



NZLSA 2016 Competition Rules Review

Explanatory materials to amendments made in 2016

Extensive amendments to the NZLSA National Law Students' Competitions Championships Rules (schedule 1 of the NZLSA Constitution) were passed in August 2016 by the NZLSA Council.

This followed a review carried out in 2016 by two reviewers, who produced a consultation draft. This was then examined across two successive consultation rounds by the NZLSA Rules Committee constituted pursuant to cl 18.3 of the NZLSA Constitution. The Rules Committee then formally recommended passage of a final draft to Council, which accepted the recommendation at its fourth meeting of 2016 with two minor amendments. The amended Rules came into force on 5 September 2016.

This document collates the explanatory material generated during the Rules Committee consultation process. This comprises the explanatory note sent to the Rules Committee along with the consultation draft, as well as the summaries of feedback received and revisions made during each consultation round. This material is intended as an historical record to inform future decisions about the Rules and to aid in their interpretation. However, of course, nothing in this document stands as a supplement for the Rules themselves.

NZLSA 2016 Competition Rules Review Consultation Draft explanatory note

This Review was prompted by:

- a provision in the current Rules requiring the NZLSA Council to review the definition of “junior mooter” by its 2016 Annual General Meeting; and
- the identification of various other gaps and inconsistencies in the existing Rules by NZLSA Council members and LSS competition coordinators over several years.

The deadline attached to the “junior mooter” review meant it was thought timely to undertake a more general review of the Rules at large.

The review has been undertaken by NZLSA Competitions Vice-President Will McGrath, a former competition convenor at both a regional and national level, and one of NZLSA’s Council of Legal Education Representatives Seamus Woods, former NZLSA President and national competitor in mooting and negotiation.

The reviewers have produced a consultation draft. This explanatory note outlines the main proposed changes contained in the consultation draft.

The Review has not set out to propose any major substantive changes. None of the issues with the existing Rules equated to fundamental issues about how the competitions are run. Instead, the Review proposes to:

- consolidate in a single source all of the rules relating to each competition; and
- codify what are understood to be established conventions and practices, but which have in fact been applied inconsistently and caused confusion in the past.

The consultation draft has not been crafted afresh. Rather it has used the existing Rules as a scaffold and added parts of the rules prescribed by the sponsoring firms.

The consultation draft provides a single rule set that governs both the regional and national competitions. The details of how each competition should be conducted and judged are included. These have been adopted without substantive change from the rules currently prescribed by the sponsoring firms. The benefits of consolidating the rules in a single source are that they will be easier for competitors to obtain and reference, they will be consistent nationwide for both regionals and nationals, and they will not be susceptible to change without input from the formal NZLSA Rules Committee process.

The consultation draft expressly retains the ability of sponsoring firms to prescribe additional rules as they see fit. The NZLSA Rules will prevail in case of any inconsistency. The NZLSA Rules are separate from and in no way inhibit any of NZLSA’s sponsorship arrangements.

The existing eligibility requirements students must meet before entering competitions have been codified. So too has the convention that applies in the event a student qualifies to compete at nationals in more than one competition. The NZLSA Entry Form that students must use enter the competitions has been made an appendix to the Rules.

The convention that student competition convenors and the Presidents of Law Student Societies must not compete has been codified.

No change has been proposed to the definition of “junior mooter” after all. It pitches the competition at an appropriate level and has not caused any issues in practice.

The marking scheme for Negotiation has been altered so that better teams receive higher rather

than lower scores. Previously for each marking criterion, a “1” was the best mark and a “7” was the poorest. This has been reversed. This achieves consistency with the other competitions, is a more logical approach and makes the break system easier to apply.

