

Reporting Irregularities

Deficiency in Trust Account

Section 226 of the Legal Profession Act 2008 ('the Act') prohibits a law practice from causing a deficiency ("debit balance") in any trust account (which includes a controlled money account kept at an Approved ADI) or trust ledger account without reasonable excuse.

The Act defines "deficiency" as including "the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account".

Debit balances may represent administrative errors, for example:

- i) a cheque is drawn and processed for an incorrect amount,
- ii) a trust cheque drawn for office expenses or
- iii) incorrect calculations in the trust account ledger.

Law practices should be particularly careful in ensuring their trust records are up to date and transactions are posted as prescribed by the Regulations. It is imperative that errors are corrected as soon practicable so that the records disclose that prompt action was taken to rectify the error. The bank reconciliation process is an essential process in the identification of errors.

Reporting Certain Irregularities and Suspected Irregularities

Section 227(1) requires:

- (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.

It should be noted that approved ADI's are also required by Section 244(1) to report any deficiency in a trust account to the Board.

Form of Notification

There is no prescribed form of notification. Please report via e-mail, without any annexures, in the following format:

On [*insert the date of the irregularity*] Amount involved [\$] Description [*What happened*]

Date [date error identified] Date [date error corrected] Description [*How corrected*]

If annexures or additional explanations are required a separate request shall be made.

NB: Supporting documentation and hard copy is not generally required.

Notifications lodged via e-mail at general@lpbwa.com will receive an immediate acknowledgement.

In addition, Section 227(2) requires an Australian legal practitioner (any legal practitioner external of the law practice), to notify the Board as soon as practicable after forming the belief that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice.

False Names in Trust Records

Section 229 of the Act prescribes that the law practice must not knowingly receive money or record receipt of money in the practice's trust records under a false name.

Contact

If you have any queries, please contact:

Legal Practice Board
Trust Account Inspectors Team
Telephone: 6211 3600 Facsimile: 6211 3650
general@lpbwa.com
<http://www.lpbwa.org.au>.