

Civil Liability and Other Legislation Amendment Bill 2009

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Cameron Dick MP Attorney-General and Minister for Industrial Relations

Title of the Bill

Civil Liability and Other Legislation Amendment Bill 2009.

Objectives of the Amendments

The objectives of the amendments are to:

- ensure that the amendment in the Bill to partially re-instate *Sullivan v Gordon* damages has retrospective operation in the case of dust-related conditions that are not otherwise excluded from the *Civil Liability Act 2003* (the Act); and
- allow an organisation to be prescribed by regulation as a ‘community organisation’ for the purposes of section 39 of the Act.

Achievement of the Objectives

The objectives are achieved by making the amendments to the Act described below.

Estimated Cost for Government Implementation

There are no costs to government in implementing the amendments.

Consistency with Fundamental Legislative Principles

Under section 39 of the Act, a person undertaking volunteer work for a ‘community organisation’ is entitled to receive protection from liability in

certain circumstances. Clause 6 of the Bill will ensure that a Parents and Citizens Association established under the *Education (General Provisions) Act 2006* is a ‘community organisation’ for the purposes of section 39.

Clause 2 makes a further amendment to section 38 to allow an organisation to be prescribed by regulation as a ‘community organisation’ for the purposes of section 39.

While this amendment may have insufficient regard to the institution of Parliament, this potential breach of fundamental legislative principles is justifiable on the basis that flexibility is required to deal with requests from organisations that wish to be considered as a ‘community organisation’ for the purposes of section 39 of the Act.

As was the case with Parents and Citizens Associations established under the *Education (General Provisions) Act 2006*, there may be other organisations in the community which organise important and essential work by volunteers but which do not meet the existing definition of ‘community organisation’ due to their unique organisational status.

The factors that would be taken into account when deciding whether an organisation should be prescribed by regulation as a ‘community organisation’ include the organisation’s legal status and structure. Each case would be decided on its merits.

Clause 3 ensures that clause 10 of the Bill will have retrospective operation in the case of a dust-related condition that is not otherwise excluded from the Act if:

- judgment has not been given in relation to the action; or
- the action has not been settled or discontinued.

While this amendment may adversely affect defendants, the amendment is justified on the basis that many of the current cases of dust-related disease arise from exposure to asbestos during the 1950s, 1960s and 1970s.

Consultation

The Queensland Asbestos Related Disease Support Society and the Department of the Premier and Cabinet were consulted in relation to the amendments and support the amendments.

Notes on Provisions

Clause 1 amends clause 2 of the Bill, which provides for commencement of the Bill. The amendment will ensure that clause 15 of the Bill will commence on assent.

Clause 2 amends clause 6 of the Bill to allow an organisation to be prescribed by regulation as a ‘*community organisation*’.

Clause 3 replaces the transitional provision inserted by clause 15 of the Bill with a new transitional provision. The purpose of the new transitional provision is to ensure that the amendment in the Bill to partially reinstate *Sullivan v Gordon* damages has retrospective operation in the case of certain dust-related claims that are not otherwise excluded from the Act.