

Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd & Ors [2021] HCA 2

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Facts

- 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 objected 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.
- 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, the Supreme Court directed that the parties were bound by the findings / 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. 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. On appeal, 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, instead of 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.

Held

- The plurality of the High Court, Kiefel CJ, Bell, Gageler and Keane JJ, ordered that the qualified order for referral be substituted with an order referring the applications back to the Land Court for

full reconsideration:

- The qualified order for referral back to the Land Court reflected the Court's conclusion that the findings and recommendations of the Member were not affected by apprehended bias.
- The effect of the recommendations depended upon whether they complied with the conditions of the exercise of the statutory jurisdictions conferred on the Land Court under the relevant legislation. Central to this is that the Land Court observe procedural fairness.
- Although the President did not act in a way that gave rise to apprehended bias, the process by which she arrived at her conclusions, as a result of her adoption of the findings and conclusions of the Member, breached a condition of the exercise of the Land Court's jurisdiction.
- A recommendation made by the Land Court is insufficient to meet the preconditions to the making of a decision by the Minister where procedural fairness is not observed.
- Where statutory duties remain unperformed as a result of circumstances arising in the administrative process, an order referring the decision back to the decision-maker should be made. This is "*unless circumstances appear making it just that the remedy should be withheld.*"

Quotes

"In Forrest & Forrest Pty Ltd v Wilson, by reference to a long line of previous authority, the majority in this Court stated:

"[W]here a statutory regime confers power on the executive government of a State to grant exclusive rights to exploit the resources of the State, the regime will, subject to provision to the contrary, be understood as mandating compliance with the requirements of the regime as essential to the making of a valid grant. When a statute that provides for the disposition of interests in the resources of a State 'prescribes a mode of exercise of the statutory power, that mode must be followed and observed'. The statutory conditions regulating the making of a grant must be observed. A grant will be effective if the regime is complied with, but not otherwise."

(Kiefel CJ, Bell, Gaegler, Keane JJ at paragraph [56](emphasis added))

Full Text

The full text is available here: <http://eresources.hcourt.gov.au/showCase/2021/HCA/2>