



Accredited Specialisation Application Guidelines 2019

Commercial Tenancy 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 this area of practice 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 the 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

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 specialist accreditation in Commercial Tenancy 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** listed in **Schedule 1**

- Part 1 Written Examination (extended and short answer responses) – See **Schedule 2**
- Part 2 Simulated Client Interview – See **Schedule 3**
- Part 3 Take-home assignment – See **Schedule 4**

Please 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 Commercial Tenancy 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
Tuesday 6 August 2019	Part 2: Simulated Client Interview, by appointment
Tuesday 13 August 2019	Part 3: Take Home Assignment due
Late October 2019	Results sent by post to candidates
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%20Master%20SpecialisationSchemeRules%20April16.pdf)

Performance Standards

Practitioners wishing to be accredited should be able to:

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

General Recommendations

It is strongly recommended that candidates undertake the following in preparing for the assessment tasks:

- (a) form a study group – to register your interest in forming a study group please contact 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 https://www.liv.asn.au/PDF/Education-Events/Accredited-Specialisation/2013AS_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, and the legislation listed in **Schedules 4 and 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 Commercial Tenancy. The resume should give the Specialisation Board an overall picture of the applicant's experience and expertise in Commercial Tenancy, 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 Commercial Tenancy
- 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

SCHEDULE 1:

Topics for Assessment

The following list is not intended to be exhaustive, but is provided as a guide to matters which might be raised in the assessment program. Not all the topics listed will necessarily be tested.

Candidates will be assessed on the law as it stands on the day of assessment and at any time relevant to the answer to a particular question.

Commercial Tenancy Law Topics

- GST and leases
- Insolvency
 - Tenant's insolvency
 - Landlord's insolvency
 - Different effects of administration, liquidation, receivership and bankruptcy
- Leasehold enquiries and disclosures
- Leasehold clauses:
 - Rent and rent reviews
 - Use
 - Options to renew
 - Right of first refusal
 - Premiums
 - Quiet enjoyment
 - Essential safety measures
 - Outgoings
 - Insurance
 - Options to purchase
 - Repairs and maintenance
 - Security deposits and other forms of security
 - Assignment and sub-letting
- Legal costs in respect of leasing transactions
- Preparing and negotiating leasehold documentation:
 - agreements for lease
 - assignments
 - concurrent leases
 - guarantor and other security documents
 - leases
 - surrenders
 - variations of lease
 - sub-leases
 - disclosure statements
- Protection of leases:
 - S.42 (2)(e) Transfer of Land Act 1958
 - Caveats
 - Registration
 - Mortgagee's consent and right of entry
- Renewal of leases
- Remedies
- Retail Tenancies Legislation
 - Retail Tenancies Act 1986
 - Retail Leases Act 2003
 - Retail Tenancies Reform Act 1998
- Security interests
 - Personal Property Securities
 - Leasehold security interests
- Stamp duty and leases
- Tenants' fixtures and improvements
- Termination of leases

- The nature of a leasehold interest in land:
 - compared with a contractual licence and other interests in land
 - sub-leases
 - agreements for lease
 - assignments
 - concurrent leases
- The application of contractual principles to leases
- The application of equitable principles to leases

Property Law Topics

Candidates are expected to have a sound general knowledge of property law. A Commercial Tenancy Law Specialist would be expected to be able to deal with general property law matters including conveyancing, fixtures and chattels, planning issues, building controls, contaminated sites, subdivisions and owners corporations and mortgages and securities.

NB: It is stressed that the above list is not intended to be exhaustive and that any matter relevant to the practice in Commercial Tenancy Law may be examined. Schedule 5 gives a further indication of the legislation and topics which candidates might be asked to address.

SCHEDULE 2:

Examination Assessment Component Part 1 – Written Examination

Exam Date: Saturday, 27 July 2019, 9.30am – 1.00pm (3 hours *plus 30 minutes* for reading and planning)
Exam Venue: (TBC).

Examination Assessment Components

Part 1A: Extended response

This part will contain FOUR questions. Candidates must answer ONE compulsory question together with TWO questions out of THREE optional questions provided.

