

LAW INSTITUTE OF VICTORIA LIMITED (LIV)

LIV CONTINUING PROFESSIONAL DEVELOPMENT RULES 2008

These Rules about legal practice in Victoria are made by the Law Institute of Victoria Limited under s.3.2.9 (3) of the *Legal Profession Act 2004*.

Introduction and Commencement

- 1.1 These Rules may be cited as the LIV Continuing Professional Development Rules 2008.
- 1.2 These Rules will commence operation on 1 April 2008.

Object of these Rules

2. The object of these Rules is to assist legal practitioners to further their professional competence and capacity to provide high quality and ethical legal services for the benefit of their clients and the community.

Definitions

- 3.1 In these Rules, unless the context otherwise requires:
 - “Act” means the *Legal Profession Act 2004*;
 - “CPD” means continuing professional development;
 - “CPD activity” means an activity which meets the requirements of Rule 4.1;
 - “CPD unit” means an hour of CPD activity, subject to other provisions of these Rules;
 - “CPD year” means the year beginning on 1 April and ending on 31 March following;
 - “LIV” means the Law Institute of Victoria Limited;
 - “Board” means the Legal Services Board;
 - “practitioner” means a local legal practitioner within the meaning of the *Legal Profession Act 2004*.
- 3.2 Expressions defined in the Act have the same meaning in these Rules.

Content and format of CPD Activities

- 4.1 For the purposes of these Rules, a CPD activity must:

- (a) be of significant intellectual or practical content and must deal primarily with matters related to the practitioner's practice of law
- (b) be conducted by persons who are qualified by practical or academic experience in the subject covered; and
- (c) seek to extend the practitioner's knowledge and skills in areas that are relevant to the practitioner's practice needs.

4.2 A CPD activity may consist of:

- (a) a seminar, workshop, lecture, conference, discussion group, multimedia, web-based program, audio/video material or online program and any other educational activity howsoever may be delivered from time to time;
- (b) the research, preparation or editing by a practitioner of an article published in a legal publication or a legal article in a non-legal publication. A practitioner may claim 1 CPD unit for every 1000 words of such article but may not claim in a CPD year more than 5 CPD units in this category;
- (c) the research, preparation, or editing of published Law Reports or other legal services. A practitioner may claim 1 CPD unit for every 1000 words for such editing or writing but may not claim in a CPD year more than 5 CPD units in this category;
- (d) the preparation and/or presentation by a practitioner of material to be used in a CPD activity or in other forms of education provided to practitioners and/or to other professionals and/or to other persons including articulated clerks or trainees but a practitioner may not claim in any CPD year more than 5 CPD units in this category;
- (e) membership of a Committee, Taskforce or Section of the LIV, the Law Council of Australia or a Practice Section Committee of a Professional Association or of other Committees provided that the practitioner regularly attends its meetings, if the work performed on the Committee, Taskforce or Section is of substantial significance to the practice of law and is reasonably likely to assist the practitioner's professional development. A practitioner may claim 1 CPD unit for every 2 hours of participation in a committee or similar group in this category and may not claim in any CPD year more than 3 CPD units in this category, save for a member of a Specialist Accreditation Advisory Committee who may claim up to 5 CPD units in this category;

- (f) Postgraduate studies relevant to a practitioner's practice needs.

Note:

Postgraduate courses may be completed online and/or via correspondence.

- 4.3 Practitioners who complete an LIV specialist accreditation assessment process will be deemed to have completed 10 CPD units in the year of their completion.
- 4.4 Private study does not constitute CPD activity for the purpose of these Rules unless it involves the private study of audio or video material specifically designed for the purpose of updating a practitioner's knowledge and/or skills relevant to his/her practice needs. A practitioner may claim 1 CPD unit for every 1 hour of such private study and may not claim in any CPD year more than 5 CPD units under this sub-rule.
- 4.5 Notwithstanding anything to the contrary in these Rules, a practitioner may not claim in any CPD year more than 6 CPD units per day of attendance at a CPD activity or per day of attendance at a CPD conference.
- 4.6 Engaging in legal practice does not constitute CPD activity.

CPD Obligations of Practitioners

- 5.1 Each CPD year, a practitioner must, unless exempted in whole or in part, complete at least 10 CPD units.
- 5.2 Each CPD year, a practitioner must complete as part of his or her CPD obligations at least 1 CPD unit in each of the following fields:
- (a) Ethics and Professional Responsibility
 - (b) Professional Skills
 - (c) Substantive Law
 - (d) Practice Management and Business Skills

Notes:

A non exhaustive list of examples of CPD activities which may satisfy the requirements of this Rule are outlined at Appendix A to these Rules.

