

**SUPPLEMENTARY GAZETTE**



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ADELAIDE, THURSDAY, 10 FEBRUARY 2011

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**RULES OF THE LEGAL PRACTITIONERS EDUCATION AND ADMISSION COUNCIL 2004****AMENDMENT NO 5**

Pursuant to sections 14C, 14J and 17A of the *Legal Practitioners Act 1981*, as amended, and to all other enabling powers, the Legal Practitioners Education and Admission Council makes the following Rules to take effect as amendments to the *LPEAC Rules 2004*:

- 1 These Rules may be cited as the "*LPEAC Rules 2004*", Amendment No 5.
- 2 The *LPEAC Rules 2004*, as amended by these Rules may be cited as the "*LPEAC Rules 2004*".
- 3 These amendments will commence on (a date not less than 4 months after the rule is made), or upon their gazettal, whichever is the later.
- 4 Rule 1.3 – after the definition of **court** insert:  
  
**CPD** means continuing professional development.  
  
**CPD year** means a year beginning on 1 April to the following 31 March.
- 5 Insert after Rule 1.3A:  
  
1.3B For the purpose of Rule 3A of and Appendix C to these Rules, a reference to the **Law Society** is a reference to the Law Society while it continues to be assignee of the functions of the Supreme Court in respect of the issue and renewal of practising certificates pursuant to the Supreme Court Admission Rules and section 52A of the Act and, if it ceases to be such assignee, then the term is to be read as a reference to the Supreme Court.
- 6 Insert after Rule 3:

**3A PRACTISING CERTIFICATE ISSUE & RENEWAL (MCPD QUALIFICATIONS)**

- 3A.1 The qualifications for the issue and renewal of practising certificates to individual legal practitioners having effect on or after 1 July 2011 shall include completion of mandatory continuing professional development as set out in Appendix C.
- 3A.2 It is a condition of every practising certificate issued to or renewed by an individual legal practitioner having effect on or after 1 July 2011 that the practitioner comply with the MCPD obligations contained in Appendix C.
- 3A.3 Before a practising certificate will be issued to or renewed by an individual legal practitioner who held a practising certificate in respect of any period after 1 July 2011, the applicant practitioner must first satisfy the Law Society that the practitioner has complied with the MCPD requirements in Appendix C in respect of the preceding CPD year.

- 3A.4 Where an individual legal practitioner has not complied with the requirements in Appendix C, on the application of the Law Society, the Board may:
- (a) direct that a practising certificate be issued to or renewed by the practitioner subject to a condition or conditions which the Board considers appropriate; or
  - (b) direct that the practising certificate of the practitioner be suspended for a period specified by the Board or be cancelled.
- 3A.5 Where the Law Society determines not to issue or renew a practising certificate by reason of sub-rule 3A.3, the practitioner may, within 7 days of notification of the determination (or such longer time as the Board may allow), apply to the Board. The Board may:
- (a) if it determines that the practitioner has complied with the obligations contained in Appendix C, direct that a practising certificate may be issued or renewed; or
  - (b) direct that a practising certificate may be issued or renewed, subject to such further conditions (if any) as may be appropriate, notwithstanding that the practitioner has not so complied; or
  - (c) direct that a practising certificate not be issued to or renewed by the practitioner.

7 Insert after Appendix B:

### **APPENDIX C MANDATORY CONTINUING PROFESSIONAL DEVELOPMENT**

It is a requirement that an individual legal practitioner must complete 10 CPD units of CPD activity in each CPD year.

#### **1 Definitions**

In this Appendix:

**CPD** means continuing professional development.

**CPD activity** means an activity:

- (a) of significant intellectual or practical content primarily related to the practice of law; and
- (b) conducted by persons qualified by practical or academic experience in the subject covered; and
- (c) relevant to the immediate or long-term professional development needs of the legal practitioner undertaking it; and

- (d) comprising:
- (i) attendance at, or preparing or presenting material for, a seminar, workshop, lecture, conference, educational program or course or discussion group; or
  - (ii) viewing or listening to, or preparing material for, a multi-media or web-based program or recorded material; or
  - (iii) publishing, or substantively editing or refereeing, an article in a legal or non-legal publication; or
  - (iv) regular attendance at meetings, and participation as a member, of a committee or other body undertaking work of substantial significance to the practice of the law and which is reasonably likely to assist the attendee's professional development.

**CPD unit** means:

- (a) in relation to a CPD activity referred to in (d) (i) or (ii) above, one hour of the activity;
- (b) in relation to a CPD activity referred to in (d) (iii) above, 1000 words of the article;
- (c) in relation to a CPD activity referred to in (d) (iv) above, two hours of the activity.

**CPD year** means a year beginning on 1 April to the following 31 March.

**Defined Circumstances:** see paragraph 6.1.

**Required CPD activity:** see paragraph 2.2.

## **2 Completion of Minimum CPD units**

- 2.1 An individual legal practitioner must complete at least 10 CPD units of CPD activity in each CPD year.
- 2.2 The 10 CPD units must include at least 3 units of Required CPD activity as detailed below:

### **Required CPD activity**

- (a) one CPD unit relating to practical legal ethics;
  - (b) one CPD unit relating to practice management or business skills; and
  - (c) one CPD unit relating to professional skills.
- 2.3 In calculating the minimum 10 CPD units of CPD activity in respect of a CPD year, the total units must not include more than:
    - (a) 5 CPD units of CPD activity referred to in paragraph 1 (d)(ii); or

- (b) 5 CPD units of CPD Activity referred to in paragraph 1 (d)(iii); or
  - (c) 3 CPD units of CPD activity referred to in paragraph 1 (d)(iv).
- 2.4 CPD units completed in January, February or March of a CPD year, may at the election of the practitioner be assigned in whole or in part either to that CPD year or to the next CPD year.
- 2.5 Where the Board has imposed a condition pursuant to sub-rule 3A.4(a), the legal practitioner must complete such activities within such period as is specified in the condition.

