

External Examiner Guidelines

2023



THE LAW SOCIETY
OF NEW SOUTH WALES

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Who is eligible to be appointed as an External Examiner?

Only persons who successfully complete the approved External Examiner course and a member of the following are eligible to be appointed as External Examiners (Examiners):

- CPA Australia holding a current Public Practice Certificate
- Chartered Accountants Australia and New Zealand holding a current Certificate of Public Practice
- Institute of Public Accountants holding a current Professional Practice Certificate
- person registered as auditors under Part 9.2 of the Corporations Act

Register your interest for upcoming courses [here](#).

What is the purpose of an EER?

The purpose of the EER is to:

- confirm that the information submitted in the law practice's Part B is correct
- confirm that appropriate, prompt action was undertaken in any instance of overdrawing trust money
- confirm the trust records for the various types of trust money have been properly kept in accordance with the provisions of the LPUL and the LPUGR
- Detail any observed breaches of the LPUL and the LPUGR including, but not limited to, relevant dates, frequency, details describing the breach etc.

How should I prepare an EER?

You will undertake appropriate examination of the trust records to satisfy yourself that the trust records have been maintained in accordance with the LPUL and the LPUGR, including sampling techniques and other enquiries to form your opinion.

The Law Society has developed an [External Examiner's Checklist](#) to guide you through the examination of the various forms of trust records and to assist in the assessment of compliance with the legislation.

You will complete the EER online and submit by 31 May.

What is the EER's due date?

We require the EER to be submitted online to the Law Society by **31 May** to ensure that any matters arising within your report can be addressed within the current financial year.

If 31 May falls on a Saturday or Sunday or a public holiday, the EER may be lodged on the next business day.

If the EER is delayed as a result of an authorised ADI's delay in providing information, you are requested to lodge the External Examiner's Report with a note in paragraph 7 of the Report advising that you are awaiting information from the authorised ADI.

If your opinion changes upon subsequent receipt of the information from the authorised ADI, please notify the Chief Trust Account Investigator at tad@lawsociety.com.au or (02) 9926 0337.

How do I submit an EER?

The External Examiners Reports are submitted online via the Law Society of New South Wales website.

You will be provided a unique log-in to access the Law Practices we understand you have been engaged to examine.

If any information contained therein is incorrect notify the Chief Trust Account Investigator at tad@lawsociety.com.au or (02) 9926 0337.

What needs to be included in an EER?

You will confirm whether information in the Part B is correct and satisfy yourself of the following:

A. Trust Money

Have you satisfied yourself that:

- the law practice is keeping and has maintained trust money records and registers in accordance with the requirements of the LPUL and the LPUGR?
- these trust records are readily available to you to enable the examination?
- the law practice's computerised accounting system complies with the requirements of the LPUGR?
- trust money transactions are entered into the accounting records within 5 working days?

- that trust account statements are given for all trust money (other than transit money and written direction money) held or controlled?
- the law practice is complying with the procedures in regard to the withdrawal of money from a general trust account or controlled money account for legal costs?
- only properly authorised persons sign trust cheques, sign controlled money withdrawals or effect electronic funds transfers from the general trust account or controlled money account?

B. General Trust Account

Have you satisfied yourself that:

- the law practice which receives money that is required to be deposited into a general trust account maintains a general trust account in this jurisdiction, and that the general trust account is established and maintained in accordance with the LPUGR?
- a general trust account receipt is issued promptly in respect of general trust money received and the receipt records sufficient information to enable the receipt of the money to be properly recorded in the cash book and trust ledger account?
- each deposit record is made out in duplicate, that completed deposit records are securely retained and the general trust money received has been promptly deposited?
- sufficient information has been recorded on the relevant cheque butt, or cheque requisition, or other initiating disbursement document to enable details of disbursements to be properly recorded in the trust account payments cash book and trust ledger account?
- the trust account receipts and payments cash books have been properly kept?
- the records of each general trust account are reconciled within 15 working days of the end of each month and that errors and deficiencies are identified?
- there are no transfers between ledger accounts without the use of the trust journal and the required details are recorded for each trust journal transaction?
- the trust ledger accounts have been properly kept and details of money received, disbursed and transferred are recorded in a trust ledger account kept for each matter for each person on whose behalf money is held?

C. Controlled Money

Have you satisfied yourself that:

- a law practice that receives controlled money deposits the money in a controlled money account as directed?
- that a controlled money account receipt is issued promptly in respect of all controlled money received and the required particulars are properly recorded?
- that all withdrawals of controlled money are carried out in accordance with the Rules and that a written record disclosing the required particulars is kept for each withdrawal of controlled money?
- that all records relating to controlled money accounts are properly kept in the controlled money register?
- that listings of controlled money are prepared within 15 working days of each month end for the period under review?
- That the listing is reviewed by a principal and the review is evidenced?

D. Transit Money

Have you satisfied yourself that if the law practice has received transit money, that it has retained the appropriate records?

E. Trust Money Subject to Written Direction

Have you satisfied yourself whether the law practice has received a written direction to deal with trust money (other than cash) in a particular way, it has retained a copy of the written direction?

