

# Law Reform (Miscellaneous Provisions) Act 1944 No 28

[1944-28]



New South Wales

## Status Information

### Currency of version

Current version for 7 December 2007 to date (accessed 18 December 2024 at 19:00)

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.

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# 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- (2) (Repealed)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 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*.

### **3 Repeal of Act does not affect operation of savings and transitional provision**

- (1) Despite the repeal of the *Law Reform (Miscellaneous Provisions) (De Facto Relationships) Amendment Act 1984*, section 4 of that Act continues to have effect and is taken to have been transferred to this Act.
- (2) Section 4 of the *Law Reform (Miscellaneous Provisions) (De Facto Relationships) Amendment Act 1984* is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

## **Part 3**

### **4 (Repealed)**