

MINE SUBSIDENCE COMPENSATION ACT.

Act No. 22, 1961.

An Act to make provision for and in respect of a Elizabeth II,
No. 22, 1961 scheme for the payment of compensation where improvements on the surface are damaged by subsidence following the extraction of coal or shale; to repeal the Mine Subsidence Act, 1928, and certain other enactments; to validate certain matters; and for purposes connected therewith. [Assented to, 27th March, 1961.]

BE it enacted by the Queen'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:—

1. (1) This Act may be cited as the "Mine Subsidence Short title
and com-
mencement. Compensation Act, 1961".

(2) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Mine Subsidence Act, 1928, the Mine Subsidence Repeals. (Amendment) Act, 1948, the Mine Subsidence (Amendment) Act, 1951, and the Mine Subsidence (Amendment) Act, 1957, are hereby repealed:

Provided that the Mine Subsidence Board constituted under this Act may in accordance with the provisions of the Acts hereby repealed:—

- (a) continue to deal with and determine any claim for damage made under the Acts hereby repealed and not determined before the commencement of this Act; and
- (b) deal with and determine any claim for damage made within six months after the commencement of this Act which if the Acts hereby repealed had not been repealed

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repealed could have been made in respect of damage caused by subsidence due to the extraction of coal or shale within six months immediately before such commencement.

Crown bound.

3. This Act shall bind the Crown.

Inter-pretation.

4. In this Act, unless the context or subject matter otherwise indicates or requires—

“Board” means the Mine Subsidence Board constituted under this Act.

“Colliery holding” means the lands included in a colliery holding of a mine as shown on plans of such mine or included in any description furnished to the Under Secretary for Mines and registered in accordance with the provisions of the Coal Mines Regulation Act, 1912, as amended by subsequent Acts.

“Fund” means Mine Subsidence Compensation Fund.

“Improvement” includes any building or work erected or constructed on land; any formed road, street, path, walk or drive-way; any pipeline, water, sewer, telephone, gas or other service main, whether above or below the surface of the land.

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

cf. Act No. 37, 1912, s. 3 (1), definition “owner”.

“Proprietor”, when used in relation to any colliery holding means any person or body corporate who is the immediate owner, or lessee, or occupier of any colliery holding, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent or fine from a colliery holding, or is merely the proprietor of a colliery holding, subject to any lease, grant, or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the colliery holding; but any contractor for the working of any colliery holding, or any part thereof, shall be subject to this Act in like manner as if he were a proprietor.

“Regulations”

“Regulations” means regulations made under this Act. No. 22, 1961

“Shale” means oil shale.

5. (1) For the purposes of this Act there shall be constituted a Board to be called the “Mine Subsidence Board”. Appointment and constitution of the Board.
In the exercise and discharge of its powers, authorities, duties and functions the Board shall be subject in all respects to the control and direction of the Minister.

(2) The Board shall consist of :

- (a) the Under Secretary of the Department of Mines, or the person for the time being acting as such, who shall be chairman;
- (b) the Chief Inspector of Coal Mines or the person for the time being acting as such;
- (c) three persons appointed by the Governor being—
 - (i) a representative nominated by the proprietors of colliery holdings;
 - (ii) a person representative of local government nominated by the Minister for Local Government; and
 - (iii) a person nominated by the Minister.

If no person, or no person able and willing to act as a member of the Board is within such time as the Minister determines, nominated as the representative of any class referred to in paragraph (c) of this subsection, the member of the Board representative of such class may be appointed on the nomination of the Minister.

(3) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of a member of the Board under paragraph (c) of subsection two of this section and such member shall not in his capacity as a member be subject to the provisions of any such Act.

(4)

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(4) The members of the Board referred to in paragraph (c) of subsection two of this section shall hold office for a term of three years and shall be eligible for reappointment. On the occurrence of a vacancy in the office of any such member an appointment may be made for the remainder of the unexpired term of the vacant office.

(5) 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.

(6) Any three members of the Board shall form a quorum and may exercise all or any powers of the Board.

(7) 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.

(8) The Governor may remove any member referred to in paragraph (c) of subsection two of this section for sufficient cause, and appoint another person in his stead.

(9) 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.

(10) Each member of the Board other than a member who is an officer of the Public Service shall be entitled to such remuneration as the Governor may fix. Each member of the Board shall be entitled to such travelling and sustenance allowances as the Board with the approval of the Minister may fix.

