



THE VICTORIAN BAR INCORPORATED

**LEGAL PROFESSION  
(APPROVED CLERKS TRUST  
ACCOUNT) RULES 2015**  
COMMENCING 1 JULY 2015



# CONTENTS

1	Citation .....	3
2	Commencement.....	3
3	Definitions .....	3
4	Objectives.....	3
5	Authorising provision .....	3
6	The application of the Uniform Rules to approved clerks.....	3
Schedule 1 .....		4
Schedule 2.....		8
Part 4.2 Trust money and trust accounts.....		8
Division 1 Preliminary.....		8
33	Authorising provision .....	8
34	Definitions .....	8
Division 2 Trust money and trust accounts.....		8
35	Maintenance of general trust account.....	8
36	Receipting of trust money.....	8
37	Deposit records for trust money.....	9
38	Computerised accounting systems—copies of trust records.....	9
39	Computerised accounting systems—chronological record of information to be made.....	10
40	Computerised accounting systems—requirements regarding systems .....	10
41	Computerised accounting systems—back-ups.....	10
42	Withdrawal of trust money for payment of legal costs .....	11
43	Method of payment .....	12
44	Trust account receipts cash books.....	13
45	Trust account payments cash book .....	13
46	Journal transfers.....	14
47	Recording transactions in trust ledger accounts .....	14
48	Reconciliation of trust records .....	15
49	Trust ledger account in name of an approved clerk or legal practitioner associate.....	15
50	Notification requirements regarding general trust accounts .....	16
51	An approved clerk closing down, closing office or ceasing to receive or hold trust money.....	16
54	Statements regarding receipt or holding of trust money.....	16



55	Trust money subject to specific powers .....	16
57	Disclosure of accounts used to hold money.....	17
Division 4	External examinations .....	17
65	Designation of persons eligible to be appointed as external examiners.....	17
66	Appointment of external examiner by an approved clerk .....	18
67	Standard form reports by external examiners.....	18
68	Final external examination .....	18
69	External examiner's report.....	19

Victorian Bar Inc makes the following rules under section 90 of the *Legal Profession Uniform Law Application Act 2014*.

## 1 CITATION

These rules may be cited as the Legal Profession (Approved Clerks Trust Account) Rules 2015.

## 2 COMMENCEMENT

These rules commence on 1 July 2015.

## 3 DEFINITIONS

In these rules –

- (a) **Act** means the *Legal Profession Uniform Law Application Act 2014*;
- (b) **Uniform Law** means the Legal Profession Uniform Law (Victoria) set out as Schedule 1 to the Act;
- (c) **Uniform Rules** means the Legal Profession Uniform General Rules 2015 made under Part 9.2 of the Uniform Law.

### Notes:

- (i) Section 23 of the *Interpretation of Legislation Act 1984* provides –

#### 23 Construction of subordinate instruments

Where an Act confers power to make a subordinate instrument, expressions used in a subordinate instrument made in the exercise of that power shall, unless the contrary intention appears, have the same respective meanings as they have in the Act conferring the power as amended and in force for the time being.

- (ii) Section 3(2) of the Act provides –

- (2) Terms used in this Act and also in the Legal Profession Uniform Law (Victoria) have the same meanings in this Act as they have in that Law.

## 4 OBJECTIVES

The objectives of these rules are –

- (a) to regulate the receipt and handling of trust money and the keeping of trust records by approved clerks; and
- (b) to modify the application of the Uniform Rules to the extent necessary for the Uniform Rules to apply to approved clerks.

## 5 AUTHORISING PROVISION

These rules are made under section 90 of the Act.

## 6 THE APPLICATION OF THE UNIFORM RULES TO APPROVED CLERKS

Part 4.2 of the Uniform Rules referred to in column 1 and described in column 2 of Schedule 1 apply to, and in relation to, an approved clerk –

- (a) subject to paragraph (b), as if –



- (i) a reference in that Part to 'a law practice' or 'the law practice' were a reference to 'an approved clerk' or 'the approved clerk' respectively; and
  - (ii) a reference in that Part to the 'Uniform Law' were a reference to the Uniform Law as modified by section 89 of the Act; and
- (b) subject to the other modifications set out in column 3 of Schedule 1.

