



## POSITION PAPER 2

### LODGEMENT OF CAVEATS

#### ISSUE

When can a caveat be lodged against a tenement and what evidence is required?

#### BACKGROUND

Section 122A of the *Mining Act 1978* provides for the lodging of caveats against mining tenements:

122A. Lodgment of caveats

- (1) A person claiming an interest in a mining tenement may lodge —
  - (a) a caveat against the mining tenement forbidding the registration of a dealing or surrender affecting the mining tenement or interest; or
  - (b) a caveat against the mining tenement forbidding the registration of —
    - (i) a dealing affecting the mining tenement or interest unless the dealing expressly states that it is to be subject to the interest claimed by the caveator; or
    - (ii) a surrender affecting the mining tenement or interest.
- (2) If -
  - (a) the holder of a mining tenement has entered into an agreement with another person relating to —
    - (i) the sale of the holder's interest in the mining tenement; or
    - (ii) any other matter connected with the holder's interest in the mining tenement; and
  - (b) the agreement so provides, either party to the agreement may lodge a caveat against the mining tenement forbidding the registration of a dealing or surrender affecting the mining tenement or interest together with a copy of the agreement.
- (3) A caveat lodged under this section is to —
  - (a) be in the prescribed form; and
  - (ba) be lodged in the prescribed manner; and
  - (b) be accompanied by the prescribed fee; and
  - (c) state the full name and address of the caveator; and
  - (d) be signed by the caveator or an agent of the caveator; and
  - (e) give an address within the State for the service of notices and proceedings in relation to the caveat.
- (4) If a caveat is lodged under this section —
  - (a) a memorial or copy of the caveat is to be entered in the register; and
  - (b) except in the case of a consent caveat lodged by the holder of a mining tenement, a notice stating that the caveat has been lodged is to be sent by certified mail to the holder of the mining tenement affected by the caveat.



(5) Subject to section 122B, a caveat lodged under this section has effect from the time of lodgment.

(6) Successive caveats shall not be lodged by, or on behalf of, the same person in respect of the same subject matter except with the consent of a warden.

## **POSITION**

Caveats may be lodged where there is an 'interest' claimed or by consent. Evidence required is set out below:

### Evidence of Interest

The Department does not assess the 'interest' claimed under an absolute or subject to claim caveat. Notice is sent to the tenement holder who can then take the necessary action to challenge the recording of the caveat through the Wardens Court.

In the Supreme Court decision *Kuper v Keywest Constructions Pty Ltd* (1990), it was ruled that an interest need not be of a proprietary (direct interest) nature to justify lodgement of a caveat. While the case was in respect to caveats lodged under the *Transfer of Land Act*, the Department has subsequently determined this ruling to apply to the Mining Act. As a result, caveats are accepted in respect of "any interest" claimed in a mining tenement, with the exception of oral agreements. Caveats will not be accepted on the basis of oral agreements - some supporting documentation must accompany the caveat to support the caveator's claim; neither will caveats be accepted if supported by a statutory declaration or affidavit which attests to an oral agreement.

### Dutiable and Non-Dutiable Transactions

Section 278 of the *Duties Act 1978* provides that, if a caveat relates to a dutiable transaction, then the supporting document to the caveat must be endorsed with duty or lodged for duty assessment.

If a caveat relates to a transaction that is not a dutiable transaction, the mining registrar may reject the caveat unless when it is lodged it is accompanied by a statutory declaration — (a) stating that the transaction is not a dutiable transaction; and (b) setting out why the transaction is not a dutiable transaction (including reference to any relevant provisions of a duties Act).

## **REFERENCES**

Sections 122A of the *Mining Act 1978*

Section 278 of the *Duties Act 2008*

*Kuper v Keywest Constructions Pty Ltd* (1990) 3 WAR 419