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Projects in which GHD and AJP are currently engaged in Malaysia include: Kinta Dam Project, Ipoh; Langkawi Eco-tourism Project; and Bintulu Urban and Regional Masterplanning Study.

Lawrence Hargrave to open

A bridge built to replace a stretch of spectacular coastal road plagued by rockfalls south of Sydney is scheduled to open this month. Lawrence Hargrave Drive was closed to traffic between Clifton and Coalcliff in July 2003 after rockfalls made driving dangerous. The NSW government announced last year it would build a \$47 million bridge to provide residents with a reliable and safe road. The bridge is scheduled open mid-December, opening up northern Wollongong suburbs that have been affected by the closure. The opening is two months ahead of schedule. The old road was replaced by two bridges which run parallel to coast, about 30m to the east. One spans the southern headland, the other the middle headland, with both connecting to form a 665m-long bridge. The route then returns to the existing alignment through the northern headland. A cycleway and pedestrian pathway along the bridges has been included.

National to acquire AH Plant

National Hire Group will buy Australian Highway Plant Services – operating as AH Plant Hire – for \$115 million. National Hire will also purchase any additional businesses within the Nylex group of companies associated with the hire of plant and equipment. This will provide National Hire with additional regional opportunities following on from the integration of The Cat Rental Stores (WA) and Allight Holdings. “Benefits include the substantial entry into the civil and road construction markets in addition to expanding our footprint and capabilities on the east coast of Australia through the existing 20 AH Plant Hire branches,” says National Hire managing director Stephen Donnelley. AH Plant Hire supplies rental equipment to the civil and road construction markets and operates in 20 service centres throughout the eastern states and South Australia.

Multiplex wins tower contract

Multiplex Constructions has been awarded the job of building a 56-level tower in the heart of Sydney, at a cost of \$220 million. Stage two of the Regent Place mixed project will comprise 456 apartments and also include commercial, retail and leisure facilities. The agreement extends Multiplex Constructions’ involvement in the \$600 million dollar project. It is currently building the \$100

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Early grave for Qld Act

By KARYN REARDON

A DECISION of the Queensland Supreme Court delivered on 12 October 2005 opens the court’s doors to applications to set aside adjudicator’s decisions. Is this the death knell for adjudication in the Queensland construction industry?

The Building and Construction Industry Payments Act (Queensland Act) came into effect in Queensland just over one year ago. It is very similar to NSW’s Building and Construction Industry Security of Payments Act (NSW Act).

Since the NSW Court of Appeal’s unanimous decision in *Brodyn t/as Time Cost and Quality v. Davenport & Anor*, relief in the nature of certiorari (quashing adjudicators’ decisions) has not been available in NSW.

The NSW Court of Appeal said that adjudicators’ determinations under the NSW Act were “provisional determinations” and ought be “given effect to with minimum delay and minimum court involvement”. The NSW Court of Appeal also said that it was “by no means clear that an adjudicator is a tribunal exercising governmental powers, to which the remedy in the nature of certiorari lies”.

The Queensland Position

In contrast to the approach taken by the NSW Court of Appeal, Justice Dutney of the Queensland Supreme Court has decided that the Queensland Act is subject to Queensland’s Judicial Review Act 1991 (JRA).

Decisions to which the JRA applies are decisions “of an administrative character made ... under an enactment”, and a person may apply for relief if that person’s “interests are adversely affected by the decision.”

Although Justice Dutney decided that judicial review of adjudicators’ decisions is available, Justice Dutney did not explain why the interests of an unsuccessful party to a Queensland adjudication are “adversely affected by the decision”, when the NSW Court of Appeal has described of equivalent determinations as merely “provisional”.

Nor did he explain why Queensland adjudicators’ decisions are of an “administrative character” when the NSW Court of Appeal says that adjudicators do not exercise “governmental powers”.

The consequence of Justice Dutney’s decision is that applications may be made to the Queensland courts for judicial review of adjudicators’ decisions on many grounds including denial of natural justice, procedural non-compliance, lack of jurisdiction or evidence, and error of law (not necessarily on the face of the decision).

In another potential anomaly between Queensland and NSW, Justice Dutney also decided that the matter said to be grounds for relief was a mere question of fact, and therefore not a ground for judicial review.

The particular ground for relief was whether the adjudicator had erred in law by failing to have regard to a document described as “Dayworks Valuation June 05”, which was said to be attached to the respondent’s payment schedule.

The adjudicator decided that this document was not attached to the payment schedule, and that the respondent’s efforts to refer to this document by its adjudication response were attempts to introduce new reasons for non payment (rather than further particulars of reasons already advanced). Justice Dutney found that the question of whether or not the dayworks schedule was attached to the payment schedule was merely a question of fact (and if wrong, not a ground for judicial review).

He failed to consider *Multiplex v. Luikens*, or whether the Queensland Act’s requirement that reasons be “stated” imposes a higher level of particularity upon Queensland payment schedules.

Future for Queensland Act

The delay and uncertainty that is bound to follow this decision can only frustrate future claimants who successfully refer payment claims to adjudication under the Queensland Act.

However, there are murmurings that parliament is considering excluding the Queensland Act from the JRA. This is surely the only way to ensure the Queensland Act achieves its intended outcomes.

Karyn Reardon is senior associate, Ebsworth & Ebsworth, national councillor of Institute of Arbitrators & Mediators Australia and co-author of The Adjudicator’s Guide.

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