

# GETTING THE POINT?

**REVIEW OF CONTINUING PROFESSIONAL DEVELOPMENT  
FOR VICTORIAN LAWYERS**

**CHRIS HUMPHREYS**  
November 2020



## TERMS OF REFERENCE

The VLSB+C has engaged the consultant to investigate and report on:

1. The effectiveness of the current CPD scheme as a learning and development tool, and the extent to which the scheme benefits Victorian lawyers and consumers of legal services. This should include:
  - consideration of the quality, accessibility, relevance, and cost of CPD;
  - lawyers' and other stakeholders' views on the current state of CPD, including the auditing function as well as whether the scheme is meeting their needs; and
  - the suitability of the current scheme for assisting lawyers in the evolving legal services market.
2. The effectiveness of the VLSB+C's policy on CPD and auditing function, and whether these are aligned with our current strategy.
3. Potential opportunities where the VLSB+C can achieve greater efficiency and improve outcomes, and the potential risks and challenges of these opportunities, including looking at other jurisdictions.
4. Any other matters necessary to satisfactorily resolve the matters set out in paragraphs 1-3, including any refinements or improvements to the Uniform law scheme.

## TERMINOLOGY AND ABBREVIATIONS

**Admission Rules** Legal Profession Uniform Admission Rules 2015 (NSW)\*

**Application Act** *Legal Profession Uniform Law Application Act 2014* (Victoria)

**Barristers CPD Rules** Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015 (NSW)

**In-house Counsel** a lawyer who practises as an in-house counsel to a non-legal private corporation or enterprise

**CPD** Continuing Professional Development

**CPD providers** are entities, including the Law Institute, Victorian Bar, in-house and commercial providers that deliver CPD activities

**CPD stakeholders** refers to any person or body with a substantial interest in the CPD framework, e.g. all providers as well as academic and government entities and industry associations e.g. the Law Institute, the Victorian Bar

**CPD Rules** describes the Barristers CPD Rules and Solicitors CPD Rules collectively

**Ethics** When capitalised refers to the Ethics and Professional Responsibilities subject matter area under the CPD Rules

**Law Institute** Law Institute of Victoria

**LPLC** Legal Practitioners' Liability Committee. The LPLC is the professional indemnity insurer for Victoria's barristers and solicitors

**LSC** Legal Services Council

**Newly admitted lawyers** Solicitors with less than 3 years' post admission experience

**PAE** Post Admission Experience

**PLT** Practical legal training

**Practice Management** When capitalised refers to Practice Management and Business Skills subject matter area under the CPD Rules

**Questionnaire** Questions series produced to accompany the CPD Review 'Issues Paper' and available at Appendix C

**Solicitors CPD Rules** Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 (NSW)

**SRA** Solicitors Regulation Authority of England and Wales

**SLT** Supervised legal training

**Uniform Law** The Uniform Law is Schedule 1 to the Legal Profession Uniform Law Application Act 2014 (Victoria)

**VLSB+C** Victorian Legal Services Board + Commissioner

\* Note that while the Uniform Law is a schedule to the Victorian Application Act, rules made under the Uniform Law are made in New South Wales and applied in Victoria.

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## FOREWORD

### **CONTINUING PROFESSIONAL DEVELOPMENT – CPD – HAS ALWAYS BEEN A PART OF LEGAL PRACTICE, ALTHOUGH IT HAS NOT ALWAYS BEEN IDENTIFIED BY THAT NAME.**

The legal profession, like any profession, values the achievement of knowledge and experience and it expects its members to apply themselves to maintaining and updating their knowledge and skills. It also expects them to uphold high standards of impartiality and integrity while providing the best possible advice and advocacy for their clients.

These characteristics are not just a matter of professional pride and principle. They are also part of the agreement by which government and society allow lawyers to claim an exclusive right to practise law, with all the social and economic benefits that flow from that status. Such an exclusive right is also a key element in the maintenance of the rule of law, by which people and businesses can be confident that their rights and obligations are accurately and fairly interpreted and applied.

The conventions and structures of legal practice have been greatly challenged over the past 50 years by a host of factors with which we have become familiar – technology, globalisation, demands for greater accountability and transparency, increasing numbers of lawyers, changing demographics including many more women lawyers, increasing competition within the profession and from other professional service providers, alignment with other jurisdictions, the growth of alternative dispute resolution, concerns about consumer protection and access to justice – to name just some of the recurrent topics that have driven debate and reform.

Regulation of the profession, and CPD in particular, has not been immune from these changes. CPD became more or less uniform across all Australian jurisdictions earlier this century and it also became mandatory for all practising lawyers. However, it has not been much scrutinised in recent years, despite a growing awareness of the inadequacies of the current scheme. The Victorian Legal Services Board and Commissioner – the VLSB+C – asked me to review the current arrangements and provide a report on how they could be improved.

This report is the result of my investigation. The CPD system is not broken, but it needs improvement to reflect more contemporary approaches to adult learning and professional development. The annual 10-point threshold is useful for ensuring a minimum commitment from all practising lawyers but has a negative impact on the way that they think about their

learning needs and seek out relevant learning and development opportunities.

To counteract the threshold's influence, I have recommended the development of a competency framework for lawyers that will give greater weight to the whole basket of skills that are needed for contemporary legal practice. I have also recommended many related changes that will shift the focus of activity from compliance to genuine learning and development.

The other key recommendation is the establishment of a steering committee to guide the implementation of this report and the development of CPD more generally. To date, the VLSB+C has not been active in the CPD field, notwithstanding its key regulatory role in Victoria for promoting and regulating professional competence. The lack of its presence has arguably allowed the policy discussion around CPD to drift and so I have recommended the creation of the steering committee to reinvigorate the discussion and for the VLSB+C, the Law Institute of Victoria and the Victorian Bar Council, to take a leadership role in Victoria. The committee should also be able to draw on the skills and experience of other stakeholders in its composition and work.

I have greatly enjoyed the opportunity to investigate these issues, to see how other jurisdictions and other professions approach the topic, and to work out how useful changes could be made in Victoria.

I have also enjoyed the contact with lawyers throughout Victoria, unfortunately always through online meetings during these COVID-affected times, and especially through the focus groups that were conducted. I greatly appreciated the time taken by the participants to share their experiences and views, and their willingness to engage in the conversation. Similarly, the respondents to the questionnaire went well beyond providing simple yes/no answers and gave the review the benefit of their many insights.

Those involved in delivering CPD and monitoring its outcomes in Victoria and elsewhere – lawyers associations, providers, academics and regulators – also gave freely of their time and I was grateful that so many supported the review and welcomed the opportunity to advocate for improvements. Their contributions were informed, thoughtful, and integral to shaping its recommendations.

Finally, I would like to express my appreciation to the VLSB+C, and in particular, its CEO and Commissioner, Fiona McLeay, for giving me the opportunity to undertake this absorbing project. I have greatly appreciated Fiona's leadership, support and



commitment to reform. I would also like to thank Natalie Neal, the experienced and skilful policy officer who has guided me with her understanding of how CPD and the wider regulatory system works. Natalie also ensured that the review process ran as smoothly as it did, all with enthusiasm and good humour. I am also grateful to Michelle Marfurt and Kerri-anne Millard at the VLSB+C for their constructive support and guidance, and to Kate Harris, Jared Muser and Julie Tanish for their efforts in supporting the innumerable meetings, and in processing the submissions and questionnaire responses.

The legal profession faces many challenges in the coming years. The development of a relevant and effective CPD scheme is part of a wider and evolving discussion between all stakeholders about the best way to respond to those challenges. I hope that this report will assist that discussion.

**CHRIS HUMPHREYS**

The CPD system is not broken, but it needs improvement to reflect more contemporary approaches to adult learning and professional development. The annual 10-point threshold is useful for ensuring a minimum commitment from all practising lawyers but has a negative impact on the way that they think about their learning needs and seek out relevant learning and development opportunities.

## OVERVIEW AND SUMMARY

**WHILE THE LEGAL PROFESSION HAS A LONG TRADITION OF LEARNING AND DISCOURSE, IT HAS A RELATIVELY BASIC APPROACH TO THE LEARNING REQUIREMENTS OF ITS MEMBERS ONCE THEY HAVE COMMENCED PRACTICE.**

Its scholastic roots appear not to have been allowed to grow and support the wider development of the skills necessary for competent, contemporary legal practice.

The reverence for knowledge espoused, and genuinely felt, by many in the profession focuses on the acquisition of knowledge about the content of the law. While this focus is valuable, it is insufficient to equip a lawyer with the skills needed to apply the law, to conduct a business, to advise clients or employers, to make difficult ethical choices. Comprehensive learning is not embraced as an integral part of a practice in which a lawyer reflects systematically on their strengths and weaknesses and how to become a more effective lawyer.

Many lawyers enjoy the practice of law and stretch their knowledge by engaging in substantial further development programs. Others seek only to acquire the mandatory ten points of professional development each year, seeking out seven that deal with their particular area of practice or interest, and scrabbling around in February and March to find the minimum, one required point for each of the other streams – ethics, professional skills and practice management.

Nor have the learning modes employed for professional learning and development evolved far beyond the traditional classroom approach to teaching. Whether the teaching occurs face to face or online, much of the content is delivered by a presenter with insufficient engagement with the lawyers who are attending, many of whom might already be experts in the field.

Such programs are relatively easy and cheap to develop and deliver, and are familiar to lawyers who gained their primary knowledge through university lectures. There is little accounting for the many and varied forms of effective adult learning, the need for practical engagement, for continuity of engagement, or the unsuitability of classroom methods for the acquisition of professional, business or ethical skills. It leads to frustration for lawyers and providers and gives CPD a bad name.

The contrast with medical practice and most other professions is stark. In medicine, continued learning and development is an integral and essential part of practice. It is expected that doctors will reflect on their practice, will keep journals, engage with their peers in discussion groups and to review their work, as well as attend seminars and conferences.

While law and medicine are very different in their practice and organisation, other, non-medical professions, such as accountancy, have also been far more active in developing learning programs and competency frameworks for their members. Some professions require up to 50 hours of learning and development activities each year, some of which are private study, some of which are facilitated or peer-enabled.

These deficiencies in CPD are not just a concern for the lawyers who care about professional standards and maintaining the market relevance of legal services. The need for CPD programs has long been justified by the need to ensure that the claimed public privileges of practice are matched by a commitment to ensuring that lawyers are competent and unlikely to harm clients through negligence or misconduct.

Regulatory action in this field is tempered by the recognition that adult learning is most effective where there is a professional culture of learning and reflection, that adult learners are intrinsically self-motivated, and that they are less responsive to mandatory compliance regimes. Accordingly, regulators must focus on the ‘soft’ tools of persuasion and improving available resources and activities, while ensuring that harder-edged options are deployed to set a minimum level for compliance and for areas of genuine risk.

CPD is not, on its own, a panacea for the problems of the profession. Suggestions to the review for mandatory CPD activities have been treated cautiously, as the logistics of delivering programs for all of Victoria’s 24,000 lawyers would be so large that there would be a significant risk that they would be poorly designed and targeted. They would be an inadequate substitute for a more comprehensive, integrated program of reform. There is much that can be achieved by active support for new and innovative approaches that provide better resources in problem areas and lift the bar of practice and expectations.

At its best, CPD helps a lawyer to integrate their career with their other personal aspirations and development. But learning and development after admission to practice often becomes a matter of ad hoc courses and a hope that learning on the job is really leading to skills acquisition, even after 10 or 15 years of practice. CPD offers the lawyer the chance to make lifelong learning a reality, but its potential is unrealised if it is treated as just another diversion from the demands of a busy practice.

CPD for the legal profession is characterised by a number of problem dilemmas:

- a compliance structure that is simple and sets a basic requirement that all lawyers must meet, but that also encourages a culture of tick-the-box compliance at the expense of a more effective, reflective approach to learning and development
- a legal culture that values subject matter expertise, but is reluctant to engage in purposeful development of other necessary skills for practice competency – professional skills, practice management and business skills, and ethics and professional responsibility
- a market that is fragmented and characterised by a wide range of providers offering mostly free or low-price offerings. The demand side is characterised by a large number of lawyers providing a wide range of legal services who, for a variety of reasons, are unwilling or unable to invest significantly in their ongoing development. Faced with strong competition and somewhat reluctant purchasers, providers are unwilling to invest in higher value, more expensive and customised products that would deliver better learning outcomes.
- a lack of institutional structures such as a competency framework and governance bodies that could guide the improvement of CPD in Victoria.

This report has been organised using a similar structure to the Issues Paper that was released in June 2020:

**Section 1** provides the context for the review and describes the methodology that was adopted.

**Section 2** describes the CPD framework in Victoria, including the legislative arrangements and the CPD Rules.

**Section 3** provides a brief description of CPD arrangements in other Australian jurisdictions and overseas, and for other professions.

**Section 4** examines the principles for effective adult learning and describes the current arrangements and main forms of CPD activity in Victoria.

**Section 5** introduces the concept of a competency framework to provide a more comprehensive basis for CPD, as well as examining the needs of more experienced lawyers, newly admitted lawyers and lawyers working in different types of practice.

**Section 6** examines the four currently prescribed subject areas for CPD, focusing particularly on Ethics CPD, as well as examining the options for prescribing new topics for mandatory CPD activities.

**Section 7** provides a synopsis of the operation of the CPD market in Victoria, as well as discussing the merits of an accreditation system, which was raised for discussion in the Issues Paper.

**Section 8** examines the regulator's role in CPD, including the merits of retaining the 10-point threshold requirement, and specific issues such as audit and risk requirements.

**Section 9** discusses the need for leadership and action to implement the recommendations and recommends the establishment of a steering committee to take the CPD agenda forward.

The report's key recommendations that will improve CPD for the Victorian legal profession are:

- development of a competency framework that describes the core skills for practising lawyers, differentiated by levels of experience and expertise
- production of resources for lawyers that provide information, guidance and templates about CPD activities, including reflective practice and planning
- working with the Law Institute, Victorian Bar and CPD providers to identify ways in which more effective, customised activities can be designed and delivered
- raising the profile and strengthening the resources available for CPD in key areas such as technology and the law, sexual harassment, family violence, diversity and inclusion, and health and wellbeing
- improving the approach to CPD Ethics programs
- developing a more active approach to identifying risk and linking CPD programs to identified risks
- using the CPD audit process to gather better information about risk and lawyers' use of CPD
- establishing a CPD Steering Committee with representatives from the Law Institute, Victorian Bar, lawyers not in private practice, and an academic or other expert to implement the review's recommendations, in consultation with other stakeholders and
- strengthening and re-orienting the profession's culture of learning through leadership and communication of the new approaches.

In pursuing these objectives, the VLSC+C should be mindful of the desirability of a uniform approach to CPD across the Australian federation and recognise the limits of its powers in relation to the Legal Profession Uniform Law (the Uniform Law).

The task should be approached as a collaborative project with the Law Institute and Victorian Bar as well as other stakeholders. It should be underpinned by the recognition that more effective outcomes will be delivered by activities that are designed to be useful, relevant and engaging than those that are delivered to satisfy a compliance objective.

## RECOMMENDATIONS

### Effective Learning

#### RECOMMENDATION 1

The VLSB+C should actively promote and encourage the adoption of reflective learning approaches by working with CPD stakeholders to develop guidance and template materials that would assist lawyers to consider their learning and development needs and to prepare learning and development plans.

#### RECOMMENDATION 2

- a) The VLSB+C should work with CPD providers to identify ways that CPD activities could more fully incorporate adult learning principles, especially the programs delivered in the Professional Skills, Practice Management and Business Skills, and Ethics and Professional Responsibility subject areas.
- b) The VLSB+C should work with CPD stakeholders to support the establishment of discussion groups and other communities of practice for lawyers with common interests.
- c) The VLSB+C should work with CPD stakeholders to develop guidance materials to assist lawyers who are presenting CPD sessions to structure and deliver their presentations using adult learning principles to achieve better engagement, satisfaction and positive learning outcomes.

#### RECOMMENDATION 3

The VLSB+C should seek changes to the Uniform CPD Rules to:

- a) recognise private study of any materials undertaken for the purpose of increasing a lawyer's knowledge and/or skills relevant to their practice needs and aspirations
- b) remove the five-point limit in the Solicitors CPD Rules for audio/visual materials that are interactive, and
- c) permit private study that is not interactive to be counted, up to a limit of five hours, and if recorded by the lawyer in a learning diary.

### Relevant Learning

#### RECOMMENDATION 4

The VLSB+C should establish a Competency Framework Working Group as a sub-group of the CPD Steering Committee (see Section 9) to undertake development of a competency framework for Victorian lawyers.

#### RECOMMENDATION 5

The competency framework should be developed incrementally and should not be overly prescriptive. It should initially focus on areas of greatest need and utility, including the competency skills for newly admitted lawyers.

#### RECOMMENDATION 6

To reduce the size of the task, the development of the competency framework should draw on work already undertaken by professional associations (including non-legal professional associations in respect of generic skills), by law firms and by legal regulators in other jurisdictions.

#### RECOMMENDATION 7

- a) The VLSB+C should encourage the development of mentoring programs by its stakeholders for lawyers to participate in and count towards their CPD goals.
- b) Mentoring should only count towards CPD goals if the mentor has undertaken training, if it is consistent with the programs developed by CPD stakeholders, and if a learning journal is kept by the mentor or mentee. There should be a cap on the number of hours mentoring that can be counted towards CPD goals.
- c) If the VLSB+C forms the view that mentoring is not covered by the current Solicitors CPD Rules, it should seek to expand the definition of CPD formats to include mentoring. It should consult with the Victorian Bar before approving mentoring for purposes of the Barristers CPD Rules.



**RECOMMENDATION 8**

The VLSB+C should investigate the options for ensuring that CPD undertaken by newly admitted solicitors during their supervised period of practice and barristers within their first three years of practice helps them to develop values and behaviours that will sustain their career, including in the areas of ethics, diversity and inclusion, sexual harassment, family violence, and health and wellbeing. One option would be to make completion of such requirements a precondition for the grant of an unrestricted practising certificate.

**RECOMMENDATION 9**

Newly admitted solicitors should be required to keep a CPD learning plan and reflective journal about their CPD activities during their supervision period.

**RECOMMENDATION 10**

The VLSB+C should work with its CPD providers to identify and support CPD activities that more satisfactorily meet the needs of lawyers not in private practice.

**Subject Areas****RECOMMENDATION 11**

- a) The VLSB+C should publish guidance on the topics that are covered by each subject area, especially in the Practice Management and Business Skills, and Professional Skills areas.
- b) The VLSB+C should publish guidance to clarify the topics that could be undertaken in the Practice Management and Business Skills stream by lawyers who work in the corporate, government and community sectors or are at the Victorian Bar.

**RECOMMENDATION 12**

The VLSB+C should seek changes to the Uniform CPD Rules to require a minimum of five points annually to be acquired within the non-Substantive Law subject areas. The proposed CPD Steering Committee (see Section 9) should support providers to design and deliver more innovative learning programs in these areas.

**RECOMMENDATION 13**

The VLSB+C should establish an Ethics CPD Reference Group to work with the CPD Steering Committee. The Reference Group should include CPD stakeholders as well as representatives from universities and other bodies (or it could work with such experts).

The Reference Group's agenda should include:

- Supporting the development of learning templates and guidance for delivering Ethics CPD training
- Supporting the development of more in-depth Ethics CPD training modules for those with a special interest in, or responsibility for, lawyers' ethical conduct, such as Ethics Co-ordinators (see Recommendation 15(b) below)
- Identifying particular areas where ethical challenges are common, or are emerging, or where there is a gap in current Ethics CPD provision
- Working with CPD providers to support the development of Ethics CPD activities in respect of such challenges and gaps, and regularly highlighting the current challenges and gaps to the profession
- Working with specialisation committees and subject matter sections and committees to identify ethical issues that could be included in CPD courses and activities
- Working with relevant stakeholders to assess the availability of appropriate Ethics CPD activities for in-house counsel, government lawyers and community lawyers and how any gaps could be addressed.

**RECOMMENDATION 14**

The VLSB+C should amend its Policy on Management Systems for Law Practices to include an additional guideline objective of requiring law firms to have in place a process for the management of ethical issues in a firm.

**RECOMMENDATION 15**

- a) Solicitors' firms should seek to organise Ethics CPD activities for their lawyers on a whole-of-firm basis to promote a common understanding of the firm's approach to ethical issues.
- b) The VLSB+C should encourage each firm to appoint an Ethics Coordinator who would be responsible for a firm's ethics processes and for ensuring appropriate Ethics CPD training for the firm's lawyers.

**RECOMMENDATION 16**

Ethics CPD should be a strong focus for the increased CPD requirements for newly admitted lawyers recommended at Recommendation 8.

**RECOMMENDATION 17**

The VLSB+C should continue to implement the regulatory strategy it developed in response to its survey on sexual harassment in the profession. The strategy's progress should guide any decision on the use of CPD for this topic.

**RECOMMENDATION 18**

The VLSB+C should actively promote and support training in the areas of diversity and inclusion, family violence, and health and wellbeing.

**RECOMMENDATION 19**

The VLSB+C should actively promote and support programs for lawyers to:

- a) gain an understanding of the technologies commonly used by lawyers, their clients and the courts, the legal frameworks for such technologies, and the risks associated with them; and
- b) broaden lawyers' abilities to recognise, use and develop technologies to improve their services and create new types of services.

**CPD Providers****RECOMMENDATION 20**

The VLSB+C should encourage employers to set aside a minimum amount each year to cover or contribute to their employee lawyers' CPD expenses.

**RECOMMENDATION 21**

The VLSB+C should monitor the quality of CPD programs in non-Substantive Law programs and keep under consideration the possibility of introducing a voluntary accreditation system to address any continuing concerns about their effectiveness.

**Regulator's Role****RECOMMENDATION 22**

The VLSB+C should not seek to abolish or change the 10 CPD point minimum threshold requirement.

**RECOMMENDATION 23**

The VLSB+C should revise the content of its CPD policy to reflect the approach outlined in this report. It should also consider developing a page on its website

that provides more information and assistance about CPD. It could include:

- information about relevant legislation, rules, policies and guidance
- competence statements as they are developed, and updates on the progress towards a competency framework
- learning development plans and guidance around reflective practice, including examples and templates
- current and emerging areas of risk
- a learning register for recording CPD activities, which could also provide reminders and suggestions relevant to the lawyer's preferences.

**RECOMMENDATION 24**

The VLSB+C should regularly liaise with CPD stakeholders to identify and publicise particular areas of practice that present current or emerging competence risks. It should also conduct an annual workshop to identify current and emerging risks that could inform the development of CPD programs.

**RECOMMENDATION 25**

The CPD Audit program should continue to develop its approach to include both a random element and lawyers who have either come to the attention of the VLSB+C previously or who practise in areas of identified risk.

**RECOMMENDATION 26**

The CPD Audit program should also use the opportunity of an audit to gather information about lawyers' preferences and engagement with different types of CPD activities.

**Going forward – Leadership and Action****RECOMMENDATION 27**

The VLSB+C should establish a CPD Steering Committee with representation from the Law Institute and Victorian Bar to implement the recommendations of this review that are accepted by the VLSB+C. The Committee should also include at least one expert in CPD, adult education or another relevant field, and one lawyer from the in-house, government or community sectors.

**RECOMMENDATION 28**

The Steering Committee should develop a three-year plan for implementation of the review and should report back to the Board of the VLSB+C on a regular basis.

SECTION

1

INTRODUCTION





# 1 INTRODUCTION

## 1.1 Purpose of the review

In a fast changing world, many professions are re-evaluating their roles, their services and their relations with their clients and the broader community.

Old paradigms and conventions are scrutinised to see if they are still fit for purpose, and if not, whether they should be re-modelled or thrown out and replaced with something more relevant and useful. Approaches to education and training for professional practice are included in the fields that are being interrogated for their fitness for purpose.

The legal profession is no different to other professions in this respect. Its modes and services are rapidly diversifying as national borders open up to international firms or create overseas opportunities for Australian firms; as new technologies redefine the skills that lawyers need and the composition of the teams that they work with; as clients adopt new technologies for their services and expect their lawyers to keep up; as multi-service firms enter the market offering a new suite of one-stop shop services; and as the number of graduates in search of satisfying and rewarding careers continues to increase.

More lawyers work for corporations or governments, the numbers at the Bar are increasing, and almost half of all solicitors work in small to medium-sized firms in the suburbs and regions, servicing the needs of their communities and local businesses. Over half of all lawyers are women, changing the profession's gender narratives. Competition is fierce at all levels, and the profession continues to be exposed to public scrutiny about its standards and performance.<sup>1</sup>

The COVID-19 pandemic hit Victoria particularly hard and has caused hardship for many firms and individual lawyers. It has also opened up new ways of practice and given many lawyers new insights into the use of online technology, and the possibilities and limitations of home-based working.

The ways in which lawyers qualify for practice and maintain and update their skills have not been immune from scrutiny and criticism. Universities are constantly looking for new ways to improve their offerings to students and respond to needs in the legal services sector. The old system of articled clerkships for graduates in Victoria was replaced by a system of supervised legal traineeships in 2008, following a review by Associate Professor Susan Campbell (the

Campbell Review).<sup>2</sup> Many firms stopped using trainees, such that the practical legal training courses offered by authorised education providers became the preferred route to admission to practice.

A more radical approach to pre-admission requirements has been taken by England and Wales, which have overhauled their admission system and will launch the Solicitors Qualifying Examination (SQE) in September 2021.<sup>3</sup> The SQE will cover knowledge of the law and practical legal skills. A tertiary degree will be a necessary prerequisite but need not be a law degree. There will also be a requirement for two years qualifying work experience.

Continuing Professional Development (CPD) is the third dimension of legal training and development, complementing the degree and pre-admission training stages. It has also been subject to reconsideration in many jurisdictions, but not recently in Australia. There has been little significant change since the four core subject areas, prescribed delivery modes and 10 credit point requirement became mandatory and relatively uniform across Australia in the decade from 2005 to 2015. The Campbell Review considered CPD but it focused on iterative improvements and did not recommend wide-ranging changes to the scheme.

The Victorian Legal Services Board + Commissioner (VLSB+C) is the body responsible for the management of most of Victoria's responsibilities under the Legal Profession Uniform Law (the Uniform Law).<sup>4</sup> It is responsible for ensuring Victorian lawyers' compliance with CPD requirements as part of its licensing functions under the Uniform Law. More broadly, it is responsible for upholding the objectives of the Uniform Law, including:<sup>5</sup>

- 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 is concerned that for many lawyers, CPD has become a box-ticking exercise that they undertake each year to ensure that they can renew their practising certificates. The purpose of CPD is to ensure that lawyers maintain their competence and that the public can be confident that lawyers are maintaining their skills. The imposition of the mandatory points

<sup>1</sup> Data quoted in this section is from the VLSB+C Annual Report 2018-19, Appendix 2, pp41-50

<sup>2</sup> S Campbell (2006) Review of Legal Education Report – Pre-admission and Continuing Legal Education, Department of Justice, Melbourne

<sup>3</sup> See Solicitors Registration Authority website at <https://www.sra.org.uk/students/sqe/>

<sup>4</sup> The Uniform Law is Schedule 1 to the Legal Profession Uniform Law Application Act 2014 (Victoria)

<sup>5</sup> Uniform Law, s3

requirement, with the associated costs imposed on lawyers, might be driving behaviours that do not support these goals.

A wide variety of CPD activities are available from a wide number of providers, including law firms providing activities for their lawyers and clients. While such a variety of choice might be beneficial for lawyers seeking to choose programs appropriate to their needs, the VLSB+C is concerned that the quality of some activities is quite low and that they are delivered with scant regard for effective learning design and delivery.

Similar concerns have been expressed by lawyers themselves and their professional associations. The Victorian Bar has commissioned a separate report by the Nous Group into its entire educational program, including its CPD offerings. At the time of finalising this report the Bar report had not been released, but it is understood that its recommendations are likely to be consistent with this review's recommendations.

This review has been commissioned to investigate the current CPD scheme's effectiveness as a learning and development framework, and the extent to which the scheme benefits Victorian lawyers and consumers of legal services. The review has also been asked to examine the role of the VLSB+C and to identify improvements that could be made, including to the CPD audit processes.

## 1.2 Review methodology

The review commenced in March 2020. The reviewer was assisted by VLSB+C staff throughout the term of the project, with particular assistance being provided by Ms Natalie Neal, senior policy officer.

**Appendix A** contains a detailed account of the phases of the review, and the organisations and people who contributed to it.

The first phase comprised a desktop review of CPD regimes in other Australian and overseas jurisdictions. The review also considered CPD regimes in the medical and accounting professions. Preliminary meetings were held with senior officers at the Law Institute of Victoria and the Victorian Bar Council. Apart from the initial inception meeting with the VLSB+C officers, all meetings were conducted online due to the restrictions imposed in Melbourne to contain the COVID-19 virus.

An Issues Paper detailing the issues that had been identified by the review as being the most relevant to its task was released on 1 June 2020. The Issues Paper contained 45 questions about the topics that it raised, and a separate questionnaire and response form was made available on the VLSB+C website. In addition, data was collected from respondents about the nature of their practice and experience. The closing date for submissions and responses to the questionnaire was initially 3 July 2020, later extended to 17 July 2020.

