

Policy Grant of Trust Authorisation

Purpose	1.1	<p>This policy outlines the Victorian Legal Services Board and Commissioner’s (VLSB+C) approach to granting an Australian practising certificate subject to a condition that the holder is authorised to receive trust money.</p> <p>This policy sets out how an applicant may demonstrate the necessary skills and expertise which will guide the Victorian Legal Services Board’s (the Board) discretion to grant to an applicant an Australian practising certificate authorising the receipt of trust money.</p>
Introduction	2.1	<p>The conduct of legal business often requires the safe, reliable transfer of money, which is typically conducted through law practices’ trust accounts. It is vital to maintain the integrity of law practices’ trust accounts as consumers of legal services are entitled to expect proper management for the safekeeping of their money. Lawyers who are entitled to receive trust money have a fiduciary duty to those persons on whose behalf they hold it and the consequences of breaching that duty can be that criminal or disciplinary action is taken.</p> <p>The VLSB+C are responsible for ensuring lawyers are competent and maintain high ethical and professional standards such that both clients of law practices and the public generally are protected. The Board, as the designated local regulatory authority, may grant Australian practising certificates at its discretion and may have regard to matters relevant to the exercise of that discretion including the competency, expertise, knowledge and experience of the lawyer applying to hold a particular type of practising certificate.</p> <p>The objective of Part 4.2 of the <i>Legal Profession Uniform Law (Victoria)</i> (Uniform Law) is to ensure that trust money is held in a manner that protects the interests of those persons for whom and on whose behalf trust money is held. The extensive regulation of trust money in Part 4.2 reflects lawyer’s fiduciary obligations and is indicative of the importance of the additional responsibility carried by lawyers who are authorised to receive trust money and to deal with it on behalf of their clients and other members of the community. The detriment to consumers of legal services on whose behalf trust money is held can be significant where trust money is dealt with improperly or with a lack of competence or diligence.</p> <p>It is therefore a relevant consideration for the Board to have regard to whether an applicant seeking trust authorisation possesses the necessary skills and expertise. In addition to lawyers’ fiduciary obligations to hold trust money safely, dealing with trust money also requires particular technical skills in accounting and records management. This policy sets out the skills and expertise to which the Board will have regard in considering whether an Australian practising certificate will be granted with trust authorisation or without trust authorisation to an applicant lawyer.</p>

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Legislative Framework 3.1

Part 3.3 of the Uniform Law – Australian legal practitioners

Part 3.3 of the Uniform Law establishes the legislative framework for the grant and renewal of Australian practising certificates for eligible and suitable persons who are already admitted to the Australian legal profession. The holders of Australian practising certificates are entitled to call themselves Australian legal practitioners.

The Uniform Law establishes that an Australian legal practitioner is entitled to engage in legal practice. However, the entitlement to engage in legal practice is subject to the requirements of the Uniform Law, the Rules and any conditions imposed on the practitioner's practising certificate.

The Board is responsible for granting or renewing applications for Australian practising certificates.

Section 47(2) of the Uniform Law imposes a condition on an Australian practising certificate, to be determined by the Board, that the holder is authorised or is not authorised to receive trust money. This policy stipulates the matters to which the Board may have regard when exercising the discretion to grant a certificate with or without the condition authorising receipt of trust money.

Part 4.2 of the Uniform Law – trust money and trust accounts

Part 4.2 of the Uniform Law regulates the receipt and handling of trust money by Australian legal practitioners who are authorised to do so. The objective of Part 4.2 is to ensure trust money is held by law practices in a manner that protects the interests of the persons for whom or on whose behalf it is held. This Part contains extensive provisions regulating the receipt, holding and disbursing of, and accounting for, trust money on behalf of consumers of legal services and contains various civil and criminal penalty provisions for various contraventions, including but not limited to defalcations and deficiencies in law practice trust accounts.

Chapter 4 of the Uniform Rules prescribes various matters pertaining to the maintenance of trust accounts, including record keeping, withdrawing monies for legal costs, appropriate computerised systems management, notification requirements, registers that must be held, obligations with respect to external examinations of trust records and billing obligations.

An extensive external examination and external investigation regime are imposed on law practices operating trust accounts to prevent fraud and defalcation. External examiners are required to undertake a course approved by the Legal Services Council before being authorised to conduct external examinations.

