

Accredited Specialisation Application Guidelines 2018

ENVIRONMENT & PLANNING 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 Environment & Planning 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: Take Home Written Submission – See **Schedule 2**

Part 3: Presentation of Written Submission – 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 environment and planning 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
Monday 6 August 2018	Part 2: Take Home Written Submission due
Thursday 9 August 2018	Part 3: Presentation of Written Submission
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 recordings of oral assessments - 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 environment and planning law. The resume should give the Board an overall picture of the applicant's experience and expertise in environment and planning 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 environment and planning 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 is divided into three sections. Candidates should spend approximately one hour answering each section of the examination.

Section A – This section will contain TWO questions, of which candidates must answer ONE. The questions will examine a candidate's ability to demonstrate a depth of knowledge and understanding of environment law.

Section B - This section will contain TWO questions, of which candidates must answer ONE. The questions will examine a candidate's ability to demonstrate a depth of knowledge and understanding of planning law.

Section C - This section tests the candidate's ability to identify key issues and principles arising out of a given set of facts. Candidates will be required to prepare an outline of submissions that will later form the basis of a detailed submission to the Tribunal as part of Schedules 2 and 3. A copy of your outline from the written examination will be sent to you in the week following the written examination for Part 2 of the assessment. Candidates may add to or depart from the original outline of submission, in preparation for Part 2 and 3 of the assessment program.

Each section of the written examination carries 100 marks, the total marks available for the written examination is 300 marks.

Note: In order to pass the examination, candidates will need to achieve at least a 50 per cent score in each of the sections (A, B and C) of the written examination.

Assessment criteria

Candidates will be assessed on their:

- ability to identify relevant issues
- depth of knowledge and understanding of the relevant law
- ability to provide practical, clear and accurate advice

- demonstrated ability to satisfy the performance standards set out in these Guidelines.

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
- Answers must be numbered correctly
- 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 will not appear on any material submitted for assessment.

SCHEDULE 2: EXAMINATION ASSESSMENT COMPONENT PART 2

TAKE HOME WRITTEN SUBMISSION

Distributed to candidates: Saturday 28 July 2018

Due date: Monday 6 August 2018, 4pm

Assessment overview

Using the copy of your outline from Section C of the written examination, plus the material downloaded through www.accreditedspecialisation.liv.asn.au, candidates will be expected to prepare a written submission for presentation to a Tribunal on behalf of the client. Candidates are advised that in Part 2 and 3, they may add or depart from their original outline submitted within the written examination as they see necessary. The written submission should also refer to any relevant case law.

In presenting the client's case, the candidate is expected to recognise, and respond to, the arguments likely to be advanced against the client. As time is allowed for research and reflection, work of high quality is expected. The written submission should not exceed **4000 words**.

Take Home assignment conditions

Candidates may use the resources of their offices in completing this exercise. However, consultation with any other person in completing the exercise is not permitted.

Assessment criteria

Candidates will be assessed on their:

- ability to analyse the information provided and identify relevant issues arising
- ability to conduct research and gather additional information, relevant to the situation
- ability to apply their knowledge and experience of the law to the situation
- ability to draft a practical submission that is clear and concise.
- manner of presentation of submission and supporting documentation

Submission due

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 Monday, 6 August 2018.

SCHEDULE 3: EXAMINATION ASSESSMENT COMPONENT PART 3

PRESENTATION OF WRITTEN SUBMISSION

Presentation date: Thursday 9 August 2018

Presentation time: By appointment

Presentation venue: VCAT, 55 King Street, Melbourne

Assessment overview

The format of this assessment will be a presentation of the Part 2: Written Submission to a Tribunal of two, including a member of the Victorian Civil and Administrative Tribunal. Candidates will be given approximately 30 minutes.

Candidates are required to briefly outline the key elements of their Part 2: Written Submission, add anything to the submission the candidate wishes (approximately 10 minutes) and answer questions from the Tribunal (approximately 15-20 minutes).

Candidates can assume that the Tribunal has read the Part 2: Written Submission and accompanying materials.

The presentation will be recorded.

Arrangements for this part of the program will be confirmed once the number of candidates is known.