The evidence gathering phase of the review was composed of four principal activities:

- Consultation meetings with key stakeholders. In all, 32 meetings were conducted with stakeholders, including 10 with people in other Australian jurisdictions, England, Canada and New Zealand.
- Submissions from organisations and individuals. The review received 26 submissions from organisations, of which four were confidential, and 30 submissions from individuals.
- Questionnaire responses – 70 were received. Although low in number, the responses were highly informative and provided a useful indication of the profession's engagement with CPD in Victoria. **Appendix C** provides an analysis of the questionnaire results.
- Focus groups – the review conducted nine focus groups with different lawyer cohorts. Again, the views expressed by the participants greatly enriched the quality of the information available to the review

Figures 1 to 4 provide data about the composition of the questionnaire respondents' cohort. The distribution of location and gender for the cohort roughly correlates with the overall distribution in the profession, while data for years of experience are weighted to the more experienced segment of Victorian lawyers, with 48% of respondents having more than 20 years' experience.

Figure 4 shows that the survey sample was over-represented by solicitors with principal practising certificates (48% of the sample compared to 29% of Victorian lawyers) and under-represented by employee solicitors (10% compared to 37% overall) and barristers (4% compared to 9% overall).<sup>6</sup>

Most of the work associated with the evidence-gathering phase concluded by August 2020, after which the review analysed the results and commenced preparation of this report.



**FIGURE 1**

**GENDER**



- MALE 44%
- FEMALE 49%
- N/A 7%

**FIGURE 2**

**YEARS OF EXPERIENCE**



- < 10 YEARS 17%
- 11-20 YEARS 29%
- 20 > YEARS 48%
- N/A 6%

**FIGURE 3**

**LOCATION**



- CBD 44%
- REGIONAL 16%
- SUBURBAN 34%
- N/A 6%

**FIGURE 4**

**PRACTISING CERTIFICATE TYPE**

Sample cohort practising certificate breakdown



- BARRISTER 4%
- CORPORATE 20%
- EMPLOYEE 10%
- GOVERNMENT 11%
- PRINCIPAL WITH TRUST 19%
- PRINCIPAL WITHOUT TRUST 29%
- VOLUNTEER 3%
- NO ANSWER 4%

**FIGURE 5**

**PRACTISING CERTIFICATE TYPE**

Practising certificate breakdown for all Victorian lawyers



- BARRISTER 9%
- CORPORATE 13%
- EMPLOYEE 37%
- GOVERNMENT 12%
- PRINCIPAL WITH TRUST 15%
- PRINCIPAL WITHOUT TRUST 13%
- VOLUNTEER 1%

SECTION

2



CPD IN VICTORIA

## 2 CPD IN VICTORIA

### 2.1 Legislative framework

The *Legal Profession Uniform Law Application Act 2014* (Victoria) (the Application Act) provides the framework for regulation of the legal profession in Victoria.

The Legal Profession Uniform Law (the Uniform Law) that the Application Act applies to Victoria is contained in Schedule 1 to the Application Act.

New South Wales and Victoria are the current members of the Uniform Law scheme, with the Western Australian Parliament also considering a bill to join the scheme.

The Uniform Law establishes the Legal Services Council (LSC)<sup>1</sup> and the Commissioner for Uniform Legal Services Regulation<sup>2</sup>, which exercise general policy and oversight functions aimed at ensuring inter-jurisdictional consistency of application of the Uniform Law. Ministerial responsibility for the scheme is allocated to the Attorneys-General from each participating jurisdiction, who comprise the Uniform Law's Standing Committee.<sup>3</sup>

The Uniform Law provides for the making of Legal Profession Uniform Rules, including rules for CPD.<sup>4</sup> It is a statutory condition for the grant of a practising certificate that a lawyer must comply with the relevant CPD Rules.<sup>5</sup>

The CPD Rules' development is undertaken by the national professional associations who submit the draft rules to the LSC for formal enactment after approval by the Standing Committee.<sup>6</sup> The Law Council of Australia is the national association for solicitors and the Australian Bar Association represents barristers at the national level. Interestingly, most Australian jurisdictions whose professional associations participate in the national associations are yet to join the Uniform Law scheme.

Nevertheless, consistency between jurisdictions is a core policy objective for legal services regulation, regardless of individual jurisdictions' positions on participation in the Uniform Law scheme. The national professional associations are well placed to formulate a

consistent approach, notwithstanding the existence of different rule making bodies in non-Uniform Law jurisdictions.

The management and operation of the Uniform Law at the state jurisdictional level is undertaken by designated local regulatory authorities. The VLSB+C is the local regulatory authority in Victoria with responsibility for all of the Uniform Law's regulatory functions, with the exception of the Bar Readers Course which is the direct responsibility of the Victorian Bar. The VLSB+C is consulted during the CPD rule-making process and has some discretionary powers in relation to the content and interpretation of the Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015<sup>7</sup> (the Barristers CPD Rules). It does not otherwise have any other formal role in respect of the CPD Rules' content. However, it has the usual discretions of a regulator about how the CPD Rules are interpreted and enforced in Victoria.

The VLSB+C has power to delegate some of its regulatory functions and has delegated some CPD functions in respect of managing and auditing compliance with the CPD Rules to the Law Institute for solicitors and the Victorian Bar for barristers.<sup>8</sup> It has also developed a CPD Policy<sup>9</sup> which documents the key requirements of the CPD Rules, provides commentary on those requirements and explains its approach to its compliance functions.

Apart from the CPD Rules, the VLSB+C has a range of other powers that are relevant to the performance of its role in relation to CPD, including discretionary powers to:

- impose conditions on different types of practising certificates,<sup>10</sup> and
- ensure that lawyers comply with their obligations under the Uniform Law, the Uniform Rules and other professional obligations.<sup>11</sup>

1 Uniform Law s394

2 Ibid s398

3 Ibid ss6, 391

4 Ibid ss420(d), 424

5 Ibid s52

6 Ibid s427

7 Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015 (NSW) 2015-241

8 Instruments of delegation accessed on 20 October 2020 at [https://lsbc.vic.gov.au/sites/default/files/2020-02/Delegations-VLSB\\_external\\_delegations\\_to\\_the\\_Law\\_Institute\\_of\\_Victoria\\_2015.pdf](https://lsbc.vic.gov.au/sites/default/files/2020-02/Delegations-VLSB_external_delegations_to_the_Law_Institute_of_Victoria_2015.pdf) (solicitors) and [https://lsbc.vic.gov.au/sites/default/files/2020-02/Instrument-VLSB\\_External\\_Delegations\\_to\\_Victorian\\_Bar-2018.pdf](https://lsbc.vic.gov.au/sites/default/files/2020-02/Instrument-VLSB_External_Delegations_to_Victorian_Bar-2018.pdf) (barristers)

9 VLSB+C Continuing Professional Development Policy, accessed at <https://lsbc.vic.gov.au/resources/continuing-professional-development-policy> on 20 October 2020

10 Uniform Law s53

11 e.g. Uniform Law ss 34, 257

## 2.2 CPD rules

### 2.2.1 KEY REQUIREMENTS

The Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015<sup>12</sup> (the Solicitors CPD Rules) and the Barristers CPD Rules<sup>13</sup> are broadly similar, although there are some differences in terminology and, as noted, the Barristers CPD Rules allow for some powers to be exercised by the VLSC as the designated local regulatory authority.<sup>14</sup>

The CPD Rules require a practising lawyer to obtain a minimum of 10 CPD points (or units) each year.<sup>15</sup> The CPD Year runs from 1 April to 31 March of the following year.<sup>16</sup> The VLSC may require a barrister within the first three years of practice to undertake additional CPD activities.<sup>17</sup>

One point usually equates to one hour of activity<sup>18</sup>, although the Solicitors CPD Rules require two hours for committee activities, and attribute one point for every 1,000 words of an article. Allowances are made for exemptions and pro-rata calculations if a lawyer has not been in practice for a full year.

A lawyer may apply for an exemption from the CPD requirements for a variety of reasons, including illness, disability, parenting leave, hardship or, for solicitors, being in practice for more than 40 years.<sup>19</sup>

### 2.2.2 FORMAT REQUIREMENTS

To qualify as a CPD activity, an activity must:<sup>20</sup>

- be of significant intellectual or practical content and must deal primarily with matters related to the practice of law, and
- be conducted by a person who is qualified by practical or academic experience in the subject covered, and
- be relevant to the lawyer's professional development needs in relation to their practice of law.

The CPD Rules also specify at some length the format of activities that may qualify for points. These include:<sup>21</sup>

- seminars, workshops, lectures, conferences, discussion groups, multimedia or web-based programs, private study of audio/visual material or any other education activity
- research, preparation or editing of legal articles and books
- preparation and/or presentation of material used in a CPD activity or other forms of education for lawyers or other professionals or persons
- membership of committees and working groups of professional associations or local regulatory authorities, provided that the lawyer regularly attends the meetings,<sup>22</sup> or
- postgraduate studies relevant to the practice of law.<sup>23</sup>

The Solicitors CPD Rules require audio-visual materials used for private study to be designed for the purpose of updating a solicitor's knowledge or practice needs. They also impose a cap of 5 CPD points on such activities. There is no similar limitation for barristers.

For barristers, the VLSC may also approve any other activity. The power was used in 2015 to approve some supplementary guidance formulated by the Bar Ethics Committee.<sup>24</sup>

Some caps are imposed on particular activities by the Solicitors CPD Rules and also on barristers under the supplementary guidance for barristers.<sup>25</sup>

The VLSC CPD Policy specifically excludes volunteering at a community legal centre or at Victoria Legal Aid, as well as law reform submissions, unless the submission is prepared outside of the lawyer's employment.<sup>26</sup>

The usefulness and limits of the rules relating to CPD format are discussed further in Section 4 on Effective Learning.

<sup>12</sup> Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 (NSW) 2015-242

<sup>13</sup> e.g. Barristers CPD Rules r6(3), 6A(h)

<sup>14</sup> op cit, n7

<sup>15</sup> Solicitors CPD Rules r6.1, Barristers CPD Rules, r8(1)

<sup>16</sup> Solicitors CPD Rules r5, Barristers CPD Rules r5

<sup>17</sup> Barristers CPD Rules r11

<sup>18</sup> Solicitors CPD Rules r9, Barristers CPD Rules r7

<sup>19</sup> Solicitors CPD Rules r16; Barristers CPD Rules r13

<sup>20</sup> Solicitors CPD Rules r7.1, Barristers CPD Rules r6(1). Note that the Solicitors CPD Rule also allows for professional development to be a relevant element.

<sup>21</sup> Solicitors CPD Rules r8, Barristers CPD Rules r6A

<sup>22</sup> Note that for solicitors, the work must also be of substantial significance to the practice of law and reasonably likely to assist the solicitor's professional development.

<sup>23</sup> Barristers may also count activities associated with courses and examinations for admission to practice as a barrister.

<sup>24</sup> VLSC - Victorian Bar Continuing Professional Development Policy, accessed at <https://www.vicbar.com.au/sites/default/files/Documents/VicBar%20CPD%20Policy.pdf> on 19 October 2020

<sup>25</sup> Solicitors CPD Rules r9.2, ibid for barristers

<sup>26</sup> VLSC+CPD Compliance Policy n9 clauses 3.1.6 and 3.1.5

### 2.2.3 SUBJECT REQUIREMENTS

Lawyers must also ensure that in completing their 10 points of CPD activities, they complete at least one point in each of the practice areas that are recognised as essential elements of competent practice:<sup>27</sup>

- ethics and professional responsibility
- practice management and business skills
- substantive law (or “substantive law, practice and procedure, and evidence” for barristers)
- professional skills (or “barristers’ skills” for barristers)

The categories for barristers are also subject to any requirement of the VLSB+C. The subject areas are discussed further in Section 6.

### 2.2.4 COMPLIANCE REPORTING AND AUDIT

Each year when applying for a practising certificate, lawyers must certify to the VLSB+C whether they have complied with the CPD Rules. The CPD Rules require lawyers to keep a record of their CPD activities for at least three years.<sup>28</sup>

The VLSB+C may conduct an audit to monitor a lawyer’s compliance with the CPD Rules.<sup>29</sup> The VLSB+C has delegated this function to the Law Institute and Victorian Bar, although it retains an involvement in deciding the criteria for audit each year. The VLSB+C and its delegates may require a non-compliant lawyer to submit a plan to rectify their non-compliance.<sup>30</sup>

<sup>27</sup> Solicitors CPD Rules r6, Barristers CPD Rules r9

<sup>28</sup> Solicitors CPD Rules r12, Barristers CPD Rules r12

<sup>29</sup> Solicitors CPD Rules r14, Barristers CPD Rules r15

<sup>30</sup> Solicitors CPD Rules r15, Barristers CPD Rules r16





SECTION

# 3

**CPD IN OTHER JURISDICTIONS  
AND PROFESSIONS**

### 3 CPD IN OTHER JURISDICTIONS AND PROFESSIONS

#### THE REVIEW HAS EXAMINED CPD ARRANGEMENTS FOR THE LEGAL PROFESSION IN OTHER AUSTRALIAN AND OVERSEAS' JURISDICTIONS, AS WELL AS FOR OTHER PROFESSIONS IN AUSTRALIA.

A table documenting the research undertaken into other jurisdictions and professions is at **Appendix B**.

Australian jurisdictions are broadly similar, having agreed to adopt a common approach in 2007. Western Australia is notable because of its requirement for CPD providers to be accredited by the Legal Practice Board of Western Australia.

Key themes emerging from the review of lawyers' CPD in other jurisdictions were:

- the continuing reliance on CPD hours as a compliance tool, although the Australian jurisdictional requirements for 10 hours were lower than most other jurisdictions. Professor Julian Webb in his submission cites a study of European legal professions that found an average minimum of 14 hours/13-14 points annually.<sup>1</sup> England and Wales, and the Canadian province of Alberta were exceptions to this approach, having moved to an outcomes-based framework, which is discussed in more detail in Section 5 – Relevant Learning. New Zealand has a combined approach that requires a minimum 10 hours to be completed but which otherwise focuses on learning and development planning rather than prescribing areas of mandatory activity.
- prescription of key areas of practice to be covered by CPD in jurisdictions that require a minimum number of points.
- some willingness to use mandatory CPD to address systemic conduct issues such as diversity and inclusion, and sexual harassment, primarily in the American jurisdictions.
- a scarcity of resources to assist lawyers to reflect on and plan their learning activities, with the notable exceptions of New Zealand, Singapore and England and Wales.

- the absence of competency frameworks in most jurisdictions, apart from Canada, Singapore and England and Wales. The Canadian framework was the result of an intensive development exercise by the Canadian law societies, but was not fully integrated into the province-based educational and regulatory systems.
- the dominance of professional association providers in markets where they have retained regulatory responsibility for the profession.
- minimal use of provider accreditation systems, with some minor exceptions.

The review also examined CPD regimes in the medical and accounting professions.

The medical profession is one of a number of health professions regulated by the Australian Health Practitioners Registration Authority (Ahpra), with its domain regulator being the Medical Board of Australia. In addition, many doctors are either members of, or are affiliated for CPD purposes with, specialty colleges, such as the Australia and New Zealand College of Anaesthetists, which have their own particular requirements.

General practitioners are required to undertake 130 points of activities every three years, with 80 points gained in accredited activities, 5 points in basic life support training, and the balance through activities chosen by the practitioner.<sup>2</sup>

Medical CPD activities are in some senses the gold standard for CPD, usually incorporating a continuous, active program of CPD activities with high numbers of prescribed hours but with a strong focus on learning outcomes delivered through peer activities, review and assessment, clinical learning, encouragement of research and the keeping of study journals. Impressive as these programs are, some caution needs to be exercised in measuring lawyers' CPD arrangements against them. Differential factors include:

- medicine is science-based, with an enormous public and private research sector constantly reporting on new discoveries and treatments;

<sup>1</sup> Julian Webb submission, para 11

<sup>2</sup> See Royal Australian College of General Practitioners website at <https://www.racgp.org.au/education/professional-development/qi-cpd>

- medicine deals in matters of life and death for which risk margins are narrow and up-to-date knowledge and safe practice are essential;
- significant parts of the sector are government-based, with public hospitals promoting collegial learning and also performing roles as teaching hospitals for medical undergraduates;
- specialist colleges are well-resourced and equipped to provide relevant learning activities; and
- pharmaceutical and medical equipment suppliers compete to subsidise professional development activities (which can be a double-edged benefit).

The review also considered the CPD arrangements for chartered accountants (CAs) and certified practising accountants (CPAs). The noteworthy elements of both groups for purposes of this review were:

- the higher number of hours required, spread over a triennium (120 hours for both types of accountant, of which 90 must be formal CPD)
- the range of activities that may be counted towards CPD goals, and
- the availability of online tools and resources for members, including a skills self-assessment application for CPAs that links to a range of learning and development programs.<sup>3</sup>

3 At <https://mycapabilityplan.cpaaustralia.com.au/Introduction.html>



SECTION

# 4

**EFFECTIVE LEARNING**

A photograph of two women in a library setting. The woman on the left is older, with short white hair and glasses, wearing a light blue button-down shirt. She is smiling and looking towards the younger woman on the right. The younger woman has dark curly hair and is wearing a light-colored jacket with an orange scarf. She is holding a tablet computer and gesturing with her hands as if explaining something. In the background, there are bookshelves filled with books and other people are blurred.

## 4 EFFECTIVE LEARNING

### 4.1 Adult learning

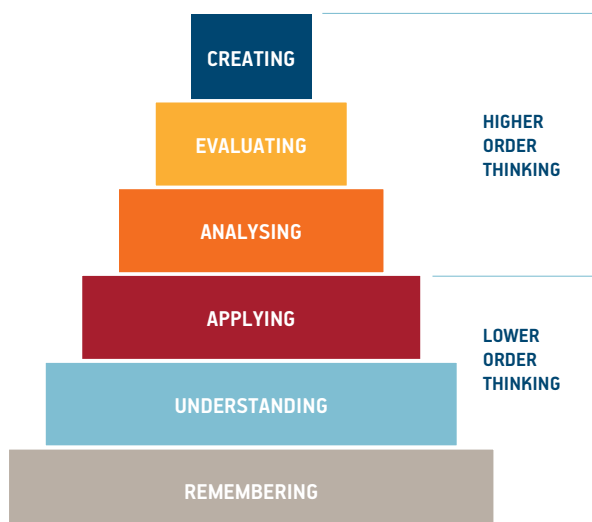
The Issues Paper flagged the importance of incorporating adult learning principles into the design of CPD activities for the profession.

Many theories of adult learning have been developed over the past 60 years to explain the different ways in which adults learn.<sup>1</sup> The theories have accompanied the growth in education and the increasing recognition of the need for lifelong learning. Some people undertake further learning, such as CPD, for vocational reasons, while others choose to engage in further learning for reasons of personal growth. A rich body of knowledge has developed about how to design and deliver engaging, effective programs, which is available to CPD providers to maximise the quality of their products and programs.

While it is beyond the scope of this review to detail the different types of learning theories, some basic points can be made:

- Learning is about more than acquiring knowledge, it is also about acquiring skills and values. Different learning approaches are needed for different types of learning – ethical attitudes are acquired differently to knowledge about taxation law, or rather, are more likely to be effectively learned by using a different learning approach.
- There are different levels of learning engagement and acquisition. Bloom's taxonomy<sup>2</sup> is a commonly used model for designing learning activities and describing learning outcomes:

**FIGURE 6: BLOOM'S TAXONOMY OF LEARNING OBJECTIVES**



- Adult learners will make their own choices about what and how they learn, based on their experience and perceptions of what skills will be useful and important for them to refresh or acquire.
- Adult learners are motivated by their own internal drivers. They are less likely to respond to external drivers, such as externally imposed requirements, unless they have chosen to submit to such requirements (e.g. to become part of an association which requires members to undertake such activities).
- Self-directed learning and learning through discussion groups and communities of practice are valuable forms of motivated, engaged learning, but guided learning is sometimes necessary to identify learning gaps and to challenge learners to acquire substantial new skills.
- Learning outcomes are improved where:
  - the activity has been chosen by the learner after reflection on their needs
  - the activity has been designed by the provider to meet the learner's needs
  - the activity is part of a planned program of activity
  - the activity allows for engagement and interactivity with the presenter/facilitator and other participants, and
  - the presenter/facilitator has high level skills.

A practising lawyer should be able to:

- recognise the value of continuing professional development
- reflect on their practice and aspirations
- identify the learning and development goals that they wish to pursue, and
- participate in activities that allow them to achieve their learning goals.

They should have access to a wide range of activities calibrated to the experience and needs of different cohorts and that offer a variety of learning modes.

Having completed a program of activity, a lawyer should be able to reflect on what they have learnt, identify the skills that they have acquired, and plan their next learning and development cycle.

<sup>1</sup> For a summary of theories, see e.g. S B Merriam & L L Bierama (2014) *Adult Learning: Linking Theory and Practice* Jossey-Bass, San Francisco

<sup>2</sup> Bloom BS, Engelhart MD, Furst FJ, Hill W, Kratwohl DR (1956) *Taxonomy of Education Objectives: The classification of educational goals*, Longmans, New York. Diagram downloaded on 29 October 2020 at <https://teachingcommons.lakeheadu.ca/learning-objectives-or-learner-outcomes-and-blooms-taxonomy>



## 4.2 CPD activities for Victorian lawyers

The range of CPD activities for Victorian lawyers is very wide, as described further in this section and in Section 7 – CPD Providers.

However, the fragmented nature of the market and the plethora of free or low cost activities could indicate a lack of engagement by the profession with the practice of learning. Nor is it necessarily limited to Victoria. For example, almost 40 years after Donald Schön's ground-breaking *The Reflective Practitioner*,<sup>3</sup> there are very few resources and materials available for the reflective practice of law, except in relation to teaching law students.

However, it is clear that some lawyers and firms are familiar with a more reflective, outcomes-based approach to professional learning. Roughly equal numbers of respondents to the CPD questionnaire undertook CPD activities as part of a cycle of reflection about their professional needs as those who did not. Principals were slightly less likely (ratio of 2:3) to have engaged in reflection while in-house lawyers were much more likely (3:1) to have done so, no doubt because of working in an organisational environment where such plans are part of a human resources framework.

A reflective, planned approach to learning and development needs is one of the best ways to overcome the compliance-driven rush to accumulate points in February and March each year. Most lawyers are under time and cost pressures that collide with the CPD calendar requirement each year, resulting in sub-optimal learning outcomes. The Leo Cussen Centre for Law commented that:<sup>4</sup>

*The demands placed on many practitioners to meet billable targets may mean that some of them do not choose CPD programs because they are quality offerings that assist them in their practices. Rather, they may choose a program because it requires the bare minimum of their time, concentration and participation. Clearly this does not deliver an ideal outcome for the practitioner or the profession.*

Despite the pressures and the tokenistic nature of some lawyers' participation, the questionnaire respondents thought that, on average, 65% of the CPD activities that they completed were useful for maintaining or improving their competency as a lawyer. The questionnaire also demonstrated that many lawyers engage fully with their CPD activities by completing many more than the required hours each year:

**TABLE 1: NUMBER OF CPD HOURS COMPLETED ANNUALLY**

CPD Hours	<10	10	11-20	21-30	>30	NR/U
No. of Respondents	1	7	32	14	14	2
%	1%	10%	46%	20%	20%	3%

Some caution should be exercised about extrapolating from these figures as the questionnaire sample is likely to contain more lawyers who take an active interest in CPD and who might therefore be more likely to undertake more activities than lawyers who did not respond.

Although the questionnaire numbers were small, when taken with the other data obtained by the review, they indicate that lawyers consider the CPD scheme to be flawed rather than broken. Such a view is consistent with the Law Institute's position that:<sup>5</sup>

*The current rules support the desire to ensure meaningful, relevant and accessible CPD for the entire profession, thereby ensuring standards of excellence in the provision of legal services. However, in consideration of the issues identified in the current scheme, improvements and/or alternatives could be implemented that will provide greater opportunity for lawyers to use CPD to enhance, develop and maintain their knowledge skills and competencies relevant to their service and/or practice as well as to comply.*

The Law Institute also drew attention to the diversity of legal practice and of Victorian lawyers, with different needs, motivations and preferences for learning and skill development.<sup>6</sup>

The CPD questionnaire asked whether respondents favoured the idea of a mandatory annual CPD plan, such as occurs in New Zealand. A clear majority (62%) rejected the idea, with only 19% in favour. Many felt that

<sup>3</sup> Donald Schön (1983) *The Reflective Practitioner- How Professionals Think in Action*, Routledge, New York

<sup>4</sup> Leo Cussen Centre for Law submission, p6

<sup>5</sup> Law Institute submission, p4

<sup>6</sup> *Ibid*, p4

such a requirement would add an unnecessary administrative burden while not delivering any useful benefits.

On the other hand, the Victorian Bar endorsed the idea of requiring learning plans to be completed:<sup>7</sup>

*All lawyers, including barristers, should be required to identify learning and development needs and activities in annual CPD plans. Doing so would facilitate tailored and effective learning, which is targeted to individual practice areas and needs. It would also ensure a planned and structured approach is taken by lawyers to their professional development, and guards against the risk that CPD becomes a purely compliance exercise with similar or repetitive CPD activities undertaken for the purpose of simply accruing points.*

On balance, the review does not think that imposing an annual requirement for a CPD plan on all lawyers would be productive. It would be more likely to be treated as another chore than as a useful way to engage with one's learning needs.

However, law is a knowledge-based profession and most lawyers are keen, at least in-principle, to engage in effective learning activities. It is unrealistic to expect change to occur unless some guidance and assistance on how to do things differently is provided.

Basic techniques and tools for lawyers to reflect on their work, their learning and development needs, and to plan activities accordingly would provide help for those who are interested in adopting a more coherent approach to their development. Reflective practice can be done relatively easily at a basic level but requires practice to develop into a more sophisticated analytical learning skill. For example, university teachers have commented that because law students are just starting out on their journey into law, they don't always have the knowledge, skills and conceptual underpinnings to reflect constructively on the material that they are being taught.

CPD providers need to be encouraged to develop more engaging CPD programs that result in genuine learning and development outcomes. This is perhaps the most difficult challenge to meet. Some of the most thoughtful and informed submissions to the review were from CPD providers who fully understand the aspirations of the CPD program and are committed to them, but who operate in a market that is not structured to deliver more effective programs. The market challenges are discussed further in Section 7-CPD Providers.

The VLSB+C should work with CPD providers to identify possible market opportunities for which better programs could be designed and developed. The non-Substantive Law subjects are least favoured by lawyers and are also the subjects that most benefit from practical, scenario-based and interactive learning experiences. These areas should be the focus of the efforts to improve CPD programs.

### 4.3 Learning modes and experiences

Learning formats that may be counted towards CPD points are prescribed in the Solicitors CPD Rules<sup>8</sup> and Barristers CPD Rules<sup>9</sup> and are summarised in Section 2.2.2. The Barristers CPD Rules are more flexible, insofar as they do not limit the number of points that might be gained in any particular format but are subject to a number of caps introduced by the VLSB+C in 2015.<sup>10</sup> They also allow the VLSB+C to approve other formats<sup>11</sup>.

Seminars, online programs (not including materials for private study) and conferences were the main types of activities engaged in by the respondents to the CPD questionnaire. Seminars (20) and workshops (16) were listed as most commonly improving the skills of the respondents. However, seminars were also listed by the highest number of respondents (19) as having improved their skills the least.

<sup>7</sup> Victorian Bar submission, p9

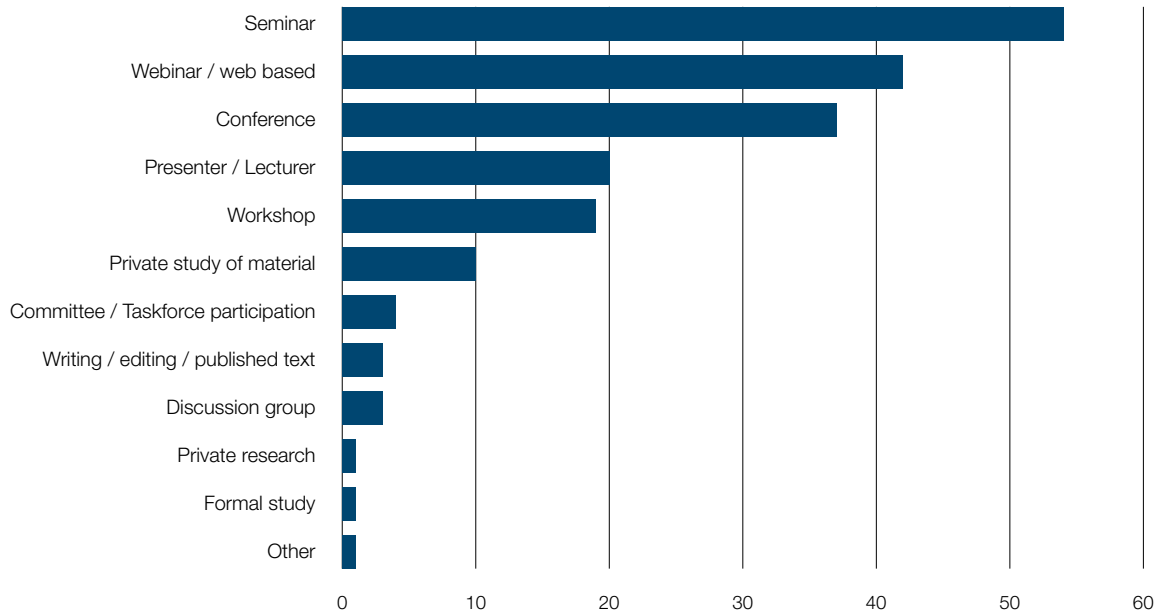
<sup>8</sup> Solicitors CPD Rule 8

<sup>9</sup> Barristers CPD Rule 6A

<sup>10</sup> op cit, Section 2, n12

<sup>11</sup> A CPD Policy formulated by the Victorian Bar's CPD sub-committee that provided guidance and limits to the hours that could be counted for some activities was endorsed by the VLSB+C in 2015.

