

Our Ref: east end mine
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**Queensland
Government**

11 November 2004

**Natural Resources, Mines
and Energy**

Mr Percy Shaw
Shaw Road
Hut Creek
Mount Larcom Qld 4695

Assessment of impact of Cement Australia's East End Mine on Groundwater

I acknowledge receipt of your correspondence that arrived on 1 November 2004 regarding the assessment of the impact of the East End Mine on your ground water supply.

Your attention is drawn to the provision of special condition 4 attached to the mining lease numbers 3629, 3630, 3631 and 3632 which states "*If in the opinion of the Chief Executive the operations of the holder cause a reduction of any groundwater supply, other than a supply belonging to the holder, so as to cause a diminution of the use made of the land of the owner of such supply, the holder shall, at his own expense, rectify such reduction in supply. Rectification shall be by provision of an alternative supply of water, or by such other method, to the satisfaction of the Chief Executive*".

The Chief Executive has considered a detailed report in regard to this matter and has provided you with his determination. There is no provision in the special conditions that provide for an "independent review" of this determination.

However, if you are of the belief that you are aggrieved by this determination, you may commence an action in the Land and Resources Tribunal which has jurisdiction to hear and determine matters regarding any assessment, damage, injury or loss arising from activities purported to have been carried on under authority of the MRA or any other Act relating to mining.

Any such action commenced by you in the LRT would in effect amount to an "independent review".

Yours Sincerely

A handwritten signature in black ink, appearing to read "Paul O'Sullivan".

Paul O'Sullivan
MINING REGISTRAR

Department of Natural Resources and Mines
Level 1, 209 Bolsover Street
PO Box 1762
Rockhampton QLD 4700



REES R & SYDNEY JONES

SOLICITORS · EST 1864

Our Ref: 04-04-2023 (05)

25 November 2004

Mr A & Mrs H Lucke
"Bracewell"
MS 1374
MT LARCOM 4695

Dear Alec & Heather

RE: CEMENT AUSTRALIA MINING LEASE

I refer to previous correspondence and discussions in this matter and acknowledge receipt of a copy of the letter from the Mining Registrar of Rockhampton, Mr Paul O'Sullivan, to Mr Percy Shaw.

In the letter Mr O'Sullivan acknowledged receipt of Mr Shaw's request for an "independent review" of the determination of the Chief Executive pursuant to Special Condition 4 attached to Mining Lease no. 3629, 3630, 3631 and 3632. The Mining Registrar indicated that:

"If you are of the belief that you are aggrieved by this determination, you may commence an action in the Land and Resources Tribunal which has jurisdiction to hear and determine matters regarding any assessment, damage, injury or loss arising from activities purported to have been carried on under authority of the MRA or any other act relating to mining.

Any such action commenced by you in the LRT would in effect amount to an 'independent review'."

The Mining Registrar seems to be referring to Sec. 363 (2) (h) of the *Mineral Resources Act 1989* ("MRA") which reads as follows:

"Without limiting the generality of Subsection (1) the tribunal shall have jurisdiction to hear and determine actions, suits and proceedings with respect to:

- (h) Any assessment of damage, injury or loss arising from activities purported to have been carried on under the authority of this Act or any other act relating to mining."

For you to be successful in any action pursuant to this section, you would first have to prove, to the satisfaction of the Tribunal, that you have suffered damage, injury or loss and that it was caused by the activities carried on by Cement Australia under the terms of its mining lease. You would then have to provide the amount of your damage or loss so that an award could be made in your favour.

I do not consider that such proceedings amount to "an independent review" as referred to by the

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Roger Baker LLM FTIA
Andrew Palmer BA LLB
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Justin Houlihan LLB
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Associates

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Stephen Fleming B Com LLB

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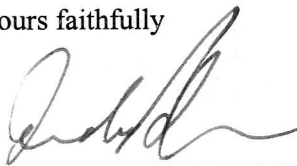
ACCREDITED SPECIALIST
PERSONAL INJURIES LAW

Mining Registrar. To be successful under this section you would have to prove the liability and quantum of your claim and this is quite different to you having a review merely of the decision of the Chief Executive under Special Condition 4 to the Mining Leases.

I therefore am of the view that for you to commence an action pursuant to Sec. 363 (2) (h) of the MRA would require you to be able to prove to the satisfaction of the Tribunal that the actions of Cement Australia under the Mining Leases had caused the injury or damage, and to be able to quantify the extent of your damage, injury or loss.

This is a huge undertaking and given the fact that it would be an action against a corporate giant such as Cement Australia with huge resources to defend such an action, you as a landowner would be at a distinct disadvantage. In fact, I consider that the costs of proving the claim and quantifying your loss would be extremely high, particularly when you consider the potential for matters to be taken on appeal and with the potential for costs orders to be made against you. The reality of these circumstances mean that it is virtually impossible for you to consider commencing such an action unless you are prepared to commit huge resources to proving your claim and defending any judgment which may be made in your favour against any appeals. I consider that there is a potential for costs, including any costs orders made against you, in such proceedings to be as high as \$450,000.00 - \$550,000.00.

Yours faithfully



Andrew Palmer
andrewp@reesjones.com.au

