

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

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Civil Liability Act 2002</i> amended		
3.	Act amended	4
4.	Section 3A amended	4
5.	Part 2 Division 5 inserted	4
Division 5 — Provisional and subsequent damages		
Subdivision 1 — Preliminary		
15AA.	Terms used	4
15AB.	Dust disease	5
Subdivision 2 — Provisional damages		
15AC.	Award of provisional damages	6
15AD.	Amount of provisional damages	7
15AE.	Settlement agreement in initial action	7
15AF.	Consequence of settlement in initial action	7
Subdivision 3 — Subsequent damages		
15AG.	Award of subsequent damages	8
15AH.	Court must give effect to terms of settlement agreements	9
15AI.	Evidence to apply in subsequent actions	10
15AJ.	One award of subsequent damages for each subsequent dust disease	11
15AK.	Amount of subsequent damages	11
15AL.	Settlement agreement in subsequent action	11
15AM.	Consequence of settlement in subsequent action	12
15AN.	Costs	12

Contents

	Subdivision 4 — Transitional provisions	
	15AO. Transitional provision	13
	Part 3 — <i>Law Reform (Miscellaneous Provisions) Act 1941</i> amended	
6.	Act amended	14
7.	Section 4 amended	14
	Part 4 — <i>Limitation Act 2005</i> amended	
8.	Act amended	16
9.	Section 6B inserted	16
	6B. Special provisions for subsequent action in respect of subsequent dust disease: no limitation period	16
	Part 5 — <i>Workers Compensation and Injury Management Act 2023</i> amended	
10.	Act amended	17
11.	Section 416 amended	17
12.	Section 625 amended	17
	Part 6 — <i>Workers' Compensation and Injury Management Act 1981</i> amended	
13.	Act amended	18
14.	Section 93B amended	18

Western Australia

LEGISLATIVE ASSEMBLY

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

A Bill for

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*.**

The Parliament of Western Australia enacts as follows:

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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

- 1 before the day fixed under subsection (1)(d), Part 6 of this
2 Act —
- 3 (a) does not come into operation; and
 - 4 (b) is deleted on the day fixed under subsection (1)(d).

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1 **Part 2 — *Civil Liability Act 2002* amended**

2 **3. Act amended**

3 This Part amends the *Civil Liability Act 2002*.

4 **4. Section 3A amended**

5 In section 3A(1) in the Table:

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

7

8 Divisions 4 and 5).

9

10 (b) delete item 6 and insert:

11

- | | | |
|----|--|--|
| 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). |
|----|--|--|

12

13 **5. Part 2 Division 5 inserted**

14 At the end of Part 2 insert:

15

16 **Division 5 — Provisional and subsequent damages**

17 **Subdivision 1 — Preliminary**

18 **15AA. Terms used**

19 (1) In this Division —

20 ***Court*** means the Supreme Court;

- 1 *dust disease* has the meaning given in
2 section 15AB(1);
3 *initial action* has the meaning given in
4 section 15AC(1);
5 *provisional damages* has the meaning given in
6 section 15AC(1);
7 *settlement agreement* —
8 (a) in relation to an initial action, has the meaning
9 given in section 15AE;
10 (b) in relation to a subsequent action, has the
11 meaning given in section 15AL;
12 *subsequent action* has the meaning given in
13 section 15AG(1);
14 *subsequent damages* has the meaning given in
15 section 15AG(1);
16 *subsequent dust disease* has the meaning given in
17 section 15AC(2)(b).

18 **15AB. Dust disease**

- 19 (1) A *dust disease* means a pathological condition of the
20 lungs, pleura or peritoneum that has resulted from the
21 inhalation of asbestos or silica.
22 (2) Without limiting subsection (1), a dust disease includes
23 a pathological condition specified in the Table that has
24 resulted from the inhalation of asbestos or silica.

25 **Table**

Item	Disease
1.	Asbestosis
2.	Asbestos-induced carcinoma

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

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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.

1 **15AD. Amount of provisional damages**

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

5 **15AE. Settlement agreement in initial action**

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

- 9 (a) any subsequent dust disease that the plaintiff
10 claims they may develop, wholly or partly as a
11 result of the act or omission giving rise to the
12 cause of action;
- 13 (b) whether or not the defendant admits liability
14 for —
- 15 (i) the dust disease; and
- 16 (ii) if a subsequent dust disease is specified
17 in accordance with paragraph (a) — the
18 subsequent dust disease;
- 19 (c) whether or not the plaintiff is barred from
20 commencing a subsequent action in relation to
21 a subsequent dust disease specified in
22 accordance with paragraph (a).

23 **15AF. Consequence of settlement in initial action**

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

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

8 **Subdivision 3 — Subsequent damages**

9 **15AG. Award of subsequent damages**

- 10 (1) In an action (a *subsequent action*) in respect of a
11 subsequent dust disease for which personal injury
12 damages are claimed, the Court may award damages
13 (*subsequent damages*) for that subsequent dust disease.
- 14 (2) A subsequent action must be commenced in the Court.
- 15 (3) A subsequent action must be in respect of a subsequent
16 dust disease specified in the indorsed writ or a writ
17 indorsed with a statement of claim (as the case may be)
18 that commenced the initial action.
- 19 (4) A plaintiff may commence more than 1 subsequent
20 action, with each subsequent action relating to a
21 subsequent dust disease or more than 1 subsequent dust
22 disease.
- 23 (5) Despite subsection (4), a plaintiff cannot commence a
24 subsequent action in relation to a subsequent dust
25 disease that has already been the subject of a
26 subsequent action.
- 27 (6) A plaintiff is barred from commencing a subsequent
28 action if —
- 29 (a) the initial action was disposed of in whole by a
30 settlement agreement that specifies that the

- 1 plaintiff is barred from commencing a
2 subsequent action; or
3 (b) any other subsequent action was disposed of in
4 whole by a settlement agreement that specifies
5 that the plaintiff is barred from commencing
6 another subsequent action.

