

Legal Practice Act 1996

Continuing Professional Development Rules 2005

These practice rules are made by Law Institute of Victoria Limited under section 72 of the *Legal Practice Act 1996*.

Introduction and Commencement

- 1.1 These Rules may be cited as the Continuing Professional Development Rules 2005.
- 1.2 These Rules come into operation on 1 May 2005.

Object of these Rules

- 2.1 Practitioners have a continuing obligation to themselves and to the community to participate in professional development that improves their ability to engage in the practise of law by extending their knowledge and skills in areas that are relevant to their current practice needs. These Rules are intended to assist practitioners to discharge that obligation.
- 2.2 Continuing professional development activities undertaken by a practitioner pursuant to these Rules must have regard to and be likely to further the objects of these Rules.

Transitional Arrangements

- 3.1 A continuing professional development activity carried out before the commencement of these Rules that complied with the Continuing Professional Development (CPD) Scheme Rules 2004 complies with these Rules.
- 3.2 An exemption granted under the Continuing Professional Development (CPD) Scheme Rules 2004 before the commencement of these Rules and which applies to a time or period after their commencement applies as an exemption under these Rules, in accordance with its terms.

- 3.3 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 Rule 9 if the practitioner lodged notice of appeal in writing within sixty days of the commencement of these Rules.

Definitions

- 4.1 In these Rules unless the context requires otherwise the following terms have the following meaning:
- ”Act” means the Legal Practice Act 1996 or the Legal Profession Act 2004 on its commencement;
- ”CPD Committee” means the Continuing Professional Development Scheme Committee of the Council;
- ”Council” means the Council of the LIV;
- ”CPD” means continuing professional development;
- ”CPD year” means the year starting 1 April and ending 31 March;
- ”CPD unit” means an hour of continuing professional development activity approved by these Rules, save that:
- (a) in the case of private study two hours of continuing professional development activity shall constitute one CPD unit; and
 - (b) in the case of participation in a committee or like activity to which Rule 6.7 applies each two hours of participation shall constitute one CPD unit;
- ”LIV” means the Law Institute of Victoria Limited.
- 4.2 Expressions defined in the Act have the same meaning in these Rules.

CPD Obligations of Practitioners

- 5.1 In each CPD year in which a practitioner holds a practising certificate a practitioner must, unless exempted in whole or part, complete ten CPD units.

- 5.2 During every three consecutive CPD years a practitioner must, in the continuing professional development activities undertaken for those years, complete at least two CPD units on the subject of legal ethics.
- 5.3 During every five consecutive CPD years a practitioner must, in the continuing professional development activities undertaken for those years, complete at least two CPD units on the subject of equal opportunity.
- 5.4 During every three consecutive CPD years a practitioner who holds a principal practising certificate must, in the continuing professional development activities undertaken for those years, complete at least two CPD units on the subject of trust accounts.
- 5.5 During every five consecutive CPD years a practitioner who holds a practising certificate other than a principal practising certificate must, in the continuing professional development activities undertaken for those years, complete at least two CPD units on the subject of trust accounts.
- 5.6 For the purposes of each of 5.2, 5.3, 5.4 and 5.5, the first consecutive CPD years period referred to in each of those Rules shall include the period from 1 April 2004 to the date of the commencement of these Rules.

Approved CPD activities

- 6.1 Having regard to the object of these Rules, continuing professional development activities approved by these Rules:
- (a) may consist of a seminar, workshop, lecture, conference, discussion group, multimedia or website based program, or the research and preparation of an article published in a legal publication or a combination of those activities;
 - (b) must be of significant intellectual or practical content and must deal primarily with matters directly related to the practice of law;
 - (c) must be conducted by persons who are qualified by practical or academic experience in the subject covered;
 - (d) must extend the practitioner's knowledge and skills in areas that are relevant to the practitioner's current practice needs.
- 6.2 Private study is not a continuing professional development activity approved by these Rules unless it involves the private study of audio or video material specifically designed

