enhance safety. A condition requiring risk assessment is an appropriate condition where the hazard is inrush. (The Court recommended amendments to the Act to deal with these issues and the imposition of time periods for dealing with s.138 applications.)

COAL COMPENSATION REVIEW TRIBUNAL DECISION

Estate of the late PI Magin and the NSW Coal Compensation Board CCRT 98/01

In the matter of the *Estate of the late PI Magin and the NSW Coal Compensation Board*, the Tribunal had to consider whether the 30 day period for lodging appeals in Clause 27(1) of the Coal Acquisition (Compensation) Arrangements was mandatory or directory. Clause 27(1) states that not later than 30 days after being notified of the determination of a claim by the Coal Compensation Board or of a refusal by the Board of a claim, the claimant may, by notice in writing, lodge with the Tribunal an appeal against the determination or refusal.

The Tribunal concluded that the time limit was directory. In reaching that conclusion, the Tribunal relied on the statement of McHugh JA in *Woods v Bates* that generally speaking at the present time the proper approach is to regard a statutory requirement expressed in positive language as directory unless the purpose of the provision can only be achieved by invalidating the result of any departure from it, irrespective of the circumstances or resulting injustice.

The Tribunal noted that it must examine not only the relevant provisions of the Arrangements but also the scope and objective of the *Coal Acquisition Act* in reaching a conclusion whether the time limit for lodging appeals was mandatory or directory.

The Tribunal concluded that to interpret clause 27(1) as mandatory would not only be against the intent of the legislation but against the intention of parliament and that there would be injustice to the claimant if the claimant was deprived of the opportunity to have its claim examined by the Board. On the other hand, no inconvenience or injustice would be occasioned if the clause was interpreted as directory.

The circumstances of the case described by the Tribunal as a "sorry saga" revealed a history of confusion resulting in a misunderstanding as to which CCB claim number related to which claim after the splitting of a claim producing new claim numbers and that confusion resulted in the claimant's solicitor withdrawing a claim for pecuniary loss in relation to front-end payments in circumstances where the solicitor thought he had withdrawn a claim relating to taxation.

In the circumstances the Tribunal ruled that it would entertain the appeal even though the appeal was lodged after the 30 day period. In deciding to do so, the Tribunal warned that this case involved the most unusual circumstances and that the ruling was not to be regarded as a precedent that appeals will necessarily be entertained where appeals are lodged after the lapse of the 30 day period stipulated in clause 27(1).

NATIVE TITLE (NEW SOUTH WALES) AMENDMENT ACT 1998

The above Act commenced on 30 September 1998 except for the low impact exploration licence Divisions referred to below which will commence once approved by the Commonwealth Minister.

The above Act:

(a) validates intermediate period acts attributable to the State of New South Wales, certain transfers under the NSW *Aboriginal Land Rights Act* and certain future acts that are covered by indigenous land use agreements in the manner permitted by the Commonwealth *Native Title Act*;

(b) provides that any compensation payable for the validation of intermediate period acts will be payable by the State;

(c) confirms the extinguishment of native title by previous exclusive possession acts of the State and the partial extinguishment of native title by previous non-exclusive possession acts of the State;

(d) provides for the Administrative Decisions Tribunal to hear certain objections of registered native title claimants or native title bodies corporate; and

(e) provides for the manner of satisfying procedural rights of native title holders.

The above Act also makes amendments to the *Mining Act* 1992. Those provisions include a new Division for low impact exploration licences under the *Mining Act*. That is a special class of exploration licence that will authorise prospecting operations which are unlikely to have a significant impact on the land covered by the licence. It is intended that the NSW Government will apply to the Commonwealth Minister for approval of the low impact exploration licence regime under s26A of the Commonwealth *Native Title Act* thereby providing an exemption for these exploration licences from the right to negotiate procedure under that Act.

The holder of an existing exploration licence may apply for a low impact exploration licence in respect of any Crown land covered by that license which cannot be utilised unless and until the right to negotiate procedure is first followed under the conditions for that exploration licence. If an application for that area is approved then that area will become subject to a low impact exploration licence and the existing licence continues in respect of the remainder of its area.

Where a low impact exploration license is granted then an access agreement with native title holders will need to be entered into and there will need to be consultation which satisfies the requirements of s26A of the Commonwealth *Native Title Act*.

A similar Division has been added to the *Petroleum (Onshore) Act* 1991 in respect of petroleum prospecting titles.

If compensation is payable under s24MD of the Commonwealth *Native Title Act* in respect of the grant, renewal or variation of a title under the *Mining Act* or *Petroleum (Onshore) Act* then the holder of that title is liable to pay that compensation.

Consequential amendments are also made to the *Land Acquisition (Just Terms Compensation) Act* 1991, the *Western Lands Act* 1901, the *Roads Act* 1993, the *Pipelines Act* 1967, the *Local Government (General) Regulation* 1993 and the *Very Fast Train (Route Investigation) Regulation* 1995.