

Accredited Specialisation Application Guidelines 2018

MEDIATION



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 Mediation 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 **Schedules 2 & 3**.

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

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

Part 3: Simulated Mediation – 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 mediation 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 - see Schedule 1
Wednesday 1 August 2018	Part 2: Simulated Mediation - see Schedule 2
Thursday 2 August 2018	Part 3: Simulated Mediation - see Schedule 3
Late October 2018	Results sent to candidates will be advised by mail
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 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 4**
- 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 4**.

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 4**.

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 mediation. The resume should give the Board an overall picture of the applicant's experience and expertise in mediation, 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 mediation
- 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

Candidates will be expected to demonstrate knowledge of the rules, practices, procedures and techniques of mediation and the capacity to apply relevant knowledge to situations encountered in practice.

The examination will consist of five compulsory questions. Each question will be worth 20 marks, totalling 100 marks overall.

Candidates must answer 5 questions taken from the following areas:

- the place of mediation in relation to other modes of dispute;
- any policy or codes of practice;
- rules and practices relating to the powers and duties of mediators;
- confidentiality of a mediation and the admissibility of evidence derived from the process;
- techniques for dealing with an imbalance in power between the parties arising from differences in such characteristics as gender, culture, intellectual capacity and legal representation;
- impartiality, neutrality and appropriate levels of intervention in mediation proceedings;
- liability of mediators;
- the development of court-annexed mediation and its place in the processes of the courts;
- trends towards mandatory mediation; and
- standards and ethics of mediators and the mediation process.

Candidates must achieve at least 50 per cent overall to pass 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) and skill in applying that knowledge in practice;
- knowledge of the practice and procedural rules and standards; and
- awareness of practical considerations in dispute resolution.

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 which must be clearly written on all material submitted for assessment
- 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

- Materials pertaining to the simulated mediation in Part 2 and Part 3 of the assessment program

SCHEDULE 2: EXAMINATION ASSESSMENT COMPONENT PART 2

SIMULATED MEDIATION

Mediation **Date:** Wednesday 1 August 2018, up to 90 minutes

Mediation **Time:** To be confirmed, the assessment will go for up to 90 minutes

Mediation **Venue:** Law Institute of Victoria, Level 2, 470 Bourke Street Melbourne

Assessment Overview

Candidates will be asked to conduct a simulated mediation with two persons acting in the roles of the disputants. Those playing the roles of the disputants will have been given instructions in the roles they are expected to play. The mediation will be undertaken in the presence of an assessor and recorded for later referral by the examiners.

The two simulated mediations will provide an opportunity for candidates to display the different skills and techniques of a mediator in different type of disputes.

Candidates will be expected to apply their knowledge and skills in mediation to deal with the facts of the dispute, demonstrate practical application of theoretical frameworks suited to the facts of the matter, and exhibit competency in policy and codes of practice, including confidentiality and ethics in the mediation process. The duration of the mediation is 90 minutes. Candidates will receive the simulated mediation pertaining to the mediation half an hour prior to the mediation taking place.

Failure of the parties to reach agreement in the time allowed will not prevent a candidate from gaining a satisfactory assessment.

Assessment criteria

Candidates will be expected to demonstrate competence in conducting a mediation which incorporates the following elements:

- (a) effectiveness of opening statement;
- (b) encouraging/allowing the parties to express their views;
- (c) to demonstrate the ability to adapt the mediation process to the dynamics of the dispute and the parties;
- (d) knowledge of practice and procedure rules and standards;

(e) effectively communicate with the parties to explore issues and clarify interests; and

(f) to assist the parties to make progress towards a solution.

SCHEDULE 3

Examination Assessment Component Part 3 – Simulated Mediation

Mediation Date: Thursday 7 August 2018, up to 90 minutes

Mediation Time: To be confirmed, the assessment will go for up to 90 minutes

Mediation Venue: Law Institute of Victoria, Level 2, 470 Bourke Street Melbourne

Assessment Overview

Candidates will conduct a simulated mediation with two persons acting in the roles of the disputants. Those playing the roles of the disputants will have been given instructions in the roles they are expected to play. The mediation will be undertaken in the presence of an assessor and recorded for later referral by the examiners.

The two simulated mediations will provide an opportunity for candidates to display the different skills and techniques of a mediator in different type of disputes.

Candidates will be expected to apply their knowledge and skills in mediation to deal with the facts of the dispute, and manage the interactions between the mediator and the parties in dispute, including difficulties which may arise in the course of the mediation, and demonstration of effective techniques to provide solutions and progress impasses.

The duration of the mediation is 90 minutes. Candidates will receive the simulated mediation pertaining to the mediation half an hour prior to the mediation taking place.

Failure of the parties to reach agreement in the time allowed will not prevent a candidate from gaining a satisfactory assessment.

