

Haoma's second contention in relation to s 102(4) was that taking into account shortfalls in expenditure, which are the subject of previous certificates of exemption, when the Warden is contemplating an adverse recommendation on a subsequent application for exemption, undermines the operation of s103 and s96(2a) of the Act. This was rejected by the Court As to s 103, which deals with the effect of the grant of a certificate of exemption, the Court said:

the effect is not undermined because the exemption might later be looked at, in the context of a fresh application, for the purpose of considering whether or not there is, in all the circumstances, an unwillingness, or inability, to explore or mine the tenement within a reasonable timeframe.¹³

The Court held it was open to the Warden to take into account prior shortfalls in expenditure by Haoma even though exemptions had been granted in respect of them regardless of the grounds upon which the exemptions were granted. It was proper to do so in the context of the enquiry as to whether there was "any other reason for the grant of a certificate of exemption" under section 102(3) of the Act. It would not have been open to the Warden to ignore the fact of previous exemptions when considering Haoma's subsequent applications for exemption.

Implications

The Court's refusal to read down section 102(4), in light of section 103, has confirmed the relevance of the prior history of expenditure on a mining tenement and previous applications for exemption by the tenement holder. The Warden may consider previous grants of exemption, regardless of the grounds upon which they were granted, and where the same grounds are relied upon in a current application the Warden must take this history into account. This may, depending on the circumstances, assist an objector to an application for exemption or the tenement holder. For example, it is open for the Warden to inquire whether a repeated claim that "more time is required to evaluate work done on the tenement" has any credibility. Conversely, the decision suggests that previous grounds of exemption such as those granted on the basis that a tenement contains an uneconomic mineral deposit, is part of a project or that there are difficulties in obtaining approvals to commence mining, may provide good reasons why, as a matter of consistent decision making, a certificate ought to be granted.

WARDEN'S POWERS UNDER THE 1904 MINING ACT*

Precious Metals Australia Ltd v Western Mining Resources Ltd [2006] WAMW 6 (Warden Richardson SM), 12 April 2006)

Extension of time – Powers of Warden and Registrar – Objections – 1904 Act

Background

This decision concerned an application by Precious Metals for extension of time to lodge an objection under the repealed *Mining Act 1904* (WA) (1904 Act) and *Mining Regulations 1925*

¹³ *Haoma v Tunza No 4* at [64].

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(WA) (1925 Regulations). The 1904 Act and 1925 Regulations were relevant because of the effect of a State Agreement read with section 5 of the *Mining Act 1978* (WA).

Precious Metals sought to lodge objections to exemption applications made by WMC Resources. WMC Resources sought exemptions from labour conditions for 185 mineral claims. These mineral claims were granted under the 1904 Act and continue by virtue of the *Uranium (Yeelirrie) Agreement Act 1978* (WA) and the State Agreement scheduled to that Act.

Precious Metals' objections were lodged 8 and 78 days after the date the Mining Registrar set as the date by which objections were to be lodged.

Submissions by the Parties

Precious Metals argued that either the objection period was invalidly set because the 1925 Regulations required the Warden, not the Registrar, to set the date. Alternatively, Precious Metals argued that the Warden had the power to extend the objection period and an extension was justified in the circumstances. In making this argument Precious Metals relied on a provision of the 1904 Act that confirmed the powers of a Warden acting judicially to extend periods of time.

WMC Resources argued that the Registrar was able to set the objection periods. It relied on a regulation that enabled the Registrar to conduct transactions affecting mining tenements in the absence of the Warden where no objections were lodged. WMC Resources also argued that the Warden had no power to extend the period because the proceedings were administrative not judicial.

Decision

The Warden dismissed Precious Metals' application for an extension of time to lodge objections and found the purported objections were incompetent.

The Warden held that an exemption application is a transaction affecting the grant and register of a mining tenement and that the Mining Registrar had the power to fix the time for objections when the Warden was absent from the registry. The Warden also held that she acts administratively in hearing an exemption application and that the 1904 Act did not therefore confer on her the power to extend the time in which to lodge objections.

Precious Minerals has sought judicial review of the Warden's decision.