

CONTINUING PROFESSIONAL DEVELOPMENT POLICY

Frequently Asked Questions

This document is designed to provide answers to questions asked about how the Board's CPD policy will operate. It will be updated as regularly as we can to add new issues and questions as they arise. Please keep checking back to see new information as it is added. This document was last updated on 23 July 2008.

These FAQ's are arranged into a number of categories:

- A. Fees and charges
- B. CPD Points
- C. CPD Activities
- D. QA Provider status
- E. Approval of CPD activity not provided by a QA Provider
- F. Exemptions & Variations
- G. Monitoring
- H. More information

A. FEES AND CHARGES

1. What are the fees payable under the Policy?

The Board has approved the following as the fees which will likely apply once the legislation comes into effect.

Table 1. Fees for QA Provider status, charged to the applicant under clause 7 of the CPD Policy.

All fees are for the duration of the QA Provider status (generally two years). See the explanatory notes below for the categories of provider.

	Number of CPD sessions the Provider intends to offer per QA Provider period (i.e. upto 2 years)	Fee
(a)(i)	2 – 10 seminars or conferences	\$7,000
(ii)	11 - 30 seminars or conferences	\$12,000
(iii)	31+ seminars or conferences	\$20,000
(b)(i)	2 – 10 seminars or conferences	\$3,500
(ii)	11 - 30 seminars or conferences	\$6,000
(iii)	31+ seminars or conferences	\$10,000
(c)(i)	Law practice: <15 practice certificates/practitioners	\$1,000
(ii)	15 - 49 practice certificates/practitioners	\$2,000
(iii)	50+ practice certificates/practitioners	\$3,000
(d)	Non-metropolitan law practice discussion groups	\$1,000
(e)	Volunteer and community organisations	50% of relevant category (b) fee

- (a) Commercial providers who offer legal education as business or commercial enterprise.
- (b) Legal professional providers, other than those in category (e), being Law Society of WA, the UWA Law School, Murdoch University Law School, University of Notre Dame Law School and ECU Law School, and State and Federal Government Departments.
- (c) Law practices for the provision of in-house CPD to practitioners and the law practice's clients.
- (d) Non-metropolitan law practice discussion groups.

- (e) Volunteer and community organisations means:
- (i) organisations that are community based or, predominately a charity e.g. Community Legal Centres, charities e.g. Amnesty; and
 - (ii) organisations that provide CPD, generally to their members, when the organisation is predominantly run by volunteers, with limited or no paid administrative support and where the CPD is provided on a minimal cost recovery or no fee basis. Organisations which fit into this category include the WA Bar Association, FLPWA, WLWA, and Criminal Lawyers Association.

Table 2 Fees for approval of an activity, pursuant to clause 10

	Type of activity	Fee
(a)	One to two-hour seminar	\$120
(b)	Half-day seminar (up to four hours)	\$300
(c)	Full day seminar	\$500
(d)	Individual conference or workshop	\$500
(e)	Volunteer and community organisations	50% of relevant fee
(f)	Applications by practitioners for approval of attendance and allocation of points pursuant to clause 10.	\$60

Table 3 Miscellaneous other fees

	Type of activity	Fee
(a)	Registration fee for a provider deemed under clause 7(e) (interstate QA status)	25% of relevant fee from table 1
(b)	Variation pursuant to clause 12(a) or (c) (per practitioner) (request for variation of application of the policy for a 12 month period)	\$120
(c)	Expedited Application fee under clause 6(e)	30% uplift on the applicable fee
(d)	Retrospective applications under clause 7(c) (other than those to which clause 4(o) applies – i.e. this fee does not apply to a QA Provider who applies for QA Provider status prior to 30 June 2009)	30% uplift on the applicable fee
(e)	Late application under clause 10 (e) (application to approve points allocation more than two months after the event has been held)	30% uplift on the applicable fee
(f)	Special consideration for allocation of points pursuant to clause 11(a) (application for variation of the general schedule of allocation of points set out in clause 11)	\$120

2. Will a surcharge be applied for QA Provider status for activities undertaken in 2007-2008, but not approved until the Policy comes into effect?

