

Coal Mine Subsidence Compensation Amendment Bill 2024

Explanatory paper

March 2024

Acknowledgement of Country

The NSW Department of Customer Service acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past and present and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this explanatory paper.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Coal Mine Subsidence Compensation Amendment Bill 2024 – Explanatory paper

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Subsidence Advisory NSW

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Information contained in this publication is based on knowledge and understanding at the time of writing, March 2024, and is subject to change.

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.

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Introduction

1.1 Purpose

The Department of Customer Service seeks your feedback on the *Coal Mine Subsidence Compensation Amendment Bill 2024* (the Bill), which follows a statutory review of the *Coal Mine Subsidence Compensation Act 2017* (the Act). Your opinion is needed on whether the proposed changes have the intended effect and meet the Act's objectives of providing a fair, efficient and sustainable compensation framework.

1.2 Background

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 sink and cause damage to structures built around active or historical underground coal mines.

Both active and historical coal mines can cause mine subsidence damage to buildings and other structures ranging from cracking to walls and jammed doors, to more significant structural issues. Residents affected by mine subsidence damage are assisted by Subsidence Advisory NSW.

Subsidence Advisory NSW

Subsidence Advisory NSW is the NSW Government agency responsible for supporting property owners living in areas where mine subsidence caused by underground coal mining may occur. Subsidence Advisory is authorised under the Act to:

- manage all compensation claims if mine subsidence damage occurs and support property owners throughout the claims process
- regulate development within Mine Subsidence Districts to help protect home and buildings from potential mine subsidence damage
- operate a 24 Hour Emergency Hotline to allow members of the public to report subsidence emergencies, and coordinate responses to these reports.

The Coal Mine Subsidence Compensation Act 2017

The *Coal Mine Subsidence Compensation Act 2017* provides for a system of compensation for damage caused by mine subsidence. 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 introduced a fairer compensation system by distinguishing between claims arising from mine subsidence in active and non-active mining areas. Under the reforms, coal mine operators were made financially liable for the subsidence damage caused by their coal mine. Additionally, changes were made to the levy framework to enable compensation for mine subsidence damage from non-active coal mines to be paid from the Coal Mine Subsidence Compensation Fund (the Fund).

The statutory review of the Act

From 2022 to 2023 a statutory review of the Act was conducted, as was required under section 59 of the Act. A discussion paper was publicly released for feedback in 2022. The Review sought feedback from stakeholders on whether they agreed with the different types of compensation that can be claimed under the Act, and whether any improvements could be made. Feedback received from mining operators and residents was carefully considered as part of the statutory review and is available on the Have Your Say [website](#) here.

The recommendations of the statutory review have informed the development of the Bill.

1.3 Consultation process

Have your say

Interested individuals and organisations are invited to give feedback on the draft *Coal Mine Subsidence Compensation Amendment Bill 2024*. You can take part on the Have Your Say consultation website, through the survey or a written submission that is in an accessible format.

You can provide feedback in one of the following ways:

- completing the online survey at the NSW Government Have Your Say website: haveyoursay.nsw.gov.au/coal-mine-subsidence
- uploading your written submission on the NSW Government Have Your Say website: haveyoursay.nsw.gov.au/coal-mine-subsidence

Feedback is open until 9am, Monday 8 April 2024.

Next steps

After the consultation period has closed:

- all feedback and submissions will be considered
- a report on the consultation and its findings will be submitted to the Minister for Better Regulation and Fair Trading.

We will make all uploaded submissions publicly available on the Have Your Say website. If you do not want your personal details or your submission published, please state this clearly in your submission and tell us why. Automatically generated confidentiality statements will not be considered as an indication that you do not want your submission published. 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* (NSW).

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Proposed amendments

2.1 Extending relocation compensation to tenants

Proposed changes to section 7¹ of the Act will extend compensation to residential tenants, for reasonable relocation and short-term accommodation expenses where the property they are leasing is uninhabitable, under repair or under construction due to subsidence. This addresses recommendation 1 of the statutory review.

