

# Accredited Specialisation Application Guidelines 2018

## **WORKPLACE RELATIONS**



## 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](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 Workplace Relations 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 1A: Written Submission– See **Schedule 1**

Part 2A: Written Examination Short Questions – See **Schedule 2**

Part 2B: Written Examination Long Question – See **Schedule 2**

Part 1B: Advocacy – **See Schedule 3**

**Further details of the assessment programme and procedures are contained in the Schedules attached to these Guidelines.**

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 Workplace Relations 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
Friday 29 June 2018	Part 1A: Written Submission – distributed to candidates
Friday 13 July 2018	Part 1A: Written Submission – return of submission by candidates
Saturday 28 July 2018	Part 2A & B: Written Examination, 9.30am – 1.00pm
Monday 30 July 2018	Part 1B: Advocacy
Late October 2018	Results sent to candidates will be advised by mail
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](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 recordings of oral assessments - these are available at [https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/20170224\\_Form\\_AS\\_AssessMaterials-Orders-Interactive\\_V06.pdf](https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/20170224_Form_AS_AssessMaterials-Orders-Interactive_V06.pdf)
- 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**.

## 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 Workplace Relations law. The resume should give the Board an overall picture of the applicant's experience and expertise in Workplace Relations 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 Workplace Relations 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 1A – Written Submission

**Distribution Date:** Fact scenario distributed to candidates on Friday 29 June 2018

**Submission Date:** No later than 4.00pm on Friday 13 July, 2018

### Assessment Overview

Candidates will be asked to draft written submissions based on an agreed fact scenario.

Candidates will act for a party.

### Assessment criteria

Candidates will be assessed on their:

- a. Identification of relevant issues from the given fact situation
- b. Judgement and decision-making skills
- c. Knowledge of relevant law and skill in applying that knowledge in practice
- d. Awareness of practical considerations

### Examination conditions

You may consult any materials in completing this exercise. However, the material submitted must be entirely your own work. Consultation with any other person is prohibited.

Written submissions must be submitted as a word or PDF document through the submission box for this assessment piece on [www.accreditedspecialisation.liv.asn.au](http://www.accreditedspecialisation.liv.asn.au) by no later than **4.00 pm on Friday 13 July 2018**.

Late submissions will not be accepted. It is the sole responsibility of candidates to ensure all take-home examination material is received by the Law Institute through the online submission box on or before the due date. Failure of the examination material to reach the Law Institute by the due date will result in failure of that examination component. Particular care should be taken with all forms of electronic transmission to ensure it has been received by the Law Institute in the time and in the intended form.

# SCHEDULE 2:

## Examination Assessment Component Part 2A & B – Written Examination

**Exam Date:** Saturday 28 July 2018, time to be confirmed (3 hours plus thirty minutes for reading and planning)

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

### Assessment Overview

**Part 2A** (allow approximately one hour)

This section will test general knowledge across all areas of workplace relations. Questions in this section will require only brief answers.

Candidates must answer **five out of eight** questions which may be taken from the following subject areas of the **Knowledge Requirements**:

- |   |   |
|---|---|
| 1. The Contract of Employment   | 11. Workers Compensation  |
| 2. Industrial Relations Systems   | 12. Workplace Health & Safety Law                                     |
| 3. Statutory Unfair Dismissal   | 13. Workplace Bullying  |
| 4. General Protections  | 14. Independent Contractors   |
| 5. Discrimination Law   | 15. Compliance and Prosecutions                                       |
| 6. Minimum entitlements under Modern Awards and the National Employment Standards | 16. Miscellaneous Federal and State Statutory Topic areas, including: |
| 7. Enterprise Agreement Making  | - privacy issues  |
| 8. Registered Organisations   | - statutory regimes relating to Misleading Conduct                    |
| 9. Transfer of Business Issues  | - taxation, superannuation and insurance premiums                     |
| 10. Leave Entitlements  | - Corporations Act 2001 (Cth)   |

**Part 2B** (allow approximately two hours)

Candidates will be asked to evaluate a fact situation, identify the key issues to be addressed, and prepare appropriate advice. The answer should include clear descriptions of any assumptions made and of any additional inquiries which it is considered should be undertaken.

Candidates will be asked to provide advice on the following topics:

- The Contract of Employment
- Industrial Relations Systems
- Discrimination & General Protections Law.

