



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 119 of 1975

An Act to amend the Wrongs Act, 1936-1974.

[Assented to 4th December, 1975]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Wrongs Act Amendment Act, 1975". Short titles.
 (2) The Wrongs Act, 1936-1974, is hereinafter referred to as "the principal Act".
 (3) The principal Act, as amended by this Act, may be cited as the "Wrongs Act, 1936-1975".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 3 of the principal Act is amended— Amendment of principal Act, s. 3—
Division of Act.
 (a) by striking out the passage "Sections 4-17";
 and
 (b) by striking out the passage "Sections 18-23".

4. The following section is enacted and inserted in the principal Act immediately after section 3 thereof:— Enactment of s. 3a of principal Act—
Interpretation.
 3a. In this Act, unless the contrary intention appears—
 "brother" includes half-brother and step-brother:
 "child" includes son, daughter, grandson, granddaughter, step-son and step-daughter:
 "the judgment first given" means—
 (a) where a judgment is set aside on appeal, a subsequent judgment that is not set aside;
 and
 (b) where a judgment is varied on appeal, the judgment as varied:

“newspaper” means any newspaper or journal printed for sale and published in the State periodically at intervals not exceeding thirty-one days:

“parent” includes father, mother, grandfather, grandmother, step-father and step-mother:

“putative spouse” in relation to any cause of action arising under this Act means a person adjudged under the Family Relationships Act, 1975, to have been a putative spouse on the day on which the cause of action arose:

“sister” includes half-sister and step-sister:

“spouse” in relation to any cause of action arising under this Act means a person—

(a) who was a lawful spouse on the day on which the cause of action arose;

or

(b) who is adjudged to have been a putative spouse on the day on which the cause of action arose,

and “husband” and “wife” are to be construed accordingly.

Repeal of
s. 4 of
principal Act.

5. Section 4 of the principal Act is repealed.

Repeal of
s. 18 of
principal Act.

6. Section 18 of the principal Act is repealed.

Amendment of
principal Act,
s. 20—
Effect of
action and
manner in
which it is
to be brought.

7. Section 20 of the principal Act is amended—

(a) by striking out subsection (2b);

and

(b) by inserting after subsection (3) the following subsections:—

(4) Where a deceased person is survived by a legal spouse and a putative spouse, the action shall, subject to this section, be brought for the benefit of both.

(5) An action need not be brought under this section for the benefit of a person who has, by notice in writing served upon the executor or administrator of the deceased, renounced the benefit of this section.

(6) Where the court considers it appropriate that any person for whose benefit an action lies under this section should present an independent claim for the benefit of an action under this section, it may permit or require that person to appear or be represented in the proceedings in all respects as if he were a separate party to the proceedings.

(7) No action lies against the executor or administrator for failing to bring an action for the benefit of a putative spouse if he brings the action without notice of the claim of

the putative spouse under this section, but the interest of any such spouse in the action shall be recognized by the court if application for recognition is made to the court before the proceedings are finally determined.

8. Section 23a of the principal Act is amended—

(a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Whenever the death of an infant 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 infant to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving parents or parent of the child such sum—

(a) where the death occurred before the commencement of the Wrongs Act Amendment Act, 1974—not exceeding one thousand dollars;

or

(b) where the death occurred after the commencement of the Wrongs Act Amendment Act, 1974—not exceeding three thousand dollars,

as the court thinks just by way of solatium for the suffering caused to the parents or parent by the death of the child.;

and

(b) by striking out from subsection (4) the passage “of a legitimate child and the mother of an illegitimate child” and inserting in lieu thereof the passage “of a child”.

9. Section 23b of the principal Act is repealed and the following section is enacted and inserted in its place:—

23b. (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 that person to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving spouse of the deceased person such sum—

(a) where the death occurred before the commencement of the Wrongs Act Amendment Act, 1974—not exceeding one thousand four hundred dollars;

or

(b) where the death occurred after the commencement of the Wrongs Act Amendment Act, 1974—not exceeding four thousand two hundred dollars,

as the court thinks just by way of solatium for the suffering caused to the spouse by that death.

Amendment of principal Act, s. 23a—
Liability to parents of person wrongfully killed.

Repeal of s. 23b of principal Act and enactment of section in its place—
Liability to surviving spouse of person wrongfully killed.

5

(2) Where the deceased person is survived by a lawful spouse and a putative spouse, they may both claim solatium under this section, but the total amount awarded by way of solatium in any such case shall not exceed the amount that could have been awarded if the deceased had been survived by a single spouse.

(3) Where, in any proceedings under this section, a lawful spouse and a putative spouse both claim solatium under this section, any solatium awarded by the court shall be apportioned between the claimants in such manner as the court thinks just.

(4) In any proceeding by a lawful spouse for solatium it is not necessary for the court to inquire if the deceased was also survived by a putative spouse, but any such spouse may, at any time before the proceedings are finally determined, apply to the court to be joined as a party to the proceedings.

Amendment of
principal Act,
s. 23c—
Further
provisions as
to solatium.

10. Section 23c of the principal Act is amended by inserting after subsection (3) the following subsection:—

(4) A cause of action conferred on a person by section 23a or section 23b of this Act is exercisable notwithstanding that the death of the person injured by the wrongful act, neglect or default was caused in circumstances which in law amount to a felony.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor