



# Early Claim Settlement Policy

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# 1. Policy Statement

## 1.1 About Subsidence Advisory NSW

Subsidence Advisory NSW (SA NSW) operates in areas of NSW where there is previous, current or proposed underground coal mining. SA NSW is responsible for administering the *Coal Mine Subsidence Compensation Act 2017* (the Act) and has three primary functions:

- To manage and pay compensation claims where surface developments are damaged by mine subsidence following extraction of coal in NSW
- To regulate development in mine subsidence districts to help protect homes and other surface improvements from potential subsidence damage
- To operate a 24 Hour Emergency Hotline for the public to report subsidence issues presenting safety, security or serviceability concerns.

## 1.2 Objectives

The policy sets out SA NSW's approach to the settlement of claims for mine subsidence damage prior to subsidence ceasing where properties may be impacted by a prolonged subsidence period.

The key objectives of this policy are to:

- provide fair and reasonable compensation guidelines for properties impacted by prolonged subsidence periods
- provide a consistent framework for determining fair and reasonable compensation
- provide a clear process for SA NSW, Mine Operators and property owners to follow for the settlement of claims in active mining areas where subsidence is not yet complete.

## 1.3 Scope

This policy applies to residential and commercial properties that are susceptible to prolonged subsidence periods.

This policy does not apply to infrastructure claims such as roads, bridges, large buildings, or power supply.

Claims lodged under the Act that fall within the scope of this policy should be managed by SA NSW in accordance with this policy, the Approved Procedures for managing claims under s14 of the Act (Approved Procedures) and any other internal documents providing guidance on the management of claims.

Existing claims lodged under the *Mine Subsidence Compensation Act 1961* (1961 Act) that fall within the scope of this policy, will be managed by SA NSW in accordance with this policy. References made to the Approved Procedures throughout this policy should also be applied as a guide to claims lodged under the 1961 Act.

Staff should also consider any relevant legislation.

## 2. Introduction

### 2.1 Introduction

If a residential or commercial property is damaged by subsidence as a result of coal mining in NSW, the property owner can lodge a claim for compensation with SA NSW under the Act.

In current mining areas, assessment of claims is deferred until subsidence is complete. This is because it is likely that the property may sustain further damage as mining continues and the ground continues to settle.

Some properties that are within the zone of influence of multiple longwalls may be predicted to be impacted by subsidence for significantly longer periods than typically expected.

This policy has been developed to ensure property owners are not waiting unreasonable periods of time for their claims to be resolved while minimising possible further subsidence impacts.

## 3. Early Claims Settlement Process

There are five key stages in SA NSW's Early Claims Settlement management process:

1. **Preliminary assessment:** Identifying claims upon receipt where early settlement may be required to avoid an unreasonable assessment timeframe.
2. **Subsidence monitoring:** Determining when claims should progress for early assessment.
3. **Assessment and determination:** Assessing claims in accordance with the Approved Procedures and offering early settlement subject to conditions.
4. **Pre/post settlement actions:** Inspecting properties post repairs / prior to impacts from next longwall and installing survey pins.
5. **Review options.**

Sections 3.1 to 3.5 further detail each of these stages.

### 3.1 Preliminary assessment

As part of the preliminary assessment of claims (refer to Section 6 of the Approved Procedures) within the scope of this policy, SA NSW will assess whether a claim may be subject to prolonged subsidence timeframes and eligible for early assessment.

To ensure a fair and transparent approach for early claim settlements, claims must satisfy the below criteria at the preliminary assessment stage to be considered for early settlement:

- the claim relates to a residential or commercial structure
- the property is within the zone of influence of multiple longwalls
- the timeframe for subsidence impacts at the property is significantly longer than typically expected under normal mining conditions (e.g. due to non-sequential mining of adjacent longwalls near the property or longer than typical longwalls).

If a claim does not meet the criteria for early settlement, assessment will be deferred until subsidence is complete consistent with the Approved Procedures.

Note: The Chief Executive of SA NSW has discretion to progress claims which do not meet the above criteria for early settlement in exceptional circumstances as considered appropriate.

This policy does not limit the CEO's power to defer assessment of claims under Section 13 of the Act.

### **3.1.1 Residential structures**

Early settlement is available for claims for subsidence damage to residential structures, including pools and dams and bores used for primary production purposes.

Dams, bores, water features or other property features that are not used for agricultural purposes or only serve an aesthetic purpose are not eligible for an early claim settlement and can only be determined once subsidence has ceased.

### **3.1.2 Non-residential structures**

Claims for sites of critical infrastructure such as schools and hospitals will be considered for early claim settlement as necessary.

Structures that are necessary to fulfill a commercial purpose will be considered, such as dams used for primary production. Commercial structures that serve only for aesthetic purposes will not be considered for early settlement under this policy.

### **3.1.3 Property impacted by multiple longwalls**

The property must be within the zone of influence of multiple longwalls. Properties that are only within the zone of influence of one longwall or where mining occurred over five years ago are not eligible for early settlement.

