IN THE WARDEN'S COURT
HOLDEN AT ST LEONARDS
ON 29TH JUNE 1990
BEFORE J L McMAHON
CHIEF MINING WARDEN

AUSTRALASIAN MINING TITLE SERVICES PTY LTD
v
CRAVINO, WILLIS & OTHERS

On 19th and 20th June 1990 I conducted a hearing under Part VIII of the Mining Act into an application by Australasian Mining Title Services Pty Ltd (the applicant) which is the authorised agent for Hasmay Pty Ltd, the holder of twenty-two prospecting licences in the Lightning Ridge Mining Division. The lands over which the licences are held are Crown Land over which Western Lands Leases are held by Messrs Cravino and Willis and several other individuals who carry on grazing activities (the occupiers). Their names are set out in the Notice of Inquiry.

At the defended hearing, Mr Moore, Solicitor appeared for the applicant and Mr Maxwell of Counsel, instructed by Stathis & Macri, Solicitors, appeared for the occupiers. For the applicant, Mr David Reardon gave evidence that he was a director of Hasmay Pty Ltd, (the licensee). The licences were granted in early February 1990 and empower under and by virtue of the Mining Act the licensee to conduct prospecting operations on the land the subject of them. In addition special conditions which are set out in exhibit 6 which in the evidence are called "Conditions of Authority 'L.R.'" applied to the licences. Mr Reardon said that it was proposed to divide the programme in respect of the licences into four quarters, the first quarter being taken up with photographic and perhaps some light drilling activities, the second and third quarters being identification of key areas where comprehensive drilling activities by way of exploration would take place and the fourth quarter could be the sinking of large size drill holes by a machine called a calweld drill which has a diameter of approximately one metre. The drills

to be used at the earlier stage of the programme were rotary air blast (RAB) drills having a diameter of approximately 22 cms tapering to 10 to 12 cms. Some line clearing to allow for implement movement would take place. It was intended that the majority of holes once their product had been examined would be backfilled straight away while the remainder would be capped and left open for approximately two weeks to allow for further research. The calweld drill holes may be left open to allow for possible physical entry by personnel and Mr Reardon noted that no more than five of such holes would be open at the one time unless with the approval of a Departmental inspector.

Lengthy cross examination which took place of Mr Reardon by Mr Maxwell showed that there were some photographs in existence which indicated that some holes had been previously sunk on another property owned by a Mr Powell. Some of these had subsided and left a depression in the earth which was contended could have caused a danger not only to stock but also to human beings especially those of who travelled about the rural properties by means of motor cycle. Mr Reardon indicated in evidence that these depressions would receive further attention to restore the land to its former condition.

Two occupiers, Messrs Leon Cravino and Terrence Willis gave evidence. The general effect of their evidence was an expression of concern about the conduct of the holders of the licences. The clear impression I gained from their evidence was they had considerable reservation about the ability of the licensees to produce sufficient funds satisfactorily to meet any claims of compensation should substantial costs arise. They also were concerned about the environment of their properties, the damage to the surface of it, the disturbance of stock especially to lambing ewes, and claimed that their quality of life bearing in mind that they had left the Sydney area to live in a rural atmosphere, would be disrupted. As far as disturbance

to stock is concerned, I would expect that the licensee would be highly sensitive to the needs of the occupiers, especially at lambing periods.

Needless to say the amounts offered by the licensee through the applicant as compensation on the one hand and the amounts claimed by or on behalf of the occupiers on the other had between them a considerable gulf and it is my task to assess compensation in accordance with the Act bearing in mind the circumstances of the respective parties.

As I commented towards the conclusion of the hearing on 20th June, I did not see anything wrong in any licensee being required to deposit a sum of money with the court against future claims for compensation notwithstanding that the licensee, as in this case, has already deposited with the Department of Minerals & Energy $3,000 for each of twenty-two prospecting licences, making a total of $66,000. However, those deposits are a security against the breach by the licensee of the conditions of the licence or the Act and really have no direct correlation with compensation which might be awarded by the Warden for loss caused or likely to be caused by the prospecting operations. It is agreed by Mr Reardon that the licensee is a "$2 company" and apart from the security deposit and the licences themselves, the company is without funds and I think it reasonable to require a deposit with the court of an amount of money as security for compensation.