### **3 Part Years**

Where a practitioner holds a practising certificate for less than a full CPD year, the references in paragraph 2 to CPD units in respect of that year are proportionally reduced in accordance with the following rules:

- (a) the number of CPD units specified in paragraph 2.1 (10 units) shall be reduced by 1 unit for each whole calendar month of the CPD year for which the practitioner did not hold a practising certificate;
- (b) the number of required CPD units specified in paragraph 2.2 (3 units) shall be reduced by 1 unit for each 3 units reduced by (a) hereof;
- (c) the number of CPD Units permitted at paragraph 2.3 (a) and (b) (5 units) shall be reduced by 50% (rounded up to the nearest whole number) of the number derived under (a) hereof;
- (d) the number of CPD Units permitted at paragraph 2.3(c) (3 units) shall be reduced by 1 unit for each 3 units reduced by (a) hereof.

### **4 Records of CPD**

- 4.1 An individual legal practitioner must, in respect of each CPD year, maintain and retain for 3 years after the end of that CPD year:
- (a) a written record of CPD activities undertaken and of CPD units completed and of any activities undertaken pursuant to a condition imposed by the Board pursuant to sub-rule 3A.4(a);
  - (b) material indicating the nature of each CPD activity undertaken and of any activity undertaken pursuant to a condition imposed by the Board pursuant to sub-rule 3A.4(a);
  - (c) a record of the fact that the practitioner undertook each such activity.
- 4.2 An individual legal practitioner must provide to the Law Society within 14 days of receipt of a written request for information about and/or evidence of the practitioner's compliance with his or her obligations under this Appendix in respect of any CPD year within the previous 3 years as specified in the request.

## 5 Inability to Comply

- 5.1 In this paragraph, **Defined Circumstances** means:
- (a) illness or disability;
  - (b) the location of the practitioner's legal practice;
  - (c) the absence of the practitioner from legal practice; or
  - (d) hardship or other special circumstances.
- 5.2 Where during a CPD Year Defined Circumstances exist or occur which are likely to prevent a practitioner from complying with paragraph 2, the practitioner must lodge with the Law Society a statutory declaration as soon as practicable after it becomes apparent that it is likely that the practitioner will not comply with paragraph 2 and in any event by 31 January of the CPD year:
- (a) setting out full details of the Defined Circumstances and their past and/or likely future effect upon compliance with paragraph 2;
  - (b) setting out the number of CPD units (including Required CPD activities) the practitioner has completed and plans to complete during the balance of the CPD year;
  - (c) setting out the evidence and exhibiting any documentary evidence which demonstrates the matters in (a) and (b);
  - (d) seeking an intimation from the Law Society as to the number of CPD units to be completed to comply with his or her obligation under this Appendix.
- 5.3 A practitioner who does not comply by 31 March with his or her obligations under paragraph 2 due to Defined Circumstances must by 14 April lodge with the Law Society a statutory declaration setting out:
- (a) the number of CPD units (including required CPD activities) the practitioner completed in respect of that CPD year;
  - (b) the number of CPD units (including Required CPD activities) which the practitioner was prevented by Defined Circumstances practicably from completing in respect of the CPD year.
- 5.4 Where during a CPD Year Defined Circumstances have occurred which prevented a practitioner from complying with paragraph 2, provided the practitioner has complied with sub-paragraphs 5.2 and 5.3, the number of CPD units which the practitioner is required to accrue is reduced to the extent that the Defined Circumstances have so prevented compliance.

## 6 Certification of Compliance

An individual legal practitioner must by 14 April each year lodge with the Law Society a certificate by the practitioner that the practitioner has complied with the obligations contained in paragraphs 2 and 4 of Appendix C in respect of the preceding CPD year.

## 7 Rectification of Contravention

7.1 Where a practitioner has not complied with his or her obligations under paragraph 2, he or she must:

- (a) by 14 April lodge with the Law Society a statutory declaration setting out:
  - (i) the number of CPD units (including Required CPD activities) the practitioner has completed in respect of that CPD year;
  - (ii) the number of CPD units (including Required CPD activities) which the practitioner has not completed in respect of that CPD year;
  - (iii) details of CPD activities which the practitioner proposes to undertake prior to 31 May of that year to rectify the non-compliance;
- (b) by 31 May undertake sufficient CPD and other activities as are necessary to rectify the non-compliance; and
- (c) by 7 June lodge with the Law Society a statutory declaration setting out the number of CPD units (including of Required CPD activities) completed in respect of the prior CPD year up to the date of the statutory declaration.

7.2 Where a practitioner has not complied with his or her obligations under paragraph 2, the practitioner may not have his or her practising certificate in respect of the subsequent year issued or renewed (see rule 3A.3).

7.3 Any CPD activity completed in respect of a CPD year pursuant to this paragraph cannot be taken into account for any other CPD year.

Dated 20 January 2011.

  
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**The Hon John Doyle AC**  
**Chief Justice of South Australia**