# CONCURRENCE COPY

# 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 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.

# CONCURRENCE COPY

# LAVI RELORM (MORCHILANCOUS PROVISIONS) AMENDALI MULLI, 1982

#### TEATLAN TOTAL NOTE:

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

The New South Wales Court of Appear recently declared in the case of Hyde-Categ y, *Firth* that where, must the flow Reform (Miscellencous Provinces). Act, 1944, is cause of action anterses upon the death of a paraolete the action of the section of the death of a paraolete the court of the estate section is categorie for the set of a capacity to earn as teer of flow sector is anterse of a capacity to earn as teer of flow sector is mobiled as a categories in the sector is the set of the sector of flow sector is a capacity to earn as teer of flow sector is categories.

" Phatobility of this 1911 is to a nucleity have Reform (11) collaboration for the second second second to be second to be and to be and to be a second to b

# LAW REFORM (MISCELLANEOUS PROVISIONS) AMENDMENT BILL, 1982

No. , 1982.

# 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.]

99668D 117-

# Law Reform (Miscellaneous Provisions) Amendment.

**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.

- 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 25 causes of action in respect of which a court has given judgment, whether or not an appeal has been made against that judgment.

(20c)

15

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

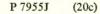
New South Wales



# ANNO TRICESIMO PRIMO ELIZABETHÆ II REGINÆ

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.]



Law Reform (Miscellaneous Provisions) Amendment.

**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.

> BY AUTHORITY D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982