

New thinking on continuing professional development

Discussion paper

December 2022

Acknowledgment of Country

We acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas, and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families, and communities, towards improved economic, social, and cultural outcomes.

Artwork:

Regeneration by Josie Rose



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1 Introduction

1.1 This discussion paper

Continuing professional development (CPD) can benefit consumers by supporting high levels of service quality and safety. It helps occupational licensees maintain skills and keep abreast of changes. CPD may also increase consumer confidence and make it easier to find suppliers of high-quality services.

CPD, however, also creates costs, in time out of the workplace and fees paid for courses. These costs result in higher prices for consumers. There are ongoing concerns about the quality and relevance of mandatory CPD, including reports of ‘tick and flick’ training, limited compliance, and a lack of relevance. IPART (2014) and the NSW Productivity Commission White Paper (2021) recommended that mandatory CPD be reviewed and reformed where the costs outweigh the benefits.

The NSW Productivity Commission is releasing this discussion paper as the first step towards delivering the 2021 White Paper recommendation. The next steps are:

- Development of a consistent **CPD framework** that can be applied to determine whether existing or proposed mandatory CPD schemes are justified, and to ensure their design is efficient and effective.
- Occupational **deep dives** to test and refine the draft framework. Nurses, lawyers, builders,¹ and property agents² will be examined. Each deep dive will include stakeholder consultation, survey research, and identification of reform opportunities.
- **Stakeholder feedback** on the draft CPD framework and other issues outlined in this paper.
- Release of a **final report** and **final framework** in mid-2023, drawing on stakeholder feedback and findings from the occupational deep dives.

The final report and final framework will inform future regulatory reviews for mandatory CPD schemes undertaken by the NSW Government. They may also inform national review processes and broader skills policy development.

1.2 Skills and the 21st century workforce

The way we work is changing

Digital technology and automation are changing the 21st century workforce. Complex problem-solving skills, inter-personal skills, and technical skills are becoming more important and jobs requiring physical abilities less important (Productivity Commission, 2022). Non-linear moves between professions and industries throughout a working life are becoming normal. Task-based employment models of the past have shifted towards employee wellbeing, flexible ways of working, and a skills-based approach to hiring and promoting staff. Employees, employers, and policy makers must grapple with these problems over the coming decade.

¹ Includes swimming pool builders.

² Includes agents with a Class 1 or Class 2 licence, or a certificate of registration.

Skills and labour shortages have been a long-term challenge for the Australian economy but have become more acute in the wake of COVID-19. The 2022 skills priority list (National Skills Commission, 2022) found that 31 per cent of occupations are facing shortages. Health and education professions, as well as trades, are of particular concern. Labour shortages cause disruption and create a handbrake on growth and productivity. Employers struggle to find workers with the right skills to fill vacancies, and consumers struggle to access the services they need.

Skills and labour market flexibility can improve our standard of living

Skills policy is one of the most important levers available to support productivity growth. It helps individuals attain job satisfaction, income, and wellbeing goals. Labour market flexibility makes the workforce more resilient and able to adapt to changing economic circumstances. A higher level of labour mobility is also correlated with a higher level of average wage growth (Deutscher, 2019).

For our skills and training system and labour market to work effectively:

- mobility barriers should be as low as possible so that workers can find and change jobs easily
- regulation must appropriately protect workers and consumers from harm
- education and training must be high quality and provide flexible career pathways
- employers and employees must be provided with the right incentives to undertake the right amount of training, at the right time.

Most, and in some cases all, workplace learning occurs informally on the job (Clardy, 2018). Government has a clear role to:

- ensure that mandatory requirements are evidence based and proportional to the associated risks
- ensure that continuing education supports skills formation, labour market flexibility and mobility.

1.3 Continuing education needs to adapt

Little has changed in decades

Occupational regulation is a complex policy area. Mandatory CPD is set through a mixture of Commonwealth and state regulation and industry codes. The amount, and level of prescription, in mandatory requirements varies considerably across professions (see Appendix A). Some schemes have been reviewed and incremental changes made. Online learning has also become more prevalent. Schemes generally still require practitioners to count hours or units, which may, or may not, correlate with any useful learning.

System incentives make change difficult. For example:

- Government may unnecessarily use CPD to manage minor risks. Mandating CPD without consideration of the appropriateness of government intervention (discussed in section 3) can lead to unnecessary costs being passed onto consumers.
- Some incumbents may have an interest in introducing, maintaining, or increasing mandatory CPD. This may occur where incumbents receive fee revenue for the delivery of CPD at the same time as setting industry CPD requirements or influencing government in the setting of standards. This could be perceived as a conflict and has the potential to limit competition in, and the quality of, training.
- Incumbents can have an incentive to keep barriers to entry high. Mandatory CPD is not a barrier to entry *per se*. It does, however, increase the resources required to remain in a profession, and

potentially impact its composition. It can result in qualifications turning ‘cold’ more quickly, with a potentially steep re-accreditation path.

There are opportunities to do more with CPD

CPD forms a significant component of the ongoing training that happens in our economy each year. Many professions currently facing skills and labour shortages, such as teachers, general practitioners, and nurses, are required to complete mandatory CPD units or hours at some cost to their employers and the economy. Yet, little, if any, attention has been paid to CPD by policymakers in the context of skills and workforce challenges.

A traditional economic approach would say that CPD should only be mandatory where it addresses an information failure or externality, and the benefits of intervening has been shown to outweigh the costs. This work on CPD, however, is thinking more broadly about how CPD can better work with our skills and training system to meet current and future challenges.

1.4 We need to discuss and test new ideas

Feedback on this paper may be sent to productivityfeedback@treasury.nsw.gov.au by **28 February 2023**. Feedback may specifically address the issues raised in this paper or put forward other relevant information and ideas.

Discussion questions:

1. What is the role of CPD: skill maintenance or upskilling?
2. What is the right balance between initial education requirements and CPD? How could CPD be used to facilitate progression through graduated occupational licencing?
3. How could CPD be used to enable upskilling and improved labour market flexibility? What barriers must be overcome?
4. How can digital technology be better used to facilitate and deliver CPD?
5. Does the framework appropriately guide regulators as to whether mandatory CPD is the right policy?
6. What design features should be included in the framework to ensure CPD is well designed and maximises net benefits?

