

# Coal Mine Subsidence Compensation Act 2017

## No 37

[2017-37]



New South Wales

### Status Information

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#### Authorisation

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# Coal Mine Subsidence Compensation Act 2017 No 37



New South Wales

An Act to make provision for the payment of compensation for damage caused by subsidence in connection with the extraction of coal; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Coal Mine Subsidence Compensation Act 2017*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

- (1) The object of this Act is to provide for a fair, efficient and sustainable compensation framework for dealing with the impacts of coal mine subsidence.
- (2) In particular, it is the object of this Act to provide for:
  - (a) a scheme for the provision of compensation for damage caused by subsidence resulting from coal mine operations, and
  - (b) the assessment and management of risks associated with subsidence resulting from coal mine operations.

### 4 Definitions

- (1) In this Act:

**active coal mine** means the following:

- (a) a colliery holding registered in accordance with section 163 of the *Mining Act 1992* for which a mining lease or other authorisation is in force that authorises mining for coal or the carrying out of mining purposes in connection with the mining of coal,

(b) a coal mine prescribed by the regulations,

but does not include a coal mine excluded from this definition by the regulations.

**approved procedures**—see section 14.

**authorised officer**—see section 36.

**Chief Executive** means the person employed in the Public Service as the Chief Executive of Subsidence Advisory NSW.

**coal mine** means a place where mining for coal is occurring or has occurred.

**Department** means the Department of Finance, Services and Innovation.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**Fund** means the Coal Mine Subsidence Compensation Fund.

**goods** means any moveable personal property, but does not include motor vehicles, boats or aircraft or any other thing prescribed by the regulations.

**Note—**

For example, goods can include carpets, curtains, furniture, electrical appliances, musical instruments, computers or power tools.

**improvement** includes the following:

(a) any building or work erected or constructed on land,

(b) infrastructure, whether above or below the surface of the land.

**infrastructure** includes (without limitation) railways, roads, electricity transmission or distribution networks, pipelines, ports, wharf or boating facilities, telecommunications, sewerage systems, stormwater management systems, water supply systems, waterway or foreshore management activities, flood mitigation works, public parks or reserves management, soil conservation works or other buildings or works prescribed by the regulations.

**mine subsidence district** means an area declared under section 20.

**non-active coal mine** means a coal mine other than an active coal mine.

**preventative or mitigative expense** means an expense incurred or proposed by or on behalf of the owner of an improvement or goods in preventing or mitigating damage to that improvement or those goods arising from subsidence.

**proprietor**, in relation to a coal mine, means a person who is the immediate owner, lessee or occupier of the coal mine (or of any part of the coal mine), and includes the

following:

- (a) any contractor for the working of the coal mine (or any part of the coal mine),
- (b) if the proprietor is a corporation—any related body corporate of that corporation, but does not include a person:
  - (c) who merely receives a royalty, rent or fine from a coal mine, or
  - (d) who is merely the proprietor of a coal mine, subject to any lease, grant, or licence for the working of the coal mine, or
  - (e) who is merely the owner of the soil, but is not interested in the minerals of the coal mine.

**related body corporate** has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

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

**subdivide** and **subdivision** mean the dividing of land into parts, whether the dividing is:

- (a) by sale, conveyance, transfer or partition, or
- (b) by any agreement, dealing or instrument (other than a lease for a period not exceeding 5 years without option of renewal) rendering different parts of the land immediately available for separate occupation or disposition, or
- (c) by obtaining the issue of a certificate of title under the [Real Property Act 1900](#) in respect of a part of the land,

but does not include any severance of land by the opening of a public road.

**subsidence** means subsidence due to the extraction of coal, and includes all vibrations or other movements of the ground related to any such extraction (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.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

## 5 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative

power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **Part 2 Compensation for mine subsidence**

### **6 Compensation in relation to subsidence**

A person is entitled to compensation in relation to subsidence in accordance with this Act.

### **7 Types of compensation**

- (1) **Compensation for damage arising out of subsidence** A person is entitled to the following compensation:
  - (a) compensation for any damage to improvements or goods owned by the person that arises from subsidence, unless the subsidence is due to operations carried on by the owner of the improvements or goods or an affiliate of the owner,
  - (b) compensation to meet the reasonable and necessary expense incurred or to be incurred as a result of such damage,
  - (c) in relation to a building or works (or any part of a building or works) that are leased by the owner to another person—reasonable compensation for the rent that would have been paid or payable for any period during which the building or works are uninhabitable, under repair or in the course of construction because of damage arising from subsidence,
  - (d) in relation to a building or works (or any part of a building or works) that are occupied by the owner—reasonable compensation for accommodation expenses of the owner (including relocation expenses and rent) for any period during which the building or works are uninhabitable, under repair or in the course of construction because of damage arising from subsidence.
- (2) **Compensation in relation to actions to prevent or mitigate damage** A person is entitled to the following compensation:
  - (a) compensation for preventative or mitigative expenses,
  - (b) compensation for damage incurred as a result of the exercise by the Chief Executive of the Chief Executive's functions under section 29 (Works for prevention or mitigation of damage from subsidence).
- (3) **Entitlement transfers to successors in title** For the avoidance of doubt, a successor in title to an original owner of an improvement or goods is entitled to compensation under this Act, as if the successor were the original owner, in relation to subsidence and damage that occurred before the transfer of ownership of the improvement or goods.
- (4) In this section:



**affiliate**, in relation to an entity (**the entity**), means:

- (a) another entity that is controlled (within the meaning of section 50AA of the *Corporations Act 2001* of the Commonwealth) by the entity, or
- (b) if the entity is a body corporate—an entity that is a related entity of the entity.

**entity** and **related entity** have the same meanings as in section 9 of the *Corporations Act 2001* of the Commonwealth.

