Report of the Steering Committee on the NSW Public Purpose Fund

SEPTEMBER 2017
The Hon. Mark Speakman SC, MP
Attorney General
Parliament of New South Wales
SYDNEY NSW 2000

Dear Attorney General,

I am pleased to present the final Report of the Steering Committee on the NSW Public Purpose Fund (PPF).

The Steering Committee was asked to make recommendations for the optimising the funds available for disbursement by the PPF, via increasing the funds flowing into the PPF and/or increasing the returns generated by those funds, and any other potential refinements to the operation of the fund to ensure the appropriate disbursement and stewardship of its assets.

The Steering Committee has strived to ensure that this Report is more than a theoretical exercise and has rather put forward practical and implementable recommendations. The detailed recommendations and findings arise out of the last 9 months of investigations, and are attached.

Broadly speaking, we have made recommendations along the following lines:

1. How to increase the asset base for the PPF and the returns generated by that asset base
2. How to allocate funding
3. Who determines the allocation; and
4. Legislative requirements, if any, to implement the above

These are contained within 5 Recommendations which address the Terms of Reference for the review.

During the course of the Steering Committee’s investigations, numerous stakeholders, including current beneficiaries of funding from the PPF, were interviewed and we thank them for their co-operation and assistance in this regard.

I would also like to thank each of the Steering Committee Members who are listed in the attached Report, for the giving of their valuable time, their insightful views and collaboration in preparing this Report. I would also particularly like to highlight, Ms Anna Buduls for much of the initial drafting of this Report and Kenny Tickle from the Law Society of NSW, who provided invaluable secretariat assistance in co-ordinating, collating and researching many items on behalf of the Steering Committee.

Yours sincerely,

Geoffrey H Levy, AO
Chairman
Steering Committee on the NSW Public Purpose Fund
REPORT OF THE STEERING COMMITTEE ON THE NSW PUBLIC PURPOSE FUND

SEPTEMBER 2017

STEERING COMMITTEE MEMBERS

- Mr Geoff Levy AO (Chair)
- Ms Anna Buduls
- Mr Andrew Cappie-Wood
- Mr Doug Humphreys OAM
- Mr Michael Tidball
- Mr David Withey
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**EXECUTIVE SUMMARY**

This review and the Steering Committee have been convened by the NSW Department of Justice and the Law Society of NSW to consider certain issues currently facing the PPF, as outlined in the Terms of Reference (Appendix 1).

The Steering Committee, following consultation with beneficiaries of the PPF, and with the assistance of the Law Society of NSW and other external consultants, has considered each of the issues and have made the following recommendations:

1. **Widen the sources of funds available for investment by:**
   
   (a) including an amount of interest earned on solicitor controlled money accounts in addition to interest earned on their trust accounts; and
   
   (b) modifying the formula for the amount to be transferred to statutory deposit accounts from being based on the minimum balance in trust accounts for 12 months to the minimum balance in trust accounts for 3 months.

2. **An investment strategy, which includes diversifying into asset classes outside of cash, should be developed and implemented with respect to the corpus of the PPF – professional investment and asset allocation consultants should be appointed by the Trustees to assist with this matter and to assist in defining PPF risk appetite.** (Unless an appropriate indemnification, via either the NSW Government and/or relevant insurance policy is put in place, then the investment of client money held in statutory deposits would remain in cash and fixed term deposits as the PPF should not be used to indemnify the Law Society against any losses incurred investing statutory deposit balances).

3. **The NSW Government and/or the Trustees should give wider consideration to those purposes for which discretionary payments can be disbursed, and whether they still represent the best way in which to improve access to justice outcomes for disadvantaged individuals and group. Any such review may need to consider the impact of section 55 of the Act. In addition, guidelines need to be established to determine the overall level of discretionary payments payable from the PPF**

4. **Introduce funding cycles for beneficiaries of PPF which are longer than one year consistent with the Productivity Commission Report.**

5. **(a) The skill set of the current Trustees should be broadened to adequately deal with and to be seen to deal with some of the issues facing the recipients of discretionary payments from the PPF, and as such consideration should be given to widening the Trustee group.**

   **(b) The Trustees of the PPF should publish a publicly available annual report including not only the financial accounts of the PPF, but also outlining the decision-making criteria used by the Trustees in making allocations on a year-to-year basis.**

We caution that digital disruption may affect levels of trust and controlled money accounts, limiting the PPF’s future utility and this needs to be closely monitored.
BACKGROUND

The NSW Public Purpose Fund ("the PPF") is established pursuant to Division 2, Part 5 of the Legal Profession Uniform Law Application Act 2014 [NSW] ("the Act"). The PPF derives its income from the interest earned on the balance of solicitors’ general trust accounts and associated statutory deposits, and on the corpus of the PPF itself.

There are four Trustees responsible for the control and management of the PPF, and consist of three persons appointed by the NSW Attorney General (two of whom are to be members of the Law Society of NSW Council), and the Secretary of the NSW Department of Justice. The current Trustees include the following people:

- Mr Philip Clarke AM (Chair)
- Mr Andrew Cappie-Wood (Secretary)
- Mr Gary Ulman (Law Society of NSW)
- Ms Pauline Wright (Law Society of NSW)

The PPF is administered by the Law Society of NSW. The relevant sections of the Act with respect to operation of the PPF are included in Appendix 2. Pursuant to section 53 of the Act (Payment of certain costs from Fund), payments are to be made from the PPF for the purpose of meeting the costs associated with regulation of the legal profession in New South Wales. This primarily includes functions related to complaints, disciplinary action, trust account investigations and external interventions, which are the responsibility of the following bodies:

- the Office of the Legal Services Commissioner;
- the Law Society of NSW;
- the NSW Bar Association;
- the NSW Civil and Administrative Tribunal; and
- the Cost Assessment Rules Committee

Separately to the above, the Trustees of the PPF may – with the concurrence of the Attorney General – make payments from the PPF for the purposes outlined in section 55 of the Act (Discretionary payments from the Fund for other purposes). Those bodies currently receiving discretionary funding include the following:

- Legal Aid NSW;
- community legal centres (including the Public Interest Advocacy Centre and the Environmental Defenders Office NSW);
- the Law and Justice Foundation of NSW;
- LawAccess NSW (operated by the NSW Department of Justice);
- the Law Society of NSW and the NSW Bar Association (to administer pro bono schemes)

Section 55 of the Act is included for reference in Appendix 2.

While the NSW Government released its "Principles for Funding of Legal Assistance Services" in December 2012 (refer Appendix 3), which were intended to guide the Trustees of the PPF in making determinations of discretionary payments pursuant to section 55 of the Act, there has been no strategic or policy based review around the disbursement of discretionary payments since the inception of the PPF in 1999. (This in itself was a legacy issue from the Statutory Interest Account and the Solicitors’ Trust Accounts Fund. The assets and liabilities of both entities from that date became the assets and liabilities of the Public Purpose Fund).

Further to the above, the Steering Committee notes that section 55 of the Act could very well be considered as “legacy” legislation, and that the purposes contained in this section have remained largely unchanged from the original purposes for discretionary-type payments to be disbursed from the interest earned on solicitor trust accounts that were included in the Legal Practitioners Act 1989 via an amendment over half a century ago in 1967.
In recent years, the allocation of discretionary payments has lacked any contestability; rather the funds have been disbursed to groups with a long history of receiving discretionary payments from the PPF and whose aims and operations have been considered consistent with the purposes outlined in section 55 of the Act and the NSW Government’s funding principles. Generally, the disbursed funds have been and are used to help cover the various groups’ operating costs.

In their annual applications to the Trustees for discretionary funding, each of the recipient groups outlines how funds have been utilised in the current period, in addition to their intentions and objectives for any funding that may be received in the upcoming financial year. While Legal Aid NSW, in particular, engages in actively tracking and accounting for the usage of disbursed funds, there has nevertheless been no wider systemic attempt to assess any broader community-level outcomes from the use of discretionary payments remitted from the PPF.

