

Policy Continuing Professional Development

Introduction	1.1	This policy provides guidance to assist lawyers to comply with their continuing professional development (CPD) obligations under the Legal Profession Uniform Continuing Professional Development Rules (the CPD Rules) and to assist the Legal Services Board (the Board) and its delegates to consistently exercise their functions, duties and powers under the CPD Rules.
	1.2	This policy should be read with the CPD Rules.
	1.3	This policy is divided into three areas: <ul style="list-style-type: none"> • Part A: Compliance with CPD Rules. • Part B: Monitoring compliance with CPD Rules. • Part C: Responding to non-compliance with CPD Rules.
Legislative Framework	2.1	The Board's role in relation to CPD is drawn from a number of areas of the <i>Legal Profession Uniform Law (Victoria)</i> (the Uniform Law). <i>Making CPD Rules</i>
	2.2	Part 9.2 of the Uniform Law provides that the Legal Services Council (the Council) may make Legal Profession Uniform Rules, including CPD Rules, and submit them to the Standing Committee after they have been subject to appropriate notice and public consultation. Part 9.2 also provides that the Law Council of Australia and the Australian Bar Association may develop CPD Rules after consulting with the Council, the Commissioner for Uniform Legal Services Regulation and the designated local regulatory authorities.
	2.3	The current CPD Rules made under Part 9.2 of the Uniform Law are: <ul style="list-style-type: none"> • Legal Profession Uniform Continuing Professional Development (Solicitors') Rules 2015 (Solicitors' CPD Rules 2015). • Legal Profession Uniform Continuing Professional Development (Barristers') Rules 2015 (Barristers' CPD Rules 2015). <i>Contravening or failing to comply with CPD rules</i>
	2.4	Section 298(b) and (h) of the Uniform Law provides that conduct consisting of a contravention of the Uniform Rules, or of a failure to comply with the requirements of a notice under the Uniform Rules, is capable of constituting unsatisfactory professional conduct or professional misconduct.
	2.5	Section 52 of the Uniform Law makes it a statutory condition of an Australian practising certificate that the holder comply with the applicable requirements of the CPD Rules. Section 54 requires the holder of an Australian practising certificate to comply with the conditions of the certificate (a civil penalty of 100 penalty units applies to any contravention).

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- 2.6 Section 82 of the Uniform Law allows the Board to vary, suspend or cancel a practising certificate on the ground that the holder has contravened a condition of the certificate. Section 45 provides that in considering whether a person is a fit and proper person to hold an Australian practising certificate, the Board may have regard to matters specified in the Uniform Rules. Rule 13(p) of the Legal Profession Uniform General Rules 2015 allows the Board to have regard to whether the applicant has contravened an Australian law relating to the legal profession in considering whether the applicant is a fit and proper person.
- 2.6 *Confidentiality*
Information provided to the Board is handled under the Board's Privacy Policy and in accordance with the *Privacy and Data Protection Act 2014*, the *Health Records Act 2001* and the Uniform Law. The Board may delegate certain functions or activities to authorised bodies and, as a result, will share information with those bodies in relation to those delegated functions or activities.
- 2.7 *Non-discrimination*
Except to the extent permitted under the Act, the Board complies with all non-discrimination requirements including, but not limited to, those contained in the *Equal Opportunity Act 2010*.

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- 3.1 **Part A: Compliance with CPD Rules**
Lawyers who hold an Australian practising certificate and practise or reside in a non-participating or foreign jurisdiction
- 3.1.1 All lawyers who hold a current Australian practising certificate and practice or reside in a non-participating or foreign jurisdiction must comply with the CPD Rules. Lawyers may complete CPD units (including the equivalent compulsory CPD units) by undertaking CPD activities in the state, territory or foreign country in which they practise or reside.
- 3.1.2 Lawyers who hold a current Australian practising certificate and reside or practise in a foreign jurisdiction may complete all CPD units online.
A solicitor who commences legal practice solely as a barrister during a CPD year
- 3.1.3 Where an Australian legal practitioner commences practice solely as a barrister during a CPD year, any CPD activities the practitioner completed under the Solicitors' CPD Rules 2015 are CPD activities for the purposes of the Barristers' CPD Rules 2015.
A barrister who ceases practice solely as a barrister and commences practice as a solicitor during a CPD year
- 3.1.4 Where a barrister ceases practice solely as a barrister and commences practice as a solicitor during a CPD year, any CPD activities completed under the Barristers' CPD Rules 2015 are CPD activities for the purposes of the Solicitors' CPD Rules 2015.

