

# Legal profession—model laws project

## Model Regulations

February 2006

### Prefatory note

These Model Regulations were approved on 28/29 July 2005 for adoption in connection with the model provisions contained in the Model Bill approved by the Standing Committee of Attorneys-General. They contain further minor and editorial amendments.

The Regulations are currently being reviewed by the National Legal Profession Joint Working Party, in light of recent amendments to the Model Bill. A new version of the Model Regulations is expected to be released later in 2006.

### General note

These Regulations contain the following categories of provisions:

- Provisions identified as core provisions requiring textual uniformity are intended to apply in each jurisdiction in a form that is textually uniform to the maximum extent possible. Provisions in this category are generally marked **CU** (“Core Uniform”).
- Provisions identified as core provisions not requiring textual uniformity are intended to have counterparts in the legislation of each jurisdiction, though not necessarily with textual uniformity. Provisions in this category are generally marked **CNU** (“Core Not Uniform”).
- Provisions identified as not being core provisions are optional. Provisions in this category are generally marked **NC** (“Not Core”).

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### Part 1 Preliminary

#### Division 1 Introduction to the Regulations

**101 Citation [CNU]**

These Regulations may be cited as the *Legal Profession Regulations 200...*

**102 Commencement [CNU]**

**Note.** Appropriate local provisions to be inserted.

**103 Definitions [CU]**

In these Regulations:

*entity* means a person or body.

*named month* means one of the 12 named months of the year starting with January.

*the Act* means the *Legal Profession Act 200...*

**104 Definition of “associate” - Australian-registered foreign lawyer (section 107 of the Act) [CU]**

The relationship of employee of the law practice is prescribed as a class of relationship for the purposes of section 107 (1) (e) of the Act.

#### Division 2 Regulations for Part 1 of the Act

**105 Default determination of associate’s home jurisdiction (section 108 of Model Bill) [CU]**

- (1) This regulation applies to an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, where:

- (a) section 108 (4) (b) of the Act is applicable to the associate; and

- (b) the home jurisdiction for the associate can be determined under neither subparagraph (i) nor subparagraph (ii) of that paragraph.
- (2) For the purposes of section 108 (4) (b) (iii) of the Act, the home jurisdiction for the associate is to be determined in accordance with the following criteria:
  - (a) the jurisdiction of the associate's place of residence in Australia; or
  - (b) if the associate does not have a place of residence in Australia, the jurisdiction of the associate's last place of residence in Australia.

## **Part 2    Reservation of legal work and legal titles**

### **201       Prohibition on engaging in legal practice when not entitled (section 202 of Model Bill) [NC]**

**Note.** Jurisdictions may consider including a regulation providing that section 202 (1) of the Act does not apply to engaging in legal practice by government lawyers who are not required to hold practising certificates, although this may not be necessary if a provision along the lines of section 444 (2) (a) of the Act has been included.

### **202       Presumptions about taking or using name, title or description (section 204 of Model Bill) [NC]**

For the purposes of section 204 (2) of the Act, the kinds of persons specified in the third column of the table to this regulation are persons who are entitled, in the circumstances specified opposite in the fourth column, to take a name, title or description specified opposite in the second column.

**Table**

<b>First column</b>	<b>Second column</b>	<b>Third column</b>	<b>Fourth column</b>
<b>Item No.</b>	<b>Name, title or description</b>	<b>Kinds of persons who are entitled to take or use name, title or description</b>	<b>Circumstances in which the persons are entitled to take or use name, title or description</b>
1	legal practitioner	Australian legal practitioner	all circumstances (no restriction)
2	legal practitioner	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of the Government of the Commonwealth (or as an employee of the Government of a State or Territory) in circumstances in which the laws of the Commonwealth (or the laws of the State or Territory) permit an Australian lawyer to engage in such practice without having to hold an Australian practising certificate
3	barrister and solicitor, or solicitor and barrister, or solicitor, or attorney	Australian legal practitioner	when the Australian legal practitioner holds an Australian practising certificate and engages in legal practice in the manner of a solicitor
4	barrister and solicitor, or solicitor and barrister, or solicitor, or attorney	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a solicitor as an employee of the Government of the Commonwealth (or as an employee of the Government of a State or Territory) in circumstances in which the laws of the Commonwealth (or the laws of the State or Territory) permit an Australian lawyer to engage in such practice without having to hold an Australian practising certificate
5	barrister	Australian legal practitioner	when the Australian legal practitioner holds a local practising certificate and engages in legal practice in the manner of a barrister

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<b>First column</b>	<b>Second column</b>	<b>Third column</b>	<b>Fourth column</b>
<b>Item No.</b>	<b>Name, title or description</b>	<b>Kinds of persons who are entitled to take or use name, title or description</b>	<b>Circumstances in which the persons are entitled to take or use name, title or description</b>
6	barrister	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a barrister as an employee of the Government of the Commonwealth (or as an employee of the Government of a State or Territory) in circumstances in which the laws of the Commonwealth (or the laws of the State or Territory) permit an Australian lawyer to engage in such practice without having to hold an Australian practising certificate
7	counsel	Australian legal practitioner	all circumstances (no restriction)
8	counsel	Australian lawyer	<p>when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee of the Government of the Commonwealth (or as an employee of the Government of a State or Territory) in circumstances in which the laws of the Commonwealth (or the laws of the State or Territory) permit an Australian lawyer to engage in such practice without having to hold an Australian practising certificate, or</p> <p>when the Australian lawyer, not holding an Australian practising certificate, provides legal services to his or her employer, or to a related entity, in the ordinary course of his or her employment and for no fee, gain or reward other than his or her ordinary remuneration as an employee</p>

First column	Second column	Third column	Fourth column
Item No.	Name, title or description	Kinds of persons who are entitled to take or use name, title or description	Circumstances in which the persons are entitled to take or use name, title or description
9	Queen’s Counsel or QC, or King’s Counsel or KC, or Her Majesty’s Counsel, or His Majesty’s Counsel	Australian lawyer	when the Australian lawyer currently holds the appropriate status, as conferred by the Crown in any capacity or as recognised by the High Court or a Supreme Court of any jurisdiction
10	attorney	Australian-registered foreign lawyer	when entitled to use the name, title or description under section 1409 of the Act
11	attorney	patent attorney	when using the expression “patent attorney”
12	attorney	donee of a power of attorney	when indicating that the donee holds or is acting under a power of attorney
13	Attorney	Attorney-General of any jurisdiction, the Commonwealth or a foreign country	all circumstances (no restriction)
14	Solicitor	Solicitor-General of any jurisdiction, the Commonwealth or a foreign country	all circumstances (no restriction)

**Note 1.** Jurisdictions that cater for a split profession may need to vary item 5—see Schedule 1 to the *Legal Profession Regulation 2005* (NSW).