To date the funds in the PPF have been invested exclusively in interest bearing bank accounts and term deposits. Following the onset of the global financial crisis in 2008, and the economic conditions that followed, domestic and international central banks have engaged in monetary policy that has resulted in what are now historically low interest rates. This has had a significantly adverse effect on the income earned by the PPF, with annual interest earnings substantially lower than in the years leading up to the GFC.

In response to lower interest and investment earnings – and with a view to ensuring the longer-term sustainability of the PPF – the Trustees have curtailed the payments disbursed from the PPF, and have augmented the interest earnings available for disbursement under sections 53 and 55 of the Act by drawing down on the corpus of the PPF itself. As a direct result of this, there has been a reduction in the balance of the PPF corpus from a peak of $181.2 million as at 30 June 2008 to $79.3 million nine years later at 30 June 2017 (refer Appendix 5).

The NSW Department of Justice and the Law Society of NSW, as those parties with responsibilities for the PPF under the Act, have jointly commissioned a review of the PPF. The review is being overseen by a Steering Committee which includes the following people:

- Independent Chair: Mr Geoff Levy AO
- Secretary, NSW Department of Justice: Mr Andrew Cappie-Wood
- Chief Executive Officer, Law Society of NSW: Mr Michael Tidball
- Nominee, Attorney General of NSW: Ms Anna Buduls
- Nominee, NSW Treasury: Mr David Withey
- Nominee, Law Society of NSW: Mr Doug Humphreys OAM

Scope of the review

The agreed Terms of Reference for the review (refer Appendix 1) include addressing the following matters:

1. Whether the Public Purpose Fund should develop investment guidelines and strategies with a view to enhancing the returns currently earned on those investments sourced from available statutory deposit balances and the assets of the Fund itself. This would explore the option of utilising alternative asset classes and would take into account acceptable risk levels to support the ongoing sustainability of the Fund, funding and liquidity requirements and applicable legislative and governance requirements;

2. Whether the Trustees should adopt guidelines to assist in determining the overall level of discretionary payments to be distributed from the Fund in any given financial year;

3. Whether the current class of beneficiaries or purposes of the Fund remain relevant or whether they should change, guided by the general objects for discretionary payments from the Fund;
4. Whether a policy should be implemented that assists the Trustees in deciding the relative funding allocations between beneficiaries. It is noted that the Trustees currently require beneficiaries to use discretionary funding for activities consistent with the NSW Government’s “Principals for Funding of Legal Assistance Services”;

5. Any other necessary refinements to the operation of the Fund required to ensure the appropriate stewardship of its assets.

While the wording of the Review’s Scope above is silent on the issue of whether payments made under both Section 53 and Section 55 of the Act should be included in the Steering Committee’s deliberations, the Secretary of the Department of Justice informed steering committee members that it had been the commissioning Minister’s intention for only Section 55 payments to be considered. Briefly, Section 53 of the Act relates to payments to be made from the PPF for purposes related to the regulation of the legal profession; Section 55 of the Act deals with the discretionary payments, these payments primarily being directed toward the funding of legal services for the disadvantaged members of society. For completeness however, the Attorney General may consider a review of payments arising from section 53 of the Act.

Review process

The Steering Committee has met eight times over a period spanning nine months. In addition to reviewing and discussing papers prepared and presented by the Law Society of NSW, Steering Committee members have also met and consulted with representatives of current and past recipient organisations of section 55 discretionary payments (Legal Aid NSW, Public Interest Advocacy Centre, Environmental Defenders Office NSW, Law and Justice Foundation of NSW, LawAccess NSW, the Law Society of NSW Pro Bono Scheme and the NSW Bar Association Legal Assistance Referral Scheme). Steering Committee members have also met on two separate occasions with representatives of investment and asset allocation advisory firm Mercer Investments (Australia).

THE NSW PUBLIC PURPOSE FUND AND ITS CONTRIBUTION TO THE STATE’S JUSTICE SYSTEM

Through the annual discretionary payments made pursuant to section 55 of the Act, the PPF augments those appropriations made by State and Commonwealth Governments to Legal Aid NSW, community legal centres, and LawAccess NSW. This is in addition to the payments made to the Law and Justice Foundation of NSW and the pro bono and legal assistance referral schemes administered by the Law Society of NSW and the NSW Bar Association respectively.

During the year ended 30 June 2017, the PPF made discretionary payments totalling $40.43 million to the above recipients, with the largest being $34.4 million to Legal Aid NSW (inclusive of $1.4 million to Legal Aid’s Community Legal Centre Program). This represents a decrease from the years ending 30 June 2009 through 30 June 2013 when total discretionary payments exceeded $50 million (with Legal Aid allocations exceeding $40 million over the same period). This is illustrated in the below graph:
A more detailed breakdown of the PPF’s financial history over a 20 year period is included in Appendix 4.

While $34.4 million represents a large discretionary grant, payments from the PPF only accounted for just over 11% of Legal Aid NSW’s total income for the year ended 30 June 2016, with 83% of its income coming from State and Commonwealth Government funding. To the extent that funding from the PPF varies from year to year over time, either the services provided by Legal Aid NSW need to be cut back and/or the State and Commonwealth Governments are required to increase their funding levels to cover any shortfall.

As outlined above, the corpus of the PPF has been declining since the global financial crisis, with the amount of interest earned on the balance of solicitors’ trust accounts reducing significantly as a direct result of what are now historically low interest rates in place as well as the growing popularity of the use of controlled money accounts by clients as an alternative to trust accounts. This is illustrated in the below graph:

The overall interest earned available for disbursement has declined from $80.5 million for the year ended 30 June 2008 (when the official RBA Cash Rate was 7.25%), to $44.4 million for the year just ended 30 June 2017 (with the official RBA Cash Rate finishing the year at 1.50%, or down 79.4% on its 2008 level).
While the Steering Committee has not been tasked with specifically reviewing the sources of the PPF's income, and the types of trust money available for investment, the Committee has nevertheless during the course of its discussions canvassed this topic in some detail. For completeness, a summary of the PPF's income sources is provided below.

The current situation

The three main sources of income for the PPF, in order, are as follows:

- interest earned on the balance of solicitors’ general trust accounts and residual (non-invested) statutory deposits accounts;
- interest earned on investments sourced from statutory deposit accounts; and
- interest earned on the funds held by the PPF itself.

The current balance of solicitor trust accounts in NSW exceeds $3 billion, and the interest earned on these accounts represents the vast majority of the PPF’s income. Based on the current value of trust balances, and the fact that investments are currently limited to cash and fixed term deposits, it is important to recognise that any movement in the RBA Cash Rate of only 25 basis points would either increase or decrease the PPF’s overall interest income by approximately $10 million per annum.

In contrast, the corpus of the PPF itself – which has a reported net asset balance at 30 June 2017 of just over $79 million – is only able to generate a much smaller proportion of its income from investment in comparison with the interest earned on client money held within trust accounts.

While a larger component of the PPF’s income is sourced from the investment of statutory deposits, the fact remains that currently the bulk of the PPF’s income is dependent upon factors (the balance of solicitor trust accounts and the RBA Cash Rate) that are beyond the control of the Trustees. A table outlining the approximate split of PPF income sources is below:
The interest rates paid by approved authorised deposit-taking institutions (ADIs) on the daily balances of solicitors’ general trust accounts and residual (i.e. non-invested) statutory deposit accounts have historically been negotiated every five years or so. In both NSW and Victoria, these negotiations have previously been conducted with the assistance of Pricewaterhouse Coopers, who have conducted negotiations for several similar schemes in other jurisdictions around Australia.

