

CONTINUING PROFESSIONAL DEVELOPMENT & BENCHMARK TELEVISION

Founded in 2008 by AR Conolly & Company Lawyers, Benchmark Television (BenchTV) (referred to as 'BTV') programs were originally developed for the purpose of assisting Australian legal practitioners fulfil their annual compulsory continuing professional development (referred to as 'CPD') obligations. Generally, each broadcast involves thorough, rich discussions of decisions made by the superior courts of Australia, conducted with some of the most nationally eminent figures in the profession.¹ Additionally, other BTV broadcasts comprise discussions of various topics pertinent to the profession and even to the general public, within the legal context.

The question of whether watching BTV programs qualifies as a 'CPD activity' is a matter determined by each jurisdiction due to the various regulations surrounding CPD requirements. In general, qualifying CPD activities must exhibit 'CPD content' which is characterised by the following:²

- a) Significant intellectual or practical content that primarily deals with matters related to the practitioner's legal practice.
- b) Conducted by persons that are qualified by practical or academic experience in the topic covered.
- c) Relevant to the practitioner's immediate or long term needs or professional development and the practice of law.

Benchmark Television consistently delivers such content.³

Jurisdiction	Legal Practitioner	Does BTV qualify as CPD activity?	MAX. CPD points claimable for BTV.	MAX. hours of BTV qualifying as CPD activity	Additional Comments
NSW*/VIC (*see below)	Solicitor ⁴	YES ⁵	10 CPD points per CPD year. ⁶	10 hours. ie. 1 hour = 1 CPD unit. ⁷	At least ONE CPD unit must be obtained from each of the following areas: - Ethics and professional responsibility. - Practice management and business skills. - Professional skills. - Substantive law. ⁸ Must contain CPD content. ⁹
	Barrister ¹⁰	YES	No restriction. All 10 CPD points can be achieved.	10 hours needed to fulfil entire obligations. ie. 1 hour = 1 CPD unit. ¹¹	CPD activities should be in relation to the following categories: - Ethics and Professional Responsibility. - Practice Management and Business Skills. - Substantive Law, Practice and Procedure, and Evidence. - Barristers' Skills. ¹² Must contain CPD content. ¹³
ACT	Solicitor ¹⁴	YES ¹⁵	No restriction. All 10 CPD points can be achieved.	10 hours needed to fulfil entire obligations. ie. 1 hour = 1 CPD unit. ¹⁶	At least ONE CPD unit must be obtained from each of the following areas: - Legal ethics and professional responsibility - Practice management and business skills - Professional skills

¹ AR Conolly & Company, *Benchmark Television* (2016) Benchmark Inc < <https://benchmarkinc.com.au/benchmark-tv/>>.

² Refer to any of the following: *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015* (NSW and VIC) ss 7.1-7.1.3; *Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015* (NSW and Vic) s 6(1)(a)-(c); ACT Bar Association, *Continuing Professional Development Protocol* (2015) s 3(a)-(c); Queensland Law Society, *Administration Rule* (2005) ss 48(1)(a)-(c); Bar Association of Queensland, *CPD Policy* (2015) s 4(c)(i)-(iii); Law Society of South Australia, *Mandatory Continuing Professional Development* (2011) s 4; *Legal Profession Regulations 2007* (NT) Schedule 2

³ Above n 1.

⁴ *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015* (NSW and Vic).

⁵ *Ibid* s 8.1.1.

⁶ *Ibid* s 9.2.1.

⁷ *Ibid* s 9.1.1.

⁸ *Ibid* ss. 6.1.

⁹ *Ibid* s 8.2.

¹⁰ *Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015* (NSW and Vic).

¹¹ *Ibid* s 7.

¹² *Ibid* s 9(1)(a)-(d).

¹³ *Ibid* s 6(1)(a)-(c).

¹⁴ ACT Law Society, *CPD Guidelines – A continuing professional development scheme for Canberra's legal practitioners* (2014).

¹⁵ *Ibid* s 5(a).

¹⁶ *Ibid*.

