

# Guidelines for completion of External Examiner's Report (QLS Form 5 (LPR))



## Fact sheet

### Introduction

External Examiner's Report (hereinafter referred to as "Form 5") contains two schedules:

#### Schedule 1 – Breaches of Legislation

#### Schedule 2 – Law Practice Declaration & Trust Money Statement (QLS Form 4(LPR))

##### Part A – Declaration

##### Part B – Trust Money Statement

All law practices with an office in Queensland are required to complete Part A, irrespective of whether they have received, or held, trust money.

If a law practice is not required to complete Part B, the law practice must send the completed Part A to the Queensland Law Society ("the Society") by 30 April.

Part B is only required to be completed by a law practice if the law practice has received, or held, trust money during the relevant period.

Part B is not, however, required to be completed if transit money was the only trust money received, or held, and the law practice has recorded and retained sufficient information in relation to the transit money.

If a law practice is required to complete Part B, the law practice is required to provide both completed Forms (Part A and Part B) to the External Examiner (previously known as the trust account auditor) before the External Examiner commences the examination (previously known as trust account audit).

Parts A & B are to be attached to the External Examiner's Report (QLS Form 5(LPR)) by the External Examiner as Schedule 2.

### Explanation of terminology

#### Approved ADI

An "approved ADI" is an ADI (Authorised deposit-taking institution) approved under section 280 by the Law Society [*Legal Profession Act 2007* s.237]. A list of approved ADI's can be found on the Society's website at <http://www.qls.com.au/content/lwp/wcm/connect/QLS/For+the+Profession/Trust+Accounting/>.

#### Trust Money

"Trust money" is defined in s. 237 of the *Legal Profession Act 2007* as:

*"money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, and includes-*

- a. *money received by the practice on account of legal costs in advance of providing the services; and*
- b. *controlled money received by the practice; and*
- c. *transit money received by the practice; and*
- d. *money received by the practice, that is subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for another person.*



### General trust account

A general trust account is an ADI account in the name of the law practice that is identified in the name of the account as a law practice trust account (e.g. ABC Solicitors Law Practice Trust Account) and that is used by the law practice to hold trust money for one, or more, persons or entities. General trust accounts opened with an ADI prior to 1 July 2007 are not required to include the words "law practice" in the account name.

Pursuant to s. 248 of the *Legal Profession Act 2007* trust money must be deposited to a general trust account as soon as practicable after it is received unless:

- a. the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in a general trust account; or
- b. the money is controlled money; or
- c. the money is transit money; or
- d. the money is the subject of a specific power.

### Controlled Money

"Controlled money" is defined in s. 237 of the *Legal Profession Act 2007* as:

*"money received or held by a law practice for which the practice has a written direction to deposit the money in an account, other than a general trust account, over which the practice has or will have exclusive control"*.

Controlled money is deposited to a controlled money account and is not deposited to a general trust account.

A controlled money account is kept for the benefit of one person, or one matter, only.

Money held on behalf of different persons in respect of different matters can not be kept together in one controlled money account. It must be kept in the general trust account, or separate controlled money accounts.

### Trust money subject to a Specific Power

If a law practice, or an associate of the law practice, is given a power, or authority, to deal with trust money for and on behalf of a person this is trust money subject to a specific power.

For example: A client of the law practice, purchasing a property, is to be admitted to hospital for an operation and gives an associate of the law practice authority to operate the client's personal bank account for the purpose of withdrawing money from the account to settle the purchase of the property.

The money in the client's personal bank account is entrusted to the associate of the law practice in the course of or in connection with the provision of legal services by the law practice and is therefore trust money subject to a specific power.

### Money subject to a Written Direction

An example of trust money received subject to a written direction to deal with the trust money other than by depositing it into a general trust account is:

- A law practice acting for a client in the sale of a property requests the purchaser to provide, at settlement, a bank cheque payable to the vendor client.
- At settlement, the purchaser produces a bank cheque payable to the law practice's trust account.
- The vendor client gives the law practice a written direction to accept the bank cheque payable to the law practice's trust account, endorse it payable to the vendor client and deliver it to the vendor client.



### **Investment Money (Investment Register Money)**

Investment money is trust money received and deposited to a general trust account that is withdrawn from the general trust account and invested pursuant to a written direction from the appropriate person (usually the client) such that the appropriate person receives the income earned on the investment

### **Transit Money**

"Transit money" is defined in s.237 of the *Legal Profession Act 2007* as:

*"money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the practice".*

For example: A cheque payable to the Office of State Revenue received with instructions to deliver the cheque to the Office of State Revenue is transit money. The law practice is required to keep a record of the receipt of the cheque and the delivery of it to the Office of State Revenue and the instructions from the client to deal with the cheque in that manner.