FIGURE 7: MOST COMMONLY USED CPD FORMATS



*Seminars and conferences – the presence of other professionals in a formal setting with the opportunity to ask and hear questions.*

**Principal, regional Victoria, 10-20 years PAE**



*Webinars – Availability online; scope of topics to choose from; scope of presenters to choose from.*

**Principal, Melbourne CBD, 20+ years PAE**



*Seminar – Lack of interactivity – the communication is invariably one way from the presenter to the audience and, given time constraints, lack of genuine opportunity for audience engagement with the core skill.*

**Government lawyer, Melbourne, 10-20years PAE**



*Recordings or webinars where content is generic, one-way and/or where guidance on how the content applies in practice is missing.*

**In-house counsel, Melbourne CBD, 20+ years PAE**

**4.3.1 SEMINARS AND CONFERENCES**

Most lawyers are familiar and comfortable with seminar and conference activities, especially in relation to increasing or refreshing their legal knowledge. The Leo Cussen Centre for Law’s submission advised that their clients’ feedback showed that:<sup>12</sup>

*They are primarily concerned to be updated on legislative and procedural changes and new cases. It is not surprising that they are keen to be informed about any issue that may impact their advice to clients. These kinds of “update and latest development” sessions are ideally suited to a one-hour seminar format, as CPD clients can fit them relatively easily into their working day. These kinds of substantive law topics are the most widely attended programs followed by skills-based programs.*

High quality conferences and seminars will offer adequate opportunities for question and answer sessions, and break-out sessions for smaller group discussion. Many lawyers value the insights of their peers and the networking opportunities. However, the review heard from many lawyers who described conferences and seminars where lawyers enjoyed the opportunity to catch up with each other but paid little attention to the sessions.

12 Leo Cussen Centre for Law submission, p3

Focus group participants were critical of the variable quality of seminars and conferences:

*Many face to face seminars do have not interaction and I may as well have watched it via video link. The distinction is not about face to face v digital – it's about interactivity and engagement.*

**Participant, Government Lawyers focus group**

*There is a lot of difference between being a subject matter expert and actually delivering a good educational experience and engaging people. The vast majority of providers do not engage people well.*

**Participant, Small and sole practitioner focus group**

*Sometimes with those (seminars), the description sounds wonderful, and it ends up being just looking at the Act that you already know, so it can be disappointing. Too generalist.*

**Participant, Regional practitioners focus group**

Presenters who were expert, experienced and engaging were commonly cited as providing the best type of CPD experience. Equally, one of the most frequent criticisms of seminar and conference formats was the lack of pedagogical and presentational skills. Many lawyers seem to assume that because they are expert in the subject area and that advocacy is part and parcel of being a lawyer that they must be good presenters.

Presenters do not necessarily prepare a learning plan for their session that would document the learning outcomes sought to be achieved, how they would be achieved, how the participants' needs would be ascertained, and how the participants would be engaged. Presenters are not usually paid for their efforts, which compounds the complacency, however well-intentioned and committed they might be.

Some CPD providers use feedback surveys to assess the merits of speakers and state that poor feedback will result in the speaker not being asked to present again.<sup>13</sup> Some also provide presenters with presentation tips and vet presentations before they are delivered.

Many basic pedagogical skills and tools are available to be used to structure and deliver a worthwhile

presentation. These resources should be widely promoted such that anyone who is asked to present a CPD session is able to access materials that will help them to design and deliver an engaging and effective experience.

While conference and seminars are useful if they are well designed and delivered, adult learning research and practice has demonstrated that participants are far more likely to retain and absorb information if they have personally engaged with the material through questions, tests or interactivity with the facilitator and/or their peers. The non-substantive law streams – professional skills, practice management and ethics – are less able to be taught effectively by classroom methods and are better understood if participants have had the chance to apply the content while learning it.

The College of Law submitted that:<sup>14</sup>

*Legal practice skills or business skills are not developed in any meaningful way within one hour, usually by listening to a presentation on the skill. Skill development happens through doing. To meaningfully develop these skills, it must occur in the context of substantive knowledge through longer, structured programs with clear learning outcomes, ideally, mapped to a competency or development framework.*

*Similarly, with regards to ethics and professional responsibility, meaningful engagement with these topics is not best delivered through a presentation. Ethical considerations, often within the context of a substantive practice area, which involves reflection and discussion, is more likely to achieve the 'light bulb' moment which then has a true impact on practice.*

#### 4.3.2 ONLINE LEARNING AND PRIVATE STUDY

For solicitors, private study of audio/visual materials may only be counted if the materials were designed to update or develop a lawyer's skills, and only five hours of such study may be counted towards the annual 10-point requirement<sup>15</sup>. The cap has been removed altogether during the COVID-19 crisis. Barristers are not subject to any similar limitations in relation to online learning materials.

The restrictions for solicitors sit uncomfortably with the increasing use of online learning methods, and the unrestricted use of "multi-media or web-based

<sup>13</sup> e.g. Meeting with Jacquelyn Simon, Legalwise Seminars, 26 June 2020

<sup>14</sup> College of Law submission, p3

<sup>15</sup> Solicitors CPD Rules n r8.2, 9.2.4

program(s)” permitted by the rules. The ambiguous terminology illustrates the difficulties of prescribing rules in relation to digital learning methods, and also the inconsistent treatment of private study.

A number of respondents to the CPD questionnaire queried why they should not be able to count private study of professional texts towards their learning goals. Many other professions recognise the value of allowing such activities, although they typically restrict the proportion of such activities that may be counted, and also have significantly higher overall requirements. For example, chartered accountants must complete 120 hours of CPD in a three-year cycle, of which 90 hours must be formal activities with a clear educational framework and involve the participant.<sup>16</sup>

Many questionnaire respondents and focus group participants commented on the unexpected and beneficial impacts of the switch to online learning necessitated by the COVID-19 restrictions. Supporters of online learning also commented on its general flexibility for lawyers who are located in regional or suburban areas, juggling parenting responsibilities, or who otherwise want to access material away from their office on mobile, tablet or laptop devices.

Law CPD, which only provides online activities, commented that it received very positive feedback about its use of interactive quizzes. Participants needed to achieve a 70% score to pass, and many commented on the usefulness of the quizzes for embedding their learning.<sup>17</sup>

*I work in the suburbs. Most CPD activities are held either early morning or at lunch in Melbourne CBD.*

*It'd be much easier if there were more online options and webinars available (and no cap on online studies for CPD).*

**In-house lawyer, ACCA member**

*It's hard to get away from work and I prefer to be with my family after business hours. I have increased my attendance to training events during the pandemic because everything is now online which makes it much easier to attend.*

**In-house lawyer, ACCA member**

Online resources can be as boring or engaging as face-to-face activities. The lack of face-to-face group interaction in live online resources appears to be compensated by other benefits, such as the ability to participate in online chat and breakout groups and the absence of the group meeting dynamic that often inhibits people from asking questions.

Concerns that online resources can be gamed if the user decides to run the program without actually watching or listening to it are similar to concerns expressed in relation to face-to-face events where some attendees might spend the time catching up on emails or reading non-course materials. Online programs can also be designed to require the user to respond to questions during the program or take a test at the end.

The Law Institute thought that the assumption that self-directed study should be excluded or capped needed to be reconsidered, especially in light of the explosion of the use of digital technology in education.<sup>18</sup> It also drew attention to the current CPD Rules' ambiguous terminology and, recognising the differences between interactive and passive learning, recommended that interactive digital learning should be unlimited and that passive styles of learning should still be capped at five hours.

Online resources are expected to expand and become more engaging and useful as the digital economy accelerates and online learning approaches become more sophisticated. While some content needs to be specific to jurisdictional laws, other content, especially in the non-Substantive Law areas, will be able to be generated for multi-jurisdictional access.

#### 4.3.3 WORKSHOPS AND DISCUSSION GROUPS

Engagement with one's peers through workshops or discussion groups offers many opportunities for consistently good learning outcomes.

Workshops were rated by many questionnaire respondents as the mode in which they learnt the most. They are usually attended by relatively small numbers of similarly skilled lawyers, are facilitated by one or more experts, require active engagement by participants (sometimes through practical exercises), and focus on specific knowledge and skill areas. They run for longer than a standard one-hour seminar session and are usually more expensive than seminars, even on a per hour basis.

<sup>16</sup> Chartered Accountants Australia and New Zealand Regulations CR7 Schedule 1 cl 2

<sup>17</sup> Law CPD meeting – Sarah Mateljan, 24 June 2020

<sup>18</sup> op cit, n5, p7



Discussion groups did not feature much in the questionnaire responses but were identified by many focus group participants as the most rewarding CPD activity that they undertook. Support for such groups was noticeable in the focus groups for regional, suburban, small firm and in-house lawyers. Some were self-organised and were locally based while others had sprung from subject-specific interests and had been organised through Law Institute specialisation courses or associations such as a taxation law body.

*We have a group of 20 people - not all the same in terms of their practice area. Because it is a small group and a seminar, you actually get something out of it. Large groups you just don't remember much about them afterwards. You need interaction.*

**Participant, Regional lawyers focus group**

*A small focus group is the best learning for me as well. I meet with 4-5 peers from my specialist accreditation group. We have been meeting for years, always discuss a live case in a very enjoyable and informal setting.*

**Participant, Mid-tier law firm discussion group**

Discussion groups are convened to discuss and learn about issues of common interest, either through engagement with invited speakers or with other members (who might also give presentations from time to time). Some groups charge a small annual fee to cover meeting and speaker costs. Discussion groups require ongoing organisation to maintain contact with members and to arrange speakers, events and undertake other administrative functions.

Online discussion groups are cost-effective and offer significant potential for groups of dispersed participants to engage, especially given the familiarity with such formats gained by many lawyers during the COVID-19 crisis. An increasing number of cross-jurisdictional communities of practice, such as the Digital Legal Exchange,<sup>19</sup> will help lawyers to find other lawyers with similar interests and gain access to a much wider range of resources, including resources to help them adapt to new forms of legal practice.

As communities of practice, discussion groups offer good opportunities for support and communication between lawyers who might be isolated because of the size or nature of their practice or by distance. The VLSB+C has previously identified that lawyers working on their own without peer support and guidance are more vulnerable to negligence and misconduct claims.<sup>20</sup>

Top-down attempts to create communities of practice are rarely successful, but organisations can create a more favourable environment for the establishment of such groups by providing support, guidance and materials for interested lawyers who might want to pursue such activities. The VLSB+C and CPD stakeholders should work with existing groups (e.g. local associations and subject matter interest groups) to identify how they could be strengthened and how new groups could be established.

While discussion groups have rich learning potential, they are not always the most effective way of acquiring new skills. Facilitated, interactive learning provided by experts is sometimes necessary to push the boundaries of all members' knowledge and understanding in new topic areas.

#### 4.3.4 OTHER LEARNING MODES

Preparing or presenting materials for CPD sessions, writing articles or books for publication, and undertaking further formal study also featured in the responses to the CPD questionnaire and in focus group discussions, but not to the same extent as the activities already noted above. Barristers also have the option of writing or marking barrister admission examinations. A small number of lawyers gain points through serving on professional association committees and working groups.

### 4.4 Different lawyers / Different opportunities

Lawyers' experience of CPD is strongly influenced by the nature of their work. In 2018-19, almost half (49%) of Victoria's 22,300 solicitors worked in the Melbourne CBD, a further 39% worked in the suburbs, and 8% in rural Victoria. Fourteen per cent worked in in-house roles and 11% worked for government entities. Lawyers working at community legal centres as employees or principals number approximately 1,800. Nine per cent of Victorian lawyers were barristers.<sup>21</sup>

<sup>19</sup> See [www.dlex.org](http://www.dlex.org)

<sup>20</sup> 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

<sup>21</sup> Victorian Legal Services Board and Commissioner Annual Report 2018-19, pp42-50

Data about the numbers of lawyers working in different sized firms is not readily available.

*Solicitors working in large and medium-sized firms* usually have free access to significant in-house programs that are well run, comprehensive and produced in accordance with an overall learning and development strategy. Some will also benefit from individual learning plans that are produced as part of an annual performance plan. The plan might refer to key competencies developed by the firm which are used to inform the choice of learning activities. Apart from technical expertise and results, competencies might include client focus, teamwork, innovation and, for more senior members, strategic thinking and business development. Different levels of competence are defined and corresponding behaviours described for different levels of experience.

Progress against a plan is reviewed during and at the end of the year. Inevitably, some firms and lawyers are more engaged than others, and the level of attention to planning and review might vary.

*We have three L&D Coordinators nationally. They work out a number of presentations over the course of the year so that everyone reaches their minimum points. We're fortunate to have in-house experts in a range of areas. We run a program for junior lawyers (The Breakfast Club). This meets every fortnight and is for soft skills - managing files, presentation skills, etc. For partners we have a leadership program. We tend to do a lot of 1:1 for partners.*

**Participant, Large law firm focus group**

*(Large) firms do a good job, good quality, just breadth a bit lacking and not much room for individual choice.*

**Participant, Early career lawyer focus group**

Such systems reflect a sophisticated and desirable approach to CPD, notwithstanding some concerns expressed about individual lawyers' ability to seek development opportunities beyond their firm, and the degree to which they are spoon-fed programs that benefit the firm, rather than being genuinely engaged in a process of reflection about their needs. The programs also tend to take the form of seminar presentations by in-house experts, with the limitations that such modes encompass. On the other hand, some firms use the sessions as development opportunities for junior

lawyers to partner with more senior experts in preparing and delivering presentations.

It is difficult to ascertain the desirable level of expertise and activity for an in-house CPD team, or the extent to which their existence is driven by a wish to minimise CPD expenses for large numbers of lawyers by in-sourcing the work. Ideally, the combination of a significant commitment to a firm-wide program generates good learning and development outcomes as well as efficiencies for the firm.

In contrast, *regional, suburban, small and sole practices* generally lack the size and resources to plan for or run extensive learning and development activities. They rely on professional associations and commercial or not-for-profit providers to deliver many of their CPD requirements. Cost, time and geographical access are significant considerations for such lawyers. As mentioned, some focus group lawyers referred to the valuable learning that they gained through membership of regular discussion groups that had been organised in their local area, sometimes through their regional law association. Not all such groups were productive, with some being described as just an opportunity for networking and socialising.

*A day long seminar could cost \$6-800. Might be okay for big firms but not for regional firms. Cost is an issue plus being out of the office for that length of time. Especially if you walk away at the end of the day and can't remember what you learned.*

**Participant, Small and sole practitioner focus group**

*Timing and accessibility. Are things offered at accessible times? Especially for women with caring responsibility.*

**Participant, Small and sole practitioner focus group**

*(Suburban) law association – quality good and relevance high as meets needs of small players.*

**Participant, Small and sole practitioner focus group**

Barristers are favoured by an abundance of free opportunities that are produced by their colleagues in the form of seminars and online learning materials available on the Victorian Bar's CPD In Session website. The content is generally of the 'chalk and talk'

variety, with opportunities for interaction generated through questions and answers at live events. The quality depends on the knowledge and presentational skills of the speakers. There is not much evidence of barristers being encouraged to reflect about their needs and planning their activities accordingly, although this might change as a result of the Nous Group's review of the Bar's education programs.

*In-house counsel, government lawyers and community lawyers* are usually supported by their organisations to engage in CPD activities. Such organisations often use performance and development plans for their employees which, if used constructively, can guide the lawyers' learning activities. The lack of enough CPD activities that are relevant to their particular form of practice is a particular concern expressed by many lawyers in these fields, who now comprise about one quarter of the profession in Victoria. This theme is examined in more detail in Section 6 - CPD Subject Areas. Larger entities, such as Victoria Legal Aid (VLA), have developed their own training programs, some of which are also being made available to CLC lawyers and private lawyers on the VLA panels.

*There is a disconnect between the (CPD) regime and the in-house profession. CPD has a consumer protection focus which is not what in-house lawyers do. Need something different to the one size fits all.*

**Participant, In-house counsel focus group**

*More tailored to CLC needs, low cost and high relevance. There is often nothing available in some substantive law topics, eg child protection. Family law is more directed to those in private practice. Most valuable type of training is immersive, intensive and interactive.*

**Participant, Community Law Centre focus group**

*I find many sessions to be completely irrelevant to my work.*

**Questionnaire respondent, Government lawyer, Melbourne, 4-10 years PAE**

## 4.5 Changes to the Uniform CPD Rules

The current Solicitors CPD Rules in relation to private study of online materials are designed to safeguard such activities from abuse by those seeking to avoid their CPD obligations. The Barristers CPD Rules do not include such restrictions. Neither set of rules permits study of non-audio/visual materials to be counted.

Many lawyers resent the fact that their conscientious study of books and articles cannot count towards their CPD. Non-interactive audio/visual materials are as vulnerable to being gamed as hard copy books and articles (e.g. by turning on the recorded presentation but not watching it).

A concern about safeguards is legitimate if one accepts that the regulator should undertake some action to prevent easy avoidance of the rules, although as discussed elsewhere, the focus of improvements to the CPD scheme should be to encourage more constructive approaches to learning and development rather than new ways to secure ever closer compliance with the rules.

To establish a minimum safeguard, a requirement could be introduced that materials must either be interactive (for online materials) or the lawyer must keep a learning diary summarising their study (hard copy or non-interactive online materials), perhaps with a limit of five hours for such study because of its passive nature. The change to the Barristers CPD Rules could be achieved by the VLSC+C exercising its powers under those rules. The change to the Solicitors CPD Rules would need to be undertaken through the Uniform Law processes.

An additional option would be to increase the number of required CPD points to 15 each year, including up to five hours of private study, noting that the total number of hours is usually much higher in other professions. This type of arrangement would effectively mean increasing the number of non-study hours by up to five for those solicitors who currently rely on the provisions permitting private study of audio/visual materials, and by up to ten for barristers who currently rely on the Barristers CPD Rules' provisions. While this might not be a bad thing, any private study proposal that increases the overall number of CPD points would need to be part of a larger discussion at the national level about the appropriate number of CPD points that must be obtained by a lawyer.

**RECOMMENDATION 1**

The VLSB+C should actively promote and encourage the adoption of reflective learning approaches by working with CPD stakeholders to develop guidance and template materials that would assist lawyers to consider their learning and development needs and to prepare learning and development plans.

**RECOMMENDATION 2**

- (a) The VLSB+C should work with CPD providers to identify ways that CPD activities could more fully incorporate adult learning principles, especially the programs delivered in the Professional Skills, Practice Management and Business Skills, and Ethics and Professional Responsibility subject areas.
- (b) The VLSB+C should work with CPD stakeholders to support the establishment of discussion groups and other communities of practice for lawyers with common interests.
- (c) The VLSB+C should work with CPD stakeholders to develop guidance materials to assist lawyers who are presenting CPD sessions to structure and deliver their presentations using adult learning principles to achieve better engagement, satisfaction and positive learning outcomes.

**RECOMMENDATION 3**

The VLSB+C should seek changes to the Uniform CPD Rules to:

- (a) recognise private study of any materials undertaken for the purpose of increasing a practitioner's knowledge and/or skills relevant to their practice needs and aspirations
- (b) remove the five-point limit in the Solicitors CPD Rules for audio/visual materials that are interactive, and
- (c) permit private study that is not interactive to be counted, up to a limit of five hours, and if recorded by the practitioner in a learning diary.



SECTION

5

RELEVANT LEARNING



## 5 RELEVANT LEARNING

### 5.1 The need for a competency framework

The rudimentary nature of CPD in Victoria is underlined by the absence of a competency framework to describe the skills expected of practising lawyers.

What seems usual for other professions in thinking about the way that they work and about their development needs is absent from the post-admission learning and development structures of the legal profession.

A competency framework would provide a readily understandable guide for lawyers about their expected level of competence consistent with their level of knowledge and experience. It would provide a basis for re-focusing the CPD framework on learning outcomes rather than measuring activity inputs.

*If mandatory CPD is justified by the need to maintain professional competence, a framework would provide the means by which competence could be defined and CPD was organised to support it.*

Over time a framework could be modified to take account of the changing nature of the profession and the evolving expectations of its clients and stakeholders. It would guide CPD providers in preparing their roster of offerings, and also provide the means for lawyers to think about their individual learning needs.

Some of the larger law firms have developed their own competency frameworks. There are also competencies prescribed for entry-level lawyers in the Legal Profession Admission Rules<sup>1</sup>. A proposal in 2018 by the Law Council of Australia for a competency project was not supported by enough Australian governments and stakeholders to proceed.<sup>2</sup>

The Law Institute has also commenced development of a competency framework, although progress has been sporadic. The Victorian Bar in its submission supported the development of a competency framework and advised that it was in the process of finalising a competency framework for barristers.<sup>3</sup>

England and Wales have re-aligned their system most completely by abolishing points requirements and replacing them with requirements for lawyers to certify that they have maintained their competence. The Solicitors Regulation Authority in England and Wales

has developed a comprehensive competency framework<sup>4</sup> to support professional practice.

The Canadian province of Alberta chose not to introduce a points requirement when it mandated CPD and instead relied on a framework based on the core competencies developed by the Canadian law societies.<sup>5</sup> The Alberta CPD reporting requirements were suspended in early 2020 while the Alberta Law Society undertook a review of the system, as well as pre-admission training requirements. That review resulted in a report submitted to the Law Society in September 2020 which strongly recommended against the introduction of a points system in Alberta.

The Law Society is expected to accept the report and its recommendations.

The Legal Services Board of England and Wales is also reviewing the CPD schemes for solicitors and barristers, although with a view to strengthening the competency-based approach by introducing re-validation requirements for lawyers.<sup>6</sup> Doctors and teachers in England and Wales are already subject to such requirements. If such an option were to be implemented, lawyers might need to demonstrate that they have maintained their competency on a five yearly cycle, typically by keeping journals of their work and learning activities, and engaging in other activities as might be considered necessary, such as peer engagement and review. A report has not yet been released, but it is expected that any change of approach would be implemented gradually and might focus on particular areas of the profession that were more exposed to conduct and negligence claims.

Forty per cent of questionnaire respondents thought that a competency framework for legal practice skills would help to create a more useful CPD program. Only 26% did not, with a further 34% not answering the question definitively. Some of those in favour indicated that it would be more useful for newly admitted lawyers, and others said that it should only be advisory. One experienced solicitor went further and expressed the view that “all lawyers should undertake an oral or written exam every three years, regardless of their years of admission.” Some expressed concern that such frameworks only stated the obvious, were insufficiently differentiated for different types of practice, or contained too many detailed prescriptions to be useful.

<sup>1</sup> Legal Profession Uniform Admission Rules 2015 (NSW)

<sup>2</sup> Assuring Professional Competence Committee, Law Council of Australia (2017) What we need to do, accessed at <https://www.lawcouncil.asn.au/docs/490542a9-1665-e711-93fb-005056be13b5/Assuring%20Professional%20Competence%20-%20What%20we%20need%20to%20do.pdf>,

<sup>3</sup> Victorian Bar submission, p10

<sup>4</sup> Solicitors Regulation Authority website, <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>

<sup>5</sup> Alberta Law Society website, <https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-competencies/>

<sup>6</sup> See LSB website at <https://www.legalservicesboard.org.uk/our-work/current-work/ongoing-competence>

The Law Institute commented<sup>7</sup> that there was an opportunity to:

*develop output-based guidance around expected minimal competency of practitioners at different stages of their career, or job role and experience to assist practitioners to evaluate their specific skill need. This could be in the form of a competency framework detailing the minimal skills and performance outcomes required of specific domain and sub-domains under the existing four skills.*

The Victorian Bar advised that:<sup>8</sup>

*To ensure that the Bar's delivery of its education program is relevant and contemporary, the Bar is conducting a comprehensive review and update of its education program. This exercise is aimed at ensuring its education program equips barristers with the requisite skills to deal effectively with issues that arise at each stage in the life of their practice, and to ensure that the Bar's educational offerings are consistent with best practice and support professional growth.*

The Victorian Bar also advised that the framework would shortly be finalised and would be shared with the VLSC+C. Any work on a barristers' competency framework would be relevant to the proposed development of the VLSC+C competency framework.

The College of Law expressed cautious support for a competency framework, provided that it was not too prescriptive, and that the 10 CPD point requirement was translated into a three year cycle:<sup>9</sup>

*The College would caution against a prescriptive competency-based approach which would probably have the unintended consequence of entrenching any compliance mentality that may exist with the current system. However, we would support a framework which is based around a development guideline which helps lawyers understand the development needs that may arise at various stages of their career and encourages them to think about their development as an ongoing process. For such an approach to be successful, we would submit that the current requirements must move away from 10 hours per year to a longer period, say three years.*

In supporting the need for a competency framework, the LPLC stated:<sup>10</sup>

*Lawyers often don't know what they don't know and therefore don't know where they need to develop. There appears to be a false belief by many lawyers that all they need to know about is changes in legislation and case law. They fail to appreciate there are many more reasons why mistakes happen, and the range of skills and knowledge required to produce good quality legal work.*

Care should be taken not to over-engineer a framework by making it too detailed or prescriptive. The work should build upon frameworks used in other professions where appropriate, and borrow from frameworks already developed within the profession, e.g. in law firms, government entities and in other jurisdictions. The Admission Rules<sup>11</sup> prescribe standards of competence for a range of subjects and skills that applicants for admission to practice are expected to demonstrate. It would be desirable and logical if the competency framework for newly admitted lawyers was consistent with the standards prescribed by those rules.

Many of the generic competencies around client communication, business development, strategic planning, leadership, business and finance could be derived from existing frameworks. Subject matter content should be built upon the competencies articulated by specialisation committees and other groups and associations formed around specific topics. Work could be delegated to those groups for this purpose.

Recognising the size and long-term nature of the project, the framework should be developed incrementally as the most efficient ways to investigate and define competencies are rehearsed, and should initially focus on the areas that would most benefit from its development. For example, many contributors to the review thought that a framework would be especially useful for newly admitted lawyers and their supervisors.

The project should be open to opportunities for cooperation with other jurisdictions, bearing in mind the desirability of national harmonisation and the extension of the Uniform Law to all Australian jurisdictions. The Queensland Law Society was generally supportive of a competency framework as having strong

7 Law Institute submission, p18

8 Victorian Bar submission, p10

9 College of Law submission, p8

10 LPLC submission, p5

11 op cit, n1



reputational benefits for the profession and improving consumer protection outcomes. It similarly noted the desirability of a consistent approach to CPD between jurisdictions and was aiming to refine its framework without creating a structure that was at odds with the national approach.<sup>12</sup>

## 5.2 CPD for experienced and newly admitted lawyers

Competency frameworks usually distinguish between different levels of skill for each competency. Some frameworks use a three-level approach, e.g. “developing”, “competent” and “expert”, while others prefer a four-level calibration, e.g. by inserting an additional category of “proficient” or “accomplished” between the “competent” and “expert” categories.

The development of a competency framework would allow lawyers of different levels of experience and expertise to assess their level of competence and plan their CPD activities accordingly. It would also allow CPD providers to tailor their programs more easily to the experience of participants, generating greater engagement and satisfaction.

### 5.2.1 EXPERIENCED LAWYERS

Senior lawyers often cited the unavailability of CPD activities that reflected their level of experience as discouraging them from undertaking CPD. One contributor commented that to expect senior lawyers to listen to material they knew 20 years ago was “insulting and disrespectful”. Another commented through the Association of Corporate Counsel Australia (ACCA) that:

*I have been practising for over 25 years. My professional skills are at a high level but I imagine there is still much to learn. I just can't find an activity that suits my needs or interest as most are focussed on more junior lawyers.*

Some jurisdictions reduce the number of CPD points that senior lawyers are required to complete<sup>13</sup>, but such an approach is not recommended for Victoria where a small proportion of senior lawyers are an identifiable risk cohort for negligence or misconduct claims.<sup>14</sup>

The LPLC opposed any relaxation of CPD requirements for more experienced lawyers:<sup>15</sup>

*We believe more senior people should not be permitted to do less CPD. There are many and often overlapping reasons for claims and years of experience are not necessarily a guide to avoiding claims. Our claims statistics suggest that principals of firms are responsible for more claims than younger employee lawyers. This is however open to interpretation as in some cases there is question as to whether the mistake was a failure to adequately supervise a junior practitioner or the actual error by the junior practitioner.*

In any event, the idea that a practising lawyer should be relieved of some of their fairly minimal CPD obligations is antithetical to the idea that the profession requires continuous upskilling to maintain its integrity and relevance. A preferable approach would be to widen and improve the CPD offerings for experienced lawyers.

Almost half of the questionnaire respondents (46%) did not think that there should be different requirements for more experienced lawyers, with 37% thinking that the requirements should be changed.

