

TASMANIA*

LEGISLATION

MINERAL RESOURCES DEVELOPMENT ACT 1995

This Act, which commenced on 1 July 1996, repeals the *Mining Act* 1929. A discussion of the Mineral Resources Development Bill appeared in (1995) 14(4) *AMPLA Bulletin* 240.

The *Mineral Resources Development Act* (the Act) reduces the mining tenements to three basic types:

- Exploration Licence;
- Retention Licence; and
- Mining Lease.

The Act provides for the activity of fossicking. It provides for a consistent royalty regime over both crown and private land. The Act widens the powers of inspectors of mines.

Objections to the granting of applications for exploration licences, special exploration licences, retention licences or mining leases are restricted to those having an interest or an estate in the land within the area of the proposed grant.

A licensee or lessee may appeal against Ministerial decisions to:

- vary the conditions of a licence;
- not extend the term of a licence;
- vary a licence by amending the area or minerals to which the lease relates;
- revoke part or all of a licence;
- refuse to grant an application for a removal of a licence; and
- revoke part or all of a lease.

The Act establishes a Mining Tribunal as a division of a Magistrate's Court in Tasmania. The Tribunal replaces the Warden's Court. Appeals to the Supreme Court lie from the decisions of the Tribunal except where the parties agree or it is otherwise provided. The Supreme Court may determine an appeal on the proceedings of the Tribunal or by way of a new hearing. There is also provision for parties to a dispute to apply to have a matter for determination transferred directly to the Supreme Court.

The Act provides for compensation agreements with the owners or occupiers of private land the subject of an application for a lease or licence. In the absence of agreement, the Act provides for a determination by the Mining Tribunal of the amount of compensation payable.

The Act obliges a licensee or leaseholder to store a sample of its drill cores and cuttings obtained in the process of exploration, mining or geoscientific investigation. The drill cores and cuttings must be available to the director, and the director or someone authorised by the director may take samples for investigation. The director cannot publish the information obtained from such an investigation or assay without the licensee or lessee's consent or unless otherwise directed by the Minister. Furthermore, any such information is exempt from the provisions of the *Freedom of Information Act* 1991 (Tas).

* Audrey Mills, Tas Information Service Reporter.

The Act requires licensees and lessees to keep records of exploration and mining activities and to provide copies of those records to the director. This information is also exempt from the *Freedom of Information Act* where the Act provides for the confidentiality of those records. Once the time for confidentiality of the records kept expires the Minister may publish, copy and release the records.

The Act sets up a Geoscientific and Research Trust Fund the funds of which are to be applied to research, inquiries or surveys carried out or commissioned by the Minister.

The Minister may not grant a lease or licence for Aboriginal land, within the meaning of the *Aboriginal Lands Act 1995* (Tas), without the agreement of the Aboriginal Land Council of Tasmania established under that Act.

WARDEN'S COURT DECISIONS

STEWART v D K & C M BARNES

(unreported, Warden's Court, Tas, Warden Shott, 16 May 1996)

This decision concerned an application for the forfeiture of a stone lease held by the respondents and the application was based on failure by the respondents to comply with a labour covenant contained in the lease.

The warden noted that his discretion when determining whether to declare a lease forfeited, to impose a fine or determine to impose no penalty pursuant to s 57(2) of the *Mining Act 1929* (Tas) was to be exercised judicially, that is "by application of sound principle to circumstances of a particular case".

He noted that labour covenants should be rigorously enforced as the "covenant comprises a substantial consideration for the lease". (*Barwick v Dutches of Edinburgh Co* (1881) 8 VLR (Eq) 70 cited in support).

The warden noted that the Act makes provision for relief from compliance with labour covenants but that no such relief had been sought by the respondents.

The warden concluded that the extent of non-compliance by the respondents was substantial suggesting that a forfeiture penalty was appropriate.

However, two factors lead the warden to consider that, under the circumstances, a fine rather than forfeiture was the appropriate penalty. First he found that the respondents had been confused by a letter from their local council querying the use to which they were putting the land comprising the lease. Secondly "accidental" removal by the council of a substantial amount of sand from the lease gave rise to a belief by the respondents that they had exceeded their quota in that period.

In the circumstances the warden found that there was not a substantial abandonment of the mine or of any abdication of the respondents statutory duty.

The respondents were each fined \$400.

GENERAL INFORMATION

In a prosecution under the *Mines Inspection Act 1968* (Tas) Pasmenco EZ was fined \$7000 following the death by electrocution of one of its employees.

The learned magistrate noted that the primary purpose of the *Mines Inspection Act* is to demand, for the common welfare, and going beyond the provisions of the civil law, safe systems of work in mines and in mine-related areas.

The learned magistrate found that the corporation had accepted "with hindsight that it should have anticipated and appreciated the potential danger involved in (the) fatal injury".