

# Suitors' Fund Act 1951 No 3

[1951-3]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)

### Authorisation

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# Suitors' Fund Act 1951 No 3



New South Wales

An Act to make further and better provision in respect of the liability for costs of certain litigation; to establish a Suitors' Fund to meet such liability; and for purposes connected therewith.

## 1 Name of Act and commencement

- (1) This Act may be cited as the *Suitors' Fund Act 1951*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

## 2 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

**Appeal** includes any motion for a new trial and any proceeding in the nature of an appeal.

**Corporation** has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

**Costs**, when used in relation to an appeal in respect of which an indemnity certificate is granted, includes:

- (a) the costs of the application for the indemnity certificate but, except as provided by paragraph (b) of this definition, does not include costs incurred in a court of first instance,
- (b) where a new trial is ordered upon the appeal, the costs of the first trial.

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

**Director-General** means:

- (a) the Director-General of the Attorney General's Department, or
- (b) any person employed within that Department who is authorised in writing by the Director-General to exercise the powers and perform the functions of the Director-General under this Act.

**Fund** means the Suitors' Fund established under this Act.

**Indemnity certificate** means an indemnity certificate granted under section 6 (1), (1A) or (1AA) or 6B.

**Land and Environment Court** means the Land and Environment Court constituted under the [Land and Environment Court Act 1979](#).

**Legally assisted person** has the meaning ascribed thereto in section 4 (1) of the [Legal Services Commission Act 1979](#).

**Sequence of appeals** means a sequence of appeals in which each appeal that follows next after another appeal in the sequence is an appeal against the decision in that other appeal.

**Supreme Court** means the Supreme Court of New South Wales or a judge thereof.

(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.

### 3 Suitors' Fund

- (1) There is to be established in the Attorney General's Department Account a "Suitors' Fund" into which shall be paid the moneys referred to in section 5 and from which shall be paid the amounts referred to in sections 6 (2), 6A, 6B and 6C.
- (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 Director-General to be surplus to the Fund's requirements,
  - (c) fees payable to consultants retained by the Director-General 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 used 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*.
- (3) The Fund shall, subject to this Act and the regulations, be under the direction, control and management of the Director-General.
  - (4) All moneys payable to the Fund under this Act and interest allowed thereon shall be made available to the Director-General for investment or for the purpose of paying the amounts referred to in subsection (2) of section 6 or any other amount properly payable out of the Fund.
  - (5) Interest at a rate to be determined by the Treasurer shall be allowed on the amount at the credit of the account first referred to in subsection (4).
  - (6) The Fund shall as far as practicable be invested in securities in which trustees are by law authorised to invest.
  - (7) Interest derived from the investment of the Fund shall form part thereof.
  - (8) The income of the Fund shall not be subject to taxation under any Act of this State.
  - (9) The Director-General may retain consultants to advise on the proper investment of the Fund.

#### **4 Director-General to be corporation sole**

- (1) For the purposes of the exercise and discharge of the powers, authorities, duties, functions and obligations conferred and imposed upon the Director-General by this Act, the Director-General is hereby declared to be a corporation sole under the name of "The Director-General of the Attorney General's Department".

The said corporation sole shall have perpetual succession and an official seal and may in the corporate name sue and be sued and shall be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property and of doing and suffering all such other acts and things as a body corporate may by law do and suffer.

- (2) The assets of the Fund shall be vested in the said corporation sole.
- (3) Where any property real or personal or the interest therein or charge thereon is vested in or is acquired by the said corporation sole, the same shall unless otherwise disposed of by the said corporation sole pass to and devolve on and vest in its successors.

- (4) The seal of the said corporation shall not be affixed to any instrument or writing except in the presence, or by the direction, of the Director-General who shall attest by the Director-General's signature the fact and date of the seal being so affixed.
- (5) The appointment of the Director-General and the Director-General's official seal shall be judicially noticed.
- (6) (Repealed)

## **5 Contributions to the Fund**

- (1) As soon as practicable after the last day of each month, there shall be paid to the Fund such percentage, not exceeding in any case ten parts per centum, of the fees of court collected in any court or in any jurisdiction of any court which are paid into the Consolidated Revenue Fund during the month ending on that day, as may be fixed by the Governor, upon the recommendation of the Colonial Treasurer, by proclamation published in the Gazette with respect thereto.