**Notes:**

- (i) Part 4.2 of the Uniform Rules, as amended by Rule 6, is Schedule 2 and forms part of this Note.
- (ii) For the avoidance of doubt, Schedule 2 is intended to be a consolidated version. In any conflict between Schedule 1 and Schedule 2, Schedule 1 is to be preferred.

## SCHEDULE 1

COLUMN 1	COLUMN 2	COLUMN 3
Rule	Heading	Other modifications
33	Authorising provision	Nil
34	Definitions	Omit the definition of ' <i>written direction money</i> '.
35	Maintenance of general trust account	In paragraph (1)(b) omit, 'engages in legal practice', and substitute, 'conducts business'.
36	Receipting of trust money	In paragraph (2)(h) omit, 'engages in legal practice', and substitute, 'conducts business'. Omit subrule (7).
37	Deposit records for trust money	Nil
38	Computerised accounting systems – copies of trust records	Omit paragraph (2)(d). In paragraph (3)(a) omit, ', the register of controlled money'. In paragraph (3)(b) omit, 'and controlled money account'.
39	Computerised accounting systems – chronological record of information to be made	Nil
40	Computerised accounting systems – requirements regarding systems	Nil
41	Computerised accounting systems – back-ups	Nil



COLUMN 1	COLUMN 2	COLUMN 3
42	Withdrawal of trust money for payment of legal costs	<p>Omit subrule (1) and substitute, '(1) This rule prescribes, for the purposes of Division 2 of Part 4.2 of the Uniform Law (see section 144(2)(b) of that Law), the procedure for the withdrawal of trust money held in a general trust account of an approved clerk for payment of legal costs owing to a barrister for whom the clerk acts by the person for whom the trust money was paid into the account.'</p> <p>In subrule (3) omit, 'if the law practice has given the person a bill', and substitute, 'if the barrister or clerk has given the person a bill'.</p> <p>In subrule (4) omit, 'whether or not the law practice has given the person a bill', and substitute, 'whether or not the barrister or clerk has given the person a bill'.</p> <p>In paragraph (5)(a) omit, 'law practice', wherever appearing and substitute, 'barrister'.</p> <p>In paragraph (5)(b) omit, 'law practice', and substitute, 'barrister or clerk'.</p> <p>Omit subrule (6).</p> <p>In subparagraph 7(a)(ii) omit, 'law practice', and substitute, 'barrister or clerk'.</p> <p>Omit subrule (8) and substitute, '(8) For the purposes of subrule (5), money is taken to have been paid by the barrister on behalf of the person when the relevant account of the barrister maintained by the approved clerk has been debited.'</p>
43	Method of payment	<p>Omit subrule (2) and substitute, '(2) A cheque must be signed by, or an electronic funds transfer must be effected under, the direction or authority of –</p> <p>(a) the approved clerk; or</p> <p>(b) if the approved clerk is not available, by a person authorised by the approved clerk (as the case requires) –</p> <p>(i) to sign cheques drawn on the general trust account of the approved clerk; or</p> <p>(ii) to effect, direct or authorise an</p>



COLUMN 1	COLUMN 2	COLUMN 3
		electronic funds transfer from the general trust account of the approved clerk.’.
44	Trust account receipts cash book	Nil
45	Trust account payments cash book	Nil
46	Journal transfers	Omit paragraph (1)(a) and substitute, ‘(a) the transfer is authorised in writing by – (i) the approved clerk; or (ii) a person who is authorised by the approved clerk to sign cheques drawn on the general trust account without a co-signatory; or (iii) 2 or more persons who are authorised by the approved clerk to sign cheques drawn on the general trust account jointly.’ Omit paragraph (1)(b).
47	Recording transactions in trust ledger accounts	In subrule (1) omit, ‘received by the practice’, and substitute, ‘received by the approved clerk’.
48	Reconciliation of trust records	Nil
49	Trust ledger account in name of law practice or legal practitioner associate	In subrule (1) omit, ‘the practice or a legal practitioner associate of the practice’, and substitute, ‘the clerk’. Omit subrule (2) and substitute ‘(2) An approved clerk may maintain in the approved clerk’s trust ledger a trust ledger account in the clerk’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 a barrister on whose behalf the clerk has received money on account of legal costs.’. Omit subrule (4).
50	Notification requirements regarding general trust accounts	Omit subrule (2) and substitute, ‘(2) During July in each year, an approved clerk must give the designated local regulatory authority written notice of the persons (including their names and addresses) who are authorised, as at 1 July in that year – (a) to sign cheques drawn on a general trust account of the approved clerk;



