

SUITORS' FUND (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Suitors' Fund Act 1951—

- (a) to extend the definition of "Court" to include prescribed tribunals or other bodies;
- (b) to empower the Secretary of the Attorney General's Department to expend surplus money from the Suitors' Fund for the purpose of improving court facilities and services, and towards the administrative costs under the Arbitration (Civil Actions) Act 1983;
- (c) to enable the Secretary of the Department to retain consultants to advise on the proper investment of the Fund;
- (d) to increase the maximum amounts payable from the Fund under the Act;
- (e) to extend the circumstances in which payments can be made from the Fund so as to cover proceedings in an appeal on a question of fact, as well as an appeal on a question of law; and
- (f) to allow the Secretary of the Department, with the concurrence of the Attorney General, to make payments from the Fund where a payment is not authorised by, but is within the spirit and intent of, the Act,

and to generally revise the provisions of the Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 gives effect to the Schedule of amendments to the Suitors' Fund Act 1951.

Schedule 1 (1) (a) substitutes the definition of "Court" so as to include any tribunals or other bodies prescribed by regulation.

Schedule 1 (1) (b) is a consequential amendment.

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Schedule 1 (1) (c) inserts in the Act a definition of "Secretary" of the Attorney General's Department (to include a Deputy Secretary or Assistant Secretary authorised by the Secretary to exercise the powers and perform the duties of the Secretary under the Act).

Schedule 1 (1) (d) is a consequential amendment.

Schedule 1 (1) (e) states that the Act applies to courts, and proceedings in courts, exercising State or federal jurisdiction.

Schedule 1 (2) (a) is a consequential amendment.

Schedule 1 (2) (b) inserts provisions authorising the payment out of the Suitors' Fund (with the concurrence of the Attorney General) of amounts considered by the Secretary to be surplus to the Fund's requirements. The amounts are to be paid into the Attorney General's Department Account for expenditure on improving court facilities and services and towards administrative costs under the Arbitration (Civil Actions) Act 1983.

Schedule 1 (2) (c) is a consequential amendment.

Schedule 1 (2) (d) inserts a provision authorising the Secretary to retain consultants to advise on the proper investment of the Fund. The consultants' fees are to be paid from the Fund.

Schedule 1 (3) amends the provision constituting the Secretary of the Department as a corporation sole consequent on the insertion in the Act of a definition of that office.

Schedule 1 (4) (a) substitutes section 6 (1) and restates the powers of the Supreme Court to grant an indemnity certificate following a successful appeal. It provides that a claim for payment out of the Fund can be made in respect of proceedings on an appeal to the Supreme Court on a question of fact, as well as on an appeal on a question of law, and proceedings on an appeal to the High Court on a question of law. References to appeals to the Privy Council have been omitted from the subsection.

Schedule 1 (4) (b) and (c) are consequential amendments.

Schedule 1 (4) (d) substitutes section 6 (2A) and increases the maximum amounts payable from the Fund in respect of proceedings on appeals. Where the proceedings relate to—

- (a) appeals to the Supreme Court—the amount is increased from \$3,000 to \$10,000;
- (b) appeals to the High Court—the amount is increased from \$5,000 to \$20,000;
- (c) appeals to any other Court—the amount is increased from \$3,000 to \$10,000.

References to appeals to the Privy Council have been omitted from the subsection.

Schedule 1 (4) (e) and (f) are consequential amendments.

Schedule 1 (5) (a) and (b) are consequential amendments.

Schedule 1 (5) (c) substitutes section 6A (1B) and increases from \$3,000 to \$10,000 the maximum amount payable from the Fund in cases where proceedings are aborted because of the death of the judge etc., or where a new trial is ordered.

Schedule 1 (6) (a) and (h) provide that, if an appeal on the ground that damages were excessive or inadequate succeeds, the respondent shall be entitled to a payment from the Fund only if the Court grants an indemnity certificate (instead of the respondent being automatically entitled).

Schedule 1 (6) (f) increases the maximum amount payable in such cases from \$3,000 to \$10,000.

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Schedule 1 (6) (b), (c), (d), (e), (g), (i) and (j) are consequential amendments.

Schedule 1 (7) (proposed section 6C) authorises the Secretary with the concurrence of the Attorney General to make payments from the Fund (up to \$10,000) where a payment, although not authorised by the Act, would be within the spirit and intent of the Act.

Schedule 1 (7) (proposed section 6D) authorises the Secretary to reduce the amount that would otherwise be payable from the Fund under the Act if taxation of the costs in respect of which the amount was payable was not contested by the other party.

Schedule 1 (8) inserts a Schedule of savings and transitional provisions.

Clause 1 of the Schedule provides for the determination of entitlement to payments from the Fund in respect of matters arising before the commencement of the proposed amendments.

Clause 2 of the Schedule provides that the Act will continue to apply to any appeals to the Privy Council which have not been finalised as at the date of repeal of the provisions relating to those appeals. However, an application for a payment from the Fund must be made within 2 years of the commencement of the amending Act or the decision on the appeal, whichever is the later.
