Mining Amendment (Miscellaneous Provisions) Bill.

Second Reading

Mr KERRY HICKEY (Cessnock—Minister for Mineral Resources) [10.00 a.m.]: I move:

That this bill be now read a second time.

The amendments to the Mining Act 1992 proposed in this bill will further improve the management of mineral claims and opal prospecting licences at Lightning Ridge. This bill represents the legislative arm of the Government's agenda to reform land access and environmental management on the Lightning Ridge opal fields. The Lightning Ridge area is a unique part of New South Wales. It is the world's number one source of valuable black opal, with a production value of approximately $35 million each year, although this figure can vary depending on supply and market price. Opal mining also has major benefits for local industries, such as, jewellery making and for the local community through tourism.

Unlike other established minerals, such as coal or gold, where significant resources can be measured by accepted geological exploration techniques, the occurrence of gem-quality precious opal is generally unpredictable. As a result, mining for opal is the domain of small-scale mining and prospecting. There are unique conditions surrounding these small-scale opal mining and prospecting activities, and specific sections of the Mining Act 1992 have been introduced over time to improve their administration and operation.

The proposed amendments reflect a commonsense and practical approach to resolving a number of difficult issues that have been of concern to miners and land-holders. They reflect this Government's commitment to playing a proactive role in resolving issues and protecting the environment, without unnecessary government intrusion into the operation of either mining or farming activities. The Government already contributes considerable resources to managing and administering approximately 6,000 mineral claims at Lightning Ridge. The Government also makes every effort to ensure that miners at Lightning Ridge operate in a safe working environment and that they manage the local environment by rehabilitating their mine sites and keeping mining impacts to a minimum.

The measures introduced in this bill will particularly strengthen the environmental management of future activities at Lightning Ridge. A major government review of mining operations and processes at Lightning Ridge, which reported at the end of 2002, identified a number of issues that needed to be addressed. Many of these issues will be resolved through major stakeholders working together on the Lightning Ridge Mining Board. The review also identified a number of matters that can be addressed only through changes to the Mining Act. Through these changes the Government is seeking to improve outcomes for all stakeholders at Lightning Ridge, including land-holders, opal prospectors and miners, the local community and the Government.

Considerable consultation has taken place with the opal mining industry and land-holders about these proposed amendments. I place on record the Government's appreciation of the input from the parties involved, namely the Lightning Ridge Mining Board, the Lightning Ridge Miners Association, the Grawin Glengarry Sheepyard Miners Association, the New South Wales Farmers Association, the Landholders Protection Association, the local community, and opal prospectors and miners. I assure each and every one of those parties that their comments have been taken into account.

The bill contains provisions that clarify the right of way to both mineral claims and opal prospecting licences. Currently, the Mining Act does not provide for a right of way for holders of opal prospecting licences. New provisions are proposed for these licences that mirror the right of way provisions that currently apply to mineral claims. Under the Act, the holder of a mineral claim is entitled to a right of way between the claim and the nearest practicable point of entry from a public road. The Western Lands Amendment Act 2002 changed the road network in the Western Division. This allows the Minister for Lands to dedicate public roads and create easements for right of way and will reduce the number of public roads in the Western Division. However, the right of access to easements is restricted and prospectors and miners may access them only with land-holder consent.

The existing and future access rights of prospectors and miners must be preserved. Therefore, the bill proposes that rights of way continue to run from a public road to a mineral claim but follow, where practicable, existing constructed tracks, such as the easements created under the Western Lands Act. This will be more convenient for land-holders, opal miners and prospectors and will limit the impact of vehicles, benefiting both the environment and land-holders. At present, a right of way must be physically marked out. This is inconvenient, unnecessary and expensive. This bill includes an alternative to physical marking out, which is to describe the area. This can be done by various means—including by a map deposited with the relevant mining registrar—which will be detailed in the regulations.

