



Government of **Western Australia**
Department of **Commerce**
Consumer Protection

Debt collectors trust accounting: A reference manual



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Introduction

This manual is designed to assist debt collectors to establish and maintain a trust account recording system that complies with the *Debt Collectors Licensing Act 1964* and the Debt Collectors Licensing Regulations 1964.

This manual is not intended to be a comprehensive trust accounting text for debt collectors and in setting up any trust accounting system, whether manual or computerised, debt collectors should seek advice from an accountant or taxation adviser.

Using this booklet

Part One answers general questions about trust money and accounts.

Part Two outlines the duties of debt collectors in relation to recordkeeping and briefly explains how to balance trust accounts.

Part Three discusses the investigative powers of the Minister for Commerce and other authorised people to inspect trust accounts and associated records.

Part Four looks at recommended practices for reducing theft and fraud.

Part Five reminds debt collectors of their conduct obligations when collecting a debt.

Note that while this manual refers to relevant legislation, it does not include a complete reproduction of any legislative provisions. Copies of the Act and Regulations can be downloaded from State Law Publisher at www.slp.wa.gov.au

Additional copies

Additional copies of this booklet can be downloaded free of charge from the Consumer Protection section of the Department of Commerce website www.commerce.wa.gov.au

Glossary

Act

The *Debt Collectors Licensing Act 1964*.

Authorised person

A person who has been authorised in writing by the Minister for Commerce.

Client

A creditor that has retained the services of a debt collector.

Commissioner

The Commissioner for Consumer Protection.

Creditor

A person to whom a debt is owed.

Debt collector

A person carrying on the business of collecting, requesting or demanding the payment of debts on behalf of another person. This business must be carried out in return for a fee or reward.

Debtor

A person who owes a debt.

Minister for Commerce

A reference to the Minister for Commerce includes any Minister by whatever name who was previously responsible for the Act.

Money

Any form of payment which can be deposited into a bank account such as cash or cheque.

Regulations

The Debt Collectors Licensing Regulations 1964.

Trust account

The bank account in which trust money is kept.

Trust money

Any money collected or received by a debt collector acting on behalf of another person.

Also refer to sections 3 and 4 of the Act for more definitions of terms used in the legislation.

Part one. Trust money and accounts

1.1 What is trust money?

Trust money is defined in the Act as ‘any money collected or received by a person in the capacity of debt collector as agent for another person’. Trust monies must be kept and accounted separately to the debt collector’s general business funds at all times.

Trust monies do not include monies received directly from your clients, ie creditors, with respect to fees and commissions.

The custody of trust money places debt collectors in a position of control over other people’s money. It therefore requires careful monitoring of all withdrawals and deposits. There are generally accepted trust accounting practices that need to be adhered to in order to prevent misappropriation of trust funds.

1.2 Titling of trust accounts

A debt collector who receives and holds monies must maintain a trust account. The title of this trust account to correctly account for trust monies must be in the form of: ‘Trust Account of (your name)’. For example: Trust Account of XYZ Debt Management Services.

Refer: [section 3 of the Act](#)

1.3 Receiving and depositing trust money

A debt collector who receives an amount of trust money from a debtor must do two things before close of business on the following business day:

- pay the whole amount collected into the trust account; and
- record the amount collected in their trust account separately from other monies held in that account. This can be achieved through journal entries or similar accounting records of the monies received.

Money received from debtors that is held in a trust account must be kept separate from all other money eg personal monies or monies received from creditors such as fees or commissions.

Refer: [section 15\(1\) of the Act](#)

Receiving payments via instalments

Where a debtor pays by instalments, the debt collector can charge a fee of 50 cents or 2.5 per cent of the amount of debt outstanding, whichever is the greater amount.

Refer: regulation 13

1.4 Opening and amending trust accounts

The Commissioner for Consumer Protection must be notified in writing within 14 days when:

- the debt collector opens a trust account (the name of the trust account and the name and address of the bank where it is held must be supplied); or
- changes are made to the name of the trust account, or the bank where it is held.

Refer: section 15(4) of the Act

1.5 Paying the creditor

Within 45 days of receiving the trust money from the debtor, the debt collector must pay the money to the creditor, unless the creditor has agreed in writing to a longer time. A creditor can request in writing that;

- the money be paid to them within 14 days; or
- the money be paid to a third party.