**Note 2.** The table could appear as a Schedule at the end of the provisions, with appropriate adjustments to the opening words of Regulation 202.

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### **Part 3 Admission of local lawyers**

**Note.** No regulations are currently proposed.

## Part 4 Legal practice: Australian legal practitioners

### 401 Completion of periods of supervised legal practice (sections 430 and 437 of Model Bill) [CNU]

- (1) For the purposes of sections 430 and 437 of the Act, completion by a person of a period or periods of supervised legal practice equivalent to the required period of 18 months or 2 years is to be worked out by satisfying the requirements of this regulation.
- (2) The person satisfies the requirements of this regulation if the person completes:
  - (a) one period of supervised legal practice, worked on a full-time basis, that is equal to the required period; or
  - (b) one period of supervised legal practice, worked on a part-time basis, that is equivalent to the required period; or
  - (c) two or more periods of supervised legal practice, worked on either or both of those bases, that together are equal or equivalent to the required period.
- (3) For the purposes of this regulation:
  - (a) public holidays during a relevant period are to be included as days of supervised legal practice, whether or not the person engaged in legal practice on those days; and
  - (b) normal periods of leave taken during a relevant period by the person are to be included as periods of supervised legal practice.

### 402 Register of local practising certificates (section 441 of Model Bill) [NC]

- (1) For the purposes of section 441 (2) (b) of the Act, the particulars referred to in subregulation (2) are prescribed as particulars to be included in the register kept under section 441 of the Act in relation to a local legal practitioner, except where the [appropriate authority] is required by subregulation (5) not to include them in the register.
- (2) The particulars to be included in the register are as follows:
  - (a) the name of the local legal practitioner;
  - (b) the type of local practising certificate held by the practitioner;
  - (c) the name of the law practice of which the practitioner is an associate or, if the practitioner is not an associate of a law practice, the name of the entity of which the practitioner is a director, officer or employee or with which the practitioner is otherwise engaged in legal practice;

- (d) the contact details of the office of the law practice or other entity in this jurisdiction;
  - (e) by way of separate additional entry, the name of the law practice or other entity and the contact details of the office of the law practice or other entity:
    - (i) in this jurisdiction; and
    - (ii) in any other jurisdictions in which it has an office, except where the [appropriate authority] considers those particulars need not be included in respect of an entity that is not a law practice;
  - (f) any other particulars about the practitioner, law practice or other entity that the [appropriate authority] considers should be included.
- (3) Contact details of an office are the following:
- (a) its street address (the address where the office is physically located);
  - (b) its postal address (a post office box number and the location and postcode of the post office), if any;
  - (c) its DX address (the number of the exchange box in a document exchange (DX)), if any.
- (4) A local legal practitioner may, by notice in writing to the [appropriate authority], request the authority not to include any or any specified particulars about the practitioner, law practice or other entity in the register, on the ground that special circumstances warrant the particulars not being publicly available (for example, if the safety or well-being of a person would be substantially affected by making the particulars publicly available).
- (5) If the [appropriate authority] is satisfied that those special circumstances exist, the authority is required not to include the particulars concerned in the register, unless the authority considers that the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

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## **Parts 5, 6**

**Note.** No regulations are currently proposed.

## Part 7 Trust money and trust accounts

### Division 1 Preliminary

#### 701 Operation of this Part [CU]

This Part has effect for the purposes of Part 7 of the Act, and accordingly applies to a law practice in respect of:

- (a) trust money received by the practice in this jurisdiction, unless the practice has an office in one or more other jurisdictions but not in this jurisdiction; and
- (b) trust money received by the practice in another jurisdiction, if the practice has an office in this jurisdiction but in no other jurisdiction; and
- (c) trust money received by the practice in another jurisdiction, if the practice has an office in:
  - (i) this jurisdiction; and
  - (ii) one or more other jurisdictions but not in the jurisdiction in which the money was received;

unless the money is dealt with in accordance with the corresponding law of a jurisdiction in which the practice has an office.

#### 702 Definitions [CU]

In this Part:

**BSB number** (Bank State Branch number) means the number assigned to identify a particular branch of a particular ADI.

**deposit record** includes a deposit slip.

**matter description** means a brief phrase or expression assigned by a law practice to describe a matter.

**matter reference** means a number or other reference assigned by a law practice to identify a matter.

**trust money** means trust money in respect of which this Part for the time being applies, as mentioned in regulation 701.

#### 703 Conditions on approval of ADIs (section 738 of Model Bill)

For the purposes of section 738 (2) of the Act, the kinds of conditions that may be imposed on an approval of an ADI under section 738 of the Act are conditions that provide for, or conditions that require arrangements to be negotiated and entered into between the ADI and

the [appropriate authority] that provide for, any one or more of the following:

- (a) the payment of interest to the [appropriate authority] on the whole or any part of deposits in trust accounts;
- (b) the manner in which the [appropriate authority] is informed of amounts held in trust accounts;
- (c) the auditing of balances in trust accounts;
- (d) the keeping of any trust accounts or only trust accounts of a particular class (for example, controlled money accounts);
- (e) any matters relevant to paragraphs (a) to (d).

**Note.** This regulation is intended to achieve a similar result to Vic s3.3.59. If Model Bill s738 is amended in line with the Victorian section, this regulation would not be needed.

## **Division 2      Computerised accounting systems**

### **704    Application of Division [CU]**

This Division applies where a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.

### **705    Copies of trust records to be printed [CU]**

- (1) The law practice must print a paper copy of trust records as follows:
  - (a) trust account cash books are to be printed monthly as at the end of each named month, unless a copy of the books as at the end of the named month is retained in electronic form that is readable or reportable on demand;
  - (b) reconciliation statements prepared under regulation 720 (Reconciliation of trust records) are to be printed as at the end of each named month;
  - (c) trust ledger trial balances are to be printed monthly as at the end of each named month;
  - (d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each named month;
  - (e) trust ledger accounts, the register of controlled money and the trust account transfer journal are to be printed before they are archived or deleted from the system;

- (f) trust ledger account and controlled money account details are to be printed on request by and provided to an investigator as defined in section 1502 of the Act.
- (2) The trust records printed monthly as at the end of a named month under subregulation (1) (a)–(d) must be printed within 15 working days after the named month.
- (3) The paper copies printed under subregulation (1) are to be retained by the law practice, except where they are printed on request under that subregulation.
- (4) The electronic copy of the trust account cash books under subregulation (1) (a) is to be retained by the law practice.

