

**MINE SUBSIDENCE COMPENSATION (AMEND-
MENT) ACT.**

Act No. 9, 1966.

Elizabeth II, An Act to make further provision for and in respect
No. 9, 1966 of a scheme for the payment of compensation where improvements on the surface are damaged by subsidence following the extraction of coal or shale; to amend the Mine Subsidence Compensation Act, 1961, as amended by the Decimal Currency Act, 1965; to validate certain matters; and for purposes connected therewith. [Assented to, 22nd March, 1966.]

BE

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BE it enacted by the Queen's Most Excellent Majesty, by No. 9, 1966
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
citation.
Compensation (Amendment) Act, 1966".

(2) The Principal Act, as amended by this Act, may
be cited as the Mine Subsidence Compensation Act, 1961-
1966.

(3) The Mine Subsidence Compensation Act, 1961,
as amended by the Decimal Currency Act, 1965, is in this
Act referred to as the Principal Act.

2. (1) Upon a day to be appointed by the Governor Reconsti-
tution of
the Mine
Subsidence
Board.
and notified by proclamation published in the Gazette (which
day is in this Act referred to as the "appointed day") the
Mine Subsidence Board shall be reconstituted and shall con-
sist of six members who shall be the persons referred to in
paragraphs (a) and (b) of subsection two of section five of
the Principal Act, as amended by this Act, and the persons
appointed in accordance with paragraph (c) of that sub-
section.

(2) (a) Nothing contained in this section shall
prejudice or affect in any way the continuity of the body
corporate constituted under section five of the Principal Act
but the same shall continue notwithstanding the provisions
of this section.

(b) The said body corporate shall continue and
shall be deemed always to have continued notwithstanding
that there are or have been at any time or times vacancies
in the offices of all of the members of the body corporate
or of any one or more of them.

(3) (a) For the purposes only of the appointment
pursuant to paragraph (c) of subsection two of section five of
the Principal Act, as amended by this Act, of persons to be
members of the Mine Subsidence Board as reconstituted
under this section, and of any matters necessary for or
incidental

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No. 9, 1966 incidental to such appointment or reconstitution, the provisions of subsection four of this section shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(b) The persons so appointed shall assume their offices as members of the Mine Subsidence Board upon the appointed day; and on that day the provisions of subsection four of this section shall come into force for all purposes.

Amendment
of Act No.
22, 1961.
Sec. 5.
(Appointment
and constitu-
tion of
the Board.)

(4) The Principal Act is amended—

(a) by omitting paragraph (c) of subsection two of section five and by inserting in lieu thereof the following paragraph :—

(c) four persons appointed by the Governor being—

- (i) a person nominated by the proprietors of colliery holdings;
- (ii) a person who shall be representative of local government or of the State Planning Authority of New South Wales and shall be nominated by the Minister for Local Government;
- (iii) a person nominated by the Minister to represent the owners of improvements situated within mine subsidence districts, not being improvements used in connection with the winning of coal or shale; and
- (iv) an officer of the Department of Public Works eligible to be a corporate member of The Institution of Engineers, Australia, nominated by the Minister for Public Works.

(b)

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- (b) by omitting from the same subsection the words “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” and by inserting in lieu thereof the words “under subparagraph (i), (ii), (iii) or (iv) of paragraph (c) of this subsection, the Minister may nominate a person to be a member of the Board in the place of such first-mentioned person”.

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3. (1) The Principal Act is further amended—

Further amendment of Act No. 22, 1961.

- (a) by inserting at the end of section two the following new subsection :—

**Sec. 2.
(Repeals.)**

(2) There is hereby vested in the Board all property, real and personal, vested at the commencement of this Act in the Mine Subsidence Board constituted by the Mine Subsidence Act, 1928, as amended by subsequent Acts, subject however to any trusts and liabilities attaching to that property.

- (b) by inserting in section four next after the definition of “Shale” the following new definition :—

**Sec. 4.
(Interpretation.)**

“Subdivide” and “subdivision” mean and refer to the dividing of land into parts, whether the dividing is—

- (a) by sale, conveyance, transfer or partition;

- (b) by any agreement, dealing or instrument inter vivos (other than a lease for a period not exceeding five years without option of renewal) rendering different parts thereof immediately available for separate occupation or disposition; or

(c)

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- (c) by procuring the issue of a certificate of title under the Real Property Act, 1900, as amended by subsequent Acts, in respect of a part of the land;

but those expressions do not include any severance of land by the opening of a public road.

New sec.
7A.

- (c) by inserting after section seven the following new section :—

Board may
reconsider
matters.

7A. The Board may reconsider any matter which has been dealt with by it and may adhere to, rescind, alter or amend any decision previously made by it, but shall not rescind, alter or amend any such decision except with the consent in writing of the person in respect of whose claim or application the decision was given.

