

LEGISLATIVE COUNCIL

Question On Notice

Tuesday, 16 May 2017

15. Hon Robin Chappie to the Minister for Environment representing the Minister for Mines and Petroleum

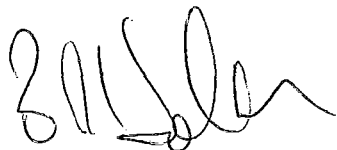
I refer to all mining tenure within Western Australia and the Mining Wardens Court decision titled, *Carnegie Gold Pty Ltd v Gerard Victor Brewer*, delivered on 24 March 2017, concerning applications for exemption appertaining to Mining Leases 16/470 and 30/102, and I ask:

- (a) does the Minister support the position within the industry of allowing a practice of completing form 5 expenditure reports certifying on the one hand that expenditure conditions have been met, whilst also allowing simultaneous applications for exemption from expenditure requirements;
- (b) if no to (a), why;
- (c) if yes to (a), why;
- (d) does the Minister support the position of allowing tenement holders to have an each way bet, for example, saying on the one hand 'I have met my obligation' whilst on the other saying 'I haven't met my obligation and seek an exemption';
- (e) if yes to (d), why;
- (f) if no to (d), why not;
- (g) within the last six months, for all mining tenure, can the Minister identify by stating each respective tenement number and the financial amount of money sought by exemption application in which the holder has completed Form 5 expenditure reports certifying on the one hand that expenditure requirements have been met, whilst also allowing the simultaneous applications for exemption from expenditure requirements;
- (h) if no to (g), why not;
- (i) will the Minister or the Department of Mines and Petroleum immediately refuse all applications for exemptions within the last six months on the basis of a greater public interest so the practice outlined in *Carnegie Gold Pty Ltd v Gerard Victor Brewer* is not allowed to persist;
- (j) if no to (i), why not;
- (k) if yes to (i), how will this be carried out;
- (l) does the Minister consider the practice outlined in *Carnegie Gold Pty Ltd v Gerard Victor Brewer* in relation to all other mining tenure within Western Australia as being frivolous;
- (m) if no to (l), why not; and
- (n) if yes to (l), why?

Answer

- (a) The *Mining Act 1978* allows tenement holders to make applications for exemption from expenditure provision. The decision to lodge an exemption from expenditure application, and the content of such an application, rests with tenement holders. It would be inappropriate for the Minister to stipulate whether exemption applications are appropriate, or to form an opinion on an actual application, without considering the case on its merits.

- (b) Refer to (a) above.
- (c) Refer to (a) above.
- (d) As set out above in answer (a), tenement holders have a right to apply for exemption from expenditure. This right is not curtailed by the requirement to lodge Form 5 expenditure reports. It would be inappropriate for the Minister to stipulate whether an exemption application is appropriate, or to form an opinion on the actual application without considering the case on its merits.
- (e) Refer to (d) above.
- (f) Refer to (d) above.
- (g) No. There are currently approximately 18 000 live tenements across Western Australia. Collating this information would take considerable time and create a significant workload for the Department of Mines and Petroleum, requiring a manual review of all live mining tenements over the period.
- (h) Refer to (g) above.
- (i) No
- (j) Refer to (a) and (d) above. The matter of *Carnegie Gold Pty Ltd v Gerard Victor Brewer* is still before the Warden. Once the Warden has considered the matter and made his recommendation, it will be forwarded to me for determination.
- (k) Not applicable
- (l) This question relates to paragraph 43 of the decision in *Carnegie Gold Pty Ltd v Gerard Victor Brewer* in which Warden Maughan states the following:
- “Whilst not making a determination on the issue it seems that any Application for Exemption made in the face of a maintained position of expenditure requirements having been met could be considered frivolous and render the maker of the applications subject to an award of costs, if challenged.”*
- Whether an application for exemption is frivolous is a matter for the Warden to consider on a case-by-case basis. In accordance with the *Mining Act 1978*, I will consider the Warden’s recommendation when making my determination.
- (m) Refer to (l) above.
- (n) Refer to (l) above.



MINISTER FOR MINES AND PETROLEUM