COLUMN 1	COLUMN 2	COLUMN 3
		<p>or</p> <p>(b) otherwise to effect, direct or authorise the withdrawal of money from a general trust account of the approved clerk –</p> <p>except to the extent that this information has already been provided (or that the approved clerk reasonably expects to be included) in an external examiner’s report under section 159 of the Uniform Law.’</p> <p>Omit subrule (5) and substitute, ‘(5) In this rule, <b>approved clerk</b> includes a former approved clerk.’</p>
51	Law practice closing down, closing office or ceasing to receive or hold trust money	<p>Omit subrule (1) and substitute, ‘(1) An approved clerk who ceases to hold trust money because the approved clerk ceases to be an approved clerk or to carry on business as a clerk or to carry on business in such a way as to receive trust money must, within 14 days of so ceasing to hold trust money, give the designated local regulatory authority –</p> <p>(a) written notice of such of those facts as are applicable and the dates of their occurrence; and</p> <p>(b) particulars sufficient to identify the approved clerk’s general trust accounts.’</p> <p>Omit subrule (2) and substitute, ‘(2) In this rule, <b>approved clerk</b> includes a former approved clerk.’</p>
54	Statements regarding receipt or holding of trust money	Omit subparagraphs (b)(ii) and (iii).
55	Trust money subject to specific powers	<p>In subrule (2) omit, ‘a law practice or an associate of the practice’ and substitute, ‘an approved clerk’.</p> <p>In subrule (3) omit, ‘the practice’s’, and substitute, ‘the clerk’s’.</p>
57	Disclosure of accounts used to hold money	Omit, ‘For the purposes of section 151 of the Uniform Law, a law practice must notify the designated local regulatory authority of the following details of each account that is maintained at an ADI in which the law practice or any legal practitioner associate of the law practice holds money entrusted to the law practice or legal practitioner associate:’, and substitute, ‘For the



COLUMN 1	COLUMN 2	COLUMN 3
		purposes of section 151 of the Uniform Law, an approved clerk must notify the designated local regulatory authority of the following details of each account that is maintained at an ADI in which the approved clerk holds money entrusted to the approved clerk:’.
Division 4 (Rules 65 to 69)	External examinations	Nil

## SCHEDULE 2

### PART 4.2 TRUST MONEY AND TRUST ACCOUNTS

#### DIVISION 1 PRELIMINARY

##### 33 AUTHORISING PROVISION

The rules in this Part are made under Part 4.2 of the Uniform Law.

##### 34 DEFINITIONS

In this Part:

**reconciliation statements** means statements prepared under rule 48.

#### DIVISION 2 TRUST MONEY AND TRUST ACCOUNTS

##### 35 MAINTENANCE OF GENERAL TRUST ACCOUNT

- (1) A general trust account established in a jurisdiction:
  - (a) must be established with an authorised ADI; and
  - (b) must include in its name the name of the approved clerk or the business name under which the approved clerk conducts business, and the expression ‘approved clerk trust account’ or ‘approved clerk trust a/c’.
- (2) This rule does not apply to a general trust account established in a participating jurisdiction before the commencement day for that jurisdiction, so long as the account name did not breach any requirement of the legislation of that jurisdiction before that day.

