

Appendix 2 to the Part 3.3 Investigation Policy

Minor breaches

100. The following trust reports were not **prepared** within 15 working days after **the end of the month and kept** in printed form or in readable form, in accordance with section 29(1) of the Regulation:
- The trust account cashbook (receipts and payments) (section 29(1)(a) of the Regulation).
 - The reconciliation statements prepared under section 44 of the Regulation (section 29(1)(b) of the Regulation).
 - The list of trust ledger accounts and their balances (section 29(1)(c) of the Regulation).
 - The list of controlled money accounts and their balances (section 29(1)(d) of the Regulation).
101. The **trust records** maintained by the law practice do not comply with the requirements of Act and Regulation in that:
- Trust ledger accounts were not printed to paper before they were archived or deleted from the system (section 29(2)(a) of the Regulation).
 - Controlled money movement records were not printed to paper before they were archived or deleted from the system (section 29(2)(a) of the Regulation).
 - Trust transfer journal were not printed to paper before they were archived or deleted from the system (section 29(2)(a) of the Regulation).
 - Trust ledger accounts were not printed upon the request of an investigator (section 29(2)(b) of the Regulation).
 - Controlled money accounts were not printed upon the request of an investigator (section 29(2)(b) of the Regulation).
 - The system allows the entry of transactions that result in a debit balance in the trust ledger account but does not make a contemporaneous record of the transaction that enables the production of a separate chronological report of all overdrawing(s) (section 31(1) of the Regulation).
 - The system incorrectly allows the deleting of trust ledger account(s) even if the trust ledger account does not record a nil balance (section 31(2)(a) of the Regulation).
 - A copy of the trust ledger account is not kept as a permanent record when it is deleted from the system (section 31(2)(b) of the Regulation).
 - Transactions are not recorded in chronological sequence (section 31(3) of the Regulation).
 - Printed reports are not numbered sequentially or printed in a way that precludes a page being extracted (section 31(4) of the Regulation).

- The system allows the amending of the particulars of a transaction already recorded other than by a transaction separately recording the amendment (section 31(5) of the Regulation).
 - The system is not backed up at least monthly (section 32 of the Regulation).
 - The system backup is not stored at a separate location (section 32 of the Regulation).
 - The trust account cashbook is not capable of being printed (to paper or electronic format) that details the particulars that must be recorded pursuant to sections 40(1) and 41(1 & 2) of the Regulation.
102. **Name of trust account** does not include the expression “Trust Account” or “Law Practice Trust Account” (if opened after 1 July 2007) as required by section 33 of the Regulation.
103. The **name of the trust account** does not include the name of the law practice or the business under which the law practice engages in legal practice in accordance with section 33 of the Regulation.
104. **Trust account receipts** maintained by the law practice failed to record in accordance with section 34 of the Regulation:
- The date trust the receipt is made out and, if different, the date of receipt of the money.
 - The amount of money received.
 - The form in which the money is received.
 - The name of the person from whom the trust money was received.
 - The name of the client in relation to whom the money was received and the matter description and matter reference.
 - The purpose for which the money was received.
 - 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”.
 - The name of the person who made out the receipt.
 - The number of the receipt.
105. **Trust account receipts and/or controlled money receipts** maintained by the law practice failed to be made out in **duplicate** (except if using a computerised system) in accordance with section 34(4) and 48(5) of the Regulation.
106. **Trust account receipts** were not consecutively numbered and issued in consecutive sequence in accordance with section 34(7) of the Regulation.
107. **Trust account deposit records** were not maintained in accordance with section 35 of the Regulation:
- Duplicate deposit records were not maintained.
 - Duplicate deposit records failed to record:
 - a. The date of deposit.
 - b. The amount of the deposit.
 - c. Whether the deposit consisted of cheques, notes or coins and the amount of each.
 - d. For each cheque:
 - i. the name of the drawer.
 - ii. the name and branch, or the BSB number, of the ADI on which the cheque is drawn.
 - iii. the amount of each cheque.
 - Duplicate deposit record were not retained as a trust account record for the required period as prescribed by section 59 of the Regulation.
108. **Trust account cheque forms** (section 37(2) of the Regulation):
- Are not printed with a direction to pay to Order.
 - Are not printed with a crossing “not negotiable”.
 - The name of the law practice and/or the expression “law practice trust account” – if established after 1 July 2017.