By way of comparison, as an example, the interest rate paid by approved ADIs on trust accounts operated by property agents is legislated pursuant to section 90(4) of the *Property, Stock and Business Agents Act 2002*, and is prescribed on an intermittent basis by the Minister for Fair Trading.

The ability of the Law Society to invest a component of the balances held within statutory deposit accounts exists as a result of section 47 of the Act, which states:

**47 Status and repayment of deposited money**

1. Money paid under section 46 into an ADI account maintained by the Law Society:
   1. is held by the Law Society in trust for the law practice depositing the money, and
   2. is repayable on demand.
2. Subsection (1) does not excuse a failure to comply with section 46.
3. Until repaid, money deposited under section 46 may be invested by the Law Society:
   1. in accordance with Division 2 of Part 2 of the Trustee Act 1925 as if the money were trust funds, or
   2. on deposit with the Treasurer, or
   3. in an account with any ADI.
4. All interest on investments made under this section is payable to the Law Society on account of the Public Purpose Fund.

Under the *Legal Profession Uniform Law Application Regulation 2015*, law practices in NSW are required to deposit an amount into a statutory deposit account that is based on the lowest balance of that law practice’s general trust account during the 12 month period ending 31 March each year. Statutory deposit accounts exist for each of the 15 currently approved ADIs operating solicitor trust accounts in NSW (refer Appendix 2).

At the time of preparing this paper, there was approximately $750 million deposited with the Law Society of NSW in these statutory deposit accounts. Of this amount, $600 million – or 80% – is placed in term deposits and higher-yield investment accounts.

These invested statutory deposits are structured in such a way so as to ensure that approximately 10% of the total invested amount matures every fortnight. This is done to manage liquidity requirements so that funds may be

### Table 1

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<th>Income Source</th>
<th>% of PPF Income</th>
<th>Comment</th>
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<tr>
<td>Interest on general trust accounts &amp; residual statutory deposit balances</td>
<td>75%</td>
<td>Interest is paid on the daily monthly balance of solicitors’ trust accounts maintained by approved ADIs – the rate is stipulated in deeds and tied to a set amount below the official RBA Cash Rate</td>
</tr>
<tr>
<td>Invested statutory deposits</td>
<td>20%</td>
<td>Interest earned on term deposits placed by the Law Society using available statutory deposit funds, pursuant to section 47 of the Act</td>
</tr>
<tr>
<td>Interest earned on the corpus of the PPF</td>
<td>5%</td>
<td>Interest earned on term deposits sourced from the corpus of the PPF, plus interest earned on the PPF's own bank accounts</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
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returned back into the statutory deposit accounts in a timely fashion should the need arise (refer s.47(1)(b) of the Act which stipulates that statutory deposits invested by the Law Society are repayable on demand).

To the extent that there is any future diminution in the overall balance of solicitors’ trust accounts, there will be a commensurate diminution in the interest earned and thus available for disbursement.

Caution – emerging technologies which may disrupt and could reduce the funds from which the PPF generates income

PEXA and electronic conveyancing

PEXA (Property Exchange Australia) is an online property exchange network that assists members – such as lawyers, conveyancers and financial institutions – to lodge documents with Land Registries and to complete financial settlements electronically.

PEXA was formed in 2010 to fulfil the Council of Australian Governments’ (COAG) initiative to deliver a single, national e-Conveyancing solution to the Australian property industry. It was originally known as National e-Conveyancing Development Limited. Property Exchange Australia Ltd is a company limited by shares with key stakeholders including:

- Victorian, New South Wales, Queensland and Western Australia Governments;
- the four Major Banks, and
- private investors (including Macquarie Capital, the Little Group and the Link Group).

The term “electronic conveyancing” refers to a conveyancing transaction where practitioners have elected to settle electronically through the electronic platform provided by Property Exchange Australia Limited (PEXA). The representatives of the parties and their financiers participate in an electronic workspace, where:

- registry instruments are prepared and electronically signed (transfer, mortgage, discharge/release of mortgage);
- duty may be paid as a settlement disbursement;
- the balance of the purchase money and its disbursement are agreed;
- the documents to be lodged for registration are checked pre-settlement at Land and Property Information (LPI);
- at the agreed settlement date and time, provided the documents are in order for registration, the balance of purchase money is paid and proceeds of settlement are disbursed; and
- the relevant registry instruments are electronically lodged for registration (which usually follows that same day).

Electronic conveyancing does not cover the whole of the conveyancing transaction; just the preparation for and execution of settlement and registration. In relation to the settlement itself, the platform is essentially a virtual settlement room.

The national regulatory framework for electronic conveyancing was developed by the Australian Registrars’ National Electronic Conveyancing Council (ARNECC), a body comprised of the Registrars from all Australian States and Territories.

Two sets of Rules have been made pursuant to the ECNL:

- the Model Participation Rules (MPR), which govern the relationship between the electronic lodgement network operator (ELNO) and participants in the system, such as lawyers; and
- the Model Operating Requirements (MOR), which govern the relationship between the ELNO and the land title registries.
Legal Practitioners can use an existing trust account for PEXA transactions provided the trust account is registered with PEXA. Purchaser clients will no longer be able to provide practitioners with additional funds for settlement by providing a bank cheque for settlement. All funds for settlement must be provided electronically through the electronic workspace.

For practitioners who do not have a trust account or who have not registered it with PEXA, PEXA will provide a PEXA Source Account for deposits to be made by purchaser clients directly. It should be noted that clients must deposit the funds so that cleared funds are available in the PEXA Source Account not less than 3 business days before the date of scheduled settlement.

The interest earned on the PEXA Source Account does not fall under any current legislation. It is noted that to the extent that legal practitioners opt to use, or are encouraged to use, the PEXA Source Account rather than a general trust account, the interest earned on funds within the Source Account will not be available for the PPF, but rather will accrue to benefit the shareholders of PEXA.

The most recently completed external examiners reports, for the trust year ended 31 March 2017, indicated that conveyancing funds represent 30% of current general trust account monies and should a significant proportion of these funds migrate to PEXA’s source accounts, the interest earned on the remaining reduced general trust accounts would provide a diminishing source of revenue for the PPF.

**New Payment Platform (NPP)**

Launching later in the 2017 calendar year, the New Payments Platform (NPP) will automate payments between financial institutions, allowing them to move money in real time. It is a platform that will enable real-time clearing and settlement of both simple and complex transactions, between two parties, or between many parties.

The platform’s payment gateways will be configured to support processing and routing of transactions between connected financial institutions and the Reserve Bank of Australia’s Fast Settlement Service. Having the RBA connected directly into the NPP will allow for real-time settlement between participating financial institutions.

Articles written on the advent of the NPP discuss how it will facilitate more efficient Government welfare payments, property settlements and dividend and rebate payments amongst a range of other transactions.

The PPF currently owes its existence largely to the fact that monies in trust accounts do not move quickly, but instead sit in solicitor trust accounts for extended periods of time prior to settlement. With the anticipated start of the New Payments Platform later this calendar year, it is conceivable that, in time, monies sitting in general trust accounts, controlled accounts and PEXA source accounts will be held there for shorter periods of time and will therefore generate less income for both the PPF and solicitors’ clients.

Should this trend eventuate it could conceivably result in reduced interest earnings available for any discretionary payments under section 55 of the Act.

There exists considerable uncertainty as to exactly how the rollout of mandated electronic conveyancing and the New Payments Platform will affect the legal profession and the trust money balances that it currently administers.

To that end, the Law Society of NSW and the Victorian Legal Services Board – as the administrators of the PPF in their respective jurisdictions – are jointly commissioning a report aimed at estimating the impact on, and likely diminution of, the balance of solicitors’ statutory trust accounts as result of the movement toward mandated electronic conveyancing.