## **8 Liability for compensation**

- (1) Compensation under this Act is to be paid:
  - (a) by the proprietor of the coal mine that caused the subsidence—in relation to compensation arising from an active coal mine, and
  - (b) by the Chief Executive from the Fund—in relation to compensation arising from a non-active coal mine.
- (2) If a person ceases to be a proprietor of an active coal mine (whether by reason of sale, transfer, the coal mine ceasing to be active or any other reason), the proprietor remains liable to pay compensation in relation to any claim that has been made under this Act but has not been finally determined.
- (3) Subject to subsection (2), a person who becomes a proprietor of an active coal mine (whether by reason of purchase, transfer or any other reason) is liable to pay compensation under this Act in relation to subsidence arising from the coal mine (whether occurring before or after that time).

## **9 Limitation on claims for damage arising out of subsidence**

- (1) If 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 amount of compensation in respect of the damage may be reduced in accordance with the approved procedures.
- (2) Compensation is not payable in relation to:
  - (a) improvements or goods used in connection with the carrying on of a coal mining operation that were damaged by subsidence, or
  - (b) a preventative or mitigative expense that was incurred, or is incurred or proposed, in relation to any such improvements or goods,if the cause of the subsidence that caused the damage or necessitated the expense was the carrying on of that coal mining operation.

## **10 Limitation on claims arising out of actions to prevent or mitigate damage**

- (1) Compensation is not payable in relation to 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 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.
- (2) Compensation is not payable in relation to a claim for any preventative or mitigative expenses if the total preventative or mitigative expenses claimed are disproportionate to the reasonably expected total expense of repairing or replacing the improvements or goods concerned if no preventative or mitigating work had been or were to be carried out.

## **11 Making of claims of compensation**

- (1) A person may apply for compensation under this Act by lodging a claim through the website of Subsidence Advisory NSW in the manner and form approved by the Chief Executive.
- (2) An application is to be accompanied by the information or documents (if any) specified by the regulations or that the Chief Executive requires in any particular case.
- (3) A claim for compensation under section 7 (1) must be made:
  - (a) within 12 months after the day on which it became known to the owner concerned that the damage was caused by subsidence, or
  - (b) if the Chief Executive determines that the owner should have known on a particular day that the damage was caused by subsidence—within 12 months after that day, or
  - (c) if the Chief Executive determines that a longer period is justified in the circumstances of the case—within the longer period so determined.
- (4) A claim for compensation for preventative or mitigative expenses under section 7 (2)
  - (a) must be made within 3 months after the expense to which the claim relates became known to the claimant or within such longer period as may be prescribed by the regulations.

- (5) A claim for compensation for damage under section 7 (2) (b) incurred as a result of the exercise by the Chief Executive of powers under section 29 must be made within 3 months after the damage to which the claim relates became known to the claimant or within such longer period as may be prescribed by the regulations.

## **12 Forwarding of claims relating to active coal mines to mine proprietors**

- (1) The Chief Executive is to:
- (a) forward each claim relating to compensation arising from an active coal mine to the proprietor of the coal mine, and
  - (b) determine each other claim for compensation in accordance with this Act.
- (2) The proprietor of the coal mine to whom a claim has been forwarded under subsection (1) (a) may request the Secretary in writing to review the determination of the Chief Executive that the claim relates to compensation arising from the proprietor's active coal mine.
- (3) A request under this section must be made within 21 days after the date on which the claim was forwarded to the proprietor.
- (4) On receiving a request, the Secretary is to review the Chief Executive's determination and may confirm or reject the forwarding of the claim.
- (5) The Secretary must give the following persons notice in writing of the Secretary's decision:
- (a) the proprietor of the coal mine,
  - (b) the claimant for compensation,
  - (c) the Chief Executive.
- (6) If the Secretary rejects the forwarding of a claim to the proprietor of the coal mine, the Chief Executive may:
- (a) if the Chief Executive is of the opinion that the claim relates to compensation arising from another active coal mine, forward the claim to the proprietor of that other coal mine, or
  - (b) in any other case, determine the claim for compensation in accordance with this Act.
- (7) The proprietor of a coal mine to whom a claim has been forwarded under this section is to determine the claim for compensation in accordance with this Act.
- (8) A proprietor of a coal mine may not request a second or subsequent review in respect of any particular claim unless new and material evidence has been discovered after

the determination of the earlier review.

### **13 Determination of claims in accordance with approved procedures**

- (1) Claims for compensation are to be determined in accordance with the approved procedures.
- (2) A claim must be determined within:
  - (a) the period of time specified in the approved procedures or otherwise prescribed by the regulations, or
  - (b) such longer period of time as may be approved by the Chief Executive in a particular case.
- (3) A failure to determine a claim within the period referred to in subsection (2) is taken, for the purposes of this Part, to be a disallowance of the claim.

### **14 Approved procedures**

- (1) The Chief Executive may approve procedures for the determination of claims under this Act.
- (2) Without limiting subsection (1), approved procedures may deal with the following:
  - (a) the determination of whether damage is caused by subsidence arising from an active or non-active coal mine,
  - (b) the determination of claims relating to damage caused by or likely to be caused by subsidence arising from an active coal mine, with the agreement of the claimant, by the proprietor of the coal mine:
    - (i) purchasing the land, improvements or goods concerned, or
    - (ii) carrying out or causing to be carried out works to restore the damaged improvements or goods or works to prevent or mitigate damage to improvements or goods,
  - (c) the independent assessment of claims, including the selection of independent assessors and the processes for such assessment,
  - (d) the payment of costs, fees and charges (or the prohibition of costs, fees and charges) in connection with the determination of claims under this Act,
  - (e) any other matters prescribed by the regulations for the purposes of this section.
- (3) The Chief Executive may amend, revoke or replace the approved procedures.
- (4) The Chief Executive is:

- (a) to consult the proprietors of coal mines before the Chief Executive approves, amends or replaces the approved procedures, and
  - (b) to provide reasonable notice of any amendment to the approved procedures before the amendment takes effect.
- (5) Subsection (4) (a) does not apply to an amendment of the approved procedures that, in the opinion of the Chief Executive, is minor or trivial in nature.
- (6) The approved procedures may:
- (a) adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time, and
  - (b) apply generally or be limited in their application by reference to specified exceptions or factors or apply differently according to different factors of a specified kind (or do a combination of those things).

