Personal Injury Law Specialist Accreditation Assessment Requirements 2014

These notes should be read in conjunction with the 2014 Guide to Application and Assessment. These documents will assist practitioners in understanding and preparing for the assessment process.

Included are:

A  The performance standard which is the benchmark for competent practice in this area and the performance criteria which form the basis for the assessment.

B  The list of the core skills and areas of knowledge which underpins the performance standard to assist with assessment preparation.

C  The methods and dates of assessment which applicants are required to undertake.
2014 SPECIALIST ACCREDITATION PROGRAM TIMETABLE

The shaded area below shows the core assessment period including reminders and due dates for each assessment component.

Candidates need to focus on this core assessment timeframe and reminders and planning their workload, well in advance, accordingly.

From experience and feedback reports from previous years, candidates are encouraged to dedicate their time during this period to optimise their performance across all the assessment tasks.

Candidates are reminded that participating in the Specialist Accreditation program requires a considerable level of commitment if candidates are to achieve their desired outcome.

<table>
<thead>
<tr>
<th>TASK</th>
<th>DATE</th>
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<tbody>
<tr>
<td>Question &amp; Answer sessions for potential candidates</td>
<td>Mid February to early April 2014</td>
</tr>
<tr>
<td>Applications for Specialist Accreditation close</td>
<td>Monday 14 April 2014</td>
</tr>
<tr>
<td>Candidature confirmed and 2 weeks until Take Home Assessments are sent out</td>
<td>After 5 May 2014</td>
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<tr>
<td>Mock File distributed</td>
<td>Wednesday 21 May 2014</td>
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<tr>
<td>1 week until – Mock File due</td>
<td>Wednesday 4 June 2014</td>
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<tr>
<td>Mock File due</td>
<td>Wednesday 11 June 2014</td>
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<tr>
<td>2 weeks until - Formal Written Examination and Live Assessment</td>
<td>Saturday 12 July 2014</td>
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<tr>
<td>Formal Written Examinations Personal Injury Law</td>
<td>Saturday 26 July 2014</td>
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<tr>
<td>Live Assessment Peer Interview</td>
<td>Sunday 27 July 2014</td>
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<tr>
<td>Results released to candidates</td>
<td>After 6 October 2014</td>
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<tr>
<td>Reassessment and/or Appeal application close</td>
<td>14 days from notification of results</td>
</tr>
<tr>
<td>Reassessment results released</td>
<td>Early December 2014</td>
</tr>
<tr>
<td>Appeal results released</td>
<td>February 2015</td>
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A. PERFORMANCE STANDARD

Standard of an Accredited Specialist

The Standard of an Accredited Specialist in Personal Injury Law is that of a ‘specially competent practitioner’ in the core skills and practical capabilities in their selected area of practice, as assessed against the spectrum of capability of all practitioners in that area of practice. This standard is to be distinguished from the idea that the Scheme requires the highest technical legal knowledge across all aspects of the selected area of practice.

B. CORE SKILLS/CAPABILITIES AND KNOWLEDGE AREAS

Practitioners wishing to be accredited in Personal Injury Law should be able to:

- Display knowledge of the law and procedure which underpins the performance of tasks in this area of practice to the level of the performance standard; and
- Demonstrate the core skills and capabilities which underpin the performance of tasks in this area of practice to the level of the performance standard.

B. 1 CORE SKILLS AND PRACTICAL CAPABILITIES

1. Taking instructions & preliminary investigations:

1.1 Conducting cases efficiently, effectively and expeditiously

The specialist personal injury solicitor:

- Takes the initiative to promote the client’s case;
- Is commercially responsible and guards against wasteful procedures and over-servicing;
- Develops and maintains efficient and disciplined office procedures, including a diary system time limitations;
- Is sympathetic, objective, professional and courteous;
- Advises clients of any applicable restrictions on recovery of costs;
- Discusses and enters into a fee agreement; and
- Explains the need to certify that the claim or defence has reasonable prospects of success, and the consequences if a claim is wrongly certified.

