

# NSW Unlicensed Building Work: Important Legal Cases

In residential building, the engagement of a licensed builder is not just a matter of best practice, but a legal necessity under the [Home Building Act 1989](#) (NSW). The Act, a cornerstone of New South Wales' building legislation, stipulates stringent licensing requirements, aiming to safeguard homeowners against the pitfalls of substandard workmanship and to uphold industry standards. However, navigating the complexities of building contracts and understanding the implications of unlicensed building work can be daunting for many homeowners.

## Navigating Unlicensed Residential Building Work

This article discusses the legal landscape surrounding unlicensed residential building work in New South Wales and analyses some vital legal cases. We endeavour to give homeowners a clearer understanding of their rights and the legal ramifications of engaging with unlicensed builders. Each case selected for this analysis sheds light on specific legal principles and echoes the broader judicial sentiment towards protecting the interests of homeowners in the state.

As we delve into these pivotal cases, we will explore the intricacies of the Home Building Act, unravel the judicial interpretations of section 4 of the Act, and identify the consequences faced by those who circumvent its mandates. This article is intended as a practical guide to empower homeowners with basic knowledge of unlicensed building and for owners to get legal advice from a [specialist residential construction Lawyer](#).

## Section 4: Unlicensed Contracting in NSW

The cornerstone of residential building regulation in New South Wales is the *Home Building Act 1989* (NSW). This Act lays down the legal framework governing residential building work, emphasising the necessity of licensing for builders and tradespeople. Its primary objective is to ensure that all residential construction, renovation, and repair work meets the requisite quality and safety standards, thereby protecting homeowners and maintaining the integrity of the building industry.

Under the Act, any person or entity undertaking residential building work valued at over \$5,000 (including labour and materials) must hold a valid licence issued by NSW Fair Trading. This requirement spans a broad spectrum of work, encompassing construction, alterations, renovations, repairs, and even certain types of decorating and waterproofing. The licensing regime enshrined in the Act serves multiple purposes: it establishes a baseline of competence and credibility for

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builders, provides a mechanism for accountability, and facilitates recourse for homeowners in the event of disputes or substandard work.

A critical aspect of the Act is its provisions concerning statutory warranties. These warranties, implied in every contract for residential building work, mandate that the work be completed with due care and skill, be fit for its intended purpose, and be completed within a reasonable time frame. These warranties offer significant protection to homeowners and are a key consideration in legal disputes concerning building work.

The Act also delineates the responsibilities and obligations of both parties in a building contract. It mandates specific contractual requirements, such as a detailed work description, the agreed price (or how it will be calculated), and a clear timeline. These stipulations ensure clarity and fairness in the builder-homeowner relationship, minimising the potential for misunderstandings and disputes.

Breaches of the Act, such as carrying out work without a proper licence, can lead to severe penalties for contractors, including substantial fines and legal action. For homeowners, engaging with an unlicensed builder not only poses risks of poor workmanship and potential safety hazards but also limits their avenues for legal recourse and may impact their home insurance, warranty claims, and ability to sell their property.

## Case Analyses of Leading Authorities on Unlicensed Contracting

Each of the following cases provide insights into the judicial interpretation of the Act, highlighting significant legal principles and their implications for homeowners in New South Wales. These cases form legal precedent, guiding legal professionals and laypersons in navigating the complexities of building law.

### Singh v Zamaneh 30 August 2023

Singh v Zamaneh [2023] NSWCATAP 248

S Thode, Principal Member, J S Currie, Senior Member

**Background:** The case of Singh v Zamaneh emerged from a residential construction dispute where the builder, Zamaneh, was found to be unlicensed.

**Legal Issues:** Central to the dispute was the enforceability of the contract, given the Owner's lack of evidence. The Tribunal's decision highlighted the need for parties to provide sufficient evidence to support their claims. The Owner's failure to prove his case led to the dismissal of his application for a money order.

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**Court's Decision:** The Tribunal ruled to dismiss the Owner's money order claim. The Tribunal found no satisfactory evidence that the Builder breached the contract, nor was there evidence of loss or damage suffered by the Owner.

**Legal Principle Established:** The Builder performed work without the necessary licence, impacting the legality and enforceability of the contract.

