



Western Australia

# **Suitors' Fund Act 1964**

**Reprint 3: The Act as at 22 July 2005**

## Guide for using this reprint

### What the reprint includes



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## Suitors' Fund Act 1964

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Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 22 July 2005

## Suitors' Fund Act 1964

**An Act to make provision in respect of the liability for costs of certain litigation; to establish a Suitors' Fund to meet that liability; and for incidental and other purposes.**

### 1. Short title

This Act may be cited as the *Suitors' Fund Act 1964*<sup>1</sup>.

### 2. Commencement

- (1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.
- (2) It shall not be necessary to proclaim that the whole Act shall come into operation on one day, but the several sections of this Act may be proclaimed to come into operation on such days as are respectively fixed by proclamation.

### 3. Interpretation

In this Act unless the contrary intention appears —

“**appeal**” includes any proceeding by way of discharging or setting aside a judgment, a motion for a new trial, a case stated for the opinion of the Supreme Court on a question of law, an appeal under Part 2 of the *Criminal Appeals*

*Act 2004*, and any other proceeding in the nature of an appeal;

**“company”** has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth;

**“costs”** in relation to an appeal includes the costs of an application for an indemnity certificate or a costs certificate in respect of the appeal, but does not include costs incurred in a court of first instance except where otherwise expressly provided;

**“costs certificate”** means a costs certificate granted under section 12A;

**“Department”** means the department of the Public Service principally assisting the Minister in the administration of this Act;

**“foreign company”** means a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, and a registrable Australian body (within the meaning of that Act) other than such a body formed or incorporated in the State;

**“indemnity certificate”** means an indemnity certificate granted under section 10;

**“sequence of appeals”** means a sequence of appeals in which each appeal that follows the last preceding appeal in the sequence is an appeal against the decision in the last preceding appeal;

**“the Board”** means the Appeal Costs Board constituted under this Act;

**“the Fund”** means the Suitors' Fund established under this Act.

*[Section 3 amended by No. 72 of 1969 s. 2; No. 57 of 1971 s. 3; No. 10 of 1982 s. 28; No. 58 of 1984 s. 2; No. 31 of 1993 s. 65; No. 34 of 1999 s. 61; No. 20 of 2003 s. 46; No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]*

**4. Suitors' Fund established**

- (1) There shall be established and kept at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, a Fund to be called the "Suitors' Fund".
- (2) The amounts referred to in section 6(2) shall be credited to the Fund.
- (3) The amounts referred to in sections 11, 14, 14A, 14B, and 15 and the cost of the administration of this Act shall be charged to the Fund.
- (4) All interest derived from the investment of the Fund forms part of the Fund.
- (5) The Fund is, subject to this Act, under the direction, control and management of the Board.
- (6) Where the Board certifies in writing to the Treasurer that the amount of money standing to the credit of the Fund is, for the time being, insufficient for the purposes of this Act, the Board may borrow from the Treasurer such amounts as are sufficient for the time being to make up the deficiency.
- (7)
  - (a) Any amount advanced to the Fund pursuant to subsection (6) shall be subsequently repaid to the Treasurer from moneys standing to the credit of the Fund by the Board, when money is available to the Fund to make the repayment.
  - (b) The amount of any money so advanced by the Treasurer to the Fund is, while the money remains unpaid, a charge on the Fund.
- (8) Where the Board certifies in writing to the Treasurer that any money standing to the credit of the Fund is not immediately required for the purposes of this Act the Treasurer may temporarily invest so much of the money as he considers practicable so to do, as trust funds may be invested under

**s. 4A**

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Part III of the *Trustees Act 1962* and shall cause all interest therefrom to be credited to the Fund.

- (9) The accounts relating to the Fund shall be audited by the Auditor General appointed under the *Financial Administration and Audit Act 1985*.

