



# Enhancing legal ethics education in Continuing Professional Development

**Guidance for CPD Providers**

# Contents

---

Background – why are we issuing this guidance?	1
Introduction	2
Embedding legal ethics education within non-Ethics CPD subject streams	3
Enhancing the effectiveness of legal ethics education within the Ethics CPD subject stream	5
Effective learning formats for activities within the Ethics CPD subject stream	6
Appendix A	7

---

# Background – why are we issuing this guidance?

The Royal Commission into the Management of Police Informants (“RCMPI”) was established to conduct an independent inquiry into Victoria Police’s recruitment and management of human sources (also known as police ‘informants’ or ‘informers’) who were subject to legal obligations of confidentiality or privilege.

The RCMPI submitted its final report on 30 November 2020 and made a number of recommendations relevant to the regulatory regime for the Victorian legal profession, with a particular focus on professional ethics. Recommendation 84 was that:

*(T)he Victorian Legal Services Board and Commissioner, within six months, issues clear guidance about how legal ethics education should be embedded in the four compulsory fields of continuing professional development, including through the use of practical, scenario-based learning.*

In making recommendation 84, the RCMPI reiterated the particular importance of legal ethics education, commenting that ‘lawyers can become desensitised or unquestioning of accepted ways of doing things, and stop thinking through the ethical implications of a given scenario or new issue that they have not faced before<sup>1</sup>’. The RCMPI considered that there is room to improve the current approach to legal ethics education, and that it should be routinely embedded into subject-specific continuing professional development (“CPD”) activities, rather than continuing to be delivered in isolation<sup>2</sup>.

Our recent wide-ranging and independent review of CPD for Victorian lawyers, the findings of which are outlined in the report *Getting the Point? Review of Continuing Professional Development for Victorian Lawyers*<sup>3</sup> (“*Getting the Point*”), reached similar conclusions to the RCMPI. It found that legal ethics education requires improvement, and that lawyers are most likely to benefit from legal ethics education when it is directly linked to their areas of practice and taught in an interactive, scenario-based way. *Getting the Point* suggested that we develop guidance for CPD providers on how to include legal ethics education in the Substantive Law CPD subject stream, to complement Ethics CPD subject stream activities.

This guidance responds to both RCMPI recommendation 84 and the findings of *Getting the Point*. It was developed following consultation with CPD providers, professional associations and other stakeholders with an interest or expertise in legal ethics education, who we thank for their helpful contributions.

<sup>1</sup> *Royal Commission into the Management of Police Informants* (Final Report, November 2020), p73

<sup>2</sup> Note 1, p104

<sup>3</sup> [https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD\\_Report\\_Final\\_0.pdf](https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD_Report_Final_0.pdf)

# Introduction

This guidance is for CPD providers who seek to refine and improve their current and future CPD activities. It offers some ideas about how to embed legal ethics education into CPD activities in the three non-Ethics CPD subject streams prescribed in the *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015* and *Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015* (“CPD rules”), i.e. Substantive Law, Professional Skills/ Barristers’ Skills, and Practice Management and Business Skills<sup>4</sup>, as well as providing examples of topics that lend themselves to discussion of ethical issues in those subject streams. The guidance also includes suggestions about how CPD providers can diversify and strengthen stand-alone ethics activities in the fourth mandatory CPD subject stream, Ethics and Professional Responsibility (“Ethics CPD subject stream”).

In offering this guidance we are mindful of feedback that:

- many CPD providers already embed consideration of ethical principles and issues into their non-Ethics CPD offerings, where it is relevant to do so
- some Substantive Law, Professional/Barristers’ Skills and Practice Management CPD activities are more likely than others to raise ethical issues
- CPD providers should not need to manufacture artificial ethical scenarios to include in non-Ethics CPD subject streams in order to meet this guidance, and
- efforts to embed legal ethics into non-Ethics CPD subject streams should not undermine, or create a disincentive for lawyers to attend, ethics-specific CPD activities in the Ethics CPD subject stream.

