

**Victorian Legal Services Board + Commissioner  
Continuing Professional Development**

# **Response to the Issues Paper**

**The College of Law Limited**

**3 July 2020**

## Executive Summary

Thank you – The College of Law Limited is very pleased to be consulted and happy to submit a response to the Victorian Legal Services Board and Commissioner (VLSB+C) Review of CPD. Continuing professional development is a cornerstone of an ever-evolving legal services market, and we welcome this timely review of its role and effectiveness in ensuring the delivery of legal services to a diverse law consuming market.

The Issues Paper raises a number of important considerations and, as a very experienced legal education provider, we are very pleased to share our views:

### Effective learning

- The College absolutely supports the principles of **adult education** outlined in the Issues Paper.
- In our experience, lawyers do prefer professional development programs which are **structured, with key tangible takeaways** such as a skill development, or checklist, which can be applied and incorporated back into practice. This is particularly so for early and mid-career lawyers. There is less of this style of learning available in the general CPD for more experienced lawyers.
- We also support the statement **that learning is more effective if it is regarded as a process as opposed to a series of unrelated events**. Most CPD is not. In our experience, we have strong engagement, over many years and subsequent programs, when lawyers come into our structured programs that then lead them into an LLM. However, not all lawyers want to undertake professional development at quite this level.
- As noted in the Issue Paper, there can be a ‘tick-box’ mentality to CPD. We believe that the ‘10 hours per year’ drives this and is the biggest inhibitor to effective learning. We also acknowledge the inherent challenges in moving away from such easily understood requirements, as has been experienced in some jurisdictions which have attempted to reform.
- We support any discussions that consider moving towards a **competency-based or development-based framework**, with a longer compliance period than one year, as a more effective way of delivering professional development that improves the practice of law.
- We believe such a model could:
  - Still ensure lawyers remain up to date with important legal developments
  - Develop lawyer’s legal practice skills, as well as building out other important skills that are required for an evolving legal profession. This is relevant to all practitioners, regardless of seniority, and
  - Provide greater protection to the law consuming market by ensuring the development of legal skills, not knowledge.
- If the aim is to improve the effectiveness of CPD, then the **learning activities which are recognised should be broad**. As highlighted in the issues paper, adults like to choose what and how they learn. This can happen through a traditional seminar or conference, online through interactive, on-demand courses, or through video, webinar or podcasts, research and further study which provides deeper knowledge and development. All types of learning have a place, depending on the purpose of the learning.
- However, it is our view, that if real knowledge and skill development is to occur, that gets incorporated back into practice for the betterment of the profession and to the benefit of legal consumers, educationally-sound, evidence-based structured programs must be a feature of any CPD regime.
- It is important that lawyer’s development includes a **mix of substantive law updates and skills and practice development, as well as ethics**.

- We would argue that 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. This is particularly so when trying to bolster an ethically aware working environment, which benefits the profession overall.
- In our experience, programs developed for **different levels of experience** are particularly important when it comes to skill development. Just-in-time legal updates, which is the majority of CPD, are largely undifferentiated with regards to level.
- The College has no firm position on accreditation, except to caution against a system that sets a low threshold for accreditation and becomes a tick-box for providers, thereby rendering it meaningless in the eyes of the profession.
- We do see merit in there being accreditation to provide some courses which are designed to have greater impact, such as ethics and skills development.

#### **Barriers to participation**

- The Issues Paper notes that cost is a barrier to participation.
- 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.
- **Location is also a barrier to participation** and again, the 10-hour requirement is a root cause of this.
- CPD is, for the most part and for most providers, a low cost-high volume game. That means events will be held where there is the highest chance of high attendance, which is largely in capital cities. This is a detriment to the regions.
- We strongly support the use of digital technologies to reach lawyers outside metropolitan areas.

#### **Technical issues**

- We support any discussion around moving toward something other than an annual CPD compliance period. We do acknowledge the practical difficulties involved in this but believe it is a conversation worth having.

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## 1. Introduction

We thank the VLSB+C for undertaking this Review and for inviting our participation. It is welcome, timely and important.

The College of Law is Australia's largest provider of professional legal education and skills training in Australia and New Zealand, with offices in all capital cities and expanding operations in South-East Asia and the United Kingdom. The College is a not-for-profit organisation whose mission is to enhance the provision of legal education and law related services by providing practical, skills-based education and training for lawyers and other professionals.

Our teaching and learning philosophy is based on active learning and is embedded in adult learning principles. Our programs are aimed at marrying legal knowledge with practical application and skills development, and we do this across different learning levels and delivery formats.



