

ISSUES PAPER

# Continuing Professional Development



# ISSUES PAPER

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## 1 Introduction

This paper has been prepared to identify issues and promote discussion about Continuing Professional Development (CPD) in the Victorian legal profession. No conclusions have been reached and the Victorian Legal Services Board + Commissioner (VLSB+C) hopes to obtain as wide a range of views as possible. The VLSB+C is keen to hear from lawyers and other stakeholders on how the present system is working and how it might be improved.

## 2 Context

CPD is a hallmark of most professions. A profession's economic and social identity, status and privileges spring from its unique knowledge and skills. Professionals generally agree that they should maintain and improve their knowledge and skills by regularly refreshing them and staying up to date with new developments.

The legal profession has always valued continuing development of its members' knowledge and skills. The essential need for the community to have confidence in the rule of law also generates a requirement for lawyers to demonstrate competence in the advice and representation that they provide to their clients.

Although many lawyers voluntarily undertook CPD activities in the past, CPD became a mandatory requirement for Victorian lawyers in 2004. The introduction of compulsory CPD reflected a trend in other jurisdictions in Australia as well as overseas, including New Zealand, the United Kingdom, Singapore, Canada and the USA. Most European lawyers have also become subject to a mandatory CPD requirement.

Under the Legal Profession Uniform Law (Uniform Law) that applies in Victoria<sup>1</sup>, practising lawyers are required to complete 10 CPD points on an annual basis. The requirements for solicitors and barristers are similar, with some small differences<sup>2</sup>. The VLSB+C has a CPD Policy<sup>3</sup> that provides guidance on how it interprets, monitors and enforces the CPD requirements.

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Lawyers must complete at least one CPD point annually in each of four subject areas:

- Ethics and professional responsibility;
- Practice management and business skills;
- Professional skills; and
- Substantive law

The most common activity is attendance at seminars (including online seminars) or conferences, which generates one point per hour of attendance. Attendance at a discussion group is a qualifying activity, but private study is not, unless it involves the viewing of audio/visual material designed for updating a lawyer's skills. Writing articles, preparing or presenting material for a CPD activity, postgraduate study and attendance at professional committees also attract CPD points, subject to a range of specific conditions.

Additional types of activity for barristers include preparing or presenting material for Bar admission training courses and writing or marking barristers' admission examinations. The barristers' requirements also allow for the VLSB+C to approve other activities and topic areas as well as additional hours for junior barristers.

The VLSB+C as the regulator of lawyers in Victoria is responsible for ensuring compliance with CPD requirements as part of its licensing functions under the Uniform Law. The VLSB+C more broadly is responsible for upholding the objectives of the Uniform Law, including:

- ensuring lawyers are competent and maintain high ethical standards in the provision of legal services;
- enhancing the protection of clients of law practices and the protection of the public generally; and
- promoting regulation of the legal profession that is efficient, effective, targeted and proportionate.

The VLSB+C and many within the legal profession are concerned that the current CPD scheme is skewed towards a focus on 'points grabbing' and 'box ticking' for the purpose of maintaining a practising certificate, rather than genuine, relevant professional development. The CPD year runs from 1 April to 31 March each year, with many lawyers needing to cram some or all of their CPD points into a month of 'March madness' each year.

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The quality, accessibility, relevance and cost of CPD vary significantly and it is likely that this variability both contributes to, and is a result of, the focus on points attainment.

The basic competencies for legal practice were identified in the four CPD subject areas mentioned above. Other jurisdictions and other professions have gone much further in defining more specific competencies required for practice, and in recognising the different levels of competency associated with different levels of skill and experience. The VLSB+C is interested in whether a more sophisticated link between practice competencies and CPD should be developed.

The VLSB+C also believes that it could adopt a more risk-based, proactive approach to regulating this area that improves the quality of CPD and the quality of services provided by the profession to the public. It is also timely to consider the role of CPD in a profession that is changing rapidly under the pressure of new business models and new technology.

### 3 Review

The VLSB+C has decided to undertake a review of the CPD scheme in Victoria to investigate its effectiveness in supporting the VLSB+C's regulatory objectives. The review will be undertaken in close consultation with the profession, the Law Institute of Victoria (LIV), the Victorian Bar (VicBar) and other stakeholders. The VLSB+C hopes the review can be concluded by mid August 2020, with the chief contingency being the impact of the COVID-19 virus on the review's ability to gather information from the profession and other sources.

The VLSB+C has appointed Mr Chris Humphreys to conduct the review, with assistance from VLSB+C officers. Mr Humphreys was most recently the Director of Civil Justice Policy in the Department of Justice and Community Safety, and has been involved in legal profession policy issues, as well as a wide range of other public policy activities, for over 25 years.

As the CPD rules for solicitors and barristers are made pursuant to the Uniform Law by national and Uniform Law entities<sup>4</sup>, some proposals for changes (e.g. to the 10 CPD points requirement) would need to be negotiated with those entities. Other proposals might be able to be implemented at the local level within the existing framework.

## 4 Issues

The review has undertaken an initial survey of CPD models in other jurisdictions, reviews previously carried out in those jurisdictions, and relevant articles by commentators and researchers. It has identified the following issues as being most relevant to the review, but would welcome contributions that highlight other possible matters for consideration.

### 4.1 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<sup>5</sup>

Learning and development activities are more likely to be effective if they are regarded as a process rather than as a series of mostly unrelated events. Sequential activities that are linked by a common goal, pre-learning activities (e.g. reading or influencing proposed content) and post-learning activities (e.g. assessment, follow-up meetings) reinforce learning and flatten the memory loss curve. The approaches used to boost retention of knowledge are sometimes referred to as 'sticky learning' techniques.

Learning and development plans are sometimes developed as part of individual performance management activities for solicitors working in law firms, or for in-house lawyers in the private or public sectors. Such an approach recognises that learning and development is best undertaken as an annual cycle of reflection, identification of learning needs, planning how to address those needs, then undertaking activities to implement the plan. Its effectiveness is potentially increased by being closely linked to the lawyer's daily work and interests.

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The desirability of a cyclical, reflective approach underpinned the changes to CPD that were adopted for solicitors in England and Wales in 2016. The changes dispensed with an annual requirement to complete a minimum number of CPD hours. Instead, solicitors must state annually that they have reflected on their practice and undertaken regular learning and development so their skills and knowledge remain up to date. Similar changes were introduced for barristers, except for those with less than three years' experience.

The Legal Services Board in England and Wales has recently called for submissions on the effectiveness of this “continuing competency” approach for protecting the public and promoting consumer interests<sup>6</sup>. It is interested in whether the continuing competence of solicitors and barristers should be subject to some form of peer review or reassessment at regular intervals, as occurs in some other professions<sup>7</sup>.

New Zealand also requires lawyers to prepare annual learning plans but has retained a minimum hours requirement. Other professions, especially in the health field, have adopted more needs-based, reflective approaches, although many also still require a minimum number of hours to be completed<sup>8</sup>.

### 4.2 Learning activities

All jurisdictions considered by the review recognise the many different forms of activity in which adult learning occurs. The traditional and most common activity is attendance at a seminar, conference or workshop. Online versions of these activities are also recognised. Some jurisdictions require all such activities to be interactive and participatory, such as through question and answer elements, quizzes or assessment tasks.