**706 Chronological record of information to be made [CU]**

- (1) The law practice must maintain a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the following:
  - (a) client name;
  - (b) client address;
  - (c) matter reference;
  - (d) matter description;
  - (e) ledger account number.
- (2) The record is to be retained by the law practice.

**707 Requirements regarding computer accounting systems [CU]**

- (1) The law practice must ensure that 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.
- (2) The law practice must ensure that the system is not capable of deleting a trust ledger account unless:
  - (a) the balance of the account is zero and all outstanding cheques have been presented; and
  - (b) when the account is deleted, a copy of the account is retained in a permanent form.
- (3) The law practice must ensure that any entry in a record produced in a permanent form appears in chronological sequence.

- (4) The law practice must ensure that each page of each printed record is numbered sequentially or is printed in such a way that no page can be extracted.
- (5) The law practice must ensure that 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.
- (6) The law practice must ensure that its computerised accounting system requires input in every field of a data entry screen intended to receive information required by this Part to be included in trust records.

#### **708 Back-ups [CU]**

The law practice must ensure that:

- (a) a back-up copy of all records required by this Part is made not less frequently than once each month; and
- (b) each back-up copy is retained by the law practice; 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.

### **Division 3 General trust accounts**

#### **709 Establishment of general trust account (section 711 (2) of Model Bill) [CU]**

- (1) A law practice may at any time open a general trust account that satisfies the requirements of this regulation, but must, as soon as practicable after receiving trust money that is required to be paid into a general trust account, establish a general trust account that satisfies those requirements if the practice does not already have such a general trust account.
- (2) A general trust account satisfies the requirements of this regulation if:
  - (a) the account is established in this jurisdiction, before or after the commencement of this regulation, with an approved ADI; and
  - (b) the account is and is to be maintained in this jurisdiction; and
  - (c) the name of the account includes:
    - (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”; and

- (d) the account is of a kind that is for the time being approved by the [appropriate authority].
- (3) Subregulation (2) (c) does not apply to an account established in this jurisdiction before the commencement of this regulation.
- (4) Subregulation (2) (c) (ii) does not require the repetition of the words “law practice” if those words form part of the name or business name of the law practice.

**710 Receipting of trust money [CU]**

- (1) This regulation applies if a law practice receives trust money that is required to be paid into a general trust account.
- (2) After receiving the trust money, the law practice must make out a receipt.
- (3) The receipt must be made out as soon as practicable:
  - (a) after the trust money is received; or
  - (b) in the case of trust money received by direct deposit—after the law practice receives or can access notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the trust account receipts cash book.
- (5) For the purposes of subregulation (4), the *required particulars* are as follows:
  - (a) the date the receipt is made out and, if different, the date of receipt of the money;
  - (b) the amount of money received;
  - (c) the form in which the money was received;
  - (d) the name of the person from whom the money was received;
  - (e) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
  - (f) particulars sufficient to identify the purpose for which the money was received;
  - (g) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression “trust account” or “trust a/c”;
  - (h) the name of the person who made out the receipt;

- (i) the number of the receipt.
- (6) The original receipt is to be delivered, on request, to the person from whom the trust money was received.
- (7) Receipts must be consecutively numbered and issued in consecutive sequence.
- (8) If a receipt is cancelled or not delivered, the original receipt must be retained.

**711 Deposit records for trust money [CU]**

- (1) This regulation applies if a law practice 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.
- (2) A deposit record must be produced to the approved ADI at the time the deposit is made.
- (3) 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, notes or coins (and the amount of each);
  - (d) for each cheque:
    - (i) the name of the drawer of the cheque;
    - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn;
    - (iii) the amount of the cheque.
- (4) The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise.
- (5) The duplicate deposit record must be retained for each deposit to the general trust account and must be retained in a deposit book or be otherwise securely filed in the order in which the deposits were made.

**712 Direction for non-deposit of trust money in general trust account (section 712 (3) of the Act) [CU]**

For the purposes of section 712 (3) of the Act, the prescribed period for which a written direction referred to in section 712 (1) (a) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

**713 Payment by cheque [CU]**

- (1) This regulation applies to the withdrawal of trust money from a general trust account of a law practice by cheque.
- (2) A cheque:
  - (a) must be made payable to or to the order of a specified person or persons and not to bearer or cash; and
  - (b) must be crossed “not negotiable”; and
  - (c) 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”.

**Note.** Jurisdictions may wish to consider a transitional provision for subregulation (2).

- (3) A cheque must be signed:
  - (a) by an authorised principal of the law practice; or
  - (b) if a principal referred to in paragraph (a) is not available:
    - (i) by an authorised legal practitioner associate; or
    - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
    - (iii) by two or more authorised associates jointly.
- (4) A written record of the required particulars (which may be in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those particulars are recorded by computer program in the trust account payments cash book.
- (5) If at the time the cheque is issued the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (6) For the purposes of subregulations (4) and (5), the **required particulars** are as follows:
  - (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, in the case of a cheque made payable to an ADI, the name 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;

- (e) details clearly identifying the ledger account to be debited;
  - (f) particulars sufficient to identify the purpose for which the payment was made.
- (7) Written records relating to payments by cheque (including cheque requisitions) must be stored in the order in which the cheques were issued.
- (8) Subregulation (2) (c) does not apply to an account established in this jurisdiction before the commencement of this regulation.
- (9) Subregulation (2) (c) (ii) does not require the repetition of the words “law practice” if those words form part of the name or business name of the law practice.
- (10) In this regulation:
- associate* means an associate of the law practice.
- authorised* means authorised by the law practice to sign cheques drawn on the general trust account.

#### **714 Payment by electronic funds transfer [NC]**

- (1) This regulation applies to the withdrawal of trust money from a general trust account of a law practice by electronic funds transfer.
- (2) An electronic funds transfer must be effected by, under the direction of or with the authority of:
- (a) an authorised principal of the law practice; or
  - (b) if a principal referred to in paragraph (a) is not available:
    - (i) an authorised legal practitioner associate; or
    - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
    - (iii) two or more authorised associates jointly.
- (3) A written record of the required particulars must be kept of each payment unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.
- (4) If at the time the electronic funds transfer is effected the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.