##### 36 RECEIPTING OF TRUST MONEY

- (1) An approved clerk must make out a receipt as soon as practicable:
  - (a) after trust money is received; or
  - (b) in the case of trust money received by direct deposit, after the approved clerk receives or accesses notice or confirmation of the deposit from the ADI concerned.
- (2) The receipt must contain the following particulars:
  - (a) the date the receipt is made out and, if different, the date of receipt of the money;
  - (b) the number of the receipt;



- (c) the amount of money received;
  - (d) the form in which the money was received;
  - (e) the name of the person from whom the money was received;
  - (f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
  - (g) particulars sufficient to identify the reason for which the money was received;
  - (h) the name of the approved clerk or the business name under which the approved clerk conducts business and the expression 'trust account' or 'trust a/c';
  - (i) the name of the person who made out the receipt.
- (3) The receipt must be made out in duplicate unless, when the receipt is made out the particulars referred to in subrule (2) are recorded by a computerised accounting system in the trust account receipts cash book.
  - (4) The original receipt must, as soon as practicable, be given to the person from whom the trust money was received.
  - (5) Receipts must be consecutively numbered and issued in consecutive sequence.
  - (6) If a receipt is cancelled, the original receipt must be kept.

### 37 DEPOSIT RECORDS FOR TRUST MONEY

- (1) If an approved clerk receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit, a deposit record must be produced to the ADI at the time the deposit is made.
- (2) The following particulars must be recorded on the deposit record:
  - (a) the date of the deposit;
  - (b) the amount of the deposit;
  - (c) whether the deposit consists of cheques or cash (and the amount of each);
  - (d) for each cheque:
    - (i) the name of the drawer of the cheque; and
    - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn; and
    - (iii) the amount of the cheque.
- (3) The deposit record must be made out in duplicate.
- (4) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

### 38 COMPUTERISED ACCOUNTING SYSTEMS—COPIES OF TRUST RECORDS

- (1) This rule applies if an approved clerk maintains trust records by means of a computerised accounting system.
- (2) An approved clerk must maintain and keep, in printed form or in readable and printable form, the following copies of trust records:
  - (a) a copy of trust account receipts and payments cash books as at the end of each named month;
  - (b) a copy of reconciliation statements as at the end of each named month;
  - (c) a copy of lists of trust account ledgers and their balances as at the end of each named month.



- (3) An approved clerk must:
  - (a) print a paper copy of trust ledger accounts and the trust account transfer journal before they are deleted from the system; and
  - (b) on request by an investigator appointed under Chapter 7 of the Uniform Law, provide to the investigator a printed copy of trust ledger account details.
- (4) The copies of trust records as at the end of a named month under subrule (2) must be prepared within 15 working days after the named month.
- (5) Except as provided by rule 40, an approved clerk must ensure that copies of trust records prepared under subrule (2) cannot be modified afterwards.

### **39 COMPUTERISED ACCOUNTING SYSTEMS—CHRONOLOGICAL RECORD OF INFORMATION TO BE MADE**

- (1) This rule applies if an approved clerk maintains trust records by means of a computerised accounting system.
- (2) An approved clerk must maintain and keep a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to each of the following:
  - (a) client name;
  - (b) client address;
  - (c) matter reference;
  - (d) matter description;
  - (e) ledger account number or other descriptor.

### **40 COMPUTERISED ACCOUNTING SYSTEMS—REQUIREMENTS REGARDING SYSTEMS**

- (1) This rule applies if a law practice maintains trust records by means of a computerised accounting system.
- (2) An approved clerk must ensure that:
  - (a) its computerised accounting system is not capable of accepting, in respect of a trust ledger account, the entry of a transaction resulting in a debit balance to the account, unless a contemporaneous record of the transaction is made in a manner that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind; and
  - (b) the system is not capable of deleting a trust ledger unless:
    - (i) the balance of the account is zero and all outstanding cheques have been presented; and
    - (ii) when the account is deleted, a copy of the account is kept in a permanent form; and
  - (c) any entry in a record produced in a permanent form appears in chronological sequence; and
  - (d) each page of each printed or printable record is numbered sequentially or is printed or printable in such a way that no page can be extracted; and
  - (e) its computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment; and
  - (f) its computerised accounting system requires input in every field of a data entry screen intended to receive information required by these Rules to be included in trust records.

### **41 COMPUTERISED ACCOUNTING SYSTEMS—BACK-UPS**

- (1) This rule applies if a law practice maintains trust records by means of a computerized accounting system.