2 CPD and our skills system

2.1 What is the role of CPD?

Mandatory CPD requirements are broad ranging

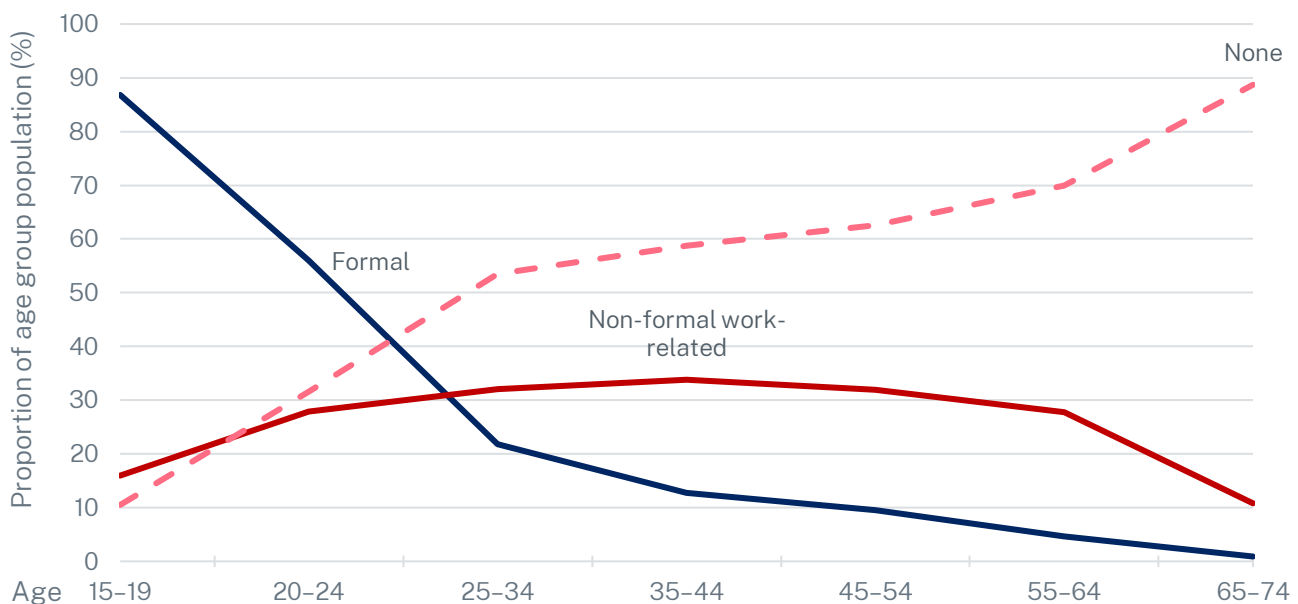
In Australia nearly 560,000 teachers, 104,000 lawyers, and 110,000 real estate agents are required to complete mandatory CPD³, typically of between 10 to 20 hours each year. In NSW alone, around 500,000 workers are employed in professions subject to mandatory CPD. There is no comprehensive dataset that captures the number and type of practitioners required to complete CPD each year. The NSW Productivity Commission is collating this data and will include analysis in the final report.

Mandatory CPD varies widely. Some schemes require participation in course based, collaborative learning, others award points for taking on an apprentice or mentee, others encourage private study and reflection. CPD can be mandatory or voluntary, government or industry-led, and focused on independent learning, prescribed practitioner-led learning, or a mixture⁴ (see Appendix A).

Lifelong learning is of growing importance

Skills formation gives people better job security, income, satisfaction, and overall quality of life (Productivity Commission, 2017). Lifelong learning is critical to stable employment, wages, and the adaptability of the economy (Productivity Commission, 2020). Its importance will grow in future years, as technologies and labour market structures change and require new and updated skills.

Figure 1 Participation in learning during any part of 2020-21 by age group



Source: NSW PC, constructed from ABS (Work-Related Training and Adult Learning, Australia, 2020-21, table 1).

³ NSW Productivity Commission Analysis, based on ABS 2016 Census - Employment, Income, and Education (table: INDP - 4-digit level by State). See Appendix A for further details.

⁴ For example, solicitors are required to complete ten units, of which four must come from a set of prescribed topics.

Formal learning primarily takes place early in life through schools, universities, and registered training organisations (see Figure 1). On the job training, however, is no less important. It can provide flexible, targeted skills development, in particular for skills not easily attained in a classroom. The OECD (2010) has found that Australia's systems for recognising non-formal learning, that is, structured learning outside of formal institutions, are limited.

Is CPD about maintaining skills or upskilling?

Mandatory CPD forms a significant part of both formal and non-formal on the job learning. Policy makers, however, have tended to view CPD as a compliance activity, focussed on maintaining a base level of skill or keeping abreast of changes. On this narrow view of CPD, reform should focus on making mandatory CPD schemes work better, by tightly targeting mandatory requirements and ensuring they are efficient and effective. These opportunities are examined further in section 3.

On a broader view, CPD is part of lifelong learning with a role to play in our skills and training system, and reform should consider how CPD can more effectively meet skills and labour challenges. This must include consideration of how components of the system, including CPD and initial education, could better work together. Whether the objective of CPD is about maintaining skills, or improving them is, however, unclear in some instances. For example, teachers in NSW must complete CPD that may go beyond maintaining base level competency (see Box 1).

Box 1: CPD for teachers in NSW

Some of the most burdensome CPD requirements in NSW apply to teachers. To achieve the most basic accreditation, Proficient Accreditation, teachers are required to undertake a minimum of 100 hours of CPD every five years, of which 50 hours must be from NESA accredited courses across 4 priority learning areas. To maintain more advanced accreditation at Highly Accomplished or Lead Teacher levels, teachers must complete a minimum of 20 hours of NESA accredited courses at their more advanced level and a further 20 hours of professional commitment activities that “support the professional development and practice of colleagues in a teacher’s school/service and/or wider community” (NESA, 2020). In addition, teachers maintaining accreditation at the higher levels are also required to complete a report that must:

- provide an overview of the context and background of their practice, including at least three examples of practice that demonstrate the impact of their practice on child/student learning outcomes and the practice of colleagues
- describe how professional development activities have been used to inform and improve their practice over the maintenance period
- nominate between three and five referees, one of whom must be their current principal/service director (or line manager in the case of principals/service directors maintaining at the higher levels), who can attest to their currency of knowledge and depth of practice throughout the maintenance period
- be between 2,500 and 5,000 words in total
- be completed in the final three months of their maintenance period (NESA, 2020)
- be reviewed by the principal (or service director if the teacher is a principal).

In contrast, conveyancers in NSW undertake five hours of CPD per year, which may include informal activities such as group learning, writing for legal publications, and private study. There are no prescribed topics (other than that the learning is relevant to conveyancing work) and surplus CPD hours can be carried forward 12 months. This approach imposes a low burden, however, may bring limited benefits.

Discussion question:

1. What is the role of CPD: skill maintenance or upskilling?

2.2 Opportunities to better integrate with the skills and training system

The recently released NSW Productivity Commission (2022) report, *Adaptive NSW: how embracing tech could recharge our prosperity* identifies ways policymakers can create a flexible and responsive training system. These include:

- lowering barriers to entry by combatting ‘credentialism’
- creating a system for continuous improvement in skills
- creating smooth, flexible pathways for multiple career transitions
- using data and industry insights to keep training relevant and responsive.

Striking the right balance: credentialing, not credentialism

Qualifications, or credentials, ensure tradespeople and professionals have the right skills, capabilities, and knowledge to effectively perform their role and build public trust. As recently highlighted by the NSW Productivity Commission (2022), when training and qualification requirements become unnecessarily onerous, expensive, or lengthy, credentialing becomes ‘credentialism’. When credentialism makes it harder to enter a profession and harder to change jobs, it can close off opportunities for aspirants into a profession. In turn, this makes it harder for employers to find the skills they need, increases costs for the community, and reduces satisfaction for workers.

