



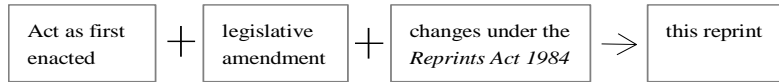
Western Australia

# **Fatal Accidents Act 1959**

**Reprint 2: The Act as at 7 February 2003**

## 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  - removed (because it was repealed or deleted from the law); or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 7 February 2003

Western Australia

## Fatal Accidents Act 1959

---

### CONTENTS

---

1.	Short title	1
3.	Interpretation	1
4.	Liability for death caused wrongfully	2
5.	Medical and funeral expenses	2
6.	Effect of action and mode of bringing it	3
7.	Restriction of number of actions and time of commencement	4
8.	Particulars of claim	7
9.	Where no executor or administrator or no action commenced within 6 months of death	7
9A.	Powers of court as to parties and procedure	8
10.	Survival of claim	8
11.	Crown bound	9
	<b>Schedule 2 — Definition of relative</b>	10
	<b>Notes</b>	
	Compilation table	11
	<b>Defined Terms</b>	





Reprinted under the  
*Reprints Act 1984* as  
at 7 February 2003

Western Australia

## Fatal Accidents Act 1959

**An Act to consolidate and amend the law as to compensating the families of persons killed by accident.**

**1. Short title**

This Act may be cited as the *Fatal Accidents Act 1959*<sup>1</sup>.

[2. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

**3. Interpretation**

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

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

- (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.

- (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) 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.

*[Section 3 amended by No. 97 of 1985 s. 5.]*

**4. Liability for death caused wrongfully**

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.

**5. Medical and funeral expenses**

- (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.
- (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 Industry Superannuation Act 1989*;
- (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.

[Section 5 amended by No. 45 of 1994 s. 22.]

**6. Effect of action and mode of bringing it**

- (1)
  - (a) Every action brought under this Act shall be for the benefit of relatives of the person whose death has been caused in any manner referred to in section 4.
  - (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.
  - (c) In this Act —
    - “**relative**” has the meaning given in Schedule 2.
- (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) 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

**s. 7**

---

- (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 life-time of the illegitimate 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.
- (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.
- (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.
- (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.

*[Section 6 amended by No. 7 of 1973 s. 3; No. 97 of 1985 s. 6.]*

**7. Restriction of number of actions and time of commencement**

- (1) Not more than one action lies under this Act for and in respect of the same subject matter of complaint; and subject to this section every action brought under this Act shall be commenced within 12 months after the death of the person in respect of whose death the cause of action arose.



- 
- (1a) An action brought under this Act may, where the death in respect of which the cause of action arose —
- (a) resulted from a latent injury that is attributable to the inhalation of asbestos; and
  - (b) occurred before 1 January 1984,
- be commenced without leave within the period of 3 years after the coming into operation of the amending Act notwithstanding that —
- (c) at the time of his death, the person in respect of whose death the action is brought may have been barred by the expiration of a period of limitation from maintaining an action in respect of the act, neglect or default by which his death was caused; or
  - (d) the period of 6 years applicable under subsection (2)(c) may have expired before the coming into operation of the amending Act.
- (2) (a) This subsection applies to every action under this Act to which section 6 of the *Crown Suits Act 1947*, section 47A of the *Limitation Act 1935*, or section 10 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 6 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 6 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) 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 14 days before the application is made.

- (3) An action brought under this Act may, where the death in respect of which the cause of action arose —

- (a) resulted from a latent injury that is attributable to inhalation of asbestos; and
- (b) occurred on or after 1 January 1984 but before the coming into operation of the amending Act,

be commenced in accordance with subsection (1) or (2) notwithstanding that, at the time of his death, the person in respect of whose death the action is brought may have been barred by the expiration of a period of limitation from maintaining an action in respect of the act, neglect, or default by which his death was caused.

- (4) Where —

- (a) in an action to which subsection (1a) or (3) applies it is proved that, at the time of his death the person in respect of whose death the action is brought was barred by the expiration of a period of limitation from maintaining an action in respect of the act, neglect, or default by which his death was caused; or
- (b) in an action to which subsection (1a) applies it is proved that the period of 6 years applicable under subsection (2)(c) had expired before the action was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

- (5) Where in an action brought under this Act in respect of a death that —
- (a) resulted from a latent injury that is attributable to the inhalation of asbestos; and
  - (b) occurred on or after the coming into operation of the amending Act,

it is proved that the damages that would (if death had not ensued) have been recoverable by the deceased person in respect of the act, neglect or default by which his death was caused would, by reason of the amending Act, have been limited to damages in respect of pecuniary loss and a total amount in any case of \$120 000, then damages shall not be awarded under this Act except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

- (6) In subsections (1a), (3) and (5) —

“**latent injury**” has the same meaning as is given to that expression by section 38A of the *Limitation Act 1935*;

“**the amending Act**” means the *Acts Amendment (Asbestos Related Diseases) Act 1983*.

[Section 7 amended by No. 84 of 1983 s. 9.]

**8. Particulars of claim**

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.

**9. Where no executor or administrator or no action commenced within 6 months of death**

- (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 6 months after the death of the

**s. 9A**

---

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.

- (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.

**9A. Powers of court as to parties and procedure**

- (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.

*[Section 9A inserted by No. 97 of 1985 s. 7.]*

**10. Survival of claim**

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

- (2) Where the wrongdoer dies before an action under this Act is commenced and within 12 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 6 months after the grant of probate or administration is made, notwithstanding the expiry of the period of 12 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. Crown bound**

This Act binds the Crown.

*[Schedule 1 omitted under the Reprints Act 1984 s. 7(4)(f).]*

## 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.

[Schedule 2 inserted by No. 97 of 1985 s. 9.]



---

**Notes**

- <sup>1</sup> This reprint is a compilation as at 7 February 2003 of the *Fatal Accidents Act 1959* and includes the amendments made by the other written laws referred to in the following table. This table also contains information about any previous reprint.

**Compilation table**

---

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Fatal Accidents Act 1959</i>	20 of 1959	8 Oct 1959	8 Oct 1959
<i>Fatal Accidents Act Amendment Act 1973</i>	7 of 1973	25 May 1973	8 Mar 1976 (see s. 2 and <i>Gazette</i> 5 Mar 1976 p. 635)
<b>Reprint of the <i>Fatal Accidents Act 1959</i> approved 13 Apr 1976</b> (includes amendments listed above)			
<i>Acts Amendment (Asbestos Related Diseases) Act 1983 Pt. IV</i>	84 of 1983	22 Dec 1983	19 Jan 1984 (see s. 2)
<i>Fatal Accidents Amendment Act 1985</i>	97 of 1985	4 Dec 1985	1 Jan 1986 (see s. 2)
<i>Acts Amendment (Coal Mining Industry) Act 1994 s. 22</i>	45 of 1994	22 Sep 1994	22 Sep 1994 (see s. 2(1))

---

Defined Terms

---

**Defined Terms**

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

<b>Defined Term</b>	<b>Provision(s)</b>
adopted person .....	3(3)
court .....	3(1)
latent injury .....	7(6)
relative .....	6(1)(c), Sch. 2
the amending Act .....	7(6)