LAND APPEAL COURT OF QUEENSLAND

CITATION:	*Lonergan & Anor v Friese* [2020] QLAC 3
	Patrick Joseph Lonergan & Prue Madeline Lonergan (appellant)
	V
	Murray John Friese (respondent)
FILE NOs:	LAC 007-19
	Land Court No MRA219-18
DIVISION:	Land Appeal Court of Queensland
PROCEEDING:	Appeal from the Land Court of Queensland
ORIGINATING COURT:	Land Court of Queensland
DELIVERED ON:	19 May 2020
DELIVERED AT:	Brisbane
HEARING DATE:	27 March 2020
THE COURT:	Crow J FY Kingham, President of the Land Court WA Isdale, Member of the Land Court
ORDER:	**The appeal is dismissed.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – SECURITY FOR COSTS – where the appellant was required to lodge security for costs in compliance with s 282A MRA – where the appellant did not do so – where the appeal lapses if security is not provided as required -where the registrar accepted verbal notice from the Bank and an emailed copy of the security as substantial compliance with the requirement - whether the registrar could exercise the power to accept substantial compliance under s 392 MRA – where the Court found he could APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – where the Appellant argued the Member at first instance erred in their assessment of compensation – where the learned Member made a calculation error in assessing land valuation but the error did not give rise to an incorrect assessment of total compensation – where the Court found that none of the grounds of appeal could succeed

Land Court Act 2000 s 7, s 48, s 49
Mineral Resources Act 1989 s 279, s 280, s 281, s 282A, s 392

Commonwealth v Hospital Contribution Fund of Australia (1982) 150 CLR 49; [1982] HCA 13, applied
Dasreef Pty Ltd v Hawchar (2011) 243 CLR 588; [2011] HCA 21, cited
Esso Research and Engineering Co v Commissioner for Patents (1960) 102 CLR 347; [1960] HCA 31, applied
Friese v Lonergan & Anor [2019] QLC 27, considered
Hunt v Australian Associate Motor Insurers Limited [2012] QCA 183, applied
McAusland v Deputy Federal Commissioner of Taxation (1993) 118 ALR 577, applied
Sullivan v Oil Co of Australia Ltd and Santos Petroleum Operations Pty Ltd [2003] QLRT 2, cited
Valantine v Henry [2018] QLC 21, cited

APPEARANCES: SW Trewavas (instructed by Marland Law) for the appellant

R Cunningham (solicitor), Taylors Solicitors, for the respondent

[1] **CROW J:**

Preliminary issue

[2] The respondent raises a preliminary issue as to whether the appeal has lapsed because the appellant did not comply with the requirement for lodging security for costs under the *Mineral Resources Act 1989* (MRA). The relevant facts and circumstances are set out in President Kingham's reasons for judgment at paragraph [59] to [103]. I agree with President Kingham's reasons and the conclusion that the appeal did not lapse.

Background

[3] In 2012, the appellants, Mr and Mrs Lonergan, purchased "*Rolfe Creek*", a property north west of Clermont. Rolfe Creek has a land area of 4,690.306 hectares and is held on two titles: Lot 11 on CLM 109 and Lot 11 on CLM 130.

[4] Rolfe Creek is currently subject to two mining leases: ML70052, a mining lease of 5 hectares due to expire 31 December 2022; and ML70152, an area of 3.17 hectares, upon which the original lease expired on 28 February 2019. These leases were

purchased by the respondent, Mr Friese, in 2017 and since then, Mr Friese has paid $100 per annum for each mining lease, that sum being the compensation agreed between the prior lessee and the prior owners of Rolfe Creek.

[5] As ML70152 was due to expire on 28 February 2019, Mr Friese applied to renew it for a further 10 years. The renewal was granted, but an agreement could not be reached as to the amount of compensation Mr Friese should pay. Mr Friese therefore sought a determination of the compensation payable pursuant to s 281 of the MRA.

[6] The determination was conducted by Member Stilgoe, on 1, 2 and 3 April 2019, with submissions closing on 10 May 2019. Importantly, Member Stilgoe inspected the site of ML70152. On 4 June 2019, Member Stilgoe determined the compensation to be $3,726.38 and imposed a condition upon the lessee to contribute to the expense of track maintenance by paying 10% of any invoice for track grading.

[7] The compensation sum of $3,726.38 comprised of two parts and a 10% uplift pursuant to s 281(4)(e) of the MRA. The first compensation part, $2,931.92, was the sum of the net present value of an annual payment of $320 per annum over 10 years.[1] This 10-year annuity was to compensate for weed management, biosecurity, interference with property operations, livestock management and firebreak management.[2] The second compensation part was $455.70, for diminution in land value, calculated for the 3.17 hectare area (subject to ML 70152) at $147 per hectare. The two compensation parts totalled $3,387.62. Member Stilgoe then applied an additional 10% uplift pursuant to s 281(4)(e), bringing the total compensation to $3,726.38.