Initial education requirements, licencing requirements and CPD requirements can contribute towards credentialism. Often qualifications are set at the national level and occupational licencing is the responsibility of the State. A lack of coordination between the State and national regulation can make it difficult to strike the right balance. In this regard, the Commonwealth Productivity Commission (2022) recently noted there is a need for innovation, competition, and informed student choice.

One potential area for innovation is recalibrating the balance between initial education and continuing education, by designing CPD to complement initial education and make entry into an occupation faster and smoother. For example, graduated licensing could initially involve a restricted or provisional licence, with scope for CPD to develop capability towards a less restricted or advanced occupational licence. Box 2 and Box 3 provide some examples.

Box 2: Pathways to becoming a licensed renovator or builder

A kitchen, bathroom, and laundry renovation licence is required to undertake residential renovation work valued over \$5,000 in labour and material. This licence is limited to the renovation of kitchens, bathrooms and laundries and does not include work affecting the core structure of a building or specialist work. Individuals can apply for a renovation licence with a qualification in either carpentry, joinery, plumbing or wall and floor tiling and without having to obtain a full builder’s licence to undertake the same work.

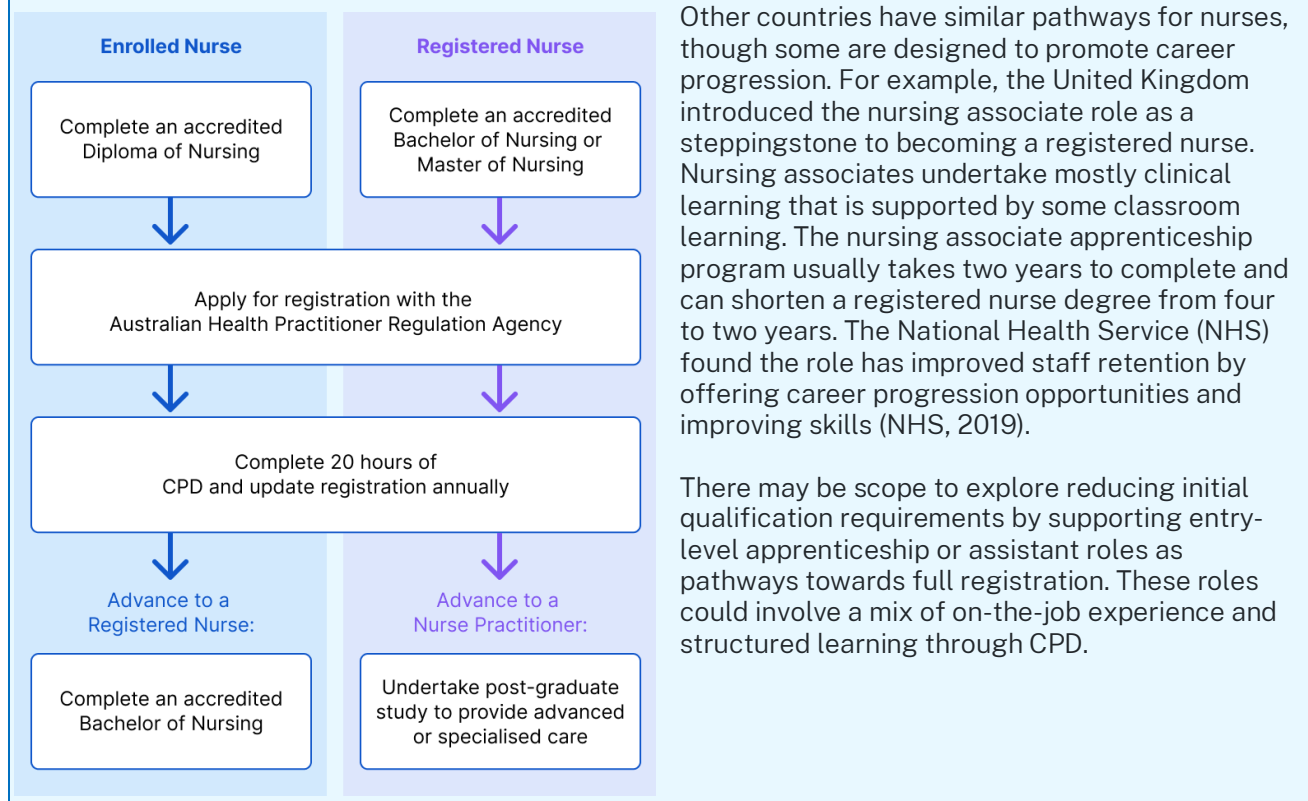
This demonstrates how occupational licensing and initial education can create simpler pathways towards undertaking certain work. There could be further opportunity to enable practitioners with a renovation licence to obtain a builder’s licence, using CPD to undertake blocks of the required training.

Box 3: Pathways to becoming an Enrolled Nurse

There are two levels of registration for nurses in Australia (see Figure 2). Enrolled nurses (ENs) work under the direction of registered nurses (RNs) to provide nursing support in health, aged care, and community settings. Registered ENs must complete a Diploma of Nursing and can only advance to a RN after completing a Bachelor of Nursing.

A third category of nursing, assistants in nursing (AIN) perform lower-skilled tasks which require less training. AINs require a Certificate III Health Services Assistance. There is no direct pathway for AINs to advance to an EN or RN through CPD or on-the-job training, as a separate Diploma or Degree is required.

Figure 2: Nursing pathways in Australia



Discussion question:

2. What is the right balance between initial education requirements and CPD? How could CPD be used to facilitate progression through graduated occupational licencing?

Supporting continuous upskilling and flexible career pathways

A third of essential skills by 2025 will consist of technological skills not yet regarded as crucial in today’s job requirements (Li, 2022). As a result, around four in ten workers will require reskilling every six months or less by 2025 (World Economic Forum, 2020) and 97 per cent of Australian companies will seek to retrain their existing employees to meet shifting skill needs (World Economic Forum, 2020). Despite the importance of upskilling and reskilling, the bulk of Government funding favours full qualifications and training needed to meet entry level requirements.

Many CPD schemes take a credit-based approach to monitoring CPD activity, where one credit is awarded for each hour of learning time spent. Measuring inputs may redirect the focus from maintaining competence and learning new skills to simply meeting the target. A more outcomes-focused approach to CPD could ensure learning addresses a gap between current personal competencies and future practices and skills. Rather than a credit-based system, documentation of learning activities could help demonstrate and assess progress towards professional development.

Micro-credentials or micro-skills may offer a fast and practical way for workers to upskill. They allow new skills to be applied in a much shorter timeframe than a traditional degree or certification. They are 'stackable', providing pathways to further study or credit towards future degrees, however there may be barriers to the stacking of credentials. There may also be barriers preventing the uptake of micro-credentials as a legitimate CPD learning activity. For example, a limited number of relevant courses available or accredited educational providers who offer these courses, or concerns over the quality and breadth of learning they provide.

Discussion question:

3. How could CPD be used to enable upskilling and improved labour market flexibility? What barriers must be overcome?

Use data and technology to keep training accessible, relevant, and responsive

Digital learning is becoming a delivery mechanism of choice for many. Digital learning may also present opportunities to improve accessibility and efficiency of delivery, and to collect and analyse data to support evaluation and continuous improvement in the quality of learning.

