



New South Wales

Coal Mine Subsidence Compensation Bill 2017

Explanatory note

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

Overview of Bill

The object of this Bill is to make provision for the payment of compensation for damage caused by subsidence arising from coal mining.

The Bill repeals and replaces the *Mine Subsidence Compensation Act 1961* which contained a statutory scheme of compensation for coal mine subsidence and enacts a new scheme. The new scheme provides for the following:

- (a) proprietors of active coal mines are liable to pay compensation for damage arising from subsidence caused by their coal mines and for related preventative or mitigative expenses,
- (b) the Mine Subsidence Board is to be abolished after a transitional period and is to be replaced by Subsidence Advisory NSW which is established under the *Government Sector Employment Act 2013* as a Public Service agency,
- (c) the Mine Subsidence Compensation Fund, to be renamed the Coal Mine Subsidence Compensation Fund (the **Fund**), will continue in existence and continue to be funded by levies paid by proprietors of active coal mines,
- (d) the Chief Executive of Subsidence Advisory NSW is liable to pay compensation from the Fund for damage arising from subsidence caused by non-active coal mines and for related preventative or mitigative expenses,
- (e) a process for making claims for compensation through Subsidence Advisory NSW is established and provision is made for reviews of, and appeals from, determinations relating to those claims,

- (f) provisions of the *Mine Subsidence Compensation Act 1961* relating to approval of development within mine subsidence districts, the enforcement of the Act and functions and powers of the Mine Subsidence Board (now to be conferred on the Chief Executive of Subsidence Advisory NSW) are re-enacted and modified.

Outline of provisions

Part 1 Preliminary

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 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act, including *active coal mine*, *non-active coal mine* and *subsidence*.

Clause 5 provides that the proposed Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2 Compensation for mine subsidence

Clause 6 provides for a statutory entitlement to compensation in relation to subsidence in accordance with the proposed Act.

Clause 7 provides that a person is entitled to the following compensation:

- (a) compensation for any damage to improvements or goods owned by the person that arises from subsidence, unless the subsidence is due to operations carried on by the owner of the improvements or goods or an affiliate of the owner,
- (b) compensation to meet the reasonable and necessary expense incurred or to be incurred as a result of such damage,
- (c) in relation to a building or works (or any part of a building or works) that are leased by the owner to another person—reasonable compensation for the rent that would have been paid or payable for any period during which the building or works are uninhabitable, under repair or in the course of construction because of damage arising from subsidence,
- (d) in relation to a building or works (or any part of a building or works) that are occupied by the owner—reasonable compensation for accommodation expenses of the owner (including relocation expenses and rent) for any period during which the building or works are uninhabitable, under repair or in the course of construction because of damage arising from subsidence.

A person is also entitled to the following compensation:

- (a) compensation for preventative or mitigative expenses (being expenses incurred or proposed by or on behalf of the owner of improvements or goods in preventing or mitigating damage to those improvements or goods arising from subsidence),
- (b) compensation for damage incurred as a result of the exercise by the Chief Executive of Subsidence Advisory NSW (the *Chief Executive*) of the Chief Executive's functions relating to the prevention or mitigation of damage from subsidence.

A successor in title to an original owner of an improvement or goods is entitled to compensation under the proposed Act, as if the successor were the original owner, in relation to subsidence and damage that occurred before the transfer of ownership of the improvement or goods.

Clause 8 provides that compensation under the proposed Act is to be paid:

- (a) by the proprietor of the coal mine that caused the subsidence—in relation to compensation arising from an active coal mine, and

- (b) by the Chief Executive from the Coal Mine Subsidence Compensation Fund (the *Fund*)—in relation to compensation arising from a non-active coal mine.

Clause 9 sets out circumstances where compensation is not payable or is to be reduced.

Clause 10 limits certain claims for compensation arising out of actions to prevent or mitigate damage.

Clause 11 contains provisions dealing with the making of claims for compensation under the proposed Act. A person may apply for compensation by lodging a claim through the website of Subsidence Advisory NSW in the manner and form approved by the Chief Executive. The provision sets out the period within which certain types of claims must be made.

Clause 12 provides that the Chief Executive is to:

- (a) forward each claim relating to compensation arising from an active coal mine to the proprietor of the coal mine, and
- (b) determine each other claim for compensation in accordance with the proposed Act.

