



**LAW  
INSTITUTE  
VICTORIA**



# 2022 Accredited Specialisation Assessment Guidelines

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## Immigration 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.

## The standard of an Accredited Specialist

The standard of an Accredited Specialist in Immigration Law is that of a 'specially competent practitioner' in the core skills and practical capabilities in their selected area of practice, as assessed against the spectrum of capability of all practitioners in that area of practice. This standard is to be distinguished from the idea that the Scheme requires the highest technical legal knowledge across all aspects of the selected area of practice.

## Legislation and other provisions

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

# Core skills and Practical Capabilities

## 1. Take instructions and give initial advice by:

### 1.1 Developing a relationship with the client

- Through a broad knowledge of other cultures, world affairs and human experiences the specialist Immigration Law solicitor demonstrates an understanding of the issues and concerns particular to immigration clients.
- The solicitor adopts a non-discriminatory, empathetic and ethical approach to encourage the client to give full instructions.
- The solicitor communicates with the client in plain language using interpreters effectively.

### 1.2 Taking instructions

- The specialist Immigration Law solicitor works from a sound knowledge base including an understanding of all aspects of Immigration Law, policy, and departmental practices enabling the solicitor to identify relevant facts to question and to **obtain the client's** account of facts and his or her expectations.
- The solicitor adopts an ordered approach to eliciting information, checking with the client and the client's records to clarify data.
- The solicitor displays familiarity with appropriate documentation.

### 1.3 Appraising the situation

- The specialist Immigration Law solicitor analyses the information provided by the client and identifies the relevant issues of fact, law and policy, and the extent to which these are clear and settled.
- The solicitor distinguishes realistic and unrealistic expectations and decides if the **client's problems are capable of resolution**.
- The solicitor identifies the immediately available options including appropriate legal and other courses of action.
- The solicitor communicates clearly to the client the factors relevant to choosing between available options and courses of action and the consequences of each including procedural requirements, time frames, costs and the dynamic nature of the law.
- The solicitor checks to ensure **the client's understanding of the advice and reviews** the resources available to the client to undertake the various options. The solicitor advises on and recommends interim actions in the light of the client responses.

### 1.4 Responding

- The specialist Immigration Law solicitor identifies matters of urgency and responds immediately with court or administrative action.
- In respect of other matters, he or she responds promptly and as appropriate and within deadlines
- At all times the solicitor acts in accordance with properly obtained instructions and keeps the client fully informed.

## 2. Research and investigate by:

### 2.1 Gathering information

- The specialist Immigration Law solicitor adopts an orderly and creative approach to gathering and assessing relevant information.
- The solicitor demonstrates an ability to communicate with a wide variety of people who may assist, and to access potential sources of information.
- The solicitor keeps a full and accurate record of the information obtained.

### 2.2 Analysing information obtained

- The specialist Immigration Law solicitor analyses the information provided by the client and obtained from third parties, including experts, government and non-government agencies and through appropriate enquiry or investigation.
- The analysis of the facts involves a cross-referencing of documents and statements and obtaining relevant expert comment on the evidence.
- The solicitor also assesses the reliability of witnesses, the competence of experts as witnesses, the relative weight of evidence and, where necessary, determines what is admissible.

### 2.3 Determining legal issues

- The specialist Immigration Law solicitor recognises the legal issues arising from the facts and identifies the extent to which the legal principles are clear.
- The solicitor identifies areas where the law is unsettled or where arguments can be developed.
- The solicitor promptly and efficiently identifies the sources available to resolve legal issues, e.g. legal texts, law report, tribunal and court decisions, legislation, explanatory memoranda, departmental instructions, circulars and relevant databases.
- The solicitor determines whether to seek counsel's opinion on the legal issues and seeks appropriate instructions.

## 3. Develop a plan by:

### 3.1 Formulating options

- The specialist Immigration Law solicitor develops courses of action in the light of relevant legislation, case law, departmental policies and practices and the client's instructions and circumstances.
- The solicitor displays a comprehensive knowledge of immigration law and related areas to identify all available options. Such options may include:
  - Doing nothing
  - Non legal action
  - Applications to and negotiation with Department of Home Affairs (Department) and other agencies
  - Tribunal and court action.

