

# Appendix 1 to the Part 3.3 Investigation Policy

## Substantial breaches

A Number = investigator to insert number of breaches

1. A number of instances of receiving trust money but did not keep a general trust account (breach section 247 of the Act).
2. A number of instances of a **failure to deposit money** received into a general trust account **as soon as practicable** after receiving the trust money (breach of section 248 of the Act).
3. A number of instances where trust moneys and/or controlled moneys were **not received as soon as practicable** after the trust money was received (breach of section 34(3) and 48(3) of the Regulation).
4. A number of instances of not dealing with trust money received subject to a **written direction** in accordance with the written direction (breach of sections 248 and 249 of the Act).
5. Failure of the law practice to **retain for the required period of 7 years, a written direction in respect of non-deposit of trust money** in a general trust account, in this jurisdiction, in accordance with section 36 of the Regulation.
6. A number of instances where trust money was **not held exclusively for the person** on whose behalf it is received (breach of section 249 of the Act and/or section 42 of the Regulation).
7. A number of instances where trust money was **not disbursed as directed** by the person for whom the trust money is held/was **not disbursed in accordance** with an order of a court of competent jurisdiction/**was not disbursed in accordance** with Division 2A/**was not disbursed** as otherwise authorised by law (breach of section 249 of the Act).
8. A number of instances where **trust funds were incorrectly deposited or transferred to the law practice general account** when no entitlement to do so (breach of section 249 of the Act).
9. Failure of the law practice to **withdraw trust money for legal costs** in accordance with **section 58 of the Regulation**.
10. A number of instances where **debtor ledgers recorded credit balances** and not investigated by the law practice (possible failure to hold trust money in a trust account in breach of section 249 of the Act).
11. A number of instances where **trust funds were disbursed incorrectly** without authority by the Society e.g. EFT when not authorised or OSR, PEXA, Sympli or Titles direct debit payments in breach of section 250 of the Act.

12. A number of instances where **trust money was disbursed using a method prohibited** (e.g. bank cheques purchased by withdrawal or cash) by section 250(2) of the Act or the Regulation.
13. A number of instances where **controlled money** was not dealt with in accordance with section 251 of the Act.
14. A number of instances where **controlled money was disbursed via a method not authorised** under section 252 of the Act or the Regulation.
15. A number of instances where **transit money** was not dealt with in a way authorised by section 253 of the Act.
16. A number of instances where **transit money records were not maintained** as required by section 52 of the Regulation.
17. A number of instances where **trust money subject to a power** was not dealt with in a way authorised by the power in breach of section 254 of the Act.
18. A number of instances where trust money **subject to a power were not accounted for** in a way authorised by the power or section 56 of the Regulation.
19. A number of instances where **trust money received in the form of cash** was not dealt with in a way authorised under section 255 of the Act.
20. A number of instances where **trust money was intermixed** in a way not permitted by the Society as a result of action or lack of action by the law practice (breach of section 257 of the Act).
21. A number of **overdrawn trust ledger accounts** (deficiencies) were not promptly restored to a credit or nil balance (section 259 of the Act). A number of instances where a legal practitioner, without reasonable excuse, caused a **deficiency in a trust account or trust ledger accounts** without reasonable excuse, and/or caused a failure to pay or deliver any trust money (breach of section 259 of the Act).
22. A number of instances where a legal practitioner caused a **failure to pay or deliver any trust money** (breach of section 259 of the Act).
23. The law practice failed to **report irregularities and suspected irregularities** (breach of section 260 of the Act).
24. The law practice failed to keep trust records in a **permanent form** (breach of section 261 of the Act).
25. A number of instances where **incorrect information** has been recorded in the trust account records - in what appears to be an attempt to avoid discovery (breach of section 261(2) of the Act).
26. The law practice knowingly received money or recorded the receipt of money in the practice's trust records under a **false name** (breach of section 262 of the Act).
27. Failure to file an **External Examiner's Report** (EER) on time or at all in accordance with section 274 or section 276 of the Act.
28. The law practice regularly receives funds to its trust bank account, which is not trust money and does not provide the appropriate notifications to the person who provided the **non-trust money** to the law practice (sections 237 and section 294 of the Act).
29. The law practice was not providing the required **costs disclosures** for matters that it expected to charge professional costs in excess of \$1,500.00 (exclusive of GST) for work performed (Part 3.4 of the Act).
30. The law practice routinely forwarded **bills of costs electronically** to clients without the clients consenting to the receiving of bills electronically (section 330 of the Act).
31. Bills sent to clients were not accompanied by the **Notification of client's right** (section 331 of the Act).
32. There was a **default** by the law practice as defined in section 356 of the Act.
33. Failure to maintain a **trust account cashbook** (breach of sections 40 and 41 of the Regulation).
34. **Failure to record trust account transaction(s) in the cashbook within 5 working days** (inclusive of the day of the transaction) of the transaction taking place in accordance with sections 40(4) and 41(4) of the Regulation – receipt not issued due to lack of information is not a breach.
35. Failure to keep or maintain a **trust ledger account** (breach of section 42 of the Regulation).

36. **Failure to record trust account transaction(s) in the trust ledger accounts within 5 working days** (inclusive of the day of the transaction) of the transaction taking place in accordance with section 42(9) of the Regulation.
37. **Failure to reconcile trust account** records in accordance with sections 44(1) and (2) of the Regulation.
38. A number of instances where **trust account reconciliation(s) was/were not completed within 15 working days** after the end of the month concerned as required by section 44(3) of the Regulation.
39. **Failure to reconcile controlled money accounts** in accordance with section 51(8) of the Regulation.
40. A number of instances where **controlled money account reconciliations** were not completed within 15 working days after the end of the month concerned as required by section 51(8) of the Regulation.
41. The law practice **failed to retain for a period of not less than 7 years trust account records** required to be kept pursuant to section 59 and 60 of the Regulation.
42. Failure for trust cheques (section 37(3) of the Regulation) and/or EFT payments (section 38(2) of the Regulation) and/or Controlled money withdrawals (section 50(3) of the Regulation) to be signed or effected by:
  - a) An authorised principal of the law practice; or
  - b) If the principal is not available:
    - i) By an authorised legal practitioner associate; or
    - ii) By an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
    - iii) By two or more authorised associates jointly.
43. The law practice failed to **appoint an individual as the external examiner for the practice** (breach of section 267 of the Act).
44. The law practice failed to **give notice of the appointment of the practice's external examiner** (breach of section 270 of the Act).
45. The law practice **issued bills to clients** without signing the bill or enclosing a letter signed by the law practice (breach of section 330 of the Act).
99. The law practice has breached the legislation in the following manner [insert details]. Specific details are detailed in the investigation report.