

Legislative Council

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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.

Contents

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Object of this Act
- 5 District Court to ensure expeditious hearing and determination of dust disease actions
- 6 Transfer of actions to the District Court
- 7 Costs
- 8 Evidentiary presumptions and special rules of evidence and procedure
- 9 Damages
- 10 Procedure where several defendants or insurers involved
- 11 Dust disease action may be brought directly against insurer in certain cases
- 12 Regulations

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—Amendment of *Limitation of Actions Act 1936*

- 2 Amendment of section 36—Personal injuries

Part 3—Amendment of *Survival of Causes of Action Act 1940*

- 3 Amendment of section 3—Damages in actions which survive under this Act

Part 4—Transitional provision

- 4 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

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—

defendant includes a third-party against whom contribution is sought;

dust disease means one or more of the following:

- (a) asbestosis;
- (b) asbestos induced carcinoma;
- (c) asbestos related pleural disease;
- (d) mesothelioma;
- (e) any other disease or pathological condition resulting from exposure to asbestos dust;

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;

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 have access to procedures that are expeditious and unencumbered by unnecessary formalities of an evidentiary or procedural kind.

5—District Court to ensure expeditious hearing and determination of dust disease actions

The District Court will give the necessary directions to ensure that dust disease actions have priority over less urgent cases and are dealt with as expeditiously as the proper administration of justice allows.

6—Transfer of actions to the District Court

A dust disease action commenced in the Magistrates Court or the Supreme Court before the commencement of this Act will, on application by any party, be transferred to the District Court.

7—Costs

- (1) Costs of proceedings in dust disease actions before the District Court will be allowed or awarded on the same basis as for other actions in the District Court.

- (2) However, if the District Court considers it appropriate, costs of an action that falls within the jurisdictional limits of the Magistrates Court may be allowed or awarded on the same basis as for a civil action in the Magistrates Court.

8—Evidentiary presumptions and special rules of evidence and procedure

- (1) If it is established in a dust disease action that a person (the *injured person*)—
- (a) suffers or suffered from a dust disease; and
 - (b) was exposed to asbestos dust in circumstances in which the exposure might have caused or contributed to the disease,

it will be presumed, in the absence of proof to the contrary, that the exposure to asbestos dust caused or contributed to the injured person's dust disease.

- (2) A person who, at a particular time, carried on a prescribed industrial or commercial process that could have resulted in the exposure of another to asbestos dust will be presumed, in the absence of proof to the contrary, to have known at the relevant time that exposure to asbestos dust could result in a dust disease.
- (3) The following rules apply in a dust disease action:
- (a) the Court may admit evidence admitted in an earlier dust disease action against the same defendant (including in a dust disease action brought in a court of the Commonwealth or another State or Territory);
 - (b) the Court may dispense with proof of any matter that appears to the Court to be not seriously in dispute;
 - (c) the Court may invite a party to admit facts of a formal nature, or facts that are peripheral to the major issues in dispute, and may, if the party declines to do so, award the costs of proving those facts against the party.
- (4) If—
- (a) a finding of fact has been made in a dust disease action by a court of this State, the Commonwealth or another State or Territory; and
 - (b) the finding is, in the Court's opinion, of relevance to a dust disease action before the court,

the Court may admit the finding into evidence and indicate to the parties that it proposes to make a corresponding finding in the case presently before the Court unless the party who would be adversely affected satisfies the Court that such a finding is inappropriate to the circumstances of the present case.

9—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 Court 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 Court should make an award of exemplary damages in each case against a defendant if it is satisfied that the defendant—
 - (a) knew that the injured person was at risk of exposure to asbestos dust, or carried on a prescribed industrial or commercial process that resulted in the injured person's exposure to asbestos dust; and
 - (b) knew, at the time of the injured person's exposure to asbestos dust, that exposure to asbestos dust could result in a dust disease.
- (3) Despite any other Act or law, the Court must, when determining damages in a dust disease action, compensate, as a separate head of damage, any loss or impairment of the injured person's capacity to perform domestic services for another person.

Note—

This subsection is intended to restore the effect of *Sullivan v Gordon* (1999) 47 NSWLR 319.

10—Procedure where several defendants or insurers involved

The Court will determine questions of liability and quantum of liability to the plaintiff before dealing with questions of contribution between defendants or insurers unless, in the opinion of the Court, any delay resulting from dealing with the questions together is inconsequential in the circumstances.

11—Dust disease action may be brought directly against insurer in certain cases

- (1) If the defendant to a dust disease action—
 - (a) is dead or has been dissolved; or
 - (b) is insolvent; or
 - (c) cannot be found,

a dust disease action that might have been brought against the defendant (the *absent defendant*) may be brought instead directly against an insurer who insured the defendant against a liability to which the action relates.

- (2) An insurer against whom an action is brought under subsection (1) has the same rights, powers, duties and liabilities in relation to the action as the absent defendant would have had if the action had been brought against the absent defendant.
- (3) The extent of the insurer's liability cannot, however, exceed the extent to which the insurer would have been liable to indemnify the absent defendant if the action had been brought against the absent defendant.

12—Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

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—Amendment of *Limitation of Actions Act 1936*

2—Amendment of section 36—Personal injuries

Section 36—after subsection (1) insert:

- (1a) However, in the case of a personal injury that remains latent for some time after its cause, the period of 3 years mentioned in subsection (1) begins to run when the injury first comes to the person's knowledge.

Part 3—Amendment of *Survival of Causes of Action Act 1940*

3—Amendment of section 3—Damages in actions which survive under this Act

Section 3(2), after "and curtailment of expectation of life," insert:

and exemplary damages,

Part 4—Transitional provision

4—Transitional provision

- (1) This Act (and 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, subclause (1) does not apply to an action commenced before the commencement of this Act if the trial has commenced before the commencement of this Act.