### 3.2 Advising client

- The specialist Immigration Law solicitor communicates clearly the possible courses of action open to the client and the procedures involved in each option.
- The solicitor clearly explains the legal and practical consequences of each option, the **advantages and disadvantages and the extent to which each will achieve the client's objectives**.
- The solicitor is aware of Legal Aid arrangements.

### 3.3 Confirming instructions for action

- The specialist Immigration Law solicitor obtains feedback from the client on relevant issues, recommends the preferred option and determines with the client the plan to be implemented.
- The solicitor confirms very **clearly the client's instructions, preferably in writing**.

### 3.4 Use of interpreters & translators

- As required the specialist Immigration Law solicitor uses competent interpreters in clarifying instructions and confirming content with clients. Competent translators are used for documents as required.

## 4. Implement plan by:

### 4.1 Conducting negotiations

- When negotiating, the specialist immigration Law solicitor assesses the client's eligibility and legal entitlements against the Department's position and demonstrates an ability to put the client's case coherently and persuasively.

### 4.2 Preparing written submissions to department

- The specialist Immigration Law solicitor prepares submissions and documents which are clear, concise and comprehensive. Submissions, whether written or oral, summarise the relevant evidence and legal issues in a logical sequence, relate the evidence to the matters in issue, and emphasise key issues in a structured way.
- The solicitor prepares a plan for each submission to ensure all relevant matters are addressed, including:
  - Facts
  - Law and policy
  - Areas of discretion
  - **Previous decisions of Courts and Tribunals and their application to the client's case.**
- The **solicitor prepares submissions in a form which assists the decision maker's consideration of the case and argues the client's case persuasively.**
- The solicitor is conscious of the parameters in which the decision maker operates.

### **4.3 Preparing and conducting hearings**

- The specialist Immigration Law solicitor is familiar with the rules and practice of the courts and the Administrative Appeals Tribunal.
- The solicitor operates effectively within the framework of the non-adversarial jurisdictions.
- The solicitor initiates proceedings and prepares supporting documentation, including submissions, statements, declarations and affidavits.
- The solicitor conducts interlocutory procedures and where necessary advises on appeals.

### **4.4 Briefing counsel**

- The specialist Immigration Law solicitor considers when to brief counsel, having regard to the nature and the complexity of the issues and the likelihood of success.
- The solicitor chooses the appropriate barrister for the matter and knows when the registration requirements are involved.
- An instructing solicitor understands the relationship between barrister and client and plays an active role in the conduct and management of the case and acts as liaison between the barrister and the client.

### **4.5 Acting as advocate**

- When appearing the specialist Immigration Law solicitor is well prepared, organised, clear and effective with the ability to think quickly on his or her feet.
- The solicitor tries to achieve the best result having regard to the client's instructions and the limits of the law and the remedies available.
- The solicitor prepares the client and witnesses to give evidence and may prepare written material for tender.
- The solicitor operates effectively within the non adversarial system and demonstrates a knowledge of the rules of evidence and the rules of natural justice and other administrative law principles as well as current legal principles and case law that apply to the case.

### **4.6 Managing the plan**

- The specialist Immigration Law solicitor constantly reviews the plan in the light of changing circumstances in particular resulting from clarification or changes in the position of the other parties; procedural requirements, information gained, judicial or arbitral decisions, actual or proposed legislative changes.
- The solicitor informs the client of any changes and explains their impact on the plan, any variation in prospects and the impact on costs.

### **4.7 Finalising the matter**

- The specialist Immigration Law solicitor ensures all necessary documentation and correspondence are prepared and processed.
- The solicitor advises, as to the outcome of the matter, any further work required on the case and how to meet any obligations arising therefrom, including payments of any outstanding accounts and expenses.



## 5. Cultural Competence:

- Cultural competence has been described as:  
*a set of congruent behaviours, attitudes and policies that come together in a system, agency or among professionals and enable that system, agency or those professionals to work effectively in cross-cultural situations. (Cross, Bazron, Dennis & Isaacs)*
- As a concept, true competence requires more than awareness of different cultures or 'practising tolerance'. It involves empathetic understanding built on awareness of both your own culture and expectations as well as acceptance that another person's culture and background can mean that they behave and see the world differently. In the words of Walker, Schultz and Sonn:  
*Cultural competence encompasses and extends elements of cultural respect, cultural awareness, cultural security and cultural safety. Cultural competence encompasses the knowledge, awareness and skills aimed at providing a service that promotes and advances cultural diversity and recognises the uniqueness of self and others in communities.*
- The literature in this growing area of cultural studies suggests that there are three components to 'competency' in this area: awareness, respect and safety.

