

6th August, 2020

Ms Fiona McLeay
Board CEO + Commissioner
Victorian Legal Services Board and Commissioner
Level 5, 555 Bourke Street,
Melbourne, Victoria 3000
By Email:
cpdreview@lsbc.vic.gov.au
FMcLeay@lsbc.vic.gov.au
nneal@lsbc.vic.gov.au

Dear Ms. McLeay,

Review of Continuing Professional Development (CPD) in Victoria.

Thank you for the opportunity for ACC Australia (ACC) to contribute to the Victorian Legal Services Board and Commissioner's (VLSB+C) review of Continuing Professional Development (CPD) in Victoria (the Review). The Review has stated aims of gaining an understanding of lawyers' personal experience with CPD through their career, identifying current issues and proposing avenues for improvement. We are pleased to be able to provide some insight from an in-house perspective.

We understand the Review's progress and outcomes will be shaped by the Legal Profession Uniform Law's regulatory framework and that the VLSB+C will be able to directly implement certain recommendations relevant to Victoria alone, such as guidance material, or efficiency measures in compliance and enforcement. However, implementation of other recommendations such as changes to the CPD Rules would be contingent on achieving national level engagement and support.

Introduction

ACC is the peak body representing the in-house legal profession in Australia – both corporate and government (note the terms in-house legal counsel and corporate counsel are used interchangeably). It is part of a global network of more than 45,000 in-house legal counsel employed by over 10,000 organisations in more than 85 countries. ACC is proud to represent the interests of lawyers working for corporations and government in Australia. In-house lawyers constitute approximately 25% of the total Australian legal profession, or about 14,000 practitioners, making ACC's role as the 'voice of in-house lawyers' a vital one for the furthering and advancement of the profession.

ACC is pleased to have the opportunity to provide this submission.

In addition, in support of the Review

- ACC members have also recently contributed to a number of in-depth focus groups of lawyers practising within particular cohorts conducted by an independent consultant on behalf of the VLSB+C; and
- ACC has also carried out a survey of its Victorian members in relation to their views on CPD. **Their de-identified, summarized responses can be found [here](#).**

As stated above, ACC is the peak body representing both the in-house public and private legal profession in Australia. The feedback from our members with respect to CPD is that there are largely consistent views between ACC's in-house members employed in the public and the private sectors, but specific differences in the Ethics and Practice Management learning requirements prevail.

Specific Issues raised by members

Quality and focus of CPD sessions

The majority of members advised that they were satisfied with the quality of CPD sessions, but the quality, or relevance to their needs could vary. For lawyers new to an area of law, they may look for a CPD session that provides an overview of the substantive law, while more experienced practitioners may want CPD sessions that focus on more challenging issues in case study form and how to deal with such issues. A number of our members agreed there should be an increased focus on active learning, with more scope for including discussion-style or collaborative forums into the CPD programs. While there are many CPD topics that apply to both corporate and government lawyers, there are particular CPD topics relevant to government lawyers, who work subject to a public service Code of Conduct and Model Litigant Guidelines. For example, issues relating to the public interest, diversity, inclusion and constitutional issues.

CPD presenters need to engage their audience in a facilitative manner so that there is learning provided not just from the presenter, but also from colleagues/attendees to create a broad mutual learning experience. Sometimes the best presenters, according to some members, have not been lawyers, particularly in the areas of practice management and professional skills.

Prior to COVID-19, many CPD sessions were delivered face to face, also providing opportunities to network with colleagues. However, technology provides additional opportunities to reach people no matter where they are working and to engage presenters no matter where they are in the world. Access to learning has therefore taken on a more global character.

Sources of CPD

Sources of CPD may be individual experts, such as lawyers in private practice, or legal learning organisations that provide CPD to all lawyers. There are also particular CPD providers servicing government lawyers – IPAA and ANZSOG, for example. All in-house legal counsel have access to no cost CPD sessions that are offered by private law firms. ACC also provides a wide range of courses.