It was suggested that the reviewers might consider proposing one set of general rules applicable to all competitions to be accompanied by separate sections setting out the specific rules for each competition. The reviewers decided that this was not the preferable approach. There were sufficient differences required within the general rules for each competition that it was deemed impracticable to try and sanitise these to a sufficiently general level. An unwieldy number of exceptions and exceptions to exceptions would be required. The reviewers are cogent of the fact the overall consultation draft is large. But the Rules are supposed to be a working document used primarily by competitors and competition convenors for one competition at a time. The reviewers consider it is preferable for that purpose to have each set of rules be a complete set for each competition.

The only real substantive change is to the break system to be used for nationals. The reviewers are aware from experience that successive national competition convenors have found the extant break system extremely difficult to apply. Furthermore, the reviewers consider that at least one of the steps in the current break system could never have any practical application in a round robin context. The chief example of this is the “win points” method contained within the existing break system. It is possible this arose when the competitions were briefly expanded to include Australian teams, meaning a round robin was not practicable. It may be that the break system was modified at that time, but was never corrected when that was discontinued.

The proposed break system in the consultation draft is suitable for a round robin. It also attempts to minimise the significance of the more subjective elements of law competition judging. It includes explanations along with the applicable steps. This is consistent with modern legislative drafting and obviates the need for any examples, such as were contained as an appendix to the existing Rules. That appendix has been deleted in the consultation draft.

Aside from these matters, various minor amendments have been made to the rules throughout. For example, language has been modernised so that references to “shall” have been changes to “must” or “may” as appropriate. Again, none of this intends any substantive change.

NZLSA 2016 Competition Rules Review

Feedback and revisions following first consultation round

No issues were raised with the general approach or requiring any substantial revision. As a consequence the reviewers have elected not to produce a revised version at this juncture. Instead, this document summarises key pieces of feedback and what revisions are proposed in response. It is these proposals on which comment is sought in the second consultation round.

It has been raised that the eligibility rules as drafted would exclude students who have already won another competition. This is because they would not be capable of fulfilling the requirement of being able to compete at nationals in the later competition. This is inconsistent with current practice and would be an unintended consequence. The reviewers propose to address this by adding to r 4.2.2 that the requirement does not exclude competitors in this position.

Rule 4.7.3.1(a) does not specify who decides which member of the other team competes. The reviewers consider the rule should specify that the competitors decide as between themselves and, if they are not able to decide, the Competitions Convenor decides.

It has been asked whether the second reference to r 4.7 in r 4.8 should actually be to r 4.6. The answer is no; the purpose of r 4.8 is to apply the same process in r 4.7 repeatedly as many times as needed until a national representative is found. The reviewers would be interested in feedback of whether this is clear in the way r 4.8 is drafted.

“Play” in r 6.3 will be changed to “meet”.

It has been suggested that r 7.3 also prohibits the re-use of any past problems in the National Championship. The reviewers agree and will add that to r 7.3 or as a separate clause in r 7.

The rules stating that scores must not be announced after a round will be amended to specify that scores must not be announced “to competitors” after a round.

Specific rules will be added to r 13 of Witness Examination to state that all applicable law must be supplied to competitors and that electronic devices may not be used during the preparation time. This is consistent with current practice.

Rule 13.5.1 of Negotiation will be amended to read: “The order of the team’s self-analyses will be chosen randomly.” The reviewers agree with a comment that the existing drafting suggests there is a standard procedure to be used. There is not.

Negotiation r 13.10.1 as currently drafted omits to include reference to the final round and should be amended to read “... their respective appearances in the applicable round”.

Some matters raised in feedback were more in the nature of practical considerations for those running the competitions rather than matters the reviewers felt were appropriate to feature in the Rules. In this category for example was that the prohibition on time extensions should be drawn to judges’ attention and that it might be useful to create a store of previous problems. The reviewers would be interested to know if Committee members did indeed think matters more in the nature of practical guidance would have a place in the Rules.