Preparation of submissions by lawyers

- 3.1.5 Preparing submissions or undertaking research for the purposes of preparing submissions is only CPD activity if it is not prepared or undertaken as part of a lawyer's legal practice. Passive reading is not, of itself, a CPD activity.

Volunteer work

- 3.1.6 Providing legal services as a volunteer at a law firm, Victoria Legal Aid or a Community Legal Centre does not constitute CPD activity.

Exemptions from CPD Compliance

- 3.1.7 A lawyer may be exempted in "whole" or in "part" from any requirements to undertake CPD activities, as is set out in Rule 13 of the Barristers' CPD Rules 2015 and Rule 16 of the Solicitors' CPD Rules 2015.
- 3.1.8 If an exemption is granted in "part" and the lawyer is required to complete any remaining units, those units must be earned in as many of the fields listed in Rule 6 of the Solicitors' CPD Rules 2015 or Rule 9 of the Barristers' CPD Rules 2015 as the number of units he or she is required to complete.

Return from extended leave, including parental and sabbatical leave

- 3.1.9 On returning from extended leave (such as parental or sabbatical leave) a lawyer must complete all outstanding CPD units as follows:
- Where a lawyer returns to practice by 31 December, he/she must complete any outstanding CPD units and the CPD units for the CPD year of his/her return to legal practice, by the end of the current CPD year, ie. by 31 March.
 - Where a lawyer returns to practice on or after 1 January, he/she must complete any outstanding CPD units and the CPD units for the CPD year of his/her return to legal practice, within 3 months of the date of return to legal practice.
- 3.1.10 Outstanding CPD units are those units a lawyer must complete for each CPD year of his/her absence from legal practice, subject to any exemptions granted.
- 3.1.11 Outstanding CPD units do not include those units the lawyer must complete for the CPD year of their return to legal practice.
- 3.1.12 If a lawyer's practising certificate has lapsed during the period of his/her absence from legal practice, on renewal of the lawyer's practising certificate the pro rata calculation table at Rule 8(2) of the Barristers' CPD Rules 2015 and Rule 10 of the Solicitors' CPD Rules 2015 applies.

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3.2 Part B: Monitoring compliance with CPD Rules

3.2.1 All lawyers who declare they have complied with the CPD Rules when applying to renew their practising certificate may be audited under Rule 15 of the Barristers' CPD Rules 2015 and Rule 14 of the Solicitors' CPD Rules 2015.

3.2.2 Audits of lawyers' compliance with the CPD Rules are used by the Board to deter non-compliance and to ascertain the level of compliance by those who declare they have met their annual CPD obligations in their practising certificate renewal form.

3.2.3 Lawyers will be exempted from an audit if in the relevant CPD year they:

- have been granted an exemption under Rule 13 of the Barristers' CPD Rules 2015 and Rule 16 of the Solicitors' CPD Rules 2015; or
- have successfully completed the Bar's Readers Course or the LIV's specialisation course in the relevant CPD year (subject to the professional association holding records of completion).

Audits of individual lawyers

3.2.4 The Board may request records of the CPD activities undertaken by, and from, particular lawyers who, amongst other matters, are:

- subject to criminal or disciplinary proceedings or orders;
- known to be non-compliant with the CPD Rules or other provisions of the Uniform Law.

3.2.5 The Board can use the verification audit function to annually monitor lawyers who have not met their CPD obligations in previous CPD years.

3.2.6 All lawyers subject to Victorian Civil and Administrative Tribunal orders setting out particular CPD obligations will be subject to an individual verification audit to confirm compliance with the order.

3.2.7 All lawyers with a condition on their practising certificate requiring completion of particular CPD obligations will be subject to an individual audit to confirm compliance before the condition is removed.

Random audits

3.2.8 A random sample of lawyers will be selected annually for a CPD verification audit at the conclusion of each practising certificate year.

3.2.9 Lawyers can be randomly selected from within particular areas of practice or types of practice, to ensure a representative sample.

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Audits of a particular class of lawyers

3.2.10 The Board may, from time to time, seek records of the CPD activities undertaken by, and from, particular classes of lawyers for analysing CPD compliance among lawyers with particular characteristics.

