

NZLS GUIDELINES FOR THE

Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education – Continuing Professional Development) Rules 2013

These guidelines provide context and a guide to interpreting the Lawyers: Ongoing Legal Education – Continuing Professional Development Rules 2013 (CPD Rules).

Aims and objectives

The objective of the CPD Rules is to build on the culture of lifelong learning which exists within the New Zealand legal profession. Its aim and anticipated outcome is to contribute to the increased competency of New Zealand lawyers.

The continuing professional development (CPD) requirements

The CPD Rules apply to all lawyers. The Rules require you to take responsibility for developing and implementing your own CPD plan. This includes undertaking, recording, documenting and reflecting on a minimum of 10 hours of CPD activities each CPD year.

The Rules apply to all lawyers and:

- are learner-centred rather than prescriptive
- focus on outcomes

- are flexible enough to allow all lawyers to complete the requirements regardless of their areas of practice, location and experience and to enable them to take account of their preferred learning styles
- are intended to be cost-effective and affordable for both individual lawyers and for the Law Society to apply
- provide a transparent accountability mechanism.

The continuing professional development plan and record (CPDPR)

All lawyers (whether or not providing regulated services) must have a CPDPR.

Note: “regulated services” are defined in section 6 of the Lawyers and Conveyancers Act 2006 and means in relation to a lawyer, legal services, conveyancing services and services a lawyer provides by undertaking the work of a real estate agent. Under the CPD Rules providing regulated services includes holding yourself out as being willing or available to do so.

Planning CPD is an ongoing process which begins when you first start practice. There are no start/stop dates. You may review your learning objectives and amend them at any

time. If you are new to practice you should prepare your CPDPR as soon as practicable.

Your CPDPR is specific to you and should include:

- your learning needs.
To identify your current learning needs you should consider:
 - your reflections on any CPD activities you have undertaken
 - your strengths and weaknesses
 - new law and procedures
 - your career goals
 - pending changes in your roles, responsibilities and practice areas
- your proposed actions
 - the specific outcomes you will aim to achieve in the coming year
 - what activities would best suit your practice and learning style
- details of the activities you undertake including:
 - title
 - provider/facilitator
 - aims and objectives
 - dates/place
 - number of CPD hours you completed
- your reflections on each of these activities – consider:
 - the outcomes – what did you learn/what you will do differently as a result
 - how the outcomes relate to your learning needs
 - did you fulfil your current learning needs?
 - do you have any further learning needs as a result of this activity?
- the documentation verifying your attendance at these activities (see the section on activities below).

Also, you:

- may keep your CPDPR in either hard-copy or electronic format or a combination of both.
- must keep your CPDPR for three years.

Minimum hours of activities

If you provide no regulated services during a yearly period you are not required to complete any hours of activities. You are still required to have a CPDPR and to file declarations of compliance. Your CPDPR should state that no activities or related records and documentation are required. You may, however, choose to complete activities and record those activities in your CPDPR.

If you provide any regulated services you must complete a minimum of ten hours of activities whether you work in a part-time or full-time capacity. The minimum hours requirement is only reduced if you take a break from practice of three months or more. In these cases you are entitled to a pro rata reduction in the minimum hours as set out in Schedule One of the Rules. For example, if you take a break from practice (due to illness, parental leave, sabbatical etc) for seven months then you are required to complete five hours of activities. If you work part time during your break from practice the reductions do not apply.

If you complete more than the minimum number of hours of activities during a CPD year then you can choose to carry forward up to five of those excess hours into the next year.

If you complete the previous or an earlier year's hours of activities in a subsequent yearly period for any reason then those hours are additional to the required hours for that yearly period – there is to be no double counting of hours.

Schedule One also applies if you hold a practising certificate for less than a full year.

Activities

Activities either provide you with an opportunity for interaction and feedback and are verifiable, or not. But you must use your professional judgement to decide if an activity appears to align with your CPDPR and delivers worthwhile outcomes for you. The Law Society will not accredit activities as “one size” does not necessarily fit all. What is relevant and worthwhile for one lawyer may not be for another.

There is no limit to the number of hours you can count for taking part in any one activity. You are responsible for verifying your attendance at CPD activities. There are a number of ways you may do this depending on the type of activity. Suggestions as to how you may verify your CPD activities are listed below.

You may count CPD activities required by:

- the Law Society’s regulations/rules other than those related to CPD, eg requirements for practice on own account, or by a standards committee
- other professional bodies or regulated bodies both in New Zealand and overseas towards your CPD requirements provided they comply with the definition of activities in the Rules.

