

Your reference:

Our reference:

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Victorian Legal Services Board + Commissioner

**By email only:** [cpdreview@lsbc.vic.gov.au](mailto:cpdreview@lsbc.vic.gov.au)

Dear Ms. McLeay

**Review of the Current CPD Requirements for Lawyers in Victoria: Submission to Issues Paper**

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We refer to the Issues Paper that you have prepared for stakeholder consultation on this important review of the current Continuing Professional Development (**CPD**) requirements for lawyers in Victoria. Our interest in this review stems from our role as both providers of CPD opportunities for government lawyers in the Victorian public sector (**VPS**), and consumers of CPD opportunities as an employer of government lawyers.

The Victorian Government Solicitor's Office (**VGSO**) supports the VLSB+C's action to identify and consider improvements to CPD to ensure that it is meaningful, relevant and accessible for all types of lawyers. We compliment the Issues Paper, detailing matters for consideration, and are pleased to provide commentary with respect to the issues raised. Our submission takes into account the views of a selection of VGSO solicitors of varying levels of Post Admission Experience (**PAE**) and of different areas of practice.

**1. Who we are**

The VGSO occupies a niche role in the legal profession. The legal services provided are expansive in terms of subject matter offered (e.g. commercial and property, workplace relations, administrative law, and personal injury litigation), and specialised (e.g. human rights and constitutional law). We are also unique in terms of our operating environment, being subject to an number of obligations that other practitioners are not required to adhere to, including the Model Litigant Guidelines. In addition, legal services for government have a strong nexus to various policy initiatives of government.

To summarise the CPD needs of VGSO solicitors, we would note that the following as core requirements:

- Learning and development that covers the full breadth of VGSO practice areas, with appropriate opportunities for solicitors of various PAE, from early career to expert.
- A specific need for niche subject areas such as human rights, procurement and financial management. Similarly, a need for ethics training reflective of the ethical challenges specific to the public sector.

VGSO places great emphasis and importance on continuous learning and development, particularly focussed on the unique needs of government lawyers. Specific CPD opportunities provided by VGSO and open to staff and the broader VPS include:

- A monthly seminar series, encompassing topics reflective of VGSO's practice areas as well as overarching obligations, such as Ethics and Professional Responsibility.
- A Whole of Victorian Government Legal Induction Program for lawyers new to the public sector. The program assists lawyers to transition to the unique and challenging field of government law and aims to improve the quality of legal advice provided across government.
- Tailored, small group training, that draws upon our legal expertise and strong understanding of government. Examples of subject areas include statutory interpretation, administrative decision-making, land acquisition, contract management and workplace relations.

## **2. Our response to the Issues Paper**

### **Learning Styles and Activities**

VGSO solicitors undertake CPD in a variety of formats, including seminar and conference attendance, but many note that online training is the most convenient and accessible. A significant proportion of solicitors claim preparation or presentation of CPD activities, given VGSO's knowledge sharing and professional development focus and the availability of opportunities to be involved in the provision of internal and external training.

Across VGSO the total number of completed CPD units each year can vary between solicitors, with some completing well over the required amount in a single year. Most concur that having a minimum requirement of points is beneficial. Some note this structure actually improves the effectiveness of learning and development activities.

The existing structured approach still allows solicitors to set their own learning and development goals, with the 10 CPD requirement used as a base to plan relevant activities. In the absence of a defined structure, there is a high risk that CPD would not be prioritised, constantly being pushed aside amongst a solicitors everyday stream of work.

Overall, it is agreed that the point system should be maintained. The remainder of this paper details other changes that may be considered.

### **Subject areas**

Practice Management and Business Skills has been identified by many as the least relevant subject area. From the perspective of a government lawyer employed in the Victorian public

sector, CPD offerings of this nature generally do not reflect a solicitors management or operating environment. Instead, valuable skills in this area are usually developed on the job and from observing and learning from colleagues.

Regarding the Ethics and Professional Responsibility competency area, while it is a critically important aspect of a well-rounded CPD program, a point of note is that government lawyers have found that many CPD offerings of this nature are directed towards lawyers in the private sector, who service private clients. In saying this, we confirm that this should remain a mandatory competency area and raise the point only to encourage thought as to the diversity of offerings in the Ethics and Professional Responsibility learning area.

