

COMPENSATION (FATAL INJURIES) ORDINANCE 1974

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No. 36 of 1974

An Ordinance relating to Compensation to Relatives of Persons whose Deaths are caused by wrongful Act, Neglect or Default

[Assented to 23 September 1974]

BE it ordained by the Legislative Council for the Northern Territory of Australia as follows:

1. This Ordinance may be cited as the *Compensation (Fatal Injuries) Ordinance 1974*. Short title
2. (1) The *Compensation (Fatal Injuries) Ordinance 1938* and the *Compensation (Fatal Injuries) Ordinance 1970* are repealed. Repeal
(2) Notwithstanding the repeal made by sub-section (1), the provisions of the *Compensation (Fatal Injuries) Ordinance 1938* as amended continue to apply in relation to a cause of action in respect of the death of a person that occurred before the commencement of this Ordinance.
3. This Ordinance shall be administered by the Attorney-General. Administration
4. (1) In this Ordinance, unless the contrary intention appears— Interpretation
“child”, in relation to a deceased person, includes an adopted child and a grand-child and a step-child of the deceased person;
“infant” means a person who is under the age of 18 years;
“parent”, in relation to a deceased person, includes an adoptive parent, and a step-father, a step-mother, a grand-father and a grand-mother of the deceased person;

“personal representative”, in relation to a deceased person, means the person to whom a grant of probate of the will or administration of the estate of the deceased person has been made in a State or Territory and includes an executor by representation of the deceased person, the Public Trustee if he is administering the estate of the deceased person and the Curator of the Estates of Deceased Persons within the meaning of the *Administration and Probate Ordinance* if he is administering the estate of the deceased person.

(2) Each of the following persons is, for the purposes of this Ordinance, a member of a deceased person's family:

- (a) the surviving wife or husband, as the case may be, of the deceased person;
- (b) a child of the deceased person;
- (c) a person to whom the deceased person stood, immediately before his death, *in loco parentis*;
- (d) a person who stood, immediately before his 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.

(3) For the purposes of this Ordinance—

- (a) an illegitimate child shall be treated as being, or as having been the legitimate child of his mother and reputed father;
- (b) a child of a deceased person born alive after the death of that person shall be treated as having been born before the death of the deceased person;
- (c) 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 shall be treated as the wife or husband, as the case may be, of the deceased person; and
- (d) an infant to whom a deceased person stood, immediately before his death, *in loco parentis* shall be treated as the child of the deceased person.

(4) A reference in this Ordinance to an action or proceeding shall, unless the contrary intention appears, be read as a reference to an action or proceeding under this Ordinance.

5. This Ordinance applies only where a death occurs on or after the commencement of this Ordinance, whether the act, neglect or default that caused the death occurred before or after that commencement. Application

6. This Ordinance binds the Crown. Ordinance binds the Crown

7.(1) Where the death of a person is caused by a wrongful act, neglect or default and the act, neglect or default 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 amount in law to a crime. Liability in respect of the death of a person

(2) A settlement, release or judgment in respect of the wrongful act, neglect or default causing his death made, given or obtained by the deceased person after the commission or occurrence of the wrongful act, neglect or default does not, subject to section 10(5), affect the liability of a person to an action under this Ordinance.

8.(1) Not more than one action may be brought against any one person in respect of a death. One action for the benefit of members of deceased person's family

(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 death.

9. An action may not be commenced except within a period of 3 years after the date of the death of the deceased person. Time for commencement of actions

10.(1) 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. Damages

(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) Damages in an action may include—
- (a) the reasonable expenses of burial or cremation of the deceased person that are incurred by a person for whose benefit the action is brought;
 - (b) the reasonable medical and hospital expenses of the deceased person in relation to the injury that resulted in the death of the deceased person that are incurred by a person for whose benefit the action is brought;
 - (c) if the deceased person is survived by a wife or husband—damages for loss or impairment of consortium of husband and wife in the same manner as damages would be assessed in a claim in tort by a husband for damages for loss or impairment of consortium;
 - (d) if the deceased person customarily performed household services—the reasonable expenses that would be incurred by a person for whose benefit the action is brought in respect of the hire of help to perform those services;
 - (e) if the deceased person is survived by a child of his who is an infant—
 - (i) the reasonable expenses that would be incurred by a person on whose behalf the action is brought in respect of the hire of a person to live in the home and care for the infant until the infant attains the age of 18 years; and
 - (ii) damages on account of loss of care and guidance of the child by the deceased person as a parent; and
 - (f) solatium.

(4) In assessing damages in an action, no reduction shall be made on account of—

- (a) a sum paid or payable on the death of, or personal injury to, the deceased person under a contract of insurance;
- (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;
- (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;
- (d) a sum paid or payable as a gratuity consequent upon the death of the deceased person;
- (e) any sum in respect of the acquisition by a member of the deceased person's family, consequent upon the death, of, or 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;
- (f) a premium that would have become payable under a contract of insurance in respect of the life of the deceased person if he had lived beyond the time at which he died;
- (g) any other gain or benefits that have accrued or may accrue to the deceased person's estate or to any person for whose benefit an action is brought consequent upon the death of the deceased person; or
- (h) the remarriage or prospects of remarriage of the surviving spouse, or a surviving former spouse.

(5) A payment made in pursuance of a settlement, release or judgment in respect of the wrongful act, neglect or default causing his death made, given or obtained by the deceased person within the period of 6 months after the commission or occurrence of the wrongful act, neglect or default causing his death shall be taken into account in assessing damages in an action.

11.(1) Where a person dies as the result partly of his own fault and partly of the fault of another person or other persons, and accordingly, if an action were brought for the benefit of his estate under Part II of the *Law Reform (Miscellaneous Provisions) Ordinance*, the damages recoverable would be reduced, any damages recoverable in an action under this Ordinance shall be reduced to the same extent as if they were damages in an action so brought for the benefit of the estate of the deceased person.

Contributory negligence

(2) In this section, "fault" has the same meaning as in Part V of the *Law Reform (Miscellaneous Provisions) Ordinance*.

12.(1) Where an action is brought under this Ordinance, 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 Ordinance.

Payment into 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.

Alternative action where personal representative is not appointed or does not bring action

13.(1) Where an action 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 one or more of the persons for whose benefit an action may be brought may bring such an action.

(2) An action brought 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.

Special endorsement on writ of summons

14. The writ of summons or other process by which an action 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 person.

Powers of the court to make orders in relation to actions

15.(1) Where—

(a) an action 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 the action to proceed as if the name of that person had been so included.

(2) The court may order that any one or more of the persons for whose benefit an action has been brought be separately represented by counsel or solicitor, or both.

(3) Where the court makes an order under this section, the court may, at the same time or subsequently, 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.

Provisions applicable where action tried before court with a jury

16. If an action or the assessment of damages in an action is tried before the court with a jury, the references in section 10 to the court shall be read as references to the jury before which the action is tried.