



Accredited Specialisation Application Guidelines 2019

Costs 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 Costs 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 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/Education---Events/Accredited-Specialisation/Accredited-Specialisation-Scheme-Rules-and-Forms>

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 Costs 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: Simulated Hearing – See **Schedule 2**

Part 3: Take Home Assignment – See **Schedule 3**

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

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 Costs 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 postgraduate 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, 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 (Simulated Hearing and Take Home Assignment materials distributed)
Monday 5 August 2019	Part 2: Simulated Hearing, by appointment
Friday 9 August 2019	Part 3: Take Home Assignment 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/Education---Events/Accredited-Specialisation/Accredited-Specialisation-Scheme-Rules-and-Forms>

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
- (b) Attend appropriate LIV CPD events in the area of specialisation
- (c) Review previous examination papers and videos of the simulated hearing. These are available at https://www.liv.asn.au/getattachment/Learning-and-Networking/Become-an-Accredited-Specialist/FAQ/Can-I-order-past-assessments--before-I-enrol-for-t/20170713_Form_AS_AssessMaterials-Orders-Interactive_V02.pdf.aspx
- (d) Read 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.

Resumé of Practice

As evidence of substantial involvement, applicants must submit a resume of their professional activities relevant to practice in Costs Law. The resume should give the Board an overall picture of the applicant's experience and expertise in Costs 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 Costs 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

SCHEDULE 1:

Assessment Component Part 1 – Written Examination

Exam Date: Saturday 27 July 2019, 9.30am to 1.00pm

Exam Venue: Moonee Valley Racing Club, McPherson Street, Moonee Ponds.

Assessment Overview

(3 hours *plus thirty minutes* for reading and planning)

This paper will test knowledge across a wide range of topics likely to be encountered in Costs Law practice. Questions in this paper will require extended answers. There will be EIGHT questions, of which candidates will be required to answer SIX. Each of the eight questions will have equal weighting, although any one or more of them may be divided into different parts.

Candidates will be expected to identify relevant issues and form sound preliminary views without the benefit of time to undertake more than a brief examination of basic references.

IMPORTANT: In order to pass the written examination, you will need to obtain a minimum 50% score.

Assessment Criteria

Candidates will be assessed on their:

- a) Identification of relevant issues
- b) Assessment of facts and legal options
- c) Ability to argue a case and appropriately concede a point
- d) Judgement and decision making skills
- e) Ability to provide practical, clear and comprehensive advice
- f) Knowledge of relevant law and skill in applying that knowledge in practice
- g) Awareness of practical considerations

Examination Conditions

Candidates will be provided with the opportunity to elect to type their written examination on a computer provided by the LIV. Candidates will be contacted, seeking their preference following the application closure dates.

- 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 the booklets or computer provided

- Answers must be numbered correctly
- Handwriting must be legible
- 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 Take Home Assignment and Simulated Hearing material.

SCHEDULE 2:

Assessment Component Part 2 – Simulated Hearing

Distributed to candidates:	Saturday 27 July 2019, at the completion of the written exam
Hearing Date:	Monday 5 August 2019
Written submission due	No later than 4pm on Friday 2 August 2019
Presentation Time:	By appointment, up to 45 minutes per candidate
Venue:	Supreme Court of Victoria, Costs Court

Assessment Overview

The simulated hearing assessment is divided into two sections.

In Section A, candidates will be required to submit a written submission containing a brief outline of arguments before the hearing date. The written submission should be no more than five pages and otherwise be in accordance with Order 27 of the Supreme Court Rules. The written submission is due no later than **4pm on Friday 2 August**.

In Section B, candidates will take part in a moot court with 2 people acting in the roles of Taxing Officers. The hearing will take up to 45 minutes per candidate. The hearing will be recorded for assessment by examiners.

Candidates will act for a party. Candidates will have been provided with relevant material on the day of the written examination. The format and content of the material provided will be dependent on the particular circumstances of the case.

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

Simulated Hearing conditions

Candidates may use the resources of their offices in completing the two sections of this exercise. However, consultation with any person in completing either of the two sections of this exercise is not permitted. Candidates will be required to provide a signed statement to this effect.

IMPORTANT: In order to pass the Simulated Hearing, you will need to obtain a minimum 50% score in EACH of Section A (written submission) and Section B (moot court hearing).

Assessment criteria

The following criteria apply to both the written submission and the oral component of Part 2.

Candidates will be assessed on their:

- a) Identification of relevant issues
- b) Assessment of facts and legal options
- c) Ability to argue a case in a logical and concise manner
- d) Ability to support or concede a point as appropriate
- e) Judgement and decision-making skills
- f) Knowledge of relevant law and skill in applying that knowledge in practice
- g) Drafting skills
- h) Presentation skills

The Written Submission must be submitted as a word or PDF document through the submission box for this assessment piece via www.accreditedspecialisation.liv.asn.au by no later than 4pm **on Friday 2 August 2019**

SCHEDULE 3:

Assessment Component Part 3 – Take Home Assignment

Distributed to candidates: Saturday 27 July 2019, at the completion of the written exam

Due: No later than 4pm on Friday 9 August 2019

Assessment Overview

Using the information from the material received at the conclusion of the written examination, candidates will be requested to prepare and submit a letter of advice, court documents or combination of documents.

The word limit for the take home paper is no more than 3,500 words.

Take-Home assignment conditions

Candidates may use the resources of their offices in completing this exercise. However, consultation with any person in completing the exercise is not permitted. Candidates will be required to provide a signed statement to this effect.

IMPORTANT: In order to pass the Take-Home Assignment, you will need to obtain a minimum 50% score .

