

Trust Accounting Guide

Trust Money and
Trust Accounts

September 2023

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Part 3.3 *Legal Profession Act 2007* | Version 11 | September 2023

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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 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 money

2.1 Definitions

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

“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.

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

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.

“Principal” of a law practice – Section 7(4) of the Act

is an Australian legal practitioner who is –

- a. A sole practitioner if the law practice is constituted by the practitioner; or
- b. A partner in the law practice if the law practice is a law firm; or
- c. A legal practitioner director in the law practice if the law practice is an incorporated legal practice; or
- d. A legal practitioner partner in the law practice if the law practice is a multi-disciplinary partnership.

“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.

“Trust money” is defined in section 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.”

“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.

“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 trust account, over which the practice has or will have exclusive control.

2.2 What is trust money?

“Trust money” is defined by section 237 of the Act.

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

- Money received by the law practice on account of **legal costs** in advance of providing services; and
- Controlled money received by the practice; and
- Transit money received by the practice; 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 money are not merely given to a law practice but are placed in its “care and protection”.

Section 238 of the Act also includes within the definition of trust money *investment money* that has 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 money that must be banked to the law practice's 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 of the Act, 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 of the Act 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) of the Act provides that money entrusted to a law practice for a managed investment scheme, or mortgage financing, 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 that money entrusted to the law practice for investment purposes, whether on its own account or as agent is not trust money 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 Society considers that there is doubt or dispute as to whether the money is trust money.

- The Society may decide that the money is or is not trust money.
- The 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.

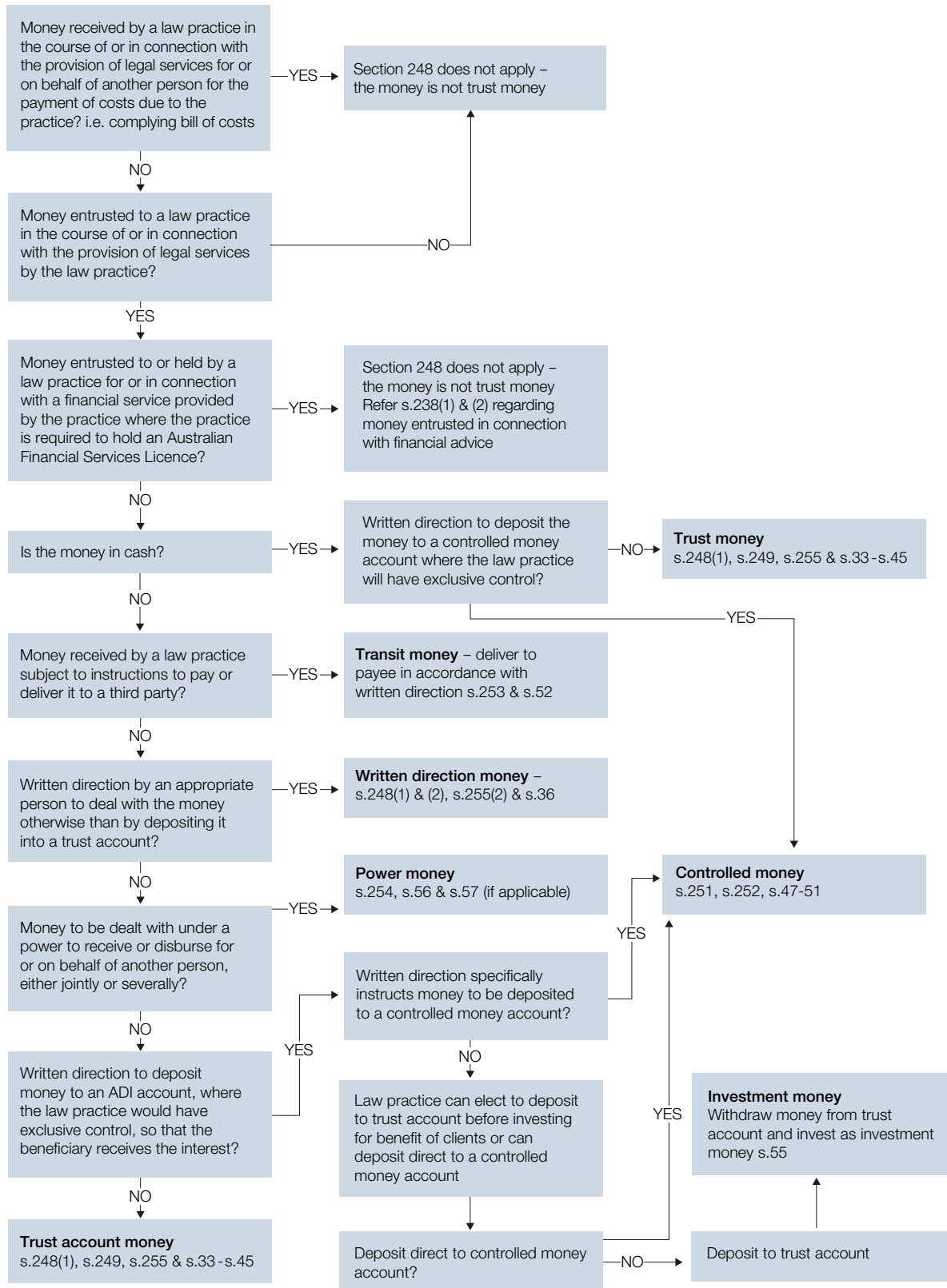
This section has effect subject to a decision of a court made in relation to the money concerned.

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 Society's Trust Account Investigation's team.

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 trust money, controlled money, transit money, written direction money and power money.

3.1 Establishing a trust account

A law practice must, after receiving trust money, that is required to be paid into a trust account, establish a compliant trust account. When a law practice opens a trust account, the law practice must satisfy the following requirements (s247 of the Act and s33 of the Regulation):

- a. The trust account must be established in Queensland with an approved ADI; 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 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 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 “**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 (s237 of the Act).

An “**approved ADI**” is an ADI approved under section 280 by the Society (s237 of the Act). 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 trust bank account. An arrangement should be made with the bank, when the 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 trust accounts

Within 14 days after establishing a trust account, the law practice must give the Society written notice of that fact (s46(1) of the Regulation). 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 (s46(4) of the Regulation). The law practice must also notify the Society of the associates and Australia legal practitioners who are authorised to sign cheques drawn on or to authorise the withdrawal of money from the trust account, as well as the authorised signatories and external examiner.

A notification form for the opening of a law practice trust account can be found on the Society’s website at qls.com.au.

3.3 Authorised associates/trust account signatories

Section 37(3) and 38(2) of the Regulation provides that a withdrawal of money (by trust account cheque or electronic funds transfer) from a trust account can be effected by:

- a. an authorised principal of the law practice; or
- b. if an authorised principal 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.

Interpretation of section 37(3) and 38(2) of the Regulation is as follows:

1. An authorised principal of the law practice may solely sign trust account cheques drawn on the law practice 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 trust account; or
 - An authorised Australian legal practitioner holding an Unrestricted Practising Certificate can be authorised **solely** as a signatory to the law practice 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 trust account
 - The holder of a Restricted Practising Certificate can only be authorised as a **sole** signatory to a law practice trust account if he/she is employed by the law practice.

Authorised signatories must be provided with the appropriate levels of authority when setting up internet banking or direct debit authorities eg if an associate is a joint signature please ensure that they have joint authority in the internet banking or direct debit platform.

3.3.1 Notification of authorising/terminating signatories

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 trust account of the practice; or
 - ii. otherwise to effect, direct or give authority for the withdrawal of money from a 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 (s46(2)(a) of the Regulation).

3.3.2 Annual requirement to give notice

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 (s46(2)(b) of the Regulation)—

- i. to sign cheques drawn on a trust account of the practice; or
- ii. otherwise to effect, direct or give authority for the withdrawal of money from a trust account of the practice.

Section 46(3) of the Regulation states that the requirement to provide written notice during July each year does not apply to a law practice if the law practice has provided an external examiner's report pursuant to section 274 of the Act.

3.3.3 Controlled money authorising/terminating signatories

Section 50 of the Regulation similarly provides for the withdrawal of money from a controlled money account.

Whilst there is a requirement pursuant to section 46(2)(a) of the Regulation to notify the Society of the authorisation, or termination of the authorization, of a person to effect the withdrawal of money from a 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 trust account will also be authorised to effect withdrawals from controlled money accounts.

3.4 Funds to be deposited to the trust account

Trust money received in the form of cash must be deposited to a trust account or a controlled money account. All other trust money must be deposited to a trust account as soon as practicable after receiving it 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 (s248(1)(a) & s248(2) of the Act);
- **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 (s248(1)(b) & s251 of the Act);
- **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 (s248(1)(c) and s253 of the Act);
- **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 (s248(1)(d) of the Act).

3.5 Trust money received in the form of cash

Trust money, except for controlled money, received in cash must be deposited to the 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 (s255 of the Act). Hence, transit money, written direction money and trust money in the form of cash must be first deposited to the 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 of the Act (s255(3) of the Act).

Money that is received in the form of cash that is subject of a power must also be banked into the 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 (s255(5) of the Act).

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 trust money

Section 249(1) of the Act provides that a law practice must hold trust money deposited in a 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 Regulation. However this is subject to the operation of section 249(2) of the Act which prescribes that an order of a court of competent jurisdiction or a payment as authorised by law overrides section 249(1) of the Act.

Hence, a law practice should obtain a written direction from the client before making payments to third parties from the trust account. This may be as a separate trust account authority, or may be embedded in a signed costs agreement.

3.7 Withdrawing legal costs from the trust account

Legal costs means remuneration and disbursements incurred in relation to legal work. Disbursements includes outlays.

A law practice may withdraw money from a trust account or controlled money account for payment to the law practice's general account for legal costs owing to the law practice (s258(1)(b) of the Act). The procedure to be followed is prescribed in s58 of the Regulation.

Compliance with s258(1)(b) of the Act and s58 of the Regulation requires the law practice to meet one of Regulation 58(2), (3), (4) or (5) (see section 58(1) of the Regulation).

