

COMMERCIAL UPDATE – SEPTEMBER 2006

1. Native Title Determination over Perth Metro Area

The Federal Court handed down a native title determination over the Perth metro area on 19 September 2006. The Court found that the Noongar people, as a single identifiable community have maintained traditional connection to the area. Subject to extinguishment (the claim area did not include areas where native title has been extinguished at law) the Court found the Noongar people held rights to occupy, use and enjoy the area and specified eight native title rights and interests.

Justice Wilcox noted that: “A Determination of Native Title is neither the pot of gold for the indigenous claimants nor the disaster for the remainder of the community that is sometimes painted. A Native Title Determination does not affect freehold land or most leasehold land; it cannot take away peoples’ back yards. The vast majority of private landholders in the Perth region will be unaffected by this case.

A Native Title Determination recognises the traditional association of the claimant community with particular land.... a Determination does not give to the claimant community a right that enables them to sell or lease the land or to develop or use it for any non-traditional purpose.”

The decision has been the subject of much political comment, some of which has been highly inflammatory. Without a full understanding of the underlying tenure of the claim area, which should then indicate areas where native title has been extinguished at law, it is difficult to conclude where the native title rights exist.

The precise implications of the decision are yet to be determined. As the Judge indicated for most people it will not affect their land nor the exercise of their rights in relation to that land. The State has announced its intention to appeal the decision. In the mean time, should you have particular concerns about the implications of the decision for you, please do not hesitate to contact us.

See further comments at the end of this newsletter on other Native Title matters.

2. Jubilee Mines NL Forced to Pay Shareholder \$1.86m in Damages

On 6 September 2006 a former shareholder of Jubilee Mines NL (“**Jubilee**”), Mr Kim Riley, was awarded \$1.86m (plus interest) in damages from Jubilee for its failure to meet the continuous disclosure obligations by delaying the release of market sensitive information to the ASX.

Mr Riley sold his shares in Jubilee prior to an announcement by Jubilee that ore-grade nickel had been found on one of its tenements. The Court upheld Mr Riley’s contention that he would not have sold his shareholding if he had known about the drill results at the time.

At the time, Jubilee’s focus was on gold and gold exploration and the company was not prospecting for nor was it interested in nickel deposits. The drill results in question were produced by Western Mining Corporation who had inadvertently drilled on a portion of the tenement and forwarded its results to Jubilee.

The Court found that despite Jubilee’s focus on gold, the fact remained that the drill results revealed very positive results in respect of ore-grade nickel and that Jubilee had not taken sufficient care nor given proper consideration to the significance of the results.

In his reasons for decision, Master Sanderson acknowledged the difficulties facing junior explorers in terms of a lack of personnel and resources but noted that every listed company is subject to the same disclosure requirements and that the reporting requirements are one of the obligations imposed in exchange for the benefits of being listed.

In closing, Master Sanderson remarked: “The last thing that junior explorers need is to think that they must spend time and money obtaining expert geological and legal advice on whether or not information ought be released to the market. What is important is that material information should be released. If there is any doubt about whether the information is material, then the company ought to err on the side of caution and make the release.”

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3. Contaminated Sites Legislation

The Contaminated Sites Act and Regulations comes into operation on 1 December 2006. The object of the Act and the Regulations is to protect human health and the environment. The Act establishes a public register to identify contaminated sites and creates a regime for the identification, reporting, management and remediation of contaminated land and provide that those who are responsible for contamination of land are responsible for the remediation of that land.

Under the Act, owners, occupiers, mortgagees in possession and any persons who have caused or contributed to contamination have an obligation to report the contamination, although anyone can report contamination of a site. Once a site has been reported, the Chief Environmental Officer classifies the level of contamination and, if contaminated, requires remediation of the site. The Contaminated Sites Committee then decides whose responsibility it is to remediate the site and makes orders accordingly.

For further information please contact Philip Pullinger (ppullinger@prllawyers.com.au).

