

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

COMPENSATION (FATAL INJURIES) (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

**Circulated by authority of
Terry Connolly, Attorney General**

COMPENSATION (FATAL INJURIES) (AMENDMENT) BILL 1991

Outline

The *Compensation (Fatal Injuries) (Amendment) Bill* amends the Compensation (Fatal Injuries) Act 1968 (the Principal Act) to give effect to the recommendations of the ACT Community Law Reform Committee made in its third report.

The Bill substitutes a new section 11 in the Principal Act to abolish the defence of contributory negligence in fatal accident cases.

It also amends section 10 of the Principal Act to provide for adequate and more certain compensation for funeral expenses. The Bill substitutes the words "funeral expenses" for the words "burial or cremation" in subsection 10(3) of the Principal Act. The phrase "funeral expenses" is used in other States and has a wider meaning than "burial or cremation". The Bill also inserts new subsections 10(3A), 10(3B) and 10(5). Subsections 10(3A) and 10(3B) provide that the age, health, religious and cultural background of the deceased are relevant to the determination of compensation. Subsection 10(5) lists some expenses which are funeral expenses for the purposes of the Bill.

Financial Implications

This Bill has no immediate implications for expenditure or revenue.

In the long term, the changes effected by the Bill could cause the Government to incur additional compensation costs in respect of its employees. However, such extra costs, if they arose, would be of marginal significance because the changes will affect only a minority of compensation claims.

Clause Notes

Clause 1 provides that the Act may be cited as the *Compensation (Fatal Injuries) (Amendment) Act 1991*.

Clause 2 provides that the Principal Act is the Compensation (Fatal Injuries) Act 1968.

Clause 3 amends section 10 of the Principal Act by repealing subsection 10(3) and substituting a new subsection 10(3) in which the words "funeral expenses" replace the words "burial or cremation" in the Principal Act. In other respects, the new subsection 10(3) differs from the Principal Act in form only. Clause 3 also amends section 10 of the Principal Act by the insertion of the following new subsections.

Subsection 10(3A) applies to a situation where because of ill health or age the deceased was already near death at the time of the accident which gave rise to the dependant's claim. It provides for the Court to reduce compensation for funeral expenses if the age or health of the deceased make such a reduction appropriate.

Subsection 10(3B) provides that the religious and cultural circumstances of the deceased and family members are relevant to determining whether an expense (in terms of its cost or nature) is reasonable.

Subsection 10(5) sets out a list of some of the expenses which are funeral expenses for the purposes of the Bill.

Clause 4 repeals section 11 of the Principal Act and substitutes a new section 11 which abolishes the defence of contributory negligence in fatal accident cases. New subsection 11(3) provides that this section does not affect any causes of action commenced before the operation of the section.