

Coal Mine Subsidence Compensation Act 2017

No 37

[2017-37]



New South Wales

Status Information

Currency of version

Current version for 1 July 2025 to date (accessed 7 December 2025 at 16:47)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 July 2025

Coal Mine Subsidence Compensation Act 2017 No 37



New South Wales

Contents

Long title	5
Part 1 Preliminary	5
1 Name of Act	5
2 Commencement	5
3 Objects of Act	5
4 Definitions	5
5 Act to bind Crown	8
Part 2 Compensation for mine subsidence	8
6 Compensation in relation to subsidence	8
7 Types of compensation	8
8 Liability for compensation	9
9 Limitation on claims for damage arising out of subsidence	9
10 Limitation on claims arising out of actions to prevent or mitigate damage	10
10A Limitation on claims if pre-mining inspection was required	10
10B Limitation on claims for compensation	11
11 Making of claims of compensation	11
11A Assessment of claims by Subsidence Advisory NSW	11
12 Determination of claims	12
13 Determination of claims in accordance with approved procedures	12
14 Approved procedures	12
15 Review of claim determinations by Secretary	13

16 Appeals.....	14
17 No contracting out of Act.....	15
18 Failure of proprietor of coal mine to comply with Act	15
19 No further liability for proprietors of coal mines complying with Act.....	15
Part 3 Development within mine subsidence districts.....	16
20 Mine subsidence districts	16
21 Certain development within mine subsidence districts requires approval.....	16
22 Approvals for development within mine subsidence districts.....	16
23 Contravening development	17
24 Exemption from Part by Chief Executive.....	18
25 Exemption from Part under regulations	19
Part 4 Miscellaneous functions of Chief Executive.....	19
26 Purchase of damaged improvements and effecting of remedial works by the Chief Executive	19
26A Purchase of damaged improvements or effecting of remedial works by proprietor of coal mine ..	20
27 Emergency, urgent and temporary actions	21
28 Review by Secretary of certain temporary action directions	23
29 Works for prevention or mitigation of damage from subsidence	24
30 Vacant land whose development affected by subsidence	24
31 Chief Executive may provide advice.....	24
31A Pre-mining inspections	24
31B Requests for information	25
Part 5 Financial provisions	25
32 Coal Mine Subsidence Compensation Fund	25
33 Imposition of rates, levies and contributions	26
34 Recovery by Chief Executive in the case of unlawful mining operations	27
Part 6 Enforcement of Act.....	27
Division 1 Authorised officers	27
35 Definitions	27
36 Appointment of authorised officers by Chief Executive	28
37 Limitations on functions	28
38 Identity cards must be issued.....	28

39 Identity cards to be shown	28
40 Functions of authorised officers.....	29
41 Inspections	29
Division 2 Powers of authorised officers	29
42 Power to enter premises with consent.....	29
43 Power to enter premises without consent	29
44 Powers after entering premises	30
45 Production of documents	30
46 Retention of documents and other material	31
47 Power to require explanation of documents	32
48 Provisions relating to requirements to provide documents or information or answer questions	32
Division 3 Offences	33
49 Offences relating to inspections	33
Division 4 Prevention notices	33
50 Prevention of unauthorised work.....	33
Part 7 Miscellaneous	34
51 Regulations.....	34
52 Delegation	34
53 Personal liability	35
54 Exchange of information.....	35
55 Nature of proceedings for offences.....	36
56 Time for commencement of proceedings for offences.....	36
57 Penalty notices	37
58 Service of documents	37
59 Review of Act.....	38
60 (Repealed)	38
Schedule 1 Savings, transitional and other provisions	38
Schedule 2 (Repealed)	43

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 subsidence damage 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.

assessment report—see section 11A(1)(b).

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 Customer Service.

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.

mining operations has the same meaning as in the [Mining Act 1992](#).

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

pre-mining inspection—see section 31A(1).

