



THE LAW SOCIETY
OF NEW SOUTH WALES

EXTERNAL EXAMINER'S REPORT 2022

UPDATE FOR EXTERNAL EXAMINERS

The legislation

1. The operative legislation for the year ending 31 March 2022 is the Legal Profession Uniform Law (NSW) 2014 and the Legal Profession Uniform General Rules 2015 which commenced on 1 July 2015. The Legal Profession Uniform Law Application Act 2014 (NSW) and the 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 2022.

Results of processing 2021 External Examiner's Reports

3. The following table discloses the amount of money under the control of law practices in New South Wales reported as at 31 March 2021:

Type of Trust Money	31 03 2021	# of A/cs	31 03 2020	# of A/cs
General Trust Money	5,152,029,198.20	164,427	4,360,089,642	156,177
Controlled Money	2,230,510,435.92	10,995	2,666,094,442	14,860
Investment of Trust Money	93,177,100.63	92	89,676,506	167
Money subject of a power	217,052,575.63	567	153,869,812	599
Total:	7,692,769,310.38		7,269,730,402	

4. There were 3,810 External Examiners' Reports received for the year ended 31 March 2021 of which 3,608 were unqualified and 80 qualified. 122 Reports were adverse. A qualified report is one that has a negative response in the external examiner's opinion or a qualified/adverse comment in paragraphs 2 or 7 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 1,231 External Examiner's Reports received which recorded a breach of the Regulation and 2,579 reports received which disclosed no breaches.

7. A very common matter noted during the 2021 review process was the number of 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	
	2021	2020
Noted – No Further Action	1,506	1,650
Correspondence Issued – Reply Not Required	325	197
Correspondence Issued – Reply Requested	107	57
Scheduled for Investigation	64	74
Breaches referred to Investigator (routine investigation already scheduled for an Investigator)	34	54
Letter to Examiner requesting clarification regarding the breaches reported	16	5
Combination of above	5	4

2022 Forms

10. Law Practice Confirmation and Statement of Trust Money

The data captured by 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.**

References to the PEXA Settlement Scheme have been replaced by Electronic Lodgement Network Operator ('ELNO') Scheme.

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

There are multiple minor text changes to the Statement of Trust Money for uniformity purposes. These do not change the structure of the form.

The Trust Ledger Deficiency Report and General Trust AADI Account Overdrawn Report have both previously contained one question. This has now been split into two questions.

- **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.

Administration

11. The 2022 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 7 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 represent a major breakdown in the accounting for trust money or (3) the law practice has benefited without reasonable excuse. The Examiner should report directly to the Chief Trust Accounts Investigator if the overdrawn balances have not been rectified.

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.
16. Finally, the Trust Accounts Department has become aware of instances of banks unilaterally ceasing business arrangements with law practice clients. Such occurrences include closure of the trust bank account and payment to the law practice of the balance in the account. The banks are not stating their reasons, but we believe it is in response to recommendations of the Banking Royal Commission. In the event your law practice client has changed its trust bank account arrangements in the course of this examination period, would you please enquire as to the circumstances of closure and notify us if closure was initiated by the bank.

Jim Sofiak
Chief Trust Account Investigator