The case illustrated the complexity around contract variations, especially regarding mutual agreement and [proper documentation](#). There needed to be more clarity regarding the work contracted and potential variations to the contract, notably whether the scope of work and contract sum had been reduced. It needed to be clarified exactly what work the Builder had done or agreed to do, which contributed to the difficulty in resolving the dispute.

**Implications for Homeowners:** Determining the amount owed by the Owner to the Builder involves considering the original contract price, payments made, and the disputed contract variation.

## Brodyn Pty Ltd v Davenport 03 November 2004

Brodyn Pty Ltd v Davenport [2004] NSWCA 394

Mason P, Giles and Hodgson JJA

**Background:** In Brodyn Pty Ltd v Davenport, the dispute revolved around a building project where Brodyn Pty Ltd, the builder, claimed payments for work done. However, questions arose regarding the validity of the building contract and compliance with licensing requirements.

**Legal Issues:** The primary legal issue concerned the statutory requirements for valid building contracts and the implications of non-compliance with licensing regulations.

**Court's Decision:** The court held that while the builder completed the work, the lack of proper licensing invalidated the contract. The decision emphasised the importance of adhering to the statutory requirements outlined in the Home Building Act.

**Legal Principle Established:** This case affirmed that compliance with licensing regulations is a formality and a legal imperative. The ruling clarified the invalidity of contracts and the inability to claim payments under such agreements when licensing requirements are not met.

**Implications for Homeowners:** For homeowners, this case highlights the potential financial and legal implications of engaging with unlicensed builders. It illustrates the importance of ensuring that all contractual and licensing requirements are met before commencing any building work.

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## Capital Constructions Pty Ltd v Dimitropoulos 27 April 2018

Dimitropoulos v Capital Constructions Pty Ltd; Capital Constructions Pty Ltd v Dimitropoulos [2018] NSWCATAP 100

M Harrowell, Principal Member, R Titterton, Principal Member

**Background:** The dispute in Capital Constructions Pty Ltd v Dimitropoulos arose when Capital Constructions, an unlicensed builder, sought payment for residential building work performed for Dimitropoulos. The work was completed, but the licensing issue came into question post-completion.

**Legal Issues:** The case centred on whether the builder could enforce the contract and claim payment despite being unlicensed when the work was performed.

**Court's Decision:** The court ruled against Capital Constructions, holding that the absence of a valid licence at the time of the contract and during the performance of the work rendered the contract unenforceable. The ruling was consistent with the legislative intent of the Home Building Act to protect homeowners.

**Legal Principle Established:** This ruling reinforced the principle that the enforceability of a contract for residential building work is contingent upon the builder's compliance with licensing requirements throughout the contract.

**Implications for Homeowners:** This case underscores the ongoing obligation of builders to maintain valid licensing and the right of homeowners to refuse payment when this condition is not met. It highlights the protective measures offered by the law to homeowners against unlicensed building practices.

## Falzon v Lockrey 06 February 2023

Falzon v Lockrey 06 February 2023  
[2023] NSWCATAP 32

G Blake AM SC, Senior Member, G Burton SC, Senior Member

**Background:** The dispute in Falzon v Lockrey involved a homeowner, Falzon, who engaged Lockrey, a builder, for residential renovations. The parties entered a contract for constructing a double-story brick veneer dwelling for \$442,689.53. The homeowners issued a termination notice to the builder, citing failure to rectify breaches and comply with the contract.

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**Legal Issues:** The Tribunal's decision suggests that Section 10 is intended to prevent unlicensed contractors from enforcing contracts, not licensed contractors who subsequently use unlicensed subcontractors. This is because the focus of Section 10 is on the conditions at the time of contract formation, not subsequent actions.

**Tribunal's Decision:** The Tribunal assessed damages for defective work and amounts owed, determining the homeowners owed the builder \$73,698.96. The builder was ordered to provide all necessary certifications for an occupation certificate.

**Legal Principle Established:** There is a notable distinction between who can contract the work and who performs it. A contractor's licence holder is allowed to contract for all work, including subcontracting parts of it, provided they were licensed when the contract was made.

