



New South Wales

Mine Subsidence Compensation Amendment Act 2014 No 55

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The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mine Subsidence Compensation Amendment Act 2014*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 1 [7] and [8] commence on a day to be appointed by proclamation.

Schedule 1 Amendment of Mine Subsidence Compensation Act 1961 No 22

[1] Section 4 Definitions

Insert at the end of the section:

- (2) Notes included in this Act do not form part of this Act.

[2] Section 12 Claims for damage arising out of subsidence

Insert after section 12 (2):

- (3) The Board must notify the claimant of its decision about a claim and the reasons for its decision.

[3] Section 12A Claims arising out of actions to prevent or mitigate damage

Omit section 12A (1). Insert instead:

- (1) The following claims may be made under this Act for payment from the Fund:
 - (a) a claim for compensation for damage incurred as a result of the exercise by the Board of its powers under section 13A,
 - (b) a claim for preventative or mitigative expenses.
- (1A) The Board must not make a payment from the Fund for a claim for any preventative or mitigative expense unless:
 - (a) the claim is made after the subsidence concerned has commenced, and
 - (b) the expense is incurred or proposed after the subsidence concerned has commenced, and
 - (c) at the time the expense is incurred or proposed the damage concerned is more likely than not to occur, and
 - (d) the Board is satisfied that the preventative or mitigating work (or proposed preventative or mitigating work) is appropriate and necessary to prevent or mitigate the damage concerned, and
 - (e) the subsidence concerned is not due to operations carried on by the owner.
- (1B) The Board may reject a claim if the Board is of the opinion that the total preventative or mitigative expenses claimed are disproportionate to the reasonably expected total expense of repairing or replacing the improvements or household or other effects concerned if no preventative or mitigating work had been or were to be carried out.
- (1C) A claim under this section is to be made in the form approved by the Board.

[4] Section 12A (4)–(6)

Insert after section 12A (3):

- (4) The Board may determine the amount of payment in response to a claim under this section.
- (5) The Board must notify the claimant of its decision about a claim and the reasons for its decision.
- (6) In this section, *preventative or mitigative expense* means an expense incurred or proposed by or on behalf of the owner of improvements or household or other effects in preventing or mitigating damage to those improvements or household or other effects arising from subsidence.

[5] Section 12B Appeals

Omit “or could reasonably have been anticipated” from section 12B (a).

[6] Section 12B (c)

Insert at the end of section 12B (b):

, or

- (c) to reject a claim because of a matter specified in section 12A (1A) or (1B).

[7] Section 12B (2)

Insert after section 12B:

- (2) A person who has made an application under section 13A may appeal to the Land and Environment Court against a decision of the Board on the application.

Note. The Land and Environment Court, when hearing an appeal under this section, makes its decision in the place of the Board. In addition to its other functions and discretions, the Land and Environment Court has all the functions and discretions which the Board had in respect of the original decision. An appeal is by way of rehearing, and fresh evidence or evidence in addition to or in substitution for, the evidence given to the Board may be given on the appeal (See section 39 of the *Land and Environment Court Act 1979*).

[8] Section 13A

Omit the section. Insert instead:

13A Works for prevention or mitigation of damage from subsidence

- (1) The Board may expend money for the funding of works to prevent or mitigate damage to improvements or household or other effects that the Board anticipates would occur (in the absence of the works) by reason of subsidence if the Board is satisfied that the expenditure will result in a net benefit to the Fund. Those works are **authorised works** for the purposes of this section.
- (2) The Board may decide to fund authorised works of its own motion or on the application of an interested party but an application cannot be made after subsidence has commenced.
- (3) The following restrictions apply to the funding of authorised works pursuant to an application (but not to the funding of works of the Board’s own motion):
- (a) the Board is not to fund works unless the Board is satisfied that there are special circumstances that justify funding the works before subsidence has commenced,
- (b) the Board is not to fund works after subsidence has commenced.
- Note.** Sections 12 and 12A deal with claims after subsidence has commenced.
- (4) For the purposes of this section, expenditure is considered to result in a net benefit to the Fund if the amount of the expenditure would be less than the amount of the total prospective liability of the Fund resulting from claims under sections 12 and 12A in respect of the anticipated damage.
- (5) The Board must, when exercising its powers under this section in respect of an application for the funding of authorised works, give effect to any policy declared by the Minister by order published in the Gazette to be a policy that is required to be given effect to by the Board.

