JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA IN CIVIL
CITATION	**:**	SHIRE OF MOUNT MAGNET -v- ATLANTIC VANADIUM PTY LTD [2025] WASC 274
CORAM	**:**	SOLOMON J
HEARD	**:**	21 AUGUST 2024
DELIVERED	**:**	8 JULY 2025
FILE NO/S	**:**	GDA 5 of 2024
BETWEEN	**:**	SHIRE OF MOUNT MAGNET Appellant AND ATLANTIC VANADIUM PTY LTD Respondent

ON APPEAL FROM:

Jurisdiction	**:**	STATE ADMINISTRATIVE TRIBUNAL
Coram	**:**	SENIOR MEMBER DR S WILLEY
File Number	**:**	DR 143 of 2023

Catchwords:

Proper construction of s 6.26 of the *Local Government Act 1995* (WA) - Role of legislative history in statutory construction - Local government - Objection to rate notice - Rates - Whether land the subject of an occupied miscellaneous licence under the *Mining Act 1987* (WA) is rateable land - Miscellaneous licence

Legislation:

Acts Amendment (Mining Tenements) (Rating) Act 1984 (WA), s 5
Interpretation Act 1984 (WA), s 10(c)
Local Government Act 1995 (WA), s 1.4, s 6.26
Local Government Act 1960 (WA), s 6, s 531A, s 532
Mining Act 1978 (WA), s 33, s 91
Mining Act 1904 (WA)
Mining Regulations 1981 (WA), reg 42B
State Administrative Tribunal Act 2004 (WA), s 105

Result:

Appeal allowed

Category: A

Representation:

Counsel:

Appellant	:	EM Heenan SC & P Honey
Respondent	:	TC Russell SC & L Holland

Solicitors:

Appellant	:	McLeods
Respondent	:	DLA Piper Australia - Perth

Case(s) referred to in decision(s):

Atlantic Vanadium Pty Ltd v Shire of Mount Magnet [2024] WASAT 16
CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384
Director of Public Prosecutions (DPP) (Vic) v Walters (a Pseudonym) [2015] VSCA 303; 49 VR 356
Federal Commissioner of Taxation v Consolidated Media Holdings Ltd (2012) 250 CLR 503
Fly By Night Musicians Club Limited v City of Fremantle [2002] WASCA 161
Knight v The State of South Australia [2022] SASCA 14; 140 SASR 326
Taylor v Owners - Strata Plan No 11564 (2014) 253 CLR 531
Victoria v Tabcorp Holdings Ltd [2014] VSCA 143

SOLOMON J:

Background

1 This proceeding is an appeal by the Shire of Mt Magnet (**Shire**) against a decision of the State Administrative Tribunal (**Tribunal**) in favour of the respondent, Atlantic Vanadium Pty Ltd (**Atlantic**). The Tribunal's decision was published with the citation ***Atlantic Vanadium Pty Ltd v Shire of Mount Magnet*** [2024] WASAT 16.

2 In accordance with facts agreed by the parties for the purpose of the proceeding, the Tribunal found the following background facts:[1]

> a. Atlantic holds six miscellaneous licences (L58/27, L58/28, L58/29, L58/30, L58/32 and L58/35) (**Miscellaneous Licences**) over land, relevantly, within the Shire of Mount Magnet (**Shire** or **Respondent**). These licences were granted between 23 June 1998 and 12 June 2009.
>
> b. Atlantic acquired the Miscellaneous Licences in around 2016 and they form part of its Windimurra Vanadium project.
>
> c. The Miscellaneous Licences cover a total area of 5,633.39 ha, of which 4,237.59 ha sits within the Shire. The remaining portions are within the adjoining Shire of Sandstone.
>
> d. On or about 15 June 2023, the Shire issued rates notices to Atlantic in respect of the Miscellaneous Licences following a review of its rate record under s 6.39 of the LGA. Prior to 15 June 2023, the Shire did not issue rates notices for any of its Miscellaneous Licences.
>
> e. Upon receipt of the rates notices, Atlantic and the Shire exchanged a series of communications on the question as to whether the land the subject of the Miscellaneous Licences is rateable land.

3 Before the Tribunal, the parties formulated a preliminary issue for determination. The singular question determined by the Tribunal and raised on this appeal is whether Crown land the subject of an occupied miscellaneous licence is, or is not, rateable land. The answer to that question turns on the proper construction of s 6.26 of the *Local Government Act 1995* (WA) (**LGA**).

[1] ***Atlantic Vanadium Pty Ltd v Shire of Mount Magnet*** [2024] WASAT 16 [4] - [10].

4 Section 6.26(1) and (2)(a) provide as follows:

> **6.26. Rateable land**
>
> (1) Except as provided in this section all land within a district is rateable land.
>
> (2) The following land is not rateable land —
>
> (a) land which is the property of the Crown and —
>
> (i) is being used or held for a public purpose; or
>
> (ii) is unoccupied, except —
>
> (I) where any person is, under paragraph (e) of the definition of *owner* in section 1.4, the owner of the land other than by reason of that person being the holder of a prospecting licence held under the *Mining Act 1978* in respect of land the area of which does not exceed 10 ha or a miscellaneous licence held under that Act; or
>
> (II) where and to the extent and manner in which a person mentioned in paragraph (f) of the definition of owner in section 1.4 occupies or makes use of the land;

5 The Tribunal held that Crown land the subject of an occupied miscellaneous licence is not rateable land.[2]

6 Section 105 of the *State Administrative Tribunal Act 2004* (WA) provides that an appeal lies to the court from the Tribunal's decision only with leave and on a question of law. This was not in dispute, and it is plainly the case that the appeal involves a question of law. The question of law is significant, and leave should be given.