### **3.1.4 Timeframe for subsidence to be completed**

Claims are only eligible for early settlement if the normal timeframe for subsidence impacts is considerably extended (i.e. timeframe for subsidence impacts extended by two years longer than typically expected). This may be due to adjacent longwalls not being mined sequentially or longer than typical longwalls.

For claims that may meet the early settlement criteria, SA NSW is to use the timeframe that the property would ordinarily be impacted by subsidence as a baseline. That is assuming the conventional format of extracting adjacent longwalls or the typical timeframes for subsidence to cease at a property in an active mining area (3-5 years). SA NSW, in consultation with the Mine Operator, is to consider whether an early claim settlement would significantly reduce the timeframe to resolve the claim (e.g. by one year). In instances where early settlement would not considerably reduce the timeframe, early settlement may be refused.

#### **3.1.1 Notification to mine proprietor**

SA NSW is to notify the Mine Operator if a claim meets the criteria for settlement prior to subsidence ceasing at the preliminary assessment stage

### **3.1.2 Timing of assessments**

The timing for assessment of claims prior to subsidence ceasing is to be considered on a case by case basis, allowing consideration for a property owner's personal circumstances, the extent of damage, other arrangements in place to manage the impacts (e.g. Mine Operator has management plan in place for commercial structure), risk of consequential damage and future impacts.

. SA NSW will consult the Mine Operator to ensure the latest mining information is available to make a decision on the proposed claim assessment date.

### **3.1.3 Notification to property owner**

Prior to progressing a claim for settlement prior to subsidence ceasing, SA NSW is to notify the property owner to advise the claim may be eligible for an early claim settlement. SA NSW is to advise the property owner of the conditions of settlement prior to subsidence ceasing (refer to Section 3.3.2) and the possibility that further damage may arise after settlement.

Property owner agreement is required at this point to progress a claim for settlement. If the property owner does not agree, SA NSW will wait until subsidence has ceased to progress the claim for assessment.

## **3.2 Subsidence monitoring**

Throughout the assessment process for claims where subsidence is not complete, SA NSW will regularly monitor the latest subsidence data and mine plans to identify any changes that may impact assessment timeframes for the claim. Any changes from timeframes determined during the Preliminary Assessment will be communicated to the property owner and Mine Operator.

### **3.2.1 Progressing a claim for assessment prior to subsidence ceasing**

SA NSW is to notify the property owner and Mine Operator in writing at least four weeks prior to progressing a claim for assessment prior to subsidence ceasing.

## **3.3 Assessment and Determination**

### **3.3.1 Early assessments**

Claims being considered for settlement under this policy are to be assessed in accordance with Section 7 of the *Guidelines – Process for Claiming Mine Subsidence Compensation*, with the exception of claims under the 1961 Act, for which not all aspects of Section 7 will apply.

### **3.3.2 Claims accepted for early settlement - monetary compensation**

In most cases, claims that are accepted for settlement prior to subsidence ceasing will be compensated through a monetary payment offer and deed of release. The deed of release is subject to timeframes that support the intent of the policy as detailed below.

The compensation offer will be subject to agreement from the property owner to the following conditions and timeframes as outlined in the deed:

- installation of Survey Pins to monitor further subsidence at the property by a specified date (this date is set by SA NSW to ensure sufficient time for repairs to be completed prior to the next predicted subsidence impact)
- inspection of the property and rectification works by a qualified engineer engaged by SA NSW by (whichever is sooner):
  - no later than 14 days after the date of completion of rectification works
  - or
  - no later than one month before mining of the next longwall with potential to impact the property commences (SA NSW is to notify property owners of this date – Mine Operators are to share this information with SA NSW)
  - or
  - upon completion of a transfer of the property.

Payment of compensation will occur following the installation of survey pins at the property. Where conditions have not been met by the required dates property owners must acknowledge that:

- this may prejudice the ability for any further claims lodged by the owners for the property to be assessed
- monetary compensation may be deferred until it is satisfied that further subsidence has not arisen or has ceased. Where further damage has occurred as a result of subsidence, the claim will be reassessed with consideration of all damage to the property. Note: This may apply to property owners who have not met pre rectification works conditions, such as the installation of Survey Pins.

### **3.3.3 Demolition and rebuilds**

In cases where the assessor identifies that the extent of damage necessitates demolition and rebuilding of a structure, property owners may be given the option of the Determining Body purchasing the property or providing compensation for the works.

If compensation for demolition and rebuild is to be provided, the rebuild should not commence until subsidence has ceased. A separate deed of release with different requirements to the conditions outlined in Section 3.3.2 is required for this situation.

The deed of release may include a multi-phased compensation payment with the final payment to be made on a determined date when subsidence is estimated to be complete. SA NSW may specify in the deed that demolition of the property can occur while subsidence is continuing to allow rebuilding to commence immediately after subsidence is deemed complete.

If the property is determined to be unfit to live in prior to a knockdown rebuild, the property owner may be offered compensation to arrange alternate accommodation.

### **3.3.4 Alternatives to monetary compensation**

There may be circumstances where alternative arrangements to monetary compensation may be offered to the property owner to settle the claim, this may include the Determining Body project managing repairs or purchasing a property. Refer to Section 14 of the Approved Procedures.

