

Statutory Review of the  
***Coal Mine Subsidence Compensation  
Act 2017***

---

Discussion Paper  
2022

---



**Disclaimer**

This publication avoids the use of legal language, with information about the law summarised or expressed in general statements. The information in this document should not be relied upon as a substitute for professional legal advice.

For access to legislation in force in NSW go to the official NSW Government website for online publication of legislation at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**Copyright Information**

© State of New South Wales through Department of Customer Service, 2022

You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose provided that you attribute the Department of Customer Service as the owner. This publication is licensed under the Creative Commons Attribution 4.0 licence. For more information, visit [www.customerservice.nsw.gov.au/copyright](http://www.customerservice.nsw.gov.au/copyright).

# Contents

---

<b>MINISTER'S MESSAGE</b>	<b>4</b>
<b>CONSULTATION PROCESS</b>	<b>5</b>
Making a submission	5
Release of submissions	6
<b>PURPOSE OF THE DISCUSSION PAPER</b>	<b>7</b>
<b>1. BACKGROUND</b>	<b>8</b>
1.1 Mine subsidence	8
1.2 Coal Mine Subsidence Compensation Act 2017	9
1.3 Coal Mine Subsidence Compensation Regulation 2017	10
<b>2. OBJECTIVES OF THE ACT</b>	<b>11</b>
<b>3. COMPENSATION FOR MINE SUBSIDENCE</b>	<b>12</b>
3.1 Framework for compensation	12
3.2 Making claims	15
3.3 Approved procedures	15
3.4 Provision of information in active mining areas	17
3.5 Dispute resolution process	17
3.6 No contracting out of the Act	18
<b>4. DEVELOPMENT WITHIN MINE SUBSIDENCE DISTRICTS</b>	<b>19</b>
4.1 Risk-based development regulation	19
<b>5. ADDITIONAL FUNCTIONS OF THE CHIEF EXECUTIVE</b>	<b>22</b>
<b>6. COMPLIANCE AND ENFORCEMENT</b>	<b>24</b>
6.1 Fit and proper person	24
6.2 Compliance and enforcement tools	24
6.3 Offences and penalties	25
<b>7. OTHER MATTERS</b>	<b>27</b>
7.1 Other matters in the Act	27
7.2 Forward thinking	27
<b>APPENDIX 1: CONSOLIDATED LIST OF QUESTIONS</b>	<b>29</b>

## Minister's Message

---

I am pleased as Minister for Fair Trading to introduce the discussion paper for public consultation on the statutory review of the laws in relation to coal mine subsidence compensation in NSW.

Coal mining is a significant source of direct and indirect jobs in our regions and underpins prosperity in many local economies. It is the state's largest export commodity and is a major source of revenue, which the NSW Government uses to help fund essential services and infrastructure such as schools, hospitals, roads and transport. However, the NSW Government acknowledges the stressful experience property owners go through when their homes are affected by mine subsidence.

The *Coal Mine Subsidence Compensation Act 2017* (**the Act**), which seeks to provide a fair, efficient and sustainable risk and compensation framework for dealing with the impacts of coal mine subsidence has been in operation for five years now.

The purpose of this review is to seek your opinion on how the law has been operating in practice and whether the law is having the intended effect and meeting its stated objectives.

I encourage you to engage with the issues presented in this paper, respond to the questions, and raise any matters you consider relevant.

Your views will help the NSW Government ensure that this compensation scheme continues to meet the needs of the community.

**Victor Dominello MP**

**Minister for Fair Trading**

# Consultation process

---

## Making a submission

Interested individuals and organisations are invited to make a submission on any matter relevant to the *Coal Mine Subsidence Compensation Act 2017*, whether or not it is addressed in this discussion paper.

You can provide your feedback through the Have Your Say website, or by email in an accessible format. Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website at <http://webaim.org/techniques/word/>.

You can provide feedback in one of three ways:

- Completing the online survey and/or uploading your written submission at the [NSW Government Have Your Say website](#).
- Emailing your written submission to: [subsidencecompstatreview@customerservice.nsw.gov.au](mailto:subsidencecompstatreview@customerservice.nsw.gov.au).