- (5) For the purposes of subregulations (3) and (4), the *required particulars* are as follows:
- (a) the date and number of the transaction;
  - (b) the amount transferred;
  - (c) the name and number of the account to which the amount was transferred and relevant BSB number;
  - (d) 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 and the matter reference;
  - (f) details clearly identifying the ledger account to be debited;
  - (g) particulars sufficient to identify the purpose for which the payment was made.
- (6) Written records relating to payments by electronic funds transfer (including transfer requisitions) must be stored in the order in which the transfers were effected.
- (7) In this regulation:

*associate* means an associate of the law practice.

*authorised* means authorised by the law practice to effect, direct or give authority for an electronic funds transfer from the general trust account.

#### **715 Recording transactions in trust account cash books [CU]**

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 regulation 716; and
- (b) a trust account payments cash book in accordance with regulation 717.

#### **716 Trust account receipts cash book [CU]**

- (1) The following particulars must be recorded in a law practice's trust account receipts cash book 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 purpose 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.
- (4) The particulars in respect of a receipt must be recorded within 5 working days counting from and including the day the receipt was made out.

**717 Trust account payments cash book [CU]**

- (1) The following particulars must be recorded in a law practice's trust account payments cash book in respect of each payment of trust money by cheque:
- (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, 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;
  - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
  - (e) details clearly identifying the ledger account to be debited;
  - (f) particulars sufficient to identify the purpose for which the payment was made.
- (2) The following particulars must be recorded in a law practice's trust accounts payments cash book in respect of each payment of trust money by electronic funds transfer:
- (a) the date and number of the transaction;
  - (b) the amount transferred;
  - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;

- (d) 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 and the matter reference;
  - (f) details clearly identifying the ledger account to be debited;
  - (g) particulars sufficient to identify the purpose for which the payment was made.
- (3) The particulars in respect of payments must be recorded in the order in which the payments are made.
- (4) The particulars in respect of a payment must be recorded within 5 working days counting from and including the day the payment was made.

**718 Recording transactions in trust ledger accounts [CU]**

- (1) A law practice that maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each client of the practice in each matter for which trust money has been received by the practice.
- (2) The following particulars must be recorded 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) Details of any changes in the title of a trust ledger account must be recorded.
- (4) The following particulars must be recorded in the trust ledger account in respect of each receipt of trust money for the matter:
- (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 name of the person from whom the money was received;
  - (e) particulars sufficient to identify the purpose for which the money was received.

- (5) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by cheque:
- (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, 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;
  - (d) particulars sufficient to identify the purpose for which the payment was made.
- (6) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by electronic funds transfer:
- (a) the date and number of the transaction;
  - (b) the amount transferred;
  - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
  - (d) 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) particulars sufficient to identify the purpose for which the payment was made.
- Note.** Subregulation (6) applies only to those jurisdictions that adopt NMR 713.
- (7) The following particulars must be recorded in the trust ledger account in respect of each transfer of trust money effected by a journal entry:
- (a) the date of the transfer;
  - (b) the amount transferred;
  - (c) the journal reference number;
  - (d) the name of the other trust ledger account from which or to which the money was transferred;
  - (e) particulars sufficient to identify the purpose for which the payment was made.
- (8) Transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur.
- (9) The particulars in respect of a receipt, payment or transfer of trust money must be recorded within 5 working days counting from and including the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.

- (10) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

**719 Journal transfers [CU]**

- (1) Trust money may be transferred by journal entry from one trust ledger account in a law practice's trust ledger to another trust ledger account in the trust ledger, but only if:
- (a) the law practice is entitled to withdraw the money and pay it to the other trust ledger account; and
  - (b) the transfer has been authorised in writing:
    - (i) by a person who is authorised to sign cheques drawn on the general trust account without a co-signatory; or
    - (ii) by two or more persons who are authorised to sign cheques drawn on the general trust account jointly.
- (2) A law practice 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 its identifying reference);
  - (c) the trust ledger account to which the money is transferred (including its identifying reference);
  - (d) the amount transferred;
  - (e) particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.
- (4) Journal pages or entries must be consecutively numbered.
- (5) A law practice 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.

**720 Reconciliation of trust records [CU]**

- (1) A law practice that maintains one or more general trust accounts must reconcile the trust records relating to the only or 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 retained by the law practice.

**721 Trust ledger account in name of law practice or legal practitioner associate [CU]**

- (1) A law practice must not maintain a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this regulation.
- (2) A law practice may maintain in its trust ledger:
  - (a) a trust ledger account in the 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 practice for legal costs; and
  - (b) a trust ledger account in a legal practitioner associate's name, but only in respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.
- (3) In a case to which subregulation (2) (a) applies, the law practice 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.
- (4) In a case to which subregulation (2) (b) applies, 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.

**722 Notification requirements regarding general trust accounts [CU]**

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- (1) Within 14 days after establishing a general trust account, a law practice must give the [appropriate authority] written notice of that fact.
- (2) A law practice:
  - (a) must either before, or within 14 days after, authorising or terminating the authority of an associate of the practice or an Australian legal practitioner:
    - (i) to sign cheques drawn on a general trust account of the practice; or
    - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice;  
give the [appropriate authority] written notice of that fact (including the name and address of the associate or practitioner and indicating, in the case of an associate, whether the associate is an employee of the practice); and
  - (b) during [July] of each year, must give the [appropriate authority] written notice of the associates and Australian legal practitioners (including their names and addresses) who are authorised, as at 1 July of that year:
    - (i) to sign cheques drawn on a general trust account of the practice; or
    - (ii) otherwise to effect, direct or give authority for the withdrawal of money from a general trust account of the practice.
- (3) Within 14 days after the closure of a general trust account maintained by it, a law practice must give the [appropriate authority] written notice of that fact.
- (4) A notice under this regulation given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.
- (5) In this regulation:

*law practice* includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

**Note.** Jurisdictions may wish to consider a transitional provision for this regulation.

## Division 4      Controlled money

### 723    Maintenance of controlled money accounts

- (1) For the purposes of section 714 (4) of the Act, a controlled money account must be maintained under an account name that includes the following particulars:
  - (a) the name of the law practice concerned;
  - (b) the expression “controlled money account”;
  - (c) such particulars as are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.
- (2) This regulation does not apply to an account established in this jurisdiction before the commencement of this regulation.

