James Hardie (Civil Liability) Act 2005 No 106

[2005-106]

New South Wales

Status Information

Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Editorial note**
  The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-rules (em-dashes). Text of the legislation is not affected.

  This version has been updated.

Authorisation

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James Hardie (Civil Liability) Act 2005 No 106

New South Wales

Contents

Long title 4

Part 1 Preliminary 4

1 Name of Act 4
2 Commencement 4
3 Definitions 4
4 Extraterritorial operation of Act 7
5 Construction of legislation so as not to exceed legislative power 8
6 Act to bind State and other jurisdictions 8

Part 2 Extinguishment of certain civil liability 9

Division 1 General 9

7 Application of Part 9
8 Meaning of “protected conduct” 9

Division 2 Extinguishment of liability 10

9 Civil liability in relation to protected conduct extinguished 10
10 Certain liability for economic loss for asbestos harm extinguished 11
11 When civil liability extinguished 11
12 Effect of extinguishment of civil liability under this Division 11
13 Certain liability not affected by Division 12

Division 3 Revival of liability 12

14 Revival of extinguished civil liability 12

15 Effect of revival of extinguished liability 13
16 Claims against liable entities in respect of revived liabilities 13
17 Effect of revocation of reviving order 14

Part 3 Contractual liability of State 14

18 Meaning of “legislative or regulatory action” 14
19 Right to compensation for enactment, making or enforcement of legislation confirmed 15
20 Validity of action not affected even if compensable 15

Part 4 Baryulgil claims against Marlew Mining 15

21 Interpretation 15
22 Amaca liable for asbestos claims and contribution claims against Marlew 17
23 Amaca not liable for certain claims—rehabilitation of mine 17
24 Amaca to have all Marlew’s rights in respect of claim 18
25 Special provisions for Amaca liabilities as concurrent wrongdoer 18
26 Insurance 19
27 Recovery of payments from Marlew 19

Part 5 Miscellaneous 20

28 Relationship with James Hardie (Civil Penalty Compensation Release) Act 2005 20
29 Regulations 20
30 Savings, transitional and other provisions 20

Schedule 1 Savings, transitional and other provisions 20

James Hardie (Civil Liability) Act 2005 No 106

New South Wales

An Act to provide for the extinguishment of certain civil liability of companies and other persons associated with the James Hardie corporate group, to confirm certain contractual liabilities of the State and to make Amaca Pty Limited liable for certain personal asbestos liabilities of Marlew Mining Pty Limited arising from its mining activities at Baryulgil in New South Wales; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *James Hardie (Civil Liability) Act 2005*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

(1) In this Act—

ABN 60 means the company registered under the Corporations Act immediately before the introduction day as ABN 60 Pty Limited (ACN 000 009 263) that was formerly called James Hardie Industries Limited, and includes any successor to or continuation of that company.

ABN 60 Foundation means the company registered under the Corporations Act immediately before the introduction day as ABN 60 Foundation Limited (ACN 106 266 611), and includes any successor to or continuation of that company.

Amaba means the company registered under the Corporations Act immediately before the introduction day as Amaba Pty Limited (ACN 000 387 342) that was formerly called Jsekarb Pty Limited, and includes any successor to or continuation of that company.

Amaca means the company registered under the Corporations Act immediately before the introduction day as Amaca Pty Limited (ACN 000 035 512) that was formerly called James Hardie & Coy Pty Limited, and includes any successor to or

continuation of that company.

assent day means the day on which this Act received the Royal Assent.

Compensation Foundation means the company registered under the Corporations Act immediately before the introduction day as the Medical Research and Compensation Foundation (ACN 095 924 137), and includes any successor to or continuation of that company.

concurrent wrongdoer, in relation to a civil liability, means a person who is one of two or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the liability.

controlled entity of James Hardie Industries NV has the same meaning as it has in section 32 of the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*.

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

Corporations legislation means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

damages includes any form of monetary compensation.

economic loss includes damage to property.

exercise a function includes perform a duty.

