

# Accredited Specialisation Application Guidelines 2018

**CRIMINAL LAW**



## What is an Accredited Specialist?

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

## Eligibility for Accreditation

- Membership of the Law Institute of Victoria
- A current practising certificate
- At least five years' experience in practice
- Substantial involvement in 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/20160420\\_Master\\_SpecialisationSchemeRules\\_April16.pdf](https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20160420_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 criminal law is in three parts. To gain accreditation candidates must obtain a satisfactory mark in each of the three parts of the program. Candidates may, in any or all of the assessment program, be assessed on any or all of the **Assessment Topics** listed in **Schedule 4**.

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

**Part 2:** Oral Presentation – See **Schedule 2**

**Part 3:** Simulated Court Presentation – 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 criminal law in a postgraduate course at a tertiary institution. Any such exemption is entirely at the discretion of the Specialisation Board and will be assessed on a case by case basis.

Eligibility for the exemption is subject to the following conditions. The completed 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
Thursday 2 August 2018	Part 2: Oral Presentation
Friday 3 August 2018	Part 3: Simulated Court Presentation
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/20160420\\_Master\\_SpecialisationSchemeRules\\_April16.pdf](https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20160420_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](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 **Schedule 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 criminal law. The resume should give the Board an overall picture of the applicant's experience and expertise in criminal law with an emphasis on involvement over the past three (3) years. It is not expected that a comprehensive curriculum vitae will be submitted.

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

- broad description of current practice activities
- experience in specific areas of activity in criminal law
- involvement with relevant professional organisations

- relevant publications and presentations
- academic qualifications
- other.

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

**Please forward to the Law Institute of Victoria:**

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

## **Applications close**

**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](mailto: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

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

The written examination will consist of two compulsory sections, Section A and Section B.

In **Section A** candidates will be presented with two questions (detailed factual situation questions) of which candidates must answer both. In the two detailed fact 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.

In **Section B** candidates will be required to answer six out of the ten short answer questions. This section will be worth 30 percent of the total mark for the written examination.

### 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

# 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
- 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

## ORAL PRESENTATION

**Presentation Date:** Thursday 2 August 2018

**Presentation Time:** By appointment

**Presentation Venue:** Law Institute of Victoria

### Assessment overview

This part of the examination requires candidates to make a presentation to a panel of examiners. Candidates will be given 1.5 hours prior to their presentation 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 laptop 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 then 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.

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 adoption of course;
- 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 particular candidate subject to the response provided.

Presentations will be recorded.

The panel will consist of two to three accredited specialists criminal law. 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

# SCHEDULE 3: EXAMINATION ASSESSMENT COMPONENT PART 3

## SIMULATED COURT PRESENTATION

**Presentation Date:** Friday 3 August 2018

**Presentation Time:** By appointment

**Presentation Venue:** Magistrates Court of Victoria, 233 William Street Melbourne

### Assessment overview

A presentation of 15 - 20 minutes in a mock court environment.

Candidates will use the information in the brief from the day prior in Part 2: Oral Presentation. Candidates will also be given additional information at the conclusion of their assessment of Part 2.

The presentation may relate to any criminal matter arising out of the materials encountered in the oral presentation. Candidates will be representing the defendant in all cases.

Candidates can expect to encounter an interventionist Bench.

The format will be structured to assess the candidate's knowledge of the criminal jurisdiction, procedure and rules of evidence. Candidates should also have a thorough knowledge of relevant sentencing principles.

The venue for the advocacy presentations will be the Melbourne Magistrates' Court. It should not however be presumed that the court will be sitting as the Magistrates' Court. Arrangements will be confirmed once the number of candidates is known. Country candidates will be given preference in the allocation of appointment times.

This part of the assessment will be recorded for assessment by the examiners.

*Simulated Court Presentation date may be subject to change due to 2018 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; and
- appreciation of court etiquette.

# SCHEDULE 4: TOPICS FOR ASSESSMENT

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

Any matter relevant to practice in criminal law may be examined. 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
- Supreme Court
- High Court of Australia

## Substantive Law

- Bail
- Complicity
- Defences
- 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
  - Traffic offences
  - Sexual offences
  - Commonwealth offences:
    - Drugs
    - Offences committed in other jurisdictions
    - People smuggling offences
    - Sexual offences
    - Telecommunications/ postal offences
    - Terrorism

## Evidence

- Admissions
- Character
- Corroboration
- Credibility
- Documents
- Exclusion of evidence
- Hearsay
- Identification
- Incriminating conduct
- Opinion
- Prior consistent statements
- Prior inconsistent statements
- Privileges
- Relevance
- Tendency and coincidence
- The specific rules of evidence in sexual offence cases
- Unfavourable witnesses

## Procedure

- Ancillary Orders
- Appeals and cases stated
- Bail
- Bringing accused to court
- Commencing proceedings
- Committal proceedings
- Orders preceding confiscation
- Current Practice directions and notes issued by the courts
- Detention and supervision orders
- Family Violence Intervention orders
- Fitness to stand trial
- Forensic sample applications
- Individual jurisdiction of all criminal courts (includes specialist courts and lists)
- Interlocutory appeals
- Jury directions
- Plea/change of plea and sentencing procedures
- Plea negotiation
- Police powers
- Stalking Intervention Orders
- Summary procedure
- Trial and pre-trial procedure
- Trial on indictment

## Sentencing

- Ancillary orders available to the court in relation to criminal offending (PPO, Confiscation etc.)
- Breach of sentencing orders
- Cancellation, suspension, disqualification of drivers licence and other rights and privileges
- Diversionary laws and programs
- Parole
- Sentencing options
- Sentencing principles
- Victim impact statements

**Please note:** Any matter relevant to practice in **criminal law** 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

## Legislation

### 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

- Appeal Costs Act 1998 (Vic)
- 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)
- Magistrates' Court Act 1989 (Vic)
- Magistrates' Court Criminal Procedure Rules 2009 (Vic)
- Major Crime (Investigative Powers) Act 2004 (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 Sex Offenders (Detention and Supervision) Act 2009
- 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)

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.

## 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*,  
[www.judicialcollege.vic.edu.au/publications/family-violenceresources](http://www.judicialcollege.vic.edu.au/publications/family-violenceresources)

Judicial College of Victoria, *Personal Safety Resources*,  
[www.judicialcollege.vic.edu.au/publications/personal-safety](http://www.judicialcollege.vic.edu.au/publications/personal-safety)

Judicial College of Victoria, *Sexual Assault Manual*,  
[www.judicialcollege.vic.edu.au/publications/sexual-assault-manual](http://www.judicialcollege.vic.edu.au/publications/sexual-assault-manual)

Judicial College of Victoria, *Victorian Criminal Charge Book*,  
[www.judicialcollege.vic.edu.au/publications/victorian-criminalcharge-book](http://www.judicialcollege.vic.edu.au/publications/victorian-criminalcharge-book)

Judicial College of Victorian, *Victorian Criminal Proceedings Manual*,  
[www.judicialcollege.vic.edu.au/publications/victorian-criminalproceedings-manual](http://www.judicialcollege.vic.edu.au/publications/victorian-criminalproceedings-manual)

Judicial College of Victoria, *Victorian Sentencing Manual*,  
[www.judicialcollege.vic.edu.au/publications/victoriansentencing-manual](http://www.judicialcollege.vic.edu.au/publications/victoriansentencing-manual)

Judicial College of Victoria, *Uniform Evidence Manual*,  
[www.judicialcollege.vic.edu.au/publications/uniform-evidenceresources](http://www.judicialcollege.vic.edu.au/publications/uniform-evidenceresources)

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