### College of Law at a Glance

-  Operating since 1974
-  Offices throughout Australia, New Zealand, South-East Asia and UK
-  Trains 61% of graduating law students
-  Second largest postgraduate program in Law in Australia
-  One of the largest training programs for Nationally Accredited Mediators
-  Eight out of top 10 law firms train graduates through the College
-  Experience customising programs for government and corporate clients

## 2. Issues

### 2.1 Effective learning

We support the Malcolm Knowles principles of adult learning set out in Issues Paper 4.1. The College's general teaching and learning philosophy is described as:



The College applies these principles in our structured programs and, where possible in CPD.

It is the College's strong position that adults need to know why they need to learn something. They are self-directed and can make their own choices about what learning to engage in. In our experience, the learning activities which receive the highest level of engagement and positive feedback are those where lawyers are engaged in 'learning by doing'. This is particularly so for early and mid-career lawyers. Experienced lawyers are often thought to be less so inclined to this approach. This may be the result of the lack of availability of truly advanced CPD which builds both technical legal knowledge and advanced practical skills.

The College of Law's LLM programs have experienced lawyers enrolled, some of whom do not necessarily intend to complete a full LLM, but who enrol to access advanced professional development, which is structured, practical and builds upon their current skills. They do so because there is little availability of this type of learning in the general CPD market. As noted in the Issues Paper, the motivation to enrol is a higher level of learning – they are making a commitment to develop themselves as lawyers and their practice, and the majority of experienced lawyers who undertake this type of learning self-fund.

We also support the statement that learning is more effective if it is regarded as a process as opposed to a series of unrelated events. For this reason, we support the view that a holistic competency-based approach, which helps develop the 'T-shaped lawyer (see **Attachment A**), would be a valuable development which would enhance the legal services industry. It would build capability in the areas which are important to the protection of legal consumers, such as important legal knowledge and skills, but also build the necessary skills in lawyers to navigate and embrace the evolving nature of legal service provision.

The current CPD framework of 10 hours of CPD inhibits effective learning on several fronts.

The traditional seminar approach, with one or multiple speakers, has a place for knowledge/information transfer. Without doubt lawyers must stay abreast of legal developments which may affect their clients, and this approach is a quick and relatively easy way to achieve this. It is also an approach with a very low barrier to entry. Any provider can enter the market and while discerning lawyers will be drawn to CPD which features prominent and experienced practitioners, that will not always be the case. Practitioners looking for 'just-in-time' legal updates, or who may have a matter for which they know little about and need a quick update, will attend the most convenient CPD which may often be whatever is on offer. A poor presenter (regardless of experience) can make all the difference as to whether a learner engages enough for this knowledge transfer to occur. However, we do not advocate its complete removal as there is a place for this type of activity.

We believe this Review provides an opportunity to promote a higher standard for CPD which links to the career aspirations and needs of participants by providing a structured educational experience tailored for adult learning. Career enhancement through a valuable educational experience should be sufficient incentive for lawyers to engage in a higher standard of CPD.

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.

Under the current model there is little incentive for providers to offer more structured training, which is more expensive to develop – it requires the provider to have deep knowledge of legal practice; instructional design capability; to develop, provide and be able to teach practical activities and ‘take-away’ skill or knowledge development; presenter training, remuneration and quality control; learning management systems to augment face-to-face teaching; and restricted attendance. On the other hand, traditional seminar-style CPD often does not pay presenters or pays a token amount or gift, is low-cost to attendees and encourages high levels of attendance to ensure profitability.

Lawyers, for their part, don’t value CPD, often don’t plan for it and there is the inevitable rush for ‘points’ in February and March. There is little time within an event to consider actual learning and development needs or undertake the reflection that will enable learning to be embedded back into practice for the benefit, ultimately, of legal consumers. When the College of Law has conducted market research into the professional development needs of lawyers, it found that they do know what they need they just don’t see the current CPD offerings as fulfilling that need. Often, their CPD requirements are fulfilled in an ad hoc or random way. It is not easy to plan CPD when it runs on a very short cycle – programs are often in the market for a maximum of two months and many are one-off or annual updates, which makes it difficult to know in advance exactly what will be on offer, or to plan. If something comes up which is of interest, a lawyer may attend but that may mean that actual development needs are not met, unless of course a CPD program happens to pop up at a convenient time.

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. This would ensure lawyers still undertake relevant just-in-time legal updates but removes the pressure to complete 10 hours each year. It would allow for the remaining hours each year to be completed within a three-year period, and encourage greater planning and attendance at longer, more structured programs that aim to build on technical knowledge and add other important skills for legal practice. It is our view that such an approach would ultimately benefit legal consumers and enhance the practise of law.

