

## **Legislative Council—No 127A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 29 November 2005

South Australia

# **Dust Diseases Bill 2005**

A BILL FOR

An Act to provide more expeditious remedies for those suffering from disabilities resulting from exposure to dust; and for other purposes.

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## Contents

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Object of this Act
- 5 Abolition of limitation of action
- 6 The Dust Diseases Tribunal
- 7 Transfer of actions to the Dust Diseases Tribunal
- 8 Costs
- 9 Special rules of evidence and procedure
- 10 Damages
- 11 Causation where multiple defendants or insurers involved
- 12 Procedure where multiple defendants or insurers involved
- 13 Certain provisions of the *Corporations Act 2001* of the Commonwealth do not apply

### Schedule 1—Related amendment and transitional provision

#### Part 1—Amendment of *Civil Liability Act 1936*

- 1 Amendment of section 24—How to bring action etc

#### Part 2—Transitional provision

- 2 Transitional provision
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## The Parliament of South Australia enacts as follows:

### 1—Short title

This Act may be cited as the *Dust Diseases Act 2005*.

### 2—Commencement

5 This Act will come into operation 2 months after assent, or on an earlier day to be fixed by proclamation.

### 3—Interpretation

In this Act, unless the contrary intention appears—

*damages* includes any form of compensation;

10 *dust* means asbestos, silica or another substance that can give rise to a dust disease and includes a substance declared by regulation to be within the ambit of this definition;

*dust disease* means one or more of the following:

- (a) asbestosis;
- (b) asbestos induced carcinoma;
- (c) asbestos related pleural disease;
- 15 (d) berylliosis;
- (e) mesothelioma;

- (f) silica-induced carcinoma;
- (g) silicosis;
- (h) silico-tuberculosis;
- (i) any other disease or pathological condition resulting from exposure to dust;
- (j) any other disease or pathological condition declared by the regulations to be within the ambit of this definition;

*dust disease action* means a civil action in which the plaintiff—

- (a) claims damages for or in relation to a dust disease or the death of a person as a result of a dust disease; and
- (b) asserts that the dust disease was wholly or partly attributable to a breach of duty owed to the person who suffered the disease by another person;

*Dust Diseases Tribunal* or *Tribunal* means the division of the District Court under that name;

*injured person* means a person who is suffering from, or who has suffered from, a dust disease.

#### 4—Object of this Act

The object of this Act is to ensure that residents of this State who claim rights of action for, or in relation to, dust diseases—

- (a) have access to procedures that are expeditious and unencumbered by unnecessary formalities of an evidentiary or procedural kind; and
- (b) have essentially the same legal and procedural advantages as are available in the Dust Diseases Tribunal of New South Wales.

#### 5—Abolition of limitation of action

No temporal limitation applies to a dust disease action.

#### 6—The Dust Diseases Tribunal

- (1) A separate division of the District Court is to be established for dealing with dust disease actions.
- (2) The separate division is to be called the *Dust Diseases Tribunal*.
- (3) The procedure in the Dust Diseases Tribunal is, subject to this Act, to correspond as nearly as practicable to the procedure in the Dust Diseases Tribunal of New South Wales.
- (4) The Chief Judge of the District Court is to make special rules of court for dealing with dust disease actions to give effect to subsection (3) and, until such rules are made, each dust disease action will be assigned to a judge or master who will give the necessary directions to ensure, as far as practicable, that the action progresses through the Tribunal and is dealt with in the same way as a corresponding action before the Dust Diseases Tribunal of New South Wales.

## 7—Transfer of actions to the Dust Diseases Tribunal

- (1) A dust disease action commenced in the District Court before the commencement of this Act will be transferred to the Dust Diseases Tribunal.
- (2) A dust disease action commenced in the Magistrates Court or the Supreme Court before the commencement of this Act will, on the application of any party, be transferred to the Dust Diseases Tribunal.

## 8—Costs

- (1) Costs of proceedings before the Dust Diseases Tribunal will be allowed or awarded on the same basis as for other actions in the District Court.
- (2) However, costs of an action that falls within the jurisdictional limits of the Magistrates Court will be allowed or awarded on the same basis as for a civil action in the Magistrates Court.

## 9—Special rules of evidence and procedure

- (1) The following rules apply in the Dust Diseases Tribunal:
  - (a) the Tribunal may admit evidence admitted in any earlier dust disease action before the Tribunal, a court or the Dust Diseases Tribunal of New South Wales as evidence in an action before the Tribunal whether or not the earlier action was between the same parties;
  - (b) the Tribunal may dispense with proof of any matter that appears to the Tribunal to be not seriously in dispute;
  - (c) the Tribunal may invite a party to admit facts of a formal nature, or facts that are peripheral to the major issues in dispute, and, if the party declines to do so, award the costs of proving those facts against the party.
- (2) A plaintiff in a dust disease action is not required to give notice of a proposed claim to the defendant.
- (3) Once issues of a general nature have been established by decision of the Tribunal, by decision of the Dust Diseases Tribunal of New South Wales or by decision of a court or tribunal of co-ordinate jurisdiction, the Tribunal will not permit the issues to be re-litigated unless it is of the opinion that it is in the interests of justice to do so.
- (4) The Tribunal must not refer a dust disease action for mediation unless the plaintiff asks for mediation.

