

Western Australia

Suitors' Fund Regulations 1965

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Suitors' Fund Regulations 1965

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Suitors' Fund Regulations 1965

1. Citation

These regulations may be cited as the *Suitors' Fund Regulations 1965*¹.

2. Interpretation

In these regulations unless the contrary intention appears —

“**applicant**” means a person making an application for a certificate of the Board authorising payment of an amount out of the Fund or for a direction of the Board;

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

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

“**Secretary**” means the Secretary to the Board;

“**the Act**” means the *Suitors' Fund Act 1964*.

[Regulation 2 amended in Gazette 18 Feb 1972 p. 364.]

3. Indemnity certificate

- (1) An indemnity certificate shall be in the form of Form 1 in the schedule and shall be signed by the judge before whom the application for the certificate was made.

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- (1a) A costs certificate shall be in the form of Form 1a or 1b, as the case requires, in the schedule and shall be signed by a Judge of the Supreme Court.
- (2) A certificate granted pursuant to section 14(1)(c) or (d) of the Act shall be in the form of Form 2 or 2a, as the case requires, in the schedule to these regulations and shall be signed by the presiding judge, magistrate or justice, as the case may be.
- (3) A person to whom an indemnity certificate or a certificate under section 14(1)(c) of the Act is granted shall cause the indemnity certificate or certificate to be prepared and shall present it to the judge, or as the case may be, the presiding judge, magistrate or justice, for signature, together with a copy thereof which shall be filed by the proper officer of the Court with the file relating to the appeal or proceeding in respect of which the indemnity certificate or certificate was granted.
- (3a) A person to whom a costs certificate is granted shall cause the certificate to be prepared and shall present it to a Judge of the Supreme Court for signature together with a copy thereof which shall be filed by the proper officer of the Court with the file relating to the appeal in respect of which the costs certificate was granted.
- (4) Where a respondent to whom an indemnity certificate has been granted fails to comply with the provisions of subregulation (3), the appellant may cause the indemnity certificate to be prepared and presented to the judge for signature, together with a copy thereof which shall be filed in the manner prescribed in that subregulation.

[Regulation 3 amended in Gazette 18 Feb 1972 p. 364.]

4. Applications to the Board

- (1) Subject to subregulation (2), a person who claims to be entitled to be paid any moneys out of the Fund may apply in writing to the Board in the form whichever of Forms 3 or 4 in the schedule

is appropriate for a certificate of the Board authorising payment of the amount claimed out of the Fund.

- (2) A person who seeks a direction of the Board pursuant to section 11(2) of the Act may apply in writing to the Board in the form of Form 5 in the schedule to these regulations for such a direction.
- (3) A respondent may make an application under subregulations (1) and (2) in a form which combines Forms 3 and 5 in the schedule.
- (4) An application under subregulation (1) or (2) shall contain a statement of the facts upon which the application is made and be signed by the applicant.
- (5) An applicant shall lodge with his application —
 - (a) in the case of an application by a respondent to whom an indemnity certificate has been granted —
 - (i) the indemnity certificate, or where the indemnity certificate is not available, a copy thereof certified to be a true copy by the proper officer of the Supreme Court;
 - (ii) a copy, certified by the proper officer of the Court, of the judgment ordering the respondent to pay the appellant's costs;
 - (iii) where the appellant's costs have been ordered to be taxed — the certificate or allocatur, or, where the certificate or allocatur is not available, a certified copy thereof, of the Registrar of the Privy Council or other proper officer of the Privy Council, or of the Registrar of the High Court of Australia, or of the Taxing Master of the Supreme Court, as the case may be, certifying the amount at which the appellant's costs have been taxed and allowed;

- (iv) where the respondent's costs have been taxed as provided in these regulations — the certificate of the officer by whom such costs have been taxed certifying the amount at which the respondent's costs have been taxed and allowed;
 - (v) the receipt of the appellant or his solicitors for payment by the respondent of the amount of the appellant's costs ordered to be paid by the respondent, or other evidence of such payment satisfactory to the Board;
- (b) in the case of an application by an appellant in an appeal in which an indemnity certificate has been granted to a respondent — the documents referred to in subparagraphs (i), (ii) and (iii) of paragraph (a);
- (ba) in the case of an application by an appellant in an appeal in which a costs certificate has been granted —
 - (i) the costs certificate or where the certificate is not available a copy thereof certified to be a true copy by the proper officer of the Supreme Court; and
 - (ii) where the applicant's costs are required to be taxed the certificate, or allocatur or, where the certificate or allocatur is not available, a certified copy thereof, by the Taxing Master of the Supreme Court certifying the amount at which the appellant's costs have been taxed and allowed;
- (c) in the case of an application by a person to whom a certificate has been granted under section 14(1)(c) or (d) of the Act — the certificate or, where the certificate is not available, a copy thereof certified to be a true copy by the proper officer of the Court by which the certificate was granted;
- (d) in the case of an application by a person under section 14(1)(a) or (b) of the Act — a copy, certified to be a true copy by the proper officer of the Court, of the

order made by the Court in the proceedings or on the appeal, as the case may be;