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Key definitions	4.1	<p>Terms used in this policy have the same meaning as contained in section 6 of the Uniform Law unless otherwise stated in this section.</p> <p>For the purposes of this policy:</p> <p>Approved trust account course means the course approved on 9 July 2015 by the Legal Services Commissioner and CEO of the Legal Services Board and includes the trust account course examination similarly.</p> <p>Applicant lawyer means a lawyer who is an applicant for an Australian practising certificate or Australian registration certificate authorising the receipt of trust money.</p> <p>Australian practising certificate includes an Australian registration certificate.</p>
Skills, experience and competency criteria for trust authorisation	5.1	<p>Criteria to be met for a grant of <u>any</u> practicing certificate type</p> <p>Section 45 of the Uniform Law sets out the prerequisites for a grant of any Australian practising certificate, including one authorising receipt of trust money, specifically that the Board must refuse a grant where it considers an applicant is not a fit and proper person to hold that certificate. Rule 13 of the <i>Legal Profession General Rules 2015</i> (Uniform Rules) sets out the matters to which the Board may have regard when assessing an applicant lawyer's fitness and propriety. All applicants for Australian practising certificates, including those applying for trust authorisation, must notify the Board of certain events under section 51 of the Uniform Law.</p> <p>In addition to declaring any fit and proper matters at grant or renewal, a lawyer who is an applicant for or the holder of a certificate must notify the Board of a show cause event, as described in Division 4 sections 85 - 92 of the Uniform Law. There are two kinds of show cause events:</p> <ul style="list-style-type: none"> • Automatic Show Cause events; or • Designated Show Cause events. <p>In relation to Automatic Show Cause events, the Board must determine whether the lawyer concerned is a fit and proper person to hold a certificate.</p> <p>These requirements must be met by all applicants annually including applicant lawyers seeking trust authorisation for the first time. Information on the Board's approach to the above matters is contained in the VLSB+C's Fit & Proper Person Policy also available on the VLSB+C website.</p>
	5.2	<p>Additional skills and expertise criteria for applicant lawyers seeking trust authorisation for the first time</p> <p>In exercising its discretion whether or not to grant an Australian practising certificate with trust authorisation the Board will consider whether the applicant lawyer has demonstrated the necessary skills and expertise to handle trust money on behalf of consumers of legal services. The Board may seek further information from an applicant under rule 12(3) of the Uniform Rules before determining an application.</p>

5.3 **Approved trust account course**

The Board has determined that an applicant lawyer who has completed an approved trust account course¹ will have the necessary skills and expertise to receive trust money.

The applicant lawyer must provide the Board with a certificate of completion as part of the application process. This may be provided directly by a provider of the approved trust account course.

Procedure

An applicant lawyer may complete the approved trust account course at any time prior to receiving authorisation to receive trust money. Once a certificate of completion has been provided, an applicant lawyer may then go to *LSB Online* to vary their current practising certificate, to be authorised for trust.

The Board consider that the approved trust account course provides the skills and expertise necessary to conduct a trust account in a safe, competent and diligent manner. The approved trust account course provides detailed instruction and guidance as to the provisions of the Uniform Law, particularly Part 4.2 and the applicable Uniform Rules. Furthermore it provides instruction and testing of the practical application of the provisions to everyday legal practice in Victoria.

5.4 **Alternatives to completion of approved trust account course**

The Board considers the approved trust account course to be the primary way for an applicant lawyer to demonstrate the skills and expertise necessary to operate a law practice trust account safely, competently and diligently.

The Board recognises however, that there may be lawyers who may demonstrate these skills and expertise and have experience equal to that provided by completion of the approved trust account course.

Although not an exhaustive list of what the Board may consider, the following is intended as a guide.

An applicant lawyer may be considered to possess the necessary skills and expertise if he or she has:

- within the last 5 years, completed a course of comparable length and subject matter approved in another jurisdiction of Australia to allow authorisation of receipt of trust money in that jurisdiction;
- been a lawyer authorised to receive trust money in another common law jurisdiction of at least 2 years continuous duration within the last 5 years;
- been a lay associate of a law practice in Victoria with a recognised accounting qualification of degree level with some demonstrable experience in the operation of a law practice trust account of at least 2 years duration; or
- been a licensed conveyancer in Victoria with demonstrable experience in the operation of a trust account of at least 2 years continuous duration within the last 5 years.

¹ The approved course is available through the Law Institute of Victoria.

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Procedure

An applicant lawyer who seeks to demonstrate the skills and expertise other than by completion of the approved trust account course should provide sufficient documentary evidence of their skills, expertise and experience directly to the Board.

The Board will consider the material provided by the applicant lawyer and advise of its determination within a reasonable time.

The Board may ask for further information or verification of the material provided from the applicant lawyer or a third party.

Failure to meet skills, competency and experience criteria	6.1	Applicant lawyers who do not demonstrate the necessary skills and expertise by either completion of the approved trust account course or otherwise may only be granted the certificate applied for without trust authorisation, for example a principal without trust authorisation.
Related policy and other documents	7.1	<p>Other policies related to this policy include the following;</p> <ul style="list-style-type: none"> • VLSB+C Compliance & Enforcement Policy • VLSB+C Fit & Proper Person Policy • VLSB+C Risk based Regulation – Trust Accounts