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* This summary note was updated and added based on the lecture slides & lecture records, the textbook, ‘Lawyers’ Professional Responsibility’ written by Dal Point, Legal Profession Act 2007 (Qld), Legal Profession Regulation 2007 (Qld) and Trust Account Guide with the purpose of preparing an online quiz of trust account during the semester in 2017. Can’t guarantee 100% accurate.
Part A – Trust Account

1. What is the trust account

Trust accounting is?

- a simple form of bookkeeping
- exclusively used for trust transactions
- the recording by the law practice of the receipt and payment of people’s money
- all transactions being recorded in individual accounting records maintained for the person on whose behalf the money was received

- Part 3.3 of the Legal Profession Act 2007 (Qld) deals with Trust money and trust accounts. The main purposes of this Part are:

  (a) to ensure trust money is held by law practices in a way that protects the interests of persons for whom money is held, both inside and outside this jurisdiction [statement of basic trust accounts law]

  (b) to minimise compliance requirements for law practices that provide legal services within and outside this jurisdiction [efficiency of legal practice operation]

  (c) to ensure the law society can work effectively with corresponding authorities in other jurisdictions in relation to the regulation of trust money and trust accounts [efficiency of operation of contemporary national and international practices]

Cases:

“reliability and integrity in the handling of trust funds are fundamental prerequisites in determining whether an individual is a fit and proper person to be entrusted with the responsibilities attaching to a solicitor.”

- **Legal Services Commissioner v Quinn [2015] QCAT 85**
  

  “legal practitioners must maintain high standards of integrity in the way in which they conduct themselves in the profession and particularly in the way in which they maintain monies held on trust for their clients” (at [29]).

- Disciplinary proceedings against the solicitor were initiated by the Legal Service Commission alleging 64 instances where the respondent failed to adequately manage his trust account. The charges included:
  
  - Failure to properly administer a trust account;
  - Keeping improper trust records;
  - Producing numerous deficiencies in trust ledgers;
  - Illegally transferring funds from trust;
  - Misappropriating trust funds; and
  - Retaining trust money in the firm’s general account.

- The Tribunal found that the respondent’s conduct “… involved a substantial failure to reach a reasonable standard of competence and diligence and falls short to a very substantial degree, of the standard of professional conduct... expected of members of the profession of good repute and competency” (at [23])
2. Regulatory Framework

- The Legal Profession Act 2007 (Qld) (‘LPA’):
  - The LPA amended the provisions of the Trust Accounts Act 1973; and, with effect from 01 April 2008, has replaced the provisions of the Trust Accounts Act 1973 in so far as they relate to solicitors.

- Regulation-making power relating to trust money and trust accounts (s298, LPA)
  - Lawyers’ keeping of trust accounts;
  - The manner of dealing with trust money;
  - Maintaining financial records and accounts;
  - Notifications to the regulator of trust accounts, money and records;
  - Making unannounced examinations;
  - The exercise of lien over trust money; and
  - Exemptions from the provisions of the Act.

298 Regulation-making power relating to trust money and trust accounts

(1) The Governor in Council may make regulations about a matter to which this part applies.

(2) A regulation may provide for the following—

(a) the establishment, keeping and closure of general trust accounts and controlled money accounts;
(b) the manner of receiving, depositing, withdrawing, making records about and otherwise dealing with and accounting for trust money;
(c) without limiting paragraph (a) or (b)—
(i) the keeping and reconciliation of trust records; and
(ii) the establishment and keeping of trust ledger accounts; and
(iii) the establishment and keeping of records about controlled
money and transit money; and
(iv) the establishment and keeping of registers of powers and estates
in relation to trust money; and
(v) the recording of information about the investment of trust
money; and
(vi) the giving of statements regarding trust money;

(d) the notification to the law society of information relating directly or
indirectly to matters to which this part relates, including information
about—

(i) trust accounts, trust money and trust records; and
(ii) the proposed or actual termination of a law practice that holds
trust money; and
(iii) the proposed or actual termination of engaging in legal practice
in this jurisdiction by a law practice that holds trust money; and
(iv) the proposed or actual restructuring of the business of a law
practice so that it no longer holds or no longer will hold trust
money;

(e) the carrying out of unannounced examinations of a law practice's trust
records by an external examiner;

(f) the creation and exercise of liens over trust money;

(g) exemptions, or the giving of exemptions, from all or any stated
requirements of this part.

- **The Legal Profession Regulation 2007 (Qld) (‘LPR’):**

  - The LPR details the recording requirements for law practices that receive trust
    money; it amended the provisions of the Trust Accounts Regulation 1999; and,
    with effect from 01 April 2008, has replaced provisions of the Trust Accounts
    Regulation 1999 in so far as they relate to solicitors.
3. Types of trust accounts

- **Trust account (money held on behalf of clients)**
  - Regulated by the LPA & LPR
  - Sometimes called ‘General Trust Account’

- **Office account (Law practice’s own money)**
  - LPA & LPR not applicable

- **Other accounts to hold investment and controlled monies**
  - Regulated by the LPA & LPR

4. What is the trust money?

Trust money is defined in s 237 of the LPA as money:

- **entrusted** (위임 받은,수탁 받은) to a law practice

- in the course of and in connection with the provision of legal services by the practice, and includes but differentiates between:
  - Money received on account of legal costs in advance of providing services; and
  - Controlled money; and
  - Transit money; and
  - Power money
237 Definitions for pt 3.3

trust money means money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, and includes—

(a) money received by the practice on account of legal costs in advance of providing the services; and
(b) controlled money received by the practice; and
(c) transit money received by the practice; and
(d) money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for another person.

* See Dal Pont pp 329 – 331 & TAG 2.2: What is trust money?

5. General or office account

• the firm's/practitioner's own money. This is NOT a trust account.

• The law practice is not permitted to receive trust money into its office or general account; this is so even if they receive any written direction to this effect from the person or whose behalf the money is being received.

* See TAG – 3.7: Intermixing money

6. General trust account*

• A law practice that receives trust money to which Part 3.3 of LPA applies must keep a general trust account in Qld (s 247, LPA)
Most common is money paid to a solicitor on account of legal costs – both professional costs and anticipated outlays.

Monies paid to a client by another party in a proceeding or transaction – proceeds of sale, damages awards – will be paid to this account.

- Within 14 days after establishing a general account, the law practice must give the society written notice of that fact (s46, LPR).

Other 3 types of trust monies – less common:

- controlled money (LPA - s248 (1) (b) & s251)
- transit money (LPA - s248 (1) (c) & s253)
- power money (LPA - s248 (1) (d))

Money received subject to a written direction (other than money received as cash) from any appropriate person must be dealt according to the directions. If someone give your money in cash, which is intended to the trust money and give you some written direction but you can’t follow them. You have to deposit into the trust account.

248 Certain trust money to be deposited in general trust account

(1) Subject to section 255, as soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice unless—

(a) the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or
(b) the money is controlled money; or
(c) the money is transit money; or
(d) the money 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.

Maximum penalty—100 penalty units.
251 Controlled money

(1) As soon as practicable after receiving controlled money, a law practice must deposit the money in the account stated in the written direction relating to the money. Maximum penalty—50 penalty units.

(2) The law practice must hold controlled money deposited in a controlled money account under subsection (1) exclusively for the person on whose behalf it was received. Maximum penalty—50 penalty units.

(3) The law practice that holds controlled money deposited in a controlled money account under subsection (1) must not disburse the money other than under—
   (a) the written direction mentioned in that subsection; or
   (b) a later written direction given by or on behalf of the person on whose behalf the money was received.

Maximum penalty—50 penalty units.

(4) The law practice must keep the controlled money account, and account for the controlled money, in the way prescribed under a regulation. Maximum penalty—50 penalty units.

(5) The law practice must keep a written direction mentioned in this section for the period prescribed under a regulation. Maximum penalty—50 penalty units.

(6) The law practice must ensure that the controlled money account is used for the deposit of controlled money received on behalf of the person mentioned in subsection (2), and not for the deposit of controlled money received on behalf of any other person, except to the extent that a regulation otherwise permits. Maximum penalty—50 penalty units.

(7) Subsection (3) applies subject to an order of a court of competent jurisdiction or as authorised by law.

253 Transit money

(1) Subject to section 255, a law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money—
(a) within the period, if any, stated in the instructions; or
(b) subject to paragraph (a), as soon as practicable after it is received.
Maximum penalty—50 penalty units.

(2) The law practice must account for the money in the way prescribed under a regulation.
Maximum penalty—50 penalty units.

• **Requirements: s 247 LPA & s 33 LPR**

  o the account is maintained in Queensland;


  o the name of the account (opened after 01 July 2007) to include**:

    ▪ The name of or the business name of the law practice

    ▪ The expression ‘law practice trust account’ or ‘law practice trust a/c’

    ▪ An approved ADI is an ADI approved under s 280(LPA)

    ** If the words ‘law practice’ forms part of the name or the business name of the law practice, the repetition of the words not required.

    ▪ Eg: a law practice practising under the name of ‘ABC Law Practice’ that opens general trust account after 01 July 2007 is required to open the account in the name of ‘ABC Law Practice Trust Account’ or ‘ABC Law Practice Trust A/c’. It is not necessary to repeat the words ‘law practice’

      See TAG 3.1: Establishing a General Trust Account

  o **Within 14 days after establishing a general trust account, the law practice must give the society written notice of that fact (s46, LPR).** The notification should
include, the name of the trust account, the name of approved ADI, and branch where the account is held, the account number including BSB no. and the date that account was established (s46(4), LPR).

- Trust money received as cash **MUST** be deposited to a **general trust account or a controlled money account**.

  - All other trust money must be deposited to a **general trust account** or dealt with as:
    - controlled money (LPA - s248 (1) (b) & s251)
    - transit money (LPA - s248 (1) (c) & s253)
    - power money (LPA - s248 (1) (d))
    - written direction money (LPA - s248 (1) (a) & s248 (2))

* See TAG 3.4: Funds to be deposited to the General Trust Account

### 33 Establishment of general trust account—Act, s 247

(1) A law practice may at any time establish a general trust account that satisfies the requirements of this section, but must, after receiving trust money that is required to be paid into a general trust account, establish a general trust account that satisfies those requirements if the practice does not already have a general trust account that satisfies those requirements.

(2) A general trust account satisfies the requirements of this section if—

  - (a) the account is established in this jurisdiction, before or after 1 July 2007, with an approved ADI; and
  - (b) the account is and is to be kept in this jurisdiction; and
  - (c) the name of the account includes—
    - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
    - (ii) the expression 'law practice trust account' or 'law practice trust a/c'; and
  - (d) the account is of a kind that is for the time being approved by the law society.

(3) Subsection (2)(c) does not apply to an account established in this jurisdiction before 1 July 2007.

