

Course of Education for External Examiners of the Trust Records of Law Practices, Barristers and Approved Clerks (External Examiners Course)

Course Description and Instrument of Approval

A - COURSE DESCRIPTION

Background

Section 156 of the Legal Profession Uniform Law (LPUL) provides

- (1) *Only persons designated or within a class designated under the Uniform Rules for the purposes of this section may be appointed as external examiners.*
- (2) *An associate of a law practice cannot be appointed as an external examiner to examine the law practice's trust records.*

Uniform General Rule 65 makes provision for the *Designation of persons eligible to be appointed as external examiners*

- (1) *This rule designates the classes of persons who may be appointed as external examiners under Part 4.2 of the Uniform Law.*
- (2) *The following classes of persons are designated for the purposes of section 156 of the Uniform Law:*
 - (a) *members of CPA Australia holding a current Public Practice Certificate issued by that body,*
 - (b) *members of Chartered Accountants Australia and New Zealand holding a current Certificate of Public Practice issued by that body,*
 - (c) *members of the Institute of Public Accountants holding a current Professional Practice Certificate issued by that body,*
 - (d) *persons registered as auditors under Part 9.2 of the Corporations Act,*
 - (e) *employees or agents of the designated local regulatory authority,****being in each case persons who have also successfully completed a course of education approved by the Legal Services Council from time to time after consultation with the relevant designated local regulatory authority*** (emphasis added).
- (3) *A reference in subrule (2) (a)–(c) to:*
 - (a) *a particular body includes a reference to the body with a changed name or to a successor body, and*
 - (b) *a particular certificate includes a reference to a certificate (however described) that is issued by the body concerned and certifies the professional competency of the holder.*

Clause 20 in Schedule 4 to the LPUL provides. in effect, that all external examiner appointments will cease two years after the commencement of the Uniform Law. This means that their appointments cease at the end of 30 June 2017.

The objectives to be achieved when fulfilling the duties of an External Examiner are:

- (1) To confirm the accuracy of the details recorded in the Law Practice Confirmation and Trust Money Statement by a principal of the law practice or approved clerk.
- (2) To ensure all records were properly and regularly maintained.
- (3) To ascertain the extent to which the law practice, barrister or approved clerk has complied with the requirements of the LPUL and Rules for trust money entrusted to the law practice, barrister or approved clerk.

The approach to the examination and visits should be designed to form a view as to whether the LPUL and the Uniform General Rules (UGR's) have been complied with.

At the end of the External Examination process an examiner is required to express the following opinions that

- (1) an examination of the trust records of the Law Practice/Approved Clerk has been conducted based on appropriate examination and sample techniques for the year ending 31 March (in the relevant year)
- (2) nothing has come to attention that indicates the information recorded in the Law Practice & Approved Clerk's Confirmation (Part A) and the Statement of Trust Money – Law Practice & Approved Clerks (Part B) is not true.
- (3) all the necessary trust records were produced for external examination and the records were kept in a way that enables them to be conveniently externally examined.
- (4) the trust records have/have not been properly kept in compliance with the provisions of the Uniform Law and Uniform Rules
- (5) overdrawn entries in the bank account or trust ledger have been appropriately treated unless listed in the report
- (6) dormant balances have been appropriately treated unless listed in the report
- (7) information which is not listed in any schedules to the report needs to be drawn to the attention of the Designated Local Regulatory Authority

Mandatory Qualifications

To be appointed as an External Examiner in accordance with Rule 65 of the UGRs a person:

- (1) must be a member of one of a number of accounting bodies, which are listed in the Uniform General Rule 65 set out above OR
- (2) must be a person registered as an Auditor under Part 9.2 of the Corporations Act; and/
- (3) in regard to (1) and (2) above must hold a certificate of public practice
- (4) must be an employee or agent of the designated local regulatory authority (or its delegate).
- (5) all of whom must have successfully completed the course of education (the course) and associated online assessment (the assessment) approved by the Legal Services Council (LSC)

Certification Required

Successful completion of a course of education (the course) and associated online assessment (the assessment) approved by the Legal Services Council (LSC) is required by UGR65 (2).

Previously appointed External Examiners

There is at present no provision in the process for approval by the LSC or its delegate for recognition of the status of persons who may in the past have undertaken external examinations of law practices. The reason for this is that section 156 of the Uniform Law provides that only persons designated under the Uniform General Rules (i.e. UGR 65) may be appointed as external examiners and clause 20 in Schedule 4 has the effect that previous appointments cease, as indicated above.

Approved Course Structure

Course Content

The External Examiners Course of Education (the course) was prepared in consultation with the Designated Local Regulatory Authorities (DLRA's) and their delegates in Victoria and New South Wales and approved by the Commissioner for Uniform Legal Services Regulation and Chief Executive Officer of the LSC as its Delegate and pursuant to rule 65 of the UGR's.

The course material consists of:

- The course manual
- PowerPoint slides
- Assessment questions
- Evaluation form

The original Manual, including copies of the above material and together dated 5 December 2016 and identified as the Uniform Law External Examiners, is held by the LSC.

The course duration is one day. In order to successfully complete the course, candidates must both undertake the course, and subsequently successfully complete the assessment described herein.

At the end of the course the assessment process will confirm that candidates have a sound understanding of the duties, obligations and role of an External Examiner. This, together with the candidate's possession of the mandatory qualification for appointment, should mean that candidates appointed as an External Examiner will be fully competent to perform this role.

There are 12 sessions in the one-day course. The sessions outlined below are intended to form a coherent whole.

