

**LEGAL PROFESSION ACT 1987—REGULATION**

(Relating to withdrawal of money by electronic funds transfer)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, on the recommendation of the Attorney General, and in pursuance of the Legal Profession Act 1987, has been pleased to make the Regulation set forth hereunder.

J. P. HANNAFORD, M.L.C.,  
Attorney General.

The Legal Profession (Trust Accounts and Controlled Money) Regulation 1988 is amended:

- (a) by inserting after paragraph (c) of the definition of “trust records” in clause 3 (1) the following paragraph:
  - (c1) withdrawals by electronic funds transfer;
- (b) by omitting clause 11 (1) and by inserting instead the following subclause:
  - (1) Trust money must not be drawn from a solicitor’s trust bank account otherwise than by cheque or electronic funds transfer.
- (c) by omitting clause 11 (2) (e) and by inserting instead the following paragraph:
  - (e) be signed by the solicitor, a partner of the solicitor or two persons authorised under clause 16 to sign the cheque.
- (d) by omitting from clause 11 (3) (b) the word “or” and by inserting instead the word “and”;
- (e) by inserting after clause 11 (4) the following clauses:
  - (5) An electronic funds transfer is to be effected by, or under the direction or with the authority of:
    - (a) the solicitor; or

- (b) a partner of the solicitor; or
- (c) two persons authorised under clause 16 to effect an electronic funds transfer from the trust account concerned.
- (6) The solicitor must ensure that, for each electronic funds transfer, a record is kept of the following particulars:
  - (a) the name of the person effecting the transfer and, if the transfer is effected under the direction or with the authority of some other person, of the person under whose direction or with whose authority the transfer is effected;
  - (b) details identifying the ledger account debited and name of the person on whose behalf the amount is transferred;
  - (c) brief particulars of the subject-matter and purpose for which the money is transferred;
  - (d) the reference number or other means of identification of the transfer;
  - (e) the name or style of the bank account to which the money is paid, its number and the identifying numbers of the receiving bank and its branch;
  - (f) the date of the transfer and the amount transferred.
- (f) by inserting in clause 12 (2) after the word “drawn” the words “or, in the case of money received or disbursed by means of electronic funds transfer, the reference number or other means of identification of the transfer”;
- (g) by inserting in clause 12 (3) (b) after the word “cheque” the words “or required by clause 11 (6) to be recorded for an electronic funds transfer” ;
- (h) by omitting clause 16 and by inserting instead the following clause:

**Delegation**

16. (1) A solicitor may delegate his or her authority to sign a cheque drawn on, or to effect an electronic funds transfer from, the trust bank account maintained by the solicitor or his or her firm under section 61 of the Act:

- (a) if the solicitor is practising on his or her own account or there is no partner of the solicitor available to sign the cheque or effect the transfer with due expedition; and
  - (b) if subclause (2) is complied with; and
  - (c) if the Law Society Council is immediately notified of the delegation.
- (2) The delegation must be in writing signed by the solicitor and must be to any 2 of the following persons:

- (a) a solicitor holding a current practising certificate;
  - (b) a registered company auditor within the meaning of the Corporations Law;
  - (c) a bank manager;
  - (d) any other person approved or nominated by the Law Society Council.
- (3) A delegation does not authorise the signing of a cheque or the effecting of an electronic funds transfer unless:
- (a) the delegator is unable to sign the cheque or effect the transfer with due expedition because of his or her illness, injury or absence for good reason; and
  - (b) no solicitor practising in partnership with the delegator is available to sign the cheque or effect the transfer with due expedition; and
  - (c) the cheque is signed or the transfer is effected by 2 delegates.
- (4) A delegation ceases to have effect if the Law Society Council notifies the delegate that the delegation has been cancelled by the Law Society Council.
- (5) A notification of the cancellation of a delegation by the Law Society Council may be given by the Council at any time and with or without notice to the delegator.
- (i) by inserting in clause 23 after the word “cheque” the words “or electronic funds transfer”.

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#### EXPLANATORY NOTE

The purpose of this Regulation is to amend the Legal Profession (Trust Account and Controlled Money) Regulation 1988 so as to enable money to be withdrawn from a solicitor’s trust bank account or controlled money bank account by an electronic funds transfer. At present all such withdrawals must be made by cheque. This Regulation also makes some minor, consequential and ancillary amendments to the Principal Regulation.

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