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Advice – Mineral Resources Act 1989 – Section 286A

I am asked to advise in relation to the renewal of mining licences under the *Mineral Resources Act 1989* ('the MRA') and in particular section 286A ('the Section').

I am asked specifically:

1. Whether the renewals under the Section are:
 - a. automatic?
 - b. made by public servants?
2. Must the Minister be satisfied of *each* of the matters set out in the relevant parts of the section?
3. Does the Minister decide the application?

The Section

Section 286A of the MRA reads as follows¹

286A Decision on application

(1) Subject to part 17, division 5, the Governor in Council may grant an application for the renewal of a mining lease if the Minister is satisfied of each of the following—

- (a) the holder has complied with—
 - (i) the terms of the lease; and
 - (ii) this Act in relation to the lease;
- (b) the land the subject of the lease—
 - (i) still contains workable quantities of mineral or mineral bearing ore; or
 - (ii) is otherwise required for purposes for which the lease was granted;
- (c) the proposed term of the renewed lease is appropriate;
- (d) having regard to the current and prospective uses of the land comprised in the lease, the operations to be carried on during the renewed term of the lease—
 - (i) are an appropriate land use; and
 - (ii) will conform with sound land use management;
- (e) the land and surface area for which the renewal is sought is of an appropriate size and shape in relation to the activities proposed to be carried out;
- (f) the financial and technical resources available to the holder to carry on mining operations under the renewed lease are appropriate;
- (g) the public interest will not be adversely affected by the renewal;
- (h) for a lease subject to a condition mentioned in section 285—the lease should be renewed.

(2) If the application is for a lease subject to a condition mentioned in section 285, the Minister must advise the Governor in Council of the fact.

(3) The renewal may be granted for the further term, decided by the Governor in Council, that is not longer than the period for which compensation has been agreed or determined under section 279, 281 or 282.

(4) The renewed lease is subject to—

- (a) any conditions prescribed under a regulation; and
- (b) any conditions decided by the Governor in Council.

(5) Without limiting subsection (4), the Governor in Council may decide a condition of the renewed lease if the Governor in Council considers the condition is in the public interest.

(6) The Minister may refuse the application if the Minister—

- (a) has served on the holder a notice in the approved form asking the holder to show cause, within the period stated in the notice, why the application should not be refused; and
- (b) after considering the holder's response, is satisfied the application should be refused.

(7) Without limiting subsection (6)(b), the Minister may refuse the renewal if the Minister considers the renewal is not in the public interest.

(8) As soon as practicable after deciding the application, the Minister must give the holder a written notice stating—

- (a) the decision; and
- (b) if the decision is to recommend the grant of the renewal on conditions, or to refuse to recommend the grant of the renewal, the reasons for the decision.

¹ Reprint 11B effective 2 November 2009

Question 1 - Renewals

This can be answered on a plain reading of the Act.

Renewals are not automatic.

The final decision to renew or not is made by the Governor in Council

The Governor in Council ('the GinC') consists of the Governor advised by the Executive Council who is effectively Cabinet. In order for the GinC to even see the application, the Minister must be provided by an applicant with an application that must meet defined criteria under the Act. They are no doubt assisted and advised by public servants but the Minister personally must be satisfied before taking the matter to the Governor in Council. The actual decision is that of the GinC and thus an administrative decision at the highest level controlled by elected officials.

Question 2 - Considerations

The Section allows the matter to go to the GinC 'if the Minister is satisfied of each of the following ... (a) to (g)'.

On a plain reading it means that the Minister can only proceed if she or he are satisfied about each and every item on the list.

The section does not say 'any of the following' or 'all of the following'. It does not use an 'and' or 'or' before the next to last element.

The Section was inserted by the *Mineral Resources and Other Legislation Amendment Act 2005* (No. 8, 2005). Any section should be given its plain meaning consistent with the purpose of the legislation². Where this is ambiguous, assistance can be gained from the Explanatory Notes provided to Parliament when the section was passed³. These shed some light on the matter implying that the Minister must be satisfied of each and every one of the matters set out, not just one or some them.

286A Decision on application

Clause 32, section '286A sets out the matters related to a decision to renew a mining lease, including those matters of which the Minister must be satisfied when granting a renewal.'

His Honour Justice Fryberg considered the Section in *Papillon Mining & Exploration P/L v Minister for Mines and Energy* [2009] QSC 97 in relation to whether a refusal could be made by the Minister alone or could only be made by the Executive Council and said:

[10] It may be that the power of the Minister is limited to refusing an application on the ground that he is not satisfied of **one** of the matters referred to in sub-s (1), and that if he wishes the application to be refused on a different ground, his only option is to induce the Executive Council to recommend refusal to the Governor. [my emphasis added]

Clearly there is Supreme Court authority that supports the view that the Minister not being satisfied of any one of the matters requires a refusal.

² Section 14A – *Acts Interpretation Act 1954*

³ Section 14B – *Acts Interpretation Act 1954*

Question 3 - The Decision

Again the *Papillon* case provides the answer. The Minister acts as a filter to the final decision maker who is the GinC. The Minister can refuse an application independently of the GinC but cannot approve it herself/himself. It is likely the GinC would follow the Minister's advice but it need not.

Just because the Minister is satisfied of each of the matters, it does not mean the GinC is bound to agree and grant the renewal. The GinC must consider for itself all the matters the Minister has and other factors it considers relevant and weigh them up.



**Andrew Sinclair
Chambers
21 March 2009**