

External Intervention Procedures Manual

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THE LAW SOCIETY
OF NEW SOUTH WALES

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External Intervention – Legal Profession Uniform Law (NSW)

1. Types of External Intervention

The *Legal Profession Uniform Law (NSW)* No 16a (the “Act”) provides for three (3) types of external intervention:

- (1) Supervisors – sections 329 to 333 of the Act;
- (2) Managers – sections 334 to 340 of the Act;
- (3) Receivers – sections 341 to 355 of the Act.

The Act also provides for:-

- (1) Initiation of External Interventions – sections 326 to 328 of the Act;
- (2) General Conditions on Appointment – sections 356 to 367 of the Act.

The external intervention appointment may be made in relation to the law practice generally or may be limited in any way the Council of the Law Society of New South Wales (the “Law Society Council”), being the designated local regulatory authority for the purposes of the Act, considers appropriate, for example to matters connected with a particular legal practitioner associate or to matters connected with a particular office or a particular subject matter (section 328 of the Act).

2. General Reasons for External Intervention

Section 326 of the Act outlines general circumstances warranting external intervention.

The form of external intervention is a decision for the Law Society Council.

Section 327(1) of the Act provides that if the Law Society Council becomes aware that one or more of the circumstances mentioned in Section 326 exist and having regard to the interests of the clients, owners and employees of the law practice and to other matters that it considers appropriate, the Law Society Council may appoint a supervisor or manager or determine to initiate the appointment of a receiver.

The reasons for external intervention in relation to a law practice can be summarised as follows:

- (1) If a legal practitioner involved in the law practice has died, ceases to be an Australian legal practitioner, becomes an insolvent under administration or is imprisoned;
- (2) If a law firm or an unincorporated legal practice has been wound up or dissolved;
- (3) If an incorporated legal practice ceases to be incorporated, is being wound up or has been de-registered or dissolved;
- (4) If the Law Society Council believes that the law practice is:-
 - (a) not dealing adequately with trust money or is not properly attending to the affairs of the practice;

- (b) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the practice;
- (c) has failed to properly account in a timely way to any person for trust money received by the law practice for or on behalf of that person;
- (d) has failed to properly make a payment of trust money, or a transfer of trust property, when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer;
- (e) is in breach of the Uniform Rules with the result that the record-keeping for the law practice's trust account is inadequate;
- (f) has been or is likely to be convicted of an offence relating to trust money or trust property;
- (g) is the subject of an adverse finding in relation to a complaint relating to trust money or trust property received by the law practice;
- (h) has failed to comply with any requirement of an investigator or an external examiner under this Act;
- (i) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the law practice or for properly winding up the affairs of the law practice.

- (5) If the Law Society Council believes on reasonable grounds that any other proper cause exists in relation to the law practice which warrants external intervention.

3. Decision Regarding Type of External Intervention

The Law Society Council may appoint a supervisor or manager if it has considered the following and is of the opinion that:-

(1) Supervisor

- (a) External intervention is required because of issues relating to the law practice's trust accounts; and
- (b) That it is not appropriate that the provision of legal services by the law practice be wound up and terminated because of those issues.

(2) Manager

- (a) External intervention is required because of issues relating to the law practice's trust accounts; or
- (b) The appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
- (c) There is a need for an independent person to be appointed to take over professional and operational responsibility for the law practice.

The Law Society Council may determine to initiate the process of the appointment of a receiver if it is of the opinion:

(3) Receiver

- (a) The appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
- (b) It may be appropriate that the provision of legal services by the law practice be wound up and terminated.

Supervisors – Sections 329 to 333 of the Act

1. Appointment of Supervisor

The Law Society of New South Wales (“Law Society”) receives notification of a potential requirement for external intervention into a law practice.

The Licensing and Registry Division (“Registry”) of the Legal Regulation Department (“LRD”) checks the Law Society’s records about the law practice, including the number and identity of the principals, and whether there are any employed solicitors. Registry also checks whether, in the case of the death of a sole practitioner, there is a nominated personal representative.

The notification will then be reported to the Litigation and External Intervention Unit (“LEI Unit”) within the Professional Standards Division (“PSD”) of the LRD. Subject to the outcome of Registry’s enquiries, it may be necessary for the LEI Unit to make further enquiries and then to proceed to seek the initiation of an external intervention.

Where possible there should be telephone contact with the principal of the law practice (“principal”) notifying him/her of the intention to submit a report to the Law Society Council with a recommendation that a supervisor be appointed.

The procedure for initiating the appointment of a supervisor of trust money of a law practice entails the LEI Unit preparing a memorandum to the Law Society Council. In the memorandum, the LEI Unit recommends that the Law Society Council approves:

- (1) the appointment of a supervisor of trust money of the law practice;
- (2) the conditions applying to the appointment; and
- (3) a draft Notice of Appointment which complies with Rule 97(1) of the Uniform Rules.

The Law Society Council must appoint a person as supervisor who is:

- (a) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
- (b) a person holding accounting qualifications with experience in law practices’ trust accounts; and
- (c) who may, but need not be, an employee of the Law Society.

In circumstances in which an officer of the Law Society is appointed as supervisor, it may be useful to arrange for an assistant supervisor to be appointed in order to ensure that trust account transactions are able to be carried out promptly in the primary supervisor’s absence.

Rule 97(1) of the *Legal Profession Uniform General Rules* (“Uniform Rules”) provides that the instrument of appointment of a supervisor of trust money must:

- (a) identify the law practice and the supervisor of trust money of the law practice, and
- (b) indicate that the external intervention is by way of appointment of a supervisor of trust money of the law practice, and
- (c) specify the term of the appointment, and
- (d) specify any conditions imposed by the Law Society Council when the appointment is made, and
- (e) specify any fees payable by way of remuneration to the supervisor of trust money of the law practice specifically for carrying out the supervisor’s duties in relation to the external intervention, and
- (f) provide for the legal costs and the expenses that may be incurred by the supervisor of trust money of the law practice in relation to the external intervention.

Rule 97(2) of the Uniform Rules provides that the instrument of appointment may specify any reporting requirements to be observed by the supervisor of trust money of a law practice.

2. Notifications of Appointment of Supervisors of Trust Money

Once the Law Society Council has appointed a supervisor of trust money of a law practice the LEI Unit proceeds to notify the following parties (rule 98(1) Uniform Rules):

- (a) the law practice;
- (b) any other person authorised to operate any trust account of the law practice;
- (c) any external examiner appointed to examine the law practice’s trust records;
- (d) the ADI with which any trust account of the law practice is maintained;
- (e) any person whom the Law Society Council reasonably believes should be served with the notice

The following notifications should be made immediately by post and email to the above persons. This is the role of the regulatory authority. To ensure that service is effective pursuant to section 442 of the Uniform Law, the procedures set out below must be followed.

(1) Notification to the Supervisor(s)

A notice of appointment of supervisor is signed by the Director, Legal Regulation (“DLR”). The notice should be addressed to the individual appointed as supervisor.

The notice of appointment will be accompanied by a covering letter which also encloses a separate document setting out the reasons for the Law Society Council’s decision. Arrangements are made for the notice and reasons to be posted immediately, and where appropriate and possible emailed, to the supervisor.

Rule 98(2) of the Uniform Rules requires that the notice of appointment must:

- (a) identify the law practice and the supervisor; and
- (b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and
- (c) specify the term of the appointment; and
- (d) specify any reporting requirements to be observed by the supervisor;
- (e) specify any conditions imposed by the Law Society Council when the appointment is made; and
- (f) include a statement that the law practice may appeal against the appointment of the supervisor.

In circumstances in which an individual officer of the Law Society is appointed as supervisor the standard paragraph inserted into the appointment letter is as follows:

“The remuneration of the supervisor in connection with the time spent in the supervision of the trust account of the law practice shall be equal to the cost of his/her employment at the Law Society of New South Wales.”

Any costs or expenses incurred by a supervisor are payable by and recoverable from the law practice concerned pursuant to section 365 of the Uniform Law.

As for fees, legal costs and expenses, rule 103 of the Uniform Rules provides:

- (1) An external intervener must provide written reports in accordance with any reporting requirements as specified in the instrument of appointment –
 - (a) fees by way of remuneration, and
 - (b) the legal costs and the expenses incurred in relation to the external intervention.
- (2) An account of the external intervener for fees, costs and expenses may, on the application of the designated local regulatory authority, be taxed or assessed.

(2) Notification to the Law Practice

When the Law Society Council has resolved to appoint a supervisor of trust money as set out in the report submitted to it by the LEI Unit, the principal should be contacted by telephone to notify him/her of the Council’s decision and a letter is to be sent immediately to the principal notifying him/her of the resolutions made by the Law Society Council.

Arrangements are made for a letter to be provided forthwith to the principal.

The letter will also enclose the Notice of Appointment of Supervisor and a separate document comprising the reasons for the appointment. The reasons for the decision are set out in the memorandum to the Law Society Council.

Section 330(2) of the Act provides that after a person is served with a notice of appointment of the supervisor of trust money of the law practice and until the appointment is terminated, the person must not:

- (a) deal with any of the law practice's trust money; or
- (b) sign any cheque or other instrument drawn on a trust account of the law practice; or
- (c) authorise the withdrawal or transfer of funds from a trust account of the law practice.

In circumstances in which an individual officer of the Law Society is appointed as supervisor, the supervisor will send a letter to the law practice notifying the principal(s) of the practical issues that arise as a result of the appointment of the supervisor.

(3) Notification to the trust ADI – rule 98(1)(d) of the Uniform Rules

When the Law Society Council has resolved to appoint a supervisor of trust money as set out in the report submitted to it by the LEI Unit, a letter is to be sent immediately to the trust ADI (“authorised deposit-taking institution”) notifying of the resolutions of the Law Society Council and enclosing the Notice of Appointment (rule 98(1)(d) of the Uniform Rules).

The letter may be sent by email with the original and enclosures to follow by post. In some instances, it may be possible to deliver the letter to the trust ADI.

It is the responsibility of the designated local regulatory authority (the Law Society Council) to notify the ADI. In practice, the standard procedure has been for the supervisor to send this letter following his/her appointment.

Section 330(1) of the Act provides that after an ADI is given a copy of the notice of appointment of the supervisor of trust money of the law practice, and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the law practice unless the withdrawal or transfer is made:

- (a) by cheque or other instrument drawn on that account signed by the supervisor or a nominee of the supervisor; or
- (b) by the supervisor or a nominee of the supervisor by means of electronic or internet banking facilities; or
- (c) under an authority to withdraw or transfer funds from the account signed by the supervisor or a nominee of the supervisor.

Upon appointment, the supervisor is to send a letter to the ADI immediately notifying the ADI of the consequences of the appointment of a supervisor of trust money and the practical issues that arise upon the appointment of a supervisor.

The ADI is to be notified that one of the supervisor's roles is to take control of the trust money held by the law practice and receivable by the law practice during the term of the supervisor's appointment.

Trust money includes money held in the law practice's trust account, money held in any investment or controlled money account in the name of the law practice, or in the name of the principal(s) of the law practice.

This letter should, if necessary, request a current trust ADI statement to the date of appointment of the supervisor and request the ADI to re-direct ADI statements to the supervisor.

In practical terms, it may also be necessary for the supervisor to attend to the completion of any ADI requirements to be appointed as signatory to the law practice's trust account.

If the supervisor becomes aware that the legal practitioner associate is a signatory to a deemed trust bank account(s) in the name of his/her client or to any investment bank accounts the supervisor should inform the relevant ADI of the appointment of the supervisor.

(4) Notification to the external examiner - r98(1)(c) of the Uniform Rules

Any external examiner appointed to examine the law practice's trust accounting records must also be notified. This letter should notify the external examiner of the Law Society Council's resolutions and the consequences of the appointment of a supervisor. This letter should request that the external examiner provide any documents and information that the supervisor reasonably requires.

The external examiner is also requested to notify the supervisor if he/she is aware of any breaches of the Law or of the Uniform Rules which have not been previously reported to the Law Society or if he/she has any other concerns in relation to the manner in which the law practice has operated the trust account or dealt with trust money.

The letter should be delivered forthwith to the external examiner.

