



Accredited Specialisation Application Guidelines 2012

Immigration 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 Immigration 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 Immigration 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: Take home assignment– See **Schedule 1**

Part 2: Written Examination– See **Schedule 2**

Part 3: Simulated Interview – 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 Immigration 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 21 May 2012	Part 1: Mockfile distributed
Monday 28 May 2012	Accredited Specialisation Exam Techniques evening
Wednesday 13 June 2012	Part 1: Mockfile due back
Saturday 28 July 2012	Part 2: Written Examination, 9.30am – 1.00pm
Tuesday 31 July 2012	Part 3: Simulated Client Interview
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 Immigration Law. The resume should give the Board an overall picture of the applicant's experience and expertise in Immigration 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 Immigration 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 – Take home assignment - Mockfile**Distributed to candidates:** Monday 21 May 2012**Returned by Candidates:** Wednesday 13 June 2012 by no later than 4pm.**Overview**

Candidates will be required to complete specific tasks on a mock file, including the preparation of legal advice and court documents. 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. Candidates will be required to provide a signed statement to that effect.

The completed exercise must be lodged in person at the Law Institute of Victoria by 4:00pm 13th June or sent by registered post postmarked no later than 4.00 pm on 13th June 2012.

Assessment criteria

Candidates will be assessed on their:

- ability to identify relevant issues from the materials
- knowledge of relevant law, including significant recent decisions
- knowledge of relevant procedural rules and principles
- ability to provide practical, clear and comprehensive advice.

SCHEDULE 2: Examination Assessment Component Part 2 - 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

The paper will test knowledge of procedure and rules as well as the ability to apply relevant knowledge to situations encountered in practice.

The examination paper will be in three sections.

Section A - 15 questions worth 2 marks each.

Section B - 6 questions worth 5 marks each.

Sections A and B will contain questions requiring brief answers. The questions will cover a wide range of migration and citizenship topics drawn from the list of topics for assessment. The emphasis in this section is on knowledge of fundamental legislation, regulations and procedures.

Section C - 2 questions worth 20 marks each.

This section will present candidates with more complex fact situations in which expert legal advice might be sought.

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. Portable computers must not be used for external communication during the examination.
- Mobile phones are not permitted.
- Answers must be written in the booklets provided.
- Answers must be numbered correctly.
- Handwriting must be legible.
- Examination numbers (not names) must be written on all answer books submitted.

Assessment criteria

Candidates will be assessed on their ability to:

- identify relevant issues
- demonstrate knowledge and understanding of the relevant law
- present clearly expressed practical advice that is both comprehensive and legally correct.

After the examination

Immediately following the conclusion of the written examination, candidates will receive:

- Details of the time and place of their simulated interviews in Part 3 of the assessment program.

SCHEDULE 3: Examination Assessment Component Part 3 – Simulated Interview

Interview Date: Tuesday 31 July 2012
Interview Time: To be confirmed (60 minutes *including* time for completing file notes)
Interview Venue: Law Institute of Victoria, Level 2, 470 Bourke Street Melbourne

Overview

Candidates will be asked to conduct a simulated first interview with a person acting in the role of a client. The interview will take up to 50 minutes and will be videotaped for assessment by the examiners.

At the conclusion of the interview, candidates will be given 10 minutes to prepare a brief file note which records in point form the steps to be taken following the interview. This file note will be assessed by the examiners in conjunction with the videotaped interview.

The time allocated for the interview and writing up of the file notes will be strictly enforced.

The location and timetable for the simulated interview will be announced closer to the date of the assessment program.

Assessment criteria

This exercise will assess a wide range of performance standards, including those relating to interaction between the solicitor and client, taking instructions and giving advice, assessing facts and legal options, canvassing options with the client and developing the initial plan.

In particular, candidates will be assessed on their ability to:

- elicit relevant information and facts from the client
- obtain and clarify instructions
- identify relevant issues
- communicate clearly with the client
- assess facts and legal options
- indicate procedural steps and timelines for responses
- develop an initial plan.

SCHEDULE 4: Topics for Assessment

The topics listed below indicate 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.