Refer: section 15(2) of the Act

1.6 Withdrawing from the trust account

The debt collector is not permitted to withdraw any other trust money from the trust account unless it is for the purpose of paying either:

- expenses, commission, fees and other charges incidental to the collection service; or
- money which the creditor owes to the debt collector. The debt collector must be lawfully entitled to withdraw this money.

Refer: section 15(1) of the Act

Note: The trust account should never be overdrawn (see section 2.6)

2.1 Duties of debt collectors in relation to recordkeeping

The Act requires debt collectors to keep full and accurate records of trust accounts, including the particulars of any trust money received from a debtor, paid out to a creditor, or withdrawn from the trust account whether by the debt collector or by someone employed by them.

Trust documents and/or electronic records may include:

- a record of money received for or on behalf of any other person such as trust receipts books;
- records of trust money payments such as trust journals, trust ledgers and trust cheque books;
- reconciliation statements of the trust account; and
- any other accounts, books or records kept by the debt collector relating to the trust money, such as bank statements.

These records must be kept in such a way that they can be conveniently and properly audited, and must be correctly balanced at the end of each month. See *2.3 Balancing the trust account*.

It is also useful to establish procedures for the timely follow-up of outstanding monies such as unpresented cheques, any unidentified monies and unclaimed monies. See *2.7 Unclaimed monies*.

If a debt collector fails to maintain full and accurate records of their trust account, they will be guilty of an offence under the Act.

[Refer section 17 of the Act](#)

2.2 How long must trust records be retained?

Although the Act does not specify a set period for retaining trust records, income tax legislation generally requires debt collectors to keep business records for a minimum of five years.

2.3 Balancing the trust account

The Act requires that records of accounts are correctly balanced at the end of each month. This ensures that debt collectors are informed of the status of each account, and that any discrepancies in the balance are dealt with at this time.

It is expected that the trust account is balanced through the use of a Bank Reconciliation Statement, either through a manual or computerised accounting system. More information about Bank Reconciliation Statements, including an example, can be found below.

The purpose of balancing the trust account is to ensure that the trust records of the business are reconciled with those of the bank at which the trust account is kept.

Often, there will be discrepancies between the trust records and the bank statement. These are essentially timing differences and can include:

- cheques written out but not yet presented at the bank;
- deposits directly credited to the trust account but not yet entered into the trust records; or
- deposits entered into the trust records but not yet deposited into the trust account.

2.4 Preparing a bank reconciliation

The procedure for preparing a bank reconciliation is as follows:

1. Add the total of all receipts for the particular month (e.g. August) of the trust receipt records.
2. Add the total of all payments for the month of the trust payment records.
3. Examine the bank statement for the month and check that the money you deposited each day went into the bank account (NB: these amounts are entered as credits on the statement).
4. Check that all the cheques which were written out appear on the bank statement and that they are for the same amount (Note: These amounts will be shown as debit entries).
5. Tick off each entry on the bank statement against your trust account records. Items that may appear on the bank statement and not in the trust account records could be a direct deposit. If a direct deposit has been made the information should be entered into the trust account receipt records.
6. Deposits that are not ticked in the trust account receipt records represent outstanding deposits and will be used later in the Bank Reconciliation Statement.

7. Cheques that appear in the trust account payment records that have not been ticked are known as unpresented cheques and will be used in the preparation of the Bank Reconciliation Statement.
8. The balance of the bank statement and trust account records should agree after making adjustments for outstanding deposits and unpresented cheques. If they do not agree, then an error has been made and will need to be rectified.

A trust bank account must not have bank charges debited to it, as this will create a deficiency. Sometimes banks can inadvertently debit a trust bank account with these charges. In these situations ensure these charges are reversed out of the trust account and debited to the general bank account.

Refer: [section 17\(1\) of the Act](#)

2.5 The steps in balancing a trust account

Balance as per bank statement

- This is the final balance on the bank statement and it is from this basis that the reconciliation will be made.
- Bank statements should be received on a monthly basis so that the bank account can be balanced at the end of each month. The bank balance at the end of the month is described with the term 'CR' or credit.