(5) Notification to signatories to the trust account - r98(1)(b) the Uniform Rules

There may be other persons, other than a principal, authorised to operate the trust account of the law practice. Other signatories to the trust account must also be notified immediately. This letter should notify the signatory(ies) of the Law Society Council's resolutions and the consequences of the appointment of a supervisor.

The letter should be delivered forthwith to the signatory(ies).

Section 330(2) of the Act provides that after a person is given a copy of the notice of appointment of the supervisor of trust money of the law practice and until the appointment is terminated, the person must not:

- (a) deal with any of the law practice's trust money; or
- (b) sign any cheque or other instrument drawn on a trust account of the law practice; or
- (c) authorise the withdrawal or transfer of funds from a trust account of the law practice.

(6) Internal notification of appointment

Upon appointment, an internal notification of appointment is signed by the DLR.

The Law Society provides the notification to a number of different persons and entities by way of email notifying them of the appointment of the supervisor of trust money of the law practice as per the table below:

Person/Entity	
The President, Law Society	Policy & Practice Department, Law Society
Chief Executive Officer, Law Society	Journal/Monday Briefs Editor, Law Society
General Counsel and Company Secretary, Law Society	Chief Librarian, Law Society
Director, Licensing and Registry Division (Legal Regulation Department), Law Society	NSW Legal Services Commissioner
Licensing and Registry Division (Legal Regulation Department), Law Society	Assistant Commissioner (Legal) OLSC
Chief Trust Account Investigator, Trust Accounts Division (Legal Regulation Department), Law Society	Lawcover
Manager Fidelity Fund (Legal Regulation Department), Law Society	IRO
Specialist Accreditation, Law Society	Legal Aid NSW
Community Referral Service (Membership & Engagement Department), Law Society	

3. Reporting Requirements

The supervisor is required to furnish the Law Society Council with a report in accordance with the requirements set out in the notice of appointment. A report is usually required one month after the commencement of the appointment and upon the expiry or termination of the appointment. Additional reports will be required at periodic intervals throughout the term of the appointment.

There are no formal requirements for the contents of the first report. Generally, however, the report would cover the initial engagement with the law practice and the first observations made about the state of the law practice's premises, staffing, matter numbers and the areas of law to which the matters mostly relate, the status of the trust account and trust records, and the general state of practice management. The report would also outline the arrangements proposed for carrying out the work the supervisor has identified as being required to be done.

4. Role and Functions of a Supervisor

Section 331(1) of the Act defines the role of the supervisor of trust money of a law practice as follows:

- (a) to receive trust money on behalf of the law practice; and
- (b) to open and close trust accounts.

The supervisor's role is to take control of the trust money held by the law practice and receivable by the law practice at the time of the appointment and during the term of the supervisor's appointment.

Section 331(2) of the Act sets out the supervisor's powers and functions, which essentially are to:

- (a) enter and remain on premises used by the law practice in connection with its engaging in legal practice;
- (b) require the law practice, or an associate, or former associate of the law practice, or another person who has or had control of files or documents relating to trust money received by the practice, to give the supervisor access to the documents and information relating to the trust money that the supervisor reasonably requires;
- (c) operate equipment or facilities on the premises, or require a person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the supervisor's appointment;
- (d) take possession of any relevant material and retain it for as long as may be necessary;
- (e) secure any relevant material found on the premises against interference, if the material cannot be conveniently removed; and
- (f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the supervisor's appointment.

According to Section 331(8) of the Act, if the supervisor reasonably requires access to premises to discharge their duty as supervisor and is refused access, or the premises are unoccupied, the supervisor may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.

In practical terms it may be necessary for the supervisor to do the following:

- (a) attend the solicitor's practice and conduct an interview with the solicitor;
- (b) balance and reconcile, if required, the trust account. If the legal practitioner did not maintain the trust account in a timely manner it may be necessary for the supervisor to complete the trust accounting records;
- (c) take possession of any relevant material (trust accounting records, client matter files and Safe Custody documents);
- (d) ensure cheques are only paid against the trust account which have the approval of the supervisor and to record the receipt of trust funds to the supervisor's trust records;
- (e) distribute trust ledger balances in accordance with a direction given by the person on whose behalf it was received;
- (f) maintain trust accounting records;
- (g) maintain records of the supervisor's work.

It is important to assess each appointment of a supervisor on an individual basis to determine whether the abovementioned tasks are required. The type of records and the manner in which they are maintained, either in manual or electronic form, will vary according to the assessment made of the law practice in each particular case.

(1) Interview with the Solicitor

As soon as possible after the appointment is made by the Law Society Council, the supervisor should attend at the premises of the law practice.

The purpose of the interview is to:

- (a) explain the procedures of cheque authorisations and EFT payments;
- (b) ascertain whether there are any current client matters in relation to which it may be necessary for a trust account cheque to be issued or an EFT payment to be made within the next few days;
- (c) balance and reconcile the trust account;
- (d) review any unpresented cheques to determine if they should be presented;
- (e) collect any relevant material; and
- (f) liaise with relevant trust bank branches for the addition of the new trust cheque signatories and the new procedures for authorising trust cheques and EFT payments.

(2) Balance and Reconcile the Trust Account

The trust account must be reconciled to determine that all trust money is accounted for. Unpresented cheques must be investigated so that payment on presentation may be confirmed or otherwise. The first notification of appointment would have placed the trust ADI on notice that all payments through the trust account are to be authorised by the supervisor.

The supervisor should photocopy any relevant trust accounting records, such as the last monthly reconciliation prepared by the law practice and the most recent cash-book entries. The supervisor should reconcile the trust account to the date of the appointment as supervisor. Copies of the law practice's most recent trust accounting records and last prepared trust reconciliation should be retained and filed in a trust accounting folder in the name of the law practice.

If the legal practitioner did not maintain the trust account in a timely manner it may be necessary for the supervisor to complete the trust accounting records and reconcile the trust account to the date of the appointment as supervisor. Hence, if it is necessary to reconstruct or reconcile the law practice's trust accounting records prior to the date of appointment it is important to record in a memorandum to the file:

- (a) the date of the appointment;
- (b) the date from which the trust accounting records have been reconstructed;
- (c) the date that the reconstruction was prepared; and
- (d) the reasons for the reconstruction.

As soon as practicable, the law practice's last prepared reconciled trust ledger balances should be input into the computerised trust accounting system used by the supervisor. Take-up trust ledger balances will be posted to new client trust ledger accounts which will be created in the supervisor's trust accounting system under the name of the law practice.

(3) Take Possession of Relevant Material

The supervisor should do a current reconciliation of the trust bank account and take possession of the following trust accounting records where applicable:

- (a) copy of the last prepared trust reconciliation (including the trust bank reconciliation, cashbook reconciliation and trust trial balance);
- (b) copy of current trust cash-book (if relevant);
- (c) copy of the current trust trial balance;
- (d) copy of the current trust bank statement;
- (e) copies of current trust account ledgers;
- (f) copies of current investment ledgers, controlled money account and any investment bank account statements;
- (g) information in relation to unpresented trust cheques;

- (h) where possible copies of the general ledger accounts/debtors' ledgers should be collected in relation to the current trust ledger balances.

Any documents, accounting records and client files which the supervisor takes possession of should be catalogued. If the supervisor takes anything from the premises, the supervisor must issue a receipt in the approved format, and:

- (a) if the occupier of the premises is present, or a person apparently responsible to the occupier of the premises is present, give the receipt to the occupier or person; or
- (b) otherwise, leave the receipt at the premises in an envelope addressed to the occupier (s331(3) of the Act).

(4) Trust Cheque Approvals/EFT Transaction Approvals & Trust Receipts

It will be necessary for the supervisor to liaise with the trust ADI to establish procedures to ensure that cheques are paid against the trust account and EFT payments related to the trust account are made only with the approval of the supervisor. As indicated in "Notifications to the trust ADI(s)", the trust ADI has been informed that the supervisors are the only persons who can withdraw money from any trust accounts of the law practice.

Trust money includes money held in the law practice's trust account and money held in any investment or controlled money account in the name of the law practice, or the principal of the law practice, and money held in a power money account.

The supervisor will generally take possession of the trust cheque book and obtain details of the user id and password for on-line transactions. The law practice will inform the supervisor in writing of any requests for trust disbursements. Requests from the law practice for trust cheque approvals and EFT payments would generally contain the following details:

- (a) trust cheque details including the date of issue, payee, cheque number, amount of the cheque or name of payee and amount for an EFT payment;
- (b) supporting documentation (e.g. settlement statement, Contract, Will, trust account authority etc).

A "Cheque Approval Folder"/"EFT Transaction Folder" would generally be established in the name of the law practice into which correspondence related to the approval of trust cheques and EFT payments and information from the law practice in relation to trust receipts would be filed.

The supervisor, upon being satisfied that the trust payment is valid, would authorise for the trust account cheque to be presented or for the EFT transaction to proceed.

(5) Maintain trust accounting records

Pursuant to Section 332 of the Act, the supervisor is to keep records of the supervisor's dealings with trust money. The records must be kept –

- (a) separately from records relating to dealings with trust money before the appointment of the supervisor; and
- (b) separately from the affairs of any other law practice in relation to the trust account of which the supervisor has also been appointed supervisor; and

(c) in a manner specified by the Uniform Rules.

Any transactions through the trust account after the appointment date will be authorised by a supervisor and will be written up in records maintained by the supervisor. Trust accounting records and the monthly trust reconciliations, such as the trust trial balance, trust bank reconciliation and the trust cash-book, will be retained in a folder under the name of the law practice called “Trust Accounting Records”.

Section 332(2) of the Act requires that a supervisor of the trust money of a law practice must deal with the trust money in the same way as a law practice must deal with trust money.

(6) Maintain Supervisor Records

All correspondence which the supervisor sends in relation to the appointment of the supervisor, should be copied and filed in a file maintained by the supervisor.

The supervisor should also make a record of all telephone calls.

A supervisor should open and maintain a file in the name of the law practice in which a series of folders are created as set out below:

(i) Cheque Approval Folder/EFT Transaction Approval Folder

Generally for ongoing law practices, it would be necessary to establish a cheque approval folder/EFT transaction approval folder in which all correspondence to and from the law practice and the trust ADI in relation to the approval of trust cheque payments and EFT transactions would be filed.

(ii) Disbursement of trust ledger balances folder

Generally where the law practice is no longer ongoing, it may be necessary for the supervisor to disburse balances held in the law practice’s trust account to the persons entitled to the funds.

It is necessary to establish a folder in which each client trust ledger matter would generally have a separate tab divider. It may be necessary to file the following documents in this folder:

- i. the law practice’s trust ledger print-out for the client matter;
- ii. the current trust ledger printout for the client matter;
- iii. supporting documentation (e.g. settlement statement, Contract, Will, trust account authority, relevant excerpts from the client file, the law practice’s bill etc);
- iv. a memorandum signed by the supervisor, after reviewing the client file and relevant documents, with the recommendation as to who is entitled to the balance of funds held in trust;
- v. correspondence to the law practice, the client or other relevant parties related to the distribution of the trust monies.

(iii) Safe Custody and Client Matter File folders

If the solicitor is not continuing in practice, it will be necessary to make arrangements to deal with any safe custody and client matter file folders. The solicitor should be informed it is their responsibility to do this either by obtaining secure file storage facilities on an ongoing basis (and notifying Registry), or arranging for another law practice to take custody of the files and safe custody documents (and again notifying Registry). In exceptional cases, it may be necessary to consider appointing a Manager to make these arrangements.

(iv) Trust Accounting Folder

A trust accounting folder should be maintained in which relevant trust accounting records should be filed.

Examples of trust accounting records which are required to be retained in the “Trust Accounting Records” folder are as follows:

- i. a copy of the law practice’s last prepared trust reconciliation and other relevant trust accounting records;
- ii. file memoranda regarding the reconstruction or posting of the trust accounting data onto the supervisor’s trust accounting system for the law practice;
- iii. monthly trust account bank reconciliations;
- iv. monthly trust account trial balances;
- v. monthly trust cash-books;
- vi. trust account receipts;
- vii. trust account deposit slips;
- viii. trust account cheques (if applicable);
- ix. EFT transaction records;
- x. trust account bank statements;
- xi. trust account journals (if applicable);
- xii. investment records, controlled money account ledgers, bank statements and reconciliations (if applicable).