Further, we acknowledge CPD providers face pressure to deliver quality activities in time-constrained circumstances, to audiences who are cost-sensitive and concerned about meeting specific development needs.

Therefore, this guidance is intended to provide assistance to CPD providers about how they can routinely embed legal ethics education in a relevant and beneficial way, rather than seeking to mandate topics or percentages of time that must be spent on ethical principles or issues.

We consider that the RCMPI’s recommendation about embedding legal ethics education across the mandatory CPD subject streams presents an important opportunity to strengthen legal ethics education by linking topics of discussion in CPD activities to relevant ethical principles and issues. We therefore strongly encourage CPD providers to proactively consider whether a particular topic in a non-Ethics CPD subject stream raises either obvious or nuanced ethical issues and, if so, to raise (and, where possible, explore) those issues with participants in a setting-appropriate way.

We welcome feedback on the guidance and suggestions about how it could be improved, and note that further revisions to the guidance are likely following the establishment of the Ethics CPD Reference Group recommended in *Getting the Point*.

The remainder of this document is divided into the following sections:

1. Embedding legal ethics education within non-Ethics CPD subject streams.
2. Enhancing the effectiveness of legal ethics education within the Ethics CPD subject stream.
3. Effective learning modes for activities within the Ethics CPD subject stream.

<sup>4</sup> For barristers, Substantive Law, Practice and Procedure, and Evidence

# Embedding legal ethics education within non-Ethics CPD subject streams

We consulted widely to identify examples of ethical challenges and issues that CPD providers could incorporate within the non-Ethics CPD subject streams of Substantive Law, Professional Skills/Barristers' Skills, and Practice Management and Business Skills, and our suggestions are set out in *Tables 1, 2 and 3* in **Appendix A** to this guidance. Our suggestions are, of course, non-exhaustive and lawyers will still need to make their own assessment of any activity to ensure it meets their development and practice needs. We welcome further suggestions about possible topics.

Given that the duration of certain CPD activities in the Substantive Law, Professional/Barristers' Skills and Practice Management CPD subject streams may be no longer than an hour, we consider that suitable approaches to embedding legal ethics education within the non-Ethics CPD subject streams could include brief but clear advice about:

- recent relevant case law raising ethical issues, and how those issues could have been avoided
- identification of possible and relevant scenarios within the topic that could give rise to ethical issues
- important professional conduct rules that are directly or indirectly relevant to the topic being discussed
- emerging ethical issues relevant to the subject of the activity, and
- ethical risks in particular areas of law, transactions or client relationships.

This advice might only take 5 minutes to deliver, but could have a significant impact on lawyers by establishing early in the CPD activity the ethical framework within which subsequent discussions will take place. Advice could also be reiterated in the written material provided to participants.

Longer CPD activities provide a more significant opportunity for CPD providers to highlight and discuss ethical issues that are relevant to the subject matter of the activity, in a way that encourages participant engagement.

Half and full-day programs, covering all four CPD subject streams, offer CPD providers maximum opportunity to embed legal ethics education across their activities in a nuanced way that promotes deeper thinking and engagement with ethical issues raised. Programs directed at specific cohorts (for example, early career lawyers, practitioners in family, criminal or property law, law practice partners and managers) could be structured in a way to alert lawyers to ethical issues early in the program, which will be fully explored later, in scenario-based discussion groups.

## A note on CPD points

In embedding legal ethics education within non-Ethics CPD subject streams, the question arises as to whether such content should count toward the single point that lawyers are required to obtain in the Ethics CPD subject stream, e.g. in the form of half points. We do not endorse this approach.

Our view is that lawyers should undertake a variety of Ethics CPD activities during the course of a CPD year, as a means of fostering deeper engagement with the ethical dimensions of legal practice. Embedding legal ethics education in non-Ethics CPD subject streams will give lawyers greater choice and variety in this regard. However, it should supplement and build on the Ethics CPD subject stream, not seek to replace it entirely.