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,
- (c) (Repealed)

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.

subsidence damage means damage arising from 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 subsidence damage** 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) for a building, or part of a building, that is uninhabitable, under repair or under construction for a period because of subsidence damage—
 - (i) if the building or part is owned by the person and is leased to another person—reasonable compensation for the rent under the lease that would have been payable for the period, or
 - (ii) if the building or part is occupied by the person—reasonable compensation for—
 - (A) alternative accommodation for the person for the period, and
 - (B) the person's relocation expenses.
 - (d) (Repealed)
- (2) **Compensation in relation to actions to prevent or mitigate damage** A person is entitled to the following compensation—
- (a) compensation for expenses incurred, or proposed to be incurred, by or on behalf of the owner of existing improvements or goods to prevent or mitigate subsidence damage to the improvements or goods,
 - (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 damage—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) The amount of compensation for subsidence damage may be reduced in accordance with the approved procedures if—

(a) the damage is to an improvement, and

(b) the improvement is constructed or maintained in a negligent or improper way, and

(c) the damage is greater than it would have been if the improvement had been

properly constructed or maintained.

(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) an expense incurred, or proposed to be incurred, to prevent or mitigate subsidence damage to the improvements or goods referred to in paragraph (a),

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 under section 7(2)(a) 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 under section 7(2)(a) if the total 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.

10A Limitation on claims if pre-mining inspection was required

(1) A person is not entitled to compensation for subsidence damage to improvements or goods if—

- (a) before the subsidence occurred, the Chief Executive required a pre-mining inspection to be carried out on the land on which the improvements or goods are located, and
- (b) the person refused to allow the pre-mining inspection to be carried out.

(2) Subsection (1) does not apply if, on application to the Chief Executive by the person, the Chief Executive is satisfied in all the circumstances that the person should be entitled to compensation.

10B Limitation on claims for compensation

Compensation is not payable to a person for damage caused by works carried out under, or in compliance with a direction given under, section 27 or 29 if the works were carried out by the person using money paid out from the Fund.

11 Making of claims of compensation

- (1) A person may make a claim for compensation under this Act by lodging the claim in the way 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 subsidence damage, or
 - (b) if the Chief Executive determines that the owner should have known on a particular day that the damage was subsidence damage—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.

11A Assessment of claims by Subsidence Advisory NSW

- (1) As soon as reasonably practicable after receiving a claim for compensation, Subsidence Advisory NSW must—
 - (a) assess the claim in accordance with the approved procedures, and
 - (b) prepare a report (an **assessment report**) about the assessment, and
 - (c) provide the assessment to the Chief Executive.
- (2) Subsidence Advisory NSW may arrange for the assessment report to be prepared by an independent assessor in accordance with the approved procedures.

(3) In this section—

independent assessor means a person who is independent of the following—

- (a) Subsidence Advisory NSW,
- (b) for a claim arising from an active coal mine—the proprietor of the coal mine to which the claim relates.

12 Determination of claims

- (1) The Chief Executive must determine each claim for compensation in accordance with this Act, including the approved procedures.
- (2) If the Chief Executive determines a claim in a way that is inconsistent with the assessment report relating to the claim, the Chief Executive must give written reasons for the determination to the person who made the claim.

13 Determination of claims in accordance with approved procedures

- (1) (Repealed)
- (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), the approved procedures may deal with the following—
 - (a) the determination of whether subsidence damage was caused by an active or non-active coal mine,
 - (b) the making, assessment and determination of claims for compensation,
 - (c) the review of determinations of claims for compensation,
 - (d) the procedures relating to the assessment of risk of subsidence damage before mining commences on the land,

- (e) the assessment of claims for compensation, including processes for the assessment of claims,
 - (f) the payment of costs, fees and charges, or the prohibition of costs, fees and charges, in connection with the determination of claims for compensation under this Act,
 - (g) another matter prescribed by the regulations.
- (3) The Chief Executive may amend, revoke or replace the approved procedures.
- (4) The Chief Executive is—
- (a) to consult members of the public and 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 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—590 penalty units, or
 - (b) in the case of a corporation—1,180 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) (Repealed)
- (3) In exercising a function under subsection (1), 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 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—120 penalty units, or
- (b) in the case of a corporation—590 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—120 penalty units, or
- (b) in the case of a corporation—590 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.

