



**Review of Compensation to relatives – Consultation Paper No 14**

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<b>Options</b>	<b>Comments</b>
<p>Options 1 &amp; 2</p> <p>Maintain the current law or Abolish the Strikwerda Principle</p>	<p>Strikwerda did not involve new questions of law and it did not add additional insight into the existing established law. It did however demonstrate the application of a well established principle of law. This principle of law states that a dependency claim involves calculation of the offset of damages between the pecuniary benefits passing to a widow as a beneficiary of an estate that had increased in value because of the husband's dust diseases personal injury claim and the widow's separate dependency action.</p> <p>In jurisdictions where a personal injury action of a deceased survives for the benefit of their estate, the damages recoverable swell the estate in which a widow or other dependant may share. It follows that any dependency action by the widow or dependant must take into account that increase in value of the estate, by way of a reduction of the pecuniary loss that would otherwise be payable to them. What occurs is a taking into account of all the pecuniary losses and gains resulting from the death – there is no reduction of <i>entitlement</i> but rather avoidance of over compensation.</p> <p>Suncorp believes the current system of compensation in New South Wales for dust disease victims provides timely and appropriate compensation to victims and their families. The</p>



survivorship of causes of action beyond the death of the sufferer; the compensation available and the operation of the Dust Diseases Tribunal and Commission provide extra protection and compensation for this particular class of claimant. Suncorp believes that the NSW government has created a legislative compensation environment where the needs of dust disease sufferers have been appropriately balanced with the obligations of businesses and insurers.

Suncorp agrees that it is appropriate to treat dust disease claims in NSW as a special class of personal injury, given the unique and tragic circumstances of diagnosis and death. However, it does not believe there are demonstrated circumstances of unjustness, unfairness or failings within the current system of compensation to support such significant changes, as proposed.

Abolishing the principle outlined in Strikwerda would only increase the disparity between the law and compensation available to dust disease sufferers as opposed to other classes of wrongful death or personal injury claimants in the absence of any failings in the current system to support the change.

Suncorp is further concerned at the lack of analysis on the impact of the proposed change on the existing funding arrangements for dust disease claims, and on the possible size and constitution of future claims, which would also affect funding arrangements and claims costs. Consideration of these important factors needs to be undertaken.

Suncorp supports maintenance of the law as it currently stands and the upholding of the principle as explained in Strikwerda. Accordingly, Suncorp supports Option 1 of the Consultation Paper. It does not support the Bill or option 2 of the Consultation Paper, which seeks to abolish the principle followed in Strikwerda.



<p>Option 3</p> <p>Expand the entitlement to damages for non-economic loss in estate actions to dust disease actions commenced after death</p>	<p>Aligned with the view expressed above, Suncorp supports the legislative position as it currently stands for dust disease estate actions and is concerned that the expansion to the entitlement to claim damages to actions commenced after death will have consequences not intended by the legislature.</p> <p>Expansion of entitlement to claim will involve an increase in claims costs and frequency. This entitlement must be balanced against the need to maintain the appropriate level of funding for dust disease claims, given that this is in effect a closed pool of funding.</p> <p>Expansion without clear time limitations on the ability to bring a claim and clear guidelines as to the types of claim that may be brought would bring a level of uncertainty and unpredictability to the compensation system.</p> <p>In addition, Suncorp is concerned that such an expansion will impact on the ability of insurers and claimants to prepare and locate the necessary evidence to represent their interests, placing strain on the process and adding to the uncertainty of the system.</p> <p>Suncorp submits that further analysis of the impact of such a change on claims frequency, costs and funding constraints, is required.</p>
<p>Option 4</p> <p>Introduce damages for grief suffered by relatives</p>	<p>This option has the effect of creating a new cause of action and expanding the existing compensatory framework within which insurers operate. Such a departure from the current law and the creation of a compensable loss that is not currently compensable is a matter of public policy.</p> <p>However, Suncorp considers that the current framework of compensation for personal injury, including dust disease claims and other wrongful death claims, is appropriate and adequate as it currently stands. The creation of a new cause of action may have significant unintended consequences.</p>

	<p>For instance, any expansion of existing rights to compensation will necessarily result in an increase in the cost of claims which would in turn place upward pressure on premiums and pricing arrangements under every scheme affected. These costs will ultimately pass to the consumer and will impact on the affordability of the regulatory schemes and policies of insurance generally. Careful analysis and actuarial assessment of the cost would need to be undertaken.</p> <p>If limited solely to dust diseases claims, creation of a new cause of action and entitlement to damages will further the divide between classes of claimants for wrongful death to a point that is not necessitated by clear evidence of injustice or special need requiring further special treatment.</p> <p>Suncorp does not consider necessary public policy concerns exist that would warrant the expansion of damages available to claimants across all classes.</p>
<p>Option 5</p> <p>Expand the entitlement to damages for non-economic loss in estate actions to all cases</p>	<p>Suncorp supports the current special arrangements for dust disease sufferers, including the survival of actions for damages beyond death, in light of the tragic and painful circumstances created by long latency, late diagnosis and an often accelerated painful death that sufferers face. Expedited hearings and survivorship of actions were introduced in response to the very unique circumstances of dust disease claims.</p> <p>However, an expansion of the entitlement to damages for non-economic loss in estate actions to all classes of personal injury claimants is a significant change in public policy that would have very significant consequences for existing schemes, which is not supported, in Suncorp's view, by any demonstrable need for change that existed for dust disease claimants.</p> <p>Such a change is likely to significantly impact on</p>

	<p>the cost and frequency of claims which would in turn put upward pressure on premiums and the affordability of the relevant compensatory schemes.</p> <p>Suncorp submits there are no public policy concerns or failings of the current compensation framework that requires such a drastic change or justify the likely significant impact on premiums and the affordability of the relevant affected schemes.</p>
<p>Option 6</p> <p>Alter the basis of assessment of damages in a dependant's action</p>	<p>Suncorp does not support a wholesale change to the established common law foundations of personal injury law in New South Wales.</p> <p>As stated previously, Suncorp submits there is no public policy concern or failing in the current system of compensation that requires such a fundamental change.</p> <p>The proposed change requires extensive actuarial assessment to assess the likely benefit against the likely significant increase in scheme costs, including the costs of transition. There is also concern that the proposed change would create high level of uncertainty within the insurance industry.</p>