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					- Substantive law and procedural law. ¹⁷ Must contain 'CPD content.' ¹⁸ The ACT Law Society does not accredit courses or providers but reserves the right to refuse to recognise inappropriate courses or courses provided by inappropriate providers. ¹⁹
	Barrister ²⁰	YES ²¹	No restriction. All 10 CPD points can be achieved.	20 hours needed to fulfil entire obligations. ie. 2 hours = 1 CPD unit. ²²	At least ONE CPD point must be obtained from each of the following areas: - Ethics and Regulation of the Profession - Management - Substantive Law, Practice and Procedure and Evidence. - Advocacy, Mediation and other Barristers' Skills. ²³ Must contain CPD content. ²⁴
QLD	Solicitor ²⁵	YES ²⁶	No restriction. All 10 CPD points can be achieved.	10 hours needed to fulfil entire obligations. ie. 1 hour = 1 CPD unit. ²⁷	Listening to or viewing recorded material for the purposes of CPD activity must be in relation to an event occurring in the relevant CPD year. ²⁸ At least ONE CPD unit must be obtained from each of the following areas: - Practical legal ethics. - Practice management and business skills. - Professional skills. ²⁹ Must contain CPD content. ³⁰
	Barrister ³¹	Unspecified.	Unspecified.	Unspecified.	Examples of CPD activities and their corresponding points are provided in the guidelines. Watching of online audio/visual material is not explicitly stated, unless it is provided by the Bar Association of Queensland on its own website. ³² At least ONE CPD point must be from each of the following areas: - Ethics and Professional Responsibility. - Practice Management and Business Skills. - Substantive Law, Practice and Procedure and Evidence - Barristers skills. ³³ Must contain CPD content. ³⁴
SA	Solicitor ³⁵	YES ³⁶	5 CPD points per CPD year. ³⁷	5 hours. ie. 1 hour = 1 CPD unit. ³⁸	There is a reduced quota for MAX CPD points claimable on recorded programs for practitioner's qualifying for a pro-rata calculation on CPD requirements. ³⁹ At least ONE CPD unit must be from each of the following areas: - Practical legal ethics - Practice management of business skills - Professional skills. ⁴⁰ Must contain CPD content. ⁴¹

¹⁷ Ibid s 8.¹⁸ Ibid s 3(a)-(c).¹⁹ Ibid s 7.²⁰ ACT Bar Association, *Continuing Professional Development Protocol* (2015); ACT Bar Association, *Legal Professions Barristers Rules* (2013) s 113.²¹ ACT Bar Association, *Continuing Professional Development Protocol* (2015) s 5(a)(iii).²² Ibid.²³ Ibid s (1)(a)-(d).²⁴ Ibid s 4.²⁵ Queensland Law Society, *Administration Rule* (2005) ss 43-51.²⁶ Ibid s 48(s).²⁷ Ibid s 44(a).²⁸ Ibid s 48 (2).²⁹ Ibid s 47(4)(a)-(c).³⁰ Ibid s 48(1)(a)-(c).³¹ Bar Association of Queensland, *Administration Rules* (2004) part 4; Bar Association of Queensland, *CPD Policy* (2015).³² Bar Association of Queensland, *CPD Policy* (2015) ss 11, appendix 1.³³ Ibid ss 2(a)-(d).³⁴ Ibid ss 4c(i)-(iii).³⁵ Law Society of South Australia, *Mandatory Continuing Professional Development* (2011).³⁶ Ibid s 6.³⁷ Ibid s 5.³⁸ Ibid s 4.³⁹ Ibid s 7.⁴⁰ Ibid s 5.⁴¹ Ibid s 4.

