



THE LAW SOCIETY  
OF NEW SOUTH WALES

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## **MANDATORY CONTINUING LEGAL EDUCATION (CONTINUING PROFESSIONAL DEVELOPMENT) (MCLE/CPD) SCHEME**

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Enquiries concerning MCLE/CPD Rules should be directed to the Registry Compliance Officer: ph (02) 9926 0243.

Enquiries concerning courses run by the Law Society of New South Wales should be directed to Young Lawyers: ph (02) 9926 0270

The MCLE/CPD Rules can also be found on the Law Society's web site  
[www.lawsociety.com.au](http://www.lawsociety.com.au) > Running Your Practice>Legal Issues>MCLE

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## 1. Frequently Asked Questions

### When does the MCLE/CPD year commence and end?

The MCLE/CPD year runs from **1 April to the 31 March** the following year.

### How many units do I need?

The requirement is **10 MCLE/CPD units** in each MCLE/CPD year.

**However**, if it is your **first** practising certificate and the practising certificate has an effective start date between 1 July and 31 December, you need to attain 5 units by 31 March. If the effective start date is between 1 January and 31 March you do not have to attain any units by 31 March.

If you have **recommended** holding a practising certificate after a break then the above information for first time practising certificate holders applies to you as well.

**Please note** that Members of Parliament are exempt from the MCLE/CPD requirements for the period that they are Members of Parliament.

### Do I need to keep a record?

**Yes** - you are required to maintain your own record of your MCLE/CPD activities. You do not need to supply the Law Society with details of this record unless you are audited by the Law Society. An MCLE/CPD audit is conducted each year and practitioners who are chosen as part of the audit are required to submit details of their MCLE/CPD activities to establish proof of compliance with the Rules and Regulation.

An appropriate page is supplied in the Law Society Diary facing the tab divider for the 'Solicitors New South Wales' section for recording your MCLE/CPD activities and an MCLE/CPD Record of Activities form can be found in the Appendix to this MCLE/CPD Information Pack or downloaded from the Forms Directory on the Law Society website:

[www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory](http://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory)

### How do I gain units and what are they worth?

Units may be gained through a variety of activities including:

- attending seminars/conferences/ lectures = 1 unit per hour minus refreshment breaks
- preparing CLE/CPD lectures = 1 unit per hour - maximum of 5 units
- presenting CLE/CPD lectures = 1 unit per hour - maximum of 5 units
- private study of video/audio tapes/DVD = 1 unit per hour - maximum of 5 units
- publishing/editing articles in law journals = 1 unit per 1000 words - maximum of 5 units
- on line web based programs = 1 unit per hour

### What areas do I need to cover in any one year?

A course of MCLE/CPD must include at least one (1) unit in each of the following fields:

- Ethics and Professional Responsibility
- Practice Management and business skills
- Professional Skills

(Please see section 7 for a non exhaustive list of topics by core areas.)

Also, you may need to complete 1 unit dealing with equal employment opportunity, discrimination, harassment and occupational health and safety. Practitioners are

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required to complete 1 unit every three years. Please see page 8 of this information pack for further details.

**How do I know if I can claim units for a course and know how many units a course is worth?**

The Law Society does not accredit courses. The MCLE/CPD scheme is based on self-assessment of the educational activity by the practitioners. If you find it is relevant to your immediate or long term needs in relation to your professional development and practice of law then you can claim the activity for MCLE/CPD units. You should refer to Rules 42.1 for the criteria in assessing an activity and Rules 42.2 – 42.5 for the amount of units that can be claimed for an activity.

**I am a lecturer at a university/TAFE/Higher education institution, can I claim lecturing as part of my MCLE/CPD requirements?**

**Yes.** You may claim teaching as part of your MCLE/CPD requirements. Under Rules 42.3.2 and 42.3.3 you may claim preparation and presentation of written or oral material forming part of the formal instruction within any one course of continuing legal education or formal legal education. You should be aware that you also need to comply with the core topic areas each year (effective 1 April 2009) and that Regulation 176 is still in force and needs to be complied with every three years.

