

## Legislative Council Hansard – 08 August 2017 – Proof

**COAL MINE SUBSIDENCE COMPENSATION BILL 2017***Second Reading***Mr SCOT MacDONALD ( 21:02 ):** On behalf of the Hon. Don Harwin: I move:

That the bill be read a second time.

I seek leave to incorporate the second reading speech in Hansard.

**Leave granted.**

## Introduction

The Government is pleased to introduce the Coal Mine Subsidence Compensation bill 2017 to the House.

## The 1961 Act

The 1961 Act was the creation of the Heffron Government in 1961. The bill was introduced into this place on 15 March of that year.

The 1961 Act, as it became, achieved two major reforms.

Firstly, it introduced a mine subsidence compensation fund that was financed by the coal industry and not by property owners, as under the original scheme which dated back to the 1920s. The intention was to ensure that property owners whose properties were damaged by subsidence from historic, legacy coal mining would be compensated.

Secondly, the fund provided compensation payments for mine subsidence damage for properties located in any part of the State, as opposed to just the Newcastle area under the original scheme.

The 1961 Act moved accountability for mine subsidence impacts to mining operators rather than property owners. The Berejiklian Government's reforms to the Mine Subsidence Compensation Act 1961 build on that.

The main purpose of the 1961 Act was to finance mine subsidence compensation through a fund by imposing a levy on mining operators and to provide payments to property owners affected by subsidence damage regardless of where their property was situated. The Fund was called the Mine Subsidence Compensation Fund (the Fund).

Before 1961, all property owners in Merewether and the greater part of the west ward of Newcastle were required to insure their properties against the risk of damage by subsidence, even if their properties were not being, and probably never would be, undermined.

The 1961 Act recognised the injustice to property owners whose properties would not be affected by subsidence damage. Property owners would essentially be paying an annual premium against a risk that was unlikely to even occur. The 1961 Act addressed this issue.

The 1961 Act also recognised the need for protection against subsidence damage beyond properties in Merewether and Newcastle. With impacts from historic, legacy coal mining becoming apparent across other areas in the State, the risk of subsidence had also extended accordingly. Therefore the 1961 Act provided that compensation arising from subsidence in any part of the State could be claimed from the Fund to ensure fairness and certainty for all property owners.

The Fund consisted of levy contributions from mining operators. A board was set up to administer the Fund, deal with and determine claims and pay compensation. The bill before the House today will build on and strengthen the 1961 Act, and introduce a number of significant measures to ensure mining operators that are causing subsidence damage are accountable for those impacts, both financially and socially.

#### Background to the review

As the House will be aware, a review of the 1961 Act was undertaken and a report provided to government late last year.

As part of the review, submissions were invited from interested parties on the review's terms of reference.

Submissions were received from past and current claimants, community groups representing residents impacted by subsidence, local councils, the development industry and the NSW Minerals Council. Among issues raised, were concerns that the Mine Subsidence Board was not determining suitable compensation fairly or processing claims efficiently, and that a better balance was needed between the interests of mining operators and property owners.

#### Effectiveness of current legislation and levy model

The key finding of the review was that the mine subsidence compensation framework was outdated, and was not being administered effectively by the Mine Subsidence Board.

The legislation had not been subject to a comprehensive review in over 40 years. While the intention of the 1961 Act was to cover costs of property damage caused by legacy mining where liability could not be apportioned to mining operators, the recent claims data shows that approximately 90 per cent of claims for compensation relate to damage from active mines currently in operation, rather than historic, legacy coal mines.

This is a clear disconnect between the original intent of the legislation and the outcome of the legislative framework in practice.

There is also a high level of industry cross subsidisation. Although all active open cut and underground coal operations contribute to the Fund, only a small number of underground coal mining operators are actually causing the majority of subsidence damage.

This inequitable regime provides an unfair competitive advantage to certain mines.

#### Poor administration of the system

In addition to these findings, there was also a clear opportunity to improve the way the Mine Subsidence Board and its officers administered the system.