Assessment criteria

Candidates will be expected to demonstrate competence in conducting a mediation which incorporates the following elements:

- (a) effectiveness of opening statement;
- (b) encouraging/allowing the parties to express their views;
- (c) to demonstrate the ability to adapt the mediation process to the dynamics of the dispute and the parties;
- (d) knowledge of practice and procedure rules and standards;
- (e) effectively communicate with the parties to explore issues and clarify interests; and
- (f) to assist the parties to make progress towards a solution.

SCHEDULE 4:

RELATED LEGISLATION, SUGGESTED READING & OTHER MATERIALS

Legislation

- Civil Procedure Act 2010 (Vic)
- Evidence Act 1958 (Vic)
- Evidence Act 1995 (Cth)
- Federal Court of Australia Act 1976 (Cth)
- Federal Court Rules 1979 (Vic)
- Supreme Court Act 1986 (Vic)
- County Court Act 1958 (Vic)
- Supreme Court (General Civil Procedure) Rules 2005 (Vic)
- Magistrates' Court Act 1989 (Vic)
- Magistrates' Court Civil Procedure Rules 1999 (Vic)
- Commercial Arbitration Act 1984 (Vic)
- Victorian Civil and Administrative Tribunal Act 1998 (Vic)
- Victorian Model Litigant Guidelines

Journals, Loose-leaf Services and Texts

- Nadja Alexander, *International and Comparative Mediation: Legal Perspectives*, 2009, Wolters Kluwer
- Hilary Astor and Christine Chinkin, *Dispute Resolution in Australia*, (2nd edn), 2002, Butterworths
- Ruth Charlton (editor), *Australasian Dispute Resolution Journal (ADRJ)*, 2008, Thomson Reuters
- Bernard S Mayer, *Beyond Neutrality*, 2004, Jossey Bass
- *Bond Dispute Resolution News*, Bond University School of Law, Queensland
- Laurence Boulle, *Mediation: Principles, Process, Practice*, (2nd edn), 2005, LexisNexis
- Laurence Boulle et al, *Mediation Skills & Techniques*, 2008, LexisNexis

- Mieke Brandon and Leigh Robertson, Conflict and Dispute Resolution: A Guide for Practice, 2007, Oxford University Press
- Ruth Charlton and Micheline Dewdney, The Mediator's Handbook: Skills & Strategies for Practitioners, (2nd edn), 2004, Lawbook Co
- Ruth Charlton and Micheline Dewdney, The Mediator's Handbook – Skills and Strategies for Practitioners, (3rd edn), 2014, Lawbook Co
- Commercial Dispute Resolution Journal
- Daniel Bowling and David Hoffman, Bringing Peace into the Room, 2003, Jossey Bass
- David Spencer and Samantha Hardy, Dispute Resolution in Australia: Cases, Commentary and Materials, (3rd edn), 2014, Lawbook Co
- Sue Duncombe and Judith Heap, Australasian Dispute Resolution Service, loose-leaf, Law Booklet LEADER
- Roger Fisher et al, Getting To Yes: Negotiating agreement without giving in, (2nd edn), 1991, Random House
- Maxwell J Fulton, Commercial Alternative Dispute Resolution, 1989, Lawbook Co
- Samantha Hardy and Olivia Rundle, Mediation for Lawyers, 2010, CCH
- Richard Ingleby, Standards for court-connected mediation in Victoria: approved by the Dispute Resolution Committee of the Victorian Bar and by the Law Institute of Victoria, 1994, Victorian Law Foundation
- Leonard Riskin, Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed, 1996, Harvard Negotiation Law Review Vol 1:7
- Laurence Boulle, Mediation – Principles, Process, Practice, (3rd edn), 2011, LexisNexis
- Law Institute Journal
- Gordon Lewis et al, Handy Hints on Legal Practice, (3rd edn), 2004, Lawbook Co
- Litigation Lawyer
- Ian Lulham, Mediation – Confidentiality and Without Prejudice Privilege, 2002, LIV Litigation Lawyer (four parts) commencing www.liv.asn.au/sections/litigation/newsletter
- Michael D Lang and Alison Taylor, The Making of a Mediator, 2000, Jossey Bass
- National Alternative Dispute Resolution Advisory Council (NADRAC) publications www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Pages/NADRACpublications.aspx
- Tania Sourdin, Alternative Dispute Resolution, (3rd edn), 2008, Lawbook Co

- Nadja Spegel, Negotiation: Theory and techniques, 1998, Butterworths.
- David Spencer and Samantha Hardy, Dispute Resolution in Australia, (2nd edn), 2009, Lawbook Co
- Ellen Waldman, Mediation Ethics: Cases and Commentaries, 2011, Jossey Bass
- S Williamson, Mediation: A Guide for Victorian Solicitors, 1995, Law Institute of Victoria

Mediation Videotapes

- Fletcher's Dispute" Dispute Resolution Centre, Bond University.
- LEADR, "Sous Chef or Sue Chef?"(1997)

Important:

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.