The provisions relating to permits to enter will be amended in this bill. The Act currently provides certain powers to members of the general public holding a permit. Along with government inspectors and royalty officers, the relevant

provision allows an individual permit holder to use reasonable force to exercise powers in an emergency, and removes the need to give notice to enter land. These powers are very appropriate for government inspectors and royalty officers but they are not appropriate powers to be granted to a member of the public. The amendment proposes to limit the powers of members of the public who hold a permit, while still ensuring that they can enter land to mark out their claims. Currently, the Act makes the Crown responsible for the compensation of land-holders for damage done by permit holders, as well as its own officers. Again, it is not appropriate for the Crown to bear responsibility for the actions of permit holders, and the Act will be amended to make it clear that permit holders are responsible to land-holders.

I will now address provisions in the bill related to land access arrangements. At present, the Mining Act has provisions for access arrangements between individual titleholders and individual land-holders, but they apply only in the case of exploration licences and assessment leases. There are no equivalent provisions that apply to mineral claims and opal prospecting licences that are used in the Lightning Ridge fields, even though opal miners are responsible for compensation to affected land-holders similar to the responsibilities of exploration licence holders. The present way of arranging access between land-holders and individual holders of mineral claims and opal prospecting licences has led to disputes on some occasions.

This bill introduces simple, straightforward controls and processes to facilitate arrangements for access to land for mineral claims and opal prospecting licences that will minimise disputes. These new arrangements, to be called access management plans, will be negotiated and agreed between a landowner and a representative of the titleholders and title applicants. Each plan will be made to meet the particular circumstances of the land-holder and the titleholders who need to mine or prospect on various parts of the land-holder's property. A plan can include such things as the safety of stock, where titleholders access the property, and how any changes will be made to the plan in the future. Once an access management plan is made it will apply to all the titleholders on the property. The plan will then become a condition of the miners' and prospectors' titles.

These plans will supersede most of the right-of-way provisions that would otherwise apply under the Act. When agreement cannot be reached on a proposed plan, or some part of it, the land-holder or the miners' representative can apply to have his or her differences settled through dispute resolution procedures. Provision is made for the Director-General of the Department of Mineral Resources to assist, through a process of consultation with each party, in arriving at a determined plan. If either the landowner or the titleholders wish to, they can apply to the Warden's Court for a review of that determined plan, and in some circumstances for determination of a plan by the court itself. These new provisions will give the holders of minerals claims and opal prospecting licences a clear process for making a plan. Importantly, the amendments will provide a legislative basis for making an access management plan.

The bill proposes changes to tighten controls over the activities that can be carried out under a permit to enter. The Mining Act currently includes a 14-day permit to enter land to mark out a mineral claim. The bill proposes to insert provisions that will limit and clearly specify the activities allowed under a permit to enter. The provisions permit inspection of the land before lodging an application for either an opal prospecting licence or a mineral claim to mark out a mineral claim or to comply with conditions of a title. Permits to enter will be issued only to bona fide opal miners through the Department of Mineral Resources office at Lightning Ridge. All such permits will be subject to strict conditions to protect the land-holder.

Another change proposed in the bill relates to fossickers. Fossicking for minerals is a lawful activity that does not require a licence, although it is subject to some regulations. Amendments to the Mining Act in 2000 allowed fossickers to access western lands and other Crown leases without having to gain land-holder consent. This has led to a number of problems between land-holders and fossickers. A proposed amendment to the Act will overcome the problems by ensuring that fossickers obtain land-holder consent before gaining access to these western lands leases. Having to gain land-holder consent to access will bring fossickers in the Western Division into line with fossickers elsewhere in the State.

Amendments in this bill address camps on claims. Currently, the Act sets a distance of 200 metres around houses on western lands leases inside which mining leases and mineral claims cannot be granted without the owner's consent. As part of the settlement some years ago of a long-running issue regarding unauthorised homes on mineral claims around Lightning Ridge, it was agreed that miners in some areas of the Lightning Ridge mineral claims district could have homes on their claims. It was further agreed that these residential claim holders would ultimately have the opportunity of obtaining a western lands lease for the claim on which they have established a permanent home. However, as these mineral claims are only 50 metres by 50 metres an amendment to the Act is needed to allow new mineral claims to be granted within 200 metres of the proposed residential western lands leases. As a result, the bill proposes that the 200-metre distance does not apply to these western lands leases for residences.

