

# Mine Subsidence Compensation Act 1961 No 22

[1961-22]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Mine Subsidence Compensation Amendment Act 2014 No 55](#), Sch 1 [7] and [8] (not commenced)
  - [Work Health and Safety \(Mines and Petroleum\) Legislation Amendment \(Harmonisation\) Act 2015 No 43](#) (not commenced — to commence on 1.2.2016)
  - [Regulatory Reform and Other Legislative Repeals Act 2015 No 48](#) (not commenced — to commence on 1.3.2016)

### Authorisation

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File last modified 29 January 2016

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# Mine Subsidence Compensation Act 1961 No 22



New South Wales

An Act to make provision for and in respect of a scheme for the payment of compensation where improvements on the surface or household effects 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.

## 1 Name of Act and commencement

- (1) This Act may be cited as the *Mine Subsidence 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 Repeals

- (1) The *Mine Subsidence Act 1928*, the *Mine Subsidence (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Act 1948*, the *Mine Subsidence (Amendment) Act 1951* and the *Mine Subsidence (Amendment) Act 1957* are hereby repealed: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that the Mine Subsidence Board constituted under this Act may in accordance with the provisions of the Acts hereby repealed:

- (a) continue to deal with and determine any claim for damage made under the Acts hereby repealed and not determined before the commencement of this Act, and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and determine any claim for damage made within six months after the commencement of this Act which if the Acts hereby repealed had not been repealed could have been made in respect of damage caused by subsidence due to the extraction of coal or shale within six months immediately before such commencement.
- (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*, subject however to any trusts and liabilities attaching to that property.

## 3 Crown bound

This Act shall bind the Crown.

#### 4 Definitions

(1) 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 a colliery holding registered in accordance with section 163 of the [Mining Act 1992](#).

**Department** means the Department of Industry, Skills and Regional Development.

**Fund** means Mine Subsidence Compensation Fund.

**Household or other effects** means any chattels (for example, carpets, curtains, furniture, electrical appliances, musical instruments, computers or power tools) whether or not in or used in a house, but does not include motor vehicles, boats or aircraft or any other prescribed thing.

**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.

**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 licence 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 or she were a proprietor.

**Regulations** means regulations made under this Act.

**Secretary** means the Secretary of the Department.

**Shale** means oil shale.

**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) by procuring the issue of a certificate of title under the [Real Property Act 1900](#) 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.

**Subsidence** means subsidence due to:

- (a) the extraction of coal or shale, or
- (b) the prospecting for coal or shale carried out within a colliery holding by the proprietor of the holding,

and includes all vibrations or other movements of the ground related to any such extraction or prospecting (whether or not the movements result in actual subsidence), but does not include vibrations or other movements of the ground that are due to blasting operations in an open cut mine and that do not result in actual subsidence.

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

## **5 Appointment and constitution of the Board**

(1) For the purposes of this Act there shall be constituted a Board to be called the "Mine Subsidence Board".

(1A) 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 chairperson who is to be the Secretary or a person employed in the Department nominated by the Secretary,
- (b) a person nominated by the Minister who the Minister is satisfied has appropriate expertise in coal mine operations,
- (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 Department of Planning and Environment 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) a person employed in the Department of Finance, Services and Innovation eligible to be a corporate member of The Institution of Engineers, Australia, nominated by the Minister for Finance, Services and Property.

- (2A) 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 under subsection (2) (c) (i), (ii), (iii) or (iv), the Minister may nominate a person to be a member of the Board in the place of such first-mentioned person.
- (3) The provisions of the *Government Sector Employment Act 2013* do not apply to or in respect of the appointment of a member of the Board under subsection (2) (c) and any such member shall not, in his or her capacity as a member of the Board, be subject to the provisions of that Act.
- (4) The members of the Board referred to in subsection (2) (c) 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 chairperson 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 subsection (2) (c) for sufficient cause, and appoint another person in his or her stead.
- (9) If any member of the Board is absent from three consecutive meetings except on leave granted by the Board or by the chairperson (which leave the chairperson is hereby authorised to grant) his or her seat shall become vacant.
- (10) Subject to subsection (11), a member of the Board, other than a person employed in the Public Service appointed to the Board in his or her capacity as such, shall be entitled to receive such fees for service as a member of the Board as the Minister may determine in respect of the member.
- (11) If the Minister so orders, the fees which a member of the Board would, but for this subsection, be entitled to receive shall be paid to the employer, specified in the order, of the member instead of being paid to the member.
- (12) A member of the Board shall be entitled to receive such travelling and sustenance allowances as the Minister may determine in respect of the member.

