Stop work orders

The Minister may issue stop work orders for up to 28 days if the Minister is of the opinion that a serious breach or likely serious breach of the Act or the Occupational Health & Safety Act is to be committed. The order may be extended for a further 28 days. Those orders override any direction or notice previously issued by an inspector.

Coal Competence Board

A Coal Competence Board will be established which is subject to the control and direction of the Minister. The functions of the Board include to oversee the development of competence standards for people performing functions at coal operations that may impact on health and safety, to undertake initial and on-going assessments of competence of those people and to advise the Minister on matters related to the competence required of people to perform those functions.

Oversight of coal operations

There are provisions for the appointment of the Chief Inspector, check inspectors, mine safety officers and investigators and their functions and powers are broadly similar to their current functions and powers.

Codes of practice

The Act contemplates coal mining industry codes of practice being prepared and approved by the Minister. If the Minister thinks appropriate, there is to be consultation with relevant persons and organisations on the code contents. Any such codes may be relevant in prosecutions of an offence.

QUEENSLAND

QUEENSLAND LAND AND RESOURCES TRIBUNAL DECISIONS*

The full text of these cases can be accessed via the LRT's website: www.lrt.qld.gov.au

***Boral Bricks Pty Ltd v Caboolture Shire Council* [2002] QLRT 49 (Koppenol P)**

DETERMINATION OF VALIDITY OF OBJECTIONS – WHETHER OBJECTION INCORPORATED BY REFERENCE

Background

Caboolture Shire Council (the objector) lodged an objection to the applicant's mining lease under the *Mineral Resources Act* 1989 (MRA) and the *Environmental Protection Act* 1994 (EP Act). Section 260 of the MRA sets out various requirements for making an objection including, in subsection (3), that an objector must state the grounds of objection and the facts and circumstances

* Richard Brockett, Research Officer to the Presiding Members, Land and Resources Tribunal.

relied on by the objector in support of those grounds. Section 217(1)(f) of the EP Act stipulates the same requirement for making an objection.

The objector in purporting to fulfil these requirements wrote a letter stating, "Refer attached correspondence on Council letterhead". Attached to the letter was a document which referred to an organisation Citizens Rally Against Superquarries Haulage (CRASH) which had also lodged an objection to the subject mining lease application. The Council's objection was forwarded to the mining registrar with a covering letter which referred to the Council's having resolved to lodge a written 'submission' to the mining registrar, requesting that certain issues 'be considered in its assessment of the subject mining lease application'. The letter also requested the mining registrar to defer any decision regarding the application until the rock haulage route/method had been resolved, and that the submission of CRASH be assessed and comments made.

The issue arose as to whether the objection fulfilled the requirements of s. 260(3) of the MRA and s. 217(1)(f) of the EP Act.

Arguments

The Council submitted that those parts of the letter mentioned constituted a good objection. The Council also submitted that the CRASH objection, being expressly referred to in the Council's objection and the covering letter which referred to a Council memorandum which referred to the CRASH objection, was incorporated by reference into the Council's objection. The applicant submitted that the Council's objection was unintelligible and did not set out any grounds or supporting facts and circumstances.

Decision

Koppenol P noted that the term 'objection' was usually understood as an expression of disapproval or complaint. Koppenol P held that when viewing the letter he was unable to view it as conveying disapproval of, or complaint about, the proposed mining lease; the words and expressions used were not consistent with the concept of objecting to a mining lease application. As to whether there was incorporation of the CRASH objection by the Council, Koppenol P noted that the Council did not expressly adopt the CRASH objection and had merely stated that it had no comment or no additional comment about most of the CRASH objection. Koppenol P held that the Council's objections were unintelligible and failed to articulate the grounds of objection or the supporting facts and circumstances, and accordingly ordered that the objections be struck out.

***Papillon Mining and Exploration Pty Ltd & Ors v Brough & Ors* [2002] QLRT 50 (Koppenol P)**

APPLICATION FOR DETERMINATION OF VALIDITY OF OBJECTIONS

Facts

The Respondents had applied for a mining lease pursuant to the *Mineral Resources Act* 1989. In response to this application, 14 tenement objections were lodged with the Registrar. Each of the objections were forwarded by registered post, from various post offices, to the Mining Registrar's post office box as outlined on the objection form.

Registered mail to collect cards were placed into the Registrar's box on 20 May 2002, at some time after 10:00am. The evidence demonstrated that the box was cleared by Registry staff normally between 8:30am and 9:00am. Consequently, the objections were not collected and then stamped as having been received by the Registry until the following day, 21 May 2002. Pursuant to s.260(1) of the MRA, objections were required to be lodged by 20 May 2002. Therefore, the issue arose as to whether the objections were lodged on, or before, the last objection day and therefore whether they were valid objections or not.

Arguments

The Applicant argued that actual physical receipt of the form of objection by the mining registrar or at the mining registrar's office was required. The Respondents relied upon s39A(1) of the *Acts Interpretation Act* 1954 to demonstrate that actual physical receipt of the objections was not required.

