

## MINE SUBSIDENCE ACT.

### Act No. 53, 1928.

George V,  
No. 53, 1928.

An Act to provide for the insurance against damage to improvements on the surface due to subsidence caused by coal and shale mining operations; to further regulate the subdivision of land within certain areas; to provide for the restriction of the extraction of minerals in certain cases; to amend the Coal Mines Regulation Act, 1912, and certain other Acts; and for purposes connected therewith. [Assented to, 4th January, 1929.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title  
and com-  
mencement.

**1.** (1) This Act may be cited as the "Mine Subsidence Act, 1928."

(2) This Act shall come into operation on a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Interpreta-  
tion.

**2.** In this Act, unless the context otherwise indicates or requires—

"Board" means the board constituted under this Act.

"Certificate" means a certificate of insurance under this Act.

"Council" means council of a municipality or shire.

"District" means a mine subsidence insurance district established under this Act.

"Fund" means the Mine Subsidence Insurance Fund established under this Act.

"Improvements"

“Improvements” means and includes the surface of land and any buildings, works, or things erected or constructed on the land. No. 53, 1928.

“Mine” means any mine opened under the provisions of the Coal Mines Regulation Act, 1912, or any Act amending the same.

“Mine owner” means any person who is the immediate proprietor, lessee, or occupier of any mine, and does not include a person merely receiving a royalty, rent, or fine from the mine.

“Minerals” means coal and oil-shale.

“Owner of land” includes a person in whom the right to obtain the fee-simple of land is vested, and a mortgagee, and a person holding a lease, agreement for, or promise of a lease, or a license to occupy, and a person in actual possession or occupation, and a trustee of land reserved temporarily or permanently, or dedicated for a public purpose under any Act relating to Crown lands.

“Owner of the minerals” includes a holder of the right to mine minerals, whether such are reserved to the Crown or not.

“Prescribed” means prescribed by this Act or by the regulations.

“Regulations” means regulations made under the authority of this Act.

“Subdivision” or “Subdivide” has the meaning ascribed thereto by the Local Government Act, 1919, as amended by subsequent Acts.

**3.** (1) The Governor, upon the recommendation of the board by proclamation published in the Gazette, may establish mine subsidence insurance districts for the purposes of this Act, and may from time to time in like manner vary the boundaries of any district. Districts  
estab-  
lish-  
ment.

(2) The board shall before making a recommendation to the Governor for the establishment of or the variation of the boundaries of a district publicly notify in the Gazette and in a newspaper circulating in the locality in which the proposed district or district is situated, and in such other manner, if any, as may be prescribed its intention to make a recommendation.

(3)

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(3) The notice shall set out short particulars of the boundaries of the proposed district or of the variation, and shall appoint a date not less than three months from the date of the publication before which persons likely to be affected by the recommendation, if carried into effect, may object in the prescribed manner to the terms thereof.

(4) The board shall, before making the recommendation, give consideration to any objection lodged, and may alter or modify the proposed recommendation, and shall with the recommendation make to the Governor a report as to the nature and effect of the objections (if any) lodged, and the nature and effect of any alteration or modification of the original proposal, and an estimate of the annual amount necessary to be raised by way of premiums to insure the improvements within the district against damage by subsidence caused by the extraction of minerals, and to provide for all other expenses of the administration of this Act or a just proportion thereof as the case may be.

Insurance of  
improve-  
ments—  
By owner.

**4.** (1) Every owner who is entitled to the possession of or to the receipt of the rents and profits of land within a district shall insure with the board the improvements on such land against damage by subsidence caused by the extraction of minerals.

By council.

(2) Every council shall insure with the board any bridge, public road or work within a district owned by, or the control or management of which is vested in, the council against damage by subsidence caused by the extraction of minerals.

By public  
authorities.

(3) Every person in whom any bridge, railway, pipe line, or other improvements within a district is vested shall insure the same with the board against damage by subsidence caused by the extraction of minerals.

By mine  
owner.

(4) Every mine owner of a mine within the boundaries of a district shall insure with the board against all damage to improvements caused, or likely to be caused, by subsidence due to the extraction of minerals from the mine or by reason of the working thereof, such improvements as the board may determine, to whomsoever the improvements may belong.

(5)

(5) Any person who contravenes the provisions of this section shall be guilty of an offence against this Act and shall be liable on summary conviction to a penalty not exceeding five pounds per day for each day for which the offence continues. No. 53, 1928.

