

Federation of  
Community Legal Centres  
VICTORIA

**Ms Kerry Riseley**  
Executive Officer  
Victorian Parliament Law Reform Committee

By email: [vpirc@parliament.vic.gov.au](mailto:vpirc@parliament.vic.gov.au)

19 October 2009

### **Compulsory professional development for legal practitioners**

Dear Ms Riseley

This short submission supplements the original submission of the Federation Community Legal Centres, dated 24 August 2009, and our evidence to the public hearing on 1 October 2009.

Further to the public hearing, we would like to expand on our proposal for a compulsory professional development unit, to include instruction about powers of attorney.

### **Current professional development requirements**

As we noted on 1 October, Victorian legal practitioners are already required to undertake continuing professional development ('CPD'). These obligations are significant, and are set out in the Victorian Continuing Professional Development Rules 2008 of the Legal Services Board and the Law Institute Continuing Professional Development Rules 2008 ('the CPD rules').<sup>1</sup>

At present, the CPD rules require practitioners to undertake annual CPD in the categories of ethics and professional responsibility; professional skills; practice management and business skills; and substantive law. While training on substitute decision making (including powers of attorney) could fit within several of these categories, it is not explicitly mentioned in the CPD rules and is not compulsory.<sup>2</sup>

The Federation sees this as a missed opportunity to increase awareness of substitute decision making and other important legal issues relevant to the elderly, the mentally ill and others with limited capacity.

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<sup>1</sup> The CPD rules are available at <http://www.liv.asn.au/Practicing-in-Victoria/Professional-Standards/The-CPD-Scheme>.

<sup>2</sup> See 'Non-exhaustive list of examples of CPD activities under Rule 5.2', Law Institute Continuing Professional Development Rules 2008, pp 6-7.

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### **A CPD unit on capacity, substitute decision making and other options**

We suggest that the CPD rules be amended to include a compulsory unit covering:

- determination of a client's capacity;
- techniques for taking instructions from older clients and clients suffering from a mental illness or disability;
- substitute decision making;
- other less restrictive means of supported decision making;
- advance directives, advance care plans and medical treatment certificates;
- the role of administrators with respect to those clients who have already lost or who already have impaired capacity; and
- a comparison of the differing duties and standards of care applicable to attorneys and administrators.

The unit could be developed by the Victorian Government, in collaboration with the Law Institute of Victoria ('LIV') and specialist community legal centres such as the Mental Health Legal Centre and Seniors Rights Victoria.

Practitioners should be required to complete this unit at least once, with refresher courses recommended every five years. Ideally, the refresher courses would also be compulsory. We recognise, however, that CPD obligations are presently calculated on a yearly basis. A strict policy regarding refresher courses may therefore be difficult to administer.

The committee might consider an exemption for practitioners who work exclusively with corporate clients.

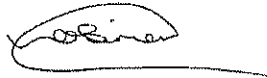
### **Human rights and powers of attorney**

The proposed CPD unit would promote the human rights of older, mentally ill and disabled Victorians under the *Charter of Human Rights and Responsibilities Act 2006*. Sub-section 8(3) of the Charter provides that 'every person is equal before the law and is entitled to the equal protection of the law without discrimination.' By developing a greater sensitivity to the needs of these clients, legal practitioners would be better equipped to provide them with appropriate legal advice. In light of Victoria's ageing population, this skill will become increasingly important to practitioners in the years ahead.

Improved professional training would also enhance other human rights contained in the Charter, namely the right to protection from torture and cruel, inhuman or degrading treatment (section 10), freedom of movement (section 12), privacy and reputation (section 13), protection of families (section 17) and property rights (section 20). These rights are all affected by powers of attorney. They may be infringed if donors do not receive clear, accurate advice about the documents they sign and the powers they confer on their appointees.

Once again, the Federation thanks the committee for the opportunity to contribute to this inquiry. If you require any further information, please contact me at any time on (03) 9652 1512.

Sincerely

A handwritten signature in black ink, appearing to read 'Lucie O'Brien', with a long horizontal flourish extending to the right.

**Lucie O'Brien**  
Policy Officer