

Nevertheless, the effect of the Court of Appeal decision is to eliminate the earlier precedent set by the LRT decision. Therefore, new coal mining lease applicants in Queensland will potentially be open to similar objections from conservation groups in the foreseeable future, until the argument is again tested and determined in the courts.

TASMANIA

LEGISLATIVE DEVELOPMENTS IN TASMANIA*

Electricity Supply Industry Amendment Act 2007

One significant piece of legislation entered into force during the current reporting period. The *Electricity Supply Industry Amendment Act 2007* (Tas) received Royal Assent and commenced on 21 June 2007. The Act amends the *Electricity Supply Industry Act 1995* (Tas) by inserting a new Division 6A to Part 10 of the original Act.

The amending legislation introduces two new charges: the National Energy Market Charge (NEMC) and the Electrical Safety Inspection Service Charge. The purpose of the NEMC is to cover the cost of the State's funding obligations in respect of the Australian Energy Market Commission. Under cl 10.1 of the Council of Australian Governments *Australian Energy Market Agreement* (2004), the costs of funding the Australian Energy Regulator and the Australian Energy Market Commission can be recovered in the form of a levy imposed on the energy industry. Under cl 10.2, the Commonwealth Government is responsible for funding the Regulator and States and Territories fund the Commission.

Under s 121 of the *Electricity Supply Industry Act 1995* (Tas) (as amended by the *Electricity Supply Industry Amendment Act 2007* (Tas)), electricity entities are required to pay an annual charge to the Crown, as determined by the Minister. Information provided in the second reading speech on 19 April 2007 indicates that the estimated charge will be approximately \$430,000 per year. Although electricity distributors liable to pay this charge can pass it on to consumers, it is suggested that the impact will be negligible (approximately 51 cents per quarter). This is particularly the case given that the charge replaces previous cost recovery obligations for the funding of the National Electricity Code Administrator.

Under s 121B of the *Electricity Supply Industry Act 1995* (Tas) (as amended by the *Electricity Supply Industry Amendment Act 2007* (Tas)), an Electricity Safety Inspection Charge is payable annually by electricity entities to the Crown to cover the ongoing cost of the operation and administration of the Electricity Safety Inspection Service (ESIS). An ESIS fund is to be established for this purpose. Aurora Energy Pty Ltd, which runs the distribution network for

* Dr Dianne Nicol, Senior Lecturer, Law Faculty, University of Tasmania.

electricity in Tasmania, also currently provides this service, overseen by Workplace Standards Tasmania. In the past, Aurora recovered the costs associated with the ESIS through its distribution revenue determination process. Data provided in the second reading speech indicate that approximately 17,000 safety inspections are carried out in Tasmania each year, at a cost of around \$1.8 million.

VICTORIA

ROLE OF THE MINING WARDEN*

Introduction

There have been Mining Wardens in Victoria since 1855¹ and since these times, this statutory office has operated independently from the executive government and the courts, although their role has historically involved the exercise of judicial functions to deal with encroachments on claims and mining leases, grant injunctions against mining and order the deposit of disputed gold or minerals.² Today the role of the Mining Warden may be described as the exercise of administrative functions and powers with some judicial elements.³ The Warden has some of the powers exercised by Boards appointed by the Governor in Council under the *Evidence Act 1958*. These powers include the ability to summons a person to appear and produce documents and to take evidence on oath. The effect of conferring such powers means that a hearing conducted by the Mining Warden is recognised as a legal proceeding and in this context the Warden is acting in a judicial capacity as a court.¹ The current Mining Warden, has occupied the office since 2000 and describes his role as multifaceted, but essentially composed of four main functions – investigations, referrals from the Minister regarding competing mining activities, dispute settlement between applicants or licensees and disputes involving the Secretary or Department.

Investigations

The Warden's broad investigatory function arises from the ability of the Minister or the Secretary to refer any matter to the Warden for investigation, report and recommendation under s 98 of the *Mineral Resources (Sustainable Development) Act 1990* (the Act). Typically this may involve a referral to the Warden to consider whether or not an applicant for an exploration or mining licence meets the requirements of s 15(6) as a fit and proper person and has the intention to comply with the Act and undertake work with appropriate finance and work program.²

For the purposes of an investigation, the Mining Warden, legal practitioners and witnesses appearing before him and the Warden's report to the Minister are subject to the same privileges and immunities that would arise if the matter came before the Supreme Court.³ The Warden also has the power to make orders for the inspection, custody or preservation of any relevant minerals or to restrain a person from dealing with, or removing minerals from Victoria.⁴ Such orders are

* Elda M Poletti BA, LLB, LLM, Senior Legal Counsel, Department of Primary Industries. The generous assistance of Mr Noel Laidlaw, Mining Warden, in the preparation of this paper is acknowledged.

¹ *Goldfields Act 1855* 18 Vict 37.

² Ralph Birrell, *Staking a Claim – Gold and the Development of Victorian Mining Law*, 1998, 74.

³ *Mineral Resources (Sustainable Development) Act 1990* (Vic) s 98(2).

¹ *Evidence Act 1958* (Vic) s 3, see definitions of 'person acting judicially', 'legal proceeding' and 'court'.

² During 2005-2006, 26% of all matters investigated by the Mining Warden related to the ability of applicants to satisfy s 15(6). Office of the Mining Warden Annual Report 2005 – 2006, p 2.

³ *Evidence Act 1958* (Vic) s 14, 15, 16 and 21A.

⁴ *Mineral Resources (Sustainable Development) Act 1990* (Vic) s 99(1)(c)(d).