- (e) in the case of an application by a person under section 15 of the Act —
 - (i) a copy, certified to be a true copy by the proper officer of the Court, of the order of the Court ordering a new trial; and
 - (ii) the receipt of the appellant or his solicitors for payment by the respondent of the amount of the appellant's costs ordered to be paid by the respondent, or other evidence of such payment satisfactory to the Board.

[Regulation 4 amended in Gazette 18 Feb 1972 p. 364.]

5. Time within which application is to be made

Every application under regulation 4 shall be made —

- (a) in the case of an application made under section 10 of the Act — within 6 months after the date on which the appeal has succeeded in respect of which the indemnity certificate has been granted;
- (b) in the case of an application made under section 14 or section 15 of the Act, other than an application by a person to whom a certificate has been granted under subsection (1)(d) of that section 14 — within 6 months after the new trial; or
- (c) in the case of an application by a person to whom a certificate has been granted under subsection (1)(d) of section 14 of the Act — within 6 months after the date on which the proceeding is adjourned.

[Regulation 5 amended in Gazette 18 Feb 1972 p. 364.]

6. Board may extend time

- (1) The Board may, upon application made to it in respect of any application under regulation 4, at any time extend the period of

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6 months fixed by regulation 5 and may further extend any period fixed in pursuance of this regulation.

- (2) The Board may impose such conditions as it thinks fit with respect to any extension granted under subregulation (1).

7. Board may require costs to be taxed

For the purposes of any application for payment from the Fund, the Board may require the applicant to have any of the costs to which his application relates taxed in accordance with regulation 8 by the taxing officer of the Court concerned or, to enable agreement to be reached between the Board and the applicant as to the amount of those costs, by an assessor nominated by the Board with the consent of the applicant.

8. Taxation of costs

- (1) Where the Board in pursuance of regulation 7, requires an applicant to have any costs taxed by the taxing officer of the Court concerned, it shall cause notice in writing to that effect to be posted to the applicant at the address shown in his application.
- (2) An applicant to whom such a notice is addressed may, unless a bill of those costs has already been delivered, request the solicitor who acted for him in the proceedings in which the costs were incurred to deliver to him a bill of the costs to which the notice relates and the solicitor shall within 14 days of being so requested and in accordance with such request deliver his bill of costs.
- (3) An applicant to whom notice has been given in pursuance of subregulation (1) shall —
 - (a) within 6 months of receiving the notice obtain from the taxing officer of the Court concerned an appointment to tax a bill of the costs to which the notice relates; and
 - (b) not less than 2 days before the day appointed for the taxing of the bill of costs, cause notice in writing of the

appointment to be given to the solicitor by whom the bill was delivered.

- (4) The taxing officer shall proceed to tax the bill and shall permit the solicitor by whom the bill was delivered to attend the taxation but, in the absence of that solicitor, shall proceed to the taxation upon being satisfied that the solicitor has been given notice of the appointment in accordance with subregulation (3)(b).
- (5) The taxing officer shall ascertain and tax the costs of and incidental to the taxation of any bill of costs in pursuance of this regulation, and those costs shall be paid by the applicant.
- (6) The taxing officer shall certify in writing the amount at which he allows any bill of costs taxed in pursuance of this regulation and the amount at which he allows the costs of and incidental to the taxation of that bill.

9. Board may require additional information

The Board may require an applicant to produce to the Board such additional information in support of his application as it may think fit.

10. Certificates and directions of the Board

- (1) Upon being satisfied that a payment out of the Fund is authorised by the Act and that the provisions of the Act and these regulations in relation to any claim for payment have been complied with, the Board shall issue a certificate setting out the sum which the person named therein is entitled to be paid and authorising the payment of such sum out of the Fund.
- (2) Every certificate issued by the Board under subregulation (1) shall be signed by the Chairman of the Board or by a member of the Board authorised by the Board in that behalf and shall be in the form of Form 6 in the schedule.