### *Cultural Awareness*

The starting point for cultural competence in any practitioner is self-awareness in the sense of recognising our own biases, values, assumptions and patterns of cultural behaviour. This becomes the basis for understanding and accepting that others can see the world differently and that there are cultures that promote behaviours and reactions that are different to those 'we' assume are 'normal'.

### *Cultural Respect*

Respect of another culture extends beyond tolerance to active acceptance that another person has a right to maintain, protect and develop their culture. So it is that the next step for practitioners is to develop an open and inquiring mindset when faced with individuals from different cultural backgrounds. It may never be possible to know or understand all the nuances of human societies. However, a competent practitioner will recognise cultural difference and seek to acquire relevant knowledge so as to enhance their understanding and modify expectations of how a client is likely to behave and react in different contexts. Respect of an individual recognises that the starting point for such learning will often (but not always) be the client themselves.

### *Cultural Safety*

Many aspects of cultural competence derive from the global efforts of indigenous societies to fight for the preservation and promotion of the ancient cultures of 'first nation' people. Cultural safety was developed as a concept in training nurses in Aotearoa New Zealand to be more accepting of the health and welfare practices of the country's Maori population. The idea turns on the notion that practitioners actively embrace cultural practices so as to make an individual feel comfortable and safe. In this way, safety is a structural concept that sounds in how a client feels in a professional context.

For migration practitioners, cultural competence is reflected in efforts made across a workplace to make clients from different cultures feel at home and safe. In the stressful context of formal interviews and processes, the task of making an individual feel comfortable and safe will be exponentially more difficult. However, there may be small things that practitioners can do to place an individual at ease, whether it is in assuring the provision of the correct religious text for taking oaths, assuring that young people are interviewed or represented by individuals of the same gender or, if possible with the same or similar faith or cultural backgrounds. In other respects, knowledge of basic cultural practices, including the timing of religious rituals, is critical to creating cultural safe spaces.

## 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 **Immigration Law**.

1. [Mock File](#)
2. [Written Examination](#)
3. [Simulated Interview](#)

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 Immigration 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>Candidate support and access available</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="#">Mock File (Schedule 1)</a></li> <li><b>Part 2:</b> <a href="#">Written Examination (Schedule 2)</a></li> <li><b>Part 3:</b> <a href="#">Simulated Interview (Schedule 3)</a></li> </ul>	Wednesday 1 June 2022 Saturday 30 July 2022 Sunday 31 July 2022
<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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## Take Home Assignment

<b>Assignment Release Date:</b>	10am Wednesday 11 May 2022
<b>Assignment Due Date:</b>	4pm Wednesday 1 June 2022
<b>Assignment Submission:</b>	Assignment to be submitted via the LIV Student Portal

## Assessment overview

Using the information from the materials available for download via the student portal, candidates will be required to complete specific tasks on a mock file, including the preparation of legal advice and court documents.

## Assessment criteria

Candidates will be assessed on their ability to:

- Ability to identify relevant issues from the materials;
- Knowledge of relevant law, including significant recent decisions;
- Knowledge of relevant procedural rules and principles; and
- Ability to provide practical, clear and comprehensive advice.
- 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 no less than 50% in this assessment**

# SCHEDULE 2: ASSESSMENT COMPONENT PART 2

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## Written Examination

<b>Exam Date:</b>	Saturday 30 July 2022
<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

The written exam will test knowledge of procedure and rules as well as the ability to apply relevant knowledge to situations encountered in practice.

The examination paper will be in three sections.

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

## The written exam is divided into three parts:

### PART A

- In Part A of the examination candidates are required to answer ALL questions
- This section of the exam is comprised of 15 short answer questions worth 2 marks each
- Candidates will be expected to demonstrate knowledge of fundamental legislation, regulations and procedures
- The questions will cover a wide range of migration and citizenship topics drawn from the Schedule 4 list of topics for assessment.

