



THE LAW SOCIETY  
OF NEW SOUTH WALES

# **Accounting and Controls in law practices**

## **TRUST MONEY & TRUST RECORDS**

**Accounting and Support Staff**

Trust Accounts Department  
Law Society of New South Wales  
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## Chapter One

### 1. INTRODUCTION

For accounting and support staff working for legal practitioners in sole practice, partnerships and incorporated legal practices, the necessity to deal with trust money and manage the accounting relating to trust money is an integral part of legal practice.

These Seminar Notes have been produced to make that process more efficient and to help legal practitioners and their accounting staff to reduce their exposure to problems relating to the keeping of accounting records for trust money.

These Seminar Notes:

- Outline the basic records that must be maintained when handling various categories of trust money, specifically;
  - money that must be deposited to a general trust account;
  - written direction money;
  - controlled money;
  - transit money;
  - money subject of a power; and
  - in limited situations the investment of trust money which is not involved in financial services or investments.
- Present an explanation of records required to be kept.
- Detail the information required to be recorded in each of these records.
- Explain how each record interacts within the legal accounting system.
- Offer suggestions which, if adopted, should minimise risk and reduce the cost of compliance.
- Reproduce relevant sections of Part 4.2 of the *Legal Profession Uniform Law (NSW)* relating to trust money and relevant sections of Part 4.2 of the *Legal Profession Uniform General Rules 2015* relating to trust records including amendments in force as at 1 July 2015
- Provide worked examples of trust records commonly used in law practice sole practice – Chapter 20.

## 1.1 Importance of Record Keeping

It is vital that a law practice's trust records provide a complete historical record of all trust money transactions undertaken. The legislation in force in New South Wales sets out the requirements as to the scope and form of such records.

The creation and maintenance of adequate and effective accounting systems for funds entrusted to a law practice improves the efficiency of legal practice and reduces the risks associated with the handling of funds entrusted to a law practice.

## 1.2 The Legislative Regime

The *Legal Profession Uniform Law Application Act 2014 (NSW)* applies the text of the Legal Profession Uniform Law as set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014 (VIC)* as the scheme to regulate the legal profession in New South Wales. The scheme as it applies in New South Wales is referred to as the *Legal Profession Uniform Law (NSW)*. The purpose is to establish a uniform legal services market in New South Wales and Victoria.

In New South Wales, the uniform legislative regime consists of the following:

- *Legal Profession Uniform Law (NSW)* (referred to in these Seminar Notes as the LPUL);
- *Legal Profession Uniform Law Application Regulation 2015 (NSW)* (referred to in these Seminar Notes as the Regulations);
- *Legal Profession Uniform Law Application Act 2014 (NSW)* (referred to in these Seminar Notes as the Application Act);
- *Legal Profession Uniform Law Application Amendment Act 2015 (NSW)* (referred to in these Seminar Notes as the Application Amendment Act);
- *Legal Profession Uniform Rules* which consist of the following (collectively referred to as the Uniform Rules):
  - *Legal Profession Uniform General Rules 2015* (referred to in these Seminar Notes as the LPUGR);
  - *Legal Profession Uniform Admission Rules 2015*;
  - *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015*;
  - *Legal Profession Uniform Australian Solicitors' Conduct Rules 2015* (referred to in these Seminar Notes as the ASCR); and
  - *Legal Profession Uniform Legal Practice (Solicitors) Rules 2015* (referred to in these Seminar Notes as the Solicitors Rules).

The regime commenced on 1 July 2015. The introduction of the above instruments made changes to the previous legislative regime but a law practice's compliance obligations with respect to trust accounts and trust money remain largely unchanged.

The provisions relating to trust accounts are contained in the following sections:

- Part 4.2 of the LPUL – Sections 127 to 168 regarding trust money and trust accounts;

- Part 4.2 of the LPUGR – Rules 33 to 69 regarding trust money and trust accounts;
- Part 4.6 of the LPUGR – Rules 93 to 95 relating to the maintenance of a File Register, Register of Safe Custody Documents, and Register of Financial Interests. These registers were previously required to be maintained under the New South Wales Professional Conduct and Practice Rules (Solicitors' Rules) 2013;
- Part 5 Division 1 of the Application Act – Sections 46 and 47 regarding statutory deposits;
- Part 3 of the Regulations – Rules 9 to 12 regarding the calculation of the amount to be retained on statutory deposit. The calculation of the amount to be held has not changed. The calculator is still current although references to Approved ADI should read Authorised ADI. This will be updated later in the year.
- Part 2 Division 2 of the Application Act – Section 14 regarding unclaimed money and Section 11 regarding the designation of the Law Society Council as the local regulatory authority (except in certain situations);
- Rule 6 of the Solicitors Rules regarding transfer of a practitioner's practice which was previously Rule 53 of the New South Wales Professional Conduct and Practice Rules (Solicitors' Rules) 2013; and
- Rule 12.3 of the ASCR regarding borrowing from a client which was previously Rule 12.3 of the New South Wales Professional Conduct and Practice Rules (Solicitors' Rules) 2013.

All sections referred to in these Seminar Notes are sections of the LPUL and all rules referred to in these Seminar Notes are rules of the LPUGR unless otherwise stated.

### **1.3 Further Information**

If you need help or have any enquiries in regard to trust money or the maintenance of trust records, please contact the Trust Accounts Department of the Law Society of New South Wales on (02) 9926 0337. An officer of the Department will be happy to assist you with your enquiries.

The Law Society of New South Wales' website at [www.lawsociety.com.au](http://www.lawsociety.com.au) makes available a list of examined software and an electronic calculator to assist law practices in respect of statutory deposit calculations.





## Chapter Two

### 2. TRUST MONEY

#### 2.1 Definition of Trust Money

Section 129(1) defines **trust money** as:

"money entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice, and includes—

- (a) money received by the law practice on account of legal costs in advance of providing the services; and
- (b) controlled money received by the law practice; and
- (c) transit money received by the law practice; and
- (d) money received by the law practice, that is the subject of a power exercisable by the law practice or an associate of the law practice, to deal with the money for or on behalf of another person."

Section 153(1) provides that a law practice receives money when:

- (a) the law practice obtains possession or control of it directly; or
- (b) the law practice obtains possession or control of it indirectly as a result of its delivery to an associate of the law practice; or
- (c) the law practice, or an associate of the law practice (otherwise than in a private and personal capacity), is given a power or authority to deal with the money for or on behalf of another person.

Further, Section 153(2) provides that a "law practice or associate is taken to have received money if the money is available to the law 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".

See further below regarding the definition of "power".

The concept of "power exercisable by the law practice or an associate of the law practice, to deal with the money for or on behalf of another person" is elaborated in Section 128(3) to mean a power given to the practice or associate exercisable by:

- (a) the practice alone; or
- (b) an associate of the practice alone (otherwise than in a private and personal capacity); or
- (c) the practice or an associate of the practice jointly or severally, or jointly and severally, with either or both of the following—
  - (i) one or more associates of the practice;
  - (ii) the person, or one or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

Section 129(2) specifically excludes as trust money:

- (a) money received by a law practice for legal services that have been provided and in respect of which a bill has been given to the client;
- (b) money entrusted to or held by a law practice for or in connection with—
  - (i) a managed investment scheme; or
  - (ii) mortgage financing; undertaken by the law practice;
- (c) money received by a law practice for or in connection with a financial service it provides in circumstances where the law practice or an associate of the law practice—
  - (i) is required to hold an Australian financial services licence covering the provision of the service; or
  - (ii) provides the financial service as a representative of another person who carries on a financial services business.

However, pursuant to Section 129(2)(d) money received by a law practice for investment purposes is treated as trust money if:

- (i) the law practice received the money in the ordinary course of legal practice and primarily in connection with the provision of legal services at the direction of the client; and
- (ii) 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.

It should be noted that Section 134 requires that “if a law practice receives or holds money that is non-trust money (other than money for the payment of legal costs due to the law practice), it must give the person who provided the money written notice that:

- (a) the money will not be treated as trust money; and
- (b) the money is not subject to the provisions relating to trust money in this Law or the Uniform Rules; and
- (c) a claim against the fidelity fund of this jurisdiction cannot be made in respect of the money.

## 2.2 What is Trust Money?

The definition of trust money has three core elements;

- i) **money**;
- ii) **entrusted to** a law practice;
- iii) in the **course** of or in **connection** with the provision of legal services by a law practice.

If the “money” has all the above elements, then it is “trust money” to which Section 129(1) applies. The term “entrusted” is not defined in the LPUL. However, the use of the word “entrusted” in the definition reinforces the general belief that trust money is not merely given or delivered to a law practice; it is placed in its “care and protection” to be held for or on behalf of another person.

The terms used are defined at Section 6 as:

- law practice means (a) a sole practitioner; or  
(b) a law firm; or  
(c) a community legal service; or  
(d) an incorporated legal practice; or  
(e) an unincorporated legal practice.
- associate of a law practice means a person who is one or more of the following:
  - (a) a principal of the law practice;
  - (b) a partner, director, officer, employee or agent of the law practice;
  - (c) an Australian legal practitioner who is a consultant to the law practice.
- legal services means work done, or business transacted, in the ordinary course of legal practice.
- power in relation to trust money, includes authority.
- Section 47(2) requires that an Australian practising certificate granted in this jurisdiction is subject to a condition, as determined by the designated local regulatory authority, that the holder is authorised or not authorised to receive trust money (see paragraph 2.3 of these Seminar Notes for further information).

Section 137 directs that a law practice must deposit trust money (other than cash) into the law practice’s general trust account as soon as practicable after receiving it **unless**:

- the law practice has a **written direction** by a person legally entitled to provide it to deal with the money otherwise than by depositing it in the general trust account and that is not controlled money: Section 137(a) and Rule 34. This is defined in Rule 34 as “**written direction money**”.

Section 143(1) provides that written direction money received in the form of cash must be deposited in the general trust account as soon as practicable after receiving it before it is otherwise dealt with in accordance with the direction (or

instructions) relating to the money, regardless of anything to the contrary in the direction (or instructions).

- the money is **transit money** received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the law practice (Section 128) in which case the law practice must pay or deliver the money:
  - (a) within the period specified in the instructions (if any); or
  - (b) subject to paragraph (a), as soon as practicable after it is received: Sections 140(1) and 137(b).

Section 143(1) provides that transit money received in the form of cash must be deposited in the general trust account as soon as practicable after receiving it before it is otherwise dealt with in accordance with the instructions relating to the money.

- the money is **controlled money** received or held by a law practice in respect of which the law practice has a written direction to deposit the money in an account (other than a general trust account) with an *authorised deposit taking institution (ADI)* over which the law practice has or will have exclusive control: Sections 128 and 137(b).

Section 143(2) provides that controlled money received in the form of cash must be deposited in a controlled money account.

- the money is the subject of a **power** given to the practice or an associate of the practice to deal with the money for or on behalf of another person which is referred to in these Seminar Notes as “**power money**”: Section 137(c). A law practice that exercises a power to deal with trust money must deal with the money only in accordance with the power relating to the money: Section 141(1).

Section 143(1) provides that money the subject of a power that is received in the form of cash must be deposited in the general trust account (or in the case of controlled money, a controlled money account) before it is otherwise dealt with in accordance with the power.

The simple rule is that all trust money received in the form of cash must be deposited to the general trust account or, if directed in writing, a controlled money account before it is otherwise dealt with in accordance with the direction or instructions relating to the money regardless of anything to the contrary in the direction or instructions.

When a law practice receives cash in a transaction valued at AUD \$10,000 or more, it is required by the *Financial Transactions Reports Act 1988 (Cth)* to report the transaction to Austrac. The law practice must contact Austrac on 1300 021 037 or by email on [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au) and enquire about how to report significant cash transactions.

Although the term General Trust Account Money is not defined in the LPUL it is used in these Seminar Notes to describe trust money that is received which must be

deposited to a general trust account at an authorised ADI in New South Wales.

ADI means an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cth)*: see definition in Section 6. **Note:** a general trust account must be held with an **authorised** ADI. That is, an ADI authorised to maintain trust accounts to hold trust money pursuant to section 149. A controlled money account must be maintained at an ADI. A list of **authorised** ADI's and ADI's can be found on the Law Society of New South Wales website at [www.lawsociety.com.au](http://www.lawsociety.com.au)

## 2.3 Authorised to Receive Trust Money

Section 150 states:

A law practice must not receive trust money unless:

- (a) a principal of the law practice holds an Australian practising certificate authorising the receipt of trust money; or
- (b) the law practice is otherwise authorised to receive trust money under the Uniform Rules.

A principal's practising certificate issued under the LPUL will be issued with a condition that allows the principal to receive trust money unless this condition is removed by the Law Society Council. A non principal practising certificate will be issued with the condition that the person is not authorised to receive trust money on their own account.

Section 153 provides that a law practice receives money when:

- (a) the law practice obtains possession or control of it directly; or
- (b) the law practice obtains possession or control of it indirectly as a result of its delivery to an associate of the law practice; or
- (c) the law practice, or an associate of the law practice (otherwise than in a private and personal capacity), is given a power or authority to deal with the money for or on behalf of another person

Further, Section 135(2) provides that trust money held by a law practice may be dealt with only by the law practice or an associate of the law practice.

An associate of a law practice is defined in Section 6 as a person who is one or more of the following:

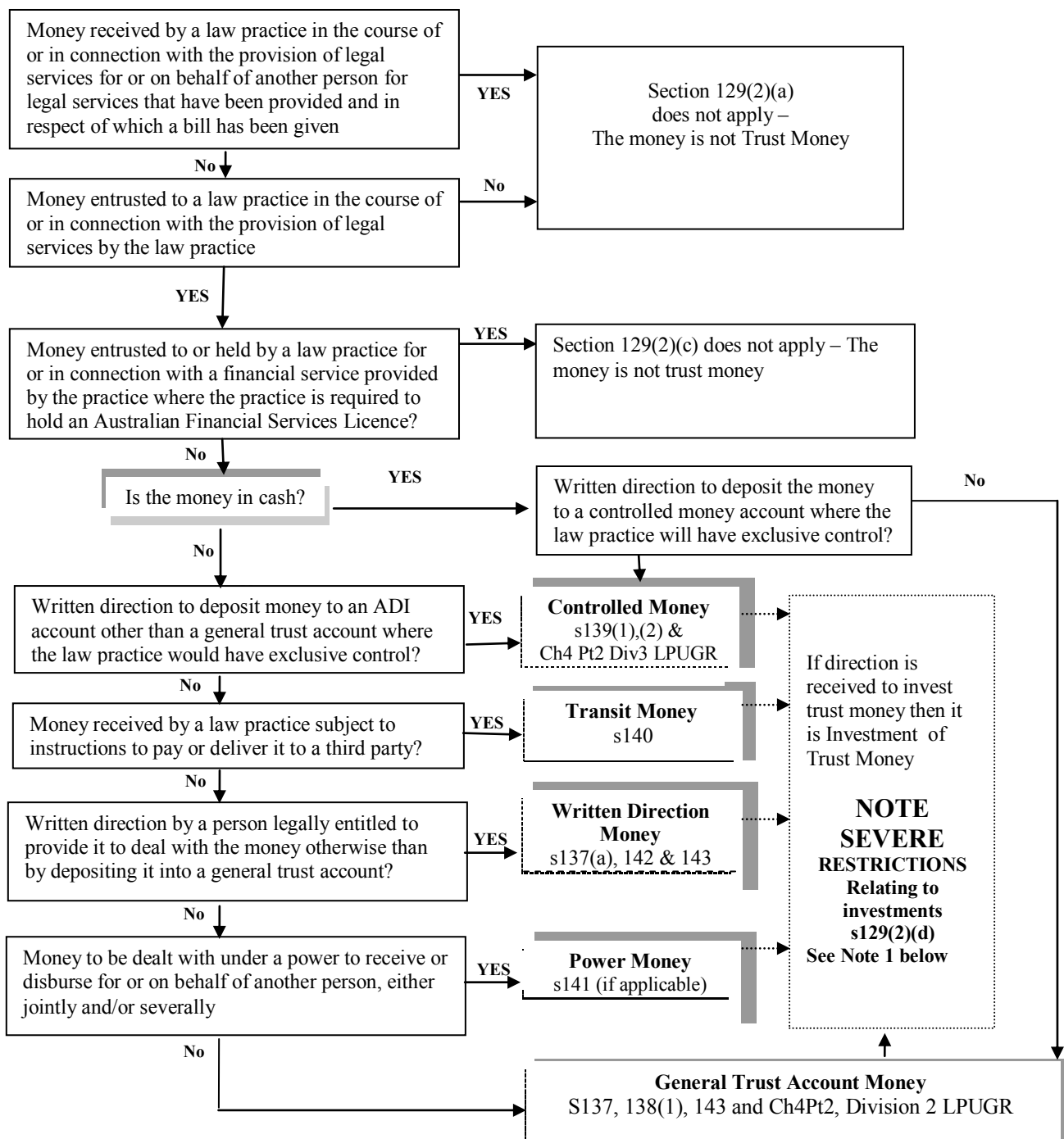
- (a) a principal of the law practice;
- (b) a partner, director, officer, employee or agent of the law practice;
- (c) an Australian legal practitioner who is a consultant to the law practice.

It is the view of the Trust Accounts Department that provided a law practice has a principal with a practising certificate authorising the receipt of trust money then the solicitor associates and non-solicitor associates may receive trust money on behalf of the law practice and account to the law practice for the trust money.

## 2.4 Trust Money Decision Chart

The Trust Money Decision Chart has been designed to assist in the identification of money received by a law practice. The steps identified need to be followed for each receipt of money into a law practice. The chart is displayed below.

**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 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



## Chapter Three

### 3 Dealing with Trust Money - Generally

The specific requirements for money that must be deposited into a general trust account, controlled money, money subject of a power, transit money, written direction money and the investment of trust money are discussed separately in these Seminar Notes. Below is a brief overview of these specific categories of trust money.

#### 3.1 Holding, Disbursing and Accounting for Trust Money

##### 3.1.1 General Trust Money

Section 138(1) provides that a law practice must:

- a.) hold trust money deposited in the law practice's general trust account **exclusively** for the person on whose behalf it is received; and
- b.) **disburse** the trust money only in accordance with a **direction given by the person**.

However, this is subject to an order of a court of competent jurisdiction or as authorised by law: Section 138(2).

Section 138(3) provides that a law practice must account for the money as required by the Uniform Rules.

##### 3.1.2 Controlled money

Section 139 provides that a law practice must:

- a.) as soon as practicable after receiving controlled money, deposit the money in the account specified in the **written direction** relating to the money (i.e. a controlled money account); and
- b.) hold controlled money deposited in a controlled money account **exclusively** for the person on whose behalf it is received; and
- c.) **disburse** the trust money only in accordance with the original written direction relating to the money or a later written direction given by or on behalf of the person on whose behalf the money was received (subject to a court order or as authorised by law: Section 139(3)); and
- d.) **account** for the controlled money as required by the Uniform Rules.

### **3.1.3 Power Money**

Section 141(1) provides that a law practice must ensure that trust money (other than cash) that is subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only in accordance with the power relating to the money.

Section 141(2) provides that the law practice must account for the money in the way specified in the Uniform Rules.

### **3.1.4 Transit Money**

Section 140 provides that a law practice must pay or deliver the money as required by the instructions relating to the money within the period (if any) specified in the instructions, or if the period is not specified, then as soon as practicable after it is received.

The law practice must record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received: Section 140(2). The record must be kept for 7 years: Section 140(3)

### **3.1.5 Written Direction Money**

Section 142 provides that a law practice that receives a written direction to deal with trust money (other than cash) in a particular way must comply with that direction within the period specified in the direction, or if the period is not specified, then as soon as practicable after it is received. The law practice must keep the written direction for 7 years after finalisation of the matter to which the direction relates.

## **3.2 Intermixing Trust Money - Section 146**

The law practice is prohibited from mixing trust money with any other money unless authorised to do so by the Law Society Council, being the designated local regulatory authority. The practice must not deposit trust money in to an account holding non-trust money. Conversely, the practice must not deposit non-trust money to an account holding trust money.

## **3.3 Withdrawing Legal Costs from Trust Money - Section 144(2)(b)**

A law practice may withdraw trust money held in the general trust account or in a controlled money account for payment to the law practice's account for legal costs owing to the practice if the relevant procedures are followed.

Legal costs are defined in section 6 as amounts that a person or a third party payer *"has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services ... including disbursements but not including interest."*



The relevant procedures are detailed in Rule 42 which prescribes four methods for withdrawing legal costs, these being:

### **3.3.1 Method 1 – Withdrawal on Issue of Bill of Costs or Money Legally Payable – Rule 42(3)**

The law practice may withdraw the trust money:

- a) if the law practice has given the person a bill relating to the money and referring to the proposed withdrawal; **and**
- b) if the person does not, at the end of the period of 7 business days after the person was given the bill, object to the amount specified in the bill; **or**
- c) if the person objects but has not referred the matter to the designated local regulatory authority - NSW Commissioner or for costs assessment, and the period of 30 days after the later of the following dates has expired:
  - i.) the date on which the person was given the bill;
  - ii.) the date on which the person received an itemised bill following a request made in accordance with section 187; **or**
- d) if the money otherwise becomes legally payable.

**Note:** The term “bill” is not defined in the LPUL or LPUGR. However, Division 5 of Part 4.3 of the LPUL prescribes the form of and the particulars to be included in the bill. Rule 73 also provides for the giving of bills.

The term “*referring to the proposed withdrawal*” is a new concept to the withdrawal of trust money for legal costs. The Trust Accounts Department suggests that the term “*referring to the proposed withdrawal*” requires the law practice to include in the footer of the bill a statement to the effect “*It is intended to withdraw the above amount from money held in your trust ledger at the expiration of 7 business days from the date of this bill unless an objection is received.*”

A bill given by a law practice must be signed by a principal of the law practice designated in the bill as the responsible principal for the bill or nominate a principal of the law practice as the responsible principal for the bill. If a principal does not sign or is not nominated as the responsible person, each principal of the law practice is taken to be responsible for the bill.

The bill issued to the client must include or be accompanied by a written statement setting out:

- a.) the avenues that are open to the client in the event of a dispute in relation to legal costs; and
- b.) any time limits that apply to the taking of any action referred to above.

### **3.3.2 Method 2 – Withdrawal with Authority – Rule 42(4)**

The law practice may withdraw the trust money (whether or not the law practice has given the person a bill relating to the money):

- a.) if the money is withdrawn in accordance with instructions that have been received by the law practice and that authorise the withdrawal; **and**
- b.) if, before effecting the withdrawal, the law practice gives or sends to the person:
  - i.) a request for payment, referring to the proposed withdrawal; **or**
  - ii.) a written notice of withdrawal.

Rule 42(7)(a) provides that where the authorisation authorises withdrawal of part only of the money, the law practice may withdraw the money to that extent only. If the law practice has given the person a bill relating to the money in accordance with Method 1 above, subrule 42(4)(b) is taken to apply to the remaining part of the amount specified in the bill.

Rule 42(7)(b) provides that if the instruction is given in writing, it must be kept as a permanent record or if not given in writing, it must be confirmed in writing either before, or not later than 5 working days after, the law practice effects the withdrawal and a copy must be kept as a permanent record.

The word “confirmed” is not defined in the LPUL or LPUGR. However, it is the Trust Accounts Department’s view that the law practice must initiate correspondence confirming the authority to disburse the money. A copy of that correspondence should be kept in the matter file.

### **3.3.3 Method 3 – Withdrawal for Reimbursement – Rule 42(5)**

The law practice may withdraw the trust money:

- a.) if the money is owed to the law practice by way of reimbursement of money already paid by the law practice on behalf of the person; **and**
- b.) if, before effecting the withdrawal, the law practice gives or sends to the person:
  - i.) a request for payment, referring to the proposed withdrawal; **or**
  - ii.) a written notice of withdrawal.

Rule 42(8) provides 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. The Trust Accounts Department’s view is that the cheque drawn to pay the disbursement must be debited to the law practice’s office bank account to confirm that the money is already paid.

### **3.3.4 Method 4 – Withdrawal for a Commercial or Government Client – Rule 42(6)**

The law practice may withdraw the trust money:

- a.) if the law practice has given the person who is a commercial or government client a bill specifying the amount payable by the person; **and**

- b.) the money is withdrawn in accordance with a costs agreement between the law practice and the person; **and**
- c.) the costs agreement complies with the legislation under which it is made and authorises the withdrawal; **and**
- d.) before effecting the withdrawal, the law practice gives or sends to the person a request for payment, referring to the proposed withdrawal.

Section 170(2) defines a commercial or government client as a client of a law practice where the client is:

- a.) a law practice; or
- b.) one of the entities referred to in Section 170(2)(b) and as defined or referred to in the Corporations Act (which have not been listed in these Seminar Notes); or
- c.) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not any such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
- d.) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the Corporations Act) if it were a company; or
- e.) a body or person incorporated in a place outside Australia; or
- f.) a person who has agreed to the payment of costs on a basis that is the result of a tender process; or
- g.) a government authority in Australia or in a foreign country; or
- h.) a person specified in, or of a class specified in, the Uniform Rules.

### **3.3.5 Costs Disclosure - Division 3 of Part 4.3**

Costs disclosure requirements are contained in Division 3 of Part 4.3 Sections 174 to 178 of the LPUL and they must be strictly complied with. If a law practice does not disclose to a client or an associated third party payer anything required by this Division, the client or associated third party payer need not pay the legal costs unless they have been assessed or any costs dispute has been determined by the NSW Commissioner, being the designated local regulatory authority in these situations: Section 178(1)(c).

Moreover, if the law practice fails to comply with the costs disclosure requirements, the costs agreement is void, the law practice cannot sue the client for costs and the failure to disclose is capable of being unsatisfactory professional conduct or professional misconduct: Section 178(1)(a) & (d).

Disclosure is not required in certain circumstances: Section 174(4). The \$750 (exclusive of GST and disbursements) threshold, under which disclosure is not required, has not been increased in the LPUL or LPUGR.

### **3.3.6 Costs Recovery - Section 129(2)**

According to Section 129(2)(a) money received by a law practice for legal services that have been provided and in respect of which a bill has been given to the client is not trust money for the purposes of the LPUL.

It follows that in relation to money held in a law practice's general trust account or controlled money account on account of legal costs for which legal services have been provided and a bill has been given, the law practice should as soon as practicable withdraw the money in accordance with Rule 42. Any delay will be mixing trust money with non-trust money and therefore a breach of Section 146.

### **3.3.7 Authority to withdraw costs from general trust account or controlled money account is essential**

Complaints concerning costs have represented a very high proportion of complaints from persons dealing with law practices. Historically, it was far more onerous for a law practice to obtain a person's "authority" prior to taking costs from a law practice's general trust account or controlled money account.

The process of taking costs from a trust account has been streamlined under the LPUL. For example, as method 2 (Chapter 3.3.2) indicates, it is possible for a law practice to obtain a person's authority to transfer costs from the general trust account or a controlled money account, at the commencement of a legal matter. If, a person's authority is stated in a costs agreement, the agreement must comply with the legislation under which it is made and that authorises the withdrawal. The practice must also send to the person a request for payment (e.g a bill), referring to the proposed withdrawal, or a written notice of withdrawal before the withdrawal is effected.

Care should be exercised to ensure that a person's authority to transfer costs from a general trust account or a controlled money account has been obtained for the transfer and for the appropriate amount.

A transfer without authority constitutes a failure to hold a person's funds in accordance with Sections 138(1) or 139(2). Consequently, such conduct is capable of being unsatisfactory professional conduct or professional misconduct under Section 298.

The form of authority to transfer is not prescribed and is not required to be in writing. However, Rule 42(7)(b) requires oral authority to be confirmed in writing either before or not later than 5 working days after the law practice effects the withdrawal (also see 3.3.2 for more information).

## **3.4 Deficiency in Trust Account**

Section 148 prohibits a law practice, an Australian legal practitioner or any other person from causing a deficiency ("debit balance") in any trust account (which includes a controlled money account kept at an ADI) or trust ledger account without reasonable excuse. The word "deficiency" is not defined in the LPUL. Under the

previous legislative regime “deficiency” was defined as including “*the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account*”. The Trust Accounts Department will continue to adopt this definition.

The Trust Accounts Department understands that some debit balances represent may administrative errors. For example, a cheque is drawn and processed for an incorrect amount, a trust cheque is drawn for office expenses or incorrect additions of the trust account ledger.

