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## The Queensland Court of Appeal overturns decision of Agripower applying ordinary meaning of the word ‘Land’

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### *J & D Rigging Pty Ltd v Agripower Australia Ltd & Ors* [2013] QCA 406

On 20 December 2013, the Queensland Court of Appeal overturned a controversial decision in *J & D Rigging Pty Ltd v Agripower Australia Ltd & Ors*<sup>1</sup> (**Agripower decision**). That decision excluded work undertaken on a mining lease from the definition of ‘Construction Work’ under the *Building and Construction Industry Payments Act 2004* (Qld) (**BCIPA**) with the result that BCIPA did not apply if the work was undertaken on a mining lease.

Since being handed down on 25 June 2013, the original decision had caused great uncertainty for participants and adjudicators undertaking projects on mining leases as to whether BCIPA will apply in those circumstances.

### Original Decision

For BCIPA to apply, there must be a ‘Construction Contract’ to undertake ‘Construction Work’.

Construction work is defined within BCIPA to include:

*‘dismantling of buildings or structures, whether permanent or not, forming, ... part of land’.*

Justice Wilson considered whether certain mining plant and transportable structures ‘formed part of the land’ within the meaning of BCIPA and therefore ‘Construction Work’.

In finding that a mining lease did not give rise to an interest in the land, her Honour determined that:

- a. ‘land’ within s 10 of BCIPA does not include mining leases;
- b. the plant and structures may have formed part of the mining leases; and
- c. the plant and structures did not ‘form part of land’ within the meaning of s 10.’

This finding flowed from the application of a technical, legal meaning of 'land' and the application of the law of fixtures.

The result was that plant and structures brought on to the land as a result of the rights granted by a mining lease could not 'form part of the land' and the work dismantling the plant and structures was not 'Construction Work'.

The original decision would have meant that no work undertaken under rights granted by a mining lease would have been able to be claimed under BCIPA. The practical effect of *Agripower* was to require parties to make enquiries into the underlying ownership of the land and establish that the work was done for the beneficial owners to ascertain whether a valid payment claims could issue, an issue alluded to on appeal.

## The Appeal

The Court of Appeal, while delivering separate reasons for judgment, unanimously rejected the approach of interpretation that applied a technical, legal meaning to the word 'land', and applied the law of fixtures. Instead, the Court of Appeal preferred the natural meaning of the word 'land'. In considering this issue, Justice Applegarth, with whom the other judges agreed, said at [25]:

*'BCIPA reallocates financial risk between the parties to a construction contract to which it applies. Section 10 should be interpreted so that its ordinary words are able to be applied by parties to determine whether or not a contract is subject to BCIPA. If possible, the statute should be interpreted so that it is capable of being applied in a practical way by parties to a construction contract or a proposed construction contract.'*

In adopting this approach, Justice Applegarth clarified that the ordinary meaning of the definition of 'Construction Work' does not depend where the work is undertaken, at [53]:

*'...while a mining lease may not be legally categorised as "land", the actual land on which the building or structure is affixed does not change its character by reason of the existence of a mining lease. The physical characteristics of the thing that is to be constructed or that has been constructed and the thing's relationship to the land determine whether it forms part of land'.*

Accordingly, the focus is on the work and whether it is physically attached to the land, as distinct from an analysis of legal title.

## Conclusion

The uncertainty and confusion generated by the *Agripower* decision has been removed and, once again, construction work undertaken on a mining lease will fall within BCIPA.

While the *Agripower* decision will serve as an interesting side note concerning the interpretation of BCIPA, the approach taken by the Court of Appeal reduces the need for a legal background in interpreting BCIPA and means that the interpretation given by the courts will reflect the ordinary meaning of the words used.

<sup>1</sup> *J & D Rigging Pty Ltd v Agripower Australia Ltd & Ors* [2013] QCA 406

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