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## Key Dates

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| <b>30 June</b>     | <b>End of financial year.</b>                                                                                                                                                                                                                           |
| <b>31 August</b>   | <b>Date on which law practice must provide the examiner with a completed Statement AB - Statement Regarding the Receipt or Holding of Trust Money, including mandatory reports.</b>                                                                     |
| <b>1 September</b> | <b>Date on which examiner should lodge a notification to the Society of non-receipt of the completed Statement AB.</b>                                                                                                                                  |
| <b>31 October</b>  | <b>Date on which examiner should provide completed external examination report to Society; OR</b><br><br><b>Latest date on which the examiner should lodge a notification to the Society of failure to submit the examination report by 31 October.</b> |

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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 to either 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.

There are now 3 Statements for the law practice to choose from. Only one Statement relating to the relevant period should be completed.

**Statement A** Law practice has not maintained a general trust bank account in the relevant period; and has not 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 has maintained a general trust bank account in the relevant period but has not received or held any trust money in the account; and has not 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 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 has maintained a general trust bank account in the relevant period and may have 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, a formal notification should be made to the Society using our online notification. See our website **FORMS - NOTIFICATION - FAILED TO RECEIVE Statement Regarding the Receipt or Holding of Trust Money**.

## **External Examiner Requirements**

### **Examiner Reporting 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.

If an examiner is unable to submit the examination report to the Society on or before 31 October, the examiner should complete a formal notification of same no later than 31 October. See our website **FORMS - NOTIFICATION - Examiner unable to meet report submission deadline of 31 October**.

### **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's 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 or Holding Trust Money (Statement AB) with the Society within 60 days after the end of the period to which the examination relates.

If an examiner is unable to provide the law practice with a copy of the examination report or provide same directly to the Society on or before the 60-day period has expired, the examiner should provide the Society with written notification of same no later than the end of the 60-day period by email to [trustenquiry@awsocietysa.com.au](mailto:trustenquiry@awsocietysa.com.au).

## Frequently Asked Questions

**Q: I have not received the completed Statement AB from the law practice by 31 August.**

A: It is important the examination is not delayed. Please lodge the formal notification report - *FAILED TO RECEIVE Statement Regarding the Receipt or Holding of Trust Money*. A Law Practice Compliance Investigator will contact the law practice and advise you further.

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**Q: I have received the completed Statement AB from the law practice but have been unable to contact the practitioner to organise the external examination/have not received additional requested documents. I may not be able to meet the 31 October deadline.**

A: It is important the examination is not delayed. Law practice failure to engage/provide is a potential red flag. Please lodge the formal report - *Notification - Examiner unable to meet report submission deadline of 31 October*. A Law Practice Compliance Investigator will contact the practitioner and advise you further.

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**Q: I have received no documents at all and cannot contact the law practice.**

A: Unless the Society has advised you that a request has been made by the law practice to have you removed as the appointed external examiner, you are deemed to be the appointed examiner. Law practice failure to engage/provide is a potential red flag. Please contact a Law Practice Compliance Investigator at the Society without delay to discuss 08 8229 0229.

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**Q: I have received everything I need from the law practice but cannot meet the 31 October deadline due to other work pressure/audit firm constraints.**

A: It is important the examination report submission is not delayed. Please lodge the formal report - *Notification- Examiner unable to meet report submission deadline of 31 October*. A Law Practice Compliance Investigator will review your submission and advise you further.

Please note that 'extensions' to submit examination reports beyond 31 October cannot be granted as there is no such provision in the Act or regulations. Examiners should instead complete the formal notification report for consideration and comment by the assigned Law Practice Compliance Investigator.

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**Q: What happens if the law practice will not respond to the request of the examiner or the Society?**

A: Pursuant to clause 33(3) of Schedule 2 of the Act, an employee or agent of the Society may be a designated person. Each Law Practice Compliance Investigator is a designated person by appointment. The Society's own designated persons may examine a law practice's trust records if the Society is not satisfied that the practice has had its trust records externally examined as required by the Act; or is not satisfied that an external examination of the practice's trust records has been carried out in accordance with the regulations.

It is important to ensure the Society can commence such an examination without delay, and certainly no later than 31 October in each year. Your assistance in notifying the Society of any engagement/provision issues as early as possible is appreciated.