Stakeholder feedback suggests that it is unlikely that there will be sufficient time to include substantial content on the ethical dimension of the relevant topic in Substantive Law, Professional Skills/Barristers' Skills, and Practice Management and Business Skills CPD subject streams. Concerns have also been expressed that enabling half points to be counted may undermine the uptake of activities in the Ethics CPD subject stream.

# Enhancing the effectiveness of legal ethics education within the Ethics CPD subject stream

For CPD activities that are solely devoted to legal ethics, the following considerations are relevant:

- Basic Ethics CPD activities – that is, focussing on the rules and how they apply – are most suitable for early career lawyers or lawyers who would benefit from refreshing their core understanding at other points in their career, such as when changing roles or returning from career breaks.
- Experienced lawyers, who are familiar with the core elements of ethical practice, require activities that are more directly relevant to their practice or that focus on complex ethical issues, e.g. creating and maintaining an ethical firm culture, and ethical supervision.
- Ethics CPD activities that update participants on recent developments in legal ethics should be nuanced to account for different cohorts of lawyers (e.g. their role and practice area) and the relevant angles should be fully explored with participants.
- Ethics CPD activities should encourage and allow time for lawyers to reflect and connect content with their particular practice area and role. This could be achieved by including a set of questions to prompt lawyers to link the content to their particular circumstances.
- Disciplinary cases at VCAT or strike-off proceedings in the Supreme Court provide important clarification and context to the application of ethical rules, and it is important for lawyers to be aware of them. However, we would like CPD providers to ensure that discussion focusses on the more nuanced lessons to be learned from these cases. For example, these cases often offer important insights into the consequences of poor supervision of early career lawyers, the relationship between poor workplace culture/practices and misconduct, the risks of ‘tunnel vision’ in relation to a client’s interests, and the role self-awareness plays in avoiding ethical issues.
- As well as covering obvious or clear ethical issues, Ethics CPD activities should address the more ambiguous, nuanced and complex ethical challenges that arise in daily practice, to promote a deep and sophisticated understanding of ethical practice.
- Longer-format Ethics CPD activities allow more opportunity to engage with colleagues and stimulate deeper thinking and understanding of ethical issues and how to manage them. This may be more interesting for participants and valuable for a lawyer’s development. CPD providers are encouraged to offer longer-format Ethics CPD activities, e.g. for lawyers commencing a different or more senior role, or taking a position of ethical leadership within a law practice.
- Scenario-based discussions are a widely used approach to focus lawyers’ attention on practical examples of ethical dilemmas and are an effective way to apply ethical principles and stimulate discussion, as learning occurs during debate. It is important that scenarios are tailored to the participants’ level of experience and interest, regularly refreshed, and explicitly tied to their underpinning ethical principles and rules.
- Ethics activities should create a safe space for lawyers to express their views without fear of embarrassment or ‘getting it wrong’. Small group discussion and break-out rooms in online activities can foster greater ease and collegiality.
- Ethics activities should include information on where to locate the relevant professional conduct rules<sup>5</sup> and information about where lawyers can go for both formal advice (e.g. from their professional association) and informal help (e.g. from their own networks, colleagues and mentors) with ethical issues that arise for them.

*Table 4 in Appendix A* provides examples of ethical content suitable for various cohorts of lawyers in the Ethics CPD subject stream. Feedback to the *Getting the Point* review confirmed that lawyers benefit most from ethics education relevant to their roles and areas of practice.

<sup>5</sup> For Solicitors see the *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015* and for Barristers see the *Legal Profession Uniform Conduct (Barristers) Rules 2015*

# Effective learning formats for activities within the Ethics CPD subject stream

Generally, adult learners are more likely to benefit from learning activities if the activity is targeted at their particular needs, interests and level of experience, and is conducted using a participatory, problem solving approach. Content that is presented to an essentially passive audience is much less likely to be retained. Interactive engagement is particularly useful in legal ethics education, which involves complex and sometimes competing concepts requiring detailed exploration and nuanced guidance.

