

Trust Accounting Guide

Trust Money and
Trust Accounts

January 2018

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Trust accounting

1. Introduction

The requirement to deal with trust money and to maintain trust accounting records is an integral part of legal practice.

Trust accounting is a simple form of bookkeeping used exclusively for trust transactions. It is the recording by a law practice of the receipt and payment of other people's money, with all transactions being recorded in individual accounting records maintained for the person on whose behalf the money was received.

1.1 The Legislative Regime

The Legal Profession Act 2007 (QLD) commenced on 1 July 2007. The *Legal Profession Act 2007* introduced a number of important reforms in the handling of trust money entrusted to a law practice. It amended provisions of the *Trust Accounts Act 1973* and has, with effect from 1 April 2008, replaced provisions of the *Trust Accounts Act 1973* in so far as they relate to solicitors.

The *Legal Profession Regulation 2017*, which details the recording requirements for law practices that receive trust money, also commenced on 1 September 2017. It amended provisions of the *Legal Profession Regulation 2007*.

Unless otherwise stated, references to the Act are references to the *Legal Profession Act 2007* and references to the Regulation are references to the *Legal Profession Regulation 2017*.

2. Trust moneys

2.1 Definitions

To understand the term “trust money” it is necessary to be familiar with terms used in s.237 and defined elsewhere in the Act.

“**Associate**” of a law practice – Section 7(1) of the Act

1. An **associate**, of a law practice, is –
 - a. An Australia legal practitioner who is –
 - i. A sole practitioner if the law practice is constituted by the practitioner; or
 - ii. A partner in the law practice if the law practice is a law firm; or
 - iii. A legal practitioner director in the law practice if the law practice is an incorporated legal practice; or
 - iv. A legal practitioner partner in the law practice if the law practice is a multi-disciplinary partnership; or
 - v. An employee of, or consultant to, the law practice; or
 - b. An agent of the law practice who is not an Australian legal practitioner; or
 - c. An employee of the law practice who is not an Australian legal practitioner; or
 - d. An Australian-registered foreign lawyer who is a partner in the law practice; or
 - e. A person who is a partner in the multidisciplinary partnership but who is not an Australian legal practitioner; or
 - f. An Australian-registered foreign lawyer who has a relationship with the law practice, that is a class of relationship prescribed under a regulation.

“**Controlled money**” – Section 237 of the Act

“controlled money” means money received or held by a law practice for which the practice has a written direction to deposit the money in an account, other than a general trust account, over which the practice has or will have exclusive control.

“**Law Firm**” – Schedule 2 of the Act

“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**” is defined in Schedule 2 of the Act as:

- a. an Australian legal practitioner who is a sole practitioner; or
- b. a law firm; or
- c. an incorporated legal practice; or
- d. a multidisciplinary partnership.

“**Legal services**” – Schedule 2 of the Act

“legal services” means work done, or business transacted, in the ordinary course of legal practice.

“Money received” – Section 242 of the Act

1. A law practice receives money when –
 - a. The practice obtains possession or control of it directly; or
 - b. The practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or
 - c. The practice, or an associate of the practice (otherwise than in a private and personal capacity) is given a power to deal with the money for another person.
2. A law practice or associate is taken to have received money if the money is available to the practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

“Terms relating to legal practitioners” – Section 6 of the Act

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.

“Transit money” – Section 237 of the Act

“transit money” means 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.

“Trust moneys” are defined in s.237 of the Act as:

“.....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 subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for another person.”

2.2 What is Trust Money?

Trust money is defined by Section 237 of the *Legal Profession Act 2007* as money –

- **entrusted** 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 receive on account of **legal costs** in advance of providing services; and
 - **Controlled money**; and
 - **Transit money**; and
 - Money received by the practice, that is subject of a **power**, exercisable by the practice or an associate of the practice, to deal with the money for another person.

The term “entrusted” is not defined in the Act. However, the use of the word “entrusted” in the definition of trust money reinforces the understanding that trust moneys are not merely given to a law practice but are placed in its “care and protection”.

Section 238 of the *Legal Profession Act 2007* also includes within the definition of trust moneys *investment moneys* that have the following characteristics:

- 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 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.

For example, settlement money received by a law practice on behalf of a client who sold a property and that is invested on the client's behalf pending the use of the money in the subsequent settlement of the client's purchase of another property is trust money.

Another example of trust money is where funds are received in payment of a rendered account of costs and disbursements and that account includes incurred but unpaid disbursements, then that portion of those funds received for the incurred and billed, but unpaid, disbursements will be considered as trust moneys that must be banked to the law practice's general trust account.

2.3 What is not Trust Money?

Section 238(1) & (2) of the Act prescribes that money received in the following circumstances is not trust money:

- money entrusted to or held by a law practice in connection with a financial service provided by the practice or 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);
- money entrusted to or held by a law practice in connection with a financial service provided by the practice or 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);
- money that is entrusted to or held by a law practice for a managed investment scheme, or mortgage financing, undertaken by the practice.

2.4 Disclosure to clients – money not received or held as trust money

Section 294 of the Act provides that if money is entrusted to a law practice and the money is not, at the time of entrustment, trust money due to the provisions of Section 238, the practice must notify the person who entrusted the money to the practice that:

- a. the money is not treated as trust money under the Act and is not subject to any supervision, investigation or audit requirements of the Act; and
- b. a claim against the Fidelity Guarantee Fund cannot be made in relation to the money.

Section 294 further provides that if money entrusted to the practice was trust money at the time of entrustment but subsequently becomes non-trust money, the practice must, after the money becomes non-trust money, notify the person as above.

Section 238(2) provides that money entrusted to a law practice for a managed investment scheme, or mortgage financing, or for investment purposes, is not trust money.

For example, if a client entrusts a sum of a money to a law practice for the purpose of making a loan to a third party in circumstances where the law practice has introduced the lender to the borrower, the money has been entrusted to the law practice for investment purposes and is not trust money.

On the other hand, if a money lending client has decided to lend money to a third party in circumstances where the law practice has had no part in the introduction of the money lending client to the borrower and the money lending client merely engages the law practice to prepare the documentation in respect of the loan (in the ordinary course of legal practice), the money being advanced to the borrower would, if received into the law practice's trust account, be trust money.

Section 238(3) of the Act provides as follows:

"Without limiting subsections (1) and (2), money 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."**

For example, if a client is purchasing a property and provides the balance purchase money to the law practice prior to settlement and instructs the law practice to invest the money pending settlement, the money continues to be trust money pursuant to the provisions of the Act with the result that disclosure pursuant to Section 294 of the Act is not required.

2.5 Decisions about status of money

Section 239 of the Act applies to money received by a law practice if the Law Society considers that there is doubt or dispute as to whether the money is trust money.

- The Law Society may decide that the money is or is not trust money.
- The Law Society may amend or repeal a decision under this section.

Whilst a decision under this section is in force that money is trust money, the money is taken to be trust money under this Act.

Whilst a decision under this section is in force that money is not trust money, the money is taken not to be trust money under this Act.

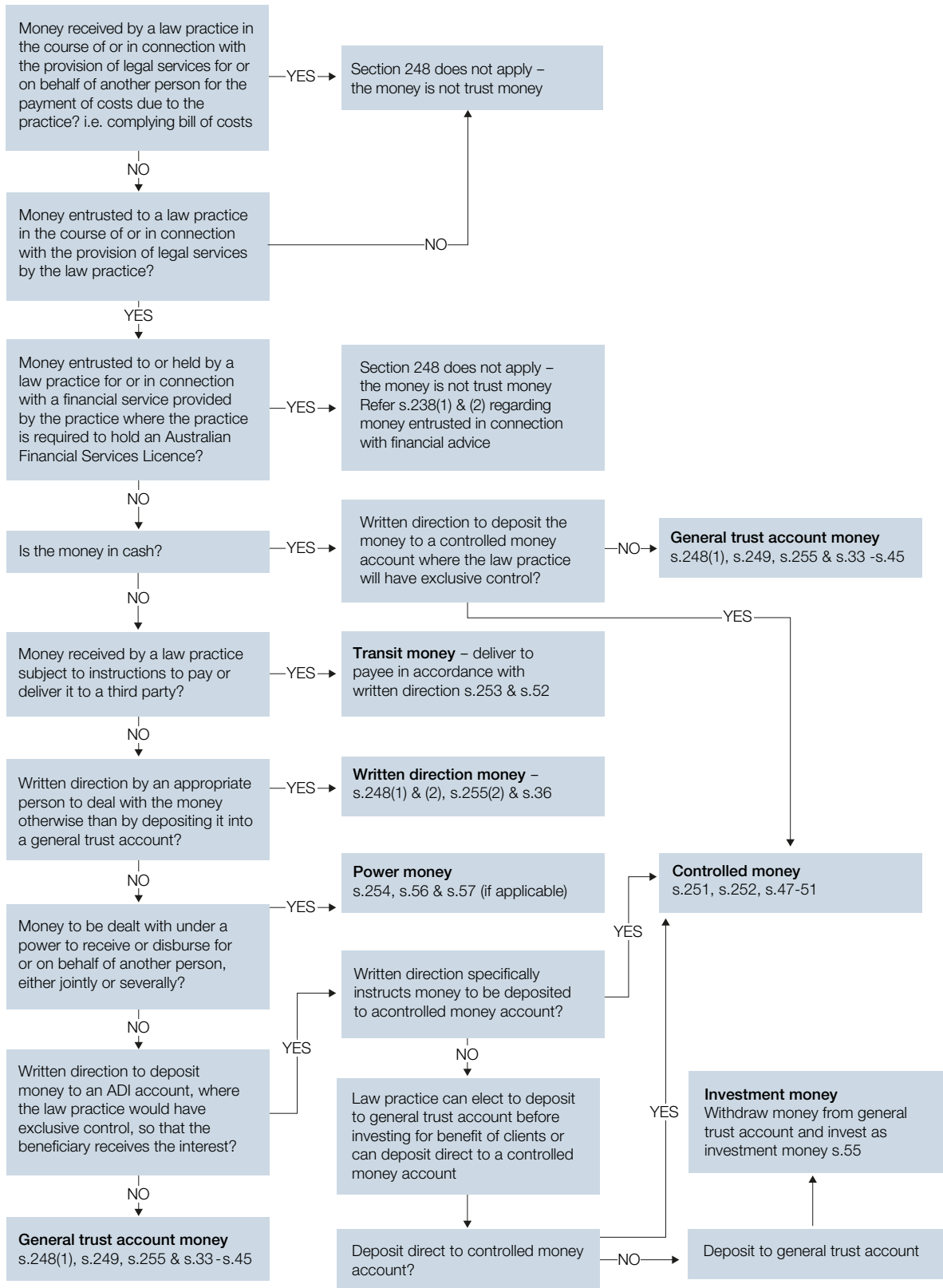
This section has effect subject to a decision of a court made in relation to the money concerned.

Difficulties will sometimes be experienced in determining whether or not money received should be received into the trust account. If there is any doubt, enquiries should be directed to the Queensland Law Society's (the "Society") Audit Section.

2.6 Trust Money Decision Flowchart

The Trust Money Decision Flowchart is a diagram of the process in categorising money received by a law practice; whether it is trust money and how the money should be dealt with.

TRUST MONEY DECISION CHART



Note 1

To invest trust money, the investment must be:

- in the ordinary course of legal practice; and
- primarily in connection with the provision of legal services or at the direction of the client; and
- the investment is (or is to be made) in the ordinary course of legal practice; and
- for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter

3. Dealing with Trust Money – Generally

There are different requirements for dealing with general trust money, controlled money, transit money, written direction money and power money.

3.1 Establishing a General Trust Account

When a law practice opens a general trust account, the law practice must satisfy the following requirements [*Legal Profession Act 2007* s.247, *Legal Profession Regulation 2017* s.33]:

- a. The general trust account must be established in Queensland with an approved ADI (a list of approved ADIs can be located on qls.com.au); and
- b. The account is to be maintained in Queensland; and
- c. The name of the account is to include:
 - i. The name or the business name of the law practice;
 - ii. The expression “**law practice trust account**” or “law practice trust A/c” (this does not apply to an account opened in Queensland before 1 July 2007). The repetition of the words “law practice” is not required if those words form part of the name or the business name of the law practice.

For example:

- A law practice that practises under the name “Fred Bones & Associates” that opens a general trust account after 1 July 2007 is required to open the account in the name of “Fred Bones & Associates Law Practice Trust Account”, or “Fred Bones & Associates Law Practice Trust A/c”.
- A law practice that practises under the name “Fred Bones Law Practice” that opens a general trust account after 1 July 2007 is required to open the account in the name of “Fred Bones Law Practice Trust Account”, or “Fred Bones Law Practice Trust A/c”. It is not necessary to repeat the words “law practice”.

A “**general trust account**” is an account kept by a law practice with an approved ADI (Authorised deposit-taking institution) for the holding of trust money received by the practice, other than controlled money or transit money [*Legal Profession Act 2007* s.237].

An “**approved ADI**” is an ADI (Authorised deposit-taking institution) approved under section 280 by the Law Society [*Legal Profession Act 2007* s.237]. A list of approved ADI’s can be found on the Society’s website at qls.com.au.

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.

Hence, no bank charges should be debited to the general trust bank account. An arrangement should be made with the bank, when the general trust account is opened, for all charges associated with trust account transactions to be debited to the law practice’s office or general account.

3.2 Notifications regarding New General Trust accounts

Within 14 days after establishing a general trust account, the law practice must give the Society written notice of that fact [*Legal Profession Regulation 2017* s.46(1)]. The notification should include the name of the trust account, the name of the approved ADI and branch where the account is held, the account number (including the BSB) and the date the account was established [*Legal Profession Regulation 2017* s.46(4)].

3.3 Notification of authorised associates

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 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 [*Legal Profession Regulation 2017* s.46(2)(a)].

During July of each year the law practice must give the Society written notice of the associates and Australian legal practitioners, including their names and addresses, who are authorised, as at 1 July of that year [*Legal Profession Regulation 2017* s.46(2)(b)]—

- 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.

Section 46(2)(b) does not apply to a law practice if the law practice has provided an external examiner's report pursuant to s274 of the *Legal Profession Act 2007*. [*Legal Profession Regulation 2017* s46(3)].

Section 37(3) of the *Legal Profession Regulation 2007* provides that a withdrawal of money from a general trust account can be effected by:

- an authorised principal of the law practice; or
- if an authorised principal is not available:
 - an authorised legal practitioner associate; or
 - an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - or more authorised associates jointly.

Interpretation of s37(3) and s38(2) of the *Legal Profession Regulation 2017* is as follows:

1. An authorised principal of the law practice may solely sign trust account cheques drawn on the law practice general trust account.
2. If the principal mentioned in 1 is not available:
 - An authorised Australian legal practitioner (employed solicitor), irrespective of whether the employed solicitor holds an Unrestricted Practising Certificate or a Restricted Practising Certificate, can be authorised **solely** as a signatory to the law practice general trust account; or
 - An authorised Australian legal practitioner holding an Unrestricted Practising Certificate can be authorised **solely** as a signatory to the law practice general trust account irrespective of whether he/she is employed by the law practice; or
 - Any two (2) or more authorised associates (including non-solicitors) can be authorised **jointly** to sign trust account cheques drawn on the law practice general trust account
 - The holder of a Restricted Practising Certificate can only be authorised as a **sole** signatory to a law practice general trust account if he/she is employed by the law practice.

Section 50 of the *Legal Profession Regulation 2017* similarly provides for the withdrawal of money from a controlled money account.

Whilst there is a requirement pursuant to s46(2)(a) [*Legal Profession Regulation 2017*] to notify the Society of the authorisation, or termination of the authorization, of a person to effect the withdrawal of money from a general trust account, there is no such requirement in respect of controlled money accounts.

In practice however, it is anticipated that any person authorised to effect the withdrawal of money from a general trust account will also be authorised to effect withdrawals from controlled money accounts.

3.4 Funds to be deposited to the General Trust account

Trust money received in the form of 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 follows:

- **Written direction money** – money received subject to a written direction (other than money received in the form of cash) from an appropriate person must be dealt with in accordance with the direction within the period, if any, stated in the direction, or as soon as practicable after it is received [*Legal Profession Act 2007* s.248(1)(a), s.248(2)];
- **Controlled money** – money received subject to a direction to deposit it into a controlled money account, must be deposited to a controlled money account maintained exclusively for the person on whose behalf it was received, as soon as practicable after it is received [*Legal Profession Act 2007* s.248(1)(b) & s.251];
- **Transit money** – money received subject to instructions to pay or deliver it to a third party (other than money received in the form of cash) must be paid or delivered in accordance with the instructions, within the period, if any, stated in the instructions, or as soon as practicable after it is received [*Legal Profession Act 2007* s.248(1)(c) & s.253];
- **Power money** – money received (other than in the form of cash) on behalf of a client who has given the law practice, or an associate of the law practice, power to operate on an account of the client, may be deposited to the client's account [*Legal Profession Act 2007* s.248(1)(d)].

3.5 Trust moneys received in the form of cash

Trust money, except for controlled money, received in cash must be deposited to the general trust account before it is otherwise dealt with in accordance with the direction (or instructions) relating to the money, regardless of anything contrary in the direction or instructions [*Legal Profession Act 2007* s.255]. Hence, transit money, written direction money and general trust money in the form of cash must be first deposited to the general trust account before it is dealt with in accordance with the written directions by an appropriate person.

Controlled money received in the form of cash must be deposited into a controlled money account in accordance with section 251 [*Legal Profession Act 2007* s.255(3)].

Money that is received in the form of cash that is subject of a power must also be banked into the general trust account or a controlled money account before it is dealt with in accordance with the power, despite anything contrary in the power or any relevant direction [*Legal Profession Act 2007* s.255(5)].

It should be noted that when a law practice receives cash of \$10,000 or more, the law practice is required by the *Financial Transactions Act 1988* to report the transaction to Austrac.