Law practices should be particularly careful in ensuring their trust records are up to date and transactions are posted to the trust ledger account as prescribed by the LPUGR. That is within 5 working days. It is imperative that errors are corrected as soon as practicable so that the records disclose prompt action was taken to rectify the error.

Section 154(1) requires a legal practitioner associate (e.g. principal, partner, employed solicitor) to give written notice to the Law Society Council, being designated local regulatory authority, when the practitioner becomes aware that there is an irregularity (e.g. “debit balance”) in any of the practice’s trust accounts or trust ledger accounts. It should be noted that authorised ADI’s are also required by Section 154(1) to report any deficiency in a trust account to the Law Society Council.

The appropriate notification is a letter/email be sent to the Chief Trust Account Investigator and Supervisor advising of the reason(s) for the irregularity and evidence of rectification.

In addition, Section 154(2) requires an Australian legal practitioner (any legal practitioner external to the law practice), to notify the Law Society Council, being the designated local regulatory authority, in writing as soon as practicable after forming the belief 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.

It should be noted that Section 466 provides that a person must comply with Section 154 despite any claim for legal professional privilege or any other duty of confidence and is not excused from compliance on the ground that compliance may tend to incriminate the person. Further, a failure of an Australian lawyer or Australian-registered foreign lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.

### **3.5 False Names in Trust Records**

Section 147(3) provides that a law practice must not knowingly receive money or record the receipt of money in the law practice’s trust records under a false name.

If a law practice is aware that a person on whose behalf trust money is received by the law practice is commonly known by more than one name, the law practice must ensure that the law practice’s trust records record all names by which the person is known. The Trust Accounts Department suggests that the person’s known aliases should at a minimum be recorded when opening or amending the client details in the relevant trust account ledger or record for trust money.

### 3.6 Unclaimed Money

It is not uncommon for a law practice to have balances in a general trust account and controlled money account relating to people who cannot be located. This may result from clients moving from their original place of residence and not advising the practice. Sometimes, considerable time is required to locate the individuals concerned. It is important to minimise the amount of time taken in this follow-up, and to reinforce the importance of clearing all amounts from the trust account as soon as possible.

The law practice should document and enforce file closure procedures so that a file is not closed until all balances have been cleared and there are no unpresented cheques relating to the matter in the trust or office bank reconciliation statement.

When the law practice considers that money in a trust account may represent “unclaimed moneys”, certain procedures must be followed by the law practice.

Section 167 provides that unclaimed money is to be dealt with in accordance with jurisdictional legislation. Section 14 of the Application Act provides that:

- (1) This section provides for how unclaimed money in a trust account is to be dealt with, as contemplated by section 167 of the *Legal Profession Uniform Law (NSW)*.
- (2) If a law practice holding money in a trust account cannot find the person on whose behalf the money is held or a person authorised to receive it, the practice may:
  - (a) pay the money to the Treasurer for credit to the Consolidated Fund, and
  - (b) provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held by the practice.
- (3) If a law practice pays money to the Treasurer under subsection (2), the practice is relieved from any further liability in relation to the money.
- (4) The Treasurer must pay money deposited under this section to a person who satisfies the Treasurer as to his or her entitlement to the money.

Sub-sections (5), (6) and (7) are not included in these Seminar Notes.

This Section does not require the law practice to pay the money to the Treasurer. Section 14 of the Application Act states that the practice “may” pay the money to the Treasurer. In other words, there is no obligation on the practice to do so. However, it is recommended that old balances be reviewed and, if applicable, removed from the trust ledger account or record.

Unclaimed funds may be paid to the Treasury using the procedures noted on the Office of State Revenue website: <http://www.osr.nsw.gov.au/ucm/lodge>

### **3.6.1 Money in Dispute**

The law practice that has money under its control as trustee may pay it into court pursuant to Section 95 of the Trustee Act 1925 (NSW). Further information can be found in Part 55 of the Uniform Civil Procedure Rules 2005.



## Chapter Four

### 4. Accounting Overview

The following is a review of the basic accounting records to be maintained by a law practice in accordance with the LPUL and the LPUGR. The table headed “Overview of Trust Records and Office Account Records” below details all the records that the LPUGR require to be maintained for trust money. The heading “Office” has been included to assist bookkeepers commencing an office accounting system. A law practice’s office accounting system should be discussed with an external accountant as soon as possible after deciding to operate a law practice.

To assist practitioners in understanding the maintenance of trust records, a worked example in the name of Philpott & Associates has been included at Chapter 20. Examples of several transactions included in the Seminar Notes are shown in the worked example.

#### 4.1 Overview of Trust Records and Office Account Records

The Trust Records to be kept by a law practice for the various types of Trust Money are:

Overview of Trust Records and Office Account Records				
Type of Money	Source Records	Book of Prime Entry	Book of Summary	Reports
General Trust Money	Bank (AADI) Deposits Receipts Cheque Butts EFT Payment Advices Invoices Bills of Costs Bank (AADI) Statements Journal Authorisations Dockets etc.	Trust Account Receipts Cash Book Trust Account Payments Cash Book Trust Transfer Journal	Trust Ledger Account	Trust Trial Balance Reconciliation Statement Trust Account Statement
Controlled Money	Correspondence Bill of Costs Copy of cheques Written direction Controlled money receipts Bank (ADI) statements Bank (ADI) deposits Initiating record for withdrawal	Controlled Money Register	Controlled Money Movement Record	Controlled Money Accounts Listing Trust Account Statement
Transit Money	Transit money record may include: Copies of cheques Settlement sheet Direction for other party.	Nil	Nil	Nil
Written Direction	Written direction	Nil	Nil	Nil



Overview of Trust Records and Office Account Records				
Type of Money	Source Records	Book of Prime Entry	Book of Summary	Reports
Money				
Power Money	Power of attorney/Probate or other authority Bank statements Cheque butts EFT Payment Advices EFT Receipts Bank Deposits All supporting documents in relation to the dealings	Power Money Record (Record of all dealings)	Nil	Trust Account Statement
Investment of Trust Money	Written direction evidencing the investment All supporting documents in relation to the investment	Investment Record	Nil	Trust Account Statement

The Records normally maintained by a law practice for the recording of office/general account transactions are:

Office/ General Money	Source Records	Book of Prime Entry	Book of Summary	Reports
Office	Receipt Duplicates ADI Deposits Cheque Butts EFT Payment Advices Journal Input Sheets Invoices (Bill) Petty Cash Dockets Photocopy Register Time Costing Register Fax Register Wages Records ADI Statements	Receipts Cash Book Payments Cash Book Petty Cash Book General Journal Costs Journal	* Ledgers * General * Subsidiary * Accounts Receivable * Disbursements	Trial Balance - General - Subsidiary Bank Reconciliation Management Reports



## Chapter Five

### 5. Trust Records

#### 5.1 Keeping of Trust Records – Section 147

Section 147 provides that a law practice must keep in permanent form trust records in relation to trust money received by the law practice. The law practice must keep the trust records:

- a) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and
- b) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and
- c) for a period of 7 years after the last transaction entry in the trust record, or the finalisation of the matter to which the trust record relates, whichever is the later; and
- d) in accordance with the Uniform Rules: Section 147(2). This requires the records to be:
  - i) kept up to date, with transactions posted on a regular basis. For example, Rule 47(4)(b) requires particulars of a receipt, payment or transfer of trust money to be recorded in the trust ledger account within 5 working days.
  - ii) produced on a timely basis. That is the reconciliation statement and list of the practice's trust ledger accounts ("trial balance") must be prepared within 15 working days from month end.

Trust records may be kept separately for a branch office at the branch provided the Law Society is notified: Section 136(2).

Section 128 defines trust records to include 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 as required to be furnished under the Uniform Rules,
- (l) registers required to be kept under the Uniform Rules,
- (m) monthly statements required to be kept under the Uniform Rules,
- (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 Law or the Uniform Rules,
- (p) supporting information required to be kept under the Uniform Rules, in relation to powers to deal with trust money.

## **5.2 General Provisions of the Regulation relating to Trust Money**

The following sections will provide a general overview of requirements in the LPUGR that would apply to trust money in general.

### **5.2.1 Trust Account Statements**

A trust account statement is the accounting report 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 general trust money the trust account statement is similar in presentation and detail to that reported in the trust ledger account.

Rule 52 provides that a law practice must give a trust account statement to each person for whom or on whose behalf trust money (other than transit money and written direction money) is held or controlled by the law practice or an associate of the law practice.

#### **5.2.1.1 A separate statement must be given for each;**

- i) trust ledger account – for general trust account.
- ii) record of controlled money movements– for controlled money.
- iii) record of dealings with the money that is the subject of a power to which the law practice or an associate of the law practice is a party – for power money.

#### **5.2.1.2 A trust account statement must contain particulars of:**

- i) all the information required to be kept under the Uniform Law or LPUGR in relation to the trust money included in the relevant ledger account or record; and
- ii) the remaining balance (if any) of the money

### **5.2.1.3 The law practice must give a trust account statement as soon as practicable after:**

- i) completion of the matter to which the ledger account or record relates; and
- ii) 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; and
- iii) 30 June each year, unless exempted by the provisions of Rule 52(5) or (6).

The terms "given" and "as soon as practicable" are not defined in the LPUGR. It is the Trust Accounts Department's view that the method of giving a bill of costs to a client as regulated by Section 189 and Rule 73 may be used to define how a trust account statement can be given to the person on whose behalf trust money is held or controlled.

In relation to the term "as soon as practicable", the following provides some guidance to the meaning of the phrase.

The trust account statement is a reflection of the transactions in the ledger and the validity of the ledger is generally not confirmed until the authorised ADI reconciliation and trial balance statements have been completed. These are required to be completed within 15 working days of month end. It is therefore probable that the statements required to be given "as at 30 June" would not reasonably have to be given until late mid to late July each year.

A law practice's ability to give statements promptly may depend on factors including:

- size of the ledger;
- accounting facilities;
- staff numbers.

A sample trust account statement is included in the worked example at Chapter 20.

### **5.2.1.4 Exemptions from giving trust account statements at the end of June each Year:**

Rule 52(5) provides that the law practice is not required to give a trust account statement under Rule 52(4)(c) in respect of a ledger account or record if at 30 June the balance of the ledger account or record is zero and:

- a.) no transaction affecting the account has taken place within the previous 12 months; **or**
- b.) a trust account statement has been furnished within the previous 12 months and no transaction affecting the account has taken place since the last statement was furnished.

Rule 52(6) provides that the law practice is also not required to give a trust account statement under Rule 52(4) in respect of a ledger account or record if at 30 June 2015:

- a.) the ledger account or record has been open for less than 12 months; **or**
- b.) 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.

However, Rule 52(6) expires immediately before 1 July 2016.

It should be noted that Rule 53 provides an exemption to Rule 52 if the client is a commercial or government client to the extent to which the client directs the law practice not to provide trust account statements under that rule. However, the client may direct the law practice to give a statement on a different basis from that prescribed by Rule 52 to which the law practice must comply unless the direction is unreasonably onerous.

#### **5.2.1.5 Details to be included in Trust Account Statements**

As noted above in Rule 52(3), the detail to be shown in a trust account statement is the same as the information required to be kept in a *ledger account or record* and the remaining balance (if any) of the money.

### **5.3 Computerised Accounting Systems – Rules 38 to 41**

#### **5.3.1 Introduction**

These rules apply where a law practice maintains trust records by means of a computerised accounting system. It is recommended that users contact their supplier/distributor to ascertain whether their software complies with the LPUGR. Existing software may need to be modified or developed to meet the requirements in the LPUGR. Enquiries on computer systems controls should be directed to the Chief Trust Account Investigator & Supervisor, Trust Accounts Department or directly to the Supplier/Distributor.

Briefly, the intention of the LPUGR is to provide:

- a) compulsory copies of certain trust records to be kept, in printed form or in readable and printable form each month, provided the law practice ensures that copies of the trust records cannot be modified after printing;
- b) file maintenance audit trails;
- c) exception reports/audit trails for debit balances processed;
- d) controls over deletion of ledger accounts;
- e) page numbering and entry processing requirements;
- f) compulsory input requirements;
- g) backup facility requirements.

#### **5.3.1 Examined Software Packages**

The overall requirement for New South Wales law practices is that their accounting records comply with the legislation. The Trust Accounts Department offers the facility of examining software packages at the request of suppliers. This examination does not extend to the "office" portion of a package. The examination is not compulsory

and a law practice can purchase a "non-examined" package if the practice is satisfied that the software provides the capacity to comply with the legislation. The Trust Accounts Department does not recommend one package over another.

The time taken to examine individual software packages varies depending on factors such as degree of compliance with the legislation, the software's internal controls and the ability of the supplier to process amendments. A Certificate of Examination is issued on satisfactory completion of the examination process. This Certificate contains an opinion as to the software's capability to comply with the LPUL and LPUGR if it is competently and properly operated. The Certificate may be subject to qualifications and/or exemptions. It is recommended that any prospective purchaser review the Certificate of Examination for any qualifications and/or exceptions noted.

### **5.3.2 Monthly Procedures**

Rule 38 provides that a law practice must maintain and keep, in printed form or in readable and printable form, the following copies of trust records as at the end of each named month:

- authorised ADI reconciliation
- trust trial balance
- trust account receipts and payments cash books
- controlled money listing

The law practice must ensure that if the records are in readable and printable form, they cannot be modified afterwards: Rule 38(5).

The law practice must have these documents in printed form or in readable and printable form no later than 15 working days after the end of month, as the LPUGR require that the authorised ADI reconciliation and trust trial balance be prepared within that time.

It is recommended that the following documents are kept in printed form or in readable and printable form at the end of each month:

- trust transfer journal
- file maintenance audit journal

After completing these monthly procedures, the law practice must backup its computer accounting system's data file into a recording media, to be stored at an off-site location.

## **5.4 Records to be in permanent form**

The records prepared by the law practice must be in "permanent form" as required by Section 147. Permanent form is defined in Section 128 to mean "printed or, on request, capable of being printed, in English on paper or other material". Records should not be kept in pencil as this allows for alteration.



## Chapter Six

### 6. General Trust Account

#### 6.1. Maintain General Trust Account in NSW

When a law practice receives trust money it must deposit it to a general trust account unless the trust money falls into one of the specific exclusions as detailed in Section 129(1)(a) to (d) and discussed in Chapter 2 of these Seminar Notes. The law practice must establish and maintain in accordance with the LPUGR a general trust account at an authorised ADI in New South Wales.

##### 6.1.1 Holding, Disbursing and Accounting for General Trust Money - Section 138

Section 138(1) provides that a law practice must:

- a.) hold trust money deposited in the law practice's general trust account **exclusively** for the person on whose behalf it is received; and
- b.) **disburse** the trust money only in accordance with a **direction given by the person**; and
- c.) **account** for the money as required by the Uniform Rules.

However, this is subject to an order of a court of competent jurisdiction or as authorised by law: Section 138(2).

#### 6.2 General Trust Account Records

The LPUL and LPUGR prescribe the general trust account records to be kept by the law practice. The following broad headings are useful to describe the function of the various records.

##### 6.2.1 Source Records

Source records are the original documentation produced by an accounting system to capture the relevant details of a transaction. It is from this record that the remainder of the accounting records are produced. Source documents are important because, if relevant data is not captured at this point, it becomes impossible to complete secondary records originating from the source document. Common examples of source documents within the general trust account accounting system are duplicate trust receipts, cheque butts, cheque requisitions, journal authorisations, invoices, bills, deposit slips and authorised ADI statements.

## 6.2.2 Books of Prime Entry

Books of prime entry are normally referred to as journals. The function of these records within the general trust account system is to classify transactions into a transaction class, i.e. receipt, receipt reversal, payment, payment reversal or “non cash” entries. The three journals used for the general trust account system are cash receipts journal (incorporating receipt reversals), cash payments journal (incorporating cheque reversals) and trust transfer journal.

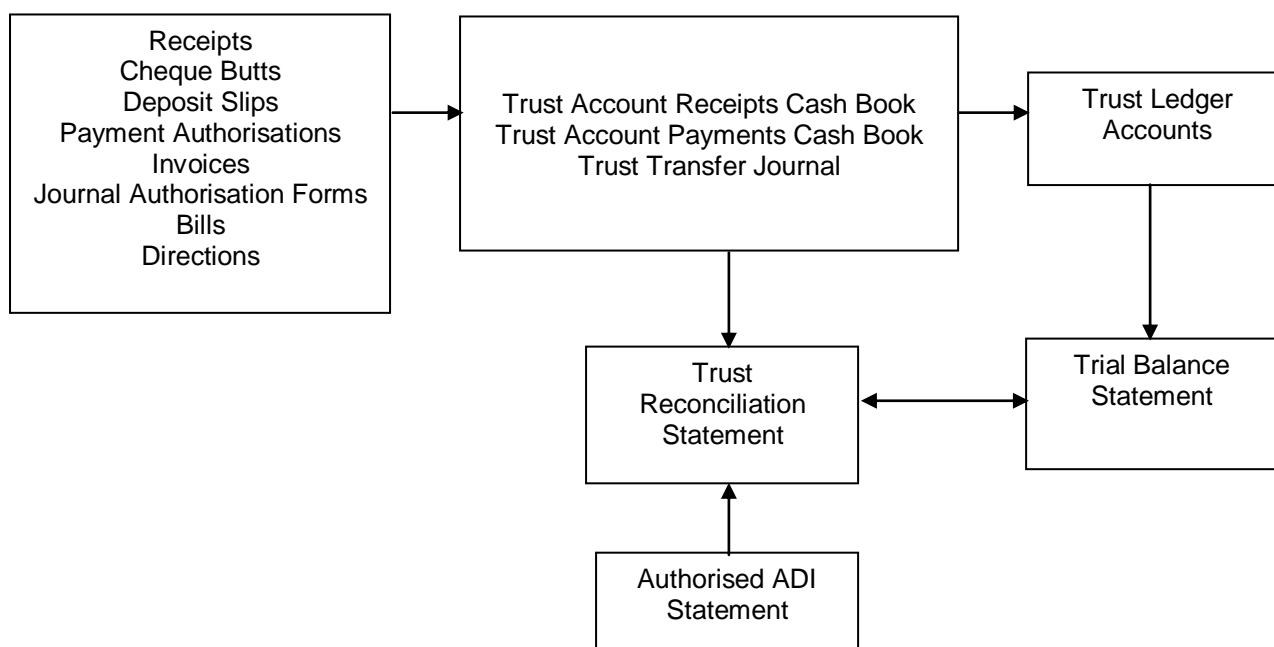
## 6.2.3 Book of Summary

A trust ledger account is the document in which all trust transactions relating to a particular matter are recorded. Its function therefore is a book of summary. Together, the individual trust ledger accounts comprise of what is referred to as a trust account ledger. The law practice can ascertain the trust financial position of each matter by reference to each trust ledger account (Rule 47).

## 6.2.4 Reports

The trust accounting system is designed to produce a number of reports which are used to control and check the accuracy of the general trust account system. These reports include the monthly trust authorised ADI reconciliation statement (Rule 48(2)(a)) and trust trial balance statement (Rule 48(2)(b)).

The following diagram represents the basic accounting system requirements for the general trust account:



The following is a summary of each relevant rule of the LPUGR. Where applicable, it includes a description of the accounting records to be maintained by the law practice.



## 6.3 Establishment of General Trust Account - Rule 35

When a law practice opens a general trust account, the law practice must satisfy the following requirements:

- a) The account must be established with an authorised ADI.  
(See definition of “authorised ADI” and “ADI” at page 13 of these Seminar Notes)
- b) The account must be maintained in NSW: Section 136.
- c) The name of the account must include:
  - i) the name of the law practice or the business name under which the law practice engages in legal practice; **and**
  - ii) the expression “**law practice trust account**” or “**law practice trust a/c**” (this does not apply to an account opened in NSW before 1 July 2015).

The law practice must give the Law Society Council, being the designated local regulatory authority, notice within 14 days of the establishment of a trust account: Rule 50(1). The notice should include the name of the trust account and the account number (including BSB). A form to be used for notification to the Law Society Council of the opening of a general trust account is available on the Law Society’s website at: <http://www.lawsociety.com.au/forms>

## 6.4 Closure of General Trust Account

Rule 50(3) requires the law practice to notify the Law Society Council, being the designated local regulatory authority, in writing within 14 days after the closure of the practice’s general trust account. The written notice should identify the name and account number of the closed general trust account. A form to be used for notification to the Law Society Council of the closure of a general trust account is available on the Law Society’s website at: <http://www.lawsociety.com.au/forms>

## 6.5 Trust Receipts – Rule 36

### 6.5.1 Receipts Generally

A trust receipt is the **source** document to record the receipt of money that is required to be deposited into a general trust account. The importance of the trust receipt cannot be overstated. It acts not only as the accounting source document but also as written confirmation of the instructions received from the person on whose behalf the money is received. The receipt is used to write up the receipts cash book and post entries to the ledger.

A trust receipt must be made out for all money received as soon as practicable after the money is received and the original receipt must as soon as practicable be given

on request to the person from whom the trust money was received. This includes direct deposits and any withdrawal of the statutory deposit. If information on the trust receipt is incorrect, then all other records produced from this document will also be inaccurate.

The LPUGR require the receipt to be made out in duplicate and:

- be consecutively numbered and issued in consecutive sequence;
- contain the name or the business name of the law practice; and
- contain the expression "Trust Account" or "Trust A/c".

Further, the LPUGR require the receipt to contain the following particulars;

- (i) the date the receipt is made out and, if different, the date of receipt of the money;
- (ii) the number of the receipt;
- (iii) the amount of money received;
- (iv) the form in which the money was received;
- (v) the name of the person from whom the money was received;
- (vi) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
- (vii) particulars sufficient to identify the reason for which the money was received;
- (viii) the name of the person who made out the receipt.

The following is a suggested format for a trust account receipt:

PHILPOTT & ASSOCIATES TRUST ACCOUNT RECEIPT		
Receipt Number :	_____	
Date:	_____	Date Received (if different): _____
Received from;	_____	
The sum of;	_____ and _____ cents.	
\$ _____	Cheque/Cash/Direct Deposit	
For and on behalf of:	_____	
Matter Reference.	Account Name	Matter Description
_____:	_____	_____
Reason:	_____	
	Made out by: _____	
	On behalf of Philpott and Associates	

The phrase "*the date the receipt is made out and, if different, the date of receipt of the money*" would apply, for example, for the receipt of money by direct deposit which is credited to the authorised ADI account on 20 April and the receipt is made out on the 26 April, which is the date that the law practice became aware of the

direct deposit. Also if a principal received a cheque from a client in chambers with a barrister in the afternoon of 20 April and made the receipt out on the return to the office on 21 April then the date the money is received is 20 April and the date the receipt is made out is the 21 April. The Trust Accounts Department recommends that both dates only have to be shown if there are different dates.

The Trust Accounts Department also recommends that the intention of Rule 36(2)(i) is that the person who made out the receipt can be identified therefore the name of the person must be clearly printed/written on the receipt.

It is also noted that some accounting systems use a ledger reference which is different to the matter reference. In these instances both matter reference and ledger reference will need to be recorded.

It is not a requirement that the receipt disclose the field headings, although it is desirable the headings be shown to prompt the user to record the details required. Showing field headings also makes review of the receipt easier and encourages consistent entry of information.

For law practices using the copywriter system, the Trust Accounts Department accepts a copy of the cash book as the duplicate receipt. This is on the basis that the records are made out simultaneously. Any law practice not using the copywriter system as designed must therefore maintain a duplicate receipt recording the foregoing details. This also applies to law practices using a computerised accounting system. However, if the computer system allows the entry of the receipt to be changed after acceptance of the entry, then practices using this software must also maintain a duplicate trust receipt.

### **6.5.2 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.

For instance, the receipt may have been made out for the general trust account when the money relates to office, or an incorrect client name may be shown. It is permissible for these receipts to be cancelled. A receipt should not be cancelled unless the original receipt has been retained. Rule 36(6) requires that the original cancelled receipt is retained by the law practice with the general trust account records.

The preferred method for cancelling a receipt is to:

- a) note on the original and duplicate of the receipt the word "Cancelled" and the reason for cancellation;
- b) retain the original and 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 reason for cancellation. An amount will not be recorded in the amount or deposited column of the receipts cash book;

- d) the entry is not posted to a ledger account under a manual system of accounting.

The worked example in Chapter 20 illustrates the preferred method of recording a cancelled receipt.

Where it is realised that a receipt has been issued in error and the original receipt has already been issued, then the receipt should not be cancelled. The appropriate treatment for this type of error depends on the circumstances and each instance must be fully reviewed to ascertain the appropriate method of correction.

### **6.5.3 Multi Receipt**

There will be occasions when a client attends the office and pays one amount to cover a number of matters. It is acceptable on these occasions to issue one receipt covering all matters. This is referred to as a "multi receipt". The worked example in Chapter 20 illustrates the preferred method of recording this type of transaction.

### **6.5.4 Clearance for Cheques Receipted**

A common question asked is "How long is it before a cheque received can be drawn against"? The LPUGR do not stipulate a period during which cheques must be deposited before funds may be drawn. A problem arises if a cheque is dishonoured when it has been drawn against prior to clearance and funds belonging to other persons are used to meet that cheque. This action is a breach of Section 138(1)(a) and the requirement that funds must be held exclusively for each person on whose behalf money is held.

The law practice should be guided by advice from its authorised ADI in relation to the clearance of cheques through its specific clearance system.

It is also suggested that law practices be guided by advice from its authorised ADI in relation to the clearance of funds deposited to the general trust account by direct transfer from other financial institutions.

### **6.5.5 Dishonour of Cheques Receipted into General Trust Account**

The dishonour of a cheque occurs when a cheque has been received, a receipt issued and then deposited into the general trust account but the authorised ADI subsequently advises that the cheque has not been met on presentation. This type of transaction is not a cancelled receipt and a negative receipt is not issued.

#### **6.5.5.1 Recording Dishonoured Cheque**

The method to be adopted for recording this type of transaction is to:

- a) retain the notification of dishonour from the authorised ADI in the appropriate file;

- b) enter the reversal in the cash book by rewriting the 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 ledger. (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 general trust account immediately to remedy the deficiency. A receipt is issued for this transaction and entered in the receipts cash book, and credited to the trust ledger relating to the dishonoured cheque. A notification pursuant to Section 154 is required to be sent to the Law Society Council, being the designated local regulatory authority.

The worked example in Chapter 20 illustrates the preferred method of recording a dishonoured cheque in the trust records. The following example illustrates the suggested method of recording a dishonoured cheque which has been drawn against in the ledger.

**Philpott and Associates  
Trust Ledger**

ACCOUNT NAME                      SMITH A.J.  
ADDRESS                              21 Belmore Rd, CANTERBURY 2180

MATTER REFERENCE:    S2  
MATTER DESCRIPTION:   Estate late May Smith

OTHER PARTY  
RESPONSIBLE LEGAL PRACTITIONER Mapper                      RESPONSIBLE PRINCIPAL Walsh

Date Rct/ Rec'd/Paid <small>Note 1</small>	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amount	Credit Amount	Balance
05.09.07	R5	Commonwealth Approved ADI Proceeds of approved ADI a/c 153-607		15,000.00	15,000.00
05.09.07	R6	A J Smith Proceeds of Auction of Estate Property		1,000.00	16,000.00
05.09.07	R7	State Government Superannuation Fund Proceeds of Superannuation policy		160,000.00	176,000.00
05.09.07	R8	Max Wright - Proceeds sale of Late May Smith's M/V		5,000.00	181,000.00
15.09.07	P600	St George Building Society Investment of Estate funds	170,000.00		11,000.00
16.09.07	R11	AGC Insurances Limited Proceeds of Life policy		10,000.00	21,000.00
21.09.07	P605	St George Building Society Additional investment estate funds	10,000.00		11,000.00
21.09.07	P607	A Heffron Final distribution of estate	10,000.00		1,000.00
22.09.07	R8	Max Wright Receipt cancelled - dishonoured chq	5,000.00		4,000.00DR
29.09.07	Receipts Book Ref	Philpott and Associates Adjustment of overdraw		4,000.00	0.00

01.10.07 Note 2	Receipts Book Ref	Max Wright Funds to replace dishonoured chq	5,000.00	5,000.00
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(The Notes are listed in the next page)

**Note 1:** The column headed Date Rct/ Rec'd/Paid is used to record the date the money was received and if different the date that the receipt was made out and date of the cheque, electronic funds transfer or journal transfer.

