

The Carmichael coal mine planned for Queensland's Galilee Basin has cleared another legal hurdle, with the state's Supreme Court dismissing a legal challenge to the validity of the Queensland government's decision to approve the project.

The court found in favour of the Queensland Department of Environment and Heritage Protection, ruling that its approval of Indian firm Adani's proposal was within the rules.

The decision is another setback for environmentalists' bid to stop the controversial project. But Adani does not yet have a green light to break ground on the project, and legal questions still remain, both about this project and about climate change litigation more generally.

The Supreme Court ruling

It is important to note that this was a judicial review proceeding – a narrow type of review in which the court is not permitted to consider whether or not the decision to approve the mine was “correct”. The court could only rule on whether correct procedures were followed, while accepting that the decision was at the government's discretion.

Within this already narrow context, the argument on which the legal challenge hinged was even more constrained. It was brought by an environmental campaign group called Land Services of Coast and Country (LSCC), and was focused on a particular point of Queensland environmental law.

Queensland's [Environmental Protection Act 1994](#) requires that decisions are made in accordance with the Act's objective, which is to deliver “ecologically sustainable development”. LSCC argued that the government failed to do this in approving the coalmine.

The Supreme Court disagreed, finding that the government had considered all matters that it were obliged to consider. So in this respect, the Supreme Court's decision is an endorsement of the process, but not necessarily the ultimate decision.

Is this the final hurdle overcome for Adani?

In short, no. The decision can be referred to Queensland's Court of Appeal. There is also ongoing litigation against Adani in the Federal Court of Australia under federal environmental and native title laws. There are also some approvals yet to be obtained by Adani, including a [groundwater licence](#).

Is this ruling a rejection of climate change arguments against the coal mine?

No. This case dealt specifically with the question of whether the Queensland government had complied with a particular aspect of the law. The Supreme Court did not (and was not able to) address the potential climate change impacts of the proposed mine.

These climate issues were addressed more fully by Queensland's Land Court in the case of [Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors \(2015\) QLC 48](#).

Importantly, the Land Court in this case accepted the scientific basis for climate change, and agreed that "scope 3 emissions" (that is, the emissions produced when the coal is burned overseas) are indeed a relevant consideration in whether or not to approve the mine.

However, Adani successfully used a "market substitution" defence, arguing that if the mine is refused, coal would simply be mined elsewhere and burned regardless.

What does this case say about climate change litigation more generally?

The latest judgement was handed down amid a series of fresh attacks on the rights of environmental groups to use Australia's environmental laws to hold companies and governments to account. Federal Environment and Energy Minister Josh Frydenberg has [raised](#)

Carmichael mine jumps another legal hurdle, but litigants are making headway

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[d concerns](#)

about “activists ... seeking to frustrate” projects with “vexatious litigation”, while Prime Minister Malcolm Turnbull has revived plans to

[amend federal environmental legislation](#)

so as to

[restrict standing to apply for judicial review](#)

– the so-called “lawfare” amendments.

In the wake of the new ruling, the head of the Queensland Resources Council has [criticised the delays caused by litigation against mining projects](#)

This begs the question: is climate change litigation “vexatious”? A close analysis of Queensland court decisions would suggest the opposite. Climate change issues have been considered in a series of three key Queensland Land Court cases: [Wandoan Mine in 2012](#) , [Alpha Coal Project in 2014](#)

and the

[Carmichael Mine \(Adani\) in 2015](#)

The Alpha Coal matter has [proceeded to the Supreme Court](#) , the [Court of Appeal](#) , and leave has been sought to appeal to the High Court of Australia. Importantly, none of these cases has been dismissed as vexatious; each resulted in a lengthy judgement analysing the complex legal issues raised by the objector.

Furthermore, although objectors have not yet succeeded in stopping a mining project on the basis of climate concerns, they have nevertheless made modest strides. Most recently, President McMurdo of Queensland’s Court of Appeal found that the Land Court [must consider scope 3 emissions](#)

in deciding whether a mine should be granted environmental approval. This represents significant progress, given that climate science was

[questioned by Queensland Courts less than ten years ago](#)

The only significant barrier remaining to a successful climate change case is the market substitution defence, which will be considered by the High Court if special leave is granted in

the Alpha Coal matter.

Climate change litigation has also clarified other environmental and economic impacts. In the Carmichael Mine case, it was discovered that the mine site was a critical habitat for the endangered black-throated finch – evidence that was not previously available. The Land Court ordered strict conditions aimed at protecting this species. The litigation also served to clarify the significantly overstated economic benefits of the mine – particularly Adani's estimate that it would generate more than 10,000 jobs. It was revealed in court that this figure was more likely to be 1,206 jobs in Queensland, as part of a total of 1,464 jobs in Australia.

Where to for climate change litigation?

Although the latest judgement is another setback for environmental groups, it is part of a bigger body of case law that is making real and discernible progress in ensuring that climate change is considered by decision-makers and courts.

Given that several courts have agreed on the validity of climate litigants' arguments, it seems perverse for the federal government to try and restrict environmental groups' right to continue raising these concerns.

Justine Bell-James has previously received funding from the Australian Research Council. She has previously assisted EDO Qld with policy advice.

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Read more <http://theconversation.com/carmichael-mine-jumps-another-legal-hurdle-but-litigants-are-making-headway-69423>