

Fatal Accidents Amendment Bill 2008

Explanatory Memorandum

General

This Bill amends the *Fatal Accidents Act 1959* so that general damages (ie damages for pain and suffering and loss of enjoyment of life) received by the estate of a victim of an asbestos related disease under the *Law Reform (Miscellaneous Provisions) Act 1941* are not taken into account when calculating the value of the benefits lost by the victim's dependants for the purposes of a claim by those dependants under the *Fatal Accidents Act 1959*.

Where the victim of an asbestos related disease dies, claims may be made against the wrongdoer by the victim's estate (for the deceased's losses) under the *Law Reform (Miscellaneous Provisions) Act 1941* and by the deceased's dependants (for their economic loss consequential upon the victim's death) under the *Fatal Accidents Act 1959*. While an estate's entitlement to an award for pain and suffering and loss of expectation of life is ordinarily extinguished by the victim's death, in the case of asbestos disease victims such damages are preserved for their estate by amendments to the *Law Reform (Miscellaneous Provisions) Act 1941* effected by the *Law Reform (Miscellaneous Provisions (Asbestos Diseases)) Act 2002*.

In assessing dependants' damages entitlements, account is taken not only of their pecuniary losses, but also of any pecuniary gains (unless excluded by legislation) consequential upon the death. Such gains were held in the New South Wales decision of *BI Contracting Pty Ltd v Strikwerda* [2005] NSWCA 288 to include any general damages awarded to the victims' estates which are inherited by those dependants.

This Bill will operate so as to exclude such general damages from the calculation of the dependants' loss.

Clause Notes

Clause 1. Short title

This provides for this Act to be cited as the *Fatal Accidents Amendment Act 2008*.

Clause 2. Commencement

This provides for the Act to come into effect upon Royal Assent.

Clause 3. The Act amended

The Act amends the *Fatal Accidents Act 1959*.

Clause 4. Section 5 amended

The effect of the amendment is that where the dependant of an asbestos-related disease victim inherits general damages awarded to the victim's estate pursuant to the *Law Reform (Miscellaneous Provisions) Act 1941*, that inheritance will not be taken into account so as to reduce the dependant's damages entitlement under the *Fatal Accidents Act 1959*.

The amendment is retrospective, so that dependants' damages will be calculated in accordance with the Act notwithstanding that the victim died before the Act comes into effect. However, dependants' claims which have been resolved, by Court judgment or settlement, will not be affected by the Act.