the distinction between the wording of the provisions in the 1989 MRA and its 1968 predecessor. To this end, it was necessary to distinguish the decision in *R v The Land Court; Ex parte Kennecott Explorations (Australia) Ltd*[6] whereby the Supreme Court of Queensland held that under the provisions of the 1968 Act compensation was to be assessed for the "whole property (including the balance land)".[7]

On appeal, President Koppenol held that any distinction between the provisions of the 1968 and 1989 MRA was illusory; the context and wording of both Acts is materially identical. The President also examined the passage from the Minister's second reading speech for the 1989 Act relied upon by the Deputy President at first instance.

As a matter of language, the President held that the phrase "the lands of the owner of which an area of surface has been taken up"[8] denotes that the area of surface could not be the same as the lands of the owner, but is rather a part of that land. In this regard, the term 'land of the owner' utilised within s 281 of the MRA was to comprise the area of surface taken up by the mining lease and some other land, being the balance land, and was therefore consistent with the decision in *Kennecott*. President Koppenol expressed the opinion that were it otherwise, s 281(3)(a)(iv) of the MRA would be rendered nonsensical for it would mean "that the landowners' entitlement to compensation would be for severance of any part of *the mining lease land* from other parts of *the mining lease land* or from other land of the owner, *as a consequence of the grant of the mining lease*".

Severance

It was submitted by the cross-appellant mining company that the Deputy President at first instance had erred in making an award for severance under s 281(3)(a)(iv) of the MRA. While it was acknowledged by both parties that the land in question was adjoined by two further mining leases, it was unclear as to whether such leases were surface or subsurface mining leases. Notwithstanding such an argument, President Koppenol held that valuation evidence presented by both parties established that the grant of the mining lease would affect a severance such that there was no merit in the mining company's cross-appeal.

Decision

President Koppenol allowed the appeal and ordered that the award determined at first instance be increased by $1,535,000 to account for compensation for the balance land. The cross-appeal was disallowed. Costs were ordered to follow the event.

SERVICE AND LATE OBJECTIONS*

Re Australian Finegrain Marble Pty Ltd & Kagara Pty Ltd ([2006] QLRT 123 (Koppenol P))

Mining lease – Application – Service of application documentation – Late objections

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6 [1989] 1 Qd R 335.
7 Ibid, 340 (Thomas J).
8 *Parliamentary Debates*, 7 September 1989, 558.
* Ryan Gawrych BA, LLB (Hons), A/Registrar, Queensland Land and Resources Tribunal.

Background

A preliminary issue arose in proceedings for the grant of eight mining leases as to whether proper service of the eight applications was effected by the applicant mining company upon the respondent landowner.

Pursuant to s 252(4) of the *Mineral Resources Act 1989* (MRA) the applicant sent copies of certificates of public notice and the mining lease applications by registered post to the respondent's Perth postal address. This address was listed as the respondent's principal place of business and was the address of previous correspondence. The respondent received the documents on 12 September 2006. The last day for objections to the mining lease applications was 2 October. The respondent lodged late objections on 6 October 2006 stating that the objections were late as a result of the documents being sent to the incorrect address and subsequently being inadvertently filed.

It was argued by the respondent that the Brisbane address contained within the mining lease applications themselves was the correct address for service pursuant to s 399(3) of the MRA and s 81(2)(c) of the *Mineral Resources Regulation 2003* (Regulations). It was contended that the failure to serve at that address should result in the applications being rejected under s 266 or s 269(5) of the MRA due to non-compliance. The respondent argued that in the alternative the late objections should be accepted.[1]

Validity of Service

Under s 399(1) of the MRA, documents are validly served under the Act when they are served personally on the landowner or when they are sent by registered post to the last known place of residence or business of the landowner. Section 399(3) provides that for any matter under the MRA that requires a person's name or address to be specified then for the purposes of service the last known place of residence or business is deemed to be that which is recorded in the register in respect of the matter, which is further defined in the schedule to the MRA as a "register maintained under section 387".

President Koppenol noted that the mining district register under s 387 of the MRA was required to contain *inter alia* particulars of applications for the grant of mining leases, but that it was ss 49-51 and s 54 of the Regulations that outlined which particulars were to be specifically included. Under these provisions there was no requirement for the address of the landowner to be recorded. The respondent submitted that the requirement under s 81(2)(c) of the Regulations for the Mining Registrar to only accept applications in the approved form meant that acceptance of the mining company's application constituted approval of the landowner's address for service. The President rejected this argument, stating that s 81(2) dealt with matters of form not content and that on the basis of the evidence before the Tribunal s 399(1) of the MRA had been complied with.

Extension of Time

The respondent relied upon the President's previous decision in *Lee v Kokstad Mining Pty Ltd*[2] to argue for an extension of the time in which to object. In *Lee* time for objection was extended following a finding that the lease application had not come to the objector's attention in a timely fashion. After careful consideration, and notwithstanding the view adopted in *Lee*, the President was of the opinion that no extension of time could be granted. In so deciding the President

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1 See *Lee v Kokstad Mining Pty Ltd* [2005] QLRT 160.

2 Ibid.

emphasised that upon reflection, the decision in *Lee* had been decided *per incuriam*[3] insofar as the earlier decision of *ACI Operations Pty Ltd v Friends of Stradbroke Island Association Inc*[4] had not been draw to his attention. It was further noted that neither party in *Lee* had disputed the orders so given nor had the matter of *ACI* been discussed by either of the lawyers who had appeared.

Decision

The President held that the applicant's service of the application documentation was valid pursuant to s 399(1) of the MRA. The extension of time to lodge objections was refused and objections were struck out.

NATIVE TITLE ISSUE DECISIONS*

Re Australian Jade Exploration Pty Ltd & Ors ([2006] QLRT 78 (Smith DP))

Mining lease – Application – Native title parties – Native title issues decision – Compensation trust decision

Background

Pursuant to s 245 of the *Mineral Resources Act 1989* (MRA) the applicant lodged its mining lease application for the mining of chrysoprase with the Mining Registrar for Rockhampton District. No objections were subsequently lodged.

The underlying tenures subject to the lease application included non-exclusive land as defined in s 422 of the MRA thereby invoking the native title provisions of Part 17 of the Act. This joined the native title parties of the Barada Barna and Kabalbara Yetimarla People, Durambal People and the Koinjmal People. The State of Queensland also became a party.

Pursuant to s 669 of the MRA, the application was referred to the Tribunal for recommendation,[1] making of a native title issues decision[2] and a compensation trust decision.[3]

Native Title Issues Decision

Drawing parallels with *Re Fazzari*,[4] Deputy President Smith considered the submissions of the State of Queensland that an appropriate native title issues decision would be to grant the mining lease subject to specified contract conditions. These conditions were the result of a mediated agreement between the parties and addressed the relevant native title concerns.

Notwithstanding the agreement between the parties, one native title signatory failed to sign the agreement. All material was supplied and repeated requests to respond were ignored. It was the view of the Deputy President that the failure by one individual in such circumstance was not fatal, especially where all other parties had demonstrated clear support for the contract conditions. It was

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3 *Proctor v Jetway Aviation Pty Ltd* [1984] 1 NSWLR 166.
4 [2000] QLRT 7.
* Ryan Gawrych BA, LLB (Hons), A/Registrar, Queensland Land and Resources Tribunal.
1 See *Mineral Resources Act 1989*, s 269(4).
2 Ibid, s 675(1).
3 Ibid, s 675(2) and ss 706-722.
4 [2005] QLRT 74.