

## DEATHS BY ACCIDENTS COMPENSATION BILL

### EXPLANATORY NOTE

1. This Bill consolidates and amends the Deaths by Accidents Compensation Act 1908 and its amendments.

2. The provisions relating to the apportionment of damages have been rewritten, and the following material changes in connection with apportionment have been made:—

- (a) Damages are to be apportioned by the Court, as has been done in practice in most cases in recent years, instead of by the jury as provided in the present legislation:
- (b) The Court is given a discretion either to direct that damages shall form a class fund and be applied at the discretion of a trustee for the benefit of the persons for whom they were recovered, or to follow the existing practice and allot a share of the damages to every such person:
- (c) Where a dependant's share is paid to a trustee for the protection of the dependant, the share is to be inalienable and the trusts affecting it are not to be varied or terminated without the consent of the Court:
- (d) Where any amount is paid to a trustee for a dependant, or as a class fund, wide powers of dealing with the trust moneys are given to the Court and the trustee to enable the moneys to be applied to the best advantage of the dependant or members of the class:
- (e) In making an apportionment order the Court may have regard to circumstances which have arisen since the death of the deceased person, and may also have regard to any gain to any dependant that is consequent on the death of the deceased, notwithstanding that the gain cannot be taken into account in assessing the amount of damages payable by the wrongdoer:
- (f) Express authority is given to the Court to vary apportionment orders:
- (g) Existing apportionment orders which have been made without authority but could be made under the new provisions are validated.

3. The changes mentioned in paragraph (e) of *clause 2* of this note warrant special mention as they involve marked departures from existing principles and practice. It is considered preferable not to require a rigid apportionment of damages in the light of the circumstances existing at the date

of death; but to place the Court in the position in which the deceased would have been if he had lived, and to let it have regard to circumstances which have arisen since his death for the purposes of making an apportionment order or of varying an apportionment order relating to moneys for the time being held by a trustee. As regards the gain to any person that is consequent on the death of the deceased person, it is clearly proper that the wrongdoer should not be able to take this into account in connection with the assessment of the amount of the damages; but, as between the dependants for the purposes of the apportionment of the amount that is recovered, it seems that a fairer result is likely to be reached if the Court is allowed to take this factor into account, notwithstanding the apparent inconsistency of doing so.

4. The Bill provides, in the definition of the term " wife " in *clause 2*, that a divorced wife who was being maintained or was entitled to be maintained by the person who was killed shall be included in the class of relatives for whose benefit an action is brought under the legislation.

5. Under the existing legislation the action for damages must be brought by the executor or administrator of the deceased, but all or any of the persons for whose benefit the action lies can bring it if the executor or administrator does not do so within six months after the date of the death of the deceased person. *Clause 6* of the Bill gives the said persons a right to bring the action without waiting for the expiration of the six months' period if within that period the executor or administrator declares in writing his desire not to bring the action.

6. All other amendments appearing in the Bill are merely verbal, and the Bill makes no other material changes in the law.

7. To enable a comparison to be made with the present legislation, references thereto are given in the margin; and the following table indicates where the present legislation appears in the Bill in the same form or in a modified form.

TABLE OF CORRESPONDING SECTIONS OF ENACTMENTS  
REPEALED

THE DEATHS BY ACCIDENTS COMPENSATION ACT 1908, No. 39 (REPRINT OF STATUTES, VOL. VI, P. 427)

Section of Act.	Clause of Bill.
1	1, 12
2	2
3	4 (1)
4	5
5	6, 7 (a)
6	11
7	9
8	4 (3)
8A	10
9	8
10	6

THE LAW REFORM ACT 1936 (1936, No. 31)

Section of Act.	Clause of Bill.
4 .....	1
5 .....	2
6 .....	7
7 .....	7
8 .....	4 (2)

THE STATUTES AMENDMENT ACT 1937 (1937, No. 38)

Section of Act.	Clause of Bill.
7 .....	7 (1)

THE STATUTES AMENDMENT ACT 1939 (1939, No. 39)