Body
corporate.

6. (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.

(2)

(2) For the purposes of carrying out the powers, No. 22, 1961 authorities, duties and functions 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.

(3) No matter or thing done, and no contract entered into by the Board, and no matter or thing done by any member of the Board or by any other person whomsoever acting under the direction of the Board shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.

(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.

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

7. (1) In relation to any particular matters or class of matters the Board may by writing delegate any of its powers, authorities, duties or functions under this Act (except this power of delegation) to any one member of the Board or to any fit person, so that the delegated powers, authorities, duties or functions may be exercised by the delegate with respect to the powers, authorities, duties or functions specified in the instrument of delegation. Delegation of powers.

(2) Every such delegation shall be revocable in writing at will, and no delegation shall prevent the exercise of any power or function by the Board.

8. In the exercise and discharge of any of the powers, authorities, duties and functions conferred or imposed upon it by or under this Act the Board and the chairman of the Powers of Royal Commissioners exercisable by Board.

Board

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No. 22, 1961 Board shall have the powers, authorities, protections and immunities conferred on commissioners and the chairman of a commission respectively, by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts. The provisions of the Royal Commissions Act, 1923, as amended by subsequent Acts, section thirteen, and Division 2 of Part II excepted, shall, mutatis mutandis, apply to and in respect of any witness or person summoned by or appearing before the Board.

**Accounts
and audit.**

9. (1) The Board shall cause to be kept proper books of account, and shall, as soon as practicable after the thirtieth day of June in each year, prepare and transmit to the Minister for presentation to Parliament statements of accounts in a form approved by the Auditor-General, exhibiting a true and correct view of the financial position and transactions of the Board.

(2) The accounts of the Board shall be audited by the Auditor-General, who shall have, in respect thereof, all the powers conferred on the Auditor-General by any law now or hereafter to be in force relating to the audit of public accounts; and the Audit Act, 1902, or any Act amending the same, shall apply to the Board, the members of the Board, and the officers and employees concerned in the administration of this Act, in the same manner as it applies to accounting officers of public departments.

**Mine
Subsidence
Compensa-
tion Fund.**

10. (1) There shall be constituted a fund to be called the Mine Subsidence Compensation Fund.

(2) The Fund shall consist of—

- (a) all moneys which immediately before the commencement of this Act were standing to the credit of the Mine Subsidence Fund;
- (b) the contributions payable by the proprietors of colliery holdings pursuant to this Act;
- (c) interest from time to time accruing from any investment of moneys in the Fund authorised by this Act;
- (d)

(d) such moneys as are required or authorised by this No. 22, 1961 Act to be paid to the Fund.

(3) There shall be paid out of the Fund—

- (a) all amounts payable under this Act in respect of damage caused by subsidence due to the extraction of coal or shale;
- (b) the expenses involved in the administration of this Act;
- (c) the repayment of sums loaned to the Board together with interest thereon;
- (d) such other payments as are required or authorised by this Act to be paid out of the Fund.

(4) The Fund shall be under the direction and control of the Board.

(5) There shall be paid to the credit of the Fund either by way of loan or grant such sums as may from time to time be provided for that purpose by Parliament out of the Consolidated Revenue Fund.

(6) Where there are insufficient moneys to the credit of the Fund to meet payments to be made therefrom the Board from time to time may, with the consent in writing of the Minister and subject to such terms and conditions as the Minister may impose, borrow such sums as may be necessary to meet such payments.

(7) Any moneys in the Fund which are not immediately required for the purposes of the Fund may be invested by the Board in any manner in which trustees are for the time being authorised to invest trust funds.

Any moneys which immediately before the commencement of this Act were invested pursuant to the Mine Subsidence Act, 1928-1957, shall as from such commencement be deemed to be moneys of the Fund invested pursuant to this subsection.

(8) The Board may, with the consent of the Minister, expend moneys on works or amenities upon lands which were within mine subsidence insurance districts as established under the

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No. 22, 1961 the Mine Subsidence Act, 1928-1957, immediately before the commencement of this Act. No such moneys shall be so expended before the expiration of five years from the commencement of this Act and the aggregate amount of the moneys so expended shall not exceed the amount which immediately before the commencement of this Act stood to the credit of the Mine Subsidence Fund.

Contributions to be paid by colliery proprietors to Fund.