Compensation under s 279 for a grant or renewal of a mining lease

[8] Section 279(1) of the MRA provides:

> **279 Compensation generally**
>
> (1) A mining lease shall not be granted or renewed, and an application under section 275A must not be granted for the surface of restricted land to be included in a mining lease, unless—
>
> (a) compensation has been determined (whether by agreement or by determination of the Land Court) between the applicant

1 Discounted at 2%.
2 *Friese v Lonergan & Anor* [2019] QLC 27 [35].

and each person who is the owner of land the surface of which is the subject of the application and of any surface access to the mining lease land; or

(b) there is no person (other than the applicant) who is the owner of any of the land referred to in paragraph (a);

and the conditions of the agreement or determination have been or are being complied with by the applicant.

[9] Sections 280 and 281 provide:

280 Compensation for owner of land where surface area not included

(1) An owner of land the subject of a mining lease where no part of the surface area of that land is included in the lease may agree with the holder of the mining lease as to compensation for any damage caused to the surface of the land.

(2) An agreement made pursuant to subsection (1) shall not be effective unless and until—

(a) it is in writing signed by or on behalf of the parties; and

(b) it is filed.

281 Determination of compensation by Land Court

(1) At any time before an agreement is made under section 279 or 280, a person who could be a party to the agreement may apply in writing to the Land Court to have the Land Court determine the amount of compensation.

(2) The Land Court is hereby authorised to hear and determine matters referred to in subsection (1).

(3) Upon an application made under subsection (1), the Land Court shall **settle the amount of compensation** an owner of land is entitled to as compensation **for**—

(a) in the case of compensation referred to in section 279—

(i) deprivation of possession of the surface of land of the owner;

(ii) diminution of the value of the land of the owner or any improvements thereon;

(iii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;

(iv) severance of any part of the land from other parts thereof or from other land of the owner;

(v) any surface rights of access;

(vi) all loss or expense that arises;

as a consequence of the grant or renewal of the mining lease; and

(b) in the case of compensation referred to in section 280—

(i) diminution of the value of the land of the owner or any improvements thereon;

(ii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;

(iii) all loss or expense that arises;

as a consequence of the grant or renewal of the mining lease.

(4) In assessing the amount of compensation payable under subsection (3)—

(a) where it is necessary for the owner of land to obtain replacement land of a similar productivity, nature and area or resettle himself or herself or relocate his or her livestock and other chattels on other parts of his or her land or on the replacement land, all reasonable costs incurred or likely to be incurred by the owner in obtaining replacement land, the owner's resettlement and the relocation of the owner's livestock or other chattels as at the date of the assessment shall be considered;

(b) no allowance shall be made for any minerals that are or may be on or under the surface of the land concerned;

(c) if the owner of land proves that the status and use currently being made (prior to the application for the grant of the mining lease) of certain land is such that a premium should be applied—an appropriate amount of compensation may be determined;

(d) loss that arises may include loss of profits to the owner calculated by comparison of the usage being made of land prior to the lodgement of the relevant application for the grant of a mining lease and the usage that could be made of that land after the grant;

(e) an additional amount shall be determined to reflect the compulsory nature of action taken under this part which amount, together with any amount determined pursuant to paragraph (c), shall be not less than 10% of **the aggregate amount determined under subsection (3).**

(5) In any case the Land Court may determine the **amounts** and the terms, conditions and times when payments **aggregating the total compensation payable** shall be payable.

(6) An amount of compensation decided by agreement between the parties, or by the Land Court, is binding on the parties and the parties' personal representatives, successors and assigns.

(7) The Land Court shall give written notice of its determination to all parties and may make such order as to costs between the parties to the determination as it thinks fit. (emphasis added)

[10] The word "compensate" has a familiar meaning. According to the Macquarie Dictionary it means:

> "to counter-balance; offset; make up for… to make up for something; recompense… to counter-balance…; adjust or construct so as to offset or counterbalance variations or produce equilibrium… make amends."[3]

[11] The word "aggregate" also has familiar meaning, defined in the same dictionary as: "formed by the conjunction or collection of particulars into a whole mass or sum; total; combined."[4]

[12] As can be seen from s 281(4)(e) of the MRA, Parliament has envisaged that the total compensation should be the "aggregate amount determined under subsection (3)". It is further reinforced, in s 281(5), that there ought to be an assessment of each of the matters in s 281(3)(a), in order to quantify the appropriate "amounts" payable for each matter, and the terms, conditions and timing of payments "aggregating the total compensation payable".

[13] Section 281(4)(e) provides for a minimum 10% uplift "of the aggregate amount determined under subsection (3)". In the present case, the lease includes the surface land and accordingly, s 279(1) is engaged which in turn requires the Land Court, pursuant to s 281(3)(a), to settle the amount of compensation an owner of land is entitled to as compensation for each of the matters referred to in s 281(3)(a)(i) through to (vi).

[14] Therefore, the approach that Parliament has intended that the Land Court undertake is to settle an amount of compensation (and the terms, conditions, and timing of the payments aggregating in that amount of compensation) that an owner of land is entitled to by reference to the five specific matters set out in ss 281(3)(a)(i) to (v) and the broader "all loss and expense that arises as a consequence to the grant or renewal of the mining lease " clause contained in s 281(3)(a)(vi).

[15] In order to allow for the 10% uplift referred to in s 281(4)(e), it is necessary to determine the aggregate amount under s 281(3) and it is therefore necessary for the Land Court to make findings and come to conclusions in respect of each of the matters referred to in s 281(3)(a) when determining compensation as referred to in s 279. The approach of the learned Member in the present case accords with this interpretation of s 281.

