



Law Council  
OF AUSTRALIA

10 August 2020

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Dear Ms McLeay

## **CONTINUING PROFESSIONAL DEVELOPMENT: ISSUES PAPER**

### **Introduction**

Thank you for the opportunity to comment on the Continuing Professional Development Issues Paper (**Issues Paper**) which was prepared by the Victorian Legal Services Board + Commissioner (**VLSB+C**) to promote discussion about Continuing Professional Development (**CPD**) in the Victorian legal profession.

The Law Council of Australia (**Law Council**) recognises there are many differently held views about the effectiveness, structure, form and content of the CPD obligations that apply - or perhaps should apply - to legal practitioners. The Issues Paper itself suggests a number of significant changes that might be made to the current CPD arrangements, and a variety of different opinions have been expressed on these matters in the submissions from professional associations already made to the VLSB+C Review.

It would not be appropriate at this stage for the Law Council to express any concluded views on the matters canvassed in the Issues Paper, given that no recommendations have as yet been made to the VLSB+C by the independent consultant engaged to conduct the Review, and in consideration of the statutory functions of the Law Council of Australia under the Uniform Law relating to the development of CPD, Legal Practice and Professional Conduct Rules as they relate to solicitors.

Nevertheless, and after seeking the views of the Law Council's constituent bodies, Sections and Advisory Committees about the Review, this letter sets out further context about the current CPD arrangements applying generally throughout Australia, and the Law Council's views on how any recommendations for changes that might arise from the VLSB+C Review should be progressed.

### **Current CPD arrangements**

The current CPD regulatory arrangements are broadly consistent across all States and Territories, for both solicitors and barristers. Interjurisdictional consistency in regulation underpins the micro-economic reforms that successive federal, state and territory governments have undertaken since at least the early 2000's to create national markets, including a national market for legal services. The Uniform Law framework is a continuation of that reform process.

The Law Council has long-supported interjurisdictional consistency in legal profession regulation as the foundation for a seamless, national legal profession; facilitating interjurisdictional legal practice and mobility of lawyers; and delivering consistent consumer protections and regulatory outcomes. Interjurisdictional consistency also decreases the cost and complexity of regulatory compliance and, in relation to CPD particularly, the cost and complexity of developing and delivering CPD programs.

The current CPD arrangements were developed between 2005-2008 by a 'CPD Taskforce' established with voluntary participation by legal profession associations, regulatory authorities, institutional and commercial providers of CPD programs and other stakeholders. The objective was to consider whether national guidelines might be developed to harmonise the then existing mix of proposed CPD and mandatory continuing legal education schemes, consistent with the other elements of the legislative uniformity and harmonisation work being implemented under the auspices of the Standing Committee of Attorneys-General through the Legal Profession Model Laws Project and the State and Territory Legal Profession Acts based on those model laws.

The CPD Taskforce developed *A Model Continuing Professional Development Scheme for Australian Lawyers*, (**Model CPD scheme**) which was subsequently adopted in-principle by the Law Council of Australia and the Standing Committee of Attorneys-General, as the basis for moving to the nationally consistent approach to CPD now in place in all States and Territories. A copy of the Model CPD Scheme is at **Attachment A**.

The Model CPD scheme is based upon an agreed set of principles and design parameters. Design parameters which are especially pertinent to the VLSB+C Review include:

- that individual learners make their own decisions about what they should do to comply with the requirements within an overall framework: it should not be too prescriptive;
- compulsory topics, for example, should be within described areas of content rather than as stand-alone topics; and
- accreditation of courses or providers must not be a requirement of the scheme.

The CPD Rules which give effect to the Model CPD scheme are uniformly structured across virtually all States and Territories. The Rules deal with:

(a) The CPD obligation in terms of four competencies (i.e. compulsory topics):

- Ethics and professional responsibility;
- Practice management and business skills;
- Professional skills; and
- Substantive law<sup>1</sup>.

(b) The CPD content in terms of the criteria for an acceptable activity, being one:

- of significant intellectual or practical content which must deal primarily with matters related to the solicitor's practice of law, and
- conducted by persons who are qualified by practical or academic experience in the subject covered, and

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<sup>1</sup> Not included in the current South Australia Rules.

- that extends the solicitor’s knowledge and skills in areas that are relevant to the solicitor’s practice needs or professional development.
- (c) The CPD format requirement in terms of the kinds of activities that are acceptable.
- (d) The CPD minimum requirement, expressed as units per annum based on time or other units of measurement required to attract 1 CPD point and the maximum spread of points across each competency.
- (e) The CPD compliance requirement in terms of: record keeping; annual certification; rectifying non-compliance; exemptions and regulatory authority verification through an audit program.