(4) Subsection (2)(c)(ii) does not require the repetition of the words 'law practice' if those words form part of the name or business name of the law practice.
248 Certain trust money to be deposited in general trust account

(1) Subject to section 255, as soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice unless—

(a) the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or
(b) the money is controlled money; or
(c) the money is transit money; or
(d) the money 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.

Maximum penalty—100 penalty units.

(2) Subject to section 255, a law practice that has received money that is the subject of a written direction mentioned in subsection (1)(a) must deal with the money in accordance with the direction—

(a) within the period, if any, stated in the direction; or
(b) subject to paragraph (a), as soon as practicable after it is received.

Maximum penalty—100 penalty units.

(3) The law practice must keep a written direction mentioned in subsection (1)(a) for the period prescribed under a regulation.

Maximum penalty—100 penalty units.

(4) A person is an appropriate person for this section if the person is legally entitled to give the law practice directions in relation to dealings with the trust money.
7. **Authorised Deposit-taking Institution**

- The **ADI** at which a trust account is kept by a law practice –
  - is not under an obligation to control or supervise transactions in relation to the account or to oversee the application of money disbursed from the account; and
  - does not have, in relation to any liability of the law practice to the ADI, any recourse or right, whether by way of set-off counterclaim, charge or otherwise, against money in the account.

- No bank charges should be debited to the general trust bank account.

- All charges associated with trust account transactions to be debited to the law practice’s office or general account.

* See TAG 3.1: Establishing a General Trust Account

8. **Cash**

- Except for controlled money, **trust money received in cash MUST be deposited into a general trust account regardless of anything contrary in the direction or instructions** (s 255, LPA) – even of the client give you different direction.

- Cash received as controlled money must be deposited into a controlled money account in accordance with s 251 LPA (s255(3), LPA)

- Cash received that is subject of a power must also be banked in the general trust account or a controlled money account before applied to the provisions under the power **despite anything contrary in the power or relevant direction** (s 255 (5), LPA)

- **Cash cannot be treated as transit money** (s 255 (4), LPA)
• When an amount of **cash of A $10,000 or more** or the foreign currency equivalent is received in cash – required to **report to Australian Transaction Reports and Analysis Centre** (‘AUSTRAC’) under the **Financial Transactions Reports Act 1988** (Cth)

* See TAG 3.5: Trust moneys received in the form of cash & TAG 6.3: Cash cannot be treated as Transit Money.

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255 **Trust money received in the form of cash**

(1) A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.  
Maximum penalty—100 penalty units.

(2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice—

(a) the money must nevertheless be deposited in a general trust account of the practice under subsection (1); and

(b) after it is deposited in the general trust account, the money is to be dealt with under the applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).

(3) **Controlled money received in the form of cash must be deposited in a controlled money account under section 251.**

(4) A law practice must deposit transit money received **in the form of cash** in a general trust account of the practice before the money is otherwise dealt with under the instructions relating to the money.  
Maximum penalty—100 penalty units.

(5) A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account, or a controlled money account in the case of controlled money, of the practice before the money is otherwise dealt with under the power.  
Maximum penalty—100 penalty units.

(6) This section has effect despite anything to the contrary in any relevant direction, instruction or power.
(7) In this section—
appropriate person, in relation to trust money, means a person who is legally entitled to give the law practice concerned directions in relation to dealings with the money.
general trust money means trust money, other than—
(a) controlled money; and
(b) transit money; and
(c) money that is the subject of a power.

9. Controlled moneys*

- Trust account in a same reason that you (practice) can’t charge the bank fees from the trust account, no can trust account grow. Interest is not paid on trust account either. Instead, there are couple of other system that solicitor can ensure that they earn interest on money for client, if they are going to hold money for significant period of time. So, one of the way to setting up the account is the controlled money account. It is a still trust account but the interest can be earned.

- Controlled moneys is a way of making interest for the client while I have money, held on trust with you.

- Controlled Moneys (3 Elements):
  (i) money received or held by a law practice;
  (ii) the practice has a written direction to deposit the money in an account, other than a general trust account,
  (iii) the practice has or will have exclusive control.

  Eg: the proceeds of the sale of the matrimonial home pending agreement/court order as to property settlement.
10. Transit moneys*

- Transit money is money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the practice.

- When someone bring you money for purpose of something that you are doing even on that day, you remember that the transit money come in cash, it has to go to the trust account. You can't hold in cash. For example, someone has a settlement of the property, they might bring the bank cheque to the lawyer. While you hold that money, you have to hold it on the trust account even if it is not a form of cash. If you receive transit money, it is very important to remember that you must keep all the record of when you receive, what you receive, who brought it to you or where it to be paid to. You may keep the photocopy of transaction or retain all the records even after the money is used.

Eg: Bank cheques in favour of ultimate payee provided by a client to a solicitor for a real estate purchase. Say, a bank cheque in favour of the Department of Natural Resources and with instructions from the client to pay to the department when lodging the memorandum of transfer for registration.

- The law practice in receipt of the transit money is required to effect the payment within the period specified in the instructions or if the period is not stipulated, then as soon as practicable after the receipt.

* See TAG 6.1: Definition of Transit Moneys & s253 (1), LPA & S52 (2), LPR

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253 Transit money

(1) Subject to section 255, a law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money—

(a) within the period, if any, stated in the instructions; or

(b) subject to paragraph (a), as soon as practicable after it is received.
Maximum penalty—50 penalty units.

52 Information to be recorded about transit money

(1) This section has effect for section 253 of the Act.

(2) A law practice must, in relation to transit money received by the practice, record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

11. Power moneys*

- Power moneys is the money that you might be received as a lawyer when you are acting on behalf of somebody, say, power of attorney or the executor of an estate then that kinds of money has to go to the general trust account. It is just about transparency.

- Power money is the money controlled by a law practice pursuant to the power (a lawyer has a power) to deal with it for or on behalf of a person, whether alone or jointly
  - Involves situation where law practice given power of attorney, guardianship etc
    - Eg: an associate of the law practice, who is the executor of a deceased estate opening a bank account in the name of the associate as executor of the estate.

- When you have power moneys, you, as a trustee, are holding on the trust account. You might have a power to use that money in a different kinds of way
because you hold in active role in relation to that money. But, in practice, it is not recommend as it requires high level of integrity, honesty and obligation.

- Solicitor as executor – Rule 12.4.1 (Fiduciary duty to the client) of ASCR

* See TAG 7: Power Moneys & s 254(2) LPA & s 56 LPR

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254 Trust money subject to specific powers
(1) Subject to section 255, a law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only under the power relating to the money.

Maximum penalty—50 penalty units.

(2) The law practice must account for the money in the way prescribed under a regulation.
Maximum penalty—50 penalty units.

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56 Trust money subject to specific powers
(1) This section has effect for section 254 of the Act.

(2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the practice must keep the following in a way that enables the dealings to be clearly understood—

   (a) a record of all dealings with the money to which the practice or associate is a party;
   (b) all supporting information in relation to the dealings.

(3) The record, supporting information and power must be kept by the law practice as part of the practice's trust records.
12. Written direction moneys*

- Money received subject to a written direction (other than money received as cash) from any appropriate person must be dealt according to the directions. If someone give your money in cash, which is intended to the trust money and give you some written direction but you can’t follow them. You have to deposit into the trust account.

- The law practice in receipt of the transit money is required to effect the payment as directed within the period specified in the instructions or if the period is not stipulated, then as soon as practicable after the receipt.

* See TAG 8.1: Definition of written direction Moneys & s 248(1) (a) & s248 (2), LPA

248 Certain trust money to be deposited in general trust account

(1) Subject to section 255, as soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice unless—

(a) the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or

(2) Subject to section 255, a law practice that has received money that is the subject of a written direction mentioned in subsection (1)(a) must deal with the money in accordance with the direction—

(a) within the period, if any, stated in the direction; or

(b) subject to paragraph (a), as soon as practicable after it is received.
13. Investment moneys

- It is very similar to controlled money but instead, it goes straight into the controlled account.

  a. Money entrusted to or held by the practice –

  i. in the ordinary course of legal practice; and

  ii. primarily in connection with the provision of legal services to or at the direction of the client; AND

  b. The investment is or is to be made –

  i. in the ordinary course of legal practice; and

  ii. for the ancillary (부수적인) purpose of keeping or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

Note: This is not about solicitors acting as investment advisers for clients.

* See TAG 9.1: Definition of investment moneys & s 238 (3), LPA

238 Money involved in financial services or investments

(1) Money that is entrusted to or held by a law practice in connection with either of the following is not trust money under this Act—

(a) a financial service provided by the practice or an associate of the practice in circumstances in which the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not the licence is held at any relevant time);

(b) a financial service provided by the practice or an associate of the practice in circumstances in which the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any
(2) Without limiting subsection (1), money that is entrusted to or held by a law practice for a managed investment scheme, or mortgage financing, undertaken by the practice is not trust money under this Act.

(3) Without limiting subsections (1) and (2), money that is entrusted to or held by a law practice for investment purposes, whether on its own account or as agent, is not trust money under this Act, unless—

(a) the money was entrusted to or held by the practice—

(i) in the ordinary course of legal practice; and

(ii) primarily in connection with the provision of legal services to or at the direction of the client; and

(b) the investment is or is to be made—

(i) in the ordinary course of legal practice; and

(ii) for the ancillary purpose of keeping or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

- When a financial service is provided by the practice or the associate of the practice in which:
  - the practice or associate is required to hold an Australian financial services licence; or
  - the practice or associate provides the service as representative of another person who carries on a financial services business; or
  - Is money entrusted to or held by a law practice for a managed investment scheme, or mortgage financing undertaken by the practice, will the moneys so entrusted or held by the law practice be considered trust money under the LPA? **NO.**

  * See TAG 9.2: When investment money is not trust moneys & s 238(1) & (2) LPA

238 Money involved in financial services or investments

(1) Money that is entrusted to or held by a law practice in connection with either of the
**following is not trust money** under this Act—

(a) a financial service provided by the practice or an associate of the practice in circumstances in which the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not the licence is held at any relevant time);

(b) a financial service provided by the practice or an associate of the practice in circumstances in which the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).

(2) Without limiting subsection (1), money that is entrusted to or held by a law practice for a managed investment scheme, or mortgage financing, undertaken by the practice is not trust money under this Act.

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14. Intermixing money

- **The law practice must not**, otherwise than as permitted and to the extent only that is authorised by the law society and under any conditions imposed by the law society in relation to authorisation, mix trust money with other money (s 257 LPA).

- Law practice is not permitted receive trust money into its office or general account.

- Law practices cannot deposit the trust money to their general or office account even if there is any written direction to this effect from the person on whose behalf the money is received.

* See TAG 3.7: Intermixing money

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257 Intermixing money

(1) A law practice must not, otherwise than as permitted under subsection (2), mix trust money with other money.
Maximum penalty—100 penalty units.

(2) A law practice is permitted to mix trust money with other money to the extent only that is authorised by the law society and under any conditions imposed by the law society in relation to the authorisation.

