

Comparison of APES 310 ED Client Monies and the *Legal Profession Act 2004 (Vic)*

APES 310 ED Client Monies		<i>Legal Profession Act 2004 (Vic)</i> [No.99 of 2004]	Discussion
Section	Key Points	Part 3.3 – Trust Money and Trust Accounts	
<p><i>Part A: Professional obligations of a Member in Public Practice in respect of Client Monies</i></p> <p>Fundamental Responsibilities of Members in Public Practice</p> <ul style="list-style-type: none"> - Public interest - Professional competence and due care 	<p>1.5 Members are required to comply with the fundamental principles of the Code (APES 110).</p>		No comparable paragraph.
Objectives and general principles	<p>4.1 The overriding objective is to protect client interests.</p>	<p>3.3.14 Must hold trust money exclusively for the person on whose behalf it is received.</p>	Consistent.
	<p>4.2 Member is accountable for all Client Monies transacted through the trust account. Money is to be held separately and applied exclusively for the benefit of the Client.</p>	<p>3.3.19 Trust money must not be mixed with other money (otherwise than as permitted by The Act).</p>	Broadly consistent.

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	4.6 Member is required to comply with all legal and fiduciary duties.		No specific discussion in the Act.
	4.9 Member shall not pay or deposit monies that they believe is from illegal activities.		No specific discussion in the Act. Note however the Act does prohibit receipt of money under a false name (see 3.3.26).
	4.10 Member shall not be involved in money laundering or the proceeds of crime or terrorist financing.		No specific discussion in the Act.
Receipt of client monies	7.1/7.2 money received shall be dispatched immediately. Where recipient is unknown, Member to forward to drawer or sender as appropriate.		No specific discussion in the Act.
	7.5 Members acting on written authority from the client must assign proceeds to the client's account in a timely manner.		No specific discussion in the Act.
	7.7 specify information that has to be recorded when money is received or deposited.		No specific discussion in the Act.
	7.8 require documents of title to be safeguarded and recorded in a		No specific discussion in the Act.

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	register.		
	7.9 the Member is required to issue fully completed receipts.		No specific discussion in the Act.
Client Bank Accounts	6. Specific written authority from the client is required prior to operating the bank account.		No specific discussion in the Act.
Establishment of Trust Account(s)	5.1 Members are required to establish trust accounts for the receipt of client monies.	3.3.11 A general trust account must be maintained.	Broadly consistent.
	5.3 “trust account” must be in the title of the trust account.		No specific discussion in the Act.
	5.4 member to provide written notice of the terms of the account to the financial institution.		No specific discussion in the Act.
	5.5 Money is to be deposited within 2 working days of receipt.	3.3.13 requires that money is deposited as soon as practicable after receipt. 3.3.17A2 (where cash is received) it must be deposited into the trust account following	Broadly consistent.

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		which it should be dealt with in accordance with any directions provided.	
	5.6 A register of monies must be maintained.		No specific discussion in the Act.
	5.7 The member is required to provide the client with information relating to the location at which monies are held.		No specific discussion in the Act.
Operation of Trust Account(s)	8.1 Member required to protect client interests.		No specific discussion in the Act.
	8.2 Take all reasonable steps to ensure client authorises access by member's professional body for the purposes of inspection, quality review program or disciplinary proceedings.		No specific discussion in the Act.
	8.3 Only transact on the account with authority from the legal owner.		No specific discussion in the Act.
	8.4 Financial charges to be debited against member's account, not trust account.		No specific discussion in the Act.

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Disbursement of Client Monies	9.1 Disbursements only to be made based on authority (from the client).	3.3.14 Trust money must only be disbursed in accordance with a direction given by the person (<i>on whose behalf trust money is received</i>).	Consistent
	9.2 Member or delegated authorities to sign cheques.	3.3.14 A Trust money may only be withdrawn via cheque or electronic funds transfer.	The Act specifically prohibits any other forms of withdrawal from trust accounts. APES 310 does not specifically prohibit other forms of withdrawal however it states that monies shall only be disbursed on Client authority or as authorised by the operation of law.
	9.3 Appropriate paperwork required for electronic transfers.		No specific discussion in the Act.
	9.4 Written client approval is required prior to withdrawing professional fees from the trust account.	3.3.20 A law practice may exercise a lien, for the amount of legal costs reasonably due and owing by the person to the practice.	Requirements of APES 310 ED are more stringent.
	9.5 Disbursements should not exceed	3.3.21 A practitioner is guilty	Broadly consistent.

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	balance.	of an offence if he or she without reasonable excuse causes a deficiency in the trust account.	
Trust Account Records	10.1 Trust Account Records are to be maintained to appropriately document transactions.	3.3.25 Trust account records must be kept in permanent form.	Broadly consistent.
	10.3 Only hold Client Monies in a Trust Account for the period reasonably necessary...		No specific discussion in the Act.
	10.5 All interest to be credited to the relevant Client's account.		No specific discussion in the Act.
	10.6 Member to disclose to the Client in writing any benefit accruing to the Member or Client		No specific discussion in the Act.
	10.8 Notify the auditor immediately when there is a deficiency in the Client account.	3.3.23 Written notice of irregularities in the Trust account must be given to the Board as soon as practicable.	Consistent in that irregularity must be reported as soon as possible.
	10.9 Statement of transactions to be provided annually.		The Act implies this through the requirement to have an annual examination.

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			Consistent.
	10.11 Maintain records to enable audit.		The Act implies this through the requirement to have an annual examination. Consistent.
	10.12 Trust account records to be retained for 5 years or as required by legislation.		No specific discussion in the Act.
	10.16 Reconcile on a monthly basis the trust account records to the trust accounts.		No specific discussion in the Act.
	10.17 The Client Bank Account is to be reconciled on a monthly basis.		No specific discussion in the Act.
Audit of the Member's Trust Account(s)	11.1/11.2 Requires that trust accounts are audited annually within 90 days of year end or cessation of operation of the trust account.	<p>3.3.52 Records must be examined by an approved external examiner in respect of each audit year.</p> <p>3.3.54 A report on the examination must be submitted to the Board by 28 February each year (for the year ending the preceding 31 October).</p>	Consistent in terms of the requirement to audit. Note where audits are required by the <i>Trust Accounts Act (QLD) 1973</i> , the <i>Corporations Act 2001</i> or the <i>Bankruptcy Act 1966</i> , a separate audit is not required by APES 310.

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	11.4 Member to bear the cost of the audit.		No specific discussion in the Act.
	11.6/11.7 Member can apply to remove an auditor. If this is done, a new auditor must be appointed within 14 days of removal.		No specific discussion in the Act.
<i>Part B: Responsibilities of a Member in Public Practice who conducts audits of a Member's Trust Accounts</i>			
Professional obligations of the Auditor	12.1 Perform the audit in accordance with Auditing & Assurance standards and this standard.	3.3.57 (1) The Board may issue directions and guidelines in relation to the conduct of examinations under this Division. (2) An approved external examiner must comply with directions issued by the Board under subsection (1).	The requirements of the Board may potentially be in conflict with the auditor's requirements under APES 310.
	12.3 Report to the Member's professional body any matters of significance that	3.3.56 The examiner must report the (deficiency or failure) to the Board	Consistent requirement to report irregularities.

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	arise.	as soon as practicable after becoming aware of it.	
	12.5 Working papers are to be retained for 7 years or as prescribed by legislation.		No specific discussion in the Act.