**Note 2:** When this cheque is cleared Philpott & Associates may withdraw their \$4,000 deposited on 29.09.07.

**Note 3:** The Receipts Book Ref recorded against entries dated 29 September 2007 and 1 October 2007 would be replaced by the receipt number. However these entries are not included in the worked example at Chapter 20 and a receipt number reference has not been provided to avoid confusion.

## 6.6 Use of Credit Card

### 6.6.1 Receipts to General Trust Account

A law practice may accept a credit card payment from a person as acceptable trust funds for deposit to the general trust account. The only credit card that can be used is the type that permits the whole transaction amount to be credited. Any account keeping fees or transaction fees should be debited to the general office account.

A law practice cannot accept a direction from a person paying trust money to the law practice for the trust money to be paid by credit card to the office account and then transferred to the trust account. The reason for this is that the office account is the account to which the credit card facility is linked. This would be a breach of Section 146 and notification required pursuant to Section 154.

### 6.6.2 Credit Card "Chargeback"

Legal practitioners should ensure when applying to operate as a merchant that the account fits these criteria, and should be aware of the credit card provider's policy in regard to "chargeback" transactions. In the event of a "chargeback" transaction the law practice is required to deposit the amount of the "chargeback" to the general trust account and then commence recovery proceedings against the person from whom the original funds were received.

## 6.7 Deposit Record – Rule 37

An authorised ADI deposit record is the source document prepared to evidence the timely deposit of receipts of general trust money to the general trust account. A deposit record must be made out and produced to the authorised ADI for each deposit to the general trust account other than direct deposits. The deposit record must be filed in the order that the deposits were made to the authorised ADI

Although not required by the LPUGR, as a matter of internal control the authorised ADI's deposit record should include the authorised ADI's acknowledgment of receipt of the funds. This acknowledgment is normally in the form of the authorised ADI's stamp and teller's initials on the duplicate copy of the deposit slip.

The LPUGR do not require that a deposit slip is produced when funds are deposited directly to the credit of a general trust account. The law practice should review its

procedures to ensure that the receipt of funds via direct deposit is acknowledged by the authorised ADI prior to the law practice drawing on the funds.

The LPUGR provide that the deposit record is made out in duplicate and must include:

- i) the date of the deposit;
- ii) the amount of the deposit;
- iii) the cheques, notes or coins content and the amount of each;
- iv) for each cheque, the name of the drawer of the cheque, the name and branch (or BSB number) of the ADI on which the cheque is drawn, and the amount of each cheque.

The deposit slip included in the worked example in Chapter 20 records the required detail. Only this type of deposit slip should be used. Law practices that open a new general trust account may be provided with the “butt style” deposit slip by their authorised ADI. These deposit records cannot be used as the information relating to the drawer, bank and branch is handed over to the authorised ADI.

The amount of the deposit and the date of the deposit slip constitute part of the details required to be entered in the trust account receipts cash book in accordance with Rule 44(2). The deposit information recorded in the receipts cash book should be reviewed on receipt of the authorised ADI statement to ensure that the amount disclosed in the receipts cash book agrees with the amount recorded on the authorised ADI statement. The worked example in Chapter 20 illustrates the Trust Accounts Department’s preferred method of recording the date and amount of the deposit in the receipts cash book.

### **6.7.1 Quick banking**

The law practice should be aware of the risks associated with the use of quick banking systems. Quick banking should only be used if the practice is satisfied that appropriate records are maintained by the law practice so as to reconstruct the deposit in the event of its being lost by the authorised ADI. Particular attention should be paid to any deposit that includes a bank (ADI) cheque. Quick banking should not be used for deposits that include cash.

If the law practice decides to adopt this system of banking, it must ensure that a copy of the deposit slip is kept as part of the trust records.

## **6.8 Withdrawal by Cheque or Electronic Funds Transfer - Rule 43**

The LPUGR provide for withdrawals from the general trust account by way of a cheque or Electronic Funds Transfer (EFT). Section 144 prohibits cash withdrawals, withdrawals or transfers from an ATM or telephone withdrawals or transfers.

The cheque butt/requisition/EFT authorisation is the source document to record payments from the trust account. The design of the cheque is usually standardised by the authorised ADI providing the service. As for receipts, the cheque

butt/requisition/record of EFT is used to write up the cash payments book and post the entry to the ledger.

### 6.8.1 Withdrawal by cheque

The LPUGR require that cheques:

- a) contain the name of the law practice or the business name and the expression "law practice trust account" or "law practice trust a/c" (this does not apply to an account opened in NSW before 1 October 2005);
- b) must be payable to or to the order of a specific person or persons and must not be drawn to **bearer** or cash; **and**
- c) must be signed by an "authorised" principal of the law practice or in their absence an "**authorised person(s)**" and
- d) must be crossed "not negotiable".

The law practice must keep a written record of required particulars of each payment made by cheque unless the particulars are recorded by a computerised accounting system in the trust account payments cash book at the time the cheque is issued. The written record of the required particulars must be kept in a way that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.

The written recorded must be kept in the order in which the cheques were issued and contain the following "required particulars":

- a.) the date and number of the cheque;
- b.) the amount ordered to be paid by the cheque;
- c.) the name of the person to whom the payment is to be made or, if the cheque is 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.) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference, 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; **(Account Name)**
- e.) details clearly identifying the ledger account to be debited; **(Account Name & Matter Description)**
- f.) particulars sufficient to identify the reason for the payment.

The Trust Accounts Department considers that it is the intention of the LPUGR that the same information is captured in the written record as that required for receipts; in particular, Account Name, Matter Reference and Matter Description. However, the LPUGR do not use the same terms. The references above in bold italics reflect the corresponding information that is recorded for receipts.



For law practices using the computer printed cheque facility, a cheque requisition may be used prior to drawing the cheque. A sample requisition is as follows:

### **TRUST CHEQUE PAYMENT REQUISITION**

**Cheque Number:**

**Date of Payment:**

**Solicitor/Associate Requesting Payment:**

**On behalf of:**

**Client (person) Name:**

**Matter Description:**

**Matter Reference:**

**Pay To:**

**Payee\*:**

**Amount:**

**Reason/Purpose of Payment:**

**Authorised By (Authorised principal or associates):**

**Note:** If the payment is made to an ADI (authorised deposit taking institution), the name of the person receiving the benefit of the payment must also be recorded. For example, if the law practice holds a general trust account with the Commonwealth Bank and intends to draw a trust cheque payable to the Commonwealth Bank to obtain a bank cheque payable to the Office of State Revenue, the Payee section must record "Commonwealth Bank B/C Office of State Revenue".

## **6.8.2 Withdrawal by Electronic Funds Transfer – Rule 43**

The LPUGR require that electronic funds transfers are to be effected under the direction or authority of an "authorised" principal or in their absence an authorised person(s).

The law practice must keep a written record of required particulars of each payment made by electronic funds transfer unless the particulars are recorded by a computerised accounting system in the trust account payments cash book at the time the transfer is effected. The written record of the required particulars must be kept in a way that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.

**The written record for Electronic Funds Transfer must disclose the:**

- a.) date of the transfer;
- b.) reference number or other means of identifying the transfer;
- c.) the amount ordered to be paid by electronic funds transfer;
- d.) the name and number of the account to which the amount was transferred and relevant BSB number;
- e.) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference, 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; **(Account Name)**

- f.) details clearly identifying the ledger account to be debited; **(Account Name & Matter Description)**
- g.) particulars sufficient to identify the reason for the payment.

The Trust Accounts Department considers that it is the intention of the LPUGR that the same information is captured in the written record as that required for receipts; in particular, Account Name, Matter Reference and Matter Description. However the LPUGR do not use the same terms. The references above in bold italics reflect the corresponding information that is recorded for receipts.

A sample record for electronic funds transfer payment requisition is as follows:

<b><u>TRUST EFT PAYMENT REQUISITION</u></b>
<b>EFT Reference*:</b>
<b>Date of Payment:</b>
<b>Solicitor/Associate Requesting Payment:</b>
<b><u>On behalf of:</u></b>
<b>Client (person) Name:</b>
<b>Matter Description:</b>
<b>Matter Reference:</b>
<b><u>Pay To:</u></b>
<b>Account Name &amp; Number (incl BSB):</b>
<b>Recipient of Funds (Name)(if different):</b>
<b>Amount:</b>
<b>Reason/Purpose of Payment:</b>
<b>Authorised By (Authorised principal or associates):</b>

**Note:** An EFT reference (internally generated) in consecutive sequence should be created by the law practice and entered in the description field in the electronic funds transfer window of the internet banking facility. This reference should also be recorded in the payments cashbook and ledgers, similar to the cheque number. The source record should then be filed in the EFT reference number order.

This is to ensure that the specific payment in the ADI statement can be referred back to the source record and other records. The document evidencing the transfer (produced by the ADI on screen) should be printed and attached to the EFT requisition.

### 6.8.3 Authorised Signatories

Rule 43(2) provides that a cheque must be signed by, or an electronic funds transfer must be effected under, the direction or authority of:

- a.) an authorised principal of the law practice; or
- b.) if such principal is not available:
  - i.) an authorised legal practitioner associate; or
  - ii.) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
  - iii.) two or more authorised associates jointly.

Rule 50(2) requires that during July each year, a law practice must give the Law Society Council, being the designated local regulatory authority, written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised to sign cheques drawn on a general trust account of the practice or otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice as at 1 July that year. Notification is not required if the information is already provided in the External Examiner's Report pursuant to Section 159. A form to be used for notification is available on the Law Society's website at: <http://www.lawsociety.com.au/forms>.

The signing of trust cheques and effecting of electronic funds transfers is further discussed at Chapter 7 of these Seminar Notes.

#### 6.8.3.1 Online Payments

Law practices are being encouraged by authorised ADI's to adopt online transaction systems in respect of general trust accounts. There is nothing to prevent practices using these systems on the understanding that practices remain responsible for the trust money, that is, the money entrusted to the law practice in the course of or in connection with the provision of legal services.

Before adopting an authorised ADI's online transaction facilities, liability clauses should be clearly understood. A transaction is authorised by a password. The system is built on the basis that password security is controlled by an authorised principal of the law practice. If an authorised ADI receives a valid transaction (one in which the correct password has been entered), the transaction will be processed without question. If there is a lack of control over the use of security passwords, it may be impossible to identify the person who entered the transaction.

Audit trails should be reviewed to ensure that transaction details in the cash book and authorised ADI statement enable a transaction to be traced through the records. Original authorised ADI statements and the transaction confirmation document (e.g. a print out of the screen confirming the transaction) must be retained and the same controls implemented for electronic funds transfers as those adopted when signing trust cheques.

It is also suggested that before online transaction facilities are used within a law practice, the processes are documented and fully understood by all partners and staff. A management plan should also be implemented to ensure that the processes are regularly reviewed.

There is no such thing as a "forged cheque" in an online transaction. The authorised ADI will only pay on an authenticated transaction, which is one that contains correct passwords which the authorised principal/s are expected to control. It is not acceptable to entrust passwords to the bookkeeper/office manager. Authorised principals are the only persons who can authorise an online transfer unless another person is properly authorised by the law practice. The password is in effect the signature on a cheque.

The law practice must ensure that the Anti-Virus software is up to date and in accordance with the authorised ADI's agreement for use of online banking facilities.

#### **6.8.4 Withdrawal for legal costs**

Withdrawal from general trust account to reimburse the practice's legal costs is discussed in Chapter 3 of these Seminar Notes.

#### **6.8.5 Cancelled cheques**

There will be occasions when a cheque is made out and, before issuing the cheque, an error is realised. If the original cheque is in the possession of the law practice then it is permitted to cancel the cheque.

##### **6.8.5.1 Procedures for cancelled cheques**

The procedures to be followed are:

- a) the cheque is to be crossed "Cancelled" and the signature torn from the cheque;
- b) the cheque butt/requisition is to be crossed "Cancelled" and the reason for cancellation recorded;
- c) the original of the cheque is to be retained. The Trust Accounts Department recommends that cancelled cheques are stapled to the cheque butt/requisition;
- d) the entry is recorded in cheque number sequence in the cash book with the notation reading "Cancelled", the reason for cancellation and a Nil dollar value recorded;
- e) the entry is not posted to a ledger account under the manual accounting system.

The worked example in Chapter 20 illustrates the preferred method of recording a cancelled cheque.

### **6.8.6 Reversal of a cheque**

There will be occasions when a cheque has been made out and issued to the payee and an error is subsequently realised requiring payment of the cheque to be stopped. Examples of this type of transaction are when a cheque is issued for an incorrect amount or the reversal of a stale cheque.

#### **6.8.6.1 Cheque reversal procedure**

The procedures to be followed when reversing a cheque are:

- a) contact the person or entity to whom the cheque has been issued and advise of the problem;
- b) contact the authorised ADI and request the issue of a stop payment order;
- c) enter the reversal in the cash 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;
- d) post the entry to the credit side of the ledger (the opposite side to the original cheque);
- e) if applicable, a replacement cheque should be issued in the normal manner.

The worked example in Chapter 20 illustrates the preferred method of recording the reversal of a cheque.

### **6.8.7 Multi cheque**

There will be occasions when a cheque needs to be drawn to one payee which covers a number of matters. It is acceptable on these occasions to draw one cheque covering all matters. This is referred to as a "multi cheque". The worked example in Chapter 20 illustrates the method of recording this type of transaction. Some bookkeepers/legal practitioners may find this a more convenient method of transferring costs and disbursements from the trust ledger.

### **6.8.8 Stale cheques**

Cheques which have been drawn and become stale should no longer be processed through the authorised ADI system.

#### **6.8.8.1 Procedures for dealing with stale cheques**

It is recommended that a principal regularly review all unpresented cheques drawn on the general trust account. Unpresented cheques are listed on the monthly authorised ADI reconciliation. It is recommended that the date drawn be noted against each cheque. This assists in reviewing the reconciliation.

Follow-up action should be undertaken promptly as it is unlikely that a cheque that has been drawn and not presented for a period of 3 months will be presented after that time.

Where a cheque becomes stale, it should be stopped by notifying the authorised ADI. It should also be cancelled in the accounting records, as detailed under the heading “cheque reversal procedure” at paragraph 6.8.6.1 of these Seminar Notes. Follow-up procedures should be taken to ascertain the reason for the non-presentation prior to issuing a new cheque.

## **6.9 The Cash Books – Rules 44 and 45**

A law practice that maintains a general trust account must keep the following trust account cash books:

- (a) a trust account receipts cash book in accordance with Rule 44,
- (b) a trust account payments cash book in accordance with Rule 45.

For the purposes of these Seminar Notes, the above cash books are referred to as “receipts cash book” and “payments cash book” respectively. Wherever the term “cash book” is used, it refers to both the receipts and payments cash books.

### **6.9.1 Format**

The cash book is used in the general trust account accounting system to record all financial transactions i.e. receipts, receipt reversals, receipt cancellations, cheques, cheque reversals and cheque cancellations. The cash book is designed as a summary of receipt and payment transactions, and provides control over receipt/cheque sequencing, ADI deposits (for receipts) and monthly totals of receipts and payments.

The format of the cash book is a matter for each law practice provided that the required information is recorded. For law practices adopting a manual accounting system, the Trust Accounts Department recommends the use of separate books, ie, one for receipts and one for payments.

Rule 44 requires the receipts cash book to record all particulars on the trust account receipt (excluding the name of the law practice, the expression “law practice trust account” and the name of the person who made out the receipt). Particulars of receipts are to be recorded in the order in which the receipts are made out.

In relation to the payments cash book, Rule 45 requires that the information recorded on the cheque butt/requisition or the record of electronic funds transfer is shown in the payments cash book and these particulars are recorded in the order in which the cheques or EFT were made or cancelled.

Following are suggested formats of a cash book that, if completed in full, will comply with the LPUGR. Bookkeepers are encouraged to enter the headings on each page of the cash book, to assist review by legal practitioners and external parties. The worked example in Chapter 20 uses two lines per entry. Bookkeepers/legal practitioners are encouraged to use as many lines as required to record the entry.

**A suggested format of the Trust Account Receipts Cash Book is:**

**Philpott and Associates  
Trust Account Receipts Cash Book**

For Period / / to / /

Page

Date Rec /Rec'd Note (1)	Rec No. Form	Ledger Ref Note (2)	Received From Reason	Account Name Matter Reference Matter Description	Multi AMT	Rec AMT	Amount Deposited
							Note 3

Note (1): The column headed Date Rec/Rec'd is used to record the date the receipt is made out and if different the date of the receipt of the money.

Note (2): The column headed Ledger Ref is used when a law practice has a trust ledger reference that is different to the Matter Reference. The ledger reference provides the number of the ledger to which the transaction is posted.

Note (3): If the date of the last receipt is the same as the date the funds were deposited then the amount deposited is recorded against the last receipt. If the date deposited is different to the date of the last receipt then an additional line disclosing the date of the deposit and the amount of the deposit would be recorded.

**A suggested format of the Trust Account Payments Cash Book is:**

**Philpott and Associates  
Trust Account Payments Cash Book**

For Period / / to / /

Page

Date	Cheque/EFT Number	Ledger Ref Note (1)	Paid To Reason	Account Name Matter Reference Matter Description	Multi AMT	Payment AMT

Note: (1) The column headed Ledger Ref is used when a law practice has a trust ledger reference that is different to the Matter Reference. The ledger reference provides the number of the ledger to which the transaction is posted

The LPUGR require that the particulars of a receipt or payment must be entered in the cash book within **5 working days** of the day the receipt or payment was made.



## 6.9.2 Reconciliation of General Trust Account Records – Rule 48

A law practice that maintains one or more general trust accounts must reconcile the records relating to each account. Rule 48(2) requires that the records relating to the general trust account(s) are reconciled as at the end of each named month.

### 6.9.2.1 Cashbook balance

Rule 48(2) requires the trust records in respect of a general trust account to be reconciled as at the end of each named month by preparing a statement reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books.

Either the cash book is balanced and the balance carried forward to the commencement of the next month, or the balance is carried forward to a ledger account for that purpose, referred to as a "Cash Book Control Account". Either method is acceptable; however, the Trust Accounts Department recommends the use of the "Cash Book Control Account". (See Chapter 6.9.4 of these Seminar Notes)

There are several methods that can be used to produce a cash book balance to assist the practice in reconciling its trust records. The most common are the "cash book summary" or the "cash book balance". An explanation of each method follows:

#### a) "Cash Book Summary"

This method requires that at month end the receipts cash book and payments cash book are each totalled to obtain the total receipts and total payments for the month. The following statement is then recorded on the last page of the chosen record. The summary should be recorded in the same record and format each month.

##### Cash book summary

Opening balance	-- / -- / --	\$ _____
Plus receipts for month of		\$ _____
	SUBTOTAL	\$ _____
Less payments for month of		\$ _____
Closing balance	-- / -- / --	\$ _____

The opening balance is the closing balance from the previous month.

#### b) "Cash Book Balance"

This method records the opening balance as the first entry of the receipts cash book record. At month end the cash book is totalled. This produces a balance which is carried forward as the opening balance for the next month.

**Note:** If the cash book is overdrawn, the balance is recorded as the first entry of the payments cash book.

### 6.9.3 Amount Deposited to Authorised ADI

Rule 44(2) requires the date and amount of each deposit in the general trust account to be recorded in the trust account receipts cash book.

This assists in preparing the reconciliation of trust records. The amount shown in the "Amount Deposited" column of the suggested Trust Account Receipts Cash Book should agree with the deposit record and the amount shown in the authorised ADI statement.

### 6.9.4 Posting Cash Books

Individual entries recorded in a cash book should be posted to the individual trust ledger accounts daily. To ensure all entries are posted to the ledger and to assist in the checking of the postings, it is suggested that when the detail is recorded in the ledger, a tick is placed against the matter reference of the relevant entry in the cash book. The totals of the trust account receipts and payments cash book should be posted to the control ledger account on a monthly basis. In order to ensure the totals are posted to the ledger and to assist in the checking of the postings, it is suggested that on completion of recording the detail in the control ledger, the ledger account number be written under the relevant total in the receipts or payments cash book.

The law practice must record the particulars of a **receipt or payment** in the cash book within **5 working days** counting from and including the day on which the receipt or payment was made.

**Rules for posting to the trust ledger are:**

#### **Receipts:**

- |               |  |
|---------------|--|
| <b>Debit</b>  | <b>Control Account</b> with the total receipts for the month. This total is obtained by adding the column headed "Rec Amt" of the receipts cash book, after all entries have been entered for the month. |
| <b>Credit</b> | <b>Individual Trust Ledger Account</b> with the amount of each receipt entered into the receipts cash book on a daily basis.   |

#### **Payments:**

- |               |  |
|---------------|--|
| <b>Debit</b>  | <b>Individual Trust Ledger Account</b> with the amount of each payment entered into the payments cash book on a daily basis.   |
| <b>Credit</b> | <b>Control Account</b> with the total payments for the month. This total is obtained by adding the column headed "Cheque Amt" of the payments cash book after all entries have been entered for the month. |

Note: When reversing receipts and cheques the debit and credit entries to the individual trust ledgers should be recorded on the opposite side of the ledger to that

where the original entry is recorded. The effect should be to cancel the original entry processed to the ledger. For further information see paragraph 6.5.5 Dishonour of Cheques Receipted into General Trust Account and 6.8.6 Reversal of a Cheque.

## **6.10 Reconciliation Statement – Rule 48(2)**

A reconciliation statement is the accounting record prepared to ensure that the accounting records of the law practice agree with the records produced by the authorised ADI. It is the process of comparing internal records of the law practice, with external records of the authorised ADI.

It is imperative that this procedure is completed at least monthly. The longer records remain out of balance, the more difficult it is to identify and correct errors. In larger practices, reconciliation statements should be prepared weekly or daily.

Rule 48(2)(a) requires a statement to be prepared at the end of each month that reconciles the general trust account balance as shown in the authorised ADI records (for example authorised ADI statements) with the balance of the practice's trust account cash books.

Rule 48(3) stipulates that the reconciliation statement must be completed within **15 working days** after the end of the month concerned and should open with the authorised ADI statement balance on the last day of the previous month. The law practice must note the date of preparation on the reconciliation statement.

### **6.10.1 Procedures to complete reconciliations**

The procedures to complete authorised ADI reconciliations are:

- a) ensure that all receipts and payments are entered into the cash book prior to month end closure;
- b) total the receipts cash book and payments cash book to disclose the closing cash book balance;
- c) obtain the month end authorised ADI statement;
- d) compare the authorised ADI statement with the cash book:

#### **for receipts by:**

- i) ticking entries that are common to the authorised ADI statement and receipts cash book;
- ii) listing entries that appear in the authorised ADI statement but are not recorded in the receipts cash book, on a list headed "Receipts etc in authorised ADI statement not in cash book";
- iii) listing items in receipts cash book that do not appear in the authorised 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.

Entries appearing in items d(ii) and d(iii) need to be thoroughly investigated to ascertain the reason for the discrepancy between records, and the corrective action required. Some items will need to be corrected by the authorised ADI, other items will need to be corrected by the operator, for example when a telegraphic transfer is credited to the authorised ADI account without a receipt having been issued. A receipt may need to be issued in the following month to adjust this item.

**for cheques by:**

- i) ticking the entries that are common to the authorised ADI statement and payments cash book;
- ii) listing the entries that appear in the authorised ADI statement but are not recorded in the payments cash book, on a list headed "Items in authorised ADI statement not in cash book";
- iii) listing the items that are recorded in the payment cash book but not recorded in the authorised ADI statement, on a list headed "Items in cash book not on approved ADI statement". The majority of these items will be unrepresented cheques. It is suggested that this list be broken into two headings "Unrepresented cheques" and "Entries in cash book not on authorised ADI statement".

All items, other than current unrepresented cheques need to be thoroughly investigated as to the nature of the item and if necessary corrective action taken.

- e) complete the reconciliation statement. This statement commences with the authorised ADI statement end of month closing balance and then adding and/or subtracting the lists prepared in d) above (subject to the opening balance), arriving at a cash book balance which should agree with the balance arrived at in b) above. For general trust accounts, the authorised ADI statement balance is normally a credit balance. A sample reconciliation statement is provided in the next page.

The Reconciliation statement may be presented as:

**PHILPOTT AND ASSOCIATES  
RECONCILIATION STATEMENT**

Reconciliation statement as at	<hr/>		
Authorised ADI statement balance as at	--/--/--	\$	Cr
<u>Add</u> Outstanding deposit(s)			
<b>Add/Less</b>			
Item(s) in authorised ADI statement not in cash book			
<u>Less</u> Unpresented cheque(s)			
(List separately showing date, cheque number and amount)			
<b>Add/Less</b>			
Item(s) in cash book not in authorised ADI statement			
<u>Reconciled</u> cash book balance		\$	<hr/>
Date of preparation:		By:	

The reconciled cash book balance is required to be shown on the ADI reconciliation statement in accordance with Rule 48(2)(b)(i).

The reconciliation statement should be reviewed by the principal(s) to ensure that:

- a) outstanding deposits are deposited on the first working day of the next month;
- b) items in the authorised ADI statement requiring adjustment by the authorised ADI, such as authorised ADI charges and authorised ADI interest, are reversed by the authorised ADI;
- c) other items shown in the authorised ADI statement that have not been recorded in the cash book are recorded in the cash book on the first working day of the next month, e.g. Direct Deposits;
- d) unpresented cheques are reviewed to ensure that stale cheques (older than 15 months) are reversed by the bookkeeper to the ledger account from which the cheque was originally drawn. The Trust Accounts Department recommends that all cheques over three months old shown on the reconciliation statement are reviewed and the reason for non-presentation ascertained. It may be appropriate to cancel the cheque and re-issue at this time rather than wait for the cheque to become stale;

- e) any other items shown on the previous month's reconciliation statement have been cleared.

### **6.10.2 Authorised ADI errors**

Items frequently appearing on authorised ADI statements are authorised ADI errors, ie costs of obtaining the cheque book, interest, and incorrect deposits. Items which are clearly authorised ADI errors 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 authorised ADI should be requested to reverse them directly from the authorised ADI statement. Items should be checked to ensure that they have been reversed.

When opening a general trust account it is important to stress that the authorised ADI must charge the costs of maintaining the general trust account to the law practice's office account.

### **6.10.3 Unidentified deposits**

There may be occasions when deposits are made to the general trust account but the source of the funds (the person on whose behalf the funds are received) cannot be established.

If at the expiration of the month following receipt, identification is still not possible, and all avenues of enquiry have been exhausted, then the Trust Accounts Department recommends that the deposit be recorded in the cash book and posted to an individual ledger account in the name of "Unidentified deposit credited to ADI statement on --/--/--". If the source of the money cannot be identified after completion of appropriate enquiries then the money should be paid to unclaimed monies in accordance with Section 14 of the Application Act.

## **6.11 Interest on General Trust Accounts**

All interest on the money in a general trust account is payable to the Law Society on account of the Public Purpose Fund.

Interest on funds held in a law practice's general trust account should not be credited to the general trust account or office account. This is due to the difficulties associated with distributing interest. If the authorised ADI incorrectly credits interest then it should be shown as an adjusting item in the reconciliation statement. The authorised ADI manager should be asked to reverse the entry and credit it to the appropriate account within the authorised ADI system.

### **6.11.1 Statutory Deposit**

Every law practice with a minimum general trust account balance in excess of \$10,000 in the 12 month period ending 31 March is required to deposit with the Law Society an amount equal to 100% of the lowest balance in the general trust account during the previous year and to maintain that deposit in subsequent years with

adjustments reflecting movements in the balance of funds in the account. This requirement is pursuant to Section 46 and 47 of the Application Act and Division 1 Clauses 9 to 12 of the Regulations. Interest earned on the statutory deposit is paid to the Law Society on account of the Public Purpose Fund pursuant to Section 47(4) of the Application Act.

An electronic version of the statutory deposit calculator is available on the Law Society's website at: <http://www.lawsociety.com.au/statutorydepositcalculator/>

### **6.11.2 The balance of trust funds**

The balance of trust funds held by law practices (represented by the authorised ADI statement balance) also attracts interest payable to the Public Purpose Fund. In early 1983, the Law Society reached agreement with the major financial institutions operating in New South Wales for the payment to the Law Society of interest on "the balance of trust funds" being calculated on the minimum monthly balances, not annual balances. The authorised ADIs did not agree to be bound to pay the interest, but indicated a preparedness to make "ex gratia" payments. Payments are at an agreed rate of interest (determined annually) calculated by reference to the total of the minimum monthly balance of all solicitors' trust funds held by each authorised ADI.

