

Western Australia

Asbestos Diseases Compensation Bill 2013

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Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon Kate Doust, MLC)

Asbestos Diseases Compensation Bill 2013

A Bill for

An Act to provide for a second award of damages in the case of an injured person suffering more than one asbestos disease and to provide compensation for the loss or impairment of the injured person's capacity to perform domestic services for another person.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This Act may be cited as the *Asbestos Diseases Compensation*
3 *Act 2013*.

4 **2. Commencement**

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

7 **3. Interpretation**

8 In this Act, unless the contrary intention appears —

9 **“asbestos disease”** means one or more of the following —

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

16 **“asbestos disease action”** means a civil action in which the
17 plaintiff —

- 18 (a) claims damages for or in relation to an asbestos disease
19 or the death of a person as a result of an asbestos
20 disease; and
- 21 (b) asserts that the asbestos disease was wholly or partly
22 attributable to a breach of duty owed to the person who
23 suffered the disease by another person;

24 **“injured person”** means a person who is suffering from, or
25 who has suffered from, an asbestos disease.

1 **4. Damages**

2 (1) If it is proved or admitted in an asbestos disease action that an
3 injured person may, at some time in the future, develop another
4 asbestos disease wholly or partly as a result of the breach of
5 duty giving rise to the cause of action, the Court may—

6 (a) award, in the first instance, damages for the asbestos
7 disease assessed on the assumption that the injured
8 person will not develop another asbestos disease
9 (provisional damages); and

10 (b) award damages at a future date if the injured person
11 does develop another asbestos disease.

12 **Note —**

13 This subsection is intended to avoid the effect of the principle of
14 “once and for all damages” stated in *Fitter v Veal* (1701) 12 Mod
15 Rep 542; 88 ER 1506; 1 Ld Raym 339, 692.

16 (2) If a payment of provisional damages has been made to an
17 injured person in respect of an asbestos disease only one
18 subsequent award of damages for another asbestos disease can
19 be made to that person.

20 (3) If a payment of provisional damages has been made to an
21 injured person for an asbestos disease, a court may have regard
22 to those damages when assessing damages to be awarded in a
23 subsequent action for damages for another asbestos disease
24 suffered by that person.

25 (4) Despite any other Act or law, the Court must, when determining
26 damages in an asbestos disease action, compensate, as a
27 separate head of damage, any loss or impairment of the injured
28 person’s capacity to perform domestic services for another
29 person.

s. 5

1 **Note —**

2 This subsection is intended to restore the effect of *Sullivan v Gordon*
3 (1999) 47 NSWLR 319.

4 **5. Regulations**

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

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Schedule 1 — Transitional provision

1. Transitional provision

- (1) This Act applies 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.