Please note that the answer given should demonstrate an advanced understanding of these topics

## Assessment criteria

Candidates will be assessed on their:

- a. Ability to identify relevant issues from a given fact situation
- b. Knowledge of relevant law (including significant recent decisions) and skill in applying that knowledge in practice
- c. Knowledge of the procedural rules
- d. Ability to provide practical, clear and comprehensive advice
- e. Awareness of practical considerations in dispute resolution

**Please note: it is essential that candidates pass both Part 2A and Part 2B of the Written Exam.**

## Examination 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 3:

## Examination Assessment Component Part 1B – ADVOCACY

**Advocacy Date:** Monday 30 July 2018

**Advocacy Time:** TBC

**Interview Venue:** Fair Work Commission (subject to confirmation)

### Assessment Overview

The fact situation provided in Part 1A will be the same as that for Part 1B.

Candidates will be asked to make submissions before a person sitting as a member of a tribunal or court. The examiner will have been provided with a copy of the candidate's written submissions prior to the oral submissions taking place.

Candidates will act for a party. Candidates will have been provided with a mock file (available on [www.accreditedspecialisation.liv.asn.au](http://www.accreditedspecialisation.liv.asn.au) from Friday 29 June) which will contain an agreed fact situation. Candidates will be expected to make their oral submissions based on their written submissions and any other materials which may be provided. The candidate will act for the Respondent to the application.

The format and content of the material provided by the candidate will be dependent on the circumstances of the case.

The submissions will be recorded for assessment by the examiners. The member can ask questions of the candidate during the submissions. Arrangements for this part of the program will be confirmed once the number of candidates is known.

### Assessment criteria

This exercise will test a range of skills including:

- a. Identification of relevant issues
- b. Assessment of facts and legal options
- c. Ability to argue a case and answer points raised
- d. Judgement and decision making skills
- e. Composure in presentation and assessment
- f. Knowledge of relevant law and skill in applying that knowledge in practice

A sound knowledge of the relevant law, rules, procedures, practice notes and protocols will also be required.

# SCHEDULE 4:

## Topics for Assessment

### Outline of Knowledge Requirements

The specialist needs to possess a knowledge of a wide range of topics. A comprehensive reading guide appears at the end of these guidelines.

In practice of course, the client base and practice experience of the applicant will result in that applicant having a greater degree of familiarity with some of these topics than others. Over a period of years those topics with which the applicant will be most familiar within the speciality may fluctuate as the client base changes.

Nevertheless, every applicant needs to be aware that once accredited as a specialist in this area, the practitioner will be in effect holding himself or herself out to potential clients as having a knowledge of all of the topics that fall within the specialty. The examiners will expect that for some topics the applicant will have an advanced understanding, but for other topics only a basic or an intermediate understanding is required.

To assist applicants, a description of the levels of basic, intermediate and advanced as used in the knowledge requirements, is set out below:

#### i. Basic Understanding

The applicant would be expected to have a general awareness or overview of the topic. For example, the applicant should be able to identify the names of relevant Acts and show awareness of general concepts and principles.

#### ii. Intermediate Understanding

The applicant would be expected to have more than a general awareness or overview of the topics. For example, the applicant should be able to identify and explain the relevant sections in legislation and key cases.

#### iii. Advanced Understanding

The applicant must have extensive knowledge of legislation and cases relevant to the topic. For example, the applicant would be expected to know:

- differences in the approaches (if any) adopted in the key cases relevant to the topic
- contending interpretations (if any) of relevant sections in legislation
- relevant government policies
- relevant bills introduced into the Parliament.

The assessment will be structured so that the applicant will be required to demonstrate knowledge in topics for each level of understanding (basic, intermediate and advanced). The applicant will have a choice of topics from which to select. Any matter relevant to practice in workplace relations law may be examined. Candidates may be called on to demonstrate knowledge of any of the following topics:

# 1 The contract of employment

An **advanced** understanding of:

- The employment relationship, including its formation, and being able to distinguish it from other working relationships (eg independent contractor, partnership, volunteer).
- Contractual construction, performance of a contract and variation of a contract.
- The implication of terms in contracts of employment (eg duties of confidentiality, fidelity, loyalty and good faith, entitlement to wages for being available for work, reasonable notice of termination, implied ownership of inventions).
- All aspects of termination of employment (including termination on notice (express or implied), summary dismissal for misconduct, redundancy, constructive dismissal, repudiation of contract).
- The content and application of the doctrines of duress, unconscionability, undue influence and estoppel to employment issues.
- Remedies for breach or anticipatory breach of the employment contract.
- Employment restraints of trade and on the use of confidential information (including restrictions imposed by the Corporations Act 2001 (Cth)).
- The key aspects of the economic torts including interference with contractual relations, intimidation, conspiracy and interference with trade.

