



# Accredited Specialisation Application Guidelines 2019

## Administrative Law



## What is an Accredited Specialist?

A lawyer who is accredited as a specialist is recognised as having an enhanced skill level, 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.

## Eligibility for Accreditation

- Membership of the Law Institute of Victoria
- A current practising certificate
- At least five years experience in practice
- Substantial involvement in Administrative Law over the past three years
- Three references in support of the application
- Successful completion of the prescribed assessment program

Candidates who do not meet the eligibility criteria may apply for an exemption from criteria in accordance with the Specialisation Scheme Rules. Such applications for exemption must be lodged no later than **4.00pm Friday 22 March 2019**.

**IMPORTANT: Details of the conditions for gaining specialist accreditation are contained in the Specialisation Scheme Rules which can be found at:**

[http://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20160420 Master SpecialisationSchemeRules April16.pdf](http://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20160420%20Master%20SpecialisationSchemeRules%20April16.pdf)

Specialisation Candidates are particularly advised to read the *Specialisation Scheme Rules* and familiarise themselves with the requirements for any applications for exemption or special consideration. The Rules are located under the Scheme Administration tab of the *Specialisation Scheme* link.

## Assessment

The assessment program for Accredited Specialisation in Administrative Law is in three parts. To gain accreditation candidates must obtain a satisfactory mark in each of the three parts of the program. Candidates may, in any or all of the assessment program, be assessed on any or all of the **Assessment Topics and Legislation** listed in **Schedules 4 and 5**.

Part 1: Written Examination – See **Schedule 1**.

Part 2: Oral Submission – See **Schedule 2**.

Part 3: Letter of Advice – See **Schedule 3**

**Further details of the assessment programme and procedures are contained in the Schedules attached to these Guidelines.**

**Note:** Candidates will be examined on the law as it stands at the date of assessment.

## **Supplementary assessment**

Candidates may be required to undertake additional assessment at the discretion of the Specialisation Board.

## **Exemption from Written Examination**

Candidates may apply in advance for an exemption from the written examination if they have recently studied subjects relating to Administrative Law in a postgraduate course at a tertiary institution. Any such exemption is entirely at the discretion of the Specialisation Board and will be assessed on a case by case basis.

Eligibility for the exemption is subject to the following conditions. The completed post graduate course units **must:**

- have been completed within the preceding five years of the date of application
- assess knowledge that is equivalent in range to the knowledge assessed in the specialist accreditation exam
- be at a level of complexity and standard of knowledge that is equivalent to that assessed in the specialist accreditation exam
- contain knowledge that is of equivalent relevance to practice in the specialist accreditation exam

Any application for an exemption should be made at the time of lodging the application form, which is to be lodged no later than **4.00pm Friday, 22 March 2019**.

## **Timetable**

Thursday 25 October 2018	Prospective specialist networking night, 5:30pm-7pm
Monday 25 February 2019	Accredited Specialisation Annual Information night, 5:30pm-7pm
Friday 22 March 2019	Applications requesting Board discretion (for those who do not meet eligibility criteria) or exemption from the Written Examination close, no later than 4pm
Friday 5 April 2019	All other Applications close, no later than 4pm
Saturday 27 July 2019	Part 1: Written Examination, 9.30am – 1.00pm
Friday 2 August 2019	Part 2: Oral Submission
Monday 12 August 2019	Part 3: Letter of Advice due
Late October 2019	Results sent to candidates by post
Late November 2019	Accredited Specialisation Conferral and Cocktail reception

**IMPORTANT:** Candidates who wish to apply for special consideration in relation to their assessment tasks must do so in accordance with the Rules  
[http://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20160420\\_Master\\_SpecialisationSchemeRules\\_April16.pdf](http://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20160420_Master_SpecialisationSchemeRules_April16.pdf)

## Performance Standards

Practitioners wishing to be accredited must be able to:

- (a) perform at a superior standard which is expected of practitioners wishing to hold themselves out as specialists in the area
- (b) display a superior standard of knowledge of the law and procedure which underpins the performance of tasks in this area of practice.

## General Recommendations

Candidates may find it of assistance in preparing for the assessment tasks to:

- (a) Form a study group – to register your interest in forming a study group please contact [special@liv.asn.au](mailto:special@liv.asn.au)
- (b) Attend appropriate LIV CPD events in the area of specialisation
- (c) Review previous examination papers and videos of simulated interviews. These are available at [http://www.liv.asn.au/PDF/Professional-Development/Accredited-Specialisation/2014\\_AS\\_AssessmentMaterials](http://www.liv.asn.au/PDF/Professional-Development/Accredited-Specialisation/2014_AS_AssessmentMaterials)
- (d) Read some or all of the Suggested Reading Material listed in **Schedule 5**

## Legislation and Other Provisions

Candidates should be familiar with the relevant parts of legislation relating to the selected topics for assessment **Schedule 4**, and the legislation listed in **Schedule 5**.

