

FATAL ACCIDENTS.

No. 97 of 1985.

AN ACT to amend the Fatal Accidents Act 1959-1973.

[Assented to 4 December 1985.]

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:—

1. (1) This Act may be cited as the *Fatal Accidents Amendment Act 1985*.
Short title and citation.
- (2) In this Act the Fatal Accidents Act 1959-1973 is referred to as the principal Act.
Reprinted as approved 13 April 1976.
- (3) The principal Act as amended by this Act may be cited as the Fatal Accidents Act 1959-1984.

Commencement.

2. This Act shall come into operation on the twenty-eighth day after the day on which it is assented to by the Governor.

Application.

3. This Act shall apply only in relation to deaths occurring after the coming into operation of this Act.

Section 2 amended.

4. Section 2 of the principal Act is amended by deleting "the Schedule" and substituting the following—

" Schedule 1 ".

Section 3 amended.

5. Section 3 of the principal Act is amended—

(a) in subsection (1) by deleting the definitions of "child" and "parent";

(b) by repealing subsection (2) and substituting the following subsection—

" (2) In deducing any relationship for the purposes of this Act—

(a) an adopted person shall be treated as the legitimate child of his adopters; and

(b) an illegitimate person shall be treated as the legitimate child of his mother and reputed father. "; and

(c) by repealing subsection (4) and substituting the following subsection—

" (4) For the purposes of this Act, a child of the deceased person born alive after the death of that person shall be treated as having been born before the death of the deceased person. ".

6. Section 6 of the principal Act is amended—<sup>Section 6
amended.</sup>

(a) in subsection (1)—

(i) by deleting “wife, husband, parent, and child” in paragraph (a) and substituting the following—

“ relatives ”; and

(ii) by inserting after paragraph (b) the following paragraph—

“ (c) In this Act—

“relative” has the meaning given in Schedule 2 to this Act. ”; and

(b) by repealing subsection (3) and substituting the following subsection—

“ (3) In any action under this Act, the relationship between a father and his illegitimate child, and any other relationship traced through that relationship, shall be recognized only if—

(a) in the case of a claim by, or through relationship with, the illegitimate child, paternity is admitted by or established against the deceased father in his lifetime; and

(b) in the case of a claim by, or through relationship with, the father of a deceased illegitimate child, paternity is admitted by or established against the father in the lifetime of the illegitimate child. ”.

Section 9A
inserted.

7. After section 9 of the principal Act, the following section is inserted—

Powers of
court as to
parties and
procedure.

" 9A. (1) Where—

(a) an action under this Act has been commenced; and

(b) the court is satisfied that a person whose name is not included in the names of the persons for whose benefit the action is stated to have been brought is a person whose name should have been so included,

the court may, on application made by or on behalf of that person or of its own motion, order the action to proceed as if the name of that person had been so included.

(2) The court may order that any one or more of the persons for whose benefit an action has been brought be separately represented.

(3) Where the court makes an order under this section, the court may, at the same time or subsequently, make such orders in relation to procedure in the action as it thinks fit.

(4) The powers of the court under this section are in addition to and not in derogation of any other powers of the court. ”.

The Schedule
amended.

8. The heading “THE SCHEDULE.” after section 11 of the principal Act is deleted and the following heading is substituted therefor—

“ SCHEDULE 1. ”.

9. After Schedule 1 of the principal Act, the following Schedule is added—^{Schedule 2 added.}

“

SCHEDULE 2.

s. 6

DEFINITION OF RELATIVE.

In this Act, “relative” in relation to a deceased person means—

- (a) a person who immediately before the deceased's death was the husband or wife of the deceased;
- (b) any person who was the father, mother, grandfather, grandmother, stepfather or stepmother of the deceased;
- (c) any person who was a son, daughter, grandson, granddaughter, stepson or stepdaughter of the deceased;
- (d) any person to whom the deceased person stood *in loco parentis* immediately before the death of the deceased;
- (e) any person who stood *in loco parentis* to the deceased person immediately before his death;
- (f) any person who was a brother, sister, half-brother or half-sister of the deceased person;
- (g) any person who having been a husband or wife of the deceased person had ceased to be so by virtue of a divorce; and
- (h) any person who, although not married to the deceased person—
 - (i) lived with the deceased person as husband or wife of the deceased on a permanent and *bona fide* domestic basis immediately before his or her death, if the deceased person left any dependant who is the child of that union; or
 - (ii) lived with the deceased person as husband or wife of the deceased on a permanent and *bona fide* domestic basis for not less than 3 years, if the deceased person did not leave any dependant who is a child of that union.”.