# 2 Industrial relations systems (Commonwealth and Victoria)

An **advanced** understanding of:

- The basic constitutional principles relating to the exercise of federal power (including the use of the corporation power, the conciliation and arbitration power and external affairs power) and the coverage of the federal system.
- The provisions of the Fair Work Act 2009 (Cth) and Fair Work (Commonwealth Powers) Act 2009 (Vic) relating to the referral of industrial relations power by Victoria.
- Resolution of industrial disputes generally under the Fair Work Act 2009 (Cth).
- The core functions, powers and procedures of the Fair Work Commission (including the approval of enterprise agreements, enforcing good faith bargaining, regulating industrial action, resolution of disputes, the making and adjusting of wages and modern awards conditions, unfair dismissal, and general protection claims).
- The law (statutory and common law) relating to industrial action (including industrial action in the building and construction industry), including proceedings in the Fair Work Commission and the courts.
- The core functions, powers and procedures of the Fair Work Divisions of the Federal Court of Australia and Federal Circuit Court and the Magistrates' Court of Victoria in relation to breaches of the Fair Work

Act 2009 (Cth) (including enforcement of Fair Work Commission orders, Australian Competition and Consumer Act 2010 (Cth) proceedings and underpayment claims).

- The functions and powers of the Australian Building and Construction Commission.
- The functions and powers of the Registered Organisations Commission.

### 3 Statutory unfair dismissal

An **advanced** understanding of:

The unfair dismissal jurisdiction of the *Fair Work Act 2009* (Cth), including:

- statutory exclusions
- conciliation and arbitration procedures
- criteria to determine whether a dismissal is unfair
- the available remedies
- circumstances which may give rise to costs orders including security for costs.

### 4 General protection claims

An **advanced** understanding of the general protections provisions contained in Part 3–1 of the Fair Work Act 2009 (Cth), including the meaning of “adverse action”, the protected attributes and activities, the operation of the reverse onus of proof and causation issues.

### 5 Discrimination law

An **advanced** understanding of:

- The principles under the *Equal Opportunity Act 2010* (Vic) and the *Racial and Religious Tolerance Act 2001* (Vic).
- The principles under various federal statutes providing rights and remedies in relation to discrimination matters, including:
  - the relevant provisions of the *Fair Work Act 2009* (Cth)
  - *Racial Discrimination Act 1975* (Cth)
  - *Sex Discrimination Act 1984* (Cth)
  - *Disability Discrimination Act 1992* (Cth)
  - *Australian Human Rights Commission Act 1986* (Cth)
  - *Age Discrimination Act 2004* (Cth).
- The concepts of direct and indirect discrimination and reasonable adjustments/ accommodation under legislation.
- The core functions, rules and procedures of the Fair Work Commission, Fair Work Ombudsman, Victorian Equal Opportunity and Human Rights Commission, Australian Human Rights Commission, Victorian Civil and Administrative Tribunal, Federal Circuit Court and the Federal Court as they relate to discrimination law.

A **basic** understanding of the existence of available claims and remedies in Australian state and territory jurisdictions other than Victoria.

## 6 Statutory safety net

An **advanced** understanding of:

- The operation and content of minimum employment entitlements (“Minimum Entitlements”) under the *Fair Work Act 2009* (Cth).
- The relationship between National Employment Standards, enterprise agreements, modern awards, national minimum wage orders and common law contracts of employment.
- The functions and powers of the Expert Panel of the Fair Work Commission.
- How Minimum Entitlements are established.
- Enforcement mechanisms in relation to Minimum Entitlements.
- Variations to modern awards.
- Interpretation of awards and enterprise agreements.

## 7 Enterprise agreement making under the *Fair Work Act 2009* (Cth)

An **advanced** understanding of:

- The types and effect of available agreements.
- The required and permissible content of agreements.
- Requirements for approval, lodgement, variation and termination of agreements.
- Enforcement of agreements including penalties for breaches.
- Better off overall test.

An **intermediate** understanding of:

- Bargaining including:
  - bargaining representatives
  - bargaining orders
  - suspension and termination of Industrial Action (including cooling off periods)
  - workplace determinations.

- Protected industrial action including secret ballots.
- Measures available in the Fair Work Commission and Federal and State courts in response to unprotected action.