**Note—**

Under section 380A of the *Mining Act 1992*, decision-makers may take contraventions of this Act into consideration in determining whether a person is a fit and proper person under that Act.

**15 Review of claim determinations by Secretary**

- (1) A claimant whose claim for compensation under this Act is wholly or partly disallowed (whether by the Chief Executive or by the proprietor of a coal mine) may request the Secretary in writing to review the decision.
- (2) A request under this section must be made within 3 months of the decision to disallow the claim.
- (3) On receiving a request, the Secretary:
- (a) if the claim is in relation to infrastructure, may:
    - (i) review the claim and may allow or disallow the whole or part of the claim, or
    - (ii) refuse to review the claim, or
  - (b) in any other case, is to review the claim and may allow or disallow the whole or part of the claim.
- (4) The Secretary must give the following persons notice in writing of the Secretary's decision as to the claim:
- (a) the claimant for compensation,
  - (b) in relation to a claim for compensation in relation to subsidence arising from an active coal mine—the proprietor of the coal mine,

(c) in any case—the Chief Executive.

- (5) A claimant may not request more than one review in respect of any particular claim.
- (6) Subject to section 16 (Appeals), a proprietor of a coal mine must give effect to a decision of the Secretary under this section.

Maximum penalty:

- (a) in the case of an individual—500 penalty units, or
- (b) in the case of a corporation—1,000 penalty units.

**Note—**

Under section 380A of the *Mining Act 1992*, decision-makers may take contraventions of this Act into consideration in determining whether a person is a fit and proper person under that Act.

**16 Appeals**

- (1) If the Secretary has refused to review a claim under this Act for compensation in relation to infrastructure, the person claiming compensation may appeal to the Land and Environment Court against a determination of the claim.
- (2) A proprietor of a coal mine or a person claiming compensation under this Act may appeal to the Land and Environment Court against the decision of the Secretary under section 15 (Review of claim determinations by Secretary):
- (a) as to whether damage has arisen from subsidence, or
- (b) as to the amount of the compensation, or
- (c) to reject a claim because of a matter specified in section 10 (Limitation on claims arising out of actions to prevent or mitigate damage).
- (3) An appeal under this section must be made within 3 months after the making of the decision concerned.

**17 No contracting out of Act**

This Act applies despite any contract or agreement to the contrary.

**18 Failure of proprietor of coal mine to comply with Act**

- (1) If, in the opinion of the Chief Executive, a proprietor of a coal mine fails to respond to a claim under this Act in accordance with the approved procedures, the Chief Executive may respond to the claim and deal with the claim as if the Chief Executive were the proprietor of the coal mine.
- (2) If, in the opinion of the Chief Executive, a proprietor of a coal mine fails to do any of the following in accordance with an agreement with a claimant to determine a claim

under section 14 (2) (b), the Chief Executive may deal with the claim as if the Chief Executive were the proprietor of the coal mine:

- (a) purchase land, improvements or goods,
  - (b) carry out or cause to be carried out works to restore damaged improvements or goods or works to prevent or mitigate damage to improvements or goods.
- (3) In exercising a function under subsection (1) or (2), the Chief Executive may:
- (a) make a payment to the claimant from the Fund, and
  - (b) recover the amount of the payment from the proprietor as a debt due to the Crown.
- (4) If, in the opinion of the Chief Executive, a proprietor of a coal mine fails to make a payment to a claimant as required by this Act, the Chief Executive:
- (a) is to make the payment to the claimant from the Fund, and
  - (b) may recover the amount of the payment from the proprietor as a debt due to the Crown.
- (5) Unless the Chief Executive is of the opinion that exceptional circumstances exist, the Chief Executive must not take action under this section in relation to a claim that is pending but has not been finally determined under this Act.
- (6) Before taking action under this section, the Chief Executive must:
- (a) give the proprietor of the coal mine concerned at least 21 days notice of the proposed action, and
  - (b) invite the proprietor to make submissions regarding that proposed action, and
  - (c) consider any submission received from the proprietor within that 21-day period.
- (7) The Chief Executive is to pay any amounts recovered under this section into the Fund.

### **19 No further liability for proprietors of coal mines complying with Act**

The proprietor of a coal mine who deals with a claim for compensation in connection with subsidence under this Act and who complies with:

- (a) the conditions of the relevant authority under the *Mining Act 1992*, and
- (b) the provisions of this Act relating to compensation,

is not liable under any other Act or law in connection with that claim in connection with that subsidence.

## **Part 3 Development within mine subsidence districts**

### **20 Mine subsidence districts**

The regulations may declare an area to be a mine subsidence district.

### **21 Certain development within mine subsidence districts requires approval**

- (1) A person must not carry out work, or cause work to be done, in connection with the erection or alteration of an improvement within a mine subsidence district, except in accordance with the approval of the Chief Executive.

Maximum penalty:

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

- (2) A person must not subdivide land within a mine subsidence district, or cause such land to be subdivided, except in accordance with the approval of the Chief Executive.

Maximum penalty:

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

- (3) Proceedings for an offence under this section must not be commenced except with the consent of the Chief Executive.