(7) Appointment of new external examiner

Where a new external examiner is appointed, the supervisor should notify the Law Society’s Trust Accounts Division of the LRD (“TAD”) of the appointment.

5. Re-Appointment of Supervisor

Approximately five weeks prior to the recorded expiry date for an appointment of supervisor of trust money, the LEI Unit will contact the supervisor to ascertain whether an extension of the appointment is required.

Should re-appointment be required, the LEI Unit will prepare a report for the Law Society Council or the Director, Legal Regulation recommending approval of an extension of the appointment.

6. Termination of Appointment of Supervisor

Section 333(1) of the Act provides that the appointment of supervisor of trust money of a law practice terminates in the following circumstances:

- (a) the term of the appointment comes to an end;
 - (b) the appointment is set aside under section 358;
 - (c) the appointment of a manager for the law practice takes effect;
 - (d) the appointment of a receiver for the law practice takes effect;
 - (e) the supervisor has distributed all trust money received by the law practice and wound up all trust accounts;
 - (f) a determination of the designated local regulatory authority that the appointment be terminated has taken effect.
- (2) The designated local regulatory authority may determine in writing that the appointment be terminated immediately or with effect from a specified date.
 - (3) The designated local regulatory authority must serve a written notice of the termination on all persons originally served with notice of the appointment.

Managers

1. Appointment of Manager

The Law Society receives notification of a potential requirement for external intervention into a law practice.

The Registry checks the Law Society's records about the law practice, including the number and identity of the principals, and whether there are any employed solicitors. Registry also checks whether, in the case of the death of a sole practitioner, there is a nominated personal representative.

The notification will then be reported to the LEI Unit within the PSD of the LRD. Subject to the outcome of Registry's enquiries, it may be necessary for the LEI Unit to make further enquiries and then to proceed to seek the initiation of an external intervention.

Where possible there should be telephone contact with the principal of the law practice ("principal") informing him/her of the intention to submit a report to the Law Society Council with a recommendation that a manager be appointed.

In cases involving death, abandonment or incapacity of the Principal, the Law Society's preference in the following order is:

- (1) To identify another person within the practice to be appointed as Principal, with agreement of the former Principal's family or estate;
- (2) To identify another practitioner, outside of the practice, to be appointed as Principal, with agreement of the former Principal's family or estate;
- (3) To identify a person in the local area to be appointed as Manager, with the costs to be determined in a costs agreement between the appointed Manager and the family or estate of the former Principal;
- (4) to appoint individual officers (or contractors) of the Law Society as managers, with costs to be recovered from the Law Practice (or the estate or family of the Principal).

The procedure for initiating the appointment of a manager to a law practice entails the LEI Unit preparing a memorandum to the Law Society Council. In the memorandum, the LEI Unit recommends that the Law Society Council approves:

- (1) the appointment of a manager to the law practice;
- (2) the conditions applying to the appointment; and
- (3) a draft Notice of Appointment which complies with Rule 99(1) of the Uniform Rules.

Rule 99(1) of the Uniform Rules provides that the instrument of appointment of a manager for a law practice must:

- (a) identify the law practice and the manager, and
- (b) indicate that the external intervention is by way of appointment of a manager, and

- (c) specify the term of the appointment, and
- (d) specify any conditions imposed by the Law Society Council when the appointment is made, and
- (e) specify any fees payable by way of remuneration to the manager specifically for carrying out the manager's duties in relation to the external intervention, and
- (f) provide for the legal costs and the expenses that may be incurred by the manager in relation to the external intervention.

Rule 99(2) of the Uniform Rules provides that the instrument of appointment may specify any reporting requirements to be observed by the manager.

2. Notifications of Appointment of Manager

Once the Law Society Council has appointed a manager to the law practice, the LEI Unit proceeds to notify the following parties (rule 100 Uniform Rules):

- (a) the law practice;
- (b) the trust account ADI;
- (c) any external examiner of the trust account;
- (d) any signatories or joint signatories to the trust account;
- (e) any person whom the Law Society believes should be served with the notice.

The following notifications should be made immediately by post and email to the above persons. This is the role of the regulatory authority. To ensure that service is effective pursuant to section 442 of the Uniform Law, the procedures set out below must be followed.

(1) Notification to the Manager

A notice of appointment of manager is signed by the DLR. The notice should be addressed to the individual appointed as manager.

The notice of appointment will be accompanied by a covering letter addressed to the manager and enclose a separate document comprising the reasons for the Law Society Council's decision.

The notification to the manager must comply with rule 100(2) of the Uniform Rules which requires that the notice of appointment:

- (a) identify the law practice and the manager; and
- (b) indicate that the external intervention is by way of appointment of a manager; and
- (c) specify the term of the appointment; and
- (d) specify any reporting requirements to be observed by the manager, and
- (e) specify any conditions imposed by the Law Society Council when the appointment is made, and

- (f) include a statement that the law practice may appeal against the appointment of the manager under the Uniform Law.

In circumstances in which an individual officer of the Law Society is appointed as manager the standard paragraph inserted into the appointment letter is as follows:

“The remuneration of the manager in connection with the time spent as manager of the law practice shall be equal to his/her remuneration at the Law Society.”

As to fees, legal costs and expenses, rule 103 of the Uniform Rules provides –

- (1) An external intervener must provide written reports in accordance with any reporting requirements as specified in the instrument of appointment:
- (a) fees by way of remuneration, and
 - (b) the legal costs and the expenses incurred in relation to the external intervention.
- (2) An account of the external intervener for fees, costs and expenses may, on the application of the designated local regulatory authority, be taxed or assessed.

(2) Notification to the Law Practice

When the Law Society Council has resolved to appoint a manager as set out in the report the LEI Unit submitted to it, the principal should be contacted by telephone to notify him/her of the Law Society Council’s decision and the principal is to be served immediately with a letter enclosing a copy of the notice and a copy of the reasons for the Council’s decision by:

- (a) delivering it personally to the principal of the law practice; or
- (b) sending it by post to the law practice at its usual or last known business address; or
- (c) leaving it at the practice’s usual or last known business address with a person on the premises who is apparently at least 16 years of age and apparently employed there (s442(2) of the Act).

The notice may also be served on, or given to, an incorporated legal practice in any other way that service of documents may be effected on a corporation (s442(3) of the Act).

Section 335(1) of the Act provides that after a law practice is served with a notice of appointment of the manager for the law practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or referred to in the notice must not participate in the affairs of the practice except under the direct supervision of the manager.

In circumstances in which an individual officer of the Law Society is appointed as manager the manager will send a letter to the law practice notifying the principal(s) of the practical issues that arise as a result of the appointment of the manager.

(3) Notification to the trust ADI

When the Law Society Council has resolved to appoint a manager to a law practice which handles trust monies, a letter is to be sent immediately to the trust ADI (“authorised deposit-taking institution”) notifying of the resolutions of the Law Society Council and enclosing the notice of appointment (rule 100(1)(d) of the Uniform Rules).

The letter should be sent forthwith to the ADI. The letter may be sent by email with the original plus enclosures to follow by post. In some instances it may be possible to deliver the letter to the trust ADI.

It is the responsibility of the Law Society Council to notify the ADI. The standard procedure has been for the manager to send this letter following his/her appointment.

Section 335(2) of the Act provides that after an ADI is given a copy of the notice of appointment of the manager for the law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the law practice unless the withdrawal or transfer is made:

- (a) by cheque or other instrument drawn on that account signed by the manager, a receiver appointed for the law practice or a nominee of the manager or the receiver; or
- (b) by the manager or a receiver appointed for the law practice or a nominee of the manager or receiver by means of electronic or internet banking facilities; or
- (c) under an authority to withdraw or transfer funds from the account signed by the manager, a receiver appointed for the law practice or a nominee of the manager or receiver.

Upon appointment, the manager is to send a letter to the ADI immediately notifying the ADI of the consequences of the appointment of a manager to trust moneys and the practical issues that arise upon the appointment of a manager.

The manager is to notify the ADI that one of the manager’s roles is to take control of the trust money held by the law practice and receivable by the law practice during the term of the manager’s appointment.

Trust money includes money held in the law practice’s trust account, money held in any investment or controlled money account in the name of the law practice, or the principal of the law practice, and any trust money held in a power money account.

This letter should, if necessary, request a current trust ADI statement to the date of appointment of the manager and request the ADI to re-direct ADI statements to the manager.

In practical terms, it may also be necessary for the manager to attend to the completion of any ADI requirements to be appointed as signatory to the law practice’s trust account.

If the manager becomes aware that the legal practitioner associate is a signatory to a deemed trust bank account(s) in the name of his/her client or investment bank accounts the manager should inform the relevant ADI of the appointment of the manager.

(4) Notification to the external examiner

Any external examiner appointed to examine the practice's trust accounting records must also be notified (rule 100(1)(c) of the Uniform Rules). This letter should notify the external examiner of the Law Society Council's resolutions and the consequences of the appointment of a manager.

This letter should request that the external examiner provide any documents and information which the manager reasonably requires.

The external examiner is also requested to indicate if he/she is aware of any breaches of the Law or of the Uniform Rules that have not been previously reported to the Law Society or if he/she has any other concerns in relation to the manner in which the law practice has operated the trust account or dealt with trust money.

The letter should be delivered forthwith to the external examiner.

(5) Notification to signatories to the trust account

There may be other persons, other than a principal, authorised to operate the trust account of the practice. Other signatories to the trust account must also be notified immediately (100(1)(b) of the Uniform Rules). This letter should notify the signatory(ies) of the Council's resolutions and the consequences of the appointment of a manager.

The letter should be delivered forthwith to the signatory(ies).

Section 335(2) of the Act provides that after a person is given a copy of the notice of appointment of the manager for the law practice and until the appointment is terminated, the person must not:

- (a) deal with any of the law practice's trust money; or
- (b) sign any cheque or other instrument drawn on a trust account of the law practice; or
- (c) authorise the withdrawal or transfer of funds from a trust account of the law practice.

(6) Internal notification of appointment

Upon appointment, an internal notification of appointment is signed by the DLR.

The Law Society provides the notification to a number of different persons and entities by way of email notifying them of the appointment of the manager to the law practice as per the table below:

Person/Entity	
The President, Law Society	Policy & Practice Department, Law Society
Chief Executive Officer, Law Society	Journal/Monday Briefs Editor, Law Society
General Counsel and Company Secretary, Law Society	Chief Librarian, Law Society
Director, Licensing and Registry Division (Legal Regulation Department), Law Society	NSW Legal Services Commissioner
Licensing and Registry Division (Legal Regulation Department), Law Society	Assistant Commissioner (Legal) OLSC
Chief Trust Account Investigator, Trust Accounts Division (Legal Regulation Department), Law Society	Lawcover
Manager Fidelity Fund (Legal Regulation Department), Law Society	IRO
Specialist Accreditation, Law Society	Legal Aid NSW
Community Referral Service (Membership & Engagement Department), Law Society	

3. Reporting Requirements

The manager is required to furnish the Law Society Council with a report in accordance with the requirements set out in the notice of appointment. A report is usually required one month after the commencement of the appointment and upon the expiry or termination of the appointment. Additional reports will also be required at periodic intervals throughout the term of the appointment.

There are no formal requirements for the contents of the first report. Generally, however, the report would cover the initial engagement with the law practice and the first observations made about the state of the law practice's premises, staffing, matter numbers and the areas of law to which the matters mostly relate, the status of the trust account and trust records, and the general state of practice management. The report would also outline the arrangements proposed for carrying out the work the manager has identified as being required to be done.

4. Role and Functions of a Manager

A manager for a law practice may carry on the law practice and do all things that the law practice or a legal practitioner associate of the law practice might lawfully have done.

Section 336(1) of the Act defines the role of the Manager for a law practice as, but not limited to:

- (a) transacting any business of the law practice that the manager reasonably believes to be urgent;
- (b) transacting, with the approval of any or all of the existing clients of the law practice, any business on their behalf, including—
 - (i) commencing, continuing, defending or settling any proceedings; and
 - (ii) receiving, retaining and disposing of property;
- (c) accepting instructions from new clients and transacting any business on their behalf, including—
 - (i) commencing, continuing, defending or settling any proceedings; and
 - (ii) receiving, retaining and disposing of regulated property;
- (d) charging and recovering legal costs, including legal costs for work in progress at the time of the appointment of the manager;
- (e) entering into, executing or performing any agreement;
- (f) dealing with trust money or trust property;
- (g) winding up the affairs of the law practice.

