

Leo Cussen submission to the Victorian Legal Services Board and Commissioner's review of CPD arrangements in Victoria

Leo Cussen Centre for Law is pleased to have the opportunity to make a submission to the Victorian Legal Services Board + Commissioner on the Review of Continuing Professional Development in Victoria.

We make this submission to add to the information we provided in our meeting with Chris Humphreys, independent consultant leading the review and Natalie Neal, Senior Policy Officer, CPD Review, VLSB+C, on 24 June 2020.

We will address those Terms of Reference that fall within our sphere of particular experience.

EXECUTIVE SUMMARY

Leo Cussen makes the following recommendations for the VLSB+C's consideration:

1. That given the gravity of the potential consequences of poor risk management, risk management training is an area where quality assured training, delivered by an approved CPD provider be considered.
2. That in the medium to long term, once face-to-face training is again possible, both online and face-to-face onsite training should be made available by CPD providers so that a variety of learning styles, workplace demands, and locations can be accommodated.
3. That CPD providers demonstrate that the programs offered are designed to accommodate different learner needs and are relevant, practical and aimed at a practitioner's particular level of seniority.
4. That the CPD subject areas should be reviewed with a view to providing sub-categories for different types of legal practices (government lawyers; community sector lawyers; in-house lawyers; small/medium/large firms) to ensure relevant and appropriate training.
5. That ethics is a category of CPD training that should be delivered by an approved CPD provider that can assure the quality of content, the presenters and the appropriate delivery mode.
6. That training regarding the risks associated with technology in legal practice becomes a mandatory stand-alone requirement each CPD year.
7. That a regular review of the PMC topics could be scheduled to ensure they remain relevant and appropriate.
8. That an employer, at minimum, must provide paid time within work hours for the practitioner to meet their CPD obligations.
9. That 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.

BACKGROUND

Leo Cussen has delivered CPD programs to the legal profession since 1972. Leo Cussen is accredited by VLAB, VLSB+C, WALPB and TEQSA. It holds memberships in CLEAA, ALPMA, LIV, ACLEA, APLEC, Iteca and ASTAS.

We employ 40 lawyers on staff and all CPD Program Managers are experienced lawyers. We engage hundreds of members of the legal profession each year, to present our CPD programs.

We have a longstanding history of providing high quality, practical legal education programs including seminars, conferences, intensives, masterclasses, workshops, publications including books, and more recently by online delivery. We have provided these professional development programs for tens of thousands of lawyers and their support staff.

In 2019 our CPD Department delivered 255 programs. At all times we prioritise quality of training content over quantity of programs. Our deep relationship of trust with the legal profession ensures that we are able to source leading legal practitioners to present our programs and enables us to provide up to date content.

Our qualifications and history as a TEQSA regulated higher education provider underlines our understanding and application of sound educational principals when designing CPD programs. Our CPD clients pay to attend our programs and therefore they are choosing carefully before booking a place. We rarely offer free CPD and we believe that our clients choose our programs for their relevance and quality.

Leo Cussen CPD Team qualifications and experience

Our CPD team includes seven Program Managers who are all experienced lawyers, and a number of experienced coordinators and administrators. Our CPD team is supported by an extensive network of Leo Cussen staff including a Course Design Team, IT and online learning staff. We are situated in state-of-the-art premises backed up with cutting edge technology and an experienced senior management team. Our Board of Directors includes lawyers, accountants and university academics.

A CPD Program Manager attends each program we run, as an observer, to ensure quality, consistency and to address any presenter or client feedback or concerns in real time. Each Program Manager liaises with hundreds of presenters and thousands of CPD clients in any given year. Our CPD programs are designed to address the practical needs of our clients and regular client feedback is considered and addressed in our ongoing program design and content.

CPD Program Managers hold regular consultative meetings and liaise constantly with barristers and leading lawyers in private practice, in-house roles, government and community legal centres, to discuss practice updates and developments. The meetings also provide feedback which informs program development and content.