### PART B

- In Part B of the examination candidates are required to answer ALL questions
- This section of the exam is comprised of 6 questions worth 5 marks each requiring brief answers
- Candidates will be expected to demonstrate knowledge of fundamental legislation, regulations and procedures
- The questions will cover a wide range of migration and citizenship topics drawn from the Schedule 4 list of topics for assessment.

### PART C

- In Part C of the examination candidates are required to answer ALL questions
- This section of the exam is comprised of 2 questions worth 20 marks each
- This section will present candidates with more complex fact situations in which expert legal advice might be sought.

**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 knowledge of the law as it stands on the date of the examination, including:

- Identify relevant issues;
- Demonstrate knowledge and understanding of the relevant law;
- Present clearly expressed practical advice that is both comprehensive and legally correct and
- 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 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 3: ASSESSMENT COMPONENT PART 3

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## Simulated Interview

<b>Interview Date:</b>	Sunday 31 July 2022
<b>Interview Time:</b>	50 min scheduled by appointment closer to the date
<b>Interview Venue:</b>	Via Zoom, candidates must use a device with a working camera

## Assessment overview

The simulated interview is designed to enable candidates to demonstrate skill in conducting a first interview with the client. Using the information from the materials available for download following the written examination, via the student portal, candidates will conduct a simulated first interview with a person acting in the role of the client.

The candidate is expected to demonstrate a clear ability to take and receive instructions, deliver preliminary advice and provide information to the "client" in a manner which satisfies the assessment criteria, core knowledge areas and the performance standard.

- The interview will take up to 50 minutes and will be recorded for assessment by examiners.
- At the conclusion of the interview, candidates will be given 10 minutes to prepare a brief file note which records in point form, the steps to be taken following the interview.
- File notes will be used as part of the overall assessment in conjunction with the recorded interview in this examination component and may assist you in gaining accreditation.
- **Candidates will be expected to provide preliminary advice during the interview.**
- The time allocated for the interview and completion of the file notes will be strictly enforced.

## Assessment criteria

This simulated interview is intended to assess a wide range of assessment criteria including those relating to interaction between the solicitor and client, taking instructions and giving advice, terms of engagement, assessing facts and legal options, canvassing the options with the client and developing the initial plan. Candidates must perform each one of the assessment criteria listed below to the level of the performance standard in order to pass this assessment overall.

Candidates will be assessed on their ability to:

- Elicit relevant information and facts from the client;
- Obtain and clarify instructions;
- Identify relevant issues (both immediate and longer term which impact upon any visa or citizenship strategy being proposed);
- Communicate clearly with the client;
- Accurately assess facts and legal issues and options;
- Indicate procedural steps and timelines for responses;
- Develop an initial plan;
- Provide advice on the client's current circumstances and on any strategies identified; and
- Ability to identify and address any ethical issues.

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

# SCHEDULE 4: TOPICS FOR ASSESSMENT

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The topics listed below indicate 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.

## Important:

Any matter relevant to practice in **Immigration Law** may be assessed, including the areas listed above and all related case law. 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, related case law and other materials not listed in these guidelines. The list is not intended to be an exhaustive list but merely a guide.

## Topics for Assessment

### 1. Fundamental principles

- Constitutional basis for migration law
- Legislative framework:
  - Migration Act 1958, Migration Regulations 1994, Policy (Procedural Advice Manuals (PAMS) and Fast Load Instructions (FLIs) and Federal Legislative Instruments); implications of a codified system of entry, policy including directions under s.499
- Basic principles of administrative law including:
- Rules of procedural fairness and natural justice
- Concepts of jurisdictional error
- Concept of ultra vires
- changes in the law and determining what law applies at a particular time
- Transitional arrangements
- Definitions contained in the *Migration Act 1958* and Regulations and other relevant laws and Conventions (including international law)
- Registration of migration agents
- Relevant merits and judicial review decisions
- COVID border and travel restrictions

### 2. Requirements relevant to more than one class of visa

#### 2.1 General requirements

- Classes and subclasses of visas
- Schedules 1 - 13
- Resident return visas, authority to return and return endorsements
- Conditions of visas
- EOI, SkillSelect
- Criteria for a valid application



