

External Examinations Guidance Note 2012-2013

IMPORTANT CHANGES

External Examiner's Written Report

New optional forms have been developed by the Legal Practice Board of WA (**Board**) for use in 2013. These consist of:

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

These documents are styled upon national model documents which are already in use in other States.

Appointment of External Examiner

An External Examiner is a person:

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

A Notification of Appointment or Termination of External Examiner must be filed with the Board when a law practice appoints an External Examiner.

NB: All External Examiners that undertook external examinations in the 2010-2011 year were "Designated Accountants" by the Board in 2011. That designation remains in place for 2013.

LODGEMENT OF EXAMINER'S REPORTS 2013

Trust records to be externally examined

A law practice must (at least once in each financial year) have its trust records externally examined by an External Examiner, unless the only trust money received or held by a law practice during a financial year is transit money: section 241 of Act.

Penalty: a fine of \$10,000.

One Copy Only

The External Examiner's written report is to be lodged by the External Examiner, not the individual legal practitioners. Historically multiple copies of the report were lodged with the Board: original, facsimile and e-mail copies, copies lodged on behalf of each practitioner within a law practice, by the auditor or External Examiner and then more copies lodged as part of the practising certificate renewal.

The External Examiner is to lodge with the Board the original signed copy of the written report on behalf of the law practice.

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. 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 the Act and Regulations. 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.

Law Practice Declaration & Trust Money Statement

The Board has also prepared a Law Practice Declaration and Trust Money Statement that the Board recommend the law practice complete to assist the External Examiner. If the law practice completes the Law Practice Declaration and Trust Money Statement the External Examiner should attach the completed document to the External Examiner's written report.

External Examiner's Checklist

A Checklist has been prepared to guide External Examiners through their examination of the various forms of trust records maintained by the law practice and to assist in the assessment of compliance with the Regulations. It is suggested that the External Examiner utilise the Checklist as a guide to conduct the examination and to leave a completed copy, or other review documentation, with the law practice to evidence completion of the examination. A copy of the written report and Law Practice Declaration & Trust Money Statement (if used) should also be left with the law practice.

The above three documents are available at the Board's website. If any of these documents are used, the External Examiner should retain the completed copies and other review documentation as part of the working papers.

EXTERNAL EXAMINATIONS

Areas of Concern

Since June 2008 the Board has been requesting law practices to complete a law practice declaration and trust money statement. Of the statements returned and reviewed the majority indicate some form of remedial action was required by the law practice. Issues identified include:

- Failure to prepare Monthly trust reconciliations;
- Failure to issue trust receipts;
- Failure to maintain trust cash account cash books;
- Failure to issue Trust Account Statements;
- Non-compliant accounting software in use;
- Stale cheques appearing on the bank reconciliations;
- Adjustments to the bank statements carried forward over successive months;
- Unpresented cheques not being followed up;
- Small and stagnant balances appearing in the trust ledger;
- Non legal practitioners having sole access to the trust account;
- Suspense accounts within the trust.

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

TRUST ACCOUNT STATEMENTS

Regulation 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.

Provision of Statement

The law practice must send a trust account statement as soon as practicable after:

- i. completion of the matter;
- ii. receiving a reasonable request from the person on whose behalf the money is held or controlled;
- iii. 30 June each year, unless exempted by provision of regulation 60(7).

The latest date for the issue of such statements since inception of Regulation 60 was as at 30 June 2010.

Given the high number of stagnant trust account balances held by Law Practices compliance with regulation 60 will be a focus of the Board in 2013.

IRREGULARITIES & SUSPECTED IRREGULARITIES

Under section 227 of the Act 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.

The frequency of reporting under section 227 has increased from 106 in 2009 to 813 in 2012. Each report is acknowledged and the law practice advised to retain a copy for the External Examiner.

FINANCIAL SERVICES OR INVESTMENTS MONEY

Money held by a law practice that is not trust money includes:

- i. money held in respect of a financial service provided by the practice or an associate of the practice in circumstances where an Australian Financial Services Licence is required; or
- ii. money in connection with a managed investment scheme, or mortgage financing.

Such monies **cannot** be paid into a Trust Account.

“**trust money**” means money entrusted to the law practice in the course of or in connection with the provision of legal services by the practice

COMPUTERISED ACCOUNTING SYSTEMS

If a law practice maintains trust records by means of a computerised accounting system, it is recommended that users contact their supplier/distributor to ascertain whether their software complies with the Regulations. Details of approved systems are available from the Board.

CONTACT

If you have any queries, please contact:

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