1. Fundamental Principles

- constitutional basis for migration law
- legislative framework: Act, Regulations, Policy (PAMS & MSIs); implications of a codified system of entry, policy including directions under s.499
- basic principles of administrative law including:
 - rules of procedural fairness and natural justice
 - concepts of jurisdictional error
 - concept of broad ultra vires
- changes in the law and determining what law applies at a particular time
- transitional arrangements
- definitions contained in the Migration Act and Regulations and other relevant laws and conventions (including international law).
- registration of migration agents
- relevant merits and judicial review decisions

2. Requirements relevant to more than one class of visa

2.1 General requirements

- classes and subclasses of visas
- schedules 1- 9
- resident return visas, authority to return and return endorsements
- conditions of visas
- criteria at time of application and decision
- requirements of a valid application and decision
- codes of procedure for dealing with visa applications including time limits
- lodgement of applications (different venues) and internet applications
- exclusion periods
- evidencing of visas
- period of validity of visas
- Health changes
- English language changes
- settlement criteria
- sponsorship
 - limitations on sponsorship
 - family related
 - guardian of a child
 - business sponsorship
- assurance of support and bond
- capping
- time limits for lodgement of primary applications and review application
- relevant merits and judicial review decisions

2.2 Public interest criteria schedule 4 /schedule 5

- health criteria
 - applicability of waiver
 - role of the Medical Officer of the Commonwealth
 - scope of the review authority of MOC's opinion
- character requirement

- settlement criteria
- debts due to the Commonwealth
 - migration related debts (removal/detention)
 - other debts
 - applicability of the Financial Management and Accountability Act 1997 (provision for waiving debts)
- risk factor profiles
- national interest consideration
- exclusion periods & waiver requirements
- relevant merits and judicial review decisions
- Australian values statement
- Item 4020 bogus documents/false info

2.3 Points tests and skills determination

- general points test and sections 92-96
- application of transitional arrangements
- schedule 6, 6A,6B and 6C, allocation of points, definitions, pass and pool marks, nominated occupation, role of "relevant assessing authorities"
- assessment of applicable criteria at time of application and decision
- regulations 2.26 to 2.29K, allocation of points, applications including publications relevant to skills assessment: ASCO/ANZCO Dictionary, PAMS, NOOSR Country Education Profiles
- publications, guidelines of "relevant assessing authorities"
- business skills points test, regulation 2.29 and Schedule 7
- Processing Directions
- Transitional arrangements for onshore students
- relevant merits and judicial review decisions
- Skilled Occupation Lists (SOL)

3. Migrant entry

- family: partner, child, parent, contributory parent, orphan relative, last remaining relative, adoption, carer, other family
- skilled categories,
 - independent
 - family sponsored
 - state sponsored
 - students
 - skilled graduate and skilled recognised graduate
- Employer Nomination Scheme (ENS) and Regional Sponsored Migration Scheme (RSMS) - approved appointments Regulation 5.19
- labour agreement
- business skills and post settlement business surveys
- distinguished talent
- NZ citizens
- Special categories including:
 - former citizen
 - former resident
- quotas, capping and priorities
- relevant merits and judicial review decisions
- worker/protection
- sponsorship obligations and employer sanctions

4. Temporary entry

- visitors
- students
- temporary residents, including 457s
- Skilled temporary Visas
- New Zealand citizens – pre and post 26 February 2001; post 1 April 2004
- business skills
- miscellaneous temporary entry categories eg. Medical treatment, transit occupational trainee, dependent child
- relevant merits and judicial review decisions

5. Change of status

- General issues
 - effect of choice of class where subclasses overlap
 - limitation on applications eg (schedules 3, 4, 5 and 8, ss 41, 48, 48A, 48B)
 - substantive visa requirement
 - assurances of support
 - "old" legislation/regulation and policy
 - family violence, death of partner, parenting arrangements and other exemption provisions
 - substantial compliance issues
- Partner (Temporary & Residence & DV & other exemption provisions) including Reg 2.12 prescription of certain Partner Visa applications for the purposes of s.48 and consequential policy amendment in relation to Schedule 3 criteria
- permanent visas (based on) family relationships
- occupational and business grounds
- refugee and humanitarian "Temporary Protection & Humanitarian visa holders – applications for other visas (Reg.2.07 AO)" and abolition of Temporary Protection Visa / introduction of Subclass 851 - Resolution of Status Visa
- statutory visas including:
 - absorbed person
 - special purpose
 - criminal justice
 - Ex-citizen visa
 - enforcement visas
- employer nomination
- business skills
- temporary visas
 - temporary resident
 - student
 - visitor
 - medical treatment
- unlawful non-citizens
 - schedule 3 criteria
- processing of applications
 - bridging visas
 - change of conditions
 - evidence required
- effect of certain visa conditions
- no further stay conditions and provisions for waiver
- relevant merits and judicial review decisions
- employer nomination/RSMS