## 6 Body corporate

- (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) (Repealed)
- (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 *Work Health and Safety (Mines) Act 2013*, the Board shall for the purposes of this Act have access to any plans, descriptions or records of a mine deposited in the Department.

## 6A Staff

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Board to exercise its functions.

### Note—

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Board makes use of) may be referred to as officers or employees, or members of staff, of the Board. Section 47A of the *Constitution Act 1902* precludes the Board from employing staff.

## 7 Delegation of powers

- (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.
- (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.

## 7A Board may reconsider matters

- (1) 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:

- (a) where the decision was that a payment be made under section 12 or 12A, of the person in respect of whose claim the decision was made, or
  - (b) where the decision was that:
    - (i) the Board's approval be granted (whether with or without conditions) under section 15, or
    - (ii) (Repealed)
    - (iii) the Board issue a certificate under section 15B, of the person in respect of whose application the decision was made or of a person having an estate or interest in the land to which the approval or the certificate, as the case may require, relates.
- (2) Where a decision has been made under section 15 or 15B in respect of an application in relation to any land, nothing in this section affects the subsequent making of a decision in respect of another application under any of those sections in relation to the same land.

## **8 Powers of Royal Commissioners exercisable by the Board**

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 chairperson of the Board shall have the powers, authorities, protections and immunities conferred on commissioners and the chairperson of a commission respectively, by Division 1 of Part 2 of the *Royal Commissions Act 1923*. The provisions of the *Royal Commissions Act 1923*, section 13, and Division 2 of Part 2 excepted, shall, mutatis mutandis, apply to and in respect of any witness or person summoned by or appearing before the Board.

## **9 Financial year of the Board**

The financial year of the Board shall be:

- (a) where no period is prescribed as referred to in paragraph (b)—the year commencing on 1 July, or
- (b) the period prescribed for the purposes of this section.

## **10 Mine Subsidence Compensation Fund**

- (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) such moneys as are required or authorised by this 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 or payable under section 12A,
  - (a1) moneys expended by the Board in the exercise of its powers under section 13A or 13B,
  - (b) the expenses involved in the administration of this Act, including expenses incurred in connection with the investigation of notifications of damage and claims for payment of compensation,
  - (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 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* 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 such works or

amenities, upon such lands, as the Minister may approve, whether or not such lands were within mine subsidence insurance districts as established under the *Mine Subsidence Act 1928* 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.

## **11 Contributions to be paid by colliery proprietors to Fund**

(1) In this section, **land value**, in relation to a colliery holding, is the land value of the colliery holding as determined under the *Valuation of Land Act 1916*.

(1A) Where, in respect of any year, a manner of calculating a sum to be contributed to the Fund by the proprietor of a colliery holding is prescribed for the purposes of this subsection, the proprietor of that colliery holding shall, subject to this section, contribute to the Fund in respect of that year the sum calculated in that manner.

(1B) The contribution under subsection (1A) payable by a proprietor of a colliery holding in respect of any year:

(a) shall be based:

- (i) on the land value of that colliery holding as in force on 30th June in that year,
- (ii) if no land value has been determined for that colliery holding by 30th June in that year—on the first land value of that colliery holding that is determined after that day, or
- (iii) if that colliery holding ceases to be registered in accordance with the *Mining Act 1992* before 30th June in that year—on the land value last used for the purposes of this section, or

(b) where some other basis is prescribed—shall be based on that other basis.