---

3 *Macquarie Dictionary* (online at 5 May 2020) 'compensate'.
4 *Macquarie Dictionary* (online at 5 May 2020) 'aggregate'.

[16] In the present case, the learned Member found a deprivation of the possession of the surface land[5] valued at $147/ha for 3.1 ha[6], a sum of $455.70, as is required to be valued by s 281(3)(a)(i). The learned Member determined, on the basis of the absence of evidence, that there ought to be no compensation for diminution in the value of the remaining land (s 281(3)(a)(ii)).

[17] The learned Member concluded in respect of s 281(3)(a)(iii) that the "issue of compensation was equivalent to the Lonergans being deprived of the use of the land";[7] a finding on the facts of the present case that loss assessed under s 281(3)(a)(i) properly compensated for any loss referred to in s 281(3)(a)(iii).[8]

[18] Further, the learned Member found on the facts there was not any loss of productivity due to the mining lease, and therefore did not allow any other sum for s 281(3)(a)(iii) diminution of the use of the land.

[19] The learned Member then assessed compensation for any surface right of access under s 281(3)(a)(v)[9] by requiring Mr Friese to contribute 10% of the expense of track maintenance on the access track, as explained below, which had been in place for many years. The learned Member then quantified all other loss or expense which arose as required under s 281(3)(a)(vi) in the sum of $2,931.92[10].

[20] Section 281(3)(a), properly construed, requires a determination of separate "amounts" for each subsection or head of compensation. However, as the MRA does not prescribe the method of valuation for each head of compensation, the facts in any particular case for grant or renewal of a mining lease may support the adoption of a valuation method for one head of compensation which adequately compensates for other heads of compensation set out in s 281(3)(a). Whilst it is important to ensure proper compensation is assessed in accordance with s 281(3)(a), that is, by systematic reference to ss 281(3)(a)(i) to 281(3)(a)(vi), it is equally as important to avoid "double dipping". Consequently, it is necessary that in determining compensation under the MRA, adequate reasons must be provided for each of the "amounts" or heads of compensation, particularly when one head

---

5 *Friese v Lonergan & Anor* [2019] QLC 27 [11].
6 Ibid [42].
7 Ibid [15].
8 Ibid [15].
9 Ibid [38].
10 Ibid [35].

compensates for another. The heads of compensation must then be aggregated as required by s 281(4)(e), and a minimum 10% uplift applied to reflect the compulsory nature of the action taken.

[21] As is demonstrated below, the learned Member did undertake the task required by statute in accordance with the above interpretation.

[22] The appellants raise nine grounds of appeal in submitting that the compensation as determined by Member Stilgoe was erroneous.

Ground 1 Value of Land

[23] The appellants argue that the Land Court erred in assessing the value of land at $147 per hectare, but rather ought to have assessed it at $245 per hectare. As the Land Court adopted the $147 per hectare for 3.17 hectares, it quantified the loss at $455.70. Had the Land Court adopted $245 per hectare for the 3.17 hectares, it would have calculated the award at $759.50, an increase of $303.80 over the entirety of the renewed 10-year period, which is a further allowance of $0.58 per week or $0.08 per day. There is authority to support the proposition that errors in judgments ought to be corrected even if the error is diminutive, "so as to give the appellant the award of damages intended by the trial judge."[11]

[24] The appellant quite rightly points out that there is an error of calculation in paragraph 11 of the judgment. The Land Court has found a value of the land at $147 per hectare by dividing the Lot 10 valuation of $690,000 by the entire parcel of 4,690.306 hectares.[12] As set out in page 5 of the valuation, the entire property, across both lots, is valued at $1,150,000. When this total value is divided by the combined land area of the two lots, 4,690.31 hectares, it is equal to $245 per hectare. The total land area of 4,693.0 hectares consists of: 3,099.993 hectares in Lot 10 with a value of $690,000, which equates to approximately $222.58 per hectare; and 1,590.313 hectares in Lot 11 with a value of $460,000, that is a value of approximately $289 per hectare.

---

11 *Hunt v Australian Associate Motor Insurers Limited* [2012] QCA 183, 43 per Muir JA.

12 $690,000 ÷ 4, 690.306 hectares ≈ $147 per hectare.

[25] Both of Mr Friese's mining leases are situated upon Lot 10 and as the valuation report sets out,[13] the loss in value caused by the land mining encumbrance ought to be quantified as a loss of 50% of $222.58 per hectare, or $111.29 per hectare. That suggests that the compensation ought to have been calculated as 3.17 hectares multiplied by $111.29 per hectare which is a sum of $345. A difficulty with this analysis is that the renewed mining lease encumbers Lot 10 for 10 years only and accordingly the diminution of value is probably less than $345.

[26] It is true that Mr Lyons deducted a further 2.5% off the entire property value for "diminution in value of balance" which he quantified as an overall loss of $29,727. However, that 2.5% appears to be based upon Mr Lyons' opinion that "in relation to the impact on the value of the balance of the property, an allowance of 2.5% in value has been allowed for the blot on title and injurious affection as a result of these ML's." A similar statement is also made on page 9 of the report.

