

SUITORS' FUND AMENDMENT BILL 2017

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [6.15 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce this bill, which, together with the Suitors' Fund Amendment (Levy) Bill 2017, will ensure the suitors' fund's ongoing financial sustainability.

The Suitors' Fund Act 1964 of Western Australia establishes the suitors' fund to assist in the payment of costs to litigants in certain circumstances in which decisions are upset on appeal or proceedings are rendered abortive through no fault of their own. The fund is a pool of money made up of contributions from litigants, together with interest accruing from investment. Put broadly, the suitors' fund sets up an insurance scheme for litigants should unforeseen situations arise—for example, in a criminal case if proceedings are discontinued and a new trial is ordered for reasons completely unrelated to the conduct of the parties. In such cases, the accused may be able to apply to the Appeal Costs Board, which administers the suitors' fund, for a payment to assist in meeting the additional costs incurred by the new trial.

The suitors' fund is financed through the imposition of a levy of 20c on initiating processes in criminal and civil proceedings in the Magistrates, District and Supreme Courts. The cap on that amount has not been updated since 1965, when the Decimal Currency Act 1965 necessitated that the reference in the Suitors' Fund Act 1964 to the maximum sum of "two shillings" be amended to "20 cents". Regulation 15 of the Suitors' Fund Regulations 1965 has prescribed the levy as 20c since 1980. In light of inflation over the last four decades and increases in court fees, it is not surprising, given the inflexible cap of 20c, that the suitors' fund has not been able to meet its obligations under the act from funds accumulated by the collection of the levy alone.

Section 4(6) of the act allows for the provision of advances from Treasury when there are insufficient funds in the suitors' fund. The Appeal Costs Board has already had to rely on successive loans from the Treasurer's advance account to make up the deficiency. For example, in the 2016–17 financial year, costs awarded from the suitors' fund amounted to \$136 582, while funds raised totalled only \$42 879. To meet the shortfall, the suitors' fund made use of a Treasurer's advance of \$2 million, which was provided until 30 June 2015. In November 2016, the suitors' fund received an increase of \$500 000 in the Treasurer's advance to make a total balance owing of \$2.5 million.

Section 4(7)(a) of the act provides that any amount advanced to the suitors' fund by the Treasurer shall be subsequently repaid from moneys standing to the credit of the suitors' fund when money is available to make the repayment. The Appeal Costs Board has advised that the Treasurer's advance is unlikely to ever be repaid unless steps are taken to increase the levy to an amount that better reflects the expenditure from the suitors' fund. The Suitors' Fund Amendment Bill 2017 seeks to address this funding deficiency by amending the act to remove the current cap on the levy and provide for the quantum of the levy to be prescribed in regulations. The bill will also provide for different amounts to be prescribed for different originating processes or classes of process. This will allow for greater flexibility in setting levy amounts that are appropriate to sustain the operation of the suitors' fund, while remaining proportionate to the quantum of costs in different jurisdictions.

As the amendments relate to the imposition of a tax, a separate bill is required for this to occur due to the operation of subsection 46(7) of the Constitution Acts Amendment Act 1899. I therefore draw the attention of the house to the Suitors' Fund Amendment (Levy) Bill 2017, which is introduced simultaneously with this bill.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 1777.]

Debate adjourned, pursuant to standing orders.