



NSW Productivity Commission
By Email: productivityfeedback@treasury.nsw.gov.au

Dear Productivity Commission Team,

Thank you for the opportunity to provide feedback on the discussion paper *New thinking on continuing professional development*.

The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services across NSW. The Commission's role includes:

- Encouraging government agencies and larger businesses to enter productive working relationships with small businesses.
- Facilitating and encouraging the fair treatment of small businesses.
- Promoting a fair operating environment in which small businesses can flourish.

Continuous professional development (CPD) can be a useful mechanism to ensure professional skills and knowledge is contemporary and meets consumer expectations.

However, poorly designed CPD requirements can contribute additional cost and complexity without materially improving outcomes (such as where there is no evidence that a CPD requirement achieves a human capital uplift).

The Commission welcomes this review as an opportunity to examine whether current CPD requirements can be improved, including more flexible and less onerous arrangements where the efficacy of CPD requirements is unclear. The Commission also recommends more rigorous assessment and scrutiny of proposed CPD requirements as part of regulatory impact assessment processes including Better Regulation Statements (BRS) and Regulation Impact Statements (RIS). Comprehensive cost-benefit analyses should inform whether current or newly proposed CPD requirements are suitable.

Business attitudes to CPD

CPD can play a role in helping professionals stay informed about changes in regulations and best practices in their field, which can help them to better serve their clients and protect consumers.

Feedback to the Commission suggests small businesses have generally favourable views in relation to the impact of CPD in achieving improved service quality and other outcomes. The Commission's December 2022 Small Business Momentum Survey found that continuing professional development (CPD) have a positive impact on service quality (70 per cent), safety (57 per cent) and consumer confidence (58 per cent).¹

¹ NSW Small Business Commissioner, December 2022 Momentum Survey, the survey is conducted through an online platform and businesses are randomly selected from the Australian Business Register to participate.

Despite the overall positive sentiment, feedback to the Commission suggests small business experiences with CPD are not universally positive (see **Attachment A** for a summary of qualitative feedback provided to the Commission).

The efficacy of CPD is unclear in some specific circumstances

Underlying the introduction of mandatory CPD is the assumption that practitioners gain new skills and knowledge, remain up to date with technical, legislative and regulatory changes, and build upon existing knowledge and skills. However, in some specific cases small businesses have expressed concern about whether some specific CPD requirements achieve actual improvements in service quality or safety. One respondent to the Commission's December 2022 Small Business Momentum Survey notes:

'There is no oversight as to whether these programs are improving the safety, or quality of nurses across the board. There is limited quantitative data readily available to consumers which measures the impact of CPD.'

The Housing Industry Association remarked similarly in its submission to the NSW Productivity Commission, noting:

*'There is no evidence that mandatory CPD raises on-site building standards or delivers a significant net public benefit, with those states operating mandatory CPD schemes still encountering a similar level of building disputes and defects.'*²

Other representatives of the building industry have pointed to the cost of complying with CPD and highlighted that "free-riders" in the industry simply don't comply and there is insufficient enforcement of CPD requirements.

Even where CPD leads to genuine human capital uplift and improved consumer outcomes, these benefits need to be weighed against the cost of CPD, in both time and monetary expense. Poorly designed CPD requirements can harm both businesses and consumers through higher regulatory burden and labour-related costs which must ultimately be passed onto the end user.

CPD requirements are often hours or points-based which emphasises inputs into the process rather than outcomes or verifiable capabilities. This can also lead to an emphasis in pursuing activities which 'tick the box' on a broader CPD requirement, without genuinely upskilling or filling a knowledge gap. A respondent to the Commission's December 2022 Small Business Momentum Survey notes:

'[Professional association] has a requirement of 150 hours [of CPD] every three years. That amount is excessive and does not contribute to better performance by professional [occupation].'

The Commission would welcome further consideration of alternative CPD models which would focus on outcomes and capabilities.

Mandating CPD

A distinction should be made between CPD undertaken voluntarily (including as part of voluntary membership to a professional association), and mandatory CPD required as a condition of a license or other regulatory requirement.

² NSW Productivity Commission Discussion Paper (2021), p. 140.

While CPD can be viewed as having significant benefits across many occupations, the Commission's view is that it should not generally be mandated in circumstances where risks and consequences are low.

In these circumstances the need for mandatory CPD is more limited because consumers who value higher standards can utilise market and reputational mechanisms to identify services which are more likely to meet their needs. Additionally, in such industries, competition may incentivise businesses to invest in the training and development of their employees to maintain a competitive edge. Indeed, many professionals opt into professional associations and voluntarily commit to undertake CPD that is not otherwise mandated.

Where CPD is mandated, there should be sufficient basis, preferably informed by supporting evidence, to be confident that specific CPD requirements achieve desired outcomes. Even for the most serious of risks, CPD requirements should only be considered where there is confidence that such a requirement will achieve policy objectives. The pursuit of ineffective CPD models with a no-regrets mindset risks the implementation of badly designed policy with little regard to whether the benefits are outweighed by costs.

The Commission would welcome further guidance and a framework to assist policymakers in identifying the circumstances where CPD is likely to be appropriate and where it is not.

