

SUITORS' FUND (AMENDMENT) ACT 1987 No. 249

NEW SOUTH WALES



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SUITORS' FUND (AMENDMENT) ACT 1987 No. 249

NEW SOUTH WALES



Act No. 249, 1987

An Act to amend the Suitors' Fund Act 1951 to increase the amount of payments from the Fund, to extend the circumstances giving rise to a claim on the Fund, to provide for payment of any surplus amount into the Attorney General's Department Account and for other purposes. [Assented to 16 December 1987]

*Suitors' Fund (Amendment) 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the *Suitors' Fund (Amendment) Act 1987*.

Amendment of Act No. 3, 1951

2. The *Suitors' Fund Act 1951* is amended in the manner set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 2)

(1) Section 2 (Definitions)—

- (a) Omit the definition of "Court", insert instead:

"Court" includes such tribunals or other bodies as are prescribed.

- (b) Definition of "Indemnity certificate"—

After "(1AA)", insert "or 6B".

- (c) After the definition of "Legally assisted person", insert:

"Secretary" means—

- (a) the Secretary of the Attorney General's Department and any person for the time being acting as Secretary of that Department; or
- (b) any Deputy Secretary or Assistant Secretary of that Department authorised in writing by the Secretary (as defined in paragraph (a)) to exercise the powers and perform the duties of the Secretary under this Act.

- (d) Definition of "Sequence of appeals"—

Omit "(being a decision on a question of law)".

- (e) Section 2 (2)—

At the end of section 2, insert:

- (2) This Act applies to and in respect of—

- (a) a court;
- (b) an appeal to or from a court;
- (c) proceedings or actions before a court; and
- (d) a decision of a court,

exercising State or federal jurisdiction.

(2) Section 3 (Suitors' Fund)—

- (a) Section 3 (1)—

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Omit “subsection (2) of section 6 and in sections 6A and 6B”, insert instead “sections 6(2), 6A, 6B and 6C”.

(b) Section 3 (2)—(2B)—

Omit section 3 (2), insert instead:

(2) In addition to the money payable out of the Fund under this Act the following amounts shall be a charge against and shall be paid out of the Fund:

- (a) all costs of management of the Fund as certified by the Auditor-General;
- (b) any amount considered by the Secretary to be surplus to the Fund's requirements;
- (c) fees payable to consultants retained by the Secretary to advise on the proper investment of the Fund.

(2A) An amount referred to in subsection (2) (b) shall not be paid out of the Fund without the concurrence of the Attorney General.

(2B) An amount paid out of the Fund under subsection (2) (b) shall be paid into the Attorney General's Department Account for expenditure—

- (a) on improving (or on projects designed to lead to improving) court facilities and services; and
- (b) towards the administrative costs incurred in relation to the operation of the Arbitration (Civil Actions) Act 1983.

(c) Section 3 (3), (4)—

Omit “Under Secretary of the Department of the Attorney-General and of Justice” wherever occurring, insert instead “Secretary”.

(d) Section 3 (9)—

After section 3 (8), insert:

(9) The Secretary may retain consultants to advise on the proper investment of the Fund.

(3) Section 4 (**Secretary to be corporation sole**)—

(a) Section 4 (1)—

Omit “Under Secretary of the Department of the Attorney-General and of Justice” where firstly occurring, insert instead “Secretary”.

(b) Section 4 (1)—

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Omit “Under Secretary of the Department of the Attorney-General and of Justice” where secondly occurring, insert instead “Secretary of the Attorney General’s Department”.

(c) Section 4 (4), (5)—

Omit “Under Secretary of the Department of the Attorney-General and of Justice” wherever occurring, insert instead “Secretary”.

(d) Section 4 (6)—

Omit the subsection.

(4) Section 6 (**Costs of certain appeals**)—

(a) Section 6 (1)—

Omit the subsection, insert instead:

(1) If an appeal against the decision of a court—

(a) to the Supreme Court on a question of law or fact; or

(b) to the High Court from a decision of the Supreme Court on a question of law,

succeeds, the Supreme Court may, on application, grant to the respondent to the appeal or to any one or more of several respondents to the appeal an indemnity certificate in respect of the appeal.

(b) Section 6 (2)—

Omit “Under Secretary of the Department of the Attorney-General and of Justice” wherever occurring, insert instead “Secretary”.

(c) Section 6 (2) (a)—

Omit “the said Under Secretary” wherever occurring, insert instead “the Secretary”.

(d) Section 6 (2A)—

Omit the subsection, insert instead:

(2A) The amount payable from the Fund pursuant to any one indemnity certificate, being an indemnity certificate granted after the commencement of the Suitors’ Fund (Amendment) Act 1987, shall—

(a) if it was granted in respect of an appeal to the Supreme Court or the Land and Environment Court—not exceed \$10,000;

(b) if it was granted in respect of an appeal to the High Court from a decision of the Supreme Court—not exceed \$20,000; or

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- (c) if it was granted in respect of any other appeal—not exceed \$10,000,
or such other amount as may be prescribed (at the time when the indemnity certificate is granted).
- (e) Section 6 (4)—
Omit “Under Secretary of the Department of the Attorney-General and of Justice” wherever occurring, insert instead “Secretary”.
- (f) Section 6 (4) (b)—
Omit “the said Under Secretary” wherever occurring, insert instead “the Secretary”.
- (5) Section 6A (**Costs of proceedings not completed by reason of death of judge etc.**)—
- (a) Section 6A (1)—
Omit “Under Secretary of the Department of the Attorney-General and of Justice”, insert instead “Secretary”.
- (b) Section 6A (1), (1A)—
Omit “the said Under Secretary” wherever occurring, insert instead “the Secretary”.
- (c) Section 6A (1B)—
Omit the subsection, insert instead:
(1B) If an application has been made under subsection (1) in respect of proceedings rendered abortive, or a new trial ordered, after the commencement of the Suitors' Fund (Amendment) Act 1987, the amount payable under that subsection to any one person shall, in respect of that application, not exceed—
(a) \$10,000; or
(b) such other amount as may be prescribed (at the time when the proceedings were rendered abortive or the new trial was ordered).
- (6) Section 6B (**Costs of certain appeals on ground that damages were excessive or inadequate**)—
- (a) Section 6B (1)—
Omit “shall be entitled”, insert instead “shall (if granted an indemnity certificate under subsection (2)) be entitled”.
- (b) Section 6B (1) (a)—
Omit “Under Secretary of the Department of the Attorney-General and of Justice”, insert instead “Secretary”.