Posting your written submission to:

Statutory Review of Coal Mine Subsidence Compensation Act 2017  
Policy & Strategy, Better Regulation Division  
NSW Department of Customer Service  
4 Parramatta Square  
12 Darcy Street  
PARRAMATTA NSW 2150

**The closing date for submissions is midnight, Monday 19 December 2022.**

After the consultation period has closed:

- all comments and submissions will be considered
- there may be targeted consultation on specific issues
- a report on the review and its findings will be submitted to the Minister for Fair Trading
- the final report is required to be tabled in both Houses of Parliament by 14 August 2023.

## Release of submissions

We will make all submissions publicly available on the Have Your Say website. If you do not want your personal details or part of your submission published, please state this clearly in your submission. Automatically generated confidentiality statements are not sufficient. Submissions may be referred to in a report on the outcome of the consultation, however any anonymous submissions will be referred to as such.

Please note, even if you state that you do not wish us to publish certain information, we may need to release that information by law. For example, to comply with the *Government Information (Public Access) Act 2009*.

## Purpose of the discussion paper

---

The Discussion Paper seeks your views on the compensation framework for mine subsidence damage to homes and other structures, as part of a statutory review into the *Coal Mine Subsidence Compensation Act 2017* (the Act).

The Act and the Coal Mine Subsidence Regulation 2017 (**the Regulation**) manage compensation for mine subsidence damage, as well as risks associated with mine subsidence in NSW.

Section 59 of the Act requires the Minister for Fair Trading to review the Act, five years after the date of assent of the Act, to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives. A report on the outcome of the review must be tabled in each House of Parliament no later than 14 August 2023.

The Department of Customer Service (**the Department**) is conducting the Statutory Review (the review) on behalf of the Minister.

The Discussion Paper examines the current regulatory regime and seeks your feedback on the objectives of the Act, including whether they remain relevant and whether any improvements are necessary to ensure these objectives can be met.

This includes considering whether the objectives should continue to apply or be adjusted to include other matters. Your feedback will help us to ensure the legislation continues to reflect the needs of the community.

The Regulation will be reviewed separately in 2023. You will have an opportunity to comment on the operation of the Regulation at this time. Any feedback received from this process that relates to the Regulation, will be collated and used to inform the 2023 Regulation review.

The issues and questions identified in this discussion paper are not exhaustive and are intended to facilitate discussion as part of the review. Further comments are welcome on any other matters that are relevant to improving the regulatory framework established by the Act.

Throughout the review process, the Department may conduct further consultation on specific issues relating to the Act, where necessary.

# 1. Background

---

## 1.1 Mine subsidence

Mine subsidence is the movement of the ground that can occur after underground coal mining. After coal is extracted from beneath the ground, the land above can subside. This can cause damage to buildings, and other effects, on the ground surface above the mine.

Most active underground mines in NSW use longwall mining methods. Longwall mining involves the extraction of entire sections of coal using high-powered machinery and generally occurs at more than 200 metres beneath the ground. As the machinery moves ahead, the mined-out area falls in, causing the ground above to subside. Subsidence from longwall mining generally occurs over a large area, with the majority of subsidence occurring a short time after mining has taken place.

Historically, underground mines throughout NSW extracted coal through bord and pillar mining methods. Bord and pillar mining occurred all over NSW but was extensively used in the Hunter and Newcastle regions.

Bord and pillar mine workings were often shallow and left supporting coal pillars after mining. In some cases, coal extraction may have occurred over 200 years ago. Many homes are built over old non-active mines that may never be impacted by subsidence, however occasionally, parts of the old mine workings collapse, resulting in subsidence. A range of factors may cause these workings to deteriorate over a long time.

The signs of mine subsidence damage to buildings and other structures can range from cracking to walls and jammed doors, to more significant structural issues. In most cases, buildings damaged by mine subsidence remain safe and can be used until they are repaired.

The extent of mine subsidence damage can vary depending on the location of a building in proximity to the mine workings. It is possible for the ground directly above collapsed mine workings to subside without causing damage to above buildings.

Similarly, it is possible for a building that is not directly mined beneath to experience mine subsidence damage. Buildings on or near the edge of subsided ground, may experience damage as a result of tilts and strains in the ground surface.



## 1.2 *Coal Mine Subsidence Compensation Act 2017*

In NSW if a property is damaged as a result of mine subsidence, the property owner can lodge a claim for compensation.