- Cases:

  **Craig L Stevenson (SCT/90, Dec 2002)**

  o A Solicitor had intermixed trust moneys with his own moneys and applied to his own use and benefit. The trust deficiency in some charges been restored and others were not. He had mainly deposited trust monies paid to him for outlays on files (e.g. stamp duty) into his office account.

  o **Charges:** That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, namely clients’ trust moneys, has failed, during the period 2000 – 2002, to comply with his obligations as trustee with respect to the audit of his trust account.

  o **Order:** Suspended for 12 months (only operative if certain further defaults), penalty of $5,000, T/A module course of the Practice Management course conducted by the Queensland Law Society, Incorporated audit of procedures by senior practitioner, QLS costs.

  **Legal Services Commissioner v Watts [2016] QCAT 4**


  - Charges: Disbursing trust money without authority
Examples of breaches: Significant payments made from trust without authority. Sometimes before bill issued, sometimes ultimately entitled to money but transferred before that, some of the money had been re-paid well before charges laid.

Charges 4 and 5: Watts created false trust account receipts to record receipt of funds into trust from a client and then transferred amounts “received” into his general account → a deficiency in the trust account. Restored to trust after 6 months (charge 4) & after a few weeks (charge 5).

- Accepted that conduct amounted to professional misconduct. Submissions made regarding his mental health at the time and now. Disciplinary proceedings about protection not punishment [at 24]. Observed that Mr. Watt’s conduct was unacceptable and fell short, to a very substantial degree, of the standard of professional conduct which would be expected of members of the profession of good repute and competency.

- Held that he was not a fit and proper person to remain in legal practice and orders given that his name be removed from the roll of practitioners.

15. Trust Accounting Records

(1) A law practice must keep in permanent form* trust records in relation to trust money received by the practice (s 261, LPA & s59(1), LPR)

261 Keeping trust records

(1) A law practice must keep in permanent form trust records in relation to trust money received by the practice.

Maximum penalty—100 penalty units.

(2) The law practice must keep the trust records— (is further explained in the next page)
59 Keeping of trust records

(1) This section has effect for section 261 of the Act for the keeping, in a permanent form, of a law practice's trust records in relation to trust money received by the practice.

(2) The law practice must keep the trust records—

(a) in the way prescribed under a regulation; and

(b) in a way that at all times discloses the true position in relation to trust money received for any person; and

(c) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and

(d) for the period prescribed under a regulation

- Trust accounting records (authorities) must be kept for 7 years after the last entry in the trust record or after finalisation of the matter, before they can be destroyed (s 59 LPR)

- permanent form – trust records that are printed or, on request, capable of being printed, in English on paper or other material (s 237, LPA); not be kept in pencil, as this may allow for alteration.

  o See s261 (2) LPA & TAG 4.1: Keeping Trust Account Records

  o The trust accounting records (regardless of whether manual or computer system in force), that must be kept by the law practice are listed under the LPA (s 237 LPA)
Most records must be kept on a monthly basis (s29 LPR).

Law practice must print a paper copy of the trust record listed below as at the end of each month (s29(1) LPR):

- Trust account receipts and payments cash books unless kept in electronic form that is readable or reportable on demand;
- Reconciliation statements;
- Lists of trust ledger accounts and their balances;
- List of controlled money accounts and their balances.

Must be printed within 15 working days after the end of the named month.

* See TAG 14.1.1: Keeping Trust Account Records

### 29 Copies of trust records to be printed

(1) The law practice must print a paper copy of trust records as follows—

(a) trust account receipts and payments cash books are to be printed monthly as at the end of each named month, unless a copy of the books as at the end of the named month is kept in electronic form that is readable or reportable on demand;

(b) reconciliation statements prepared under section 44 are to be printed as at the end of each named month;

(c) lists of trust ledger accounts and their balances are to be printed monthly as at the end of each named month;

(d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each named month;

(e) trust ledger accounts, the controlled money movement records and the trust transfer journal are to be printed before they are archived or deleted from the system;

(f) trust ledger accounts and controlled money account details are to be printed on request by and provided to an investigator.

* reconciliation statements: 계정 조정표

Example:

Q. Trust account authorities (trust account records) must be retained by law firms
for at least seven years.

Answers: True

59 Keeping of trust records

(1) This section has effect for section 261 of the Act for the keeping, in a permanent form, of a law practice's trust records in relation to trust money received by the practice.

(2) The trust records are to be kept for a period of 7 years after—
   (a) for a trust record mentioned in paragraphs (a) to (m) of the definition trust records in section 237(1) of the Act—the only or the last transaction entry in the trust record; or
   (b) for any other trust record—finalisation of the matter to which the trust record relates.

16. Computerised Trust Accounting Systems

Chronological record of information - Computerised Trust Accounting Systems

(1) The law practice must keep a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the following—

   (a) client name;

   (b) client address;

   (c) matter reference;

   (d) matter description;

   (e) ledger account number or other descriptor.
(2) The record is to be kept by the law practice.

* See s 30 LPR & TAG 14.1.2: File maintenance audit trails

### 30 Chronological record of information to be made

(1) The law practice must keep a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the following—

(a) client name;
(b) client address;
(c) matter reference;
(d) matter description;
(e) ledger account number or other descriptor.

(2) The record is to be kept by the law practice.

### 17. Types of Records*

**Source documents**

1. duplicate trust receipts
2. cheque butts
3. cheque requisitions
4. EFT requisitions
5. trust transfer journals
6. deposit records
7. ADI statements
**Supporting documents:**

1. correspondence
2. trust account authorities
3. bills of costs
4. invoices

**Secondary documents**

1. trust account receipts cashbook
2. trust account payments cashbook
3. trust ledger accounts

* See TAG 4.2: Overview of General Trust Records

**18. Trust Account Receipts**

- A source document (initiating documents created by a law practice which capture and record the relevant details of each transaction)

- The records the receipt of money that is required to be banked into a general trust account

- Should contain the particulars prescribed in **s34 (5) LPR**

**34 Receipting of trust money**

(5) For subsection (4), the required particulars are as follows—

(a) the date the receipt is made out and, if different, the date of receipt of the money;
(b) the amount of money received;
(c) the form in which the money was received;
(d) the name of the person from whom the money was received;
(e) details clearly identifying the name of the client in relation to whom the money was received and the matter description and matter reference;
(f) particulars sufficient to identify the purpose for which the money was received;
(g) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression ‘trust account’ or ‘trust a/c’;
(h) the name of the person who made out the receipt;
(i) the number of the receipt.

- Should be made out as soon as practicable after the trust money is received
- Manual trust accounts should be made out in duplicate
  - Regardless of the system (manual or computerised), must be consecutively numbered and issued in consecutive sequence (s34 (7) LPR)

(7) Receipts must be consecutively numbered and issued in consecutive sequence.

- Serves as written confirmation of the instructions received from the person on whose behalf the money is received.

* See s18 LPA, s 34 (2), (3), (5) & (7) LPR; & TAG 4.3: Trust Account Receipts

18 Timing for doing things

If no time is provided or allowed for doing something under this Act, the thing is to be done as soon as practicable, and as often as is required.

34 Receipting of trust money

(2) After receiving the trust money, the law practice must make out a receipt.
(3) The receipt must be made—
   (a) after the trust money is received, except as provided by paragraph (b); or
   (b) for trust money received by direct deposit—after the law practice receives or
   accesses notice or confirmation, in written or electronic form, of the deposit from the
   ADI concerned.

   * Note—

   * In other jurisdictions, provisions similar to this subsection may include the
     statement that the receipt must be made out as soon as practicable after
     receiving the trust money. Under section 18 of the Act, if no time is provided
     or allowed for doing something under the Act, the thing is to be done as soon
     as practicable. So, by this section, the receipt must be made out as soon as
     practicable after the trust money is received.

(5) For subsection (4), the required particulars are as follows—
   (a) the date the receipt is made out and, if different, the date of receipt of the money;
   (b) the amount of money received;
   (c) the form in which the money was received;
   (d) the name of the person from whom the money was received;
   (e) details clearly identifying the name of the client in relation to whom the money
       was received and the matter description and matter reference;
   (f) particulars sufficient to identify the purpose for which the money was received;
   (g) the name of the law practice, or the business name under which the law practice
       engages in legal practice, and the expression 'trust account' or 'trust a/c';
   (h) the name of the person who made out the receipt;
   (i) the number of the receipt.

(7) Receipts must be consecutively numbered and issued in consecutive sequence.

- The name of the person making out the receipt is required to be printed on the
  receipt (s 34 (5) (h) LPR)

34 Receipting of trust money

   (5) For subsection (4), the required particulars are as follows—
       (h) the name of the person who made out the receipt;
- If receipt being issued on a day after the money was received the receipt must also record the date money was received.
  - See TAG 4.3.3: Issue of trust account receipts

- The original receipt to be delivered, on request to the person from whom the trust money was received (§ 34 (6) LPR)

- The trust moneys must be banked into the trust bank account on the day of receipt or, if that is not reasonably practicable, then on the next business day; and, this information should be reflected in the law practice cashbooks and ledgers.
19. Receipts by Telegraphic Transfer (‘TT’) & Direct Deposit

- On the money being deposited into a trust ADI account through telegraphic transfer (TT) or direct deposit, the law practice will receive notification to that effect from the ADI/from the ADI statement.

- On receipt of such advice/accessing the notice or confirmation from the ADI of such payment, a trust receipt should be made out as soon as it is practicable (s 34 (3) (b), LPR)

### 34 Receipting of trust money

(3) The receipt must be made—
- after the trust money is received, except as provided by paragraph (b); or  
- for trust money received by direct deposit—after the law practice receives or accesses notice or confirmation, in written or electronic form, of the deposit from the ADI concerned.

* Note—

* In other jurisdictions, provisions similar to this subsection may include the statement that the receipt must be made out as soon as practicable after receiving the trust money. Under section 18 of the Act, if no time is provided or allowed for doing something under the Act, the thing is to be done as soon as practicable. So, by this section, the receipt must be made out as soon as practicable after the trust money is received.

- Prior to issue of the receipt it is advisable to seek written or electronic confirmation from the ADI in relation to the telegraphic transfer or direct deposit the law practice should be clear as to what constitutes cleared funds on online internet ADI statement

* See TAG 4.3.4: Receipts by telegraphic transfer and direct deposit
• What are the dangers in issuing a receipt without obtaining any written verification?
  
  o Drawing against unclear funds
  o Proceeds credited to the wrong account
  o Advice of incorrect amount lodged
  o Misrepresentation

* See TAG 4.3.5: Risks of Deficiency

20. Receipts by Credit Card facilities

• Credit card payments can be accepted by law practice
  
  • The only credit card facilities that should be used are those which permit the whole transaction amount to be credited
  
  • If the law practice elects to pass the credit card charge onto the client it should advise the client accordingly prior to the transaction with details of the amount of the fee – either as a percentage or nominated amount.

