

23 December 2022

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**RE: Statutory Review of Coal Mine Subsidence Compensation Act 2017**

I refer to your invitation dated 22 November 2022 regarding the opening of the public consultation period regarding the Statutory Review of Coal Mine Subsidence Compensation in accordance with the *Coal Mine Subsidence Compensation Act 2017* (the Act).

Illawarra Coal Holdings Pty Ltd, a wholly owned subsidiary of South32 Limited (South32), is the owner and operator of two mines, those being the Appin and Dendrobium Mines, located within the Greater Sydney Water Catchment Special Areas, that participate in compensation activities associated with the Act; we appreciate the opportunity to provide feedback regarding the Act.

**Background**

South32 produces high-quality metallurgical coal used for steelmaking. Our coal is considered some of the best in the world and our operations are important to the region and New South Wales through our economic and employment contributions.

The BlueScope Steelworks at Port Kembla is the largest steel production facility in Australia, and one of only two primary iron and steel making facilities in Australia. South32 supplies the Steelworks with approximately 60% of their total Hard Coking Coal requirements.

There is currently no economically viable alternative to the use of metallurgical coal in the blast furnace method of steelmaking used at the BlueScope Steelworks.

South32's Illawarra Metallurgical Coal operations:

- Provide jobs for approximately 1,900 people, with more than 90% of wages paid to workers residing in the Illawarra region.
- Result in expenditure of \$400 million a year in the Illawarra region, of which \$240 million is spent with more than 200 locally based suppliers.
- Contributes more than A\$1 million a year to support local community groups and organizations.
- Contributed approximately \$95 million in royalties to the NSW government in FY21.

South32 is the most significant metallurgical coal producer in the region, providing local supplies of a product essential to the BlueScope Steel works, and also exporting around the world.

In summary;

- Any damage to buildings or infrastructure identified during pre-mining inspections should not be deemed as damage caused by subsidence, hence ineligible for compensation under the Act.
- Additional powers should be afforded to the Chief Executive to enable mine operators or Subsidence Advisory NSW to undertake pre-mining inspections, mitigation works to prevent the effects of subsidence related damage and for directions to occupants in regard to ensuring the health/safety of occupants.
- Additional review rights for mining operators, which is consistent with provisions included within Section 16.
- Increase frequency of Mine Subsidence Districts review to prevent inappropriate development, reduce property damage and subsequent compensation costs to mine operators.
- South32 Illawarra Metallurgical Coal supports a staged approach to surface development, whereby mining and associated subsidence are completed first, with development subsequently occurring in due course. IMC is opposed to any subdivisions or urban development projects in future mining areas, and as such request Subsidence Advisory NSW refuse subdivision applications, allowing future mining to precede urban development.

Please find attached our responses to the Discussion Paper noted within the Statutory review of the *Coal Mine Subsidence Compensation Act 2017* Discussion Paper (2022).

Again, thank you for the opportunity to provide a submission on the Statutory Review of the *Coal Mine Subsidence Compensation Act 2017*. If you have any questions or wish to discuss any of the matters further, please contact the undersigned.

Yours sincerely

**Blake Preston**

Coordinator Land & Infrastructure  
South32 Illawarra Metallurgical Coal

## **Act Objectives**

### **Q1) Are the objectives of the Act still valid? Please explain.**

Illawarra Metallurgical Coal (IMC) notes that the objectives of the Act remain valid. The Act, which promotes assessment, management, remediation and provides compensation due to subsidence damage caused by active mining is one in which IMC supports.

IMC suggests that an additional objective be added to section 3 that reflects Part 3 of the Act, whereby mine subsidence districts are declared to ensure that such areas are appropriately developed or in some cases, not developed at all in anticipation of future mine subsidence.

### **Q2) Are there other objectives that should be included? If so, please identify them and explain why.**

IMC suggests that the Act provide a greater emphasis on ensuring unsuitable development activities are not undertaken in Mine Subsidence Districts (MSDs). This will reduce the cost to mine operators, reduce infrastructure risks and protect the community and households from uncertainty and impacts associated with compensation and rectification works.

## **Framework for Compensation**

### **Q3) Do you think the framework for compensation is working well – (yes/no) If no, what improvements do you suggest are made to the compensation framework?**

IMC considers the compensation framework generally operates as intended, however the below improvements would increase the level of confidence in the framework by Mine Operators and (in particular) owners of private property:

The use of actual works Quotations provided by vendors as an alternative to cost estimates provided by Quantity Surveyors (QS). Often, significant conservatism is applied to QS responses, whilst Margins and Preliminary costs applied may not be appropriate for the small, regional, sole trader type businesses often engaged to undertake mitigative and remediation works.

There is no consideration of proportional liability for end-of-life equipment, or in infrastructure where pre-mining condition audits are unable to confirm condition (i.e. pool and dam drainage, bore production and utilisation) that regularly falls to the mine operator to rectify in full.

