

New South Wales

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.

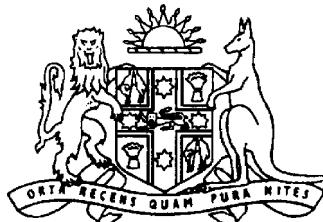
Dictionary

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.

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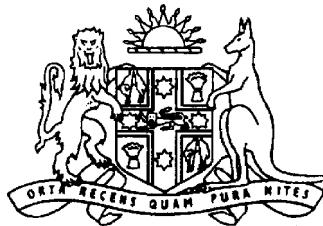
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No , 2004

A Bill for

An Act to amend the *Mining Act 1992* so as to regulate access to private land by holders of mineral claims or opal prospecting licences, to establish management funds for mineral claims districts and opal prospecting areas, to control mining subleases and to make provision with respect to other matters.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mining Amendment (Miscellaneous Provisions) Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Mining Act 1992 No 29

The *Mining Act 1992* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 12 Fossicking

Omit “, unless it is so held for grazing purposes” from section 12 (2A) (a).

[2] Part 5, Division 5

Insert after Division 4:

Division 5 Subleasing of mining leases

83A Subleases not to exceed 100 hectares in area

(1) A mining sublease that purports to have effect in relation to more than the prescribed area of the land the subject of its head lease is void for all purposes, both in relation to the land the subject of its head lease and any other land in respect of which the mining sublease purports to have effect.

(2) In this section:

head lease means the mining lease under which a mining sublease is granted.

mining sublease means any instrument in the nature of a sublease or sublicence by which the holder of a mining lease:

- (a) assigns, or purports to assign, to another person for a limited period, or
- (b) permits, or purports to permit, another person to exercise for a limited period,

any of the rights conferred by the mining lease.

prescribed area, in relation to land the subject of a mining sublease, means:

- (a) except as provided by paragraph (b), 100 hectares, or
- (b) if any other mining sublease has effect in relation to land the subject of the same head lease, 100 hectares less the total area of land in relation to which each other mining sublease has effect.

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Schedule 1 Amendments

[3] Section 112 Rights of way	1
Omit “marked out under”.	2
Insert instead “indicated or described as referred to in”.	3
[4] Section 161 Registration of certain interests	4
Insert after section 161 (7):	5
(7A) In particular, the registration of a mining sublease (within the meaning of section 83A) does not give any interest under the sublease any greater effect than it would otherwise have.	6 7 8
[5] Section 164	9
Omit the section. Insert instead:	10
164 Rights of way	11
(1) The holder of an authority is entitled to a right of way (to be indicated or described in the manner prescribed by the regulations) between the land subject to the authority and a public road.	12 13 14 15
(2) The route of a right of way should, wherever practicable, follow the route of existing roads or tracks (particularly, in the case of land in the Western Division, those the subject of special easements under section 35S of the <i>Western Lands Act 1901</i>).	16 17 18 19 20
(3) The holder of the authority:	21
(a) must ensure that substantial gates or grids (or, if the landholder of the land so requires, gates and grids) are placed wherever fences are intersected by the right of way, or	22 23 24 25
(b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences, must ensure that rabbit-proof, marsupial-proof or dog-proof gates are placed at all such intersections.	26 27 28 29
(4) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.	30 31
(5) The costs of installing and maintaining any gates or grids required by this section are to be borne by the holder of the authority.	32 33 34

(6)	A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations or as may be imposed by a warden pursuant to an inquiry under subsection (7).	1 2 3 4 5
(7)	A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.	6 7
(8)	Such an inquiry may be held on the warden's own motion or on the application of any landholder affected by, or the holder of any authority entitled to, the right of way.	8 9 10
[6]	Section 171	11
	Omit the section. Insert instead:	12
	171 Certain claims for damages prohibited	13
	No action lies against the Crown, the Minister or any person administering this Act in respect of any injury or loss suffered or incurred in relation to the exercise of any right conferred by an authority.	14 15 16 17
[7]	Section 173A	18
	Insert after section 173:	19
	173A Ancillary orders	20
(1)	The Director-General may, by order published in the Gazette, prohibit, either indefinitely or until a specified date, the lodging of applications for mineral claims over specified land in a mineral claims district.	21 22 23 24
(2)	The Director-General may, by order published in the Gazette, constitute any land in a mineral claims district as a preserved mining field and may, by the same or a subsequent order so published, name the preserved mining field and fix its boundaries.	25 26 27 28 29
[8]	Section 174 Notice of proposal to constitute mineral claims district	30 31
	Insert "to constitute a mineral claims district" after "recommendation" where firstly occurring in section 174 (1).	32 33