• Necessary arrangements should be made with the law practice’s ADI relating to:
  
  o Debit of merchant facility fee to general office account;

  o Charge-backs or reversed transactions not to be debited to the law practice’s trust account.

* See TAG 4.3.6: Receipts by credit card facilities
21. Cancelled Receipts

- A receipt can be cancelled, when a receipt is made out but it is realised prior to its issue that the content of the receipt is incorrect. On such cancellation, the original cancelled receipt must be kept by the law practice \( (s \ 34(8), \ LPR) \)

- The **preferred method for cancelling a receipt** is to:
  
  a. Record on the original and duplicate (if there is a duplicate) of the receipt the word “Cancelled” and the reason for cancellation;

  b. Retain (보유하다) the original and duplicate receipt (if there is a duplicate), the desired method being to staple the original to the duplicate;

  c. Enter the original receipt into the receipts cash book in receipt number sequence with the notation reading “cancelled” and the reason for the cancellation. In a manual system an amount will not be recorded in the amount or deposited column of the receipts cash book;

  d. If a manual accounting system is used, details of the receipt are not to be recorded in the relevant ledger account

* See TAG 4.3.9: Cancelled receipts

22. Dishonoured Cheques

- On being advised by the ADI that the cheque has been dishonoured, the required process is:
  
  o To retain the notification of dishonour from ADI on file
Trust Account Summary Note Written By Adrienne Park

- To effect the entry in the receipts cash book with reasons for reversal and showing the amount as a negative amount (which has the effect of cancelling the original entry)

- To post the entry to the debit side of the trust account ledger

- If the receipt in relation to the dishonoured cheque has been drawn against, then funds must be deposited from the office account to the general trust account immediately to remedy the deficiency

- A receipt to be issued for this transaction and entered in the receipts cash book and credited to the relevant trust ledger account.

* See TAG 4.3.10: Dishonour of cheques receipted – Reversal of receipts

Case:

- **LSC v Devenish, Leibinger, Rolls and Valente [2006] LPT 008**


  - Firm acting for a purchaser – personal cheque for $400,000 paid into trust account – client told firm’s conveyancing clerk it could be treated as cleared for purposes of settlement – clerk believed this – advised accounts who overrode computer software to allow settlement to go ahead – cheque dishonoured – trust overdrawn nearly $360,000.

  - Firm’s trust auditor was advised – told to remedy ASAP but real urgency not emphasised – took 5 months

  - Firm had to borrow the money to restore the deficiency.

  - No suggestion of dishonesty – firm put steps in place to ensure no recurrence

  - Fined $750 each plus applicant’s costs
23. Withdrawal by cheque or Electronic Funds Transfer (EFT)

- Withdrawals from the trust account can be made either by cheque or if the law practice is authorised by the law society, by electronic funds transfer (EFT) (s 250(1) LPA)

250 Withdrawing trust money from general trust account

(1) A law practice must not withdraw trust money from a general trust account otherwise than by—
(a) cheque; or
(b) if the practice is authorised by the law society to withdraw trust money from a general trust account by electronic funds transfer—electronic funds transfer.
Maximum penalty—50 penalty units.

- For EFTs refer to the ‘Electronic Funds Transfer Guidelines for Trust Account Operations’ issued by the Law Society. Refer to:

- Withdrawals specifically prohibited are cash withdrawals, ATM withdrawals or transfers, telephone banking withdrawals or transfers (s 250(2) LPA)

250 Withdrawing trust money from general trust account

(2) Without limiting subsection (1), the following are specifically prohibited by the subsection—
(a) cash withdrawals;
(b) ATM withdrawals or transfers;
(c) telephone banking withdrawals or transfers;
(d) unless the law practice is authorised by the law society to withdraw trust money from a general trust account by electronic funds transfer—
• **Cheques drawn on the law practice’s general trust account** must:

  o Be made payable to or to the order of a stated person or persons, not to bearer;
  
  o Not be payable to ‘cash’;
  
  o Be crossed ‘not negotiable’;
  
  o Include the name of the law practice and the expression ‘law practice trust account’

* See s 37(2) LPR; & TAG 4.5: Withdrawal by Cheque or Electronic Fund Transfer & TAG 4.5.1: Cheques

**37 Payment by cheque**

(1) This section applies to the withdrawal of trust money from a general trust account of a law practice by cheque.

(2) A cheque—

  (a) must be made payable to or to the order of a stated person or persons and not to bearer or cash; and
  
  (b) must be crossed 'not negotiable'; and
  
  (c) must include—
  
  (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
  
  (ii) the expression 'law practice trust account’ or 'law practice trust a/c'.
24. Who can sign a cheque?

- A cheque must be signed—
  
  (a) by an authorised principal of the law practice; or

  (b) if a principal mentioned in paragraph (a) is not available—
    
    (i) by an authorised legal practitioner associate [i.e., by an employee solicitor of the firm – whether he or she holds an unrestricted practising certificate or restricted practising certificate]; and, law practice must have given written notice of authorisation to QLS within 14 days of authorisation (s 46 (2) (a) LPR); or

    (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money (does not need to be an employee); or

    (iii) by 2 or more authorised associates (including non-solicitors) jointly.

* See s 37 (3), s 38 (2) & s 46 (2) (a) LPR; & TAG 3.3: Notification of authorised associates

37 Payment by cheque

(3) A cheque must be signed—

  (a) by an authorised principal of the law practice; or

  (b) if a principal mentioned in paragraph (a) is not available—
    
    (i) by an authorised legal practitioner associate; or

    (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or

    (iii) by 2 or more authorised associates jointly.
46 Notification requirements regarding general trust accounts

(1) Within 14 days after establishing a general trust account, a law practice must give the law society written notice of that fact.

(2) A law practice—
   
   (a) either before, or within 14 days after, authorising or terminating the authority of an associate of the practice or an Australian legal practitioner—
      
      (i) to sign cheques drawn on a general trust account of the practice; or
      
      (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice;
   
   must give the law society written notice of that fact, including the name and address of the associate or practitioner and indicating, for an associate, whether the associate is an employee of the practice; and

25. Cheque butts and cheque requisitions

- Whether computer generated cheques or manual cheques in use, a written record of the payment (either a cheque butt or cheque requisition) must be kept by the law practice (s 37 (4) & (5) LPR)

37 Payment by cheque

(4) A written record of the required particulars (including a record in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those particulars are recorded by computer program in the trust account payments cash book.

(5) If, at the time the cheque is issued, the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
• Spoiled cheque (무효화된 체크) forms or those considered unsuitable for issue should be marked ‘cancelled’ and stapled to the cheque butt

• Trust cheque must never be issued until clear funds are held on behalf of the client at the approved ADI where the trust a/c is conducted

• Trust cheque also should never be drawn against unbanked funds in the law practice’s possession, for, such funds could be stolen, lost or destroyed before being banked.

* See TAG 4.5.2: Cheque Butts and Cheque Requisitions

26. Cheque butts

• The cheque butts and cheque requisitions being the source documents for recording the entries in the cash payments book, should contain a record of full details of the payment.

• When a number of payments be made to one payee for number of transactions one trust account cheque be drawn.
27. Cheque reversal & Stale cheques (TAG 4.5.5: Cheque reversal & 4.5.6: Stale cheques)

- **Cheque reversal** (체크 전환)
  - What happens when a cheque has been made out and issued to the payee and an error subsequently known?
    - There will be occasions when a cheque has been made out and issued to the payee and error is subsequently realised, for instance, **when a cheque is issued for an incorrect amount, requiring payment of the cheque to be stopped.**
  
  - What are the procedures to be followed?
    1. Contact the payee to whom the cheque has been issued and advise of the problem;
    2. Contact the approved ADI and request the issue of a stop payment order;
    3. Enter the reversal in the cash payment book by rewriting the entry, adding the reason for reversal and entering the amount as a negative amount. This has the effect of cancelling the original entry;
    4. Post the entry to the credit side of the ledger (the opposite side to the original cheque); and
    5. If applicable, a replacement cheque should be issued in the normal matter

- Example:
Assume that cheque No.123345 issued to Nicole Kidman on 6 April 2017 for $24,100.00 was destroyed by her 6 year old kid, and Nicole informed the law practice of this on 30 April 2017. The law practice should verify with the approved ADI that the cheque has not been presented and should then request its approved ADI to stop payment on the cheque. The law practice would then reverse and write-back the cheque in the trust account records. The cheque reversal be recorded in the cash payment book under date of 30 April 2017 (the date on which the law practice stopped payment on the cheque) as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Chq No.</th>
<th>Paid to Reason</th>
<th>Account Name Matter Ref Matter description</th>
<th>Multi Amount</th>
<th>Cheque Amount</th>
</tr>
</thead>
</table>
| 30/4/2017 | 123345  | Cancelled Cheque No.123345  
Re: Cheque no.123345 dated 06/4/2017 destroyed by client | Nicole Kidman S1 PI Claim – ANI Insurance Co. |              | ($24,100.00)  |

- When the cash payment book is totalled the write-back is treated as a deduction from the other payments thus cancelling out the original entry in the cash payment book in respect of cheque no.123345.

- The replacement cheque issued on 19/5/2017 is recorded in the cash payment book as follows:
<table>
<thead>
<tr>
<th>Date</th>
<th>Chq No.</th>
<th>Paid to Reason</th>
<th>Account Name</th>
<th>Multi Amount</th>
<th>Cheque Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>19/5/2017</td>
<td>123376</td>
<td>Nicole Kidman Re: replacement of cancelled cheque no.123345 dated 06/4/2017 being net settlement funds</td>
<td>Nicole Kidman S1 PI Claim – ANI Insurance Co.</td>
<td></td>
<td>$24,100.00</td>
</tr>
</tbody>
</table>

- **Stale Cheques** (발행된 지 오래된 체크)

  - Cheques which have been drawn and become stale (e.g. when a cheque is **older than 15 months from the date of issue**) should no longer be possessed through the approved ADI system.

  - However, the law practice should be guided by advise from its approved ADI as to the treatment of stale cheques through tis specific clearance systems.

  - It is strongly recommended that a stop payment notice be issued to the ADI in respect of a stale cheque before a replacement cheque is issued as ADIs have, on occasion, paid state cheques.
28. Trust account cash books

- A law practice having a **general trust account must keep two trust account cash books**:
  - a trust account receipts cash book (s 40 LPR) – money in
  - a trust account payments cash book (s 41 LPR) – money out

- **Trust account receipts cash book** – entries are posted from the duplicate trust account receipts. The date and amount of each deposit in the general trust account are recorded in the order in which the receipts are made out (s 40 (2) & (3) – LPR)

- **Trust account payments cash book** – entries are posted from the cheque butts or cheque requisitions and EFT transaction summary forms. The particulars must be recorded in the order in which the payments are made.