- Application fee
- Base charge
- Dependents' charge
- Subsequent temporary application charges
- Non-Internet application charges, credit card surcharge and waivers
- Location of applicant
- Section 48(A) and 48(B)
- Section 46(A) Schedule 1
- Time when criteria must be met
- Requirements for a favourable decision
- Codes of procedure for dealing with visa applications including time limits
- Method and place of lodgement of applications and internet applications
- Exclusion periods
- Period of validity of visas
- 2nd VAC
- Health charges
- English language charges
- Settlement Criteria
- Sponsorship and nomination
- Key definitions under s5 Migration Act and regulation 1.03
- Limitations on sponsorship/nomination
  - Family related
  - Guardian of a child
  - Business sponsorship
  - State/Territory sponsorship/nomination
  - Capacity of sponsor
- Assurance of support and bond
- Capping and queuing
- Time limits for lodgement of primary applications and review applications
- Schedule 3 criteria
- Relevant merits and judicial review decisions

## 2.2 Public interest criteria schedule 4/schedule 5

- Health criteria
  - Applicability of waiver
  - Role of the Medical Officer of the Commonwealth
  - **Scope of the review authority of MOC's opinion**
- Character requirement
- Settlement criteria
- Debts due to the Commonwealth

- Migration related debts (removal/detention)
- Other debts
- Applicability of the Financial Management and Accountability Act 1997 (provision for waiving debts)
- Risk factor profiles
- National interest consideration
- Exclusion periods and waiver requirements
- Relevant merits and judicial review decisions
- Australian values statement
- PIC 4020 - bogus documents/false or misleading information/identity

### 2.3 Points tests and skills determination

- *Migration Act 1958* ss 92-96, Regulations Div 2.6 Prescribed qualifications and Point Systems, allocation of points, applications for skills assessment and relevant sources:
  - ANZSCO Dictionary, PAMS, NOOSR Country Education Profiles
- Application of transitional arrangements
- Schedules 6, 6A, 6B, 6C, and 6D allocation of points, definitions, pass, nominated occupation, role of "relevant assessing authorities"
- Publications, guidelines of "relevant assessing authorities"
- Business skills points test -schedule 7A
- Processing directions
- Relevant merits and judicial review decisions
- Medium and Long-Term Strategic Skills List (MLTSSL)
- Short-term Skilled Occupation List (STSOL)
- Regional Occupation List (ROL)
- Priority Migration Occupations List (PMSOL)
- SkillSelect – EOI
- Australian Study Requirement
- English requirement

### 3. Migrant/Residence entry

- Family
  - Partner
  - Child
  - Parent
  - Contributory parent
  - Orphan relative
  - Aged dependent relative
  - Remaining relative
  - Adoption
  - Carer **and 'member of the family unit' definition**; and
  - **'Dependent'**

- Skilled categories
  - Independent
  - Family sponsored
  - State/Territory nominated
  - Skilled graduate and skilled recognised graduate
- Employer Nomination Scheme (ENS) and Regional Sponsored Migration Scheme (RSMS) including- approved appointments Regulation 5.19 and transitional arrangements
- Business skills, business innovation visas and post settlement business surveys
- Global Talent program
- New Zealand citizens
- Special categories including:
  - Former citizen
  - Former resident
  - Resident return
    - Quotas, capping and priorities
    - Relevant merits and judicial review decisions

#### 4. Temporary entry

- Visitors
  - Visitor visa for parents of Australian children
- Students
  - Genuine Temporary Entrant
  - Simplified Student visa framework
- Student Guardian Visas
  - Temporary residents, including 457/Temporary Skill Shortage visa, Skilled Employer Sponsored Regional (Provisional) visa
  - Sponsorship & nomination criteria including sponsorship obligations
  - Specialist temporary entry i.e. 400, 403, 407, 408 Skilled temporary visas Working Holiday/ Work and Holiday visas
- Labour Agreements including Designated Area Migration Agreements and Global Talent Employer Sponsored
- New Zealand citizens (including family members)
- Business skills, business innovation visas,
- Temporary Parent visa
- Miscellaneous temporary entry categories (e.g. medical treatment, transit, dependent child, maritime crew, diplomatic)
- Relevant merits and judicial review decisions

