

Mining Amendment (Miscellaneous Provisions) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Mining Act 1992* (the **principal Act**) so as:

- (a) to establish procedures for the regulation of access to private land by holders of mineral claims and opal prospecting licences, and
- (b) to provide for the establishment of management funds for mineral claims districts and opal prospecting areas, for the imposition of levies for payment into those funds and for the expenditure of money in those funds, and
- (c) to impose restrictions on the granting of mining subleases, and
- (d) to provide the landholder of any land with immunity from liability for the acts and omissions of other persons exercising rights under the principal Act in or on the land, and
- (e) to enact other provisions of a minor, consequential or ancillary nature, including provisions of a savings and transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Mining Act 1992* set out in Schedule 1.

Schedule 1 Amendments

Access management plans for small-scale titles

Schedule 1 [32] inserts a new Part 10A (proposed sections 236A–236M) into the principal Act.

Proposed section 236A applies the new Part to mineral claims and opal prospecting licences (**small-scale titles**) with respect to land in a mineral claims district or opal prospecting area, with an exception for certain native title holders.

Proposed section 236B enables the Director-General to constitute land in a mineral claims district or opal prospecting area as an access management area.

Proposed section 236C provides that an access management plan may be agreed between a miners' representative and a landholder, or may be determined by the Director-General of the Department of Mineral Resources.

Proposed section 236D sets out the matters for which an access management plan may provide, which include the rights of access that small-scale title holders have in relation to land subject to the plan, their obligations in relation to the exercise of those rights and the manner in which disputes between them and the landholder are to be resolved.

Proposed section 236E establishes the procedure by which a miners' representative may negotiate an access management plan with a landholder.

Proposed section 236F establishes the procedure by which the Director-General may determine an access management plan if the miners' representative and the landholder fail to agree on a plan within 60 days. The proposed section allows the Director-General to decline to make such a determination, either generally or in relation to any particular matter.

Proposed section 236G establishes the procedure by which the Warden's Court may determine an access management plan where the Director-General has declined to make such a determination.

Proposed section 236H enables a miners' representative and a landholder to apply to a Warden's Court for the review of an access management plan determined by the Director-General.

Proposed section 236I provides for the registration of access management plans.

Proposed section 236J requires notice of the registration of an access management plan to be published, and requires copies of the plan to be kept available for inspection and purchase by members of the public.

Proposed section 236K provides that an access management plan commences when notice of its registration is published, or on such later date as it may provide. Such a plan will not apply in a claim area under a mineral claim and will not affect existing rights of way. A later plan will prevail over an earlier plan to the extent to which they relate to the same land.

Proposed section 236L provides that an existing access management plan may be replaced by another plan, but only (in the case of a plan determined by a Warden's Court) by leave of the Warden's Court.

Proposed section 236M provides that an access management plan does not run with the land, and so terminates when the landholder dies or leaves the land to which it applies.

Schedule 1 [42] inserts consequential definitions of ***access management area***, ***miners' representative***, ***registered access management plan*** and ***small-scale title*** into the Dictionary to the principal Act.

Management funds for mineral claims districts and opal prospecting areas

Schedule 1 [9] amends section 175 of the principal Act so as to allow the special conditions specified under that section to require levies to be paid in respect of mineral claims and to identify the purposes for which those levies may be applied.

Schedule 1 [20] inserts a new section 219A into the principal Act. The proposed section provides for the establishment of a district management fund for each mineral claims district, being a fund into which are to be paid the levies imposed under section 175 of the principal Act and out of which money may be paid for the purposes identified under that section. The fund will be kept in a bank or other authorised deposit-taking institution and will be administered by the Director-General.

Schedule 1 [21] inserts a new section 223A into the principal Act. The proposed section allows the Minister to specify special conditions that are to apply to opal prospecting licences granted over land in a specified opal prospecting area. One such condition will be able to require levies to be paid in respect of opal prospecting licences and to identify the purposes for which those levies may be applied. **Schedule 1 [22], [23], [24] and [25]** make consequential amendments to sections 225.

Schedule 1 [31] inserts a new section 235D into the principal Act. The proposed section provides for the establishment of an area management fund for each opal prospecting area, being a fund into which are to be paid the levies imposed under proposed section 223A and out of which money may be paid for the purposes identified under that section. The fund will be kept in a bank or other authorised deposit-taking institution and will be administered by the Director-General.

Mining subleases

Schedule 1 [2] inserts a new Division 5 (proposed section 83A) into Part 5 of the principal Act.

Proposed section 83A applies to any instrument by which the holder of a mining lease temporarily assigns, or temporarily allows another person to exercise, the holder's rights under the lease (a ***mining sublease***). It renders void any mining

sublease that purports to apply to more than 100 hectares of a single mining lease, both in relation to land under that mining lease and in relation to any other land to which it purports to apply. **Schedule 1 [4]** makes a consequential amendment to section 161 of the principal Act.

A saving provision (proposed clause 79 of Schedule 6, to be inserted by **Schedule 1 [41]**) excludes existing mining subleases from the operation of proposed section 83A.

Immunity from liability for landholders

Schedule 1 [39] inserts a new section 383C into the principal Act. The proposed section provides that the landholder of land in which any other person is authorised to exercise any power or right (whether under the principal Act, or under an exploration licence, assessment lease, mining lease, mineral claim, opal prospecting licence or permit granted under the principal Act) is not subject to any action, liability, claim or demand arising as a consequence of that other person's acts or omissions in the exercise of any such power or right.

