

# Legal Profession Amendment Regulation 2021

Explanatory notes for SL 2021 No. 39

Made under the

*Legal Profession Act 2007*

## General Outline

### Short Title

*Legal Profession Amendment Regulation 2021*

### Authorising law

Section 715 of the *Legal Profession Act 2007*

### Policy objectives and the reasons for them

The Legal Practitioners' Fidelity Guarantee 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 law practice. The Queensland Law Society (QLS) administers the Fund under part 3.6 of the *Legal Profession Act 2007* (LPA).

Section 396(2) of the LPA currently provides that the QLS must not pay amounts from the Fund which are more than the amount prescribed by regulation (the statutory caps). Under section 76 of the *Legal Profession Regulation 2017* (LPR), the statutory caps are set at \$200,000 for a single claim and \$2 million for all claims made in relation to a single law practice. The LPA further provides that, despite section 396(2), the QLS may authorise payment of a larger amount if satisfied that it would be reasonable to do so after taking into account the position of the fidelity fund and the circumstances of the particular case.

The statutory caps under section 396 of the LPA were introduced as protection against an extraordinary claim against the Fund which, if paid in full, would result in the Fund being exhausted to the detriment of subsequent claims. The *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* (Amendment Act), which received assent on 7 April 2021, includes amendments to section 396 which commence on 1 May 2021 and will clarify the operation of the statutory caps. The amendments were progressed in response to concerns that the QLS had, for a period, applied the statutory caps to all claims. As a result of this approach, a number of claimants did not have their claims against the Fund paid in full.

As part of the Amendment Act, new section 787 will also be inserted to authorise the full payment of any claim not paid in full since the commencement of the LPA due to the previous operation of the statutory caps. Under new section 787, which will also commence on 1 May 2021, the QLS must also pay the claimant interest on the amount payable from the Fund, which is calculated at the rate prescribed by regulation from the day the capped payment was made.

In addition to clarifying the operation of the statutory caps and authorising the repayment of historical claims, the Amendment Act also includes amendments to section 364 of the LPA which commence on 1 July 2021 and will permit 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 programs is limited to an amount prescribed by regulation.

The main policy objectives of the *Legal Profession Amendment Regulation 2021* (Amendment Regulation) are to:

- prescribe the maximum amount that may be paid out of 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;
- update section 76 of the LPR to reflect changes made by the Amendment Act to section 396 of the LPA to clarify the operation of the statutory caps; and
- prescribe the interest rate applying to amounts payable from the Fund under section 787 of the LPA.

## **Achievement of policy objectives**

The Amendment Regulation achieves these policy objectives by amending the LPR to:

- prescribe \$750,000 as the maximum amount that may be paid from the Fund in any financial year 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;
- update section 76 of the LPR to reflect changes made by the Amendment Act to section 396 of the LPA to clarify the operation of the statutory caps (with the amounts of the caps unchanged), and provide guidance to the QLS as to how claims must be apportioned where multiple claims are made in relation to a single law practice; and
- prescribe that the interest rate applying to amounts payable from the Fund under section 787 of the LPA is the bank bill yield rate, calculated on a daily basis for each day the interest is to be paid.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objectives of the LPA.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The benefit of the Amendment Regulation is that it will provide a maximum annual amount that may be paid from the Fund for programs aimed at preventing or reducing the incidence of trust account defaults, thereby reducing the risk of subsequent claims against the Fund.

The Amendment Regulation will also allow claimants, who were not paid in full due to the previous operation of the statutory caps, to receive interest on the unpaid amounts at a prescribed rate from the date the capped payment was made.

There will be no costs for government in implementing the Amendment Regulation. While there will be costs for the QLS in the payment of interest to eligible claimants, those interest payments are not expected to affect the sufficiency of the Fund to meet its future liabilities.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with fundamental legislative principles.

## **Consultation**

The QLS has been consulted and the issues raised were considered in finalising the Amendment Regulation.

The Amendment Regulation falls within agency-assessed exclusion category (c) 'Regulatory proposals for the internal management of the public sector or a statutory authority' as listed in the *Queensland Government Guide to Better Regulation*. Accordingly, the Amendment Regulation does not require further regulatory impact assessment and the Office of Best Practice Regulation was not consulted.