

Q & As – Proposed changes to the mine subsidence system in NSW

General mine subsidence matters

What is mine subsidence?

Mine subsidence refers to the shifting of the ground resulting from underground coal mining. Sometimes after mining, the ground above the mine workings subsides and fills the hollow workings which then results in a lowering of the land surface.

Mining does not always cause subsidence and there are many examples where mining has occurred without causing any movement of the land surface. Subsidence can occur without any effect on surface buildings and structures; however, sometimes damage may occur. Damage to buildings and other structures can range from hairline cracks and doors jamming to structural damage. Buildings damaged by subsidence often remain serviceable until they are repaired.

Some shallow abandoned mining areas can result in 'potholes'. Most potholes are relatively small however it is important that any safety issues are promptly addressed.

What does subsidence damage look like?

In the rare case property is impacted by subsidence, damage is unlikely to cause the building to be uninhabitable. Subsidence caused by mines often occurs over a period of time. Generally, damaged buildings remain safe and people can continue using them until they are repaired.

In most cases, subsidence damage occurs when small parts of old mines or active mines collapse. Typically this causes property to move slightly as the ground beneath moves.

It is important to note that an undermined property will not necessarily be affected. Many properties built over abandoned mines are considered stable and will never experience subsidence.

How are subsidence safety issues managed?

Subsidence safety issues are currently attended to by the Mine Subsidence Board's (MSB) emergency response team.

Safety is the highest priority for the MSB. A 24 hour emergency hotline is available to all members of the public. This service operates both within and outside of mine subsidence districts (Districts). There will be no changes to the subsidence emergency service.

Once notified of a subsidence safety issue, the MSB coordinates an immediate response to ensure the affected area is made safe. Subsidence safety issues include restricting access to the site of the subsidence until final rectification work can be completed, filling potholes with concrete and other materials, and various other rectification works. In addition to the emergency service, the MSB also controls development within Districts to mitigate potential subsidence damage. Developed areas are more likely to have large and complex structures which can present greater safety risks if impacted by mine subsidence; therefore, by specifying the construction conditions, the MSB is able to assist in keeping the structures safe.

How does the current mine subsidence compensation system work?

Under current arrangements, all active coal mines pay a levy towards the mine subsidence compensation fund. This fund is administered by the MSB.

If a property is damaged by mine subsidence, the property owner lodges a claim for compensation with the MSB. The MSB assesses the claim and inspects the damage. The MSB may accept or reject a claim. If the claim is accepted, the MSB will generally engage contractors to repair the damage.

Alternatively, the MSB may choose to provide compensation to a property owner instead of carrying out works. Where the damage renders a home uninhabitable, the MSB may choose to acquire the property.

If claimants are unhappy with the MSB's claims determination, the only avenue for independent review is to appeal the MSB's decision in the Land and Environment Court.

The review of the mine subsidence compensation framework

Why did the Government review the *Mine Subsidence Compensation Act 1961* (the Act) and its administration?

The current legislation was established in 1961 to deal with damage caused by subsidence impacts arising from bord and pillar coal mines across NSW. These impacts were typically caused by abandoned mines.

The Act and the MSB became the responsibility of the Minister of Finance, Services and Property in July 2015. Following the recent investigation into an MSB manager by the Independent Commission Against Corruption (ICAC) as well as significant community and industry concerns about the MSB's operation, the Minister approved a Review of the Act and its operation.

The legislation and the operations of the MSB have not been subject to a comprehensive review in over two decades. Given technological advancements and changes in industry practice, a review of the Act and its administration was necessary to ascertain whether it still meets the needs of the community, developers, coal industry and Government.

The objectives of the review were to ensure the fund is sustainable, to ensure the framework is fair and to ensure it is being administered efficiently.

What are the findings of the Review?

The Review has identified a clear need to improve the claims experience for property owners, and the MSB's administration of the Act.

The Review has also found that the Act is outdated and no longer fit for purpose. There is a clear disconnect between the original intent of the legislation and the legislative framework in practice.

