

A BILL

i n t i t u l e d

An Act to amend the Civil Law Act 1956.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Civil Law (Amendment) Act 2018.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

2. The Civil Law Act 1956 [*Act 67*], which is referred to as the “principal Act” in this Act, is amended in section 2 by inserting after the definition of “executor” the following definition:

‘ “persons with disabilities” has the meaning assigned to it in the Persons with Disabilities Act 2008 [*Act 685*];’.

Amendment of section 7**3. Section 7 of the principal Act is amended—**

(a) by substituting for the shoulder note the following shoulder note:

“Compensation to persons entitled for loss occasioned by death”

(b) in subsection (2), by substituting for the words “and child,” the words “child and any person with disabilities under the care,”;

(c) in the proviso to subsection (3)—

(i) in subparagraph (iv)(a)—

(A) by substituting for the words “fifty five years” the words “sixty years”; and

(B) by deleting the words “was in good health but for the injury that caused his death and”;

(ii) in subparagraph (iv)(d)—

(A) by substituting for the words “fifty four years” the words “fifty-nine years”; and

(B) by substituting for the words “figure 55” the words “figure 60”;

(d) in subsection (3A), by substituting for the word “ten” the word “fifty”;

(e) by substituting for subsection (3B) the following subsection:

“(3B) A claim for damages for bereavement shall only be for the benefit of—

(a) the spouse of the person deceased;

(b) the child of the person deceased; and

(c) the parents of the person deceased.”;

(f) in subsection (3c), by substituting for the words “paragraph (3B)(b) for the benefit of the parents of the person deceased” the words “subsection (3B)”;

(g) in subsection (4), by substituting for the words “paragraph (3B)(b)” the words “subsection (3B)”.

Amendment of section 11

4. Section 11 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1); and

(b) by inserting after subsection (1) as renumbered the following subsections:

“(2) Where interest is awarded under subsection (1) for recovery of damages under section 6A of the Limitation Act 1953 [Act 254], the interest may be given for the whole or any part of the period between the starting date and the date of the judgement.

(3) For the purposes of subsection (2), “starting date” has the meaning assigned to it in the Limitation Act 1953.”.

Amendment of section 28A

5. Subsection 28A(2) of the principal Act is amended—

(a) in subparagraph (c)(i)—

(i) by substituting for the words “fifty-five years” the words “sixty years”; and

(ii) by deleting the words “was in good health but for the injury and”;

(b) in subparagraph (d)(ii)—

- (i) by substituting for the words “fifty-four years” the words “fifty-nine years”; and
- (ii) by substituting for the words “figure 55” the words “figure 60”.

Savings

6. Any action or proceedings under sections 7 and 28A of the principal Act and matters relating to such action or proceedings commenced or pending immediately before the date of coming into operation of this Act shall, after the date of coming into operation of this Act, be continued as if the principal Act had not been amended by this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Civil Law Act 1956 (“Act 67”) to extend the categories of persons who can claim damages for loss of dependency, to extend the age limit for the purposes of assessing the loss of earnings in claims for damages for loss of dependency and for personal injury, to amend the provisions for determining the multiplier in assessing the loss of earnings and the loss of future earnings, to increase the amount of damages for bereavement and to extend the categories of persons entitled to claim for damages for bereavement.

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 67 to introduce the definition of “persons with disabilities” into Act 67.

4. *Clause 3* seeks to amend section 7 of Act 67.

Subclause 3(a) seeks to substitute the shoulder note to section 7 of Act 67 to state the persons entitled to claim damages for loss of dependency.

Subclause 3(b) seeks to amend subsection 7(2) of Act 67 to extend the categories of persons who can claim damages for loss of dependency to persons with disabilities under the care of a person whose death was caused by wrongful act, neglect or default. With the proposed amendment, any persons with disabilities within the meaning of the Persons with Disabilities Act 2008 [Act 685] who is under the care of the deceased person may

now claim damages for loss of dependency. The present provision of subsection 7(2) of Act 67 only allows the wife, husband, parent and child of the deceased person to claim damages for loss of dependency.

