

SUITORS' FUND AMENDMENT BILL 2017

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.R. QUIGLEY (Butler — Attorney General) [1.19 pm]: I move —

That the bill be now read a second time.

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

The Suitsors' Fund Act 1964 (WA) establishes the Suitsors' 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 the investment. Put broadly, the Suitsors' 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 Suitsors' Fund, for a payment to assist in meeting the additional costs incurred by the new trial.

The Suitsors' 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 the amount has not been updated since 1965, when the Decimal Currency Act 1965 (WA) necessitated that the reference in the Suitsors' Fund Act 1964 to the maximum sum of "two shillings" be amended to "20 cents". Regulation 15 of the Suitsors' Fund Regulations 1965 (WA) 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 Suitsors' 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 Suitsors' Fund. The Appeal Costs Board has already had to rely on successive loans from the Treasurer's advance account to make up for the deficiency. For example, in the 2016–17 financial year, costs awarded from the Suitsors' Fund amounted to \$136 582, while funds raised totalled only \$42 879. To meet the shortfall, the Suitsors' Fund made use of a Treasurer's advance of \$2 million which was provided until 30 June 2015. In November 2016, the Suitsors' 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 Suitsors' Fund by the Treasurer shall be subsequently repaid from moneys standing to the credit of the Suitsors' 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 Suitsors' Fund. The Suitsors' 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 Suitsors' 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 (WA). I therefore draw the attention of the house to the Suitsors' Fund Amendment (Levy) Bill 2017, which is introduced simultaneously with this bill.

I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam**.