



Trust Account Circular

Date: 9 March 2023

Attn: Managing Partners and Sole Practitioners

External examination reports and statutory deposits for the year ending 31 March

To assist you, we have summarised the relevant provisions of the *Legal Profession Act 2006* (“the Act”) and the *Legal Profession Regulation 2007* (“the Regulation”) in relation to your external examination report and statutory deposit obligations. **Please ensure that the appropriate staff in your practice are aware of these requirements.**

External examination

No external examination is required if, between **1 – 30 April**, the Society is given a Statutory Declaration stating that either:

1. **no trust money or controlled money** was received or held by the law practice during the year ended 31 March; **or**
2. the **only** trust money received by a law practice during the year ended 31 March was **transit money**.¹

Please be aware that no statutory declarations relating to the period 1 April – 31 March can be made prior to 31 March.

If trust money or controlled money was received or held in the current trust year, please refer to the section regarding the appointment of an external examiner, notification of such appointment, and subsequent lodgement of the examination report with the Society.

Using the PEXA Source Account

Law firms without an ACT trust account, but registered to use the PEXA Source account are dealing with trust money defined as Power Money. For these firms, any statutory declaration given to the Society must now include an acknowledgement that the only Power Money dealt with is Power Money via the PEXA platform, otherwise an external examination will be required. If this applies to your firm, please refer to page 4 for information specifically on PEXA and Power Money.

Law firms which have held or received trust money

Appointment of an External Examiner

- You must engage an external examiner no later than 8 April.²

¹ s67 of the Regulation.

² s66(2)(a) of the Regulation.

- Notify the Society in writing **within one month** of engaging the external examiner.³ There is a form available on the Law Society's website at www.actlawsociety.asn.au/practising-law/trust-accounts/trust-account-notification-forms.
- You may only appoint a designated person who is named in the list of designated external examiners,⁴ which can be found on the Society's website at www.actlawsociety.asn.au/practising-law/trust-accounts/designated-external-examiners. The list is comprised of people who have been designated by the Society as being eligible for appointment as external examiners.⁵
- If you wish to appoint, as your external examiner, someone who is not currently included in the list, please contact the Society's Finance & Business Services Manager, Lea McLean via email on lea.mclean@actlawsociety.asn.au for further information on the procedure to be followed. **Important note:** A firm may not appoint an external examiner who is related to the firm's regular bookkeeper.

Lodgement of the External Examiner's Report

- Section 247 of the Act requires the external examiner to lodge the report of the examination with the Society as soon as practicable after completing the external examination.
- In any case, the Society will expect to have received the external examiner's report no later than **31 May**.
- It is anticipated that the external examination reports for most law practices will have been completed by mid-May. Reminders for the renewal of practising certificates will be sent out electronically in early April.
- To facilitate the issue of unrestricted practising certificates by 1 July, your practice is requested to do all it can to ensure that your external examiner lodges the report with the Society by 31 May.
- You may choose to provide your written comments on any **qualifications** in the report by the external examiner, at the same time as the report is sent to the Society.

Format of the External Examiner's Report

- A copy of the approved format for the External Examiner's Report is attached. Please ensure that your external examiner is aware that the format is mandatory.⁶

Reports from members ceasing to practise in the ACT

- Section 244 of the Act requires a law practice which ceases to engage in legal practice in the ACT to appoint an external examiner, and to give the report of the examination to the Society within 60 days after the end of the period to which the examination relates.
- In addition, within 60 days after the practice stops holding trust money, written notice of that fact must be given to the Society.⁷

³ s66(3) of the Regulation.

⁴ s240(2) of the Act.

⁵ s240(1) of the Act.

⁶ s68(2) of the Regulation.

⁷ s244(3)(b) of the Act.

Statutory deposits

Calculation of Statutory Deposit

- By 30 June you are obliged to deposit with the Society an amount equal to two-thirds ($\frac{2}{3}$) of the minimum general trust bank account balance at any time during the year ended 31 March, where the minimum balance exceeds \$3,000.⁸
- Calculation of your practice's statutory deposit can be completed on the attached form, or by using the Excel spreadsheet found on the Law Society's website at www.actlawsociety.asn.au/practising-law/trust-accounts/trust-account-notification-forms. The form can be scanned and emailed to Society and payment can be made either via EFT into the account details provided on the calculation form or you may send a trust account cheque.
- The lowest general trust bank account balance should be determined as soon as possible after 31 March. This amount is based on the balances showing on the bank statement over the twelve-month period.⁹
- If calculations show that the firm is entitled to a refund of any excess deposit, upon receipt of your calculation form, the Society can arrange a refund by online transfer. Please make it clear to the Society that you do require the refund processed, as some firms elect not to exercise their entitlement to a refund, by advising the Society that a refund is not required at that time. Of course, should it transpire during the course of the year that a refund of any part of the Statutory Deposit is required, refund requests in accordance with section 72 of the Regulation are dealt with immediately, with refunds being made via EFT, directly into the firm's trust account.

PEXA source account/power money

Law firms who do not have a trust account

At the Council meeting held on 16 November 2020, the Council of the ACT Law Society invoked section 81 of the Regulations to provide an exemption from the need to lodge an external examiner's report if the only Power Money dealt with was in relation to PEXA or any future electronic conveyancing platform.

To qualify for the exemption a law firm without a trust account which uses the PEXA Source Account must include wording in their annual statutory declaration to the Society which clearly acknowledges that the only Power Money dealt with is that which is used in the PEXA platform (or any future electronic conveyancing platform).

The law firm must still maintain a Register of Powers and Estates pursuant to section 61 of the Regulations.

⁸ s71 of the Regulation.

⁹ s69(7) of the Regulation.

Recommended wording on the statutory declaration relating to the trust year ending 31 March, for law firms who have used the PEXA Source account and do not have an ACT solicitor trust account, is as follows:

No trust money was received or held by the law practice during the year ended 31 March 20xx, except for the following:

1. The only trust money received by the law practice during the year ended 31 March 20xx was transit money (*only include this text if applicable*) and/or
2. The only Power Money dealt with by the law practice was in the course of using the PEXA Source Account and a Register of Powers and Estates has been maintained by the law practice (*only include this text if applicable*)

Important dates for all law firms

Checklist

31 March	<input type="checkbox"/> Trust accounting year-end and calculation date for Statutory Deposit amount.
8 April	<input type="checkbox"/> Deadline for firm to engage an external examiner.
31 May	<input type="checkbox"/> External examiners report should have been received by the Society (delay in receiving the report will affect issuance of unrestricted practising certificates).
30 June	<input type="checkbox"/> Deadline for deposit of funds to the Society along with Statutory Deposit calculation form.
1 July	<input type="checkbox"/> Notification required to the Society during July each year, with names and addresses of all those authorised to act on the trust account.



Simone Carton
Chief Executive Officer