



Email

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Chris Humphreys
Independent Consultant
Victorian Legal Services Board + Commissioner
Level 5, 555 Bourke Street
Melbourne VIC 3000

CPDreview@lsbc.vic.gov.au

Dear Mr Humphreys

Review of continuing professional development in the Victorian legal profession

Law Firms Australia (**LFA**) appreciates the opportunity to provide a submission to the Victorian Legal Services Board + Commissioner (**VLSB+C**) review of continuing professional development (**CPD**) in the Victorian legal profession (**the Review**).

LFA represents Australia's leading multi-jurisdictional law firms, being Allens, Ashurst, Clayton Utz, Corrs Chambers Westgarth, DLA Piper Australia, Herbert Smith Freehills, King & Wood Mallesons, MinterEllison and Norton Rose Fulbright Australia. LFA is also a constituent body of the Law Council of Australia, the peak representative organisation of the Australian legal profession.


This submission first provides general comments, before turning to the following specific matters raised in the CPD Issues Paper: effective learning; subject areas; experience levels; providers; employers, and; additional matters. Lawyers at LFA member firms have also been encouraged to respond to the questions in the Issue Paper.

1. General comments

- 1.1 LFA recognises the importance of continuing learning for lawyers generally and the critical role of CPD programmes in achieving two broad purposes. First, CPD programmes are designed to ensure that lawyers provide legal services competently and diligently, and practise law ethically and professionally. Secondly, the completion of CPD programmes provides assurance to the public and legal regulators that lawyers are competent, diligent, ethical and professional.
- 1.2 LFA member firms invest heavily in the learning and development of their respective lawyers. As a general proposition, LFA member firms provide broad learning and development programmes for graduate lawyers through to partners. Such programmes encompass topics including: practice management, professional and business training, risk management, leadership training, technology training, ethics, public law learnings, social justice initiatives, and substantive law areas. They are designed to allow flexibility for lawyers to pursue their own learning goals, with LFA member firms recognising that there are many pathways for lawyers to develop and maintain their knowledge and skills.
- 1.3 LFA supports the intent of the Review to improve learning and development outcomes for lawyers practising in Victoria. It is submitted that any recommendations from the Review:
- (a) should accommodate the full and varied range of positions occupied by practising lawyers in the Victorian legal profession,




- (b) should be evidence-based and proportionate,
 - (c) should strike a careful balance between improving learning and development outcomes, and ensuring that the ease and cost of delivery and administration of CPD programmes is reasonable,
 - (d) should provide law practices, lawyers, and other organisations the flexibility to determine how best to achieve appropriate learning and development outcomes for lawyers, and
 - (e) should recognise that interjurisdictional consistency for CPD requirements is highly desirable.
- 1.4 Following on from the final principle, LFA notes that differences in state and territory CPD requirements add unnecessary administrative complexity and cost to the learning and development programmes of law practices that operate in multiple jurisdictions. LFA submits that significant changes should not be made to CPD requirements in Victoria unless they are replicated nationally. This is regardless of whether such changes are able to be made in Victoria alone.
2. **Effective learning**
- 2.1 LFA wishes to comment on several issues raised in the 'effective learning' section of the Issues Paper.
- 2.2 First, LFA supports retaining the 10 hour minimum requirement for CPD. The requirement is easy to understand, easy to monitor, and imposes a basic minimum commitment which all lawyers must satisfy. It does not prevent lawyers that wish to supplement their learning from undertaking further study, nor does it prevent law practices that wish provide additional training to their lawyers from doing so. Indeed, LFA understands that several English law practices imposed internal minimum hours requirements when the Solicitors Regulation Authority moved to a reflection-based approach in England and Wales in 2016.
- 2.3 LFA disagrees with the comment made at p 8 of the Issues Paper that '[t]he hours-based approach to CPD creates incentives for minimal effort and commitment by lawyers and providers'. It may be that some lawyers show little effort and commitment to learning and development, but this is not necessarily due to an hours-based approach. It is more likely to be a result of the general attitude of some practising lawyers towards learning and development, and the culture of some practices. As the Issues Paper recognises at p 9, '[a] proportion of lawyers will always minimise their engagement and activities, for a variety of reasons, including many that derive from the understandable pressures of conducting a business'. It follows that replacing or supplementing the minimum hours requirement with a requirement to make an annual statement or prepare a learning and development plan is unlikely to ameliorate any lack of commitment to learning and development on the part of some lawyers.
- 2.4 Secondly, LFA member firms generally encourage their lawyers to plan their CPD activities and reflect on their learning and development needs at regular intervals. LFA recognises that planning and reflection can form important components of study plans, but does not support mandating the preparation of learning plans or reflection statements. Rather, guidance could be provided by professional associations and regulators on effective planning and reflection activities as examples of best practice. Additionally, the preparation of learning plans or reflection statements could constitute a CPD point under the 10 hour minimum requirement.