109. **Trust account cheque butts** maintained by the law practice failed to record, in accordance with section 37(6) of the Regulation:
- The date and number of the cheque.
 - The amount ordered to be paid by the cheque.
 - The name of the person to whom payment is made.
 - For a cheque payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment.
 - Details clearly identifying the name of the person on whose behalf the payment was made and the matter reference.
 - The ledger account to be debited, i.e. the matter description.
 - Particulars sufficient to identify the purpose for which the payment was made.
110. A written record (i.e. cheque butt) was **not kept** by the law practice for each cheque payment in accordance with section 37(4) of the Regulation.
111. The trust cheque written records (i.e. cheque butt or cheque requisition) were not kept by the law practice **in the order** in which the cheques were issued in accordance with section 37(7) of the Regulation.
112. The trust account **electronic funds transfer (EFT, OSR, PEXA, Sympli or Titles)** written records maintained by the law practice in respect to electronic funds transfer payments failed to record in accordance with section 38(5) of the Regulation:
- The date and number of the transaction.
 - The amount transferred.
 - The name and number of the account to which the amount was transferred and the relevant BSB number.
 - The name of the person to whom the payment was made.
 - For payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment.
 - Details clearly identifying the name of the person on whose behalf the payment was made and the matter reference.
 - The ledger account to be debited, i.e. the matter description.
 - Particulars sufficient to identify the purpose for which the payment was made.
113. A written record (i.e. **EFT requisition form, PEXA trust account authorisation record and financial settlement statement**) was **not kept** by the law practice for each EFT payment in accordance with section 38(3) of the Regulation.
114. The written records (i.e. **EFT requisition form, PEXA trust account authorisation record and financial settlement statement**) were not kept by the law practice **in the order** in which the transfers were effected in accordance with section 38(6) of the Regulation.
115. The **trust account receipts cashbook** maintained by the law practice failed to record in accordance with section 40 of the Regulation:
- The date the trust the receipt is made out and, if different, the date of receipt of the money.
 - The number of the receipt.
 - The amount of money received.
 - The form in which the money is received.
 - The name of the person from whom the trust money was received.
 - The name of the client in relation to 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.

116. The **trust account payments cashbook** maintained by the law practice failed to record in accordance with section 41 of the Regulation:
- The date and number of the transaction (cheque, EFT, or direct debit (OSR/PEXA/Symplic/Titles) transaction number).
 - The amount transferred or paid.
 - The name and number of the account to which the amount was transferred and the relevant BSB number if funds transferred via EFT.
 - The name of the person to whom the payment is to be made or for a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment.
 - Details clearly identifying the name of the person on whose behalf the payment was made and the matter reference.
 - Detail clearly identifying the ledger account to be debited, i.e. the matter description.
 - Particulars sufficient to identify the purpose for which the payment was made.
117. The **trust account cashbooks** maintained by the law practice failed to record receipts and payments **in the order** in which the receipts and payments are made as required by section 40(3) and 41(3) of the Regulation.
118. The **trust ledger accounts** maintained by the law practice failed to record sufficient detail in accordance with section 42 of the Regulation:
- The date the receipt is made out and, if different, the date of receipt of the money.
 - The date trust money was paid or transferred.
 - The amount received, paid or transferred.
 - The receipt number, the cheque number, the transaction number or the journal reference number.
 - The name of the person from whom the trust money was received or to whom the trust moneys were paid.
 - The name of the person to whom the payment is to be made or for a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment.
 - For an EFT payment, the name and number of the account to which the amount was transferred and the relevant BSB number.
 - For a journal transfer the name of the other trust ledger account from which or to which the money was transferred.
 - Particulars sufficient to identify the purpose, for which the money was received, paid or transferred.
 - The balance of the account after each transaction.
119. The **trust ledger accounts** maintained by the law practice failed to record sufficient information in the heading of the trust ledger account as required by section 42 of the Regulation:
- The name of the person for and on behalf of whom the trust money was paid.
 - The person's address.
 - Particulars sufficient to identify the matter in relation to which the trust money was received.
 - Details of any changes in the title of a trust ledger account.
120. A **trust ledger account** was maintained in the name of the law practice or legal practitioner associate of the practice, in contravention of section 45 of the Regulation.
121. The **trust ledger account** maintained by the law practice failed to record receipts and payments in **chronological order** in the trust ledger account as required by section 42(8) of the Regulation.
- Transactions relating to trust money were not recorded in chronological order or the order in which the transactions occurred and the trust ledger account would have recorded a debit balance if they had been.