*[Section 4 amended by No. 44 of 1977 s. 3; No. 58 of 1984 s. 3; No. 98 of 1985 s. 3; No. 49 of 1996 s. 64; No. 1 of 1997 s. 18.]*

**4A. Application of *Financial Administration and Audit Act 1985***

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in respect of the department and the Fund.

*[Section 4A inserted by No. 98 of 1985 s. 3; amended by No. 31 of 1993 s. 66.]*

**5. Fees to be paid to courts on issue of writs etc.**

- (1) There shall be paid to the proper officer of the appropriate Court —
- (a) upon the issue of any writ of summons whereby an action is commenced in the Supreme Court or The District Court of Western Australia;
  - (b) upon the commencement of any case in the Magistrates Court under the *Magistrates Court (Civil Proceedings) Act 2004*; or
  - (c) upon the issue of any summons or court hearing notice under the *Criminal Procedure Act 2004* in respect of a prosecution notice to be dealt with by a court of summary jurisdiction,

in addition to any fee which may be payable in respect thereof under any Act or rules of any Court, the sum of 10 cents or such other sum not exceeding 20 cents as may from time to time be prescribed.



- (2) The words “or The District Court of Western Australia”, in subsection (1)(a), are deemed to have been included therein on and from 1 April 1970.

*[Section 5 amended by No. 113 of 1965 s. 8; No. 57 of 1971 s. 4; No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]*

**6. Department to advise Treasurer of number of writs, etc. issued**

- (1) During the months of January, April, July and October of each year, the chief executive officer of the department shall cause to be prepared and sent to the Treasurer, a statement signed by him, specifying the total number of processes referred to in section 5, upon which a fee is payable under this Act, that appear from records in the custody or control of the department, to have been issued out of or returnable in the Supreme Court, The District Court of Western Australia, the Children’s Court or the Magistrates Court during the period of 3 months immediately preceding the first day of the month in which the statement is prepared.
- (2) The Treasurer shall, as soon as practicable after the receipt by him of the statement referred to in subsection (1), cause to be charged to the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly) and credited to the Fund, an amount equal to the total sum of the additional fee payable under section 5 that is credited to the Consolidated Fund in respect of the processes specified in the statement.

*[Section 6 amended by No. 58 of 1978 s. 2; No. 98 of 1985 s. 3; No. 6 of 1993 s. 11; No. 31 of 1993 s. 67; No. 49 of 1996 s. 64; No. 59 of 2004 s. 141.]*

**7. Payment from Fund only on direction of Board**

- (1) Payment shall not be made out of moneys standing to the credit of the Fund except upon and in accordance with a written direction of the Board.

- (2) The Board shall not issue such a direction unless it is satisfied that the payment from moneys standing to the credit of the Fund to which the direction relates is authorised by or under this Act and that the provisions of this Act relating to any claim for the payment have been complied with.

*[Section 7 amended by No. 49 of 1996 s. 64.]*

**8. Appeal Costs Board, constitution**

- (1) For the purposes of this Act there shall be a Board to be called the "Appeal Costs Board".
- (2) The Board shall consist of 3 members appointed by the Governor of whom —
- (a) one shall be appointed as Chairman of the Board;
  - (b) one shall be a person who is nominated in writing by the Law Society of Western Australia (Inc.) and who is willing to act as a member of the Board; and
  - (c) one shall be a person who is nominated in writing by The Legal Practice Board established by the *Legal Practice Act 2003* and who is so willing.
- (3) If either of the bodies referred to in subsection (2) does not within 30 days after being requested in writing by the Minister so to do, submit a nomination of a person as member of the Board, the Minister may, without the nomination, appoint an otherwise eligible person to be a member of the Board to represent the interests of the body in default and the person so appointed shall for all purposes be deemed to be duly appointed.
- (4) The Governor may at any time remove any person appointed to the Board and appoint another otherwise eligible person in his stead to represent, where the case requires, the interests of the body represented by the member in whose place he is appointed.
- (5) Each member appointed to the Board including the Chairman thereof, is entitled to hold office for such term not exceeding 3 years as the Governor specifies at the time of his appointment and is eligible for reappointment.

