

Mining Amendment (Miscellaneous Provisions) Act 2004 No 75

[2004-75]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2006](#)

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Mining Amendment (Miscellaneous Provisions) Act 2004 No 75



New South Wales

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.

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[1] (Repealed)

[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) This section does not apply:

- (a) if the holder of the head lease is a body corporate and the holder of the mining sublease is a subsidiary of the body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (b) if the mining sublease is exempt from the operation of this section by an order in force under subsection (3), or
- (c) if the mining sublease is exempt from the operation of this section by the regulations.

(3) The Minister may, by order in writing, exempt a mining sublease from the operation of this section.

(4) 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.

[3] Section 112 Rights of way

Omit “marked out under”.

Insert instead “indicated or described as referred to in”.

[4] Section 161 Registration of certain interests

Insert after section 161 (7):

- (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.

[5] Section 164

Omit the section. Insert instead:

164 Rights of way

- (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.
- (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 *Western Lands Act 1901*).
- (3) The holder of the authority:
 - (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 authority.
- (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).
- (7) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.
- (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.

[6] Section 171

Omit the section. Insert instead:

171 Certain claims for damages prohibited

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.

[7]-[15] (Repealed)

[16] Section 192 Conditions of mineral claim

Omit section 192 (1) (a). Insert instead:

- (a) in the case of a mineral claim that is granted over land within a mineral claims district:
 - (i) any special conditions that apply to the land, and
 - (ii) the conditions imposed on the holder of the claim under section 211 as to his or her exercise of any right of way under that section in respect of the claim area, and
 - (iii) the conditions to which the holder of the claim is subject pursuant to any registered access management plan in force in respect of that land, and
 - (iv) such other conditions (not inconsistent with the conditions referred to in subparagraphs (i), (ii) and (iii)) as the mining registrar may impose, and

[17] (Repealed)

[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).
- (7) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.
- (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.
- (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.

[19] Section 218

Omit the section. Insert instead:

218 Certain claims for damages prohibited

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.

[20] (Repealed)

[21] Section 223A

Insert after section 223:

223A Special conditions

- (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.
- (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:
 - (a) the areas in which prospecting operations in respect of an opal prospecting block are prohibited,
 - (b) the nature and extent of prospecting operations that may be carried out in respect of opal prospecting blocks,
 - (c) the levies payable in respect of opal prospecting licences and the purposes for which those levies may be applied,
 - (d) the security deposits to be lodged in respect of the granting of opal prospecting licences,
 - (e) the compensation payable in respect of the carrying out of prospecting operations under opal prospecting licences,
 - (f) the obligations of holders of opal prospecting licences as to the rehabilitation of land on which prospecting operations have been carried out,
 - (g) the program of work to be carried out under an opal prospecting licence,
 - (h) the amount of money to be expended on prospecting,
 - (i) such other matters as the Minister considers appropriate.

[22] Section 225 Map of opal prospecting area to be prepared

Insert "and" after "granted," in section 225 (1) (a) (v).

[23] Section 225 (1) (a) (vi)

Omit the subparagraph.

[24] Section 225 (2) (c)

Omit “granted, or”. Insert instead “granted.”.

[25] Section 225 (2) (d)

Omit the paragraph.

[26] Section 228 Power of mining registrar in relation to applications

Insert after section 228 (2):

(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.

[27] (Repealed)

[28] Section 229

Omit the section. Insert instead:

229 Conditions of licence

An opal prospecting licence is subject to:

- (a) any special conditions that apply, pursuant to section 223A, to the opal prospecting block over which the licence is granted, and
- (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
- (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
- (d) such other conditions (not inconsistent with the conditions referred to in paragraphs (a), (b) and (c)) as the mining registrar may impose.

[29] Section 232 Rights under licence

Insert after section 232 (1):

(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.

[30] (Repealed)

[31] Sections 235C-235E

Insert after section 235B:

235C Rights of way

- (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.
- (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) must accord with the provisions of any registered access management plan applying to the land.
- (3) The holder of the opal prospecting licence:
 - (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 opal prospecting licence.
- (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) 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).
- (7) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.

- (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.
- (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.

235D Opal prospecting area management fund

- (1) For each opal prospecting area there is to be established an area management fund into which are to be paid:
 - (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
 - (b) the proceeds of investment of money in the fund, and
 - (c) such other money as is required or permitted to be paid into the fund.
- (2) Money in any such fund may be used:
 - (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
 - (b) to cover the costs of administering the fund.
- (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.
- (4) A fund established under this section in relation to an opal prospecting area is to be administered by the Director-General.

235E Pending applications

For the purposes of this Act, an application for an opal prospecting licence is pending from the time it is lodged under this Act until the time it is finally disposed of.

[32] Part 10A

Insert after Part 10:

Part 10A Access management plans for small-scale titles

236A Application of Part

- (1) This Part applies to mineral claims and opal prospecting licences (referred to collectively as ***small-scale titles***) with respect to land within an access management area.
- (2) This Part does not require an access management plan in respect of a landholder who is a native title holder if:
 - (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
 - (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.
- (3) This Part does not apply if:
 - (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
 - (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.

