

NEW SOUTH WALES

DRAFT GOVERNMENT BILL

Coal Mine Subsidence Compensation Amendment Bill 2024

Explanatory note

Overview of Bill

The object of this Bill is to amend the *Coal Mine Subsidence Compensation Act 2017* to update the Act as a result of the 2023 statutory review.

Outline of provisions

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Coal Mine Subsidence Compensation Act 2017 No 37

Schedule 1[1], [5], [6], [12], [25], [29], [30], [37] and [38] provide for consistent terminology when referring to damage arising from subsidence.

Schedule 1[2] inserts definitions for *assessment report*, *mining operations* and *pre-mining inspection* and omits the definition of *preventative or mitigative expense*. **Schedule 1[7]–[9]** make consequential amendments.

Schedule 1[3] and [4] clarify the following—

- (a) reasonable compensation for accommodation expenses is payable to the lessee of a building while it is uninhabitable due to damage arising from subsidence, and

- (b) compensation for expenses incurred, or proposed to be incurred, by an owner of existing improvements or goods to prevent or mitigate damage arising from subsidence to the improvements or goods, is only payable if the improvements or goods already exist.

Schedule 1[10] inserts proposed sections 10A and 10B. Proposed section 10A provides that a person is not entitled to compensation for damage to improvements or goods arising from subsidence if the person refused to allow a pre-mining inspection to be carried out. Proposed section 10B provides that compensation is not payable to a person for damage caused by works carried out under, or in compliance with a direction given under the Act, section 27 or 29, if the works were carried out by the person using money paid from the Coal Mine Subsidence Compensation Fund (the *Fund*).

Schedule 1[11] removes the requirement that a claim be lodged through the Subsidence Advisory NSW website and instead requires that a claim be lodged in the way approved by the Chief Executive of Subsidence Advisory NSW (the *Chief Executive*).

Schedule 1[13] inserts proposed section 11A to clarify that Subsidence Advisory NSW has the function of assessing claims for compensation made under the *Coal Mine Subsidence Compensation Act 2017* (*the Act*), in accordance with approved procedures made under section 14, and producing an assessment report.

Schedule 1[14] replaces section 12 to clarify that the Chief Executive is required to determine claims for compensation made under the Act, and requires the Chief Executive to give written reasons for a determination made that is inconsistent with the assessment report relating to the claim.

Schedule 1[15] clarifies the matters that approved procedures may deal with.

Schedule 1[16]–[21], [31], [32] and [39]–[42] increase the maximum monetary penalty for certain offences.

Schedule 1[22] clarifies that when a person seeks approval to alter or erect improvements or to subdivide land within a mine subsidence district, the Chief Executive may refuse approval if the Chief Executive is satisfied that the land to which the application relates may subside as a result of the historical or future extraction of coal undertaken in the mine subsidence district.

Schedule 1[26] clarifies that the Chief Executive is not required to restore damaged improvements or goods on land under section 26(1)(a).

Schedule 1[27] provides the power for the Chief Executive to demolish improvements or goods that have been purchased or acquired, or are on land that has been purchased or acquired, under section 26(1) or (2).

Schedule 1[28], [33] and [34] provide that the Chief Executive—

- (a) has the power to evacuate people from land if the Chief Executive reasonably believes that damage to the surface of any land arising from subsidence may cause danger to a member of the public, and to arrange temporary accommodation for people who have been evacuated, and
- (b) may make a payment from the Fund to reimburse a person for expenses incurred by the person as a result of certain actions taken by the Chief Executive to prevent danger to the public, and
- (c) may recover a payment made from the Fund from the proprietor of an active coal mine if the payment was made to reimburse a person for expenses incurred as a result of actions taken by the Chief Executive to prevent danger to the public, if the Chief Executive has formed the opinion that the actions taken were necessary to eliminate or minimise danger caused by, or in connection with, subsidence arising from the active coal mine, and
- (d) may make a payment from the Fund to reimburse a public authority for expenses incurred by the authority when carrying out works to repair damage to land, improvements or goods, if the damage to the land, improvements or goods arose from subsidence.

Schedule 1[35] provides the Chief Executive with the power to cause works to be carried out to prevent or mitigate damage to existing improvements or goods that the Chief Executive anticipates would, in the absence of the works, occur because of subsidence. The Chief Executive may authorise amounts to be paid from the Fund to—

- (a) fund works to prevent or mitigate damage to existing improvements or goods, and
- (b) compensate a person for expenses incurred as a result of works to prevent or mitigate damage to existing improvements or goods.

