

**Policy**

**Trust Account Regulations Exemptions**

<b>Introduction</b>	1.1	This document sets out the Victorian Legal Services Board's policy on when an exemption from the trust account provisions may be granted.
	1.2	Nothing in this policy diminishes or predetermines the discretion of the Board to grant exemptions under s.130(4) of the Legal Profession Uniform Law (Uniform Law).
<b>Background Legislation</b>	2.1	Section 130(4) of the Uniform Law provides the Board with the power to exempt law practices (not approved clerks) from trust requirements. It provides that the Board may exempt a particular law practice from complying with any of the provisions of Part 4.2 of the Uniform Law subject to any conditions that may be imposed by the Board.
	2.2	<p>Rule 43 of the <i>Legal Profession Uniform General Rules 2015</i> (Uniform General Rules) sets out requirements in relation to the withdrawal of trust money from a general trust account by cheque and electronic funds transfer. Similar requirements are found in rules 46 and 63. Rule 43 provides, as relevant:</p> <p>(2) A cheque must be signed by, or an electronic funds transfer must be effected under the direction or authority of—</p> <ul style="list-style-type: none"> <li>(a) an authorised principal of the law practice; or</li> <li>(b) if such a principal is not available— <ul style="list-style-type: none"> <li>(i) an authorised legal practitioner associate; or</li> <li>(ii) an authorised Australian legal practitioner who holds an Australian practising certificate authorising the receipt of trust money; or</li> <li>(iii) 2 or more authorised associates jointly.</li> </ul> </li> </ul>
	2.3	<p>The term 'associate' is defined in section 6 of the Uniform Law and has the effect of allowing:</p> <ul style="list-style-type: none"> <li>a) legal practitioners who are partners, directors, officers, employees, agents of, or consultants to, the law practice to sign trust cheques and authorise or direct electronic funds transfer, where authorised by the practice, in the absence of the principal; and</li> <li>b) other associates of the law practice who are not Australian legal practitioners, such as officer, employees and agents, to act as signatories if two act jointly.</li> </ul>
<b>Guidelines</b>	<i>Power to grant exemptions</i>	
	3.1	The Board has the power to exempt law practices from trust provisions, subject to any condition that may be imposed by the Board.
	3.2	<p>The Board can grant exemptions:</p> <ul style="list-style-type: none"> <li>a) to allow one (or more) associate(s) of a law practice to be authorised to sign cheques or effect, direct or authorise the withdrawal or electronic funds transfer of trust or controlled money solely or jointly; and</li> <li>b) to exempt law practices from other trust provisions.</li> </ul>

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*When the Board will grant an exemption*

- 3.3 The Board will only grant an exemption where it considers it is unduly onerous for the applicant to comply with Part 4.2 of the Uniform Law, and/or where other special circumstances exist making it appropriate to exempt the applicant from the usual requirement.

*What the Board will consider*

- 3.4 The Board will take into account any relevant information about the applicant and/or its principals.

*Conditions*

- 3.5 The Board may at any time impose a new condition on an exemption, amend or revoke a condition already imposed on an exemption, or revoke an exemption.

*Term of Exemption*

- 3.6 The Board will determine the period for which an exemption will be granted.

*Applications*

- 3.7 Applications should be made in writing and should provide reasons as to why compliance with the provision/s is unduly onerous, or outline the special circumstances that exist.

*Board Enquiries*

- 3.8 The Board will make requests for any relevant information from the Victorian Legal Services Commissioner, the relevant professional association, and any information held by any former or current supervisor, receiver or manager appointed to the practice (as this information may be held or disclosed by the professional association) if necessary.

*Additional Requirements*

- 3.9 The following additional requirements also apply for applications from law practices for exemption from trust signatory provisions:
- a) Applications must identify why the applicant is unable to comply with the signatory provisions.
  - b) Applications will be preferred where they propose a named associate of the law practice with a significant period of experience signing trust cheques or effecting, directing or authorising the withdrawal or transfer of trust or controlled money, at that or another law practice. The onus is on the applicant to satisfy the Board of the proposed associate's experience.

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- c) Before a trust signatory exemption becomes effective, the Board will require:
  - i) an undertaking from a principal of the law practice that the proposed associate(s) will be the only associate(s) of the practice authorised to sign cheques or effect, direct or authorise the withdrawal or transfer of trust or controlled money solely; and
  - ii) written confirmation of the period that the proposed associate has been employed by the practice and/or signing cheques or otherwise effecting, directing or authorising the withdrawal or transfer of trust or controlled money solely.

**Management & Implementation**

- 4.1 The policy will be communicated to relevant staff of the Board, Law Institute of Victoria and Victorian Bar and further training will be available if required.
- 4.2 The Board and its delegates will ensure that relevant staff have access to current legislation, case law and relevant Board policies and guidelines.