[27] The difficulty with Mr Lyons' assertion is that such an opinion is in the nature of a "bare *ipse dixit"*; that is, an unreasoned expert opinion, which is not admissible at common law as there has been a breach of the "reasoning rule". [14] Mr Lyons' report records that the valuation method adopted for the bank valuation was the direct comparison method. The five properties utilised by Mr Lyons in assessing value do not have any mining leases, however as Mr Lyons notes on page 15, Rolfe Creek is subject to old gold mining lease areas. There is no factual basis or reasoning in the adoption of a "2.5% blot". The "2.5% blot" may represent a partial allowance for the interference caused by the mining leases to: property operations; livestock numbers; biosecurity; and weed and firebreak management. If the "2.5% blot" did represent the previously mentioned matters, as they are losses or expenses that are the subject of specific quantifications under the MRA then the allowance for a "2.5% blot" amounts to a "double dip". If the "blot" did not, then the Land Court is in the impossible position of having to guess what the "blot" represents.

[28] As the learned Member said, the evidential value of the valuation report is not ideal as the valuation report was prepared for bank purposes and not for litigation.[15] In summary therefore, Mr Lyons' valuation is a perfectly good bank valuation,

---

13 Appeal Record Book 1, 199.
14 *Dasreef Pty Ltd v Hawchar* (2011) 243 CLR 588, 624; [2011] HCA 21.
15 *Friese v Lonergan & Anor* [2019] QLC 27 [8].

however, it was not intended to be and nor is it a report prepared for litigation. Whilst the report does not meet the strict requirements for admissibility set out in *Dasreef v Hawchar,*[16] it may be received by the Land Court,[17] however it is of limited assistance to the Land Court in determination of value.

[29] The appellant's appeal in respect of valuation cannot succeed, indeed the valuation is too generous. However, as there has been no cross-appeal, compensation in respect of land value ought not be reduced.

Ground 2 Access Road

[30] By ground 7 the appellant attacks the determination that the respondents ought to contribute 10% towards the cost of track maintenance on an annual basis. By ground 2, the appellant attacks the determination on the basis that there ought to be an allowance for loss of land associated with the access road. This attack has no prospect of success. The evidence of Mr Lonergan[18] and as noted by Member Stilgoe in her judgement,[19] is that the appellant used the access road for his own purposes in running Rolfe Creek and he used the track at least once a week. Accordingly, as the track has been in existence prior to 2012, and was regularly used by Mr Lonergan, there can be no diminution of value attributed to the existence of the track.

[31] Furthermore, as Mr Lonergan's evidence is that he used the track at least 52 time per annum and Mr Friese's evidence is that he would use the track approximately 8 times per year,[20] that calculates Mr Friese's use at less than 13%. Given the track was also used as a firebreak, the learned Member thought it reasonable to reduce the contribution to 10%. That is a fair and logical conclusion. The appellants' complaint regarding the valuation of the access road ought to be rejected.

Ground 3 Diminution in Value

[32] The diminution in the value of the land was specifically considered by the Land Court, as it is obliged to do pursuant to s 281(3)(a)(ii) of the MRA and based on

---

16 (2011) 243 CLR 588; [2011] HCA 21.
17 LCA s 7, set out at [41] herein.
18 Appeal Record Book 1, 56.
19 *Friese v Lonergan & Anor* [2019] QLC 27 [37].
20 Appeal Record Book 1, Exhibit 1.

specific evidence and with the benefit of an inspection. The learned Member rejected a nominal 1% additional diminution of value of land.[21] The reasoning expressed there was sound. The renewed mining lease of 3.17 hectares of the parcel of 4,690 hectares represents approximately 0.06% of the total area of the property. Furthermore, the evidence shows that the area of the mining lease was in a less productive area of the property which had also been previously mined.

[33] Rather than adopt a diminution of an apparently arbitrary diminution of 2.5% as set out in the valuation report, or a further arbitrary 1% diminution in value as submitted by the appellant, the learned Member undertook the task that she was obliged by statute to undertake. That is, to determine compensation in respect of all loss or expense that arises as a consequence of the renewal of the mining lease as required by s 281(3)(a). The learned Member undertook this task in great detail,[22] by examining the impact the renewal of the mining lease would have upon weed management, biosecurity, property operations, livestock, and firebreak management. That is, the learned Member undertook a careful assessment based on the evidence brought in the determination upon the specific circumstances applicable to the renewal of ML70152 and its impact upon Rolfe Creek.

[34] In doing so the learned Member not only reached a proper conclusion as to the appropriate value to apply with respect to diminution under the MRA, but also a value based upon a discernible rationale. The appellant's complaint in this regard should be dismissed.

Ground 4 Fire Breaks

[35] The appellants submit that the Land Court erred in not providing an allowance for maintenance of the firebreaks at 2 hours per year at $150 per hour over 10 years. In principle, it is correct that any additional expense incurred by a landholder in maintaining firebreaks around a mining lease is a loss or expense that arises consequent to the renewal of the mining lease and thus ought to be allowed pursuant to s 281(3)(a)(vi).