7 The question of law the subject of this appeal concerns the proper construction of s 6.26(2)(a)(ii)(I) of the LGA.

[2] ***Atlantic Vanadium Pty Ltd v Shire of Mount Magnet*** [2024] WASAT 16 [148].

Principles of statutory construction

8 The principles of statutory construction are well established and were not in dispute. They have been repeated in many cases and may be relevantly summarised as follows.

9 The statutory text is the surest guide to Parliament's intention. A decision as to the meaning of the text requires consideration of the context, in its widest sense, including the general purpose and policy of the provision. The context includes the existing state of the law, the history of the legislative scheme and the mischief to which the statute is directed. However, legislative history and extrinsic materials cannot displace the meaning of statutory text. Further, the examination of legislative history and extrinsic materials is not an end in itself. The purpose of legislation must be derived from the statutory text and not from any assumption about the desired or desirable reach or operation of the relevant provisions. The intended reach of a legislative provision is to be discerned from the words of the provision and not by making a prior assumption about its purpose.[3]

10 Of particular relevance in this case is the principle articulated by the Court of Appeal of Victoria in ***Victoria v Tabcorp Holdings Ltd*** [2014] VSCA 143[4] and repeated in ***Director of Public Prosecutions (DPP) (Vic) v Walters (a Pseudonym)*** [2015] VSCA 303; 49 VR 356 at [3]:

> There are powerful reasons of principle for giving primacy to the statutory text. First, the separation of powers requires nothing less. Axiomatically, it is for the Parliament to legislate and for the courts to interpret. Close adherence to the text, and to the natural and ordinary meaning of the words used, avoids the twin dangers of a court 'constructing its own idea of a desirable policy', or making 'some a priori assumption about its purpose'.
>
> Secondly, giving the text its natural and ordinary meaning maximises the comprehensibility and accessibility of statute law, and the accountability of the legislature.

Tribunal's decision

11 The construction urged by the respondent and upheld by the Tribunal is that s 6.26(2)(a)(ii)(I) is to be read such that land the subject of a miscellaneous licence on Crown land comes within the terms of the

[3] See ***CIC Insurance Ltd v Bankstown Football Club Ltd*** (1997) 187 CLR 384, 408; ***Taylor v Owners - Strata Plan No 11564*** (2014) 253 CLR 531, 549 [39].
[4] See [101] - [102].

exemption in s 6.26(2) and is not rateable, whether occupied or unoccupied.

Shire's construction

12 The appellant challenges that construction. The appellant contends that the meaning of s 6.26(2)(a) is reasonably straightforward and is to be understood as follows. Section 6.26 begins by providing in s 6.26(1) that within a relevant district, all land is rateable. Section 6.26(2) creates exemptions from the application of s 6.26(1). It begins with the chapeau: 'The following land is not rateable land'. It then sets out in 11 sub-paragraphs, s 6.26(2)(a) - (k), outlining the land which is not rateable. Unless land comes within one of the categories of s 6.26(2)(a) - (k) it is rateable by reason of s 6.26(1).

13 The first category of land that is not rateable is in s 6.26(2)(a). The first qualification for the exemption is that the land is Crown land. The provision then provides for two additional features, one of which is required to make the land non rateable land. The first is that it is land used or held for a public purpose. Thus, Crown land used or held for a public purpose is not rateable land. The second is land that 'is unoccupied'. Thus, Crown land that is unoccupied is non rateable land.

14 Following the words 'is unoccupied,' s 6.26(2)(a)(ii) states 'except -' and then sets out two qualifying provisions That means there are two exceptions to what is otherwise provided by s 6.26(2)(a)(ii). The first is set out in s 6.26(2)(a)(ii)(I). That exception to the application of s 6.26(2)(a)(ii) arises where a person is an owner of the land by reason of the definition of 'owner' in s 1.4(e). The term 'owner' in this section refers to the holder of a mining tenement under the *Mining Act 1978* (WA) (**Mining Act 1978**). That means that if a person is the 'owner' of the land because the person is the holder of a mining tenement on the land, then the exception provided by s 6.26(2)(a)(ii) does not apply. In effect, s 6.26(2)(a)(ii)(I) provides that land is not rateable land if it is Crown land and is unoccupied, except if the land is the subject of a mining tenement. If the land is the subject of a mining tenement, then it does not meet the description of non-rateable land. Land the subject of a mining tenement is excluded from the exemption.

15 Section 6.26(2)(a)(ii)(I) then provides an exception to the exclusion of a mining tenement from the exemption. If the mining tenement is a prospecting licence of an area less that 10ha (**small PL**) or a miscellaneous licence then it is not excluded from the exemption. Rather it remains within the terms of the exemption provided by

s 6.26(2)(a)(ii). As explained, the terms of that exemption apply to Crown land that is unoccupied. Thus, land which is unoccupied and the subject of a miscellaneous licence meets the description of non-rateable land. In contrast, land which is not Crown land, or land which is Crown land but is not unoccupied, does not meet the description of s 6.26(2)(a)(ii). It is therefore rateable land under s 6.26(1).