Currently, only a property owner (if they are occupying the property) is entitled to reasonable compensation for accommodation costs if a property is uninhabitable due to subsidence. However, residential tenants are also affected and may be required to vacate the premises during works to prevent or mitigate subsidence damage. These works may take several weeks to months and the available accommodation may be more expensive than the tenants' previous rental payments, creating an added burden to tenants.

The proposed changes will allow for affected residential tenants to apply to be compensated for accommodation and relocation expenses arising from subsidence damage. The Approved Procedures will provide for the process of claiming this compensation, and safeguards to ensure integrity of compensation payments. The Approved Procedures are currently contained in the document 'Guidelines – Process for Claiming Mine Subsidence Compensation', available on the Subsidence Advisory NSW website.

Focus questions

1. Do you support extending compensation to residential tenants for relocation expenses?

2.2 More support from Subsidence Advisory NSW in mine subsidence events

Proposed changes to section 27 of the Act will introduce powers for Subsidence Advisory NSW to:

- direct people to evacuate in a mine subsidence emergency²
- arrange temporary accommodation for residents who are forced to relocate because of a mine subsidence emergency³
- provide payments to residents (both tenants and property owners) for expenses arising from emergency relocation⁴
- recover costs of emergency actions that relate to an active coal mine, from the operator of that active coal mine⁵
- make payments from the Fund to repair infrastructure⁶.

These changes address recommendation 2 of the statutory review.

¹ *Coal Mine Subsidence Compensation Amendment Bill 2024* (NSW), s 7(1)(d).

² *Ibid* s 27(1)(a)(iii).

³ *Ibid* s 27(1)(a)(iv).

⁴ *Ibid* s 27(4A).

⁵ *Ibid* s27(4B).

⁶ *Ibid* s 27(4C); s 27(7).

Reimbursing relocation costs in mine subsidence emergencies

For some mine subsidence events, residents (both property owners and tenants) may be required to relocate, and currently, Subsidence Advisory NSW will arrange for temporary accommodation. While section 27 provides a power for the Chief Executive of Subsidence Advisory NSW (the Chief Executive) to take necessary action to respond to a mine subsidence emergency, there is no clear power to arrange this accommodation. The proposed amendments to section 27 will provide a clear basis for this essential function.

Additionally, when residents are evacuated and do not have access to their belongings, they may incur out-of-pocket expenses such as food, clothing and other incidentals. However, the Act does not currently have a clear power for Subsidence Advisory NSW to reimburse residents for these expenses.

The proposed changes will benefit residents by enabling the reimbursement of reasonable expenses such as food, clothing, damage to property and other incidentals in appropriate circumstances. In situations where these expenses are from subsidence caused by an active coal mine, the amount can be recovered by the operator of that coal mine.

Payments from the Fund to repair infrastructure

A proposed new provision under section 27 of the Act will provide Subsidence Advisory NSW the power to make payments from the Fund to public authorities to repair infrastructure.

Particularly in historical coal mining areas, infrastructure such as roads or sewers may require emergency repairs following mine subsidence damage. These repairs are necessary to ensure infrastructure can continue to be used. Typically, the respective asset owner, such as a local council, carries out repairs to the infrastructure and Subsidence Advisory NSW makes a payment from the Fund for these works. While section 27 provides a power for Subsidence Advisory NSW to carry out repairs in these situations, there is not a clear basis in the Act to make transfers from the Fund to the asset owner, which then could then carry out the repairs itself.

The proposed new provision will ensure Subsidence Advisory NSW can fund repairs to infrastructure undertaken by the relevant public authority, ensuring the infrastructure can continue to be used.

Focus questions

2. Do you support the additional powers for Subsidence Advisory NSW to act in mine subsidence emergencies?

2.3 Allowing claims to be lodged outside of the online portal

Proposed changes to section 11⁷ of the Act will enable a person to make a claim for compensation in a way approved by the Chief Executive. This addresses recommendation 3 of the statutory review.