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## Contact

Please contact the Society on 08 8229 0229 to discuss any concerns or issues, or email [trustinquiry@lawsociety.sa.sa.au](mailto:trustinquiry@lawsociety.sa.sa.au)

### **Receipts - Regulation 20 Legal Practitioners Regulations 2014**

- Receipts must be made out as soon as practicable after receiving the funds or, in the case of funds received by direct deposit, as soon as practicable after receiving notice or accessing confirmation of the deposit in written or electronic form.
- There is no requirement for the receipt to be made out within 3 or 5 business days. However, for receipts written manually, they must be recorded in the cash books and ledgers within 5 business days, counting from and including the date they were written.
- Receipts must record the date the receipt was made out and, if different, the date of receipt of the money. Receipts must be consecutively numbered and issued in consecutive sequence. If receipts are recorded in the cash books out of consecutive sequence this usually signifies that receipts have been incorrectly backdated to the date of deposit in contravention of the regulation.
- The receipt is not required to be signed but it is required to include the name of the person who made out the receipt. Some computerised systems are incorrectly set up so that the name of the law practice is recorded as the person or the words 'Administrator,' which is insufficient to comply with the requirement.

### **Deposits - Regulation 21 Legal Practitioners Regulations 2014**

- Most computerised systems can generate a compliant bank deposit slip once the funds have been receipted into the system. The computer-generated deposit slip should be produced to the bank and a copy retained as part of the trust records. This is also vital for successful reconciliation.
- Manual system users should maintain a deposit book that allows a compliant duplicate record to be kept. The counterfoil style deposit book is generally unreliable.
- The details to be recorded in respect of cheques deposited include the name and branch (or BSB number) of the ADI on which the cheque is drawn. Often this will be recorded as, for example, NAB, Adelaide. This information is not sufficient. In these circumstances our advice is to record the BSB number in place of the branch address.

### **Payment By Trust Cheque - Regulation 24 Legal Practitioners Regulations 2014**

- Written records that must be maintained are usually the cheque butts or cheque remittance advice. The written record must include all information as listed under regulation 24(8). The information often omitted is the name of the person or persons effecting, directing or authorising the payment (not required for sole practitioners). Cheque requisitions are useful (and recommended) to ensure all information is captured, however they are not a requirement.

### **Payment by Electronic Funds Transfers - Regulation 25 Legal Practitioners Regulations 2014**

- Electronic funds transfers include the following:
  - Internet banking transfers (including trust to office transfers)
  - Electronic Lodgment Network Operators - ELNO's (e.g., PEXA and Sympli)
  - Revenue SA payments
  - Withdrawals on authority for bank cheques
  - BPAY and PayID

- Every payment made electronically must be supported by a written record and written confirmation that the payment has been made. For computerised systems, the written record is often a report generated from the computer system once the information has been entered. The written record must include all information as listed under regulation 25(7). As with cheque payments, the information most often omitted is the name of the person or persons effecting, directing or authorising the payment, hence payment requisitions are useful in ensuring all information is captured.
- The written confirmation of payment for each payment type should be as follows:
  - **Internet banking transfers** (includes trust to office transfers and BPAY) - the official bank payment receipt/confirmation showing the account to which the funds were paid.
  - **ELNO payments (e.g., PEXA and Sympli)** - the PEXA Settlement Completion Record and Trust Authorisation Record generated from the ELNO workspace, which provides details of the date and time and the person/s who authorised the payment as well as the destination of the funds.
  - **Revenue SA payments** - the self-determination report generated from the Revenue SA system.
  - **Withdrawals for bank cheques** - a copy of the instruction given to the bank and preferably a copy of the bank cheque.

#### **Trust Receipts Cash Book - Regulation 27 Legal Practitioners Regulations 2014**

- Most computerised systems can produce a compliant trust account receipts cash book, however there are a couple of common issues:
  - If receipt numbers appear out of consecutive sequence, this usually signifies that receipts have been incorrectly backdated to the date of deposit - see above for receipts.
  - The date and amount of each deposit in the general trust account is sometimes not properly recorded. This relates to deposits of cash and/or cheques made by the law practice. For this information to appear in the cash book the computer system must have the facility to generate a compliant deposit slip which should be generated and produced to the bank at the time of the deposit - see above for deposits.
  - Manual cash books often omit the recording of the two dates as per the receipt (if applicable) as well as the date and amount of each deposit of cheques and/or cash made by the law practice.

#### **Trust Payments Cash Book - Regulation 28 Legal Practitioners Regulations 2014**

- Most computerised systems can produce a compliant trust account payments cash book, however manual cash books often omit the payee bank details when the payment has been made electronically. BPAY payments must record the biller code and customer reference in place of the BSB and account number. Electronic payments such as ELNO, Revenue SA should record the BSB and Account number of the relevant account to which funds are paid to. Such information is available on request from the ELNO and Revenue SA to ensure ongoing compliance.