16 The second exception to what is otherwise provided by s 6.26(2)(a)(ii), is set out in s 6.26(2)(a)(ii)(II). That arises where a person is an owner of the land by reason of the definition of *owner* in s 1.4(f). Owner in this provision refers to a person in unlawful occupation of the Crown land. That means that if the land is unlawfully occupied then the exemption otherwise provided by s 6.26(2)(a)(ii) does not apply and the land is not non rateable land (subject to the extent and manner of the occupation).

Atlantic's construction

17 The construction urged by the respondent attributes a different meaning to s 6.26(2)(a)(ii). The construction is focussed on the feature of occupation.

18 I understood that construction to proceed as follows. To meet the description of 'not rateable land' under s 6.26(2)(a)(ii) the land must first be Crown land. Under s 6.26(2)(a)(ii) it must also be unoccupied. The word 'except -' then introduces an exception to the feature that the land is not rateable because it is unoccupied. That is, the word 'except-' qualifies the relevance of the land being unoccupied as a basis for its non-rateability. In effect, under s 6.26(2)(a)(ii) the word 'except' means that the word 'unoccupied' is to be ignored. The exceptions that follow identify instances when the feature of being 'unoccupied' is *irrelevant* and the land is therefore rateable (or, more precisely, is not 'not rateable land') regardless of whether it is unoccupied or occupied. That is apparent because 'except-' follows immediately after the word 'unoccupied'. The respondent emphasised the juxtaposition of the words 'unoccupied' and 'except' as supporting its construction that the exceptions, outlined in s 6.26(2)(a)(ii)(I) and (II), are applicable to the requirement of 'unoccupied'.[5]

[5] Transcript, ***Shire of Mount Magnet v Atlantic Vanadium Pty Ltd,*** Supreme Court of Western Australia, 21 August 2024, 41 (**ts**).

19 The respondent's construction was summarised by its counsel as follows:[6]

> Crown land the subject of mining tenements are rateable regardless of the question of occupation, except that miscellaneous licences … are not rateable … that is … they are exempt from rating regardless of the question of occupation.

20 Counsel for the respondent submitted that the 'exception' is from the land 'having to be occupied'[7] or 'from the question of occupation'.[8] That is, the statutory language renders land the subject of a mining tenement rateable in all circumstances, regardless of occupation.[9] Counsel for the respondent explained the words in s 6.26(2)(a)(ii) '*is occupied, except* - ' as follows:[10]

> The comma, the words except, and the dash delineate them from the requirement of occupation. They [meaning, lands the subject of a mining tenement] are rateable regardless of whether there is occupation or not on the mining tenement.

21 Section 6.26(2)(a)(ii) then sets out two classes when the feature of being 'unoccupied' is irrelevant and the land is therefore rateable whether or not it is unoccupied.

22 The first class under s 6.26(2)(a)(ii)(I) is where any person is an 'owner' of that land by reason of s 1.4(e), that is a person who holds a mining tenement under the Mining Act 1978 in respect of the land. Simply put, if there is a mining tenement over the land, then the exception of being not rateable land because it is unoccupied does not apply. That is, where the land is the subject of a mining tenement, it is rateable (or not 'not rateable') regardless of whether or not it is unoccupied.

23 The second class under s 6.26(2)(a)(ii)(II) is where a person is an 'owner' of that land by reason of s 1.4(f), that is, the person is in unlawful occupation of the Crown land. That is, if a person is in unlawful occupation the land, then the exception of being not rateable land because it is unoccupied does not apply. Thus, where the land is unlawfully occupied, it is rateable (or not 'not rateable') regardless of whether or not it is unoccupied.

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[6] ts 33.
[7] ts 36.
[8] ts 37.
[9] ts 39.
[10] ts 37.

24 The first class of exception in s 6.26(2)(a)(ii)(I) is itself subject to a qualification. The exception is not applicable to, relevantly, a miscellaneous licence. Therefore, the exception from non-rateability on the basis of the irrelevance of non-occupation does not apply to a miscellaneous licence. It follows that land the subject of a miscellaneous licence is not rateable land irrespective of whether or not it is unoccupied.

25 The respondent submitted that its construction was the plain and natural meaning of the provision. However, the respondent submitted that to the extent there are competing constructions, its construction was preferable because it was supported by various textual and contextual indicators and by the legislative history.

26 The respondent submitted that three contextual indicators supported its position. Those indicators were said to reflect a statutory aim or object, in the context of the exemption provided by s 6.26(2), to render occupation irrelevant to rateability.[11]

Plain and natural meaning

27 In my view, it is necessary first to assess whether the provision carries a plain, natural and straightforward meaning. In my respectful view, as a matter of plain meaning and of syntax, the provision naturally bears the meaning contended for by the Shire.