Legal costs can be withdrawn from the trust account as follows:

- withdrawal on issue of a bill (s58(2) of the Regulation); **or**
- withdrawal in accordance with a costs agreement or on instructions authorising the withdrawal (s58(3) of the Regulation); **or**
- withdrawal is for reimbursement of money already paid by the law practice (s58(4) of the Regulation); **or**
- withdrawal of part of the money under a combination of the three instances above (s58(5) of the Regulation)

3.7.1 Withdrawal on issue of bill

The giving of a bill negates the need to comply with either 58(3) or 58(4) of the Regulation. However the law practice may only withdraw the trust money for legal costs after 7 days of the bill being given, provided there was no objection to the bill, or if the money otherwise becomes legally payable.

The requirements of s58(2) are –

- The law practice has given the person a bill relating to the money; and
- The person has not objected to the withdrawal of the money within 7 days after being given the bill; or
- The person has objected within 7 days after being given the bill, but has not applied for a costs assessment within 60 days after being given the bill; or
- If the money otherwise becomes legally payable.

In accordance with s330 of the Act a bill may be in the form of a lump sum bill or an itemised bill. A bill is to be **given** to a person–

- By delivering it personally to the person or to an agent of the person; or
- By sending it by post to the person or agent at –
 - i. The usual or last known business or residential address of the person or agent; or
 - ii. As address nominated for the purpose by the person or agent; or
- By leaving it for the person or agent at –
 - i. The usual or last known business or residential address of the person or agent; or
 - ii. An address nominated for the purpose by the person or agent;

with a person on the premises who is apparently at least 16 years old and apparently employed or residing there; or

- If the legal costs or the basis on which they have been calculated have or has been agreed as a result of a tender process – in a way provided as part of the tender process or by later agreement between the client and the law practice.
- Electronically, if the client consents to the bill being given electronically. It is recommended that an authority to deliver bills electronically is obtained from the client prior to sending the bill by this means.

A bill may also be in the form of an interim bill (section 333 of the Act)

3.7.2 Withdrawal in accordance with a costs agreement or on instructions authorising the withdrawal

Section 58(3) of the Regulation permits trust money to be withdrawn, for the payment of legal costs, (including disbursements or outlays that have been incurred but not paid) owing to the law practice, whether or not a bill was given, if the law practice has:

- A costs agreement that complies with the Act **and** that authorises the withdrawal (s58(3)(a)(i)); or
- Instructions that have been received by the practice that authorise the withdrawal (s58(3)(a)(ii)).

In both of those instances before the withdrawal is made, a request for payment or written notice of withdrawal must be sent or given to the person.

If a costs agreement or instruction, mentioned in 58(3)(a), **authorises the withdrawal of only part** of the money, the remainder of the money may still be withdrawn in accordance with subsection (2) or (4) of section 58 of the Regulation (see s58(5)).

3.7.2.1 Withdrawal in accordance with a costs agreement

If a law practice is relying on 58(3)(a)(i) the law practice must have a costs agreement that complies with the Act. Part 3.4 of the Act applies to costs disclosure and assessment. A costs agreement is defined in s300 of the Act and “*means an agreement about the payment of legal costs.*” A law practice must ensure that the costs agreement complies with ss322-328 of the Act.

If a law practice is to rely on 58(3)(a)(i) of the Regulation to withdraw costs incurred, including disbursements and outlays incurred, but not yet paid, the costs agreement must include an appropriate clause. An example of an appropriate is –

“When we hold money in our trust account on your behalf:

- i. You authorise us,*
- ii. to withdraw money for payment to the practice’s account*
- iii. for legal costs owing to the practice, including such costs incurred but which we have not already paid,*
- iv. if the relevant procedures or requirements under the Legal Profession Regulation 2017 are complied with.”*

Before effecting the withdrawal, the law practice must **give or send** to the person a request for payment, referring to the proposed withdrawal; or a written notice of withdrawal.

To not send or give those notices means 58(3) is not complied with and the monies must not be withdrawn from trust or if withdrawn, returned to trust immediately when the lack of compliance is found. Such a withdrawal may be a breach of s249 Act. There would be nothing to prevent the process being conducted again properly in these cases.

If a law practice withdraws money for legal costs without a compliant costs agreement or does not comply with the authority in the costs agreement then a withdrawal of monies will be in breach of s249 of the Act.

A written request for payment referring to the proposed withdrawal does not have to be in the form of a bill. However a bill may include a written request for payment referring to the proposed withdrawal or a notice of withdrawal (see r58(2) above).

A law practice should consider the costs assessment provisions in Part 3.4 of the Act, including s335(4) and (5) of the Act when determining whether to issue a bill with a written request for payment or notice of withdrawal or to issue a written request for payment or notice of withdrawal separate to the issue of a bill.

A request for payment, referring to the withdrawal or a written notice of withdrawal are trust records as defined in s237 of the Act. Trust records must be kept in accordance with s261 of the Act and s59 of the Regulation.

If a law practice wishes to give or send a person the request for payment or a written notice of withdrawal via electronic communication, the law practice must ensure the client has consented to receiving communications via electronic communication.

3.7.2.2 Withdrawal in accordance with an instruction, authorising withdrawal

If a law practice is relying on s58(3)(a)(ii) of the Regulation to withdraw costs incurred, but not yet paid, the law practice must have received instructions authorising the withdrawal. If the instruction is provided verbally, the law practice can rely on the instruction, however the law practice must ensure that the instruction is confirmed in writing either before, or within 5 working days after the law practice withdraws the money (section 58(6)(b) of the Regulation):

An example of an appropriate instruction authorising the withdrawal of trust money for legal costs would be:

Re: [insert matter details: payment of legal costs]

I [insert name] authorise [insert law practice name] to:

- i. to withdraw money held in the law practice trust account on my behalf from the law practice trust account for payment to the practice's account*
- ii. for legal costs owing to the practice, in relation to [insert matter details] including such costs incurred but which we have not already paid,*
- iii. if the relevant procedures or requirements under the Legal Profession Regulation 2017 are complied with."*

Signature:

Date:

- If the instruction to withdrawal is given in writing, it must be **kept** as a permanent record (s58(6)).
- If the instruction authorising the withdrawal of trust money for legal costs has not been provided in writing, the instruction must be confirmed in writing either before the withdrawal of the trust money, or within 5 working days after the withdrawal of trust money and a copy must be kept as a permanent record (r 58(6)(b)).
- **before** effecting the withdrawal, the law practice must **give or send** to the person/s a request for payment, referring to the proposed withdrawal; or a written notice of withdrawal. The regulation does not contemplate that an instruction alone is sufficient.
- **the request or written notice must specify the amount to be taken, if an amount is recorded in the instruction and that amount is exceeded by the request or written notice a fresh instruction must first be obtained.**
- If there is a deficiency in the costs agreement or instructions authorising withdrawal, the law practice may be able to withdraw the legal costs if the requirements set out in r58(4) are met (see r58(5)).

3.7.3 Withdrawal for reimbursement

Where money is owed to a law practice by way of **reimbursement** for money **already paid** on behalf of a person the law practice is permitted by s58(4) of the Regulation to withdraw the trust money.

Before withdrawing the trust money the law practice must **give or send** to the person –

- A request for payment, referring to the proposed withdrawal; **or**
- A written notice of withdrawal.

Section 58(7) of the Regulation states that money is taken to have been paid by the law practice on behalf of the person when the relevant account of the law practice has been debited. This means that the transaction should show on the relevant account statement and if a general account cheque drawn, the cheque must be presented for payment i.e. show as a debit on the account statement.

Put simply, a law practice may reimburse themselves for costs paid:

- i. if the money has been paid; and
- ii. the relevant account i.e. general account, has been debited, and
- iii. the law practice has provided a request for payment or notice of withdrawal to the person/s.

A written request for payment referring to the proposed withdrawal does not have to be in the form of a bill. However, a bill may include a written request for payment referring to the proposed withdrawal or a notice of withdrawal.

A law practice should consider the costs assessment provisions in Part 3.4 of the Act, including s335(4) and (5) of the Act when determining whether to issue a bill with a written request for payment or notice of withdrawal or, issue a written request for payment or notice of withdrawal separate to the issue of a bill.

3.7.4 Withdrawal of part of the money

If a costs agreement or instruction, mentioned in s58(3)(a) of the Regulation, authorises withdrawal of only part of the money, the remainder of the money may still be withdrawn in accordance with subsection (2) or (4) of s58 of the Regulation.

3.7.5 Retaining written instructions

Written instructions/authorities to deal with trust money should be kept in written form as a permanent record for at least 7 years (s58(6)(a) of the Regulation). It is best practice to obtain the instructions in writing before transferring costs. However, costs can be transferred pursuant to verbal authorisation. If that occurs the verbal authorisation must be confirmed in writing not later than 5 working days after the law practice effects the withdrawal. A copy of the confirmation must be kept as a permanent record (s58(6)(b) of the Regulation).

3.7.6 Internal costs/sundries

A law practice may only charge disbursements that are capable of **and** have been accurately costed.

If the charges cannot be accurately costed, the law practice needs to describe the costs as a professional fee rather than an outlay. The amounts must be agreed with or adequately disclosed to clients, prior to or at the time, the clients retain the law practice to act on their behalf, as a “professional costs” not as a disbursement or outlay.

An example of an outlay **not** accurately costed are sundry items or administration costs. These costs are referred to as “internal charges” which if the law practice decides to bill to its clients must be included and disclosed as a professional fee rather than an outlay.

3.8 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 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 cannot 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.

If a law practice relies on s58(2),(3),(4) or (5) of the Regulation to withdraw money for legal costs, but does not comply with the authority provided or the requirements set out in s58 of the Regulation, the money must be transferred back to trust to avoid intermixing of money.

3.9 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.

3.10 Reporting certain irregularities and suspected irregularities

Written notice must be provided to the 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 (s260(1) of the Act).

Written notice must be provided to the 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 (s260(1) of the Act).

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) (s260(3) of the Act).

3.11 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 (s262(1) of the Act).

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 (s262(2) of the Act).