We have identified a number of areas in which VLSB+C may consider making learning and development mandatory:

- Cultural and Diversity Competence / Unconscious Bias training. Specifically, it is noted that Koori and Indigenous cultural training should be incorporated, with a particular focus on understanding the Koori Court process. In addition, programs that promote a greater understanding of other communities, including but not limited to, culturally and linguistically diverse communities and the LGBTIQ+ community should be considered.
- Legal Technology - Given COVID-19 and the profession's recent need to engage with technology, there should be a focus on developing legal technology skills at least for the next three years.
- Mental Health - Given the trend of poor mental health outcomes in the legal profession, this learning area has been determined critical. Sessions within this subject area may discuss trends and contributing factors, identify common triggers (such as vicarious trauma) and present practical strategies to improve mental health.
- Workplace Safety - Given obligations to provide a safe and inclusive workplace, this learning area has been determined critical. Sessions that broadly fall under this category may include training related to occupational health and safety, workplace bullying, sexual harassment and equal opportunity.

### **Different levels of experience**

It is agreed that the current system allows solicitors to identify learning and development activities relevant to their level of experience.

If a more prescriptive framework were to be developed specifying different requirements for new and experienced lawyers, we suggest the following principles may be taken into account:

For new lawyers, of 0-3 years' PAE:

- A selection of mandatory subjects, reflective of identified essential knowledge and foundational skills could be considered.
- An increase in the minimum CPD requirements, potentially up to 15 hours, which could encompass the additional mandatory subjects referred to above, could be considered.

- The inclusion of supervised work activities in the CPD model for new lawyers could be considered. The activities would need to be relevant to the solicitor's area of work, for example it may include accomplishments such as managing the discovery process, end to end, in a complex litigation, drafting a complex written advice requiring very limited amendment, or their first court appearance of over 1 hour. The solicitor supervising the activity would attest to the proficiency developed and a CPD point would be allocated.
- Of the existing competency areas, it has been identified that Ethics and Professional Responsibility and Practice Management and Business Skills are two areas of importance for new lawyers

For experienced lawyers, with continuous PAE of more than 10 years:

- We do not think the CPD requirements for experienced lawyers should be reduced. The law is always changing, with updates, amendments and interpretation. Regardless of their number of years' experience, solicitors should continue to learn and share their knowledge.
- Professional Skills and Practice Management and Business Skills competency areas could be considered optional, rather than mandatory. We note that with this level of professional experience, one should be competent in these areas. Those wishing to enhance these skills could elect to undertake these topics, as required. Should training in the area of legal technology be made mandatory, this will ensure solicitors knowledge in this related area remains up to date.

## **Providers**

VGSO solicitors have found that in-house training is the most meaningful and relevant as it is tailored to our practice areas, our clients, and our operating environment. In contrast, CPD activities delivered by commercial providers or training bodies have sometimes been described as too generic.

Knowing the challenges government lawyers may face in accessing relevant CPD activities external to their organisation, VLSB+C may wish to consider how the growing sector of government legal practice should and can obtain relevant CPD.

Of the external training opportunities available, VGSO solicitors have found specialist conferences, such as Criminal Law or Government Law Conferences, to be useful.

We note that presenters are a critical component of CPD activities. Their specialty and standing in law can impact on a solicitor's perception of the session and the value they get out of it.

Provider accreditation is not considered an important factor. Solicitors remark that provider accreditation would not impact on their decision as to the sessions or courses they will attend.

## **Entity / employer role**

VGSO places great emphasis and importance on continuous learning and development and aim to foster a strong culture of knowledge sharing. We have a robust internal learning and

development program and are also committed to lifting the capability of government lawyers across the Victorian public sector more generally.

Section one of this paper provides an overview of the CPD opportunities provided by VGSO and open to staff and the broader VPS.

We support our staff in attending relevant external CPD opportunities that align with their individual learning and development goals. We encourage staff to reflect on the sessions they attend and share with colleagues the learning outcomes.

We also provide ample opportunity for staff to be involved in the preparation and delivery of CPD activities for internal and external audiences.