CPD providers are encouraged to develop Ethics CPD activities that are presented by knowledgeable, articulate and engaging presenters, and that maximise the benefit of legal ethics education by engaging participants in discussion and problem solving. Activities are not required to be delivered by lawyers, but rather by experts in the particular field of study. This includes experts in areas such as leadership, culture and organisational development who are skilled at applying their expertise in a legal context.

Types of CPD activity that are particularly useful in generating high-quality learning outcomes, and which are therefore particularly suitable for the Ethics CPD subject stream, are described below.

## Workshops

Workshops are usually run for smaller groups of people, over at least half a day, and are facilitated by an expert/s in the subject area. The key advantage of this format is the opportunity it presents for lawyers to interact with other participants, discuss problems and scenarios, and explore a topic in depth with experts and peers.

## Online

Online Ethics CPD activities provide significant flexibility for lawyers who are juggling competing commitments or who might otherwise have difficulty attending a face-to-face activity. Online activities are particularly important for regional lawyers, as it allows them to access more diverse training opportunities than might be locally available. Well-designed online activities can provide opportunities for interaction that are not available in face-to-face environments, and can create a safe, anonymous space for those lawyers who dislike large group settings. Non-live online activities are most effective when:

- the content includes longer-format questions and answers
- scenarios that require practical application of the concepts conveyed are explored, or
- the learning experience varies depending on answers given by the participant.

An online session that only provides slides or is a video recording of a seminar is unlikely to be engaging enough to stimulate deeper thinking for ethics activities. Similarly, quizzes that only test the learner's memory are not particularly useful forms of interactivity.

## Seminars and conferences

Many seminars and conferences that deal with particular subject areas or are aimed at particular cohorts, e.g. barristers or early career lawyers, offer activities on the ethical challenges of the topic or role that are likely to be more relevant to participants' daily practice. Seminars and conferences that employ break-out sessions, or that arrange participants at separate tables for group discussion (rather than a lecture hall layout) are considered optimal.

Engagement with an expert panel as part of an activity is also a useful way to increase interactivity and stimulate discussion.



# Appendix A

The following tables are non-exhaustive and are intended as a guide only; CPD providers are encouraged to explore additional or alternative issues.

The columns headed 'Ethical issues for exploration' highlight potential or emerging ethical issues.

**TABLE 1: Ideas about how to embed legal ethics in Professional Skills CPD activities**

Professional Skills CPD subject stream		
Example topics	Common ethical issues	Ethical issues for exploration
<b>Client communication skills</b>	<ul style="list-style-type: none"> <li>• Giving clear advice to foster client understanding</li> <li>• Manner and tone – avoiding rudeness</li> <li>• Managing challenging clients</li> <li>• Maintaining objectivity</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding client vulnerability</li> <li>• Recognising and addressing unconscious bias</li> <li>• Recognising family violence</li> <li>• Assisting clients from CALD backgrounds</li> </ul>
<b>Negotiation/mediation skills</b>	<ul style="list-style-type: none"> <li>• How to be respectful with opponents and not mislead</li> </ul>	<ul style="list-style-type: none"> <li>• Courtesy and demeanour</li> <li>• Appropriate use of the professional complaints process</li> </ul>
<b>Advocacy</b>	<ul style="list-style-type: none"> <li>• Proper behaviour before courts and when dealing with opponents and witnesses</li> <li>• Admissibility of evidence</li> <li>• Prosecutor's duties</li> <li>• Duty not to mislead the court and correct errors</li> <li>• Dealing with vexatious litigants</li> </ul>	<ul style="list-style-type: none"> <li>• Ethical issues in the online environment</li> </ul>