Depending on your individual learning needs, preferred learning style, experience and the various activities available to you, you may choose to complete the required hours in a number of ways, for instance:

(I) COURSES, PROGRAMMES AND RELATED ACTIVITIES

- continuing legal education programmes such as conferences, seminars, training programmes and skills workshops
- completion of or study towards relevant degrees, diplomas or certificates
- receiving structured and planned one-to-one coaching, instruction, training or

mentoring, providing it is not file-specific and has identified aims and learning outcomes relating to your learning needs

- taking part in a study group or a similar activity

Programmes and courses could be arranged by:

- NZLS CLE Ltd
- NZLS branches and sections
- the New Zealand Bar Association and other legal associations
- other professional associations and organisations
- universities and other teaching institutions
- law firms
- barristers or barristers’ chambers
- in-house organisers
- government legal services training
- external providers of education and training, both commercial and non-commercial
- individuals or small groups of lawyers and/or other professionals united by geography and/or professional interests

They could be delivered in person, online, via video or audio conferencing, webinars or other real-time communications technology as long as there is an opportunity for interaction and feedback, e.g. the ability to ask questions. They could be sourced and/or delivered either in New Zealand or overseas.

You should count only the actual time you attend activities towards your CPD requirements. This does not mean time spent in breaks or reading materials and handbooks or other forms of preparation and follow-up activities.

You may verify your attendance at programmes, courses or related activities in a number of ways, for instance:

- asking another participant to countersign your registration form / receipt / admission ticket or similar
- attendance record
- university record

- completion certificate
- degree and dates
- in-house records
- list of topics discussed and the duration signed by a study group facilitator or workshop instructor, or by another named participant
- letter from an activity organiser confirming participation and duration
- assessment results

(II) DISTANCE LEARNING PROGRAMMES

You may count distance learning programmes you complete online or through a variety of media, including written material, providing they include an interactive/feedback component, for instance through:

- completing quizzes or an assessment component at the end of the course or at intervals throughout
- the ability to email and/or telephone a designated person to ask questions and to receive a timely response.

You may verify you undertook a distance learning programme through a certificate of completion or an equivalent which may be issued automatically online or sent by the organiser.

(III) TEACHING AND RELATED ACTIVITIES

These could include, but are not confined to

- lecturing and teaching law courses at a university or any other tertiary institution
- instructing/demonstrating in legal skills workshops
- speaking at and chairing conferences
- giving seminars, running training programmes etc for external providers of education and training
- giving seminars in-house and/or for an invited audience

- facilitating discussions in study groups and other similar activities
- undertaking structured and planned one-to-one coaching, instructing, training or mentoring, providing it is not client file-specific and has identified aims and learning outcomes which are relevant to both participants
- teaching, training and lecturing for other professional associations and organisations or other relevant groups or organisations
- preparing for any of the above

In order to lead to relevant outcomes teaching related activities should be at tertiary level or the equivalent. Teachers learn from the research they do, from the insights they gain from reflecting on the topics they teach, and from engaging with their students, participants or target audience and seeking to satisfy their learning requirements. You will need to use your professional judgement when deciding what teaching activities you may include.

You should usually only count activities when you undertake them for the first time during a yearly period. You should not count repeats of substantially the same activities you undertake in either the same or a subsequent yearly period unless you carry out a thorough review of the content and a “renewal” of the approach to the subject leading to further self-learning.

One-to-one coaching, instructing and training should involve new insights and you should thus be able to repeat them annually. If you are a faculty member for the Litigation Skills programme, for instance, you should be able to count this activity towards your CPD requirements each year, if you choose. It may be, however, that you would want to diversify your activities from time to time.

You may count the time you spend in both preparation and teaching. “Fair play” should be the key criterion in deciding the number

of hours you should record for preparation.

You may verify teaching-related activities in a number of ways, for instance by:

- timetables/brochures showing participants, chairs and speakers
- list of topics discussed and person facilitating
- letter from organiser/administrator
- record of a coaching/mentoring session signed by you and the participant(s)
- copies of background materials

The following activities would not meet the requirements set out in the CPD Rules and you should not count them towards your minimum hours:

- teaching which is part of your regular employment as a lawyer
- marking
- giving career talks
- day to day supervision of legal staff.

(IV) WRITING

This could include (but is not confined to) writing law books, articles or papers intended for publication or to be included in course materials for:

- students at tertiary level, both law students and others
- lawyers and legal executives
- other professions

As with teachers, writers learn from the research they do and from the insights and ideas they develop as they reflect on their subject matter. If a writing activity does not require this sort of engagement it would not qualify. You will need to use your professional judgement about this. Writing offers an opportunity for interaction and evaluation in many ways, for instance through comments from editors, colleagues, reviewers and your targeted readers, either orally or in writing.

You might verify your writing activities

through:

- published tables of content and date of publication
- copies of published articles and date of publication
- letter from publishers, editors, course organisers

These should be accompanied by a record of the time you spent.

You should not count writing which is part of your regular employment as a lawyer.

(V) LAW REFORM

You may count preparing as a lead or major drafter and presenting submissions on proposed reforms of the law or of legal processes and procedures on behalf of the Law Society, a legal association or similar in an objective manner.

You could verify law reform activities by:

- a copy of your individual written contribution to the formal law reform submissions and an acknowledgement of receipt
- a notice/memo relating to oral submissions

The above records should be accompanied by a record of the time you spent.

You should not count preparing and presenting formal submissions

- as part of your regular employment
- on behalf of a client or a firm or employer or an interested party whether or not it is part of your paid employment or a pro bono activity.