- (6) The exercise or performance of the functions or powers of the Board is not affected by reason only of there being a vacancy in the office of a member.

*[Section 8 amended by No. 65 of 2003 s. 68(2); No. 74 of 2003 s. 114.]*

**9. Board meetings**

- (1) The Chairman shall preside at all meetings of the Board at which he is present.
- (2) At a meeting of the Board 2 members constitute a quorum.
- (3) A question arising at a meeting of the Board shall be decided by a majority of the votes of the members present.
- (4) Where 2 members only are present at a meeting of the Board, if those members differ in opinion upon any question the decision on the question shall be deferred to a meeting of the Board at which all 3 members thereof are present.
- (5) Subject to this Act the Board may regulate its own proceedings.
- (6) The functions of the Board are —
- (a) to exercise and discharge the powers, authorities, duties, functions and obligations conferred and imposed on the Board by or under this Act; and
  - (b) to advise the Minister upon any matter submitted by him to the Board for its advice that relates to the operation of this Act.
- (7) There may be appointed by the Governor a Secretary to the Board and such other officers as are necessary for carrying out the objects of this Act.

**10. Successful appeal on question of law, indemnity certificate may be granted**

- (1) Where an appeal against the decision of a Court in any proceedings —
- (a) to the Supreme Court;

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- (b) to the High Court of Australia from a decision of the Supreme Court;
- (c) to the Queen in Council from a decision of the High Court of Australia given in an appeal from a decision of the Supreme Court; or
- (d) to the Queen in Council from a decision of the Supreme Court,

on a question of law succeeds, the Supreme Court may, upon application made to the Court in that behalf by any party to the proceedings, grant to the respondent to the appeal or to all or any of several respondents to the appeal an indemnity certificate in respect of that appeal.

- (2) Whenever an appeal against the decision of a Court in any proceedings to The District Court of Western Australia on a question of law succeeds, The District Court of Western Australia may, upon application made to it in that behalf by any party to the proceedings, grant to the respondent to the appeal or to all or any of several respondents to the appeal an indemnity certificate in respect of that appeal.
- (3) The jurisdiction conferred upon the Supreme Court or The District Court of Western Australia by subsection (1) or (2) may be exercised by a Judge of the Supreme Court or a District Court Judge, as the case may be, sitting in Chambers.

*[Section 10 amended by No. 72 of 1969 s. 3; No. 58 of 1978 s. 3.]*

**11. Indemnity certificate entitles respondent to costs from the Fund**

- (1) Subject to this Act, where a respondent to an appeal has been granted an indemnity certificate, the certificate entitles the respondent to be paid from moneys standing to the credit of the Fund —
  - (a) an amount equal to the appellant's costs —
    - (i) of the appeal in respect of which the indemnity certificate was granted; and also

- (ii) where that appeal is an appeal in a sequence of appeals, of any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate of indemnity was granted,  
ordered to be paid and actually paid by the respondent;
  - (b) an amount equal to the respondent's costs —
    - (i) of the appeal in respect of which the certificate was granted; and also
    - (ii) where that appeal is an appeal in a sequence of appeals, of an appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted,  
as taxed or agreed upon by the Board and the respondent or the respondent's solicitor and not ordered to be paid by any other party; and
  - (c) where the costs referred to in paragraph (b) are taxed at the instance of the respondent an amount equal to the costs incurred by the respondent in having the costs taxed.
- (2) Where an indemnity certificate has been granted, and the Board is satisfied —
- (a) that the respondent unreasonably refuses or neglects or is unable through lack of means to pay to the appellant the costs referred to in subsection (1)(a) or any part of those costs; or
  - (b) that payment of those costs or part of those costs would cause the respondent, undue hardship; or
  - (c) that the respondent cannot be found and the costs or part of those costs have not already been paid by the respondent and the certificate of taxation in respect thereof is produced to the Board,

the Board may direct in writing that an amount equal to those costs or to the part of those costs not already paid by the

respondent be paid from moneys standing to the credit of the Fund for and on behalf of the respondent to the appellant, and thereupon the appellant is entitled to payment from moneys standing to the credit of the Fund in accordance with the direction of the Board and the Fund is discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction.