Section 336(2) of the Act sets out the Manager's powers, which essentially are:

- (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
- (b) to require the law practice, an associate or former associate of the law practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the law practice) to give the manager either or both of the following—
 - (i) access to the files and documents the manager reasonably requires;
 - (ii) information relating to client matters the manager reasonably requires;
- (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
- (d) to take possession of any relevant material and retain it for as long as may be necessary;

- (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
- (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.

Section 336(4) of the Act provides that the manager may enter and remain on premises only

- (a) during normal business hours; or
- (b) during other hours with the consent of the occupier of the premises.

According to section 336(6) of the Act, if the manager reasonably requires access to premises to discharge their duty as manager and is refused access, or the premises are unoccupied, the manager may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the police force to assist entry.

In practical terms it may be necessary for the manager to do the following:

- (a) attend the premises of the solicitor's law practice and conduct an interview with the solicitor, or where the appointment follows the death of a solicitor, the legal personal representative of the deceased solicitor;
- (b) attend to any urgent issues that have arisen in connection with matters handled by the law practice which may include the settlement of conveyancing matters due for completion or appearing or arranging an appropriately qualified person to appear in any matters listed before any Court or Tribunal;
- (c) where the premises of the law practice are leased, liaise with the lessor of the premises regarding the terms of ongoing occupation of the premises;
- (d) a manager for a law practice may carry on the law practice and may do all things that the law practice or a legal practitioner associate of the law practice might lawfully have done;
- (e) notify clients of the law practice of the appointment and the effect of the appointment and provide assistance to the clients to engage alternative legal representation for the ongoing conduct of their matters;
- (f) notify employees of the law practice of the appointment and the effect of the appointment and inform the employees of what arrangements will follow depending on the outcome of the interview with the solicitor or, where the appointment follows upon the death of a solicitor, the legal personal representative of the deceased solicitor;
- (g) balance and reconcile, if required, the trust account. If the legal practitioner did not maintain the trust account records in a timely manner it may be necessary for the manager to complete the trust accounting records;
- (h) take possession of any relevant material (trust accounting records, client matter files and Safe Custody documents);
- (i) ensure cheques are paid against the trust account or EFT transactions involving the trust account are made only when there is approval from the manager and to record the receipt of trust funds to the manager's trust records;

- (j) distribute trust ledger balances to entitled beneficiaries;
- (k) maintain trust accounting records;
- (l) maintain manager records;
- (m) appointment of new external examiner.

It is important to assess the appointment of each manager on an individual basis to determine whether the abovementioned tasks are required. The type of files and records and the manner in which they are maintained either in manual or electronic form will vary according to the assessment the manager makes of the law practice in each particular case.

(1) Interview with the Solicitor

The legal practitioner associate will usually be aware of the proposal to appoint a manager for the law practice. As soon as possible after the appointment the appointed manager should attend at the premises of the law practice.

Where the law practice is **ongoing**, the purpose of the interview is to:

- (a) explain the procedures of the managership;
- (b) ascertain whether there are any current client matters which may require attendances within the next few days;
- (c) balance and reconcile the trust account, if a trust account was maintained by the law practice;
- (d) collect any relevant material; and
- (e) where appropriate, liaise with relevant trust account bank branches for the addition of the new trust cheque signatories and the new procedures for authorising trust cheques or EFT payments.

(2) Balance and Reconcile the Trust Account.

If the law practice conducted a trust account, the trust account must be reconciled:

- (1) to determine that all trust money is accounted for; and
- (2) to investigate unrepresented cheques so that payment on presentation may be confirmed or otherwise.

By means of the first notification, the trust ADI would have been notified that a stop is to be placed on the trust account and all payments through the trust account are to be authorised by the Manager.

The manager should photocopy any relevant trust accounting records, such as the last monthly reconciliation prepared by the law practice and the most recent cash-book entries, and reconcile the trust account to the date of the appointment as manager. Copies of the law practice's most recent trust accounting records and last prepared trust reconciliation should be retained and filed in a trust accounting folder in the name of the law practice.

If the legal practitioner did not maintain the trust account it may be necessary for the manager to complete the trust accounting records and reconcile the trust account to the date of the appointment as manager.

If it is necessary to reconstruct or reconcile the law practice's trust accounting records prior to the date of appointment it is important to record in a memorandum to the file the date of the appointment, the date from which the trust accounting records have been reconstructed, the date that the reconstruction was prepared, and the reasons for the reconstruction.

As soon as practicable, the law practice's last prepared reconciled trust ledger balances should be input into a computerised trust accounting system used by the manager. Take-up trust ledger balances will be posted to new client trust ledger accounts which will be created in the manager's trust accounting system under the name of the law practice.

(3) Take Possession of Files and other Relevant Material

The manager should do a current reconciliation of the trust bank account and take possession of the following trust accounting records where applicable:

- (a) unbanked trust monies on hand;
- (b) trust receipt books (current, used and unused);
- (c) trust cheque books (current, used and unused);
- (d) trust deposit books (current, used and unused);
- (e) details of user id and password for on-line transactions;
- (f) trust bank statements (for the last 7 years);
- (g) trust account reconciliations (trust bank, cash-book and trust trial balances for the last 7 years);
- (h) trust account ledgers (current and closed/archived);
- (i) trust account cash-books (for the last 7 years);
- (j) investment records and controlled money account records;
- (k) information in regard to unpresented trust cheques;
- (l) letter of Credit – evidence of funds held in the Statutory Deposit Account;
- (m) all client files in relation to which there is a current trust ledger balance;
- (n) all current client matter files which may need to be referred to another solicitor;
- (o) Safe Custody documents;
- (p) Office of State Revenue returns where the law practice is a self-assessor;
- (q) where possible, copies of the general ledger accounts/ debtors' ledgers should be collected in relation to the current trust ledger balances.

- (r) Any documents, accounting records and client matter files which the manager takes possession of should be catalogued. Section 336(3) of the Uniform Law provides that if the manager takes anything from the premises, the manager must issue a receipt in the approved format, and:
- (a) if the occupier of the premises is present, or a person apparently responsible to the occupier of the premises is present, give the receipt to the occupier or person; or
 - (b) otherwise, leave the receipt at the premises in an envelope addressed to the occupier.

(4) Trust Cheques/EFT Transactions & Trust Receipts

It will be necessary for the manager to liaise with the trust ADI to establish procedures to ensure that only cheques or EFT transactions which have the approval of the manager are paid against the trust account. As indicated in the “Notifications to the trust ADI(s)”, the trust ADI has been informed that the manager is the only person who can withdraw money from any trust accounts of the law practice. In short, the manager will take possession of the trust cheque book and details of the user id and password for on-line transactions and will draw cheques or make on-line transactions as needed.

Trust money includes money held in the law practice’s trust account and money held in any investment or controlled money account in the name of the law practice, or the principal of the law practice and money held in a power money account.

A “Cheque Approval Folder”/“EFT Transaction Folder” should generally be established in the name of the law practice into which correspondence related to the approval of trust cheques and EFT transactions and advices from the law practice in relation to trust receipts may be filed.

(5) Disbursement of Trust Ledger Balances

It will be necessary for the manager to disburse balances held in the law practice’s trust account to the persons entitled to those monies. Client files, relevant documents and accounting records may require review to determine who is entitled to the funds held in trust. It is important in these instances to ensure that the client matter files, in relation to which there are trust ledgers with balances in the law practice’s trust account, are located and obtained from the law practice.

When considering who is entitled to the trust moneys, the question of any costs and outlays outstanding to the law practice should be kept in mind, including making a note of any bill of costs and outlays on the file. Wherever possible, the manager should ask the legal practitioner associate about any costs and outlays owing to him/her prior to accounting for any moneys in the trust account.

Where there are outstanding costs due to the law practice, the legal practitioner should be asked if a lien is claimed over regulated property regarding those costs and, if appropriate, the procedures set out in section 339 of the Act are to be followed.

The trust account cheque book and details of the user id and password for on-line transactions will be held by the manager. It is recommended that a record be established in the name of the law practice called “Distribution of Client Trust Ledger Balances” or similar name with an index and tab system whereby each tab contains all correspondence and related documents for each client trust ledger matter. Examples of correspondence and related documents which may be required to be retained are as follows:

- (a) the law practice's trust ledger or ledger for the client matter;
- (b) the manager's current (follow-on) trust ledger for the client matter;
- (c) supporting documentation (for example, settlement statement, Contract, Will, trust account authority, relevant excerpts from the client file, the law practice's bill et cetera);
- (d) correspondence to the law practice, the client or other relevant parties related to the distribution of these trust monies.

The manager, after being satisfied that the trust payment is valid, is to sign the trust account cheque and make a note on the trust account cheque butt or approve an on-line EFT transaction as required. It may be prudent, if a stop has been placed on the trust account, to send a cheque approval letter or written approval of an on-line transaction to the trust ADI.

(6) Maintain trust accounting records

Pursuant to section 337 of the Act the manager is to keep records of the manager's dealings with trust money. The records must be kept:

- (a) separately from records relating to dealings with trust money before the appointment of the manager;
- (b) separately from the affairs of any other law practice to which the manager has been appointed manager; and
- (c) in a way prescribed in the Uniform Rules.

Any transactions through the trust account after the appointment date are required to be authorised by the manager and must be written up in the records maintained by the manager.

Trust accounting records and the monthly trust reconciliations, such as the trust trial balance, trust bank reconciliation and the trust cash-book, must be retained in a folder called "Trust Accounting Records" which is created in a file under the name of the law practice.

(7) Maintain Manager Records

All correspondence which the Law Society or manager send about the appointment of the manager should be copied and filed, as appropriate, in one of the following files:

- (a) Distribution of trust ledger balances folder – only if the law practice is not trading;
- (b) Safe Custody & Client Matter File Folder – only if the law practice is not trading;
- (c) Trust Accounting Folder.

The manager should also make a record of all telephone calls.

A manager should open and maintain a file in the name of the law practice in which a series of folders are created as set out below:

(a) Cheque approval folder/EFT transaction folder

Generally, for ongoing law practices it would be necessary to establish a cheque approval folder and an EFT approval folder into which all correspondence to and from the law practice and the trust ADI in relation to the approval of trust cheque payments and EFT payments would be filed.

(b) Disbursement of trust ledger balances folder

Generally, where the law practice is no longer ongoing it may be necessary for the manager to disburse balances held in the law practice's trust account to the persons entitled to the funds.

It is necessary to establish a folder and each client trust ledger matter would generally have a separate tab divider.

It may be necessary to file the following documents in this folder:

- i. the law practice's trust ledger print-out for the client matter;
- ii. the manager's current trust ledger print-out for the client matter;
- iii. supporting documentation (e.g. settlement statement, Contract, Will, trust account authority, relevant excerpts from the client matter file, the law practice's bill etc);
- iv. a memorandum signed by the manager, after reviewing the client matter file and relevant documents, with a recommendation as to who is entitled to the balance of funds held in trust;
- v. correspondence to the law practice, the client or other relevant parties related to the distribution of these trust monies.

(c) Safe Custody & Client Matter File folder

Generally, where the law practice is no longer ongoing it may be necessary to return Safe Custody documents and/or client matter files to clients or to alternative law practices nominated by the clients. All correspondence related to the delivery of Safe Custody documents and/or client matter files should be filed in this folder.

Contacts should be updated for any returned correspondence where the "addressee is not at that address" and the returned letter should be filed with the returned envelope in this correspondence folder.

A spreadsheet of all the Safe Custody Documents should be created and saved as an Excel document. Clear records should be made of the dates and parties to whom Safe Custody documents are distributed. The manager is required to email a copy of the spreadsheet to the Law Society.

(d) Trust Accounting Folder

Where appropriate, a trust accounting folder should be maintained in which relevant trust accounting records are filed.

