



Australian Capital Territory

Compensation (Fatal Injuries) Act 1968 No 9

Republication No 4

Republication date: 16 November 2001

Last amendment made by Act 2001 No 12

Amendments incorporated to 5 April 2001

Authorised by the ACT Parliamentary Counsel

About this republicationThe republished law

This is a republication of the *Compensation (Fatal Injuries) Act 1968* as in force on 16 November 2001. It includes any amendment, repeal or expiry affecting the republished law to 5 April 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
5 April 2001



Australian Capital Territory

Compensation (Fatal Injuries) Act 1968

Contents

| | Page |
|---|------|
| Name of Act | 2 |
| 2 Definitions for Act | 2 |
| 3 Meaning of <i>member</i> of deceased person's family | 2 |
| 4 Application of Act to children | 3 |
| 5 Application of Act generally | 3 |
| 7 Liability in respect of death of person | 3 |
| 8 One action for benefit of members of deceased person's family | 4 |
| 10 Damages | 4 |
| 11 Contributory negligence not defence | 6 |
| 12 Payment into court | 6 |

Contents

| | Page |
|--|------|
| 13 Alternative action where personal representative is not appointed or does not bring action | 7 |
| 14 Special endorsement on writ of summons | 7 |
| 15 Powers of court to make orders in relation to actions | 7 |
| 16 Provisions applicable where action tried before court with jury | 8 |

Endnotes

| | |
|-------------------------------|----|
| 1 About the endnotes | 9 |
| 2 Abbreviation key | 9 |
| 3 Legislation history | 10 |
| 4 Amendment history | 11 |
| 5 Earlier republications | 12 |

Amendments incorporated to
5 April 2001



Australian Capital Territory

Compensation (Fatal Injuries) Act 1968

An Act relating to compensation to relatives of persons whose deaths are caused by wrongful acts, neglects or defaults

1 Name of Act

This Act is the *Compensation (Fatal Injuries) Act 1968*.

2 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

child, in relation to a deceased person, includes a grandchild and a stepchild of the deceased person.

parent, in relation to a deceased person, includes a stepfather, a stepmother, a grandfather and a grandmother of the deceased person.

personal representative, of a deceased person, means the person to whom any grant of probate of the will or administration of the estate of the deceased person has been made in the Territory or a State, and includes an executor by representation or the public trustee.

3 Meaning of *member of deceased person's family*

Each of the following persons is, for this Act, 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 or her death, in loco parentis;
- (d) a person who stood, immediately before his or her 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;
- (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.

4 Application of Act to children

For this Act—

- (a) an illegitimate person shall be treated as being, or as having been, the legitimate child of his or her 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 Application of Act generally

This Act applies to the death of a person after 12 June 1968, even if the act or omission that caused the person's death happened on or before that date.

7 Liability in respect of death of person

Where the death of a person is caused by a wrongful act or omission and the act or omission 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 were an offence.

8 One action for benefit of members of deceased person's family

- (1) Not more than 1 action under this Act shall be brought against a person in respect of a death.
- (2) Subject to section 13 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 or her death.

10 Damages

- (1) In an action under this Act, 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.
- (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) The damages may include an amount to compensate for—
 - (a) any reasonable funeral expenses; and
 - (b) any reasonable medical or hospital expenses related to the injury that resulted in the death;paid or payable by a person for whose benefit the action is brought.
- (4) An amount to compensate for any reasonable funeral expenses may be reduced to such an extent (if any) as the court thinks just and equitable having regard to the age and health of the deceased person immediately prior to the occurrence that gave rise to the cause of action.
- (5) In determining whether an expense is reasonable for the purposes of subsection (3) (a), regard shall be had to the religious and cultural

circumstances of the deceased person and the members of his or her family.

- (6) In assessing damages in respect of liability under this Act, 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; or
 - (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; or
 - (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; or
 - (d) a sum paid or payable as a gratuity consequent upon the death of the deceased person; or
 - (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 or she had lived beyond the time at which he or she died.
- (7) In this section:
- funeral expenses* includes costs related to all or any of the following:
- (a) the publication of death and funeral notices;

- (b) the services of an undertaker, including the provision of vehicles;
- (c) wreaths or floral tributes;
- (d) a funeral service;
- (e) a service at the burial or cremation site;
- (f) burial or cremation;
- (g) a headstone, plaque, tablet or other memorial.

11 Contributory negligence not defence

- (1) If a person (the *deceased person*) has died as the result partly of the deceased person's failure to take reasonable care (*contributory negligence*) and partly of the wrong of someone else, the damages recoverable in an action under this Act for the wrong are not to be reduced because of the deceased person's contributory negligence.
- (2) This section does not apply to a cause of action that arose before 6 December 1991.
- (3) In this section:
wrong means an act or omission (whether or not an offence)—
 - (a) that gives rise to a liability in tort; or
 - (b) that amounts to a breach of a contractual duty of care that is concurrent and coextensive with a duty of care in tort.