The COVID-19 pandemic greatly accelerated adoption of digital technologies in the CPD space (see Box 4). Restrictions on travel and in-person events forced industries and CPD providers to adapt and innovate resulting in a wider uptake of web-conferencing and online learning modules (Dean, 2020). For digital and web based CPD to be effective, however, it needs to be interactive, engaging, and accessible (Blake, Bermingham, Johnson, & Tabner, 2020). Online learning can be delivered to large numbers at a low cost and can make activities less costly and more convenient for attendees, and reduces the use of tick box networking events as recordable CPD.

Box 4: Informal CPD at the Princess Alexandra Hospital Radiation Oncology Department, Brisbane during COVID-19

Prior to the COVID-19 pandemic radiation therapists (RTs) at the Princess Alexandra Hospital could, if all sessions were attended, reasonably expect to complete 3 to 4 hours of learning and engagement each week. These sessions included peer-reviewed chart rounds, mandatory or practical training coverage, research updates, and team meetings. When the pandemic struck in early 2020 the department quickly pivoted to ensure the full activity calendar was moved to online offerings utilising a suite of online tools to enable video conferencing, online newsletters, and web-based social activities. Besson et al (2020) conducted a review of the changes and found a strong level of support and engagement with the new program among RTs, and that the time spent incorporating new methods of delivering CPD has added elements of flexibility and resilience to the program.

Digital technologies provide a valuable opportunity to use data and insights to identify online learning trends or potential gaps in course content relevant to specific skills and knowledge. Using this data can ensure CPD course content is continuously updated to meet changing learning needs and preferences and better target topics where there may be inadequate content. For example, in the building sector data is collected through building inspections and customer complaints to identify areas where practitioners are unaware of mandatory standards. This data is collected and forms the basis for updating CPD courses that target the specific gaps.

Data can also be used to record individual learning. For example, education passports provide a digital record of a learner's achievements and accomplishments throughout their learning journey, which may enable prior learning and CPD activities to be recognised when moving between professions. There have been many different models proposed. For example:

- A model that tracks numerous low stakes assessments for medical students and professionals which is then analysed to identify areas of strength and where improvements can be made (Warm, et al., 2022).
- NSW has introduced the Education Passport for schools that track the educational achievement, extracurricular involvement, and other similar elements with the goal of providing students, employers, and education institutions with a verifiable record of learning involvement.

While there are potential benefits to an education passport several concerns must be addressed including ensuring data security, minimising unintended consequences (stigmatising certain learners such as those from disadvantaged backgrounds), and ensuring the program has a clear goal to reduce the risk of it going unused.

An alternative to reporting on CPD to regulators is to expand on the Service NSW digital licence for drivers and registered occupations. The Service NSW digital licence acts as a verifiable record of a tradespersons licence and qualifications. The digital licensing could be expanded to all professionals and include CPD compliance for licence holders, providing consumers with greater transparency and information on a persons' qualifications, capabilities, and compliance.

Enforcement may also be hindered by onerous administrative requirements. There may be potential to explore initiatives to better align CPD with licensing systems. For example, if professionals could renew their licence and pay for CPD requirements at the same time, this may incentivise compliance with CPD.

Discussion question:

4. How could digital technology be better used to facilitate and deliver CPD?

3 Ensuring mandatory CPD is targeted, efficient, and effective

3.1 Why is a framework for CPD required?

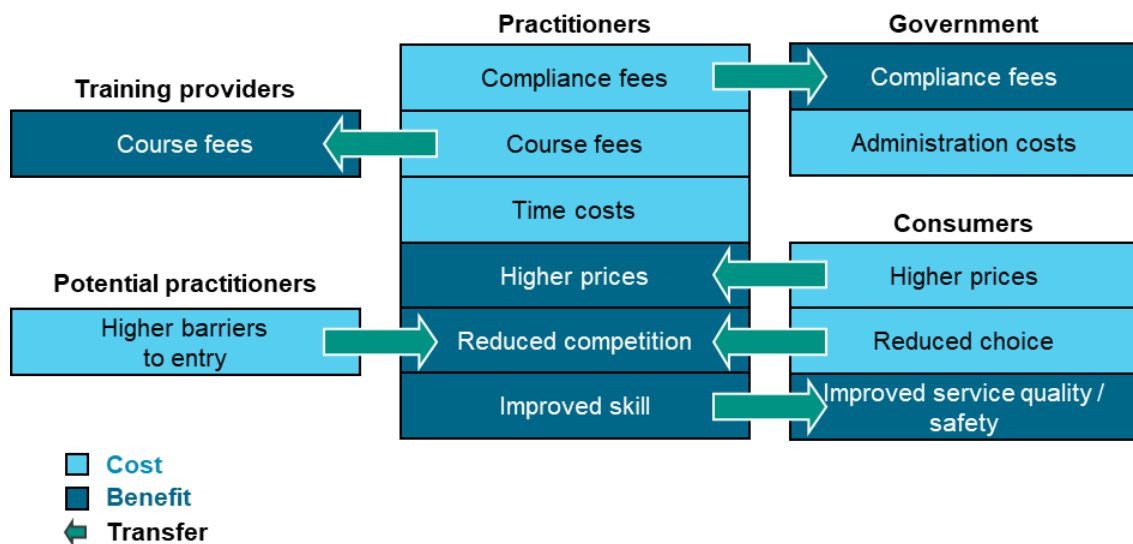
CPD creates costs as well as benefits

Occupational regulation, which includes mandatory CPD, is generally justified by a need to correct market failures. The most important market failures are:

- **Information failures**, where available information is inadequate to support an efficient market outcome. These include information asymmetries, where a consumer is not able to accurately evaluate the quality of services until after purchase, as well as information biases, where parties may have flawed information or incorrect risk perceptions. Regulation can address information failures by helping to avoid adverse selection and acting as a signal of minimum standards or quality or safety.
- **Negative externalities**, where costs are imposed on others not part of a transaction. For example, if work threatens the health and safety of the community or has negative impacts on the environment.

Licensing, and ongoing licence conditions such as mandatory CPD, are one option to address these market failures. Other options include voluntary schemes, negative licensing⁵, and general law, such as statutory warranties.

Figure 3: Overview of the economic impacts of occupational regulation



Source: NSW Productivity Commission

The primary benefit of mandatory CPD is the potential for enhanced service quality and safety. As outlined in section 1.1, however, mandatory CPD can increase prices for consumers and negatively impact competition (see Figure 3). As with any regulation, the benefits must be weighed against the

⁵ Negative licensing is where a qualified individual may practise an occupation without first being accredited, but where certain standards are breached, they may be prohibited from practicing.

cost, and regular review should take place. Given the amount of highly skilled time devoted to mandatory CPD, even small improvements would drive substantial productivity gains.

A framework can guide when mandatory CPD is justified

A framework can provide a consistent conceptual approach to ensure that government intervention is delivering on its objectives and is being designed and delivered efficiently and effectively. A draft framework has been developed adapting and simplifying the 2014 IPART licensing framework. We are inviting feedback to refine and develop a final framework.