**I am undertaking postgraduate studies in law. Can I claim the course for my MCLE/CPD requirements?**

**Yes.** You can claim participation in postgraduate studies in law as part of your MCLE/CPD requirements. The accrual rate is as per participation in a course/seminar/conference that is, 1 hour = 1 unit of MCLE/CPD. You should be aware that you also need to comply with the core topic areas each year (effective 1 April 2009) and that Regulation 176 is still in force and needs to be complied with every three years.

**I am a provider of CLE/CPD courses. Do I have to get accreditation from the Law Society of NSW?**

**No.** The Law Society does not have an accreditation process. Please see the Rules for the basic criteria that courses should meet. The “Notes for Providers” section in this information pack details the wording that the Law Society prefers providers to use when advertising educational activities.

**How does the Law Society know that I have complied?**

Every year you will receive an application for renewal of a practising certificate form by the end of April. On that form you make a declaration as a solicitor as to whether you have complied with the requirements or not. The Law Society will only want to see your diary record of your MCLE/CPD activities if you have been selected as part of the random audit that occurs every year.

**What if I have not completed enough units by 31 March?**

If you find upon checking your records that you have not attained the necessary units you may submit a written application to the Registry Compliance Officer at the Law Society Registry explaining why you have been unable to obtain the necessary units and requesting an extension of time. An application form to request of an extension of time can be downloaded from the Forms Directory on the Law Society website:

[www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory](http://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory)

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**Am I eligible for an annual or partial exemption from MCLE/CPD?**

There are strict criteria for eligibility for exemptions detailed in 42.6 of the MCLE Rules. An application must be made in writing to the Registry Compliance Officer at the Law Society detailing the extenuating circumstances where an exemption is requested. An application form for exemption can be downloaded from the Forms Directory on the Law Society website: [www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory](http://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory)

**Am I eligible for a permanent exemption from MCLE?**

**Yes** - If you have held a practising certificate continuously for forty years or more and are not practising as a principal, you are invited to make a written application to the Licensing Committee for a permanent MCLE exemption. Should you return to practice as a principal or sole practitioner, such exemption becomes null and void. An application form for exemption can be downloaded from the Forms Directory on the Law Society website: [www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory](http://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/formsdirectory)

**Do I need to comply with MCLE/CPD as I am currently practising overseas?**

**Yes** - all practitioners holding current practising certificates and practising as solicitors overseas, are required to undertake MCLE/CPD wherever they practice. Therefore you need to keep a record of what educational activities you are undertaking, the names of providers, the date of the activity and the number of units you are claiming.

**Can I carry units over from one MCLE/CPD year to the next?**

**Yes.** Units accrued in the period 1 January – 31 March in any year may be carried forward into the following MCLE/CPD year but can only be counted in one MCLE/CPD year.

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## 2. The MCLE/CPD Rules

(Part 42 of the Law Society Professional Conduct and Practice Rules also known as the Solicitors Rules)

### 42. MCLE (CONTINUING PROFESSIONAL DEVELOPMENT)

42.1 A practitioner must, during each year in which the practitioner holds a practising certificate, unless exempted by the Council, comply with a condition endorsed on the practitioner's practising certificate, requiring the practitioner to complete mandatory continuing legal education (Continuing Professional Development) by completing a course of education which satisfies the following requirements:

42.1.1 the course may consist of an education programme, seminar, workshop, lecture, conference or discussion group or a multimedia or website based programme, or private study of audio or video material, or the research and preparation of an article published in a legal publication or such other publication approved by the Council, or any combination of two or more of those events;

42.1.2 the course must be of significant intellectual or practical content and must deal primarily with matters directly related to the practice of law;

42.1.3 the course must be conducted by persons who are qualified by practical or academic experience in the subject covered;

42.1.4 the course must be relevant to a practitioner's immediate or long term needs in relation to the practitioner's professional development and to the practice of law;

42.1.5 the course must have an aggregate value of ten (10) MCLE units and

42.1.6 the course must include at least one (1) MCLE unit in each of the following fields:

- 42.1.6.1 Ethics and Professional Responsibility
- 42.1.6.2 Practice Management and business skills
- 42.1.6.3 Professional skills.

42.2 A practitioner's engagement in a course of continuing legal education, which satisfies the requirements in Rule 42.1, will entitle the practitioner to one (1) MCLE unit for each hour of participation in the course..