Session Topics

- Session 1: Course Overview
- Session 2: Regulatory Framework of the Legal Profession In New South Wales and Victoria.
- Session 3: Financial Assurance Scheme and the Role of the External Examiner
- Session 4: Trust Money Overview
- Session 5: Trust records overview
- Session 6: Overview of online lodgement
 - Victoria 6A
 - New South Wales 6B
- Session 7: External Examiners Perspective
- Session 8: External Examiners Powers
- Session 9: Overview Conveyance Transactions
- Session 10: Overview of the Administration of Deceased Estates
- Session 11: Overview of General Litigation
- Session 12: Assessment Component Requirements – Questions.

Course Delivery

Each session is to be delivered face-to-face in lecture or seminar format. Those delivering the course should encourage attendee participation in the course. Adult learning principals should be applied wherever possible, specifically:

- **Actively involve participants** in discussions;
- **Encourage questions** by participants to address their issues and concerns;
- **Respect** the experience and prior knowledge of participants;
- **Encourage** participants to share experience and knowledge;
- **Question and challenge** participants throughout course delivery;
- **Ensure content and discussions** cover practical application of the course concepts and are relevant and realistic.

Critical thinking and discussions about the practical application of course contents should be encouraged wherever possible.

Continuous Improvement

The DLRAs must monitor feedback provided in evaluation responses from every session at which the course was delivered and modify their approach to delivery in order to ensure that the most effective approach is taken. Where minor changes are made, such as to correct typographical errors, a record of those changes should be made.

Where the DLRA receives feedback that indicates that there needs to be a major change, such as major changes to topic weighting or a changes to underlying content in the course manual, the LSC must be advised within 30 days and the approval of the LSC or its delegate must be sought.

The Assessment

Successfully completion this course of education requires active participation in the one day face to face course and successful completion of the online assessment.

The assessment consists of a bank of questions drawn from across course topics. The number of questions on each topic are weighted in accordance with the relative importance of the topic to the overall learning outcomes of the course. Topics of an administrative or informative –only nature (i.e. Sessions 1 and 9, 10, 11 and 12) are not subject to assessment.

The assessment questions used by the DLRA are to be approved by LSC annually and may be varied by the LSC or its delegate from time to time as appropriate in consultation with the DLRA's.

Assessment structure

Candidates will be required to answer fifteen (15) questions drawn randomly from a larger pool of questions. The questions will potentially be drawn from each topic on the course.

Attendees are required to complete the assessment within the timeframe provided by the assessment module. If the applicant exits the module or does not complete the assessment, the results will be assessed on the responses entered at the time of exit.

A pass mark of 80% (i.e. 12/15) is required.

Candidates will be given three opportunities to attempt the complete assessment. If they do not successfully complete the assessment at the third attempt they will be required to make contact with the DLRA and discuss remedial activities prior to being granted access to resit the assessment. If a candidate is unable to successfully complete the assessment on a second occasion (after undertaking such remedial coaching as may be appropriate), they may be excluded from undertaking the course for a period of up to 10 years at the discretion of the DLRA.

Accessing the assessment

Candidates are to be given an email which contains a link to the assessment. This email will be sent to the email address provided in the course application form and should be sent during the period that candidates are undertaking the course, so that the assessment may be completed as soon after attendance at the course as possible .

Candidates will be required to click on this link and follow the instructions provided in order to change their password and verify the personal information provided. This verification will include clicking on an acknowledgement that they are the individual named in the screen displayed and there should be a link to the Privacy Policy of the DLRA

Assessment system security

Candidates will be asked to change their password when they first log onto the system. Should they forget their password a new password should be issued automatically via an email sent to the email address provided on the course application form.

Candidates will be advised whether or not they completed the assessment successfully with an appropriate screen message advising that a certificate will be issued by the designated local regulatory authority and their details published on the External Examiners Listing. If an attempt was unsuccessful the applicant will be advised of this and how to re attempt the assessment. A new set of random question will be provided for the 2nd and possibly 3rd attempt.

Only system administrators should be able to view the question banks and individual's results. Administrator access is limited to approved persons, being such persons as the DLRA considers to be appropriate to perform this task.

Technical Issues

If candidates experience technical difficulties accessing the assessment they should contact the DLRA.

Course Fees

The total cost to participants will be up to \$800.00 plus GST for all courses conducted up to 31 March 2018. The fee is an all-inclusive fee and includes course notes and refreshments.

How to Apply

External examiners will be contacted directly by the DLRA's to inform them of the requirement to undertake a course and asking them to complete an application form for the course.

Duration of Course and Assessment Approval

Rule 65 in the Uniform General Rules requires the LSC to approve a course of education for external examiners from time to time. It is intended that the LSC will fully review the current course in 5 years' time and may approve changes to the course before that time for any reason it deems appropriate, such as to insert integrity requirements in relation to the assessment, if a change is made to the LPUL, or if another jurisdiction joins the Uniform Law Scheme or for any other reason.

The assessment questions are subject to review and approval by LSC annually.

Continuing Professional Development

External Examiners are required to comply with the CPD obligations stipulated by their professional body in order to maintain and renew their practising certificates under their respective designations under UGR 65(2). Should they cease to hold a practising certificate or to be otherwise designated under UGR 65, for the purpose of section 156 of the LPUL, their certification will lapse.

B – INSTRUMENT OF COURSE APPROVAL

The Legal Services Council through its delegate approves:

- the course of education (described above) for the period from 5 December 2016 to 4 December 2021
- the assessment questions associated with the course of education (described above) for the period from 5 December 2016 to 4 December 2017

for the purposes of Section 156 of the Legal Profession Uniform Law on the basis and subject to the requirements set out herein.



**Dale Boucher
Chief Executive Officer
Commissioner for Uniform Legal Services Regulation
Delegate of the Legal Services Council**

5 December 2016