## **6.12 Trial Balance Statement – Rule 48(2)(b)**

There is no reference to a trial balance statement in the LPUGR. However, it is the Trust Accounts Department's view that a statement reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books should be construed as a "trial balance statement".

A trial balance statement is prepared to ensure the principle of double entry accounting has been followed correctly (i.e. the system is in balance). This statement is designed to highlight any errors in the law practice's internal records. Common errors include failure to post both sides of the transaction, posting an entry to the wrong side of the ledger, incorrect calculation of the balance and transposition errors, i.e. \$15 as \$51.

Rule 48(3) requires the trial balance statement to be prepared monthly and within **15 working days** of the end of the month concerned.

### **6.12.1 Preparing a trial balance statement**

The procedures to be followed when preparing a trial balance statement are:

- a) 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 authorised ADI statement;
- b) ensure all journal entries have been posted to the relevant trust ledger accounts;

- c) ensure each trust ledger account has the correct resulting balance after each entry;
- d) on a separate sheet of paper headed, list the totals of each individual trust ledger account. Trust ledger accounts showing a nil balance may be excluded;
- e) add the trial balance;
- f) compare the total of the trial balance with the reconciled cash book balance. For the accounting system to be in balance, the totals of the reconciled cash book balance, control account/cash book balance and the trial balance should all agree.

It is imperative that a law practice that maintains their trust records by a computerised accounting system, print the trial balance **as at** the last day of each month and before any transactions are processed in the forthcoming month. The bookkeeper must be aware of the requirements of the system to ensure that a month end trial balance is prepared showing all transactions with a date processed in the applicable month.

Rule 48(b)(ii) and (iii) requires that the trial balance statement disclose the following information:

- a) the month to which it refers;
- b) the date of preparation;
- c) the following details:
  - i) name (of the person for whom the account is maintained) (***Account Name***);
  - ii) identifying reference (***Matter Reference***);
  - iii) a short description of the matter; (***Matter Description***)
  - iv) balance of the account (at month end);
- d) the total of the trust ledger account balances;
- e) a reconciliation of the balance of the ledger accounts with the reconciled balance of the practice's trust account cash books.

The items in bold italics and brackets reflect the descriptions that have been assigned to the various descriptions by the Trust Accounts Department in the various records where inconsistent words have been used in the LPUGR.

Rule 48(b)(i) requires that the trial balance statement show a comparison between the total of the trust ledger accounts and the balance of the trust account cash books. A sample trial balance statement is shown in the following page.

The following is a sample of a trust trial balance statement:



## PHILPOTT AND ASSOCIATES TRIAL BALANCE STATEMENT

Trust Trial Balance Statement as at; \_\_\_\_\_

Account Name	Matter Reference	Matter Description	Balance
	Total	Trust Ledger Accounts	\$

### Rule 48(2)(b)(i) Comparison

Total Trust Ledger Accounts	\$ _____
<i>Add</i>	
Statutory deposit	\$ _____
Reconciled Trust Cash Book Balance	\$ _____
Variance (should be nil)	\$ _____

Prepared by \_\_\_\_\_ Date prepared \_\_\_\_\_

The exact comparison shown by each law practice depends on the method of presentation of the trial balance statement. Some presentations and the resultant 48(2)(b)(i) comparisons are listed below. It is suggested that each law practice review their presentation to ensure the reconciled cash book balance is compared with the balance of the trust ledger accounts and that this comparison is shown on the trust trial balance. It is accepted that a number of different bookkeepers/legal practitioners and principals may be involved in compiling this comparison. However, the number of instances where records have not balanced for considerable periods has led to the Trust Accounts Department insisting that this comparison be shown on the trial balance as required by Rule 48(2)(b)(i).

Example comparisons are as follows:

**Where Statutory Deposit is included in trial balance total;**

Total Trust Trial Balance (total trust ledger accounts)	xxx.xx
Reconciled Cash Book Balance	<u>xxx.xx</u>
Variance (Should be Nil)	Nil

***Where Statutory Deposit is excluded from trial balance or in debit column;***

Total Trust Trial Balance (total trust ledger accounts)	xxx.xx
Less Statutory Deposit	<u>xxx.xx</u>
Trial Balance Total	xxx.xx
Reconciled Cash Book Balance	xxx.xx
Variance (Should Be Nil)	Nil

## **6.13 Trust Ledger Accounts – Rule 47**

The ledger is the accounting document that draws together all transaction types, (i.e. receipts, payments and journals) relating to one matter in order to provide the history relative to that matter and the matter balance.

The double entry theory of accounting (for each entry there is an equal and corresponding debit and credit entry) is the principle upon which trust accounting is based. Simply stated, when posting to the ledger for:

- a) **Receipts** - the individual matter is credited and the control/cash book is debited;
- b) **Receipt Reversals** - the individual matter is debited and the control/cash book is credited;
- c) **Payments** - the individual matter is debited and the control/cash book is credited;
- d) **Payment Reversal** - the individual matter is credited and the control/cash book is debited;
- e) **Transfer Journal** - the matter being transferred from is debited and the matter being transferred to is credited. Note: There is no effect on the control account for a journal entry.

Rule 47(1) requires the law practice to maintain a separate ledger account for each matter for each person on whose behalf money is held in the general trust account. The title of the ledger must record and be kept up to date the name of the person for or on behalf of whom, money was paid, the person's address, and particulars of the matter in relation to which the money was received.

Rule 47(4) requires that transactions must be recorded in the trust ledger account in the order in which they occur. Particulars of the receipt, payment or transfer of money must be recorded within **5 working days** of the day the receipt was made out, the payment was made or the transfer was effected.

The trust ledger account balance is to be recorded after each transaction posted to the ledger.

### 6.13.1 Particulars to be Recorded in Trust Account Ledgers

The following particulars must be recorded for each transaction in the trust ledger account:

- a.) the date of the transaction;
- b.) the appropriate reference number and transaction type;
- c.) particulars sufficient to identify the reason for the transaction;
- d.) the amount of money in the transaction;
- e.) if the transaction type is:
  - i.) a receipt—the provider of the amount and the date the amount was received if that date is different from the date of receipt;
  - ii.) a payment by cheque—the payee 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;
  - iii.) a payment by electronic funds transfer—the account name and number and the relevant BSB number of the ADI and the name of the person receiving the benefit of the payment;
  - iv.) a journal entry—the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter

In regard to the phrase “*and 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*”, the Trust Accounts Department’s interpretation of this is that the law practice is required to record the name of the authorised ADI at which the trust account is maintained together with the name of the person to whom the authorised ADI cheque is to be paid to (e.g. payee on the bank cheque).

### 6.13.2 Format of a Trust Ledger Account

#### Philpott and Associates Trust Ledger Account

Account Name:

Address:

Matter Reference:

Matter Description:

Other Party:

Responsible Legal Practitioner:

Responsible Principal:

Date Rec/ Rec'd/Paid (Note 1)	Reference Number	Rec'd From/Paid To/Jnl To/From. Reason	Debit Amount	Credit Amount	Balance

Note 1: The column headed Date Rec/Rec'd/Paid is used to record the date of the receipt is made out and if different the date the money was received. If that transaction is by Cheque, Electronic Funds Transfer or Journal then the date recorded is the date the cheque is drawn, electronic funds transfer or journal transfer is effected.

The method of maintaining the ledger may take any form chosen by the law practice. Methods available include card, book or computer format.

### 6.13.3 Trust Ledger Account in name of Law Practice or Legal Practitioner Associate

Rule 49(2) permits a law practice to have a trust ledger account in the name of the law practice or a legal practitioner associate in the following circumstances:

- a) an account in the law practice's name but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger money properly due to the law practice for legal costs. The money in the trust ledger must be withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account: Rule 49(3); and
- b) an account in a legal practitioner associate's name for money in respect of which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity. The law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates: Rule 49(4).

A legal practitioner should not maintain a ledger in her or his own name if it is not in respect of a legal matter. Moreover, the operation of section 146 dictates that the law practice is not allowed to mix trust money with other money unless authorised by the Law Society Council, being the designated local regulatory authority, and in accordance with any conditions imposed by that Council in relation to the authorisation.

## **6.14 Trust Transfer Journal – Rule 46**

The trust transfer journal is the accounting record used to record all "non cash" transactions; that is, transactions that do not involve the receipt of cash/cheques or the payment of cheque/EFT. Examples of "non cash" transactions are:

- a) Transfer of money from one matter to another matter within the ledger - a movement of funds within the ledger system, commonly used to record transfers from sale to purchase matters and sale of estate property to estate matter;
- b) Correction of incorrect posting, for example, a receipt is posted to an incorrect ledger account, the error is realised and a correcting entry is made;
- c) Transfer from a trust ledger account to a cost clearing account as prescribed by Rule 49(2)(a).

The LPUGR permits the journal transfer only if the law practice is entitled to withdraw the money and pay it to the other trust ledger account. The journal transfer must also be authorised in writing by an authorised principal or if the principal is not available, an authorised legal practitioner associate of the law practice (e.g. employed legal practitioner), or an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money, or two authorised associates jointly, or an external intervener for the law practice. The law practice must retain particulars of each authorisation. For law practices using a manual accounting system, the handwritten journal should be authorised in writing (e.g. the principal signs beside each entry) before it is posted to the respective trust ledger accounts.

The Trust Accounts Department recommends that law practices adopting a computerised accounting system use a journal transfer request form as the source record for all journal transfers. This document should be signed by the authorised person(s) and detail the reason for the transfer.

A sample journal authorisation form follows:

<b><u>TRUST JOURNAL TRANSFER REQUEST</u></b>
<b>Trust Journal Reference Number:</b>
<b>Date:</b>
<b>Solicitor/Associate Requesting Transfer:</b>
<b><u>Transfer From:</u></b>
<b>Client (person) Name:</b>
<b>Matter Description:</b>
<b>Matter Number:</b>
<b>Amount:</b>
<b><u>Transfer To:</u></b>
<b>Client (person) Name:</b>
<b>Matter Description:</b>
<b>Matter Number:</b>
<b>Amount:</b>
<b>Reason/Purpose of Transfer:</b>
<b>Authorised By (Authorised principal or associates):</b>

It is suggested that the printed journal should also be reviewed and endorsed by an authorised person(s) initialling each entry.

### **6.14.1 Particulars to be included in a Trust Transfer Journal**

Rule 46(3) requires the trust transfer journal entry to record the following particulars in respect of each transfer of trust money by journal entry:

- a) date of the transfer;
- b) the trust ledger account **from which** the money is transferred (including the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description)
- c) the trust ledger account **to which** the money is transferred (including the appropriate ledger reference, the name of the person on whose behalf the transfer was made and the matter description)
- d) particulars identifying the reason for the transfer;
- e) amount transferred to and from each ledger.

Rule 46(4) requires journal pages or entries to be consecutively numbered and each entry in the trust transfer journal should be numbered and maintained exclusively for the trust account.

A sample trust transfer journal record follows:

**Philpott and Associates  
Trust Transfer Journal**

For Period    /    /        to    /    /

Page

Date	Journal Reference	Matter Reference, Account Name Matter Description Reason	Debit	Credit	Authorised by

Recording a reason for the trust transfer journal is a matter commonly overlooked by bookkeepers/legal practitioners. As a cheque cannot be paid from the trust account ledger, unless the payment has been authorised by the person on whose behalf the money is held and signed by an authorised person(s). Likewise a journal entry should not be completed unless the transfer has been approved by the person on whose behalf the money is held and the transfer is authorised in writing by an authorised person(s).

Prior to effecting a journal transfer, ledger accounts should be reviewed to confirm which account the money is being transferred to and which account it is being transferred from and that there are sufficient funds in the ledger to make the transfer.

The procedure 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.



## Chapter Seven

### 7. Authorised Signatories

#### 7.1 Authority to Operate General Trust Accounts or Controlled Money Accounts

Rule 42 states that withdrawals from a general trust account must be at the direction or authority of:

- a.) an authorised principal of the law practice; or
- b.) if such principal is not available:
  - i.) an authorised legal practitioner associate; or
  - ii.) an authorised Australia legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or
  - iii.) two or more authorised associates jointly.

Rule 63 states that withdrawals from a controlled money account must be effected by, under the direction of or with the authority of:

- a.) an authorised principal of the law practice; or
- b.) if such principal is not available:
  - i.) a legal practitioner associate authorised by the law practice to effect, direct or give authority for this purpose; or
  - ii.) an Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money and who is authorised by the law practice to effect, direct or give authority for this purpose; or
  - iii.) two or more associates of the law practice jointly.

An “associate” is defined in Section 6 to mean a person who is one or more of the following:

- a.) a principal of the law practice;
- b.) a partner, director, officer, employee or agent of the law practice;
- c.) an Australian legal practitioner who is a consultant to the law practice.

A “legal practitioner associate” is also defined in Section 6 to mean an associate of the law practice who is an Australian legal practitioner.

The term “authorised” is not defined in the LPUL or LPUGR. Under the previous legislative regime, the Legal Profession Regulation 2005 defined “authorised” to mean:

- in the case of withdrawals from the general trust account by cheque: authorised by the law practice to sign cheques;
- in the case of withdrawals from the general trust account by electronic funds transfer: authorised by the law practice to effect, direct or give authority for an electronic funds transfer;



- in the case of withdrawals from the controlled money account: authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.

Further, for the purposes of being “authorised” to operate a general trust account or a controlled money account, a person is “authorised” when the law practice delegates the person the authority to sign cheques (i.e. a signatory on the general trust account or controlled money account) or effect electronic funds transfers (i.e. is given access to internet banking).

## **7.2 Notification Requirements Regarding Authorised Signatories**

Rule 50(2) provides that during July in each year, a law practice must give the Law Society Council written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised, as at 1 July that year:

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

Persons authorised in accordance with a.) and b.) above are collectively referred to as “authorised signatories” in these Seminar Notes.

A law practice is not required to provide notification pursuant to Rule 50(2) if the information has already been provided in an external examiner’s report under Section 159. It is intended that this notification will be included in Part B of the Law Practice Confirmation and Trust Money Statement which is issued to the profession in April each year and submitted as part of the External Examiner’s Report.

The term “associate” includes the principal of the law practice. As such, a principal of the law practice who is an authorised signatory must be included on the list.

It is the view of the Trust Accounts Department that provided a law practice has a principal with a practising certificate authorising the receipt of trust money then the solicitor associates and non-solicitor associates may receive trust money on behalf of the law practice and account to the law practice for the trust money.

No notification to the Law Society Council, being the designated local regulatory authority, is required regarding persons authorised to operate a controlled money account.

The law practice is not required to seek permission from the Law Society Council, being the designated local regulatory authority, to authorise persons to sign a trust cheque or effect an electronic funds transfer for the general trust account or controlled money accounts.

A law practice is also no longer required to notify the Law Society Council upon the appointment or termination of an authorised signatory for the general trust account.

A notification form pursuant to Rule 50(2) in the event that the notification has not been included as part of the External Examiner's Report is available on the Law Society's website at: <http://www.lawsociety.com.au/forms>.

### **7.3 Procedures for Notifying the Law Society Council of Authorised Signatories**

The following is the recommended procedure to be followed when notifying the Law Society Council of authorised signatories on the general trust account:

- a.) Ensure that all authorised signatories are up to date in Part B of the Law Practice Confirmation and Trust Money Statement which forms part of the external examiner's report and that this report is submitted by 31 May each year;
- b.) If there are any changes in the list of authorised signatories from the date of submission of the external examiner's report to 1 July that year, download and complete the notification form pursuant to Rule 50(2);
- c.) If the list of authorised signatories is not provided in the external examiner's report, download and complete the notification form pursuant to Rule 50(2).



## Chapter Eight

### 8. Written Direction Money - Section 137(a)

#### 8.1 Written directions generally

If at the time a law practice receives trust money (other than cash) 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.

"Written direction money" is defined in Rule 34 to mean trust money that is received or held by a law practice, in respect of which the law practice has a written direction to deal with the money otherwise than by depositing it in a general trust account, and that is not controlled money.

#### 8.2 Person legally entitled to provide written direction

The phrase is not defined in the LPUL, however the operation of Section 137(a) provides for a person, other than the person on whose behalf trust money is received, to give binding written directions to a law practice with regard to trust money providing that person is "legally entitled" to do so.

##### 8.2.1 Example of Written Direction Money

An example is where a cheque is received by the law practice which is made payable to the law practice whereby the person entitled provides a written direction to the law practice to deposit the money into the entitled person's bank account rather than the law practice's general trust account. The written direction cannot be to deposit it to the law practice's office/general account or an account in which other money is held by the law practice as Section 146 precludes a law practice from mixing trust money with other money.

##### 8.2.2 Examples of possible "legally entitled" persons

An example could be where a court gives written orders as to the way a person's trust money is to be handled. For example, a spouse with a Family Court Order; a Trustee in Bankruptcy with a Sequestration Order or a Guardian with a Guardianship Order. Another example may be where a law practice is sent a statutory notice from a government Department such as the Australian Taxation Office or Child Support Agency and the notice establishes that the department or agency has a "legal entitlement" to particular trust money not yet deposited into the general trust account or controlled money account.

### **8.2.3 Law Practice must ensure person is “legally entitled”**

A law practice faced with this particular situation must ensure that the person providing the direction to a law practice with regard to trust money is “legally entitled” to do so. Additionally the law practice should ensure that the person’s claim to “legal entitlement” is in respect of the **specific** trust monies concerned. That is, that the trust money is not protected from a claim of legal entitlement, such as, protected money or assets listed in the *Bankruptcy Act 1966* (Cth).

## **8.3 Record Keeping Requirements**

The practice must keep the written direction as part of its trust records for a period of seven years after finalisation of the matter to which the direction relates. A folder containing all original written directions provided to the law practice should be kept and a copy placed in the respective file.

## **8.4 Written Direction Money received in the form of Cash**

Money received in the form of cash must be deposited in the general trust account before dealing with it in accordance with the person’s written direction. A trust receipt should be issued and the money disbursed according to the direction.

## **8.5 Trust Account Statement**

The LPUGR do not require a Trust Account Statement to be issued for trust money received that is subject to a written direction.



## Chapter Nine

### 9. Controlled Money – Rules 61 to 64

Section 128 defines a “Controlled money account” as “an account maintained by a law practice with an ADI for the holding of controlled money received by the practice”.

Unlike a general trust account, it is not necessary for controlled money accounts to be maintained with authorised ADIs. However, they must be maintained with an “ADI”. ADI is defined under Section 6 as “an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth”. A list of ADI’s can be located on the Australian Prudential Regulation Authority (APRA)’s website [www.apra.gov.au](http://www.apra.gov.au)

Section 128 defines “Controlled money” 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.

#### 9.1 Elements of Controlled Money:

- money **received** or held by the 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**;
- in respect of which the practice has a written direction to disburse (other than for legal costs, court order or as authorised by law) the money.

##### 9.1.1 Written direction in respect of controlled money

The LPUL requires a law practice to obtain a written direction from the person on whose behalf the money was received (e.g. the client) before the money can be deposited to a controlled money account. The written direction by the client should be specific to avoid possible breaches of the Corporations Act as law practices are prohibited to give financial advice to a client (except where the law practice has a Australian Financial Services Licence). It may be prudent for the written direction to have the details of the matter, reason for the investment, name of the ADI and the type of account (e.g. type of product that an ADI offer) inserted in the direction given to the law practice. The law practice should refrain from giving the client advice about investing with a specific ADI and/or type of ADI account.

As soon as practicable after receiving controlled money, a law practice must deposit the money in the account specified in the written direction relating to the money. In

addition, the law practice must ensure that it does not pool controlled money with money held on behalf of another person.

### **9.1.2 No written direction**

In the absence of a written direction, the following avenues would apply:

- i) If a cheque is made payable to the law practice – the money must be deposited into the practice’s general trust account pending written instructions from the person,
- ii) If a cheque is made payable to the client (or the person on whose behalf the money is held) – the cheque must be delivered to the client or returned to the drawer of the cheque as the money is considered as transit money,
- iii) If cash is given to the law practice – the money must be deposited into the practice’s general trust account pending written instructions from the client.

## **9.2 Establishment of a Controlled Money Account:**

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. However, the practice may after receiving a written direction to do so, open a controlled money account in anticipation of receiving controlled money.

The law practice should be aware that Section 139(6) prevents law practices from pooling controlled money. In other words, the controlled money account must be held exclusively on behalf of the person directing the opening of the account.

According to Rule 61 the controlled money account must be maintained under an account name that includes the following particulars:

- the name of the law practice; and
- the expression “controlled money account”, “CMA” or “CMA/c”; and
- particulars sufficient to identify the purpose of the account and to distinguish the account from other accounts maintained by the law practice.

It is also suggested that “ITF” be recorded in the account name to remove the requirement on the law practice to submit a trustee return as per a tax ruling.

The distribution of the interest on the controlled money account should be documented in the initial written direction to open the controlled money account especially if the money is held for two or more parties.

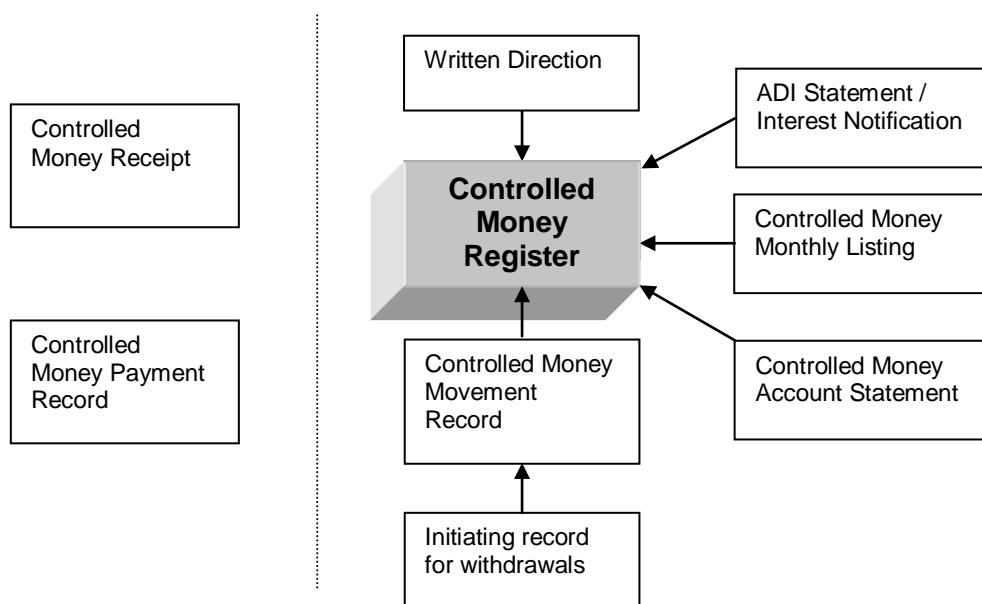
The tax file numbers should be provided to the ADI when opening the account as this removes the requirement of the bank to withhold interest. It is strongly suggested that the law practice does not provide the law practice’s tax file number when opening the account. As this will then be recorded by the ADI as interest paid to the law practice.

## 9.3 Record Keeping:

The law practice must maintain the controlled money account and keep accounting records for controlled money in accordance with Rules 61 to 64.

The following diagram illustrates the records required to be kept in respect of controlled money.

### Controlled Money Records



The duplicates of the controlled money receipts should be retained in sequence in the controlled money receipt book.

The records that are required to be maintained in the “controlled money register” are:

- Written direction
- Cheque/payment records
- Controlled money movement record (ledger)
- Controlled money monthly listing
- ADI statements / Passbook
- Controlled money account statement (trust account statement)
- Any supporting information relating to controlled money

The following is a summary of each controlled money record and the requirements of the LPUGR relating to that record.

## 9.4 Written Direction – Section 139

As soon as practicable after receiving controlled money, a law practice must deposit the money into an ADI account specified in the written direction relating to the money. The written direction is the primary source document for controlled money. It

is a record of the person's instructions and directs the law practice to deposit the money in a nominated account and disburse the money.

Section 139(5) stipulates that the law practice must keep a written direction for a period of seven years. The written direction should be kept in the controlled money register and a copy kept in the relevant matter file.

## **9.5 Controlled Money Receipt – Rule 62**

The law practice must make out a controlled money receipt as soon as possible after receiving the controlled money. If the law practice receives the money by direct deposit, then the practice must make out a receipt after receiving notice or confirmation of the deposit from the ADI. In other words, if a person makes a direct deposit into a controlled money account, the law practice is required to make out a receipt upon receiving confirmation that the money has been credited into the account. The law practice may also become aware of these deposits by accessing the internet or receiving an ADI statement from the ADI.

The controlled money receipt is to be made out to the person from whom the controlled money is received and given to the person on request.

There are instances where the money is held in the general trust account but later directed by the person to deposit the money in a controlled money account. A controlled money receipt is required to be made out to the general trust account.

The law practice must operate a single controlled money receipt system for the receipt of controlled money for all controlled money accounts. For example, if a law practice has several branches it will still be required to have one set of controlled money receipts.

The controlled money receipts must be made out in duplicate, unless at the time the receipt is made out those particulars are recorded by a computerised accounting system in the register of controlled money, and must contain the following particulars:

- (i) must contain the name of the law practice or business name;
- (ii) the expression "controlled money receipt";
- (iii) consecutively numbered;
- (iv) issued in sequence;
- (v) and contain the following particulars:
  - i) date the receipt is made out;
  - ii) the date of receipt of the money if different to the date the receipt was made out;
  - iii) form in which the money was received;
  - iv) name of the person from whom the money was received;
  - v) details identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
  - vi) name of, and other details clearly identifying, the controlled money account to be credited, unless the account has not been



- established by the time the receipt is made out; (e.g. the ADI account name and number including BSB);
- vii) particulars identifying the reason for which the money was received;
- viii) name of the person who made out the receipt;
- ix) amount of money received.

A sample controlled money receipt follows:

**PHILPOTT & ASSOCIATES  
CONTROLLED MONEY RECEIPT**

Receipt Number: \_\_\_\_\_

Date: \_\_\_\_\_

Date of Receipt: \_\_\_\_\_  
(If Different to the date receipt was made out)

Received from: \_\_\_\_\_

The sum of \_\_\_\_\_ and \_\_\_\_\_ cents

\$ \_\_\_\_\_ Cash/Cheque/Direct Deposit

For and on behalf of: \_\_\_\_\_

Account Name: \_\_\_\_\_

Matter Reference: \_\_\_\_\_ Matter Description: \_\_\_\_\_

Reason: \_\_\_\_\_

Name of controlled money account to be credited: \_\_\_\_\_

Account Number (including BSB): \_\_\_\_\_

Name of Person Issuing Receipt: \_\_\_\_\_

If the controlled money account was not established when the receipt was issued, particulars of the account must be included in the duplicate receipt.

A controlled money receipt is not required to be made out for interest or other income received from the investment of controlled money which is credited directly to the controlled money account.

## 9.6 Payment of Controlled Money – Rules 63 & 42

Controlled money must not be disbursed except:

- (i) 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; or
- (ii) as prescribed at Rule 42 relating to the withdrawal for legal costs; or
- (iii) in accordance with a court order or as authorised by law.

Despite any direction to the contrary controlled money can only be withdrawn from the controlled money account by:

- (a) cheque,
- (b) electronic funds transfer.

The following withdrawals are prohibited:

- (a) Cash withdrawals,
- (b) ATM withdrawals or transfers,
- (c) Telephone banking, withdrawals or transfers.

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 such a principal is not available:
  - i.) a legal practitioner associate authorised by the law practice to effect, direct or give authority for this purpose; or
  - ii.) an Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money and who is authorised by the law practice to effect, direct or give authority for this purpose; or
  - iii.) two or more associates of the law practice jointly.

See Chapter 7 for more information relating to authorised signatories.

### 9.6.1 Particulars to be recorded for withdrawal:

A written record of the required particulars must be kept for each withdrawal of controlled money. The written record must be filed in order in which the payments were made and recorded separately for each controlled money account.

If at the time the withdrawal is made, the required particulars are recorded by a computerised accounting system, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computerised accounting system to be verified.