### **22 Approvals for development within mine subsidence districts**

- (1) An application for approval to alter or erect improvements, or to subdivide land, within a mine subsidence district is to be made in a form approved by the Chief Executive.
- (2) The Chief Executive may require any applicant for approval under this section to provide such particulars as the Chief Executive may specify in a notice sent to the applicant.
- (3) The Chief Executive may grant an approval under this section either subject to conditions or unconditionally or may refuse to grant the approval.

**Note—**

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) Any approval given under this section ceases to have effect if the erection, alteration or subdivision concerned is not commenced within the period specified in the approval (being a period of at least 2 years, but not more than 5 years, commencing on the date of the approval).



- (5) However, the Chief Executive may, if the Chief Executive thinks fit, grant an extension or renewal of an approval given under this section.
- (6) For the purposes of subsection (4), 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.
- (7) Without limiting the generality of subsection (3), the Chief Executive may refuse to grant an approval that relates to:
  - (a) the alteration or erection of improvements over land, or
  - (b) the subdivision of land,being land that, in the opinion of the Chief Executive, may subside if the coal in the land were extracted by underground methods.
- (8) Nothing in this section affects the provisions of the *Environmental Planning and Assessment Act 1979* relating to the subdivision of land.
- (9) If 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 in a mine subsidence district, the Chief Executive may refuse an application for approval of the erection, alteration or subdivision if the applicant for the approval has not produced to the Chief Executive the approval of that person to the erection, alteration or subdivision.

### 23 Contravening development

- (1) If an improvement has been erected or altered or a subdivision has been made in contravention of this Part (a **contravening improvement** or **contravening subdivision**):
  - (a) the contravention does 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 (if the contravention relates to the land purchased), and
  - (b) a claim under Part 2 is not to be dealt with and payment is not to be made under this Act in respect of the following:
    - (i) any contravening improvement, any goods fixed or attached to a contravening improvement or any goods 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 goods on land within a contravening subdivision for the purpose of erecting or altering an improvement.
- (2) Despite subsection (1) (b), the Chief Executive may determine that a claim may be dealt with or a payment made under this Act in relation to the following:
- (a) an improvement that is a residential building that was altered or erected more than 15 years before the claim was made, if the Chief Executive is of the opinion that:
    - (i) the failure to obtain the approval was not the fault of the claimant, or
    - (ii) exceptional circumstances exist,
  - (b) an improvement that is not a residential building, if the Chief Executive is of the opinion that exceptional circumstances exist.

#### **24 Exemption from Part by Chief Executive**

- (1) The Chief Executive may, by order in writing, exempt any specified work or subdivision or class of work or subdivision or any specified person or class of persons from the operation of any of the provisions of this Part.
- (2) An exemption granted by the Chief Executive may:
  - (a) be granted subject to conditions, and
  - (b) apply generally or be limited in its application by reference to specified exceptions or factors, and
  - (c) apply differently according to different factors of a specified kind, and
  - (d) be granted for a specified period or for an indefinite period, and
  - (e) if granted for a specified period, be granted before, during or after that period.
- (3) An exemption that is granted for:
  - (a) a specified period remains in force for that period, and
  - (b) an indefinite period remains in force until it is revoked.

A condition of an exemption may, according to its terms, continue in force after the exemption has ceased to be in force.

- (4) The regulations may make provision for or with respect to applications to the Chief Executive for an exemption under this section.

## **25 Exemption from Part under regulations**

The regulations may exempt, or provide for the exemption, from the operation of any of the provisions of this Part any specified work or subdivision or class of work or subdivision or any specified person or class of persons, and subject to such conditions, as may be specified in the regulations.

## **Part 4 Miscellaneous functions of Chief Executive**

### **26 Purchase of damaged improvements and effecting of remedial works by the Chief Executive**

- (1) The Chief Executive may, instead of making a payment of compensation in respect of a claim under section 7 (1) or (2) (b) in relation to a non-active coal mine:
- (a) after consulting a qualified valuer, agree with the owner of the land or improvements to which the claim relates to purchase the following without regard to any damage caused by subsidence or by works to prevent or mitigate any such damage:
    - (i) the land,
    - (ii) the improvements,
    - (iii) any estate or interest in the land or the improvements concerned, and
  - (b) carry out or cause to be carried out such works as may be necessary to restore the damaged improvements or goods to a condition as nearly as practicable to the condition in which the improvements or goods were before the damage to the improvements or goods arose.
- (2) If no agreement has been entered into under subsection (1) (a) within such time as the Chief Executive considers reasonable after the claim is made under section 7 (1) or (2) (b), the Chief Executive 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](#) without regard to any damage caused by subsidence or by works to prevent or mitigate any such damage.
- (3) For the purposes of the [Public Works and Procurement Act 1912](#), any such acquisition is taken to be for an authorised work and the Chief Executive is taken to be the Constructing Authority.
- (4) Sections 34, 35, 36 and 37 of the [Public Works and Procurement Act 1912](#) do not apply in respect of works constructed under this section.

- (5) The Chief Executive may sell, lease or otherwise dispose of any property acquired by the Chief Executive under subsection (1) or (2).
- (6) The Chief Executive 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 Chief Executive.
- (7) Subject to the regulations, a reference in this section to a **qualified valuer** is a reference to a person who is of a class prescribed by the regulations.

## **27 Emergency, urgent and temporary actions**

- (1) If the Chief Executive reasonably believes that:
  - (a) damage to the surface of any land caused by subsidence may cause danger to any member of the public, the Chief Executive may do either or both of the following in order to eliminate or minimise the danger:
    - (i) in relation to subsidence arising from an active coal mine—direct the proprietor of the coal mine to cause the land to be filled in or fenced off or take such other action necessary,
    - (ii) cause the land to be filled in or fenced off or take such other action necessary, and
  - (b) damage to improvements or goods has been caused by subsidence and urgent repairs are required to ensure the continued use of the improvement, the Chief Executive may:
    - (i) in relation to subsidence arising from an active coal mine—direct the proprietor of the coal mine to cause urgent repairs to be carried out, or
    - (ii) in relation to subsidence arising from a non-active coal mine—cause urgent repairs to be carried out, and
  - (c) damage to improvements or goods has been caused by subsidence and further subsidence is likely to occur, the Chief Executive may:
    - (i) in relation to subsidence arising from an active coal mine—direct the proprietor of the coal mine to cause temporary repairs to be carried out, or
    - (ii) in relation to subsidence arising from a non-active coal mine—cause temporary repairs to be carried out and may defer payments in respect of claims for damage to the improvements or goods until the Chief Executive is satisfied that the subsidence has settled or is unlikely to recur within a reasonable period.

