



WARDEN'S COURT

MAGISTRATES COURT OF WESTERN AUSTRALIA
501 HAY STREET
PERTH WA 6000

CIRCULAR TO PRACTITIONERS

No. 3 of 2023

Dear Practitioners

RE: NOTIFICATION OF AN IMPORTANT QUESTION OF STATUTORY CONSTRUCTION

The Wardens advise that on the 8th of December 2023 Warden McPhee was served with a copy of a Supreme Court Review, being *Richmond v McPhee and Regis Resources Limited* (Supreme Court Matter CIV 2404 of 2023).

The grounds of review in that proceeding squarely raise the construction of section 58(1)(b) of the Act, and in so doing challenge the correctness of the line of authority described in the decisions of *William Robert Richmond v Regis Resources Limited [No.2]* [2023] WAMW 23 and *William Robert Richmond v Regis Resource [No.3]* [2023] WAMW 44, made on 23 August 2023 and 10 November 2023 respectively.

In light of the direct challenge to the construction adopted by the Wardens in relation to section 58(1)(b) of the Act, the Wardens advise as follows:

- 1 Part IV proceedings which involve objections to applications, which include an objection ground alleging non-compliance with section 58(1)(b) of the Act, save for a specific order, will not advance to hearing at this time, and ought be the subject of consent orders adjourning the matter to a mention date of 6 May 2024;
- 2 In respect of ballots; in the context of a ballot comprising of the group of applications which might be regarded as consistent with the line of authority adopted by the Wardens, there is no impediment to those ballots being the subject of appropriate consideration for compliance, and the ballot proceeding. In the event one or more of



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the applications referred to in a ballot contains a statement pursuant to section 58(1)(b) which is inconsistent on its face with the line of authority adopted by the Wardens, that ballot will be held in abeyance until the determination of CIV 2404 of 2023. In the latter circumstance, the ballot ought be adjourned to 6th of May 2024.

Nothing in this Circular ought be taken to be an indication that the Wardens have a pre-conceived notion in respect of any particular application which might be pressed by any party.

In the event any party wishes to bring an appropriate application in respect of any of the matters which have been raised, they are of course entitled to do so.

This Circular is provided in an effort to provide a degree of certainty in relation to the procedure to be taken in respect of matters the subject of this particular judicial review.

Finally, we also take the opportunity to wish all and sundry a safe and happy holiday season.

Yours faithfully

A blue ink signature, appearing to be 'Tom McPhee', written in a cursive style.

Warden Tom McPhee

A black ink signature, appearing to be 'Genevieve Cleary', written in a cursive style.

Warden Genevieve Cleary

19 December 2023