The Governor may from time to time in like manner vary or revoke any such proclamation.

- (2) Any proclamation under subsection (1) may fix different percentages in respect of:
  - (a) different courts,
  - (b) different jurisdictions of the same court,
  - (c) courts held at different places.
- (3) Any amounts payable to the Fund under subsection (1) shall be paid out of the Consolidated Revenue Fund, and are hereby specially appropriated.

## **6 Costs of certain appeals**

- (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.
- (1A) Where an appeal against the decision of a court to the Industrial Relations Commission of New South Wales or to the District Court of New South Wales on a question of law succeeds, that Commission or Court, as the case may be, may, upon application made in that behalf, 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.

(1AA) Where an appeal under section 56A of the *Land and Environment Court Act 1979* to the Land and Environment Court on a question of law succeeds, that Court may, upon application made in that behalf, 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.

(1B) For the purposes of this section, a taxing officer of a court shall, when acting as such a taxing officer, be deemed to be exercising the jurisdiction of a court of first instance.

(2) Where a respondent to an appeal has been granted an indemnity certificate, the certificate shall entitle the respondent to be paid from the Fund:

(a) an amount equal to the appellant's costs of:

(i) the appeal in respect of which the certificate was granted, and also

(ii) where that appeal is an appeal in a sequence of appeals, any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted,

ordered to be paid and actually paid by the respondent: Provided that where the Director-General is satisfied that the respondent is unable through lack of means to pay the whole of those costs or part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, or where those costs or part thereof have not been paid by the respondent and the Director-General is satisfied that the respondent cannot be found after such strict inquiry and search as the Director-General may require or that the respondent unreasonably refuses or neglects to pay them, the Director-General may, if so requested by the appellant or the respondent, direct in writing that an amount equal to those costs or to the part of those costs not already paid by the respondent be paid from the Fund for and on behalf of the respondent to the appellant and thereupon the appellant shall be entitled to payment from the Fund in accordance with the direction and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction,

(b) fifty per centum or such other percentage as may be prescribed (at the time when the indemnity certificate is granted) in lieu thereof by the Governor by proclamation published in the Gazette of the amount payable from the Fund pursuant to paragraph (a) or, where no amount is so payable, an amount equal to the costs of:

(i) the appeal in respect of which the certificate was granted, and also

(ii) where that appeal is an appeal in a sequence of appeals, any appeal or

appeals in the sequence that preceded the appeal in respect of which the certificate was granted,

as taxed, incurred by the respondent and not ordered to be paid by any other party: Provided that where an amount is payable from the Fund pursuant to paragraph (a), but the Director-General directs that the costs of the appeal or appeals referred to in subparagraph (i) or in subparagraphs (i) and (ii) incurred by the respondent and not ordered to be paid by any other party be taxed at the instance of the respondent or those costs are, without such a direction, taxed at the instance of the respondent, the amount payable from the Fund under this paragraph shall be the amount equal to those costs as so taxed, and

- (c) where the costs referred to in paragraph (b) are taxed at the instance of the respondent, an amount equal to the costs incurred by the respondent in having those costs taxed.

Notwithstanding the foregoing provisions of this subsection:

- (i) where the costs referred to in paragraph (b) are taxed at the instance of the respondent, the aggregate of the amounts payable from the Fund pursuant to that paragraph and paragraph (c) shall not exceed the amount payable from the Fund pursuant to paragraph (a).

- (ii) (Repealed)

(2A) The maximum amount payable from the Fund for any one appeal is:

- (a) \$20,000 in the case of an appeal to the High Court, or  
(b) \$10,000 in the case of any other appeal.

(2B) If more than one indemnity certificate has been issued in connection with the same appeal, the maximum amount payable from the Fund with respect to any one indemnity certificate is:

- (a) an amount equal to the maximum amount payable from the Fund for that appeal divided by the number of indemnity certificates issued in connection with that appeal, or  
(b) subject to subsection (2A), such other amount as may be determined by the court by which the indemnity certificate is issued.