  * See TAG 4.7.1: Trust account receipts cash book & 4.7.2: Trust account payments cash book

40 Trust account receipts cash book

(1) The following particulars must be recorded in a law practice's trust account receipts cash book in relation to each receipt of trust money—
   (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
   (b) the receipt number;
   (c) the amount of money received;
   (d) the form in which the money was received;
   (e) the name of the person from whom the money was received;
   (f) details clearly identifying the name of the client in relation to whom the money was received and the matter description and matter reference;
   (g) particulars sufficient to identify the purpose for which the money was received;
   (h) details clearly identifying the ledger account to be credited.
(2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.

(3) The particulars in relation to receipts must be recorded in the order in which the receipts are made out.

(4) The particulars in relation to a receipt must be recorded within 5 working days counting from and including the day the receipt was made out.

<table>
<thead>
<tr>
<th>41 Trust account payments cash book</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The following particulars must be recorded in a law practice's trust account payments cash book in relation to each payment of trust money by cheque—</td>
</tr>
<tr>
<td>(a) the date and number of the cheque;</td>
</tr>
<tr>
<td>(b) the amount ordered to be paid by the cheque;</td>
</tr>
<tr>
<td>(c) the name of the person to whom the payment is to be made or, for a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;</td>
</tr>
<tr>
<td>(d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;</td>
</tr>
<tr>
<td>(e) details clearly identifying the ledger account to be debited;</td>
</tr>
<tr>
<td>(f) particulars sufficient to identify the purpose for which the payment was made.</td>
</tr>
<tr>
<td>(2) The following particulars must be recorded in a law practice's trust accounts payments cash book in relation to each payment of trust money by electronic funds transfer—</td>
</tr>
<tr>
<td>(a) the date and number of the transaction;</td>
</tr>
<tr>
<td>(b) the amount transferred;</td>
</tr>
<tr>
<td>(c) the name and number of the account to which the amount was transferred and the relevant BSB number;</td>
</tr>
<tr>
<td>(d) the name of the person to whom the payment was made or, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;</td>
</tr>
<tr>
<td>(e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;</td>
</tr>
<tr>
<td>(f) details clearly identifying the ledger account to be debited;</td>
</tr>
<tr>
<td>(g) particulars sufficient to identify the purpose for which the payment was made.</td>
</tr>
<tr>
<td>(3) The particulars in relation to payments must be recorded in the order in which the payments are made.</td>
</tr>
<tr>
<td>(4) The particulars in relation to a payment must be recorded within 5 working days counting from and including the day the payment was made.</td>
</tr>
</tbody>
</table>
29. **Trust Ledger Account**

- **The trust funds held by the law practice on behalf of its clients must be accurately recorded in client’s individual trust ledger.** The posting of the ledger should be up to date.

- The details required to be recorded in the trust ledger are:
  
  o **Title:** the full name and address together with full details of the transaction (§ 42(2), LPR); any changes of the details in the title of the trust ledger account must be recorded (§ 42(3), LPR);
    
    (2) The following particulars must be recorded in the title of a trust ledger account—
    
    (a) the name of the person for or on behalf of whom the trust money was paid;
    (b) the person’s address;
    (c) particulars sufficient to identify the matter in relation to which the trust money was received.

    (3) Details of any changes in the title of a trust ledger account must be recorded.

  o **Receipt of trust money:** (§ 42(4), LPR);
    
    (4) The following particulars must be recorded in the trust ledger account in relation to each receipt of trust money for the matter—
    
    (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
    (b) the receipt number;
    (c) the amount of money received;
    (d) the name of the person from whom the money was received;
    (e) particulars sufficient to identify the purpose for which the money was received.

  o **Payment of trust money by Cheque:** (§ 42(5), LPR);
(5) **The following particulars must be recorded in the trust ledger account** in relation to each payment of trust money by cheque—

(a) the date and number of the cheque;
(b) the amount ordered to be paid by the cheque;
(c) the name of the person to whom the payment is to be made or, for a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
(d) particulars sufficient to identify the purpose for which the payment was made.

○ **Payment of trust money by EFT: (s 42(6), LPR);**

(6) **The following particulars must be recorded in the trust ledger account** in relation to each payment of trust money by electronic funds transfer—

(a) the date and number of the transaction;
(b) the amount transferred;
(c) the name and number of the account to which the amount was transferred and the relevant BSB number;
(d) the name of the person to whom the payment was made or, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
(e) particulars sufficient to identify the purpose for which the payment was made.

○ **Transfer by Journal Entry: (s 42(7), LPR);**

(7) **The following particulars must be recorded in the trust ledger account** in relation to each transfer of trust money effected by a journal entry—

(a) the date of the transfer;
(b) the amount transferred;
(c) the journal reference number;
(d) the name of the other trust ledger account from which or to which the money was transferred;
(e) particulars sufficient to identify the purpose for which the payment was made.
(10) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

* See TAG 4.8: Trust Ledger Accounts & 4.8.1: Trust ledger account detail

Example:

Q. The trust ledger account relating to each payment **by electronic transfer** should contain:

Select answer:

Answers:  
- the transaction number
- the receipt number
- the written authority from the appropriate person
- **date of transaction**
- none of the above
- ✔️ a & d only
30. Trust account reconciliation

- Trust account reconciliation – effective internal control
- The trust account cash books must be balanced and reconciled with the trust ledger and the ADI balance (referred to as three-way reconciliation) **within 15 working days** of the end of each month (s 44 (3), LPR)
- May have to take into account non-receipted direct deposits (beneficiary unknown), outstanding deposits (received on last day of the month), unpresented trust account cheques, ADI errors (deduction of bank fees, adding interest) (TAG 4.10.4 to 4.10.7)
- Preparing the cashbook balance reconciliation – the procedure to balance the cash book (TAG 4.10.1)
- A trial balance statement containing of all trust ledger account balances to be prepared as at the end of the month (s 44 (2) (b) LPR)
- Procedures to be followed in preparing a trial balance statement (TAG 4.10.2)
- Preparing the approved ADI reconciliation statement (TAG 4.10.3)

* See TAG: 4.10: Trust Account Reconciliations

### 44 Reconciliation of trust records

(1) A law practice that keeps 1 or more general trust accounts must reconcile the trust records relating to each account.

(2) The trust records relating to a general trust account are to be reconciled as at the end of each named month by preparing—

(a) a statement—

(i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and
(ii) showing the date the statement was prepared; and

(b) a statement—

(i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; and
(ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and
(iii) showing the date the statement was prepared.

(3) The statements must be prepared within 15 working days after the end of the month concerned.

(4) The statements must be kept by the law practice.

31. Trust account statements* - Client can require the trust account statement at any time

- Trust account statements - a report designed by the Regulation (sS3, LPR) to inform persons for whom or whose benefit the trust money is held or controlled by the law practice (TAG 4.11: Trust account statements)

- Law practice to furnish (제공하다) a trust account statement to each person for whom or whose behalf trust money other than transit money is being held or controlled (s53, LPR)

- Required to furnish a separate trust account statement in respect of general trust accounts, controlled money accounts and power money accounts (TAG 4.11.2: Delivery of Trust account statements)

- Must retain a copy of the trust account statement furnished under LPR.

A trust account statement is to be furnished:

a. as soon as practicable after completion of the matter to which the ledger account or record relates; or
b. as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or

c. except as provided by sub-regulation(7), as soon as practicable after 30 June in each year.

* See s53(6) LPR; & TAG 4.11.2:Delivery of trust account statements

### 53 Trust account statements

(1) A law practice must give a trust account statement to each person for whom or on whose behalf trust money, other than transit money, is held or controlled by the law practice or an associate of the practice.

(2) For trust money in relation to which the law practice is required to keep a trust ledger account, the practice must give a separate statement for each trust ledger account.

(3) For controlled money in relation to which the law practice is required to keep a record of controlled money movements, the practice must give a separate statement for each record.

(4) For trust money subject to a power given to the law practice or an associate of the practice in relation to which the practice is required to keep a record of all dealings with the money to which the practice or associate is a party, the practice must give a separate statement for each record.

(5) A trust account statement is to contain particulars of—
   
   (a) all the information required to be kept under this division in relation to the trust money included in the relevant ledger account or record; and
   
   (b) the remaining balance (if any) of the money.

(6) A trust account statement is to be given—
   
   (a) after completion of the matter to which the ledger account or record relates; or
   
   (b) after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or
   
   (c) except as provided by subsection (7), after 30 June in each year.
(7) The law practice is not required to give a trust account statement under subsection (6)(c) in relation to a ledger account or record if at 30 June—

(a) the ledger account or record has been open for less than 6 months; or

(b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or

(c) a trust account statement has been given within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.

(8) The law practice must keep a copy of a trust account statement given under this section.

32. Legal costs and trust money*

- Can a law practice withdraw money from the general trust account or a controlled money account for payment of legal costs owing to the practice? *Yes*, it can if the required procedures are followed *(s 258(1) (b) LPA)*

258 Dealing with trust money—legal costs and unclaimed money

(1) A law practice may do any of the following in relation to trust money held in a general trust account or controlled money account of the practice for a person—

(a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the practice;

(b) withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements under this Act or prescribed under a regulation are complied with;

(c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under section 713.
• **What are legal costs?**

“*amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services including interest on the amounts, but excluding disbursements and interest on disbursements.*” *(s 346, LPA)*

• **Such withdrawal for legal costs may be effected by two methods** *(s 58 LPR)*:

  o Withdrawal with authority: see TAG 10.1: Withdrawal with authority
  o Withdrawal on issue of bill: see TAG 10.3: Withdrawal on issue of bill

33. **Withdrawal with authority***

• **Before** effecting the withdrawal the practice gives or sends to the person a written notice of withdrawal or a request for payment, referring to the proposed withdrawal *(s 58(3)(b) LPR)*; and

  o The money is withdrawn **in accordance with a costs agreement** that complies with the legislation under which it is made and that authorises the withdrawal *(s 58(3)(a)(i), LPR)*;

  o The money is withdrawn **in accordance with instructions** that have been received by the practice and that authorise the withdrawal *(s 58(3)(a)(ii), LPR)*;

  o **The money is owed to the practice** by way of reimbursement of money already paid by the practice on behalf of the person *(s 58(3)(a)(iii), LPR)*;

A written notice of withdrawal or a request for payment referring to the proposed withdrawal would usually be in the form of a bill of costs and outlays relating to the money or in the form of a letter.

* See TAG 10.1: Withdrawal with Authority
34. Withdrawal on issue of bill*

- The law practice may withdraw money for professional costs where bill issued (s 58(4)(a) LPR) AND:
  - The person has not objected to withdrawal of the money within seven (7) days after being given the bill (s 58(4)(b)(i) LPR); or
  - The person has objected within 7 days after being given the bill but has not applied for review of the legal costs under the Act within sixty (60) days after being given the bill (s 58(4)(b)(ii) LPR); or
  - The money becomes otherwise legally payable (s 58(4)(b)(iii) LPR)

Division 6 of the LPA prescribes the form of, and the particulars to be included in the bill.

