

Handling Trust Money and Transit Money



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What is Trust Money?

The simplest way to explain what constitutes trust money is to state that it is money that does not belong to the law practice but is held by the practice on the client's behalf and must only be disbursed according to the client's direction.

A law practice must identify any money received – is it trust money, or general money? To do this, the practice must look at the definition of trust money in s205 of the *Legal Profession Act 2008* (LPA) which defines "trust money" as:

"... money entrusted to the 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 the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person."*

It is very important that the legal practice identifies which category the trust money falls into as the required accounting records differ for each of the above categories. The records required range from only having to establish a register to detailed accounting records such as receipts, cheques, cashbook, reconciliations and client trust ledgers.

The *Legal Profession Regulations 2009* (LPR) provide greater detail as to what, how and when accounting records are to be kept for each category of trust money. The new legislation requires that the release of trust money for costs and disbursements must be made in accordance with r65 of the LPR. In particular, be aware of whether a costs agreement is in existence as different provisions do apply.

When issuing invoices, it is important to note that the appropriate notification is used. Accordingly, it is recommended that a review of the notification of the client's rights appearing on the law practice's invoices should be undertaken. Reference should be had to s616 of the LPA to ascertain which form of notification

must be given (that is to say, notification in accordance with the *Legal Practice Act 2003* or the LPA).

Section 227 of the LPA requires legal practitioners to report in writing to the Board as soon as practical certain irregularities and suspected irregularities which they become aware of in any of the practice's trust accounts or trust ledger accounts. Regulation 53 of the LPR requires a law practice to notify the Board in writing within 14 days of opening or closing a general trust bank account.

What is Transit Money?

Transit money is also defined in s205 of the LPA but, put simply, it is usually a cheque received by a law practice which is made payable to a third party and is given to the law practice in order to be sent to that third party. This means that these funds would normally not appear in any of the law practice's accounting records. However, these are funds received from the client (entrusted to the practice) to pass onto a third party and, therefore, are classified as trust money. Such funds, therefore, need to be recorded but cannot be recorded in the general trust records. Regulation 59 of the LPR requires this information to be recorded briefly, identifying the transaction and purpose of the money being received.

What is recommended here is to either have a specific transit register to record receipt of the funds, when the funds were forwarded to the third party, for what purpose and to whom the funds relate. Another option that some practices have adopted is to copy the cheque and record the date of receipt, the date the cheque was forwarded to the payee, why payment was made and to whom it relates. Either approach is adequate for the requirements of the LPR.

For more detailed information as to your obligations with regard to the legislation and specific trust accounting records required when handling trust money, please refer to the following:

- The *Legal Profession Act 2008* Part 9 Division 2 ss204–250.
- The *Legal Profession Regulations 2009* Part 7 Division 3 rr33–77.
- The Legal Practice Board website (www.lpbwa.org.au).