

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Shannon Fentiman MP

Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020

Objectives of the Amendments

The Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 (the Bill) includes amendments to the *Legal Profession Act 2007* (LPA) in relation to the Legal Practitioners' Fidelity Guarantee Fund (the Fund). The Fund was established to provide a source of compensation for persons who have lost trust money or property due to a dishonest default by a solicitor or law practice. The Queensland Law Society (QLS) administers the Fund under part 3.6 of the LPA.

Currently, section 364 of the LPA provides that amounts may be paid out of the Fund for certain purposes, including the payment of claims, legal expenses incurred in relation to the Fund, and expenses incurred in the administration of the Fund.

The objective of the amendments during consideration in detail of the Bill (ACiDs) is to allow payments to be made from the Fund from 1 July 2021 for measures directed to reducing the risk of defaults by solicitors or law practices and subsequent claims against the Fund.

Achievement of the Objectives

The ACiDs achieve these objectives by permitting payments from the Fund for programs or tools to assist the QLS or law practices in identifying defaults and educational programs for law practices aimed at improving compliance with part 3.3 (Trust money and trust accounts) of the LPA. The amount of any payments from the Fund for such measures is limited to an amount prescribed by regulation.

The QLS will be required to report to the Minister under replaced section 367 of the LPA on or before 30 September of each year for the previous financial year on its use of the additional payments, amounts paid for claims made against the Fund, the balance of the Fund and any other matters prescribed by regulation.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways for achieving these policy objectives.

Estimated Cost for Government Implementation

There will be no cost for government in implementing the ACiDs.

Consistency with Fundamental Legislative Principles

The fundamental legislative principles require that legislation has sufficient regard to the institution of Parliament (section 4(2)(b) of the *Legislative Standards Act 1992* (LSA)). Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons (section 4(4)(a) of the LSA), and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (section 4(4)(b) of the LSA).

Allowing a regulation to prescribe the amount of additional payments and matters to be reported to the Minister will facilitate consideration of an appropriate amount for additional payments and appropriate reporting requirements taking into account the balance of the Fund and the prevailing circumstances at the time. Further, a regulation, when made, will sufficiently subject the exercise of the delegated legislative power to the scrutiny of the Legislative Assembly.

Consultation

The ACiDs were requested by the QLS and recommended by the Legal Affairs and Safety Committee in its Report on the Bill.

NOTES ON PROVISIONS

Amendment 1 amends the commencement clause in the Bill to commence part 6 of the Bill, other than sections 24A (Amendment of s 364 (Expenditure from fund)) and 24B (Replacement of s 367 (Minister may require report about fund)), on 1 May 2021. Sections 24A and 24B will commence on 1 July 2021.

Amendment 2 makes a minor consequential amendment.

Amendment 3 amends section 364 of the LPA (Expenditure from fund) and replaces section 367 of the LPA (Minister may require report about fund). The amendment to section 364 allows for payments from the Fund for programs or tools to assist the QLS or law practices in identifying defaults and educational programs for law practices aimed at improving compliance with part 3.3 (Trust money and trust accounts). The amount of any payments from the Fund for such measures is limited to an amount prescribed by regulation.

New section 367 (Reporting requirements) requires the QLS to report to the Minister on or before 30 September of each year for the previous financial year on amounts paid from the Fund for a matter mentioned in section 364(1)(a), its use of the additional payments for a matter mentioned in new section 364(1)(g), the balance of the Fund, and any other matters prescribed by regulation.