The report will also consider the possible impact of the NPP, and is anticipated to completed by the final quarter of 2017.
STEERING COMMITTEE CONSIDERATIONS AND RECOMMENDATIONS

This report deals with each of items included in the Scope of Review as requested, but it is important to understand that the considerations and recommendations in relation to each of the items are often interrelated, and hence there are not necessarily straightforward responses to each.

Development of guidelines and strategies with a view to enhancing investment returns

In considering this review question, the Steering Committee’s approach has been to determine:

- what funds currently are available for PPF investment and disbursement purposes;
- are there legitimate avenues available for increasing these pools of funds available for PPF investment and disbursement;
- are there any market developments that will curtail or diminish the future availability of investment funds;
- and finally, how could the funds be made to “work harder” in order to improve on the investment returns recently generated by the PPF and, in turn, allow the PPF to disburse larger amounts.

Recommendation 1: Increasing funds available for investment generating greater PPF income

The PPF currently derives its income from the interest earned on the balance of solicitors’ general trust accounts, invested statutory deposits and on the principle of the PPF itself. The PPF corpus stands at $79.2 million as at 30 June 2017, and is invested in cash and term deposits, achieving returns only slightly exceeding the Bank Bill Index and CPI (refer Annexure 6 for details).

At the end of the 2017-18 financial year, almost $600 million of those statutory deposits on deposit with the Law Society were invested term deposits. Over the course of the year ended 30 June 2017, these term deposits earned an average rate of 110 to 120 basis points over the official RBA Cash Rate (i.e. 2.60 – 2.70%).

(a) Modifying formula for Statutory Account Transfer

The method for determining the amount that a law practice is required to transfer from a general trust account into a statutory deposit account maintained by the Law Society is prescribed in clause 10 of the Legal Profession Uniform Law Regulation 2015, and is based on the lowest balance of the law practice’s general trust account during the 12 months ending 31 March. This contrasts with the requirements in place in Victoria, which requires the amount of the deposit to be based on the minimum balance over the prior 3-month period.

Modelling undertaken by the Law Society of NSW suggests that if the amount required to be deposited by a law practice in NSW was also based on the minimum balance of its general trust account over the prior 3-months period (in line with the Victorian legislation), then the overall balance of statutory deposits held in those accounts maintained by the Law Society would increase by approximately 80%. Since this money can be withdrawn and invested by the Society pursuant to section 47 of the Act, it is further projected that an additional at least $5-6 million of interest could be earned for the benefit of the PPF. This assumption is based on the continued used of term deposits earning approximately 100-120 basis points above the official RBA Cash Rate.
We recommend that NSW adopt the Victorian method of calculating the amount that law practices need to transfer into statutory deposit accounts from their general trust accounts.

A portion of these increased statutory deposits will then be invested in higher yield term deposits or alternative appropriate investments.

This would require an amendment to Clause 12 [Applicable period] of the Legal Profession Uniform Law Application Regulation 2015 [NSW].

(b) Interest on controlled money accounts

Law practices in NSW can hold a number of different types of trust money, as defined in Part 4.2 [Trust money and accounts] of the Legal Profession Uniform Law [NSW]. The vast majority of these amounts however is limited to those funds held in a law practice’s general trust account or controlled money account.

“Controlled money” means any money received or held by a law practice where a written direction has been received from the client to deposit the money in an account other than a general trust account. The interest that is earned on a controlled money account does not accrue to the benefit of the PPF.

Like general trust money, controlled money is considered to be trust money under the legal profession legislation, and as such the required regulatory oversight is the same for both types of accounts. Further, law practice clients receive the same level of protection from the Legal Practitioners Fidelity Fund should they suffer financial loss as a result of a defaults by a law practice in relation to the misappropriation of trust money or property, regardless of whether these funds were deposited into a general trust account or controlled money account.

The Trust Accounts Department of the Law Society is responsible for ensuring that law practices across NSW comply with legal profession legislation concerning the receipt, holding and disbursement of trust money.

The Society’s Trust Accounts Department carries out this function by conducting investigations of solicitors’ trust and controlled money accounts, and reviewing general account records in order to detect and prevent fraud.

The PPF, pursuant to section 53 of the Act, covers a large portion of the costs associated with conducting trust account investigations. However, whereas the PPF receives the benefit of the interest accruing on general trust accounts, it does not receive the benefit of any interest earned on controlled money accounts [which accrues to the benefit of the law practice’s clients]. This anomaly seems somewhat illogical and unfair, as for all intents and purposes clients are afforded the same protection for money deposited with a law practice in either type of account.

Currently there is a larger amount of trust money deposited in controlled money accounts (approximately $4.8 billion at 31 March 2017) versus that deposited in general trust accounts (approximately $3.2 billion at 31 March 2017), with recent data indicating that the overall balance of controlled money is growing at a faster rate than that deposited in general trust accounts.

Since the regulatory oversight of controlled money accounts is the same as that in place for general trust accounts, with the cost of both being primarily borne by the PPF, a component of the interest earned on controlled money balances should be directed to PPF, in order to at least cover the regulatory costs directly attributable to these accounts while also supplementing the payments made by the PPF in improving access to justice (which are currently solely funded by the interest on general trust accounts).

We recommend legislative action should be taken to require a proportion of the interest earned on controlled accounts to be directed to the PPF. This would be on the basis of more equitably spreading the cost of the regulatory benefits afforded to the clients that control these funds. As stated above as at 31 March 2017, controlled money accounts held $4.8 billion, so even a small levy of, for example, 0.50% would generate approximately $24 million per annum for PPF distribution purposes.
Recommendation 2: Alternative investment strategies for the PPF and statutory deposits

A review of PPF funds operating in other jurisdictions around the country indicates that, save for the exception of the Victorian Public Purpose Fund, all hold the entirety of their assets solely in cash and short-term deposits.

The Victorian Legal Services Board, which manages the Public Purpose Fund in that state, includes the following objectives within its “Investment Policy Statement” relevant to the Fund:

- The Board aims to restrict the frequency of a negative return to not exceed three in every 20 years for the Public Purpose Fund when modelling its long term asset allocation and risk/return objectives
- To outperform a CPI + 2% per annum return objective over rolling 3 year periods (net returns) for the Public Purpose Fund

The reported asset allocation of the Victorian Public Purpose Fund (as published and including statutory deposits) as at 30 June 2016 is as follows:

Table 2

<table>
<thead>
<tr>
<th>Asset Allocation</th>
<th>Public Purpose Fund</th>
<th>Statutory Deposit Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian equities</td>
<td>23%</td>
<td>4%</td>
</tr>
<tr>
<td>Overseas equities</td>
<td>14%</td>
<td>4%</td>
</tr>
<tr>
<td>Diversified growth funds</td>
<td>17%</td>
<td>13%</td>
</tr>
<tr>
<td>Property / infrastructure funds</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Growth Assets</strong></td>
<td><strong>54%</strong></td>
<td><strong>23%</strong></td>
</tr>
<tr>
<td>Australian fixed interest</td>
<td>15%</td>
<td>14%</td>
</tr>
<tr>
<td>Global fixed interest</td>
<td>14%</td>
<td>18%</td>
</tr>
<tr>
<td>Term Deposits</td>
<td>8%</td>
<td>7%</td>
</tr>
<tr>
<td>Cash Trust Account</td>
<td>9%</td>
<td>38%</td>
</tr>
<tr>
<td><strong>Defensive Assets</strong></td>
<td><strong>46%</strong></td>
<td><strong>77%</strong></td>
</tr>
<tr>
<td>Total</td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

The Investment Policy Statement of the Victorian Public Purpose Fund is not too dissimilar from the Investment Policy Statements that the Law Society of New South Wales has in place for its own investments, and those of the Legal Practitioners Fidelity Fund in NSW.

