

**ACTS AMENDMENT
(ASBESTOS RELATED
DISEASES).**

No. 84 of 1983.

AN ACT to amend the Limitation Act 1935-1978, the Crown Suits Act 1947-1954, the Fatal Accidents Act 1959-1973, the Law Reform (Miscellaneous Provisions) Act 1941-1982 and the Local Government Act 1960-1983.

[Assented to 22 December 1983.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment (Asbestos Related Diseases) Act 1983.* Short title.

Commence-
ment.

2. This Act shall come into operation on the 28th day after the day on which it is assented to by the Governor.

PART II—LIMITATION ACT 1935-1978.

Principal
Act.
Reprinted
as approved
5 May 1983.

3. (1) In this Part the Limitation Act 1935-1978 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Limitation Act 1935-1983.

Sections 38A
and 38B
inserted.

4. After section 38 of the principal Act the following sections are inserted—

Extended
limitation
period in
certain
cases.

“ 38A. (1) In this section—

“latent injury” means a disease or injury of such a nature that, at the time it is suffered by a person, that person does not know and could not reasonably be expected to know that he has suffered the disease or injury;

“the amending Act” means the Acts Amendment (Asbestos Related Diseases) Act 1983.

(2) Where the period of limitation within which an action, suit, or other proceeding may be brought would, but for this section, be fixed by section 38 (1) (c) of this Act and—

(a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos;

(b) the person who suffered the latent injury had knowledge of the relevant facts before 1 January 1984; and

- (c) the period of limitation that would be applicable thereto had the amending Act not come into operation had expired before 1 January 1984,

that action, suit, or other proceeding may be commenced within the period of 3 years after the coming into operation of the amending Act.

(3) Where in an action, suit, or other proceeding to which subsection (2) of this section applies it is proved that—

- (a) the person who suffered the latent injury had knowledge of the relevant facts before 1 January 1984; and
- (b) the period referred to in paragraph (c) of that subsection had expired before 1 January 1984 and before the action, suit, or other proceeding was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

(4) Where the period of limitation within which an action, suit, or other proceeding may be brought would, but for this section, be fixed by section 38 (1) (c) of this Act and—

- (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos;
- (b) the person who suffered the latent injury had knowledge of the relevant facts before 1 January 1984; and
- (c) the period of limitation that would be applicable thereto had the amending Act not come into operation had not expired before 1 January 1984,

that action, suit, or other proceeding may be commenced within the period referred to in paragraph (c) of this subsection or, if that period expires less than 3 years after the coming into operation of the amending Act, may be commenced within the period of 3 years after the coming into operation of that Act.

(5) Where in an action, suit or other proceeding to which subsection (4) of this section applies it is proved that—

- (a) the person who suffered the latent injury had knowledge of the relevant facts before 1 January 1984; and
- (b) the period referred to in paragraph (c) of that subsection had expired before the action, suit, or other proceeding was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

(6) Where the period of limitation within which an action, suit, or other proceeding may be brought is fixed by section 38 (1) (c) of this Act and—

- (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and
- (b) the person who suffered the latent injury did not have knowledge of the relevant facts before 1 January 1984,

the period of limitation so fixed shall run not from the time provided by section 38 of this Act but from the time when that person has knowledge of the relevant facts.

(7) For the purposes of this section a person has knowledge of the relevant facts in relation to a cause of action when he has knowledge—

- (a) that the injury in question was significant;
- (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute the cause of action;
- (c) of the identity of the defendant; and
- (d) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant,

and knowledge that any acts or omissions did or did not, as a matter of law, give rise to a cause of action is irrelevant.

(8) For the purposes of this section an injury is significant if the person whose knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(9) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him; or
- (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek,

but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

(10) Unless the context otherwise requires, a reference, however expressed, in this Act or in any other Act or law to the time from which a period of limitation runs shall, where the period of limitation is one to which subsection (6) of this section applies, be read as if it were a reference to the time from which it is provided by that subsection that the limitation period shall run.

Revival.

38B. An action, suit, or other proceeding may be commenced in accordance with section 38A of this Act notwithstanding that the period of limitation applicable before the coming into operation of the Acts Amendment (Asbestos Related Diseases) Act 1983 in respect of the action, suit or other proceeding may have expired before the coming into operation of that Act. ”.

**Section 47A
amended.**

5. Section 47A of the principal Act is amended by inserting after subsection (4) the following subsections—

“ (5) Where an action is one to which this section applies and—

(a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and

(b) the person who suffered the latent injury had the knowledge referred to in section 38A of this Act before 1 January 1984,

the period limited by this section for the doing of any thing in relation to that action shall run not from the time otherwise provided by this section but from the time of the coming into operation of the amending Act.