- (3) Notwithstanding the foregoing provisions of this section —
- (a) the aggregate of the amounts payable from moneys standing to the credit of the Fund pursuant to paragraphs (b) and (c) of subsection (1) shall not exceed the amount payable from moneys standing to the credit of the Fund pursuant to paragraph (a) of that subsection; and
  - (b) the amount payable from moneys standing to the credit of the Fund to any one respondent pursuant to an indemnity certificate shall not in any case exceed the sum of \$1 000 or such other amount as may from time to time be prescribed.

*[Section 11 amended by No. 113 of 1965 s. 8; No. 49 of 1996 s. 64.]*

**12. Indemnity certificate vacated or inoperative in certain circumstances**

- (1) An indemnity certificate granted to a respondent in respect of an appeal, being an appeal in a sequence of appeals, is vacated if —
- (a) in a later appeal in the sequence the successful party to the appeal is the one to whom the indemnity certificate was granted; or
  - (b) an indemnity certificate is granted in respect of a later appeal in the sequence and the respondent to the earlier appeal is a party to the later appeal.

- (2) An indemnity certificate granted to a respondent in respect of an appeal —
- (a) where a time is limited for appealing against the decision in the appeal, is inoperative during the time so limited;
  - (b) where a time is not limited for appealing against the decision in the appeal, is inoperative until an application for leave to appeal against that decision has been determined and where leave to appeal is granted, until the appeal is instituted, or until the respondent lodges with the Board a written undertaking by him that he will not apply for leave to appeal or appeal against the decision in the appeal, whichever first happens; and
  - (c) is, where the decision in the appeal is the subject of an appeal, inoperative during the pendency of the appeal notwithstanding the foregoing provisions of this subsection.
- (3) Where the appeal and a later appeal or later appeals form a sequence of appeals and the indemnity certificate has not been vacated under subsection (1), any reference in subsection (2) —
- (a) to the decision in the appeal shall be construed as including a reference to the decision in the later appeal or in each such later appeal, as the case may be; and
  - (b) to the pendency of the appeal shall be construed as including a reference to the pendency of the later appeal or of each such later appeal, as the case may be.
- (4) (a) Where an undertaking has been given by a respondent under subsection (2)(b) and thereafter the respondent applies for leave to appeal or appeals against the decision in respect of which the undertaking was given, the respondent shall, upon written demand being made in that behalf by the Board, pay to the Board any amount paid to him, or for and on his behalf under the indemnity certificate and in default of payment of the amount by the respondent in accordance with the demand, that

**s. 12A**

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amount may be recovered by the Board from the respondent as a debt in any court of competent jurisdiction.

- (b) Any amount paid to or recovered by the Board under this subsection shall be credited by it to the Fund.
- (5) Nothing in this section affects the operation of subsection (1).  
*[Section 12 amended by No. 49 of 1996 s. 64.]*