- (3A) Without limiting subsection (3), the Chief Executive may refuse to grant the approval

if the Chief Executive is satisfied the land to which the application relates may subside as a result of the historical or future extraction of coal undertaken in the mine subsidence district.

- (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, 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)—
 - (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 subsidence damage or damage caused by works to prevent or mitigate subsidence damage—
 - (i) the land,
 - (ii) the improvements,
 - (iii) any estate or interest in the land or the improvements concerned, or
 - (b) carry 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 subsidence damage or damage caused by works to prevent or mitigate subsidence 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).
- (5A) The Chief Executive may demolish or remove improvements or goods—
 - (a) purchased or acquired by the Chief Executive under subsection (1) or (2), or
 - (b) on land purchased or 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.
- (6A) The Chief Executive may recover the following amounts from the proprietor of an active coal mine as a debt due to the Crown—
 - (a) an amount paid to a person under subsection (1) or (2), if the Chief Executive reasonably believes that—
 - (i) the land, improvements or goods experienced subsidence damage, and
 - (ii) the subsidence damage was caused by the active coal mine.
 - (b) the costs associated with the repair, maintenance or sale of land or improvements acquired under subsections (1)(a) or (2), if the Chief Executive reasonably believes that—
 - (i) the land and improvements experienced subsidence damage, and
 - (ii) the subsidence damage was caused by the active coal mine.
- (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.

26A Purchase of damaged improvements or effecting of remedial works by proprietor of coal mine

- (1) This section applies if—
 - (a) a person has, under section 11, made a claim for compensation for land, improvements or goods, and
 - (b) the Chief Executive reasonably believes that the land, improvements or goods has

experienced subsidence damage caused by an active coal mine.

- (2) The Chief Executive may, instead of making a payment of compensation in relation to a claim under section 7(1), direct the proprietor of the active coal mine to—
 - (a) after consulting a qualified valuer, purchase the following without regard to subsidence damage or damage caused by works to prevent or mitigate the subsidence damage—
 - (i) the land,
 - (ii) the improvements,
 - (iii) any estate or interest in the land or the improvements concerned, or
 - (b) carry out works necessary to restore the following to a condition as nearly as practicable to the condition in which they were before the subsidence damage arose—
 - (i) the land,
 - (ii) the improvements.
- (3) Subsection (2)(a) does not apply unless the owner of the land or improvements has given written consent to the purchase.
- (4) 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) subsidence damage to the surface of land may cause danger to a member of the public, the Chief Executive may take the following actions to eliminate or minimise the danger—
 - (i) for subsidence damage caused by an active coal mine—direct the proprietor of the coal mine to fill in or fence off the land or take other necessary action,
 - (ii) fill in or fence off the land or take other necessary action,
 - (iii) direct persons to evacuate the land,
 - (iv) arrange temporary accommodation for persons evacuated from the land, and
 - (b) improvements or goods have experienced subsidence damage and urgent repairs are required to ensure the continued use of the improvement, the Chief Executive may—

- (i) for subsidence damage caused by an active coal mine—direct the proprietor of the coal mine to carry out urgent repairs, or
 - (ii) for subsidence damage caused by a non-active coal mine—carry out urgent repairs, and
- (c) improvements or goods have experienced subsidence damage and further subsidence is likely to occur, the Chief Executive may—
 - (i) for subsidence damage caused by an active coal mine—direct the proprietor of the coal mine to carry out temporary repairs, or
 - (ii) for subsidence damage caused by a non-active coal mine—carry out temporary repairs and defer payments for claims for subsidence 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—2,365 penalty units, or
 - (b) in the case of a corporation—11,820 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 carry out the necessary action or urgent or temporary repairs 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.
- (4A) If a person, other than the proprietor of an active coal mine, incurs expenses as a result of actions taken under subsection (1)(a)–(c), the Chief Executive may make a payment from the Fund to reimburse the person for the expenses incurred.
- (4B) The Chief Executive may recover an amount paid to a person under subsection (4A) from the proprietor of an active coal mine as a debt due to the Crown if, in the Chief Executive’s opinion, the actions referred to in subsection (4A) were necessary to eliminate or minimise danger caused by, or in connection with, subsidence damage

caused by the active coal mine.

