

# Electronic Funds Transfers

Guidelines for trust  
account operations

**August 2023**

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## Guidelines for trust account operations

Version 6 | 2023

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### Acknowledgements

The material in this Trust Accounting Referral Course has been formulated in consultation with the Legal Services Commission and the Professional Conduct Committee.

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# 1. Legislative Requirements

A law practice may withdraw trust money from a law practice trust account, by way of Electronic Funds Transfer (EFT) if authorised by the Queensland Law Society (Law Society) in accordance with Section 250(1)(b) of the *Legal Profession Act 2007* (Qld) (Act).

The same rules apply for the withdrawal of money from a controlled money account (section 252 of the Act).

Section 38 of the *Legal Profession Regulation 2017* (Qld) prescribes who may effect an electronic transfer, and the particulars that must be kept when payment is made by EFT.

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*.

## **Section 38 Regulation – Payment by electronic funds transfer**

- (1) *This section applies to the withdrawal of trust money from a general trust account of a law practice by electronic funds transfer.*
- (2) *An electronic funds transfer 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 mentioned in paragraph (a) is not available—*
    - (i) *an authorised legal practitioner associate; or*
    - (ii) *an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or*
    - (iii) *2 or more authorised associates jointly.*
- (3) *A written record of the required particulars must be kept of each payment unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.*
- (4) *If at the time the electronic funds transfer is effected the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.*
- (5) *For subsections (3) and (4), the following particulars are **required particulars**—*
  - (a) *the date and number of the transaction;*
  - (b) *the amount transferred;*
  - (c) *the name and number of the account to which the amount was transferred and relevant BSB number;*
  - (d) *the name of the person to whom the payment was made or, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;*
  - (e) *details clearly identifying the name of the person on whose behalf the payment was made and the 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.*
- (6) *Written records relating to payments by electronic funds transfer, including transfer requisitions, must be kept in the order in which the transfers were effected.*
- (7) *In this section—*

*authorised means authorised by the law practice to effect, direct or give authority for an electronic funds transfer from the general trust account.*

Section 50 of the Regulation sets out the equivalent requirements for controlled money.

## 2. Making an Application

Law practices intending to make EFT payments must apply to the Law Society for approval. “Appendix A” of the Guidelines is a template application letter to be used when seeking approval.

Approval to make payments by EFT includes payments by direct debit authority. If a law practice is going to make payments by direct debit through an Electronic Lodgement Network (ELN) such as PEXA, SYMPLI, QRO Online or similar direct debit platforms, the law practice must be satisfied that it understands the implications and obligations of the providers when using those platforms.

**Note:** If the law practice is intending to make trust to office transfers by EFT, it must comply with all requirements of the EFT Guidelines. There is no exception from the Guidelines for trust to office transfers.

## 3. Prohibited Transfers

Section 250(2) of the Act states that cash withdrawals, ATM withdrawals or transfers, telephone banking withdrawals or transfers, are prohibited.

BPAY payments are **not** allowed to be made from a trust account as this means of payment does not have an associated BSB number so does not comply with Section 38(5) of the Regulation.

## 4. Authorising EFT payments and required particulars

Section 38(2) of the Regulation requires that an EFT is to be effected by, under the direction of or with the authority of an “authorised” principal or in their absence an authorised person.

When an EFT payment is effected a written record of the required particulars must be kept of each payment.

Section 38(5) of the Regulation requires that the following details are recorded in the written record:

- (a) The date and number of the transaction;

**The number of the transaction is referred to as the EFT reference number. The EFT reference number must be entered into the description/lodgement field and must appear on the trust account bank statement (e.g. EFT1, EFT2).**

If an ADI<sup>1</sup> cannot record the EFT reference number on the trust account bank statement then the law practice must include one of the following (whichever that is also recorded on the bank statement), on the written record

- i. Bank Receipt Number; or
  - ii. Payment ID Receipt; or
  - iii. Payment ID Number; or
  - iv. Bank Transaction ID Number
- (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, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
- (e) Details clearly identifying the name of the person on whose behalf the payment was made and the 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.

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<sup>1</sup> See definition of ADI in schedule 2 of the Act

**The law practice must also keep a copy of (e.g. take a screen shot or save to pdf) the bank receipt that shows the full Name, BSB and Account Number of the Payee. This can be printed or kept electronically with the EFT written record.<sup>2</sup> The bank receipt is a trust record and must be kept in accordance with section 261 of the Act and section 29 and 59 of the Regulation.**

“Appendix B” of the EFT Guidelines is a sample written record of payment by EFT form (written record). The law practice can choose to adopt the QLS written record form or utilise its own written record form. The law practice may choose to produce a physical form or save the form in an electronic format.