No. A surcharge will not apply for applications approved by 30 June 2009 in respect to activities which took place in the period from 1 April 2007 to 31 March 2009, with an organisation that becomes a QA Provider.

3. Are practitioners required to bear the cost of attending courses and complying with the policy?

Yes, it is part of the cost of practising. However, remember that many organisations, including some employers, will likely offer low-cost CPD and when this is done by a QA Provider, it will be able to be counted.

B. CPD POINTS

4. Can a single activity be awarded 7 points if it meets the criteria in clause 11?

Yes, an example would be a conference or a weekend intensive workshop or other structured course, e.g. a subject in an LLM.

5. Who decides on what the points allocation for an individual activity will be?

QA Providers decide what points they allocate to the activities they provide; the Legal Education Committee will allocate points for activities approved under clause 10.

6. Can points be allocated across competency areas for a single activity?

Yes, provided that the points are allocated in accordance with clause 11.

7. Can a practitioner accumulate 9 points from teaching in a subject over a semester, subject to compliance with competency stream requirements?

No, because the subject in which they are teaching is classed as a “single activity” hence the maximum claimable for that subject will be 7 points – see clause 4(k).

8. If two people jointly present a CPD activity, how will they be able to count the points?

If two people jointly work on a CPD exercise as co-presenters and participate jointly, they are able to count the points in accordance with clause 11(c), that is, 3 points per 60 minutes. If one of the people did the bulk of the presenting and the other's role was that of commentator, the presenter would claim 3 points and the commentator, 2 points.

9. Can I count my work on committees as part of CPD?

No, only those activities identified in clause 8(d) or which have otherwise been approved by the Board can be relied upon as CPD for the purposes of compliance with the Policy. Work undertaken on committees, whilst valuable, is not sufficiently educationally focused for it to be available as a CPD activity.

10. If I attend a seminar or conference organised by a QA Provider in another jurisdiction, can I count that for my CPD compliance in WA?

Any CPD undertaken with an approved QA Provider can be counted, this is not dependant on the location of the activity.

11. Does all my CPD have to be with a WA based organisation?

No, so long as you undertake your CPD with a QA Provider, that provider can be based anywhere, and can provide the CPD anywhere.

12. Do legal practitioners who work part-time have to accrue the same number of CPD points as full-time practitioners?

Yes. Part-time practitioners should note that for the purposes of CPD, "five years or more post-admission experience" is defined as "five years employment as a legal practitioner engaged in legal work".

Part-time practitioners are still expected to achieve 10 CPD points for each year.

13. Can I apply for a variation in the allocation of points?

Yes. Clause 11 sets out the usual points allocation for activities, however in particular circumstances a practitioner or QA Provider may seek a variation of that clause. It is open for an application to be made to the Board for that to occur. See below where there are more questions about variations and exemptions.

C. CPD ACTIVITIES

14. Who decides what competency area a particular activity fits into?

QA Providers decide for the activities they provide; the Legal Education Committee will decide the relevant competency area or areas for activities approved under clause 10.

15. What is the rationale for clause 11(e)(2) and is it in contravention of the TPA?

The rationale is to encourage participation in live activity. Practitioners may only claim like points for a like activity; there is no price fixing, the Board has no interest in the price other than the fact that full value paid for will give rise to an ability to claim full points. If a provider chooses to provide differential pricing for attendance at activities to different classes of practitioner there is no difficulty with that from the CPD policy perspective.

16. Can we use a DVD as Part of a Seminar?

Use of a DVD, video or other material as a teaching aid in a workshop or seminar does not fit within the restrictions relating to electronic education.