Minor, consequential and ancillary amendments

Fossicking in Crown lands

Section 12 of the principal Act currently gives fossickers the right to enter land held for grazing purposes under a Crown lease, licence or permissive occupancy.

Schedule 1 [1] amends section 12 so that fossickers will no longer have such a right.

Preserved mining fields

Schedule 1 [7] inserts a new section 173A into the principal Act to allow the Director-General to make orders prohibiting the lodging of applications for mineral claims over certain land, and constituting certain land as a preserved mining field. An amendment to section 175 of the principal Act made by **Schedule 1 [10]** will allow the special conditions under that section to vary by reference to whether or not a proposed claim area is in a preserved mining field. An amendment to section 178 of the principal Act made by **Schedule 1 [11]** will prevent applications for mineral claims from being lodged with respect to land over which the lodging of such an application is prohibited by an order under proposed section 173A of the principal Act. An amendment to section 188 of the principal Act made by **Schedule 1 [12]** ensures that mineral claims will not be granted over private land in a preserved mining field if the land has on it a house that is its occupier's principal place of residence. **Schedule 1 [8]** makes a consequential amendment to section 174 of the principal Act.

Mineral claims near dwelling-houses

Schedule 1 [12] amends section 188 of the principal Act to clarify the existing prohibition with respect to the granting of mineral claims over private land and land on which a principal dwelling-house is situated. **Schedule 1 [13]** and **[14]** make consequential amendments to section 188 of the principal Act.

Prohibition of opal prospecting operations in specified areas

Schedule 1 [21] inserts a new section 223A into the principal Act. The proposed section allows the Minister to specify special conditions that are to apply to opal prospecting licences granted over land in an opal prospecting area. One such condition will be able to prohibit prospecting operations in specified areas (such as environmentally sensitive areas) of an opal prospecting block. **Schedule 1 [29]** makes a consequential amendment to section 232 of the principal Act.

Schedule 1 [43] makes a consequential amendment to the definition of *special conditions* in the Dictionary to the principal Act.

Fees for opal prospecting licences

Schedule 1 [38] amends section 382A of the principal Act so as to enable licence fees to be imposed on the grant of opal prospecting licences. **Schedule 1 [26]** amends section 228 of the principal Act so as to require such a fee to be paid

before an opal prospecting licence is granted.

Immunity of Crown and others

Schedule 1 [6] and [19] substitute sections 171 and 218 of the principal Act (in relation to authorities and mineral claims) so as to bring them into line with section 235 (in relation to opal prospecting licences). Section 235 provides that no action lies against the Crown, the Minister or any person administering the principal Act in respect of any injury or loss suffered or incurred in relation to the exercise of any right conferred by an opal prospecting licence. The existing sections provide no such immunity, but instead require the holder of the authority or mineral claim to indemnify the Crown against any such loss or injury.

Schedule 1 [37] substitutes section 362 of the principal Act (exclusion of personal liability) so as to ensure that its provisions extend to the Minister and the Director-General and to staff of the Department of Mineral Resources.

Rights of way

Schedule 1 [5] and [18] substitute sections 164 and 211 of the principal Act in relation to rights of way for holders of authorities and mineral claims, and

Schedule 1 [31] inserts a new section 235C into the principal Act in relation to rights of way for holders of opal prospecting licences. The new sections differ from old sections 164 and 211 in that they allow rights of way to be indicated otherwise than by physical mark-out (the current requirement), that they should generally follow the route of existing roads or tracks and that they must accord with the provisions of any relevant registered access management plan.

Schedule 1 [3], [16], [28] and [36] make consequential amendments to section 112, 192, 229 and 296 of the principal Act.

Uniformity of conditions of mineral claims and opal prospecting licences

Schedule 1 [15] and [27] amend sections 190 and 228 of the principal Act so as to allow the same security conditions to apply to related mineral claims and opal prospecting licenses held by the same person. **Schedule 1 [17] and [30]** amend sections 195A and 232A of the principal Act so as to enable a single security to be given and maintained in relation to mineral claims and opal prospecting licences held by the same person.

Permits to enter land

Schedule 1 [33] amends section 254 of the principal Act so as to extend the persons to whom a permit to enter land may be granted so as to include the holder (or prospective holder) of an opal prospecting licence, and to extend the purposes for which a permit to enter land may be granted so as to include the inspection of a proposed mineral claim or opal prospecting block. **Schedule 1 [35]** amends section 259 of the principal Act so as to extend, from 14 days to 28 days, the time for which a permit to enter land remains in force.

Restriction on powers of entry to land

Schedule 1 [34] replaces existing section 255 of the principal Act with proposed sections 255 and 255A, so as to distinguish between the restrictions applicable to a person who enters land in the exercise of regulatory functions and a person who enters land in the exercise of a right conferred by a permit to enter land.

Savings and transitional provisions

Schedule 1 [40] amends clause 1 of Schedule 6 to the principal Act so as to permit regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act. **Schedule 1 [41]** inserts a new Part 8 at the end of Schedule 6 to the principal Act so as to effect particular provisions in that regard.

Dictionary

Schedule 1 [42] inserts a number of definitions into the Dictionary to the

principal Act as a consequence of the other amendments to be made by the proposed Act.