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Schedule 1 Amendments

[9] Section 175 Special conditions	1
Insert after section 175 (2) (h):	2
(h1) the levies payable in respect of mineral claims and the purposes for which those levies may be applied,	3
4	4
[10] Section 175 (2A)	5
Insert after section 175 (2):	6
(2A) The conditions may vary by reference to specified matters including, in particular, by reference to whether or not the proposed claim area is within a preserved mining field.	7
8	8
9	9
[11] Section 178 Application for granting of mineral claim	10
Insert after section 178 (2):	11
(3) An application for a mineral claim may not be lodged with respect to land over which the lodging of such an application is prohibited by an order in force under section 173A (1).	12
13	13
14	14
[12] Section 188 Dwelling-houses, gardens and improvements	15
Insert after section 188 (2):	16
(2A) A mineral claim may not be granted over land:	17
(a) which is within a preserved mining field, and	18
(b) which is privately owned land (that is, land that is not Crown land) or is Crown land held under a lease for residential purposes under the <i>Western Lands Act 1901</i> , and	19
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(c) within which is situated a dwelling-house that is the principal place of residence of its occupier,	22
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except with the written consent of both the owner and the occupier of the dwelling-house.	25
26	26
(2B) Subsection (1) does not apply to land referred to in subsection (2A).	27
28	28
[13] Section 188 (4)	29
Omit “Subsection (1) does not”.	30
Insert instead “Subsections (1) and (2A) do not”.	31

[14] Section 188 (5)	1
Insert “or (2A)” after “subsection (1)”. 2	
[15] Section 190 Power of mining registrar in relation to applications	3
Insert “or in relation to some opal prospecting licence or licences, whether 4 under section 228 or 232A, held by the same person” after “section 195A,” 5 in section 190 (4A). 6	
[16] Section 192 Conditions of mineral claim	7
Omit section 192 (1) (a). Insert instead: 8	
(a) in the case of a mineral claim that is granted over land 9 within a mineral claims district: 10	
(i) any special conditions that apply to the land, and 11	
(ii) the conditions imposed on the holder of the claim 12 under section 211 as to his or her exercise of any 13 right of way under that section in respect of the 14 claim area, and 15	
(iii) the conditions to which the holder of the claim is 16 subject pursuant to any registered access 17 management plan in force in respect of that land, 18 and 19	
(iv) such other conditions (not inconsistent with the 20 conditions referred to in subparagraphs (i), (ii) 21 and (iii)) as the mining registrar may impose, and 22	
[17] Section 195A Amendment of mineral claim in respect of certain conditions	23
Insert after section 195A (3): 25	
(3A) A single security may be given and maintained in relation to 26 both mineral claims and opal prospecting licences held by the 27 same person. 28	

[18] Section 211

Omit the section. Insert instead:

211 Rights of way

- (1) The holder of a mineral claim is entitled to a right of way (to be indicated or described in the manner prescribed by the regulations) between the claim area and a public road.
- (2) The route of a right of way:
 - (a) should, wherever practicable, follow the route of existing roads or tracks (particularly, in the case of land in the Western Division, those the subject of special easements under section 35S of the *Western Lands Act 1901*), and
 - (b) in the case of land within a mineral claims district, must accord with the provisions of any registered access management plan applying to the land.
- (3) The holder of the mineral claim:
 - (a) must ensure that substantial gates or grids (or, if the landholder of the land so requires, gates and grids) are placed wherever fences are intersected by the right of way, or
 - (b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences, must ensure that rabbit-proof, marsupial-proof or dog-proof gates are placed at all such intersections.
- (4) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.
- (5) The costs of installing and maintaining any gates or grids required by this section are to be borne by the holder of the mineral claim.
- (6) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised:
 - (a) as may be prescribed by the regulations, or
 - (b) in the case of land within a mineral claims district, as may be specified in any registered access management plan applying to the land, or