3.2.11 All class audits will need a clear reason and must be approved by the Board before being conducted.

Requesting and producing records and supporting documentation

3.2.12 All lawyers selected for a verification audit of their CPD obligations must submit records or evidence of CPD activities undertaken as required to be kept by the lawyer under the relevant CPD Rules.

3.2.13 Lawyers selected for a verification audit must provide evidence or records of their completion of CPD units for that CPD year in accordance with the relevant CPD Rules. Supporting documentation may include:

- receipts of payment for CPD activities;
- lists of attendance records;
- attendances confirmation;
- copies of presentation notes;
- copies of enrolment records;
- copies of Certificates of Completion of CPD activities.

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3.3 Part C: Responding to non-compliance with CPD Rules

Responding to non-compliance

3.3.1 Continuing professional development is essential for preserving public and professional confidence in lawyers and their legal services. As such CPD compliance is closely tied to a lawyer's right to engage in legal practice in Victoria.

3.3.2 Failing to meet outstanding CPD obligations or, at least, establish a rectification plan in accordance with the CPD Rules, may mean that a practising certificate will not be issued by 30 June (the start of the next practising certificate year).

3.3.3 If a lawyer:

- Fails to meet their obligations under the CPD Rules; and/or
- Fails to produce required records or evidence of CPD activities when requested; a notice will be sent to the lawyer requiring rectification.

3.3.4 If a lawyer fails to comply with a rectification notice, the Board may:

- With the consent of the lawyer, impose conditions on the practising certificate requiring completion of particular CPD activities; and/or
- Refer the matter to the Victorian Legal Services Commissioner.

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- 3.3.5 In deciding how to respond to non-compliance, the Board may consider the following factors:
- The nature of the non-compliance.
 - The objectives of the Uniform Law.
 - The severity of, or culpability in, the non-compliance.
 - Any mitigating factors.
- Nature of non-compliance*
- 3.3.6 Relevant matters to consider in relation to the nature of non-compliance include, but are not limited to:
- The knowledge of the lawyer as to the consequences of their actions.
 - The degree of care taken by the lawyer to ensure they complied with the CPD Rules.
 - The openness, honesty and cooperation demonstrated by the lawyer.
 - The lawyer's background and any history of non-compliance.
 - The duration and magnitude of the non-compliance.
 - How the non-compliance came to the attention of the Board.
- Objectives of the Act*
- 3.3.7 Relevant matters to consider in relation to the objectives of the Act include, but are not limited to:
- The maintenance of professional standards.
 - Addressing the concerns of clients of lawyers.
 - The protection of consumers of legal services.
- Severity of, or culpability in, non-compliance*
- 3.3.8 Relevant matters to consider in relation to the severity of, or culpability in, the non-compliance include, but are not limited to:
- The number of CPD units accrued by the lawyer in the CPD year in which the non-compliance occurred.
 - The extent to which the lawyer has met their obligations under Rule 5.2 of the LIV CPD Rules 2008 or Rule 8 of the Bar CPD Rules 2010.
 - The nature of the lawyer's response to actions taken by the Board under provisions 3.3.3 to 3.3.4 above.
 - A pattern of non-compliance in relation to a lawyer's CPD obligations.
 - The extent to which a lawyer has attempted to rectify any non-compliance.

Mitigating factors

- 3.3.9 Relevant mitigating factors include, but are not limited to:
- The extent to which a lawyer is, or was at the time of non-compliance, suffering from any physical and/or mental impairment.
 - The lawyer's access to CPD activities.
 - The extent to which a lawyer has attempted to rectify any non-compliance.
 - Any other relevant personal circumstances.
- 3.3.10 All factors mentioned in provisions 3.3.5 to 3.3.9 above should be considered in determining an appropriate response to non-compliance. Those factors, however, only provide guidance. The Board's decision will be based on the particular circumstances of each case.

Serious offences

- 3.3.11 Where it seems a lawyer holding a current Australian practising certificate granted under Part 3.3 of the Uniform Law refuses to comply with the CPD Rules and demonstrates a pattern of ignoring or failing to comply with requests to rectify their non-compliance, the Board may seek to impose conditions on that lawyer's practising certificate or take other serious action including considering whether the lawyer is a fit and proper person to hold a practising certificate.