[36] The principles however must be applied to the evidence brought in any specific case. The evidence in the present case accepted by the learned Member is that the

---

21 *Friese v Lonergan & Anor* [2019] QLC 27 [17] – [22].
22 Ibid [23] – [41].

respondent Mr Friese and his wife have a passion for small scale mining which they wish to share with their six grandchildren.[23] Mr Friese doesn't keep any machinery or improvements on the mining lease.[24] There are no firebreaks around the mining lease, which has been in existence for many years. The learned Member accepted the evidence of the appellant Mr Lonergan that there was one firebreak to the north of the mining lease, namely the access track referred to in grounds 2 and 7, and that the existence of a firebreak is an essential part of land management for the property, whether or not there was a mining lease.[25]

[37] As the learned Member found,[26] there had been existing mining leases in the vicinity of the respondent's mining lease for many years without any firebreaks and without any evidence of any fire being occasioned from the mining lease. It was reasonable for the learned Member to reject the appellant's argument that the appellants ought to be compensated for the creation of new firebreaks. The evidence showed that the risk of fires arising from this mining lease with no equipment was minimal, such that it was adequately met by the respondent's contribution towards the cost of maintenance to the access road. The learned Member correctly found that the access road acted as a firebreak for the benefit of the entire property.

Grounds 5 and 6 Management Time and Inappropriate Hourly Rate

[38] In respect of weed management, biosecurity, interference with property operations and livestock management, and firebreak management, the learned Member allowed a total loss of $2,931.92. This was calculated by allowing 4 hours per annum, at $80 per hour, over 10 years, and the sum being discounted at 2%.

[39] Paragraph 24 of the appellant's written submissions, which contains the orders sought by the appellants in a table format, re-states the appellant's initial claim for management time as: 2 hours, 4 times per annum for weed monitoring and control; and 2 hours per annum for fire management.

[40] With respect to weed monitoring and control, the appellant claimed 8 hours per annum, and was allowed, by the learned Member, 4 hours per annum. The learned

---

23 Ibid [1].
24 Appeal Record Book 1, 4.
25 *Friese v Lonergan & Anor* [2019] QLC 27 [28]-[29].
26 Ibid [29].

Member admitted to "doing the best I can"[27] in allowing half the amount claimed, but at a lesser rate of $80 per hour rather than the claimed rate of $150 per hour. As to the number of hours, it is appropriate in determining compensation that the learned Member do the best they could.

[41] No doubt, there was some additional management time required due to the renewal of the mining lease, however, the difficulty in compensating for that, is that the appellants did not place any evidence before the Land Court as to any additional tasks undertaken, nor time spent on those tasks due to the renewal of the mining lease.[28]

[42] The learned Member did refer to *Valantine v Henry*,[29] for the proposition that the very existence of the mining lease and mining activities warrant observation and checking by landowner from time to time. This enlivens some allowance to be made for managerial time, however, in the absence of specific evidence of the actual time and given that the respondent's mining operation was a small-scale operation, it was a fair outcome to allow half the amount claimed in terms of hours.

[43] The general powers of the Land Court are set out in s 7 of the *Land Court Act 2000* (LCA) as follows:

> **7 Land Court to be guided by equity and good conscience**
>
> In the exercise of its jurisdiction, the Land Court—
>
> (a) is not bound by the rules of evidence and may inform itself in the way it considers appropriate; and
>
> (b) must act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities and forms or the practice of other courts.

[44] In a case such as the present, where the Land Court is not provided with any specific evidence as to the actual additional management time incurred as a consequence of the existence of the mining lease, it makes it quite impossible for the Land Court to make a precise evidential ruling as to the additional number of management hours required by the existence of the lease. However, acting with equity, good conscience and substantial merits, the loss or expense which exists but which has not been quantified ought to not be simply ignored.

---

27 Ibid [34].
28 Ibid [25]; Appeal Record Book 1, 56.
29 [2018] QLC 21 [69].

[45] In such a circumstance, the Land Court may, most pragmatically and as the learned Member said, do "the best they can"[30] with reference to the facts in the specific case. In the present case, the mining lease was a very small, family-oriented mining lease located in previously-mined-country. The allowance of 4 hours per annum in respect of management time does accord with the broad factual parameters and has not been demonstrated to be incorrect.

[46] The same approach is appropriate in respect of the hourly rate for management time. In the present case, the appellants did not place any evidence before the Land Court as to the appropriate hourly rate for managerial works. Again, the Land Appeal Court fairly acknowledged that there is a loss, but with an absence of evidence to support the appropriate rate, must be guided by equity and good conscience.

[47] As the learned Member reflected,[31] the type of work required was in the nature of work as a station manager or overseer and that there was no "evidence about what might be appropriate".[32] The learned Member adopted $80 per hour,[33] by reference to the $70 per hour allowed in *Sullivan v Oil Co of Australia Ltd and Santos Petroleum Operations Pty Ltd,*[34] reflecting that the award in *Sullivan* of $70 per hour was made some 14 years ago and therefore may be too low, and "doing the best I can" Member Stilgoe allowed for $80 per hour.[35]

[48] In the absence of specific evidence as to the appropriate rate for managerial time, the approach adopted by the learned Member cannot be criticised.

Ground 7 Maintaining Access Track

[49] The appellants boldly submit that the court erred in not making an allowance for the maintenance of the access track. That is plainly incorrect as there was an allowance made for the cost of maintaining the access track.

