

Accredited Specialisation Application Guidelines 2018

COMMERCIAL LITIGATION



What is an Accredited Specialist?

A lawyer who is accredited as a specialist is recognised as having an enhanced skill level, as well as substantial involvement in established legal specialty areas. The Law Institute of Victoria requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an accredited specialist is meaningful and reliable.

Eligibility for Accreditation

- Membership of the Law Institute of Victoria
- A current practising certificate
- At least five years' experience in practice
- Substantial involvement in this area of practice over the past three years
- Three references in support of the application
- Successful completion of the prescribed assessment program

Candidates who do not meet the eligibility criteria may apply for an exemption from criteria in accordance with the Specialisation Scheme Rules. Such applications for exemptions must be lodged no later than **4pm on Friday 6 April 2018**.

IMPORTANT: Details of the conditions for gaining specialist accreditation are contained in the Specialisation Scheme Rules which can be found at:

https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20180420_Master_SpecialisationSchemeRules_April16.pdf

Specialisation candidates are particularly advised to read the *Specialisation Scheme Rules* and familiarise themselves with the requirements for any applications for exemption or special consideration. The Rules are located under the Scheme Administration tab of the *Specialisation Scheme* link.

Assessment

The assessment program for Accredited Specialisation in Commercial Litigation is in three parts. To gain accreditation candidates must obtain a satisfactory mark in each of the three parts of the program. Candidates may, in any or all of the assessment program, be assessed on any or all of the **Assessment Topics** listed in **Schedule 4**.

Part 1: Written Examination – See **Schedule 1**

Part 2: Simulated Interview – See **Schedule 2**

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

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

Supplementary assessment

Candidates may be required to undertake additional assessment at the discretion of the Specialisation Board.

Exemption from Written Examination

Candidates may apply in advance for an exemption from the written examination if they have recently studied subjects relating to commercial litigation in a postgraduate course at a tertiary institution. Any such exemption is entirely at the discretion of the Specialisation Board and will be assessed on a case by case basis.

Eligibility for the exemption is subject to the following conditions. The completed post graduate course units **must:**

- have been completed within the preceding five years of the date of application
- assess knowledge that is equivalent in range to the knowledge assessed in the specialist accreditation exam
- be at a level of complexity and standard of knowledge that is equivalent to that assessed in the specialist accreditation exam
- contain knowledge that is of equivalent relevance to practice in the specialist accreditation exam.

Any application for an exemption should be made at the time of lodging the application form, which is to be lodged no later than **4pm on Friday 6 April 2018**.

Timetable

Monday 26 February 2018	Accredited Specialisation information evening
Friday 6 April 2018	Applications requesting Board discretion (for those who do not meet eligibility criteria) or exemption from the Written Examination close, at 4pm
Friday 20 April 2018	All other Applications close at 4pm
Monday 28 May 2018	Accredited Specialisation Exam Techniques evening
Saturday 28 July 2018	Part 1: Written Examination
Wednesday 1 August 2018	Part 2: Simulated Interview
Wednesday 8 August 2018	Part 3: Take-Home Assignment due
Late October 2018	Results sent to candidates
TBC Late November 2018	Accredited Specialisation Conferral Ceremony

IMPORTANT - Candidates who wish to apply for special consideration in relation to their assessment tasks must do so in accordance with the Rules https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20180420_Master_SpecialisationSchemeRules_April16.pdf

Performance Standards

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.

General Recommendations

Candidates may find it of assistance in preparing for the assessment tasks to:

- form a study group – to register your interest in forming a study group please contact **special@liv.asn.au**
- attend appropriate LIV CPD events in the area of specialisation
- review previous examination papers and videos of simulated interviews - these are available at **http://www.liv.asn.au/PDF/Professional-Development/Accredited-Specialisation/AS_AssessmentMaterials.aspx**
- read some or all of the Suggested Reading Material listed in **Schedule 5**

Legislation and Other Provisions

Candidates should be familiar with the relevant parts of legislation relating to the selected topics for assessment, and the legislation listed in **Schedules 4 and 5**.

Applications

Applications must be made on the prescribed application form.

Resume of Practice

As evidence of substantial involvement, applicants must submit a resume of their professional activities relevant to practice in commercial litigation. The resume should give the Board an overall picture of the applicant's experience and expertise in commercial litigation, with an emphasis on involvement over the past three (3) years. It is not expected that a comprehensive curriculum vitae will be submitted.

No standard format is prescribed. However, applicants might find it helpful to use some or all of the following headings:

- broad description of current practice activities
- experience in specific areas of activity in commercial litigation
- involvement with relevant professional organisations
- relevant publications and presentations

- academic qualifications
- other.

It is not necessary to repeat details provided on the application form.

Please forward to the Law Institute of Victoria:

1. The completed application form
2. Three references
3. Resume of practice
4. Application fee of \$1,100.00 (including GST) payable to the Law Institute of Victoria.