Currently, the Act allows a person to apply for compensation by lodging a claim through an online portal accessed via the Subsidence Advisory NSW website. However, the Act does not consider that some customers may find it difficult to lodge their claim through the portal, due to digital literacy or accessibility issues.

⁷ *Coal Mine Subsidence Compensation Amendment Bill 2024 (NSW)*, s 11(1).

The proposed amendment would give Subsidence Advisory NSW the power to set the way in which claims can be made and enable claims to be lodged outside of the online portal. This will benefit customers by providing greater flexibility and increased accessibility and help to future proof the claims process.

Focus question

3. Do you support the proposed change to allow claims to be lodged outside of the online portal?

2.4 Pre-mining inspections

The proposed new sections 10A and 31A⁸ will make completing a pre-mining inspection a requirement for making a claim where a notification has been issued for that property. This will apply for properties in areas that may be at risk of damage caused from subsidence. Subsidence Advisory NSW will be solely responsible for arranging these pre-mining inspections, with the cost recovered from mine operators⁹. These changes address recommendation 4 of the statutory review.

Pre-mining inspections to be conducted by Subsidence Advisory NSW

A pre-mining inspection is a survey of a property's condition prior to mining commencing. Pre-mining inspections assist in future claim assessments of damaged property, allowing a clear comparison of any damage that may occur. They are an added protection for property owners to ensure they receive adequate compensation should their property be damaged by mine subsidence.

Currently, pre-mining inspections can be carried out by appropriately skilled contractors such as licensed builders or structural engineers at the request of mine operators. Subsidence Advisory NSW lacks visibility over this process and is only able to access some pre-mining inspections during the claims process. Currently, if the mine operator carries out the pre-mining inspection, property owners must discuss any concerns they have about the inspection report with the mine operator themselves.

Proposed changes will give the Chief Executive the power to direct a pre-mining inspection be carried out, if they believe there is a risk of damage arising from mine subsidence. Subsidence Advisory will either undertake or contract independent consultants to complete pre- and post-mining inspections with the cost paid for by mine operators. The changes will allow Subsidence Advisory NSW to have clear evidence of the state of a property prior to mine subsidence, and claimants will be provided with the most fair, efficient, and sustainable method for determining claims.

Pre-mining inspections a condition to claims

The proposed changes to section 10 of the Act will make pre-mining inspections a condition for making a compensation claim where it is directed by the Chief Executive. Under the changes, mine operators will be required to provide information about the estimated area that may be affected by subsidence around their coal mine to Subsidence Advisory NSW. The information will assist the Chief Executive to determine whether land or structures on the land may be at risk of damage from mine subsidence caused by the mining operations, and whether a pre-mining inspection would be required as a condition for making a claim. For a pre-mining inspection to be admissible in a

⁸ Coal Mine Subsidence Compensation Amendment Bill 2024 (NSW), s 10A; 31A.

⁹ Ibid s 31A(4).

compensation claim, the inspection will be required to have been carried out in accordance with the Approved Procedures.

The Chief Executive will also have the power to accept a claim for compensation where a pre-mining inspection was required but not carried out, if the Chief Executive is satisfied that the claimant should still be entitled to compensation. For example, if a pre-mining inspection was refused by a previous owner and the current claimant is not to blame, a claim may still be allowed.

Currently, mine operators engage mine subsidence engineering consultants and experts to prepare mine subsidence predictions and pre-mining inspections. The mine subsidence predictions inform the preparation of impact assessments and recommended management and monitoring strategies for the natural and built features in the area.

Making pre-mining inspections a pre-requisite to claims will promote fair, efficient, and accurate resolution of claims, should damage caused by mine subsidence occur. In some instances, properties damaged by mine subsidence outside of the estimated subsidence impact zone may not have a pre-mining inspection. Assessment of these claims will be carried out in accordance with the Approved Procedures and these claimants will not be prevented from making a claim without a pre-mining inspection.