## Professional Skills CPD subject stream

Example topics	Common ethical issues	Ethical issues for exploration
<b>Will drafting</b>	<ul style="list-style-type: none"> <li>• Client capacity</li> <li>• Multiple family members</li> <li>• Proper charging clauses (costs and commission)</li> <li>• Gifts and conflicts of interest</li> </ul>	<ul style="list-style-type: none"> <li>• Family violence issues</li> <li>• Potential elder abuse</li> </ul>
<b>Dealing with unrepresented parties</b>	<ul style="list-style-type: none"> <li>• Not taking undue and improper advantage</li> <li>• Duty to the court</li> <li>• Prosecutors' duties</li> </ul>	
<b>Drafting affidavits</b>	<ul style="list-style-type: none"> <li>• Avoiding influencing/manipulating witnesses</li> </ul>	<ul style="list-style-type: none"> <li>• Exercising forensic judgement</li> </ul>
<b>Time management</b>	<ul style="list-style-type: none"> <li>• Acting in a client's best interests</li> <li>• Properly assessing likely work involved in a matter</li> <li>• Fair and reasonable costs</li> </ul>	<ul style="list-style-type: none"> <li>• Managing health and wellbeing for prevention of ethical issues</li> </ul>
<b>Taking instructions</b>	<ul style="list-style-type: none"> <li>• Informed consent</li> <li>• Duty to the court</li> <li>• Being clear about who your client is and who you are taking instructions from – particularly where third party payers are involved</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding cultural diversity</li> </ul>
<b>Witness statements</b>	<ul style="list-style-type: none"> <li>• Avoiding influencing witnesses</li> <li>• Maintaining integrity of evidence</li> <li>• Undue influence of client and duty to the court</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding cultural diversity</li> <li>• Family violence issues</li> <li>• Intimidation</li> </ul>

**TABLE 2: Ideas about how to embed legal ethics in Practice Management CPD activities**

Practice Management CPD subject stream		
Example topics	Common ethical issues	Ethical issues for exploration
<b>Costing/billing</b>	<ul style="list-style-type: none"> <li>• Communication with clients</li> <li>• Dealing with billing complaints</li> <li>• Tax obligations</li> <li>• Fair and reasonable costs</li> </ul>	<ul style="list-style-type: none"> <li>• Alternative billing methods to accommodate vulnerable clients</li> </ul>
<b>Risk management</b>	<ul style="list-style-type: none"> <li>• Systems and processes to manage risk effectively</li> <li>• File management – including the keeping of proper file notes</li> <li>• Avoiding conflicts between clients</li> </ul>	<ul style="list-style-type: none"> <li>• Customer service focus</li> <li>• Recognising the risks of acting in a matter without sufficient expertise</li> </ul>
<b>Cyber risk</b>	<ul style="list-style-type: none"> <li>• Legal professional privilege and client confidentiality</li> <li>• How to safely and validly ascertain client instructions about the release of funds</li> <li>• Managing a practice in a risk-averse way</li> </ul>	<ul style="list-style-type: none"> <li>• Managing a cyber-fraud incident</li> <li>• Whose responsibility is it to understand cyber threats?</li> </ul>
<b>Organisational culture and leadership</b>	<ul style="list-style-type: none"> <li>• Values that inform ethical leadership and ethical workplace culture</li> <li>• Cultural awareness, inclusion and diversity issues</li> </ul>	<ul style="list-style-type: none"> <li>• Designing systems to ensure that ethical concerns in an organisation can be confidently raised and responded to appropriately</li> </ul>
<b>Workplace behaviour</b>	<ul style="list-style-type: none"> <li>• Preventing and responding to workplace conflict, including bullying, harassment and discrimination, etc.</li> <li>• Consequences of failing to prevent and respond to workplace conflict – mistakes, client loss, etc.</li> <li>• Understanding of OH&amp;S and EEO obligations and implications</li> </ul>	<ul style="list-style-type: none"> <li>• Implications of engaging in bullying, harassment and discrimination for a person’s professional integrity</li> <li>• Promoting situation-appropriate bystander action</li> </ul>
<b>Technology skills</b>	<ul style="list-style-type: none"> <li>• Avoiding (or dealing with) inadvertent disclosure of confidential information/ client confidentiality</li> <li>• Maintaining competence when using technology and working remotely</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding metadata</li> <li>• Ethical employer monitoring</li> <li>• Appropriate use of social media</li> </ul>

