

The application for the grant of the mining leases was made on the basis that, pursuant to s21(4) of the Act, the State may grant or register in favour of persons, other than the holder of the coal mining lease, mining leases and other mining tenements in respect of the area the subject of the coal mining lease for minerals other than coal. However, such a grant may not be made where it is likely to unduly prejudice or interfere with the operation of the holder of the coal mining lease, assuming that the holder takes reasonable steps to avoid the prejudice or interference.

The Act further provides that where such a grant is made the land contained therein shall be deemed to be automatically excised from the coal mining lease.

Westfarmers Coal Limited objected to the grant on the following grounds:

- that its mining operations involved major strip mining
- that it had invested large sums of money in the project
- that there was no guarantee that the excised area would revert back to the objector at the expiration of the mining lease and that it would, therefore, need to comply with all the native title requirements if it were to reapply
- that it would be deprived, by way of the grant, of the use of the sands contained within the coal mining lease, which was used for infrastructure
- that it was required to meet strict environmental conditions and that the grant may affect its capacity to meet these conditions.

The Warden held that he could not recommend the grant of the mining lease, on the basis that the style of operation adopted by the objector meant that the excision of areas may not only deprive the objector of the resources within the excision but would adversely affect the economic viability of removing the coal resources from areas in the location of the excision.

#### **FORFEITURE OF MINING LEASE APPLICATION – ALLEGED BREACH OF MINING AND EXPENDITURE REQUIREMENTS – ADEQUACY OF WORK AND EXPENDITURE\***

*Alexander Dalrymple and Joy Helen Holland v Ross Dalrymple*

(Warden's Court, Perth, 23 April 1999)

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\* Tim Kavanagh and Kirsten Matthews, Corsers, Perth.

The applicant applied for the forfeiture of a mining lease on the basis that the defendants had not actively mined or met the expenditure requirements during the expenditure year.

The Warden accepted on the evidence that there had been work done on the tenement for a total of 27 days during the expenditure year, consisting of chip sampling and metal detecting. He held that the following constituted expenditure on or in connection with mining on the lease for the purposes of regulation 31(1) and for the purposes of s82(2)(c) of the *Mining Act 1978* (WA):

- wages incurred in engaging the Respondent's husband and another worker to carry out chip sampling on the tenement (the Respondent's husband was a qualified civil engineer and a qualified surveyor and he had with him and used GPS equipment to mark out grids for the sampling)
- wages incurred in engaging the Respondent's husband and another worker to carry out metal detecting work on the tenement (note – the Respondent's husband was a qualified civil engineer and a qualified surveyor and that he had with him and used GPS equipment to mark out grids for the sampling)
- the purchase price of a small refrigerator and generator, which were used solely on the tenement
- the purchase price of a metal detector, which was used solely on the tenement
- the hire costs of a four-wheel drive vehicle used to travel to and from the tenement and between the campsite, and fuel costs
- the purchase price of a radio for use on the tenement, given that the locality of the tenement was reasonably remote, and therefore the purchase of a radio was a reasonable precautionary measure.

The Warden held that the applicant had failed to establish that the respondent had not complied with the expenditure requirements. Accordingly, the application for forfeiture was refused.

#### **REVIEW OF WARDEN'S DECISION – WHETHER FINAL OR INTERLOCUTORY - STAY OF EXECUTION PENDING APPEAL \***

***Kaye Lorraine Hume & Kym Matthew Dolan v Paul Maher***

(Supreme Court of Western Australia, 29 October 1998, Murray J)

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\* David Wood, Clayton Utz, Perth.