

## SUITORS' FUND AMENDMENT BILL 2017

### EXPLANATORY MEMORANDUM

#### Overview of the Bill

The Suitors' Fund Amendment Bill 2017 amends the *Suitors' Fund Act 1964 (WA)* to remove reference to the maximum amount that may be imposed on an initiating process to finance the Suitors' Fund, and to provide that the levy to be imposed be prescribed in regulations. This will allow for greater flexibility in setting an appropriate levy to finance the Suitors' Fund and to allow the Appeal Costs Board to meet its ongoing obligations under the *Suitors' Fund Act 1964*.

#### Clause 1 – Short title

This clause provides that the short title is the *Suitors' Fund Amendment Act 2017*.

#### Clause 2 – Commencement

This clause provides that sections 1 and 2 of the Act will come into operation on the day the Act receives Royal Assent, and that the rest of the Act will come into operation on a day fixed by proclamation.

This provision allows for the continued operation of the current levy amount until a new levy amount is prescribed in regulations, the date of which will coincide with the date fixed in a proclamation for the operation of the relevant sections of the Act.

#### Clause 3 – Act amended

This clause provides that the Bill amends the *Suitors' Fund Act 1964*.

#### Clause 4 – Section 5 amended

This clause amends the wording in section 5(1) of the *Suitors' Fund Act 1964* which will have the effect of deleting reference to a fixed maximum amount and providing for the levy to be prescribed in regulations.

The clause inserts two new subsections:

- subsection 5(3) - to permit the regulations to prescribe different levy amounts for different processes or classes of process. This is to provide flexibility in setting an appropriate levy amount for different jurisdictions that is proportionate to the quantum of costs in that jurisdiction.
- subsection 5(4) - to remove any doubt regarding the application of section 43 of the *Interpretation Act 1984 (WA)* which deals with the power to make subsidiary legislation.

This clause also includes a note to change the heading of section 5 to read "Levy to be paid to courts".

#### Clause 5 – Section amended

Clause 5(1) deletes the word "fee" in section 6(1) and inserts the word "levy".

Clause 5(2) deletes the words “additional fee” in section 6(2) and inserts the word “levy”.

These amendments are in line with current drafting practice which describes as a ‘levy’ any general imposition which is in the nature of a tax.

This clause also includes a note to change the heading of section 6 to read:

“Department to advise Treasurer of number of processes upon which levy is payable”.