4. Trust accounting records – trust account

4.1 Keeping trust records

Accounting and other records relating to trust money must be kept by the law practice for at least **7 years**, after the last entry in the trust record or after the finalisation of the matter, before they can be destroyed (s59 of the Regulation).

The law practice must keep in permanent form trust records in relation to trust money received by the practice. (s261 of the Act and s59(1) of the Regulation). "Permanent form" is defined in section 237 of the Act 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 money to be kept:

- in the way prescribed under the Regulation; 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 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 trust account are duplicate trust account 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 trust account are the trust account receipts cash book, 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 (s237 of the Act - 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 the Act or the 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
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 account receipts cash book • Trust payments cash book • Trust Ledgers 	<ul style="list-style-type: none"> • Trust trial balance • Reconciliation statements (bank & cash book) • 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 • Trust account payments cash book • Trust account receipts cash book 	<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 trust account. Trust account receipts are to be made out as soon as practicable after the trust money is received (s18 of the Act and s34(2) of the Regulation).

Trust account receipts must be:

- Made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out the required particulars are recorded by computer program – s34(4) of the Regulation
- Delivered, on request, to the person from whom the trust money was received – s34(6) of the Regulation;
- Consecutively numbered and issued in consecutive sequence – s34(7) of the Regulation;
- If a receipt is cancelled or not delivered, the original receipt is to be kept – s34(8) of the Regulation.

4.3.1 Particulars of trust account receipts

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

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

Examples of trust account receipts

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: Mary King (receptionist) On behalf of Fred Bones & Associates	

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: **Thirty six thousand seven hundred and fifty** _____
_____ Dollars and _____ cents

Amount: **\$36,750.00**

Form of funds: **EFT**

For and on behalf of:

Matter ref: Client Name:
B2 JW & PB Black

Matter description:
**Purchase of 1 Station Street, Springwood
from TS White**

Reason: **Balance of purchase money \$32,000; professional costs \$650, stamp duty \$4,000;
searches \$100; direct deposit on 25 June 20XX**

Made out by: **Mary King (receptionist)**
On behalf of Fred Bones & Associates

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:
S1 AB Slack

Matter description:
AB Slack v Whitehall Insurance Co

Reason: **Settlement monies \$40,000, less Centrelink refund \$2,000**

Made out by: **Mary King (receptionist)**
On behalf of Fred Bones & Associates

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 ledger account. 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 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 (e.g. – see receipt number 1002 on previous page).

4.3.3 Issue of trust account receipts

When trust money is received into a trust account, a trust account receipt must be issued or made out as soon as practicable after the trust money is received (s34(2) & (3) of the Regulation). The definition of when trust money is received is as follows:

“Money received” – s242 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.”

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.

4.3.4 Unknown deposits

Unknown deposits are a common occurrence in legal practice and these funds relate to those that are deposited to a law practice's trust account where the depositor of the funds is not immediately known to the law practice.

It is the Society's preference that unknown deposits are handled as follows:

1. The unknown deposit amount remain on the monthly reconciliation while enquiries are being made with staff, clients and bank traces are occurring (this could be for a period of 3-4 months);
2. The unknown deposit amount can then be receipted to an individual trust ledger account in the name of the law practice with the matter description 'Unidentified Deposit/Funds received xxx'. The matter description should reflect the date the funds were received into trust and any description associated with the deposit.
3. The funds can then be lodged with the Public Trustee as unclaimed monies at the appropriate time – refer to section 713(3) of the Act for the legislative timeframes for a lodgement to Public Trustee.

Section 42(1) of the Regulation states that a law practice must maintain a separate trust ledger account for each separate transaction of a client.

It is the Society's view that when an unknown deposit is received, this is a separate transaction for an unknown client, and therefore must be receipted to an individual trust ledger account, **not** an amalgamated unknown deposits trust ledger or suspense ledger.

It should be noted that a law practice is unable to issue a trust account receipt as soon as practicable (s34(3) of the Regulation) for an unknown provider as the law practice does not have all the information to enable it to issue a trust account receipt.

4.3.5 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, email or notification) or from the ADI statement.

When trust money is received by direct deposit, a trust account 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 (s34(3)(b) of the Regulation). Trust account receipts should be dated with the date the receipt was made out and, if different, the date the money was received.

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.

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.

4.3.6 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.

4.3.7 Receipts by credit card facilities

Money can be received into trust accounts by credit card payments but law practices must 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 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. Such deficiencies must be avoided by law practices by making arrangements with the relevant ADI that any "charge-backs" or reversals will be debited to the law practice's general or 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).

4.3.8 Clearance of cheques receipted

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. (**Note:** 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.

4.3.9 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 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 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 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.

4.3.10 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 (or reversed). If a trust account receipt is cancelled the original cancelled receipt must be kept by the law practice (s34(8) of the Regulation).

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.

4.3.11 Dishonour of cheques receipted – reversal of receipts

The dishonour of a cheque occurs when a cheque has been received and deposited into the 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 cash book, 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 ledger account (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 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.

4.3.12 Register of receipt forms

If manual trust account receipts are used 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 for immediate use 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 trust money to a trust account. A deposit record must be produced to the approved ADI at the time the deposit is made to the trust account, other than direct deposits (s35(1) & (2) of the Regulation).

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 trust account (s35(4) & (5) of the Regulation).

Section 35(3) of the Regulation requires the following details must be recorded on the bank deposit record:

- 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.

A law practice may deposit funds into an ATM, provided the ATM provides the law practice with the appropriate trust account record as detailed above.

4.4.1 Prompt banking of trust money

Trust money received by a law practice should be banked to a trust account as soon as practicable. The 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 (s248(1) of the Act).

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.

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, that money 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 trust account by way of a cheque or, if the law practice is authorised by the Society, by way of electronic funds transfer (EFT) (s250(1) of the Act).

Cash withdrawals, ATM withdrawals or transfers, telephone banking withdrawals or transfers are specifically prohibited (s250(2) of the Act).

4.5.1 Trust account cheques

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 money 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.

The law practice should review the client's trust ledger to ensure that there are sufficient funds before effecting any payment from trust.

Section 37(2) of the Regulation requires that cheques drawn on the law practice's trust account must:

1. Be made payable to or to the order of a stated person or persons, not to bearer;
2. Not be payable to "cash";
3. Be crossed "not negotiable";
4. Include the name of the law practice or the business name under which the law practice engages;
5. include the expression "law practice trust account".

Note: 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 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 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”.

Trust accounts established prior to the commencement of the Regulation are not required to be renamed to include the expression “law practice trust account” (s37(8) of the Regulation).

4.5.2 Cheque butts and cheque requisitions

Cheque butts or cheque requisitions are 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 (s37(4) & (5) of the Regulation).

Section 37(6) of the Regulation states that the following information must be shown on the cheque butt (or cheque requisition):

- 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 usually the client name and the matter number);
- 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.

Examples of written records for cheques

Example 1 – Butt

Fred Bones & Associates
TRUST BANKER LTD
Date <u>4 July 20XX</u>
Payee <u>Office of State Revenue</u>
Detail <u>J A Brown – Purchase from RA & SB Smith (B1)</u>
<u>\$6000.00 / PB Black – Purchase from TS White (B2)</u>
<u>\$4000.00</u>
For <u>Stamp Duty</u>
Chq Amt \$ <u>10,000.00</u>
55001

Example 2 – Butt

Fred Bones & Associates
TRUST BANKER LTD
Date <u>4 July 20XX</u>
Payee <u>ANZ Bank Chq IFO FS Batten & Associates Trust A/C</u>
Detail <u>PB Black – Purchase from TS White (B2)</u>
For <u>Balance of Settlement Funds</u>
Chq Amt \$ <u>31,945.55</u>
55002

Example 3 – Requisition

			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	\$6,000.00
B2	JW & PB Black Purchase from TS White	Stamp duty on purchase	\$4,000.00

Example 4 – Requisition

			55002
Payee:	ANZ bank cheque in favour of FS Batten & Associates Trust Account	Cheque No.:	55002
		Date:	04/07/20XX
Amount:	\$31,945.55		
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

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 Queensland Revenue Office, or the law practice's office or general 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.

4.5.3 Paid cheques

As approved ADIs are required to retain paid cheques for a period of not less than 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 Purchasing bank cheques

It is common for law practices to require bank cheques for settlement of certain matters. The correct process for the purchasing of a bank cheque is for the law practice to draw a trust account cheque, give this to the trust banker and request a bank cheque in return.

The Society has noted that law practices have incorrectly authorised trust account bankers to withdraw funds from the trust account for the purchase of bank cheques. This process is not acceptable as section 250(1) of the Act states that withdrawals from the trust account are to be made by trust account cheque, or if the law practice is approved by the Society, by electronic funds transfer (EFT).

Law practices are advised that if a trust account cheque is drawn for the purchase of multiple bank cheques that the trust account records (ledger, cash book, cheque and cheque butt) must record the name of the person to whom the payment was made and if a cheque is payable to an ADI, the name of the person receiving the benefit (s41 and s42 of the Regulation). If there is insufficient space on the cheque butt, the law practice should attach a schedule to the cheque butt.

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	AB Slack Re: Cancelled 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 money		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	AB Slack Re: Cancelled Cheque no. 55003 dated 06/07/20XX destroyed by client		34,350.00	34,350.00
25/08/20XX	55020	AB 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.

A stop payment notice must 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.

4.5.7 Electronic funds transfers (EFT) payments

A law practice may withdraw trust money from the trust account by way of electronic funds transfer (EFT) if the law practice is authorised by the Society (s250(1) of the Act). Direct debit authority payments are a form of electronic funds transfers (Pexa, Symppli, QRO, Titles Office).

Cash withdrawals, ATM withdrawals or transfers, telephone banking withdrawals or transfers are specifically prohibited (s250(2) of the Act).

BPAY, PayID and NPP payments from the trust account are not possible, as these payment types do not provide a BSB and account number that is required to be entered into the law practices trust records in accordance with the Regulation.

The Society has issued "Electronic Funds Transfers: Guidelines for trust account operations". The Guidelines can be located on the Society's website qls.com.au.

