

# Damages (Infants and Persons of Unsound Mind) Act 1929 No 25

[1929-25]



New South Wales

## Status Information

### Currency of version

Repealed version for 26 November 1998 to 14 August 2005 (accessed 22 December 2024 at 19:52)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by Sch 4 to the [Civil Procedure Act 2005 No 28](#) with effect from 15.8.2005.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Damages (Infants and Persons of Unsound Mind) Act 1929 No 25



New South Wales

An Act for the protection of infants and certain persons of unsound mind in regard to damages recovered or awarded, and to settlements and compromises of claims by them for such damages; to amend the *Common Law Procedure Act 1899*, the *District Courts Act 1912* and certain other Acts; and for purposes connected therewith.

## 1 Name of Act

This Act may be cited as the *Damages (Infants and Persons of Unsound Mind) Act 1929*.

## 2 Application of Act

- (1) This Act does not apply to claims made or compensation awarded under the *Workers' Compensation Act 1926* or any Act amending or replacing that Act.
- (2) This Act does not affect the provisions of section 16 of the *Infants' Custody and Settlements Act of 1899*.
- (3) This Act extends to any action brought under the *Compensation to Relatives Act of 1897*.
- (4) (Repealed)
- (5) This Act extends to compensation payable under Part 2 of the *Victims Compensation Act 1996*.

## 3 Definitions

In this Act, unless the context or subject-matter otherwise requires:

**Action** includes counter claim.

**Minor** means a person under the age of eighteen years.

**Person of unsound mind** means a person who has been found or declared whether by inquisition or under the *Lunacy Act 1898*, or any other Act, to be insane or of unsound mind and incapable of managing his or her affairs, and includes an incapable person

within the meaning of the *Lunacy Act 1898*.

#### **4 Settlement of action by minor to be subject to sanction of court**

Where, in any action or matter in the Supreme Court, District Court or a Local Court, damages are claimed by or on behalf of a minor either alone or in conjunction with another party or by a person of unsound mind either alone or in conjunction with another party, the following provisions shall apply:

- (a) No settlement, or compromise of, or acceptance of money paid into court in such action or matter, whether before, at, or after trial, shall, as regards the claim of the minor or person of unsound mind, be valid without the sanction of the court in which the action or matter is instituted.
- (b) No damages recovered in such action or matter, whether by verdict or by settlement, compromise, or payment into court or otherwise, in respect of the claim of the minor or person of unsound mind, shall be paid to the minor or person of unsound mind or to a next friend or solicitor.
- (c) All damages so recovered shall be paid into court, and shall, unless the court otherwise directs, be paid out:
  - (i) in the case of a claim by or on behalf of a minor, to the Public Trustee,
  - (ii) in the case of a claim by or on behalf of a person of unsound mind, to his or her committee or the manager of his or her estate, or to the Master in Lunacy.

#### **5 Application of moneys by Public Trustee**

- (1) Any sum so paid to the Public Trustee shall, subject to any general or special direction of the court as to the payment of costs or otherwise, be held and applied by the Public Trustee in such manner as the Public Trustee shall think fit for the maintenance and education or otherwise for the benefit of the minor.
- (2) The Public Trustee in any case in which moneys are paid to the Public Trustee under this Act may at any time and from time to time request a judge of the Supreme Court to give the Public Trustee directions as to the administration of the money or to vary directions which may already have been given in regard thereto, or to determine any matter relating thereto, and any direction or determination of the judge shall, if given effect to by the Public Trustee, exonerate the Public Trustee from any claim or demand by any person whomsoever.
- (3) The provisions of section 59 of the *Public Trustee Act 1913* shall extend to the making of regulations fixing the scale of commission and other charges to be made by the Public Trustee in respect of moneys paid to the Public Trustee under this Act.
- (4) Any sum so paid to such committee, manager, or Master in Lunacy shall, subject to any general or special direction of the court as to payment of costs, be held and

applied by that person or body as part of the estate of the person of unsound mind.

## **6 (Repealed)**

## **7 Costs**

- (1) Nothing in this Act shall prejudice the lien of a solicitor for costs.
- (2) The costs of the minor or person of unsound mind of and incidental to the action or matter and of the settlement or compromise for which the sanction of a judge is sought under this Act may be assessed by the judge to whom the application is made, or the judge may direct that such costs be taxed by the proper officer, and the costs so assessed or taxed shall be payable out of the moneys payable in such manner and to such person as the judge may direct.

The judge may assess or direct the taxation of costs generally or as between party and party or as between solicitor and client or the judge may assess costs of one class and direct taxation of costs of the other class.

- (2A) The costs of the minor or person of unsound mind of and incidental to the action or matter and of the settlement for which the sanction of a Magistrate is sought under this Act may be assessed by the Magistrate to whom the application is made and shall be paid as the Magistrate directs.

- (2B) A Magistrate may assess costs referred to in subsection (2A):

- (a) generally,
- (b) as between party and party, or
- (c) as between solicitor and client.

- (3)

- (a) Where any such costs have been directed to be taxed (whether generally or as between party and party or as between solicitor and client), the costs of the plaintiff, or if more than one, of all the plaintiffs, in the action or matter or settlement or compromise or incident to the claims therein or consequent thereon, shall be taxed in accordance with such direction.
- (b) Where the amounts payable as costs have been determined by assessment or taxation:
  - (i) the respective amounts and the difference, if any, and the proportion of such difference, if any, payable by or out of the moneys of the minor or person of unsound mind, shall be certified by the judge or Magistrate or by the taxing officer,
  - (ii) no costs other than those so certified to be payable shall be payable to the

solicitor for the plaintiff by, or out of the moneys of, the minor or person of unsound mind.

- (4) Subsection (3) shall extend to the costs of a minor or person of unsound mind upon a counter claim.
- (5) Where application is made under subsection (2) to a judge or Magistrate to assess the costs of the minor or person of unsound mind the judge or Magistrate may refer the application to the proper officer for consideration and report.