



**LAW  
INSTITUTE  
VICTORIA**



# 2022 Accredited Specialisation Assessment Guidelines

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## **Criminal Law**

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# Assessment Guidelines Overview

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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 **Criminal Law**.

1. [Written Exam](#)
2. [Oral Presentation](#)
3. [Simulated Court Presentation](#)

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 Criminal 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 the 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
<b>Applications Open</b>	Mid-January 2022
<b>Applications Close</b>	25 March 2022
<b>2022 Accredited Specialisation Program begins</b> <ul style="list-style-type: none"> <li>– Welcome Orientation Session</li> <li>– Access to the LIV Student Portal and resources</li> </ul>	03 May 2022
<b>Candidate support sessions:</b> <ul style="list-style-type: none"> <li>– Study techniques series</li> <li>– Online exam platform familiarisation</li> </ul>	May-August
<b>Candidate self-guided study:</b> <ul style="list-style-type: none"> <li>– Review assessment guidelines &amp; make study notes</li> <li>– Form study groups</li> <li>– Work with mentors</li> </ul>	May-August
<b>Practice Written Exam &amp; Familiarisation Exam access available</b>	July
<b>Assessment Period</b> <ul style="list-style-type: none"> <li><b>Part 1:</b> <a href="#">Written Examination (Schedule 1)</a></li> <li><b>Part 2:</b> <a href="#">Oral Presentation (Schedule 2)</a></li> <li><b>Part 3:</b> <a href="#">Simulated Court Presentation (Schedule 3)</a></li> </ul>	Saturday 13 August Thursday 18 August Friday 19 August
<b>Results Released</b>	Early November
<b>Conferral Ceremony</b>	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

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## Written Examination

<b>Exam Date:</b>	Saturday 13 August
<b>Time:</b>	Three hours and 30 minutes inclusive of reading, writing, and planning time
<b>Venue:</b>	LIV online exam platform (refer to application guidelines for full details)

## Assessment overview

This part will examine the candidate's knowledge of substantive law and the ability to apply that knowledge in practice.

In planning and time management, it is recommended to use the mark allocation per question as a guide.

## The examination is divided in two parts:

### Section A

- Candidates will be presented with two questions of which candidates must answer both.
- The two questions will be detailed factual situation questions
- Candidates will be expected to identify the key issues in the situations described and demonstrate their capacity to provide appropriate advice
- This section will be worth 70 per cent of the total mark for the written examination.

### Section B

- Candidates will be required to answer six out of the ten short answer questions
- Candidates will be expected to demonstrate broad knowledge of matters relevant to practice in criminal law
- This section will be worth 30 percent of the total mark for the written examination

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**IMPORTANT:** In order to pass the written examination, candidates will need to achieve a minimum of 50% in each part of the exam.

## 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
- Knowledge of the rules pertaining to evidence, procedure and sentencing
- Ability to provide practical, clear and comprehensive advice
- Awareness of practical considerations in criminal litigation; and
- Awareness of how legal aid guidelines apply
- 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

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## Oral Presentation

<b>Presentation Date:</b>	Thursday 18 August
<b>Presentation Time:</b>	30 min scheduled by appointment closer to the date
<b>Presentation Venue:</b>	Via Zoom, candidates must use a device with a working camera

## Assessment overview

This assessment will be a presentation by candidates to a panel of examiners. Details are as follows:

- Candidates will be given 1.5 hours prior to their allotted presentation time to study a brief.
- While preparing for the presentation candidates will be allowed access to published materials or study notes. Candidates will also be allowed to use their computer to assist them with preparation, however they will not be allowed access to internet resources.
- Candidates will be playing the role of an associate in a law firm and the examiners will be playing the role of senior partners of that firm. The firm will have been instructed by a client whom the firm is representing in relation to this matter.
- Candidates will be given 30 minutes to present their opinion of the case to the panel, setting out the main issues and their strategies for dealing with them.
- During this interaction, questions and issues will be raised by the panel. Candidates will need to identify the strengths and weaknesses of the case and what advice they would give their client.
- Presentations will be video recorded for assessment by examiners.

### The questions may require the candidate to provide a response to the following:

- Alternative arguments or propositions that might be expected to be put by the other side;
- Drawing out legal principles;
- Identifying issues and potential defences;
- Justification for course of action;
- Managing the client's expectations;
- Recommendations/advice to the client;
- Identification of strengths and weaknesses in evidentiary material provided;
- Ancillary and/or consequential orders;
- Any other matters which the candidate believes are relevant and should be raised; and
- Demonstrate dispute resolution skills and strategies.

The above list should not be seen to be exhaustive and it should be expected that panel members may follow a line of inquiry with a candidate subject to the response provided.