That is, when these materials are used as part of a live event, the fact they are more than a year old will not reduce the usual points allocation.

D. QA PROVIDER STATUS

17. What guarantees does QA Provider status give the practitioner?

QA Provider status will guarantee that for the duration of the currency of that status, all CPD activities offered by that provider will be available for practitioners to count towards their compliance with the Board's CPD Policy. It will also act as a guarantee that the provider meets minimum standards of organisation and record keeping, which will assist the practitioner in circumstances where they are audited and required to verify their attendance at an activity. QA Provider status will not be a guarantee of the quality, relevance or usefulness to a particular practitioner of any individual activity offered.

18. Is “suitable experience” in clause 7(a)(1) demonstrated by meeting the criteria in clause 7(b)?

Generally meeting the criteria in clause 7(b) will demonstrate suitable experience, however the Board reserves the right to request any further information that it requires in order to make a decision as to whether an organisation has suitable experience to be a QA Provider.

19. What is meant by “suitable training infrastructure”?

This means having in place appropriate administrative systems plus access to facilities which are appropriate to the type and nature of activity being offered, in the context in which it is being offered. It will mean in practical terms that a QA Provider will have to have in place a facility (with allocated responsibility) for record keeping plus a means of identifying and supplying training facilities and aids required to present their programs. Accessing commercially available premises for the presentation of workshops or seminars and the

hiring of equipment, e.g. projectors, microphones etc is entirely appropriate as a means of achieving this.

20. What conditions might be placed on QA Provider status?

Record keeping requirements as set out in clause 15 will be a standard condition for QA Providers. The Board reserves the right to place any relevant conditions on any QA approval and will consider each application including whether any conditions should be placed on the approval on a case by case basis. The general conditions that currently apply are as follows:

1. You must comply with the Board's CPD Policy, as it is amended from time to time.
2. The fee applicable to your application is \$. This fee must be received by the Board by no later than 2 February 2009, failing which this approval automatically lapses.
3. You must provide the Board, upon its request, with any information it seeks from you in respect to your ongoing activity as a QA Provider, including, but not limited to, information relating to the attendance of legal practitioners at any CPD activity.
4. You must notify the Board of any material change in your circumstances during the term of this approval, including, but not limited to, changes to contact details including websites, solvency or other matters which may impact on your capacity to provide CPD.

21. Is there a right of appeal from a decision to reject or withdraw QA Provider status?

Under the Legal Profession Act 2008 there is no right to appeal against any decision made under section 51 which is the provision enabling CPD to be implemented. In making any decision to reject or withdraw QA Provider status, the Board will always be mindful of the interests of natural justice and the impact of any decision on the commercial interests of the QA Provider, as well as the impact on practitioners who have undertaken CPD with that provider.

22. Do QA Providers who have acquired QA status in another jurisdiction have QA Provider status in WA?

Yes. Any provider holding the equivalent of QA Provider status in any Australian jurisdiction is deemed, for the currency of their equivalent status, to be a QA Provider in this state. (Subject to payment of the appropriate fee as per Table 3 (a) of the Fees Schedule). This does not apply for approval for single activities. At present there are no providers with QA status approval in any other states.

E. APPROVAL OF CPD ACTIVITY NOT PROVIDED BY A QA PROVIDER

23. Can an application for approval under clause 10 relate to more than one activity?

No, each application under clause 10 needs to be made separately, although applications can be made concurrently.

24. Does third party provided training arranged through a QA Provider (e.g. law firm) qualify for points on the basis of the QA Provider's status, or is an application under clause 10 necessary?

An application under clause 10 will be necessary if a practitioner wishes to count attendance at a third party activity that is not actually provided by the QA Provider. Joint venture or partnering arrangements between QA and non-QA providers will not generally require additional applications. Additionally, the fact that a presenter of an activity is not an employee or member of the QA Provider does not mean that an activity is not provided by the QA Provider. Likewise, the fact that a speaker at an activity comes from an otherwise QA Provider, will not of itself make the activity approved e.g., if a non QA Provider had a Judge deliver a paper, this would not

serve automatically deem the activity approved by reason of clause 7(d).