Law practices that wish to make an application for approval to make electronic funds transfer payments are required to make application to the Society by submitting an application form and declaration that the law practice will comply with the relevant Guidelines. An application form can be found within the Guidelines.

Section 38(2) of the Regulation requires that electronic funds transfers 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). Please ensure when setting up internet banking (EFT payments from trust) or direct debit authorities that authorised persons have the appropriate level of access (i.e. sole or joint signatory access).

The law practice should review the client's trust ledger to ensure that there are sufficient funds before effecting any payment from trust.

The law practice is also reminded to verbally verify payment details (account name, BSB and account numbers) prior to payment and that instructions have been received from the person on whose behalf the trust money is held in accordance with s249 of the Act.

4.5.8 Electronic funds transfers (EFT) written record

The law practice must ensure that a written record recording the particulars of the electronic funds transfer **is kept for each payment** (s38(3) of the Regulation). A written record must be retained regardless of whether the law practice maintains a manual or computerised trust accounting system (s38(3) & (4) of the Regulation).

The written records relating to payments by electronic funds transfer, including transfer requisitions, must be **kept in the order** in which the transfers were effected (s38(6) of the Regulation).

For the particulars that must be recorded on the written record, refer to the Society's "Electronic Funds Transfers: Guidelines for trust account operations". The Guidelines can be located on the Society's website qls.com.au.

4.6 Trust account bank 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 trust account and controlled money accounts. 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 7 years.

4.7 Trust account cash books

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

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

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 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 (s40(2) & (3) of the Regulation).

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 cash book 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 money; Professional costs; stamp duty; searches; Direct deposit on 25/6/20XX	JW & PB Black B2 Purchase 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 electronic funds transfer written records. All of the information recorded on the cheque butts or requisitions and electronic funds transfer written records 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 electronic funds transfers/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 electronic funds transfer/withdrawal 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 (s41(3) & (4) of the Regulation). However, as a best practice, details of trust account payments should be posted to the trust account payments cash book 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/ EFT No.	Paid To Reason	Account Name Matter Ref (Note 2) Matter description	Client Amount	Payment 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	JW & 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
4/8/20XX	EFT201	John William & Pamela Barbara Black JW and PB Black BSB: 065-000 Account No: 1234 5678 Re: return of excess funds	JW & PB Black B2 – Purchase of 1 Station Street, Springwood from TS White	\$804.45	
Total Payments				\$81,485.00	\$80,680.55

Note 1: The date on which the trust account cheque is drawn or the date of the electronic funds transfer is the date to be recorded in this column and not the date when the entry was actually recorded in the trust account payments cash 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 money 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 (s42(2) of the Regulation) –
 - a. the name of the person for and on behalf of whom the trust money 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 (s42(3) of the Regulation).
 - e. It is recommended that each client ledger sheet should be numbered.
2. In respect of each **receipt** of trust money for the matter (s42(4) of the Regulation):
 - a. the date a receipt was made out for the money **and**, if different, the date of receipt of the money;
 - b. the receipt number;
 - c. The amount of money received;
 - d. The name of the person from whom the money was received;
 - e. Particulars sufficient to identify the purpose for which the money was received (reason for receipt).
3. In respect to each payment of trust money by **cheque** (s42(5) of the Regulation):
 - a. the date and number of the cheque. Note: date of the cheque is the date the cheque was issued;
 - b. the amount ordered to be paid by the cheque;
 - c. 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;
 - d. particulars sufficient to identify the purpose for which the payment was made.
4. In respect to each payment of trust money by **electronic funds transfer** (s42(6) of the Regulation):
 - a. the date of the transaction;
 - b. the number of the transaction;
 - 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 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;
 - 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 (s42(7) of the Regulation):
 - 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 (s42(10) of the Regulation). 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 (s42(9) of the Regulation).

However, as a best practice, details of trust account receipts, payments and journals should be posted to the cash books 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 Regulation also require that transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur (s42(8) of the Regulation).

Examples of trust ledger accounts

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 money \$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
04/08/20XX	EFT201	John William & Pamela Barbara Black JW and PB Black BSB: 065-000 Account No: 1234 5678 Re: return of excess funds	804.45		0.00

4.8.2 Separate trust ledger accounts – Stakeholder accounts

A law practice that keeps a trust account must keep a trust ledger account containing separate trust ledger account in relation to each client of the practice in each matter for which trust money has been received by the practice (s42(1) of the Regulation).

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 money 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 money 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 money 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 money is the only money 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: Deposit monies - Sale of 10 Orange Street, New Farm

Example of stakeholder ledger

Fred Bones & Associates					
Trust Ledger					
Page 1 of 1					
Account Name:	Fred Jones & Associates (stakeholder) as stakeholder for M Brown (seller) and P&Y Jones (buyer)				
Address:	101 George Street, Brisbane City				
Matter Reference:	F1				
Matter Description:	Deposit monies – Sale of 10 Orange Street, New Farm				
Date	Ref	Paid To/ Received From/ Jnl to/from Reason	Debit \$	Credit \$	Balance \$
01/07/20XX	1010	P&Y Jones Re: Deposit Monies		20,000.00	20,000.00
01/09/20XX	55010	M Brown Re: Release of deposit monies	20,000.00		0.00

4.8.3 Separate trust ledger accounts – Miscellaneous, administration, etc

It is a requirement of s42(1) of the Regulation that a law practice that keeps a trust account must keep a trust ledger account containing **separate** trust ledger accounts in relation to **each client** of the practice in **each matter** for which trust money has been received.

Therefore law practices that utilise a miscellaneous, administration or like trust ledger account for the receipting of unknown deposits, banking errors, initial consultations, etc. do not comply.

Initial consultations where the law practice receipts funds received from clients to the trust account, are required to be receipted to their own individual trust ledger account. It should be noted that if the deposit is for fees paid subsequent to the consultation, in accordance with a rendered bill, these funds may be banked straight to the general account rather than the law practice's trust account.

If the law practice experiences any banking errors or anomalies they are encouraged to contact the Trust Account Investigations team for assistance in resolving these matters and for direction on how to treat these funds in terms of receipting or reconciliation adjustments.

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 (s45(1) & (2) of the Regulation):

- 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 (s45(2)(a) of the Regulation); 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 (s45(2)(b) of the Regulation).

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 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 trust account at the conclusion of the matter to which the money relates.

4.8.5 Archiving trust ledger accounts

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 account before withdrawing funds

Before withdrawing trust money from the 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. Section 259 of the Act 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 money 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 trust account.

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

4.8.7 Clearance of surplus trust money

A law practice must account the available trust money to the rightful beneficiary with as little delay as possible.

Section 259 of the Act states that an Australian legal practitioner must not, without reasonable excuse, cause a failure to pay or deliver any trust money. Small balances held in the trust account representing overpayments by clients for stamp duty, registration fees, filing fees, purchase money, costs etc. should be promptly accounted to clients.

If the law practice is unable to locate the beneficiary of the trust money or can not determine who is legally entitled to receive the money the law practice is referred to section 713 of the Act. Refer to Item 11 “Unclaimed Monies” of this Guide for more information.

4.9 Trust transfer journal

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 (s43(1) of the Regulation). That is that the law practice has client authority to transfer funds from one matter to another. Trust money is received for an identified purpose and therefore changing the purpose of the funds from one matter to another requires client authority.

Section 43(3) of the Regulation requires authorisation of the trust journal transfer to be made in **writing** by the principal or authorised legal practitioner associate or 2 or more authorised associates jointly.

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;

Journal pages or entries must be consecutively numbered. The entry requires the signature or **written** authorisation of the principal or authorised legal practitioner associate or 2 or more authorised associates jointly.

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.

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	<i>F.Bones</i>
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	<i>F.Bones</i>

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 (s43(6) of the Regulation). 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 accompanied by the authorization of 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, a law practice must reconcile the trust records relating to its trust account/s (s44 of the Regulation). The trust records are to be reconciled **as at the end of each named month date** by preparing:

- a. A statement reconciling the trust account balance as shown in the ADI records with the balance of the trust account cash books; and
- b. A statement reconciling the trust ledger accounts with the balance of the trust account cash books.

Put simply the trust account cash books must be balanced at the end of each month to the trust ledger listing (trust trial balance) and the ADI balance (s44(2) of the Regulation).

The Regulation also stipulates that each statement (reconciliation and trust trial balance) must also show the date the statement was prepared, be kept by the law practice and be:

- a. Reviewed by a principal of the law practice;
- b. Annotated in a way that evidences the completion of the review.

It is strongly recommended 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 cash book balance reconciliation

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

- 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 cash book to give total receipts for the month. The first money column in the receipts cash book represents the total of trust money received by the law practice during the month. The second money column in the receipts cash book represents the total of trust money banked and could vary from the total of trust money received. The difference would be attributable to either:
 1. trust money received in the previous month and included in the initial bank deposit in the month being balanced; or
 2. trust money received on the last business day of the month but not banked until the first business day of the next month.;
- b. Add all amounts on the payment cash book to give total payments for the month. In the payments cash book, the two money columns should always agree;
- c. Add the total receipts for the month to any balance carried forward from the previous month ('cumulative figure');
- d. 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
Add: total receipts for month of October 20XX	\$49,604.70
Sub Total	\$144,803.80
Less: 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: <i>Principal of law practice</i>	Date reviewed: 4/11/20XX

4.10.2 Preparing a listing of individual trust ledger account balances

Section 44(2)(b) of the Regulation requires that a statement containing a listing of all trust ledger account balances, is to be prepared as at the end of each named month. The listing 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:

- 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;
- Ensure all journal entries have been posted to the relevant trust ledger accounts;
- Ensure each trust ledger account has the correct resulting balance after each entry;
- 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;
- Add the listing of individual trust ledger balances and compare with the end of month cash book balance.

Section 44(2)(b)(ii) of the Regulation requires the listing (trust trial balance) to include:

- The month to which it refers;
- The date of preparation;
- The following details:
 - Name of the person for whom the account is maintained (client name);
 - Identifying reference (matter reference number);
 - A short description of the matter to which each relates (matter description);
 - The balance of the trust ledger account as at the end of month date.
 - It is recommended that the last transaction date be included in the listing.