Focus question

4. Do you support making pre-mining inspections a requirement for claims for mine subsidence damage, to be carried out by Subsidence Advisory NSW?

2.5 Requiring information and documents from coal mine operators

The new proposed section 31B¹⁰ in the Bill will require coal mine operators to provide additional information and documentation to Subsidence Advisory NSW. This addresses recommendation 4 in the statutory review.

Currently, Subsidence Advisory NSW has no clear powers to obtain information from mine operators, for example:

- lists of properties that may be affected by mine operations
- individual subsidence management plans relating to specific properties
- survey data
- copies of property inspections that have been conducted by mine operators, prior to a claim being lodged
- maps of proposed mining activity.

Subsidence Advisory NSW has faced difficulties obtaining these types of information because it is outside the context of compliance and enforcement of the Act.

The power to compel mine operators to provide this information would allow Subsidence Advisory NSW to obtain data and reports that are important for the overall assessment of mine subsidence within a particular region. It would also assist Subsidence Advisory NSW to carry out its role under the Act including managing and determining claims and supporting customers.

¹⁰ *Coal Mine Subsidence Compensation Amendment Bill 2024* (NSW), s 31B.

Focus question

5. Do you support the proposed changes that will require mine operators to provide additional information and documentation to Subsidence Advisory NSW?

2.6 Clarifying the roles of Subsidence Advisory NSW and mine operators in the assessment and determination of claims

Proposed changes to the Act clarify the role of Subsidence Advisory NSW in relation to the assessment determination of claims. These changes address recommendation 5 in the statutory review.

Subsidence Advisory NSW to assess all claims

The proposed new section 11A¹¹ makes Subsidence Advisory NSW responsible for assessing all claims for compensation.

Currently, after a claim is lodged, Subsidence Advisory NSW conducts an assessment to determine if the damage is in an area that may be affected by mine subsidence from an active coal mine. If the damage falls within this area, the claim is subsequently forwarded to the relevant mine operator for acknowledgement¹².

Following this, Subsidence Advisory NSW selects an independent assessor to carry out assessments. These specialist assessors provide professional and objective assessment of claims. Following an assessment, the assessor(s) prepares an assessment report detailing if the damage arises from mine subsidence and where applicable, a cost estimate for repairs¹³.

However, there is confusion among stakeholders, who believe that mine operators play a role throughout the claim assessment process.

Proposed changes to the Act make Subsidence Advisory NSW responsible for assessing all claims¹⁴. This removes any ambiguity regarding the claim assessment process and reiterates the fair and independent process of compensation.

Chief Executive to determine all claims

Proposed changes to section 12¹⁵ of the Act make the Chief Executive responsible for determining all claims.

Under the current process, once Subsidence Advisory NSW has completed an initial assessment and determined that a claim relates to an active coal mine, the claim is then forwarded to the relevant mine operator. Following claim assessment by an independent assessor, a report from the independent assessor is provided to the mine operator for determination. The determination must be done in accordance with the Approved Procedures¹⁶. Under the Approved Procedures, mine

¹¹ *Coal Mine Subsidence Compensation Amendment Bill 2024 (NSW)*, s 11A.

¹² *Subsidence Advisory NSW, Guidelines – Process for Claiming Mine Subsidence Compensation* (1 January 2018), 6.

¹³ *Ibid* 7.

¹⁴ *Coal Mine Subsidence Compensation Amendment Bill 2024 (NSW)*, s 11A(1)(b).

¹⁵ *Ibid* s 12(1).

¹⁶ *Coal Mine Subsidence Compensation Act 2017 (NSW)*, s13(1).

operators can only either accept the outcome of the expert report or request a review into the findings¹⁷. The current reference in the Act, referring to the mine operator as determining claims, has created a misconception among stakeholders that mine operators themselves can decide whether to accept or reject claims.