Preparing and delivering presentations, mentoring, undertaking formal study and writing materials for publication are also commonly recognised as activities that increase a lawyer's knowledge.

Other types of activities, such as participation in small discussion groups, are permitted by some jurisdictions. Private study and research related to particular matters are generally not permitted, although some jurisdictions, including Victoria, permit the viewing of audio-visual materials designed for learning purposes. Activities such as participation in professional organisations or providing pro bono work are sometimes recognised, usually with a capped number of hours.

The rules around allowable activities are characterised by careful definitions that were designed to permit activities that are recognised as having genuine learning outcomes, and to exclude activities, such as self-directed study, that lack sufficient means of verification.

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By contrast, the non-prescriptive approach adopted in England and Wales gives lawyers (apart from newly admitted barristers) the freedom to determine how their learning needs are best met in order to maintain their competencies.

New Zealand's rules strike a middle course by requiring activities to be structured to meet a lawyer's identified learning needs, and to be interactive, verifiable and not part of their day-to-day work. A minimum of 10 hours must be completed, although the guidance material stresses the desirability of undertaking more than this minimal requirement.

Other professions allow for a wider range of activities, including private study, but require a higher number of hours to be completed, e.g. general medical practitioners must complete 50 hours annually<sup>9</sup>, and CPA accountants must complete a minimum of 20 hours annually and 120 hours over a three year period<sup>10</sup>.

The hours-based approach to CPD creates incentives for minimal effort and commitment by lawyers and providers. 'Chalk and talk' classroom presentations are the most unproductive of adult learning. Lawyers in a survey undertaken by the Solicitors Regulation Authority for England and Wales ('the SRA Review')<sup>11</sup> agreed that the learning outcomes of such sessions are often limited<sup>12</sup>, yet they most commonly chose this mode of CPD because it required little pre-planning or engagement.

The attraction of classroom-style seminars (including online seminars) is often their relative affordability for both lawyers and providers. A provider might be a law firm putting on a free seminar for clients or its lawyers, or it might be a commercial provider who, apart from understanding the need for useful and well-presented information, also understands many attendees' desire to accrue the necessary CPD points for as little cost and effort as possible. A commercial provider might arrange speakers who do not request a fee, perhaps out of a sense of duty or passion for the field, but sometimes because of the promotional value of presenting to the audience, and so the cost to the provider and the attendees is minimised. More carefully designed activities that aim to embed learning are likely to require more planning and research, and a wider set of educational techniques, and would be more expensive.

It is not intended to disparage the effort and expertise of providers and presenters, nor to deny that many lawyers find that at least some of their learning activities improves their understanding. The SRA Review found that lawyers rated their chosen legal content subjects as the most practical and relevant CPD subjects undertaken<sup>13</sup>. Nevertheless, it is likely that a significant number of lawyers undertake their CPD obligations as a matter of regulatory necessity rather than as a considered approach to their learning, development and competency.



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If the most common approach to CPD has suboptimal learning outcomes, the dilemma remains of how a profession's regulatory system could compel all members to attempt to reach higher outcomes. A proportion of lawyers will always minimise their engagement and activities, for a variety of reasons, including many that derive from the understandable pressures of conducting a business. This regulatory dilemma is discussed further in the sections on the regulator's role (4.8), and compliance and enforcement (4.9).

***Learning Styles and Activities – Questions for Lawyers***

*The questions in this paper are aimed at exploring lawyers' individual experiences of the current CPD arrangements. Lawyers and other stakeholders are also encouraged to contribute their views on the general policy issues raised in each section and that underpin the questions. A form that includes all of the questions accompanies this paper for those who wish to provide a response. It is available on the [VLSB+C website](#).*

1. *What type of CPD activity (e.g. seminar, online training materials) do you most commonly undertake?*
2. *(a) What type of CPD activities have improved your skills the most?  
(b) What were the factors that contributed to their effectiveness?*
3. *(a) What CPD learning formats improved your skills the least?  
(b) What were the factors that contributed to their lack of effectiveness?*
4. *(a) Are your CPD activities undertaken as part of a cycle of reflection about your professional needs and goal setting?  
(b) If yes, is it part of a performance management program at your work?*
5. *How many hours of CPD did you complete in the last CPD year?*
6. *What is your best estimate (as a percentage) of the CPD activities you undertook in each of the four subject areas?*
7. *Overall, what proportion (as a percentage) of the CPD activities that you completed do you think was useful for maintaining or improving your competency as a lawyer?*
8. *Please rank the four subject areas in terms of their usefulness for maintaining or improving your competence as a lawyer.*

*Ethics & Professional responsibility*

*Professional skills*

*Practice Management and Business skills*

*Substantive law*

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9. *Do you think that the requirement to achieve 10 CPD points each year improves or reduces the effectiveness of your learning and development activities? In what way?*
10. *Would you prefer to set your own learning and development goals (in conjunction with your employer if applicable), without being required to complete a fixed number of points?*
- If yes, a) what sort of accountability would be effective for demonstrating achievement of your goals?*
- b) Do you think this could work for the whole profession?*

### 4.3 Subject areas

The CPD scheme subject area requirements (see p3) recognise 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 business management issues. Most other jurisdictions have adopted a similar approach, with some variations and differing levels of guidance and specificity.

The four broad categories of CPD were designed to allow lawyers to choose programs of activity that were most relevant to their professional practice within each category. Unless the content rules were relaxed significantly, three of the four areas – ethics, substantive law and professional skills – would be likely to remain as a pre-condition of any form of legal practice. The fourth – practice management and business skills – could be broadly interpreted to cover many aspects of new legal practice, but it might be of less relevance to lawyers who practise as in-house or community or legal aid lawyers.

New Zealand, England and Wales, and the Canadian province of Alberta take a different approach by allowing lawyers to choose their own subject areas, based on their learning needs. These learning and development models are underpinned by a competency-based approach to legal practice in which lawyers are expected to reflect on their learning needs in order to maintain and improve their competence.

Alberta's scheme is grounded in six basic competencies<sup>14</sup>, while England and Wales have identified four basic competencies, each of which has two to ten sub-competencies<sup>15</sup>. It is likely that a competency-based approach will become an increasingly common way of conceptualising legal practice in the future as it spreads across a wider range of services and business structures. A competency-based approach might in time prove to be a more flexible and effective way to regulate the profession as it diversifies.

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The discussion around how to define and evaluate practice competencies in Australia is at an early stage, although several papers raising the issue have been published, including from the Law Council of Australia<sup>16</sup>.

The England and Wales Bar Standards Board reviewed the new competency-based CPD system in 2019<sup>17</sup>. It found that the shift in CPD requirements had generally been positive and generated more useful outcomes for lawyers. However, the need for formal planning and reflection was a new professional activity, as it was in other professions that had moved to competency-based CPD, and consequently there was a lack of clarity amongst barristers about how they were to satisfy the new requirements. The requirements for formal reflection and preparation of a CPD plan were of most concern to the respondents<sup>18</sup>.

