

- functions of the Tribunal will be assumed by the Land and Environment Court who will hear any pending appeals under the 1985 Arrangements and 1997 Order as if the Tribunal.

LIMITATION OF JURISDICTION IN LAND AND ENVIRONMENT COURT – NEW SOUTH WALES MINE SUBSIDENCE BOARD DECISION*

Land and Environment Court Jurisdiction – Ground subsidence compensation

The High Court has handed down its decision in *Alinta AG Ltd v the Mine Subsidence Board*.¹ It is a short judgment and reminds us that while the Land and Environment Court is a superior court within the general court hierarchy, it is of limited jurisdiction.

The case considers whether Alinta had a right of appeal to the Land and Environment Court (LEC) under the *Mine Subsidence Compensation Act 1961* (NSW) (the Act) against a decision of the New South Wales Mine Subsidence Board not to hear its claim for compensation for subsidence. Under the Act, the Board can award compensation to mine owners who have suffered damage caused by ground subsidence. However, eligibility requirements under the Act are strict and require mine owners to obtain appropriate certification from the Board if at any time an improvement is made to a mine (presumably to ensure that improvements meet a certain quality).

In 2004 Alinta lodged a claim with the Board for compensation in relation to a natural gas pipeline damaged by subsidence. Over the years Alinta had made a number of improvements to that gas line but had never obtained appropriate certification from the Board. Alinta's claim for compensation was rejected by the Board.

Alinta sought to appeal this decision to the LEC. The Board opposed this application on the ground that the LEC lacked jurisdiction.

The Act provides that decisions of the Board can only be appealed to the LEC where they amount to a finding as to whether damage has occurred and whether compensation is due. The Board argued that in relation to Alinta it had made neither of these decisions. Instead, the Board argued that it had made a decision about Alinta's eligibility to apply for compensation and determined that it was ineligible given its failure to obtain certification. Alinta argued that as the practical effect of this decision meant that it would not be awarded compensation it had a right to appeal to the LEC.

The New South Wales Court of Appeal rejected Alinta's arguments. Alinta appealed to the High Court.

The High Court unanimously dismissed Alinta's appeal. Affirming the decision of the NSW Court of Appeal, the High Court held that the right to appeal to the LEC under the Act was restricted to appeals against decisions of the Board as to certain subject matter and that the Board's decision in relation to Alinta was of entirely a different sort. The legislature left to the Board the determination of jurisdictional facts, subject to scrutiny only on judicial review by the Supreme Court.

* Andrew Cooke, Lawyer, Allens Arthur Robinson, Sydney.

¹ [2008] HCA 17: <http://www.austlii.edu.au/au/cases/cth/HCA/2008/17.html>.