Solatium

The respondent submitted that the solatium under s 281(4)(e) of the *Mineral Resources Act* should be increased beyond the minimum 10 per cent to an amount of 25 per cent on the basis of the increase in cattle property values. Mining Referee Windridge was of the opinion that in the absence of any further evidence of special or exceptional circumstances, the purpose of the provision dictated that the solatium was to "reflect the compulsory nature of the action taken" and that only an amount of 10 per cent was warranted.[6]

Mining Referee Windridge further noted that both the valuations submitted by the applicant and respondent included a claim under s 281(4)(a) of the MRA as part of the aggregate award for the solatium claim under s 281(4)(e). The wording of the provision explicitly states that the solatium is based on the award under subsection (3); matters under subsection (4) need only be considered in the determination of compensation and do not form a separate head of compensation to be considered in the aggregate calculation.

Decision

The Mining Referee determined compensation to be in the amount of $548,625.00 representing 665 hectares at a value of $825.00 per hectare in addition to the solatium of $54,862.50. A direction was also made that the applicant pay the total compensation to the respondent landowners within 3 months.[7]

Practice note

Windridge MR concluded that it is now prudent for legal representatives who give instructions to valuers in relation to compensation issues under the *Mineral Resources Act 1989*, to refer the valuer to the legislative restrictions of ss.281(3) & (4), the practice directions issued by the Land and Resources Tribunal (especially Practice Direction 1 of 2003) and the effect of the decision in *Sullivan v Oil Company of Australia Ltd (No.2)*.[8]

TRIBUNAL JURISDICTION[*]

Teutonic Minerals Pty Ltd v Minister for Natural Resources, Mines and Water [2006] QLRT 101 (Koppenol P)

Mining – exploration permit applications – applications refused – jurisdiction of Tribunal to review or remake decision.

Background

The applicants had made 4 exploration permit applications to the Department for Natural Resources, Mines and Water concerning certain Commonwealth land near Townsville. The land had been transferred to the Commonwealth in 1993, although all mineral and related access rights were reserved to the State of Queensland.

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6 Ibid, [20].
7 Ibid, [24]-[27].
8 [2004] 2 Qd R 105.
* Ryan Gawrych BA, LLB (Hons), Research Officer to the Presiding Members, Queensland Land and Resources Tribunal.

The respondent refused each of the applications on the grounds that the requirements under s 137(1)(a) of the *Mineral Resources Act 1989* ('the Act') had not been satisfied insofar as the Commonwealth had opposed the grants. The applicant subsequently applied to the Tribunal to either stay the respondent's decision and grant the applications or refer the applications to a Commonwealth entity statutorily prescribed by the *Mineral Resources Regulations 2003*.

Jurisdiction

The applicants argued that the Tribunal had the requisite jurisdiction under s 363 of the Act to make the orders sought. In this regard, President Koppenol noted that s 363(1) drew a distinction between activities or operations (prospecting, exploration or mining) on the one hand and the tenement or instrument (permit, claim, licence or lease) on the other.[1] Applying the reasoning of the High Court in *O'Grady v Northern Queensland Co Ltd*[2] it was concluded that if 'exploration' were regarded as encompassing the activity or operation or instrument there would be no need for the second category which expressly deals with tenements or instruments. Moreover, it was noted that s 363(1) explicitly referred to those instruments "granted or issued", which had not taken place in present circumstances.

President Koppenol also highlighted the fact that although s 406 of the Act confers jurisdiction to review a "decision given or requirement made" by a Mining Registrar or other authorised officer, the respondent's refusal to grant the four exploration permits could not be regarded as either a direction or a requirement.[3]

Decision

The President held that the Tribunal was not conferred with the jurisdiction necessary to grant the relief sought by the applicant and the applications were struck out.[4]

Graham v Minister for Natural Resources, Mines and Water [2006] QLRT 102 (Koppenol P)

Mining – mining claim – breach of condition – penalty imposed by mining registrar – application to review decision – jurisdiction of tribunal.