### *Ethics and professional responsibility*

Ethical conduct is at the heart of the profession's competence and reputation. Unethical actions are the source of many of the proceedings against lawyers for unsatisfactory professional conduct or professional misconduct that are initiated by the VLSB+C at VCAT. While the importance of ethics is second to none, anecdotal evidence suggests that the smaller scope of this topic limits the availability of interesting, well-designed courses and materials, and that more experienced lawyers struggle to identify activities that are not repetitive or that add value.

Value-adding activities would demonstrate relevance and a practical approach to the challenges faced by lawyers. Ethical dilemmas faced in a particular area of practice could provide a more granular perspective on the commonly understood general principles. Activities should also incorporate effective adult learning principles and encourage participatory discussion.

Ethical challenges are likely to become more widespread as legal practice uses new technologies and diversifies into new business structures in which non-lawyers play increasingly important roles. Such issues are already a feature of work performed by in-house lawyers.

While ethical conduct is the primary responsibility of individual lawyers, a person's working environment exerts a strong influence over their ability and willingness to take ethical decisions<sup>19</sup>. Ethical dilemmas are not always readily identified or resolved, and those lawyers who operate in an ethically aware and proactive environment are less likely to be compromised by their decision making.

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The question of what role entities such as employers could play in CPD arrangements, including promoting an ethical workplace, is raised separately in this paper (4.6).

The breaches of professional ethics committed by barrister Nicola Gobbo in acting as a police informant led to the establishment of the Royal Commission into the Management of Police Informants<sup>20</sup>. The Royal Commission is due to provide its report by 30 November 2020. The CPD Review will be completed before the Royal Commission's report, but any findings and recommendations by the Royal Commission and responses by the government that are relevant to ethics training for lawyers will need to be factored into the implementation of the CPD Review's recommendations.

### *Substantive law*

This content stream appears to be the main driver for participation in CPD<sup>21</sup>, no doubt because it provides the most concrete and practical link to lawyers' day-to-day work and interests. Legal updating and specialist legal knowledge were the most strongly supported areas for CPD regulatory requirements in the SRA Review<sup>22</sup>. To qualify for CPD credit, content must be relevant to a lawyer's professional development needs in relation to their practice of law. Some experienced lawyers find that the courses in their field are insufficiently advanced to meet their needs and become repetitive over time.

### *Professional skills*

Professional skills are those skills that underpin and facilitate legal practice. They range from skills closely associated with the legal profession, such as drafting, negotiating and advocacy, to more generic professional skills such as client relationship management, project management, leadership and teamwork. The relationship-based skills can be more difficult to teach effectively because they are skills that are often gained through experience, drawing on the personal traits of the lawyer, and requiring a degree of personal reflection and insight. Nevertheless, they are central to competent practice, and their absence drives many of the complaints received by the VLSB+C, especially in relation to communication skills.

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***Practice Management and business skills***

Although practice management and business skills are a necessary competency for many lawyers, and many courses and activities are offered through CPD programs, some lawyers working in in-house, community or legal aid roles find that such skills are not particularly relevant to their practice or aspirations. Barristers are also subject to the same requirement under the Barristers Rules<sup>23</sup>. The review seeks information about how barristers and solicitors working outside private practice satisfy their obligations in this category, and whether there are enough relevant activities available for them.

The rate of change in the legal profession due to technology and new business structures is sometimes exaggerated, but there is little doubt about the fact of change and its inevitability. Alternative business structures, multi-disciplinary firms, outsourced services, service networks, new technology platforms, blurred jurisdictional and professional boundaries, and the increasing numbers of lawyers practising as in-house lawyers in private and public organisations demonstrate a profession that is in flux.

The acquisition of knowledge about technology and its potential application to legal practice is central to the evolution of the legal services market. As Richard and Daniel Susskind argue in their book *The Future of the Professions*<sup>24</sup>, legal professionals will increasingly work alongside other types of worker as the legal supply chain is disaggregated and component parts are performed by the person (or machine) in the best position to complete the task efficiently. Whether or not the work is done in a law firm or some other entity will depend on the business structure that has been developed to deliver the service, and whether it is offered as part of a suite of other services.

It could be argued that relevant technology skills should be included as a special requirement to better prepare lawyers for the demands of practice in the future. A preferable approach may be to retain it as one of the topic areas currently able to be undertaken within the practice management and business skills stream.

Issues of diversity and inclusion, and of sexual harassment, have widened the scope of practice management (although they could also be included in the Ethics and Professional Responsibilities stream), and are now mandatory requirements in some American jurisdictions<sup>25</sup>. Equal opportunity was a requirement for Victorian solicitors when compulsory CPD was first introduced in 2004<sup>26</sup>, but it was subsequently dropped from the list of required topics.

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The VLSB+C's recent investigation into sexual harassment in the profession<sup>27</sup> found that 36 per cent of respondents had experienced sexual harassment, the overwhelming majority of whom were women. Over one half of all female professionals had experienced sexual harassment. The survey found that many firms lacked clear policies and procedures in relation to sexual harassment. Nor was the VicBar free of such complaints, with barristers identified as harassers by 14 per cent of respondents. The VLSB+C is committed to implementing the investigation's recommendations for an increased focus on training in relation to sexual harassment.

The Victorian Royal Commission into Family Violence recommended that all occupations that were engaged in the family violence sector, including lawyers, should receive training to ensure they were able to assist victims of family violence. The Victorian government accepted all of the Royal Commission's recommendations and the VLSB+C is also committed to developing improved family violence learning opportunities for the profession.

Some jurisdictions suggest or require their lawyers undertake CPD activities in health and wellbeing. Numerous studies have identified mental health and wellbeing as an endemic challenge in legal practice<sup>28</sup>. Workplaces are required to have effective health and safety policies to guard against the detrimental consequences of persistent high stress, and lawyers need to be aware of how to respond to such issues at an individual and organisational level.

All of these topics are suitable for CPD activity. Whether or not they should be mandated or how they should otherwise be supported is discussed further in the sections on regulation, and are matters on which the review seeks contributions.

First time applicants for a principal's practising certificate must demonstrate to the VLSB+C that they have the skills and experience to ethically, diligently and competently run a practice<sup>29</sup>. One of the ways in which a lawyer can demonstrate the necessary skills and experience is to attend a recognised practice management course.

Similarly, the VLSB+C requires lawyers who wish to receive trust money to demonstrate either prior experience of operating a trust account or completion of a trust account course.

The review seeks the views of lawyers and other stakeholders about the effectiveness of the current requirements for a principal's practising certificate, and authorisation to receive trust money.