28 Section 6.26(1) establishes that all land is rateable unless it is land that is identified by s 6.26 as not rateable. Section 6.26(2) then identifies land that is not rateable. The classes of land identified by s 6.26(2) are exceptions to the general rule prescribed by s 6.26(1) that all land is rateable. Unless land comes within an exception identified by s 6.26(2) it is rateable. The first class of land identified by s 6.26(2) as excepted from the general rule in s 6.26(1), is Crown land that meets either one of two descriptions. The first is the land identified in s 6.26(2)(a)(i), that is; Crown land that is used for a public purpose. The second is the land identified in s 6.26(2)(a)(ii), that is; land that is unoccupied.

29 In my view, the natural and indeed unambiguous meaning of s 6.26(2)(a)(ii) is that if land is not unoccupied, then it stands outside the exception in s 6.26(2)(a)(ii) and remains within the general class of land that is rateable by reason of s 6.26(1). Section 6.26(2)(a)(ii) then

[11] ts 42.

goes on to provide qualifications to the exception identified by s 6.26(2)(a)(ii). Broadly speaking, the qualification refers to land the subject of mining tenements. If land is the subject of a mining tenement, it does not enjoy the exemption provided by s 6.26(2)(a)(ii)(I). It is rateable even though it is unoccupied. To that exception there is a further qualification - relevantly, land the subject of a miscellaneous licence. Unlike other mining tenements, land the subject of a miscellaneous licence is not removed from the exception provided by s 6.26(2)(a)(ii). Land the subject of a miscellaneous licence retains the benefit of the exemption provided by s 6.26(2)(a)(ii) - that is, it is not rateable land if it is unoccupied.

30 In my view, the natural reading of s 6.26(2)(a)(ii) and the way it is structured is that if land the subject of a miscellaneous licence is occupied, then it does not come within the class of land identified by s 6.26(2)(a)(ii). It is therefore rateable under s 6.26(1). Moreover, in my view, that construction is unremarkable and indeed rational. For reasons that will be explained, I consider that the Shire's construction is no less harmonious or consistent with, and perhaps is more consistent with the important revenue-raising object of the statute.

31 I accept that it is possible to read s 6.26(2)(a)(ii) in the manner contended by the respondent. But in my view, that is a strained and unnatural reading. The provision ought not to bear a strained meaning that departs from a more natural meaning unless that meaning is mandated by the application of principles of statutory construction.

Atlantic's arguments in support of its construction

32 The respondent submitted that, in accordance with orthodox principles of statutory construction, a number of considerations supported and indeed mandated its preferred reading.

33 First, it was submitted that the definition of 'owner' in s 1.4(e) of the LGA supports its construction at [17] - [26] of these reasons because it draws no distinction based upon occupation. In my view, the absence of that distinction does not emerge from the plain reading of the definition. Rather, the submission takes its force, as Atlantic indeed submitted, from looking at the legislative history of the definition and related provisions.

34 The predecessor of the LGA was the *Local Government Act 1960* (WA) (**the 1960 Act**). Section 532 of the 1960 Act provided as follows:

> (1) Except where this section provides otherwise land is rateable property under this Act.
>
> (2) Land is not rateable property if it is the property of the Crown,
>
> (a) and is being used for a public purpose; or
>
> (b) is unoccupied, except where and to the extent and manner in which a person mentioned in paragraph (e), (f), or (g), of the interpretation, 'owner' in section six occupies, or makes use of the land.

35 Paragraph (e) of the definition of owner s 6 in the 1960 Act provided that the meaning of owner includes:

> Where a person is in the actual occupation, with or without title, of the surface of any portion of a mining tenement according to the interpretation given to that expression by section four of the Mining Act, 1904, means the person so in occupation;

36 Under those provisions, unoccupied Crown land was not rateable. An exception to that was a person in occupation of the land pursuant to a mining tenement under the *Mining Act 1904* (**Mining Act 1904**). Land occupied as a mining tenement was rateable. The word 'occupier' was defined under s 6 of the 1960 Act to include a person entitled to possession if there was no person in actual occupation of the land.

37 It can readily be seen that the definition of 'owner' under s 6 of the 1960 Act, and its importation into s 532, included the notion of occupation.

38 Following the passage of the Mining Act 1978, the 1960 Act was amended to include the following definition of 'owner' in s 6:

> where a person is in the actual occupation, with or without title, of the surface of any portion of a mining tenement according to the interpretation given to that expression by section 8 of the Mining Act 1978, means the person so in occupation;

39 That amendment, it appears, simply substituted the reference to the Mining Act 1904 with the equivalent reference in the Mining Act 1978.

40 The *Acts Amendment (Mining Tenements) (Rating) Act 1984* (WA) (**Amending Act**) included amendments to the 1960 Act. The amendments included changes to paragraph (e) of the definition of 'owner' in s 6, the addition of s 531A and changes to s 532.

41 The Amending Act deleted paragraph (e) of the definition of 'owner'. In substitution it provided two definitions; one in s 5(1) of the Amending Act was to come into operation on 1 January 1982, that is retrospectively. The other in s 5(2) was to come into operation on the date the Amending Act was assented to by the Governor, that is prospectively. Section 5(2)(e) of the Amending Act prospectively provided that 'owner':

> (e) means a person who –
>
> (i) under the Mining Act 1978, holds in respect of the land a mining tenement within the meaning given to that expression by that Act; or
>
> (ii) in accordance with the Mining Act 1978 holds, occupies, uses or enjoys in respect of the land a mining tenement within the meaning given to that expression by the Mining Act 1904.