(2) The proprietor of the coal mine must comply with a direction under this section.

Maximum penalty:

- (a) in the case of an individual—2,000 penalty units, or
- (b) in the case of a corporation—10,000 penalty units.

**Note—**

Under section 380A of the *Mining Act 1992*, decision-makers may take contraventions of this Act into consideration in determining whether a person is a fit and proper person under that Act.

- (3) If, in the opinion of the Chief Executive, a proprietor of an active coal mine fails to comply with a direction under this section, the Chief Executive may cause the necessary action or urgent or temporary repairs to be carried out as if the Chief Executive were the proprietor of the coal mine.
- (4) In exercising a function under subsection (3), the Chief Executive may:
  - (a) make a payment from the Fund, and
  - (b) recover the amount of the payment from the proprietor as a debt due to the Crown.
- (5) The Chief Executive may exercise a function under this section on the request of a person or on the Chief Executive's own motion.
- (6) The Chief Executive is to pay any amounts recovered under this section into the Fund.

**28 Review by Secretary of certain temporary action directions**

- (1) A proprietor of a coal mine to whom a direction under section 27 (1) (c) (i) has been given may make a request in writing to the Secretary to review the direction.
- (2) On receiving a request, the Secretary is to review the direction and may:
  - (a) confirm the direction, or
  - (b) disallow the whole or part of the direction, or
  - (c) amend the direction.
- (3) The Secretary must give the following persons notice in writing of the Secretary's decision as to the review:
  - (a) the proprietor of the coal mine,
  - (b) the Chief Executive.
- (4) A proprietor of a coal mine may not request more than one review in respect of any

particular direction.

### **29 Works for prevention or mitigation of damage from subsidence**

The Chief Executive may expend money from the Fund for the funding of works to prevent or mitigate damage to improvements or goods that the Chief Executive anticipates would occur (in the absence of the works) by reason of subsidence if the Chief Executive is satisfied that the expenditure will reduce the total prospective liability of the Fund.

### **30 Vacant land whose development affected by subsidence**

If a person proposes to erect an improvement on vacant land that, in the opinion of the Chief Executive, has been, or is likely to be, adversely affected by subsidence, the Chief Executive 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.

### **31 Chief Executive may provide advice**

The Chief Executive 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.

## **Part 5 Financial provisions**

### **32 Coal Mine Subsidence Compensation Fund**

- (1) There is to be established by this Act in the Special Deposits Account a fund called the Coal Mine Subsidence Compensation Fund.
- (2) The following amounts are to be paid into the Fund, subject to any requirements specified in the regulations:
  - (a) the rate, levies and contributions payable by the proprietors of coal mines under this Act,
  - (b) the proceeds of investment of money in the Fund,
  - (c) any other money appropriated by Parliament for the purposes of the Fund or required by this or any other Act or law to be paid into the Fund.
- (3) The following amounts may be paid out of the Fund, subject to any requirements specified in the regulations:
  - (a) all amounts payable under this Act in respect of damage caused by subsidence or otherwise payable under this Act,

- (b) money expended by the Chief Executive in the exercise of the Chief Executive's functions under Part 4,
  - (c) the expenses involved in the administration of this Act,
  - (d) such other amounts as are authorised to be paid out of the Fund by this or any other Act or law.
- (4) The Chief Executive is to manage and control the Fund in accordance with this Act and the regulations.
- (5) The Chief Executive:
- (a) is to act as trustee of money in the Fund, and
  - (b) is to invest the money in the Fund not immediately required for the purposes for which it is to be applied in the same way as trustees may invest trust funds, and
  - (c) subject to any requirements specified in the regulations, is to make payments from the Fund as authorised by this Act and the regulations, and
  - (d) may do all things necessary or convenient to be done in connection with the exercise of functions under this section.
- (6) The regulations may make further provision with respect to the Fund and its management and control.

### **33 Imposition of rates, levies and contributions**

- (1) The Chief Executive may make and levy, in accordance with the regulations, such types and amounts of rates, levies and contributions on coal mines as are prescribed by, or determined in accordance with, the regulations.
- (2) The regulations may deal with the making and levying of rates, levies and contributions, including in relation to the following:
- (a) providing for the period within which a rate, levy or contribution is payable,
  - (b) describing the basis or bases on which any particular type of rate, levy or contribution may be imposed,
  - (c) describing the coal mine or other land in respect of which a particular type of rate, levy or contribution is payable.
- (3) All amounts of rates, levies and contributions are to be paid into the Fund.
- (4) Any rate, levy or contribution due or payable under this section may be recovered by the Chief Executive as a debt due to the Crown in a court of competent jurisdiction and paid into the Fund.

### 34 Recovery by Chief Executive in the case of unlawful mining operations

- (1) In this section, **unlawful mining operations** means mining operations, in relation to coal, carried out by a person in contravention of:
  - (a) Part 2 of the *Mining Act 1992*, or
  - (b) any condition of the authority under the *Mining Act 1992* (including conditions of any approvals required to be obtained under any such condition), or
  - (c) the *Environmental Planning and Assessment Act 1979*.
- (2) If improvements or goods are damaged by subsidence caused by unlawful mining operations:
  - (a) any amount paid from the Fund to the owner of the improvements or goods in respect of the damage under section 7 (1) or in respect of the subsidence under section 7 (2) (a), or
  - (b) the cost of the execution of any work in respect of the damage under section 26 (1) (b),may be recovered in any court of competent jurisdiction as a debt due to the Crown from the person who carried out the unlawful mining operations.
- (3) Any money recovered by the Chief Executive under subsection (2) is to be paid into the Fund.

