

PRACTITIONER'S TRUST ACCOUNTS

- IMPORTANT CHANGES -

1. Introduction

The *Legal Profession Act 2008* ("LPA") and *Legal Profession Regulations 2009* are expected to come into effect on 1 March 2009. However, **the date on which the provisions of the Act and Regulations will commence in regard to trust money and trust accounts and costs disclosure and assessment has been deferred to the 1 July 2009.**

There are many changes under the LPA and Regulations and practitioners should be aware that Trust Account provisions are now more prescriptive:

Legal Practice Act 2003.	Legal Profession Act 2008
Law: Part 10, 12 sections	Law: Part 9, 47 sections
Rules: Part 6, 14 rules	Regulations: Part 7, 45 rules

The purpose of this advice is to alert practitioners to some of the changes they should have in place for **1 July 2009.**

2. Establishment of Trust Accounts

- All new trust accounts are to include the name of the law practice and the expression "law practice trust account" or "law practice trust a/c".
- Practitioners are required to notify the Board of the establishment and closure of a trust account.
- Practitioners are required to notify the Board within 14 days of the appointment of signing authorities on trust account/s.

3. Keeping of Trust Records s.228

Trust records are required to be kept in permanent form which means printed or capable of being printed.

4. Deficiency in Trust Account s.226

A deficiency in any trust account or trust ledger account, or a failure to pay or deliver any trust money is a prescribed offence that can attract a fine of \$25,000.

5. Reporting Irregularities s.227

As soon as practicable after a legal practitioner becomes aware that there is an irregularity in any of the practice's trust accounts or ledgers, written notice of the irregularity must be given to the Board and may also need to be provided to other authorities, e.g. Austrac.

Written notice is also required where a practitioner believes on reasonable grounds that there is an irregularity in connection with the trust account of another practitioner.

A failure to report in writing as soon as practicable can attract a fine of \$5,000.

6. Computerised Accounting Systems

Where a practice maintains a computerised accounting system it will be necessary to:

- Print paper copies of trust records.
- Ensure the system is not capable of accepting a transaction that would result in a debit balance to any trust account.
- Ensure the system is not capable of amending a transaction already recorded otherwise than by journal entry.
- Ensure a back up copy of all records is kept in a separate location.

The effect of these requirements is that many current versions and formats of accounting packages will no longer be compliant with the Regulations (Part 7 Division 2 s.35-39).

If practitioners are in doubt regarding the suitability of their accounting software systems they should contact their suppliers to obtain confirmation and undertaking that it complies with the LPA.

7. Time Frames

The Regulations prescribe specific time frames:

- Within 15 working days after the end of the month trust records are to be printed.
- Back up copies of trust records are to be made not less frequently than once a month.
- Receipts for trust money are to be made out as soon as practicable.
- Trust account receipts must be recorded within 5 working days.

- Trust account payments must be recorded within 5 working days.
- Trust account receipts payments or transfers must be recorded in the trust ledger accounts within 5 working days.
- Reconciliation of trust records must be prepared within 15 working days after the end of the month.
- Written notification to the Board of the establishment or closure of a trust account must be within 14 days.

8. Trust Account Statements

Clients for whom or on whose behalf trust money (other than transit money) is held or controlled by the law practice must be issued regular trust account statements.

9. Accountants Certificates and External Examiner's Report - Division 4 Part 9

Accountant's certificates are replaced with an external examiner's report and the content of that report is to be greatly increased.

The information required to be lodged with the Board will be far more detailed especially in relation to authorised signatories to the account, account details and monies held in trust.

s.239 - Where a law practice ceases to be authorised to receive trust money or ceases to engage in legal practice an external examiner's report for the period from the date of the last report must be lodged within 60 days after ceasing to hold trust money. A contravention attracts a fine of \$10,000.

If the Board appoints an external examiner to carry out an examination, the Board may specify the amount payable as the costs of the examination, and the specified amount is a debt payable to it by the law practice.

10. Classification of Trust Monies

Practitioners need to be aware that there are important changes to the terminology and classifications of trust monies, and that the LPA imposes penalties for non-compliance.

TRUST MONEY has been redefined to include the following categories: s.218 to s.222

- Controlled money.
- Transit money.
- Money that is the subject of a specific power.
- General trust money.

The categories of trust moneys are important as each are dealt with differently in the LPA.

Controlled Money

Is money in respect of which the practice has a written direction to deposit the money into an account, e.g. generally an interest bearing deposit account.

A register of controlled money is required to be maintained.

Transit Money

Is money the subject of instructions to pay or deliver the money to a third party, e.g. a cheque payable to the Office of State Revenue for stamp duty or a settlement cheque payable to the client. A law practice is required to keep particulars of such money.

Note: These particulars can be recorded in a simple register or maintained in a binder.

Money that is the subject of a specific power

Is money received by the practice that is the subject of a power, given to the practice or an associate of the practice, to deal with the money for or on behalf of another person, e.g. a client departing overseas provides a written power of attorney to operate his/her personal bank account.

General Trust Money

This includes money received by the practice on account of legal costs in advance of providing the services but which excludes the above 3 categories of money.

11. Financial Services or Investments Money

Is money held by a law practice that is not trust money and includes:

- Money held in respect of a financial service provided by the practice or an associate of the practice in circumstances where an Australian Financial Services Licence is required; or
- Money in connection with a managed investment scheme, or mortgage financing.

Such monies **cannot** be paid into a Trust Account.

Contact

If you have any queries, please contact:

Legal Practice Board
Senior Trust Account Inspector
Bruce Bentley
Telephone: 6211 3600 Facsimile 9325 2743
bbentley@lpbwa.com.