Detailed answers which identify the key issues and specify the advice appropriate to the situation are expected. In view of the fact that candidates are able to choose the topics on which they are assessed, as far as the optional questions are concerned, the answers to these questions should demonstrate particular expertise in the topic chosen. Issues set out under Topics for Assessment in Schedule 1 may be included within each of these questions.

Part 1B: Short-answer responses

Questions in Part 1B will cover a wide range of commercial tenancy law matters likely to be encountered in practice. Candidates will be expected to demonstrate broad knowledge of commercial tenancy law and relevant general property law practices and procedures. The questions will require only brief answers. Candidates will be expected to answer all questions in this part.

Assessment criteria

Candidates will be assessed on their:

- ability to identify relevant issues from a given fact situation
- breadth of knowledge of the law
- depth of knowledge of the law and skill in applying that knowledge to the given fact situation
- knowledge of procedural rules and practices
- ability to provide practical, clear and accurate 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 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 will not appear on any material submitted for assessment

After the examination

Following the written examination, candidates will receive the material relating to the Simulated Interview and Take Home Assignment.

SCHEDULE 3:

Examination Assessment Component Part 2 – Simulated Client Interview

Interview Date:	Tuesday 6 August 2019 (50 minutes plus 10 minutes to record observations)
Interview Time:	By appointment
Interview Venue:	Law Institute of Victoria, Level 2, 470 Bourke Street, Melbourne

Assessment overview

Candidates will conduct a simulated interview with a person acting in the role of the client. The interview will take up to 50 minutes and will be recorded for assessment by examiners.

Candidates will be expected to give initial advice in the interview.

At the conclusion of the 50 minute interview, candidates will be given 10 minutes to record their observations. These observations will be assessed by the examiners in conjunction with the recorded interview. The time allocated for the interview and writing up on the file notes will be strictly enforced. Candidates are not permitted to tape the interview themselves (eg. dictaphone).

The interview is designed to enable candidates to demonstrate skill in conducting an interview with the client. A sound knowledge of the relevant law, rules and procedures will also be required.

Interview times are by appointment only. You will be allocated a time closer to the assessment date.

Assessment criteria

Candidates will be assessed on their ability to:

- (a) elicit relevant information and facts from the client – 15 percent
- (b) obtain and clarify instructions – 10 percent
- (c) communicate clearly with the client – 10 percent
- (d) identify relevant issues – 15 percent
- (e) assess facts, provide advice with legal options – 25 percent
- (f) indicate procedural steps and timelines for responses – 10 percent
- (g) develop a short-term plan – 10 percent
- (h) comply with good and proper legal practices and procedures – 5 percent

SCHEDULE 4:

Examination Assessment Component Part 3 – Take Home Assignment

Date Assignment Available: Saturday 27 July 2019 after the written exam.
Date assignment due: Tuesday 13 August 2019, no later than 4pm

Assessment Overview

Using the information from the material distributed on Saturday 27 July 2019, candidates will be requested to prepare a memorandum of advice to a Commercial Tenancy Law partner of the candidate's firm. A concise and well organised response written in plain English is expected.

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 be required to provide a signed statement to that effect.

This exercise is designed to test a candidates ability to absorb new material, identify errors and omissions, draw attention to important features of a file and to make recommendations or initiate actions appropriate to the circumstances.

There will be a word limit of 3,300 words prescribed for this piece of assessment, candidates will be advised of this in the material distributed on Saturday 27 July 2019.

Assessment criteria

Candidates will be assessed on their:

- ability to identify relevant issues from a given fact situation
- depth of knowledge of the law and skill in applying that knowledge to the given fact situation
- ability to provide practical, clear and accurate advice
- skill in interpreting and drafting documents.

Late submissions will not be accepted.

It is the sole responsibility of candidates to ensure all take home examination material is received by the Law Institute on or before the due date. Failure of the examination material to reach the Law Institute by the due date will result in failure of that examination component. Particular care should be taken with all forms of electronic transmission to ensure it has been received by the Law Institute in the time and the intended form.

SCHEDULE 5:

Related Legislation & Regulations

NOTE: Act titles include all relevant regulations and any other instruments made under those Acts and amendments and replacements which come into operation by the date of assessment.

