

## EXEMPTION APPLICATION - DIRECTIONS FOR PARTICULARS - PRINCIPLES OF NATURAL JUSTICE\*

*Alcoa Australia Limited v Frank Peter Simunovich and Nicholas David Charles Dillon* ((No 2) [2003] WAMW 2 (Perth Warden's Court, Warden Calder SM, 27 February 2003))

*Application for exemption from expenditure conditions – Objection – Directions for particulars of grounds of objection – Principles of natural justice*

### Background

The applicant applied for exemption from expenditure conditions on the basis that it was uneconomic to mine the mining lease during the tenement year. One of the grounds of the objection was that the mining lease did contain deposits of limestone that were economic to mine. This decision concerns the preliminary issue of the applicant's request for directions for further particulars concerning the objectors' claim that the mining lease was economic to mine.

### Provision of Particulars

The Warden made directions for the provision of particulars concerning the above-mentioned ground of objection. The objectors did provide particulars, however, the particulars consisted of a statement that the mining lease contained economic deposits of limestone and listed six potential uses for the limestone.

In response to these particulars, the applicant sought directions for the provision of further particulars on the basis that the particulars provided were incomplete and, accordingly, did not comply with the initial directions. The objectors were of the view that directions to provide further particulars would improperly force them to disclose their evidence prior to the substantive hearing.

### The Law Relating to the Provision of Particulars

Warden Calder referred in detail to the judgment of Justice Wheeler in *Re Warden Nicholls; Ex parte Plutonic*<sup>1</sup> and her observation that the principles of natural justice must apply to an applicant and objector in the context of an application for exemption from expenditure conditions.<sup>2</sup> The Warden also referred to Justice Wheeler's explanation of the practical implications of the principles of natural justice and concluded that each party is entitled to know the factual basis of the other's arguments. The Warden considered this to be particularly significant in the case of those who lodge objections to applications for exemption, because neither the *Mining Act* nor Regulations expressly define proper grounds for objections.

The Warden also had regard to Justice Wheeler's consideration of Justice Ipp's judgment in the *Peko Exploration* decision<sup>3</sup>, where he made the analogy between the role and purpose of standard forms in the *Mining Regulations* and pleadings in judicial proceedings. Although Warden Calder did not expressly approve or adopt the analogy made by Justice Ipp, he did outline the legal principles relating to particulars in judicial proceedings.<sup>4</sup> Following this analysis, the Warden declared that the legal principles relating to particulars in judicial proceedings may be properly applied by the Warden when sitting in an administrative capacity.

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<sup>1</sup> *Re Nicholls SM; Ex parte Plutonic Operations Limited* [2002] WASCA 232; (2003) 22 ARELJ 38.

<sup>2</sup> At paragraph 21.

<sup>3</sup> *Ex parte Peko Exploration Limited* (Supreme Court of Western Australia, Library No 970613).

<sup>4</sup> Cairns, *Australian Civil Procedure* (5th Edition) and Paul Seaman QC *Civil Procedure WA*.

**Warden's Decision**

In relation to the particulars provided by the objector, Warden Calder concluded that they did not comply with the legal principles of particulars. Further, Warden Calder noted that the particulars provided did nothing more than contradict the grounds for the application for exemption and provided no factual basis upon which the applicant could identify the objectors' arguments for the substantive hearing. Warden Calder noted that this may entail the disclosure of evidence prior to a substantive hearing.

Of particular note, is Warden Calder's application of the principle that the state of knowledge of the party directed to provide particulars has no influence on their obligation to provide particulars. This was relevant in the context of this decision because it was argued by the objectors that they could not provide particulars because they could not access the mining lease to collect the facts upon which they based their objection.

The Warden did make directions for the provision of further particulars. In doing so, the Warden noted that if these directions were not complied with, he would then be placed in a position where he would have to consider exercising his discretion to prevent the objectors adducing related evidence at the substantive hearing, in the absence of consent from the applicant.

**EXEMPTION APPLICATION – PURCHASE OF TENEMENTS**

*Luzenac Australia Pty Ltd v Graham Alfred Hawks* ([2003] WAMW 1 (Meekatharra Warden's Court, Warden Wilson SM, 15 January 2003))

*Application for exemption from expenditure conditions – Purchase of tenements – More time required to plan exploration – Aboriginal site clearance an “approval” – Project exemption – Sections 102(2)(B), 102(2)(G) and 102(2)(H)*

**Background**

In September 2001 Luzenac Australia Pty Ltd ("Luzenac") purchased mining leases 52/469 and 52/471 (the "Tenements") known to be prospective for talc together with the Three Springs Talc Mine and a Talc Treatment Plant. Luzenac became the holder of the Tenements in December 2001, two months prior to the end of the relevant expenditure year.

Luzenac applied, pursuant to ss 102(2)(b), 102(2)(g) and 102(2)(h) of the *Mining Act* 1978 (the "Mining Act") for a full exemption from the expenditure requirements for the expenditure year in respect of the Tenements (the "Applications"). Hawks objected to the Applications but withdrew the objections prior to the hearing.

Luzenac presented oral and written evidence to the Warden and requested he make a recommendation to the Minister that the Applications be approved. The Warden accepted that on the evidence each of the grounds of exemption had been made out and made comments in relation to the application of the exemption provisions of the Mining Act.

**Section 102(2)(b) – Time required to evaluate work done, plan future exploration**

The evidence showed that since the acquisition of the Tenements, Luzenac had been reviewing existing data and planning further exploration. Time was spent collating, interpreting and compiling data obtained as part of the purchase. The Warden accepted that it was unreasonable for

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