

South Australia

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SURVIVAL OF CAUSES OF ACTION ACT 1940

An Act to amend the law as to the effect of death in relation to causes of action.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **10 March 2003**.*

Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.

SURVIVAL OF CAUSES OF ACTION ACT 1940

being

Survival of Causes of Action Act 1940 No. 63 of 1940
[Assented to 5 December 1940]

as amended by

Survival of Causes of Action Act Amendment Act 1982 No. 86 of 1982 [Assented to 7 October 1982]

Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 No. 41 of 2001 [Assented to 3 August 2001]¹

Survival of Causes of Action (Dust-Related Conditions) Amendment Act 2001 No. 49 of 2001 [Assented to 11 October 2001]

Law Reform (Delay in Resolution of Personal Injury Claims) Act 2002 No. 38 of 2002 [Assented to 28 November 2002]²

¹ Section 9(2) came into operation 16 August 2001: *Gaz.* 16 August 2001, p. 3046.

² **Section 3 came into operation 10 March 2003: *Gaz.* 13 February 2003, p. 581.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

SUMMARY OF PROVISIONS

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LEGISLATIVE HISTORY**

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Survival of Causes of Action Act 1940*.

Survival of causes of action

2. (1) Subject to this Act—
 - (a) a cause of action vested in a person at the time of his or her death survives for the benefit of his or her estate; and
 - (b) a cause of action existing against a person at the time of his or her death survives against his or her estate.
- (2) This section does not apply to a cause of action in defamation.

Damages in actions which survive under this Act

3. (1) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

- (a) shall not include damages for—
 - (i) pain or suffering;
 - (ii) bodily or mental harm;
 - (iii) the curtailment of expectation of life;
 - (iv) the loss of capacity to earn, or the loss of probable future earnings, in respect of the period for which the deceased person would have survived but for the act or omission that gave rise to the cause of action;
- (b) shall not include any exemplary damages;

* * * * *

- (d) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(2) However, if a person commences an action for damages in respect of a dust-related condition and dies as a result of that condition before the action is finally determined, damages for pain and suffering, bodily and mental harm, and curtailment of expectation of life, are recoverable for the benefit of the estate of the person.

- (3) In subsection (2)—

"dust-related condition" means—

- (a) a disease specified in the Schedule; or
- (b) any other pathological condition of the lungs, pleura or peritoneum that is attributable to dust.

Conditions precedent to survival of cause of action

4. No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this Act has survived against the estate of a deceased person, unless either—

- (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
- (b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his executor or administrator took out probate or letters of administration.

Provision for cases where person liable dies before or at time of damage

5. Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

Saving of other rights

6. (1) This Act does not derogate from the rights of the dependants of a deceased person to bring an action in respect of the death of the deceased.

(2) The *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* applies to a cause of action that survives for or against the estate of a deceased person under this Act.

Repeals

7. The following enactments shall cease to have effect as part of the law of South Australia:

- (a) the Statute 13 Edw. 1, c. 23;
- (b) the Statute 4 Edw. 3, c. 7;
- (c) section 2 of *The Civil Procedure Act 1833* (3 and 4 Will. 4, c. 42).

Schedule—Prescribed dust diseases

Aluminosis
Asbestosis
Asbestos induced carcinoma
Asbestos related pleural diseases
Bagassosis
Berylliosis
Byssinosis
Coal dust pneumoconiosis
Farmers' lung
Hard metal pneumoconiosis
Mesothelioma
Silicosis
Silico-tuberculosis
Talcosis

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APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

*(Transitional provision from Survival of Causes of Action (Dust-Related Conditions)
Amendment Act 2001, s. 5)*

5. The amendments made to the principal Act by this Part extend to actions commenced before the commencement of this Act, other than any action that has been finalised by a judgement of a court (whether or not the judgement is subject to an appeal), or settled or withdrawn, before the commencement of this Act.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 2:	substituted by 38, 2002, s. 3(a)
Section 3(1):	amended and redesignated as s. 3(1) by 86, 1982, s. 2
(previously section 3)	
Section 3(1)(c):	repealed by 38, 2002, s. 3(b)
Section 3(2):	inserted by 86, 1982, s. 2(b); substituted by 49, 2001, s. 3
Section 3(3):	inserted by 49, 2001, s. 3
Section 6:	substituted by 41, 2001, s. 9(2)
Schedule:	inserted by 49, 2001, s. 4