The written record must contain the following particulars:

- i) date of the transaction;

- ii) number of the transaction;
- iii) if the withdrawal was made by:
  - (a) electronic funds transfer, the name and the account number (including the BSB number) to which the account was transferred;
  - (b) cheque, the name of the payee;
  - (c) in the case of a withdrawal by cheque made payable to an ADI Cheque, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
- iv) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
- v) particulars sufficient to identify the purpose for which the payment was made;
- vi) the amount withdrawn;
- vii) the person or persons effecting, directing or authorising the withdrawal.

A sample controlled money payment record follows:

<b><u>CONTROLLED MONEY PAYMENT RECORD REQUEST</u></b>	
<b>Reference Number:</b>	
<b>Controlled Money Account Number:</b>	
<b>Date:</b>	
<b>Matter Reference:</b>	
<b>Client/Person's Name:</b>	
<b>Matter Description:</b>	
<b>Amount:</b>	
<b>Payee:</b>	
<b>If by EFT – Receiving account number (incl BSB):</b>	
<b>If payable to ADI – BSB:</b>	<b>Name of beneficiary:</b>
<b>Reason/Purpose of Payment:</b>	
<b>Clients written instructions for the payment are attached</b>	<b>Y/N</b>
<b>Solicitor/Associate Requesting Payment:</b>	
<b>Authorised By:</b>	
<b>(Authorised controlled money account signatory/ies):</b>	

### **9.6.2 Withdrawal of legal costs from Controlled Money Account**

Withdrawal of legal costs from a controlled money account is discussed at Chapter 3 of these Seminar Notes.

## 9.7 Controlled Money Register – Rule 64

The law practice must maintain a register of controlled money for the records of controlled money movements for all its controlled money accounts together with all supporting documentation including ADI statements and notifications of interest received. A separate record of movements must be maintained for each controlled money account.

### 9.7.1 Record of Controlled Money Movements

The Trusts Accounts Department suggests that the *record of controlled money movements* be kept in a form of a ledger.

The record of controlled money movements for a controlled money account must disclose:

- the name of the person on whose behalf the controlled money is held;
- the person's address;
- particulars sufficient to identify the matter (e.g. matter reference and matter description);
- any changes to the information above.

**For the Receipt of Controlled Money, the following particulars must be recorded in a record of controlled money movements for a controlled money account:**

- i) date the controlled money was received;
- ii) number of the receipt;
- iii) date the money was deposited in the controlled money account;
- iv) name of and other details clearly identifying the controlled money account;
- v) amount of controlled money deposited;
- vi) details of the deposit sufficient to identify the deposit;
- vii) interest received.

**For the Withdrawal of Controlled Money, the details of any payments from the controlled money account must be recorded in a record of controlled money movements. The Trust Accounts Department suggests the following particulars:**

- i) date and number of the payment;
- ii) if the withdrawal was by;
  - (a) EFT – the name and number of the account to which the amount was transferred and the relevant BSB number;
  - (b) Cheque – the name of the person to whom payment is to be made; or
  - (c) 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;
- iii) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;

- iv) particulars sufficient to identify the purpose for which the payment was made;
- v) name of the authorised person(s) effecting the withdrawal;
- vi) amount paid.

A suggested presentation of the controlled money movements record is:

**PHILPOTT & ASSOCIATES**  
**Controlled Money Movements Record**

Person's Name: \_\_\_\_\_  
 Person's Address: \_\_\_\_\_  
 Matter Reference: \_\_\_\_\_ Matter Description: \_\_\_\_\_  
 ADI: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Original Investment Amount:\$ \_\_\_\_\_ Date: \_\_\_\_\_  
 Account Name: \_\_\_\_\_  
 Account Number: \_\_\_\_\_  
 Term/Duration: \_\_\_\_\_  
 Interest Rate: \_\_\_\_\_  
 Payable from: \_\_\_\_\_  
 Payable \_\_\_\_\_

Date Rec/ Rec'd/ Paid <small>Note 1</small>	Rec./Cheq/ EFT No	Paid To/Rec'd From Reason	Debit (Withdrawal)	Credit (Deposit)	Balance	Party Authorising Withdrawal

Note: (1) The column headed Date Rec/Rec'd/Paid is used to record the date of the receipt is made out and if different the date the money was received. If that transaction is by Cheque, Electronic Funds Transfer or Journal then the date recorded is the date the cheque is drawn, electronic funds transfer or journal transfer is effected.

The LPUGR stipulate that particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the law practice or the payment is made.

The LPUGR take into account that the receipt of interest and other income may only come to the law practice's attention when it receives an ADI statement. Consequently, particulars of interest and other income received in respect of controlled money are required to be entered in the register as soon as practicable after the law practice is notified of the receipt.

## 9.8 Controlled Money Listing – Rule 64(8)

The law practice is required to prepare and keep in permanent form a statement listing its controlled money accounts as at the end of each month detailing:

- a) the name, number and balance of each controlled money account in the controlled money register; and
- b) the name of the person on whose behalf the controlled money in each account was held; and
- c) short description of the matter to which each relates; and
- d) the date the statement was prepared.

The law practice must prepare the statement within 15 working days after each named month.

Rule 64(9) now requires the controlled money statement to be reviewed by a principal of the law practice who is authorised to receive trust money and that review must be evidenced on the statement.

A suggested presentation of the controlled money listing is:

**PHILPOTT & ASSOCIATES**  
**Controlled Money Listing**  
As at 30 September 20XX

Persons Name	Account Name	Account Number ADI Name	Matter Reference Matter Description	Amount
			Total	

Prepared on 15 October 20XX

Prepared by

Reviewed by:

\_\_\_\_\_  
Name of Principal

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## 9.9 Trust Account Statement – Rules 52 & 53

Trust Account Statements for controlled money must be sent to persons on whose behalf the money is held. The requirements in regard to the required particulars in trust account statements are discussed at Chapter 5 of these Seminar Notes.



## Chapter Ten

### 10. Transit Money – Section 140

#### 10.1 Transit Money Generally

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.

Section 140 requires the law practice to pay or deliver the money as required by the instructions relating to the money within the period (if any) specified in the instructions or if the period is not specified, then as soon as practicable after receipt.

#### 10.2 Record keeping requirements

In respect of transit money received by the law practice, Section 140(2) requires the practice to record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

Where third party cheques are received, a law practice should ensure where possible, that copies of the cheques are retained. Copies of other documentation received should also be retained. For example, settlement directions from the vendor and directions from an incoming mortgagee or directions to an agent. Together, these kinds of records will assist a law practice to discharge its obligation in respect of Section 140(2) “to record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received”. Transit money records should be kept in the client file.

##### 10.2.1 Retention of Records

The brief particulars required to be retained in respect of transit money, such as, written directions, authorities or other documents, come within the definition of *trust records* in Section 128. In accordance with Section 140(3) these trust records are to be kept for a period of 7 years.

#### 10.3 Transit Money Received in Cash

The law practice must deposit transit money received in cash into the general trust account as soon as practicable after receiving the money before dealing with it in accordance with the instructions: Section 140. A trust receipt should be issued and the money dealt with according to the instructions as soon as practicable.

#### 10.4 Trust Account Statements

A Trust Account Statement does not have to be issued for transit money.



## Chapter Eleven

### 11. Money to be Dealt with Under a Power – Rule 55

#### 11.1 Power or Authority

If the law practice or an associate of the practice is given a power or authority to deal with money for or on behalf of a person (for example, power of attorney, grant of probate, 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 Rules 55 and 60.

#### 11.2 Record Keeping Requirements

The law practice must keep:

- i) a record of all dealings with the money to which the practice or associate is a party,

**and**

- ii) all supporting information in relation to the dealings:

in a manner that enables the dealings to be clearly understood.

##### 11.2.1 Recording all dealings

The suggested method of recording all dealings, in respect of a power 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. In other words, the practice should retain all 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) for a period of seven years: Section 147(2)(d).

In situations where two law practices are joint signatories of a bank (ADI) account and that there is only one bank statement, the law practices can by agreement, allocate the task of record keeping to one law practice and ensure that the other law practice gets a copy of records at least monthly.

#### 11.3 Register of Powers and Estates in relation to Trust Money – Rule 60

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.

This does not apply where the law practice or an associate of the law practice is also required to act jointly with one or more persons who are not associates of the law practice: Rule 60(2).

### 11.3.1 The register of powers and estates must record:

- (a) particulars sufficient to identify each power in respect of which the law practice or an associate of the law practice is acting or entitled to act (alone or jointly with the law practice or one or more associates of the law practice), including the name and address of the donor and date of each power;
- (b) particulars sufficient to identify each estate in respect of which the law practice or an associate of the law practice is acting or entitled to act (alone or jointly with the law practice or one or more associates of the law practice), including 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.

A suggested format of the Register of Powers and Estates is:

Philpott and Associates Register of Powers and Estates					
Date of Power	Name and Address of Donor / Deceased	Matter Reference	Description of Power	Date of Death of Deceased	Responsible Solicitor

### 11.3.2 Powers and estates that must be included in the Register

The register of powers and estates must record all powers and estates where the law practice or an associate of the practice is acting or entitled to act in relation to trust money. For example, if a legal practitioner associate was given a sole general power of attorney from a client, an entry must be made in the register, regardless of whether the legal practitioner becomes a signatory of the client's personal account.

In essence, a system of ensuring that details of all powers and estates are recorded in the register must be developed by the law practice.

## 11.4 Money under a Power received in Cash

The law practice **must** deposit trust money subject of a power that is received in the form of cash in a general trust account (or a controlled money account in the case of

controlled money) of the law practice concerned as soon as practicable after receiving the money before it is otherwise dealt with in accordance with the power, despite anything to the contrary in the power or any relevant direction.

## **11.5 Costs**

Costs cannot be withdrawn from the power money account pursuant to Rule 42. Costs can only be withdrawn pursuant to the power.

## **11.6 Trust Account Statement**

Rules 52 and 53 prescribe that trust account statements must be sent to each person for whom or on whose behalf trust money (other than transit money and written direction money) is held or controlled by the law practice or an associate of the practice. This includes trust money subject of a power. See details at Chapter 5 of these Seminar Notes.



## Chapter Twelve

### 12. Investment of Trust Money

#### 12.1 When Investment Money is not Trust Money

Section 129(2)(b) provides that the following money **is not** trust money:

- a.) money entrusted to or held by a law practice for or in connection with a managed investment scheme or mortgage financing undertaken by the law practice;
- b.) money received by a law practice for or in connection with a financial service it provides in circumstances where the law practice or an associate of the law practice is required to hold an Australian financial services licence covering the provision of the service or provides the financial service as a representative of another person who carries on a financial services business;
- c.) money received by a law practice for investment purposes.

“Australian financial services licence”, “authorised representative”, “financial service” and “financial services business” are not defined in the LPUL or LPUGR. The Trust Accounts Department is of the view that these terms have the same meanings as in Chapter 7 of the Corporations Act 2001 (Cth).

##### 12.1.1 Disclosure to Clients— When Investment Money is not Trust Money Section 134

When a law practice receives or holds money that is non-trust money (other than money for the payment of legal costs due to the law practice), it must give the person who provided the money written notice. The notification requirements are discussed at Chapter 2 of these Seminar Notes.

#### 12.2 When Investment of Trust Money is Trust Money

Section 129(2)(d) provides that money that is received by a law practice for investment purposes is trust money if both of the following criteria are satisfied;

- the law practice received the money in the ordinary course of legal practice and primarily in connection with the provision of legal services 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.

The Trust Accounts Department suggests that any law practice investing money that has been entrusted to the law practice obtains a written direction from the person on

whose behalf the money is held, unless acting under a power. The written direction provides evidence that the law practice is not making investment decisions on behalf of a person on whose behalf money is held which may be in breach of the Managed Investments Act, 1998 (Cth) and/or Corporations Act, 2001 (Cth).

### **12.2.1 An Example of When Investment of Trust Money is Trust Money**

A law practice was firstly entrusted with settlement moneys say from the proceeds of sale. This trust money is then receipted through the trust records of the law practice that is, general trust account or a controlled money account. The law practice is subsequently given further instructions to invest the trust moneys in a non ADI or buy shares or other property on behalf of the client.

## **12.3 Register of Investments**

If a law practice invests trust money for or on behalf of a client the law practice is required to keep a register recording the investment in accordance with Rule 59. The law practice should record an investment made by the practice in the register if the practice has or will have continuing control over the investment.

### **12.3.1 Register of Investments – Information Required – Rule 59**

Rule 59 requires a register to be kept for the investment of trust money.

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.

In regard to item g) above the Trust Accounts Department suggests that particulars sufficient to identify the source of the investment would include:

- i) a reference to the relevant trust ledger, and
- ii) a reference to the written authority to make the investment, and
- iii) the number of the cheque for the amount to be invested.

The law practice is not required to record the above particulars in the Register of Investments if the particulars are recorded elsewhere for example, the controlled money register.

### 12.3.2 Example of Investment Record:

#### Philpott & Associates Investment Record

NAME: \_\_\_\_\_  
(on whose behalf investment is made)

ADDRESS: \_\_\_\_\_

MATTER REFERENCE: \_\_\_\_\_

Name in which investment is made (Account name): \_\_\_\_\_

Source of Investment: General Trust Account/Controlled Money Account/Transit Money/Power Money  
Strike out not applicable

Institution: \_\_\_\_\_

Type of Investment: \_\_\_\_\_ Date of Investment: \_\_\_\_\_

Original Investment Amount: \$ \_\_\_\_\_ Cheque Number: \_\_\_\_\_

Investment Terms: \_\_\_\_\_ Document Identifier: \_\_\_\_\_

Date of Written Direction: \_\_\_\_\_

Maturity/Repayment Details: \_\_\_\_\_

Other information: \_\_\_\_\_

### 12.3.3 Evidence of Investment

A copy of the document evidencing the investment should be attached to the above record. For example, if the law practice is instructed to buy shares on behalf of the client, the practice should keep a copy of the share certificate and attach it to the investment record. The law practice should also create an identifier (or a short description) referring to the written authority by the client.

## 12.4 Costs

Costs cannot be withdrawn from the investment of trust money account pursuant to Rule 42. Costs can only be withdrawn pursuant to the instructions of the person on whose behalf the investment was made.

## 12.5 Trust Account Statement

Rules 52 and 53 prescribe that trust account statements must be sent to each person for whom or on whose behalf trust money (other than transit money and written direction money) is held or controlled by the law practice or an associate of the practice. This includes investment of trust money. See details at Chapter 5 of these Seminar Notes.



## Chapter Thirteen

### 13. External Examiner's Report – Rules 65 to 69

This section deals with the requirements related to the preparation of the External Examiner's Report for Trust Money.

#### 13.1 When is a report required?

There are two instances where the law practice is required to prepare an External Examiner's Report these being when the law practice:

1. received or held trust money the law practice must have its trust records externally examined at least once every financial year. The accounting period covered by the examination is 1 April to 31 March each year: Section 155(1).
2. ceases to be authorised to receive trust money or ceases to engage in legal practice in NSW and has held a trust account: Rule 68 final examination.

The law practice is not required to lodge an External Examiner's Report if it only received or held transit money: Section 155(4).

#### 13.2 Who can conduct an external examination?

Section 155(1) provides that a law practice must have its trust records externally examined by a suitably qualified person appointed in accordance with Rule 66(1) as an external examiner.

Section 156 provides that only persons designated or within a class designated under Rule 65 may be appointed as external examiners. An associate of a law practice cannot be appointed as an external examiner to examine the law practice's records.

Rule 65 designates the following classes of persons who may be appointed as external examiners:

- a.) members of CPA Australia holding a current Public Practice Certificate issued by that body;
- b.) members of Chartered Accountants Australia and New Zealand holding a current Certificate of Public Practice issued by that body;
- c.) members of the Institute of Public Accountants holding a current Professional Practice Certificate issued by that body;
- d.) persons registered as auditors under Part 9.2 of the Corporations Act;
- e.) employees or agents of the designated local regulatory authority.

The persons listed above must have also successfully completed a course of education approved by the Legal Services Council after consultation with the Law Society Council.

Schedule 4 of the LPUL provides at Section 20 that a person who, immediately before the commencement day, was an approved external examiner for the purposes of the old legislation is taken, on and after that day, to be duly appointed as an external examiner for the purposes of this Law until the end of 30 June of the second year after the year in which the commencement day occurs, whether or not the person meets the requirements of Section 156.

### **13.3 Appointment, Cessation or Termination of an External Examiner**

Rule 66 provides that a law practice must in writing appoint a suitably qualified person as an external examiner and must provide the designated local regulatory authority - Law Society Council written notification of the appointment as follows:

- a.) within 30 days after first receiving trust money (other than transit money) – written notice of the external examiner appointed by the law practice as its external examiner; **and**
- b.) within 7 days after an external examiner ceases to be the external examiner of the law practice – written notice of that fact; **and**
- c.) within 30 days after an external examiner ceases to be the external examiner appointed by the law practice – written notice of the successor external examiner appointed by the law practice as its external examiner.

The appointed External Examiner may cease the appointment by notifying the law practice and the law practice submits the Notification of Cessation. The form for the Notification or Cessation of an External Examiner is available on the Law Society's website at: <http://www.lawsociety.com.au/forms>.

Rule 66(3) provides that a law practice may terminate the appointment of an external examiner with the prior approval of the Law Society Council, being the designated local regulatory authority. Approval may be provided if the Law Society Council is satisfied that it is reasonable in the circumstances for the practice to terminate the appointment. The Law Society Council may require the law practice to supply any evidence when considering the request for approval. The form for the Approval of Termination of an External Examiner is available on the Law Society's website at: <http://www.lawsociety.com.au/forms>.

### **13.4 Powers of External Examiner**

The external examiner can exercise a wide range of powers conferred under the LPUL.

When an examiner is engaged to conduct examination of a law practice's trust records, he/she may also examine the affairs of the practice for the purposes of and in connection with an examination of the trust records.

An external examiner may require the law practice or any person who has or had control of documents relating to the affairs of the law practice to give the examiner either or both of the following:

- a.) access to the documents relating to the affairs of the law practice the examiner reasonably requires;
- b.) information relating to the affairs of the law practice the examiner reasonably requires (verified by statutory declaration if requested).

The examiner may inspect, make copies or retain the documents provided.

## 13.5 External Examiner's Report

The External Examiner must give the designated local regulatory authority - Law Society Council a written report of the examination at a time or within a period determined by the Legal Services Council and published on the Council's website. Each external examiner must report in accordance with the standard form published by the designated local regulatory authority – Law Society Council.

The standard form known as the External Examiner's Report comprising Parts A and B of the Law Practice Confirmation and Trust Money Statement is made available via an online lodgement system in late March each year on the Law Society website.

The report must include an examination of all general trust accounts and accounts where trust money was held (e.g. controlled money accounts, account subject of a power) that have been opened or closed by the law practice during the reporting period.

## 13.6 Final Examination – Section 68

If the law practice ceases to be authorised to receive trust money or ceases to engage in legal practice and the practice has held a trust account, the law practice must appoint an external examiner to examine and report on the trust records of the law practice:

- (a) in respect of the period since an external examination was last conducted;  
**and**
- (b) in respect of each period of 12 months after that period; **and**
- (c) in respect of any remaining period thereafter;

during which, or any part of which, the law practice held trust money.

The Report is required to be lodged with the Law Society Council, being the designated local regulatory authority, 60 days from the end of the period to which the examination relates.





## Chapter Fourteen

### 14. Statutory Deposit

Clause 9(1) of the Regulations requires out of the money that is paid to a general trust account, the law practice must deposit with the Law Society, and keep deposited with the Law Society an amount not less than the minimum amount calculated in accordance with Clause 10 of the Regulations. This is known as the statutory deposit. Any amount paid on statutory deposit is repayable on demand.

Each principal of a law practice must ensure that reasonable steps are taken to ensure that the law practice complies with its statutory deposit obligations.

The accounting period covered by the statutory deposit is 1 April to 31 March each year. Calculation of the amount to be maintained on statutory deposit with the Law Society is based on the general trust account bank balance in the previous 12 months, that is, the period 1 April to 31 March the previous year, unless an amount has been repaid from the statutory deposit.

#### 14.1 Amount to be deposited

1. The minimum amount to be deposited and kept deposited with the Law Society is the sum of:

- a.) the lowest balance recorded in the trust account kept by the law practice in the previous 12 months ending 31 March, and
- b.) the amount (if any) on deposit by the law practice with the Law Society on the day on which that lowest balance is recorded.

2. If on 15 April of the current year, the sum of:

- a.) the lowest balance recorded in the trust account during the period from 1 April in the previous year to 15 April in the current year, and
- b.) the amount (if any) on deposit with the Law Society on that day, is less than the sum calculated in 1 above, then the minimum amount that the law practice is to deposit with the Law Society is an amount equal to 80% of the lesser sum.

3. If an amount is repaid to the law practice from the statutory deposit in the current period, the minimum amount to be deposited with the Law Society during that year is the sum of:

- a.) the lower of the following:
  - i.) the lowest balance recorded in the trust account kept by the law practice during the period from 1 April that year to 15 banking days after the repayment,
  - ii.) the lowest balance recorded in that trust account during the previous accounting period (i.e. 1 April to 31 March the previous year), and
- b.) the amount (if any) on deposit by the law practice with the Law Society on the day on which the lower of those balances is recorded.

If money is repaid to the law practice on more than on occasion, this calculation applies to each of those repayments.

4. If the amount calculated in 1-3 above is less than \$10,000.00, the amount to be deposited with the Law Society is nil.

## 14.2 When amount is to be deposited with the Law Society

The law practice must have an amount calculated above deposited with the Law Society not later than 20 banking days after 31 March or, if an amount was repaid, not later than 20 banking days after the day of repayment.

If a law practice is unable to make the deposit within the 20 banking days, the law practice must request the Law Society to determine the amount that the law practice is to deposit with the Law Society. A form is available on the Law Society's website at <http://www.lawsociety.com.au/forms>. If a determination is made by the Law Society, the amount must be deposited with the Law Society not later than 5 banking days after the Law Society notifies the law practice of its determination.

The following will assist in calculating the amount to be held in the current year ending on 31 March and in monitoring the required level during the next 12 months. Note that the calculation of statutory deposit requires a review of the general trust account's balance on the authorised ADI statements, not the reconciled cash book balance.

## 14.3 New Trust Accounts

If the general trust account was opened during the year ending 31 March:

- a) Review the authorised ADI statements from the opening date to 31 March to determine the minimum balance. **Note:** The opening balance of **nil** should not be used as the minimum balance.
- b) If the minimum balance is less than \$10,000, there is no requirement to lodge a statutory deposit. This position is not required to be reviewed until 1 April of the following year.
- c)
  - (i) If the minimum balance is \$10,000 or greater, this minimum balance is your statutory deposit. The statutory deposit should be rounded up to the next hundred dollars. The deposit is required to be made not more than 20 banking days from 1 April.
  - (ii) Complete a further calculation as per (i) above for the period 1 April to 15 banking days after 1 April. If the minimum balance is lower than the minimum balance calculated in a) above, then you are only required to deposit 80% of the lower minimum balance. If you are unable to deposit this amount, see Chapter 14.8 of these Seminar Notes.
- d) A Statutory Deposit ledger account should be established to record this transaction and all subsequent transactions. This transaction will be recorded as a debit entry.

- e) The statutory deposit must be maintained at this level until the following 31 March, except where a withdrawal is made. (See Chapter 14.7 for procedures).

## **14.4 Continuing Trust Account with no Current Statutory Deposit**

If the general trust account has been open for some time and has not held a statutory deposit during the preceding 12 months ending 31 March:

- a) review the authorised ADI statements from 1 April to 31 March and determine the minimum balance;
- b) follow procedures b) to e) in Chapter 14.3.

## **14.5 Continuing Trust Account with current Statutory Deposit**

If the general trust account was opened before 1 April last, and a statutory deposit was held at some time during the present year ending 31 March:

- a) the general trust account authorised ADI balance consists of two elements at all times:
  - i) authorised ADI statement balance; and
  - ii) the statutory deposit (on the same day as i)

and therefore, when determining the minimum balance of the trust account, both elements should be included;

- b) review the authorised ADI statements and the letter of credit from 1 April to 31 March. Select the lowest authorised ADI statement balance and add the amount held on statutory deposit on that day. This will result in the minimum balance (i) + (ii);
- c) if the minimum balance is less than \$10,000, it is not a requirement to maintain a statutory deposit. The current statutory deposit may be withdrawn. This position is not required to be reviewed until 1 April next year. Any withdrawal should be recorded in the Statutory Deposit ledger account (as a credit entry);
- d)
  - i) if the minimum balance is \$10,000 or greater, this minimum balance is the statutory deposit. It is requested that the statutory deposit be rounded up to the next hundred dollars. The deposit is required to be made not more than 20 banking days from 1 April;
  - ii) complete a further calculation as per a) above for the period 1 April to 15 banking days after 1 April. If the minimum balance is lower than the

minimum balance calculated in a) above, then you are only required to deposit 80% of the minimum balance. If you are unable to deposit this amount see Chapter 14.8 of these Seminar Notes;

- e) the current statutory deposit should therefore be adjusted as follows:
  - i) where the new required statutory deposit is less than the current statutory deposit, the current statutory deposit may be reduced to the level of the new required statutory deposit (see Chapter 14.7 for procedures).
  - ii) where the new required statutory deposit is more than the current statutory deposit, it is a requirement to increase the current statutory deposit to the level of the required statutory deposit (also see Chapter 14.6 for procedures).
- f) the adjustment (increase) must be made within 20 banking days from 31 March each year;
- g) it is a requirement to maintain this required statutory deposit at this level until the following 31 March, except where a withdrawal is necessary (see Chapter 14.7 for procedures).

## **14.6 More than one authorised ADI account**

Where more than one general trust account is operated, aggregation of the accounts for the purposes of the calculation will not be required in most cases. Whilst it is difficult to summarise all possible situations, the following common examples may assist:

- A practice with a head office (with a trust ledger and an authorised ADI account) with a branch (with a separate trust ledger and authorised ADI account) - separate calculations for each account should be performed. A separate statutory deposit should be maintained for each office, if one is required.
- A practice with one office which has two separate trust ledgers with two separate authorised ADI accounts - separate calculations for each ADI account should be performed.
- A practice with one office which has one trust ledger with two authorised ADI accounts - an aggregation calculation should be performed.

The procedures for calculation are the same as outlined in Chapter 14.3 above.

## **14.7 Withdrawals during the Year ended following 31 March**

The law practice should be monitoring its general trust account to ensure that it is not overdrawn. If the practice believes that a withdrawal is necessary, the practice

should attend the authorised ADI with the letter of credit/confirmation of deposit and request a transfer to its general trust account. The practice can make its own determination as to the amount to be withdrawn. It is not necessary to seek the permission of the Law Society Council, being the local regulatory authority, to make the withdrawal.

Clause 10(3) of the Regulations provides the mechanism for the re-calculation and adjustment of the deposit when a repayment (withdrawal) from the deposit is made pursuant to Section 47 of the Application Act.

After the withdrawal, the law practice must recalculate the amount to be deposited with the Law Society. The first step is to determine whether or not a deposit is required by calculating a minimum balance based on the period from 1 April to 15 banking days after the withdrawal. The following procedure should be carried out:

- a) **Note** that the general trust account authorised ADI balance consists of two elements at all times:
  - i) authorised ADI statement balance; and
  - ii) the statutory deposit (recorded on the same day as (i)).

and therefore, when determining the minimum balance of the trust account, both elements should be included;

- b) Review the authorised ADI statements and the letter of credit from 1 April to 15 banking days after the date of withdrawal. Select the lowest approved ADI statement balance and add the amount held on statutory deposit on that day. This will result in the minimum balance (i) + (ii);
- c) Review the authorised ADI statements and the letter of credit from 1 April (the previous year) to 31 March. Select the lowest authorised ADI statement balance and add the amount held on statutory deposit on that day. This will result in the minimum balance (i) + (ii);
- d) If either one of the minimum balances (b) and (c) is less than \$10,000 then the statutory deposit may be withdrawn;
- e) If the minimum balance is \$10,000 or greater, the lower balance of (b) or (c) is the new statutory deposit calculation (rounded up to the next hundred dollars). This new statutory deposit calculation should be compared with the amount currently held on statutory deposit. If the difference allows a withdrawal, then this may be carried out as shown in Chapter 14.7.
- f) If the above calculation requires a deposit, the law practice must make a deposit within 20 banking days from the date of the withdrawal of the deposit. There will be occasions where the practice is unable to make the adjustment, the practice should write to the Trust Accounts Department of the Law Society (by completing the Request for Determination of Statutory Deposit form) requesting a determination on the amount required to deposit and kept deposited at the Law Society (see Chapter 14.8).