3.2 Draft CPD framework

The framework consists of three stages:

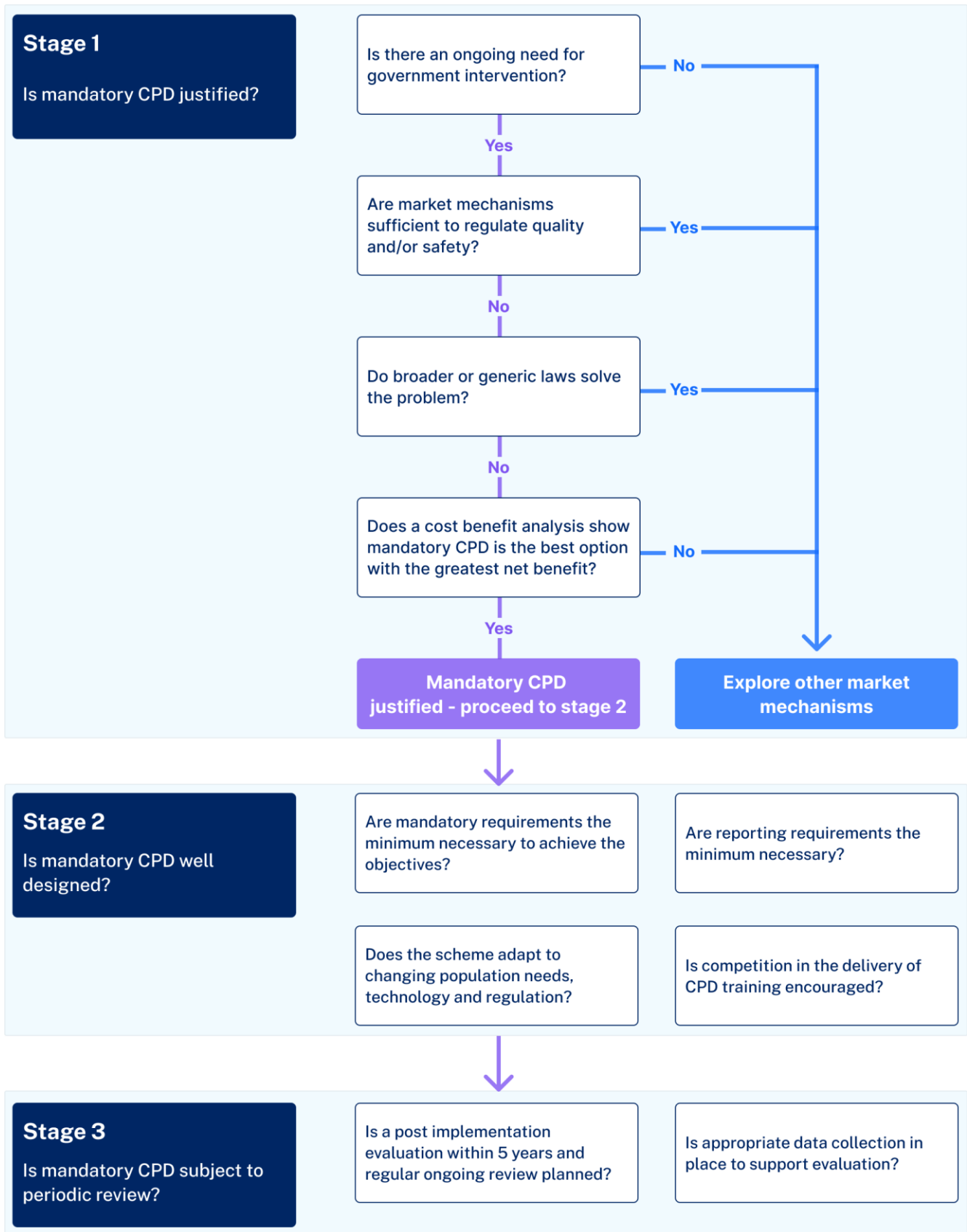
- Stage 1 – Assists to target mandatory CPD. It requires demonstration that government action is required to address a specific problem or risk *and* that mandatory CPD delivers the greatest net benefit compared to other options.
- Stage 2 – Once it is established that mandatory CPD is justified, assists regulators to design and deliver CPD to ensure it is efficient and effective.
- Stage 3 – Mandatory CPD should be subject to continuous improvement and regular evaluation.

An overview of the framework is outlined in Figure 4. The framework is designed to apply to both existing and proposed mandatory CPD schemes. Application of the framework should be documented as part of review processes for existing schemes, or as part of regulatory impact assessment for new schemes.

Discussion question:

5. Does the framework appropriately guide regulators as to whether mandatory CPD is the right policy?

Figure 4: Overview of draft CPD framework



Stage 1: Is mandatory CPD appropriate?

Is there an ongoing need for government intervention?

Occupational regulation, which includes mandatory CPD, is generally justified by a need to correct market failures. The most important market failures to consider are information failures and negative externalities.

The less consumers are able to judge the quality of or safety associated with a service themselves, the more likely market mechanisms will fail to regulate their behaviour. Regulatory intervention is most likely to be justified in relation to ‘credence’ services, that is, where the buyer cannot identify the quality either ex ante or ex post. This is exacerbated where the practitioner both diagnoses the need for the service and subsequently provides it, for example, lawyers, mechanics, or dentists (Emons, 1997, p. 107).

Figure 5 provides some examples of activities with different risk and information profiles. In practice, higher risk activities tend to be more likely to involve information asymmetry.

Figure 5: Examples of risk and information symmetry assessments

| | Low risk | Medium or high risk |
|------------------------|---|---|
| Symmetric information | A musician – the ability of a musician is easily judged both ex ante (through audition) and at the time of the performance. The harm associated with a poor performance is low. | A construction engineer – a construction firm engaging an engineer likely has others with similar knowledge but defects in the work have significant risks. |
| Asymmetric information | A landscape gardener – while the detriment associated with dying plants is low, defects in the garden may not become apparent for months or years. | A surgeon – a person undergoing surgery cannot personally gauge the quality of the service, and the risks of poor service are high. |

Source: NSW Productivity Commission

A market failure alone is not sufficient to justify government intervention. Mandatory CPD must be expected to improve outcomes, outcomes that cannot be achieved by the market. This requires consideration of:

- The likelihood of detriment: what is the probability of an adverse event occurring?
- The scale of the detriment: what are the direct and indirect costs of an adverse event?
- Whether the detriment is rectifiable: would the harm be rectifiable, would it involve injury or death⁶?

⁶ PwC (2013) and IPART (2014) consider the nature and rectifiability of the detriment as a separate consideration to risk.

Are market mechanisms sufficient to regulate quality and safety?

CPD is one of several mechanisms that may signal the quality or safety of a service to consumers (see Box 5). A number of these mechanisms involve some form of voluntary training.

Box 5: Search costs and market responses

Consumers generally undertake some level of research into services and suppliers before making a purchase. This effort, or 'search costs', will vary based on the nature of the service, and are greatest when there is large variance in quality and there is a large degree of skill required to evaluate the services.

