

Furthermore, additional consents are required before petroleum operations can be carried out on certain types of Crown land. The consent of the Minister for that land is required.

Before carrying out any petroleum operations, an authority holder is required to put forward an operation plan which demonstrates that they will operate to an acceptable environmental code of practice.

Private Landowners

While reaffirming the State's ownership of all petroleum on or below the surface of any land in Victoria, the Act recognises and protects private landowners' interests. No petroleum operations can be carried out on any private land unless compensation has been agreed to or settled with the landowner. The Act aligns the compensation provisions for petroleum operations with those for mining which are contained in the *Mineral Resources Development Act 1990*.

Royalties

The Act retains the current royalty on petroleum production at 10% of wellhead value although it is possible for different royalty arrangements to be entered into with the Minister.

Transitional Provisions

The transitional provisions provide for existing explorers and producers to continue their current operations and benefit from the passage of the Act. Current exploration permit holders may apply for a once-only five-year renewal of their permits.

WESTERN AUSTRALIA

WARDEN'S DECISIONS

DESCRIPTION OF MINING TENEMENT - SURVEY DISPUTE

*Westdeen Holdings Pty Ltd v Arnold Dickenson Haggarty**
(Unreported, Warden sitting in open court, 7 August 1998)

objection - survey dispute - boundaries of mining leases - whether survey boundaries of mining tenements according to description in application or marking out - s80, s82, s105 *Mining Act 1978* (WA), regs 64, 116, 118, 119, 120, 120A, 120E *Mining Regulations 1981* (WA)

Facts

Westdeen Holdings Pty Ltd objected to a survey carried out of mining lease 70/631, which is held by Mr AD Haggarty. The survey placed M70/631 entirely within the boundaries of mining lease 70/307, which is held by Westdeen Holdings Pty Ltd.

* Caroline Hayward, Solicitor, Mallesons Stephen Jaques, Perth

M70/631 and M70/307 were both granted subject to survey. The survey carried out of M70/631 was based on the datum post and pegs used in connection with the original marking out.

Decision

A surveyor is not required to survey only on the basis of pegs in the ground. The surveyor should also have reference to the description of the land contained in the application (Form 21).

Reasoning

The warden relied on the authority of *Campbell v Knightsbridge Holdings Pty Ltd* (Unreported, Supreme Court of Western Australia, 17 October 1986) to hold that a mining tenement was granted in respect of the land described in the application, not according to the land as marked out. The reasons for the warden's decision include:

- rarely does a warden or registrar or the Minister for Mines (as the case may be) physically inspect the ground the subject of an application in connection with the grant of the mining tenement;
- none of the prescribed forms for the instruments of lease or licence in respect of a mining tenement contain a reference to "the ground as marked out" in describing the land the subject of that mining tenement;
- pegs and trenches do not have the elements of consistency and permanency of the records maintained by the Department of Minerals and Energy;
- particulars of mining tenements contained in the records of the Department of Minerals and Energy are more accessible than the location of pegs and trenches in the ground.

The warden considered that, in this instance, it was unsafe to solely rely on pegs in the ground for the purposes of a survey, particularly as, over time, the pegs were buried due to a moving sand dune. In addition, by relying mainly on the marking out, the surveyor failed to take sufficient notice of irregularities between the results of the survey and the description of the ground contained in the Form 21.

Order

The warden recommended to the Minister for Mines that the survey of M70/631 be rejected, and that a new survey of M70/307 be conducted.

NO JURISDICTION TO ORDER DISCOVERY IN PLAINT PROCEEDINGS

Rodelinda Pty Ltd and Ian Geoffrey Burton*

(Unreported, Warden sitting in open court, held at Perth, 10 July 1998)

Application for forfeiture - chamber summons for order that tenement holder give discovery and inspection of documents

Facts

Rodelinda Pty Ltd ("Rodelinda") lodged a plaint for forfeiture of a mining lease held by Ian Geoffrey Burton ("Burton"). Rodelinda sought forfeiture on the basis of alleged non-compliance with the

* Chris Stevenson, Partner, Mallesons Stephen Jaques, Perth.