#### 5. Change of status

- Development of options and strategies (including lateral thinking)
- Validity
  - Differentiate between criteria for applications vs. criteria for granting a Visa
- General issues
  - Limitations on applications i.e. schedules 3, 4, 5 and 8, ss 41, 46A, 48, 48A, 48B
  - Substantive visa requirements
  - Assurances of support
  - "Old" legislation/regulations and policy
    - Family violence, death of partner, parenting arrangements and other exemption provisions
  - Substantial compliance issues
- Reg. 2.12 prescription of certain Partner visa applications for the purposes of s.48 and consequential policy amendment in relation to schedule 3 criteria and waiver
- Business skills/business innovation provisional to permanent visas
- General Skilled Migration provisional to permanent visas
- Statutory visas including:
  - Absorbed person
  - Special purpose
  - Criminal justice
  - Ex-citizen visa
  - Enforcement visas
- Applications by unlawful non-citizens and holders of bridging visas
  - Schedule 3 criteria
- Processing of applications
  - Bridging visas
  - Change of conditions
  - Evidence required
- Effect of certain visa conditions on subsequent applications
- No further stay conditions and provisions for waiver
- Relevant merits and judicial review decisions

## 6. Refugee and humanitarian entry

- General
  - Refugee Convention and Protocol
  - Section 5H – 5M
  - Section 91A – 91XA
  - Convention Against Torture, ICCPR, Convention on the Rights of the Child
  - Definition of "refugee" as modified by legislation and judicial interpretation
  - Stateless persons
- Offshore

- Unauthorised maritime arrivals and transitory persons
- Refugee subclass 200
- Special humanitarian programs subclasses 201-204
- Approved proposing organisations
- Temporary safe haven visas
- Onshore
  - Protection visas
  - Temporary protection visas
  - Safe haven enterprise visas
  - Temporary humanitarian
  - Complementary protection
- Relevant merits and judicial review decisions

## 7. Detention, cancellation and compliance

- Powers of entry, search and examination
- Mandatory detention of unlawful non-citizens
  - Release from detention, bridging visas, wrongful detention
  - Questioning detention
- Mandatory removal of unlawful non-citizens
  - Personal identifiers
  - Costs of detention, removal and deportation, recovery
- Offences under the Migration Act
  - People trafficking
  - Contrived relationships
  - Offences relating to work, including civil penalty provisions (employer sanctions)
- Powers and procedures for cancellation: Division 3, subdivisions C-H, *Migration Act*,
  - Incorrect information s109
  - General s 116, s 128
  - Business visas s134
  - 134B emergency cancellation on security grounds
  - Student visas s 116
  - Regional sponsorship employment visas s 137Q and 137T (consequential cancellation)
  - Consequential cancellation power s 140
  - Temporary safe haven visas 500A
  - Personal powers section 133(A) – 133(F)

- Character s 501, 501A, 501B, 501C (revocation of decision under 501(3) or 501A(3) 501F (consequential cancellation) and s 502
  - Refusals (including refusals by the Minister personally)
  - Cancellations (including refusals by the Minister personally, mandatory cancellations and revocation)
  - Review by the AAT
- Criminal deportation
- Relevant merits and judicial review decisions

## 8. Review of migration decisions

### 8.1 Choice of remedy – avenues of appeal and review

#### *i. Merits Review*

- Definition of reviewable decision
- Review powers and jurisdiction of the AAT
- Time limits
- Detainees
- Non detainees
- Ministerial discretion
- Requests to the Minister seeking his personal intervention Ministerial override of character decision by delegate or AAT under ss. 501A, 501B and 501C
- Relevant merits and judicial review decisions

#### *ii. Judicial Review*

- Definition of judicially reviewable decision
- The privative clause
- Grounds for judicial review
- Time limits
- Powers of the Federal Court and Federal Circuit Court
- Role of High Court

## 9. Citizenship - Citizenship Act 2007

- Australian Declaratory Visa (ADV)
- Australian citizenship
- Status at birth
- Automatic acquisition of Australian citizenship
  - Persons born in Australia
  - Citizenship by adoption
  - Citizenship for abandoned children
  - Citizenship by incorporation of Territory
- Citizenship by Descent
- Children born under offshore commercial and onshore non-commercial surrogacy arrangements

- Citizenship by Adoption under the Hague Convention on Inter country Adoption
- Citizenship by conferral
  - Normal requirements
  - Exemptions from the normal requirements
  - Residence requirements and exemptions for conferral
  - English language requirements and Australian values
  - Citizenship test
  - Personal identifiers
- Persons of national security or character concern
- Cancellation or deferral of approval
- Cessation of citizenship
  - Renunciation
  - Revocation
  - Service in enemy armed forces
  - Children of parents who lose their Australian citizenship
- Resumption of citizenship
- Dual citizenship
- Review of decisions
- Transitional arrangements
- Relevant merits and judicial review decisions