Add outstanding deposits

- These are deposits that have been entered into the trust account receipt records but have not yet been entered into the bank records.
- These are easy to identify because they are the deposits remaining unticked after the trust receipts records and bank statements have been compared (refer to point 6 under *2.4 Preparing a bank reconciliation*).
- Outstanding deposits are added to the balance on the bank statement because eventually they will be entered into the banks records and increase the funds held in the trust account.

Less unpresented cheques

- Unpresented cheques are ascertained in the same manner as outstanding deposits and are listed by identifying the cheque number and the amount (refer to point 7 under *2.4 Preparing a bank reconciliation*).
- These cheques are deducted because when presented to the bank for payment they will reduce the funds in the trust account.
- Unpresented cheques still outstanding after three months should be followed up.

- Cheques that are older than 15 months are regarded as being a ‘stale cheque’ under the *Cheques Act 1986 (Cwth)* and should be cancelled.

Balance as per trust records

- The balance shown on the bank statement plus any outstanding deposits and less any unrepresented cheques should equal the balance of the trust records.

An example of a bank reconciliation statement to be performed at the end of a month for either a manual or computerised accounting system is shown in the table below.

Trust Account of XYZ Debt Collection Services Bank Reconciliation Statement As at 30 November 2009		
	\$	\$
Trust Account		
Balance from 31 October 2009	25,000	
Plus receipts for November	12,500	37,500
Deduct payments for November		19,000
 Balance as at 30 November 2009		 18,500
Bank Statement		
Balance as per bank statement 31 October 2009	20,000	
Add deposited not yet credited by the bank	5,000	25,000
Deducted: unrepresented cheques # 423	3,500	
# 428	3,000	6,500
 Total Trust Money as at 30 November 2009		 18,500
Clients' Trust Ledger Balances		
Total of listing of clients' balances as at 30 November 2009		18,500
 Signed by Stella Richards on 4/12/2009		

The **Clients' Trust Ledger Balances** consist of the total of all clients' individual trust ledgers (\$18,500) and as shown above must agree with the balance held in the Trust Account.

Bank reconciliation statements including related bank statements must be retained as they form part of the trust account records.

2.6 Steps for an overdrawn trust account

A bank account will become overdrawn where withdrawals from the account exceed the available balance, giving the account a negative balance. A trust account should never be overdrawn and it is important that you are aware of your legal obligations in relation to overdrawn trust accounts.

The first step is to notify the owner of the trust funds. Second, you must identify the point at which the trust funds became overdrawn, and the reason why the withdrawal was made. If a mistaken payment was made, it is important that you rectify it. You are personally liable for misplaced or lost trust funds that are in your custody.

Refer to *Part 4 Preventing Theft and Fraud* for more information on what to do in the event of fraud or theft from the trust account.

2.7 Unclaimed monies

Debt collectors are under an obligation to ensure trust money is dealt with in an accurate and timely manner.

There is a statutory requirement that trust funds which cannot be traced to a specific debtor or creditor must be held in the trust account for six years.

The Western Australian State Treasurer must be notified of any unclaimed monies equal to or greater than \$100 that have been held in a trust account for more than six years, as at 31 December each year. Under section 8 of the *Unclaimed Monies Act 1990*, the Treasurer must be notified of these monies by 31 January in the succeeding year.

The *Unclaimed Monies Act 1990* also provides that if trust money is unable to be identified after two years, the unclaimed money can be remitted to the Department of Treasury and Finance (DTF) on a voluntary basis. The Unclaimed Monies section of the Department can be contacted on (08) 9222 9185.

When making a payment to DTF:

- all money in the transfer must have been held, unclaimed, for at least two years; and
- DTF must be provided with a covering letter, a cheque for the amount being transferred and the following information:
 - i. Name of the owner of the money (DTF may not accept money where ownership is in dispute or unclear)
 - ii. Owner's last known address
 - iii. Amount payable
 - iv. Date cheque issued
 - v. Description of the payment.

Part three. Investigations of trust accounts

3.1 Inspection of records

Records of trust accounts which are required to be kept by the debt collector in accordance with the Act must at all reasonable times be available for inspection by an authorised person.