An example: if a law firm was a QA Provider and contracted with a third party to design and run courses for its staff, provided there was control exercised by the firm over course objectives, content, presentation, location, attendees and so on, these courses would be part of the QA Provider status. If the law firm approved of and paid for its staff to enrol in third party provided activity, e.g. an LLM, over which it exercised no control or had no responsibility, those providers would have to have their own QA Provider status for a practitioner to be able to rely on that attendance for CPD purposes.

25. What is anticipated to be the turn-around time for receiving responses to applications?

Clauses 6 (d) & (e) provide that the Board seeks to respond to applications within 14 days of a meeting of the Committee, provided that all the relevant information is received prior to the relevant meeting. Subject to business requirements, meetings will generally be held monthly, other than in January, in accordance with the Board's usual practice. Meetings will be held on dates advertised on the Board's web-site (see clause 6(c)).

F. EXEMPTIONS & VARIATIONS

26. If I work outside Perth, do I have to meet the same requirements for CPD?

The Policy does not distinguish between Perth-based and other practitioners. Variations of specific clauses of the policy are available to non-metropolitan based practitioners. This includes anyone based outside a 50 km radius from Perth (Mandurah is deemed to be metropolitan) and includes practitioners working in other Australian jurisdictions and overseas who hold WA practice certificates.

27. I work in a role where I do not need a practice certificate, but I have one because I like to keep it up, can I get an exemption from CPD?

No, an exemption is not permitted in these circumstances. If you have a practice certificate, regardless of whether you are required to for your employment, you must comply with the policy.

28. I work part-time. Can I get an exemption?

No, CPD applies to every practitioner regardless of the hours they work. You may qualify for an exemption under clause 12 of the Policy, but this depends on your individual circumstances and the reasons why you cannot comply with the Policy.

29. I am a very senior practitioner, can I get an exemption?

Generally, an exemption will be available if you have been in practice for more than 40 years AND you hold either a restricted practice certificate (being one which only allows you to work as an employee) or you are a Government Lawyer. There is no general exemption for practitioners based solely on seniority, status or job e.g. being a Member of Parliament, QC or SC etc.

30. I hold a WA practice certificate but practice overseas, can I get an exemption?

Exemptions are available for practitioners who do CPD as part of their obligations for practice in another jurisdiction. Therefore, if you hold the equivalent of a practice certificate in another country and as part of that you must do CPD or the equivalent, you will be able to apply for an exemption under clause 12(a)(1)(E).

You may be able to seek either an exemption under clause 12(a)(1)(b), or a variation under clause 12(c). You can consider an application for a variation to clause 4(f) which may mean you can

count any CPD activities you have undertaken in another jurisdiction as approved CPD activities.

You should take particular notice of clause 12(d) if you make an application for exemption as it is the Board's policy that all practitioners should undertake CPD, regardless of where they practice.

G. MONITORING

31. How will compliance be monitored?

In two ways. There will be a requirement for a statutory declaration at the time of renewal of your practice certificate, this will be supplemented by audits.

In the first year of compliance, from July 2009, a paper audit for the CPD period 1 April 2007 – 31 March 2009 will be undertaken of all practices in the State. That means that at least one practitioner from each practice will be audited by requiring the filing of a form setting out in detail the CPD they have attended and this will be cross-checked with the records provided by QA Providers. About 650 people will be audited in the first year.

Audits will also be conducted for QA Providers and there will be a review at the time for renewal of QA Provider status.

I. MORE INFORMATION

32. How can I find out more information?

More information is available on the LPB website www.lpbwa.com . Approved QA Providers will also be listed on the Board's website.

Please contact the Legal Education Coordinator on 6211 3600 if you require any further information.

