

# Accredited Specialisation Scheme Rules (April 2016)

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# Part 1 – Introduction to the Specialisation Scheme

## 1.1 Specialist Accreditation

Lawyers who are accredited as specialists are recognised as having enhanced skill levels, as well as substantial involvement in established legal specialty areas. The Law Institute of Victoria requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an accredited specialist is meaningful and reliable.

## 1.2 Aims

The Scheme aims to benefit the public and the profession in three ways:

- 1.2.1 by offering the public and other professionals a reliable means of identifying legal practitioners who are recognised by their peers as having special competence in particular areas of practice
- 1.2.2 by providing an incentive and an opportunity for legal practitioners to reach and maintain higher levels of competence in their chosen areas of practice
- 1.2.3 by encouraging improvement in the quality, speed and cost-efficiency of legal services.

## 1.3 Individual Attainment

Specialist accreditation is an attainment of an individual practitioner and does not pertain to his or her firm.

## 1.4 No Limitation on Rights of Practice

Participation in the Scheme is voluntary. No legal practitioner is required to be accredited before practising in any particular area of practice. At the same time, accreditation as a specialist does not in any way limit the right to practise in other areas of practice.

## 1.5 Guidelines

The Board and/or the Advisory Committees may, from time to time, publish guidelines to provide additional information pertaining to the Scheme.

## 1.6 Definitions

<i>Accredited Specialist:</i>	<i>A person accredited by the Law Institute of Victoria as a Specialist, that person having satisfied the qualifying requirements contained within these Rules</i>
<i>Advisory Committee:</i>	<i>An advisory committee established by the Specialisation Board in specific areas of practice</i>
<i>Applicant:</i>	<i>A person who submits an application for accreditation as a Specialist</i>
<i>Associate Member:</i>	<i>A professional person working within the legal sector, including (but not limited to) barristers; a member of the judiciary; interstate, overseas and non-practising lawyers; articulated clerks and trainees; paralegals; law librarians; practice managers; and collaboratively trained professionals</i>
<i>Board</i>	<i>Specialisation Board</i>
<i>Candidate</i>	<i>A person whose application is accepted and who is admitted to an assessment program</i>
<i>Committee</i>	<i>A committee established by the Specialisation Board for a specific purpose</i>
<i>Council</i>	<i>The Board of Directors of the Law Institute of Victoria Ltd</i>
<i>CPD</i>	<i>Continuing Professional Development</i>
<i>Enquirer</i>	<i>A person who expresses an interest in applying for specialisation</i>
<i>Law Institute</i>	<i>Law Institute of Victoria</i>
<i>Law Institute of Victoria</i>	<i>A registered name of the Law Institute of Victoria Ltd ACN 075 475 731</i>
<i>LIV</i>	<i>Law Institute of Victoria</i>
<i>Official publication</i>	<i>The day following the date upon which assessment results in a particular specialty area are posted to candidates</i>
<i>Practising Certificate</i>	<i>The certificate issued by the Victorian Legal Services Board pursuant to the Legal Profession Uniform Law Application Act 2014 or the equivalent interstate body in Australia, authorising a person to engage in legal practice</i>
<i>Practitioner</i>	<i>A person qualified to practice law in any state or territory in Australia</i>
<i>President</i>	<i>The President of the Law Institute of Victoria Ltd</i>
<i>Rules</i>	<i>Specialisation Scheme Rules</i>
<i>Scheme</i>	<i>Specialisation Scheme</i>
<i>Secretary</i>	<i>The Secretary of the Specialisation Board</i>
<i>Specialist</i>	<i>A person who is an Accredited Specialist</i>

## Part 2 – The Specialisation Board

### 2.1 Status

The Board is a committee of the Council of the Law Institute of Victoria. The Council has delegated to the Board the power to oversee and administer all aspects of the Scheme.

### 2.2 Powers of the Board

The Board has general jurisdiction in all matters pertaining to the Scheme. The Board has the power to:

- 2.2.1 administer the Scheme
- 2.2.2 determine areas of practice in which specialists may be accredited
- 2.2.3 appoint and supervise the Committees and in its discretion to act on the recommendations of those Committees
- 2.2.4 make and publish guidelines for the accreditation of specialists, such guidelines to be designed to produce a uniform level of competence amongst the various specialties in accordance with the nature of those specialties
- 2.2.5 supervise assessment and accreditation of candidates
- 2.2.6 accredit specialists or to deny, suspend or revoke the accreditation of specialists
- 2.2.7 establish and publish rules, policies and procedures for the administration of the Scheme
- 2.2.8 set and collect fees payable by applicants and by accredited specialists
- 2.2.9 make recommendations to the Council for amendments to the Scheme whenever appropriate
- 2.2.10 report annually to Council on the conduct of the Scheme
- 2.2.11 assist specialists in marketing their specialist legal services
- 2.2.12 promote the scheme to the public, profession and potential candidates
- 2.2.13 to provide ongoing support, development and continuing education to specialists
- 2.2.14 to do other such act or thing as is necessary to give effect to the Rules and the advancement of the Scheme.

