



*Trust Accounts Act 1973*

# **Trust Accounts Regulation 1999**

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Queensland

# Trust Accounts Regulation 1999

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# Trust Accounts Regulation 1999

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Trust Accounts Regulation 1999*.

## Part 2 Supervising entity

### 2 Supervising entity for trustees—Act, s 4E

For section 4E(2) of the Act, the registrar of funeral benefit businesses under the *Funeral Benefit Business Act 1982*, section 6, is declared to be the supervising entity for a trustee.

*Note—*

See also the *Funeral Benefit Business Act 1982*, section 80.

## Part 3 Record keeping

### Division 1 Prescribed books, accounts and records

#### 3 Books, accounts and records to be kept by trustees

A trustee must keep the following books, accounts and records—

- (a) a register of trust account receipt forms;

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- (b) a trust account receipt book of consecutively machine numbered receipt forms in duplicate;
- (c) a trust account deposit book of trust account deposit forms in duplicate;
- (d) a trust account cash book;
- (e) a trust account journal of consecutively machine numbered folios;
- (f) a trust account ledger;
- (g) a trust account investment ledger.

## **Division 2                      Register of trust account receipt forms**

### **4                      Register**

A register of trust account receipt forms must contain a record of the receipt number of each receipt form held by the trustee.

## **Division 3                      Trust account receipt books**

### **5                      Receipt forms**

- (1) A receipt form must be headed 'Trust Account Receipt', and a completed receipt form must contain the following particulars—
  - (a) the name of the trustee on whose behalf the receipt is given;
  - (b) the date the receipt is given;
  - (c) the name of the person to whom the receipt is given;
  - (d) the name of the person on whose behalf the trust moneys are received;
  - (e) a brief description of the matter for which the trust moneys are received;

- (f) the amount of trust moneys received, in words and figures;
  - (g) how the trust moneys are received, for example, in cash, by cheque or by electronic funds transfer;
  - (h) the signature of the person giving the receipt.
- (2) Each receipt form must include provision for the particulars mentioned in subsection (1).
- (3) A duplicate receipt form must also be headed ‘Office Copy’ or ‘Duplicate Copy’.

## **6 Dealing with trust account receipt forms**

A trustee must ensure—

- (a) a trust account receipt form—
  - (i) is used only for the receipt of trust moneys; and
  - (ii) includes the particulars mentioned in section 5(1); and
  - (iii) is given to the person from whom trust moneys are received; and
- (b) a legible copy of each trust account receipt form given by the trustee is kept securely in the trustee’s records; and
- (c) if the trustee cancels a receipt form, the form is kept securely in the trustee’s records.

Maximum penalty—10 penalty units.

## **7 Trustee may destroy unused receipt forms**

- (1) This section applies if an auditor who audits a trustee’s records and trust accounts under the Act reasonably believes the trustee does not intend to use a receipt form.
- (2) The auditor may give the trustee a written direction to destroy the receipt form.

- (3) The trustee must not contravene the direction.

Maximum penalty—5 penalty units.

- (4) If the auditor gives a trustee a written direction to destroy a receipt form, the auditor must, as soon as practicable after giving the direction, give to the supervising entity a notice stating—

- (a) the trustee's name and address; and
- (b) the trustee's general trust account name and number; and
- (c) the number of the receipt form.

Maximum penalty—5 penalty units.

- (5) In this section—

*reasonably believes* means believes on grounds that are reasonable in the circumstances.

## **Division 4            Trust account deposit book**

### **8            Trust account deposit forms**

A trust account deposit form must contain the following particulars—

- (a) the name and account number of the trust account into which the trust moneys are deposited;
- (b) the amount and the date of the deposit;
- (c) the number of the trust account receipt form given by the trustee for the trust moneys;
- (d) the signature of the depositor.

### **9            Depositing trust moneys**

If a trustee deposits trust moneys into a trust account, the trustee must ensure—

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- (a) if the trust moneys are deposited other than by way of electronic funds transfer—a copy of the trust account deposit form is kept securely in the trustee’s records; and
  - (b) if the trust moneys are deposited by way of electronic funds transfer—
    - (i) the trustee receives a document, other than a financial institution statement balance, from the financial institution into which the trust moneys are paid acknowledging the receipt of the trust moneys into the trust account; and
    - (ii) the document is kept securely in the trustee’s records.