- **Reputation** – a practitioner may develop a reputation based on previous work. Reputation may spread organically (e.g., word-of-mouth), and practitioners may attempt to cultivate this through marketing activities.
- **Professional associations** – membership of a professional association may signal the reliability, quality, and ethics of a service provider, including through their qualifications and adherence to a code of conduct.
- **Warranties or guaranties** – practitioners may assume some of the risk associated with a service through a warranty or guarantee. This is particularly useful where the quality of the service is only assessable after the service is provided.
- **Independent certification** – where an endorsing agency is considered reputable and credible by consumers, it may function as both a signal of quality and a useful initial starting point in a consumer's search.
- **Certificate of insurance** – where an independent practitioner certifies work and provides insurance coverage for example pest or home inspections.

Source: Commonwealth Productivity Commission (2000, pp. 65-67)

Where consumers treat qualifications or CPD as evidence of quality (either directly or indirectly), practitioners are incentivised to undertake more education and training. Voluntary activities are generally preferable to prescribed ones as:

- practitioners are incentivised to choose CPD and qualifications that are relevant to consumer wants, including emerging practices or technologies, and
- practitioners have an incentive to legitimately engage with the content, rather than attend for purely compliance reasons.

Voluntary CPD or qualifications allow consumers to make selections based on their individual preferences and tolerance for risk (see Figure 6). For example, while some consumers may prefer that a practitioner hold a relevant qualification, other consumers may be willing to substitute that requirement with a good reputation or accept a riskier service if it comes at a lower price.

Figure 6: How consumers can express choice when CPD or education is voluntary

Consumers with a low risk tolerance choose to pay a higher price for a reputable and qualified practitioner.



Consumers with a higher risk tolerance may choose a cheaper unqualified practitioner based on reputation alone.



Source: NSW Productivity Commission

When market mechanisms are working well, consumer preferences will determine what CPD practitioners engage in. In that case mandatory requirements will have limited benefits, as they require what the consumer preferences already impose, and risk creating unnecessary costs.

Do broader or generic laws solve the problem?

In addition to market mechanisms, generic laws provide several protections against unsafe or poor-quality service provision that may address the identified need for government intervention, thus negating the need for mandatory CPD. Some common categories and examples of generic laws are provided in Table 1.

Table 1: Examples of common types of generic laws

| Generic law | Example |
|---|---|
| Consumer Law | The <i>Competition and Consumer Act 2010</i> requires a practitioner render services to a customer with due care and skill. |
| Employment | An employee ordinarily has a duty to perform their duties with care and skill. They may also owe their colleagues a duty to behave safely. |
| Contract | A practitioner's failure to deliver a service of an acceptable skill is likely to be a breach of contract. |
| Tort/criminal | A service provided in a negligent way leads to tortious liability. Where the harm and culpability are large, the practitioner may be criminally liable. |
| Other occupational licensing requirements | E.g., A solicitor is required to 'deliver legal services competently, diligently, and as promptly as reasonably possible' regardless of any qualification/CPD requirements. |

Source: NSW Productivity Commission

Does a cost-benefit analysis show mandatory CPD delivers the greatest net benefits?

As with any other government regulation or major investment, a cost-benefit analysis (CBA) should be undertaken to compare mandatory CPD against other options to test if:

- the likely benefits of the proposed or existing mandatory CPD schemes are greater than the likely cost, and
- mandatory CPD is the best way to achieve the government's objectives, relative to feasible alternatives (regulatory and non-regulatory, for example voluntary CPD).

General costs and benefits that to be considered in completing the analysis are set out in Table 2. Guidance about how to undertake CBA, as well as other techniques that may be used where particular impacts (such as certain benefits of CPD) are not easily quantified can be found in the NSW Government *Guide to Better Regulation* and the NSW Government *Guide to Cost-Benefit Analysis*. As with any CBA, the detail and time taken to complete the analysis should be proportionate to the potential impacts of the policy being analysed. Costs and benefits should be quantified where possible, however qualitative analysis may be used where quantification of certain costs or benefits is not feasible.

Table 2: High level cost and benefit categories for consideration

| Costs | Benefits |
|--|--|
| <ul style="list-style-type: none"> • Practitioner time • Course fees (may be a transfer where paid to a NSW provider) • Increased prices for consumers • Administration and enforcement costs • Reduced competition | <ul style="list-style-type: none"> • Improved levels of skill and competence • Increased service quality • Increased service safety • Reduced regulator intervention • Reduced search costs |

Source: NSW Productivity Commission

In developing an appropriate CBA, the following questions should be considered:

- How significant is the problem or issue that is being addressed by mandatory CPD?
- What impact does mandatory CPD have on the problem or issue that is being addressed? That is, how significant are the benefits of mandatory CPD?
- How costly is mandatory CPD?
- What is the magnitude of risk or detriment that is being remedied by mandatory CPD?
- What is the likelihood that mandatory CPD prevents or reduces the risk or detriment?

Stage 2: Is mandatory CPD well designed?

Once a need for mandatory CPD has been established, it is necessary to look at whether it is being designed efficiently and effectively. This is critical to whether benefits are in fact delivered. For example, a Victorian review of CPD requirements for solicitors found that:

- a simplistic points-based system encourages ‘a culture of tick-the-box compliance’
- a mismatch between requirements and practitioner learning interest
- practitioners who are already subject matter experts have little interest in engaging, as they already possess the knowledge and skill delivered by the training
- some study areas were required but not of interest for many lawyers
- classroom-based learning was the primary means of completing CPD but did not translate into genuine learning for practitioners (Humphreys, 2020).

Design and administration will also impact cost. For example, a rigid scheme that requires practitioners to complete a limited set of courses delivered by a small number of training providers

will be higher cost than a scheme entirely consisting of self-directed learning. There are, however, trade-offs in the outcomes that will be achieved, dependent on the quality and appropriateness of the CPD activities. The challenge is finding ways to limit the costs of CPD without detracting from the benefits.

Scheme design should also ensure that the body setting standards for a mandatory CPD scheme, whether it be a government regulator or professional association, does not also benefit from the delivery of CPD. For example, this can occur where professional associations are involved in the design of requirements and also receive revenue from the delivery of CPD training. This can create incentives to impose higher requirements, rather than minimising requirements, increasing the overall costs of the scheme.

To some extent, a Stage 2 high-level consideration of the scheme design will be required to complete a CBA (at Stage 1). This should be followed by a more detailed design and assessment of design issues once the appropriateness of mandatory CPD as a policy intervention has been established.

We have identified several initial indicators to guide scheme design set out in Table 3. These will be further developed based on stakeholder feedback and findings from the deep dives.

