

**MINE SUBSIDENCE COMPENSATION (AMENDMENT) ACT
1989 No. 154**

NEW SOUTH WALES

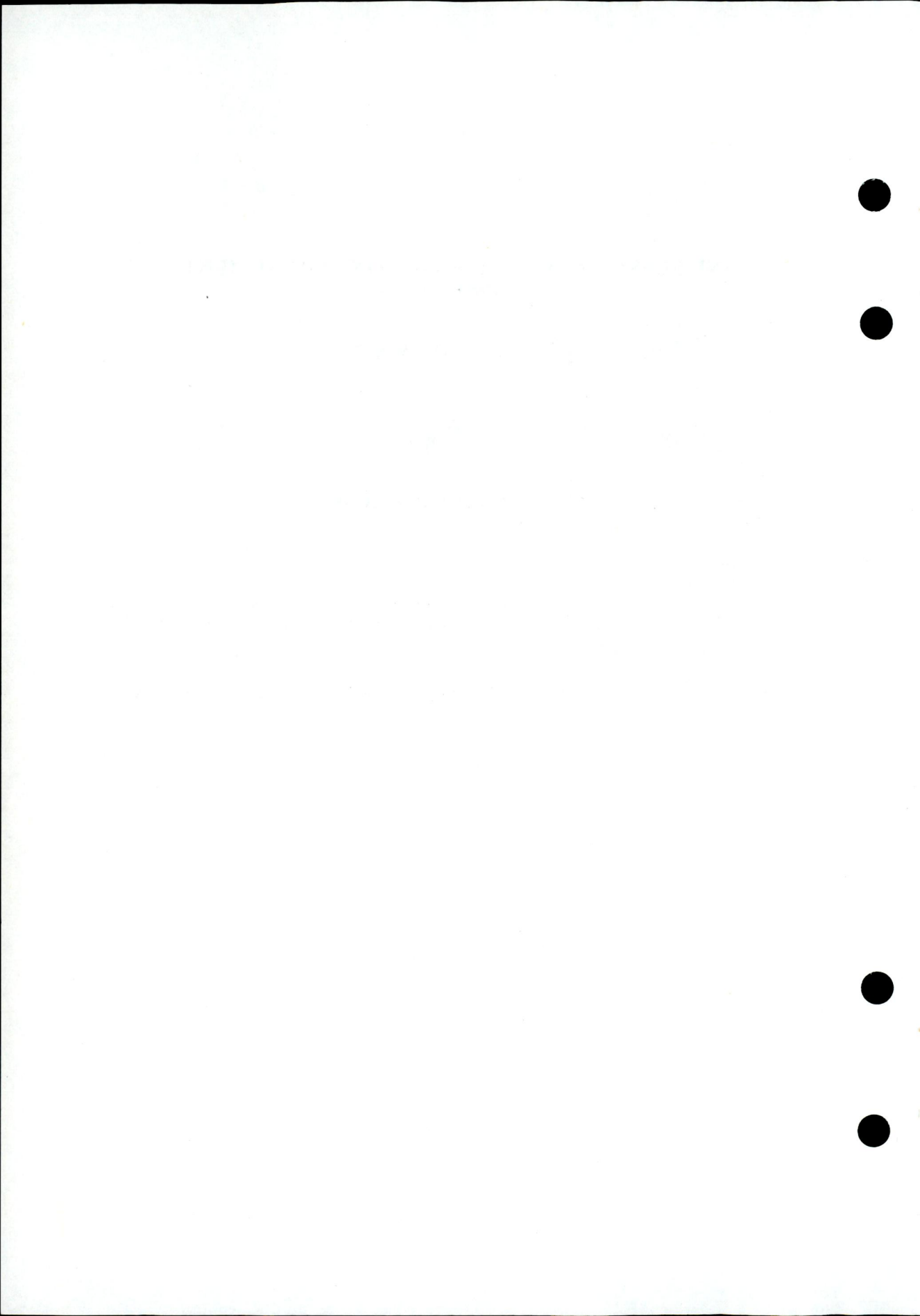


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ACT 1961

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF LAND AND
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**MINE SUBSIDENCE COMPENSATION (AMENDMENT) ACT
1989 No. 154**

NEW SOUTH WALES



Act No. 154, 1989

An Act to amend the Mine Subsidence Compensation Act 1961 with respect to rights of appeal, the meaning of subsidence, the control of unauthorised work and in other respects; and to amend the Land and Environment Court Act 1979. [Assented to 8 December 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Mine Subsidence Compensation (Amendment) Act 1989.