Assessment criteria

Candidates must display competency in each of the following criteria:

- identification of relevant issues from a given fact situation
- ability to argue a case and appropriately concede a point
- judgement and decision-making skills
- confidence in presentation and assessment
- knowledge of relevant law and skill in applying that knowledge
- ability to respond appropriately to questions from the Tribunal

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

SCHEDULE 4: TOPICS FOR ASSESSMENT

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

The following list should not be taken to be exhaustive but indicates the range of matters which could be addressed in the assessment program. Candidates may be assessed on any matter relevant to environment and planning matters.

Conservation Controls

- Aboriginal cultural heritage
- Archaeological and Aboriginal sites and relics
- Coastal areas
- Heritage places
- Protected fauna and flora
- Vegetation clearance and biodiversity

Environmental Controls

- Clean-up notices
- Contaminated sites
- Enforcement
- Environmental audits
- Extractive industry and mining controls
- Environmental impact assessment (State and Commonwealth)
- Industrial waste management
- Land fill requirements
- Land management authorities
- Licences and works approvals
- Transport, use and disposal of hazardous materials
- Waste
- Water management

Jurisdictions, Powers and Procedures

- Charter of Human Rights
- Courts (Victorian)
- Heritage Council and its Executive Director
- Local Government procedures
- Permit and licence applications
- Planning Panels and assessment committees
- Streamlined assessment and approvals processes
- VCAT

Land Acquisition and Compensation

- Compensation principles
- Procedures

Planning

- Compensation
- Development contributions, infrastructure costs and similar matters
- Enforcement
- Existing use rights
- Permits including conditions, amendments and cancellation
- Planning Schemes including amendments, exhibition, submissions, panel hearings, adoption and approval
- Powers of planning authorities and responsible authorities
- Review proceedings and applications before VCAT
- Section 173 Agreements
- Strategic planning and policy documents
- Subdivision of land buildings

Important:

Any matter relevant to practice in environment and planning law may be examined, including the areas listed above. The above 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/REGULATIONS AND SUGGESTED READING MATERIALS AND RESOURCES

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

Core

- *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

Other

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*
- *National Environment Protection Council Act 1994 (Cth)*
- *National Greenhouse and Energy Reporting Act 2007 (Cth)*

State

Core

- *Aboriginal Heritage Act 2006 (Vic)*
- *Environment Effects Act 1978 (Vic)*
- *Environment Protection Act 1970 (Vic)*
- *Flora and Fauna Guarantee Act 1988 (Vic)*
- *Heritage Act 1995 (Vic)*
- *Land Acquisition and Compensation Act 1986 (Vic)*
- *Local Government Act 1989 (Vic)*

- *Major Transport Projects Facilitation Act 2009 (Vic)*
- *Mineral Resources (Sustainable Development) Act 1990 (Vic)*
- *Planning & Environment Act 1987 (Vic)*
- *Property Law Act 1958 (Vic)*
- *Subdivision Act 1988 (Vic)*
- *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*

Other

- *Building Act 1993 (Vic)*
- *Catchment and Land Protection Act 1994 (Vic)*
- *Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- *Climate Change Act 2010 (Vic)*
- *Coastal Management Act 1995 (Vic)*
- *Dangerous Goods Act 1985 (Vic)*
- *Interpretation of Legislation Act 1984 (Vic)*
- *Liquor Control Reform Act 1998 (Vic)*
- *Public Health and Wellbeing Act 2008 (Vic)*
- *Road Management Act 2004 (Vic)*
- *Transport Integration Act 2010 (Vic)*
- *Water Act 1989 (Vic)*
- *Wildlife Act 1975 (Vic)*

Suggested Reading and Resources

The reading materials listed are to be used as a guide only to assist a candidate when preparing for the assessment components. This is not necessarily an exhaustive list of reading material.

- Russell Byard, *Planning and Environment: Victoria*, 2004, LexisNexis
- Gerry Bates and Zada Lipman, *Corporate Liability for Pollution*, 1998, Thomson Reuters
- Gerry Bates, *Environmental Law in Australia*, (8th edn), 2013, LexisNexis
- Des Eccles and Tannetje Bryant, *Statutory Planning in Victoria*, (4th edn), 2011, Federation Press
- Stephen Rowley, *The Victorian Planning System: Practice, Problems and Prospects*, 2017, The Federation Press

The following government and regulatory websites:

- Department of the Environment (Commonwealth)
- Department of Economic Development, Jobs, Transport and Resources
- Department of Environment, Land, Water and Planning
- Department of Planning and Community Development
- Department of Premier and Cabinet (Office of Aboriginal Affairs Victoria)
- Environment Protection Authority
- VCAT