

External Examination Guidance Note 2019-2020

External Examiner's Written Report

Electronic copies are preferred. Please lodge written reports at: general@lpbwa.com

The following forms have been developed by the Legal Practice Board of WA (**Board**) for use when preparing an external examiner written report in 2020:

- **External Examiner's Report** (which can be used as the written report),
- **External Examiner's Checklist;**
- **Controlled Money Checklist;** and
- **Law Practice Declaration and Trust Money Statement.**

Appointment of an External Examiner

An External Examiner is a person who:

- (a) the Board has appointed as a designated accountant pursuant to section 235 of the *Legal Profession Act 2008* (**the Act**); and
- (b) the law practice has appointed as its External Examiner pursuant to regulation 70 of the *Legal Profession Regulations 2009* (**the Regulations**).

LODGEMENT OF AN EXTERNAL EXAMINER'S WRITTEN REPORT

Trust records to be externally examined

- The Board will only accept an External Examiner's written report lodged by the External Examiner, not by a legal practitioner or associate of the law practice;
- An External Examiner's written report must be lodged by **31 May 2020**.

External Examiner's written report

After completing an external examination, an External Examiner must give a written report of the examination to the Board. The written report for the 12 month period 1 April 2019 to 31 March 2020 is to be lodged with the Board by **31 May 2020**. The Board recommends that an External Examiner use the Board's template External Examiner's Report, available on the Board's website, however provision of the written report in this format is optional.

It is necessary for an External Examiner to conduct appropriate examination, sampling technique and enquiry to form an opinion as to whether the trust records of the law practice have been properly kept in accordance with the Act and the Regulations.

An External Examiner must use his or her own judgment, formed through the examination of trust

records, to form an opinion. The Board will not offer advice as to whether an issue in the records constitutes a potential breach of the Act or the Regulations.

EXTERNAL EXAMINATIONS 2020

TRUST RECEIPTS

Regulation 41(3) of the Regulations provides that Trust receipts do not need to be issued within 5 working days, but "*must be made out as soon as is practicable*" after receiving the trust money or becoming aware of direct deposits.

IRREGULARITIES/SUSPECTED IRREGULARITIES

Section 227 of Act provides that as soon as practicable after a legal practitioner becomes aware that there is an irregularity in any of the practice's trust accounts or trust ledger accounts, written notice of the irregularity must be given to the Board.

By way of example, an irregularity includes:

- A debit balance in the trust account;
- Bank fees charged to the trust account, in error;
- Trust funds deposited in to the law practice's general account, in error;
- A failure to reconcile a trust account.

It is not necessary to detail a reported irregularity in the External Examiner's written report if it is evident the irregularity has already been reported to the Board.

AREAS OF CONCERN 2020

Controlled Money Accounts

Record keeping in relation to the maintenance of Controlled Money Accounts (**CMA/s**) will again be a focus for the Board in 2020.

A Controlled Money guidance note and CMA specific checklist are available on the Board's web site.

It is highly recommended that an External Examiner reviews the guidance note and checklist in detail prior to conducting any external examination.

Trust Account Statements

Regulation 60(1) of the Regulations requires a law practice to furnish a trust account statement to each person for whom or on whose behalf trust money (other than transit money) is held or controlled by the law practice. ***This includes a separate statement for controlled monies.***

Keeping Trust Records

Section 228(1) of the Act provides that a law practice must keep, in the form of a permanent record, trust records in relation to trust money received by the practice.

Section 228(2) of the Act provides that a **Permanent Record**, in relation to a trust record, means printed or, on request, capable of being printed, in English on paper or other material.

Section 228(3) of the Act provides that the law practice must keep the trust records —

- (a) in accordance with the regulations; and
- (b) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and
- (c) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and
- (d) for a period determined in accordance with the regulations.

Copies of trust records to be printed

Regulations 36(1)(a) to (d) of Regulations provide that the law practice must print a paper copy of the following trust records, as at the end of each month and within 15 working days after the end of the month:

- (a) trust account receipts and payments cash books are to be printed monthly as at the end of each named month, unless a copy of the books as at the end of the named month is kept in electronic form that is readable or reportable on demand;
- (b) reconciliation statements prepared under regulation 51 are to be printed as at the end of each named month;
- (c) lists of trust ledger accounts and their balances are to be printed monthly as at the end of each named month;
- (d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each named month.

Regulation 36(1)(e) of the Regulations provides that the law practice must print a paper copy of the following records prior to archiving or deletion from the system:

- (a) Trust ledger accounts;
- (b) Controlled money register (movement records);
- (c) Trust transfer journals.

The paper copies printed under subregulation (1) are to be kept by the law practice, except if they are printed on request under that subregulation. The electronic copy of the trust account cash books under subregulation (1)(a) is to be kept by the law practice. These records should be kept for a period of seven (7) years from the date of finalisation of a matter.

Controlled Money Accounts - Suggestions

When a practice opens a CMA for its client please vigilantly check and review the following:

For a term deposit:-

- (a) Check that the written authority to open the account is held, and check the authorised signatories comply with regulation 57 of Regulations.
- (b) confirm that bank confirmation of the deposit has been received, the date and amount is correct.
- (c) Review the date and amount on renewal notices for any renewed term deposit, to confirm that there has been a continual renewal and that the amount is correct.
- (d) Check for any date delays or amount changes other than interest.
- (e) Any drawings should be investigated and written authorities to release the funds, and to whom the funds have been released, sighted.

For a CMA:-

- (a) Confirm all bank statements exist from opening to current;
- (b) Check that there has been no closure and re-establishment in the life of the CMA;
- (c) If any large amount has been drawn confirm authority to do so and to whom the funds were paid to;
- (d) Check that the authority to open the account is held and the authorised signatories are correct.

Query where funds have been held for an extended time with no drawings being made to either the beneficiaries, especially if the funds relate to an estate, or to the parties in a family law matter.

Continuing Concerns under the Regulations

- Inadequate controls regarding unrestricted access to the trust account regulations 44 & 45.
- Failure to prepare Monthly trust reconciliations regulation 51.
- Failure to issue trust receipts regulation 41.
- Failure to maintain trust cash account cash books regulation 47 & 48.
- Failure to issue Trust Account Statements, regulation 60.
- Adjustments to the bank statements carried forward over successive months.
- Unpresented cheques and stale cheques.
- Small and stagnant balances in the trust ledger.
- Suspense accounts within the trust.

In many instances these concerns have occurred over successive reporting periods.

CONTACT

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Legal Practice Board

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