## 5. Required particulars Electronic Lodgement Networks (PEXA and SYMPLI)

### Required particulars – ELN

When using an Electronic Lodgement Network (ELN), if trust money is required to be debited from the law practice trust account, the law practice is required to keep the required particulars as set out in section 38(5) of the Regulation.

If preferred, a law practice may use a different sequential numbering system to delineate ELN transactions e.g. PEXA1, PEXA2 etc. from other EFT transactions.

The law practice must also keep the Trust Authorisation Record and the Settlement Completion Record (or the equivalent Sympli records) in a form that complies with section 261 of the Act and sections 29 and 59 of the Regulation.

#### Registering a law practice trust account with an ELN

When a law practice subscribes to use an ELN the law practice can register a law practice trust account with that ELN.

A law practice trust account must only be registered to a subscriber in the name of the law practice. The name of the law practice includes the business name of a law practice under which the law practice engages in legal practice, but does not include a business unit.

### Information Recorded on Bank Statements for ELN Payments

When entering the source financial line items into the transaction description on the ELN the law practice must enter:

PEXA/SYMPLI transaction Number; or

The transaction description; or

The EFT reference number

The selected identifier will appear on the trust account bank statement.

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<sup>2</sup> This is a security measure to ensure there is primary evidence that the money was sent to the correct payee. A bank receipt is a trust record as defined in the Act. If your ADI is able to provide access to full details of the transaction including Payee, BSB and Account number in a printable readable form that complies with sections 29, 59 and 60 of the Regulation and section 261 of the Act, that will be sufficient.

## 6. QRO Online

### Required particulars – QRO Online

When using QRO Online where trust money is required to be debited from the law practice trust account, the law practice must keep the required particulars as set out in section 38(5) of the Regulation.

If preferred, a law practice may use a different sequential numbering system to delineate QRO Online transactions from other EFT payments eg QRO1, QRO2 etc. The law practice must also record the stamping transaction number.

## 7. Titles Queensland eLodgement

### Required particulars – Titles Queensland eLodgement

When using Titles Queensland eLodgement, where trust money is required to be debited from the law practice trust account, the law practice must keep the required particulars as set out in section 38(5) of the Regulation.

If preferred, a law practice may use a different sequential numbering system to delineate Titles Queensland eLodgement transactions from other EFT payments eg TQ1, TQ2 etc.

The law practice will need to obtain the Name of the Account, the BSB and Account Number of Titles Queensland. The law practice will also need to keep the Titles Queensland Tax Invoice/Receipt.

Direct debit payments made using the Titles Queensland eLodgement portal will result in a Payment Reference Number being recorded on the law practice's trust account bank statement.

## 8. Recording EFT payments in trust records

Details of an EFT payment from a trust account are to be recorded in the trust account cash payment book and the relevant trust ledger account.

When the EFT payment is recorded, the EFT reference number is recorded as the payment number in the payments cashbook and trust ledger account. Remember that if the EFT reference number does not appear on the trust account bank statement, the Bank Receipt Number, Payment Receipt Number, Payment ID Number or Bank Transaction ID Number (whichever reference number that is recorded in the trust account bank statement) must be recorded in the reason for payment in the payments cashbook and in the trust ledger account.

The payment is to be recorded in a similar manner to a trust account cheque but with the added BSB and account number details. Details of an EFT payment are to be recorded in the relevant trust records within the period of 5 working days starting on, and inclusive of, the day the payment was made.

Details of an EFT payment from a controlled money account are to be recorded in the relevant controlled money account movement record.

## 9. Security measures

The Law Society recommends that law practices speak to their financial institution prior to applying for EFT approval.

Some financial institutions do not have the facility for trust accounts to disburse funds via EFT and other financial institutions do not have the facilities to comply with the requirements of section 38 of the Regulation.

Things to ask:

1. Does the bank allow for EFT payments to be made from a trust account to another bank account (including your office account)?
2. Does the online banking platform allow for a unique reference number to be recorded by the law practice (i.e. a description field)?
3. What information will appear on the trust account bank statement for EFT payments?
4. Which bank reference number (receipt, lodgement confirmation) appears on the trust account bank statement?