Examples of trust accounting records which are required to be retained in the “Trust Accounting Records” folder are as follows:

- i. a copy of the law practice’s last prepared trust reconciliation and other relevant trust accounting records;
- ii. file memoranda regarding the reconstruction or posting of the trust accounting data into the manager’s trust accounting system for the law practice;
- iii. monthly trust account bank reconciliations;
- iv. monthly trust account trial balances;
- v. monthly trust cash-books;
- vi. trust account receipts;
- vii. trust account deposit slips;
- viii. trust account cheques (if applicable);
- ix. EFT transaction records;
- x. trust account bank statements;
- xi. trust account journals (if applicable);
- xii. investment ledgers, control account, bank statements and reconciliations (if applicable).

(8) Appointment of new external examiner

Where a new external examiner is appointed, the manager should notify the Law Society’s TAD of the appointment.

(9) Re-direction of email, email access, and website

Depending upon the particular circumstances pertaining to each law practice, it may also be necessary for the manager to attend to the following:

- i. arrange for the re-direction of the law practice’s mail;
- ii. arrange for access to the emails of the law practice; and
- iii. arrange for the law practice’s website to be shut down or updated so as to report the appointment of the manager and to provide contact details.

5. Re-Appointment of Manager

Approximately five weeks prior to the recorded expiry date for an appointment of a manager, the LEI Unit will contact the manager to ascertain whether an extension of the appointment is required.

Should re-appointment be required, the LEI Unit will arrange for approval to be sought from the Law Society Council or the Director, Legal Regulation as delegate.

6. Termination of Appointment of Manager

Section 340 of the Act provides as follows:

- (1) The appointment of a manager for a law practice terminates in the following circumstances-
 - (a) the term of the appointment comes to an end;
 - (b) the appointment is set aside under section 358;
 - (c) the appointment of a receiver for the law practice takes effect, where the terms of appointment indicate that the receiver is authorised to exercise the powers and other functions of a manager;
 - (d) the manager has wound up the affairs of the law practice;
 - (e) a determination of the designated local regulatory authority that the appointment be terminated has taken effect.
- (2) The designated local regulatory authority may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) If the appointment terminates in the circumstances referred to in subsection (1)(a), (c) or (e) the former manager must, as soon as practicable after the termination, transfer and deliver the regulated property and client files of the law practice to
 - (a) another external intervener appointed for the law practice; or
 - (b) the law practice, if another external intervener is not appointed for the law practice.
- (5) The designated local regulatory authority must serve a written notice of the termination on all persons originally served with notice of the appointment.
- (6) Upon termination of the appointment, the local regulatory authority must serve a written notice of the termination on all persons originally served with notice of the appointment.

Final report

Where a manager's appointment has been terminated, the manager is required, under the terms of his/her appointment, to submit a final report.

If the manager has wound up or closed the law practice, the final report should cover the following issues:

- (a) the status of the trust account and of any trust money;
- (b) the status of any client matters which were current upon the commencement of the managership;
- (c) the location of the closed and archived files of the law practice;
- (d) the location of the safe custody packets (if any) of the law practice.

If the law practice has been sold, the manager should also provide details of the name and contact details of the new owner in the final report.

Receivers

1. Appointment of Receiver (section 341 of the Act)

The Law Society receives notification of a potential requirement for external intervention into a law practice.

The Registry checks the Law Society's records about the law practice, including the number and identity of the principals, and whether there are any employed solicitors. Registry also checks whether, in the case of the death of a sole practitioner, there is a nominated personal representative.

The notification will then be reported to the LEI Unit within the PSD of the LRD. Subject to the outcome of Registry's enquiries, it may be necessary for the LEI Unit to make further enquiries and then to proceed to seek the initiation of action for the appointment of a receiver.

Where possible there should be telephone contact with the principal of the law practice ("principal") informing him/her of the intention to submit a report to the Law Society Council with the recommendation that action be taken to seek the initiation of action for the appointment of a receiver.

The procedure for initiating action to seek the appointment of a receiver of a law practice entails the LEI Unit preparing a memorandum to the Law Society Council. In the memorandum, the LEI Unit recommends that the Law Society Council approves:

- (1) the making of an application to the Supreme Court for a receiver to be appointed to the law practice;
- (2) the conditions applying to the appointment; and
- (3) a draft Notice of Appointment which complies with Rule 101(1) of the Uniform Rules.

In the event that the Law Society Council determines to initiate action seeking the appointment of a receiver under section 341(1) of the Act, the Law Society must nominate for appointment, in the approved form, a person as receiver who is:-

- (a) an Australian legal practitioner who holds an Australian practising certificate as a principal authorising the receipt of trust money; or
- (b) a person holding accounting qualifications with experience in the trust accounts of law practices; and
- (c) who may, but need not be, an employee of the Law Society section 341(5) of the Act.

The designated tribunal to hear the application is the Supreme Court of New South Wales (see s11(3) *Legal Profession Uniform Law Application Act 2014*).

The designated tribunal may make the appointment whether or not the law practice or a principal of the practice concerned has been notified of the application and whether or not the law practice or principal is a party to the proceedings.

In the event that the designated tribunal makes orders including an order that a receiver be appointed, notice of that appointment must be given in accordance with the Uniform Rules (section 341(6) of the Act).

The resolution of the Law Society Council must specify the property that is subject to the appointment. In normal circumstances the appointment should be in respect of the “regulated property” of the law practice.

“**regulated property**”, of a law practice, means the following:

- (a) trust money received, receivable or held by, or under the control of the law practice;
- (b) other property received or receivable for another person by the law practice in providing legal services;
- (c) interest, dividends or other income or anything else derived from or acquired with money or property mentioned in paragraph (a) or (b);
- (d) documents or records of any description relating to anything mentioned in paragraph (a), (b) or (c);
- (e) any means by which any records that are mentioned in paragraph (d) and not written may be reproduced in writing.

Rule 101(1) of the Uniform Rules provides that the instrument of appointment of a person as a receiver for a law practice must:

- (a) identify the law practice and the receiver, and
- (b) indicate that the external intervention is by way of appointment of a receiver, and
- (c) specify any conditions imposed by the Supreme Court when the appointment is made, and
- (d) specify any fees payable by way of remuneration to the receiver specifically for carrying out the receiver’s duties in relation to the external intervention, and
- (e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.

Rule 101(2) of the Uniform Rules provides that the instrument of appointment may:

- (a) specify the term (if any) of the appointment, and
- (b) specify any reporting requirements to be observed by the receiver.

2. Notifications of Appointment of Receiver(s) - r102 of the Uniform Rules

Once the designated tribunal has appointed a receiver for the law practice the LEI Unit proceeds to notify the appointment of a receiver to the following parties:-

- (a) the law practice;
- (b) the trust account ADI(s);

- (c) any other person authorised to operate any trust account of the law practice;
- (d) any external examiner appointed to examine the law practice's trust records;
- (e) any person whom the designated tribunal directs should be served with the notice; and
- (f) any person whom the Law Society reasonably believes should be given a copy of the notice.

The following notifications should be made immediately by express post and emailed, where appropriate and possible, to the above persons.

(1) Notification to the Receiver(s)

A notice of appointment of receiver is signed by the DLR. The notice should be addressed to the individual appointed as receiver.

Rule 102(2) of the Uniform Rules provides that the notice to the receiver must:

- (a) identify the law practice and the receiver; and
- (b) indicate that the external intervention is by way of appointment of a receiver; and
- (c) specify the term (if any) of the appointment; and
- (d) indicate the extent to which the receiver has the powers of a manager for the law practice, and
- (e) specify any reporting requirements to be observed by the receiver, and
- (f) specify any conditions imposed by the Supreme Court when the appointment is made; and
- (g) include a statement that the law practice may appeal against the appointment of the receiver under the Uniform Law.

(2) Notification to the Law Practice

When the designated tribunal has ordered the appointment of a receiver to property as sought by the Law Society Council, the principal should be contacted by phone to notify him/her of the decision and a letter is to be sent immediately to the principal notifying him/her of the designated tribunal's order(s).

The letter, signed by the DLR, should be delivered immediately to the legal practitioner associate.

The letter should also enclose the notice of appointment of receiver.

Section 342(3) of the Act provides that after a person is given a copy of the notice of appointment of the receiver for the law practice and until the appointment is terminated, the person must not:

- (a) deal with any of the law practice's trust money; or
- (b) sign any cheque or other instrument drawn on a trust account of the law practice; or
- (c) authorise the withdrawal or transfer of funds from a trust account of the law practice.

The receiver will also send a letter to the law practice which would generally notify the principal(s) of the effect of the appointment, that the practice is not able to deal with trust money or other regulated property, and that the legal practitioner associate is to notify the receiver of current client matters and other practical issues.

(3) Notification to the trust ADI(s)

When the designated tribunal has resolved to appoint a receiver to property as set out in the order(s), a letter is to be sent immediately to the trust ADI(s) notifying the making of the order(s) and enclosing the notice of appointment. The letter is to be signed by the DLR and should be sent forthwith to the trust ADI(s) with a request that a bank officer acknowledge receipt of the letter on a duplicate copy of it. The letter may be sent by email with the original plus enclosures to follow by post. In some instances, it may be possible to deliver the letter to the trust ADI.

Section 342(2) of the Act provides that after an ADI is given a copy of the notice of appointment of the receiver for the law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the law practice unless the withdrawal or transfer is made:

- (a) by cheque or other instrument drawn on that account signed by the receiver; or
- (b) by the receiver by means of electronic or internet banking facilities; or
- (c) under an authority to withdraw or transfer funds from the account signed by the receiver.

The receiver is to send immediately a letter to the trust ADI setting out the consequences of the appointment of a receiver to regulated property and the practical issues arising as a result of the appointment of a receiver.

The trust ADI is to be notified that one of the receiver's roles is to take control of the trust money held by the law practice and receivable by the law practice during the term of the receiver's appointment. Trust money includes money held in the law practice's trust account and money held in any investment or controlled money account in the name of the law practice, or the principal of the law practice, and any power money accounts.

The trust ADI is to be notified that the receiver is the only person who can withdraw money from any of these accounts and that pursuant to subsection 342(5) of the Act, the receiver can recover from the ADI an amount that is withdrawn, or transferred, from such an account by a person other than the receiver.

The letter should, if necessary, request a current trust statement to the date of appointment of the receiver and request the bank to re-direct bank statements to the receiver. The Act permits the withdrawal of money from the trust account by means of electronic or internet banking facilities. Individual officers of the Law Society, appointed as receivers, are authorised by the Law Society to withdraw or transfer money from a trust account by electronic or internet banking facilities.

In practical terms, in circumstances in which an individual Law Society officer has been appointed as a receiver, funds from the law practice's trust account will only be withdrawn by issue of a trust account cheque signed by the receiver or by an EFT transaction authorised by the receiver. In practical terms, it may also be necessary for the receiver to attend to the completion of any ADI requirements to be appointed as signatory to the law practice's trust account.

If the receiver becomes aware that the legal practitioner associate is a signatory to a power money account(s) in the name of his/her client or investment or controlled money accounts the receiver should inform the relevant ADI of the receivership appointment.

(4) Notification to the external examiner

The external examiner appointed to examine the law practice's trust accounting records must also be notified immediately of the receiver's appointment. The letter of notification should include a copy of the designated tribunal's order(s) and set out the consequences of the appointment of a receiver.

The letter, signed by the DLR, should be delivered immediately to the external examiner.

The receiver will also write to the external examiner and request that the external examiner provide any documents and information that the receiver reasonably requires.

The receiver will also request that the external examiner indicate if he/she is aware of any breaches of the Law or of the Uniform Rules which have not been reported previously to the Law Society or if he/she has any other concerns in relation to the manner in which the law practice has operated the trust account or dealt with trust money.

(5) Notification to signatories to the trust account

There may be other persons, other than a principal, authorised to operate a trust account of the law practice. Other signatories to the trust account must also be notified immediately. The letter should notify the designated tribunal's order(s) and set out the consequences of the appointment of a receiver.

Ordinarily, a letter, signed by the DLR, should be delivered forthwith to the signatory(ies).

Section 342(3) of the Act provides that after a person is given a copy of the notice of appointment of the receiver for the law practice and until the appointment is terminated, the person must not:

- (a) deal with any of the law practice's trust money; or
- (b) sign any cheque or other instrument drawn on a trust account of the law practice; or

- (c) authorise the withdrawal or transfer of funds from a trust account of the law practice.

(6) Internal notification of appointment

Upon appointment, an internal notification of appointment is signed by the DLR.

