

# CONCURRENCE COPY

## **LAW REFORM (MISCELLANEOUS PROVISIONS) AMENDMENT BILL, 1982**

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### **EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The New South Wales Court of Appeal recently decided in the case of *Hyde-Cates v. Fitch* that where, under the Law Reform (Miscellaneous Provisions) Act, 1944, a cause of action survives upon the death of a person to the benefit of his estate, section 2 (2) of that Act does not prevent the inclusion in the damages recoverable of an amount of damages for loss of a capacity to earn or loss of future probable earnings.

The object of this Bill is to amend the Law Reform (Miscellaneous Provisions) Act, 1944, to overcome the effect of that decision.

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## LAW REFORM (MISCELLANEOUS PROVISIONS) AMENDMENT BILL, 1982

### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament.)

The *New South Wales Court of Appeal* recently decided in the case of *Hys-Cox v. Fitz* that where under the Law Reform (Miscellaneous Provisions) Act, 1944, a cause of action arises upon the death of a person to the estate of that person, section 2 (2) of that Act does not prevent the inclusion in the manager's account of an amount of damages for loss of a capacity to earn or loss of future earnings.

The object of this Bill is to amend the Law Reform (Miscellaneous Provisions) Act, 1944 to correct the effect of that decision.

**LAW REFORM (MISCELLANEOUS PROVISIONS)  
AMENDMENT BILL, 1982**

No. , 1982.

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**A BILL FOR**

**An Act to amend the Law Reform (Miscellaneous Provisions) Act, 1944,  
with respect to the damages recoverable under a cause of action which  
survives the death of a person.**

[Mr WALKER—10 February, 1982.]

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*Law Reform (Miscellaneous Provisions) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**5 Short title.**

**1.** This Act may be cited as the "Law Reform (Miscellaneous Provisions) Amendment Act, 1982".

**Amendment of Act No. 28, 1944.**

**2.** The Law Reform (Miscellaneous Provisions) Act, 1944, is amended  
10 by omitting section 2 (2) (a) and by inserting instead the following paragraph:—

(a) shall not include—

- (i) any exemplary damages; or
- 15 (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 his death as he would have survived but for the act or omission which gives rise to the cause of action;

**Saving.**

20 **3.** Section 2 of the Law Reform (Miscellaneous Provisions) Act, 1944, as amended by this Act, applies to and in respect of causes of action arising before the commencement of this Act in the same way as it applies to and  
— in respect of causes of action arising after that commencement, but section 2 (2) (a) (ii) of that Act, as so amended, has no operation in relation to  
25 causes of action in respect of which a court has given judgment, whether or not an appeal has been made against that judgment.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982



**LAW REFORM (MISCELLANEOUS PROVISIONS)  
AMENDMENT ACT, 1982, No. 4**

**New South Wales**



ANNO TRICESIMO PRIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 4, 1982.**

An Act to amend the Law Reform (Miscellaneous Provisions) Act, 1944,  
with respect to the damages recoverable under a cause of action which  
survives the death of a person. [Assented to, 29th March, 1982.]

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*Law Reform (Miscellaneous Provisions) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

**1.** This Act may be cited as the "Law Reform (Miscellaneous Provisions) Amendment Act, 1982".

**Amendment of Act No. 28, 1944.**

**2.** The Law Reform (Miscellaneous Provisions) Act, 1944, is amended by omitting section 2 (2) (a) and by inserting instead the following paragraph:—

(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 his death as he would have survived but for the act or omission which gives rise to the cause of action;

**Saving.**

**3.** Section 2 of the Law Reform (Miscellaneous Provisions) Act, 1944, as amended by this Act, applies to and in respect of causes of action arising before the commencement of this Act in the same way as it applies to and in respect of causes of action arising after that commencement, but section 2 (2) (a) (ii) of that Act, as so amended, has no operation in relation to causes of action in respect of which a court has given judgment, whether or not an appeal has been made against that judgment.

*In the name and on behalf of Her Majesty I assent to this Act.*

J. A. ROWLAND,  
*Governor.*

*Government House,  
Sydney, 29th March, 1982.*