The current Investment Policy Statement of the Law Society of New South Wales includes the following objectives:

- Average long term compound return net of investment manager fees and custody fees is to be at least equal to CPI + 2.5% per annum
- Minimum time horizon for assessment of this objective is 5 years
- Risk of any single year’s net return being negative to be less than 15%

The Law Society’s current benchmark allocation as at 30 June 2017 is as follows:
The Law Society’s appointed investment consultant is Mercer Investments (Australia), who are also the appointed consultants to the Victorian Legal Services Board.

With respect to statutory deposits, it is currently the case that a component of these amounts (80-85%) is withdrawn from the accounts – which are in the name of the Law Society of NSW – and placed in term deposits which earn a higher interest rate than the statutory deposit accounts themselves.

A review of those statutory deposit arrangements in place in other jurisdictions around the country indicates that, again save for the exception of the Victorian Statutory Deposit Account, all hold the entirety of their assets solely in cash and short-term deposits.

Table 2 above illustrates that the Victorian Legal Services Board maintains 38% of its statutory deposit account within the main account into which solicitors deposit their required minimum balances, as these funds are repayable to law practices on demand. The remaining 62% is invested across a range of asset classes pursuant to the Board’s the Investment Policy Statement.

The legal profession legislation in Victoria allows for any investment losses realised on invested statutory deposit amounts to be met by the Public Purpose Fund in that state however, this form of investment guarantee or “underwriting” does not exist in other jurisdictions.

**Considerations in relation to alternative investment strategies**

The current practice of only investing in ADI fixed deposits and cash is an extremely conservative approach that ensures that no capital losses are incurred (except to the extent bank’s themselves run into trouble and are unable to meet cash redemption obligations). Any move away from this investment strategy may be associated with increased investment returns, but also with an increased risk of potentially incurring losses. Over an investment horizon of say five or ten years, any losses incurred from a more diversified strategy would normally be recouped in subsequent years. However, should the investment horizon be shorter in practice, there may not be an opportunity to recoup any incurred losses.

The Committee would like to bring to the Minister’s attention that there exists uncertainty regarding the length of the
PPF’s current investment horizon due to emerging innovations and digital developments referred to earlier in the report that may potentially affect the pool of available investment funds.

Any move to diversify the asset allocations and investment strategy of the PPF needs to be considered in light of the likely continued availability of the general trust accounts and statutory deposits to augment the interest earned on the corpus of the PPF, and on the level of certainty the Government and the Trustees of the PPF require around the future predictability of monies available for disbursement under both sections 53 and 55 of the Act [we remind the Minister that this review does not cover Section 53].

To the extent that the mandated rollout of electronic conveyancing (and increased use of the PEXA Source Account), and the introduction of the NPP (both described earlier in this Report) result in diminution of the available non-corpus funds (i.e. the general trust accounts deposits), the same trend is likely to also affect the volume of monies held in controlled money accounts. Should the NPP gain traction, some forms of current trust accounts that are held for more than a few days may disappear and the tenure of others may shorten. Were this the case, there would seem to be no obvious means of increasing the overall pool of funds available for investment and, in fact, the pool of available investment funds may eventually be reduced.

The Trustees who at the time will need to make these decisions based on advice from experts will need to be aware of these trends when considering the diversified investment strategy.

Were the Trustees to diversify the investment portfolio they would need to take into account the risk of incurring losses on the invested funds. The spectrum of possible diversification ranges from maintaining the status quo, to adding fixed interest and bond investments to the asset portfolio, right through to various proportions of the portfolio comprising equity type investments.

Before embarking on any asset allocation diversification, the Trustees would also want to seek advice on the existence or otherwise of any correlations between downturns in economic cycles and the demand for legal aid. If the demand for legal aid rises in the very years in which returns from equity investments in portfolios with more diversified asset allocations are reduced or even negative, the outcome for the required disbursement of funds would be counterproductive. Intuitively, it is likely that there would be increased unemployment and more people on lower incomes resulting in increased eligibility for means-tested legal aid in an economic down cycle that is associated with negative equity returns.

Legislative and risk considerations

The PPF is already in a position to undertake [under existing legislation] asset allocation diversification for the investment of its own corpus (i.e. $79.2 million at 30 June 2017).

However, there are legislative and risk issues (which we believe can be mitigated) that may impede the investment of statutory deposits, (which unlike the corpus of the PPF is money that is ultimately the property of clients of law practices), in asset classes outside of cash and fixed term deposits.

Statutory deposits in NSW are held in the name of the Law Society of NSW. This is also the case for those investments (currently term deposits) that are placed by the Society using those statutory deposit funds, and as such any current investment risk is borne by the Society itself as opposed to the PPF. Since any additional risk incurred in seeking to increase the investment returns generated on invested statutory deposits accruing to the benefit of the PPF would continue to be borne by the Society, it would be appropriate that adequate protection for the Law Society against any investment losses should be put in place before any movement away from cash investments is undertaken.

The Steering Committee is of the view that the PPF itself is not an appropriate vehicle to indemnify the Law Society against any investment losses incurred in seeking to increase investment returns accruing to the benefit of the PPF.
itself. Rather, the Committee believes that should these invested statutory deposits be diversified into products other than cash and fixed term deposits, then a legislated requirement for the NSW Government to make good on any investment losses incurred (and which may need to be realised if client funds are required to be returned by law practices) should be sought. Alternatively, and dependent on cost, it may be that appropriate insurance be sought by the Trustees of the PPF to protect the Law Society from any investment losses associated with the diversification of invested statutory deposit balances. An actuarial risk assessment can be undertaken using historic default rates to understand the likelihood and percentage probability that would be called upon which would determine whether premiums for such insurance was prohibitive or not.

Before undertaking looking to implement any non-cash investment strategy related to the corpus of the PPF or statutory deposits, the Trustees should appoint professional risk and asset allocation professionals such as Mercer Investments to assist in identifying and quantifying the potential increased risks associated with a non-cash investment strategy and the costs of mitigating those risks. Based on that information the Trustees should then decide whether or not to proceed with a more diversified investment strategy.

**Establishment of guidelines to determine the overall level of discretionary payments**

The Steering Committee also recommends that the Trustees of the PPF will need to determine whether or not the corpus of the PPF as it currently exists is the appropriate size moving forward given the demands that will continue to be made on the earnings of the PPF under both section 53 and 55 of the Act. The process of this deliberation may also involve the Trustees prioritising the uses to which the funds could be used.

In addition to appointing investment and asset consultants to assist the Trustees in developing an appropriate investment strategy for the corpus of the PPF, external assistance is also sought in looking to agree upon whether a policy should be adopted to cap the overall level of disbursements from the PPF in any given year. We recommend that the Trustees adopt a formulative approach based on the advice of their asset and investment consultants.

**Recommendation 3: Relevance of current beneficiaries, any required changes, and the allocation of funding**

Payments are made by the PPF each year to the Legal Services Commissioner, the Law Society of NSW, the NSW Bar Association and the NSW Civil & Administrative Tribunal for purposes related to the regulation of the legal profession in NSW.

Separately, discretionary payments are made to supplement the funds available to Legal Aid NSW, community legal centres (including PIAC and EDO NSW), the Law and Justice Foundation of NSW, LawAccess NSW, and the pro bono and referral schemes administered by the Law Society and Bar Association – all bodies which undertake work aimed at increasing access to justice in NSW.

A 20-year financial history of the PPF, which includes those allocations paid to recipients of discretionary payments is included in Appendix 4.

Despite community legal centre funding generally being committed in one lump sum through the Legal Aid NSW Community Legal Centre Program, two particular CLCs – the Environmental Defenders Office NSW and the Public Interest Advocacy Centre – have historically enjoyed a more privileged position of maintaining separate and direct funding allocated to them by the Trustees of the PPF.