The proposed changes clarify that it is the role of the Chief Executive to determine the outcome of all claims. The Approved Procedures will provide information on the process for determining whether a claim relates to an operator's active coal mine. Mine operators continue to have rights to appeal this decision to the Land and Environment Court of New South Wales and will be consulted on changes to the Approved Procedures. This provides greater clarity to claimants about the claims process to ensure fair compensation.

Focus question

6. Do you support making Subsidence Advisory NSW responsible for assessing and determining all claims?

2.7 Expanding the scope of the Approved Procedures

The Approved Procedures are Guidelines contained outside the Act in the document '[Guidelines – Process for Claiming Mine Subsidence Compensation](#)' on the Subsidence Advisory NSW website. Under the Act, claims for compensation are to be decided in accordance with Approved Procedures, ensuring claims are assessed and determined consistently and fairly.

The Bill proposes to amend section 14¹⁸ of the Act to allow the Approved Procedures to apply to:

- the making, assessment, and determination of claims¹⁹
- the review of the determination of a claim²⁰
- steps that occur prior to mining commencing and prior to a claim being lodged²¹.

This addresses recommendation 6 in the statutory review.

Expanding the scope of the Approved Procedures

Proposed changes to section 14 of the Act will allow the Approved Procedures to include steps that occur prior to mining commencing, and prior to a claim being lodged.

Currently, the Approved Procedures only cover some aspects of the claim process, the claim determination. It excludes steps that occur prior to mining commencing and prior to a claim being lodged. Examples of such steps include pre-mining inspections and claim lodgement. Feedback received from industry and residents recommends the Approved Procedures cover pre-mining inspections and steps taken as conditions for the making of a claim.

The proposed changes would simplify and create clarity for property owners/claimants and mine operators about the claims process beyond the determination process.

¹⁷ Subsidence Advisory NSW, *Guidelines – Process for Claiming Mine Subsidence Compensation* (1 January 2018), 8.

¹⁸ *Coal Mine Subsidence Compensation Amendment Bill 2024* (NSW), s 14(2).

¹⁹ *Ibid* s 14(2)(b).

²⁰ *Ibid* s 14(2)(c).

²¹ *Ibid* s 14(2)(d).

Approved Procedures to include a process of reviewing determinations of claims

The proposed changes also allow the Approved Procedures to include a no-cost review of claim determinations, to resolve claim disputes²².

Currently, a claimant whose claim for compensation is wholly or partly disapproved can seek an independent no-cost review by the Secretary under section 15 of the Act. A mine operator can also seek review by the Secretary of the Chief Executive's determination that a claim relates to the mine operator's coal mine under section 12 of the Act. In both instances, the claimant or operator can appeal the Secretary's review decision to the Land and Environment Court of New South Wales where they are unsuccessful – at their own expense.

The statutory review heard feedback on the difficulty of the Secretary's review process from both industry and property owners. The proposed changes aim to include a process for revising the determination of claims with the Approved Procedures. This process would occur prior to the Secretary's review, and would allow claimants and mine operators to request reconsideration by the Subsidence Advisory NSW at no cost without seeking formal review.

Focus Question

7. Do you support the inclusion of a proposed review process within the Approved Procedures?

2.8 Increasing penalties in line with inflation for existing offences in the Act

The Bill proposes to increase maximum penalties for existing offences in line with inflation since the commencement of the Act in 2018, as measured by the Consumer Price Index (CPI)²³. This was recommendation 7 in the statutory review.

Currently, the Act provides Subsidence Advisory NSW with enforcement tools to allow it to effectively oversee and enforce compliance with the Act. However, the maximum penalty levels have not been adjusted to consider the increases in CPI since the Act's commencement in 2018.

