



Western Australia

Civil Liability Amendment (Provisional Damages for Dust Diseases) Act 2024

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Civil Liability Amendment (Provisional Damages for Dust Diseases) Act 2024

No. 32 of 2024

An Act to amend —

- **the *Civil Liability Act 2002*; and**
- **the *Law Reform (Miscellaneous Provisions) Act 1941*; and**
- **the *Limitation Act 2005*; and**
- **the *Workers Compensation and Injury Management Act 2023*; and**
- **the *Workers' Compensation and Injury Management Act 1981*.**

[Assented to 26 September 2024]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Civil Liability Amendment (Provisional Damages for Dust Diseases) Act 2024*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) section 11 —
 - (i) if the *Workers Compensation and Injury Management Act 2023* section 416 comes into operation on or before the day fixed under paragraph (d) — on the day fixed under paragraph (d); or
 - (ii) otherwise — immediately after the *Workers Compensation and Injury Management Act 2023* section 416 comes into operation;
- (c) section 12 — immediately after the *Workers Compensation and Injury Management Act 2023* section 625 comes into operation;
- (d) the rest of the Act — on a day fixed by proclamation.

(2) Despite subsection (1), if the *Workers Compensation and Injury Management Act 2023* section 625 comes into operation on or before the day fixed under subsection (1)(d), section 12 of this Act —

- (a) does not come into operation; and
- (b) is deleted on the day fixed under subsection (1)(d).

- (3) Despite subsection (1), if the *Workers Compensation and Injury Management Act 2023* section 416 comes into operation on or before the day fixed under subsection (1)(d), Part 6 of this Act —
- (a) does not come into operation; and
 - (b) is deleted on the day fixed under subsection (1)(d).

Part 2 — *Civil Liability Act 2002* amended

3. Act amended

This Part amends the *Civil Liability Act 2002*.

4. Section 3A amended

In section 3A(1) in the Table:

- (a) in item 3 column 3 delete “Division 4.” and insert:

Divisions 4 and 5).

- (b) delete item 6 and insert:

6. Damages relating to personal injury that resulted from the inhalation of asbestos or silica. Parts 1A (other than sections 5A, 5B, 5C and 5D), 1B, 1D, 1E and 2 (other than section 10A and Divisions 4 and 5).

5. Part 2 Division 5 inserted

At the end of Part 2 insert:

Division 5 — Provisional and subsequent damages

Subdivision 1 — Preliminary

15AA. Terms used

- (1) In this Division —
Court means the Supreme Court;

dust disease has the meaning given in section 15AB(1);

initial action has the meaning given in section 15AC(1);

provisional damages has the meaning given in section 15AC(1);

settlement agreement —

- (a) in relation to an initial action, has the meaning given in section 15AE;
- (b) in relation to a subsequent action, has the meaning given in section 15AL;

subsequent action has the meaning given in section 15AG(1);

subsequent damages has the meaning given in section 15AG(1);

subsequent dust disease has the meaning given in section 15AC(2)(b).

15AB. Dust disease

A *dust disease* means a pathological condition that is either or both of the following —

- (a) a pathological condition of the lungs, pleura or peritoneum that has resulted from the inhalation of asbestos or silica;
- (b) a pathological condition specified in the Table (whether or not of the lungs, pleura or peritoneum) that has resulted from the inhalation of asbestos or silica.

Table

Item	Disease
1.	Asbestosis

Item	Disease
2.	Asbestos-induced carcinoma
3.	Asbestos-related pleural disease
4.	Lung cancer
5.	Mesothelioma
6.	Pneumoconiosis or silicosis
7.	Silico-tuberculosis

Subdivision 2 — Provisional damages

15AC. Award of provisional damages

- (1) In an action (an *initial action*) in respect of a dust disease suffered by a plaintiff for which personal injury damages are claimed, the Court may award damages (*provisional damages*) on a provisional basis for that dust disease.
- (2) Despite subsection (1), provisional damages can only be awarded if the initial action is commenced in the Court by an indorsed writ or a writ indorsed with a statement of claim (as the case may be) that —
 - (a) nominates provisional damages as the remedy required; and
 - (b) specifies another dust disease (a *subsequent dust disease*) or more than 1 subsequent dust disease that the plaintiff may develop, wholly or partly as a result of the act or omission giving rise to the cause of action.

15AD. Amount of provisional damages

In determining the amount of provisional damages to award to a plaintiff the Court must not assume that the plaintiff will develop a subsequent dust disease.