42.3 A practitioner shall be entitled to claim one (1) MCLE unit to a maximum of five (5) MCLE units for every hour spent:

42.3.1 in a programme of private study of audio or video material specifically designed for the purpose of updating legal knowledge determined by reference to contemporaneous records maintained by the practitioner engaged in the study.

42.3.2 in the preparation of written or oral material forming part of the formal instruction within any one course of continuing legal education or formal legal education.

42.3.3 in the presentation of written or oral material forming part of formal instruction within any one course of continuing education or formal legal education to a maximum of five (5) MCLE units for any one course.

42.4 A practitioner shall be entitled to one (1) MCLE unit to a maximum of five (5) MCLE units for every thousand words of an article published in a legal publication, or such other publication as the Council of the Law Society may approve (including an article which the practitioner has structurally edited or refereed.).

42.5 42.5.1 A practitioner who is a member of a committee or Task Force of the Council of the Law Society, of the Executive Council of NSW Young Lawyers, of the Law Council of Australia, or a practice section of a professional association (which deals with substantive issues) and gives reasonable attendance at its meetings, is entitled to claim one (1) MCLE unit to a maximum of three (3) MCLE units for each period of two hours or more engaged in committee work, which is of substantial significance to the practice of law and is reasonable likely to assist the practitioner's professional development.

42.5.2 A practitioner cannot claim entitlement under this paragraph in respect of committee work for which the practitioner has claimed or intends to claim entitlement for CLE units under paragraphs 42.3 or 42.4

42.6 The Council may exempt a practitioner, in whole or in part, from compliance with the condition on the practitioner's practising certificate, requiring completion of a course of continuing legal education, if -

42.6.1 the practitioner has been in practice for a period exceeding forty (40) years, and does not practise as a principal; or

42.6.2 the practitioner, by reason of the practitioner's geographical location; any physical disability, or any particular exigencies of practice, may experience particular hardship or difficulty in completing the required number of MCLE units.

42.6.3 the practitioner has been or will be absent from practice because of parenting leave, unemployment or illness;

42.6.4 the practitioner has reduced hours of practice owing to part time or casual employment;

42.6.5 the practitioner's circumstances are such that the practitioner is required to hold a practising certificate but is not engaged in legal practice.

Exemptions in relation to 42.6.3, 42.6.4 and 42.6.5 will generally be granted on a pro-rata basis.

42.7 The practitioner must, unless exempted by the Council, certify, when applying for renewal of the practitioner's practising certificate each year, that the practitioner has, within the period of twelve months ending on 31 March immediately prior to the practitioner's application for a practising certificate,

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completed ten (10) units of mandatory continuing legal education, in accordance with this Rule.

42.8 MCLE units accrued in the period 1 January – 31 March in any year may be carried forward into the following MCLE year but can only be counted in one MCLE year.

42.9 This Rule commences on 1 April 2009.

#### **History of amendments to Rule 42**

- **Amended by Council: 17 June 1999**, by inserting the words "or of the Executive Council of NSW Young Lawyers" immediately following the words "of the Council of the Law Society".  
Commencement: 1 month after date of publication in the NSW Government Gazette.  
Date of Gazettal: 9 July 1999.
- **Amended by Council: 29 January 1998**, by inserting in Rule 42.1.1 immediately following the words "discussion group", the words "or a multimedia or website based programme".  
Commencement: 1 month after date of publication in the NSW Government Gazette.  
Date of Gazettal: 6 February 1998
- **Amended by Council: 19 December 1996**. New solicitors' rules 42.4 and 42.5 made.  
Commencement: 1 month after date of publication in the NSW Government Gazette.  
Date of Gazettal: 10 January 1997
- **Amended by Council: 7 November 1996**. New solicitors' rule 42 made  
Commencement: 1 month after date of publication in the NSW Government Gazette.  
Date of Gazettal: 22 November 1996
- **Amended by Council: 19 February 2009**. New solicitors' rule 42 made  
Commencement: 1 April 2009  
Date of Gazettal: 27 February 2009

### 3. Additional Compulsory MCLE/CPD Requirement

In addition to the standard MCLE/CPD requirements, Sections 175 and 176 of the *Legal Profession Regulation 2005 (reproduced hereunder)* prohibit discrimination and require solicitors who are required to undertake mandatory MCLE/CPD, to include a component relating to the management of the practice of law dealing predominantly with the principles of equal opportunity, the law relating to the discrimination and harassment, occupational health and safety law and employment law. Solicitors must complete at least one unit every three years.