6. Refugee and humanitarian entry

- General

- *U.N. Convention*
- *definition of "refugee" as modified by legislation and judicial interpretation*
- *stateless persons*
- Offshore
 - offshore entry persons and transitory persons
 - refugee subclass 200
 - special humanitarian programs subclass 201-204
 - special assistance categories
- Onshore
 - protection visas
 - temporary humanitarian
 - temporary safe haven
- relevant merits and judicial review decisions

7. Detention, Cancellation and Compliance

- powers of entry, search and examination
- mandatory detention of unlawful non-citizens
 - release from detention, bridging visas, wrongful detention
 - questioning detention
- mandatory removal of unlawful non citizens
 - costs of detention, removal and deportation, recovery
- offences under the Migration Act
 - people trafficking
 - contrived relationships
 - offences relating to work
- powers and procedures of cancellation: Division 3, subdivisions C-H, *Migration Act*;
 - incorrect information s109
 - general s116, s128
 - business visas s134
 - student visas s137J
 - regional sponsorship employment visas s137Q
 - consequential cancellation power s140
- character s501, 501A, 501B and s502
 - refusals (including refusals by the Minister personally)
 - cancellations (including refusals by the Minister personally)
 - review by the AAT
- Departmental revocation of automatic cancellation of student visas under s137K
- criminal deportation
- relevant merits and judicial review decisions

8. Review of migration decisions

8.1 Choice of remedy – Avenues of Appeal and Review

8.1.1 Merits review

- definition of reviewable decision
- role and powers of the MRT and RRT
- review powers and jurisdiction of the AAT
- time limits
 - detainees
 - non detainees
- ministerial discretion
 - requests to the Minister seeking his personal intervention under sections 345, 351, 391, 417, 454
 - ministerial override of character decision by delegate or AAT under ss 501A, 501B and 501C
- relevant merits and judicial review decisions

8.1.2 Judicial review

- definition of judicially reviewable decision
- the privative clause
- grounds for judicial review
- time limits
- powers of the Federal Court and Federal Magistrates Court
- role of High Court
- relevant merits and judicial review decisions
- Migration Litigation Reform Act 2005

9 Citizenship - Citizenship Act 2007

- Australian Declaratory Visa (ADV)
- Australian Citizenship
- Status at birth
- Automatic acquisition of Australian citizenship
 - Persons born in Australia
 - Citizenship by adoption
 - Citizenship for abandoned children
 - Citizenship by incorporation of Territory
- Citizenship by Descent
- Citizenship by Adoption under the Hague Convention on Inter country Adoption
- Citizenship by Conferral
 - Normal requirements
 - Exemptions from the normal requirements
 - Residence requirements and exemptions for conferral
 - English language requirements and Australian values
 - Citizenship test
 - Personal identifiers
- Persons of national security or character concern
- Cancellation or deferral of approval
- Cessation of Citizenship
 - Renunciation
 - Revocation
 - Service in enemy armed forces
 - Children of parents who lose their Australian citizenship
- Resumption of citizenship
- Dual citizenship
- Review of decisions
- Transitional arrangements

10. Client Contact

- professional Conduct and Practice Rules
- assisting in completing applications
- solicitor's responsibilities for bona fides of applications
- issues of privilege
- solicitors lien on documents
- use of solicitor's trust account
- relevant merits and judicial review decisions

11. Responsibilities of a Lawyer

- Legal Profession Legislation
- Trust Accounting
- Insurance

- Ethics

12. Regulation of Migration Agents

- MARA's powers
- Appeal Rights
- Migration Agent Regulations - Code of Conduct
- IRMAP

13. Other issues

- freedom of information
- legal aid and Pro Bono Scheme
- alternative avenues of redress
 - HREOC
 - Ombudsman
 - MPs
 - UNHCR
- Privacy Commissioner
- relevant merits and judicial review decisions

NB: Any matter relevant to practice in **Immigration 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, Related Regulations and other materials**

