The *Mineral Resources Act 1989* (MRA) provides that where there are conflicting applications, the "mining registrar must not deal with the later application until the earlier application is finally decided" or until "the earlier applicant's consent to the later application is lodged with the mining registrar" (s 249(5), (6)). The later applicant is required to obtain the earlier applicant's written consent in order to proceed (s 249(2)).

Referral by Mining Registrar

Kingham DP held that the applications were referred by the Mining Registrar prematurely because there were competing applications for tenures for the same mineral. The Mining Registrar acted on the applicant's assurance that consent from Titan would be forthcoming, but Kingham DP held that s 249 of the MRA "prevents the Mining Registrar from exercising any of his statutory powers with respect to the application, including its referral to the Tribunal" unless the earlier application is finally decided or consent of the earlier applicant is lodged.

Costs

In the absence of special circumstances, parties in the Tribunal are required to bear their own costs (s 51(1), *Land and Resources Tribunal Act 1999*). The respondents sought an order for costs, and Kingham DP accepted that, if Titan's consent did not materialise, "special circumstances" would exist to justify an order for costs against the applicants. Kingham DP explained that those special circumstances are that the applicants were aware of the need for Titan's consent and had assured the Mining Registrar that consent would be obtained. Without that assurance, the Mining Registrar would not have referred the case to the Tribunal.

Decision

Kingham DP referred the applications for a mining lease and an environmental authority back to the Mining Registrar. In respect of each application, it was ordered that if the Minister rejects the mining lease because Titan's consent is not obtained, the applicants must pay the respondents' costs of and incidental to the applications.

APPLICATION FOR DETERMINATION THAT NATIVE TITLE EXTINGUISHED[*]

De Lacey v Juunjuwarra People and State of Queensland ([2004] QLRT 20 (Koppenol P and Kingham DP))

Exploration permit application – Registered native title claim – Effect of compulsory acquisition law – Whether tribunal has jurisdiction to determine if native title extinguished

Background

The applicant sought a determination of whether the Tribunal had jurisdiction to decide if native title over certain land had been extinguished. The applicant had a pending application for grant of a high impact exploration permit. The respondent Juunjuwarra People had a National Native Title Tribunal-registered claim over the land concerned.

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[*] Matt Black, BA, Research Officer to the Presiding Members, Land and Resources Tribunal. The full text of these cases can be accessed via the LRT's website: www.lrt.qld.gov.au.

Questions of extinguishment

The applicant submitted that the Tribunal had the necessary jurisdiction and that extinguishment had been effected by the *Starcke Pastoral Holdings Acquisition Act 1994* (the Acquisition Act). The respondents accepted that the Tribunal had jurisdiction to decide whether the relevant land was "non-exclusive land" and conceded that the Tribunal could determine an extinguishment question if it were manifestly clear that native title was extinguished, such as by the grant of a fee simple. But, it was argued, factual findings as to the content of native title were needed in this case and those findings were the exclusive jurisdiction of the Federal Court. This, it was submitted, meant that the Tribunal had to conclude that the land was "non-exclusive land".

The Tribunal held that there was nothing in the *Native Title Act 1993* (Cth) (NTA) which expressly or impliedly ousted a State court or tribunal's jurisdiction to determine whether extinguishment of native title has occurred. The Tribunal agreed that questions of extinguishment should usually await the anterior determination of native title, but that there were some circumstances where that exercise could be undertaken, such as those cited by the High Court in *Wilson v Anderson*[1]: the grant of an estate in fee simple, the grant of a common law lease, and a previous exclusive possession act under s 23B of the NTA.

The Acquisition Act in this case compulsorily acquired the underlying pastoral holdings and rendered the land as unallocated State land. The Tribunal noted that s 24MD(2)(a)-(c) of the NTA provides that native title is extinguished by certain types of compulsory acquisition laws.

Decision

The Tribunal held that the question of whether the Acquisition Act is a compulsory acquisition law which under the NTA would effect an extinguishment of native title was an appropriate question for the Tribunal to address. Such a question is capable of separate determination prior to the factual determination of the claimed native title rights and interests because a determination of the legal effect of the Acquisition Act would not rest on those factual findings. The Tribunal decided that it would determine the question as a preliminary issue.

ASSESSMENT OF COMPENSATION UNDER PETROLEUM ACT 1923 (QLD)*

Sullivan v Oil Company of Aust Ltd & Anor ([2003] QCA 570, Queensland Court of Appeal, 19 December 2003)

Appeal from Land and Resources Tribunal – Section 99 Petroleum Act 1923 – Compensation – Injurious affection – Consequential damages

Background

The respondents (the Sullivans) acquired a lease under the *Land Act* over land. The lease was subject to a reservation to the Crown of all petroleum in the land and all rights of access necessary for the exploitation of the petroleum. The lease was later converted to freehold. The respondents used the land for grazing and cropping.

The appellants (Oil Company of Australia Limited and Santos Petroleum Operations Pty Ltd) each held a 50% interest in an authority to prospect (ATP) and two petroleum leases under the

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1 (2002) 76 ALJR 1306.

* Peter Schmidt, Graduate Lawyer and Katherine Graff, Senior Associate, Corrs Chambers Westgarth, Brisbane.