

website

FEES IN ADVANCE

The legislation that regulates barristers receiving fees in advance in direct access matters changed on 1 July 2015. Clause 106A of the *Legal Profession Regulation 2005* was repealed on that date (along with the *Legal Profession Act 2004*).

The new provisions are clauses 15 and 16 of the *Legal Profession Uniform Law Application Regulation 2015* ('the Application Regulation'). Links to the legislation can be found on the Uniform Law page of the Bar Association website.

Trust money is defined in the *Legal Profession Uniform Law* (s. 129). It includes money received by a barrister on account of legal costs in advance of providing the services. Clause 15 of the Application Regulation permits a barrister to receive and hold fees in advance in **direct access matters only** and subject to a number of restrictions –

- the barrister maintains a '**trust money account**' with an ADI for the **sole purpose** of holding fees in advance;
- the trust money account cannot be linked to any credit or mortgage facility;
- the barrister **notifies the Bar Association** of the name and certain details of the account, **within 14 days** of opening account;
- fees in advance are **deposited** in the trust money account as soon as practicable after they are received by the barrister;
- the barrister provides a detailed written **receipt** as soon as practicable to the person from whom the money is received;
- the money **remains deposited** in the trust money account until a bill is given to the client, or the money is refunded to the client or paid to a solicitor later engaged by the client;
- the barrister appoints an **external examiner** to carry out an annual examination (first examination to be submitted to the Bar Association no later than 7 June 2017 and is to cover the period from commencement of the regulation).

This is only a summary of the provision. It is essential that a barrister who receives fees in advance examines clause 15 in detail.

Holding fees in advance immediately on 1 July 2015 – transitional arrangements

* A barrister who held trust money (fees in advance) in an account that complied with clause 106A of the *Legal Profession Regulation 2005* immediately before its repeal may take advantage of a transitional provision and continue to receive and hold trust money in the circumstances set out in clause 106A until 1 October 2015, but is required to give written notice of the account to the Bar Association as soon as practicable.

* The transitional provision is clause 16 of the *Legal Profession Uniform Law Application Regulation 2015*.

Any questions? Please contact the Bar Association's Legal Officer, Angela Huang, on 9232 4055 or pcd@nswbar.asn.au.