The legislation was originally set up to provide security to home owners that were impacted by subsidence from abandoned bord and pillar mines. Following a shift to longwall mining, around 90% of claims for compensation now relate to damage from active mines, rather than abandoned mines.

Secondly, the Review identified that there is a high level of industry cross subsidisation under the current model.

All active open cut and underground coal operations contribute to the subsidence compensation fund, as the legislation was established to deal with legacy subsidence impacts from abandoned mines. Furthermore, only a small number of underground coal mine operations cause the majority of subsidence damage. This inequitable regime provides an unfair competitive advantage to certain mines.

What are the main proposed changes?

The NSW Government is proposing a series of measures to change the NSW mine subsidence compensation system to make it fairer and provide better outcomes for property owners affected by subsidence.

At an organizational level, the MSB would be transitioned to a newly established, citizen-focused Subsidence Advisory NSW (SA NSW), responsible for facilitating all claims and providing strategic and technical advice to Government and industry.

SA NSW will take over from MSB as the government body responsible for processing subsidence claims arising from damage caused by abandoned mines.

The most significant change is to make current underground coal mining operators accountable for the subsidence they cause. If a property is damaged by mine subsidence caused by an active coal mine, property owners will lodge a claim with Government, who will facilitate a discussion between the mine operator and the claimant. Government will regulate the process and support claimants to ensure that mining operators are fully accountable for the damages they cause.

This is consistent with how property owners are directly compensated for other mine-related damages such as blasting or dust management.

Guidelines will be established to ensure coal operators manage claims consistently and fairly. Operators will be required to report regularly on their claims management performance.

Importantly, SA NSW's case management function will be strengthened to provide greater support and advocacy to claimants. To improve the claims experience, claimants will be able to lodge all subsidence related claims in a central portal on SA NSW's website. An SA NSW case manager will be allocated to each claim to oversee the claim management process and coordinate interactions between the claimant and mining operator.

Claims will be independently assessed by a panel of independent technical assessors managed by SA NSW, with the cost of these assessments met by mining operators. This will ensure mining operators understand the full impacts of their operations.

A robust dispute resolution process will provide property owners with access to a broader range of options to obtain an independent determination, without having to resort to expensive litigation. Further, legislative protections including conditions on underground coal mining leases will give miners a strong incentive to comply with these legislative protections. Miners will be required to meet KPIs on claims handling to ensure timely and fair compensation is provided. KPIs will relate to the timeliness of claims processing and the number of disputed claims.

SA NSW will also focus on balancing the needs of the community and the interests of the coal industry through better regulation of surface improvements in Mine Subsidence Districts. The

organisation will also provide advocacy and support to local communities affected by mine subsidence, and will work to streamline development approval processes and certification functions.

How will these changes benefit local communities affected by subsidence?

The new system has been carefully designed around improving the experience for claimants in the following ways:

- ✓ Claimants will benefit from a streamlined claims process and new dispute resolution procedures – **providing timely decisions and greater certainty**
- ✓ Claimants have access to support and advice from Subsidence Advisory NSW, including a dedicated case manager – **delivering greater assistance to homeowners**
- ✓ Guidelines will provide claimants with clear information on the steps to seek compensation – providing property owners with a **better understanding of the process**

When do the changes take effect?

These reforms require legislative change. Stakeholder engagement will occur over the coming months to inform the legislative drafting process. It is intended that an amending Bill be provided to Government for further consideration in early 2017. Subject to the Bill being passed in Parliament, the major changes to the levy framework will take effect in 2018.

I currently have a claim lodged with the MSB for compensation. What happens now?

All claims lodged with the MSB will continue to be processed by Subsidence Advisory NSW, however the claims experience for property owners will be greatly improved. In the first instance, Subsidence Advisory NSW is contacting all property owners with existing claims to provide individualised advice on the status of their claim.

Subsidence Advisory NSW has recently introduced new case management capabilities to improve its capacity to assist local communities affected by subsidence. These case managers are responsible for liaising directly with claimants on compensation matters and will be the first point of contact for claimants.

Interim arrangements

The MSB has been rebranded as Subsidence Advisory NSW (SA NSW).

All other current arrangements remain in place until 2018.