**12A. Costs of trial where conviction quashed without new trial may be met from Fund; cost certificates**

- (1) Where after the coming into operation of the *Suitors' Fund Act Amendment Act 1971*<sup>1</sup>, on an appeal against a conviction for an indictable offence the conviction is quashed without a new trial being ordered, the Supreme Court may, upon application made to it in that behalf, grant to the appellant a costs certificate in respect of the costs of the appeal or such part of those costs as the Court may determine.
- (2) Where after the coming into operation of the *Suitors' Fund Act Amendment Act 1971*<sup>1</sup>, an appeal on a question of law succeeds and the Court that allowed the appeal would, but for the provisions of some other Act or law, have ordered costs of the appeal, fixed or to be taxed, or some proportion thereof, to be paid by the respondent —
  - (a) that Court shall make a finding to that effect and shall specify the amount of costs it would have fixed or state that it would have directed them to be taxed, or what proportion of the taxed costs it would have ordered to be paid, as the case requires; and
  - (b) the Supreme Court may, upon application made to it in that behalf, grant a costs certificate to the appellant and, if so, shall include in it the substance of the finding referred to in paragraph (a).
- (3) The jurisdiction of the Supreme Court to grant a costs certificate may be exercised by a judge sitting in chambers.



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- (4) Subject to this Act, where an appellant has been granted a costs certificate, the certificate shall entitle the appellant to be paid from moneys standing to the credit of the Fund —
- (a) if the certificate was granted under subsection (1) —
    - (i) an amount equal to the appellant's costs of the appeal in respect of which the certificate was granted as taxed or agreed upon by the Board and the appellant or the appellant's solicitor, or equal to such part of those costs as the Supreme Court has determined, as the case requires; and
    - (ii) where the costs referred to in subparagraph (i) are taxed, an amount equal to the costs incurred by the appellant in having those costs taxed;
  - or
  - (b) if the certificate was granted under subsection (2) —
    - (i) the amount of costs of the appeal which the Court that allowed the appeal would have ordered to be paid by the respondent; or
    - (ii) the taxed costs of the appeal, or such proportion of the taxed costs as that Court would have ordered to be paid by the respondent, including the costs incurred by the appellant in having those costs taxed, or in lieu of the taxed costs or that proportion of them an amount agreed upon by the Board and the appellant or the appellant's solicitor,
- as the case requires.
- (5) The amount payable from moneys standing to the credit of the Fund to any one appellant pursuant to a costs certificate shall not in any case exceed the sum of \$1 000 or such other amount as may from time to time be prescribed.

*[Section 12A inserted by No. 57 of 1971 s. 5; amended by No. 49 of 1996 s. 64.]*

**13. No appeal lies against grant or refusal of a certificate**

- (1) In the case of an application for —
  - (a) an indemnity certificate, The District Court of Western Australia or the Supreme Court; or
  - (b) a costs certificate, the Supreme Court,may grant or refuse that application and no appeal lies against that grant or refusal.
- (2) An indemnity certificate shall not be granted in respect of an appeal from proceedings begun in a court of first instance before the coming into operation of this Act.
- (3) An indemnity certificate or a costs certificate shall not be granted in favour of the Crown or a company or foreign company that has a paid up capital of or equivalent to \$200 000 or more.

*[Section 13 amended by No. 113 of 1965 s. 8; No. 57 of 1971 s. 6; No. 58 of 1978 s. 4.]*

**14. Costs of new trial etc. where proceedings aborted etc. due to no fault of party may be met from Fund**

- (1) Where after the coming into operation of this Act —
  - (a) any civil or criminal proceedings are rendered abortive by the death or protracted illness of the judge, magistrate or justice before whom the proceedings were had or by disagreement on the part of the jury where the proceedings are with a jury;
  - (b) an appeal on a question of law against the conviction of a person (in this section called “**the appellant**”) convicted on indictment or summarily is upheld and a new trial is ordered; or
  - (c) the hearing of any civil or criminal proceeding is discontinued and a new trial is ordered by the presiding judge, magistrate or justice for a reason not attributable in any way to the act, neglect or default in the case of

civil proceedings of all or any one or more of the parties thereto or their counsel or solicitors, or, in the case of criminal proceedings, of the accused or his counsel or solicitor, and the presiding judge, magistrate or justice grants a certificate, which he is hereby empowered to grant —

- (i) in the case of civil proceedings — to any party thereto stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to the act, neglect or default of all or any one or more of the parties to the proceedings or their counsel or solicitors; or
- (ii) in the case of criminal proceedings — to the accused stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to the act, neglect or default of the accused or his counsel or solicitor,

or where after the coming into operation of the *Suitors' Fund Act Amendment Act 1971*<sup>1</sup> —