## 2.2 Learning activities

The College’s teaching and learning philosophy, set out above in 2.1, is very focused on ‘learning by doing’. ‘Learning by doing’ is what we do, and we have been doing it for over 40 years across multiple jurisdictions. Interactivity is a central part of this philosophy, but it must be meaningful and purposeful. Rarely would we consider Q&A to be interactivity. In structured programs, interactivity will almost always take place by having the learner apply their learning in some way, whether through drafting a document or a clause, or participating in a role play. For short CPD programs, this may not always be the case.

It is the position of some regulators (eg, New Zealand and Western Australia) that CPD must be interactive. The College’s general approach to learning supports this position, but we do not discount that learning, and engaged learning, can take place without it, although we would argue that there should be a mix.

Face-to-face learning, with its opportunity for questions and answers, on its own, does not guarantee engagement, and it is not superior to online learning or on-demand CPD. There is equally the chance for a lawyer to attend a CPD event only to sit in a room for a number of hours, on their phone or otherwise distracted, as there is for them to turn on a device while a recording plays, paying little or no attention. There is more success with engagement and true interaction if the lawyer has chosen to undertake a learning event because it is relevant and benefits them, not because they must for points or otherwise. A lawyer can equally be engaged in a recorded podcast, which has no opportunity for



interactivity, if they are choosing to do so because it is relevant, interesting and being done of their own volition.

Learning is a process and it occurs through multiple inputs, some formal, some informal, some structured, some not. There is value in a CPD regime recognising the multiple ways that learning can take place and incorporating a more holistic approach to the knowledge and skills needed by lawyers of the future, i.e. the T-shaped lawyer.

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.

## **2.3 Subject areas**

It is the College's position that lawyers need broader skills than just technical legal skills and we support the range of subject areas encompassing ethics, professional skills and business skills. As mentioned above, the College supports a development framework which develops T-shaped lawyers. These skills necessarily encompass practice management and business skills such as legal project management, financial management, people management and client development, business strategy, legal operations and leadership. These skills are applicable across all types of legal practice, including government and in-house, but we accept that the types of learning that is offered will need to be tailored to the needs of these types of practice.

Additionally, these skills cannot be adequately taught by attending a seminar for one hour per year. It is these types of development activities that may be better spread across a longer time period, allowing lawyers to attend multi-day workshops or undertake longer, structured online learning programs.

Ethics is an area of importance and one which is not given justice by one hour per year. In a more structured development framework ethics should be considered in the context of all substantive law programs. Including ethics as a one-hour mandatory topic reduces this important area to something which must be ticked-off, as opposed to something which needs ongoing consideration and reflection. All lawyers undergo ethics as part of their CPD, but not all lawyers behave ethically. Arguably, ethics is one of the most important areas for lawyers to continually consider and develop to ensure the protection of the legal consumer. In our view, ethics can be incorporated within the CPD offerings in many areas of legal practice including criminal law, corporate and commercial law, succession law and family law. The College supports a longer compulsory CPD period for ethics and supports it being provided by reference to the areas of practice for participating lawyers as "ethics in action" rather than just focussing on the Conduct Rules in isolation.

## **2.4 Different levels of experience**

The College supports the design and delivery of CPD aimed at different levels of experience, in line with our position regarding a development framework for legal professionals. The exception to this may be just-in-time legal updates, which if relevant to a lawyer's practice, should be applicable to all levels of seniority.

The College does not advocate for early career lawyers to have greater CPD requirements than more experienced practitioners. However, targeted programs at different levels of experience may encourage earlier career lawyers to engage with meaningful professional development early on in their careers, establishing professional development requirements as a central tenant of lifelong learning and career development, and not just a compliance exercise.

The College acknowledges the low availability of quality, advanced CPD for experienced practitioners, which could encompass lawyers from anywhere between 10 – 40 years' experience. This cohort of lawyers 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 practitioners 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.

Experienced lawyers, with their specialised legal knowledge, are not exempt from the need to continually refine their legal practice skills. At an advanced stage of their career, these skills may also encompass more of the business and leadership skills that are often overlooked in preference for technical legal knowledge. It is these skills that will shape the profession in the future, and these skills which form the core to the culture of the profession.

## 2.5 Providers

The quality of CPD providers varies greatly, from those with true educational backgrounds, to those commercial providers whose educational qualifications are that they operate a CPD business. There is no question that all providers have a desire to develop and deliver programs that are of interest and benefit the profession – if they did not, they would not have viable businesses.