### Should the CPD requirements for more experienced lawyers (>15 PAE\*) be changed?

*I have serious doubts that substantive law is of any value for lawyers at this level. I think ethics is important, and it is easy to forget some of the ethical responsibilities you have as a lawyer. Beyond this, I doubt that CPD is of any value at all for a 15 year plus lawyer.*

**Principal, Melbourne CBD, 20+ years PAE**

*I think 10 years is appropriate for a cut-off, not 15. Other than in relation to ethics, I don't think I find any substantive law, practice management, etc useful. If I need to learn something, I will do it myself - I don't need to be dictated a formal CPD requirement to do what is in my client's best interest, nor my own.*

**Employee, Melbourne CBD, 10-20 years PAE**

\* Post-Admission Experience

<sup>12</sup> Queensland Law Society submission, pp1-2

<sup>13</sup> e.g. Singapore

<sup>14</sup> 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

<sup>15</sup> LPLC, op cit, pp6-7



*Not necessarily – the issue is the availability of activities that reflect different levels of experience. Currently many activities (admittedly the free or cheap ones) are pitched at the lowest common denominator rather than a particular type or experience of lawyer.*

**Government Lawyer, Melbourne CBD,  
10-20 years PAE**

Seminars, conferences, workshops and peer discussion groups can all be designed to meet the specific needs and interests of experienced lawyers. Many of the LIV specialisation committees provide discussion groups for those who have completed a specialisation course. The College of Law commented that:<sup>16</sup>

*This cohort of lawyers (10-40 years' experience) are more likely to choose the more traditional seminar/conference style CPD, which, with the right presenters, can be an effective way to deliver information. However, this type of CPD does not develop or refine legal skills, it just imparts legal knowledge. It is the College's experience that some of the more experienced lawyers who come into our LLM program lack some of the legal skills, such as clear drafting and communication skills, that the legal consumer market now expects. These skills may have been learnt early in their career but not refreshed, adapted or developed since, although there is no doubt legal knowledge is continually updated. It is these skills which often form the basis of legal complaints and dissatisfaction with the legal consumer market.*

Participation in practice sections of professional organisations and the preparation of articles, CPD activities and other educational materials are also particularly relevant options for experienced lawyers. However, the commitment needed to undertake such activities often exceeds the hours that are sufficient to acquit the annual obligation and might be more than some busy lawyers feel that they can afford. The CPD Rules also limit the number of hours from such activities that may be counted towards the annual requirement, e.g. only six hours of relevant committee work by a solicitor may be counted.<sup>17</sup>

## MENTORING

Mentoring was an activity that many contributors to the review, including the Law Institute,<sup>18</sup> thought would be a productive activity for both more experienced mentors and newly admitted 'mentees'. A constructive mentoring relationship can be immensely valuable to a mentee, and also to a mentor, although the learning might not be as pronounced as for the mentee (one contributor suggested balancing the relationship by allowing younger mentees to use part of each session to train older mentors on technology issues).

Mentoring can also allow participants to engage in reflective practice as they discuss work, skills and development needs. On the other hand, an intended mentoring session can also become a rambling conversation over a cup of coffee.

Objections to the lack of accountability for the content of mentoring sessions could be met by requiring mentors to undertake a short training session on mentoring skills and requiring at least one of the participants to keep a journal of the sessions. The training session could be an interactive online program designed for the purpose. A cap could also be imposed on the amount of points that could be counted towards the annual total.

The Barristers CPD Rules allow the VLBSB+C to approve CPD activities not already covered by the rules. It would be arguable that the Solicitors CPD Rules already provide for mentoring activity under the phrase "or any other educational activity" in Rule 8.1.1.<sup>19</sup>

### 5.2.2 NEWLY ADMITTED LAWYERS

Unless they have been granted an exemption, recently admitted solicitors must undertake 18 months or two years of supervised practice before they can obtain an unrestricted practising certificate, depending on whether they qualified for admission through Supervised Legal Training (SLT) or Practical Legal Training (PLT).<sup>20</sup>

Once they have been admitted to practice, prospective barristers must pass the Bar's entry examination, complete the Bar Readers Course and work under an approved mentor for nine months.<sup>21</sup> The VLBSB+C may require barristers to undertake additional CPD activities within the first three years of practice, although it has not done so to date.<sup>22</sup>

<sup>16</sup> College of Law submission, pp8-9

<sup>17</sup> Solicitors CPD Rules, r 9.2.3

<sup>18</sup> Law Institute submission, p8

<sup>19</sup> Solicitors CPD Rules r8.1.1 – "a seminar, workshop, lecture, conference, discussion group, multimedia or web-based program, private study of audio/visual material or any other educational activity..."

<sup>20</sup> Uniform Law, s49

<sup>21</sup> Uniform Law, s50 and VLBSB+C/Victorian Bar requirements

<sup>22</sup> Barristers CPD Rules r11

The early years of practice are particularly important for lawyers as being the years when they should be developing their professional skills, attitudes and habits of mind that will sustain them throughout their career.

The concerns that used to be expressed about the inconsistent nature of supervision for articled clerks who were training to be solicitors are now expressed about the supervision of newly admitted solicitors. The VLSB+C is concerned that poor behaviours and substandard competence may be attributable in part to inadequate training and supervision at the outset of a lawyer's career. In 2018, the VLSB+C held a 'supervision summit' to discuss the issues with stakeholders. The VLSB+C is also planning to undertake further work in relation to the impact of poor or inadequate supervision on new lawyers during 2021.

Barristers are in a better position because of the close supervision undertaken during their transition to becoming a barrister. The LPLC commented that it was less concerned about more junior barristers than more experienced barristers, because the former were closely supervised and mentored in their early years of practice.<sup>23</sup>

It is beyond the scope of this review to canvass all the issues associated with supervised practice. Nevertheless, some changes should be made in the way that newly admitted lawyers undertake their CPD requirements. In contrast to the views about changing the requirements for more experienced lawyers, a higher proportion of questionnaire respondents (40%) thought that the CPD requirements for less experienced lawyers should be changed, and a smaller proportion (28%) thought they should not.

### Should the CPD requirements for less experienced lawyers (<3 years PAE) be changed?



*12 points required, with some mandatory topics relevant to a new practitioner.*

**Employee, Suburban, 10-20 years PAE**



*I think there should be more opportunity for newly admitted lawyers to network and participate in formal mentoring for the purposes of CPD points. Establishing a solid and reliable legal network is critical for early career lawyers.*

**Government lawyer Melbourne CBD, 4-10 years PAE**



*It is the quality of the CPD offering that needs to change, not the requirements.*

**Principal, Melbourne CBD, 4-10 years PAE**

The development of a competency framework is particularly important for this group, a fact that was commented on frequently by the contributors to the review. Many newly admitted lawyers are unaware of what level of competence is expected of them at completion of their supervision period. A framework would provide them and their supervisors with valuable guidance and form a basis for discussing the supervisory relationship and training goals.

*A competency framework would be good for junior lawyers. Know what they are entitled too and a clear reference point. Otherwise end up in a luck of the draw scenario.*

**Participant, Early career lawyers focus group**

*(A competency framework) needs to be complemented by training for supervisors – this is the best thing to do for junior lawyer wellbeing - build supervisors' skills. (Your supervisor) Is the most important person in your career – safety and wellbeing relies on them.*

**Participant, Early career lawyers focus group**

Apart from the subject matter knowledge that a supervised lawyer should be acquiring, they should also be developing an informed approach to ethics and their own health and wellbeing, and the issues and behaviours associated with sexual harassment, family violence, and diversity and inclusion. CPD providers should consider the potential for activities in these topic areas that are tailored to the needs of newly admitted lawyers.

Engagement by newly admitted lawyers on these issues should inject an awareness of their importance from the outset of their practice, as well as providing them with a foundation with which to act in the event that they are exposed to harmful behaviours. Training about complaints processes, how to seek help and how to take action as a third party bystander would provide them with a degree of autonomy and control in such a situation. The broader issues are discussed in Section 6 – Subject Areas.

Some newly admitted lawyers are taught reflective practices when they are undertaking their undergraduate and PLT course requirements, especially if they have taken a clinical legal practice subject. However, the use of reflective learning techniques in professional practice is sporadic and, unlike many professions, not a common feature of legal practice. Inclusion of a requirement to prepare a learning and development plan is not recommended for the entire profession but would be a useful way for newly admitted lawyers to be exposed to the practice of reflective learning while also giving them a useful road map for their period of supervision.

One of the challenges of specifying conditions for supervised practice is the risk that law firms might be discouraged from taking on newly admitted lawyers if they perceive that the requirements for supervised practice are too onerous. The recommendations from this review to guide the choice of CPD activities and to develop learning plans should only impose a minimal burden. Some firms already deploy such plans, which assist the development of positive and productive supervisory relationships.

### 5.3 Customisation for different cohorts

The nature of the CPD market drives providers to favour large scale, generic sessions offered in CBD locations. Offerings tailored for smaller cohorts working as in-house counsel, government lawyers or in the community sector or who are located in the regional or suburban areas are less commonly available.

A recent skills survey of lawyers by the England and Wales Law Society documented the similarities and differences between the skill sets valued by private lawyers, in house lawyers and government lawyers.<sup>24</sup> Writing and drafting skills were rated in the top three skills for all cohorts, but other skills, such as client handling and risk management, revealed sharp differences:<sup>25</sup>

**TABLE 2: IMPORTANCE OF SKILLS RATED BY LAWYERS IN ENGLAND AND WALES**

Skill	Private (%)	In-house (%)	Government (%)
Client handling	66	24	27
Writing and drafting	37	40	42
Risk Management	18	38	13

The challenge of improving the availability of relevant programs for these cohorts is again a difficult one. The VLSC+C should work with CPD providers to identify ways to develop more relevant programs. Better information about program availability might be one approach that could be tested. Another might be to encourage groups of lawyers to work with a provider to develop a program for their members over the course of a year. Such a program might not be face-to-face but could be an online offering. The VLSC+C could also work with lawyers from these cohorts to help them establish discussion groups of their peers.

<sup>24</sup> Law Society of England and Wales (2019) Research to Inform Workforce Planning and Career Development in Legal Services, Table 3, p15

<sup>25</sup> Ibid

**RECOMMENDATION 4**

The VLSB+C should establish a Competency Framework Working Group as a sub-group of the CPD Steering Committee (see Section 7) to undertake development of a competency framework for Victorian lawyers.

**RECOMMENDATION 5**

The competency framework should be developed incrementally and should not be overly prescriptive. It should initially focus on areas of greatest need and utility, including the competency skills for recently admitted lawyers.

**RECOMMENDATION 6**

To reduce the size of the task, the development of the competency framework should draw on work already undertaken by professional associations (including non-legal profession associations in respect of generic skills), by law firms and by legal regulators in other jurisdictions.

**RECOMMENDATION 7**

- a) The VLSB+C should encourage the development of mentoring programs by its stakeholders for lawyers to participate in and count towards their CPD goals.
- b) Mentoring should only count towards CPD goals if the mentor has undertaken training, if it is consistent with the programs developed by CPD stakeholders, and if a learning journal is kept by the mentor or mentee. There should be a cap on the number of hours mentoring that can be counted towards CPD goals.
- c) If the VLSB+C forms the view that mentoring is not covered by the current Solicitors CPD Rules, it should seek to expand the definition of CPD formats to include mentoring. It should consult with the Victorian Bar before approving mentoring for purposes of the Barristers CPD Rules.

**RECOMMENDATION 8**

The VLSB+C should investigate the options for ensuring that CPD undertaken by newly admitted solicitors during their supervised period of practice and barristers within their first three years of practice helps them to develop values and behaviours that will sustain their career, including in the areas of ethics, diversity and inclusion, sexual harassment, family violence, and health and wellbeing. One option would be to make completion of such requirements a precondition for the grant of an unrestricted practising certificate.

**RECOMMENDATION 9**

Newly admitted solicitors should be required to keep a CPD learning plan and reflective journal about their CPD activities during their supervision period.

**RECOMMENDATION 10**

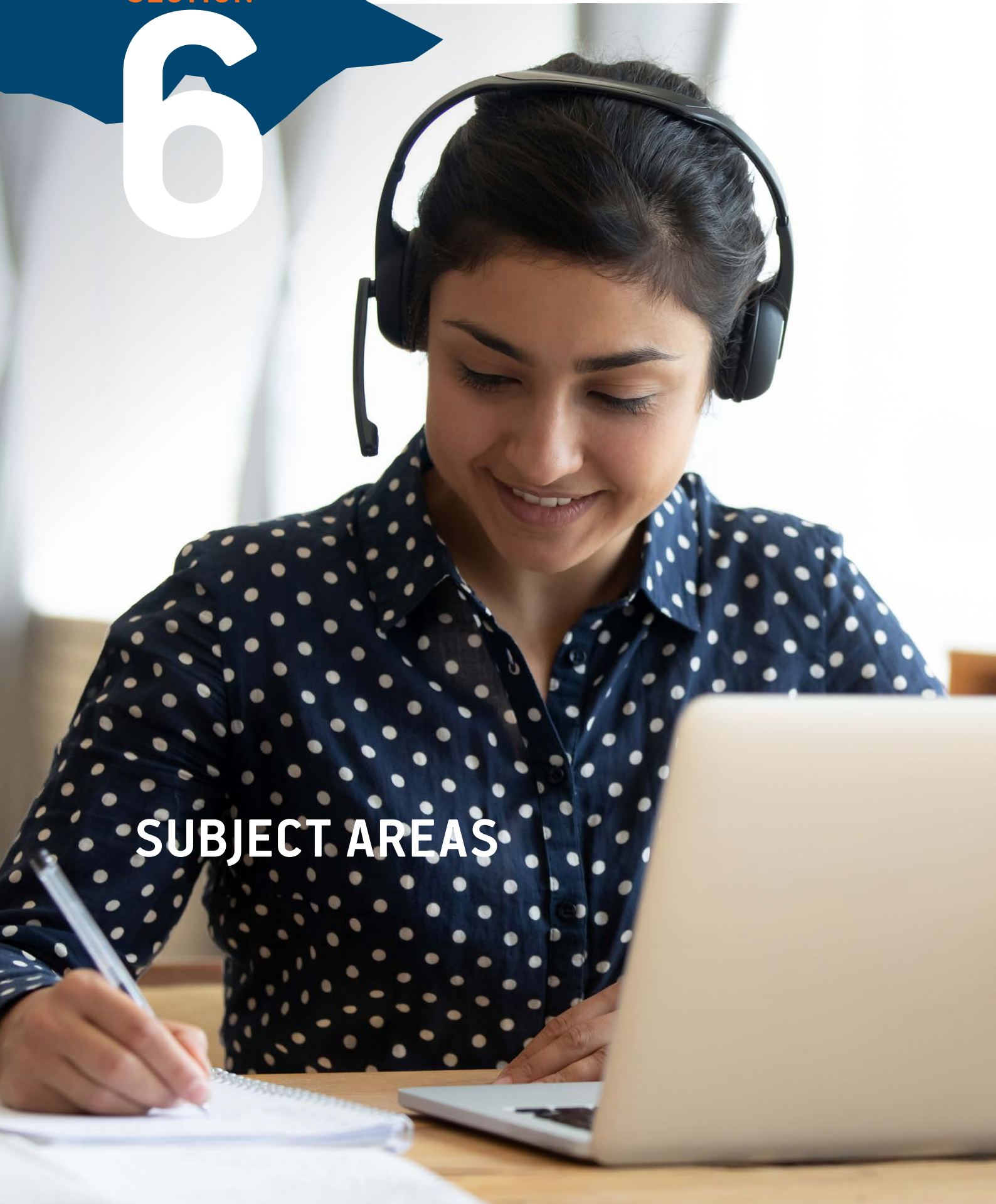
The VLSB+C should work with its CPD providers to identify and support CPD activities that more satisfactorily meet the needs of lawyers not in private practice.



SECTION

6

SUBJECT AREAS



## 6 SUBJECT AREAS

### 6.1 The current subjects

An embryonic competency framework can be found in the four subject areas for which Victorian lawyers are required to complete at least one CPD point each year:

- Substantive Law
- Professional Skills
- Practice Management and Business Skills, and
- Ethics and Professional Responsibilities\*.

The subject areas are similar to four of the six core competencies used by Alberta:<sup>1</sup>

- Substantive Legal Knowledge
- Oral and Written Communication, Analytical and Research Skills
- Practice Management
- Ethics and Professionalism

The other two are:

- Client Relationship Management, and
- Wellness

Alberta goes further by describing up to 12 topic areas within each competency, as well as types of CPD activities that might contribute to the achievement of competency. Interestingly, Alberta does not include different levels of expertise for each competency.

Professor Julian Webb's submission<sup>2</sup> drew the review's attention to the competencies recommended by the Hong Kong Comprehensive Review of Legal Education and Training in 2018.<sup>3</sup> The Hong Kong review recommended that a lawyer should be able to:

- demonstrate competence in a relevant area or areas of practice (technical knowledge)
- perform a range of legal tasks (task skills – client interviewing/conferencing, legal research, drafting and advocacy)
- manage a range of tasks within a job (task and project management skills – including time management)
- respond to uncertainties and breakdowns in routine/normal activities (task/project contingency management)
- work effectively for and with others (team and professional relationship skills)

- identify and deal with embedded issues of ethics, professionalism and professional regulation 'in context' (ethical and regulatory risk management), and
- reflect on and understand the limits of one's own competence and to address one's own personal and professional development needs (self-management).

Professor Webb explained that the review, of which he was a member, was anxious to avoid the traps of over-specifying competencies while providing enough detail to be useful and relevant. The review thought that the high level statements could be supplemented by guidance and exemplars.

The Professional Standards Council commented that:<sup>4</sup>

*Effective CPD should include activities outside a professional's 'comfort zone'. It should relate to identified needs and consumer harms, informed by data collected by the regulator and professional associations. Professionals, of their own volition, tend to pursue activities in content areas of interest and increasing expertise, rather than content areas where experience is less or where they have less confidence and interest.*

The Professional Standards Council also referred to the recent standards developed by the Financial Adviser Standards and Ethics Authority (FASEA) as being the most recently devised model for professional competency that had been approved at the Commonwealth level. The four competence areas that FASEA identified were:<sup>5</sup>

- technical competence: acting as a technically proficient professional
- client care and practice: acting as a client-centric practitioner
- regulatory compliance and consumer protection: acting as a legally compliant practitioner, and
- professionalism and ethics: acting as an ethical professional.

While a re-cataloguing of legal professional competence using the FASEA taxonomy would be premature without further discussion, it presents a more contemporary, client-oriented model that could be considered in the future, preferably at a national level. If adopted, it would also need to ensure that practice management (re-defined to more clearly

\*The Barristers CPD Rules use slightly different definitions of essentially the same topics.

1 See Alberta Law Society website at <https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-competencies/>

2 Julian Webb, Response to Issues Paper, p8

3 Final Report of the Consultants on the Comprehensive Review of Legal Education and Training (2018), Standing Committee on Legal Education and Training, Hong Kong.

4 Professional Standards Council submission to CPD Review, p3

5 Ibid, p5 and attachment to submission

include the practice skills required in non-private practice areas) remained a subject area, given the risks associated with inexperienced or unskilled practice management. The addition of a regulatory compliance and consumer protection competency would prioritise consumer protection issues and might also provide lawyers with a single point of reference about their regulatory obligations.

In the absence of a more comprehensive and helpful framework, the four Victorian subject areas are broadly satisfactory insofar as they capture the main elements of legal practice and are sufficiently flexible to allow a range of topics to be chosen by lawyers to meet their particular needs.

The proposed competency framework recommended in the Relevant Learning section would cover the four subject areas. The Substantive Law area might be broken down into sub-categories for specific areas of law.

Many lawyers expressed confusion about the difference between Professional Skills and Practice Management, with some CPD activities being eligible to be counted under either category. While the idea of amalgamating the two areas was appealing to many, closer analysis of the topics revealed that, despite some overlaps, there is a distinction between the two that justifies their retention as separate areas. It would nevertheless be helpful for the VLSB+C to publish a readily accessible list of topics for each area. Such lists are published in other jurisdictions such as Western Australia and Queensland.<sup>6</sup>

CPD survey respondents and focus group participants clearly preferred Substantive Law CPD activities, rating them as the most useful of the four streams. Survey respondents chose Substantive Law topics for over half (53%) of their CPD activities. Professional Skills topics were the next most commonly chosen at 18%. The order of preference in terms of scores for perceived usefulness was:<sup>\*</sup>



According to the LPLC, skills and behaviours covered by the non-Substantive Law subjects are more likely to generate negligence claims than claims arising from lack of knowledge about the law.<sup>7</sup> The non-Substantive Law subjects are also less able to be learnt effectively through traditional classroom teaching methods with learners more likely to benefit from practical, interactive approaches. The preference for Substantive Law topics also reflects a preference by some lawyers to choose subjects within their comfort zone. Communication, business development, leadership and other topics are more likely to stretch the boundaries of knowledge and experience.

To create a more balanced approach to CPD that addresses more likely risk areas and results in more genuine learning outcomes, the VLSB+C should seek changes to the Uniform CPD Rules to require half of the mandated CPD points to be undertaken in the non-Substantive Law areas. The suggested change would force lawyers to undertake more training in areas of risk, as well as encourage providers to expand their offerings.

\* Rankings from 68 responses were tallied in reverse order (1=4pts, 2=3pts etc) with the highest aggregate number showing the highest level of perceived usefulness

6 See Legal Practice Board of Western Australia website at <https://www.lpbwa.org.au/Documents/Legal-Profession/Continuing-Professional-Development/CPD-Guidelines/GUIDELINES-FOR-THE-ALLOCATION-OF-TOPICS-TO-CPD-COM.aspx> and Queensland Law Society CPD Guide, p6 at [https://www.qls.com.au/For\\_the\\_profession/Your\\_legal\\_career/Continuing\\_professional\\_development\\_CPD/CPD\\_rules\\_policies](https://www.qls.com.au/For_the_profession/Your_legal_career/Continuing_professional_development_CPD/CPD_rules_policies)

7 LPLC submission, p4

As previously identified, a particular criticism expressed by lawyers who did not work in private law firms was the unsuitability of many of the Practice Management and Business Skills programs for their area of practice. The business skills required by barristers, government, in-house and community lawyers are clearly distinct from those required for solicitors in private practice. Lawyers should be able to count training that improves their skills and value within their organisation or business, e.g. leadership, finance, workplace health and safety, public sector procurement rules, diversity and inclusion, media and communications. The VLSC+ should publish guidance to clarify the availability of these and other topics in the Practice Management stream where relevant to a lawyer's practice.

## 6.2 Ethics

Society expects lawyers, however they practise, to be beyond reproach in upholding the ethical standards of their profession. While a lawyer's duty to protect their clients' interests as a trusted adviser and advocate are at the heart of legal practice, the duty is always secondary to the overriding duty to the court and to the administration of justice. The inclusion of ethics as a required element of the CPD scheme reflects the importance of the topic for the practice of law and the maintenance of the profession's reputation.

Ethics has traditionally been taught by reference to the conduct rules that guide lawyers in their practice.<sup>8</sup> General principles are expressed, as well as detailed rules that deal with the nuances of practice, especially in relation to the management of client relationships. Beyond knowing the conduct rules, lawyers are also expected to be able to reflect on the ethical dimensions of their actions and decisions and understand the values that inform them.

The broader ethical context for the practice of law is a recurrent theme in the discussion of the content of ethics courses, both pre- and post-admission. While critical reflection on the role of law and lawyers in society and the impact of such reflection on practice is valuable, it is beyond the scope of this review to examine.<sup>9</sup>

The more immediate challenge is to promote an ethical culture that gives full weight to the expectations contained in the conduct rules and the general law.

CPD can play a role in developing this culture but cannot on its own drive improvement. Ethics CPD should be included as an integral part of a wider effort to encourage ethical practice. No-one would expect an annual hour's training on the topic to create an ethical culture or to stop a lawyer who wants to disregard their ethical obligations.

Some examples of good ethics training available to Victorian lawyers were identified in meetings and by survey respondents, but many lawyers commented that the existing offerings are usually repetitive and unengaging. There is a concentration of offerings in February and March each year as providers understand that many lawyers put off completing their Ethics CPD subject until the last moment.

The review received many critical responses about Ethics CPD:

*I didn't learn anything I did not already know well. (In contrast with other areas, where I frequently learnt new things.)*

**Principal, Melbourne CBD, 20+ years PAE**

*Ethics is a personal issue and often I find training contrary to my real life experiences – but I sit through the training and acquire the point!!!!*

**Principal, Regional Victoria 20+ years PAE**

*Unavailability of activities for my in-house roles, unsuitable level, repetition of the same information year in year out, location of activities.*

**Corporate lawyer, Regional Victoria, 10-20 years PAE**

*I want them to be in the area of law that I practise in, and there is minimal out there for Family Law.*

**Government lawyer, Regional Victoria, 10-20 years PAE**

\* N = 70, Respondents could identify more than one area

<sup>8</sup> Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (NSW), and Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW)

<sup>9</sup> See e.g. K U Gabriel (2011) The Idealist Discourse of Legal Professionalism in Maryland: Delineating the Omissions and Eloquent Silences as a Progressive Critique, University of Baltimore Law Forum, Vol 41(2) pp120-149, accessed at <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2334&context=if>



*I have practised criminal law for many years. Defending serious professional criminals who also want to be your friend is a continuous dance with the Devil. It is sometimes a fine line that divides a criminal and a criminal's lawyer. I think that Ethics associated with the practice of Criminal Law should be the subject of discrete and special attention. I think Ethics in general is not well understood by practitioners and is far more than a body of rules and regulations to abide by but is in truth a state of mind and an inseparable part of the fundamental integrity expected of every legal practitioner from the date of their admission to practice.*

**Principal, Suburban practice, 20+ years PAE**

Some lawyers found their Ethics CPD useful and rewarding:

*I enjoy Ethics every year. I think this is super important for the integrity of the profession. I undertook web-based CPD last year and it was perfect – it's 2020 after all. I like all the practical examples that often accompany Ethics. I think this is the best way of teaching Ethics as it really drives home what is and isn't 'ethical' – which sometimes can be a blurry grey line.*

**Principal, Suburban Practice, 20+ years PAE**

Ethics CPD was the most common area in which respondents to the questionnaire had trouble finding relevant activities:

Q11 – In which of the four prescribed areas of CPD activities (if any) have you encountered difficulty in finding activities that were relevant to your learning and development needs?\*

Ethics and Professional responsibility	<b>30</b>
Practice Management and Business Skills	<b>25</b>
Professional Skills	<b>20</b>
Substantive Law	<b>8</b>

Contributors to the review made clear that ethics is best taught through an interactive, scenario-based approach. Well-qualified, engaging presenters and well-designed materials that are regularly refreshed are essential.

Ethics training is also more effective when the topic is specifically relevant to a participant's practice, e.g. criminal law ethical issues differ from those faced by banking, conveyancing or family law practitioners. Ethics issues should be included in CPD activities on sub-stantive law topics rather than just as a separate program of activities to generate more immediate impact.

However, separate ethics activities will continue to be necessary given the difficulty of allocating an Ethics CPD point for the ethics element of a Substantive Law CPD session. Inclusion of ethics issues in substantive law topics should be part of the guidance on CPD formats and activities to be undertaken by the VLSB+C, the Law Institute and Victorian Bar. The VLSB+C could consult with the Victorian Bar about using its discretionary powers under the Barristers CPD Rules to require a minimum proportion of points gained in non-Ethics CPD subject areas, or specific topics in those areas, to include an ethics component.

A lawyer's practice environment will shape the way that they approach, identify and resolve ethical challenges. Managers and peers create the norms about how to interpret ethical obligations and how proactively ethical a lawyer should be in their approach to their work. Responsibility and the capacity to identify and act upon ethical issues may be diffused in an environment where a lawyer works as part of a team and where the team may be one of many parts of the firm that are engaged with the same client. The impact of firms, especially large firms, on an individual lawyer's ethical approach has been extensively discussed in the past 20 years, with many commentators calling for firms to ensure they have an 'ethical infrastructure' to manage their ethical risks.<sup>10</sup>

The VLSB+C should actively encourage firms to develop a collective approach to ethics where they are not already doing so, which should include clear processes for resolving ethical issues and ensuring that key personnel take responsibility for the overall ethical profile of the firm.

The ethical challenges experienced by barristers, in-house lawyers, government lawyers and community lawyers are often quite different to those faced by private solicitors.

In-house lawyers and government lawyers face particular challenges in resisting pressure and expectations, sometimes unspoken, from their employers. The Association of Corporate Counsel Australia commented:<sup>11</sup>

*In-house legal counsel have a professional duty to give independent legal advice to the organisations which employ them. They owe duties of care, fidelity and confidentiality to their client / employer but they owe higher professional duties to the courts and the Law. This multidisciplinary role can create specific issues for corporate counsel. An in-house counsel discovering a compliance issue in the course of their employment could end up in the conflicted position of disclosing the corporate breaches, thereby potentially breaching their employment and/or professional duties of confidentiality, trust and fidelity to client, and inadvertently waiving the client's legal professional privilege. There could be legal and professional consequences as a result of these actions. Conflicts and ethical issues can also arise via requests from the CEO and from the Board and when acting in the capacity of a lawyer, and also potentially as company secretary where that position is also held.*

For barristers, the culture of the Bar is the primary influence on their approach to ethics, including the attitudes of peers in chambers or the same area of practice, and the members of the list to which the barrister belongs.

While relevant to ethical values and behaviour, topics such as discrimination, sexual harassment, diversity and inclusion, and family violence should not be allowable within the Ethics CPD stream, unless the CPD Rules were changed to increase the required number of non-Substantive Law points to be completed, as per Recommendation 12. Otherwise there would be a risk that too many lawyers could use those topics to avoid engaging in the current content of Ethics CPD, thereby diluting the minimal focus on professional ethics even further.

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>12</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 the VLSB+C will need to factor any relevant findings and recommendations by the Royal Commission and responses by the government into its implementation of the CPD Review's recommendations.

## 6.3 Additional CPD topics

### 6.3.1 SEXUAL HARASSMENT

The Ipsos/VLSB+C profession-wide study on sexual harassment in Victoria's legal sector<sup>13</sup> that was conducted in 2019 showed sexual harassment is common within the profession, with approximately one third of lawyers reporting that they had experienced sexual harassment in a legal workplace. This figure was much higher for women, of whom 61% reported experiencing sexual harassment, as compared with 12% of men. One in five people who reported experiencing sexual harassment experienced unwelcome physical behaviour, including physical assault. Sexual harassment remains a live challenge for the profession: for 57% of people who had experienced sexual harassment, the harassment occurred in the past five years, and for a quarter it was within the last 12 months.