Maximum penalty—10 penalty units.

## **Division 5                    Disbursement of trust moneys**

### **10            Disbursements**

- (1) A trustee must not draw against or cause any payment to be made from a trust account kept by the trustee for a particular matter conducted by the trustee for a person unless—
  - (a) the amount of the withdrawal or payment is not more than the amount of cleared funds in the account for the matter; and
  - (b) if the trustee draws a cheque under section 12(1) of the Act, the cheque is signed by—
    - (i) if the trustee is an individual—the trustee or a person appointed by the trustee; or
    - (ii) if the trustee is a partnership—a partner.

Maximum penalty—10 penalty units.

- (2) If the trustee draws a cheque under section 12(1) of the Act, the trustee must also ensure the following particulars are written on the trustee’s cheque butt or other document—

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- (a) the date the cheque is drawn;
- (b) the name of the person to whom the cheque is made payable;
- (c) the name of the person on whose behalf the cheque is drawn;
- (d) a brief description of the matter for which the cheque is drawn;
- (e) the amount withdrawn.

Maximum penalty—10 penalty units.

- (3) Also, if a payment is made from a trust account by a cheque drawn on, or permitting or enabling payment to be made by, a financial institution, the trustee must ensure that the name of the person beneficially entitled to the trust moneys is written on—
- (a) the trustee's cheque; and
  - (b) the trustee's cheque butt or other document.

Maximum penalty—10 penalty units.

- (4) A trustee must keep each cheque butt or other document containing the particulars mentioned in subsection (2) or (3) securely in the trustee's records.

*Example of 'other document'—*

a cheque requisition form

## **Division 6                      Trust account cash book**

### **11                      Trust account cash book—entries**

- (1) If a trustee receives trust moneys, or pays trust moneys to someone, the trustee must, within 2 days after the day the moneys are received or paid, enter the following particulars in the trust account cash book—
- (a) if trust moneys are received—
    - (i) the date the moneys are received; and

- (ii) the name of the person from whom the moneys are received; and
  - (iii) the name of the person on whose behalf the moneys are received; and
  - (iv) a brief description of the matter for which the moneys are received; and
  - (v) the amount received; and
  - (vi) the date the trust moneys are paid into the trust account;
- (b) if trust moneys are paid—
- (i) the date the moneys are paid; and
  - (ii) the name of the person to whom the moneys are paid; and
  - (iii) the name of the person on whose behalf the moneys are paid; and
  - (iv) a brief description of the matter for which the moneys are paid; and
  - (v) the amount paid.

Maximum penalty—10 penalty units.

- (2) However, if a trustee receives trust moneys by way of electronic funds transfer, the trustee may enter the particulars in the trust account cash book on the day the trustee becomes aware of the receipt.

## **12 Trust account cash book—reconciliation**

- (1) A trustee must, as soon as practicable after the end of each month—
- (a) balance and reconcile the trust account cash book balance at the end of the month with the trust account ledger; and
  - (b) reconcile the financial institution's statement balance for the trustee's trust account at the end of the month with

the trust account cash book balance at the end of the month.

Maximum penalty—10 penalty units.

- (2) A reconciliation under subsection (1)(b) must contain the following particulars—
  - (a) the balance of the financial institution statement balance at the end of the month;
  - (b) the amount of trust moneys on hand at the end of the month and the date the moneys were received;
  - (c) the amount of each outstanding deposit at the end of the month and the date the amount was received and deposited;
  - (d) details of any outstanding cheques at the end of the month, including—
    - (i) the cheque number of each cheque; and
    - (ii) the amount and date of each cheque;
  - (e) the balance of the trust account at the end of the month as shown in the trust account cash book.
- (3) For a reconciliation under subsection (1)(b), the trustee must reconcile the trust account cash book balance at the end of the month with the amount obtained by—
  - (a) adding the amounts mentioned in subsection (2)(b) and (c) to the financial institution statement balance amount at the end of the month; and
  - (b) deducting the amount of each outstanding cheque at the end of the month from the amount obtained under paragraph (a).
- (4) The trustee must keep the reconciliations mentioned in subsection (1) securely in the trustee's records.