(2C) Subsections (2A) and (2B) do not apply to appeals lodged before the commencement of those subsections.

(3) An indemnity certificate granted in respect of an appeal to the respondent to the appeal, being an appeal in a sequence of appeals, shall be vacated if:



- (a) in a later appeal in the sequence the successful party is the one to whom the indemnity certificate was granted, or
- (b) an indemnity certificate is granted in respect of a later appeal in the sequence and the respondent to the earlier appeal is a party to the later appeal.

(4)

- (a) An indemnity certificate granted in respect of an appeal to the respondent to the appeal shall have no force or effect:
  - (i) where a time is limited for appealing against the decision in the appeal—during the time limited for appealing against the decision in the appeal,
  - (ii) where an appeal lies against the decision in the appeal but no time is so limited—until an application for leave to appeal against the decision in the appeal has been determined and, where leave is granted, the appeal is instituted, or until the respondent lodges with the Director-General an undertaking in writing by the respondent that the respondent will not seek leave to appeal, or appeal pursuant to the leave granted, against the decision in the appeal, whichever first happens,
  - (iii) notwithstanding anything contained in subparagraph (ii) where the respondent gives the undertaking referred to in that subparagraph and thereafter seeks leave to appeal, or appeals, against the decision in the appeal—until the application for leave has been determined and, where leave is granted, the appeal is instituted,
  - (iv) notwithstanding anything contained in the foregoing provisions of this paragraph where the decision in the appeal is the subject of an appeal—during the pendency of the appeal.

Where the appeal and a later appeal or later appeals form a sequence of appeals and the indemnity certificate has not been vacated under subsection (3):

- (v) the reference to the decision in the appeal in the foregoing provisions of this paragraph shall be construed as including a reference to the decision in the later appeal or in each such later appeal, as the case may be, and
  - (vi) the reference to the pendency of the appeal in those provisions shall be construed as including a reference to the pendency of the later appeal or of each such later appeal, as the case may be.
- (b) Where an undertaking has been given by a respondent under the foregoing provisions of this subsection and thereafter the respondent seeks leave to appeal or appeals, as the case may be, against the decision to which the undertaking relates, the respondent shall, upon demand made by the Director-General, pay to

the Director-General any amount paid to the respondent, or for and on behalf of the respondent, under the indemnity certificate or, if the respondent notifies the Director-General in writing of the respondent's seeking leave to appeal or of the respondent's appeal, as the case may be, any amount paid to the respondent, or for and on behalf of the respondent, under the indemnity certificate before the respondent gave the notification, and the amount concerned may be recovered by the Director-General from the respondent as a debt in any court of competent jurisdiction.

Any amount paid to, or recovered by, the Director-General under this subsection shall be paid by the Director-General into the Fund.

- (c) Nothing in this subsection affects the operation of subsection (3).
- (5) The grant or refusal of an indemnity certificate shall, except as provided by subsections (5A), (6) and (7), be in the discretion of the Supreme Court, Land and Environment Court, Industrial Relations Commission of New South Wales or District Court of New South Wales, as the case may be, and no appeal shall lie against any such grant or refusal.
- (5A) Where a respondent to an appeal referred to in subsection (1), (1A) or (1AA) is a legally assisted person, the respondent shall, for the purpose of exercising the discretion referred to in subsection (5) and for the purpose of determining the amount which the respondent is entitled to be paid from the Fund:
- (a) be deemed not to be a legally assisted person, and
  - (b) be deemed to have incurred such costs as have been incurred by any other person in the course of acting for the respondent as a legally assisted person.
- (6) An indemnity certificate shall not be granted in respect of any appeal from proceedings begun in a court of first instance before the commencement of this Act.
- (7) An indemnity certificate shall not be granted in favour of:
- (a) the Crown,
  - (b) a corporation that has a paid-up share capital of two hundred thousand dollars or more, or
  - (c) a corporation that does not have such a paid-up share capital but that, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, is related to a body corporate that has such a paid-up share capital, unless the appeal to which the certificate relates was instituted before the commencement of the *Legal Assistance and Suitors' Fund (Amendment) Act 1970*.