Final Funding Agreement has the same meaning as it has in the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*.

function includes a power, authority or duty.

general law means the common law and equity.

Heads of Agreement means the Heads of Agreement entered into on 21 December 2004 by the following persons and bodies—

(a) James Hardie Industries NV,

(b) the State,

(c) the Australian Council of Trade Unions,

(d) Unions New South Wales,

(e) Mr Bernie Banton as the designated representative of the Asbestos Victims Groups named in Schedule 1 to the Heads of Agreement.

introduction day means the day on which the Bill for this Act was first introduced into Parliament.

Editorial note—

Day the Bill for this Act was first introduced into Parliament: 1.12.2005.

Jackson Inquiry means the Special Commission of Inquiry that was commissioned, by Letters Patent dated 27 February 2004 and 30 June 2004, to inquire into and report on certain matters relating to the establishment of the Compensation Foundation.

Jackson Inquiry Report means the report issued by the Jackson Inquiry on 21 September 2004 entitled "Report of the Special Commission of Inquiry into the Medical Research and Compensation Foundation".

James Hardie Industries NV means the foreign company incorporated in the Netherlands registered under the Corporations Act immediately before the introduction day as James Hardie Industries NV (ARBN 097 829 895), and includes such successors to or continuations of that company, or other entities having obligations under the Final Funding Agreement, as may be prescribed by the regulations.

legislation includes—

(a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and

(b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

liable entity means each of the following—

(a) ABN 60,

(b) Amaba,

(c) Amaca.

Related Agreement means any agreement as in force from time to time that is entered into (whether before, during or after the assent day) as contemplated by the terms of the Final Funding Agreement.

the 2001 Deed of Covenant and Indemnity means the Deed of Covenant and Indemnity executed in February 2001 by—

(a) James Hardie Industries Limited (which was subsequently renamed as ABN 60), and

(b) Jsekarb Pty Limited (which was subsequently renamed as Amaba), and

(c) James Hardie & Coy Pty Limited (which was subsequently renamed as Amaca).

the 2003 Deed of Covenant, Indemnity and Access means the Deed of Covenant, Indemnity and Access executed by James Hardie Industries NV and ABN 60 in March 2003, as amended by the Deed of Rectification executed by those parties on 3 February 2004.

the State means the State of New South Wales.

(2) In this Act, the following terms have the meanings given in section 9 of the Corporations Act—

ACN

ARBN

company

director

foreign company

officer

(3) If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.

(4) Notes included in this Act do not form part of this Act.

4 Extraterritorial operation of Act

(1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following—

(a) things situated in or outside the territorial limits of the State,

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.

(2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

5 Construction of legislation so as not to exceed legislative power

(1) Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act—

(a) would, apart from this section, have an invalid application, but

(b) also has at least one valid application,

it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.

(2) Despite subsection (1), the provision is not to have a particular valid application if—

(a) apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of the Parliament of New South Wales, or

(b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the legislative power of the Parliament of New South Wales.

(3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).

(4) This section is in addition to, and not in derogation of, section 31 of the *Interpretation Act 1987*.

(5) In this section—

application means an application in relation to—

(a) one or more particular persons, things, matters, places, circumstances or cases, or

(b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

invalid application, in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.

valid application, in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.

6 Act to bind State and other jurisdictions

(1) This Act binds the State and, in so far as the legislative power of the Parliament of

New South Wales permits, the other States, the Territories and the Commonwealth.

Note—

The *Interpretation Act 1987* defines the term ***person*** to include a body politic.

(2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.

(3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.

(4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

Part 2 Extinguishment of certain civil liability

Division 1 General

7 Application of Part

(1) This Part applies to civil liability of any kind, regardless of whether it arises—

(a) at general law (whether in tort, contract or otherwise), or

(b) by or under any legislation.

(2) The provisions of this Part apply despite the provisions of any other legislation or any other law (whether written or unwritten).