Further engagement with local communities will occur throughout 2017 to provide property owners with advice and support to transition to the new system.

Who do I talk to if my property is affected by mine subsidence?

If your property is affected by subsidence and the damage poses immediate danger, call the Subsidence Advisory 24 hour emergency service on 1800 248 083.

If the damage is not an emergency, the following contact details apply:

| Subsidence Advisory NSW locations | Contact details | Local Government Areas serviced |
|-----------------------------------|--|--|
| Newcastle | <p>Hours: 8.30am-4.30pm, Monday to Friday</p> <p>Phone enquiries: (02) 4908 4300</p> <p>Location: Ground Floor, NSW Government Offices, 117 Bull Street, Newcastle West, NSW 2302</p> <p>Post: PO Box 488G, Newcastle 2300</p> <p>DX: 4322 Newcastle West</p> | Newcastle, Maitland, Lake Macquarie, Wyong, Muswellbrook, Singleton, Lithgow, Upper Hunter, and Cessnock |
| Picton | <p>Hours: 8.30am-4.30pm, Monday to Friday</p> <p>Phone enquiries: (02) 4677 1967</p> <p>Location: 99 Menangle Street,</p> | Wollondilly, Campbelltown, Camden and Wingecarribee |

Picton 2571

Post: PO Box 40, Picton 2571

DX: 26053 Picton

I have lodged plans with council and/or commenced building works in a mine subsidence district. How will this affect my development?

All relevant MSB approval/certification requirements continue to apply. Property owners and developers seeking development approval in mine subsidence districts will need to continue to demonstrate compliance with all relevant MSB guidelines to obtain development approval.

How will the system work under the proposed changes?

Will I still be able to receive compensation if my property is damaged by mine subsidence?

Yes. All property damaged by mine subsidence in NSW will continue to be eligible for compensation, provided that the building has been constructed in accordance with Subsidence Advisory NSW's design requirements and approvals.

SA NSW will provide more effective regulation of mine subsidence to ensure future damage to homes and property is better mitigated.

Will there be a different process for receiving compensation if the subsidence relates to active or abandoned mining?

No. The claim assessment process will be the same regardless of whether the subsidence is caused by active or abandoned mining. The only difference is that the relevant coal mining operators will be required to meet the cost of compensation for the damage they cause. SA NSW will continue to meet the cost of compensation for damage arising from abandoned mining.

Regardless of whether the damage relates to active or abandoned mining, all claims for compensation will:

- require lodgement on SA NSW's subsidence claims portal
- be allocated a SA NSW case manager to oversee the assessment of the claim
- be reviewed by an independent assessor who will inspect the damage and provide an estimate on costs
- be assessed for a disturbance payment acknowledging the inconvenience and disruption that the subsidence damage causes to a property owner.

What does 'abandoned mining' mean?

Subsidence can be caused by either abandoned mining or active mining.

Abandoned mining refers to historic coal mining activity that occurred in parts of NSW over 150 years ago predominately using bord and pillar extraction methods. These abandoned mines predominately go unnoticed as they are considered stable. Occasionally, parts of these mines collapse. In addition, some areas have always had potential for mine subsidence from this historic mining activity, but damage only occurs when these areas are developed for urban purposes.

If your property is damaged from subsidence and it's not in proximity to a current mine site, then it is likely that this damage is attributable to historic mining activity from *abandoned mines*.

Active mining refers to coal mines that are currently in operation. Generally, underground mines use the longwall mining extraction method where subsidence incidents typically occur within a few months of extraction, with full subsidence usually occurring over a 2 year period after extraction. Generally, open cut coal mining operations do not cause subsidence damage to property.

If your property is damaged from subsidence and it's in proximity to a current underground coal mine, then it is likely that this damage is attributable to *active mining*.

SA NSW will offer assistance to property owners to navigate the new claims process regardless of whether the subsidence damage is from abandoned or active mining activity, and ensure homeowners understand the steps to obtain compensation.

Will there be longer timeframes for claims to be processed?

No. It is expected that claims processing timeframes will be greatly reduced under the new system.