Schedule 1[36] inserts proposed sections 31A and 31B. Proposed section 31A provides that before a person commences mining operations for a coal mine, the Chief Executive may direct that a pre-mining inspection be carried out in relation to land that the Chief Executive is satisfied may be at risk of damage arising from subsidence caused by the mining operations. The proposed section also provides that—

- (a) the pre-mining inspection must be carried out in accordance with the approved procedures under the Act, section 14, and
- (b) the Chief Executive may install survey equipment on land on which a pre-mining inspection is undertaken to monitor whether damage from subsidence is likely to occur to the land or to any improvements or works on the land, and
- (c) the Chief Executive may recover costs associated with a pre-mining inspection from the proprietor of the proposed coal mine to which the mining operations relate.

Proposed section 31B provides that the Chief Executive may, by written notice, require the production of certain documents or information, and makes the failure to comply with the requirement an offence.

Schedule 1[43] provides that the Secretary of the Department of Customer Service must not delegate certain functions of the Secretary under the Act to the Chief Executive or a person employed by Subsidence Advisory NSW.

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Coal Mine Subsidence Compensation
Amendment Bill 2024

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DRAFT GOVERNMENT BILL

**Coal Mine Subsidence Compensation
Amendment Bill 2024**

No. , 2024

A Bill for

An Act to amend the *Coal Mine Subsidence Compensation Act 2017* to implement various recommendations arising from the statutory review of the Act, and for other purposes.

public consultation draft

Coal Mine Subsidence Compensation Amendment Bill 2024 [NSW]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Coal Mine Subsidence Compensation Amendment Act 2024*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Coal Mine Subsidence Compensation Act 2017 No 37

[1] Section 3 Objects of Act

Omit “caused by” from section 3(2)(a). Insert instead “arising from”.

[2] Section 4 Definitions

Omit section 4(1), definition of *preventative or mitigative expense*.

Insert in alphabetical order—

assessment report—see section 11A(1)(b).

mining operations has the same meaning as in the *Mining Act 1992*.

pre-mining inspection—see section 31A(1).

[3] Section 7 Types of compensation

Omit section 7(1)(c) and (d). Insert instead—

- (c) in relation to a building, or part of a building, owned by the person that is leased to another person (the *lessee*)—reasonable compensation for the rent under the lease that would have been paid or payable to the person by the lessee for a period during which the building or part is uninhabitable, under repair or under construction because of damage arising from subsidence,
- (d) in relation to a building, or part of a building, occupied by the person—reasonable compensation for accommodation expenses incurred by the person, including relocation expenses and rent for alternative accommodation, for a period during which the building or part is uninhabitable, under repair or under construction because of damage arising from subsidence.

[4] Section 7(2)(a)

Omit section 7(2)(a). Insert instead—

- (a) compensation for expenses incurred, or proposed to be incurred, by or on behalf of the owner of existing improvements or goods in preventing or mitigating damage to the improvements or goods arising from subsidence,

[5] Section 8 Liability for compensation

Insert “subsidence caused by” after “arising from” wherever occurring in section 8(1)(a) and (b) and (3).

[6] Section 9 Limitation on claims for damage arising out of subsidence

Omit “caused by” in section 9(1). Insert instead “arising from”.

[7] Section 9(2)(b)

Omit section 9(2)(b). Insert instead—

- (b) an expense incurred, or proposed to be incurred, to prevent or mitigate damage arising from subsidence to improvements or goods referred to in paragraph (a),

[8] Section 10 Limitation on claims arising out of actions to prevent or mitigate damage

Omit “for any preventative or mitigative expense” from section 10(1).

Insert instead “made under section 7(2)(a)”

[9] Section 10(2)

Omit “for any preventative or mitigative expenses if the total preventative or mitigative”.

Insert instead “made under section 7(2)(a) if the”.

[10] Sections 10A and 10B

Insert after section 10—

10A Limitation on claims where pre-mining inspection was required

- (1) A person is not entitled to compensation for damage to improvements or goods arising from subsidence if—
 - (a) before the subsidence occurred, the Chief Executive required a pre-mining inspection to be carried out on the land on which the improvements or goods are located, and
 - (b) the person refused to allow the pre-mining inspection to be carried out.
- (2) Subsection (1) does not apply if, on application to the Chief Executive by the person, the Chief Executive is satisfied in all the circumstances that the person should be entitled to compensation.

10B Limitation on claims for compensation

Compensation is not payable to a person for damage caused by works carried out under, or in compliance with a direction given under, section 27 or 29 if the works were carried out by the person using money paid out from the Fund.

[11] Section 11 Making of claims of compensation

Omit section 11(1). Insert instead—

- (1) A person may make a claim for compensation under this Act by lodging the claim in the way approved by the Chief Executive.

