



AUSTRALIAN CAPITAL TERRITORY

## **Law Reform (Miscellaneous Provisions) (Amendment) Act (No. 2) 1991**

**No. 73 of 1991**

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**An Act to amend the *Law Reform (Miscellaneous Provisions) Act 1955***

*[Notified in ACT Gazette S 134: 6 December 1991]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

**Short title**

**1.** This Act may be cited as the *Law Reform (Miscellaneous Provisions) (Amendment) Act (No. 2) 1991*.

### **Principal Act**

2. In this Act, “Principal Act” means the *Law Reform (Miscellaneous Provisions) Act 1955*.<sup>1</sup>

### **Damages in surviving cause of action**

3. Section 5 of the Principal Act is amended—

(a) by omitting subparagraph (c) (i) and substituting the following subparagraph:

“(i) shall, subject to subsection (2), be calculated without reference to any loss or gain to the estate consequent upon the death;”;

(b) by omitting from subparagraph (c) (ii) “and”;

(c) by adding at the end of paragraph (c) the following word and subparagraph;

“; and (iv) do not include damages of the kind referred to in section 33.”; and

(d) by adding at the end the following subsections:

“(2) The damages may include an amount to compensate for any reasonable funeral expenses paid or payable by the estate.

“(3) 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 or health of the deceased person immediately prior to the occurrence that gave rise to the cause of action.

“(4) In determining whether an expense is reasonable for the purposes of subsection (2), regard shall be had to the religious and cultural circumstances of the deceased person and the members of his or her family.

“(5) In subsection (2), “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.”.

### **Insertion**

4. After section 20 of the Principal Act the following section is inserted in Part V:

#### **Contributory negligence not a defence in actions for breach of statutory duty**

“20A. (1) Where a person has suffered injury partly as a result of his or her own fault and partly as a result of a breach of statutory duty by another person, in an action for the breach the damages recoverable by the plaintiff in respect of the injury shall not be reduced because of his or her fault.

“(2) Subsection (1) does not apply in relation to a cause of action that arose before the commencement of this section.”.

### **Addition**

5. The Principal Act is amended by adding at the end the following Part:

#### **“PART X—LOSS OF CONSORTIUM AND LOSS OF CAPACITY TO DO HOUSEHOLD WORK**

### **Application**

“30. This Part does not apply in relation to a cause of action that arose before the commencement of this Part.

### **Extended meaning of negligence**

“31. In this Part, a reference to negligence shall be read as including a reference to a breach of statutory duty, to a failure to discharge a duty of care and to any other act or omission giving rise to a liability in tort.

### **Action for loss of consortium abolished**

“32. Where a wife has been injured as a consequence of the negligence of a person other than her husband, the person is not liable to the husband for any resultant impairment or loss of consortium.

**Damages for loss of capacity to do housework**

“33. (1) The liability of a person in respect of an injury suffered by another person as a consequence of negligence extends to include liability for damages for any resultant impairment or loss of that other person’s capacity to perform domestic services that he or she might reasonably have been expected to perform for his or her household if he or she had not been injured.

“(2) In proceedings for the recovery of damages referred to in subsection (1), it is immaterial—

- (a) whether the plaintiff performed the domestic services for the benefit of other members of the household or solely for his or her own benefit;
- (b) that the plaintiff was not paid to perform those services;
- (c) that the plaintiff has not been, and will not be, obliged to pay another person to perform those services; and
- (d) that those services have been, or are likely to be, performed (gratuitously or otherwise) by other persons (whether members of the household or not).”.

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**NOTE**

1. Ordinance No. 3, 1955 as amended by No. 14, 1965; No. 10, 1968; No. 65, 1977; No. 95, 1982; No. 66, 1985; No. 21, 1989; Act No. 19, 1991.

*[Presentation speech made in Assembly on 17 October 1991]*