**CPD Subject Areas – Questions**

11. *In which of the four prescribed areas (Ethics & Professional responsibility, Professional skills, Practice Management and Business skills, Substantive law) of CPD activities (if any), have you encountered difficulty in finding activities that were relevant to your learning and development needs?*
12. *If you encountered difficulty, what was the nature of the problem? (e.g. basic unavailability of activities in that field, unsuitable level, location)*
13. *How useful was the Ethics and Professional Responsibilities activity that you undertook last year? Please elaborate on your response, including describing the format of the activity.*
14. *How useful was the Substantive Law activity that you undertook last year? Please elaborate on your response, including describing the format of the activity.*
15. *How useful was the Professional Skills activity that you undertook last year? Please elaborate on your response, including describing the format of the activity.*
16. *How useful was the Practice Management and Business Skills activity that you undertook last year? Please elaborate on your response, including describing the format of the activity.*
17. *Are there any specific topics (e.g. technology, sexual harassment) that you think should be included as mandatory topics for all lawyers? If yes, please specify the topics you think should be included.*
18. *Are there any topics (e.g. technology, sexual harassment) that you think should be included as mandatory topics for some lawyers? If yes, please specify the categories of lawyers and the topics you think should be included.*
19. *Are there any of the four subject areas that you think do not need to be mandatory for all lawyers? If yes, please elaborate.*
20. *Please provide any views and insights you have about the effectiveness of the current skills requirements for (a) a principal's practising certificate, and (b) authorisation to receive trust money.*

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### 4.4 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. Arguably, the lack of a strategic, competency-based approach to CPD has deprived lawyers of clear pathways that would allow them to choose activities that would deliver relevant learning and support their aspirations for a higher level of competence.

Masterclasses for experienced lawyers in some areas (e.g. building disputes) are offered by some providers. A significant proportion of activities are framed around new developments, which could be expected to be of interest to all lawyers. Lawyers with more than 40 years' experience who do not practise as a principal are exempt from CPD requirements.

The SRA survey found that experienced lawyers (10+ years) were more likely to identify CPD courses as not being at the right level than more junior lawyers, and that this factor was a barrier to CPD participation for that cohort<sup>30</sup>.

Some jurisdictions require new lawyers of less than two or three years' experience to undertake more prescriptive study<sup>31</sup>, while Singapore prescribes less onerous requirements for more experienced lawyers, depending on whether they have been admitted for less than 5 years (16 points) or 15 years (8 points) or more than 15 years (4 points)<sup>32</sup>.

On the one hand, there is a view that experienced lawyers do not need to be subject to such regulatory oversight, or that they should only be required to keep abreast of new developments, perhaps with more periodic refreshers in ethics and professional practice.

However, to the extent that CPD is meant to be a measure that improves the quality of legal services and protects the public from incompetence, a recent study of Victorian lawyers who had been the subject of a professional conduct complaint found that the cohort of lawyers most likely to be the subject of a complaint was older than the average lawyer age<sup>33</sup>. In particular, those in the 46 to 55 year old age bracket were disproportionately likely to be the subject of a complaint, although the research stopped short of investigating links between age and final adjudicated outcomes. Nevertheless, the findings were consistent with studies in other jurisdictions<sup>34</sup>.



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A particular area of differential expertise is in respect of the specialisation scheme run by the LIV. Solicitors wishing to be recognised for their particular skill in one of 16 areas of law may apply for specialist accreditation. Apart from demonstrating relevant experience and providing references, applicants must also submit to an assessment that may be composed of different tasks, including examinations and assignments. Once accredited, they must re-apply every three years, with the primary requirement being able to demonstrate continuing practice in the area. They must also complete 12 CPD points each year, of which eight must be in the area of specialisation.

In some jurisdictions, professions have adopted a requirement for all members to re-validate their qualifications at regular intervals<sup>35</sup>. Revalidation provides a stronger assurance to the public of the continuing competence of a profession's members than completion of the existing annual CPD obligations. Typically, it involves a mixture of activities such as a planned program of CPD activities, keeping a reflective journal of work and learning activities, undertaking research or other types of professional inquiry, and engaging in discussion or evaluation with peers. Formal examinations, if any, are not the principal part of the revalidation process. Peer review is common in many professions but has been little used in the legal profession, perhaps because its members are often in open competition with each other for business, and because of client confidentiality issues, although these issues are also present in other professions.

It is suggested that any consideration of revalidation requirements for the Victorian legal profession would need to await the development of a more comprehensive approach to competencies, apart from consideration of the regulatory burden that it might impose on lawyers. The report of the England and Wales Legal Services Board on CPD, which is expected within the next 12 months, will provide a useful basis for further discussion.

### ***Different Levels of Experience – Questions***

- 21. Overall, would you agree that the CPD activities that you completed in the last CPD year were about right for your level of skill and experience?*
- 22. Should the CPD requirements for more experienced lawyers (>15 years post-admission experience) be changed? If yes, how should they be changed?*
- 23. Should the CPD requirements for less experienced lawyers (<3 years post-admission experience) be changed? If yes, how should they be changed?*

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### 4.5 Providers

The CPD rules require activities to be conducted by people who are qualified by practical or academic experience in the subject<sup>36</sup>. There is a wide variety of providers ranging from commercial entities, to academic, training and professional association bodies, to law firms providing activities for their clients or their own lawyers.

In a further attempt to ensure the quality of the services, some jurisdictions require providers to be accredited<sup>37</sup>. Others have allowed for a voluntary accreditation system and required lawyers to either undertake a minimum number of activities from accredited providers<sup>38</sup>, or to undertake specific subject areas from accredited providers (e.g. professional practice subjects<sup>39</sup>).

The SRA Review in England and Wales<sup>40</sup> found that solicitors were sceptical of any claimed difference in quality between accredited and non-accredited providers, given the large range of activities that were on offer and the consequent variability in quality of those activities. The large numbers of accredited providers might have been driven by the mandatory requirement at the time for some CPD activities to be delivered by accredited providers, which in turn might have generated a tick-box approach to accreditation that undermined the credibility of the process.

A form of voluntary accreditation might be worth considering if there is evidence of uncertainty in the market about how to identify good quality providers, and if the VLSB+C and the profession wish to promote better quality CPD. Voluntary or mandatory accreditation might also be worth considering for the subject areas that are not dependent on the simple transfer of legal knowledge and that require a more sophisticated pedagogic approach to engage participants effectively. A range of qualifying elements could be developed<sup>41</sup>. Consideration could be given to including an understanding of, and commitment to, the principles of adult learning as a part of any such accreditation scheme.

#### *Providers – Questions*

- 24. In your experience, which type of provider (e.g. in-house, law firm, education or training body, professional association, commercial provider) consistently provides the best CPD training?*
- 25. In general, is there a noticeable difference in quality between CPD activities that you or your employer pay for and those that are free? If yes, please describe the difference.*
- 26. What amount, on average, do you or your employer pay for CPD activities (e.g. an annual sum, or an average fee for seminars or conferences, or a figure per CPD point)?*
- 27. Would it help you to choose activities if some providers had gained CPD training accreditation?*

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### 4.6 Entity / employer role

Regulators and the profession have increasingly recognised the important role that the culture of a business entity that provides legal services plays in determining its compliance with regulatory requirements. Culture can be defined as the values, attitudes and behaviours that characterise an organisation's activities. A firm's culture determines its approach to CPD and, in particular, whether it supports learning and development activities and develops the systems to facilitate such support.

Many law firms, especially larger firms, conduct their own CPD activities for the benefit of their employees. In-house learning and development might be part of a wider performance management framework for employees and partners. Such frameworks have the attraction of being organised around an annual cycle of reflection, goal setting, purposeful activity and acquittal. It might be both more effective and efficient if the arrangements for supporting and monitoring CPD activities could recognise the firm-based nature of many such activities in the solicitors' branch of the profession.