3.6 Holding disbursing and accounting for General Trust Money

Section 249(1) of the Act provides that a law practice must hold trust money deposited in a general trust account of the practice **exclusively** for the person on whose behalf it is received, **disburse** the trust money only under a **direction given by the person** and **account** for the money as required by the regulations. However this is subject to the operation of Section 249(2) which prescribes that an order of a court of competent jurisdiction or a payment as authorised by law overrides Section 249(1).

3.7 Intermixing Money

Section 257 of the Act states that a law practice must not, otherwise than as permitted and to the extent only that is authorised by the Law Society, mix trust money with other money. This means that the law practice is not permitted to receive trust money into its office or general account.

Therefore law practices can not deposit trust money to their office or general account even if they get a written direction to this effect from the person on whose behalf the money is received.

3.8 Deficiency in trust account

Section 259 of the Act states that 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 “cause” includes be responsible for. 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.

3.9 Reporting certain irregularities and 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 [*Legal Profession Act 2007* s.260(1)].

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 received by a law practice of which the practitioner is not a legal practitioner associate [*Legal Profession Act 2007* s.260(2)].

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) [*Legal Profession Act 2007* s.260(3)].

3.10 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 [*Legal Profession Act 2007* s.262(1)].

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 [*Legal Profession Act 2007* s.262(2)].

4. Trust Accounting Records – General Trust Account

4.1 Keeping Trust Account Records

Accounting and other records relating to trust money must be kept by the law practice for at least **seven (7) years**, after the last entry in the trust record or after the finalisation of the matter, before they can be destroyed [*Legal Profession Regulations 2017* s.59].

The law practice must keep in permanent form trust records in relation to trust money received by the practice. [*Legal Profession Regulation 2017* s.59(1), *Legal Profession Act 2007* s.261]. "Permanent form" is defined in s.237 as trust records that are printed or, on request, capable of being printed, in English on paper or other material. Trust records should therefore not be kept in pencil as this allows for alteration.

Section 261(2) of the Act requires records relating to trust moneys to be kept:

- in the way prescribed under the regulations; and
- in a way that **at all times** discloses the **true position** in relation to trust money received for any person; and
- in a way that enables the trust records to be conveniently and properly investigated or externally examined; and
- for the period prescribed under the regulation.

4.2 Overview of General Trust Records

The initiating documents created by the law practice which capture and record the relevant details of each transaction are known as source documents. Source documents are important because, if relevant data is not captured at this point, it becomes impossible to record that information in the secondary records. Common examples of source documents in relation to the general trust account are duplicate trust receipts, cheque butts, cheque requisitions, EFT requisitions, trust transfer journals and deposit records. Supporting documentation such as correspondence, trust account authorities, bills of costs and invoices should also be kept and form part of the trust accounting records.

The details recorded in the source documents need to be accurate as these details are used as the basis for completing all secondary accounting records. Common examples of secondary records in relation to the general trust account are the trust account receipts cashbook, trust account payments cash book and trust ledger accounts.

Regardless of whether a manual or computerised accounting system is used, the various trust account records [*Legal Profession Act 2007* s.237 – definition of "trust records"] which the law practice must keep are as follows:

- a. trust account receipts;
- b. cheque butts or cheque requisitions;
- c. records of authorities to withdraw by electronic funds transfer;
- d. deposit records;
- e. trust account ADI statements;
- f. trust account receipts and payments cash books;
- g. trust ledger accounts;
- h. records of monthly trust trial balances;
- i. records of monthly trust account reconciliations;
- j. trust transfer journals;
- k. statements of account required to be given under a regulation;
- l. registers required to be kept under a regulation;
- m. monthly statements required to be kept under a regulation;
- n. files relating to trust transactions or bills of costs or both;
- o. written directions, authorities or other documents required to be kept under this Act or a regulation;
- p. supporting information required to be kept under a regulation in relation to powers to deal with trust money.

The trust records to be kept by a law practice for the various types of Trust Money are as follows:

Type of Money	Source & supporting Records	Secondary Records	Reports
General trust money	<ul style="list-style-type: none"> • Receipts • Initiating record for withdrawal (cheque butts or cheque requisitions or EFT requisitions) • Deposit records • ADI statements • Trust Transfer Journals • Trust Account authorisations • Bills of costs • Invoices • Correspondence 	<ul style="list-style-type: none"> • Trust Receipts cashbook • Trust Payments cashbook • Trust Ledgers 	<ul style="list-style-type: none"> • Trust trial balance • Reconciliation statements (bank & cashbook) • Trust Account Statement
Controlled Money	<ul style="list-style-type: none"> • Written direction • Controlled money receipts • Initiating record for withdrawal • Deposit records • ADI statements • Invoices • Correspondence • Bills of costs 	<ul style="list-style-type: none"> • Controlled Money Register made up of Controlled Money Movement records. 	<ul style="list-style-type: none"> • Controlled Money Accounts Listing • Trust Account statement
Transit Money	<ul style="list-style-type: none"> • Copies of cheques • Settlement sheet • Written direction (if any) 	Nil	Nil
Written Direction Money	<ul style="list-style-type: none"> • Written direction • Copies of cheques 	Nil	Nil
Power Money	<ul style="list-style-type: none"> • Power of attorney or other power document • Bank statements • Initiating record for withdrawal • All supporting documents in relation to the dealings 	<ul style="list-style-type: none"> • Power Money Record • Register of Powers & Estates 	<ul style="list-style-type: none"> • Trust Account Statement
Investment of trust money	<ul style="list-style-type: none"> • Written direction authorising the investment • Initiating record for withdrawal • Bank statements • General trust account payments cashbook • General trust account receipts cashbook 	<ul style="list-style-type: none"> • Register of Investments 	<ul style="list-style-type: none"> • Trust Account Statement

4.3 Trust account receipts

Trust account receipts are a source document specified by the Regulation to record the receipt of money that is required to be banked into a general trust account. The regulations require that trust account receipts be made out as soon as practicable after the trust money is received [*Legal Profession Regulation 2017* s.34(2), *Legal Profession Act 2007* s.18].

Manual trust account receipts must be made out in duplicate and trust account receipts, whether as a manual or computer generated receipt, must be consecutively numbered and issued in consecutive sequence.

4.3.1 Particulars of Trust Account Receipts

Section 34(5) of the Regulation requires trust receipts to contain the following particulars:

1. the date the receipt is issued or made out and, if different, the date of receipt of the money;
2. the amount of money received;
3. the form in which the money was received;
4. the name of the person from whom the money was received;
5. details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
6. particulars sufficient to identify the purpose for which the money was received (ie the reason for receipt);
7. 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";
8. the name of the person who made out or issued the receipt;
9. the number of the receipt.

Three sample trust account receipts are set out below:

Example 1

Fred Bones & Associates		Trust Account Receipt	
Receipt Number:	1001		
Date receipt issued:	1 July 20XX	Date received:	
Received from:	JA Brown		
the sum of:	Six Thousand Seven Hundred and Thirty-five _____		
		Dollars and _____	cents
Amount:	\$6,735.00	Form of funds:	Cash
For and on behalf of:			
Matter ref:	Client Name:	Matter description:	
B1	JA Brown	Purchase 1 Apple Street, Sunnybank from RA & SB Smith	
Reason:	Professional Costs \$500; Stamp Duty \$6000; Regn Fees \$110; Searches \$125		
		Made out by:	M Receptionist
		On behalf of Fred Bones & Associates	

Example 2

Fred Bones & Associates		Trust Account Receipt
Receipt Number:	1002	
Date receipt issued:	1 July 20XX	Date received: 25 June 20XX
Received from:	PB Black	
the sum of:	Six Thousand Seven Hundred and Thirty-five _____ _____ Dollars and _____ cents	
Amount:	\$36,750.00	Form of funds: EFT
For and on behalf of:		
Matter ref:	Client Name:	Matter description:
B2	JW & PB Black	Purchase of 1 Station Street, Springwood from TS White
Reason:	Balance of purchase moneys \$32,000; professional costs \$650, stamp duty \$4,000; searches \$100; direct deposit on 25 June 20XX	
	Made out by:	T Typist
	On behalf of Fred Bones & Associates	

Example 3

Fred Bones & Associates		Trust Account Receipt
Receipt Number:	1003	
Date receipt issued:	2 July 20XX	Date received:
Received from:	Peters & Associates Trust Account	
the sum of:	Thirty-eight Thousand _____ _____ Dollars and _____ cents	
Amount:	\$38,000.00	Form of funds: Cheque
For and on behalf of:		
Matter ref:	Client Name:	Matter description:
S1	AB Slack	AB Slack v Whitehall Insurance Co
Reason:	settlement monies \$40,000 less Centrelink refund \$2,000	
	Made out by:	M Receptionist
	On behalf of Fred Bones & Associates	

Some points to be noted about trust account receipts are:

4.3.2 Informative recording

The duplicate trust account receipt is a source document from which entries are posted to the trust account cash receipt book and the trust account ledgers. It is in the law practice's best interests for the information on trust account receipts to be fully informative. The trust account receipt also serves as written confirmation of the instructions received from the person on whose behalf the money is received.

Section 34(4) of the Regulation requires the receipt, containing the required particulars, to be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the trust account receipts cash book.

When funds are received to cover several different proposed payments it is advisable to record each amount received and the purpose of receipt, rather than record the total amount as being received under a collective heading such as costs and outlays (eg – see receipt number 1002 on previous page).

4.3.3 Issue of trust account receipts

When trust money is received into a general trust account, a trust account receipt must be issued or made out as soon as practicable after the trust money is received [*Legal Profession Regulation 2017* s.34(2) & (3)]. The definition of when trust money is received is as follows:

“**Money received**” – Section 242 of the Act

1. *A law practice receives money when –*
 - a. *The practice obtains possession or control of it directly; or*
 - b. *The practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or*
 - c. *The practice, or an associate of the practice (otherwise than in a private and personal capacity) is given a power to deal with the money for another person.*
2. *A law practice or associate is taken to have received money if the money is available to the practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.*

Although not required by the regulations, the receipt should be signed. The name of the person making out the receipt is required to be printed on the receipt [*Legal Profession Regulation 2017* s.34(5)(h)]. It is the intention of this regulation that the receipt identifies the person who made out the receipt; therefore the requirement that the **name of the person be clearly printed or written** on the receipt.

There is no provision for the backdating of entries in trust accounting. A trust account receipt cannot be backdated to bear a date earlier than the date of the preceding receipt. Section 34(7) of the Regulation requires that receipts must be consecutively numbered and issued in consecutive sequence.

The receipt must always be dated with the date of issue of the receipt. If the receipt is issued on a day after the money was received the receipt must also record the date the money was received.

For example:

1. If money was deposited to the account by direct deposit, or telegraphic transfer, and the law practice does not become aware of the deposit until a later date, the receipt must also record the date the money was deposited to the trust account.
2. If an associate of the law practice received a cheque from a client when out of the office on 20 July and did not return to the office until the next day, the receipt would be issued on 21 July, dated 21 July and must record that the money was received on 20 July.

The regulations require that the original receipt is to be delivered, **on request**, to the person from whom the trust money was received [*Legal Profession Regulation 2017* s.34(6)]. This includes direct deposits. If a receipt is not delivered, the original receipt must be kept.

4.3.4 Receipts by telegraphic transfer and direct deposit

When money is deposited into a trust ADI account by telegraphic transfer or direct deposit, the law practice will receive notification of that fact direct from the ADI (telephone call or facsimile message) or from the ADI statement.

When trust money is received by direct deposit, a trust receipt should be made out as soon as practicable after the law practice receives advice, or accesses notice or confirmation (written or electronic) from the ADI [*Legal Profession Regulation 2017* s.34(3)(b)]. Trust receipts should be dated with the date the receipt was made out and, if different, the date the money was received.

For example if funds were received by direct deposit and credited to the ADI account on 20 July but the law practice only became aware of the direct deposit on 27 July then the date the receipt is made out is 27 July and the date of receipt of the money (20 July) is to be also recorded on the receipt.

Before issuing the receipt, it is suggested that written or electronic confirmation be obtained from the ADI in relation to the telegraphic transfer or direct deposit, quoting the following information:

1. the date;
2. the amount;
3. the name of the current account to be credited and the account number;
4. the remitting party;
5. a statement whether the funds are clear funds; and
6. if applicable, the name or signature of a bank officer, or a bank reference number.

Such written confirmation can be by means of a facsimile message or an ADI receipt. In relation to electronic confirmation (for example, online bank statements) the law practice should be guided by advice from its approved ADI as to what constitutes cleared funds on online internet ADI statements.

4.3.5 Risks of deficiency

Failure to obtain written confirmation could result in a deficiency, or even a fraud being committed at the law practice's expense. The dangers of issuing a receipt, without obtaining written verification, are as follows:

1. **Drawing against uncleared funds** – there is no guarantee that the funds transmitted are cleared funds. Cheques lodged for remittance by telegraphic transfer are capable of being dishonoured.
2. **Proceeds credited to the wrong account** – the remitter of a telegraphic transfer states the name of the account to be credited, but may not specify that the funds are to be paid to the trust account. If the funds are credited to the general account and the law practice then draws a trust account cheque against these funds, a deficiency will result.
3. **Advice of incorrect amount lodged** – a transposition error may occur, such as recording the figure of \$9,920.00, instead of \$9,290.00. If a cheque for \$9,920.00 is drawn on the trust account, a deficiency will result.
4. **Misrepresentation** – A telephone call may be received from a person attempting to defraud the law practice. The telephone caller may represent themselves as being an officer of the bank and may advise that funds have been received by telegraphic transfer when in fact no funds have been received. If a payment is made from the trust account on the basis of such advice, a deficiency will result.

The trust account receipt should be issued immediately after the law practice is satisfied that the funds have been credited to the trust bank account and are available for disbursement.

4.3.6 Receipts by Credit Card facilities

Money can be received into trust accounts by credit card payments but it is strongly recommended that law practices observe the following guidelines:

- Arrangements should be made with the law practice's ADI for merchant facility fees to be debited to the law practice's general office account.
- The only credit card facilities that should be used are those that permit the whole transaction amount to be credited.

- Arrangements should be made with the law practice's ADI that any "charge-backs" or reversed transactions will not be debited to the law practice's trust account. Credit card providers can reverse payments for a period of up to twelve (12) months from the date of the credit card payment. If the payment is reversed to a trust account and payment has already been made against the funds received by the credit card payment, there will be a deficiency in the trust account which the law practice will have to immediately restore from its own funds. It is the Society's preference that the possibility of such deficiencies be avoided by law practices making arrangements with the relevant ADI that any "charge-backs" or reversals will be debited to the law practice's general office account.
- Credit card reforms, which came into effect on 1 January 2003 and again in March 2013 (RBA Standards), gave merchants, including law practices, the freedom to choose whether they wish to recover credit card charges from clients. If a law practice elects to pass the credit card charge on to the client the law practice must:
 - Advise the client that a credit card fee will apply prior to the transaction;
 - Advise the client of the amount of the credit card fee, either as a percentage, or a nominated amount. Pursuant to the Legal Services Commissioner's guidelines law practices should only charge to their client the actual amount they have paid out as outlays or disbursements (eg merchant facility fees attached to individual transactions).

4.3.7 Clearance of Cheques Received

In 1999 the banking industry announced that most cheques can be cleared within a period of 3 days. However this time period is a guide only and law practices are advised to seek specific guidance from their ADI.

When a law practice must make prompt payment from funds received and the funds were received as a cheque, the law practice will need to obtain a special clearance of the cheque before payment can be made from the trust ADI account. (NB. Bank cheques must be cleared in the same way as personal cheques).

It is advisable to bank the cheque requiring a special clearance or special answer as a separate bank deposit and to maintain a special clearance register. A sample entry follows:

Special Clearance Register						
Date	Client	Cheque drawer	Bank & branch	Amount	Date & time advised & bank officer/ reference	Answer
01/07/20XX	JW & PB Black	PB Black	CBA, Brisbane	\$33,420.00	02/07/20XX John Banker Ref 12345-5678	Paid

It is suggested that written or electronic confirmation be obtained that cheque funds are cleared funds prior to the law practice drawing against these funds, especially if funds need to be disbursed within the ADI's normal cheque clearance periods. In relation to electronic confirmation (for example, online bank statements) the law practice should be guided by advice from its ADI as to what constitutes cleared funds on online internet bank statements.

4.3.8 Receipt of Foreign currency cheques

Notwithstanding the legislative requirements it is strongly suggested in the case of a cheque drawn on a foreign bank that it be banked on a collection basis. When banked on this basis the amount of the cheque will not be credited to the general trust account until payment by the foreign bank. In some cases, months will pass before the cheque is paid.

If cheques drawn on foreign banks are banked in the normal manner, the amount of the cheque will be converted to Australian dollars on the date of the deposit and that amount will be credited to the law practice's general trust account on the same day. The ADI will advise the law practice to allow a certain period for the cheque to clear. This is no more than an estimate of the time required. Clearance can take months.

The advantage of banking foreign cheques on a collection basis is that the cheque cannot be dishonoured. The proceeds of the cheque are not credited to the trust account until the cheque has been paid. Further, if a foreign cheque is banked in the normal manner but is subsequently dishonoured, the amount debited to the trust account for the dishonour of the cheque will be a different amount to that which was credited to the trust account when the foreign cheque was deposited to the trust account. If the amount debited to the trust account in respect of the dishonour is more than the amount that was credited to the account when the cheque was deposited, there will be a deficiency in the trust account which the law practice will have to immediately restore from its own funds.

In practical terms the procedure for receipting a foreign currency cheque which has been banked on a collection basis is as follows:

1. Give a written acknowledgment of receipt of the cheque to the person who provided the foreign cheque and advise them in that written acknowledgment of receipt that the cheque has been banked on a collection basis and an official receipt will be issued to them when the proceeds of the cheque have been collected and credited to the general trust account.
2. Don't issue a receipt until the foreign currency cheque has been paid and credited to your trust account. This will avoid the possibility of inadvertently making a payment against the proceeds of the cheque before they are available. It also overcomes the difficulty of not knowing how much to receipt the cheque for because you may not know what the exchange rate will be on the date of the deposit of the cheque.
3. Record relevant details of the foreign cheque in the bank reconciliation statements completed after its banking and before its payment, including the date it was deposited to the account and its foreign currency amount.