- g) All deposits and withdrawals should be recorded in the Statutory Deposit ledger account.

## **14.8 Insufficient Funds to Make Deposit**

If at the time of the drawing of the cheque to maintain the statutory deposit, the transaction results in any of the following:

- a) an overdraft of the approved ADI statement balance;
- b) an overdraft of the cash book;
- c) insufficient funds to operate your general trust account,

then the law practice is required to write to the Law Society to seek a determination from the Manager, Trust Accounts Department. A form titled Request for Determination of Statutory Deposit is available from the Law Society's Website at <http://www.lawsociety.com.au/forms>.

## **14.9 Procedures in Depositing/Withdrawing the Statutory Deposit**

A general trust account cheque should be made payable to the "Law Society of NSW - Special Account" and handed to the authorised ADI where the general trust account is kept. It should not be sent to the Law Society.

On receipt of the general trust account cheque, the authorised ADI will transfer the funds to the Society's Special Account at that authorised ADI's head office in Sydney. A letter of credit/confirmation of deposit should be received from the authorised ADI after handing the cheque to the authorised ADI. It is important that this letter of credit/confirmation of deposit be filed in a safe place as it is required to be presented when a request for withdrawal is made.

If the law practice has an existing letter of credit/confirmation of deposit, the letter must be forwarded to the authorised ADI for adjustment and returned to the practice. The cheque should be recorded on the Statutory Deposit ledger account (as a debit entry).

If a law practice needs to withdraw money using the letter of credit, it should contact the authorised ADI where the account is kept and request a transfer to the general trust account from the "Law Society of NSW - Special Account". The current letter of credit/confirmation of deposit must be forwarded to the authorised ADI for adjustment and returned to the practice. A trust receipt should be issued to record the receipt of funds into the trust account and the transaction should be recorded on the Statutory Deposit ledger account (as a credit entry).

## 14.10 Calculation Summary

The following table has been included to assist with the calculation of the Statutory Deposit.

Required	Example	
1. Obtain authorised ADI statements for period 1 April 2014 to 31 March 2015, or from the commencement of the law practice.		
2. <b>Select</b> the lowest balance as per the authorised ADI statements.	23.06.14	\$23,600
3. <b>Obtain</b> the statutory deposit balance <b>as at</b> the date of the lowest balance of the authorised ADI statement.	23.06.14	<u>\$50,000</u>
4. <b>Add</b> the authorised ADI statement balance (2) and the statutory deposit balance (3). This is the amount you are required to hold on deposit for the period 1 April 2014 to 31 March 2015		<u>\$73,600</u>
5. <b>Compare</b> the figure (4) with the amount currently held on deposit and deposit the difference	Req'd Dep Amt held Dep Req'd	\$73,600 (4) <u>\$50,000</u> <u>\$23,600</u>
6. The deposit is required to be made within 20 banking days after 1 April 2015		
7. <b>Complete</b> a further calculation as per (4) above for the period 1 April 2015 and the 15th banking day thus:	21.04.15 Amt on Deposit	\$ 7,600 <u>\$50,000</u>
<b>If this figure is lower than the figure calculated in (4) then:</b>	Lowest balance	\$57,600
<b>Calculate</b> the amount to be held on 80% of the lowest balance	80% (rounded)	\$46,100
8. <b>Compare</b> the 80% figure (7) with the amount currently held on deposit and deposit the difference	Amt on dep Amt req'd to be held Deposit Required	\$50,000 <u>\$46,100</u> NIL
9. If you are still unable to make the deposit then select an amount that will leave you with sufficient funds to operate the general trust account and seek a determination from the Trust Accounts Department in writing based on Chapter 14.8		
10. Once the deposit has been determined you are not required to re-calculate the amount.		

## 14.11 General

There is no need to advise the Law Society of deposits to or withdrawals from the special account as the Society receives monthly statements from each authorised ADI. A trust account statement is not required to be sent to the Law Society.

Also a Statutory Deposit calculator is available on the Law Society's website at <http://www.lawsociety.com.au/statutorydepositcalculator/> which works through each of the above scenarios and may assist the law practice to calculate the amount to be held on Statutory Deposit.

If any difficulty is experienced with the calculation of statutory deposit at any time, please call the Trust Accounts Department for assistance on 9926 0337.



## Chapter Fifteen

### 15. Trust Account Investigations

#### 15.1 Appointment of Investigators

The power to appoint trust account investigators is contained in Section 162 which states:

Section 162 provides for the appointment of investigators and reads:

- (1) The Law Society Council, being the designated local regulatory authority, may investigate, or may in writing appoint a suitably qualified person as an external investigator to investigate, the affairs or specified affairs of a law practice.
- (2) The appointment may be made generally or for the law practice specified in the instrument of appointment, or in relation to a particular external investigation.

#### 15.2 Production of Records & Information

Section 370 states:

- (1) This section applies to the following activities:
  - (a) trust records examination,
  - (b) trust records investigation,
  - (c) compliance audit in relation to a law practice,
  - (d) complaint investigation.
- (2) For the purpose of carrying out an activity to which this section applies an investigator may, on production of evidence of his or her appointment for inspection, require the law practice or any person who has or had control of documents relating to the affairs of the law practice to give the investigator either or both of the following—:
  - (a) access to the documents relating to the practice's affairs that the investigator reasonably requires, and
  - (b) information relating to the practice's affairs that the investigator reasonably requires (verified by statutory declaration if the requirement so states).

#### 15.3 Additional powers in relation to incorporated legal practices

Part 7.4 of the LPUL also gives investigators additional powers in relation to incorporated legal practices. Section 383 allows for the examination of persons, Section 384 allows for the inspection of books and Section 385 provides the power



to hold meetings. These powers are the same as those conferred by the Australian Securities and Investments Commission Act, 2001 (Cth).

## 15.4 Costs of Investigation

Section 166 states:

- (1) If:
  - (a) an investigator states in his or her report of an external investigation that there is evidence that a contravention of this Law has been committed or evidence that a default (within the meaning of Part 4.5) has occurred in relation to the law practice whose affairs are under investigation; and
  - (b) the designated local regulatory authority is satisfied that the contravention or default is wilful or of a substantial nature.
- (2) The designated local regulatory authority – Law Society Council may recover the amount (as determined by the designated local regulatory authority) of all or part of the costs of the external investigation as a debt payable to it by the law practice.
- (3) The amount of the costs must be reasonable, and is subject to any appeal or review mechanism provided in applicable jurisdictional legislation.

## 15.5 Definition of "Affairs"

Section 6 defines "affairs" of a law practice includes the following:

- (a) all accounts and records required by or under this Law or the Uniform Rules to be maintained by the law practice or an associate or former associate of the law practice;
- (b) other records of the law practice or an associate or former associate of the law practice;
- (c) any transaction—
  - (i) to which the law practice or an associate or former associate of the law practice was or is a party; or
  - (ii) in which the law practice or an associate or former associate of the law practice has acted for a party.

## 15.6 Types of Investigation

Section 161 states:

*“The principal purposes of an external investigation are to ascertain whether a law practice has complied with or is complying with the requirements of this Part and to detect and prevent fraud or defalcation, but this section does not limit the scope of an investigation or the powers of an external investigator.”*

Section 163 states that the designated local regulatory authority - Law Society Council may undertake, or the instrument of appointment of an external investigator may authorise the investigator to undertake, external investigations:

- a.) in relation to particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of the law practice; **or**
- b.) where the designated local regulatory authority - Law Society Council otherwise considers it appropriate to do so.

The designated local regulatory authority - Law Society Council has agreed to a system of routine external investigations which scheduled on a regular basis to comply with Section 163(b). The frequency of the routine external investigations is subject to the size of the law practice.

External Investigations are also scheduled as particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of a law practice are drawn to the department's attention. The source of this information is varied but generally information is received from The Manager, Professional Standards Department; The Commissioner, Office of Legal Services Commissioner; notifications pursuant to Section 154 and correspondence/information from employees and clients of the law practice.

An External Investigation takes priority over Routine External Investigations that have been scheduled.

## **15.7 Notice of Appointment**

The current External Investigator's notice of appointment reads:

On the XX/XX/XXXX the Council of the Law Society of New South Wales appointed XXXXXX (a specimen whose signature appears below) as an external investigator to investigate the affairs of law practices, which appointment was made generally pursuant to Section 162(1) and (2) of the Legal Profession Uniform Law (NSW).

The appointment authorises the investigator to undertake either or both of the following external investigations:

- (a) in relation to particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of law practices;
- (b) where the Law Society Council, as the designated local regulatory authority pursuant to Section 11 of the Legal Profession Uniform Law Application Act 2014, otherwise considers it appropriate to do so.

Administratively, investigators assigned to a routine external investigation may only contact clients and third parties other than ADI's, other financial institutions, former employees and external accountants at the direction of the a section leader or the Chief Trust Account Investigator & Supervisor.

## **15.8 Conduct of Investigation**

Routine external investigations vary in length depending on the size of the law practice and the standard of accounting and file records. Routine external investigations are scheduled on a perceived "risk" of the practice and can be any one of the following types:

- (a) investigation at a law practice's request;
- (b) first investigation;
- (c) compliance investigation;
- (d) file verification investigation
- (e) mortgage investigation;
- (f) no notice investigation;
- (g) substantiation investigation;
- (h) final investigation;
- (i) External Examiner's Report follow up
- (j) Trust Verification (No Trust Money)

## **15.9 Investigation Letters**

Reports pursuant to Section 165 are required to be submitted to the Law Society Council, being the designated local regulatory authority, as soon as practicable after the completion of each external investigation. Investigation letters are issued as part of the routine external investigations when breaches of the LPUL or LPUGR are noted with a copy to the External Examiner, to assist the law practice to identify the breach or breaches which in the opinion of the investigator are not considered to be wilful. It is considered this assists law practice to adopt the appropriate procedures to rectify the breaches noted. The investigator is expected to discuss the content of the investigation letter, if issued with the principal and accounting staff, if appropriate of the law practice.

## **15.10 Wilful and/or substantial breaches**

In the event that there is evidence that a breach of the Uniform Laws or Rules has been committed or evidence that a default (within the meaning of Part 4.5 of the LPUL) has occurred in relation to the law practice whose affairs are under routine external investigations or external investigation, and the breach(es), in the opinion of the investigator are wilful or substantial then the investigator is required to complete and forward a report pursuant to Section 165 to the Law Society Council, being the designated local regulatory authority, addressing the each element of the offence. This report may also be submitted to the Manager Professional Standards Department for consideration of the appropriate action.

Further, if during the course of a routine external investigations or external investigation an investigator becomes aware of any matter that the investigator thinks may be unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the investigator must refer the matter to the designated local regulatory authority - Law Society Council pursuant to Section 386. This report may also be submitted to the

Manager, Professional Standards Department for consideration of the appropriate action.

## **15.11 Obligations of lawyers and other persons**

Section 387 prescribes that a person must not, without reasonable excuse, obstruct an investigator exercising a function under the LPUL. A person required to do anything under Section 375(1)(j) must not, without reasonable excuse, fail to comply with the requirement. Section 388 prescribes that a lawyer must not mislead an investigator in the exercise of any function under Chapter 7 of the LPUL.

Section 466(2)(a) and (b) prescribes that the validity of a requirement under section 370 to produce documents or provide information and 375(1)(j) to do a specified thing or Part 7.4 to produce documents, provide information or do anything else under that Part is not affected and the person is not excused from complying with the requirement on the grounds:

- legal professional privilege or any other duty of confidence or
- that a law practice or Australian legal practitioner has a lien over a particular document or class of documents

Section 466(3) also prescribes that a person is not excused from complying with the requirement on the ground that compliance with the requirement, or an answer, document, information or assistance provided in complying with the requirement, may tend to incriminate the person.



## Chapter Sixteen

### 16. Solicitors Conduct and Practice Rules

With the introduction of the LPUL, the solicitors' conduct and practice rules are now contained in Uniform Rules as follows:

- Legal Profession Uniform Australian Solicitors' Conduct Rules 2015; and
- Legal Profession Uniform Legal Practice (Solicitors) Rules 2015.

The conduct and practice rules were previously contained in the New South Wales Professional Conduct and Practice Rules (Solicitors' Rules) 2013 and before that the Revised Professional Conduct and Practice Rules 1995.

Law practices must be aware of Rule of the Legal Profession Uniform Legal Practice (Solicitors) Rules 2015 when transferring a solicitor's practice. The Rule states:

- 6.1 When a solicitor intends to transfer to another solicitor the whole or part of the solicitor's practice, including clients' work in progress, and to put the other solicitor in possession of the documents held by the solicitor on behalf of clients, before the solicitor delivers possession of the practice to the solicitor acquiring it the solicitor must give to each client at least 14 days (or such other period as may be reasonable in the circumstances) notice in writing of:
  - 6.1.1 the intended transfer of documents to the solicitor acquiring the practice, unless a contrary direction is received from the client; and
  - 6.1.2 the client's right to give to the solicitor a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.
- 6.2 Any notice sent to a client on whose behalf the solicitor holds money in trust or under the solicitor's control must advise the client of:
  - 6.2.1 the balance of money held on the client's behalf; and
  - 6.2.2 the solicitor's intention to transfer the relevant account to the solicitor acquiring the practice, unless advised by the client to the contrary; and
  - 6.2.3 the client's right to give to the solicitor a contrary direction as to the manner in which the solicitor should deal with the account on the client's behalf.
- 6.3 Rules 6.1 and 6.2 do not apply where a new partner is admitted to a partnership which continues to conduct the practice.



## Chapter Seventeen

### 17. Business Management and Control

#### 17.1 File Register

Rule 93 states:

- (1) A law practice must maintain a register of files opened.
- (2) The register of files opened must, in respect of each matter for which the law practice receives instructions to provide legal services to a person, record the following:
  - (a) the full name and address of the person;
  - (b) the date of receipt of the instructions;
  - (c) a short description of the services which the law practice has agreed to provide;
  - (d) an identifier.

The file register is designed to provide a history in relation to all matters conducted by a practice. Law practices normally maintain the register by cards filed in either numeric or alphabetic order.

As instructions are received for a new matter, particulars are recorded on a new card, which should be allocated a new number and filed in order. The file is then opened using this reference number. The reference number is quoted on all correspondence issued by the firm. Wherever possible the same reference number should be used within the accounting system, with the appropriate general or subsidiary ledger reference added.

The suggested information to be included is:

#### **Philpott and Associates File Index Card**

Client Name \_\_\_\_\_ Matter Reference \_\_\_\_\_  
Address \_\_\_\_\_  
Date Opened \_\_\_\_\_  
Date Closed \_\_\_\_\_  
Matter Description \_\_\_\_\_  
Other Party \_\_\_\_\_  
Responsible Principal \_\_\_\_\_

If a numeric file register is maintained, then it is appropriate to also maintain a card file of clients. The advantage of a client register is that all matters conducted on behalf of that client can be readily identified. The register may also maintain details of wills and security documents held on behalf of clients. This register should be filed in alphabetical order by family name.

## 17.2 Register of Safe Custody Documents

Rule 94 states:

- (1) A law practice must maintain a register of safe custody documents.
- (2) The register of safe custody documents must, in respect of each will, deed, document or other valuable property for which the law practice receives instructions to hold the item in safe custody, record the following:
  - (a) the full name and address of the person who gave the instructions;
  - (b) a short description of the item;
  - (c) the date of receipt of the item by the law practice;
  - (d) the identifier of the safe custody packet, in which the item is held by the law practice.

A Register of Safe Custody Documents is a register of all security documents held by a legal practice on behalf of clients. The Register of Safe Custody Documents should be kept in a secure place. The usual method is to maintain a card for each packet opened. Documents are placed in a large envelope for each client. The envelope is numbered and, as additional documents are added to the envelope, information describing each document is added to the front of the envelope and to the card. When documents are released to the client a signature for receipt should be obtained. Some legal practitioners maintain separate registers for wills and security documents.

A suggested presentation of a Register of Safe Custody Documents is:

**Philpott and Associates**  
Register of Safe Custody Documents

Client Name \_\_\_\_\_  
 Packet Number \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

Documents Held

Description of Document	Dated	Date Collected	Signature

## 17.3 Register of Financial Interests

Rule 95 states:

- (1) A law practice must maintain a register of financial interests.
- (2) The register of financial interests must, in respect of each legal practitioner associate of the law practice, record the following:
  - (a) the full name and address of the associate;
  - (b) the name and other identifying particulars of any company, partnership, or other entity, in which the associate has a financial interest and which engages in any dealing with trust money received by the associate or the law practice, other than:
    - (i) companies listed on the Australian Stock Exchange; and
    - (ii) shelf companies (companies that have already been registered but have not traded) maintained for sale.
- (3) A legal practitioner associate of the law practice must cause the details referred to in subrule (2) (b) to be disclosed in the register of financial interests as soon as practicable.

A suggested format for this register is not included in these Seminar Notes. The intention of the register is for the law practice to record companies, entities or partnerships in which the principal of the practice has direct control and have had transactions involving trust money as defined under Section 129 or transactions with clients of the practice.

## 17.4 OFFICE REGISTERS

Consideration should be given to maintaining register/records that will assist in collecting details of costs and recoverable items. Costs for such items as photocopying, facsimiles and STD/IDD telephone calls should be collected for inclusion in bills issued to the client.

### 17.4.1 Photocopy Register

The objective of maintaining a photocopy register is to record all photocopies made against individual matters. Charges may be subsequently recouped from the client when the matter is billed. There are many forms of a photocopy register from the simple piece of paper through to computer technology known as "Disbursement Recovery Device", which requires the entry of an account number prior to commencing the photocopying.

All expenses related to the photocopier such as toner, paper and services should be recorded in the accounting system under the photocopying expense account. If a practice adopts the procedure of allowing other persons to use the photocopier at a fee per copy, then the resulting income should be recorded in the accounting system when the receipt is issued.

The most common method of recording photocopies is in an exercise book held in close proximity to the photocopier. Employees are required to record the number of



copies, the matter reference, matter description and the date copies were taken. Whether these charges are posted to the individual ledger in the accounting system or simply recorded and subsequently charged to the client, is a matter for each practice. The simplest method is to ensure that entries recorded in the photocopy register are transferred to an "individual matter cost recovery sheet". This will ensure that charges are not overlooked when a bill is prepared. Some firms use the inside cover of the file to record photocopies and other charges. Each method is acceptable as long as the entries in the photocopy register are transferred to the appropriate individual matter on a regular basis and charged to the client on billing.

A suggested presentation for a photocopy register is:

**Philpott and Associates  
Photocopy Register**

Date	Matter Reference	Matter Description	Number of Copies	Operator

#### 17.4.2 Fax Register

A similar register should be maintained to record the cost of transmitting faxes, so that costs can be recouped where applicable.

A suggested presentation for a fax register is:

**Philpott and Associates  
Facsimile Register**

Date	Matter Reference	Matter Description	Number of Pages	Sent By

Consideration should be given to recording the cost of telephone calls external of the local network, particularly for clients where this expense is regularly incurred.



## Chapter Eighteen

### 18. Common areas of Concern

If legal practitioners are aware of common problem areas associated with the LPUL and LPUGR, many of the difficulties can be easily overcome. Problem areas include:

#### 18.1 Sections 129 / 137 – Trust Money

- a) Debit balances in ledger accounts - normally caused by not posting transactions to the ledgers;
- b) Lengthy delays in correcting debit balances - normally caused by a failure to complete month end balancing requirements;
- c) Late deposits of trust money;
- d) Drawing against uncleared funds;
- e) Direct Deposits;
- f) Old balances;
- g) Unidentified deposits.

#### 18.2 Section 147 – Keeping of Records

- a) The need to show the "true position" and for the records to be "conveniently and properly examined and investigated" and "regularly maintained";
- b) Failure to clear balances for costs and then making payments from these balances for office items;
- c) Consideration of storage of records.

#### 18.3 Section 46 Application Act – Statutory Deposit

- a) The calculation when commencing practice;
- b) Areas of difficulties;
  - i) more than one general trust account;
  - ii) a declining general trust account;
  - iii) communication with the authorised ADI;

- iv) accounting for increases and reductions in the statutory deposit.

## **18.4 LPUGR – Compliance**

- a) Insufficient information recorded in the source documents;
- b) Insufficient information recorded in the cash book, journal and ledger;
- c) The use of a "Suspense Account";
- d) The use of a "Costs Clearing Account";
- e) Monthly reporting requirements;
- f) Trust ledger out of balance;
- g) ADI reconciliation out of balance.

## **18.5 Computerised Accounting Systems**

- a) Failure to complete back up procedures in accordance with suppliers' recommendations;
- b) Failure to test the restore function of the computer system;
- c) Use of software that does not comply with the LPGUR as to the information to be recorded and the deletion of entries.

## **18.6 Old Balances**

- a) Failure to review balances prior to closing a file.
- b) Failure to clear stale cheques



## Chapter Nineteen

### 19. Statutory Provisions

#### 19.1 Legal Profession Uniform Law Application Act 2014

Note Legal Profession Uniform Law

Located at:

<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+16+2014+cd+0+N>

Section 4 of the Act applies the Legal Profession Uniform Law as set out in Schedule 1 to the Legal Profession Uniform Law Application Act 2014 (VIC) as law in NSW and as so applying may be referred to as the Legal Profession Uniform Law (NSW), and so applies as if it were an Act.

The relevant sections relating to statutory deposits may be found in Division 1 of Part 5 of the Act at Sections 46 and 47.

Section 11 of the Act designates the Law Society Council as the designated local regulatory authority for the purposes of the Legal Profession Uniform Law (NSW).

Section 14 of the Act relates to unclaimed monies.

#### 19.2 Legal Profession Uniform Law Application Regulation 2015

The relevant clauses relating to statutory deposits may be found in Part 3 of the Regulations.

#### 19.3 Legal Profession Uniform Law (NSW)

Located at:

<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+16a+2014+cd+0+N>

The relevant sections relating to trust money and trust accounts may be found in Part 4.2 of Chapter 4 of the LPUL at Sections 126 to 168 which are inserted in these Seminar Notes

Section 6 of the LPUL contains general definitions.

Chapter 7 of the LPUL relates to investigatory powers available to investigators conducting a trust account investigation or external examination.

The relevant provisions relating to the appointment of External Investigators are contained in Sections 161 to 166 which are inserted in these Seminar Notes.

The relevant provision relating to the powers of External Investigators are contained in Section 368 to 390 which are inserted in these Seminar Notes

The relevant provision relating to the appointment of External Examiners are contained in Sections 155 to 160 which are inserted in these Seminar Notes

The relevant provision relating to the powers of External Examiners are contained at Section 368 to 370 and 386 to 390 which are inserted in these Seminar Notes

## **19.4 Legal Profession Uniform General Rules 2015**

Section 419 of the LPUL gives the Legal Services Council the power to make Legal Profession Uniform Rules. The Rules made by the Council are collectively referred to as the Uniform Rules. The relevant Rules relating to trust money and trust accounts are contained in Part 4.2 of Chapter 4, Rules 35 to 69 of the LPUGR which are inserted in these Seminar Notes.

The Rules are available on the Legal Services Council's website at [www.legalservicescouncil.org.au/legislation](http://www.legalservicescouncil.org.au/legislation)



## Chapter Twenty

### 20. WORKED EXAMPLE

#### TRUST MONEY AND TRUST ACCOUNTS

The worked example below has been prepared to enable revision of the major areas of the trust money and trust account LPUGR. The transactions are representative of the normal type of transactions processed by a law practice. If assistance is required in regard to in any matter relating to trust money transactions or trust records then, contact should be made with an officer of the Trust Accounts Department on (02) 9926 0337.

Date	Transaction Particulars	Identification
01.09.07	Received from Mr A J Smith \$2,000 cash as costs and disbursements for matter number S1 Property Purchase 114 West Street, Botany [Comment 1]	Trust Receipt
01.09.07	Received from Mrs S Chidiac \$1,500, being a Commonwealth Bank cheque, Hurstville branch, for costs, disbursements and barristers fees on behalf of Peter Chidiac, Matter reference C1 Shoplifting Charges. [Comment 1]	Trust Receipt
01.09.07	Received from Mr M R Gaynor \$500, being a personal cheque drawn on the Commonwealth Bank, Hurstville branch for costs and disbursements relating to matter G1 third party v GIO [Comment 1]	Trust Receipt
01.09.07	Received from M Colebrigg \$2,000 being a company cheque drawn on the account of M A Colebrigg Pty Ltd with National Australia Bank, Hurstville branch for \$1,500 for stamp duty re matter number C2 Purchase of Lot 129 Blackheath Road, Blackheath and \$500 for disbursements re matter number C3 Sale 10 Joseph Street, Lidcombe [Comment 1.]	Trust Receipt
01.09.07	Prepared and deposited the trust receipts processed to date.	Trust Deposit Slip
05.09.07	<p>Received \$15,000 cash from Mr P Chidiac to cover future disbursements. Mr Chidiac's written directions are to deposit the money at call with the St George bank at an interest rate as determined by the St George Bank.</p> <p>The practice must also complete a Form 15A to report the cash transaction to Austrac, refer to Chapter 3.2 of the Seminar Notes.</p> <p>Your secretary advised later that day that the \$15,000 had been deposited with the St George Bank account number 0634607 at 4.85% fixed interest rate, at call. Interest is to be credited monthly to the Account.</p>	Controlled Money Receipt to be issued. Open Controlled Money Ledger Card. Duplicate copy of the receipt to be retained in Controlled Money Register
<b>Comment 1</b>	A bill has not been delivered. The client's instructions do not require the deposit of funds other than to the credit of the general trust account in NSW.	