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- (3) Every direction made by the Board pursuant to section 11(2) of the Act shall be in writing and shall be signed by the Chairman of the Board or by a member of the Board authorised in that behalf by the Board.
- (4) Each certificate and direction shall forthwith be sent by the Secretary to the person in whose favour it has been issued.

11. Secretary

The Secretary shall —

- (a) keep a register of all applications made to the Board for payment from the Fund;
- (b) file all applications and documents lodged therewith;
- (c) keep minutes of the meetings of the Board; and
- (d) conduct such correspondence and other business as is directed by the Board.

12. Board meetings

The Board shall meet at such times and places as the Board determines or as are fixed by the Chairman and notified by the Secretary to the other members of the Board.

13. Board may require production of court documents

- (1) The Board may by notice in writing to the clerk or proper officer of a Court require the production or transmission to the Board of any file or papers in the custody of that clerk or proper officer that relate to any application then before the Board and the clerk or proper officer concerned shall produce or transmit the file or papers accordingly.
- (2) Any notice under subregulation (1) may be signed by the Secretary or other person authorised in that behalf by the Board.

14. Prescribed amount s. 11(3)(b)

For the purposes of section 11(3)(b) of the Act the amount payable from the Fund to any one respondent in respect of an indemnity certificate shall not in any case exceed the sum of \$2 000.

[Regulation 14 inserted in Gazette 10 Nov 1970 p. 3461.]

15. Prescribed amount s. 5(1)

For the purposes of section 5(1) of the Act the prescribed amount payable to the proper officer of the appropriate Court is 20 cents.

[Regulation 15 inserted in Gazette 19 Dec 1980 p. 4295.]

Schedule

Schedule

Form 1

Suitors' Fund Act 1964

In the Supreme Court
of Western Australia.

In the matter of the *Suitors' Fund Act 1964*

and

In the matter of an appeal between

(Appellant)

and

(Respondent)

INDEMNITY CERTIFICATE

WHEREAS:

1. On the day of 20 , the abovenamed (appellant or respondent as the case may be) issued out of Court (name of Court) at (place) a (writ, summons, complaint, etc., as the case may be) against the abovenamed (respondent or appellant as the case may be):

2. On the day of 20 the said Court ordered in favour of the respondent against the appellant that:

(Set out substance of order.)

3. On the day of 20 the appellant appealed against the said decision to (name of Court) (hereinafter called "the Appeal Court") on grounds which included a question of law:

4. On the day of 20 the Appeal Court ordered that:

(Set out substance of order or judgment.)

and thereby the said appeal succeeded on a question of law:

5. On the day of 20 the respondent applied to this Court for an indemnity certificate in respect of the said appeal:

6. On the day of 20 this Court decided that an indemnity certificate be granted to the respondent in respect of the said appeal.

IT IS HEREBY CERTIFIED THAT the respondent be indemnified in respect of the costs of the said appeal pursuant to the provisions of the *Suitors' Fund Act 1964*.

Dated the day of 20 .

Judge.

Form 1a

SUITORS' FUND ACT 1964

IN THE SUPREME COURT }
OF WESTERN AUSTRALIA }

IN THE MATTER of the *Suitors' Fund Act 1964*,
and

IN THE MATTER of an appeal against a conviction for an
indictable offence between

The State of Western Australia

Respondent

against

Appellant
(Accused)

COSTS CERTIFICATE PURSUANT TO SECTION 12A(1) OF THE
SUITORS' FUND ACT 1964

WHEREAS:

1. On the day of 20 the abovenamed appellant
was convicted in the Court at of an indictable offence.
2. On the day of 20 the said conviction was
quashed by the Supreme Court without a new trial being ordered.

NOW IT IS HEREBY CERTIFIED that the Court grants to the appellant a costs
certificate in respect of the costs of the appeal (or such part of the costs of the
appeal being).

Dated the day of 20 .

JUDGE.

*[Form 1a inserted in Gazette 18 Feb 1972 p. 365; amended in
Gazette 19 Apr 2005 p. 1301.]*

Schedule

Form 1b

SUITORS' FUND ACT 1964

IN THE SUPREME COURT }
OF WESTERN AUSTRALIA }

IN THE MATTER OF THE *SUITORS' FUND ACT 1964*,

and

IN THE MATTER OF PROCEEDINGS BETWEEN

Appellant

and

Respondent

COSTS CERTIFICATE PURSUANT TO SECTION 12A(2) OF THE
SUITORS' FUND ACT, 1964.

