

emphasised that upon reflection, the decision in *Lee* had been decided *per incuriam*<sup>3</sup> insofar as the earlier decision of *ACI Operations Pty Ltd v Friends of Stradbroke Island Association Inc*<sup>4</sup> had not been drawn 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,<sup>1</sup> making of a native title issues decision<sup>2</sup> and a compensation trust decision.<sup>3</sup>

### Native Title Issues Decision

Drawing parallels with *Re Fazzari*,<sup>4</sup> 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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<sup>3</sup> *Proctor v Jetway Aviation Pty Ltd* [1984] 1 NSWLR 166.

<sup>4</sup> [2000] QLRT 7.

\* Ryan Gawrych BA, LLB (Hons), A/Registrar, Queensland Land and Resources Tribunal.

<sup>1</sup> See *Mineral Resources Act 1989*, s 269(4).

<sup>2</sup> *Ibid*, s 675(1).

<sup>3</sup> *Ibid*, s 675(2) and ss 706-722.

<sup>4</sup> [2005] QLRT 74.

therefore held that the contract conditions set out within the agreement were appropriate and should be accordingly affixed to the mining lease.

### **Compensation Trust Decision**

In the material before the Tribunal, the negotiated agreement included two clauses referring to “payment”. While not drafted in terms of “compensation”, Deputy President Smith was of the opinion that the intent was obvious, and that pursuant to s 711 of the MRA, compliance should be made a condition of the mining lease.<sup>5</sup>

### **Decision**

The Deputy President made a recommendation that the mining lease be granted subject to the contract conditions agreed to between the parties.

## **ENVIRONMENTAL OBJECTIONS\***

### ***Re Xstrata Coal Queensland Pty Ltd & Ors* ([2007] QLRT 33 (Koppenol P))**

*Mining lease – Application for additional surface area – Environmental authority application – Objections – Greenhouse gas emissions – Global warming – Climate change – Conditions*

### **Background**

The applicant mining company sought the grant of additional surface area adjoining its existing operations as part of the Newlands Coal Project. Mining operations on the proposed site would employ open-cut methods and be carried out in accordance with a 33-page environmental authority issued by the Environmental Protection Agency for a period of 15 years.

The Queensland Conservation Council (QCC) and Mackay Conservation Group (MCG)<sup>1</sup> lodged objections to the mining lease application and associated environmental authority on the basis that conditions should be imposed to “avoid, reduce or offset the emissions of greenhouse gases that are likely to result from the mining, transport and use of the coal from the mine”.<sup>2</sup>

Pursuant to s 268 of the *Mineral Resources Act 1989* (MRA), the applications and objections were submitted to the Tribunal for the making of a recommendation to the Minister for Mines and Energy to either grant (with or without conditions) or reject the applications.

### **Statutory Considerations and Objections**

Under s 269 of the MRA and ss 222 and 223 of the *Environmental Protection Act 1994* (EP Act) President Koppenol was required to take into consideration certain prescribed factors in making the recommendation. To this end, the matter centred around four of those factors such that unless the conditions sought by QCC and MCG were imposed then it was submitted that:

- there would be an adverse environmental impact;<sup>3</sup>

<sup>5</sup> *Re Fazzari* [2005] QLRT 74, [5].

\* Ryan Gawrych BA, LLB (Hons), A/Registrar, Queensland Land and Resources Tribunal.

<sup>1</sup> Pursuant to the provisions under *Practice Direction No 5/2003*, the Mackay Conservation Group opted to rely on their notice of objection and not attend the hearing or make further submissions.

<sup>2</sup> This objection was later particularised by QCC so as to require the avoidance, reduction or offset of 100% of all greenhouse gas emissions from the mine, including those attributable to downstream use.

<sup>3</sup> *Mineral Resources Act 1989*, s 269(4)(j).