

Legal Profession (External Examinations of Trust Records) Amendment Regulation 2017

Explanatory notes for SL 2017 No. 43

Made under the

Legal Profession Act 2007

General Outline

Legal Profession (External Examinations of Trust Records) Amendment Regulation 2017

Authorising law

Sections 254(2) and 715 and of the *Legal Profession Act 2007* (Act).

Policy objectives and the reasons for them

Section 715 of the Act provides that the Governor in Council may make regulations under the Act. Under section 254(2) of the Act, a law practice must account for trust money in the way prescribed under a regulation. Section 56 of the *Legal Profession Regulation 2007* (the Regulation) prescribes the records and information that must be kept by a law practice if the law practice is given a power to deal with trust money for or on behalf of another person.

Under the Act, a law practice must appoint an external examiner for the purpose of having its trust records externally examined (audited). Under section 62 of the Regulation, if the only trust money received or held by a law practice during a financial year is transit money, the practice's trust records for that year are not required to be externally examined. Transit money is defined to mean money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the practice.

The Amendment Regulation provides for the exemption from external examination to extend to a law practice that only receives or holds, either or both, transit money and/or trust money via the Property Exchange Australia Ltd (PEXA) source account.

PEXA is currently the only approved Electronic Lodgement Network Operator in Queensland (and Australia) under the national regulatory framework for e-conveyancing (which applies in Queensland under the *Electronic Conveyancing National Law (Queensland) Act 2013*).

E-conveyancing provides a single national online hub through which documents needed for property conveyancing can be digitally prepared, signed, settled and lodged.

As part of PEXA's operations, legal practitioners who do not have a statutory trust account, or have a statutory trust account with a financial institution that is not currently integrated with PEXA, may use the PEXA source account.

Money in the PEXA source account is held by PEXA on trust for use in a settlement of a conveyancing transaction using the PEXA Electronic Lodgement Network (ELN). Directions in relation to use of the funds can only be given by the purchaser's subscriber (for example, the solicitor acting for the purchaser).

An exemption from external examination for trust money received or held via the PEXA source account is proposed because:

- where client money is deposited in the PEXA source account for a particular transaction and the legal practitioner's role is confined to instructing on how those settlement moneys are to be distributed, it is analogous to transit moneys which are already exempt from external examination under existing 62 of the Regulation; and
- external examination of the PEXA source account is not appropriate or feasible given it is not the legal practitioner's account but rather an account operated by PEXA.

Achievement of policy objectives

The Amendment Regulation amends the Regulation so that the exemption from external examination in section 62 extends to a law practice that only receives or holds, either or both, transit money and/or trust money via the PEXA source account.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the LPA.

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 extension of the exemption simplifies trust account requirements for legal practitioners. There are no implementation costs for the Amendment Regulation.

Consistency with fundamental legislative principles

The requirement in relation to external examination of trust records promotes the proper dealing with, and accountability for, trust moneys and otherwise protects particular clients of a law firm.

The Amendment Regulation, which broadens the existing transit money exemption in section 62 of the Regulation, has sufficient regard to rights and liberties of individuals as regards the promotion of the proper dealing with, and accountability for, trust moneys where:

- the exemption only applies to client money deposited in the PEXA source account for a particular, immediate transaction and the legal practitioner's role is confined to instructing on how those settlement moneys are to be distributed (as for transit moneys which are already exempt from external examination); and
- PEXA is regulated under the national regulatory framework for e-conveyancing and is required to use a participation agreement authorising persons to use the ELN.

The Amendment Regulation is otherwise consistent with fundamental legislative principles.

Consultation

The Queensland Law Society was consulted during the preparation of, and supports, the Amendment Regulation.