5. (1) Insurance under this Act shall be applied for in the prescribed manner and at or within the prescribed times, and shall be effected by the board upon payment to it of the annual premium fixed by the board in respect of the particular risk sought to be insured. Insurance.

(2) The board shall, from time to time, determine the annual premium to be paid in respect of the insurance in any particular case and the portion thereof to be paid by the owner of the mine which has or is likely to cause damage to the improvements in question.

(3) The board shall notify in the prescribed manner the premium determined by the board in respect of the particular risk insured and require payment of such premium within the time and after service of the notice prescribed.

(4) Should any person be dissatisfied with any determination of the board he may, upon payment of the premium so fixed and within the prescribed time, appeal therefrom to the Land and Valuation Court in manner prescribed by rules of that court.

The court may make such order as shall appear just, and the order of that court shall be given effect.

(5) A certificate of insurance in the prescribed form shall be issued by the board in respect of any insurance and shall be issued upon such terms and conditions and for such a period as the board may determine.

(6) Any amount determined as a premium or as an apportioned portion thereof under this section may be recovered from the mine owner or other person by the board in any court of competent jurisdiction.

(7) Where improvements are to be erected, the class of building, and the structural conditions to be observed in the erection thereof, shall be as prescribed.

(8) A certificate of insurance subject to notice to the board in the prescribed form and to the assent of the board may be transferred by endorsement.

(9)

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(9) Nothing in this Act shall affect the provisions of the Local Government Act, 1919, as amended by subsequent Acts, relating to the erection of buildings.

Mine owner removing support, relieved of liability to safeguard surface.

**6.** (1) A mine owner who extracts from a mine within a district the minerals to such an extent that subsidence of the surface is occasioned thereby shall not if he is not in arrears with the premiums determined in accordance with section five of this Act, be liable for any damage to improvements occasioned by such subsidence.

(2) Nothing in this section shall be construed so as to absolve the mine owner from the observance or performance of any covenant or stipulation relating to the method or extent of the extraction of the minerals contained in any instrument through which the mine owner derives title to mine the minerals.

(3) Nothing in this section shall relieve a mine owner from liability for damage caused by subsidence where the subsidence is due to the negligence of the mine owner or his servants.

Appointment and constitution of the board.

**7.** (1) For the purposes of this Act there shall be constituted a board to be called the Mine Subsidence Board, which board shall be the authority charged with the administration of this Act.

Members of board.

(2) The board shall consist of the persons for the time being holding or acting in the following offices:—  
 the Under Secretary of the Department of Mines, who shall be chairman;  
 the Chief Inspector of Coal Mines;  
 the General Manager of the Government Insurance Office of New South Wales; and  
 two other members who shall be appointed by the Governor, one of whom shall be representative of mine owners, and the other representative of owners of improvements on land affected or likely to be affected by subsidence.

Term of appointment

(3) The appointed members of the board shall hold office for a term not exceeding three years, and shall be eligible for reappointment.

On the occurrence of a vacancy, an appointment may be made for the remainder of the unexpired term of the vacant office.

(4)

(4) The chairman shall have the right to vote on all occasions, and in the event of an equality of votes, shall have a second or casting vote. No. 53, 1928.  
Chairman to have casting vote.

In the absence of the chairman from a meeting one of the members elected by those present shall preside, and at that meeting shall have the rights of the chairman.

(5) Any three members of the board shall form a quorum, and may exercise all or any powers of the board. Quorum.

(6) Any act or proceeding of the board shall not be invalidated or prejudiced by reason only of the fact that at the time such act or proceeding was taken, done, or commenced, there was a vacancy in the office of any member, or that some informality or irregularity has occurred in the constitution of the board. Proceedings not invalidated by reason of vacancy.

(7) The Governor may remove any member for sufficient cause, and appoint another person in his stead. Removal of member.

(8) If any member of the board absents himself from three consecutive meetings except on leave granted by the board or by the chairman (which leave he is hereby authorised to grant) his seat shall become vacant. Absence without leave.

(9) The Governor may appoint a deputy for any member of the board to act for such member during any illness, absence, or inability to attend any meeting. Appointment of deputy.

Every such deputy shall have the immunities and shall during the time he acts as deputy have all the powers and authority of such member.

(10) The remuneration and allowances of the members of the board shall be fixed by the Governor and shall be paid out of the fund. Remuneration.

Any such remuneration and allowances of any member who is in the Public Service may be retained by him for his own use.

**8.** (1) The board shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name; and shall for the purposes and subject to the provisions of this Act be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer. Body corporate.