They argued that once the evidence demonstrated that the objections had been properly addressed, prepaid and posted they were then regarded as having been received in the normal course of the post.

Decision

Koppenol P considered the objections in two groups and dealt with each individually as each raised different concerns. Eleven objectors had retained their registered mail receipt numbers and the evidence demonstrated that these had been delivered on 20 May 2002. Koppenol P following *Macrae v St Margaret's Hospital*[1] held that as the form of objection specified the post office box as the mining registrar's address then this was effectively a part of that business's business address. Further, following *Hong Ye v Minister for Immigration and Multicultural Affairs*[2], Koppenol P held that an objection should be regarded as having been lodged with the mining registrar when it is received at the mining registrar's nominated post office box. The objections were therefore valid.

Three other objectors could not provide their Australia Post registered post receipt numbers. Various affidavits were filed in support of the contention that these had all been sent on 17 May 2002. Koppenol P agreed with the submissions made by counsel for the respondents regarding the effect, and application of, s.39A(1) and that the evidence demonstrated that by the ordinary course of the post, registered mail sent on 17 May would have been received by the Registrar by 20 May 2002. These objections were therefore, also valid.

Two other objectors, who had failed to make any submissions to the Tribunal prior to the hearing, were granted leave to make written submissions about their objections.

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1 (1999) 19 NSWCCR 1.

2 (1998) 82 FCR 468.

***Reefway Pty Ltd v Kalkadoon People [No. 2]* [2002] QLRT 65 (Koppenol P and Kingham DP)**

APPLICATION TO REFER A QUESTION OF LAW TO COURT OF APPEAL

Background

In March 2002, the parties had reached agreement over the terms of an access agreement as required by the *Mineral Resources Act* 1999. Before the agreement was executed, one of the claimants died and another was said to be reluctant to sign. Consequently, the Applicant requested that the matter be referred to the Tribunal. Shortly before this referral was made, two changes were made to the list of registered native title claimants in the Kalkadoon People's native title claim over the area.

Application for leave to appeal

The Respondent brought an application seeking that the Tribunal refer a question of law to the Court of Appeal for an opinion, pursuant to s.70 of the LRT. The respondent asked the following question:

> "Can the new 7 [native title claimants] execute access agreements pursuant to the MRA and have them accepted by the Mining Registrar as access agreements complying with the MRA?"

Arguments

The Respondents argued that the relevant legislative provisions, sections 485-491 of the MRA, were not ambiguous or unclear, but rather that they produced a result which was said to be unintended or inconvenient.

The Applicant opposed the referral on three grounds. Firstly, the Mining Registrar was not required to do anything; secondly, the Kalkadoon People could have executed the agreement prior to amending the registered native title parties; and thirdly, the provisions of the Act were clear and that there were no unintended consequences.

Decision

Koppenol P and Kingham DP firstly outlined the need for caution in proceeding to refer a point of law to a higher court as set out in *Re Alcoota Land Claim No 146*.[3]

In considering whether to grant leave, the Tribunal considered the definitions of "access agreement" and "registered native title party" as provided by s.485(1). It does not define the term "registered native title claimant". However, s.423(1) provides that the term has the same meaning as it does in the *Native Title Act* 1993 (Cth).

These provisions were considered by the Members and they held that the definition of "registered native title party" focuses upon the entity on *particular prescribed days.* It was clear from the

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[3] (1998) 82 FCR 391, at 394.

evidence that the registered native title claimants on the consultation period advice day[4] or the first day of the consultation period[5] were not the same as those stated in the claim.

Koppenol P and Kingham DP held that on the clear words of the Act, the "new 7" could not execute an agreement. They were not satisfied that the statute led to unintended consequences and therefore saw no reason to refer the question of law to the Court of Appeal. The Tribunal also took into account the fact that the two parties had had a lengthy history and that the intention of the MRA in dealing with low impact exploration permits and access agreements would be further frustrated by any referral to a higher court.

***RAG Australia Coal Pty Ltd & Anor v Barada Barna Kabalabara and Yetimarla People, State of Queensland & Ors* [2002] QLRT 101 (Koppenol P)**

APPLICATION TO DISQUALIFY PROPOSED PANEL MEMBER

Background

Five mining leases were to be considered by the Tribunal. Koppenol P had directed that those matters were to be heard by a panel comprised of Smith DP, Dr E. Fesl, and Mr J. Sheehan. Dr Fesl was concurrently an applicant in 4 native title claims in the Federal Court and also a member of the claimant group in a fifth claim. Substantial similarities existed between the issues to be determined by the Tribunal and the claims in the Federal Court.

Argument

The Applicants submitted that a potential conflict of interest arose under s.27 of the *Land and Resources Tribunal Act* 1999. The Applicants acknowledged that Dr Fesl's role was not one of decision-maker, however, as there arose from the situation an objective perception concerning the similarity of interests claimed by the native title parties in the present applications and those in the Federal Court, Dr Fesl should be disqualified from the panel.