The Coal Mine Subsidence legislation sets out the legal framework for this to occur.

The Act took effect on 1 January 2018. This followed a 2016 review of the former *Mine Subsidence Compensation Act 1961* by the then NSW Department of Finance, Services and Innovation.

The 2016 review identified a need to improve:

- the claims experience for property owners
- the compensation framework
- the Mine Subsidence Board's (**MSB**) administration of the system.

Reforms were made under the Act to the mine subsidence compensation framework for active and non-active mining areas and a distinction was drawn between the two types of areas.

The reforms introduced changes to the way claims were assessed, implementing the case advisor function to provide dedicated support and advocacy on behalf of claimants and an independent claim assessment process.

Under the Act, Mine Proprietors (hereon referred to as **mine operators**) were made financially accountable for the subsidence damage they cause arising from an active coal mine. Changes to the levy framework paid by mine operators were introduced, as it would now primarily fund compensation for non-active claims. The levy was reduced to offset the new direct liability of mine operators for damage in active mining areas for which they were responsible. This was introduced to provide a fairer compensation system.

The Government continues 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.

The MSB was abolished and replaced by Subsidence Advisory NSW (**Subsidence Advisory**).

Major reforms introduced by the Act included:

- the MSB was abolished, and its functions were transferred to the Chief Executive of Subsidence Advisory NSW and various structural and operational improvements were made
- introduction of a new compensation model
- a new case advisory function was introduced to support claimants
- operators of active underground coal mines were made financially accountable for the subsidence damage they cause

- all coal mine operators were still required to pay a levy towards the Mine Subsidence Compensation Fund, but the amount was reduced
- Subsidence Advisory continued to use the fund for compensation claims caused by subsidence in non-active mining areas.

### **1.3 Coal Mine Subsidence Compensation Regulation 2017**

The Regulation commenced on 1 January 2018. The Regulation supports the Act, providing details in relation to:

- the definition of “active coal mines” to support the new compensation framework, which differentiates between active and non-active mines (excludes certain historical coal mining areas)
- makes clear that bridges, weirs, tunnels and culverts are “infrastructure”
- deals with extensions of the time within which certain claims for compensation under the Act must be made
- prescribes the persons who are to be “qualified valuers” for the purposes of the Act
- requires reports by operators of active coal mines to the Chief Executive of Subsidence Advisory NSW about ground movement and ongoing subsidence
- provides that functions of the Secretary of the Department under the Act may be delegated to a person who is a retired Supreme Court or District Court judge
- prescribes certain offences under the Act and the Regulation as penalty notice offences and sets out the penalty notice amounts for those offences.

## 2. Objectives of the Act

---

The policy objectives of the Act are set out in section 3. They provide for:

- a fair, efficient and sustainable compensation framework for dealing with the impacts of coal mine subsidence
- a scheme for the provision of compensation for damage caused by subsidence resulting from coal mine operations
- the assessment and management of risks associated with subsidence resulting from coal mine operations.

If a person's property is damaged by subsidence as a result of coal mining in NSW, their rights are protected under the Act and a person can claim compensation through Subsidence Advisory.

Under the Act, the Mine Subsidence Board was abolished and the functions were transferred to the Chief Executive of Subsidence Advisory and integrated into the Department. This was supported by a new claims management model.

### Questions for comment

1. Are the objectives of the Act still valid? Please explain.
2. Are there other objectives that should be included? If so, please identify them and explain why they should be included.

## 3. Compensation for mine subsidence

---

### 3.1 Framework for compensation

#### *Types of compensation*

Section 7 outlines the types of compensation for damage arising out of subsidence that can be claimed:

- Compensation for damage arising out of subsidence
  - any damage to improvements or goods owned by the person that arises from subsidence
  - reasonable and necessary expenses incurred or to be incurred as a result of such damage
  - lost rent while building or works are unusable, under repair or construction
  - accommodation expenses of the owner including relocation expenses and rent, during the period the building or works are uninhabitable, under repair or construction
- Compensation in relation to actions to prevent or mitigate damage
  - for preventative or mitigative expenses incurred by an owner of improvements/goods following the commencement of a subsidence event
  - for damage arising from preventative or mitigative works undertaken by Subsidence Advisory under section 29.

