

South Australia

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.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

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

2—Survival of causes of action

- (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.

3—Damages in actions which survive under this Act

- (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, and exemplary damages, 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.

4—Conditions precedent to survival of cause of action

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.

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

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.

6—Saving of other rights

- (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.

7—Repeals

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

Legislative history

Notes

- 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.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1940	63	<i>Survival of Causes of Action Act 1940</i>	5.12.1940	5.12.1940
1982	86	<i>Survival of Causes of Action Act Amendment Act 1982</i>	7.10.1982	7.10.1982
2001	41	<i>Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001</i>	3.8.2001	s 9(2)—16.8.2001 (<i>Gazette 16.8.2001 p3046</i>)
2001	49	<i>Survival of Causes of Action (Dust-Related Conditions) Amendment Act 2001</i>	11.10.2001	11.10.2001
2002	38	<i>Law Reform (Delay in Resolution of Personal Injury Claims) Act 2002</i>	28.11.2002	s 3—10.3.2003 (<i>Gazette 13.2.2003 p581</i>)
2005	78	<i>Dust Diseases Act 2005</i>	8.12.2005	Sch 1 (cl 3)—8.2.2006: s 2

Provisions amended since 3 February 1976

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
s 2	substituted by 38/2002 s 3(a)	10.3.2003
s 3		
s 3(1)	s 3 amended and redesignated as s 3(1) by 86/1982 s 2	7.10.1982
	(c) deleted by 38/2002 s 3(b)	10.3.2003
s 3(2)	inserted by 86/1982 s 2(b)	7.10.1982
	substituted by 49/2001 s 3	11.10.2001
	amended by 78/2005 Sch 1 cl 3	8.2.2006
s 3(3)	inserted by 49/2001 s 3	11.10.2001
s 6	substituted by 41/2001 s 9(2)	16.8.2001
Sch	inserted by 49/2001 s 4	11.10.2001

Transitional etc provisions associated with Act or amendments

Survival of Causes of Action (Dust-Related Conditions) Amendment Act 2001

5—Transitional provision

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.

Historical versions

Reprint No 1—15.1.1992

Reprint No 2—16.8.2001

Reprint No 3—11.10.2001

Reprint No 4—10.3.2003