

Section 263 Investigations for Law Practices

The Society may investigate the affairs of a law practice pursuant to Section 263 of the *Legal Profession Act 2007* (the Act).

Types of investigations

There are generally three types of Section 263 investigation (“investigation”) that the Society may conduct:

- Section 263 investigation (no trust account); or
- Trust account investigation (trust account); or
- Trust account compliance review (trust account).

This information sheet is in relation to the first two types of investigations. The difference between the first two investigations and a trust account compliance review (“review”) is that a review usually only takes half a day, only reviews accounting records and does not usually review client transaction files.

Purpose of investigations

The Society conducts Section 263 investigations to:

- assist and advise practitioners on the proper and efficient management and maintenance of their trust accounts and records, and
- review the law practices’ risk management processes, and
- protect The Legal Practitioners’ Fidelity Guarantee Fund, by establishing whether practitioners are complying with Part 3.3 (trust money and trust accounts) of the Act.

How are law practices selected?

Majority of law practices are randomly selected to be investigated. The Society endeavours to visit all Queensland law practices every 2 to 3 years.

Some investigations are follow-up investigations, as a result of an unsatisfactory result from a previous trust account review or Section 263 investigation. Other investigations are scheduled on receipt of information which indicates a risk to a trust account or trust money.

What can law practices do to prepare for an investigation?

The law practice will generally receive a letter from the Society advising them that they have been selected to be investigated. An investigator from the Society will contact the law practice by telephone to organise a suitable time to conduct the investigation. The investigator will generally give guidance as to the documents required to be produced during the investigation.

The law practice can prepare the following prior to the investigation:

- A written response to the letter sent to the law practice (eg conflicts of interest, stale trust ledger balances, overdrawn trust ledger balances in the last 12 months if applicable etc). Often the investigator will also send a questionnaire which needs to be completed;
- Trust accounting records, if applicable, for the last 12 months (eg trust bank reconciliations, bank statements, trust account receipts, cheque butts, cashbooks, ledgers, last 2 external examiner reports with attachments etc)
- General accounting records for the last 12 months (eg general account bank statements, bank reconciliations, general or debtors ledgers, last BAS statement lodged etc)

What can law practices expect during an investigation?

A Section 263 Investigation, where there is no trust account, usually takes one (1) day and reviews the law practice's general or office account to ensure that general trust money have not been incorrectly received by the law practice. There may be instances where a law practice does not operate a general trust account but may operate controlled money accounts or power money accounts (client bank accounts to which a law practice associate is a signatory). The investigation would review any such accounts and supporting documentation as well as a sample of client files which are selected after reviewing the accounts.

A Trust Account Investigation, where there is a trust account, usually takes two (2) days and reviews all trust accounting records, the law practice's general account and a sample of client files.

Typically a sample of client files will be reviewed, in both types of investigation, to ensure that matters have been conducted in accordance with clients' instructions and trust moneys have been properly dealt with. The investigation will also review whether the law practice has met other statutory obligations, such as payment of tax and superannuation, as part of the risk management process.

The level of engagement of the investigator with the law practitioner and the law practice's staff will be dependent a number of factors; such as whether the practitioner is the bookkeeper, the state of the accounting records, whether client files and accounting records are physical or electronic, whether client files which are selected are onsite or in archives.

At the end of the investigation the trust account investigator will usually do a face to face review with the law practitioner and will provide a written report of any issues identified.

What happens after the investigation?

At the completion of the investigation a report, prepared by the investigator, must be given to the law society in accordance with Section 264 of the Act. A copy of the report will be sent to the law practice for comment. The report addresses breaches of the legislation, for example not preparing trust account reconciliations in a timely manner or receiving trust moneys to the general account without authority.

The law practice is requested to prepare a written response, addressing each item in the report, as to the steps taken to rectify the breach or provide details of procedures implemented to ensure that a similar breach does not occur in future. It is important for the law practice to provide a prompt response as a non-response can be viewed as an unsatisfactory result.

Potential outcomes of an investigation

Upon receipt by the Society of the law practice's response to the investigation report, there are two possible conclusions:

- 1. Satisfactory.** If all issues have been satisfactorily addressed by the law practice, the investigation is closed. It is important to address each item in the report, to confirm that each of the reported matters have been corrected and identify the actions you have taken to ensure that matters of that type do not reoccur. In some instances the report will request for further information or evidence which should be provided.

- 2. Unsatisfactory.** An unsatisfactory result would be where the Manager and team leader of Trust Account Investigations are of the view that the matters included in the report and the law practice's response to the report are of a significant nature that the report and subsequent correspondence is referred to the Society's Professional Conduct Committee (PCC) for consideration.

Some examples of an unsatisfactory result are as follows:

- The law practice fails to provide a response and/or fails to address each item in the report and confirm that each of the reported matters have been corrected;
- The law practice fails to supply requested information;
- Overdrawn trust ledgers for significant amounts or for a significant period of time;
- Large number of stagnant trust ledger balances;
- Breaches of the Australian Solicitor Conduct Rules;
- Receiving trust money, on account of unpaid outlays or without authority, into the general account;
- Outstanding superannuation or BAS returns.

Depending on the severity of the breaches included in the investigation report there are a number of possible resolutions that could be made by the PCC:

- a. Follow-up Section 263 investigation to be undertaken in approximately 3, 6 or 12 months' time.
- b. Request that the law practice's sole practitioner, managing director or ILP director undertake additional training in relation to trust accounting.
- c. Request that the law practice reimburses the costs of the current investigation to the Society.
- d. Refer the matter to the Legal Services Commissioner for his consideration.

The issues that the PCC will take into consideration in reaching a resolution are:

- The number of breaches;
- The nature and significance of the breaches;
- Past history of the law practice ie the number of unsatisfactory investigations in the past;
- The co-operation of the law practice as reflected in the detailed response to the report and the behaviour during the investigation.

It is the usual case that reimbursement of the costs of an investigation will be requested where there have been substantial or wilful breaches by the law practice on a prior occasion.