



HIGH COURT OF AUSTRALIA

3 February 2021

OAKEY COAL ACTION ALLIANCE INC v NEW ACLAND COAL PTY LTD & ORS
[2021] HCA 2

Today the High Court unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland. The issue raised by the appeal was whether, after finding that recommendations made by the Land Court of Queensland ("Land Court") were affected by apprehended bias, the Court of Appeal ought to have referred the entirety of the matters to which the recommendations related back to the Land Court for full reconsideration, instead of making consequential orders limited to a declaration that procedural fairness had not been observed.

New Acland Coal Pty Ltd ("New Acland") operated an open-cut coal mine near Oakey in Queensland. In seeking to expand the mine, New Acland applied for additional mining leases and for an amendment to its existing environmental authority. Oakey Coal Action Alliance Inc ("Oakey") and others lodged objections to each application. The Land Court recommended that both applications be rejected, including on the basis of issues relating to noise, groundwater and intergenerational equity ("Land Court's first decision"). On judicial review, the Supreme Court of Queensland rejected New Acland's arguments that the Member's conduct during the hearing gave rise to apprehended bias, but held that the recommendations were affected by errors of law and that certain matters should be referred back to the Land Court for further consideration by a different Member. In remitting matters to the Land Court for reconsideration, the Supreme Court directed that the parties were bound by the findings and conclusions reached in the Land Court's first decision on all issues other than those affected by errors of law, and also by the factual findings made in relation to noise.

Following reconsideration by a different Member, the Land Court made recommendations that New Acland's applications for mining leases and an amendment to its environmental authority be approved subject to conditions ("Land Court's second decision"). The amendment to New Acland's environmental authority was subsequently granted by a delegate of the Chief Executive of the Department of Environment and Science ("Chief Executive"). On appeal from the Supreme Court's decision, the Court of Appeal allowed a cross-appeal by New Acland, holding that the recommendations made in the Land Court's first decision were affected by apprehended bias. However, rather than setting aside the qualified order for referral back made by the Supreme Court and remitting the matter to the Land Court for full reconsideration, the Court of Appeal made consequential orders limited to a declaration that the Land Court failed to observe procedural fairness in making the first decision.

Following a grant of special leave to appeal to the High Court, Oakey argued that as the Land Court's second decision was affected by the same apprehended bias found by the Court of Appeal to have affected the Land Court's first decision, being based in part on the first decision-maker's findings and conclusions, the Court of Appeal should have set aside the Land Court's second decision and the Chief Executive's subsequent decision to approve the variation to New Acland's environmental authority. The High Court held that by adopting the findings and conclusions in the Land Court's first decision, the Land Court's second decision involved jurisdictional error in that it failed to observe the requirements of procedural fairness by reason of apprehended bias. Accordingly, the Court made orders setting aside the declaration made by the Court of Appeal and in its place ordered that the qualified order for referral back made by the Supreme Court be set aside, that New Acland's applications be referred back to the Land Court to be reconsidered according to law, and that the decision of the delegate of the Chief Executive be set aside.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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