The Respondents argued that the Act envisaged that non-presiding members with specialist knowledge, such as Dr Fesl, should bring their experience to bear on such matters. Furthermore, as Dr Fesl's role was merely advisory, no conflict of interest as envisaged by s.27 existed.

Decision

At the outset, Koppenol P remarked that no one would suggest that Dr Fesl would act other than in an honourable, professional and appropriate way. Rather, he stressed that the question was whether someone in Dr Fesl's position, might (albeit subconsciously) be influenced or affected by those interests. Koppenol P held that s.27 combined with recent pronouncements by the High Court in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, emphasised the fundamental need for independence and impartiality in any judicial office. After acknowledging the advisory role of Dr Fesl, Koppenol P held that similar principles as espoused in Ebner should also apply to those who

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4 Defined in MRA s.490(2).

5 Defined in MRA s.490(1).

advise the ultimate decision maker, as was the issue in the present case. Consequently, Koppenol P held that Dr Fesl did have a conflict of interest in terms of s.27 which thereby precluded her membership of the panel for those applications.

***Armstrong v Salmon* [2002] QLRT 104 (Koppenol P)**

APPEAL AGAINST DETERMINATION OF COMPENSATION

Background

The Applicants appealed under s.282 of the *Mineral Resources Act* 1989 (MRA) against a determination of compensation by Kingham DP[6]. The landowners appealed on 8 grounds including loss of value, blot on title, and injurious affection.

Grounds of appeal

Loss of value

The Appellants argued that the amount allowed for loss of value of the mining land was a realised loss and should have been part of the up-front payment rather than as part of the annual instalments. Koppenol P, following the approach of the Land Court in *Zimmerebner v Hawkins & Anor*[7], concluded that Kingham DP had exercised her discretion in relation to when payment of loss of value should be made and that as he was not satisfied that it was erroneously exercised, dismissed the first ground of appeal.

Blot on title

The determination in respect of blot on title was appealed on the grounds that the Deputy President, without the benefit of either alternate evidence or any valuation expertise of her own, rejected the expert assessment offered by the appellants. The landowners claimed $15,905 for blot on title, which reflected a 5% reduction in value discounted by 33%, in accordance with their valuation. The Deputy President accepted the discount rate but halved the reduction in value figure to 2.5%. Koppenol P, noting and agreeing with the Deputy President's rejection of parts of the Appellant's evidence, held that no errors had been demonstrated and therefore this ground of appeal should be dismissed.

Further, the Appellants argued that the Deputy President had failed to provide compensation for access. Koppenol P pointed out that Kingham DP's determination for compensation for blot of title included compensation for access. As the Appellants had not appealed the quantum of that determination, Koppenol P rejected this aspect of the appeal.

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6 [2002] QLRT 54.

7 (1999) 20 QLCR 71 at 92.

Injurious affection

Similar arguments were advanced by the Appellants with respect to Kingham DP's determination for injurious affection. In respect of the proposed 500m buffer zone, Kingham DP had reduced it by two-thirds on the grounds that it was excessive, representing more than 157% of the area of the lease itself. Koppenol P agreed with the reasoning of the Deputy President and held that this determination should not be disturbed.

Costs

The Appellant's appealed against Kingham DP's refusal to grant compensation for the costs incurred by their agent in the formulation of their claim. Koppenol P rejected this limb of the appeal on two grounds. Firstly, agreeing with the approach of Scott M in *Wills v Minerva Coal Pty Ltd [No.2]*[8] that such costs were not incurred "as a consequence of the grant of the mining lease" pursuant to s.281 of the MRA and therefore were unrecoverable. Secondly, as the Tribunal's rules do not address the issue of costs for para-professionals, recourse should be made to the *Supreme Court Act* 1995 (SC Act), pursuant to s.65(1) of the *Land and Resources Tribunal Act* 1999. In this case s.209(2) of SC Act provides that costs cannot be claimed by a person who is not a solicitor or barrister. Therefore, the agent's fees were not recoverable.

Other grounds of appeal concerning judgement composition, environmental conditions and depreciation were all rejected by Koppenol P as misconceived.

NEW COAL SEAM GAS REGIME IN QUEENSLAND[*]

New regime proposed

On 25 November 2002, the Queensland Government released details of its new Coal Seam Gas ("CSG") regime. It focuses on issues arising from overlapping coal and CSG production tenures.

The Government intends the forthcoming *Petroleum and Gas (Production and Safety) Bill* 2003 to be the principal source of rights to commercially produce CSG. This is intended to clarify issues of *who* holds CSG commercial production rights.

Issues under the current law

The regime is intended to remedy current gaps in the law.

An independent Government review panel had identified that the current law relating to the production of coal and CSG was unsatisfactory for the following reasons:

Rights to extract CSG for coal mining purposes and rights to produce petroleum in the form of CSG are governed by two different Acts, namely the *Mineral Resources Act* 1989 and the

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8 (1998) 19 QLCR 297.

* Gavin Scott and Mark Hourigan, Blake Dawson Waldron.