## Practice Management CPD subject stream

Example topics	Common ethical issues	Ethical issues for exploration
<b>Mental health and wellbeing</b>	<ul style="list-style-type: none"><li>• Implications of poor mental health on ability to foresee and deal with ethical challenges</li></ul>	<ul style="list-style-type: none"><li>• Cutting corners and disciplinary issues</li><li>• Self-management</li></ul>
<b>Supervision</b>	<ul style="list-style-type: none"><li>• Mentoring ethical development</li><li>• Recognising and addressing skill limitations</li></ul>	<ul style="list-style-type: none"><li>• Enabling early career lawyers</li></ul>
<b>Trust account management</b>	<ul style="list-style-type: none"><li>• Requirements of the Legal Profession Uniform Law General Rules 2015 for trust account management</li><li>• Mandatory reporting of trust account deficiencies</li></ul>	<ul style="list-style-type: none"><li>• Holding trust monies for both parties to litigation</li></ul>

**TABLE 3: Ideas about how to embed legal ethics in Substantive Law CPD activities**

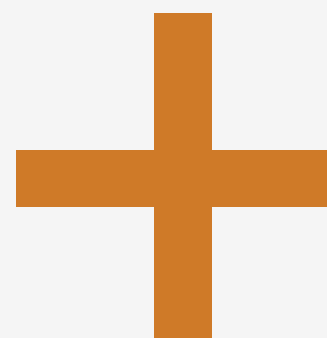
Substantive Law CPD subject stream		
Example topics	Common ethical issues	Ethical issues for exploration
<b>Civil litigation</b>	<ul style="list-style-type: none"> <li>• Representation in court proceedings, negotiations and settlements</li> <li>• Duty to the court</li> <li>• Conflicts in acting for multiple parties</li> <li>• Compliance with undertakings</li> <li>• Compliance with the <i>Civil Procedure Act 2010</i></li> <li>• Fees and charges vs. quantum of client’s claim</li> <li>• Properly instructing and communicating with expert witnesses</li> <li>• Communications with opposing lawyers (avoiding being discourteous, etc.)</li> <li>• Proper basis for issuing proceedings</li> </ul>	<ul style="list-style-type: none"> <li>• Relationships with judicial officers</li> <li>• Meaning and effect of going ‘on the record’</li> </ul>
<b>Criminal law</b>	<ul style="list-style-type: none"> <li>• Representation of clients in custody or who are subject to investigation, court proceedings and negotiations</li> <li>• Lawful vs. unlawful instructions</li> <li>• Duty to the court</li> <li>• Prosecutors’ duties</li> <li>• Conflicts of interest</li> <li>• Understanding fitness to plead and stand trial</li> <li>• Confidentiality and exceptions</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding family violence</li> <li>• Scope/limits of legal professional privilege</li> <li>• Creating, maintaining and enforcing professional boundaries</li> </ul>
<b>Family law</b>	<ul style="list-style-type: none"> <li>• Representation in court proceedings, negotiations and settlements</li> <li>• Caveats</li> <li>• Instructions and challenging clients</li> <li>• Lawyer / client boundaries (becoming too invested in client matters)</li> <li>• Fair and reasonable costs</li> </ul>	<ul style="list-style-type: none"> <li>• Family violence and parenting</li> <li>• The role of an independent children’s lawyer</li> <li>• Power imbalances in drafting binding financial agreements</li> <li>• Coercive control</li> </ul>

