

The Warden held that s142(4) is directed at different categories or types of amendments. Warden Calder referred and followed his earlier decision in *WMC Resources Ltd v Gardner*² In that decision he expressed the view that in applications for exemption the Warden would need to hear all the reasons which the applicant claims are relevant and as many relevant circumstances as will assist in formulating a recommendation to the Minister. Further, to determine the “real question in issue” it was necessary to:

- examine the nature of the application, action, suit or proceeding;
- enquire as to what it is that the Warden is being asked to do; and
- look to the documents, forms or pleadings lodged and determine (in the context of the initiating document) what matters are in issue between the parties.

The Warden reiterated that in order to determine the real question in issue it may be necessary to allow new issues to be introduced, provided no party is unfairly prejudiced and s142(4) is not used to overcome a failure to commence proceedings within prescribed time periods.

The objector also submitted that an amendment to the exemption application was not possible as it is limited by the contents of the statutory declaration required by r54(3) of the *Mining Regulations* 1981 (which sets out the reasons in favour of granting the exemption). The Warden stated that the statutory declaration is not intended to circumscribe the application for exemption and does not form part of the application. The Warden suggested that a failure to lodge a statutory declaration would not invalidate an application for exemption and the only purpose served by it is to assist in the determination of the application where there is no objection (and, therefore, no requirement for a hearing in open court).

Decision:

The Warden allowed the amendments on the basis that they were necessary to decide the real question in issue between the parties – whether the Applicant is entitled to the certificate of exemption. Indeed, the Warden saw himself as directed by the language of s142, in mandatory terms, to allow the amendments. The Warden dismissed any suggestion of procedural or substantive prejudice to the objector. Rather, there would be significant prejudice to the applicant if the amendments were not allowed.

EXEMPTION FROM EXPENDITURE CONDITIONS– PROJECT EXEMPTION – S102(2)(b) MINING ACT 1978 (WA)*

WMC Resources Limited v Glen Alan Mackie

(Kalgoorlie Warden's Court, Warden Woods, 17 April 2000)

WMC Resources Limited (“WMC”) applied for a certificate of exemption from expenditure conditions in respect of a mining lease. The grounds for the application included that the mining lease was part of a

2 Unreported, Perth Warden's Court 21 August 1998. The decision was subject to an application for judicial review in *Re: His Worship Calder SM: ex parte Gardner* [1999] WASCA 28, but not on the issue of the Warden’s power under s142. See (1999) 18 AMPLJ 125.

* Mark Gerus, Clayton Utz, Perth.

project for the purposes of s 102(2)(h) of the Mining Act 1978 as recently defined by the Full Court in *Re: Warden Calder SM; ex parte St Barbara Mines Limited* [1999] WASCA 25.

It was contended by WMC that the mining lease and 14 other contiguous mining and exploration tenements formed the Golden Ridge Project. Evidence showed that the tenements were linked by a geological sequence known as the Western Ultramafic belt, known to host nickel sulphide mineralisation.

The Blair Nickel Mine was located on another mining lease on the Golden Ridge Project Area. During the relevant expenditure year the Blair Nickel Mine was put on care and maintenance due to record lows in prevailing nickel prices. Nevertheless, the actual costs of mining at the Blair Nickel Mine during the period (of approximately \$1.6 million) if apportioned over the Project Area meant that the expenditure requirements of the mining lease were satisfied. Evidence was also led of WMC's plan for exploration through the Project area, the changes to the plan caused by the fall in nickel prices and new opportunities resulting from advances in nickel laterite technology.

Warden Woods gave an ex tempore decision. She made a finding that the Golden Ridge Project constituted a project for the purposes of s 102(2)(h) of the *Mining Act* and recommended that a certificate of exemption be granted.

EXPLORATION LICENCE – FORFEITURE APPLICATION – LATE LODGMENT OF EXPENDITURE FORM – TIMELY COMPLIANCE MANDATORY – DECLARATION OF INVALIDITY OF LODGMENT*

Shadmar Pty Ltd v Silver Gecko Pty Ltd

(Perth Warden's Court, 10 March 2000)

Background

Shadmar had made application for forfeiture of an exploration licence held by Silver Gecko. Silver Gecko was in liquidation. Someone unknown had lodged a Form 5 in respect of the tenement for the relevant expenditure year, out of time.

Orders Sought

Shadmar sought declarations first that the Form 5 had been accepted for lodgment by the Department contrary to law and secondly, in the alternative that the register be corrected by deleting the Form 5 and specifying the expenditure for the year as Nil.

Evidence

An affidavit was produced by Shadmar from the liquidator of Silver Gecko acknowledging service of the summons claiming forfeiture of the licence, consenting to the declarations sought and indicating that no other person was authorised to act on behalf of Silver Gecko.

* Tim Kavenagh, Corsers, Perth.