

| Policy                       |     | Statutory Deposit Account Exemptions  |
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| <b>Purpose</b>               | 1.1 | To set the framework and outline the structures for managing Statutory Deposit Account (SDA) exemptions by the Victorian Legal Services Board (the Board).  |
| <b>Introduction</b>          | 2.1 | This policy applies to applications for exemption from statutory deposit account requirements pursuant to section 85 of the <i>Legal Profession Uniform Law Application Act 2014</i> (the Application Act).   |
| <b>Legislative Framework</b> | 3.1 | Section 81 of the Application Act requires law practices or approved clerks who are required to maintain general trust accounts to deposit a specified amount into the SDA.   |
|                              | 3.2 | Section 79 of the Application Act specifies the required deposit amount, which is calculated each quarter on the basis of the trust account and SDA balances in the previous quarter. The required deposit amount is 70 percent of the sum of the lowest daily balance of the trust account during the previous quarter and the amount held in the SDA on the last day of the quarter, unless this sum is less than \$10,000, in which case no deposit is required. Deposits are required, under s.81(b) of the Application Act, by the 21 <sup>st</sup> day of the first month of the quarter. |
|                              | 3.3 | Under s.83 of the Application Act, the amounts deposited with the Board are held on trust for the law practice or approved clerk and are repayable on demand. However, if an amount is repaid to a law practice or an approved clerk and there is subsequently a sufficient amount to cover the required deposit amount, the law practice must deposit the required deposit amount with the Board.  |
|                              | 3.4 | Section 85 of the Application Act provides that the Board may, on application by a law practice or an approved clerk, exempt the law practice or approved clerk from any of the provisions of Division 1 of Part 5 of the Application Act, for the period and subject to the conditions (if any) determined by the Board.   |
|                              | 3.5 | Exemptions may be granted for the following reasons: <ul style="list-style-type: none"> <li>a) a further deposit of \$15,000 or less is required by the law practice or approved clerk to meet the quarter's requirements for the SDA;</li> <li>b) there is insufficient money in the trust account; or</li> <li>c) any other circumstance the Board considers appropriate</li> </ul>   |
| <b>Guidelines</b>            | 4.1 | On application by the law practice or an approved clerk, the Board may grant an exemption from statutory deposit provisions for the period and subject to any conditions determined by the Board.   |
|                              | 4.2 | A law practice or approved clerk may make an application for an enduring exemption from the requirement to make a further deposit of \$15,000 or less. Once such an application is made, the Board may provide an exemption for any future quarter in which paragraph 4.3 below applies.  |

**Policy**

**Statutory Deposit Account Exemptions**

- 4.3 The Board may grant an exemption from the obligation to deposit the required amount into an SDA if it is satisfied that there are or will be insufficient funds in the trust account. Exemptions will only be granted:
- a) in respect of the quarter in which the application is made; and
  - b)
    - i) on condition that, if there is subsequently a sufficient amount in the law practice or approved clerk's trust account to enable the deposit to be made, the law practice or approved clerk must deposit the required deposit amount with the Board; or
    - ii) on condition that a smaller deposit is made, if the Board determines the smaller deposit is reasonable in the circumstances and if there is subsequently a sufficient amount in the law practice or approved clerk's trust account to enable the deposit to be made, the law practice or approved clerk must deposit the required deposit amount with the Board.
- 4.4 The Board may grant other exemptions from statutory deposit requirements as it considers appropriate. In these cases, the Board will consider whether special circumstances exist.
- 4.5 Where exemptions have not been sought on a timely basis, the Board may investigate failures to make the required deposit amount, or refer the matter to the Victorian Legal Services Commissioner to determine whether there has been unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice.

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**Applications**

- 5.1 Applications in circumstances where there are insufficient funds in the trust account to cover the required deposit amount should be made on the approved form.
- 5.2 A law practice or approved clerk may make an application for an enduring exemption from the requirement to make a further deposit of \$15,000 or less. Once such an application is made, the Board may provide an exemption for any future quarter in which paragraph 4.3 above applies.
- 5.3 All applications should be made in writing to the Board.
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