4.3.9 Cancelled receipts

There will be occasions when a receipt is made out and it is realised prior to its issue that the content of the receipt is incorrect. It is permissible for these receipts to be cancelled. If a trust account receipt is cancelled the original cancelled receipt must be kept by the law practice [*Legal Profession Regulation 2017* s.34(8)].

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 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.

4.3.10 Dishonour of Cheques receipted – Reversal of Receipts

The dishonour of a cheque occurs when a cheque has been received and deposited into the general trust account or controlled money account; and the approved ADI subsequently advises that the cheque has not been met on presentation.

The method to be adopted for recording a dishonoured cheque is to:

- a. Retain the notification of dishonour from the approved ADI in the appropriate file;
- b. Enter the reversing entry in the receipts cashbook, adding the reason for reversal and entering the amount as a negative amount. This has the effect of cancelling the original entry;
- c. Post the entry to the debit side of the trust account ledger (the opposite side to the original receipt);
- d. 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 new receipt is issued for this transaction and entered in the receipts cash book, and credited to the relevant trust ledger account.

The following example illustrates the suggested method of reversing a receipt (receipt R8).

Fred Bones & Associates					
Trust Ledger					
Account Name:		SMITH, A.J.			
Address:		21 Belmore Rd Jonesville 4000			
Matter Reference:		S2			
Matter Description:		Estate late May Smith			
Date (Note 1)	Ref	Paid To/ Received From/ Jnl to/from/ Reason	Debit	Credit	Balance
05/09/20XX	R5	Westpac Bank proceeds of bank account 153-607		15,000.00	15,000.00
10/09/20XX	R6	AJ Smith Proceeds of auction estate property – banked 05.09.0X		1,000.00	16,000.00
10/09/20XX	R7	Sunsuper Fund proceeds of superannuation policy		160,000.00	176,000.00
10/09/20XX	R8	Max Wright Proceeds of sale of late May Smith's MV		5,000.00	181,000.00
15/09/20XX	P600	St George Building Society Investment of Estate funds	170,000.00		11,000.00
16/09/20XX	R11	AGC Insurances Ltd Proceeds of life insurance policy		10,000.00	21,000.00
21/09/20XX	P605	St George Building Society Additional investment estate funds	10,000.00		11,000.00
21/09/20XX	P607	A Heffron Specific bequest	10,000.00		1,000.00
22/09/20XX	R8	Max Wright – Cancelled receipt R8 due to dishonoured cheque	5,000.00		4,000.00DR
22/09/20XX	R9	Fred Bones & Associates Office Account – rectify overdrawing caused from client's cheque being dishonoured		4,000.00	0.00
1/10/20XX (Note 2)	R14	Max Wright Funds to replace dishonoured cheque		5,000.00	5,000.00

Note 1: The column headed "Date" is used to record:

1. in relation to receipts, the date that the receipt was made out;
2. in regard to payments from the trust account the date of the cheque or electronic funds transfer; and
3. in the case of journal transfers the date of the journal entry.
4. If the date the receipt was made out is different to the date the money was received this can be recorded in this column or within the "Paid To/ Received From/ Jnl to/from/ Reason" column.

Note 2: When this client cheque, for funds to replace the dishonoured cheque, is cleared Fred Bones & Associates may be reimbursed their office account funds of \$4,000.00, which were deposited on 22.09.0X to rectify the overdraw.

4.3.11 Register of receipt form

The new regulations do not require a law practice to maintain a register of trust account receipt forms. However, it is recommended, as a form of internal control, that a register of receipt forms be kept to record the serial numbers of all trust account receipt forms supplied to the law practice by the law practice's printer. The serial numbers of trust account receipt forms issued to office staff for normal daily requirements should also be recorded in the register. Trust account receipt forms not issued to office staff should be kept in a secure location.

A suggested register of receipt forms follows:

Register of receipt forms			
Date Received from Printer	Numbers received from Printer	Numbers issued to office staff	Balance on hand
1-7-XX	1001-1500		500
1-7-XX		1001-1100	400
1-10-XX		1101-1200	300

4.4 Deposit records

An approved ADI deposit record is a source document prepared to evidence the deposit of general trust money to a general trust account. A deposit record must be produced to the approved ADI at the time the deposit is made to the general trust account, other than direct deposits [*Legal Profession Regulation 2017* s.35(1) & (2)]. The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise, and must be kept either in a deposit book or filed in the order that the deposits were made to the general trust account [*Legal Profession Regulation 2017* s.35(4) & (5)].

The following details must be recorded on the bank deposit record [*Legal Profession Regulation 2017* s.35(3)]:

- a. The date of the deposit;
- b. The amount of the deposit;
- c. Whether the deposit consists of cheques, notes or coins and the amount of each);
- d. For each cheque:
 - i. The name of the drawer of the cheque;
 - ii. The name and branch (or BSB number) of the ADI on which the cheque is drawn;
 - iii. The amount of the cheque.

In relation to manual deposit slips law practices are advised that they should request that their approved ADI provide them with duplicate carbonised deposit slip books rather than the "butt style" deposit slips. Butt style deposit slips do not comply as the information relating to the drawer, bank, branch and the form of funds received is not recorded on the butt.

4.4.1 Prompt Banking of General Trust Funds

Trust moneys received by a law practice should be banked to a general trust account as soon as practicable. The Law Society interprets this to mean the money must be banked on the day of receipt or, when that is not reasonably practicable, the next business day [*Legal Profession Act 2007* s.248(1)].

Major errors in this area are:

- a. banking trust money without issuing a trust account receipt;
- b. failure to bank trust money for which a trust account receipt has been issued;
- c. late banking of receipted trust money.

These errors will not occur if the correct procedures are adopted, namely:

- a. The banking of receipted trust money should be done at a regular time each day.
- b. The amounts receipted since the last banking should be totalled, and this total should agree with the total of the banking as recorded on the approved ADI deposit form and the amount recorded on the credit summary slip. (If the two totals do not agree, the matter should be investigated promptly. Trust account receipts will have to be issued for any money included in the banking if a trust account receipt has not already been issued. If money has been receipted but not included in the banking, those moneys will have to be located and banked.)
- c. If trust account receipts are issued in duplicate, the back of the last duplicate trust account receipt for money included in the banking should record the date of the banking and the amount of the banking.
- d. The credit summary slip should be checked to ensure that the correct form has been completed – the ADI will deposit the money to the account nominated on the credit summary slip and will not check that the account nominated on the credit summary slip is the account in respect of which the approved ADI deposit form has been completed.

4.5 Withdrawal by Cheque or Electronic Funds Transfer

A law practice may withdraw trust money from the general trust account by way of a cheque or, if the law practice is authorised by the Law Society, by way of Electronic Funds Transfer (EFT) [*Legal Profession Act 2007* s.250(1)]. Cash withdrawals, ATM withdrawals or transfers, telephone banking withdrawals or transfers are specifically prohibited [*Legal Profession Act 2007* s.250(2)].

4.5.1 Cheques

The Regulations require that cheques drawn on the law practice's general trust account must [*Legal Profession Regulation 2017* s.37(2)]:

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

The repetition of the words "law practice" is not required if those words form part of the name of the law practice.

For example:

- A law practice that practises under the name "Fred Bones & Associates" that opens a general trust account after 1 July 2007 is required to open the account in the name of "Fred Bones & Associates Law Practice Trust Account", or "Fred Bones & Associates Law Practice Trust A/c".
- A law practice that practises under the name "Fred Bones Law Practice" that opens a general trust account after 1 July 2007 is required to open the account in the name of "Fred Bones Law Practice Trust Account", or "Fred Bones Law Practice Trust A/c". It is not necessary to repeat the words "law practice".

General trust accounts established prior to the commencement of the Regulation are not required to be renamed to include the expression "law practice trust account" [*Legal Profession Regulation 2017* s.37(8)].

4.5.2 Cheque Butts and Cheque requisitions

The cheque butts or cheque requisitions are the source documents for the recording of entries in the cash payments book and as such must contain a record of the full details of the payment. A written record of the payment (either a cheque butt or a cheque requisition) must be kept by the law practice, whether computer-generated cheques or manual cheques are utilised [*Legal Profession Regulation 2017* s.37(4) & (5)]

All the following information must be shown on the cheque butt (or cheque requisition) [*Legal Profession Regulation 2017 s.37(6)*]:

- a. date of payment;
- b. number of the cheque;
- c. name of the payee (in the case of a cheque made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment);
- d. details clearly identifying the name of the person on whose behalf the payment was made and the matter reference (ie client name);
- e. details clearly identifying the ledger account to be debited (ie matter description);
- f. particulars sufficient to identify the purpose for which the payment was made (ie the reason for the payment);
- g. the amount.

Three sample cheque butts follow:

Example 1

			55001
Payee:	Office of State Revenue	Cheque No.:	55001
		Date:	04/07/20XX
Amount:	\$10,000.00		
Allocated as follows:			
Matter Ref	Client/Matter description	Reason	Matter Amount
B1	JA Brown Purchase from RA & SB Smith	stamp duty on purchase of 1 Apple St, Sunnybank	\$6,000.00
B2	JW & PB Black – Purchase 1 Station St, Springwood from TS White	stamp duty	\$4,000.00

Example 2

			55002
Payee:	ANZ bank cheque in favour of FS Batten & Associates Trust Account	Cheque No.:	55002
		Date:	04/07/20XX
Amount:	\$10,000.00		
Allocated as follows:			
Matter Ref	Client/Matter description	Reason	Matter Amount
B2	JW & PB Black – Purchase 1 Station St, Springwood from TS White	balance settlement funds	\$31,945.55

Example 3

			55003
Payee:	A B Slack	Cheque No.:	55003
		Date:	06/07/20XX
Amount:	\$34,350.00		
Allocated as follows:			
Matter Ref	Client/Matter description	Reason	Matter Amount
S1	AB Slack – PI Claim – v – Whitehall Insurance Co	Net settlement funds	\$34,350.00

It is not necessary to draw a separate trust account cheque for each payment. If a number of payments are to be made to the one payee for a number of transactions (eg payments to the Office of State Revenue, Department of Natural Resources and Water, or the law practice's business account), it is only necessary to draw one trust account cheque. However, full details of each transaction must be recorded on the cheque butt or cheque requisition.

Cheque forms which have been spoilt or are considered unsuitable for issue should be marked "cancelled" and stapled to the cheque butt.

Trust account cheques must never be issued on behalf of a client until banked cleared funds are held on behalf of the client at the branch of the approved ADI where the trust account is conducted. Cleared funds lodged at another bank or branch for remittance to a law practice's ADI account cannot be drawn against until the deposit has actually been processed by the branch of the approved ADI of the law practice.

Under no circumstances should a law practice draw a trust account cheque against unbanked funds in the law practice's possession. The unbanked trust funds could be stolen, lost or destroyed before being banked. In these circumstances the presentation and payment of the law practice's trust account cheque would result in a deficiency of trust money.

4.5.3 Paid cheques

As approved ADIs are required to retain paid cheques for a period of not less than seven (7) years, paid cheques, although an accounting record, need not be collected from the approved ADI and retained by the law practice.

4.5.4 EFT Payments

A law practice may withdraw trust money from the general trust account by way of *Electronic Funds Transfer* (EFT) if the law practice is authorised by the Law Society [*Legal Profession Act 2007* s.250(1)]. Cash withdrawals, ATM withdrawals or transfers, telephone banking withdrawals or transfers are specifically prohibited [*Legal Profession Act 2007* s.250(2)].

The Society has issued "Electronic Funds Transfer Guidelines" (which can be located on the Society's website qjs.com.au) and will require a law practice to give a Declaration that it will comply with the Guidelines before giving approval to the law practice to make EFT payments. An Application Form and Declaration can found on the Society's website qjs.com.au.

Direct debit authority payments are also a form of electronic funds transfer. The Society has also issued Guidelines, which can be located on the Society's website qjs.com.au, in relation to direct debit payments from the trust account to the Office of State Revenue (OSR) and to the Property Exchange Australia (PEXA). Law practices must apply to the Society and complete a Declaration that it will comply with the Guidelines before approval will be granted to the law practice to make EFT payments via direct debit to OSR or/and PEXA.

The Regulations require that EFTs are to be effected by or under the direction or with the authority of an "authorised" principal or in their absence an "authorised" person(s) [*Legal Profession Regulation 2017* s.38(2)].

The law practice must ensure that a written record recording the particulars of the EFT is retained for both computer and manual accounting records. The written record must be kept in order in which the transfers were effected [*Legal Profession Regulation 2017* s.38(6)]. A written record must be retained regardless of whether the law practice maintains a manual or computer trust accounting system [*Legal Profession Regulation 2017* s.38(3) & (4)]. Examples of written records for EFTs are an "EFT transaction summary form" for EFTs instigated by the law practice, a "trust account authorisation record" for debit debit payments to PEXA or a "Confirmation of Payment" screen-print for debit debit payments to OSR.

Written records for EFTs must disclose [*Legal Profession Regulation 2017* s.38(5)]:

- a. the date and the number of the transaction;
- b. the amount transferred;
- c. the name and number of the account to which the amount was transferred and relevant BSB number;
- d. the name of the person to whom the payment was made or, in the case of 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. details clearly identifying the name of the person on whose behalf the payment was made (ie Client name) and the matter reference;
- f. details clearly identifying the ledger account to be debited (ie Matter description);
- g. particulars sufficient to identify the purpose for which the payment was made (ie reason for payment).

4.5.5 Cheque reversal

There will be occasions when a cheque has been made out and issued to the payee and an error is subsequently realised, for example when a cheque is issued for an incorrect amount, requiring payment of the cheque to be stopped.

The procedures to be followed when reversing a cheque are:

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 payments 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);
5. if applicable, a replacement cheque should be issued in the normal manner.

Assume that cheque No. 55003 issued to AB Slack on 6 July 20XX for \$34,350.00 was destroyed by Slack's four year old child and Slack informed the law practice of this on 22 August 20XX. 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 would be recorded in the cash payment book under the date of 22 August 20XX (the date on which the law practice stopped payment on the cheque) as follows:

Fred Bones & Associates – Trust Account Payments Cash Book					
For period 1/8/20XX to 31/8/20XX					Page 1 of 1
Date	Chq No.	Paid To Reason	Account Name Matter Ref Matter description	Multi Amount	Cheque Amount
22/8/20XX	55003	Cancelled Cheque no. 55003 Re: Cheque no. 55003 dated 06/07/XX destroyed by client	AB Slack S1 PI Claim – v. Whitehall Insurance Co		(\$34,350.00)

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. 55003.

The replacement cheque issued on 25/8/20XX is recorded in the cash payment book as follows:

Fred Bones & Associates – Trust Account Payments Cash Book					
For period 1/8/20XX to 31/8/20XX					Page 1 of 1
Date	Chq No.	Paid To Reason	Account Name Matter Ref Matter description	Multi Amount	Cheque Amount
25/8/20XX	55020	A B Slack Re: replacement of cancelled cheque no. 55003 dated 06/07/20XX being net settlement funds	AB Slack S1 PI Claim – v. Whitehall Insurance Co		\$34,350.00

The client's trust ledger account would then be recorded as follows:

Fred Bones & Associates					
Trust Ledger					
Account Name:		Andrew Bartholomew Slack			
Address:		16 Thomas Street, Newstead			
Matter Reference:		S1			
Matter Description:		PI Claim: AB Slack –v-Whitehall Insurance Co			
Date	Ref	Paid To/ Received From/ Jnl to/from/ Reason	Debit \$	Credit \$	Balance \$
02/07/20XX	1003	Peters & Assoc. legal practice trust A/c, Re: net Settlement moneys		38,000.00	38,000.00
06/07/20XX	55003	AB Slack, Re: Net settlement funds	34,350.00		3,650.00
21/07/20XX	55004	Fred Bones & Assoc. General A/c, Re: Professional costs	3,650.00		0.00
22/08/20XX	55003	Cancelled Cheque no. 55003 Re: Cheque no. 55003 dated 06/07/20XX destroyed by client		34,350.00	34,350.00
25/08/20XX	55020	A B Slack Re: replacement of cancelled cheque no. 55003 dated 06/07/20XX being net settlement funds	34,350.00		0.00

4.5.6 Stale cheques

Cheques which have been drawn and become stale (ie when a cheque is older than 15 months from the date of issue) should no longer be processed through the approved ADI system. However, the law practice should be guided by advice from its approved ADI as to the treatment of stale cheques through its 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 stale cheques.

4.6 Trust account ADI statements

At the end of each month or at more regular intervals a statement should be obtained from the law practice's approved ADI. Online ADI statements should be checked regularly to confirm transactions to and from the general trust account and controlled money accounts. However, there have been occasions where the online ADI transaction listing is different to the official printed ADI statement. The law practice should be guided by advice from its approved ADI as to what constitutes cleared funds on online internet ADI statements.

These statements of account are trust records that must be retained by the law practice for at least seven years.

4.7 Trust account cash books

A law practice that maintains a general trust account must keep two trust account cash books; a trust account cash receipts book in accordance with s.40 of the Regulation and a trust account cash payments book in accordance with s.41.

The trust account cash books are a secondary record of all transactions through the general trust account. Details of receipts (including cancelled receipts and receipt reversals) and withdrawals (including cheques, cheque reversals and EFT payments from trust) are posted to the trust ledger from the trust account cash books and this is why full particulars of trust moneys received and paid must be recorded in the trust account cash books.

The most suitable type of manual cash book is the treble column cash book with pages numbered consecutively.

4.7.1 Trust account receipts cash book

The entries in the trust account receipts cash book are posted from the duplicate trust account receipts. All of the information recorded on the duplicate trust account receipts should be recorded in the trust account receipts cash book.

Section 40 of the Regulation requires the following information to be recorded in the trust account receipts cash book:

- The date a receipt was made out for the money and, if different, the date of receipt of the money;
- The receipt number;
- The amount of money received;
- The form in which the money was received;
- The name of the person from whom the money was received;
- Details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
- Particulars sufficient to identify the purpose for which the money was received;
- details clearly identifying the ledger account to be credited.