[50] Properly construed, the appellants' submission is that the Land Court allowance of a 10% contribution toward track maintenance was inadequate, and that the Land

---

30 *Friese v Lonergan & Anor* [2019] QLC 27 [34].
31 Ibid [33].
32 Ibid [33].
33 Ibid [34].
34 [2003] QLRT 2 [88].
35 *Friese v Lonergan & Anor* [2019] QLC 27 [34].

Court ought to have adopted the appellants' contention that the contribution ought to have been a third and not a tenth.

[51] This matter has been dealt with in ground 2 above[36] and ought to be dismissed for the same reasons.

Ground 8 Loss of Livestock Production

[52] According to Mr Lyons' report,[37] Rolfe Creek has adult equivalent capacity for breeding and backgrounding beef cattle of 12 beasts per hectare (4,690 hectares divided by 390 adult equivalent beasts). Accordingly, theoretically, the mining lease at 3.17 hectares results in a loss of livestock production of one-quarter of one head. Exhibit 5 consists of 15 photographs of mining lease 70152,[38] they show a small non-grassed area of mining activity which is unfenced and accessible in rough terrain. There is, as one would expect, nothing preventing any cattle should they wish, for the majority of the year, utilising the remnants of grass in close proximity to the area that has been actually mined.

[53] The respondent gave evidence that at times when he has been present on the mining lease area there have been no cattle in the vicinity,[39] and that most of the time the cattle are nowhere near the mining lease. As the learned Member accurately states, the mining lease was previously mined,[40] so the area had, for quite some time, been in a condition different to surrounding grazing country, namely that the mining area predominantly lacked any grass.

[54] Section 281(3) of the MRA requires the loss or expense to be quantified on the facts by accepted the Land Court as a consequence of the grant or renewal of the mining lease. As the area had been previously mined and was not productive land, the Land Court was correct in determining that no loss or expense had been incurred by the appellants by the renewal of the mining lease in respect of loss of livestock production.

Ground 9 Time Spent Negotiating with Mr Friese

---

36 See above at paragraphs [30]-[31].
37 Appeal Record Book 1, Exhibit 8, 171.
38 Ibid Exhibit 5, 141.
39 Ibid 2 – 31.
40 *Friese v Lonergan & Anor* [2019] QLC 27 [20].

[55] Pursuant to s 279(1) of the MRA, the mining lease shall not be granted unless compensation has been agreed between a mining lessee or otherwise determined by the Land Court. The MRA promotes a cooperative approach between landowners and mining lessees.

[56] Ordinarily agreements cannot be reached in the absence of negotiation. Negotiation for compensation may prove advantageous to a landowner. The time spent by a landowner negotiating with a mining lessee as to appropriate compensation cannot be properly characterised as "loss or expense that arises as a consequence of the grant of renewal of the mining lease" pursuant to s 281(3)(a) because the grant or renewal of the mining lease cannot occur until, pursuant to s 291, compensation has been determined by agreement or by determination of the Land Court.

[57] Furthermore, in the present case there is no evidence as to the time that was actually spent negotiating with Mr Friese. That ground of appeal is therefore dismissed.

[58] The appeal is dismissed.

[59] **KINGHAM P:** I have read and, respectfully, agree with Justice Crow's reasons on the appeal and the order he proposes. My reasons deal only with a preliminary issue - whether the appeal has lapsed because the appellant did not comply with the requirement to lodge security for costs.

[60] The Land Court determined compensation payable by Mr Friese to Mr & Mrs Lonergan, pursuant to s 281 of the MRA. A party aggrieved by such a determination may appeal to the Land Appeal Court. If an appeal is lodged, no further step can be taken in the appeal unless the appellant lodges security for the costs of the appeal. Mr Friese submits the Lonergans have not fulfilled that requirement and the appeal cannot proceed.

[61] The registrar of the Land Court has the function of deciding the form and amount of the security and must give notice of that decision to the appellant.[41] The appellant must lodge the security in the decided form and amount within 15 business days after the registrar gives notice of the decision.[42]

---

41 MRA ss 282A(3), (4).
42 Ibid s 282A(5).

[62] There is no dispute about the relevant facts regarding the security for costs. The registrar notified Mr & Mrs Lonergan that they must provide a Bank Guarantee for $5,000 by 4:30pm on 24 January 2020.

[63] They did not lodge the original Bank Guarantee by that time on that day.

[64] However, two things did occur on that day. Firstly, an officer of Suncorp Bank at Emerald spoke to the registrar by telephone. The officer advised the registrar that the bank had issued a Bank Guarantee for $5,000 and asked if she could email it to the Registry that day and provide the original by post. Secondly, at 5:04pm, the Registrar received an emailed copy of the Bank Guarantee.

[65] On 29 January 2020, an officer of the Court notified the parties that the Bank Guarantee had been "deemed accepted within time on the basis that Suncorp Bank verbally confirmed that the Bank Guarantee has been produced before 4:30pm on Friday 24 January 2020."

[66] The use of the term "deemed accepted" is consistent with the registrar accepting substantial compliance with the requirement to lodge the security for costs by the due date. The MRA contains a substantial compliance provision[43] which uses that term.

