

QLS Trust Accounts Remedial Course Policy

As approved by the Queensland Law Society Council on 22 June 2023.

1. Introduction

- 1.1 This Policy establishes and sets out procedures regarding the Society's Trust Accounts Remedial Course (Course).
- 1.2 The course aims to benefit the profession and the public by:-
 - 1.2.1 providing awareness of trust accounting obligations;
 - 1.2.2 providing remedial education to practitioners whose actions are capable of constituting unsatisfactory professional conduct or professional misconduct; and
 - 1.2.3 encouraging improvement in the delivery of legal services.

2. The Course

- 2.1 There will be a QLS Trust Accounts Remedial Course (Course).
- 2.2 It will be administered by the Trust Accounts Investigation Unit of the Society.
- 2.3 It will be conducted throughout the year.

3. Content of the Course

- 3.1 Without limiting or prescribing its content the Course may include all or any of the following:-
 - 3.1.1 completion of primary records;
 - 3.1.2 completion of secondary records;
 - 3.1.3 charging legal fees, disbursing money from trust accounts, preparing trust account statements;
 - 3.1.4 preparing monthly reports;
 - 3.1.5 complying with statutory requirements;
 - 3.1.6 common trust account issues;
 - 3.1.7 tailored content which will specifically address the circumstances that lead to the participant undertaking the course;
 - 3.1.8 materials for the assessment of participants.
- 3.2 The Legal Services Commission and the Professional Conduct Committee may be consulted in the preparation of the Course.

4. Approval of the Course

- 4.1 The Manager Trust Account Investigations (Manager TAI) will approve the course materials for the Trust Accounting Course.
- 4.2 Manager TAI will consider the following course materials:-
 - 4.2.1 the core content to be taught;
 - 4.2.2 the assessment program for the course;
 - 4.2.3 details of the knowledge and skills to be demonstrated to satisfactorily complete the course;
 - 4.2.4 a marking guide for use by the assessors showing what constitutes completion of the course;
 - 4.2.5 a statement by the author of the course if the LSC, QCAT and Ethics Committee, as is appropriate, have been consulted in its creation.
- 4.3 The Manager TAI may from time to time make such changes to the course as are necessary to deal with the individual requirements of practitioners undertaking the course.

5. Entry to the Course

- 5.1 A practitioner may be required to attend and complete the Course by:-
 - 5.1.1 order of the Court;
 - 5.1.2 order of QCAT;
 - 5.1.3 order of the LPC;
 - 5.1.4 referral by the LSC;
 - 5.1.5 resolution of Council; or
 - 5.1.6 resolution of the Executive Committee of Council.
- 5.2 The Professional Conduct Committee may invite a practitioner to attend and complete the Course where:-
 - 5.2.1 the practitioner has been subject to an investigation of the affairs of their law practice; and
 - 5.2.2 The Professional Conduct Committee determines that investigation of affairs has disclosed that the trust accounts of the law practice have not been maintained to the standard of compliant as required by the Society's Part 3.3 Investigation Policy.
- 5.3 A practitioner may undertake the Course at their own initiative
- 5.4 A practitioner required to attend and complete the Course must enrol within 21 days of being notified of the requirement.
- 5.5 A failure by a practitioner to enrol is conduct that may: -
 - 5.5.1 Be capable of being unsatisfactory professional conduct or professional misconduct; and
 - 5.5.2 Call into question the fitness of the practitioner to hold a practicing certificate.
- 5.6 Where a practitioner has enrolled:-
 - 5.6.1 a failure to attend the course; or
 - 5.6.1 a failure to successfully complete the course;may:-
 - (a) be conduct capable of being unsatisfactory professional conduct or professional misconduct; and
 - (b) Call into question the fitness of the practitioner to hold a practicing certificate.
- 5.7 A practitioner invited by the Professional Conduct Committee to attend and complete the Course will, if accepting the invitation, enrol in the course when accepting the invitation.

- 5.8 The Practitioner will pay a fee to take the Course.
- 5.9 The assessment reached at the end of the course will be communicated by the Professional Conduct Committee to the body that required the practitioner to attend and complete the Course.

6. Assessment of the Course

- 6.1 The assessment of each practitioner undertaking the Course will be made by one assessor appointed by the Manager TAI.
- 6.2 The assessor will assess each practitioner in accordance with the approved course materials.
- 6.3 Each practitioner will be assessed as having satisfactorily or unsatisfactorily completed the Course.
- 6.4 Where a practitioner fails to achieve satisfactory completion of the course they may, at the discretion of the General Manager Regulation be allowed one further attempt before an assessment of satisfactory or unsatisfactory completion of their Course is made by the assessor.
- 6.5 The assessor will communicate their assessment to the Professional Conduct Committee.
- 6.6 The Professional Conduct Committee at its next meeting after receipt of the assessment document will consider the assessments and will:-
 - 6.6.1 accept or refuse the assessment of the assessor;
 - 6.6.2 advise the practitioner of the decision within 28 days of the decision accompanied by a statement of reasons for the decision;
 - 6.6.3 will communicate that decision to the practitioner and the body which ordered or referred the practitioner to the Course;
 - 6.6.4 unless the contrary is proven, the practitioner is deemed to have been advised of the Professional Conduct Committee's decision five working days after the practitioner has been sent a copy of the notice of decision via post or email.