As mentioned earlier, a firm's culture also plays a critical role in shaping its ethical approach, and it might make sense to encourage firms to undertake ethics training as a collective activity.

The SRA in England and Wales has gone further than many other jurisdictions by introducing requirements for the authorisation of businesses providing legal services (including sole practitioners), which are in addition to the usual requirements for individual practising certificates. Entities must nominate a Compliance Officer Legal Practice (COLP) and a Compliance Officer Finance and Administration (COFA) who are responsible for taking all reasonable steps to ensure their firms' compliance with their regulatory obligations<sup>42</sup>.

New Zealand has also introduced a scheme that allows firms and other organisations that employ lawyers to apply for self-auditing status<sup>43</sup>. Individual lawyers must still complete annual declarations but are exempt from audits. The scheme is designed to encourage legal service entities to take responsibility for monitoring their lawyers' CPD activities and to also partner with them in setting professional goals that align with the entity's business goals. The entity must nominate a CPD Officer, and the Law Society has the power to audit the entity to check its compliance with the rules.

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Public or private sector bodies, if they are of sufficient size, might also offer CPD programs for their in-house lawyers. Barristers and sole practitioner solicitors are by definition free of influence by an employer, business partner or other organisational member, but they can nevertheless be influenced by their peers and others with whom they interact. In particular, the VicBar has a strong culture that emphasises the importance of the individual barrister's membership of the wider collective and the concomitant obligations of such membership. A list or practice area association that a barrister belongs to might also have its own culture that influences its members' approach to providing services.

**Entity / employer role – Questions**

28. *If you are employed, what role (if any), does your employer play in assisting you to identify and complete your CPD obligations?*
29. *(a) If you are employed, does your employer contribute to any CPD activity costs?  
(b) If yes, what proportion (as a percentage) does your employer contribute on average?*
30. *How would you describe the level of support that you receive from your employer to undertake CPD activities? Please provide any comments about the level of your employer's support if you wish to.*
31. *If you do not work as a barrister or sole practitioner, do you think that there is scope for greater recognition of the role that your organisation plays in CPD activities? If yes, please elaborate.*
32. *If you are a partner, director or otherwise responsible for your organisation's provision of legal services, do you think that having a person who was the accountable officer for CPD obligations would improve your organisation's engagement with CPD activities?*

**4.7 Obstacles to CPD participation**

Commonly discussed barriers to participation identified in other jurisdictions<sup>44</sup> include cost, location, relevance, time and employer pressure. Survey respondents in the SRA Review identified cost as being the highest barrier to CPD participation by a significant margin (62%), with location (41%) and the generic nature of the offerings (35%) being the next highest factors. Time spent out of the office to attend CPD activities can be especially difficult for sole practitioners, including barristers, and for partners and other senior employees. Employer pressure was identified as a barrier by only 14% of respondents<sup>45</sup>.

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Some employers pay for all or part of their employees' and partners' CPD activities, while others leave it to individuals to pay for their own CPD. Employers may or may not grant time off to undertake the activities.

In Victoria, it appears that city-based lawyers and lawyers in large and medium-sized firms have relatively little difficulty in finding CPD activities that suit their needs. Online activities and events put on by local associations might assist suburban and regional lawyers to meet their obligations, but the difficulty in finding a reasonable variety of offerings relevant to their practices is a constant challenge. The VLSB+C receives many complaints about the inadequacy of activities for regional lawyers and is keen to work with the profession to improve the availability of relevant CPD activities.

Particular cohorts of lawyers, such as those with family responsibilities or who work part-time, might encounter more difficulties than others in identifying suitable CPD opportunities. Other cohorts, such as those who work in private or public in-house roles or as legal aid or community lawyers, may find it difficult to find activities that are relevant to their practice.

The review seeks the views of lawyers on the obstacles that influence their CPD decisions and how they might be reduced.

### *Obstacles – Question*

*33. What are the two most significant factors that prevent you from participating effectively in CPD activities? Please elaborate on each factor.*

## 4.8 Regulator's role

To ensure competence and high ethical standards, the VLSB+C must adopt measures that are effective and efficient. Effectiveness requires a link to be demonstrated between current CPD approaches and the maintenance of skills and ethical standards. It also requires a focus on particular areas of risk, where lawyer activities are known to create a higher risk of incompetent or dishonest practice. Efficiency requires the measures imposed on lawyers, and the regulator's costs of administering the system, to be proportionate and cost-efficient.

Regulation should take account of the profession's evolving business structures and processes and the changing needs and expectations of clients and the public. Changes would necessarily be moulded to the Uniform Law's regulatory structure.

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The regulator has a choice of options ranging from mandatory requirements backed by sanctions, to the promotion of new best practice approaches and guidance for the profession in adopting such approaches. Mandatory compliance obligations need to be targeted at the areas of greatest risk to the consumer.

The need for some form of mandatory obligation to undertake CPD is widely accepted within the profession and is consistent with the approach in other professions. Clients and the general public may also have a reasonable expectation that lawyers should maintain their skills through regular training and educational activities.

However, little research has been undertaken to objectively demonstrate a link between CPD and improved skills. An American study examined the link between the rate of disciplinary proceedings in the legal profession in five states and the introduction of mandatory CPD<sup>46</sup>. It found a statistically significant link between the introduction of CPD and a fall in the number of complaints requiring investigation. The study was unable to establish a similar link for the number of initial complaints or the number of sanctions imposed.

While many lawyers would undertake CPD activities regardless of a regulatory requirement, many would not. Some would not because of a lack of interest while others might have genuine intentions that would not be realised because of other pressures and priorities. American surveys of two states before mandatory CPD was introduced found that less than half of lawyers in those jurisdictions undertook CPD activities<sup>47</sup>. Many of those who had not previously undertaken CPD found the changes beneficial. The installation of a mandatory requirement may have the effect of catalysing good intentions into action and creating a general culture of continuous learning and development. As one CPD supporter noted:

“[t]hose that argue against [mandatory CPD] sometimes quote the old saying ‘You can lead a horse to water, but you can’t make it drink.’ Maybe not, but if you take the whole herd, most of them are going to have a drink.”<sup>48</sup>

The current Victorian scheme’s 10 credit point structure is attractive insofar as a lawyer’s obligations are easily understood and accounted for. It provides a basic minimum commitment which all lawyers must meet. It ensures that the most reluctant or poorly skilled lawyer undertakes some minimal development activities, and it also provides employees with a means of responding to pressure from an employer not to undertake training. It provides an easily understood assurance to the public of a commitment to maintaining competence and is also consistent with the approach adopted in other professions.

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However, the current requirements are a flimsy basis for making any claims about the depth of the profession's commitment to professional learning and development. Clearly, many lawyers are dedicated to enlarging their knowledge and understanding, and there are many associations and groups that have coalesced around their members' mutual interests. However, the basic requirements are quite minimal when compared to other professions, and an overall strategy to move to a more comprehensive model of competency-based, outcome-focused training for the profession is absent.

As the local regulatory authority, the VLSB+C has a role to play in supporting a more effective approach to CPD. Such a role includes promoting CPD programs that will help the profession to adapt to its changing circumstances. However, despite its function of enforcing minimum standards in the interests of consumer protection, it cannot require all lawyers to adopt best practice, or to adapt to the changing demands of the evolving market. The regulator sets a floor, but it cannot require everyone to then work at higher levels. It can, however, encourage and assist lawyers to work at those levels and to provide better services to the public.