(c) as may be imposed by a warden pursuant to an inquiry under subsection (7).	1 2
(7) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.	3 4
(8) Such an inquiry may be held on the warden's own motion or on the application of any landholder affected by, or the holder of any mineral claim entitled to, the right of way.	5 6 7
(9) In the case of land within a mineral claims district, the conditions imposed by a warden pursuant to an inquiry under subsection (7) must not be inconsistent with the conditions specified in any registered access management plan applying to the land.	8 9 10 11 12
[19] Section 218	13
Omit the section. Insert instead:	14
218 Certain claims for damages prohibited	15
No action lies against the Crown, the Minister or any person administering this Act in respect of any injury or loss suffered or incurred in relation to the exercise of any right conferred by a mineral claim.	16 17 18 19
[20] Section 219A	20
Insert after section 219:	21
219A Mineral claims district management fund	22
(1) For each mineral claims district there is to be established a district management fund into which are to be paid:	23 24
(a) all levies paid in accordance with a condition referred to in section 175 (2) (h1) in respect of mineral claims granted or renewed over land within the district, and	25 26 27
(b) the proceeds of investment of money in the fund, and	28
(c) such other money as is required or permitted to be paid into the fund.	29 30
(2) Money in any such fund may be used:	31
(a) for any purpose specified in a condition referred to in section 175 (2) (h1) as a purpose for which levies referred to in that paragraph may be applied, and	32 33 34

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| (b) | to cover the costs of administering the fund. | 1 |
| (3) | Money received for payment into a fund established under this section is to be paid into an account kept, for the purposes of the fund, in an authorised deposit-taking institution. | 2 |
| (4) | A fund established under this section in relation to a mineral claims district is to be administered by the Director-General. | 3 |
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[21] Section 223A

Insert after section 223:

223A Special conditions

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| (1) | The Minister may, by order published in the Gazette, specify special conditions that are to apply to opal prospecting licences granted over land within any specified opal prospecting area. | 10 |
| (2) | Without limiting the generality of subsection (1), the conditions that may be specified in an order under this section include conditions as to the following matters: | 11 |
| (a) | the areas in which prospecting operations in respect of an opal prospecting block are prohibited, | 12 |
| (b) | the nature and extent of prospecting operations that may be carried out in respect of opal prospecting blocks, | 13 |
| (c) | the levies payable in respect of opal prospecting licences and the purposes for which those levies may be applied, | 14 |
| (d) | the security deposits to be lodged in respect of the granting of opal prospecting licences, | 15 |
| (e) | the compensation payable in respect of the carrying out of prospecting operations under opal prospecting licences, | 16 |
| (f) | the obligations of holders of opal prospecting licences as to the rehabilitation of land on which prospecting operations have been carried out, | 17 |
| (g) | the program of work to be carried out under an opal prospecting licence, | 18 |
| (h) | the amount of money to be expended on prospecting, | 19 |
| (i) | such other matters as the Minister considers appropriate. | 20 |
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[22] Section 225 Map of opal prospecting area to be prepared	1
Insert “and” after “granted,” in section 225 (1) (a) (v).	2
[23] Section 225 (1) (a) (vi)	3
Omit the subparagraph.	4
[24] Section 225 (2) (c)	5
Omit “granted, or”. Insert instead “granted.”.	6
[25] Section 225 (2) (d)	7
Omit the paragraph.	8
[26] Section 228 Power of mining registrar in relation to applications	9
Insert after section 228 (2):	10
(2A) An opal prospecting licence may not be granted until the appropriate opal prospecting licence fee (as determined under section 382A) has been paid for the grant of the licence.	11 12 13
[27] Section 228 (5)	14
Insert “or in relation to some mineral claim or mineral claims, whether under section 190 or 195A, held by the same person” after “section 232A.”.	15 16 17
[28] Section 229	18
Omit the section. Insert instead:	19
229 Conditions of licence	20
An opal prospecting licence is subject to:	21
(a) any special conditions that apply, pursuant to section 223A, to the opal prospecting block over which the licence is granted, and	22 23 24
(b) the conditions imposed on the holder of the licence, pursuant to section 235C, as to his or her exercise of any right of way under that section in respect of the opal prospecting block over which the licence is granted, and	25 26 27 28 29

