

Trust Accounts (Transitional) Regulation 2024

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* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Trust Accounts (Transitional) Regulation 2024* (Transitional Regulation) made under the *Justice and Other Legislation Amendment Act 2023* (Amendment Act).

In my opinion, the Transitional Regulation, as tabled in the Legislative Assembly, is compatible with the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the HR Act.

Overview of the Subordinate Legislation

The *Trust Accounts Act 1973* (TA Act) regulates the operation of trust accounts by public accountants and funeral benefit businesses.

The 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 inserts a new transitional regulation-making power in relation to the return of financial security lodged with the chief executive under section 31 of the TA Act.

The Transitional Regulation provides for the return of this security. 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.

Human Rights Issues

In relation to the Transitional Regulation, I consider the following human rights to be relevant:

- Right to property (section 24 of the HR Act).

(a) the nature of the right

All persons have the right to own property alone and in association with others and to not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based

on human dignity, equality and freedom. The right includes protection from the deprivation of property. Deprivation in this sense has been held to include the substantial restriction on a person's use and enjoyment of their property. Property includes money; however, the right does not provide a right to compensation.

(b) the nature of the purpose of the limitation

The Transitional Regulation places limits on the return of financial security lodged under the TA Act. Under the transitional arrangements, a former trustee must: give the supervising entity any outstanding auditor's reports required under former section 16(1)(b) of the TA Act; not have proceedings commenced for an offence involving misapplication of trust moneys; and satisfy the chief executive that the former trustee has no liabilities for trust moneys that were held by the trustee. The purpose of these limitations is to ensure that financial security lodged under the TA Act is available if a person entitled to trust moneys held by the trustee suffers a financial loss from the misapplication of trust moneys.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves the purpose by allowing the chief executive to keep a security in place where there may have been a misapplication of trust moneys.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available alternatives to achieve the purpose of ensuring the financial security is available if a person entitled to trust moneys held by the trustee suffers a financial loss from the misapplication of trust moneys.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, the need to ensure that financial security is available in the event there has been a misapplication of trust moneys outweighs any impact on a person's human rights in relation to the return of the security.

(f) any other relevant factors

Not applicable.

Conclusion

I consider that the Transitional Regulation is compatible with the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the HR Act.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
and Minister for the Prevention of Domestic and Family Violence