## Applications

Applications must be made on the prescribed application form.

## Resume of Practice

As evidence of substantial involvement, applicants must submit a resume of their professional activities relevant to practice in Administrative Law. The resume should give the Board an overall picture of the applicant's experience and expertise in Administrative Law, with an emphasis on involvement over the past three (3) years. It is not expected that a comprehensive *curriculum vitae* will be submitted.

No standard format is prescribed. However, applicants might find it helpful to use some or all of the following headings:

- broad description of current practice activities
- experience in specific areas of activity in Administrative Law

- involvement with relevant professional organisations
- relevant publications and presentations
- academic qualifications
- other

It is not necessary to repeat details provided on the application form.

**Please forward to the Law Institute of Victoria:**

1. The completed application form
2. Three references
3. Resume of practice
4. Application fee of \$1,100.00 (including GST) payable to the Law Institute of Victoria

## Applications Close

**By 4:00pm Friday 22 March 2019:** for applicants wishing to apply for Board discretion because they do not meet the eligibility criteria or for applicants wishing to apply for exemption from the Written Examination.

**By 4:00pm Friday 5 April 2019:** for all other applications.

The address for applications is:

*Accredited Specialisation*

*Law Institute of Victoria*

*GPO Box 263            OR    DX 350  
MELBOURNE 3001        MELBOURNE*

**Enquiries:** Telephone: 9607 9461  
Facsimile: 9607 9404  
Email: [special@liv.asn.au](mailto:special@liv.asn.au)

## SCHEDULE 1:

### Examination Assessment Component Part 1 – Written Examination

**Exam Date:** Saturday 27 July 2019

**Exam Venue:** TBC

#### Assessment Overview

The examination paper will be in three sections:

**Section A:** This section is compulsory and will contain ten questions requiring brief answers to short questions. Each question is worth six marks and this section is worth a total of 60 marks. The questions will cover a wide range of topics drawn from the list of topics for assessment. Answers to questions should be practical and concise.

**Section B:** This section will contain a choice of five optional questions. Candidates are required to answer three of the five questions. Each question is worth a total of 20 marks and this section is worth a total of 60 marks. This section will present candidates with more complex factual situations in which expert legal advice might be sought. Candidates will have the opportunity to respond to this section from the perspective of a State (Victorian) or Commonwealth based jurisdiction.

**Section C:** This section is compulsory comprising of one extended response question. This question is worth a total of 60 marks. Candidates will be asked to evaluate a fact situation, identify the key issues to be addressed, and prepare appropriate advice. The answer should include clear descriptions of any assumptions made and of any additional enquiries which it is considered should be undertaken.

#### Assessment Criteria

Candidates will be assessed on their:

- Ability to identify relevant issues from a given fact situation
- Knowledge of relevant law (including significant recent decisions) and skill in applying that knowledge in practice
- Knowledge of the procedural rules and guidelines
- Ability to provide practical, clear and comprehensive advice

#### Examination Conditions

- The written examination is an **open book exam**.
- Candidates may take into the examination room any books, notes or other written material
- Portable computers may be used for reference purposes on a read-only basis so long as their use does not disturb other candidates. Access to the internet is strictly prohibited
- Mobile telephones are not permitted.
- Questions must be answered in either:
  - the script book provided; or
  - on computers provided.

at the choice of the candidate.

- Handwriting must be legible (if applicable).
- Each candidate will be issued with an examination number.
- The names of candidates must not appear on any material submitted for assessment.

### **After the examination**

Note: Immediately following the conclusion of the written examination, candidates will be able to download the following information through [www.accreditedspecialisation.liv.asn.au](http://www.accreditedspecialisation.liv.asn.au) :

1. materials pertaining to the oral submission in Part 2 of the assessment program
2. materials pertaining to the letter of advice for the purposes of completing Part 3 of the assessment program.

## SCHEDULE 2:

### Examination Assessment Component Part 2 – Oral Submission

<b>Date</b>	Friday 2 August 2019
<b>Time</b>	By Appointment
<b>Venue</b>	Administrative Appeals Tribunal

#### **Assessment Overview**

Using the information available after the written examination, candidates will be required to present an oral submission for a party to a tribunal of two. Candidates will be given approximately 30 minutes. Candidates are required to outline the key elements of their Submission (approx. 20 minutes) and to answer questions from the Tribunal (approx. 10 minutes).

The presentation will be recorded. Arrangements for this part of the program will be confirmed once the number of candidates is known.

**Please note:** Part 2 - Oral submission and Part 3 - Letter of advice will be relying on the same factual scenario. The candidate will make oral submissions on behalf of one of the parties in Part 2 and will write the letter of advice to the other party in Part 3.

