



Is Your Construction Contract Valid and Enforceable?

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If you're an unlicensed electrician or an unregistered engineer, then maybe not - at least according to a recent decision of *Agripower Australia Ltd v Queensland Engineering and Electrical Pty Ltd & Ors* ("**AgriPower decision**").

The Supreme Court determined that an adjudication decision made under the *Building and Construction Industry Payment Act 2004* (Qld) ("**BCIPA**") was void, due to the illegal construction contract that underpinned the payment claim.

The construction contract was found to be illegal because the contractor:

- conducted a business or undertaking that included the performance of electrical work while unlicensed, in breach of the *Electrical Safety Act 2002* (Qld) ("**ES Act**"); and
- performed professional engineering services while unregistered, in breach of the *Professional Engineers Act 2002* (Qld) ("**PE Act**").

There is no provision in the ES Act that expressly prohibits a contract being entered into, or performed, in contravention of the ES Act. The Court found that in considering the electrical safety of members of the public, there is a strong indication that a contract entered into with an unlicensed person is prohibited.

In the PE Act, there is an express provision that disentitles an unregistered engineer to payment under their contract when, in performing professional

engineering services, they allowed themselves to be held out as a registered professional engineer.

The Court noted that the BCIPA operates only when there is a construction contract of which the terms as to payment are enforceable.

TAKE HOME

1. If you are unregistered or unlicensed, then you should consider what steps are required to get registered or licensed and under what circumstances you will need it.
2. Read your relevant legislation, particularly regarding unregistered or unlicensed offences. You'd hate to perform all of that work and not be entitled to claim for payment (or enforce your contract at all).

If you have any further queries about your construction contracts, entitlements to payment, and licensing or registration requirement for your profession, then please do not hesitate to contact ClarkeKann.

FOR MORE INFORMATION, PLEASE CONTACT:



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