Guidelines - Process for Claiming Mine Subsidence Compensation

Requirements, information and guidance on the process for seeking compensation for property damage from mine subsidence.

SUBSIDENCE ADVISORY NSW

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2 Introduction

Subsidence Advisory NSW (SA NSW) is the NSW Government organisation responsible for regulating and administering the mine subsidence compensation system in NSW.

SA NSW has developed this document, 'Guidelines – Process for Claiming Mine Subsidence Compensation' (guidelines) to support, inform and guide claimants, Mine Proprietors, Local Councils and other stakeholders involved in the subsidence compensation framework.

These guidelines explain what claimants and Mine Proprietors must do in relation to claims under the following legislation:

- *Coal Mine Subsidence Compensation Act 2017* (the Act)
- *Coal Mine Subsidence Compensation Regulation 2017* (the Regulation).

Specific sections of the Act place obligations on stakeholders and provide guideline making powers. These guidelines are an approved procedure under Section 14 of the Act.

These guidelines commence on 1 January 2018. Accordingly, from this date, these guidelines apply to all new claims and replace any existing guidelines issued by SA NSW (formerly the Mine Subsidence Board).

SA NSW will consult key stakeholders should it propose any substantive changes to these guidelines.

2.1 Information for the reader

Words defined in the Act or the Regulations have the same meaning in these guidelines.

References to 'Mine Proprietors' means "proprietor" of a coal mine as defined in the Act.

References to applicable legislative provisions are made throughout the guideline; instructions on where further information can be obtained is also included.

References to 'days' should be read as calendar days, unless otherwise stated.

References to 'guidelines' should be read as approved procedures in accordance with the Act.

2.2 Role of SA NSW and Mine Proprietors

SA NSW is responsible for managing all claims for compensation for mine subsidence damage from start to finish. All claims are assigned a SA NSW Case Advisor to support property owners and provide them with a dedicated point of contact throughout the claim process. Technical assessments are coordinated centrally by SA NSW.

SA NSW compensates property owners whose properties have been impacted by subsidence from non-active coal mines using the Coal Mine Subsidence Compensation Fund (the Fund).

SA NSW also facilitates Mine Proprietor involvement in the claims process where the damage is in the zone of an active coal mine. Mine Proprietors are responsible for compensating the costs of mine subsidence damage arising from their operations and providing timely input through SA NSW at key stages of the claims process.

2.3 Mandatory compliance

SA NSW, claimants and Mine Proprietors are obliged to fully comply with the Mine Subsidence Compensation legislation and these guidelines.

2.4 SA NSW services and advice

SA NSW provides all case management services to claimants and Mine Proprietors through its dedicated claims and community team.

SA NSW can answer queries or assist claimants to navigate the compensation claim process. SA NSW can also help answer queries about these guidelines.

More information can be found at www.subsidenceadvisory.nsw.gov.au. Alternatively, SA NSW can be contacted on (02) 4908 4300.

2.5 Online portal for end to end case management services

SA NSW has an online portal for the end to end management of claims for compensation (portal). The portal facilitates a straightforward claims process and provides key stakeholders, including claimants and Mine Proprietors, with oversight of claims.

2.5.1 Claimants access to portal

Claimants are to lodge claims for compensation for mine subsidence damage via SA NSW's centralised portal. The portal is accessed via SA NSW's website at www.subsidenceadvisory.nsw.gov.au.

Claimants log in to the portal using their Service NSW username and password. If a claimant does not have a Service NSW account, the portal will direct them to create an account in the first instance.

Claimants can access the portal at any time to view the status of their claim, update their details, respond to requests for further information and access all claim documents in a central location.

In situations where a claimant is not able to access the portal, SA NSW will facilitate contact with the claimant via their preferred method as nominated on a hard copy claim form.

2.5.2 Mine Proprietor access to portal

Mine Proprietors also have access to SA NSW's portal to view and manage claims relating to their operations.

Each levy paying Mine Proprietor in NSW has an account for SA NSW's portal. SA NSW manages these accounts and will consult Mine Proprietors on their preferred log in details. SA NSW will provide the log in details to the Mine Proprietor.

SA NSW will share any relevant information, including claim evaluation reports, with the Mine Proprietor via the portal.

Mine Proprietors are to use the portal to provide input at key stages of a claim, including the initial allocation, review of reports and at the claim determination within set timeframes. The portal includes alerts to ensure Mine Proprietors are aware of the date of their required input for each claim.

Mine Proprietors can also request further information from SA NSW about a claim via the portal.

3 Emergencies

SA NSW operates a 24 hour emergency hotline – 1800 248 083 – for the public to report mine subsidence issues presenting immediate safety, security or health risks.

In the event of an emergency, immediate actions are required where the damage may cause danger to a member of the public. This may include situations such as a pothole surfacing, broken pipes (e.g. gas), or, an unsecure property as result of mine subsidence. SA NSW will respond to the emergency within 24 hours of receiving contact, to undertake the immediate actions required and determine subsequent repairs.

Urgent repairs may be required to ensure the continued serviceability of a property, e.g. inoperable bathroom, broken water pipes. SA NSW will respond to urgent repairs within 14 days of receiving contact.

Temporary repairs may be required where damage has been caused by mine subsidence and further subsidence is likely to occur e.g. repairs to a bump that has surfaced in a driveway. Reasonable requests made by the claimant must be considered by the Mine Proprietor.

SA NSW will notify the Mine Proprietor of any emergency actions undertaken and subsequent repairs, urgent repairs or temporary repairs within 24 hours of inspection.

For emergencies, urgent repairs and temporary works, SA NSW may:

a) carry out repairs on behalf of the Mine Proprietor. Repair costs incurred by SA NSW will be compensated by the Mine Proprietor.
b) instruct the Mine Proprietor to carry out repairs. Repairs considered an emergency and/or urgent are to be addressed in less than **14 days**.

Relevant provisions and requirements are contained in Section 27 of the Act.

SA NSW will consult the relevant regional office of the Roads and Maritime Services (RMS) and the relevant Local Council in relation to proposed works on public roads.

Mine Proprietors have the right to request a review by the Secretary, Department of Finance, Services & Innovation (DFSI) on SA NSW's decision to issue a direction regarding temporary actions (see Section 28 of the Act).