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

Offence(s)	Current maximum penalty in Act	Indicative maximum penalty after indexation
Section 15(6) Failure for an operator of a coal mine to give effect to a decision of the Secretary after reviewing a claim determination.	500 penalty units (\$55,000) for an individual, or 1000 penalty units (\$110,000) for a corporation.	590 penalty units (\$64,900) for an individual, or 1180 penalty units (\$129,800) for a corporation.

²² Coal Mine Subsidence Compensation Amendment Bill 2024 (NSW), s 14(2)(c).

²³ Ibid s 15(6); s 21; s 22; s 27; s 39; s 49(1); s 49(2); s 49(3); s 49(4); s 50.

Section 21(1) Carrying out work in connection with buildings or infrastructure in a mine subsidence district without the approval of the Chief Executive.	100 penalty units (\$11,000) for an individual, or 500 penalty units (\$55,000) for a corporation.	120 penalty units for an individual (\$13,200), or 590 penalty units (\$64,900) for a corporation.
Section 21(2) Subdividing land within a mine subsidence district without the approval of the Chief Executive.	100 penalty units (\$11,000) for an individual, or 500 penalty units (\$55,000) for a corporation.	120 penalty units for an individual (\$13,200), or 590 penalty units (\$64,900) for a corporation.
Section 27 Not complying with a direction from the Chief Executive for emergency, urgent and temporary actions.	2,000 penalty units (\$220,000) for an individual, or 10,000 penalty units (\$1,100,000) for a corporation.	2,365 penalty units (\$260,150) for an individual, or 11,820 penalty units (\$1,300,200) for a corporation.
Section 39 Failure for authorised officer to carry identity card, produce identity card, refuse or fail to return any identity card issued.	15 penalty units (\$1,650).	18 penalty units (\$1,980)
Section 49(1) Hindering or obstructing an authorised officer.	500 penalty units (\$55,000) for an individual, or 1000 penalty units (\$110,000) for a corporation.	590 penalty units (\$64,900) for an individual, or 1180) penalty units (\$129,800 for a corporation.
Section 49(2) Failing to provide an officer with all reasonable assistance.	500 penalty units (\$55,000) for an individual. or 1000 penalty units (\$110,000) for a corporation.	590 penalty units (\$64,900) for an individual, or 1180 penalty units (\$129,800) for a corporation.
Section 49(3) Failing to answer questions or provide information when required to do so by an authorised officer.	500 penalty units (\$55,000) for an individual, or 1000 penalty units (\$110,000) for a corporation.	590 penalty units (\$64,900) for an individual, or 1180 penalty units (\$129,800) for a corporation.
Section 49(4) Failing to produce for inspection any documents or other things when required to do so by an authorised officer.	500 penalty units (\$55,000) for an individual, or 1000 penalty units (\$110,000) for a corporation.	590 penalty units (\$64,900) for an individual, or 1180 (\$129,800) penalty units for a corporation.

Section 50 Not complying with a direction to cease work without approval.	20 penalty units (\$2,200).	24 penalty units (\$2,640).
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The proposed amendments to the above sections will increase the penalties for existing offences, in line with inflation since 2018. This will ensure that the deterrent effect of the penalties is maintained over time.

Focus Question

8. Does the proposed amendment provide adequate deterrence against offences under the Act that may be committed by both individuals and corporations?

2.9 Clarifying provisions for work to prevent or mitigate damage

The proposed Bill aims to clarify the extent to which a person is entitled to compensation for works to prevent or mitigate damage. This addresses recommendation 8 in the statutory review.

Compensation for work to prevent to mitigate or prevent damage is only for existing structures

Amendments to section 7²⁴ of the Act clarify that a person is entitled to compensation for work to prevent or mitigate damage only for existing structures.

Currently, the Act states that a person is entitled to compensation in relation to works to prevent or mitigate damage. However, this has caused confusion amongst claimants as to whether it relates to work associated with existing or future structures.