The proprietor of a coal mine to whom a claim has been forwarded is to determine the claim for compensation in accordance with the proposed Act.

The proprietor of the coal mine to whom a claim has been forwarded may request the Secretary of the Department of Finance, Services and Innovation (the *Secretary*) to review the determination of the Chief Executive that the claim relates to compensation arising from the proprietor's active coal mine.

Clause 13 provides that claims for compensation are to be determined in accordance with the approved procedures.

Clause 14 provides that the Chief Executive may approve procedures for the determination of claims under the proposed Act. The approved procedures may deal with the following:

- (a) the determination of whether damage is caused by an active or non-active coal mine,
- (b) the determination of claims relating to damage caused by or likely to be caused by subsidence arising from an active coal mine, with the agreement of the claimant, by the proprietor of the coal mine:
- (i) purchasing the land, improvements or goods concerned, or
 - (ii) carrying out or causing to be carried out works to restore the damaged improvements or goods or works to prevent or mitigate damage to improvements or goods,
- (c) processes for the independent assessment of claims, including the selection of independent assessors,
- (d) costs, fees and charges (or the prohibition of costs, fees and charges) in connection with the determination of claims under the proposed Act,
- (e) any other matters prescribed by regulations.

Clause 15 provides for the review by the Secretary of determinations of claims for compensation. A claimant whose claim for compensation is wholly or partly disallowed (whether by the Chief Executive or by the proprietor of a coal mine) may request that the Secretary review the decision. A request must be made within 3 months of the decision to disallow the claim. The Secretary may refuse to review a claim in relation to infrastructure.

Subject to proposed section 16 (Appeals), a proprietor of a coal mine must give effect to a decision of the Secretary under the proposed section. A failure to give effect to the decision is an offence carrying a maximum penalty of 500 penalty units (in the case of an individual) and 1,000 penalty units (in the case of a corporation). See also **Schedule 2.3 [3]** to the proposed Act which amends section 380A of the *Mining Act 1992* to provide that decision-makers may take contraventions of the proposed Act into consideration in determining whether a person is a fit and proper person under that Act.

Clause 16 provides for appeals to the Land and Environment Court. Proposed section 16 (1) provides that if the Secretary has refused to review a claim under the proposed Act for

compensation in relation to infrastructure, the person claiming compensation may appeal to the Land and Environment Court against a determination of the claim. Proposed section 16 (2) provides that a proprietor of a coal mine or a person claiming compensation under the proposed Act may appeal to the Land and Environment Court against the decision of the Secretary under proposed section 15:

- (a) as to whether damage has arisen from subsidence, or
- (b) as to the amount of the compensation, or
- (c) to reject a claim because of a matter specified in proposed section 10 (Limitation on claims arising out of actions to prevent or mitigate damage).

Clause 17 provides that the proposed Act applies despite any contract or agreement to the contrary.

Clause 18 deals with failures of proprietors of coal mines to comply with the proposed Act. If, in the opinion of the Chief Executive, a proprietor of a coal mine fails to respond to a claim in accordance with the approved procedures, the Chief Executive may respond to the claim and deal with the claim as if the Chief Executive were the proprietor of the coal mine. In exercising this function, the Chief Executive may:

- (a) make a payment to the claimant from the Fund, and
- (b) recover the amount of the payment from the proprietor as a debt due to the Crown.

If, in the opinion of the Chief Executive, a proprietor of a coal mine fails to make a payment to a claimant as required by the proposed Act, the Chief Executive:

- (a) is to make the payment to the claimant from the Fund, and
- (b) may recover the amount of the payment from the proprietor as a debt due to the Crown.

Before taking action under the proposed section, the Chief Executive must:

- (a) give the proprietor of the coal mine concerned at least 21 days notice of the proposed action, and
- (b) invite the proprietor to make submissions regarding that proposed action, and
- (c) consider any submission received from the proprietor within that 21-day period.

Clause 19 provides that a proprietor of a coal mine who deals with a claim for compensation in connection with subsidence under the proposed Act and who complies with:

- (a) the conditions of the relevant authority under the *Mining Act 1992*, and
- (b) the provisions of the proposed Act relating to compensation,

is not liable under any other Act or law in connection with that claim in connection with that subsidence.

Part 3 Development within mine subsidence districts

Clause 20 enables the regulations to declare an area to be a mine subsidence district.