Example of trust trial balance or listing of individual trust ledger account 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	Date Last Transaction
B6	Bland, JM & LB	Purchase from BG White	\$ 1,474.45	28/10/20XX
S4	Smart, AB	Litigation – v J Jackson	\$ 12,000.00	17/08/20XX
T1	Talisman, A	Sale to J Angus	\$ 50,164.00	15/10/20XX
T3	Thomas, A	Purchase from T Swift	\$ 4,000.00	26/10/20XX
T7	Toft, D	v B Basher	\$ 1,155.00	15/09/20XX
W12	West, A	Estate of the late Sybil West	\$ 18,000.00	1/10/20XX
Y6	Young, N	Purchase from T Terry	\$ 1,200.00	15/10/20XX
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: <i>Principal of law practice</i>			Date reviewed: 4/11/20XX	

4.10.3 Preparing the approved ADI reconciliation statement

Section 44(2)(a) of the Regulation requires that a statement be prepared reconciling the bank statement balance to the trust account cash books, commonly referred to as the ADI reconciliation or trust account reconciliation. The statement is used 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:

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

For receipts:

- Ticking entries that are common to the approved ADI statement and receipts cash book;
- 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 cash book". 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 law practice not being able to identify the provider of the funds and are commonly referred to as "unreceipted deposits".
- 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". Outstanding deposits or receipts should be investigated to ensure that these receipts have been deposited as soon as practicable.

For payments:

- Ticking entries that are common to the approved ADI statement and payments cash book;
- Listing the entries that appear in the approved ADI statement but are not recorded in the cash book on a list headed "Items in approved ADI statement not in cash book". Any such payments which have not been recorded in the cash book but have been paid from trust should be recorded to the cash book as soon as practicable;
- 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 i.e 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		
Trust bank reconciliation		
Reconciliation statement for the period ended 31 October 20XX		Page 1 of 1
Approved ADI statement balance 31/10/20XX		\$ 126,069.89
Add: Outstanding deposits/receipts		
Receipt No. 1088 31/10/20XX (banked 1/11/20XX)		\$ 155.00
		<hr/>
		\$ 126,224.89
Less: Outstanding cheques		
29/9/20XX Chq No. 54999	\$ 462.16	
30/9/20XX Chq No. 55000	\$ 164.28	
06/10/20XX Chq No. 55003	\$ 34,350.00	
30/10/20XX Chq No. 55006	\$ 55.00	\$35,031.44
		<hr/>
		\$ 91,193.45
Less: Unreceipted deposits		
28/10/20XX Frank F6 – receipt 1089 issued 1/11/20XX	\$2,000.00	
31/10/20XX Nguyen N15 – receipt 1090 issued 1/11/20XX	\$1,200.00	\$3,200.00
		<hr/>
Add/Less: Item(s) in cash book not in Approved ADI statement		
Reconciled bank statement balance as at 31/10/20XX		\$ 87,993.45
		<hr/>
Reconciled cash book balance as at 31/10/20XX		\$ 87,993.45
Variance:		nil
Prepared by: A Bookkeeper		Date prepared: 3/11/20XX
Reviewed by: <i>Principal of law practice</i>		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 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 may not be issued in the same month as the date of deposit.

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 trust account receipt 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, receipted 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 money required to be banked to the law practice's 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, should only refer to trust money 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, such as where the amount receipted has not been banked the next business day may represent a deficiency of trust money. The law practice should investigate immediately and review the relevant trust ledger account and to determine if there has been a deficiency. If there is a deficiency 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.

4.10.6 Unpresented trust account cheques

A law practice must account the available trust money 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 three 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 cash book 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 trust account it is important to stress that the approved ADI must charge the costs of maintaining the trust account to the law practice's office account.

4.10.8 Dormant balances

Dormant balances are funds held in a trust account, where the balance has not changed for a period of over 12 months.

Most computerised accounting system have the ability to produce a dormant/stagnant balances report which will show the relevant trust ledgers that have dormant balances. In addition, most computerised accounting system will show the last transaction date of trust ledgers on a prepared trust trial balance (listing of individual trust ledger accounts).

A law practice must not cause a failure to pay or deliver any trust money pursuant to section 259 of the Act. The Society encourages law practices to regularly review its dormant balances held in the trust account and to take appropriate steps to disburse the funds from the trust 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 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

Section 53(5) of the Regulation states that a trust account statement is to contain particulars of:

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

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. **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.

Section 53(6) of the Regulation states that a trust account statement is to be furnished:

- a. as soon as practicable after completion of the matter to which the ledger account or record relates; or
- b. as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or
- c. except as provided by subregulation (7), as soon as practicable after 30 June in each year.

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 section 53(6)(c) of the Regulation in respect of a ledger account or record if at 30 June (s53(7) of the Regulation):

- 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 (s54(1) of the Regulation). 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 of the Regulation and the law practice must give those statements as directed, except to the extent to which the direction is unreasonably onerous (s54(2) of the Regulation).

The law practice must keep a copy of a trust account statement provided under this section.

5. Controlled money

5.1 Definition of controlled money

Controlled money is trust money (section 237 of the Act) –

“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 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 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 (s255(3) of the Act).

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 Act 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 (s251(1) of the Regulation).

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

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 (s237 and s251(2) of the Act). 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 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.

Section 47(1) of the Regulation states that a controlled money account must include the following particulars in the account name:

- 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 money 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 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 (s251(1) & (3) of the Act). The written directions must be kept for a period of 7 years after finalisation of the matter to which the direction relates (s49 of the Regulation).

5.4 Controlled money receipts

Section 48(2) of the Regulation requires that the law practice must operate a single controlled money receipt system for the receipt of all controlled money. 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 (s48(3) & (4) of the Regulation). 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 – section 48(2) of the Regulation;
- 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 – section 48(5) of the Regulation;
- Delivered, on request, to the person from whom the controlled money was received – section 48(8) of the Regulation;
- Consecutively numbered and issued in consecutive sequence – section 48(9) of the Regulation;
- If a receipt is cancelled or not delivered, the original receipt must be kept – section 48(10) of the Regulation.

5.4.1 Particulars for controlled money receipts

Section 48(6) & (7) of the Regulation requires the following **particulars** to be recorded on the controlled money receipts are:

- a. the date the receipt is made out and, if different, the date of receipt of the money;
- b. the amount of money received;
- c. the form in which the money was received;
- d. the name of the person from whom the money was received;
- e. details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
- f. particulars sufficient to identify the purpose for which the money was received;
- g. the name of and other details clearly identifying the controlled money account to be credited (for example, the ADI account name and number including the BSB);
- h. 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;
- i. the name of the law practice, or the business name under which the law practice engages in legal practice
- j. the expression “controlled money receipt”;
- k. the name of the person who made out the receipt;
- l. the number of the receipt.

Example of controlled money receipt

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 ____nil____ 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

5.4.2 Interest/other income

Whilst the Regulation does 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 Regulation requires the interest or other income to be recorded in the relevant controlled money movement record (s48(11) and s51(6) of the Regulation). 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.

5.5 Withdrawal of controlled money

Controlled money must not be disbursed except:

1. 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 (s251(3) of the Act); or
2. As prescribed in section 58 of the Regulation relating to the withdrawal of trust money from a controlled money account for legal costs; or
3. In accordance with an order of a court of competent jurisdiction or as authorised by law (s251(7) of the Act).

Controlled money can only be drawn from a controlled money account by (s252(1)(a) of the Act):

- a. Trust account cheque; or
- b. Electronic funds transfer – if the law practice has been authorised by the Society to withdraw controlled money from a controlled money account by EFT.

The following withdrawals are prohibited (s252(2) of the Act):

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

Section 50(3) of the Regulation states that 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.

5.5.1 Controlled money written record

Section 50(6) of the Regulation states that the **written record** (ie initiating record of withdrawal) must disclose the following:

- 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 requisition form will meet the requirements of a written record.

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 (s50(7) of the Regulation).

5.6 Withdrawing legal costs from a controlled money account

Legal costs means remuneration and disbursements incurred in relation to legal work. Disbursements includes outlays.

A law practice may withdraw money from a trust account or controlled money account for payment to the practice's general or office account for legal costs owing to the law practice (s258(1)(b) of the Act).

To comply with s258(1)(b) of the Act and s58 of the Regulation requires the law practice to meet one of s58(2),(3),(4) or (5) (see s58(1) of the Regulation).

Section 58 of the Regulation prescribes the procedures and requirements for the withdrawal of trust money for the payment of legal costs.

Legal costs can be withdrawn as follows:

- withdrawal on issue of bill (s58(2) of the Regulation); **or**
- withdrawal in accordance with a costs agreement or on instructions authorising the withdrawal (s58(3) of the Regulation); **or**
- withdrawal is for reimbursement of money already paid by the law practice (s58(4) of the Regulation); **or**
- withdrawal of part of the money under 58(3), the remainder may still be withdrawn in accordance with 58(2) or (4).

5.6.1 Withdrawal on issue of bill

The giving of a bill negates the need to comply with either 58(3) or (58(4) of the Regulation. However the law practice may only withdraw the trust money from a controlled money account, for legal costs after 7 days of the bill being given, provided there was no objection to the bill, or if the money otherwise becomes legally payable.

Section 58(2) of the Regulation permits for trust money to be withdrawn, for payment of legal costs owing to the law practice –

- If the law practice has **given** the person a bill relating to the money; **and**
- If the person has not objected to the withdrawal of the money within 7 days after being given the bill; or
- If the person has objected within 7 days after being given the bill, but has not applied for a costs assessment within 60 days after being given the bill; or
- If the money otherwise becomes legally payable.

A law practice that has given a bill to the person/s may withdraw trust money for legal costs after 7 days of the bill being given; provided there were no objections to the bill.

In accordance with s330 of the Act a bill may be in the form of a lump sum bill or an itemised bill.