Subparagraph 3(c)(i)(A) seeks to amend subparagraph (iv)(a) of the proviso to subsection 7(3) of Act 67 to extend the age limit for the purposes of assessing the loss of earnings in claims for damages for loss of dependency. Prior to the amendment, loss of earnings shall not be taken into consideration if the deceased person has attained the age of fifty-five years at the time of death. However, since the retirement age for public service officers has been extended to the age of sixty years in accordance with the Pensions (Amendment) Act 2011 [Act A1409] and the minimum retirement age for employees under a contract of service with an employer has been set at the age of sixty years in accordance with the Minimum Retirement Age Act 2012 [Act 753], the proposed amendment to the provision is in line with the two laws as a person could now be working until the age of sixty years.

Subparagraph 3(c)(i)(B) seeks to amend subparagraph (iv)(a) of the proviso to subsection 7(3) of Act 67 to delete the requirement of good health prior to the deceased's death. This is because with technological advancement in medicine and medical treatment a person could still work productively. With this proposed amendment, health factor will only be made a basis for reducing an award for loss of earnings.

Paragraph 3(c)(ii) seeks to amend subparagraph (iv)(d) of the proviso to subsection 7(3) of Act 67 in respect of computation of the multiplier for assessment of loss of earnings.

Subclause 3(d) seeks to amend subsection 7(3A) of Act 67 to increase the amount of damages for bereavement from the present ten thousand ringgit to fifty thousand ringgit.

Subclause 3(e) seeks to amend subsection 7(3B) of Act 67 to include the child of the deceased person in the categories of persons who is entitled to claim for damages for bereavement. Prior to the amendment, only the spouse of the deceased and parents of the deceased who was a minor and was never married may make a claim for bereavement under subsection 7(3A) of Act 67.

5. *Clause 4* seeks to amend section 11 of Act 67 as a consequential amendment to the introduction of the proposed new section 6A into the Limitation Act 1953 [Act 254]. The proposed new section 6A of Act 254 allows a person to take action on negligence involving latent damage in construction cases which was discovered outside the limitation period of six years from the date the cause of action accrued. Because there is an extended limitation period under the proposed new section, thus this proposed amendment seeks to provide that any interest given by the Court for recovery of damages under the proposed new section 6A of Act 254 shall be for the whole or any part of the period between the discovery of the damage and the date of judgment, and not from the date the cause of action accrued.

6. *Clause 5* seeks to amend section 28A of Act 67.

Paragraph 5(a)(i) seeks to amend subparagraph 28A(2)(c)(i) of Act 67 to extend the age limit for the purposes of assessing the loss of future earnings in claims for damages for personal injury not resulting in death. Prior to the amendment, loss of future earnings shall not be taken into account if the plaintiff has attained the age of fifty-five years at the time of injury. However, since the retirement age for public service officers has been extended to the age of sixty years in accordance with the Pensions (Amendment) Act 2011 [Act A1409] and the minimum retirement age for employees under a contract of service with an employer has been set at the age of sixty years in accordance with the Minimum Retirement Age Act 2012 [Act 753], the proposed amendment to the provision is in line with the two laws as a person could now be working until the age of sixty years.

Paragraph 5(a)(ii) seeks to amend subparagraph 28A(2)(c)(i) of Act 67 to delete the requirement of good health prior to the plaintiff's injury. This is because with technological advancement in medicine and medical treatment a person could still work productively. With this proposed amendment, health factor will only be made a basis for reducing an award for loss of future earnings.

Subclause 5(b) seeks to amend subparagraph 28A(2)(d)(ii) of Act 67 in respect of computation of the multiplier for assessment of loss of future earnings.

7. *Clause 6* deals with savings provision.

8. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)3092]