

Changes to withdrawing costs from trust

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The provisions contained in the *Legal Practitioners (Miscellaneous) Amendment Act 1981* and the *Legal Practitioners Regulations 2014* came into force on 1 July 2014. Those provisions include new requirements for withdrawing money from trust on account of costs. An overview of those requirements follows¹.

Withdrawing legal costs from trust

A law practice may withdraw money from the general trust account or a controlled money account for payment of legal costs owing to the practice if the required procedures are followed (regulation 45).

Clause 1 of Schedule 3 of the Act defines "legal costs" as:

"amounts that a person has been or may be charged by, or is or may become liable to pay, a law practice for the provision of legal services including disbursements but not including interest".

Regulation 45 states that legal costs may be withdrawn from a general trust account or a controlled money account by two methods:

- withdrawal with authority;
- withdrawal on issue of bill.

Withdrawal with authority

Money may be withdrawn from a general trust account or a controlled money account for payment of legal costs that are owed to the practice by the person for whom the trust money was paid if:

1. Before effecting the withdrawal the practice gives or sends to the person a written notice of withdrawal or a request for payment, referring to the proposed withdrawal (regulation 45(3)(b)); and
 - a. the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal (regulation 45(3)(a)(i)); or

- b. the money is withdrawn in accordance with instructions that have been received by the practice and that authorises the withdrawal (regulation 45(3)(a)(ii)); or
- c. the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person (regulation 45(3)(a)(iii)).

A bill of costs that refers to the proposed withdrawal from the trust account would, in the Society's opinion, satisfy the requirement of regulation 45(3)(b). Alternatively, a written notice of withdrawal or a request for payment referring to the proposed withdrawal from the trust account could be given in the form of a letter.

Regulation 45(6) states that for the purposes of regulation 45(3)(a)(iii) (see 1c. above) money is taken to have been paid by the law practice when the relevant account of the law practice has been debited.

Costs authorities should be kept in written form as a permanent record for at least seven years (regulation 46(2)). It is best practice to obtain the costs authority in writing before transferring costs. However, costs can be transferred pursuant to verbal authorisation, but such verbal authorisation must be confirmed in writing not later than five working days after the law practice effects the withdrawal and a copy must be kept as a permanent record (regulation 45(5)).

Withdrawal on issue of bill

A law practice may withdraw trust money for legal costs if the practice has given the person a bill relating to the money (regulation 45(4)(a)) and:

1. the person has not objected to withdrawal of the money within seven days after being given the bill (regulation 45(4)(b)(i)); or
2. the person has objected within seven days after being given the bill but has not applied for review of the legal costs

under the Act within 60 days after being given the bill (regulation 45(4)(b)(ii)); or

3. the money becomes otherwise legally payable (regulation 45(4)(b)(iii)).

Schedule 3 of the Act prescribes the form of and the particulars to be included in the bill.

Withdrawal for reimbursement

A law practice may withdraw trust money from a general trust account or controlled money account for reimbursement if:

1. before effecting the withdrawal, the practice gives or sends to the person a request for payment, referring to the proposed withdrawal, or a written notice of withdrawal; and
2. the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person (regulation 45(3)(a)(iii)).

In accordance with regulation 45(6) money is taken to have been paid by the law practice on behalf of the person when the relevant account of the practice has been debited.

Where funds are received in payment of a rendered account of costs and disbursements and the account includes incurred but unpaid disbursements, then the portion of those funds received for the incurred but unpaid disbursements will be considered "monies entrusted to a law practice in the course of or in connection with the provision of legal services by the practice" that must be banked to the law practice's general trust account.

Trust account handbook

The above is an extract from the new edition of the *Trust Account Handbook* which is now available for sale. To purchase a copy of the handbook please contact Ethics and Practice on 82290229 or at ethicsandpractice@lawsociety.asn.au. **B**

Endnotes

¹ All references to "section" or "Act" relate to the *Legal Practitioners Act 1981* from 1 July 2014, and all references to "regulation" or "Regulations" relate to the *Legal Practitioners Regulations 2014*.