There is a difference between being able to develop and deliver CPD that is of interest, and that which effects meaningful development of change to a lawyer's practice. It is the College's position that CPD needs to focus more on the actual development of legal knowledge and skill, applied in practice. This requires more than information delivery or transfer from an experienced practitioner. It requires teaching and learning. It requires practical application, not in words but by doing, and it requires reflection. Not all CPD needs to occur in this way, but there must be some actual development, for the betterment of the individual lawyer, their clients and law consuming public, and the profession generally.

The College does not have a position on accreditation but acknowledges that there are very few barriers to entry for becoming a CPD provider. The College of Law is an accredited provider in jurisdictions which require it, and are accredited to offer legal practice management training, and an accredited higher education provider.

If accreditation of providers is a considered path, we believe it must be meaningful accreditation. There are some jurisdictions where accreditation is required, but any CPD provider who applies will gain accreditation. Such an approach undermines the accreditation process, creates a tick-box for providers, is an administrative burden for the regulator and is meaningless with regards to quality in the eyes of the law consumer.

As highlighted in the Issues Paper at 4.5, there may be some benefit in accrediting providers in areas where there is more than the transfer of knowledge. For the most part, a 10-hour CPD requirement in itself is what drives the transfer of knowledge approach, rather than deep and effective learning. We do believe that something other than that transfer could lend itself to accreditation of providers who would need to establish credentials in adult learning, learning design and delivery, with a staff of appropriately credentialed professionals. Any accreditation where the bar is set too low will undermine credibility.

## 2.6 Entity/employer role

Legal service providers, particularly large firms, often have sophisticated professional development programs for their lawyers. These programs are design by highly qualified learning and development professionals, and are broader than the 10-hour requirement, building skills beyond purely legal. Such programs of course limit participation in public CPD but, benefit the wider profession as they move from one firm to another.

The College offers no position on this other than to recognise that such law firm activity shows a commitment to development, often requiring employed lawyers to participate in far more than 10 hours per year of development and are not simply a compliance exercise.

## 2.7 Obstacles to CPD participation

### Cost

At 4.7 in the Issues Paper it is noted that cost is a significant barrier to participation, with 62% of participants in an SRA Review listing this as the most significant barrier. CPD in the United Kingdom is significantly more expensive than in Australia, nonetheless, there is a low willingness to pay.

The issue of costs deserves special consideration. Running a CPD business which is anything other than a high-volume seminar/conference business, is not a high margin operation. With most CPD providers offering CPD that ranges from \$50-\$100 per hour (and in this current environment, often at no cost), profitability is dependant on volume. Once fixed costs are covered, it is all profit, so the incentive is to run CPD with as many people in attendance as possible. As noted above, there are few barriers to entry to becoming a CPD provider, so the market is extremely fragmented and variable in quality and effectiveness. The proliferation of CPD offerings further drive down the value perception for lawyers and their willingness to pay.

For CPD which is focused on development of skills, costs are much higher, and margins can be low if class sizes are small. Fixed costs often include training venues (as opposed to seminar rooms or hired hotel rooms), instructional designers, development teams, learning management systems to augment face-to-face delivery, experienced trainers and presenters, and ongoing training programs for trainers and presenters. Willingness to pay is higher because there is a greater perceived value. However, because these programs often run for a day or more, they are in excess of the 10 hour CPD requirement. There is a proportion of the profession who will not invest, or 'overinvest' in CPD beyond the minimum requirement. We find that we have lawyers who self-fund into these programs, as their employer is unwilling to either pay for the CPD at all, or willing to pay more than the minimum. It is entirely possible for a lawyer to reach all 10 hours for free, and this is the expectation of some lawyers and some firms.

For CPD to be more highly valued, and to be more valuable to the profession, there must be a shift away from this focus on box-ticking, which then translates to a desire to comply for as little expense as possible. While the market is so fragmented with so many providers and variable quality, cost will be a factor. It is true that for well developed CPD, if it is relevant, cost may not be the determining factor. For example, the College runs a mediation program which requires a total investment of almost \$4,000. We run this multiple times per year across jurisdictions and it is often wait-listed because there is an immediate professional outcome. Cost is not the driver because of the clear professional development that occurs. This clear and immediate outcome is often not clear in the general CPD market.

The College's view is that a CPD requirement which comprises some minimum annual number of hours, aimed at just-in-time updates, coupled with a larger number of hours spread across a longer compliance period, would go toward addressing this issue of cost. Single or multi-hour updates are low cost to run and that can be passed on to lawyers. More structured programs, in some instances will be more expensive, but the value to the lawyer and the public they service, is higher. Not-for-profit organisations such as the College are able, and is committed to, providing such programs at the most affordable price point. Our sole purpose is to serve the educational needs of the legal profession, and we see that providing professional development, whether mandated or not, is part of our obligation to the profession.