4 Pre-mining inspections

4.1 What is a pre-mining inspection?

The purpose of a Pre-Mining Inspection (PMI) is to determine the condition of a property prior to mining. PMIs are an added protection for property owners to ensure they receive adequate compensation to return their property to its pre-mining condition, should it be impacted by mine subsidence.

PMIs provide clarity on the pre-existing condition of the property via photos and survey levels, which enables a clear comparison to any differences after mining. A PMI results in a clearer and more timely claims process in the case that a property is impacted by mine subsidence. It is highly recommended that PMIs are undertaken. PMIs are free to property owners.

The Mine Proprietor must complete a PMI or arrange and ensure that a PMI is completed prior to a property being influenced by mine subsidence.

4.2 Responsibility of pre-mining inspections

It is the responsibility of the Mine Proprietor to identify properties that have the potential to be impacted by mine subsidence from underground mining in the future. The Mine Proprietor must provide this information, including likely timing of any mine subsidence, to SA NSW.

The Mine Proprietor can coordinate the process of seeking property owner's permission to undertake PMIs and subsequently undertake PMIs. Alternatively, the Mine Proprietor can forward information to SA NSW to undertake this work. It is recommended the Mine Proprietor provide SA NSW details on future properties that may be impacted annually for the upcoming three years to inform the PMI forward work program.

PMIs should be planned and scheduled well in advance of mine subsidence potentially impacting a property. PMIs may be incorporated into existing processes of the Mine Proprietor, e.g. Development of Property Subsidence Management Plans and Built Features Management Plans.

4.3 Carrying out pre-mining inspections

The Mine Proprietor (or SA NSW if applicable) must seek permission from the property owner (residential, commercial and industrial) to undertake PMIs in the zone of subsidence influence.

With the property owner's consent, the Mine Proprietor can choose to undertake PMIs in one of the following ways:

- Mine Proprietor to directly undertake PMI
- Engage a suitably qualified contractor (i.e. with building qualifications)
- Engage a suitably qualified contractor from the Technical Panel
- Engage SA NSW to undertake PMIs (for a fee and subject to availability).

This will involve a qualified professional from the SA NSW Technical Panel or qualified SA NSW employee inspecting the property and providing a report prior to mine subsidence taking place.

The fee charged to Mine Proprietors will be the cost of the PMI carried out by the technical assessor (or qualified SA NSW employee) plus 10% of the cost of the PMI (additional overhead charge to cover SA NSW administration costs).

Where consent is not granted or no response is received from the property owner, SA NSW has statutory powers to undertake an external PMI of residential properties (where it is safe to do so) on behalf of the Mine Proprietor. SA NSW charges a fee for mandatory external PMIs as listed in the schedule of rates for the Technical Panel.

4.4 Commercial and infrastructure pre-mining inspections

SA NSW has statutory powers to carry out a full internal and external pre-mining inspection of any infrastructure or commercial property on behalf of the Mine Proprietor. SA NSW may commission a suitably qualified and experienced person to conduct this process.

Where other pre-mining requirements are required of the Mine Proprietor such as a Built Features Management Plan, the Mine Proprietor can integrate the PMI within these requirements.

4.5 Pre-Mining Inspection reports

PMI reports must document the condition of any buildings, structures and improvements on the land prior to an active subsidence period. The reports must include extensive photos of buildings, structures and improvements (including driveways, sheds, fences), internal floor levels, pool levels, functionality of water boreholes and dams. The extent of all existing damage must be illustrated using a tape measure. Details of the damage must be highlighted (e.g. a 3mm crack in northern kitchen gyprock wall and 1m length).

A copy of the PMI report must be provided to the Mine Proprietor, the property owner and SA NSW.

4.6 Notice and timing of pre-mining inspections

PMIs are to be conducted prior to the active subsidence period. Efforts are made to co-ordinate a mutually convenient time to both the property owner and assessor. In the event of a mandatory external PMI, notice of **14 days** (or shorter if reasonable to all parties), must be given to the property owner prior to the PMIs being carried out. SA NSW and/or the Mine Proprietor must consider any reasonable requests from the property owner to accommodate an inspection, e.g. requests for inspections outside of business hours.

5 Claims management process

5.1 Overview of Claims Process

The claims management process is summarised into a number of stages as outlined below:



5.2 Lodging a claim

5.2.1 How to lodge a claim

Claims for compensation for mine subsidence damage are to be lodged through SA NSW's portal which can be accessed at www.subsidenceadvisory.nsw.gov.au.

Once a claim is lodged, the claimant will receive an automatic response via email from SA NSW acknowledging receipt of the claim and providing further information on the claims process.

The property owner may return and log into the portal at any time to track the status of their claim, view all claim documents in a central location, and access dedicated SA NSW advisory services.

If a property owner is not able to access the portal to lodge a claim, they may complete and lodge a hardcopy claim form at a SA NSW office. SA NSW staff will enter the claim details, including a scanned copy of the claim form, into the portal, on behalf of the claimant.

5.2.2 Who can lodge a claim

Claimants must be the property owner or an authorised representative of the property owner. Proof of authority to represent the property owner must be provided in the form of a Statutory Declaration or Power of Attorney before SA NSW will proceed with a claim.

SA NSW will not accept claims for compensation made by tenants. However, tenants are able to report mine subsidence issues presenting safety, security or serviceability issues via SA NSW's 24-hour emergency hotline on 1800 248 083. Refer to Emergencies for further information.

5.2.3 What information is needed to lodge a claim

SA NSW requires property owners to provide the below information when lodging a claim:

Claimant details	•Name, address, email and telephone number of the claimant and each owner of the property/asset subject of the claim and relevant proof of authority
Property details	•The address of the property subject to the claims •Lot and DP of the property (if available)
Damage details	•Detailed description of the damage •Photos of damage (if available) •The date the damage was first observed by the claimant

The portal will prompt claimants to provide the above information. In some circumstances, SA NSW may contact the claimant for further information after receiving the claim.

Refer to **Appendix 1** for clarification on items that can be claimed under the Act.

5.2.4 Time restrictions on claims for compensation

Section 11 of the Act requires claims for compensation to be lodged within **12 months** after the day on which the subsidence damage became known to the property owner. The earlier the claim is lodged, the easier it will be to determine the exact cause of damage and potentially prevent further damage.

SA NSW may grant property owners an extension of time for lodging claims in exceptional circumstances. Property owners who have not lodged a claim within 12 months of becoming aware of the damage should contact SA NSW on (02) 4908 4300 regarding next steps.