Section of Act.	Clause of Bill.
14 .....	11

THE CROWN PROCEEDINGS ACT 1950 (1950, No. 54)

Provision of Act.	Clause of Bill.
Portion of First Schedule .....	3

THE DEATHS BY ACCIDENTS COMPENSATION AMENDMENT ACT 1950 (1950, No. 58)

Section of Act.	Clause of Bill.
1 .....	1
2 .....	4 (3), 10



Hon. Mr. Webb

## DEATHS BY ACCIDENTS COMPENSATION

### ANALYSIS

Title.	8. Plaintiff to deliver full particulars of claim.
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3. Act to bind the Crown.	
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### A BILL INTITULED

AN ACT to consolidate and amend certain enactments relating to actions for damages on behalf of the families of persons killed by accident. **Title.**

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Deaths by Accidents Compensation Act 1952, and shall come into force on the first day of January, nineteen hundred and fifty-three. **Short Title and commencement.**

Interpretation.  
Deaths by  
Accidents  
Compensation  
Act 1908, s. 2  
(1908, No. 39,  
Reprint of  
Statutes,  
Vol. VI,  
p. 427);  
1936, No. 31,  
s. 5

See Reprint  
of Statutes,  
Vol. III,  
p. 1069;  
1950, No. 18,  
s. 2

2. (1) In this Act, unless the context otherwise requires,—

“ Child ”, in relation to any deceased person, means a son, daughter, grandson, granddaughter, stepson, or stepdaughter of the deceased person; and includes a person who bears or is deemed to bear any such relationship to the deceased person illegitimately or under the provisions of section twenty-one of the Infants Act 1908 or in consequence of a legal adoption outside New Zealand either before or after the commencement of this Act: 5 10

“ Dependant ”, in relation to any deceased person, means any wife, husband, parent, or child of that person who has suffered injury as a result of the death of the deceased person or who might reasonably have expected to enjoy some actual pecuniary benefit if the deceased person had not died, whether or not the wife, husband, parent, or child was either wholly or partially dependent upon the deceased person before his death: 15 20

“ Parent ”, in relation to any deceased person, means a father, mother, grandfather, grandmother, stepfather, or stepmother of the deceased person; and includes a person who bears or is deemed to bear any such relationship to the deceased person illegitimately or under the provisions of section twenty-one of the Infants Act 1908 or in consequence of a legal adoption outside New Zealand either before or after the commencement of this Act: 25 30

“ Wife ”, in relation to any deceased person, means the person who is his wife at his death; and includes every other person who has been his wife and is maintained or entitled to be maintained by him either wholly or partly at the time of his death or would have been so maintained or entitled but for the incapacity due to the accident from which his death resulted. 35 40

(2) For the purposes of this Act, in deducing any relationship which is included as aforesaid within the meaning of the expressions "parent" and "child" any illegitimate person and any person legally adopted  
 5 outside New Zealand either before or after the commencement of this Act shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father or, as the case may be, his adopters.

3. This Act shall bind the Crown.

Act to bind the Crown.

1950, No. 54,  
s. 5 (2)

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#### *Actions for Damages*

4. (1) Where the death of a person is caused by any 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  
 15 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 was  
 20 caused under such circumstances as to amount in law to a crime.

Right of action when death is caused by negligence, &c.

1908, No. 39,  
ss. 3, 8;  
1936, No. 31,  
s. 8;  
1950, No. 58,  
s. 2

(2) Any such action shall lie whether the cause of action arose before or after the commencement of this Act.

(3) Not more than one action shall lie under this Act  
 25 for the same subject matter of complaint.

5. Every such action shall be for the benefit of the wife or husband and the parents and children of the person whose death has been so caused.

Action to be for benefit of family.