## 6A Costs of proceedings not completed by reason of death of judge etc

- (1) Where on or after the day on which Her Majesty's assent to the *Suitors' Fund (Amendment) Act 1959* is signified:
- (a) any civil or criminal proceedings are rendered abortive by the death or protracted illness of the judge, magistrate or justice before whom the proceedings were had,
    - (a1) any civil or criminal proceedings are rendered abortive for the purposes of this paragraph by section 46A (Appeal against damages may be heard by 2 Judges) of the *Supreme Court Act 1970* or section 6AA (Appeal against sentence may be heard by 2 judges) of the *Criminal Appeal Act 1912*, because the judges who heard the proceedings were divided in opinion as to the decision determining the proceedings,
  - (b) an appeal on a question of law against the conviction of a person (in this section referred to as the appellant) convicted on indictment is upheld and a new trial is ordered, or
  - (c) the hearing of any civil or criminal proceedings is discontinued and a new trial ordered by the presiding judge, magistrate or justice for a reason not attributable in any way to disagreement on the part of the jury, where the proceedings were with a jury, or to the act, neglect or default, in the case of civil proceedings, of all or of any one or more of the parties thereto or their counsel or attorneys, or, in the case of criminal proceedings, of the accused or the accused's counsel or attorney, and the presiding judge, magistrate or justice grants a certificate (which certificate the presiding judge, magistrate or justice is hereby authorised to grant):
    - (i) in the case of civil proceedings—to any party thereto stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to disagreement on the part of the jury, where the proceedings were with a jury, or to the act, neglect or default of all or of any one or more of the parties to the proceedings or their counsel or attorneys, or
    - (ii) in the case of criminal proceedings—to the accused stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to disagreement on the part of the jury or to the act, neglect or default of the accused or the accused's counsel or attorney,

and any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, incurs additional costs (in this section referred to as **additional costs**) by reason of the new trial that is had as a consequence of the proceedings being so rendered abortive or as a consequence of the order for a new trial, as the case may be, then the Director-General may, upon application made in that behalf, authorise the payment from the Fund to the party or the accused or the

appellant, as the case may be, of the costs (in this section referred to as **original costs**), or such part thereof as the Director-General may determine, incurred by the party or the accused or the appellant, as the case may be, in the proceedings before they were so rendered abortive or the conviction was quashed or the hearing of the proceedings was so discontinued, as the case may be.

(1A) Where, in the opinion of the Director-General:

- (a) the Director-General would, but for this subsection, not be entitled to authorise payment of an amount to a person under subsection (1) because that person incurred neither original costs nor additional costs by reason only of the fact that that person was a legally assisted person, and
- (b) that person would have incurred original costs and additional costs had that person not been a legally assisted person,

subsection (1) shall apply to and in respect of that person as if that person had not been a legally assisted person and as if that person had incurred such original costs and additional costs as the Director-General determines:

Provided that the Director-General may, in lieu of authorising payment under that subsection of an amount to that person, authorise payment of that amount to such person or persons as in the Director-General's opinion is or are entitled to receive payment thereof.

(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).

(2) No amount shall be paid from the Fund under this section to:

- (a) the Crown,
- (b) a corporation that has a paid-up share capital of two hundred thousand dollars or more, or
- (c) a corporation that does not have such a paid-up share capital but that, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, is related to a body corporate that has such a paid-up share capital, unless the proceedings were rendered abortive or the new trial was ordered (as referred to in subsection (1)) before the commencement of the *Legal Assistance and Suitors' Fund (Amendment) Act 1970*.

