

Law Reform (Miscellaneous Provisions) Act 1944 No 28

[1944-28]



New South Wales

Status Information

Currency of version

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Provisions in force

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

Notes—

- **Does not include amendments by**
[Civil Liability Amendment \(Personal Responsibility\) Act 2002 No 92](#) (not commenced)

Authorisation

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Contents

Long title	3
Part 1 Preliminary	3
1 Name of Act	3
Part 2 Survival of causes of action after death	3
2 Effect of death on certain causes of action	3
Part 3 Injury arising from mental or nervous shock	4
3 Personal injury arising from mental or nervous shock	4
4 Extension of liability in certain cases	5

Law Reform (Miscellaneous Provisions) Act 1944 No 28



New South Wales

An Act to amend the law with respect to the effect of death in relation to causes of action; to amend the law in relation to actions for the recovery of damages; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act

- (1) This Act may be cited as the *Law Reform (Miscellaneous Provisions) Act 1944*.
- (2) (Repealed)

Part 2 Survival of causes of action after death

2 Effect of death on certain causes of action

- (1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in the person shall survive against, or, as the case may be, for the benefit of, the person's estate: Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims under section 52 of the *Matrimonial Causes Act 1899*, as amended by subsequent Acts, for damages on the ground of adultery or to claims under Division 2 of Part 3 of the *Property (Relationships) Act 1984*.
- (2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person:
 - (a) shall not include:
 - (i) any exemplary damages, or
 - (ii) any damages for the loss of the capacity of the person to earn, or for the loss of future probable earnings of the person, 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,

- (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry,
 - (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to the person's estate consequent on the person's death, except that a sum in respect of funeral expenses may be included,
 - (d) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall not include any damages for the pain or suffering of that person or for any bodily or mental harm suffered by the person or for the curtailment of the person's expectation of life.
- (3) (Repealed)
- (4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part, to have been subsisting against the person before the person's death such cause of action in respect of that act or omission as would have subsisted if the person had died after the damage was suffered.
- (5) The rights conferred by this Part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the [Compensation to Relatives Act 1897](#), as amended by subsequent Acts, and so much of this Part as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Act as so amended as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).
- (6) The rights conferred by this Part for the benefit of the estates of deceased persons and the obligations continued or created by this Part against the estates of deceased persons shall be in addition to and not in derogation of any rights conferred or obligations created by or under the [Motor Vehicles \(Third Party Insurance\) Act 1942](#) or the [Transport Accidents Compensation Act 1987](#) or the [Motor Accidents Act 1988](#).
- (7) This section has effect subject to section 12B of the [Dust Diseases Tribunal Act 1989](#).

Part 3 Injury arising from mental or nervous shock

3 Personal injury arising from mental or nervous shock

- (1) In any action for injury to the person caused after the commencement of this Act, the plaintiff shall not be debarred from recovering damages merely because the injury

complained of arose wholly or in part from mental or nervous shock.

- (2) In determining any question of liability for injury to the person caused before the commencement of this Act, no regard shall be paid to the fact that this section has been enacted, or to the provisions hereof.

4 Extension of liability in certain cases

- (1) The liability of any person in respect of injury caused after the commencement of this Act by an act, neglect or default by which any other person is killed, injured or put in peril, shall extend to include liability for injury arising wholly or in part from mental or nervous shock sustained by:
- (a) a parent or the spouse of the person so killed, injured or put in peril, or
 - (b) any other member of the family of the person so killed, injured or put in peril where such person was killed, injured or put in peril within the sight or hearing of such member of the family.
- (2) Where an action is brought by a member of the family of any person so killed, injured or put in peril in respect of liability for injury arising wholly or in part from mental or nervous shock sustained by the plaintiff as aforesaid and claims have been made against or are apprehended by the defendant at the suit of other members of the family of such person in respect of liability arising by operation of subsection (1) out of the same act, neglect or default the defendant may apply to the Court in which the action is brought and that Court may thereupon stay any proceedings pending at the suit of any such other member of the family arising out of the same act, neglect or default and may proceed in such manner and subject to such regulations as to making members of the family of such person parties to the action as to who is to have the carriage of the action and as to the exclusion of any member of the family who does not come in within a certain time as the Court thinks just.
- (3) Where any application under subsection (2) is made the action shall be for the benefit of such members of the family of the person so killed, injured or put in peril as are joined by the Court as plaintiffs pursuant to such application and the Court may give such damages as it may think proportioned to the injury resulting to the persons joined as plaintiffs respectively, and the amounts so recovered after deducting the costs not recovered from the defendant shall be divided amongst the persons joined as plaintiffs in such shares as the Court finds and directs.
- (3A) Where any case to which subsection (3) applies is tried by a judge sitting with a jury, the jury shall find the shares of damages and the judge shall direct in accordance with the finding.
- (4) Any action in respect of a liability arising by operation of subsection (1) shall be taken in the Supreme Court or the District Court.

(5) In this section:

Member of the family means the spouse, parent, child, brother, sister, half-brother or half-sister of the person in relation to whom the expression is used.

Parent includes father, mother, grandfather, grandmother, stepfather, stepmother and any person standing in loco parentis to another.

Child includes son, daughter, grandson, granddaughter, stepson, stepdaughter and any person to whom another stands in loco parentis.

Spouse means:

(a) a husband or wife, or

(b) the other party to a de facto relationship within the meaning of the [Property \(Relationships\) Act 1984](#),

but where more than one person would so qualify as a spouse, means only the last person so to qualify.