- for the purpose of updating a practitioner's legal knowledge. No more than five CPD units may be claimed for such activity in any CPD year.
- 6.3 Engaging in legal practice is not a continuing professional development activity approved by these Rules.
- 6.4 Activities undertaken to achieve or maintain LIV accredited specialisation may be claimed as CPD units as long as those activities otherwise meet the requirements of these Rules.
- 6.5 The preparation and/or presentation of material to be used in a course of continuing professional development to assist practitioners in complying with these Rules is continuing professional development approved by these Rules. However, in any CPD year a practitioner may not claim more than five CPD units for the preparation and presentation of material to be used in such a course of continuing professional development.
- 6.6 The preparation of an article published in a legal publication or a legal article in a non-legal publication is continuing professional development approved by these Rules, provided that it assists the practitioner in complying with these Rules. A practitioner is entitled to one CPD unit for every thousand words of any such article. However, in any CPD year a practitioner may not claim more than five CPD units for the preparation of an article or articles to be published in legal publications.
- 6.7 A practitioner who is a member of a committee, taskforce or Section of the LIV, the Law Council of Australia, or a practice section committee of a law association, and regularly attends its meetings, may claim one CPD unit for each period of two hours engaged if its work so performed is of substantial significance to the practitioner's practice of law and is reasonably likely to assist the practitioner's professional development. However in any CPD year a practitioner may not claim more than three CPD units (save for a member of a Specialist Accreditation Advisory Committee who may claim up to five CPD units) for such participation and only if the practitioner does not also seek to claim for continuing professional development that would attract the operation of Rules 6.5 or 6.6.

Exemptions

- 7.1 In a CPD year the LIV may upon application in writing from a practitioner in such form as the LIV may from time to time require exempt in whole or in part a practitioner from compliance with these Rules during that CPD year on such conditions as it may specify, if:
- (a) the practitioner has been in 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 substantially absent from practice because of parenting leave, unemployment or illness; or
 - (d) the LIV considers that there are special circumstances warranting it doing so.
- 7.2 A practitioner who commences or recommences practice on or after the start of the CPD year must undertake during the balance of the CPD year such continuing professional development as is 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.
- 7.3 A practitioner whose practice in a CPD year does not involve dealing with members of the public, who does not hold a principal practising certificate and is not employed by the holder of such a certificate is exempt from Rule 5.5 to the extent that such obligation arises in that CPD year.

Certification and audit of CPD activity

- 8.1 When applying for renewal of a practising certificate a practitioner must provide such information and certification as the LIV may reasonably require as to the continuing

professional development in which the practitioner has participated in the CPD year prior to that application.

- 8.2 The LIV may at any time or times require a practitioner to verify that the practitioner has complied with these Rules by providing to the LIV a statement (in such form as the LIV may reasonably require) that sets out:
- (a) the number of CPD units claimed for the period covered by the statement;
 - (b) the activity undertaken by the practitioner in respect of which the CPD units have been claimed;
 - (c) the reasons for claiming that the activities for which CPD units have been claimed satisfy the criteria set out in these Rules; and
 - (d) particulars of any exemptions granted pursuant to these Rules.
- 8.3 A practitioner shall comply with a requirement under Rule 8.2 within fourteen days of the date of such requirement being made.
- 8.4 In the event that a practitioner fails to comply with Rules 8.2 or 8.3 the LIV 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 LIV 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.
- 8.5 If in breach of Rule 8.4:
- (a) a practitioner fails within fourteen days to file with the LIV 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; or
 - (b) having filed such a plan the practitioner fails to comply with the 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;

- the LIV 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 conduct or for misconduct.
- 8.6 Notwithstanding Rule 8.5 the LIV may in its discretion allow a practitioner to rectify any failure to comply with these Rules.
- 8.7 Failure to comply with these Rules may constitute unsatisfactory conduct or misconduct pursuant to the Act.

Appeals

- 9.1 There shall be an Appeals Committee ("the Appeals Committee") to review decisions of the CPD Committee.
- 9.2 The Appeals Committee shall consist of not less than three persons, appointed from time to time by the Council and comprising members of the Council or other members of the LIV who are not current members of the CPD Committee. A quorum of the Appeals Committee is three members.
- 9.3 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.
- 9.4 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 notice of appeal with the secretary of the CPD Committee.
- 9.5 A notice of appeal pursuant to Rule 9.4 must be lodged within fourteen days of the appellant being notified by the CPD Committee of its decision.
- 9.6 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 notice of decision to the practitioner's address.
- 9.7 A notice of appeal must be in writing and accompanied by any documentary evidence, written submission or other material sought to be relied upon by the practitioner.
- 9.8 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.
- 9.9 The decision of the Appeals Committee is final.
- 9.10 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

- 10.1 The LIV may delegate any of its powers and functions under these Rules to the CPD Committee.
- 10.2 A delegation by the LIV pursuant to these Rules must be in writing.

Accreditation of CPD Activity

- 11.1 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 development activities.
- 11.2 Providers of continuing professional development to practitioners are encouraged to use the following statement on brochures in preference to the making of any specific reference to CPD units:
- “If this particular educational activity is relevant to your immediate or long term needs in relation to your professional development and practice of the law, then you should claim one unit for each hour of attendance, refreshment breaks not included.”*