## 8 Registered organisations

A **basic** understanding of:

- System for registration of organisations (employer and employee) under the *Fair Work (Registered Organisations) Act 2009* (Cth).
- Legal status and judicial supervision of registered organisations and unregistered organisations (employer and employee).
- Accountability of officers of registered organisations under the *Fair Work (Registered Organisations) Act 2009* (Cth).
- Rights of entry of registered organisations under the *Fair Work Act 2009* (Cth) the *Occupational Health and Safety Act 2004* (Vic) and the model *Workplace Health and Safety Act*.
- Powers and functions of the Fair Work Commission and the Registered Organisations Commission in relation to registered organisations.

## 9 Transfer of business issues

An **intermediate** understanding of the operation of the *Fair Work Act 2009* (Cth) as it relates to transfer of business, including an understanding of:

- The obligations of the first employer to transferring employees, as well as employees to be terminated.
- The obligations of the second employer to transferring employees, as well as new recruits.
- The connection between the first employer and the second employer and the consequences that flow from that connection.
- Transfer of employment situations that effect the obligation to pay redundancy pay.
- The work that is transferred.
- Instruments that are transferred.
- The capacity of the Fair Work Commission to modify the outcomes in transfer of business situations.
- The effect on entitlements to long service leave for transferring employees.

## 10 Leave entitlements

An **advanced** understanding of the entitlements, and enforcement of rights, relating to leave under the National Employment Standards in the *Fair Work Act 2009* (Cth), *Modern Awards* and the *Long Service Leave Act 1992* (Vic).

A **basic** understanding of:

- Annual leave and long service leave entitlements (residence test) for employees not covered by the *Fair Work Act 2009* (Cth) in Australian state and territory jurisdictions other than Victoria.
- The Federal Government's Paid Parental Leave and Dad & Partner's Pay schemes.
- The obligations of employers of jurors under the *Juries Act 2000* (Vic).

## 11 Workers compensation

A **basic** understanding of:

- Concepts and entitlements under the Workplace Injury Rehabilitation and *Compensation Act 2013* (Vic).
- Rights and entitlements of impaired workers to common law remedies.

An **intermediate** understanding of the interaction with the *Fair Work Act 2009* (Cth) (especially unfair dismissal and general protection provisions) and relevant anti-discrimination laws.

## 12 Work health and safety law

An **intermediate** understanding of:

- The relevant principles under the *Occupational Health and Safety Act 2004* (Vic), the regulations and Codes of Practice.
- Prosecutions under the *Occupational Health and Safety Act 2004* (Vic) including the Worksafe Victoria General Prosecution Guidelines.
- The Guidance Notes on workplace violence and bullying issued by Worksafe Victoria.
- The liability of officers and employees under the *Occupational Health and Safety Act 2004* (Vic).

A **basic** understanding of:

- The relevant principles under the model *Work Health and Safety Act* and regulations made under the Act.
- The liability of officers and employees under the model *Work Health and Safety Act*.

## 13 Workplace Bullying under the Fair Work Act 2009 (Cth)

An **advanced** understanding of the federal Workplace Bullying under the Fair Work Act 2009 (Cth)

## 14 Independent contractors

An **advanced** understanding of the difference at common law between an independent contractor and an employee and the laws relating to sham contracting under the *Fair Work Act 2009* (Cth).

An **intermediate** understanding of the Independent Contractors Act 2006 (Cth).

A **basic** understanding of the operation of the Owner Drivers and Forestry Contractors Act 2005 (Vic).

## 15 Fair Work Act compliance

An **intermediate** understanding of the:

- Record keeping and payslip obligations under the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth).
- Civil remedy provisions of the *Fair Work Act 2009* (Cth) and the different penal implications of these and criminal provisions (eg s25 *Occupational Health and Safety Act 2004* (Vic)).
- Strike pay provisions of the *Fair Work Act 2009* (Cth).
- Powers of the Fair Work Ombudsman.
- Penalties for failing to comply with a notice given by or a requirement of a Fair Work Inspector.
- Accessorial liability provisions of the *Fair Work Act 2009* (Cth)

## 16 Miscellaneous Federal and State Statutory Topic Areas

### A. Privacy issues

An **intermediate** understanding of the application of the following legislation to the employment relationship, specifically to the monitoring of employee activities and the collection of personal information from employees and job applicants:

- Surveillance Devices Act 1999 (Vic).
- Information Privacy Act 2000 (Vic).
- Health Records Act 2001 (Vic).
- Privacy Act 1988 (Cth).
- Telecommunications (Interception and Access) Act 1979 (Cth).

