

The Australian

Newcrest in historic \$10m royalties win: copper royalties

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LAWS from the 16th century about the right of the English king to gold and silver mines have collided with Australia's Mining Act of 1992.

The result being a \$10 million win for miner Newcrest over disputed copper royalties.

The High Court victory for Newcrest comes days after its merger with Lihir Gold was approved by Lihir shareholders, and provides welcome relief for the wider resources sector, which has been locked in a battle with the federal government over the proposed resources tax.

The High Court yesterday found that the NSW government was not entitled to more than \$8m in royalties in relation to a mine in the Cadia Valley at Orange in NSW.

The court overturned an earlier judgment of the NSW Supreme Court that had ruled in favour of the government.

The case was run for Newcrest by Marque Lawyers partners Kim Middleton and Damian Sturzaker.

Ms Middleton said the result meant that Cadia would no longer have to pay these royalties for the life of the mine.

"This was a test case and is likely to have wider relevance to other mining companies who are conducting mining activity on land which was granted in a similar way, namely without an express reservation of minerals," Ms Middleton said.

"The issue for determination was the ownership of intermingled copper and whether it was a publicly owned or privately owned mineral."

The High Court unanimously ruled in Newcrest's favour, with the result being that the NSW government will be forced to repay to Newcrest 7/8ths of the royalties that have been paid over the years.

This comes to \$10.9m.

Newcrest had already made provisions for the payments in its accounts, and this will now be reversed, a Newcrest spokeswoman said yesterday.

"We are very pleased to have the matter resolved," she said. "The case related to a matter of legal interpretation and principle rather than a commercial dispute, and it applies only to a portion of our Cadia Valley operations."

Chief Justice Robert French noted in his judgment that the English crown's "prerogative right to mines of gold and silver" dated back to 1568 and was justified in part by the need for the crown to obtain precious metals to make coins and pay military defences. A later 1688 statute was considered by the High Court, as the question of whether a mine could be characterised as both a copper mine and a goldmine had not been raised in the last 320-plus years.

"It is that question of construction of the 1688 act, and its effect upon the scope of the prerogative rights, that determines the outcome of this appeal," Chief Justice French said.

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