7 **15AH. Court must give effect to terms of settlement**
8 **agreements**

- 9 (1) In this section —
10 *information* includes any document;
11 *non-publication order* means an order that prohibits or
12 restricts the publication of information (but that does
13 not otherwise prohibit or restrict the disclosure of
14 information);
15 *publication*, in relation to information, means the
16 dissemination of information to the public or a section
17 of the public by any means, including —
18 (a) in a book, newspaper, magazine or other
19 written publication; and
20 (b) by radio broadcast, television, a website, an
21 online facility or other electronic means;
22 *suppression order* means an order that prohibits or
23 restricts the disclosure of information (by publication
24 or otherwise).
- 25 (2) In a subsequent action the Court must consider, and if
26 relevant give effect to, the terms of any settlement
27 agreement entered into by the parties effecting the
28 settlement, in whole or in part, of —
29 (a) the subsequent action; or
30 (b) the initial action; or
31 (c) any other subsequent action.

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

22 **15AI. Evidence to apply in subsequent actions**

23 In a subsequent action, the Court may —

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

1 **15AJ. One award of subsequent damages for each**
2 **subsequent dust disease**

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

6 **15AK. Amount of subsequent damages**

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

- 9 (a) awarded to the plaintiff —
- 10 (i) in the initial action by way of
11 provisional damages; and
- 12 (ii) in any other subsequent action by way
13 of subsequent damages;
- 14 and
- 15 (b) received by the plaintiff in settlement of —
- 16 (i) the initial action; or
17 (ii) any other subsequent action.

18 **15AL. Settlement agreement in subsequent action**

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

- 22 (a) any other subsequent dust disease that the
23 plaintiff claims they may develop, wholly or
24 partly as a result of the act or omission giving
25 rise to the cause of action;
- 26 (b) whether or not the defendant admits liability
27 for —
- 28 (i) the subsequent dust disease; and
29 (ii) if another subsequent dust disease is
30 specified in accordance with

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- 1 paragraph (a) — that subsequent dust
2 disease;
- 3 (c) whether or not the plaintiff is barred from
4 commencing another subsequent action in
5 relation to a subsequent dust disease specified
6 in accordance with paragraph (a).

7 **15AM. Consequence of settlement in subsequent action**

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

16 **15AN. Costs**

- 17 In determining costs in relation to a subsequent action,
18 the Court must have regard to —
- 19 (a) any amount of costs awarded in relation to —
20 (i) the initial action; and
21 (ii) any other subsequent action;
22 and
- 23 (b) if costs were awarded under paragraph (a) —
24 whether a basis for which costs were awarded
25 is duplicated in a basis for which costs are
26 subsequently claimed.

1 **Subdivision 4 — Transitional provisions**

2 **15AO. Transitional provision**

3 (1) In this section —

4 *proclamation day* means the day on which the *Civil*
5 *Liability Amendment (Provisional Damages for Dust*
6 *Diseases) Act 2024* Part 2 comes into operation.

7 (2) If an action in respect of a dust disease suffered by a
8 plaintiff for which personal injury damages are claimed
9 is commenced before proclamation day, the claim may
10 be amended to specify —

11 (a) that provisional damages are the remedy
12 required; and

13 (b) a subsequent dust disease or more than
14 1 subsequent dust disease that the plaintiff may
15 develop, wholly or partly as a result of the act
16 or omission giving rise to the cause of action.

17 (3) Despite subsection (2), this section does not apply if,
18 before proclamation day —

19 (a) the hearing of the action has commenced; or

20 (b) damages have been awarded or a settlement
21 reached in the action.

22 (4) If a claim is commenced in a court other than the Court
23 and the claim is amended in accordance with
24 subsection (2), a registrar of the court in which the
25 action was commenced must transfer the action to the
26 Court.
27

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

3 **6. Act amended**

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

6 **7. Section 4 amended**

7 (1) Before section 4(1) insert:
8

9 (1A) In this section —
10 *proceedings* includes an initial action and a subsequent
11 action (as those terms are defined in the *Civil Liability*
12 *Act 2002* Part 2 Division 5).
13

14 (2) In section 4(2)(d) after “(2a)” insert:
15

16 or (3)
17

18 (3) After section 4(2a) insert:
19

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

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

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

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

3 **10. Act amended**

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

6 **11. Section 416 amended**

7 In section 416:

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

9

10 Division; or

11

12 (b) after paragraph (f) insert:

13

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

17

18 **12. Section 625 amended**

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

20

21 Divisions 4 and 5).

22

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

3 **13. Act amended**

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

6 **14. Section 93B amended**

7 In section 93B(3):

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

9

10 Division; or

11

12 (b) after paragraph (c) insert:

13

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

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