



Media Release

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Compensation to relatives in dust diseases cases

The Attorney General has tabled the Law Reform Commission's report on compensation to relatives in dust diseases cases. The Government is currently considering the report.

The Report makes recommendations to achieve fairness for the families of deceased dust diseases victims who may be disadvantaged by the existing law when the victims die before completing their actions for damages.

As a result of a reform passed in 1998, the estate of a person whose death was caused by a dust disease can recover damages for non-economic loss in relation to the pain and suffering and loss of expectation of life provided the victim had commenced proceedings before dying.

However, as a result of earlier High Court authority confirmed in the Strikwerda case, such damages must normally be deducted when the damages are calculated in an action by the victim's dependants under the *Compensation to Relatives Act* for their loss of support arising from the death. The principal reform recommended in this Report is to remove that requirement.

"This will put these dependants in an equivalent position to the dependants of a victim who was able to complete a claim for non-economic loss damages in his or her lifetime and as a consequence was in a position to pass them to his dependants," said chairperson of the Commission, the Hon James Wood AO QC.

"The Commission does not expect that abolishing the principle will generate any significant increase in the filing of compensation to relatives claims in the Dust Diseases Tribunal, but it will provide a fairer result for the few families affected," Mr Wood said.

Some dust diseases victims face difficulties in commencing or completing their claims before dying because of the sometimes rapid progression after diagnosis of asbestos-related diseases such as mesothelioma and as a consequence their dependants may not be able to receive the benefit of the damages for non-economic loss, which in mesothelioma cases can amount to \$200,000 - \$300,000.

The application of the current law is most likely to affect the dependant families of dust diseases victims who are not entitled to statutory workers' compensation death benefits, such as DIY renovators, children who play with asbestos and spouses who washed work clothes of asbestos workers. In most other cases the dust disease benefits provide sufficient compensation for a worker's dependants such that they rarely bring a dependant's claim under the *Compensation to Relatives Act*.

Having considered the practical difficulties for litigants arising from the often swift progression of asbestos-related diseases between diagnosis and death, the Commission has made a second recommendation that would permit the recovery of damages for non-economic loss by the estate of a deceased dust diseases victim so long as proceedings are commenced no later than 12 months after the victim's death. This will replace the current rule that only permits the estate to recover such damages where the victim had commenced an action in the Dust Diseases Tribunal for damages during his or her lifetime.

The NSW Law Reform Commission has been proposing changes to the State's laws since 1966 as the first permanent law reform agency established in Australia. The Chairperson is James Wood AO QC, who is also the lead Commissioner for this reference.

**The report is published on the Law Reform Commission's website
www.lawlink.nsw.gov.au/lrc.**

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