8 Meaning of "protected conduct"

For the purposes of this Part, ***protected conduct*** is anything done or omitted to be done in connection with any of the following—

(a) the transfer of the assets of, and the payment of dividends and management fees by, any liable entity, that is set out in Part 3 of the Jackson Inquiry Report,

(b) the establishment and funding and underfunding of the Compensation Foundation and the Medical Research and Compensation Foundation Trust (including announcements or other representations made in relation to the effect or consequences of the establishment or funding),

(c) the transfer of assets from ABN 60 to James Hardie Industries NV, the establishment in 2001 of the ABN 60 Foundation and the ABN 60 Foundation Trust and the allotment of shares in ABN 60 to the ABN 60 Foundation,

(d) the corporate reorganisation of the James Hardie group of companies on 15 February 2001 (including announcements or other representations made in relation to the effect or consequences of the reorganisation),

(e) the corporate reorganisation of the James Hardie group of companies between August and October 2001, including without limitation—

(i) the scheme of arrangement approved by the Supreme Court in October 2001 under which James Hardie Industries NV became the holding company for the James Hardie group of companies, and

(ii) announcements or other representations made in relation to the effect or consequences of that scheme (including representations made to the Supreme Court),

(f) the entry into the 2001 Deed of Covenant and Indemnity and the 2003 Deed of Covenant, Indemnity and Access and the amendment of the 2003 Deed of Covenant, Indemnity and Access by the Deed of Rectification executed by the parties to it on 3 February 2004,

(g) the issue by ABN 60 of shares in ABN 60 to James Hardie Industries NV and the cancellation of those shares in March 2003,

(h) the negotiation of, and entry into, the Heads of Agreement, the Final Funding Agreement or any Related Agreement.

Note—

The matters referred to in paragraphs (a)–(g) are described in the Jackson Inquiry Report.

Division 2 Extinguishment of liability

9 Civil liability in relation to protected conduct extinguished

Any civil liability to which this Part applies that is incurred (whether before, during or after the assent day) by any of the following persons in respect of any protected conduct of the person is extinguished—

(a) any liable entity,

(b) the Compensation Foundation,

(c) James Hardie Industries NV,

(d) any controlled entity of James Hardie Industries NV,

(e) any person who engaged in the conduct in the person's capacity as a director or other officer, employee, advisor or agent of—

(i) any liable entity, or

(ii) the Compensation Foundation, or

(iii) James Hardie Industries NV, or

(iv) any controlled entity of James Hardie Industries NV.

10 Certain liability for economic loss for asbestos harm extinguished

(1) Any civil liability to which this Part applies that is incurred (whether before, during or after the assent day) by any of the following persons in respect of asbestos harm is extinguished to the extent that it is a liability for economic loss, other than economic loss resulting from or attributable to personal injury or death—

(a) any liable entity,

(b) James Hardie Industries NV,

(c) any controlled entity of James Hardie Industries NV.

(2) This section does not limit section 9.

(3) In this section—

asbestos harm means damage or loss sustained by any person (including damage to or loss of property) arising from exposure to, or the presence of, any asbestos or asbestos products that were mined, manufactured, sold, distributed or used by or on behalf of a liable entity.

11 When civil liability extinguished

Civil liability that is extinguished by section 9 or 10 is extinguished—

(a) if the liability accrues during or before the assent day (but subject to paragraph (c))—on the assent day, or

(b) if the liability accrues after the assent day (but subject to paragraph (c))—on the day on which the liability accrues, or

(c) if the liability was revived under Division 3 and then extinguished again under this Division as referred to in section 17 (1) (b)—on the day on which the order that revived the liability is revoked by a revoking order under section 14.

12 Effect of extinguishment of civil liability under this Division

If civil liability is extinguished under this Division, then (to the full extent that the legislative power of the Parliament of New South Wales permits)—

(a) any person to whom the liability is owed cannot assert, continue or enforce a cause of action in respect of the liability in any civil proceedings unless and until the liability is subsequently revived under this Part, and

(b) no court or other tribunal has any jurisdiction or power to entertain proceedings or grant any relief in respect of such liability unless and until the liability is subsequently revived under this Part.

