

Independent Review into the Statutory Framework for Small-Scale Titles in NSW

Terms of Reference

On 22 May 2023, the Minister for Natural Resources, the Hon Courtney Houssos MLC, announced the commencement of a small-scale (opal mining) titles validation program to re-determine titles invalidly issued under the *Mining Act 1992* between 1 January 2015 and 13 February 2023.

As part of a broader initiative to investigate the issues associated with the invalidly granted titles, Minister Houssos announced an Independent Review would be conducted into the current statutory framework for administration and regulation of small-scale opal titles.

Objective

The Independent Review will analyse the statutory framework under the *Mining Act 1992* relating to opals and the current state of the opal industry in NSW to make recommendations about the future of the industry.

This will include, among other things, consideration of land access and landholder compensation arrangements as well as the findings and recommendations of the 2011 Lightning Ridge Opal Mining Report by Murray Wilcox AO KC (the Wilcox Report). The focus will be on identifying inefficiencies and inadequacies in the current statutory framework to inform recommendations for proposed legislative and policy reform that will deliver practical, beneficial changes.

Scope

The terms of reference for the Independent Review are to examine, report on and make recommendations as to:

1. The current statutory provisions for small scale titles under the *Mining Act 1992* (the Act) and whether:
 - a. they are fit-for-purpose for the administration and regulation of small-scale title mining;
 - b. they adequately balance the needs and rights of miners and landholders;
 - c. the compensation arrangements for landholders are sufficient, fair and contemporaneous;
 - d. the rehabilitation framework relating to small-scale titles is sufficient to deliver effective rehabilitation outcomes.
2. The effectiveness of the current legislative framework for opal mining in NSW, including an assessment of the 2011 Wilcox Report and subsequent 2015 legislative changes and how NSW compares to other comparable Australian jurisdictions.
3. The current state of the small-scale opal mining industry in New South Wales, including the nature and size of the industry, trends and key economic measures.
4. The future of the industry, including land availability and consideration of the release and limitation of additional areas for prospecting and mining.
5. An appropriate methodology to determine landholder compensation amounts for the White Cliffs and Lightning Ridge mineral claims districts, including proposed amounts.

6. Consideration of landholder issues, including biosecurity and notification requirements, as well as the Lightning Ridge Opal Area Reserve Crown Land Manager.
7. Any other matters relating to improving the regulation of small-scale titles in NSW.

The specific activities undertaken as part of the Independent Review will be determined by the independent reviewer but are expected to include the following as a minimum:

- Targeted consultation with key stakeholders including miners, mining associations, landholders and State and Local Government agencies.
- Seeking and considering feedback obtained through open public consultation, including through open forums and a public call for written submissions based on the Terms of Reference.
- Review of documents provided by the Department of Regional NSW, including the Wilcox Report, an economic analysis of the industry in the form of a cost benefit analysis and contemporaneous property valuations.
- Review of relevant legislation including the *Mining Act 1992*. There will be some touchpoints for consideration regarding obligations under the *NSW Environmental Planning and Assessment Act (1979)* and the *Commonwealth Native Title Act (1996)*.

Deliverables

Delivery of a Preliminary Observation report is to be provided after the initial stakeholder engagement process is complete, with a draft Final Report provided within 6 months of commencement of the Independent Review and a Final Report within 3 weeks after the draft report.

The final report will be publicly released.

Out of scope

While specific experiences may be raised as part of the review process, the Independent Review will not make determinations relating to specific claims or conflicts.

Consideration of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* does not need to be included in the Independent Review.

Governance

The independent reviewer will be responsible for managing stakeholder engagement activities and reviewing submissions. Administrative support will be provided by Mining, Exploration and Geoscience (Department of Regional NSW) as required, and as specified in the contract with the independent reviewer.

The independent reviewer will also consider information from the Government Envoy appointed to liaise with opal mining stakeholders, the Hon. Stephen Lawrence MLC, on current stakeholder issues.