[12] Section 11(3)(a) and (b)

Omit “was caused by” wherever occurring in section 11(3)(a) and (b).

Insert instead “arose from”.

[13] Section 11A

Insert after section 11—

11A Assessment of claims by Subsidence Advisory NSW

- (1) As soon as reasonably practicable after receiving a claim for compensation, Subsidence Advisory NSW must—
 - (a) assess the claim in accordance with the approved procedures, and
 - (b) prepare a report (an *assessment report*) about the assessment in accordance with the approved procedures.

[14] Section 12

Omit the section. Insert instead—

12 Determination of claims

- (1) The Chief Executive must determine each claim for compensation in accordance with this Act, including the approved procedures.
- (2) If the Chief Executive determines a claim in a way that is inconsistent with the assessment report relating to the claim, the Chief Executive must give written reasons for the determination to the person who made the claim.

[15] Section 13 Determination of claims in accordance with approved procedures

Omit section 13(1).

[16] Section 14 Approved procedures

Omit section 14(2). Insert instead—

- (2) Without limiting subsection (1), the approved procedures may deal with the following—
 - (a) the determination of whether damage arises from subsidence caused by an active or non-active coal mine,
 - (b) the making, assessment and determination of claims for compensation,
 - (c) the review of determinations of claims for compensation,
 - (d) the procedures relating to the assessment of risk of damage that may arise from subsidence before mining commences on the land,
 - (e) the assessment of claims for compensation, including processes for the assessment of claims,
 - (f) the payment of costs, fees and charges, or the prohibition of costs, fees and charges, in connection with the determination of claims for compensation under this Act,
 - (g) another matter prescribed by the regulations.

[17] Section 15 Review of claim determinations by Secretary

Omit “500 penalty units” from section 15(6), penalty. Insert instead “590 penalty units”.

[18] Section 15(6), penalty

Omit “1,000 penalty units”. Insert instead “1,180 penalty units”.

[19] Section 18 Failure of proprietor of coal mine to comply with Act

Omit section 18(2).

[20] Section 18(3)

Omit “or (2)”.

[21] Section 21 Certain development within mine subsidence districts requires approval

Omit “100 penalty units” from section 21(1), penalty. Insert instead “120 penalty units”.

[22] Section 21(1), penalty

Omit “500 penalty units”. Insert instead “590 penalty units”.

[23] Section 21(2), penalty

Omit “100 penalty units”. Insert instead “120 penalty units”.

[24] Section 21(2), penalty

Omit “500 penalty units”. Insert instead “590 penalty units”.

[25] Section 22 Approvals for development within mine subsidence districts

Insert after section 22(3)—

- (3A) Without limiting subsection (3), the Chief Executive may refuse to grant the approval if the Chief Executive is satisfied the land to which the application relates may subside as a result of the historical or future extraction of coal undertaken in the mine subsidence district.

[26] Section 26 Purchase of damaged improvements and effecting of remedial works by the Chief Executive

Omit “caused by” from section 26(1)(a) and (2). Insert instead “arising from”.

[27] Section 26(1)(a)(iii)

Omit “and” from section 26(1)(a)(iii). Insert instead “or”.

[28] Section 26(5A)

Insert after section 26(5)—

- (5A) The Chief Executive may demolish or remove improvements or goods—
- (a) purchased or acquired by the Chief Executive under subsection (1) or (2), or
 - (b) on land purchased or acquired by the Chief Executive under subsection (1) or (2).

[29] Section 27 Emergency, urgent and temporary actions

Omit section 27(1)(a). Insert instead—

- (a) damage to the surface of land arising from subsidence may cause danger to a member of the public, the Chief Executive may take the following actions to eliminate or minimise the danger—
 - (i) in relation to subsidence arising from an active coal mine—direct the proprietor of the coal mine to cause the land to be filled in or fenced off or take other necessary action,
 - (ii) cause the land to be filled in or fenced off or take other necessary action,
 - (iii) direct persons to evacuate the land,
 - (iv) arrange temporary accommodation for persons evacuated from the land, and

[30] Section 27(1)(b) and (c)

Omit “been caused by” wherever occurring. Insert instead “arisen from”.

[31] Section 27(2), penalty

Omit “2,000 penalty units”. Insert instead “2,365 penalty units”.

[32] Section 27(2), penalty

Omit “10,000 penalty units”. Insert instead “11,820” penalty units.

