



**LAW
INSTITUTE
VICTORIA**



2022 Accredited Specialisation Assessment Guidelines

Environment & Planning Law

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Table of Contents

Assessment Guidelines Overview	3
Performance Outcomes	3
Methods of Assessment.....	3
Results	4
Supplementary assessment.....	4
Key Milestones & Program Timetable	5
SCHEDULE 1: ASSESSMENT COMPONENT PART 1	6
Assessment overview	6
The examination is divided in three parts:.....	6
Assessment Criteria	7
Examination Conditions	7
Access to Support Materials	7
SCHEDULE 2: ASSESSMENT COMPONENT PART 2	8
Assessment overview	8
Assessment criteria.....	8
Assessment conditions	8
SCHEDULE 3: ASSESSMENT COMPONENT PART 3	9
Assessment criteria.....	9
SCHEDULE 4: TOPICS FOR ASSESSMENT	10
Levels of Understanding	10
Core Topics.....	10
Non-Core Topics.....	10
Topics for Assessment.....	11
SCHEDULE 5: RELATED LEGISLATION & OTHER MATERIALS	13
Related legislation:.....	13
Commonwealth	13
Core.....	13
Non-Core.....	13
State	13
Core.....	13
Non-Core	13
Suggested Reading and Resources	14
Other reading	14

SCHEDULE 6: RECOMMENDED COMPUTER REQUIREMENTS FOR ASSESSMENTS..... 15

 Written Examination Devices Specification..... 15

 Oral Assessments 15

Assessment Guidelines Overview

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, credible and reliable.

These Assessment Guidelines should also be viewed in conjunction with the **Application Guidelines** and the **Accredited Specialisation Scheme Rules**.

Performance Outcomes

Specialist Accreditation is a structured assessment process which requires the candidate to draw on their existing knowledge and skills to demonstrate their competency and expertise in their chosen area of law.

Practitioners wishing to be accredited should be able to:

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

Specific assessment criteria and performance outcomes are listed under the details of individual assessments that follow.

Methods of Assessment

The LIV Accredited Specialisation assessments are all delivered in a digital environment. This provides equitable access for all candidates irrespective of location, and is also aligned with the nature of legal practice in today's digital world. There is a base level of computer literacy required indicative of the skills required of a specialist lawyer. It is incumbent upon candidates to have access to suitable technology and infrastructure to perform in the most optimal way. Details of these requirements are outlined in [Schedule 6](#).

Three assessments make up the Accredited Specialisation program in **Environment and Planning Law**.

1. [Written Exam](#)
2. [Take Home Written Submission](#)
3. [Presentation of Written Submission](#)

The three assessments are weighted equally, and candidates must achieve a satisfactory grade of at least 50% in all three assessments. Candidates who complete all three assessments to the performance standard are eligible for accreditation as a specialist in Environment and Planning Law.

The below schedules include further details in relation to each of the three assessments along with details of topics for assessment and relevant legislation that you will need to know to undertake 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](#). Further details of the assessment program and procedures are contained in the schedules within.

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

Results

Results are only released after the completion of all three assessments and with all candidates results, regardless of area of law being issued on the same day.

As outlined in Rule [4.11.6 of the scheme rules](#), all assessments undergo a rigorous marking process. Any assessment that is deemed to have not achieved a satisfactory result will go through an independent second round of marking before a recommendation is made to grant or deny Accredited Specialisation.

It is important to note the following information about results:

- **You will not be provided with individual assessment marks**
- **Outcomes are delivered as either satisfactory or unsatisfactory for each assessment component with an overall satisfactory in all three resulting in being granted specialisation.**
- **Candidate Assessment Reports (CARs) will be provided to candidates on any assessment where an unsatisfactory grade is attained. The CAR will provide constructive feedback for improvement to the candidate. No further feedback or grades will be disclosed.**

Supplementary assessment

Candidates may be required to undertake additional assessment at the discretion of the Specialisation Board. The Specialisation Board will only consider a recommendation from an advisory committee for a proposal of a supplementary assessment being offered to a candidate due to exceptional circumstances. Candidates will be notified the decision of the Specialisation Board in their official notification of results.

Key Milestones & Program Timetable

Candidates are advised that Accredited Specialisation program requires a significant commitment in order to achieve a satisfactory outcome. Based on feedback from previous candidates the number of hours of study is in excess of 100.

We encourage you to dedicate and manage time in the lead up to and during the assessment period. Candidates need to plan their workload well in advance of the key assessment dates and are encouraged to seek support in the form of study leave from employers where possible to optimise performance across all assessment tasks.

