

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

Explanatory Notes on amendments to be moved during consideration in detail

General Outline

Objectives of the Legislation

To ensure the objects of the Act are achieved whilst ensuring maximum practical operability of the law.

Reasons for the objectives and how they will be achieved

Further consultation with various stakeholders has identified an issue with application of the proposed amendment to the *Limitation of Actions Act 1974*. The proposed amendment deals with those concerns

Administrative cost to Government of implementation

There are no financial implications for the Government as a result of the amendments

Consistency with Fundamental Legislative Principles

The amendments do not breach fundamental legislative principles

Consultation

Community

There has been further consultation with representatives of the Queensland Asbestosis and Related Diseases Support Society and the Bar Association of Queensland.

Government

Queensland Treasury, through the Office of the Insurance Commissioner on behalf of the Motor Accident Insurance Commission and the Queensland Government Insurance Fund, has been consulted.

Notes on Provisions

Part 1—Preliminary

Clause 1 amends clause 6 of the Bill inserting the words “*that is, or will be, a contributing factor to significant loss of amenities, or expectation, of a person’s life*” to the end of the proposed subparagraph 30A(1)(a). This amendment will clarify that section 30A will only apply to incidents involving dust-related conditions where the condition is of a serious level. The amendment will ensure that people who suffer less debilitating diseases will retain their right to seek an extension of time under the *Limitation of Actions Act 1974*.

For example, a person is diagnosed on 2 January 2005 with early asbestosis which is not impacting upon the person to any great extent. The asbestosis is related to an exposure that occurred more than three years prior to diagnosis. At the time of diagnosis the doctor states the disease may develop into a significant injury, but is not showing signs of doing so at that time. The person seeks legal advice and is advised that they may have a claim on the basis of the early form of asbestosis with reasonable prospects of success and which will result in damages sufficient to justify bringing the action. At the time of receiving the advice, the person has the option of commencing proceedings and making an application to extend the limitation period for the less debilitating disease prior to 2 January 2006.

The person may decide that they do not wish to pursue any action at that time. After 2 January 2006 they will be unable to commence proceedings on the basis of the early form asbestosis. The person continues regular medical observation on a 6 monthly basis and the disease progresses, but to no great extent. On 1 February 2010, following the regular check up, the person is advised by a medical practitioner that it can now be stated the asbestosis will continue to progress to the point where it will contribute to a

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significant loss of amenities of the person's life. The person seeks legal advice and decides they wish to make a claim. Section 30A applies to make the relevant material fact in relation to the nature and extent of the disease decisive at the time the person was advised on 1 February 2010 that the disease is definitely going to substantially disable them.