

WEEK 1

# TRUST ACCOUNTING

Obligations for Trust Accounts are in:

- Legal Profession Act 2007 (Qld) (LPA) Pt 3.3
- Legal Profession Regulation 2007 (Qld) (LPR) Part 3.3

<b>NB</b>	Barristers are not to receive trust moneys	<b>s 246 LPA</b>
-----------	--	------------------

**Considerations**

<b>1</b>	General Overviews & Purpose
<b>2</b>	Trust Moneys
<b>3</b>	Responsibilities
<b>4</b>	Records
<b>5</b>	Receipts
<b>6</b>	Receiving Trust Moneys
<b>7</b>	Paying Trust Moneys
<b>8</b>	Reconciliation
<b>9</b>	External Examination
<b>10</b>	Outlays
<b>11</b>	Case Law

## 1. OVERVIEW AND PURPOSE

Money does not belong to the firm and cannot be used by it for any purpose unless LPA or LPR permits	<b>s 240; 256; 257 LPA</b>
--	--------------------------------

### PURPOSE

<b>a)</b>	Ensure trust money held by law practices in way that protects interests of persons for whom money is held, both inside and outside jurisdiction	<b>s 236 LPA</b>
<b>b)</b>	Minimise compliance requirements for law practices that provide legal services within and outside jurisdiction	
<b>c)</b>	Ensure law society can work effectively with corresponding authorities in other jurisdictions in relation to regulation of trust money & accounts	

## 2. TRUST MONEYS

QLS can decide status of money, by referral or on own action (Decides it is, it is. Decides it is not subject to any order of the court)	<b>s 239 LPA</b>
---	------------------

### YES IF:

Entrusted to law practice in course of/connection with provision of legal services, incl:	
a) Money received on account of legal costs in advance of providing services	<b>s 237 LPA</b>
b) Controlled money (firm has written direction to deposit money in account, other than general trust account, over which practice has/will have exclusive control)	
c) Transit money (held for future payment to third party other than associate of firm)	
d) Power money (held under power of attorney for someone, by associate as executor, under authority to sign re bank account, or joint account with other form etc.)	
Investment moneys – where investment is or ought to be made in ordinary course of legal practice, and for ancillary purpose of keeping/enhancing value of money/property pending completion for the matter of further stages of the matter or pending payment or delivery of money or property to or at direction of client	<b>s 238(b) LPA</b>

### NO IF:

Received with respect to financial service and is either:	<b>s 238 LPA</b>	
Australian financial service license holder	<b>s 238(1)(a) LPA</b>	
Representative for Australian financial service license holder	<b>s 238(1)(b) LPA</b>	
Managed investment scheme	<b>s 238(2) LPA</b>	
Mortgage Scheme		
For investment purpose – not in ordinary course of legal practice; and primarily in connection with provision of legal services to/at client direction and investment made (exact same wording as above in s 238(b))	<b>s 238(3) LPA</b>	
<b>IF NOT AND RECEIVE</b>	Must advise provider in writing ASAP not subject to supervision, investigation or LPA audit requirements, and no access to fidelity fund for any claims	<b>s 294 LPA (max 50pu)</b>

### RECEIVED

When practice obtains possession/control	Directly; or	<b>s 242(1)(a)</b>
	Indirectly as result of its delivery to associate of practice; or	<b>s 242(1)(b)</b>
Practice, as associate of practice (other than in private/personal capacity) is given power to deal with money from another person		<b>s 242(1)(c)</b>

### 3. RESPONSIBILITIES AND RECORDS

Consider from perspective of:	
Legal Practice associate	<b>s 7 LPA</b>
Principal/s of law practice – joint and several liability	<b>s 244 LPA</b>

#### TRUST MONEY MUST

Be recorded in a transparent and accessible manner	
Never be intermingled with business funds	
Never have indeficiencies (go into debit) – Breach 200PU	<b>s 259</b>
Not be received or recorded under a false name (this is money laundering)	<b>s 262 (1)</b>
Never be transferred/withdrawn for purpose other than which was received	
Only used for another purpose if written authority of client received	
Only withdrawn in certain ways (i.e. not by ATM)	

#### TRUST ACCOUNT MUST:

Be a general trust account if receive trust money	<b>s 247 LPA</b>
Be established in Qld	<b>100 penalty units</b>
Be kept according to LPR	
Name must include 'law practice trust account' and practice's name	<b>r 33 LPR</b>
Be the type approved by the QLS	
Be with an approved ADI within meaning of Banking Act 1959 (Cth) – <b>Sch 2 LPA</b> <b>ANZ, BNZ, BOQ, BankWest, Bendigo, CBA, MacQuarie, NAB, QPCU, Suncorp, St George, The Rock Building Society, Westpac</b>	

#### FIRM HAS RESPONSIBILITY TO:

<b>Holding</b>	Must hold money in the general trust account: - Exclusively for the person on whose behalf it is held; and - Disperse only under a direction by that person	<b>s 249(1) LPA – 50 penalty units</b>
<b>Mixing</b>	Practice must not mix trust money with other money unless authorised by QLS	<b>s 257 LPA 100 pu</b>
	<b>NB</b> Irrespective of whether client authorises	