- (2) For the purposes of section 147 of the Uniform Law, an approved clerk must ensure that:
  - (a) a back-up copy of all records required under the Uniform Law and these Rules is made at least once each month; and
  - (b) each back-up copy is kept by the approved clerk; and
  - (c) a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy.

#### 42 WITHDRAWAL OF TRUST MONEY FOR PAYMENT OF LEGAL COSTS

- (1) This rule prescribes, for the purposes of Division 2 of Part 4.2 of the Uniform Law (see section 144(2)(b) of that Law), the procedure for the withdrawal of trust money held in a general trust account of an approved clerk for payment of legal costs owing to a barrister for whom the clerk acts by the person for whom the trust money was paid into the account.
- (2) The trust money may be withdrawn in accordance with the procedure set out in any applicable subrule of this rule.
- (3) The approved clerk may withdraw the trust money if the barrister or clerk has given the person a bill relating to the money and referring to the proposed withdrawal, and:
  - (a) 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
  - (b) if the person objects to the amount specified in the bill within the period of 7 business days after being given the bill but has not referred the matter to the designated local regulatory authority 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 of the Uniform Law; or
  - (c) if the money otherwise becomes legally payable.
- (4) The approved clerk may withdraw the trust money (whether or not the barrister or clerk 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 approved clerk and that authorise the withdrawal; and
  - (b) if, before effecting the withdrawal, the approved clerk gives or sends to the person:
    - (i) a request for payment, referring to the proposed withdrawal; or
    - (ii) a written notice of withdrawal.

##### **Note**

See also subrule (7), which relates to subrule (4).

- (5) The approved clerk may withdraw the trust money:
  - (a) if the money is owed to the barrister by way of reimbursement of money already paid by the barrister on behalf of the person; and
  - (b) if, before effecting the withdrawal, the barrister or clerk gives or sends to the person:
    - (i) a request for payment, referring to the proposed withdrawal; or
    - (ii) a written notice of withdrawal.

##### **Note**

See also subrule (8), which relates to subrule (5).

- (7) In relation to subrule (4):
  - (a) if the authorisation referred to in subrule (4) (a) authorises withdrawal of part only of



the money:

- (i) the approved clerk may withdraw the money to that extent only; and
  - (ii) if the barrister or clerk has given the person a bill relating to the money as referred to in subrule (3) (a)—subrule (3) (b) (i) and (ii) are taken to apply to the remaining part of the amount specified in the bill; and
- (b) instructions referred to in subrule (4):
- (i) if given in writing, must be kept as a permanent record; or
  - (ii) if not given in writing, must be confirmed in writing either before, or not later than 5 working days after, the approved clerk effects the withdrawal and a copy must be kept as a permanent record.
- (8) For the purposes of subrule (5), money is taken to have been paid by the barrister on behalf of the person when the relevant account of the barrister maintained by the approved clerk has been debited.

#### **Note**

Rule 73 provides for the giving of bills.

### **43 METHOD OF PAYMENT**

- (1) If a withdrawal of trust money from a general trust account of an approved clerk is made by cheque, the cheque:
- (a) must be made payable to or to the order of a specified person or persons and must not be made payable to bearer or to cash; and
  - (b) must be crossed 'not negotiable'; and
  - (c) must include:
    - (i) the name of the approved clerk or the business name under which the approved clerk engages in legal practice; and
    - (ii) the expression 'law practice trust account' or 'law practice trust a/c'.
- (2) A cheque must be signed by, or an electronic funds transfer must be effected under, the direction or authority of –
- (a) the approved clerk; or
  - (b) if the approved clerk is not available, by a person authorised by the approved clerk (as the case requires) –
    - (i) to sign cheques drawn on the general trust account of the approved clerk; or
    - (ii) to effect, direct or authorise an electronic funds transfer from the general trust account of the approved clerk.
- (3) A written record of the required particulars:
- (a) must be kept of each payment made by cheque or electronic funds transfer, unless those particulars are recorded by a computerised accounting system in the trust account payments cash book at the time the cheque is issued or the transfer is effected; and
  - (b) 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.
- (4) For the purposes of subrule (3), the **required particulars** are as follows:
- (a) the date and number of the cheque or electronic funds transfer;
  - (b) the amount ordered to be paid by the cheque or electronic funds transfer;
  - (c) in the case of a cheque, 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) in the case of an electronic funds transfer, 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;
  - (f) details clearly identifying the ledger account to be debited;
  - (g) particulars sufficient to identify the reason for the payment.
- (5) Written records relating to payments by cheque or electronic funds transfer (including cheque or transfer requisitions) must be kept in the order in which the cheques or transfers were issued or effected.