Clause 21 prohibits certain development within mine subsidence districts without approval. Proposed section 21 (1) provides that a person must not carry out work, or cause work to be done, in connection with the erection or alteration of an improvement within a mine subsidence district, except in accordance with the approval of the Chief Executive. Proposed section 21 (2) provides that a person must not subdivide land within a mine subsidence district, or cause such land to be subdivided, except in accordance with the approval of the Chief Executive. Contravention of the provisions is an offence carrying a maximum penalty of 100 penalty units (in the case of an individual) and 500 penalty units (in the case of a corporation).

Clause 22 deals with applications for, and the grant of, approvals for development within mine subsidence districts.

Clause 23 deals with the consequences of improvements being erected or altered or subdivisions being made in contravention of the proposed Part. In general:

- (a) the contravention does not invalidate any instrument intended to affect or evidence the title to any land, but a purchaser may cancel any contract for sale and recover any deposit or instalment of purchase money paid together with reasonable costs and expenses (if the contravention relates to the land purchased), and
- (b) no claim for compensation under Part 2 of the proposed Act is to be dealt with or any payment made under the proposed Act in respect of the following:
 - (i) any contravening improvement, any goods fixed or attached to a contravening improvement or any goods damaged as a consequence of damage to a contravening improvement,
 - (ii) any improvement on land within a contravening subdivision that was erected or altered after the land was subdivided,
 - (iii) any goods on land within a contravening subdivision for the purpose of erecting or altering an improvement.

However, the Chief Executive may determine that a claim may be dealt with or a payment made under the proposed Act in relation to the following:

- (a) an improvement that is a residential building that was altered or erected more than 15 years before the claim was made, if the Chief Executive is of the opinion that:
 - (i) the failure to obtain the approval was not the fault of the claimant, or
 - (ii) exceptional circumstances exist,
- (b) an improvement that is not a residential building, if the Chief Executive is of the opinion that exceptional circumstances exist.

Clause 24 provides for the grant of exemptions from the proposed Part by the Chief Executive.

Clause 25 provides that the regulations may exempt, or provide for the exemption, from the operation of any of the provisions of the proposed Part any specified work or subdivision or class of work or subdivision or any specified person or class of persons, and subject to such conditions, as may be specified in the regulations.

Part 4 Miscellaneous functions of Chief Executive

Clause 26 contains provisions enabling the Chief Executive to purchase damaged improvements and effect remedial works.

Clause 27 enables the Chief Executive to take certain emergency, urgent or temporary actions or direct that they be taken.

Clause 28 provides for the review by the Secretary of certain temporary action directions under proposed section 27.

Clause 29 provides that the Chief Executive may expend money from the Fund for works to prevent or mitigate damage to improvements or goods that the Chief Executive anticipates would occur (in the absence of the works) by reason of subsidence if the Chief Executive is satisfied that the expenditure will reduce the total prospective liability of the Fund.

Clause 30 provides that where a person proposes to erect an improvement on vacant land that, in the opinion of the Chief Executive, has been, or is likely to be, adversely affected by subsidence, the Chief Executive may (but is not required to):

- (a) acquire that land or any estate or interest in that land, or
- (b) carry out, or cause to be carried out, on that land such works as would prevent or mitigate the effects of subsidence.

Clause 31 empowers the Chief Executive to provide advice on matters relating to mine subsidence or the development of land that may be subject to subsidence, whether or not the land concerned is within a mine subsidence district.

Part 5 Financial provisions

Clause 32 provides for the establishment of the Coal Mine Subsidence Compensation Fund and specifies the amounts which are to be paid into and out of the Fund. The Chief Executive is to manage and control the Fund in accordance with the proposed Act and the regulations.

Clause 33 provides for the imposition of rates, levies and contributions on coal mines for the purposes of the proposed Act. All amounts of rates, levies and contributions are to be paid into the Fund. The Chief Executive may make and levy, in accordance with the regulations, such types and amounts of rates, levies and contributions on coal mines as are prescribed by, or determined in accordance with, the regulations. The regulations may deal with the making and levying of rates, levies and contributions, including in relation to the following:

- (a) providing for the period within which a rate, levy or contribution is payable,
- (b) describing the basis or bases on which any particular type of rate, levy or contribution may be imposed,
- (c) describing the coal mine or other land in respect of which a particular type of rate, levy or contribution is payable.

Clause 34 deals with the recovery of amounts by the Chief Executive where improvements or goods are damaged by subsidence caused by unlawful mining operations.

