

Passed by both Houses



New South Wales

# Coal Mine Subsidence Compensation Amendment Bill 2024

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney,*

*, 2024*



New South Wales

## **Coal Mine Subsidence Compensation Amendment Bill 2024**

Act No \_\_\_\_\_, 2024

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An Act to amend the *Coal Mine Subsidence Compensation Act 2017* to implement various recommendations arising from the statutory review of the Act; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Coal Mine Subsidence Compensation Amendment Act 2024*.

**2 Commencement**

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

## **Schedule 1      Amendment of Coal Mine Subsidence Compensation Act 2017 No 37**

**[1] Section 3 Objects of Act**

Omit “damage caused by subsidence” from section 3(2)(a).

Insert instead “subsidence damage”.

**[2] Section 4 Definitions**

Omit section 4(1), definition of *preventative or mitigative expense*.

Insert in alphabetical order—

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

*mining operations* has the same meaning as in the *Mining Act 1992*.

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

*subsidence damage* means damage arising from subsidence.

**[3] Section 7 Types of compensation**

Omit “**damage arising out of subsidence**” from section 7(1).

Insert instead “**subsidence damage**”.

**[4] Section 7(1)(c) and (d)**

Omit the paragraphs. Insert instead—

- (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.

**[5] Section 7(2)(a)**

Omit the paragraph. Insert instead—

- (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,

**[6] Section 8 Liability for compensation**

Insert “damage” after “subsidence” in section 8(1)(a).

**[7] Section 9 Limitation on claims for damage arising out of subsidence**

Omit section 9(1). Insert instead—

- (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.

**[8] Section 9(2)(b)**

Omit the paragraph. Insert instead—

- (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),

**[9] Section 10 Limitation on claims arising out of actions to prevent or mitigate damage**

Omit “for any preventative or mitigative expense” from section 10(1).

Insert instead “under section 7(2)(a)”

**[10] Section 10(2)**

Omit “for any preventative or mitigative expenses if the total preventative or mitigative”.

Insert instead “under section 7(2)(a) if the total”.

**[11] Sections 10A and 10B**

Insert after section 10—

**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.

**[12] Section 11 Making of claims of compensation**

Omit section 11(1). Insert instead—

- (1) A person may make a claim for compensation under this Act by lodging the claim in the way approved by the Chief Executive.

**[13] Section 11(3)(a) and (b)**

Omit “was caused by subsidence” wherever occurring.

Insert instead “was subsidence damage”.

**[14] Section 11A**

Insert after section 11—

**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.

**[15] Section 12**

Omit the section. Insert instead—

**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.

**[16] Section 13 Determination of claims in accordance with approved procedures**

Omit section 13(1).

**[17] Section 14 Approved procedures**

Omit section 14(2). Insert instead—

- (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.

**[18] Section 14(4)(a)**

Insert “members of the public and” before “the proprietors”.

- [19] Section 15 Review of claim determinations by Secretary**  
Omit “(whether by the Chief Executive or by the proprietor of a coal mine)” from section 15(1).
- [20] Section 15(6), penalty**  
Omit “500 penalty units”. Insert instead “590 penalty units”.
- [21] Section 15(6), penalty**  
Omit “1,000 penalty units”. Insert instead “1,180 penalty units”.
- [22] Section 18 Failure of proprietor of coal mine to comply with Act**  
Omit section 18(2).
- [23] Section 18(3)**  
Omit “or (2)”.
- [24] Section 21 Certain development within mine subsidence districts requires approval**  
Omit “, or cause work to be done,” from section 21(1).
- [25] Section 21(1), penalty**  
Omit “100 penalty units”. Insert instead “120 penalty units”.
- [26] Section 21(1), penalty**  
Omit “500 penalty units”. Insert instead “590 penalty units”.
- [27] Section 21(2), penalty**  
Omit “100 penalty units”. Insert instead “120 penalty units”.
- [28] Section 21(2), penalty**  
Omit “500 penalty units”. Insert instead “590 penalty units”.
- [29] Section 22 Approvals for development within mine subsidence districts**  
Insert after section 22(3)—  
(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.
- [30] Section 26 Purchase of damaged improvements and effecting of remedial works by the Chief Executive**  
Omit “in relation to a non-active coal mine” from section 26(1).
- [31] Section 26(1)(a) and (2)**  
Omit “damage caused by subsidence or by works to prevent or mitigate any such damage” wherever occurring.  
Insert instead “subsidence damage or damage caused by works to prevent or mitigate subsidence damage”.
- [32] Section 26(1)(b)**  
Omit “or cause to be carried out”.

**[33] Section 26(1)(a)(iii)**

Omit “and”. Insert instead “or”.

**[34] Section 26(5A)**

Insert after section 26(5)—

- (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).

**[35] Section 26(6A)**

Insert after section 26(6)—

- (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.

**[36] Section 26A**

Insert after section 26—

**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.

**[37] Section 27 Emergency, urgent and temporary actions**

Omit section 27(1)(a)–(c). Insert instead—

- (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.

**[38] Section 27(2), penalty**

Omit “2,000 penalty units”. Insert instead “2,365 penalty units”.

**[39] Section 27(2), penalty**

Omit “10,000 penalty units”. Insert instead “11,820” penalty units.

**[40] Section 27(3)**

Omit “cause the necessary action or urgent or temporary repairs to be carried out”.

Insert instead “carry out the necessary action or urgent or temporary repairs”.

**[41] Section 27(4A)–(4C)**

Insert after section 27(4)—

- (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.

**[42] Section 27(7)**

Insert after section 27(6)—

- (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*.

**[43] Section 29**

Omit the section. Insert instead—

**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.

**[44] Section 30 Vacant land whose development affected by subsidence**

Omit “, or cause to be carried out,” from section 30(b).

**[45] Sections 31A and 31B**

Insert after section 31—

**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.

**[46] Section 32 Coal Mine Subsidence Compensation Fund**

Omit section 32(3)(a). Insert instead—

- (a) all amounts payable under this Act for subsidence damage or otherwise payable under this Act,

**[47] Section 34 Recovery by Chief Executive in the case of unlawful mining operations**

Omit “are damaged by subsidence” from section 34(2).

Insert instead “experience subsidence damage”.

**[48] Section 39 Identity cards to be shown**

Omit “15 penalty units” from section 39, penalty. Insert instead “18 penalty units”.

**[49] Section 41 Inspections**

Omit “cause inspections of premises to be carried out” from section 41(1).

Insert instead “carry out inspections of premises”.

**[50] Section 49 Offences relating to inspections**

Omit “500 penalty units” from section 49, penalty. Insert instead “590 penalty units”.

**[51] Section 49, penalty**

Omit “1,000 penalty units”. Insert instead “1,180 penalty units”.

**[52] Section 50 Prevention of unauthorised work**

Omit “20 penalty units” from section 50(2), penalty. Insert instead “24 penalty units”.

**[53] Section 52 Delegation**

Insert after section 52(2)—

- (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.