

COMPENSATION (FATAL INJURIES)

No. 9 of 1968

An Ordinance relating to Compensation to Relatives of
Persons whose deaths are caused by wrongful Acts,
Neglects or Defaults.

- Short title.** 1. This Ordinance may be cited as the *Compensation (Fatal Injuries) Ordinance 1968*.*
- Repeal.** 2.—(1.) The *Compensation (Fatal Injuries) Ordinance 1938* is repealed.
- (2.) Notwithstanding the repeal of the *Compensation (Fatal Injuries) Ordinance 1938*, the provisions of that Ordinance continue to apply in relation to a cause of action in respect of the death of a person that occurred before the commencement of this Ordinance.
- Administration.** 3. This Ordinance shall be administered by the Attorney-General.
- Interpretation.** 4.—(1.) In this Ordinance, unless the contrary intention appears—
- “child”, in relation to a deceased person, includes a grand-child and a step-child of the deceased person;
 - “parent”, in relation to a deceased person, includes a step-father, a step-mother, a grand-father and a grand-mother of the deceased person;
 - “personal representative”, in relation to a deceased person, means the person or persons to whom any grant of probate of the will or administration of the estate of the deceased person has been made in the Territory, in a State or in the Northern Territory of Australia, and includes an executor by representation of the deceased person, and the Curator of Deceased Estates if the Curator is administering the estate of the deceased person.
- (2.) Each of the following persons is, for the purpose of this Ordinance, a member of a deceased person's family:—
- (a) the widow or widower of the deceased person;
 - (b) a child of the deceased person;
 - (c) a person to whom the deceased person stood, immediately before his death, *in loco parentis*;
 - (d) a person who stood, immediately before his death, *in loco parentis* to the deceased person;
 - (e) a parent of the deceased person;
 - (f) a brother, a sister, a half-brother and a half-sister of the deceased person;
 - (g) a former wife or former husband of the deceased person;

* Made on 7 June 1968; notified in the *Commonwealth Gazette* and commenced on 13 June 1968.

- (h) a person who, although not legally married to the deceased person, was immediately before the death of the deceased person living with the deceased person as wife or husband, as the case may be, on a permanent and *bona fide* domestic basis.

(3.) For the purposes of this Ordinance—

- (a) an illegitimate person shall be treated as being, or as having been, the legitimate child of his mother and reputed father; and
- (b) 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.

5. This Ordinance applies only where a death occurs on or after the commencement of this Ordinance, whether the act, neglect or default that caused the death occurred before or after that commencement.

Application of Ordinance.

6. This Ordinance binds the Crown.

Ordinance binds the Crown.

7. Where the death of a person is caused by a wrongful act, neglect or default and the act, neglect or default is such that it would, if death had not ensued, have entitled the person injured to maintain an action and recover damages in respect of the injury, the person who would have been liable if the death had not ensued is liable to an action for damages notwithstanding the death of the person injured and irrespective of whether the death of that person was caused by circumstances that amount in law to a crime.

Liability in respect of the death of a person.

8.—(1.) Not more than one action under this Ordinance shall be brought against a person in respect of a death.

One action for the benefit of members of deceased person's family.

(2.) Subject to section 13 of this Ordinance, any such action shall be brought by and in the name of the personal representative of the deceased person for the benefit of those members of the deceased person's family who sustained damage by reason of his death.

9. An action under this Ordinance shall be commenced within a period of three years after the date of the death of the deceased person.

Time for commencement of actions.

10.—(1.) In an action under this Ordinance, the court may award to the parties respectively for whose benefit the action is brought, such damages as it may think proportioned to the injury resulting from the death of the person injured.

Damages.

(2.) The amount of damages recovered under this section shall, after deducting the costs not recovered from the defendant, be divided amongst the persons for whose benefit the action is brought in such shares as the court determines.

(3.) Damages in an action under this Ordinance may include—

- (a) the reasonable expenses of burial or cremation of the deceased person; and
- (b) the reasonable medical and hospital expenses of the deceased person in relation to the injury that resulted in the death of the deceased person,

that are incurred by a person for whose benefit the action is brought.

(4.) In assessing damages in respect of liability under this Ordinance, there shall not be taken into account by way of reduction of damages—

- (a) a sum paid or payable on the death of, or personal injury to, the deceased person under a contract of insurance;
- (b) a sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society, lodge or trade union;
- (c) a sum paid or payable by any government or person consequent upon the death or injury of the deceased person and being—
 - (i) a payment in lieu of furlough or long service leave; or
 - (ii) a payment by way of pension, social service benefit or repatriation benefit;
- (d) a sum paid or payable as a gratuity consequent upon the death of the deceased person;
- (e) any sum in respect of the acquisition by a member of the deceased person's family, consequent upon the death, of, or of an interest in, a dwelling used at any time as the home of the member, or of, or of an interest in, the household contents of any such dwelling; or
- (f) a premium that would have become payable under a contract of insurance in respect of the life of the deceased person if he had lived beyond the time at which he died.

Contributory negligence.

11.—(1.) Where a person dies as the result partly of his own fault and partly of the fault of another person or other persons, and accordingly, if an action were brought for the benefit of his estate under Part II. of the *Law Reform (Miscellaneous Provisions) Ordinance* 1955-1968, the damages recoverable would be reduced under section 15 of that Ordinance, any damages recoverable in an action under this Ordinance shall be reduced to the same extent as if they were damages in an action so brought for the benefit of the estate of the deceased person.

(2.) In this section, "fault" has the same meaning as in Part V. of the *Law Reform (Miscellaneous Provisions) Ordinance* 1955-1968.

Payment into court.

12.—(1.) Where an action is brought under this Ordinance, the defendant may pay an amount of money into court as compensation for the benefit of the persons for whose benefit the action is brought

and who are entitled to compensation under this Ordinance without specifying the shares into which that amount is to be divided by the court.

(2.) Where an amount of money is paid into court by way of compensation, no portion of that amount shall be paid out of court except in pursuance of an order of the court.

13.—(1.) Where an action under this Ordinance has not been commenced by and in the name of the personal representative of a deceased person within six months after the death of the deceased person, any one or more of the persons for whose benefit an action under this Ordinance may be brought may bring an action under this Ordinance.

Alternative action where personal representative is not appointed or does not bring action.

(2.) An action brought under this Ordinance by a person other than the personal representative of the deceased person shall be for the benefit of the same persons and subject to the same provisions and procedures, *mutatis mutandis*, as if it were brought by the personal representative of the deceased person on behalf of those persons.

14. The writ of summons or other process by which an action under this Ordinance is commenced shall, in addition to any other endorsements required or permitted to be made, be endorsed with a statement specifying the names of each of the persons for whose benefit the action is brought and the relationship of each of those persons to the deceased person.

Special endorsement on writ of summons.

15.—(1.) Where—

- (a) an action under this Ordinance 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,

Powers of the court to make orders in relation to actions.

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

(2.) In proceedings under this Ordinance, the court may order that any one or more of the persons for whose benefit the action has been brought be separately represented by counsel or solicitor, or both.

(3.) Where the court makes an order under this section, the court may, at the same or a subsequent time, 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.

16. If an action under this Ordinance or the assessment of damages in such an action is tried before the court with a jury, the references in section 10 of this Ordinance to the court shall be read as references to the jury before which the action is tried.

Provisions applicable where action tried before court with a jury.