**User identification information and password must be kept secure. They are not to be shared with any other person, including staff members, under any circumstances, nor are they to be stored in a way that another person may easily gain access to them.**

Staff members i.e. bookkeepers, administration staff and finance officers, can be given 'read only' access to a trust account for the purpose of checking transactions recorded against the trust account and printing online bank statements. It is essential that all users have their own password and that their user account is setup correctly, according to the authorisation status i.e. user versus authoriser.

## ASIC ePayments Code of Conduct

ASIC issues an ePayments Code of Conduct (ePayments Code), the code is voluntary. Banks, credit unions, building societies and other providers of electronic payment facilities to consumers subscribe to the Code. A list of subscribers is available at [asic.gov.au/epaymentscode](https://asic.gov.au/epaymentscode).

The Code sets out security arrangements, reporting and investigating unauthorised transactions, loss and theft. Some of the ePayments covered by the Code are not currently available in relation to trust accounts or controlled money accounts (see prohibited transfers).

Law practices should make themselves aware of the ePayments Code and how it impacts on EFT payments made by the law practice and the security measures that subscribers to the ePayments Code should follow.

## Multi-factor authentication

Law practices are required to enter into arrangements with their financial institution to implement multi-factor authentication, before the financial institution will transfer funds from the law practice's trust account pursuant to an EFT instruction.

It is important to remember that, without some other form of identification requirement/security code, a person who knows the user identification information and password is in the same position as a person who has possession of a blank trust account cheque, pre-signed by a trust account cheque signatory – they can withdraw the entire balance of the trust account and apply it to their own benefit.

## 10. Breach of the EFT Guidelines

If a law practice fails to keep the required particulars this will be a breach of section 38 of the Regulation.

Keeping records as required under the Act and Regulation helps protect the law practice from unauthorised payments being made, or if they are made, keeping and checking the required particulars will allow the law practice to identify any discrepancies in a timely manner.



# Appendix A

## Application Letter

DATE

General Manager Regulation  
Queensland Law Society  
GPO Box 1785  
BRISBANE QLD 4001  
Email: managertai@qls.com.au

Dear Colleague

### **Authorisation to withdraw trust money from a general trust account by electronic funds transfer.**

XYZ Law Practice hereby applies to the Queensland Law Society for approval to make electronic funds transfer payments (EFT payments) from a general trust account.

I (insert name of main Principal/ Law Practice Director) on behalf of (insert name of law practice) certify that:

1. The Electronic Funds Transfer – Guidelines (Guidelines) issued by the Queensland Law Society have been read by all authorised trust account signatories, all staff involved in the management of the trust account and all staff that will be involved in the making of EFT payments;
2. Suitable practices and procedures have been implemented and will be observed by the law practice in order to comply with the Guidelines;
3. Where a law practice trust account is linked to a subscriber on an Electronic Lodgement Network (ELN), the subscriber on the ELN will only be in the name of the law practice. A trust account will not be linked to a business unit on an ELN that is not in the name of the law practice.
4. The Queensland Law Society has been previously notified of the trust account signatories as required by section 46(2)(a) of the Regulation.
5. The law practice agrees that it must follow the current Electronic Funds Transfer – Guidelines for trust account operations that from time to time are published by the Queensland Law Society.

And

I warrant that:

6. I am authorised to make this application on behalf of the law practice; and
7. The law practice understands the implications and obligations imposed by providers when using the direct debit platforms outlined in section 2 of the Guidelines.

Yours faithfully

Name of main Principal/Law Practice Director XYZ Law Practice

# Appendix B

## Written Record Form

<b>Date</b>	
<b>EFT reference number (Note 1)</b>	
<b>Bank transaction identification number (Note 2)</b>	
<b>Amount</b>	
<b>Payee details</b>	Account Name:  BSB:  Account Number:
<b>Debit trust ledger account or controlled money account (client, matter name and number, if there is a number)</b>	Client:  Matter Name:  Matter Number:
<b>Reason/Purpose for payment</b>	
<b>Name(s) and position of person(s) who authorised payment (Note 3)</b>	

(Screen print of Bank EFT receipt/confirmation attached)

**Note 1:** The EFT reference number allocated to the EFT Payment is a unique and sequential number, generated by the law practice to be recorded on the bank statement, trust account cashbook and trust ledger account.

**Note 2:** The Bank Transaction ID or similar reference number is only required to be recorded if the EFT reference number assigned by the law practice does not appear on the trust account bank statement. The Bank ID or similar reference number must then also be recorded in the trust account cashbook and trust ledger account as it is the linkage between the bank statement and trust records.

**Note 3:** The person(s) who authorise the EFT payment from the trust account must be the same person(s) who authorise the payment online.



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