



Australian Capital Territory

# Legal Profession Act 2006

A2006-25

**Republication No 39**

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## Chapter 3            Conduct of legal practice

### Part 3.1            Trust money and trust accounts

#### Division 3.1.1      Preliminary—pt 3.1

#### 210            Definitions—pt 3.1

- (1) In this Act:

*controlled money* means trust money received or held by a law practice for which the practice has a written direction to deposit the money in an account (other than a general trust account) over which the practice has or will have exclusive control.

*Note*        See s 224 (6) (Controlled money), which prevents pooling of controlled money.

*deposit record* includes a deposit slip or duplicate deposit slip.

*transit money* means money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the practice.

*Note*        *Trust money* is defined in the dictionary.

- (2) In this part:

*approved ADI* means an ADI approved under section 250 (Approval of ADIs for pt 3.1) by the law society council.

*controlled money account* means an account kept by a law practice with an ADI for the holding of controlled money received by the practice.

*external examination* means an external examination under subdivision 3.1.3.2 of a law practice's trust records.

*external examiner* means a person holding an appointment as an external examiner under subdivision 3.1.3.2.

**general trust account** means an account kept by a law practice with an approved ADI for the holding of trust money received by the practice, other than controlled money or transit money.

**investigation** means an investigation under subdivision 3.1.3.1 of the affairs of a law practice.

**investigator** means a person holding an appointment as an investigator under subdivision 3.1.3.1.

**law practice**—see section 218 (2).

**permanent form**, in relation to a trust record, means printed (or, on request, capable of being printed) in English on paper or other material.

**trust account** means an account kept by a law practice with an approved ADI to hold trust money.

**trust records** includes the following documents:

- (a) receipts;
- (b) cheque butts or cheque requisitions;
- (c) records of authorities to withdraw by electronic funds transfer;
- (d) deposit records;
- (e) trust account ADI statements;
- (f) trust account receipts and payments cash books;
- (g) trust ledger accounts;
- (h) records of monthly trial balances;
- (i) records of monthly reconciliations;
- (j) trust transfer journals;
- (k) statements of account as required to be provided under a regulation;

- (l) registers required to be kept under a regulation;
- (m) monthly statements required to be kept under a regulation;
- (n) files relating to trust transactions or bills of costs, or both;
- (o) written directions, authorities or other documents required to be kept under this Act;
- (p) supporting information required to be kept under a regulation in relation to powers to deal with trust money.

*Note 1* **This Act** is defined in the dictionary.

*Note 2* **Trust records** includes a reference to the affairs of a law practice that may be examined under s 245 (Examination of affairs in relation to examination of trust records etc)—see s 245 (3).

- (3) A reference in this part to a law practice's trust account or trust records includes a reference to an associate's trust account or trust records.
- (4) A reference in this part to a power given to a law practice or an associate of the practice to deal with money for or on behalf of someone else is a reference to a power given to the practice or associate that is exercisable by—
  - (a) the practice alone; or
  - (b) an associate of the practice alone (otherwise than in a private and personal capacity); or
  - (c) the practice or an associate of the practice jointly or severally, or jointly and severally with either of the following:
    - (i) 1 or more associates of the practice;
    - (ii) the person, or 1 or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

## **211 Purposes—pt 3.1**

The purposes of this part are as follows:

- (a) to ensure trust money is held by law practices in a way that protects the interests of people for or on whose behalf money is held, both inside and outside the ACT;
- (b) to minimise compliance requirements for law practices that provide legal services within and outside the ACT;
- (c) to ensure the law society council can work effectively with corresponding authorities in other jurisdictions in relation to the regulation of trust money and trust accounts.

## **212 Money involved in financial services or investments**

- (1) Money that is entrusted to or held by a law practice is not trust money for this Act if it is entrusted or held for or in relation to—
  - (a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not the licence is held at any relevant time); or
  - (b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate provides the service as a representative of someone else who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).
- (2) Without limiting subsection (1), money that is entrusted to or held by a law practice is not trust money for this Act if it is entrusted or held in relation to—
  - (a) a managed investment scheme undertaken by the practice; or
  - (b) mortgage financing undertaken by the practice.

- (3) Without limiting subsections (1) and (2), money that is entrusted to or held by a law practice for investment purposes, whether on its own account or as agent, is not trust money for this Act, unless—
- (a) the money was entrusted to or held by the practice—
    - (i) in the ordinary course of legal practice; and
    - (ii) primarily in relation to the provision of legal services to or at the direction of the client; and
  - (b) the investment is or is to be made—
    - (i) in the ordinary course of legal practice; and
    - (ii) for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

- (4) In this section:

*Australian financial services licence*—see the [Corporations Act](#), section 761A.

*authorised representative*—see the [Corporations Act](#), section 761A.

*financial service*—see the [Corporations Act](#), section 761A.

*financial services business*—see the [Corporations Act](#), section 761A.

## **213 Determinations about status of money**

- (1) This section applies to money received by a law practice if the law society council considers that there is doubt or a dispute as to whether the money is trust money.

- (2) The law society council may determine, in writing, that the money is or is not trust money.

*Note* A provision of a law that gives an entity power to make a statutory instrument also gives the entity the power to amend or repeal the instrument (see [Legislation Act](#), s 46).