#### 44 TRUST ACCOUNT RECEIPTS CASH BOOKS

- (1) An approved clerk that maintains a general trust account must keep a trust account receipts cash book in which the following particulars must be recorded in respect of each receipt of trust money:
- (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
  - (b) the receipt number;
  - (c) the amount of money received;
  - (d) the form in which the money was received;
  - (e) the name of the person from whom the money was received;
  - (f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
  - (g) particulars sufficient to identify the reason for which the money was received;
  - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
- (3) The particulars in respect of receipts must be recorded in the order in which the receipts are made out and must be recorded within 5 working days of the receipt being made out.

#### 45 TRUST ACCOUNT PAYMENTS CASH BOOK

- (1) An approved clerk that maintains a general trust account must keep a trust account payments cash book in which the following particulars are recorded in respect of each payment of trust money:
- (a) the date and number of the cheque or electronic funds transfer;
  - (b) the amount ordered to be paid by the cheque or the amount transferred;
  - (c) in the case of a cheque, 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) in the case of an electronic funds transfer:
    - (i) the name and number of the account to which the amount was transferred and the relevant BSB number; and
    - (ii) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

- (e) details clearly identifying the name of the person on whose behalf the payment was made, the matter description and the appropriate ledger reference;
  - (f) particulars sufficient to identify the reason for payment.
- (2) The particulars in respect of payments must be recorded:
- (a) in the order in which the payments are made; and
  - (b) within 5 working days of the day the payment was made.

#### 46 JOURNAL TRANSFERS

- (1) Trust money may be transferred by journal entry from one trust ledger account in an approved clerk's trust ledger to another trust ledger account in the trust ledger, but only if the approved clerk is entitled to withdraw the money and pay it to the other trust ledger account and:
- (a) the transfer is authorised in writing by–
    - (i) the approved clerk; or
    - (ii) a person who is authorised by the approved clerk to sign cheques drawn on the general trust account without a co-signatory; or
    - (iii) 2 or more persons who are authorised by the approved clerk to sign cheques drawn on the general trust account jointly.
- (2) The approved clerk must keep a trust account transfer journal if it transfers trust money by journal entry.
- (3) The following particulars must be recorded in the trust account transfer journal in respect of each transfer of trust money by journal entry:
- (a) the 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) the amount transferred;
  - (e) particulars sufficient to identify the reason for the transfer.
- (4) Journal pages or entries must be consecutively numbered.
- (5) The approved clerk must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

#### 47 RECORDING TRANSACTIONS IN TRUST LEDGER ACCOUNTS

- (1) An approved clerk that maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each person in each matter for which trust money has been received by the approved clerk.
- (2) The following particulars must be recorded, and kept up to date, in the title of a trust ledger account:
- (a) the name of the person for or on behalf of whom the trust money was paid;
  - (b) the person's address;
  - (c) particulars sufficient to identify the matter in relation to which the trust money was received.
- (3) 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 description.
- (4) Transactions relating to trust money must be recorded in the trust ledger account:
- (a) in the order in which the transactions occur; and
  - (b) within 5 working days of the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.
- (5) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

#### 48 RECONCILIATION OF TRUST RECORDS

- (1) An approved clerk that maintains one or more general trust accounts must reconcile the trust records relating to each account.
- (2) The trust records relating to a general trust account are to be reconciled as at the end of each named month by preparing:
  - (a) a statement:
    - (i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and
    - (ii) showing the date the statement was prepared; and
  - (b) a statement:
    - (i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; and
    - (ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and
    - (iii) showing the date the statement was prepared.
- (3) The statements must be prepared within 15 working days after the end of the month concerned.
- (4) The statements must be kept by the approved clerk.