A practitioner may complete his or her CPD obligations through participating in CPD activities conducted by his or her legal practice or employer or external provider.

CPD Pro rata Calculations

- 5.3 A practitioner who commences or recommences legal practice on or after the start of a CPD year must complete on a pro rata basis during the balance of the CPD year such CPD units as set out below:

Renewal Month	CPD requirement
1 April	10
1 May	9
1 June	8
1 July	7
1 August	6
1 September	5
1 October	4
1 November	3
1 December	2
1 January	1
1 February	0
1 March	0

Practitioners returning to legal practice

- 5.4 When a local legal practitioner who did not hold a practising certificate for three or more consecutive CPD years is granted a practising certificate, the practitioner must, within 21 days of receipt of his/her practising certificate, file with the LIV a training plan.
- 5.5 The training plan should set out the following information:
- a. How long the practitioner has been absent from legal practice in Victoria;
 - b. Reason/s for the absence of the practitioner from legal practice in Victoria;
 - c. What was the practitioner's area/s of practice prior to his/her absence from legal practice;
 - d. What is the practitioner's current/intended area/s of practice;
 - e. Any other information which the practitioner considers relevant;
 - f. The CPD activities which the practitioner considers will assist him/her in his/her return to legal practice, which shall not be less than what is required under Rule 5.1 and which have been chosen following discussion with the LIV; and

- g. The reason/reasons the practitioner considers each of the CPD activities listed in the training plan will assist his/her return to legal practice.

5.6 The practitioner must complete the CPD activities listed in the training plan within six months of the date of its filing.

5.7 The practitioner must provide to the LIV written notification of the completion of the CPD activities listed in the training plan within 21 days of completion.

CPD record keeping

6.1 A practitioner must maintain for each CPD year:

- (a) A record of his or her engagement in CPD activities; and
- (b) Evidence in support of the CPD activities undertaken.

6.2 A practitioner must retain the record referred to at 6.1 (a) and the evidence in support referred to at 6.1 (b) for at least three years after the end of the CPD year to which the CPD record and evidence in support relate.

Note:

The record referred to at 6.1 (a) and the evidence in support referred to at 6.1 (b) may be produced for the purposes of verification and Audit.

Transitional arrangements

7.1 A continuing professional development activity carried out before the commencement of these Rules that complied with the Continuing Professional Development Rules 2005 or the Continuing Professional Development Rules 2007, complies with these Rules.

APPENDIX A

Non – exhaustive list of examples of CPD activities under Rule 5.2

The following are examples of some topics within each field under Rule 5.2 (a)(b)(c)(d). They are provided by way of illustration only and are not intended to be exhaustive.

Ethics and Professional Responsibility

Lawyer's duties to the court
Lawyer's duty of competence
Lawyer's duty of confidentiality
Difference between the duty of confidentiality and legal professional privilege
Duty not to abuse the court process or the administration of justice
Conflicts of interest
Undertakings
Written and unwritten rules of professional conduct
Written and unwritten rules of professional courtesy
How to identify an ethical issue
Ethical duties in advocacy
When can/should a lawyer breach the duty of confidentiality?
When can/should a lawyer report their client to the police?
Communicating direct with third parties

Skills

Effective communication skills
Issues in cross-cultural communication
Client interviewing – principles and techniques
Preparing for a client interview
Taking a witness statement
Interviewing and the use of interpreters

Giving oral advice – how to break bad news
Giving advice – identifying options
Plain English advice
How can I be sure my client understands me?

Plain English letter-writing
Plain English drafting
Use of precedents

Negotiation – principles and techniques
Negotiation – the principled approach vs the positional bargainer.
When is “Without Prejudice” effective?
Drafting Terms of Settlement

Lawyer's role in mediation
Conducting a mediation

Simple advocacy for solicitors
Appearing before tribunals
Presenting a plea in the Magistrates Court

Legal research

Substantive law

This is self-explanatory

Practice Management and Business Skills

Costs rules
Requirements of the *Legal Profession Act 2004* on Costs Disclosure
Requirements of the *Legal Profession Act 2004* on Costs Agreements
Billing
Negotiating fees
Costs review

Aspects of Trust Accounts rules

Risk Management
File Management
How to ensure deadlines are met
Employment-related equal opportunity
Employment-related discrimination law
Occupational Health and Safety law
Staff management and Human Resources

Superannuation for sole practitioners
Income protection for self-employed practitioners
Financial planning
Business planning
Cash-flow management
Growth and development of a business
Succession planning
Taxation planning
How to finance a practice
Business structures
Effective use of technology
The electronic library