## Part 6 Enforcement of Act

### Division 1 Authorised officers

#### 35 Definitions

In this Part:

**premises** includes land.

**requirement** under this Act includes a requirement imposed under a notice, a direction or an exemption under this Act and a requirement contained in an undertaking or order given under this Act.

#### 36 Appointment of authorised officers by Chief Executive

The Chief Executive may appoint the following persons to be an authorised officer for the purposes of this Act:

- (a) a person employed in Subsidence Advisory NSW,
- (b) a police officer,



(c) a person of a class prescribed by the regulations for the purposes of this section.

### **37 Limitations on functions**

The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions, and to the cases, specified in the instrument of appointment.

### **38 Identity cards must be issued**

- (1) The Chief Executive must issue an authorised officer with an identity card.
- (2) The identity card must:
  - (a) be in the form approved by the Chief Executive, and
  - (b) contain a recent photograph of the person.
- (3) An authorised officer must not exercise a function conferred by or under this Act unless an identity card has been issued to the authorised officer by the Chief Executive.
- (4) This section does not apply to an authorised officer who is a police officer.

### **39 Identity cards to be shown**

- (1) This section applies to an authorised officer who is exercising, or about to exercise, a function under this Act.
- (2) An authorised officer must:
  - (a) carry his or her identity card at all times when exercising a power under this Act to enter premises or a vehicle or a power that is exercisable after entering premises or a vehicle, and
  - (b) produce his or her identity card if requested to do so by a person in relation to whom the officer is exercising, or about to exercise, the power.
- (3) A person who has ceased to be an authorised officer must not, without reasonable excuse, refuse or fail to return to the Chief Executive, within the period specified by the Chief Executive in a request for the return of the card, any identity card issued to the person by the Chief Executive.
- (4) This section does not apply in relation to a power exercised by an authorised officer who is a police officer.

Maximum penalty: 15 penalty units.

#### **40 Functions of authorised officers**

- (1) An authorised officer may exercise the functions conferred by Division 2 if the officer believes on reasonable grounds that it is necessary to do so for the purposes of this Act or the regulations, including the following purposes:
  - (a) an inspection, audit or inquiry under this Act,
  - (b) to determine whether there has been a contravention of this Act or the regulations.
- (2) An authorised officer must not use any more force than is reasonably necessary to enter premises under this Act or to do anything for which entry is effected.
- (3) An authorised officer must do as little damage as possible when exercising a function under this Act.

#### **41 Inspections**

- (1) The Chief Executive may cause inspections of premises to be carried out in relation to subsidence (including inspections of premises before activities at a coal mine commence to ascertain pre-subsidence information).
- (2) Inspections under this section may be carried out at the intervals that the Chief Executive thinks fit.

### **Division 2 Powers of authorised officers**

#### **42 Power to enter premises with consent**

- (1) An authorised officer may enter any premises with the consent of the occupier of the premises at any time.
- (2) Before obtaining the consent of a person to enter premises, an authorised officer must inform the person that the person may refuse consent.

#### **43 Power to enter premises without consent**

- (1) An authorised officer may enter premises or any part of premises (other than premises or any part of premises used as a residence) without the consent of the occupier of the premises.
- (2) An authorised officer may enter the premises without the consent of the occupier of the premises only at any of the following times:
  - (a) at any reasonable time during the day,
  - (b) at any other time the premises are open for entry.
- (3) Before entering premises without the consent of the occupier, an authorised officer

must give the occupier reasonable notice of the intention to enter the premises unless:

- (a) notice would defeat the purpose for which entry is required, or
- (b) it is an emergency.

#### **44 Powers after entering premises**

An authorised officer who enters premises under this Part may do any of the following:

- (a) search any part of the premises,
- (b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises,
- (c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing,
- (d) copy, or take an extract from, a document, at the premises,
- (e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this Act,
- (f) require the occupier of the premises, or a person at the premises, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a)-(e),
- (g) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in exercising the officer's functions.

#### **45 Production of documents**

- (1) An authorised officer may, by written notice, require a person to produce documents or information.
- (2) The notice must specify the manner in which documents or information are required to be produced and a reasonable time by or at which they must be produced.
- (3) If any document required by the notice to be produced is in electronic form or a form other than writing, the notice requires the document to be produced in writing, unless the notice otherwise provides.
- (4) The notice may relate to a document that is located outside this State or Australia.
- (5) A person is liable to an offence under section 49 (Offences relating to inspections) of failing to produce a document required by a notice even if the document is not located in this State if the person is reasonably able to bring the document or a copy of the

document to this State.

#### **46 Retention of documents and other material**

- (1) This section applies to the following material:
  - (a) a document or other thing produced under this Part,
  - (b) a thing seized under this Part.
- (2) An authorised officer must provide a receipt for the document or thing.
- (3) An authorised officer may make copies of the document or thing.
- (4) An authorised officer may examine or test the document or thing, even though that might result in damage to or destruction of the document or thing or a reduction in its value.
- (5) An authorised officer must return the document or thing when it is no longer needed for the purposes of an inspection, investigation or inquiry. However, if there is no owner or the authorised officer cannot, despite making reasonable efforts, locate the owner, the authorised officer may dispose of the document or thing in the manner that the authorised officer thinks appropriate.
- (6) Despite subsection (5), an authorised officer must make the document or thing available to a relevant body on the written request of the body for the purposes of:
  - (a) an investigation under a law of the Commonwealth or another State or Territory, or
  - (b) a coronial inquest or inquiry.
- (7) An authorised officer must permit a person who would be entitled to inspect the document or thing were it not in the possession of the authorised officer to inspect the document or thing at any reasonable time and to make copies of the document or thing.
- (8) In this section:

**owner** includes an agent of an owner.

**relevant body** means:

  - (a) a government sector agency within the meaning of the [Government Sector Employment Act 2013](#), or
  - (b) a NSW government agency, or
  - (c) an agency of the Commonwealth or another State or Territory, or

- (d) a State or Territory government, or
- (e) a coroner.