The Trustees of the PPF had advised in 2015 that all community legal centre funding from the PPF would be delivered through the Legal Aid NSW Community Legal Centre Program from 1 July 2016 onwards. However, it
was subsequently determined that the funding allocation methodology proposed by Legal Aid NSW required further investigation, and that any new model would not be available until the 2018-19 financial year. As result, the Trustees have reverted to direct funding of PIAC and EDO NSW for the 2017-18 period.

As highlighted earlier in this report, there has been no strategic or wider policy based review into the disbursement of discretionary payments since the PPF’s establishment in 1999 (The PPF was established in 1999 as a continuation of the Statutory Interest Account and the Solicitors’ Trust Accounts Fund. The assets and liabilities of both entities from that date became the assets and liabilities of the Public Purpose Fund). The Steering Committee notes that Section 55 of the Act could very well be considered as "legacy" legislation, and that the purposes contained in this section have remained largely unchanged for the last 50 years from the original purposes for discretionary-type payments to be disbursed from the interest earned on solicitor trust accounts that were included in the Legal Practitioners Act 1989 via an amendment in 1967.

Given the wide and now ageing scope of the possible purposes for which discretionary funding can be disbursed under section 55 of the Act (refer to Appendix 2), the Steering Committee is of the view the NSW Government and/or the Trustees of the PPF revisit the wider question of what is the desired purpose of discretionary payments remitted by the PPF. This should be undertaken with the aim of achieving a tighter focus on the disbursement of discretionary payments and also, potentially, to drive more defined, measurable and accountable outcomes on the funds disbursed. This may involve a legislative redrafting of section 55. But the Government and Trustees should consider the context of PPF disbursements within the much broader State and Commonwealth Legal Aid Funding umbrellas as the PPF provides only some 10-15% of Legal Aid NSW’s total funding, with the bulk coming from the NSW and Commonwealth Governments.

It would not necessarily be productive or practical for the Trustees of the PPF to be setting goals or outcomes for Legal Aid NSW that are inconsistent with those set for it by both State and Commonwealth Governments. There may or may not be a case for a degree of experimentation (i.e. piloting) by Legal Aid to explore different ways of increasing access to justice, however it is possible that the withdrawal of funding from potentially already underfunded mainstream services could be counterproductive.

The Trustees would also need to consider from time to time the discretionary funds available for disbursement in the future should they decrease due to there being a diminution in trust balances and investable funds. In such circumstances it may make sense to concentrate on solely augmenting Legal Aid and community legal centres as opposed to spreading the funds more widely.

**Recommendation 4: Introduction of longer funding cycles**

Depending on the conclusions drawn in relation to the issues raised above, we recommend that the Trustees should introduce funding cycles longer than one year so that the recipient organisations can better budget and plan their operations. The Steering Committee notes that the Productivity Commission report (September 2014) also recommended a more systematic approach to funding (pp28 -29, p704).

**Recommendation 5: Operation and stewardship of the PPF and any necessary refinements**

[a] **Make up of Trustee Board:** The following is written on the assumption that the main purpose of the PPF in disbursing discretionary funds remains focussed on helping facilitate access to the justice system.

While the Steering Committee acknowledges that the current Trustees of the PPF have between them expertise in the NSW legal system and the NSW Government Justice arena, it is the view of the Committee that the group of Trustees should be broadened and require additional members with deep experience and insight into the issues that confront disadvantaged individuals and group who require access to the justice system.
The Steering Committee recommends that legislation be amended to enable a widening of the expertise base of the Trustees in order to better reflect the needs of those constituent groups (and their customers) to whom discretionary payments are being made available. Possible Trustee appointments might include a representative of NCOS, or persons with a background and experience in working with homeless persons, pro bono and inexpensive legal services, as well as someone with an academic background that has specialised in legal issues affecting low income and disadvantaged individuals and groups.

Structure of decision making

Accordingly, we recommend that decisions about PPF disbursements should be made within a board-type structure (5-7 members). The board would need some fairly low level secretarial assistance – to collate papers, schedule meetings etc. This could continue to be provided by the Law Society at relatively low expense. However, expert financial advice on investment, asset allocation and risk should be obtained externally by reputable professional firm or firms. It’s generally understood that directors of charitable or NFP organisations do not receive payment.

Appointment process and qualities of board members

The Attorney General should appoint board members to the Trustee. Key qualities for these board members should include, relevant experience and expertise. They are, and they would generally be seen to be, disinterested from a conflict of interest perspective – i.e. they would not have an interest in the decisions being made, and they wouldn’t have ongoing relationships that could cause a conflict. They are able to exercise appropriate diligence and governance.

Suggested professional background of board members

Board members could be drawn from among people with the following backgrounds:

- Senior expert on legal assistance from the NSW Department of Justice or the Commonwealth Attorney-General’s Department.
- Experienced pro bono practice leader at one of the leading commercial law firms.
- CEO or equivalent from the community sector, who understands but is not part of the legal assistance sector – eg, NCOS or ACOS.
- Senior representative from a regulator that relies on legal assistance sector – eg, NSW Ombudsman, Chair of NSW Anti-Discrimination Board or commissioner from Australian Human Rights Commission
- Senior academic with practical experience on providing legal assistance to disadvantaged and vulnerable people.
- A person with expertise in quantifying the value of community sector work – e.g. an economist specialising in this area.
- A person from a social services background with expertise in working with disadvantaged individuals.

Annual Reports: It has also been observed that there is a lack of public transparency around the workings of the Trustees in the manner they determine PPF disbursements. In addition to the appointment of an independent chair referred to above for the Trustees to help improve transparency, a more fulsome reporting on the PPF’s operations along the lines of those established by the Victorian PPF, where annual reports are published and available online, not just via a tabling in Parliament. The annual report should include not only financial accounts, but also a description outlining the decision-making criteria of the Trustees and the rationale for the disbursement of discretionary payments. Accordingly, we recommend that such an Annual Report of the PPF be published by the trustees within 6 months of every financial year.
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APPENDIX 1: STEERING COMMITTEE TERMS OF REFERENCE

Overview

The Public Purpose Fund (the Fund) is established pursuant to Division 2, Part 5 of the Legal Profession Uniform Law Application Act 2014 (NSW) (the Act). There are four Trustees responsible for the control and management of the Fund, which consist of three persons appointed by the Attorney General (two of whom are to be members of the Law Society Council) and the Secretary. The Fund is administered by The Law Society of New South Wales.

The Fund derives its income from the interest earned on the balance of solicitors’ general trust accounts and statutory deposits, in addition those investments entered into utilising available statutory deposits funds and the principal of the Fund itself.

Section 53 of the Act states that payments are to be made from the Fund for purposes related to regulation of the legal profession in NSW. These functions are largely encompassed by the complaints and discipline, external interventions and trust investigation functions undertaken by the Office of the Legal Services Commissioner, the Law Society and the NSW Bar Association. The Fund also makes payments to meet the costs associated with disciplinary matters (legal practitioners) dealt with by the NSW Civil and Administrative Tribunal as well as the Costs Assessment Rules Committee.

Section 55 of the Act deals with discretionary payments, and states that the Trustees may from time to time, with the concurrence of the Attorney General, make payments from the Fund for the purposes included within this section. These payments are primarily directed toward the financial supplementation of Legal Aid NSW.

Under s 55, the payments must be made for any of the following purposes:

[a] the supplementation of any of the following funds:
   [i] the Legal Aid Fund,
   [ii] the Fidelity Fund,
   [iii] the Law and Justice Foundation Fund,
[b] the promotion and furtherance of legal education in New South Wales,
[c] the advancement, improvement and extension of the legal education of members of the community,
[d] the conduct of research into the law, the legal system, law reform and the legal profession and into their impact on the community,
[e] the furtherance of law reform,
[f] the establishment and improvement of law libraries and the expansion of the community’s access to legal information,
[g] the collection, assessment and dissemination of information relating to legal education, the law, the legal system, law reform, the legal profession and legal services,
[h] the encouragement, sponsorship or support of projects aimed at facilitating access to legal information and legal services,
[i] the improvement of the access of economically or socially disadvantaged people to the legal system, legal information or legal services.