If consent is not provided by landowners for mine operators or Subsidence Advisory NSW (SA NSW) to undertake Pre-mining inspections, the Chief Executive should be able to direct such by way of a suitable methodology to be outlined within the Act.

That the information provided with claims is often brief and unclear; IMC suggest additional resolution and greater queries regarding the subject damage experienced be included within SA NSW's claimant form.

Extend Section 41 of the Act so that the Chief Executive is able to permit mining operators to undertake preventative or mitigation works to reduce property subsidence effects.

### **Q4) Do you agree with the types of compensation for mine subsidence damage – (yes/no). If no, what improvements do you suggest?**

IMC agrees with the types of compensation noted within the Act.

**Q5) Do you think certain types of compensation should be extended to tenants of a property?**

In our view the current compensation framework whereby compensation is limited to the owners of property is appropriate. Compensation should be to one party only. If the property owner has tenants, the owner should be responsible for any tenant losses or protections as a result of subsidence claims; similar to other matters than may impact on a tenant's enjoyment of land under a leasing arrangement.

In addition, given tenancies are not always documented or subject to formal lease arrangements there could be significant complexities in extending these provisions to tenants.

However, if the NSW Government considers it necessary to extend the current provision to include tenants, we recommend that the compensation be limited only to reasonable relocation expenses but not include any compensation for rent including any 'additional' rent that may be payable as a result of relocating to a different property, or any other expenses such as lost profits or the like arising from relocation given the inherent complexity and subjectivity of such claims.

**Q6) Do you have any comments on the viability of the compensation fund and suggestions for other mechanisms/ actions?**

IMC has no comments on the viability of the system whilst it remains a 'user pays' system. In the event of mine operators leaving the scheme, the NSW Government should assist with compensation funding.

**Making Claims**

**Q7) Do you think that the current requirements for making a claim of compensation are appropriate?**

IMC has no general issues with the current requirements, however the current 12 month period for claimants to lodge claims is excessive, allowing potential for property damage to be exacerbated or non-mining damage issues to be raised. IMC proposes that claims be lodged within 6 months of the claimant becoming aware that subsidence related damage has occurred.

**Approved Procedures**

**Q8) Should the Act be amended to allow the approved procedures made under section 14 to deal with additional aspects of the claims process beyond claim determination?**

Noting a separate review of the approved procedures will be taking place post statutory review of the Act, Section 14 of the Act should be retained in its current form until such a review takes place.

**Provision of information in active mining areas**

**Q9) Do you think the Act should be amended to specify requirements for certain types of information from mine operators?**

The Act should not be amended to prescribe the development and provision of specific documentation by mine operators. Whilst supporting transparency and sharing, IMC notes that documentation should only be supplied to SA NSW where an active mining claim has been lodged, or in exceptional circumstances, to persons considering a claim.

IMC does not agree with the provision of documentation without a specific purpose, however would welcome changes to the Act associated with auditing if greater visibility and adherence to the Act was required by SA NSW related to the completeness of documentation.

### **Dispute Resolution Process**

#### **Q10) Is the Dispute Resolution process achieving its aim of providing a no-cost independent review mechanism?**

IMC notes the Dispute Resolution process provides a no-cost, independent review mechanism to both the Claimant and Mine Operators under certain circumstances only.

In contrast, mine operators are only able to request review as to whether the subject damage has been caused by the operator's active coal mine (per Section 12). Separately, claimants may seek a review regarding the quantum of the determination. IMC proposes that the Act be amended to provide equal review opportunities to mine operators (in addition to the existing review right in respect of liability); this being consistent with the appeal provisions noted within Section 16 which is equally available to both claimants and proprietors.

Additionally, Section 10.3.1 of the Approved Procedures note that the Mine Proprietor may be liable for costs to claimants. IMC proposes that each party be liable for their own costs, with discretion from the Secretary as to whether the fund is utilised to fund claimant costs.

### **No contracting out of the Act**

#### **Q11) Should contracting out of the Act be considered for government agencies such as Transport for NSW?**

Contracting out of the Act should not be considered for government agencies. IMC prefers that SA NSW administer all subsidence and related compensation matters within NSW, allowing subsidence knowledge and experience to be applied consistently for all parties. With SA NSW maintaining overall visibility of all subsidence related development requests, the sterilisation of resources is more likely to be prevented.

### **Risk Based Development Regulation**

#### **Q12) Do you have any comment about mine subsidence districts and how it works?**

First principles should be applied when considering surface development applications in areas where mining has been approved. IMC supports a staged approach to surface development, whereby mining and associated subsidence are completed first, with development subsequently occurring in due course.

An annual period of MSD review should be included within the Act; such reviews would reduce development not aligned to the Surface Development Guidelines issued by SA NSW, reducing potential damage to improvements and properties and the cost to rectify any impacts to mine proprietors.