Sec. 11.
(Contribu-
tions to be
paid by
colliery
proprietors
to Fund.)

- (d) (i) by omitting from subsection one of section eleven the words "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.";
- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections :—

(2) The Board shall, in respect of each year, cause to be served, in accordance with subsection three of this section, on each proprietor of a colliery holding a notice in the prescribed form specifying the amount of his contribution for that year.

(3) Any such notice shall be deemed to have been served on the proprietor of a colliery holding—

- (a) where the proprietor is an individual, if it is delivered to him personally or is sent by prepaid certified mail to his address last known to the Board; or

(b)

(b) where the proprietor is a body corporate, if it is served in a manner authorised under the Companies Act, 1961, as amended by subsequent Acts, for the service of documents on that body corporate. No. 9, 1966

(4) If within a period of twenty-eight days after any such notice has, in accordance with subsection three of this section, been served on the proprietor of a colliery holding, the amount of his contribution specified in the notice has not been paid, he shall be deemed to be in arrears with his contributions and interest, at such rate, not exceeding ten per centum per annum, as may be determined by the Board from time to time for the purposes of this subsection, shall be paid by that proprietor in respect of the period from the expiration of the said period of twenty-eight days until the date of payment of that amount.

(5) The Board may waive any interest payable under subsection four of this section.

(6) Where a colliery holding is registered in accordance with the provisions of the Coal Mines Regulation Act, 1912, as amended by subsequent Acts, for part only of a year, the person who was proprietor of that colliery holding during that part of the year shall contribute to the Fund in respect of that part such amount as bears to the amount that his contribution would have been had that holding been so registered for the whole of that year the same proportion as that part of that year bears to the whole of that year.

(7) Notwithstanding the provisions of subsection one of this section, where any contribution is required to be paid by a person pursuant to subsection six of this section in
respect

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respect of part only of a year and there is no unimproved capital value of that holding in force as at the thirtieth day of June in that year, the contribution shall be based—

(a) subject to paragraph (b) of this subsection—on the unimproved capital value of the colliery holding ascertained as at the day upon which the colliery holding was first registered in that year in accordance with the provisions of the Coal Mines Regulation Act, 1912, as amended by subsequent Acts; or

(b) where—

(i) that part of the year includes the first day of January in that year; and

(ii) the colliery holding was registered in accordance with those provisions continuously during the preceding year or continuously during part of the preceding year for a period ending on the thirty-first day of December in that preceding year—

on the unimproved capital value of the colliery holding as last used for the purposes of this section,

or where some other basis is prescribed upon that other basis.

(8) In default of payment of any contribution or interest payable under this section, the Board may recover the amount of the contribution and interest or any outstanding portion thereof as a debt in any court of competent jurisdiction.

(e)

- (e) by inserting at the end of subsection one of section **No. 9, 1966** twelve the following new paragraph :—

Sec. 12.

Where damage, caused by subsidence due to the extraction of coal or shale, to an improvement is greater, by reason of the negligent or improper manner in which the improvement was constructed or maintained, than it would have been had the improvement not been so constructed or maintained, the Board may reduce the amount of compensation in respect of the damage by such amount as it considers is attributable to the fact that the improvement was so constructed or maintained.

(Claims for damage arising out of subsidence.)

- (f) (i) by omitting paragraph (a) of subsection one of section thirteen and by inserting in lieu thereof the following paragraph :—

Sec. 13.

(Purchase of damaged improvements and effecting of remedial works by Board.)

- (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 determined, as at a date not more than one month before the date of the agreement, under the Valuation of Land Act, 1916, as amended by subsequent Acts, or the Local Government Act, 1919, as amended by subsequent Acts, without regard to any damage caused by such subsidence;

- (ii) by omitting from the same subsection the words "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.";

(iii)

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(iii) by inserting next after the same subsection the following new subsections :—

(1A) If within such time after a claim is made under section twelve of this Act as the Board considers reasonable, no agreement referred to in paragraph (a) of subsection one of this section has been entered into with the claimant in respect of damage to the improvements referred to in the claim, the Board may apply to the Minister for approval that he recommend to the Governor that the land on which the improvements are erected (together with the improvements) be acquired, and upon the Minister so recommending the Governor may appropriate or resume such land and improvements by notification in the Gazette pursuant to Division 1 of Part V of the Public Works Act, 1912, as amended by subsequent Acts, and for the purposes of that Act, as so amended, such appropriation or resumption shall be deemed to be for the purpose of carrying out an authorised work and the Board shall be deemed to be the Constructing Authority within the meaning of that Act, as so amended :

Provided that sections thirty-four, thirty-five, thirty-six and thirty-seven of the Public Works Act, 1912, as amended by subsequent Acts, shall not apply in respect of the expenditure incurred on any acquisition under this subsection, but section thirty-eight of that Act, as so amended, shall apply to any contract in respect of any such acquisition.