* See TAG 10.3: Withdrawal on issue of bill

35. Withdrawal for reimbursement – outlays*

- The law practice may withdraw money from a trust account or controlled money account if:
  
  (i) before effecting the withdrawal, the practice gives or sends to the person a request for payment, referring to the proposed withdrawal, or a written notice of withdrawal; and
(ii) the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person (s58(3)(a)(iii))

* See s58(3)(a)(iii) and (b) LPR & TAG 10.4: Withdrawal for Reimbursement - Outlays

LSC has published specific guidelines about charging outlays and disbursements:


58 Withdrawing trust money for legal costs

(1) This section prescribes, for section 258(1)(b) of the Act, the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice by the person for whom the trust money was paid into the account.

(2) The trust money may be withdrawn in accordance with the procedure set out in either subsection (3) or (4).

(3) The law practice may withdraw the trust money—

   (a) if—

   (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or

   (ii) the money is withdrawn in accordance with instructions that have been received by the practice and that authorise the withdrawal; or

   (iii) the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person; and

   (b) if, before effecting the withdrawal, the practice gives or sends to the person—

      (i) a request for payment, referring to the proposed withdrawal; or

      (ii) a written notice of withdrawal.

(4) The law practice may withdraw the trust money—
(a) if the practice has given the person a bill relating to the money; and
(b) if—

(i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or

(ii) the person has objected within 7 days after being given the bill but has not applied for a review of the legal costs under the Act within 60 days after being given the bill; or

(iii) the money otherwise becomes legally payable.

(5) Instructions mentioned in subsection (3)(a)(ii)—

(a) if given in writing, must be kept as a permanent record; or

(b) if not given in writing, must be confirmed in writing either before, or not later than 5 working days after, the law practice effects the withdrawal and a copy must be kept as a permanent record.

(6) For subsection (3)(a)(iii), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the practice has been debited.

36. Unclaimed monies

- Law practices are required, by 1 June of each year, to lodge a return with the Public Trustee for unclaimed trust money (s 258(1)(c), LPA)

258 Dealing with trust money—legal costs and unclaimed money

(1) A law practice may do any of the following in relation to trust money held in a general trust account or controlled money account of the practice for a person—

(c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under section 713.
Pursuant to section 713(3) of the LPA, a return must be lodged with the Public Trustee, by 1 June in a year, if on 1 April in the year, a law practice had in its possession or under its control, trust money or trust property, where:

1. the person, on that day, and for 12 months immediately preceding that day was:

   1.1 absolutely entitled to the money or property; and
   1.2 is not known to the practice or cannot be found by the practice; or

2. the law practice:

   2.1 cannot, and could not for 2 years immediately preceding that day, determine who is legally entitled to receive the money or property; and
   2.2 considers that legal proceedings are necessary to resolve who is legally entitled to receive the money or property; and
   2.3 has no knowledge of legal proceedings having been commenced to resolve the matter.

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713 Dealing with particular trust money and trust property

(1) This section applies if, on 1 April in a year—

   (a) a law practice has in its possession or under its control trust money or trust property of a person who, on that day is, and for 12 months immediately preceding that day was, absolutely entitled to the money or property; and
   (b) the person, or another person legally entitled to receive the money or property, is not known to the practice or cannot be found by the practice.

(2) Also, this section applies if, on 1 April in a year—

   (a) a law practice has in its possession or under its control trust money or trust property for which the law practice can not, and could not for 2 years immediately preceding that day, determine who is legally entitled to receive the money or property; and
   (b) the law practice considers legal proceedings are necessary to resolve who is legally entitled to receive the money or property; and
   (c) the persons who may be, or claim to be, entitled to receive the money or
property have not started legal proceedings to resolve the matter.

(3) The law practice must, by 1 June in the year, give to the public trustee a return about the trust money or trust property.

Maximum penalty—50 penalty units.

(4) The return must—

(a) be signed by a principal or legal practitioner director of the law practice; and

(b) include full details of the trust money or trust property; and

(c) include details of any claim or lien of the law practice in relation to the money or property, including, for example, details of all costs, charges and expenses, if any, claimed by the practice in relation to the money or property; and

(d) include a statement of the reasons that the money or property is in the possession of or under the control of the practice; and

(e) include other information the public trustee reasonably requires about the money or property and the person who is, or the persons who may be, entitled to it.

(5) On receipt of a return under subsection (3), the public trustee may, by signed notice given to the law practice, require the practice to transfer to the public trustee the trust money or trust property mentioned in the return within the period stated in the notice.

(6) On the giving of a notice under subsection (5), any lien of the law practice claimed in relation to the trust money or trust property stops having effect.

(7) If a law practice does not comply with a requirement under subsection (5), the public trustee may apply by motion to the Supreme Court for an order that the practice immediately transfer the trust money or trust property to the public trustee.

(8) An order under subsection (7) may be made in the absence of the law practice if the notice of motion has been duly served on the practice, or the court is satisfied that reasonable efforts have been made to serve the notice.

(9) If a law practice transfers trust money or trust property to the public trustee under this section—

(a) the practice is relieved from any further liability in relation to the money or property; and

(b) for trust money—the public trustee must place the money in the unclaimed moneys fund under the Public Trustee Act 1978 and deal with it as unclaimed money under that Act.

(10) In this section—

transfer includes pay, assign and deliver.
37. Deficiencies & False names*

- **Deficiencies**: An Australian legal practitioner must not, without reasonable excuse, cause—
  
  a. a deficiency in any trust account or trust ledger account; or
  
  b. a failure to pay or deliver any trust money.

- **The definition of “deficiency”**, in a trust account or trust ledger account, includes the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account (§ 259, LPA)

259 Deficiency in trust account

(1) An Australian legal practitioner must not, without reasonable excuse, cause—

   (a) a deficiency in any trust account or trust ledger account; or

   (b) a failure to pay or deliver any trust money.

   Maximum penalty—200 penalty units.

(2) A reference in subsection (1) to an account includes a reference to an account of the practitioner or of the law practice of which the practitioner is an associate.

(3) In this section—

  cause includes be responsible for.

  deficiency, in a trust account or trust ledger account, includes the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account.

- **False Names**: A law practice must not knowingly receive money or record receipt of money in the practice’s trust records under a false name (§ 262(1), LPA)
262 False names

(1) A law practice must not knowingly receive money or record receipt of money in the practice’s trust records under a false name.

Maximum penalty—100 penalty units.

• If a person on whose behalf trust money is received by a law practice is commonly known by more than one name, the practice must ensure that the practice’s trust records record all names by which the person is known (s 262(2) LPA)

262 False names

(2) If a person on whose behalf trust money is received by a law practice is commonly known by more than one name, the practice must ensure that the practice’s trust records record all names by which the person is known.

Maximum penalty—100 penalty units.

* See TAG 3.8: Deficiency in trust account & 3.10: False names

38. Certain irregularities & suspected irregularities*

• Written notice must be provided to the Law Society 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 (s 260(1) LPA)

• Written notice must be provided to the Law Society as soon as practicable if a legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money
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) (s 260(3) LPA)

* See TAG 3.9: Reporting certain irregularities and suspected irregularities

260 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 law society; and

(b) if a corresponding authority is responsible for the regulation of the accounts concerned—the corresponding authority.

Maximum penalty—50 penalty units.

(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 law society; and

(b) if a corresponding authority is responsible for the regulation of the accounts relating to the trust money concerned—the corresponding authority.

Maximum penalty—50 penalty units.

(3) 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).
39. Computerised trust accounting systems*

The requirements of the Regulation in relation to computer accounting systems are

1. Certain paper copies of trust records are to be printed at the end of each month *(s 29, LPR)*;

2. File maintenance audit trails *(s 30, LPR)*;

3. Overdrawn trust ledger reports *(s 31(1), LPR)*;

4. Controls over deletion of ledger accounts *(s 31(2), LPR)*;

5. Page numbering, chronological sequencing and entry processing requirements *(s 31(3) & (4) LPR)*;

6. Compulsory input requirements *(s 31(6), LPR)*;

7. Back-up facility requirements *(s 32, LPR)*

* See TAG 14.1: Requirements regarding computer accounting systems

29 Copies of trust records to be printed

(1) The law practice must print a paper copy of trust records as follows—

(a) trust account receipts and payments cash books are to be printed monthly as at the end of each named month, unless a copy of the books as at the end of the named month is kept in electronic form that is readable or reportable on demand;

(b) reconciliation statements prepared under section 44 are to be printed as at the end of each named month;

(c) lists of trust ledger accounts and their balances are to be printed monthly as at the end of each named month;

(d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each named month;

(e) trust ledger accounts, the controlled money movement records and the trust transfer journal are to be printed before they are archived or deleted from the system;

(f) trust ledger accounts and controlled money account details are to be printed on request by and provided to an investigator.
(2) The trust records printed monthly as at the end of a named month under subsection (1)(a) to (d) must be printed within 15 working days after the end of the named month.

(3) The paper copies printed under subsection (1) are to be kept by the law practice, except if they are printed on request under that subsection.

(4) The electronic copy of the trust account cash books under subsection (1)(a) is to be kept by the law practice.

30 Chronological record of information to be made

(1) The law practice must keep a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the following—

(a) client name;
(b) client address;
(c) matter reference;
(d) matter description;
(e) ledger account number or other descriptor.

(2) The record is to be kept by the law practice.

31 Requirements regarding computer accounting systems

(1) The law practice must ensure its computerised accounting system is not capable of accepting, in relation to a trust ledger account, the entry of a transaction resulting in a debit balance to the account, unless a contemporaneous record of the transaction is made in a way that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind.

(2) The law practice must ensure the system is not capable of deleting a trust ledger account unless—

(a) the balance of the account is zero and all outstanding cheques have been presented; and
(b) when the account is deleted, a copy of the account is kept in a permanent form.

(3) The law practice must ensure any entry in a record produced in a permanent form
appears in chronological sequence.

(4) The law practice must ensure each page of each printed record is numbered sequentially or is printed in a way that no page can be extracted.

(5) The law practice must ensure its computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment.

(6) The law practice must ensure its computerised accounting system requires input in every field of a data entry screen intended to receive information required by this division to be included in trust records.

40. External examination of trust accounts

• A law practice is required to have trust records externally examined in 2 situations:
  
  o At the end of each financial period (1 April to 31 March); and, the report must be lodged by 31 May (s 268(1) & 274(1) LPA)
  
  o After the law practice ceases to hold trust money (eg closing practice) (s276 LPA)

• External examiner: An auditor or appropriately qualified accountant (s65, LPR)

• Law practice must appoint an external examiner within 14 days after first receiving trust moneys (s267(1), LPA) and should give notice, within 30 days, to the Law Society in the approved form of the practice’s external examiner (s270(1), LPA)

267 Appointment and qualifications of external examiner

(1) A law practice must, within 14 days after becoming a law practice to which this part applies, appoint an individual as the external examiner for the practice.