#### **47 Power to require explanation of documents**

- (1) This section applies to the following documents:
  - (a) a document seized or produced under this Part,
  - (b) a document found on premises inspected under this Part.
- (2) An authorised officer may require a person who was a party to the creation of a document to provide any explanation that the person is able to provide of a matter relating to the creation of the document or to which the document relates.

#### **48 Provisions relating to requirements to provide documents or information or answer questions**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence under section 49 (Offences relating to inspections) of failing to comply with a requirement under this Act to provide documents or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Act to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information or answer not admissible if objection made** However, any information provided or answer given by a natural person in compliance with a requirement under this Act is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against section 49) if:
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Documents admissible** Any document provided by a person in compliance with a requirement under this Act is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.
- (5) **Further information** Further information obtained as a result of a document or information provided or an answer given in compliance with a requirement under this Act is not inadmissible on the ground:

- (a) that the document or information had to be provided or the answer had to be given, or
- (b) that the document or information provided or answer given might incriminate the person.

## **Division 3 Offences**

### **49 Offences relating to inspections**

- (1) A person must not, without reasonable excuse, hinder or obstruct an authorised officer in a manner that interferes with the exercise by the officer of his or her functions under this Act or the regulations.
- (2) The occupier or person in charge of any premises or land entered by an authorised officer under this Act must not, without reasonable excuse, fail to provide the officer with all reasonable assistance for the effective exercise of the officer's functions under this Act or the regulations.
- (3) A person must not, without reasonable excuse, fail to answer questions or provide information when required to do so by an authorised officer in the exercise of the officer's functions under this Act or the regulations.
- (4) A person must not, without reasonable excuse, fail to produce for inspection any documents or other things when required to do so by an authorised officer in the exercise of the officer's functions under this Act or the regulations.

Maximum penalty:

- (a) in the case of an individual—500 penalty units, or
- (b) in the case of a corporation—1,000 penalty units.

## **Division 4 Prevention notices**

### **50 Prevention of unauthorised work**

- (1) If a person is carrying out work without an approval required under Part 3, or carries out work that is not in accordance with such an approval, the Chief Executive may, by notice in writing given 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 Chief Executive 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.

## **Part 7 Miscellaneous**

### **51 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) fees and charges in connection with the administration of this Act,
  - (b) data and reports to be provided by proprietors of coal mines to the Chief Executive regarding ground movement and subsidence management (including requirements for monitoring to be conducted),
  - (c) requiring proprietors of coal mines to conduct inspections of land or premises that may be affected by subsidence from future coal mining activities before those activities commence to ascertain pre-subsidence information.
- (3) The regulations may create offences punishable by a monetary penalty not exceeding 10 penalty units.

### **52 Delegation**

- (1) The Secretary may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation) to:
  - (a) any person employed in the Department, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) The Chief Executive may delegate the exercise of any function of the Chief Executive under this Act (other than this power of delegation) to:
  - (a) any person employed in Subsidence Advisory NSW, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

### **53 Personal liability**

- (1) A matter or thing done or omitted to be done by the Secretary or the Chief Executive

or a person acting under the direction of the Secretary or the Chief Executive does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, subject the Secretary or the Chief Executive or person so acting personally to any action, liability, claim or demand.

(2) However, any such liability attaches instead to the Crown.

#### **54 Exchange of information**

(1) The Chief Executive may enter into an arrangement (***an information sharing arrangement***) with a relevant agency for the purposes of sharing or exchanging any information that is held by the Chief Executive or the agency.

(2) The information to which an information sharing arrangement may relate is limited to the following:

(a) information that assists in the exercise of the functions of the Chief Executive or relevant agency under this Act or legislation administered by the relevant agency concerned,

(b) any other information that may be prescribed by the regulations.

(3) Under an information sharing arrangement, the Chief Executive and the relevant agency are, despite any other Act or law of the State, authorised:

(a) to request and receive information that is held by the other party to the arrangement, and

(b) to disclose that information to the other party.

(4) In this section:

***relevant agency*** means any of the following:

(a) the Secretary,

(b) a government agency or holder of a statutory office with any functions similar to or related to those imposed on the Chief Executive under this Act,

(c) any government agency of the Commonwealth or another State or Territory with functions similar to or related to those imposed on the Chief Executive under this Act,

(d) any other person or body, or person or body of a class, prescribed by the regulations.

#### **55 Nature of proceedings for offences**

(1) Proceedings for an offence under this Act or the regulations may be dealt with:



- (a) summarily before the Local Court, or
  - (b) summarily before the Land and Environment Court.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) Any penalty recovered for an offence against this Act or the regulations is to be paid into the Fund.

## **56 Time for commencement of proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be commenced within, but not later than, 3 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within, but not later than 3 years, after the date on which evidence of the alleged offence first came to the attention of any authorised officer.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice:
- (a) must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer, and
  - (b) does not have to contain particulars of the date on which the offence was committed.

The date on which evidence first came to the attention of any authorised officer is the date specified in the court attendance notice, unless the contrary is established.

- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or another Act.