1.2 Helping the client to gain a realistic understanding of the case

The specialist personal injury solicitor:

- Regularly provides realistic advice in relation to the assessment and likely outcome of the claim, including liability and damages issues and risks;
- Explains the basis on which damages or compensation are assessed, the likely range of damages or compensation, the impact of discount rates, and where applicable the statutory restrictions contained in the relevant legislation including the Motor Accidents Compensation Act 1999 (NSW), Workers Compensation Act 1987 (NSW), Civil Liability Act 2002 (NSW), Workplace Injury Management and Workers Compensation Act
• In CTP claims, explains where applicable the effects of the *Motor Accidents Compensation Act 1999* (NSW), the procedures for medical and claims assessment, requirements for early notification of the claim and the availability of early payment of treatment expenses and care and payments in cases of financial hardship;
• Advises on the availability of structured settlements, where appropriate;
• Advises on the availability of ADR mechanisms e.g. arbitration, mediation, CARS assessments;
• Advises on the implications of Offers of Compromise in relation to costs and the principles for awarding interest;
• Advises client of the implications of settlement and the impact settlement may have on Centrelink and/or Workers Compensation entitlements; and
• Advises on Health Insurance Commission / Medicare Australia legislation and medical refunds.

2. **Advice on prospects**

2.1 **Eliciting information from the client**

The specialist personal injury solicitor:

• Has the ability to communicate with clients of all walks of life to elicit all relevant details relating to liability, damages or compensation;
• Is guided by knowledge of the common law principles of negligence, causation and the relevant statutes and time limitations;
• When appropriate, identifies available defences and considers admissions of liability, grounds for privilege, third party proceedings and cross claims;
• Obtains relevant details of the client’s pre-incident life, education, work history etc, the consequences of the injuries and the changes which the injuries have had on the client’s life i.e. the development of a “before and after” picture of the client; and
• Combines a professional attitude with objectivity, tolerance and thoroughness in obtaining information and evidence.

2.2 **Obtaining evidence on liability**

When gathering supporting information and evidence, the specialist personal injury solicitor:

• Demonstrates knowledge of the appropriate sources e.g. Police reports;
• Obtains factual reports and transcripts;
• Takes statements from all relevant witnesses as expediently as possible;
• Where deemed appropriate, engages experts and ensures reports of experts comply with requirements as set out in *Makita v Sprowles* (2001) 52 NSWLR 705, 713; *Dasreef Pty Ltd v Hawchar* (2011) HCA 21 and the Expert Witness Code of Conduct;
• Where necessary attends the scene of the accident, as expediently as possible; and
• In CTP cases considers “blameless accidents”.

1998 (NSW);
2.3 Obtaining appropriate medical evidence

The specialist personal injury solicitor:

- Obtains medical information from hospitals, the ambulance services, treating doctors and seeks opinion from qualified medico-legal experts;
- If necessary, conducts an investigation of previous medical history;
- Obtains details of the likely cost of any future treatment and care;
- Updates this information in response to regular monitoring of the progress of the medical condition by treating doctors or other health professionals, including rehabilitation programs;
- Is familiar with medical terms, technology and the medical experts who are available to give medical opinions;
- Ensures that the medical experts address the important questions of evidence e.g. causation;
- Where appropriate, qualifies a suitably qualified occupational therapist to assess the client's needs; and
- Ensures medical and non-medical experts certify as required by Schedule 7 of Uniform Civil Procedure Rules (UCPR).

2.4 Obtaining evidence of loss and damage

The specialist personal injury solicitor:

- Quantifies the claims for loss and damage by developing and contrasting a picture of the claimant's post-accident life, including future possibilities, with a "most likely to have been" picture of the claimant's pre-accident expectations and reasonable prospects;
- When appropriate, obtains details of employment history, income, ability, duties, prospects for promotion, redundancy and retirement, personnel records, professional qualifications and references, academic records, etc;
- If necessary, engages and qualifies an appropriate expert to assess past and future economic loss; and
- Where appropriate, arranges surveillance of plaintiff/applicant/claimant.

2.5 Using procedures to obtain additional facts/evidence

To obtain additional facts/evidence the specialist personal injury solicitor:

- Uses initiative and a knowledge of formal and informal procedures including:
  - Discovery before action; searches; Freedom of Information Act 1982 (Cth) to obtain hospital and other government records;
  - Subpoenas to produce documents; interlocutory proceedings e.g. discovery, interrogatories and notices to admit facts; and
  - Understands the various MACA Guidelines.
3. **Litigation strategy and Conduct of litigation**

3.1 **Assessing liability**

The specialist personal injury solicitor:

- Analyses the strengths and weaknesses of the client’s case in the light of the available facts and the current law;
- Considers the identity of the correct defendant, the probable evidence of the opponents, expert reports, probable defences, the possibility of third party proceedings and the likely availability, demeanor and credibility of all parties and witnesses;
- Assesses the likelihood of success;
- Certifies as to reasonable prospects of success, where applicable; and
- In CTP cases considers ‘**blameless accidents**’.