(6) Where in an action to which subsection (5) of this section applies it is proved that—

- (a) the person who suffered the latent injury had the knowledge referred to in section 38A of this Act before 1 January 1984; and
- (b) the period of 6 years applicable under subsection (3) (a) of this section as in force before the coming into operation of the amending Act had expired before the action was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

(7) Where an action is one to which this section applies and—

- (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and
- (b) the person who suffered the latent injury did not have the knowledge referred to in section 38A of this Act before 1 January 1984,

the period limited by this section for the doing of any thing in relation to that action shall run not from the time otherwise provided by this section but from the time when that person has the knowledge referred to in section 38A of this Act.

(8) After the coming into operation of the amending Act—

- (a) a notice may be given;
- (b) an action may be commenced; or
- (c) consent may be given, or leave may be granted, to bring an action,

in accordance with subsection (5) or (7) of this section notwithstanding that the period of limitation applicable before the coming into operation of the amending Act in respect thereof had expired before the coming into operation of that Act.

(9) In subsections (5), (6), (7), and (8) of this section—

“latent injury” has the same meaning as is given to that expression by section 38A of this Act;

“the amending Act” means the Acts Amendment (Asbestos Related Diseases) Act 1983. ”.

PART III—CROWN SUITS ACT 1947-1954.

Principal Act.
Reprinted as approved 14 April 1971.

6. (1) In this Part the Crown Suits Act 1947-1954 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Crown Suits Act 1947-1983.

Section 6 amended.

7. Section 6 of the principal Act is amended by inserting after subsection (3) the following subsections—

“ (4) Where an action is one to which this section applies and—

- (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and

- (b) the person who suffered the latent injury had the knowledge referred to in section 38A of the Limitation Act 1935 before 1 January 1984,

the period limited by this section for the doing of any thing in relation to that action shall run not from the time otherwise provided by this section but from the time of the coming into operation of the amending Act.

- (5) Where in an action to which subsection (4) of this section applies it is proved that—

- (a) the person who suffered the latent injury had the knowledge referred to in section 38A of the Limitation Act 1935 before 1 January 1984; and

- (b) the period of 6 years applicable under subsection (3) (a) of this section as in force before the coming into operation of the amending Act had expired before the action was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

- (6) Where an action is one to which this section applies and—

- (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and

- (b) the person who suffered the latent injury did not have the knowledge referred to in section 38A of the Limitation Act 1935 before 1 January 1984,

the period limited by this section for the doing of any thing in relation to that action shall run not from the time otherwise provided by

be commenced in accordance with subsection (1) or (2) of this section notwithstanding that, at the time of his death, the person in respect of whose death the action is brought may have been barred by the expiration of a period of limitation from maintaining an action in respect of the act, neglect, or default by which his death was caused.

(4) Where—

(a) in an action to which subsection (1a) or (3) of this section applies it is proved that, at the time of his death the person in respect of whose death the action is brought was barred by the expiration of a period of limitation from maintaining an action in respect of the act, neglect, or default by which his death was caused; or

(b) in an action to which subsection (1a) of this section applies it is proved that the period of 6 years applicable under subsection (2) (c) of this section had expired before the action was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

(5) Where in an action brought under this Act in respect of a death that—

(a) resulted from a latent injury that is attributable to the inhalation of asbestos; and

(b) occurred on or after the coming into operation of the amending Act,

it is proved that the damages that would (if death had not ensued) have been recoverable by the deceased person in respect of the act, neglect or default by which his death was caused would, by reason of the amending Act, have been limited to damages in respect of pecuniary loss and a total amount in any case of \$120 000, then damages shall not be awarded under this Act except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

(6) In subsections (1a), (3) and (5) of this section—

“latent injury” has the same meaning as is given to that expression by section 38A of the Limitation Act 1935;

“the amending Act” means the Acts Amendment (Asbestos Related Diseases) Act 1983. ”.

PART V—LAW REFORM (MISCELLANEOUS PROVISIONS)
ACT 1941-1982.

10. (1) In this Part the Law Reform (Miscellaneous Provisions) Act 1941-1982 is referred to as the principal Act.

Principal
Act.

(2) The principal Act as amended by this Act may be cited as the Law Reform (Miscellaneous Provisions) Act 1941-1983.

11. Section 4 of the principal Act is amended in subsection (2) by inserting after paragraph (c) the following paragraph—

Section 4
amended.

“ (ca) where the cause of action arose from the suffering of a latent injury that is attributable to the inhalation of asbestos and

(4) Where in an action to which subsection (3) of this section applies it is proved that—

- (a) the person who suffered the latent injury had the knowledge referred to in section 38A of the Limitation Act 1935 before 1 January 1984; and
- (b) the period of 6 years applicable under subsection (2) of this section as in force before the coming into operation of the amending Act had expired before the action was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

(5) Where an action is one to which this section applies and—

- (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and
- (b) the person who suffered the latent injury did not have the knowledge referred to in section 38A of the Limitation Act 1935 before 1 January 1984,

the period limited by this section for the doing of any thing in relation to that action shall run not from the time otherwise provided by this section but from the time when that person has the knowledge referred to in section 38A of the Limitation Act 1935.

(6) After the coming into operation of the amending Act—

- (a) a notice may be served;
- (b) an action may be commenced; or