Table 3: Potential framework design features

| |
|--|
| Are mandatory requirements the minimum necessary to achieve the objectives? |
| <ul style="list-style-type: none"> • Do requirements target identified issues or deficiencies in capabilities? • Is coverage based on risks? • Are mandatory units (versus informal learning) the minimum necessary? • Is the time period for compliance (i.e., annual completion, or triennial) as long as possible, as appropriate to the likelihood of change and the risks involved? • Has comparison with other jurisdictions or similar industries been used to inform design? |
| Does the scheme adapt to changing population needs, technology and regulation? |
| <ul style="list-style-type: none"> • Is there scope to place requirements on hold where time is taken out of the workforce, for example, act as a primary carer? • Is content flexible and adaptable to meet deficiencies in areas of competency as identified over time (i.e., constant modification to address non-compliance or gaps in knowledge)? • Can practitioners choose when and how to complete requirements? |
| Are reporting requirements the minimum necessary? |
| <ul style="list-style-type: none"> • If the purpose of CPD reporting is to promote transparency and accountability: <ul style="list-style-type: none"> ○ Are there opportunities for licensees to be directly accountable to customers? • If the purpose of CPD reporting is to monitor enforcement and compliance: <ul style="list-style-type: none"> ○ When: periodically or at the point of renewing a licence, or a requirement that licensees retain the information and provide to regulators on request, that is, spot audits? ○ How: can on-line platforms simplify record-keeping and reporting to regulators? |

Is competition in the delivery of CPD training encouraged?

- Are restrictions on who may deliver training minimised?
- Where a competitive market is not possible, could the regulator set costs at an appropriate rate to cover the cost of the provider?
- Are options to limit costs, such as online delivery, used?
- Are bodies involved in the design or co-design of CPD prevented from benefiting from course fees?

Discussion question:

6. What design features should be included in the framework to ensure CPD is well designed and maximises net benefits?

Stage 3: Is mandatory CPD subject to periodic review?

Mandatory CPD schemes should be subject to ongoing evaluation and review, periodically or when the need arises, to ensure:

- the expected net benefits are being realised post-implementation
- the need and rationale for CPD units and content remain valid
- the design of CPD scheme remains fit for purpose, and
- administration reflects best practice.

A review of new CPD schemes should be undertaken within five years of implementation. Ongoing evaluation and review should also take place, however the frequency may vary depending on the nature of the scheme. In determining an appropriate review period, consider:

- the scope of impact (e.g., how many practitioners must comply with requirements)
- the scale of impact (e.g., the overall costs to practitioners complying with requirements including time and money), and
- the rate of change in the industry (e.g., technological and regulatory change).

Scheme design should provide a plan for regular evaluation and incorporate mechanisms to collect data required to inform evaluation.

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Appendix A: CPD in NSW

Large number of workers must undertake CPD

Initial high-level analysis of the number of people subject to occupational licensing categories subject to CPD across Australia shows that the requirements are far reaching (Table A.1). In Australia, nearly 600,000 teachers, 104,000 lawyers, and 110,000 real estate agents are required to complete some form of CPD each year. As the most populous state, over 30 per cent of these professionals reside in NSW.

Table A.1: Estimated number of people working in occupations subject to CPD in 2016

| Occupation | NSW | VIC | QLD | SA | WA | TAS | NT | ACT | Total |
|---------------------------|---------------|--------------|---------------|--------------|--------------|--------------|--------------|--------------|-----------------|
| | 000's | 000's | 000's | 000's | 000's | 000's | 000's | 000's | 000's |
| Architectural Services | 13.20 | 12.26 | 6.64 | 1.98 | 3.73 | 0.64 | 0.16 | 0.63 | 39.24 |
| Builders and Tradespeople | 125.96 | 98.24 | 81.96 | 24.00 | 51.83 | 6.86 | 5.66 | 5.05 | 399.56 |
| Child Care Services | 39.22 | 30.24 | 26.15 | 6.91 | 9.70 | 2.08 | 1.16 | 2.77 | 118.22 |
| Dental Services | 14.70 | 11.50 | 10.22 | 3.89 | 5.54 | 0.97 | 0.25 | 0.83 | 47.89 |
| Engineers | 20.94 | 15.99 | 18.48 | 4.45 | 12.55 | 0.93 | 1.80 | 1.19 | 76.33 |
| Lawyers | 39.26 | 27.34 | 19.24 | 5.69 | 8.21 | 1.42 | 0.69 | 2.20 | 104.04 |
| Pest Controllers | 2.64 | 1.14 | 2.71 | 0.63 | 1.03 | 0.10 | 0.10 | 0.07 | 8.43 |
| Real Estate Agents | 37.70 | 25.92 | 25.28 | 5.75 | 11.44 | 1.54 | 0.64 | 1.66 | 109.93 |
| Surveyors | 2.19 | 2.09 | 1.61 | 0.46 | 1.48 | 0.16 | 0.08 | 0.11 | 8.17 |
| Teachers | 163.92 | 133.01 | 123.66 | 38.73 | 67.83 | 13.46 | 6.50 | 9.17 | 556.26 |
| Veterinarians | 6.63 | 5.23 | 4.64 | 1.58 | 2.27 | 0.47 | 0.16 | 0.33 | 21.31 |
| Total | 482.42 | 375.4 | 327.73 | 97.55 | 177.6 | 29.16 | 17.52 | 24.78 | 1,532.12 |

Source: NSW Productivity Commission Analysis, based on ABS 2016 Census – Employment, Income, and Education (table: INDP – 4-digit level by State)

Notes: Builders and tradespeople includes all individuals who identified as being employed in “construction” and “building” occupations and the variations of each such as house construction, other construction services, and other residential building construction. Teachers includes only the following ABS categories: Combined Primary and Secondary Education; Primary Education; School Education, nfd; Secondary Education; Special School Education. The Census data may not accurately reflect the number of professionals subject to continuing professional development requirements for each occupation because ANZSIC industry codes do not always align with, or provide sufficiently granular detail, to identify those professionals subject to CPD requirements.

CPD delivery models are varied

Table A.2 provides a high-level overview of mandatory CPD requirements that apply in a selection of professions in NSW. It demonstrates the variety of requirements that may apply; for example, teachers must complete 100 hours of CPD over five years, while for solicitors the number is 10 units each year. Some professions, such as real estate agents, have tightly defined mandatory requirements with limits on the organisations that may deliver training. Other professions, such as conveyancers, largely allow for mandatory CPD to be self-directed with activities such as writing an article or attending a seminar.

