

The New South Wales Personal Injuries Damages Bill

If enacted, the New South Wales Personal Injuries Bill will radically change the basis upon which personal injuries damages are paid in New South Wales. Although the Bill does not apply to damages awarded under the Workers Compensation Act, the Bill might have some application to the construction industry, viz injuries caused to persons by building works and occupier's liability.

The object of the Bill is to impose limitations on the recovery of damages for personal injury or death caused by the fault of another person. It will not apply to damages awarded under the Motor Accidents Act 1988, the Workers' Compensation Act 1987, or the Dust Diseases Tribunal Act 1989.

The Bill will impose a limit on the amount of damages for non-economic loss (for example, pain or suffering and loss of expectation of life) in line with the maximum applying under the Motor Accidents Act. That is an index linked figure based on \$180,000 and, as at December 1990, it stood at \$192,600.

The Bill provides that the maximum amount of damages is only to be awarded in the most extreme cases and exemplary of punitive damages will not be available under the scheme.

It will be necessary for fault to be shown and the defence of voluntary assumption of risk will be abolished. The courts will instead be able to reduce damages to the extent that they think it is just an equitable where the person injured was negligent in failing to take sufficient care for his or her own safety.

The Bill will apply to an award for damages in respect of injury even though the damages recovered are in an action for breach of contract or any other action.

The Bill allows for structured settlements if either of the parties agree or the court considers they should apply. Payments of amounts representing future economic loss are to be approved by the court, if an arrangement is made between the parties for such a payment or, otherwise, the amount will be determined by the court. The court will be allowed to take into account any matters it thinks fit, including the views of any insurer of the defendant, the ability of the plaintiff to manage and invest any lump sum, and the suitability of periodic payments rather than a lump sum.

A court will be required to have particular regard to any failure by a defendant to take all reasonable steps to minimise the risks arising from the defendant's activities.

Restrictions will apply to awards of compensation of the value of gratuitous home care services, including a limitation on the hourly rate of compensation to one-fortieth of average weekly earnings.

If the Bill is enacted in its current form, it should have the effect of containing personal injury claims and reducing premium costs, although it is not expected that the price reduction will be radical.

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