Jurisdiction	Legal Practitioner	Does BTV qualify as CPD activity?	MAX. CPD points claimable for BTV.	MAX. hours of BTV qualifying as CPD activity	Additional Comments
	Barrister ⁴²	Unknown	Unknown	Unknown	The SA Bar Council from time to time prescribes the minimum CPD obligations to be undertaken by a barrister. ⁴³
WA	Solicitor/ Barrister ⁴⁴	Unknown	If qualifying: 4 CPD points per single program. ⁴⁵	If qualifying: 4 hours in any one viewing. ie. 1 hour = 1 CPD unit. ⁴⁶	Further enquiry needed: if BTV has been considered an 'approved CPD activity' by the WA Legal Practice Board. ⁴⁷ All qualifying video material must be prepared within the last 12 months. ⁴⁸ At least ONE CPD unit must be obtained from each of the following areas: - Practice management - Professional skills - Ethics and professional responsibility - Substantive law. ⁴⁹
NT	Solicitor/ Barrister ⁵⁰	YES ⁵¹	5 CPD points per CPD year. ⁵²	5 hours. ie. 1 hour = 1 CPD unit. ⁵³	At least ONE CPD unit must be from each of the following areas: - Ethics and responsibility - Practice management and business skills - Professional skills in legal practice - Substantive law. ⁵⁴ Must contain CPD content. ⁵⁵
TAS	Solicitor/ Barrister ⁵⁶	Unknown	If qualifying: 5 CPD points per CPD year. ⁵⁷	If qualifying: 5 hours. ie. 1 hour = 1 CPD unit. ⁵⁸	Further enquiry needed: if the TAS Law Society has accredited BTV as a qualified CPD activity. The TAS Law Society considers viewing or listening to web-based program or recorded material as a CPD activity, if they have approved of the provider. ⁵⁹ Maximum of 6 CPD points can be claimed in any single day. ⁶⁰ At least ONE CPD point must be from each of the following areas: - Practical legal ethics. - Practice management or business skills. - Professional skills. - Substantive law. ⁶¹ Must contain CPD content. ⁶²

⁴² South Australia Bar Association, *Barristers' Conduct Rules* (2013) ss 127-131.

⁴³ *Ibid* s 127.

⁴⁴ Legal Profession Rules 2009 (WA) ver 01-a0-03 ss 13A-E.

⁴⁵ *Ibid* s 13(F)(1)(3).

⁴⁶ *Ibid*.

⁴⁷ *Ibid* ss 7(a)-(b).

⁴⁸ *Ibid* ss 13F(3)(a)-(b).

⁴⁹ *Ibid* ss 13D(1)-(5).

⁵⁰ *Legal Profession Regulations 2007* (NT) Schedule 2.

⁵¹ *Ibid* s 2(1)(d).

⁵² *Ibid* s 9(2).

⁵³ *Ibid* s 10(1).

⁵⁴ *Ibid* s 1.

⁵⁵ *Ibid* ss 2(a)-(c).

⁵⁶ Law Society of Tasmania, *Practice Guidelines No. 4: Continuing Professional Development Scheme* (2015).

⁵⁷ *Ibid* s 3.3(b).

⁵⁸ *Ibid* s 2.6(a).

⁵⁹ *Ibid* s 2.4(c).

⁶⁰ *Ibid* s 3.3(d).

⁶¹ *Ibid* ss 3.2(a)-(d).

⁶² *Ibid* ss 3.6 (a)-(c).

CPD points in NSW*.

1. Rule 8.1.1 of the Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 states that a CPD activity may consist of “a seminar, workshop, lecture, conference, discussion group, multimedia or web-based program, private study of audio/visual material or any other educational activity”.
2. These are distinct types of activities, which rule 8.1.1 differentiates from each other.
3. Rule 9.2.4 provides that solicitors may not include more than 5 units of the activity referred to in rule 8.2 in their total CPD units for any CPD year. Rule 8.2 refers to “private study”.
4. Each of the other categories of activities mentioned in rule 8.1.1 is clearly distinct from private study. Each of the other types (with the possible exception of discussion groups) involves a third party provider presenting the solicitor with a structured flow of information, whose content and structure has been chosen by the presenter.
5. Private study, on the other hand, involves a course of study that is not structured by a provider. It involves the solicitor himself or herself choosing what to study, finding the material to study, and then arranging for the study to take place.
6. BenchTV is not private study. It is a “multimedia or web-based program”, which rule 8.1.1 specifically contrasts with, and differentiates from, “private study”. It involves a provider deciding what information to present, and then presenting it to the subscriber in a considered form.
7. The only differences between a solicitor watching a presentation on BenchTV, and the same solicitor sitting in a lecture watching the same material in the form of a lecture are differences that make BenchTV superior to the lecture. The BenchTV presentation is edited for correctness and clarity, it is checked by both editors and the presenters, and useful material is presented on-screen in conjunction with what is being said. Further, precis papers and multiple choice tests are available in respect of each presentation.
8. BenchTV, being a “multimedia or web-based program”, is therefore able to provide all 10 CPD units to solicitors per year.