#### **Assessment criteria**

Candidates must display competency in each of the following criteria:

- Identification of relevant issues from a given fact situation
- Ability to argue a case and appropriately concede a point
- Judgment and decision making skills
- Confidence in presentation and assessment
- Knowledge of relevant law and skill in applying that knowledge
- Ability to respond appropriately to questions from the Tribunal

A sound knowledge of the relevant law, rules and procedures will also be required.

#### **After the assessment**

Following the oral submission, candidates will be able to download further instructions pertaining to Part 3 of the assessment program through [www.accreditedspecialisation.liv.asn.au](http://www.accreditedspecialisation.liv.asn.au) :



## SCHEDULE 3:

### Examination Assessment Component Part 3 – Letter of Advice

Distribution Date: Saturday 26 July 2019 and Friday 2 August 2019

Due Date: Monday 12 August 2019

#### **Assessment Overview**

Using the information available after the conclusion of the written examination, along with further instructions provided at the conclusion of the oral submission, candidates will be required to prepare a letter of advice for the other party.

In presenting the letter of advice, the candidate is expected to recognise, and respond to, the arguments likely to be advanced against the client. Because time is allowed for research and reflection, work of high quality is expected.

The letter of advice should not exceed **4,000 words**.

Candidates may use the resources of their offices in completing this exercise. However, consultation with any other person in completing the exercise is not permitted. Candidates will need to sign an undertaking to that effect.

#### **Assessment criteria**

Candidates will be assessed on their:

- Ability to identify relevant issues from the materials
- Knowledge of relevant law, including significant recent decisions
- Knowledge of relevant procedural rules and principles
- Ability to provide practical, clear and comprehensive advice

The completed exercise must be submitted as a word or PDF document through the submission box for this assessment piece on LIV Moodle ([www.accreditedspecialisation.liv.asn.au](http://www.accreditedspecialisation.liv.asn.au)) by no later than **4.00pm on Monday 12 August 2019**.

## SCHEDULE 4:

### Topics for Assessment

Candidates will be assessed on the law as it stands at the time of assessment and at any other time which may be relevant in answering a particular question. Applicants will be expected to display a working knowledge of all the practice areas as well as to recognise typical problems, construct an advice to a client and to outline the steps which would be taken to prepare the matter for hearing.

- **Information management**

- Freedom of Information Acts and Regulations (Victorian and Commonwealth)
  - o validity of requests for access to documents;
  - o exemptions;
  - o requests to amend defective personal information;
  - o review rights;
  - o Commonwealth information publication scheme
- Right of access as an adjunct to the right of freedom of expression eg s 15, Victorian Charter and interaction with FOI
- Information privacy (Victorian and Commonwealth):
  - o what is an interference with privacy;
    - definition of personal information/health information
    - applicability of relevant Privacy Principles
  - o how to make a complaint and to whom;
  - o remedies available, eg:
    - conciliation by Commissioner
    - referral to VCAT
    - compensation and other possible remedies;
- Right against having your privacy unlawfully or arbitrarily interfered with (eg s 13, Victorian Charter)
- Information sharing (Victorian and Commonwealth)
  - o Lawful sharing of information under Victorian and Commonwealth privacy Legislation.
- Secrecy/Confidentiality provisions in specific legislation prohibiting disclosure
  - o in particular whether and how interact with FOI Act;
  - o breadth of scope and exceptions dependent on wording of provisions;

- **Good decision making**

- General Principles
  - o Identifying the source of the decision making power and its limits
  - o Delegation of power
  - o Relevant and irrelevant considerations
  - o Fettering and dictation
  - o The role of guidelines and policy
  - o Bad faith and improper purpose
  - o Natural justice
  - o Illogicality or irrationality
  - o Unreasonableness
  - o Transparency

- Reasons - when are they required, what should they cover and adequacy.
- Review of decisions
  - Identifying the review rights (internal, merits and judicial review)
  - Differences between merits review and judicial review
  - Launching and conducting an application for review
- Merits Review (Victoria and Commonwealth)
  - Sources of jurisdiction - VCAT and AAT (subject to change)
  - Scope and nature of merits review
  - Grounds for review
  - Procedure and powers for each tribunal
  - Who are the proper parties?
  - Relief
  - Appeals
- Judicial Review (Victoria and Commonwealth)
  - Sources of jurisdiction - Supreme Court of Victoria, Federal Courts and High Court of Australia
  - Scope and nature of judicial review
  - Privative clauses
  - Grounds for review
  - Who are the proper parties?
  - Discoveries and exceptions
  - Relief
- **Regulatory bodies – investigations, inquiries and oversight**
  - Bodies
    - Royal Commissions (Commonwealth only)
    - Commonwealth and Victorian Ombudsmen
    - Commonwealth and Victorian Auditors-General
    - Independent Broad-based Anti-corruption Commission (Victoria)
    - Office of the Australian Information Commissioner (Commonwealth)
    - Office of the Victorian Information Commissioner (Victoria)
    - Health Complaints Commissioner (Victoria)
    - Other agencies with regulatory powers
  - Issues
    - Who and what does the body regulate or investigate?
    - What time limits/restrictions apply in seeking or conducting any investigation?
    - What coercive powers does the body have, for example power to seek documents, power of search and/or entry, power to compel oral examination?
    - What protections apply – for example legal professional privilege, client legal privilege, public interest immunity or privilege against self-incrimination?
    - Are there secrecy or confidentiality restrictions that apply?
    - What sanctions can the body impose?
    - What rights are there to appeal decisions?