The Law Society provides the notification to a number of different persons and entities by way of email notifying them of the appointment of the receiver of the law practice as per the table below:

Person/Entity	
The President, Law Society	Policy & Practice Department, Law Society
Chief Executive Officer, Law Society	Journal/Monday Briefs Editor, Law Society
General Counsel and Company Secretary, Law Society	Chief Librarian, Law Society
Director, Licensing and Registry Division (Legal Regulation Department), Law Society	NSW Legal Services Commissioner
Licensing and Registry Division (Legal Regulation Department), Law Society	Assistant Commissioner (Legal) OLSC
Chief Trust Account Investigator, Trust Accounts Division (Legal Regulation Department), Law Society	Lawcover
Manager Fidelity Fund (Legal Regulation Department), Law Society	IRO
Specialist Accreditation, Law Society	Legal Aid NSW
Community Referral Service (Membership & Engagement Department), Law Society	

(7) Fees, legal costs and expenses of the receiver

Rule 103 of the Uniform Rules provides:

- (a) An external intervener must provide written reports in accordance with any reporting requirements as specified in the instrument of appointment-
 - (i) fees by way of remuneration, and
 - (ii) the legal costs and the expenses incurred in relation to the external intervention.
- (b) An account of the external intervener for fees, costs and expenses may, on the application of the designated local regulatory authority, be taxed or assessed.

(8) Reports by external intervener

As an external intervener, rule 104 of the Uniform Rules provides that the receiver will:

- (a) Provide written reports in accordance with any reporting requirements as specified in the instrument of appointment.
- (b) If the instrument of appointment does not specify any reporting requirements, an external intervener must provide:
 - (i) written reports as required from time to time by the designated local regulatory authority, and
 - (ii) a written report to the designated local regulatory authority at the termination of the appointment.
- (c) An external intervener must also keep the designated local regulatory authority informed of the progress of the external intervention, including providing reports about any significant events occurring or state of affairs existing in connection with the intervention or with any of the matters to which the intervention relates.
- (d) Nothing in this rule affects any other reporting obligations that may exist in respect of the law practice concerned.

3. Role and Functions of a Receiver

Section 343(1) of the Act defines the role of the receiver for a law practice as follows:

- (a) to be the receiver of regulated property of the law practice; and
- (b) to wind up and terminate the affairs of the practice.

Sections 345 to 348 of the Act set out the receiver's powers. In essence, receivers are authorised to:

- (a) take possession of regulated property;
- (b) take delivery of regulated property;
- (c) apply to the Supreme Court for an order authorising the receiver to seize regulated property;

- (d) enter premises specified in an order of the Supreme Court and search for, seize and remove anything that appears to be regulated property of the law practice;
- (e) give written notice to another person requiring that person to deliver regulated property of the law practice to the receiver;
- (f) deal with regulated property in a way in which the law practice might lawfully have dealt with the property;
- (g) require a person who is an associate, or former associate of the law practice, or a person having control of documents relating to the practice to give the receiver access to the documents or information that the receiver reasonably requires – when making such a request the receiver must warn the person that it is an offence to fail to give the documents or information;
- (h) apply to the Supreme Court for an order that an associate, or former associate of the law practice, or another person, appear before the Court for examination on oath or affirmation in relation to the regulated property of the law practice.

In addition, receivers have certain rights of action, pursuant to section 352 of the Act to recover regulated property which has been improperly or unlawfully taken, paid or transferred to another person.

If the receiver reasonably requires access to premises to discharge his/her duty as receiver and he/she is refused access, or the premises are unoccupied, the receiver may ask a police officer to help them gain access to the premises (s.343(7) of the Act).

In practical terms, it may be necessary for the receiver to:

- (a) attend the solicitor's law practice and conduct an interview with the solicitor;
- (b) balance and reconcile, if required, the trust account. If the legal practitioner did not maintain the trust account records in a timely manner the receiver may need to complete the trust accounting records;
- (c) be notified by the practitioner of the sale of the law practice.
- (d) take possession of regulated property (trust accounting records, client matter files and Safe Custody documents);
- (e) contact clients with urgent/current matter files;
- (f) re-direct mail;
- (g) maintain trust accounting records;
- (h) maintain receiver records;
- (i) appoint a new external examiner;
- (j) distribute trust ledger balances;
- (k) trust cheque approvals;
- (l) catalogue client matter files, Safe Custody documents and accounting records;

(m) mail-out to clients and distribution of client matter files; and

(n) Safe Custody documents

4. Procedural guidance as Receiver

(1) Interview with Solicitor

The legal practitioner associate will usually be aware of the proposal to seek the appointment of a receiver to regulated property. As soon as possible after the appointment is made, a meeting should be arranged between the receiver and the practitioner.

The purpose of the interview is to:

- (a) ascertain, after consultation with the legal practitioner associate, the current client matters;
- (b) contact clients with very urgent matters;
- (c) balance and reconcile the trust account;
- (d) collect relevant regulated property;
- (e) liaise with relevant trust bank branches for the addition of the new trust account cheque signatories and the procedures for authorising trust cheques and EFT transactions.

The legal practitioner associate whose practice is the subject of the appointment should provide the following information:

- (a) particulars of all client matter files which require urgent attention – for example, an imminent settlement, the expiration of a limitation period or where a court hearing is imminent;
- (b) particulars of other current matter files including their location, together with the current matter file register;
- (c) particulars of diary appointments for the next few weeks;
- (d) location of the Solicitor's Safe Custody Documents and the Safe Custody Register;
- (e) location of completed matter files together with any register of completed matter files;
- (f) location of the Trust Account Records. Trust Account Records should be available for the previous seven (7) years;
- (g) location of General Account Records including any binders/folders of Accounts or Bills of costs issued but unpaid;
- (h) particulars of any investments held by the Solicitor as Trustee for any clients;
- (i) particulars of any other trust property; and

- (j) if the solicitor's practising certificate has been cancelled or suspended advice of any Wills appointing the solicitor as an executor, or any appointments as a Power of Attorney.

The receiver has the immediate function of determining any action to be taken in relation to current client matters.

These current client matters may be in three (3) broad categories:

- (a) Very Urgent – where settlement is pending, a Court appearance is required or there is some other deadline that day or within the next two (2) business days;
- (b) Urgent – where matters are pending as above but the deadline is between two (2) business days and thirty (30) days in the future;
- (c) Ordinary – where known time limits are more than thirty (30) days in the future or the matter appears not to have specific deadlines.

In circumstances in which an officer of the Law Society has been appointed as receiver the legal practitioner associate would have been notified that the receiver will not undertake any work for the relevant clients and the purpose of contact is to indicate that the appointment of another solicitor is necessary to complete the matter. See "Contacting clients with urgent/current matters" for further details.

The legal practitioner associate, or an employee of the practitioner should, where possible, assist in identifying any issues arising in each client matter. It should be determined if it is necessary to employ any of the legal practice's employees, by and at the expense of the receiver, to assist the receiver.

It may be necessary for the receiver to place a notice on the door of the law practice's premises stating that the solicitor is no longer in practice and that all future enquiries in relation to the law practice and trust records are to be addressed to the receiver.

(2) Balance and Reconcile the Trust Account

The trust account must be reconciled to determine that all trust money is accounted for and also to investigate unpresented cheques so that payment on presentation may be confirmed or otherwise. The trust ADI would have been notified in the first notification that a stop is to be placed on the trust account and all payments through the trust account are to be authorised by the receiver.

The trust accounting records maintained by the law practice may be in the following condition:

- (a) Well maintained: trust account records are up-to date and reconciliations have been prepared on a monthly basis with no overdrawn trust ledgers;
- (b) Unsatisfactorily maintained: trust account records are not up-to-date, or there is information missing from the trust records, or there are overdrawn ledgers or there has been a defalcation of trust moneys.

The receiver should photocopy any relevant trust accounting records, such as the last monthly reconciliation prepared by the law practice and the most recent cash-book entries. The receiver must reconcile the trust account to the date of appointment. Copies of the law practice's most recent trust accounting records and last prepared trust reconciliation should be retained and filed in a trust accounting folder in the name of the law practice.

If the legal practitioner did not maintain the trust account records in a timely manner it may be necessary for the receiver to complete the trust accounting records and reconcile the trust account to the date of the appointment as receiver. If it is necessary to reconstruct or reconcile the law practice's trust accounting records prior to the date of appointment it is important to record in a memorandum to the file, the date from which the trust accounting records have been reconstructed, the date that the reconstruction was prepared, and the reasons for the reconstruction.

As soon as practicable, the law practice's last prepared reconciled trust ledger balances should be posted to a computerised trust accounting system used by the receiver. Take-up trust ledger balances will be posted to new client trust ledger accounts which will be created in the receiver's trust accounting system under the name of the law practice.

(3) Sale of a Practice

In circumstances in which an officer of the Law Society has been appointed as the receiver, the Law Society will not authorise the receiver to carry on a law practice. Generally, the receiver will allow the legal practitioner to sell the law practice within a certain time period.

Where a sale of the law practice has been effected by the legal practitioner, the receiver will generally allow the purchaser to hold the client matter files and Safe Custody documents of the law practice as the receiver's unpaid agent in exchange for an undertaking. The undertaking from the purchaser is to acknowledge that the regulated property is held as the receiver's unpaid agent and that the purchaser will write to all current clients offering to act for them or to deliver their matter file or Safe Custody documents to the solicitor of their choice.

Whether the law practice is sold or not sold will be relevant to what regulated property the receiver takes into possession.

(4) Take Possession of Regulated Property

The receiver will ascertain the extent of regulated property held and determine if any immediate action is required to be taken in respect of the property, especially in relation to trust moneys, Safe Custody and urgent client matter files.

Pursuant to Sections 517 to 520 of the Uniform Law the receiver may take possession and/or control of regulated property (see "Appointment of Receiver" for definition of regulated property) held by and receivable by the law practice and give that property to the persons entitled to it.

The law practice would generally be given the opportunity to sell the law practice to another legal practitioner. In circumstances in which the law practice is intending to sell the law practice, the receiver should be notified of any prospective purchaser. Generally, where the law practice is sold the receiver would not take into possession the regulated property of the law practice but would allow the purchaser to hold the client matter files and Safe Custody documents of the law practice as the receiver's unpaid agent in exchange for an undertaking. The undertaking from the purchaser is to acknowledge that the regulated property is held as the receiver's unpaid agent and that the purchaser will write to all current clients offering to act for them or to deliver their matter file or Safe Custody documents to the solicitor of their choice.

If the practice is **sold** the receiver should still take possession of trust accounting records, as listed below.

If the practice is **not sold** all regulated property will be removed from the practice by the receiver. Regulated property includes the following:

- (a) urgent client matter files – which are required to be immediately referred to another solicitor;
- (b) current client matter files and the current matter file register;
- (c) Safe Custody documents and the Safe Custody Register;
- (d) trust accounting records:
 - i. unbanked trust monies on hand;
 - ii. trust receipt books (current, used and unused);
 - iii. trust cheque books (current, used and unused);
 - iv. trust deposit books (current, used and unused);
 - v. trust bank statements (for the last 7 years);
 - vi. trust account reconciliations (trust bank, cash-book and trust trial balances for the last 7 years);
 - vii. trust account ledgers (current and closed/archived);
 - viii. trust account cash-books (for the last 7 years);
 - ix. investment records and controlled money account records;
 - x. information in regard to unrepresented trust cheques;
 - xi. Letter of Credit – evidence of funds held in the Prescribed Account;
 - xii. any deemed trust accounting records.

Trust Account Records should be available for the previous seven (7) years;

- (e) archived, closed or completed client matter files on the premises and the archive file register;
- (f) Office of State Revenue returns where the law practice is a self-assessor;
- (g) where possible, copies of general ledger accounts/ debtors' ledgers and general accounting records should be collected.

It may be beneficial to obtain general accounting records of the law practice, however the receiver's powers are confined to regulated property and the definition of regulated property does not appear to extend to general accounting records.

All documents, client matter files and accounting records which are taken into possession by the receiver should be catalogued. If a law practice is sold to another practitioner it is not generally required to catalogue any client matter files and/or documents as the receiver would not have taken possession of these documents.