11. (1) The proprietor of each colliery holding shall each year contribute to the Fund such sum as may be prescribed. The contribution payable by the proprietor of a colliery holding shall be based upon the unimproved capital value of the colliery holding of which he is the proprietor, or where some other basis is prescribed upon such basis.

The contributions payable by the proprietors of colliery holdings under this section shall be paid in such manner and at such times as may be prescribed. For the purposes of this section the unimproved capital value of a colliery holding shall be the unimproved capital value of such colliery holding as determined under the Valuation of Land Act, 1916, or the Local Government Act, 1919, as amended by subsequent Acts, and in force as at the thirtieth day of June in the year in respect of which the contribution by the proprietor of such colliery holding is payable.

(2) In default of payment of any contribution pursuant to this section the Board may recover the amount of the contribution or any outstanding portion thereof as a debt in any court of competent jurisdiction.

Claims for damage arising out of subsidence.

12. (1) Claims may be made under this Act for payment from the Fund of—

(a) compensation for damage to improvements, other than buildings or works used in connection with the winning of coal or shale, where such damage arises from subsidence due to the extraction of coal or shale;

(b)

- (b) an amount to meet the proper and necessary expense No. 22, 1961 incurred or to be incurred as a result of such damage in : —
- (i) building retaining walls or bolting together or underpinning or otherwise supporting, raising or repairing buildings and walls;
 - (ii) altering the approaches to or the levels of lands or buildings;
 - (iii) raising, lowering, diverting or making good roads, tramways, railways, pipelines, bridges, fences, sewers, drains or other improvements;
- (c) an amount equivalent to the rent which would have been payable for such period as may be prescribed in respect of any buildings or works which by reason of such damage are untenable, under repair or in course of construction, or where such buildings or works or any part thereof are or is occupied by the owner thereof such sum in lieu of rent as the Board deems just.

No claim shall be entertained or payment made under this Act in respect of any improvement which was the subject of a conditional right to insure granted under section sixteen of the Mine Subsidence Act, 1928-1957, unless the conditions of such conditional right have been, and are at the date of making such claim, complied with.

(2) (a) The owner of any improvement which has been damaged by subsidence due to the extraction of coal or shale may notify the Secretary of the Board in writing in the prescribed manner and within the prescribed time of the details of such damage; the location of the improvement damaged; the amount he claims from the Fund and such other particulars as may be prescribed.

Such notification shall be treated as a claim for payment from the Fund under subsection one of this section.

(b) Any such notification received shall be recorded and investigated by the Board, an officer of the Board or some other officer in the Public Service acting for the
the

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No. 22, 1961 the Board and on receipt of a report of such investigation the matter shall be placed before a meeting of the Board for a decision as to the payment, if any, to be allowed in respect of the damage to which such notification relates.

(3) The Board's decision as to whether or not damage has arisen by subsidence due to the extraction of coal or shale shall be final.

Appeal by
owners of
improve-
ments.

(4) (a) Where the owner of an improvement is dissatisfied with the decision of the Board respecting the amount of any such payment he may within the time prescribed appeal therefrom to the Land and Valuation Court in the manner prescribed by the rules of that Court.

(b) That Court may make such determination as shall appear just and the determination of that Court shall be given effect.

(5) Payments may be made under and in accordance with the provisions of this Act notwithstanding any covenant, condition, stipulation or restriction affecting, limiting or restricting the recovery of damages or compensation for damage arising from subsidence due to the extraction of coal or shale to improvements in respect of which a claim for such payment has been made.

Purchase
of damaged
improve-
ments and
effecting of
remedial
works by
Board.

13. (1) The Board may, in lieu of making payments in respect of claims under section twelve of this Act—

(a) agree with the owner of the improvements damaged by subsidence due to the extraction of coal or shale for the purchase of the improvements and the land on which the improvements are erected at a price not greater than the valuation thereof as last determined under the Valuation of Land Act, 1916, or the Local Government Act, 1919, as amended by subsequent Acts, before the damage to such improvements arose;

(b)

- (b) execute or cause to be executed such works as may be necessary to restore the damaged improvements to a condition as nearly as practicable equivalent to that in which such improvements were before the damage to such improvements arose. No. 22, 1961

The Board may renovate, repair, reconstruct or carry out such other works as may be necessary to restore any property purchased by it under paragraph (a) of this subsection and may sell, lease or otherwise dispose of such property.

