

Administration and Probate (Dust Diseases) Bill

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EXPLANATORY MEMORANDUM

- Clause 1 sets out the purpose of the Act.
- Clause 2 provides for the commencement of the Act.
- Clause 3 inserts a definition of "dust-related condition" into the Principal Act. The definition includes diseases listed in the First Schedule to the Principal Act.
- Clause 4 provides that certain claims for damages in certain causes of action are to survive the death of a plaintiff. Section 29(1) of the Principal Act provides that when a person dies, all causes of action subsisting against or vested in that person survive for the benefit of the person's estate, subject to a number of exceptions and qualifications. Section 29(1) overcomes the old common law rule that a personal action dies with the person. Section 29(2)(c)(ii) of the Act qualifies section 29(1) by providing that where a cause of action survives for the benefit of a deceased's estate, and where the death of the person was caused by the act or omission which gives rise to the cause of action, the action shall not include any damages for—
- pain or suffering;
 - any bodily or mental harm suffered by the person; or
 - the curtailment of the person's expectation of life.

Clause 4 makes section 29(2)(c)(ii) subject to new section 29(2A) and inserts new section 29(2A). New section 29(2A) provides that a cause of action surviving for the benefit of the estate of a deceased person under section 29(1) shall include damages for—

- pain or suffering;
- any bodily or mental harm suffered by the person; or
- the curtailment of the person's expectation of life—

where the deceased dies from a dust-related condition, and where the proceedings in respect of the cause of action were commenced by the deceased before his or her death and were pending at his or her death.

Clause 5 provides a transitional provision. The clause provides that section 29(2A) of the Principal Act does not apply to proceedings commenced before the commencement of section 4 of this Act if the plaintiff has died before the commencement of section 4 of this Act.

Clause 6 inserts a Schedule in the Principal Act. The Schedule lists fourteen diseases that are included in the definition of "dust-related condition". These diseases are the same as the diseases included in the definition of "dust-related condition" in the Dust Diseases Tribunal Act 1989 (NSW).