

South Australia

Dust Diseases Act 2005

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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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

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

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;

SAET means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*.

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.

4A—Jurisdiction of SAET

- (1) SAET has jurisdiction to hear and determine proceedings in relation to dust disease actions.
- (2) The jurisdiction under subsection (1) is assigned to the South Australian Employment Court.
- (3) Proceedings for any tortfeasor liable in respect of damages for or in relation to a dust disease or the death of a person as a result of a dust disease to recover contribution from any other tortfeasor liable in respect of that damage may be brought before SAET and dealt with by the South Australian Employment Court.
- (4) If a cause of action giving rise to proceedings brought under subsection (1) or (3) also gives rise to a claim in respect of some other matter, the claim may be included in those proceedings even though it does not relate to a dust disease.
- (5) Any matter that is ancillary or related to a matter that is the subject of proceedings brought under a preceding subsection may also be included in those proceedings.

5—Expeditious hearing and determination of dust disease actions

The District Court or SAET (as the case may be) 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.

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

- (2) However, if the District Court or SAET 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 before the District Court or SAET:
- (a) the relevant 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 or tribunal of the Commonwealth or another State or Territory);
 - (b) the relevant court may dispense with proof of any matter that appears to the court to be not seriously in dispute;
 - (c) the relevant 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, or a court or tribunal of the Commonwealth or another State or Territory; and
 - (b) the finding is, in the District Court's or SAET's opinion, of relevance to an action before it under this Act,

the District Court or SAET (as the case may be) may admit the finding in evidence and indicate to the parties that it proposes to make a corresponding finding in the case presently before it unless the party who would be adversely affected satisfies the District Court or SAET (as the case may be) 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 District Court or SAET (as the case may be) 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 District Court or SAET (as the case may be) 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 District Court or SAET (as the case may be) 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 District Court or SAET (as the case may be) 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 District Court or SAET (as the case may be), 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.

11A—Right of appeal from SAET

Despite Part 5 of the *South Australian Employment Tribunal Act 2014*, an appeal against a decision of SAET in relation to a dust disease action (including in relation to any matter that is ancillary or related to a dust disease action that is the subject of the proceedings) lies—

- (a) in the case of an interlocutory order made by SAET—to the Supreme Court constituted of a single Judge; or
- (b) in any other case—to the Court of Appeal.

12—Regulations

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

Schedule 1—Transitional provision

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.

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.

Legislation amended by principal Act

The *Dust Diseases Act 2005* amended the following:

Civil Liability Act 1936

Limitation of Actions Act 1936

Survival of Causes of Action Act 1940

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2005	78	<i>Dust Diseases Act 2005</i>	8.12.2005	8.2.2006: s 2
2016	63	<i>Statutes Amendment (South Australian Employment Tribunal) Act 2016</i>	8.12.2016	Pt 3 (ss 42—50)—1.7.2017 (<i>Gazette</i> 16.5.2017 p1221)
2019	45	<i>Supreme Court (Court of Appeal) Amendment Act 2019</i>	19.12.2019	Sch 1 (cl 41)—1.1.2021 (<i>Gazette</i> 10.12.2020 p5638)

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2017</i>
s 3		
SAET	inserted by 63/2016 s 42	1.7.2017
s 4A	inserted by 63/2016 s 43	1.7.2017
s 5	amended by 63/2016 s 44	1.7.2017
s 6	<i>deleted by 63/2016 s 45</i>	<i>1.7.2017</i>
s 7		
s 7(1a)	inserted by 63/2016 s 46(1)	1.7.2017

s 7(2)	amended by 63/2016 s 46(2)	1.7.2017
s 8		
s 8(3)	amended by 63/2016 s 47(1)—(5)	1.7.2017
s 8(4)	substituted by 63/2016 s 47(6)	1.7.2017
s 9		
s 9(1)	amended by 63/2016 s 48(1)	1.7.2017
s 9(2)	amended by 63/2016 s 48(2)	1.7.2017
s 9(3)	amended by 63/2016 s 48(1)	1.7.2017
s 10	amended by 63/2016 s 49(1), (2)	1.7.2017
s 11A	inserted by 53/2016 s 50	1.7.2017
	amended by 45/2019 Sch 1 cl 41	1.1.2021
Sch 1		
Pts 1—3	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2017

Historical versions

1.7.2017