- (d) a criminal proceeding in any Court is adjourned by or on behalf of the prosecution and the presiding judge, magistrate or justice grants a certificate, which he is hereby empowered to grant if he is satisfied that by reason of the adjournment the accused has necessarily incurred expense, to the accused stating the reason why the proceedings were adjourned and that the reason was not attributable in any way to the act, neglect or default of the accused or his counsel or solicitor,

and any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, incurs additional costs by reason of the new trial that is had as a consequence of the proceedings being so rendered abortive or as a consequence of the order for a new trial or as a consequence

**s. 14A**

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of the adjournment, then the Board may, upon application made to it in that behalf, direct the payment from moneys standing to the credit of the Fund to the party or the accused or the appellant, as the case may be, of the costs or such part thereof, as the Board may determine incurred by the party or the accused or the appellant in the proceedings before they were rendered abortive or were adjourned or the conviction was quashed or the hearing of the proceedings was so discontinued.

- (1a) For the purposes of this section a criminal proceeding is deemed to have been adjourned where the prosecution has notified the accused or his counsel or solicitor that a date has been fixed for the hearing of the proceedings and the proceeding is, without his consent, not listed for hearing on that day.
- (1b) An application for a certificate under subsection (1) with respect to the adjournment of a criminal proceeding may be made when the proceedings come on for hearing and a certificate may then be granted in accordance with the provisions of subsection (1)(d).
- (2) An amount shall not be paid from moneys standing to the credit of the Fund under this section to the Crown or to a company or foreign company that has a paid up capital of or equivalent to \$200 000 or more.

*[Section 14 amended by No. 113 of 1965 s. 8; No. 72 of 1969 s. 4; No. 57 of 1971 s. 7; No. 49 of 1996 s. 64; No. 84 of 2004 s. 80.]*

**14A. Costs of legal representation of infant may be met from Fund**

- (1) Where after the coming into operation of the *Legal Representation of Infants Act 1977*<sup>2</sup>, a guardian *ad litem* is appointed pursuant to that Act to represent the interests of an infant in any proceedings and the Court orders that the costs of such representation, or any portion of such costs, shall be charged to the Suitors' Fund the Court shall specify the amount of the costs to be so charged or direct them to be taxed and

specify the proportion of the taxed costs so to be charged and the order shall thereupon entitle the guardian *ad litem* to be paid from moneys standing to the credit of the Fund —

- (a) the amount so specified; or
  - (b) an amount equal to that proportion of the costs as so taxed, together with such further costs as may be incurred by him in having the costs of the proceedings so taxed; or
  - (c) an amount agreed upon by the Board and the solicitor representing the guardian *ad litem*.
- (2) Notwithstanding the provisions of subsection (1), the amount payable from moneys standing to the credit of the Fund in respect of any proceedings where an order is so made shall not in any case exceed \$1 000 or such other amount as may from time to time be prescribed.

*[Section 14A inserted by No. 44 of 1977 s. 4; amended by No. 49 of 1996 s. 64.]*

**14B. Costs of trial etc. where Court refuses to approve settlement may be met from Fund**

- (1) In this section —

**“person under a disability”** means —

- (a) an infant;
- (b) a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*; and
- (c) a person who, by reason of mental illness, defect or infirmity, however occasioned, is declared by the Court to be incapable of managing his affairs in respect of any proceedings to which the declaration relates;

**“settlement”** includes a compromise of an action or of an appeal, acceptance of money paid into court and an acceptance of an offer to consent to judgment.

