

OBJECTIONS TO GRANT OF A MISCELLANEOUS LICENCE – ABORIGINAL HERITAGE AND NATIVE TITLE GROUNDS – FAILURE TO OBJECT UNDER NATIVE TITLE ACT - REFUSAL TO HEAR OBJECTOR*

Murrin Murrin Holdings Pty Ltd and Glenmurrin Pty Ltd v Mr Raymond Ashwin

(Leonora Warden's Court, Warden Burton, 16 January 2003, *ex tempore* Reasons)

Background

Two applications for miscellaneous licences were made for the purposes of water management facilities for the Murrin Murrin Project, north of Leonora. Mr Raymond Ashwin (“the Objector”) is a registered native title claimant over the land the subject of the applications. An objection to each application was lodged claiming that the grant of the licence will:

- directly interfere with the community life of the native title holder;
- directly interfere with areas or sites of particular significance; and
- involve a major disturbance to the land and waters concerned.

The Applicants' submissions

The Applicants submitted, by reference to the Supreme Court decisions of *Re Warden Calder*¹ and *Re Warden Heaney*², that the Warden had a wide discretion when deciding whether or not he should hear the Objector. Particular reference was made to the comments of Justice Steytler in *Re Warden Calder*³ as to the ability of the Warden, in the appropriate circumstances, to find that there is no occasion or reason for an objection to be heard because:

- the merit of the objection is self-evident;
- the objection is self-evidently without merit;
- the applicant's case reveals the objection to be misconceived; or
- of some other valid reason.

The principal submission of the Applicants was that the Warden should exercise his discretion not to hear the Objector. The objections were based upon native title matters and both miscellaneous licence applications had passed through the procedure under the *Native Title Act* directed specifically at the ventilation and resolution of native title objections, without any such objections being lodged by the Objector, or any other native title claimant. An exercise of the Warden's discretion not to hear the Objector:

- avoided unnecessary duplication, expense and delay;

* Scott Crabb, Simon Eley and Dane Chandler, Clayton Utz, Perth.

¹ *Re Warden Calder; Ex parte Cable Sands (WA) Pty Ltd* (1998) 20 WAR 343.

² *Re Warden Heaney; Ex parte Serpentine Jarrahdale Rate Payers and Residence Association (Incorporated)* (1997) 18 WAR 320.

³ At pages 364-365.

- ensured that objections related to native title are dealt with by the specialist procedures established under the *Native Title Act*;
- prevented the Warden being involved in any collateral attack on the procedures established under the *Native Title Act*, or decisions or outcomes arising from those procedures; and
- avoided any potential inconsistency between the provisions of the *Mining Act* and the provisions of the *Native Title Act* (legislation that the Commonwealth Government fully intended to cover the field).

Orders made by Warden Burton

Warden Burton did exercise his discretion not to hear the Objector and made orders for the grant of both miscellaneous licences. Warden Burton found that in circumstances where:

- a specific native title procedure was established;
- notice triggering this native title procedure had been properly served; and
- there had been no objections lodged within the prescribed time,

he ought to exercise his discretion not to hear the Objector.

APPLICATION FOR MINING LEASE – SN 49 MINING ACT - SURRENDER OF UNDERLYING PROSPECTING LICENCE – APPLICATION FOR DECLARATION*

Castek Pty Ltd v Astro Mining NL [2002] WAMW 25

(Perth Warden's Court, Warden Calder SM, 8 November 2002)

Facts

The *Mining Act* (s 49) confers on a prospecting licence holder the right to apply for a mining lease for land over which it holds the prospecting licence/s ("the land"). In accordance with that section, Astro Mining NL ("the defendant") lodged a mining lease application but pending consideration of the application by the Minister it surrendered the prospecting licences it held for the land. Castek Pty Ltd ("the plaintiff") sought a declaration from the Warden that the mining lease application was invalid due to surrender of the prospecting licences.

The plaintiff's submissions

The plaintiff submitted that, to be granted a mining lease, s 49 requires the applicant to hold a current prospecting licence for the land. As the defendant had surrendered the relevant prospecting licences, it was no longer in a valid position to be granted the mining lease.

The defendant's submissions

The defendant submitted that:

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