Commencement

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

Amendment of Mine Subsidence Compensation Act 1961 No. 22

3. The Mine Subsidence Compensation Act 1961 is amended as set out in Schedule 1.

Consequential amendment of Land and Environment Court Act 1979 No. 204

4. The Land and Environment Court Act 1979 is amended as set out in Schedule 2.

**SCHEDULE 1 - AMENDMENT OF MINE SUBSIDENCE
COMPENSATION ACT 1961**

(Sec. 3)

(1) Section 4 (**Definitions**):

Omit the definition of "Subsidence", insert instead:

"Subsidence" means subsidence due to:

- (a) the extraction of coal or shale; or
- (b) the prospecting for coal or shale carried out within a colliery holding by the proprietor of the holding,

and includes all vibrations or other movements of the ground related to any such extraction or prospecting (whether or not the movements result in actual subsidence).

SCHEDULE 1 - AMENDMENT OF MINE SUBSIDENCE
COMPENSATION ACT 1961 - *continued*

- (2) Section 5 (**Appointment and constitution of the Board**):
- (a) Section 5 (2) (a):
Omit "Secretary, Department of Mineral Resources", insert instead "Director- General, Department of Minerals and Energy".
 - (b) Section 5 (2) (c) (ii):
Omit "Environment and".
 - (c) Section 5 (3):
Omit "Public Service Act 1979", insert instead "Public Sector Management Act 1988".
- (3) Section 12 (**Claims for damage arising out of subsidence**):
Omit section 12 (3) and (4).
- (4) Section 12A (**Claims arising out of actions to prevent or mitigate damage**):
- (a) Section 12A (3):
Omit ", (4)".
 - (b) Section 12A (4):
Omit the subsection.
- (5) Section 12B (**Appeals**):
After section 12A, insert:
- Appeals**
- 12B. A person claiming compensation under section 12 or 12A may appeal to the Land and Environment Court against the decision of the Board:
- (a) as to whether damage has arisen from subsidence or could reasonably have been anticipated; or
 - (b) as to the amount of the payment from the Fund.

SCHEDULE 1 - AMENDMENT OF MINE SUBSIDENCE
COMPENSATION ACT 1961 - *continued*

- (6) Section 13 (**Purchase of damaged improvements and effecting of remedial works by the Board**):

After section 13 (1B), insert:

(1C) The Board may, in connection with any purchase under subsection (1), agree to increase the purchase price determined under that subsection by the amount of the reasonable incidental expenses incurred by the owner in connection with, or resulting from, the sale of the property concerned to the Board.

- (7) Section 13C:

After section 13B, insert:

Vacant land whose development affected by subsidence

13C. If, in the opinion of the Board, the proposed erection of an improvement on vacant land has been adversely affected by subsidence or the likelihood of subsidence, the Board 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.

- (8) Section 15 (**Mine Subsidence Districts**):

Section 15 (5) (b):

After "subdivision", insert ", unless a certificate is issued under section 15B (3A) in respect of the improvement or land".

- (9) Section 15B (**Certificates of compliance**):

After section 15B (3), insert:

(3A) If the Board is satisfied that:

- (a) an improvement or a subdivision of land referred to in an application under this section would have met

SCHEDULE 1 - AMENDMENT OF MINE SUBSIDENCE
COMPENSATION ACT 1961 - *continued*

the requirements of subsection (3) had the Board's approval been obtained; and

(b) it is appropriate having regard to the circumstances of the case to do so,

the Board may issue a certificate under this section in respect of the improvement or land.

(10) Section 15D:

After section 15C, insert:

Prevention of unauthorised work

15D. (1) If a person is carrying out work without an approval of the Board required under section 15 or which is not in conformity with such an approval, the Board may, by notice in writing 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.

(2) A person who contravenes the notice is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) The Board 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.

(4) 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.

(11) Section 16A:

After section 16, insert:

Board may provide advice

16A. The Board may 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.

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF LAND
AND ENVIRONMENT COURT ACT 1979**

(Sec. 4)

- (1) **Section 19 (Class 3 - land tenure, valuation, rating and compensation matters):**

After section 19 (f), insert:

(f1) appeals under section 12B of the Mine Subsidence Compensation Act 1961;

- (2) **Section 20 (Class 4 - environmental planning and protection civil enforcement):**

After section 20 (1) (da), insert:

(db) proceedings under section 15D of the Mine Subsidence Compensation Act 1961;

[*Minister's second reading speech made in -
Legislative Assembly on 19 September 1989
Legislative Council on 15 November 1989*]

FIRST PRINT

**MINE SUBSIDENCE COMPENSATION (AMENDMENT) BILL
1989**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Mine Subsidence Compensation Act 1961 so as:

- (a) to extend the application of the Act by including in the definition of "subsidence" all related ground movements; and
- (b) to provide rights of appeal to the Land and Environment Court from certain decisions of the Mine Subsidence Compensation Board; and
- (c) to allow for the acquisition of, or for repair works in relation to, vacant land if the proposed erection of an improvement on that land is adversely affected by subsidence; and
- (d) to extend the compensation provisions to improvements or subdivisions that have met all requirements except prior approval; and
- (e) to make further provision for the control of unauthorised work on land or improvements by directions and restraining orders; and
- (f) to extend the provision of advice on matters related to mine subsidence beyond mine subsidence districts; and
- (g) to make other minor changes.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Mine Subsidence Compensation Act 1961.

Mine Subsidence Compensation (Amendment) 1989

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Land and Environment Court Act 1979.

**SCHEDULE 1 - AMENDMENT OF MINE SUBSIDENCE
COMPENSATION ACT 1961**

Schedule 1 (1) extends the definition of "subsidence" to include all ground movements related to the extraction of, or prospecting for, coal or shale.

Schedule 1 (2) makes amendments by way of statute law revision.

Schedule 1 (5) provides appeal rights for claimants to the Land and Environment Court in respect of decisions of the Board as to whether damage for which compensation is claimed has arisen from subsidence or could reasonably have been anticipated. At present an appeal lies only in respect of a decision of the Board as to the amount of compensation to be paid. Schedule 1 (3) and (4) make consequential amendments.

Schedule 1 (6) allows the Board a discretion to pay to the owner of land or improvements reasonable incidental expenses incurred by the owner in connection with the sale of the land or improvements to the Board.

Schedule 1 (7) enables the Board to acquire vacant land, or to carry out repair works in relation to vacant land, if the proposed erection of an improvement on that land is adversely affected by subsidence or the likelihood of subsidence.

Schedule 1 (8) authorises the payment of compensation if a certificate of compliance has been issued in relation to the improvement or subdivision under amendments to be made by Schedule 1 (9).

Schedule 1 (9) gives the Board a discretion to issue certificates of compliance if improvements or subdivisions comply with all requirements other than having obtained prior Board approval.

Schedule 1 (10) empowers the Board to direct immediate cessation of work on an improvement or a subdivision that is commenced without Board approval or that does not conform to a Board approval. An owner who contravenes a direction by the Board is to be guilty of an offence (maximum penalty: 20 penalty units). The Board is authorised to bring proceedings in the Land and Environment Court for an order to restrain a contravention of a direction by the Board.

Schedule 1 (11) allows the Mine Subsidence Compensation Board to provide advice on various matters related to mine subsidence outside mine subsidence districts.

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF LAND
AND ENVIRONMENT COURT ACT 1979**

Schedule 2 amends the Land and Environment Court Act 1979 as a consequence of the amendments made by Schedule 1 that confer rights of appeal to that Court.