#### 175 Discriminatory conduct (including sexual harassment) prohibited

Conduct, whether consisting of an act or omission, that constitutes unlawful discrimination (including unlawful sexual harassment) under the *Anti-Discrimination Act 1977* against any person must not be engaged in:

- (a) by a local legal practitioner, in connection with the practice of law in this or any other jurisdiction, or
- (b) by an interstate legal practitioner, in connection with the practice of law in this jurisdiction

#### 176 Mandatory continuing legal education—special requirement

(1) If the holder of a local practising certificate is required to undertake continuing legal education, that continuing legal education must include a component relating to the management of the practice of law that deals predominantly with the following issues:

- (a) the principles of equal employment opportunity,
- (b) the law relating to discrimination and harassment,
- (c) occupational health and safety law,
- (d) employment law,
- (e) the management of legal practice consistent with paragraphs (a)–(d).

(2) That component is to be undertaken at least once in every compliance period, or such shorter period as may be determined by the appropriate Council, and is to comprise at least one unit in the units of continuing legal education that the holder of the practising certificate is required to undertake.

(3) In this clause:

**compliance period** means:

- (a) in relation to a person who is the holder of a local practising certificate at 2 April 2004:
  - (i) the period starting on 2 April 2004 and ending on 31 March 2007, and
  - (ii) each further period of 3 years ending on the third anniversary of the expiration of the previous period, or
- (b) in relation to a person who became or becomes the holder of a local practising certificate after 2 April 2004:
  - (i) the period starting on the date the person became or becomes the holder of a practising certificate and ending on 31 March in the year that is 3 years after the start of the period, and
  - (ii) each further period of 3 years ending on the third anniversary of the expiration of the previous period.

**continuing legal education** means continuing legal education that the holder of a practising certificate is required to undertake under the conditions attached to the certificate.

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## 4. Administration of the Rules

The following resolutions have been adopted by Council in respect to the MCLE/CPD Rules.

### **Delegation of Authority (Adopted by Council on 21 July 1994)**

In respect of Mandatory Continuing Legal Education, Council delegate to the Licensing Committee the power vested in Council to exempt solicitors from compliance with the MCLE requirements pursuant to Council's resolution of 21 March 1991.

### **MCLE Audit (Adopted by Council on 21 July 1994)**

That each year the Law Society will verify compliance with the MCLE/CPD Rules by a random audit of solicitors.

### **Specialist Accreditation (Adopted by Council on 15 September 1994)**

Completion of the specialist accreditation process by a solicitor is deemed to be a specified course of continuing legal education to the value of ten (10) MCLE/CPD units.

### **Solicitors Commencing or Recommencing Practice**

(Adopted by Council on 15 September 1994)

1. A solicitor who commences or recommences practice **on or after 1 July but prior to 1 January** in the following year is partially exempted from the MCLE/CPD Rules and shall be required to complete a specified course of continuing legal education to the value of **five (5) MCLE/CPD units**.
2. A solicitor who commences or recommences practice **on or after 1 January but prior to 1 July** in the same year is exempt from the MCLE/CPD Rules for the year ending 31 March in the year in which the solicitor commenced or recommenced practice.

### **Compliance Procedures (Adopted by Council on 15 September 1994)**

Where a solicitor has failed to comply he/she be issued a Notice to Comply under the following procedure:-

1. drawing the attention of the solicitor to the failure to comply;
2. requiring that the solicitor file with the Society within fourteen days from the date of the Notice a specific plan for making up the deficiency of MCLE/CPD units within 90 days from the date of filing the plan with the Society;

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3. in default of the filing of the plan referred to in sub-paragraph 2., or failure to comply with the plan within 90 days, the Council shall consider whether to refuse to issue, cancel or suspend the practising certificate;
  4. the Council shall have discretion to allow solicitors every opportunity to rectify any failure to comply, or if appropriate, apply for exemption;
  5. the Council impose a further condition on the practitioner's practising certificate until he or she has complied;
  6. failure to comply with the MCLE/CPD Rules is capable of being unsatisfactory professional conduct or professional misconduct.

