

## PREPARING INDEPENDENT EXPERT REPORTS FOR THE AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION (ASIC)

By Deborah Spicer

Should accountants be the most appropriate professionals to write mining-related expert reports?

The appointment of accounting firms appears to be the preferred practice in Australia when assistance is sought to ensure that security holders make informed decisions about transactions and the fairness of valuations. ASIC does not appear to explicitly state that accountants are the preferred writers of expert reports that relate to minerals. However, it also does not appear to endorse geologists as the chief writers of mineral-related expert reports.

This is for two reasons:-

- Regulatory Guideline (RG) 111.101 notes that “expert reports typically constitute the giving of financial product advice so an expert must hold an [Australian Financial Service] AFS licence”. Because many geologists will not have this licence they are immediately precluded from writing expert reports; and
- Geologists are seen as experts in particular areas and their experience in ‘financial services’ is not highly recognized. This can be seen in RG112 which notes that geologists are allowed to write geologists reports in Australia. The guideline reads:-
  - “Expert reports are exempt from the licensing regime (reg 7.6.01(u)) when the advice is an opinion on matters other than financial product (e.g. a geologist report) and:*
  - a) it does not include advice on a financial product;*
  - b) the document includes a statement that the person is not operating under an Australian financial services (AFS) licence when giving the advice; and*
  - c) the expert disclosures (sic) remuneration, interests and relationships.” (RG112)*

As a result of this guideline, geologists’ contributions to expert reports appear to be somewhat limited and this has traditionally resulted in geologists merely being allowed to contribute a chapter on geology to expert reports.

ASIC goes some way to ensuring that experts have sufficient knowledge to write expert reports, since it notes that “an expert should ensure that staff preparing and supervising the preparation of the report have sufficient skill, knowledge and experience to perform the expert’s role”. It goes on to say, in RG 111.99, that “for technical matters beyond the expert’s expertise, an expert should retain a specialist to advise them (e.g. a geologist to provide an opinion on recoverable ore, the subject of mining tenements)”. While the first guideline would suggest that geologists could be suitable for the writing of expert reports, the latter guideline has traditionally resulted in those in the financial sector being perceived as the primary authors of reports, with geologists playing a secondary supportive role in the writing of expert reports.

However, Venmyn believes that the limited role that geologists have historically played in the writing of expert reports in Australia, i.e. to advise on recoverable ore, does not take into account that many geologists are marrying the realms of finance and geology, and are eminently suited to providing valuations on mineral resources and mineral reserves.

Where these geologists have an AFS licence, and thereby meet the ASIC requirement that experts have this licence, Competent Valuers who are geologists are the most appropriate persons to write expert’s reports, argues Venmyn MD Andy Clay. This is because there are so many technical aspects to the valuation of a mineral deposit or operating mine that accountants may not be aware of even if they have commissioned a geologist to write a section on geology for their expert reports, he says.