

Agents Financial Administration Regulation 2014

Explanatory notes for SL 2014 No. 246

made under the

Agents Financial Administration Act 2014

General Outline

Short title

Agents Financial Administration Regulation 2014

Authorising law

Sections 40(2), 113(2), 113(4), 135(3) and 153 of the *Agents Financial Administration Act 2014*.

Policy objectives and the reasons for them

The objectives of the *Agents Financial Administration Regulation 2014* (the Regulation) are to:

1. facilitate the repeal and replacement of the *Property Agents and Motor Dealers Regulation 2001* (PAMD Regulation) by establishing, along with three industry-specific regulations, a regulation which provides the requirements for agents regulated under the *Property Occupations Act 2014*, the *Motor Dealers and Chattel Auctioneers Act 2014* and the *Debt Collectors (Field Agents and Collection Agents) Act 2014* about keeping trust account records and other provisions related to the claim fund to support the regulatory framework contained in the *Agents Financial Administration Act 2014* (the Act);
2. reduce red tape and regulation; and
3. improve the operation of existing legislative requirements by clarifying the provisions which are being retained from the current regulation.

Achievement of policy objectives

Facilitate the replacement of the PAMD Regulation

The first policy objective will be achieved when the Regulation, along with the three industry-specific regulations, is made.

Support the regulatory framework contained in the Act

The Regulation achieves the second component of the first policy objective by prescribing how payments may be made from a trust account, the audit requirements for trust accounts and related documents, stipulating what trust account records must be kept or maintained, how these records must be kept and for how long they must be retained, and what information must be included in the trust account records. The Regulation also sets penalties for contravention of a regulation provision, notes the fees which are payable to inspect or copy information in the register of undertakings, and sets the limits on recovery from the claim fund.

Reduce red tape and regulation

While this Regulation is largely consistent with the provisions related to trust account records and the claim fund under the PAMD Regulation, the Regulation does make some important and necessary amendments consistent with the amendments made to the Act and to provide some important red tape reduction measures to reduce the record-keeping burden on the industries formerly regulated under the *Property Agents and Motor Dealers Act 2000* (PAMD Act). The Regulation does so by including only those provisions which are relevant to agents, which are necessary to support the operation of the Act, and which retain an identifiable measure to reduce risk to consumers and provide adequate accounting records relating to trust accounts. The accounting record requirements also assist with ensuring audits can be conducted, which are able to determine that trust account monies have not been misapplied or misappropriated in breach of the Act.

An example of a reduction in red tape relates to receipts for trust money. Under the PAMD Regulation, all computer-generated receipts had to be printed whether the person paying the money requested a receipt or not. This is because all receipts had to be signed. This requirement placed an unnecessary burden on agents who had to print each receipt and then store the paper copy. This also unnecessarily added to the agent's printing and stationery, storage and accounting costs. Under the Regulation, hard copies of receipts are no longer required to be printed out where a receipt has been created for a deposit of trust money made by electronic means and where the payer has not requested a copy of the receipt. As this is now a very common means of receiving payments and recording the receipt of such payments, this change should provide significant benefits and savings for agents, particularly those who have large volumes of receipts.

Improve the operation of the existing legislation by clarifying certain provisions that are retained under this new Regulation

For those provisions which have transitioned from the PAMD Regulation, the terminology has been adjusted consistent with the changes to the terminology incorporated in the Act. Also, provisions that have been identified as possibly causing confusion for the regulated industries have been redrafted to provide more clarity. The drafting of provisions has also been done in a way to be consistent with current Queensland statute book drafting standards and to set out the requirements in a logical and orderly manner. The compact, stand-alone nature of the trust account and claim fund provisions in a single regulation also makes the legislation more accessible and presents the requirements in a step-by-step format with lists of information required to guide agents and their accountants, as well as auditors, in the preparation and maintenance of trust account records and subsequent audits conducted on those records.

An example of a provision that has improved clarity under this Regulation is clause 23, which is about dealing with transferred trust accounts. Under the equivalent provision in the PAMD Regulation, agents and auditors experienced confusion and struggled to interpret the requirements of the provision. The provision expressed contradictory requirements about holding and disbursing trust account monies when a change in business structure occurred, for example two principal agents entering into a partnership. Under the Regulation, it is clear that an agent must first have all trust money properly accounted for and reconciled across their clients' ledgers and this must be certified by an agent's auditor. All trust money must be held (i.e. not transferred or disbursed) until this has been completed.

Consistency with policy objectives of authorising law

The Regulation is consistent with the main object of the Act which is to protect consumers from financial loss in dealings with agents regulated under an Agents Act (as defined under the Act).

The object is to be achieved mainly by:

- regulating the way agents establish, manage and audit trust accounts; and
- establishing a claim fund to compensate persons in particular circumstances for financial loss arising from dealings with agents; and
- promoting administrative efficiency for claims made against the claim fund.

The Regulation helps achieve the object of the Act through regulating how trust accounts must be kept, prescribing the records and documents that must be kept and retained, promoting timely and accurate record-keeping, providing guidance for auditors, and setting appropriate limits for claims.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives. Without legislative prescription of trust account records, there would be no consistency of record-keeping, no audit trail for trust monies, and consequently consumers' money could be at risk.

Benefits and costs of implementation

Stakeholders will benefit from this regulation as it contains less legislative obligations compared to the existing regulations made under the PAMD Act and has been drafted in a way to improve clarity and guidance for stakeholders. The implementation costs associated with this regulation are consistent with those which are associated with the repeal and replacement of the PAMD Act.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

Consultation

Prior to the development of subordinate legislation, a comprehensive red tape reduction review of draft Bills to split the PAMD Act into four separate pieces of legislation was conducted in 2013. The objective of the review was to identify opportunities to reduce red tape and regulation while maintaining effective consumer protections. The red tape reduction review was informed by a six week public consultation process that commenced in February 2013. Stakeholders were encouraged to make submissions to remove unnecessary legislative obligations.

The majority of the provisions of the Regulation are consistent with the existing relevant provisions of the PAMD Regulation that regulate trust accounts and the claim fund. Where possible and appropriate, provisions brought across from the PAMD Regulation have been redrafted to improve clarity and provide a logical and guiding structure. As such, stakeholders will benefit from this improvement to the legislation and also from a reduction in legislative obligations and red tape.

Following the development of the Regulation, further targeted consultation on a draft of the Regulation was undertaken with key stakeholders, including the Real Estate Institute of Queensland, Institute of Mercantile Agents Ltd, Australian Resident Accommodation Managers Association, RACQ, Motor Trades Association of Queensland, Australian Livestock and Property Agents Association Ltd, Chartered Accountants Australia, CPA Australia and the Institute of Public Accountants. Generally speaking, stakeholders were supportive of the provisions of the Regulation. Peak accounting bodies consulted noted that the general audit requirements would not have an adverse impact on their activities and practices, and do not conflict with auditing standards.