### **3.3.5 Early settlement refusals**

Property owners can only be compensated for damage caused by subsidence from the extraction of coal. Homes and other structures built in mine subsidence districts without relevant approval, may also not be eligible for compensation.

SA NSW may also refuse the early settlement of a claim, in which the claim will be reassessed in accordance with the Approved Procedures. This may be due to the type of residential feature, such as a feature for aesthetic purposes only, not being eligible for an early claim settlement or due to changes to the predicted timeframe for subsidence to cease or other reasons not listed.

## **3.4 Pre and post early claim settlement actions**

### **3.4.1 Installation of Survey Pins**

All claims determined under this policy are subject to the condition that property owners must agree to Survey Pins being installed at their property by a specified date. This date is set to ensure there is sufficient time for the works to be completed prior to mining of the next longwall with potential to impact the property commencing.

Compensation is paid following the installation of the survey pins.

Property owners must permit after being requested, the installation of Survey Pins around the property to enable the monitoring of any further subsidence at the property. The owner

must also agree not to remove, damage, destroy, displace, obliterate or deface installed Survey Pins.

Survey pins will be monitored at suitable increments with consideration made to frequency where active subsidence periods exist or any subsidence events occur. The data from the Survey Pins may be used to inform any assessment of any subsequent claims.

### **3.4.2 Post early claim settlement property inspection**

All claims determined for early settlement are subject to the condition that the property owner agrees to an inspection of the property on completion of repairs or before mining of the next longwall with potential to impact the property commences, whichever is sooner.

The deed of release requires the property owner to notify SA NSW within 14 days of completing repairs or within 1 month before the further longwall mining date. SA NSW is to organise an inspection and report by an appropriately qualified engineer. The inspection is carried out by an assessor from or engaged by the Determining Body to ensure any repairs / remaining damage are documented to inform assessment of any future claims.

The inspection ensures property owners are provided with acknowledgement from SA NSW that repair works were completed, should any damage reoccur at a later stage. To provide an accurate history of the damage, the engaged engineer will take photographs, draw diagrams and take notes during the inspection.

It is important that before such inspections commence, the owners alert the engineer to any potential hazards or risks known to them.

Under the deed of release, future claims lodged may not be compensated for damage if the property owner has failed to comply with the post settlement inspection requirement or if the inspection carried out deemed the repair works do not meet the compensated scope of works.

## **3.5 Options for review**

If a property owner is not satisfied with the outcome of their claim, they can request a review of the claim by the Secretary of the Department of Customer Service or their delegate. Please refer to Section 10 of the [Approved Procedures](#) for full details.

Note: Property owners are not able to request a Secretary Review of SA NSW's determination not to progress a claim for early assessment. However, they may request an internal review by the Chief Executive of SA NSW.

## **4. Further mine subsidence damage after early claim settlement**

If a property is further impacted by subsidence following a claim settlement under this policy, the property owner can lodge a new claim with SA NSW.

The data obtained from the installed Survey Pins and the post rectification inspection may be used to inform subsequent claim assessments. Property owners that fail to comply with the requirements, as set out in the deed of release, may not be compensated for further damage.

New claims will be investigated in accordance with the Approved Procedures regardless of any prior accepted early claim settlements.

## 5. Accountability and learning

### 5.1 Feedback and complaints

#### Feedback for continuous improvement

SA NSW is committed to providing excellent customer service and seeks feedback from property owners on their experience with the claims management process. Property owners are sent a survey upon completion of their claim. Responses are collated and inform continuous improvement processes.

#### Complaints

Complaints can be lodged online at [www.subsidenceadvisory.nsw.gov.au/feedback](http://www.subsidenceadvisory.nsw.gov.au/feedback) or via email to [subsidencefeedback@customerservice.nsw.gov.au](mailto:subsidencefeedback@customerservice.nsw.gov.au).

All complaints will be investigated and handled in accordance with the Department of Customer Service's *Complaints Handling Policy* and any relevant internal procedures.

### 5.2 Monitoring the Early Claim Settlement process

SA NSW will continually monitor the claims management process to:

- ensure its effectiveness in managing claims for mine subsidence
- identify and correct deficiencies in the process.

## 6. Related Policies and Documents

| Issuer                         | Reference                           | Document Name   |
|--------------------------------|-------------------------------------|---|
| Department of Customer Service | January 2017                        | Complaint Handling Policy   |
| Department of Customer Service | September 2015                      | Code of Ethics & Conduct  |
| NSW Ombudsman                  | June 2015<br>ISBN 978 1 925061 55 0 | Complaint Management Framework & Policy Model                                       |
| Subsidence Advisory NSW        |                                     | Approved Procedures – Guidelines: Process for Claiming Mine Subsidence Compensation |

## 7. Document Control

### 7.1 Document Approval & Use

| Name and Position                 | Date approved |
|-----------------------------------|---------------|
| Joseph D'Ermilio, Director SA NSW | 21/12/2020    |

### 7.2 Document Version Control

| Version | Status | Date       | Prepared By                         | Comments |
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### 7.3 Review Date

This procedure will be reviewed in January 2023.