



Tabled, ~~by leave,~~

by Mrs Howell

Clerk of the Parliaments

14 / 4 / 2023

MINING AMENDMENT (MINERAL CLAIMS – OPAL) BILL 2023

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Amendment of the *Mining Act 1992* (**Mining Act**) and the *Mining Regulation 2016* (**Mining Regulation**) is needed to address invalidity and liability issues associated with the grant, renewal and transfer of opal mineral claims since 2015 in the Lightning Ridge Mineral Claims District (**Lightning Ridge MCD**) and White Cliffs Mineral Claims District (**White Cliffs MCD**).

The amendments will retrospectively validate mineral claims affected by a failure to comply with procedural requirements under section 266(4) of the Mining Act.

The policy is needed to reduce impacts associated with the invalid mineral claims on miners, landholders and other parties, and to mitigate the State's exposure to legal risk. Stakeholder feedback has been taken into account by ensuring the policy places stakeholders in, or as close as possible to, the position they thought they were in before the invalidity issue was known.

Objectives: What is the policy's objective couched in terms of the public interest?

The policy objective is to reduce the impact and minimise legal risk for affected stakeholders (including miners and landholders) and the State arising from mineral claims granted, renewed or transferred since 2015 that have been affected by invalidity.

The proposed bill will do this by:

- retrospectively validating mineral claims
- protecting interests of transferees to a mineral claim
- protecting interests of people who had a mineral claim devolved to them (for example when a holder has died)
- validating mineral claim conditions, including rehabilitation requirements
- validating collection and expenditure of fees, duties, levies and other money in relation to affected mineral claims, including landholder compensation
- helping prevent successful legal claims being brought against the State or any other person arising out of the invalid mineral claims.

As is appropriate, the bill makes it clear that the requirements and provisions of the *Aboriginal Land Rights Act 1983* and the Commonwealth *Native Title Act 1993* are not impacted by the validation of mineral claims under the Bill.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The following alternative options to the proposed bill were considered:

Option 1: An administrative validation project only to redetermine invalid claims to ensure future validity.

Option 2: Placing a moratorium on opal mining in NSW.

Option 3: Do-nothing.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Option 1: Administrative validation

The benefits of an administrative validation project is that it minimises disruption to the opal industry and affected landholders by providing a timely mechanism for miners to have their mineral claim applications lawfully determined, without the need to wait for a bill to be passed.

The Department of Regional NSW commenced an administrative validation project in May this year. This has allowed opal miners to recommence mining, following the lawful determination of their applications. To date, the department has lawfully re-determined ~~XXX~~ mineral claims.

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However, the downside to administrative validation only is that it can only address the validity of mineral claims going forward. It cannot address the period that mineral claims were invalid.

Option 2: Placing a moratorium on the opal mining industry to allow the Department time to further work through options

A moratorium on opal mining would allow time for further consideration of the issue and for the Department to undertake further work including review of the legislative framework.

This option does not address the invalidity and liability issues arising from invalidly granted claims. It also does not address the issue that the Department, miners and landholders had been wrongly proceeding on the basis that opal mining has been lawfully occurring. Further this option does not address stakeholder concerns about the potential that rehabilitation will not occur. The costs of this option are estimated to be \$3.6 million in refunding of fees and securities, and any additional compensation that may need to be refunded to opal miners.

Option 3: Do nothing

This option would eliminate short-term administrative burden on the Department associated with administrative validation or the proposed bill.

However, doing nothing does not address the invalidity and liability issues arising from invalidly granted mineral claims. Further it does not address the issue that the Department, miners and landholders had been wrongly proceeding on the basis that opal mining has been lawfully occurring. It is estimated that \$3.6 million in fees,

securities and landholder compensation could need to be refunded to opal miners under this option.

Summary and conclusion:

In summary, while the options outlined above each have their merits, none of the above options can effectively address the invalidity and liability issues arising from the invalid mineral claims. This can only be done by the proposed bill. Specifically, only the proposed bill can retrospectively validate affected mineral claims, as well as their associated conditions and payments of moneys.

It is important to note however that the Department has chosen a complementary approach. Namely, the proposed bill will complement the administrative validation program which commenced in May 2023. The bill will complement that program by validating invalid mineral claims and validating the steps taken to lawfully redetermine mineral claims under that program.

The administrative validation program was commenced to provide a timely avenue for miners to recommence mining. Together the bill and the administrative validation program form a comprehensive solution.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The bill, once passed, will be taken to have commenced on 14 February 2023. This ensures that the benefits of the bill can be realised immediately, addressing the invalidity issues. The Department is preparing supporting Regulations, which will be taken to the Executive Council. The Department will administer this legislation. Once passed, the legislation will support the ongoing administrative validation project, being undertaken by the Department.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Stakeholders were informed of the invalidity issue in May 2023 and holders of approximately 1230 mineral claims were advised to cease activities under their mineral claims as they had no lawful right to mine. About two-thirds of affected mineral claims were able to continue to be mined.

This bill is complemented by an administrative validation program to reprocess affected mineral claims to ensure future validity. A comprehensive communication and consultation plan was developed to ensure that all stakeholders are aware of the issues and the process required to resolve it.

The bill will reinstate the previous understanding of all affected parties that the mineral claims were valid. It will also remedy potential legal consequences arising from the invalid mineral claims.

The Department of Communities and Justice and the Department of Planning and Environment (Crown Lands Legal and Native Title Legal) were consulted on the draft bill.