12 Payment into court

- (1) Where an action is brought under this Act, 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 Act 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 Alternative action where personal representative is not appointed or does not bring action

- (1) Where an action under this Act has not been commenced by and in the name of the personal representative of a deceased person within 6 months after the death of the deceased person, any 1 or more of the persons for whose benefit an action under this Act may be brought may bring an action under this Act.
- (2) An action brought under this Act 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 Special endorsement on writ of summons

The writ of summons or other process by which an action under this Act 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 persons.

15 Powers of court to make orders in relation to actions

- (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 that the action shall proceed as if the name of that person had been so included.

- (2) In proceedings under this Act, the court may order that any 1 or more of the persons for whose benefit the action has been brought be separately represented by a barrister 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 Provisions applicable where action tried before court with jury

If an action under this Act or the assessment of damages in such an action is tried before the court with a jury, the references in section 10 to the court are references to the jury before which the action is tried.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

| | |
|---|--|
| am = amended | ord = ordinance |
| amdt = amendment | orig = original |
| ch = chapter | p = page |
| cl = clause | par = paragraph |
| def = definition | pres = present |
| dict = dictionary | prev = previous |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously |
| div = division | prov = provision |
| exp = expires/expired | pt = part |
| Gaz = Gazette | r = rule/subrule |
| hdg = heading | reg = regulation/subregulation |
| ins = inserted/added | renum = renumbered |
| LA = Legislation Act 2001 | reloc = relocated |
| LR = legislation register | R[X] = Republication No |
| LRA = Legislation (Republication) Act 1996 | s = section/subsection |
| mod = modified / modification | sch = schedule |
| No = number | sdiv = subdivision |
| o = order | sub = substituted |
| om = omitted/repealed | SL = Subordinate Law |
| | <u>underlining</u> = whole or part not commenced |

Endnotes

3 Legislation history

3 **Legislation history**

The *Compensation (Fatal Injuries) Act 1968* was originally the *Compensation (Fatal Injuries) Ordinance 1968*. It became an ACT Act on self-government (11 May 1989).

Legislation before self-government

Compensation (Fatal Injuries) Act 1968 No 9

notified 13 June 1968
commenced 13 June 1968

as amended by

Ordinances Revision Ordinance 1978 No 46

notified 28 December 1978
commenced 28 December 1978

Public Trustee (Miscellaneous Amendments) Ordinance 1985 No 9

notified 8 March 1985
commenced 28 October 1985 (Gaz 1985 No G42)

Limitation Ordinance 1985 No 66

notified 19 December 1985
commenced 19 December 1985

Legislation after self-government

Compensation (Fatal Injuries) (Amendment) Act 1991 No 74

notified 6 December 1991 (Gaz 1991 No S134)
commenced 6 December 1991

Acts Revision (Position of Crown) Act 1993 No 44 sch 1

notified 27 August 1993 (Gaz 1993 No S165)
commenced 27 August 1993 (s 2)

Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1

notified 1 December 1997 (Gaz 1997 No S380)
s 1, s 2 commenced 1 December 1997 (s 2 (1))
sch 1 commenced 1 June 1998 (s 2 (2))

Law Reform (Miscellaneous Provisions) Amendment Act 2001 No 12 pt 3 and sch 2

notified 5 April 2001 (Gaz 2001 No 14)

commenced 5 April 2001 (s 2)

4 Amendment history

Name of Act

s 1 sub 2001 No 12 amdt 2.1

Definitions for Act

s 2 hdg (prev s 4 hdg) sub 2001 No 12 amdt 2.3

s 2 orig s 2 om 2001 No 12 amdt 2.1
(prev s 4 (1)) am 1985 No 9; 2001 No 12 amdt 2.4
renum 2001 No 12 amdt 2.2

Meaning of *member of deceased person's family*

s 3 hdg ins 2001 No 12 amdt 2.6

s 3 orig s 3 om 1978 No 46
(prev s 4 (2)) renum 2001 No 12 amdt 2.5

Application of Act to children

s 4 hdg ins 2001 No 12 amdt 2.8

s 4 (prev s 4 (3)) renum 2001 No 12 amdt 2.7

Application of Act generally

s 5 sub 2001 No 12 amdt 2.9

Act binds the Crown

s 6 om 1993 No 44

Liability in respect of death of person

s 7 am 2001 No 12 amdt 2.10

Time for commencement of actions

s 9 om 1985 No 66

Damages

s 10 am 1991 No 74; 2001 No 12 amdt 2.11; R4 LA

Contributory negligence not defence

s 11 sub 1991 No 74; 2001 No 12 amdt 2.12

Powers of court to make orders in relation to actions

s 15 am 1997 No 96

Endnotes

5 Earlier republishings

5 Earlier republishings

Some earlier republishings were not numbered. The number in column 1 refers to the publication order.

| Republishing No | Amendments to | Republishing date |
|-----------------|----------------|-------------------|
| 1 | Act 1985 No 66 | 31 May 1991 |
| 2 | Act 1993 No 44 | 31 January 1994 |
| 3 | Act 1997 No 96 | 1 May 2000 |

Authorised when accessed at www.legislation.act.gov.au or in authorised printed form

© Australian Capital Territory 2001