Mentoring and Clerkship programs

Sources of CPD should also embrace a wider range of learning opportunities, such as supervising a law graduate and mentoring. The ACC offers a mentoring program which provides a cross-sharing of learning to occur. There is a range of learning opportunities arising from the continual growth of new technologies that have the potential to transform how lawyers work. A majority of members who responded to the survey supported the idea of both a mentor and mentee receiving CPD points in recognition of the mentoring provided. ACC also facilitates a structured in-house clerkship program in Australia, complete with an in-built training component. The ACC clerkship program creates new and unique opportunities for law students to gain work experience in a growing segment of the legal profession, and for in-house lawyers it provides the opportunity to give back to the next generation of lawyers and to learn mentoring, people management and delegation skills.

Accreditation

It is important to ensure that CPD meets quality standards. Some lawyers hold the view that accreditation of providers is not necessary as many providers of CPD are already accredited as part of learning organisations and that gaining the learning experience is more important than the presenter's accreditation status.

Time and cost of CPD

Currently 10 CPD units must be obtained in one year and for some people there is a late rush to gain the necessary units towards the end of the legal year. Time was referenced as the most significant factor that prevents members from participating effectively in CPD activities in the survey of members.

Most respondents to the survey supported the retention of a minimum requirement of 10 CPD units and many respondents supported more flexibility (in particular between the four subject areas). The idea of allowing units to be accumulated over a longer time frame (such as 20 units over two years was raised).

Members have also raised the time and cost burden some face to face CPD sessions entail. This is so particularly if the member needs to travel to a city centre. ACC and others provide day-long and multi-day events to facilitate better time management of travel for members with the opportunity to gain maximum units as well as the opportunity to network with peers. Digital conferences are now also being run with the opportunity of accessing high quality speakers from different jurisdictions. Digital events are likely to continue post COVID-19 and a review on any limitations on the number of CPD units that can be accredited to such virtual events needs to be considered.

Another issue raised by some members was that their employer does not recognise the importance of CPD sessions and does not reimburse the lawyer for costs incurred.

Ethics

It is in the area of ethics that our members advise that they have encountered difficulty finding activities that were relevant to their learning and development needs. A number of presentations rely on repeating professional obligations without focusing on actively working through the real and often complex ethical issues that lawyers face in their daily practice. All lawyers no matter where they work have faced the challenging issue of pressure from their employer to reach a particular position that may be at odds with their professional views. However, in-house counsel understand the importance of maintaining their independence in the special client/lawyer relationship they enjoy.

It is not the case that a general ethics session should be 'one size fits all'. The ethical issues faced by corporate lawyers are not the same as the ethical issues experienced by government lawyers, who are also bound by the public service Code of Conduct and Model Litigant guidelines.

Ethics courses need to consider specific issues faced by corporate counsel. The core problem for corporate counsel is that they wear a number of hats at the same time – officer of the court, lawyer, corporate officer (often company secretary) and company employee. 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.

CPD should cover these issues and in-house legal counsel should be entitled to avail themselves of an independent 'ethical advice service', free of charge when faced with such ethical dilemmas. A provider of ethical advice should receive CPD units.

Practice Management

Many members have commented that the prescribed area of practice management and business skills needs to change to be more relevant to in-house counsel. Some respondents suggested that the requirements be removed for in-house counsel or blended with professional skills. In-house counsel in the public sector have also queried the relevance of the practice management requirements.

A proportional question: substantive law v. other categories of CPD

It is needs that drive the type of CPD session which a lawyer chooses to attend as well as the stage at which a lawyer is in their career. It may be that where a lawyer is working in a new area of law that a CPD session dealing with substantive law issues will be their focus. There is no doubt that the role of lawyers is changing. Following the Hayne Royal Commission lawyers should be advising not just 'what can be done' but 'what should be done' in an organisation. In-house lawyers provide more than legal advice and have a role as agents of influence and change. They also have a greater role in understanding their employer's business and business units and the role of the Board, all of which require new skills and learning opportunities.

We look forward to further discussions.

Please contact Chris Drummer, Director, Policy, Projects and Advocacy, ACC Australia and Asia Pacific c.drummer@acc.com or 0411264734 at first instance should you have any questions

Yours faithfully



Tanya Khan

Vice President and Managing Director

Association of Corporate Counsel
Australia and Asia Pacific