Date	Transaction Particulars	Identification
05.09.07	Received by way of a telegraphic transfer (direct deposit to trust bank account on 04.09.07) from the Armidale branch of the Commonwealth Bank \$15,000, being proceeds of Commonwealth bank savings account 153-607 in the name of May Smith, matter number S2 Estate of the late May Smith.	Trust Receipt
05.09.07	Received from A J Smith \$1,000 cash, being proceeds of the sale of estate items of May Smith matter number S2 – Estate of the late May Smith.	Trust Receipt
05.09.07	Received from the State Government Superannuation Fund \$160,000 by way of a cheque drawn on the State Super Fund with Commonwealth Bank, Martin Place for proceeds of May Smith's superannuation policy, matter number S2 – Estate of the late May Smith.	Trust Receipt
05.09.07	Received from Max Wright \$5,000 by personal cheque drawn on the Westpac Bank, Carlingford Branch for proceeds of the late May Smith's motor vehicle, matter number S2 – Estate of the late May Smith	Trust Receipt
05.09.07	Prepared deposit slip and deposited the trust receipts issued to date	Trust Deposit Slip
12.09.07	Mr Ryan, a client of 19 Reece Street, Guildford, advised he was departing overseas and gave you his sole written power of attorney dated 10.09.07 to operate his personal bank account, at Westpac bank, Arncliffe branch, 179 Sumner Street, Arncliffe, account number 220-356 until his return. He also provided you with his cheque book for this account. The appropriate authority to operate the account was lodged with the bank. The account has a balance of \$5,000.	Entry in the Powers and Estates register  Power Money Record (record of all dealings)
15.09.07	Mr A J Smith, the Executor of the late May Smith's estate advised in writing that \$170,000 be drawn from the Estate's trust ledger and be deposited with St George Bank at the market rate of interest at call.	Trust cheque Controlled Money Receipt Controlled Money Movement Record
15.09.07	Received from Paul Ashby, \$5000 by St George Bank cheque, Hurstville Branch for costs, disbursements and stamp duty re matter number A1 Purchase of 15 Homebush Road, Homebush. Your secretary prepared a trust account receipt for this money however before issuing same realised an error and cancelled the receipt. A valid trust receipt is outstanding.	Cancelled Trust Receipt (all copies of the cancelled receipt should be retained)  Trust Receipt
16.09.07	Mr M Colebrigg, made a direct deposit of \$15,000 into your general trust account on 14.09.07, being the balance of the stamp duty for matter number C2, purchase of Blackheath Road, Blackheath.	Trust Receipt
16.09.07	Your secretary advised today that the \$170,000 had been deposited with St George at 4.85% fixed interest rate, at call. The account number is XX25604 in the name of Philpott and Associates Controlled Money Account Smith Estate. Interest is to be credited monthly.	Account particulars must be entered in the duplicate controlled money receipt.  Open Controlled Money Movement Record.
16.09.07	Received \$10,000 from AGC Insurance Ltd by way of company cheque drawn on the ANZ Bank, Blakehurst Branch for proceeds of life insurance policy on the late May Smith.	Trust Receipt
17.09.07	Prepared trust deposit slip deposited the receipts for 15.09.07 and 16.09.07	Trust Deposit Slip

Date	Transaction Particulars	Identification
18.09.07	Received \$2,000 from, Mr J Cahill by personal cheque drawn on J T and F T Cahill, Westpac Bank, Castle Hill Branch as costs and disbursements re matter number C4 Sale to Wenzell. [Comment 1].	Trust Receipt
18.09.07	Received \$1,000 from Mrs K Forster by Commonwealth Bank cheque, Hurstville branch on behalf of Mr A J Forster as costs and disbursements re matter number F1 Sale to Wehbe [Comment 1].	Trust Receipt
18.09.07	Received \$1,000 cash from Mr C Fahey for costs and disbursements formatter number F2 sale 16 Bankstown St. Bankstown [See comment 1].	Trust Receipt
18.09.07	Prepared deposit slip and deposited the receipts issued.	Trust Deposit Slip
20.09.07	Paid Pink Pest Pty Ltd \$150 for inspection report relating to matter number A1 – Ashby purchase of 114 Homebush Road.	Trust Cheque
	Paid Supreme Court \$220 for filing fees relating to matter number G1 – third party GIO, Client Gaynor	Trust Cheque
	Paid Dr Huskey \$250 for medical report relating to matter number G1 – third party GIO.	Trust Cheque
	Paid to Philpott and Associates office account in one cheque \$500 for costs re matter number C4 Cahill sale to Wenzell and \$600 for costs re matter number F1 Forster sale to Wehbe. A bill of costs had been sent to both clients and the clients have approved the transfer.	Trust Cheque (multi)
21.09.07	Mr Cahill directed that the balance of his sale account be transferred to his purchase account, for costs and disbursements re matter number C5 Purchase from Cutcliff, 16 Castle Hill Road.	Trust Transfer Journal
21.09.07	Received a bank cheque from R Dunlop made payable to the Office of State Revenue for payment of Duty on his purchase of 15 Landsdown Street, Liverpool. The cheque was in response to our letter requesting same and advising such payment would be made on 25.09.07.	Transit Money. If not paid on 25.09.07 then prescribed period has elapsed. New instructions required as soon as practicable.
21.09.07	Mr Smith directed that further \$10,000 be drawn from the estate's trust ledger and be deposited with the St George Bank by electronic funds transfer relating to matter number S2 the Estate of May Smith. Your secretary confirms that this has been effected today.	Electronic Funds Transfer (General Trust Account) Controlled Money Receipt
21.09.07	Mr Forster on receiving his receipt advised that the receipt should have been \$600 for his sale matter numbered F1 and the balance related to his purchase matter, F3 Purchase Swing St Penrith.	Trust Transfer Journal
25.09.07	Received \$1,500 from R Dunlop in response to a bill forwarded to him on 30.08.07 re matter number D1 Purchase 15 Landsdown Street, Liverpool.	Office Receipt
26.09.07	Your bank advised that the cheque received on 5.09.07 from Mr Wright for the purchase of motor vehicle was not met on presentation and has been dishonoured.	Trust Receipt reversal



Date	Transaction Particulars	Identification
	Dr Huskey returned the cheque drawn for \$250 with advice that the amount should have been \$25. The cheque was cancelled and a new cheque issued.	Trust Cheque Cancelled. Before cancelling a cheque the law practice must be in possession of the original cheque or place a stop payment on the cheque. Trust cheque.
27.09.07	Mr Max Wright paid \$5,000 cash to replace his dishonoured cheque	Trust Receipt
	Prepared trust deposit slip and deposited the trust money.	Trust Deposit Slip
28.09.07	Mr A J Smith advised that he has made a deposit of \$5,000 on 26.09.07 into the controlled money account of the Estate of May Smith (Matter Ref: S2) being realisation from the sale of an asset.	Controlled Money Receipt
	A letter advising the intended first and final distribution together with a bill for \$1,000 was forwarded to A J Smith the executor of the Estate of May Smith.	
29.09.07	Mr Smith approved the distribution of the estate (in writing) as follows:  <b>From controlled money a/c</b>  Mr T Heffron     \$92,575 by EFT  Telegraphic transfer of the above amount to the credit of Mr T Heffron's account number 123-456 with C'wlth Bank, Tamworth (BSB number 062-100).  Mrs J Heffron     \$92,575 by cheque  The additional \$150 is interest that was advised by St George on closure of the account.	Controlled Money Cheque and Electronic Funds Transfer (Controlled Money)
	From Trust Mr Smith approved the bill sent on 28.09.07 in writing which was transferred by cheque from the general trust account.	Trust Cheque
	Mr Smith directs that the remaining trust funds are to be electronically transferred to the credit of Mr A Heffron's account number 163-705 with Commonwealth Bank, Armidale.	Electronic Funds Transfer (General Trust Account)
	This matter is now considered closed.	Trust Account Statement – for General Trust and Controlled Money
29.09.07	Mr Chidiac requested a trust cheque be drawn from the general trust account for the balance of his matter C1 – shoplifting charges, such cheque to be made payable to cash, as he does not have a bank account.	Not possible. Refer Rule 43(1)(a)

Date	Transaction Particulars	Identification
30.09.07	Mr T Ryan, advised by telephone (as he is overseas), that his family in Australia have received an invoice from his medical centre (The Medical Professionals) for the amount of \$200. He has arranged for the invoice to be faxed to your office and directs that upon receipt of the invoice, you may pay the invoice from his personal bank account.  You have made a file note of the conversation and draws a cheque payable to "The Medical Professionals" when the invoice arrived at your office.	Power Money Record (record of all dealings)
30.09.07	Received \$1500 by St George Bank cheque drawn on the Hurstville Branch from S Pont for future disbursements relating to matter numbered P1 – sale of 16 Greystanes Rd, Greystanes. [Comment 1]	Trust Receipt
30.09.07	A review of the ledger posting indicates that the receipt made out to Mr Fahey on 18.09.07 had been posted to the wrong account. It had been posted to the ledger card F4 Fehon – Sale Piccadilly Court to Windsor Holdings rather than the Fahey sale.	Trust Transfer Journal Written authorisation (Rule 46(1)(a))
30.09.07	Cheque number 607 cancelled, prior to issue.	Cancelled trust cheque.
30.09.07	Mr M Colebrigg directs you to stamp the contract for matter C2, purchase of Blackheath Road, Blackheath. The stamp duty for the contract is \$16,500. You draw a cheque payable to your bank to obtain a bank cheque payable to the Office of State Revenue.	Trust Cheque
01.10.07	Received GIO cheque for \$16,000 from Foscett and Foscett, solicitors as settlement funds for matter number G1 – third party GIO.	Trust Receipt to be recorded in Oct receipts cash book.
01.10.07	Prepared trust deposit slip and deposited the trust receipts for 30.09.07.	Deposit Slip
01.10.07	Received bank cheque for \$150,000 from Smith and Jones solicitors as settlement proceeds for matter number P1 – Sale 16 Greystanes Road, Greystanes.	Trust Receipt
01.10.07	Received a bank cheque for \$1,500 payable to Philpott and Associates law practice trust account with no remittance details or accompanying documentation.	Should be accepted into trust ledger account headed "Client to be identified". After identification trust transfer journal or funds paid to unclaimed money if not identified.
05.10.07	Trust bank statement as attached was received from the bank.	Reconciliation statement Trust trial balance
07.10.07	Received a trust account cheque from Foscett and Foscett made payable to Philpott and Associates law practice trust account as settlement proceeds for matter F2 Sale 16 Bankstown St, Bankstown. The client instructs that as the long weekend is approaching he wants the cheque paid directly to him and the cheque is not to be deposited into the general trust account. Can this be done? What should the law practice ensure is retained?	Yes, if client directs, a cheque can be endorsed, but subject to the approved ADI accepting the endorsement. The direction must be in writing and a "receipt" (letterhead only) be obtained for receipt of the cheque by the client. The written direction and a copy of the endorsed

Date	Transaction Particulars	Identification
		cheque must be kept as part of the trust records.
08.10.07	Practitioner is advised that he/she will be required to attend the Melbourne Supreme Court for 2 weeks. The practitioner decides to delegate in writing the authority to sign trust cheques and controlled money withdrawal forms to the legal secretary (non-legal practitioner) who has been employed by the law practice for past 16 years. Is this course of action satisfactory?	No, the delegation must be to 2 associates as the secretary is not a legal practitioner. See Chapter 7 of the Seminar Notes.

**Philpott and Associates  
Client Register**

<b>Client Name</b>	<b>Address</b>	<b>Will Held</b>	<b>Security Documents Packet #</b>
Ashby Paul	16 Ashley Drive, West Pennant Hills 2210	Y	N
Arlott K	6 Smith St. , Smithville 2164	N	N
Chidiac Peter	16 Oaks Drive, Merrylands 2160	N	N
Colebrigg M	16 John Street , Smithfield 2164	Y	X3152
Cahill John	16 Old Northern Road, Castle Hill 2154	Y	N
Carrol S	11 Dunlop Street, Dubbo 2830	N	N
Dunlop R	16 Bronte Rd, Bronte 2024	Y	X3153
Forster A J	16 Beard Street, Castle Hill 2154	N	N
Fahey Terry	16 Redfern Street, Redfern 2016	Y	X3154
Fehon Peter	21 Merrylands Road, Merrylands 2160	N	N
Gaynor Michael	21 Ricketts Road, Merrylands 2160	Y	N
Gillett W	1 Key Street, Birdsville 4482	Y	N
Smith A J	21 Belmore Road, Canterbury 2193	N	N
Pont S	21 Balgowlah Road, Mosman 2088	N	N
Ryan T	19 Reece Street, Guildford 2161	Y	X3155
Speaking C	11 Yap Yap Road, Talktown	N	N

## Philpott and Associates Matter Register

Index	Client Name	Matter Description	File Ref	Date Opened	Trust (Matter) Ref	Office Ref	Date Closed
A	Ashby I	Purchase 15 Homebush Road, Homebush	07/A1	15.09.07	A1	07/A1	
C	Arlott K	Assault Police	07/A2	16.09.07	-	07/A2	
	Chidiac P	Shoplifting Charges	07/C1	01.09.07	C1	07/C1	
	Colebrigg M	Purchase Blackheath Road, Blackheath	07/C2	01.09.07	C2	07/C2	
	Colebrigg M	Sale 10 Joseph Street Lidcombe	07/C3	01.09.07	C3	07/C3	
	Cahill J	Sale to Wenzell	07/C4	18.09.07	C4	07/C4	
	Cahill J	Purchase from Cutcliff	07/C5	21.09.07	C5	07/C5	
D	Carrol S	Assault Police	07/C6	21.09.07		07/C6	
	Dunlop R	Purchase 15 Landsdown Street, Bankstown	07/D1	21.09.07	D1	07/D1	
F	Forster A J	Sale to Wenbe	07/F1	18.09.07	F1	07/F1	
	Fahey	Sale 16 Bankstown St, Bankstown	07/F2	18.09.07	F2	07/F2	
	Forster A J	Purchase Swing Street, Penrith	07/F3	21.09.07	F3	07/F2	
	Fehon P	Sale Piccadilly Court	07/F4	18.09.07	F4	07/F4	
G	Gaynor M	Third Party - GIO	07/G1	19.09.07	G1	07/G1	
	Gillett W	Defamation ats Mitchell	07/G2	21.09.07		07/G2	
P	Pont S	Sale 16 Greystanes Street, Greystanes	07/P1	30.09.07	P1	07/P1	
R	Ryan T	Power of attorney - affairs	07/R1	10.09.07	R1	07/R1	
S	Smith A J	Property Settlement 114 West St, Botany	07/S1	01.09.07	S1	07/S1	
	Smith A J	Estate late May Smith	07/S2	05.09.07	S2	07/S2	30.09.07
	Speaking C	Larceny	07/S3	21.09.07		07/S3	

**Note:** In the matters of Arlott (06/A2), Carrol (06/C6), Gillett (06/G2) and Speaking (06/S3) there are no trust transactions and hence no trust references. It will be observed that by utilising a matter register a common identification of files, trust ledgers, and matters will facilitate filing, storage of records, client reference, bill numbering, the filing of deleted trust and office ledgers. The register may be expanded to also incorporate wills registers, security packets, deeds, responsible solicitor etc. dependant on the size and nature of the practice.

**PHILPOTT & ASSOCIATES  
TRUST ACCOUNT RECEIPT**

Receipt Number : **1**

Date: **01.09.07**

Date Received (if different):

Received from; **Mr A J Smith**

The sum of; **Two thousand** dollars and \_ cents.

**\$2,000.00**

Cash

For and on behalf of:

Matter Ref.

**S1**

Account Name

**Smith**

Matter Description

**Property Settlement –  
114 West St, Botany**

Reason: **Costs and disbursements**

Made out by: **Sean Spinak**

On behalf of Philpott and Associates

**Note:** Refer to Rule 36 for details to be included in the receipt

**PHILPOTT & ASSOCIATES  
TRUST ACCOUNT RECEIPT**

Receipt Number : **2**

Date: **01.09.07**

Date Received

Received from; **Mrs S Chidiac**

The sum of; **One thousand five hundred** dollars and  
cents.

**\$ 1,500.00** Cheque

For and on behalf of:

Matter Ref.

**C1**

Account Name

**Chidiac**

Matter Description

**Shoplifting Charges**

Reason: **Costs, disbursements and barristers fees**

Made out by: **Sean Spinak**

On behalf of Philpott and Associates

**Note:** Refer to Rule 36 for details to be included in the receipt

**PHILPOTT & ASSOCIATES  
TRUST ACCOUNT RECEIPT**

Receipt Number : **3**

Date: **01.09.07**

Date Received

Received from; **Mr M R Gaynor**

The sum of; **Five hundred** dollars and cents.

**\$ 500.00** Cheque

For and on behalf of:

Matter Ref.

**G1**

Account Name

**Gaynor**

Matter Description

**Third Party - GIO**

Reason: **Costs and disbursement**

Made out by: **John Northey**

On behalf of Philpott and Associates

**PHILPOTT & ASSOCIATES  
TRUST ACCOUNT RECEIPT**

Receipt Number : **4**

Date: **01.09.07**

Date Received

Received from; **M Colebrigg**

The sum of; **Two thousand** dollars and cents.

**\$ 2,000.00** Cheque

For and on behalf of:

Matter Ref.

**C2**

**C3**

Account Name

**Colebrigg**

**Colebrigg**

Matter Description

**Purchase Lot 129 Blackheath Rd, Blackheath**

**Sales 10 Joseph Street, Lidcombe**

Reason: **Stamp duty** **\$1,500**  
**Disbursements** **\$500**

Made out by: **John Northey**

On behalf of Philpott and Associates

OR

**PHILPOTT & ASSOCIATES  
TRUST ACCOUNT RECEIPT**

Receipt Number : **4**

Date: **01.09.07**

Date Received

Received from; **M Colebrigg**

The sum of; **Two thousand** dollars and cents.

**\$ 2,000.00** Cheque

For and on behalf of: **See Attached List\***

Matter Ref.	Account Name	Matter Description
-------------	--------------	--------------------

Reason: **See Attached list\***

Made out by: **John Northey**

On behalf of Philpott and Associates

\* Attached List to show

1. Matter Ref	2. Account Name
3. Matter Description	3. Reason for each account

**PHILPOTT & ASSOCIATES  
TRUST ACCOUNT RECEIPT**

Receipt Number : **5**

Date: **05.09.07**

Date Received **04.09.07**

Received from; **Commonwealth Bank**

The sum of; **Fifteen thousand** dollars and cents.

**\$ 15,000.00** Direct Deposit

For and on behalf of:

Matter Ref.	Account Name	Matter Description
<b>S2</b>	<b>Smith</b>	<b>Estate late May Smith</b>

Reason: **Proceeds of bank account numbered 153607**

Made out by: **John Northey**

On behalf of Philpott and Associates





National Australia Bank Limited  
ABN 12 004 044 937

## Credit Listing

Customers note: Before depositing, please remove metal staples and pins from cheques

Drawer	Bank	Branch or BSB number	Amount
1 Commonwealth Bank	Comm	Hurstville	1500 00
2 M R Gaynor	✓	✓	500 00
3 M A Colebrigg Pty Ltd	Nat	✓	2000 00
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Deposit date 01/09/07	CSC/Teller - initials	Cash breakup	Total Cheques
		\$100 \$ ,00	
Trading date		\$50 \$ ,00	\$ 4000 00
		\$20 \$ ,00	
		\$10 \$ ,00	Total cash
Account name Phillpott and Associates Law Practice Trust Account		\$5 \$ ,00	\$ 2000 00
		Coin \$	
		Total \$	Total to Credit Summary
BSB number 032-002	Account number 941-9404	Change \$	\$ 6000 00
		Total Cash \$	

Cheques in this deposit are not available until cleared.

98-028 (3/07)



National Australia Bank Limited  
ABN 12 004 044 937

# Credit Listing

Customers note: Before depositing, please remove metal staples and pins from cheques

Drawer	Bank	Branch or BSB number	Amount
1 State Super Fund	Comm	Martin Place	160000 00
2 Max Wright	Westpac	Carlingford	5000 00
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Deposit date	CSO/teller - initials	Cash breakup	Total Cheques
05/09/07		\$100 \$ 00	
		\$50 \$ 00	\$ 165000 00
Trading date		\$20 \$ 00	
		\$10 \$ 00	Total cash
		\$5 \$ 00	\$ 1000 00
Account name		Coin \$	
Phillpott and Associates Law Practice		Total \$	Total to Credit Summary
Trust Account		Change \$	
BSB number	Account number	Total Cash \$	\$ 166000 00
032-002	941-9404		

Cheques in this deposit are not available until cleared.  
98-028 (5/01)



National Australia Bank Limited  
ABN 12 004 044 937

Credit Listing

Customers note: Before depositing, please remove metal staples and pins from cheques

Drawer	Bank	Branch or BSB number	Amount
1 St George Bank	StG	Hurstville	5000 00
2 AGC Insurance Ltd	ANZ	Blakehurst	10000 00
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Deposit date 17/09/07	C/SO/Teller - initials	Cash breakup	Total Cheques
		\$100 \$ 00	
Trading date		\$50 \$ 00	\$ 15000 00
		\$20 \$ 00	
		\$10 \$ 00	Total cash
Account name Phillpott and Associates Law Practice Trust Account		\$5 \$ 00	
		Coin \$	\$
		Total \$	
BSB number 032-002	Account number 941-9404	Change \$	Total to Credit Summary
		Total \$	\$ 15000 00
		Cash \$	

Cheques in this deposit are not available until cleared.  
98 028 (3/05)



National Australia Bank Limited  
ABN 12 004 044 937

# Credit Listing

Customers note: Before depositing, please remove metal staples and pins from cheques

Drawer	Bank	Branch or BSB number	Amount
1 J T & F T Cahill	Westpac	Castle Hill	2000.00
2 Commonwealth Bank	Comm	Hurstville	1000.00
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Deposit date	CSO/teller - initials	Cash breakup	Total Cheques
18/09/07		\$100 \$ .00	
		\$50 \$ .00	\$ 3000.00
Trading date		\$20 \$ .00	
		\$10 \$ .00	Total cash
Account name		\$5 \$ .00	\$ 1000.00
Phillpott and Associates Law Practice		Coin \$	
Trust Account		Total \$	
		Change \$	Total to Credit Summary
BSB number	Account number	Total Cash \$	\$ 4000.00
032-002	941-9404		

Cheques in this deposit are not available until cleared.  
98-028 (5/03)



National Australia Bank Limited  
ABN 12 004 044 937

Credit Listing

Customers note: Before depositing, please remove metal staples and pins from cheques

Drawer	Bank	Branch or BSB number	Amount
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Deposit date 27/09/07	CSO/Teller - initials	Cash breakup	Total Cheques
		\$100 \$ 00	
		\$50 \$ 00	
Trading date		\$20 \$ 00	\$
		\$10 \$ 00	Total cash
Account name Phillpott and Associates Law Practice		\$5 \$ 00	\$ 5000 00
Trust Account		Coin \$	
		Total \$	Total to Credit Summary
BSB number 032-002	Account number 941-9404	Change \$	\$ 5000 00
		Total \$	
		Cash \$	

Cheques in this deposit are not available until cleared.  
96-028 (5/05)



National Australia Bank Limited  
ABN 12 004 044 937

# Credit Listing

Customers note: Before depositing, please remove metal staples and pins from cheques

Drawer	Bank	Branch or BSB number	Amount
1 St George Bank	STG	Hurstville	1500 00
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Deposit date	CSO/Teller - initials	Cash breakup	Total Cheques
01/10/07		\$100 \$ 00	
		\$50 \$ 00	
Issuing date		\$20 \$ 00	\$ 1500 00
		\$10 \$ 00	
Account name		\$5 \$ 00	Total cash
Phillpott and Associates Law Practice		Coin \$	
Trust Account		Total \$	
		Change \$	Total to Credit Summary
BSB number	Account number	Total	
032-002	941-9404	Cash \$	\$ 1500 00

Cheques in this deposit are not available until cleared.  
88-028 (5/03)

## General Trust Account Cheque Butts

---

15.09.07  
St George Bank Ltd -----  
Smith-----  
S2 Estate Smith-----  
Investment of  
Estate funds as-----  
directed-----  
-----  
\$170,000.00  
857600

20.09.07  
Pink Pests -----  
Ashby -----  
A1 Purchase -----  
Inspection Report  
-----  
-----  
-----  
\$150.00  
857601

20.09.07  
Philpott and assoc  
Trf costs as per trf  
Book - Various a/cs  
-----  
-----  
-----  
-----  
\$1,100.00  
857604

30.09.07  
NAB B/C IFO Office of  
State Revenue -----  
Colebrigg -----  
C2 Purchase -----  
Stamp Duty -----  
-----  
-----  
\$16,500.00  
857608

**Note:** Refer to Rule 34(4) for the required details to be recorded on the cheque butt.

**Philpott and Associates**  
**General Trust Account Receipts Cash Book**  
For Period 01/09/07 to 30/09/07

Page 1

Date Rct Date Rec'd (If different)	Rec No. Form	Received From Reason	Account Name Matter Reference (Note 2) Matter Description	Multi Amt.	Rec Amt.	Amount Deposited
01.09.07	1 Cash	Mr A J Smith Costs and Disbursements	SMITH S1 Property settlement 14 West St Botany		2,000.00	
01.09.07	2 Cheque	Mrs S Chidiac Cost, disb, Barristers fees	CHIDIAC P C1 Shoplifting Charges		1,500.00	
01.09.07	3 Cheque	Mr M R Gaynor Costs & disbs.	GAYNOR G1 Third Party - G.I.O.		500.00	
01.09.07	4 Cheque	M Colebrigg Stamp duty	COLEBRIGG C2 Purchase 129 Blackheath Rd, Blackheath	1,500.00		
		Disbursements	C3 Sale 10 Joseph St Lidcombe	500.00	2,000.00	6,000.00
05.09.07 04.09.07	5 T/T	Commonwealth Bank Proceeds of a/c 153607	SMITH S2 Est. late May Smith		15,000.00	15,000.00
05.09.07	6 Cash	A J Smith Auction of est. property	SMITH S2 Est. late May Smith		1,000.00	
05.09.07	7 Cheque	State Gov Super Fund Proceeds of Super Fund	SMITH S2 Est. late May Smith		160,000.00	
05.09.07	8 Cheque	Max Wright Proceeds Sale of M/V	SMITH S2 Est. late May Smith		5,000.00	166,000.00
15.09.07	9	Cancelled -	should be office account			
15.09.07	10 Cheque	Paul Ashby Cost, Disb & Stamp duty	ASHBY A1 Purchase 15 Homebush Rd, Homebush		5,000.00	
16.09.07	11 Cheque	A.G.C. Insurance Ltd Proceeds of life policy	SMITH S2 Estate late May Smith		10,000.00	
16.09.07 14.09.07	12 Direct Deposit	M Colebrigg Stamp duty	COLEBRIGG C2 Purchase 129 Blackheath Rd, Blackheath		15,000.00	15,000.00
17.09.07	<b>Note 3</b>					15,000.00
18.09.07	13 Cheque	J Cahill Costs & disbs.	CAHILL C4 Sale to Wenzell		2,000.00	
18.09.07	14 Cheque	Mrs K Forster Costs & disbs.	FORSTER F1 Sale to Wehbe		1,000.00	
18.09.07	15 Cash	Mr C Fahey Costs & disbs.	FAHEY F2 Sale 16 Bankstown St Bankstown		1,000.00	4,000.00
26.09.07	8	Max Wright Cheque dishonoured	SMITH S2 Est. late May Smith		(5,000.00)	(5,000.00)
27.09.07	16 Cash	Max Wright Replace disb sale M/V	SMITH S2 Est. late May Smith		5,000.00	5,000.00
30.09.07	17 Cheque	S Pont Disbs.	PONT P1 Sale 16 Greystanes Rd Greystanes		1,500.00	
<b>Note 1</b>			Total Receipts		222,500.00	

Refer to Rule 44(1) for the required details to be shown in the Trust Account Receipts Cash Book.

- Note 1:** The column headed Date Rec/Rec'd is used to record the Date the receipt is made out and if different the date of the receipt of the money.
- 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.
- Note 3:** If the date deposited is different to receipt date then the date of deposit should be recorded in a separate line or against the amount deposited



**Philpott and Associates**  
**General Trust Account Payments Cash Book**

For Period 01/09/07 to 30/09/07

Page 1

Date	Chq/EFT Number	Paid To Reason	Account Name Matter Reference Matter Description	Multi Amount	Payment Amount
15.09.07	857600	St George Bank Invest Estate Funds	SMITH S2 Estate late May		170,000.00
20.09.07	601	Pink Pests Inspection Report	ASHBY A1 Purchase 114 Homebush Rd		150.00
20.09.07	602	Supreme Court Filing Fees	GAYNOR G1 Third Party - G.I.O		220.00
20.09.07	603	Dr Huskey Medical Report	GAYNOR G1 Third Party - G.I.O		250.00
20.09.07	604	Philpott and Associates Costs as per bill Costs as per bill	CAHILL C4 Cahill sale Forster F1 Sale to Wehbe	500.00 600.00	1,100.00
21.09.07	EFT01	Philpott & Associates Controlled Money Account Smith Estate XXX-XXX-XX25604 Additional Invest Est. Funds	SMITH S2 Estate late May Smith		10,000.00
26.09.07	603	Dr Huskey Cheque Cancelled	GAYNOR G1 Third party - G.I.O		(250.00)
26.06.07	605	Dr Huskey Replace Chq 603 - Med. Rep.	GAYNOR G1 Third party - G.I.O.		25.00
29.09.07	EFT02	A Heffron XXX-XXX-163-705 Final Distribution of Estate	SMITH S2 Estate late May Smith		10,000.00
29.09.07	606	Philpott and Associates Costs as per Bill	SMITH S2 Estate late May Smith		1,000.00
30.09.07	607	Cancelled – Incorrect entry			
30.09.07	608	NAB IFO Office of State Revenue [Note 2 & 3] Stamp duty	COLEBRIGG C2 Purchase 129 Blackheath Rd, Blackheath		16,500.00
Total Payments					208,995.00

**CASH BOOK SUMMARY**

Opening Balance	0.00
Add receipts - September	222,500.00
Less payments - September	<u>208,995.00</u>
Closing Cash Book balance	<u>13,505.00</u>

**Note 1:** Refer to Rule 45 for the required details to be shown in the Trust Account Payments Cash Book.

**Note 2:** If a cheque is made payable to an ADI, Rule 45(1)(c) requires the payments cashbook to record the name of the person receiving the benefit of the payment. In other words, if a cheque is drawn to NAB to obtain a bank cheque, the law practice must also record the payee in the cashbook.