6 Preliminary assessment

6.1 Overview of preliminary assessment

Following receipt of a claim, SA NSW will undertake a preliminary assessment to confirm:

- the claimant's ownership of the property
- that the damage is consistent with, or could be attributable to, mine subsidence
- if the subject property is in the zone of influence of active or non-active underground mines
- if mine subsidence is still underway for claims in active mining areas.

The findings of the preliminary assessment will determine how the claim is progressed.

SA NSW will conduct a land and property title search to confirm the claimant's ownership of the property.

SA NSW will allocate a Case Advisor to the claim within **3 days** of the claim being lodged.

6.2 Review to confirm claim location in proximity to mine workings

SA NSW will undertake an initial desktop assessment to review the location of the claim in proximity to underground mine workings.

If the claim is outside the zone of influence of any active or non-active coal mine, SA NSW will not accept the claim. The claim will be closed within **14 days** of being lodged. Refer to Claim Determinations for further information.

SA NSW will progress claims identified as 'within the zone' of underground mine workings to the next phase of assessment, to determine whether it is in an active or non-active mining area.

6.3 Assessment on whether claim is in an active or non-active mining area

SA NSW maintains comprehensive mapping records of all non-active coal mines and active coal mines. SA NSW will review these records in relation to the claim to assess whether it is in the zone of influence of an active or non-active coal mine. In some areas of active mining, SA NSW may request further information from the relevant Mine Proprietor before making a determination.

There may be occasions where a claim is lodged in an area where there are both active mining operations and non-active mine workings. In this situation, SA NSW will notify the relevant Mine Proprietor. Further investigations will be carried out during the course of the claim to identify if mine subsidence has occurred and, if so, whether it was caused by an active coal mine, non-active coal mine or a combination of both.

Active and non-active coal mines are defined in the Act and the Regulation.

6.4 Mine Proprietor notification and acceptance

SA NSW will notify Mine Proprietors via the portal after making a determination that a claim is within the zone of influence of their mining operations. SA NSW is to notify the Mine Proprietor within **7 days** of the claim being lodged with SA NSW.

Within **7 days** of being notified of a claim, the Mine Proprietor is to either acknowledge that the claim is within the zone of their operations or submit a request for further information from SA NSW decision via the portal.

6.4.1 Mine Proprietor requests for information

Prior to accepting that a claim is within the zone of their operations, the Mine Proprietor may submit a request via the portal for SA NSW to provide additional information in relation to the claim, including:

- details of past claims at the property
- building compliance.

SA NSW is to provide the requested information (if available) to the Mine Proprietor within **7 days** of the request. In this situation, the timeframe for the Mine Proprietor to either acknowledge or contest that the claim is in the zone of their operations is extended to within **7 days** of receiving the information from SA NSW.

6.4.2 Mine Proprietor disagrees claim is in the zone of their operations

In instances where the Mine Proprietor disagrees with SA NSW's assessment that a claim is within the zone of their operations, pursuant to section 12 of the Act, the Mine Proprietor may request a review within **21 days** of the date on which the claim was forwarded to them.

6.5 Meetings with claimants

Throughout the claims process, SA NSW may arrange meetings with the claimant to further explain information, such as the claims management process, technical reports and letter of compensation offer. All meetings between SA NSW and the claimant will be coordinated centrally by the relevant SA NSW Case Advisor.

Claimants may have representation of their choice at any meetings.

6.5.1 Mine Operator involvement in claimant meetings

For claims in active mining areas, SA NSW will endeavour to facilitate a constructive relationship between the Mine Proprietor and claimant so that claims can be resolved in a fair and timely manner. The SA NSW Case Advisor will extend an invitation to the Mine Proprietor to attend meetings with the claimant.

In the situation that a Mine Proprietor and claimant arrange to meet, the Mine Proprietor must make SA NSW aware of the meeting at least **2 days** in advance (where practicable). SA NSW may exercise its discretion to attend the meeting.

6.6 Continuing mine subsidence and/or ongoing ground movement

In active mining areas, mine subsidence impacts can occur from one or a number of longwalls, due to the extraction of underground coal. It is possible that a property that is impacted by mine subsidence may sustain further damage from subsequent longwalls.

For claims received in an area where mine subsidence is ongoing, the full claim assessment will be deferred until mine subsidence is complete. This ensures properties do not sustain further damage once repairs have been completed, except in the case of temporary repairs, as referred to in Section 3.

6.6.1 Postponing claim assessments where mine subsidence is ongoing

If the claim involves ongoing mine subsidence and/or ongoing ground movement, SA NSW may postpone a full claim assessment until ground movements are within nominal seasonal movement levels.

The Mine Proprietor is to advise SA NSW when mine subsidence is likely to cease. SA NSW will then advise the claimant of the estimated timeframe when the claim can progress to the full assessment.

Emergency works related to a claim will not be postponed, even if mine subsidence is not yet completed. Refer to Emergencies for further information on emergency works.

6.6.2 Mine Proprietor responsibilities for mine subsidence monitoring

Mine Proprietors are responsible for advising SA NSW when mine subsidence has ceased.

Mine Proprietors are responsible for undertaking ground level surveys to determine the extent of movement from their mining operations. A Subsidence Monitoring Plan is required to detail the survey location and frequency prior to (typically 1 year) and post mining (typically 5 years) relevant to residential structures.

The Subsidence Monitoring Plan may be incorporated into existing plans that the Mine Proprietor has developed. The aim of the plan is to fully understand the ground movements as close as possible to the improvements (i.e. dwellings, buildings, roads) that may potentially be impacted by mine subsidence.

SA NSW may also request a Mine Proprietor to undertake further survey work to inform the claim inspection process.

Further reporting requirements are prescribed in the Regulation.

7 Claim assessment

7.1 Assessment of claims in non-active mining areas

For claims arising from non-active mines, the assessment and determination process is to conclude within **3 months** of the property being inspected.

Claims for mine subsidence damage in non-active mining areas are assessed by an SA NSW Project Manager/Estimator with expertise in mine subsidence damage.

Where necessary, an independent specialist from SA NSW's technical panel, such as a geotechnical engineer, may also be engaged to assess the claim.

7.2 Assessment of claims in active mining areas

For claims arising from active mines, the assessment and determination process is to conclude within **3 months** of the property being inspected (unless otherwise approved by SA NSW, e.g. where mine subsidence is ongoing, a property owner might seek an extension of time due to personal reasons such as ill health, etc).