I will now speak about the provisions dealing with land-holder immunity. At present, immunity for land-holders from the actions of titleholders can be established only as a condition of title. Land-holders have expressed concerns about the strength of this immunity. This bill takes account of that concern by including a general immunity for land-holders. The immunity means that a land-holder will not be subject to any action, liability, claim or demand arising from the actions or omissions of any person exercising his or her rights under the Mining Act. For reasons of equity, the immunity will apply not just at Lightning Ridge but to all land-holdings throughout the State and to all titles. This makes it clear just how seriously the Carr Government views land-holder concerns about such issues.

I turn now to deal with proposals for levies that streamline administration of mining titles at Lightning Ridge. The

provisions of the Act can require titleholders of mineral claims and opal prospecting licences to lodge security deposits. The purpose of security deposits is to guarantee that miners fulfil their obligations to ensure that the land disturbed by their individual mining operation is restored to a condition that allows it to be returned to its pre-mining use of grazing. However, the Mining Act does not allow levies to be imposed for the rehabilitation of the environment damaged in the past and outside current title areas. Rehabilitation needs to be undertaken and it is appropriate that titleholders make a contribution to this. Amendments in the bill will allow for these levies to be imposed when mineral claims are being granted or renewed. Similar amendments are proposed for opal prospecting licences.

At present, a single security deposit can be lodged for a number of mineral claims. A single deposit can also be lodged for a number of opal prospecting licences. However, the Act does not allow a single security deposit to be lodged for a combination of mineral claims and opal prospecting licences. By amending the Act to allow for such a combined security deposit, government administration will be streamlined and the process will be simpler for miners. Applications for all prospecting and mining titles must be accompanied by a lodgement fee, and when there is more than one application the allocation of the licence is decided by ballot. In a recent case hundreds of people applied for a single opal prospecting licence.

Following the ballot, the Department of Mineral Resources had to return lodgement fees to hundreds of unsuccessful applicants. This is not an efficient process, and this bill introduces a provision for a modest non-refundable lodgement fee for all opal prospecting licence applications, plus a fee for the granting of a title. Under this process, the Government can recoup some of the costs associated with dealing with multiple applicants. The proposal is cost neutral for the successful applicant. Under the Act, particular conditions may be imposed on all the opal prospecting licences or mineral claims in a declared mineral claims district. However, there is currently no power to prevent mineral claims or opal prospecting licences from being issued over sensitive areas within a mineral claims district.

For example, it may be appropriate to preserve an area of land as a flood refuge, but allow mining activity on adjoining high land. Once the adjoining land has been mined, it may then be reserved as a flood refuge and mining allowed on the formally reserved land. It should be noted that the Act does allow reserves to be established where titles cannot be granted. Unfortunately, this does not allow the flexibility to readily manage small scale and transient titles such as mineral claims and opal prospecting licences. To overcome this situation, the bill proposes that when an order is made setting up a mineral claims district it will allow for particular restrictions and claim management conditions. Restrictions can then include areas where prospecting and mining may not take place. This amendment will improve the environmental management of the Lightning Ridge opal fields and also remove an ongoing issue of concern to land-holders.

The proposed amendments will modernise the legislation and bring opal mining into line with the rest of the mining industry. I draw the attention of the House to one other amendment in this bill that concerns mining subleases of areas greater than 100 hectares. A sublease means that the holder of a mining lease assigns his or her rights under the mining lease to another entity for a period of time. Currently, ministerial approval is not required for a sublease. Most subleases are small and are used for minor adjustments of mine reserves adjacent to lease boundaries to ensure that the mineral resource is best used. These subleases will not be affected by this proposed amendment. However, some existing subleases are more than 100 hectares and affect an entire mine. Nardell Colliery is one such case.

Under the proposed amendment, companies wishing to enter arrangements similar to a sublease for an area greater than 100 hectares will be required to apply for a lease transfer. Under existing provisions, the Minister has the authority to amend the conditions of a lease. That means that these larger subleases will now be subject to ministerial approval and amendment of conditions. This proposal will bring these large subleases into line with similar provisions for leases and other authorities. The proposed amendment will also abolish the practice of absentee landlords; a practice that is not widespread in the industry, but still one that can cause concern, as in the case of Nardell. This bill is part of the Carr Government's program to use modern and effective regulatory measures in the mining industry for the benefit of industry and the community. I commend the bill to the House.