### 2.3 Duties of the Board

- 2.3.1 The Board has general jurisdiction in all matters pertaining to the Scheme.
- 2.3.2 The Board has the duty to:
  - 2.3.2.1 on completion of the assessment process publish a list of names of successful candidates in a specialty area on the official publication date or as soon as practicable thereafter
  - 2.3.2.2 subject to Rule 2.3.2.1, maintain as confidential at all times the identity of enquirers, applicants and candidates and the performance of individual candidates and their examination scores
  - 2.3.2.3 maintain as confidential at all times the content of examination materials prior to the assessment tasks taking place and until the completion of same
  - 2.3.2.4 publicly support the Scheme and the decisions of the Board
  - 2.3.2.5 make determinations in good faith
  - 2.3.2.6 make determinations for the maintenance and advancement of the Scheme.

## **2.4 Membership of the Board**

- 2.4.1 The minimum number of Board members is seven and the maximum number is ten (excluding the President), but the Board has discretion to increase this to twelve when necessary
- 2.4.2 At least three members of the Board must be members of the Council. The President of the Council is an *ex officio* member of the Board
- 2.4.3 At least five members of the Board must be Accredited Specialists
- 2.4.4 The Board is assisted by a Secretary
- 2.4.5 No more than two members of the Board may be persons who are not current practitioners
- 2.4.6 Board members are appointed by the Council
- 2.4.7 Appointment to the Board is for a term of three years
- 2.4.8 Board members are eligible to serve on the Board for no more than ten years, which need not be served consecutively, but the Board has discretion to increase this to twelve when necessary
- 2.4.9 A quorum of the Board is five members
- 2.4.10 Board members must declare any conflicts of interest known to them and must maintain strict confidentiality at all times.

## **Part 3 – Committees**

### **3.1 Status**

The Board will establish an Advisory Committee for each area of practice in which it is intended that practitioners be accredited. The Board is assisted by the Advisory Committee but is not bound to act in accordance with the advice provided to it.

### **3.2 Role of a Committee**

Each Advisory Committee is to assist the Board in administering the Scheme generally and to advise the Board on matters relating to particular areas of specialty. Matters on which an Advisory Committee is expected to advise and assist the Board include the following:

- 3.2.1 conditions for gaining and maintaining accreditation
- 3.2.2 application procedures and specific applications
- 3.2.3 assessment procedures and specific assessments
- 3.2.4 accreditation of candidates
- 3.2.5 continuing accreditation and re-accreditation
- 3.2.6 suspension and revocation of accreditation
- 3.2.7 continuing professional development
- 3.2.8 proposed new members
- 3.2.9 such other matters as may be requested by the Board from the Advisory Committee

### **3.3 Duties of a Committee**

The Advisory Committee has a duty to:

- 3.3.1 subject to Rule 2.3.1, maintain as confidential at all times the identity of enquirers, applicants and candidates and the performance of individual candidates and their examination score
- 3.3.2 maintain as confidential at all times the content of examination materials prior to the completion of the assessment tasks
- 3.3.3 publicly support the specialisation scheme and the decisions of the Advisory Committee and the Board

- 3.3.4 make deliberations and recommendations in good faith
- 3.3.5 make deliberations and recommendations for the maintenance and advancement of the Scheme and the particular specialty administered by the Advisory Committee.

### **3.4 Membership of a Committee**

- 3.4.1 The minimum number of Committee members is five and the maximum number is twelve, or such other number as the Board considers appropriate
- 3.4.2 Excluding the examiner, no more than one member may be a person who is not a current practitioner
- 3.4.3 A practitioner appointed to an Advisory Committee must be an Accredited Specialist in the area of practice concerned, unless accreditation has not been made available in that area of practice
- 3.4.4 Practitioners appointed as initial members of an Advisory Committee must be eligible to be accredited in the area of practice
- 3.4.5 Committee members are appointed by the Board
- 3.4.6 Appointment to an Advisory Committee is for a term of three years
- 3.4.7 The term of appointment of an initial member of an Advisory Committee is calculated from the date on which the first candidates in that area of practice are accredited. Any time served as a Committee member before that date is not counted as part of the three-year term
- 3.4.8 An initial member of an Advisory Committee who is eligible for accreditation can be accredited as a Specialist from the date on which the first candidates in that area of practice are accredited
- 3.4.9 Advisory Committee members are eligible for re-appointment as follows:
  - (a) Advisory Committee members who have passed the assessment program are eligible to serve on the Committee for no more than ten years, which need not be served consecutively, but the Board has discretion to increase this to twelve when necessary
  - (b) An Advisory Committee member who has not passed the assessment program may be re-appointed for no more than one additional three-year term.
- 3.4.10 In order to maintain accreditation as a Specialist after leaving the Committee an initial member of an Advisory Committee must pass the assessment program within two years (or such longer time as the Board may allow in exceptional circumstances).
- 3.4.11 An initial member may not undertake any assessment program set while that person is a member of the Advisory Committee.
- 3.4.12 Advisory Committee members must declare any conflicts of interest known to them and must maintain strict confidentiality at all times.