Using the other regulatory tools at its disposal, the regulator could seek to improve the profession's overall level of competence by promoting best practice and new ways of working. It could support frameworks that prioritise those issues and that encourage and facilitate change.

The professional associations could also have significant roles if such a proactive approach was adopted. The involvement of the profession is widely recognised as an essential part of an effective approach to CPD, and the regulatory change process needs to engage the profession in the development and implementation of any changes.

Examples of initiatives that could be investigated include:

- developing a more detailed and comprehensive competency framework for legal practice that could then inform the design of new CPD programs
- developing guidelines for quality CPD programs, including learning cycles (as per England and Wales, New Zealand and CPD requirements in other professions) and activities that are more likely to lead to genuine learning outcomes. For example, guidelines could be developed that describe the elements of high quality seminar and conference programs.
- accrediting providers of CPD activities and programs who demonstrate a commitment to effective learning using the relevant guidelines. Accredited providers should be able to market their offerings in the expectation of attracting higher levels of participation from lawyers.

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- accrediting firms and other entities that are able to demonstrate their commitment to effective learning. Accreditation could be useful in attracting talented employees, and in demonstrating a commitment to quality to prospective and existing clients (especially private and public sector clients operating selective provider panels). Recognition of entities' role in learning and development would appropriately acknowledge their importance in fostering individual lawyers' attitudes to learning and, in particular, to ethical practice.

Such an approach would also have the advantage of not requiring immediate changes to the existing Uniform Law rules. Some regulators are wary of the costs required to run effective accreditation schemes, whether they are voluntary or mandatory, and are sceptical of whether the claimed differences in quality are sufficiently real to justify their establishment. Western Australia offsets some of the costs of its scheme by charging fees for accreditation. If accreditation is seen as a possible option, it might be advisable to investigate the range of accreditation models that are available.

Care would need to be taken with any accreditation programs that might be implemented to allow for accreditation of smaller entities that might not have the same systems and resources as larger firms but which nevertheless demonstrated a proactive and organised approach to learning and development.

### **Regulator's role – Questions**

34. *Should the mandatory 10 CPD point requirement be abolished, maintained, increased or reduced? Please elaborate on your response.*
35. *Should all lawyers be required to prepare CPD plans on an annual basis that identify learning and development needs and activities? Please elaborate on your response.*
36. *Would you welcome more information from the VLSB+C and/or professional bodies about CPD programs in some or all of the four current subject areas? ? If yes, in which of the four areas would information be most useful?*
37. *Would a competency framework, and associated guidance, help to create a more useful CPD program?*
38. *Do you think that a voluntary accreditation scheme for CPD providers would provide you with useful information about CPD providers and activities?*



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### 4.9 Compliance and enforcement

This section examines in more detail the compliance and enforcement options used by the VLSB+C in undertaking its CPD oversight role.

Regulatory schemes in Australia and elsewhere provide for a range of processes and sanctions to promote compliance, including loss of the right to practise in the most serious cases. Sanctions are the necessary steel in the regulatory frameworks that reinforces the importance of the public's right to competent legal advice and representation.

In all Australian jurisdictions, aside from Queensland, failure to undertake the minimum requirements for CPD is capable of constituting a disciplinary breach, unsatisfactory professional conduct or professional misconduct. Some jurisdictions, such as Ontario, issue infringement notices for non-compliance<sup>49</sup>. The Uniform Law provides for a civil offence of failure to comply with a statutory condition of a practising certificate, but it has not been used to date in relation to non-compliance with CPD rules.<sup>50</sup>

#### *Record keeping*

Barristers<sup>51</sup> and solicitors<sup>52</sup> must keep records of their CPD activities for a minimum of three years. Solicitors must also keep evidence in support of the activities they have undertaken. Lawyers must include in their annual application for a practising certificate a declaration that they have completed their CPD requirements for the year.

In New Zealand, lawyers are required to have a professional development plan which informs their choice of CPD activities. Many of the health professions in Australia require a 'portfolio' of documents to be kept for up to 5 years with a development plan, including reflections on how particular activities furthered a member's development, receipts, and evidence of attendance<sup>53</sup>. Lawyers in England and Wales are required to keep records of their CPD activities and are asked to produce them if they are the subject of a complaint or other regulatory issue or if they do not make a declaration<sup>54</sup>.

The Law Society of British Columbia requires lawyers to complete their CPD record keeping requirements on its online portal, as well as maintaining their own private record of their activities. The online system provides guidance in completing the record, prompts lawyers of approaching timelines and also facilitates quicker checking processes by the Law Society<sup>55</sup>.

The review seeks feedback from lawyers and other stakeholders on record keeping requirements and practice, and whether an online system might provide a more efficient and helpful way of meeting the requirements.

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### *Audit*

The VLSB+C has delegated its audit functions to the LIV and VicBar, with associated funding. Each body reports back to the VLSB+C on its activities. Compliance may be checked by a process of random audits that coincide with the practising certificate renewal period. Lawyers are usually given the opportunity to rectify any non-compliance by completing the minimum requirements within a specified time or applying for an exemption for a variety of reasons, such as hardship or absence from practice.

As an example, for the CPD year ending 31 March 2018, the LIV advised that it conducted random audits of the CPD records of 550 solicitors (out of a total of 22,483 solicitors practising in Victoria)<sup>56</sup>. Nineteen (3.5%) were found to be non-compliant and were identified for follow-up action. However, it appears that 15 of these lawyers were non-compliant because they did not respond to the request for information, which might also be a source of concern, although it is possible that a proportion may have ceased practice or been on leave.

The LIV also reported that 265 solicitors (or 1.2% of all solicitors) declared on their practising certificate applications that they were not compliant with the CPD Rules. All but 13 duly completed rectification plans. Of the 13 non-compliant lawyers, eight surrendered or did not renew their practising certificates, and five were referred for follow-up action. The levels of non-compliance identified through audits or practising certificate declarations have been consistent for the past five years.

Lawyers subject to audit are not asked about the particular CPD activities they undertook, or the quality or relevance of the activities to their practice or professional development. More focus on value as part of the audit process would complement guidance material on the features of good quality CPD as suggested earlier in this paper. South Australia and New Zealand focus on the substance of CPD undertaken and endeavour to be more pastoral in their approach to non-compliance.

The VLSB+C does not routinely request information about CPD compliance when a lawyer experiences other regulatory issues such as a complaint or external intervention. However, a history of CPD non-compliance would be a factor in suitability decisions. The VLSC in considering disciplinary matters may require a lawyer to undertake additional CPD. VCAT often includes learning and development orders that involve additional hours of ethics-focused CPD in the disciplinary matters that it adjudicates.

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### *Compliance strategy*

A regulator could take a strict, sanctions-based approach to compliance or consider a breach to be an opportunity to steer a lawyer to a greater commitment to learning and development. With either approach, a regulator must ensure regulation is efficient and effective, as required by Victorian Government policy. Effective and efficient performance underpins a regulator's legitimacy and is enshrined as an objective of the Uniform Law scheme<sup>57</sup>. Regulators are also increasingly expected to do more with less by prioritising and targeting their activities for maximum gain while remaining cost effective.