The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book and the particulars must be recorded in the order in which the receipts are made out [*Legal Profession Regulation 2017* s.40(2) & (3)].

Particulars of the receipt must be recorded to the trust account receipts cash book within 5 working days from and including the day the receipt was made out. However, as a best practice, details of trust account receipts should be posted to the trust account receipts cashbook on a daily basis.

Example of trust account receipts cash book

Fred Bones & Associates – Trust Account Receipts Cash Book						
For period 1/7/20XX to 30/7/20XX						Page 1 of 1
Date receipt issued (Note 1)	Rec No. Form of funds	Received From Reason	Client Name Matter Ref (Note 2) Matter description	Multi Amount	Receipt Amount	Amount and date of deposit
1/7/20XX	1001 Cash	JA Brown Re: Professional costs; stamp duty; regn fees; searches	JA Brown B1 Purchase of 1 Apple Street, Sunnybank from RA & SB Smith	\$500.00 \$6,000.00 \$110.00 \$125.00	\$6,735.00	\$6,735.00 1/7/20XX
1/7/20XX	1002 EFT	PB Black Re: Balance of purchase moneys; Professional costs; Stamp duty; Searches; Direct deposit on 25/6/20XX	JW & PB Black B2 purchase 1 Station Street, Springwood from TS White	\$32,000.00 \$650.00 \$4,000.00 \$100.00	\$36,750.00	\$36,750.00 25/6/20XX
2/7/20XX	1003 Chq	Peters & Associates Legal Practice Trust Account Re: settlement monies \$40,000 less Centrelink refund \$2,000	AB Slack S1 PI Claim – v. Whitehall Insurance Co		\$38,000.00	\$38,000.00 2/7/20XX
Total Receipts					\$81,485.00	\$81,485.00

Note 1: The column headed “Date” is used to record the date the receipt is made out, not the date on which the entry was actually posted. If date funds received is different to the date the receipt is made out, record date received in the body of the receipt and either in the “date of deposit” column or the “reason” column.

Note 2: If the law practice uses a trust ledger reference that is different to the matter reference then an additional column would be shown disclosing the ledger reference number.

4.7.2 Trust account payments cash book

The entries in the trust account payments cash book are posted from the cheque butts (or cheque requisitions) and EFT transaction summary forms. All of the information recorded on the cheque butts or requisitions and EFT transaction summary forms should be recorded in the trust account payments cash book, as the details recorded in the trust ledger are posted from the trust account payments cash book.

Section 41 of the Regulation requires the following information to be recorded to the trust account payments cash book for cheque payments and EFT withdrawals:

- a. The date and number of the cheque or transaction;
- b. The amount ordered to be paid by the cheque or the amount transferred;
- c. The name of the person to whom the payment is to be or was made or, in the case of 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. If the withdrawal was via EFT the name and number of the account to which the amount was transferred and the relevant BSB number;
- e. Details clearly identifying the name of the client in respect of whom the payment was made and the matter description and matter reference;
- f. Details clearly identifying the ledger account to be debited;
- g. Particulars sufficient to identify the purpose for which the payment was made.

The particulars in respect of the payments must be recorded in the order in which the payments are made and must be recorded to the trust account payments cash book within **5 working days** from and including the day the payment was made [Legal Profession Regulation 2017 s.41(3) & (4)]. However, as a best practice, details of trust account payments should be posted to the trust account payments cashbook on a **daily basis**.

Example of trust account payments cash book

Fred Bones & Associates – Trust Account Payments Cash Book					
For period 1/7/20XX to 30/7/20XX					Page 1 of 1
Date (Note 1)	Chq No.	Paid To Reason	Account Name Matter Ref (Note 2) Matter description	Client Amount	Cheque Amount
4/7/20XX	55001	Office of State Revenue Re: stamp duty on purchase of 1 Apple St, Sunnybank; Re: stamp duty;	JA Brown B1 – Purchase of 1 Apple Street, Sunnybank from RA & SB Smith JW & PB Black B2 – purchase 1 Station Street, Springwood from TS White	\$6,000.00 \$4,000.00	 \$10,000.00
4/7/20XX	55002	ANZ bank cheque in favour of FS Batten Re: Balance settlement funds	J W & PB Black B2 – purchase 1 Station Street, Springwood from TS White	\$31,945.55	\$31,945.55
6/7/20XX	55003	AB Slack Re: net settlement funds	AB Slack S1 – PI Claim – v. Whitehall Insurance Co	\$34,350.00	\$34,350.00
21/7/20XX	55004	Fred Bones & Assoc General Account Re: professional costs & outlays Re: professional costs	JA Brown B1 – Purchase of 1 Apple Street, Sunnybank from RA & SB Smith AB Slack S1 – PI Claim – v. Whitehall Insurance Co	\$735.00 \$3,650.00	 \$4,385.00
Total Payments				\$80,680.55	\$80,680.55

Note 1: The date on which the trust account cheque is drawn or the date of the EFT transaction is the date to be recorded in this column and not the date when the entry was actually recorded in the trust account cash payment book.

Note 2: If the law practice uses a trust ledger reference that is different to the matter reference then an additional column would be shown disclosing the ledger reference number.

4.8 Trust ledger accounts

Details of all trust funds held by a law practice on behalf of clients must be correctly recorded in clients' individual trust ledger accounts so that the actual position, on any given day, can be ascertained.

If manual trust account records are maintained the most efficient system of filing individual trust ledger accounts is in strict alphabetical order.

4.8.1 Trust ledger account detail

Section 42 of the Regulation requires the following to be recorded in the trust ledger accounts:

1. In the **Title** of the trust ledger account the following particulars must be recorded [*Legal Profession Regulation 2017 s.42(2)*]
 - a. the name of the person for and on behalf of whom the trust moneys was paid. This is usually the client's name, unless it is a stakeholder account;
 - b. the person's address;
 - c. sufficient particulars to identify the matter in relation to which the trust money was received.
 - d. Any changes of the details in the title of the trust ledger account must be recorded [*Legal Profession Regulation 2017 s.42(3)*].
 - e. It is recommended that each client ledger sheet should be numbered.
2. In respect of each **Receipt** of trust money for the matter [*Legal Profession Regulation 2017 s.42(4)*]:
 - a. date of the receipt;
 - b. date of receipt of money, if different from the date of receipt;
 - c. the receipt number;
 - d. The amount of money received;
 - e. The name of the person from whom the money was received;
 - f. Particulars sufficient to identify the purpose for which the money was received (reason for receipt).
3. In respect to each payment of trust money by **Cheque** [*Legal Profession Regulation 2017 s.42(5)*]:
 - a. the date of the cheque;
 - b. the cheque number;
 - c. the amount ordered to be paid by the cheque;
 - d. the name of the person to whom the payment is made or, in the case of 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;
 - e. particulars sufficient to identify the purpose for which the payment was made.
4. In respect to each payment of trust money by **EFT** [*Legal Profession Regulation 2017 s.42(6)*]:
 - a. the date of the transaction;
 - b. the transaction number;
 - c. the amount transferred;
 - d. the name and number of the account to which the amount was transferred and the relevant BSB number;
 - e. the name of the person to whom the payment is made or, in the case of 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;
 - f. particulars sufficient to identify the purpose for which the payment was made.

5. In respect to each transfer of trust money by **journal** entry [*Legal Profession Regulation 2017* s.42(7)]:
 - 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.
6. **Balance** – A running balance of the amount of funds held on behalf of the client is recorded in this column. This must be calculated after each transaction [*Legal Profession Regulation 2017* s.42(10)]. Individual client trust ledger accounts must never have a debit balance. However, if this does occur, the letters “DR” should be recorded in the balance column.

If a trust ledger account records a debit balance, ie an overdrawn trust ledger, the law practice must **immediately** deposit funds to the trust account for that individual trust ledger account in order to restore that trust ledger account to a nil or credit balance.

Details of trust account receipts, payments and journals should be posted to the trust ledger within 5 working days counting from and including the day the receipt was made out, the payment was made or the transfer was effected [*Legal Profession Regulation 2017* s.42(9)].

However, as a best practice, details of trust account receipts, payments and journals should be posted to the cashbooks and ledgers on a **daily basis**. This should be done immediately after the details of the transactions have been recorded in the trust account receipts cash book and trust account payments cash book and trust journal transfer. The regulations also require that transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur [*Legal Profession Regulation 2017* s.42(8)]

4.8.2 Examples of Trust Account Ledgers

Two examples of trust ledger accounts are set out below:

Example 1

Fred Bones & Associates					
Trust Ledger					
					Page 1 of 1
Account Name:	James Arthur Brown				
Address:	15 Orange Street, Mount Gravatt				
Matter Reference:	B1				
Matter Description:	Purchase 1 Apple Street, Sunnybank from RA & SB Smith				
Date	Ref	Paid To/ Received From/ Jnl to/from/ Reason	Debit \$	Credit \$	Balance \$
01/07/20XX	1001	JA Brown Re: Professional Costs \$500; Stamp Duty \$6000; Regn Fees \$110; Searches \$125		6,735.00	6,735.00
01/07/20XX	55001	Office of State Revenue, Re: stamp duty on purchase of 1 Apple St, Sunnybank	6,000.00		735.00
21/07/20XX	55004	Fred Bones & Assoc General A/c, Re: Professional costs and outlays	735.00		0.00

Example 2

Fred Bones & Associates					
Trust Ledger					
Page 1 of 1					
Account Name:	John William & Pamela Barbara Black				
Address:	25 Maria Crescent, Windsor				
Matter Reference:	B2				
Matter Description:	Purchase of 1 Station Street, Springwood from TS White				
Date	Ref	Paid To/ Received From/ Jnl to/from/ Reason	Debit \$	Credit \$	Balance \$
01/07/20XX	1002	PB Black, Re: balance of purchase moneys \$32000, professional costs \$650; Stamp Duty \$4000; Searches \$100		36,750.00	36,750.00
04/07/20XX	55001	Office of State Revenue, Re: stamp duty	4,000.00		32,750.00
04/07/20XX	55002	ANZ bank cheque in favour of FS Batten, Re: Balance settlement funds	31,945.55		804.45

4.8.3 Separate ledger accounts – Stakeholder accounts

A separate trust ledger account must be opened for each transaction.

Generally speaking, a separate trust ledger account should be maintained for each separate party to a transaction.

For instance, in a conveyancing transaction where a law practice acts for both parties the balance purchase moneys received from the buyer prior to settlement are to be credited to a trust ledger account in the name of the buyer. Further, the settlement moneys retained after settlement for future accounting on behalf of the seller (eg funds retained from settlement funds for payment of the seller's professional costs) are to be held in a trust ledger account in the name of the seller.

Law practices are reminded that if they act for both parties to a conveyance transaction the law practice incurs a significant risk of liability to one or both of the parties and must make full and frank disclosure to both parties of potential problems that could arise. (5.4 Conflict of Interest – Qld Conveyancing Protocol v7 (December 2014) and Australian Solicitors Conduct Rules 2012 Rule 11).

One example of a situation where trust moneys should properly be held in a trust ledger account maintained for more than one party to a transaction is where a law practice is the stakeholder pursuant to a contract of sale. In these circumstances the deposit, when received, should be credited to a trust ledger account maintained for the benefit of both the buyer and the seller. The deposit moneys are the only moneys to be credited to this account.

The stakeholder trust ledger account should be titled as follows:

name of stakeholder (law practice) as stakeholder for the seller and the buyer, eg:

Fred Bones & Associates (stakeholder) as stakeholder for M Brown (seller) and P & Y Jones (buyer),

Re: Sale/Purchase of 10 Orange Street, New Farm; or

name of seller and buyer, eg:

M Brown and P & Y Jones

Re: Sale/Purchase of 10 Orange Street, New Farm.

4.8.4 Trust ledger account in name of the law practice

A law practice must not maintain a trust ledger account in the name of the law practice or a legal practitioner associate of the law practice except in the following instances [*Legal Profession Regulation 2017* s.45(1) & (2)]:

- A law practice may maintain a trust ledger account in the name of the practice for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs [*Legal Profession Regulation 2017* s.45 (2)(a)]; and
- A law practice may maintain a trust ledger account in a legal practitioner associate's name in respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity [*Legal Profession Regulation 2017* s.45 (2)(b)].

In a case to which subregulation (2) (a) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account.

In a case to which subregulation (2) (b) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates.

4.8.5 Archiving trust ledgers

Section 29(2)(a) of the Regulation requires that trust ledger accounts be printed before they are archived or deleted from the system.

4.8.6 Referring to the ledger before drawing a trust account cheque

Before withdrawing trust moneys from the general trust account the law practice must be satisfied that there are banked cleared funds available in the relevant trust ledger account. If the relevant trust ledger account is not checked prior to withdrawing trust money a deficiency in the trust account could occur. The *Legal Profession Act 2007* section 259 states that an Australian legal practitioner must not, without reasonable excuse, cause a deficiency in any trust account or trust ledger account.

The law practice must also be satisfied that the trust funds held in the client's trust ledger account are available for the purpose required. Funds received for a specific purpose constitute a specific trust and cannot be used for any other purpose. Therefore, the mere fact that funds are available in the client's trust ledger account does not mean that the law practice is able to withdraw the funds from the general trust account.

It is important that the posting of the trust ledger is up to date and that details of receipts and payments clearly record the purpose for which the trust funds were received or paid. The more information recorded in the trust ledger, the better.

4.8.7 Clearance of surplus trust funds

A law practice must account the available trust funds to the rightful beneficiary with as little delay as possible. Section 259 of the *Legal Profession Act 2007* states that an Australian legal practitioner must not, without reasonable excuse, cause a failure to pay or deliver any trust moneys. Small balances representing overpayments by clients for stamp duty, registration fees, filing fees, purchase moneys, costs etc. should be promptly accounted to clients.

If the law practice is unable to locate the beneficiary of the trust funds or can not determine who is legally entitled to receive the money or property the law practice is referred to Section 713 of the Act. See Section 12.0 "Unclaimed Monies" in this Guide.

4.9 Trust transfer journal – Particulars

Trust money may be transferred by journal entry from one trust ledger account in the law practice's trust ledger to another trust ledger account if the law practice is entitled to transfer the money [*Legal Profession Regulation 2017* s.43(1)]. The Regulation requires authorisation of the trust journal transfer to be made in writing by the principal or authorised legal practitioner associate or external intervener [*Legal Profession Regulation 2017* s.43(2)].

The following particulars must be recorded in relation to trust account transfer journals:

- a. The date of the transfer;
- b. The trust ledger account from which the money is transferred (including its identifying reference);
- c. The trust ledger account to which the money is transferred (including its identifying reference);
- d. The amount transferred;
- e. Particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter;
- f. Journal pages or entries must be consecutively numbered;
- g. The signature or authorisation of the principal or authorised legal practitioner associate.

4.9.1 Example of a trust transfer journal

Prior to effecting a journal transfer ledger accounts should be reviewed to make certain which account the money is transferred to and which account it is being transferred from.

Example of trust transfer journal

Fred Bones & Associates					
Trust Transfer Journal					
Period 1/11/20XX to 30/11/20XX					Page 1 of 1
Date	Jnl Ref	Account Name Matter No. Matter description Reason	Debit	Credit	Authorised by
26/11/XX	J1	Bartholomew, John B4 – Sale of 16 Apple Street, Sunnybank to CW Jones Bartholomew, John B5 – purchase of 12 Beuna Ave from I Einsenhower (transfer as directed by client to enable purchase of 12 Beuna Ave)	\$1,500.00	\$1,500.00	F Bones
29/11/XX	J2	Forster, V F1 Sale to Webbe Forster, V F3 Purchase 92 Swing Street (correct incorrect recording of receipt as per client's instructions)	\$400.00	\$400.00	F Bones

Each journal entry is to be authorised by the principal or an authorised signatory to the trust account. The authorisation for each transfer journal is to be evidenced by the principal signing the trust account journal transfer or by some other method and should be kept in writing [*Legal Profession Regulation 2017* s.43(6)]. Law practices utilising computerised accounting systems would generally have a trust journal requisition form as the source document for the journal transfer. This document should be signed by the legal practitioner and detail the reason for the transfer.

The rules for posting a trust transfer journal are:

Debit: The ledger account that the funds are being transferred from.

Credit: The ledger account that the funds are being transferred to.

4.10 Trust account reconciliations

Within **15 working days** of the end of each month, the trust account cash books must be balanced as at end of month date and reconciled with the trust ledger and the ADI balance [*Legal Profession Regulation 2017* s.44(3)]. The regulations also stipulate that the reconciliation statements should be:

- (i) reviewed by a principal of the law practice;
- (ii) annotated as evidence of completion of the review;
- (iii) kept by the law practice

and should show the **date the reconciliation statements were prepared and reviewed** [*Legal Profession Regulation 2017* s.44(2) & (3)].

It is strongly recommended however that the reconciliation of the trust records be completed as quickly as possible after the end of the month and that consideration be given to reconciling the trust records on a more frequent basis. The reconciliation process is an extremely important internal control and will identify any errors that have occurred during the period since the last reconciliation.

4.10.1 Preparing the cashbook balance reconciliation

Pursuant to s.44(2) of the Regulation the law practice must as at the end of each month:

- a. Balance and reconcile the ADI statement balance at the end of the month with the trust account cash book balance as at the end of the month;
- b. Reconcile the trust ledger listing (trust trial balance) at the end of the month with the trust account cash book balance as at the end of the month.

The procedure to balance the cash book is as follows:

- a. Add all amounts listed on the receipts page to give total receipts for the month. The first money column in the receipts cash book represents the total of trust funds received by the law practice during the month. The second money column in the receipts cash book represents the total of trust funds banked and could vary from the total of trust funds received. The difference would be attributable to either:
 - 1. trust funds received in the previous month and included in the initial bank deposit in the month being balanced; or
 - 2. trust funds received on the last business day of the month but not banked until the first business day of the next month.;
- a. Add all amounts on the payment page to give total payments for the month. In the payments cash book, the two money columns should always agree;
- b. Add the total receipts for the month to any balance carried forward from the previous month ('cumulative figure');
- c. Subtract the total payments for the month from the cumulative figure to give the cash book balance as at the end of the current month.

