



Legal Profession Complaints Committee

Current Issues

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Reporting Trust Account Irregularities

The attention of practitioners is drawn to the provisions of s227 of the *Legal Profession Act 2008*, which imposes an obligation on all legal practitioners, whether or not they are associated with the relevant legal practice, to report any irregularity or suspected irregularity in respect of trust monies to the Legal Practice Board. Practitioners are not liable for any loss or damage suffered by another person as the result of such reporting.

Early reporting of trust account concerns will assist in limiting any theft and the consequential financial loss and distress to the affected client. It may also assist practitioners who have offended in this way by preventing further fraud and the consequences of that conduct. Section 227 is set out in full below:

227. Reporting certain irregularities and suspected irregularities

(1) As soon as practicable after a legal practitioner associate of a law practice becomes aware that there is an irregularity in any of the practice's trust accounts or trust ledger accounts, the associate must give written notice of the irregularity to:

- (a) the Board; and
- (b) if a corresponding authority is responsible for the regulation of the accounts concerned – the corresponding authority.

Penalty: a fine of \$5 000.

(2) If an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt,

recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as practicable after forming the belief, give written notice of it to:

- (a) the Board; and
- (b) if a corresponding authority is responsible for the regulation of the accounts concerned – the corresponding authority.

Penalty: a fine of \$5 000.

(3) The validity of a requirement imposed on an Australian legal practitioner under subsection (1) or (2) is not affected and the practitioner is not excused from complying with subsection (1) or (2), on the ground that giving the notice may tend to incriminate the practitioner.

(4) An Australian legal practitioner is not liable for any loss or damage suffered by another person as a result of the practitioner's compliance with subsection (1) or (2).

Mediation

Under the *Legal Profession Act 2008*, the Committee has the power to facilitate the resolution of complaints by mediation. In appropriate cases the Committee will suggest mediation to the complainant and the practitioner at an early stage of the complaints process with a view to resolving the complaint as quickly as practicable. Practitioners are encouraged to consider this process as it may allow for the resolution of the complaint without the need for a formal investigation, resulting in a saving in both time

and uncertainty for the practitioner. It also provides an opportunity for the complainant to express his or her concerns and have them dealt with by the practitioner in a manner acceptable to both parties.

This is something of a new approach for the Committee and it is hoped that practitioners will avail themselves of the opportunity to resolve differences with their clients with the assistance of an independent party. Often complaints are based on misunderstanding and a lack of effective communication between the parties.

While it is anticipated that the mediation process will be offered at the early stage of a complaint, possibly before the practitioner has been asked to respond to the complaint, the mediation process can occur at any stage of the investigation by the Committee including after a matter has been to the Committee for a determination. The Committee has always been of the view that it is more desirable for the parties to reach their own agreement rather than have a decision imposed upon them.

The *Legal Profession Act 2008* specifically prohibits the Committee from offering mediation to the parties in respect of a complaint where it is of the view that a practitioner would be likely to be found guilty of professional misconduct by the State Administrative Tribunal with respect to the complaint. It is therefore possible, in limited circumstances, that the Committee may decline to facilitate mediation.