

Compensation to Relatives Act 1897 No 31

[1897-31]



New South Wales

Status Information

Currency of version

Current version for 15 June 2018 to date (accessed 28 December 2024 at 12:43)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Compensation to Relatives Act of 1897

Authorisation

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File last modified 15 June 2018

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Compensation to Relatives Act 1897 No 31



New South Wales

An Act to consolidate enactments relating to compensation to relatives of persons killed by accidents.

1 Name of Act

This Act may be cited as the *Compensation to Relatives Act 1897*.

2 Repeal

The enactments mentioned in the Schedule to this Act to the extent therein expressed are hereby repealed.

3 An action to be maintainable against any person causing death through neglect despite the death of the person injured

- (1) Whensoever 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 party injured to maintain an action and recover damages in respect thereof, then and in every such case 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 a serious indictable offence.
- (2) In any such action any reasonable expenses of the funeral or the cremation of the deceased person and the reasonable cost of erecting a headstone or tombstone over the grave 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 deceased 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, or
 - (c) any sum paid or payable by way of pension under:
 - (i) the *Widows' Pension Act 1925-1942*,

- (ii) the *Coal and Oil Shale Mine Workers (Pensions) Act 1941-1942*,
 - (iii) the *Australian Soldiers' Repatriation Act 1920-1943* of the Parliament of the Commonwealth,
 - (iv) the *Widows' Pensions Act 1942-1945* of the Parliament of the Commonwealth,
 - (v) the *Invalid and Old-age Pensions Act 1908-1945* of the Parliament of the Commonwealth,
- or under any Act (Commonwealth or State) amending or replacing any such Act.

4 By whom and for whom action may be brought

- (1) Every such action shall be for the benefit of the spouse, brother, sister, half-brother, half-sister, parent, and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased, and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action is brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict find and direct.
- (2) If there is more than one spouse of the person whose death has been so caused, the action is (without limiting the application of subsection (1) to other persons) for the benefit of each of the spouses, who are to be separate parties to the action.

5 Only one action shall lie

Not more than one action shall lie for and in respect of the same subject matter of complaint.

6 Plaintiff to deliver a full particular of the person for whom such damages shall be claimed

In every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or the defendant's attorney a full particular of the persons for whom and on whose behalf such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

6A Payment into court

- (1) In every such action the defendant may pay money into court as a compensation in one sum to all persons entitled under this Act for the wrongful act neglect or default without specifying the shares into which the sum is to be divided by the jury.
- (2) If the sum paid in is not accepted, and if an issue is taken by the plaintiff as to its

sufficiency, and the jury think the same 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.

6B Alternative action

- (1) Where there is no executor or administrator of the person deceased, or where the person's executor or administrator does not bring an action under this Act within six months after the death of the person deceased, 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.
- (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.

6C Survival of action

- (1) Every action and cause of action under this Act shall survive notwithstanding the death of the wrongdoer.
- (2) (Repealed)
- (3) Any damages recovered against the executor or administrator shall be payable in like order of administration as the debts of the wrongdoer.

6D Action before judge without jury

Where an action under this Act is tried before a judge without a jury, the provisions of this Act with respect to a jury and to the verdict of a jury shall be construed as applying to a judge and to the judgment of a court, as the case may be.

6E Application of Act

- (1) This Act applies whether the subject-matter of the complaint arises within or outside New South Wales, and whether the wrongdoer, the person whose death has been caused, or any other person concerned was or is a British subject or not.
- (2) This Act applies to actions commenced either before or after the commencement of the [Compensation to Relatives \(Amendment\) Act 1928](#).
- (3) This Act shall bind the Crown.

7 Construction of Act

- (1) The following words are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature

of the subject matter, that is to say, the word **parent** shall include father and mother, and grandfather and grandmother, and stepfather and stepmother, and any person standing in loco parentis to another; and the word **child** shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter, and any person to whom another stands in loco parentis; and the word **declaration** shall include any statement of the cause of action appropriate to the court in which the action is brought.

(1A), (1B) (Repealed)

(2) In this Act **administrator** means administrator within the meaning of the [Probate and Administration Act 1898](#) and includes the NSW Trustee and Guardian acting as collector of an estate under an order to collect.

(3) In this Act **executor** means the executor to whom probate has been granted and includes an executor by right of representation.

(4) In this Act, **spouse** means:

(a) the person to whom a person is legally married (including the husband or wife of a person), or

(b) a de facto partner.

Note—

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

8 Rights of action in respect of past events

The amendments made to this Act by the [Property \(Relationships\) Legislation Amendment Act 1999](#) do not operate to confer on any person a right of action in relation to any act, neglect or default that took place before those amendments took effect.

Schedule

Reference to Act	Title of Act	Extent of Repeal
11 Vic No 32	An Act for compensating the families of persons killed by accidents.	The whole.