[33] Section 27(4A)–(4C)

Insert after section 27(4)—

- (4A) If a person incurs expenses as a result of actions taken under subsection (1)(a)(ii)–(iv), (1)(b)(ii) or (1)(c)(ii), the Chief Executive may make a payment from the Fund to reimburse the person for the expenses incurred.
- (4B) The Chief Executive may recover an amount paid to a person under subsection (4A) from the proprietor of an active coal mine as a debt due to the Crown, if—
 - (a) the amount paid to the person was to reimburse the person for expenses incurred as a result of actions taken under subsection (1)(a)(ii)–(iv), (1)(b)(ii) or (1)(c)(ii), and
 - (b) in the Chief Executive’s opinion the actions taken were necessary to eliminate or minimise danger caused by, or in connection with, subsidence arising from the active coal mine.
- (4C) The Chief Executive may make a payment from the Fund to reimburse a public authority for expenses incurred by the public authority if the Chief Executive is satisfied—
 - (a) the expenses were incurred by the public authority when carrying out works to repair damage to land, improvements or goods, and
 - (b) the repairs were necessary to ensure the continued use of the land, improvements or goods, and
 - (c) the damage to the land, improvements or goods arose from subsidence.

[34] Section 27(7)

Insert after section 27(6)—

- (7) In this section—
 - public authority** means—
 - (a) a public authority or local authority constituted by or under an Act, or
 - (b) a Public Service agency, or
 - (c) a statutory body representing the Crown, or
 - (d) a statutory State owned corporation or its subsidiaries within the meaning of the *State Owned Corporations Act 1989*, or
 - (e) a chief executive officer of a corporation or subsidiary referred to in paragraph (d), or
 - (f) a council within the meaning of the *Local Government Act 1993*.

[35] Section 29

Omit the section. Insert instead—

29 Works for prevention or mitigation of damage from subsidence

- (1) The Chief Executive may cause works to be carried out to prevent or mitigate damage to existing improvements or goods that the Chief Executive anticipates would, in the absence of the works, occur because of subsidence.
- (2) The Chief Executive may authorise amounts to be paid from the Fund—
 - (a) to fund works to prevent or mitigate damage to existing improvements or goods if the Chief Executive is satisfied—
 - (i) damage is reasonably likely to occur if the works are not carried out, and

- (ii) carrying out the works will reduce the total potential liability of the Fund, or
- (b) to compensate a person for expenses incurred as a result of works to prevent or mitigate damage to existing improvements or goods.

[36] Sections 31A and 31B

Insert after section 31—

31A Pre-mining inspections

- (1) Before a person commences mining operations for a coal mine, the Chief Executive may require an inspection (a *pre-mining inspection*) be carried out in relation to land, and any improvements or works on the land, that the Chief Executive is satisfied may be at risk of damage arising from subsidence caused by the mining operations.
- (2) A pre-mining inspection must be carried out in accordance with the approved procedures.
- (3) The Chief Executive may install survey equipment on land inspected under this section for monitoring whether damage arising from subsidence is likely to occur to the land or to any improvements or works on the land.
- (4) The Chief Executive may recover costs associated with a pre-mining inspection from the proprietor of the proposed coal mine to which the mining operations relate.

31B Requests for information

- (1) The Chief Executive may, by written notice given to a person, require the person to produce documents or information.
- (2) The notice must specify—
 - (a) the way in which the documents or information must be produced, and
 - (b) a reasonable time by or at which the documents or information must be produced.
- (3) The notice may relate to a document that is located outside the State or Australia.
- (4) A person must not, without reasonable excuse, fail to comply with the notice.
Maximum penalty—
 - (a) for an individual—590 penalty units, or
 - (b) otherwise—1,180 penalty units.

[37] Section 32 Coal Mine Subsidence Compensation Fund

Omit “caused by” from section 32(3)(a). Insert instead “arising from”.

[38] Section 34 Recovery by Chief Executive in the case of unlawful mining operations

Omit “caused by” from section 34(2). Insert instead “arising from”.

[39] Section 39 Identity cards to be shown

Omit “15 penalty units” from the penalty. Insert instead “18 penalty units”.

[40] Section 49 Offences relating to inspections

Omit “500 penalty units” from the penalty. Insert instead “590 penalty units”.

[41] Section 49, penalty

Omit “1,000 penalty units”. Insert instead “1,180 penalty units”.

[42] Section 50 Prevention of unauthorised work

Omit “20 penalty units” from section 50(2), penalty. Insert instead “24 penalty units”.

[43] Section 52 Delegation

Insert after section 52(2)—

- (3) Despite subsection (1), the Secretary must not delegate the Secretary’s functions under section 15(1)–(3) to—
 - (a) the Chief Executive, or
 - (b) a person employed in Subsidence Advisory NSW.