

LEGAL PROFESSION UNIFORM GENERAL AMENDMENT (INTEREST RATE) RULE 2021

820. Hon Nick Goiran to the parliamentary secretary representing the Attorney General:

I refer to the *Legal Profession Uniform General Amendment (Interest Rate) Rule 2021*, and I ask:

- (a) what was the catalyst for bringing about this amendment to the rule;
- (b) who was consulted prior to this amendment rule being finalised;
- (c) did any person consulted raise any concerns;
- (d) if yes to , what were these concerns;
- (e) has the finalised amendment rule addressed these concerns; and
- (f) if no to (e), why not?

**Hon Matthew Swinbourn replied:**

- (a) The *Legal Profession Uniform General Amendment (Interest Rate) Rule 2021* inserts rule 89A into the *Legal Profession Uniform General Rules 2015*, providing that the interest rate payable on fidelity fund claims is equivalent to the Reserve Bank of Australia cash rate plus 1%. The amendment was introduced to amend the interest rate payable on fidelity fund claims to more closely align with expected rates of return, and improve the sustainability of the fidelity fund.
- (b) The consultation was undertaken by the Legal Services Council, consistent with the Legal Profession Uniform Law, through the publication and issuing of a consultation paper. The Legal Services Council received submissions from the following stakeholders: the Law Institute of Victoria; Consumer Law Action Centre; Law Society of NSW; Office of the Legal Services Commissioner (NSW); Law Council of Australia; Victorian Legal Services Board and Commissioner; Legal Practice Board of WA; and Justice Connect. The Victorian Department of Justice and Community Safety and NSW Department of Communities and Justice also provided comments on the proposed Rule.
- (c) The consultation process sought views on determining the interest rate by reference to a formula based on the Reserve Bank of Australia cash rate plus 1%, or a formula based on CPI and included two versions of a possible rule, and a variety of responses with alternative proposals were received.
- (d) Some stakeholder submissions raised alternative approaches to interest rates, namely the RBA cash rate plus 2%, or an approach consistent with section 57 of the *Insurance Contracts Act 1984* (Cth) and regulation 38 of the *Insurance Companies Regulations 2017* (Cth) which is calculated by reference to the 10-year Treasury bond yield at the end of the half-financial year, plus 3%. Another stakeholder did not agree that the rate proposed provides for transparency on the basis of calculation and appropriate consumer redress for losses, and also suggested that alternative benchmarks based on the ATO benchmark rate or the Social Security deeming rate might be desirable.
- (e)–(f) It is understood that the submissions were carefully considered by the Legal Services Council and it was ultimately concluded that the rate of interest adopted (being the RBA cash rate formula plus 1%) was appropriate because it ensured that rates of interest were not over and above market rates, that a higher interest rate would not reflect the rate of return that could be achieved from investment in the fund or investment by a claimant if a claim was paid immediately, it supported the sustainability of the fund, and reflected the RBA cash rate formula which is better known to consumers and therefore more transparent.