Table A.2: Overview of selected CPD requirements in NSW

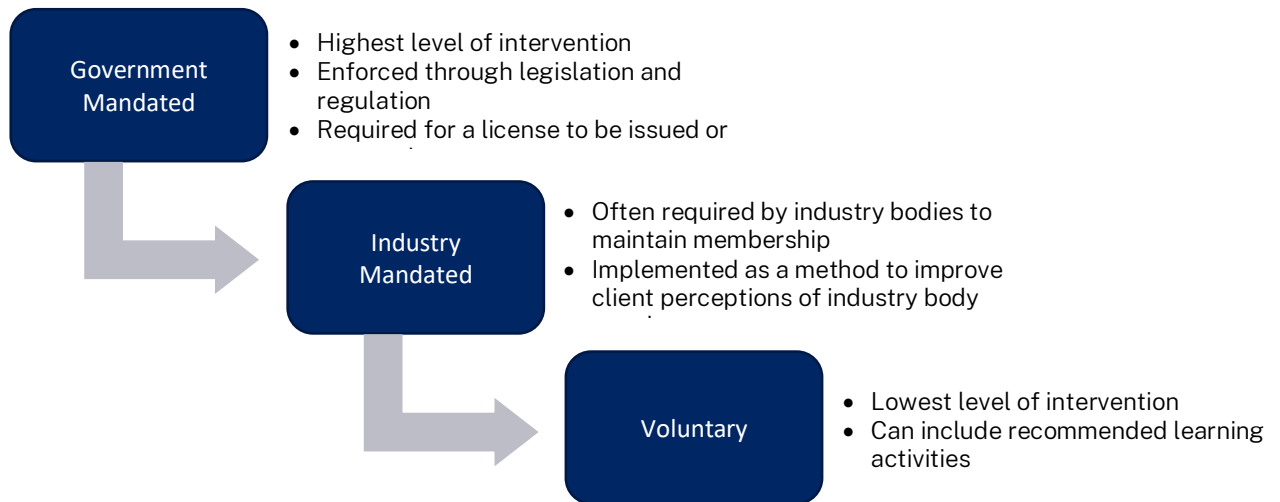
| Occupation | Requirement | Regulation of content and delivery |
|-----------------------------------|---|--|
| Solicitors | 10 units of CPD each year | Must cover at least one unit in each of: ethics and professional responsibility; practice management and business skills; professional skills; substantive law. CPD activities may consist of educational activities, research preparation or editing of an article, membership of a committee or taskforce, or relevant post-graduate studies. Online CPD may be completed in the form of web-based programs (unlimited) and private study (capped at 5 units). |
| Builders / Swimming Pool Builders | 12 CPD points per year | CPD must relate to broad learning areas, including sustainability, compliance obligations, communication techniques and skills, disputes, contractual issues, business management, building technical issues and safety. Any person qualified to provide training may do so. |
| Real Estate Agent (Class 1) | 9 CPD hours per year | Must include 3 hours of compulsory CPD, 3 hours of elective topics, and 3 hours of business skill topics. Compulsory topics change each year and are determined by NSW Fair Trading in consultation with industry. Only approved providers may deliver compulsory topics CPD. Any training provider may deliver elective topics or business skill topics. |
| Teachers | 100 CPD hours per maintenance period (five years for permanent full-time teachers and seven years for part-time or casual teachers) | Accredited CPD must be completed in the priority areas of: <ul style="list-style-type: none"> • delivery and assessment of NSW Curriculum/Early Years Learning Framework (as applicable) • student/child mental health • students/children with disability • Aboriginal education and supporting Aboriginal students/children. Proficient Teachers must complete 50 accredited hours; Highly Accomplished Lead Teachers must complete 20 accredited hours. Elective CPD may include a range of other activities and courses. |
| Architects | 20 CPD hours per year | At least 10 hours must be a formal CPD activity. At least 3 of the 10 hours of formal CPD must be mandatory topics, including understanding and respecting country, sustainability, and the National Construction Code. Informal CPD may include self-directed study and professional activities that relate to practice as an architect. |
| Conveyancers | 5 CPD points per year | CPD must consist of: <ul style="list-style-type: none"> • an education program • a seminar, workshop, lecture, or discussion group • a multi-media or website-based program |

| Occupation | Requirement | Regulation of content and delivery |
|------------|-------------|--|
| | | <ul style="list-style-type: none"> research or preparation of an article published in a legal publication or a combination of the above. <p>No specific content requirements apply, however must be relevant to conveyancing work.</p> |

Government mandated, industry-led, or voluntary?

A wide variety of models are used to deliver CPD in NSW. The models can be broken up by several broad categories, they can be either mandatory or voluntary, government- or industry-led, and can be focused on independent or practitioner-led learning (see Figure A.1).

Figure A.1: CPD Intervention Hierarchy



Source: NSW Productivity Commission

Mandatory CPD models are generally enforced by legislation or professional associations and must be completed for a professional to have their license renewed. All professions participate in learning and development activities which may include attending conferences, tradeshow, or performing independent research. Mandatory CPD generally aims to ensure all members of the profession can deliver high quality services to their customers and keep pace with new developments affecting their practice (McBride, Collins, Osborne, & McVeigh, 2022). Mandatory CPD is often seen in industries where there are large information asymmetries between professionals and consumers, or where the magnitude of risk to the consumer is high, such as in the medical and legal fields (see Box A.1), mandated learning may be required to achieve minimum quality and safety requirements and protect consumers (Pool, Poell, Berings, & Cate, 2015; Wheeler & Chisholm-Burns, 2018).

The alternative to mandatory CPD is a voluntary model, it may include recommended learning modules, suggested reading, or conferences. There is only a small body of evidence around how many professionals would continue to undertake some form of CPD if moved to a voluntary model. IPART (2014) estimated that around 75 per cent of professional builders would continue participating in voluntary CPD, Harper (2000) conducted a survey of nurses in the United States and found that all respondents had participated in at least one form of voluntary CPD in the preceding 12 months. The challenge of having no formal or mandatory CPD model is ensuring an optimum level of learning is completed to meet the minimum standards of the profession.

Box A.1: Mandatory Substantive Law Training

Legal professionals in Australia must complete 10 units (5 in both Tasmania and South Australia), or hours, of mandatory CPD each year. In several jurisdictions, including NSW and Victoria, lawyers must complete 1 unit from each of a range of mandatory fields. Substantive law, which is the term given to judgments that create or define new rights, duties, and obligations, features in the NSW and Victorian curriculums as well as those of several other states. The inclusion of mandatory substantive law training is an acknowledgement of the constant changes in the law that occur each time a judgement is handed down or new legislation is passed by Parliament.

Government- and industry-led CPD models both require professionals to complete a set number of hours or units of study to maintain their license or professional association membership. Government-led CPD is generally a result of legislation that requires professionals complete continuing education, such as for registered tax agents under the Tax Practitioner's Board.

Industry-led CPD aims to ensure a minimum skill level for members of professional associations, such as those for accountants in Australia. This can provide a positive signal to consumers and act as a market mechanism to regulate quality or safety. In some cases, industry- and government-led CPD models require professionals to undertake similar or identical learning activities, for example completing the professional accountant association CPD can also count towards the CPD requirements as a registered tax agent.

Prescriptive content or flexible, self-directed learning?

CPD may include both prescribed, practitioner-led learning and flexible, unstructured, independent activities. Practitioner-led learning is generally classroom (including web conferencing) based, it follows a more traditional lecture/presentation format and is often followed by an assessment to verify that the student has met the learning expectations. Practitioner-led learning can also include group discussions and practical activities depending on the profession and specific learning goals.

This differs greatly from self-directed learning where professionals select and manage their own learning activities. Self-directed learning can encompass a broad range of activities, including mentoring or training young professionals, reading, and reviewing research articles, and completing online training modules. Box A.2 explores an innovative example of self-directed learning. This style of learning provides flexibility to meet individual practitioner needs. It may, however, be challenging to ensure that learning activities are additional to what would be undertaken in any event.

Box A.2: Veterinarian Unstructured Learning

After a review of existing CPD requirements, from 2022 veterinarians in New Zealand are no longer required to complete a mandated number of hours or units of CPD. Rather, they are encouraged to undertake a wide range of activities that have an education focus and are relevant to their practice as a veterinarian. The Veterinary Council of NZ views the process of CPD, from developing a learning plan, to completing the activities, and recording and reviewing the learning, as more important than completing a defined set of prescribed topics or a minimum number of hours.

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