

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 4 of 1938.

AN ORDINANCE

**Relating to Compensation to Relatives of Persons
whose Deaths are caused by Wrongful Act,
Neglect or Default.**

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909 and the *Seat of Government (Administration) Act* 1910-1933, as follows:—

1. This Ordinance may be cited as the *Compensation (Fatal Injuries) Ordinance* 1938. Short title.

2. The Compensation to Relatives Act of 1897 of the State of New South Wales shall cease to apply to the Territory. Act of the State of New South Wales to cease to apply.

3.—(1.) This Ordinance shall apply whether the cause of action arises within or outside the Territory, and whether the wrongdoer, the person whose death has been caused, or any other person concerned was or is a British subject or not. Application of Ordinance.

(2.) This Ordinance shall apply to actions commenced either before or after the commencement of this Ordinance.

(3.) This Ordinance shall bind the Crown.

4. In this Ordinance, unless the contrary intention appears—
“action” means an action under section five of this Ordinance; Definitions.

“administrator” means an administrator appointed under the *Administration and Probate Ordinance* 1929-1937 and includes the Curator of Estates of Deceased Persons appointed under that Ordinance acting as collector and administrator of an estate under an order to collect and administer;

“child” includes son, daughter, grandson, granddaughter, step-son, step-daughter, adopted child and ex-nuptial child;

“declaration” includes any statement of the cause of action appropriate to the court in which the action is brought;

“executor” means an executor to whom probate has been granted and includes an executor by right of representation;

“parent” includes father, mother, grandfather, grandmother, step-father, step-mother and, in the case of a person who is an adopted child, the person who adopted such child.

Action against person causing death by wrongful act, neglect or default.

5.—(1.) Whenever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death has been caused under such circumstances as amount in law to felony.

(2.) In any such action any reasonable expenses of the funeral of the deceased person may be recovered.

(3.) In assessing damages in any such action there shall not be taken into account—

(a) any sum paid or payable on the death of the person injured under any contract of insurance; or

(b) any sum paid or payable out of any superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union.

Action to be for the benefit of certain relations.

6.—(1.) Every action shall be for the benefit of the wife, husband, parent, and child of the person injured and shall be brought by and in the name of the executor or administrator of that person.

(2.) In every such action the jury or the court, if the trial is without a jury, may give, to the parties respectively for whom and for whose benefit the action is brought, such damages as they or it may think proportioned to the injury resulting from the death of the person injured.

(3.) The amount of damages recovered under this section shall, after deducting the costs not recovered from the defendant, be divided amongst the parties mentioned in the last preceding subsection in such shares as the jury by their verdict or the court by its judgment may find and direct.

Limitation of actions.

7. Not more than one action shall be brought in respect of the same cause of action, and every action shall be commenced within a period of twelve months after the death of the person injured.

8. In every action the plaintiff on the record shall deliver to the defendant or his solicitor, with the declaration, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the cause of action in respect of which damages are sought to be recovered.

Particulars of person or persons for whom damages claimed.

9.—(1.) In every action the defendant may pay money into court as compensation in one sum to all persons entitled under this Ordinance for the wrongful act, neglect or default, without specifying the shares into which the sum is to be divided by the jury or the court.

Payment into court.

(2.) If the sum paid in is not accepted, and if the sufficiency of the amount is put in issue by the plaintiff, and the jury or court find or finds the sum sufficient, the defendant shall be entitled to the verdict upon that issue.

(3.) No portion of the sum paid in shall be paid out of court except under the order of a judge or magistrate.

10.—(1.) Where there is no executor or administrator of the person deceased, or where his executor or administrator does not bring an action within six months after the death of the person injured, the person or any one or more of the persons for whose benefit the action might be brought by such an executor or administrator may bring the action.

Alternative action.

(2.) Any action so brought shall be for the benefit of the same person or persons and shall be subject to the same provisions and procedure, as nearly as may be, as if it were brought by such an executor or administrator.

11.—(1.) Every action and cause of action shall survive notwithstanding the death of the wrongdoer.

Survival of action.

(2.) If the wrongdoer dies before an action is brought and within twelve months after the death of the person injured, an action may be brought against the executor or administrator of the wrongdoer notwithstanding the expiry of that period, provided that the action is brought within six months after the grant of probate or administration.

(3.) Any damages recovered against the executor or administrator shall be payable in like order of administration as the debts of the wrongdoer.

Dated this eleventh day of February, 1938.

GOWRIE

Governor-General.

By His Excellency's Command,

ROBERT G. MENZIES
for Minister of State for the Interior.

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.