42 That new definition in the 1960 Act distinguished between tenements held under the Mining Act 1904 and tenements held under the Mining Act 1978. In respect of the Mining Act 1978, it is apparent that the new definition of 'owner' in s 5(2)(e) of the Amending Act, which was enacted in 1984, removed reference to occupation.

43 Section 6 of the Amending Act added s 531A into the 1960 Act, which provided:

> 'Exempt mining tenement' means a prospecting licence held under the Mining Act 1978 in respect of land the area of which does not exceed 10 hectares or a miscellaneous licence held under that Act.

44 By s 7 of the Amending Act, s 532(2)(b) of the 1960 Act was amended such that s 532 then provided:

> (1) Except where this section provides otherwise land is rateable property under this Act.
>
> (2) Land is not rateable property if it is the property of the Crown,
>
> (a) and is being used for a public purpose; or
>
> (b) is unoccupied, except –
>
> (i) where any person is, under paragraph (e) of the definition of "owner" in section 6, the owner of the land other than by reason of his

> being the holder of an exempt mining tenement; or
>
> (ii) where and to the extent and manner in which a person mentioned in paragraph (f) or (g) of the interpretation of "owner" in section 6 occupies or makes use of the land.

45 It is clear enough that the provision in s 6.26(2)(a) of the Act took its present form from s 532 of the 1960 Act, as amended by the Amending Act. The respondent submitted that the omission of the feature of occupation from s 1.4(e) of the meaning of 'owner' therefore informs the proper construction of s 6.26(2)(a)(I) of the LGA.

46 The respondent also pointed to the following history of the Amending Act. The Amending Act was the subject of a second reading speech by the Minister of Local Government in the Legislative Assembly and materially in the same terms by the Attorney General in the Legislative Council. The speech included the following:[12]

> This Bill proposes amendments to the Local Government Act and the Valuation of Land Act to clarify the rateability of mining tenements.
>
> This amending legislation has been introduced to clarify the rateability of mining tenements and it is considered to generally preserve the existing rating situation in its overall application to both local government and the mining industry.
>
> …
>
> Members may recall that when the new Mining Bill was introduced, considerable concern was expressed by local government that councils would be adversely affected through reduced rating revenue resulting from either some new tenements not being rateable or there being a lesser number of tenements due to the larger areas which many schemes are able to generate revenue now be granted.
>
> The Government supports the intention of its predecessors to retain the status quo, so far as rating liability is concerned, when the new Mining Act came into operation.
>
> …
>
> To overcome these difficulties it has, therefore, been necessary to devise a scheme which is intended to provide, as near as possible, for the same aggregate level of rate revenue for councils from the mining industry.

[12] Second Reading Speech, Hansard, Legislative Council, 8 May 1984, 7978 - 7979.

> At present the rateability of mining tenements is uncertain in some cases, due to a reference in the Local Government Act to their actual occupation. Provision is made in this Bill to clarify the issue by making it clear that tenements under the Mining Acts of 1904 or 1978 have been rateable since 1 January 1982 on the basis of their actual occupation. In future, tenements will be rateable, regardless of the occupation question.
>
> However, provision is made for exemption from rating of prospecting licences of 10 hectares or less and miscellaneous licences under the Mining Act 1978.
>
> These exemptions are intended to afford assistance to the small prospectors who have previously not been rated on their prospecting areas held under the Mining Act 1904 and to continue the non-rateability of the miscellaneous type of tenements which have not been subject to rating in the past.

47 The respondent argued that its construction was supported by the second reading speech because the speech reflected an intention to render mining tenements rateable regardless of their occupation, which was then followed by a statement of exemption for miscellaneous licenses. It is said that the second reading speech indicates that the exemption for miscellaneous licenses is also to operate regardless of occupation.

48 On the basis of that legislative history, the respondent contended that the absence of the notion of occupation in the s 1.4(e) definition of 'owner' is a contextual and textual indicator that occupation is irrelevant to the rateability of a mining tenement under s 6.26.1(2)(a) and therefore also irrelevant to excluded tenements, such as a miscellaneous license.

49 It may be accepted that in respect of mining tenements generally, the prospective amendment of the Amending Act removed the notion of occupation from the relevant definition of owner. However, the substantive meaning of s 532(2)(b) is to be distilled from its terms, not from an inference drawn from an amendment to a definition of a term used by the section. Relevantly, s 532(2)(b) of the 1960 Act is in substance the same as s 6.26(2)(b). To the extent that there is any ambiguity in s 6.26(2)(b), the same ambiguity is reflected in s 532(2)(b) of the 1960 Act.

50 Moreover, in my view, the second reading speech is itself ambiguous. It is clear that it reflects an intention generally to render mining tenements rateable regardless of occupation. And that is what

the amendments achieved - mining tenements are generally rateable irrespective of whether or not they are occupied. That is because if they are occupied, they do not fall within the exemption and if they are unoccupied, they are expressly excepted from the exemption.

51 I accept that, read literally, the second reading speech is open to be understood as reflecting an intention to exempt a miscellaneous licence from rateability regardless of occupation. However, the second reading speech does not say that in terms. In my view it is also not the only available understanding of the speech. The speech reflects an intention to maintain the status quo so as to preserve the rates revenue for local authorities. That intention is consistent with retaining the rateability of occupied miscellaneous licenses, which unlike mining tenements generally, attract the exemption when unoccupied.