**s. 14B**

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- (2) Where in any action or appeal —
- (a) there is a claim or appeal by or on behalf of a person under disability;
  - (b) the person under disability or his next friend has applied to the Court for an order approving the proposed settlement;
  - (c) the Court refuses to approve the proposed settlement;
  - (d) on trial of the action or in an appeal brought in relation thereto the amount awarded is not more than the amount offered in the proposed settlement; and
  - (e) the person under disability or his next friend is ordered to pay the whole or any part of the costs of the action or appeal on any ground,

the Court before which the action is tried, or the Court by which the appeal is heard, as the case may be, may, upon application made to it in that behalf, grant to the person under disability or his next friend an indemnity certificate.

- (3) An indemnity certificate granted under subsection (2) entitles the person under disability or his next friend to be paid from moneys standing to the credit of the Fund —
- (a) the costs of the action or the appeal ordered to be paid by the person under disability or his next friend; and
  - (b) the costs of the action or appeal, as the case may be, as determined by the Board, incurred by or on behalf of the person under disability after the date on which the Court refused to approve the settlement.
- (4) Notwithstanding the provisions of subsection (3), the total amount payable from moneys standing to the credit of the Fund in respect of any proceedings in respect of which a certificate is so granted shall not in any case exceed \$5 000 or such other amount as may from time to time be prescribed.

*[Section 14B inserted by No. 37 of 1978 s. 2; amended by No. 24 of 1990 s. 123; No. 49 of 1996 s. 64.]*

**15. Costs of appeal etc. where award of damages overturned on appeal may be met from Fund**

- (1) Where after the coming into operation of this Act, a new trial is ordered in an action on the ground that the damages awarded in the action were excessive or inadequate, the respondent to the appeal or motion for the new trial is entitled to be paid from moneys standing to the credit of the Fund —
- (a) an amount equal to the costs of the appellant in the appeal or motion for and upon the new trial ordered to be paid and actually paid by the respondent but where the Board is satisfied —
- (i) that the respondent unreasonably refuses or neglects or is unable through lack of means to pay the whole of those costs or part thereof; or
  - (ii) that payment of those costs or part thereof would cause the respondent undue hardship; or
  - (iii) that the respondent cannot be found and the costs or part of those costs have not already been paid by the respondent and the Certificate of Taxation in respect thereof is produced to the Board,
- the Board may direct in writing that an amount equal to those costs or to the part of those costs not already paid by the respondent be paid from moneys standing to the credit of the Fund for and on behalf of the respondent to the appellant and thereupon the appellant is entitled to payment from moneys standing to the credit of the Fund in accordance with the direction of the Board and the Fund is discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction;
- (b) an amount equal to the respondent's costs of the appeal or motion for and upon the new trial, as taxed or agreed upon by the Board and the respondent or the respondent's solicitor and not ordered to be paid by any other party; and

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- (c) where the costs referred to in paragraph (b) are taxed at the instance of the respondent an amount equal to the costs incurred by him in having those costs taxed.
- (2) Notwithstanding the provisions of subsection (1) —
  - (a) the aggregate of the amounts payable from moneys standing to the credit of the Fund pursuant to paragraphs (b) and (c) of that subsection shall not exceed the amount payable from moneys standing to the credit of the Fund pursuant to paragraph (a) of that subsection; and
  - (b) the amount payable from moneys standing to the credit of the Fund to any one respondent in respect of the appeal or motion for a new trial shall not in any case exceed the sum of \$1 000 or such other amount as may from time to time be prescribed.
- (2a) The provisions of subsections (1) and (2) relating to the entitlement of a respondent to an appeal to be paid from moneys standing to the credit of the Fund amounts in respect of costs of an appeal apply, with such modifications as are necessary, where, after the coming into operation of the *Suitors' Fund Act Amendment Act 1971*<sup>1</sup>, on an appeal in an action a new trial is not ordered but damages awarded in the action are altered on the ground that they were excessive or inadequate.
- (3) This section does not apply where the respondent to the appeal or motion for the new trial is the Crown or a company or foreign company that has a paid up capital of or equivalent to \$200 000.  
*[Section 15 amended by No. 113 of 1965 s. 8; No. 72 of 1969 s. 5; No. 57 of 1971 s. 8; No. 49 of 1996 s. 64.]*

**15A. Subsidiary and related corporations**

Notwithstanding any other provision of this Act, where it appears to the Board that a corporation is, for the purposes of the *Corporations Act 2001* of the Commonwealth, a related body corporate of another corporation that has a paid up capital of or equivalent to \$200 000 or more, an amount shall not be



paid from moneys standing to the credit of the Fund to that first-mentioned corporation.