3.2 **Assessing compensation**

When assessing likely compensation the specialist personal injury solicitor:

- Adopts a realistic approach to the quantification of heads of damage and the calculation of entitlements and applies a knowledge of common law principles and legislation;
- Reviews precedents;
- Considers questions of insurance and the other party’s ability to pay;
- Evaluates the strength and extent of the medical evidence, based on knowledge of medical terminology and investigative procedures;
- Considers obligations and entitlements to provide and receive rehabilitation services;
- Considers the likely availability, demeanor and credibility of all parties and witnesses;
- Considers statutory limits of the *Workers Compensation Act 1987 (NSW)*, *Motor Accident Compensation Act 1999 (NSW)*, and *Civil Liability Act 2002 (NSW)* and other relevant legislation; and
- Understands the assessment of “a most extreme case” and “whole person impairment”.

3.3 **Determining the appropriate tribunal**

When determining the appropriate tribunal the specialist personal injury solicitor applies the principles regarding:

- The nature and quantum of causes of action;
- The appropriate jurisdiction;
- The advantages and disadvantages of various tribunals, including alternative dispute resolution, Claims Assessment and Resolution Service (CARS) assessments;
- The prerequisites to obtaining an exemption from CARS;
- Use of Medical Assessment Service (MAS) to adjudicate medical disputes in CTP cases
3.4 Considering tactics

The specialist personal injury solicitor:

- Determines when to proceed with, defer or attempt to settle a claim;
- Understands the commercial reality and assesses the strengths and weaknesses of the evidence on both liability and damage;
- If appropriate, uses any of the following to advance the client’s position:
  - Expedited hearings;
  - Split trials on liability and damages;
  - Interlocutory proceedings;
  - Offers of compromise/Calderbank letters;
  - Requiring experts to be available for cross-examination;
  - Seeking agreement on the quantum of various heads of damage;
  - Application for arbitration hearings;
  - Choice of venue;
  - Early service of medical reports;
  - Decide whether to proceed with a MAS assessment or review; as to the degree of whole person impairment or to delay assessment; and
  - Application for Special and General Assessment by CARS in cases.

3.5 Advising the client on a course of action

The specialist personal injury solicitor:

- Advises the client on possible courses of action, including alternative dispute resolution, need to compromise, settlement options; and the likely duration, cost and outcome of litigation;
- Considers joining other parties to the proceedings and time limitations;
- Remains objective and realistic; and
- Decides final strategy in consultation with the client.

4. Conducting litigation or assessment

4.1 Preparing or scrutinising documents

The specialist personal injury solicitor:

- Accurately prepares all necessary documentation in accordance with the rules of court, common law and statutory provisions;
- Ensures that documents reflect the client’s instructions or the terms of any agreement;
- Draws pleadings which identify all relevant parties and disclose proper causes of action, heads of damage or defences;
- If required, prepares documents for the appointment of tutor/next friend; and
- Prepares applications for assessment by CARS and MAS.
4.2 Briefing counsel

The specialist personal injury solicitor:

- Considers whether briefing counsel is appropriate;
- Briefs counsel who is skilled in the appropriate field in appropriate cases;
- Takes an active role in liaison between the client and counsel;
- Monitors the presentation of the case;
- Does not abdicate to counsel responsibility for preparing the case and advising the client; and
- Scrutinises counsel’s fee agreement

4.3 Reviewing evidence

The specialist personal injury solicitor regularly:

- Reviews the file to ensure the preservation of evidence and updates evidence of loss;
- Considers the opponent’s material;
- Reviews which reports will be used and which experts should be called as witnesses or be required for cross-examination; and calls on CCTV footage where applicable.

4.4 Calculating special damages

The specialist personal injury solicitor:

- Obtains particulars of and calculates the total of out-of-pocket expenses;
- Considers whether out-of-pocket expenses are reasonable and necessary and arise out of the injury;
- Applies relevant and up to date principles and statutory provisions to the calculation of all heads of special damages e.g. principles relevant to the assessment of domestic assistance and care;
- Considers and calculates entitlement to interest, for example, social security refund formula;
- Checks what medical expenses have been paid by the insurer;
- Checks which medical accounts remain unpaid; and
- Checks workers compensation refunds and other possible refunds.

