

**Parsons Brickerhoff Australia Pty Ltd v Downer EDI Works Pty Ltd [2010] NSWSC 1295 New South Wales Supreme Court 12 November 2010.**

**FACTS:**

Downer EDI Works Pty Ltd (“the Defendant”) engaged Parsons Brickerhoff Australia Pty Ltd (“the Plaintiff”) on a sub-consultancy basis to provide design consultancy services in relation to an upgrade of a passenger rolling stock production facility in New South Wales.

The Plaintiff sent the Defendant a Statutory Payment Claim by fax to both the Defendant’s offices in Melbourne and the site office located in New South Wales.

The Defendant argued that these addresses were not its ordinary place of business and failed to provide a Statutory Payment Schedule within the 10 days prescribed by the Building and Construction Industry Security of Payment Act (“the Act”).

**ISSUES:**

Whether either the Melbourne or Sydney addresses were the “ordinary place of business” of the Defendant for the purposes of section 31 of the Act?

**FINDING:**

The Court found that both the Sydney and Melbourne addresses were the “ordinary place of business” of the Defendant as it is possible to have more than one ordinary place of business [at 8].

**QUOTE:**

Hammerschlag J [at 16]:

*“...I think that the ordinary place of a person’s business includes any place at or from which the person usually engages in activities which form a not insignificant part of the person’s business...[at 18] ...the Melbourne office is the seat of the chief executive officer and chief financial officer. It is the place from where business management and support services are provided for its business operations nationally...It is thus a nerve centre and what might be called as the head office of the defendant’s national business...[at 21] This finding renders it unnecessary to deal with the {Sydney} office. It does however seem to me that it too would qualify. From there the defendant administers and undertakes projects which are clearly not an insignificant part of its ordinary business.”*

**IMPACT:**

The case illustrates the Court’s acceptance of a broad interpretation of what constitutes the business’ ordinary place of business.

Contract administrator's need to ensure however that the service of payment claims under the Act, are properly served on the ordinary place of business to ensure the validity of any decision sought under the claim.

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Jim Doyle  
1800 888 783

[jdoyle@doylesconstructionlawyers.com](mailto:jdoyle@doylesconstructionlawyers.com)  
[www.doylesconstructionlawyers.com](http://www.doylesconstructionlawyers.com)