



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PLC:BMgl170424

17 April 2024

Statutory Review of the *Coal Mine Subsidence Compensation Act 2017*
NSW Fair Trading
Department of Customer Service

By email: subsidencecompstatreview@customerservice.nsw.gov.au

Dear Sir/Madam,

Coal Mine Subsidence Compensation Amendment Bill 2024

Thank you for the opportunity to provide feedback on the draft Coal Mine Subsidence Compensation Amendment Bill 2024. The Law Society's Property Law Committee contributed to this submission.

Our feedback on relevant questions in the Explanatory Paper is provided in the attached comments table.

We note that the Amendment Bill makes no change to s 23(1) of the Act, giving the right to a purchaser to cancel a contract to purchase land on the basis of a contravening development, such as an unauthorised improvement on the land. We appreciate that the corresponding section in the 1961 Act (section 15(5)(a)), provided significant consumer protection, when combined with the certificate regime under sections 15B and 15C of the former Act. We remain concerned¹ that, because of the abolition of these certificates, there is no readily available and conclusive means for a purchaser to identify whether the right to cancel the contract has been established.

If a purchaser purported to cancel a contract relying on the section, and was subsequently found to have no basis for doing so, a vendor may treat the purported termination as a repudiation, exposing the purchaser to the risk of forfeiture of deposit and damages. In our view, the policy decision to abolish the certificates means that s 23(1)(a) is unlikely to be used by a prudent purchaser. Retention of the section without the availability of certificates, in our view, does not promote the protection of purchasers. We therefore suggest that s 23(1)(a) be repealed, in line with our previous advocacy, and would be happy to discuss this aspect further.

Any questions in relation to this letter should be directed to Gabrielle Lea, Senior Policy Lawyer, at gabrielle.lea@lawsociety.com.au or on (02) 9926 0375.

Yours faithfully,

Brett McGrath
President

Encl.

¹ The Law Society previously suggested that s 23(1)(a) be repealed, in answer to question 12 in its [response](#) to the Discussion Paper issued in 2022.



No.	Question	Law Society comments
2 Proposed Amendments		
2.1 Extending relocation on compensation to tenants		
1.	Do you support extending compensation to residential tenants for relocation expenses?	We support the proposed extension. Residential tenants may be put to significant additional expense where a property becomes uninhabitable due to prevention or mitigation works, particularly where the works are undertaken at short notice. Those expenses should be compensable under the <i>Coal Mine Subsidence Compensation Act 2017</i> (“Act”).
2.2 More support from Subsidence Advisory NSW in mine subsidence events		
2.	Do you support the additional powers for Subsidence Advisory NSW to act in mine subsidence emergencies?	We support the proposed additional powers.
2.3 Allowing claims to be lodged outside of the online portal		
3.	Do you support the proposed change to allow claims to be lodged outside of the online portal?	While we agree that the online portal should remain the default method of lodging claims, we recognise that issues of digital literacy or accessibility can occasionally arise for some claimants. We support the proposed change.
2.4 Pre-mining inspections		
4.	Do you support making pre-mining inspections a requirement for claims for mine subsidence damage, to be carried out by Subsidence Advisory NSW?	Yes, the benefits of pre-mining inspections outlined at pages 16-17 of the Statutory Review, ¹ coupled with the previous difficulties, in some cases, in obtaining copies of these, noted at page 16 of the Statutory Review, indicates reform in this area is necessary.

¹ *Coal Mine Subsidence Compensation Act 2017* Statutory Review, Department of Customer Service, August 2023,

<https://www.parliament.nsw.gov.au/tp/files/186331/Report%20of%20the%20Statutory%20Review%20of%20the%20Coal%20Mine%20Subsidence%20Compensation%20Act%202017.pdf>



2.5 Requiring information and documents from coal mine operators		
5.	Do you support the proposed changes that will require mine operators to provide additional information and documentation to Subsidence Advisory NSW?	Yes, the provision of additional information and documentation will likely be of assistance to Subsidence Advisory NSW in carrying out its functions under the Act.
2.6 Clarifying the roles of Subsidence Advisory NSW and mine operators in the assessment and determination of claims		
6.	Do you support making Subsidence Advisory NSW responsible for assessing and determining all claims?	We note the tension between section 12 of the Act and the provisions of the Approved Procedures outlined at pages 20-21 of the Statutory Review. We believe the arrangements under the Approved Procedures engender confidence in the independence of the claims determination process, and support assigning responsibility for the claims process to Subsidence Advisory NSW.
2.7 Expanding the scope of the Approved Procedures		
7.	Do you support the inclusion of a proposed review process within the Approved Procedures?	Yes, as a general principle we are supportive of access to appropriate forms of alternative dispute resolution. We note the framework for the review process is outlined at a high level at page 24 of the Statutory Review, and would be pleased to engage in further consultation about the detail of the process.
2.8 Increasing penalties in line with inflation for existing offences in the Act		
8.	Does the proposed amendment provide adequate deterrence against offences under the Act that may be committed by both individuals and corporations?	While we cannot speak to whether deterrence is adequate, we support regular periodic review of penalties for offences under legislation.
2.9 Clarifying provisions for work to prevent or mitigate damage		
9.	Do you support limiting compensation for works to prevent or mitigate damage to only cover existing structures?	We support the proposed limitation. Extending the compensation to future structures is, in our view, potentially open to abuse and “over-compensating” the landowner.
10.	Do you support reimbursing people for expenses incurred as a result of works to prevent or mitigate works, such as relocation costs?	We support this proposal for the reasons set out in our response to question 1.



11.	Do you support limiting claims where a person is paid out to carry out preventative or mitigative works themselves?	<p>The limitations proposed in the second and third bullet points at page 27 of the Statutory Review are appropriate, namely:</p> <ul style="list-style-type: none"> • give the Chief Executive discretion to fund reasonable expenses that may be incurred by a property owner and/or tenant, associated with preventative and mitigative works, such as temporary relocation expenses; • clarify that where the owner of an improvement is paid from the Fund to carry out preventative or mitigative works themselves, any damage from these works is not eligible for compensation. <p>Any such amounts should be reasonable, and not extend to damage arising from the landowner carrying out preventative or mitigative works themselves.</p>
2.10 Clarifying the responsibilities of the Chief Executive		
12.	Do you have any other considerations regarding the Chief Executive's powers and responsibilities?	The only other issue we wish to raise is the proposed retention of s23(1)(a) of the Act which we address in the covering letter.