

## COMPENSATION\*

*Hicks v Graham* ([2004] QLRT 47 (Kingham DP))

*Mining – Compensation agreement – Review of agreement – Material change in circumstances*

### Background

This case involved two mining leases with a number of related matters, including an application for review of compensation agreements. When the parties entered into compensation agreements they were under a number of misunderstandings as to the rights and conditions of the mining lease. Subsequently, there were changes to legislation with the environmental controls on mining moved from the *Mineral Resources Act 1989* (MRA) to the *Environmental Protection Act 1994* (EP Act).

### Review of Compensation Agreements

The miners sought review of the compensation agreements. The tribunal may only review a compensation agreement if there has been a “material change in circumstances” since the agreement was made (MRA, s 283B). The Tribunal considered the meaning of this term.

Kingham DP explained that a circumstance of a mining lease is a condition which accompanies, determines or modifies a relevant fact or event. She determined that the proper interpretation of material change for the purposes of s 283B was “a change that is pertinent to what compensation should be awarded”.

The Tribunal addressed a number of potential grounds for review of compensation. The first potential ground was that the parties were under certain misunderstandings about the lease and its conditions during compensation negotiations. Citing *Do Carmo v Ford Excavations Pty Ltd*<sup>1</sup> the Deputy President noted that a clear distinction must be drawn between the circumstances and the parties’ understanding of the legal consequences of those circumstances. She held that the parties’ understandings were not circumstances of the mining lease and thus any change in those understandings was not relevant. She observed that parties had an interest in being properly advised in negotiating compensation agreements.

The miner argued that there had been a material change in circumstances because only a minimal area of land had been disturbed. Kingham DP determined that this was not a material change because the area of land actually disturbed remained consistent with the lease obligations throughout their terms. The miner had also applied for a reduction of the total area of one of the leases, but the application had not been accepted until after the term for which compensation had been agreed had expired. Kingham DP held that this was not a material change during the term of the compensation agreement.

Finally, there was a change to the conditions imposed on the mining leases due to changes in legislation. A condition under the MRA that the miners were not to disturb more than a specified area was changed to a condition under the EP Act that the area of disturbance must be minimised. Kingham DP found that this was a material change in circumstances.

### Decision

However, although there was a material change in circumstances, the change in the conditions for the leases did not warrant amendment of the compensation agreement. Kingham DP confirmed both compensation agreements.

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\* Matt Black, Research Officer to the Presiding Members, Land and Resources Tribunal (Qld).

<sup>1</sup> (1984) 154 CLR 234.

**Other Observations**

In this case, the Mining Registrar had issued a notice to show cause to the miner, apparently to prompt him to resolve compensation in relation to the mining lease renewal. Kingham DP observed that in applications for mining leases the Mining Registrar has the power to refer compensation to the Tribunal for consideration after a defined period, whereas in applications for renewal there is no such power. She drew this to the attention of the Minister for Natural Resources, Mines and Energy.

Kingham DP also noted that although a miner cannot surrender a mining lease until the environmental authority has been surrendered or cancelled (s 309(6)(b), MRA), the Minister can cancel a mining lease regardless of the status of the environmental authority (s 308(6)). This could give rise to a range of issues for miners, landowners and departmental officers. Kingham DP drew this to the attention of both the Minister for the Environment and the Minister for Natural Resources, Mines and Energy.

***Cape Flattery Silica Mines Pty Ltd v Hope Vale Aboriginal Council*** ([2004] QLRT 34 (Koppenol P))

*Mining – Application for interim injunction – Ex parte – Urgency – Safety on mine site – Alleged unlawful trespass and threatening behaviour*

**Background**

The applicant held mining leases north of Cairns, Queensland and for commercial reasons reduced its workforce. In an ex parte hearing, the applicant presented evidence that various named Aboriginal persons (some of whom were former employees) and representatives of the Hope Vale Aboriginal Council were attempting to take over control of the mine and were refusing to leave the property.

**Urgency and Safety**

Evidence was given that people were entering the mine site without authorisation or safety inductions and that unauthorised vehicles were being driven on the site. There was evidence about the abusive and threatening behaviour of some of those persons on the mine site. The applicant indicated that alcohol had been brought in and that there were grave safety issues. The applicant had sought police protection and had arranged for the attendance of security officers.

**Decision**

The *Mineral Resources Act 1989* s 403 provides that a person shall not enter or be upon land that is subject to a mining lease unless authorised under the Act and with the consent of the lease holder. The President accepted the applicant's evidence that there were urgent safety issues and was satisfied that the respondents had been lawfully asked to leave the mine site.

Noting the ex parte nature of the application, the President was prepared to issue an interim injunction on the evidence provided. It ordered that the respondents forthwith vacate the area of the applicant's mining leases.