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Sri Lankan - Australian Lawyers Association

Trust Accounting, Ethics & AML

10 Oct 2026

CPD CONFERENCE

Mulgrave Country Club

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Managing Partner

Australian Public Accountants



Related Act + Rules

- ✓ Part 4.2 of the Legal Profession Uniform Law (LPUL), contained in Schedule 1 of the Legal Profession Uniform Law Application Act 2014 (Vic)
- ✓ The Legal Profession Uniform **General Rules** 2015 (Vic) (General Rules 2015)
- ✓ Legal Profession Uniform Law Australian Solicitors **Conduct Rules** 2015
- ✓ Legal Profession Uniform Legal **Practice (Solicitors) Rules** 2015
- ✓ Anti-Money Laundering and Counter-Terrorism Financing Act 2006

The regulatory framework

***Trust money +
Trust accounts***



► *Regulatory Bodies*

- ✓ The Legal Services Council
- ✓ The Commissioner for Uniform Legal Services Regulation
- ✓ The Victorian Legal Services Board
- ✓ The Victorian Legal Services Commissioner

The regulatory framework

***Trust money +
Trust accounts***



► *S129 (1) definition of trust money*

Trust money is money entrusted to a law practice in the course of or in connection with the provision of legal services by the law practice, and includes

- (a) money received by the law practice on account of **legal costs in advance** of providing the services; and
- (b) **controlled money** received by the law practice; and
- (c) **transit money** received by the law practice; and
- (d) money received by the law practice, that is the **subject of a power** exercisable by the law practice or an associate of the law practice, to deal with the money for or on behalf of another person.

The regulatory framework

***Trust money +
Trust accounts***



► *Types of trust money and AML impact*

- ✓ General trust money (S 137)
- ✓ Controlled money (S 139)
- ✓ Transit money (S 140)
- ✓ Power money (S 141)
- ✓ Written direction money (S 142)
- ✓ Investment money - recorded in the register of investments (Rule 59)

Trust money

*Types of trust money &
AML*



▶ *Part 2 of AML & CTF Act 2006— Customer due diligence*

- ▶ A reporting entity must undertake initial customer due diligence before providing a designated service to a customer. However, in special cases, initial customer due diligence may be carried out after the provision of the designated service.
- ▶ • A reporting entity must undertake ongoing customer due diligence in relation to the provision by the reporting entity of designated services.
- ▶ • Simplified customer due diligence may be undertaken in certain low risk circumstances as part of initial and ongoing customer due diligence.
- ▶ • Enhanced customer due diligence must be undertaken in certain circumstances as part of initial and ongoing customer due diligence.
- ▶ • Certain pre-commencement customers are subject to modified customer due diligence.
- ▶ • Exemptions from initial customer due diligence, and ongoing customer due diligence, apply in certain circumstances.

Trust money

*Types of trust money &
AML*

What designated services are relevant for lawyers?

- ▶ (1) For the purposes of **AML & CTF Act 2006** , the following **table 6** define:
 - ▶ (a) the provision of a **designated service**; and
 - ▶ (b) **the person** (the **customer**) to whom the designated service is provided.
- ▶ *Credit :The following summary of table 6 from NSW Law Society .*
- ▶ *Person means any individual, a company, a trust, a partnership, a corporation, a body politic.*



Trust money

**Types of trust money &
AML**



Table 6 item	Examples – LIKELY IN (likely designated services)	Examples – LIKELY OUT (generally, not designated services)
Item 1 – Real estate transactions	• acting in conveyancing or settlements • holding deposit or settlement funds in relation to the conveyance • implementing property transfers (other than purely court-ordered transfers)	• advising on general property law issues • acting in property litigation • property disposals as part of probate • leases of 30 years or less
Item 2 – Buying or selling an entity	• acting for a seller or buyer in a share or unit trust sale • transferring ownership of a trust interest • preparing and executing transfer documents • obtaining regulatory approvals or waivers, eg Foreign Investment Review Board approvals	• advising on options for a deal structure, without implementing transfers • court ordered transfers • sale or shares and minor interests (less than 25%)
Item 3 – Receiving, holding controlling or managing property	• receiving, holding, and transferring client funds through the firm's trust account as part of a transaction • having authority over a customer's bank account, and making payments on behalf of a customer, eg making loan repayments to a financial institution relating to a transaction • managing escrow funds to enable a transaction	• holding funds solely for legal fees and disbursements • holding funds under a court order for non-transaction purposes • Merely operating a trust account, in the absence of providing other designated services