**Implications for Homeowners:** The homeowners' appeal focuses on the alleged use of unlicensed subcontractors. However, based on the interpretation of Section 10, this issue, while potentially a breach of the HB Act, does not affect the enforceability of the original contract between the homeowners and the builder. Homeowners should expressly add provisions in their contract for all trades and workers to be duly licensed for their trade works if the Owner wants the work performed by a licensed tradesman.

## Mills v Walsh 08 December 2022

Mills v Walsh 08 December 2022  
[2022] NSWCA 255

Bell CJ, White and Brereton JJA

**Background:** The case involving Mr. David Mills, Ms. Crystal Lu Zhang, and JSW Property Projects Pty Ltd, helmed by Mr. Haiden Walsh, casts a spotlight on the complexities of engaging with unlicensed contractors for home renovations. The dispute arose from a renovation project for a property at 150 Sydney Street, North Willoughby, where the homeowners paid \$500,000 to JSW, unaware of its unlicensed status.

**Legal Issues:** Central to the legal battle were contractual clarity, misrepresentation, and loss assessment questions. The homeowners contended that they were misled into believing JSW was licensed, a belief that influenced their decision to contract. The focus was whether the misleading conduct led to a recoverable monetary loss for the homeowners.

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**Court's Decision:** While the court acknowledged that Mr. Walsh had engaged in misleading and deceptive conduct, it concluded that the homeowners failed to demonstrate that the value of the work performed was less than what they paid. Consequently, despite proving the misleading conduct, the homeowners could not recover their financial outlay.

**Legal Principles Established:** This case underscores several fundamental legal principles: the importance of objective evidence in determining contractual parties, the gravity of misleading and deceptive conduct under Australian Consumer Law, and the burden on plaintiffs to prove the extent of their loss.

**Implications for Homeowners:** This case serves as a cautionary tale for homeowners. It highlights the necessity of due diligence in verifying a contractor's licensing status. The decision stresses the importance of clear, documented agreements, and a keen understanding of one's rights under consumer protection laws. Homeowners must know that proving a contractor's misrepresentation is only half the battle; they must also demonstrate quantifiable loss to recover payments. This case illustrates the potential risks of unlicensed contracting, emphasising the need for homeowners to be vigilant, informed, and prepared to substantiate their claims in legal disputes.

## Clark v Jubian 02 March 2016

Jubian v Clark; Clark v Jubian [2016] NSWCATAP 56

S Higgins, Principal Member, S Thode, Senior Member

**Background:** Under the Home Building Act, a builder must hold a valid contractor licence to enter and continue a contract for residential building work. If the builder's licence is suspended, cancelled, or surrendered, their authority to perform the contracted work or to subcontract it to another licensed builder is also invalidated.

**Legal Issues:** The dispute centred on the builder losing his licence during the build. The builder, at the time of entering the contract on 12 February 2012, was licensed. However, the builder's licence was surrendered during the contract period, impacting their ability to fulfil the contract.

**Tribunal's Decision:** Following the builder's surrender of their licence, the homeowners commenced proceedings before the Tribunal, seeking damages for the defective work and ultimately terminating the contract based on the builder's repudiation. The Tribunal found that the homeowners were justified in terminating the contract due to the builder's repudiation and that the reasons for the builder surrendering their licence were irrelevant to this conclusion.

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**Legal Principle Established:** This case reinforced the principle that a builder's licensing status is integral to the validity of a building contract, highlighting the Act's role in protecting homeowners.

**Implications for Homeowners:** The case illustrates that homeowners may terminate a contract based on the builder's repudiation. In this context, repudiation refers to the builder's inability to fulfil contractual obligations due to losing their contractor licence.

## Sunshine East Pty Ltd v Cbem Holdings Pty Ltd 29 June 2023

Sunshine East Pty Ltd v Cbem Holdings Pty Ltd [2023] NSWSC 744

Fagan J

**Background:** The case of Sunshine East Pty Ltd v Cbem Holdings involved a dispute over payment for residential building work, with issues surrounding the licensing and insurance of the contractor.

**Legal Issues:** Key to the dispute was whether the contractor's licence and failure to ensure disentitled the contractor from enforcing its successful Adjudication Application.

**Court's Decision:** The court ruled that the contractor was entitled to payment. The surrounding circumstances of this case entitled the contractor to pay.