In 2017 the VLSB+C undertook an activity-based costing exercise of its regulatory functions in order to properly and fairly allocate the costs of regulation across the different practising certificate fee classes (for example, principals and employees). The analysis found that CPD compliance activities undertaken by the VLSB+C and LIV added approximately \$10 to each practising certificate. In aggregate, the cost of CPD compliance activities in 2017 was \$0.19 million, out of a total cost of regulation of just over \$20 million, or just under one percent of regulatory costs<sup>58</sup>.

The focus of compliance has often been process-driven and quantitative, i.e. ensuring that the minimum hours are met within the time frames set by the rules. The VLSB+C believes that this compliance regime may have served to perpetuate and reinforce the 'box ticking' problem. The VLSB+C would like to improve how it enforces the CPD rules by considering options more aligned to its current risk-based and outcome-focused strategy. The preferred option needs to be cost effective and integrated with the VLSB+C's other regulatory functions, such as trust account and compliance auditing and the VLSC's complaint investigations functions.

As discussed earlier, regulators and the profession have increasingly recognised the important role that the culture of a business entity plays in determining its compliance with regulatory requirements. In New Zealand, a law practice may apply for CPD 'self-audit status' which reduces the regulatory burden for lawyers at those firms in exchange for adherence with certain CPD standards for the whole practice<sup>59</sup>.

The VLSB+C is interested in the role that entities could play as cultural and ethical leaders supporting CPD. Examination of a law practice's business management systems is another regulatory tool that the VLSB+C could use as part of its compliance auditing function<sup>60</sup>. The VLSB+C takes a collaborative approach to such audits, assisting to resolve systemic issues.

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VLSB+C CPD guidance could also inform lawyers about increasing prevalence of issues in complaints, and other regulatory data to inform their CPD choices, for example cyber security or contingency planning.

The VLSB+C is interested in more targeted, nuanced ways of managing enforcement by promoting best practice and minimising the need for intensive auditing.

### ***Compliance and Enforcement – Questions***

- 39. How onerous do you find the CPD record keeping requirements? If you think they are too onerous, please provide details of how they could be improved.*
- 40. Would an online solution make it easier for you to maintain your records and receive information and reminders about CPD?*
- 41. Have you been audited for compliance with your CPD obligations? If yes, please provide details of your experience, and any suggestions for how the process could be improved.*
- 42. If you work in a firm or organisation, do you think it would be interested in self-auditing its lawyers' CPD compliance?*

### **4.10 Technical Issues**

The CPD rules and the VLSB+C's CPD Policy provide a detailed framework for lawyers' compliance with their CPD obligations. In addition to the matters that have already been discussed in this paper, there are some other provisions dealing with the issues of timing and exemptions.

#### ***Timing***

The CPD year runs from 1 April to 31 March each year, with special provisions for pro rata calculations if a lawyer has only been in practice for part of a year. Up to 3 CPD points can be carried forward into the following CPD year.

Some jurisdictions<sup>61</sup> and professions<sup>62</sup> operate their CPD systems on a triennial basis, with an overall number of credits to be earned during that period, subject to a minimum annual requirement in each year. California also operates a staggered reporting schedule in which each one of three cohorts that are organised alphabetically (i.e. A-G, H-M, N-Z) reports in different years of the triennial cycle.

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The triennial system, with staggered reporting, has the attraction of only requiring a report to be provided once in three years, reducing the regulatory burden on lawyers and the costs to the regulator. It also allows lawyers a degree of flexibility in organising their CPD activities over the course of the cycle, subject to the minimum annual requirements. A change from the current reporting cycle would require changes to the Uniform Law regulations.

New Zealand allows lawyers to file their declarations of CPD compliance at any time during the CPD year, and while the declarations are mandatory, they are not tied to the renewal of a practising certificate. The review will consider whether to recommend a similar approach for Victoria, although it would also require changes to the Uniform Law.

### **Exemptions**

The CPD Rules provide for a range of exemptions for barristers<sup>63</sup> and solicitors<sup>64</sup> that may be granted on application to the VLSB+C. Both sets of rules include illness, disability, absence from practice (e.g. due to parenting leave), hardship or special circumstances. The Solicitors CPD Rules also include other examples, such as the location of the solicitor's legal practice, or practice for more than 40 years by a solicitor who is not practising as a principal.

In the CPD year ending 31 March 2019, the LIV granted 741 exemption applications in full or in part. The vast majority of applications (529) were for absence from practice, with the next most common category being reduced hours or casual work (154).

The review seeks the views of lawyers and other stakeholders about whether the existing exemptions are appropriate and if the process is working satisfactorily.

### **Technical issues – Questions**

*43. Do you think that the CPD scheme should move to a triennial reporting basis, subject to a minimum annual activity requirement?*

*44. Do you have any comments on the CPD scheme's exemption processes?*

### **Other issues**

*45. Are there any other issues that you think the review should consider in preparing its report?*

## 5 Next steps

The review is using this Issues Paper and the accompanying Executive Summary Paper to seek contributions from lawyers and others with an interest in CPD. Questions directed at lawyers' experience of the current CPD scheme are included in the paper, as a means of gathering information about particular issues, but lawyers and others should feel free to provide comment on other issues as well. These consultation questions are also available as a separate document on the [VLSB+C website](#).

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.

Comments and submissions can be provided to: [cpdreview@lsbc.vic.gov.au](mailto:cpdreview@lsbc.vic.gov.au)

The closing date for comments and submissions is **5pm Friday 17 July 2020**.

The review will be engaging with the LIV and the VicBar as well as educational and regulatory bodies in Victoria and elsewhere in Australia. More information is available on the [VLSB+C website](#).

Once consultations are complete, a report will be prepared for the VLSB+C's consideration.