The VLSB+C is implementing a multi-faceted regulatory strategy to reduce the incidence of sexual harassment in the profession. The strategy includes proactive measures to raise awareness, develop knowledge and skills and generate culture change within the profession, in addition to reactive measures, such as improving reporting and complaints processes to address specific incidents of harassment.

Many contributors to the review, including the Women Barristers Association,<sup>14</sup> called for mandatory CPD training in view of the alarming rates of sexual harassment in the profession. The Law Institute was also supportive of such training, in the context of its support for all lawyers being required to upskill in the area of safe workplace culture.<sup>15</sup> The Victorian Bar was also supportive, advocating for a mandatory point to be included in the CPD requirements for appropriate conduct, equality and diversity training.<sup>16</sup>

<sup>11</sup> Association of Corporate Counsel Australia submission, p4

<sup>12</sup> The Royal Commission's website is at <https://www.rcmpi.vic.gov.au/>

<sup>13</sup> Ipsos / VLSB+C (2019) Sexual Harassment in the Victorian Legal Sector, Melbourne at <https://lsbc.vic.gov.au/resources/report-sexual-harassment-study>

<sup>14</sup> Women Barristers Association submission

<sup>15</sup> Law Institute submission, p15

<sup>16</sup> Victorian Bar submission, p2

While the introduction of mandatory CPD training on sexual harassment may be supported on the basis of its unacceptable frequency and harm, it might not be the most effective or sustainable approach for ensuring cultural change in the profession. While one-off training for over 24,000 lawyers about an issue might be useful to send a message about its importance, it is unlikely to be effective if it is not embedded within a wider change program.

The Victorian Equal Opportunity and Human Rights Commission advises that:

*education and training which is primarily compliance focused, rather than directed towards improved understanding, empathy, equality and culture, has limited effect, and once-off training sessions, which are not delivered in concert with ongoing processes of organisational culture and structural change, are unlikely to achieve results.<sup>17</sup>*

Further, while it would be open to the VLSB+C to engage with the Victorian Bar about mandating sexual harassment training just for the Victorian Bar, there would need to be clear evidence that the problem was proportionately worse at the Bar and that the problems with one-off training described above could be ameliorated by other measures.

Fourteen per cent of those who had been harassed advised that their harasser was a barrister. Thirty-three per cent said that it was a partner or principal of a firm. This and other data from the survey indicate that a greater problem is older men in senior positions across the profession. The Victorian Bar would of course be free to take such a step itself in respect of its members.

This issue should be included in the suite of matters that would be covered by CPD training for newly admitted lawyers, discussed at section 5.2.2.

### **6.3.2 FAMILY VIOLENCE, DIVERSITY AND INCLUSION, HEALTH AND WELLBEING**

As with sexual harassment training, any program of mandatory CPD for specific topics should be considered in the context of a wider improvement agenda in respect of each topic.

Activities such as the VLSB+C is undertaking in relation to sexual harassment – training resources, new policy formulation, focusing on high priority or most vulnerable groups, improving complaints processes, raising awareness through meetings with firms, collecting and analysing data, convening support groups – provide a

much stronger platform for lasting change than an hour or two of CPD training.

The Victorian Bar drew on a recent survey of its members to advocate strongly for greater attention to be paid to CPD activities around health and wellbeing. It stated that:<sup>18</sup>

*clarity is required as to whether seminar topics or activities related to health and wellbeing (such as those listed above) fit within the existing CPD categories, such as 'Practice Management and Business Skills'. However, this would not give sufficient weight to the importance of health and wellbeing as a critical component of effective practice, and it would do little to promote participation in health and wellbeing seminars and activities.*

*The separate identification of a CPD category related to 'Health and Wellbeing' would prompt lawyers to consider their health and wellbeing as part of their professional development, and it would compel them to attend or participate in at least one seminar or activity designed to promote their health and wellbeing.*

While the creation of a new category of CPD for Health and Wellbeing could possibly be undertaken by the VLSB+C using its powers under the Barristers CPD Rules, it would seem at least possible for it to support the inclusion of these topics as being eligible topics within the Practice Management stream. CPD training on these topic areas should be strongly promoted, regardless of any decision about whether they should be mandatory. In addition, law firms should be actively considering such programs as part of their obligations under relevant equal opportunity and workplace health and safety legislation.

### **6.3.3 TECHNOLOGY**

The field of technology and the law covers many different angles of legal practice and is relevant to all four CPD subject streams. Lawyers should be familiar with the office and business technologies in common use and should particularly understand cyber risks relevant to their practice. The LPLC has identified cyber risk as a significant risk to legal practice and has developed materials and courses for lawyers. As part of its monitoring of the CPD market, the VLSB+C should pay attention to the availability of cyber risk programs and flag the importance of lawyers being familiar with the strategies to manage the risk.

<sup>17</sup> Email from VEOHRC to reviewer, 20 July 2020

<sup>18</sup> Victorian Bar submission, p5

More advanced and innovative use of technology by the profession is desirable, especially as clients restructure themselves to offer services on new platforms and applications. New legal service providers with novel business models are also entering the market. The VLSB+C should work with legal industry stakeholders to spread awareness of the potential of such technologies to improve services to clients, and to reach potential clients who might not otherwise be able to access legal advice and information.

The Law Institute supported the introduction of mandatory CPD on digital literacy. However, as with

other topics that have been suggested for mandatory inclusion, it would be preferable to develop a more comprehensive agenda for digital literacy rather than placing questionable reliance on a minimal amount of training to improve the profession's knowledge and engagement.

The development of a competency framework would provide an opportunity to identify the skills that lawyers will increasingly need to use, such as familiarity with office-based technologies, risk identification, data analytics, project management and how technology can be applied to service design.

#### RECOMMENDATION 11

- a) The VLSB+C should publish guidance on the topics that are covered by each subject area, especially in the Practice Management and Business Skills, and Professional Skills areas.
- b) The VLSB+C should publish guidance to clarify the topics that could be undertaken in the Practice Management and Business Skills stream by lawyers who work in the corporate, government and community sectors or are at the Victorian Bar.

#### RECOMMENDATION 12

The VLSB+C should seek changes to the Uniform CPD Rules to require a minimum of five points annually to be acquired within the non-Substantive Law streams. The proposed CPD Steering Committee (see Section 9) should support providers to design and deliver more innovative learning programs in these areas.

#### RECOMMENDATION 13

The VLSB+C should establish an Ethics CPD Reference Group to work with the CPD Steering Committee.

The Reference Group should include CPD stakeholders as well as representatives from universities and other bodies (or it could work with such experts).

The Reference Group's agenda should include:

- supporting the development of learning templates and guidance for delivering Ethics CPD training
- supporting the development of more in-depth Ethics CPD training modules for those with a special interest in, or responsibility for, lawyers' ethical conduct, such as Ethics Co-ordinators (see Recommendation 15(b) below)
- identifying particular areas where ethical challenges are common, or challenges are emerging, or where there is a gap in current Ethics CPD provision
- working with CPD providers to support the development of Ethics CPD activities in respect of such challenges and gaps, and regularly highlighting the current challenges and gaps to the profession
- working with specialisation committees and subject matter sections and committees to identify ethical issues that could be included in CPD courses and activities
- working with relevant stakeholders to assess the availability of appropriate Ethics CPD activities for corporate in-house counsel, government lawyers and community lawyers and how any gaps could be addressed.



**RECOMMENDATION 14**

The VLSB+C should amend its Policy on Management Systems for Law Practices to include an additional guideline objective of requiring law firms to have in place a process for the management of ethical issues in a firm.

**RECOMMENDATION 15**

- a) Solicitors' firms should seek to organise Ethics CPD activities for their lawyers on a whole-of-firm basis to promote a common understanding of the firm's approach to ethical issues.
- b) The VLSB+C should encourage each firm to appoint an Ethics Coordinator who would be responsible for a firm's ethics processes and for ensuring appropriate Ethics CPD training for the firm's lawyers.

**RECOMMENDATION 16**

Ethics CPD should be a strong focus for the increased CPD requirements for newly-admitted lawyers proposed at Recommendation 8.

**RECOMMENDATION 17**

The VLSB+C should continue to implement the regulatory strategy it developed in response to its survey on sexual harassment in the profession. The strategy's progress should guide any decision on the use of CPD for this topic.

**RECOMMENDATION 18**

The VLSB+C should actively promote and support training in the areas of diversity and inclusion, family violence, and health and wellbeing.

**RECOMMENDATION 19**

The VLSB+C should actively promote and support programs for lawyers to:

- a) gain an understanding of the technologies commonly used by lawyers, their clients and the courts, the legal frameworks for such technologies, and the risks associated with them; and
- b) broaden lawyers' abilities to recognise, use and develop technologies to improve their services and create new types of services.

SECTION

# 7

CPD PROVIDERS

A professional meeting scene. A woman with dark hair, wearing a light blue short-sleeved button-down shirt and grey trousers, stands and smiles while talking to two other people. One person, a man in a light blue shirt and tie, is seated on the left and smiling. The other person, a woman with long blonde hair, is seated in the foreground with her back to the camera. They are gathered around a table with documents. The background shows large windows with a view of a city.

## 7 CPD PROVIDERS

### 7.1 The CPD market

The market for CPD is fragmented, with many different types of providers offering activities and programs.

There are commercial providers of varying size; not-for-profit educational organisations such as the Leo Cussen Institute and the College of Law; professional associations such as the Law Institute, Victorian Bar and the Association of Corporate Counsel Australia; and a wide range of in-house offerings from law firms to their own lawyers as well as to their corporate and government clients and other external lawyers.

The larger providers offer a mix of generic and specialised face-to-face and online programs, including one hour seminars, half-day intensives, half-day and full-day conferences, multi-day interactive online and face-to-face workshops and masterclasses.<sup>1</sup>

CPD providers are faced with a competitive market in which purchasers are partly driven by the regulatory requirement to complete 10 CPD points by 31 March each year and a desire to minimise costs, while nevertheless expecting engaging seminar or conference-style presentations consistent with their experience of law school and other CPD activities. Some providers have tried to produce more interactive activities but say that apart from a few enthusiasts most attendees prefer the traditional seminar approach. Perhaps the ‘talking head’ approach is preferred as being less challenging for participants, and the presence of an engaging, knowledgeable presenter is a bonus.

Providers deliver a disproportionate amount of their offerings in the first three months of each year.<sup>2</sup> Such a model also maximises revenue if one generic seminar or conference attracts hundreds of attendees. The providers might point to the need for such events to offset their lower returns during the balance of the year. It is equally true that the providers seem to be in a cleft stick on this issue insofar as many of them have a strong understanding of good learning outcomes and how they should be delivered, and a genuine desire to deliver more tailored, rewarding programs, but find it hard to design and deliver such programs while remaining profitable. The CPD provider submissions were amongst the most considered and knowledgeable received by the review.

A sizeable majority (73%) of survey respondents said there was not a noticeable difference in quality between those activities that they paid for and those that were free, with only 11% agreeing that there was a noticeable difference. This is more an indication of the volume of free activities that are available and the variability in quality across all types of service provider than a specific criticism of providers who charge for their services. It also illustrates the challenges for providers of investing in higher quality CPD and hoping to recover the investment by charging more for the product.

The College of Law provided some hope for the potential of higher quality products:<sup>3</sup>

*CPD is very inexpensive for lawyers, and a low-cost/high-volume business for providers. We would suggest that cost is not the barrier, but perceived value. The CPD market is highly fragmented and swamped with undifferentiated courses, often with the same presenters on the ‘circuit’. Lawyers don’t want to pay for it because they simply don’t value CPD, and this is mainly because it can be very hit and miss. In our experience lawyers will pay for structured training with clear development outcomes.*

The advent of more sophisticated online technologies and their uptake during the COVID-19 pandemic might generate more opportunities for high quality CPD. However, providers note that programs with higher production values need to be kept on their websites for a longer period of time in order to generate an adequate return on their investment. This can limit their ability to provide up-to-the-minute online CPD updates.

The significant amount of in-house training undertaken by large and medium-sized firms reduces the size of the market available for other providers, as well as removing many of the wealthier firms from the market. Smaller firms and sole practitioners usually operate on narrower margins and must factor in CPD expenses along with their other overheads in a highly competitive legal services market.

Over half (55%) of questionnaire respondents (or their employers) spent \$1,000 or less on CPD activities each year. Nineteen percent spent between \$1,000 and \$3,000 while 24% did not respond to this question. The average hourly rate for CPD seems to range between \$50 and \$150, noting that barristers can access the Victorian Bar resources for free, and that the LIV offers discounts to its members.

<sup>1</sup> See e.g. Leo Cussen Centre for Law submission, p3

<sup>2</sup> Information provided during meetings with different CPD providers

<sup>3</sup> College of Law submission, p3

Costs, including the opportunity costs of attending a session, were cited by many lawyers as one of the most common obstacles to undertaking CPD. Two thirds of those who responded said that their employer contributed to their CPD costs, although the response rate to this question was low. CPD providers said that a significant number of employee lawyers funded their own attendance, rather than their employer.<sup>4</sup>

CPD is an integral part of practice. Firms and other employer organisations should treat CPD as a necessary business expense. The VLSB+C should encourage employers to allocate a minimum sum, perhaps \$1,000, for their employee lawyers' CPD expenses each year, although specifying an amount might inadvertently cause it to become a standard level rather than a minimum. It is worth noting that one contributing principal reported that she dealt with the 'March Madness' problem by agreeing to pay for her employees' CPD expenses but only if they were incurred for topics completed by 31 December each year.

Recommendations for support for providers to explore new modes of delivery and new topics are included throughout this review. While it is possibly the most difficult aspect of CPD to change, there is also great potential for improvement. The review, at Section 9 – Going Forward, recommends creation of a CPD steering committee that should work with providers to foster better, more engaging CPD programs that are more clearly targeted to the needs of specific cohorts of lawyers.

## 7.2 Accreditation

The Issues Paper canvassed the idea of mandatory or voluntary accreditation of CPD providers to lift the quality of CPD activities. While some contributors, including some CPD providers, were supportive of a voluntary accreditation system, many were not. A majority of questionnaire respondents (51%) did not think that CPD accreditation would help them choose activities, compared to only 27% who said they would find accreditation helpful.

Some thought that accreditation would become a box-ticking exercise that ultimately would not send useful signals to the market, while other stakeholders

pointed out the substantial resources that would be needed to design accreditation criteria, assess applications and monitor programs. The costs of accreditation would also add to the costs of CPD for users.

The Legal Practice Board of Western Australia (LPB WA) has run a mandatory accreditation scheme since 2010. Accreditation is required for all providers, including law firms. Applicants must provide information addressing the following criteria:<sup>5</sup>

- a) The person, body or group of persons has, or has the services of others who have, experience in providing CPD activities relevant to the legal profession.
- b) The person, body or group of persons has access to suitable training infrastructure.
- c) The person, body or group of persons has the ability to provide quality and timely material that accurately reflects the contents of the training sought to be provided.
- d) The person, body or group of persons has an appropriate evaluation tool or tools to assess outcomes.
- e) The training to be provided will have significant intellectual or practical content that deals with matters relevant to the practice of law.
- f) The training to be provided will be or has been conducted by persons who are qualified by practical or academic experience in the subject or subjects covered.
- g) The training to be provided will be relevant to a practitioner's immediate or long-term needs in relation to the practitioner's professional development and to the practice of law.
- h) The person, body or group of persons understands the requirement that CPD topics fall within at least one of the nominated competency areas.
- i) The person, body or group of persons has the ability to maintain and provide suitable and accurate records of attendance, including dealing with questions of privacy and the need for records to be made available to the Board for audit purposes.

<sup>4</sup> Meetings with different CPD providers

<sup>5</sup> Legal Practice Board of Western Australia – 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>



- j) The person, body or group of persons has the ability to accurately apply CPD points.

The LPB WA advises that while interstate providers sometimes criticise the scheme (commercial providers must currently pay \$7,000 biennially), local providers are less critical and, along with the profession, have become familiar with its operation.

CPD providers had mixed views on the value of accreditation. The Leo Cussen Centre for Law saw value in the proposal:<sup>6</sup>

*Mandating appropriate training and learning environments and accrediting or 'approving' CPD providers allows for the setting of minimum standards, a level of consistency and an objective demonstration of understanding and adherence to adult learning principles.*

The College of Law saw some merit in accreditation for courses that were designed to have greater impact, such as professional skills and ethics.<sup>7</sup> Legalwise was concerned that an accreditation scheme would limit the range of programs that lawyers could undertake to pursue their learning and development needs.<sup>8</sup> The Continuing Legal Education Association of Australia proposed an alternative approach of developing a code of conduct for CPD providers.<sup>9</sup>

On balance, the review does not recommend that accreditation be introduced for CPD providers, even on a voluntary basis. A voluntary scheme could become a mandatory scheme in practice if all providers felt obliged to gain accreditation. This could in turn lead to resourcing and efficacy problems through the need to properly accredit and monitor large numbers of providers.

The development of a competency framework and the production of learning and development resources and guides is likely to be much more useful and effective for the profession. However, the VLSB+C should monitor the delivery of CPD programs in the non-Substantive Law areas and if no significant improvement occurs in the next three to four years, it may wish to re-visit this proposal.

The Steering Committee proposed in Section 9 might also wish to consider the merits of encouraging the development of a CPD provider code of conduct.

#### RECOMMENDATION 20

The VLSB+C should encourage employers to set aside a minimum amount each year to cover or contribute to their employee lawyers' CPD expenses.

#### RECOMMENDATION 21

The VLSB+C should monitor the quality of CPD programs in non-Substantive Law programs and keep under consideration the possibility of introducing a voluntary accreditation system to address any continuing concerns about their effectiveness.

<sup>6</sup> op cit, n1, p7

<sup>7</sup> op cit, n2, p3

<sup>8</sup> Meeting with Jacquelyn Simon, CEO Legalwise, 6 June 2020

<sup>9</sup> CLEAA submission, and meeting with Jacquelyn Simon and Ronwyn North, 1 July 2020

SECTION

# 8

**REGULATOR'S ROLE**



## 8 REGULATOR'S ROLE

### 8.1 Regulatory approaches

Regulation should be proportionate to the problem that it is seeking to resolve and should recognise the limits of its effectiveness. If a problem is judged to require some form of organised intervention, the government or a regulator or a member-based association may choose from a suite of options ranging from voluntary and incentive-based measures to mandatory requirements backed by sanctions for breach.

For the VLSB+C, interventions that go beyond supporting good practice and that impose mandatory requirements and costs on Victoria's 24,000 practising lawyers need to be carefully justified by reference to the severity of the harm, and the comparative costs and benefits of the intervention.

The introduction of rules to mandate CPD in the legal profession was judged to be necessary to protect the public from the risk of incompetent practice, and to demonstrate a commitment to the elimination of that risk as far as possible. Incompetence adopts many guises including negligent advice, unethical conduct, poor communication and business mismanagement. Recognition of the variety of incompetent behaviours underpins the choice of the four subject areas in the CPD scheme.

Input-based regulation, such as the requirement to undertake 10 points of CPD activities in the four subject areas, is a fairly simple approach to CPD regulation that is easy to understand and to comply with. It suffers from a lack of effectiveness insofar as the achievement of the annual 10 points becomes a goal in itself at the expense of a consistent focus on actual learning and development needs. Cost and time considerations dominate those of quality and relevance and inhibit investment in pedagogically effective activities. However, removal of the 10-point threshold is unlikely to generate any greater willingness to engage with CPD by those who currently are reluctant to do so.

Adult learners are by definition self-motivated and will generally not learn what they do not perceive to be relevant or useful. The regulator's intervention is more likely to be effective if it works with lawyers and their professional associations to develop a coherent framework that ensures learning and development become a more prominent and integrated part of legal culture. As the Victorian regulator, the VLSB+C has the opportunity to improve CPD by adopting a vigorous approach to leadership, engagement and support and a cautious approach to prescription and enforcement.

There is also a pragmatic reason for preferring support and incentives for learning and development to imposing further requirements. Most of the mandatory CPD regulatory requirements are contained in the rules made under the Uniform Law, although the VLSB+C has some discretionary powers in relation to the Barristers CPD Rules. Changing those requirements would require a process that would be lengthy, given that the rules must be prepared by the Law Council of Australia (for solicitors) or the Australian Bar Association (for barristers) after consultation and prior to the Legal Services Council formally making the rules and submitting those rules to the Standing Committee for its approval.

While this report makes recommendations for changes to the rules, it has focused on what can be achieved within Victoria, a course that necessarily involves less formal regulatory approaches. Nevertheless, it is hoped that the review will also prompt a wider discussion about national approaches to CPD and the legal profession.

### 8.2 The mandatory threshold

The minimum 10 CPD point threshold is a basic requirement that is easily understood by the profession, demonstrates a commitment to continued learning and development, and provides employee lawyers with a degree of leverage if they are working for an employer that might oppose their wish to undertake CPD. However, as mentioned, it drives an annual points-accumulation rush for many lawyers that defeats its purpose and its connection to professional competence.

The College of Law commented that:<sup>1</sup>

*The CPD framework of 10 hours, and the tick-the-box mentality that accompanies it, is the single biggest barrier to effective learning and we advocate for a system which is more focused on development over a longer period... We believe a more effective model may be to move away from an annual hours-based approach to a longer compliance period, say three years, while still requiring a minimum number of hours to be completed in each year.*

It seems that lawyers generally support retention of a points threshold, mainly because it is a hard-edged requirement that ensures all lawyers engage in some learning activities. Most CPD questionnaire respondents wanted to retain it (39%) or change it (40%), e.g. through a different mix of topics or

<sup>1</sup> College of Law submission, p7

increased hours, and only eight respondents (11%) thought it should be abolished altogether (a further seven did not respond).



*I think retain it. On balance, although I don't need it, I think it provides structure and discipline. It also sends a message that CPD is important.*

**Principal, Melbourne CBD, 20+ years PAE**



*The current CPD regime should be retained as present. It is my opinion that the current 10 point requirement has proven sufficient in helping lawyers maintain their general competence, improve on their area of specialization, and maintain the public's positive perception of the legal profession.*

**Employee, Melbourne CBD, <4 years PAE**



*Keep it as it is but the professional skills and practice management skills points should be abolished or made optional.*

**Corporate solicitor, Melbourne CBD, 10-20years PAE**



*Abolished – it plays no meaningful role in the quality of service received by clients.*

**Barrister, Melbourne CBD, 5-10 years PAE**

Despite the inadequate nature of the points-based scheme, the review does not recommend that it should be abolished at this stage. A better option is to invest time and resources in improving the quality of CPD and engagement of the profession rather than attempting to pursue abolition of the points requirement at the national level, even if that was the desired outcome. A mandatory points backstop might become less needed if the review's recommendations for a more outcomes-based approach to learning and development are implemented and prove successful in changing the culture of the profession.

The threshold is low by comparison to other countries and other professions and could be increased, including by allowing for a component of private study.

Many lawyers already undertake many more hours of CPD than the statutory minimum and would not be affected by such a rise. However, for similar reasons to those for not pursuing an abolition agenda, the review does not think that a major effort to increase the points threshold would be a useful focus for activity.

To the extent that some more minor changes might be worth pursuing, the review has recommended in Section 4 that more flexibility in respect of private study should be introduced, and in Section 6 that no more than five hours should be counted towards Substantive Law subjects. A further adjustment to stem the rush in February / March would be to only allow five points to be counted for activities undertaken during that period. The consequences of such changes would need to be discussed further with the VLSB+C's stakeholders before a formal submission could be made to the relevant national bodies.

Apart from the Victorian Bar, the suggestion in the Issues Paper that the CPD program could move to a three year cycle was not well supported, as many contributors thought there was too great a risk of lawyers facing an overwhelming backlog at the end of the cycle, notwithstanding any requirement to obtain a minimum number of points each year. The Bar thought that a triennial cycle would reduce administrative costs and:

*...would also provide practitioners with the flexibility of organising their CPD activities over the course of the three-year cycle, which, for example, would allow for anticipated busy periods to be planned around.*

Others expressed concern about the administrative difficulties that might result from such a change. While moving to a triennial system might have merit as the CPD program expands and re-orientates to a more reflective, outcomes-based approach, it should not be an immediate priority, especially as any such change would require a change to the CPD Rules. Again, development of a more planned and reflective learning culture might create the right circumstances for such a change to be considered in the future.

Similarly, the suggestion in the Issues Paper that a type of firm-based CPD regulation, such as occurs in New Zealand, could be introduced was not welcomed by the review's contributors. The perceived benefits in terms of audit relief were not seen to justify the costs of an additional element of complexity. The New Zealand Law Society advised that only six firms had taken the opportunity to register under its scheme.<sup>2</sup> Any such change might need to await a stronger move to a



firm-based regulatory base, as occurs in England and Wales. The review has made specific recommendations in relation to firms and Ethics CPD in Section 6.

### 8.3 Online compliance resources

Online resources have great potential for lawyers to access information about CPD, seek guidance, enrol in activities, use templates to construct learning plans, organise discussion groups and record their activities. Some professional CPD websites (e.g. Singapore<sup>3</sup>, CPA Australia<sup>4</sup>) allow members to self-assess their competency in nominated areas and then provide links to suggested courses and providers in identified areas for development.

The Law Institute offers an online service to its members, although it is not as broad-based or interactive as some sites. The VLSB+C could establish a page on its website to assist lawyers manage their CPD. Alternatively, it could consult with the Law Institute and other bodies about a decentralised network of sites sharing common resources but also oriented to their members' particular needs. The VLSB+C would need to be mindful that the Law Institute is also a CPD provider and that not all solicitors are Law Institute members. However, it has been delegated functions under the Uniform Law in relation to CPD (as has the Victorian Bar) and it might be possible to maintain the separation of its regulatory, membership and provider roles in developing a website.

The webpage could also include links to CPD providers' courses, although the VLSB+C might be wary about the potential for such links to appear as an endorsement of the providers. There would appear to be a market niche for CPD providers or another entity to establish a central website to list and link different CPD offerings. Just under half (46%) of survey respondents would welcome more information about CPD offerings with 37% not being in favour, often because of the volume of promotional material that they already received. Many welcomed any service that would help them to identify CPD programs in areas where there was a scarcity of regular offerings.

The Law Institute drew attention to the lack of awareness amongst solicitors of the activities that could count towards CPD points, which resulted in many lawyers reverting to the default option of

classroom-style seminars.<sup>5</sup> The review also found that some of the lawyers who were participating in focus groups or responding to the questionnaire were similarly unaware of the breadth of allowable CPD activities.

### 8.4 Risk

An important part of mandatory CPD's purpose is to minimise the risk of incompetent practice. The risks could spring from new technologies, legislative or process change or particular areas that historically have generated negligence or misconduct claims.

The Leo Cussen Centre for Law recommended that risk management should be a compulsory CPD subject:<sup>6</sup>

*(Lawyers) respond favourably to any program that includes expert advice on current risk areas and provides practical risk management tools. Poor risk management practices have a significant and damaging impact on the whole profession both in terms of public confidence and professional indemnity insurance premiums.*

The LPLC already holds CPD programs that are directed to particular areas of risk, such as conveyancing and cyber security. It identifies particular areas of law, such as conveyancing, as being subject to higher numbers of claims, and types of lawyers, such as those who 'dabble' in areas that they do not usually practise in, as being higher risk. Poor business systems, poor communication, and out-of-date precedents also contribute to claims risk.<sup>7</sup>

The Law Institute consults with its practice committees to identify appropriate areas for new CPD activities. The Law Institute and Victorian Bar notify their members of emerging risks and recent cases on a regular basis through their journals, newsletters and other publications.

While the review does not believe that it should be mandatory for all of Victoria's lawyers to undertake risk management training, it notes that it is a core subject contained in the VLSB+C Practice Management Course Guidelines. All lawyers wishing to obtain a principal's practising certificate must demonstrate certain skills and expertise, a requirement that can be met by successfully completing a Practice Management Course delivered by a provider that meets the VLSB+C Guidelines.

3 See Singapore Academy of Law LIFTED site at <https://app.lifted.sg/analysis>

4 See CPA Australia website at <https://www.cpaaustralia.com.au/member-services/continuing-professional-development>

5 Law Institute submission, p9

6 Leo Cussen Centre for Law submission, p5

7 Meeting with LPLC, Justin Toohey and Heather Hibberd, 18 June 2020 and LPLC submission, pp2-3

The VLSB+C should regularly monitor emerging practice risks, notify lawyers of those risks, encourage them to attend relevant CPD activities if the risks are relevant to their practice, and liaise with providers to discuss the availability of programs. It might also be useful for the VLSB+C to hold an annual risk identification meeting to assist providers to plan their programs.

## 8.5 Audit\*

The CPD Rules require lawyers to retain records of their CPD activities for three years.<sup>8</sup> The VLSB+C may audit a lawyer's compliance with the CPD Rules by asking them to produce the records of their participation. The VLSB+C may require a lawyer who has not met the annual CPD requirements to submit a remedial plan to rectify their non-compliance.<sup>9</sup> Failure to undertake CPD could also amount to unsatisfactory professional conduct within the meaning of the Uniform Law.<sup>10</sup>

The VLSB has delegated its audit functions to the Law Institute and Victorian Bar, with associated funding. Each body reports back to the VLSB 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. Repeated non-compliance can lead to conditions being attached to a practising certificate, or more serious disciplinary action.

As an example, for the CPD year ending 31 March 2018, the Law Institute 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>11</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 Law Institute 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, and that 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.

Nineteen of the 70 respondents to the CPD questionnaire advised that they had been audited at some point in the past. Most expressed satisfaction with the process, although some found the process irritating and time-consuming.

While lawyers are asked for the record of their activities, they are not asked about the quality or relevance of the activities that they undertook. The audit process provides the VLSB+C with an opportunity to understand the nature of the profession's engagement with CPD. It should be re-shaped to obtain richer data about the nature of the profession's compliance, and to also offer support to those who might not have satisfied the annual requirement.

