

+ Letter to the Editor

Trust issues

I have read with interest the cover article in Issue 19 of *Law News* dealing with the new anti-money laundering regime.

Like anyone having to deal with this new legislation, I have had to analyse it from the ground up and do not profess to be an expert; unlike – for example – some of the big four accounting firms offering advisory services in this area, who appear to have become experts overnight.

There are a couple of items in the article which I took issue with, included in the boxed item on page 2 of the *Law News* issue, entitled “What does this mean for you?”

In paragraph 2 of that item it states:

“Law firms having trust administration and mortgage nominee companies may not have ANY exemption from the activities those subsidiaries perform – even after publication of the further regulations (25 May 2013). If there is any external ownership of those subsidiaries (e.g. partners’ spouses), the exemption will almost certainly not apply.”

I have not had cause to look at the position of mortgage nominee companies, but the remainder of that quotation is, in my opinion, incorrect.

Regulation 20 of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2013, which was enacted on 27 May 2013, provides an exemption to (inter alia): lawyers; executors/administrators/trustees of a deceased estate; and trustees “in respect of services provided to beneficiaries of a family trust”, if those parties carry out any “relevant service” (i.e. regulated activity) in the ordinary course of the person’s business as a lawyer or trustee etc.

As far as lawyers are concerned, clearly the provision of service as an executor or trustee (even if this was a “relevant service”) is in the ordinary course of the lawyer’s business, and would be exempted.

Regulation 20(2) extends the law firm exemption to “any director, employee, agent, or other person while acting in the course of, and for the purposes of, [the law firm business]”.

Therefore it seems to me that a law firm trust company providing services in the ordinary course of the law firm’s business will be exempted as an “agent or other person”. Even if the trust company charged fees in its own right and was not therefore arguably within the scope of the legal practice exemption, it would get the benefit of the ‘trustee’ exemption in Reg. 20.

So to suggest that law firms may be captured by the new regime by virtue of administering trusts is, in my view, quite incorrect.

Secondly, the suggestion that ownership of a law practice trust company by third parties such as partners’ spouses would disentitle that entity to the law firm exemption is also wrong.

There is no ownership test in Reg. 20 for the “agent or other person”, and even if there was, or if the trust company was charging fees in its own right, trusteeship is an exempted service.

I would concede that non-trustee law practice companies (e.g. a mortgage nominee company) which generate revenue on their own account are unlikely to get the benefit of the law firm exemption, but only if they are carrying on a regulated service – for example under Reg. 17, or if they fall within the “financial institution” definition in the AML/CFT Act.

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+ Family Law

ADLSI investigates family law ramifications of fixed fee decision

ADLSI’s Family Law Committee met last week to discuss the recent Court of Appeal decision which ruled certain aspects of the current legal aid fixed fees regime, as it affects criminal lawyers, to be unlawful.

Family lawyers are questioning whether the decision also has ramifications for how legal aid is regulated in the family law arena.

Tasked with representing the best interests of this section of the legal community, ADLSI is looking at various ways to progress the cause on their behalf.

After discussing various options, the Committee decided to investigate obtaining an opinion from a QC as to whether the decision applies to family law legal aid providers, and if so the effects and implications of the decision together with recommendations as to what family law legal aid providers should do.

The outcome of the opinion would then form the basis of an email bulletin to members, followed by an explanatory piece published in *Law News*.

+ Correction

ADLSI would like to wish Bryan Mahon, featured in *Law News* Issue 19, a very happy 90th birthday, which was celebrated on 2 July. The article erroneously listed him as 92.

+ Call to lawyers

Citizens Advice Bureau Needs You

Papakura Citizens Advice Bureau is seeking keen lawyers to join its roster of volunteers to provide bi-monthly assistance.

The rostered Solicitor attends the Bureau on a Saturday morning at 9am to meet with persons who are all asked to attend at 9am or shortly thereafter. The session normally runs between

one and two hours until all clients are attended to, at which time the Solicitor leaves and the Bureau shuts.

The Papakura Bureau normally has at least eight lawyers on the roster, so that a rostered Lawyer only need attend once every eight weeks. The Bureau will soon be losing some

of its regular Lawyers, and invites those interested in offering their services to contact the Convenor.

Please contact David Rice, Convenor of the Solicitors’ Roster for the Papakura Citizens Advice Bureau, on (09) 295 1067 or email office@davidrice.co.nz