(1C) Without affecting the generality of subsection (1A), the power:

(a) under subsection (1A) to prescribe the manner of calculating the sum to be contributed to the Fund by the proprietor of a colliery holding in respect of any year, or

(b) under subsection (1B) to prescribe the basis of that contribution,

may be exercised:

(c) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified cases or class of cases, and

- (d) so as to make, as respects the cases in relation to which it is exercised, the same provision for all of those cases or different provision for different cases or classes of cases.
- (2) The Board shall, in respect of a year for which the proprietor of a colliery holding is required pursuant to subsection (1A) to contribute to the Fund, cause to be served, in accordance with subsection (3), on that proprietor a notice in a form approved by the Board specifying the amount of the proprietor's 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 the proprietor personally or is sent by prepaid certified mail to the proprietor's address last known to the Board, or
  - (b) where the proprietor is a body corporate, if it is served in a manner provided by section 109X or 601CX of the *Corporations Act 2001* of the Commonwealth for the service of documents on that body corporate.
- (3A) Any contribution payable under this section in respect of any year shall be due and payable:
  - (a) on 28 January in the following year or on the expiration of the period of 28 days after a notice under subsection (2) has been served in accordance with subsection (3) in respect of that contribution, whichever is the later, or
  - (b) where any such notice has been served in respect of that contribution in the place of a previous notice that did not specify the correct amount of the contribution—on the expiration of the period of 28 days after any such replacement notice has been served in accordance with subsection (3).
- (4) Interest, at such rate, not exceeding 15 per cent per annum, as may be determined by the Board from time to time for the purposes of this subsection, shall be paid by the proprietor of a colliery holding on the amount of the proprietor's contribution that has not been paid on the date it becomes due and payable in respect of the period from that date until the date of payment of that amount.
- (5) The Board may waive any interest payable under subsection (4).
- (6) Where a colliery holding is registered in accordance with the provisions of the *Mining Act 1992* 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 or her 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) Where there is a change in the proprietorship of a colliery holding during any year the contribution payable by each proprietor of that holding in respect of that year shall be apportioned.
- (8) Any contribution or interest payable under this section which is not paid as required by this section shall be deemed to be a debt due to the Crown and may be recovered by the Board on behalf of the Crown in any court of competent jurisdiction.
- (9) The Board may exempt the proprietor of a colliery holding from paying in respect of any year such portion of the proprietor's contribution as relates to that part of the year during which, in the opinion of the Board, the extraction of coal or shale had not commenced.

## **12 Claims for damage arising out of subsidence**

- (1) Claims may be made under this Act for payment from the Fund of:
  - (a) compensation for any damage to improvements that arises from subsidence, except where the subsidence is due to operations carried on by the owner of the improvements,
  - (b) an amount to meet the proper and necessary expense 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,
  - (d) compensation for any damage to household or other effects that arises from subsidence, except where the subsidence is due to operations carried on by the owner of the household or other effects.

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 16 of the *Mine Subsidence Act 1928* unless the conditions of such conditional right have been, and are at the date of making such claim, complied with, or, where such conditions have not been or are not being so complied with, unless the Board is satisfied that any departure from or contravention of such conditions is such that it

need not be rectified.

Where damage, caused by subsidence, 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.

(1A) Notwithstanding anything contained in subsection (1) or (2), or section 12A, or any approval given under section 15, where:

- (a) improvements or household or other effects used in connection with the carrying on of an extractive industry or operation were damaged by subsidence before, or are so damaged after, the commencement of the *Mine Subsidence Compensation (Amendment) Act 1969*, or
- (b) expense referred to in section 12A (1) (b) was incurred before that commencement, or is incurred or proposed, in relation to any such improvements or household or other effects,

the Board may refuse to entertain a claim, or make a payment, in respect of that damage or expense where it is satisfied that the cause of the subsidence that caused the damage or necessitated the expense was the carrying on of that industry or operation.

(2)

- (a) The owner of any improvement or any household or other effects which have been damaged by subsidence may notify the Secretary of the Board in a form approved by the Board and within the prescribed time of the details of such damage; the location of the improvement damaged; the description of the household or other effects damaged; the amount claimed 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 (1).

- (b) Any such notification received shall be recorded and investigated by the Board or a member of staff of 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 must notify the claimant of its decision about a claim and the reasons for its decision.

- (4) (Repealed)
- (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 to improvements or household or other effects in respect of which a claim for such payment has been made.