NZLSA 2016 Competition Rules Review

Notes on the final version – feedback and revisions following second consultation round

This document accompanies the proposed final version of the Rules. It explains further revisions made to the original consultation draft in response to feedback received during the second consultation round. The reviewers consider that, having now considered the draft over two consultation rounds, the Committee should recommend the passage of the final version of the Rules to the NZLSA Council.

Some of the feedback received during the second consultation round was not limited to revisions proposed after the first round, but instead was of the kind that should have been raised during the first consultation phase. This obviously carried the risk that it would not be feasible to take it into account, especially for comments of a substantive nature. This was particularly so in the context of a review focussed on consolidation rather than substantive change. However, the reviewers considered that much of this feedback was helpful, uncontroversial and not substantive, and have made some revisions accordingly. These are detailed below.

Like in the first round, none of the second round feedback took issue with the general approach or suggested substantive revision. In many ways therefore the final version greatly mirrors the consultation draft.

Members will recall that one of the revisions proposed after the first consultation phase was to clarify that, in accordance with existing practice, winning one regional competition would not render competitors ineligible for another. One submitter urged the reviewers to consider changing this practice. The reviewers have declined to do so for several reasons:

- First, the comment from the submitter appeared to conflate this issue at least in part with a concern about teams competing at the National Championship in more than one competition at once. This is not permissible according to current practice, as indeed is made explicit by rule 4.7.1.
- Further, this suggestion would represent a change to current practice and that is not the purpose of this review.
- The reviewers also consider that as a matter of principle a competitor should not be debarred from a competition simply because he or she has found success in another.
- The reviewers consider this principle outweighs the practical difficulties that might arise on rare occasions where, for example, a winning team of one competition is split up for the National Championship or a good quality team is knocked out in the regional competition by another team that would not be eligible for the National Championship anyway. In this regard, the reviewers note that the Rules would give regional Competition Convenors discretion to impose measures to deal with these sorts of issues. Examples include discouraging people from forming a team with someone who has won another competition or seeding preliminary rounds if they consider that is appropriate.
- Practical issues might arise where competitions overlap in time, for example where a person wins one competition while another competition they are also in is only midway through.
- Finally, no other Committee member took any issue with this point.

It was pointed out that the Rules did not account for situations where, for unforeseen reasons such as illness, competitors were unable to attend the National Championship, the ALSA Conference or Worlds. The reviewers agree the Rules should address this and, in respect of ALSA and the National Championship, have added a new rule 4.9 to extend the application of rule 4.7.3 to this situation. This contains in-built exceptions, primarily targeted at avoiding competitors having to switch competitions at a late stage.

In respect of Worlds, members will recall additional feedback was sought as follows:

The reviewers propose that rule 4.9 [now rule 4.10] be extended to provide that, in the event the winning team from the National Competition cannot attend the international competition for reasons unforeseen, the next highest ranked team from the National Competition that is able to attend must represent New Zealand at the international competition.

The reviewers consider this to be the fairest approach and one that appropriately ties in to how competitors become eligible for Worlds in the first place. The reviewers are aware of at least one occasion in recent years where, when this situation arose, the university whose team won the National Competition simply picked an alternate team to attend Worlds. The reviewers do not consider this is a fair or appropriate approach and seek confirmation that the Rules Committee agrees.

No member took issue with this approach and it has been drafted into the Rules accordingly. One member pointed out the reviewers had not specified what happens if, in a two-member winning team, only one member cannot attend. The reviewers have decided to specify that, in that situation, the next best placed team attends Worlds. This is unfortunate for the remaining team member who could attend Worlds, but the reviewers do not consider it appropriate that, for example, another person could simply be picked. That would be unfair to the next best placed team. And the other person would not have the experience of the National Championship, nor of working with the other competitor at that level. The national interest in putting New Zealand's best team forward weighs in favour of this approach.