ITEM	DATE
Applications Open	Mid-January 2022
Applications Close	25 March 2022
2022 Accredited Specialisation Program begins <ul style="list-style-type: none"> – Welcome Orientation Session – Access to the LIV Student Portal and resources 	03 May 2022
Candidate support sessions: <ul style="list-style-type: none"> – Study techniques series – Online exam platform familiarisation 	May-August
Candidate self-guided study: <ul style="list-style-type: none"> – Review assessment guidelines & make study notes – Form study groups – Work with mentors 	May-August
Practice Written Exam & Familiarisation Exam access available	July
Assessment Period <ul style="list-style-type: none"> Part 1: Written Examination (Schedule 1) Part 2: Take Home Written Submission (Schedule 2) Part 3: Presentation of Written Submission (Schedule 3) 	Saturday 30 July Monday 15 August Tuesday 23 August
Results Released	Early November
Conferral Ceremony	Early December

Note: The above dates are correct at the time of publishing. Should any changes need to occur, they will be communicated directly to candidates throughout their assessment program as early as possible.

SCHEDULE 1: ASSESSMENT COMPONENT PART 1

Written Examination

Exam Date:	Saturday 30 July
Time:	Three hours and 30 minutes inclusive of reading, writing, and planning time
Venue:	LIV online exam platform (refer to application guidelines for full details)

Assessment overview

The examination is divided in three parts:

Candidates should spend approximately one hour answering each section of the examination.

PART A

- This section will contain TWO questions, of which candidates must answer ONE.
- The questions will examine a candidate's ability to demonstrate a depth of knowledge and understanding of environment law.

PART B

- This section will contain TWO questions, of which candidates must answer ONE.
- The questions will examine a candidate's ability to demonstrate a depth of knowledge and understanding of planning law.

PART C

- This section tests the candidate's ability to identify key issues and principles arising out of a given set of facts.
- Candidates will be required to prepare an outline of submissions that will later form the basis of a detailed submission to the Tribunal as part of [Part 2](#) and [Part 3](#) of the assessment program.
- A copy of your outline will be sent following the written examination. Candidates may add to or depart from the original outline of submission, in preparation for Part 2 and Part 3 of the assessment program.

IMPORTANT: In order to pass the written examination, candidates will need to achieve a minimum of 50% in each of the sections (A, B and C) of the written examination.

Assessment Criteria

Candidates will be assessed on their:

- Ability to identify relevant issues
- Depth of knowledge and understanding of the relevant law
- Ability to provide practical, clear and accurate advice
- Demonstrated ability to satisfy the performance standards set out in these guidelines
- Ability to identify and address any ethical issues

Examination Conditions

- Access to a computer with webcam and microphone
- Access to the exam is via the safe exam browser, once installed on your computer, this will be located on your desktop and called Exam Launch File, LIV Online Assessment Candidate App (the app)
- All questions must be answered within this digital environment
- All questions can be reviewed and updated prior to submitting the exam
- Once the exam is submitted, there is no opportunity to revisit or change your responses
- Access to any external sites including email is disabled for the duration of the exam.
- Once you submit the exam you will be automatically redirected to the confirmation of submission screen.
- You will need to logout of the safe exam browser once you have completed your exam. Candidates will not have access to their computer applications and programs until logging out of the site.
- Refer to [Schedule 6: Recommended Computer Requirements for Assessments](#) for more information

Access to Support Materials

- This examination is an open book exam.
- Prior to the exam, you will be asked to save your digital notes on the device on which you will be completing your examination. These can be saved in a drive that does not require access via the internet or document management system. You are also encouraged to have these available on a USB stick as a backup.
- The format of accessible files include word, excel and PDF.
- You may access your digital notes via the exam delivery system. There will be two windows within the browser – one for your notes, the other for your examination. These can be located on dual screens.

SCHEDULE 2: ASSESSMENT COMPONENT PART 2

Take Home Written Submission

Assignment Release Date:	Saturday 30 July
Assignment Due Date:	Monday 15 August, 4pm
Assignment Submission:	Assignment to be submitted via the LIV Student Portal

Assessment overview

The Take Home Written Submission will use the information from Part C of the written examination, plus additional material downloaded via the student portal. Candidate will be expected to prepare a written submission for presentation to a Tribunal on behalf of the client. In Part 2 and [Part 3](#) candidates may add or depart from their original outline submitted within the written examination as they see necessary. The written submission should also refer to any relevant case law.

In presenting the client's case, the candidate is expected to recognise, and respond to, the arguments likely to be advanced against the client. As time is allowed for research and reflection, work of high quality is expected. The written submission should not exceed **4000 words**.

