



Accredited Specialisation Application Guidelines 2012

Criminal 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 Criminal Law 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 compliance in accordance with the Specialisation Scheme Rules (2011)

IMPORTANT: Details of the conditions for gaining specialist accreditation are contained in the Specialisation Scheme Rules which can be found at:

<http://www.liv.asn.au/PDF/Accredited-Specialisation/SpecialisationSchemeRulesMasterCopy>

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 Criminal 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: Oral Presentation– See **Schedule 2**

Part 3: Simulated Court Presentation – 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 Component

Candidates may apply in advance for an exemption from the written examination if they have recently studied subjects relating to Criminal 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 LLM 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 **4.00pm Friday, 13 April 2012**

Timetable

Monday 5 March 2012	Accredited Specialisation information evening
Friday 13 April 2012	Applications requesting Board discretion (for those who do not meet eligibility criteria) close, no later than 4pm
Friday 11 May 2012	All other Applications close, no later than 4pm
Monday 28 May 2012	Accredited Specialisation Exam Techniques evening
Saturday 28 July 2012	Part 1: Written Examination, 9.30am – 1.00pm
Thursday 2 August 2012	Part 2: Oral Presentation
Friday 3 August 2012	Part 3: Simulated Court Presentation
Late October 2012	Results sent to candidates will be advised by mail
Thursday 29 November 2012	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

<http://www.liv.asn.au/PDF/Accredited-Specialisation/SpecialisationSchemeRulesMasterCopy>

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; and
- (b) display a high 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:

- (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
- (c) Review previous examination papers and videos of simulated interviews. These are available at <http://www.liv.asn.au/PDF/Accredited-Specialisation/2012AccreditedSpecialistsAssessmentMaterials>
- (d) 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 Criminal Law. The resume should give the Board an overall picture of the applicant's experience and expertise in Criminal 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 Criminal 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

By 4:00pm Friday 13th April 2012: for applicants wishing to apply for Board discretion because they do not meet the eligibility criteria.

By 4:00pm Friday 11th May 2012: for all other applications.

The address for applications is:

*Accredited Specialisation
Law Institute of Victoria
GPO Box 263C OR DX 350
MELBOURNE 3001 MELBOURNE*

Enquiries: 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 2012, 9.30am to 1.00pm
(3 hours *plus thirty minutes* for reading and planning)
Exam Venue: Moonee Valley Racing Club, McPherson Street, Moonee Ponds.

Overview

This part will examine the candidate's knowledge of substantive law and the ability to apply that knowledge in practice.

The written examination will consist of two compulsory sections, Section A and Section B.

In **Section A** candidates will be required to answer three of the four long answer questions. Candidates will be presented with detailed fact situations and will be expected to identify the key issues in the situations described and demonstrate their capacity to provide appropriate advice. This section will be worth 75% of the total for the written examination.

In **Section B** candidates will be required to answer five out of the eight short answer questions. This section will be worth 25% of the total mark for 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
- (c) knowledge of the rules pertaining to evidence, procedure and sentencing
- (d) ability to provide practical, clear and comprehensive advice
- (e) awareness of practical considerations in criminal litigation.

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 books 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.

SCHEDULE 2: Examination Assessment Component Part 2 – Oral Presentation

Interview Date: Thursday 2 August 2012
Interview Time: To be confirmed
Interview Venue: Law Institute of Victoria, Level 2, 470 Bourke Street Melbourne

Overview

This part of the examination requires candidates to make a presentation to a panel of examiners. Candidates will be given 1.5 hours prior to their presentation to study a brief. Whilst preparing for the presentation candidates will be allowed access to published materials or study notes. Candidates will also be allowed to use their laptop computer to assist them with preparation, however they will not be allowed access to internet resources.

Candidates will be playing the role of an associate in a law firm and the examiners will be playing the role of senior partners of that firm. The firm will have been instructed by a client whom the firm is representing in relation to this matter.

Candidates will then be given 30 minutes to present their opinion of the case to the panel, setting out the main issues and their strategies for dealing with them. During this interaction, questions and issues will be raised by the panel. Candidates will need to identify the strengths and weaknesses of the case and what advice they would give their client.

The questions may require the candidate to provide a response to the following:

- alternative arguments or propositions that might be expected to be put by the other side
- drawing out legal principles
- identifying issues and potential defences
- justification for adoption of course
- managing the client's expectations
- recommendations/advice to the client
- identification of strengths and weaknesses in evidentiary material provided
- ancillary and/or consequential orders
- any other matters which the candidate believes are relevant and should be raised
- demonstrate dispute resolution skills and strategies

The above list should not be seen to be exhaustive and it should be expected that panel members may follow a line of inquiry with a particular candidate subject to the response provided.