By oversight, the reviewers had omitted to include that rules 4.6 and 4.7 also required attendance at the ALSA Conference. That this was the intention is clear from the eligibility requirements in rule 4 and this omission has been rectified in the final version. One submitter queried whether competitors should be required to attend ALSA, suggesting it did not count towards anything and people who could not go should not be excluded. The reviewers understand the latter sentiment but consider there is considerable merit in attendance at ALSA Conference. It precedes the National Championship and in the reviewers' experience affords competitors excellent practice, raising the standard of the National Championship. Besides, this would be a substantive deviation from existing practice, which would not be appropriate to make in this review, especially at this stage.

The reviewers considered making it clear in light of the current climate that ALSA Conference attendance is subject to funding but decided it was sufficiently obvious that, in a year or for a competition where ALSA Conference was not being funded, competitors would not be required to attend or be excluded from competing because of ALSA. Ensuring this is clear from year to year, the reviewers considered, is more a matter of practice to be overseen by the NZLSA Competitions Vice-President and Competition Convenors rather than something to make concrete in the Rules.

Another matter that occurred to the reviewers was to make it clear in rule 4.8 that a person must represent their University in the competition in which they achieved the place by virtue of which they are required to compete first in time. This is to avoid any confusion that might otherwise be caused by the reference in rule 4.7.2 to the regional competition a person "won" first in time.

One submitter queried why rule 7 permitted re-use of previous regional problems (although that is discouraged) but not those from the National Championship. That was not the intention of the rule and the reviewers believe some confusion was caused by the use of "NZLSA" in rule 7.2. This has been omitted to avoid confusion. On this topic, members are reminded that one of the revisions following the first consultation round was to prohibit completely the re-use of problems in the National Championship.

The reviewers agreed with the following various pieces of feedback relating to Judges and have drafted revisions accordingly. Practitioners will not be permitted to judge competitors with whom they have worked, for example in the context of summer clerking. The Rules will say that, in the National Championship, there should usually be at least two judges for each preliminary round; the use of the word "usually" will ensure that practical issues commonly faced by Competitions

Convenors in securing sufficient judges will not prevent the competition going ahead. Similarly a rule has been added that a judge should not usually judge the same team more than once in the preliminary rounds.

The reviewers were asked to consider leaving to the discretion of each regional competition whether the assessment criteria in the Rules had to be followed strictly or if judges could decide rounds on, for example, a win/loss basis. The reviewers first examined whether the Rules as drafted already left that discretion to the regions, but decided they did not. This was because the discretion conferred by rule 5 is expressed as being subject to the Rules and the phrase “the draw and break system” was insufficiently wide to cover the ground.

The reviewers are reluctant to permit regional Competition Convenors to have judges completely dispense with the assessment criteria in the Rules. These have been carefully developed over time and give competitors continuity with the criteria used at the National Championship. However, the reviewers are also aware that existing practice at some universities is to use the assessment criteria as guides but to permit judges to decide rounds on the basis of win/loss more generally. From a practical perspective, compelling judges to stick rigidly to the assessment criteria may disincentivise their involvement, especially where they might be adjudicating multiple rounds late into one night.

As such the reviewers have, on balance, added a specific discretion for regional Competition Convenors on this aspect. This has been worded in such a way that the assessment criteria cannot be dispensed with entirely, but equally they need not be determinative.

It was noted that the provision prohibiting ties did not provide any guidance to judges about how they should adjust their scores, leaving room for potential confusion about whether, for example, they were required to arbitrarily add a bonus point or something similar. The reviewers have added to that provision that judges must adjust their scores in accordance with their renewed views of the merits.