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Appointment  
of officers  
and  
employees.

(2) For the purpose of carrying out the powers, duties, authorities, and obligations conferred or imposed upon the board by this Act the board upon such terms and conditions as are approved by the Minister of the Department concerned, may make use of the services of any of the officers and employees of the Public Service.

No action or  
suit against  
members of  
board.

(3) No action or suit shall be brought or maintained against any person who is or at any time has been a member of the board for anything done or omitted by him pursuant to the duties imposed upon him by this Act, nor shall any action, suit, or other proceeding lie against him nor any costs be payable by him in respect of any proceeding before the board.

Minute of  
meetings, &c

(4) The board shall cause minutes of its decisions to be kept upon the official papers, and cause minutes to be kept of the proceedings at formal meetings.

Until the contrary is proved every meeting of the board whereof a minute has been made shall be deemed to have been duly convened and held.

The board shall cause an annual statement of accounts to be prepared and presented to Parliament, together with the report of the Auditor-General thereon.

Access to  
plans and  
records.

(5) Notwithstanding anything to the contrary contained in the Coal Mines Regulation Act, 1912, the board shall for the purposes of this Act have access to any plans or records of a mine deposited in the Department of Mines.

Secrecy.

(6) Every person appointed or employed under this Act who without lawful excuse reveals any matter or thing which has come to his knowledge in his official capacity shall be guilty of an offence against this Act, and shall be liable on summary conviction to a penalty not exceeding fifty pounds.

Powers and  
duties of  
board.

**9.** The powers and duties of the board shall extend to—

- (a) the issue of certificates of insurance;
- (b) investigation of all claims made under such certificates;
- (c) ascertaining the nature and assessing the damage to any improvements insured under this Act;
- (d) determining the amount to be paid out of the fund to the holder of a certificate of insurance;
- (e)

- (e) carrying out the work of repairing or making good either wholly or in part any damage caused to improvements insured under this Act; No. 53, 1923.
- (f) determining the conditions upon which the right to insure improvements may be granted upon land being subdivided;
- (g) securing support to improvements when deemed expedient in the national interest;
- (h) generally to all matters relating to the administration of the Act.

**10.** (1) Subject to this Act the amount payable in respect of any claim under a certificate of insurance shall be that determined by the board. Amount payable under claims.

(2) The board may decide what sum if any should be paid to the occupier on account of the loss occasioned by damage to the improvements. Payment to occupier.

Such sum shall be paid out of the amount which the board determines to be payable in respect of the claim by the holder of the certificate.

**11.** The damage for which payment may be made under a certificate of insurance shall be damage of any of the following kinds (and no other) arising from subsidence which has happened after the commencement of this Act:— Damage for which compensation may be made.

- (a) Depreciation of land which shall subside or become permanently submerged, including any necessary expense of fencing in such land;
- (b) destruction or structural damage of buildings and works of all kinds, other than buildings or works used in connection with the winning of minerals, but not including damage to machinery or fixtures, whether removable or not;
- (c) the proper and necessary expense of building retaining walls or bolting together or underpinning or otherwise supporting, raising or repairing buildings and walls;
- (d) the proper and necessary expense of altering the approaches to or the levels of lands or buildings;

(e)



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- (e) the proper and necessary expense of raising, lowering, diverting or making good roads, tramways, railways, pipe lines, bridges, fences, sewers, drains or other insured improvements.
- (f) the loss of rent for such period as may be prescribed during which the buildings or works are untenable under repair or in course of construction and where the whole of or any part of a building damaged is occupied by the owner the board may allow to him such sum in lieu of rent as to the board seems just.

No payment shall in any case exceed the amount of the actual loss sustained by the person making the claim (in this Act referred to as the claimant) or exceed the amount of the expense necessary to make good any damage sustained, as hereinbefore defined, all circumstances which in the opinion of the board are material, being taken into consideration.

The board shall have power to make contributions out of any sum received under this Act towards the extra cost of building, rebuilding, or replacing any existing or future building within a district on some system or style of building whereby the building can conveniently be raised and may also provide plans and models of buildings recommended as suitable and convenient for the purpose aforesaid.

Claims for  
compensation.

**12.** (1) Any claimant who alleges the following matters, that is to say—

- (i) that any damage as in this Act defined has been caused to any property by subsidence of the same or of any other land, and that the subsidence is the result of the extraction of minerals and has happened after the commencement of this Act; and
- (ii) that he has a title to or interest in the property so damaged or some part thereof; and
- (iii) that he is the holder of a subsisting certificate of insurance under this Act;

and who has given notice in writing to the board of such damage within six months after the same became apparent, may send in to the board a claim for such damage to the extent of his title or interest.