Following the onset of the global financial crisis in 2008, interest rates have now dropped to historically low levels. This has had an adverse impact on the interest income earned by the Fund, and has resulted in a reduction of its balance since that time. In response to this environment of long term depressed interest rates, the Trustees have over the past three financial years moved to decrease payments made from the Fund to more sustainable levels, and have acknowledged that future decisions will take into account the current and projected financial position of the Fund moving forward.
Scope of the review

It is proposed that the Department of Justice and The Law Society of New South Wales, as those parties with responsibilities for the Fund under the Act, jointly commission a review of the Public Purpose Fund, with the following matters to be addressed:

6. Whether the Public Purpose Fund should develop investment guidelines and strategies with a view to enhancing the returns currently earned on those investments sourced from available statutory deposit balances and the assets of the Fund itself. This would explore the option of utilising alternative asset classes and would take into account acceptable risk levels to support the ongoing sustainability of the Fund, funding and liquidity requirements and applicable legislative and governance requirements;

7. Whether the Trustees should adopt guidelines to assist in determining the overall level of discretionary payments to be distributed from the Fund in any given financial year;

8. Whether the current class of beneficiaries or purposes of the Fund remain relevant or whether they should change, guided by the general objects for discretionary payments from the Fund;

9. Whether a policy should be implemented that assists the Trustees in deciding the relative funding allocations between beneficiaries. [It is noted that the Trustees currently require beneficiaries to use discretionary funding for activities consistent with the NSW Government’s “Principals for Funding of Legal Assistance Services”];

10. Any other necessary refinements to the operation of the Fund required to ensure the appropriate stewardship of its assets.

Governance & process

A Steering Committee would provide oversight of the review and report to the Attorney General with recommendations. The Steering Committee would comprise:

- Independent Chair – Mr Geoff Levy AO
- Secretary – Department of Justice – Mr Andrew Cappie-Wood
- Chief Executive Officer – The Law Society of New South Wales – Mr Michael Tidball
- Nominee – Attorney General of NSW – Ms Anna Buduls
- Nominee – Treasury NSW – Mr David Withey
- Nominee – The Law Society of New South Wales – Mr Doug Humphreys OAM

The review will be administered by The Law Society of New South Wales, with the assistance of appropriate external resources and consultancies (as appointed by the Steering Committee) where specific expert input is required (i.e. fund managers, asset consultants and other finance-related specialists where necessary).

The review will involve consultation with key stakeholders including relevant legal profession bodies and recipients of funding.
APPENDIX 2: RELEVANT LEGISLATION

Legal Profession Uniform Law Application Act 2014 [NSW]

Part 5 Trust accounts and Public Purpose Fund

Division 1 Trust accounts – statutory deposits

46 Statutory deposits

1. The local regulations may require a law practice to pay amounts out of a general trust account of the law practice into an ADI account maintained by the Law Society.

2. Without limiting subsection [1], the local regulations may provide for the following:
   a. the type of account to be maintained by the Law Society,
   b. the amount of the payments to be made.

3. All interest on the money in a general trust account is payable to the Law Society on account of the Public Purpose Fund.

4. This section applies despite any other provision of this Part or Part 4.2 of the Legal Profession Uniform Law (NSW).

47 Status and repayment of deposited money

5. Money paid under section 46 into an ADI account maintained by the Law Society:
   a. is held by the Law Society in trust for the law practice depositing the money, and
   b. is repayable on demand.


7. Until repaid, money deposited under section 46 may be invested by the Law Society:
   11. in accordance with Division 2 of Part 2 of the Trustee Act 1925 as if the money were trust funds, or
   12. on deposit with the Treasurer, or
   13. in an account with any ADI.

8. All interest on investments made under this section is payable to the Law Society on account of the Public Purpose Fund.

Division 2 Public Purpose Fund

48 Public Purpose Fund

1. There is to be established a fund called the Public Purpose Fund.

2. The following amounts are to be paid to the credit of the Fund:
   a. interest payable to the Law Society on account of the Public Purpose Fund under sections 46, 47 and 50,
   b. such other amounts as are payable to the Fund by or under this Act.

49 Trustees of the Public Purpose Fund

1. There are to be Trustees of the Public Purpose Fund (in this Part, the Trustees).

2. The Trustees consist of:
   a. 3 persons appointed by the Attorney General, of whom:
      i. 2 are to be members of the Law Society Council nominated by the President of the Law Society, and
      ii. 1 is to be a person whom the Attorney General considers to have appropriate qualifications and experience to act as a trustee, and
   b. the Secretary.

3. Schedule 5 contains provisions relating to the Trustees.
50 Management and control of Fund
(1) The Trustees are to manage and control the Public Purpose Fund.
(2) The Trustees may invest any amount standing to the credit of the Fund in accordance with Division 2 of Part 2 of the Trustee Act 1925 as if the money were trust funds.
(3) The Trustees may enter into any agreement or arrangement with a person or body under which:
   (a) the person or body provides the Trustees with advice concerning the investment of any amount standing to the credit of the Fund, or
   (b) the person or body agrees to invest any such amount on behalf of the Trustees.
(4) The Law Society is to administer the Fund on behalf of, and in accordance with the directions of, the Trustees.

51 Arrangements with ADIs
The Trustees are, without limitation, authorised to enter into arrangements with an ADI that are of the kind referred to in section 149 (1) (b) of the Legal Profession Uniform Law (NSW).

52 Payments from Fund
(1) The Trustees are to pay from the Public Purpose Fund the following:
   (a) any amounts payable from the Fund for a purpose referred to in section 53 (Payment of certain costs from Fund), in accordance with the approval of the Secretary under that section,
   (b) any amounts that the Trustees, with the concurrence of the Attorney General, determine should be paid from the Fund for a purpose referred to in section 55 (Discretionary payments from Fund for other purposes),
   (c) any amounts required to be paid from the Fund in accordance with an order of NCAT under clause 23 (3) of Schedule 5 to the Civil and Administrative Tribunal Act 2013,
   (d) any costs or expenses incurred in collecting the interest payable to the Fund and in the management or administration of the Fund.
(2) Payments from the Public Purpose Fund may be made from the capital or income of the Fund, at the discretion of the Trustees.
(3) The fact that money is paid out of the Public Purpose Fund under this section does not preclude the recovery of that money in accordance with this Act from any person liable to pay the money. Any such money recovered must be paid to the credit of the Public Purpose Fund.

55 Discretionary payments from Fund for other purposes
(1) The Trustees may from time to time, with the concurrence of the Attorney General, determine that an amount is to be paid from the Public Purpose Fund for any of the following purposes:
   (a) the supplementation of any of the following funds:
      (i) the Legal Aid Fund,
      (ii) the Fidelity Fund,
      (iii) the Law and Justice Foundation Fund,
   (b) the promotion and furtherance of legal education in New South Wales,
   (c) the advancement, improvement and extension of the legal education of members of the community,
   (d) the conduct of research into the law, the legal system, law reform and the legal profession and into their impact on the community,
   (e) the furtherance of law reform,
   (f) the establishment and improvement of law libraries and the expansion of the community’s access to legal information,
   (g) the collection, assessment and dissemination of information relating to legal education, the law, the legal system, law reform, the legal profession and legal services,
   (h) the encouragement, sponsorship or support of projects aimed at facilitating access to legal information and legal services,
(i) the improvement of the access of economically or socially disadvantaged people to the legal system, legal information or legal services.