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## **Division 7                      Trust account ledger**

### **13            Keeping trust account ledgers**

A trustee must keep a separate ledger account in the trust account ledger for each matter conducted for each person on whose behalf the trustee receives trust moneys.

Maximum penalty—10 penalty units.

### **14            Trust account ledger—form**

- (1) Each trust ledger account must contain the following particulars—
  - (a) the surname and initials of the person on whose behalf the trust moneys are received or paid;
  - (b) a brief description of the matter for which the trust moneys are received or paid.
- (2) Also, each trust ledger account must contain the following particulars for each entry in the ledger account—
  - (a) the date the trust moneys are received or paid;
  - (b) the name of the person from whom the trust moneys are received or to whom the trust moneys are paid;
  - (c) a brief description of the matter for which the trust moneys are received or paid;
  - (d) the amount received or paid;
  - (e) if trust moneys are received—the receipt number;
  - (f) if trust moneys are paid—the cheque number;
  - (g) the balance of the account after each entry;
  - (h) if trust moneys are transferred to the trust ledger account from another trust ledger account under section 21—the number of the trust account journal folio on which the transfer is recorded.

**15 Trust account cash book entries to be posted to ledger account**

A trustee must ensure that each entry in the trust account cash book is posted to the trust ledger account for the person on whose behalf the trust moneys are received or paid within 2 days after the day the trust moneys are received or paid.

Maximum penalty—10 penalty units.

**Division 8 Records of investments**

**16 Trustee to keep records of investments**

- (1) This section applies if a person entitled to trust moneys held by a trustee gives to the trustee a written authority to invest the trust moneys.
- (2) The trustee must—
  - (a) within 2 days after receiving the authority, invest the moneys in accordance with the authority; and
  - (b) keep a trust account investment ledger containing the following records—
    - (i) an investment control account for all trust moneys invested by the trustee;
    - (ii) an investment ledger account for each person on whose behalf an investment is made.

Maximum penalty—10 penalty units.

**17 How trustee accounts for investments**

- (1) A trustee must, for each amount invested by the trustee under section 16(2)(a)—
  - (a) credit the amount of the investment to the investment control account; and
  - (b) debit the amount to the investment ledger account.

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- (2) If interest accrues on an investment, the trustee must—
    - (a) credit the amount of accrued interest to the investment control account; and
    - (b) debit the amount to the investment ledger account.
  - (3) The interest accruing on an investment must be entered in the accounts when the trustee receives notice of the accrual.
  - (4) If an amount is withdrawn from, or realised on, an investment, the trustee must—
    - (a) debit the amount to the investment control account; and
    - (b) credit the amount to the investment ledger account.
  - (5) In this section—

*investment ledger account* means the investment ledger account kept by the trustee in the name of the person on whose behalf the investment is made.

## 18 Particulars of investment control account and investment ledger accounts

- (1) A trustee must, for each amount invested by the trustee under section 16(2)(a), enter the following particulars in the investment control account—
  - (a) the date an amount is credited or debited to the investment control account;
  - (b) the name of the investment ledger account to which the amount credited or debited relates;
  - (c) each amount credited or debited to the investment control account;
  - (d) the balance of the investment control account after each entry.

Maximum penalty—10 penalty units.
- (2) A trustee must, for each amount invested by the trustee under section 16(2)(a), enter the following particulars in the

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investment ledger account for the person on whose behalf the investment is made—

- (a) the full name in which the investment is made;
- (b) a brief description of the investment, including details that readily identify its nature and location;
- (c) the date it is made;
- (d) each amount debited or credited to the account;
- (e) the balance of the account after each entry.

Maximum penalty—10 penalty units.