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- 2.5 Thirdly, LFA submits that CPD requirements should permit the provision of flexible and varied learning activities, including in relation to classroom style 'chalk and talk' sessions. This reflects that the effectiveness of each delivery method will depend on the preferences or characteristics of the relevant lawyers, the knowledge and experience of the presenter or facilitator, and the presenter or facilitator's delivery. It should also be noted that any limitation of CPD delivery methods would likely have a disproportionate impact on lawyers in smaller or regional law practices and sole practitioners as compared to lawyers at larger law practices due to access and availability issues.
- 2.6 As a general proposition, all verifiable activities with genuine learning outcomes that are relevant to legal practice should be recognised for the purposes of CPD. This is particularly so for remote and online delivery methods such as webinars (live and on-demand), e-learning modules and interactive online presentations. Lawyers and law practices have experienced a dramatic shift to remote working arrangements during the current pandemic. Such arrangements are likely to remain in place in many circumstances if and when the pandemic subsides. This supports the permanent removal of limits on private study of online materials; lawyers working part-time or remotely should not be required to attend in-person CPD activities if their learning and development needs can be met through online delivery methods.
- 2.7 CPD requirements should also continue to recognise time spent preparing and delivering presentations, engaging in relevant postgraduate studies, researching and writing materials for publication, and participating in committees and working groups of relevant professional and trade associations.
- 2.8 Any benefits or limitations generally associated with specific delivery methods may be explained in best practice materials from professional associations and regulators. Such material should also acknowledge the role of both formal and informal learning and development for lawyers.
- 2.9 Finally, LFA supports changes to CPD requirements that permit lawyers to receive credit for learning and development activities shorter than 30 minutes. This would reflect the increasing trend of law practices offering microlearning sessions to lawyers as part of their broader learning development programmes.

3. **Subject areas**

- 3.1 LFA provides the following three comments on the 'subject areas' section of the Issues Paper.
- 3.2 First, LFA agrees with the proposition at p 10 of the Issues Paper that professional competence is not solely driven by knowledge of the law. Competence is also influenced by knowledge of clients and markets, a broad range of professional skills such as communication skills (both oral and written), and a good understanding of professional ethics. For some, practice management and business skills are also important.
- 3.3 The four prescribed areas remain relevant to and appropriate for legal practice, with lawyers at some LFA member firms indicating that the substantive law component of their learning and development programmes is the most useful area.
- 3.4 Secondly, mandatory CPD subjects should generally be kept to a minimum to allow lawyers the flexibility to determine how best to meet their learning and development needs. However, LFA would welcome any changes that make it simpler to determine whether particular topics qualify for CPD recognition and, assuming the category-based approach is retained, the category or categories that such topics fall into.



3.5 Finally, LFA member firms are committed to providing appropriate and ongoing training to staff on workplace and risk and compliance matters, including in relation to diversity and workplace safety. LFA does not have a settled view on whether such matters should be included within the CPD regime.