## Substantive Law CPD subject stream

Example topics	Common ethical issues	Ethical issues for exploration
<p><b>Elder law, including wills, estates and powers of attorney</b></p>	<ul style="list-style-type: none"> <li>• Client capacity and conflicts of interest between clients</li> <li>• Release of documents</li> <li>• Solicitor as executor issues</li> <li>• Acting for multiple family members</li> <li>• Witnessing of documents</li> <li>• Undue influence (are instructions actually coming from the client?)</li> <li>• Record keeping – file notes of instructions in relation to Wills and POA</li> <li>• Gifts and conflicts of interest</li> <li>• Charging fair and reasonable costs</li> </ul>	<ul style="list-style-type: none"> <li>• Family violence</li> <li>• Elder abuse</li> <li>• Conflicts between multiple executors</li> </ul>
<p><b>Commercial law</b></p>	<ul style="list-style-type: none"> <li>• Directors’ duties</li> <li>• Joint guarantors on mortgages</li> <li>• Conflict in acting for vendor and purchaser in sale of a business</li> <li>• Duty not to take advantage of opponent’s error</li> <li>• Disclosure obligations</li> <li>• Letters of demand obligations</li> <li>• Promoter penalty tax obligations</li> </ul>	<ul style="list-style-type: none"> <li>• Conflicts and identifying personal interest</li> <li>• Insurance duty of utmost good faith</li> <li>• Ceasing to act</li> <li>• Acting for joint venture partners</li> </ul>
<p><b>Migration law</b></p>	<ul style="list-style-type: none"> <li>• Acting for multiple clients</li> <li>• Client documents</li> </ul>	<ul style="list-style-type: none"> <li>• Client vulnerability</li> </ul>

## Substantive Law CPD subject stream

Example topics	Common ethical issues	Ethical issues for exploration
<b>Property law</b>	<ul style="list-style-type: none"> <li>• Client capacity</li> <li>• Compliance with undertakings</li> <li>• Know your limitations – providing clear advice on tax implications (or referring client to accountant/ financial advisor)</li> <li>• Caveats – know the law, when to lodge and when not to lodge</li> <li>• Properly witnessing mortgage documents</li> <li>• Ascertaining identity of contractual parties</li> <li>• Conflicts of interest (between clients and between lawyer and client)</li> </ul>	<ul style="list-style-type: none"> <li>• Elder abuse</li> <li>• Family violence</li> <li>• Coercive control</li> <li>• Acting for all parties in intra family transfers</li> <li>• Subject to finance clauses and conflicts</li> </ul>
<b>Personal injury law</b>	<ul style="list-style-type: none"> <li>• Assessing capacity</li> <li>• Conflicts of interest between former and current clients</li> <li>• Managing client expectations</li> <li>• Managing conflicts in class action litigation and with institutional clients</li> </ul>	<ul style="list-style-type: none"> <li>• Impact of chronic pain on competent instructions</li> <li>• Using private investigators</li> </ul>
<b>Taxation law</b>	<ul style="list-style-type: none"> <li>• Conflicts between client and lawyer’s own interest</li> <li>• Managing client expectations</li> </ul>	<ul style="list-style-type: none"> <li>• Promoter penalty laws and the client’s best interest</li> </ul>