Claims for mine subsidence damage in active mining areas are assessed by an independent specialist from a technical panel of assessors managed by SA NSW.

7.3 Technical Panel

SA NSW has established a technical panel of independent specialist assessors (Technical Panel) to carry out assessments as part of the claims process. Appointment to the Technical Panel requires demonstrated technical experience and relevant certified qualifications in relevant fields.

The specialist assessors provide professional, objective, consistent and independent assessment of claims. The Technical Panel includes:

- geotechnical engineers
- structural engineers
- quantity surveyors
- property valuers
- other suitably qualified professionals, including building assessors and builders.

SA NSW manages the appointment of specialists to the panel. SA NSW also undertakes annual reviews of panel assessors.

SA NSW oversees the assessment process and sets conditions for report templates, inspection processes and reporting requirements.

7.3.1 Selection of an assessor from the panel

For active mining areas, and instances where a specialist is required to assess a claim in a non-active mining area, SA NSW will randomly select the relevant assessor from the Technical Panel to carry out the claim investigation inspection.

SA NSW will determine the type of assessor required to investigate the claim, e.g. some claims may necessitate a geotechnical engineer whereas others will require an assessment by a structural engineer.

7.3.2 Subsequent assessments

The assessor should typically be a geotechnical or structural engineer with an understanding of mine subsidence. Subsequent assessors may be required from the Technical Panel to provide specific expertise, e.g. a pool specialist. If the Technical Panel does not have the expertise, other specialists may be engaged using the same selection process for the Technical Panel.

7.4 Inspection of the damage

The formal assessment process commences with an inspection of the damage by the assessor. The purpose of the inspection is for the assessor to determine if the damage claimed is attributable to mine subsidence. The inspection is to occur within **4 weeks** of mine subsidence ceasing (active mine) or lodgement of a claim (non-active mine). This timeframe can be extended at the discretion of Chief Executive Officer, SA NSW.

7.4.1 Arranging the property inspection

The SA NSW Case Advisor will oversee the assessment process and facilitate all interactions between the claimant, assessor and Mine Proprietor where applicable.

The SA NSW Case Advisor will contact the claimant and assessor to confirm availability and arrange a suitable time for the inspection. SA NSW is to provide the claimant and Mine Proprietor with reasonable notice, e.g. **5 days** prior to the inspection.

The SA NSW Case Advisor, and the Mine Proprietor where applicable, may attend the inspection.

7.4.2 Assessment methods

The methods to carry out a claim assessment will vary depending on the type of mining and extent of the damage. As part of the assessment, the assessor may:

- carry out level survey of improvements, e.g. survey internal floor levels and walls
- request survey data from the Mine Proprietor
- carry out testing of soil with a dynamic cone penetrometer
- carry out an underfloor and/or roof cavity inspection of the property
- test site for presence of fill
- inspect water bores and dams
- check adequacy of footings
- carry out any other appropriate tests or checks
- consider past claims
- consider pre-mining inspection reports (if available)
- consider Council approvals.

7.5 Claim Evaluation Report – Scope of damages for repair

Following the inspection, the assessor will prepare a Claim Evaluation Report (CER). The CER will detail:

- whether the damage is attributable to mine subsidence
- supporting data (e.g. survey levels, photos)
- scope of works to repair if applicable
- cost estimate for scope of works if applicable.

If further clarification is required to determine the cause of damage, SA NSW will engage alternate specialists.

If the assessor determines that the damage is the result of mine subsidence, they will prepare a detailed scope of works and cost estimate as part of the CER. The scope of works must provide sufficient detail to enable a third party to fully understand the works.

7.6 SA NSW / Mine Proprietor review of draft reports

Prior to finalising the CER, the assessor will provide their report to SA NSW (in non-active mining areas) or provide to SA NSW to forward to the Mine Proprietor (in active mining areas) for consideration, comment and clarification before finalisation.

The CER is to be provided within **2 weeks** of the site inspection. Response from the Determining Body is required within **7 days**, with a counter response from the assessor within **7 days**.

7.6.1 Dispute of report findings

For procedural fairness, if the Mine Proprietor or SA NSW (in non-active mining areas) disagrees with the scope and/or content of the reports, there is an option for an alternative assessor to carry out a desktop peer review of the existing reports.

Mine Proprietors are to lodge a request for a peer review of the reports by another assessor with SA NSW via the portal within **4 weeks** of receiving the draft report. The Mine Proprietor has the right to nominate the expert peer reviewer from the Technical Panel. The Peer Review report is to be received within **2 weeks** of engagement. The Mine Proprietor is unable to request a third assessment and is required to determine the claim in accordance with the CER and cost estimate.

8 Determination of claim

The process for determining claims is the same for active and non-active coal mines. For the purposes of this guideline the 'Determining Body' is as follows:

- SA NSW – where mine subsidence is caused by non-active coal mines
- The relevant Mine Proprietor – where mine subsidence is caused by active coal mines.

Hence, the term 'Determining Body' referred to in this Guideline is either SA NSW or the Mine Proprietor, as appropriate.

The Determining Body must determine the claim in accordance with the CER. Out of pocket allowances may be applicable as indicated in **Appendix 1**.

8.1 Accepted claims

If the Determining Body accepts the claim, they are to prepare an offer of fair and reasonable compensation in accordance with the CER and any other eligible compensation. The offer determined must not be less than the cost estimate in the report. The scope of works accepted and the details of settlement are to be included in the offer.

The compensation is to allow the property owner to coordinate repairs. The compensation must be based on the assessment of damage to the property using a 'like for like' principle.

The monetary compensation model enables claims to be settled quickly and also benefits claimants by providing them with increased flexibility in choosing their preferred repairer and timeframe for repair.

In certain circumstances, alternatives to monetary compensation may be considered by the Determining Body. Refer to Appendix 2 for further information.

8.2 Claims not accepted

If the CER confirms that the claimed damage was not the result of mine subsidence, the Determining Body is not able to accept the claim. The Determining Body is to prepare a letter to the claimant advising that the claim has not been accepted and the reasons why.

8.3 Discrepancies between claim assessments and determination

If the Mine Proprietor fails to respond to a claim in accordance with this guideline, including determining the claim in accordance with the CER, SA NSW may step in and deal with the claim, including determining the claim.

