MINING ACT, 1973

SECTION 122

PARTIES: Asarco (Australia) Pty. Limited (applicant)
c/- Clayton Utz & Company,
Solicitors,
P.O. Box H3,
AUSTRALIA SQUARE. 2000

Mrs. A.V. Heuston, (respondent/landowner)
25 Maxwell Street,
WELLINGTON. 2820

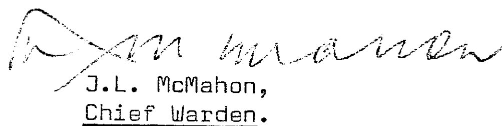
At the Warden's Court, PARKES, on FOURTH MARCH, 1982.

Application for assessment of compensation in respect of Exploration Licence No. 1365.

APPEARANCES: Mr. Scarlet, Solicitor, of Parkes, appears for Asarco (Australia) Pty. Limited. Mr. Heuston, husband of respondent/landowner, appears for Mrs. Heuston.

Proceedings recorded by sound recording equipment operated by Mr. B. McBryde of the Department of Attorney General and of Justice.

After evidence - ADJOURNED FOR ASSESSMENT OF COMPENSATION, NOTIFICATION OF WHICH WILL BE RECEIVED BY THE PARTIES FROM THE WARDEN'S SECRETARY IN DUE COURSE.



J.L. McMahon,
Chief Warden.

4th March, 1982.

IN THE WARDEN'S COURT
HOLDEN AT PARKES ON
4TH MARCH, 1982 AND
SUBSEQUENTLY AT SYDNEY
ON 19TH MARCH, 1982
BEFORE J.L. McMAHON

ASARCO (AUSTRALIA) PTY. LIMITED

v.

A.V. HEUSTON

BENCH: This has been the hearing of an application by the holder of Exploration Licence No. 1365, Asarco (Australia) Pty. Limited, for the Warden to assess compensation over certain lands owned by Mrs. Ami V. Heuston which are part of those comprised in that licence. For the purpose of exercising this jurisdiction I am particularly cognisant of the requirements of Part VIII of the Mining Act.

The evidence tendered by the applicant has been given on oath by Mr. Henry Williamson, its Managing Director, who has indicated that it is proposed to prospect by means of the establishment of some six boreholes within portions 90 and 106 on lands which have been deemed to be not agricultural within the meaning of Section 46 to the Act. By way of background I feel it necessary to state that the question of agricultural land had earlier been raised and the Director-General of Agriculture has decided this question. In pursuance of Section 46(4), his decision is final. It is not open for me, nor does it appear to be competent for any other jurisdiction, to go behind that decision in the ordinary course of circumstances. I have felt it necessary to make this statement for it seems clear that Mr. Heuston, who I permitted to appear for his wife, sought to dispute the Director-General's decision during the hearing and I had to explain to him at the time and re-state in my view the question of agricultural land is one which having been decided ought not now be re-ventilated in a Warden's Court. All I was concerned with were the criteria laid down in Section 124(1)(b), that is, the guidelines under which compensation ought to be assessed.

Mr. Williamson stated that it was proposed to sink the six holes to a depth of some 300 metres by means of a mobile drilling rig on Mrs. Heuston's land, there being three on portion 106, some 200 metres apart, and three on portion 90, some 300 metres apart. The holes would have a diameter of between 10 to 15 centimetres

which would be reduced as they went down. It was necessary also in respect of each site to establish a sump for water with dimensions of 3.3 metres by 1.7 metres by 0.7 metres (10 feet by 5 feet by 2 feet). This water could be re-circulated as time went on. The sumps were necessary for sinking of the bores. Men employed on the area would total three, there being two drillers plus a geologist, with perhaps a further visit from a foreman. The men would not camp on the property but would drive to and from Wellington each day. At a maximum, some four vehicles would be parked on the site with the drilling truck staying in position. In addition, a water truck would visit the area when necessary, perhaps every second day, although if drilling conditions became difficult, the water trips may become more frequent with up to four to five a day. This was a large vehicle of some 10 tonne capacity. It was proposed that at a maximum a total of 36 weeks would be taken to drill the holes, it being envisaged that each hole would take three weeks with the possibility of a further three weeks, depending on circumstances. No cropped land would be crossed. It was proposed that there would be certain tracks established to the respective drilling sites, that in portion 105 450 yards in length and in portion 90, some 1,760 yards. By way of compensation, Mr. Williamson had indicated certain negotiations and stated that these had culminated in the company being prepared to pay a total of $4,000 for all matters covered by the damage caused or likely to be caused arising out of the prospecting operations.

On the other hand, Mr. Heuston stated that much of the area had been backfilled with the approval of the Department of Mineral Resources and that had mining not taken place on it, then doubtless it would have been agricultural land in that it would have been placed under cultivation prior to the date of the application. He was adamant that the mining had caused it to be so disrupted that it was impossible to cultivate it, up until recent times. Once the filled holes settled down he had intended cultivation of the whole area, something which he had been prevented from doing in the last 24 years. He claimed that the land was good country even in the areas which the Director-General had decided were not agricultural land and stated that he was reluctant to allow the prospector any entry on the land. As far as carrying capacity was concerned, he was of the view that two sheep to the acre was appropriate.

In other proceedings I have established a formula for the assessment of compensation in relation to prospectors drilling for coal. This formula has been generally accepted in the mining industry, particularly in the Hunter Valley. Briefly, it allows for consideration of all matters which were thought to be appropriate for the purposes of the section of the Coal Mining Act which is equivalent to Section 124(1)(b) of the Mining Act, for example, the time factor, the number of weeks, a supervision factor, a figure for the number of boreholes and total kilometres travelled. The formula then is $b(a + 100 + 12x) + .09z$.

It has been, from time to time, indicated by me that in assessing compensation in other cases of exploration by means of drillhole sinking, all that one needs to do is to change the figures in the formula as seemed to be appropriate to the nature of the land and other aspects such as those envisaged by Section 124(1)(b) and thereby a just and reasonable assessment of compensation is forthcoming.

To this end I have attempted to feed into the formula situation such figures as I consider appropriate, bearing in mind the nature of the land and activities planned, for the purposes of assessing compensation. However, at each time that this has been attempted, no figure exceeding the amount of compensation as offered by Asarco could be reasonably arrived at. In fairness therefore to the parties, and in particular to Mrs. Heuston, I have decided to adopt the amount offered by Asarco to her as the compensation which will be payable, for anything that I assess using the formula which has been accepted by industry and landowners alike, would be less than this figure.

I assess compensation at $4,000 payable at the rate of $1,000 within 14 days from today and the sum of $500 within 14 days of completion of each of the respective drillholes. These monies may be paid direct to Mrs. Heuston without reference to the Registrar.