13 Certain liability not affected by Division

(1) Nothing in this Part operates to extinguish—

(a) any civil liability incurred by a party to the Heads of Agreement, the Final Funding Agreement or a Related Agreement to another party to the Agreement where that liability arises under or in relation to the Agreement or in connection with the negotiation of, and entry into, the Agreement, or

(b) any civil liability incurred by an advisor or agent of James Hardie Industries NV in connection with the negotiation of, and entry into, the Heads of Agreement, the Final Funding Agreement or any Related Agreement, or

(c) any civil liability in respect of which proceedings are pending before a court or other tribunal immediately before 1 December 2005, or

(d) any civil liability of a person who is a concurrent wrongdoer with another person whose liability is extinguished under this Division in respect of the damage or loss to which the extinguished liability relates.

Note—

A person whose liability is extinguished under this Division is not liable as a concurrent wrongdoer in respect of that liability for the purposes of paragraph (d) even if the person is a concurrent wrongdoer with another person whose liability is also extinguished under this Division.

(2) The extinguishment of a liability by this Part operates even if the liability is the subject of proceedings commenced during or after 1 December 2005. The fact that any such proceedings are pending on the assent day does not prevent or limit the application of that provision or this Part in respect of the liability concerned.

Division 3 Revival of liability

14 Revival of extinguished civil liability

(1) A civil liability extinguished by operation of Division 2 may be revived as provided by this section, but not if the liability is a liability of a natural person or a liability of the Compensation Foundation.

(2) The Minister may, at any time, by order published in the Gazette (a ***reviving order***) declare that specified civil liability, or a specified class of civil liability, extinguished by operation of Division 2 is revived on a day specified in the order. That day must not be earlier than 14 days after the day on which the reviving order is published in the Gazette.

(3) A reviving order may not be made if the making of the order would constitute a breach by the State of the terms of the Final Funding Agreement or a Related Agreement.

Note—

An exercise of the power to make a reviving order in a manner that breaches the Final Funding Agreement or a Related Agreement may also render the State liable to pay damages. See Part 3.

(4) Any person whose civil liability is revived (or purportedly revived) by a reviving order (or purported reviving order) may not claim or otherwise assert in any proceedings that the order or purported order was not validly made unless the Minister is, or is subsequently joined as, a party to the proceedings.

(5) A reviving order operates to revive the civil liability concerned on the day specified by the order.

(6) The Minister may, by order published in the Gazette (a ***revoking order***), revoke a reviving order on a day specified in the order.

(7) Without limiting subsection (6), the Minister must revoke a reviving order as soon as is reasonably practicable after the Minister becomes aware of the cessation of the breach or breaches of the Final Funding Agreement by another party to the Agreement that occasioned the reviving order.

(8) A revoking order may be published before, during or after the day fixed by the reviving order for the revival of the civil liability concerned.

(9) The revocation of a reviving order does not prevent publication of a further reviving order.

(10) More than one reviving or revoking order may be made under this section.

15 Effect of revival of extinguished liability

If extinguished civil liability is revived under this Division—

(a) the civil liability is taken for all purposes never to have been extinguished and is enforceable accordingly by any person for whose benefit the liability accrues, and

(b) any limitation period applicable to a cause of action for the liability is taken to have stopped running on the day on which the liability was extinguished and to have recommenced to run on the day on which the liability is revived.

16 Claims against liable entities in respect of revived liabilities

(1) If extinguished civil liability is revived under this Division, a claim against a liable entity in respect of the liability becomes a payable liability of the entity.

(2) The Minister may, by order published in the Gazette, order that a claim against a liable entity in respect of a specified liability or a liability of a specified class or description that is an extinguished civil liability revived under this Division is not a payable liability, and such an order has effect accordingly.

(3) The Minister may make such an order before or after the liability concerned is revived under this Division.

(4) If the Minister's order is made to take effect after the liability is revived, the effect of the order is as follows—

(a) a claim against a liable entity in respect of the liability is a payable liability until the Minister's order takes effect,

(b) the claim remains a payable liability after the Minister's order takes effect but only for the purposes of and in connection with any proceedings commenced in respect of the claim before a court or other tribunal before the Minister's order takes effect and only if those proceedings are pending immediately before the Minister's order takes effect.