Under section 7, compensation may only be provided to the owners of improvements or goods or an affiliate. Definitions of improvements and goods are provided under section 4. In certain situations, preventative, mitigative or repair works may require residents of a property to be relocated for the duration of works. The review is considering compensation provisions for tenants who may be renting a property during this time and be required to relocate.

Sections 9 and 10 outline limitations on claims:

- The approved procedures may provide for claims for damage arising out of subsidence to be reduced because of improvements constructed or maintained in a negligent or improper manner.<sup>1</sup>
- Compensation will not be paid for improvements or goods used for a coal mining operation if that operation was the cause of the subsidence.

---

<sup>1</sup> Section 14 of the Act allows the Chief Executive to approve procedures for the determination of claims under the Act. More information on the Approved Procedures is provided in section 3.3 of this discussion paper.

- Claims for the cost of actions to prevent or mitigate damage will not be compensated unless the preventative or mitigating work is appropriate and necessary, and the subsidence must not result from operations carried out by the owner.
- The amount of the expenses must be proportionate to the amount needed to prevent or mitigate damage.

### ***Mine operators are directly liable for subsidence damage caused by their operations***

Under section 8(1) of the Act, mining operators are required to pay compensation for subsidence damage arising from their active mines. As mining operators are directly liable for the subsidence they cause, this provides a direct financial incentive to reduce their future subsidence impacts to the greatest extent possible.

Claims are determined under the approved procedures (refer to in section 3.3) and mine operators are required to compensate claims in accordance with independent assessments.

If a mine operator fails to make a payment to a claimant as required, the Act provides for the Chief Executive to make payment to the claimant and seek to recover the amount from the mine operator. This function ensures claimants are rightfully compensated should mine operators refuse payment.

### ***Coal Mine Subsidence Compensation levy and Fund***

The Coal Mine Subsidence Compensation Fund (**the Fund**) is a Special Deposits Account funded through an annual levy on all operating NSW coal mines.

As a result of the introduced responsibility for mine operators to directly compensate subsidence damage caused by their operations, the levy was reduced in 2017 on the basis that it now primarily funds only those compensation claims arising from non-active mines. Prior to the reforms, compensation for damage from both historical (i.e., non-active) and active coal mines was paid from the Fund.

Transitional arrangements were introduced for the three mine operators deemed worse off by the change to allow them to prepare and put in place the necessary arrangements for the new compensation framework over a five-year period. These arrangements will be ending and will not be included in future levy calculations.

The proposed total annual levy is now based on operating costs for administering the Act, historical claim costs and costs to cover catastrophic mine subsidence events, caused by historical abandoned coal mining. Actuarial studies are commissioned to inform levy amounts based on these three costs.

Due to the unknown nature of mine subsidence from historical abandoned coal mining, challenges exist in accurately predicting future catastrophic mine subsidence events. A significant mine subsidence event could deplete the fund quicker than anticipated. The review is considering whether additional mechanisms could be put in place to ensure mine subsidence continues to be addressed. The mine subsidence levy amount paid by a Mine Operator (leaseholder) during a royalty period, is an allowable deduction from royalties paid under the *Mining Act 1992*.

#### Questions for comment

3. 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?
4. Do you agree with the types of compensation for mine subsidence damage – (yes/no). If no, what improvements do you suggest?
5. Do you think certain types of compensation should be extended to tenants of a property?
6. Do you have any comments on the viability of the compensation fund and suggestions for other mechanisms or actions?

### 3.2 Making claims

Under section 11 of the Act, a person can apply for compensation by lodging a claim through Subsidence Advisory's website via an online portal. Some customers may not be able to lodge through the portal. The review is considering allowing alternatives to the website.

Claims must be lodged within 12 months of the claimant becoming aware that the damage was caused by subsidence. Claims for preventative or mitigative expenses must be made within three months after the expense is known to the person making the claim. Feedback is sought on whether customers can be expected to know that the damage was caused by subsidence prior to a claim being lodgement.

#### Question for comment

7. Do you think that the current requirements for making a claim of compensation are appropriate?

### 3.3 Approved procedures

Claims lodged under section 11 of the Act are determined in accordance with the Approved Procedures for Determining Claims (the procedures) (section 14).

