



VICTORIAN
WOMEN
LAWYERS

**SUBMISSION TO VICTORIAN LEGAL SERVICES BOARD +
COMMISSION'S REVIEW OF VICTORIA'S CONTINUING
PROFESSIONAL DEVELOPMENT (CPD)**

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About us

Victorian Women Lawyers (**VWL**) is a voluntary association that promotes and protects the interests of women in the legal profession. Formed in 1996, VWL now has over 600 members. VWL provides a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community.

Since 1996, VWL has advocated for the equal representation of women at all levels of the legal profession and promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating discrimination against women in the law and in the legal system, to achieve justice and equality for all women.

Details of our publications and submissions are available at www.vwl.asn.au under the 'Publications' tab.

Overview of submission and response

VWL welcomes the opportunity to make a submission to the Victorian Legal Services Board + Commission's (**VLSB+C**) review of Continuing Professional Development (**CPD**) in Victoria.

VWL supports Victorian lawyers maintaining and improving their knowledge and skills through CPD. VWL sees continued education as an important component of an effective, efficient, progressive and fair justice system and as a vital component in ensuring that legal practice in Victoria is of the highest quality. Importantly for our members, CPD and education opportunities that are meaningful, relevant and accessible is crucial in supporting women lawyers achieve the highest level of professional success and equal representation in leadership positions across the industry.

The Victorian legal profession is diverse in a myriad of ways. Employment circumstances vary significantly – from practising in private inner-city law firms, to smaller firms in the suburbs and regional areas,¹ to working for community legal services, the government (including in government departments, statutory bodies, the Courts and Tribunals), practising as sole practitioners (solicitors or barristers) or working in-house for private or not-for-profit organisations. Increasingly, lawyers are taking advantage of flexible working arrangements, including working part time, job-sharing, working flexible hours or working remotely (partially or exclusively). In addition, the Victorian legal industry comprises of lawyers of diverse backgrounds, ages, identities, personal circumstances, abilities and disabilities.

Despite this variety which exists in our profession, VWL considers that the current CPD requirements in Victoria are based on a 'one size fits all model', which insufficiently recognises

¹ VLSB+C, *Annual Report 2019* (September 2019) (**VLSB+C 2019 Annual Report**), p 43
<[https://lsbc.vic.gov.au/sites/default/files/2020-02/Report-Victorian Legal Services Board and Commissioner annual report 2019.pdf](https://lsbc.vic.gov.au/sites/default/files/2020-02/Report-Victorian%20Legal%20Services%20Board%20and%20Commissioner%20annual%20report%202019.pdf)>.

the different needs of lawyers based on gender identity, employment circumstances, caring responsibilities, health and geographic location.

To address these issues, VWL submits that the VLSB+C should have regard to two key issues in reviewing Victoria's CPD:

1. First, the obstacles and challenges that can prevent lawyers (particularly women in the legal profession) from obtaining CPD points, which can undermine their ability to maintain their practising certificates and participate in continued education and training.
2. Second, the relevance of the four compulsory CPD subject areas and the substantive content of CPD training generally, which insufficiently addresses workplace discrimination and sexual harassment – issues which disproportionately affect women in the legal profession.

With those limitations in mind, VWL submits that improvements can be made to Victoria's CPD regime by:

- removing the financial obstacles to obtaining CPD points, for example by increasing the delivery and accessibility of free CPD seminars and material;
- removing the 5-hour cap on private study in obtaining the 10 mandatory CPD points;
- more fully utilising the benefits and flexibility offered by new technologies, which would allow lawyers to obtain CPD points by online learning, such as through private study of audio/visual material or online tutorials and sessions;
- introducing a mandatory new subject area designed to improve education and training in relation to workplace discrimination, sexual harassment and diversity and inclusion matters more broadly; and
- ensuring that CPD content is delivered in a way that is accessible and sensitive to lawyers of diverse backgrounds and needs.