The following list is not intended to be exhaustive, but is provided as a guide to legislation which might be raised in the assessment program. A detailed knowledge of all these Acts is not necessary.

Commonwealth

Competition and Consumer Act 2010

Bankruptcy Act 1966

Building Energy Efficiency Disclosure Act 2010

Corporations Act 2001

Income Tax Assessment Act 1936 (Part IIIA - capital gains and losses)

Income Tax Assessment Act 1997

A New Tax System (Goods & Services Tax) Act 1999 & related statutes

Personal Property Securities Act 2009 and related statutes

State

Australian Consumer Law & Fair Trading Act 2012

Building Act 1993

Duties Act 2000

Environment Protection Act 1970

Estate Agents Act 1980

Instruments Act 1958

Land Tax Act 2005

Legal Profession Uniform Law Application Act 2014

Occupational Health & Safety Act 2004

Owners Corporation Act 2006

Planning & Environment Act 1987

Property Law Act 1958

Retail Leases Act 2003

Retail Leases (Amendment) Act 2005

Retail Tenancies Act 1986

Retail Tenancies Reform Act 1998

Sale of Land Act 1962

Subdivision Act 1988

Transfer of Land Act 1958

Victorian Civil and Administrative Tribunal Act 1998

Suggested reading materials and resources

The following list is not intended to be exhaustive and is provided as a guide. It lists the principal texts in the area of commercial tenancy law for Victorian practitioners. Candidates may also find continuing professional development material published by a number of providers useful. Some of the material listed is available on-line.

BRADBROOK, Adrian J., GRATTAN, Scott., MACCALLUM, Susan V., and MOORE, Anthony P. *Australian Real Property Law*. 5th Edition. Sydney (2011) Thomson Reuters.

CCH Australia. Ltd: *Victorian Conveyancing Law and Practice*. Sydney (1994) CCH. (Loose leaf and on-line)

CROFT, Clyde and HAY, Robert, *Retail Leases Victoria* Sydney (2002) Lexis Nexis (loose-leaf and on-line)

CROFT, Clyde E. Hay, Robert S. and VIRGONA, Luke. *Commercial Tenancy Law* 4th Edition. Sydney (2018) Lexis Nexis, Butterworths.

DUNCAN, W.D. *Commercial Leases in Australia*. 7th Edition, Pyrmont, NSW (2014) Thomson Reuters

FOX, P.M. and HOCKLEY, J.J. *Fox. Annotated Transfer of Land Act*. 2nd Edition. Sydney (1989) Law Book Company.

Lexis Nexis, *Halsbury's Laws of Australia, 245 Leases and Tenancies* (loose-leaf and on-line)

HYAM, Alan, *The Law Affecting Rent Review Determinations* 2nd Edition, Sydney (2014) Federation Press

LANG, Andrew. *Lang's Commercial Leasing in Australia*. Sydney (1996) CCH (loose-leaf and on-line).

MOORE, Anthony. *Commercial & Residential Tenancies – The Laws of Australia*. Pyrmont, NSW (2008) Thomson Reuters

PIZER, Jason. *Pizer's Annotated VCAT Act* 4th Edition. Melbourne (2012) JNL Nominees

REDFERN, M.J. and CASSIDY, D.I. *Australian Tenancy Practice and Precedents*. Sydney. (1987) Lexis Nexis (loose-leaf and on-line).

ROBINSON, S. *The Property Law Act Victoria*. Sydney (1992) Law Book Company.

ROBINSON, S. *Transfer of Land in Victoria*. Sydney (1979) Law Book Company.

Sir Lewison JA (ed) et al, *Woodfall's - Landlord and Tenant* (Sweet and Maxwell, looseleaf service, UK)

Thomson Reuters, (new) *The Laws of Australia, 28.8 Retail Tenancies* (loose-leaf and on-line)

Thomson Reuters, *Commercial and Retail Leases in Australia* (online)

Websites

Office Of The Victorian Small Business Commissioner - www.vsbcc.vic.gov.au

VCAT Retail Tenancy decisions – www.austlii.edu.au/au/cases/vic/VCAT (search “Retail Tenancies”)