(5) In this section, ***payable liability*** of a liable entity means a payable liability under and for the purposes of the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*.

17 Effect of revocation of reviving order

(1) If a reviving order under section 14 is revoked by a revoking order under that section, the revoking order has the following effect—

(a) if it is published before or during the day fixed by the reviving order for the revival of a specified civil liability—the reviving order is taken never to have been published and, accordingly, the specified civil liability is not revived,

(b) if it is published after the day fixed by the reviving order for the revival of a specified civil liability—the reviving order ceases to have effect on the day on which it is revoked and, accordingly, Division 2 operates (subject to subsection (2)) to extinguish again the specified civil liability.

(2) Subsection (1) (b) does not operate to apply Division 2 to civil liability in respect of which proceedings were commenced before a court or other tribunal while the liability was revived if those proceedings are still pending immediately before the publication of the revoking order.

Note—

Subsection (2) extends to proceedings in respect of a claim that is a claim for a payable liability under section 16.

Part 3 Contractual liability of State

18 Meaning of "legislative or regulatory action"

For the purposes of this Part, ***legislative or regulatory action*** means any of the following—

(a) the enactment or making of legislation by or on behalf of the State or an instrumentality of the State,

(b) the exercise of functions by officials, employees, authorities or agencies of the State that are conferred or imposed on them by legislation.

19 Right to compensation for enactment, making or enforcement of legislation confirmed

(1) This section applies to any provision of the Final Funding Agreement or a Related Agreement that provides for the State not to carry out, or not to cause the carrying out of, legislative or regulatory action of a kind specified by the Agreement.

(2) For the avoidance of doubt, it is declared that a breach by the State of a provision to which this section applies is capable of rendering the State liable to pay damages for breach of contract if the breach is of such a kind as to warrant an award of damages for breach of contract at general law.

20 Validity of action not affected even if compensable

(1) Nothing in section 19, the Final Funding Agreement or any Related Agreement operates—

(a) to prevent the introduction of any Bill in, or the passage of a Bill through, a House of Parliament or prevent assent being given to any Bill, or

(b) to prevent the making of any other legislation, or

(c) to affect the validity of any legislation, or

(d) to affect the validity of any action taken, or not taken, by the State or any its officials, employees, authorities or agencies.

(2) Nothing in subsection (1) limits the operation of section 14 (3) of this Act or section 9 (3) of the *James Hardie (Civil Penalty Compensation Release) Act 2005*.

Note—

Section 14 (3) of this Act provides that a reviving order under section 14 may not be made if the making of the order would constitute a breach by the State of the terms of the Final Funding Agreement or a Related Agreement. Section 9 (3) of the *James Hardie (Civil Penalty Compensation Release) Act 2005* makes similar provision in relation to a reviving order made under section 9 of that Act.

Part 4 Baryulgil claims against Marlew Mining

21 Interpretation

(1) In this Part—

asbestos claim means a claim by any of the following persons for damages (whether arising before, during or after the assent day) in respect of personal injury or death arising from exposure to asbestos—

(a) the person who sustains the personal injury,

(b) the legal personal representative of a deceased person who sustained the injury or died as a result of the injury,

(c) a relative of a deceased person who sustained the injury or died as a result of the injury,

and includes such a claim against a person pursuant to the joinder of the person as a party to proceedings.

asbestos mining activities means the mining or milling of asbestos and includes the disposal or other parting with of tailings (and other materials containing asbestos) that resulted from those mining or milling operations.

concurrent wrongdoer, in relation to an asbestos claim, means a person who is one of two or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the claim.

Marlew means the company registered under the Corporations Act immediately before the introduction day as Marlew Mining Pty Limited (ACN 000 049 650) that was formerly called Asbestos Mines Pty Limited, and includes any successor to or continuation of that company.