#### 49 TRUST LEDGER ACCOUNT IN NAME OF AN APPROVED CLERK OR LEGAL PRACTITIONER ASSOCIATE

- (1) An approved clerk must not maintain a trust ledger account in the name of the clerk except as authorised by this rule.
- (2) An approved clerk may maintain in the approved clerk's trust ledger a trust ledger account in the clerk'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 a barrister on whose behalf the clerk has





received money on account of legal costs.

- (3) In a case to which subrule (2) (a) applies, an approved clerk must ensure that the money in the trust ledger account is 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.

#### 50 NOTIFICATION REQUIREMENTS REGARDING GENERAL TRUST ACCOUNTS

- (1) Within 14 days after establishing a general trust account, an approved clerk must give the designated local regulatory authority written notice of that fact.
- (2) During July in each year, an approved clerk must give the designated local regulatory authority written notice of the persons (including their names and addresses) who are authorised, as at 1 July in that year—
  - (a) to sign cheques drawn on a general trust account of the approved clerk; or
  - (b) otherwise to effect, direct or authorise the withdrawal of money from a general trust account of the approved clerk—

except to the extent that this information has already been provided (or that the approved clerk reasonably expects to be included) in an external examiner's report under section 159 of the Uniform Law.

- (3) Within 14 days after the closure of a general trust account maintained by it, the approved clerk must give the designated local regulatory authority written notice of that fact.
- (4) A notice under this rule given by the approved clerk must include particulars sufficient to identify the general trust accounts of the practice.
- (5) In this rule, **approved clerk** includes a former approved clerk.

#### 51 AN APPROVED CLERK CLOSING DOWN, CLOSING OFFICE OR CEASING TO RECEIVE OR HOLD TRUST MONEY

- (1) An approved clerk who ceases to hold trust money because the approved clerk ceases to be an approved clerk or to carry on business as a clerk or to carry on business in such a way as to receive trust money must, within 14 days of so ceasing to hold trust money, give the designated local regulatory authority –
  - (a) written notice of such of those facts as are applicable and the dates of their occurrence; and
  - (b) particulars sufficient to identify the approved clerk's general trust accounts.
- (2) In this rule, **approved clerk** includes a former approved clerk.

#### 54 STATEMENTS REGARDING RECEIPT OR HOLDING OF TRUST MONEY

- (1) The designated local regulatory authority may, by written notice, require an approved clerk to give the regulatory authority a statement within a specified period:
  - (a) specifying whether or not the practice has, during a period specified by the regulatory authority, received or held trust money; and
  - (b) if it has received or held trust money during that period, specifying to which of the following categories the trust money belongs:
    - (i) general trust money;
- (iv) money subject to a power.
- (2) A notice may be given so as to apply in respect of one or more periods (whether they occur annually or otherwise) and may be withdrawn or varied by a further notice.

#### 55 TRUST MONEY SUBJECT TO SPECIFIC POWERS

- (1) This rule has effect for the purposes of section 141 of the Uniform Law.



- (2) If an approved clerk is given a power to deal with trust money for or on behalf of another person, the approved clerk must keep:
  - (a) a record of all dealings with the money to which the approved clerk or associate is a party; and
  - (b) all supporting information in relation to the dealings;in a manner that enables the dealings to be clearly understood.
- (3) The record, supporting information and power must be kept by the approved clerk as part of the clerk's trust records.

## 57 DISCLOSURE OF ACCOUNTS USED TO HOLD MONEY

- (1) For the purposes of section 151 of the Uniform Law, an approved clerk must notify the designated local regulatory authority of the following details of each account that is maintained at an ADI in which the approved clerk holds money entrusted to the approved clerk:
  - (a) the name of the ADI, together with its BSB number;
  - (b) the name of the account, together with its account number;
  - (c) the name of each person who is authorised to operate on the account;
  - (d) for each amount of money so entrusted:
    - (i) the name of the person for whom the money is entrusted;
    - (ii) the reason for which the money is entrusted;
    - (iii) the date on which the money is deposited in the account, together with the manner in which it is deposited;
    - (iv) the date on which the money is withdrawn from the account, together with the manner in which it is withdrawn;
  - (e) the date on which the account was opened.