**12A Claims arising out of actions to prevent or mitigate damage**

- (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.
- (2) A claim under subsection (1):
  - (a) shall be made, in the case of a claim for compensation under subsection (1) (a), within three months after the day on which the extent of the damage to which the claim relates became apparent to the claimant or, where some other time within which such a claim may be made is prescribed by the regulations, within the time so prescribed,

- (b) shall be made, in the case of a claim for payment of an amount under subsection (1) (b), within three months after the day on which the expense to which the claim relates became known to the claimant or, where some other time within which such a claim may be made is prescribed by the regulations, within the time so prescribed,
  - (c) shall specify the location of the land or improvements, or the description of the household or other effects, to which the claim relates, the amount claimed, the nature and extent of the damage or, as the case may be, the matters in respect of which the expense was, or is to be, incurred, and
  - (d) shall contain such other particulars as may be prescribed.
- (3) The provisions of section 12 (2) (b) and (5) shall, mutatis mutandis, apply to and in respect of claims and payments under this section in the same manner as they apply to and in respect of notifications and payments under section 12.
  - (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.

## **12B Appeals**

A person claiming compensation under section 12 or 12A may appeal to the Land and Environment Court against the decision of the Board:

- (a) as to whether damage has arisen from subsidence, or
- (b) as to the amount of the payment from the Fund, or
- (c) to reject a claim because of a matter specified in section 12A (1A) or (1B).

## **13 Purchase of damaged improvements and effecting of remedial works by the Board**

- (1) The Board may, in lieu of making payments in respect of claims under section 12 or 12A (1) (a):
  - (a) agree with the owner of the land or improvements to which the claim relates for the purchase of the land, or the improvements and the land on which the improvements are erected, or any estate or interest therein, at a price not greater than an amount determined, as at a date not more than one month before the



date of the agreement, as being the value of the land, or the improvements and the land, or the estate or interest therein, as the case may require, by a valuer with the prescribed qualifications who shall be appointed by the Board to make the valuation (which appointment the Board is hereby authorised to make), without regard to any damage caused by subsidence or by works to prevent or mitigate any such damage,

(b) execute or cause to be executed such works as may be necessary to restore the damaged land or improvements to a condition as nearly as practicable equivalent to that in which such land or improvements were before the damage to such land or improvements arose.

(1A) If no agreement has been entered into under subsection (1) (a) within such time as the Board considers reasonable after the claim is made under section 12 or 12A (1) (a), the Board may acquire the land (or the land and improvements or the estate or interest) by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

(1AB) For the purposes of the *Public Works Act 1912*, any such acquisition is taken to be for an authorised work and the Board is taken to be the Constructing Authority.

(1AC) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this section.

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

(1C) The Board may, in connection with any purchase under subsection (1), agree to increase the purchase price determined under that subsection by the amount of the reasonable incidental expenses incurred by the owner in connection with, or resulting from, the sale of the property concerned to the Board.

(2)

(a) Where in the opinion of the Board damage to the surface of any land caused by subsidence 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 or household or other effects has been caused by subsidence, 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 or household or other effects until it is satisfied that such subsidence has settled or is unlikely to recur within a reasonable period.

**13A Works for prevention or mitigation of damage from subsidence**

The Board may carry out, or cause to be carried out such works as, in its opinion, would reduce the total prospective liability of the Fund by preventing or mitigating damage that the Board anticipates would, but for those works, be incurred by reason of subsidence, whether or not the damage anticipated is damage to improvements or household or other effects on the land on which the works are to be carried out.

**13B Acquisition of land for certain works**

The Board may acquire any land or any estate or interest in land for the purpose of exercising its powers under section 13A.

**13C Vacant land whose development affected by subsidence**

If, in the opinion of the Board, the proposed erection of an improvement on vacant land has been adversely affected by subsidence or the likelihood of subsidence, the Board may (but is not required to):

- (a) acquire that land or any estate or interest in that land, or
- (b) carry out, or cause to be carried out, on that land such works as would prevent or mitigate the effects of subsidence.

**14 Liability of proprietors of colliery holdings**

(1) The proprietor of a colliery holding who:

- (a) is not in arrears with the contributions payable by the proprietor 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 the proprietor derives title to mine such coal or shale,

shall not be liable for any damage to improvements or household or other effects occasioned by subsidence.

(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 the proprietor's servants.

