

Underground water laws passed by Queensland Parliament: Government exempts Adani coal mine, refuses to exempt New Acland

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In the early hours of Thursday morning, the Queensland Parliament passed the *Environmental Protection (Underground Water Management) and Other Legislation Amendment Act* and the *Water Legislation Amendment Act*, with amendments targeted at clarifying the position of advanced stage resources projects under the new laws.

The most significant amendment introduced is an exception that, in effect, exempts the Adani coal mine from transitional provisions that would have required it to obtain an “associated water licence”. Despite a significant number of submissions, the exception will not apply to the New Acland Stage 3 expansion.

See our earlier alert for a discussion of the Bill and its impacts on mining projects and communities.

In this Alert, Partner Martin Klapper and Law Graduate Ruby Rayner briefly comment on the new law, which is anticipated to commence on 6 December 2016.

Key points

- Certain advanced coal projects will not require an associated water licence under the transitional provisions - if the chief executive is satisfied that groundwater impacts were assessed as a part of the EIS process, objectors led expert evidence as to water issues in a Land Court hearing and the impacts were considered and decided by the Land Court before 13 September 2016.
- This exemption applies to the Adani project, however it does not apply to the New Acland project as it is currently before the Land Court and no decision has been made.
- Coal mines that are currently in operation under a valid mining lease will be deemed to hold, and to have always held, a water licence.

Discussion

The new law was subject to heavy debate in Parliament. In response to submissions protesting the application of the transitional provisions under the new law to advanced stage projects, the Government introduced amendments that would exempt projects that had already proceeded through the Land Court process from the requirement to obtain an associated water licence.

This exemption only applies to projects subject to a Land Court decision handed down before 16 September 2016, therefore it does not extend to the stage 3 expansion of New Hope’s New Acland coal project. Despite heavy criticism, the New Acland project will be required to obtain an associated water licence and may be subject to significant delay due to public consultation and objection periods.

The non-exemption of the New Acland expansion project was a significant concern raised in the Report of the Queensland Parliament Agriculture and Environment Committee that was tabled in Parliament on 25 October 2016. The Report strongly recommended that the Government consider the

impact of the new law on the advanced New Acland project, and the impact of delaying the expansion of this established project on job losses and also on the economy of the project area.

Another concern raised by industry representatives was that the new legislation could mean existing operating mines could be technically non-compliant with the new groundwater laws.

The Government introduced an amendment targeted at this issue that provides that any mining lease holders that had started operations involving the taking of or interfering with underground water in the area of a mining lease before the commencement of the new law is taken to have, and always to have had, a water licence.

From their commencement, these “deemed water licences” will be subject to provisions of the Water Act and Mineral Resources Act as amended.

The projects will not be required to comply with the transitional provisions under the new law, or to apply for a new water licence.

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