



Queensland

Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005

Act No. 43 of 2005



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Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005

Act No. 43 of 2005

an Act to amend the *Succession Act 1981* and the *Limitation of Actions Act 1974* to make further provision in relation to damages when death results from a dust-related condition, and for other matters

[Assented to 14 October 2005]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005*.

Part 2 Dust diseases amendments

Division 1 Amendment of Succession Act 1981

2 Act amended in div 1

This division amends the *Succession Act 1981*.

3 Amendment of s 66 (Survival of actions)

(1) Section 66—

insert—

‘(2A) Despite subsection (2)(a), damages for pain and suffering, for any bodily or mental harm or for curtailment of expectation of life, may be recovered if—

- (a) the cause of action related to personal injury resulting from a dust-related condition; and
- (b) the deceased person commenced a proceeding in relation to the cause of action before the deceased person died; and

- (c) the deceased person died as a result of the dust-related condition or the dust-related condition was a contributing factor to the deceased person's death.
- ‘(2B) To remove any doubt, it is declared that personal injury resulting from a dust-related condition does not include personal injury resulting from smoking or other use of tobacco products or exposure to tobacco smoke.’.
- (2) Section 66—
insert—
- ‘(10) In this section—
dust-related condition see the *Civil Liability Act 2003*, schedule 2.
personal injury includes disease.’.

4 Insertion of new pt 7, div 3

Part 7—
insert—

‘Division 3 Transitional provision for Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005

‘75 Application of amendment made by Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005

‘Section 66, as amended by the *Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005*, applies in relation to all proceedings surviving for the benefit of a deceased person's estate whether commenced before or after the commencement of this section unless judgment has been given in the proceeding or the proceeding has otherwise ended.’.

Division 2 Amendment of Limitation of Actions Act 1974

5 Act amended in div 2

This division amends the *Limitation of Actions Act 1974*.

6 Insertion of new s 30A

After section 30—

insert—

‘30A Application of s 30 in actions for dust-related conditions

- ‘(1) This section applies for the purposes of applying section 30 in relation to a right of action if—
- (a) the right of action relates to personal injury resulting from a dust-related condition that is, or will be, a contributing factor to significant loss of amenities, or expectation, of a person’s life; and
 - (b) the knowledge of the person suffering the injury of the nature and extent of the injury would, apart from subsection (2), be taken to be knowledge of a material fact of a decisive character.
- ‘(2) The knowledge is taken not to be knowledge of a material fact of a decisive character unless it is within the means of knowledge of the person suffering the injury that the dust-related condition is, or will be, a contributing factor to significant loss of amenities, or expectation, of the person’s life.
- ‘(3) To remove any doubt, it is declared that personal injury resulting from a dust-related condition does not include personal injury resulting from smoking or other use of tobacco products or exposure to tobacco smoke.
- ‘(4) In this section—
- dust-related condition*** see the *Civil Liability Act 2003*, schedule 2.’.

7 Insertion of new pt 5

After part 4—

insert—

‘Part 5 Transitional provision

‘44 Transitional provision for Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005

‘Section 30A, as inserted by the *Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005*, applies in relation to all actions whether the right of action accrued before or after the commencement of this section unless—

- (a) judgment has been given in relation to the action; or
- (b) the action has settled or been discontinued; or
- (c) an application to extend the period of limitation for the action under this Act has been refused.’

Part 3 Other Amendments

Division 1 Amendment of Civil Liability Act 2003

8 Act amended in div 1

This division amends the *Civil Liability Act 2003*.

9 Replacement of s 54 (Damages for loss of earnings or earning capacity)

Section 54—

omit, insert—

‘54 Damages for loss of earnings

- ‘(1) In making an award of damages for loss of earnings, including in a dependency claim, the maximum award a court may make is for an amount equal to the limit fixed by subsection (2).
- ‘(2) The limit is an amount equal to the present value of 3 times average weekly earnings per week for each week of the period of loss of earnings.
- ‘(3) In this section—
present value means the value when the award is made.’.