A bill is to be given to a person–

- By delivering it personally to the person or to an agent of the person; or
- By sending it by post to the person or agent at –
 - i. The usual or last known business or residential address of the person or agent; or
 - ii. As address nominated for the purpose by the person or agent; or
- By leaving it for the person or agent at –
 - i. The usual or last known business or residential address of the person or agent; or
 - ii. An address nominated for the purpose by the person or agent;

With a person on the premises who is apparently at least 16 years old and apparently employed or residing there: or

- If the legal costs or the basis on which they have been calculated have or has been agreed as a result of a tender process – in a way provided as part of the tender process or by later agreement between the client and the law practice.
- Electronically, if the client consents to the bill being given electronically. It is recommended that an authority to deliver bills electronically is obtained from the client prior to sending the bill by these means.

A bill may also be in the form of an interim bill (section 333 of the Act).

5.6.2 Withdrawal in accordance with a costs agreement or on instructions authorising the withdrawal

Section 58(3) of the Regulation permits for trust money to be withdrawn, for the payment of legal costs owing to the law practice, whether or not a bill was given, if the law practice has:

- A costs agreement that complies with the Act **and** that authorises the withdrawal (s58(3)(a)(i) of the Regulation); or
- Instructions that have been received by the practice **and** that authorise the withdrawal (s58(3)(a)(ii) of the Regulation).

If a costs agreement or instruction, mentioned in 58(3)(a), **authorises the withdrawal of only part** of the money, the remainder of the money may still be withdrawn in accordance with subsection (2) or (4) of s58 of the Regulation.

5.6.2.1 Withdrawal in accordance with a costs agreement

If a law practice is relying on s58(3)(a)(i) the law practice must have a costs agreement that complies with the Act. Part 3.4 of the Act applies to Costs disclosure and assessment. A costs agreement is defined in s300 of the Act “*means an agreement about the payment of legal costs.*” A law practice must ensure that the costs agreement complies with ss322-328 of the Act.

If a law practice is to rely on s58(3)(a)(i) of the Regulation to withdraw costs incurred, but not yet paid, the costs agreement must include an appropriate clause in the costs agreement. An example of an appropriate clause would be:

“When we hold money in a controlled money account on your behalf:

- v. You authorise us,*
- vi. to withdraw money for payment to the practice’s account*
- vii. for legal costs owing to the practice, including such costs incurred but which we have not already paid,*
- viii. if the relevant procedures or requirements under the Legal Profession Regulation 2017 are complied with.”*

A law practice must:

- **before** effecting the withdrawal, the law practice must **give or send** to the person/s a request for payment, referring to the proposed withdrawal; or a written notice of withdrawal;

If a law practice withdraws money for legal costs without a compliant costs agreement or the law practice does not comply with the authority in the costs agreement, the money must be deposited back to the trust account, until such time as the law practice can comply with section 58(2),(3),(4) or (5) of the Regulation. Failure to deposit the money back to the trust account may breach section 257 of the Act – intermixing money.

5.6.2.2 Withdrawal in accordance with an instruction to authorising withdrawal

If a law practice is relying on s58(3)(a)(ii) of the Regulation to withdraw costs incurred, but not yet paid, the law practice must have received instructions authorising the withdrawal. If the instruction is provided verbally, the law practice can rely on the instruction, however the law practice must ensure that the instruction is confirmed in writing either before, or within 5 working days after the law practice withdraws the money (s58(6)(b) of the Regulation):

An example of an appropriate instruction authorising the withdrawal of trust money for legal costs would be:

<p>Re: [insert matter details: payment of legal costs]</p> <p><i>I [insert name] authorise [insert law practice name] to:</i></p> <p><i>iv. to withdraw money held in a controlled money account on my behalf from the law practice trust account for payment to the practice's account</i></p> <p><i>v. for legal costs owing to the practice, in relation to [insert matter details] including such costs incurred but which we have not already paid,</i></p> <p><i>vi. if the relevant procedures or requirements under the Legal Profession Regulation 2017 are complied with."</i></p> <p style="text-align: right;">Signature:</p> <p style="text-align: right;">Date:</p>
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A law practice must:

- **before** effecting the withdraw, the law practice must **give or send** to the person/s a request for payment, referring to the proposed withdrawal; or a written notice of withdrawal;
- If the instruction to withdrawal is given in writing, it must be **kept** as a permanent record or **confirmed in writing** either **before or within 5 working days after**, the law practice withdraws the money and a copy must be kept as a permanent record (section 58(6) of the Regulation).
- If a law practice withdraws money for legal costs, but does not comply with the authority provided or, does not hold instructions confirmed in writing as required under section 58(6) of the Regulation, the law practice must deposit the money back to the trust account,. The money must remain in trust until such time as the law practice can comply with section 58(2),(3),(4) or (5) of the Regulation. Failure to deposit the money back to the trust account may breach section 257 of the Act – intermixing money.

5.6.3 Withdrawal for reimbursement

Where money is owed to a law practice by way of **reimbursement** for money **already paid** on behalf of a person the law practice is permitted by section 58(4) of the Regulation to withdraw the trust money.

Before withdrawing the trust money the law practice must **give or send** to the person –

- A request for payment, referring to the proposed withdrawal; **or**
- A written notice of withdrawal.

Section 58(7) of the Regulation states that money is taken to have been paid by the law practice on behalf of the person when the relevant account of the law practice has been debited. This means that the transaction should show on the relevant account statement and if a general account cheque drawn, the cheque must be presented for payment i.e. show as a debit on the account statement.

A law practice may reimburse themselves for costs paid, if the money has been paid and the relevant account i.e. general account, has been debited, and the law practice has provided a request for payment or notice of withdrawal to the person/s.

5.6.4 Withdrawal of part of the money

If a costs agreement or instruction, mentioned in section 58(3)(a) of the Regulation, authorises withdrawal of only part of the money, the remainder of the money may still be withdrawn in accordance with subsection (2) or (4) of section 58 of the Regulation.

5.6.5 Retaining written instructions

Written instructions/authorities should be kept in written form as a permanent record for at least 7 years (s58(6)(a) of the Regulation). It is best practice to obtain the instructions 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 (s58(6)(b) of the Regulation).

5.7 Register of controlled money

The law practice must maintain a register of controlled money 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.

5.7.1 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						
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.

5.8 Controlled money movement record

A separate record of controlled money movements must be maintained for each controlled money account (s51(2) of the Regulation). The controlled money movement record should be maintained in a format similar to a trust ledger account.

Section 51(3) of the Regulation states that a record of controlled money movements for a controlled money account must record the following information:

- 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).

Section 51(4) of the Regulation states that the following particulars must be recorded in a record of controlled money movements for a controlled money account:

- a. the date the controlled money was received;
- b. the number of the receipt;
- c. the date the money was deposited in the controlled money account;
- d. the name of and other details clearly identifying the controlled money account;
- e. the amount of controlled money deposited;
- f. details of the deposit sufficient to identify the deposit;
- g. interest received;
- h. details of any payments from the controlled money account, including the particulars required to be recorded under section 50 of the Regulation.

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 (s51(5) of the Regulation). 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 (s51(6) of the Regulation).

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.

5.9 Monthly listing of controlled money accounts

Within 15 working days after the end of each month, the law practice must prepare a statement and keep as a permanent record a statement as at the end of the named month (s51(8) of the Regulation) – containing a list of the practice's controlled money accounts showing:

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

The statement must be reviewed by a principal of the law practice and annotated in a way that evidences the completion of the review (s51(9) of the Regulation).

Example of the controlled money reconciliation statement

Fred Bones & Associates Controlled Money Reconciliation As at 31 August 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	\$129,600.00
				\$169,600.00
Prepared by: A Bookkeeper			Date prepared: 3/09/XX	
Reviewed by: Principal of law practice			Date Reviewed: 04/09/XX	

5.10 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 (s53(3) of the Regulation).

As discussed in item 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:

- 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
- 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 money

6.1 Definition of transit money

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 s253(1) of the Act, 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 Queensland Revenue Office 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 Queensland Revenue Office;

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 Electronic lodgement networks

6.2.1 Using PEXA or Sympli

Property Exchange Australia ("PEXA") and Sympli are Electronic Lodgement Network Operators (ELNO). They are subject to the Electronic Conveyancing National Law (Queensland) (National Law).

A law practice can subscribe to an ELNO, this allows the law practice to use an electronic lodgement network (ELN) to effect property settlements.

When a law practice subscribes to an ELNO they are subject to the Australian Registrars National Electronic Conveyancing Council (ARNECC) model participation rules.

A law practice that intends to use an ELNO for a property settlement must ensure it has a Client Authorisation in the form prescribed in the model participation rules.

ELNO's facilitate the transfer of funds on settlement of a conveyance from a source account to one or more destination accounts. If a law practice intends to establish direct debit payments from the law practice trust account for use in conveyancing matters, the law practice must have prior approval from the Society. Practitioners should follow the process set out in the Direct Debit Authorities Guidelines for PEXA and Sympli.

6.2.2 Categorisation of trust money held in an ELNO source account

Money held in an ELNO source account is trust money in the form of transit money of whichever law practice is able to control those funds; that is, nominate the destination account.

The law practice that controls the transit money must record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received¹.

There is an exception. A client cannot be a third party, money held by the law practice to be paid or delivered to its client cannot be transit money. Where a law practice controls funds in the source account and the money is payable to the client, that money is trust money received by the law practice in the course of or in connection with the provision of legal services.

That trust money must be deposited into the trust account, unless the practice has a written direction from an appropriate person, almost always the client, to deal with it otherwise than by depositing it in the account.²

6.3 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.

In respect to PEXA or Symplic transactions please refer to the EFT Guidelines in respect to what trust accounting records should be maintained e.g client authorisation form; settlement completion records.

6.4 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 trust account or a controlled money account (s255(4) of the Act).

7. Power money

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 s56 of the Regulation (s254(2) of the Act).

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.

A review of the disclosures as required by Rule 12.4.1 of the *Australian Solicitor Conduct Rules 2012* should be made so as to satisfy any fiduciary duty to the 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 trust account.

The executor may then instruct the law practice to withdraw the money from the 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 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 trust account.

