

External Examinations Guidance Note 2017-2018

External Examiner's Written Report

Electronic copies are acceptable and can be lodged at: general@lpbwa.com

Forms developed by the Legal Practice Board of WA (Board) for use in 2019. These consist of:

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

Appointment of External Examiner

An External Examiner is a person:

- the Board has approved as a designated accountant pursuant to s235 of the *Legal Profession Act 2008 (LPA)*; and
- the law practice has appointed as its External Examiner pursuant to reg 70 of the *Legal Profession Regulations 2009 (LPR)*.

LODGEMENT OF EXAMINER'S REPORTS

Trust records to be externally examined

- The External Examiner's written report is to be lodged by the External Examiner, not the individual legal practitioners;
- The External Examiner's Report is due for lodgement by **31 May**.

External Examiner's Written Report

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

It is necessary for External Examiners to conduct appropriate examinations, sampling techniques and enquiries to form an opinion as to whether the trust records have been properly kept in accordance with LPA and LPR.

External Examiners must use their own judgment, from 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 legislation.

EXTERNAL EXAMINATIONS 2019

TRUST RECEIPTS

Reg 41: Trust receipts do not need to be issued with 5 working days, but "*must be made out as soon as is practicable*" After receiving the trust money or accessing direct deposits.

IRREGULARITIES/SUSPECTED IRREGULARITIES

Under s227 of LPA there is a specific obligation 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 ledgers, written notice of the irregularity must be given to the Board.

By way of example an irregularity includes:

- All debit balances in trust accounts;
- Bank fees charged to the trust in error;
- Trust funds deposited to the practice's general account in error;
- A failure to reconcile trust accounts.

It is not necessary to detail reported irregularities in the External Examiner's Report.

AREAS OF CONCERN 2018

Controlled Money Accounts

The legislative requirements and record keeping in relation to the maintenance of Controlled Money Accounts ("**CMA/s**") will be a Board focus in 2018.

A controlled money guidance note and CMA specific checklist have been prepared and is available on the Board's web site.

It is highly recommended that the guidance note and checklist be reviewed prior to any examination.

Trust Account Statements

Reg 60 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

Law practice must keep, in the form of a permanent record, trust records in relation to trust money received by the practice s228 of LPA.

Permanent Record, in relation to a trust record, means printed or, on request, capable of being printed, in English on paper or other material.

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

Reg 36 LPR states that the law practice must print a paper copy of the following trust records, as at the end of each 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 reg 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.

These trust records must be printed within 15 working days after the end of the named month.

The law practice must print a paper copy of the following records prior to archiving or deletion from the system [Reg 36(1)(e) LPR]:

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

The paper copies printed under subsection (1) are to be kept by the law practice, except if they are printed on request under that subsection. The electronic copy of the trust account cash books under subsection (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 has CMAs opened for their clients please be vigilant with respect to checking and reviewing the following:

For term deposits:-

- a) Check that the written authority to open the account is held and check the authorised signatories comply with reg 57 of LPR;

- b) confirm that a bank confirmation of the deposit has been received, the date and amount is correct;
- c) Review the dates and amounts on renewal notices for any renewed term deposits 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 sight written authorities to release the funds and to whom the funds have been released;

For CMA's:-

- a) Confirm all bank statements exist from opening to current;
- b) Check that there has been no closures and re-establishments in the life of the CMA;
- c) If any large amounts have 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 who are the authorized signatories.

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

Continuing Concerns:

- Inadequate controls regarding unrestricted access to the trust account reg 44 & 45;
- Failure to prepare Monthly trust reconciliations reg 51;
- Failure to issue trust receipts reg 41;
- Failure to maintain trust cash account cash books reg 47 & 48;
- Failure to issue Trust Account Statements, reg 60;
- Adjustments to the bank statements carried forward over successive months;
- Unpresented cheques greater than 3 months and stale cheques not being followed up;
- Small and stagnant balances appearing in the trust ledger;
- Suspense accounts within the trust.

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

Lodge at: general@lpbwa.com

CONTACT

If you have any queries, please contact:

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