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## **5. Notes for Course Providers**

The system of self-assessment underpinning the MCLE/CPD scheme requires individual practitioners to determine the number of units for which he/she will claim credit. The Society suggests that providers use one of the following statements on brochures in preference to making any specific reference to MCLE points or units.

### **Version A - long version**

Seminars and other CLE/CPD activities are not accredited by the Law Society of New South Wales. Under the MCLE/CPD Rules and Guidelines, if this particular educational activity is relevant to your immediate or long term needs in relation to your professional development and practice of the law, then you should claim one "unit" for each hour of attendance, refreshment breaks not included.

The annual requirement is ten (10) units each year from 1 April to 31 March.

### **Version B - short version**

If this particular educational activity is relevant to your immediate or long term needs in relation to your professional development and practice of the law, then you should claim one "unit" for each hour of attendance, refreshment breaks not included.

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## 6. Legislative Basis of MCLE/CPD

The rules in respect to Mandatory Continuing Legal Education (Continuing Professional Development) have been formulated and adopted by the Council of the Law Society as solicitors' rules under the authority of Division 2 of Part 7.5 of the Legal Profession Act 2004.

Section 82 of the Act is in the following terms:

- "(1) Practice as a solicitor is subject to the solicitors' rules.
- (2) Practice as a solicitor is not subject to any other rules, practice guidelines or rulings of the Law Society or Law Society Council."

Division 2 of Part 7.5 of the Act contains the provisions enabling the Law Society Council to make Rules with respect to practice as a solicitor; the Bar Council to make rules with respect to practice as a barrister, and the Bar Council and Law Society Council to make joint rules. Legal profession rules are binding on Australian legal practitioners (section 711).

Failure to comply with a rule does not, of itself, amount to a breach of the Act but "is capable of being professional misconduct or unsatisfactory professional conduct" (Section 498).

Legal profession rules are to be published in the Gazette, and in appropriate professional publications (Section 709).

In 1987, when the Law Society created the scheme of Mandatory Continuing Legal Education, it did so by incorporating it as a requirement for the continuance of registration. The requirement to complete CLE is a condition on a practitioner's annual practising certificate. (refer to s 50 (3) LPA 2004). It is therefore incumbent on all persons seeking to renew a New South Wales practising certificate to remain current with issues of law and legal practice by completing at least ten MCLE units of formal continuing legal education each year.

Through the MCLE/CPD scheme the Society recognises certain activities as constituting formal continuing education (for example, seminars and workshops). However, the Society encourages the profession to undertake a wide range of formal and informal activities and to regard formal education and the acquisition of ten MCLE units each year as only a minimum requirement.

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## **7. Non-exhaustive list of topics by core areas (Adapted from the National CPD Taskforce Model for Australian Lawyers)**

This non-exhaustive list of topics is also non-prescriptive and is provided for illustrative purposes. The teaching of these core areas may be done pervasively, for example, the core area of Practical legal ethics may be taught within a substantive law seminar. While providers may indicate the core area to which their CPD activity belongs, it is up to the practitioner to identify which core area it applies to from their perspective.

### **Practical legal ethics core area**

- Conflicts of interest
- How to identify an ethical issue
- Communicating direct with third parties
- Lawyer's duties to the court
- Ethics within a technical legal context
- Topics which satisfy the mandatory requirement of Regulation 176 Legal Profession Regulation 2005\*

### **Practice management and business skills core area**

- Risk management
- File management
- Cost rules
- Business planning
- Financing a practice
- Effective use of technology
- Topics which satisfy the mandatory requirement of Regulation 176 Legal Profession Regulation 2005\*

### **Professional skills core area**

- Communication and interpersonal skills
- Client interviewing
- Plain English drafting
- Negotiation and mediation skills
- Career and personal development
- Advocacy
- Legal research

*\* Any one course in the topics specified in the Regulation can only be counted towards one of the core areas.*