The proposed amendments to the Act will clarify that a person is entitled to compensation for works to prevent or mitigate damage on existing structures. This means that costs related for works to prevent or mitigate damage of future building is not eligible to compensation. This will minimise any uncertainty for claimants.

Subsidence Advisory NSW to carry out work to prevent or mitigate damage

Proposed changes to section 29 of the Act give the Chief Executive power in some circumstances to carry out work to prevent or mitigate damage.

This would be used for works such as sub-surface mitigation, while a claim is pending, prior to repair works being completed by the property owner.

While section 29 provides a power for Subsidence Advisory to fund reasonable expenses that may arise from works to prevent or mitigate damage, there is no clear power in the Act for the Chief Executive to carry out the works.

The proposed change will give the Chief Executive powers to carry out such works and ensure repairs are not impacted by further subsidence and therefore reduce the liability of the Fund.

²⁴ Coal Mine Subsidence Compensation Amendment Bill 2024 (NSW), s 7(2)(a).

Associated expenses from work to prevent or mitigate damage

Proposed changes to section 29²⁵ of the Act give the Chief Executive discretion to fund reasonable expenses that may arise from works to prevent or mitigate damage.

Under section 29 of the Act, the Chief Executive can spend money from the Fund to pay for works to prevent or mitigate damage. In some circumstances, residents may need to relocate. However, payments for relocation expenses are not payable under section 29.

The proposed change will give the Chief Executive discretion to fund expenses relating to works to prevent or mitigate damage, such as temporary relocation expenses. This allows residents to be compensated for relocation expenses while preventative and mitigative works are completed.

Limiting claims from damage caused by works to prevent or mitigate damage

The proposed new section 10B²⁶ of the Act clarifies that where an owner is paid out from the Fund to carry out works to prevent or mitigate damage themselves, any future damage associated with or caused by these works will not be eligible for further compensation.

Currently, a person is entitled to compensation from the Fund to carry out works to prevent or mitigate damage. However, there are no current limits on the number of claims a claimant can make to carry out works to prevent or mitigate damage, or for any damage caused by these works.

The proposed changes to the Act will limit claims where an owner is paid out to carry out works to prevent or mitigate damage. This means that where an owner is paid out to carry out works to prevent or mitigate damage, any future damages associated with or caused by these works are not eligible for future compensation. This ensures a fair and sustainable framework for claiming compensation.

Focus Question

9. Do you support limiting compensation for works to prevent or mitigate damage to only cover existing structures?
10. Do you support reimbursing people for expenses incurred as a result of works to prevent or mitigate works, such as relocation costs?
11. Do you support limiting claims where a person is paid out to carry out preventative or mitigative works themselves?

2.10 Clarifying the responsibilities of the Chief Executive

Clarifying when the Chief Executive can refuse development approvals

Proposed changes to section 22²⁷ of the Act is to clarify the situations when the Chief Executive may refuse to grant development approvals. This addresses recommendation 9 in the statutory review.

Currently, the Chief Executive may refuse a development application to alter and/or construct buildings or infrastructure on land they believe may subside due to prior underground coal mining. However, the use of the term 'were' under section 22(7) of the Act creates confusion on whether it

²⁵ *Coal Mine Subsidence Compensation Amendment Bill 2024* (NSW), s 29(2)(b).

²⁶ *Ibid* s 10B.

²⁷ *Coal Mine Subsidence Compensation Amendment Bill 2024* (NSW), s 26(3A).

refers to coal to be mined in the future or coal that has already been mined.

The proposed change clarifies the application process for developments and creates certainty about the Chief Executive's power regarding development approvals over past and future mined land.

Clarify the Chief Executive's power to sell vacant land

Proposed changes to section 26²⁸ of the Act will allow the Chief Executive to demolish structures or buildings, according to development approvals, on land bought by the Chief Executive if it is not realistic to restore damaged buildings or infrastructure to the condition they were in before mine subsidence damage occurred. Additionally, the Bill proposed to make it clear that in circumstances where the Chief Executive may sell, lease, or dispose a property, the following conditions do not have to be both met:

- that the Chief Executive purchase damaged property from an owner due to mine subsidence arising from a non-active mine claim instead of compensation, and
- the Chief Executive restore the damaged property as close as possible to its prior condition.