1908, No. 39,  
s. 4

6. (1) Every such action shall be brought by and  
 30 in the name of the executor or administrator of the deceased person:

Persons who may bring action.

ibid., ss. 5, 10

Provided that, where no action is so brought within six months after the date of the death of the deceased person, or where within six months after the date of the  
 35 death of the deceased person the executor or administrator declares in writing his desire not to bring the action, or where there is for the time being no executor or administrator of the deceased person, the action may

be brought by and in the name of the person, or (if there are more than one) the names of all or of any of the persons, for whose benefit the action would have been if it had been brought by and in the name of the executor or administrator.

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(2) Where any such action is brought by and in the name of any person or persons other than the executor or administrator of the deceased person, the action shall be for the benefit of the same person or persons, and shall be subject to the same procedure, as nearly as may be, as if it were brought by and in the name of the executor or administrator.

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7. (1) In every such action the Court may award—

Amount of damages.  
1908, No. 39,  
s. 5;  
1936, No. 31,  
ss. 6, 7;  
1937, No. 38,  
s. 7

(a) Such damages as it may think proportioned to the injury resulting from the death to the person or persons for whose benefit the action is brought; and

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(b) Damages in respect of the amount of actual pecuniary benefit which the person or persons for whose benefit the action is brought might reasonably have expected to enjoy if the death had not occurred, whether or not the person or persons have been either wholly or partially dependent upon the deceased person before his death; and

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(c) Damages in respect of the medical and funeral expenses of the deceased person if the expenses have been incurred by the person or any of the persons by whom or for whose benefit the action is brought.

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(2) In awarding damages in any such action the Court shall not take into account any gain, whether to the estate of the deceased person or to any dependant, that is consequent on the death of the deceased person.

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(3) Where any such action is tried with a jury, the amount of the damages which may be awarded as aforesaid shall be determined by the jury.

Plaintiff to deliver full particulars of claim.  
1908, No. 39,  
s. 9

8. In every such action the plaintiff on the record shall be required to deliver to the defendant or his solicitor, in or together with the statement of claim, full particulars of the person or persons for whose benefit the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

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9. If the defendant pays money into Court, it shall be sufficient if he pays it in one sum for the benefit of all persons entitled under this Act as a compensation for his wrongful act, neglect, or default, without specifying the  
5 shares into which it is to be divided.

Money paid into Court may be paid in one sum.  
1908, No. 39, s. 7

10. (1) This section shall apply to every action under this Act to which section twenty-three of the Limitation Act 1950 does not apply.

Limitation of actions.  
Ibid., s. 8A  
1950, No. 58, s. 2  
1950, No. 65

(2) No action under this Act shall be brought after  
10 the expiration of two years from the date of the death of the person deceased:

Provided that application may be made to the Court, after notice to the intended defendant, for leave to bring such an action at any time within six years after the  
15 date of the death of the person deceased; and the Court may, if it thinks it is just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it is just to impose, where it considers that the delay in bringing the action was occasioned by mistake  
20 or by any other reasonable cause or that the intended defendant was not materially prejudiced in his defence or otherwise by the delay.

*Apportionment of Damages*

25 11. (1) Where any damages for which an action lies under this Act are recovered (either in an action or without any action being brought), the costs which are properly payable out of the damages and are not otherwise recovered may be paid thereout, and the amount (if any) recovered in respect of the medical and funeral  
30 expenses of the deceased person may be refunded to the person or persons who paid them, and the balance of the damages may be allotted or disposed of by the Court as provided in the following provisions of this section.

Apportionment or disposal of damages.  
1908, No. 39, s. 6;  
1939, No. 39, s. 14

35 (2) Where the Court makes an order under this section and is satisfied that there was only one dependant of the deceased person, the balance of the damages shall be allotted to that dependant.



