

POLICY – APPLICATIONS FOR EXEMPTION FROM TRUST SIGNATORY REGULATIONS

Regulation 3.3.12 sets out signatory requirements in relation to trust cheques. Similar requirements are found in regulations 3.3.13, 3.3.18 and 3.3.25. Reg 3.3.12 provides, as relevant:

- (1) *This regulation applies to the withdrawal of trust money from a general trust account of a law practice or an approved clerk by cheque.*
- ...
- (3) *In the case of a law practice, a cheque must be signed—*
 - (a) *by an authorised principal of the law practice; or*
 - (b) *if a principal referred to in paragraph (a) is not available—*
 - (i) *by an authorised legal practitioner associate; or*
 - (ii) *by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or*
 - (iii) *by 2 or more authorised associates jointly.*

The Board has power to exempt law practices and approved clerks from trust requirements, pursuant to reg 3.3.52, which provides:

- The Board may –*
- (a) *exempt a law practice or approved clerk from complying with any of the provisions of this Part subject to any conditions that may be imposed by the Board; and*
 - (b) *at any time impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.*

Policy

1. The Board will in appropriate circumstances grant exemptions that allow one (or more) associate(s) of a law practice to be authorised to sign cheques or effect, direct or authorise the withdrawal or transfer of trust or controlled money solely.
2. Applications will be preferred where they propose a named associate of the law practice with a significant period of experience signing cheques or effecting, directing or authorising the withdrawal or transfer of trust or controlled money.
3. The Board will only grant an exemption where it considers it is unduly onerous for the applicant law practice to comply with the regulations, and/or where other special circumstances exist making it appropriate to exempt a law practice from the usual requirement.
4. In considering an application for exemption, the Board will take into account any adverse material known about the applicant law practice and/or its principals after consultation with the relevant professional association and the Office of the Legal Services Commissioner.
5. Before an exemption will become effective, the Board will require:
 - (i) an undertaking from a principal of the law practice that the proposed associate(s) will be the only associate(s) of the practice authorised to sign cheques or effect, direct or authorise the withdrawal or transfer of trust or controlled money solely; and
 - (ii) a statutory declaration confirming the period that the proposed associate has been employed by the practice and/or signing cheques or otherwise effecting, directing or authorising the withdrawal or transfer of trust or controlled money solely.
6. Exemptions will be granted for a maximum period of two years.

Applications

Applications should be in writing, and should address the Board's policy.

Applications should be accompanied by a form (**attached**) consenting to disclosure of information to the Board from the Office of the Legal Services Commissioner, the relevant professional association, and any information held by any former or current supervisor, receiver or manager appointed to the practice (as this information may be held or disclosed by the professional association).

Requests for information are then made of the relevant professional association and the Office of the Legal Services Commissioner. The application will not be considered by the Board until responses are received.

POLICY – APPLICATIONS FOR EXEMPTION FROM OTHER TRUST REGULATIONS

The Board has, pursuant to reg 3.3.52, power to exempt law practices and approved clerks from trust regulations, subject to any condition that may be imposed by the Board. The Board may at any time impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.

Policy

1. The Board will only grant an exemption where it considers it is unduly onerous for the applicant law practice to comply with the regulations, and/or where other special circumstances exist making it appropriate to exempt a practice from the usual requirement.
2. In considering an application for exemption, the Board will take into account any adverse material known about the applicant practice and/or its principals after consultation with the relevant professional association and the Office of the Legal Services Commissioner.
3. Exemptions will generally be granted for a maximum period of two years.

Applications

Applications should be in writing, and should address the Board's policy.

Applications should be accompanied by a form consenting to disclosure of information to the Board from the Office of the Legal Services Commissioner, the relevant professional association, and any information held by any former or current supervisor, receiver or manager appointed to the practice (as this information may be held or disclosed by the professional association).

Requests for information are then made of the relevant professional association and the Office of the Legal Services Commissioner. The application will not be considered by the Board until responses are received.