In October 2013, the NSW Independent Commission Against Corruption commenced an investigation into the Mine Subsidence Board.

In early 2016 the Commission delivered its final report, finding evidence of serious fraud and corruption within the organisation. The Commission made recommendations on changes to financial management, organisational processes, procurement practices and governance arrangements.

Furthermore, there was a high level of community dissatisfaction with the Mine Subsidence Board and, in particular, with the Board's ability to process claims efficiently and treat claimants fairly.

For example, there was a large backlog of claims when the organisation came into the Finance, Services and Property portfolio from 1 July 2015. There were in excess of 300 outstanding claims awaiting determination, with some claims remaining unresolved for over 10 years.

#### The need to improve the mine subsidence compensation framework

Overall, the review found that the 1961 Act is no longer fit for purpose and that there is a clear need to improve the mine subsidence compensation framework to restore the confidence of the community.

The Government acknowledges the stressful experience property owners go through when their homes are affected by mine subsidence, through no fault of their own. The Government also recognises that any changes to the system will impact the coal mining industry.

However, the Government is committed to ensuring that the small number of mining operators that are causing subsidence damage are made directly accountable for these impacts, both financially and socially.

With this in mind, the reforms provide comprehensive improvements to the mine subsidence compensation process and fairer outcomes for property owners and the coal mining industry generally.

The bill, together with the package of guidelines and regulatory change which will underpin this legislation, strikes the balance between coal mine operators' and claimants' interests. It ensures an increased level of colliery involvement in the claims management process, so that collieries better understand their subsidence impacts and costs, while also ensuring claimants receive faster and fairer compensation.

Coal mining is a major contributor to the economic development of NSW and investment in the State's mining industry is encouraged.

Continued development of the State's coal resources, however, needs to take into account the impacts of subsidence damage on the people of NSW.

We are committed to improving government services, particularly in light of our growing population in regional areas, and this bill will contribute to delivering this commitment.

Work is already underway to give the utmost assurance that property owners affected by subsidence will be well-supported by Government.

The Mine Subsidence Board has been repositioned as Subsidence Advisory NSW and integrated into the Department of Finance, Services and Innovation.

Subsidence Advisory NSW is now undertaking a stronger case management role to assist property owners affected by subsidence.

All claims will be allocated to a case advisor, tasked with monitoring the assessment of claims and facilitating collieries' participation in the claims management process.

The case advisor will facilitate discussions between the colliery and the claimant to resolve compensation claims; ensuring mine operators understand the full impacts of their operations, including the emotional hardship that can accompany property damage from mine subsidence.

Since August last year, Subsidence Advisory's strengthened role in case management has seen a significant reduction in the backlog of claims. From August 2016 to present, the case management team has resolved over 120 claims, compared to 40 claims per annum on average in previous years. These results have been achieved through taking a more empathetic approach to claims management, as well as focusing on driving outcomes for people, so that we can help them move on with their lives. These results are underpinning the development of a new claims management model that puts claimants' needs at the centre.

To ensure the system is more accessible for claimants, an online portal is being developed so that property owners can lodge their claims in a central government-managed location, with the ability to manage claims online and streamline access to claims documentation and case advisory services.

To restore transparency and independence in decision making, all claims will now be assessed by technical experts from a panel of independent assessors. SA NSW will manage this panel and oversee inspections, assessments and claim evaluation reports.

This new claims management process prioritises and supports those communities impacted by mine subsidence, and places the claimant at the centre of the compensation process.

The former Customer Service Commissioner, Mr Michael Pratt AM, has reviewed and endorsed the claims process.

The Government thanks Mr Pratt for the work he has done to review the process from the citizen's perspective to ensure the claimant experience is fair and easy to navigate.

There are further improvements to be made. This package of reforms commits us to strengthening the 1961 Act to provide advocacy and support to claimants at every step of the process, and a fairer levy framework which will enable SA NSW to perform case advisory functions and become a more effective regulator of development in mine subsidence districts.

In order to deliver on these objectives, the Government is acting decisively in creating a new Coal Mine Subsidence Compensation Act.