**724 Receipt of controlled money [CU]**

- (1) This regulation applies if a law practice receives controlled money.
- (2) The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (3) After receiving controlled money, the law practice must make out a receipt.
- (4) The receipt must be made out as soon as practicable:
  - (a) after the controlled money is received; or
  - (b) in the case of controlled money received by direct deposit—after the law practice receives or can access notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (5) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.
- (6) For the purposes of subregulation (5), the *required particulars* are as follows:
  - (a) the date the receipt is made out and, if different, the date of receipt of the money;
  - (b) the amount of money received;
  - (c) the form in which the money was received;
  - (d) the name of the person from whom the money was received;
  - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;

- (f) particulars sufficient to identify the purpose for which the money was received;
  - (g) the 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;
  - (h) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression “controlled money receipt”;
  - (i) the name of the person who made out the receipt;
  - (j) the number of the receipt.
- (7) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (8) The original receipt is to be delivered, on request, to the person from whom the controlled money was received.
- (9) Receipts must be consecutively numbered and issued in consecutive sequence.
- (10) If a receipt is cancelled or not delivered, the original receipt must be retained.
- (11) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

**725 Deposit of controlled money [CU]**

For the purposes of section 714 (5) of the Act, the prescribed period for which a written direction referred to in section 714 (1) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

**726 Withdrawal of controlled money must be authorised [CU]**

- (1) 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 a principal referred to in paragraph (a) is not available:
    - (i) an authorised legal practitioner associate; or
    - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
    - (iii) two or more authorised associates jointly.
- (2) A written record of the required particulars must be kept of each withdrawal unless at the time the withdrawal is made those particulars are recorded by computer program.
- (3) If at the time the withdrawal is made the required particulars are recorded by computer program, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (4) For the purposes of subregulations (2) and (3), the required particulars are as follows:
  - (a) the date and number of the transaction;
  - (b) the amount withdrawn;
  - (c) in the case of a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number;
  - (d) the name of the person to whom payment is to be 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 and the matter reference;
  - (f) particulars sufficient to identify the purpose for which the payment was made;
  - (g) the person or persons effecting, directing or authorising the withdrawal.

**Note.** Subregulation (4) (c) applies only to those jurisdictions that adopt NMR 713.

- (5) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.
- (6) In this regulation:  
*associate* means an associate of the law practice.  
*authorised* means authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.

**727 Register of controlled money [CU]**

- (1) A law practice that receives controlled money must maintain a register of controlled money consisting of the records of controlled money movements for the controlled money accounts of the practice.
- (2) A separate record of controlled money movements must be maintained for each controlled money account.
- (3) A record of controlled money movements for a controlled money account must record the following information:
  - (a) the name of the person on whose behalf the controlled money is held;
  - (b) the person's address;
  - (c) particulars sufficient to identify the matter;
  - (d) any changes to the information referred to in paragraphs (a)–(c).
- (4) The following particulars must be recorded in a record of controlled money movements for a controlled money account:
  - (a) the date the controlled money was received;
  - (b) the number of the receipt;
  - (c) the date the money was deposited in the controlled money account;
  - (d) the name of and other details clearly identifying the controlled money account;
  - (e) the amount of controlled money deposited;
  - (f) details of the deposit sufficient to identify the deposit;
  - (g) interest received;
  - (h) details of any payments from the controlled money account, including the particulars required to be recorded under regulation 726 (4).
- (5) With the exception of interest and other income received in respect of controlled money, 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 any payment is made.

- (6) Interest and other income received in respect of controlled money must be entered in the register as soon as practicable after the law practice is notified of its receipt.
- (7) The law practice must retain as part of its trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.
- (8) Within 15 working days after each named month, the law practice must prepare and keep as a permanent record a statement as at the end of the named month:
  - (a) containing a list of the practice's controlled money accounts showing:
    - (i) the name, number and balance of each account in the register; and
    - (ii) the name of the person on whose behalf the controlled money in each account was held; and
    - (iii) a short description of the matter to which each account relates; and
  - (b) showing the date the statement was prepared.

## **Division 5      Transit money**

### **728    Information to be recorded about transit money (section 715 of Model Bill) [CU]**

- (1) This regulation has effect for the purposes of section 715 of the Act.
- (2) A law practice must, in respect of transit money received by the practice, record and retain brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

## **Division 6      Trust money generally**

### **729    Trust account statements [CU]**

- (1) A law practice must furnish a trust account statement to each person for whom or on whose behalf trust money (other than transit money) is held or controlled by the law practice or an associate of the practice.
- (2) In the case of trust money in respect of which the law practice is required to maintain a trust ledger account, the practice must furnish a separate statement for each trust ledger account.
- (3) In the case of controlled money in respect of which the law practice is required to maintain a record of controlled money movements, the practice must furnish a separate statement for each record.
- (4) In the case of trust money subject to a power given to the law practice or an associate of the practice in respect of which the practice is required to keep a record of all dealings with the money to which the practice or associate is a party, the practice must furnish a separate statement for each record.
- (5) A trust account statement is to contain particulars of:
  - (a) all the information required to be kept under this Part in relation to the trust money included in the relevant ledger account or record; and
  - (b) the remaining balance (if any) of the money.
- (6) A trust account statement is to be furnished:
  - (a) as soon as practicable after completion of the matter to which the ledger account or record relates; or
  - (b) as soon as practicable after 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; or
  - (c) except as provided by subregulation (7), as soon as practicable after 30 June in each year.
- (7) The law practice is not required to furnish a trust account statement under subregulation (6) (c) in respect of a ledger account or record if at 30 June:
  - (a) the ledger account or record has been open for less than 6 months; or

- (b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or
  - (c) 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.
- (8) The law practice must retain a copy of a trust account statement furnished under this regulation.

**730 Trust account statements for institutional clients [CU]**

- (1) In this regulation:
- institutional client* of a law practice means a client of a law practice, if the client is:
- (a) a public company, a subsidiary of a public company, a foreign company, a subsidiary of a foreign company or a registered Australian body (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
  - (b) a financial services licensee (within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (2) Regulation 729 (Trust account statements) does not apply to an institutional client to the extent to which the client directs the law practice not to provide trust account statements under that regulation.
- (3) If the institutional client directs the law practice to provide trust account statements on a basis different from that prescribed by regulation 729, the law practice must supply those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (4) The law practice must retain a copy of a trust account statement furnished under this regulation.

**731 Register of Investments [CU]**

- (1) This regulation applies if trust money referred to in section 703 (3) of the Act is invested by a law practice for or on behalf of a client, but this regulation does not itself confer power to make investments.
- (2) The law practice must maintain a register of investments of trust money.
- (3) 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, including, for example:
    - (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;
  - (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.
- (4) This regulation does not require particulars to be recorded in the register if the particulars are required to be recorded elsewhere by another regulation.