Maximum penalty—50 penalty units.
270 Law practice to give notice of external examiner

(1) A law practice must, within 30 days after becoming a law practice to which this part applies, give the law society notice in the approved form of the practice's external examiner.

Maximum penalty—50 penalty units.

- The external examiner must report any irregularities to the QLS within 7 days of discovery (s275(2), LPA)

275 External examiner to give other reports

(2) The external examiner must, within 7 days after becoming aware of the matter, give the law society a written report on the matter.

Maximum penalty—100 penalty units.

268 Law practice must have trust records externally examined

(1) A law practice must, for each financial period for the practice and within 60 days after the end of the period, have its trust records externally examined by the practice's external examiner.

Maximum penalty—100 penalty units.

274 External examiner's report on external examination

(1) If a law practice has its trust records examined by an external examiner under section 268(1), the practice must, within 60 days after the end of the period to which the examination relates, give to the law society a copy of the external examiner's report on the examination, unless the practice has a reasonable excuse.
276 Final examination of trust records

(1) This section applies if a law practice—
   (a) ceases to be authorised to receive trust money; or
   (b) ceases to engage in legal practice in this jurisdiction.

(2) The law practice must appoint an individual as an external examiner to examine the practice's trust records—
   (a) in relation to the period since an external examination of the practice's trust records was last conducted; and
   (b) in relation to each period after the period mentioned in paragraph (a), comprising a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money.

Maximum penalty—50 penalty units.

(3) The law practice must give to the law society—
   (a) a report of each examination under subsection (2) within 60 days after the end of the period to which the examination relates; and
   (b) a statutory declaration in the law society approved form within 60 days of ceasing to hold trust money.

Maximum penalty—20 penalty units.

(4) If an Australian legal practitioner dies, the practitioner's legal personal representative must comply with this section as if the representative were the practitioner.

(5) Nothing in this section affects any other requirements under this part.

65 Appointment and qualifications of external examiner

For section 267(3)(a) of the Act, each of the following is prescribed as a qualification or experience that an individual must have to be appointed as an external examiner—

(a) the individual must be registered as an auditor under the Corporations Act;
(b) the individual must—
   (i) be a member of CPA Australia Ltd ACN 008 392 452; and
   (ii) be entitled to use the letters ‘CPA’ or ‘FCPA’; and
   (iii) have satisfied the requirements of CPA Australia Ltd ACN 008 392 452 for practice as a public accountant;

(c) the individual must—
   (i) be a member of Chartered Accountants Australia and New Zealand ARBN 084 642 571; and
   (ii) be entitled to use the letters ‘CA’ or ‘FCA’; and
   (iii) have satisfied the requirements of Chartered Accountants Australia and New Zealand ARBN 084 642 571 for practice as a public accountant;

(d) the individual must—
   (i) be a member of the Institute of Public Accountants ACN 004 130 643; and
   (ii) be entitled to use the letters ‘MIPA’ or ‘FIPA’; and
   (iii) have satisfied the requirements of the Institute of Public Accountants ACN 004 130 643 for practice as a public accountant; and
   (iv) have completed a tertiary course of study in accounting with an auditing component from a university or other institution prescribed under the Corporations Act, section 1280(2A);

(e) the individual must be a person who the chief executive considers has appropriate qualifications as an auditor under the Corporations Act.

**41. Prescribed account deposits**

- Amendments to the Legal Profession Act 2007 on 11 November 2016, were to take effect from 1 January 2017

- Amendment - Abolition of the requirement for law practices to maintain a deposit in a prescribed account

- Law practices, who maintained a prescribed account prior to 31 December 2016, are to withdraw these funds and deposit back to the law practice’s trust account
* See TAG 13: Deposits to prescribed account

42. Fidelity Fund

Ref:
http://www.qls.com.au/For_the_community/You_your_solicitor/Resolving_a_complaint/Fidelity_Guarantee_Fund

- Legal Practitioners’ Fidelity Guarantee Fund is administered by Queensland Law Society (QLS)
- Reimbursement to persons who suffer pecuniary loss arising from an act or omission of one or more associates that involves dishonesty and results in:
  - a default of a law practice
  - fraudulent dealing with trust property that was received by the law practice
- “Default” failure to pay or deliver trust money, or fraudulent dealing with trust property, that arises from an act or omission of an associate that involves dishonesty (Schedule 2 LPA)

43. Commencing a law practice

- Steps to take when commencing a practice:
  - Trust Account receipts
  - Trust Account cheques
  - Establishing a General Trust Account
  - Notification of opening a General Trust Account
  - Notification of authorised associates
- Notification of external examiner

* See TAG 16: What to do when commencing a practice
Part B – Ceasing a law practice

1. Notification of intention to cease

- Law practice holding trust money must give **14 days written notice** of its intention to QLS (s63(1), LPR)
  - to cease to exist as a law practice
  - to cease to engage in legal practice in this jurisdiction
  - to cease to practice in such a way as to receive trust money

2. Notification of closure

- Law practice that holds trust money, **within 14 days** of ceasing to hold trust moneys must give QLS -
  - **Written notice of that fact**; and,
  - If the practice has not given a notice under subsection (1) within the previous 28 days, a notice that complies with that subsection

- The notification of both intention to cease and closure **should include details which identify the practice’s general trust accounts**, and if applicable, **controlled money accounts**, **power money accounts** and **investment money accounts**.

* See TAG 17.1: Notification of intention to cease & 17.3: Notification of closure
3. **Ceasing to practice**

- **Distribution of trust monies**
  - To the person entitled to those moneys or in accordance with their directions
  - If transaction cannot be done before settlement of the practice –
    - Written authority, in duplicate from the client authorising the delivery of the incomplete file and the payment of trust funds held for the transaction to the law practice purchasing the practice or any other law practice chosen by the client
    - Copy of such authority should be retained as a trust account record.
  - A law practice general account is closed only when –
    - All amounts held in the trust account have been accounted to the rightful beneficiaries;
    - All trust account cheques issued have been presented to the approved ADI account for payment and the ADI statement shows a NIL balance.

  See **TAG 17.2: Distribution of trust monies**

- **Lodgement of final external examiner’s report:**
  - External examination of the trust account
  - Lodgement of the report for the period from the last examination to the date of cessation to QLS within 60 days of the date of ceasing to hold trust money *(s276, LPA)*
  - Confirmation of closure of the trust account
• Declarations:

(i) Statutory declaration (276 (3) (b), LPA)

  o Ceasing to hold trust money

  o In the prescribed form within 60 days of the date of ceasing to hold trust money

(ii) Law Practice Declaration & Trust Money Statement

  o In the prescribed form within 60 days of the date of ceasing to hold trust money

* See TAG 17.4: Lodgement of Final External Examiner’s Report

Example:

Monica Smith, a legal practitioner of a regional firm in Queensland, is in the process of selling her law practice due to her cancer. The settlement is scheduled for 16th February 2017. As at today, his law practice has a general trust account and controlled money account.

Select all correct answers below: (please find the answer by yourself)

Answers: ☑

Monica should also complete and lodge with the Queensland Law Society two declarations, 'Statutory Declaration - Ceasing to hold trust money' and 'Law Practice Declaration & Trust Money Statement'.

☑ Monica must distribute the trust moneys to the person/s entitled to those moneys or in terms of directions received from those persons.

Monica should give the Queensland Law Society at least 30 days written notice of his intention

☑ Monica, whilst lodging the final external examiner's report must provide confirmation of closure of the trust account.

☑ The notice to include details that identify law practice's general trust accounts, and if applicable controlled money accounts, power money accounts and
investment money accounts.

On closure of the general trust account or when the practice ceases to hold trust money, **Monica must have its trust account externally examined**; and, the external examiner's report is to be lodged within 30 days of the ceasing to hold trust money.

4. **Lodgement of various reports** (Refer to: Trust Account Guide 18: Dates of lodgement of reports etc)

<table>
<thead>
<tr>
<th>Date</th>
<th>Legislation</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 April</td>
<td>S61, Legal Profession Regulation 2007</td>
<td>Law practice must forward statement regarding receipt or holding of trust money (Part A of Law Practice Declaration &amp; Trust Money Statement – QLS Form 4 (LPR)) if they did not receive or hold trust money during the period.</td>
</tr>
<tr>
<td>31 May</td>
<td>S274, Legal Profession Act 2007</td>
<td>Law practice must forward external examiner report for the year ended 31 March to the society, on or before 31 May (QLS Form 5 (LPR)). The Law Practice Declaration and Trust Money Statement (Part A &amp; B of the QLS Form 4 (LPR)) is to be attached as a schedule to the external examiner’s report.</td>
</tr>
<tr>
<td>1 June</td>
<td>S713(3), Legal Profession Act 2007</td>
<td>Return to be lodged with the public Trustee for unclaimed trust money.</td>
</tr>
<tr>
<td>After 30 June</td>
<td>S53, Legal Profession Regulation 2007</td>
<td>Trust account statement must be furnished to each person from whom or on whose behalf trust money is held. Exemptions from furnishing a trust account statement as at 30 June are in s53(7).</td>
</tr>
<tr>
<td>July</td>
<td>S46(2)(b), Legal Profession Regulation 2007</td>
<td>Law practice must provide detail of practitioners and associates who are authorised to withdraw money from the practice’s trust account, as at 1 July of that year, to the society.</td>
</tr>
<tr>
<td>Within 14 days of establishing a general trust account</td>
<td>S46(1), Legal Profession Regulation 2007</td>
<td>Notification to the society, advising the establishment and detail of a law practice’s trust account.</td>
</tr>
<tr>
<td>Within 30 days of receiving trust moneys</td>
<td>S267(1), Legal Profession Act 2007</td>
<td>Law practice to appoint an individual as the external examiner.</td>
</tr>
<tr>
<td></td>
<td>S46(2)(a), Legal Profession Regulation 2007</td>
<td>Notification to the society, advising the detail of practitioners or associates authorised to withdraw money from a law practice’s trust account.</td>
</tr>
<tr>
<td></td>
<td>S270(1), Legal Profession Act 2007</td>
<td>Notification to the society, advising the details of the external examiner appointed. QLD Form</td>
</tr>
<tr>
<td>Immediate after an individual stops being the law practice external examiner</td>
<td>S270(2), Legal Profession Act 2007</td>
<td>Notification to the society of the fact.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Within 30 days of appointment of replacement external examiner</td>
<td>S270(3), Legal Profession Act 2007</td>
<td>Notification to the society, advising the details of the external examiner appointed. QLS Form 31 (LPA).</td>
</tr>
<tr>
<td><strong>Within 14 days before or after of authorising or terminating a practitioner or associate to authorise the withdrawal of funds from the general trust account</strong></td>
<td>S46(2)(a), Legal Profession Regulation 2007</td>
<td><strong>Law practice must provide notification to the society, regarding details of practitioners and/or associates authorised to withdraw funds from the general trust account.</strong></td>
</tr>
<tr>
<td>At least 14 days prior to intention to cease as a law practice</td>
<td>S63(1), Legal Profession Regulation 2007</td>
<td>Notification to the society, advising of its intention to cease to exist as a law practice, or to cease to engage in legal practice in this jurisdiction, or to cease to practice in a way that involves it receiving trust money.</td>
</tr>
<tr>
<td><strong>Within 14 days of ceasing to hold trust money</strong></td>
<td>S63(2), Legal Profession Regulation 2007</td>
<td>Notification to the society, advising the closure of the general trust account and/or if applicable the controlled money account, power money account or investment money account.</td>
</tr>
<tr>
<td>Within 60 days of ceasing to hold trust money</td>
<td>S276, Legal Profession Act 2007</td>
<td>Law practice must forward external examiner reports for the period from the last examination to the date of ceasing to hold trust money. Law practice must also complete QLS Form 33 (LPA) and QLS Form 4 (LPR).</td>
</tr>
<tr>
<td>As soon as practicable after becoming aware of an irregularity in a law practice’s trust account</td>
<td>S260(1), Legal Profession Act 2007</td>
<td>Written notice should be provided to the society as soon as practicable after a legal practitioner associate become aware that there is an irregularity in any of the practice’s account or trust ledger account.</td>
</tr>
<tr>
<td>As soon as practicable after becoming aware of an irregularity in another law practice’s trust account</td>
<td>S260(2), Legal Profession Act 2007</td>
<td>Written notice should be provided to the society as soon as practicable after a legal practitioner associate become aware that there is an irregularity in connection with the receipt, recording on disbursement of any trust money received a law practice of which the practitioner is not a legal practitioner associate.</td>
</tr>
<tr>
<td>Within 7 days of becoming aware of a breach or irregularity during an examination</td>
<td>S275(2), Legal Profession Act 2007</td>
<td>The external examiner should provide a written report to the society within 7 days of becoming aware of an irregularity or breach of the Act or adversely affect the financial position of the law practice.</td>
</tr>
</tbody>
</table>
5. Professional discipline