## **Part 4 – Gaining Accreditation**

### **4.1 Applications**

- 4.1.1 The Board may set application fees from time to time.
- 4.1.2 Each application must be accompanied by the set fee.
- 4.1.3 Applications must be made in the form provided by the Board from time to time.
- 4.1.4 Upon application for accreditation, applicants are deemed to have agreed to be bound by the rules and guidelines made pursuant thereto.

### **4.2 Membership of the Law Institute of Victoria**

Applications for accreditation as a specialist will only be accepted from full members of the Law Institute or an equivalent state or territory body in Australia.

### 4.3 Current Practising Certificate

Each applicant must:

- 4.3.1 hold a current Practising Certificate from the Victorian Legal Services Board or the Law Institute of Victoria or an equivalent State or Territory body in Australia, or
- 4.3.2 be engaged in legal work as an employee of a State or Territory Government or Commonwealth Government or acting in a judicial or quasi-judicial capacity.

### 4.4 Practical Experience

4.4.1 Subject to Rule 4.4.2 below, an applicant must:

- (a) have been by 30 June in the year of their application engaged in full time legal work for a total period of no less than five years following the date of their admission to practice;
- (b) demonstrate in each of the three years immediately prior to the application being made, a substantial involvement in the area of practice of law in which accreditation is sought.

4.4.2 In respect of the requirements of Rule 4.4.1 above, substantial involvement shall mean legal work in the area of practice for which accreditation is sought which is equivalent to at least 25% of the total work load of a practitioner engaged in full time practice, which is considered to be equivalent to 460 hours per year. The length of involvement may be measured by time engaged in work relevant to the area of practice, by the number and nature of matters handled, or by a combination of these and other relevant factors at the discretion of the Board.

### 4.5 Exceptional Circumstances

- 4.5.1 The Board may, in exceptional circumstances, exercise its discretion to accept an application in the form prescribed by the Board from a practitioner who is unable to fully satisfy the conditions set out in Rule 4.4 above.
- 4.5.2 In submitting such an application for the Board to exercise its discretion not to require compliance with Rule 4.4, the applicant must demonstrate to the Board that the experience gained by the applicant in legal work, para-legal work, judicial, quasi-judicial work, legal research, teaching, or part-time legal work which in aggregate, is sufficient to satisfy the Board that the requirements of Rule 4.4 have been satisfied, and that the application otherwise complies with the aims of the Scheme.
- 4.5.3 In considering such an application seeking relief from the requirements of Rule 4.4 above, the Board may have regard to matters including but not limited to:
  - (a) advice from the relevant committee
  - (b) the applicant's experience gained in part-time legal work on a *pro rata* basis
  - (c) any particular characteristics of the relevant area of practice in which accreditation is sought
  - (d) work such as para-legal, judicial, quasi-judicial, legal research, teaching, or part-time legal work of the applicant
  - (e) any other matters as the Board considers appropriate.
- 4.5.4 The Board shall notify the practitioner making the application in writing stating the reasons for its decision within 14 days of the decision being made.

### 4.6 Referees

- 4.6.1 Each application for accreditation must include the names, occupations and addresses of three referees in the form prescribed by the Board (from time to time).
- 4.6.2 Each of these referees must be able to attest to the applicant's:
  - (a) involvement in the area of legal practice in which accreditation is sought; and
  - (b) competence as a legal practitioner

