

Trust accounting for law practices under the Legal Profession Act 2007 (Tasmania)

Part 1: About this document

In this document:

1993 Act means the Legal Profession Act 1993 (Tasmania)

1994 Rules means the Rules of Practice 1994 (Tasmania) made under the 1993 Act

2007 Act means the Legal Profession Act 2007 (Tasmania)

2008 Regulations means the Legal Profession Regulations 2008 (Tasmania) made under the 2007 Act

The purpose of this document is to assist law practices in relation to trust accounting issues arising out of the commencement of the 2007 Act and the 2008 Regulations. This document is a summary of the key provisions and must be read in conjunction with the relevant legislation. This document is **not** a substitute for reading the 2007 Act and the 2008 Regulations. The summary generally ignores trust accounting issues in relation to law practices that have interstate offices.

No liability or responsibility is accepted for any errors in, or omissions from, this document.

Part 2: The 2007 Act

The main provisions relating to trust accounting are contained in Part 3.2 of the 2007 Act.

Subject	2007 Act section	1993 Act section and/or 1994 Rules	Summary of 2007 Act provisions
Trust money	Section 231	Section 101	Trust money is defined in section 231. Trust money comprises: <ul style="list-style-type: none">❑ money entrusted to a law practice in the course of or in connection with the provision of legal services;❑ money received on account of legal costs in advance of providing services;❑ controlled money received by the law practice;❑ transit money received by the law practice; and❑ money received subject to a power to deal with the money for or on behalf of another person.
Transit money	Section 231	Rules 41 and 42	Transit money is trust money received by a law practice subject to instructions to pay or deliver it to a third party. Under the 2007 Act transit money does not have to be recorded or deposited in the general trust account unless it is in the form of cash: see section 249(4).

Subject	2007 Act section	1993 Act section and/or 1994 Rules	Summary of 2007 Act provisions
Controlled money	Section 4	No provision	Controlled money is trust money received or held by a law practice subject to 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. The account must be with an authorised deposit taking institution (ADI): see definition of controlled money account in section 4. Note that controlled money cannot be pooled: see section 245(6).
Money that is not trust money	Section 232	No provision	Under the 2007 Act certain moneys entrusted to or held by a law practice for or in connection with financial services or investment is not trust money for the purposes of the Act. Money entrusted to or held by the law practice for or in connection with a managed investment scheme, mortgage financing or a mortgage investment scheme undertaken by the practice is not trust money. Note that section 251 of the 2007 Act contains an express prohibition of mixing trust money with other money. See also section 279.
Determinations about the status of money	Section 233	No provision	The Law Society has the power to make determinations about whether money is or is not trust money for the purposes of the 2007 Act. The section operates subject to any decision by a court made in relation to the money.
Application provisions and protocols for determining where trust money is received	Section 234 Section 235	No provision	These provisions stipulate when Part 3.2 of the 2007 Act applies. The provisions are technical. Generally, Part 3.2 will apply whenever a law practice that has an office in Tasmania receives trust money in Tasmania.
When is trust money received	Section 236	No provision	A law practice receives trust money when: <ul style="list-style-type: none"> ❑ the practice obtains possession or control of it directly; ❑ the practice obtains possession or control of it indirectly as a result of delivery to an associate of the law practice; or ❑ the practice or an associate of the practice is given power to deal with the money for or on behalf of another person.
Discharge by legal practitioner associate of obligations of a law practice	Section 237	No provision	Section 237 treats certain actions by a legal practitioner associate of a law practice as discharging the corresponding obligations of the law practice in relation to trust money. The expression "legal practitioner associate" is defined in section 7 as an associate who is an Australian legal practitioner. An associate of a law practice is more broadly defined to include persons who are legally qualified as well as employees who are not legally qualified.

Subject	2007 Act section	1993 Act section and/or 1994 Rules	Summary of 2007 Act provisions
Liability of principals of a law practice	Section 238	No provision	An obligation on a law practice imposes the same obligation on the principals of the law practice jointly and severally. Discharge of the practice's obligation discharges the corresponding obligation imposed on the principals. These provisions are required because many of the obligations relating to the operation of trust accounts are imposed on law practices.
Former practices, principals and associates	Section 239	No provision	Part 3.2 of the 2007 Act continues to apply to former law practices, and in relation to former principals and associates of a law practice, in relation to conduct occurring while they were law practices, principals and associates.
Barristers not to receive trust money	Section 240	Rule 90(c) 1994 Rules	A barrister, is not in the course of practising as a barrister, to receive trust money.
Obligation to establish trust account	Section 241(1)	Section 101(1)	A law practice is only required to establish and maintain a trust account if it receives trust money. Under the 1993 Act there is a mandatory obligation to maintain a trust account regardless of whether trust money is received or not. Note regulation 27, 2008 Regulations regarding the establishment of general trust accounts.
Obligation to operate trust account in accordance with Act and Regulations	Section 241(2)	Section 101(2)	Section 241(2) imposes a mandatory obligation on a law practice that is required to maintain a general trust account to establish and maintain the account in accordance with the regulations.
No trust account required if only receive controlled money or transit money	Section 241(3)	Section 101(1)	A law practice is not required to maintain a general trust account if it only receives controlled money or transit money. However, note that transit money received in the form of cash must be banked in a general trust account: see section 249(4). Under the 1993 Act there is a mandatory obligation to maintain a trust account regardless of whether trust money is received or not.
More than one trust account	Section 241(4)	Section 101(7)	Under the 1993 Act a law firm could establish a separate trust account for each office. The 2007 Act does not prevent more than one general trust account.
Depositing of trust money in the general trust account	Section 242 Section 249	Section 101	As soon as practicable after receiving trust money a law practice must deposit the money in a general trust account unless: <ul style="list-style-type: none"> □ the practice has a written direction to deal with the money otherwise than by deposit (note record must be kept for a period 7 of years after finalisation of the matter: regulation 30, 2008 Regulations);

Subject	2007 Act section	1993 Act section and/or 1994 Rules	Summary of 2007 Act provisions
Depositing of trust money in the general trust account (continued)	Section 242 Section 249	Section 101	<ul style="list-style-type: none"> ❑ the money is controlled money; ❑ the money is transit money; or ❑ the money is subject to a power to deal with the money for or on behalf of another person. <p>Cash must be deposited as soon as practicable in the general trust account even if the money is subject to a written direction to the contrary or transit money. Controlled money that is cash must be deposited in a controlled money account: see section 249, 2007 Act.</p> <p>Transit money (that is not cash) does not have to be recorded in the trust account.</p> <p>Except in relation to the non recording of transit money (that is not cash) in the trust account, the 2007 Act provisions are materially similar to the 1993 Act.</p>
Holding, disbursing and accounting for trust money	Section 243	No similar provision but implicit	A law practice must hold trust money in the general trust account exclusively for the person on whose behalf the money is received and must disburse it only in accordance with a direction given by that person.
Manner of withdrawing trust money from the general trust account	Section 244	Rule 21, 1994 Rules	<p>Money can only be withdrawn by cheque or electronic funds transfer. The following are prohibited methods of withdrawal:</p> <ul style="list-style-type: none"> ❑ cash withdrawals; ❑ ATM withdrawals or transfers; ❑ telephone banking withdrawals or transfers <p>Note that the prohibitions override any directions given to the law practice.</p> <p>Under the 1994 Rules cash payments were permitted with the written authority of the client.</p>
Obligations in relation to dealing with controlled money	Section 245	No provision	As soon as practicable after receiving controlled money, the law practice must deposit the controlled money in the account specified in the written direction relating to the money: section 245(1). The law practice must hold the controlled money in the controlled money account exclusively for the benefit of the person on whose behalf it was received. Controlled money can only be disbursed in accordance with a written direction given by or on behalf of the person on whose behalf the money was received. The written directions must be kept for 7 years after the finalisation of the matter to which the record relates: section 245(5); regulation 44, 2008 Regulations. A separate controlled money account is required in relation to each matter: see section 245(6).

Subject	2007 Act section	1993 Act section and/or 1994 Rules	Summary of 2007 Act provisions
Manner of withdrawing money from a controlled money account	Section 246	No provision	<p>Money can only be withdrawn by cheque or electronic funds transfer. The following are prohibited methods of withdrawal:</p> <ul style="list-style-type: none"> <input type="checkbox"/> cash withdrawals; <input type="checkbox"/> ATM withdrawals or transfers; <input type="checkbox"/> telephone banking withdrawals or transfers <p>Note that the prohibitions override any directions given to the law practice.</p>
Dealing with transit money	Section 247	Rule 41 and 42, 1994 Rules	<p>A law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money within the period specified in the instructions or as soon as practicable after it is received. Note that under the 2007 Act and 2008 Regulations there is no obligation to record movements of transit money in a trust ledger account. Regulation 47 merely requires that the law practice record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.</p>
Trust money subject to specific powers	Section 248	No provision	<p>Trust money that is subject to a specific power must be dealt with in accordance with the power.</p>
Trust money received in the form of cash	Section 249	No provision	<p>Trust money received in the form of cash must be deposited in the general trust account. Controlled money received in the form of cash must be deposited in the controlled money account.</p> <p>Transit money received in the form of cash must be deposited to the general trust account.</p>
Protection of trust money	Section 250	No provision	<p>Restates the law that trust money standing to the credit of a trust account maintained by a law practice is not available for the payment of debts of the practice or any of its associates.</p>
Intermixing money with trust money	Section 251	Section 101(8)	<p>A law practice is not allowed to mix trust money with other money.</p> <p>Note that section 232 of the 2007 Act declares money held by a law practice for or in connection with a managed investment scheme, mortgage financing or a mortgage investment scheme is not trust money for the purposes of the 2007 Act. Therefore such moneys should not be processed through the trust account.</p>

Subject	2007 Act section	1993 Act section and/or 1994 Rules	Summary of 2007 Act provisions
Dealing with trust money: legal costs and unclaimed money	Section 252	Section 101(9)	<p>A law practice can do the following things in relation to trust money held in the general trust account or a controlled money account for a person:</p> <ul style="list-style-type: none"> ❑ exercise a lien for the amount of legal costs reasonably due and owing by that person; ❑ withdraw the money to pay legal costs as allowed by the Act or regulations; ❑ after deducting legal costs, deal with the balance of the money as unclaimed money in accordance with section 258. <p>Section 101(9) of the 1993 Act provides that the Act does not affect the right to a lien.</p>
Deficiency in trust account	Section 253	No provision	<p>A practitioner is guilty of an offence if he or she without reasonable excuse causes a deficiency in any trust account or a trust account ledger or a failure to pay or deliver any trust money. Note that deficiency is broadly defined to include the non-inclusion or exclusion of any amount that is required to be included in any trust account.</p> <p>Note that regulation 53A of the 2008 Regulations provides that a deficiency does not occur for the purposes of section 253 in the circumstances set out in that regulation. In essence, regulation 53A replicates the operation of Rule 37 of the 1994 Rules: see further below in relation to the summary of regulation 53A.</p>
Reporting of irregularities and suspected irregularities	Section 254	No provision	<p>As soon as practicable after a legal practitioner associate of a law practice becomes aware of any irregularity in the law practice's trust accounts or trust ledger accounts, that associate must report the irregularity to the Law Society.</p> <p>A reporting obligation also exists where a practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money by a law practice in respect of which the practitioner is not a legal practitioner associate.</p>
Keeping of trust records	Section 255	Rule 58, 1994 Rules	<p>There is an express requirement to keep trust records in relation to trust money received by a law practice. Note the expansive definition of what are trust records: see section 231(1). Trust records include files relating to trust transactions or bills or costs or both.</p> <p>Trust records must be generally kept for 7 years either after last entry or conclusion of the matter: regulation 54.</p> <p>Under the 1994 Rules, trust records had to be kept for 10 years.</p>
False names	Section 256	No provision	<p>There is a prohibition against knowingly receiving trust money or recording the receipt of money under a false name.</p>

Subject	2007 Act section	1993 Act section and/or 1994 Rules	Summary of 2007 Act provisions
Investigation provisions	Sections 260-264	Section 58	The 2007 Act contains a detailed regime for the appointment of persons to investigate the affairs of a law practice. Such investigations can be routine or regular in character or can relate to particular allegations or suspicions.
External examination provisions	Sections 265-272	Part 3, Division 11, 1994 Rules	The provisions of the 2007 Act replace Part 3, Division 11, of the 1994 Rules. An examination must be conducted at least once in each financial year: section 266(1). The Law Society can also require an examination.
Approval of ADIs	Section 273	No provision	Law Society may approve ADIs at which trust accounts to hold trust money may be maintained.
Reports, records and information	Section 275	No provision	An ADI at which a trust account is maintained is under a mandatory obligation to report to the Law Society any deficiency in a trust account or any suspected offence in relation to a trust account: see sections 275(1) and (2) of the 2007 Act.
Restrictions on the receipt of trust money	Section 276	No provision	An unincorporated legal practice must not receive trust money if a principal holds a practising certificate that does not authorise the receipt of trust money: section 276(1). Special provisions apply in relation to incorporated legal practices: see section 276(2). Generally, in relation to incorporated legal practices, at least one legal practitioner director of the law practice must hold an Australian practising certificate authorising the receipt of trust money.
Disclosure to clients - money not received or held as trust money	Section 279	No provision	Imposes an obligation to disclose that money that is not trust money for the purposes of the Act: <ul style="list-style-type: none"> ❑ is not treated as trust money; ❑ is not subject to supervision, investigation or audit under the Act; ❑ cannot be the subject of a claim against the Guarantee Fund. Notification must be given in writing.

Part 3: 2008 Regulations

Part 3 of the 2008 Regulations contain extensive provisions relating to trust money and trust accounts. There are some new provisions which are not directly related to trust money - for example the requirement to keep a register of power and estates contained in regulation 52.

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Conditions on approval of ADIs	Regulation 21		Section 273(1) of the 2007 Act gives the Law Society the power to approve ADIs at which trust accounts may be maintained. That approval may be subject to conditions of the kind prescribed by the regulations: section 273(2). Regulation 21 sets out the kind of conditions that may be imposed on an approval of an ADI under section 273.
Copies of trust records to be printed	Regulation 23	Division 10, 1994 Rules	<p>Regulation 23 applies where a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.</p> <p>Regulation 23 imposes obligations to print a paper copy of the following trust records:</p> <ul style="list-style-type: none"> ❑ trust account receipts and payment cash books to be printed monthly as at the end of each named month unless a copy is kept in electronic form that is readable or reportable on demand: regulation 23(1)(a); ❑ reconciliation statements at the end of each named month: regulation 23(1)(b); ❑ lists of trust account ledgers and their balances are to be printed monthly as at the end of each named month: regulation 23(1)(c); ❑ lists of controlled money accounts and their balances are to be printed monthly as at end of each named month: regulation 23(1)(d); ❑ trust ledger accounts, the register of controlled money and the trust account transfer journal must be printed before they are archived or deleted: regulation 23(1)(e); ❑ trust ledger account and controlled money account details are to be printed on request by and provided to an investigator: regulation 23(1)(f). <p>Paper copies that are required to be printed monthly must be printed within 15 working days after the end of the named month: Regulation 23(2).</p> <p>Paper copies must be kept by the law practice except when printed on request: Regulation 23(3).</p> <p>Electronic copies of the trust account cash book are to be kept by the law practice: Regulation 23(4)</p>

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Chronological record of information to be made	Regulation 24	Rule 43(2) 1994 Rules	<p>Regulation 24 applies where a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.</p> <p>A law practice is required to maintain a record, in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to:</p> <ul style="list-style-type: none"> ❑ client name; ❑ client address; ❑ matter reference; ❑ matter description; ❑ ledger account number or other descriptor <p>The provisions are materially similar except that under the 2008 Regulations there is no reference to the "number of the client".</p>
Requirements regarding computer accounting systems	Regulation 25	Rules 45 and 46 1994 Rules	<p>Regulation 25 applies where a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.</p> <p>System requirements are:</p> <ul style="list-style-type: none"> ❑ the system must not allow a debit balance unless contemporaneous record is made that can be printed on demand as part of a chronological report: regulation 25(1); ❑ the system must not allow deletion of a trust ledger account unless the balance is zero and a copy is printed: regulation 25(2); ❑ the printed record must be produced in chronological sequence: regulation 25(3); ❑ each page of each printed record must be numbered sequentially or printed in such a way that no page can be extracted: regulation 25(4); ❑ the system must not allow amendment of an existing entry except by a further transaction entry: regulation 25(5); ❑ the system must require input into every data field intended to receive information required by Part 3 of the 2008 Regulations: regulation 25(6) <p>With the exception of regulation 25(6), regulation 25 is materially similar to the 1993 Rules relating to computerised accounting systems.</p>

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Back up copies of system	Regulation 26	Rules 46(d) and (e)	<p>Regulation 26 applies where a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.</p> <p>Back-ups must be made not less frequently than monthly: regulation 26(a). Back-ups must be kept by the law practice: regulation 26(b). Back-ups must be kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy: regulation 26(c).</p> <p>These provisions are materially similar to rules 46(d) and (e) of the 1994 Rules. Note however, that rule 46(e) permitted the back-up copies to be kept in a fireproof location on the firm's premises. This is not specifically authorised by the 2008 Regulations.</p> <p>Note that back-ups form part of trust records: see regulation 55(2).</p>
Establishment of general trust account	Regulation 27	Section 101	<p>Regulation 27(1) requires a law practice to establish a trust account if it receives trust money and does not already have a general trust account. This regulation overlaps with section 241 of the 2007 Act which only imposes an obligation to maintain a trust account if trust money is received.</p> <p>The formal requirement for a general trust account are:</p> <ul style="list-style-type: none"> ❑ the account must be with an approved ADI: regulation 27(2)(a); ❑ the account must be maintained in Tasmania: regulation 27(2)(b); ❑ the name of the account must include the name of the law practice or the business name under which the law practice engages in legal practice: regulation 27(2)(c)(i); ❑ the name of the account must include the expression "law practice trust account" or "law practice trust a/c": regulation 27(c)(ii). However, these words are not required in relation to pre-existing trust accounts: regulation 27(3).
Receipting of trust money	Regulation 28	Rules 17, 18, 19 and 20	<p>A law practice must make out a receipt after receiving trust money: regulation 28(2).</p> <p>The receipt must be made out as soon as practicable after the money is received or, in the case of money received by direct deposit, as soon as practicable after the law practice receives notice or has access to notice of the deposit from the ADI concerned: regulation 28(3).</p> <p>The receipt must be made out in duplicate unless the particulars are recorded by computer program in the trust accounts receipt book: regulation 28(4).</p> <p>The receipt must show:</p> <ul style="list-style-type: none"> ❑ receipt must show the date of the receipt of the money and the date the receipt is made out if different: regulation 28(5)(a); ❑ the amount of money received: regulation 28(5)(b); ❑ the form of the money: regulation 28(5)(c);

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Receipting of trust money (continued)	Regulation 28	Rules 17, 18, 19 and 20	<ul style="list-style-type: none"> ❑ the name of the person from whom the money was received: regulation 28(5)(d); ❑ details which identify the client, the matter and the matter reference: regulation 28(5)(e); ❑ the purpose for which the money was received: regulation 28(5)(f); ❑ the name of the law practice, its business name, and the expression "trust account" or "trust a/c": regulation 28(5)(g); ❑ name of the person who made out the receipt: regulation 28(5)(h); and ❑ the number of the receipt: see regulation 28(5)(i). <p>These requirements are materially the same as the requirements set out in rule 18(2) of the 1994 Rules except that the 1994 Rules required the receipt to be signed by the person who issued the receipt or show the name of the firm.</p> <p>On request, the original of the receipt must be delivered to the person from whom the trust money was received: regulation 28(6).</p> <p>Receipts must be consecutively numbered and issued in consecutive sequence: regulation 28(7).</p> <p>If a receipt is cancelled or not delivered, the original receipt must be kept: regulation 28(8). This is a new requirement.</p>
Deposit records for trust money	Regulation 29	Rule 29	<p>The provisions of regulation 29 are much more extensive than those contained in the 1994 Rules. However, as a matter of practice, most ADIs will already require a law practice to do the things required by regulation 29.</p> <p>A record of deposit must be produced to the approved ADI at the time a deposit is made: regulation 29(2).</p> <p>Pursuant to regulation 29(3), the deposit record must show:</p> <ul style="list-style-type: none"> ❑ the date of the deposit; ❑ the amount of the deposit; ❑ details of cheques, notes and coins; ❑ for each cheque: the name of the drawer; the name of the branch or the BSB number of the ADI on which the cheque is drawn; the amount of the cheque. <p>The deposit record must be made out in duplicate: regulation 29(4).</p> <p>The duplicate deposit record must be kept in a deposit book or securely filed in the order in which deposits were made: regulation 29(5).</p>

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Payments by cheque	Regulation 31	Rules 21, 22, 23, 24 and 25	<p>There are some changes in relation to payments by cheques.</p> <ul style="list-style-type: none"> ❑ A cheque must be payable to the order of a specified person or persons and not to bearer or cash: regulation 31(2)(a). Under the 1994 Rules bearer cheques were permitted: see rule 22(b) ❑ A cheque must be crossed not negotiable: regulation 31(2)(b). ❑ A cheque must include the name of the law practice or business name of the law practice and include the expression "law practice trust account" or "law practice trust a/c": regulation 31(2)(c). This regulation does not apply to pre-existing trust accounts: see regulation 31(9). ❑ Regulation 31(3) provides for who can sign a cheque. A cheque must be signed by: <ul style="list-style-type: none"> (1) an authorised principal of the law practice: see section 7 of the 2007 Act as to who is a principal; (2) if a principal is not available: <ul style="list-style-type: none"> (a) an authorised legal practitioner associate: see section 7 as to who is a legal practitioner associate of a law practice; (b) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money: Note that the authorised Australian legal practitioner does not have to be an associate of the law practice: see section 7 of the Act as to who is an Australian legal practitioner; or (c) two or more associates of the law practice jointly. <p>The practical operation of these provisions is that a cheque can be signed by a wider range of persons. Any employed legal practitioner, or any 2 employees of a law practice, will be able to sign a trust cheque if authorised by the law practice. For sole practitioners, cheques can be signed by another legal practitioner (who is authorised to receive trust money). However, non principals can only sign if a principal is not available.</p> ❑ No approval by the Council of the Law Society is required to allow for signing of trust cheques by non principals. This was required under the 1994 Rules: rule 22(e), 1994 Rules. ❑ The following particulars must be kept of each payment by cheque: <ul style="list-style-type: none"> (1) the date and number of the cheque; (2) the amount ordered to be paid;

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Payments by cheque (continued)	Regulation 31	Rules 21, 22, 23, 24 and 25	<p>(3) the payee of the cheque, 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;</p> <p>(4) details of the name of the person on whose behalf the payment was made and matter reference number;</p> <p>(5) details of the ledger account to be debited;</p> <p>(6) particulars of the purpose of the payment.</p> <p>See regulation 31(6). Except for paragraph (3) above, these requirements are similar to the 1994 Rules.</p> <p>Written records relating to payments by cheques including cheque requisitions must be kept in the order they are issued: see regulation 31(7). This requirement is similar to the 1994 Rules.</p>
Payment by electronic funds transfer	Regulation 32	Not authorised by 1994 Rules	<p>There is no requirement for the operating aspects of electronic funds transfers (EFT) to be approved by the Law Society. The requirements in regulation 32 for payments by EFT, and the details to be kept of payments, are similar to the provisions in relation to cheques. An additional, but obvious requirement, is that the record for an EFT must include the account name, account number and BSB of the account to which the funds are transferred.</p>
Trust account receipt cash book	Regulation 33(a) and 34	Rules 26 and 27	<p>A law practice that has a trust account is required to keep a trust account cash book: regulation 33(a). The details to be recorded in the cash book are set out in regulation 34(1). The required details are:</p> <ul style="list-style-type: none"> ❑ the date the receipt for the money was made out, and if different, the date on which the money was received; ❑ the receipt number; ❑ the amount of money received; ❑ the form of the money; ❑ the name of the person from whom the money was received; ❑ details identifying the name of the client, matter description and reference; ❑ the purpose for which the money was received; ❑ details of the trust ledger to be credited. <p>These requirements are similar to rule 27 of the 1994 Rules. However, there was no requirement in the 1994 Rules for the receipt number to be shown.</p> <p>The date and amount of each deposit to the general trust account must also be recorded in the cash book: regulation 34(2).</p>

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Trust account receipt cash book (continued)	Regulation 33(a) and 34	Rules 26 and 27	Receipts must be recorded in the cash book in the order they are made out: regulation 34(3). The particulars of the a receipt must be entered into the cash book within 5 working days from and including the date of the receipt: regulation 34(4). Note that under the 1994 Rules, the period allowed was 7 days of the issue of the receipt.
Trust account payments cash book	Regulation 33(b) and 35	Rule 28	The payment details to be recorded in the cash book mirror the requirements in regulations 31 and 32. Particulars must be recorded in the cash payments book in order in which they are made. The particulars of the payment must be recorded within 5 working days from and including the date on which the payment is made: regulation 35(4). Note that under the 1994 Rules, the period allowed was 7 days. The 2008 Regulations require that the trust account receipts cash book and the trust account cash payments book be kept as separate books.
Recording of transactions in the trust ledger accounts	Regulation 36	Rules 30, 31, 32, and 33	A separate trust ledger account must be kept in relation to each client of the practice in each matter for which trust money has been received by the law practice: see regulation 36(1). The title of a trust ledger account must record: the name of the person; the person's address; and particulars to identify the matter: regulation 36(2). Details of any changes in the title of a trust ledger account must be recorded: see regulation 36(3). Regulations 36(4), 36(5), 36(6) and 36(7) set out the particulars that must be recorded in a trust ledger in respect of receipts, payments by cheque, payments by EFT and journal transfers. The requirements are as follows: <ul style="list-style-type: none"> <li data-bbox="907 901 2116 1029">❑ for each receipt of trust money: the date the receipt for the money was made out, and if different, the date on which the money was received; the receipt number; the amount of money received; the name of the person from whom received, the purpose for which the money was received: regulation 36(4); <li data-bbox="907 1037 2116 1165">❑ for each payment of trust money by cheque: the date and number of the cheque; the amount ordered to be paid; the payee of the cheque, 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; particulars of the purpose of the payment: regulation 36(5); <li data-bbox="907 1173 2116 1364">❑ for each payment of trust money by EFT: the date and number of the transaction; the amount transferred; the account name, account number and BSB of the account to which the funds are transferred; 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; particulars of the purpose of the payment: regulation 36(6); and

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Recording of transactions in the trust ledger accounts (continued)	Regulation 36	Rules 30, 31, 32, and 33	<ul style="list-style-type: none"> ❑ for each transfer of trust money effected by journal transfer: the date of the transfer; the amount transferred; the journal reference number; the name of the other trust ledger account from or to which the money was transferred; particulars of the purpose of the payment: regulation 36(7). <p>Transactions relating to trust money must be recorded in the order in which they occur: regulation 36(8).</p> <p>Particulars must be recorded within 5 working days counting from and including the date of receipt, the date of payment or the date of transfer: regulation 36(9).</p> <p>The trust ledger account must show the balance of the trust ledger account after each receipt, payment or transfer of money: regulation 36(10).</p>
Journal transfers	Regulation 37	Rule 34	<p>Trust money may be transferred by journal from one trust ledger account to another trust ledger account but only if:</p> <ul style="list-style-type: none"> ❑ the law practice is entitled to so; ❑ the transfer is authorised in writing: <ul style="list-style-type: none"> (1) by an authorised principal of the law practice; or (2) if a principal is not available: by an authorised legal practitioner associate; by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or by 2 or more associates jointly. <p>Authorised means authorised by the law practice. The practical operation of these provisions is that a journal transfer must be authorised. Any employed legal practitioner, or any 2 employees of a law practice, will be able to authorise a journal transfer if authorised by the law practice. For sole practitioners, transfers can be authorised by another legal practitioner (who is authorised to receive trust money). However, non principals can only authorise a journal transfer if a principal is not available.</p> <p>A law practice must keep a trust account transfer journal if it transfers trust money by journal transfer. The journal entry must show:</p> <ul style="list-style-type: none"> ❑ the date of the transfer; ❑ the "to" and "from" trust ledger account details; ❑ the amount transferred; ❑ the purpose of the transfer, matter reference and a short description of the matter. <p>Journal pages or entries must be consecutively numbered.</p>

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Journal transfers (continued)	Regulation 37	Rule 34	<p>The particulars of authorisation for each journal transfer must be kept.</p> <p>The provisions of the 2008 Regulations are similar to the 1993 Rules. However, the provisions about authorisation are new.</p>
Reconciliation of trust records	Regulation 38	Rule 36	<p>Trust records are required to be reconciled at the end of each named month. The following statements have to be prepared:</p> <ul style="list-style-type: none"> □ a statement reconciling the ADI balance with the balance in the practice's trust account cash books; and □ a statement: <ul style="list-style-type: none"> (1) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; (2) containing a list of the trust ledger accounts showing the name, identifying reference, short description and ledger balance. <p>Each statement must show the date it was prepared and be prepared not later than 15 working days after the end of the named month.</p> <p>The requirements of regulation 38 are similar to the requirements in rule 36. Note however that rule 36 required reconciliations to be prepared within 10 days of the end of each month.</p>
Prohibition against trust ledger accounts in the name of a law practice or a legal practitioner associate	Regulation 39	No provision	<p>Subject to certain exceptions, a law practice is not allowed to maintain a trust ledger account in the name of the law practice or a legal practitioner associate of the law practice. The exceptions are:</p> <ul style="list-style-type: none"> □ a trust ledger account for the transfer of legal costs by journal transfer; □ a trust ledger account in the name of the legal practitioner associate but only respect of money in which the associate has a personal and beneficial interest as vendor, purchaser, lessor or lessee or a similar capacity. <p>Moneys in a trust ledger account for legal costs must be withdrawn not later than one month after the date on which the money was transferred. Moneys held for a legal practitioner associate must be withdrawn at the conclusion of the matter.</p>
Notification requirements in regarding general trust account	Regulation 40	No provision	<p>A law practice must give notice in writing to the Law Society of the following:</p> <ul style="list-style-type: none"> □ the establishment or closure of a general trust account for the practice (notice to be given within 14 days after that fact); □ the name and address of each associate of the law practice (and whether they are an employee) who is to be, or has been, given authority to sign trust cheques or authorise the withdrawal of trust or whose authority to do these things has been terminated (notice to be given either before or within 14 days the event).

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Notification requirements in regarding general trust account (continued)	Regulation 40	No provision	<p>An annual statement each July must also be given to the Law Society of associates who can sign trust cheques or authorise the withdrawal of trust money.</p> <p>Note that the Law Society does not have to approve authorised signatories on the general trust account as required by rule 22(e), 1994 Rules.</p>
Maintenance of Controlled money accounts	Regulation 42	No provision	<p>This regulation prescribes the particulars which must be included in the name of a controlled money account for the purposes of section 245(4) of the 2007 Act. The particulars are:</p> <ul style="list-style-type: none"> ❑ the name of the law practice; ❑ expression "controlled money account," or the abbreviation "CMA" or CMA/c"; ❑ particulars to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice. <p>The regulation does not apply to accounts established before the commencement of the regulation.</p>
Receipt of controlled money	Regulation 43	No provision	<p>There must be a single system for the receipt of all controlled money for all controlled money accounts. The system must be separate from the system for receiving trust money: regulation 43(1).</p> <p>After receiving controlled money, the law practice must make out a receipt: regulation 43(3). A receipt must be made out as soon as practicable after the money is received, or in the case of a direct deposit, notice or confirmation of the deposit: regulation 43(4). The receipt has to be made out in duplicate unless recorded by computer program in the register of controlled money: regulation 43(5).</p> <p>A receipt has to show:</p> <ul style="list-style-type: none"> ❑ the date the receipt for the money was made out, and if different, the date on which the money was received; ❑ the amount of money received; ❑ the form of the money; ❑ the name of the person from who the money was received; ❑ details identifying the name of the client, matter description and reference; ❑ the purpose for which the money was received; ❑ the name and details of the controlled money account credited, unless the account has not been established at the time the receipt is made out; ❑ the name of the law practice, or its business name, and the expression "controlled money receipt";

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Receipt of controlled money (continued)	Regulation 43	No provision	<ul style="list-style-type: none"> ❑ the name of the person who made out the receipt; ❑ the receipt number. <p>Regulation 43(6). Receipts must be numbered consecutively and be issued in consecutive sequence: regulation 43(9). A receipt must be kept if it is cancelled or not delivered: regulation 43(10). A receipt is not required to be made out for interest or income from the investment of controlled money and credited directly to the controlled money account: regulation 43(11).</p>
Deposit of controlled money	Regulation 44	No provision	<p>The regulation stipulates the period for which a written direction for the purposes of section 245(1) of the 2007 Act must be kept. The period is 7 years after the finalisation of the matter to which the direction relates.</p>
Withdrawal of controlled money	Regulation 45	No provision	<p>In addition to the requirements in section 245 of 2007 Act, money can only be withdrawn from a controlled money account by or under the direction or authority of:</p> <ul style="list-style-type: none"> ❑ an authorised principal of the law practice; ❑ if a principal is not available: <ul style="list-style-type: none"> (1) an authorised legal practitioner associate; (2) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; (3) 2 or more authorised associates of the law practice. <p>Authorised means authorised by the law practice. The practical operation of these provisions is that a withdrawal must be authorised. Any employed legal practitioner, or any 2 employees of a law practice, will be able to authorise a withdrawal if authorised by the law practice. For sole practitioners, withdrawals can be authorised by another legal practitioner (who is authorised to receive trust money). However, non principals can only authorise a withdrawal if a principal is not available. Regulation 45(1).</p> <p>Regulation 45(4) requires the following particulars must be kept of each withdrawal:</p> <ul style="list-style-type: none"> ❑ the date and number of the transaction; ❑ the amount withdrawn; ❑ in the case of a transfer by EFT, the account name, account number and BSB of the account to which the funds are transferred; ❑ the name of the person to whom the payment is to be made or, in the case of a payment to be made to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Withdrawal of controlled money (continued)	Regulation 45	No provision	<ul style="list-style-type: none"> <input type="checkbox"/> details identifying the name of the person on whose behalf the payment was made and the matter reference; <input type="checkbox"/> the purpose of the payment; <input type="checkbox"/> the person or persons effecting, directing or authorising the withdrawal. <p>Particulars are to be recorded in the order in which payments are recorded, and are to be recorded separately for each controlled money account: see regulation 45(5).</p>
Register of controlled money	Regulation 46	No provision	<p>A register must be kept in relation to controlled money.</p> <p>A separate record of controlled money movements must be maintained for each controlled money account. Details to be shown in the register are:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the name of the person on whose behalf the money is held; <input type="checkbox"/> the person's address; <input type="checkbox"/> particulars sufficient to identify the matter; and <input type="checkbox"/> any changes in these details. <p>The register is to record:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the date the controlled money was received; <input type="checkbox"/> the number of the receipt; <input type="checkbox"/> the date the money was deposited in the controlled money account; <input type="checkbox"/> the name and other details of the account; <input type="checkbox"/> the amount of controlled money deposited; <input type="checkbox"/> details of the deposit; <input type="checkbox"/> interest received; and <input type="checkbox"/> details of payments (including details required by regulation 45(4)) <p>Regulation 46(4).</p> <p>Receipts and payments must be entered in the register as soon as practicable. Interest and other income must be entered in the register as soon as practicable after receipt is notified to the law practice: see regulations 46(5) and (6).</p> <p>A law practice is required to keep as part of its trust records all supporting information relating to controlled money (including ADI statements and notifications of interest): see regulation 46(7).</p> <p>Within 15 days of the end of each named month a statement is required to be prepared and kept containing a list of controlled money accounts showing:</p>

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Register of controlled money (continued)	Regulation 46	No provision	<ul style="list-style-type: none"> <input type="checkbox"/> the name, number and balance of each controlled money account; <input type="checkbox"/> the name of the person on whose behalf the account is held; <input type="checkbox"/> a description of the matter. <input type="checkbox"/> the date the statement was prepared. Regulation 46(8).
Information to be recorded about transit money	Regulation 47	Rules 41 and 42	<p>The regulation prescribes the particulars required by section 247 of the 2007 Act. The particulars to be kept are those sufficient to identify the transaction and the purpose for which the money is received.</p> <p>There is no requirement for a formal register of transit money. Unless it is cash, there is no requirement for details of transit money to be entered into the trust account ledger. There are no requirements to provide a statement to the person on whose behalf the money was received.</p>
Trust account statements	Regulation 48	No provision	<p>A law practice has an obligation to provide 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 law practice: see regulation 48(1). The statement must show all of the information that is required to be kept under Part 3 of the 2008 Regulations and show the balance: see regulation 48(5).</p> <p>The statement must be provided in respect of each trust ledger account: see regulation 48(2). In relation to controlled money, a separate statement must be provided in relation the record of movements of the controlled money: see regulation 48(3).</p> <p>A statement must be provided in relation to the record of dealings with trust money which is subject to a power: see regulation 48(4).</p> <p>The statement is to be provided:</p> <ul style="list-style-type: none"> <input type="checkbox"/> as soon as practicable after the completion of the matter; <input type="checkbox"/> as soon as practicable after a reasonable request by the person for whom or on whose behalf the money is held or controlled; <input type="checkbox"/> as soon as practicable after the end of 30 June in each year (but exceptions apply). <p>See regulation 48(6).</p>

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Trust account statements (continued)	Regulation 48	No provision	<p>A trust account statement is not required to be provided at the end of each financial year in the following circumstances:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the ledger account record has been open for less than 6 months; <input type="checkbox"/> the ledger account has a zero balance and there has been no activity affecting the account during the previous 12 months; or <input type="checkbox"/> a statement has been provided within the previous 12 months and there has been no subsequent transaction affecting the account or record. <p>See regulation 48(7). A law practice has to keep a copy of each trust account statement furnished under the regulation: see regulation 48(8).</p>
Trust account statements for sophisticated clients	Regulation 49	No provision	<p>Sophisticated clients can direct a law practice not to provide trust account statements under regulation 48. Sophisticated client is defined in section 283 of the 2007 Act.</p>
Register of investments	Regulation 50	No provision (Note practice direction issued)	<p>A register of investments must be maintained if a law practice invests trust money for or on behalf of a client: see regulation 50(1) and (2). Particulars are not required to be recorded if the particulars are recorded elsewhere pursuant to another regulation.</p> <p>The register is to record the following details:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the name in which the investment is held; <input type="checkbox"/> the name of the person on whose behalf the investment is made; <input type="checkbox"/> the person's address; <input type="checkbox"/> particulars sufficient to identify the investment; <input type="checkbox"/> the amount invested; <input type="checkbox"/> the date the investment was made; <input type="checkbox"/> particulars sufficient to identify the source of the investment (for example: a reference to the relevant trust ledger; a reference to the written authority to make the investment; and the number of the cheque for the amount to be invested); <input type="checkbox"/> details of any documents evidencing the investment; <input type="checkbox"/> details of any interest received from the investment or credited directly to the investment; <input type="checkbox"/> details of the repayment of the investment and any interest, on maturity or otherwise. <p>See regulation 50(3)</p>

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Trust money subject to specific powers	Regulation 51	No provision	A law practice, or associate of a law practice, that has power to deal with trust money for or on behalf of another person has to keep, as part of the law practice's trust records, a record of all dealings with the money to which the practice or associate is a party. The supporting information must enable the dealings to be clearly understood: see regulations 51(2) and (3).
Register of powers and estates in relation to trust money	Regulation 52	No provision	<p>A register of powers and estates is required in respect of which the law practice, or an associate of the law practice, is acting.</p> <p>However, the register is not to include matters where the law practice or an associate of the law practice is required to act jointly with one or more persons who are not associates of the law practice: see regulations 52(1) and (2).</p> <p>The register must show:</p> <ul style="list-style-type: none"> ❑ the name and address of the donor and the date of each power; ❑ the name, and date of death, of the deceased in respect of each estate.
Withdrawing trust money for legal costs	Regulation 53	Rules 39 and 40	<p>There are 2 alternative methods for withdrawing trust money for legal costs.</p> <p>Pursuant to regulation 53(2), a law practice may withdraw money for legal costs from a general trust account or a controlled money account:</p> <ul style="list-style-type: none"> ❑ in accordance with a costs agreement that complies with the law under which it was made: see regulation 53(3)(a); or ❑ in accordance with instructions received by the law practice. (Note the requirements in regulation 53(5) regarding the form of instructions. The instructions if given in writing must be kept, and if the instructions have not been given in writing, they must be confirmed in writing within 5 working days after the withdrawal): see regulation 53(3)(b); or ❑ the money has been requested by and paid to the law practice for that purpose: see regulation 53(3)(c); or ❑ the money is owed for reimbursement of money already paid by the law practice and the law practice gives or sends to the client a request for payment referring to the proposed withdrawal or a written notice of the withdrawal: see regulation 53(3)(d). There is no requirement for the notice of withdrawal to be received by the client before the withdrawal is made.

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Withdrawing trust money for legal costs (continued)	Regulation 53	Rules 39 and 40	<p>As an alternative to regulation 53(3), a law practice may also withdraw trust money if the practice has given the client a bill relating to that money and:</p> <ul style="list-style-type: none"> □ the person has not objected to the withdrawal within 7 days after the bill has been given; □ if the person objects but has not requested a review of costs within 60 days after being given the bill; or □ the money otherwise becomes legally payable. <p>See regulation 53(4).</p> <p>The reason that regulation 53 contains 2 alternative methods for withdrawing trust money for legal costs is largely historical. The drafters of the Model Regulations (upon which the 2008 Regulations are based) provided for 2 alternative withdrawal methods to reflect pre-Model Regulation requirements in different jurisdictions.</p> <p>It should be also noted that regulation 53(3) is less restrictive than the corresponding provisions contained in the Model Regulations because of the inclusion of regulation 53(3)(c). Regulation 53(3)(c) allows a law practice to withdraw money for legal costs where the money has been requested by and paid to the law practice for that purpose.</p>
Deficiencies in trust accounts	Regulation 53A	Rule 37	<p>Regulation 53A of the 2008 Regulations substantially replicates the operation of rule 37 of the 1994 Rules.</p> <p>Regulation 53A is necessary because, in the absence of regulation 53A, a law practice would breach section 253 of the 2007 Act by overdrawing its trust account for the purposes of purchasing a bank cheque where trust money to purchase the bank cheque were not held at the time of purchase. Pursuant to regulation 53A, for the purposes of section 253, a deficiency in a trust bank account or trust ledger account does not arise if:</p> <ul style="list-style-type: none"> □ money amounting to at least the amount withdrawn is held in relation to that account at the time of withdrawal either: <ul style="list-style-type: none"> (1) in the trust bank account to the credit of the client; (2) in the possession of the law practice for payment into the trust bank account for the credit of the client; or (3) in the trust bank account identifiable by details recorded in the trust ledger account as being money to which the client is entitled; or □ the withdrawal arises from the debiting of a cheque which has been properly used to obtain a bank cheque on behalf of the client while that cheque remains in the possession of the law practice pending its proper disposition. <p>A law practice cannot retain the bank cheque for a period exceeding 2 banking days.</p>

Subject	2008 Regulations	1993 Act or 1994 Rules	Summary of 2008 Regulations requirement
Keeping of trust records and keeping of other records and information	Regulations 54 and 55	Rule 58	Pursuant to the 2008 Regulations trust records must be kept for 7 years after the last entry (in the case of certain records) or finalisation of the matter (in all other cases). Trust records include the file. Under the 1994 Rules, records had to be kept for 10 years.
Statements regarding the receipt or holding of trust money	Regulation 56	No provision	<p>Allows the Law Society to seek information from a law practice, or law practices generally, about the receiving or holding of:</p> <ul style="list-style-type: none"> ❑ trust money; ❑ controlled money; ❑ transit money; ❑ money subject to a power.
Requirement for external examination	Regulation 57(2)	No provision	An external examination of a law practice's trust records for a financial year is not required if the only trust money received or held by the law practice for that financial year was transit money.
External examination of trust records	Regulation 59	Rule 50	Provides that for the purposes of <u>section 270(3)</u> of the 2007 Act, the standards to be adopted and the procedures to be followed by external examiners and the form and content of the external examiner's report on an examination are to be approved by the Law Society. In comparison, Rule 50 of the 1994 was prescriptive as to the matters to be examined.
Law practice closing down, closing office or ceasing to receive or hold trust money	Regulation 60	No provision	<p>Requires certain notices where a law practice that holds trust money intends:</p> <ul style="list-style-type: none"> ❑ to cease to exist as a law practice; ❑ to cease to engage in legal practice in Tasmania; or ❑ to cease to practise in such a way as to receive trust money.
Authority to receive trust money	Regulation 60A	No provision	<p>This is a transitional provision. Section 276(1) of the 2007 Act prohibits a law practice from receiving trust money if a principal of the law practice holds a practising certificate which does not authorise the receipt of trust money.</p> <p>Tasmanian practising certificates do not specifically authorise the receipt of trust money by a principal. Regulation 60A provides that a principal who holds a current practising certificate under the 1993 Act (at the commencement of section 276(1)) is, unless the certificate contains a condition to the contrary, taken to be authorised to receive trust money. Regulation 60A avoided the need to re-issue 1993 Act practising certificates to comply with section 276(1).</p>
Exemptions	Regulation 61	Rule 59	Enables the Law Society to exempt a law practice from having to comply with provisions in Part 3 of the 2008 Regulations.