

# LAND AND RESOURCES TRIBUNAL QUEENSLAND

CITATION: *Re Clayton & Anor v Warner & Anor* [2007] QLRT 117

PARTIES: **In the matter of Mining Lease No 60204 – Determination of compensation payable by Peter Clayton and Graham Forss to Shane and Peta Warner**

FILE NO/S: MLC66/07

PROCEEDING: Jurisdictional issue re Application for determination of compensation

DELIVERED ON: 22 August 2007

DELIVERED AT: Brisbane

HEARING DATE: Heard on the Papers

MEMBER/S: Smith DP

ORDER/S: **1. There is no power for the Tribunal to determine compensation (at [9]).**  
**2. Direction made for the Registrar to provide a copy of this decision to the Mining Registrar (at [13]).**

CATCHWORDS: MINING LEASE – DETERMINATION OF  
COMPENSATION – JURISDICTION –  
COMPENSATION ALREADY DETERMINED

*Mineral Resources Act* 1989, s. 279, 279A, 281, 342

COUNSEL: N/A

SOLICITOR/S: N/A

## *Background*

- [1] Peter Clayton and Graham Forss (the miners) currently hold ML60204. The mining lease was originally granted on 1 January 1996 for a period of 10 years. On 20 June 2005 the miners lodged an application for renewal of the mining lease for a term of 10 years with the Mining Registrar, Quilpie District.

- [2] The lease is located on Bingara Station, which is owned by Shane and Peta Warner (the landholders). Access to the lease is through Bingara Station. The lease is for the purpose of mining for opal and has an area of 1.7011ha.

#### *Referral to Tribunal*

- [3] On 19 March 2007 the Mining Registrar referred the issue of the determination of compensation to the tribunal under s 281 of the *Mineral Resources Act 1989* (the Act). On 8 August 2007, President Koppenol allocated this matter to myself.

#### *Relevant Facts*

- [4] The limited material that I have reveals that the miners and the landholders entered into a written compensation agreement on 4 May 2005. From material provided by the Mining Registrar, it would seem that a copy of that agreement has been filed, but the Mining Registrar has no evidence of the compensation agreement being stamped.
- [5] By the compensation agreement, the parties agreed that the miners would pay the landholders the sum of \$30.00 per annum for a period of 5 years, and that the mining lease would be renewed for a term of 5 years.

#### *Jurisdiction*

- [6] The relevant legislative provisions regarding compensation are set out in ss 279, 279A and 281 of the Act. Section 279 (1)(a) provides as follows:

*“(1) A mining lease shall not be granted or renewed unless  
(a) compensation has been determined (whether by agreement or by determination of the tribunal) between the applicant and each person who is the owner of land the surface of which is the subject of the application and of any surface access to the mining lease land; or  
(b)...and the conditions of the agreement or determination have been or are being complied with by the applicant.”*

- [7] Applying s 279 (1)(a) to the facts at hand, it would appear to be beyond doubt that, by the parties entering into a compensation agreement, compensation ‘has been determined’. There is no evidence before the Tribunal as to whether or not the conditions of the agreement, including payment of the sum of \$30.00 per annum by the miners, are being complied with.
- [8] Section 279 (3) is also of relevance. It provides that and an *“agreement made pursuant to subsection (1)(a) shall not be effective”* until it is in writing and signed by the parties, and has been filed with the Mining Registrar. Section 279 (4) then provides that, if the agreement is required by law to be stamped, it shall not be filed until it is stamped. Given the known facts, the compensation agreement is in writing; has been signed; and has been provided to the Mining Registrar. It would seem that the compensation agreement has not been stamped, and I have no evidence or submissions before me as to whether or not this particular agreement is required to be stamped. However, even acting on the assumption that the compensation agreement requires stamping, according to the Act the compensation agreement is simply expressed as being ‘not effective’ until it is filed after having been stamped.

- [9] In my view, the impact of the Act on the facts at hand is clear. By entering into an agreement, compensation has been determined, but that determination may not be effective until such time as the agreement is stamped. The outstanding issues are procedural under the Act. From a jurisdictional perspective, there is no power for the Tribunal to determine compensation as compensation is already determined, and I order accordingly.
- [10] I appreciate that this decision does not necessarily fit well with the manner in which Mining Registrars' usually perform their functions under the Act, particularly in circumstances where miners take an inordinate amount of time to stamp compensation agreements. However, be that as it may, there are clear, important issues of legal construction and statutory interpretation which remove any doubt that the Tribunal does not have jurisdiction to determine compensation in circumstances where it is already determined (even with procedural issues outstanding). In the case at hand, were the Tribunal to proceed to a normal determination of compensation in circumstances where there was no agreement between the parties, a sum of compensation would be determined as compensation for a 10 year renewal of the mining lease. However, as is clear, the parties have agreed by the terms of their compensation agreement that this mining lease is only to be renewed for a period of 5 years.
- [11] As the landholders pointed out in a letter of 20 May 2007 to the Tribunal:
- "We signed a compensation agreement for this lease in 2005 in good faith & fully expected it to be processed in the accepted manner."*
- [12] If it is the case that the compensation agreement in this matter is required to be stamped, it would seem that the Mining Registrar has power under s 342 (1)(m) of the Act to order the miners to have the compensation agreement stamped and then filed with the Mining Registrar. That is the appropriate course which should be followed in this matter.
- [13] I direct the Registrar to provide a copy of this decision to the Mining Registrar.