



## FEES IN ADVANCE – FACT SHEET FOR BARRISTERS

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 Clause 106A of the *Legal Profession Regulation 2005* was repealed on that date (along with the *Legal Profession Act 2004*).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 provision is clause 15 of the *Legal Profession Uniform Law Application Regulation 2015* ('the LPULAR'). Links to the legislation can be found on the 'Uniform Law' page of the NSW Bar Association website.

Trust money is defined in section 129 of the *Legal Profession Uniform Law (NSW)* (the LPUL). It includes money received by a barrister on account of legal costs in advance of providing the services. Clause 15 of the LPULAR 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 Authorised Deposit-taking Institution 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 the account (a notification form is available on the Bar Association's website);
- 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 (a sample receipt is available on the Bar Association's website);
- 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; and
- the barrister appoints an **external examiner** to carry out an annual examination for the relevant reporting period, with the report to be submitted to the Bar Association by no later than 7 June of each year. A list of external examiners is can be found on the NSW Law Society's Register of External Examiners.

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

### Obligations associated with fees in advance

The obligations associated with fees in advance in direct access matters apply whenever the barrister receives money before the work paid for is completed. This includes, for example:

- Fees received in the days before an appearance, conference, or other work;
- Fees received at the commencement of an appearance, conference or other work; and
- Fees received in the course of a multi-day appearance, conference, or other work, to the extent that the fees are paid in full for the whole of the appearance, conference, or other work.

A contravention of clause 15 of the LPULAR can be taken into account by the Bar Council when considering whether an applicant for the grant of renewal of a practising certificate is a fit and proper person to hold a practising certificate (see rule 13(1)(j) of the *Legal Profession Uniform General Rules 2015* and section 45 of the LPUL).

### Further questions

If you have any questions about clause 15 of the LPULAR, please contact the Bar Association's Legal Officer, Angela Huang, on 9232 4055 or by email at [pcd@nswbar.asn.au](mailto:pcd@nswbar.asn.au).