

FINDINGS OF THE CHIEF WARDEN
DELIVERED AT BATHURST
ON 28TH APRIL, 1989

APPLICATIONS BY WESLEY BURGE & ROSS BURGE
RELATIVE TO AN INQUIRY UNDER SECTION 175(5)
OF THE MINING ACT, 1973.

On 2nd December, 1981 pursuant to Section 175 of the Act, I stipulated conditions of a right-of-way relative to the access from a public road to the area of a mining lease known as No. 4360 (Act 1906). Condition No. 3 in the right-of-way document provided that the Warden could add conditions, vary them or cancel any part or the whole of the right-of-way. Following the receipt of recent correspondence seeking to invoke this provision or its conditions, the matter was listed at the Warden's Court at Bathurst on 13th January, 1989 and later at Blayney on 20th March, 1989 with a view to determining certain complaints which had been received from Mr. Ross Burge and Mr. Wesley Burge relative to the conduct of the lease holders and or their contractors in the exercise of the right-of-way. Evidence was received on oath from these persons but in addition Mr. Armitage, an engineer, gave evidence on their behalf, while the Shire Engineer of the Bathurst City Council, Mr. Lovell gave evidence as did Mr. Scott for and on behalf of the lease holder companies.

The right-of-way gives access and egress to a limestone quarry from which is carted the product of it on a daily basis by several large trucks and/or semi-trailers which make approximately fifty truck movements per day.

Evidence shows that the right-of-way is also used by the Burge brothers and their families to get to and from the homesteads on their properties. It is also used by any other persons wishing to gain access to the quarry or the

properties and so for all intents and purposes it is a convenient and necessary means of access for many people.

The complaints of the Burge brothers can be placed under the headings of difficulties which they have experienced in their use and enjoyment of the access road and interference with their use and enjoyment of their properties by reason of the movement of the heavy trucks to and from the quarry on the lease area. As to the former, evidence suggests that the roadway was often littered with large stones - certainly this took place before the sides of the trucks were heightened. It is suggested that with so many truck movements per day there is a continual deterioration of the surface of the roadway and that the situation will get worse as these movements will increase in number. The constant use of vehicles has prevented the Burge brothers from moving stock whenever they wanted to, the roadway was not wide enough for the large trucks to pass each other without encroaching upon the verges of the road and creating a severe dust problem. Mr. Wesley Burge suggested, as depicted by Exhibit 9 - a plan of the area - that for the whole of the length of the right-of-way that a sheep proof fence be constructed. He later resiled from this suggestion somewhat. Another problem has been the fact that at the areas in front of the residences of the Burge brothers and another person residing on the properties that the trucks have encroached upon the verges of the road to the extent that 200 litre empty drums had to be placed on the edge of the road to prevent this happening. The overall picture sought to be painted by the Burge brothers was that there was discomfort, inconvenience and costs caused by the presence of the trucks, aggravated they said by lack of, or delays in, or defects in, maintenance of the road.

The ultimate solution to this problem was the suggestion by the Burge brothers that there be a cancellation by me of the right-of-way.

As against their evidence, the evidence on behalf of the lease holders indicated in effect that the situation was not nearly as severe as was complained about. Mr. Lovell has sworn that he had been a member of a committee which had inspected the area recently. The city engineer disagreed with Mr. Armitage, engineer, who had said that the road was inadequate but agreed with his evidence when it was put it to him that the important fundamentals to road preparation had obviously not been adhered to when the roadway was first formed and sealed.

Appropriate comment was made by Mr. Leahy on behalf of the lease holder that the Burge brothers had not complained recently about some of the matters raised by them in evidence and even letters from their own solicitors had not made mention of features about which they had given evidence, a factor which I have not overlooked.

In determining this matter, I had the advantage, in order more fully to understand the evidence, of a recent view of the area along the right-of-way. The roadway is primarily of single lane width - approximately 3.5m wide - to and upon the lease area.

The whole situation seems to me to dictate that something should be done to alleviate the difficulties being experienced by the landowners. I am not unmindful of the fact that the Burge brothers are running sheep only on their properties and there are many hectares of land away from the area of this right-of-way in which those sheep could be grazed and attended to excepting during times of lambing. The Burge brothers do not present as unreasonable people. They are graziers trying to make a living off their land and in my opinion have certainly had a lot to put up with over the years in relation to this right-of-way. On the other hand, the contention that the right-of-way

should be wholly dug up and re-formed would present considerable financial burden for the lease holders, bearing in mind, of course, that they have a profit factor to consider in extracting, carting, processing and marketing the limestone. Certainly cancellation of the right-of-way is out of the question. It would be too drastic a step for me to take bearing in mind the magnitude of the commercial project on foot in this area and the number of people who would be thrown out of work relative to the inconvenience and trouble that has been caused.

There will be changes made to the right-of-way and I would expect that within the stipulated times the requirements that I am placing upon the conditions attached to the right-of-way will be complied with without equivocation.

It seems clear that the stone dropping problem has been solved because of the increased height of the sides of the trucks so I stipulate no condition as to that. As for the breaking up of the road surface is concerned, I would require that within nine months the surface for the whole of the length of the right-of-way be re-surfaced to a depth of 250 millimetres of pavement material. Furthermore inspections of that surface to be conducted each month thereafter by a nominated representative of the lease holders and a nominated representative of the Burge brothers with a view to maintaining the surface of the roadway to a satisfactory standard.

I believe that the proposition as to the construction of the fence is reasonable and I require that within twelve months the lease holders construct such a sheep proof fence at their expense along the edges of the right-of-way only, if required by Mr. Wesley Burge.

As far as I can deal with the problems caused by trucks having to move off the sealed surface of the roadway when they pass each other, I require that passing bays be established each 500 metres along the length of the right-of-way. In order to alleviate the additional problem about vehicles encroaching on verges near homes, I require that for a distance of 100 metres in front of each residence the road surface be widened and there be laid down a roadway which will permit trucks to pass each other without having to encroach upon those earthen verges of the road. This work also to be completed also within 12 months.

I make no insertion of a condition as to hours of work, nor limitation of truck movements nor any requirement as to the proposed alternative route about which Mr. Wesley Burge gave evidence. However, a speed limit of 40 k.p.h. shall apply. I attach an amended right-of-way document incorporating these newly stipulated conditions.

On the question of costs, these proceedings primarily are administrative and while Section 146 permits of the award of costs I believe it appropriate for the parties to pay their own professional costs.