Assessment criteria

Candidates will be assessed on their:

- Ability to analyse the information provided and identify relevant issues arising
- Ability to conduct research and gather additional information, relevant to the situation
- Ability to apply their knowledge and experience of the law to the situation
- Ability to draft a practical submission that is clear and concise
- Manner of presentation of submission and supporting documentation
- Ability to identify and address any ethical issues

Assessment conditions

- 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** and the material submitted must be entirely your own work.
- The assessment must be typed and submitted as a word or PDF document through the online student portal by no later than 4pm on the due date advised. Late submissions will not be accepted.
- Further details are provided when the assessment is released.

In order to achieve a satisfactory mark candidates must achieve at least 50% in this assessment.

SCHEDULE 3: ASSESSMENT COMPONENT PART 3

Presentation of Written Assessment

Presentation Date:	Tuesday 23 August
Presentation Time:	30 min scheduled by appointment closer to the date
Presentation Venue:	Via Zoom or Microsoft teams, candidates must use a device with a working camera

Assessment overview

This assessment will be a presentation to a Tribunal of the [Part 2: Written Submission](#).

- Candidates will be given approximately 30 minutes and will be video recorded for assessment by examiners.
- The Tribunal will consist of two members, including one from the Victorian Civil and Administrative Tribunal.
- Candidates are required to outline the key elements of their [Part 2: Written Submission](#) and add anything to the submission they wish (approximately 10 minutes)
- The remaining duration of the presentation the candidate will answer questions from the Tribunal (approximately 15-20 minutes)
- Candidates can assume that the Tribunal has read the [Part 2: Written Submission](#) and accompanying materials

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

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
- Judgement 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
- Ability to identify and address any ethical issues

In order to achieve a satisfactory mark candidates must achieve at least 50% in this assessment.

SCHEDULE 4: TOPICS FOR ASSESSMENT

Candidates will be expected to display a working knowledge of all the practice areas as well as to recognise typical problems, construct advice to a client and to outline the steps that would be taken to prepare the matter for hearing. Candidates will also be required to demonstrate an in-depth knowledge of the two practice areas and be able to address more complex issues specific to that field and cover the matters set out in these guidelines.

Levels of Understanding

Any matter relevant to practice in **environment and planning law** may be examined, including the areas listed below. The following 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. More importantly, it is expected that a specialist would be able to provide detailed advice on certain topics; these are the topics in respect of which '**Core Topics**' are prescribed in the following Table. This is not intended to be an exhaustive list and is provided as a guide for your assessment preparation.

Core Topics

For topics identified as 'core', candidates are expected to demonstrate:

- A detailed knowledge of the content, operation and application of environmental and planning legislation relevant to the topic.
- A knowledge of cases relevant to the operation of the legislation and its application to key issues.
- An ability apply to apply the legislation and authorities to a broad range of facts.

Non-Core Topics

For topics identified as 'non-core', candidates are expected to demonstrate:

- An awareness of environmental and planning legislation relevant to the topic.
- A knowledge of the operation of the legislation and its relationship with 'core topics'.
- An ability to identify when the topic and legislation are relevant to consideration of 'core topics' and related facts.

Topics for Assessment

TOPICS FOR ASSESSMENT	LEVEL OF UNDERSTANDING
1. Conservation Controls	
▪ Aboriginal cultural heritage including cultural heritage management plans and permits and relationship to planning system	Core
▪ Heritage places, permits and procedures	Core
▪ Coastal areas	Non-Core
▪ Protected fauna and flora Vegetation clearance and biodiversity	Core
2. Environment Protection	
▪ Environmental duties, obligations and requirements	Core
▪ Statutory notices, orders, directions, and regulatory authority enforcement powers	Core
▪ Contaminated land regulation	Core
▪ Third party rights of review and enforcement	Core
▪ Environmental audits	Non-Core
▪ Extractive industry and mining controls	Non-Core
▪ Environmental impact assessment (State and Commonwealth)	Core
▪ Industrial waste management	Non-Core
▪ Licenses, permits and registrations	Non-Core
▪ Permission exemptions	Core
▪ Reporting obligations	Non-Core
▪ Compliance codes, position statements	Non-Core
▪ EPA guidance and procedures	Non-Core
▪ Environment Reference Standards	Core
▪ Transport, use and disposal of hazardous materials	Non-Core
▪ Water management	Non-Core
3. Legislation & Jurisdictions	
▪ Magistrates Court (Prosecutions)	Non-Core
▪ Supreme Court (s148 Appeals, Judicial Review, Injunctions, Covenants)	Core
▪ Heritage Council and its Executive Director	Non-Core
▪ Planning Panels, advisory and inquiry and assessment committees	Core
▪ Review proceedings and applications before VCAT	Core
4. Planning	
▪ Compensation (Part 5 of Planning Environment Act)	Non-Core
▪ Development contributions plans, infrastructure contribution plans	Non-Core
▪ Enforcement and Prosecutions (s114)	Core