4. Enforcement by ASX of Fee for Applications Made in Pre-Listing Period

ASX has recently commenced enforcing the payment of a minimum fee of \$7,500 (plus GST) in respect of applications for “in principle” decisions made by a company in the pre-listing period, for example a listing rule waiver. If listing proceeds, this fee may be set off against the initial listing fees.

5. AGM Season and the PRL AGM Package

If you are considering holding your Annual General Meeting in October, PRL has a standard package of documents compliant with the Corporations Act and Listing Rules.

For further information please contact Philip Lucas (plucas@prllawyers.com.au).

6. GST on Farm-Ins

AMEC's Corporate Regulation & Taxation Committee has been working with the Australian Taxation Office ("ATO") to reach a practical outcome with regards to the GST treatment of Farm-In Farm-Out Scenarios. The outcome of the consultative process between AMEC and the ATO was that when the Farm In/Out actually occurred then at that point in time GST obligations would arise for each party.

It is our understanding that the ATO intends to publish this outcome in a publicly available format, quite possibly a GST Determination. We are uncertain when this will occur, and we are awaiting the ATO's GST Determination to confirm this position.

7. Court Gives Cazaly Right to Appeal over Shovelanna Decision

The Supreme Court of Western Australia held on 11 August 2006 that Cazaly Resources Ltd has a case against a ministerial decision denying it the right to explore the contested Shovelanna iron ore prospect. The Court decreed that Cazaly's case "was not trivial or misguided" and that the matter should go to a court of appeal.

In addition, on 29 September 2006 Walden Calder granted a stay in the mining lease applications by Rio Tinto pending the outcome of Cazaly's Supreme Court review and also allowed Cazaly to amend its objection to expand the grounds of the objection.

Cazaly had lodged an exploration licence for the Shovelanna project, in north Western Australia, late last August, after Rio Tinto accidentally let its licence expire. For further information see PRL Newsletter – April 2006.

In addition, Cazaly has released to the public its legal advice on its disputed ground with Rio to access this advice visit <http://www.cazalyresources.com.au>

8. Native Title Reviews

On 7 September 2005 Attorney-General, the Hon. Philip Ruddock MP, announced a package of coordinated measures to improve the performance of the native title system. The six elements of reform are:

- an independent review of native title claims resolution processes;
- technical amendments to the Native Title Act;
- consultation on measures to encourage the effective functioning of Prescribed Bodies Corporate (“**PBCs**”);
- reform of the native title non-claimants (respondents) financial assistance; program to encourage agreement making rather than litigation;
- measures to improve the effectiveness of Native Title Representative Bodies (“**NTRBs**”);
- increased dialogue and consultation with the State and Territory Governments to promote and encourage more transparent practices in the resolution of native title issues.

For further information please contact Simone Muller (smuller@prllawyers.com.au).

9. Review of Regional Standard Heritage Agreements

The Regional Standard Heritage Agreements (“**RSHA**”) were developed by the Heritage Protection Working Group, convened by the Office of Native Title in October 2002. The Working Group was convened to develop template heritage protection agreements for use in each of the native title representative body (“**NTRB**”) regions. The purpose of a RSHA is to minimise the number of objections lodged under the expedited procedure by providing a regime for the protection of Aboriginal heritage upfront. RSHA were developed in the Goldfields, the South West, the Geraldton-Pilbara region; the Central Desert region and the Kimberley.

The purpose of the Review of the RSHAs is to determine the extent to which RSHAs are fulfilling their purpose within the context of the terms of reference of the Review. The terms of the review are to measure the extent to which RSHAs minimise the number of objections lodged under the expedited procedure in section 29 of the NTA; and to measure the extent to which RSHAs protect Aboriginal heritage.

If you wish to make comment on the RSHA please contact our office or the Office of Native Title.

For further information please contact Simone Muller (smuller@prllawyers.com.au).

For Further Information and Advice

If you would like to subscribe/unsubscribe to the PRL Quarterly Commercial Update, please email us at info@prllawyers.com.au and type “subscribe” or “unsubscribe” in the subject box, as the case may be.

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