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(c) the conditions to which the holder of the licence is subject pursuant to any registered access management plan in force in respect of the opal prospecting block over which the licence is granted, and	1 2 3 4
(d) such other conditions (not inconsistent with the conditions referred to in paragraphs (a), (b) and (c)) as the mining registrar may impose.	5 6 7
[29] Section 232 Rights under licence	8
Insert after section 232 (1):	9
(1A) Despite subsection (1), the holder of an opal prospecting licence may not prospect for opals in any part of an opal prospecting block in respect of which prospecting is prohibited under section 223A.	10 11 12 13
[30] Section 232A Amendment of opal prospecting licence in respect of certain conditions	14 15
Insert after section 232A (3):	16
(3A) A single security may be given and maintained in relation to both opal prospecting licences and mineral claims held by the same person.	17 18 19
[31] Sections 235C and 235D	20
Insert after section 235B:	21
235C Rights of way	22
(1) The holder of an opal prospecting licence is entitled to a right of way (to be indicated or described in the manner prescribed by the regulations) between the opal prospecting block and a public road.	23 24 25 26
(2) The route of a right of way:	27
(a) should, wherever practicable, follow the route of existing roads or tracks (particularly, in the case of land in the Western Division, those the subject of special easements under section 35S of the <i>Western Lands Act 1901</i>), and	28 29 30 31 32
(b) must accord with the provisions of any registered access management plan applying to the land.	33 34

(3) The holder of the opal prospecting licence:	1
(a) must ensure that substantial gates or grids (or, if the landholder of the land so requires, gates and grids) are placed wherever fences are intersected by the right of way, or	2
(b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences, must ensure that rabbit-proof, marsupial-proof or dog-proof gates are placed at all such intersections.	3
(4) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.	4
(5) The costs of installing and maintaining any gates or grids required by this section are to be borne by the holder of the opal prospecting licence.	5
(6) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised:	6
(a) as may be prescribed by the regulations, or	7
(b) as may be specified in any registered access management plan applying to the land, or	8
(c) as may be imposed by a warden pursuant to an inquiry under subsection (7).	9
(7) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.	10
(8) Such an inquiry may be held on the warden's own motion or on the application of any landholder affected by, or the holder of any opal prospecting licence entitled to, the right of way.	11
(9) The conditions imposed by a warden pursuant to an inquiry under subsection (7) must not be inconsistent with the conditions specified in any registered access management plan applying to the land.	12
235D Opal prospecting area management fund	13
(1) For each opal prospecting area there is to be established an area management fund into which are to be paid:	14
(a) all levies paid in accordance with a condition referred to in section 223A (2) (c) in respect of opal prospecting licences granted over land within the area, and	15

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(b)	the proceeds of investment of money in the fund, and	1
(c)	such other money as is required or permitted to be paid into the fund.	2
(2)	Money in any such fund may be used:	3
(a)	for any purpose specified in a condition referred to in section 223A (2) (c) as a purpose for which levies referred to in that paragraph may be applied, and	4
(b)	to cover the costs of administering the fund.	5
(3)	Money received for payment into a fund established under this section is to be paid into an account kept, for the purposes of the fund, in an authorised deposit-taking institution.	6
(4)	A fund established under this section in relation to an opal prospecting area is to be administered by the Director- General.	7
[32]	Part 10A	8
	Insert after Part 10:	9
Part 10A Access management plans for small- scale titles		10
236A Application of Part		11
(1)	This Part applies to mineral claims and opal prospecting licences (referred to collectively as <i>small-scale titles</i>) with respect to land within an access management area.	12
(2)	This Part does not require an access management plan in respect of a landholder who is a native title holder if:	13
(a)	the small-scale title concerned was granted or renewed after compliance with Subdivision P of Division 3 of Part 2 of the Commonwealth Native Title Act, and	14
(b)	the grant or renewal of the title was not an act that attracted the expedited procedure under and within the meaning of that Subdivision.	15
(3)	This Part does not apply if:	16
(a)	the small-scale title concerned was granted or renewed after compliance with a registered indigenous land use agreement under the Commonwealth Native Title Act, and	17