Legislative change

1) The first change is to make mine operators directly liable for subsidence damage caused by their operations

Currently, mine operators pay a levy towards the Mine subsidence compensation fund which effectively absolves them of any further liability.

The proposed reforms will require mine operators to determine and pay claims for compensation in accordance with independent assessments of damage and costs via a panel of technical assessors.

This will provide mine operators with a direct financial incentive to reduce their future subsidence impacts on communities to the greatest extent possible.

This will also ensure operators are not only financially accountable, but also understand the full impacts of their operations including the emotional hardship that can accompany property damage from subsidence.

The proposed changes also provide a more consistent impact mitigation model across the mining industry, aligning the mine subsidence compensation system with how other mining impacts such as blasting, noise and dust are directly compensated.

Mine operators will be financially accountable for their own subsidence impacts just as they are for other mining impacts.

Overall, this means there will be an increase in mine operator involvement in the claims management process. Government sees this as an opportunity for mine operators to strengthen their partnership with their local communities.

It is important to note that government will continue to administer all claims, regardless of whether they are caused by active or non-active mines, and to provide a dedicated case advisor for each claim. Mine operators will be required to be involved at key stages of the claims process, and to provide compensation in accordance with independent technical assessments.

2) The second change I announce today is that the Coal Mine Subsidence Compensation levy and Fund will be reduced to primarily fund compensation claims arising from non-active mines

All mine operators will continue to contribute to the Fund, but it will be at a significantly reduced rate to mainly cover claims arising from non-active mines.

This returns the legislation to its original intent.

The Fund will operate on a base levy scenario, meaning the levy will only be payable when the Fund is below a specific base threshold, minimising the financial burden on collieries as much as possible.

Importantly, the Government will continue to administer the levy and draw on the Fund to provide compensation to property owners affected by subsidence damage from non-active coal mines or mines where liability cannot be apportioned, but with improved processing timeframes and service guarantees.

The Fund will also be used to address the backlog of claims and to meet existing claims arising from damage from active mines up until the commencement of the new legislation. The cost of transitional arrangements will also be met from the Fund in the first five years of the legislation commencing.

3) As referenced earlier, the third change in this reform package is that claims will be assessed by an independent assessor from a panel of technical experts

To ensure transparency and independence, the claimant will select an independent assessor from the panel of technical assessors to undertake an investigation to assess the damages attributable to mine subsidence as indicated in the claim.

The independent technical assessor will typically be a geotechnical or structural engineer with an understanding of mine subsidence, or a quantity surveyor depending on the nature of the damage.

The assessor will prepare a Claim Evaluation Report outlining the damage, supporting data, scope of works to repair the damage and cost estimate for repairs. Mine operators will then be required to compensate property owners in accordance with these reports.

Government will maintain and support the panel of technical assessors to provide expert, objective and consistent assessment of all claims, providing both claimants and mine operators with a straightforward process to assess claims.

4) The fourth change again goes to the issue of independence. A robust dispute resolution process will be introduced, allowing claimants and mine operators to seek an independent review, without having to resort to expensive litigation

In the interests of transparency and natural justice, the Government will change the Act to allow claimants and mine operators to seek an independent review by the Secretary of the Department of Finance, Services and Innovation. The Secretary is able to delegate this determination role to an independent body or expert panel.

Claimants will now be able to request reviews of the mine operator's determination:

- as to whether damage has arisen from subsidence;
- the scope of repairs or amount of compensation; or
- the means of compensation.

Similarly, when claims are lodged in relation to a mine operators' operation, mine operators may request the Secretary to review the determination that the damage arises from subsidence caused by their mine.

This new independent, no-cost review mechanism provides an alternative to existing onerous and costly litigation options and will improve transparency and fairness in decision making.

The right to appeal against the decision of the Secretary to the Land and Environment Court remains where claimants and mine operators are dissatisfied after the independent review process.