Our submission is based on our observations, stakeholder feedback and our cumulative experience of CPD program delivery since 1972

DIVERSE DELIVERY TO ACCOMMODATE A DIVERSE PROFESSION

A wide range of educational formats ensure lawyers can attend the style of training that best suits them. Leo Cussen offers one-hour seminars, three-hour intensives, half-day conferences, full-day conferences, multi-day interactive online and face-to-face workshops and masterclasses and our Practice Management Course. We also offer a wide range of pre-recorded webcasts.

More than ever, it is important for CPD to be available in a variety of formats and delivery modes in order to suit learning styles, geographical location, business needs and cost. In the current COVID-19 climate most CPD providers are delivering CPD totally online whilst awaiting re-commencement of face-to-face onsite programs. It is probably too soon to say whether the lack of face-to-face onsite training will have a short- or medium-term impact on the overall effectiveness of the CPD delivered during COVID-19. In the medium- to long-term, once face-to-face training is again possible, we **recommend** that both online and face-to-face onsite training are made available so that a variety of learning styles, workplace demands, and locations can be accommodated.

Learning design to accommodate learner needs

Leo Cussen client feedback consistently and overwhelmingly indicates that, regardless of the style of CPD program, the most important issues are that the content be relevant, practical and aimed at a practitioner's particular level of seniority.

The feedback from our CPD clients can be summarised as follows:

1. 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.

2. They want practical content that enhances their skills development and assists them to, gain confidence, avoid a negligence claim or complaint and manage their practices more efficiently.

CPD clients who attend our practical workshops indicate they appreciate the interactive small group environment which allows them to acquire a deeper understanding of the practice area and that 'learning by doing' is most beneficial.

3. Some CPD clients prefer to combine substantive law updates and skills sessions into a longer program. For these clients, longer intensives or conferences suit their needs best.
4. Our CPD clients want programs aimed at their level of experience rather than a 'one size fits all' approach. For example, CPD clients attending Masterclasses are looking for nuanced and more complex content than a general program, while those undertaking an "Essentials" program might be looking for an introduction to a new area of practice, and those attending our Practice Management Course are looking to fulfil regulatory requirements regarding their application for a principal practising certificate and to gain knowledge and skills aimed at a senior level.

Our client surveys indicate that most of our CPD clients are serious about the importance and relevance of a CPD program and are not attending it merely to 'tick a box'. They are prepared to pay money and invest time for quality training and education, rather than opt for the free CPD that is available elsewhere. A significant number of our clients attend programs numerous times in a CPD year and many obtain more than 10 CPD points in that year.

Different levels of experience

It may seem obvious to state that practitioners with different levels of experience need, and benefit from, different professional development courses that take into account the knowledge and skills gained over time. There are a number of ways that better targeted or tailored training could be offered. One option may be to categorise different levels of seniority, and direct practitioners to undertake the appropriate program. For example: 1-3 years; 3-5 years; 5-10 years post admission experience and so on. The practitioner can then find training most relevant to their experience and seniority.

We have observed that there is usually a mix of seniority in most CPD programs provided by Leo Cussen, even when they are clearly aimed at a specific audience.

The success of our practical programs which focus on complex issues including drafting and contracts interpretation at a high level, indicates that when a program is designed for a specific senior niche audience, senior lawyers are inclined to register to attend.

The creation of agreed categories; a requirement for CPD providers to explicitly state the intended audience; and an obligation on practitioners to select the appropriate course, may lead to better, more relevant training.

SUBJECT AREAS

The categorisation of CPD into the four current categories may contribute to some lawyers finding it difficult to access programs relevant and appropriate to their practices, particularly within the category of Practice Management & Business Skills. Many of the CPD programs offered within this category can also appear less relevant to lawyers not engaged in private practice.

