

Western Australia

## **Fatal Accidents Act 1959**

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## Fatal Accidents Act 1959

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## 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 parents.

- (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.

**s. 4**

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*[Section 3 amended by No. 97 of 1985 s. 5; No. 28 of 2003 s. 54.]*

**4. Liability for death caused wrongfully**

- (1) 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.
- (2) An injured party who did not commence an action relating to the injury before the limitation period for commencing the action expired is to be taken to be entitled, for the purposes of subsection (1), to maintain an action in respect of the injury if, before the person died, the person —
  - (a) was not aware of the physical cause of the injury and it was reasonable for the person not to be aware of that cause;
  - (b) was aware of the physical cause of the injury but was not aware that the injury was attributable to the conduct of a person and it was reasonable for the person not to be aware that the injury was so attributable; or
  - (c) was aware of the physical cause of the injury and that the injury was attributable to the conduct of a person but after reasonable enquiry, had been unable to establish that person's identity.

*[Section 4 amended by No. 20 of 2005 s. 12.]*

**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 a pension to the spouse or a de facto partner of the deceased,or under any Act whether of the Parliament of the Commonwealth or Parliament amending or replacing any of those Acts;
  - (d) any damages for the pain or suffering of the deceased person or for any bodily or mental harm suffered by the deceased person or for the curtailment of the deceased person's expectation of life that, because of the *Law Reform (Miscellaneous Provisions) Act 1941* section 4(2a), are recovered or recoverable for the benefit of the deceased person's estate.

- (3) Subsection (2)(d) applies to an action that is, or could be, brought under this Act whether the cause of action accrues before, on or after the day on which the *Fatal Accidents Amendment Act 2008* commences (**commencement day**) but does not apply to —
- (a) an action that was finalised before commencement day by a judgment of a court or by agreement of the parties to the action; or
  - (b) a claim, in respect of an action that could have been brought under this Act, that was finalised before commencement day by agreement of the parties to the prospective action.

*[Section 5 amended by No. 45 of 1994 s. 22; No. 28 of 2003 s. 55; No. 20 of 2008 s. 4.]*

**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 parent and his or her 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, parentage is admitted by or



established against the deceased parent in his or her lifetime; and

- (b) in the case of a claim by, or through relationship with, the parent of a deceased illegitimate child, parentage is admitted by or established against the parent in the life-time of the illegitimate child.
- (3a) Subsection (3) does not apply to or in respect of a relationship established by the *Artificial Conception Act 1985*.
- (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; No. 28 of 2003 s. 56.]*

**7. Restriction of number of actions**

No more than one action lies under this Act for and in respect of the same subject matter of complaint.

*[Section 7 inserted by No. 20 of 2005 s. 13(1).]*

**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 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. Repealed by No. 20 of 2008 s. 5.]*

**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 —
    - (i) the spouse of the deceased; or
    - (ii) a de facto partner of the deceased who was living in a de facto relationship with the deceased and had been living on that basis with the deceased for at least 2 years immediately before the deceased died;
  - (b) any person who was the parent, grandparent or step parent 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;
- and
- (g) any person who was a former spouse or former de facto partner of the deceased person whom the deceased was legally obliged, immediately before his or her death, to make provision for with respect to financial matters.

*[(h) deleted]*

*[Schedule 2 inserted by No. 97 of 1985 s. 9; amended by No. 28 of 2003 s. 57.]*

**Notes**

<sup>1</sup> This is a compilation 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 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))
<b>Reprint 2: The <i>Fatal Accidents Act 1959</i> reprinted as at 7 Feb 2003</b> (includes amendments listed above)			
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 20</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Limitation Legislation Amendment and Repeal Act 2005 Pt. 6<sup>2</sup></i>	20 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2)
<i>Fatal Accidents Amendment Act 2008</i>	20 of 2008	19 May 2008	19 May 2008 (see s. 2)

<sup>2</sup> The *Limitation Legislation Amendment and Repeal Act 2005* s. 13(2) reads as follows:

“

**13. Section 7 replaced and a savings provision**

(2) The *Fatal Accidents Act 1959* section 7, as it was immediately before commencement day, continues to apply to causes of action that accrued before commencement day as if subsection (1) had not been enacted.

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