- 4.6.3 Each referee must have known the applicant for at least three years prior to the date of the application.
- 4.6.4 At least one referee must be a legal practitioner resident within an Australian jurisdiction with at least five years' experience in practice and who is significantly involved in the relevant area of practice in which accreditation is sought. A referee who is not a legal practitioner must have appropriate experience in a field of work closely related to the area of practice in which accreditation is sought.
- 4.6.5 None of the following is eligible to act as a referee for an application:
- (a) a current partner, associate, employee, employer or relative of the applicant
  - (b) another applicant or candidate for accreditation in the same area of practice in the same year as the applicant
  - (c) a current member of the Board or a current member of the Committee in the relevant area of practice
  - (d) a current staff member of the Law Institute.
- 4.6.6 Each application must include an authority from the applicant directed to the Board to enable the Board to make all due inquiries of:
- (a) referees provided with the application for specialisation, and
  - (b) the Victorian Legal Services Board, Victorian Legal Services Commissioner, Victorian Bar, Victoria Police, the Law Institute of Victoria (or interstate equivalent of each such body or authority) in relation to any findings of misconduct or unsatisfactory conduct concerning the applicant
- Such authority shall be drawn in the form prescribed from time to time by the Board so as to encompass proper inquiries to be made pursuant to Part 4 of the Rules.
- 4.6.7 The Board may, in its discretion, exempt or vary the requirement of the production of three references in special circumstances and on such conditions as the Board decides.

#### **4.7 Professional Conduct**

An application for accreditation must include, if applicable, details of any previous:

- (a) finding of professional misconduct or unsatisfactory professional conduct made against them in accordance with section 137 of the *Legal Practice Act 1996*, Sections 4.4.2 and 4.4.3 of the *Legal Profession Act 2004*, sections 296 and 297 of the *Legal Profession Uniform Law Act 2014* or at common law;
- (b) any convictions of a state, federal or international court made against them involving dishonesty or moral turpitude;
- (c) details of any other conduct capable of constituting unsatisfactory professional conduct or professional misconduct as defined in section 298 of the *Legal Profession Uniform Act 2014*.

#### **4.8 Undertakings by Applicants**

- 4.8.1 It is a condition of application that applicants unconditionally agree that in the event they are accredited as a specialist, they will immediately, upon receipt of notification, report to the Board:
- (a) any finding of professional misconduct or unsatisfactory professional conduct made against them in accordance with section 137 of the *Legal Practice Act 1996*, Sections 4.4.2 and 4.4.3 of the *Legal Profession Act 2004*, sections 296 and 297 of the *Legal Profession Uniform Law Act 2014* or at common law; and/or
  - (b) any conviction of a state or federal court made against them involving dishonesty or moral turpitude.



## 4.9 Professional Conduct

4.9.1.1 The Board may decline to accept an application on the ground of the:

- (a) applicant's professional misconduct as defined by section 137 of the *Legal Practice Act 1996*, Section 4.4.3 of the *Legal Profession Act 2004*, section 297 of the *Legal Profession Uniform Law Act 2014* and/or at common law; or
- (b) applicant's unsatisfactory professional conduct as defined by section 137 of the *Legal Practice Act 1996*, section 4.4.2 of the *Legal Profession Act 2004*, section 296 of the *Legal Profession Uniform Law Act 2014*; or
- (c) applicant having engaged in conduct which in the opinion of the Board is likely to bring Accredited Specialists or the Scheme into disrepute.

## 4.10 Enquiries

4.10.1 Each application must include an authority from the applicant directed to the Board to enable the Board to make all due enquiries of the Victorian Legal Services Board, Victorian Legal Services Commissioner, Victorian Bar, Victoria Police or the Law Institute of Victoria (and interstate equivalent of each such body or authority) to any findings of misconduct or unsatisfactory conduct concerning the applicant.

4.10.2 Such authority shall be drawn in the form prescribed from time to time by the Board so as to encompass proper inquiries to be made pursuant to Rule 4.10.1

4.10.3 It is a condition of application that applicants unconditionally agree that in the event they are accredited as a Specialist, they will immediately report to the Board:

- (a) any finding of professional misconduct or unsatisfactory professional conduct made against them in accordance with section 137 of the *Legal Practice Act 1996*, Sections 4.4.2 and 4.4.3 of the *Legal Profession Act 2004*, sections 296 and 297 of the *Legal Profession Uniform Law Act 2014* or at common law; or
- (b) any conviction of a state or federal court made against them involving dishonesty or moral turpitude; or
- (c) any determination or finding by a Court, Tribunal or body which is inconsistent with their standing as an Accredited Specialist.

## 4.11 Assessment of Candidates

4.11.1 A candidate for accreditation must pass an assessment program as approved by the Board from time to time.

4.11.2 The Board shall publish from time to time guidelines to candidates in each area of specialty, of the curriculum to be examined, the method of assessment, and the assessment timetable.

4.11.3 The assessment timetable published from time to time shall include a prescribed date on which applications for candidature must be received and dates on which each assessment or part of the assessment must be completed.

4.11.4 A candidate may make application for special consideration pertaining to any part of the assessment tasks where the candidate feels that their performance has been substantially diminished by an event beyond their control. The application must be lodged by the candidate seeking special consideration on the form provided no later than two clear business days after the relevant assessment date or such later time as the Board thinks fit.