Assessment criteria

Candidates will be assessed on their:

- a) Identification of relevant issues
- b) Assessment of facts and legal options
- c) Ability to argue a case and appropriately concede a point
- d) Judgement and decision making skills
- e) Ability to provide practical, clear and comprehensive advice
- f) Knowledge of relevant law and skill in applying that knowledge in practice
- g) Awareness of practical considerations
- h) Drafting skills

The completed exercise must be submitted as a word or PDF document through the submission box for this assessment piece via www.accreditedspecialisation.liv.asn.au by no later than 4pm **on Friday 9 August 2019**

SCHEDULE 4:

Topics for Assessment

The topics listed below indicate the range of matters which could be addressed in the assessment program. This is not necessarily an exhaustive list.

Practitioner Client Costs

- The retainer
- Cost agreement and disclosure statements
- Compliance with the *Legal Profession Uniform Law Application Act 2014* (Vic) including the *Legal Profession Uniform Law*, *Legal Profession Act 2004* (Vic) and their respective Rules
- Who can seek to have costs assessed and when
- Rights of and duties owed to third parties (both associated and non-associated third party payers)
- The jurisdiction of VCAT
- The jurisdiction of the Legal Services Commissioner in relation to cost disputes

General

- Interpretation of cost orders
- Different bases of taxations of costs
- Understanding of and application of the Commonwealth and Victorian court scales and rules (including VCAT)
- Drawing a bill of costs
- Right to amend the Bill
- Challenges to a bill of costs
- The procedures involved in a taxation/assessment of costs
- Review or appeal of a taxation
- Taxation process and the issue of privilege in taxations
- Costs of a taxation
- Assessment of counsel's fees
- Offers of compromise and other offers of settlement and their costs consequences
- Costing non-litigious work including mortgages and leases
- Charges of a solicitor-trustee
- Personal injury costs generally
- Party party costs in WorkCover matters
- Party party costs in Transport Accident matters
- Agency costs
- Preparation of expert reports and role of the cost lawyer as an expert
- Powers of the taxing officers
- Security for costs
- Gross sum costs applications
- Solicitor's liens
- Costing work in wills and estates and solicitors as trustees
- The costs lawyer as an expert (role of the cost lawyer as an expert including privilege, security for costs and gross sum cost applications)
- Application of the *Civil Procedure Act 2010* (Vic) to cost lawyers

NB: Any matter relevant to practice in **Costs Law** may be examined, including the areas listed above. The list gives an indication of other matters which candidates might be asked to address. Candidates may be asked questions arising under any legislation, related regulations and other materials listed in these guidelines. This is not intended to be an exhaustive list.

SCHEDULE 5:

Related Legislation and Other Materials

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.

- *Australian Consumer Law*
- *Appeal Costs Act 1998 (Vic)*
- *Civil Procedure Act 2010 (Vic)*
- *County Court Act 1958 and Rules*
- *County Court Practice Notes*
- *Evidence Miscellaneous Provisions Act 1958 (Vic)*
- *Evidence Act 2008 (Vic)*
- *Expert Witness Code of Conduct*
- *Family Law Act 1975 and Rules*
- *Federal Court of Australia Act 1976 (Cth) and Rules*
- *Federal Court Practice Notes*
- *Federal Circuit Court of Australia Act 1999 and Rules*
- *High Court of Australia Act 1979 (Cth) and Rules*
- *Judiciary Act 1903*
- *Jurisdiction of Courts (Cross-Vesting) Act 1987 (Cth) and (Vic)*
- *Legal Profession Uniform Law Application Act 2014 (Vic) (including the Legal Profession Uniform Law)*
- *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*
- *Legal Profession Uniform General Rules 2015*
- *Legal Profession Act 2004 (Vic)*
- *Limitation of Actions Act 1958 (Vic)*
- *Magistrates Court Act 1989 (Vic) and Rules*
- *Magistrates Court Practice Notes*
- *Practitioner Remuneration Order – General Order and Schedules*
- *Residential Tenancies Act 1997 (Vic)*
- *Retail Leases Act 2003 (Vic)*
- *Service & Execution of Process Act 1992 (Cth)*
- *Supreme Court Act 1986 and Rules*
- *Supreme Court Practice Notes*
- *Transport Accident Act 1986 (Vic)*
- *TAC Protocols Legal Costs*
- *VCAT Act 1998 (Vic) and Rules (Civil Claims only)*
- *Workcover (Pre-Litigated Claims) Legal Costs Order 2010*
- *Workcover (Litigated Claims) Legal Costs Order 2010*
- *Workcover (Pre-Litigated Claims) Legal Costs Order 2016*
- *Workcover (Litigated Claims) Legal Costs Order 2016*
- *Workplace Injury Rehabilitation and Compensation Act 2013*

Suggested Reading Materials

The reading materials listed are to be used as a guide only to assist a candidate when preparing for the assessment components. This is not necessarily an exhaustive list of resources of reading material.

- *Legal Costs Victoria* (looseleaf); Butterworths
- *Federal Companion to Legal Costs Victoria* (looseleaf); Butterworths
- G. Dal Pont, *Law of Costs* (4th ed); Lexis Nexis Butterworths
- L. Oliver, *Law of Costs*; Law Book Co
- R. Quick and E. Harris, *Quick on Costs* (looseleaf); Thomson Reuters
- *Vance Executor's Commission*; Law Book Co
- G. Dal Pont, *Lawyers Professional Responsibility* (6th ed); Thomson Reuters
- C. Parker and A. Evans, *Inside Lawyers Ethics* (2nd ed) Cambridge
- J. D. Heydon, *Cross On Evidence* (9th ed); LexisNexis
- B. Cairns, *Australian Civil Procedure* (11th ed); Thomson Reuters