

Reasons

Meagher JA agreed with the trial judge at first instance that the parties acted, and intended to act, as if bound by a contract, even though the formalisation of that contract (which both anticipated), had not occurred. He affirmed Her Honour's use of the description of a contract from *Scott & Co Ltd v Naughton (1929) 43 CLR 310 at 317 as:*

“one in which the parties were content to be bound immediately and exclusively by the terms which they had agreed upon whilst expecting to make a further contract in substitution for the first contract, containing, by consent, additional terms”.

The court found, that even the words on the Royalty payment certificates that “The royalty paid is pursuant to our revision of the agreement currently being finalised” were not conclusive evidence that an agreement had not been reached.

Meagher JA similarly agreed with the trial judge on the second assertion of the appellants which questioned the precedence of cl 11 of the Royalty Deed over and above the correspondence of February and May. This clause provided that any variation of the Deed must also be by Deed. Meagher JA found that parties cannot be found by a clause such as cl 11 to be depriving themselves of their own liberty to contract. He thus held that cl 11 had no effect on the status of the contract between the parties.

NSW COAL MINE HEALTH AND SAFETY ACT 2002*

Introduction

This Act will replace the Coal Mines Regulation Act 1982 and the regulations made under that Act. It will commence after new regulations have been prepared, which may take a number of months. The main new obligations are set out below.

OH&S Act

The Act places special additional obligations, protections and procedures on persons that own and operate coal mines to control particular risks arising from coal operations. The obligations, protections and procedures in the NSW Occupational Health and Safety Act 2000 continue to apply to coal operations. Compliance with this Act is not of itself a defence for proceedings for an offence against that Act.

This Act applies to all places of work that are within a registered colliery holding, a coal exploration site or the subject of a licence to mine coal under the Offshore Minerals Act 1999 and a coal operation is such a place at which coal is mined.

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Colliery holder obligation

A colliery holder must not undertake any mining or allow any other person to undertake any mining at a coal operation within a colliery holding unless the colliery holder has nominated a person who is the employer with the day to day control of the coal operation as the operator of the coal operation.

Nomination process

The colliery holder may nominate itself as the operator. Where there is more than one separate and distinct coal operation within a colliery holding, the colliery holder may nominate the person who is the employer with the day to day control of each coal operation within the colliery holding. The nomination must be in the prescribed form and must be made in writing to the Chief Inspector. The Chief Inspector may reject the nomination if he believes the nominated operator is not the employer with the day to day control of the coal operation or in other limited circumstances. If a nomination is rejected, it is taken not to have been made. The operator may be changed by another nomination made which is subject to the same rejection provisions.

Operator obligations

The operator of a coal operation must ensure that mining is not carried out by any person at the coal operation unless a Health and Safety Management System (*the System*) that complies with the Act and the regulations is implemented for the coal operation. The Operator is required to prepare a statement of its System and the System must provide the basis for the identification of hazards and the assessment of risks arising from those hazards, for the development of controls for those risks and for the reliable implementation of those controls.

The system

The System must include system elements, major hazard management plans, the management structure of the coal operation, any contractor management plan and any prescribed matters by regulation. Persons working at the coal operation must be consulted during the preparation of the System and before its amendment.

The information relating to the System must be supplied to the Chief Inspector and an industry check inspector. The Chief Inspector may object to the System if he forms the view that it does not comply with the Act or the regulations, there was insufficient or inadequate consultation in the preparation of the System or the System is insufficient to protect the health and safety of workers.

If the Chief Inspector has an objection, he must notify the operator in writing of the objection and the System must not be implemented until the objection has been resolved. If the Chief Inspector notifies an operator of an objection, the operator must revise the System taking into account any matters raised in the objection and submitted to the operator within the prescribed time. If the Chief Inspector has not notified the operator of an objection within 21 days or within any other prescribed period the operator may implement the System. The System may not be implemented before that period ends.

An industry check inspector may raise objections with the Chief Inspector regarding the content of the System and the Chief Inspector must have regard to such objections.

Contractors

As part of the System for a coal operation, the operator of a coal operation at which contractors are proposed to be used must prepare a contractor management plan stating how the risks arising from use of contractors at the coal operation would be managed.

The operator must ensure that each contractor provides the operator with a written safe work method statement and, if applicable, a site specific occupational health and safety management plan prepared by the contractor before the contractor commences work. The operator must ensure that the contractor is directed to comply with the requirements in that statement and plan and the Act and regulations. There are also other obligations on contractors in respect of subcontractors.

Review of the system

The operator must regularly review the System and the review must occur at least every three years.

An immediate review is also required 12 months after the commencement of mining at the coal operation, if there is a fatality or a dangerous incident that could reasonably have been expected to result in a fatality, if there is a significant change in operations that may affect health and safety, if the operator is required to do so by the Chief Inspector in writing or if the operator is required to do so by the regulations.

Workers at the coal operation must be consulted as part of the review. A review must be completed within 6 months after it is required to be undertaken.

Emergency management system

An emergency management system must also be prepared by the operator and the operator must ensure that mining is not carried out at the coal operation unless an emergency management system that complies with the Act is implemented for the coal operation.

Offence

An operator or former operator of the coal operation who contravenes whether by act or omission any of the above requirements is guilty of an offence. The maximum penalty for a corporation is 5,000 penalty units for first time offenders and 7,500 penalty units for a previous offender. (A penalty unit is currently \$110).

Employee's obligations

An employee who works at any coal operation is required to comply with the System for the coal operation and to follow the operator's procedures for emergencies set out in the emergency management system.

Stop work orders

The Minister may issue stop work orders for up to 28 days if the Minister is of the opinion that a serious breach or likely serious breach of the Act or the Occupational Health & Safety Act is to be committed. The order may be extended for a further 28 days. Those orders override any direction or notice previously issued by an inspector.

Coal Competence Board

A Coal Competence Board will be established which is subject to the control and direction of the Minister. The functions of the Board include to oversee the development of competence standards for people performing functions at coal operations that may impact on health and safety, to undertake initial and on-going assessments of competence of those people and to advise the Minister on matters related to the competence required of people to perform those functions.

Oversight of coal operations

There are provisions for the appointment of the Chief Inspector, check inspectors, mine safety officers and investigators and their functions and powers are broadly similar to their current functions and powers.

Codes of practice

The Act contemplates coal mining industry codes of practice being prepared and approved by the Minister. If the Minister thinks appropriate, there is to be consultation with relevant persons and organisations on the code contents. Any such codes may be relevant in prosecutions of an offence.

QUEENSLAND

QUEENSLAND LAND AND RESOURCES TRIBUNAL DECISIONS*

The full text of these cases can be accessed via the LRT's website: www.lrt.qld.gov.au

***Boral Bricks Pty Ltd v Caboolture Shire Council* [2002] QLRT 49 (Koppenol P)**

DETERMINATION OF VALIDITY OF OBJECTIONS – WHETHER OBJECTION INCORPORATED BY REFERENCE

Background

Caboolture Shire Council (the objector) lodged an objection to the applicant's mining lease under the *Mineral Resources Act* 1989 (MRA) and the *Environmental Protection Act* 1994 (EP Act). Section 260 of the MRA sets out various requirements for making an objection including, in subsection (3), that an objector must state the grounds of objection and the facts and circumstances

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