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 VLSB+C 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.

\* Some of the factual material in this section has been taken from the Issues Paper

8 Solicitors CPD Rules, r12, Barristers CPD Rules r12

9 Solicitors CPD Rules, rr14 and 15, Barristers CPD Rules r15 and 16

10 Uniform Law, s296

11 LIV Annual Report of CPD Compliance Outcomes 2018-19

**RECOMMENDATION 22**

The VLSB+C should not seek to abolish or change the 10 CPD credit minimum threshold requirement.

**RECOMMENDATION 23**

The VLSB+C should revise the content of its CPD policy to reflect the approach outlined in this report. It should also consider developing a page on its website that provides more information and assistance about CPD. It could include:

- information about relevant legislation, rules, policies and guidance
- competence statements as they are developed, and updates on the progress towards a competency framework
- learning development plans and guidance around reflective practice, including examples and templates
- current and emerging areas of risk
- a learning register for recording CPD activities, which could also provide reminders and suggestions relevant to the lawyer's preferences.

**RECOMMENDATION 24**

The VLSB+C should regularly liaise with CPD stakeholders to identify and publicise particular areas of practice that present current or emerging competence risks. It should also conduct an annual workshop to identify current and emerging risks that could inform the development of CPD programs.

**RECOMMENDATION 25**

The CPD Audit program should continue to develop its approach to include both a random element and lawyers who have either come to the attention of the VLSB+C previously or who practise in areas of identified risk.

**RECOMMENDATION 26**

The CPD Audit program should also use the opportunity of an audit to gather information about lawyers' preferences and engagement with different types of CPD activities.

SECTION

# 9

GOING FORWARD –  
LEADERSHIP AND ACTION





## 9 GOING FORWARD – LEADERSHIP AND ACTION

**AFTER A BURST OF ACTIVITY IN THE EARLY TO MID-2000S, DURING WHICH CPD BECAME MANDATORY AND THE AUSTRALIAN JURISDICTIONS COOPERATED TO FORMULATE A SINGLE SET OF STANDARDS, THE SECTOR HAS SUFFERED FROM A LACK OF NEW POLICY IDEAS AND HAS FAILED TO KEEP UP WITH EVOLVING APPROACHES TO PROFESSIONAL DEVELOPMENT.**

One of the primary reasons for the lack of progress in CPD has been the absence of a dynamic governance structure to sustain a strategic approach to the topic and generate new initiatives. The Campbell Review in 2006 recommended the establishment of a CPD committee. It is understood that a committee met for a number of years but petered out in the early 2010s. Neither the VLSB+C nor the Law Institute has a CPD committee. The Victorian Bar has a CPD sub-committee that co-ordinates much of the Bar's activities and responsibilities but is not a strategic policy body. The Bar has also retained the Nous Group to review its educational programs, including its CPD program. Its report should give added impetus to the change agenda for CPD.

This report has surveyed the many different aspects of CPD in the legal profession and the challenges of developing a more useful and relevant framework for the future. If its recommendations are accepted, the resulting change project will require commitment into the foreseeable future. It may require a small ongoing commitment of resources by the VLSB+C with strategic funding injections from time to time for worthwhile initiatives. It will certainly require a visible and continuing

commitment from the profession's leaders, and a governance structure to coordinate its implementation.

A CPD Steering Committee should be established to undertake the implementation tasks associated with this report. It should be chaired by the VLSB+C with representation from the LIV and Victorian Bar, as the two peak bodies for the Victorian profession, and as the VLSB+C's delegates in discharging some of the current scheme's statutory functions.

To provide balance and independent views, the committee should also include at least one expert in CPD, adult education or other relevant field, and one lawyer from the in-house, government or community sectors, notwithstanding that the Law Institute and, to a lesser extent, the Victorian Bar, include some lawyers from these cohorts in their membership. The Committee should also work closely with industry stakeholders, especially CPD providers and academic experts.

Many of the review's recommendations are broadly framed and require further investigation and development. One of the Committee's first tasks should be to develop a plan of action to work through the initiatives. The development of a competency framework would be the largest and most important task awaiting the Committee's attention, but the provision of more information and guidance resources as recommended in this report also provides an opportunity for improvements that can be generated relatively quickly.

### RECOMMENDATION 27

The VLSB+C should establish a CPD Steering Committee with representation from the Law Institute and Victorian Bar to implement the recommendations of this review that are accepted by the VLSB+C. The Committee should also include at least one expert in CPD, adult education or another relevant field, and one lawyer from the in-house, government or community sectors.

### RECOMMENDATION 28

The Steering Committee should develop a three-year plan for implementation of the review and should report back to the Board of the VLSB+C on a regular basis.



# APPENDICES

## APPENDIX A METHODOLOGY

### Background

The VLSB+C Terms of Reference provided the framework for review of the CPD scheme in Victoria. The review commenced in March 2020 and progressed through three phases - a research phase, a consultation phase and the final phase of analysis of data and information for completion of the final report.

### Phase 1 – Literature review and research

Desktop research was conducted on current approaches to CPD in the legal and other sectors, and in other Australian and overseas jurisdictions. The research examined developments in legal education as well as in regulation. A comparison of Australian and international legal profession CPD requirements as well as some other professional requirements can be found in **Appendix B**.

Research for the review included interviews with staff and Board members at the VLSB+C and establishment meetings with the Law Institute of Victoria and Victorian Bar. Reports containing data about compliance and enforcement since 2015 were examined along with more general demographic data about the Victorian legal profession collected through the VLSB+C licensing and complaints functions.

### Phase 2 – Consultation

#### DEVELOPMENT OF THE ISSUES PAPER

An Issues Paper with a short Executive Summary was prepared to facilitate consultation with stakeholders and the legal profession and can be viewed on the VLSB+C website. The Issues Paper included a set of consultation questions at the conclusion of each section of the paper to assist stakeholders frame their responses. The questions sought lawyer views about the CPD scheme and also about their own engagement with CPD activities. The consultation questions were also available in a separate downloadable and interactive form to enable respondents to more easily provide comments. The downloadable questionnaire included optional demographic and practice area questions and appear at **Appendix C**.

#### DISTRIBUTION TO STAKEHOLDERS AND THE PROFESSION

The review was launched on 1 June 2020 with an email to every practising member of the Victorian legal profession. Information about the review was placed on the VLSB+C website and distributed through social media channels and the networks of the major professional associations. Individual lawyers were encouraged to complete the questionnaire or join a focus group of a specified cohort, e.g. from regional areas.

A broad range of organisational stakeholders were invited to provide their views, either through a consultation meeting or by written submission. These stakeholders included:

- Victorian and other Australian legal professional associations
- Victorian law schools and academic experts
- Victorian and other government agencies and regulators, including international regulators
- CPD providers; and
- Victorian courts and tribunals

The submission period was due to conclude on 3 July 2020, but was extended to 17 July 2020, with a number of consultation meetings and focus groups taking place after that date.

#### CONSULTATION MEETINGS

Tables 1 and 2 show the organisations and individuals consulted by the review, by video or audio conference for periods ranging between 30 minutes and two hours. The meetings were conducted by the reviewer, usually with the participation of the VLSB+C senior policy officer, Ms Natalie Neal. Administrative assistance in establishing and documenting the meetings was generally provided by a member of the VLSB+C staff.

## APPENDIX A: METHODOLOGY

TABLE 1: MEETINGS WITH ORGANISATIONS

No.	Stakeholder	Representative	Date
1.	Australian Health Practitioners Regulation Authority	Clarissa Martin, State Manager, Victoria	17 July 2020
2.	College of Law	Fiona Turner, Executive Director, Victoria Angie Zanstra, Commercial Finance Director Bill O'Shea, Chapter Chair	24 June 2020
3.	Continuing Legal Education Association of Australia (CLEAA)	Jacquelyn Simon, President Ronwyn North, Executive	1 July 2020
4.	Judicial College of Victoria	Samantha Burchell, CEO	26 June 2020
5.	Law CPD	Sarah Mateljan, Director	23 June 2020
6.	Law Institute of Victoria	Adam Awty, CEO Kellie Hamilton General Manager, Member Knowledge & Learning Peter Docherty, Head of Professional Standards and Quality Assurance	Various
7.	Law Institute of Victoria	Brendan Lacota, Vice President, President LIV Young Lawyers (2018)	7 July 2020
8.	Legal Practice Board of Western Australia	Libby Fulham, Executive Director	30 June 2020
9.	Legal Practitioners Liability Committee (LPLC)	Justin Toohey, CEO Heather Hibbard, Chief Risk Manager	18 June 2020
10.	Legal Services Board of England & Wales	Margie McCrone, Legal Regulatory Policy Manager	13 August 2020
11.	LegalWise Seminars	Jacquelyn Simon, Managing Director	26 June 2020
12.	Leo Cussen Centre for Law	Shirley Southgate, Executive Director Linda Baxter, CPD Director Tom O'Gorman, Program Manger	24 June 2020
13.	New Zealand Law Society	Rosemary Killop, CPD Manager	14 October 2020
14.	Solicitors Regulation Authority of England & Wales	Julie Brannan, Director, Education & Training Richard Williams, Policy Associate	12 August 2020
15.	Victoria Legal Aid	Dianna Gleeson, Executive Director, Legal Practice Peter Noble, Executive Director, Services & Innovation Hala Atwa and Kimberley Ison Managing Lawyers, Professional Support and Professional Legal Education Eleanor Jenkin, Senior Policy & Projects Manager, Legal Practice	25 June 2020
16.	Victoria Police	Irene Chrisopoulidis, Managing Principal Lawyer Karen McKenzie, Supervising Lawyer	14 July 2020
17.	Victorian Bar	Katherine Lorenz, CEO Nina Massara, Education Manager	various



## APPENDIX A: METHODOLOGY

No.	Stakeholder	Representative	Date
18.	Victorian Bar – CPD Committee	Richard Dalton QC, Oren Bigos SC, Rachel Walsh, Minal Vohra SC	26 June 2020
19.	Victorian Civil and Administrative Tribunal	Senior Member Elisabeth Wentworth Senior Member Jonathan Smithers Member Reynah Tang AM	7 July 2020
20.	Victorian Equal Opportunity and Human Rights Commission	Catherine Dixon, Director	16 July 2020
21.	Victorian Legal Services Board – practitioner members	Jennifer Batrouney AM QC, Geoff Bowyer and Liz Harris	22 May 2020
22.	Victorian Legal Services Board + Commissioner	Alice Duggan, Regulatory Compliance Programs (CPD)	3 and 9 July 2020
23.	Victorian Legal Services Board + Commissioner	Danielah Iacono, Manager, Discipline & Suitability	5 August 2020

TABLE 2: MEETINGS WITH INDIVIDUALS (views expressed were those of the individuals, not of their related organisation)

1.	Bennett, Judith and Horton, Fabian		13 July 2020
2.	Ching, Professor Jane	Nottingham University Law School	16 September 2020
3.	Clark, Professor Sandy, and Besley, Richard		22 June 2020
4.	Curran, Dr Liz	Curran Consulting: Enhancing Justice and Human Rights	8 September 2020
5.	Furlong, Jordan	Law 21, Canada	6 October 2020
6.	Giddings, Professor Jeff	Monash University Law School	25 September 2020
7.	McNicol AM QC, Dr Sue	Victorian Bar	18 June 2020
8.	Shepherd, Stafford	Queensland Law Society	13 July 2020
9.	Webb, Professor Julian	Melbourne University Law School	15 June 2020

## FOCUS GROUPS

The review hosted 9 focus group sessions by video conference from late June to early August 2020. The focus groups were drawn from specific cohorts of lawyers and were asked to discuss issues that were canvassed in the Issues Paper and that had arisen in the desktop research and consultation meetings.

These cohorts are set out in Table 3 below.

The focus group material was collated and analysed thematically with comparisons made between themes emerging through the responses of focus groups to those emerging from the questionnaire.

The focus group participants were not required to provide information about their years of practice however the review noted that participants tended to be more senior, at least post 10 years of experience. The Issues paper asked for comment about specific issues and needs for senior and early career lawyers in CPD. The needs of early career lawyers, particularly those under supervision emerged as a significant theme during the consultation phase, both in focus groups and amongst organisational stakeholders. A focus group of early career lawyers was then established with the assistance of the Law Institute's Young Lawyers' section.

## APPENDIX A: METHODOLOGY

TABLE 3: FOCUS GROUP COHORTS

Cohort	Date held	Number of participants
Corporate lawyers	29 June 2020	7
Government Lawyers	7 July 2020	5
Large law firm lawyers	16 July 2020	5
Small and sole practice lawyers	17 July 2020	7
Mid-tier firm lawyers	22 July 2020	6
Community sector lawyers	23 July 2020	4
Regional Lawyers	23 July 2020	5
Suburban Lawyers	28 July 2020	5
Early career lawyers	4 August 2020	4
<b>Total</b>		<b>48</b>

Lawyers either self-selected as volunteers or were involved at the request of organisational stakeholders. The groups were chosen to maximise diversity of gender, experience, practice area or type of employer.

The sessions were conducted by the reviewer and usually ran for 90 minutes. Administrative assistance was provided by a member of the VLSB+C staff. Participants were provided with an agenda two days prior to the session setting out the themes and questions intended to be covered. The questions broadly reflected the Issues Paper consultation questions, tailored to suit the particular focus group. The sessions were conducted in a directed but conversational manner and issues raised by participants outside of the themes were also explored. Sessions were recorded with the permission of participants.

#### INDIVIDUAL QUESTIONNAIRES, SUBMISSIONS AND COMMENTS

The questionnaire contained 52 questions, of which six were in respect of practice and demographic data. The estimated time given to complete the questionnaire was 30 minutes but the length and quality of most of the responses indicated more time was spent by most respondents. Only six questions could be described as 'tick a box', with most requesting some descriptive comment or elaboration on a yes or no answer.

The review received 70 completed questionnaires from individual lawyers. Many respondents provided detailed comments to individual questions. Two large law firms, Hall & Wilcox and Lander & Rogers, provided collated responses to the questionnaire. The Association of Corporate Counsel (Victoria) also undertook a survey of its members in a similar form to the questionnaire, and included the 53 responses with their written submission. The number of respondents was small for a profession

of over 24,000 lawyers. While the number of responses did not provide a statistically accurate sample, enough were obtained to provide an indicative picture of the profession's views and experience. The results also provided a valuable further source of data in addition to the data obtained through the focus groups, meetings and submissions and largely corroborated and enriched the information from those sources.

The profile of the respondent cohort was skewed to more experienced lawyers, principals and corporate/government lawyers. Barristers and employee solicitors were under-represented. There was a reasonable response from suburban and regional solicitors. Allowance should also be made for the self-selecting nature of the sample, i.e. the results reflect the views of lawyers with a sufficient interest in CPD to complete the questionnaire.

For the purposes of analysis the responses were allocated unique identifiers based on the demographic information collected using a spreadsheet. This allowed for analysis based on years of practice, gender, location, practising certificate type, areas of practice and fulltime/part time hours. The review did not request information about size of practice. The qualitative comments were analysed to draw out common themes.

A further 28 lawyers provided short, written submissions by email. Professor Julian Webb and Dr Liz Curran also provided written submissions in addition to the consultation meetings that they attended.

#### WRITTEN SUBMISSIONS – ORGANISATIONAL STAKEHOLDERS

The table below provides details of the 28 written submissions the review received from organisational stakeholders. Aside from those provided in confidence these submissions can be found on the VLSB+C website.

## APPENDIX A: METHODOLOGY

TABLE 4: ORGANISATIONAL STAKEHOLDER SUBMISSIONS

No.	Stakeholder	Date
1.	Amnesty International Australia (Legal Activism Sub-committee)	1 July 2020
2.	Association of Corporate Counsel (Victoria)	7 August 2020
3.	Australian Bar Association*	3 July 2020
4.	College of Law	3 July 2020
5.	Continuing Legal Education Association of Australia (CLEAA)	30 July 2020
6.	Hall & Wilcox Lawyers	2 July 2020
7.	International Law Summits	17 July 2020
8.	Lander & Rogers Lawyers	6 July 2020
9.	Law Council of Australia	10 August 2020
10.	Law Firms Australia	17 July 2020
11.	Law Institute of Victoria	23 July 2020
12.	Law Society of New South Wales, The*	24 July 2020
13.	Legal Forecast, The	2 July 2020
14.	Legal Practitioners Liability Committee	21 July 2020
15.	Leo Cussen Centre for Law	21 July 2020
16.	Monash University Law School	18 June 2020
17.	New South Wales Bar Association*	9 July 2020
18.	Professional Standards Councils	21 July 2020
19.	Property Exchange Australia Limited (PEXA)	17 July 2020
20.	Queensland Law Society	23 July 2020
21.	Television Education Network*	13 July 2020
22.	Victorian Bar	17 July 2020
23.	Victorian Government Solicitors Office	17 July 2020
24.	Victorian Women Lawyers	17 July 2020
25.	Women Barristers Association	1 July 2020
26.	Women's Legal Service Victoria	17 July 2020

### Phase 3 – Analysis and Final Report

The information gathered during the consultation phase provided a solid platform for analysis and discussion.

A preliminary version of the review's report was presented to the VLSB+C Board on 13 October 2020, after which the report was finalised for release.

\* Denotes organisation submitted confidential submission

## APPENDIX B JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>Victoria</b>	<p>Uniform Law jurisdiction</p> <p><b>Legislation:</b></p> <p>Legal Profession Uniform Law Application Act (Vic) 2014</p> <p>Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 (NSW)</p> <p>Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015 (NSW)</p> <p><b>Regulatory bodies:</b></p> <p>Legal Services Council (Uniform Law)</p> <p>Law Council of Australia</p> <p>Australian Bar Association</p> <p>Victorian Legal Services Board and Commissioner</p>	<p>10 mandatory CPD points annually</p> <p>Minimum 1 point in:</p> <ul style="list-style-type: none"> <li>ethics and professional responsibility</li> <li>practice management and business skills</li> <li>substantive law (or substantive law, practice and procedure, and evidence for barristers)</li> <li>professional skills (or barristers' skills for barristers)</li> </ul>	<p>Attendance at seminars, workshops (may be web-based); preparation of articles, CPD or educational materials; professional association committee work; postgraduate studies; private study of audio/visual material designed for updating knowledge/skills</p> <p>Limitations on numbers of hours that can be obtained in certain formats of CPD</p>	<p>Barristers / Solicitors – minor differences in respective rules</p> <p>Lawyers over 40 years' experience may be exempted</p> <p>Other discretionary grounds, e.g. hardship, illness</p>	<p>Compliance is a pre-condition for renewal of annual practising certificate</p> <p>Attendance record and evidence must be kept</p> <p>Annual self-certification with practising certificate application</p> <p>Subject to random audit</p> <p>Exemptions and rectification available</p> <p>A range of disciplinary and licensing sanctions available for non-compliance</p>



## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>NSW</b>	Uniform Law jurisdiction	As above	As above	As above	As above
<i>NSW Law Society – CPD requirements for solicitors</i>	<p><b>Legislation:</b></p> <p>Legal Profession Uniform Law Application Act 2014 (NSW)</p> <p>Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015</p> <p>Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015</p> <p>Professional bodies</p> <p><b>Regulatory bodies:</b></p> <p>Legal Services Council (Uniform Law)</p> <p>Law Council of Australia</p> <p>Australian Bar Association</p> <p>Law Society of New South Wales</p> <p>New South Wales Bar Association</p>				

## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>Queensland</b>  <a href="https://www.qls.com.au/For_the_profession/Your_legal_career/Continuing_professional_development_CPD/CPD_rules_policies">https://www.qls.com.au/For_the_profession/Your_legal_career/Continuing_professional_development_CPD/CPD_rules_policies</a>	<p><b>Legislation:</b> Legal Profession Act 2007 QLD</p> <p>Queensland Law Society Administration Rules 2005</p> <p>Administration Rules of the Bar Association of Queensland</p> <p><b>Regulatory bodies:</b> Queensland Law Society The Bar Association of Queensland</p>	<p>10 mandatory points of CPD annually</p> <p><b>Solicitors</b> Minimum 1 point in each of:</p> <ul style="list-style-type: none"> <li>• Practical legal ethics,</li> <li>• Practice management and business skills</li> <li>• Professional skills (which allows case law and legislative updates)</li> </ul> <p><b>Barristers</b> Minimum 1 point in each of:</p> <ul style="list-style-type: none"> <li>• Ethics and Professional Responsibility</li> <li>• Practice Management and Business Skills</li> <li>• Substantive Law, Practice and Procedure and Evidence; and</li> <li>• Barrister's Skills</li> </ul>	<p>Attendance at seminars, workshops (may be web-based); preparation of articles, CPD or educational materials; professional association committee work; postgraduate studies; private study of audio/visual material designed for updating knowledge/skills</p> <p>Caps on some formats but not on private study of audio visual material and is defined as a recording of an activity that took place in last CPD year</p> <p>Power to accredit CPD providers available but not used</p>	<p>Barristers / Solicitors</p>	<p>Compliance is a pre-condition for renewal of annual practising certificate</p> <p>Attendance record and evidence must be kept</p> <p>Annual self-certification</p> <p>Subject to random audit</p> <p>Extensions and exemptions available</p> <p>A breach of the CPD Rules is not conduct capable of amounting to a disciplinary offence</p>

## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>Western Australia</b> <a href="https://www.lpbwa.org.au/Legal-Profession/Continuing-Professional-Development">https://www.lpbwa.org.au/Legal-Profession/Continuing-Professional-Development</a>	<p><b>Legislation:</b></p> <p>Legal Profession Act 2008</p> <p>The Legal Profession Rules 2009</p> <p><b>Regulatory body:</b></p> <p>Legal Practice Board of Western Australia</p> <p>Note: WA is considering a bill to join Uniform Law scheme but with retention of current accreditation scheme for CPD providers</p>	<p>10 points of mandatory CPD annually</p> <p>Minimum 1 point in:</p> <ul style="list-style-type: none"> <li>Professional skills</li> <li>Ethics and professional responsibility</li> <li>Practice management and</li> <li>Substantive law</li> </ul>	<p>Formats are available in two types:</p> <ul style="list-style-type: none"> <li>Interactive Activities</li> <li>Publication Activities</li> </ul> <p>A minimum of 6 points must be gained in either the first category alone or by a combination where publication activities do not exceed 5 points.</p> <p>Mandatory CPD provider accreditation by regulator</p> <p>No committee memberships</p>		<p>Compliance is a pre-condition for renewal of annual practising certificate</p> <p>Attendance record and evidence must be kept</p> <p>Annual self-certification</p> <p>Random audits</p> <p>Rectification and exemptions available</p> <p>Sanctions include licensing and disciplinary action</p>
<b>South Australia</b> <a href="https://www.lawsociety.sa.asn.au/Public/Lawyers/Professional_Development/Menu.aspx">https://www.lawsociety.sa.asn.au/Public/Lawyers/Professional_Development/Menu.aspx</a>	<p><b>Legislation:</b></p> <p>Legal Practitioners Act 1981</p> <p>The Legal Practitioners Education and Admission Council Rules 2018</p> <p><b>Regulatory body:</b></p> <p>Law Society of South Australia for all legal practitioners</p>	<p>10 mandatory CPD points annually</p> <p>1 point in each of:</p> <ul style="list-style-type: none"> <li>Practical legal ethics</li> <li>Practice management or business skills and</li> <li>Professional skills</li> <li>Case and legislation updates allowed within professional skills</li> </ul>	<p>Seminars, workshops, online viewing or listening, presenting publishing, committees, discussion groups with some worth 1 point per hour and others two such as publishing and editing a journal</p> <p>Caps imposed on various formats including online activities, publishing, preparation and committee work</p>		<p>Compliance is a pre-condition for renewal of annual practising certificate</p> <p>Attendance record and evidence must be kept</p> <p>Annual self-certification</p> <p>Rectification and exemption available</p> <p>Can impose late fees for lodgement</p> <p>Random audits include quality and value of CPD</p> <p>A range of disciplinary and licensing sanctions available for non-compliance</p>

## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>Tasmania</b> <a href="https://lst.org.au/professional-development/">https://lst.org.au/professional-development/</a>	<b>Legislation:</b> Legal Profession Act 2007 Law Society of Tasmania Continuing Professional Development Scheme – Practice Guideline No. 4 <b>Regulatory body:</b> Law Society of Tasmania	10 mandatory CPD points annually Minimum 1 point in each of 4 areas of: <ul style="list-style-type: none"> <li>• Practical legal ethics</li> <li>• Practice and business management skills</li> <li>• Professional skills, and</li> <li>• Substantive law</li> </ul>	Broad variety of formats including committee work, publishing and editing, seminar, workshops, courses of study, online viewing or other approved activity Activities conducted internal to a law firm specifically included Exclude reading case law or articles attendance at court, mentoring junior lawyers and repeated teaching Caps on points in different formats and maximum 6 points in one day	Barristers don't have to do any points in practice management and their professional skills point must be in advocacy or ADR	Compliance is a pre-condition for renewal of annual practising certificate Attendance record and evidence must be kept Annual self-certification Exemptions, extension of time and rectification available Random audit of 5% of the profession A range of disciplinary and licensing sanctions available for non-compliance
<b>ACT</b> <a href="https://www.actlawsociety.asn.au/practising-law/cpd">https://www.actlawsociety.asn.au/practising-law/cpd</a>	<b>Legislation:</b> Legal Profession Act 2006 Council of ACT Law Society imposes CPD condition under s 47 <b>Regulatory body:</b> ACT Law Society	10 mandatory CPD points annually Minimum 1 point in: <ul style="list-style-type: none"> <li>• Legal ethics and professional responsibility</li> <li>• Practice management and business skills</li> <li>• Professional skills</li> <li>• Substantive law, and procedural law</li> </ul> Volunteers only require 5 points	Includes workshops, seminars, presentation, discussion groups, publishing and editing, academic courses, online and committees Private study excluded Caps on committee work, writing and editing, preparing and presenting	Lawyers over 40 years' experience can be exempted	Compliance is a pre-condition for renewal of annual practising certificate Attendance record and evidence must be kept Annual self-certification Exemptions, extension of time and rectification available Random audits A range of disciplinary and licensing sanctions available for non-compliance



## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>Northern Territory</b> <a href="https://lawsocietynt.asn.au/for-the-profession/continuing-professional-development-cpd/professional-development-14.html">https://lawsocietynt.asn.au/for-the-profession/continuing-professional-development-cpd/professional-development-14.html</a>	<b>Legislation:</b> Legal Profession Regulations 2007 Schedule 2  <b>Regulatory body:</b> NT Law Society	10 mandatory CPD Points annually  Minimum 1 point in each of: <ul style="list-style-type: none"> <li>Professional ethics and responsibility;</li> <li>Practice management and business skills; and</li> <li>Professional skills in legal practice</li> </ul>	Preparation and presentation, attendance at seminars or lectures, private study of audio visual, writing and editing for publication or as part of post graduate study, committee participation  Caps on all formats except for attendance and presentation at seminars or lectures		Compliance is a pre-condition for renewal of annual practising certificate.  Annual self-certification  Extensions of time and exemptions  Random audits  A range of disciplinary and licensing sanctions available for non-compliance

## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>New Zealand</b>	<p><b>Legislation:</b> Lawyers and Conveyancers Act 2006 Ongoing Legal Education – Continuing Professional Development Rules 2013</p> <p><b>Regulatory body:</b> New Zealand Law Society</p>	<p>Lawyers must have a CPD plan and record that includes reflection on activities undertaken and personal learning needs.</p> <p>Must undertake minimum 10 hours of learning activities</p> <p>No minimum point requirements in any competency or subject area</p> <p>Activity formats and topics given as examples only in the guidelines but emphasis is on the activity's learning objectives in line with the plan and opportunities for interaction and feedback. Online activities must have an assessment component.</p> <p>Some formats excluded – private study, committee membership, pro bono work</p> <p>Lawyers encouraged to be doing at least 50 hours of learning a year</p>	<p>Broadly defined as any learning which:</p> <ul style="list-style-type: none"> <li>is structured with identifiable aims and with outcomes relevant to a lawyer's identified learning needs as contained in his or her continuing professional development plan and record;</li> <li>provides an opportunity for interaction and feedback;</li> <li>is verifiable by documentation; and</li> <li>is not part of a lawyer's usual day-to-day work</li> </ul> <p>Lawyers must use their own professional judgement to determine if an activity meets their plan</p>	<p>Rules are promoted by Law Society to be flexible enough to allow all lawyers to complete the requirements regardless of their areas of practice, location and experience and to enable them to take account of their preferred learning styles</p>	<p>Must declare compliance within 5 days of the end of CPD year on 31 March but can do it anytime before that separately to renewal of practising certificate</p> <p>Audits can occur at any time but intended to be supportive and educative rather than punitive unless knowingly making false declaration – assume disciplinary consequences</p> <p>An organisation can apply for 'self audit' status under the rules by having appropriate processes and procedures for education of its lawyers</p>

## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>England &amp; Wales</b> Solicitors	<b>Legislation:</b> Legal Services Act 2007 Solicitors Registration Authority (SRA) Code of Conduct for Firms SRA Code of Conduct for Solicitors Statement of Competence Threshold Standard of Competence Statement of Legal Knowledge <b>Regulatory bodies:</b> Legal Services Board (oversight regulator) Solicitors Regulation Authority (SRA)	No minimum hours requirement Practitioners are required to reflect on their learning and development needs and undertake activities to meet those needs to ensure that they maintain their competence. Maintaining competence to deliver their role and keep their professional knowledge and skills up to date is a Code of Conduct requirement Competence levels are defined in detail across four areas: <ul style="list-style-type: none"> <li>• ethics</li> <li>• technical legal practice</li> <li>• working with other people, and</li> <li>• managing themselves and their own work</li> </ul>	Practitioners determine the best and most relevant method for their learning and development needs No accreditation of providers	It is expected that practitioners will determine their learning and development needs based on their individual experience and practice to ensure that their skills and knowledge remain up to date	Practitioners are required to submit an annual statement of competence that they have maintained their competence and requisite standard of legal knowledge SRA may check activities as part of an investigation if a lawyer or entity is the subject of regulatory engagement

