



Western Australia

# **Law Reform (Miscellaneous Provisions) Act 1941**

**Reprint 3: The Act as at 25 September 2009**

## Guide for using this reprint

### What the reprint includes



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Reprinted under the  
*Reprints Act 1984* as  
at 25 September 2009

Western Australia

## Law Reform (Miscellaneous Provisions) Act 1941

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Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 25 September 2009

## Law Reform (Miscellaneous Provisions) Act 1941

**An Act to amend and re-state the law relating to the legal capacity of spouses; and to amend the law relating to proceedings against, and contributions between, tort-feasors; and to amend the law as to the effect of death in relation to causes of action.**

*[Long title amended by No. 28 of 2003 s. 116(2); No. 8 of 2009 s. 84(2).]*

### **1. Short title and commencement**

This Act may be cited as the *Law Reform (Miscellaneous Provisions) Act 1941* and shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### **2. Doctrine of unity of spouses abolished**

The common law doctrine of unity of spouses is abolished.

*[Section 2 inserted by No. 28 of 2003 s. 116(3).]*

### **3. Spousal capacity**

- (1) A married person has a legal personality that is independent, separate and distinct from the legal personality of the person's spouse.

**s. 4**

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- (2) A married person has the same legal capacity that the person would have if the person were unmarried.
- (3) This section applies to a married person whether the person married before or after the commencement of this section.

*[Section 3 inserted by No. 28 of 2003 s. 116(3).]*

**4. Effect of death on certain causes of action**

- (1) Subject to the provisions of this section and the *Limitation Act 2005*, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other.
- (2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person —
  - (a) shall not include any exemplary damages;
  - (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;
  - (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included;
  - (d) shall not, unless because of subsection (2a) this paragraph does not apply, include any damages for the pain or suffering of that person or for any bodily or mental harm suffered by him or for the curtailment of his expectation of life;
  - (e) shall not include any damages for the loss of the capacity of that person to earn, or for the loss of future probable earnings of that 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.

- (2a) Subsection (2)(d) does not apply where —
- (a) the death of the person occurs after the day on which the *Law Reform (Miscellaneous Provisions (Asbestos Diseases)) Act 2002* comes into operation <sup>1</sup>;
  - (b) the death results from a latent injury that is attributable to the inhalation of asbestos which has been caused by the act or omission giving rise to the cause of action; and
  - (c) proceedings in respect to the cause of action had been instituted by that person before his or her death and were pending at the time of death.

[(3) *deleted*]

- (4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.
- (5) The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Imperial Act 9th and 10th Victoria, Chapter 93 (adopted in Western Australia by the Act 12th Victoria No. 21), as amended by the Act No. 37 of 1900 <sup>2</sup>, and so much of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Act as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

*[Section 4 amended by No. 80 of 1982 s. 2; No. 84 of 1983 s. 11; No. 1 of 2002 s. 3; No. 20 of 2005 s. 15(1)-(3); No. 8 of 2009 s. 84(3).]*

**5. Discount rate applicable to damages awarded for future loss**

(1) Where an award of damages that relates to personal injury or the death of a person is to include compensation, awarded as a lump sum, in respect of damage for future loss that is referable to —

- (a) loss or impairment of capacity to earn;
- (b) loss or diminution of future probable earnings; or
- (c) a liability to incur expenditure in the future,

the present value of the future loss shall be quantified by adopting —

- (d) a discount rate of the percentage fixed by the Governor by Order; or
- (e) where no percentage is fixed as referred to in paragraph (d), a discount rate of 6%.

(2) The Governor may, by Order made on the recommendation of the Attorney General, fix a discount rate as referred to in subsection (1)(d).

(3) In subsection (1) *personal injury* includes any disease and any impairment of a person's physical or mental condition.

*[Section 5 inserted by No. 50 of 1986 s. 5(1).]*

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### Notes

<sup>1</sup> This reprint is a compilation as at 25 September 2009 of the *Law Reform (Miscellaneous Provisions) Act 1941* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Law Reform (Miscellaneous Provisions) Act 1941</i>	29 of 1941 (5 and 6 Geo. VI No. 29)	15 Dec 1941	24 Oct 1942 (see s. 1 and <i>Gazette</i> 23 Oct 1942 p. 995)
<i>Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947 s. 2</i>	23 of 1947 (11 Geo. VI No. 23)	7 Nov 1947	7 Nov 1947
<i>Law Reform (Property, Perpetuities, and Succession) Act 1962 s. 9(4)</i>	83 of 1962 (11 Eliz. II No. 83)	6 Dec 1962	6 Dec 1962
<i>Law Reform (Miscellaneous Provisions) Amendment Act 1982</i>	80 of 1982	22 Nov 1982	22 Nov 1982
<b>Reprint of the <i>Law Reform (Miscellaneous Provisions) Act 1941</i> approved 25 Sep 1983</b> (includes amendments listed above)			
<i>Acts Amendment (Asbestos Related Diseases) Act 1983 Pt. V</i>	84 of 1983	22 Dec 1983	19 Jan 1984 (see s. 2)
<i>Acts Amendment (Actions for Damages) Act 1986 Pt. II</i>	50 of 1986	4 Aug 1986	18 Aug 1986 (see s. 2 and <i>Gazette</i> 15 Aug 1986 p. 2925)
<i>Law Reform (Miscellaneous Provisions (Asbestos Diseases)) Act 2002</i>	1 of 2002	20 Mar 2002	21 Mar 2002 (see s. 2)
<b>Reprint of the <i>Law Reform (Miscellaneous Provisions) Act 1941</i> as at 12 Jul 2002</b> (includes amendments listed above)			
<i>Acts Amendment (Equality of Status) Act 2003 s. 116</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)

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Short title	Number and year	Assent	Commencement
<i>Limitation Legislation Amendment and Repeal Act 2005 Pt. 7</i> <sup>3</sup>	20 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2(1))
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 84	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))

**Reprint 3: The Law Reform (Miscellaneous Provisions) Act 1941 as at 25 Sep 2009**  
(includes amendments listed above)

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<sup>2</sup> The Imperial Act 9 and 10 Vict. c. 93 (1846) was adopted by the *Imperial Acts Adopting Ordinance 1849* (12 Vict. No. 21) and amended by Act No. 37 of 1900. It was repealed in so far as it was part of the law of WA by the *Fatal Accidents Act 1959* s. 2.

<sup>3</sup> The *Limitation Legislation Amendment and Repeal Act 2005* s. 15(4) reads as follows:

**15. Section 4 amended and a savings provision**

- (4) The *Law Reform (Miscellaneous Provisions) Act 1941* section 4, as it was immediately before commencement day, continues to apply to causes of action that accrued before commencement day as if subsections (1), (2) and (3) had not been enacted.

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<u>Defined Term</u>	<u>Provision(s)</u>
personal injury .....	5(3)