

TRUST ACCOUNTS AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The main objects of this Bill are to :—

- (a) amend the *current Act—Trust Accounts Act 1973*—to enable the transfer of auditing functions of solicitors' trust accounts to an appropriate supervising entity—the Queensland Law Society Inc;
- (b) identify and update relevant penalty provisions in the current Act;
- (c) remove unnecessary provisions and insert appropriate references to other statutes in the current Act;
- (d) enable transfer of moneys from a trust account by way of electronic funds transfer;
- (e) simplify procedures to deal with unclaimed monies in trust accounts.

Reasons for the objectives and how they will be achieved

The *Trusts Accounts Act 1973* is a statute which provides for the keeping of certain books of account and records by trustees, the establishment and management of trust accounts by trustees and the examination and audit of those accounts for the purpose of accountability. This statute primarily imposes duties on solicitors and accountants both of whom engage in a profession that requires the daily maintenance and operation of trust accounts.

The major reasons for the preparation of this Bill are that the *Trusts Accounts Act 1973* has only been infrequently amended since its enactment

and that the Government has decided to allow for “self regulation” of the auditing function of solicitors’ trust accounts by the Queensland Law Society Inc. In order that the objects of this Bill be achieved, it is necessary to undertake this legislative amendment of the current Act.

Administrative cost to Government of implementation

The Government has in anticipation of carrying out the complete transfer of auditing functions of solicitors’ trust accounts to the Queensland Law Society Inc. readjusted its operational staff in this area by consequential redeployment of some of those personnel. It is anticipated that there will not be any additional costs to Government.

It should be noted however that the Government retains its statutory ability to “claw back” this self-regulation by Queensland Law Society Inc. in the event that it is shown to be deficient.

Fundamental legislative principles

This Bill does not contain any breaches of fundamental legislative principles.

Consultation

The following organisations have been consulted in relation to the content of this Bill:—

- Queensland Law Society Inc
- Australian Society of Certified Practising Accountants
- Institute of Chartered Accountants in Australia
- The Public Trustee

NOTES ON PROVISIONS

Short Title

Clause 1 sets out the short title of the Act.

Clause 2 is the commencement provision which provides that the Act commences on a day to be fixed by proclamation.

Clause 3 provides for the amendment of the *Trust Accounts Act 1973*.

Clause 4 amends section 4 of the Act by changing the heading and inserting new definitions of fundamental terms and amending existing definitions.

Clause 5 inserts a new provision—section 4E—which provides for the definition of the term “supervising entity”. This provision enables the making of a regulation declaring a particular entity to be a supervising entity for the trustee. It is necessary that this provision operate in this manner because it allows the Executive to appoint the appropriate supervising entity in a decisive and timely manner as well as anticipating any future self regulation within the accountancy profession.

Clause 6 amends section 5 of the statute by inserting the term “supervising entity” and deleting the term “chief executive” where necessary; rephrasing sections 5(5) and (6); and inserting appropriate penalties.

Clause 7 provides for the amendment of section 6 by inserting appropriate penalties; rephrasing section 6(3); and updating the reference to the *Evidence Act 1977*.

Clause 8 amends section 7 of the Act by inserting a new provision allowing the trustee to immediately pass on third party cheques under certain conditions; rephrasing section 7(4) and omitting section 7(5) which has since been expended.

Clause 9 provides for the insertion of an appropriate penalty in section 8.

Clause 10 makes a technical amendment to section 11 of the statute by inserting the relevant reference to those provisions in the Act.

Clause 11 inserts an appropriate penalty in section 12 of the Act as well as inserting new sections 12(5),(6) and (7) which enable the payment of monies from a trustee’s trust account by way of electronic funds transfer after certain conditions are satisfied.

Clause 12 amends section 14 of the Act by rephrasing and inserting

appropriate penalties in sections 14(1), (2) and (3).

Clause 13 strengthens section 15 of the Act which deals with the qualifications, resignation and termination of appointment of auditors by making inserting a requirement to hold a “current practising certificate” and providing for links to the supervising entity. It also inserts appropriate penalties in section 15.

Clause 14 amends section 16 of the Act to take into account the new definition of the term “financial period” [as contained in clause 4]; the insertion of appropriate penalties; and the insertion of provisions which provide for the role of the supervising entity.

Clauses 15, 16 and 17 amend sections 17, 18 and 19 of the statute respectively by inserting the role of the supervising entity and inserting appropriate penalties.

Clause 18 provides for the amendment of section 20 of the Act by deleting the reference to the chief executive; inserting the role of the supervising entity; and inserting an appropriate penalty.

Clause 19 amends section 21 of the Act by making a technical amendment.

Clauses 20 and 21 insert the role of the supervising entity in sections 23 and 25 of the Act.

Clause 22 amends section 26(5) by rephrasing the language used in that section and inserting an appropriate penalty.

Clause 23 amends section 27 of the statute by deleting the term “chief executive” and inserting the role of the supervising entity.

Clause 24 inserts a new provisions—sections 28A and B—which set out the duties of the supervising entity namely to report annually to the Minister and to report suspected offences.

Clause 25 revamps section 30 of the Act by deleting the reference to the role of the “chief executive” and inserting the role of the supervising entity as well as inserting a penalty.

Clause 26 provides for the amendment of section 33 of the Act to enable a trustee to deal directly with the Public Trustee concerning unclaimed property as well as inserting a penalty.

Clause 27 amends section 34(9) of the Act by rephrasing it to insert the

term “financial institution” which is defined in section 36 of the *Acts Interpretation Act 1954*.

Clause 28 makes minor technical amendments to section 36 of the Act.

Clause 29 omits section 38 and 39 of the Act because it is not necessary to retain these provisions since there are amendments to various sections throughout the Act to expressly identify the offence provisions. However, a new section 38 is inserted to confirm that proceedings for an offence against the statute shall be dealt with summarily under the *Justices Act 1886*.

Clause 30 inserts a transitional provision [section 42] as well as a requirement that the chief executive give to the supervising entity information to enable it to perform its functions under the Act.

Schedule

MINOR AMENDMENTS

Clause 3 of this Bill provides for the amendment of the Act which are set out in the attached Schedule. These amendments insert various penalties in the offence provisions of the Act.