*[Section 15A inserted by No. 57 of 1971 s. 9; amended by No. 10 of 1982 s. 28; No. 49 of 1996 s. 64; No. 20 of 2003 s. 47.]*

**16. Protection from personal liability**

Neither the Board nor a person who is, or has been, a member of the Board is liable in any action or proceeding for anything done or omitted in good faith, in or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed on the Board by this Act.

**17. Regulations**

The Governor may make regulations prescribing all matters that by this Act are required or authorised to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act and in particular may make regulations for or with respect to —

- (a) the manner of operating on the Fund;
- (b) the taxation or assessment of costs for the purposes of this Act in circumstances not provided for under the rules of the appropriate Court or where a party to an appeal refuses or neglects to tax his costs;
- (c) regulating the preparation and service of bills of costs proposed to be taxed for the purposes of this Act; and
- (d) prescribing forms for the purposes of this Act.

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## Notes

- <sup>1</sup> This reprint is a compilation as at 22 July 2005 of the *Suitors' Fund Act 1964* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Suitors' Fund Act 1964</i>	43 of 1964	19 Nov 1964	s. 1-7: 1 Jan 1965 (see s. 2 and <i>Gazette</i> 24 Dec 1964 p. 4093); balance: 2 Aug 1965 (see s. 2 and <i>Gazette</i> 16 Jul 1965 p. 2059)
<i>Suitors' Fund Act Amendment Act 1969</i>	72 of 1969	27 Oct 1969	27 Oct 1969
<i>Suitors' Fund Act Amendment Act 1971</i>	57 of 1971	15 Dec 1971	18 Feb 1972 (see s. 2 and <i>Gazette</i> 18 Feb 1972 p. 355)
<i>Suitors' Fund Act Amendment Act 1977</i>	44 of 1977	7 Nov 1977	1 Jan 1978 (see s. 2 and <i>Gazette</i> 30 Dec 1977 p. 4743)
<i>Suitors' Fund Act Amendment Act 1978</i>	37 of 1978	21 Aug 1978	21 Aug 1978
<i>Suitors' Fund Act Amendment Act (No. 2) 1978</i>	58 of 1978	21 Sep 1978	21 Sep 1978
<b>Reprint of the <i>Suitors' Fund Act 1964</i> approved 21 Aug 1979</b> (includes amendments listed above)			
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Suitors' Fund Amendment Act 1984</i>	58 of 1984	24 Oct 1984	21 Nov 1984
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Guardianship and Administration Act 1990</i> s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 18<sup>3</sup></i>	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997 s. 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Workers' Compensation and Rehabilitation Amendment Act 1999 s. 61</i>	34 of 1999	5 Oct 1999	15 Oct 1999 (see s. 2(2) and <i>Gazette</i> 15 Oct 1999 p. 4889)
<b>Reprint of the Suitors' Fund Act 1964 as at 29 Oct 1999</b> (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act (No. 2) 2003 Pt. 23</i>	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 68</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 114</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78 and 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 3: The Suitors' Fund Act 1964 as at 22 Jul 2005</b> (includes amendments listed above)			

<sup>2</sup> Proclaimed 1 Jan 1978, see s. 2 and *Gazette* 23 Dec 1977, p. 4671.

## **Suitors' Fund Act 1964**

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<sup>3</sup> The *Acts Amendment (Ministry of Justice) Act 1993* s. 68 is a savings provision that is of no further effect.