(5) Suspension and/or Cancellation of Practitioner's Practising Certificate

The usual practice of the Law Society Council will be to suspend immediately the local practising certificate of the legal practitioner. Section 82 of the Act allows for the immediate suspension if the Law Society Council believes that the certificate holder is no longer a fit and proper person to hold a practising certificate. The proposed suspension would usually be considered by the Law Society Council when the recommendation to initiate action to seek the appointment of a receiver is made.

An information notice must be given to the local legal practitioner which notifies the practitioner of the Law Society Council's consideration of the taking of action to suspend or cancel the practitioner's practising certificate and should also state that the solicitor may make written representations to the Law Society Council about the issue of suspension or cancellation (Sections 83 and 84).

The suspension or cancellation of a practising certificate and appointment of a receiver to regulate property may not be synchronised. At the time when a determination to initiate action to seek the appointment of a receiver is considered, the Law Society Council must issue a notice to the practitioner to show cause why his/her practising certificate should not be suspended or cancelled. It is usual to give twenty-eight (28) days for the show cause notice.

Once the practising certificate is suspended or cancelled, the receiver should take possession of the legal practitioner's practising certificate at the time of attending the premises of the law practice unless the practitioner has already provided it to the Law Society.

(6) Contacting Clients with Urgent/Current Matters

The following comments assume that although the practitioner's practising certificate has not been suspended or cancelled, clients will be discouraged from continuing to retain that practitioner in order to finalise their matters.

The receiver will generally request that the legal practitioner indicate which client matters are urgent, current or closed. In some instances, especially where the law practice has been abandoned, the legal practitioner may not be available to assist, and it may be necessary for the receiver to appoint a solicitor(s) to review all client matter files to determine which matters are urgent and current.

When a matter requires urgent attention, the receiver must contact the clients, by telephone or possibly a personal visit, to explain the situation to them and to suggest that another solicitor should be appointed to the matter immediately. The receiver will not undertake any work for the relevant clients and the purpose of contact is to inform the client that the appointment of another solicitor is required to protect the client's interests.

Clients with urgent matters may attend the law practice's offices to collect their matter file(s) while the receiver is attending the solicitor's offices to collect trust property. An authority should be completed and executed by the client authorising the release of their file and acknowledging collection in person of said file. The authority should include contact details of the client and an agreement to produce the file to the Law Society if requested.

As soon as possible, the receiver should write to all other clients who appear to have a current matter notifying them that the practitioner is no longer practising and that it will be necessary for an alternative solicitor to be appointed to finalise their matters.

The letter should enclose an authority for completion and execution by the client. This authority will authorise their file to be sent to themselves or to another solicitor. An undertaking should be enclosed, to be executed by the new solicitor, to endeavour to protect the previous solicitor in

relation to any outstanding costs and outlays and to produce the file to the Law Society if requested.

A reminder system is to be implemented to ensure that matters are not neglected and that there is a further attempt to contact the client after two (2) weeks if there has been no response from the client to the receiver's first contact.

If there is no response to the second letter, a further letter should be issued three (3) weeks after the second letter. The third letter should indicate that unless the receiver hears from the client within a further three (3) weeks, the receiver will proceed on the basis that no further action is required and proceed to close the file.

In any matters in relation to which correspondence is returned unclaimed, or to which there is no response, the receiver should review the file and use his/her discretion to decide whether further enquiries should be instituted to locate the client's whereabouts and obtain his or her instructions, or whether any other action is required to be taken in the matter.

A spread-sheet of all the Safe Custody Documents should be created and saved as an Excel document. Clear records should be made of the dates and parties to whom Safe Custody documents are distributed. The receiver is required to email a copy of the spread-sheet to the Law Society.

All correspondence in relation to sending out Safe Custody documents and/or client matter files should be saved in the "Safe Custody and Client matter folder".

(7) Re-direction of Mail

It may be necessary to make arrangements to re-direct any future incoming mail addressed to the law practice, especially when the law practice has been abandoned. During the first three months all mail could be re-directed to the receiver and the arrangement reviewed at the end of that period to ascertain what, if any, future arrangement might be required.

(8) Maintain trust accounting records

According to section 344 of the Act the receiver is to keep records and accounts relating to the management of the law practice. The records must be kept:

- (a) separately from the management of the affairs of the practice before the appointment of the receiver; and
- (b) separately from the affairs of any other law practice to which the receiver has been appointed; and
- (c) in any manner prescribed under the Uniform Rules.

Any transactions through the trust account after the appointment date must be authorised by a receiver and must be written up in the records maintained by the receiver. Trust accounting records and the monthly trust reconciliations, such as the trust trial balance, trust bank reconciliation and the trust cash-book, will be retained in a folder under the name of the law practice called "Trust Accounting Records".

Examples of trust accounting records which are required to be retained in the “Trust Accounting Records” folder are as follows:

- (a) a copy of the law practice’s last prepared trust reconciliation and other relevant trust accounting records;
- (b) file memoranda regarding the reconstruction or posting of the trust accounting data onto the receiver’s trust accounting system;
- (c) monthly trust account bank reconciliations;
- (d) monthly trust account trial balances;
- (e) monthly trust cash-books;
- (f) trust account receipts;
- (g) trust account deposit slips;
- (h) trust account cheques (if applicable);
- (i) EFT transaction records;
- (j) trust account bank statements;
- (k) trust account journals (if applicable);
- (l) investment records and controlled money account records.

(9) Maintain Receiver Records

All correspondence in relation to the appointment of the receiver which is sent by the Law Society or the receiver should be saved into a folder as set out below which was created by the receiver in connection with a file opened by the receiver in the name of the law practice:

- (a) Cheque approval folder/EFT transaction folder;
- (b) Distribution of trust ledger balances folder;
- (c) Safe Custody & Client Matter File folder; and
- (d) Trust Accounting folder.

The receiver should also make a record of all telephone calls.

A receiver should open and maintain a file in the name of the law practice in which a series of folders are created as set out below:

- (a) Cheque approval file/EFT transaction approval folder

Generally, it would be necessary to establish a cheque approval folder and an EFT transaction approval folder into which all correspondence to and from the law practice and the trust ADI in relation to the approval of trust cheque payments and EFT transactions would be filed.

(b) Distribution of trust ledger balances file

Generally, where there are still funds held in the law practice's trust account the receiver may need to distribute balances held in the law practice's trust account to the rightful beneficiaries.

It is necessary to establish a folder for each client trust ledger matter. It may be necessary to file the following documents in this folder:

- (a) the law practice's trust ledger print-out for the client matter;
- (b) the receiver's current trust ledger print-out for the client matter;
- (c) supporting documentation (for example, settlement statement, Contract, Will, trust account authority, relevant excerpts from the client file, the law practice's bill etc);
- (d) file memoranda signed by the receiver, after reviewing the client matter file and relevant documents, with a recommendation as to who is entitled to the balance of funds held in trust;
- (e) correspondence to the law practice, the client or other relevant parties related to the distribution of these trust monies.

(c) Safe Custody & Client Matter File Folder

Where the law practice has not been sold and the receiver takes into possession the regulated property it may be necessary to return Safe Custody documents and/or client matter files to clients. All correspondence related to the delivery of Safe Custody documents and/or client matter files should be filed in this folder.

Contact details should be updated for any returned correspondence where the "addressee is not at that address" and the returned letter should be saved with the returned envelope in this correspondence file.

(d) Trust accounting folder

A trust accounting folder should be maintained in which relevant trust accounting records should be filed. Examples of trust accounting records which should be retained are listed above in "Maintaining trust accounting records".

(10) Appointment of new external examiner

It is the usual practice to appoint the receiver's preferred external examiner.

Any current external examiner's appointment is terminated in the initial notification letter.

Division 3 of Part 4.2 of the Act deals with the appointment of external examiners.

(11) Distribution of Trust Ledger Balances

The receiver must distribute balances held in the law practice's trust account to the rightful beneficiaries. Before trust ledger balances are distributed the receiver must be satisfied that the trust reconciliation is correct.

It is necessary to review client matter files, relevant documents and accounting records to determine who is entitled to the funds held in trust. It is important to ensure that the client transaction files relating to the trust ledgers with balances in the law practice's trust account are located and obtained from the law practice.

When considering who is entitled to the trust moneys, the question of any costs and outlays outstanding to the law practice should be kept in mind, including making a note of any bills of costs and outlays on the file. Wherever possible, the receiver should ask the legal practitioner associate about any costs and outlays owing to him/her prior to accounting for any moneys in the trust account.

It is recommended to establish a file in the name of the law practice called "Distribution of Client Trust Ledger Balances" into which all correspondence and related documents for each client trust ledger matter are saved.

Examples of correspondence and related documents which may be required to be retained are as follows:

- (a) the law practice's trust ledger for the client matter;
- (b) the receiver's current trust ledger for the client matter;
- (c) supporting documentation (for example, settlement statement, Contract, Will, trust account authority, relevant excerpts from the client file, the law practice's bill etc);
- (d) a memorandum signed by the receiver, after reviewing the client matter file and relevant documents, with the recommendation as to who is entitled to the balance of funds held in trust;
- (e) correspondence to the law practice, the client or other relevant parties related to the distribution of these trust monies.

A deficiency in, or defalcation from, the law practice's trust account may be caused by accounting errors, bank errors or deliberate mishandling of trust funds. The legal practitioner will generally be asked to rectify the deficiency immediately. If the deficiency is not corrected immediately, it will be necessary to distribute trust funds proportionately to entitled beneficiaries.

(12) Trust Cheque Approvals/EFT Transaction Approvals

As indicated in "Notifications to the trust ADI", the trust ADI has been informed that the receiver is the only person who can withdraw money from any trust accounts of the law practice. It is usual practice to arrange a procedure with the bank whereby cheques will be honoured on presentation when they are issued by the receiver. This arrangement will usually include informing the trust bank of the issue of the cheque with details of cheque number, payee and amount, with the letter signed by a receiver. Similarly, EFT transactions can only proceed with written approval by the receiver.

Given that trust account cheques will usually relate to the distribution of client trust ledger balances all correspondence and relevant documentation will be filed in the law practice's "Distribution of trust ledger balances" folder. However, the actual cheque approval letters to the trust ADI and/or the law practice should be filed in the "Cheque approvals" folder.

(13) Cataloguing Client Matter Files, Safe Custody Documents and Accounting Records

Within a reasonable time after commencement of the receivership, the Safe Custody documents, current client matter files, and trust accounting records of the law practice which the receiver has taken into possession should be catalogued. Generally, where the law practice has been sold the receiver will only take possession of the trust accounting records.

(a) Cataloguing current client matter files

Ideally all current client matter files which the receiver takes into possession should be catalogued immediately.

Ideally the legal practitioner associate will assist the receiver by indicating which client matter files are urgent, current or closed. In some instances, especially where the legal practice has been abandoned, the legal practitioner may not be available to assist and it may be necessary for the receiver to appoint a solicitor(s) to review all client matter files to ascertain which files are urgent and current.

(i) Cataloguing Safe Custody documents

Safe Custody packets which the receiver takes into possession are to be catalogued.

Initially, all that will be recorded are the client details. The contents of the Safe Custody packets will not be listed at this stage.

Letters are then to be sent to all clients for whom Safe Custody documents are held to notify them:

- (a) the receiver holds Safe Custody documents for them and will retain them for a period of six months;
- (b) the Safe Custody documents will then be moved to an off-site storage facility;
- (c) if it is necessary to recover the documents from the off-site storage facility, the receiver will incur a retrieval fee and will require the client to pay that fee.

The contents of Safe Custody packets held by the receiver for more than four months are to be listed in the relevant record.

Once a Safe Custody packet has been held by the receiver for six months, it is to be transferred to the storage facility.

Safe Custody documents should be stored in a fire-proof, weather-proof, lockable and secure location.

(ii) Cataloguing closed/archived client matter files

If closed and/or archived client matter files are taken into possession by the receiver then all these client matter files should be catalogued. Generally correspondence will not be sent to clients with closed or archived files unless the former client makes contact with the receiver.

(iii) Cataloguing accounting records

Trust accounting records and/or general accounting records which are taken into possession by the receiver should be catalogued.