As mentioned above, the Model CPD scheme was given in-principle endorsement by the Law Council as the basis for CPD schemes in all jurisdictions. It reflects a nationally harmonised framework that took considerable time, care, collaboration and consensus to develop and implement.

The Law Council acknowledges that with the passage of time and changes in the legal practice landscape, it is useful to review the contemporary relevance and effectiveness of the current CPD scheme. However, while the focus of the VLSB+C Review is understandably on the operation of the profession in Victoria, the Law Council emphasises that any recommendations that might arise from the VLSB+C Review which would, if adopted, alter the fundamentals of the current CPD arrangements, must be approached as a national issue, and considered collaboratively by all States and Territories, by the Law Council and its constituent bodies, regulatory authorities and other stakeholders.

### **Development of CPD Rules**

The Law Council notes that the Legal Profession Uniform Law - and the legal profession laws of those jurisdictions not part of Uniform Law scheme (apart from South Australia and, pending its formal entry into the Uniform Law scheme, Western Australia) – confer the function of developing legal profession rules, including CPD rules, on the profession. This reflects the long-standing coregulatory framework for legal profession regulation in Australia, and is specifically stated in section 3(f) of the Uniform Law – “...a coregulatory framework within which an appropriate level of independence of the legal profession from the executive arm of government is maintained.”

The Law Council also notes that sections 427(1) and (2) of the Uniform Law give effect to this objective by providing that the Law Council may develop proposed Uniform Legal Practice, CPD and Legal Profession Conduct Rules for solicitors, and that section 424 of the Uniform Law provides that the contents of CPD Rules “...may provide for any aspect of continuing professional development.”

Thus a distinction is clearly made in the Uniform Law between the function of developing the content of the CPD Rules, and the function of monitoring and ensuring compliance with those Rules.

Nevertheless, the Uniform Law also provides for a consultative and collaborative approach to the development of CPD and other legal professional rules. The Law Council notes that section 427(5) requires consultations with the Legal Services Council, the Commissioner for Uniform Legal Services Regulation and local regulatory authorities on proposed Rules, which are then, with the approval of the Legal Services Council, released for public consultation. Section 427(5)(d) of the Uniform Law provides that after considering all

reasonable submissions received from the public consultations, the Law Council must then submit a Report and final draft of the Rules to the Legal Services Council. Importantly, section 427(6) of the Uniform Law provides that if the Legal Services Council approves the final draft as submitted or that draft with amendments agreed to by the Law Council, the Legal Services Council may submit the proposed Rules to the Standing Committee.

In drawing the VLSB+C's attention to these provisions, the Law Council highlights the importance of adopting a consultative and collaborative approach to taking forward any recommendations for changing the current CPD scheme that might arise from the VLSB+C Review. In the Law Council's view, the current Review of the Australian Solicitors' Conduct Rules is demonstrating the value to the profession, regulators and consumers of the collaborative and consultative approaches envisaged and embodied in the Uniform Law scheme.

As with the Review of the Australian Solicitors' Conduct Rules, the development of proposals to amend the CPD Rules must, from the Law Council's perspective, necessarily include all of the constituent bodies of the Law Council if interjurisdictional consistency of core aspects of legal profession regulation are to be maintained.

## **Conclusion**

The Issues Paper raises for discussion, and seeks comments on, a number of issues of significance for the profession, and for professional associations in both their CPD regulatory and member services roles. These include:

- whether a more descriptive competency-based approach might be devised as a future basis for the CPD scheme;
- how practitioners might utilise a learning and development framework to determine their annual CPD activities;
- whether law practices should adopt, as an element of their management systems, standards relating to CPD for the whole law practice;
- whether an accreditation system should be applied to CPD providers;
- whether CPD rules should mandate particular topics as compulsory CPD;
- whether a revalidation of qualifications process might be worthwhile;
- how might the availability of CPD activities be improved for practitioners in suburban and regional areas; and
- what is the role of regulators in shaping the design of the CPD system.

The Law Council appreciates the opportunity to comment on the Issues Paper although, as noted, it would not be appropriate at this stage for the Law Council to express any concluded views on the matters canvassed in the Issues Paper.

Yours sincerely



**Michael Tidball**  
**Chief Executive Officer**