Marlew asbestos claim means an asbestos claim in respect of personal injury or death arising from exposure to any asbestos in the course of or as a consequence of asbestos mining activities conducted by or on behalf of Marlew at Baryulgil, but only where that exposure occurred at or near Baryulgil.

Marlew contribution claim means a claim (whether arising before, during or after the assent day) for contribution against a person as a concurrent wrongdoer in relation to a Marlew asbestos claim.

(2) For the purposes of the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*—

(a) a Marlew asbestos claim against Amaca is a ***personal asbestos claim*** under that Act against Amaca as a liable entity under that Act, and

(b) a Marlew contribution claim against Amaca in respect of which a final judgment has been entered by a court or other tribunal against Amaca or a binding settlement has been entered into by Amaca is a ***proven personal asbestos contribution claim*** under that Act against Amaca as a liable entity under that Act.

(3) This Part operates even if Marlew ceases or has ceased to exist or is or has been

deregistered under the Corporations Act (and in such a case operates as if Marlew had not ceased to exist or been deregistered).

22 Amaca liable for asbestos claims and contribution claims against Marlew

(1) Amaca is liable on and from the assent day in respect of a Marlew asbestos claim or Marlew contribution claim as if the asbestos mining activities conducted by or on behalf of Marlew at Baryulgil in respect of which the claim arises had been conducted by or on behalf of Amaca.

(2) Amaca's liability under this Part is limited to liability in respect of a Marlew asbestos claim or Marlew contribution claim—

(a) that is a claim in proceedings against Amaca commenced during or after the assent day in the Dust Diseases Tribunal of New South Wales, or

(b) that is a claim in proceedings against Marlew commenced before the assent day in any court, tribunal or other judicial body constituted in Australia.

(3) This Part extends to a claim in proceedings commenced against Marlew before the assent day, so as to require Amaca to satisfy the claim (as a proven personal asbestos claim under the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*) but only to the extent that the claim has not already been satisfied by Marlew, and as if—

(a) a final judgment entered by a court, tribunal or other judicial body against Marlew in respect of the claim were a final judgment against Amaca, or

(b) a binding settlement entered into by Marlew in respect of the claim had been entered into by Amaca.

Note—

Pending proceedings against Marlew can continue to finality (with judgment being satisfied by Amaca), and Amaca will be liable for claims already finalised but not yet paid by Marlew.

(4) This section does not prevent the discontinuance of any proceedings commenced before the assent day against Marlew and the commencement of separate proceedings against Amaca in respect of the claim concerned.

(5) This Part does not entitle a person to recover more than once in respect of a Marlew asbestos claim or Marlew contribution claim, and a person who recovers against either Amaca or Marlew in respect of such a claim cannot also recover against the other in respect of the claim.

23 Amaca not liable for certain claims—rehabilitation of mine

(1) Amaca is not liable under this Part in respect of any Marlew asbestos claim or Marlew contribution claim that is a claim in respect of a liability that is the subject of an

indemnity granted by the Minister for Mineral Resources by way of a release and indemnity agreement dated 11 March 1996 between that Minister and James Hardie Industries Limited (now ABN 60).

(2) The Minister is to cause a copy of the agreement referred to in this section to be published in the Gazette.

Note—

The agreement referred to releases James Hardie Industries Limited from liability for asbestos related death or injury of employees of the Department of Mineral Resources or Fuller Earthmoving Pty Ltd in connection with the rehabilitation of an asbestos mine at Baryulgil.

24 Amaca to have all Marlew's rights in respect of claim

(1) Amaca is subrogated to the rights of Marlew in respect of a Marlew asbestos claim or Marlew contribution claim against Amaca.

(2) Amaca also has all the rights that Marlew would have had in respect of a Marlew asbestos claim or Marlew contribution claim against Amaca (being the rights Marlew would have had if Marlew had not ceased to be liable in respect of the claim under this Part), including the following rights—

(a) rights of subrogation,

(b) rights of contribution against any concurrent wrongdoer in respect of the claim,

(c) rights that Marlew would have under any policy of insurance in respect of a Marlew asbestos claim or Marlew contribution claim (as if Marlew and not Amaca were liable on the claim).

