

# **Agents Financial Administration Amendment Regulation 2021**

Explanatory notes for SL 2021 No. 170

made under the

*Agents Financial Administration Act 2014*

## **General Outline**

### **Short title**

*Agents Financial Administration Amendment Regulation 2021.*

### **Authorising law**

Section 153 of the *Agents Financial Administration Act 2014*.

### **Policy objectives and the reasons for them**

The policy objectives of the *Agents Financial Administration Amendment Regulation 2021* (Amendment Regulation) are to:

1. modify trust account record keeping requirements for agents to cater for payments from trust accounts which are made using bill payment platforms, such as BPAY, to ensure the details that need to be recorded align with the details that are provided when using these platforms; and
2. make minor editorial and unrelated corrections to section 9 of the *Agents Financial Administration Regulation 2014* (AFA Regulation) (in relation to a trust account receipt form).

#### *Modification of trust account record keeping requirements*

The amendments arise out of the Residential Tenancies Authority's (RTA) digital transformation project, which aims to achieve operational efficiencies and improve services for the residential rental sector, including through online products designed to replace manual, paper-based processes. The *Residential Tenancies and Rooming Accommodation Act 2008* requires property agents to pay rental bonds to the RTA within 10 days of receiving the bond. As part of the digital transformation project, it is proposed to enable property agents to lodge multiple rental bonds with the RTA as part of a single transaction, using the bill payment platform, BPAY.

The *Agents Financial Administration Act 2014* (AFA Act) aims to protect consumers from financial loss in their dealings with agents operating under an 'Agents Act'. 'Agents Act' encompasses:

- the *Property Occupations Act 2014* (PO Act), which provides an occupational licensing framework for real estate agents, real estate salespeople, real property auctioneers and resident letting agents (collectively referred to as property agents);
- the *Debt Collectors (Field Agents and Collection Agents) Act 2014* (DC Act), which provides an occupational licensing framework for debt collectors and subagents; and
- the *Motor Dealers and Chattel Auctioneers Act 2014* (MDCA Act), which provides an occupational licensing framework for motor dealers and chattel auctioneers and motor salespersons.

The AFA Act regulates the establishment, management, and audit of agents' trust accounts.

Section 153 of the AFA Act provides that the Governor in Council may make regulations about ways in which amounts may be paid from a trust account, the keeping of records and the keeping of receipts and evidence of expenditure.

The *Agents Financial Administration Regulation 2014* (AFA Regulation) prescribes ways in which amounts may be paid from a trust account and for the keeping of records, including the form in which records are to be kept. The AFA Act and AFA Regulation support the consumer protection provisions of the 'Agents Acts'.

The record keeping requirements of the AFA Regulation relating to payments from agents' trust accounts will likely not cater for payments using bill payment platforms, such as BPAY, given the information that is required to be recorded does not align with the information generated via such platforms.

Accordingly, the Amendment Regulation amends the AFA Regulation to ensure that agents can be compliant with trust account record keeping requirements when using a bill payment platform (such as BPAY) to make payments from their trust account. It does this by providing for alternative record-keeping requirements in relation to trust account payments made via bill payment platforms, which are equivalent to the requirements imposed for more traditional payment methods such as cheque and direct electronic funds transfer. The amendments will accommodate payments using a range of current and future electronic payment platforms and are not intended to be limited only to BPAY.

The Amendment Regulation will apply to agents regulated under an 'Agents Act', in order to provide more payment options for agents where the payment is being made from their trust account, including but not limited to, rental bond payment options for property agents.

#### *Correction of section 9 of the AFA Regulation*

It has been identified that there is incorrect punctuation utilised in section 9(1)(d) of the AFA Regulation. To address this, the Amendment Regulation makes a minor correction to section 9(1)(d) to replace a full-stop with a semi-colon.

It has also been identified that there is an incorrect reference located in section 9(2) of the AFA Regulation. The definition of 'built date' in section 9(2) of the AFA Regulation states that 'built date' has the meaning given under the MDCA Act, schedule 1, section 3(3). However, the meaning of 'built date' is actually contained within schedule 1, section 3C of the MDCA Act.

Accordingly, the Amendment Regulation corrects this reference.

## **Achievement of policy objectives**

The Amendment Regulation will achieve its policy objective by prescribing alternative trust account record keeping requirements for agents when the payment they have made from a trust account occurs using a bill payment platform.

The Amendment Regulation will also make minor editorial and unrelated corrections to section 9 of the AFA Regulation, to ensure that the definition of 'built date' refers to the correct section of the MDCA Act and punctuation use is correct.

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

The PO Act provides an occupational licensing framework for property agents. Additionally, an object of the PO Act is to achieve an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace. This objective is replicated in the DC Act in respect of debt collectors and subagents and the MDCA Act in respect of motor dealers and chattel auctioneers and motor salespersons.

The AFA Act aims to protect consumers from financial loss in their dealings with agents operating under the PO Act, DC Act or MDCA Act.

The Amendment Regulation is consistent with the policy objective of the AFA Act, as well as the PO Act, the DC Act and the MDCA Act, as it will ensure agents can lawfully utilise a modern method to make payments from trust accounts, in a way that still ensures appropriate records of these payments are kept, to allow for auditing of these payments if required.

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

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

## **Alternative ways of achieving policy objectives**

The Amendment Regulation is the only effective way of achieving the policy objectives.

## **Benefits and costs of implementation**

The Amendment Regulation will reduce red-tape by modernising the regulatory framework in response to existing and emerging bill payment platforms. The amendments are technical in nature, designed to facilitate a more modern, streamlined approach for agents making payments from their trust account, by allowing the utilisation of contemporary bill payment platforms. This will provide a greater range of choice for agents in making payments for trust accounts, including in relation to rental bond payment options for property agents.

The Amendment Regulation will also make minor editorial and unrelated corrections to section 9 of the AFA Regulation (in relation to a trust account receipt form), to ensure accuracy and clarity in the legislation framework.

Implementation costs associated with the Amendment Regulation are anticipated to be minimal and will be met from within existing resources.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with fundamental legislative principles.

## **Consultation**

Consultation was conducted with the RTA, the Real Estate Institute of Queensland (REIQ), the Australian Livestock & Property Agents Association (ALPA) and the Australian Resident Accommodation Managers Association (ARAMA). The REIQ and ALPA support the Amendment Regulation, and their input informed the final wording of the Amendment Regulation. Advice from ARAMA indicated overall support for the Amendment Regulation; however, ARAMA also indicated resident letting agents may incur costs for the use of bill payment platforms, and to this extent some agents may seek to recoup these costs.

The Office of Best Practice Regulation was also consulted, advising that a Regulatory Impact Statement was not required as these amendments fall under exclusion category (k) – “regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.”