- (6) The Board can fund authorised works under this section by:
 - (a) carrying out the authorised works or causing those works to be carried out, or
 - (b) contributing a proportionate amount to the cost of the carrying out of works by another person that include the authorised works.
- (7) An application for the funding of authorised works under this section is to be made in the form approved by the Board. The Board must notify an applicant of its decision on an application and the reasons for its decision.
- (8) The funding of works is authorised under this section regardless of whether the anticipated damage is damage to improvements or household or other effects on the land on which the works are to be carried out.
- (9) In this section *interested party*, in relation to proposed works to prevent or mitigate damage to any improvement or household or other effects, means the owner of the improvement or household or other effects or a person acting with the written consent of the owner.

[9] Section 15 Mine subsidence districts

Omit “2 years after the date of the approval” from section 15 (3A).

Insert instead “the period specified in the approval (being a period that expires at least 2 years, but not more than 5 years, after the date of the approval)”.

[10] Section 15 (5)

Insert “(a *contravening improvement* or *contravening subdivision*)” after “this section”.

[11] Section 15 (5) (b)

Omit the paragraph. Insert instead:

- (b) no claim under section 12 or 12A or application under section 13A is to be dealt with or any payment made under this Act in respect of the following:
 - (i) any contravening improvement, any household or other effects fixed or attached to a contravening improvement or any household or other effects damaged as a consequence of damage to a contravening improvement,
Note. For example, no claim may be made in respect of items placed in or around an unapproved house that are damaged by the collapse of that house.
 - (ii) any improvement on land within a contravening subdivision that was erected or altered after the land was subdivided,
 - (iii) any household or other effects on land within a contravening subdivision for the purpose of erecting or altering an improvement.

Note. The Board may issue a certificate of compliance under section 15B (3A) in respect of an improvement or a subdivision of land that was erected or made without the approval of the Board. The certificate of compliance is for all purposes deemed to be conclusive evidence that the requirements of this Act relating to the improvement or the subdivision had been complied with up to the date of the certificate.

[12] Section 15 (7) and (8)

Omit “Maximum penalty: 20 penalty units.” wherever occurring.

Insert instead:

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or
- (b) in the case of a corporation—500 penalty units.

[13] Section 15B Certificates of compliance

Omit section 15B (3A). Insert instead:

- (3A) The Board may also issue a certificate under this section in respect of an improvement that was altered or erected, or a subdivision of land that was made, without the approval of the Board if the Board is satisfied that it is appropriate to do so having regard to the circumstances of the case.
- (3B) The Board must not issue a certificate under subsection (3A) in relation to the following:
 - (a) an improvement that is a residential building that was altered or erected more than 15 years before the application for the certificate was made, unless the Board is of the opinion that:
 - (i) the failure to obtain the approval was not the fault of the applicant, or
 - (ii) exceptional circumstances exist,
 - (b) an improvement that is not a residential building, unless the Board is of the opinion that exceptional circumstances exist.

[14] Section 22

Insert after section 21:

22 Claims relating to classified roads

- (1) Without limiting section 64 of the *Roads Act 1993*, RMS may make a claim under section 12 or 12A in relation to any classified road as if RMS were the owner of the road and payments may be made from the Fund to RMS accordingly.
- (2) In this section, *classified road* and *RMS* have the same meanings that they have in the *Roads Act 1993*.

[15] Schedule 1 Savings, transitional and other provisions

Insert before Part 1 of the Schedule:

Part 1A Preliminary

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[16] Schedule 1, Part 2

Insert at the end of the Schedule:

**Part 2 Provisions consequent on the enactment of the
Mine Subsidence Compensation Amendment Act
2014**

2 Existing claims made under sections 12A and 15 (5) (b)

- (1) The amendments made to sections 12A and 15 (5) (b) of this Act by the amending Act are taken to have commenced on the date that the Bill for the amending Act was first introduced into Parliament (the *introduction date*).
- (2) However, those provisions, as in force immediately before the introduction date, continue to apply to and in respect of the following:
 - (a) a claim lodged with the Board before the introduction date,
 - (b) a claim lodged with the Board after the introduction date in relation to an expense incurred before that date.
- (3) In this clause, *amending Act* means the *Mine Subsidence Compensation Amendment Act 2014*.

[Second reading speech made in—

Legislative Assembly on 15 May 2014

Legislative Council on 14 October 2014]