Presentations will be videotaped.

The panel will consist of two to three Criminal Law Specialists. Depending on the number of candidates, there may be more than one panel.

Assessment Criteria: Candidates will be assessed on their ability to:

- (a) *identify relevant issues*
- (b) *communicate clearly*
- (c) *assess facts and legal options*
- (d) *indicate procedural steps*
- (e) *develop a strategy, and evaluate the strengths and weaknesses of the strategy*
- (f) *justify for adoption of a course of action*
- (g) *exercise realistic forensic judgement*
- (h) *formulate advice to the client*

SCHEDULE 3: Examination Assessment Component Part 3 – Simulated Court Presentation

Interview Date: Friday, 3 August 2012*

Interview Time: To be confirmed

Interview Venue: Magistrates Court of Victoria, 233 William Street, Melbourne

Overview

A presentation of 15 - 20 minutes in a mock court environment.

Candidates will use the information in the brief used, the day prior, in Part 2 Oral Presentation.

The presentation may relate to any criminal matter arising out of the materials encountered in the oral presentation. Candidates will be representing the defendant in all cases.

Candidates can expect to encounter an interventionist Bench.

The format will be structured to assess the candidate's knowledge of the criminal jurisdiction, procedure and rules of evidence. Candidates should also have a thorough knowledge of relevant sentencing principles.

The venue for the advocacy presentations will be the Melbourne Magistrates' Court. It should not however be presumed that the court will be sitting as the Magistrates' Court. Arrangements will be confirmed once the number of candidates is known. Country candidates will be given preference in the allocation of appointment times.

This part of the assessment will be videotaped for assessment by the examiners.

*Simulated Court Presentation date may be subject to change due to 2012 court availability. Candidates will be notified immediately of any change.

Assessment criteria

Candidates will be assessed on their ability to demonstrate proficiency in the following aspects of advocacy:

- (a) preparation
- (b) knowledge of the law and the facts of the case
- (c) presentation
- (d) organisation
- (e) reasoning and cogency of argument
- (f) appreciation of court etiquette

SCHEDULE 4: Topics for Assessment

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

Any matter relevant to practice in Criminal Law may be examined. Candidates may be called on to demonstrate knowledge of any of the following topics, as applicable in any of the following courts:

- Magistrates' Court
- Children's Court
- County Court
- Supreme Court
- High Court of Australia

Substantive Law

- Bail
- Crime Defences
- Complicity
- Derivative Liability
 - Incitement
 - Attempt
 - Conspiracy
 - Accomplice liability
- Elements of Crime
- Particular Criminal Offences
 - Property Offences
 - Offences against the Person (non- sexual)
 - Drug Offences
 - Traffic Offences
 - Sexual Offences
 - Commonwealth Offences
 - o Drugs
 - o Sexual offences
 - o People smuggling offences
 - o Offences committed in other jurisdictions
 - o Terrorism
 - o Telecommunications/ postal offences
- The Charter of Human Rights and Responsibilities Act 2006 (Vic)

Evidence

- Admissions
- Character
- Consciousness of guilt
- Credibility
- Documents
- Exclusion of evidence
- Hearsay
- Identification
- Prior consistent statements
- Prior inconsistent statements
- Privileges
- Opinion
- Relevance
- Tendency and coincidence
- The specific rules of evidence in sexual offence cases
- Unfavourable witnesses

Procedure

- Ancillary Orders
- Appeals and cases stated
- Bringing Accused to Court
- Commencing Proceedings
- Committal Proceedings
- Current Practice notes issued by the Courts
- Detention and Supervision orders
- Forensic Sample Applications
- Individual jurisdiction of all criminal Courts (includes specialist courts and lists)
- Interlocutory appeals
- Plea/change of Plea and sentencing procedures
- Plea negotiation
- Police powers to search
- Summary Procedure
- Trial on Indictment

Sentencing

- Breach of Sentencing Orders
- Cancellation, suspension, disqualification of drivers licence and other rights and privileges
- Diversion
- Diversionary Laws and Programs
- Sentencing Principles
- Sentencing Options
- Victim Impact Statements

NB: Any matter relevant to practice in **Criminal 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**Legislation****Commonwealth**

