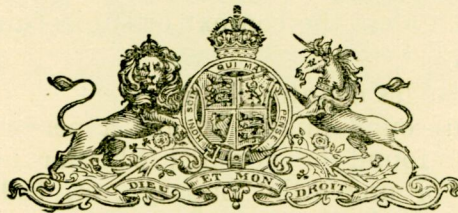


This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

W. L. S. COOPER,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 31 October, 1928.*

New South Wales.



ANNO UNDEVICESIMO

GEORGII V REGIS.

Act No. , 1928.

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.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of
5 the same, as follows:—

1. This Act may be cited as the "Damages (Infants Short title, and Persons of Unsound Mind) Act, 1928."

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2.

Damages (Infants and Persons of Unsound Mind).

2. (1) This Act does not apply to claims made or compensation awarded under the Workers' Compensation Act, 1925, or any Act amending or replacing that Act. Application of Act.

(2) This Act does not affect the provisions of section sixteen 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.

3. In this Act, unless the context or subject-matter otherwise requires,— Interpretation.

“Action” includes counter claim.

“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 affairs, and includes an incapable person within the meaning of the Lunacy Act, 1898.

4. Where, in any action or matter in the Supreme Court or any district court, damages are claimed by or on behalf of an infant 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:— Settlement of action by infant to be subject to sanction of court.

(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 infant 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 infant or person of unsound mind, shall be paid to the infant or person of unsound mind or to a next friend or solicitor unless the court so directs.

(c) All damages so recovered shall be paid into court, and shall, unless the court otherwise directs, be paid out to the Public Trustee.

5.

Damages (Infants and Persons of Unsound Mind).

5. (1) Any sum so paid to the Public Trustee shall, ^{Application of moneys by Public Trustee.} subject to any general or special direction of the court as to the payment of costs or otherwise, be held and applied by him in such manner as he shall think fit for the maintenance and education or otherwise for the benefit of the infant or person of unsound mind.

(2) The Public Trustee in any case in which moneys are paid to him under this Act may at any time and from time to time request a judge of the Supreme Court to give him 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 him from any claim or demand by any person whomsoever.

(3) The provisions of section fifty-nine 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 him under this Act.

6. (1) In any case in which a court is authorised ^{Applications to court.} by this Act to give any sanction or directions, the jurisdiction of the court may be exercised by any judge thereof.

(2) Any application made to a court or a judge under this Act shall be made as prescribed by rules of court.

7. (1) Nothing in this Act shall prejudice the lien ^{Costs.} of a solicitor for costs.

(2) The costs of the infant 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 he 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.

(3)

Damages (Infants and Persons of Unsound Mind).

- (3) In the case of an action or matter—
- 5 (a) the costs of the plaintiff, or if more than one,
of all the plaintiffs, in the action or matter or
incident to the claims therein or consequent
thereon shall be taxed both as between party
and party and as between solicitor and client ;
- 10 (b) 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
infant or person of unsound mind, shall be
certified by the taxing officer ;
- 15 (c) no costs other than those certified to be so
payable shall be payable to the solicitor for
the plaintiff by or out of the moneys of the
infant or person of unsound mind ;
- (d) the result of any such taxation shall be
notified to the Public Trustee by the taxing
officer.
- (4) Subsection three of this section shall extend
20 to the costs of an infant or person of unsound mind
upon a counter claim.

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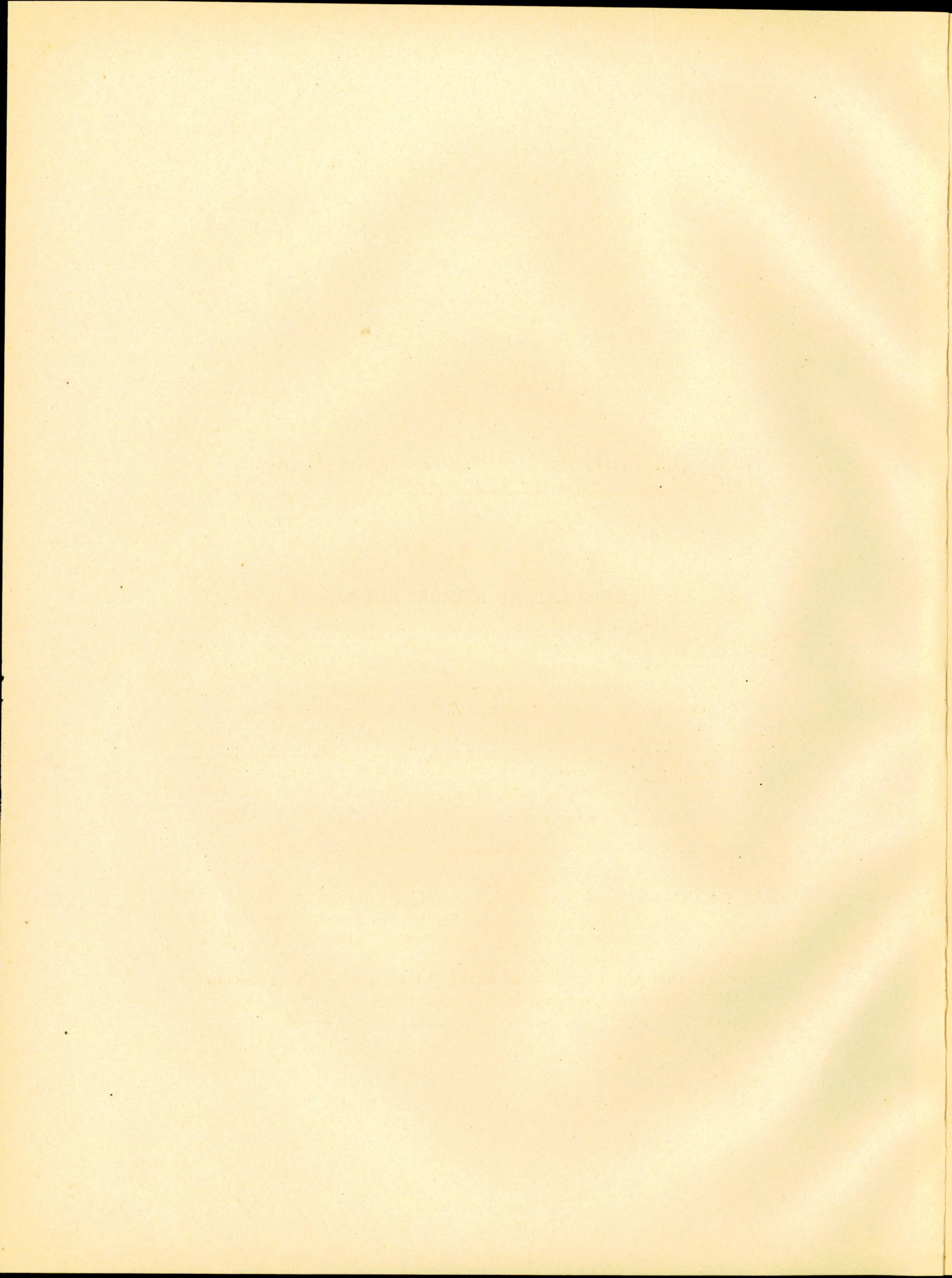
Legislative Council.