(2)

(2) The regulations may prescribe the form of any such claim and the time within which and the manner in which any such claim shall be made, and the proofs by which the claim is to be accompanied, and no claim shall be allowed with respect to any damage of which the prescribed notice shall not have been given, nor in respect of which the provisions of the regulations (unless dispensed with for cause which the board shall deem reasonable and sufficient) are not observed. No. 53, 1928.

**13.** The board shall disallow any claim for damage which in their opinion was not caused by subsidence of any land or was caused by subsidence of land which is proved not to have been caused by the extraction of minerals or in respect of which in their opinion the claimant has not such title or interest as would entitle him to recover under this Act; and shall disallow any claim to the extent to which in their opinion the damage in respect of which the claim was made has been occasioned or increased by any neglect or default of the claimant or of any person by whose acts he is affected or bound, or by the buildings or other matters in respect of which the claim was made, having been of an unnecessarily expensive kind, or improperly constructed, having regard to the liability of the district or any part thereof to subsidence. Mode of dealing with claims.

**14.** 1) The board in the exercise of any of its powers under this Act and the chairman of the board shall have the powers conferred by the Royal Commissions Act, 1923, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act and the said Act, section thirteen, and Division 2 of Part II excepted, shall mutatis mutandis apply to any witness or person summoned by or appearing before the board. Powers of board.

(2) No determination of the board in respect to the amount payable under a certificate of insurance shall be liable to be challenged, appealed against, reviewed, quashed, or called into question by any court. Determination of board final

(3) For the purposes of conducting an inquiry or investigation under the authority of this Act at which it may be inconvenient for all or any of the members to be present the board may delegate any of its powers or functions. Delegation of powers.

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**No. 53, 1928.** functions to any one member of the board or to any fit person, but the final decision of any matter in dispute shall be made by the board.

**Board may reconsider decision.** (4) The board may reconsider any matter which has been dealt with by it, or may rescind, alter, or amend any decision previously made by the board.

**Mine Subsidence Insurance Fund.** **15.** (1) There shall be constituted a fund to be called the Mine Subsidence Insurance Fund.

**Moneys to be paid to fund.** (2) All moneys expended under or for the purposes of this Act shall be paid out of such fund.

All moneys received under this Act shall be paid into such fund.

The fund shall be under the direction and control of the board, and shall be applied for the purpose of the administration and execution of this Act, and for no other purpose whatsoever.

The general costs of administration of this Act shall be paid out of the fund.

**Grant from Consolidated Revenue.** (3) There shall be paid to the credit of the fund such sums as may from time to time be provided by Parliament out of the Consolidated Revenue Fund.

**Financial provisions.** (4) All moneys received by the board under this Act shall be paid to an account in Special Deposits Account in the Treasury, and such moneys and interest allowed thereon shall be made available to the board for the purposes of meeting any claims made in pursuance of this Act or any costs or expenses payable out of the fund.

**Interest.** (5) Interest at a rate to be determined by the Colonial Treasurer shall be allowed on the amount at the credit of such account.

**Insurance of improvements in a subdivision.** **16.** (1) The owner of land within a district shall not alienate or offer to alienate any portion thereof in subdivision unless application in respect of the insurance of improvements to be erected upon the land subdivided shall first be made to the board.

**Mode of application.** (2) The application shall be made in the manner and accompanied by such fee as may be prescribed.

**Conditions of insurance.** (3) The board shall notify the applicant whether the land is such that the right to insure the improvements thereon will be granted either unconditionally or conditionally,

conditionally, and if conditionally shall indicate the conditions upon which the right to insure improvements will be granted or that insurance will not be granted as the case may be. No. 53, 1923.

(4) The decision of the board upon such application shall be a matter to be disclosed by the owner of the land to any purchaser, intending purchaser, or tenant of the land, and shall be registered by the applicant in the Register of Causes, Writs and Orders. Disclosure of decision to purchaser.

(5) Any person who alienates land in contravention of this section or who fails to register a decision within the prescribed time shall be guilty of an offence against this Act and for each such offence shall be liable to a penalty not exceeding one hundred pounds. Penalty.

A contravention of this section shall not invalidate any instrument intended to affect or evidence the title to the land, but a purchaser may cancel any contract for sale and recover any deposit or instalment of purchase money paid together with reasonable costs and expenses where there has been any such contravention in relation to the land purchased by him.