#### **Trust Ledgers - Regulation 29 Legal Practitioners Regulations 2014**

- Most computerised systems can produce a compliant trust ledger, however manually maintained trust ledgers often omit the payee bank details when the payment has been made electronically. BPAY payments must record the biller code and customer reference in place of the BSB and account number. Electronic payments such as ELNO, Revenue SA should record the BSB and Account number of the relevant account to which funds are paid to. Such information is available on request from the ELNO and Revenue SA to ensure ongoing compliance.
- Dormant ledger balances are a constant issue with the concern being the law practice is failing to properly finalise the matter and account to the client. This may result in loss of contact and consequently a financial loss to the client. This may be considered a breach of conduct rule 4.1.3.

- Trust money may only remain in trust if a legal service is being provided and the practice is not wholly entitled to the funds. If a matter has concluded or is not proceeding, the funds are not technically trust money and should be disbursed. At this point, the dormant balance may be considered a breach of clause 21 of schedule 2 as a result of intermixing non-trust money with trust money. This may also be the case if the funds were meant for payment of legal costs.
- Beware also that, in some instances, the actual dormancy date may be masked by a 'migration to new system' date which appears as the last trust transaction date.

#### **Journal Transfers - Regulation 30 Legal Practitioners Regulations 2014**

- Evidence of the journal transfer being authorised by an authorised trust account signatory in addition to the client is often omitted.
- Journal transfers should not be used to rectify receipting errors, due to the risk of disclosing confidential information relating to the client matter to/from which the funds are transferred. Users are advised to reverse incorrect receipts and re-enter as appropriate.

#### **Reconciliations - Regulation 30 Legal Practitioners Regulations 2014**

- The reconciliation statement, along with the trial balance report (list of trust ledgers) must be printed in hard copy (regulation 15). It is not acceptable to only store these electronically.
- The reconciliation statement and the trial balance report (list of trust ledgers) must show the date of preparation was within the required 15 business days.
- Adjustments to the reconciliation, other than unrepresented cheques, should only relate to the month being reconciled. Any adjustments relating to previous months could be masking some serious issues within the trust records.

#### **Trust ledger in the name of law practice or legal practitioner - Regulation 32 Legal Practitioners Regulations 2014**

- Law practices that receive legal costs from the Legal Services Commission (LSC) into their trust account (and who have received a Grant of Permission to do so from the Society) are permitted to hold a trust ledger in the name of the law practice for the receipting of those funds. Any trust money (i.e., for payment to a 3<sup>rd</sup> party rather than for legal costs) must be receipted to the relevant individual client trust ledger
- Likewise, if a law practice receives unidentified funds into the trust account, these may remain unreconciled in the trust reconciliation statement for the month received, before being receipted to the appropriate trust ledger or, if still unidentified, be receipted to individual trust ledgers named, for example "unidentified funds received X Date", "unidentified funds received Y Date." Funds must not be pooled collectively. It is not appropriate for the trust ledger to be in the name of the law practice.
- Law practices must not operate sundry/admin/general trust ledgers.

#### **Investments and Controlled Money Accounts**

- An investment is an account, established by the law practice such as a term deposit, purely for the purpose of earning interest and which will generally remain untouched until maturity.
- A controlled money account (CMA) is an account established by the law practice and is effectively transactional in nature.
- It is important to ensure investments and CMA's are properly differentiated and recorded in computerised systems.

#### **Authority to Withdraw**

#### **Withdrawal of legal costs - Regulation 45 Legal Practitioners Regulations 2014**

- If funds are entrusted for the purpose of legal costs and a bill is sent to the client, there are 2 options available:

- o obtain client authority to withdraw the trust money in payment of the bill; or
  - o wait 7 days after the bill has been sent before withdrawing the trust money (authority not required)
- If funds are entrusted for a different purpose, e.g., Counsel's fees, settlement monies, or money belonging to a deceased estate, client authority must be obtained before appropriation of funds from trust in payment of the **bill**.

#### **Withdrawal for Disbursements**

- Unless funds are entrusted for a specific purpose, e.g., Counsel fees, client authority must be obtained prior to withdrawing trust money for payment to a third party.

#### **Reimbursement from Trust - Regulation 45**

- If a law practice has paid an amount on behalf of a client, they can obtain reimbursement from money held in trust for that purpose, if the funds were entrusted for that purpose, and if:
  - o before effecting the withdrawal for reimbursement, the law practice has sent a request for payment or a written notice of withdrawal (this can be in the form of a disbursement bill). There is no requirement to wait 7 days.
- Money is taken to have been paid by the law practice when the relevant account of the practice has been debited.

#### **Regulation 56 Exemptions**

- Please review our current regulation 56 exemptions for any approved changes to regulatory requirements. You can find these details in our [Trust Accounting Management Online Resource](#) under Practice Matters.