Because of the wording of s 223 (1) (definition of native title) and s 225 (determinations) of the NTA that refer to communal and group rights it might be thought that a group needs to be identified. These sections also contemplate individual rights although a determination is required to identify the person or persons who hold the common or group rights. It will be interesting to see if the Full Court determines the group as the Yankunytjatjara people or some other sub-group of the Western Desert Bloc in the event they accept that a connection to the land has been maintained.

Spiritual Connection

This Full Federal Court confirmed the view of the Full Court in *Ward* that a connection with the land could be purely spiritual and the performance of responsibility for land could be maintained even where the Aboriginal people cannot visit the land.[7] In doing so it noted that the High Court in *Ward* did not dissent from the view of the Full Court in *Ward* on this issue.

Pastoral Act Extinguishment

The Fullers argued that the effect of the *Pastoral Act 1989* was to grant a new statutory lease in place of the three pastoral leases held over the station. That being so the effect of the NT (SA) Act was to extinguish any native title that otherwise existed over the land because it was a "category A past act": see s 33. The *Pastoral Act*, it was argued, in particular cl 5 of Division 3 of the Schedule, to the extent it granted a new lease, was invalid because it breached the terms of the *Racial Discrimination Act 1975* (Cth) in the extension of the life of the lease and providing greater security of tenure.

The Full Court examined the common law as to renewal and extension of leases which normally provided that a new lease was created upon renewal. The court held that the common law did not determine the matter because pastoral leases are statutory leases and hence the issue is resolved by statutory construction. According to the court, the language of cl 5 was clear as it provided that a lease existing prior to the commencement of the Pastoral Act *1989* "becomes, on that commencement, and *continues in force as* a pastoral lease under this Act with a term of 42 years from that commencement" (emphasis added): "If the intent was to terminate the existing leases and create a fresh lease there would have been no point in using the expression 'continues in force'" said the Full Court at [398]. The Fullers' extinguishment argument was therefore not accepted.

Attempts are being made to mediate the claim and so the Full Court may not finally determine the matter. This Journal will report on further developments.

VICTORIA

MINISTERIAL STATEMENT ON THE MINING, EXTRACTIVE AND PETROLEUM INDUSTRIES*

On 3 December 2003 the Victorian Minister for Energy Industries and Resources, Theo Theophanous, released a Ministerial Statement entitled "Promoting Victoria's Prospects: the Challenge for the Mining, Extractive and Petroleum Industries". The Statement outlines the Victorian Government's intentions for developing and regulating the mining, extractive and

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7 [2003] FCA FC 286 at [316]; *Western Australia v Ward* [2000] FCA 191 at [243]; (2000) 99 FCR 316.

* James McLaren and Michael O'Neill, Mallesons Stephen Jaques.

petroleum industries and reaffirms the Government's commitment to a triple bottom line approach of economy, community and environment. This includes policy initiatives such as:

- increasing government investment in geology exploration, development and education;
- improving, strengthening and streamlining regulatory regimes;
- encouraging sustainable exploration and development;
- developing innovative techniques to use untapped and new energy sources; and
- encouraging community engagement in resource development.

The Statement flags a number of changes to the regulation of the mining, extractive and petroleum industries in Victoria, particularly in relation to more rigorous environmental standards and increased community consultation. According to the Statement, the Government intends to:

- develop a "Code of Practice" for exploration and extraction that covers environmental matters;
- review and amend legislation such as the *Extractive Industries Development Act 1995* (Vic) and the *Environment Effects Act 1978* (Vic);
- review legislative frameworks for geo-thermal energy and coal seam methane;
- review planning protection of quarries;
- consider the establishment of a "Resources Development Council";
- improve occupational health and safety initiatives including by issuing new guidance notes;
- continuously review rehabilitation bonds to ensure they provide the appropriate level of environmental protection; and
- develop forums such as environmental review committees to encourage partnerships with community and indigenous land holders.

The Government has also indicated that it will demand increased environmental reporting and accountability from industry. One recent example is the Brown Coal Tender Process which aims to deliver greenhouse savings of up to 30% on brown coal use.

The reforms signalled by the Government are broad and have the potential to impact on all participants in the Victorian mining, extractive and petroleum industries.

WESTERN AUSTRALIA

APPLICATION FOR RESTORATION OF MINING LEASES*

Metals Quest Australia Ltd v Gianni and Ors (Kalgoorlie Warden's Court, Warden Temby SM, 22 September 2003)

Notice of Intention to Forfeit under s 97, Mining Act 1978 – Failure to file Form 5 Operations Rrepor, Expenditure on Mining Tenement – Application for Rrestoration under s 97A – Gross lack of care – No indirect financial advantage – Special circumstances

Background

In May 2002, Metals Quest Australia Limited (Metals Quest) issued a prospectus for the offer of its securities and proposing that an application would be made for these securities to be admitted to quotation on the Australian Stock Exchange Limited (ASX). Metals Quest was the holder of

* Stuart House and Mark Gerus, Blakiston & Crabb, Perth.