

# Legal Profession Amendment Regulation 2021

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Legal Profession Amendment Regulation 2021* (Amendment Regulation) made under section 715 of the *Legal Profession Act 2007* (LPA).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

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 Amendment Regulation are 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.

## Human Rights Issues

The Amendment Regulation does not affect or engage a human right.

## Conclusion

I consider that the Amendment Regulation is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue.

**SHANNON FENTIMAN MP**  
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE  
MINISTER FOR WOMEN AND MINISTER FOR THE  
PREVENTION OF DOMESTIC AND FAMILY VIOLENCE

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