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Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>England &amp; Wales</b> Barristers	<b>Legislation:</b> Legal Services Act 2007 Bar Standards Board (BSB) Handbook BSB CPD Guidance <b>Regulatory bodies:</b> Legal Services Board (oversight regulator) Bar Standards Board	No minimum hours requirement CPD defined as work undertaken to develop a barrister's skills, knowledge and professional standards in areas relevant to their present or proposed area of practice in order to keep the barrister up to date and maintain the highest standards of professional practice	Complete flexibility for EPP practitioners to determine how to complete their CPD requirements Guidance refers to the 10 Core Duties with which barristers must comply No accreditation requirements	New Practitioner Program (NPP) for practitioners with < 3 years' experience. Must complete 45 hours w/i 3 years, including 9 hours advocacy and 3 hours ethics Established Practitioner Program (EPP) – practitioner required to undertake CPD by preparing written plan of intended activities, record of activities, reflections, assessment of future needs. Record to be submitted annually to BSB	NPP record card to be kept EPP plan and record to be produced upon BSB request
<b>Ontario, Canada</b>	<b>Legislation:</b> Law Society Act 1990 Ontario Law Society By-Law 6.1 2013 <b>Regulatory body:</b> Law Society of Ontario	12 CPD hours annually Minimum 3 hours in professional responsibility, including 3 hours over 3 years to 31/12/20 in equality and diversity, and 1 hour annually thereafter Canadian law societies developed pre-entry competencies for articling clerks but there is no overall competency framework for post-admission Code of Conduct has a lengthy definition and discussion of factors that make a competent lawyer	Professional hours must be from accredited provider Substantive Law hours not required to be from accredited provider Attendance in person or online, if interactive Viewing recorded CPD programs with a colleague, or if without a colleague, up to 6 hours Mentoring, writing, further formal study and teaching, within prescribed conditions Study groups of two or more lawyers Education components of bar and law association meetings	Lawyers / Paralegal service providers	Recording and evidence requirements. Audits, fines for late or non-compliance Online recording on Law Society member portal Electronic filing



## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>British Columbia, Canada</b>	<p><b>Legislation:</b> Legal Profession Act 1998 Law Society of British Columbia Rules 2015, Part 3 Division 3</p> <p><b>Regulatory body:</b> Law Society of British Columbia</p>	<p>12 CPD hours annually</p> <p>Minimum 2 hours in professional responsibilities and ethics and practice management</p> <p>Eligible subject areas are ethics, practice management, lawyering skills, professional wellness, substantive law, procedural law, non-legal topics sufficiently connected to legal practice responsibility</p>	<p>Attendance at accredited or Bar Association accredited courses, including online courses, if Q&amp;A available</p> <p>Study group meeting of two lawyers for educational purposes; or of an editorial board or law reform group; or study group meeting chaired by a lawyer</p> <p>Mentoring, writing and teaching, within prescribed conditions</p> <p>Accreditation system where provider can apply for, or individual lawyer can request approval</p>		<p>Online recording on Law Society at member portal, exemptions available</p> <p>Non-compliance and late lodgement penalties, including suspension</p>
<b>Alberta, Canada</b>	<p><b>Legislation:</b> Legal Profession Act 2000 Rules of the Law Society of Alberta, r67</p> <p><b>Regulatory body:</b> Law Society of Alberta</p>	<p>Each lawyer to determine their learning requirements</p> <p>CPD must be (a) relevant to the professional needs of a lawyer; (b) pertinent to long-term career interests as a lawyer; (c) in the interests of the employer of a lawyer or (d) related to the professional ethics and responsibilities of lawyers</p> <p>CPD must contain significant substantive, technical, practical or intellectual content</p>	<p>It is up to each lawyer to determine if an activity meets the CPD requirements</p>	<p>No formal differentiation, but each lawyer to determine their needs</p>	<p>Lawyers are required to make an annual plan and until recently were required to file the plan on the LSA Lawyer Portal where it could be produced upon request by the executive director of the LSA</p> <p>The requirement to file a CPD plan has been suspended for 2020 and 2021 to allow the LSA to consider the next phase of lawyer competency. Lawyers are still expected to be undertaking CPD to maintain their skills</p>

## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>California, USA</b>	<p><b>Legislation:</b> The State Bar Act Article 4.5</p> <p><b>Regulatory body:</b> State Bar of California</p> <p>Established by legislation, operates as an arm of the Supreme Court of California</p>	<p>25 hours over 3 years</p> <p>Minimum 4 hours in Ethics, 1 hour in Competence, 1 hour in Recognition and Elimination of Bias</p> <p>Attorneys and firms can request free speakers through the State Bar on competency and ethics</p>	<p>Half the activities chosen must be 'participatory', i.e. either in person or online subject that is accredited as participatory</p> <p>Maximum of 12.5 hours self-study</p> <p>CPD Providers must be accredited</p>	<p>New admittees must complete 10 hours of free Bar course in their first year, as part of initial 25 hours</p>	<p>Activity recorded online under individual State Bar registered profile</p> <p>Limited exemptions available</p> <p>Cohort is divided into three by surname (A-H etc.) on staggered three-year cycles</p> <p>Statement of compliance required triennially</p> <p>Records are not tracked but may be subject to audit</p> <p>Failure to comply may lead to suspension of right to practise</p>

APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>New York State USA</b>	<p>Court-supervised system</p> <p>New York State Unified Court System</p> <p>New York State Continuing Legal Education (CLE) Board</p> <p>CLE Program Rules 2018</p>	<p>24 (CLE) credit hours every 2 years, of which 4 hours must be in ethics and 1 hour in diversity, inclusion and elimination of bias</p> <p>Competency areas are ethics and professionalism; skills; law practice management; areas of professional practice; and diversity, inclusion and elimination of bias</p>	<p>Must be from accredited provider</p> <p>Classroom or audience settings; teleconferences; video conferences; satellite transmissions; videotapes; audiotapes; motion picture presentations; interactive video instruction; activities electronically transmitted from another location; self-study; correspondence work; and on-line computer courses</p> <p>Credits for teaching, postgraduate study and publications</p> <p>10 hours credit available for pro bono work with accredited service provider (2 hours work = 1 hr credit)</p> <p>Presenters cannot include preparation, or can claim written paper without presentation</p>	<p>Newly admitted attorneys (&lt;2yrs post-admission) must complete minimum 16 hours of accredited transitional courses (i.e. designed for new admittees) in each of first two years. In each year, 3hours in ethics, 6 hours in skills and 7 hours in remaining areas</p> <p>Special transitional course credit requirements for new (&lt;2yrs) admittees. Ethics and skills courses must be in classrooms or interactive</p>	<p>Activities to be recorded and certified biennially, with renewal of registration</p> <p>Certificates of attendance to be retained</p> <p>Some exemptions available</p>

## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
<b>Singapore</b>	<p><b>Legislation:</b></p> <p>Legal Profession Act</p> <p>Legal Profession (Continuing Professional Development) Rules 2012</p> <p>Guidelines on CPD Scheme 2017</p> <p><b>Regulatory body:</b></p> <p>Singapore Institute of Legal Education</p> <p>Related body – Singapore Academy of Law</p>	<p>Number of CPD points to be completed depends on years of post-admission experience</p> <p>Content to deal primarily with:</p> <ul style="list-style-type: none"> <li>• matters of practice of law, have significant intellectual or practical content, and seek to extend the knowledge or skill of a solicitor; or</li> <li>• have significant intellectual or practical content, and deal with one of six areas of management or professional skills, e.g. information technology, financial literacy, presentation skills.</li> </ul> <p>Minimum half of required CPD points must be earned from accredited activities</p>		<p>&lt;5 years practice – 16 points</p> <p>5-15 years practice – 8 points</p> <p>&gt;15 years practice – 4 points</p>	<p>Annual declaration of compliance or exemption</p> <p>Record and evidence of CPD activities to be kept</p> <p>Institute has audit powers</p>
<b>Chartered Accountants</b>	<p>Private organisation – Chartered Accountants of Australia and New Zealand</p> <p>Different levels of membership, with some additional specialties</p>	<p>120 hours each triennium, 90 hours must be formal CPD. A minimum of 20 CPD hours must be completed in each year</p> <p>Formal CPD activities must have an organised framework with clear objectives; impart knowledge of an educational / technical nature; and involve the participant</p>		<p>Lesser requirements for Associates and Technicians</p> <p>Additional requirements for specialists / statutory registrations (e.g. tax agent)</p>	<p>Records to be kept</p> <p>Annual statement of compliance</p>



## APPENDIX B: JURISDICTIONAL AND PROFESSIONAL COMPARISON TABLE

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
General practitioner (medical)	<p><b>Legislation:</b> Health Practitioner Regulation National Law (Victoria) Act 2009</p> <p><b>Regulatory bodies:</b> Australian Health Practitioner Registration Agency (Ahpra) Medical Board of Australia Royal Australian College of General Practitioners (unless the doctor chooses to align with another college)</p>	<p>130 hours CPD activity per triennium</p> <p>80 hours must be Formal CPD activities, 5 hours must be Basic Life Saving CPD.</p> <p>Balance to be selected by practitioner.</p>	<p>CPD activities must relate to keeping up-to-date with scope of practice</p>		<p>Documents to substantiate 120 hours of activity</p>

## APPENDIX C CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
1	What type of CPD activity (e.g. seminar, online training materials) do you most commonly undertake? (Select <b>three</b> from list)	Seminar	54	77%*	*Percentages add up to 300% because of the selection of three activities by each respondent.
		Webinar/ web-based program	41	59%	
		Conference	37	53%	
		Presenter / Lecturer	22	31%	
		Workshop	20	29%	
		Private study of audio/ visual material	11	16%	
		Discussion Group	3	4%	
		Committee participation	3	4%	
		Writing / editing	3	4%	
		Formal / postgrad study	1	1%	
		NR/U	3	4%	

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis		Selected Comments and Quotes
2	(a) What type of CPD activities have improved your skills the most?  (b) What were the factors that contributed to their effectiveness	Seminar	20*	<p><i>*As some respondents nominated more than one type of activity, a percentage of the total responses has not been calculated.</i></p> <ul style="list-style-type: none"> <li>• Seminars – Updated information on relevant case law and legislative change.</li> <li>• Seminars and conferences – the presence of other professionals in a formal setting with the opportunity to ask and hear questions.</li> <li>• Conferences – legal issues/challenges are covered from multiple perspectives, sometimes from the point of view of (lawyers of) plaintiff/defendant, regulator/duty-holder – this allows a much greater understanding of issues.</li> <li>• Conference – Content is more in depth and chance to discuss with peers who are knowledgeable in that area.</li> <li>• Webinars – Ease of access.</li> <li>• Webinars – Availability online; scope of topics to choose from; scope of presenters to choose from.</li> <li>• Discussion / small study groups – Ability to contribute/discuss and ‘deep dive’ into the issues.</li> <li>• Workshops – Being able to contribute and have questions/queries directly addressed.</li> <li>• Workshops – You have the opportunity to put into practice your news skills.</li> <li>• Presenting – The necessity to properly research and prepare the material to be presented.</li> <li>• Writing – Natural inclination to writing. Ease of opportunities to publish. Ability to consult with experts.</li> <li>• Formal postgraduate study – Greater engagement with subject matter; Access to ongoing expertise outside of the legal profession (academics); Ownership over learning content; Depth of ideas and knowledge gained from the process of formal study.</li> <li>• I have sometimes attended seminars that include a practical or workshop component – most commonly through guided questions or hypotheticals (the Socratic method). This is more stimulating for reflective practice and self-assessment of knowledge or skill. That said, I am not convinced of its effectiveness re: tangible skills development (at best, it might inspire something more that is undertaken later (further inquiries, further study or personal research).</li> </ul>
		Webinar/ web-based program	7	
		Conference	10	
		Presenter / Lecturer	8	
		Workshop	16	
		Private study of audio/ visual material	1	
		Discussion Group	2	
		Committee participation	2	
		Writing / editing	3	
Formal / postgrad study	2			

APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
3	What type of CPD activities improved your skills the least*?  What were the factors that contributed to their lack of effectiveness	Seminar	19		<i>*Many respondents provided details of topic areas that they found least effective or made general statements about CPD activities (e.g. being too generic)</i> <ul style="list-style-type: none"> <li>• Seminar – cost; inconvenience; time away from the office.</li> <li>• Seminar – Lack of interactivity – the communication is invariably one way from the presenter to the audience and, given time constraints, lack of genuine opportunity for audience engagement with the core skill.</li> <li>• Seminar – broad law firm CLE sessions try to cater for the masses in very short frames of time (eg. 50 minutes plus questions).</li> <li>• Webinar – dry presentation, lack of practical understanding, no feedback or discussion.</li> <li>• Webinar – doing them at office with distractions and interruptions.</li> <li>• All day conference – not all content is useful and you have to undertake the whole day in any case.</li> <li>• Presenting my own seminars within firms – they are difficult to prepare, time consuming, and often thankless!</li> <li>• Workshops – often un-relatable scenarios, discussion dominated by people who think they know everything.</li> </ul>
		Webinar/ web-based program	9		
		Conference	5		
		Presenter / Lecturer	1		
		Workshop	2		
		Private study of audio/ visual material	4		
		Discussion Group	1		
		Committee participation	–		
		Writing / editing	–		
		Formal / postgrad study	–		
4	Are your CPD activities undertaken as part of a cycle of reflection about your professional needs and goal setting?  If Yes, is it part of a performance management program at your work*	Yes	28	40%	<ul style="list-style-type: none"> <li>• Yes. I don't try and get a set number of points, and indeed in every year I would get many more points than I need. Professional development is not about the points, but I also know that for some people they are a good discipline.</li> <li>• In part, yes. Generally, there are 1-2 activities that I have strategically planned based on goals, the remainder is more ad-hoc and based on relevance to my work, my areas of interest and availability.</li> <li>• Not really, I just choose subjects based on emails I receive from law firms and what takes my interest.</li> <li>• No. I don't need to reflect. I need to keep up to date so as to provide excellent service.</li> </ul>
		No	32	46%	
		NR/U	10	14%	
		The number of respondents to 4(b) was too low to provide a meaningful sample.			
5	How many hours of CPD did you complete in the last CPD year?	<10	1	1%	
		10	7	10%	
		11–20	32	46%	
		21–30	14	20%	
		>30	14	20%	
		NR/U	2	3%	

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes									
6	What is your best estimate (as a percentage) of the CPD activities you undertook in each of the four subject areas?	<p>Average (68 responses)</p> <p>Ethics 13%</p> <p>Professional skills 18%</p> <p>Practice Mgt 15%</p> <p>Substantive Law 53%</p>										
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?	<p>Average (52 responses): 65%</p> <p>(Median = 70%)</p>										
8	Please rank the four subject areas from 1– 4 in terms of their usefulness for maintaining or improving your competence as a lawyer	<p><i>Rankings were tallied in reverse order (1=4pts, 2=3pts etc) with the highest aggregate number showing the highest level of perceived usefulness. (68 responses)</i></p> <p>Substantive law: 222</p> <p>Professional skills: 180</p> <p>Ethics: 161</p> <p>Practice Mgt: 124</p>										
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?	<table border="1"> <tr> <td>Improves</td> <td>32</td> <td>46%</td> </tr> <tr> <td>Reduces</td> <td>25</td> <td>36%</td> </tr> <tr> <td>NR/U</td> <td>13</td> <td>18%</td> </tr> </table>	Improves	32	46%	Reduces	25	36%	NR/U	13	18%	<p><i>The results should be treated with caution as many responses treated this question as if it was asking whether the 10 point minimum threshold should be retained. Responses that favoured the current requirement tended to support it because it forced them to consider their learning activities. Those that thought the requirement was detrimental to their learning referred to the number of box-ticking seminars they attended in order to gain points.</i></p> <ul style="list-style-type: none"> <li>Probably reduces marginally as it takes away from me doing as much structured private study by lulling me into a sense that I've done what's required. It also means that the formal CPD requirements frame my own expectations, rather than an assessment of what I need.</li> <li>The requirement to achieve 10 CPD points has no bearing overall on my participation or the effectiveness of my learning and development activities because I have an internal driver to be better at what I do.</li> <li>A requirement means you have to find time to do it, rather than forget to voluntarily do it.</li> </ul>
Improves	32	46%										
Reduces	25	36%										
NR/U	13	18%										



## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
10(a)	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.	Yes	32	46%	<ul style="list-style-type: none"> <li>No – anything non-billable is low priority. No employer I have ever worked for would hold a lawyer to their learning and development goals.</li> <li>Absolutely. Although I would still probably far exceed the 10 points, it would provide me with flexibility to improve my skills whenever and wherever I like, for the purpose of self-improvement, rather than doing something because it is a requirement.</li> </ul>
		No	24	34%	
		NR/U	14	20%	
10(b)	If yes, what sort of accountability would be effective for demonstrating achievement of your goals? Do you think this could work for the whole profession?				Most responses referred to different ways in which lawyers should keep a record of their learning activities, which would be auditable. Almost all defined goals by reference to activities and hours rather than learning outcomes, with some also mentioning learning plans. One response referred to peer review, another commented that competent use of skills was the only effective measure.
11	In which of the four prescribed areas of CPD activities (if any) have you encountered difficulty in finding activities that were relevant to your learning and development needs?	(Respondents were able to provide more than one area. N=70)			
		Ethics and Professional responsibility	30		
		Practice Management and Business skills	25		
		Professional skills	20		
		Substantive Law	8		

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
12	If you encountered difficulty, what was the nature of the problem?		<p>Key difficulties included:</p> <ul style="list-style-type: none"> <li>• Unsuitable or irrelevant topics, particularly for in house or government lawyers. "Practice Management and Business Skills is largely irrelevant for in house lawyers."</li> <li>• Few options for those practicing in specialist areas i.e. family law, constitutional law.</li> <li>• A lack of variety for Ethics training.</li> <li>• Location barriers, especially for those located in suburban or regional Victoria. Compounded by a "lack of relevance with web-based products."</li> <li>• Timing: "Difficulty finding a session that was run in family friendly hours."</li> <li>• Cost prohibitive.</li> <li>• Poor quality, boring, repetitive sessions "often you have already heard what they are going to say."</li> <li>• Lack of clarity between the CPD categories "I don't know the difference between Professional Skills and Business Skills. Aren't they the same thing?"</li> <li>• More experienced lawyers concerned CPD sessions are "a waste of time... the soft skill stuff that's out there is really quite low brow and almost condescending." There are "few opportunities to experience advanced skills CPD."</li> </ul>

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
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.		<p>Of the 69 respondents who provided comment, 41 thought the last CPD activity in Ethics was useful, 28 not useful with many emphasising it was too general, not very relevant or not didn't have enough new knowledge, although many still expressed enjoyment. Those who were positive about the last activity emphasised interactivity and presenter engagement as well as being of practical value to their practice.</p> <ul style="list-style-type: none"> <li>• I attended a number of creative sessions at leading law firms in 2019 CPD year that were excellent, took a future/transformation/technology viewpoint with actors.</li> <li>• Sometimes they are not useful. Sometimes they are dramatically useful. My last one went through recent cases against lawyers and was illuminating.</li> <li>• I didn't learn anything I did not already know well. (In contrast with other areas, where I frequently learnt new things.)</li> <li>• It was OK, it ticked the box.</li> <li>• I practice solely in family law and many of these types of ethics presentations focus on varied areas of practice and the examples are not necessarily relevant.</li> <li>• I think it was helpful, particularly when being given case studies/ examples, attending in person was helpful.</li> <li>• I have practised criminal law for many years. Defending serious professional criminals who also want to be your friend is a continuous dance with the Devil. It is sometimes a fine line that divides a criminal and a criminal's lawyer. I think that Ethics associated with the practice of Criminal Law should be the subject of discrete and special attention. I think Ethics in general is not well understood by practitioners and is far more than a body of rules and regulations to abide by but is in truth a state of mind and an inseparable part of the fundamental integrity expected of every legal practitioner from the date of their admission to practice. I think Ethics extends far beyond what is being currently presented and that ideally the speaker should be mature, knowledgeable, experienced, articulate and able and willing to venture into areas of jurisprudence and philosophy in order to put more meat on the subject as a compulsory component and to engage practitioners rather than have them looking at each other with their eyebrows raised.</li> <li>• Conflict of interest and costs agreements were the ones I found quite useful. There were things brought to my attention which I had perhaps forgotten or overlooked during my years of practice. The courses brought these things back to me</li> <li>• I attended an ethics presentation and it was pretty much what I've had many times before – a reiteration of the conduct rules.</li> <li>• Good, engaging and relevant as discussions were around real scenarios that all practitioners could relate too and the audience participation in the discussion made it all the more interesting to see how each practitioner dealt with the issue.</li> <li>• I enjoy Ethics every year. I think this is super important for the integrity of the profession. I undertook web based CPD last year and it was perfect – it's 2020 after all. I like all the practical examples that often accompany Ethics. I think this is the best way of teaching Ethics as it really drives home what is and isn't 'ethical' – which sometimes can be a blurry grey line</li> <li>• Not at all, can't recall session other than it was case law and not practical, and only attended to get the point.</li> <li>• The Ethics activities I undertook were extremely useful. The presentation was of high quality and practical. Living Ethics an interactive podcast program, using case studies, was excellent as I could "absorb" the details at my own pace. This must remain a compulsory CPD activity if "best practice" is a goal.</li> </ul>

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
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.		<p>Of 63 respondents that gave an answer, 54 found substantive law useful, 9 did not. Many comments expressed the importance of keeping up to date with new developments, keeping knowledge current and that these activities were good refreshers. Most comments referred to undertaking seminars but a few mentioned committee membership and presenting as important ways that they met their CPD requirements. Many noted there was plenty of variety and that activities were chosen based on interest and practice area.</p> <ul style="list-style-type: none"> <li>• The substantive law activities that I undertook last year were useful as they were relating to important updates to the law and the profession. The activities were solely as presentations and they provided a good update about changes to an area that I deal with in the profession (costs)</li> <li>• I usually present these sessions. It is useful, but I would do it anyway as a matter of profile raising and assisting junior lawyers to promote and progress their own careers.</li> <li>• The content was criminal law, however, unless there are significant reforms, from year to year criminal law content is largely the same. I would support more diversified options, for example, a current problems in criminal law seminar. I find that the content is often too narrowed to strict legal process rather than the broader implications and social factors that influence and interact with all areas of law, including understanding client needs and service user needs. These are also core functions of legal work beyond a pure understanding of process and law. For example, instead of attending criminal law conferences yearly with only minor amendments, I would prefer to attend a university criminology or social science lecture so that there are difference perspectives, a reliance on research and an increased awareness of factors that may be relevant to legal matters that I may work on.</li> <li>• Very useful. I did a combination of online training and attending seminars – it's important to stay up to date with changes and to have the ability to ask questions around changes.</li> <li>• Useful. Seminar and workshops, well-presented by experienced Barristers and good quality material provided,</li> <li>• Always the most useful. My selection of topics in any given year can change as the relative emphases in law reform, commercial developments or judicial intervention changes. My selection of forums – university seminar series, regular special interest group or professional society conferences – enable both on-topic and just off-topic interaction with peers. On top of that, the need to present to junior or lay audiences through the year and publish in specialist publications imposes the discipline of demonstrating that learning has taken place by the need to explain what has been learnt against general background knowledge – either lay or specialised.</li> <li>• The best of them combined substantive law with professional skills – for example, recent caselaw and legislative changes regarding corporate insolvency and what implications these have for contract drafting (with examples). It was more than simply describing changes in the law or interpretations of the law, but was practical too.</li> <li>• Law changes daily, and since this blasted virus took hold, it is changing at light speed. Judging how to deal with specific issues in light of difficult accessing courts/mediation is difficult and dangerous re insurance. I tend to do substantive and professional skills in the same CPD activity as they overlap generally.</li> <li>• Some interesting legal decisions; however I already keep up with bulletin boards and numerous professional journals so for me quite unnecessary</li> <li>• I regularly present at seminars and conferences and the preparation is a useful means by which I am able to keep up with the law.</li> <li>• Very useful as they covered topics I wished to learn about.</li> </ul>

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
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.		<p>Of the 58 responses to this question, 41 thought the professional skills subject area to be useful, 17 not useful. However there were very few responses that were really engaged with the activity, mostly the answers were that the activity was marginally or only barely useful. Relevance was a particular issue for in house, sole practitioners and more experienced lawyers. Common formats were seminars but workshops were considered the most practically useful for skill development.</p> <ul style="list-style-type: none"> <li>• It was irrelevant. I attend a seminar just to get the point. Total box ticking.</li> <li>• Marginally useful. Difficult to find suitable interesting seminars.</li> <li>• I attended a forum which included a workshop on interviewing a young person. It was thought provoking and enlightening.</li> <li>• Not very useful. Undertook a unit on transforming my personal brand which was relevant for young solicitors, but certainly not relevant to an older established lawyer.</li> <li>• Marginally useful – I attend two seminars and only one was practically useful in my role as an in-house lawyer.</li> <li>• I found that the ones on legal costs can be a bit hit and miss. If we get specific info on improving costs disclosure and agreements, that is really helpful, but other times, they are very general and leave you none the wiser on how to improve those skills.</li> <li>• Very – I did leadership training over two days which was very useful and helped me develop as a professional generally.</li> <li>• Professional skills CPD activities can be quite useful. I particularly enjoy workshops and would prefer to construe the concept broadly – as a broad range of skills enhance my ability to practice law.</li> <li>• Barely at all. It was a presentation about self-care, and provided a framework for identifying risks relating to unmanaged stress; but I didn't learn much new, nor was it relevant to my circumstances.</li> <li>• I found the activity to be quite engaging in eliciting diverse opinions, and putting into immediate practice newly acquired skills within a friendly environment. The activity format was workshop.</li> </ul>



## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
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.		<p>Of the 59 responses, 37 found the practice management activity they had done useful, but there were more comments about being only marginally useful due to relevance to practice type. 22 found it not useful at all. A small number commented positively on undertaking the practice management course.</p> <ul style="list-style-type: none"> <li>• Not useful – it is not useful for in house lawyers regardless of format.</li> <li>• Not at all. This is something we do every day as senior practitioners (including mentoring juniors).</li> <li>• Again, not sure how this differs to Professional Skills. Another waste of time if you are experienced.</li> <li>• I completed my practice management course last year and so for me personally, that was useful in guiding me to start up my practice and assisting me with practices and procedures. There were parts of the course which were not particularly useful to me, but I appreciate these are mandatory for the specific course.</li> <li>• Some were really good, especially the one who offered to come out to the firm and talk to all staff about procedures and policies that can improve.</li> <li>• Useful. Seminars and workshops, well-presented and good quality material.</li> <li>• It was part of a multiple area CPD activity and though relevant I find it the hardest to concentrate on.</li> <li>• Absolutely zero benefit and should be scrapped this CPD year (and all future years) for in house lawyers.</li> <li>• The activity was beneficial in providing opportunities to network with other practitioners, discuss key practice management concerns, and acquire new business skills within a lively environment. The activity format was Conference.</li> </ul>

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
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.		<ul style="list-style-type: none"> <li>• Of those who thought there should be specific, mandatory topics, 22 proposed that technology should be included. This was the most frequently identified topic for mandatory CPD and spanned system design, using/managing data, privacy, security, software and tools for practice management, intellectual property, electronic transactions and the changing regulatory landscape in relation to technology.</li> <li>• Sexual harassment was the next most common recommendation for mandatory CPD topics (16). Some proposed annual training whilst other suggested every 2-3 years. However, it was also highlighted that training alone cannot drive the change required – “if judges don’t keep their hands to themselves, how will a compulsory webinar help?” A small number of respondents expressed their opposition to mandatory sexual harassment training with one respondent contending “we do NOT need some outside body to decide for us what socially desirable policy we should be turning our minds to”</li> <li>• Fostering safe workplaces was highlighted by some respondents through mandatory training about mental health, communication, bullying or discrimination. It was noted that there is need to build communication capabilities with colleagues, other lawyers and with clients.</li> <li>• “General social justice issues such as awareness of discrimination generally and cross-cultural issues, aboriginal justice issues” were also proposed, as well as a deeper understanding of family violence for family and criminal lawyers.</li> <li>• Further ideas for mandatory training topics include: understanding regulators and regulation that lawyers may be exposed to in their work; grievance and complaints handling; rights and responsibilities to call out system failures within the profession/justice system.</li> <li>• Other respondents proposed that rather than adding more mandatory training topics “the VLS should, however, publish a list of recommended topics and encourage lawyers to think “if that particular topic (on the list) is not on my CPD plan, why not?”</li> </ul>