Applications close

4pm Friday, 6 April 2018 for applicants wishing to apply for Board discretion because they do not meet the eligibility criteria or for applicants wishing to apply for exemption from the Written Examination.

4pm Friday, 20 April 2018 for all other applications.

The address for applications is:

Accredited Specialisation

Law Institute of Victoria
GPO Box 263, MELBOURNE 3001
or DX 350, MELBOURNE

Inquiries:

Telephone: 9607 9461
Facsimile: 9607 9404
Email: special@liv.asn.au

SCHEDULE 1: EXAMINATION ASSESSMENT COMPONENT PART 1

WRITTEN EXAMINATION

Exam Date: Saturday 28 July 2018

Exam Time: Three hours plus 30 minutes for reading and planning. Time to be confirmed

Exam Venue: Saxons Training Centre, 500 Collins Street, Melbourne

Assessment overview

The examination is divided in two parts.

In Part A of the examination candidates are required to answer ALL of the nine questions. These questions will cover a broad range of issues encountered in the area of commercial litigation. Questions will be of a general nature, and will assess candidates knowledge of procedural and ethical issues. We recommend candidates spend approximately 10 minutes answering each question and spend approximately one and a half hours on this part of the examination.

In Part B of the examination candidates are required to answer two of the six questions. These questions will relate to the topics listed on page 10, Schedule 4: Topics for Assessment (Part 1: Written examination). Candidates will be asked to evaluate a fact situation, identify the key issues to be addressed and prepare an outline of appropriate advice for the selected topic. Candidates will be required to answer TWO questions. We recommend candidates spend approximately 45 minutes per question on this part of the examination.

Note: Immediately following the conclusion of the written examination, candidates will be able to download the following information through www.accreditedspecialisation.liv.asn.au:

1. materials pertaining to the simulated interview in Part 2 of the assessment program
2. materials pertaining to the take-home assignment for the purposes of completing Part 3 of the assessment program.

Assessment criteria

Candidates will be assessed on their:

- ability to identify relevant issues from a given fact situation
- knowledge of relevant law, including any significant recent decisions
- knowledge of the procedural rules

- ability to provide practical, clear and comprehensive advice
- awareness of practical considerations in dispute resolution

Examination conditions

Typed Exams

Candidates in this area of specialisation have the option to elect whether they would like to submit a handwritten or typewritten examination. All candidates who elect to type their examination will use a computer supplied by the Law Institute of Victoria, and will only have access to a word processor on this computer.

General Conditions

- The written examination is an open book exam.
- Candidates may take into the examination room any books, notes or other written material.
- Portable computers may be used for reference purposes on a read-only basis so long as their use does not disturb other candidates. Access to the internet is strictly prohibited.
- Mobile telephones are not permitted.
- Questions must be answered in the script book provided for candidates electing to submit a handwritten examination, or in the word processor provided for those electing to type responses.
- Handwriting must be legible for candidates electing to submit a handwritten examination.
- Bullet points are permissible.
- Each candidate will be issued with an examination number.
- The names of candidates must not appear on any material submitted for assessment.

SCHEDULE 2: EXAMINATION ASSESSMENT COMPONENT PART 2

SIMULATED INTERVIEW

Interview Date: Wednesday 1 August 2018

Interview Time: By appointment

Interview Venue: Law Institute of Victoria

Assessment overview

Candidates will conduct a simulated first interview with a person acting in the role of the client. The interview will take up to 45 minutes and will be video recorded for assessment by examiners.

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

Candidates will be expected to provide preliminary advice during the interview. That advice should be of the high standard which is expected of a candidate wishing to hold him or herself out as a specialist in this area.

The fact scenario of this assessment will be linked to Part 3: Take-home Assignment. Candidates will be able to download further instructions from www.accreditedspecialisation.liv.asn.au on completion of Part 2: Simulated Interview.

Arrangements for the interview will be confirmed once the number of candidates is known. See the topics listed for assessment in Schedule 4: Topics for Assessment (Parts 2 and 3) located on pages 10 and 11.

Assessment criteria

Candidates will be assessed on their ability to:

- elicit relevant information and facts from the client
- obtain and clarify instructions
- identify relevant issues
- assess facts and legal options
- communicate preliminary advice in a clear and pragmatic manner
- indicate procedural steps and timelines for response
- discuss options, including costs, and develop a short-term plan.

SCHEDULE 3: EXAMINATION ASSESSMENT COMPONENT PART 3

TAKE-HOME ASSIGNMENT

Assignment Available: Saturday 28 July 2018 after the written exam

Assignment Due: Wednesday 8 August 2018 by 4pm

Assessment overview

Using the information from the material distributed on the day of the written examination, along with the further instructions provided at the conclusion of Part 2: Simulated Interview, candidates will be requested to prepare and submit a letter of advice arising out of Part 2: Simulated Interview.

That advice should reflect the high standard expected by a client of someone holding themselves out as being a specialist in this area of law.