The Chief Executive approves these procedures to ensure all claims are determined consistently and fairly. This serves to protect property owners.

Mine operators are required to comply with the approved procedures. The Chief Executive is required to consult the mine operators before approving, amending or replacing the approved procedures (unless the proposed amendment is minor or trivial in nature). They must provide reasonable notice of any amendment to the approved procedures before it takes effect.

Several steps that occur prior to determination of a claim, such as the pre-mining inspection process and claim lodgement, are critical in ensuring claims are determined fairly and consistently.

The review is considering extending the scope of the approved procedures to include earlier steps associated with the compensation process, including those that occur prior to mining commencing. Extending the approved procedures to deal with earlier steps will facilitate straightforward and fair determinations of damage.

Following completion of the review of the Act, a separate review of the approved procedures under section 14 will be carried out. Feedback regarding the current approved procedures will be considered as part of that process and not within the review of the Act.

**Question for comment**

8. 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?



### 3.4 Provision of information in active mining areas

Subsidence Advisory requires mine operators to provide certain information to ensure it administers the Act effectively. Information can include reports on properties completed prior to or during underground coal mining, subsidence survey data or identification of properties where subsidence may impact (within the zone of influence). This information ensures Subsidence Advisory is positioned to provide accurate advice and efficient support to customers. This information is also critical in ensuring claims are managed efficiently.

The review is considering amending the Act to ensure information is provided by mine operators to Subsidence Advisory. This provision would ensure communities are aware of the information regarding their property that mine operators are required to share, and that efficient support is being provided.

#### Question for comment

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

### 3.5 Dispute resolution process

The Act introduced an independent, no-cost dispute resolution process, as an alternative to onerous and costly litigation and to improve transparency and fairness in decision making.

A claimant whose claim for compensation is wholly or partly disallowed can seek an independent review by the Secretary of the Department (section 15). The Secretary can delegate the exercise of this function under the Act to any person employed in the Department, or other authorised person(s).

When a claim has been forwarded to a mine operator, they may request the Secretary to review the Chief Executive's determination that the damage (the subject of the claim) has been caused by the operator's active coal mine (section 12).

Under section 16 of the Act, there is a right to appeal against the decision of the Secretary to the NSW Land and Environment Court.

#### Question for comment

10. Is the dispute resolution process achieving its aim of providing a no-cost independent review mechanism?

### 3.6 No contracting out of the Act

Under section 17 of the Act, the Act applies despite any contract or agreement to the contrary. Contracting out the Act would allow certain parties to be exempt from parts of the Act.

The review is considering whether contracting out should be allowed for government agencies who may have responsibilities for the development and operations of large-scale government infrastructure, such as Transport for NSW.

Currently, large-scale government infrastructure is referred to Subsidence Advisory for approval to ensure eligibility for compensation under the Act. Contracting out of the Act would allow work on such infrastructure without needing to comply with the development conditions under Part 3 of the Act. This would allow for more efficient development of government infrastructure, such as roads and hospitals. These government agencies would be responsible for managing the risks of mine subsidence themselves, making them not eligible to claim for compensation under Part 2 of the Act.

#### Question for comment

11. Should contracting out of the Act be considered for government agencies such as Transport for NSW?

## 4. Development within mine subsidence districts

---

### 4.1 Risk-based development regulation

#### *Mine subsidence districts*

Mine Subsidence Districts are proclaimed in areas where there are potential subsidence risks from active or non-active underground coal mining (section 20). A mine subsidence district is a land zoning tool administered by Subsidence Advisory under the Act, with the aim of helping protect homes and other structures from potential mine subsidence damage by managing and assessing subsidence risks.

Under the Act, certain development within mine subsidence districts requires approval from the Chief Executive (section 21). Mine subsidence districts align with high-risk areas for subsidence related damage, while development approval processes in low-risk areas are more streamlined.

Subsidence Advisory reviews mine subsidence districts every five years to ensure they remain up to date. As part of this process, consultation may be carried out with other NSW Government departments and local councils, mine operators, industry representatives and homeowners. This process ensures districts continue to align with high-risk areas of potential subsidence damage.