(3) Where the Court makes an order under this section and is satisfied that there were two or more dependants, the Court may order—

(a) That the balance of the damages or so much thereof as it may specify shall be allotted to any dependant exclusively, or shall be allotted in such proportions as the Court determines among the dependants or among such two or more of them to the exclusion of the other or others of them as the Court specifies: 5 10

(b) That the balance of the damages or so much thereof as it may specify shall be held on trust as a class fund for the benefit of the dependants or of such two or more of them to the exclusion of the other or others of them as the Court specifies. 15

(4) Where any amount is allotted to a dependant under subsection *two* or subsection *three* of this section, that amount shall be paid to him unless he is an infant or of unsound mind or except in so far as the Court orders that the whole or any part of that amount shall be held on trust under subsection *five* of this section. 20

(5) Where any amount is allotted to any dependant who is an infant or of unsound mind or the Court orders that the whole or any part of the amount allotted to a dependant is to be held on trust for that dependant under this subsection, then, except so far as the Court directs any immediate payment therefrom, and subject to any directions or conditions given or imposed by the Court— 25

(a) The amount shall be invested and held by the trustee upon trust— 30

(i) To make such payments (if any) to the dependant out of the income and capital of the amount as the Court may specify; and

(ii) To apply the income and capital of the amount or so much thereof as the trustee from time to time thinks fit for or towards the maintenance or education (including past maintenance or education provided after the death of the deceased person) or the advancement or benefit of the dependant: 35 40

(b) The dependant shall have no power, either by himself or in conjunction with any other person or persons, to terminate the trusts upon which the amount is held or to modify or extinguish those trusts:

(c) The interest of the dependant in the income and capital of the amount shall not, while it remains in the hands of the trustee, be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

(6) Upon any dependant ceasing to be an infant or of unsound mind while any amount is held on trust for his benefit under subsection *five* of this section, the balance of that amount and of the income therefrom remaining in the hands of the trustee shall be paid to the dependant except in so far as the Court may have ordered before the payment is made that the whole or any part of that amount shall continue to be held on trust under that subsection:

Provided that where the trustee has notice that an application has been made to the Court for such an order he shall not make any payment under this subsection until the application has been disposed of.

(7) The Court may order that, if any dependant dies while any amount allotted to him is held on trust under subsection *five* of this section (whether or not he is an infant or of unsound mind) any balance of the amount and of the income therefrom remaining in the hands of the trustee at his death, or so much thereof as the Court may specify, shall form part of the dependant's estate, or shall be added to the amount allotted to any other dependant or to the amounts allotted to all or any of the other dependants in such proportions as the Court may specify or to any class fund set aside out of the balance of the damages, and shall be subject to the trusts of the amount or amounts or fund to which it is added:

Provided that if and so far as that balance is not wholly disposed of under any order of the Court made during the lifetime of the dependant for whose benefit it had been held, or made on an application to the Court made not later than six months after that dependant's death, it shall form part of his estate.

(8) Where any amount is to be held on trust as a class fund for any dependants under subsection *three* of this section, that amount shall be invested and the trustee may at his discretion, but subject to such directions and conditions as the Court may give or impose, apply the income and capital of that amount or so much thereof as the trustee from time to time thinks fit for or towards the maintenance or education (including past maintenance or education provided after the death of the deceased person) or the advancement or benefit of those dependants or of any one or more of them to the exclusion of the other or others of them in such shares and proportions and generally in such manner as the trustee from time to time thinks fit; and may so apply the income and capital of that amount notwithstanding that only one of those dependants remains alive. 5  
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(9) The Court may from time to time, at its discretion, authorize moneys to be advanced to any dependant (whether by way of loan or otherwise) as it thinks fit, and upon or subject to such conditions as it thinks fit, out of the damages or out of any amounts allotted to other dependants or out of any amount held on trust as a class fund, for any purpose that the Court thinks proper in the interests of the dependants or any of them. Without limiting the generality of this subsection, it is hereby declared that any such advance may be made for the purpose of purchasing or otherwise acquiring a residential property for the use of the dependant either alone or in conjunction with any other dependants, or for the purpose of repaying any moneys secured by way of mortgage or otherwise on any residential property owned by the dependant and so used, or for the purpose of furnishing any such residential property. Where moneys are advanced by way of loan, the Court may give such directions as it thinks fit in respect of the security to be taken, and may either prescribe the conditions upon or subject to which the moneys are to be advanced or authorize the trustee to prescribe the conditions at his discretion. The conditions may include power to the trustee to remit interest and principal moneys or any part thereof to the extent of 20  
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the amount or value of any maintenance, education, advancement, or benefit which the dependant to whom the moneys are advanced may provide for any other dependants.