## 10. Client contact

- Professional conduct and practice rules
- Assisting in completing applications
- Solicitor's responsibilities for bona fides of applications
- Issues of privilege
- Solicitors lien on documents
- Use of solicitor's trust account
- Relevant merits and judicial review decisions

## 11. Responsibilities of a lawyer

- Legal profession legislation
- Trust accounting
- Insurance
- Ethics
- Costs/charging
- Potential deregulation

## 12. Regulation of migration agents

- OMARA's powers

- Appeal rights
- Migration agent regulations - Code of Conduct
- Consumer guide
- Criteria for registration
- CPD and English for migration agents
- Professional indemnity insurance
- Average fees charged
- Client contract

### 13. Other Issues

- Freedom of Information
  - Legal Aid and Pro Bono schemes
  - Alternative avenues of redress
    - HREOC
    - Ombudsman
    - MPs
    - UNHCR
  - Privacy Commissioner
  - Relevant merits and judicial review decisions
  - Lawyers practicing overseas
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# SCHEDULE 5: RELATED LEGISLATION & OTHER MATERIALS

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## 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.

## Legislation

- Acts Interpretation Act 1901 (Cth) and Act Interpretation (Registered Relationships) Regulations 2008 (Cth)
- Administrative Appeals Tribunal Act 1975 (Cth)
- Administrative Decisions (Judicial Review) Act 1977 and Regulations (Cth)
- Australian Citizenship Act 2007 (Cth), Australian Citizenship (Transitional and Consequential) Act 2007 and Australian Citizenship Regulation 2016
- Australian Human Rights Commission Act 1986 (Cth)
- Australian Passports Act 2005 and Regulations
- Biosecurity Act 2015 (Cth)
- Butterworths Australian Immigration Law Service (looseleaf/electronic)
- Commonwealth Gazette Notices
- Convention Relating to the Status of Refugees 1951 as amended by the Protocol.
- Education Services for Overseas Students Act 2007 (Cth)
- Education Services for Overseas Students National Code of Practice
- Fair Work Act 2009 (Cth)
- Federal Circuit Court of Australia Act 1999 (Cth) and Rules
- Federal Court of Australia Act 1976 (Cth) and Rules
- Freedom of Information Act 1982 (Cth)
- Health Insurance Act 1973
- Immigration (Guardianship of Children) Act 1946 (Cth)
- Immigration (Guardianship of Children) Regulations 2001 (Cth)
- International Covenant on Civil and Political Rights, United Nations 1966
- Judiciary Act 1903 (Cth)
- Legislative Instruments Act 2003 (Cth)
- Marriage Act 1961
- Migration (United Nations Security Council Resolutions) Regulations 2007
- Migration (Visa Application) Charge Act 1997 (Cth)
- Migration Act 1958 (Cth)
- Migration Agents Regulations 1998
- Migration Amendment (Temporary Sponsored) Visas Act 2013
- Migration Amendment (Visa Application Charge and Related Matters) Regulation 2013
- Migration Reform (Transitional Provisions) Regulations
- Migration Regulations 1994 (Cth) as amended
- Ministerial Directions issued under s.499
- Ombudsman Act 1976 (Cth)
- Privacy Act 1988 (Cth)
- Same-sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008 (Cth)

- Social Security Act 1991 (Cth)
- UN Convention against Torture
- UN Convention on the Rights of the Child
- Other relevant International Instruments including International Trade Agreements

## Suggested reading materials

Candidates may find it useful to refer to the following texts (being careful to ensure the sources reflect the current status of the law):