In accordance with section 18 of the Act, prior to taking such action, SA NSW will notify the Mine Proprietor of the proposed course of action and provide them with **21 days** to make a submission regarding the proposed action.

8.4 Notifying the claimant of the determination

If the Determining Body is the Mine Proprietor, they must provide their determination and offer of compensation if applicable to SA NSW via the portal, within **4 weeks** of receiving the draft CER.

The SA NSW Case Advisor is to provide the letter of determination, offer of compensation, Deed of Release (if appropriate) and all reports to the claimant via the portal within **3 days**. The Case Advisor is to contact the claimant directly to notify them that the information is available.

8.5 Claimant response to determination

The claimant is to formally respond to the determination within **3 months** of receiving notice. SA NSW may extend this timeframe under exceptional circumstances e.g. bereavement, ill health, mental incapacity or overseas travel/posting.

The claimant may respond by accepting the determination or requesting an independent review.

If the claimant does not respond within **6 weeks** of the determination being provided, SA NSW will telephone the claimant to follow up on the offer. If a response has not been received within **3 months**, SA NSW will issue a reminder letter and telephone the claimant again. If the claimant does not respond within **4 months** of receiving notice, the SA NSW Case Advisor will place the claim on hold and notify the claimant in writing and over the phone that the claim is on hold pending contact from the claimant. SA NSW will also the Mine Proprietor in active mining areas.

8.5.1 Claimant agrees with determination and compensation offer

If the claimant accepts the outcome of the claim and the amount of compensation offered, the claim will progress to settlement.

8.5.2 Claimant disagrees with amount of compensation offered

The claimant may disagree with the compensation offer by notification to SA NSW. In this instance, SA NSW and, where applicable, the Mine Proprietor seek to fully understand the nature of the concern. Alternative pathways may be considered such as reassessing certain aspects of the claim or further consideration of the issues raised.

The Determining Body may revise the determination or alternatively confirm the original determination. The Determining Body prepares a letter within **14 days** of notification and SA NSW forwards this to the claimant within **3 days**.

If the claimant accepts the determination, the claim will progress to settlement. If the claimant still disagrees they can request an independent review of the claim by the Secretary of the Department of Finance, Services & Innovation (DFSI) or their delegate. The

Secretary's determination is binding and enforceable. Refer to Dispute Resolution for further information.

8.5.3 Claimant disagrees with decision in relation to the claim

If the claimant disagrees with the decision in relation to the claim and seeks reassessment by the Determining Body, the Determining Body must respond to the claimant within **14 days**. If there is no change to the determination, the claimant may request an independent review of the claim by the Secretary of DFSI or their delegate within **3 months** of the determination in accordance with section 15 of the Act. Refer to the Act and Dispute Resolution section of the Guidelines for further information.

9 Claim settlement

9.1 Deed of Acknowledgement, Release and Indemnity

If the claimant accepts the determination of the claim, the Determining Body may prepare a Deed of Acknowledgement, Release and Indemnity for it to enter into with the claimant. The Deed should cover:

- Releases and indemnities
- Requirement to disclose the claim and compensation to future purchasers
- Confidentiality
- Clear definition of what damage is being compensated for.

Claims for future damage or unclaimed damage that was not known to the claimant at the time of the claim must not be prevented by the deed.

9.1.1 Executing the deed

If the Determining Body is the Mine Proprietor, they are to provide the deed to SA NSW via the portal with the letter of determination and an Electronic Funds Transfer (EFT) form.

SA NSW will provide the deed, along with the EFT form, to the claimant for review and acceptance. Claimants are able to seek legal advice in relation to the deed (refer to Section 13.1.4 regarding out of pocket expenses for legal advice).

Claimants are to return the signed deed and completed EFT form to SA NSW. If the Determining Body is the Mine Proprietor, SA NSW will forward the signed deed and EFT form to the Mine Proprietor within **7 days** of receipt.

The Determining Body is to execute the deed within **14 days** of receipt and progress to paying compensation.

9.2 Paying compensation

SA NSW will provide the Determining Body's EFT form to the claimant at the same time as providing the letter of determination and the deed. The claimant is to complete the EFT form nominating an account for the compensation to be paid into and return the form to SA NSW with the signed deed.

The Determining Body is to pay the compensation to the account nominated by the claimant on the EFT form within **21 days** of the deed being executed (or other mechanism approved by SA NSW).

9.2.1 Option for staged compensation payments

In instances where the mine subsidence damage necessitates the demolition and rebuilding of a dwelling, the Determining Body may elect to pay compensation in stages. Staged

payments provide claimants with sufficient funds to commission a new home while providing incentive for mine subsidence damage to be dealt with appropriately.

The details of any staged payments are to be included in the deed of release. An example of staged compensation payments could be providing 25% of the payment upon execution of the deed and providing the remaining 75% once confirmation is received that the damaged property has been demolished.

10 Dispute resolution

Dispute resolution pathways are available for the claimant. Dispute resolution for mine subsidence claims comprise of a binding review by the Secretary of DFSI (the Secretary or their delegate) and appeal rights to the Land and Environment Court.

Reviews may be requested of the Determining Body's determination:

a) as to whether damage has arisen from mine subsidence;
b) the scope of repairs or amount of compensation; or
c) the means of compensation.

The claimant has **3 months** from the date of determination to accept the claim determination or seek an independent review.

10.1 Independent review process

10.1.1 Requesting a review

Claimants can lodge request for independent review with SA NSW via the portal. SA NSW will notify the Secretary and Mine Proprietor (where applicable) of the request for review within **7 days** of receipt.

The SA NSW Case Advisor will gather information relating to the claim being:

- any previous compensation received in relation to mine subsidence to the subject property;
- copies of the prescribed claims information that were submitted, and copies of any advice received from the Determining Body in relation to the claim.

As part of the independent review, both the claimant and Determining Body are to prepare a position statement detailing the reasons for requesting the review/making the claim determination.

10.1.2 Claimant position statement

Upon receiving a request for an independent review, SA NSW will advise the claimant to provide a position statement. The claimant must provide the position statement within **30 days** of receiving notification by SA NSW.

The claimant's position statement must:

- Specify the name and contact details of the claimant and preferred means of contact;
- Outline the nature of the dispute including:
  - the aspects of the determination or proposed compensation which the claimant does not accept;
  - a brief summary of the reasons why the claimant does not accept the determination or compensation;
  - the compensation which the claimant proposes as acceptable, whether in monetary or non-monetary (e.g. repair works) form and how it has been determined.
- Include other information supporting their position such as the:
  - nature and author of any specialist reports and the reasons for reliance on the reports (including the relevance of the report to the issues which the claimant believes will arise in the review);
  - details of previous claims and correspondence;
  - other information to support their position.