**NB:** Any matter relevant to practice in **Administrative Law** may be examined. The above list gives an indication of areas that may be subject to assessment, however it is not exhaustive.

## SCHEDULE 5:

### Related Legislation and Other Materials

The list below is not intended to be exhaustive, but is provided as a guide to legislation which might be raised in the assessment program. **At the time of preparation of these guidelines (February 2018), amendments to and new legislation were anticipated. Candidates should inform themselves accordingly.**

#### Commonwealth:

*Acts Interpretation Act 1901 (Cth)*

*Administrative Appeals Tribunal Act 1975 (Cth)*

*Administrative Decisions (Judicial Review) Act 1977 (Cth)*

*Auditor-General Act 1997 (Cth)*

*Australian Information Commissioner Act 2010 (Cth)*

*Commonwealth of Australia Constitution Act 1901 (Cth)*, Chapter 3, section 51

*Freedom of Information Act 1982 (Cth)*

*Judiciary Act 1903 (Cth)*, Sections 39, 39A, and 39B

*Legislative Instruments Act 2003 (Cth)*

*Ombudsman Act 1976 (Cth)*

*Privacy Act 1988 (Cth)*

*Royal Commission Act 1902 (Cth)*

Rules, Regulations and Procedures in relation to:

- Administrative Appeals Tribunal (AAT)

#### Victoria:

*Administrative Law Act 1978 (Vic)*

*Audit Act 1994 (Vic)*

*Charter of Human Rights and Responsibilities Act 2006 (Vic)*

*Constitution Act 1975 (Vic)*

*Freedom of Information Act 1982 (Vic)*

*Health Records Act 2001 (Vic)*

*Health Records Regulations 2012 (Vic)*

*Independent Broadbased Anti-Corruption Commission Act 2011 (Vic)*

*Interpretation of Legislation Act 1984 (Vic)*

*Ombudsman Act 1973 (Vic)*

*Privacy and Data Protection Act 2014 (Vic)*

*Protected Disclosure Act 2013 (Vic)*

Rules, Regulations and Procedures in relation to:

- Victorian Civil and Administrative Tribunal (VCAT)
- Supreme Court of Victoria Rules, Order 56

**Reference materials:**

M Aronson, M Groves and G Weeks, *Judicial Review of Administrative Action and Government Liability* (6th edn, 2017), Thomson Reuters

Creyke, McMillan & Smyth, *Control of Government Action: Text, Cases & Commentary*, LexisNexis Butterworths

Flick, *Federal Administrative Law*, Thomson Reuters (looseleaf)

Hall & Macken, *Legislation and Statutory Interpretation*, LexisNexis Butterworths

Nekvapil, *Victorian Administrative Law*, Thomson Reuters (looseleaf)

Pearce & Argument, *Delegated Legislation in Australia*, LexisNexis Butterworths

Pearce & Geddes, *Statutory Interpretation in Australia*, LexisNexis Butterworths

Pizer's *Annotated VCAT Act*, JNL Nominees Pty Ltd

Robinson, *Judicial Review: The Laws of Australia*, Thomson Reuters

Sanson, *Statutory Interpretation*, Oxford University Press

**Guidelines:**

**Commonwealth**

*Guidelines to the Australian Privacy Principles*, Office of Australian Information Commissioner, combined March 2018

*FOI Guidelines - Guidelines issued by Australian Information Commissioner under Section 93A of the Freedom of Information Act 1982*, Office of the Australian Information Commissioner, combined May 2018

**Victorian**

*Guidelines to the Information Privacy Principles*, Office of the Victoria Privacy Commissioner, Edition 3, November 2011 (available <https://ovic.vic.gov.au/privacy/for-agencies/guidance-and-resources/guidelines/>)

Guides on Freedom of Information, Office of the Victorian Information Commissioner, <https://ovic.vic.gov.au/freedom-of-information/guidance-and-resources/>

Guides on privacy, Office of the Victorian Information Commissioner, <https://ovic.vic.gov.au/privacy/for-agencies/guidance-and-resources/guidelines/>