

Continuing Professional Development

Victorian Legal Services
BOARD + COMMISSIONER



Background

The Victorian Legal Services Board + Commissioner (VLSB+C) is responsible for ensuring that Victorian lawyers are competent and maintain high ethical standards.

One of the areas that the VLSB+C has identified for possible improvement is continuing professional development (CPD), which became a mandatory requirement for Victorian lawyers in 2004. CPD is an essential part of a profession's activities. It ensures that members are continually updating and improving their skills, thereby maintaining the quality of the services delivered to their clients and the general public. The maintenance of their skills provides assurance that the exclusive privileges that attach to the practice of the profession are justified. Such assurance helps to promote confidence in the rule of law and the justice system.

CPD offerings also need to be relevant to the changing nature of legal practice, as business structures change and as new technologies play an increasingly important role in the services delivered by lawyers.

CPD is based on a requirement for solicitors and barristers to complete 10 CPD points annually, which often translates into 10 hours attendance at seminars, conferences or

accessing similar resources online. This type of approach is common in most jurisdictions in Australia and overseas, as is the criticism that it often amounts to a formulaic exercise that generates little by way of actual learning and development.

CPD for lawyers that is meaningful, relevant and accessible for all types of lawyers is important for maintaining excellence in the provision of legal services to both businesses and the community. The focus for lawyers should be on good learning and development outcomes, rather than on compliance as an aim in itself.

The VLSB+C has initiated a review of Victoria's CPD scheme and is seeking feedback from the profession and stakeholders about how it might be improved. The review will be undertaken within the framework of the Legal Profession Uniform Law and the CPD rules made under the Uniform Law. Some recommendations may be able to be implemented in Victoria, while others would need to be negotiated at the national level.

The review will actively engage with the profession and its representative bodies. A broad range of stakeholders will be interviewed, subject to the limits of the COVID-19 social distancing rules. The review's terms of reference and an issues paper that provides more information are available at the VLSB+C [website](#).

Issues

The review has identified the following issues for consideration and would welcome contributions on them from the profession and other stakeholders, as well as on any other relevant issues of concern. No conclusions have been reached.

Effective Learning

CPD is a subset of the wider field of adult learning. Adult learning theory and practice recognises that adults learn differently to children, and that classroom methods are relatively ineffective on their own. Successful programs recognise that adult learners:

- are self-directed people able to make their own choices about what and how they learn;
- have accumulated experience that influences their learning interests and their perception of what is relevant;
- are problem-focused and prefer to learn by doing; and
- are largely driven by internal rather than external motivators.

Some jurisdictions have abandoned the requirement for minimum credits and replaced it with requirements for lawyers to reflect on their learning needs, to act to maintain their competency, and to complete an annual statement of compliance with those learning and competency obligations.

Learning Activities

The CPD Rules recognise a wide range of learning activities. Seminar and conference attendance, further formal studies, writing materials for publication, and participating in study groups are permitted. Online activities are also accepted. Some jurisdictions require an element of active participation to be included, such as question and answer components, quizzes, or assessments.

A common criticism of the current approach is that the need to gain 10 CPD points by the end of each CPD year on 31 March, and the relative affordability of providing classroom-style activities, leads to a focus on compliance at the expense of learning and development outcomes. While some activities provide

genuine interest and satisfaction for lawyers, a significant proportion of mandated activity appears to be a box-ticking exercise. A more reflective and planned approach should lead to greater satisfaction and reward.

Subject areas

The CPD scheme recognises that professional competence is driven not just by knowledge of the law, but also by generic professional skills such as writing and advocacy skills, and a strong understanding of ethics and of business management issues. Victorian lawyers must complete at least one CPD point annually in each of these areas. Some jurisdictions do not prescribe areas of CPD activity and instead allow lawyers to choose learning activities that directly align with their competency and development needs.

A possible focus for improving CPD outcomes would be to develop a more detailed competency framework for lawyers that addressed the different skills required for practice, as well as the different levels of expertise for each competency.



Ethical practice is at the heart of a profession's competence and reputation. It is an area that will be subject to more challenges as legal practice diversifies into new business structures and platforms.

It is also a field where a lawyer's approach can be strongly influenced by the organisational culture within which they work. The role of the organisation in CPD regulation might be an area for further consideration.

