



JONES DAY  
**COMMENTARY**

## **RIGHTS OF CONTRACTORS IN AUSTRALIAN MINING INDUSTRY DISMANTLED AND REMOVED UNDER SECURITY OF PAYMENT ACT**

Contractors carrying out work on mining leases in Australia have had their commercial position weakened by a recent decision in the Supreme Court in Queensland.

The decision by Justice Margaret Wilson in *Agripower Australia Ltd v J & D Rigging Pty Ltd & Ors* is likely to have significant commercial consequences for the mining and construction industries ahead of the finalisation of a review of the Security of Payment Act in Queensland.

The *Building and Construction Industry Payments Act 2004* (Qld) provides for a fast-track adjudication process for payment claims in relation to construction work carried out, or related goods and services supplied, under construction contracts. There is similar legislation in the other States and Territories of Australia.

The entitlement to make a payment claim, and receive an adjudication and speedy payment, under

the legislation depends on the claim being a claim for payment for carrying out of “construction work”, or supply of “related goods and services”, under a “construction contract” within the meaning given to those terms in the legislation.

In its relevant parts, the definition of “construction work” requires the relevant work to be carried out in relation to works, buildings or structures “forming, or to form, part of land”. The legislation expressly excludes from “construction work” the drilling for, or extraction of, oil or natural gas and the extraction of minerals (including underground works).<sup>1</sup>

The main issue for determination by the Court was whether mining plant that had been erected on a mining lease in Queensland formed part of land,

<sup>1</sup> In Western Australia, the legislation excludes from “construction work” work that is “constructing any plant for the purposes of extracting or processing oil, natural gas or any derivative of natural gas or any mineral bearing or other substance” (see S4(3) of the *Construction Contracts Act 2004* (WA)).

and whether work involving the dismantling and removal of the plant was “construction work” for the purposes of the legislation.

Justice Wilson decided that the dismantling of the plant was not “construction work” under a “construction contract” for the purposes of the Act. Relying on a recent High Court decision (relating to stamp duty on assets on land the subject of a mining lease), Justice Wilson held that the mining lease was not “land” within the meaning of *Building and Construction Industry Payments Act 2004* (Qld).

Justice Wilson also decided that the mining plant was required to be removed prior to the expiry of the lease, was not affixed to the land but only stabilised on the land, and did not add some additional feature to the land. Therefore, the mining plant might have formed part of the mining lease but did not form part of the “land”.

The decision will not necessarily prevent the Act from applying to work carried out on works, buildings or structures on mining leases where the structures are not required to be removed at the expiry of the mining lease and are affixed to (rather than just stabilised on) land, including where the owner of the mining lease holds an interest in the land (in addition to holding the mining lease).

Finally, the decision does not affect the application of the *Subcontractors' Charges Act 1974* (Qld) as it is expressed to apply to certain work carried out in relation to mining plants.

## LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com](http://www.jonesday.com).

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