7. Appeals to the Council

- 7.1 Any practitioner:-
 - 7.1.1 who is assessed as unsatisfactorily completing their course may have the decision reviewed by Council,
 - 7.1.2 That power of review may not be delegated by Council;
 - 7.1.3 The review will;
 - 7.1.3.1 Be by way of rehearing;
 - 7.1.3.2 Be conducted on the papers upon submissions from the practitioner and the assessor or delegate;
 - 7.1.3.3 Produce the correct and preferable decision.
- 7.2 Upon the review Council may make any decision it deems appropriate.
- 7.3 The application for review must be lodged with the Council by giving the application to the QLS's Corporate Secretary within 14 days of the practitioner being advised of the decision of the Professional Conduct Committee.
- 7.4 Council's decision will be provided to the practitioner within 28 days of the decision being made and will be accompanied by a statement of reasons for the decision.
- 7.5 The Society will advise the body that required or invited the practitioner to the course of both the application for review and the decision of Council upon the review.

8. Other duties arising out of stewardship of the courses

- 8.1 The Council Professional Conduct Committee and the staff of QLS involved in the administration of the course have a duty to:-
- 8.1.1 maintain as confidential at all times the identities of the practitioners, the performance of the practitioners and their assessment results, save as is necessary to communicate the assessment made of their performance within the Course to the body which ordered them or referred them to the Course;
 - 8.1.2 maintain as confidential at all times the content of Course materials;
 - 8.1.3 discharge their duties impartially, in good faith and in the best interests of the practitioners, the referring or ordering bodies, the QLS and its members;
 - 8.1.4 discharge their duties in a timely fashion and in accordance with program dates;
 - 8.1.5 exercise care and diligence in discharging duties and not act recklessly or dishonestly;
 - 8.1.6 provide reasons for decisions within 28 days of the date of the decision; and
 - 8.1.7 make determinations for the maintenance and advancement of the course.

9. Fees

- 9.1 The Chief Executive Officer may:-
- 9.1.1 impose fees on participants for attendance at the Course and for the provision of any published material relating to the Course offered by it in accordance with section 83 and section 681(1)(e) of the *Legal Profession Act 2007*;
 - 9.1.2 vary the fees payable by any participant or class of participant (to effect a full or partial rebate) for courses offered by it, having regard to the referring entity;
 - 9.1.3 impose fees on any practitioner who lodges an appeal pursuant to clause 7.

10. Dictionary

Chief Executive Officer means the Chief Executive Officer of the Queensland Law Society from time to time;

Corporate Secretary is the person appointed from time to time as Corporate Secretary under section 689 of the *Legal Profession Act 2007* (Qld);

Court means any of the Court of Appeal of Queensland; the Supreme Court of Queensland;

Council means the elected Council of the Queensland Law Society;

Executive Committee of Council means the Committee established by Council with certain delegated decision-making authorities;

General Manager of Regulation means the person appointed to this position from time to time;

Legal Services Commission (LSC) is the commission originally established under section 421 of the *Legal Profession Act 2004* and continued in existence pursuant to section 591 of the *Legal Profession Act 2007* (Qld), to receive and deal with complaints about lawyers, law practice employees and unlawful operators;

Legal Practice Committee (LPC) is a disciplinary body, originally established under section 451 of the *Legal Profession Act 2004* and continued in existence pursuant to section 621 of the *Legal Profession Act 2007* (Qld), to hear and decide discipline applications lodged with it by the Legal Services Commission;

Manager Trust Account Investigations (Manager TAI) means the person appointed to this position from time to time;

Professional Conduct Committee (PCC) means the Committee established by Council to set professional standards with guidance statements, continuing learning education and

other related activities;

Queensland Civil and Administrative Tribunal (QCAT) means the tribunal established under the *Queensland Civil and Administrative Tribunal Act 2009* and which has the jurisdiction to consider occupational disciplinary matters;

Society means the Queensland Law Society Inc (QLS) means the Society in existence before 1 July 2004 and continued in existence pursuant to section 508 of the *Legal Profession Act 2004* and as continued in existence pursuant to section 679 of the *Legal Profession Act 2007 (Qld)*.

11. Interpretation

- 11.1 Words importing the singular include the plural and vice versa.
- 11.2 Words importing one gender include any other gender.
- 11.3 Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- 11.4 A mention of anything after “include”, “includes” or “including” does not limit what else might be included.
- 11.5 Clause headings are for convenient reference only and have no effect in limiting or extending the language for the provisions to which they refer.
- 11.6 A reference to a statute, regulation, ordinance or local law shall be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.