236B Declared areas

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.

236C Alternative procedures for making access management plan

An access management plan for land within an access management area:

- (a) may be agreed between a miners' representative and the landholder, or
 - (b) may be determined by the Director-General or the Warden's Court,
- either before or after small-scale titles are granted in relation to the land.

236D Matters for which access management plan to provide

- (1) An access management plan may make provision for or with respect to the following matters:

- (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:
 - (i) access points to the land, and
 - (ii) routes of access across the land, and
 - (iii) the manner in which, and the times at which, rights of access may be exercised,
 - (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:
 - (i) maintaining routes of access, and
 - (ii) preserving the safety of persons and stock, and
 - (iii) avoiding interference with the land management practices being adopted in relation to the land affected by the right of way, and
 - (iv) environmental protection,
 - (c) the manner of resolving any dispute arising in connection with the plan,
 - (d) the manner of varying or replacing the plan,
 - (e) such other matters as the parties to the plan may agree to include in the plan.
- (2) In the event of an inconsistency between:
- (a) a provision of an access management plan, and
 - (b) a provision of this Act, the regulations or a condition of a small-scale title,
- the provision referred to in paragraph (b) prevails.

236E Miners' representative to seek access management plan

- (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.
- (2) The notice of intention to negotiate an access management plan must, in addition to stating that intention, contain:
 - (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

- (b) a description of the mining or prospecting methods intended to be used in that area.
- (3) The miners' representative and the landholder may agree in writing on an access management plan.
- (4) An access management plan so agreed must be lodged with the Director-General for registration.

236F Determination of access management plan by Director-General

- (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:
 - (a) may apply to the Director-General for a determination under this section, and
 - (b) in that event, must cause a copy of the application to be served on the other.
- (2) On receiving such an application, the Director-General may determine an access management plan for the land concerned.
- (3) Before making a determination under this section, the Director-General:
 - (a) must consult with the miners' representative and the landholder concerned, and
 - (b) must give full consideration to any submissions arising from the consultation process.
- (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.
- (5) At any time after receiving an application for determination of an access management plan, the Director-General:
 - (a) may decline to make such a determination, either generally or in relation to any particular matter, and
 - (b) in that event, must cause written notice of that fact to be served on the miners' representative and the landholder.

236G Determination of access management plan by Warden's Court

- (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:

- (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
 - (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.
- (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.
 - (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.
 - (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) 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.
 - (6) Each party to proceedings under this section is to bear his or her own costs in relation to the proceedings.

236H Review of Director-General's determination

- (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 **parties to the determination**).
- (2) An application:
 - (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
 - (b) must be filed in a Warden's Court within 14 days after a copy of the determination was served on the applicant.
- (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.
- (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.

- (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).
- (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.
- (7) Each party to proceedings under this section is to bear his or her own costs in relation to the proceedings.

236I Registration of access management plans

- (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.
- (2) An access management plan determined under section 236F must be registered by the Director-General:
 - (a) as soon as practicable after the expiry of the 14-day period referred to in section 236H (2) (b), or
 - (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.

236J Public notice of access management plans

- (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.
- (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.
- (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.

236K Commencement and operation of access management plan

- (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.

- (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.
- (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.
- (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.
- (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.

236L Replacement of access management plans

- (1) An access management plan may, subject to its provisions, be replaced by a new access management plan with respect to the same land.
- (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.

236M Duration of access management plans

An access management plan does not run with the land and, unless sooner terminated, terminates:

- (a) if a landholder of the land to which it relates ceases to be a landholder of the land, or
- (b) on the death of a landholder of the land to which it relates.

[33] Section 254 Permit to enter land

Omit section 254 (1) and (2). Insert instead:

- (1) Subject to the regulations, the Director-General 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.
- (2) Subject to the regulations, the holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:
 - (a) enter the land to which the permit relates, and

- (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.

[34] (Repealed)

[35] Section 259 Term of permit

Omit section 259 (b). Insert instead:

- (b) in the case of a permit under section 254, 28 days from the date it is granted,

[36] Section 296 Jurisdiction of Wardens' Courts

Insert after section 296 (b):

(b1) any question or dispute arising as to:

- (i) a right of way or right of entry conferred by or under this Act, or
- (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,

[37] (Repealed)

[38] Section 382A Minister to determine certain fees

Insert at the end of section 382A (b):

, and

- (c) the opal prospecting licence fees payable for the purposes of section 228 (2A).

[39]-[41] (Repealed)

[42] Dictionary

Insert in alphabetical order:

access management area means an access management area constituted under Part 10A.

miners' representative, 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.

permit means a permit in force under Division 2 of Part 12.

preserved mining field means a preserved mining field constituted by an order referred to in section 173A (2).

registered access management plan means an access management plan registered under section 236I.

small-scale title means a mineral claim or an opal prospecting licence.

[43] Dictionary, definition of “special conditions”

Omit paragraph (b). Insert instead:

- (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.