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## Endnotes

- 1 In Victoria, the Uniform Law is contained in Schedule 1 of the *Legal Profession Uniform Law Application Act (Vic) 2014*
- 2 Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 and the Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015.
- 3 Victorian Legal Services Board *Continuing Professional Development Policy*, accessed at [https://lsbc.vic.gov.au/sites/default/files/2020-02/Policy-Continuing\\_Professional\\_Development-2016.pdf](https://lsbc.vic.gov.au/sites/default/files/2020-02/Policy-Continuing_Professional_Development-2016.pdf)
- 4 The key entities are the Law Council of Australia (for solicitors), the Australian Bar Association (for barristers), and the Uniform Law's Legal Services Council.
- 5 See e.g. M S Knowles, E F Holton III, & R A Swanson *The Adult Learner* (2011), 7<sup>th</sup> ed, Houston, TX: Gulf, and S B Merriam & L L Bierama *Adult Learning: Linking Theory and Practice* (2014) Josey-Bass, San Francisco
- 6 Legal Services Board (UK) *Ongoing Competence Call for Evidence*, posted on website on 21 January 2020, at <https://www.legalservicesboard.org.uk/news/ongoing-competence-call-for-evidence>
- 7 e.g. medical practitioners in the United Kingdom are required to revalidate once every five years, see General Medical Council website at <https://www.gmc-uk.org/>
- 8 e.g. Australian Health Practitioners Registration Authority, accessed at <https://www.ahpra.gov.au/Education/Continuing-Professional-Development.aspx>
- 9 Medical Board of Australia (2016) *Registration Standard: Continuing Profession Development*
- 10 CPA Australia accessed at <https://www.cpaaustralia.com.au/member-services/continuing-professional-development>
- 11 P Henderson, S Wallace, J Jarman, J Hodgson *Solicitors Regulation Authority: CPD Review* (2013) Solicitors Regulation Authority, London accessed at <https://www.sra.org.uk/globalassets/documents/sra/sra-cpd-report-september.pdf?version=4a1ace>
- 12 Ibid pp 55-59
- 13 Ibid p34
- 14 Alberta Law Society website, <https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-competencies/> Note that the Alberta Law Society has recently suspended its CPD Program to allow it to “refocus its thinking and dedicate resources toward the next phase of lawyer competency”
- 15 Solicitors Regulation Authority website, <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>
- 16 e.g. Assuring Professional Competence Committee, Law Council of Australia (2017?) *What we need to do*, accessed at <https://www.lawcouncil.asn.au/resources/law-admissions-consultative-committee/assuring-professional-competence-committee>; and NSW Office of the Legal Services Commissioner (2012) *Assuring Competence in a Changing Legal Services Market*, accessed at [http://www.olsc.nsw.gov.au/Documents/assuring\\_competence\\_changing\\_legal\\_services\\_market\\_letr\\_july20121.pdf](http://www.olsc.nsw.gov.au/Documents/assuring_competence_changing_legal_services_market_letr_july20121.pdf)
- 17 Bar Standards Board (2019) *Continuing Professional Development Scheme Evaluation Project – Final Report* accessed at <https://www.barstandardsboard.org.uk/resources/resource-library/irn-research---bsb-cpd-evaluation-research-report---final-pdf.html> Note that the website link describes the report as final, but the cover page of the report refers to it as the second draft of the report.
- 18 Ibid, p53

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- 19 See e.g. C Parker, A Evans, L Haller, S Le Mire, R Mortensen (2008) *The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy and Behaviour* 31:1 UNSW Law Journal 158
- 20 The Royal Commission's website is at <https://www.rcmpi.vic.gov.au/>
- 21 Henderson n11 at p59
- 22 Ibid pp 44-45
- 23 Rule 9(1)(b), Barristers Rules, see n2
- 24 Susskind R, Susskind D (2015) *The Future of the Professions* Oxford University Press
- 25 e.g. Rules of the State Bar of California, Title 2 Division 4 Rule 2.72(A)(2), website at <http://www.calbar.ca.gov/Attorneys/MCLE-CLE/Requirements>
- 26 Rule 1.5, Continuing Professional Development Scheme Rules 2004, Victorian Lawyers RPA Ltd (Law Institute of Victoria)
- 27 Ipsos (2020) *Sexual Harassment in the Victorian Legal Sector*, Victorian Legal Services Board + Commissioner,
- 28 e.g. Kelk N, Luscombe G, Medlow S, Hickie I. (2009) *Courting the Blues: Attitudes towards depression in Australian law students and lawyers*, Brain and Mind Research Institute, Sydney
- 29 See VLSB+C Policy: *Grant of a Principal Practising Certificate* accessed at [https://lsbc.vic.gov.au/sites/default/files/2020-02/Policy-Grant\\_of\\_Principal\\_Practising\\_Certificate-2018.pdf](https://lsbc.vic.gov.au/sites/default/files/2020-02/Policy-Grant_of_Principal_Practising_Certificate-2018.pdf)
- 30 Henderson n11 at p 67
- 31 e.g. New York State CLE Program Rules §1500.12; England and Wales Bar Standards Board Handbook Part 4 Section C
- 32 Rule 9(1) Legal Profession Continuing Legal Education Rules 2012 (Singapore)
- 33 T Sklar, Y Taouk, M Spittal, M Bismark, D Studdert, R Patterson (2019) *Characteristics of Lawyers Who are Subject to Complaints and Misconduct Findings*, Arizona Legal Studies Discussion Paper 18-29, University of Arizona
- 34 Ibid pp5-7
- 35 See n7
- 36 Rule 7, Solicitors CPD Rules; rule 7, Barristers CPD Rules, see n2
- 37 Rule 14, Legal Profession Rules 2009 (WA)
- 38 e.g. The CPD regulations previously in force in England and Wales, cited in Henderson, n11 at p.20
- 39 By-Law 6.1, subsection 2(2) Ontario Law Society By-Laws
- 40 Henderson n11, pp 84-85
- 41 e.g. Western Australia Legal Practice Board Application for Approval as a QA provider of CPD at <https://www.lpbwa.org.au/Documents/Legal-Profession/Continuing-Professional-Development/CPD-Form-1-Application-for-Approval-as-a-QA-Provid.aspx>
- 42 Para 9 Solicitors Regulation Authority *Code of Conduct for Firms*, at <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/>



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- 43 Rule 9, Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education—Continuing Professional Development) Rules 2013, see also New Zealand Law Society *Self-audit status – background information*, accessed at <https://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/continuing-professional-development/self-auditing-organisations>
- 44 e.g. Henderson n11
- 45 Ibid at p 64
- 46 Ziegler C, Kuhn J *Is MCLE A Good Thing? An Inquiry Into MCLE and Attorney Discipline* accessed at [https://www.clerereg.org/assets/pdf/Is\\_MCLE\\_A\\_Good\\_Thing.pdf](https://www.clerereg.org/assets/pdf/Is_MCLE_A_Good_Thing.pdf).
- 47 Cited in Zeigler, *ibid* p6
- 48 C M Greer quoted in Zeigler, *ibid* p6
- 49 See Law Society of Ontario website at <https://lso.ca/lawyers/enhancing-competence/continuing-professional-development-requirement/failure-to-comply>
- 50 Section 54, n1
- 51 Rule 12 Barristers CPD Rules, n2
- 52 Rule 12 Solicitors CPD Rules, n2
- 53 See Psychology Board of Australia (2015) *Registration Standard: Continuing Profession Development*
- 54 See Solicitors Regulation Authority website at <https://www.sra.org.uk/sra/corporate-strategy/sub-strategies/enforcement-practice/competence-standard-service>
- 55 See Law Society of British Columbia website at <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/continuing-professional-development/recording-cpd-hours/>
- 56 *LIV Annual Report of CPD Compliance Outcomes 2018-19*
- 57 Section 3(e), n1
- 58 Legal Profession Uniform Law Application (Practising Certificate Fees) Regulations 2017 - Regulatory Impact Statement p 30
- 59 See New Zealand Law Society website at <https://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/continuing-professional-development/self-auditing-organisations>
- 60 Section 256, n 1
- 61 e.g. California, n20
- 62 e.g. chartered accountants – see Chartered Accountants ANZ Regulations CR7 at <https://www.charteredaccountantsanz.com/member-services/member-obligations/regulations-and-guidance/australian-regulations>
- 63 Rule 13 Barristers CPD Rules, n2
- 64 Rule 16 Solicitors CPD Rules, n2