

FATAL ACCIDENTS.

8° Elizabeth II., No. XX.

No. 20 of 1959.

AN ACT to consolidate and amend the Law as to compensating the Families of Persons killed by accident.

[Assented to 8th October, 1959.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.
U.K. 59 and
60 Vict.,
c. 14, s. 1.

1. This Act may be cited as the *Fatal Accidents Act, 1959*.

Repeal.
Schedule.

2. The enactments mentioned in the Schedule to this Act are repealed to the extent prescribed by that Schedule.

3. (1) In this Act unless inconsistent with the subject matter or context—

Interpre-
tation.

“child” includes, subject to subsection (2) of this section, son, daughter, grandson, granddaughter, step son and step daughter;

U.K. 9 and
10 Vict.,
c. 93, s. 5;
U.K. 24 and
25 Geo. 5,
c. 41, s. 2 (1)
and (2).

“court” means the court by which any action brought under this Act is tried and includes a court comprising a judge and jury;

“parent” includes father, mother, grandfather, grandmother, step father and step mother.

(2) For the purposes of this Act, a person shall be deemed to be the parent or child of a deceased person notwithstanding that he was only related to him illegitimately or in consequence of adoption; and accordingly in deducing any relationship which under this Act is included within the meaning of the expressions, “parent” and “child,” any illegitimate person and any adopted person shall be treated as being or as having been the legitimate offspring of his mother and reputed father, or as the case may be, of his adopters.

(3) In this section, “adopted person” means a person who is legally adopted whether in the State or elsewhere, and whether before or after the coming into operation of this Act.

(4) Subsections (2) and (3) of this section do not apply in relation to any action in respect of the death of any person before the coming into operation of this Act.

4. Where the death of a person is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued is liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to a crime.

Liability
for death
caused
wrongfully.
U.K. 9 and
10 Vict.,
c. 93, s. 1.

Medical and funeral expenses.
S.A. Wrongs Act, 1936-1951, s. 20 (2a).

5. (1) In an action brought under this Act in respect of the death of any person after the coming into operation of this Act, damages may be awarded in respect of any medical expenses incurred as a result of the injury which caused the death and the funeral expenses of the deceased person, if the expenses have been incurred by the parties for whose benefit the action is brought.

Exclusion of insurance moneys and pensions in assessing damages.
N.S.W. 31 of 1897, s. 3 (3) reprinted as amended in Vol. 2 1957 Reprints.

(2) In assessing damages in an action brought under this Act, there shall not be taken into account—

- (a) any sum paid or payable on the death of the deceased under any contract of insurance;
- (b) any sum paid or payable out of or under any superannuation, provident or like fund or scheme, or by way of benefit from a friendly society, benefit society or trade union;
- (c) any sum paid or payable by way of pension under the provisions of
 - (i) the Repatriation Act, 1920-1957, of the Parliament of the Commonwealth;
 - (ii) the Social Services Consolidation Act, 1947-1953, of the Parliament of the Commonwealth;
 - (iii) the Coal Mine Workers (Pensions) Act, 1943;
 - (iv) the Mine Workers Relief Act, 1932; or
 - (v) any other Act for the payment of pensions to widows;

or under any Act whether of the Parliament of the Commonwealth or Parliament amending or replacing any of those Acts.

6. (1) (a) Every action brought under this Act shall be for the benefit of the wife, husband, parent, and child of the person whose death has been caused in any manner referred to in section four of this Act.

Effect of action and mode of bringing it.
U.K. 9 and 10 Vict., c. 93, s. 2; U.K. 24 and 25 Geo. 5, c. 41, s. 2 (3); S.A. Wrongs Act, 1936-1951, s. 20.

(b) The action shall be brought by and in the name of the executor or administrator of the deceased person as the case may be.

(2) In every action the court may give such damages as it thinks proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit the action is brought.

(3) No action shall be brought under this Act for the benefit of an illegitimate child of a deceased person unless during the lifetime of that person—

- (a) he contributed maintenance for the child or signed an agreement for the support of the child; or
- (b) a maintenance or pre-maternity order was made against him in respect of the child.

(4) The amount of damages recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the persons for whose benefit the action was brought in such shares as the court finds and directs.

N.S.W. 31 of 1897, s. 4, reprinted as amended in Vol. 2 1957 Reprints.

(5) In any action the defendant may pay money into court as compensation in one sum to all persons entitled under this Act, for his wrongful act, neglect or default, without specifying the shares into which the money is to be divided by the court.