Theoretical programs within the Ethics category are also difficult for many lawyers to engage and feel satisfied with. Most of our CPD clients appreciate scenario-based ethics training particularly when there is an opportunity for interaction and discussion.

We **recommend** that the subject areas should be reviewed with a view to perhaps providing sub-categories for different types of legal practices (government lawyers; community sector lawyers; in-house lawyers; small/medium/large firms). Of course, some training would be relevant to more than one type of practice, but a clearer categorisation or definition may assist practitioners to access training most relevant to them.

Ethics

Our experience of teaching ethics to CPD clients of all levels of seniority has shown that most are profoundly concerned to comply with their ethical and professional obligations. They are looking for clear guidance and to know that they can trust the ethics presenter to have a sound knowledge of the subject matter. As mentioned above, practical workshops that allow practitioners to 'learn by doing' are some of the best received training sessions.

From the feedback we receive from our CPD clients it seems that there is inconsistency in content, unqualified presenters and lack of suitable choices of ethics training within the profession. Some CPD clients have indicated they did not fully understand their ethical position because they were receiving training within firms and organisations that did not have a full understanding of or commitment to ethical decision making.

Given its importance in ensuring an ethical profession and public confidence in the administration of justice, quality and consistency of ethics training is paramount.

For these reasons we **recommend** that ethics is a category of CPD training that should be delivered by an approved CPD provider that can assure the quality of content, and presenters, and the appropriate delivery mode.

It is our view that mandatory annual ethics training is critical, and seniority does not reduce or negate the need for it, as the ethics complaints and disciplinary cases show. Further, as technology continues to impact legal practice in unexpected ways and personal pressures present lifelong challenges, new ethical challenges will continue to present themselves throughout a practitioner's career and regular and frequent ethics training will remain critical.

Risk Management

Our experience indicates that CPD clients are acutely aware of the need to minimise risk in their practice. They 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.

We **recommend**, given the gravity of the potential consequences, that risk management training is another area where quality assured training, delivered by an approved CPD provider be considered.

Technology and Cyber Security

Based on CPD client feedback, new information technology and cyber security are key issues of concern, but many lawyers rely on IT specialists within their organisation or external consultants to keep them protected. They are not keen to pay to attend a program as if they do not see it as their own personal responsibility. Identifying and linking potential technology pitfalls such as data breaches to unethical or negligent behaviour is important to highlight practitioner responsibility. This is true now more than ever as we are forced to rely almost completely on technology to conduct legal practice.

We **recommend** that regular training regarding the risks associated with technology in legal practice should be a mandatory requirement each CPD year. While it properly falls within Practice Management & Business Skills category, given its importance and complexity, and the reluctance of many practitioners to come to grips with it, we **recommend** it should become a mandatory stand-alone topic.

Practice Management Course

Feedback from the Leo Cussen PMC courses indicate that the current topics required within the course are appropriate. However, given the changes that are, and will be required within the profession in the coming years, we **recommend** that a regular review of the PMC topics could be scheduled to ensure they remain relevant and appropriate.

ENTITY/EMPLOYER ROLE

Our records show that a significant number of Leo Cussen CPD clients are paying for their own CPD rather than their employer paying for that training. We have not investigated the reasons for this. It may be that it is a choice due to interest in areas that their employer does not see as relevant or

important to their practice, or it may be they have no option but to bear the cost if they wish to retain their practicing certificate or be employed.

This is a matter which would benefit from further investigation as it would provide an insight into the different views held within the profession as to the value and importance of professional development.

It is our view that while the responsibility for undertaking the requisite CPD must rest with the individual practitioner, an employer, at minimum must provide paid time within work hours for the practitioner to meet those obligations. This at least demonstrates that CPD is a valued and valuable undertaking, and important to the work of the firm or employing entity.