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.

Note: This component of the examination process is linked to the simulated interview component. The candidate is not expected to include any written material relating to costs agreements or disclosure statements.

Assessment criteria

Candidates will be assessed on their:

- ability to identify all significant issues from the materials
- knowledge of relevant law, including significant recent decisions with appropriate citations
- knowledge of relevant procedural rules and principles
- awareness of practical considerations in dispute resolution (including strategy, timing and costs issues)
- ability to provide practical, clear and comprehensive advice
- drafting skills

The completed exercise must be submitted as a word or PDF document through the submission box for this assessment piece on www.accreditedspecialisation.liv.asn.au by no later than 4pm on Wednesday, 8 August 2018.

SCHEDULE 4: TOPICS FOR ASSESSMENT

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

Part 1: Written Examination

Selected areas of law and practice within commercial litigation.

1. Competition and consumer law.
2. Professional liability and insurance.
3. Obligations of company directors and rights of shareholders.
4. Contract litigation (excluding Australian Consumer Law).
5. Insolvency (corporate and personal).
6. Banking (excluding the Consumer Credit Code).

Part 2: Simulated Interview and Part 3: Take-home Assignment

1. Jurisdictional issues.
2. General contractual principles and remedies.
3. Claims and remedies in tort, contract or equity. Candidates should also consider any statutory claims or remedies.
4. Claims and remedies for misleading or deceptive conduct, misrepresentation and unconscionable conduct at common law, equity and statute.
5. Equitable claims and remedies including interlocutory claims for equitable relief.
6. Contribution and proportionate liability.
7. Time limitations for commencement of proceedings.

8. Liability of Directors and Officers under:
 - a. *Competition and Consumer Act 2010 (Cth)*
 - b. *Corporations Act 2001 (Cth)*
 - c. Common Law.
9. Rules of Procedure and Pleading, including:
 - a. legal professional privilege and without prejudice communications
 - b. interlocutory applications under the Rules of Court and in the inherent jurisdiction of the Court (for example, security for costs, amendment, summary disposition).
10. Concurrent liability in tort, contract, equity under federal and state legislation.
11. Commercial Alternative Dispute Resolution (including Commercial Arbitration and Early Neutral Evaluation).

Important:

Any matter relevant to practice in **commercial litigation** may be examined, including the areas listed above. 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.

SCHEDULE 5: RELATED LEGISLATION AND 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

- *Banking Act 1959* (Cth)
- *Bankruptcy Act 1966* (Cth)
- *Bills of Exchange Act 1909* (Cth)
- *Civil Dispute Resolution Act 2011* (Cth)
- *Codes of Banking Practice*
- *Competition and Consumer Act 2010* (Cth) – Parts I, IVB, VI, VIA, XI, XIAA and Schedule 2 only
- *Competition and Consumer Regulations 2010* (Cth) – Parts 1, 6 and 7 only
- *Competition and Consumer (Industry Codes–Franchising) Regulation 2014* (Cth)
- *Corporations Act 2001* (Cth)
- *Evidence Act 1995* (Cth)
- *Federal Circuit Court of Australia Act 1999* (Cth) and Rules
- *Federal Circuit Court Practice Notes*
- *Federal Court of Australia Act 1976* (Cth) and Rules
- *Federal Court Practice Notes*
- *Foreign Judgments Act 1991* (Cth)
- *General Insurance Code of Practice*
- *Insurance Contracts Act 1984* (Cth)
- *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth)
- *Personal Property Securities Act 2009* (Cth)
- *Service & Execution of Process Act 1992* (Cth)

State

- *Australian Consumer Law and Fair Trading Act 2012* (Vic)
- *Civil Procedure Act 2010* (Vic)
- *Commercial Arbitration Act 2011* (Vic)
- *County Court Act 1958* (Vic) and Rules
- *County Court of Victoria Practice Notes*
- *Credit Act 1984* (Vic)
- *Crimes Act 1958* (Vic) (Part I Division 5 only)
- *Evidence Act 2008* (Vic)
- *Evidence (Miscellaneous Provisions) Act 1958* (Vic)
- *Farm Debt Mediation Act 2011* (Vic)
- *Foreign Judgments Act 1962* (Vic)
- *Goods Act 1958* (Vic)
- *Instruments Act 1958* (Vic)
- *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Vic)
- *Legal Profession Uniform Law Application Act 2014* (Vic)
- *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*
- *Limitation of Actions Act 1958* (Vic)
- *Magistrates' Court Act 1989* (Vic) and Rules
- *Magistrates' Court of Victoria Practice Notes*
- *Supreme Court Act 1986* (Vic) and Rules
- *Supreme Court of Victoria Practice Notes*
- *Vexatious Proceedings Act 2014* (Vic)
- *Victorian Civil and Administrative Tribunal Act 1998* (Vic)
- *Wrongs Act 1958* (Vic)