In mine subsidence districts that are not yet developed (or are the subject of rezoning applications for future redevelopment), IMC supports a prohibition on development in those areas until such time as either a decision has been made to relinquish the relevant mining tenement, mining and subsidence activities have been completed or the relevant mine operator agree to development in the area.

#### **Q13) Do you suggest any improvements to the approval provisions under the Act?**

IMC notes that whilst Development Guidelines can be applied to proposed development, the preferred approach to surface development is that mining and associated subsidence are completed first, with development subsequently occurring in due course. The approval of development in areas subject to, in particular, High and Moderate predicted subsidence, can place onerous costs on mine operators to remediate such properties and infrastructure if subsidence related damage occurs.

Additionally, no validation is provided to mine operators or SA NSW as to whether properties are constructed in-line with the Surface Development Guidelines prior to occupation of the property.

IMC proposes that the approval provisions of the Act be amended to eliminate subsidence sensitive development in MSDs, or that in the event of such development, that a proportionate liability related to subsidence effects (and hence compensation) can be applied between mine operators and claimants.

IMC currently does not receive feedback on our submissions to SA NSW development queries and proposes that feedback to mine operators post consent approval (or otherwise) be required by the Act.

**Q14) Are there any matters regarding compensation eligibility of structures within Mine Subsidence Districts, that you think should be considered?**

No additional consideration to compensation eligibility needs be considered in MSDs.

IMC considers that should subsidence related damage occur to non-compliant development in a MSD, that compensation claims under the Act should not be considered. A similar approach should be applied to development where approval has not been provided by the Chief Executive under Section 21 and 22 of the Act.

**Additional functions of the Chief Executive**

**Q15) Do you agree with the actions that can be taken by the Chief Executive where there is a danger to the public? Are there any improvements you can suggest?**

IMC agrees with Chief Executive actions where there is a safety risk or danger to the public.

**Q16) Are there any matters such as expenses that should be included in the funding of preventative works, for example relocation expenses?**

IMC has no objection to the consideration of reasonable relocation expenses associated with the funding of preventative works within the Act; whilst not aware of occasions where this has been required.

**Q17) Do you think the additional functions of the Chief Executive are working well? If, 'no', what improvements would you suggest and why?**

IMC notes the additional functions of the Chief Executive actions are working well and does not suggest any improvements.

**Q18) Are there any other functions that the Chief Executive should have? If yes, what are they?**

Per Response #3, the Chief Executive should have the power to provide authorisation to mine operators or SA NSW to undertake pre-mining inspections in the event of consent not being provided by landowners.

IMC recommends that an additional provision be included within the Act whereby SA NSW has the authority to defer surface development within the MSD where mining and subsidence activities are imminent, until such a time as subsidence affecting the subject is complete.

### **Compliance & Enforcement**

**Q19) Are there any other enforcement tools, which should be included in the Act to ensure compliance?**

IMC considers the enforcement tools noted within the Act appropriate.

**Q20) Do the offences and penalties appropriately support compliance with the Act's objectives?**

IMC notes that the penalties applicable for Mine Operators is reasonable and appropriate.

However, the penalties associated with Section 21.1 (Works without Chief Executive approval) and Section 50 (Direction to Cease Work) do not appear to be a significant deterrent in ensuring that such activities are prevented, and requests that such penalties be increased.

**Q21) Should the penalty levels be adjusted to take account of increases in Consumer Price Index since the Act's enactment in 2018?**

IMC does not believe that penalty levels should be tied to the Consumer Price Index.

### **Other matters in the Act**

**Q22) Do you have any comments on these other matters included in the Act?**

Section 54 provides that the Chief Executive may enter into an information sharing arrangement with relevant agencies for the purposes of sharing or exchanging any information that is held by the Chief Executive or the agency.

Given that some information provided by mining companies in relation to its obligations under the Act may be commercially sensitive, Section 54 should be amended to provide that any commercially sensitive information will be excluded from any information sharing arrangements.

**Q23) Are there other provisions or improvements which may be necessary to assist in meeting the objectives of the Act?**

IMC suggests minimum standards associated with the SA NSW Portal be included within the Act so that it may be used as a functional documentation and communication repository, reducing redundant communications and issuing of documentation. The portal would then become the 'single source of truth' for claimants, mine operators and SA NSW. Minimum standards should include –

- Ability to assign and view all documentation associated with property under claim to the portal.
- Show status of open and outstanding actions.
- The significant number of claims not listed within summaries and searches should be corrected.
- Automatic archiving once claims are finalised.

**Q24) Do you have any comments on how property owners can continue to be compensated for the cost of repairs for damage caused by coal mining subsidence in the future, given the changing environment for the coal mining industry?**

The current 'User pays' system ensures property owners are compensated for subsidence related damage caused by mining activities. Whilst the coal mining industry is changing, a combination of the current 'user pays' arrangement, the monies held within the Compensation Fund, and Government support will ensure continued compensation payments to affected property owners into the future.