**TABLE 4: Ethical issues relevant to specific legal roles (for Ethics-specific CPD streams)**

Lawyer role / level	Common ethical issues	Ethical issues for exploration
<b>Government</b>	<ul style="list-style-type: none"> <li>• Client identification</li> <li>• Privacy and data protection</li> <li>• Political or management pressure</li> <li>• Human rights</li> <li>• Model litigant rules</li> <li>• Scope of advice</li> </ul>	<ul style="list-style-type: none"> <li>• Interface with public sector values</li> <li>• Whistle blowing and IBAC</li> </ul>
<b>Corporate counsel</b>	<ul style="list-style-type: none"> <li>• Maintaining independence and impartiality</li> <li>• Who is the client?</li> <li>• CEO and Board conflict</li> <li>• Acting for related entities</li> <li>• Corporate tax obligations</li> <li>• Scope of advice</li> </ul>	<ul style="list-style-type: none"> <li>• Avoiding corporate group think</li> <li>• Working with senior management</li> <li>• Ethical issues in a due diligence process</li> <li>• Corporate values</li> <li>• Being the ethical voice of the corporation</li> <li>• Regulatory and professional disclosure obligations</li> </ul>
<b>Legal aid and community sector</b>	<ul style="list-style-type: none"> <li>• Conflicts of interest and provision of short term legal services</li> <li>• Limitations on assistance due to insufficient resources</li> <li>• Management of high conflict clients</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding financial control</li> <li>• Multi-disciplinary practice and mandatory reporting obligations</li> <li>• Taking instructions and understanding how trauma informs client perspective, behaviour and actions</li> </ul>





Lawyer role / level	Common ethical issues	Ethical issues for exploration
<p><b>Private practice</b></p>	<ul style="list-style-type: none"> <li>• Personal interest conflict</li> <li>• Other conflicts of interest and acting in the best interests of a client</li> <li>• Third party payers</li> <li>• Providing clear costs disclosure</li> <li>• Charging fair and reasonable costs</li> <li>• Dealing properly with trust monies (general management)</li> <li>• Assessing capacity</li> <li>• Proper record keeping</li> <li>• Courteous communication with other lawyers and the regulator</li> <li>• Cyber security</li> <li>• Adhering to statutory time limits</li> <li>• Supervision of non-lawyer employees or early career lawyers</li> <li>• Complying with other professional obligations, e.g. <i>Fair Work Act 2009</i>, OHS obligations, ATO obligations</li> <li>• Failing to provide competent advice (engaging in work outside level of knowledge or expertise)</li> <li>• Misleading advertising</li> <li>• Maintaining professionalism while working remotely – interaction with client and supervision of all staff</li> <li>• Coping when life becomes stressful</li> <li>• Maintaining professional boundaries when acting for family and friends</li> <li>• Maintaining professional boundaries with clients</li> </ul>	<ul style="list-style-type: none"> <li>• Ethical leadership and establishing organisational ethics and values</li> <li>• Creating a “client-centric” culture without engaging in tunnel vision</li> <li>• Confidentiality and remote working</li> <li>• Knowing your limits and saying “no”</li> </ul>

Lawyer role / level	Common ethical issues	Ethical issues for exploration
<b>Barrister</b>	<ul style="list-style-type: none"> <li>• Relationship with your instructing solicitor</li> <li>• Complying with tax obligations</li> <li>• Working with expert witnesses</li> <li>• Cyber security</li> <li>• Courteous communication with other lawyers</li> <li>• Record keeping – time recording (particularly relevant in direct brief matters)</li> </ul>	<ul style="list-style-type: none"> <li>• Vulnerability of direct access clients</li> <li>• Ethical leadership</li> </ul>
<b>Senior lawyer</b>	<ul style="list-style-type: none"> <li>• Appropriate supervision of early career lawyers</li> <li>• Leading by example and creating a positive work culture</li> </ul>	<ul style="list-style-type: none"> <li>• Ethical leadership</li> </ul>
<b>Early career lawyer</b>	<ul style="list-style-type: none"> <li>• Identifying ethical issues</li> </ul>	<ul style="list-style-type: none"> <li>• Dealing with inadvertent disclosure and other errors early: speaking up and seeking guidance</li> <li>• Conduct outside of legal practice</li> </ul>





Victorian Legal Services  
**BOARD + COMMISSIONER**

Level 27, 500 Bourke  
Street Melbourne  
Victoria 3000

**Telephone**

03 9679 8001

**Local call cost**

1300 796 344

**Fax**

03 9679 8101

**Website**

[www.lsbc.vic.gov.au](http://www.lsbc.vic.gov.au)

