Legal Profession (Interest on Fidelity Fund Claims) Amendment Regulation 2023

Explanatory notes for SL 2023 No. 84

Made under the

Legal Profession Act 2007

General Outline

Short title

Legal Profession (Interest on Fidelity Fund Claims) Amendment Regulation 2023

Authorising law

Section 715 of the *Legal Profession Act 2007*

Policy objectives and the reasons for them

The Legal Practitioners' Fidelity Guarantee Fund (Fund) is administered by the Queensland Law Society (QLS) in accordance with part 3.6 of the *Legal Profession Act 2007* (Act). 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 law practice.

Section 384 of the Act provides that, in deciding the amount of pecuniary loss resulting from a default of a law practice, the QLS is to add interest on the amount payable unless special circumstances exist. Interest is to be calculated from the date the claim was made to the date the QLS allows the claim at the rate prescribed under a regulation. To the extent a regulation does not provide for a rate of interest, interest is to be calculated at the rate of 5% per year.

The policy objective of the *Legal Profession (Interest on Fidelity Fund Claims) Amendment Regulation 2023* (Amendment Regulation) is to prescribe a rate of interest for claims against the Fund which more accurately reflects commercial rates available in the marketplace at the time the claim is made.

Achievement of policy objectives

The Amendment Regulation amends the *Legal Profession Regulation 2017* to prescribe the 'bank bill yield rate' as the rate at which interest is to be calculated on amounts payable from the Fund. The 'bank bill yield rate' is defined as the monthly average yield of three-month bank accepted bills published by the Reserve Bank of Australia for the month of

May in the financial year immediately preceding the financial year in which the claim is made.

The rate is fixed as at the date of the claim and only applies to claims made after the commencement. Claims already made but not yet decided will continue to accrue interest at the rate of 5% per year.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main purpose of Part 3.6 of the Act, which is to establish and keep a fund to provide a source of compensation for persons who have suffered pecuniary loss due to a dishonest default by a law practice.

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 main benefit of implementing the Amendment Regulation is that claimants will obtain fairer compensation by receiving interest on their claims at a rate which more accurately reflects prevailing economic conditions at the time of the claim.

Implementing the Amendment Regulation will also assist in preserving the corpus of the Fund for future claims by ensuring the rate of interest payable to claimants is aligned with the rate of returns which the Fund can reasonably achieve.

There are no costs associated with implementing the Amendment Regulation.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

The QLS was consulted and supports the making of the Amendment Regulation.

The Office of Best Practice Regulation has not been consulted. In accordance with the *Queensland Government Guide to Better Regulation*, the Amendment Regulation has been assessed as excluded from further regulatory impact analysis as a proposal of a machinery nature.