- (3) While a determination under this section is in force that money is trust money, the money is taken to be trust money for this Act.
- (4) While a determination under this section is in force that money is not trust money, the money is taken not to be trust money for this Act.
- (5) This section has effect subject to a decision of a court or administrative review body made in relation to the money concerned.

## **214 Application of pt 3.1 to law practices and trust money**

- (1) This part applies to the following law practices in relation to trust money received by them in the ACT:
- (a) a law practice that has an office in the ACT, whether or not the practice has an office in another jurisdiction;
  - (b) a law practice that does not have an office in any jurisdiction at all.
- (2) To remove any doubt, it is intended that a law practice that receives trust money in the ACT, that does not have an office in the ACT, but that has an office in another jurisdiction, must deal with the money in accordance with the corresponding law of the other jurisdiction.
- (3) This part applies to the following law practices in relation to trust money received by them in another jurisdiction:
- (a) a law practice that has an office in the ACT and in no other jurisdiction;



- (b) a law practice that has an office in the ACT and in 1 or more other jurisdictions but not in the jurisdiction in which the trust money was received, unless the money is dealt with in accordance with the corresponding law of another jurisdiction.
- (4) However, this part does not apply to law practices, or kinds of trust money, prescribed by regulation for this subsection.
- (5) A reference in this section to having an office in a jurisdiction is a reference to having, or engaging in legal practice from, an office or business address in the jurisdiction.

*Note* Section 164 (Trust money and trust accounts—Australian-registered foreign lawyers) applies this part to Australian-registered foreign lawyers.

## **215 Protocols for deciding where trust money is received**

- (1) The law society council may enter into arrangements (the *protocols*) with corresponding authorities about any or all of the following:
  - (a) deciding the jurisdiction where a law practice receives trust money;
  - (b) sharing information about whether, and (if so) how, trust money is being dealt with under this Act or a corresponding law.
- (2) For this Act, to the extent that the protocols are relevant, the jurisdiction where a law practice receives trust money is to be decided in accordance with the protocols.
- (3) A protocol is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**216 When money is received by law practice**

- (1) For this Act, a law practice receives money when—
  - (a) the practice obtains possession or control of it directly; or
  - (b) the practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or
  - (c) the practice, or an associate of the practice (otherwise than in a private and personal capacity), is given a power to deal with the money for or on behalf of someone else.
- (2) For this Act, a law practice or associate is taken to have received money if the money is available to the practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

**217 Discharge by legal practitioner associate of obligations of law practice**

- (1) The following actions, if taken by a legal practitioner associate of a law practice on behalf of the practice in relation to trust money received by the practice, discharge the corresponding obligations of the practice in relation to the money:
  - (a) the establishment of a trust account;
  - (b) the keeping of a trust account;
  - (c) the payment of trust money into and out of a trust account and other dealings with trust money;
  - (d) the keeping of trust records;
  - (e) engaging an external examiner to examine trust records;
  - (f) the payment of an amount into an ADI account in accordance with section 253 (Statutory deposits);

(g) an action of a kind prescribed by regulation.

- (2) If the legal practitioner associate keeps a trust account in relation to trust money received by the law practice, this part applies to the associate in the same way as it applies to a law practice.

*Note* A reference to an Act (or provision) includes a reference to the statutory instruments made or in force under the Act (or provision), including any regulation (see [Legislation Act](#), s 104).

- (3) Subsection (1) does not apply to the extent that the associate is prevented by a regulation from taking any action mentioned in that subsection.

## **218 Liability of principals of law practices under pt 3.1**

- (1) A provision of this part expressed as imposing an obligation on a law practice imposes the same obligation on the principals of the law practice jointly and severally, but discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.

*Note* A reference to an Act (or provision) includes a reference to the statutory instruments made or in force under the Act (or provision), including any regulation (see [Legislation Act](#), s 104).

- (2) A reference in this part to a *law practice* includes a reference to the principals of the law practice.

## **219 Application of pt 3.1 to former practices, principals and associates**

This part applies in relation to former law practices and former principals and associates of law practices in relation to conduct happening while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, but with any necessary changes.

## **220 Barristers not to receive trust money**

A barrister commits an offence if—

- (a) the barrister receives money on behalf of someone else; and
- (b) the money is received in the course of the barrister's practice as a barrister.

Maximum penalty: 50 penalty units.

## **Division 3.1.2 Trust money and trust accounts**

### **221 Keeping of general trust account**

- (1) A law practice that receives trust money to which this part applies must keep a general trust account in the ACT.
- (2) A law practice that is required to keep a general trust account in the ACT must establish and keep the account as required by regulation.
- (3) Subsection (1) does not apply to a law practice in relation to any period during which the practice receives only either or both of the following:
  - (a) controlled money;
  - (b) transit money received in a form other than cash.
- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (6) An offence against subsection (4) or (5) is a strict liability offence.
- (7) Subject to any regulation, a requirement of this section for a law practice to keep, or establish and keep, a general trust account in the ACT does not prevent the practice from keeping, or establishing and keeping, more than 1 general trust account in the ACT, whether during the same period or during different periods.
- (8) Without limiting this section, a regulation may provide that a law practice must not close a general trust account except as permitted by regulation.

## **222 Certain trust money to be deposited in general trust account**

- (1) As soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice kept in the ACT.
- (2) Subsection (1) does not apply if—
- (a) the practice kept in the ACT has a written direction by an appropriate person to deal with the money otherwise than by depositing it in the account; or
  - (b) the money is controlled money; or
  - (c) the money is transit money; or

- (d) the money is the subject of a power given to the practice kept in the ACT or an associate of the practice kept in the ACT to deal with the money for or on behalf of someone else.
- (3) For subsection (2) (a), a direction that the money be deposited in a general trust account of the practice that is not kept in the ACT has effect only if the practice—
- (a) is authorised by the law society council to deposit the money in a general trust account of the practice that is not kept in the ACT; and
- (b) has complied with any conditions put on the authorisation by the council.
- (4) A law practice that has received money that is the subject of a written direction mentioned in subsection (2) (a) must deal with the money in accordance with the direction—
- (a) within the period (if any) stated in the direction; or
- (b) subject to paragraph (a), as soon as practicable after it is received.
- (5) The law practice must keep a written direction mentioned in subsection (2) (a) for the period prescribed by regulation.
- (6) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), (4) or (5), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (7) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), (4) or (5), each principal of the practice kept in the ACT commits an offence.

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a **law practice** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (8) An offence against subsection (6) or (7) is a strict liability offence.
- (9) This section is subject to section 226A (Trust money received in form of cash).
- (10) For this section, a person is an *appropriate person* in relation to trust money received by a law practice if the person is legally entitled to give the practice kept in the ACT directions about dealings with the money.

## **223 Holding, disbursing and accounting for trust money**

- (1) A law practice must—
  - (a) hold trust money deposited in a general trust account of the practice exclusively for the person on whose behalf it is received; and
  - (b) disburse the trust money only in accordance with a direction given by the person.
- (2) Subsection (1) applies subject to an order of a court of competent jurisdiction or as authorised by law.
- (3) The law practice must account for the trust money as required by regulation.
- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (3), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (3), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (6) An offence against subsection (4) or (5) is a strict liability offence.

**223A Way of withdrawing trust money from general trust account**

- (1) A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer.
- (2) Without limiting subsection (1), the following are prohibited:
- (a) cash withdrawals;
  - (b) ATM withdrawals or transfers;
  - (c) telephone banking withdrawals or transfers.
- (3) A regulation may make provision in relation to withdrawals by cheque or electronic funds transfer.
- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a **law practice** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (6) An offence against subsection (4) or (5) is a strict liability offence.
- (7) This section has effect despite anything to the contrary in any direction given to the law practice, even if the direction is given by a person who is otherwise legally entitled to give the law practice directions in relation to dealings with the trust money.



**224**      **Controlled money**

- (1) As soon as practicable after receiving controlled money, a law practice must deposit the money in the account stated in the written direction relating to the money.
- (2) The law practice must hold controlled money deposited in a controlled money account in accordance with subsection (1) exclusively for the person on whose behalf it was received.
- (3) The law practice that holds controlled money deposited in a controlled money account in accordance with subsection (1) must not disburse the money except in accordance with—
  - (a) the written direction mentioned in that subsection; or
  - (b) a later written direction given by or on behalf of the person on whose behalf the money was received.
- (4) The law practice must keep the controlled money account, and account for the controlled money, as required by regulation.
- (5) The law practice must keep a written direction mentioned in this section for the period prescribed by regulation.
- (6) The law practice must ensure that the controlled money account is used for the deposit of controlled money received on behalf of the person mentioned in subsection (2), and not for the deposit of controlled money received on behalf of anyone else, except to the extent that a regulation otherwise allows.
- (7) Subsection (3) applies subject to an order of a court of competent jurisdiction or as authorised by law.

- (8) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), (2), (3), (4), (5) or (6), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (9) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), (2), (3), (4), (5) or (6), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (10) An offence against subsection (8) or (9) is a strict liability offence.

#### **224A Way of withdrawing controlled money from controlled money account**

- (1) A law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.
- (2) Without limiting subsection (1), the following are prohibited:
- (a) cash withdrawals;
  - (b) ATM withdrawals or transfers;
  - (c) telephone banking withdrawals or transfers.
- (3) A regulation may make provision in relation to withdrawals by cheque or electronic funds transfer.
- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (6) An offence against subsection (4) or (5) is a strict liability offence.
- (7) This section has effect despite anything to the contrary in any direction given to the law practice, even if the direction is given by a person who is otherwise legally entitled to give the law practice directions in relation to dealings with the controlled money.

## 225

### **Transit money**

- (1) A law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money—
- (a) within the period (if any) stated in the instructions; or
  - (b) subject to paragraph (a), as soon as practicable after it is received.
- (2) The law practice must account for the money as required by regulation.
- (3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (5) An offence against subsection (3) or (4) is a strict liability offence.
- (6) This section is subject to section 226A (Trust money received in form of cash).

## **226 Trust money subject to specific powers**

- (1) A law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only in accordance with the power relating to the money.

- (2) The law practice must account for the money as prescribed by regulation.
- (3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (5) An offence against subsection (3) or (4) is a strict liability offence.

- (6) This section is subject to section 226A (Trust money received in form of cash).

**226A Trust money received in form of cash**

- (1) A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.
- (2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice—
- (a) the money must nevertheless be deposited in a general trust account of the practice in accordance with subsection (1); and
  - (b) the money is after that to be dealt with in accordance with any applicable terms of the direction to the extent that the terms are not inconsistent with paragraph (a).
- (3) Controlled money received in the form of cash must be deposited in a controlled money account in accordance with section 224 (Controlled money).
- (4) A law practice must deposit transit money received in the form of cash in a general trust account of the practice before the money is otherwise dealt with in accordance with the instructions relating to the money.
- (5) A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account (or a controlled money account in the case of controlled money) of the practice before the money is otherwise dealt with in accordance with the power.
- (6) This section has effect despite anything to the contrary in any relevant direction, instruction or power.

- (7) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), (4) or (5), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units

- (8) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), (4) or (5) each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (9) An offence against subsection (7) or (8) is a strict liability offence.  
(10) In this section:

*appropriate person*, in relation to trust money, means a person who is legally entitled to give the law practice concerned directions in relation to dealings with the money.

*general trust money* means trust money other than—

- (a) controlled money; and
- (b) transit money; and
- (c) money that is the subject of a power.

## **227 Protection of trust money**

- (1) Money standing to the credit of a trust account kept by a law practice is not available for the payment of debts of the practice or any of its associates.
- (2) Money standing to the credit of a trust account kept by a law practice is not liable to be attached or taken in execution for satisfying a judgment against the practice or any of its associates.

- (3) This section does not apply to money to which a law practice or associate is entitled.

**228**      **Intermixing money**

- (1) A law practice must not mix trust money with other money.
- (2) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (3) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

*Note*      For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (4) This section does not apply in relation to the mixing of trust money with other money if—
- (a) the law society council has authorised the mixing of the trust money with other money to the extent to which it is mixed; and
  - (b) the law practice has complied with any conditions put on the authorisation by the law society council.
- (5) An offence against subsection (2) or (3) is a strict liability offence.

## **229 Dealing with trust money—legal costs and unclaimed money**

- (1) A law practice may do any of the following, in relation to trust money held in a general trust account or controlled money account of the practice for a person:
- (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably owing by the person to the practice;
  - (b) withdraw money for payment to the practice's account for legal costs owing to the practice if any relevant provision of this Act is complied with;
  - (c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under section 259 (Unclaimed trust money).

*Note* **This Act** is defined in the dictionary.

- (2) Subsection (1) applies despite any other provision of this part but has effect subject to part 3.2 (Costs disclosure and assessment).

## **230 Deficiency in trust account**

- (1) An Australian legal practitioner commits an offence if the practitioner causes—
- (a) a deficiency in any trust account or trust ledger account; or
  - (b) a failure to pay or deliver any trust money.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the Australian legal practitioner has a reasonable excuse.

- (3) In this section:

**account**, in relation to an Australian legal practitioner, includes an account of the practitioner or of the law practice of which the practitioner is an associate.



*cause* a deficiency or failure—a person’s conduct *causes* a deficiency or failure if it is responsible for the deficiency or failure.

*deficiency* in a trust account or trust ledger account includes the non-inclusion or exclusion of all or any part of an amount that is required to be included in the account.

## **231 Reporting certain irregularities etc**

- (1) A legal practitioner commits an offence if—
- (a) the practitioner is an associate of a law practice; and
  - (b) the practitioner becomes aware that there is an irregularity in any of the practice’s trust accounts or trust ledger accounts; and
  - (c) the practitioner fails, as soon as practicable after becoming aware of the irregularity, to give written notice of the irregularity to—
    - (i) the law society council; and
    - (ii) if a corresponding authority is responsible for the regulation of the accounts—the corresponding authority.

Maximum penalty: 50 penalty units.

- (2) An Australian legal practitioner commits an offence if—
- (a) the practitioner believes, on reasonable grounds, that there is an irregularity in relation to the receipt, recording or disbursement of any trust money received by a law practice; and
  - (b) the practitioner is not an associate of the practice; and
  - (c) the practitioner fails, as soon as practicable after forming the belief, to give written notice of it to—
    - (i) the law society council; and

- (ii) if a corresponding authority is responsible for the regulation of the accounts relating to the trust money—the corresponding authority.

Maximum penalty: 50 penalty units.

- (3) The validity of a requirement imposed on an Australian legal practitioner under subsection (1) or (2) is not affected, and the practitioner is not excused from complying with subsection (1) or (2), on the ground that giving the notice may tend to incriminate the practitioner.

*Note* Section 597 (Professional privilege or duty of confidence does not affect validity of certain requirements etc) contains a similar provision in relation to client legal privilege and duties of confidence.

- (4) An Australian legal practitioner is not liable for any loss or damage suffered by someone else because of the practitioner's compliance with subsection (1) or (2).

## **232** **Keeping trust records**

- (1) A law practice must keep in permanent form trust records in relation to trust money received by the practice.
- (2) The law practice must keep the trust records—
- (a) in accordance with the regulations; and
  - (b) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and
  - (c) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and
  - (d) for a period prescribed by regulation.
- (3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (5) An offence against subsection (3) or (4) is a strict liability offence.

### **233 False names in trust records etc**

- (1) A law practice must not knowingly receive money or record receipt of money in the practice's trust records under a false name.
- (2) If a person on whose behalf trust money is received by a law practice is commonly known by 2 or more names, the practice must ensure that the practice's trust records record all names by which the person is known.
- (3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) or (2), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) or (2), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

## **Division 3.1.3 Investigations and external examinations**

### **Subdivision 3.1.3.1 Investigations**

#### **234 Appointment of investigators**

- (1) The law society council may appoint a suitably qualified person to investigate the affairs or stated affairs of a law practice.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) **The appointment may be made generally** or for the law practice stated in the instrument of, or evidencing the, appointment.
- (3) An appointment may be made subject to conditions—
  - (a) stated in the instrument of appointment; or
  - (b) stated in a written notice given by the law society council to the investigator during the term of appointment; or
  - (c) prescribed by regulation.
- (4) The law society council may end the appointment of an investigator if the investigator breaches a condition of appointment.

*Note* A person's appointment also ends if the person resigns (see [Legislation Act](#), s 210).

#### **235 Investigations**

- (1) The instrument of, or evidencing the, appointment may authorise the investigator to conduct either or both of the following in relation to a law practice:
  - (a) routine investigations on a regular or other basis;

- (b) investigations in relation to particular allegations or suspicions in relation to trust money, trust property, trust accounts or any other aspect of the affairs of the law practice.
- (2) The main purposes of an investigation are to find out whether the law practice has complied with or is complying with the requirements of this part and to detect and prevent fraud or defalcation, but this subsection does not limit the scope of the investigation or the powers of the investigator.

**236 Application of ch 6 to investigations**

Chapter 6 (Investigations) applies to an investigation under this subdivision.

**237 Investigator's report**

As soon as practicable after completing an investigation, the investigator must give a written report of the investigation to the law society council.

**238 Confidentiality by investigator etc**

- (1) In this section:

*court* includes any entity with power to require the production of documents or the answering of questions.

*divulge* includes communicate.

*person to whom this section applies* means anyone who is, or has been—

- (a) an investigator; or  
(b) acting under the direction or authority of an investigator; or  
(c) providing advice, expertise or assistance to an investigator.

*produce* includes allow access to.

*protected information* means information about a law practice or another person that is disclosed to, or obtained by, a person to whom this section applies (the *relevant person*) because of the exercise of a function under this Act by the relevant person or someone else.

- (2) A person to whom this section applies commits an offence if—
- (a) the person—
    - (i) makes a record of protected information about a law practice or another person; and
    - (ii) is reckless about whether the information is protected information about a law practice or another person; or
  - (b) the person—
    - (i) does something that divulges protected information about a law practice or another person; and
    - (ii) is reckless about whether—
      - (A) the information is protected information about a law practice or another person; and
      - (B) doing the thing would result in the information being divulged.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) This section does not apply if the record is made, or the information is divulged—
- (a) under this Act or another territory law; or
  - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (4) Subsection (2) does not apply to the divulging of protected information about a law practice or another person—
- (a) to the practice or person; or

- (b) if relevant, to an associate of the practice; or
  - (c) with the consent of the practice or person; or
  - (d) if divulging the information is necessary for properly conducting an investigation and making the report of the investigation; or
  - (e) as provided in section 557 (Permitted disclosure of confidential information—ch 6).
- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

### **239 Costs of investigation**

- (1) The costs of an investigation are payable out of the fidelity fund.
  - (2) However, the law society council may decide that all or part of the costs of carrying out the investigation is payable to the law society council, and decide the amount payable, if—
    - (a) an investigator states in his or her report that there is evidence that a breach of this Act has been committed or that a default (within the meaning of part 3.4 (Fidelity cover)) has happened in relation to the law practice whose affairs are under investigation; and
    - (b) the law society council is satisfied that the breach or default is intentional or of a substantial nature.
- Note* **This Act** is defined in the dictionary.
- (3) An amount decided by the law society council under subsection (2) is a debt owing to the law society council by the law practice whose affairs are under investigation.

- (4) A person may appeal to the Supreme Court against a decision of the law society council under subsection (2).

*Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

### **Subdivision 3.1.3.2 External examinations**

#### **240 Designation of external examiners**

- (1) The law society council may, in writing, designate a person (a *designated person*) as being eligible to be appointed as an external examiner.
- (2) Only designated people may be appointed as external examiners.
- (3) An employee or agent of the law society council may be a designated person.

#### **241 Trust records to be externally examined**

- (1) A law practice must at least once in each financial year have its trust records externally examined by an external examiner appointed as required by regulation.
- (2) The law society council may appoint an external examiner to examine a law practice's trust records if the law society council is not satisfied—
- (a) that the practice has had its trust records externally examined under subsection (1); or
- (b) that an external examination of the practice's trust records has been carried out as required by regulation.
- (3) This section has effect subject to any exemption under a regulation from the requirement to have trust records examined under this section.



- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence

Maximum penalty: 50 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (6) An offence against subsection (4) or (5) is a strict liability offence.

#### **243 Designation and appointment of associates as external examiners**

- (1) The law society council may designate an associate of a law practice under this subdivision only if the law society council is satisfied that it is appropriate to designate the associate.
- (2) However, an associate of a law practice cannot be appointed as an external examiner under this subdivision to examine the practice's trust records.

#### **244 Final examination of trust records**

- (1) This section applies if a law practice—
- (a) stops being authorised to receive trust money; or
  - (b) stops engaging in legal practice in the ACT.
- (2) The law practice must appoint an external examiner to examine the practice's trust records—
- (a) for the period since an external examination was last conducted; and

- (b) for each period after that, consisting of a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money.
- (3) The law practice must give the law society council—
  - (a) a report of each examination under subsection (2) not later than 60 days after the end of the period to which the examination relates; and
  - (b) a written notice not later than 60 days after the day it stops holding trust money.

*Note* If a form is approved by the law society council under s 587 for this provision, the form must be used.

- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (2) or (3), the practitioner or practice commits an offence.

Maximum penalty: 100 penalty units.

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (2) or (3), each principal of the practice commits an offence.

Maximum penalty: 100 penalty units.

*Note* For this part, a reference to a *law practice* includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (6) If an Australian legal practitioner dies, the practitioner's legal personal representative must comply with this section as if the representative were the practitioner.
- (7) This section does not affect any other requirements under this part.

**245 Examination of affairs in relation to examination of trust records etc**

- (1) An external examiner appointed to examine a law practice's trust records may examine the affairs of the practice for the purposes of and in relation to an examination of the trust records.
- (2) If the law practice is an incorporated legal practice or multidisciplinary partnership, the reference in subsection (1) to the affairs of the practice includes the affairs of the legal practice or partnership or of an associate, so far as they are relevant to trust money, trust records and associated matters.
- (3) A reference in this subdivision and chapter 6 (Investigations) to *trust records* includes a reference to the affairs of a law practice that may be examined under this section in an examination of the practice's trust records.

**246 Carrying out examinations**

- (1) Chapter 6 (Investigations) applies to an external examination under this subdivision.
- (2) Subject to chapter 6, an external examination of trust records is to be carried out in accordance with the regulations.
- (3) A regulation may provide for the following:
  - (a) the standards to be adopted and the procedures to be followed by external examiners;
  - (b) the form and content of an external examiner's report on an examination.

**247 External examiner's report**

As soon as practicable after completing an external examination, an external examiner must give a written report of the examination to the law society council.

## 248 Confidentiality by external examiner

(1) In this section:

*court* includes any entity with power to require the production of documents or the answering of questions.

*divulge* includes communicate.

*person to whom this section applies* means anyone who is, or has been—

- (a) an external examiner; or
- (b) acting under the direction or authority of an external examiner; or
- (c) providing advice, expertise or assistance to an external examiner.

*produce* includes allow access to.

*protected information* means information about a law practice or another person that is disclosed to, or obtained by, a person to whom this section applies (the *relevant person*) because of the exercise of a function under this Act by the relevant person or someone else.

(2) A person to whom this section applies commits an offence if—

- (a) the person—
  - (i) makes a record of protected information about a law practice or another person; and
  - (ii) is reckless about whether the information is protected information about a law practice or another person; or
- (b) the person—
  - (i) does something that divulges protected information about a law practice or another person; and

- (ii) is reckless about whether—
  - (A) the information is protected information about a law practice or another person; and
  - (B) doing the thing would result in the information being divulged.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) This section does not apply if the record is made, or the information is divulged—
  - (a) under this Act or another territory law; or
  - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (4) Subsection (2) does not apply to the divulging of protected information about a law practice or another person—
  - (a) to the practice or person; or
  - (b) if relevant, to an associate of the practice; or
  - (c) with the consent of the practice or person; or
  - (d) if divulging the information is necessary for properly conducting an examination and making the report of an examination; or
  - (e) to an investigator or a supervisor, manager or receiver appointed under this Act; or
  - (f) as provided in section 557 (Permitted disclosure of confidential information—ch 6).
- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

## **249 Costs of examination**

- (1) The costs of an examination are payable—
  - (a) for an examination under section 241 (1)—by the law practice that appointed the external examiner; and
  - (b) for an examination under section 241 (2)—out of the fidelity fund.
- (2) However, for an examination under section 241 (2), the law society council may decide—
  - (a) that all or part of the costs of the examination are payable by the law practice to the law society council; and
  - (b) the amount payable.
- (3) An amount decided by the law society council under subsection (2) is a debt owing to the licensing body by the law practice whose affairs were examined.
- (4) Before seeking to recover the amount payable, the law society council must give the law practice an information notice about the law society council's decision (including the amount decided by it as being payable).
- (5) A person may appeal to the Supreme Court against a decision of the law society council under subsection (2).

*Note* See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

## **Division 3.1.4 Provisions relating to ADIs and statutory deposits**

### **250 Approval of ADIs for pt 3.1**

- (1) The law society council may approve ADIs at which trust accounts to hold trust money may be kept.

- (2) The law society council may impose conditions, of the kinds prescribed by regulation, on an approval under this section, when the approval is given or during the currency of the approval, and may amend or revoke any conditions imposed.
- (3) The law society council may revoke an approval given under this section.

## **251 ADI not subject to certain obligations and liabilities**

- (1) An ADI at which a trust account is kept by a law practice—
  - (a) is not under any obligation to control or supervise transactions in relation to the account or to see to the application of amounts disbursed from the account; and
  - (b) does not have, in relation to any liability of the law practice to the ADI, any recourse or right (whether by way of set-off counterclaim, charge or otherwise) against amounts in the account.
- (2) Subsection (1) does not relieve an ADI from any liability to which it is subject apart from this Act.

## **252 Reports, records and information by ADIs**

- (1) An ADI commits an offence if—
  - (a) a trust account is kept with the ADI; and
  - (b) the ADI becomes aware of a deficiency in the account; and
  - (c) the ADI fails to report the deficiency to the law society council as soon as practicable after becoming aware of the deficiency.

Maximum penalty: 50 penalty units.

- (2) An ADI commits an offence if—
  - (a) a trust account is kept with the ADI; and

- (b) the ADI has reason to believe that an offence has been committed in relation to the account; and
- (c) the ADI fails to report the belief to the law society council as soon as practicable after forming it.

Maximum penalty: 50 penalty units.

- (3) An ADI commits an offence if it fails to give the law society council a report required by regulation about a trust account as required by the regulation.

Maximum penalty: 50 penalty units.

- (4) An ADI commits an offence if—
  - (a) a trust account is kept with the ADI by a law practice; and
  - (b) an investigator or external examiner produces to the ADI evidence of the appointment of the investigator or external examiner in relation to the practice; and
  - (c) the investigator or external examiner requires the ADI—
    - (i) to produce for inspection or copying by the investigator or external examiner any records relating to the trust account or trust money deposited in the trust account; or
    - (ii) to give the investigator or external examiner details of any transactions relating to the trust account or trust money; and
  - (d) the ADI fails to comply with the requirement.

Maximum penalty: 50 penalty units.

- (5) An offence against subsection (3) or (4) is a strict liability offence.
- (6) Subsections (1) to (4) apply despite any legislation or duty of confidence to the contrary.



- (7) An ADI or an officer or employee of an ADI is not liable for any loss or damage suffered by someone else because of—
- (a) the reporting of a deficiency under subsection (1); or
  - (b) the making or giving of a report under subsection (2) or (3); or
  - (c) the producing of records, or the giving of details, under subsection (4).

**253**      **Statutory deposits**

- (1) A regulation may require the following:
- (a) a law practice to pay amounts out of a general trust account of the practice into an ADI account kept by the law society (*a statutory deposit account*);
  - (b) the law society to pay interest on money in a statutory deposit account into another ADI account kept by the law society (*a statutory interest account*).
- (2) A regulation may make provision in relation to the following:
- (a) the type of account to be kept by the law society;
  - (b) payments to be made to the account;
  - (c) the use of money in the account;
  - (d) for a statutory interest account—the person entitled to interest on the money in the account.
- (3) For subsection (2) (d), a regulation may require the ADI to pay interest to the law society.
- (4) Subject to any regulation made under subsection (2) (c) or (d), the law society may, with the Attorney-General's written consent given either generally or in a particular case, use money in a statutory interest account—
- (a) to supplement from time to time the fidelity fund; and

- (b) to assist in the conduct of a scheme for the provision of legal aid and to provide funds to the legal aid commission; and
- (c) to pay or reimburse the amount of any costs and disbursements incurred by the law society council or bar council in relation to—
  - (i) an investigation or proceeding under chapter 4 (including deciding whether an investigation should be made or a proceeding should be started); or
  - (ii) any other proceeding taken in the Supreme Court in relation to a legal practitioner or an unqualified person practising as a legal practitioner (including deciding whether such a proceeding should be started); and
- (d) to pay or reimburse the amount of any costs and disbursements incurred by the law society council or bar council in relation to—
  - (i) making an objection to an application for admission (including deciding whether an objection should be made); or
  - (ii) assisting the Supreme Court in relation to an application for admission; and
- (e) to assist the law society council or bar council to facilitate a mediation under part 4.3; and
- (f) to assist in the conduct and maintenance of a course of training for the practice of law; and
- (g) to pay the amount of any costs incurred by the law society in administering amounts deposited with the law society under this part; and
- (h) to meet the costs of administering the account.

- (5) Subject to any regulation made under subsection (2) (c) or (d), the law society must, in accordance with the Attorney-General's written request, pay an amount from the account to the ACAT trust account.
- (6) This section applies despite any other provision of this part.

### **Division 3.1.5            Miscellaneous—pt 3.1**

#### **254            Restrictions on receipt of trust money**

- (1) A law practice (other than an incorporated legal practice) must not receive trust money unless a principal holds an Australian practising certificate authorising the receipt of trust money.
- (2) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1) the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (3) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1) each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

*Note*        For this part, a reference to a **law practice** includes the principals of the law practice (see s 218 (Liability of principals of law practices under pt 3.1)).

- (4) An incorporated legal practice commits an offence if—
  - (a) the practice receives trust money; and
  - (b) none of the following subparagraphs applies:
    - (i) at least 1 legal practitioner director of the practice holds an Australian practising certificate authorising the receipt of trust money;

- (ii) a person is holding an appointment under section 109 (Incorporated legal practice without legal practitioner director) in relation to the practice and the person holds an Australian practising certificate authorising the receipt of trust money;
- (iii) the money is received during a period during which the practice—
  - (A) does not have a legal practitioner director; and
  - (B) is not in default of director requirements under section 109;

but there was, immediately before the start of the period, at least 1 legal practitioner director of the practice who held an Australian practising certificate authorising the receipt of trust money.

Maximum penalty: 50 penalty units.

- (5) An offence against subsection (2), (3) or (4) is a strict liability offence.

## **255 Application of pt 3.1 to incorporated legal practices and multidisciplinary partnerships**

- (1) The obligations imposed on law practices by this part, and any other provisions of this Act relating to trust money and trust accounts, apply to an incorporated legal practice or multidisciplinary partnership only in relation to legal services provided by the practice or partnership.
- (2) A regulation may provide that prescribed provisions of this part, and any other provisions of this Act relating to trust money and trust accounts, do not apply to incorporated legal practices or multidisciplinary partnerships or apply to them with prescribed changes.

*Note* **This Act** is defined in the dictionary.

**256 Application of pt 3.1 to community legal centres**

- (1) A regulation may provide that a provision of this part, or any other provision of this Act relating to trust money and trust accounts, does not apply to a complying community legal centre or applies with prescribed changes.
- (2) For the application of a provision of this part, or any other provision of this Act relating to trust money and trust accounts, to a complying community legal centre—
  - (a) the obligations and rights of an Australian legal practitioner under the provision extends to a complying community legal centre that is a corporation, but only in relation to legal services provided by the centre; and
  - (b) money received by an Australian legal practitioner on behalf of someone else in the course of practising as an Australian legal practitioner includes money received by anyone who is an officer or employee of, or whose services are used by, a complying community legal centre on behalf of someone else in the course of providing legal services.

**257 Disclosure—money not received as trust money**

- (1) If money entrusted to a law practice by a person is not trust money because it is money to which section 212 (Money involved in financial services or investments) applies or because of a determination under section 213 (Determinations about status of money), the law practice must give the person notice in accordance with subsection (2) that—
  - (a) the money is not trust money for this Act and is not subject to any supervision, investigation or audit requirements of this Act; and

- (b) a claim against the fidelity fund under this Act cannot be made in relation to the money.

Maximum penalty: 50 penalty units.

- (2) Notice under subsection (1) must be given—
- (a) when the money is entrusted to the law practice; or
- (b) if a determination under section 213 that the money is not trust money is made after the money is entrusted to the law practice— not later than 7 days after the day the determination is made.
- (3) A regulation may make provision in relation to the way notice must be given and the contents of the notice.
- (4) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

- (5) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

- (6) An offence against subsection (4) or (5) is a strict liability offence.

**258 Disclosure of accounts used to hold money entrusted to legal practitioners**

- (1) If a law practice or any legal practitioner associate of the law practice holds money entrusted to the law practice or legal practitioner associate, the law practice must give the law society council the details required by regulation for each account of the law practice kept at an ADI in which the money is held.

Maximum penalty: 50 penalty units.

(2) This section applies whether or not the money is trust money and whether or not section 212 (Money involved in financial services or investments) applies or a determination under section 213 (Determinations about status of money) has been made in relation to the money.

(3) If a law practice that is an Australian legal practitioner who is a sole practitioner, or an incorporated legal practice, contravenes subsection (1), the practitioner or practice commits an offence.

Maximum penalty: 50 penalty units.

(4) If a law practice that is a law firm, or a multidisciplinary partnership, contravenes subsection (1), each principal of the practice commits an offence.

Maximum penalty: 50 penalty units.

(5) An offence against subsection (3) or (4) is a strict liability offence.

## **259 Unclaimed trust money**

(1) If an amount of trust money held by a law practice becomes an unclaimed amount, the practice must pay the amount to the Territory, by paying it to the public trustee and guardian, not later than 1 month after the day the amount becomes an unclaimed amount.

(2) An amount of trust money held by a law practice becomes an **unclaimed amount** if—

(a) the amount has been held by the practice for a period of 6 years during which the practice has had no knowledge of the existence or address of the person on whose behalf the amount is held; or

(b) the person on whose behalf the amount is held failed to accept payment of the amount when tendered.

*Note* A person who claims to be entitled to an unclaimed amount that has been paid to the public trustee and guardian under this section may apply to the public trustee for payment of the amount (see [Unclaimed Money Act 1950](#), pt 5).

**260 Regulations and legal profession rules—pt 3.1**

A regulation or the legal profession rules may make provision in relation to—

- (a) the establishment, keeping and closure of general trust accounts and controlled money accounting; and
- (b) the way of receiving, depositing, withdrawing, making records about and otherwise dealing with an accounting for trust money; and
- (c) without limiting paragraph (a) or (b)—
  - (i) the keeping and reconciliation of trust records; and
  - (ii) the establishment and keeping of trust ledger accounts; and
  - (iii) the establishment and keeping of records about controlled money and transit money; and
  - (iv) the establishment and keeping of registers of powers and estates where trust money is involved; and
  - (v) the recording of information about the investment of trust money; and
  - (vi) the giving of statements about trust money; and
- (d) the notification to the law society council of information relating directly or indirectly to matters to which this part relates, including information about—
  - (i) trust accounts, trust money and trust records; and
  - (ii) the proposed or actual termination of a law practice that holds trust money; and
  - (iii) the proposed or actual termination of engaging in legal practice in the ACT by a law practice that holds trust money; and



- (iv) the proposed or actual restructuring of the business of a law practice so that it no longer holds or no longer will hold trust money; and
- (e) the creation and exercise of liens over trust money; and
- (f) providing exemptions, or for the giving of exemptions, from all or any requirements of this part.