52 In my view, the brief reference in the second reading speech is itself ambiguous in respect of the rateability of an occupied miscellaneous licence.

53 More fundamentally, I am concerned that Atlantic's construction is unduly dependent upon a knowledge of the legislative history. While legislative history can certainly provide a guide to the meaning of a provision, the weight placed on that history by Atlantic runs the risk, I fear, of reading the statute through the microscopic lens of a parliamentary librarian. Legislative history may be relevant to determining the proper meaning of the text, but that history cannot replace the words of the text.[13]

54 In ***Federal Commissioner of Taxation v Consolidated Media Holdings Ltd*** (2012) 250 CLR 503 at [39], the High Court said (French CJ, Hayne, Crennan, Bell and Gageler JJ):

> 'This Court has stated on many occasions that the task of statutory construction must begin with a consideration of the [statutory] text'. So must the task of statutory construction end. The statutory text must be considered in its context. That context includes legislative history and extrinsic materials. Understanding context has utility if, and in so far as, it assists in fixing the meaning of the statutory text. Legislative history and extrinsic materials cannot displace the meaning of the statutory text. Nor is their examination an end in itself. (citations omitted)

[13] ***Knight v The State of South Australia*** [2022] SASCA 14; 140 SASR 326 at [27].

55 I am not therefore persuaded that the legislative history should alter what would otherwise be the natural meaning of the provision.

56 The second contextual argument advanced by the respondent arises from the wording of s 6.26(2)(a)(II). That paragraph sets outs out the further carve out from the exemption of unoccupied Crown land. In effect, it excludes Crown land from the exemption otherwise provided by s 6.26(2)(a)(ii) where and to the extent and manner in which a person is in the unauthorised occupation of that land, the person so in occupation occupies or makes use of the land.

57 The respondent adopted the Tribunal's reasoning in relation to those words. The Tribunal said at [120] - [121]:[14]

> If the [appellant's] construction were correct, and paragraph (I) was intended to invite an inquiry or assessment as to whether land that was the subject of a miscellaneous licence or a prospecting licence less than 10 ha was in fact occupied, one would expect to see the kind of language deployed in paragraph (II) in the context of a person who is in unauthorised occupation of Crown land.
>
> In paragraph (II) the focus is very much on the 'extent and manner in which' the land may be being occupied. Yet those words do not appear in paragraph (I). There is no inquiry to be had into the 'extent and manner' by which a miscellaneous licence or a prospecting licence less than 10 ha may be occupied or not. In my view, that omission is not without significance and supports the construction that the question of occupation is simply not relevant under paragraph (I).

58 In my respectful view, the wording of s 6.26(2)(a)(ii**)**(II) is not a clear indicator of a parliamentary intention to render occupation irrelevant to the question of rateability for a miscellaneous licence under s 6.26(2)(a). Section 6.26(2)(a)(ii)(II) is directed to circumstances of de facto, as distinct from formal or de jure occupation. It seems to me that an objective consideration of the provision reflects an intention to provide for the uncertainty that may arise where there is occupation albeit without formal form or legal tenure. Where the occupation is pursuant to a formal or legal instrument, the rights or nature of the occupation are more readily able to be determined. The parliament appears to me to have been concerned to provide for circumstances where the occupation is not so readily ascertainable. That would appear to me to be an unremarkable objective. I do not accept that s 6.26(2)(a)(ii)(II) has the inferential force attributed to it by the Tribunal and the respondent.

[14] ***Atlantic Vanadium Pty Ltd Shire of Mount Magnet*** [2024] WASAT 16.

59 The respondent's third argument is based on a legislative policy that it characterised as an efficient and effective rating system. That policy was also adopted by the Tribunal in its reasons, explaining that the respondent's construction [127] - [128]:[15]

> provides for a simpler and more efficient rating system for local governments.
>
> If the [appellant's] construction were to be accepted, it would mean that local governments in some of the geographically largest, yet most remote, municipal areas (such as the Shire) would be required, on an annual basis, to interrogate and investigate each miscellaneous licence (on land that is the property of the Crown) to ascertain if the relevant tenement is occupied or not. That hardly provides for an efficient and effective rating system.

60 As noted above, the purpose of legislation must be derived from the statutory text and not from any assumption about the desired or desirable reach or operation of the relevant provisions or by making an a priori assumption about its purpose.

61 As will be explained, the text terms of the statute itself disclose a clear policy goal behind the relevant section of the LGA. That policy is to create a revenue stream for local government. I do not accept that the possible difficulty or inconvenience of assessing the rateability of a property, in particular circumstances, emerges as a legislative policy consideration that supports a departure from the natural meaning of the relevant provision and thereby reducing the classes of land that are rateable.

62 Further, I refer below to the role and function of local government in respect of the grant of a miscellaneous licence. It appears to me that the role of local government emerging from the legislation and discussed below is likely to facilitate the local government's knowledge of, and access to, information regarding activity on land the subject of a miscellaneous licence.