Mine subsidence districts are publicly available as a planning layer on the ePlanning Spatial Viewer. Using the NSW Planning Portal ePlanning Spatial Viewer, a person can find out:

- if the property is in a mine subsidence district
- which Subsidence Advisory development guideline is assigned to the property
- if the property is in an area where underground coal mining has occurred.

#### *Building or subdividing within a district*

Subsidence Advisory regulates building and subdivision works within mine subsidence districts to ensure new homes and structures are built to an appropriate standard that reduces the risk of damage should subsidence occur.

A person must obtain approval from Subsidence Advisory before starting work (section 22). All applications are assessed in accordance with Subsidence Advisory's development policy framework. The framework includes complying and exempt development (within the meaning of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) options and a merit assessment framework for applications that exceed these options. The development policy framework is reviewed regularly and provides low risk complying development options to homeowners.

Subsidence Advisory may place conditions on any development within a mine subsidence districts to reduce the risk of potential mine subsidence damage.

Conditions may include requirements related to the following:

- nature and class of any development
- the size, height and location of new structures
- the size, location and amount of proposed lots
- use of certain building materials and construction methods
- investigation and certification requirements.

Note: Compensation is not payable for the cost of complying with a development condition imposed in a mine subsidence district.

Development applications can be lodged directly with Subsidence Advisory or as an Integrated Development application through the relevant local council. Section 4.46 of the EP&A Act specifies that all development within a district (excluding exempt development) is considered 'integrated development'. Under section 4.47(2) of the EP&A Act, councils are required to refer all integrated development to Subsidence Advisory for approval.

Feedback regarding the Subsidence Advisory NSW Development Policy Framework (external facing guidance material) does not form part of this review.

### ***Compensation eligibility for structures in mine subsidence districts***

All structures are eligible for compensation should they be impacted by mine subsidence, provided that if located in a mine subsidence district they have been constructed in accordance with the relevant approvals and any conditions.

However, there are some exceptions where the Chief Executive may consider a claim for an unapproved structure, including where exceptional circumstances exist, or where the failure to obtain the approval was not the fault of the claimant (section 23). Protections are 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.

Structures that were built in an area before it was proclaimed as a mine subsidence district, are automatically eligible for compensation should mine subsidence damage occur.

Please note, Subsidence Advisory ceased issuing certificates under sections 15B (Certificates of compliance) & 15C (Certificates of compensation claims paid) of the former *Mine Subsidence Compensation Act 1961* on 30 September 2019. The certificates were discontinued following the

2017 review and were not carried over to the new Act, save for the limited transitional provisions provided by clause 14 of Schedule 1 of the Act.

#### **Questions for comment**

12. Do you have any comment about mine subsidence districts and how they work?
13. Do you suggest any improvements to the approval provisions under the Act?
14. Are there any matters regarding compensation eligibility of structures within mine subsidence districts, that you think should be considered?

## 5. Additional functions of the Chief Executive

---

Part 4 of the Act sets out the other functions of the Chief Executive.

### *Further actions where there is subsidence or likely subsidence*

Under section 26, instead of paying compensation on a claim relating to a non-active coal mine, the Chief Executive can choose to buy the land or buildings (improvements). The Chief Executive must first consult with a qualified valuer and make an agreement with the owner to buy the land. If the Chief Executive chooses to buy the land or improvements and carry out work to rectify the damage, the Chief Executive may subsequently sell or lease the property.

Where there is vacant land and a person proposes to build on that land, and land is or is likely to be affected by subsidence, the Chief Executive may:

- buy the land or interest, or
- do works to prevent or mitigate the effects of subsidence (section 30).

### *Actions to address dangers to the public*

The Chief Executive has the ability to step in, where there is a danger to the public caused by subsidence (section 27). This includes:

- have the land filled or fenced off, or take any other necessary action taken, or direct a coal mine operator to do this
- make urgent repairs for non-active coal mines, or, for active coal mines, direct a coal mine operator to make urgent repairs
- where further subsidence is likely to occur, make temporary repairs for non-active coal mines, or, for active coal mines, direct a coal mine operator to make temporary repairs.

Penalties apply in respect of a coal mine operator's non-compliance with a direction of the Chief Executive under section 27.

The Chief Executive can also make a payment from the Fund and may subsequently recover any amount from the coal mining operator as a debt due to the Crown.