7.2 Record keeping requirements

Section 56(2) of the Regulation states that a law practice must keep:

- 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 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 (s57(1) of the Regulation).

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: Section 57(1) of the Regulation 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 (s57(2) of the Regulation).

Section 57(3) of the Regulation states that the register of powers and estates must record:

- 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 (eg 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 1 Jones Road Smithville Qld	Fred Bones	A5	A Andrews re: Power of Attorney	1/5/20XX	
15/7/20XX	Frank Peters 72 Staghorn Street Surfers Paradise Qld	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 s57 of the Regulation 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 trust account, or a controlled money account before the money is otherwise dealt with under the power.

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 (s53(4) of the Regulation).

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:

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

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

8. Written direction money

8.1 Definition of written direction money

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 (s248(1)(a) and s248(2) of the Act).

8.2 Definition of appropriate persons

An “appropriate person” is defined in s248(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 money concerned.

8.3 Example of written direction money

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 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 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 7 years after finalisation of the matter to which the direction related (s36 of the Regulation). 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 trust account or a controlled money account (s255(2) of the Act).

8.6 Trust account statement – Written direction money

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

9. Investment money

9.1 Definition of investment money

Investment money is trust money if both the following criteria are satisfied (s238(2) of the Act):

- 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 money

Investment money is not trust money if it is involved with providing financial services or investments (s238(1) & (2) of the Act).

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 money

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

9.4 Procedure for investments

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

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

Each receipt issued, when investment money is received back into the 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 money 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 trust account.

9.5 Record keeping requirements

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

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

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 7 years.

9.5.1 Written authority to invest

Section 249 of the Act states that a law practice must hold trust money deposited to a trust account of the practice exclusively for the person on whose behalf it is received and disburse the trust money only under a direction given by the person.

A law practice cannot therefore withdraw money from a trust account and deposit it to an investment money account unless the law practice has received a direction by the relevant person/entitled beneficiary, to do so.

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 trust account and then invest these funds by withdrawing the money from the trust account.

In accordance with s59 of the Regulation written directions should be maintained for a period of 7 years after the finalisation of the matter.

9.5.2 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 money in a term deposit, the law practice should keep a copy of the ADI statements or correspondence.

9.6 Register of investments

Section 55(3) of the Regulation requires that a register be kept of the investment of trust money. 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.

Example of investment register

Fred Bones & Associates						
Investment Register/List of Accounts						
For period 1/08/XX to 31/08/XX						
Matter	Matter Description	Client Name	Account Name	BSB & Acc. No.	Institution	Balance
IC1	Sale	P Chisholm	Fred Bones & Associates ATF P Chisholm & E Flynn	009-111 7894-1236	St George	\$40,000.00
IM4	Estate	A J Martin	Fred Bones & Associates ATF Estate of May Smith	084-123 4567-8910	Westpac	\$129,600.00
					Total	\$169,600.00

9.6.1 Investment control account

It is recommended that the register of investments should contain an investment control account which records all trust money 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 released on an investment, these funds would be brought back to the 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 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.

9.6.2 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 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 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

10. Written directions and authorities

10.1 Trust account authorities

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

10.2 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 7 years.

Example of costs transfer authority

<p>Fred Bones & Associates 1 Queen Street Brisbane 4000</p> <p>Re: J Cartwright – Sale to S Nixon</p> <p>I, John Cartwright, authorise Fred Bones & Associates to pay from its trust account money or settlement funds for both incurred and paid outlays, third party payments and professional fees as they become due.</p> <p>Signature: <i>J Cartwright</i> Date: 25 August 20XX</p>
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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 days** from the date of delivery of a bill of costs to the client (s58(2)(i) of the Regulation). 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 money.

If an objection is received, from the client, to the quantum of the bill within **seven 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.

10.3 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 (s251(1) & (3) of the Act). 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 7 years after finalisation of the matter to which the direction relates (s49 of the Regulation).

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: <i>T Tome</i>		
Date: 29 July 20XX		

10.4 Written directions – Transit money

Transit money is 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 (s253(1) of the Act). 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 money 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 money is 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.

10.5 Investment authorities

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

Investment authorities are a record relating to trust money and should therefore be retained for at least 7 years.

Note: if it is an investment into a controlled money account the authority should specify it is to be invested in a controlled money account. Withdrawal authorities from controlled money account must also be maintained (see item 5.3.1 for further details).

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

11. Unclaimed monies

Law practices are required, by 1 June of each year, to lodge a return with the Public Trustee for unclaimed trust money (s258(1)(c) of the Act).

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.

11.1 The return

The return must (s713(4) of the Act)—

- 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 pt.qld.gov.au/other-services/unclaimed-money/.

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 (s713(5) & (6) of the Act).

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 (s713(7) of the Act). 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 (s713(8) of the Act).

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 money fund under the *Public Trustee Act 1978* and deal with it as unclaimed money under that Act (s713(9) of the Act).

12. Computerised trust accounting systems

Law practices may maintain trust records (including 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.

12.1 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 (s29 of the Regulation);
2. File maintenance audit trails (s30 of the Regulation);
3. Overdrawn trust ledger reports (s31(1) of the Regulation);
4. Controls over deletion of ledger accounts (s31(2) of the Regulation);
5. Page numbering, chronological sequencing and entry processing requirements (s31(3) & (4) of the Regulation);
6. Compulsory input requirements (s31(6) of the Regulation);
7. Back-up facility requirements (s32 of the Regulation).

12.1.1 End of month trust reports 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 the following trust records, as at the **end of each month**:

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

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

The above trust records can either be printed to paper (i.e. hard-copy records), or saved electronically (i.e. PDF that is capable of being produced on demand).

12.1.2 Keeping and printing trust records

Section 29(2)(a) of the Regulation states that the law practice must print a paper copy of the following records prior to archiving or deletion from the system:

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

Additionally section 29(2)(b) of the Regulation states that trust ledger accounts and controlled money account details are to be printed on request by and provided to an investigator.

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 **7 years** from the date of finalisation of a matter.

12.1.3 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:

- client name;
- client address;
- matter reference;
- matter description;
- ledger account number or other descriptor.

12.1.4 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 (s31(1) of the Regulation).

12.1.5 Controls over deletion of ledger accounts

Section 31(2) of the Regulation states that the law practice must ensure the system is not capable of deleting a trust ledger account unless:

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

12.1.6 Entry and input requirements

The law practice must ensure the following:

- any entry in a record produced in a permanent form appears in chronological sequence (s31(3) of the Regulation).
- each page of each printed record is numbered sequentially or is printed in a way that no page can be extracted (s31(4) of the Regulation).
- 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 (s31(5) of the Regulation).
- 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 (s31(5) of the Regulation).

12.1.7 Back-up facility requirements

Section 32 of the Regulation states that the law practice must ensure—

- a back-up copy of all records required by this division is made not less frequently than once each month; and
- each back-up copy is kept by the law practice; and
- 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

It should be noted that an onsite firesafe/storage device is inadequate and does not meet the requirements of section 32(c) of the Regulation as the primary backup storage. A complete backup must be kept offsite in a separate location.

12.1.8 Changing from one computerised system to another

It is not uncommon for a law practice to move from one computerised system to another during the course of its operation. The Society recommends that law practices research the computerised systems that are available before transitioning to a new accounting system. There are many suppliers on the market and whilst the Society does not endorse any software providers, the Trust Account Investigations team can offer guidance on the suitability of a product for your situation. Remember, an accounting system is only as good as the information entered, the software provider should provide training as part of the initial setup.

The following procedure has been developed by the Society to provide guidance for law practice changing from one computerised system to another. Please note that this procedure may not be right for everyone.

Step 1 – feel free to contact the Society to get their opinion on the new accounting system, as there are number of new accounting systems in the market that are not complying with the Act or Regulation.

Step 2 – decide on a changeover date. Ideally cut off at the end of the month, using reconciled balances in the new system on the first day of the new month. Allocate plenty of time as changing your accounting system can be a complex process.

Step 3 – if you have any long outstanding adjustments showing up on the reconciliations, clean them up prior to system changeover to minimise errors. E.g.; unrepresented cheques, deposits and other adjustments.

- Unrepresented cheques – if there are any long outstanding cheques appearing on the reconciliation, it is advisable to place stop payments on those cheques and reverse them through its records.
- Unidentified deposits – need to be receipted to an individual trust ledger account in the name 'Unidentified Deposit/Funds' and the matter description should reflect the date the funds were received into trust, the amount and any description associated with the deposit.
- Cheque withdrawal adjustments – cheques that are not recorded need to be entered into the old system immediately.
- Other withdrawal adjustments such as bank fees, overpayment for cheques due to bank errors – these adjustments reflect deficiencies in the trust account. The law practice should transfer funds from its general account to trust account immediately to restore the deficiencies.
- Other deposit adjustments such as underpaid cheques by the banker – the amount of the cheque needs to be adjusted to reflect the actual amount paid by the banker.

Step 4 – decide on the changeover method

- a. Direct method – importing opening balances or historical data to the new system, preparing opening balance reconciliation in the new system, check and clear any discrepancies or unusual reconciliation adjustments, cease using old system and start using new system; or
- b. Parallel method – running the new and old system simultaneously for a period of time.

Step 5 – make decisions about data entry during system changeover process (e.g.- no entries into the old accounting system after the cut-off date if it is a direct changeover).

Step 6 – prepare a bank reconciliation statement, trust trial balance and other required reports in your current system as at the cut-off date. It is recommended that you print off all the current trust ledgers in your current system, especially if you are doing a direct changeover method.

Step 7 – ensure that you have a complete and readable backup of the old system. Consider keeping one licence or computer with the old system, especially if not importing historical data to the new system.

Step 8 – decide whether to bring in historical data or start afresh with opening balances (trust ledger balances) in to the new accounting system. Please get your accounting professional to manage the process.

Step 9 – perform the data transfer by entering opening ledger balances (trust trial balance) or importing historical data from the old accounting system. The software provided should assist with this process.