An **intermediate** understanding of:

- Application of Australian Privacy Principles to a workplace and relevant guidelines issued by the Australian Information Commissioner.
- Common law principles which may impact on the monitoring of employees' activities or on the disclosure of personal information about employees.

A **basic** understanding of privacy statutory regimes and workplace surveillance legislation in Australian state and territory jurisdictions other than Victoria.



## B. Statutory regimes relating to misleading conduct

An **intermediate** understanding of:

- The relevance of the Australian Consumer Law (ACL) set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (CCA) and the *Fair Trading Act 1999* (Vic) (FTA) to representations made to job applicants.
- The relevant sections of the CCA and the FTA, relating to unconscionable conduct, misleading or deceptive conduct, misleading conduct in relation to employment and representations as to future matters:
  - Part 2–2 ACL and section 7 FTA – unconscionable conduct
  - Part 2–1 ACL and section 9 FTA – misleading or deceptive conduct
  - section 31 ACL and section 13 FTA – misleading conduct in relation to employment
- The remedies for breach of these sections.

## C. Taxation, superannuation and insurance premiums

A **basic** understanding of:

- The PAYG system.
- The difference in taxation of earnings for independent contractors compared to employees.
- The taxation rules applicable to employment termination payments.
- The law relating to superannuation, in so far as it relates to the Superannuation Guarantee legislation including choice of fund.
- The definition of deemed worker under the *Payroll Tax Act 2007* (Vic) and *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).
- Consequences for companies and directors of non-payment of superannuation contributions and remittance of group tax.

## D. Corporations Act 2001 (Cth) matters

A **basic** understanding of the priority of employee entitlements in an insolvency and the system for enforcement of employee priority rights in an insolvency.

An **intermediate** understanding of the:

- *Fair Entitlements Guarantee Act 2012* (Cth), which provides limited financial entitlements on the insolvency of an employer.
- Restrictions on retirement and severance payments to directors, officers and employees under *Corporations Act 2001* (Cth).
- Duties of officers (as defined) and employees under the *Corporations Act 2001* (Cth).

## E. Other

A **basic** understanding of:

- dealing with permission to appear for lawyers and paid agents, and costs orders and summons.
- *Charter of Human Rights & Responsibilities Act 2006* (Vic).
- *Working with Children Act 2005* (Vic).
- *Public Administration Act 2004* (Vic), to the extent it regulates Victorian public sector employment

An **intermediate** understanding of:

- Workplace Gender Equality Act 2012 (Cth).
- Whistleblower protection under the:
  - Protected Disclosure Act 2012 (Vic)
  - Public Interest Disclosure Act 2013 (Cth)
  - Corporations Act 2001 (Cth).

### Important:

Any matter relevant to practice in **workplace relations 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

### Commonwealth

- Age Discrimination Act 2004 (Cth)
- Australian Competition and Consumer Act 2010 (Cth)
- Australian Human Rights Commission Act 1986 (Cth)
- Corporations Act 2001 (Cth)
- Building and Construction Industry (Improving Productivity) Act 2016 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Disability Discrimination Regulations 1996 (Cth)
- Fair Work (Registered Organisations) Act 2009 (Cth)
- Fair Work Act 2009 (Cth)
- Fair Work Regulations 2009 (Cth)
- Independent Contractors Act 2006 (Cth)
- Privacy Act 1988 (Cth)
- Public Interest Disclosure Act 2013 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Racial Discrimination Regulations (Cth)
- Sex Discrimination Act 1984 (Cth)
- Sex Discrimination Regulations 1984 (Cth)
- Superannuation Guarantee (Administration) Act 1992 (Cth)
- Superannuation Guarantee Charge Act 1992 (Cth)
- Surveillance Devices Act 2004 (Cth)
- Telecommunications (Interception and Access) Act 1979 (Cth)
- Workplace Gender Equality Act 2012 (Cth)

## State

- Charter of Human Rights and Responsibilities Act 2006 (Vic)
- Child Employment Act 2003 (Vic)
- Equal Opportunity Act 2010 (Vic)
- Fair Work (Commonwealth Powers) Act 2009 (Vic)
- Health Records Act 2001(Vic)
- Information Privacy Act 2000 (Vic)
- Juries Act 2000 (Vic)
- Long Service Leave Act 1992 (Vic)
- Occupational Health and Safety Act 2004 (Vic)
- Owner Driver and Forestry Contractors Act 2005 (Vic)
- Payroll Tax Act 2007 (Vic)
- Protected Disclosure Act 2012 (Vic)
- Racial and Religious Tolerance Act 2001 (Vic)
- Surveillance Devices Act 1999 (Vic)
- Victorian Civil and Administrative Tribunal Act 1998 (Vic)
- Working with Children Act 2005 (Vic)
- Workplace Injury Rehabilitation and Compensation Act 2013 (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

Set out below are some references that may assist applicants. It is not intended to be an exhaustive list.

Breen Creighton and Peter Rozen, *Health & Safety Law in Victoria* (4th edn), 2017, Federation Press.

Andrew Stewart, Anthony Forsyth, Mark Irving, Richard Johnstone and Shae McCrystal, Creighton & Stewarts Labour Law (6th edn), 2016, Federation Press. View electronic supplements via Federation Press website: <http://www.federationpress.com.au/bookstore/book.asp?isbn=9781760020552>

Mark Irving, *The Contract of Employment*, 2012, LexisNexis.

Rob Jackson, *Post-employment Restraint of Trade*, 2014, Federation Press.

Richard Johnstone, *Occupational Health & Safety Law & Policy* (2nd edn), 2004, Lawbook Co.

Marilyn Pittard and Richard Naughton, *Australian Labour and Employment Law*, 2015, LexisNexis.

Rosemary Owens, Joellen Riley and Jill Murray, *The Law of Work* (2nd edn), 2014, Oxford University Press.

Neil Rees, Simon Rice and Dominique Allen, *Australian Anti-Discrimination Law: Text, Cases and Materials* (2nd edn), 2014, Federation Press.

Joellen Riley, *Employee Protection at Common Law*, 2005, Federation Press.

Joellen Riley, *Independent Work Contracts*, 2007, Lawbook Co.

Chris Ronalds, *Discrimination Law and practice* (4th edn), 2012, Federation Press.

Carolyn Sappideen, Paul O'Grady, Joellen Riley, *Macken's Law of Employment* (8th edn), 2016, Thomson Reuters.

Andrew Stewart, *Stewart's Guide to Employment Law* (5th edn), 2015, Federation Press.

Michael Tooma, *Tooma's Annotated Health & Safety At Work Act 2015*, 2016, Thomson Reuters.

## Loose-leaf and online services

### CCH

*Australian & New Zealand Equal Opportunity Law & Practice*

*Australian Employment Law Guide*

*Australian Labour Law Reporter*

*Australian Occupational Health & Safety Law*

*Australian Trade Practices Reporter*

## **Thomson Reuters (Lawbook Co)**

National Workplace Relations

<http://www.thomsonreuters.com.au/catalogue/ProductDetails.asp?ID=%207465#mediaoptions>

Workplace: Fair Work portal at [www.thomsonreuters.com.au/workplace](http://www.thomsonreuters.com.au/workplace)

## **General reading**

### **Subscription-based**

*Australian Journal of Labour Law*, LexisNexis

*Discrimination Alert*, Thomson (Lawbook Co)

*Employment Law Bulletin*, LexisNexis - 10 issues per year

*Industrial Law News*, CCH - 10 issues per year

*Work Alert: Briefings On Employment Matters*, CCH, issued monthly

Workplace Info - [www.workplaceinfo.com.au](http://www.workplaceinfo.com.au)

Workplace Express - [www.workplaceexpress.com.au](http://www.workplaceexpress.com.au)

*Workforce News Service*, Thomson Reuters

### **Free**

Fair Work Commission – Benchbooks [www.fwc.gov.au](http://www.fwc.gov.au)

Fair Work Commission – Announcements <https://www.fwc.gov.au/user/9905/subscriptions>

Fair Work for Small Business newsletter and website [www.fairworkforsmallbusiness.com.au/](http://www.fairworkforsmallbusiness.com.au/)

HR, Employment & Safety News, CCH (full text of selected articles - requires registration)

<http://www.cch.com.au/au/News/newstopicpage.aspx?TopicIDNews=9>

HR Insight, Thomson Reuters <http://sites.thomsonreuters.com.au/hrinsight/>

Workplace: Fair Work portal, Thomson Reuters [www.thomsonreuters.com.au/workplace](http://www.thomsonreuters.com.au/workplace)

Fair Work Ombudsman <http://www.fairwork.gov.au/>