Subsidence Advisory is alerted to potential dangers through its 24-Hour Subsidence Emergency Hotline. Communities living in mine subsidence areas of NSW can report subsidence safety or serviceability issues that may present a danger through the hotline and Subsidence Advisory will co-ordinate a response. Mine operators also have responsibilities under other legislation regarding notifiable incidents.

### ***Preventative or mitigative works***

The Chief Executive can spend money from the Fund, to pay for works to prevent or mitigate subsidence damage to buildings (improvements) or goods, if this would be considered necessary to reduce the liability of the Fund (section 29).

In some circumstances, Subsidence Advisory may carry out works, under section 29, to prevent or mitigate damage. These works may include subsurface mitigation and be carried out alongside a claim, prior to repair works being completed by the homeowner. This process may be necessary to ensure repairs are not impacted by further subsidence. This also reduces the liability of the Fund. During mitigative or preventative works, homeowners may be required to relocate. Currently relocation expenses are not included in funding of preventative and mitigative works.

### ***Chief Executive may provide advice***

The Chief Executive 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 is within a mine subsidence district.

#### **Questions for comment**

15. 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?
16. Are there any matters such as expenses that should be included in the funding of preventative works, for example relocation expenses?
17. Do you think the additional functions of the Chief Executive are working well? If, 'no', what improvements would you suggest and why?
18. Are there any other functions that the Chief Executive should have? If yes, what are they?

## 6. Compliance and enforcement

---

### 6.1 Fit and proper person

Compliance with the Act may be considered by the relevant decision-maker, 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, is considered in determining 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.

### 6.2 Compliance and enforcement tools

This Act provides Subsidence Advisory with compliance and enforcement tools to allow it to effectively oversee and enforce compliance with the Act and approved procedures.

Under Part 6 of the Act, authorised officers are appointed and tasked with monitoring compliance with the Act and have the powers to carry out necessary inspections, audits and inquiries.

The powers of authorised officers include power:

- to enter premises with consent (section 42) or without consent under certain conditions (section 43)
- upon entry – to inspect measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises; take samples; make copies of documents; require a person at the premises to give reasonable help or information (section 44)
- on written notice – require a person to produce documents or information (section 45)
- to require persons who created a document seized or produced, to explain any matter relating to the creation of the document itself or to which the document relates (section 47)

to issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence (section 57) The Chief Executive can issue a notice to person to cease carrying out development work in a mine subsidence district if the work does not have approval or is not done in accordance with the approval conditions (section 50). The Chief Executive may also bring proceedings in the NSW Land and Environment Court for an order to restrain the carrying out of work in contravention of any such notice.



## 6.3 Offences and penalties

Offences under the Act may be committed by both individuals and corporations.

The table below sets out the following offences and their penalties in the Act:

Offence	Maximum penalty
Failure for an operator of a coal mine to give effect to a decision of the Secretary after reviewing a claim determination. (Section 15 (6))	500 penalty units for an individual or 1000 penalty units for a corporation
Carrying out work in connection with buildings or infrastructure in a mine subsidence district without the approval of the Chief Executive. (Section 21(1))	100 penalty units for an individual, or 500 penalty units for a corporation
Subdividing land within a mine subsidence district without the approval of the Chief Executive. (Section 21 (2))	100 penalty units for an individual, or 500 penalty units for a corporation
Not complying with a direction from the Chief Executive for emergency, urgent and temporary actions. (Section 27)	2000 penalty units for an individual, or 10,000 penalty units for a corporation
Failure for authorised officer to carry identity card, produce identity card, refuse or fail to return any identity card issued (Section 39)	15 penalty units
Hindering or obstructing an authorised officer. (Section 49 (1))	500 penalty units for an individual, or 1000 penalty units for a corporation
Failing to provide an officer with all reasonable assistance. (Section 49 (2))	500 penalty units for an individual, or 1000 penalty units for a corporation
Failing to answer questions or provide information when required to do so by an authorised officer. (Section 49 (3))	500 penalty units for an individual, or 1000 penalty units for a corporation

Offence	Maximum penalty
Failing to produce for inspection any documents or other things when required to do so by an authorised officer. (Section 49 (4))	500 penalty units for an individual, or 1000 penalty units for a corporation
Not complying with a direction to cease work without approval. (Section 50)	20 penalty units

### Questions for comment

19. Are there any other enforcement tools, which should be included in the Act to ensure compliance?
20. Do the offences and penalties appropriately support compliance with the Act's objectives?
21. Should the penalty levels be adjusted to take account of increases in Consumer Price Index since the Act's enactment in 2018?

