

# EXCLUDED INDIVIDUALS AND COMPANIES

To ensure public confidence in QBCC's licensing system and to promote security of payment in the building and construction industry, the *Queensland Building and Construction Commission Act 1997* (the Act) contains anti-phoenix provisions which prevent those responsible for poor financial management from running a business in the industry.

These provisions prevent people who:

- Become bankrupt or enter into a Part IX or Part X agreement
- Are a director, secretary or influential person for a construction company that experiences a company failure

from holding a QBCC Contractor, Nominee Supervisor or Site supervisor licence or from being in a position of control or influence for a QBCC licensed company.

These events bankruptcy of company failure are called insolvency events. The period of exclusion is three years from the date of the insolvency event.

A person involved in two separate relevant insolvency events may face life exclusion.

## UNDER WHAT CIRCUMSTANCES WILL A PERSON BECOME AN EXCLUDED INDIVIDUAL?

An excluded individual is someone that is a director, secretary or influential person for a construction company at any time up to two years before the company has, for the benefit of creditors, a provisional liquidator, liquidator, administrator or controller appointed or is wound up or ordered to be wound up for the benefit of the creditor.

An influential person for a company, is an Individual, other than a director or secretary of the company, who is in a position to control or substantially influence the company's conduct.

A person also becomes an "excluded individual" if they become bankrupt or take advantage of the laws of bankruptcy by entering into a Part IX or Part X agreement.

A construction company is a company that directly or indirectly carries out building work or building work services within 2 years of the insolvency event. If a person has two insolvency events, the second event does not count if it is from the same set of circumstances as the first event. For example, if someone is a director of a construction company that is wound up, and then becomes bankrupt as a result of guaranteeing loans to the company, the bankruptcy will not count as an insolvency event.

## WHAT IS THE EFFECT OF SOMEONE BEING AN EXCLUDED INDIVIDUAL?

The excluded individual's QBCC contractor, nominee supervisor or site supervisor licence will be cancelled and they will be unable to reapply for another licence until their exclusion period ends.

They also cannot be a director, secretary or influential person for a QBCC licensed company and they also cannot be in partnership with a licensed contractor

## UNDER WHAT CIRCUMSTANCES WILL A COMPANY BECOME AN EXCLUDED COMPANY?

A company becomes an excluded company if an excluded individual is a director, secretary or influential person for the company.

## WHAT IS THE EFFECT OF A COMPANY BEING AN EXCLUDED COMPANY?

The excluded company's QBCC licence will be cancelled unless the excluded individual stops being a director, secretary or influential person.