

# CONTINUING PROFESSIONAL DEVELOPMENT RULES 2007

## LAW INSTITUTE OF VICTORIA LIMITED

These Rules about legal practice in Victoria are made by the Law Institute of Victoria Limited in its capacity as a Professional Association, under s.3.2.9 (3) of the *Legal Profession Act 2004*.

### Introduction and Commencement

- 1.1 These Rules may be cited as the Continuing Professional Development Rules 2007.
- 1.2 These Rules are in operation for the period 1 April 2007 – 31 March 2008 (inclusive).

### Object of these Rules

- 2 The object of these Rules is to assist legal practitioners to maintain and enhance their capacity to provide high quality and ethical legal services and for the benefit of the community.

### Definitions

- 3.1 In these Rules, unless the context otherwise requires:
  - “Act” means the *Legal Profession Act 2004*;
  - “CPD” means continuing professional development;
  - “CPD activity” means an activity which meets the requirements of Rule 4.1;
  - “CPD Committee” means the Continuing Professional Development Scheme Committee of the Law Institute of Victoria Limited;
  - “CPD unit” means an hour of CPD activity, subject to other provisions of these Rules;
  - “CPD year” means the year beginning on 1 April and ending on 31 March following;
  - “LIV” means the Law Institute of Victoria Limited;
  - “the Board” means the Legal Services Board;
  - “practitioner” means local legal practitioner within the meaning of the *Legal Profession Act 2004*.
- 3.2 Expressions defined in the Act have the same meaning in these Rules.

### Content and format of CPD Activities

- 4.1 For the purposes of these Rules, a CPD activity must
  - (a) be of significant intellectual or practical content and must deal primarily with matters related to the practice of law;

- (b) be conducted by persons who are qualified by practical or academic experience in the subject covered; and
- (c) seek to extend the practitioner's knowledge and skills in areas that are relevant to the practitioner's practice needs.

4.2 A CPD activity may consist of:

- (a) a seminar, workshop, lecture, conference, discussion group, multimedia, web-based program or audio/video material;
- (b) the research, preparation or editing by a practitioner of an article published in a legal publication or a legal article in a non-legal publication. A practitioner may claim 1 CPD unit for every 1000 words of such article but may not claim in a CPD year more than 5 CPD units in this category;
- (c) the research, preparation, or editing of published Law Reports or other legal services. A practitioner may claim 1 CPD unit for every 1000 words for such editing or writing but may not claim in a CPD year more than 5 CPD units in this category;
- (d) the preparation and/or presentation by a practitioner of material to be used in a CPD activity or in other forms of education provided to practitioners and/or to other professionals and/or to other persons including articulated clerks or trainees but a practitioner may not claim in any CPD year more than 5 CPD units in this category;
- (e) membership of a Committee, Taskforce or Section of the LIV, the Law Council of Australia or a Practice Section Committee of a Law Association provided that the practitioner regularly attends its meetings, if the work performed on the Committee, Taskforce or Section is of substantial significance to the practice of law and is reasonably likely to assist the practitioner's professional development. A practitioner may claim 1 CPD unit for every 2 hours of participation in a committee or similar group in this category and may not claim in any CPD year more than 3 CPD units in this category, save for a member of a Specialist Accreditation Advisory Committee who may claim up to 5 CPD units in this category;
- (f) Postgraduate studies relevant to a practitioner's practice needs.

4.3 Practitioners who complete a specialist accreditation examination process will be deemed to have completed 10 CPD units in the year of their completion.

4.4 Private study does not constitute CPD activity for the purpose of these Rules unless it involves the private study of audio or video material specifically designed for the purpose of updating a practitioner's knowledge and/or skills relevant to his/her practice needs. A practitioner may claim 1 CPD unit for every

1 hour of such private study and may not claim in any CPD year more than 5 CPD units under this sub-rule.

- 4.5 Notwithstanding anything to the contrary in these Rules, a practitioner may not claim in any CPD year more than 6 CPD units per day of attendance at a CPD activity or per day of attendance at a CPD conference.
- 4.6 Engaging in legal practice does not constitute CPD activity.

