



**ADMINISTRATION AND PROBATE AMENDMENT
ACT 1983**

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No. 26 of 1983
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AN ACT to amend the Administration and Probate Act 1935 for the purpose of making further provision with respect to rights of action by and against personal representatives.

[Royal Assent 13 July 1983]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Administration and Probate Amendment Act 1983*. Short title.

Commence-
ment.

2—This Act shall commence on the day on which it receives the royal assent.

Principal Act.

3—In this Act, the *Administration and Probate Act 1935** is referred to as the Principal Act.

Amendment of
section 27 of
Principal Act
(Rights of
action by and
against personal
representatives).

4—Section 27 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:—

(3) Where a cause of action survives under this section for the benefit of the estate of a deceased person, the damages recoverable for the benefit of that estate —

- (a) shall not include exemplary damages;
- (b) in the case of a breach of promise to marry, shall be limited to such damage (if any) to that estate as flows from the breach of promise to marry; and
- (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action—
 - (i) shall be calculated without reference to any loss or gain to that estate consequent on his death, except that a sum in respect of funeral expenses may be included;
 - (ii) shall not include damages for pain or suffering, for any bodily or mental harm suffered by him or for the curtailment of his expectation of life; and
 - (iii) shall be calculated without reference to the future probable earnings of the deceased if he had survived the consequences of the act or omission and without any allowance being made for the loss of his earning capacity that relates to a period after his death.

* 26 Geo. V No. 38. For this Act, as amended up to and including 1st July 1977, see the continuing Reprint of Statutes. Subsequently amended by No. 54 of 1977, No. 4 of 1978, and No. 19 of 1980.

5—Section 27 of the Principal Act, as amended by section 4 of this Act, applies to and in respect of a cause of action arising before the commencement of this Act in the same way as it applies to and in respect of a cause of action arising after that commencement, but subsection (3) (c) (iii) of the first-mentioned section, as so amended, has no effect in relation to—

Application of section 27 of Principal Act, as amended.

- (a) a cause of action in respect of which a court has given judgment (including a judgment as to liability only), whether or not an appeal has been made against that judgment; or
- (b) a cause of action in respect of which the parties have entered into an agreement to settle claims arising from that cause of action (including an agreement as to liability only).

6—Where, but for section 27 (3) of the Principal Act (as substituted by section 4 of this Act) and section 5 of this Act, damages in respect of a cause of action would or might have been recoverable for the benefit of the estate of a deceased person whose death was caused by or arose out of the use of a motor vehicle in Tasmania and, before the commencement of this Act, the legal personal representative of that person incurred legal costs in connection with or with a view to recovering any such damages for the benefit of that estate (whether or not proceedings to recover those damages had actually been commenced), the Motor Accidents Insurance Board is, notwithstanding anything in the *Motor Accidents (Liabilities and Compensation) Act 1973* to the contrary, authorized to reimburse that legal personal representative with respect to those legal costs.

Motor Accidents Insurance Board to be empowered to pay certain legal costs.

