2015 marks the commencement of a uniform regulatory regime that applies to lawyers in Victoria and New South Wales. The Legal Profession Uniform Law Application Act 2014 (Vic) (the Act), of which the Legal Profession Uniform Law (Uniform Law) is Schedule 1, commenced on 1 July 2015 together with subordinate legislation (Uniform Rules). The Act will replace the Legal Profession Act 2004 (Vic) (LPA). It is important that you become familiar with the Act, the Uniform Law and the Uniform Rules to fully understand your obligations and those of your law practice.

Important provisions relating to trust money and accounts are contained in Part 4.2 of the Uniform Law, Part 5 of the Act, and the Legal Profession Uniform General Rules 2015 (Uniform General Rules). Many provisions are unchanged from the LPA. Significant provisions are set out below.

**TRUST MONEY AND TRUST ACCOUNTS**

- Trust money is defined in the Uniform Law as money received in advance of the provision of legal services, received subject to a power to deal with it on behalf of another, and controlled and transit money.¹

- A law practice must not receive trust money unless a principal of the law practice holds a practising certificate authorising the receipt of trust money.²

- A law practice that receives trust money (other than controlled or transit money received in a form other than cash) must maintain a general trust account³, and details of the account must be provided to the Victoria Legal Services Board (LSB)⁴.

- A law practice must deposit trust money into its general trust account as soon as practicable after receiving it, and it must be held in that trust account exclusively for the person on whose behalf it is received.⁵

- Withdrawals from trust accounts must be made only by cheque or electronic funds transfer.⁶ A law practice may withdraw money for payment of its legal costs in accordance with any requirements specified in the Uniform General Rules.⁷

- Liability for a deficiency in a trust account or trust ledger account, or a failure to pay trust money now extends beyond an Australian legal practitioner to include a law practice and any other person.⁸ The applicable penalty is 500 penalty units or imprisonment for five years, or both.

**NON-TRUST MONEY**

- There is an expanded definition of non-trust money so that it now includes money received for legal services after a bill is given.⁹ Accordingly, such money need not be banked into a trust account, even if it includes unpaid disbursements.

- It is important to note that money received for a managed investment scheme, mortgage, financial or investment purposes remains non-trust money.

- A law practice must now provide written notice to the person who provided the non-trust money (other than money received in payment of legal costs) that it will not be treated as trust money, will not be subject to the trust money provisions in the Uniform Law or the Uniform General Rules, and a claim cannot be made against the fidelity fund regarding it.¹⁰

**EXTERNAL EXAMINATIONS**

- An external examination must occur once each ‘financial year’ as opposed to visits on two days in each ‘audit year’ under the LPA — this is a substantial change.¹¹ The law practice must pay the costs of the examination.¹²

- The external examiner must give his or her report to the LSB as soon as practicable after completing the examination or otherwise as specified in the Uniform General Rules.¹³

- The LSB or its appointee may conduct an external examination if it is not satisfied that an examination has taken place in accordance with the Uniform General Rules, or at all.¹⁴ This is a significant change from the LPA position.

**EXTERNAL INVESTIGATION**

- Trust inspectors are now called external investigators. While the principal purpose of an external investigation is to ensure compliance in relation to trust matters and to detect and prevent fraud or defalcation, the powers of an external investigator are not limited to that. The LSB may undertake investigations regarding allegations or suspicions in relation to trust money or any other aspect of the affairs of the law practice or where it considers it appropriate to do so.¹⁵ This is broader than the LPA position.

- Investigators carrying out trust records investigations (and external examinations) have broad powers to require access to documents.
and information relating to the affairs of the law practice that the investigator reasonably requires. Investigators may also access the law practice’s premises (with the occupier’s consent or under authority of a search warrant) to search the premises, use equipment, seize material and computers and interrogate persons on the premises.16

• A law practice may be required to pay the reasonable costs of the investigation if a contravention of the Uniform Law is considered wilful or substantial.17

EXTERNAL INTERVENTION

• If the LSB reasonably believes that there are certain circumstances involving the conduct of a law practice or law practice associate in dealing with trust accounts or trust money (for example, if the law practice or a law practice associate is not dealing adequately with trust money or has committed a serious irregularity regarding trust money) then external intervention may take place. This could involve the appointment of a supervisor of trust money, a manager for the law practice or even a receiver.18

REGISTERS

• Under the Uniform General Rules, law practices will continue to be required to keep registers recording specified details of trust money invested for clients, of powers and estates for which it acts in relation to trust money, and of controlled money.

RESPONSIBILITIES AND LIABILITY OF PRINCIPALS

• If you are the principal of a law practice, you are responsible for ensuring the law practice and all legal practitioner associates of the law practice comply with their obligations under the Uniform Law and Uniform Rules.19 A contravention of the Uniform Law or Uniform Rules by the law practice may amount to unsatisfactory professional conduct or professional misconduct by the principal.20

TRANSITIONAL PROVISIONS

• The Uniform Law contains various transitional provisions regarding trust money and trust accounts:
  • trust accounts and other arrangements with deposit-taking institutions will continue (subject to the Uniform Law);
  • an external examiner approved before the commencement of the Uniform Law may continue, whether or not that person meets the requirements of the Uniform Law, until 30 June 2017; and
  • with some exceptions, whether an irregularity or deficiency in a trust account occurs on, after or before the Uniform Law commences, the requirements of the Uniform Law apply.

FOR MORE INFORMATION CONTACT:
LIV Legal Policy and Practice
E: lpul@liv.asn.au W: www.liv.asn.au/uniformlaw

DISCLAIMER: The information above is intended to be a general guide only. The information is not intended to constitute professional or legal advice, and you should rely on your own inquiries and assessment. The Law Institute of Victoria expressly disclaims any and all liability for any loss or damage arising from reliance upon any information in this document.

VERSION: 3 DATED: 2/7/2015