Part 6 Enforcement of Act

Division 1 Authorised officers

Clause 35 sets out definitions for the purposes of the proposed Part.

Clause 36 provides for the appointment of authorised officers by the Chief Executive.

Clause 37 deals with the authority of authorised officers.

Clause 38 provides that an authorised officer (other than a police officer) must not exercise a function conferred by or under the proposed Act unless an identity card has been issued to the authorised officer by the Chief Executive.

Clause 39 provides that an authorised officer who is exercising, or about to exercise, a function under the proposed Act must:

- (a) carry his or her identity card at all times when exercising a power under the proposed Act to enter premises or a vehicle or a power that is exercisable after entering premises or a vehicle, and
- (b) produce his or her identity card if requested to do so by a person in relation to whom the officer is exercising, or about to exercise, the power.

Clause 40 deals with the functions of authorised officers.

Clause 41 provides that the Chief Executive may cause inspections of premises to be carried out in relation to subsidence (including inspections of premises before activities at a coal mine commence to ascertain pre-subsidence information). Inspections under the proposed section may be carried out at the intervals that the Chief Executive thinks fit.

Division 2 Powers of authorised officers

Clause 42 deals with the power of an authorised officer to enter premises with the consent of the occupier of the premises.

Clause 43 deals with the power of an authorised officer to enter premises (other than premises or any part of premises used as a residence) without the consent of the occupier of the premises.

Clause 44 sets out the powers that an authorised officer who enters premises under the proposed Part may exercise.

Clause 45 deals with the production of documents.

Clause 46 deals with the retention of documents and other material produced or seized under the proposed Part.

Clause 47 provides that an authorised officer may require a person who was a party to the creation of a document to provide any explanation that the person is able to provide of a matter relating to the creation of the document or to which the document relates.

Clause 48 contains provisions dealing with requirements to provide documents or information or answer questions.

Division 3 Offences

Clause 49 contains a number of offences relating to inspections.

Division 4 Prevention notices

Clause 50 provides that if a person is carrying out work without an approval required under proposed Part 3, or carries out work that is not in accordance with such an approval, the Chief Executive may, by notice in writing given to the person, direct the person to cease carrying out that work until the necessary approval is obtained or unless it conforms with the approval. A person who contravenes the notice is guilty of an offence that carries a maximum penalty of 20 penalty units.

The Chief Executive may bring proceedings in the Land and Environment Court for an order to restrain the carrying out of work in contravention of any such notice.

If the Land and Environment Court is satisfied that the notice will be contravened unless restrained by order of the Court, it may make such order as it thinks fit to restrain the contravention.

Part 7 Miscellaneous

Clause 51 enables the Governor to make regulations for the purposes of the proposed Act. Specifically, the regulations may make provision for or with respect to the following:

- (a) fees and charges in connection with the administration of the proposed Act,
- (b) data and reports to be provided by proprietors of coal mines to the Chief Executive regarding ground movement and subsidence management (including requirements for monitoring to be conducted),
- (c) requiring proprietors of coal mines to conduct inspections of land or premises that may be affected by subsidence from future coal mining activities before those activities commence to ascertain pre-subsidence information.

Clause 52 deals with delegations by the Secretary and the Chief Executive.

Clause 53 deals with the personal liability of the Secretary, the Chief Executive and persons acting under their direction when acting in good faith for the purpose of exercising a function under the proposed Act.

Clause 54 deals with the exchange of information between the Chief Executive and other relevant agencies.

Clause 55 deals with criminal proceedings for offences under the proposed Act or the regulations.

Clause 56 sets out the time for commencement of proceedings for offences under the proposed Act or the regulations.

Clause 57 provides for the issue of penalty notices in relation to certain offences under the proposed Act or the regulations.

Clause 58 deals with the service of documents.

Clause 59 provides for the review of the proposed Act in 5 years.

Clause 60 repeals the *Mine Subsidence Compensation Act 1961*, the *Mine Subsidence Compensation Amendment Act 2014* and the *Mine Subsidence Compensation Regulation 2012*.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Acts

Schedule 2 amends the Acts specified in the proposed Schedule. **Schedule 2.1** amends the *Government Sector Employment Act 2013* to establish Subsidence Advisory NSW as a Public Service agency. **Schedule 2.2, 2.3 [1] and [2] and 2.4** make consequential amendments.