10 Insertion of new ch 5, pt 3

Chapter 5—

insert—

‘Part 3 Transitional provision for Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005

‘81 Awards of damages for loss of earnings

- ‘(1) It is declared that section 54, as amended by the *Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005*, applies in relation to all awards for damages for loss of earnings made on or after the commencement of this section, whether or not liability for the loss arose before or after the commencement.
- ‘(2) To remove any doubt, it is declared that section 54 does not apply in relation to an appeal against an award for damages for loss of earnings heard on or after the commencement if the award was made before the commencement.’.

Division 2 Amendment of Personal Injuries Proceedings Act 2002

11 Act amended in div 2

This division amends the *Personal Injuries Proceedings Act 2002*.

12 Amendment of s 6 (Application of Act)

Section 6(2)—

omit, insert—

‘(2) However, this Act does not apply to—

- (a) personal injury within the meaning of the *Motor Accident Insurance Act 1994* and in relation to which that Act applies; or
- (b) accidental bodily injury caused by, through, or in connection with a motor vehicle, within the meaning of the *Motor Vehicles Insurance Act 1936*, and in relation to which that Act applies; or
- (c) injury within the meaning of the *Workers’ Compensation and Rehabilitation Act 2003* and in relation to which that Act applies, but only to the extent that an entitlement to seek damages within the meaning of that Act for the injury is regulated by chapter 5 of that Act; or

Example for paragraph (c)—

W, a worker employed by E, sustains an injury in the course of employment. The injury is caused by a design fault in a machine designed by X Company.

If, as a result of sustaining the injury, W seeks damages against E, W must comply with the pre-court procedures under the *Workers’ Compensation and Rehabilitation Act 2003* before starting a proceeding in a court for damages against E. This Act does not require W to comply with pre-court procedures under this Act in seeking damages against E.

If, as a result of sustaining the injury, W seeks damages against X Company, W must comply with the pre-court procedures

under this Act before starting a proceeding in a court for damages against X Company.

- (d) injury within the meaning of the *WorkCover Queensland Act 1996* and in relation to which that Act applies, but only to the extent that an entitlement to seek damages within the meaning of that Act for the injury is regulated by chapter 5 of that Act; or
- (e) injury within the meaning of the *Workers' Compensation Act 1990* suffered on or after 1 January 1996 and in relation to which that Act applies, but only to the extent that an entitlement to seek damages within the meaning of that Act for the injury is regulated by part 11 of that Act; or
- (f) injury within the meaning of the *Workers' Compensation Act 1990* suffered before 1 January 1996 and in relation to which that Act applies, but only to the extent that the injury suffered created, independently of that Act, a legal liability in the employer of the person suffering the injury for which the employer was indemnified under that Act in relation to the injury or required by that Act to be so indemnified; or
- (g) injury within the meaning of the *Workers' Compensation Act 1916* and in relation to which that Act applies, but only to the extent that the injury suffered created, independently of that Act, a legal liability in the employer of the person to pay damages in relation to the injury.'.

13 Amendment of s 81 (Particular provisions having continuing effect)

Section 81, second dot point—
omit.

14 Insertion of new ch 4, pt 5

Chapter 4—
insert—

Workers' Compensation Act to recover damages for personal injury; or

- (b) proceedings to recover damages for personal injury.

relevant Motor Accident Insurance Act means—

- (a) the *Motor Accident Insurance Act 1994*; or
 (b) the *Motor Vehicles Insurance Act 1936*.

relevant Workers' Compensation Act means—

- (a) the *Workers' Compensation and Rehabilitation Act 2003*; or
 (b) the *WorkCover Queensland Act 1996*; or
 (c) the *Workers' Compensation Act 1990*; or
 (d) the *Workers' Compensation Act 1916*.

'84 Continuing application of repealed s 51

- '(1) Section 51 (Damages for loss of earnings or earning capacity) as in force immediately before 9 April 2003 has no effect in relation to personal injury arising out of an incident happening before that day.
- '(2) Instead, the *Civil Liability Act 2003*, section 54 as in force on the commencement of this section has effect in relation to personal injury arising out of an incident happening before 9 April 2003.
- '(3) To remove any doubt, it is declared that subsections (1) and (2) do not apply in relation to an appeal against an award for damages for loss of earnings heard on or after the commencement of this section if the award was made before the commencement.'

15 Amendment of sch (Dictionary)

Schedule, definition *average weekly earnings*—
omit.

