QUEENSLAND

QUEENSLAND LAND RESOURCES TRIBUNAL DECISIONS*

The Land and Resources Tribunal of Queensland, or LRT for short, is now up and running. Its mining jurisdiction formally commenced on 18 September 2000. The LRT has responsibility for completing all matters that were before the Mining Warden and that remained incomplete when the LRT's jurisdiction commenced.

The LRT delivered its first written decision regarding a matter under the *Mineral Resources Act 1989* (MR Act) on 13 October 2000. The LRT's decisions are available on the internet at www.lrt.qld.gov.au/lrt/judgements.[1] At the time of writing 21 decisions have been published. The LRT is to be praised for the open and helpful way that it makes it decisions available to the legal profession and to the community generally.

The LRT's written decisions cover a gamut of issues ranging from the substantive (determination of compensation: *Wynne and Thornton* [2000] QLRT 12; application for mining lease: *Whitty* [2000] QLRT 8) to the procedural (*Sullivan and Oil Company of Australia Limited and Santos Petroleum Operations Pty Ltd* [2000] QLRT 5). Four decisions are reviewed here.

Application for Costs on Mining Lease Application and Transitional Provisions: *Leinung and Mann [2000] QLRT 6*

This decision by President Koppenol concerned an unfinished application for costs by the successful objector to a mining lease. The matter was transferred from the Mining Warden to the LRT on 18 September 2000. In the primary proceedings, the mining lease applicant was unsuccessful, on what appears from Koppenol P's decision was the Mining Warden's assessment of evidence on a number of disputed factual questions.

Transitional Provisions

The objector (the applicant for costs) argued that the LRT should exercise the Wardens Court's powers under the former s368 of the *MR Act* to award costs, a power that had sometimes been exercised by the Warden.[2] The objector argued that s20 of the *Acts Interpretation Act* 1954 (*AI Act*) preserved the operation of the repealed s368.

Section 20 of the AI Act provides that the "repeal or amendment of an Act does not ... affect the previous operation of the Act or anything suffered, done or begun under the Act; or ... affects a right, privilege or liability acquired, accrued or incurred under the Act....". S20(3) of the *AI Act* says that the "investigation of a proceeding or remedy may be started, continued or completed and

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1 The LRT's decisions can be found at www.lrt.qld.gov.au/judgements/recent.asp or www.lrt.qld.gov.au/lrt/judgements.search.asp. The LRT has advised that decisions will be posted on the web as they are delivered, and that the "search all judgements" section will be expanded to permit all judgements since the commencement of the LRT's substantive jurisdiction to be viewed. At present all judgements can be accessed through the "recent judgements" page.

2 Koppenel P refers to J. Forbes' article *Costs before the Warden* (1997) 16 AMPLJ 7-10, which provides a good exposition of the circumstances under which the Warden has been inclined to exercise his power under s368 of the MRA 1989 to make an award of costs.

the right, privilege or liability may be enforced and the penalty imposed, as if the repeal or amendment had not happened".

Koppenol P decided that as s368 of the *MR Act* was replaced by the combined operation of s83 and 50 of the *Land and Resources Tribunal Act (LRT Act)*, "no void in respect of costs was created – such as may have necessitated the application of s20 of the *Acts Interpretation Act*". Thus, although he was unable to rely on a specific provision in the transitional provisions (*MR Act* part 19), Kopponel P held that applications for costs in respect of proceedings commenced before 18 September 2000 are to be conducted under, and decided by the LRT in accordance with the new rules for costs under ss80 and 53 of the *LRT Act*, and not under s368 of the *MR Act* (before its repeal).

Special Circumstances

In principle, under s50 of the *LRT Act* each "party to a proceeding before the tribunal must bear the party's own costs for the proceeding" (s50(1)), but "the tribunal may award costs in a proceeding if the tribunal considers, in the special circumstances of the proceeding, an award of costs is appropriate" (s50(2), emphasis added).

In the circumstances Koppenol P found that, although there had been an allegation of illegal mining, the Mining Warden arrived at his decision to recommend rejection of the mining lease application on the basis of his findings on a number of disputed factual questions, and that under the circumstances the miner's application seemed to have been an arguable one.