FIRST PRINT

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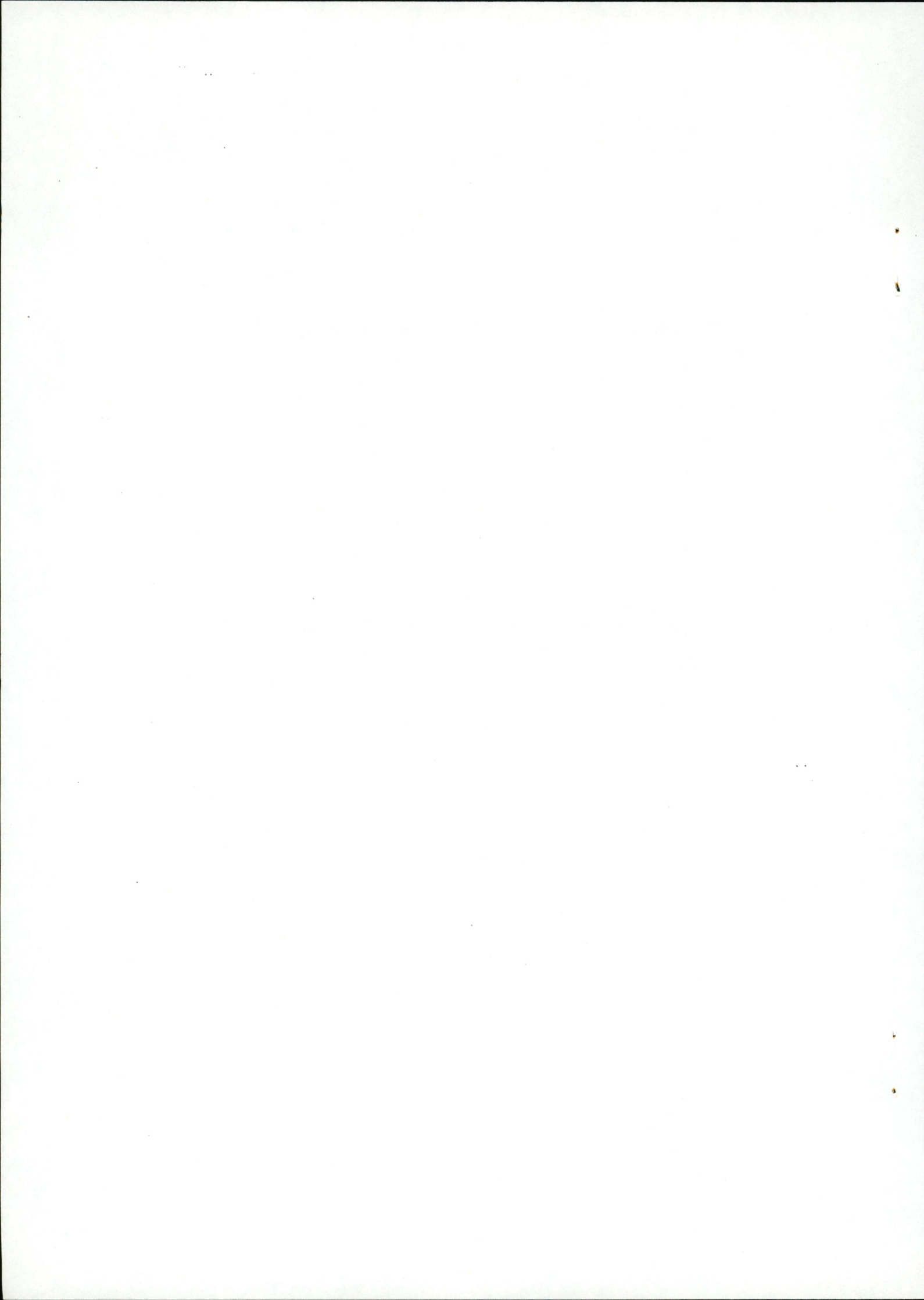


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NEW SOUTH WALES



No. , 1989

A BILL FOR

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- (b) the prospecting for coal or shale carried out within a colliery holding by the proprietor of the holding,

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SCHEDULE 1 - AMENDMENT OF MINE SUBSIDENCE
COMPENSATION ACT 1961 - *continued*

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- (a) Section 5 (2) (a):
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insert instead "Director- General, Department of Minerals
and Energy".
 - (b) Section 5 (2) (c) (ii):
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 - (c) Section 5 (3):
Omit "Public Service Act 1979", insert instead "Public
Sector Management Act 1988".
- (3) Section 12 (**Claims for damage arising out of subsidence**):
Omit section 12 (3) and (4).
- (4) Section 12A (**Claims arising out of actions to prevent or
mitigate damage**):
- (a) Section 12A (3):
Omit ", (4)".
 - (b) Section 12A (4):
Omit the subsection.
- (5) Section 12B (**Appeals**):
After section 12A, insert:
- Appeals**
- 12B. A person claiming compensation under section 12
or 12A may appeal to the Land and Environment Court
against the decision of the Board:
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**SCHEDULE 1 - AMENDMENT OF MINE SUBSIDENCE
COMPENSATION ACT 1961 - *continued***

(6) Section 13 (Purchase of damaged improvements and effecting of remedial works by the Board):

After section 13 (1B), insert:

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13C. If, in the opinion of the Board, the proposed erection of an improvement on vacant land has been adversely affected by subsidence or the likelihood of subsidence, the Board may (but is not required to):

- (a) acquire that land or any estate or interest in that land; or
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(8) Section 15 (Mine Subsidence Districts):

Section 15 (5) (b):

After "subdivision", insert ", unless a certificate is issued under section 15B (3A) in respect of the improvement or land".

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SCHEDULE 1 - AMENDMENT OF MINE SUBSIDENCE
COMPENSATION ACT 1961 - *continued*

the requirements of subsection (3) had the Board's approval been obtained; and

- (b) it is appropriate having regard to the circumstances of the case to do so,

the Board may issue a certificate under this section in respect of the improvement or land.

(10) Section 15D:

After section 15C, insert:

Prevention of unauthorised work

15D. (1) If a person is carrying out work without an approval of the Board required under section 15 or which is not in conformity with such an approval, the Board may, by notice in writing 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.

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Board may provide advice

16A. The Board may 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.

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