5 (10) The Court may exercise any power under section eighty-one of the Statutes Amendment Act 1936 (which relates to dealings with trust property) either on the creation of any trust under any of the provisions of this section or from time to time during the  
10 continuance of any such trust.

1936, No. 58

(11) The Court may at any time vary any order made by it either before or after the commencement of this Act so far as the order relates to damages which have been recovered (either in an action or without an action  
15 being brought) under this Act or under the corresponding provisions of any former Act and which are for the time being in the hands of a trustee as aforesaid or in the hands of the Public Trustee or any other trustee under section thirteen of the Public Trust Office Amendment  
20 Act 1913 or section thirty-five of the Statutes Amendment Act 1945.

See Reprint  
of Statutes,  
Vol. VIII,  
p. 979

1945, No. 40

(12) In making or varying an order under this section the Court shall have regard to all relevant considerations including, where the damages are recovered  
25 in an action which is tried with a jury, any recommendation which the jury may make in respect of the order; and the Court may, whenever it considers that it is just and proper to do so, take into consideration all or any of the following matters:—

- 30 (a) Any gain to any dependant that is consequent on the death of the deceased person; and  
(b) Circumstances which have arisen after the date of the death of the deceased person; and  
(c) The probable future needs of the dependants.

35 (13) An order or variation of an order under this section may be made by the Court of its own motion or on an application made by—

- (a) Any dependant of the deceased person;  
(b) The husband or wife of any such dependant;  
40 (c) Any near relation by blood or marriage of any such dependant;  
(d) The Public Trustee;

- (e) The trustee who holds the amount to which the application relates; or
- (f) Any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application. 5
- (14) For the purposes of this section,—
- (a) The expression “trustee” means the Public Trustee except where the Court appoints any other trustee, in which case it means the trustee so appointed: 10
- (b) Without prejudice to the generality of the expression “of unsound mind”, a person shall be conclusively presumed to be of unsound mind while he is detained or kept in custody (otherwise than as a voluntary boarder) under any provision of the Mental Defectives Act 1911. 15

See Reprint  
of Statutes,  
Vol. V, p. 743

(15) The provisions of this section shall extend so as to apply to damages that have become recoverable before the passing of this Act under any enactment repealed by this Act except in so far as the damages have been disposed of in accordance with the provisions of any such enactment. 20

Ibid., Vol.  
VIII, p. 979  
1945, No. 40

(16) Nothing in section thirteen of the Public Trust Office Amendment Act 1913 or in section thirty-five of the Statutes Amendment Act 1945 or in any order made by the Court under either of those sections shall prevent the Court from making an order under this section in respect of any damages to which this section applies. 25

(17) Where the Court has made any order before the commencement of this Act and the order was invalid at the time when it was made but would have been valid if this section had then been in force, the order shall be deemed to have been validly made and the provisions of this section shall be deemed to have applied to the order as from the time when it was made. 30 35

### *Repeals and Savings*

Repeals and  
savings.

12. (1) The enactments specified in the Schedule hereto are hereby repealed.

See Reprint  
of Statutes,  
Vol. VIII,  
p. 568

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any 40

document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and  
5 could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

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**SCHEDULE**

**Schedule.**

**ENACTMENTS REPEALED**

Section 12

1908, No. 39—

The Deaths by Accidents Compensation Act 1908. (Reprint of Statutes, Vol. VI, p. 427.)

1936, No. 31—

The Law Reform Act 1936: Part II.

1937, No. 38—

The Statutes Amendment Act 1937: Section 7.

1939, No. 39—

The Statutes Amendment Act 1939: Section 14.

1950, No. 54—

The Crown Proceedings Act 1950: So much of the First Schedule as relates to the Deaths by Accidents Compensation Act 1908.

1950, No. 58—

The Deaths by Accidents Compensation Amendment Act 1950.