Example of a cash book balance reconciliation

Fred Bones & Associates	
Cash book reconciliation	
Cash book balance as at: 31 October 20XX	Page 1 of 1
Opening balance 1/10/20XX (balance brought forward from previous month)	\$95,199.10
<i>Add:</i> total receipts for month of October 20XX	\$49,604.70
	\$144,803.80
<i>Less:</i> total payments for month of October 20XX	\$56,810.35
Closing balance 31/10/20XX	\$87,993.45
Prepared by: A Bookkeeper	Date prepared: 3/11/20XX
Reviewed by: Principal of law practice	Date reviewed: 4/11/20XX

4.10.2 Preparing a listing of individual trust ledger balances

Section 44(2)(b) of the Regulation requires that a trial balance statement, a listing of all trust ledger account balances, is to be prepared as at the end of the month. The trust trial balance is the total of the individual trust ledger accounts which should all have credit balances.

The procedures to be followed when preparing a trial balance statement are:

- a. Ensure all transactions for the month in question have been entered in the cash book and posted to the relevant trust ledger accounts. This procedure is completed prior to reviewing the approved ADI statement;
- b. Ensure all journal entries have been posted to the relevant trust ledger accounts;
- c. Ensure each trust ledger account has the correct resulting balance after each entry;
- d. List the balance of each individual trust ledger account as at the end of month date. Trust ledger accounts showing a nil balance may be excluded;
- e. Add the listing of individual trust ledger balances and compare with the end of month cashbook balance.

Legal Profession Regulation 2017 s.44(2)(b) requires the trust trial balance to include:

- a. The month to which it refers;
- b. The **date of preparation**;
- c. The following details:
 - i. Name of the person for whom the account is maintained (client name);
 - ii. Reference number or other identification (matter reference number);
 - iii. A short description of the matter (matter description);

iv. The balance of the trust ledger account as at the end of month date.

Example of trust trial balance or listing of individual trust ledger balances

Fred Bones & Associates			
Listing of Individual Trust Ledger Balances as at 31 October 20XX			
			Page 1 of 1
Matter Ref	Account Name	Matter description	Balance
B6	Bland, JM & LB	purchase from BG White	\$ 1,474.45
S4	Smart, AB	Litigation – v J Jackson	\$ 12,000.00
T1	Talisman, A	sale to J Angus	\$ 50,164.00
T3	Thomas, A	purchase from T Swift	\$ 4,000.00
T7	Toft, D	v B Basher	\$ 1,155.00
W12	West, A	purchase from J Taroy	\$ 18,000.00
Y6	Young, N	purchase from T Terry	\$ 1,200.00
Subtotal			\$ 87,993.45
Trust trial balance as at 31/10/20XX			\$87,993.45
Reconciled cash book balance as at 31/10/20XX			\$87,993.45
Variance (should be nil)			nil
Prepared by: A Bookkeeper			Date prepared: 3/11/20XX
Reviewed by: Principal of law practice			Date reviewed: 4/11/20XX

4.10.3 Preparing the approved ADI reconciliation statement

The approved ADI statement balance must be reconciled with the cash book balance to verify that the total amount of funds recorded by the law practice in the trust account cash book is correct.

The procedure to reconcile the approved ADI statement balance to the cash book balance is as follows:

- a. Ensure all transactions for the month in question have been entered in the cash book and posted to the relevant trust ledger accounts;
- b. Obtain the month end approved ADI statement;
- c. Compare the approved ADI statement with the cash book balance as at the end of month:

For receipts by:

- a. Ticking entries that are common to the approved ADI statement and receipts cash book;
- b. Listing entries that appear in the approved ADI statement but are not recorded in the cash book, on a list headed "Receipts etc in approved ADI statement not in cashbook". These items are usually direct deposits to the ADI account where a trust account receipt has not been issued in the prior month due to the firm not being able to identify the provider of the funds and are commonly referred to as "unreceipted deposits".
- c. Listing items in the cash book that do not appear in the approved ADI statement, on a list headed "Receipts entered into cash book not on approved ADI statement". These items are commonly referred to as "outstanding deposits/receipts".

For payments by:

- a. Ticking entries that are common to the approved ADI statement and payments cash book;
- b. Listing the entries that appear in the approved ADI statement but are not recoded in the cash book on a list headed "Items in approved ADI statement not in cash book";
- c. Listing the items that are recorded in the cash book but not recorded in the approved ADI statement, on a list headed "items in cash book not on approved ADI statement". The majority of these items will be unrepresented cheques, cheques drawn but not presented. It is suggested that this list be broken into two headings "unrepresented cheques" and "Entries in cash book not on approved ADI statement".

A sample approved ADI reconciliation statement is set out below. The approved ADI statement balance is adjusted to the cash book balance.

Example of Reconciliation statement

Fred Bones & Associates	
Bank reconciliation	
Reconciliation statement for the period ended 31 October 20XX Page 1 of 1	
Approved ADI statement balance 31/10/20XX	\$ 103,650.64
Add: Outstanding deposits/receipts	
Receipt No. 1012 31/10/20XX (banked 1/11/20XX)	\$ 155.00
	\$ 103,805.64
Less: Unreceipted deposits	
Add/Less: Item(s) in Approved ADI statement not in cashbook	
Less: Outstanding cheques	
Chq No. 54999 dated 29/9/20XX	\$ 462.16
Chq No. 55000 dated 30/9/20XX	\$ 164.28
Chq No. 55003 dated 06/10/20XX	\$ 34,350.00
Chq No. 55006 dated 30/10/20XX	\$ 55.00
	\$35,031.44
	\$ 68,774.20
Add: Bank charges debited in error – 28/10/20XX	\$ 19.25
Add/Less: Item(s) in cash book not in Approved ADI statement	
Reconciled cash book balance as at 31/10/20XX	\$ 68,793.45
Prepared by: A Bookkeeper	Date prepared: 3/11/20XX
Reviewed by: Principal of law practice	Date reviewed: 4/11/20XX

All unusual adjusting entries should be investigated and if applicable corrected. Some further points to note in the reconciliation of the approved ADI statement balance with the cash book balance are as follows:

4.10.4 Non receipted direct deposits and/or telegraphic transfers

There may be occasions when deposits are made to the general trust account but the source of the funds and the person on whose behalf the funds are received cannot be established by the law practice. Therefore, the receipt of these funds would not be recorded in the trust records.

In those circumstances the law practice should issue a trust account receipt, once the source of funds is established, on the date of discovery and should also record on the receipt the date the funds were credited to the approved ADI account. The information on the duplicate trust account receipt (if there is a duplicate) should then be posted to the trust account receipts cash book and the individual trust ledger account, with the date the receipt was made out and, if different, the date of the receipt of money.

It would also be necessary to make an adjustment to the approved ADI reconciliation statement.

The adjustment would be recorded as follows:

Approved ADI statement balance 31/7/20XX	\$ 71,222.33
Less: Direct deposit by P Burke on 25/7/20XX, received 1/8/20XX	\$ 1,000.00
Balance as per Trust account cash book 31/7/20XX	\$ 70,222.33

4.10.5 Outstanding deposits or receipts

As previously stated, all trust funds required to be banked to the law practice's general trust account must be deposited as soon as practicable, ie on the date of receipt or the next business day. Any amount recorded in the approved ADI reconciliation statement under the heading of outstanding deposits, or similar heading such as unbanked receipts or outstanding receipts, must refer to trust funds received on the last business day of the month. These funds should then be banked on the first business day of the next month. In any other circumstances, the amount receipted and not yet banked represents a deficiency of trust funds and should be recorded in the approved ADI reconciliation statement as a deficiency. It should not be included in the approved ADI reconciliation statement as an outstanding deposit.

4.10.6 Unpresented trust account cheques

A law practice must account the available trust funds to the rightful beneficiaries as soon as possible. The issue of a trust account cheque does not discharge this obligation and the law practice must check the approved ADI reconciliation statement to ascertain which cheques have not been negotiated. The law practice must examine these outstanding items to determine whether or not they are considered commercially current.

Generally speaking, no trust account cheque should be allowed to remain outstanding for more than two months without investigation and communication with the payee. Where necessary, payment should be stopped on the unpresented cheque and a new trust account cheque issued in its place after confirmation by the approved ADI of receipt of the stop payment notice.

The approved ADI reconciliation statement must record the date of issue, in addition to the cheque number and the amount of the unpresented cheque.

4.10.7 Approved ADI errors

Debit or credit items appearing on ADI statements not in the cash book may be clearly ADI errors (ie interest, ADI fees, incorrect deposits) and should not be recorded in the cashbook or posted to a ledger account. They should instead be shown as an adjusting item in the reconciliation statement and the ADI should be requested to reverse them directly from the ADI statement. Items should be checked to ensure that they have been reversed.

When opening a general trust account it is important to stress that the approved ADI must charge the costs of maintaining the general trust account to the law practice's office account.

4.11 Trust Account Statements

A trust account statement is a report designed by the Regulation to inform persons for whom or on whose behalf trust money is held or controlled by the law practice. It provides the person on whose behalf the money is held with a full accounting history and current trust balance relevant to their matter. In terms of general trust money the trust account statement is similar in presentation and detail to the information that is reported in the trust ledger account.

Section 53 of the Regulation requires a law practice to furnish 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.

4.11.1 Particulars of a Trust Account Statement

A trust account statement is to contain particulars of [Legal Profession Regulation 2017 s.53(5)]:

- 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.

4.11.2 Delivery of Trust Account Statements

The law practice is required to furnish a separate trust account statement in the following circumstances:

- a. **General trust account** – In the case of trust money in respect of which the law practice is required to maintain a trust ledger account, the practice must furnish a separate statement for each trust ledger account.
- b. **Controlled money account** – In the case of controlled money in respect of which the law practice is required to maintain a record of controlled money movements, the practice must furnish a separate statement for each record.
- c. **Power money account** – In the case of trust money subject to a power given to the law practice or an associate of the practice in respect of 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 furnish a separate statement for each record.

A trust account statement is to be furnished [*Legal Profession Regulation 2017 s.53(6)*] :

- 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 subregulation (7), as soon as practicable after 30 June in each year.

The regulations do not define the term “as soon as practicable”. A law practice’s ability to furnish statements promptly may depend on factors including:

- size of the ledger;
- accounting facilities;
- staff availability.

The law practice must retain a copy of a trust account statement furnished under this regulation.

4.11.3 Exemptions from furnishing Trust Account Statement at 30 June

The law practice is not required to furnish a trust account statement under s.53(6)(c) of the Regulation in respect of a ledger account or record if at 30 June [*Legal Profession Regulation 2017 s.53(7)*]:

- 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 furnished within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.

Section 53 of the Regulation does not apply to a sophisticated client to the extent to which the client directs the law practice not to give trust account statements under that section [*Legal Profession Regulation 2017 s.54(1)*]. Section 300 of the Act defines a sophisticated client.

A sophisticated client may also direct the law practice to give trust account statements on a basis different from that prescribed by section 53 and the law practice must give those statements as directed, except to the extent to which the direction is unreasonably onerous [*Legal Profession Regulation 2017 s.54(2)*]. The law practice must keep a copy of a trust account statement provided under this section.

5. Controlled Moneys

5.1 Definition of Controlled Moneys

“Controlled money” – Section 237 of the Act

“controlled money” means money received or held by a law practice for which the practice has a written direction to deposit the money in an account, other than a general trust account, over which the practice has or will have exclusive control.

Elements of controlled money are:

- Money received or held by the law practice;
- The practice has a written direction to deposit the money in an account, other than a general trust account;
- The practice has or will have exclusive control.

Controlled money received in the form of cash must be deposited to a controlled money account under Section 251 of the Act [*Legal Profession Act 2007* s.255(3)].

5.1.1 Money Received

“Money received” is defined under Section 242 of the Act as:

1. A law practice receives money when –
 - a. The practice obtains possession or control of it directly; or
 - b. The practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or
 - c. The practice, or an associate of the practice (otherwise than in a private and personal capacity) is given a power to deal with the money for another person.
2. A law practice or associate is taken to have received money if the money is available to the practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

5.1.2 Written direction

The *Legal Profession Act 2007* requires a law practice to obtain a written direction from a person on whose behalf the money was received (for example, the client) before money can be deposited to a controlled money account. The controlled money account would usually be an interest bearing account over which the law practice has exclusive control. The written direction must specify the ADI for holding controlled money received by the practice. It may also indicate the duration of time the money is to be invested, the type of investment (for example, term deposits, cash management accounts) and withdrawal instructions.

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 [*Legal Profession Act 2007* s.251(1)].

If no written direction is held, the law practice must first deposit the money into the general trust account pending written instructions from the person entitled to the funds.

5.1.3 Exclusive Control

The law practice must have exclusive control of the controlled money account.

5.2 Controlled Money Accounts

“Controlled money account” – Section 237 of the Act

“controlled money account” means an account kept by a law practice with an ADI for the holding of controlled money received by the practice.

A controlled money account should be under the exclusive control of the law practice and held exclusively for the person on whose behalf the controlled money was received [*Legal Profession Act 2007* s. 237 & s.251(2)]. A law practice must establish a controlled money account with an ADI as specified in the written direction as soon as practicable after receiving controlled money.

Unlike a general trust account, it is not necessary for controlled money accounts to be maintained with an approved ADI, however they must be maintained with an “ADI”. ADI is defined under Section 4 of the Act as “an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cwlth)*”. A list of ADIs can be located on the Australian Prudential Regulation Authority (APRA) website apra.gov.au.

A controlled money account must include the following particulars in the account name [*Legal Profession Regulation 2017* s.47(1)]:

- a. The name of the law practice concerned;
- b. The expression “controlled money account” or the abbreviation “CMA” or “CMA/c”;
- c. Such particulars as are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the practice.

For example:

“Fred Bones & Associates Law Practice CMA JW & PB Black purchase from TS White”

5.3 Controlled Money Records

The following records are required by the legislation to be maintained for controlled money accounts:

- Written direction;
- Controlled money receipts;
- Initiating record of withdrawals;
- Register of controlled moneys consisting controlled money movement records;
- Monthly listing of controlled money accounts;
- ADI Statements
- Trust account statements.

In addition, the Society recommends that law practices keep a controlled money control account to record details of all controlled money transactions and that law practices reconcile the controlled money control account to the listing of controlled money accounts at the end of each month and keep the reconciliation as a trust account record for a period of seven (7) years.

5.3.1 Written direction records

A written direction must be held in order to deposit and withdraw trust money **to and from** a controlled money account and should specify the ADI account into which the controlled money is to be received [*Legal Profession Act 2007* s.251(1) & (3)]. The written directions must be kept for a period of seven (7) years [*Legal Profession Regulation 2017* s.49].

5.3.2 Controlled money receipts

The law practice must operate a single controlled money receipt system for the receipt of all controlled money [*Legal Profession Regulation 2017* s.48(2)]. For example, if a law practice has several branches and multiple controlled accounts it will be required to have one set of controlled money receipts for the whole practice or for each branch of the practice.

The law practice must make out a controlled money receipt as soon as practicable after receiving the controlled money [*Legal Profession Regulation 2017* s.48(3) & (4)]. If the law practice receives the money by direct deposit, then the practice must make out a receipt upon receiving notice or confirmation of the deposit from the ADI.

Controlled money receipts must be:

- Under a single controlled money receipt system [s.48(2)];
- Made out in duplicate, whether by way of a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program [s.48(5)];
- Delivered, on request, to the person from whom the controlled money was received [s.48(8)];
- Consecutively numbered and issued in consecutive sequence [s.48(9)];

If a receipt is cancelled or not delivered, the original receipt must be kept [s.48(10)].

The **particulars** to be recorded on the controlled money receipts are [*Legal Profession Regulation 2017* s.48(6) & (7)]:

- i. the date the receipt is made out and, if different, the date of receipt of the money;
- ii. the amount of money received;
- iii. the form in which the money was received;
- iv. the name of the person from whom the money was received;
- v. details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
- vi. particulars sufficient to identify the purpose for which the money was received;
- vii. the name of and other details clearly identifying the controlled money account to be credited (for example, the ADI account name and number including the BSB);
- viii. If the account has not been established by the time the receipt is made out the name of and other details clearly identifying the account;
- ix. the name of the law practice, or the business name under which the law practice engages in legal practice
- x. the expression "controlled money receipt";
- xi. the name of the person who made out the receipt;
- xii. the number of the receipt.

Whilst the regulations do not require a receipt to be made out for any interest or other income received from the investment of controlled money where the interest or other income is credited directly to a controlled money account, the regulations require the interest or other income to be recorded in the relevant controlled money movement record [*Legal Profession Regulation 2017* s. 48(11) & s.51(6)]. If the Society's suggestion to keep a controlled money control account is adopted, the interest or other income will also be recorded in that account.

There is no good reason why a controlled money receipt should not be issued to create a source record for the bringing to account of this interest or other income and it is suggested by the Society that law practices do this.

Examples of controlled money receipts

Fred Bones & Associates		Controlled Money Receipt
Receipt Number:	1	
Date:	5 August 20XX	Date received (if different):
Received from:	E Flynn	
the sum of:	Forty Thousand _____ Dollars and <u>nil</u> cents	
Amount:	\$40,000.00	Form of funds: Cheque
For and on behalf of:		
Matter ref:	Client Name:	Matter description:
C1	P Chisholm	sale to E Flynn
Reason:	sale proceeds to invest with St George bank term deposit at market rate of interest for 3 months	
Name of controlled money account to be credited:	Fred Bones & Associates Controlled Money Account P Chisholm sale to E Flynn	
Account number (incl BSB):	009 111 7894 1236	
	Made out by:	M Receptionist

Fred Bones & Associates		Controlled Money Receipt
Receipt Number:	2	
Date:	18 August 20XX	Date received (if different):
Received from:	Fred Bones & Associates Law Practice Trust Account	
the sum of:	One hundred & thirty Thousand _____ Dollars and <u>nil</u> cents	
Amount:	\$130,000.00	Form of funds: Cheque
For and on behalf of:		
Matter ref:	Client Name:	Matter description:
M4	A J Martin	Estate of May Smith
Reason:	to invest with Westpac cash management account at market rate of interest at call	
Name of controlled money account to be credited:	Fred Bones & Associates Controlled Money Account Estate of May Smith	
Account number (incl BSB):	084 123 4567 8910	
	Made out by:	A Bookkeeper

5.3.3 Initiating record of withdrawal

Controlled money must not be disbursed except:

- i. In accordance with the original written direction applying to the receipt of the money or a later written direction given by the person on whose behalf the money was received [*Legal Profession Act 2007* s.251(3)]; or
- ii. As prescribed in s.58 [*Legal Profession Regulation 2017*] relating to the withdrawal of trust money from a controlled money account for legal costs; or
- iii. In accordance with an order of a court of competent jurisdiction or as authorised by law [*Legal Profession Act 2007* s.251(7)].