It may be that the employer responsibility to provide access to training is greater for more junior employees, particularly those in their first two to three years of practice, as the supervision of junior lawyers and the responsibilities of employers to support their professional development is fundamental to maintaining ethical standards and delivering on client needs. This is also particularly important in developing junior lawyer attitudes in line with the focus of VLSB+C on appropriate workplace behaviour.

OBSTACLES TO CPD PARTICIPATION

There are numerous potential obstacles to CPD participation:

Accessibility

As many programs can now be offered online or via livestreaming, accessibility due to location is less of a hurdle than it may previously have been, particularly for regional and rural practitioners. This is certainly the case for Leo Cussen clients, as most CPD programs are offered in this way. However, accessibility may still be a barrier for practitioners with disabilities for whom the technologies may not be ideal, and who find physical attendance also challenging.

Cost

Cost can present an obstacle, particularly for practitioners who are paying for their own training. Quality training and education is necessarily expensive to create and deliver, and the cost does reflect that. Leo Cussen, as a not-for-profit and an ACNC registered charity, applies its income to developing and continuously improving our CPD programs. There is therefore little capacity for an institution like Leo Cussen to assist practitioners with the cost of attending CPD programs.

Pressure of practice

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. It is a barrier that setting a requirement for employers to provide and support time “out of the office” to undertake relevant CPD may address.

CPD LEARNING ENVIRONMENT

To facilitate the best learning outcomes CPD is best delivered in a professional environment rather than a social or casual environment. The environment within which training is provided does impact on concentration, participation and learning outcomes. Whilst CPD activities can include a social

element which is important for networking and collegiality, disguising social events as a CPD activity does not take CPD seriously.

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.

COMPETENCY FRAMEWORK

As the Board and Commissioner will be aware, Leo Cussen has provided Practical Legal Training continuously since our establishment in 1972, and the current Graduate Diploma in Legal Practice (PLT) is based on the competency framework set by the Law Admissions Consultative Committee. Given that experience, we can see the value in developing a CPD framework that sets minimum standards of competence that must be reached by each practitioner, at different stages of their career.

Such a framework has the following benefits:

1. It acts as a quality assurance mechanism by setting minimum standards of continuing practitioner competence that the profession and the public can rely on.
2. It provides practitioners with assurance that the CPD offered by providers will meet the standards they require to keep up-to-date with professional skills and knowledge.

In the event that the VLSB+C wishes to explore the creation of a CPD competency framework, Leo Cussen would be keen to participate in its development.

THE FUTURE OF THE PROFESSION

To lay the groundwork for the future it may be appropriate to impose mandatory CPD topics for junior lawyers to cover once, during the first two years post admission.

The below six CPD Points is an example of how this could be structured:

1. Familiarisation with the Uniform Law Regime (approved provider)
2. Risk Management (approved provider)
3. Technology in legal practice: cyber security, cloud-based practice, AI in practice, workplace mobility
4. Ethics (approved provider)
5. Workplace Behaviour focusing on sexual harassment and diversity (approved provider)
6. Client-centred practice.

The other four CPD points are then available to cover areas of substantive law and skills relevant to the individual practitioner's practice.

CPD for experienced lawyers to periodically refresh and develop skills that have lapsed, or are new should also be considered as part of a robust CPD framework. This need has been highlighted by COVID-19 as it shows the critical need for a base level competency in relevant technology for all lawyers. There are clearly other areas such as staff communications and workplace behaviour that also need to be revisited and refreshed regularly.

CONCLUSION

The current compulsory 10 CPD points was an excellent starting point to ensure all legal practitioners take responsibility for at least some professional development. It has served to enculturate a mindset that legal professional training must continue beyond admission throughout a practitioner's entire career.

Having socialised legal practitioners to the need for CPD, it is appropriate to consider how to better quality assure the training so that it is able to meet the changing needs of the profession. In our view, the current mandatory 10 point CPD framework is a minimum standard that could be improved on in the ways we have outline above.

Thank you for opportunity to provide this submission for your consideration.

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