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Table 6 item	Examples – LIKELY IN (likely designated services)	Examples – LIKELY OUT (generally, not designated services)
Item 4 – equity or debt financing transactions	• drafting and implementing loan documents for a company (or equity fund raising documents, including initial public offerings, venture capital, share purchase plans etc) • coordinating drawdowns on a financing arrangement • executing steps that directly advance a financing transaction	• providing strategic advice on financing options, including equity and debt financing • preparing briefing papers without implementing a finance transaction
Item 5 – selling or transferring a shelf company	• facilitating the transfer of a company that the practice pre-incorporated that has not traded	• advising on whether to acquire a company that has not traded
Item 6 – Creating or restructuring a body corporate or legal arrangement	• preparatory steps in anticipation of creating a body corporate or legal arrangement, such as drafting, reviewing or negotiating corporate agreements and business documents • drafting and reviewing trust deeds in relation to the creation or restructure of a trust • drafting documents to create an association or co-operative	• high level organisational structure advice, without preparing any instruments • dealing with matters unrelated to the legal form or structure of the company or legal arrangement, eg dealing with IT systems • drafting of a will, and the subsequent creation of a testamentary trust

Trust money

*Types of trust money &
AML*



Table 6 item	Examples – LIKELY IN (likely designated services)	Examples – LIKELY OUT (generally, not designated services)
Item 7 – Acting in or arranging specified roles (directors, powers of attorney for non-natural persons, partners etc)	• acting as company director on behalf of a customer • arranging for someone to act in a specified role • drafting a power of attorney for a corporation	• acting for a natural person under a power of attorney • acting under a court-appointed fiduciary role • acting as the trustee of a regulated debtor's estate
Item 8 – Acting as or arranging a nominee shareholder	• holding shares on behalf of another under instruction • arranging a nominee shareholder to act for a client	• advising on nominee structures without acting as nominee • acting as a nominee due solely to a court order
Item 9 – providing a registered office or principal place of business	• providing your firms address as the registered office of a client company	• providing office space unrelated to registration • offering a postal address not serving as a registered office or principal place of business



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Trust money

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Trust Records

- ▶ General Discussion - Matter files
- ▶ *What AEE and Investigators expect to review in the Fidelity*



- ▶ Property Sale & Purchase files
- ▶ Estate matter files
- ▶ POA files
- ▶ Criminal law files
- ▶ Family law files
- ▶ Personal injury law files

Litigation files
Commercial law files
Business law files
Insurance matter files
Migration law files
Others



▶ AML/CTF-related amendments to uniform rules

- ▶ The implementation of the **Tranche 2 AML/CTF reforms** introduces a profound shift in the legal profession's ethical landscape. It creates an inherent friction between a lawyer's **traditional fiduciary duties to the client** (such as absolute confidentiality and undivided loyalty) and their **new statutory duties to the state** as an AUSTRAC reporting entity.
- ▶ To manage these ethical conflicts, formal changes were made to the [Australian Solicitors' Conduct Rules \(ASCR\)](#) and the Legal Profession Uniform Rules. The primary ethical changes and dilemmas facing the profession center on four major areas: [1, 2]



▶ AML/CTF-related amendments to uniform rules

1. Confidentiality vs. Statutory Disclosure

- ▶ A cornerstone of legal ethics is maintaining absolute client confidentiality. However, under the AML/CTF framework, lawyers providing designated services are legally mandated to report suspicious matters (SMRs) to AUSTRAC.
- ▶ **The Ethical Shift:** Broad statutory disclosure acts as an explicit exception to the duty of confidentiality. To handle this ethically, **Practice Rules** require lawyers to explicitly warn clients in their initial retainer agreements that the firm has statutory obligations to disclose certain information and may be forced to terminate the relationship if compliance benchmarks are not met.



▶ AML/CTF-related amendments to uniform rules

2. The "Tipping Off" Dilemma vs. Client Loyalty

- ▶ Under the AML/CTF Act, it is a criminal offence to "tip off" a client that a Suspicious Matter Report (.SMR) has been or is being filed against them.
- ▶ **The Ethical Shift:** This severely tests the ethical duty of **undivided loyalty** and the obligation to act in the client's best interests. If a lawyer files an SMR, they cannot tell the client why they are suddenly withdrawing from the matter or delaying a transaction. Practitioners must carefully navigate communication to ensure they do not inadvertently commit a tipping-off offence while trying to handle client inquiries ethically.