25 Special provisions for Amaca liabilities as concurrent wrongdoer

(1) If Amaca's liability under this Part pursuant to the settlement or determination of a Marlew asbestos claim is a joint liability as a concurrent wrongdoer in relation to the claim, the provisions of this section apply to Amaca's liability and the liability of any other concurrent wrongdoer (collectively referred to in this section as the ***other concurrent wrongdoers***) in relation to the claim.

(2) The plaintiff is required to pursue recovery of the plaintiff's damages from the other concurrent wrongdoers and is only entitled to recover from Amaca as a defendant of last resort. Amaca's liability to the plaintiff as a defendant of last resort is liability solely to the extent (if any) that the plaintiff is unable to recover from any of the other concurrent wrongdoers.

(3) None of the other concurrent wrongdoers is entitled to recover contribution from Amaca as a concurrent wrongdoer, and the other concurrent wrongdoers are liable for the purposes of rights of contribution as between themselves as if Amaca's share of contribution had been shared between them in proportion to their shares of

contribution among themselves.

(4) Amaca is entitled to recover from the other concurrent wrongdoers any payment made by Amaca to the plaintiff in respect of Amaca's liability as a concurrent wrongdoer, and for that purpose—

(a) the other concurrent wrongdoers are jointly and severally liable to Amaca for the amount of any such payment made to the plaintiff by Amaca, and

(b) any such amount recoverable by Amaca is recoverable in a court of competent jurisdiction as a debt due to Amaca from the other concurrent wrongdoers, and

(c) any of the other concurrent wrongdoers from whom Amaca recovers in respect of any such payment to the plaintiff is entitled to recover contribution from the other concurrent wrongdoers (but not from Amaca) in proportion to their shares of contribution among themselves.

(5) For the purposes of this section, a plaintiff is considered to be unable to recover damages from a concurrent wrongdoer if, and only if, the plaintiff has made a demand for payment of damages by the concurrent wrongdoer after judgment in favour of the plaintiff takes effect and the concurrent wrongdoer has failed to pay the damages within 28 days after the demand for payment was made.

(6) The expression ***other concurrent wrongdoers*** includes a single concurrent wrongdoer if the concurrent liability of Amaca is a concurrent liability with only one other concurrent wrongdoer.

26 Insurance

The operation of this Part—

(a) does not limit or otherwise affect any liability of an insurer under a policy of insurance that insures Marlew against liability in connection with a Marlew asbestos claim or Marlew contribution claim, and

(b) does not give any such insurer a right of action against Amaca in respect of a Marlew asbestos claim or Marlew contribution claim that the insurer would not have against Marlew.

27 Recovery of payments from Marlew

(1) Amaca is entitled to recover from Marlew as a debt the amount of any payment made by Amaca in satisfaction of any payable liability (within the meaning of the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*) in respect of a Marlew asbestos claim or Marlew contribution claim.

(2) Amaca is entitled to prove as a creditor in respect of a debt arising under this section in any winding up of Marlew.

(3) Subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to Chapter 5 of the Corporations Act.

Note—

Chapter 5 of the Corporations Act makes provision for the external administration of companies and certain other bodies.

Section 5G (11) of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

However, section 5G (3) of the Corporations Act provides that section 5G will only apply to a provision of a law of a State or Territory enacted after the commencement of that Act if a law of the State or Territory declares the provision to be a Corporations legislation displacement provision for the purposes of that section.

Part 5 Miscellaneous

28 Relationship with James Hardie (Civil Penalty Compensation Release) Act 2005

The provisions of this Act are in addition to, and do not derogate from, the provisions of the *James Hardie (Civil Penalty Compensation Release) Act 2005*.

29 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.

30 Savings, transitional and other provisions

Schedule 1 has effect.

Schedule 1 Savings, transitional and other provisions

(Section 30)

Part 1 General

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

this Act

(2) Any such provision may, if the regulations so provide, take effect from—

(a) the introduction day (in the case of this Act), or

(b) the date of assent to the Act concerned (in the case of any other Act),

or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.