**732 Trust money subject to specific powers (section 716 of Model Bill) [CU]**

- (1) This regulation has effect for the purposes of section 716 of the Act.
- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, whether or not the power is exercisable jointly or severally, or jointly and severally, with the other person or one or more nominees of the other person, the practice must keep:
  - (a) a record of all dealings with the money to which the practice 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 law practice as part of the practice's trust records.

**733 Register of powers and estates in relation to trust money [CU]**

- (1) 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.

- (2) Subregulation (1) does not apply where the law practice or associate is also required to act jointly with one or more persons who are not associates of the practice.
- (3) The register of powers and estates must record:
  - (a) the name and address of the donor and date of each power; and
  - (b) 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.

**734 Intermixing money (section 718 of Model Bill) [CU]**

- (1) This regulation has effect for the purposes of section 718 of the Act, which provides that a law practice must not, otherwise than as allowed by the regulations, mix trust money with other money.
- (2) A law practice is allowed to mix trust money with other money to the extent only authorised by the [appropriate authority] and in accordance with any conditions imposed by the [appropriate authority] in relation to the authorisation.

**Note.** The substance of this regulation may be transferred to the Model Bill, and consequently this regulation may not be needed.

**735 Withdrawing trust money for legal costs (section 719 of Model Bill) [CU]**

- (1) This regulation prescribes, for the purposes of section 719 (1) (b) of the Act, the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice 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 either subregulation (3) or (4).
- (3) The law practice may withdraw the trust money:
  - (a) if:
    - (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or
    - (ii) the money is withdrawn in accordance with instructions that have been received by the practice and that authorise the withdrawal; or
    - (iii) the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person; and

- (b) if, before effecting the withdrawal, the practice gives or sends to the person:
    - (i) a request for payment, referring to the proposed withdrawal, or
    - (ii) a written notice of withdrawal.
- Note.** Subregulation (3) (b) (ii) will require consequential amendments to NMP 1034, 1035 and 1036 to facilitate applications for costs reviews.
- (4) The law practice may withdraw the trust money:
    - (a) if the practice has given the person a bill relating to the money; and
    - (b) if:
      - (i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or
      - (ii) the person has objected within 7 days after being given the bill but has not applied for a review of the legal costs under the Act within 60 days after being given the bill; or
      - (iii) the money otherwise becomes legally payable.
  - (5) Instructions mentioned in subregulation (3) (a) (ii):
    - (a) if given in writing, must be retained as a permanent record; or
    - (b) if not given in writing, must be reduced to writing either before, or not later than 5 working days after, the law practice effects the withdrawal and a copy must be retained as a permanent record.
  - (6) For the purposes of subregulation (3) (a) (iii), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the practice has been debited.

### **736 Keeping of trust records (section 722 of Model Bill) [CU]**

- (1) This regulation has effect for the purposes of section 722 of the Act for the keeping in a permanent form of a law practice's trust records in relation to trust money received by the practice.
- (2) The trust records are to be kept for a period of 7 years after:
  - (a) in the case of a trust record referred to in paragraphs (a)–(m) of the definition of *trust records* in section 702 (1) of the Act—the only or the last transaction entry in the trust record; or
  - (b) in the case of any other trust record—finalisation of the matter to which the trust record relates.
- (3) This regulation does not apply to a written direction referred to in section 712 (1) (a) or 714 (1) of the Act.

**737 Retaining other records and information [CU]**

- (1) A record maintained under regulation 706 (Chronological record of information to be made) is, so far as it relates to particular information, to be retained by the law practice for a period of 7 years after finalisation of the matter to which the record relates.
- (2) Any other record or information required by this Part to be retained by a law practice is to be retained for a period of 7 years after finalisation of the matter to which the record relates.
- (3) This regulation does not apply to records to which regulation 712 (Deposit of trust money), regulation 725 (Deposit of controlled money) or regulation 736 (Keeping of trust records) applies.

**738 Statements regarding receipt or holding of trust money [CNU]**

- (1) The [appropriate authority] may, by notice given under this regulation, require a law practice to give the authority a statement:
  - (a) specifying whether or not the practice has during a period specified by the 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 (being trust money other than that referred to in subparagraphs (ii)–(iv));
    - (ii) controlled money;
    - (iii) transit 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.
- (3) A notice may specify the time by which or the period during which the requirement is to be complied with.
- (4) A notice is given to:
  - (a) a particular law practice by sending the notice by post to the practice; or
  - (b) a particular class of law practices by publishing the notice in a circular distributed generally to law practices of the class or in a magazine or other publication available generally to law practices of the class.
- (5) A law practice:

- (a) must comply with a requirement imposed on it under this regulation and must do so by the time or during the period specified in the notice for compliance; and
- (b) must not include in the statement any information that is false or misleading in a material particular.

## **Division 7 External examinations**

### **739 Requirement for external examinations (sections 730 and 731 of Model Bill) [NC]**

- (1) **Note.** Provisions requiring the appointment of an external examiner to examine the practice's records may be required in each jurisdiction.
- (2) If the only trust money received or held by a law practice during a financial year is transit money, the practice's trust records in respect of that year are not required to be externally examined.

**Note.** This may require an amendment of the Model Bill or the jurisdictional Acts.

### **740 Prescribed form for law practice ceasing to be authorised to receive trust money or engage in legal practice (section 733 of Model Bill) [CU]**

For the purposes of section 733 (3) (b) of the Act, the prescribed form of a statutory declaration to be lodged by a law practice is Form 1 in Schedule 1.

### **741 Carrying out examination (section 735 of Model Bill) [NC]**

- (1) This regulation has effect for the purposes of section 735 of the Act in connection with an external examination of trust records.

**Note.** Provisions for the carrying out of an external examination of trust records will need to be inserted in each jurisdiction.

