what is, in substance, the one set of circumstances applying to the company.

35. It can be seen that S. 56AC(6) applies were there are multiple events from one set of circumstances applying to the company. Clearly that must relate to one only company, and not different companies.

36. However, to argue for a different interpretation, Mr Beerling would have needed to review the Exclusion decisions (ie one for each company). As he did not, this issue was not open for debate in the Permitted Individual review.

SHOULD EXCLUDED INDIVIDUAL REVIEWS BE HEARD JOINTLY WITH PERMITTED INDIVUAL REVIEWS?

37. In *Gallagher v QBSA* (discussed above) a hearing was conducted jointly on both decisions.

38. In *McClintock v QBSA* (the hearing conducted by Member Jim Allen) the hearing listed for both decisions to be reviewed together was separated by the member, so that the Exclusion issue was to be determined separately and first.

39. Considerations as to whether or not these cases should be heard together include:

    (a) An Excluded Individual review raises different considerations from a Permitted Individual review, even though they arise from the same Relevant Event.

    (b) Even though they are based upon different criteria, much of the evidence is an Excluded individual review is relevant to a Permitted individual Review. However, a Permitted individual Review is much wider in ambit than an Excluded individual matter.

    (c) Review of an Exclusion decision, should be a short hearing, likely revolving around legal argument, whereas a Permitted individual decision usually requires a longer hearing covering a larger body of the evidence.

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