4. **Experience levels**

4.1 LFA believes that all practising lawyers should be subject to CPD requirements, including very senior lawyers. Rather than any strict differentiation between experience levels in CPD requirements, the requirements should permit greater flexibility and discretion for lawyers. For instance, it may be that junior lawyers determine to devote greater focus to substantive law subjects, whilst senior partners may derive greater benefit from study of practice management and business skills. Best practice guidance from professional associations and regulators could outline the general appropriateness of topics for lawyers of different levels of experience.

4.2 LFA would not support any recommendation to introduce a requirement for lawyers to revalidate their qualifications at regular intervals. This would impose a significant burden on the profession and regulators without any clear evidence that it is likely to improve outcomes for clients.

5. **Providers**

5.1 LFA does not support mandatory accreditation of CPD providers. LFA member firms have developed sophisticated legal and business skills development programmes for lawyers and clients for many years. Mandatory accreditation would create an unnecessary administrative burden for large law practices whilst being unlikely to improve learning and development outcomes for their lawyers or clients.

5.2 Furthermore, LFA does not support certain areas or topics being required to be delivered by an accredited provider. Generally, LFA members firms are capable of delivering all CPD topics for their lawyers, and they should not be restricted to using an accredited external provider for certain topics when the firms could deliver the topic directly to the same or better standard. Similarly, where law practices choose to use an external provider, they should not be restricted to engaging accredited external providers. If accreditation requirements were introduced, some external providers may decide it is not worth becoming accredited given their level of engagement by law practices. It would be unfortunate if accreditation requirements had the effect of reducing provider choice for law firms and other organisations.

6. **Employer role**

6.1 Meeting CPD requirements should primarily be seen as an individual responsibility for practising lawyers. On this basis, LFA would not support: a requirement that law practices monitor compliance with CPD requirements, or; a requirement for a law practice CPD compliance officer.

6.2 LFA is not opposed to a self-auditing scheme for CPD compliance, provided it is strictly voluntary, and subject to further consideration of the details of such a scheme.

7. **Additional matters**

7.1 LFA provides comments on the following additional matters:

- (a) *Reporting periods:* LFA member firms generally prefer retaining annual reporting periods due to simplicity and interjurisdictional consistency.



- (b) *Audit:* The Issues Paper notes at p 26 that '[I]lawyers subject to audit are not asked about the particular CPD activities they undertook, or the quality or relevance of the activities to their practice or professional development'. The Issues Paper then suggests that a greater focus on the value of CPD activities undertaken would be beneficial.

LFA would seek to understand any proposal on this matter in more detail before expressing a firm opinion, however it is noted that a lawyer's decisions about what CPD activities to undertake to meet their learning and development needs are inherently, and appropriately, subjective. LFA would not support a proposal that calls such decisions into questions where they have been made honestly and in good faith.

- (c) *Record keeping:* LFA believes that the current record keeping requirements are adequate. The necessity for an online portal has not been made out at this stage, particularly if lawyers must keep their own private records in any event.

If an online portal is to be introduced, it should integrate with law firm learning management systems so that online records may updated automatically.

- (d) *Parental leave:* Solicitors on parental leave may apply for a complete or a partial exemption from CPD requirements.¹ If granted, such exemptions will generally be granted on a pro rata basis.²

This exemptions framework remains appropriate, however LFA submits that its application may be improved:

- by publishing pro rata schedules so that practitioners on parental leave may determine how many CPD requirements are likely to be required to be completed prior to an exemption being granted, and
- by permitting greater flexibility such that practitioners on parental leave may select, at their own discretion, the subject area or areas in which they wish to complete their pro-rated study and the form in which they wish to complete it.

¹ Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015, r 16.3.3.

² Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015, r 16.4.



8. **Conclusion**

- 8.1 LFA appreciates the opportunity to provide a submission to the Review, and looks forward to making further contributions during the Review process.
- 8.2 Please do not hesitate to contact me if the points above require clarification or if LFA can provide further information that will be of assistance.

Yours faithfully



Mitch Hillier
Executive Director
Law Firms Australia

P +61 2 9230 5432
M +61 437 872 941
E mhillier@lawfirmsaus.com