63 The respondent also contended that the very nature of a miscellaneous licence supported its construction. That is because a miscellaneous licence confers ancillary rather than primary exploration or mining rights. A miscellaneous licence permits the development of infrastructure that serves the activity on other tenements, ordinarily an exploration licence or a mining lease. A manifestation of the ancillary

[15] Ibid.

nature of a miscellaneous licence on which the respondent placed some emphasis is that a miscellaneous licence (and similarly a small PL) can co-exist with other mining tenements. That feature is unique to a miscellaneous licence (and a small PL).

64 The respondent submitted that this fundamental difference supported a construction of the statute whereby an exemption is granted to land the subject of a miscellaneous licence regardless of whether it is occupied or unoccupied. The reasoning appeared to be the following. The conferral of primary exploration or mining rights supports the rateability of mining tenements *regardless* of their occupation (which is the effect of s 6.26(2)(a)(I).[16] The conferral of merely ancillary and non-exclusive rights similarly supports the construction of s 6.26(2)(a) urged by the respondent - that a miscellaneous licence is not rateable land, again, *regardless* of occupation.[17]

65 It is helpful to begin consideration of that submission with the statutory and regulatory provisions regarding a miscellaneous licence.

66 Section 91(6) of the Mining Act 1978 provides:

> (6) A miscellaneous licence shall not be granted unless the purpose for which it is granted is directly connected with mining.
>
> (7) Sections 18, 23 and 27 do not prevent a miscellaneous licence from being applied for or granted in respect of land that is the subject of another mining tenement.
>
> (8) If a miscellaneous licence is granted in respect of land that is subject to another mining tenement the miscellaneous licence and the other mining tenement apply concurrently with respect to that land.
>
> (9) Before an application for a miscellaneous licence is determined a copy of the application shall, within the prescribed time, be given to the local government and to such other persons as may be prescribed.
>
> (10) The local government is entitled to be heard on the application and may submit to the mining registrar or the warden, as the case requires, any terms and conditions to which it considers the miscellaneous licence, if granted, should be subject.

67 Reg 42B of the *Mining Regulations 1981* (WA) sets out the purposes of a miscellaneous licence:

[16] Respondent's written outline of submissions, 6 August 2024 [48].
[17] Respondent's written outline of submissions, 6 August 2024 [49].

For the purposes of section 91(1), a miscellaneous licence may be granted for the use of land for one or more of the following purposes —

(a) a road;

(b) a tramway;

(c) an aerial rope way;

(d) a pipeline;

(e) a power line;

(f) a conveyor system;

(g) a tunnel;

(h) a bridge;

(i) taking water;

(ia) a search for groundwater;

(i) hydraulic reclamation and transport of tailings;

(j) an aerodrome;

(k) a meteorological station;

(l) a sulphur dioxide monitoring station;

(m) a communications facility;

(n) a drainage channel;

(o) a pump station;

(p) a minesite accommodation facility;

(q) a bore;

(r) a bore field;

(s) a water management facility;

(t) a power generation and transmission facility;

(u) a storage or transportation facility for minerals or mineral concentrate;

(v) a minesite administration facility;

(w) a workshop and storage facility;

(x) a jetty.

68 It is plainly the case that a miscellaneous licence is an ancillary form of tenure in the sense that it requires there to be 'mining' independent of the miscellaneous licence itself, to which the purpose of the miscellaneous licence must be directly connected. Insofar as that distinction explains or supports a differential treatment of a miscellaneous licence and a small PL, under s 6.26 that differential treatment is expressly embodied in s 6.26(2)(a)(II). It is not necessary to adopt the respondent's relatively strained reading of the section in order to give expression to the distinction which the respondent seeks to draw from the inherently different nature of a miscellaneous licence and a small PL.

69 It is also plain that although a miscellaneous licence might be characterised as ancillary in the sense to which I have referred, under reg 42B a miscellaneous licence may accommodate the establishment of very significant infrastructure.

70 It is also noteworthy that the local government has a substantive role to play in the grant of a miscellaneous licence over any land (including Crown land). Given that a miscellaneous licence is often used for the development of significant infrastructure, the need for the involvement of local government is self-evident. Even a cursory perusal of the items listed in reg 42B indicates that it refers to facilities and infrastructure that would ordinarily be of direct concern to a local government.

71 It is noteworthy that the role of local government in the granting of other mining tenements is more limited.[18] That feature of the Mining Act 1978 suggests that local government is likely to be more concerned or directly engaged with the activity on a miscellaneous licence than on other mining tenements.

72 The statutory framework referred to above does not appear to support the construction urged by the respondent. On the contrary, it would be a curious outcome if the variety of mining tenement with which local government is most concerned, was exempt from rates even when it is occupied by infrastructure in respect of which the local government has a statutory function.

[18] See for example Mining Act 1978, s 33(1).

73 In my view, the different nature of a miscellaneous licence to which the respondent directs attention, is equally consistent, if not more coherent with a construction that distinguishes between an unoccupied miscellaneous licence which is not rateable land, and an occupied miscellaneous licence which is rateable land.

74 I note that the Tribunal was persuaded to accept the respondent's submission for reasons that included a conclusion that s 6.27 does not contemplate the simultaneous rating of multiple mining tenements on the same land. On that basis the Tribunal concluded:[19]

> As a result, in my view, the LG Act does not provide for the rating of multiple mining tenements over the same land. That result leaves a significant lacuna in the construction advanced by the Respondent.

