The Law Society
OF SOUTH AUSTRALIA
The Voice of the Legal Profession

Key Dates

30 June **End of financial year.**

31 August **Date on which the law practice must provide the completed Statement Regarding the Receipt or Holding of Trust Money (the Statement) to either the examiner or the Society.**

1 September **Date on which the appointed examiner should make a report to the Society if the law practice fails to provide the Statement AB including all mandatory reports.**

31 October **Date on which examiner should lodge the completed external examination report to Society.**

Latest date on which the examiner should lodge a formal notification of failing to provide the external examination report to the Society by 31 October.

Pursuant to clause 34(1) of Schedule 2 of the *Legal Practitioners Act* 1981 (the Act) a law practice is required to have the records and accounts externally examined as soon as practicable after 30 June in each financial year.

In accordance with regulation 48 of the *Legal Practitioners Regulations* 2014, the law practice is required to complete a Statement Regarding the Receipt or Holding of Trust Money (Statement) as soon as practicable after 30 June in each financial year and must submit the completed Statement either to the Society, or to the appointed external examiner (to facilitate an external examination) by the required date of 31 August following the relevant financial year end.

A law practice effectively has a very short window to meet compliance requirements.

The examination process must not be delayed because trust records are not up to date. Contact the Society for immediate assistance if your records are not up to date.

There are now 3 Statements for the law practice to choose from. Only <u>one</u> Statement should be completed.

Statement A **Law practice <u>has not</u> maintained a general trust bank account in the relevant period; and <u>has not</u> received or held any other trust money (other than transit money properly recorded).**

The law practice must complete the online Statement A by 31 August following the relevant financial year end. An external examination is not required.

Statement A+ **Law practice <u>has</u> maintained a general trust bank account in the relevant period but <u>has not</u> received or held any trust money in the account; and <u>has not</u> received or held any other trust money (other than transit money properly recorded).**

The law practice must complete the online Statement A+ and upload copies of the general trust bank account statements for the relevant period directly to the Society by 31 August following the relevant financial year end. An external examination may not be required.

Statement AB **Law practice <u>has</u> maintained a general trust bank account in the relevant period and <u>may have</u> received or held trust money in the account and may have held or received other trust money.**

OR

Law practice has not maintained a general trust bank account but has held or received other trust money (e.g., no general trust account held but did hold or maintain power monies)

The law practice must provide the completed Statement AB and all required reports directly to the external examiner by 31 August following the relevant financial year end. An external examination is required. If an examiner does not receive a completed Statement AB by close of business 31 August following the relevant financial year end, notification may be made by the examiner to the Society.

External Examiner Requirements

Pursuant to clause 39(1) of Schedule 2 of the Act, an external examiner must give a written report of the examination to the Society as soon as practicable after completing an external examination. Such a report must, if reasonably practicable, be given by the external examiner to the Society on or before 31 October following the financial year to which the report relates as required by clause 39(2) of Schedule 2 of the Act.

The external examiner must, among other things, provide the Society with their opinion on whether a law practice has complied with the Act and regulations relating to the practice's trust account(s) and records.

Failure by a law practice to properly maintain the records and accounts in the required manner may expose client funds to loss.

It is therefore reasonable to expect that an examiner will provide the Society with the written report on or before 31 October and neither the law practice or the examiner will cause delay in the conduct of the examination, or in the submission of the examination report beyond 31 October.

In the event an examiner is unable to submit the examination report to the Society on or before 31 October, the examiner will formally notify the Society of this no later than 31 October and a Law Practice Compliance Investigator will contact the practitioner.

Final External Examination Reporting Requirements

If a law practice ceases to be authorised to receive trust money; or ceases to engage in legal practice in this jurisdiction, the law practice must appoint an external examiner to examine the practice trust records in respect of the period since an external examination was last conducted; and in respect of each period thereafter, comprising a completed period of 12 months or any remaining partly completed period, during which the law practice continued to hold trust money.

The law practice must lodge such a report (the final report) and the relevant Statement Regarding the Receipt of Holding Trust Money (Statement AB) with the Society within 60 days after the end of the period to which the examination relates.

In the event that an examiner is unable to provide the law practice with a copy of the examination report or provide same directly to the Society within the relevant 60-day period, the examiner will formally notify the Society of this no later than the end of the 60-day period and a Law Practice Compliance Investigator will contact the practitioner.

Frequently Asked Questions

Q: I need to have my records externally examined but have not provided my Statement AB to the examiner by the due date of 31 August. How will this impact me?

A: The examiner may have reported this to the Society; however, you should contact the Society without delay on 08 8229 0229 to discuss with the assigned Law Practice Compliance Investigator. Failure to provide the completed Statement and all required information to the external examiner by 31 August is a contravention of regulation 48. It is important the examination is not delayed as doing so may lead to a contravention of clause 34(1) of Schedule 2 of the Act.