15AE. Settlement agreement in initial action

An agreement (a *settlement agreement*) effecting the settlement of an initial action must specify the following —

- (a) any subsequent dust disease that the plaintiff claims they may develop, wholly or partly as a result of the act or omission giving rise to the cause of action;
- (b) whether or not the defendant admits liability for —
 - (i) the dust disease; and
 - (ii) if a subsequent dust disease is specified in accordance with paragraph (a) — the subsequent dust disease;
- (c) whether or not the plaintiff is barred from commencing a subsequent action in relation to a subsequent dust disease specified in accordance with paragraph (a).

15AF. Consequence of settlement in initial action

- (1) If an initial action is disposed of in whole by a settlement agreement that specifies that the plaintiff is not barred from commencing a subsequent action in relation to at least 1 subsequent dust disease specified in the settlement agreement in accordance with section 15AE(a), the initial action must be discontinued.

- (2) If an initial action is disposed of in whole by a settlement agreement that specifies that the plaintiff is barred from commencing a subsequent action in relation to all subsequent dust diseases identified in the indorsed writ or a writ indorsed with a statement of claim (as the case may be), the initial action may be dismissed.

Subdivision 3 — Subsequent damages

15AG. Award of subsequent damages

- (1) In an action (a *subsequent action*) in respect of a subsequent dust disease for which personal injury damages are claimed, the Court may award damages (*subsequent damages*) for that subsequent dust disease.
- (2) A subsequent action must be commenced in the Court.
- (3) A subsequent action must be in respect of a subsequent dust disease specified in the indorsed writ or a writ indorsed with a statement of claim (as the case may be) that commenced the initial action.
- (4) A plaintiff may commence more than 1 subsequent action, with each subsequent action relating to a subsequent dust disease or more than 1 subsequent dust disease.
- (5) Despite subsection (4), a plaintiff cannot commence a subsequent action in relation to a subsequent dust disease that has already been the subject of a subsequent action.
- (6) A plaintiff is barred from commencing a subsequent action if —
 - (a) the initial action was disposed of in whole by a settlement agreement that specifies that the

plaintiff is barred from commencing a subsequent action; or

- (b) any other subsequent action was disposed of in whole by a settlement agreement that specifies that the plaintiff is barred from commencing another subsequent action.

15AH. Court must give effect to terms of settlement agreements

- (1) In this section —

information includes any document;

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information);

publication, in relation to information, means the dissemination of information to the public or a section of the public by any means, including —

- (a) in a book, newspaper, magazine or other written publication; and
- (b) by radio broadcast, television, a website, an online facility or other electronic means;

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

- (2) In a subsequent action the Court must consider, and if relevant give effect to, the terms of any settlement agreement entered into by the parties effecting the settlement, in whole or in part, of —
 - (a) the subsequent action; or
 - (b) the initial action; or
 - (c) any other subsequent action.

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- (3) The Court may, on its own initiative or on the application of a party to the proceedings, make a suppression order or non-publication order in relation to any terms of a settlement agreement considered under subsection (2).
- (4) The Court may only make a suppression order or non-publication order under subsection (3) if the Court considers that making the order is necessary for the proper administration of justice.
- (5) In deciding whether it is necessary to make a suppression order or non-publication order, the Court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.
- (6) A suppression order or non-publication order may be made subject to any exceptions or conditions as the Court thinks fit and specifies in the order.
- (7) This section does not limit or otherwise affect any powers that the Court has apart from this section to regulate its proceedings or to deal with a contempt of the Court.

15AI. Evidence to apply in subsequent actions

In a subsequent action, the Court may —

- (a) admit into evidence any evidence admitted in the initial action or any other subsequent action;
and
- (b) make a finding of fact that has been made in the initial action or any other subsequent action.

15AJ. One award of subsequent damages for each subsequent dust disease

Only 1 award of subsequent damages can be made for each subsequent dust disease that is claimed in a subsequent action.

15AK. Amount of subsequent damages

In determining the amount of subsequent damages to award, the Court must take into account any amount —

- (a) awarded to the plaintiff —
 - (i) in the initial action by way of provisional damages; and
 - (ii) in any other subsequent action by way of subsequent damages;
- and
- (b) received by the plaintiff in settlement of —
 - (i) the initial action; or
 - (ii) any other subsequent action.