75 In my view, s 6.27 presents no obstacle to the appellant's construction. Should it be necessary, s 10(c) of the *Interpretation Act 1984* (WA) provides that in any written law, words in the singular number include the plural and words in the plural number include the singular. The provision thus accommodates circumstances where there is one or more mining tenement on the land. The reference to a mining tenement may refer to more than one mining tenement.

76 On the contrary, I consider that it is the respondent's construction that leads to an outcome unlikely to have been intended by the parliament. In ***Fly By Night Musicians Club Limited v City of Fremantle*** [2002] WASCA 161, Le Miere J concluded that it is the physical land that is rateable; not the interest or the tenure in the land.[20] I respectfully agree with his Honour's analysis and conclusion. Land is exempt from rates, by reason of the legal rights of its 'owner' (for example, because the owner of the land is the holder of a miscellaneous licence over the land). The land attracts that exemption even though other interests may be held in respect of the land that would not attract an exemption for the land.

77 The provisions of the Act create a distinction between two things. On the one hand is the question of whether the *land* itself is rateable. As explained, under s 6.26(2) it is the land which is exempt, not the owner. On the other hand is the imposition of *liability* for the rates. Under s 6.27, if there are two or more owners, they are jointly and severally liable.

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[19] ***Atlantic Vanadium Pty Ltd Shire of Mount Magnet*** [2024] WASAT 16 [131].
[20] ***Fly By Night Musicians Club Limited v City of Fremantle*** [2002] WASCA 161 per Le Miere J [15], [33].

78 It follows that on the respondent's construction, if a miscellaneous licence was granted over a mining lease, then the land the subject of the miscellaneous licence would cease to be rateable notwithstanding that it may contain very significant mining infrastructure producing considerable profits. In my view, that is unlikely to reflect the parliamentary intention.

Statutory purpose

79 Each party contended that its preferred construction was supported by the statutory purpose or object of the legislation.

80 In my view, the appellant's construction coheres more readily with the object of the Act as distilled from its text. That is for two reasons.

81 First, s 6.26 appears in Part 6 of the Act. The Act stipulates that Part 6 is concerned with the financial management of local governments including in relation to annual budgeting and the provision of rates as a means of financing the activities of local government.

82 Section 6.2(1) requires each local government to prepare and adopt an annual budget.

83 Section 6.15(1)(a) provides that a local government may receive revenue or income from, among other things, rates authorised by the Act.

84 Importantly, s 6.32 provides the power to local government to impose rates:

> **6.32 Rates and service charges**
>
> (1) When adopting the annual budget, a local government —
>
> (a) in order to make up the budget deficiency, is to impose* a general rate on rateable land within its district, which rate may be imposed either —
>
> (i) uniformly; or
>
> (ii) differentially;
>
> and
>
> (b) may impose* on rateable land within its district —
>
> (i) a specified area rate; or

> (ii) a minimum payment; and
>
> (c) may impose a service charge on land within its district.
>
> (2) Where a local government resolves to impose a rate it is required to —
>
> (a) set a rate which is expressed as a rate in the dollar of the gross rental value of rateable land within its district to be rated on gross rental value; and
>
> (b) set a rate which is expressed as a rate in the dollar of the unimproved value of rateable land within its district to be rated on unimproved value.
>
> (3) A local government —
>
> (a) may, at any time after the imposition of rates in a financial year, in an emergency, impose* a supplementary general rate or specified area rate for the unexpired portion of the current financial year; and
>
> (b) is to, after a court or the State Administrative Tribunal has quashed a general valuation, rate or service charge, impose* a new general rate, specified area rate or service charge.

85 It is plain from the terms of the provisions referred to above that the object of imposing rates is to raise revenue for local government to undertake its activities. Specifically, the imposition of rates allows a local government to make up any budget deficiency. The Act thus reflects a direct link between the imposition of rates and the local government's ability to undertake its activities. As noted above, the local government plays a direct role and function in the grant of a miscellaneous licence. Plainly, the more significant the infrastructure proposed to occupy the miscellaneous licence, the greater will be the role played and the activity undertaken by the local government. In my view, a construction that exempts land from rates which is the subject of a miscellaneous licence and is occupied by significant infrastructure, sits most uncomfortably with the plain object of the statutory provisions concerning the local government's power to impose rates.

86 The second factor stems from the wording of s 6.26(2) itself. The exemptions in s 6.26(2)(a) - (k) relate overwhelmingly to charitable, benevolent, religious and public or civic purposes. That sits harmoniously with the theme of s 6.26(2)(a)(i). A construction that would exempt from rating, land that may be occupied by critical

infrastructure facilitating the creation of profits for private interests, runs counter to the charitable and civic theme of s 6.26(2).

87 In my view, the Shire's construction provides greater harmony with the relevant object of the rating provisions of the LGA.

Conclusion

88 For the reasons explained above, I respectfully take a different view to the conclusion reached by the Tribunal. In my view, on a proper construction of s 6.26(2) Crown land that is the subject of a miscellaneous licence and is occupied is rateable land under s 6.26(1).

89 Accordingly, I would grant leave and allow the appeal.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

GP
Associate to the Hon Justice Solomon

8 JULY 2025