4.11.5 The Committee in each area of specialty must satisfy itself that the work submitted by a candidate for assessment meets the required standard to justify a recommendation for accreditation as a Specialist within that area. The Committee shall make a recommendation to the Board as to the performance of each candidate against that standard and any application for special consideration properly lodged by the candidate.

- 4.11.6 Before making a recommendation that a candidate not be accredited, each Committee shall ensure that that candidates' work submitted for assessment be reassessed by a second examiner.
- 4.11.7 In exceptional cases the Committee may require a candidate to take further assessment before a decision is made as to the Committee's recommendation.
- 4.11.8 The Board shall determine the list of candidates to be accredited in each area of specialty and shall notify each candidate of its determination to grant or deny accreditation.
- 4.11.9 The Board shall not be required to provide reasons for its decision to grant or deny accreditation.

## **Part 5 Maintaining Accreditation**

### **5.1 Qualifications to Maintain Accreditation**

An Accredited Specialist, including an Accredited Specialist who signs the Bar Roll, must at all times maintain the qualifications necessary to gain accreditation as described in Part 4 of the Rules, save that he or she may be an associate member of the LIV or an equivalent state or territory body in Australia.

### **5.2 Annual Fee**

An Accredited Specialist must pay the annual fee set from time to time by the Board to maintain accreditation, such payment to be made within the prescribed time set by the Board in each year.

### **5.3 Obligation to be Bound by the Rules**

It is a condition of maintaining accreditation that specialists unconditionally agree to be bound by the Rules as they appear from time to time.

### **5.4 Substantial Involvement in Practice Areas**

An Accredited Specialist must maintain substantial involvement as described in Rule 4.4.2 in the area of practice in which accreditation is held subject to any allowances accorded to the candidate by a determination by the Board both as to substantial involvement and/or full time practice.

### **5.5 Professional Conduct, Revocation and Suspension**

- 5.5.1 The Board may revoke or suspend for such period or on such terms as the Board determines the accreditation of a Specialist on the grounds of:
  - (a) professional misconduct as defined by section 137 of the *Legal Practice Act 1996*, section 4.4.3 of the *Legal Profession Act 2004* or section 297 of the *Legal Profession Uniform Law Act 2014* and/or at common law
  - (b) unsatisfactory professional conduct as defined by section 137 of the *Legal Practice Act 1996*, section 4.4.2 of the *Legal Profession Act 2004* or section 296 of the *Legal Profession Uniform Law Act 2014*.
  - (c) the Specialist engaging in conduct related to the practice of law which in the opinion of the Board is likely to bring accredited specialists or the Board into disrepute, or
  - (d) failure to comply with the Rules as they appear from time to time.
- 5.5.2 The Board may seek written submissions from the Specialist as to their conduct or proceedings in relation to their conduct before making a decision under Rule 5.5.1.
- 5.5.3 The Board, prior to revoking or suspending the accreditation of a Specialist pursuant to this Rule shall:-
  - (a) provide no less than 14 days notice in writing of its intention to revoke the accreditation of the Specialist

- (b) provide reasons to the Specialist for the proposed action of the Board
  - (c) allow the Specialist to provide submissions in response within 14 days of the date of service of the notice
  - (d) consider any submissions from the Specialist
  - (e) advise the Specialist of the decision of the Board as soon as it is reasonably practicable to do so.
- 5.5.4 The Board shall not be required to conduct a hearing before making a decision pursuant to Rule 5.5.
- 5.5.5 If the accreditation of a Specialist is revoked pursuant to this Rule, it cannot be reinstated.

## **5.6 Continuing Professional Development**

- 5.6.1 Specialists must complete a minimum of 12 hours (12 CPD Scheme units) per year to maintain their accreditation.
- 5.6.2 Eight out of the 12 CPD Scheme units must be in the Specialist's area of specialisation (which may include the compulsory CPD Scheme units: Substantive Law, Ethics, Professional Skills and Practice Management provided the units are of specific relevance to the Specialist's area of specialisation).
- 5.6.3 Four out of the 12 CPD Scheme units can be in any area (which may include the compulsory CPD Scheme units: Substantive Law, Ethics, Professional Skills and Practice Management).
- 5.6.4 If more than one area of specialisation is held eight scheme units must be completed in each area of specialisation.
- 5.6.5 Each Specialist must maintain a record of their participation in CPD in order to satisfy both the compulsory CPD Scheme and the Specialisation CPD requirements.
- 5.6.6 This record should set out the date of each activity, the title of the activity, the provider, the format of the activity (e.g. seminar, workshop, study group) and the number of CPD Scheme units claimed.
- 5.6.7 In the first three years after obtaining accreditation, each specialist must submit a report to the Board by the prescribed date and in the prescribed form, setting out the CPD activities relied upon by the candidate to maintain accreditation.
- 5.6.8 The relevant Specialisation Advisory Committee will assess the CPD report, and will determine if the eight scheme units are relevant to the area of specialisation and are at the level expected of an accredited specialist.
- 5.6.9 Specialists accredited for more than three years are required to submit a CPD report as and when directed by the Board. Where a report is not required, specialists must make an annual declaration that they have complied with the requirements of the Rules regarding CPD.
- 5.6.10 The Board may select a proportion of specialists to verify compliance with the requirements of maintaining CPD.