Further in this paper we discuss flexibility and the need for solicitors to have more control over the format of CPD activities they attend. To account for flexible working arrangements, fluctuating work demands and personal learning style preferences, VGSO aims to provide a selection of CPD activities via live streaming or recording. We suggest the permanent removal of the pre-COVID-19 restrictions regarding online training would improve VGSO solicitors ability to attend in-house training and would encourage us to provide more CPD opportunities via flexible formats.

## **Obstacles**

The following have been identified as obstacles to effectively participating in CPD activities:

- Time and the balance with family/personal commitments. Those with caring responsibilities often note reduced capacity to attend CPD activities outside of business hours.
- Time and the balance with day to day work commitments. Those who try to attend CPD activities during business hours note the pressure in balancing this with billable hour targets and performance requirements.
- Cost. Solicitors note that among other financial obligations, such as mortgage payments/ rent, school fees and other essential household expenses, paid CPD activities are pushed towards the lower end of priorities. Interestingly, some solicitors specifically note no noticeable difference between paid and free CPD activities and are therefore content in seeking free opportunities.
- Travel. Solicitors note the location of CPD activities as a factor in selecting opportunities. If travel is required, solicitors may be less inclined to, or simply unable to, participate.
- Urgent, unexpected deadlines.

In summary, the above obstacles may all be overcome if more flexibility is permitted in terms of how CPD activities are completed. For many it is more convenient to attend online sessions, with those recorded increasing accessibility further. In response to the COVID-19 pandemic, the VLSB+C removed the requirement to complete face-to-face training. Before this, solicitors were only permitted to count a certain number of online hours to their CPD

total. The VLSB+C may consider removing the face-to-face requirement permanently, allowing a more flexible approach, that accounts for varied individual circumstances.

We noted earlier in this response the challenge in accessing relevant CPD activities for government lawyers, to supplement those delivered in-house. This has been identified as an obstacle for some.

### **Regulator's role**

We believe the mandatory 10 CPD point requirement should be maintained.

If the mandatory requirement were to be increased, it is imperative that a more flexible approach be adopted. Removing the pre COVID-19 restrictions regarding online CPD activities would be valuable, enabling solicitors to learn in a way that best suits their circumstances and preferences.

The VLSB+C may consider increasing the CPD point allocation for preparing and delivering training to encourage knowledge sharing amongst the profession.

### **Compliance and enforcement**

VGSO solicitors do not find CPD record keeping obligations onerous. VGSO assists in recording CPD points for solicitors, where information is available. In addition most solicitors have developed their own record keeping system, some as simple as an Excel spreadsheet, to track activities.

The flexibility allowed in regard to the format and structure of the CPD log is appreciated and solicitors note that the guidance templates provided by law societies are useful.

Some solicitors note that the proof of attendance requirement can sometimes be challenging, though the rationale behind it is understood. Perhaps CPD providers should be required or encouraged to be more proactive in ensuring confirmation is provided upon registration and/or attendance.

A single online CPD record keeping solution may be of benefit to some. Rather than having disparate or duplicated systems - personal, provider and employer - a single solution may make it even easier to maintain CPD records, particularly when changing jobs. The system could have added functionality that allows for dissemination of information or reminders about available CPD activities. In saying this, if a technology solution were to be implemented, it's expected some solicitors may still choose to keep their own records, being mindful of common problems and challenges that can arise with online portals.

### **Technical issues**

It is expected a triennial reporting schedule may result in greater recording difficulty and inconsistent learning and development.

If the reporting schedule were to be altered, it is suggested it reflect the financial year and the renewal cycle for practicing certificates, giving solicitors one reference period.

VGSO does not have feedback on the provisions around exemptions.

Should you require further information about this submission, please contact Emily Tabe, Acting Senior Executive Advisor to the Victorian Government Solicitor on 0418 103 671 or by email at [emily.tabe@vgso.vic.gov.au](mailto:emily.tabe@vgso.vic.gov.au).

Yours faithfully  
Victorian Government Solicitor's Office

A handwritten signature in blue ink, appearing to be 'M Hocking', written over a faint, illegible stamp.

Matt Hocking  
Acting Victorian Government Solicitor