



EXTERNAL EXAMINER'S REPORT 2018

UPDATE FOR EXTERNAL EXAMINERS

The legislation

1. The operative legislation for the year ending 31 March 2018 is the Legal Profession Uniform Law (NSW) 2014 and Legal Profession Uniform General Rules 2015 which commenced on 1 July 2015. The Legal Profession Uniform Law Application Act 2014 (NSW) and Legal Profession Uniform Law Application Regulation 2015 (NSW) is also applicable in regard to the requirement to maintain a statutory deposit and the calculation of the amount to be held on deposit.
2. The due date for completed reports to be submitted online is 31 May 2018. This has changed from last year when the report was due to be lodged on 15 May 2017.

Results of processing 2017 External Examiner's Reports

3. The following table discloses the amount of money under the control of law practices in New South Wales as reported by External Examiners in the 2017 External Examiners' Reports as at 31 March 2017:

Type of Trust Money	31 03 2017	# of A/cs	31 03 2016	# of A/cs
General Trust Money	3,217,832,577	139,343	2,630,100,058	129,825
Controlled Money	4,853,839,562	35,006	5,963,780,192	32,929
Money subject of a power	450,868,849	717	244,310,187	762
Investment of Trust Money	124,522,450	972	672,196,708	854
Total:	8,647,063,438		9,510,387,145	

4. There were 3,516 External Examiners' Reports received for year ended 31 March 2017 of which 3,122 were unqualified and 363 qualified. 31 Reports were adverse. A qualified report has a negative response in the external examiner's opinion or a qualified/adverse comment in paragraph 2 or 6 of the report.
5. There were a number of qualified reports received due to the Authorised ADI's failure to provide paid cheques. Please refer to the [Instructions to External Examiners](#) document in regard to the sighting of paid cheques which has been published on the Law Society website.

6. There were 1,140 External Examiner's Reports received which recorded a breach of the Regulation and 2,376 reports received which disclosed no breaches.
7. A very common matter noted during the 2017 review process was the number law practices reported as carrying adjusting items in the bank reconciliation for extended periods of time. External Examiners are requested to review this issue and if there are extended delays in rectifying the issue to draw it to the attention of the Trust Accounts Department by making a note in Paragraph 7 of the External Examiner's Report.
8. Another breach that was commonly noted related to the requirement to produce a trial balance and bank reconciliation within 15 working days after the end of the month. External Examiners are encouraged to record the extent and frequency of the breach to enable adequate review by the Trust Accounts Department.
9. The following table illustrates the Trust Accounts Department's actions in relation to the reports received which included breaches of the legislation and/or brought other matters to the attention of the Law Society of New South Wales:

Category/Actions Taken	Number of Reports	
	2017	2016
Noted – No Further Action	1,282	1,385
Letter Issued – Reply Not Required	224	235
Letter Issued – Reply Requested	35	12
Scheduled for Investigation	92	74
Breaches referred to Investigator (routine investigation already scheduled for an Investigator)	32	46
Letter to Examiner requesting clarification regarding the breaches reported	14	4
Combination of above	33	14

2018 Forms

10. Law Practice Confirmation and Statement of Trust Money

The Law Practice Confirmation and Statement of Trust Money and External Examiner's Report are uniform between New South Wales and Victoria.

- **Part A – Law Practice Confirmation.**

The content of the Law Practice Confirmation has not changed from the previous year's document. As with last years document, the question relating to trust money subject to a Specific Power has been divided into two categories which includes/excludes Power Money pursuant to the Pexa Settlement Scheme. Law practices are being advised that if the only money that was received during the relevant period was Power Money pursuant to the Pexa Settlement Scheme and Transit Money the law practice needs to contact the Trust Accounts Department in regard to the submission of an External Examiner's Report.

- **Part B – Law Practice Statement of Trust Money.**

The content of the Statement of Trust Money has not changed from the previous year's document. As with last years document, two additional tables have been added to the form. The law practice is asked to provide a breakdown of the Trust Trail Balance and Controlled Money Listing as at 31 March 2018. PLEASE NOTE that the information

provided by the law practice in these tables is not part of the scope of the external examination and this statement has been included in the tables.

- **External Examiner's Report**

The content of the External Examiner's Report has not changed from the previous year's document.

- **External Examiner's Checklist**

A Checklist is available to guide 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 Legal Profession Uniform General Rules 2015. The Checklist is available at the Law Society website.

The use of the Checklist is not mandatory. However Examiners who do not use the Checklist are required to retain appropriate work papers that evidence the compliance review.

Examiners will note that the checklist records some breaches with an “-“ at the end of the breach followed by a number. This has been introduced for rules with more than one requirement for the record. It now allows the Examiner to report only that piece of information that is not recorded in the required record.

Due to changes made to the Privacy Act 1988 which came into effect on 22 February 2018 the Law Society of New South Wales can no longer offer the Interactive Checklist which was provided by Cabenet Accounting Services.

Administration

11. The 2018 Law Practice Confirmation and Statement of Trust Money and External Examiner's Report are required to be submitted online via the Law Society of New South Wales website. Emails are sent to external examiners and law practices explaining the process.

Other Matters

12. The Trust Accounts Department received numerous telephone enquiries regarding the requirement for the Examiner to report on dormant trust ledger balances held in the general trust accounts. A dormant trust ledger balance is defined as a trust ledger account whereby the relevant matter had been completed and there is a balance in the ledger account with no movement in the past 12 months after the completion of the matter.
13. The Examiner is required to review the list of dormant balances (if any) and determine whether the law practice has taken steps to review and eliminate the balances. If the Examiner is not satisfied or concerned with the law practice's procedures, the matter should be noted in paragraph 6 of the External Examiner's Report.
14. The same applies for the review of overdrawn trust ledgers. The Examiner is only required to comment on overdrawn trust ledgers if the Examiner considers (1) that the overdrawn

trust ledgers have not been rectified in a timely manner or (2) that the overdrawn trust ledgers represents a major breakdown in the accounting for trust money or (3) the law practice has benefited without reasonable excuse.

15. The overdrawn trust ledgers and dormant balance listings which are supplied to the Examiner by the law practice are not required to be submitted to the Trust Accounts Department.

Jim Sofiak
Chief Trust Account Investigator