

Privatisation

The Amending Act provides for the transfer of property and staff of nominated public gas companies. This is designed to permit the efficient and effective sale of the publicly owned gas companies to private interests. The transfer of property, rights or liabilities will be done by means of an "allocation statement" duly signed by the chief executive officer of a public gas company. On the date fixed by the Minister, property, rights and liabilities of the public gas company allocated under an allocation statement to a person will vest in that person. The Amending Act also includes further provisions relating to privatisation designed to ensure a smooth transfer of the public gas companies to private interests.

WESTERN AUSTRALIA*

PROCEDURAL FAIRNESS AND THE EXERCISE OF MINISTERIAL DISCRETION

EX PARTE: DAVID JONES ROBERTS

(Unreported, Supreme Court of Western Australia, 4 December 1997)

prerogative writs - mandamus - certiorari - forfeiture of mining leases - warden's recommendation - Ministerial discretion - opportunity to be heard - whether denial of procedural fairness - s99, s102 Mining Act 1978 (WA)

Facts

Plutonic Operations Ltd and Sipa Resources Ltd lodged applications for exemption from expenditure requirements in respect of two mining leases. The applications were made under s102(3) but the supporting statutory declarations referred to another ground of exemption (s102(2)(e)).

Roberts subsequently filed plaints for forfeiture of each of the mining leases. At this stage, it was too late for Roberts to object to the applications for exemption.

The applications were refused on the technicality of failure to be made under the correct ground of exemption.

At the later hearing of the plaints, the tenement holders contended that:

- the applications may have been granted if not for the mistake in bringing the applications under the wrong subsection of s102; and
- non-compliance was not of sufficient gravity to justify forfeiture.

However, the warden recommended forfeiture of the tenements.

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The tenement holders then made submissions to the Minister for Mines for the exercise of his discretion against the warden's recommendation for forfeiture.

The Minister decided to uphold the complaints but to impose fines in lieu of forfeiture.

At no time was Roberts kept informed of any part of the decision making process.

Decision

- Roberts had a "legitimate expectation" that he would receive a benefit as a result of the warden's recommendation that the mining leases be forfeited.
- The Minister for Mines had to comply with the rules of procedural fairness and give Roberts the opportunity to be heard.

Reasoning

The Supreme Court considered that once Roberts had obtained a favourable recommendation from the warden with respect to his complaints, he was entitled to expect that he would obtain a benefit (ie, right in priority to apply for a mining tenement over the forfeited area) as a consequence.

Therefore, the Minister was obliged to proceed in accordance with the rules of procedural fairness.

Roberts had a reasonably based expectation that the benefit which might accrue to him would not be denied him if the Minister exercised his discretion after considering submissions to which Roberts had not been given the opportunity to answer. This expectation was strengthened by the fact that:

- the hearing of the complaints had taken place in open court; and
- the Minister may, before acting on the warden's recommendation, require the warden to take further evidence (s98(6)).

Order

The prerogative relief was granted, the decision of the Minister quashed and the matter returned to the Minister for reconsideration.

Implications

This decision means that the Minister must not exercise his discretion if it will deprive a person of some reasonable expectation of a benefit and the Minister has taken into consideration material (such as submissions or correspondence from officers of the Department) or evidence which had not been considered by the warden, unless the Minister first gives that person the opportunity of responding to the material or evidence.