## **5.7 Notification of Change of Circumstances**

An Accredited Specialist who becomes unable to satisfy the conditions for maintaining accreditation must notify the Secretary of the Board in writing of such change in circumstances at the earliest practical date.

## **5.8 Leave of Absence**

- 5.8.1 An Accredited Specialist, who is unable to satisfy the conditions for maintaining accreditation due to a change in circumstance involving their level of involvement in their area of accreditation, must, in order for the accreditation to continue, apply in writing to the Board for a leave of absence of up to two consecutive years.

- 5.8.2 Except where an area of specialisation is part of a national specialist accreditation program recognised by the Board, specialists who undertake practice wholly outside the State of Victoria must seek leave of absence if their absence extends beyond three months.
- 5.8.3 The Board will not grant any further leave of absence beyond two consecutive years other than in exceptional circumstances.
- 5.8.4 The Board may grant a leave of absence subject to such conditions as the Board may determine including the payment of such fee as may be determined by the Board in its sole and absolute discretion.
- 5.8.5 Except in exceptional circumstances including serious illness, specialists are required to actively participate in continuing professional development activities during their leave of absence as required by Rule 5.6.
- 5.8.6 In considering a leave of absence request the Board may, in its sole and absolute discretion decide that where the Accredited Specialist is on Parental Leave, completing the Bar Readers Course or on leave from work due to illness or otherwise the Accredited Specialist be exempted from the requirement to hold a current practising certificate or similar as prescribed by Rules 4.2 and 5.1.
- 5.8.7 No later than 28 days prior to the expiration of the leave of absence period or such other period the Board may determine, the Specialist must make written application to the Board for approval of their return from a leave of absence as an Accredited Specialist, with such application to include evidence of their compliance with Rule 5.8.5 unless such compliance has been waived or varied by the Board and any further conditions or terms imposed pursuant to Rule 5.8.4 and evidence of their ability to comply in the next six months with Rule 5.4.
- 5.8.8 Upon a Specialist making an application in accordance with Rule 5.8, their specialisation shall be deemed to continue until such application has been determined by the Board.
- 5.8.9 The Board will consider and determine an application made pursuant to Rule 5.8.7 by refusing it or approving it, with or without any conditions the Board considers appropriate.
- 5.8.10 In the event that a Specialist does not seek reaccreditation in accordance with Rule 5.8.7, then, upon the expiration of the leave of absence, the accreditation of the specialisation shall lapse.
- 5.8.11 Upon the accreditation of a Specialist lapsing pursuant to Rule 5.8.10, the Board shall notify the Specialist of the lapse of the specialisation as soon as reasonably practicable to do so.
- 5.8.12 In the event that the accreditation of a Specialist has lapsed, the Specialist, to regain his or her accreditation, must comply with the requirements of Part 4 of the Rules.
- 5.8.13 Notwithstanding anything herein contained to the contrary, in the event that the accreditation of a Specialist has lapsed, the subsequent provision of a Certificate of Accreditation to the former Specialist, or the payment of any cost or fee of or relating to the accreditation of a Specialist, shall not in any circumstances be deemed to be an admission of or granting of, the accreditation of the former Specialist.

## **5.9 Suspension or Revocation of Accreditation**

- 5.9.1 The Board may suspend or revoke accreditation if an Accredited Specialist fails to satisfy any of the conditions for maintaining accreditation.
- 5.9.2 Suspension may be for a fixed time and/or subject to such conditions as may be set by the Board from time to time.
- 5.9.3 A Specialist whose accreditation is suspended or revoked must not hold himself or herself out as an Accredited Specialist.
- 5.9.4 The Board, prior to suspending or revoking the accreditation of a Specialist pursuant to this Rule shall:-

- (a) provide no less than 14 days notice in writing of its intention to suspend or revoke the accreditation of the Specialist
- (b) provide reasons to the Specialist for the intention of the Board
- (c) allow the Specialist to provide submissions in response within 14 days of the date of service of the notice
- (d) consider any submissions of the Specialist
- (e) advise the Specialist of the decision of the Board as soon as it is reasonably practicable to do so.