(b) the agreement provides that an access management plan is not required under this Part in respect of a landholder who is a native title holder.	1 2 3
236B Declared areas	4
The Director-General may, by order published in the Gazette, constitute any land within a mineral claims district or opal prospecting area as an access management area and may, by the same or a subsequent order so published, name the area and fix its boundaries.	5 6 7 8 9
236C Alternative procedures for making access management plan	10
An access management plan for land within an access management area:	11 12
(a) may be agreed between a miners' representative and the landholder, or	13 14
(b) may be determined by the Director-General or the Warden's Court,	15 16
either before or after small-scale titles are granted in relation to the land.	17 18
236D Matters for which access management plan to provide	19
(1) An access management plan may make provision for or with respect to the following matters:	20 21
(a) the rights of access that the holder of a small-scale title has in relation to the land to which the plan applies, including rights in relation to:	22 23 24
(i) access points to the land, and	25
(ii) routes of access across the land, and	26
(iii) the manner in which, and the times at which, rights of access may be exercised,	27 28
(b) the conditions to which the holder of a small-scale title is subject in relation to his or her exercise of any such right of access, including conditions in relation to:	29 30 31
(i) maintaining routes of access, and	32
(ii) preserving the safety of persons and stock, and	33

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(iii) avoiding interference with the land management practices being adopted in relation to the land affected by the right of way, and	1 2 3
(iv) environmental protection,	4
(c) the manner of resolving any dispute arising in connection with the plan,	5 6
(d) the manner of varying or replacing the plan,	7
(e) such other matters as the parties to the plan may agree to include in the plan.	8 9
(2) In the event of an inconsistency between:	10
(a) a provision of an access management plan, and	11
(b) a provision of this Act, the regulations or a condition of a small-scale title,	12 13
the provision referred to in paragraph (b) prevails.	14
236E Miners' representative to seek access management plan	15
(1) A miners' representative may, by written notice served on a landholder, give notice of his or her intention to negotiate an access management plan in respect of the land.	16 17 18
(2) The notice of intention to negotiate an access management plan must, in addition to stating that intention, contain:	19 20
(a) a plan and description of the area of land over which the access is sought, sufficient to enable the ready identification of that area, and	21 22 23
(b) a description of the mining or prospecting methods intended to be used in that area.	24 25
(3) The miners' representative and the landholder may agree in writing on an access management plan.	26 27
(4) An access management plan so agreed must be lodged with the Director-General for registration.	28 29
236F Determination of access management plan by Director-General	30 31
(1) If the miners' representative and the landholder are unable to agree on an access management plan within 60 days after notice of intention to negotiate such a plan is served under section 236E, either of them:	32 33 34 35

