



New South Wales

Legal Profession Uniform General Amendment (External Examiners) Rule 2018

under the

Legal Profession Uniform Law

The Legal Services Council has made the following rule under the *Legal Profession Uniform Law (NSW)*.

MEGAN PITT
Chief Executive Officer, Legal Services Council

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1 Name of Rule

This Rule may be cited as the *Legal Profession Uniform General Amendment (External Examiners) Rule 2018*.

2 Commencement

This Rule commences on the day on which it is published on the NSW legislation website.

3 Authorising provision

This Rule is made by the Legal Services Council under Part 9.2 of the Legal Profession Uniform Law.

4 Amendment of Legal Profession Uniform General Rules 2015

(1) Rule 65 Designation of persons eligible to be appointed as external examiners

Insert after rule 65 (2):

- (2A) The classes of persons set out in subrule (2) do not include any person who is disqualified under rule 65A in this jurisdiction or an equivalent provision applying in another jurisdiction.

(2) Rule 65A

Insert after rule 65:

65A Revocation of eligibility for appointment as external examiner

- (1) The designated local regulatory authority may disqualify a person specified in rule 65 (2) (a)–(e) as a person who may be appointed as an external examiner under Part 4.2 of the Uniform Law.
- (2) Without limiting the grounds on which the designated local regulatory authority may disqualify a person under this rule, the authority may disqualify the person on any of the following grounds:
 - (a) that the person has failed to adequately and properly perform the duties of an external examiner,
 - (b) that, having regard to the circumstances, the person is not a competent or suitable person to discharge the duties of an external examiner.
- (3) It is sufficient to meet the ground specified in subrule (2) (a) if the person, in the capacity of an external examiner:
 - (a) fails to report to the designated local regulatory authority a pattern or suspected pattern of non-compliance with

- section 147 (2) of the Uniform Law, repeated or suspected repeated non-compliance by a law practice with obligations under section 147 (3) and (4) of the Uniform Law or any other matter required to be reported under section 154 of the Uniform Law, or
- (b) fails to report to the designated local regulatory authority a breach of section 148 of the Uniform Law.
- (4) It is sufficient to meet the ground specified in subrule (2) (b) if the person:
 - (a) does not have full mental or legal capacity, or
 - (b) has been found guilty of, or is being proceeded against, for an offence, or
 - (c) has been the subject of an adverse finding relating to the person's professional conduct or is subject to disciplinary or other civil proceedings relating to the person's professional conduct, or
 - (d) has ceased to be qualified for appointment as an external examiner.
 - (5) Nothing in subrule (3) or (4) limits the operation of subrule (2).
 - (6) If the designated local regulatory authority proposes to disqualify a person under this rule, the authority must give written notice to the person of the proposed disqualification and invite the person to make submissions as to why the person should not be disqualified.
 - (7) The written notice is to specify the reasons for the proposed disqualification and set out the period within which any submissions are to be made.
 - (8) The designated local regulatory authority is to consider any submissions made within the specified period before determining whether or not to disqualify the person under this rule.
 - (9) A law practice must terminate the appointment of a person as an external examiner if the person is disqualified under this rule.
 - (10) The designated local regulatory authority may at any time, on the application of a person disqualified under this rule, revoke the person's disqualification if it is satisfied that it is appropriate to do so in the circumstances of the case.
 - (11) The designated local regulatory authority may, if it thinks that it is necessary in the circumstances of the case, direct that an external examiner cease to examine the trust records of a law practice. The direction may be revoked by the authority.
 - (12) A disqualification, revocation or direction under this rule:
 - (a) is to be by written notice served on the affected person, and
 - (b) takes effect on the day the notice is served on the person or on any later day specified in the notice.
 - (13) A copy of a disqualification, revocation or direction under this rule is also to be served on any law practice that has appointed the person as an external examiner and each other local regulatory authority.