The President held that the relevant right to compensation needed to have only a broad or perhaps less direct relationship with the particular thing that was done. He saw no reason why that right could not concern the activities which were proposed by the applicants in their 3 March 2004 letter and which underpinned the 22 December 2004 application for the assessment of compensation.

Decision

The President issued a declaration that compensation was to be assessed under the former compensation provisions of the 1923 Act.

ENVIRONMENTAL AUTHORITY*

Re Clark, Bexton, Lane & Ors, Environmental Protection Agency [2005] QLRT 146 (Kingham DP)

Mining lease – environmental authority – criteria for recommendation

Background

The applicants sought a mining lease and environmental authority for a proposed dimension stone mine in Gatton Shire. The site was located in a rural residential area approximately 17km northwest of Helidon. Surrounding land uses comprised isolated detached residences.

The respondents objected to the grant of the applications and also disputed the conditions proposed by the Environmental Protection Agency (EPA) for the environmental authority.

The proposed activities

The applicants intended to commence sandstone mining in the central portion of the subject site. It was proposed that no more than 5ha would be significantly disturbed at any one time, including mine workings, haul roads, overburden and product stockpiles and bund walls. Depending on the quality of the sandstone, the initial workings could extend to 20m below surface level. The applicants estimated that the area contained 1.54 million tonnes of recoverable sandstone, which provided for 15 years of production at 100,000 tonnes per year.

Criteria for deciding whether to recommend grant of lease and authority

The Respondents submitted that, in deciding whether to recommend the grant of the mining lease and environmental authority, the question for the Tribunal was whether the economic, social and environmental benefits of the proposed mine outweighed its economic, social and environmental costs. Kingham DP accepted that those costs and benefits were relevant to the Tribunal's consideration, but held that it did not amount to a test that had to be met before a positive recommendation could be made.

The Deputy President explained that neither s 269(4) of the *Mineral Resources Act 1989* nor s 223 of the *Environmental Protection Act 1994* provided a single definitive test for whether a mining lease or environmental authority, respectively, should be granted. The Acts did not set standards or objectives required in order to obtain a positive recommendation, but instead listed matters the

* Matt Black, BA, research officer to the presiding members, Queensland Land and Resources Tribunal.

Tribunal was required to consider in making its recommendation. There was no onus on the applicants to prove that the total economic, social and environmental benefits of the mine outweighed the total economic, social and environmental costs.

Decision

Kingham DP recommended the grant of the mining lease and environmental authority subject to various additional or amended conditions.

MINING DISPUTE JURISDICTION[*]

D'Aguilar Gold Ltd v Gympie Eldorado Mining Pty Ltd [2005] QLRT 156 (Koppenol P)

Mining – jurisdiction of Tribunal – whether claim "arising in relation to" mining or a mining permit – whether with respect to "possession of or other interest or share in" an exploration permit

Background

The respondent had entered into a written agreement with a seller, under which the respondent was granted various rights of use and enjoyment with respect to 6 sub-blocks on an exploration permit which was held by the seller. Subsequently, receivers and managers were appointed to the seller and they assigned the exploration permit to the applicant.

A dispute emerged when the respondent proposed to exercise the rights conferred and the applicant maintained that it was the sole legal and beneficial owner of the 6 sub-blocks and was not bound by the agreement. The applicant sought orders to that effect, but the respondent argued that the matter was beyond the Tribunal's jurisdiction.

Arising in relation to mining

Section 363(1) of the *Mineral Resources Act 1989* (MRA) provided that the Tribunal had jurisdiction to hear "proceedings arising in relation to" mining or mining tenements. In *O'Grady v Northern Queensland Co Ltd*,[1] the holders of a mining lease agreed to sell an interest in it. When the sellers claimed that the agreement had been terminated, the buyer counterclaimed for a declaration that the purported rescission was invalid and for orders appointing a joint venture committee. Relevantly, the High Court held that the counterclaim was not an action "arising in relation to mining".[2] The majority said that "arising in relation to" mining presupposes a direct connection between a presently existing action and mining or a mining tenement.[3]

The respondent submitted that the claim was simply a matter of contract law and statutory interpretation as to whether the agreement was valid, along the lines of the *O'Grady* counterclaim. The applicant argued that its claim concerned whether there had been a valid assignment of an interest in the exploration permit, making it a claim arising in relation to the permit. It was said

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[*] Matt Black, BA, research officer to the presiding members, Queensland Land and Resources Tribunal.

1 (1990) 169 CLR 356.

2 Within a section of the *Mining Act 1968* (Qld) which corresponded to section 363(1) of the MRA.

3 *O'Grady v Northern Queensland Co Ltd* (1990) 169 CLR 356, 367, 374, 375.