- Third party rights of participation in the planning process Core
 - Existing use rights Core
 - Characterisation of use Core
 - Permits including conditions, amendments, and cancellation Core
 - Planning Schemes including amendments, exhibition, submissions, advisory committee hearings, panel hearings, adoption, approval and revocation Core
 - Subdivision of land and buildings Core
 - Restrictive covenants (Interpretation, procedures and mechanisms to vary and remove) Core
-

SCHEDULE 5: RELATED LEGISLATION & OTHER MATERIALS

Related legislation:

This is not necessarily an exhaustive list. It does not list subordinate legislation and policy or regulations, guidelines or gazette notices which may also be relevant. Candidates will be examined on the law as it stands at the date of assessment.

Commonwealth

Core

- *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

Non-Core

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*

State

Core

- *Aboriginal Heritage Act 2006 (Vic)*
- *Environment Effects Act 1978 (Vic)*
- *Environment Protection Act 2017 (Vic)*
- *Flora and Fauna Guarantee Act 1988 (Vic)*
- *Heritage Act 2017 (Vic)*
- *Land Acquisition and Compensation Act 1986 (Vic)*
- *Planning & Environment Act 1987 (Vic)*
- *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*
- *Subdivision Act 1988 (Vic)*

Non-Core

- *Catchment and Land Protection Act 1994 (Vic)*
- *Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- *Interpretation of Legislation Act 1984 (Vic)*
- *Major Transport Projects Facilitation Act 2009 (Vic)*
- *Marine and Coastal Act 2018 (Vic)*
- *Public Health and Wellbeing Act 2008 (Vic)*
- *Road Management Act 2004 (Vic)*
- *Transport Integration Act 2010 (Vic)*
- *Water Act 1989 (Vic)*
- *Wildlife Act 1975 (Vic)*
- *Mineral Resources (Sustainable Development) Act 1990 (Vic)*

Suggested Reading and Resources

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 reading material.

- Russell Byard, Geoffrey Code and Sarah Porritt, *Planning and Environment: Victoria*, 2004, LexisNexis
- Gerry Bates and Zada Lipman, *Corporate Liability for Pollution*, 1998, Thomson Reuters
- Gerry Bates, *Environmental Law in Australia*, (10th edn), 2019, LexisNexis
- Des Eccles and Tannetje Bryant, *Statutory Planning in Victoria*, (4th edn), 2011, Federation Press
- Stephen Rowley, *The Victorian Planning System: Practice, Problems and Prospects*, 2017, The Federation Press
- Department of Environment, Land, Water and Planning using Victoria's Planning System.

The following government and regulatory websites:

- Department of the Environment (Commonwealth)
- Department of Environment, Land, Water and Planning
- Department of Jobs, Precincts and Regions
- Department of Planning and Community Development
- Department of Premier and Cabinet (Office of Aboriginal Affairs Victoria)
- Department of Transport
- Environment Protection Authority
- VCAT
- Heritage Victoria

Other reading

- Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015

SCHEDULE 6: RECOMMENDED COMPUTER REQUIREMENTS FOR ASSESSMENTS

All assessments are delivered in a digital format including via the LIV student portal for release and submission of assessments, the LIV online exam platform Assess App or Zoom/ for oral assessments. You are required to ensure you have all the required infrastructure, and access to the digital assessment platforms prior to the completion of your assessment. To ensure you are set up to succeed, here are some things to consider in advance to check that your computer meets the following recommended computer requirements of optimal performance of the platforms.

You will require access to a computer with a working webcam and microphone to complete the assessment program.

Written Examination Devices Specification

Windows	
Processor	i5 2.2GHz /AMD A6 1.8Ghz
Operating system	Windows 10 64-bit
Memory	8GB
Hard drive	250GB SSD (solid state drive)
Display	14" screen with 1920 x 1080 screen resolution
Battery life	8 hours under normal use

The following devices cannot currently be used to access the LIV online exam platform:

- Mac (we anticipate having Mac compatible with the Safe Exam Browser by the time of the 2022 Written Examinations)
- iPads
- Chromebooks.
- Smartphones: this includes iPhones, Android devices, and any other mobile OS devices

Successful applicants will have access to one on one support from our exam provider to set up the applications and work through all requirements for exam setup.

Oral Assessments

Oral assessments will be conducted via Zoom or MS Teams. In addition to a working web camera and microphone, Zoom support recommends minimum internet speeds for clear and high-quality video and audio throughout. For more information on minimum internet speeds for video conferencing visit the below two useful websites.

- [Reviews.org - breaks down requirements in a simplistic way](#)
- [Zoom Support - System Requirements](#)