It is important that the Law Practice Compliance Investigator is made aware of the reasons why this requirement has not been met. Failing to provide your completed Statement to the examiner by the due date is often a potential red flag for other issues. The Investigator may request the immediate provision of trust records for examination, and may, if deemed necessary, commence a special investigation. Early contact should be made with the Society.

Q: My records are not up to date, and I have been putting off contacting my examiner. Will I be in trouble?

A: As above. Please contact the Society immediately on 08 8229 0229 to prevent any further escalation or contraventions and obtain all necessary assistance.

Q: I have not received a copy of my external examination report, and it is nearly 31 October. What should I do?

A: Please contact a Law Practice Compliance Investigator at the Society without delay to discuss 08 8229 0229.

Q: Is the law practice required to complete the Society's Audit Checklist?

A: No, this is not a mandatory requirement. The Checklist serves as a self-audit tool. It may assist practitioners and examiners but will not be reviewed by the Society.

Q: I have opened a trust account in the relevant period but have not yet commenced trading. Do I have to complete the Statement?

A: Yes. As you have opened a trust bank account you must complete the required Statement A+ to demonstrate you have not received trust money.

Contact

Please contact the Society on 08 8229 0229 to discuss any concerns or issues as soon as possible.

Helpful Information (not exhaustive)

1. **Trust Money** is defined in clause 1 schedule 2 of the *Legal Practitioners Act* 1981 (the Act). Trust money is money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice to which the practice is not wholly entitled, and includes—
   a) money received by the practice on account of legal costs in advance of providing the services (other than money paid to the practice as a retainer); 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 the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person,

   but does not include money received by a practitioner in the course of mortgage financing.

2. A general trust account is an ADI account in the name of the law practice that is identified in the name of the account as a law practice trust account (e.g., XYZ Solicitors Law Practice Trust Account) and is used by the law practice to hold trust money for one or more persons or entities.

   General trust accounts opened with an ADI prior to 1 July 2014 are not required to include the words "law practice trust account" in the account name.

   Pursuant to clause 12 schedule 2 of the Act, trust money must be deposited to a general trust account as soon as practicable after it is received unless:
   a) the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in a general trust account; or
   b) the money is controlled money; or
   c) the money is transit money; or
   d) the money is the subject of a specific power.

   The trading account of the law practice is <u>not</u> the general trust account – the trading account means the office bank account, office credit card, and can include any personal account used for the affairs of the law practice.

3. **Controlled Money** is defined in clause 1 of Schedule 2 of the Act as, "money received or held by a law practice in respect of which the practice has a written direction to deposit the money in an account (other than a general trust account) over which the practice has or will have exclusive control". Controlled money is deposited to a controlled money account and is not deposited to a general trust account. A controlled money account is kept for the benefit of one person or one matter only. Money held on behalf of different persons in respect of different matters cannot be kept together in one controlled money account.

4. **Trust money subject to a Specific Power excluding power money pursuant to an ELNO (Electronic Lodgment Network Operators) Settlement Scheme** - If a law practice or an associate of the law practice is given a power or authority to deal with trust money for and on behalf of a person (other than in a private and personal capacity) this is trust money subject to a specific power.

   For example, a client of the law practice purchasing a property is to be admitted to hospital for an operation and gives an associate of the law practice authority to operate the client's personal bank account for the purpose of withdrawing money from the account to settle the purchase of the property. The money in the clients' personal bank account is entrusted to the associate of the law practice in the course of, or in connection with, the provision of legal services by the law practice and is therefore trust money subject to a specific power. Another example is where a law practice or an associate is an executor of a Will following Probate and is not acting in a personal and private capacity.

5. **ELNO SOURCE ACCOUNT** - Money subject to a **specific power**. In conveyancing matters, if the law practice does not have a trust account and instead uses the ELNO Source Trust Account for conveyancing matters, it is our interpretation the funds are 'power money' as defined in clause 1 of Schedule 2 of the Act and therefore regulation 43 applies. The ELNO Source Trust Account is not the ENLO Settlement Account. If a law practice does not maintain a law practice general trust bank account and only operates using the ELNO Source Trust Account, an external examination of the power money

records is not required.

6. Money subject to a **Written Direction**. If at the time a law practice receives trust money (other than in cash) and it also receives a written direction by a person legally entitled to provide it to deal with the money otherwise than by depositing it into the general trust account, the law practice is obliged to follow the person's instructions. Whilst "written direction money" is not defined, it is trust money that is received or held by a law practice, in which the law practice has a written direction to deal with the money otherwise than by depositing it in a general trust account (other than controlled money).

7. **Investment of trust money**. An investment account is an account established by the law practice on behalf of a client for the purpose of earning interest – e.g., a term deposit account, the details of which are recorded in a register of investments, pursuant to regulation 42.

8. **Transit money** is defined in clause 1 schedule 2 of the Act as "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". For example, a cheque payable to Land Services received with instructions to deliver the cheque to the Land Services is transit money. The law practice is required to keep a record of the receipt of the cheque and the delivery of it to Land Services and the instructions from the client to deal with the cheque in that manner.