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- (c) Section 6B (1) (a)—
Omit “the said Under Secretary” wherever occurring, insert instead “the Secretary”.
- (d) Section 6B (1) (b)—
Omit “decision in the appeal is given”, insert instead “indemnity certificate is granted”.
- (e) Section 6B (1) (b)—
Omit “Under Secretary of the Department of the Attorney-General and of Justice”, insert instead “Secretary”.
- (f) Section 6B (1) (ii)—
Omit “three thousand dollars”, insert instead “\$10,000”.
- (g) Section 6B (1) (ii)—
Omit “decision in the appeal is given”, insert instead “indemnity certificate is granted”.
- (h) Section 6B—
After section 6B (1), insert:

(2) If an appeal to the Court of Appeal on the ground that the damages awarded in the action in respect of which the appeal is made were excessive or inadequate succeeds, the Court of Appeal may, on application, grant—

(a) to the respondent to the appeal; or

(b) to any one or more of several respondents to the appeal, an indemnity certificate in respect of the appeal.

(3) The grant or refusal of an indemnity certificate shall, except as provided by this section, be in the discretion of the Court of Appeal and no appeal shall lie against any such grant or refusal.

(4) The provisions of section 6 (4) (a) (i)–(iv) and (b) apply to and in respect of an indemnity certificate granted under this section in the same way as they apply to and in respect of an indemnity certificate granted under section 6.

(i) Section 6B—
Omit “(1A) Where a respondent to an appeal referred to in subsection (1) is a legally assisted person, he shall, for the purpose of”, insert instead “(5) If a respondent to an appeal is a legally assisted person, the person shall, for the purpose of exercising the discretion referred to in subsection (3) and for the purpose of”.

(j) Section 6B—

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SCHEDULE 1—AMENDMENTS—*continued*

Omit “(2) Subsection (1) does not apply where the respondent to the appeal is”, insert instead “(6) An indemnity certificate shall not be granted in favour of”.

(7) Sections 6C, 6D—

After section 6B, insert:

Payments not otherwise authorised by this Act

6C. (1) If—

- (a) a party to an appeal or other proceedings incurs or is liable to pay costs in the appeal or proceedings;
- (b) the party is not otherwise entitled to a payment from the Fund in respect of the costs; and
- (c) the Secretary is of the opinion that a payment from the Fund in respect of the costs, although not authorised by section 6, 6A or 6B, would be within the spirit and intent of those sections,

the Secretary may, with the concurrence of the Attorney General, pay from the Fund to the party such amount towards the costs as is assessed by the Secretary having regard to the circumstances of the case.

(2) A payment under this section shall not exceed \$10,000.

Reduction of payment if taxation of costs not contested

6D. The Secretary may, if—

- (a) an amount is payable from the Fund under this Act in relation to costs incurred in an appeal; and
- (b) taxation of the costs was not contested by the other party to the appeal,

reduce the amount payable to an amount that would, in the Secretary's opinion, have been payable had the taxation been contested.

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After section 7, insert:

Savings and transitional provisions

8. Schedule 1 has effect.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 8)

Determination of entitlement to payment before the commencement of the Suitors' Fund (Amendment) Act 1987

1. The entitlement of the following persons to a payment from the Fund shall be determined having regard to the provisions specified in respect of those persons:

- (a) a person who was granted an indemnity certificate under section 6 before the commencement of the Suitors' Fund (Amendment) Act 1987—the provisions of this Act as in force at the date of granting of the certificate;
- (b) a person to whom a payment was or is authorised under section 6A in respect of proceedings rendered abortive, or a new trial ordered, before the commencement of the Suitors' Fund (Amendment) Act 1987—the provisions of this Act as in force at the date the proceedings were rendered abortive or the new trial was ordered;
- (c) a person who was entitled to a payment from the Fund under section 6B in respect of a decision on an appeal on the ground that damages awarded were excessive or inadequate—the provisions of this Act as in force at the date of the decision.

Continuation of Act in relation to Privy Council appeals

2. (1) This Act applies to and in respect of an appeal from a decision of the Supreme Court made to the Queen in Council before the commencement of the Suitors' Fund (Amendment) Act 1987.

(2) For the purpose of subclause (1), this Act shall be deemed to have been amended—

- (a) by the insertion of the following matter at the end of section 6 (1) (b):
; or
(c) to the Queen in Council from a decision of the Supreme Court on a question of law,
- (b) by the insertion of the following paragraph after section 6 (2A) (b):
(b1) if it was granted in respect of an appeal to the Queen in Council from a decision of the Supreme Court—not exceed \$20,000; or

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SCHEDULE 1—AMENDMENTS—*continued*

(3) An application under section 6 shall not be granted in respect of an appeal to the Queen in Council unless it is made within 2 years after—

(a) the date of commencement of the Suitors' Fund (Amendment) Act 1987; or

(b) the date of the written decision on the appeal,
whichever is the later.