(VI) TOPICS

You can count any topic which you can relate to your learning needs as set out in your CPD plan and which would assist you to carry out your work as a lawyer, including:

- knowledge of the law

- knowledge of other relevant disciplines
- knowledge of the law and procedures in other countries
- legal skills
- personal skills including, but not confined to:
 - stress management
 - time management
 - leadership skills
 - communication including voice production
- practice management skills including, but not confined to:
 - financial and accounting skills
 - marketing skills
 - supervision skills
 - planning skills
 - risk management skills
 - operation management skills
 - IT management skills
- ethics, professionalism and client care

The following do not fall within the definition of activities:

- private study, eg
 - reading textbooks, journals, articles, course materials, *LawTalk*, digests and law reports
 - listening to non-interactive audio broadcasts or recordings in whatever format
- viewing non-interactive audio visual materials in whatever format
- attending meetings
- being a member of a committee, including standards committees
- assisting at community law centres and taking part in pro-bono activities

Private study is, however, an essential means of keeping up to date. All lawyers are encouraged to complete a minimum of 50 hours of self-study each CPD year. You could choose to record your self-study in your CPD plan but you are not required to.

Declarations of compliance

At the end of each CPD year a lawyer must file a declaration.

In order to file a declaration of compliance you need to have completed the applicable CPD requirements for the relevant CPD year whether as set out in the CPD Rules or as modified by a deferment.

The CPD year runs from 1 April until 31 March of the following year. You must file your declaration with the Law Society within five working days of the close of the CPD year. If you fulfil all of your CPD requirements and your CPDPR is up to date and covers the rest of the year, you may file your declaration earlier than 31 March.

(I) LATE DECLARATIONS

If you file your declaration later than five days after the end of the year it will be categorised as a late declaration of compliance. A late declaration of compliance signals to the Law Society that you, for some reason, have not managed to complete your CPD requirements during the CPD year. The Law Society will contact you to ensure you understand the CPD requirements and can, in the future, complete the requirements on time.

(II) CEASING AND RETURNING TO PRACTICE

If you hand back your practising certificate (eg, to travel overseas) part way through a yearly period and you do not intend to return before the end of that year, you are encouraged to file a CPD declaration. If you do resume practice before the end of that yearly period you may need to withdraw your declaration. You will be able to do this easily online. Likewise, if you complete the year and do not intend to renew your practising

certificate immediately, but may do so some time in the future, you should file a CPD declaration.

If you have outstanding CPD requirements when you cease practising they will still be there when you resume practice. It may be possible to get the CPD requirements deferred but you will still have to complete them.

(III) DEFERMENT OF CPD REQUIREMENTS

The CPD requirements cannot be waived. However, you may apply to the Law Society for a deferment of some or all of the CPD requirements where exceptional circumstances have prevented you from completing the requirements in the CPD year. The Law Society may defer either all or part of your requirements to a subsequent CPD year.

If you obtain a deferment you must still file a declaration of compliance with the Law Society for the applicable year.

If the Law Society does not grant you the deferment in the terms you sought, you will need to complete all applicable CPD requirements and file a declaration of compliance as required by the CPD Rules.

A failure to complete the CPD requirements may be referred to a standards committee for inquiry under the Act.

Auditing for compliance

You do not provide your CPDPR when you make your CPD declaration but it may be required

- as part of an audit process
- if you have applied for a deferment
- by a Standards Committee considering non-compliance with the CPD Rules.

Each year the Law Society will examine a sample of lawyers' CPD plans and documentation to verify they are meeting

the CPD requirements. If you do not file a declaration of compliance on time and no late declaration is forthcoming you are likely to be audited. The result of the audit may be a referral to a Standards Committee.

The audit process is intended to be supportive and educative in the first instance. If you appear to have misunderstood the CPD Rules you will be offered assistance and education to correct these misunderstandings. However, if there are indications that you have knowingly made a false declaration of compliance then the Law Society will refer you to a Standards Committee for inquiry under the Act.

Self-auditing organisations

Self-audit status means that an organisation of lawyers takes responsibility for ensuring compliance with the CPD Rules. Individual lawyers employed by or who are part of a self-auditing organisation would not be audited by the Law Society although the organisation itself may be audited from time to time.

If you are employed by or are part of a self-auditing organisation you remain personally responsible for making your own CPD declarations of compliance.

Many organisations already include planning and reflecting on a lawyer's CPD activities and identifying their ongoing learning needs in their performance review processes. This is useful as it enables the lawyer and the organisation to work together to decide what CPD would be most beneficial and the best way of carrying it out. Self-audit would encourage this approach.

If an organisation wishes to be self-auditing it is likely it would need to have in place comprehensive performance review processes and systems which could be used to review lawyers CPDPRs.

Information about applying for self-auditing status will be placed on the website.

Transitional rule relating to carrying forward of hours

1 October 2013 to 31 March 2014 is a transitional period. You may include up to five hours of activities in your CPDPR for the year beginning 1 April 2014. You do not need to complete a CPDPR for the transitional period and thus, you do not need to relate these activities to your learning needs or reflect upon them, you should, however, include the details in your 2014-15 CPDPR and retain the verifying documentation.