

New South Wales Introduces Coal Mine Subsidence Compensation Scheme

IN SHORT

The Situation: New South Wales is one of Australia's states with extensive underground coal mining operations. Recently, the NSW Department of Finance Services and Innovation undertook a review of the 1961 Mine Subsidence Compensation Act and concluded that it needed to be replaced.

The Result: NSW introduced a new coal mine subsidence compensation scheme that makes coal miners directly liable for damage arising from subsidence from their underground coal mines. They will still pay a reduced levy to fund subsidence damage from inactive mines.

Looking Ahead: The new scheme is expected to take effect from 2018. Underground coal miners should consider whether they need to make provisions in their financial statements for this new direct liability for subsidence damage.

Australian coal miners and landowners should prepare themselves for their roles in the new claims system. A fairer and quicker claims system is proposed.

The Background

Mining is a key economic driver in New South Wales ("NSW"), and the state has extensive underground coal mining operations. Recently, the NSW Department of Finance Services and Innovation undertook a comprehensive review of the 1961 Mine Subsidence Compensation Act and concluded that it should be replaced, to provide a fairer and more efficient compensation scheme for property owners affected by coal mine subsidence. "Mine subsidence" refers to the movements and vibrations of the ground because of underground coal mining. Under the 1961 scheme, coal miners paid a levy into a fund, claims for subsidence damage were made against the fund administered by the Mine Subsidence Board and coal miners were exempted from liability for subsidence damage, provided they complied with mining lease conditions.



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The New Scheme Explained

The Coal Mine Subsidence Compensation Act 2017 ("Act") establishes a new scheme under which a person is entitled to compensation for damage to improvements or goods owned by that person from subsidence due to the extraction of coal. Property owners are also entitled to compensation to meet the reasonable and necessary expenses incurred or to be incurred as a result of such damage, as well as compensation for preventative or mitigative expenses.

The compensation is payable by the proprietor of the active coal mine (where a mining lease is current) that caused the subsidence or by the Chief Executive of Subsidence Advisory NSW ("CE") from the Coal Mine Subsidence Fund in relation to compensation for subsidence damage arising from an inactive coal mine.

The coal mine proprietor is liable to pay a levy into the Coal Mine Subsidence Fund in certain circumstances, and a person applies for compensation by making a claim within specific time periods to Subsidence Advisory NSW, which will replace the Mine Subsidence Board ("MSB").

The CE is responsible for determining in the first instance whether or not the claim is valid. If considered valid, the CE will forward the claim to the coal mine proprietor, who is then required to determine the claim in accordance with approved procedures. Those procedures have not been published as of the publications of this *Commentary* but are expected to include provisions to establish a panel of experts to assess claims and time periods for making payments. The proprietor can request a review of the validity of the claim by the Secretary and, if not satisfied with the outcome, can appeal to the Land and Environment Court. A review and appeal process is also available to a claimant. Specific time periods apply to proprietors and to claimants.

A coal mine proprietor who deals with a claim for compensation in connection with subsidence under the Act and who complies with its mining lease conditions and the provisions of the Act relating to compensation is not liable under any other Act or law in connection with that claim for that subsidence.

If a coal mine proprietor breaches the Act in respect of a claim determination or payment, the CE can determine the claim or make the payment and seek to recover the amount from the proprietor as a debt due to the Crown. In addition, contracting out of the Act is prohibited, and contravention of the Act by a coal mine proprietor can be taken into account by the Minister in considering renewals or transfers of mining leases or grants of new mining leases.

Transitional provisions apply for existing claims, and the role of the MSB continues for 12 months.

Building in Mine Subsidence Districts

Approval continues to be required to erect or alter improvements in a mine subsidence district. The approval is to be provided by the CE, who replaces the MSB as the approval agency.

TWO KEY TAKEAWAYS

1. Underground coal miners should consider providing for this new potential liability in their financial statements from 2018 and should set up an internal process for dealing with claims, reviews and appeals within the required time frames and, if required, provide training for the people involved in that process.
2. Owners of improvements and goods in mine subsidence districts should familiarise themselves with the claim, review and appeal procedures of the new scheme and act in accordance with those procedures if they have new subsidence damage claims from 2018.

CONTACTS

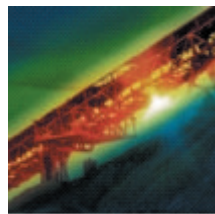


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