The cost consequences to small business of mandatory CPD

The Commission strongly supports that existing and new CPD schemes should be subject to ongoing evaluation and review, periodically and when the need arises to ensure that:

- Benefits outweigh the costs after implementation.
- CPD schemes are fit for purpose for small business practitioners.
- Compliance with CPD requirements is fairly and transparently enforced and non-compliance dealt with fairly.

Feedback to the Commission indicates that CPD requirements impose disproportionate time and cost burden on small business in certain industries, this may be of greater concern where only a percentage of an industry complied with mandatory CPD requirements. In the Commission's December 2022 Momentum survey, some small business operators reported that CPD had a negative impact on the cost to deliver services (36 per cent indicating a negative impact) and their ability to find suitably skilled staff (21 per cent indicating a negative impact).

The Commission observes that the specific requirements of CPD are not always subject to an assessment of their costs and benefits, particularly when it forms part of a broader reform agenda or policy response. For example, the Commission's submission to the recent *'Regulatory Impact Statement - Building and Construction Legislation Amendment Bill 2022'* noted that the RIS did not provide detailed information on what the specific CPD requirements would be, thus hindering industry stakeholders from eliciting meaningful feedback. The RIS did not include supporting analysis or estimate the extent to which proposals will deliver benefits by reducing defects.³

Specific consideration is also required where license categories are streamlined and consolidated. While simpler licensing regimes can be better for some users, there is a risk of unintended consequences if

³ Regulatory Impact Statement - Building and Construction Legislation Amendment Bill 2022, p. 51.

consolidated licence categories do not appropriately meet the needs of those who previously held licenses that were better tailored to their needs. Standardised educational requirements, including CPD, has the potential to impose new requirements that are either unnecessary or disproportionate to risks for some license holders.

2020 real estate reforms: onsite residential property managers

The Commission notes the unsatisfactory outcome resulting from reforms which consolidated real estate licences which resulted in increased requirements for on-site residential property managers (ORPM), generally engaged in lower risk activities.

Before major industry reforms in 2020, new entrants needed to obtain a statement of attainment or a qualification demonstrating competency in 10 units of competency to apply for the former on-site residential property manager's licence.

ORPM functions now sit within the real estate agent licence (class 1). New entrants, who are restricted from selling or auctioning real estate, are nevertheless required to complete 18 units of competency to obtain a full Certificate IV in Real Estate Practice. This represents nine specified mandatory units, as well as nine elective units. The profession is also subject to CPD requirements.

The requirement for a new ORPM to complete a Certificate IV in Real Estate Practice is considered a serious over-reach. These requirements constitute a barrier to entry, thus impacting the ability of ORPM businesses to transfer ownership to new entrants. This is problematic as the ORPM business model often combines business ownership with private living arrangements.

In developing a framework that can assist policymakers to target CPD requirements, the Commission strongly supports the NSW Productivity Commission's regulatory approach aligned with the principles of the NSW Government *Guide to Better Regulation* and the NSW Government *Guide to Cost-Benefit*. These principles recommend detailed assessments of the costs and benefits of compliance as part of RIS and BRS processes to inform policy decisions.

Existing mandatory CPD regimes should also be subject to ongoing review, particularly when industry needs evolve.

Thank you for the opportunity to make a submission. If you require further information, please contact Megan Bennett, at either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission

Date: 27/02/23

Attachment A - Additional survey data feedback

The Commission's 2022 Momentum survey obtained qualitative feedback on CPD, as summarised below.

Quality and relevance of CPD training

We heard from industry stakeholders that the issue of the quality of CPD programs needs to be addressed as a priority to achieve CPD aims. Industry stakeholders indicated that there needs to be greater involvement by the regulator in approving the quality, content and evaluation of CPD.

Also some respondents indicated that the content should be tailored to the specific needs of small business and the industry (e.g. number of CPD units considered excessive in regard to the rate of change in certain industries). Some respondents suggested it would be beneficial to their practice to have greater flexibility in selecting their CPD topics.

Availability of CPD programs in regional NSW

While respondents appreciate the opportunity offered by online courses, the variety and the availability of CPD programs remain largely unsatisfactory outside metropolitan areas.

Mutual recognition opportunities

The Commission received feedback from a real estate agent licensed in both New South Wales and Western Australia who shared his views on CPD requirements: 'I require 9 hours of CPD in NSW and 10 hours of CPD in WA. That is 19 hours in total. Add hours for accountancy, audit, finance and taxation, it is around somewhere from 2 weeks to 4 full weeks per year. Take out annual leave, sick leave and other issues, that becomes a material component of the year.'⁴

Practitioners who hold multiple licences find difficult to understand their CPD obligations and the cumulative hours required across multiple jurisdictions can cause disproportionate burden on small business. Consideration should be given to make it easier for CPD points/units to be carried over between jurisdictions under the automatic mutual recognition (AMR) scheme. As noted by the NSW Productivity Commission, barriers should be as low as possible to improve occupational mobility and address skills and labour challenges.

Reduced administrative burden

Many respondents support the idea of a reporting system managed by regulators where all licences, qualifications and CDP trainings can be recorded and easily accessed. This would alleviate the administrative burden associated with managing and tracking practitioners' CPD progress.

⁴ This figure does not reflect more recent changes to CPD requirements for agents.