Damages (Infants and Persons of Unsound
Mind) Bill, 1928.

EXPLANATORY MEMORANDUM.

THE object of this Bill is to give a certain amount of protection to infants and persons of unsound mind.

It is proposed, if damages are recovered in an action by an infant or a person of unsound mind, that the damages, whether recovered by settlement, compromise or verdict, shall be paid into Court, and paid out to the Public Trustee to be administered on behalf of the infant or person of unsound mind, due protection being given to the solicitor who has acted in the action.



Legislative Council.

No. , 1928.

A BILL

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.

[MR. BOYCE;—24 *October*, 1928.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of
5 the same, as follows:—

1. This Act may be cited as the “Damages (Infants Short title. and Persons of Unsound Mind) Act, 1928.”

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2.

Application
of Act.

2. (1) This Act does not apply to claims made or compensation awarded under the Workers' Compensation Act, 1925, or any Act amending or replacing that Act.

(2) This Act does not affect the provisions of section sixteen of the Infants' Custody and Settlements Act of 1899. **5**

(3) This Act extends to any action brought under the Compensation to Relatives Act of 1897.

Interpreta-
tion.

3. In this Act, unless the context or subject-matter otherwise requires,— **10**

“Action” includes counter claim.

“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 affairs, and includes an incapable person within the meaning of the Lunacy Act, 1898. **15**

Settlement of
action by
infant to be
subject to
sanction of
court.

4. Where, in any action or matter in the Supreme Court or any district court, damages are claimed by or on behalf of an infant 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:— **20**

(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 infant or person of unsound mind, be valid without the sanction of the court in which the action or matter is instituted. **25**

(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 infant or person of unsound mind, shall be paid to the infant or person of unsound mind or to a next friend or solicitor unless the court so directs. **35**

(c) All damages so recovered shall be paid into court, and shall, unless the court otherwise directs, be paid out to the Public Trustee. **40**

5.

5. (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 him in such manner as he shall think fit for the maintenance and education or otherwise for the benefit of the infant or person of unsound mind.

Application
of moneys by
Public
Trustee.

(2) The Public Trustee in any case in which moneys are paid to him under this Act may at any time and from time to time request a judge of the Supreme Court to give him 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 him from any claim or demand by any person whomsoever.

(3) The provisions of section fifty-nine 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 him under this Act.

6. (1) In any case in which a court is authorised by this Act to give any sanction or directions, the jurisdiction of the court may be exercised by any judge thereof.

Applications
to court.

(2) Any application made to a court or a judge under this Act shall be made as prescribed by rules of court.

7. (1) Nothing in this Act shall prejudice the lien of a solicitor for costs.

Costs.

(2) The costs of the infant 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 he 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.

(3)

Damages (Infants and Persons of Unsound Mind).

- (3) In the case of an action or matter—
- (a) the costs of the plaintiff, or if more than one, of all the plaintiffs, in the action or matter or incident to the claims therein or consequent thereon shall be taxed both as between party and party and as between solicitor and client; 5
 - (b) 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 infant or person of unsound mind, shall be certified by the taxing officer; 10
 - (c) no costs other than those certified to be so payable shall be payable to the solicitor for the plaintiff by or out of the moneys of the infant or person of unsound mind; 15
 - (d) the result of any such taxation shall be notified to the Public Trustee by the taxing officer.
- (4) Subsection three of this section shall extend to the costs of an infant or person of unsound mind upon a counter claim. 20