

## DEFINITION CHANGE MEANS MORE MINE RESTRICTIONS

### Changes to significant improvement definition will affect mining industry

Significant improvements have long been the source of frustration and impediment to miners by preventing exploration. The definition has remained largely the same for more than 100 years, during which time mining and society has changed enormously. A change to the definition has been long overdue.

On 2 November 2015, the NSW Parliament passed legislation that will implement wide-ranging amendments to the Mining Act 1992 (NSW) (Mining Act) once commenced. These amendments include replacing the definition of "significant improvement" used in the Act.

For coal operations, "significant improvements" are relevant to: prospecting and granting of a mining lease. Sections 31 and 49 of the Mining Act prohibit prospecting on land on which is situated any "significant improvement, unless the owner consents and section 62 of the Mining Act prohibits granting of a mining lease over the surface of any land on which is situated anything taken to be a "significant improvement" following a claim by a "landholder", unless the owner consents.

The current definition of a "significant improvement" is "any substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure". Items such as ordinary farm

fences and firebreaks have been held to be significant improvements.

In the recent decision in *Martin v Hume Coal Pty Ltd* [2015] NSWLEC 1461 (in which we acted for Hume Coal), there was an unsuccessful attempt to broaden the interpretation of significant improvements to include improved pastures, lucerne paddocks, a cross-country events course and parking areas (under the current definition).

The new definition is far more restrictive. An item will only be a "significant improvement" if it meets several criteria, including that it is a substantial and valuable improvement to the land, is reasonably necessary for the operation of the landholder's lawful business or use of the land, is fit for purpose (immediately or with minimal repair), cannot reasonably co-exist with the exercise of rights by the explorer or miner and cannot reasonably be relocated or substituted without material detriment to the landholder.

The changes tighten what constitutes a significant improvement by reference to the practical utility and purpose of the item and therefore restricts which items can present a barrier to prospecting or mining leases.

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