

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

**LAW REFORM (MISCELLANEOUS PROVISIONS)
(AMENDMENT) BILL 1991**

EXPLANATORY MEMORANDUM

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

LAW REFORM (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 1991

Outline

The *Law Reform (Miscellaneous Provisions) (Amendment) Bill 1991* amends the Law Reform (Miscellaneous Provisions) Act 1955 to give effect to the recommendations of the ACT Community Law Reform Committee (the Committee) made in its third and fourth reports.

Funeral Costs

The Bill amends section 5 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 section 5. The phrase "funeral expenses" is used in other States and has a wider meaning than "burial or cremation". The Bill also inserts new subsections 5(3), 5(4) and 5(5). Subsections 5(3) and 5(4) provide that the age, health, religious and cultural background of the deceased are relevant to the determination of compensation. Subsection 5(5) lists some expenses which are funeral expenses for the purposes of the Bill.

Contributory Negligence

The Bill also amends the Principal Act by the insertion of new Section 20A which abolishes the defence of contributory negligence in breach of statutory duty cases.

Loss of Consortium

The Bill provides for the abolition of the action for loss of consortium.

The action for loss of consortium is a common law action which allows a husband to claim compensation for the loss of the companionship, society and domestic services of his wife injured through negligence or assault. The right is not available to wives or persons outside marriage. The Committee recommended this right be abolished because it is discriminatory and demeaning. The Bill inserts new section 31 to give effect to this recommendation.

Loss of Capacity to do Housework

The Bill provides for the confirmation and extension of the right to claim compensation in respect to domestic services.

The Committee concluded in relation to compensation for loss of capacity to do housework, that the law allows for significant compensation but could result, on occasion, in inadequate compensation. As recommended by the Committee, the Bill inserts a new section 33 to affirm the right to compensation for loss of capacity to do housework and ensure it is adequate.

New section 33 provides that liability for negligent injury includes liability for loss of capacity to perform domestic services and sets out matters not relevant to this loss, which are not to be taken into account in proceedings for the recovery of damages.

Financial Considerations

This Bill has no immediate financial implications for revenue or expenditure.

Contributory Negligence and Funeral Costs

In the long term, the Bill could result in an increase in compensation payments to Government employees with respect to funeral expenses and breach of statutory duty actions. However, if there were an increase it would be minor because funeral expenses and statutory duty actions represent a small minority of compensation claims.

Loss of Capacity to do Housework

In the long term, the Bill could cause an increase in compensation payments payable by the Government in respect of its employees for the loss of capacity to do housework. This increase, if it occurs, will be minor as the Bill affirms an existing right.

Loss of Consortium

The Bill will end compensation payments payable by the Government in respect of its employees for the loss of consortium.

Clause Notes

Clause 1 provides that the Act may be cited as the Law Reform (Miscellaneous Provisions) (Amendment) Act 1991.

Clause 2 provides that the Principal Act is the Law Reform (Miscellaneous Provisions) Act 1955.

Clause 3 restructures and amends section 5 of the Principal Act.

The references to compensation for reasonable expenses of burial or cremation are removed from subparagraph 5(c)(i). These and other funeral expenses are now dealt with in subsection 5(2).

A new subparagraph 5(c)(iv) is added. This subparagraph makes it clear that, in an action which survives the death of a person for the benefit of the estate of the deceased person, damages will not include damages for loss of capacity of the deceased person to do housework.

The following new subsections are inserted into the section.

- Subsection (2) allows compensation for the reasonable funeral expenses. This subsection is intended to be broader than the existing subparagraph 5(c)(i). The types of funeral expenses to be included are set out in subsection 5(5).
- Subsection (3) 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 estate'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 (4) 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 (5) sets out the expenses which are funeral expenses for the purposes of the Bill.

Clause 4 inserts a new section 20A, after section 20 of the Principal Act, which abolishes the defence of contributory negligence as it applies to actions for breach of statutory duty.

Subsection 20A(2) provides that this section does not affect any causes of action commenced before the operation of the section.

Clause 5 inserts new Part X in the Principal Act which has the following new sections.

Section 30 provides that Part X does not affect any proceedings or causes of action which commenced before the operation of Part X.

Section 31 provides that, in Part X, negligence shall have a wide meaning and includes breaches of a statutory duty.

Section 32 provides for the abolition of the action for loss of consortium.

Section 33 provides for liability for loss of capacity to do housework.

Subsection 33(1) provides that liability for negligent injury includes liability for loss of capacity to perform domestic services that the injured person might reasonably have been expected to perform.

Subsection 33(2) provides that it is irrelevant to claims for this loss whether:

- (a) the plaintiff performed domestic services for others as well as her or himself;
- (b) the plaintiff was paid for those services;
- (c) the plaintiff has not and will not hire help to make up the loss; or
- (d) that other persons have or will make up the loss by providing voluntary assistance.