## 7. Other matters

---

### 7.1 Other matters in the Act

The Act makes provision for numerous other matters, including:

- delegation of functions and removal of personal liability for the Secretary and Chief Executive (sections 52, 53)
- the Chief Executive may enter into an information sharing arrangement with a relevant agency for the purposes of sharing or exchanging any information that is held by the Chief Executive or the agency (section 54). Section 54 may not allow personal information to be shared between the Chief Executive and a Commonwealth agency contrary to the Privacy Act 1988
- nature and time for commencement of proceedings for offences (sections 55, 56)
- service of documents (section 58).

#### Questions for comment

22. Do you have any comments on these other matters included in the Act?
23. Are there other provisions or improvements which may be necessary to assist in meeting the objectives of the Act?

#### *Any other comments*

The matters identified in this discussion paper are not exhaustive. They are included to stimulate discussion and do not indicate government policy.

You are not confined to the questions listed in this paper (all questions have been consolidated in Appendix 1) and may raise any other issue or make any other comment you wish to make on the operation of the legislation.

### 7.2 Forward thinking

The Australian Government has committed to reducing greenhouse emissions and has legislated a national commitment to reduce greenhouse gas emissions by 43% below 2005 levels by 2030, and net zero by 2050.

The NSW Government has announced an aspirational transitional target of achieving net-zero emissions by 2050. The NSW Governments Strategic Statement on Coal Exploration and Mining in NSW provides a policy framework for coal exploration and mining in NSW that supports investment

certainty as the coal mining sector responds to global demand and manages the effects of an expected decline in thermal coal mining in the state over the longer term.

This changing energy market and a focus on renewables and alternatives to coal-based energy generation, could see industries diversifying into other ventures, other than coal mining. This could result in a smaller pool of mining operators contributing to the Compensation Fund. However, subsidence events from non-active coal mines could still occur into the future. It is important that any mine subsidence resulting in damage to property should still be compensated to the property owner, for the cost of repairs and or mitigation works. This is the key objective of the Act.

The review is therefore seeking views on the suitability of the current legislative scheme for compensation given the changing nature of the coal industry over coming decades.

#### **Questions for comment**

24. 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?

## Appendix 1: Consolidated list of questions

---

1. Are the objectives of the Act still valid? Please explain.
2. Are there other objectives that should be included? If so, please identify them and explain why.
3. 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?
4. Do you agree with the types of compensation for mine subsidence damage – (yes/no). If no, what improvements do you suggest?
5. Do you think certain types of compensation should be extended to tenants of a property?
6. Do you have any comments on the viability of the compensation fund and suggestions for other mechanisms/ actions?
7. Do you think that the current requirements for making a claim of compensation are appropriate?
8. 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?
9. Do you think the Act should be amended to specify requirements for certain types of information from mine operators?
10. Is the Dispute Resolution process achieving its aim of providing a no-cost independent review mechanism?
11. Should contracting out of the Act be considered for government agencies such as Transport for NSW?
12. Do you have any comment about mine subsidence districts and how it works?
13. Do you suggest any improvements to the approval provisions under the Act?
14. Are there any matters regarding compensation eligibility of structures within Mine Subsidence Districts, that you think should be considered?
15. 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?
16. Are there any matters such as expenses that should be included in the funding of preventative works, for example relocation expenses?
17. Do you think the additional functions of the Chief Executive are working well? If, 'no', what improvements would you suggest and why?
18. Are there any other functions that the Chief Executive should have? If yes, what are they?
19. Are there any other enforcement tools, which should be included in the Act to ensure compliance?
20. Do the offences and penalties appropriately support compliance with the Act's objectives?

21. Should the penalty levels be adjusted to take account of increases in Consumer Price Index since the Act's enactment in 2018?
22. Do you have any comments on these other matters included in the Act?
23. Are there other provisions or improvements, which may be necessary to assist in meeting the objectives of the Act?
24. 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?