## **Division 8 Miscellaneous**

### **742 Law practice closing down, closing office or ceasing to receive or hold trust money [CU]**

- (1) A law practice that holds trust money must give the [appropriate authority] at least 14 days' written notice of its intention:
  - (a) to cease to exist as a law practice; or
  - (b) to cease to engage in legal practice in this jurisdiction; or
  - (c) to cease to practise in such a way as to receive trust money.
- (2) Within 14 days of ceasing to hold trust money, a law practice that holds trust money must give the [appropriate authority]:

- (a) written notice of that fact; and
  - (b) if the practice has not given a notice under subregulation (1) within the previous 28 days, a notice that complies with that subregulation.
- (3) A notice under this regulation must include particulars sufficient to identify:
- (a) a law practice's general trust accounts and controlled money accounts; and
  - (b) trust money controlled by the practice (or by an associate) pursuant to a power; and
  - (c) trust money invested by the practice.
- (4) In this regulation:
- law practice* includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

### 743 Exemptions [CNU]

The [appropriate authority]:

- (a) may exempt a law practice from complying with any of the provisions of this Part, subject to any conditions that may be imposed by the [appropriate authority]; and
- (b) may, at any time, impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.

**Note.** The Model Provisions may need amendment to provide explicit power for a regulation of this nature.

## **Part 8 Fidelity cover**

### **801 Protocols (section 836 of Model Bill) [CNU]**

- (1) The [appropriate authority] may enter into protocols with corresponding authorities for or with respect to any of the following matters:
  - (a) the forwarding of claims, or copies of claims, under section 837 of the Act and corresponding laws;
  - (b) the making and acceptance of requests to act as agent under Part 8 of the Act and corresponding laws;
  - (c) the processing or investigation of claims or aspects of claims as agent under Part 8 of the Act and corresponding laws.
- (2) A protocol may be amended, revoked or replaced by agreement of the parties to it.

### **802 Interstate legal practitioner becoming authorised to withdraw from local trust account: notification (section 846 of Model Bill) [NC]**

- (1) This regulation has effect for the purposes of section 846 of the Act and applies to an interstate legal practitioner who (whether alone or with a co-signatory) becomes authorised to withdraw money from a local trust account of a law practice.
- (2) The practitioner must notify the [appropriate authority] of the authorisation.
- (3) The notification must include the following particulars:
  - (a) the practitioner's name;
  - (b) the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted;
  - (c) the practitioner's principal business address;
  - (d) details of the local trust account, including the following:
    - (i) the name of the law practice operating the account;
    - (ii) the practice's principal business address;
    - (iii) the name of the ADI with which the account is held;
    - (iv) the names of any other signatories to the account;
  - (e) the date on which the practitioner became authorised to withdraw money from the trust account.
- (4) The practitioner must notify the [appropriate authority] of any change to the particulars referred to in subregulation (3).
- (5) A notification under this regulation must be in writing and must be sent or delivered to the business address of the [appropriate authority]

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before the end of the period of 7 days starting on the day the practitioner becomes authorised to withdraw money from the local trust account or the change occurs, as the case requires.

**Note 1.** The issue of Fidelity Fund contributions is a matter for further consideration.

**Note 2.** Jurisdictions may wish to consider a transitional provision for liabilities of any former Fidelity Fund.

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## **Part 9 Professional indemnity insurance**

**Note.** No regulations are currently proposed.

## **Part 10 Costs disclosure and review**

### **1001 When does a matter have a substantial connection with this jurisdiction? (section 1007 of Model Bill) [CU]**

For the purposes of Part 10 of the Act, a matter involving a client of a law practice has a substantial connection with this jurisdiction in any of the following circumstances:

- (a) the client is a natural person and is resident in this jurisdiction;
- (b) the client is a body corporate and:
  - (i) the client carries on its business activities principally in this jurisdiction; or
  - (ii) the legal services provided or to be provided relate principally to business activities carried on by the client in this jurisdiction;
- (c) the law practice, or the associate of the practice who is principally involved in the matter, engages in legal practice principally in this jurisdiction;
- (d) the legal services provided or to be provided relate to this jurisdiction, including, for example, legal services provided or to be provided for or in connection with:
  - (i) the conveyance or transfer of real property located in this jurisdiction; or
  - (ii) court proceedings in this jurisdiction.

### **1002 Exceptions to requirement for disclosure (section 1012 of Model Bill) [CU]**

For the purposes of section 1012 (1) (f) of the Act, the following circumstances are prescribed as circumstances in which disclosure under section 1009 or 1010 (1) of the Act is not required:

- (a) the client is an overseas-registered foreign lawyer or a foreign law practice (respectively within the meaning of Part 14 of the Act);
- (b) the client is a corporation that has a share capital and whose shares or the majority of whose shares are held beneficially for the Commonwealth, a State or a Territory.

## **Part 11 Complaints and discipline**

### **1101 Register of Disciplinary Action (section 1160 of Model Bill) [NC]**

For the purposes of section 1160 (2) (e) of the Act, particulars of the date and jurisdiction of the person's first and each later admission to the legal profession are prescribed as particulars to be included in the Register of Disciplinary Action.

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## **Part 12 External intervention**

**Note.** No regulations are currently proposed.

## **Part 13 Incorporated legal practices and multi-disciplinary partnerships**

### **1301 Notice of termination of provision of legal services (section 1308 of Model Bill) [CU]**

For the purposes of section 1308 of the Act, the prescribed period within which a corporation must give a notice under that section is 14 days after it ceases to engage in legal practice in this jurisdiction.

### **1302 Disqualifications and prohibitions (sections 1324, 1325 and 1350 of Model Bill) [CU]**

- (1) This regulation applies to:
  - (a) an order made under section 1324 of the Act disqualifying a corporation from providing legal services in this jurisdiction; or
  - (b) an order made under section 1325 of the Act disqualifying a person from managing a corporation that is an incorporated legal practice; or
  - (c) an order made under section 1350 of the Act prohibiting an Australian legal practitioner from being a partner of a specified person;  
being an order made on the application of the Regulator or the [appropriate authority].
- (2) The Regulator or [appropriate authority] or both of them may publicise an order in any manner the Regulator or authority thinks fit.
- (3) The applicant for an order:
  - (a) must, as soon as practicable after the order is made, give written notice of the order to the corresponding authority of every other jurisdiction; and
  - (b) may give written notice of the order to any other regulatory authority of any jurisdiction.
- (4) The notice under subregulation (3) for an order made under section 1324 of the Act:
  - (a) must state:
    - (i) the corporation's name; and
    - (ii) the Australian Company Number (ACN) of the corporation; and
    - (iii) the office or business address of the corporation, as last known to the applicant for the order; and
    - (iv) the date of the order; and
  - (b) may contain other relevant information; and

- (c) may be accompanied by a copy or summary of, or extract from, the order.
- (5) The notice under subregulation (3) for an order made under section 1325 or 1350 of the Act:
- (a) must state:
    - (i) the person's name; and
    - (ii) the person's address, as last known to the applicant for the order; and
    - (iii) the date of the order; and
  - (b) may contain other relevant information; and
  - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (6) No liability is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of this regulation.
- (7) In this regulation:
- protected person*** means:
- (a) the State; or
  - (b) the Regulator; or
  - (c) the [appropriate authority]; or
  - (d) a person responsible for keeping the whole or any part of a register or any similar record in or by which an order is publicised; or
  - (e) an internet service provider or internet content host; or
  - (f) a person acting at the direction of the State or of any person or body referred to in this definition.