**Note 3:** IFO = In Favour Of

**Philpott and Associates**  
**General Trust Transfer Journal for 01.09.07 to 30.09.07**

Date	Jnl Ref	Account Name Matter Ref. Matter Description (Reason)	Debit Amount	Credit Amount	Authorised By
21.09.07	1	CAHILL C4 Sale to Wenzell CAHILL C5 Purchase from Cutcliff (Transfer as directed by client to cover costs and disbursements)	1,500.00	1,500.00	<i>S Walsh</i> [Note 2]
21.09.07	2	FORSTER F1 Sale to Wehbe FORSTER F3 Purchase Swing Street (Correct incorrect recording of receipt as per clients instructions)	400.00	400.00	<i>S Walsh</i> [Note 2]
30.09.07	3	FEHON F4 Sale Piccadilly Court FAHEY F2 Sale 16 Bankstown Street (Entry to correct incorrect posting of receipt numbered 14)	1,000.00	1,000.00	<i>S Walsh</i> [Note 2]

**Note 1:** Refer to Rule 46 for the required details to be shown in the journal.

**Note 2:** Rule 46(1)(a) requires all trust transfer journals to be authorised in writing by a principal or authorised associate(s) and Rule 46(5) requires the particulars of the authorisation to be recorded. As this worked example is based on a manual system, the accounts and support staff may record the trust transfer journal, ask the principal (or authorised associates(s)) to sign beside the journal, before it is recorded in the respective trust ledger account.

**Note 3:** In situations where the law practice uses a computerised accounting system, the above method will not be applicable as the recording of a journal entry would be immediately recorded in the trust ledger accounts. Therefore a trust transfer journal authorisation form should be completed before the journal can be recorded in the system.

# Philpott and Associates

## General Trust Account Ledgers

ACCOUNT NAME Ashby Paul  
ADDRESS 16 Ashley Drive  
West Pennant Hills NSW 2210

MATTER REF. **A1**      MATTER DESCRIPTION      Purchase 15 Homebush Rd  
Homebush  
OTHER PARTY      Slee Robert and Julie

RESPONSIBLE PRACTITIONER      Napper      RESPONSIBLE PRINCIPAL      Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
15.09.07	R10	Paul Ashby Costs, disbs. & barristers fees		5,000.00	5,000.00
20.09.07 <b>Note 1</b>	P601	Pink Pests Inspection Report	150.00		4,850.00

Refer to Rule 48 for the required details to be shown in the ledger

**Note 1:** The column headed Date Rct/ Rec'd/Paid is used to record the date the money was received and if different the date that the receipt was made out and the date of the cheque, electronic funds transfer or journal transfer.

ACCOUNT NAME CHIDIAC Peter  
ADDRESS 16 Oaks Drive  
Merrylands 2160

MATTER REF. **C1**      MATTER DESCRIPTION      Shoplifting Charges  
OTHER PARTY      .....

RESPONSIBLE PRACTITIONER      Napper      RESPONSIBLE PRINCIPAL      Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
01.09.07 <b>Note 1</b>	R2	Mrs S Chidiac Costs, disbs & barristers fees		1,500.00	1,500.00

Refer to Rule 48 for the required details to be shown in the ledger

**Note 1:** The column headed Date Rct/ Rec'd/Paid is used to record the date the money was received and if different the date that the receipt was made out and the date of the cheque, electronic funds transfer or transfer journal.

ACCOUNT NAME COLEBRIGG Maurice  
ADDRESS 16 John Street  
Smithfield 2164

MATTER REF. **C2**      MATTER DESCRIPTION      Purchase  
OTHER PARTY      129 Blackheath Rd Blackheath  
Mr and Mrs Spring

RESPONSIBLE PRACTITIONER      Napper      RESPONSIBLE PRINCIPAL      Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
01.09.07	R4	M Colebrigg Stamp Duty		1,500.00	1,500.00
16.09.07 14.09.07 [Note 1]	R12	M Colebrigg Stamp Duty		15,000.00	16,500.00
30.09.07	P608	NAB IFO Office of State Revenue Stamp Duty	16,500.00		0.00

**Note 1:** 16.09.07 represents the date the receipt was made out and 14.09.07 was the date of the actual receipt of money in the general trust account.

ACCOUNT NAME COLEBRIGG Maurice  
ADDRESS 16 John Street  
Smithfield 2164

MATTER REF. **C3**      MATTER DESCRIPTION      Purchase  
OTHER PARTY      10 Joseph St Lidcombe  
Mr and Mrs Johnstone

RESPONSIBLE PRACTITIONER      Napper      RESPONSIBLE PRINCIPAL      Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
01.09.07	R4	M Colebrigg Disbursements		500.00	500.00

ACCOUNT NAME CAHILL John  
ADDRESS 16 Old Northern Rd  
Castle Hill 2154

MATTER REF. **C4**      MATTER DESCRIPTION      Sale to Wenzell  
OTHER PARTY      John Wenzell

RESPONSIBLE PRACTITIONER      Napper      RESPONSIBLE PRINCIPAL      Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
18.09.07	R13	J Cahill Costs and Disbursements		2,000.00	2,000.00
20.09.07	P604	Philpott and Associates Costs as per bill	500.00		1,500.00
21.09.07	J1	Cahill C5 Purchase from Cutcliff To cover cost and disbursements	1,500.00		0.00

ACCOUNT NAME CAHILL John  
ADDRESS 16 Old Northern Rd  
Castle Hill 2154

MATTER REF. **C5**      MATTER DESCRIPTION      Purchase from Cutcliff  
OTHER PARTY      Mr and Mrs Spicer

RESPONSIBLE PRACTITIONER      Napper      RESPONSIBLE PRINCIPAL      Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
21.09.07	J1	Cahill C4 Sale to Wenzell To cover costs and disbursements		1,500.00	1,500.00

ACCOUNT NAME FORSTER A J  
ADDRESS 16 Beard St  
Castle Hill 2154

MATTER REF. **F1**      MATTER DESCRIPTION      Sale to Wehbe  
OTHER PARTY      Mr and Mr A Wehbe

RESPONSIBLE PRACTITIONER      Napper      RESPONSIBLE PRINCIPAL      Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
18.09.07	R14	Mrs Forster Costs and Disbursements		1,000.00	1,000.00
20.09.07	P604	Philpott and Associates Costs as per bill	600.00		400.00
21.09.07	J2	Forster F3 Purchase Swing St Penrith To correct original receipt entry	400.00		0.00

ACCOUNT NAME FAHEY Terry  
ADDRESS 16 Redfern Street  
Redfern 2016

MATTER REF. **F2**      MATTER DESCRIPTION      Sale 16 Bankstown St  
OTHER PARTY      Bankstown  
Mr and Mrs A Smith

RESPONSIBLE PRACTITIONER      Napper      RESPONSIBLE PRINCIPAL      Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
18.09.07	J3	Fehon F4 Sale Piccadilly Court Correct incorrect posting Rec 14		1,000.00	1,000.00

ACCOUNT NAME FORSTER A.J.  
ADDRESS 16 Beard Street  
Castle Hill 2154

MATTER REF. **F3**      MATTER DESCRIPTION      Purchase Swing St  
OTHER PARTY      Penrith  
Penrith Leagues Club

RESPONSIBLE PRACTITIONER      Napper      RESPONSIBLE PRINCIPAL      Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
20.09.07	J2	Forster F1 Sale to Wehbe (Correct original receipt detail)		400.00	400.00

ACCOUNT NAME FEHON Peter John  
 ADDRESS 21 Merrylands Rd  
 MERRYLANDS 2160

MATTER REF **F4**                      MATTER DESCRIPTION                      Sale Piccadilly Court

OTHER PARTY                                      Windsor Holdings

RESPONSIBLE PRACTITIONER              Napper                      RESPONSIBLE PRINCIPAL              Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
18.09.07	R15	Mr Fahey Costs and Disbursements		1,000.00	1,000.00
30.09.07	J3	Fahey F2 Sale of 16 Bankstown St Correct incorrect posting of Rec 15	1,000.00		0.00



ACCOUNT NAME GAYNOR Michael  
 ADDRESS 21 Ricketts Rd  
 MERRYLANDS 2160

MATTER REF. **G1**                      MATTER DESCRIPTION                      Third party - G.I.O.

OTHER PARTY                                      GIO

RESPONSIBLE PRACTITIONER              Napper                      RESPONSIBLE PRINCIPAL              Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
01.09.07	R3	M.R. Gaynor Cost and Disbursements		500.00	500.00
20.09.07	P602	Supreme Court Filing Fees	220.00		280.00
20.09.07	P603	Dr Huskey Cheq amt incorrect ret & cancelled	250.00		30.00
26.09.07	P603	Dr Huskey Chequ amt incorrect ret & cancelled		250.00	280.00
26.09.07	P605	Dr Huskey Replace Cheque 603	25.00		255.00

ACCOUNT NAME SMITH A.J.  
ADDRESS 21 Belmore Rd  
CANTERBURY 2193

MATTER REF. **S1**      MATTER DESCRIPTION      Property settlement  
114 West St Botany  
OTHER PARTY      -

RESPONSIBLE PRACTITIONER Napper      RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
01.09.07	R1	A J Smith Costs and Disbursements		2,000.00	2,000.00

ACCOUNT NAME SMITH A.J.  
ADDRESS 21 Belmore Rd  
CANTERBURY 2193  
MATTER REF. **S2**      MATTER DESCRIPTION      Estate late May Smith  
OTHER PARTY

RESPONSIBLE PRACTITIONER Napper      RESPONSIBLE PRINCIPAL Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
05.09.07 04.09.07	R5	Commonwealth Bank Proceeds of bank a/c 153-607		15,000.00	15,000.00
05.09.07	R6	A.J. Smith Proceeds of Auction of Estate Prop		1,000.00	16,000.00
05.09.07	R7	State Government Superannuation Fund Proceeds of Superannuation policy		160,000.00	176,000.00
05.09.07	R8	Max Wright Proceeds sale of Late May Smith's M/V		5,000.00	181,000.00
15.09.07	P600	St George Bank Investment of Estate funds	170,000.00		11,000.00
16.09.07	R11	A.G.C. Insurances Limited Proceeds of Life policy		10,000.00	21,000.00
21.09.07	EFT01	Philpott & Associates Controlled Money Account Smith Estate XXX-XXX-XX25604 Additional Investment est. funds	10,000.00		11,000.00
26.09.07	R8	Max Wright Receipt cancelled - dishonoured chq	5,000.00		6,000.00
27.09.07	R16	Max Wright Funds to replace dishonoured cheque		5,000.00	11,000.00
29.09.07	EFT02	A Heffron XXX-XXX-163-705 Final distribution of estate	10,000.00		1,000.00
29.09.07	P606	Philpott and Associates Costs as per bill	1,000.00		0.00



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ACCOUNT NAME                      PONT Steven  
ADDRESS                              21 Balgowlah Rd  
   MOSMAN 2192

MATTER REF. **P1**                      MATTER DESCRIPTION              Sale 16 Greystanes Rd  
   Greystanes  
   Mr Turtle

RESPONSIBLE PRACTITIONER              Napper                      RESPONSIBLE PRINCIPAL              Walsh

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
30.09.07	R17	S Pont Disbursements		1,500.00	1,500.00

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**Philpott and Associates**  
**General Trust Account Trial Balance as at 30.09.07**

<b>Matter Reference</b>	<b>Account Name</b>	<b>Matter Description</b>	<b>Amount</b>
A1	Ashby	Purchase 15 Homebush Rd	4,850.00
C1	Chidiac	Shoplifting Charges	1,500.00
C3	Colebrigg	Sale 10 Joseph St Lidcombe	500.00
C5	Cahill	Purchase from Cutcliff	1,500.00
F2	Fahey	Sale 16 Bankstown St Bankstown	1,000.00
F3	Forster	Purchase Swing St Penrith	400.00
G1	Gaynor	Third party - G.I.O.	255.00
S1	Smith A.J.	Property Settlement	2,000.00
P1	Pont	Sale 16 Greystanes Rd	<u>1,500.00</u>
			<u><b>13,505.00</b></u>

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Rule 48(2)(b)(i) Comparison

Total Client Ledger accounts	13,505.00
Statutory deposit	-

	13,505.00
Reconciled Cash Book	13,505.00

Variance (Should be Nil)	<u>NIL</u>
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Prepared By Sean Spinak on 5/10/07

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**Note:** Refer to Rule 48(b) for the requirements relating to trial balances.

## Philpott and Associates

### General Trust Account Reconciliation Statement

For Month ended 30.09.07

Balance as per authorised ADI statement 30.09.07				12,230.00
ADD Outstanding deposits				1,500.00
<u>Date</u>	<u>Amount</u>			
30.09.07	1,500.00			
ADD Bank Charges incorrectly debited				10.00
<u>Date</u>	<u>Amount</u>	<u>Description</u>		
01.09.07	10.00	Cheque book		
LESS Bank Credit incorrectly credited				15.00
<u>Date</u>	<u>Amount</u>	<u>Description</u>		
30.09.07	15.00	Interest		
		Sub Total		13,725.00
LESS Unpresented Cheques				220.00
<u>Date</u>	<u>Cheque No.</u>	<u>Amount</u>		
20.09.07	857602	220.00		
		Balance as per cash book		<u>13,505.00</u>

Prepared By Sean Spinak on 5/10/07

**Note:** Refer to Rule 48(a) for the requirements relating to reconciliation statements.

## NATIONAL AUSTRALIA BANK

170 Phillip Street  
Sydney

### BANK STATEMENT

ACCOUNT NAME: Philpott and Associates Law Practice Trust Account  
ACCOUNT NO.: 941-9404  
BSB: 032-009  
ACCOUNT ADDRESS: 11th Floor  
170 Phillip Street  
Sydney

STATEMENT for period ended 30.09.07

Date	Particulars	Debit	Credit	Balance
01.09.07	Balance			0.00
01.09.07	Cheque Book fee	10.00		10.00 DR
01.09.07	Deposit		6,000.00	5,990.00 CR
04.09.07	Direct deposit		15,000.00	20,990.00 CR
06.09.07	Deposit		166,000.00	186,990.00 CR
14.09.07	Direct deposit		15,000.00	201,990.00 CR
17.09.07	Deposit		15,000.00	216,990.00 CR
17.09.07	857600	170,000.00		46,990.00 CR
18.09.07	Deposit		4,000.00	50,990.00 CR
22.09.07	857601	150.00		50,840.00 CR
	857604	1,100.00		49,740.00 CR
	EFT	10,000.00		39,740.00 CR
26.09.07	Dishonoured Cheque	5,000.00		34,740.00 CR
27.09.07	Deposit		5,000.00	39,740.00 CR
29.09.07	EFT	10,000.00		29,740.00 CR
30.09.07	857605	25.00		29,715.00 CR
	857606	1,000.00		28,715.00 CR
	857608	16,500.00		12,215.00 CR
	Interest		15.00	12,230.00 CR

**Philpott and Associates**

11th Floor  
170 Phillip Street  
Sydney NSW 2000

Mr A J. Smith  
Executor  
69 North Rocks Road  
North Rocks

Account Name      Smith A.J  
Address              21 Belmore Road Canterbury 2193  
Matter Ref:         **S2**  
Matter Description: Estate Late May Smith

Other Party:

**TRUST ACCOUNT STATEMENT AS AT 30.09.07**

Date Rct Rec'd/Paid	Ref	Paid To/Rec'd From/Jnl To/From Reason	Debit Amt.	Credit Amt.	Balance
05.09.07	R5	Commonwealth Bank Proceeds of bank a/c 153-607		15,000.00	15,000.00
05.09.07	R6	A.J. Smith Proceeds of Auction of Estate Prop		1,000.00	16,000.00
05.09.07	R7	State Go Superannuation Fund Proceeds of Superannuation policy		160,000.00	176,000.00
05.09.07	R8	Max Wright Proceeds sale of May Smith's M/V		5,000.00	181,000.00
15.09.07	P600	St George Bank Investment of Estate funds	170,000.00		11,000.00
16.09.07	R11	A.G.C. Insurances Limited Proceeds of Life Policy		10,000.00	21,000.00
21.09.07	EFT01	Philpott & Associates Controlled Money Account Smith Estate XXX-XXX XX25604 Additional investment estate funds	10,000.00		11,000.00
26.09.07	R8	Max Wright Receipt cancelled - dishonoured chq	5,000.00		6,000.00
27.09.07	R15	Max Wright Funds to replace dishonoured cheque		5,000.00	11,000.00
29.09.07	EFT02	A Heffron XXX-XXX-163-705 Final distribution of estate	10,000.00		1,000.00
29.09.07	P606	Philpott and Associates Costs as per bill	1,000.00		0.00

**Note:** Refer to Rule 52 for details to be shown in the Trust Account Statement and Rule 52(4) to 52(6) for when it is required to be sent.

## Controlled Money

The original controlled money receipt should disclose the following particulars:

### PHILPOTT & ASSOCIATES CONTROLLED MONEY RECEIPT

Received from Mr P CHIDIAC  
The sum of FIFTEEN THOUSAND DOLLARS ONLY  
\$ 15,000.00 CASH/CHEQUE/DIRECT DEPOSIT  
For and on behalf of: Mr P CHIDIAC  
Matter Ref: C1 Matter Description: Shoplifting charges / Litigation

Receipt: 1  
Date: 5/9/07

Reason: To invest with St George Bank at call at interest rates determined by St George. Such money to be held until disbursements are incurred -

Name of controlled money account to be credited: To be advised

Account Number (incl BSB): To be advised  
Issued by: S Spinak Name: Sean Spinak

Refer Rule 62 re details to be recorded in controlled money receipt.  
After the opening of the controlled money account, the account details must be noted on the duplicate controlled money receipt, see below:

### PHILPOTT & ASSOCIATES CONTROLLED MONEY RECEIPT

Received from Mr P CHIDIAC  
The sum of FIFTEEN THOUSAND DOLLARS ONLY  
\$ 15,000.00 CASH/CHEQUE/DIRECT DEPOSIT  
For and on behalf of: Mr P CHIDIAC  
Matter Ref: C1 Matter Description: Shoplifting charges / Litigation

Receipt: 1  
Date: 5/9/07

Reason: To invest with St George Bank at call at interest rates determined by St George. Such money to be held until disbursements are incurred -

Name of controlled money account to be credited: To be advised ---  
Philpott & Associates Controlled Money Account Chidiac Litigation

Account Number (incl BSB): To be advised --- XXX-XXX 0634607  
Issued by: S Spinak Name: Sean Spinak

The original controlled money receipt should disclose the following particulars:

**PHILPOTT & ASSOCIATES  
CONTROLLED MONEY RECEIPT**

Receipt: 2  
Date: 15/9/07

Received from Philpott & Associates the law practice Trust A/c  
The sum of ONE HUNDRED AND SEVENTY THOUSAND DOLLARS ONLY  
\$ 170,000.00 CASH/CHEQUE/DIRECT DEPOSIT

For and on behalf of: Mr A J SMITH  
Matter Ref: S2 Matter Description: Estate late May Smith  
Reason: To be deposited with St George Bank at the market rate of interest at call  
Name of controlled money account to be credited: To be advised

Account Number (incl BSB): To be advised  
Issued by: S Spinak  
Name: Sean Spinak

After the opening of the controlled money account, the account details must be noted on the duplicate controlled money receipt, see below:

**PHILPOTT & ASSOCIATES  
CONTROLLED MONEY RECEIPT**

Receipt: 2  
Date: 15/9/07

Received from Philpott & Associates the law practice Trust A/c  
The sum of ONE HUNDRED AND SEVENTY THOUSAND DOLLARS ONLY  
\$ 170,000.00 CASH/CHEQUE/DIRECT DEPOSIT

For and on behalf of: Mr A J SMITH  
Matter Ref: S2 Matter Description: Estate late May Smith  
Reason: To be deposited with St George Bank at the market rate of interest at call – Interest 4.85% p.a  
Name of controlled money account to be credited: To be advised --- Philpott & Associates Controlled Money Account Smith Estate  
Account Number (incl BSB): To be advised --- XXX-XXX XX25604  
Issued by: S Spinak  
Name: Sean Spinak

The original and duplicate controlled money receipt should disclose the following particulars:

**PHILPOTT & ASSOCIATES  
CONTROLLED MONEY RECEIPT**

Receipt: 3  
Date: 21/9/07

Received from Philpott & Associates the law practice Trust A/c  
The sum of TEN THOUSAND DOLLARS ONLY

\$ 10,000.00 CASH/CHEQUE/DIRECT DEPOSIT

For and on behalf of: Mr A J SMITH  
Matter Ref: S2 Matter Description: Estate late May Smith  
Reason: Additional investment to be deposited with St George Bank at the market rate of interest at call  
Name of controlled money account to be credited: Philpott & Associates Controlled Money Account Smith Estate  
Account Number (incl BSB): XXX-XXX XX25604  
Issued by: S Spinak  
Name: Sean Spinak

**PHILPOTT & ASSOCIATES  
CONTROLLED MONEY RECEIPT**

Receipt: 4  
Date: 28/9/07  
Date Received: 26/9/07

Received from Mr A J Smith  
The sum of FIVE THOUSAND DOLLARS ONLY

\$ 5,000.00 CASH/CHEQUE/DIRECT DEPOSIT

For and on behalf of: Mr A J SMITH  
Matter Ref: S2 Matter Description: Estate late May Smith  
Reason: Estate funds – to be distributed in accordance with Mr Smith's instructions  
Name of controlled money account to be credited: Philpott & Associates Controlled Money Account Smith Estate  
Account Number (incl BSB): XXX-XXX XX25604  
Issued by: S Spinak  
Name: Sean Spinak



**Philpott and Associates  
Controlled Money Movements Record**

CLIENT NAME: Chidiac P Matter Ref. C1  
 CLIENT ADDRESS: 16 Oaks Drive  
 Merrylands NSW 2160

FINANCIAL INSTITUTION: St George Bank  
 ADDRESS: Hurstville Branch  
 149 Hurstville Road  
 Hurstville

Original Investment  
 Amount \$15,000.00 Date: 05.09.07  
 Account Name: Philpott and Associates Controlled Money Account Chidiac  
 Litigation  
 BSB No: XXX-XXX  
 Account No. 0634607  
 Term/Duration At call

INTEREST: Rate 4.85%  
 Payable from 05.09.07  
 Payable Monthly

Date Rct/ Rec'd/ Paid [Note]	Rcd/Ref No & Form	Paid to/Received from Reason	Debit (Withdrawal)	Credit (Deposit)	Balance	Person Authorising Withdrawal
05.09.07	1 Cash	P Chidiac Investment on account of disbursements		15,000.00	15,000.00	-

Refer to Rule 64 for the required details to be shown in the controlled money movement ledger

**Note:** The column headed Date Rct/Rec'd/Paid is used to record the date the money was received and if different the date that the receipt was made out and the date of the cheque or electronic funds transfer.

**Philpott and Associates  
Controlled Money Movements Record**

CLIENT NAME: Smith A. J Matter Ref. S2  
CLIENT ADDRESS: 69 North Rocks Road  
Carlingford

Matter Description: Estate late May Smith

FINANCIAL INSTITUTION: St George Bank  
ADDRESS: Hurstville Branch  
149 Hurstville Road, Hurstville

Original Investment Amount \$170,000.00 Date: 15.09.07  
Account Name: Philpott and Associates Controlled Money Account Smith  
Estate  
BSB: XXX-XXX Account No. XX25604  
Term/Duration At call

INTEREST: .....RATE  
Payable from 16.09.07  
Payable Monthly

Date Rec'd/ Paid	Rcd/Ref No & Form	Paid to/Received from Reason	Debit (Withdrawal)	Credit (Deposit)	Balance	Person Authorising Withdrawal
16.09.07	2 Chq Dep	Philpott and Associates law practice Trust A/c Investment of Estate Money		170,000.00	170,000.00	-
21.09.07	3 EFT Dep	Philpott and Associates law practice Trust A/c Additional investment of estate money		10,000.00	180,000.00	-
28.09.07 26.09.07	4 Direct Deposit	A J Smith Estate funds – to be distributed		5,000.00	185,000.00	-
29.09.07	* Direct Dep	St George Bank Limited Interest credited on closure of A/c		150.00	185,150.00	-
29.09.07	A123456 EFT	Mr T Heffron Telegraphic transfer to the credit of T Heffron, account number 062-100-123-456 (CBA, Tamworth) Final distribution plus interest	92,575.00		92,575.00	J Philpott
29.09.07	150151 Chq	Mrs J Heffron Final distribution plus interest	92,575.00		0.00	J Philpott

\* Passbook reference to be included if applicable.

**Note:** Refer to Rule 64 for details required to be recorded in the Controlled Money Movement Record.

Philpott and Associates  
11<sup>th</sup> Floor  
1170 Phillip Street  
Sydney 2000

Mr A J Smith  
Executor  
69 North Rocks Road  
North Rocks

Matter Ref. S2  
Matter Description: Estate late May Smith

**CONTROLLED MONEY ACCOUNT STATEMENT AS AT 30.09.07**

Date Rec'd/ Paid	Rcd/Ref No & Form	Paid to/Received from Reason	Debit (Withdrawal)	Credit (Deposit)	Balance	Person Authorising Withdrawal
16.09.07	2 Chq Dep	Philpott and Associates law practice Trust A/c Investment of Estate Money		170,000.00	170,000.00	-
21.09.07	3 EFT Dep	Philpott and Associates law practice Trust A/c Additional investment of estate money		10,000.00	180,000.00	-
28.09.07 26.09.07	4 Direct Deposit	A J Smith Estate funds – to be distributed		5,000.00	185,000.00	-
29.09.07	* Direct Dep	St George Bank Limited Interest credited on closure of A/c		150.00	185,150.00	-
29.09.07	A123456 EFT	Mr T Heffron Telegraphic transfer to the credit of T Heffron, account number 062-100-123-456 (CBA, Tamworth) Final distribution plus interest	92,575.00		92,575.00	J Philpott
29.09.07	150151 Chq	Mrs J Heffron Final distribution plus interest	92,575.00		0.00	J Philpott

\* Passbook reference to be included if applicable.

**Note:** Refer to Rule 52(3) for details to be shown on the Controlled Money Account Statement and Rule 52(4) to (6) for when it is required to be sent.

## Philpott and Associates

### Controlled Money Listing

as at 30.09.07

<b>Persons Name</b>	<b>Account Name</b>	<b>Account No/ADI</b>	<b>Matter Ref Matter Description</b>	<b>Amount</b>
Chidiac P	Philpott & Associates Controlled Money Account Chidiac Litigation	xxx-xxx- 0634607 St George	C1 Litigation	\$15,000.00
			Total	\$15,000.00

Prepared by Sean Spinak

Prepared on 15 October 2007

Reviewed by: Peter Philpott

Name of Principal

*Peter Philpott*

Signature

16 October 2007

Date

**Note:** Refer to Rule 64(8) for details to be shown in the controlled money listing and when it is required to be prepared.

<b>Philpott and Associates</b> <b>Register of Powers and Estates</b>					
<b>Date of Power</b>	<b>Name and Address of Donor</b>	<b>Matter Ref.</b>	<b>Matter Description</b>	<b>Date of Death of Deceased</b>	<b>Responsible Solicitor</b>
10.09.07	Mr Tim Ryan 19 Reece Street Guildford NSW 2161	R1	To operate the client's personal bank account at Westpac, Arncliffe branch, 179 Summer Street, Arncliffe Acct No: 220-356	N/A	Sean Spinak

The law practice must also keep a record of all dealings in which the law practice was a party to the transaction in accordance with Rule 60, as follows:

**Philpott and Associates**  
**Power Money Record**

CLIENT NAME: RYAN, Tim Matter Ref. R1  
CLIENT ADDRESS: 19 Reece Street  
GUILDFORD NSW 2161

FINANCIAL INSTITUTION: Westpac Bank  
ADDRESS: Arncliffe Branch  
179 Summer Street, Arncliffe

Date of power/authority: 10.09.2007 Security Documents Packet Ref: X3155  
Account Name: Tim Ryan  
BSB: 123-456  
Account No. 220-356

<b>Date Rec'd/ Paid</b>	<b>Rcd/Ref No &amp; Form</b>	<b>Paid to/Received from Reason</b>	<b>Debit (Withdrawal)</b>	<b>Credit (Deposit)</b>	<b>Balance</b>	<b>Person Authorising Withdrawal</b>
10.09.07	-	Opening Balance			5,000.00	-
30.09.07	002315 Cheque	The Medical Professionals Payment of medical account as directed by client	200.00		4,800.00	Sean Spinak

**Note:** The above record is the preferred method for the recording of the dealings of power money. Other supporting documentation (e.g. invoice for payment, copy of the paid cheque, deposit slip) should be kept together with the record.

In scenarios where there are other persons that may also operate the personal bank account (e.g. the client or other persons that may also be a sole signatory to the bank account), the balance column may not accurately reflect the balance of the account. Therefore, the column may be omitted to avoid confusion.