The panel will consist of two to three accredited criminal law specialists. Depending on the number of candidates, there may be more than one panel.



## Assessment criteria

Candidates will be assessed on their ability to:

- Identify relevant issues;
- Communicate clearly;
- Assess facts and legal options;
- Indicate procedural steps;
- Develop a strategy, and evaluate the strengths and weaknesses of the strategy;
- Justify for adoption of a course of action;
- Exercise realistic forensic judgement; and
- Formulate advice to the client
- Identify and address any ethical issues

**In order to achieve a satisfactory result, candidates must achieve no less than 50% in this assessment.**

# SCHEDULE 3: ASSESSMENT COMPONENT PART 3

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## Simulated Court Presentation

<b>Presentation Date:</b>	Friday 19 August
<b>Presentation Time:</b>	20 min scheduled by appointment closer to the date
<b>Presentation Venue:</b>	Via Zoom, candidates must use a device with a working camera

## Assessment overview

The Simulated Court Presentation assesses the candidate's knowledge of the criminal jurisdiction, procedure and rules of evidence. The details are as follows:

- Candidates will use the information in the brief from the day prior in [Part 2: Oral Presentation](#) as well as additional information released via the student portal at the conclusion of [Part 2](#).
- The presentation will be 15 - 20 minutes in a mock court environment and will be recorded for assessment by the examiners.
- The presentation may relate to any criminal matter arising out of the materials encountered in [Part 2: Oral Presentation](#).
- Candidates will be representing the defendant in all cases.
- Candidates can expect to encounter an interventionist Bench.

The venue for the advocacy presentations is to be confirmed.

**Please note:** *Simulated Court Presentation date may be subject to change due to 2022 court availability. Candidates will be notified immediately of any change.*

## Assessment criteria

Candidates will be assessed on their ability to demonstrate proficiency in the following aspects of advocacy:

- Preparation;
- Knowledge of the law and the facts of the case;
- Presentation;
- Organisation;
- Reasoning and cogency of argument;
- Appreciation of court etiquette; and
- 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

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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.

**Candidates will be assessed on the law as it stands on the day of the examination.**

**Please note:** Any matter relevant to practice in **criminal 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. This is not intended to be an exhaustive list.

Candidates may be called on to demonstrate knowledge of any of the following topics, as applicable in any of the following courts:

- Magistrates' Court
- Children's Court
- County Court
- Court of Appeal
- Supreme Court
- High Court of Australia

## Substantive Law

- Bail
- Complicity
- Defences including mental impairment
- Derivative Liability:
  - Incitement
  - Attempt
  - Conspiracy
  - Accomplice liability
- Elements of Crime
- *The Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- *The Family Violence Protection Act 2008 (Vic)*
- *The Personal Safety Intervention Orders Act 2010 (Vic)*
- Particular criminal offences:
  - Property offences
  - Offences against the person (non- sexual)
  - Drug offences
  - Driving offences
  - Sexual offences
  - Administration of justice offences including perjury and attempt to pervert the course of justice
  - Dishonesty offences

- Commonwealth offences
  - Drugs
  - Offences committed in other jurisdictions
  - People smuggling offences
  - Sexual offences
  - Telecommunications/ postal offences
  - Terrorism

## **Evidence**

- Admissions
- Character
- Competency
- Credibility
- Documents
- Exclusion of evidence
- Hearsay
- Identification
- Improper questions
- Incriminating conduct
- Opinion

# SCHEDULE 5: RELATED LEGISLATION & OTHER MATERIALS

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## Related legislation:

This list indicates the range of matters which could be addressed in the assessment program. This is not necessarily an exhaustive list. Candidates will be examined on the law as it stands at the date of assessment.

## Commonwealth

- *Australian Crime Commission Act 2002* (Cth)
- *Crimes Act 1914* (Cth)
- *Criminal Code Act 1995* (Cth)
- *Customs Act 1901* (Cth)
- *Judiciary Act 1903* (Cth)
- *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth)
- *Proceeds of Crime Act 2002* (Cth)
- *Telecommunications (Interception and Access) Act 1979* (Cth)

