

**Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd
(ACN 081 022 380) & ORS (B34/2020)**

Court appealed from: Queensland Court of Appeal
[2019] QCA 238

Date of judgment: 1 November 2019

Special leave granted: 5 June 2020

New Acland Coal Pty Ltd (“Acland”) is a mining company that applied for new mining tenements (and amendments to certain other statutory instruments) to augment its existing rights. Oakey Coal Action Alliance Inc (“Oakey”) was one of several objectors to the grant of those new tenements. The Land Court Member who heard this dispute recommended against the granting of Acland’s applications. Acland then successfully sought the judicial review of that decision, with Justice Bowskill remitting the matter, subject to the following qualifications:

- a) issues concerning groundwater, as well as issues about intergenerational equity affected by groundwater, were not to be the subject of the new hearing;
- b) issues about noise (subject to a minor qualification) were excluded from consideration); and
- c) other findings made by the original Member would bind the parties.

The effect of these qualifications was to limit the issues upon rehearing.

The Land Court then reconsidered the matter and in doing so Kingham P refused Oakey’s application for an adjournment, pending the outcome of an appeal against Bowskill J’s orders. (Oakey did not appeal that refusal.) On 7 November 2018 the Land Court made final orders in favour of Acland.

Meanwhile Oakey had appealed (and Acland cross-appealed) from Justice Bowskill’s orders. In September 2019 the Court of Appeal upheld Acland’s cross-appeal, while it also found that Justice Bowskill was correct about the scope of the Land Court’s jurisdiction. The effect of this result was to confirm the correctness of Bowskill J’s order to set aside the Member’s orders. That left for consideration however her Honour’s other orders, including the order for a rehearing.

The Court of Appeal noted that although Oakey had applied in the Land Court for the rehearing to be adjourned, that application was refused. (Oakey also did not apply to the Court of Appeal for a stay of the orders made by Bowskill J.) As a result, orders 4, 5, 6, 7 and 8 of her Honour’s orders had been performed. Those orders having been spent, the Court of Appeal found that there would be no utility in setting them aside. The Court of Appeal further found that the setting aside of the order for rehearing would accomplish nothing. It was also not open to interfere with the final orders made by Kingham P, or with the decision of the delegate.

The grounds of appeal are:

- The Court of Appeal erred in concluding that, although the findings of the Third Respondent were affected by apprehended bias:
 - a) there was no utility in setting aside orders 4 - 8 made by Bowskill J in the Supreme Court on 28 May 2018;
 - b) it was not open to it to interfere with the orders made by the Land Court by Kingham P on 7 November 2018, which were binding upon the parties;
 - c) it should not remit the matter to the Land Court for a further hearing that was unaffected by the findings of the Third Respondent.