

SOUTH AUSTRALIA

**SURVIVAL OF CAUSES OF ACTION ACT, 1940**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **15 January 1992**.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

## SUMMARY OF PROVISIONS

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**SURVIVAL OF CAUSES OF ACTION ACT, 1940**

being

Survival of Causes of Action Act, 1940, No. 63 of 1940  
[Assented to 5 December 1940]

as amended by

Survival of Causes of Action Act Amendment Act, 1982, No. 86 of 1982 [Assented to 7 October 1982]

**An Act to amend the law as to the effect of death in relation to causes of action.**

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

**Short title**

1. This Act may be cited as the *Survival of Causes of Action Act, 1940*.

**Effect of death on certain causes of action**

2. Subject to the provisions of this Act, on the death of any person after the passing of this Act, all causes of action subsisting against or vested in him shall survive against his estate, or, as the case may be, for the benefit of his estate: Provided that this section shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims under section 22 of the *Matrimonial Causes Act, 1929-1938*, for damages on the ground of adultery.

**Damages in actions which survive under this Act**

3. (1) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

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

(2) This section as amended by the *Survival of Causes of Action Act Amendment Act, 1982*, applies in respect of causes of action arising before or after the commencement of that amending Act except a cause of action upon which a court had given judgment before the commencement of that amending Act (whether or not that judgment is subject to an appeal).

**Conditions precedent to survival of cause of action**

4. No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this Act has survived against the estate of a deceased person, unless either—

- (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
- (b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his executor or administrator took out probate or letters of administration.

**Provision for cases where person liable dies before or at time of damage**

5. Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

**Saving of other rights**

6. The rights conferred by this Act for the benefit of the estate of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependents of deceased persons by the *Wrongs Act, 1936-1939*, and so much of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said *Wrongs Act, 1936-1939*, as it applies in relation to other causes of action not expressly excepted from the operation of section 2 of this Act.

**Repeals**

7. The following enactments shall cease to have effect as part of the law of South Australia:—

- (a) The Statute 13 Edw. 1, c. 23.
- (b) The Statute 4 Edw. 3, c. 7.
- (c) Section 2 of *The Civil Procedure Act, 1833* (3 and 4 Will. 4, c. 42).

4.

**APPENDIX**

Legislative History

Section 3:  
Section 3(2):

amended and redesignated as s. 3(1) by 86, 1982, s. 2  
inserted by 86, 1982, s. 2(b)