

# LegalUpdate

November 2010

## Defendants take note - NSW review of compensation for wrongful death

On 3 November 2010 it was announced that the NSW Law Reform Commission would review laws surrounding the payment of compensation under the *Compensation to Relatives Act 1897*, the *Law Reform (Miscellaneous Provisions) Act 1944*, the *Dust Diseases Tribunal Act 1989* and the *Civil Liability Act 2002*.

In referring the issue to the Commission, the NSW Attorney General, John Hatzistergos, stated:

*"The Keneally Government is committed to ensuring that families are fairly compensated for their loss following the death of a loved one ... looking not only at dust diseases claimants, but those of other persons who have died as a result of some other negligent conduct."*

The Law Reform Commission will focus on the principle laid down in a series of cases including *Public Trustee v Zoanetti* (1945) 70 CLR 266 (Zoanetti) and *BI (Contracting) Pty Limited v Strikwerda* [2005] NSWCA 288. That principle requires that compensation for pecuniary loss (which includes the value of domestic services undertaken by the deceased) is reduced to the extent that damages payable to the estate of the deceased have increased the amount to be distributed to the relevant dependant.

Victoria and Western Australia have enacted legislation that overrides the general principle in Zoanetti in relation to asbestos related claims. The Law Reform Commission reference is not limited to such actions.

Depending on the findings of the Law Reform Commission, the Zoanetti principle might be subject to legislative reversal. Depending on the scope of any changes, we may see pressure to increase awards. That increase may be applicable to all dependency actions, not just those relating to dust diseases.

If you would like to discuss the review and possible amendments please feel free to contact us.

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