

Queensland



ANNO VICESIMO PRIMO

ELIZABETHAE SECUNDAE REGINAE

No. 34 of 1972

**An Act to Amend the Common Law Practice Act 1967–1970  
in certain particulars**

[ASSENTED TO 21ST DECEMBER, 1972]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

**1. Short title and citation.** (1) This Act may be cited as the *Common Law Practice Act Amendment Act 1972*.

(2) The *Common Law Practice Act 1867–1970* is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Common Law Practice Act 1867–1972*.

**2. Repeal of and new s. 15C.** The Principal Act is amended by repealing section 15C and inserting in its stead the following section:—

**“ 15C. Exclusion of certain payments in assessment of damages.**

In assessing damages in respect of a person's death in any such action, whether commenced before or after the commencement of the *Common Law Practice Act Amendment Act 1972*, there shall not be taken into account—

- (a) a sum paid or payable on the death under any contract of assurance or insurance;
- (b) a sum paid or payable on the death under a contract made with a friendly or other benefit society, or association or trade union that is not a contract of insurance or assurance;
- (c) a sum paid or payable on the death out of any superannuation, provident or like fund;
- (d) a sum paid or payable on the death by way of pension, benefit or allowance under any law of the Commonwealth or of any State or Territory of the Commonwealth or of any other country; or
- (e) a gratuity in whatever form received or receivable on the death,

whether any such sum or gratuity is paid or payable to or is received or receivable by the estate of the deceased person or by any person for whose benefit the action is brought.”.

**3. Amendment of s. 15D.** Section 15D of the Principal Act is amended by—

(a) in subsection (1), omitting the symbol “:” and all words comprising the proviso;

(b) inserting after subsection (1) the following subsection:—

“(1A) Subsection (1) does 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 for damages on the ground of the commission of adultery.”;

(c) omitting subsection (2) and inserting in its stead the following subsection:—

“(2) Where a cause of action survives pursuant to subsection (1) for the benefit of the estate of a deceased person, the damages recoverable in any action brought—

- (a) shall not include damages for pain and suffering, for any bodily or mental harm or for curtailment of expectation of life;
- (b) shall not include exemplary damages;
- (c) in the case of a breach of promise to marry, shall be limited to damages in respect of such damage as flows from the breach of promise to marry;

- (d) where the death has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to—
  - (i) loss or gain to the estate consequent upon the death save that a sum in respect of funeral expenses may be included;
  - (ii) future probable earnings of the deceased had he survived.”.

**4. Repeal of and new s. 72.** The Principal Act is amended by repealing section 72 and inserting in its stead the following section:—

“**72. Interest up to judgment.** (1) In any proceedings in respect of a cause of action that arises after the commencement of the *Common Law Practice Act Amendment Act 1972* in a court of record for the recovery of money (including proceedings for debt, damages or the value of goods) the court may order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of that sum for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

(2) The powers conferred on a court of record by subsection (1) may be exercised by an arbitrator or umpire.

(3) This section—

- (a) does not authorize the giving of interest upon interest;
- (b) does not apply in respect of any debt on which interest is payable as of right whether by virtue of an agreement or otherwise;
- (c) does not affect damages recoverable for the dishonour of a bill of exchange.”.

**5. Repeal of and new s. 73.** The Principal Act is amended by repealing section 73 and inserting in its stead the following section:—

“**73. Interest on debt under judgment or order.** (1) Where judgment is given or an order is made by a court of record for the payment of money in a cause of action that arose after the commencement of the *Common Law Practice Act Amendment Act 1972*, interest shall, unless the court otherwise orders, be payable at the rate prescribed from time to time by Order in Council and until so prescribed at the rate of eight per centum per annum from the date of the judgment or order on so much of the money as is from time to time unpaid.

(2) Notwithstanding anything contained in subsection (1)—

- (a) where the court directs the entry of judgment for damages and the damages are paid within twenty-one days after the date of the direction, interest on the damages shall not be payable unless the court otherwise orders;
- (b) where the court makes an order for the payment of costs and the costs are paid within twenty-one days after the ascertainment thereof by taxation or otherwise, interest on the costs shall not be payable unless the court otherwise orders.”.

**6. Saving.** Notwithstanding the repeal of sections 72 and 73 of the Principal Act, the provisions of those sections shall continue to apply with respect to any cause of action that arose prior to the commencement of this Act.