F. Register of Powers and Estates in Relation to Trust Money

Have you satisfied yourself that required records were maintained and appropriate entries have been made in the Register of Powers & Estates?

G. Investment of Trust Money

Have you satisfied yourself whether the law practice has received instructions to invest trust money on behalf of clients under s129(2)(d)?

H. Register of Investments

Have you satisfied yourself that if the law practice has received instructions to invest trust money for or on behalf of clients it has maintained the appropriate Register of Investments of trust money?

I. Matter Files and Registers

Have you satisfied yourself that the law practice is opening and maintaining matter files and maintaining appropriate registers?

J. Mortgage Money

Have you satisfied yourself that the law practice is not negotiating the making of or variation of a mortgage?

K. Borrowing from Client or Former Clients

Have you satisfied yourself that no solicitor or associate of the law practice has borrowed money from a client, or, in certain circumstances, from a former client?

L. Statutory Deposit

Have you satisfied yourself that:

- the calculation for the statutory deposit has been completed by the law practice for each applicable period (in the year of review)?
- the required statutory deposit amount has been deposited to the Statutory Deposit Account held by the practice's authorised ADI?

M. General Overview of Matter Files and Trust Records

Have you satisfied yourself that the provide an overview of the examination in respect of matter files and trust records?

Is there a Checklist to assist?

Yes, the Law Society has developed a [External Examiner's Checklist](#) to assist you examine 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.

You should retain a copy of your work papers, including any completed checklists, supporting documentation, copies of reconciliations etc. which will be subject to periodic reviews by the Law Society.

What are the authorised institutions to hold trust money?

Under the LPUL, a general trust bank account can only be established at an **authorised** deposit-taking institution (ADI).

The following institutions are authorised to hold general trust accounts in NSW (Authorised ADI's):

- Australia & New Zealand Bank Ltd
- Bendigo and Adelaide Bank
- Bank of Queensland Ltd
- Bank of Sydney Ltd
- Bank of Western Australia Ltd (New Statutory Deposits unavailable)
- Commonwealth Bank of Australia
- Greater Bank Ltd
- Macquarie Bank Ltd
- National Australia Bank Ltd
- St George Bank Ltd
- Westpac Banking Corporation
- The Mutual Building Society Ltd (The Mutual)
- Newcastle Permanent Building Society Ltd (New Statutory Deposits unavailable)
- Regional Australia Bank Ltd
- Southern Cross Credit Union Ltd

A controlled money account may be opened with any of the above AADIs or any other ADI (Refer to Australian Prudential Regulation Authority's approved list of ADIs).

All general trust accounts operated (including both opened and closed) during the examination period must be included in the Part B and be reconciled to the balance of the Authorised ADI Statement(s) as at 31 March.

- Rule 50(1) of the LPUGR requires a law practice to provide written notice **within 14 days** after establishing a general trust account.
- Section 370 of the LPUL allows you to contact the Authorised ADI to seek information as part of the external examination by serving the Authorised ADI with a Notice.
- Section 149(4) of the LPUL prohibits the Authorised ADI from charging you for complying with the Notice.

What is authorised trust accounting software?

The Law Society examines and certifies the trust accounting software which comply with the requirements of the LPUL and LPUGR and the current listing is available [Certified trust accounting software](#).

I don't have enough information to form an opinion?

The EER must be submitted online to the Law Society by **31 May** to ensure that any matters arising within your report can be addressed within the current financial year.

In the event, you are unable to receive sufficient information to form an opinion, submit an adverse/qualified report setting out the attempts undertaken and any other relevant information to assist the Law Society conclude on whether the accounting records have been maintained in accordance with the LPUL and LPUGR.

What do I do once I am appointed?

Once appointed as an Examiner, you should remind the law practice of its obligation to notify the Law Society in writing of the appointment by completing the [Notification of Appointment or Cessation of External Examiner form](#)

Also, if you are replacing another Examiner, the same form must be completed to advise of the cessation of the previous Examiner.

What do I do if terminated?

Rule 66 of the LPUGR requires that the law practice must obtain the prior approval of the Law Society. A form is available on the Law Society [website](#).

An Examiner may notify the law practice that the Examiner does not wish to continue to be the appointed Examiner for the law practice and in these situations the law practice may replace the Examiner without the prior approval of the designated local regulatory authority. Completion of the Notification of Appointment or Cessation of External Examiner form will suffice.

The Examiner should also notify the Trust Accounts Department of his/her resignation.

Working with other Jurisdictions

In December 2013 the NSW and Victorian Governments executed an Intergovernmental Agreement formalising their joint participation in the uniform scheme. As at 1 July 2022, Western Australia entered into Uniform Law.

The Uniform Law creates a common regulatory platform across NSW, Victoria and Western Australia, encompassing almost three quarters of Australia's lawyers.

Where can I go for further information?

You can reach the Chief Trust Account Investigator and the Trust Accounts Department at tad@lawsociety.com.au or (02) 9926 0337.