## **19 Dealing with investments**

- (1) If a trustee intends to invest trust moneys for a person, the trustee must, before investing the trust moneys, deposit the amount to be invested into the trustee's general trust account.

Maximum penalty—10 penalty units.

- (2) If a trustee withdraws trust moneys from an investment account for a person, the trustee must, before paying the trust moneys to the person, deposit the amount to be paid into the trustee's general trust account.

Maximum penalty—10 penalty units.

## **20 Interest on investments**

A trustee must ensure that interest accruing on trust moneys invested by the trustee is—

- (a) added to the trust moneys; and
- (b) dealt with by the trustee as trust moneys.

Maximum penalty—10 penalty units.

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## **Division 9                      Trust account journals**

### **21            Transfer by journal entry**

- (1) A trustee may transfer trust moneys from a trust ledger account to another trust ledger account by a journal entry.
- (2) However, a trustee must not transfer trust moneys by a journal entry unless the trustee is entitled to pay the moneys from the trust account for the purpose for which it is transferred.

Maximum penalty—10 penalty units.

- (3) A trustee must ensure that a trust account journal includes the following particulars for each entry in the journal—
  - (a) the date the trust moneys are transferred;
  - (b) the name of the person, and a brief description of the matter conducted for the person, from whose trust ledger account the moneys are transferred;
  - (c) the name of the person, and a brief description of the matter conducted for the person, to whose trust ledger account the moneys are transferred;
  - (d) the amount transferred;
  - (e) a brief description of the matter for which the moneys are transferred;
  - (f) the signature of the trustee, or authorised signatory to the trust account, authorising the transfer.

Maximum penalty—10 penalty units.

## **Division 10                      Computer system records**

### **22            Keeping computer system records**

- (1) This section applies if a trustee keeps any books, accounts or records mentioned in section 3 by a computerised accounting system.

- (2) The trustee must ensure that—
- (a) the computer system has enough capacity and backup capability to record the information required to be kept under the Act; and
  - (b) the computer system is backed-up at least once a month; and
  - (c) a computer disk or other electronic device used to store the backed-up information is kept in a fire-proof location that is unaffected by magnetic interference or other thing that may adversely affect the stored information; and
  - (d) the computer system does not allow the deletion of a trust ledger account unless—
    - (i) the account has a zero balance; and
    - (ii) a record of the account, as it was immediately before its deletion, is kept in a visible form; and
  - (e) an amendment to the particulars of a transaction recorded on the computer system is made by a separate transaction recorded on the system; and
  - (f) a report, or each page or entry in a report generated by the computer system is numbered sequentially under the computer program control in a way that enables the completeness of the record to be conveniently audited; and
  - (g) if an entry in a trust ledger account results in a debit balance in the account—a contemporaneous record of the transaction is made and the computer system is able to produce, in visible form and on demand, a separate chronological report of each transaction that results in a debit balance; and
  - (h) a record of information produced by the computer in a visible form is produced in chronological sequence.

Maximum penalty—10 penalty units.

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- (3) The computer system must be capable of keeping a record in chronological sequence of any change (by creation, amendment or deletion) to the following information—
- (a) the name and address of a person for whom trust moneys are held;
  - (b) the description of a matter being conducted by the trustee;
  - (c) the amount of trust moneys held for a person by the trustee;
  - (d) the financial institution account number of a trust account.
- (4) The trustee must, as soon as practicable after the end of each month, make a print-out of the following—
- (a) a cash book containing details of receipts and payments for the month including the cash book balance at the end of the month;
  - (b) if a trust ledger account is kept by a computerised accounting system—the balance of the ledger account;
  - (c) if a trust account investment ledger is kept by a computerised accounting system—the reconciliation of the investment ledger;
  - (d) if a trust account financial institution statement balance is reconciled with the trust account cash book balance by a computerised accounting system—the reconciliation of the financial institution statement.

Maximum penalty—10 penalty units.

- (5) If a trust account ledger or trust account investment ledger is kept by a computerised accounting system, a trustee must, immediately before a trust ledger account or investment ledger account is deleted from the computer system—
- (a) make a print-out of the ledger account; and
  - (b) keep the print-out securely in the trustee's records.