### **CPD Obligations of Practitioners**

- 5.1 Each CPD year, a practitioner must, unless exempted in whole or in part, complete at least 10 CPD units.
- 5.2 Each CPD year, a practitioner must complete as part of his or her CPD obligations at least 1 CPD unit in each of the following fields:
  - (a) Ethics and Professional Responsibility
  - (b) Professional Skills
  - (c) Substantive Law
  - (d) Practice Management and Business Skills

A non exhaustive list of CPD activities which will satisfy the requirements of this Rule are outlined at Appendix A.

- 5.3 A practitioner may complete his or her CPD obligations through participating in CPD activities conducted by his or her legal practice or employer or external provider.

### **CPD record keeping**

- 6.1 A practitioner must maintain for each CPD year:
  - (a) A record of his or her engagement in CPD activities; and
  - (b) Evidence in support of the CPD activities undertaken.
  - (c) For the purposes of verification and Audit, a practitioner must retain the record referred to at 6.1 (a) and the evidence in support referred to at 6.1 (b) for at least three years after the end of the CPD year to which the CPD record and evidence in support relate.

## **Practitioners returning to practice**

- 7.1 When a practitioner who has not held a practising certificate for three consecutive years or more applies for a practising certificate, the practitioner must file with the application a training plan setting out the CPD activities which the practitioner will complete in the first six months of recommencing legal practice and which the practitioner considers will assist his or her return to practice.
- 7.2 The Board or its Delegate may grant the application for a practising certificate on condition that the practitioner completes the CPD activities specified in the plan.

## **Exemptions**

- 8.1 In a CPD year the LIV may, upon application in writing from a practitioner, exempt in whole or in part the practitioner from compliance with these Rules during a CPD year on such conditions as it may specify, if:
- (a) the practitioner has been admitted to practice for a period exceeding forty years, and:
    - (i) holds a practising certificate other than a principal practising certificate; or
    - (ii) is a Notary Public whose sole reason for holding a practising certificate is to continue to act as a Notary; or
  - (b) by reason of the practitioner's geographical location, a physical disability or any particular exigencies of the practitioner's practice, the practitioner has experienced particular hardship or difficulty in complying with these Rules; or
  - (c) the practitioner has been or will be substantially absent from practice because of parenting leave, unemployment or illness; or
  - (d) in the opinion of the LIV there are special circumstances warranting the granting of an exemption.
- 8.2 A practitioner who commences or recommences practice on or after the start of a CPD year must complete during the balance of the CPD year such CPD units as are referable to the balance of the CPD year on a pro rata basis. However, a practitioner who holds a practising certificate for less than twenty-eight days in a CPD year is exempt from the obligation to comply with these Rules during that CPD year.

## **Reporting obligations of the Law Institute of Victoria Limited to the Legal Services Board**

- 9.1 The LIV must report to the Board within 2 months after the end of each CPD year as follows:

- (a) Report on the exemptions granted under these Rules in the preceding CPD year;
- (b) Report on the CPD Compliance process undertaken during the preceding CPD year;
- (c) Report on the CPD Audit process undertaken during the preceding CPD year.

### **Certification and audit of CPD activity**

- 10.1 When applying for renewal of a practising certificate a practitioner must provide such information as the Board or its delegate may reasonably require as to the continuing professional development in which the practitioner has participated in the CPD year prior to that application.
- 10.2 The Board or its delegate may at any time or times require a practitioner to verify that the practitioner has complied with these Rules by providing to the Board or its delegate the written record referred to in Rule 6.1(a), a statement setting out the practitioner's reasons for claiming that the activities for which CPD units have been claimed satisfy the criteria set out in these Rules and particulars of any exemption granted pursuant to these Rules.
- 10.3 A practitioner must comply with a requirement under Rule 10.2 within fourteen days of the date of such requirement being made.
- 10.4 If a practitioner fails to comply with Rules 10.2 or 10.3 the Board or its delegate may issue a notice in writing to the practitioner –
- (a) drawing the attention of the practitioner to the failure to comply; and
  - (b) requiring that the practitioner file with the Board or its delegate within fourteen days from the date of the notice a proposal in writing that details a plan to be implemented by the practitioner to make up within ninety days from the date of the filing of the plan the deficiency in the practitioner's compliance with these Rules.
- 10.5 If in breach of Rule 10.4:
- (a) a practitioner fails within fourteen days to file with the Board or its delegate a proposal in writing as specified in Rule 10.4(b); or
  - (b) having filed such a proposal the practitioner fails to comply with the plan contained in such proposal;