An authorised person may, after producing written authority from the Minister for Commerce, require a debt collector or an employee of the debt collector to produce for inspection:

- all books, papers, accounts or other documents relating to the trust account of the debt collector;
- all records of accounts required to be kept by the debt collector in accordance with the Act; and
- all contracts, agreements or other documents which the debt collector has in their possession that relate to any transaction involving the debt collector as part of their collection activities.

The debt collector must also, if requested, produce all authorities and orders to bankers as may be reasonably required, and answer any questions or supply information with respect to any books, papers, accounts, written records, contracts, agreements or other documents. The authorised person may make notes or copies of these records.

A debt collector will be guilty of an offence under the Act if they:

- wilfully delay or obstruct the authorised person;
- refuse or fail to produce any records in their possession, custody or control that are required for inspection;
- refuse or fail to furnish any authorities or orders to bankers as may be reasonably required of them; or
- refuse or fail, without lawful excuse, to truthfully answer any questions relating to records required for inspection.

A debt collector is not required to answer questions or give any information if this may incriminate them.

Consumer Protection is authorised to conduct proactive compliance visits in order to ensure that proper procedures are being followed in accordance with the Act. It is intended that every licensed debt collector will be the subject of a proactive compliance visit at least once every two years, and new licensees will generally be visited within six months of obtaining a debt collectors licence.

Refer: [section 18 of the Act](#)

3.2 Inspection of bank records

An authorised person may inspect and, if required, copy details from any bank account held by a debt collector, including personal accounts. This will occur only for an authorised reason such as during the course of an investigation.

The manager or principal officer of the bank where these accounts are held is under an obligation to provide access to these accounts. The debt collector's knowledge or permission is not required.

Refer: [section 16 of the Act](#)

Part four. Preventing fraud and theft

As is the case with most businesses, there is the potential for theft and fraud to occur. In most instances, these acts are committed by employees and often the person in charge of the business is not aware of the activities of the person or people in question.

It is in the interests of your business to ensure that proper control and supervision of staff takes place as there are strong legal responsibilities in relation to the protection of trust money. Make it clear to new employees that misappropriated funds will be reported to the police immediately and that internal control systems, including obtaining copies of any outgoing payments, are in place.

4.1 Early indicators of theft and fraud

If you have encountered one or more of the following, you may need to consider the possibility that theft or fraud is occurring:

- Original documents from transactions are missing
- Unaccounted missing receipts
- Documents have been altered without authority
- Outstanding or incomplete account reconciliations
- Complaints from clients about delays in receiving monies
- Balances held in client trust accounts for a long period of time
- Deteriorating financial position
- Auditor's access to people or information is restricted

In order to minimise the chance of fraud or theft in your business, you can do some or all of the following:

- Make periodic checks of the work of employees
- Involve yourself in bank reconciliations
- Maintain control over cheque books and receipt books
- Understand and be able to operate the computer system
- Follow up on outstanding cheques and client balances

4.2 Actions for theft or fraud

If you become aware that money has been stolen from a trust account, you should:

- Attempt to identify the date on which the theft occurred, the amount involved and how the theft occurred, and make note of any action taken to rectify the loss
- Contact an auditor to conduct a special trust audit to attempt to quantify the amount of the misappropriation and possibly identify the culprit
- Contact the Police and advise of the misappropriation of trust money and that a special audit is being conducted
- If possible, replace the misappropriated amount immediately

Part five. Conduct when carrying out collection activities

In Western Australia, the *Fair Trading Act 1987* contains provisions that prohibit certain behaviour towards consumers.

These laws and other Commonwealth and State legislation on the conduct of debt collectors are covered in the *Debt Collection Guideline: for collectors and consumers* publication, produced jointly by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC). This publication sets out what debt collectors should and should not do to avoid breaking the laws and mandatory codes. A copy of the publication can be downloaded from the ACCC website at www.accc.gov.au.

While the guidelines do not have legal force, the Department of Commerce recommends that all debt collectors follow the guidelines to minimise their risk of breaching any State or Commonwealth legislation.

Further information and assistance

Department of Commerce Consumer Protection

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If you require an interpreter, call the Translating and Interpreting Service (TIS) on 131 450 and ask for connection to 1300 30 40 54.

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