## State

- *Bail Act 1977* (Vic)
- *Charter of Human Rights and Responsibilities 2006* (Vic)
- *Children, Youth and Families Act 2005* (Vic)
- *Confiscation Act 1997* (Vic)
- *Control of Weapons Act 1990* (Vic)
- *County Court Act 1958* (Vic)
- *County Court Criminal Procedure Rules 2009* (Vic)
- *Crimes Act 1958* (Vic)
- *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic)
- *Criminal Procedure Act 2009* (Vic)
- *Criminal Procedure Regulations 2009* (Vic)
- *Drugs, Poisons and Controlled Substances Act 1981* (Vic)
- *Evidence Act 2008* (Vic)
- *Evidence (Miscellaneous Provisions) Act 1958* (Vic)
- *Family Violence Protection Act 2008* (Vic)
- *Firearms Act 1996* (Vic)
- *Juries Act 2000* (Vic)
- *Jury Directions Act 2015* (Vic)
- *Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015*
- *Magistrates' Court Act 1989* (Vic)
- *Magistrates' Court Criminal Procedure Rules 2009* (Vic)
- *Major Crime (Investigative Powers) Act 2004* (Vic)
- *Open Courts Act 2013* (Vic)
- *Personal Safety (Intervention Orders) Act 2010* (Vic)
- *Public Prosecutions Act 1994* (Vic)
- *Road Safety Act 1986* (Vic) (and the Road Safety Regulations)
- *Sentencing Act 1991* (Vic)

- *Serious Offenders Act 2018* (Vic)
- *Sex Offenders Registration Act 2004* (Vic)
- *Summary Offences Act 1966* (Vic)
- *Supreme Court Act 1986* (Vic)
- *Supreme Court (Criminal Procedure) Rules 2008* (Vic) and Court of Appeal Practice Statement No 1 of 2010 and Practice Direction 2 of 2011
- *Surveillance Devices Act 1999* (Vic)
- *Victims of Crime Assistance Act 1996* (Vic)

## Suggested Reading and References

- Arie Freiberg AM, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria*, (Thomson Reuters, 3rd ed, 2014)
- Christopher Corns, *Criminal Investigation and Procedure in Victoria*, (Thomson Reuters, 2nd ed, 2014)
- Christopher Corns, Susan Borg and Adrian Castle, *Criminal Appeals and Reviews in Victoria*, (Lawbook Co, 2016)
- David Ross QC, *Crime: Law and Practice in Criminal Courts*, looseleaf, Lawbook Co
- Gerard Nash QC, *Bourke's Criminal Law Victoria*, loose-leaf, LexisNexis
- Ian Freckelton, *Indictable Offences in Victoria*, (Lawbook Co, 6th ed, 2015)
- Ian Freckelton, *Criminal Law Investigation and Procedure Victoria*, loose-leaf, 5 vols, Lawbook Co
- James Lindsay Glissan and Sydney Tilmouth, *Australian Criminal Trial Directions*, loose-leaf, LexisNexis
- James Richardson QC (editor), *Archbold: Criminal Pleading, Evidence and Practice*, Sweet & Maxwell, (published annually)
- JD Heydon, *Cross on Evidence*, (LexisNexis, 11th ed, 2017)
- JD Heydon, *Cross on Evidence*, loose-leaf, vols 1 and 2, LexisNexis
- [Judicial College of Victoria, Family Violence Resources](#)
- [Judicial College of Victoria, Personal Safety Resources](#)
- [Judicial College of Victoria, Sexual Assault Manual](#)
- [Judicial College of Victoria, Victorian Criminal Charge Book](#)
- [Judicial College of Victoria, Victorian Criminal Proceedings Manual](#)
- [Judicial College of Victoria, Victorian Sentencing Manual](#)
- [Judicial College of Victoria, Uniform Evidence Manual](#)
- Mirko Bagaric, *Ross on Crime*, (Thomson Reuters, 7th ed, 2016)
- Miiko Kumar et al, *Uniform Evidence Law Commentary and Materials*, (Lawbook Co, 5th ed, 2015)
- Neil J Williams, *Civil Procedure Victoria*, loose-leaf, Butterworths
- Neil J Williams et al, *Federal Criminal Law*, loose-leaf, LexisNexis
- Richard G Fox, *Victorian Criminal Procedure*, (Monash University Law Book Co-operative, 14th ed, 2015)
- Simon Bronitt and Bernadette McSherry, *Principles of Criminal Law*, (Lawbook Co, 4th ed, 2017)
- Stephen Odgers SC, *Principles of Federal Criminal Law*, (Thomson Reuters, 3rd ed, 2015)
- Stephen Odgers SC, *Uniform Evidence Law*, (Thomson Reuters, 12th ed, 2016), or Stephen Odgers SC, *Uniform Evidence Law in Victoria*, (Thomson Reuters, 2nd ed, 2013)
- Springvale Legal Service, *Lawyers Practice Manual Victoria*, looseleaf, Lawbook Co
- [The Department of Justice and Community Safety \(DJCS\), Intermediary Pilot Program and Ground Rules Hearings Legal Practitioner Fact Sheet](#)

## Other reading

- Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015

# SCHEDULE 6: RECOMMENDED COMPUTER REQUIREMENTS FOR ASSESSMENTS

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All assessments are delivered in a digital format including via the LIV student portal for release and submission of assessments and 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

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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 Assessment

Oral assessments will be conducted via Zoom. 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](#)