**Legal Principle Established:** This ruling highlighted the importance of ensuring that homeowners ensure that their contracts are clear and that responsibilities and obligations for licensing and insurance are adequately documented.

Notably, the Court determined that despite the contractor needing to hold the appropriate licence for the work, the claimant could enliven their entitlement under the *Building and Construction Industry Security of Payment Act 1999* (NSW).

**Implications for Homeowners:** This case broadens the scope of diligence homeowners require. Owners should not agree to be responsible for licensing and insurance of works. This method to try and reduce costs may lead to increased costs, as in this case.

Owners should be mindful that a contractor or builder may enliven the Security of Payment law to obtain a quick interim payment.

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## Takeaway Legal Principles and Practical Tips

### The Imperative of Licensing Compliance

A recurring theme in these cases is the unequivocal necessity of licensing compliance under the Home Building Act 1989 (NSW). Courts and the Tribunal consistently underscore the legal mandate for builders and contractors to possess the appropriate licences, aligned with the specific nature of their work. This requirement is not merely procedural but serves as a fundamental criterion for the enforceability of building contracts.

However what is also clear is that a builder or contractor failing to hold an appropriate licence does not automatically disintegrate all the builders to payment. What the cases show is the complexity of this area of law.

### Due Diligence and Verification

The cases collectively stress the importance of due diligence by homeowners. Verifying the licensing status and the scope of licensure of builders is not just advisable but essential. This diligence extends beyond the mere existence of a licence; it requires assessing whether the licence covers the specific type of work contracted. Homeowners must exercise this due diligence before entering into contractual agreements to mitigate risks associated with unlicensed building work.

### Protective Framework of the Home Building Act

These case analyses also illuminate the protective framework of the Home Building Act. The Act is not just a set of guidelines, but a legal instrument that provides recourse to homeowners in non-compliance by builders. This protective stance is pivotal in upholding the integrity of the residential building sector and safeguarding homeowner interests.

### Practical Implications for Homeowners

The legal principles derived from the analysed cases have significant practical implications for homeowners in New South Wales. This section aims to translate these principles into actionable advice, helping homeowners navigate the landscape of residential building work with an informed and vigilant approach.

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## Verifying Builder's Licensing Status:

**Key Action:** Prior to engaging with a builder, homeowners must conduct thorough checks to [verify the builder's licensing status](#). This can be done through the NSW Fair Trading's online register, which provides up-to-date information on licensed builders.

**Importance:** Ensuring that a builder is appropriately licensed for the specific type of work is a legal requirement and a critical step in protecting oneself from potential legal and financial pitfalls.

## Understanding Contractual Rights and Obligations:

**Key Action:** Homeowners should familiarise themselves with the building contract terms and understand their rights, particularly in relation to statutory warranties and the scope of work. Owners should get their contracts reviewed by a specialist residential building lawyer.

**Importance:** Being well-versed in contractual obligations and rights enables homeowners to identify and address deviations from the agreed terms, including issues related to unlicensed work.

## Seeking Legal Recourse in the Case of Unlicensed Work:

**Key Action:** If a homeowner discovers they have engaged an unlicensed builder, it is crucial to [seek legal advice](#) immediately. The legal avenues include contract nullification, reclaiming payments, and seeking compensation for losses.

**Importance:** Timely legal intervention can mitigate further financial losses and ensure homeowners can exercise their rights as protected under the Home Building Act.

## Maintaining Documentation and Records:

**Key Action:** Keep comprehensive records of all communications, contracts, and work progress. Documentation should include the builder's licence details, contract agreements, payment receipts, and correspondence.

**Importance:** In a dispute or legal proceedings, well-maintained records are essential evidence to support the homeowner's case.

## Implementing Preventative Measures:

**Key Action:** Beyond verifying licensing, homeowners should take additional preventative measures such as obtaining references, reviewing past work, and ensuring that all agreements are formalised in writing.

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**Importance:** These steps provide an added security layer, helping homeowners make informed decisions and engage with reputable and compliant building professionals.

## We can Help

If you are a homeowner and have engaged a builder or contractor who needs to be correctly licensed, please call for a free phone consultation. We are specialists in [residential building law](#) and have substantial experience with advising owners on the enforcement of their rights in the Tribunal and [defending claims in Adjudication](#).

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