#### **14A Recovery by Board in the case of unlawful mining operations**

- (1) In this section, **unlawful mining operations** means mining operations, in relation to coal or shale, carried out by a person in contravention of:
  - (a) Part 2 of the *Mining Act 1992*, or
  - (b) any enactment, covenant or stipulation by which the person is bound relating to the method or extent of the extraction of coal or shale.
- (2) Where improvements or household or other effects are damaged by subsidence caused by unlawful mining operations:
  - (a) any amount paid from the Fund to the owner of the improvements or household or other effects in respect of the damage under section 12 or in respect of the subsidence under section 12A (1) (b), or
  - (b) the cost of the execution of any work in respect of the damage under section 13 (1) (b),may be recovered in any court of competent jurisdiction as a debt due to the Board from the person who carried out the unlawful mining operations.
- (3) Any money recovered by the Board pursuant to subsection (2) shall be paid into the Fund.

#### **15 Mine subsidence districts**

- (1) The Governor may by proclamation published in the Gazette proclaim any area to be a mine subsidence district.
- (1A) The Governor may revoke or alter a proclamation under subsection (1) by a further proclamation published in the Gazette.
- (2) (Repealed)
- (2A) An application for approval under this section to alter or erect improvements within a mine subsidence district or to subdivide land therein shall be made in a form approved by the Board.
- (2B) The Board may require any applicant for approval under this section to furnish such particulars as it may specify in notice sent to the applicant.
- (3) The Board may grant its approval either subject to conditions or unconditionally or may refuse its approval.

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.

(3A) Any approval given under the foregoing provisions of this section shall be void if the erection, alteration or subdivision to which it refers is not commenced within 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):

Provided that the Board may if good cause be shown grant an extension or renewal of such approval.

(3AA) For the purposes of subsection (3A), the alteration or erection of improvements on land or the subdivision (involving physical work) of land is commenced when building, engineering or construction work relating to that alteration, erection or subdivision is physically commenced on the land.

(3B) Without limiting the generality of subsection (3), the Board may refuse to approve an application or grant its approval subject to conditions where the application relates to:

- (a) the alteration or erection of improvements over land, or
- (b) the subdivision of land,

being land which, in the opinion of the Board, may subside if the coal and shale in the land were extracted by underground methods.

(4) Nothing in this section shall affect the provisions of the *Environmental Planning and Assessment Act 1979* relating to the subdivision of land.

(5) Where any improvement has been erected or altered or subdivision has been made in contravention of this section (a **contravening improvement** or **contravening subdivision**):

- (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,
- (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.

- (6) Where the approval of any person under the *Environmental Planning and Assessment Act 1979* 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 person to the erection, alteration or subdivision.
- (7) A person contravenes this subsection if the person does, or causes to be done, any work in connection with the erection or alteration of any improvement within a mine subsidence district without the approval of the Board or not in conformity with such an approval.  
Maximum penalty:
  - (a) in the case of an individual—100 penalty units, or
  - (b) in the case of a corporation—500 penalty units.
- (8) A person contravenes this subsection if the person subdivides any land within a mine subsidence district, or causes any such land to be subdivided, without the approval of the Board or not in conformity with such an approval.  
Maximum penalty:
  - (a) in the case of an individual—100 penalty units, or
  - (b) in the case of a corporation—500 penalty units.
- (8A) A person does not commit an offence against this section for anything done within a mine subsidence district that is excluded from the operation of this section by the regulations.
- (9) Proceedings for an offence under this section shall not be commenced except with the consent of the Board.

A certificate purporting to be signed by the chairperson of the Board and certifying that the Board has given its consent to the commencement of any such proceedings

referred to in the certificate shall be evidence that the Board has so consented.

- (10) Proceedings for an offence under this section may be commenced at any time within 12 months after the offence was committed.

**15A (Repealed)**

**15B Certificates of compliance**

- (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.
- (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 (2), issue to the applicant a certificate under this section in respect of such improvement or land.
- (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.
- (4) The production of the certificate shall for all purposes be deemed conclusive evidence in favour of a person having an estate or interest in the land that the requirements of

this Act relating to the improvement or the subdivision had been complied with up to the date of the certificate.

- (5) If the Board refuses to issue a certificate under this section, it shall notify the applicant for the certificate of the refusal and the reasons therefor.

### **15C Certificates of compensation claims paid**

- (1) Any person may apply to the Board for a certificate under this section stating whether or not on a date specified in the certificate any claim for compensation under this Act had been paid, or was pending, in respect of any improvement or any household or other effects specified in the application.
- (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 the household or other effects in respect of which the certificate is required.