the Board or its delegate may take any of the steps provided for in the Act including refusing to issue a practising certificate to the practitioner, suspending the practitioner's practising certificate or taking proceedings for unsatisfactory professional conduct or professional misconduct.

- 10.6 Notwithstanding Rule 10.5 the Board or its delegate may in its discretion allow a practitioner to rectify any failure to comply with these Rules.

#### Failure to comply

- 10.7 Failure to comply with these Rules may constitute unsatisfactory professional conduct or professional misconduct pursuant to the Act.

### **Continuing Professional Development Scheme Committee (CPD Committee)**

#### **Role of the CPD Committee**

- 11.1 The CPD Committee is responsible for the administration of the CPD Scheme, in accordance with these Rules.

#### **Functions of the CPD Committee**

- 12.1 To consider strategic, regulatory, compliance, educational and other CPD related matters, including matters for the further advancement of the professional development of Australian legal practitioners, under the Act or other Rules or Acts;
- 12.2 To consider and adopt policies/wording interpretation under these Rules;
- 12.3 To consider applications for exemption from practitioners under these Rules;
- 12.4 To make Recommendations to the LIV Council and to the Board on CPD and related matters including on required/proposed amendments to the Rules and the Act;
- 12.5 To consider any matter which may directly or indirectly relate to or may have the potential to impact on the administration and/or the operation and/or the further advancement of the professional development of Australian legal practitioners under these Rules or the Act or under any other Act or CPD related developments in Australia or overseas, and make recommendations to the LIV Council and the Board as appropriate.

## **Membership of the CPD Committee**

12.6 The CPD Committee consists of 8 members appointed by the LIV Council and approved by the Legal Services Board as follows:

- (a) 1 Chairperson
- (b) 3 practitioners LIV Council members
- (c) 3 practitioners non LIV Council members
- (d) 1 representative of the Board

12.7 Each Committee member is appointed for a period of 2 years with the right of re-appointment for a period of 2 further years. LIV Council members who cease being an LIV Council member before the expiration of the first 2 years of appointment or before the end of the further 2 years, cease to be a member of the CPD Committee at the expiration of their appointment as an LIV Council member.

## **Quorum at CPD Committee meetings**

12.8 The quorum at the meetings of the CPD Committee is 6 members present either in person or via other electronic/technical means.

## **Appeals**

13.1 There shall be an Appeals Committee (“the Appeals Committee”) to review decisions of the CPD Committee.

13.2 The Appeals Committee shall consist of not less than three persons, appointed from time to time by the Council of the LIV with the approval of the Legal Services Board and comprising members of the LIV Council or other members of the legal profession who are not current members of the CPD Committee. A quorum of the Appeals Committee is three members.

13.3 An appeal to the Appeals Committee shall be by way of a reconsideration of the application or matter giving rise to the decision of the CPD Committee.

13.4 A practitioner who is aggrieved by a decision of the CPD Committee may apply for a review of that decision by the Appeals Committee by lodging a written notice of appeal with the secretary of the CPD Committee.

13.5 A notice of appeal pursuant to Rule 14.4 must be lodged within fourteen days of the appellant being notified by the CPD Committee of its decision.

13.6 Unless the contrary is proved, a practitioner is deemed to have been notified by the CPD Committee of its decision two working days after the date of the posting of the written notice of decision to the practitioner’s address.

