



Summary of Judgment

Mirboo Ridge Pty Ltd & ors v Minister for Resources [2018] VSC 557

21 September 2018

The Supreme Court of Victoria has rejected a claim by subsidiaries of resources group Lakes Oil that measures taken by the Victorian government to implement a state-wide moratorium on onshore petroleum exploration were unlawful or ineffective.

The moratorium, first announced in August 2012, initially applied only to hydraulic fracturing ('fracking'), and was implemented through government policy rather than changes to the *Petroleum Act 1998*. The government widened the moratorium in 2014 to include *all* onshore gas exploration activities. In March 2017, the Victorian Parliament enacted the *Resources Legislation Amendment (Fracking Ban) Act 2017* (Vic) (the '*Fracking Ban Act*'), amending the *Petroleum Act 1998*, which effectively extended the ban until 30 June 2020.

The resource companies held six 'authorities' to explore for petroleum gas in certain onshore areas in south-western Victoria and Gippsland. These authorities were granted between 2002 and 2013 under the *Petroleum Act 1998*. The companies asked the Court to find that the changes introduced by the *Fracking Ban Act* did *not* prevent them from carrying out 'minimum work requirements' that were already permitted under their authorities. They also submitted that the Minister's implementation of the moratorium before March 2017 had been unlawful.

Justice Cameron Macaulay rejected the companies' claim and found the 2017 legislative changes prohibited *all* petroleum exploration work within the moratorium period. His Honour said the purpose behind the change was to 'introduce a comprehensive moratorium on petroleum exploration and production activities, otherwise allowed under existing authorities, with a recognition that such a moratorium would impact existing rights'.

The judge said that determining whether or not the Minister's implementation of the moratorium before March 2017 was lawful would produce no real consequence and, for that reason, dismissed that aspect of the claim.

After the March 2017 legislative changes, the Minister varied the companies' six authorities with the intention of clarifying that petroleum exploration was neither required nor permitted during the statutory moratorium period. Justice Macaulay found those variations were not validly made, but noted that such a finding was of little practical consequence considering his decision regarding the meaning and effect of the changes made under the 2017 *Fracking Ban Act*.

NOTE: This summary is necessarily incomplete. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.