15AL. Settlement agreement in subsequent action

An agreement (a *settlement agreement*) effecting the settlement of a subsequent action must specify the following —

- (a) any other subsequent dust disease that the plaintiff claims they may develop, wholly or partly as a result of the act or omission giving rise to the cause of action;
- (b) whether or not the defendant admits liability for —
 - (i) the subsequent dust disease; and

- (ii) if another subsequent dust disease is specified in accordance with paragraph (a) — that subsequent dust disease;
- (c) whether or not the plaintiff is barred from commencing another subsequent action in relation to a subsequent dust disease specified in accordance with paragraph (a).

15AM. Consequence of settlement in subsequent action

- (1) If a subsequent action is disposed of in whole by a settlement agreement that specifies that the plaintiff is not barred from commencing another subsequent action, the subsequent action must be discontinued.
- (2) If a subsequent action is disposed of in whole by a settlement agreement that specifies that the plaintiff is barred from commencing another subsequent action, the subsequent action may be dismissed.

15AN. Costs

In determining costs in relation to a subsequent action, the Court must have regard to —

- (a) any amount of costs awarded in relation to —
 - (i) the initial action; and
 - (ii) any other subsequent action;and
- (b) if costs were awarded under paragraph (a) — whether a basis for which costs were awarded is duplicated in a basis for which costs are subsequently claimed.

Subdivision 4 — Transitional provisions

15AO. Transitional provision

- (1) In this section —
proclamation day means the day on which the *Civil Liability Amendment (Provisional Damages for Dust Diseases) Act 2024 Part 2* comes into operation.
- (2) If an action in respect of a dust disease suffered by a plaintiff for which personal injury damages are claimed is commenced before proclamation day, the claim may be amended to specify —
 - (a) that provisional damages are the remedy required; and
 - (b) a subsequent dust disease or more than 1 subsequent dust disease that the plaintiff may develop, wholly or partly as a result of the act or omission giving rise to the cause of action.
- (3) Despite subsection (2), this section does not apply if, before proclamation day —
 - (a) the hearing of the action has commenced; or
 - (b) damages have been awarded or a settlement reached in the action.
- (4) If a claim is commenced in a court other than the Court and the claim is amended in accordance with subsection (2), a registrar of the court in which the action was commenced must transfer the action to the Court.

**Part 3 — Law Reform (Miscellaneous Provisions)
Act 1941 amended**

6. Act amended

This Part amends the *Law Reform (Miscellaneous Provisions) Act 1941*.

7. Section 4 amended

(1) Before section 4(1) insert:

(1A) In this section —

proceedings includes an initial action and a subsequent action (as those terms are defined in the *Civil Liability Act 2002* Part 2 Division 5).

(2) In section 4(2)(d) after “(2a)” insert:

or (3)

(3) After section 4(2a) insert:

(3) Subsection (2)(d) does not apply if —

- (a) the death of the person occurs after the day on which the *Civil Liability Amendment (Provisional Damages for Dust Diseases) Act 2024* Part 3 comes into operation; and
- (b) the death results from a latent injury that resulted from the inhalation of silica which has been caused by the act or omission giving rise to the cause of action; and

- (c) that person had instituted proceedings in respect of the cause of action that were pending at the time of death.

Part 4 — *Limitation Act 2005* amended

8. Act amended

This Part amends the *Limitation Act 2005*.

9. Section 6B inserted

After section 6A insert:

**6B. Special provisions for subsequent action in respect
of subsequent dust disease: no limitation period**

- (1) Despite anything in this or any other Act, no limitation period applies to a subsequent action for subsequent damages in respect of a subsequent dust disease (as those terms are defined in the *Civil Liability Act 2002* Part 2 Division 5).
- (2) This section applies regardless of whether the action is brought in tort (including trespass), in contract, under statute or otherwise.

**Part 5 — *Workers Compensation and Injury
Management Act 2023* amended**

10. Act amended

This Part amends the *Workers Compensation and Injury Management Act 2023*.

11. Section 416 amended

In section 416:

- (a) in paragraph (f) delete “Division.” and insert:

Division; or

- (b) after paragraph (f) insert:

- (g) an award of subsequent damages to which the *Civil Liability Act 2002* Part 2 Division 5 applies.

12. Section 625 amended

In section 625 delete “Division 4.” and insert:

Divisions 4 and 5).

**Part 6 — *Workers' Compensation and Injury
Management Act 1981* amended**

13. Act amended

This Part amends the *Workers' Compensation and Injury Management Act 1981*.

14. Section 93B amended

In section 93B(3):

- (a) in paragraph (c) delete "Division." and insert:

Division; or

- (b) after paragraph (c) insert:

- (d) subsequent damages to which the *Civil Liability Act 2002* Part 2 Division 5 applies.