## 10—Damages

- (1) If it is proved or admitted in a dust disease action that an injured person may, at some time in the future, develop another dust disease wholly or partly as a result of the breach of duty giving rise to the cause of action, the Tribunal may—
  - (a) award, in the first instance, damages for the dust disease assessed on the assumption that the injured person will not develop another dust disease; and
  - (b) award damages at a future date if the injured person does develop another dust disease.
- (2) The Tribunal may order a defendant to make interim payments to the plaintiff on account of damages yet to be assessed.

- (3) In determining damages in a dust disease action, the Tribunal must have regard to, and seek consistency with, awards in corresponding actions before the Dust Diseases Tribunal of New South Wales.
- 5 (4) Despite any other Act or law, the Tribunal must, when determining damages in a dust disease action, compensate any loss or impairment of the injured person's capacity to perform domestic services (for the injured person or another person).
- (5) The amount of the damages referred to in subsection (4) is to be determined on the basis of the costs (at commercial rates) that the injured person would be obliged to pay if another person were to perform the domestic services on his or her behalf.
- 10 (6) Subsection (4) applies even though the injured person has not been, and will not be, obliged to pay another to perform the domestic services on his or her behalf.

### 11—Causation where multiple defendants or insurers involved

- (1) This section applies for the purpose of apportioning liability between defendants or between insurers where a dust disease action involves multiple defendants or multiple insurers.
- 15 (2) If a person (the *injured person*) is exposed to dust by another person, or by other persons, in breach of its or their duty and the injured person suffers a dust disease in consequence of that exposure, the dust disease will be taken to consist of a series of injuries of equal seriousness—1 arising on each day of the wrongful exposure of the injured person to dust.
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### 12—Procedure where multiple defendants or insurers involved

- (1) If a dust disease action is brought against 2 or more defendants, and 1 or more of the defendants is insured, the Tribunal will appoint 1 of the defendants to represent all defendants.
- 25 (2) A defendant appointed to represent all defendants under subsection (1) (the *representative defendant*) must be a defendant who is insured against the liability asserted by the plaintiff.
- (3) If a defendant exposed the plaintiff to dust over a particular period and was insured against liability for doing so by different insurers for different parts of the period, the Tribunal will appoint 1 of the insurers to be the *designated insurer* for the purposes of the action.
- 30 (4) For the purpose of determining liability and quantum of liability, the designated insurer represents—
- (a) the insured defendant and all other insurers of the defendant; and
- 35 (b) if that defendant represents other defendants—the other defendants and their insurers (if any).
- (5) The Tribunal will determine questions of liability and quantum of liability to the plaintiff before dealing with questions of contribution between defendants or insurers.
- 40 (6) Judgment, and any orders for interim payment, will be given in the first instance against the representative defendant (even though that defendant may be later found, in the contribution proceedings, not to be liable on the claim and thus entitled to a complete indemnity from the other defendants).

### **13—Certain provisions of the *Corporations Act 2001* of the Commonwealth do not apply**

- (1) A person may, without permission of any court, begin or proceed with—
- (a) a dust disease action against a company; or
  - (b) a proceeding to enforce a judgment in such an action (by execution against property of the company or in any other way),
- even though the company is being wound up (in insolvency or by the Court), a resolution for voluntary winding up has been passed, or a provisional liquidator is acting.
- (2) The matter referred to in subsection (1) is an excluded matter for the purposes of section 471B and section 500(2) of the *Corporations Act 2001* of the Commonwealth.

## **Schedule 1—Related amendment and transitional provision**

### **Part 1—Amendment of *Civil Liability Act 1936***

#### **1—Amendment of section 24—How to bring action etc**

Section 24(2aa)—after paragraph (e) insert:

- (e) any sum recovered or recoverable for the benefit of the estate of the deceased under section 3(2) of the *Survival of Causes of Action Act 1940* (which permits the recovery of damages for certain kinds of non-economic loss where the deceased dies of a dust-related condition).

### **Part 2—Transitional provision**

#### **2—Transitional provision**

- (1) The amendments made by this Act apply to causes of action arising and actions commenced before or after the commencement of this Act.
- (2) However, this Act does not affect the rules of procedure for an action if the trial had commenced before the commencement of this Act.
- (3) To avoid doubt, it is the intention of Parliament that the amendments made by this Act that confer substantive rights on a person apply in an action commenced by the person (in the State or elsewhere) before the commencement of this Act unless there has been a final determination of the plaintiff's rights by judgment or the plaintiff has agreed to a settlement of the action.