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LawTalk Blog



Can Police Seize Funds Paid By Clients To Their Lawyers' Trust Account For Legal Fees?

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When lawyers attend to legal work on behalf of their clients it is expected that a client will pay an amount of money, referred to as a retainer fee, into the lawyer's trust account. This retainer fee will be based on the lawyer's estimated fees for the initial work to be conducted on behalf of the client.

Once the lawyer has attended to the initial work that the client has engaged them to do, the lawyer will provide an account to the client that itemises the work done on their behalf. They will then apply the funds held in the lawyer's trust account to make payment of that bill. The lawyer will then request that additional funds be paid into trust to cover any further work required of them by the client.

Recently, South Australian Police were found to have taken action to serve a warrant issued by the Magistrates Court on a bank, being the financial institution where a law firm's trust funds were held, requiring the bank to hand over monies in the lawyer's trust account to the SA Police Department.

The money was seized as the police asserted that it was connected to criminal activities related to their investigations as part of Operation Ironside.

This was done with no prior notice to the law firm, leaving them to believe that the funds had been stolen or misplaced; and requiring them to then report the matter to SA Police and to the Law Society of South Australia who oversee the regulation of

lawyers' trust accounts in SA.

This action taken by the police has caused great concern amongst law firms in SA and their clients with respect to their ability to be properly defended in their criminal law cases and the use of police powers under the *Criminal Assets Confiscation Act 2005* (SA) ("the Act") to seize assets including monies in bank accounts.

Now, Judge Dart of the Supreme Court of South Australia has told prosecutors and the police that the money taken should be returned to the law firm from which it was seized.

In particular, SA Police have been told to return \$6,000 of the \$20,000 taken that had already been applied to the alleged criminal's previous bill issued by the firm and that these funds should never have been taken.

Further, they have been told that if they believe that the rest of the money is "tainted" due to its relationship to crimes committed and linked to Operation Ironside, that they should seek a restraining order related to the money.¹

It is well known that under the Confiscation laws created by this Act, that the police have wide powers to seize assets that may be linked to criminal activity. However, the extent of these powers and the consequences of them should be of genuine concern to lawyers and to the public in SA.

The recent seizure of funds from the lawyers' trust account is linked to Operation Ironside which has seen many people arrested for criminal activities in South Australia and assets worth more than \$27 Million seized by the police. You can read a recent article about Operation Ironside in [The Advertiser here](#).

If you have a criminal matter for which you are being investigated and/or should you be the subject of the confiscation of assets by the police, it is clear that you will require legal advice in relation to the same.

Please [contact our experienced criminal law team](#) in Adelaide if we can assist you with these matters.

1. [Link to recent article about Operation Ironside in The Advertiser](#)

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