VWL submits that the need to ensure that Victoria's CPD regime is adapted and suitable to the needs of women lawyers and appropriately supports them to remain (and succeed) in the legal industry is significant, given that female lawyers account for just over half (51%) of all lawyers in Victoria.²

1. Obstacles and challenges that prevent women lawyers from obtaining CPD points

VWL has identified a number of practical challenges which can prohibit lawyers from attending face to face (FTF) CPD training and obtaining the mandatory minimum number of CPD points each year. These are:

- the cost of attending CPD seminars or training;

² VLSB+C 2019 Annual Report 2019, p 43.

- the location of CPD seminars or training, which are often held in inner city locations;
- the timing of CPD seminars or training, which are often held before 9:00am or during ordinary business hours;
- the time needed to attend CPD seminars or training, taking into account commuting to and from the location of the CPD seminar or training;
- the need to make alternative arrangements (often at a cost) to cover child care or other caregiving responsibilities in order to attend CPD seminars or training (especially when outside of working hours); and
- the difficulty of attending CPD seminars or training during maternity or other parental leave after the birth or adoption of a child.

These obstacles disproportionately affect women who are:

- more likely to have primary responsibility for childcare;³
- more likely to work on a part time or flexible basis;⁴
- more likely to take extended leave from practice for maternity or other forms of parental leave;⁵
- more likely to be employed in workplaces other than in private practice;⁶ and
- more likely to be on lower levels of income.⁷

VWL notes that while rule 16.3 of the *Legal Profession Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015* provides an exemption from the mandatory CPD requirements based on a number of defined grounds (including absence due to parenting leave, the location of the solicitor's legal practice, reduced hours of practice due to part time or casual employment or other special circumstances), VWL submits that obtaining an exemption

³ See VWL's submission to the Senate Community Affairs Legislation Committee into the Paid Parental Leave Amendment (Flexibility Measures) Bill 2020 <<https://vwl.asn.au/wp-content/uploads/2020/03/VWL-Submission-Paid-Parental-Leave-Flexibility-Measures-Bill-2020.pdf>>.

⁴ According to 2015 data for solicitors practising in New South Wales, just under a quarter (22.1%) of female practitioners worked part time, compared to 16.4% for the profession as a whole <<https://www.lawsociety.com.au/advocacy-and-resources/advancement-of-women/gender-statistics>>; across all industries women account for 68.2% of all part-time employees (Australian Bureau of Statistics (2020), Labour Force, Australia, January 2020 <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0/>>).

⁵ See for example the 2019 Law Firm Comparison Project prepared by Women Lawyers Association of New South Wales which, using 2017-18 data from the Workplace Gender Equality Agency (WGEA) specifically for the legal industry, identified that 80% of parental leave is taken by women as the primary carer compared to 3% of parental leave taken by men as the primary carer <<https://womenlawyersnsw.org.au/wp-content/uploads/2019/11/WLANSW-Law-Firm-Comparison-Report-2019.pdf>>.

⁶ In Victoria 71% of female solicitors compared to 29% of male solicitors are categorised as being employed other than in private practice, corporate legal or government legal: see 2018 National Profile of Solicitors, Law Association of New South Wales (July 2019) (**2018 National Profile of Solicitors**), p 48 <<https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors.pdf>>

⁷ According to data from WGEA, the gender pay gap for full time workers is 25.1% <<https://data.wgea.gov.au/comparison/?id1=115&id2=115>>; see also VWL's 'Addressing the gender pay gap in the legal sector' <<https://vwl.asn.au/wp-content/uploads/2015/07/VWL020-Fact-sheet-DP4-FS3.pdf>>

is not practicable or useful when these circumstances may affect a lawyer for many consecutive years, particularly in light of the overarching goal of CPD which is to ensure all lawyers are well trained and competent to deliver professional services of the highest quality.

1.1 Financial obstacles to obtaining CPD points

While some lawyers can obtain the required annual 10 CPD points by attending in-house FTF CPD training hosted by their employer or attending external CPD seminars paid for by their employer, this is not always the case for those who practice outside of large law firms. Legal practitioners who are for example employed at smaller law firms,⁸ in community legal centres, by government,⁹ or those who are on maternity or other parental leave may be required to seek out and bear the financial cost of attending FTF CPD training. This is despite the fact that lawyers in these circumstances may have lower levels of income compared to their private practice counterparts.