- Australian Crime Commission Act 2002
- *Corporations Act 2001*
- *Copyright Act 1968*
- *Crimes Act 1914*
- *Criminal Code Act 1995*
- *Customs Act 1901*
- *Financial Transaction Reports Act 1988*
- *Proceeds of Crime Act 1987 and 2002*
- *National Security Information (Criminal and Civil Proceedings) Act 2004*
- *Telecommunications (Interception) Act 1979*

State

- *Appeal Costs Act 1998*
- *Bail Act 1977*
- *Charter of Human Rights and Responsibilities 2006*
- *Children, Youth and Families Act 2005*
- *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*
- *Community Services Act 1970*
- *Confiscation Act 1997*
- *Control of Weapons Act 1990*
- *County Court Act 1958*
- *Crimes Act 1958*
- *Criminal Procedure Act 2009*
- *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*
- *Criminal Appeals and Procedures Rules 2011*
- *Drugs, Poisons and Controlled Substances Act 1981*
- *Evidence Act 2008*
- *Evidence (miscellaneous provisions) Act 1958*
- *Family Violence Protection Act 2008*
- *Firearms Act 1996*
- *Juries Act 2000*
- *Magistrates' Court Act 1989*
- *Major Crime (Investigative Powers) Act 2004*
- *Personal Safety (Intervention Orders) Act*
- *Police Integrity Act 2008*
- *Road Safety Act 1986 (and the Road Safety Regulations)*
- *Sentencing Act 1991*
- *Sex Offenders Registration Act 2004*
- *Serious Sex offenders (Detention and Supervision) Act 2009*
- *Stalking Intervention Orders Act 2008*
- *Summary Offences Act 1966*
- *Supreme Court Act 1986*
- *Surveillance Devices Act 1999*
- *Victims of Crime Assistance Act 1996*

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 and References

- Archbold., *Criminal Pleading, Evidence and Practice*, Sweet & Maxwell, (*published annually*)
- Bagaric, Mirko and Arenson, Kenneth, *Criminal Laws in Australia: Cases and Materials*, 2nd edn, Oxford University Press, 2007.
- Byrne, D. & Heydon, J.D., *Cross on Evidence*, looseleaf, Butterworths, 4th Australian edition
- Fox, Richard G., *Victorian Criminal Procedure: State and Federal Law*, 12th ed, Monash University Law Book Co-operative, 2005
- Freckelton, Ian, *Indictable Offences in Victoria*, 5th ed, Law Book Company, 2008
- Freckelton, Ian, *Criminal Law Investigation and Procedure Victoria*, looseleaf, 5 vols, Law Book Co
- Freckelton, Ian, *Criminal Injuries Compensation: Law, Policy and Practice*, Law Book Co, 2001
- Freckelton, Ian and Ranson, David, *Death Investigation and the Coroner's Inquest*, Oxford University Press, 2006
- Gillies, Peter, *Criminal Law*, 4th ed, Law Book Company, 1997
- Glissan, J & Tilmouth, S, *Australian Criminal Trial Directions*, looseleaf, Butterworths
- Hunter, J. & Cronin, K., *Evidence, Advocacy and Ethical Practice: a Criminal Trial Commentary*, Butterworths, 1995
- Ligertwood, A., *Australian Evidence*, 4th ed, LexisNexis Butterworths, 2004
- McSherry, B and Brunitt, *Criminal Law*, 2nd ed, Law Book Co, 2005
- Mullaly, Paul, *The Victorian Sentencing Manual*
(available online via Judicial College of Victoria website: www.judicialcollege.vic.edu.au)
- Nash QC, Gerard, *Bourke's Criminal Law Victoria*, 3rd ed, looseleaf, Butterworths.
- Nash QC, Gerard, *Victorian Courts*, looseleaf, Law Book Co
- Odgers, Stephen, *Uniform Evidence Law*, 8th ed, Law Book Co
- Ross, D., *Crime: Law and Practice in Criminal Courts*, looseleaf, Law Book Co
- Springvale Legal Service, *Lawyers Practice Manual Victoria*, looseleaf, Law Book Co
- Waight, P.K. & Williams, C.R., *Evidence: Commentary and Materials*, 7th ed, Law Book Co, 2006
- Waller, L & Williams, C.R., *Criminal Law: Text and Cases*, 10th ed, LexisNexis Butterworths, 2005
- Williams, Neil J., *Civil Procedure Victoria*, looseleaf, Butterworths.
- Williams, Payne & McNaughton, *Federal Criminal Law*, looseleaf, Butterworths