122. The **trust account transfer journals** maintained by the law practice failed to record sufficient detail in accordance with section 43(4) of the Regulation:
- The date of the transfer.
 - The trust ledger account from which the money is transferred, including its identifying reference.
 - The trust ledger account to which the money is transferred, including its identifying reference.
 - The amount transferred.
 - Particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.
123. Trust money was transferred by **journal entry** from one trust ledger account to another trust ledger account but:
- The law practice was not entitled to the withdraw the money and pay it to the other trust ledger account (section 43(1) of the Regulation)
 - The transfer was not authorised in writing by an authorised signatory of the law practice trust account (section 43(2) of the Regulation).
124. The **trust account transfer journals** maintained by the law practice were not consecutively numbered (section 43(5) of the Regulation).
125. The **date of preparation of the reconciliation** is not detailed on the reconciliation statement in accordance with section 44(2) of the Regulation.
126. A number of instances where **trust bank account reconciliation(s) and trust ledger accounts listing statement(s) were not reviewed** by a principal of the law practice and annotated in a way that evidences the completion of the review as required by section 44(3) of the Regulation.
127. Failed to record on the statement reconciling the balance of trust ledger accounts (i.e. **trust trial balance**) with the balance of the trust account cashbook, the following **particulars** as required by section 44(2) of the Regulation:
- A list of trust ledger accounts showing the name, identifying reference and a short description of the matter.
 - The balance of each ledger account.
 - The date the statement was prepared.
128. The law practice **failed to notify** the Society within 14 days in accordance with section 46 of the Regulation of:
- A general trust account event (establishment or closure of a general trust account).
 - An authorisation event (authorisation or termination of the authorisation of an associate to sign cheques or effect withdrawals of trust funds).
129. Failed to record in the **name of the controlled money account** in accordance with section 47(1) of the Regulation:
- The name of the law practice concerned.
 - The expression “controlled money account” or “CMA” or “CMA/c”.
 - Other particulars sufficient to identify the purpose of the account and to distinguish the account from any other account kept by the law practice.
130. Failed to record details on the **controlled money receipt** in accordance with section 48(6) of the Regulation:
- The date trust the receipt is made out and, if different, the date of receipt of the money.
 - The amount of money received.
 - The form in which the money is received.
 - The name of the person from whom the trust money was received.
 - The name of the person on whose behalf (i.e. usually the client), the money was received and the matter description and matter reference.
 - Sufficient particulars to identify the purpose for which the money was received.
 - The name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out.