The claimant is to provide their completed position statement to SA NSW to progress the review. If the Determining Body is the Mine Proprietor, SA NSW will forward the claimant's position paper to the Mine Proprietor for response via the portal.

If the claimant does not provide a position statement to SA NSW within 30 days of the request by SA NSW, the independent review process is terminated and the original determination stands.

10.1.3 Determining Body's position statement

Once the claimant's position statement has been received, SA NSW will provide this to the Determining Body and the Determining Body is to prepare a position statement in response within **14 days**.

The Determining Body's position statement is to:

- specify the name and contact details of the Determining Body and preferred means of contact;
- provide a detailed description of the mining activity that is being carried out under or in proximity to the property, including a map showing the mine in relation to the property;
- specify the compensation which the Mine Proprietor proposes (whether in monetary or non-monetary (e.g. works) form, or both and how it has been determined;
- nature and author of any expert reports and the reasons for reliance on the reports (including the relevance of the report to the issues which the Determining Body believes will arise in the review);
- provide a summary of the correspondence with the claimant, including a timeline and any relevant documentation;
- include other documentation as appropriate.

If the Determining Body is the Mine Proprietor, they are to provide their position statement to SA NSW to progress the review.

Once the Determining Body has completed their position statement, SA NSW will forward a copy to the claimant within **7 days** for their reference.

10.2 Settlement prior to Secretary determination

Upon receiving a claimant's position statement, the Determining Body may reconsider and revise their determination. If the claimant accepts the revised determination, the claimant can settle the claim by entering into a deed of release with the Determining Body prior to the determination of the Secretary or their delegate. Refer to Claim Settlement for further information.

If the Determining Body does not reconsider its determination, the matter will progress to the Secretary for an independent review and determination.

10.3 Secretary's determination

SA NSW will provide both the position statements of the Determining Body and the claimant to the Secretary (or their delegate) along with any other relevant information.

The Secretary will review the position statements and documents from the assessment of the claim, including the CER, cost estimate, desktop analysis, preliminary assessment and any other investigations conducted. Further investigations and information may also be requested by the Secretary.

The Secretary will provide a determination within **3 months** of receiving notice of the claimant's request for review. The determination will include a written summary of the reasons for the decision which will be provided to the claimant and Determining Body.

In accordance with section 15 of the Act, the Secretary's determination is binding. This means all parties are bound by the Secretary's determination. E.g., if the Secretary determines that the amount of compensation is less than the Determining Body's original determination, the claimant is unable to revert to the original offer. However, both the claimant and Mine Proprietor can appeal the Secretary's decision in the Land and Environment Court (LEC) in accordance with section 16 of the Act.

10.3.1 Costs associated with the independent review

The Secretary will make a determination on the costs associated with the independent review process. The Secretary may determine that costs are to be paid by the Mine Proprietor or met by the Fund or require a contribution from the claimant.

10.4 Appeals to the Land and Environment Court

Section 16 of the Act allows claimants and Mine Proprietors to appeal against the Secretary's determination to the LEC within **3 months** of the Secretary's determination date (post independent review).

Appeals can be made to the LEC against the Secretary's decision on the following grounds only:

a) whether damage has arisen from subsidence

b) the amount of compensation

c) where a claim for preventative or mitigative works has been rejected.

Further information on the LEC is available at www.lec.justice.nsw.gov.au.

11 Administration

11.1 Record keeping

SA NSW will store information on claims and act as a repository for data on claims, costs and compensation outcomes.

In active mining areas, the Mine Proprietor is required to upload all documentation in relation to the final compensation to the portal. Alternatively, the Mine Proprietor may provide this information to the SA NSW Case Advisor.

11.2 Reporting

SA NSW will report internally on a number of aspects of the claims management process to ensure these guidelines are being adhered to.

Claimants can also provide feedback to SA NSW on any aspect of the mine subsidence claims management process. The SA NSW Case Advisor will send an online claim feedback survey to the claimant and Mine Proprietor seeking feedback on the claim process within **7 days** of a claim being finalised. Information from these surveys is reviewed and acted upon accordingly to ensure continuous improvement.

11.3 Compliance and enforcement

SA NSW will monitor compliance with these guidelines as part of SA NSW's commitment to provide a fair and efficient compensation scheme, and eliminate danger to the community from mine subsidence related events.

In the event of non-compliance, the appropriate level of enforcement will be taken in accordance with SA NSW's *Compliance and Enforcement Policy*.

In accordance with section 18 of the Act, if the Mine Proprietor does not deal with the claim in accordance with the Act, including determining the claim in accordance with this guideline, SA NSW may exercise its powers to step in and determine the claim.

If SA NSW determines the claim and pays compensation due to the Mine Proprietor's failure to do so, SA NSW will take steps to recover the compensation and any other costs associated with the claim from the Mine Proprietor.

12 Summary of timeframes

The table below summarises the main actions and associated timeframes under the subsidence compensation process. References to 'days' should be read as calendar days.

Those timeframes in **red** are statutory timeframes under the Act.

ACTION	TIMEFRAME
EMERGENCIES	
Claimant contacts NSW if there is an emergency subsidence incident	**Immediately**
SA NSW to respond to emergency subsidence incidents	**Within 24 hours of receiving notification**
SA NSW to notify Mine Proprietor of **emergency actions undertaken and subsequent, urge**nt or temporary repairs	**Within 24 hours of inspection**
Work determined to be 'urgent', will be addressed and completed by Mine Proprietor or SA NSW on their behalf	**Within 14 days of claim being determined urgent**
LODGEMENT	
Claimant lodges a claim in the SA NSW subsidence claims portal for compensation	**Within 12 months of the damage becoming known**
SA NSW to advise claimant if claim is not accepted due to the property being outside the mining area of influence	**Within 14 days of claim lodgement**
SA NSW to respond to claimant and advise the Mine Proprietor of claim	**Within 7 days of claim lodgement**
Mine Proprietor requests Secretary review on SA NSW's decision that the claim is attributable to their operations	**Within 3 weeks after the date on which claim was notified**
ASSESSMENT	
Claim assessment process completed and offer of compensation provided (when ground movements have ceased)	**Within 90 days of site assessment**
Claimant accepts or refuses the determination	**Within 3 months of receiving the determination**
INDEPENDENT DETERMINATION	
Claimant requests Secretary review	**Within 3 months of determination**
SA NSW notifies the Secretary and the Determining Body of the request	**Within 7 days of receiving the request**
The claimant provides Position Statement to Secretary	**Within 30 days of receiving the notification**
Determining Body provides a Position Statement to Secretary	**Within 14 days of receiving the Claimant's position statement**