(a)	may apply to the Director-General for a determination under this section, and	1 2
(b)	in that event, must cause a copy of the application to be served on the other.	3 4
(2)	On receiving such an application, the Director-General may determine an access management plan for the land concerned.	5 6
(3)	Before making a determination under this section, the Director-General:	7 8
	(a) must consult with the miners' representative and the landholder concerned, and	9 10
	(b) must give full consideration to any submissions arising from the consultation process.	11 12
(4)	On making a determination under this section, the Director-General must cause copies of the determination to be served on the landholder and the miners' representative.	13 14 15
(5)	At any time after receiving an application for determination of an access management plan, the Director-General:	16 17
	(a) may decline to make such a determination, either generally or in relation to any particular matter, and	18 19
	(b) in that event, must cause written notice of that fact to be served on the miners' representative and the landholder.	20 21 22
236G	Determination of access management plan by Warden's Court	23
(1)	If the Director-General has declined to make a determination under section 236F, either generally or in relation to a particular matter, either the landholder or the miners' representative:	24 25 26 27
	(a) may apply to the Warden's Court for a determination under this section, either generally or in relation to that matter, as the case may be, and	28 29 30
	(b) in that event, must cause copies of the application to be served on the landholder or miner's representative, as the case requires, and on the Director-General.	31 32 33
(2)	On receiving such an application, the Warden's Court is to hold an inquiry into the matter and, following the inquiry, is to determine an access management plan for the land concerned, as required by the application.	34 35 36 37

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(3)	The Director-General is not a party to the proceedings before the Warden's Court, but may nevertheless make written submissions to the Warden's Court in relation to the proposed determination.	1 2 3 4
(4)	In making a decision under this section, the Warden's Court must give full consideration to any submissions made by the Director-General under subsection (3).	5 6 7
(5)	On making a determination under this section, the Warden's Court is to cause copies of the determination to be served on the landholder and the miners' representative.	8 9 10
(6)	Each party to proceedings under this section is to bear his or her own costs in relation to the proceedings.	11 12
236H	Review of Director-General's determination	13
(1)	An application for the review of an access management plan determined under section 236F may be made to a Warden's Court by either the landholder or the miners' representative (the <i>parties to the determination</i>).	14 15 16 17
(2)	An application:	18
(a)	must be accompanied by a copy of the determination to which it relates, together with a copy of any access management plan forming part of the determination, and	19 20 21 22
(b)	must be filed in a Warden's Court within 14 days after a copy of the determination was served on the applicant.	23 24
(3)	The applicant must cause a copy of the application to be served on the Director-General and on each of the other parties to the determination.	25 26 27
(4)	The Director-General is not a party to the proceedings before the Warden's Court, but may nevertheless make written submissions to the Warden's Court in relation to the determination under review.	28 29 30 31
(5)	In making a decision under this section, the Warden's Court must give full consideration to any submissions made by the Director-General under subsection (4).	32 33 34
(6)	The decision of a Warden's Court on a review of a determination is final and is to be given effect to as if it were the determination of the Director-General under section 236F.	35 36 37

(7) Each party to proceedings under this section is to bear his or her own costs in relation to the proceedings.	1 2
236I Registration of access management plans	3
(1) An access management plan agreed under section 236E or determined under section 236G must be registered by the Director-General as soon as practicable after it is lodged for registration.	4 5 6 7
(2) An access management plan determined under section 236F must be registered by the Director-General:	8 9
(a) as soon as practicable after the expiry of the 14-day period referred to in section 236H (2) (b), or	10 11
(b) if an application for a review of the determination is made to the Warden's Court within that period, as soon as practicable after the Warden's Court makes its decision on the application.	12 13 14 15
236J Public notice of access management plans	16
(1) As soon as practicable after registering an access management plan, the Director-General must cause notice of that fact to be published in a local newspaper circulating in the area in which the land is situated.	17 18 19 20
(2) The notice must identify the land to which the access management plan relates and indicate where copies of the access management plan may be inspected or purchased.	21 22 23
(3) Copies of each registered access management plan must be kept available for inspection or purchase at the place or places indicated in the notice.	24 25 26
236K Commencement and operation of access management plan	27
(1) An access management plan takes effect on the date on which notice of its registration is published under section 236J or on such later date as may be specified in the plan in that regard.	28 29 30
(2) An access management plan does not apply to land within the claim area under a mineral claim, but does apply to land within an opal prospecting block.	31 32 33