- The name of the law practice, or the business name under which the law practice engages in legal practice, and the expression “controlled money receipt”.
 - The name of the person who made out the receipt.
 - The number of the receipt.
131. Failed to operate a **single controlled money receipt system** for the receipt of the controlled money for all its controlled money accounts in accordance with section 48(2) of the Regulation.
132. **Controlled money receipts** were not consecutively numbered or issued in consecutive sequence in accordance with section 48(9) of the Regulation.
133. Failure of the law practice to **retain for the required period of 7 years a written direction in respect to controlled money** in accordance with section 49 of the Regulation.
134. Failure to record details on the written record for withdrawals of **controlled money** in accordance with section 50(6) of the Regulation:
- The date and number of the transaction.
 - The amount withdrawn.
 - The name and number of the account to which the amount was transferred and the relevant BSB number if funds transferred via EFT.
 - The name of the person to whom payment is to be made.
 - For a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment.
 - Details clearly identifying the name of the person on whose behalf the payment was made and the matter reference.
 - Particulars sufficient to identify the purpose for which the payment was made.
 - The person or persons effecting, directing or authorising the withdrawal.
 - Particulars of payments are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account (section 50(7) of the Regulation).
135. A written record for the withdrawal of **controlled money** was not kept for each withdrawal in accordance with section 50(4) of the Regulation.
136. The register of controlled money maintained by the law practice failed to record sufficient detail in the **controlled money movement record** (ledger) in accordance with section 51(4) of the Regulation:
- The date the controlled money was received, deposited, paid or transferred.
 - The number of the receipt or the number of the withdrawal or transaction.
 - The name of or other details clearly identifying the controlled money account.
 - The amount of the controlled money deposited or withdrawn.
 - The name of the person from whom the trust money was received or to whom the trust moneys were paid.
 - For a transfer made by EFT – the name and number of the account to which the amount was transferred and the relevant BSB number.
 - If payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of payment.
 - The name of the person on whose behalf the payment was made and the matter reference.
 - Interest received.
 - The purpose for which the money was received or paid.
137. The register of controlled money maintained by the law practice failed to record in the **controlled money movement record (ledger) heading** the following information in accordance with section 51(3) of the Regulation:
- The name of the person on whose behalf the controlled money is held.
 - The person’s address.
 - Particulars sufficient to identify the matter.
 - The name and other details clearly identifying the controlled money account.

138. The **end of month statement of controlled money accounts**, prepared after each named month, did not record the following as required by section 51(8)(a) and (b) of the Regulation:
- The name, number and balance of each account in the register.
 - The name of the person on whose behalf the controlled money in each account was held.
 - A short description of the matter to which each account relates.
 - The date the statement was prepared.
139. A number of instances where **controlled money account reconciliations were not reviewed** by a principal of the law practice and annotated in a way that evidences the completion of the review as required by section 51(9) of the Regulation.
140. **Trust account statements (general trust money, controlled money, power money):**
- Were issued without containing particulars of all information required to be recorded in the trust ledger account in accordance with section 53(5) of the Regulation.
 - Were not issued to entitled parties in accordance with section 53(6) of the Regulation:
 - At the completion of the matter.
 - Upon reasonable request.
 - After 30 June each year.
 - Copies of the trust account statements have not been retained by the law practice in accordance with section 53(8) of the Regulation.
141. The **register of investments** maintained by the law practice failed to record the following information for each investment as required by section 55 of the Regulation:
- The name in which the investment is held.
 - The name of the person on whose behalf the investment is made.
 - The person's address.
 - Particulars sufficient to identify the investment.
 - The amount invested.
 - The date the investment was made.
 - Particulars sufficient to identify the source of the investment.
 - Details of any document evidencing the investment.
 - Details of any interest received from the investment or credited directly to the investment.
 - Details of any repayment of the investment and any interest, on maturity or otherwise.
142. Failure of the law practice to **retain for the required period of 7 years a written direction in respect to investment** of trust money in accordance with section 59 of the Regulation.
143. Failure of the law practice to maintain a **register of powers and estates** in accordance with section 57 of the Regulation that records:
- The name and address of the donor and date of each power.
 - The name and date of death of the deceased in relation to each estate of which the law practice or associates is executor or administrator.
144. Failure to provide a statement regarding receipt or holding of trust money in accordance with section 61 of the Regulation.
199. The law practice has breached the legislation in the following manner [insert details]. Specific details are detailed in the investigation report.