WHEREAS:

1. On the day of 20 the abovenamed appellant
appealed against a decision of the (name the Court) sitting at
to the Supreme Court on grounds which included a question of law.

2. On the day of 20 the Supreme Court ordered
that (set out the substances of order or judgment) and
thereby the said appeal succeeded on a question of law.

NOW the Court further found that but for the provision of some other Act or
law the Court would have made an order regarding the Appellant's costs of the
Appeal, against the Respondent.

The Order which the Court would have so made is:

(The Appellant's costs of the Appeal to be fixed at and be
paid by the Respondent.)

(The Appellant's costs of the Appeal be taxed and be paid by the
Respondent.)

(The Appellant's costs of the Appeal to be taxed and
(state proportion) thereof be paid by the Respondent.)

A costs certificate is granted to the Appellant.

Dated the day of 20 .

JUDGE.

[Form 1b inserted in Gazette 18 Feb 1972 p. 365.]

Form 2

Suitors' Fund Act 1964

In the
(Court)

In the matter of the *Suitors' Fund Act 1964*

and

In the matter of proceedings between

(plaintiff, prosecutor or
as the case may be)

and

(defendant or as the case
may be).

CERTIFICATE PURSUANT TO SECTION 14(1)(c) OF THE *SUITORS'*
FUND ACT 1964

WHEREAS:

1. On the day of 20 (civil or criminal as the case may be) proceedings were commenced by the abovenamed (plaintiff or as the case may be) against the abovenamed (defendant or as the case may be) in the (name of Court) at (place):

2. On the day of 20 the said proceedings were being heard in the said Court before (name of Judge, Magistrate or Justice) (hereinafter called "the presiding judicial officer") and on the said date the said hearing was discontinued and a new trial ordered by the presiding judicial officer.

It is hereby certified that:

1. The reason why the said proceedings were discontinued was:
(set out reason)
2. A new trial of the said proceedings was ordered;
3. The said reason was not attributable in any way to the act, neglect or default of (in the case of civil proceedings) all or any one or more of the parties to the said proceedings or their legal practitioners (or in the case of criminal proceedings) the accused or his legal practitioner.

Dated the day of 20 .

(Set out name of Judge, etc., under signature and capacity, e.g. "Judge of the Supreme Court".)

Schedule

Form 2a

SUITORS' FUND ACT 1964

IN THE SUPREME COURT }
OF WESTERN AUSTRALIA }

(or as the case may be).

IN THE MATTER OF THE *SUITORS' FUND*
ACT 1964,

and

IN THE MATTER OF CRIMINAL PROCEEDINGS
BETWEEN

(Complainant or as the
case may be)

and

(Accused or as the case
may be)

CERTIFICATE PURSUANT TO SECTION 14(1)(d) OF THE *SUITORS'*
FUND ACT 1964

WHEREAS:

1. On the day of 20 at
proceedings in the above matter were commenced and were adjourned by or on
behalf of the prosecution.

2. I am satisfied that by reason of such adjournment the accused has necessarily
incurred expense.

NOW I HEREBY CERTIFY:

(i) that the reason why the said proceedings were adjourned was

(ii) that such reason was not attributable in any way to the act, neglect
or default of the accused or his counsel or solicitor.

Dated the day of 20 .

PRESIDING JUDGE, MAGISTRATE
OR JUSTICE

(or as the case may be).

[Form 2a inserted in Gazette 18 Feb 1972 p. 366.]

Form 3

Suitors' Fund Act 1964

In the matter of the *Suitors' Fund Act 1964*

and

In the matter of an appeal between

(Appellant)

and

(Respondent)

APPLICATION TO THE APPEAL COSTS BOARD BY THE RESPONDENT
FOR A CERTIFICATE AUTHORISING PAYMENT OUT OF THE
SUITORS' FUND

I of in the State of (occupation) being
the abovenamed respondent hereby apply to the Appeal Costs Board for a
certificate for payment to me from the Suitors' Fund of the following amounts:

(Set out in numbered paragraphs each amount claimed and whether it is claimed
as appellant's costs or as the case may be).

An indemnity certificate was granted to the abovenamed respondent in respect
of the abovenamed appeal on the day of , 20 .

The facts on which this application is made are as follows:

The following documents are lodged with this application:

(Set out such of the documents referred to in Regulation 4(5) as are relevant).

Dated the day of , 20 .

(Signature of applicant.)