Currently, the Chief Executive can settle with an owner to buy land or a structure instead of paying compensation in response to a claim about a non-active mine. Once bought, the Chief Executive can repair the property to its condition prior (as close as possible) to the mine subsidence damage. However, the Act prevents the Chief Executive from buying property damaged by mine subsidence, demolishing the building or infrastructure, and then selling the vacant land. Additionally, the Act provides, that the Chief Executive can sell, lease, or dispose of any property, however, it is not clear if Subsidence Advisory NSW must first restore improvements to its previous form.

The proposed changes expand the Chief Executive's options for dealing with property or land after purchasing from owners affected by mine subsidence. The Chief Executive will be permitted to demolish structures where it is impractical to restore them to their prior condition before mine subsidence damage. Without this power, it could be costly to Subsidence Advisory NSW to knock down and rebuild structures to their condition prior to mine subsidence damage.

Delegation of the Secretary's functions in the Act

Proposed changes to section 52²⁹ of the Act will limit the broad delegation powers allowing the Secretary to transfer their responsibilities to any officer in the Department.

A key responsibility of the Secretary is reviewing claim determinations. Under the Act, the Secretary can assign this power of review to any person employed by the Department, including the Chief Executive, which means the Chief Executive would be reviewing their own decision. This creates a conflict of interest and does not reflect the principles of natural justice.

The proposed changes to the Act will ensure that the Review of Claim Determinations are fair and cannot be delegated to the Chief Executive, or any person employed in Subsidence Advisory NSW.

Focus Question

12. Do you have any other considerations regarding the Chief Executive's powers and responsibilities?

²⁸ Ibid s 26(1)(a)(iii); s 26(5A).

²⁹ *Coal Mine Subsidence Compensation Amendment Bill 2024* (NSW), s 52(3).

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Appendix

3.1 Consolidated list of questions

Focus questions
2.1 Extending relocation compensation to tenants 1. Do you support extending compensation to residential tenants for relocation expenses?
2.2 More support from Subsidence Advisory NSW in mine subsidence events 2. Do you support the additional powers for Subsidence Advisory NSW to act in mine subsidence emergencies?
2.3 Allowing claims to be lodged outside of the online portal 3. Do you support the proposed change to allow claims to be lodged outside of the online portal?
2.4 Pre-mining inspections 4. Do you support making pre-mining inspections a pre-requisite for claims for mine subsidence damage, to be carried out by Subsidence Advisory NSW?
2.5 Requiring information and documents from coal mine operators 5. Do you support the proposed changes requiring mine operators to provide additional information and documentation to Subsidence Advisory NSW?
2.6 Clarifying the roles of Subsidence Advisory NSW and mine operators in the assessment and determination of claims 6. Do you support making Subsidence Advisory NSW responsible for assessing and determining all claims?
2.7 Expanding the scope of the Approved Procedures 7. Do you support the inclusion of a proposed review process within the Approved Procedures?
2.8 Increasing penalties in line with inflation for existing offences in the Act 8. Does the proposed amendment provide adequate deterrence against offences under the Act that may be committed by both individuals and corporations?
2.9 Clarifying provisions for work to prevent or mitigate damage 9. Do you support limiting compensation for works to prevent or mitigate damage to only cover existing structures? 10. Do you support reimbursing people for expenses incurred as a result of works to prevent or mitigate works, such as relocation costs? 11. Do you support limiting claims where a person is paid out to carry out preventative or mitigative works themselves?
2.10 Clarifying the responsibilities of the Chief Executive 12. Do you have any other considerations regarding the Chief Executive's powers and responsibilities?

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