## **5.10 Re-accreditation**

- 5.10.1 Each Accredited Specialist must apply for re-accreditation on the expiration of three years from the date of his or her original accreditation and at the end of each three-year period thereafter.
- 5.10.2 The Board may require accredited specialists in a particular area of practice to undertake further assessment before re-accreditation if the Board considers that changes to that area of practice make further assessment necessary.
- 5.10.3 An Accredited Specialist seeking re-accreditation must provide:
- (a) a declaration that he or she continues to satisfy the conditions of maintaining accreditation
  - (b) the names and particulars of three referees who will attest to the applicant's competence and involvement in the relevant area of practice, conduct and good character. The requirements pertaining to referees are contained in Rule 4.6.
  - (c) details of any other conduct capable of constituting unsatisfactory professional conduct or professional misconduct as defined in sections 296, 297 and 298 of the *Legal Profession Uniform Act 2014*.
- 5.10.4 Each application for re-accreditation must include an authority from the applicant directed to the Board to enable the Board to make all due inquiries of:
- (a) referees provided with the application for re-accreditation, and
  - (b) the Victorian Legal Services Board, Victorian Legal Services Commissioner, Victorian Bar, Victoria Police and the Law Institute of Victoria in relation to any finding of misconduct or unsatisfactory conduct concerning the applicant. The authority includes equivalent authorities and bodies interstate. Such authority shall be drawn in the form prescribed from time to time by the Board so as to encompass proper enquiries to be made pursuant to Part 5 of these Rules; and
  - (c) any determination or finding of a Court, Tribunal or body which is inconsistent with their standing as an Accredited Specialist.
- 5.10.5 It is a condition of application that applicants unconditionally agree that in the event they are re-accredited as a Specialist, they will immediately, upon receipt of notification, report to the Board:
- (a) any finding of misconduct, unsatisfactory or like conduct made against them in accordance with section 137 of the *Legal Practice Act 1996*, section 4.4.2 or 4.4.3 of the *Legal Profession Act 2004*, sections 296 and 297 of the *Legal Profession Uniform Law Act 2014* or at common law
  - (b) any conviction of a state, federal or international court made against them involving dishonesty or moral turpitude.

## **5.11 Certificate of Accreditation**

- 5.11.1 A Certificate of Accreditation shall be provided to each candidate who satisfies the conditions for accreditation and a replacement certificate provided to each Accredited Specialist who satisfies conditions for re-accreditation.

5.11.2 The certificates of accreditation remain the property of the Law Institute of Victoria and must be returned to the Law Institute of Victoria in the event that accreditation is suspended or revoked, or if the accreditation is surrendered or expires.

## **5.12 Cancellation of Accreditation**

5.12.1 In the event that an Accredited Specialist no longer holds a Practising Certificate or is no longer a member of the LIV, the accreditation of that person shall be deemed to be cancelled as at the date they cease to hold either a Practising Certificate or membership of the LIV, in accordance with the requirements of clauses 4.2 and 4.3.

5.12.2 If the former Accredited Specialist later obtains a Practising Certificate and if applicable is reinstated as a member of the LIV, then they may re-apply to become an Accredited Specialist in accordance with the requirements of Part 4 of the Rules.

## **5.13 Suspension of Accreditation**

5.13.1 In the event that the Practising Certificate of an Accredited Specialist is suspended, the accreditation of that person shall be deemed to be suspended as at the date their Practising Certificate is suspended.

5.13.2 If the suspension of the Accredited Specialist's Practising Certificate is lifted, the accreditation of that person shall be reinstated.

# **Part 6 - General Provisions**

## **6.1 Limit on number of areas of practice in which accreditation can be held**

6.1.1 The number of areas of practice in which a practitioner may hold accreditation is limited by the requirement to demonstrate substantial involvement in an area of practice.

6.1.2 If a Specialist already holds accreditation in more than two areas of practice, that Specialist must obtain the permission of the Board before undertaking any further assessment in any other area of specialty.

## **6.2 Referrals**

An Accredited Specialist receiving a referral of a matter from another practitioner is required to do all in his or her power to ensure that the referred client returns to the referring practitioner for all other legal work. An Accredited Specialist is also required to notify the client of this obligation in writing at the earliest opportunity.

## **6.3 Advertising**

6.3.1 Accredited specialists are entitled to advertise their accreditation by using titles such as Accredited Business Law Specialist, and Accredited Specialist in Property Law. Condensed versions of such titles may be used as post-nominals, for example, Accred. Spec. Bus. Law, or Accred. Spec. (Comm. Litig.).

6.3.2 Accredited specialists are required to identify the state in which they are accredited when advertising outside that state, for example, Accredited Personal Injury Law Specialist (Victoria).