Payment into court.
Vict. 23, Geo. 5, No. 4070 (1932), s. 3 (1) and (2); 64 Vict., No. 37, s. 2.

(6) No portion of the money so paid in shall be paid out of court except under the order of a judge, but otherwise the rules of court for the time being in force relating to payment into and out of court and tender and matters associated therewith, with any necessary modifications, apply.

N.S.W. 31
of 1897,
s. 6A (2),
reprinted
with
amendments
Vol. 2 1957
Reprints;
64 Vict.
No. 37, s. 2.

Restriction
of number
of actions
and time of
commence-
ment.
U.K. 9 and
10 Vict.,
c. 93, s. 3.

(7) Where the money paid in is not accepted, and an issue is taken by the plaintiff as to its sufficiency, if the court decides the money is sufficient the defendant is entitled to the verdict upon that issue.

7. (1) Not more than one action lies under this Act for and in respect of the same subject matter of complaint; and every action brought under this Act shall be commenced within twelve months after the death of the person in respect of whose death the cause of action arose.

(2) (a) This subsection applies to every action under this Act to which section six of the Crown Suits Act, 1947, section forty-seven A of the Limitation Act, 1935, or section ten of this Act, does not apply.

(b) A person may consent in writing to the bringing of an action against him at any time before the expiration of six years from the date of the death of the person in respect of whose death the cause of action arose.

(c) Notwithstanding the foregoing provisions of this section, application may be made to the Court for leave to bring an action at any time before the expiration of six years from the date of the death of the person in respect of whose death the cause of action arose.

(d) When the Court considers that the delay in bringing the action was occasioned by mistake or by any other reasonable cause or that the prospective defendant is not materially prejudiced in his defence or otherwise by the delay, the Court may, if it thinks it is just to do so, grant leave to bring the action subject to such conditions as it thinks it is just to impose.

(e) Before an application is made under the provisions of paragraph (c) of this subsection, the party intending to make the application shall give notice in writing of the proposed application and the grounds on which it is to be made to the prospective defendant, at least fourteen days before the application is made.

8. In every action under this Act the plaintiff shall deliver to the defendant or his solicitor, full particulars of the person or persons for whom and on whose behalf the action is brought and of the nature of the claim in respect of which damages are sought to be recovered.

Particulars of claim.
U.K. 9 and 10 Vict., c. 93, s. 4.

9. (1) Where there is no executor or administrator of the deceased person, or where his executor or administrator does not bring an action under this Act within six months after the death of the deceased person, any one or more of the persons for whose benefit the action might be brought by the executor or administrator may bring the action.

Where no executor or administrator or no action commenced within six months of death.
U.K. 27 and 28 Vict., c. 95, s. 1; 64 Vict., No. 37, s. 1.

(2) Any action so brought shall be for the benefit of that or those persons and is subject to the same provisions and procedure, as nearly as may be, as if it were brought by an executor or administrator.

10. (1) Every action and cause of action under this Act survives notwithstanding the death of the wrongdoer.

Survival of claim.
N.S.W. 31 of 1897, s. 6C, reprinted with amendments in Vol 2 1957 Reprints.

(2) Where the wrongdoer dies before an action under this Act is commenced and within twelve months after the death of the deceased person, an action may be brought under this Act against the executor or administrator of the wrongdoer, if the action is brought within six months after the grant of probate or administration is made, notwithstanding the expiry of the period of twelve months.

(3) Any damages recovered against the executor or administrator are payable in like order of administration as the debts of the wrongdoer and shall be paid accordingly.

11. This Act binds the Crown.

Crown bound.
N.S.W. 31 of 1897, s. 6E (3) reprinted with amendments in Vol. 2 1957 Reprints.

THE SCHEDULE.

<i>Enactment.</i>	<i>Long Title.</i>	<i>Extent of Repeal.</i>
12 Vict. No. 21 (1849)	An ordinance for adopting certain Acts of the Imperial Parliament.	Insofar as it adopts and directs to be applied in the administration of justice in the State, the provisions of an Act for compensating the families of persons killed by accident. (Imperial Act 9 and 10 Vict., c. 93.)
64 Vict. No. 37 (1900)	An Act to amend the Imperial Act 9th and 10th Victoriae, chapter 93 (adopted in Western Australia by the Act 12th Victoriae No. 21) for compensating the Families of Persons killed by Accident.	The whole.