(6) Before any Crown lands within a district are alienated the Secretary for Lands may give notice of such intended alienation to the board and may apply to the board for a decision as though he were a subdividing owner of land. Crown lands.

(7) Nothing in this section shall affect the provisions of the Local Government Act, 1919, as amended by subsequent Acts relating to the subdivision of land.

**17.** (1) Where it appears to the board that in the national interest it is expedient that restriction should be imposed either on the quantity or the position of the minerals to be worked or on the method of working or packing to secure adequate support to any improvements, or to prevent or minimise damage thereto, an agreement may be entered into by the board with the owner of the minerals with regard to the restrictions which should be imposed and the compensation to be paid. Restrictions on working minerals required for support.

Such agreement shall provide that the board shall have the right to enforce the observance of the conditions thereof.

(2)

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Value of  
improvements  
compared  
with value of  
minerals.

(2) In determining whether restrictions should be imposed the board shall have regard to the value of the improvements, and the cost of repairing damage likely to be caused thereto by subsidence and to the value of the minerals.

Public  
inquiry.

(3) Should the owner of the minerals and the board fail to come to an agreement a public inquiry may be held by the board at which inquiry the board shall investigate the matter and shall have power to inspect in camera all books and vouchers of the owner of the minerals, and if necessary to employ competent assistance for such purpose.

Owner of  
minerals to  
be notified of  
proposed  
restrictions.

(4) The board shall notify, under its seal, to the owner of the minerals the extent to which it is proposed to restrict the workings and the method of working or packing which is to be adopted, and the compensation (if any) which the board is prepared to pay.

Appeal by  
owner of  
minerals.

(5) Should the owner of the minerals be dissatisfied with the determination of the board he may within the prescribed time appeal therefrom to the Land and Valuation Court in manner prescribed by rules of that court.

That court may make such determination as shall appear just, and the determination of that court shall be given effect.

(6) Any determination of the board under this section or of the said court on appeal therefrom shall be enforceable at the suit of the board or the owner of the minerals by the Supreme Court in its equitable jurisdiction.

(7) Any agreement made under subsection one of this section or any determination of the board made under this section, or of the court, made on appeal therefrom shall be registered in the Register of Causes, Writs and Orders affecting land in the office of the Registrar-General; upon such registration the rights and powers of the owner of the minerals with regard to the portion thereof affected by the determination shall be modified or abrogated to the extent expressed in the agreement with him or the determination.

Where

Where the land or interest therein affected by the agreement or determination is under the provisions of the Real Property Act, 1900, such modification or abrogation shall not become effective unless and until the Registrar-General upon the application of the board makes upon the instrument in the register book evidencing the title to the land or interest affected such entries as may be necessary to evidence such modification or agreement. No. 53, 1928.

The Registrar-General may dispense with the production of any original instrument comprising or relating to the land or interest affected and may at any time when such instrument is produced in his office for any purpose make such entries thereon.

Regulations made under the Conveyancing Act, 1919, may prescribe the form of and the time of lodging the application and the nature and form of such entries.

Where minerals affected by any such agreement or determination are comprised in an instrument registered or deposited in the Department of Mines, the Registrar of Mines shall on the application of the board note upon any registered copy of such instrument and the folium of his register book relating thereto the prescribed short particulars of the agreement or determination.

(8) Where the owner of the minerals is the holder of the right to mine minerals not reserved to the Crown, upon payment of a royalty, rent or fine to the person in whom the minerals are vested, the compensation payable in respect of the imposition of restrictions shall be separately assessed. Amount due to royalty owner separately assessed.

(9) Where restrictions are imposed, any compensation agreed upon or determined shall be paid out of the fund. Payment to be made from fund.

The board may recover the amount so paid from the authority at whose instance the restrictions were imposed.

**18.** Penalties under this Act or the regulations thereunder may be recovered in a summary manner before a stipendiary or police magistrate in petty sessions. Penalties may be recovered.

**19.**

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Regulations.

**19.** (1) The board may make regulations not inconsistent with this Act, prescribing all matters, forms, and fees which by this Act are required or authorised to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act.

The regulations may prescribe a penalty not exceeding fifty pounds for any breach thereof or of any provision of this Act.

(2) The regulations shall—

- (a) be submitted to the Governor for approval, and after such approval be published in the Gazette; and
- (b) shall take effect from the date of publication thereof, or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.