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(3)	An access management plan does not affect any right of way to which the holder of a small-scale title was entitled under section 211 or 235C immediately before the plan took effect, and does not affect any conditions imposed under section 211 or 235C on any such right of access.	1 2 3 4 5
(4)	Subsection (3) ceases to have effect in relation to a small-scale title when the small-scale title ceases to have effect, and is not continued by any renewal of the small-scale title.	6 7 8
(5)	A later registered access management plan prevails over an earlier registered access management plan to the extent to which they relate to the same land.	9 10 11
236L	Replacement of access management plans	12
(1)	An access management plan may, subject to its provisions, be replaced by a new access management plan with respect to the same land.	13 14 15
(2)	Despite subsection (1), an access management plan under section 236G or 236H may not be replaced by a new access management plan with respect to the same land except by leave of the Warden's Court.	16 17 18 19
236M	Duration of access management plans	20
An access management plan does not run with the land and, unless sooner terminated, terminates:		21 22
(a)	if a landholder of the land to which it relates ceases to be a landholder of the land, or	23 24
(b)	on the death of a landholder of the land to which it relates.	25 26
[33]	Section 254 Permit to enter land	27
Omit section 254 (1) and (2). Insert instead:		28
(1)	A mining registrar may grant a permit to any person to enter any land so as to enable the person to inspect or mark out a proposed mineral claim, to inspect an opal prospecting block or to comply with the conditions of a mineral claim or opal prospecting licence.	29 30 31 32 33
(2)	The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:	34 35

(a)	enter the land to which the permit relates, and	1
(b)	do all such things as are reasonably necessary for the purpose of inspecting or marking out a proposed mineral claim, inspecting an opal prospecting block or complying with the conditions of any mineral claim or opal prospecting licence.	2
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[34] Sections 255 and 255A		7
Omit section 255. Insert instead:		8
255 Restriction of power of entry: inspectors and royalty officers		9
(1)	A power conferred by this Act to enter any land, or to do anything on any land, may not be exercised by an inspector or royalty officer unless he or she:	10
(a)	is in possession of the relevant certificate of authority, and	11
(b)	gives reasonable notice to the landholder of his or her intention to exercise the power, unless the giving of notice would defeat the purpose for which he or she intends to exercise the power, and	12
(c)	exercises the power at a reasonable time, unless the power is being exercised in an emergency, and	13
(d)	produces the certificate of authority if required to do so by the landholder, and	14
(e)	uses no more force than is reasonably necessary to effect the entry or to do the thing authorised by the certificate of authority.	15
(2)	If damage is caused by an inspector or royalty officer exercising a power of entry under this Part, the landholder is entitled to payment from the Crown of a reasonable amount of compensation unless the landholder obstructed, hindered or restricted the inspector or royalty officer in the exercise of the power.	16
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255A Restriction of power of entry: permit holders		32
(1)	A power conferred by this Act to enter any land, or to do anything on any land, pursuant to a permit may not be exercised by any person or persons unless he or she (or, if more than one, one of them):	33
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(a)	is in possession of the permit, and	1
(b)	gives reasonable notice to the landholder of his or her intention to exercise the power, and	2
(c)	exercises the power at a reasonable time, and	3
(d)	produces the permit if required to do so by the landholder.	4
(2)	If damage is caused by the holder of a permit exercising a power of entry under this Part, the landholder is entitled to payment from the holder of the permit of a reasonable amount of compensation unless the landholder obstructed, hindered or restricted the holder of the permit in the exercise of the power.	5
		6
[35]	Section 259 Term of permit	7
	Omit section 259 (b). Insert instead:	8
	(b) in the case of a permit under section 254, 28 days from the date it is granted,	9
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		12
[36]	Section 296 Jurisdiction of Wardens' Courts	13
	Insert after section 296 (b):	14
	(b1) any question or dispute arising as to:	15
	(i) a right of way or right of entry conferred by or under this Act, or	16
	(ii) any condition imposed by or under this Act (including any condition imposed pursuant to a registered access management plan) on a person's exercise of any such right of way or right of entry,	17
[37]	Section 362	18
	Omit the section. Insert instead:	19
	362 Exclusion of personal liability	20
	An act or omission of:	21
	(a) the Minister or the Director-General, or	22
	(b) a member of staff of the Department, or	23
	(c) a body constituted under this Act, a member of any such body or a member of staff of any such body, or	24
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(d) a person acting under the direction of a person or body referred to in paragraph (a), (b) or (c),	1 2
does not subject the Minister, the Director-General, or any such member or member of staff or any person so acting, personally to any action, liability, claim or demand if the act or omission was done or omitted in good faith and for the purpose of executing this Act.	3 4 5 6 7
[38] Section 382A Minister to determine certain fees	8
Insert at the end of section 382A (b):	9
, and	10
(c) the opal prospecting licence fees payable for the purposes of section 228 (2A).	11 12
[39] Section 383C	13
Insert after section 383B:	14
383C General immunity of landholders	15
The landholder of land within which any person (other than the landholder) is authorised to exercise any power or right:	16 17
(a) by or under this Act, or	18
(b) by any authority, mineral claim, opal prospecting licence or permit under this Act,	19 20
is not subject to any action, liability, claim or demand arising as a consequence of that person's acts or omissions in the exercise, or purported exercise, of any such power or right.	21 22 23
[40] Schedule 6 Savings, transitional and other provisions	24
Insert at the end of clause 1 (1):	25
<i>Mining Amendment (Miscellaneous Provisions) Act 2004</i>	26