Background

The applicant was the holder of a mining claim at Sapphire and was issued with a show cause notice by the Mining Registrar at Emerald pursuant to ss.106(1) and (3) of the *Mineral Resources Act 1989* ('the Act') alleging breach of conditions in the mining claim. The applicant's written response to the show cause notice was considered to be unsatisfactory by the Mining Registrar and a penalty of $750 was imposed for the breach. The applicant instituted proceedings in the Tribunal seeking an order revoking the Registrar's decision of the breached condition and the imposition of the fine.

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1 *Teutonic Minerals Pty Ltd v Minister for Natural Resources, Mines and Water* [2006] QLRT 101, [8].
2 (1990) 169 CLR 356.
3 *Teutonic Minerals Pty Ltd v Minister for Natural Resources, Mines and Water* [2006] QLRT 101, [9].
4 Ibid, [10].

Power to review directions or requirements of Mining Registrars

President Koppenol held that pursuant to s 406 of the Act the Tribunal is empowered to review a direction given, or requirement made, by a Mining Registrar and noted that various sections of the Act may enliven such a power.[5] Notwithstanding such provisions, the President held that in the circumstances of the case the Mining Registrar had given neither a direction to, nor made a requirement of, the applicant.[6] Properly characterised, the Mining Registrar had made a *decision* that the applicant breached a condition of the mining claim and had *imposed* a monetary penalty. This was to be distinguished from *Krco v Mining Registrar, Emerald*[7] where Deputy President Smith reviewed a *direction* by the Mining Registrar to the miner not to mine in a certain area.

Other jurisdictional grounds

The President noted that s 363(1) of the Act also gives the Tribunal the power to hear and determine actions, suits and proceeding arising in relation to prospecting, exploration or mining, or any permit, claim, licence or lease granted or issued under the Act. This provision is followed by s 363(2) which provides particular instances of the jurisdiction conferred and has been held by the Supreme Court of Queensland to refer to "the complete range of matters which might be encountered in respect of mining".[8] Such instances do not expressly provide for a review of a Mining Registrar's decision and the President was of the opinion that s 363(1) could not therefore confer jurisdiction upon the Tribunal in the case at hand.[9]

Additionally, the President found that a more compelling reason for denying jurisdiction lay in an examination of ss.38 and 116 of the Act.[10] Section 38 concerns prospecting permits and lists the types of decisions of the Mining Registrar which are appealable. In this regard, s 38(2)(f) provides for an appeal of "a decision to require a prospecting permit holder to pay an amount to the State by way of penalty for breach of a permit condition". Conversely, s 116 deals with mining claims, and while similar to s 38, does not provide for an equivalent to s 38(2)(f). This omission, in the President's view, was a powerful indicator that such an appeal did not exist in relation to mining claims. Moreover, the existence of ss.38 and 116 conferring jurisdiction for appeals against specific decisions demonstrated that the general provisions of s 363 were in any event unavailable when dealing with an appeal the focus of which was upon a Mining Registrar's decision.

While the Tribunal was not conferred with jurisdiction in the matter, note was made of the applicant's ability to commence proceedings in the Supreme Court pursuant to the *Judicial Review Act 1991*.

Decision

The President held that the Tribunal was not conferred with the jurisdiction necessary to decide the subject application and the application was struck out.[11]

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5 *Graham v Minister for Natural Resources, Mines and Water* [2006] QLRT 102, [9]. For example refer to ss.26, 32(6), 83, 107(110, 109(2), 164(9), 212(9), 342(1)(h), 342(1)(m), 343(2)(b), 401A(2), 404C(1)(a), 432(1)(a), 487(3)(a), 543(3)(a) and 654(3) of the *Mineral Resources Act 1989*.

6 Ibid, [10].

7 [2006] QLRT 28.

8 *Queensland Décor Aggregates Pty Ltd v Cadman & Ors* (Unreported, Supreme Court of Queensland, White J, 4 August 1997), 24.

9 *Graham v Minister for Natural Resources, Mines and Water* [2006] QLRT 102, [12].

10 Ibid, [13].

11 Ibid, [18].