Schedule

Form 4

Suitors' Fund Act 1964

In the matter of the *Suitors' Fund Act 1964*,

and

In the matter of a (state nature of proceedings, e.g., complaint information action or presentment) in the (name of Court) wherein

was (complainant or as the case may be)

and

was (defendant or as the case may be)

APPLICATION TO THE APPEAL COSTS BOARD BY THE
COMPLAINANT (OR AS THE CASE MAY BE) FOR
A CERTIFICATE AUTHORISING PAYMENT OUT OF THE SUITORS'
FUND PURSUANT TO SECTION 14 OR 15 OF THE ACT (AS THE CASE
MAY BE)

I of in the
State of (occupation) being the
abovenamed complainant (or as the case may be) hereby apply to the Appeal
Costs Board for a certificate for payment to me from the Suitors' Fund of the
following amounts:

(Set out in numbered paragraphs each amount claimed).

The ground on which this application is made is as follows:

(Set out ground, e.g., that the abovenamed proceedings were rendered
abortive by the death of Mr. S.M., the Magistrate
before whom the proceedings were had.)

(Where the application is made under section 14(1)(c), insert the following
paragraph:

A certificate under section 14(1)(c) of the Act was granted to the
applicant in respect of the abovenamed proceedings by (name of the
presiding Magistrate, etc.) the presiding Magistrate (or as the case may
be) on the day of , 20).

(Where the application is made under section 14(1)(d) of the Act insert the
following paragraph:

A certificate under section 14(1)(d) of the Act was granted to the
applicant in respect of the abovenamed proceeding by (name the
presiding Magistrate, etc.) the presiding Magistrate (or as the case may
be) on the day of , 20 .)

Schedule

The facts on which this application is made are as follows:

The following documents are lodged with this application:

(Set out such of the documents referred to in Regulation 4(5) as are relevant).

Dated the day of , 20 .

(Signature of Applicant.)

[Form 4 amended in Gazette 18 Feb 1972 p. 366.]

Schedule

Form 5

Suitors' Fund Act 1964

In the matter of the *Suitors' Fund Act 1964*,
and

In the matter of an appeal between

(Appellant)

and

(Respondent)

APPLICATION TO THE APPEAL COSTS BOARD BY THE
ABOVENAMED FOR A DIRECTION PURSUANT
TO SECTION 11(2) OF THE ACT

I of (occupation) being the
in the State of above-named hereby apply to the
Appeal Costs Board for a direction that the sum of being costs not
already paid by the abovenamed respondent be paid from the Suitors' Fund for
and on behalf of the above-named respondent to .
An indemnity certificate was granted to the abovenamed respondent in respect
of the abovenamed appeal on the day of , 20 .

The ground on which this application is made is:

(Set out ground, e.g., that the respondent unreasonably refuses to pay the
appellant the costs referred to in section 11(1)(a) of the Act.)

The facts on which this application is made are as follows:

The following documents are lodged with this application:

(Set out such of the documents referred to in Regulation 4(5) as are relevant).

Dated the day of , 20 .

(Signature of applicant.)

Form 6

Suitors' Fund Act 1964

In the matter of the *Suitors' Fund Act 1964*,

and

In the matter of an appeal (or proceedings as the case may be)
between

(appellant or as the case
may be)

and

(respondent or as the case
may be).

CERTIFICATE OF THE APPEAL COSTS BOARD

To the Treasurer of the State of Western Australia:

Pursuant to the *Suitors' Fund Act 1964* the Appeal Costs Board hereby certifies
that the abovenamed of
in the State of is entitled to be paid out of the
Suitors' Fund the sum of and authorises the payment of
the said sum to the said out of the
said Fund.

Dated at Perth this day of 20 .

(Set out name under signature.)
Chairman, Appeal Costs Board.

Notes

- ¹ This is a compilation of the *Suitors' Fund Regulations 1965* 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

Citation	Gazettal	Commencement
<i>Suitors' Fund Regulations 1965</i>	31 Aug 1965 p. 2551-7	31 Aug 1965
	10 Nov 1970 p. 3461	10 Nov 1970
	18 Feb 1972 p. 364-6	18 Feb 1972
<i>Suitors' Fund Amendment Regulations 1980</i>	19 Dec 1980 p. 4295	1 Jan 1981 (see r. 2)
Reprint 1: <i>Suitors' Fund Regulations 1965</i> as at 7 Mar 2003 (includes amendments listed above)		
<i>Courts and Legal Practice (Consequential Amendments) Regulations 2005</i> r. 13	19 Apr 2005 p. 1294-302	19 Apr 2005