[67] Mr Friese conceded the registrar purported to exercise the power to accept substantial compliance. Further Mr Friese did not contest the correctness of the registrar's decision, nor did he complain of any prejudice because of it. The only issue he raised was whether the registrar could exercise the substantial compliance power conferred on the Court by s 392. In any case, assuming the registrar does have the power, this Court appears to have no jurisdiction to review his use of it.

[68] The issues are:

(a) What is the effect of an appeal lapsing under s 282A(6)?

(b) Can the Registrar exercise the power to accept substantial compliance conferred by s 392?

---

43 Ibid s 392.

What is the effect of an appeal lapsing under s 282A(6)?

[69] Mr Friese relied on s 282A(6):

> If the appellant does not comply with subsection (5), the appeal lapses.

[70] It appears that this is the first time this section has been considered judicially.

[71] Mr Friese argues the effect of s 282A(6) is to bring the appeal to an end, if the appellant does not comply with the requirement for lodging the security for costs. I agree with that submission, for a number of reasons.

[72] First, it is consistent with the ordinary meaning of "lapsed" when used in a legal context:

> "*Law* the termination of a right or privilege through neglect to exercise it or through failure of some contingency."[44]

[73] Second, interpreting "lapsed" to mean the appeal is at an end, sits comfortably with reading s 282A(6) in the context of s 282A as a whole.

[74] That section sets up a process that allows the appeal to be filed, but not proceed further until security for costs is decided and provided.

[75] Section 282A(2) provides:

> A further step can not be taken in the appeal until security for the costs of the appeal has been lodged under this section.

[76] The effect of s 282A(2) is that the appeal is in abeyance while the process of deciding and providing the security takes place.

[77] The Registrar decides the form and amount of security[45] and gives notice of that decision.[46] The date for lodging the security is fixed by s 282A(5). If it is not lodged by then, in the form and amount decided, the appeal lapses.[47]

[78] If s 282A(6) is to have any function, it must be to bring an appeal that is already in abeyance, to an end.

[79] Third, that interpretation is consistent with the legislative intention of introducing s 282A. The section was introduced by the *Land Court and Other Legislation*

---

44 *Macquarie Dictionary* (3rd ed, 1997) 'lapse' (def 5).
45 MRA s 282A(3).
46 Ibid s 282A(4).
47 Ibid s 282A(6).

Amendment Act 2007 which commenced on 29 August 2007. The explanatory notes for s 282A state:

> "Clause 33 inserts new section 282A dealing with security for costs of appeal under section 282. New section 282A requires the registrar of the Tribunal[48] to determine the level of security for costs when an appeal application is lodged. Commonly appeals may be lodged on the last day of the appeal lodgement time. The consequence is that the registrar does not have adequate time to make a considered decision as to an appropriate level of security. The amendment provides a more orderly administrative process for the Tribunal including appropriate notification and time periods in which the court must act, as well as **clearly setting out the consequences for non-compliance by applicants."** (emphasis added)

[80] The explanatory notes refer to the "consequences for non-compliance." Unless s 282A(6) is interpreted to bring the appeal to an end, it imposes no consequence for non-compliance, because the appeal is already in abeyance pursuant to s 282A(2).

[81] Finally, that interpretation is consistent with the way in which the word "lapsed" was interpreted by the High Court in *Esso Research and Engineering Co v Commissioner for Patents.*[49] In that case, the issue was how to interpret "lapse" as it was used in s 54 of the *Patents Act 1952*. His Honour Fullagar J said:

> "So far as the meaning which is attributed to the word 'lapse' is concerned…I think the word 'lapse' in s 54 connotes finality, and that the intention is that, when the time for acceptance has passed and there has been no acceptance, the application is to be no longer regarded as subsisting."

[82] Properly interpreted, if the appellant has not complied with s 282A(5), the effect of s 282A(6) is that the appeal is at an end, unless the registrar had the power to accept substantial compliance with the requirement to lodge the Bank Guarantee.

Can the registrar exercise the power to accept substantial compliance conferred by s 392?

[83] Mr & Mrs Lonergan rely on the power conferred by s 392(1) of the MRA. It appears in Chapter 14, entitled Miscellaneous Provisions and is in the following terms:

> Where this Act provides that in respect of any matter…the Land Court …may act if anything has been done in the prescribed way, but that thing has not been done in the prescribed way…the Land Court…may, if satisfied that there has been substantial compliance with the prescribed way

---

48 The relevant jurisdiction was then exercised by the Land and Resources Tribunal, hence the reference to the Tribunal not to the Land Court.

49 (1960) 102 CLR 347; [1960] HCA 31, 350.

> in respect of that thing, record that fact in writing and may so act and the thing shall be deemed to have been done in the prescribed way.

[84] Before considering the registrar's ability to exercise this power, it is important to clarify what the registrar's decision was. This case is not about an extension of time. When the Lonergan's solicitors requested an extension of the period for lodging the security,[50] the registrar advised them he had no power to do so.[51]

[85] I agree with his conclusion. The period for lodging the security is fixed by s 282A(5). The registrar has no express power to extend that period; nor does the Land Court.

[86] Here, the registrar has not extended time for lodging the security. Instead, he has accepted what occurred on 24 January 2020 as substantial compliance with the requirement to lodge the security.