The test that Koppenol P applied to the question of "special circumstances" on costs is a practical one: "special" means "exceptional", based on the ordinary meaning of that term.

What can be gleaned from this case is that a successful objection in an arguable mining lease application which turns on disputed evidence will not, without more, result in an order for costs against the mining lease applicant.

Appeal Costs Fund and Transitional Proceedings:
Sullivan and Oil Company of Australia Limited and Santos Petroleum Operations Pty Ltd [2000] QLRT 5

This matter concerned the way that a proceedings is to be conducted taking into account the transfer of the substantive jurisdiction from the Mining Warden's Court to the LRT. The substantive action concerned an application for compensation under the *Petroleum Act 1923*, filed in the Warden's Court in 1999. On 12 April 2000 the Mining Warden heard an application regarding the applicability of the *Limitation of Actions Act 1974 (LA Act)*. As at the date of the transfer of his jurisdiction to the LRT (18 September 2000) his decision was still reserved.

Smith DP decided in the circumstances that the LRT was unable to continue the interlocutory proceedings commenced before the Mining Warden (applying *Cavenett v. Cavenett* [1962] SASR 299), and that the defendants' application based on the *LA Act* should be reheard.

Smith DP also examined the LRT's power to grant a certificate for payment of costs thrown away in discontinued proceedings heard before the Mining Warden's Court under the *Appeal Costs Fund Act 1973 (ACF Act)*.

In reliance on s65 (1) of the *LRT Act* (*"the tribunal has, for exercising jurisdiction conferred under this or any other Act, all the powers of the Supreme Court."*) Smith DP decided that the LRT, whether constituted by the President or a Deputy President, is able to grant an indemnity certificate under the *ACF Act*. In the circumstances of this case, certificates were granted to the plaintiffs and the defendants for costs thrown away in the discontinued proceedings heard before the Mining Wardens Court.

Late Objections and Substantial Compliance:
***ACI Operations Pty Ltd and Friends of Stradbroke Island Association Inc* [2000] QLRT 7**

Section 260 of the *MR Act* enables an entity, on or before the fixed last objection date, to lodge an objection to the grant of a mining lease in the approved form. The objection must state the grounds of objection and the supporting facts and circumstances. The giving of an opportunity to potential objectors to lodge an objection is a critical step in the process for the grant of a mining lease. For example, the mining registrar cannot fix the hearing date for the mining lease application (and any objections that were lodged) until "after the last date that objections to an application for a grant of a mining lease may ... be lodged" (s265(1) *MR Act*).

In *ACI Operations* the objection was lodged about 8 days late. The agent of the objector who appeared before the LRT conceded that the objection was late. ACI Operations' contention, predictably, was that the objection was late and therefore "not duly lodged" and consequently invalid. Koppenol P applied the test for non-compliance with a statutory provision in *Project Blue Sky Inc v. Australian Broadcasting Authority* (1998) 194 CLR 355:

> *"A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid. .... in determining the question of purpose, regard must be had to the language of the relevant provision and the scope and object of the whole statute".*

Under s392 *MR Act*, the LRT has the power to excuse non-compliance if there has been "substantial compliance". Koppenol P found it difficult to accept that an objection lodged after the prescribed last date could ever "substantially" comply with the requirement to lodge by that date – *"either there was compliance or there was not": Hunter Resources Ltd v. Melville* (1998) 164 CLR 234, Dawson J at 249. Taking account of the statutory obligation on the part of the objector to lodge the objection by the prescribed date, and the prohibition (s268 *MR Act*) upon the LRT entertaining an objection if it is not duly lodged, Koppenol P concluded "that a late objection is invalid, and .... it cannot be saved by reliance upon the substantial compliance provision". Koppenol P consequently ordered that the late objection be struck out.

THE JURISDICTION OF THE LAND AND RESOURCES TRIBUNAL ON A MINING LEASE APPLICATION*

***ACI Operations Pty Ltd (No. 2)* (2000) QLRT 14**

In *re ACI Operations (Applicant) and Quandamooka Lands Council Aboriginal Corporation and Others (Objectors)* on an application for further directions on an application for a mining lease the Land and Resources Tribunal decided that s269(4)(a) of the *Mineral Resources Act* ("the *MRA*")

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