



New South Wales

Compensation to Relatives Legislation Amendment (Dust Diseases) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

This Bill amends the *Compensation to Relatives Act 1897* and the *Dust Diseases Tribunal Act 1989* with respect to damages recoverable by the relatives or estate of a person whose death has resulted from a dust-related condition.

The objects of this Bill are as follows:

- (a) to provide that damages recoverable in a court action brought by the relatives of a deceased person must not be reduced by any non-economic loss damages (such as for pain and suffering) recovered or recoverable by the estate of the deceased person in the Dust Diseases Tribunal,
- (b) to enable the estate of the deceased person to bring proceedings, within 12 months after the person's death, to recover non-economic loss damages in the Dust Diseases Tribunal.

The Bill also amends the *Law Reform (Miscellaneous Provisions) Act 1944* to provide that the damages recoverable by the estate of a deceased person do not, under that Act, include damages for the loss of capacity to provide domestic services.

Compensation to Relatives Legislation Amendment (Dust Diseases) Bill 2012

Explanatory note

This Bill gives effect to the recommendations made by the New South Wales Law Reform Commission in its report entitled *Compensation to Relatives* (Report No 131).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 makes the amendments described in the above Overview.

Introduced by the Hon P G Lynch, MP

First print



New South Wales

Compensation to Relatives Legislation Amendment (Dust Diseases) Bill 2012

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New South Wales

Compensation to Relatives Legislation Amendment (Dust Diseases) Bill 2012

No. , 2012

A Bill for

An Act to amend certain legislation to give effect to the recommendations of the NSW Law Reform Commission in its Report 131 Compensation to Relatives.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Compensation to Relatives Legislation Amendment (Dust Diseases) Act 2012</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendments	1
1.1	Compensation to Relatives Act 1897 No 31	2
[1]	Section 3 An action to be maintainable against any person causing death through neglect despite the death of the person injured	3 4
	Insert at the end of section 3 (3) (c):	5
	, or	6
	(d) any damages recovered or recoverable for the benefit of the estate of the deceased person under section 12B of the <i>Dust Diseases Tribunal Act 1989</i> .	7 8 9
[2]	Section 3 (4)	10
	Insert after section 3 (3):	11
	(4) Section 3 (3) (d), as inserted by the <i>Compensation to Relatives Legislation Amendment (Dust Diseases) Act 2012</i> , extends to an action for damages that arises before the commencement of that Act but not so as to affect any decision of a court or tribunal made before that commencement.	12 13 14 15 16
1.2	Dust Diseases Tribunal Act 1989 No 63	17
[1]	Section 12B	18
	Omit the section. Insert instead:	19
12B	Damages for non-economic loss after death of plaintiff	20
(1)	The purpose of this section is to enable the estate of a person whose death has been caused by a dust-related condition to recover damages for the person's pain or suffering, or for any bodily or mental harm suffered by the person, or for curtailment of the person's expectation of life, provided:	21 22 23 24 25
(a)	proceedings commenced by the person were pending before the Tribunal at the person's death, or	26 27
(b)	proceedings are, by the filing and service of the statement of claim and the statement of particulars, commenced by the estate of the person no later than 12 months after the person's death.	28 29 30 31
	Note. Section 17 (5) enables parties to be joined at any stage during the proceedings.	32 33

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2012

Schedule 1 Amendments

(2)	Section 2 (2) (d) of the <i>Law Reform (Miscellaneous Provisions) Act 1944</i> does not apply in relation to:	1
		2
(a)	proceedings commenced by a person before his or her death and pending before the Tribunal at his or her death, or	3
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		5
(b)	proceedings commenced by the estate of the person, by the filing and service of the statement of claim and the statement of particulars, no later than 12 months after the person's death,	6
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	where the cause of action is for damages in respect of a dust-related condition.	10
		11
(3)	This section, as substituted by the <i>Compensation to Relatives Legislation Amendment (Dust Diseases) Act 2012</i> , extends to proceedings in the Tribunal commenced before the commencement of that Act but not so as to affect any decision of a court or tribunal made before that commencement.	12
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		16
[2]	Schedule 3 Savings, transitional and other provisions	17
	Insert at the end of clause 1 (1):	18
	<i>Compensation to Relatives Legislation Amendment (Dust Diseases) Act 2012</i>	19
		20
1.3	Law Reform (Miscellaneous Provisions) Act 1944 No 28	21
[1]	Section 2 Effect of death on certain causes of action	22
	Insert at the end of section 2 (2) (a) (ii):	23
	, or	24
(iii)	any damages for the loss of the capacity of the person to provide domestic services during such time after the person's death as the person would have survived but for the act or omission which gives rise to the cause of action,	25
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		27
		28
		29

[2] Section 2 (3)

Insert after section 2 (2):

- (3) Section 2 (2) (a) (iii), as inserted by the *Compensation to Relatives Legislation Amendment (Dust Diseases) Act 2012*, extends to an action for damages that arises before the commencement of that Act but not so as to affect any decision of a court or tribunal made before that commencement.

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