- *All Migration Regulations from December 1989 to Saturday 14th July, 2012*
- *Administration Appeals Tribunal Act 1975 (Cth)*
- *Administrative Decisions (Judicial Review) Act 1977 (Cth) and Regulations*
- *Australian Citizenship Act 2007 (Cth), Australian Citizenship (Transitionals and Consequentials Act 2007 and Regulations)*
- *Australian Human Rights Commission Act 1986 (Cth)*
- *Australian Passports Act 2005 and Regulations*
- *Commonwealth Gazette Notices*
- *Convention against torture*
- *Convention on the Rights of the Child. United Nations 1989*
- *Convention Relating to the Status of Refugees 1951 as amended by the Protocol.*
- *Education Services for Overseas Students Act 2007 (Cth) as amended*
- *Education Services for Overseas Students National Code of Practice*
- *Fair Work Act 2009 (Cth)*
- *Federal Court of Australia Act 1976(Cth) and Rules*
- *Federal Magistrates Court Act 1999 (Cth) and Rules*
- *Freedom of Information Act 1982 (Cth)*
- *International Covenant on Civil and Political Rights, United Nations 1966*
- *Judiciary Act 1901 (Cth)*
- *Migration Act 1958 (Cth) as amended to Saturday 14th July, 2012*
- *Migration Agents Regulations (1998)*
- *Migration Reform (Transitional Provisions) Regulations*
- *Migration (Visa Application) Charge Act 1997 (Cth)*
- *Ministerial Directions*
- *Ombudsman Act 1976 (Cth)*
- *Privacy Act 1998 (Cth)*
- *The Social Security Act 1991*
- *Social Security (Assurance of Support) Determination 2007*
- *The Worker Protection Act 2008*
- *ASCO Dictionary*
- *ANZSCO Dictionary*
- *Other relevant International Instruments*
- *See also associated legislation in Butterworths Australian Immigration Law. (looseleaf)*

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 materials

Candidates may find it useful to refer to the following texts:

- Bollard, P, Sudrishti, R, et al. *The Immigration Kit*, 8th Edition (Sydney: the Federation Press, 2008)
- Bagaric, M; Boyd, K, Dimopoulos, P, Tongue, S, Vrachnas, J, *Migration and refugee law in Australia: cases and commentary*, (Port Melbourne, Cambridge University Press, 2007).
- Crock, M & Berg, L, *Immigration, Refugees and Forced Migration: Law, Migration and Practice in Australia*, Federation Press: Sydney (2011)
- Crock M, Saul B, Dastyari A, *Refugees and Irregular Migration in Australia* (Sydney: Federation Press 2006).
- Crock M, Saul B, *Future Seekers Refugees in Australia* (Sydney: Federation Press 2002)
- Foster, M *International Refugee Law and Socio-economic Rights: Refugee From Deprivation*
- Germov R, Motta A, *Refugee Law in Australia* (Melbourne: OUP 2003)
- Glass, A, Goddard, J et al. *Australian Immigration Law* (loose leaf service). Sydney. Butterworths
- Goodwin-Gill, G *The Refugee in International Law* 2nd ed (London: Clarendon Press, 1996).
- Hathaway, J.C. *The Law of Refugee Status*. (Toronto: Butterworths, 1991).
- Hathaway, J.C. *The Rights of Refugees Under International Law* (Toronto: Butterworths, 2006).
- Jockel, M, *457 visa law: addressing Australia's skilled labour shortage*, (Pymont: Thomson Reuters, 2009)
- Rodan C, Rodan E, *Australian Business Skills Migration. The Guidebook* (Melbourne, Australian Migration Digest, 2010)
- Rodan, C, Rodan, E, *Migrating to Australia*, (Scottsdale, LifeSuccess Publishing, 2009).
- Rubenstein K, *Australian Citizenship Law in Context* Law Book Company 2003
- Rubenstein K, *Guide to Citizenship* DIAC website
- Vrachnas J, Boyd, K, Bagaric, M and Dimopoulos, P *Migration and Refugee Law: Principles and Practice in Australia* (Melbourne: Cambridge University Press, 2008)

Other References:

Legend.com online service run by Department of immigration, available by subscription.
Department of Immigration and Citizenship

Australian Citizenship Instructions
The Procedures Advice Manual
Migration Series Instructions

Immigration Review, Butterworths
Immigration Advice and Rights Centre NSW Immigration News
The Migration Review Tribunal Bulletins and practice notes.
RRT Decision Bulletins and practice notes
All relevant cases
Australian Bureau of Statistics, *Australian Standard Classification of Occupations* (ASCO Dictionary) (2nd edition)
Australian Bureau of Statistics and Statistics New Zealand, *Australian and New Zealand Standard Classification of Occupations* (ANZCO Dictionary) (1st Edition)
MIA - Migration Case Law Newsfeed (member e-bulletin)

Useful websites:

www.austlii.edu.au, www.immi.gov.au, www.comlaw.gov.au