(1B) The Board may sell, lease or otherwise dispose of any property acquired by it under subsection one or (1A) of this section.

Sec. 15.
(Mine
Subsidence
Districts.)

(g) (i) by inserting in subsection two of section fifteen after the word "erect" the words "or alter";
(ii)

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(ii) by inserting in the same subsection after the word "erection" the word "alteration";

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(iii) by inserting next after the same subsection the following new subsection :—

(2A) An application for approval to alter or erect improvements within a mine subsidence district or to subdivide land therein shall be made in the prescribed manner.

(iv) by inserting in subsection three of the same section after the word "unconditionally" the words "or may refuse its approval";

(v) by inserting in subsection five of the same section after the word "erected" the words "or altered";

(vi) by inserting after the same subsection the following new subsections :—

(6) Where the approval of a responsible authority under a town or country planning scheme within the meaning of Part XIII A of the Local Government Act, 1919, as amended by subsequent Acts, is required for the erection or alteration of an improvement within a mine subsidence district or for the subdivision of any land therein, the Board may refuse an application for its approval to such erection, alteration or subdivision if the applicant for the approval has not produced to the Board the approval of that responsible authority to the erection, alteration or subdivision.

(7) Any person who does or causes to be done any work in connection with the erection or alteration of an improvement in a mine subsidence district without the approval of the Board or not in conformity with such an approval, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding two hundred dollars and to a further penalty not exceeding twenty dollars for each day

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day during which such work is done after notice to cease the work has been received by that person from the Board.

(8) Any person who subdivides any land in a mine subsidence district, or causes any such land to be subdivided, without the approval of the Board shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding two hundred dollars.

New secs.
15A, 15B.

(h) by inserting next after section fifteen the following new sections :—

Certificates
of approval.

15A. (1) Any person may apply to the Board for a certificate under this section stating—

- (a) whether or not on a date to be specified in the certificate any land specified in the application is wholly or partly in a mine subsidence district; and
- (b) if the land so specified is in such a district, whether or not the Board approves of the erection or alteration of any improvement referred to in the application, or of the subdivision of any land so referred to, and, if it so approves, whether it so approves either unconditionally or subject to conditions to be specified in the certificate.

(2) An application for a certificate under this section shall be made in writing, be accompanied by the prescribed fee and state the name and address of the applicant, and the particulars of the proposed erection, alteration or subdivision in respect of which the certificate is required.

(3) The Board may require any applicant for a certificate under this section to furnish such further particulars as it may specify in a notice sent to the applicant.

(4) Where the Board issues a certificate under this section stating that the Board approves of the erection or alteration of an improvement or
of

of the subdivision of any land, the certificate shall be in force for such period as may be specified therein and the erection or alteration of the improvement, or the subdivision of the land, if carried out within that period and in accordance with any conditions specified in the certificate, shall be deemed to have been carried out pursuant to an approval of the Board granted under section fifteen of this Act. No. 9, 1966
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15B. (1) Any person may apply to the Board for a certificate under this section with respect to any improvement erected within a mine subsidence district or land within a subdivision within such a district. Certificates
of
compliance.

(2) An application for a certificate under this section shall be made in writing, be accompanied by the prescribed fee and state the name and address of the applicant, and the particulars of the improvement or land in respect of which the certificate is required.

(3) Where the Board is satisfied that an improvement referred to in an application under this section was erected in accordance with the Board's approval and that any alterations to any such improvement were so made, or that any subdivision containing any land referred to in such an application was made in accordance with the Board's approval, or that any departure from any such approval is such that it need not be rectified, the Board shall, if the application was made in accordance with subsection two of this section, issue to the applicant a certificate under this section in respect of such improvement or land.

(4) The production of the certificate shall for all purposes be deemed conclusive evidence in favour of a bona fide purchaser for value that the requirements

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No. 9, 1966 requirements of this Act relating to the improvement or the subdivision had been complied with up to the date of the certificate.

Sec. 17. (i) (i) by inserting in subsection one of section seventeen after the word "shall" the words ", where (Penalties.) no other penalty is expressly provided,";
(ii) by omitting from subsection two of the same section the words "such penalty" and by inserting in lieu thereof the words "penalty under this Act";

New sec. 20. (j) by inserting next after section nineteen the following new section :—

Validation. 20. The agreement made between the Board and Evan Arthur Payne on the first day of July, one thousand nine hundred and sixty-three for the purchase of the property, Lot 38, D.P. 27831, Kinross Avenue, Adamstown Heights, being the whole of the land comprised in certificate of title Volume 7443 Folio 186, at a price of eight thousand two hundred and fifty pounds shall be deemed to have been made in accordance with the provisions of paragraph (a) of subsection one of section thirteen of this Act.

(2) The amendment made by paragraph (a) of subsection one of this section shall be deemed to have commenced on the first day of July, one thousand nine hundred and sixty-one.

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