Controlled money can only be drawn from a controlled money account by [*Legal Profession Act 2007* s.252(1)(a)]:

- a. Cheque; or
- b. Electronic funds transfer – If a practice is authorised by the law society to withdraw controlled money from a controlled money account by electronic funds transfer

The following withdrawals are specifically prohibited [*Legal Profession Act 2007* s.252(2)]:

- a. Cash withdrawals;
- b. ATM withdrawals or transfers;
- c. Telephone banking withdrawals or transfers.

A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of:

- a. An authorised principal of the law practice; or
- b. If a principal referred to in paragraph (a) is not available:
 - i. An authorised legal practitioner associate;
 - ii. Or an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - iii. Two or more authorised associates jointly.

A written record of each withdrawal by cheque or electronic funds transfer must be kept by the law practice for each controlled money account and filed separately for each controlled money account in the order in which the payments were made [*Legal Profession Regulation 2017* s.50(7)].

The **written record** (ie initiating record of withdrawal) must disclose the following [*Legal Profession Regulation 2017* s.50(6)]:

- a. the date and number of the transaction;
- b. the amount withdrawn;
- c. in the case of a transfer made by electronic funds transfer — 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 payment is to be made or, in the case of 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. details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
- f. particulars sufficient to identify the purpose for which the payment was made;
- g. the person or persons effecting, directing or authorising the withdrawal.

A cheque butt, cheque requisition or EFT transaction summary form will meet the requirements of a written record.

5.3.4 Register of controlled moneys

The law practice must maintain a register of controlled moneys consisting of the records of controlled money movements for the controlled money accounts of the practice. Separate records of movements must be maintained for each controlled money account. The register should also contain ADI statements and notifications of interest received.

5.3.5 Controlled money control account

As a best practice it is strongly recommended to maintain a Control Money Control Account which records all transactions of all controlled money accounts. The control account could then be reconciled against the monthly listing of controlled money accounts.

Details of receipts and withdrawals in relation to all controlled money accounts would be recorded in the Controlled Money Control Account.

Example of Controlled Money Control Account

Fred Bones & Associates						
Controlled Money Control Account						
For period 1/8/XX to 4/9/XX						Page 1 of 1
Date (Note 1)	Rec/Chq/ EFT No.	Paid To/Rec'd from Reason	Account Name Matter description Matter Ref (Note 2) Controlled Account	Debit (withdrawal)	Credit (deposit)	Balance
5/8/XX	R1	E Flynn Re: sale proceeds to invest with St George term deposit at market rate of interest for 3 months;	P Chisholm – Sale to E Flynn C1 Fred Bones & Associates CMA/c – P Chisholm sale to E Flynn		\$40,000.00	\$40,000.00
18/8/XX	R2	Fred Bones & Associates Law Practice Trust Account Re: to invest with Westpac cash management account at market rate of interest at call	A J Martin – Estate of May Smith M4 Fred Bones & Associates CMA/c – Estate of May Smith		\$130,000.00	\$170,000.00
30/8/XX	EFT02/1	A J Martin Re: reimbursement of funeral expenses	A J Martin – Estate of May Smith M4 Fred Bones & Associates CMA/c – Estate of May Smith	\$400.00		\$169,600.00
4/9/XX	R3	Westpac Re: interest earned to 31/8/XX	A J Martin – Estate of May Smith M4 Fred Bones & Associates CMA/c – Estate of May Smith		\$162.00	\$169,762.00

Note 1: The column headed “Date” is used to record the date the controlled money receipt was made out and, if different, the date the money was deposited in the case of controlled money receipts. In the case of payments from the controlled account the date the cheque was issued or the date of the EFT withdrawal. The date the money was deposited can also, as in this example, be recorded in the “reason” column.

5.3.6 Controlled Money Movement Record

A separate record of controlled money movements must be maintained for each controlled money account [*Legal Profession Regulation 2017* s.51(2)]. The controlled money movement record should be maintained in a format similar to a trust account ledger.

A record of controlled money movements for a controlled money account must record the following information [*Legal Profession Regulation 2017* s.51(3)]:

- a. the name of the person on whose behalf the controlled money is held;
- b. the person's address;
- c. particulars sufficient to identify the matter;
- d. any changes to the information referred to in paragraphs (a)–(c).

The following particulars must be recorded in a record of controlled money movements for a controlled money account [*Legal Profession Regulation 2017* s.51(4)]:

- i. the date the controlled money was received;
- ii. the number of the receipt;
- iii. the date the money was deposited in the controlled money account;
- iv. the name of and other details clearly identifying the controlled money account;
- v. the amount of controlled money deposited;
- vi. details of the deposit sufficient to identify the deposit;
- vii. interest received;
- viii. details of any payments from the controlled money account, including the particulars required to be recorded under s.50 [*Legal Profession Regulation 2017*].

Particulars of receipts and payments must be entered in the register (the relevant controlled money movement record and, if kept, the controlled money control account) as soon as practicable after the controlled money is received by the law practice or any payment is made [*Legal Profession Regulation 2017* s.51(5)]. Interest and other income received in respect of controlled money must be entered in the register as soon as practicable after the law practice is notified of its receipt [*Legal Profession Regulation 2017* s.51(6)].

Example of Controlled Money Movement Record

Fred Bones & Associates					
Controlled Money Movement Record					
Person's name:	A J Martin				
Person's Address:	1 Smith St, Jonesville QLD 4999				
Matter Reference:	M4	Matter description:	Estate of May Smith		
ADI Name, Branch, BSB:	Westpac, Brisbane (084 123)	ADI account number:	4567 8910		
ADI Account Name:	Fred Bones & Associates CMA/c – Estate of May Smith				Page 1 of 1
Date (Note 1)	Rec/Chq/ EFT No.	Paid To/Rec'd from Reason	Debit (withdrawal)	Credit (deposit)	Balance
18/8/XX	R2	Fred Bones & Associates Law Practice Trust Account Re: to invest with Westpac cash management account at market rate of interest at call		\$130,000.00	\$130,000.00
30/8/XX	EFT02/1	A J Martin Re: reimbursement of funeral expenses	\$400.00		\$129,600.00
4/9/XX	R3	Westpac Re: interest earned to 31/8/XX		\$162.00	\$129,762.00

Note 1: The column headed "Date" is used to record the date the controlled money receipt was made out and, if different, the date the money was deposited in the case of controlled money receipts. In the case of payments from the controlled account the date the cheque was issued or the date of the EFT withdrawal. The date the money was deposited can also, as in this example, be recorded in the "reason" column.

5.3.7 Monthly listing of controlled money accounts

The law practice is required to prepare a statement listing its controlled money accounts as at the end of each month detailing:

- a. The name, number and balance of each controlled money account held; and
- b. The name of the person on whose behalf the controlled money in each account was held; and
- c. A short description of the matter to which each account relates; and
- d. The date the statement was prepared.

The law practice must prepare the statement within 15 working days after the end of each month.

Example of the controlled money listing

Fred Bones & Associates				
Controlled Money Listing				
As at 30 September 20XX				
Persons Name	Matter Reference Matter Description	Account Name	ADI Name Account #	Amount
P Chisholm	C1 Sale to E Flynn	Fred Bones & Associates CMA/c – P Chisholm sale to E Flynn	St George 009 111 7894 1236	\$40,000.00
A J Martin	M4 Estate of May Smith	Fred Bones & Associates CMA/c – Estate of May Smith	Westpac 084 123 4567 8910	\$129,762.00
				\$169,762.00
Prepared by: A Bookkeeper			Date prepared: 3/10/XX	

5.3.8 Trust Account Statements – Controlled Money Accounts

In the case of controlled money in respect of which the law practice is required to maintain a record of controlled money movements, the practice must furnish a separate statement for each record [*Legal Profession Regulation 2017* s.53(3)]. As discussed in item 4.11 “Trust Account Statements” a trust account statement should be furnished as soon as practicable after the completion of the relevant matter, or after receiving a reasonable request from the person on whose behalf money is controlled, or after 30 June each year.

The trust account statement is to contain particulars of:

- a. all the information required to be kept under this Part in relation to the trust money included in the relevant controlled money movement record; and
- b. the remaining balance (if any) of the money.

The trust account statement would be similar in layout to the controlled money movement record.

6. Transit Moneys

6.1 Definition of 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.

Pursuant to section 253(1) of the *Legal Profession Act 2007*, a law practice that has received transit money is required to pay or deliver the money as per the instructions relating to the money within the period specified in the instructions or if the period is not stipulated, then as soon as practicable after receipt.

In the following example, all the bank cheques delivered to the law practice are transit money:

The law practice is acting for a client in the purchase of a property. The client delivers to the law practice 3 bank cheques required to settle the purchase of the client's property and pay the relevant stamp duty and registration fees, with instructions as follows:

Bank cheque payable to the seller with instructions to hand over the cheque to the seller's solicitor at settlement;

Bank cheque payable to the Office of State Revenue with instructions to stamp the contract of sale and memorandum of transfer as agent for the Office of State Revenue and deliver the bank cheque to the Office of State Revenue;

Bank cheque payable to the Department of Natural Resources & Water with instructions to deliver the cheque to the department when lodging the memorandum of transfer for registration.

6.2 Record keeping requirements

Section 52(2) of the Regulation requires the law practice, in relation to transit money received by the practice, to record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

Where transit money cheques are received, a law practice should ensure where possible, that copies of the cheques are retained. Copies of other documentation received, for example, settlement directions from the client, directions from an incoming mortgagee or directions to an agent should also be retained.

These written directions, authorities and other documents come within the definition of trust records and are to be kept for 7 years after finalisation of the matter to which they relate.

6.3 Cash cannot be treated as transit money

If cash is delivered to a law practice by a client and the client instructs the law practice to hand over the cash to a third party, the law practice must advise the client that any trust money received in the form of cash must be deposited by the law practice to a general trust account or a controlled money account [*Legal Profession Act 2007* s. 255(4)].

6.4 Trust account statements – Transit moneys

A trust account statement does not have to be issued for transit money.

7. Power Moneys

7.1 Power or Authority

If a law practice is given a power or authority to deal with money for and on behalf of a person, for example, power of attorney, guardianship order or an authority to sign on a person's bank account, whether alone or jointly, the practice is required to keep records in accordance with s.56 of the Regulation [*Legal Profession Act 2007* s.254(2)].

If an associate of the law practice is the executor of a deceased estate and opens a bank account in the name of the associate as executor of the estate, the account will be a power money account.

Solicitors are reminded of the disclosures as required by Rule 12.4.1 of the *Australian Solicitor Conduct Rules 2012* to satisfy their fiduciary duty to their client. A solicitor should exercise caution before agreeing to accept appointment as an executor.

Alternatively, the associate may choose to instruct the law practice to open a controlled money account for the estate, or may instruct the law practice to receive money on behalf of the estate to the law practice's general trust account. The executor may then instruct the law practice to withdraw the money from the general trust account and invest it for the benefit of the estate in a controlled money account or an investment money account.

If the money is invested in an investment money account, the money, when withdrawn from the investment money account, is to be deposited to the law practice's general trust account and disbursed therefrom in accordance with the executor's instructions.

If the money is invested in a controlled money account, the money can be disbursed direct from the controlled money account, in accordance with the executor's instructions, without having to first return the money to the general trust account.

7.2 Record keeping requirements

The law practice must keep [*Legal Profession Regulation 2017* s.56(2)]:

- a. a record of all dealings with the money to which the practice or associate is a party; and
- b. all supporting information in relation to the dealings in a manner that enables the dealings to be clearly understood.

The suggested method of recording all dealings in respect of a power or authority to deal with money for or on behalf of a person, is to record all dealings in a ledger style document.

The law practice must keep the record, supporting information and power or authority as part of its trust records for a period of seven (7) years. Examples of supporting information are bank statements, information supporting any withdrawal of trust money (including the payee and supporting invoices/receipts in relation to the payment) and cheque books (if any).

7.3 Register of powers and estates in relation to trust money

A law practice must maintain a register of powers and estates in respect of which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or one or more associates of the practice, in relation to trust money [*Legal Profession Regulation 2017* s.57(1)].

A system of ensuring that the detail of all powers and estates is recorded in the register must be developed by the law practice. The details are not required to be entered in the register until the law practice or law practice associate is empowered to act pursuant to the power.

Note: s.57(1) does not apply if the law practice or associate is also required to act jointly with one or more persons who are not associates of the law practice [*Legal Profession Regulation 2017* s57(2)].

The register of powers and estates must record [Legal Profession Regulation 2017 s.57(3)]:

- a. the name and address of the donor and date of each power; and
- b. the name and date of death of the deceased in respect of each estate of which the law practice or associate is executor or administrator.

Example of Power & Estates Register

Fred Bones & Associates Register of Powers & Estates						
Date of Power document (e.g POA/Will)	Name & Address of Donor or name of deceased	Name of Associate assigned power	Matter Ref.	Matter Description	Date of commencement of power	Details of client's bank accounts entitled to act on
1/5/20XX	Amy Andrews	Fred Bones	A5	A Andrews re: Power of Attorney	1/5/20XX	A Andrews – CBA cash management account (BSB 006 123 Account number 4567 8910) joint signatory
15/7/20XX	Frank Peters	John Jones	P3	John Jones re: Estate of Frank Peters	18/10/20XX (date of death)	Estate of Frank Peters – Westpac cash management account (BSB 006 124 Account number 9876 5432) sole signatory

Where Section 57 of the Regulations applies it is considered best practice to record in the register of powers and estates the details of any bank accounts in respect of which the law practice or an associate of the practice is acting or entitled to act, alone or jointly.

7.4 Power Money received in cash

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 before the money is otherwise dealt with under the power [Legal Profession Act 2007 s.255(5)].

7.5 Trust account statement – Power Money

In the case of trust money subject to a power given to the law practice or an associate of the practice in respect of 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 furnish a separate statement for each record [Legal Profession Regulation 2017 s.53(4)].

As discussed, in section 4.11 “Trust Account Statements” of this Guide, a trust account statement should be furnished as soon as practicable after the completion of the relevant matter, or after receiving a reasonable request from the person on whose behalf money is controlled, or after 30 June each year.

The trust account statement is to contain particulars of:

- a. all the information required to be kept under this Part in relation to the power money account; and
- b. the remaining balance (if any) of the money.

The trust account statement would be similar in layout to a ledger account.

8. Written direction moneys

8.1 Definition of written direction moneys

Written direction money – money received subject to a written direction (other than money received in the form of cash) from an appropriate person must be dealt with in accordance with the direction within the period, if any, stated in the direction, or as soon as practicable after it is received [*Legal Profession Act 2007* s.248(1)(a), s.248(2)].

8.2 Definition of appropriate persons

An “*appropriate person*” is defined in Section 248(4) of the Act as a person legally entitled to give the law practice directions in relation to dealing with the trust money. Examples of appropriate persons are clients on whose behalf the money is held, a spouse with a Family Court Order or a guardian with a Guardianship Order.

A law practice must ensure that the person claiming to be an “appropriate person” is “legally entitled” to do so. Additionally a law practice must ensure that the person’s claim to “legal entitlement” is in respect of the **specific** trust moneys concerned.

8.3 Example of written direction moneys

An example is as follows:

A law practice acting for a client in the sale of a property has advised the buyer that the law practice’s client requires a bank cheque payable to the seller to be handed over at settlement in exchange for the relevant transfer documents.

At settlement, the buyer produces a bank cheque payable to the law practice’s trust account.

The law practice is instructed by the seller client to settle the sale notwithstanding that the buyer has produced a bank cheque payable to the law practice’s trust account, rather than a bank cheque payable to the client.

The client is advised that there are three (3) ways in which the sale proceeds can be paid to him, namely:

- The settlement cheque can be deposited to the law practice’s general trust account and paid to the client after it has cleared through the trust account (clearance usually takes 3 working days);
- The settlement cheque can be deposited to the law practice’s general trust account with a special clearance request and paid to the client after it has cleared through the trust account (special clearance will normally take 1 business day);
- The client can give a written direction to the law practice to endorse the cheque payable to the client and deposit the cheque to the client’s nominated account or deliver the cheque to the client.

It should be noted that a written direction to deposit trust money to a law practice’s general account, or office account, can not be acted on by a law practice as section 257 of the Act precludes a law practice from mixing trust money with other money.

8.4 Record keeping requirements

The law practice must keep the written direction as part of its trust records for a period of seven (7) years after finalisation of the matter to which the direction related [*Legal Profession Regulation 2017* s.36]. It is recommended that a folder containing the original written direction should be kept and a copy placed in the relevant client file.

It is also recommended that endorsed cheques be photocopied and that the photocopy be kept as a supporting document with the written direction.

8.5 Cash cannot be treated as written direction money

If cash is delivered to a law practice and the client gives a written direction to the law practice to hand over the cash to the client, or a third party, the law practice must advise the client that any trust money received in the form of cash must be deposited by the law practice to a general trust account or a controlled money account [*Legal Profession Act 2007* s.255(2)].

8.6 Trust account statement – Written direction moneys

A trust account statement does not have to be issued for trust money received that is subject to a written direction.