## **57 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

### **Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## **58 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,
  - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) A document may be served on the Chief Executive or the Secretary by any of the following methods:
  - (a) by post to the address specified by the Chief Executive or the Secretary for the service of documents of that kind,
  - (b) by post to an office of the Chief Executive or the Secretary or by leaving it at any such office with a person apparently over the age of 16 years,
  - (c) by email to an email address specified by the Chief Executive or the Secretary for the service of documents of that kind,
  - (d) by any other method authorised by the regulations for the service of documents of that kind.
- (3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person or the Chief Executive or the Secretary by any other method.

- (4) In this section, **serve** includes forward, give or send.

## **59 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **60 (Repealed)**

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

## **Part 1 General**

### **1 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.
- (4) Any such provision has effect despite anything to the contrary in this Schedule.
- (5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## Part 2 Provisions consequent on enactment of this Act

### 2 Definitions

In this Part:

**abolition day** means the day that is 12 months after the repeal of the former Act.

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**former Act** means the *Mine Subsidence Compensation Act 1961*.

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

### 3 Transitional continuation of Mine Subsidence Board

Until the abolition day:

- (a) the Mine Subsidence Board constituted under the former Act is taken to continue to be constituted under this Act, and
- (b) sections 5–7 of the former Act, as in force immediately before that Act's repeal, continue to apply as if those sections had not been repealed, and
- (c) a reference in this Act (except in section 4 and this Schedule other than clause 11) to the Chief Executive is taken to be a reference to the Mine Subsidence Board.

### 4 Abolition of Mine Subsidence Board

- (1) On the abolition day, the Mine Subsidence Board is abolished.
- (2) Each person holding office as a member of the Mine Subsidence Board ceases to hold office as such a member on the abolition of the Board and is not entitled to any remuneration or compensation for the loss of that office.
- (3) Subject to the regulations, the assets, rights and liabilities of the Mine Subsidence Board are, on its abolition, transferred to the Minister.
- (4) Without limiting the application of clause 5 to any such transfer, any proceedings commenced by or on behalf of the Mine Subsidence Board but not completed before the abolition day are taken to have been commenced by or on behalf of the Chief Executive and may be completed by the Chief Executive.

- (5) For the purposes of subclause (4), **proceedings** includes any prosecution, investigation or other enforcement action.

**5 Provisions relating to transfers of assets, rights and liabilities**

- (1) In this clause, **transferor** means the Mine Subsidence Board and **transferee** means the Minister.
- (2) When any assets, rights or liabilities are transferred pursuant to clause 4, the following provisions have effect:
- (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become, by virtue of this clause, the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time of the transfer,
  - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations), to be read as, or as including, a reference to the transferee.
- (3) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or

(d) as an event of default under any contract or other instrument.

- (4) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities. Such a notice is conclusive evidence of that transfer.
- (5) No attornment to the transferee by a lessee from the transferor is required.
- (6) In this clause, **instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

## **6 Continuation of Fund**

The Mine Subsidence Compensation Fund constituted by the former Act becomes, on the repeal of that Act, the Coal Mine Subsidence Compensation Fund established by this Act.

## **7 Pending claims**

The former Act continues to apply (as if it had not been repealed) to a claim made under that Act but not finally determined before the repeal of that Act and for that purpose references in the former Act to the Mine Subsidence Board (once it is abolished) are taken to be references to the Chief Executive.

## **8 Mine subsidence districts**

Areas proclaimed to be mine subsidence districts under the former Act immediately before its repeal are taken, until the regulations otherwise provide, to be mine subsidence districts under this Act.

## **9 Approvals**

- (1) An approval of the Mine Subsidence Board, as in force under section 15 of the former Act immediately before its repeal is taken, until the regulations otherwise provide, to be an approval under Part 3 of this Act.
- (2) The former Act continues to apply (as if it had not been repealed) to an application for an approval made under section 15 of the former Act, but not finally determined, before its repeal and for that purpose references in the former Act to the Mine Subsidence Board (once it is abolished) are taken to be references to the Chief Executive.

## **10 Development contravening former Act**

Section 23 of this Act extends to an improvement erected or altered or a subdivision made in contravention of the former Act as if it were erected, altered or made in contravention of Part 3 of this Act.

### **11 Transitional payments of compensation from Fund**

During the period of 5 years, commencing on the commencement of this Act, the Chief Executive may make payments from the Fund to reimburse the following persons wholly or in part for compensation payments made under this Act by those persons:

- (a) Centennial Mandalong Pty Limited,
- (b) South32 Limited,
- (c) Tahmoor Coal Pty Ltd.

### **12 Claims relating to classified roads**

- (1) Without limiting section 64 of the [Roads Act 1993](#), RMS may make a claim under this Act in relation to any classified road as if RMS were the owner of the road and compensation may be paid to RMS accordingly.
- (2) In this clause, **classified road** and **RMS** have the same meanings that they have in the [Roads Act 1993](#).

### **13 Information obtained under former Act**

Any information obtained by a person in connection with the administration or execution of the former Act is taken to have been obtained by the person in connection with the administration or execution of this Act.

### **14 Continuation for 12 months of provisions relating to certificates**

Until the end of abolition day, sections 15B and 15C of the former Act continue in force as if those sections had not been repealed.

### **15 Financial reports for 2017-18 and 2018-19 financial year**

Despite the amendment of the [Public Finance and Audit Act 1983](#) by this Act, for the purposes of that Act:

- (a) in relation to the 2017-18 financial year:
  - (i) the Mine Subsidence Board is taken to be a statutory body within the meaning of that Act, and
  - (ii) Subsidence Advisory NSW is taken not to be a Department within the meaning of that Act, and
- (b) in relation to the 2018-19 financial year, the activities carried out by the Mine Subsidence Board before the abolition day are taken to have been carried out by the Chief Executive of Subsidence Advisory NSW.

## **Schedule 2 (Repealed)**