Professional discipline

- “Complaints and Discipline” → 2 key concepts:
  - unsatisfactory professional conduct (s 418 LPA)
  - professional misconduct (s 419 LPA)

- Where offences involve breaches of rules regarding trust accounts, the technical breaches themselves tend to be treated as of the ultimate offence. Depending on the amount involved, existence of dishonesty, personal gain, frequency and length of time over which breaches occur and other factors, a finding of Unsatisfactory Professional Conduct or Professional Misconduct will be made. The penalty or order will be based on that finding.

- Orders that can be made are set out in s 456(2) of the LPA.

- See Chapter 4 LPA: Complaints & discipline

- Also refer to LSC website:
  
Part C – Duty to Account

1. Fiduciary position

- Existence of fiduciary relationship between solicitor and client

- Fiduciary duties impact upon the handling of trust money, operation of accounts, dealing with interest on trust accounts and borrowing and lending

- Solicitors are subject to high standards of openness, accountability and trustworthiness
  
  - *Law Society of NSW v Harvey* [1976] 2 NSWLR 154;
  
  - *Maguire v Makaronis* (1997) 188 CLR 449

2. Duty to Account

- Subject to principles of Equity relating to trusts – lawyer owes duties as a fiduciary and trustee
  
  - *Jalmoon Pty Ltd (in liq) v Bow* [1997] Qd R 62 per Pincus JA & Helman J
    
    “In the ordinary course in which a solicitor receives money on behalf of a client, whether or not the money is paid by a third party, immediately upon receipt the relationship between the solicitor and the client is that of trustee and beneficiary... Should there be no trusteeship here, then a fiduciary relationship is enough..”
• Regulated by statute - LPA & LPR, Parts 3.3
  • In re A Practitioner [1941] SASR 48 per Murray CJ
    “…[Parliament’s intention] was that a practitioner’s trust account should be
    sacred, so that moneys paid into the account should only be paid out to the
    persons to whom they belonged, or as they directed.”

3. Importance of duty to account

• Need for system and compliance with detailed rules:
  “The duty to account represents a necessary incident of a trustee’s personal
  obligation to hold and deal with the trust property for the benefit of the beneficiaries. It
  requires a lawyer holding trust money to maintain an accurate, accessible and
  ordered account of that money. It also requires a system of financial controls relating
  to trust accounts capable of alerting lawyers and regulators to irregularities.” (Dal
  Pont - p332)

• Queensland Law Society Inc v Cummings; ex parte A-G (Qld) & Minister for Justice [2004] QCA 138, quoting Street CJ in Law Society of New South Wales v Jones:
  "Reliability and integrity in the handling of trust funds are fundamental pre-requisites in
determining whether an individual is a fit and proper person to be entrusted with the
responsibilities belonging to a solicitor. Members of the public, many of them
wholly inexperienced and unskilled in matters of business or of law, inevitably must
put great faith and trust in the honesty of solicitors in the handling of moneys on
their behalf. The Court must ensure that this trust is not misplaced.”
4. Civil liability for breach of trust

- Equitable claim for breach of trust
- Usual remedy sought = compensation
- *Target Holdings Ltd v Redfems (a firm) [1996] 1 AC 421*
- *Youyang Pty Ltd v Minter Ellison (2003) 212 CLR 484*

5. Criminal liability for breach of trust

LPA offences

- failure to keep proper accounts under s261 of the LPA (max 100 penalty units)
- failure to deposit money into trust account under s248 of the LPA (max 100 penalty units)
- failure to comply with restrictions on making payments from trust account under ss249 & 250 of the LPA (max 50 penalty units)
- Stealing under Criminal Code

6. Recommended Cases

- *Legal Services Commissioner v PJ Watts* [2016] QCAT 4
- *Legal Services Commissioner v MJ Johnston* [2015] QCAT 480
- *R v Yarwood* [2011] QCA 367
- *Legal Services Commissioner v Wood* [2012] QCAT
- *Legal Services Commissioner v Baxter* [2013] QCAT 059
**R v Yarwood [2011] QCA 367**


- Former lawyer sentenced to 4.5 years in jail after he admitted to attempting to defraud the State Government of $300,000 in stamp duty tax
- Pledged guilty to offences relating to the misappropriation of funds provided by clients to pay stamp duty on the purchase of properties or businesses between 2004 and 2007
- Retired from his legal practice in 2006 after a 16 year career, following a QLS investigation into his links to property marketeers
- Struck off in 2007 - appealed sentence on basis of co-operation with prosecutorial authorities & alleged assaults and harassment by other prisoners & difficulties in managing mental illness in prison
- Supreme Court held that insufficient recognition was given by the primary judge to his mental illness & the role it played in his offending
- “The failure to remit(송금하다) tax, having been entrusted with that task as a consequence of his privileged status as a solicitor was, of course, a serious offence, but the illness directly contributed to the chaotic state of the applicant’s legal practice.” - per White JA at [24]
- Sentence suspended December 2011

**Legal Services Commissioner v Wood [2012] QCAT**


- On 10 February 2011, the solicitor was convicted of two counts of fraud & one count of forgery (위조) & sentenced to 10 years
- Occurred between 2003 - 2008 when managing partner of a Brisbane law firm; had applied funds in trust account & dishonestly obtained loans from financiers to cover up misappropriations.

- Took money from one client & then from another in order to pay the first

- Large sums of money involved – the Legal Practitioners Fidelity Guarantee Fund paid over $1.245 million to clients defrauded

- Prosecutor said it was impossible to establish how much money had actually misappropriated, but the figure was estimated to be anywhere between $2 million to $8 million.

- Per QCAT President Wilson J:

  “As the LSC has submitted, Mr Wood’s conduct in misappropriating clients’ funds and dishonestly obtaining loan funds from financiers clearly violates and falls short, to a substantial degree, of the standards of professional conduct observed or approved by members of the profession of good repute and competency, and are serious breaches of honesty and trust that go to the heart of a solicitor’s professional obligations.”

- Struck off for professional misconduct + ordered to pay LSC’s costs fixed at $1,500

**Legal Services Commissioner v Baxter [2013] QCAT 059**


- Townsville solicitor, Alexander Baxter, aged 53, admitted misappropriating almost $6.7 million in clients' trust funds between August 2009 & July 2011 while he was gambling
• One client was defrauded of more than $5.4 million and 17 other clients also lost money

• He told the other partners of his misconduct in July 2011, resigned & surrendered practising certificate; some money repaid, but more than $3.5 million unrecovered

• Struck off for professional misconduct and ordered to pay LSC’s costs fixed at $2,000

**Legal Services Commissioner v Baxter [2013] QCAT 059**

• “The amounts involved in this case are very large. While the amount itself may not, in every case, be determinative of the appropriate sanction, it is inescapable (and plainly material) that the level of Mr Baxter’s defalcations was enormous, and shocking.” - per QCAT President Wilson J

• “His misconduct offends fundamental pre-requisites of honesty and integrity to be expected of legal practitioners in the operation of their trust accounts. Over a period of almost two years he committed a large number of discrete, compounding breaches of the relevant legislation.” - per QCAT President Wilson J
Part D – Others

Schedule 2 of the Legal Professional Act 2007 (Qld)

law firm means a partnership consisting only of—

(a) Australian legal practitioners; or
(b) 1 or more Australian legal practitioners and 1 or more Australian-registered foreign lawyers.

law practice—

(a) for part 3.3, division 6—see section 284; or
(b) otherwise means—
   (i) an Australian legal practitioner who is a sole practitioner; or
   (ii) a law firm; or
   (iii) an incorporated legal practice; or
   (iv) a multi-disciplinary partnership.

legal services means work done, or business transacted, in the ordinary course of legal practice.
Practice of trust account receipt

You are a junior legal practitioner with J & J Associated. You have received instruction to act for Mr. Jackson Smith on his purchase of townhouse at 225, Montague Street, Macgregor in Brisbane from Ms. Sofia Jacque for $525,000. You assign the matter, the file number is A-225/2017. Your client dropped in a personal cheque down on West Pac, Brisbane CBD for $75,500 on account of costs and disbursements including stamp duty ($42,500) at 2:10 pm on 11th March 2017 at your office reception. At that time, you had to go home and you were not able to comeback within 2 days. So you issued the receipt 2 days later. The receipt number is K523221.

Trust Account Receipt

Received from: Jackson Smith

The sum of: $42,500

For and Behalf of:

A-225/2017
Matter No.

Jackson Smith
Account Name

Purchase of townhouse at 225, Montague St from Sofia
Description

Reason: on account of costs and disbursements including stamp duty

Received by:

One behalf of:
**Legal Profession Act 2007**

6 Terms relating to legal practitioners

(1) An Australian legal practitioner is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate.

(2) A local legal practitioner is an Australian lawyer who holds a current local practising certificate.

(3) An interstate legal practitioner is an Australian lawyer who holds a current interstate practising certificate, but not a local practising certificate.

* You can download other law sources from [http://www.jinslegalstory.com/](http://www.jinslegalstory.com/)