



New South Wales

Dust Diseases Tribunal Amendment (Damages—Deceased’s Dependants) Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

In *BI (Contracting) Pty Ltd v Strikwerda* [2005] NSWCA 288, the New South Wales Court of Appeal held that the damages to be awarded to a widow in a compensation to relatives claim brought by her in the Dust Diseases Tribunal in respect of the death of her husband from a dust-related condition was to be reduced to take into account the fact that the estate of her husband had already been enlarged by a successful claim for damages in relation to the same condition.

The object of this Bill is to amend the *Dust Diseases Tribunal Act 1989* to provide that the damages payable in relation to a compensation to relatives claim for the death of a person from a dust-related condition cannot be reduced to take into account that the claimant has an entitlement to participate in the distribution of the deceased person’s estate in circumstances where the estate has been enlarged by a successful claim for the same dust-related condition.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Dust Diseases Tribunal Act 1989 No 63

Schedule 1 [1] makes the amendment to the *Dust Diseases Tribunal Act 1989* described in the Overview above.

Schedule 1 [2] inserts a savings and transitional provision in the Act.

Introduced by Mr David Shoebridge, MLC

First print



New South Wales

Dust Diseases Tribunal Amendment (Damages—Deceased’s Dependants) Bill 2010

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Dust Diseases Tribunal Act 1989 No 63	3



New South Wales

Dust Diseases Tribunal Amendment (Damages—Deceased’s Dependants) Bill 2010

No. , 2010

A Bill for

An Act to amend the *Dust Diseases Tribunal Act 1989* to provide that damages for a compensation to relatives claim in respect of the death of a person from a dust-related condition cannot be reduced to take into account the claimant’s entitlement to participate in the distribution of the deceased person’s estate.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Dust Diseases Tribunal Amendment (Damages—Deceased’s Dependants) Act 2010</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

**Schedule 1 Amendment of Dust Diseases Tribunal
 Act 1989 No 63**

[1] Section 12E

Insert after section 12D:

**12E Damages in compensation to relatives claims not to be reduced to
 take into account entitlement to deceased’s estate**

- (1) This section applies to proceedings before the Tribunal (including proceedings on an appeal from the Tribunal) involving a compensation to relatives claim arising from the death of a person (*the deceased person*) from a dust-related condition in circumstances where:
- (a) general damages have been paid or are payable for a claim for damages in relation to the condition brought by the deceased person or the deceased person’s estate (*the deceased person’s claim*), and
 - (b) the person making the compensation to relatives claim has an entitlement to participate in the distribution of the deceased person’s estate.
- (2) The amount of damages to be awarded for pecuniary loss in proceedings to which this section applies is not to be reduced so as to take into account the amount of general damages that has been paid or is payable in relation to the deceased person’s claim.
- (3) This section has effect despite anything to the contrary in the *Compensation to Relatives Act 1897* or any other law.
- (4) In this section:
compensation to relatives claim means an action for damages brought under the *Compensation to Relatives Act 1897* or any other law in the claimant’s capacity as a relative of a deceased person.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

[2] Schedule 3 Savings, transitional and other provisions	1
Insert after Part 6:	2
Part 7 Dust Diseases Tribunal Amendment (Damages—Deceased’s Dependants) Act 2010	3 4 5
16 Damages in compensation to relatives claims not to be reduced to take into account entitlement to deceased’s estate	6 7
(1) Section 12E (as inserted by the <i>Dust Diseases Tribunal Amendment (Damages—Deceased’s Dependants) Act 2010</i>) applies in relation to causes of action arising before or after the commencement of that section, and extends to proceedings pending at that commencement.	8 9 10 11 12
(2) However, section 12E does not apply in relation to a cause of action to the extent that proceedings on the cause of action have been determined before the commencement of that section.	13 14 15