▶ AML/CTF-related amendments to uniform rules

3. Redefining "Just Cause" for Terminating a Client

- ▶ Under standard legal ethics, a lawyer cannot simply abandon a client mid-matter without "just cause" (e.g., a breakdown in the relationship or non-payment of fees).
- ▶ **The Ethical Shift:** Amendments to **Conduct Rule 8 (Client instructions)** and **Rule 13 (Completion or termination of engagement)** explicitly align client instructions with Customer Due Diligence (CDD) compliance. If a client refuses to provide identity documents, hides their ultimate beneficial ownership, or triggers unmitigatable money laundering risks, the rules now legally and ethically define this as "**just cause**" for **immediate termination** of the retainer



▶ AML/CTF-related amendments to uniform rules

▶ 4. "Wholesome Practice" vs. Turning a Blind Eye

- ▶ Failing to identify money laundering risks is no longer treated merely as a regulatory oversight—it is now an ethical breach of integrity under **Rule 5 of the ASCR**.
- ▶ **The Ethical Shift:** "Turning a blind eye" to obvious red flags, or wittingly structuring a transaction to help a client avoid AUSTRAC's \$10,000 cash threshold, directly violates a lawyer's **paramount duty to the administration of justice**. Ethical compliance now requires active, risk-based vetting ("know your customer") rather than passive execution of a client's instructions.



▶ AML/CTF-related amendments to uniform rules

- ▶ **“Rule 5 of ASCR - Standard of conduct—dishonest or disreputable conduct**
- ▶ 5.1 A solicitor must not engage in conduct, in the course of legal practice or otherwise, which—
- ▶ 5.1.1 demonstrates that the solicitor is not a fit and proper person to practise law, or
- ▶ 5.1.2 is likely to a material degree to—
- ▶ (i) be prejudicial to, or diminish the public confidence in, the administration of justice, or
- ▶ (ii) bring the profession into disrepute.



Trust Records

- ▶ General Discussion - Matter files
- ▶ *What AEE and Investigators expect to review in the Fidelity*



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Insurance matter files
Migration law files
Others



General trust obligations and principles

The key law practice obligations contained in the LPUL include:

► S 148 Deficiency in trust account

A law practice, an Australian legal practitioner or any other person must not, without reasonable excuse, cause—

- (a) a deficiency in any trust account or trust ledger account; or
- (b) a failure to pay or deliver any trust money.

Penalty: 500 penalty units or imprisonment for 5 years, or both.

What is the deficiency ?

"deficiency" in a trust account or trust ledger account includes the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account. (S3.3.21 of LPA - Old Act)

How to avoid common deficiencies ?

- ✓ Check the ledger balance
- ✓ Check the bank account balance
- ✓ Check the transferee two - three times (Eg: Payments to local builder (Northern Firm) and transfer to overseas client St Kilda firm)



Wellington - Capital of New Zealand



General trust obligations and principles

The key law practice obligations contained in the LPUL include:



► S 154 Reporting irregularities and suspected irregularities

(1) As soon as practicable after a **legal practitioner associate** of a law practice becomes aware that there is an irregularity in any of the law practice's trust accounts or trust ledger accounts, the associate or entity must give written notice of the irregularity to the LSB. (Eg : City Law firm / Regional law firm)

In addition **AEE** (Eg: Northern Suburbs Lawyer) – **ADI** (Eg: Regional Lawyer) must give written notice

(2) If an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as practicable after forming the belief, give written notice of it to the LSB.

Eg : Common in property, family law and estate as well as at the time of changeover the clients



Discussion



- ▶ External examinations of trust records - S 155
- ▶ External investigations - S 163
- ▶ ***External intervention (S 326)*** means the appointment of, and the exercise of the functions of, a supervisor, manager or receiver under Chapter 6.
- ▶ Trust Account related cases
- ▶ Regional lawyer - \$800k - 1000k deficiency / family law / on going ,
- ▶ City lawyer - struct off matter/ trust money allegation withdrawn/
- ▶ Regional lawyer - External Intervention matter on going - probate
- ▶ AML- funds move to trust account - suspects of robbery - long-term matter





New York - USA



Toronto - Canada



San Francisco - USA



Singapore



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Any Questions?





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Thank You!!!

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