(4C) The Chief Executive may make a payment from the Fund to reimburse a public authority for expenses incurred by the public authority if the Chief Executive is satisfied—

- (a) the expenses were incurred by the public authority when carrying out works to repair subsidence damage to land, improvements or goods, and
- (b) the repairs were necessary to ensure the continued use of the land, improvements or goods.

(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.

(7) In this section—

public authority means—

- (a) a public authority or local authority constituted by or under an Act, or
- (b) a Public Service agency, or
- (c) a statutory body representing the Crown, or
- (d) a statutory State owned corporation or its subsidiaries within the meaning of the [State Owned Corporations Act 1989](#), or
- (e) a chief executive officer of a corporation or subsidiary referred to in paragraph (d), or
- (f) a council within the meaning of the [Local Government Act 1993](#).

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

- (1) The Chief Executive may carry out works to prevent or mitigate subsidence damage to existing improvements or goods that the Chief Executive anticipates would, in the absence of the works, occur.
- (2) The Chief Executive may authorise amounts to be paid from the Fund—
 - (a) to fund works to prevent or mitigate damage to existing improvements or goods if the Chief Executive is satisfied—
 - (i) subsidence damage is reasonably likely to occur if the works are not carried out, and
 - (ii) carrying out the works will reduce the total potential liability of the Fund, or
 - (b) to compensate a person for expenses incurred as a result of works to prevent or mitigate damage to existing improvements or goods.

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 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.

31A Pre-mining inspections

- (1) Before a person commences mining operations for a coal mine, the Chief Executive may require an inspection (a **pre-mining inspection**) to be carried out in relation to land, and any improvements or works on the land, that the Chief Executive is satisfied may be at risk of subsidence damage caused by the mining operations (the **estimated zone of influence**).

- (2) A pre-mining inspection must be carried out in accordance with the approved procedures.
- (3) The Chief Executive may install survey equipment on land in the estimated zone of influence that has been subject to a pre-mining inspection to monitor whether subsidence damage is likely to occur to the land or to any improvements or works on the land.
- (4) The Chief Executive may recover costs associated with a pre-mining inspection from the proprietor of the proposed coal mine to which the mining operations relate.

31B Requests for information

- (1) The Chief Executive may, by written notice given to a person, require the person to produce documents or information if the documents or information are reasonably required to inform future assessments and development requirements.
- (2) The notice must specify—
 - (a) the way in which the documents or information must be produced, and
 - (b) a reasonable time by or at which the documents or information must be produced.
- (3) The notice may relate to a document that is located outside the State or Australia.
- (4) A person must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty—

 - (a) for an individual—590 penalty units, or
 - (b) otherwise—1,180 penalty units.

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 for subsidence damage 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 experience subsidence damage 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—18 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 carry out inspections of premises 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—590 penalty units, or
- (b) in the case of a corporation—1,180 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—24 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.

(3) Despite subsection (1), the Secretary must not delegate the Secretary's functions under section 15(1)–(3) to—

- (a) the Chief Executive, or
- (b) a person employed in Subsidence Advisory NSW.

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,
 - (e1) by other electronic means to an address or location 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,
 - (c1) by other electronic means to an address or location 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 of provisions relating to certificates

- (1) Until the end of 30 September 2019, sections 15B and 15C of the former Act continue in force as if those sections had not been repealed.

- (2) For the purposes of the application of those sections during the period commencing on the abolition day and ending on 30 September 2019, a reference to the Mine Subsidence Board relating to an application for or issue of a certificate under those sections is taken to be a reference to the Chief Executive.
- (3) Section 15B(4) of the former Act continues in force after 30 September 2019, in respect of a certificate issued under section 15B of the former Act on or before that day, as if that subsection 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)