Maximum penalty—10 penalty units.



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- (a) the full name in which the investment is made;
  - (b) the date it was made;
  - (c) the amount of the investment;
  - (d) a brief description of the investment, including particulars that readily identify its nature and location.

*Example of 'particulars' for paragraph (d)—*

- 1 the name of the financial institution holding the investment
- 2 the financial institution account number of the investment

Maximum penalty—10 penalty units.

- (3) The trustee must give the statement to the auditor as soon as practicable before the auditor completes the auditor's report for the audit.
- (4) The statement must be accompanied by a statutory declaration that—
  - (a) states the information contained in the statement is correct; and
  - (b) is made by—
    - (i) if the trustee is an individual—the individual; or
    - (ii) if the trustee is a partnership—a partner.

## **26 Auditing procedures and standards**

For section 16(10) of the Act, the auditing procedures and standards for an audit or unannounced examination are the procedures and standards in the Audit Standards and Audit Guidance Statements issued by the Auditing Standards Board of the Australian Accounting Research Foundation.

## **27 Unannounced examination**

- (1) If an auditor conducts an unannounced examination under section 18(1) of the Act, the records and accounts the auditor must examine are the records and accounts kept by the trustee in the examination period.



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## **Schedule                      Prescribed information for audit report**

section 23(1)

- 1    The period of the audit.
- 2    The auditor's name.
- 3    The auditor's qualifications to act as an auditor for a trustee under the Act.
- 4    If the auditor is a member of a firm appointed as an auditor for a trustee under the Act—the firm's name.
- 5    The address of each place of business to which the audit report relates.
- 6    The name of the trustee to which the audit relates.
- 7    If the trustee is a registered business name, the name of each member of the business.
- 8    Whether, in the auditor's opinion, the trust account has been kept in accordance with the Act.
- 9    If the trustee has been a trustee for 12 months or more, the day an unannounced examination of the trust account was conducted by the auditor.
- 10   The name of each trust account and the name of each financial institution at which a trust account has been kept.
- 11   Whether the auditor also audits the trustee's general account.
- 12   Whether the auditor has—
  - (i)    asked the trustee for permission to examine the trustee's general account; and
  - (ii)   been refused permission.
- 13   Whether a trust account has been overdrawn and, if so, the particulars of the overdrawn account.
- 14   Whether a trust ledger account has been overdrawn.

- 15 If a trust ledger account has been overdrawn—
  - (i) the date it was overdrawn; and
  - (ii) the amount by which it was overdrawn; and
  - (iii) the date the account reverted to a nil or credit balance; and
  - (iv) the reason why it was overdrawn; and
  - (v) whether, in the auditor's opinion, the overdrawing was promptly corrected; and
  - (vi) if the overdrawing was not promptly corrected—the reason why it was not promptly corrected.
- 16 Whether the trust account cash book has been reconciled with the trust account financial institution statement balance and the trust account ledger each month.
- 17 The receipt numbers of the following—
  - (i) each trust receipt form used in the audit period;
  - (ii) each unused trust receipt form given to the auditor.
- 18 A statement containing the following particulars—
  - (i) any amounts held in trust by the trustee on the last day of the financial period;
  - (ii) the name of the person on whose behalf the amounts are held;
  - (iii) a reconciliation of the trust account cash book with the trust account financial institution statement balance as at the last day of the financial period.
- 19 Any information about the trust account that, in the opinion of the auditor, should be included in the report.
- 20 Particulars of trust moneys—
  - (i) held by the trustee on the last day of the audit period; and
  - (ii) to which a person has been absolutely entitled for at least 1 year as at the end of the financial period.

- 21 Particulars of any amount invested by the trustee under section 16(2)(a).
- 22 A statement that the auditor holds professional indemnity insurance as prescribed by this regulation.
- 23 The name of any approved signatory, other than the trustee, to the trust account in the financial period.
- 24 Whether the trustee has given a security under section 31 of the Act.
- 25 Whether the auditor has complied with the auditing procedures and standards prescribed under this regulation.