Secretary determination completed and provided to Claimant and Determining Body	**Within 90 days of receiving the notification**
APPEAL TO LEC	
Either the Mine Proprietor or claimant lodges an appeal in the LEC	**Within 3 months of receiving notification of the Secretary's decision**

TIMEFRAME FOR CLAIM PROCESS – ACTIVE and NON-ACTIVE MINING AREAS

Reference: Section of Guidelines	Process Step	Timeframe
4.6	SA NSW to provide property owner with notice of mandatory external PMI	14 days (2 weeks) prior to inspection unless all parties agree to a shorter notice period
6.1	SA NSW to allocate a Case Advisor to a claim	Within **3 days** of claim lodgement
6.2	SA NSW to advise Claimant if claim is refused due to the property being outside the mining area of influence	Within **14 days** (2 weeks) of claim lodgement
6.4	SA NSW notifies Mine Proprietor claim lodged in their area of influence	Within **7 days** (1 week) of claim lodgement
6.4	Mine Proprietor acknowledges claim is within the zone of their operations or requests further information	Within **7 days** (1 week) of claim notification or receiving additional information requested from SA NSW
6.4.1	SA NSW to respond to Mine Proprietors request for information	Within **7 days** (1 week) of Mine Proprietors request
6.4.2	Mine Proprietor requests independent review of decision that a claim is within the zone of their operations	Within **21 days** (3 weeks) of being notified
6.5	Mine Proprietor to advise SA NSW of meeting with claimant	At least **2 days** prior to meeting
7.1 and 7.2	Determination of claim for active/non-active mining areas	Within **3 months** of the site investigation (unless otherwise approved by SA NSW)

7.4	Technical Assessor to **inspect property**	Within **28 days** (4 weeks) of claim lodgement (non-active mines) or subsidence ceasing (active mines)
7.4.1	SA NSW to provide claimant and Mine Proprietor with notice of property inspection	At least **5 days** prior to inspection unless otherwise agreed by all parties
7.6	Assessor to provide **draft CER to SA NSW**	Within **14 days** (2 weeks) of site inspection
7.6	SA NSW / Mine Proprietor to provide comments on report to assessor	Within **7 days** (1 week) of receiving the draft report
7.6	Assessor to address Mine Proprietor / SA NSW comments	Within **7 days** (1 week) of receiving the comments
7.6.1	If the Mine Proprietor disagrees assessment, they can request a desktop peer review of report	Within **28 days** (4 weeks) of receiving the draft report
7.6.1	Assessor carrying out desktop peer review to provide report	Within **14 days** (2 weeks) of engagement
8.4	Mine Proprietor to provide **determination and Letter of offer/refusal** to SA NSW	Within **42 days** (6 weeks) of receiving all information
8.4	SA NSW to **forward letter of offer/refusal** to claimant and follow up with a phone call	Within **3 days** of receiving all information
8.5	Claimant to **accept or refuse** offer / determination	Within **3 months** of receiving letter
9.1.1	SA NSW to forward signed Deed and EFT form to Mine Proprietor for active mines	Within **7 days** (1 week) of receipt
9.1.1	Determining body to execute (counter-sign) Deed	Within **14 days** (2 weeks) of receipt
9.2	**Determining body to pay compensation** to claimant	Within **21 days days** (3 weeks) of the Deed being executed i.e. counter-signed by Determining body
8.5.2 / 8.5.3	Claimant may seek clarification or reassessment of determination or compensation offer	Within 3 months of receiving determination / compensation offer
	Determining body to respond to claimant request for clarification or reassessment	Determining body to prepare response within 14 days (2 weeks) of notification

		SA NSW to forward response to claimant within **3 days** of receipt
	If no response received from Claimant, Case Advisor to **follow up with claimant** to touch base with phone call	After **6 weeks** of letter of offer
	If no response received, Case Advisor to **follow up with claimant** with phone call and letter	After **3 months** of letter of offer
8.5	If no response received to follow up letter, SA NSW to **follow up with claimant** with phone call and reminder letter advising the claim has been put on hold and awaits instruction from the claimant.	After **4 months** of letter of offer
11.2	SA NSW to send **feedback survey** sent to claimant and Mine Proprietor	Within **7 days** (1 week) of claim being finalised

13 Appendix 1: Items eligible for compensation

Legislation provides for compensation for “improvements” and “goods” damaged by mine subsidence.

Goods are defined as “any fittings or fixtures within the property” (e.g., carpets, curtains, light fittings) Household effects do not include fridge, motor vehicles, boats or aircraft, etc.

Improvements are defined as “any building or work erected or constructed on land”.

Compensation for damaged goods should provide adequate compensation to return the household effect to its pre-existing condition. Where this is not possible, refer to the section entitled “How to Determine Fair Compensation – Like for Like”.

Compensation extends to any damage or defects sustained as a result of repairs that are project managed on behalf of the claimant. Reasonable variations are paid by the Determining Body. In the case of SA NSW project managing repairs on behalf of the Mine Proprietor, and the Mine Proprietor does not agree with the variations, they are able to seek determination by the Secretary.

Reasonable out of pocket expenses associated with the claim are also compensated as detailed below.

13.1 Out of Pocket Expenses associated with Mine Subsidence Claims

Typical out of pocket expenses that may be eligible for compensation are detailed below. Cost estimates for these items are undertaken by the assessor from the Technical Panel, with the exception of a legal allowance.

13.1.1 Relocation expenses

Where applicable, a provision for relocation expenses should be made to the claimant, taking into account the volume of goods and distance to relocate.

13.1.2 Temporary accommodation expenses

Where claimants are required to relocate from their property for repairs to be undertaken, a provision for temporary accommodation expenses is provided. Fair compensation is based on guidance from the CER indicating the length of time for repairs to be undertaken. A cost estimate takes into consideration an equivalent sized property within the local area and minimum lease periods available.

