

Submission No. POA/415

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Law Reform Committee

22 December 2009

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150
years



**Law
Institute
Victoria**

Kerryn Riseley
Executive Officer
Victorian Parliament Law Reform Committee

By email to Kerryn.Riseley@parliament.vic.gov.au

Dear Ms Riseley

Re: Compulsory professional development for legal practitioners

Thank you for the opportunity to make this supplementary submission to the Victorian Parliament Law Reform Committee inquiry into powers of attorney (the inquiry), in response to the Federation of Community Legal Centres (the Federation) submission of 19 October 2009 on compulsory professional development for legal practitioners.

The Federation correctly identifies that legal profession rules require all practitioners who hold a current Victorian practising certificate to undertake CPD activities during each CPD year. The purpose of CPD is to ensure the ongoing competence of legal practitioners, including ensuring that practitioners' knowledge and skills are kept current. The two sets of Rules which are the Continuing Professional Development Rules 2008 of the Legal Services Board (LSB CPD Rules 2008) and the Law Institute Continuing Professional Development Rules 2008 (Law Institute CPD Rules 2008).

Each CPD year, a practitioner must complete as part of their CPD obligation at least 1 CPD unit in each of the following fields:

- (a) Ethics and Professional Responsibility;
- (b) Professional Skills;
- (c) Substantive Law; and
- (d) Practice Management and Business Skills (Rule 5.2, Law Institute CPD Rules 2008).

Each CPD year, a practitioner must, unless exempted in whole or in part, complete at least 10 CPD units (Rule 5.1, Law Institute CPD Rules 2008).

Under Rule 4.1 of the Law Institute CPD Rules 2008, a CPD activity must:

- (a) be of significant intellectual or practical content and *must deal primarily with matters related to the practitioner's practice of law*;
- (b) be conducted by persons who are qualified by practical or academic experience in the subject covered; and
- (c) seek to extend the practitioner's legal knowledge and skills in *areas that are relevant to the practitioner's practice needs* (emphasis added).

The LIV is of the view that the Rules in their current form do not accommodate the nomination of specific compulsory topics. Lawyers are expected to identify matters which are relevant to their own practice of law and practice needs. The Federation acknowledges in its letter that the topic of substitute decision-making will not be relevant to all lawyers, particularly where they deal predominantly with corporate clients.

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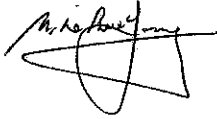
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The LIV recognises that understanding and appropriately responding to a client's capacity is a vital skill for lawyers. We recently hosted a CPD forum on "incapacity and representing your client" and will continue to offer and promote CPD activities in this area. The LIV CPD Compliance Advisory Committee will consider further whether Appendix A to the Law Institute CPD Rules can be amended to identify issues relating to a client's capacity in the non – exhaustive list of examples of CPD activities under Rule 5.2.

We suggest that you also seek the views of the Legal Service Board in relation to this matter. As you are aware, the LIV is seeking to promote law reform of "capacity" in the area of substitute decision-making and on 29 October 2009, held a round table discussion with a number of key stakeholders. The LIV continues to undertake work in this area and we hope to make a further submission to the inquiry on matters relevant to powers of attorney.

Please contact Laura Helm, Policy Adviser, Administrative Law and Human Rights, on 9607 9380 or lhelm@liv.asn.au if you have any further questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael Brett Young", written over a large, stylized scribble or signature graphic.

Michael Brett Young
Chief Executive Officer
Law Institute of Victoria