Timeframes will be significantly improved from the current processing timeframes, where there is a significant backlog of claims, with some claims remaining unresolved for 10 years.

Both SA NSW and underground coal mining operators will be required to meet key performance indicators (KPIs) to ensure claimants are treated fairly, including minimum claims response timeframes and proportion of disputed claims. These KPIs are currently being developed for consultation purposes.

Will there be any additional costs for homeowners?

No.

Do the changes impact on Mine Subsidence Districts?

Changes to Mine Subsidence Districts are currently under consideration. In these Districts, property owners must obtain prior approval from the MSB to build or subdivide in order to be eligible for compensation. While there will be some additional costs to develop within Districts, standard new homes or alternations and additions are unlikely to be subject to major increases in design costs.

SA NSW will bring a renewed focus on delivering a more effective regulatory framework for development in Districts, balancing increased costs of development regulation against the mitigation of potential subsidence damage through development controls.

For example, a large commercial development over an abandoned mine may present a significant risk. Such developments are considered by specialist engineers within SA NSW, who may require the proponent to eliminate the risk of subsidence by filling the abandoned mine with concrete.

Will there be longer approval timeframes for development applications?

No. It is expected that timeframes will be reduced.

The MSB currently aims to process 95% of low complexity residential development applications within 14 days. It is expected that SA NSW will continue to meet these processing timeframes. Development applications which pose a subsidence risk will often require additional studies and consideration, therefore processing of such applications usually requires further time.

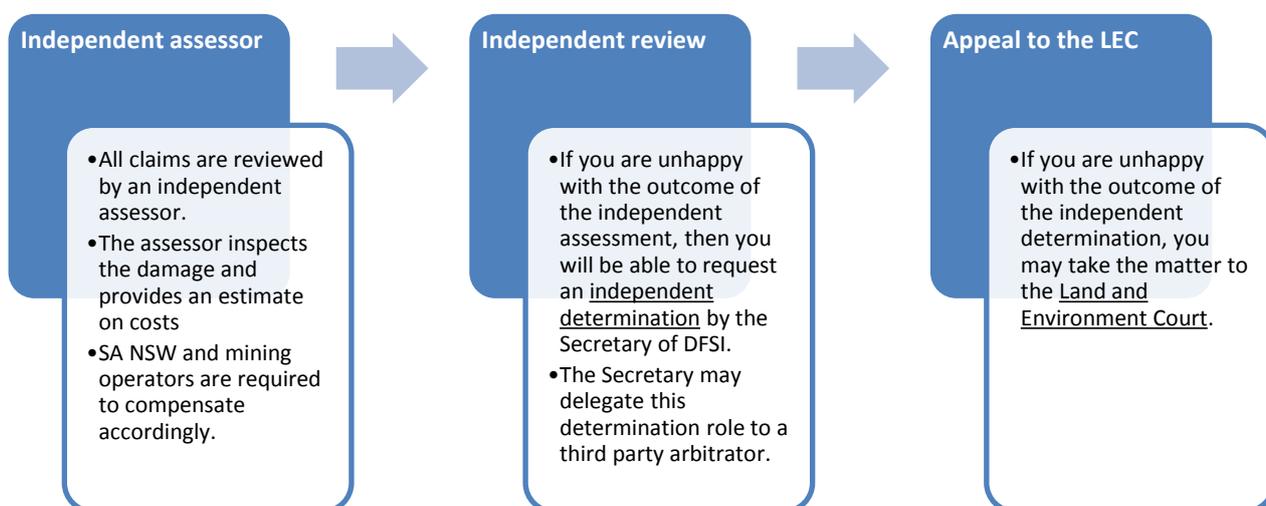
A key component of the reforms is to streamline the development approval process. SA NSW will look to partner with local government to improve the development application referral and concurrence process. Initially, this will be done through new general terms of approval (GTAs) which will be issued for DAs that present minimal subsidence risk. Over time, it is intended that SA NSW will issue deemed approval instruments to councils in Mine Subsidence Districts where a DA is compliant with the standard GTA.

To support this change, SA NSW will provide ongoing training to council staff to support them in assessing subsidence related design issues.

