ACCREDITED SPECIALISATION
APPLICATION GUIDELINES

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 of experience in practice.
- Substantial involvement in mediation over the past three years.
- Three references in support of the application.
- Successful completion of the prescribed assessment program.
- Participation in at least 10 mediations as a mediator.
- Formal mediation training.

Candidates may apply for an exemption from compliance in accordance with the Specialisation Scheme Rules. Such applications for exemptions must be lodged no later than 4pm on Friday, 1 April 2016.

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 two 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 1.

Part 1: Written Examination – See Schedule 1
Part 2: Simulated Mediation – See Schedule 2

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

Note: Candidates will be examined on the law as it stands at the date of assessment.
TIMETABLE

<table>
<thead>
<tr>
<th>DATE</th>
<th>ACTIVITY</th>
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<tbody>
<tr>
<td>Monday, 29 February 2016</td>
<td>Accredited Specialisation information evening</td>
</tr>
<tr>
<td>Friday, 1 April 2016</td>
<td>Applications requesting Board discretion (for those who do not meet eligibility criteria) close at 4pm</td>
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<tr>
<td>Friday, 15 April 2016</td>
<td>All other applications close at 4pm</td>
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<tr>
<td>Monday, 16 May 2016</td>
<td>Accredited Specialisation Exam Techniques evening</td>
</tr>
<tr>
<td>Saturday, 30 July 2016</td>
<td>Part 1: Written Examination, 9.30am–1pm</td>
</tr>
<tr>
<td>Tuesday, 2 August 2016</td>
<td>Part 2: Simulated Mediation</td>
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<tr>
<td>Late October 2016</td>
<td>Results sent: candidates will be advised by mail</td>
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<tr>
<td>Late November 2016</td>
<td>Accredited Specialisation Conferral Ceremony</td>
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Important:
Candidates who wish to apply for special consideration in relation to their assessment tasks must do so in accordance with the Rules at www.liv.asn.au/Professional-Development/Accredited-Specialisation/Accredited-Specialisation-Scheme-Rules-and-Forms

Performance Standards
Practitioners wishing to be accredited should be able to:
(a) perform at a high standard which is expected of practitioners wishing to hold themselves out as specialists in the area
(b) display a high standard of knowledge of the law and procedure which underpins the performance of tasks in this area of practice.

(c) review previous examination papers and videos of simulated interviews, available at www.liv.asn.au/PDF/Professional-Development/Accredited-Specialisation/AS_AssessmentMaterials.aspx
(d) read some or all of the suggested reading material listed in Schedule 3.

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 3.

Applications
Applications must be made on the prescribed application form.

General Recommendations
Candidates may find it of assistance in preparing for the assessment tasks to:
(a) form a study group – to register your interest in forming a study group please contact special@liv.asn.au
(b) attend appropriate LIV CPD events in the area of specialisation
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.

Applications Close

4pm Friday, 1 April 2016 for applicants wishing to apply for Board discretion for an exemption from compliance in accordance with the Specialisation Scheme Rules.

4pm Friday, 15 April 2016 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: 03 9607 9461
Facsimile: 03 9607 9404
Email: special@liv.asn.au

Please forward to the Law Institute of Victoria:

1. the completed application form
2. three references
3. resume of practice
4. application fee of $1100.00 (including GST) payable to the Law Institute of Victoria.
EXAMINATION ASSESSMENT

PART 1

WRITTEN EXAMINATION

**Exam Date**  
Saturday, 30 July 2016, 9.30am–1pm  
(Three hours plus 30 minutes for reading and planning)

**Exam Venue**  
Moonee Valley Racing Club, McPherson Street, Moonee Ponds

### 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
- 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:

(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 practice and procedural rules and standards
(d) 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.
- Handwriting must be legible.
- Each candidate will be issued with an examination number.
- The names of candidates must not appear on any material submitted for assessment.
EXAMINATION ASSESSMENT
PART 2
SIMULATED MEDIATION

Mediation Date  Tuesday, 2 August 2016
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.

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.

The duration of the mediation is 90 minutes. Candidates will receive the mock file 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) explaining how mediation works and establishing the rules
(b) encouraging/allowing the parties to put their views
(c) overcoming conflict between the parties
(d) understanding the points of view of the parties
(e) control of the process – leading the way
(f) making progress towards a solution.
3 SUGGESTED READING MATERIALS

RELATED LEGISLATION AND 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

- Hilary Astor and Christine Chinkin, Dispute Resolution in Australia, (2nd edn), 2002, Butterworths
- Ruth Chariton (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 et al, Mediation Skills & Techniques, 2008, LexisNexis
- Mieke Brandon and Leigh Robertson, Conflict and Dispute Resolution: A Guide for Practice, 2007, Oxford University Press
• 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 Duncome 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
• Laurence Boulle, Mediation – Principles, Process, Practice, (3rd edn), 2011, LexisNexis
• Law Institute Journal
• Gordan 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
• David Spencer and Samantha Hardy, Dispute Resolution in Australia, (2nd edn), 2009, Lawbook Co
• Ellen Waldman, Mediation Ethics: Cases and Commentaries, 2011, Jossey Bass

**Mediation Videotapes**

• Fletcher’s Dispute* Dispute Resolution Centre, Bond University
• LEADR, “Sous Chef or Sue Chef?”(1997)

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.