- 13.7 A notice of appeal must be in writing and accompanied by any documentary evidence, written submissions or other material sought to be relied upon by the practitioner.
- 13.8 Written notice of the date of the Appeal hearing must be given to the Appellant no later than 28 days before the Appeal hearing date.
- 13.9 The Appellant may provide written submissions in support of the Appeal, no later than seven (7) days before the Appeal hearing date.
- 13.10 Unless there are special circumstances:  
(a) the appellant is entitled to an oral hearing or to be present at any meeting of the Appeals Committee;  
(b) the appellant's case and argument to the Appeals Committee must be in writing or in documentary form.
- 13.11 The decision of the Appeals Committee is final.
- 13.12 An appeal to the Appeals Committee may not be made more than once in a CPD year in respect of the same or substantially similar grounds.

#### **Delegation of authority**

- 14.1 The LIV may delegate to the CPD Committee any of its powers and functions which are capable of being delegated.
- 14.2 A delegation by the LIV pursuant to these Rules must be in writing.

#### **Accreditation of CPD activities**

- 15.1 Having regard to the objects of these Rules, the LIV and the CPD Committee must not endorse or grant accreditation to providers of continuing professional activities and must not impose on practitioners any requirement that they may claim CPD units only in respect of accredited CPD activities.

#### **Transitional arrangements**

- 16.1 A continuing professional development activity carried out before the commencement of these Rules that complied with the Continuing Professional Development Rules 2005 complies with these Rules.
- 16.2 A practitioner dissatisfied with a decision of the CPD Committee made prior to the commencement of these Rules may appeal that decision using the procedure



set out in Rules 13.4 to 13.12, if the practitioner lodged the notice of appeal in writing within sixty days of the commencement of these Rules.

- 16.3 The policies adopted by the CPD Committee prior to the commencement of these Rules remain in force after the commencement of these Rules to the extent relevant.

## APPENDIX A

### **Non – exhaustive list of CPD activities under Rule 5.2**

The following are examples of some topics within each field under Rule 5.2 (a)(b)(c)(d). They are provided by way of illustration only and are not intended to be exhaustive.

#### ***Ethics and Professional Responsibility***

Lawyer's duties to the court  
Lawyer's duty of competence  
Lawyer's duty of confidentiality  
Difference between the duty of confidentiality and legal professional privilege  
Duty not to abuse the court process or the administration of justice  
Conflicts of interest  
Undertakings  
Written and unwritten rules of professional conduct  
Written and unwritten rules of professional courtesy  
How to identify an ethical issue  
Ethical duties in advocacy  
When can/should a lawyer breach the duty of confidentiality?  
When can/should a lawyer report their client to the police?  
Communicating direct with third parties

#### ***Skills***

Effective communication skills  
Issues in cross-cultural communication  
Client interviewing – principles and techniques  
Preparing for a client interview  
Taking a witness statement  
Interviewing and the use of interpreters

Giving oral advice – how to break bad news  
Giving advice – identifying options  
Plain English advice  
How can I be sure my client understands me?

Plain English letter-writing  
Plain English drafting  
Use of precedents

Negotiation – principles and techniques  
Negotiation – the principled approach vs the positional bargainer.

When is “Without Prejudice” effective?  
Drafting Terms of Settlement

Lawyer’s role in mediation  
Conducting a mediation

Simple advocacy for solicitors  
Appearing before tribunals  
Presenting a plea in the Magistrates Court

Legal research

### ***Substantive law***

This is self-explanatory

### ***Practice Management and Business Skills***

Costs rules  
Requirements of the *Legal Profession Act 2004* on Costs Disclosure  
Requirements of the *Legal Profession Act 2004* on Costs Agreements  
Billing  
Negotiating fees  
Costs review

Aspects of Trust Accounts rules

Risk Management  
File Management  
How to ensure deadlines are met  
Employment-related equal opportunity  
Employment-related discrimination law  
Occupational Health and Safety law  
Staff management and Human Resources

Superannuation for sole practitioners  
Income protection for self-employed practitioners  
Financial planning  
Business planning  
Cash-flow management  
Growth and development of a business  
Succession planning  
Taxation planning  
How to finance a practice  
Business structures

Effective use of technology  
The electronic library