



Trust Account Information Sheet s263 Investigations

Reviewed by the Regulatory and Professional Standards Unit April 2011



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1. REGULATORY FUNCTION

Practices are investigated under the provisions of s263 of the *Legal Profession Act (LPA)*. As with equivalent bodies in other jurisdictions, the Law Society Northern Territory is a regulatory body and is tasked with the responsibility to ensure entrusted monies are transacted, recorded and managed in accordance with the *Legal Profession Act* and *Regulations*.

2. INVESTIGATIONS s263

An investigation may be conducted in the form of;

- requests for information and/ or copies or originals of documents via letter or email and or
- onsite attendance at the premises of a law practice and or
- onsite attendance at another location considered appropriate by the Society and provisioned under chapter 6 of the LPA

An investigation may;

- take place within several hours or over a number of attendances or requests for information spanning many days.
- be routine or conducted on a regular or other basis
- as a result of an allegation, suspicion or complaint

Investigations are not limited to those practices which have declared holding or receiving of entrusted funds.

3. INVESTIGATORY POWERS s617 to s634

During an investigation, powers provided by Chapter 6 of the *LPA* will be exercised at the discretion of the investigator and in accordance with the Society's procedures.

Access to documentation, information and other assistance *Part 6.2*

During the normal course of an investigation the key power exercised by an investigator will be the request for access to documents and information relating to the affairs of the practice reasonably requested during an investigation.

Information maintained by the Society

During an investigation the Investigator may refer to the practice's file maintained by the Society. This is to verify any previous directions to comply have been actioned, and as to if any previous information provided by the practice to the Society is accurate.





Compliance Investigations s263 to s266

An Investigator must give a written report of the investigation to the Society (s.265). To assist in the reporting process, the Investigator may utilise a standardised “Investigators Reporting Pack” in which they will record; compliance ratings, Investigators’ comments and or opinion, any required corrective action and the timeline by which the practice is to comply.

Where the Investigator makes use of the “Investigator’s Reporting pack”, the Investigator will inform the relevant practitioner of the information being recorded and may invite their response. Should the practice consider the Investigator’s opinion as inaccurate the practice will have a right of reply once a copy of the Investigator’s report is received by the practice.

4. PROFESSIONAL CONDUCT DURING THE INVESTIGATION

It is expected that during the investigation the Investigator, practitioner and practice staff will conduct themselves in a courteous and professional manner; in a way that avoids offensive or provocative language; and in such a way so as not to threaten any persons’ safety or act in a manner which could reasonably be considered intimidating.

Failure to cooperate s620(2)

A person who is subject to a requirement to give an investigator access to documents or information the investigator reasonably requires must comply with that requirement. Penalties apply for failure to comply.

Should the Investigator have reasonable grounds to believe delay, hindrance or resistance is occurring during an investigation the following protocol will be followed:

- The person with whom the Investigator is dealing with will be verbally or otherwise informed of that belief.
- If the belief of delay or resistance continues, the most senior practitioner in the practice will be verbally or otherwise informed of the investigator’s belief.
- After two advices, the Investigator will provide a written notification to this effect and the practice will be given a timeline by which to cease hindrance, delay and or resistance. The Investigator is then available to consider alternative powers available to the Society under the *Act*.

5. THE INVESTIGATOR’S REPORT s265 and s634

The investigator’s report will be reviewed by the Chief Executive Officer, and key data pertaining to all investigations will be presented to the Society’s Council. Generally, the Council will see this in an anonymous format. A practice’s identity will not be revealed in the normal course of reporting.

Recording of breaches

Breaches, if any, will be recorded on the practice’s file and in the Society’s database. If the Society forms the belief on reasonable grounds that a breach is significant, further action may be considered under the trust accounting and/or complaints and discipline provisions of the *Act*.