(14) Mail-out to clients and distribution of client matter files and Safe Custody documents

Once all the other client matter files and Safe Custody documents which the receiver has taken into possession have been catalogued, letters should be generated and sent to the following clients:-

- (a) clients with current matters;
- (b) clients with Safe Custody documents less than 21 years' old; and
- (c) clients where the legal practitioner associate held a certificate of title.

Clients with current or urgent matters should be contacted via telephone or letter in the first instance. Refer to "Contacting clients with urgent/current matters" as to the letters and follow-up letters which should be sent to clients in relation to current client matter files.

Letters should be sent to clients with current Safe Custody documents or where a certificate of title is held. The letters would notify the appointment of the receiver, that Safe Custody documents are held in their name(s), and request their instructions regarding distribution of said documents.

The letter should enclose an authority for completion and execution by the client.

A record should be maintained under the client's name in alphabetical order of any correspondence in relation to the handling and movement of safe custody documents and/or client matter files.

Upon the generation of a mail-out letter, copies of all letters sent out should be filed in the correspondence folder. An alphabetical listing of all clients who were sent the letter should also be generated in a table format and filed in the correspondence folder.

When a signed client authority is received authorising the release of Safe Custody documents and/or client matter files, all documents and files which are in the possession of the receiver in the name of the client should be sent to the client. If the client's signature is on the documents held it is recommended to verify the client's identity by comparing the signature on the authority to the client's signature on the documents and/or client matter file prior to releasing said documents.

5. Termination of Appointment of Receiver

Section 355 of the Act provides as follows:

- (1) The appointment of a receiver for a law practice terminates in the following circumstances--
 - (a) the term (if any) of the appointment comes to an end;
 - (b) the appointment is set aside under section 358;
 - (c) an order of the designated tribunal that the appointment be terminated has taken effect.

- (2) The following provisions apply where a receiver for a law practice is appointed by the designated tribunal--
- (a) the designated local regulatory authority or receiver may at any time apply to the designated tribunal for an order terminating the appointment immediately or with effect from a specified date;
 - (b) the receiver must apply to the designated tribunal for termination of the appointment when the affairs of the law practice have been wound up and terminated, unless the term (if any) of the appointment has already come to an end.
- (3) The designated tribunal may make any order it considers appropriate in relation to an application under this section.

Note: Section 325(2) of the Act provides that certain orders of a court or tribunal of another jurisdiction have effect in and in respect of this jurisdiction as if they were orders of the designated tribunal.

- (4) The appointment of a receiver is not stayed by the making of an application for termination of the receiver's appointment, and the receiver may accordingly continue to exercise his or her powers and functions as receiver pending the designated tribunal's decision on the application except to the extent (if any) that the tribunal otherwise directs.
- (5) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice –
- (a) to another external intervener appointed for the law practice within the period of 14 days beginning with the day after the date of the termination; or
 - (b) to the law practice, if another external intervener is not appointed for the law practice within that period and if paragraph (c) does not apply; or
 - (c) to another person in accordance with arrangements approved by the designated local regulatory authority, if it is not practicable to transfer and deliver the regulated property to the law practice.
- (6) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (5) unless the expenses of receivership have been paid.
- (7) The designated local regulatory authority must serve a written notice of the termination on all persons originally served with notice of the appointment.

6. Other relevant provisions – incorporated legal practices subject to receivership

The Uniform Law makes provision with respect to the interplay between the powers of incorporated legal practices which are subject to receivership under the Uniform Law and external administration under other legislation as to the following:

- (1) incorporated legal practices which are subject to receivership under the Uniform Law and external administration under the Corporations Act – see section 109 of the Act; and
- (2) incorporated legal practices which are subject to receivership under the Uniform Law and external administration under other legislation – see section 110 of the Act.

In the event that an incorporated legal practice, which is subject to receivership under the Uniform Law, becomes subject to external administration under the *Corporations Act* or other legislation, the receiver is requested to notify the Law Society as soon as practicable.

This is because it may be necessary for the Law Society Council to consider obtaining legal advice to address whether any further action in the matter may be required. Such action may include intervening in any proceedings before the Supreme Court between the receiver under the Act and the external administrator involving an application for the resolution of issues arising from, or in connection with, the dual appointments and their respective powers.

One key area of concern is the handling of trust money. In particular, it may become necessary to seek direction from the court as to how to handle the disposition of trust money given the competing interests that might be at play particularly against the background of the duties that arise under the Act in respect of trust money.

General Provisions Relating to External Interventions

(1) Conditions on appointment of external intervener

Section 356 of the Act provides as follows:

- (1) external intervener is subject to--
 - (a) any conditions imposed by the appropriate authority; and
 - (b) any conditions imposed by or under the Uniform Rules for the purposes of this section.
- (2) The appropriate authority may impose conditions--
 - (a) when the appointment is made; or
 - (b) during the term of the appointment.
- (3) The appropriate authority may revoke or vary conditions imposed under subsection.
- (4) The "**appropriate authority**" is--
 - (a) the designated local regulatory authority in the case of a supervisor of trust accounts or a manager; or
 - (b) the designated tribunal in the case of a receiver.

(2) Status of acts of external intervener

Section 357 of the Act provides as follows:

- (1) An act done or omitted to be done by an external intervener for a law practice is, for the purposes of--
 - (a) any proceedings; or
 - (b) any transaction that relies on that act or omission--

taken to have been done or omitted to be done by the law practice.

Nothing in this section subjects an associate of the law practice to any personal liability.

(3) Right of appeal or review about appointment of external intervener

Section 358 of the Act provides as follows:

- a. An aggrieved person may, in accordance with applicable jurisdictional legislation, appeal to the designated tribunal against, or seek a review by that tribunal of, the appointment in this jurisdiction of an external intervener for a law practice.

- b. An "aggrieved person" is--
- (a) the law practice; or
 - (b) an associate of the law practice; or
 - (c) any person authorised to operate a trust account of the law practice; or
 - (d) a client of the law practice whose interests may be adversely affected by the appointment; or
 - (e) any other person whose interests may be adversely affected by the appointment.
- (3) The appeal or application for review is to be lodged within 7 days after notice of the appointment is served--
- (a) the person who proposes to appeal or seek review; or
 - (b) the law practice, if a notice is not required to be served on the person who proposes to appeal or seek review.
- (4) The designated tribunal may by order do any one or more of the following--
- (a) confirm the appointment;
 - (b) set aside the appointment;
 - (c) impose or vary any conditions of the appointment;
 - (d) make any other orders it thinks fit.
- (5) The appointment of an external intervener is not stayed by the making of an appeal or an application for review, and the external intervener may accordingly continue to exercise his or her powers and other functions as external intervener during the currency of the appeal or review except to the extent (if any) that the designated tribunal otherwise directs.
- (6) To avoid doubt, this section has effect subject to section 325.

(4) Directions of designated tribunal

Section 359 of the Act provides as follows:

Where the designated tribunal has appointed an external intervener for a law practice, the tribunal may, on application by--

- (a) the external intervener; or
- (b) a principal of the law practice; or
- (c) any other person affected by the external intervention-

give directions in relation to any matter affecting the intervention or the intervener's powers or other functions under this Law.

(5) Manager and receiver appointed for law practice

Section 360 of the Act provides as follows:

If a manager and a receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of any inconsistency.

(6) ADI disclosure requirements

Section 361 of the Act provides as follows:

- c. An ADI must, at the request of an external intervener for a law practice, disclose to the intervener, without charge--
 - (a) whether or not the law practice, or an associate of the law practice specified by the intervener, maintains or has maintained an account at the ADI during a period specified by the intervener; and
 - (b) details identifying every account so maintained.

Civil penalty: 100 penalty units.

- d. An ADI at which an account of a law practice or associate of a law practice is or has been maintained must, at the request of an external intervener for the law practice, and without charge--
 - (a) produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such account or money deposited in any such account; and
 - (b) provide the intervener with full details of any transactions relating to any such account or money.

Civil penalty: 100 penalty units.

- e. If an external intervener believes, on reasonable grounds, that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited into the account of a third party who is not an associate of the law practice, the ADI at which the account is maintained must disclose to the intervener, without charge-
 - (a) whether or not a person specified by the intervener maintains or has maintained an account at the ADI during a period specified by the intervener; and
 - (b) the details of any such account.

Civil penalty: 100 penalty units.

- f. An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment of the intervener in relation to the law practice concerned.
- g. A request under this section may be general or limited to a particular kind of account.

- h. This section applies despite any legislation or duty of confidence to the contrary.
- i. An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details in accordance with this section.

(7) Confidentiality

Section 362 of the Act provides as follows:

- a. An external intervener must not disclose information obtained as a result of his or her appointment except-
 - (a) so far as is necessary for exercising his or her powers or other functions;
or
 - (b) as provided in subsection (2).

Civil penalty: 50 penalty units.

- (1) An external intervener may disclose information to any of the following--
 - (a) any court, tribunal or other person acting judicially;
 - (b) a local regulatory authority;
 - (c) any officer of or Australian legal practitioner instructed by or on behalf of –
 - (i) a local regulatory authority; or
 - (ii) the Commonwealth, a State or a Territory; or
 - (iii) an authority of the Commonwealth or of a State or Territory--
 - in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation or examination;
 - (d) a member of the police force of any jurisdiction if the designated local regulatory authority or external intervener believes on reasonable grounds that the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice;
 - (e) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;
 - (f) a client or former client of the law practice concerned if the information relates to the client or former client;
 - (g) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by that other external intervener;
 - (h) any other external examiner carrying out an external examination of the trust records of the law practice concerned;

- (i) the fidelity authority of the fidelity fund for this jurisdiction or any other jurisdiction.

(8) Other provisions relating to requirements in respect of external interventions

Section 363 of the Act provides as follows:

- b. This section applies to a requirement imposed on a person under this Chapter or the Uniform Rules made for the purposes of this Chapter to give an external intervener access to documents or information.
- c. The external intervener imposing the requirement may--
 - (a) inspect any document provided pursuant to the requirement; and
 - (b) make copies of the document or any part of the document; and
 - (c) retain the document for a period the intervener thinks necessary for the purposes of the external intervention in relation to which it was produced.

(9) Obstruction of external intervener

Section 364 of the Act provides as follows:

A person must not, without reasonable excuse, obstruct an external intervener exercising a function under this Law.

Civil penalty: 50 penalty units.

(10) Fees, costs and expenses

Section 365 of the Act provides as follows:

- a. The fees, costs and expenses of an external intervener are payable in accordance with the Uniform Rules and payable by and recoverable from the law practice concerned.
- b. The designated local regulatory authority may recover any unpaid fees, costs and expenses from the law practice.
- c. Fees, costs and expenses not paid to the external intervener by a law practice are payable from the fund specified or described in the Legal Profession Uniform Law Act of this jurisdiction for the purposes of this section.
- d. Fees, costs and expenses paid by or recovered from the law practice after they have been paid from the fund referred to in subsection (3) are to be paid into that fund or refunded in accordance with an applicable law of this jurisdiction.

(11) Protection from liability

Section 366 of the Act provides as follows:

- a. No liability attaches to a protected person in respect of any act or omission by an external intervener done in good faith and in the exercise or purported exercise of the intervener's functions under this Chapter.

- b. Without limitation, no liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information as permitted by this Law or the Uniform Rules.
- c. A "protected person" is the designated local regulatory authority, an external intervener or a person acting at the direction of the designated local regulatory authority or an external intervener.

(12) Uniform Rules for external intervention

Section 367 of the Act provides as follows:

- a. The Uniform Rules may make provision with respect to any aspect of external intervention.
- b. Without limitation, the Uniform Rules may make provision with respect to the following—
 - (a) the content of and service of notices of appointment and termination of external interveners;
 - (b) reports by external interveners;
 - (c) the entitlement of external interveners to remuneration and the recovery by them of remuneration to which they are entitled;
 - (d) the assessment and recovery of legal costs and expenses incurred in relation to external interventions.

Reporting Alleged Disciplinary Matters

Rule 105 of the Uniform Rules provides as follows:

“105 Report to designated local regulatory authority on disciplinary matters

- (1) This rule applies if an external intervener becomes aware of any matter in the course of an external intervention that the external intervener thinks may be unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer.
- (2) If this rule applies, the external intervener must unless the matter is or has already been the subject of a complaint) refer the matter to the designated local regulatory authority to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.”