Feedback was received about the rules particular to Negotiation:

- One member pointed out that the two questions traditionally used to guide the self-analysis were omitted (although they were contained in the assessment criteria). This was an oversight. The questions have been added to the rule governing the actual conduct of the competition.
- It was suggested that the order of self-analysis not be randomised but organised according to a schematic that evenly distributed who went first and second across the competition. The suggestion was premised on the assumption that there was a “big advantage in going second”, with which the reviewers did not necessarily agree but which was taken on board given the experience of the particular member. Nonetheless, the reviewers did not think the change was necessary. It adds complication for organisers and, in the context of the National Championship where there are five rounds, it would not be possible to achieve an even split. In those circumstances, if indeed there is an advantage, random assignment of order is the most appropriate. It forecloses any possibility of argument about the issue from the teams. Further, random order does not reflect a change from the status quo and the reviewers are not otherwise aware of the method causing any disadvantages.
- The re-use of the word “materials” in rule 13.10 when that term had been used in a different way in rule 13.9 was said to be confusing. The reviewers agreed. Rule 13.10 has been changed to refer to the new “scenario”.
- It was suggested that rule 13.9 should be replaced with a rule prohibiting the use of extra material. Rule 13.9 was said to be confusing and inconsistent with the practice at Worlds. This would represent a substantive change which the reviewers considered outside the scope of the review, especially at this late stage. In any event, the reviewers did not

necessarily think the case had been made out for this change. The reviewers did not see the scope for confusion in the rule. This has been an established aspect of the New Zealand competition for some time and not one the reviewers are aware of as ever having caused any issues.

Feedback was received about the rules particular to Client Interviewing:

- It was suggested there could on occasion be three teams in the National Final in preference to eliminating a third team using the break system. Members will be aware that Client Interviewing permits such a structure and indeed that occurs in some regional finals. The reviewers do not agree with this suggestion. The reviewers felt it rather defeats the purpose of having a round robin to only end up eliminating half the teams. It would also be a major break with tradition which the reviewers did not think was appropriate, especially to propose at this late stage of the review. And it would cause logistical issues for NZLSA Conference organisers.
- It was drawn to the reviewers' attention that the criteria for the post-consultation period at Worlds are changing, and it was suggested rule 13.4.2 should be consistent with that. The reviewers agreed and considered this to be an uncontroversial change, albeit somewhat substantive.
- The reviewers agreed with a suggestion that rule 13.10 should be deleted because it implied the post-consultation period should be something of a self-evaluation. The reviewers were reliably informed that this is wrong and it should instead be an in-character follow on from the interview itself. It should be noted that one of the other aspects of rule 13.10 is that it permits competitors to refer to the office memo during the post-consultation period. The reviewers consider this to be uncontroversial and make it clear that they do not intend to change that aspect. But it is considered that an explicit rule permitting reference to the office memo is unnecessary because it is obvious enough without it.
- One member suggested that the order of competing should not be randomly assigned by coin toss but be specified in the draw and evenly split between going first or second. The reviewers agreed this was appropriate to specify in respect of the National Championship (this being a matter for discretion in regional competitions). The reviewers thought this would also have logistical benefits in that it would avoid other teams needlessly waiting around, which has caused problems in the past. Indeed this was what the reviewers considered put this suggestion into a different category to the one relating to self-analysis in Negotiation. Additionally, the potential for teams to accrue advantages from competing order in Client Interviewing was felt to be less than for Negotiation self-analysis and so the reviewers felt the need to leave it to chance for fairness reasons did not apply with such force. This change has been drafted into rule 6. The new rule specifies that competing order should be split as evenly as possible and the unevenness inherent in a five-round competition must be randomly assigned.

Finally, this last point about Client Interviewing drew to the reviewers' attention that the Mooting and Witness Examination Rules did not specify that teams in the National Championship should, as evenly as possible, compete on each side of the argument during the preliminary rounds. This is the existing practice and the reviewers considered that should be specified in relation to the draw for the National Championship. Again, any unevenness must be randomly assigned.

The reviewers are grateful to all members of the Rules Committee for seeing this process through, and especially to those who provided feedback. The proposed Rules are better for it. The reviewers believe the process has resulted in a high-quality product. Members are encouraged to vote in favour of formally recommending the passage of these Rules to the NZLSA Council.