VWL suggests that improvements to Victoria's CPD scheme should be made which confront the reality that many lawyers may face unemployment or underemployment at some point during their careers, and may be presented with short or long term financial obstacles to maintaining their practising certificates (for example women transitioning back to the workplace from maternity or extended parental leave). The significance of this issue is amplified by the economic impacts of the global COVID-19 pandemic which may result in further job losses across the industry in the coming months.

To address these issues, VWL submits that VLSB+C should consider providing comprehensive free or low cost CPD training and material (including FTF CPD training) which can be accessed by all lawyers, or at least those who are in most need.¹⁰

1.2 Obstacles related to the timing, duration and geographic location of FTF CPD training

FTF CPD training is generally held during a lawyer's own time – be it their lunch hour or before or after work. Attending these seminars in the CBD can be challenging for lawyers who work outside of the CBD,¹¹ are responsible for school or child-care drop off and picks ups, and/or work flexible or part time hours. For Victorian lawyers with a disability, attending FTF CPD training also requires that the physical location of the seminar and/or the amenities available at

⁸ In Victoria, 42% of solicitors employed in private practice work in firm sizes of 21 to 39 partners or fewer (including sole practitioners) compared with 12% of lawyers employed by private law firms of 40 or more partners: 2018 National Profile of Solicitors, p 28.

⁹ In Victoria, 68% of female solicitors compared to 32% of male solicitors are employed in government legal and two-thirds of solicitors employed by the government in Australia are women: 2018 National Profile of Solicitors, pp 23, 48.

¹⁰ In this respect, VWL notes that VWL CPD sessions are available at no cost to its members. VLSB+C may like to consider ways it can encourage similar membership organisations to make their CPD events more accessible in terms of fees to their members.

¹¹ In the 2018 to 2019 year, the number of lawyers (both solicitors and barristers) who are located in the suburbs or in the country has increased by approximately 10%: VLSB+C 2019 Annual Report, p 44.

the facility are sufficient to accommodate their needs and allow them to fully participate in the training (e.g. wheelchair access or Auslan Interpreter).

VWL submits that these issues could be resolved by introducing additional flexibility into the CPD regime, for example by permanently removing the cap on mandatory FTF learning and allowing more CPD-approved online training. Given the significant improvements in technology in recent years, and the lived experience of relaxing CPD requirements as a consequence of the impacts of COVID-19,¹² VWL considers that the Victorian CPD regime should make further use of online and remote options for obtaining CPD points, particularly as lawyers increasingly work in remote environments.

2. Subject matter and content covered by CPD

To fulfil the mandatory CPD requirements, lawyers must accrue at least one CPD point from each of the following categories: Ethics and Professional Responsibility, Practice Management and Business Skills, Professional Skills and Substantive Law. While these subject areas are broad and cover a wide range of matters, VWL submits that VLSB+C should consider introducing additional compulsory categories specifically targeted at upskilling Victorian lawyers in relation to workplace discrimination, sexual harassment and diversity and inclusion matters.

2.1 Workplace discrimination

The legal industry is far from immune to issues of workplace discrimination. This is evident from the fact that despite female lawyers (solicitors and barristers) in Victoria outnumbering male lawyers (solicitors and barristers) by 5.33% (as at 1 November 2019),¹³ and women making up almost two thirds of graduate roles in Australian law firms, female lawyers remain significantly underrepresented at the leadership level. According to a survey of 140 law firms across Australia, female solicitors hold just 16% of equity partnership roles and only one third of non-equity partner roles.¹⁴ The legal industry also has a 25.1% gender pay gap – highlighting the continuing gender discrimination that places women lawyers at a significant disadvantage compared to their male counterparts. This inequality further disproportionately affects women of colour and/or diverse abilities in the legal profession.

VWL submits that compulsory CPD training for all Victorian lawyers in relation to these issues will help to raise awareness about ongoing discrimination in hiring, salary and promotion decisions across the legal sector and help to improve outcomes for women lawyers.

¹² VWL has received feedback from its membership base that since moving to make seminars available online, those with caring responsibilities have been able to attend more sessions.

¹³ Victorian Legal Services, Lawyer statistics <https://lsbc.vic.gov.au/?page_id=287>.