Practice management and business skills are relevant to many, but not all, lawyers. Increasing numbers of lawyers work as private or public in-house lawyers. Barristers, legal aid and community lawyers might also struggle to find relevant activities in this stream.

Areas of current interest in the profession that might need greater emphasis include technology, diversity and inclusion, sexual harassment, and mental health and wellbeing. Whether any or all of these topics should be mandatory will be part of the review's agenda.

Different levels of experience

The approach to CPD is intended to be sufficiently broad for lawyers to be able to identify activities that are relevant to their level of experience. In practice, the offerings do not usually differentiate between new and experienced lawyers in the field, which can be a source of frustration for more experienced lawyers. Some jurisdictions prescribe more detailed requirements for junior lawyers with less experience. A competency framework would help to differentiate CPD service offerings.

Singapore has a sliding scale of requirements, with more senior lawyers able to undertake fewer activities than more junior lawyers. However, a recent Victorian study found that older lawyers were more likely to be the subject of a conduct complaint.

Providers

A wide range of providers offer CPD activities, including firms, educational and professional bodies, and commercial enterprises. Unlike some jurisdictions, Victoria does not accredit providers. There is a variety of accreditation models that could be considered to improve the quality of service offerings.

Entity / employer role

Regulators are increasingly aware of the role that organisational culture plays in determining levels of compliance. Many law firms offer their partners and employees in-house CPD training. Some large public and private sector bodies offer such programs for their in-house lawyers. The programs might be organised around an annual performance management cycle, including reflection, goal setting, purposeful activity and acquittal. The culture of firms is also important for determining their approach to ethical issues. The review is interested in the



question of whether such firm-based activities could be more formally recognised by the regulator.

Obstacles

The most commonly cited obstacles to gaining access to CPD programs are cost, location, relevance, time and employer pressure. The review seeks feedback on each of these issues, and any other obstacles to CPD participation.

Regulator's role

The VLSB+C must adopt a regulatory approach that is both effective and efficient. Mandatory requirements should be targeted at areas of risk and should ensure a minimum acceptable level of compliance. The 10 CPD point framework provides clarity and accountability, but the scheme lacks a more strategic and effective approach. Without prescribing more onerous levels of commitment, the scheme's shortcomings could be addressed by a greater emphasis on competence-based, outcome-focused approaches. Examples of such activities might include developing a competency framework, providing information and developing guidelines for lawyers and arranging voluntary accreditation schemes. Such an approach would need to be developed in partnership with the sector's professional associations.

Compliance and enforcement

The VLSB+C's current approach to CPD compliance is principally focused on ensuring the requisite number of hours are completed by a process of random audits that coincide

with the practising certificate renewal period. Lawyers are required to keep records of activities they complete and are expected to produce these if they are selected for audit. Lawyers can also declare non-compliance at renewal and are provided with the opportunity to rectify or catch up on missing hours. Although the vast majority of lawyers attend to this promptly and diligently, on occasion the VLSB+C is required to take stronger enforcement action such as placing conditions on practising certificates or referring the matter for disciplinary investigation.

The review is interested in how the audit and record keeping requirements impact on lawyers

and what improvements might be made, including whether there is a role for employers in compliance. The VLSB+C is interested in more nuanced enforcement focused on quality of learning outcomes for the lawyer and more integration with its other regulatory functions such as complaints and trust account management, while also remaining efficient and cost effective.

Technical issues

The CPD Rules contain detailed provisions around timing and exemptions. The review seeks feedback from the profession and other stakeholders about the operation of these provisions and how they might be improved.



Next steps

The review is using this Executive Summary Paper and the accompanying Issues Paper and Consultation Questions to seek contributions from lawyers and others with an interest in CPD. Both the Issues Paper and Consultation Questions can be found on our [website](#).

Comments and submissions can be provided to:

cpdreview@lsbc.vic.gov.au

The closing date for comments and submissions is **5pm Friday 17 July 2020**. The review will then prepare a final report for the VLSB+C's consideration.

Respondents should feel free to submit answers to the consultation questions anonymously. All individual submissions made using the consultation questions will be de-identified and kept in strict confidence. The review might use de-identified comments in its report. It will be assumed that all institutional respondents and individual respondents who do not use the consultation questions consent to the use of their name and inclusion of their submission in the list of published submissions, unless otherwise advised.