What happens if my claim is refused, or I don't agree with the amount of compensation?

A new dispute resolution process will ensure fair and timely decision making, and provide an avenue for review without needing to resort to expensive litigation. These arrangements are presented below.

The offer of compensation must be based on an independent assessment of costs. If claimants are unhappy with the offer, claimants will be able to request an independent review by the DFSI Secretary. The independent determination can be appealed in the Land and Environment Court.



What will be the role of Subsidence Advisory NSW?

Subsidence Advisory NSW will be repositioned as an advocate for claimants, an industry regulator and a peak advisory body.

As a community advocate and case manager, we will:

- Continue to provide assistance to members of the community in subsidence related emergencies to eliminate danger.
- Provide support to claimants on navigating the new compensation system.
- Provide case management to all claimants to ensure property owners are treated fairly
- Provide guidance to homeowners on their statutory appeal rights and other avenues to resolve complaints.
- Establish and manage a panel of independent assessors who will be tasked with assessing subsidence damage and repair costs
- Continue to manage claims for compensation from subsidence damage arising from abandoned mines. This includes carrying out inspections and determining compensation.
- Raise awareness of mine subsidence in local communities and educate homeowners on subsidence risk.
- Provide 'last resort' compensation in the event that a mining operator becomes insolvent or is unable to meet compensation obligations.

As an industry regulator, we will:

- Establish a consistent approach to claims management across all mining operators by developing clear guidelines to ensure claimants receive fair and timely compensation for damages. KPIs will be included around timeliness of claims processing and disputes.
- Impose conditions on underground mining authorisations to enforce compliance with these guidelines. Miners in breach of these guidelines can be charged with an offence, pay a fine and have their mining licence revoked.
- Monitor industry compliance with these guidelines. In the event of a breach of these guidelines or possible claims mishandling, we have broad investigative powers to gather information to inform possible enforcement actions.
- Oversee surety program (bonds will be required from high risk mining operations to secure future subsidence liabilities).

- Improve subsidence conditions on mining approvals to ensure future subsidence damage is better mitigated.
- Proclaim areas as Mine Subsidence Districts where there are high-risk abandoned workings and/or potential mining beneath surface improvements.
- Regulate all development in Mine Subsidence Districts to minimise the risk of subsidence damage, and developing design guidelines to ensure homes are better able to withstand subsidence damage should it occur.
- Continue to administer the mine subsidence compensation levy.

As the peak subsidence advisory body, we will:

- Facilitate the dispute resolution process by provision of expert advice to the Secretary for dispute arbitration purposes.
- Develop a plan to determine the best approach for strategic grouting initiatives in the Newcastle CBD.
- Provide thought leadership on mine subsidence management
- Partner with educational and research institutions to develop innovative approaches to mine subsidence management, with the goal of reducing and ideally eliminating subsidence impacts.

What information do I need to provide to support my claim?

The amending legislation will step out what information property owners will need to provide when lodging claims— known as the **prescribed information**. It is likely this information will include:

| | |
|---------------------------|---|
| Claimant details | <ul style="list-style-type: none"> • Name, address and telephone number of the claimant and each owner of the property/asset subject of the claim |
| Property details | <ul style="list-style-type: none"> • The address of the property subject to the claims • Lot and DP of the property |
| Damage details | <ul style="list-style-type: none"> • Description of the damage • Photographic evidence • The date the damage was first observed by the claimant |
| Compliance details | <ul style="list-style-type: none"> • Evidence of compliance with planning approvals • Evidence of compliance with MSB/SA NSW approvals if within a mine subsidence district |

Where can I get further information on the proposed changes?

While these changes are not proposed to take effect until January 2018, further information is available on Subsidence Advisory NSW's website www.subsidence.nsw.gov.au.

Where can I make a submission on the proposed changes?

We received submissions from a broad range of stakeholders on the terms of reference of the Review, which has informed how we are proposing to change the system. While we are not asking for submissions on the changes, we welcome your feedback which can be provided via Subsidence Advisory NSW's website www.subsidence.nsw.gov.au.