5) The fifth legislative change will ensure that compliance with the Act can be considered when determining whether a mine operator is a fit and proper person under the Mining Act 1992

Compliance with the new Coal Mine Subsidence Compensation Act (the Act) will be taken into account when applying the "fit and proper person" test under the Mining Act 1992.

This means a mine operator's record of compliance with the Act, and their performance in upholding community protections will be considered to determine whether the mine operator is a fit and proper person. A determination that an operator is not a fit and proper person may result in a decision to refuse to grant, renew, cancel or transfer a mining right, suspend operations under a mining right, or restrict operations through imposition or variation of conditions. This provides a strong incentive for operators to meet their obligations under this Act and treat claimants fairly.

Through this change, Government is able to undertake compliance and enforcement activities in relation to mine subsidence compensation by utilising the powers under the Mining Act 1992 where necessary.

6) In the interests of efficiency, the Government will improve and streamline development regulation in mine subsidence districts

Development regulation will now be risk-based, ensuring mine subsidence districts align with high-risk areas for subsidence related damage, while development approval processes in low risk areas will be streamlined.

This will refine the approval process and design requirements for development, reducing costs to property owners and providing certainty to mine operators that future liability is being proactively mitigated.

Importantly, protections will be afforded to property owners, where through no fault of their own, their home is damaged by subsidence and they were unaware that their home was built in contravention of the requirements in a mine subsidence district.

In certain circumstances, property owners may lodge subsidence compensation claims as per normal, despite the building being an unlawful development, and will follow the standard assessment process to determine compensation.

Property owners and conveyancers can be assured that this avenue will be available for such claims to be lodged.

7) The Government will require compliance with approved procedures for consistent processes in claims management

Underpinning the bill, a series of approved procedures will provide details on the claims management process, compensation eligibility and dispute resolution.

The legislation requires mine operators to comply with the approved procedures when dealing with claimants, protecting property owners by ensuring all mine operators are compensating claimants consistently and fairly.

To ensure claimants are treated fairly, mine operators will be required to deal with claims in accordance with this Act and approved procedures or risk compliance and enforcement action.

This Act provides the Government with compliance and enforcement tools to allow it to effectively oversee and enforce compliance with the Act and approved procedures. Authorised officers will be appointed and tasked with monitoring compliance with the Act and will have the powers to carry out necessary inspections, audits and inquiries.

8) The Government will legislate to disband the Mine Subsidence Board

The Mine Subsidence Board will be retained for an initial 12 month period from the commencement of the legislation before it is disbanded.

This will allow the Board to oversee the transition and ensure there is continued industry and community visibility over the Fund.

After the 12 month period, the Board will be disbanded in line with government's commitment to actively reduce the number of NSW boards and committees as part of the 'eliminating duplication' initiative, making government processes leaner and more efficient.

Regulatory burdens will be reduced and lines of accountability will be strengthened to improve the delivery of services to the people of NSW.

An ongoing advisory group will be established to ensure industry continues to have visibility on how the Fund is managed.

Subsidence Advisory NSW will manage all claims and assist property owners who are affected by subsidence.

9) The Government will legislate to include transitional arrangements for those coal mines deemed worse off under the reforms

Transitional arrangements will be negotiated with mine operators that are adversely affected by the reforms and deemed worse off.

They are deemed to be worse off as their operations are causing significant subsidence damage to homes and infrastructure, and compensation costs will now be met by these coal mines.

This means for these mines, the costs will outweigh the savings accruing from the reduced levy.

Government is committed to supporting industry throughout this time of change, which is why government will draw upon the Fund to financially support these mines over a five year transitional period.

The transitional period will allow mine operators adversely affected to prepare and put in place the necessary financial and administrative arrangements for the new subsidence compensation framework and minimise disruption to their operations.

Conclusion

The bill before the House will better balance mine operator involvement in the claims management process so that mine operators better understand their own subsidence impacts and costs, while also ensuring claimants are treated fairly and respectfully.

The package recognises the significant personal impact mine subsidence can have and provides for a fairer and more transparent compensation framework for property owners.

I commend the bill to the House.