Fair compensation is considered for other reasonable expenses incurred with a relocation, such as temporary storage of household effects that may not be accommodated in the new property.

13.1.3 Utility connection and disconnection fees

A provision is provided to the claimant for the disconnection and reconnection of utilities while the claimant is relocated out of their home.

13.1.4 Legal expenses

A provision for legal expenses is applicable where claimants are required to sign a Deed of Acknowledgement, Release and Indemnity. A provision of $1,000 + GST is recommended so the claimant can seek independent legal advice. This amount can be reviewed on merit.

For all claims where a property is being acquired, a provision of $6,000 should be provided to the claimant to cover conveyancing costs and other miscellaneous costs associated with the sale, such as mortgage discharge costs, pest and building reports. This amount can be reviewed on merit.

13.1.5 Other expenses relevant to property acquisition

A provision for stamp duty, equivalent to the purchase price of the sale, should be provided to the claimant where a property is being acquired.

13.1.6 Loss of rent for investment properties impacted by subsidence

Where a damaged property is used as an investment property and becomes uninhabitable due to mine subsidence damages, an amount equivalent to the rent which would have been payable should be provided to the claimant. The Technical Assessor determines if the property is uninhabitable.

Tenants are not claimants, and are therefore ineligible for compensation under the Act.

13.1.7 Compensation for other reasonable costs associated with the claim

Claimants should not be adversely impacted by mine subsidence damage, therefore, compensation should be considered for other reasonable requests (e.g. respite care for a disabled family member, extra storage for antique vintage cars, kennelling of dogs with a dog breeding business where yard space is reduced due to repairs).

Consideration of additional requests for compensation will require evidence such as receipts/quotes from the claimant.

13.1.8 Items ineligible for compensation

Items that are not damaged by mine subsidence, but could potentially be used in the repair process may be salvaged and therefore are considered an item ineligible for compensation.

E.g. A house requiring demolition may include salvageable items that could be used in the rebuilt home. Salvageable items may include solar panels, bathroom fittings, kitchen appliances, hot water systems and bespoke items, etc. Compensation may be required to store salvageable items during the rebuild process.

Other items ineligible for compensation under the Act include; time off work, phone bills and intangible items such as emotional distress.

13.2 How to determine fair compensation

Legislation requires that damaged land or improvements are restored to a condition as practicably equivalent to that in which such land or improvements were, before the damage arose. To ensure claimants are fairly compensated, a ‘like for like’ principle for the provision of compensation is adopted.

13.2.1 Determining ‘like for like’

The overriding factor in determining what constitutes ‘like for like’ is the budgeted cost of the replacement property/repair work to return the property to its condition prior to being damaged by mine subsidence. This includes landscaping, fit out, window furnishings and similar finishes.

The ‘like for like’ principle means that the size, inclusions or quality of finishes to a replacement dwelling or repairs, must be equivalent to that which was damaged. However, the Determining Body has discretion to accommodate minor modifications requested by the claimant where the project remains within the overall budget.

Where ‘like for like’ is not available, the closest reasonable solution or modern equivalent should to be adopted. E.g. where a bathroom is damaged and the specific tiles requiring repair are no longer available, compensation for similar quality tiles should be provided.

Compensation or replacement for older items should be of the same functionality and quality, but not necessarily the same costs associated when it was new. E.g. in a demolition and rebuild - a top of the range oven that is 30 years old should be replaced with a new oven with the same quality and functionality when it was damaged.

14 Appendix 2: Alternatives to monetary compensation

The preferred mechanism for compensation provided to the claimant relating to damaged improvements is monetary compensation, and is the basis of this guideline.

There may be circumstances where the Determining Body may exercise its discretion to offer the claimant alternatives to monetary compensation to settle a claim. Such alternatives include:

- project managing repairs or property demolition and rebuild
- purchasing a property.

Circumstances where these options might be applicable include extensive damage to the property or extenuating circumstances such as elderly people, ill health, etc.

14.1 Project Management of repairs

In circumstances where the repairs are being project managed by the Determining Body or delegate, the CER or Quantity Surveyors report on the original home should be considered as the budget for compensation. If a cheaper solution has been agreed between the claimant and Determining Body, the costs associated with 'like for like' should be considered as part of the overall settlement. Reasonable upgrades to original fixtures should be considered in good faith, provided they are within the overall budget.

The claimant must not have any direct agreements with contractors for repair/rebuilding works. All agreements with contractors must be through the Project Manager. Refer to SA NSW's procurement policies and procedures for further information.

14.2 Claimant contributions for additional inclusions

There may be instances where a claimant requests to self-fund the inclusion of an additional component in the rebuild/repair of a property, if it exceeds the approved budget/funding. Where such an inclusion would not have any material impact, the Determining Body may use its discretion to accommodate the claimant's request. Likewise, if the request were to significantly alter resource requirements or timeframes, the Determining Body may refuse the request.

Where the Determining Body agrees for the claimant to self-fund the inclusion of an additional component, the claimant must pay the required amount to the Determining Body or delegate, prior to any work commencing.

14.3 Purchase of property

In appropriate circumstances, such as extensive damage, the Determining Body may consider purchasing a property that has been damaged by mine subsidence. The purchase offer is based on market value of the property, without damage by mine subsidence.

Should the claimant not be satisfied with the purchase price offer, the claimant can seek an independent review and determination (refer to Dispute Resolution).

14.4 Other mechanisms for compensation

Compensation should not be provided for items that can be claimed under different legislation.

Part 13 of the *Mining Act 1992* contains wide ranging compensation provisions to ensure that landholders are not financially disadvantaged by mining or prospecting operations.

Further information relating to landholders' rights, access arrangements and compensation under the *Mining Act 1992* can be obtained from the Department of Planning and Environment http://www.resourcesandenergy.nsw.gov.au.

15 Code of Ethics

All activities must be conducted in an ethical and transparent manner and comply with the values, principles and articles in the DFSI Code of Ethics and Conduct and equivalent Code, of the Mine Proprietor.

SA NSW staff will ensure they are not, or are not perceived to be, in a conflict of interest with any claimant or supplier. Those staff that have, or may be perceived to have, a vested interest in the outcome of a decision or purchase will:

- disclose any conflict to their manager
- discuss whether they should exclude themselves from the claim process
- record the conflict of interest in the Conflicts Register.

Refer to DFSI Code of Ethics & Conduct for the process on how to disclose a conflict of interest.