### **15D Prevention of unauthorised work**

- (1) If a person is carrying out work without an approval of the Board required under section 15 or which is not in conformity with such an approval, the Board may, by notice in writing to the person, direct the person to cease carrying out that work until the necessary approval is obtained or unless it conforms with the approval.
- (2) A person who contravenes the notice is guilty of an offence.  
Maximum penalty: 20 penalty units.
- (3) The Board may bring proceedings in the Land and Environment Court for an order to restrain the carrying out of work in contravention of any such notice.
- (4) If the Land and Environment Court is satisfied that the notice will be contravened unless restrained by order of the Court, it may make such order as it thinks fit to restrain the contravention.

### **16 Powers of members and staff**

- (1) A member of the Board or any member of staff of 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, or to assess whether damage to any property from subsidence could reasonably have been, or be, anticipated and the nature and extent of any works necessary to prevent or mitigate any such damage or anticipated damage, 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.

- (1A) Subject to subsections (1B) and (1C), a member of staff of the Board may, for the purpose of exercising the powers conferred upon it by section 13A, enter upon any land.
- (1B) The powers conferred upon a member of staff of the Board by subsection (1A) shall not authorise entry into a dwelling house without the consent of the occupier unless the anticipated damage is damage to that dwelling house.
- (1C) Subject to subsection (1B), the powers conferred upon a member of staff of the Board by subsection (1A) shall not be exercised unless:
- (a) the Board has given any occupier of the land reasonable notice of its intention to exercise those powers, and
  - (b) the Board has, so far as may be practicable in the circumstances, given the like notice to any other person whose consent to the proposed entry and the carrying out of the proposed works would, but for subsection (1A), be required.
- (1D) A member of the Board or any member of staff of the Board may do both or either of the following things:
- (a) enter any colliery holding at any reasonable time for the purposes of any inspection, examination or inquiry under this Act,
  - (b) require the production of any books or documents which are:
    - (i) in the possession or under the control of the proprietor of a colliery holding or of the manager or any other person employed at or in connection with a mine, and
    - (ii) relevant to any inspection, examination or inquiry under this Act.
- (1E) When books or documents are produced pursuant to a requirement under subsection (1D), the person to whom the books or documents are produced may make copies of, or take extracts from, the books or documents.
- (2) A person shall not, without reasonable excuse:
- (a) obstruct or hinder a person in the exercise of his or her powers under this Act,
  - (b) refuse or fail to comply with a requirement under subsection (1D), or
  - (c) refuse or fail to provide a person with all reasonable assistance and facilities in order to enable the person to exercise his or her powers under this Act.

Maximum penalty (subsection (2)): 20 penalty units.



### **16A Board may provide advice**

The Board may provide advice on matters relating to mine subsidence or the development of land that may be subject to subsidence, whether or not the land concerned is within a mine subsidence district.

### **17 Proceedings for offences etc**

- (1) Proceedings for an offence against this Act or the regulations may be disposed of summarily before the Local Court.
- (2) Any penalty recovered for an offence against this Act or the regulations shall be paid into the Fund.

### **18 Regulations**

- (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.
- (1A) A regulation may impose a penalty not exceeding 10 penalty units for any contravention thereof.
- (2) (Repealed)

### **19 (Repealed)**

### **20 Validation**

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 section 13 (1) (a).

### **21 Savings, transitional and other provisions**

Schedule 1 has effect.

### **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](#).

## **Schedule 1 Savings, transitional and other provisions**

### **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.

### **Part 1 Provisions consequent on the enactment of the [Mine Subsidence Compensation \(Amendment\) Act 1992](#)**

(Section 21)

#### **1 Operation of amendments**

- (1) The amendments made by the [Mine Subsidence Compensation \(Amendment\) Act 1992](#) apply only to damage that occurs after the commencement of each such amendment, except as provided by subclause (2).
- (2) The amendment made by Schedule 1 (6) (a) to the [Mine Subsidence Compensation \(Amendment\) Act 1992](#) to section 15C of this Act extends so as to apply in relation to damage that occurred before the commencement of that amendment. The amendment also extends to an application for a certificate that is pending as at the commencement of the amendment.

### **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](#).