(2) (a) Where in the opinion of the Board damage to the surface of any land caused by subsidence due to the extraction of coal or shale is such as to cause a public or private danger the Board may fill in or fence or cause to be filled in or fenced such land or any part thereof in order to eliminate or alleviate such danger. Any dispute as to the existence of any public or private danger under this paragraph shall be decided by the Minister whose decision shall be final.

(b) Where in the opinion of the Board—

- (i) damage to improvements has been caused by subsidence due to the extraction of coal or shale, and
- (ii) further subsidence is likely to occur,

the Board may effect or have effected temporary repairs and may defer payments in respect of claims for damage to such improvements until it is satisfied that such subsidence has settled or is unlikely to recur within a reasonable period.

14. (1) The proprietor of a colliery holding who :—

- (a) is not in arrears with the contributions payable by him to the Fund under this Act, and
- (b) observes or performs every covenant or stipulation relating to the method or extent of the extraction of coal or shale contained in any instrument through which he derives title to mine such coal or shale,

Liability of proprietors of colliery holdings.

shall not be liable for any damage to improvements occasioned by subsidence due to the extraction of coal or shale.

(2)

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(2) Nothing in this section shall relieve a proprietor of a colliery holding from liability for damage caused by subsidence where the subsidence is due to the negligence of the proprietor of the colliery holding or his servants.

Mine
Subsidence
Districts.

15. (1) The Governor may by proclamation published in the Gazette proclaim any area to be a mine subsidence district.

(2) No person shall erect any improvements within a mine subsidence district or subdivide any land therein unless he has obtained the approval of the Board to such erection or subdivision.

(3) The Board may grant its approval either subject to conditions or unconditionally.

Such conditions may include conditions relating to the class or nature of improvements, the height, weight, type of material, number of storeys and method of construction of any improvements within the district. Such conditions may vary according to the location, class or nature of such improvements.

(4) 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.

(5) Where any improvement has been erected or subdivision has been made in contravention of this section or any conditions imposed by the Board pursuant to this section—

- (a) such contravention shall not invalidate any instrument intended to affect or evidence the title to any 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 such contravention relates to the land purchased by him,

(b)

(b) no claim shall be entertained or payment made under this Act in respect of damage caused by subsidence due to the extraction of coal or shale to any such improvement or to any improvement upon land within any such subdivision. No. 22, 1961

16. (1) A member of the Board or any officer or person employed by the Board shall have power to make inspection, examination and inquiry as may be necessary to ascertain the nature and extent of any damage occasioned to any property where such damage is alleged to have been caused by subsidence due to the extraction of coal or shale or to ascertain whether the provisions of this Act or any determination of, or condition imposed by, the Board under the provisions of this Act have been or are being complied with. Powers of members and officers.

(2) Any person who wilfully obstructs a member of the Board or any officer or person employed by the Board in the execution of his duty under this Act and every owner of improvements or proprietor of any colliery holding who refuses or neglects to furnish to such member, officer or person employed the means necessary for making any inspection, examination or inquiry under this Act shall be guilty of an offence against this Act.

17. (1) Any person guilty of an offence against this Act shall be liable to a penalty not exceeding one hundred pounds. Penalties.

(2) Any such penalty may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

(3) All penalties recovered under this Act shall be paid to the Board.

18. (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

The regulations may prescribe a penalty not exceeding fifty pounds for any breach thereof.

(2)

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(2) The regulations shall—

- (a) be published in the Gazette;
- (b) 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.

Amendment
of Act No.
66, 1957.

19. (1) The Mine Subsidence (Amendment) Act, 1957, is amended—

- (a) by omitting from paragraph (b) of subsection two of section two the words “upon a day to be appointed by the Governor and notified by proclamation published in the Gazette” and by inserting in lieu thereof the words “upon the first day of May, one thousand nine hundred and fifty-eight”;
- (b) by omitting from the same paragraph the words “the day so appointed by the Governor” and by inserting in lieu thereof the words “the first day of May, one thousand nine hundred and fifty-eight”;
- (c) by omitting from paragraph (a) of subsection three of the same section the words “the day appointed by the Governor pursuant to paragraph (b) of subsection two of this section” and by inserting in lieu thereof the words “the first day of May, one thousand nine hundred and fifty-eight”.

(2) Subsection one of this section shall be deemed to have commenced upon the first day of May, one thousand nine hundred and fifty-eight.