**6B Costs of certain appeals on ground that damages were excessive or inadequate**

- (1) Where 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 respondent to the appeal or any one or more of several respondents to the appeal, shall (if granted an indemnity certificate under subsection (2)) be entitled to be paid from the Fund:
- (a) an amount equal to the costs of the appellant in the appeal ordered to be paid and actually paid by the respondent: Provided that where the Director-General is satisfied that the respondent is unable through lack of means to pay the whole of those costs or part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, or where those costs or part thereof have not been paid by the respondent and the Director-General is satisfied that the respondent cannot be found after such strict inquiry and search as the Director-General may require or that the respondent unreasonably refuses or neglects to pay them, the Director-General may, if so requested by the appellant or the respondent, direct in writing that an amount equal to those costs or to the part of those costs not already paid by the respondent be paid from the Fund for and on behalf of the respondent to the appellant and thereupon the appellant shall be entitled to payment from the Fund in accordance with the direction and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction,
  - (b) fifty per centum or such other percentage as may be prescribed (at the time when the indemnity certificate is granted) in lieu thereof by the Governor by proclamation published in the Gazette of the amount payable from the Fund pursuant to paragraph (a) or, where no amount is so payable, an amount equal to the costs of the appeal, as taxed, incurred by the respondent and not ordered to be paid by any other party: Provided that where an amount is payable from the Fund pursuant to paragraph (a), but the Director-General directs that the costs of the appeal incurred by the respondent and not ordered to be paid by any other party be taxed at the instance of the respondent or those costs are, without such a direction, taxed at the instance of the respondent, the amount payable from the Fund under this paragraph shall be the amount equal to those costs as so taxed, and
  - (c) where the costs referred to in paragraph (b) are taxed at the instance of the respondent, an amount equal to the costs incurred by the respondent in having those costs taxed.

Notwithstanding the foregoing provisions of this subsection:

- (i) where the costs referred to in paragraph (b) are taxed at the instance of the respondent, the aggregate of the amounts payable from the Fund pursuant to that paragraph and paragraph (c) shall not exceed the amount payable from the Fund

pursuant to paragraph (a),

- (ii) the amount payable from the Fund in respect of the appeal shall not in any case exceed the sum of \$10,000 or such other amount as may be fixed (at the time when the indemnity certificate is granted) in lieu thereof by the regulations under this Act.
- (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.
- (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 determining the amount which the respondent is entitled to be paid from the Fund:
- (a) be deemed not to be a legally assisted person, and
  - (b) be deemed to have incurred such costs as have been incurred by any other person in the course of acting for the respondent as a legally assisted person.
- (6) An indemnity certificate shall not be granted in favour of:
- (a) the Crown,
  - (b) a corporation that has a paid-up share capital of two hundred thousand dollars or more, or
  - (c) a corporation that does not have such a paid-up share capital but that, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, is related to a body corporate that has such a paid-up share capital, unless the appeal was instituted before the commencement of the *Legal Assistance and Suitors' Fund (Amendment) Act 1970*.

### **6C Payments not otherwise authorised by this Act**

(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 Director-General 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 Director-General 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 Director-General having regard to the circumstances of the case.

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

### **6D Reduction of payment if taxation of costs not contested**

The Director-General 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 Director-General's opinion, have been payable had the taxation been contested.

## **7 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which, by this Act, are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1) the regulations may make provision with respect to the manner of operating on the Fund and the custody of documents evidencing investment of the Fund and with respect to the taxation, for the purposes of this Act, of the costs of an appeal incurred by a respondent and with respect to all matters relating thereto, including but without limiting the generality of the foregoing provisions of this subsection:
  - (a) the specification of the principles to be followed in the preparation of a bill of those costs and in the taxation of such a bill,
  - (b) the specification of who shall be the taxing officer of such a bill and in relation

thereto that different persons or officers shall be the taxing officers in respect of bills that relate to different courts or different jurisdictions of a court,

(c) the persons to be served with a copy of such a bill.

(3) (Repealed)

## 8 Savings and transitional provisions

Schedule 1 has effect.

### Schedule 1 Savings and transitional provisions

(Section 8)

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

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.

#### 2 Continuation of Act in relation to Privy Council appeals

- (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

(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.

### **3 Transfer of money consequent on enactment of *Courts Legislation Further Amendment Act 1998***

(1) As soon as practicable after the commencement of Schedule 9 [1] to the amending Act, the balance standing to the credit of the account which, immediately before that commencement, was required by section 3 to be established in the Special Deposits Account in the Treasury, is to be transferred to the Attorney General's Department Account and the account from which the balance is transferred is to be closed.

(2) The account established under subclause (1) is a continuation of, and is taken to be the same fund as, the Suitors' Fund established and operating under section 3 of this Act immediately before the commencement of Schedule 9 [1] to the amending Act.

(3) In this clause, **amending Act** means the *Courts Legislation Further Amendment Act 1998*.