¹⁴ Pitcher Partners, Legal firm survey (February 2019) <https://www.pitcher.com.au/sites/default/files/downloads/survey_legal_190225_national.pdf>.

2.1 Sexual harassment

According to the VLSB+C's 'Sexual Harassment in the Victorian Legal Sector: 2019 study of legal professionals and legal entities':¹⁵

- around one in three (36%) legal professionals said they had personally experienced sexual harassment while working in the legal sector;
- women in the legal sector were significantly more likely to have experienced sexual harassment in their careers (61%) when compared to men (12%);
- women in the legal profession experienced higher rates of sexual harassment than the Australian Human Rights Commission found was the case for women in all Australian workplaces (61% of women in the legal profession vs. 39% of women generally); and
- one in four (25%) legal professionals have personally experienced sexual harassment in the legal sector within the last 12 months, and 57% within the last 5 years.

Despite these findings, concerningly, VLSB+C's report identified that 73% of respondents to the Management Practices¹⁶ survey thought that sexual harassment was very rare within their own organisation.

These statistics highlight the need for meaningful and urgent steps to be taken to improve training and awareness around sexual harassment to protect Victorian lawyers from being subjected to sexual harassment in their workplaces. VWL submits that making this training mandatory for all Victorian lawyers would go some way towards reducing the incidence of sexual harassment in the legal sector.

2.3 Diversity and inclusion training

Victoria is a diverse and multicultural State, and Victorian lawyers have an important role in representing and providing legal services to people of all backgrounds and needs. Ensuring that lawyers conduct themselves in a manner that is appropriate and safe is not only important to ensure that all people (both clients and colleagues) are treated with dignity and respect, but is also necessary to ensuring that lawyers are equipped to deal with the challenges (for example, cross-cultural challenges) that they may confront in practice.

Improving Victorian lawyers' competency in diversity and inclusion matters through continued education and training can only improve legal outcomes, access to justice and build and maintain trust between the Victorian legal sector and the wider Victorian community. Diversity and inclusion awareness training will also help to reduce workplace discrimination in hiring and promotion practices and improve the diversity of leadership in the Victorian legal sector.

¹⁵ at p vii <<https://lsbc.vic.gov.au/sites/default/files/2020-03/Sexual%20Harassment%20in%20the%20Victorian%20Legal%20Sector%20Report.pdf>>.

¹⁶ The Management Practices survey was sent to principals of legal entities and covered management practices around sexual harassment (i.e. training, policies and procedures relevant to sexual harassment) in their workplaces.

On that basis, VWL submits that VLSB+C should consider including mandatory CPD training requiring diversity and inclusion training for all Victorian lawyers.

Conclusion

The COVID-19 pandemic has seen a dramatic change in how lawyers and the legal profession have adapted to flexible working arrangements and is a testament to the resilience and creativity of the legal profession and its commitment to providing services during uncertain times.

VWL submits that the temporary changes made to Victoria's CPD requirements to address the COVID-19 situation should remain – particularly the removal of the 5-hour cap on private study. Given the current environment, the format of CPD training has necessarily transitioned from FTF learning to online learning and external providers of CPD¹⁷ are already offering on-demand video, live webinars and webcasts, interactive online courses, and pre-recorded learning courses for lawyers. Interactive learning through the greater use of technology is a positive change for the legal sector, and one which should continue to be embraced in the long term.¹⁸

Finally, VWL considers that the review of Victoria's CPD provides an opportunity to improve broader issues within the Victorian legal sector, including in relation to workplace discrimination, sexual harassment and diversity and inclusion – for example through the introduction of a new mandatory subject area designed to address these issues.

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¹⁷ Law Institute of Victoria, Leo Cussen, College of Law, Legal Wise to name a few.

¹⁸ Louise Kyle, Richard Coverdale and Tim Powers, 'Conflicts Of Interest In Victorian Rural And Regional Legal Practice' (Centre for Rural and Regional Law and Justice, March 2014), p 21 <
<https://victorialawfoundation.org.au/sites/default/files/attachments/conflict-of-interest-in-victorian-rural-and-regional-legal-practice.pdf>>.