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[41] Schedule 6

Insert at the end of the Schedule:

**Part 8 Provisions consequent on enactment of
Mining Amendment (Miscellaneous
Provisions) Act 2004**

78 Definitions

In this Part:

the 2004 Act means the *Mining Amendment (Miscellaneous Provisions) Act 2004*.

79 Existing mining subleases

- (1) Section 83A does not render void any mining sublease (within the meaning of that section) that was in force immediately before the commencement of that section.
- (2) Land the subject of any such mining sublease may nevertheless be taken into account for the purpose of determining a prescribed area (within the meaning of section 83A) in relation to any other mining sublease.

80 Mineral claims close to dwelling-houses

- (1) The amendments made by the 2004 Act to section 188 do not affect any mineral claim that was in force before those amendments commenced.
- (2) Subclause (1) does not apply to any mineral claim that is renewed after the commencement of the amendments referred to in that subclause.

81 Conditions to which mineral claims are subject

The amendments made by the 2004 Act to section 192 do not affect any mineral claim that was in force before those amendments commenced, and any such mineral claim remains subject to the same conditions as those to which it was subject before those amendments commenced.

82 Conditions to which opal prospecting licences are subject	1
The substitution by the 2004 Act of section 229 does not affect any opal prospecting licence that was in force before that section was substituted, and any such licence remains subject to the same conditions as those to which it was subject before that section was substituted.	2 3 4 5 6
83 Liability for matters arising in relation to authorities and mineral claims	7 8
Sections 171 and 218, as substituted by the 2004 Act, extend to anything done or omitted to be done, as referred to in those sections, before those sections were substituted.	9 10 11
84 Entry permits	12
Section 259, as amended by the 2004 Act, extends to permits in force immediately before that section was amended.	13 14
85 General immunity of landholders	15
Section 383C, as inserted by the 2004 Act, extends to anything done or omitted to be done, as referred to in that section, before that section was inserted.	16 17 18
[42] Dictionary	19
Insert in alphabetical order:	20
<i>access management area</i> means an access management area constituted under Part 10A.	21 22
<i>miners' representative</i> , in relation to an access management plan over land, means a person or body prescribed by the regulations, or nominated as prescribed by the regulations, to represent the interests of holders (and potential holders) of small-scale titles with respect to the land.	23 24 25 26 27
<i>permit</i> means a permit in force under Division 2 of Part 12.	28
<i>preserved mining field</i> means a preserved mining field constituted by an order referred to in section 173A (2).	29 30
<i>registered access management plan</i> means an access management plan registered under section 236I.	31 32
<i>small-scale title</i> means a mineral claim or an opal prospecting licence.	33 34

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[43] Dictionary, definition of “special conditions”

1

Omit paragraph (b). Insert instead:

2

- (b) in relation to an opal prospecting area—the conditions specified under section 223A as the conditions to which opal prospecting licences granted over land within the area are to be subject.

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