Having said that, however, I now turn to an examination of the requirements of the Mining Act and apply them in practice to what will occur to the land. Section 124(1)(b) states:

"Where compensation is by this Act directed to be assessed by the warden the assessment -

(b) shall, except where the assessment is to be made for the purposes of section 117A (14) or 123, be of the loss caused or likely to be caused by -

(i) damage to the surface of land, and damage to the crops, trees, grasses or other vegetation on land, or damage to buildings and improvements thereon, being damage which has been caused by or which may arise from prospecting or mining operations;

(ii) deprivation of the possession or of the use of the surface of land or any part of the surface;

(iii) severance of land from other land of the owner or occupier of that land;

(iv) surface rights-of-way and easements;

(v) destruction or loss of, or injury to, or disturbance of, or interference with, stock on land; and

(vi) all consequential damages;"

It is a well recognised fact that in the mining and prospecting industry compensation is agreed to by parties who are at arms length or is assessed by a warden in relation to the number of holes sunk relative to their type, i.e. diameter and other surface disturbance such as costeaning (trench sinking). This principle I have over the years adopted in compensation assessments and it is my feeling that it is a fair and reasonable approach bearing in mind that the matters set out in Section 124(1)(b) have direct relationship to how many holes are sunk, and with what sort of implements have to come onto the subject land. As will be appreciated, the terrain, geology and fertility of land varies from place to place as indeed does the proximity of the land to other facilities. The use to which land is put is relative to these and other factors but in addition to the prevailing climate and rainfall. In some parts of the State, for instance, drill holes sunk by a diamond or percussion drill have been compensatible to the extent

of up to $175 each while RAB holes have attracted $5 compensation each. Costeaning operations have attracted up to 50¢ per square metre of land disturbed if it is under cultivation, or 25¢ per square metre as to land not cultivated. As far as line clearing is concerned, figures of up to $20 per kilometre have been assessed or agreed to.

In this particular matter there is evidence that compensation has been offered to the occupiers as a final offer of $15, $5 and 10¢ for each cubic metre of costeaned land respectively. The occupiers have rejected this formula and made claims for hourly rates or weekly rates for rehabilitation and supervision activities.

It seems to me however that the arguments advanced by the occupiers do not take into account the fact that there is a requirement upon the licensee to make good the surface of the land and I cannot accept that I should be assessing compensation in accordance with a rental value figure as suggested by Mr Maxwell, bearing in mind that his submission was that in respect of the red soil or opal bearing country a figure of $1 to $1.50 per acre per annum was put forward by Mr Burke, Real Estate & Stock & Station Agent, $3 for the black or better quality soil area and $2 for a mixture of both. To accept this proposition would be to say that the prospector would be tying up every acre for the whole of the twelve months and I believe that to be inappropriate and not in accordance with reality.

On the other hand I think that the land occupier is entitled to some additional figure for supervision but, again, the occupiers' figures of $500 per week is excessive by far, bearing in mind that the average prudent grazier should be going about supervising his sheep in any case at least once per week. I think a supervision figure of $500 as a <u>once only</u> payment

is appropriate to enable the occupier to oversight the activities of the licensee.

Getting back to the amount per hole or per square metre of surface disturbed, I believe a reasonable figure for this particular country which although sensitive and fragile is arid and in an area where rainfall is low should be respectively $15, $5, 10¢ and $5 per line kilometre. I would add that had basically these figures not been offered as a final proposal to the occupiers, then my assessment may have been marginally lesser.

In the circumstances I assess compensation at $15 per calweld drill hole, $5 per auger or rotary air blast hole, 10¢ per cubic metre of land disturbed by trenching or costeaning activities and $5 for each kilometre of line cleared. This figure to have added to it an initial supervision payment of $500 for each occupier. I direct that the supervision figure be paid directly to each land lessee on or before 2nd August 1990 and that payments in accordance with the disturbance activities be made at the end of each three monthly intervals, first payment on 2nd August 1990.

In conformity with my comments made beforehand, I direct that additionally the sum of $750 per licence be deposited with the Mining Registrar, Lightning Ridge on or before 2nd August 1990. Any adjustments either by way of refund or additional payments to be made as circumstances require at the expiration of the current licences.

At the conclusion of the hearing on 20th June, Mr Maxwell raised with me the question of costs. I said then and I say now that because of the peculiar provisions of Part VIII of the Mining Act in that either party may make an application for the assessment of compensation, I am of the view that

either should pay his own costs. To hold otherwise would mean that if I were to apply the normal criterion of costs following the verdict then always the party who made the application first would have costs awarded in his favour. In this case for instance, the successful recipient would be the applicant on behalf of the licensee. I direct that the parties pay their own costs.