[87] As Mr Friese argued the point on appeal, the sole issue is whether the registrar was able to exercise that power, because s 392 refers to the Land Court, not to the registrar of the Land Court.

[88] Section 392(1) does not expressly refer to the registrar. It does refer to the Land Court. The question is what the words "Land Court" mean in the context of s 392(1). Again, I am not aware of any judicial consideration of this point.

[89] The MRA contains no definition of "Land Court," nor does the LCA.

[90] Mr Friese relies on s 13 of the LCA, which appears under the heading "composition of the court." It provides:

> The Land Court consists of the president and other members.

[91] Mr Friese says this is what is meant by the Land Court in s 392(1).

[92] However, the LCA also contains provisions about its non-judicial officers. It provides there will be a registrar, deputy registrars and other officers necessary for the proper administration of the LCA.[52] Those officers have the functions conferred

---

50 Affidavit of David Thomas Marland, filed 27 March 2020, Exhibit "DTM-01."
51 Ibid Exhibit "DTM-03."
52 LCA s 48.

under the LCA or another Act, and the power to do all things necessary or convenient to be done to perform those functions.[53]

[93] Mr Friese argues the reference to Land Court in s 392(1) should be interpreted to mean the president and other members, not any officers of the Court such as the registrar. The alternative view, which I understood to be maintained by Mr & Mrs Lonergan is that "Land Court" in s 392(1) means the Court as an entity, including its officers, in this case the registrar.

[94] A similar question was considered by the High Court in *Commonwealth v Hospital Contribution Fund of Australia*.[54] In that case, the question was whether the terms "court" in s 77(iii) of the Constitution and "courts" in s 39(2) of the *Judiciary Act 1903* (Cth) should be interpreted as a reference to the judges composing the court, or the court as an institution. The question arose because one aspect of federal jurisdiction conferred on the New South Wales Supreme Court, was, under the rules of that court, exercised by a Master not a Judge.

[95] Section 25 of the *Supreme Court Act 1970* (NSW) is in similar terms to s 13 of the LCA:

> The Court shall be composed of a Chief Justice, a President of the Court of Appeal and such other Judges of Appeal and Judges as the Governor may from time to time appoint.

[96] The High Court considered s 25 yet decided the term "court" should be interpreted to mean the court as an institution, so that its meaning extended to include a Master of the court.

[97] Chief Justice Gibbs said:[55]

> "One would expect invested jurisdiction to be conferred on the court regarded as an entity, rather than on the individual persons who compose its membership….The jurisdiction and powers of the court do not cease to be its jurisdiction and powers because they are exercised by an officer of the court, under the rules of the court. In the present case the jurisdiction and powers which Master Allen was called on to exercise were undoubtedly the jurisdiction and powers of the Supreme Court. He was the officer of the court by whom the jurisdiction and powers of the court in the matter in question were normally exercised, and an order made by him, if not aside or varied by the court, would take effect as an order of the court. Although he was not a member of the court he was, in my respectful

---

53 Ibid s 49.

54 (1982) 150 CLR 49; [1982] HCA 13.

55 With whom Stephen J, Mason J, Murphy J, Aickin J, Wilson J agreed on this point, each providing separate reasons. Brennan J allowed the demurrer for different reasons.

> opinion, part of the organization through which the powers and jurisdiction of the court were exercised in matters of State jurisdiction, and through which they were to be exercised in matters of federal jurisdiction also, once the court was invested with federal jurisdiction."[56]

[98] If the same reasoning is applied to s 392(1), the power conferred on the Land Court to accept substantial compliance is conferred on the Court as an entity, and may be exercised by a member constituting the Court for a proceeding, or by an officer of the Court, exercising a power conferred on them in that capacity.

[99] The wording of s 392(1) of the MRA does not mandate a narrow interpretation. It is a remedial provision and "should be given a generous construction so as to permit the fullest relief which will be allowed on a fair reading of its language."[57] There is no compelling reason to adopt a different approach to that taken by the High Court.

[100] The words "Land Court", when used in s 392(1) should be interpreted to mean the Land Court as an entity and, therefore, extend to an officer of the Court exercising a function conferred on them in that capacity.

[101] As the registrar was engaged in a function conferred on him by the MRA, in his capacity as an officer of the Court, I find he was able to, and did, exercise the power conferred on the Court, as an entity, by s 392(1).

Did the events of 24 January 2020 amount to substantial compliance?

Conclusion

[102] I am satisfied the registrar had the power to accept the oral confirmation and emailed copy of the Bank Guarantee on 24 January 2020 substantially complied with the requirement to lodge the Bank Guarantee on that day.

[103] On that basis, I find Mr & Mrs Lonergan are deemed to have complied with s 282A(5) of the MRA and s 282A(6) does not apply. Accordingly, the appeal has not lapsed and may proceed.

[104] **MEMBER ISDALE:** I agree with the reasons of Crow J and President Kingham and the orders proposed.

---

56 *Commonwealth v Hospital Contribution Fund of Australia* (1982) 150 CLR 49; [1982] HCA 13.
57 *McAusland v Deputy Federal Commissioner of Taxation* (1993) 118 ALR 577, 581-2.