### Location

Location is a very real barrier to participation in CPD, and again leads to variable CPD quality and opportunity for development.

Most large CPD providers are located in capital cities, with Victoria being no exception. As mentioned above, because of the low willingness to pay, CPD providers require volume. For the most part, running any form of CPD outside a major metropolitan centre is not cost effective as there simply are not enough lawyers in regional centres to make it viable. Given the highly segmented nature of the profession by various practice areas, even larger regional centres will not have enough lawyers attending CPD activity to make it a viable option. It is our position that this occurs at a detriment to the profession and the legal consuming public. Travel and possible accommodation costs, as well as time away from the office, on

top of CPD registration fees, make participation in CPD a burden for many regional lawyers, who cannot always be guaranteed of the quality or value of the CPD that they have paid so much to attend.

A revised CPD framework, which does not drive activity toward the lowest cost activity and creates demand for more structure development programs, would see more providers willing to offer programs in regional areas. Structured programs, with defined learning outcomes and key skills takeaways, even if face-to-face and held in Melbourne, would be more beneficial to regional lawyers who could justify the time and expense if they could see value.

Similarly, online learning is a viable and important option that enables flexibility and accessibility. Such online CPD can be in its most simple form a recorded webinar or podcast, or a structured online learning development program, which focuses on not only legal knowledge but can develop practical skill through demonstration and application. Online CPD can reach many people, particularly when it is on-demand. The College would however caution that this could just replace one flawed system for another as on-demand CPD, in the form of recorded webinar, is even lower cost to produce than traditional face-to-face CPD, which could result in many more providers entering the market and pushing out low cost, low value, on-demand CPD. While some lawyers will be discerning, the proliferation of undifferentiated CPD creates noise and confusion, further driving down value and participation, which ultimately has a negative impact on legal consumers.

## **2.8 Regulator's role**

The 10-hour CPD requirement is easily understood by both lawyers and the providers operating in this space. It is a minimum requirement, and for many, it is treated as a maximum. This is a shame, as there are many lawyers who undertake more than 10 hours, or would like to, but feel constrained by the 'minimum requirement' approach.

It is the College's view, that for lawyers to develop their legal knowledge and legal practice skills they need to dedicate more than 10 hours per year, as many dedicated lawyers do. The College does not advocate an onerous compliance burden but for CPD to be focused on professional development, not only information transfer. As stated above, we see value in exploring a model which would spread the 10 hours per year, over three years, requiring 30 hours over three years, with a minimum number each year (say 3 or 5). This would ensure lawyers stayed up to date, but it would also enable them to undertake more structured programs which focus on professional development and are more likely to be embedded into their practice.

As noted at Issues Paper 3.8, the regulator could use the tools at its disposal to encourage lawyers to work to best practice and to think of new ways of working. A development framework would do this, as it would include scope for lawyers to focus on technical legal knowledge and skill, but also build skills, relevant to the stage of their career, across a range of areas, relevant to practice but not necessarily about blackletter law. As the shape of legal services changes, it is important that lawyers have the skills necessary to adapt to new technology to drive efficiencies in the profession. Knowledge is power in this regard, and legal knowledge is not all that is required.

## **2.9 Compliance and enforcement**

The College does not take a position on compliance and trusts that the regulator will implement a scheme which balances the regulatory burden.

## **2.10 Technical Issues**

It is our strong view, that the box-ticking mentality of lawyers and in some cases, providers, is driven almost entirely by the 10-point system. It drives lawyers to wait until February and March, when they know there will be a large amount of CPD on offer, much of it free or heavily discounted. It may be true that there is a lot of quality CPD on offer at this time, but it is easy for it to be lost amongst the proliferation of undifferentiated offerings. Convenience and price become the drivers rather than improving their legal knowledge and skill which enhances their career prospects.

We support any move away from this model however, we do acknowledge the significance of such a change.

We do not have any view of the effectiveness of the current exemptions and accept that there are valid reasons for granting an exemption. A move away from an annual compliance period may reduce the needs for some exemptions.

### **3. Further information**

Thank you for this opportunity to participate in this important Review.

For more information, please do not hesitate to contact us for further information or clarification.

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3 July 2020

**ATTACHMENT A**  
**T-SHAPED LAWYER**

*The T-Shaped Lawyer Critical Skills For Innovation & Collaboration*