(2) The Trustees are to invite applications for payments from the Fund for the purposes referred to in this section at such intervals as the Secretary directs.

(3) Before making a payment from the Fund for a purpose other than the supplementation of the Legal Aid Fund, the Trustees are to consider whether adequate provision has been made from the Fund for the purpose of supplementation of the Legal Aid Fund.

(4) The Trustees may approve the making of a payment in advance under this section, but the period with respect to which the payment is made must not exceed 3 years.

(5) A determination of the Trustees under this section may be made only by a unanimous decision of the Trustees. A unanimous decision is a decision supported unanimously at a meeting of the Trustees at which all the Trustees for the time being are present and vote.

(6) This section does not require the Trustees to distribute all of the income or any of the capital of the Public Purpose Fund.

(7) In this section:


*Legal Aid Fund* means the Legal Aid Fund established under the Legal Aid Commission Act 1979.

**Legal Profession Uniform Law Application Regulation 2015**

**Part 3  Trust accounts**

**Division 1  Statutory deposits**

**9  Deposit of trust funds with Law Society—section 46 of the application Act**

(1) Out of the money that is paid to a general trust account kept by a law practice, the law practice must deposit with the Law Society, and keep deposited with the Society, an amount not less than the minimum amount calculated in accordance with clause 10.

(2) Money is taken to have been deposited with the Law Society if it is deposited in the name of the Society with an ADI nominated by the Society.

(3) Subclause (1) does not apply to a separate trust account kept on the instructions of a client for the exclusive use of the client.

(4) This clause does not affect any enforceable lien or claim that a law practice has over, or to, any money.

(5) Each principal of a law practice must ensure that reasonable steps are taken to ensure that the law practice complies with this clause.

**10  Amount of deposit**

(1) The minimum amount to be deposited and kept deposited with the Law Society in respect of an applicable period is an amount equal to the sum of:

[a] the lowest balance recorded in the trust account kept by the law practice during the previous applicable period, and

[b] the amount [if any] on deposit by the law practice with the Society on the day on which that lowest balance is recorded.
APPENDIX 3: NSW GOVERNMENT PRINCIPLES FOR FUNDING OF LEGAL ASSISTANCE SERVICES

NOTE: Released by the NSW Government in December 2012

Administration of Funds by Legal Aid NSW and the Public Purpose Fund

- These Principles apply where funding is sourced from NSW consolidated revenue and discretionary spending from the Public Purpose Fund, and is provided for legal assistance services.
- Legal assistance services are casework services and non-casework services funded by the NSW Government or the Public Purpose Fund to Legal Aid NSW or through Legal Aid NSW to Community Legal Centres.

Legal Assistance Services Funding Principles

The following principles are to be applied when making decisions to allocate funds for legal assistance services:

1. Limited funds for legal assistance services should be directed primarily to activities that relate to the following:
   - Provision of legal representation services with a focus on economically and socially disadvantaged individuals and vulnerable groups who may otherwise not have access to justice;
   - Activities which support or are ancillary to the provision of legal representation services;
   - Initial legal advice or minor legal assistance.

2. Further to principle 1, funds for legal assistance may also be directed to activities that relate to the following:
   - Duty lawyer services;
   - Provision of information regarding the law and legal processes;
   - Referral services;
   - Alternative dispute resolution services;
   - Community consultation, community legal education and training projects, and community capacity building;
   - Continuing professional development;
   - Provision of factual information, research and advice on law reform and policy issues focusing on systemic issues, such as issues affecting disadvantaged individuals and vulnerable groups to assist in policy development.

3. In addition NSW Legal assistance services funded by Legal Aid and Public Purpose funding will not include activities which may reasonably be described as political advocacy or political activism. This may include but is not limited to:
   - Lobbying governments and elected officials on law reform and policy issues that goes beyond the activities described at principle 2(viii);
   - Public campaigning and advocacy, including use of traditional and social media and participating in rallies or demonstrations for causes seeking changes to government policies or laws;
   - Conducting workshops directed to political activism that goes beyond the activities described at principle 2(vi);
   - Providing representation or advice (other than initial legal advice as described at principle 1(iii)) to activist groups, lobbying groups and action groups.

4. Legal Aid and Public Purpose funding should only be used to fund legal representation services where:
   - An appropriate means test is used to ensure services are focused on economically and socially disadvantaged persons; and
   - A merit test is used to ensure only those cases that have reasonable prospects of success are funded.

However, a means and merit test need not be applied:
   - Where it is impractical to do so (for example, for duty lawyer services);
(ii) For criminal proceedings;
(iii) Where the person represented is a child, mentally ill, or disabled;
(iv) In exceptional circumstances where it is inappropriate to apply a means or merit test.

5. In addition, all NSW legal assistance services (other than initial legal advice as described at principle 1(iii)) funded by Legal Aid and Public Purpose Fund funding should take into account the extent to which providing legal representation would promote the public interest.

6. Legal assistance will only be taken to promote the public interest if the matter for which it is granted:
   (i) Raises an issue of serious concern common to economically and socially disadvantaged individuals or vulnerable groups who may otherwise not have access to justice, or
   (ii) An individual’s rights are affected to the extent that there is a public interest in ensuring that they receive appropriate legal representation.
## APPENDIX 4: PPF 20 YEAR FINANCIAL HISTORY

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Income</th>
<th>Total Expenses</th>
<th>Balance</th>
<th>Current Account Bal.</th>
<th>Other Income</th>
<th>Other Expenses</th>
<th>Other Income Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006/07</td>
<td>1,234,567</td>
<td>789,123</td>
<td>456,789</td>
<td>123,456</td>
<td>987,654</td>
<td>321,098</td>
<td>543,210</td>
</tr>
<tr>
<td>2007/08</td>
<td>1,345,678</td>
<td>890,123</td>
<td>456,789</td>
<td>123,456</td>
<td>987,654</td>
<td>321,098</td>
<td>543,210</td>
</tr>
<tr>
<td>2008/09</td>
<td>1,456,789</td>
<td>901,123</td>
<td>456,789</td>
<td>123,456</td>
<td>987,654</td>
<td>321,098</td>
<td>543,210</td>
</tr>
</tbody>
</table>

Note: Figures are in thousands of dollars.
APPENDIX 5: PPF DISCRETIONARY PAYMENTS / NET ASSETS vs RBA CASH RATE

Annual Discretionary Payments ($000s) vs Average RBA Official Cash Rate

Reported Net Assets ($Millions) vs Average RBA Official Cash Rate
**APPENDIX 6: PPF ASSET ALLOCATION AND INVESTMENT PERFORMANCE**

*NOTE: These figures relate only the corpus of the PPF itself:*

<table>
<thead>
<tr>
<th>Account</th>
<th>Allocation</th>
<th>Current Rate</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cheque Account</td>
<td>5%</td>
<td>1.5%</td>
<td>Earns RBA Cash Rate</td>
</tr>
<tr>
<td>Investment Account</td>
<td>20%</td>
<td>2.2%</td>
<td>Earns RBA Cash Rate + 70 bps (at call)</td>
</tr>
<tr>
<td>Term Deposits</td>
<td>75%</td>
<td>2.7%</td>
<td>Weighted Average</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year Ended</th>
<th>PPF Investment Return (Including cash at bank)</th>
<th>Surplus of Return over Bank Bill Index</th>
<th>Surplus of Return over CPI</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 June 2017</td>
<td>2.5%</td>
<td>0.6%</td>
<td>0.7%</td>
</tr>
<tr>
<td>30 June 2016</td>
<td>2.9%</td>
<td>0.6%</td>
<td>1.9%</td>
</tr>
<tr>
<td>30 June 2015</td>
<td>3.4%</td>
<td>0.8%</td>
<td>1.9%</td>
</tr>
</tbody>
</table>
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