## Part 14 Legal practice: foreign lawyers

### 1401 Scope of practice (section 1406 of Model Bill) [CU]

- (1) For the purposes of section 1406 (1) (b) of the Act, arbitration proceedings in which:
  - (a) the arbitrator is not required to apply the rules of evidence; and
  - (b) knowledge of Australian law is not essential;are prescribed as a kind of arbitration proceedings in relation to which an Australian-registered foreign lawyer may provide legal services (including appearances).
- (2) For the purposes of section 1406 (1) (d) of the Act, all forms of dispute resolution are prescribed as kinds of dispute resolution in relation to which an Australian-registered foreign lawyer may provide legal services, except to the extent to which:
  - (a) the provisions of other legislation applying to dispute resolution; or
  - (b) the requirements of a body responsible for dispute resolution; or
  - (c) the provisions of a contract that provides for dispute resolution;restrict participation in dispute resolution to persons of a specified class that does not include Australian-registered foreign lawyers.
- (3) In this regulation:

*dispute resolution* means conciliation, mediation and other forms of consensual dispute resolution.

### 1402 Application of Australian professional ethical and practice standards (section 1408 of Model Bill) [CU]

**Note.** Regulations for the purposes of section 1408 will be “core uniform”, but no regulations are required at this time.

### 1403 Trust money and trust accounts (section 1413 of Model Bill) [CU]

For the purposes of section 1413 of the Act:

- (a) the provisions of Part 7 of the Act and any other provisions of the Act (other than Part 8 of the Act) relating to trust money and trust accounts; and
- (b) the provisions of Part 7 of these Regulations and any other provisions of these Regulations relating to trust money and trust accounts; and

- (c) any provisions of any legal profession rules relating to trust money and trust accounts;

apply to Australian-registered foreign lawyers as if a reference in those provisions to a law practice or an Australian-registered legal practitioner were a reference to an Australian-registered foreign lawyer.

**Note 1.** Paragraphs (b) and (c) are dependent on the Model Bill and jurisdictional legislation being amended, to insert ", the regulations or the legal profession rules" in NMP 1413 (1) and (3) after "this Act". Note that NMP 1413 (1) applies of its own force and does not itself confer power to make modifying regulations. That power is conferred by NMP 1413 (3). Pending that amendment, the following subclause might be inserted (the power to make it is derived from the power to make regulations under Part 7, which itself is applied to foreign lawyers):

(2) The provisions of Part 7 of these Regulations accordingly apply to Australian-registered foreign lawyers as if a reference in those provisions to a law practice were a reference to an Australian-registered foreign lawyer.

**Note 2.** Section 1413 provides (in part) that the "provisions of Part 7 ... apply ... to Australian-registered foreign lawyers in the same way as they apply to Australian legal practitioners". A recommendation has been made that the section be amended to refer to "law practices" instead of or in addition to "Australian legal practitioners".

**1404 Grounds for amending, suspending or cancelling local registration (section 1426 of Model Bill) [CNU]**

- (1) The period of 3 months after the person concerned was granted registration is prescribed as the period for the purposes of section 1426 (f) of the Act.
- (2) The period of 3 months after the person concerned ceased to have an office in this jurisdiction is prescribed as the period for the purposes of section 1426 (g) of the Act.

**1405 Register of locally registered foreign lawyers (section 1450 of Model Bill) [CNU]**

- (1) For the purposes of section 1450 (2) (b) of the Act, the particulars referred to in subregulation (2) are prescribed as particulars to be included in the register kept under section 1450 of the Act in relation to a locally registered foreign lawyer, except where the domestic registration authority is required by subregulation (5) not to include them in the register.
- (2) The particulars to be included in the register are as follows:
  - (a) the name of the foreign lawyer;
  - (b) the name of the partnership of which the lawyer is a member or employee or, if the lawyer is not a member or employee of a partnership, the name of the entity of which the lawyer is a

- director, officer or employee or with which the lawyer is otherwise engaged in legal practice;
- (c) the contact details of the office of the partnership or other entity in this jurisdiction;
  - (d) by way of separate additional entry, the name of the partnership or other entity and the contact details of the office of the partnership or other entity:
    - (i) in this jurisdiction; and
    - (ii) in any other jurisdictions in which it has an office, except where the domestic registration authority considers those particulars need not be included in respect of an entity that is not a law practice;
  - (e) any other particulars about the lawyer, partnership or other entity that the authority considers should be included.
- (3) Contact details of an office are the following:
- (a) its street address (the address where the office is physically located);
  - (b) its postal address (a post office box number and the location and postcode of the post office), if any;
  - (c) its DX address (the number of the exchange box in a document exchange (DX)), if any.
- (4) A locally registered foreign lawyer may, by notice in writing to the domestic registration authority, request the authority not to include any or any specified particulars about the lawyer, partnership or other entity in the register, on the ground that special circumstances warrant the particulars not being publicly available (for example, if the safety or well-being of a person would be substantially affected by making the particulars publicly available).
- (5) If the domestic registration authority is satisfied that those special circumstances exist, the authority is required not to include the particulars concerned in the register unless the authority considers that the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

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## **Parts 15–17**

**Note.** No regulations are currently proposed.

## Schedule 1 Forms

### Form 1 Statutory declaration to be lodged by law practice that ceases to hold trust money

(Regulation 740)

(Legal Profession Act 200...)

I, *[insert full name]*, of *[insert address]*

#### DECLARE THAT:

- 1 I am or was a principal of a law practice that on *[insert date]* \*ceased to be authorised to receive trust money/\*ceased to be engaged in legal practice in this jurisdiction.
- 2 The law practice does not now hold any trust money, all such trust money having been applied in accordance with the *Legal Profession Act 200...*

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury [or other appropriate jurisdictional statement].

DECLARED AT *[place]*

in the State/Territory of *[name]*

on *[date]*

Before:

*[Name and address in legible writing, type or stamp below signature]*

a person authorised to witness the signing of a statutory declaration.

\* Omit words not applicable