## DIVISION 4 EXTERNAL EXAMINATIONS

### 65 DESIGNATION OF PERSONS ELIGIBLE TO BE APPOINTED AS EXTERNAL EXAMINERS

- (1) This rule designates the classes of persons who may be appointed as external examiners under Part 4.2 of the Uniform Law.
- (2) The following classes of persons are designated for the purposes of section 156 of the Uniform Law:
  - (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;being in each case persons who have also successfully completed a course of education approved by the Legal Services Council from time to time after consultation with the relevant designated local regulatory authority.
- (3) A reference in subrule (2) (a)–(c) to:
  - (a) a particular body includes a reference to the body with a changed name or to a successor body; and



- (b) a particular certificate includes a reference to a certificate (however described) that is issued by the body concerned and certifies the professional competency of the holder.
- (4) Persons who were qualified to be appointed in a jurisdiction as an external examiner immediately before the commencement day for that jurisdiction, and who are not within a class designated under subrule (2), are also designated as a class of persons for the purposes of section 156 of the Uniform Law.
- (5) The designation under subrule (4) ceases to apply in a jurisdiction at the end of the relevant period for that jurisdiction (see subrule (6)), but an appointment already made is not affected when the designation ceases to apply.
- (6) For the purposes of subrule (5), the **relevant period** for a jurisdiction is:
  - (a) subject to paragraph (b), the period of 12 months after the commencement day for that jurisdiction; or
  - (b) a longer period approved from time to time by the Legal Services Council after consultation with the relevant designated local regulatory authority.
- (7) An approval under subrule (6) (b) may apply generally for the jurisdiction concerned or for a particular person or class of persons only, and may be given unconditionally or subject to conditions.

#### 66 APPOINTMENT OF EXTERNAL EXAMINER BY AN APPROVED CLERK

- (1) For the purposes of section 155 (1) of the Uniform Law, an approved clerk must, in writing, appoint a suitably qualified person (who is within a class designated under rule 64) as an external examiner.
- (2) An approved clerk must give to the designated local regulatory authority:
  - (a) within 30 days after first receiving trust money (other than transit money) in the jurisdiction concerned—written notice of the external examiner appointed by an approved clerk as its external examiner; and
  - (b) within 7 days after an external examiner ceases to be the external examiner of an approved clerk—written notice of that fact; and
  - (c) within 30 days after an external examiner ceases to be the external examiner appointed by an approved clerk—written notice of the successor external examiner appointed by an approved clerk as its external examiner.
- (3) An approved clerk may terminate the appointment of an external examiner with the prior approval of the designated local regulatory authority.
- (4) The designated local regulatory authority may give approval under subrule (3) if satisfied that it is reasonable in the circumstances for the practice to terminate the appointment.
- (5) The designated local regulatory authority may require an approved clerk to supply any evidence the designated local regulatory authority requires in order to be satisfied under subrule (4).

#### 67 STANDARD FORM REPORTS BY EXTERNAL EXAMINERS

- (1) If the designated local regulatory authority publishes a standard form for an external examiner's report, each external examiner must report in accordance with that form.
- (2) The designated local regulatory authority may, in writing given to an external examiner, exempt the examiner from the requirement to report in accordance with the standard form.

#### 68 FINAL EXTERNAL EXAMINATION

- (1) This rule applies if an approved clerk:
  - (a) ceases to be authorised to receive trust money or ceases to engage in legal practice; and
  - (b) has held a trust account.



- (2) An approved clerk must appoint an external examiner to conduct the examination referred to in this rule if an external examiner is not holding an appointment as such and available to conduct the examination.
- (3) An approved clerk must arrange for the external examiner to examine and report on the trust records of an approved clerk:
  - (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, an approved clerk held trust money.
- (4) An approved clerk must give the designated local regulatory authority a copy of each report undertaken by its external examiner in accordance with this rule within 60 days after the end of the period to which the report relates.

## **69 EXTERNAL EXAMINER'S REPORT**

For the purposes of section 159 (1) (b) of the Uniform Law, an external examiner must give a written report of the examination to the designated local regulatory authority at a time or within a period determined by the Legal Services Council and published on the Council's website.