6.3.3 Accredited specialists may use the specialist accreditation logo only in accordance with the guidelines published by the Law Institute of Victoria from time-to-time.

## **6.4 Appeals**

6.4.1 There shall be an Appeal Board (the "Appeal Board") to review decisions of the Board identified in Rule 6.4.4 below.

6.4.2 The Appeal Board shall comprise three members:

- (a) the chair of the Ethics Committee of the Law Institute, or his or her nominee, who shall chair the Appeal Board
  - (b) the current President of the Council or his or her nominee from the Council who is an Accredited Specialist where possible
  - (c) the chair of the Advisory Committee in the area of specialty for which the applicant has applied, or his or her nominee save that, in the event that the chair of the Committee is perceived by the remaining members of the Appeal Board to have a conflict of interest with respect to the application, the Appeal Board shall appoint either an alternative member of the same Committee or the Chair of such other Advisory Committee as the Appeal Board members think fit.
- 6.4.3 The Specialisation Board must provide to the person about whom the decision was made, unless otherwise provided for in the Rules, a written statement of reasons for its decision within 14 days of the date the decision was made.
- 6.4.4 Any person aggrieved by a decision of the Board relating to:
- (a) an application for candidacy for accreditation under Rule 4.1-4.8, or
  - (b) the suspension or revocation of the accreditation of a person under Rule 5.9, or
  - (c) the re-accreditation of a person under Rule 5.10.1 and 5.10.3 ("the appellant") may appeal to the Appeal Board for a review of the decision of the Board.
- 6.4.5 A Notice of Appeal by the appellant must be lodged with the Secretary of the Specialisation Board.
- 6.4.6 The Appeal shall be lodged by submitting a Notice of Appeal as per Rule 6.4.5 above within 14 days of the date of the written notification of the decision of the Board in respect of which the appeal is lodged. The Notice of Appeal must:
- (a) be in writing
  - (b) specify the decision in respect of which the appeal is lodged;
  - (c) specify the grounds upon which the appellant relies; and
  - (d) be accompanied by a fee set by the Board from time-to-time, which will be refunded in full to the appellant if the appeal is successful.
- 6.4.7 The Appeal Board shall notify the appellant in writing of the date and venue of the review within 14 days of receipt of the Notice of the Appeal.
- 6.4.8 The appellant shall file with the Appeal Board and serve the Secretary of the Specialisation Board with a summary of the evidence, submissions and all documents intended to be relied upon upon at the hearing of the matter on or before 21 days prior to the date fixed for the hearing.
- 6.4.9 The Board shall file with the Appeal Board and serve the Secretary of the Specialisation Board with a summary of the evidence, submissions and all documents intended to be relied upon at the hearing of the matter within 14 days of receiving the appellant's summary.
- 6.4.10 There will be a hearing of the application at which the chair of the Board or his/her Board nominee shall appear and be entitled to make submissions.
- 6.4.11 No party appearing before the Appeal Board shall be entitled to legal representation.
- 6.4.12 The Appeal Board may:
- (a) take evidence on oath or affirmation,
  - (b) adjourn the hearing from time to time,
  - (c) require the Board, or the Committee relevant to the specialty for which the appellant has applied or the appellant to make further inquiries or submit further materials as the Appeal Board thinks appropriate with respect to the Appeal.

6.4.13 The Appeal Board may either:

- (a) affirm the decision of the Board,
- (b) vary the decision of the Board,
- (c) set aside the decision of the Board and substitute a new decision,
- (d) remit the matter for reconsideration by the Board.

6.4.14 Where the Appeal Board makes its decision on an appeal, the Appeal Board must prepare a written statement that:

- (a) sets out the decision of the Appeal Board pertaining to the appeal,
- (b) sets out the reasons for the decision,
- (c) sets out the findings on any material questions of fact,
- (d) refers to the evidence or any other material on which the findings of fact were based and the Appeal Board shall provide such written statement to the appellant and the Board within 14 days of making such decision.



### **Specialisation Board (as at April 2016)**

Heidi Asten	Herbert Smith Freehills
Jamie Bedelis	Bedelis Lawyers
Philip Colman	MST Lawyers
Caroline Counsel	Caroline Counsel Family Law
Naomi Guyett	Lorraine Jones
Simon Libbis	Subdivision Lawyers
Rose Lockie	Gadens Lawyers
Craig Lynch	Slater & Gordon
Katie Miller (Chair)	VGSO
Maria Priolo	Victoria Legal Aid
Angela Sdrinis	Angela Sdrinis Legal
Mark Woods	Tyler Tipping & Woods
Elissa Cohan (Secretary to the Board)	LIV