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
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.		<ul style="list-style-type: none"> <li>• The most commonly identified cohort for specific mandatory training was senior partners and principal lawyers: <ul style="list-style-type: none"> <li>◦ I think that an activity directed to consideration about workplace culture, supervision and technology should be mandatory for principal lawyers.</li> <li>◦ Senior Partners in law firms should learn more about the systemic causes and contributors to poor wellbeing and mental health that their firms may foster through poor management and not walking the talk.</li> <li>◦ As an employment lawyer and mediator, employers and managers should be required to be updated on risk managing workplace bullying and harassment.</li> <li>◦ Leadership for lawyers in roles which are management or require supervision or direction of other lawyers.</li> <li>◦ Principal Lawyers must have compulsory CPD focussed on the issues/ systems/money/people that they “control”. A good technical lawyer (in a practice area) is not necessarily a qualification for Management.</li> <li>◦ Partners and senior practitioners should be given more intensive anti-harassment training as well as the general active bystander stuff.</li> <li>◦ Perhaps general management/HR skills including bullying/harassment for those who are principals and/or manage staff.</li> <li>◦ Principals should be required to undertake topics in their area of practice.</li> <li>◦ Principals: How to train and supervisor your Juniors (there are too many stories of bullying and not teaching Juniors).</li> </ul> </li> <li>• Another identified cohort was Junior lawyers: <ul style="list-style-type: none"> <li>◦ Junior lawyers could do with a lot more help managing their lives in law firms. How to negotiate deadlines, what’s acceptable work practices and what isn’t, how to understand your role in a firm.</li> <li>◦ Universities and practical training colleges do not cover many areas, and there are benefits in learning when in practise. I think the profession needs to take more responsibility for training younger lawyers in a structured way. This is particularly the case now that there are so few firms taking graduates.</li> <li>◦ “For more junior lawyers Management and Business skills should be included with an emphasis on the practical.”</li> </ul> </li> <li>• Specific training for practitioners who handle trust funds and technology training for sole practitioners.</li> <li>• Remedial training may be appropriate if “a practitioner has been found wanting in one particular area, it would seem fitting to require them to undergo training to address the issues that have been identified” “Only if a practitioner has transgressed to the extent supervision is mandated.”</li> <li>• Other potential cohorts identified include: <ul style="list-style-type: none"> <li>◦ “Litigation 101 for non litigation lawyers”</li> <li>◦ “Particularly for family lawyers (and criminal lawyers), professional development must include exposure to understanding of family violence.”</li> <li>◦ “Perhaps sexual harassment and IT for mature lawyers.”</li> <li>◦ “Some topics should be mandatory for recent overseas practitioners (for the two years that they are under supervised practice) which may be substantive law related e.g. property, constitution, administrative law.”</li> </ul> </li> <li>• Other respondents were opposed to the idea of training for specific cohorts with one stating, “this goes to the heart of the fragmentation or otherwise of what it is to be a practitioner in complex and globalised society.” Another said rather than make courses mandatory, “it would be helpful for lawyers and organisations to be made more aware of capability frameworks around which to structure their professional development.”</li> <li>• 16 respondents entered ‘no’ or left field blank.</li> </ul>

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
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.	<p><i>(Respondents were able to provide more than one area)</i></p> <p>Ethics and Professional responsibility 9</p> <p>Practice Management and Business skills 25</p> <p>Professional skills 6</p> <p>Substantive Law 2</p> <p>All should be mandatory 22</p> <p>No answer 17</p>	<ul style="list-style-type: none"> <li>• Many of the comments about practice management related to relevance to position as barrister, employee, government or in house Counsel. Those who thought ethics should not be mandatory were mostly of the view ethics cannot be taught effectively. Those who thought all should stay often reflected that broadening or more flexible options under those subject areas was required.</li> <li>• Beyond substantive law, I don't see the need for the 3 other areas to be mandatory.</li> <li>• Ethics provides guidance, but in my experience, ethical lawyers often engage in conversations with other practitioners when ethical dilemmas arise. No ethics talk or presentation can provide all of the answers.</li> <li>• Practice Management – if you are not a Principal then it should just be optional.</li> <li>• Given the diversity of legal practice, I would suggest that lawyers be audited as to what areas they have explored in CPD and how that relates to their work rather than mandating specific areas.</li> <li>• Ethics and professional responsibility. Essentially, the professional behaviour expected of lawyers are set out in the legislation and as everywhere in life, some characters embrace doing the 'right' thing and others never will. I don't believe the courses are going to change the basic personal characteristics of the participants.</li> <li>• No, but they could be better defined and the objectives of the CPD better articulated – including different grades or objectives that reflect different levels of experience.</li> <li>• Professional skills and Practice Management for more experienced lawyers.</li> <li>• No – I think the balance is right. I do think it would be better if the "descriptions" or "criteria" that are in the Rules could provide more guidance, and perhaps be expanded so there is more flexibility in what fits into each subject area.</li> <li>• I think a cafeteria approach should apply ie professionals should be able to select. Why should I not emphasise one area and ignore others that are not relevant to me?</li> </ul>

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
20	<p>Please provide any views and insights you have about the effectiveness of the current skills requirements for:</p> <p>(a) a principal's practising certificate, and</p>		<ul style="list-style-type: none"> <li>• I think that if a practitioner holds authorisation to receive trust money they should do some sort of specialised activity relating to this every year.</li> <li>• A practitioner should probably have more experience – e.g. 5 years, in order to obtain a principal's practicing certificate or be able to demonstrate why they should be exempt from this requirement. There is so much to learn about the practice of law in those first few years, I do not believe junior lawyers are ready to become principals that early in their career.</li> <li>• I feel that some principals that were pre the practice management course are lacking skills to appropriately oversee junior lawyers. I believe all principals should be required to have this course over a period time. I say this having worked for practitioners having been principals for decades.</li> <li>• Good, but perhaps some more requirements on management of staff.</li> <li>• The course is very expensive, especially if one is not being subsidised by an employer.</li> <li>• Extremely limited value as currently designed – would get similar value by prescribing a text book or set of notes and imploring candidates to read the book.</li> <li>• Quite adequate. The initial testing is appropriate and the regular examination that occurs from then on compels attention to proper Practice management.</li> <li>• In my view they are sufficient. We are very heavily regulated as is.</li> </ul>
	<p>(b) authorisation to receive trust money.</p>		<ul style="list-style-type: none"> <li>• I think that if a practitioner holds authorisation to receive trust money they should do some sort of specialised activity relating to this every year.</li> <li>• Largely irrelevant. Indeed in large firms these tasks are handled by professional management.</li> <li>• There does not seem to be any training specifically relevant to this.</li> <li>• Specific competence and knowledge of the trust accounting requirements have always required special accreditation at the outset. Major reforms may require specialised refresher activity. There was no compulsory demonstration of knowledge when the Uniform Law came in.</li> <li>• A yearly refresher on the basics, perhaps using the most commonly used software and the presenters be accounts people who have to deal with lawyers may be the best way to get across the skills to prevent the problems happening?</li> <li>• Have sat for this a couple of times. I will never get that time back. There are far better (online) methods of ensuring someone has been exposed to basic details than chalk and talk/self study approaches.</li> <li>• Totally irrelevant! It used to be compulsory to do an hour of this every three years and I suspect something like this would be useful – even just forcing practitioners to read the rules!!!</li> </ul>



## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
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 (1–4, 1 being Not at all)	1 Not at all	5	7%*	
		2 No, not really	14	20%	
		3 Yes about right	43	61%	
		4 Yes exactly what I needed	4	6%	
		None	4	7%	
22	Should the CPD requirements for more experienced lawyers (>15 PAE) be changed? If yes, how should they be changed?	Yes	26	37%	<ul style="list-style-type: none"> <li>I think that there should be a focus/requirement that more experienced lawyers contribute to the profession through mentoring and/or education. This should be recognised by mentoring being accepted as a CPD activity.</li> <li>I am 16 years PQE. I don't think my requirements should be changed. If anything, increased. It's the older generation who can get extremely fixed in their ways. They need to be forced to listen to other people outside their own little bubble (not that this necessarily works as they get points for presenting!)</li> <li>Junior lawyers should probably have CPD requirements in their early years, but more experienced lawyers (eg 10 years post admission) should probably have more relaxed requirements, such as 5 substantive law points, to ensure their knowledge of the law remains current. By that stage in their career, many lawyers have developed significant skills which they continue to use on a daily basis and the CPD requirements may be of little practical benefit to them.</li> <li>It's essential to keep learning.</li> <li>Not necessarily – the issue is the availability of activities that reflect different levels of experience. Currently many activities (admittedly the free or cheap ones) are pitched at the lowest common denominator rather than a particular type or experience of lawyer.</li> <li>I have 46 years post admission and believe the requirements are appropriate.</li> </ul>
		No	32	46%	
		NR/U	12	17%	
23	Should the CPD requirements for less experienced lawyers (<3 years PAE) be changed? If yes, how should they be changed?	Yes	28	40%	<ul style="list-style-type: none"> <li>I think there should be more opportunity for new lawyers to network and participate in formal mentoring for the purposes of CPD points. Establishing a solid and reliable legal network is critical for early career lawyers.</li> <li>Core skills and capabilities need to be clearly identified for the stage of the lawyer's career, and pathways outlined for 'further study' or CPD later, to minimise 'rinse and repeat'.</li> <li>Possibly more hours with easy to understand topics and presentations. I have long thought that at any conference there should be a Young Lawyers Stream and senior stream.</li> <li>It is the quality of the CPD offering that needs to change not the requirements.</li> </ul>
		No	22	32%	
		NR/U	20	28%	

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
24	In your experience, which type of provider consistently provides the best CPD training?	Commercial provider	5	7%	<ul style="list-style-type: none"> <li>I am at a major law firm, and the consistent quality of CPD is excellent. External seminars are far more variable, with most seminars these days featuring people who want to market themselves as opposed to genuine subject matter experts.</li> <li>I have a limited experience of providers but have not seen a major difference.</li> <li>Online - CPD for Me. Consistently surpasses expectations</li> <li>Hard to say – my experience is patchy across the board, noting that I haven't yet undertaken CPD via a government authority or education and training provider.</li> <li>Subject matter expert workshop with extensive Q&amp;A – generally Specialist Association within the profession</li> <li>None of them – but in-house can be good because more commercial and practical but you rarely see that offering.</li> <li>For me, it's not one particular type of provider. It really depends on the skills area. I have found commercial providers for professional skills; in-house and law firms for substantive legal skills; law firms for ethics; commercial providers and other subject matter experts for practice management and business skills.</li> </ul>
		Education or Training body	8	11%	
		Government Authority	5	7%	
		Professional Association	23	33%	
		In-house	3	4%	
		Law Firm	9	13%	
		No answer Professional Association	17	24%	
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.	Yes	8	11%	<ul style="list-style-type: none"> <li>Free 'open days' put on by large firms are often just as effective as activities that are paid for.</li> <li>Not as a general rule. It depends on what the activity relates to and who is providing it.</li> <li>I find that the quality provided by the Commercial Providers and which I pay for are more professional and attempt to be more relevant.</li> <li>Yes, free training can be somewhat sketchy – however better than nothing.</li> <li>Personally I'd say that the free ones are far superior. These guys are out to impress and demonstrate their smarts and capabilities.</li> <li>Often the best PD comes from the free/cost recovery specialist associations rather than organised or commercial activities promoted by industry groups.</li> <li>A higher price does not necessarily reflect a high-quality program. Some free programs offered are excellent.</li> </ul>
		No	51	73%	
		NR/U	11	16%	
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)?	\$0	10	14%	<p>Note that:</p> <ul style="list-style-type: none"> <li><i>Expenses and opportunity costs are extra</i></li> <li><i>In-house activities are unable to be costed in this survey tool, except as free activities for attendees</i></li> </ul>
		\$1–1,000	29	41%	
		\$1,001 – 3,000	13	19%	
		>\$3,000	1	1%	
		NR/U	17	24%	

APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
27	Would it help you to choose activities if some providers had gained CPD training accreditation	Yes	19	27%	<ul style="list-style-type: none"> <li>If the CPD training was of a better quality, varied from year to year was relevant to my role and engaging, yes.</li> <li>Yes – many presenters (especially barristers) think that they are very skilled, but merely read their papers instead of speaking to them. They need to learn how to deliver meaningful and inspirational presentations.</li> <li>Depends on the quality of that training and its use of adult learning approaches so it’s relevant and responsive.</li> <li>That would be useful to many, especially if it were linked to the competency framework you are proposing. This would make it easier to find training which would fill competency gaps which are identified.</li> <li>No. Anyway, ‘accreditation’ would probably mean higher charges for CPD programs.</li> <li>Training offered by an accredited provider does not necessarily guarantee that an individual presenter will deliver content in a compelling way and at the right level.</li> <li>I think it would make it harder. Within the profession, there are those providers that are reputable and others that are not. I do not believe that accreditation would add any significant value.</li> <li>My general view is that CPD accreditation does not guarantee an excellent learning experience. Accreditation can be a barrier to entry for organisations that run their own CPD program or individual lawyers who offer training in their area of expertise, as it imposes a cost and administrative burden to obtain and maintain accreditation.</li> </ul>
		No	36	51%	
		NR/U	15	22%	
28	If you are employed, what role (if any) does your employer play in assisting you to identify and complete your CPD obligations?	Significant	5	16%	<ul style="list-style-type: none"> <li>None – it is left to me to manage compliance and identify suitable seminars.</li> <li>My direct manager encourages CPD compliance by offering information on varying seminars and encourages broader learning beyond CPD.</li> <li>My employer provides most of my requirements.</li> <li>None, other than to “promote” programs connected with his and her specialisations.</li> </ul>
		Some	13	42%	
		None	13	42%	
		NR/U	39	N/A	
29	If you are employed, does your employer contribute to any activity costs?	Yes	21	68%	
		No	10	32%	
		NR/U	39	N/A	
30	If yes, what proportion (as a percentage) does your employer contribute on average?	100%	17	81%	
		90-100%	2	9%	
		80	1	5%	

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis		Selected Comments and Quotes
31	How would you describe the level of support that you receive from your employer to undertake CPD activities?			<ul style="list-style-type: none"> <li>• They understand it is mandatory so they support time out of the office to ensure compliance.</li> <li>• Most in-house lawyers have to self-motivate in order to meet the compliance requirement.</li> <li>• As a Management practice my employer allows (and pays for) other lawyers in the firm to attend CPD Intensives to ensure the compulsory requirements for CPD are satisfied.</li> </ul>
32	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.	Yes	9	<ul style="list-style-type: none"> <li>• Yes. I think there should be an obligation on firms/principals to ensure that employees have appropriate CPD, particularly for their areas of practice. I would be interested to see the CPD training history for those that face disciplinary issues, particularly in the wills and estate area...</li> </ul> <p><i>Note that the responses indicate a variety of approaches to the question, which probably did not sufficiently focus on the potential role of an organisation in managing, reporting and being accountable for its lawyers' CPD obligations e.g. as per NZ optional model.</i></p>
	No	10		
	NR/U	51		
33	If you are a partner, director or otherwise responsible for your organisation's provision of legal services, do you think that having person who was the accountable officer for CPD obligations would improve your organisation's engagement with CPD activities?	Yes	7	<ul style="list-style-type: none"> <li>• Not really. I think lawyers need to take individual responsibility in this regard and this should be encouraged.</li> <li>• Extra cost. Extra paperwork. Extra red-tape. Higher resentment. Higher stress. Higher client invoices to justify the overhead.</li> <li>• For larger in-house teams this could be beneficial and reduce the administrative burden on individual lawyers. However, individual lawyers should be ultimately responsible for their own personal development.</li> </ul>
	No	12		
	NR/U	51		

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
34	What are the two most significant factors that prevent you from participating effectively in CPD activities? Please elaborate on each factor.				<ul style="list-style-type: none"> <li>• Many CPD activities are in Melbourne which is not always accessible for me. There is no point travelling to Melbourne unless I can attend all day activities.</li> <li>• The cost – I find it ludicrous that CPD is \$100+ for 1hr!</li> <li>• The time – I am in a regional area and it means that I need to travel also competing workloads etc.</li> <li>• Relevance. I work part-time and have limited ability to attend sessions outside of my standard working hours due to childcare responsibilities. With the COVID-19 lockdown, I've been able to participate in CPD online which has opened up new opportunities for me.</li> <li>• I am a government legal practitioner and find many sessions to be completely irrelevant to my work.</li> <li>• Time is two-fold – time researching relevant and useful opportunities that are available and time spent attending to the chosen activities (considering that the best opportunities are often more time consuming to complete). A lot of CPD is fairly basic and doesn't really develop a particular skill of mine (knowledge acquisition or reinforcement, yes, but not much more.)</li> <li>• The cost is excessively high esp. for contractors, sole practitioners, in-house counsel and govt practitioners that have to self-fund cost of CPD training. Availability is not suited to women, regional or remote workers or FIFO workers, locations don't suit those with disability or impairment. Most CPD only offered in last few days of March which undermines value of year round learning. Sometimes govt or in-house require you to take training on your own time, which means you are disadvantaged (i.e. not getting paid) during the time you undertake training. If you do a training over 2 days, this is a loss of 2 days work.</li> </ul>
35	Should the mandatory 10 CPD point requirement be retained, abolished or changed? Please elaborate on your response	Retain	27	39%	<ul style="list-style-type: none"> <li>• I think that it should be changed with a greater focus towards quality rather than quantity.</li> <li>• I think retain it. On balance, although I don't need it, I think it provides structure and discipline. It also sends a message that CPD is important.</li> <li>• Abolish. If not, reduce for experienced lawyers (10+ years in practice) to 5 or just what they need to keep up to date at their own discretion.</li> <li>• On balance, it seems reasonable. I think that for recent admissions, it should be higher, say 15 with a bias towards practice management, trust accounting and ethics.</li> </ul> <p>Either the total number of hours should be increased and the range of permissible activities also increased or the whole scheme dropped and rebuilt. That practitioners only need to undertake CPD of 10 hours per year is frightening, reflects badly on the regulatory system, and does not reflect the activity of competent practitioners. Ten hours a year might be right for paralegals pumping out work. For practitioners with four to six years pre-qualification learning and, usually, postgraduate qualifications, the thought that only ten hours a year keeps that knowledge relevant doesn't stand up.</p>
		Change	28	40%	
		Abolish	8	11%	
		NR/U	7	10%	



## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
36	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.	Yes	13	19%	<ul style="list-style-type: none"> <li>I think a (very brief) outline of the intention and objective of the professional development should be done by all lawyers at the time that they apply for their PC on an annual basis with a confirmation that they have completed this the following year. This would have a lawyer turn their mind to what their professional objectives are for year and an accountability to undertake this development.</li> <li>People could definitely benefit from being more structured about their L&amp;D.</li> <li>The working environment is too dynamic and changes too often. CPD activities should be undertaken when and however is convenient.</li> <li>Lawyers already have enough imposts on their time imposed on them by external professional bodies.</li> <li>I couldn't think of anything more painful. This will not promote better outcomes. It will merely make me more resentful.</li> </ul>
		No	44	62%	
		NR/U	13	19%	
37	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?	Yes	32	46%	<ul style="list-style-type: none"> <li>Information on practice management/business skills activities that are more appropriately tailored to different areas of practice.</li> <li>I think the information provided on those areas is generally good. I'd like to receive more information about more diverse ways in which CPD can be completed.</li> <li>I think that we already receive much information, by email, about CPD programs but the availability and cost is a factor which I give consideration to.</li> <li>Ethics and Professional Responsibilities which is not given the attention it should have and is often misunderstood.</li> <li>Currently, most opportunities are usually identified through subscribing to numerous mailing lists or other networking. It would be great if there could be a central clearing house for the most valuable of these activities so that individual lawyers have the widest available opportunities to select from – rather than the usual or closest suspects.</li> <li>We are already bombarded by email by providers.</li> <li>Yes. All 4 areas. A regular (perhaps monthly) summary of relevant courses/seminars (both paid and free) that are being provided in each of the 4 areas would be useful. It would serve as both a reminder to lawyers, as well as potential promotion of the relevant courses.</li> </ul>
		No	26	37%	
		NR/U	12	17%	
38	Do you think that a competency framework that described the necessary skills for legal practice would help to create a more useful CPD program?	Yes	28	40%	<ul style="list-style-type: none"> <li>It might be useful, but it would be very hard to compile given the vast array of legal roles. It would be more useful for younger practitioners.</li> <li>Possibly, but such frameworks tend to restate the obvious and are only useful if they are deployed in practice by people who know what they are for and how to use them. Also, different practice areas have a different mix of skills.</li> <li>Only if it is merely advisory.</li> <li>It would be useful to have a tool to outline what makes a well-rounded practitioner but it would have to be tailored to differentiate between levels of experience, size of practice, Corporate vs. External vs. Government.</li> <li>Not really. Every lawyer works differently and that does not mean they lack skills.</li> </ul>
		No	18	26%	
		NR/U	24	34%	

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
39	Do you think a voluntary accreditation scheme for CPD providers would provide you with useful information about CPD providers and activities?				Duplicated at Question 27.
40	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.	Onerous	7	10%	<ul style="list-style-type: none"> <li>Record keeping is not too onerous but I have heard that audits are onerous and lawyers are picked up on little things like not making notes or keeping slides. I don't think that should be required. Most lawyers are skilled and absorb information easily. They should not be policed so much.</li> <li>Not onerous if utilise the LIV tool.</li> <li>A little onerous, but not overwhelming. A bit of discipline is necessary, which is what you want.</li> <li>No because I have a system that does this automatically, the LIV should allow people to register their CPD without being a Member and perhaps it could be all kept there. That will then help LIV with their random audits.</li> <li>Not onerous at all.</li> <li>10 points is pretty easy. I keep a little excel spreadsheet with my courses, dates, topics and costs and also a folder with the documents.</li> </ul>
		Not onerous	59	84%	
		NR/U	6	6%	
41	Would an online solution make it easier for you to maintain your records and receive information and reminders about CPD?	Yes	27	39%	<p><i>Note that 13 of the 20 'No' responses had &gt;20years PAE</i></p> <ul style="list-style-type: none"> <li>I already use the LIV on-line portal however a solution where documents of proof of attendance (receipts, presentations etc.) could be uploaded would complete the record keeping.</li> <li>Definitely. I would actually support a mandatory online solution that is accessible to practitioner/employer/regulator. I have had past difficulty with CPD records when I have changed firms where my records were kept on my employers systems.</li> <li>It's better to allow practitioners to self-manage – it's simple enough to maintain an Excel spreadsheet and invitations electronically.</li> <li>I have tried that in the past but find that it is easier to use my own.</li> </ul>
		No	20	28%	
		NR/U	23	33%	
42	Have you been audited for compliance with your CPD obligations? If yes, please provide details of your experience, and any suggestions for the proceed could be improved.	Yes	19	27%	<ul style="list-style-type: none"> <li>I did not find the experience too onerous. I provided details of the activities during the relevant year which was accepted.</li> <li>I felt it was appropriate. However, I think an online solution would make this largely redundant.</li> <li>It made me feel like a criminal. The audit proved nothing but confirmation of my CPD's attended and recorded. Also, I was unimpressed with the final letter from LIV Audit and no 'sorry for the inconvenience' was given to me.</li> <li>Not in Victoria. Based on my experience, where attendance certificates were routinely supplied by providers, that single factor made the audit process much smoother and more co-operative for both auditor and auditee.</li> <li>I have assisted someone else who was being audited. I do not think you should have to provide all the materials. It would be better if you could provide a form which lists them all and a stat dec confirming you have done the 10 points in the relevant areas.</li> <li>It was rigorous, fair and appropriate.</li> </ul>
		No	37	53%	
		NR/U	14	20%	

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis			Selected Comments and Quotes
43	If you work in a firm or organisation, do you think it would be interested in self-auditing its Lawyers' CPD compliance?	Yes	13	19%	<ul style="list-style-type: none"> <li>I think it would be a great idea. We undergo a variety of self-audits already and I would see the benefits overall, as described in the issues paper.</li> <li>I think the employer has responsibility to ensure their staff are complying.</li> <li>This is the lawyer's responsibility, it is our practising certificate, and this is something that is personal to us. I don't think the firm or company should play a role, that would send a message that this is something like 'doing your IT training' or your fire exit training.</li> <li>Not in favour of organisations or employers self-auditing. The importance of Ethics is such that it should be closely monitored by the Regulator.</li> <li>Declaration when renewing certificate is a form of individual self-audit. Do we really need more?</li> </ul>
		No	19	27%	
		NR/U	38	54%	
44	Do you think that the CPD scheme should move to a triennial reporting basis, subject to a minimum annual activity requirement?	Yes	13	19%	<ul style="list-style-type: none"> <li>Yes, especially if it would enable a program of skills development and progression/improvement over time rather than a single point in time which is what the current annualised approach encourages.</li> <li>I think that triennial reporting may be too long a time-scale, particularly for lawyers who change firms / practices. I see no issue with annual reporting.</li> <li>I think this would lead to people 'forgetting' about compliance and leading to last minute panic.</li> <li>Annual is OK and is manageable, and it links in with the renewal of the Practising Certificate.</li> </ul>
		No	33	47%	
		NR/U	24	34%	
45	Do you have any comments on the CPD scheme's exemption process?				<p>Thirty people provided comments. Of these:</p> <ul style="list-style-type: none"> <li>9 said they had no knowledge of the existence of the exemption process.</li> <li>4 supported the current rules as being appropriate.</li> <li>7 were critical of the cumbersome nature of the process, of which 5 were in respect of maternity leave exemptions. Two others thought the process worked smoothly, or had improved since their first maternity leave exemption in 2012.</li> </ul> <p>Sample comments were:</p> <ul style="list-style-type: none"> <li>I've found the process to be unnecessarily time-consuming and burdensome. I went on 12 months maternity leave 5 days into the CPD year and had to seek an exemption from completing CPD for those 5 working days. The process took weeks and a great deal of my energy.</li> <li>Having been on maternity leave twice, it was quite difficult to get an exemption and when it was given, it was reduced only partially, including keeping the ethics points requirement. This was difficult because, as I mentioned, all the ethics seminars were all held in March, when I was to be on maternity leave. I didn't even both applying for an exemption the second time, as it seemed pretty pointless.</li> </ul>

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
46	Are there any other issues that you think the review should consider in preparing its report?		<p>Forty four people provided responses. Common themes included:</p> <ul style="list-style-type: none"> <li>• The need for greater relevance to areas of practice, especially for government and in-house lawyers. <ul style="list-style-type: none"> <li>◦ One size does not fit all. I do not operate in a law firm, do not see clients, do not take money, and do not work in a legal department. And yet I am still required to comply with these antiquated requirements.</li> <li>◦ I think that the whole process needs to be reviewed. I find myself sitting in seminars and conferences that have no relevance to my practice and only do so to gain the points. There also needs to be some attempt to make the subjects and presentations more relevant to experienced practitioners. It is easy for me to find a seminar on Commercial Leases (which have no relevance whatsoever) than an advanced presentation on the Corporations Act).</li> <li>◦ The current CPD is a “one size fits all” scheme which encourages a “tick the box” mentality. The relevance to Corporate lawyers is missing. Nowhere in the CPD scheme does anyone ever ask about effectiveness. I can, as a Corporate lawyer, attend 10 hours of CPD which has no relevance to my job (for example, trust accounting or the ethics of client/practitioner) but will get me another year of my licence. The onus really has to be on the individual to choose a relevant training program and VLS’ job should be to suggest the appropriate framework and topics. Practitioners should be asked to identify their own needs and be measured against meaningful progress towards those goals.</li> </ul> </li> <li>• Greater flexibility in content and learning modes <ul style="list-style-type: none"> <li>◦ The idea of a reflective component does appeal. After a gruelling case – often conducted over years – a highly complex negotiation, or a cluster of cases and responses, a practitioner is entitled to claim credit for what they have learnt and explain why, proactively they are more resilient, more knowledgeable and now a resource for the profession, their firms, and their colleagues to draw upon. This is true even if they are too busy to then undertake a PhD, Masters or write a monograph. This is not about fishing stories. Learning by doing, as the Issues Paper says, is the best protection for the relevance of the profession and protection of the public.</li> <li>◦ Adult learning principles; quality interactive online learning; quality interactive face to face learning (if you can find it); focus on what is relevant to an individual lawyer.</li> <li>◦ I have found the points system of little value. Initially I went to commercial presentations which consisted of people reading from a paper they had prepared and which generally were cosmetic commentaries on different aspects of the law. I generally found, perhaps conceitedly, that I had as much if not more knowledge of the subject than the presenter. In any event, there was no need to attend the seminar as all that happened was that the presenter read from the paper.</li> <li>◦ I wish to underscore the importance in promoting a more diverse range of cyber and technology related CPDs. This may encompass the issue of cyber-ethics, cyber conflicts, health-tech, fin-tech, big data, the internet of things, and cloud computing.</li> <li>◦ I really, strongly believe that private study – ie. Reading and noting should be included in CPD. This is what I find the most useful. Different people learn in different ways and I think this should be reflected in whatever system we end up with. It annoys me a little that the two activities that I find most useful in enhancing my knowledge and understanding of the law and keeping up do date do not qualify as CPD! These are private study and researching and writing blogs for marketing my business.</li> <li>◦ Please follow the English law CPD model. Learning and development hasn’t lessened as a result of it but the unnecessary stress and strain on an already over-regulated profession has been reduced.</li> </ul> </li> </ul>

## APPENDIX C: CPD QUESTIONNAIRE ANALYSIS

Question	Question Text	Analysis	Selected Comments and Quotes
46 (cont'd)			<ul style="list-style-type: none"> <li>• Costs and bureaucracy               <ul style="list-style-type: none"> <li>◦ Consider making obligations less onerous and time consuming.</li> <li>◦ Ensuring that there are no further regulatory burdens placed on Legal Practitioners.</li> <li>◦ Cost to regional practitioners of attending city seminars / conferences etc. which often requires overnight accommodation. More encouragement for roadshows to regional centres.</li> <li>◦ The financial cost of compliance is onerous, particularly for small firms and sole practitioners. There are many small firms struggling in difficult economic times and the requirement to complete CPD points, which often come at a cost, presents a further challenge for those who may be struggling.</li> </ul> </li> </ul>

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