- Costello C; *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press, 2014)
- Crock, M and L Benson (eds, *Protecting the Migrant Child: Central Issues in the Search for Best Practice* (London: Elgar Publishing, 2018)
- Crock M and L, Berg; *Immigration, Refugees and Forced Migration: Law, Policy and Practice in Australia* (Sydney: Federation Press, 2011)
- Foster M; *International Refugee Law and Socio-economic Rights: Refugee From Deprivation* (Cambridge University Press, 2007)
- Goddard J; R, Germov; P Papadopoulos, *Australian Immigration Law (Looseleaf and online)\** (LexisNexis, since 1990) (\*includes PAMs and FLIs)
- Goodwin-Gill G and J, McAdam; *The Refugee in International Law* (Oxford University Press, 2007)
- Hathaway J.C.; *The Rights of Refugees Under International Law* (Butterworths, 2006)
- Hathaway J.C. and M, Foster; *The Law of Refugee Status* (Cambridge University Press 2<sup>nd</sup> ed, 2014)
- *Immigration Review*, (LexisNexis Butterworths)
- McAdam J and F Chong, *Refugee Rights and Policy Wrongs* (Newsouth Books, 2019)
- Rubenstein K, *Australian Citizenship in Context* (2<sup>nd</sup> Edition, Sydney: Law Book Co, 2017)
- Springvale Legal Centre, Thomson Reuters, *Lawyers Practice Manual*, Immigration Chapter (Looseleaf and online)

## ebooks and online subscriptions

- Aronson, M and Groves, M, *Judicial Review of Administrative Action* (Thomson Reuters 5<sup>th</sup> ed 2013)
- Immigration Advice and Rights Centre, *Immigration Kit* (online subscription service – <https://iarc.worldsecuresystems.com/immigration-kit-secure-zone>)
- Legendcom – Department of Home Affairs online subscription service for Migration and Citizenship law and policy – <https://immi.homeaffairs.gov.au/help-support/tools/legendcom>
- LexisNexis Practical Guidance – Immigration Law
- Pearce, D and S Argument, *Delegated Legislation in Australia*, (LexisNexis 4<sup>th</sup> ed, 2012)
- Pearce, D. C and R S Geddes, *Statutory Interpretation in Australia*, (LexisNexis 8<sup>th</sup> ed, 2014)
- Any other relevant cases

## On cultural competence

- Cross T, Bazron B, Dennis K, Isaacs M. *Towards a culturally competent system of care* (vol. 1). Washington, DC: CASSP Technical Assistance Center, Center for Child Health and Mental Health Policy, Georgetown University Child Development Center. 1989.
- Roz Walker, Clinton Schultz and Christopher Sonn, 'Cultural competence – Transforming Policy, Services, Programs and Practice in *Working Together | Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*.

## On interviewing techniques

Clare Wilson and Martine Powell, *A guide to interviewing Children: Essential skills for counsellors, police, lawyers and social workers* (Allen & Unwin, 2001)

Lani Blackman, *Representing Children and Young People: A Lawyers Practice Guide* (Victoria Law Foundation, 2002)

Law Society of NSW, *Representation Principles for Children's Lawyers* (Law Society of NSW, 3<sup>rd</sup> ed, 2007)

## Other online resources

Administrative Appeals Tribunal – Migration and Refugee Division, *Policies, guidelines and principal member directions* – [www.aat.gov.au](http://www.aat.gov.au)

Australian Bureau of Statistics and Statistics New Zealand, *Australian and New Zealand Standard Classification of Occupations 2013 (ANZSCO Dictionary) (Version 1.2)* – [www.abs.gov.au](http://www.abs.gov.au)

Department of Education and Training, *Country Education Profiles* – <https://internationaleducation.gov.au/Services-And-Resources/Services/Country-Education-Profiles/Access-CEP/Pages/Default.aspx>

Migration Institute of Australia - *Migration Case Law Newsfeed* (member e-bulletin) – [www.mia.org.au](http://www.mia.org.au)

## Websites (government etc.)

Administrative Appeals Tribunal – [www.aat.gov.au](http://www.aat.gov.au)

Australian Bureau of Statistics – [www.abs.gov.au](http://www.abs.gov.au)

Australian Legal Information Institute – [www.austlii.edu.au](http://www.austlii.edu.au)

Federal Register of Legislation – <https://www.legislation.gov.au/>

Department of Home Affairs – [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au)

- Australian Citizenship Instructions (ACI)
- The Procedures Advice Manual (PAMs)
- Fast Load Instructions (FLIs)

Immigration Rights and Advice Centre – [www.iarc.asn.au](http://www.iarc.asn.au)

Parliament of Australia – [www.aph.gov.au](http://www.aph.gov.au)

## 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 Assessments

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](#)