

Accredited Specialisation Application Guidelines 2018

WILLS & ESTATES 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/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 Wills & Estates 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: 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 Wills & Estates 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
Tuesday 7 August 2018	Part 2: Simulated Interview
Monday 13 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 **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 Wills & Estates Law. The resume should give the Board an overall picture of the applicant's experience and expertise in Wills & Estates 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 Wills & Estates 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

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 paper will be in three sections:

Section A: This section is compulsory comprising one question worth a total of 30% of the mark. The question will be on a complex Wills and Estates matter requiring a detailed answer which identifies the key issues and specifies the advice appropriate to the situation.

Section B: This section is compulsory and will contain questions requiring brief answers to shorter questions and is worth a total of 20% of the mark. The questions will cover a wide range of topics drawn from the list of topics for assessment.

Section C: This section will contain a choice of optional questions worth a total of 50% of the mark. This section will present candidates with more complex factual situations in which expert legal advice might be sought.

Candidates will be expected to demonstrate sound knowledge of the law and relevant practice and procedures. Answers to questions should be practical and concise. Where complete advice cannot be formulated under the examination conditions, candidates should ensure that the key issues are addressed. Additional enquiries and/or research considered necessary or desirable should be specified and reasons given.

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.
- ability to interpret and draft documents.

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.

After the examination

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, and
2. Materials pertaining to the take-home assignment for the purposes of completing Part 3 of the assessment program.

SCHEDULE 2: EXAMINATION ASSESSMENT COMPONENT PART 2

SIMULATED INTERVIEW

Interview Date: Tuesday 7 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 a client. The interview will take up to 50 minutes and will be recorded for assessment by the assessors.

At the conclusion of the interview, candidates will be given approximately 10 minutes to prepare a brief file note which records in point form the steps to be taken following the interview. This file note will be considered by the examiners in conjunction with the recorded interview. The written file note material will be provided to candidates.

The time allocated for the interview and writing up of the file notes will be strictly enforced.

No material may be taken into the interview by the candidate. This includes proformas and aide memoirs.

Assessment Criteria

Candidates will be assessed on their ability to interview a client, including:

- elicit relevant information and facts from the client
- obtain and clarify instructions
- identify relevant issues
- communicate clearly with the client
- assess facts and legal options
- indicate procedural steps and timelines for responses
- discuss options including costs, and develop a short-term plan

The simulated interview is designed to enable candidates to demonstrate skill in conducting an interview with the client. A sound knowledge of the relevant law, rules and procedures will also be required, but the emphasis of this exercise is on interviewing skills.

SCHEDULE 3: EXAMINATION ASSESSMENT COMPONENT PART 3

TAKE-HOME ASSIGNMENT

Assignment Available: Saturday 28 July 2018 after the written exam

Assignment Due: Monday 13 August 2018 by 4pm

Assessment Overview

Using the information from the materials distributed available for download on www.accreditedspecialisation.liv.asn.au following the written examination, candidates will be asked to draft a will possibly with associated further documentation and a concise covering letter.

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. Candidates will be required to provide a signed statement to that effect.

There will be a word limit which will be advised in the assignment instructions.

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 4.00 pm on Monday 13 August, 2018.

Assessment Criteria

Candidates will be assessed on their:

- ability to identify relevant issues from the materials provided
- knowledge of relevant law, including any significant recent decisions
- knowledge of relevant procedural rules and principles
- ability to provide practical, clear and comprehensive advice
- drafting skills

SCHEDULE 4:

TOPICS FOR ASSESSMENT

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

Wills

- alteration
- court authorised wills
- custody and concealment
- donatia mortis causa
- drafting
- effect on wills of marriage and divorce
- estoppels
- execution
- informal wills
- interpretation
- international will
- legal practice rules / lawyers' duties
- life interests / limited interests / postponed vesting / discretionary trusts
- limited jurisdiction / foreign assets
- mutual wills / testamentary contracts
- powers of appointment
- revocation / loss / destruction / revival
- suitable executors
- suitable witnesses
- testamentary Guardians

Testator

- fraud / forgery / suspicion
- killed by beneficiary
- knowledge and approval
- overseas / interstate domicile
- testamentary capacity
- will signed under undue influence