9. Investment moneys

9.1 Definition of investment moneys

Investment money is trust money if both the following criteria are satisfied [*Legal Profession Act 2007* s.238(3)]:

- The money was **entrusted** to or held by the practice in the **ordinary course** of legal practice, primarily in connection with the provision of legal services to or at the direction of the client; and
- The investment is or is to be made in the **ordinary course** of legal practice and for the **ancillary purpose** of keeping or enhancing the value of the money or property pending completion of the matter or pending payment or delivery of the money or property to or at the direction of the client.

9.2 When Investment money is not trust moneys

Investment money is not trust money if it is involved with providing financial services or investments [*Legal Profession Act 2007* s.238(1) & (2)].

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 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);
- 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).
- money that is entrusted to or held by a law practice for a managed investment scheme, or mortgage financing, undertaken by the practice.

9.3 Example of investment moneys

A law practice is entrusted with settlement sale proceeds. These funds are receipted to the law practice's general trust account. The law practice is subsequently given further instructions to invest the trust moneys in an interest bearing account on behalf of the client pending the use of the money to purchase another property.

9.4 Record keeping requirements

The regulations require that a law practice maintain a register of investments if trust money is invested for or on behalf of a client by a law practice [*Legal Profession Regulation 2017* s.55].

The register of investments consists of the individual investment ledger accounts kept to record details of each investment.

The following records are required by the legislation to be maintained for investment money accounts:

- Written authority to invest
- Register of Investments consisting of individual investment ledger accounts
- Evidence of the investment (eg ADI statements)

In addition, the Society recommends that law practices keep an investment money control account to record details of all investment money transactions and that law practices reconcile the investment money control account to a listing of investment money accounts at the end of each month and keep the reconciliation as a trust account record for a period of seven (7) years.

9.4.1 Register of Investments

Section 55(3) of the Regulation requires that a register be kept of the investment of trust moneys. The regulation requires that the register consist of the individual investment ledger accounts. It is the Society's suggestion that the register consist of the individual investment ledger accounts and an investment money control account.

The register must record the following information in relation to each investment:

- a. the name in which the investment is held;
- b. the name of the person on whose behalf the investment is made;
- c. the person's address;
- d. particulars sufficient to identify the investment;
- e. the amount invested;
- f. the date the investment was made;
- g. particulars sufficient to identify the source of the investment;
- h. details of any documents evidencing the investment;
- i. details of any interest received from the investment or credited directly to the investment;
- j. details of the repayment of the investment and any interest, on maturity or otherwise.

The Register of Investments is the new name for the Investment Ledger that was required to be kept pursuant to the provisions of the former Trust Accounts Act and Regulations.

The method of operation is the same. Money invested and recorded in the Register of Investments must be deposited to a general trust account first and withdrawn from a general trust account to be deposited in an investment money account. Interest, or other income, accruing to the investment is to be recorded in the Register of Investments. Money must be returned to a general trust account from an investment money account and paid from a general trust account in accordance with directions given by the person entitled to the money – the money can not be paid direct from the investment money account in accordance with directions given by the person entitled to the money.

There is no longer a legislative requirement to maintain a control account but, as stated above, it is the Society's recommendation that a control account be kept. Further, it is the Society's recommendation that investments be recorded as credit entries in both the control account and the individual investment ledger account. This is different to the Trust Accounts Regulations, which require investments to be recorded as a credit entry in the Investment Control Account and a debit entry in the relevant Individual Investment Ledger Account.

If the law practice invests trust funds in a controlled money account rather than in an investment money account the law practice is not required to record the above particulars in the Register of Investments, as these particulars would be recorded in the Controlled Money Register [*Legal Profession Regulation 2017* s.55(3)].

9.4.2 Evidence of Investment

A copy of the document evidencing the investment should be kept in the register of investments and attached to the above investment record. For example, if a law practice is instructed to invest trust funds in a term deposit, the law practice should keep a copy of the ADI statement or correspondence.

9.4.3 Investment Control Account

It is recommended that the register of investments should contain an investment control account which records all trust moneys invested by the law practice.

For each amount invested by the law practice the investment control account would be credited. If interest accrues on an investment, upon receipt of notification of the interest accrual, the law practice would credit the amount of accrued interest to the investment control account.

If an amount is withdrawn from or realised on an investment, these funds would be brought back to the general trust account or the controlled money account, and the amount would be debited to the investment control account.

Example of Investment Control Account

Fred Bones & Associates						
Investment Control Account						
For period 1/8/XX to 4/9/XX						Page 1 of 1
Date (Note 1)	Ref (Note 2)	Paid To/Rec'd from Reason	Account Name Matter Ref (Note 3) Matter description	Debit (withdrawal)	Credit (deposit)	Balance
5/8/XX	55015	St George Bank Re: sale proceeds to invest	P Chisholm – Sale to E Flynn IC1		\$40,000.00	\$40,000.00
18/8/XX	55046	Westpac Banking Corporation Re: to invest with Westpac	A J Martin – Estate of May Smith IM4		\$130,000.00	\$170,000.00
30/8/XX	3894	Fred Bones & Associates Law Practice Trust Account Re: withdrawal from Westpac	A J Martin – Estate of May Smith IM4	\$400.00		\$169,600.00
4/9/XX	55059	Westpac Re: interest earned to 31/8/XX	A J Martin – Estate of May Smith IM4		\$162.00	\$169,762.00

Note 1: The column headed “Date” is used to record the date the investment is made or withdrawn or the date the law practice receives the advice from the ADI in respect to the interest. If the date the interest is credited to the ADI account is different this can be recorded in the “Particulars” column.

Note 2: The “reference” column records the general trust account cheque or EFT or receipt number.

Note 3: The source of the investment, the matter description or reference and the reason should be recorded. If the client has several investments sufficient particulars to identify the investment should be recorded.

9.4.4 Investment ledger accounts

It is also recommended that the register of investments should contain an investment ledger account for each person on whose behalf an investment is made.

For each amount invested by the law practice the individual investment ledger account would be credited. If interest accrues on an investment, upon receipt of notification of the interest accrual, the law practice would credit the amount of accrued interest to the investment ledger account.

If an amount is withdrawn from or realised on an investment, these funds would be brought back to the general trust account or the controlled money account, and the amount would be debited to the investment ledger account.

Example of Investment ledger account

Fred Bones & Associates					
Investment ledger					Page 1 of 1
Person's name:	A J Martin				
Person's Address:	1 Smith St, Jonesville QLD 4999				
Matter Reference:	IM4	Matter description:	Estate of May Smith		
ADI Name, Branch, BSB:	Westpac, Brisbane (084 123)	ADI account number:	4567 8910		
ADI Account Name:	Fred Bones & Associates atf Estate of May Smith				
Type of Investment:	Cash management account	Date of investment	18/8/20XX		
Original investment amount:	\$130,000.00	Investment terms:	variable interest		
Date of written direction:	17/8/20XX				
Maturity/repayment details:	withdraw to general trust account / reinvest				
Date (Note 1)	Ref (Note 2)	Paid To/Rec'd from Reason	Debit (withdrawal)	Credit (deposit)	Balance
18/8/XX	55046	To: Westpac Re: to invest with Westpac		\$130,000.00	\$130,000.00
30/8/XX	3894	Fred Bones & Associates Law Practice Trust Account Re: withdrawal from Westpac	\$400.00		\$129,600.00
4/9/XX	55059	Westpac Re: interest earned to 31/8/XX		\$162.00	\$129,762.00

9.4.5 Written authority to Invest

A law practice can not withdraw money from a general trust account and deposit it into an investment money account unless it has been authorised, in writing, by the relevant person (the person entitled to the money) to do so [*Legal Profession Regulation 2017 s.55(3)*].

If the client gives a specific written direction to a law practice to deposit their money in a "controlled money account", the money must be dealt with by the law practice as controlled money. If a client gives a written direction to a law practice to invest their money in an interest bearing account but does not specifically instruct the law practice to deposit the money in a controlled money account the law practice could receive these funds to the general trust account and then invest these funds by withdrawing the money from the general trust account.

In accordance with s.59 of the Regulation written directions should be maintained for a period of 7 years after the finalisation of the matter.

9.4.6 Procedure for Investments

Assume that on 1 August 20XX, Fred Bones & Associates received purchase moneys of \$60,000.00 from T Tome relating to his purchase from ABC Builders Pty Ltd into the law practice's general trust account. Tome subsequently authorised the law practice to invest the purchase moneys with the Metway Bank, Brisbane, pending settlement of his purchase transaction.

The sum of \$60,000.00 would be receipted into the general trust account in the normal manner and the investment could either be effected, by way of disbursement from the general trust account, into an investment money account or a controlled money account.

Assuming the funds were invested in an investment money account the recommended procedure for effecting the investment would be to post the cheque payment or EFT withdrawal (if approved) of \$60,000.00 from the general trust account as follows:

1. debit to the client's trust ledger account; and
2. credit to the investment control account; and
3. credit to the client's individual investment ledger account.

Further, assume that the investment account was closed on 31 August 20XX and interest of \$600.00 was earned on the investment. The recommended procedure for recording the interest of \$600.00 earned on the investment is as follows:

1. credit to the investment control account; and
2. credit to the client's individual investment ledger account.

Upon closure of the investment account, the investment moneys must be receipted into the general trust account for subsequent disbursement from that account. Under no circumstances should the investment money be paid to the client or at his or her direction without first being receipted back into the general trust account.

Each receipt issued, when investment money is received back into the general trust account following the withdrawal of investment money, must be posted from the receipts cash book as follows:

1. credit to the client's trust ledger account;
2. debit to the investment control account;
3. debit to the client's investment ledger account.

The advantage of investing trust moneys using an investment money account, rather than a controlled money account, is that a separate receipt system does not need to be maintained as the investment funds are receipted through the general trust account.

9.4.7 Reconciliation of investment ledger

It is also recommended that law practices reconcile the investment control account with the individual investment ledger accounts at the end of each month and retain such reconciliations for at least seven years.

Example of the investment ledger reconciliation

Fred Bones & Associates		
Reconciliation of Investment ledgers – as at 31 October 20XX		
Investment control account		\$95,000.00CR
Investment account in trust for A Andrews	\$15,000.00CR	
Investment account in trust for B Barry	\$25,000.00CR	
Investment account in trust for C Cleary	\$22,165.76CR	
Investment account in trust for F Force	\$32,834.24CR	
Total	\$95,000.00CR	\$95,000.00CR

10. Withdrawing Legal Costs from Trust Money

A law practice may withdraw money from the general trust account or a controlled money account for payment of legal costs owing to the practice if the required procedures are followed [*Legal Profession Act 2007* s.258(1)(b)].

Section 346 of the Act defines “**legal costs**” as:

“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.”

Section 58 of the Regulation prescribes that legal costs may be withdrawn from a general trust account or a controlled money account by two methods:

- withdrawal on issue of bill [s.58(2)];
- withdrawal with authority [s.58(3)];
- the money otherwise becomes legally payable.

Section 300 of the Act defines “**disbursements**” as:

“disbursements includes outlays.”

Section 58(4) of the Regulation prescribes that disbursements or outlays may be withdrawn from a general trust account or a controlled money account if the outlay has been already **paid** by the practice on behalf of the person.

10.1 Withdrawal on issue of bill

The law practice may withdraw trust money on account of professional costs if the practice has given the person a bill relating to the money [*Legal Profession Regulation 2017* s.58(2)(a)], and:

1. The person **has not objected** to withdrawal of the money within seven (7) days after being given the bill [*Legal Profession Regulation 2017* s.58(2)(b)(i)]; or
2. 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 [*Legal Profession Regulation 2017* s.55(2)(b)(ii)]; or
3. The money becomes otherwise legally payable [*Legal Profession Regulation 2017* s.58(2)(b)(iii)].

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

10.2 Withdrawal with Authority

Trust money may be withdrawn from a general trust account or a controlled money account for payment of legal costs owing to the practice by the person for whom the trust money was paid into the account if:

1. **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 [*Legal Profession Regulation 2017* s.58(3)(b)]; and
 - 1.1 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 [*Legal Profession Regulation 2017* s.58(3)(a)(i)]; or
 - 1.2 The money is withdrawn in accordance with **instructions** that have been received by the practice and that authorise the withdrawal [*Legal Profession Regulation 2017* s.58(3)(a)(ii)]; or

A bill of costs that refers to the proposed withdrawal from the trust account, would, in the Society’s opinion, satisfy the requirement of s.58(3)(b). Alternatively, a **written notice of withdrawal** or a **request for payment** referring to the proposed withdrawal from the trust account could be given in the form of a letter.

10.3 Obtaining authority for costs transfers

Costs transfer authorities should be kept in written form as a permanent record for at least seven (7) years [*Legal Profession Regulation 2017* s.58(6)(a)]. It is best practice to obtain the costs transfer authority in writing before transferring costs, however, costs can be transferred pursuant to verbal authorisation but such verbal authorisation must be confirmed in writing not later than 5 working days after the law practice effects the withdrawal and a copy must be kept as a permanent record [*Legal Profession Regulation 2017* s.58(6)(b)].

10.4 Withdrawal for Reimbursement – Outlays

A law practice may withdraw trust money from a general trust account or controlled money account if:

1. **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** [*Legal Profession Regulation 2017* s.58(4)(b)]; and
2. the money is owed to the practice by way of reimbursement of money **already paid** by the practice on behalf of the person [*Legal Profession Regulation 2017* s.58(4)(a)].

In accordance with Section 58(7) of the Regulation 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.

Where funds are received in payment of a rendered account of costs and disbursements and the account includes incurred but unpaid disbursements, then the portion of those funds received for the incurred and billed, but unpaid, disbursements will be considered “monies entrusted to a law practice in the course of or in connection with the provision of legal services by the practice” that must be banked to the law practice’s general trust account.

11. Written directions and authorities

11.1 Trust account authorities

A law practice should obtain a written direction from the client before making payments to third parties from the general trust account. Such written directions should be retained as a permanent record on the relevant transaction file or in the binder of trust account authorities.

11.2 Costs transfer authorities

Costs transfer authorities received from clients to enable law practices to make payments to themselves for legal costs are a trust accounting record and must be retained for at least seven years.

Example of costs transfer authority:

Fred Bones & Associates

1 Queen Street Brisbane 4000

Re: J Cartwright – Sale to S Nixon

I, John Cartwright, authorise Fred Bones & Associates to pay from its trust account money for expenses, third party payments and professional fees as they become due.

Signature: *J Cartwright*
Date: 25 August 20XX

Unless a law practice has received authorisation from a client, the law practice is not entitled to make a payment from a trust account or a controlled money account to the office account for professional costs billed to a client, until the expiry of **seven (7) days** from the date of delivery of a bill of costs to the client [*Legal Profession Regulation 2017* s.58(2)(b)(i)]. The amount paid from the trust account to the law practice cannot exceed the amount of the bill of costs or the amount of available trust funds.

If an objection is received, from the client, to the quantum of the bill within **seven (7) days** from the date of delivery of the bill the law practice is unable to make payment from the trust account to the general account until the issue of the quantum of the bill has been resolved. If the person who objected to the bill, does not apply for review of the legal costs under the Act within 60 days of being given the bill, the law practice can transfer their costs after the expiry of that 60 day period.

To avoid possible disputes with a client, a law practice should obtain a written authority specific as to the matter and the amount of the bill of costs.

11.3 Written directions – Controlled Money Account

A written direction must be held in order to deposit and withdraw trust money to and from a controlled money account [Legal Profession Act 2007 s.251(1) & (3)]. Hence, written directions not only relate to the initial deposit of funds into the controlled money account but the withdrawal of funds from the controlled money account.

The law practice must keep written directions for a period of seven (7) years after finalisation of the matter to which the direction relates [Legal Profession Regulation 2017 s.49].

Example of controlled money account direction:

Fred Bones & Associates

1 Queen Street Brisbane 4000

Re: T Tome – PI Matter

You are hereby authorised to invest the sum of \$60,000.00 received by you for the above matter, in a controlled money account with the Macquarie Bank, in a term deposit for 3 months in the name of "Fred Bones & Associates CMA/c T Tome". Upon maturity please pay the principal and any interest earned to the following account:

Account name: T Tome

BSB: 500 888

Account number: 1234 5678

Signature: *T Tome*

Date: 29 July 20XX

11.4 Written directions – Transit Moneys

Transit moneys are required to be paid or delivered as per the instructions relating to the money within the period specified in the instructions or if the period is not stipulated, then as soon as practicable after receipt [Legal Profession Act 2007 s.253(1)]. If these instructions are received in writing such written directions should be retained as a permanent record for a period of 7 years.

Sufficient particulars should be maintained in relation to transit moneys in order to identify the relevant transaction and any purpose for which the money was received. Sufficient particulars include but are not limited to written directions and copies of third party cheques. Generally transit moneys are in the form of third party cheques (cheques payable to a third party) and it is recommended that copies of these cheques be kept with the relevant written direction, if any.

11.5 Investment authorities

A law practice should obtain written authorisation from a client (or more specifically, the person entitled to the moneys to be invested) before withdrawing moneys from a general trust account for the purpose of investment.

Investment authorities are a record relating to trust moneys and should therefore be retained for at least seven years.

Example of an investment authority:

Fred Bones & Associates

1 Queen Street Brisbane 4000

Re: T Tome – Purchase from ABC Builders Pty Ltd of Lot 18 Hardgreave Avenue, Beenleigh

You are hereby authorised to invest the sum of \$60,000.00 held by you for the above transaction with Suncorp-Metway Bank, Brisbane, in your name as trustee for me pending settlement of the above transaction.

Signature: *T Tome*

Date: 29 July 20XX

12. Unclaimed monies

Law practices are required, by 1 June of each year, to lodge a return with the Public Trustee for unclaimed trust money [*Legal Profession Act 2007* s.258(1)(c)].

Pursuant to section 713(3) of the Act 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 can not be found by the practice; or
2. the law practice:
 - 2.1 can not, 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.

12.1 The return

The return must [*Legal Profession Act 2007* s.713(4)]—

- 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.

Forms and instructions for lodging unclaimed money from trust accounts are available at the Public Trustee's website <https://www.pt.qld.gov.au/unclaimed-money/faq.html>.

On receipt of a return, 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. On the giving of a notice any lien of the law practice claimed in relation to the trust money or trust property stops having effect [*Legal Profession Act 2007* s.713(5) & (6)].