- a. Manual data entry into the new system – trust trial balance prepared as at the cut-off date need to be used for this purpose. It is recommended that the law practice issue one trust account receipt for the total funds held (trust trial balance total) and allocate it among individual matters.
- b. Importing data – this involves bringing data that you have saved with your old system into your new system. Usually this process is carried out by the software provider.

Step 10 – prepare opening reconciliation statement and trust trial balance using the new accounting system.

- a. Manual data entry – Adjustments need to be manually recorded when reconciling accounts.
- b. Data import – Adjustments will automatically show up on the reconciliation statement.

Step 11 – check that your trial balance, reconciliation statement and payments and receipt cash book reports (historical data transfers only) all match between the old and the new systems.

Step 12 – If you find any discrepancies or amounts that do not match you need to fix them. If you have engaged a third party to carry out the data import (migration) process, you may seek their assistance to fix the errors (duplicate or omission of transactions) .

Step 13 – Direct changeover – After the final check if everything matches you are ready to go live with a direct changeover.

Step 14 – Parallel run – Run both systems in parallel for a period of time. Once you are satisfied, that the new system operates correctly then the old system is terminated.

Retention of trust records – Sections 59-60 of the Regulation set out the period for which trust records must be kept. Depending on the particular trust record, it must be kept for a period of 7 years after the only or last transaction entry in the trust record or for 7 years after the finalisation of the matter. Refer to Section 17.5 of the Guide and section 237 of the Act which lists the trust records required to be kept.

Speak to the provider of your old trust accounting system regarding accessing your historical trust records after the changeover. You may have the following options:

- Server based systems – you should be able to access your historical data;
- Cloud based system – Limited access can be obtained for a small monthly fee or data transfers to external hard drives.

If your law practice maintained a cloud based computerised accounting system you are encouraged to download the relevant trust records from that accounting system (before your subscription ends) and to retain those records electronically for at least 7 years. Please also note your obligations to keep a backup copy of all records under section 32 of the Regulation.

13. External examinations

13.1 External Examiner

The purpose of a law practice having an External Examiner is to ensure that a trust account and trust records are externally examined in accordance with the legislation.

An External Examiner is typically an individual that has the qualifications or experience to be an External Examiner for instance an auditor or accountant.

13.1.1 Qualification of an External Examiner

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' and have satisfied the requirements of CPA Australia for practice as a public accountant'; or
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.

13.1.2 Appointment of External Examiner

A law practice must appoint an individual as the External Examiner of the law practice's trust records within 14 days after Part 3.3 of the Act applies to the law practice (eg 14 days after first receiving trust money) (s267(1) of the Act) and give notice, within 30 days after first receiving trust money, to the Society in the approved form of the practice's External Examiner (s270(1) of the Act).

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 (s270(4) of the Act). A pro-forma of the notice (QLS Form 31 (LPA)) can be located on the Society's website qls.com.au.

13.1.3 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 (s270(2) of the Act).

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 14 days of the original External Examiner ceasing to hold office (s267(2) of the Act). The law practice must notify the Society in the approved form, within 30 days after the individual stops being the practice's External Examiner, of the appointment of the replacement External Examiner (s270(3) of the Act). 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 (s271 of the Act). A pro-forma of the notice (QLS Form 32 (LPA)) can be located on the Society's website qls.com.au.

13.1.4 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 (Part 3.3 of the Act) by the law practice; or
3. an irregularity in relation to the trust records or trust accounts of the law practice of which the 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 (s275(2) of the Act).

13.2 Part A Declaration requirement

All law practice's with an office in Queensland are required to give the Society a Law Practice Declaration (Part A of QLS Form 4 (LPR)) for each financial period ended 31 March, regardless of whether they have held or received trust money during the financial period. This is the statement required of the Society as pursuant to section 61 of the Regulation.

If you have an office in Queensland and perform legal work but do not have a trust account, you must provide a Part A Declaration to the Society by 30 April each year.

For those law practices that have held or received trust money (i.e. hold a trust account/ controlled money account/ specific power money account) they are required to complete Part A and Part B of the QLS Form 4 (Law Practice Declaration and Trust Money Statement). The lodgement period differs if a law practice has held or received trust money during the financial period.

13.3 External Examiner's Report and Law Practice Declaration and Trust Money Statement

All law practices in Queensland that hold or receive trust money are required to lodge a yearly audit report to the Society referred to as an External Examiner's Report which includes a report from the law practice's External Examiner and a report (Law Practice Declaration and Trust Money Statement) prepared by the law practice.

A law practice is required to have its trust records externally examined for the financial period ending 31 March each year (s268(4) of the Act) and to lodge a report with the Society within 60 days of the end of the financial period (s268(1) of the Act).

Exemption – a law practice is exempt from the having its trust records externally examined (s268 of the Act) if the only trust money received or held during a financial period is, transit money and/or money received into or held in a PEXA source account (s62 of the Regulation).

An External Examiner's Report must be completed in the Society's approved form for the purpose of an external examination (QLS Form 4 Law Practice Declaration & Trust Money Statement and QLS Form 5 External Examiner's Report).

13.4 Scenarios for lodgement of Law Practice Declaration and/or 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.	60 days from 31 March
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.	60 days from 31 March

13.5 Examination – Closed trust account

There are instances where a law practice holds multiple trust accounts and may during a financial period, close one of those trust accounts. The law practice has not ceased to be authorised to receive trust money and therefore a final examination of trust records (s276 of the Act) does not apply.

The correct section in this instance is s268 of the Act which states that for each financial period ending 31 March, a law practice is required to have an external examination of the trust records conducted and to lodge a report with the Society within 60 days of the period ending 31 March. The law practice would include the closed trust account with the other trust account/s for the yearly lodgement.

If a law practice closes its trust account i.e. ceases to hold trust money but continues to maintain an office in Queensland, a final external examination report is required for the period since the last external examination to the date the trust account was closed (s276(2)(a) of the Act).

The final external examination report is required to be lodged within 60 days after the end of the period to which the examination relates i.e. date of trust account closure (s276(3)(a) of the Act). A statutory declaration in the Society's approved form (QLS Form 33) is required to also be lodged within 60 days of ceasing to hold trust money.

13.6 Examination – Ceased law practice

When a law practice ceases to operate, however has not yet wound up the law practice trust account, the external examination requirements are different to those outlined above.

The process to be followed in respect of the examination requirements in these circumstances are outlined in Item 15.4 of this Guide.

14. 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. **Establishing a trust account** – A law practice must establish a trust account if trust money is anticipated or is received by the law practice. The 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”;
3. **Trust account cheques** – ensuring that trust account cheques are pre-printed payable “to order” and crossed “not negotiable”.
4. **EFT authority** – if the law practice is intending on making payments from the trust account via EFT or direct debit authority the law practice must apply to the Society for approval first. The Society has issued Guidelines for EFT payments.
5. **Notification of opening a trust account** – A law practice must give written notice to the Society, within 14 days after establishing a trust account, of the fact;
6. **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 trust account of the practice;
7. **Notification of external examiner** – If trust money (whether in a trust account, controlled money account, or power money account) is held by the law practice an external examiner needs to be appointed within 14 days and the Society should be advised within 30 days.

15. What to do when ceasing a practice

15.1 Notification of intention to cease

A law practice that holds trust money must give the Society at least **14 days** written notice of its intention (s61(1) of the Regulation)—

- 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 trust accounts, and if applicable controlled money accounts, power money accounts and investment money accounts.

15.2 Distribution of trust monies

It is important to note that a law practice that ceases can only distribute trust money to the person entitled to that trust money 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, from the client, authorising the delivery of the incomplete transaction file and the payment of any trust money 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 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.

15.3 Notification of closure

Within **14 days** of ceasing to hold trust money, a law practice that holds trust money must give the Society (s63(2) of the Regulation)—

- 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 trust accounts, and if applicable controlled money accounts, power money accounts and investment money accounts.

15.4 Lodgement of External Examiner's Report

A law practice that ceases to be authorised to receive trust money or ceases to engage in legal practice in Queensland (s276(1) of the Act) is required to have the trust records (as per s276(2) of the Act) externally examined:

- a. In relation to the period since an external examination of the practice's trust records was last conducted; and
- b. In relation to each period after the period mentioned in (a) above, comprising a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money

An example to assist in understanding is:

Law practice ceases to practice on 30 June 2019. The last External Examination Report provided was for the period ended 31 March 2019.

The law practice must give a report for the period 1 April 2019 to 30 June 2019 (s276(2)(a) of the Act). The report must be lodged within 60 days of the when the law practice ceased to operate.

The law practice then closes the trust account on 4 January 2020.

The law practice must give a report for the period 1 July 2019 to 4 January 2020 (s276(2)(b) of the Act). The report must be lodged within 60 days of 4 January 2020 (date of account closure).

Note: If the trust account remained open, the report to be lodged under section 276(2)(b) of the Act would have been for 1 July 2019 to 30 June 2020. That 12 month period would continue until such time as the trust account is closed.

If a law practice has ceased to hold trust money, a statutory declaration (QLS Form 33) is to be given to the Society within 60 days of ceasing to hold trust money.

15.5 Retention of records

Sections 59-60 of the Regulation set out the period for which trust records must be kept. Depending on the particular trust record, it must be kept for a period of 7 years after the only or last transaction entry in the trust record or for 7 years after the finalisation of the matter.

If your law practice maintained a cloud based computerised accounting system you are encouraged to download the relevant trust records from that accounting system (before your subscription ends) and to retain those records electronically for at least 7 years. Please also note your obligations to keep a backup copy of all records under s32 of the Regulation.

Section 237 of the Act sets out the definition of trust records which includes the following documents:

- a. 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 trial balances;
- i. Records of monthly 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.

16. Dates for notifications and lodgements

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.
Within 60 days of 31 March, each year	<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, within 60 days of the year end (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 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 money	<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 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 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 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(2)(a)	Law practice must forward an external examination report for the period since the last examination i.e. 31 March, to the date of the law practice ceased to operate.
	<i>Legal Profession Act 2007</i> s.276(2)(b)	Law practice must forward an external examination report, comprising a period of 12 months or less, for the period since the law practice ceased to operate.
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.