Grants of Representation

- caveat against
- documents in support
- missing will
- recognising foreign wills
- reseal of foreign grant
- revocation of grant
- specialist and limited grants
- small estates
- solemn and common form
- surety guarantee

Powers of Attorney & Guardianship

- administration and guardianship orders
- common law and statutory powers
- powers of attorney
- VCAT jurisdiction & practice

Trusts

- constructive
- charitable
 - creation
 - failure
- cy pres doctrine
- constructive
- discretionary
- distributions, advancement & appointments
- establishment / constitution
 - the three certainties
- protective
- perpetuities
- resulting
- secret
- special disability trusts
- vesting

Executors/Trustees

- chain of representation
- change of trustee / further Grant of Probate
- commission / remuneration
- conflicts of interest
- instituted and substituted
- legal personal representatives
- powers, duties and rights
- removal, waste and conversion
- renunciation
- Trustee companies

Administration

- accounts
- bankruptcy
- death and litigation
- debts in solvent & insolvent estates
- disclaiming interests
- distribution
- effect of death on cause of action
- executor's year
- legacy interest
- marshalling assets / privacy
- missing beneficiaries
- notices (eg creditors – section 30)
- priorities between beneficiaries
- releases and indemnities
- realisation
- simultaneous deaths
- unclaimed moneys

Intestacy

- administrator rights and liabilities
- date of valuation
- domicile
- effect on assets in different jurisdictions
- hotchpot
- infant beneficiaries and estates < \$1000
- lapsed gift of residue
- partial
- persons entitled
- registered and unregistered relationships
- rights of spouses and partners
- scheme of entitlements

Testamentary Gifts

- acceleration
- ademption
- chattels definition
- commercial and digital assets
- contingent
- gift over
- identification of beneficiaries
- lapse
- legacies
- residuary
- satisfaction
- testamentary options
- trusts for sale and life interests
- vesting

Taxation

- capital gains tax
- drafting and administration strategies
- exemptions / charities
- franking credits / dividend imputation
- GST
- income tax
- land tax
- liability of estate and beneficiaries
- social security
- stamp duty

Superannuation

- appeal rights
- control
- composition of benefits
- eligibility
- nominations
- proceeds trusts
- taxation
- types of funds

Real Property

- domestic partners
- improper transfers
- joint tenancy / tenancy in common
- partition
- Property Law Act / Statutes
- settled land

Testator's Family Maintenance / Family Provision

- applications / time limits
- contract excluding jurisdiction
- costs
- eligibility
- entitlement
- ethics – advice to testators
- executor duties
- family farms and businesses
- forum shopping
- minimising claims
- procedure generally
- settling claims
- summary judgement / dismissal
- time limits

Other Estate Litigation

- caveats
- *Civil Procedure Act 2010*
- concealment of wills
- construction applications
- contract
- disposal of body / memorials
- equitable estoppel
- Funds in Court
- infant compromises
- limitation periods
- order 54 applications
- Professional Conduct / Uniform Law
- rectification of will
- removal of executors and trustees
- section 15 applications
- Section 31 (Wills Act) rectification

NB: Any matter relevant to practice in **Wills & Estates Law** may be examined, including the areas listed above. The above list gives an indication of 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

State

- *Administration and Probate and other Acts Amendment Act 2017*
- *Charities Act 1978*
- *Civil Procedure Act 2010*
- *Duties Act 2000*
- *Freedom of Information Act 1982*
- *Guardianship and Administration Act 1986*
- *Instruments Act 1958*
- *Legal Profession Uniform Law Application Act 2014*
- *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*
- *Limitations of Actions Act 1958*
- *Medical Treatment Planning and Decisions Act 2016*
- *Powers of Attorney Amendment Act 2016*
- *Professional Conduct & Practice Rules, Law Institute of Victoria, 2005*
- *Perpetuities and Accumulations Act 1968*
- *Property Law Act 1958*
- *Relationships Act 2008*
- *Settled Land Act 1958*
- *Status of Children Act 1974*
- *Supreme Court Act 1986*
- *Supreme Court (Administration and Probate) Rules 2014 - Statutory Rule No 10/2014*
- *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 – Order 16*
- *Trustee Act 1958*
- *Trustee Companies Act 1984*
- *Unclaimed Moneys Act 2008*
- *Wills Act 1958*
- *Wills Act 1997*