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 [*Legal Profession Act 2007* s.713(7)]. 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 [*Legal Profession Act 2007* s.713(8)].

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. [*Legal Profession Act 2007* s.713(9)]

13. Prescribed Account Deposits

NEW

The *Legal Profession Act 2007* was amended on 11 November 2016, with amendments to take effect from 1 January 2017. The effect of one of the amendments was the abolition of the requirement for law practices to maintain a deposit in a prescribed account. Law practices, which had a deposit lodged with a prescribed account prior to 31 December 2016, were advised that these funds should be withdrawn and deposited back to the law practice's trust account.

14. Computerised Trust Accounting Systems

Law practices may maintain trust records (including general trust accounting records and controlled money records) by means of a computerised accounting system. It is recommended that users contact their software supplier or distributor to ascertain whether their software complies with the legislative requirements as the Society does not assess computerised accounting systems.

14.1 Requirements regarding computer accounting systems

In summary, the requirements of the Regulation in relation to computer accounting systems are:

1. Certain trust records are to be kept in printed form or in readable and printable form at the end of each month [s.29];
2. File maintenance audit trails [s.30];
3. Overdrawn trust ledger reports [s.31(1)];
4. Controls over deletion of ledger accounts [s.31(2)];
5. Page numbering, chronological sequencing and entry processing requirements [s.31(3) & (4)];
6. Compulsory input requirements [s.31(6)];
7. Back-up facility requirements [s.32].

14.1.1 Copies of trust records to be printed

Section 29(1) of the Regulation states that the law practice must keep in printed form or in readable and printable form of the following trust records, as at the **end of each month**:

- a. **trust account receipts and payments cash books** as at the end of each named month;
- b. **reconciliation statements** prepared under section 44 as at the end of each named month;
- c. **lists of trust ledger accounts and their balances** as at the end of each named month;
- d. **lists of controlled money accounts and their balances** as at the end of each named month

These trust records must be prepared within 15 working days after the end of the named month.

The law practice must print a paper copy of the following records prior to archiving or deletion from the system [*Legal Profession Regulation 2017* s.29(2)(a)]:

- a. Trust ledger accounts;
- b. Controlled money movement records;
- c. Trust transfer journals.

Trust ledger accounts and controlled money account details are to be printed on request by and provided to an investigator [*Legal Profession Regulation 2017* s.29(2)(b)].

The paper copies printed under subsection (2) are to be kept by the law practice, except if they are printed on request under that subsection. These records should be kept for a period of seven (7) years from the date of finalisation of a matter.

14.1.2 File maintenance audit trails

Computerised accounting systems should incorporate a file maintenance audit trail. Section 30 of the Regulation requires the law practice to 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.

14.1.3 Overdrawn trust ledger reports

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 [*Legal Profession Regulation 2017* s.31(1)].

14.1.4 Controls over deletion of ledger accounts

Pursuant to s.31(2) of the *Legal Profession Regulation 2017* 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.

14.1.5 Entry and input requirements

The law practice must ensure the following:

- a. any entry in a record produced in a permanent form appears in chronological sequence [s.31(3)].
- b. each page of each printed record is numbered sequentially or is printed in a way that no page can be extracted [s.31(4)].
- c. 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 [s.31(5)].
- d. 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[s.31(6)].

14.1.6 Back-up facility requirements

The law practice must ensure—

- a. a back-up copy of all records required by this division is made not less frequently than once each month; and
- b. each back-up copy is kept by the law practice; and
- c. a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy

15. Law Practice Declaration & Trust Money Statement and External Examiner's Report

15.1 Law Practice Declaration & Trust Money Statement

All law practices, with an office in Queensland, are required to give the Society a Law Practice Declaration (Part A of QLS Form 4(LPR)) for each year ended 31 March regardless of whether they have received or held trust money during the financial period [*Legal Profession Regulation 2017* s.61]. Law practices are only required to complete a Trust Money Statement (Part B of QLS Form 4(LPR)) if the law practice has received or held trust money during the financial period.

The financial period for a law practice is defined in Section 268(4) of the *Legal Profession Act 2007* as:

- a. For the first period after the entity becomes a law practice – the period of not more than 12 months starting on the day the entity becomes a law practice and ending on 31 March; or
- b. Otherwise – 12 months ending on 31 March.

The Law Practice Declaration & Trust Money Statement (QLS Form 4(LPR)) can be found on the Society's website qls.com.au.

If transit money or money received into or held in a PEXA source account was the only trust money held or received during the financial period and the law practice recorded and retained sufficient information in relation to the money a Trust Money Statement (Part B of QLS Form 4(LPR)) is not required to be lodged with the Society. In these circumstances a law practice is not required to lodge an external examiner's report either [*Legal Profession Regulation 2017* s.62].

15.2 External examiner's report

There are two instances where a law practice is required to have its trust records externally examined and lodge a report with the Society:

1. For each financial period (as defined by Section 268(4) of the *Legal Profession Act 2007*) ending on 31 March if the law practice received, held or disbursed trust money during the financial period. The External Examiner's report is to be lodged by **31 May** of each year [*Legal Profession Act 2007* s.268(1) & 274(1)].
2. After the law practice ceases to hold trust money. The External Examiner's report is for the period from the last examination to the date of cessation and is to be lodged within **60 days** of the date of ceasing to hold trust money [*Legal Profession Act 2007* s.276].

When lodging a final external examiner's report, the law practice is also required to give to the Society a statutory declaration to the effect that the law practice has ceased to hold trust money [*Legal Profession Act 2007* s.276(3)(b)]. The law practice is required to lodge with the Society a Statutory Declaration – Ceasing to Hold Trust Money (QLS Form 33(LPA)) and a Law Practice Declaration and Trust Money Statement (QLS Form 4(LPR)) within **60 days** of the date of ceasing to hold trust money.

A law practice is not required to lodge an External Examiner's Report if it only received or held transit money during the period [*Legal Profession Regulation 2017* s.62].

15.3 Lodgement dates

There are two different lodgement dates in respect to the Law Practice Declaration & Trust Money Statement (QLS Form 4(LPR)):

- a. If the law practice did not receive trust money (other than transit money) during the year ended 31 March, the Law Practice Declaration (Part A of QLS Form 4 (LPR)) should be lodged on or before **30 April** with the Society.
- b. If the law practice did receive trust money during the year ended 31 March, the law practice should complete and provide the Law Practice Declaration and the Trust Money Statement (Part A and Part B of QLS Form 4 (LPR)) to their external examiner to enable the external examination report to be completed and lodged on or before 31 May with the Society.

The lodgement dates for the external examiner's report, which should be accompanied with the Law Practice Declaration & Trust Money Statement, are detailed in the above section "15.02 External examiner's report".

15.4 Scenarios for lodgement of the Law Practice Declaration and Trust Money Statement and/or the External Examiner's report

The following examples are different scenarios and the required notice or report and the lodgement dates to be provided to the Society:

Scenario	Notice or Report required to be lodged	Lodgement date
A law practice commences operation on 29 January and does not operate a trust account.	The law practice must complete a Law Practice Declaration (Part A of QLS Form 4 (LPR)) for the period 29 January to 31 March.	30 April
A law practice that was previously a sole practice with no trust account ceases to operate on 28 February. A new incorporated legal practice of the same name commences on 1 March with no trust account.	Both law practices, the sole practice and the incorporated legal practice, must complete a Law Practice Declaration (Part A of QLS Form 4 (LPR)) for the relevant periods.	30 April
A law practice commences in January and has opened a trust account. However the trust account has a nil balance and has had no transactions from commencement to the end of the financial period (31 March)	The law practice must complete a Law Practice Declaration (Part A of QLS Form 4 (LPR)) for the period ended 31 March declaring that no monies were held or received. A copy of all the bank statements for the financial period should be provided to evidence that no transactions occurred.	30 April
Law practices that hold more than one trust account should record the details on the same Trust Money Statement if the trust accounts are held by the same office location.	The law practice must complete a Law Practice Declaration and Trust Money Statement (Part A and B of QLS Form 4 (LPR)) for the period ended 31 March including details of all trust accounts. An external examiner's report must be lodged at the same time.	31 May
Law practices which have one or more branch offices and each branch office has a separate trust account.	The law practice must complete a separate Law Practice Declaration and Trust Money Statement (Part A and B of QLS Form 4 (LPR)) for the period ended 31 March for each branch office's trust account. An external examiner's report for each branch office must be lodged at the same time.	31 May

15.5 Who can conduct an external examination?

Section 65 of the Regulation prescribes that an individual must have at least one of the following qualifications or experience to be appointed as an external examiner:

1. registered as an auditor under the Corporations Act; or
2. a member of CPA Australia, who is entitled to use the letters 'CPA' or 'FCPA' have satisfied the requirements of CPA Australia for practice as a public accountant'; or
- NEW** 3. a member of Chartered Accountants Australia and New Zealand, who is entitled to use the letters 'CA' or 'FCA and have satisfied the requirements for practice as a public accountant'; or
4. a member of the Institute of Public Accountants, who:
 - i. is entitled to use the letters 'MIPA' or 'FIPA'; and
 - ii. have satisfied the requirements of Institute of Public Accountants for practice as a public accountant; and
 - iii. has 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);
5. a person who the chief executive considers has appropriate qualifications as an auditor under the Corporations Act.

15.6 Appointment of external examiner

A law practice must appoint an individual as the external examiner of the law practice's trust records within fourteen (14) days after first receiving trust moneys [*Legal Profession Act 2007* s.267(1)] and give notice, within 30 days, to the Society in the approved form of the practice's external examiner [*Legal Profession Act 2007* s.270(1)]. The notice should include the full name and address of the external examiner appointed by the law practice, the qualifications and must be signed by the external examiner or replacement external examiner [*Legal Profession Act 2007* s.270(4)]. A pro-forma of the notice (QLS Form 31 (LPA)) can be located on the Society's website qls.com.au.

15.7 Notification of ceasing to be external examiner

A law practice must, immediately after an individual stops being the law practice's external examiner (whether the law practice terminates the appointment or the external examiner resigns) notify the Society of that fact [*Legal Profession Act 2007* s.270(2)].

If the external examiner's services are terminated or the external examiner resigns, the law practice must appoint another external examiner (replacement external examiner) within fourteen (14) days of the original external examiner ceasing to hold office [*Legal Profession Act 2007* s.267(2)]. The law practice must notify the Society in the approved form, within thirty (30) days after the individual stops being the practice's external examiner, of the appointment of the replacement external examiner [*Legal Profession Act 2007* s.270(3)]. A pro-forma of the notice (QLS Form 31 (LPA)) can be located on the Society's website qls.com.au.

If an individual stops being the external examiner for a law practice, the individual (the former external examiner) must immediately give the Society notice of the fact in the approved form [*Legal Profession Act 2007* s.271]. A pro-forma of the notice (QLS Form 32 (LPA)) can be located on the Society's website qls.com.au.

15.8 Other reports by the external examiner

The external examiner must provide a written report to the Society if he/she becomes aware of a matter, during the examination of a law practice's trust records, that is:

1. reasonably likely to adversely affect the financial position of the law practice to a material extent; or
2. reasonably likely to constitute a breach of this part by the law practice; or
3. an irregularity in relation to the trust records or trust accounts of the law practice of which the law society ought reasonably to be made aware.

The written report on the matter should be lodged by the external examiner to the Society within 7 days after becoming aware of the matter [*Legal Profession Act 2007* s.275(2)].

16. What to do when commencing a practice

In summary, generally the steps that a law practice needs to take when commencing a practice are as follows:

1. **Trust account receipts** – arrange for the printing of trust account receipt books (if applicable);
2. **Trust account cheques** – ensuring that trust account cheques are pre-printed payable “to order” and crossed “not negotiable”.
3. **Establishing a general trust account** – A law practice must establish a general trust account if trust money is anticipated or is received by the law practice. The general trust account must be held with an approved ADI in Queensland. If the trust account is established on or after 1 July 2007 the account must contain the expression “law practice trust account”;
4. **Notification of opening a general trust account** – A law practice must give written notice to the Society, within 14 days after establishing a general trust account, of the fact;
5. **Notification of authorised associates** – A law practice must give to the Society, either before or within 14 days after, details of associates authorised to withdraw money from a general trust account of the practice;
6. **Notification of external examiner** – If trust moneys (whether in a general trust account, controlled money account, or power money account) are held by the law practice an external examiner needs to be appointed within 14 days and the Society should be advised within 30 days.

17. What to do when ceasing a practice

17.1 Notification of intention to cease

A law practice that holds trust money must give the law society at least **14 days** written notice of its intention [Legal Profession Regulation 2017 s.63(1)]—

- a. to cease to exist as a law practice; or
- b. to cease to engage in legal practice in this jurisdiction; or
- c. to cease to practise in such a way as to receive trust money.

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

17.2 Distribution of trust monies

It is important to note that a law practice that ceases can only distribute trust moneys to the person entitled to those trust moneys or in accordance with the directions of that person.

When a transaction cannot be completed before settlement of the sale of the practice, the law practice should obtain a written authority, in duplicate, from the client, authorising the delivery of the incomplete transaction file and the payment of any trust funds held for the transaction to the law practice purchasing the practice or any other law practice chosen by the client. A copy of such authority should be retained as a trust account record.

A law practice's general trust account is not closed until all amounts held in the trust account have been accounted to the rightful beneficiaries and all issued trust account cheques have been presented to the approved ADI account for payment, so that the approved ADI statement records a nil balance.

Consideration of the maintenance and/or distribution of trust property (for example client transaction files and safe custody documents) should also be addressed by the law practice.

17.3 Notification of closure

Within **14 days** of ceasing to hold trust money, a law practice that holds trust money must give the law society [Legal Profession Regulation 2017 s.63(2)]—

- a. written notice of that fact; and
- b. if the practice has not given a notice under subsection (1) within the previous 28 days, a notice that complies with that subsection.

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

17.4 Lodgement of Final External Examiner's Report

Following the closure of the general trust account, or when the law practice ceases to hold trust money, the law practice is required to have its trust records externally examined and lodge a report with the Society. The External Examiner's report is for the period from the last examination to the date of cessation and is to be lodged within 60 days of the date of ceasing to hold trust money [Legal Profession Act 2007 s.276].

When lodging a final external examiner's report, the law practice is also required to give to the Society a statutory declaration, in the Society approved form, to the effect that the law practice has ceased holding trust money [Legal Profession Act 2007 s.276(3)(b)]. There are two declarations that the law practice must complete and lodge with the Society:

- a. Statutory declaration – Ceasing to Hold Trust Money (QLS Form 33 (LPA)), to be lodged **within 60 days** of the date of ceasing to hold trust money; and
- b. Law Practice Declaration & Trust Money Statement (QLS Form 4(LPR)), to be lodged **within 60 days** of the date of ceasing to hold trust money.

Law practices lodging a final external examiner's report must provide confirmation of closure of the trust account. A nil balance with no closed date, final statement or note from the external examiner advising the date of closure of the trust account will result in further enquiries from the Society.

18. Dates of lodgement of reports etc

The following is a list of dates of which law practices should be aware of in order to fulfil their trust accounting requirements.

Date	Legislation	Particulars
30 April	<i>Legal Profession Regulation 2017</i> s.61	Law practice must forward statement regarding receipt or holding of trust money (Part A of Law Practice Declaration & Trust Money Statement – QLS Form 4(LPR)) if they did not receive or hold trust money during the period.
31 May	<i>Legal Profession Act 2007</i> s.274(i)	Law practice must forward external examiner reports 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 & B of the QLS Form 4(LPR)) is to be attached as a schedule to the external examiner's report.
1 June	<i>Legal Profession Act 2007</i> s.713(3)	Return to be lodged with the Public Trustee for unclaimed trust money
After 30 June	<i>Legal Profession Regulation 2017</i> s.53	Trust account statements 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 s.53(7)
July	<i>Legal Profession Regulation 2017</i> s.46(2)(b)	Law practice must provide details 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.
Within 14 days of establishing a general trust account	<i>Legal Profession Regulation 2017</i> s.46(1)	Notification to the Society, advising the establishment and details of a law practice's trust account.
	<i>Legal Profession Act 2007</i> s.267(1)	Law practice to appoint an individual as the external examiner.
	<i>Legal Profession Regulation 2017</i> s.46(2)(a)	Notification to the Society advising the details of practitioners or associates authorised to withdraw money from a law practice's trust account.
Within 30 days of receiving trust moneys	<i>Legal Profession Act 2007</i> s.270(1)	Notification to the Society advising the details of the external examiner appointed. QLS Form 31(LPA)
Immediately after an individual stops being the law practice's external examiner	<i>Legal Profession Act 2007</i> s.270(2)	Notification to the Society of the fact.
Within 30 days of appointment of replacement external examiner	<i>Legal Profession Act 2007</i> s.270(3)	Notification to the Society advising the details of the external examiner appointed. QLS Form 31(LPA)
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	<i>Legal Profession Regulation 2017</i> s.46(2)(a)	Law practice must provide notification to the Society, regarding details of practitioners and/or associates authorised to withdraw funds from the general trust account.
At least 14 days prior – intention to cease as a law practice	<i>Legal Profession Regulation 2017</i> s.63(1)	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.
Within 14 days of ceasing to hold trust money	<i>Legal Profession Regulation 2017</i> s.63(2)	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.
Within 60 days of ceasing to hold trust money	<i>Legal Profession Act 2007</i> s.276	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).
As soon as practicable after becoming aware of an irregularity in a law practice's trust account	<i>Legal Profession Act 2007</i> s.260(1)	Written notice should be provided to the Society as soon as practicable after a legal practitioner associate becomes aware that there is an irregularity in any of the practice's trust accounts or trust ledger accounts
As soon as practicable after becoming aware of an irregularity in another law practice's trust account	<i>Legal Profession Act 2007</i> s.260(2)	Written notice should be provided to the Society as soon as practicable after a legal practitioner associate becomes aware 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.
Within 7 days of becoming aware of a breach or irregularity during an examination	<i>Legal Profession Act 2007</i> s.275(2)	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.