

# Trust Accounts (Transitional) Regulation 2024

Explanatory notes for SL 2024 No. 23

Made under the

*Trust Accounts Act 1973*

## General Outline

### Short Title

*Trust Accounts (Transitional) Regulation 2024*

### Authorising law

Section 42 of the *Trust Accounts Act 1973*

### Policy objectives and the reasons for them

The *Trust Accounts Act 1973* (TA Act) regulates the operation of trust accounts by public accountants and funeral benefit businesses. Under the TA Act, trustees must: make an annual declaration of moneys held in a trust account to the supervising entity; appoint an auditor for the trust account; submit an annual audit report; and lodge financial security.

The *Justice and Other Legislation Amendment Act 2023* (Amendment Act) received assent on 20 September 2023. Part 32 of the Amendment Act amends the TA Act to remove public accountants from the scope of the Act, limiting its application to funeral benefit businesses.

The Amendment Act also inserts a new transitional regulation-making power in relation to the return of financial security lodged with the chief executive under repealed section 31 of the TA Act. The *Trust Accounts (Transitional) Regulation 2024* (Transitional Regulation) provides for the return of this security.

### Achievement of policy objectives

The Transitional Regulation provides for the return of security lodged with the chief executive under repealed section 31 of the TA Act.

Under the Transitional Regulation, a former trustee may apply to the chief executive for the return of the balance of security lodged by the trustee. In deciding whether to grant the application, the chief executive must consider certain matters including whether an auditor's report has been lodged and whether there is a proceeding for an offence involving the misapplication of trust moneys being conducted against the former trustee. The chief executive must also be satisfied that the former trustee has no liabilities for trust moneys that were held by the trustee. The Transitional Regulation also makes provision for the return of security at the end of the transitional period.

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

The Transitional Regulation is consistent with the policy objectives of the authorising law. Under section 42 of the TA Act, a regulation may make provision about a matter for which it is necessary or convenient to assist in returning security lodged with the chief executive under repealed section 31.

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

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

## **Benefits and costs of implementation**

The return of security, subject to appropriate requirements, will benefit public accountants. There are no costs associated with the implementation of the Amendment Regulation.

## **Consistency with fundamental legislative principles**

The Transitional Regulation is consistent with fundamental legislative principles. Although the Transitional Regulation includes additional matters that must be considered by the chief executive in deciding an application for return of the trustee's security, these matters are all relevant to a decision as to whether a trustee has any liabilities for trust moneys and are therefore consistent with former section 34(3) of the *Trust Accounts Regulation 1999*.

## **Consultation**

No consultation was undertaken on the Transitional Regulation given that it is minor and machinery in nature.