Commonwealth

- *Bankruptcy Act 1966 (Cth)—particularly Part XI*
- *Corporations Regulations 2001 (Cth)*
- *Income Tax Assessment Act 1936 (Cth)*
- *Income Tax Assessment Act 1997 (Cth)*
- *Privacy Act 1988 (Cth)*
- *Privacy Amendment (Private Sector) Act 2000 (Cth)*
- *Social Security Act 1991 (Cth)*
- *Superannuation Industry (Supervision) Act 1993 (Cth)*
- *Superannuation Industry Supervision Regulations 1994 (Cth)*

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 materials

General references:

- J Kenneth Aitken, *Wills Precedents Volume 2 (Victoria)*, 1986, Law Book Company
- Richard Boaden et al, *Wills Probate and Administration Service Victoria*, looseleaf, Lexis Nexis
- John K De Groot and Bruce Nickel, *Family Provision in Australia* (4th edn), 2012, Lexis Nexis
- Ian J Hardingham et al, *Wills and Intestacy in Australia and New Zealand* (2nd edn), 1989, Law Book Company
- John Kaufman and Stuart McNab, *The Essential Guide to Will-making*, looseleaf, Leo Cussen Institute
- John Kaufman et al, *Probate Practice Manual*, looseleaf, Leo Cussen Institute
- Charles Rowland, *Hutley's Australian Wills Precedents* (6th edn), 2004, Lexis Nexis
- Robert D Shepherd, De Groot's Wills, *Probate and Administration Practice (Victoria)*, looseleaf, Contrapreneur Publications
- Miranda Stewart and Michael Flynn, *Death and Taxes: Tax Effective Estate Planning*, 2004, Thomson Reuters

Specialised References:

- CCH Australia Limited, *Australian capital gains tax planner in 1 volume*, 1989, CCH Australia Limited, North Ryde, N.S.W
- CCH Australia Limited, *Australian Master Superannuation Guide* (2nd edn), 1998 CCH Australia Limited, Sydney
- CCH Australia Limited, *Australian Master Tax Guide*, 2003, CCH Australia Limited, Sydney
- Thomson Reuters, *Australian Succession Law*, looseleaf/online, Lawbook Co
- John Billings et al, VCAT, *Victorian Civil and Administrative Tribunal, Guardianship and Administration*, looseleaf, Anstat
- Julie Cassidy, *Mutual Wills*, 2000, Federation Press
- Donald R.C. Chalmers, *Introduction to Trusts*, 1988, Lawbook Company
- Gino Dal Pont, *Powers of Attorney*, 2014, LexisNexis Butterworths
- Gino Dal Pont and Ken Mackie, *Law of Succession*, 2012, Lexis Nexis
- Leonie Englefield, *Australian Family Provision Law*, 2011, Thomson Reuters

Harold A.J. Ford and William A Lee, *Principles of the Law of Trusts*, looseleaf, Law Book Co

David M. Haines, *Construction of Wills in Australia*, 2007, LexisNexis Butterworths

Kenneth S. Jacobs et al, *Jacobs' Law of trusts in Australia*, (8th edn), 1997, LexisNexis Butterworths

James Kessler and Michael Flynn, *Drafting Trusts and Will Trusts in Australia: a modern approach*, 2008, Law Book Co

Law Institute of Victoria and Leo Cussen Institute Seminar Papers

Bernard, Marks, *Trusts & estates : taxation and practice : a comprehensive practice text for lawyers, accountants and tax administrators*, (2nd edn), Taxation Institute of Australia

Reid Mortensen, *Solicitors' Will-Making Duties*, 2002, 26 Melbourne University Law Review 1

Christopher H. Sherrin and Roger C. Bonehill, *The Law and Practice of Intestate Succession*, (3rd edn), 2004, Sweet & Maxwell UK

Christopher H. Sherrin et al (edited), *Williams on Wills*, (9th edn), 2008, LexisNexis Butterworth

John R. Martyn and Nicholas Caddick (edited), *Williams, Mortimer & Sunnucks- Executors, Administrators and Probate*, (20th edn), 2013, Sweet & Maxwell UK

Wills and Estates Exemplars I, Law Institute of Victoria, 2001

Wills and Estates Exemplars II, Law Institute of Victoria, 2003