4.5 Assessing general damages/Non Economic Loss

When assessing damages the specialist personal injury solicitor:

- Applies common law principles, statutory provisions and comparable verdicts.

4.6 Assessing future loss

The specialist personal injury solicitor:

- Considers and calculates the various heads of damages in relation to future loss, including loss of income, medical and rehabilitation costs, the value of care provided voluntarily and/or commercially, the recurring costs of special equipment, home and transport modifications; and
- Applies the appropriate discount rates and actuarial tables and takes into account adverse contingencies, the vicissitudes of life and life expectancy, and deferrals of loss.
4.7 Negotiating settlement

The specialist personal injury solicitor:

- Demonstrates an appreciation of when and how to negotiate;
- Understands the advantages/disadvantages of acceptance/rejection of Offers of Compromise/Calderbank letters;
- Assesses the known attitude and likely approach of the other parties and the strength of the opponent’s case;
- In appropriate cases, considers structured settlements;
- Advises client on social security implications;
- Advises client on Centrelink, NDIS and Medicare requirements;
- Advises client of solicitor/client and party/party costs; and
- In CTP cases specifically considers the claimants ‘most likely future circumstances’.

4.8 Preparing and conducting hearing

The specialist personal injury solicitor:

- Marshals the evidence;
- Issues subpoenaes;
- Confers appropriately with counsel;
- Determines availability of witnesses;
- Ensures adequate representation with counsel at hearing;
- Ensures efficient and considerate calling of witnesses;
- Keeps the client informed; and
- Advises the client on prospects of appeal/re-hearing.

4.9 Finalising matter

The specialist personal injury solicitor:

- Ensures all court documents, terms of settlement and forms of judgment are properly prepared and filed;
- Seeks court approval when necessary;
- Notifies proper authorities, including Centrelink, NDIS and Medicare;
- Advises the client of relevant dates, for example, payment of interest, rehearing or appeal, and any other arrangements which need to be made;
- Takes steps to ensure that verdict or settlement monies are paid promptly;
- Records instructions with regard to finalisation of the claims;
- Pays all outstanding accounts/expenses;
- Prepares final accounts and complies with proper accounting procedure;
- Where appropriate promptly prepares and sends assessment of costs; and
- Claims interest on outstanding judgments when not paid within time.
B. 2 KNOWLEDGE AREAS

PLEASE NOTE: All assessments will be based on the law and procedures applicable as at early May 2014.

Candidates will be expected to display a working knowledge of all the following core areas:

1. Motor Vehicle Accident claims;
2. Public Liability cases;
3. Workers compensation and work injury damages claims;
4. Medical Negligence cases; and
5. Dust Diseases.

1. MOTOR VEHICLE ACCIDENT CLAIMS

The specialist personal injury solicitor has an in-depth knowledge of the Motor Accidents Compensation Act 1999 (NSW), (and the Motor Accidents Compensation and Assessment Guidelines).

The specialist personal injury solicitor is expected to display a working knowledge of:

- Advises the client about and carefully monitors time frames e.g. 6 months to lodge a claim form;
- Complies with all statutory provisions concerning the lodgment of the claim form and the provision of all relevant particulars to the insurer;
- Advises the client about liability;
- Considers whether the claim is exemptible from CARS;
- Considers the likely level of compensation and advises the client in respect of settlement;
- Determines whether there is a dispute as to percentage of whole person impairment (WPI);
- Obtains opinions in support of a WPI assessment and arranges for WPI to be assessed by MAS if the insurer fails to concede that the injuries constitute a greater than 10% WPI and the solicitor is of the view the claimant may have a WPI of greater than 10%;
- Considers MAS assessments and potential for review;
- Marshals evidence for CARS application and assessment;
- Prepares written submissions for CARS;
- Complies with directions given by CARS Assessors;
- Considers the prospects of commencing court proceedings post CARS and advises client as to potential cost penalties;
- Has an understanding of Claims Handling Guidelines, AMA 4th Edition and MAA Impairment Assessment Guidelines;
- Has detailed knowledge of the Claims Assessment Guidelines and Medical Assessment Guidelines;
- Is aware of the operation and availability of the Lifetime Care & Support Scheme (LTCS);
- Considers “blameless accidents”; and
- Considers claimants most likely future circumstances.

2. PUBLIC LIABILITY

The specialist personal injury solicitor is expected to display a working knowledge of:

- Is aware of the applicable common law principles with respect to occupier's liability, together with the provisions and the ambit of operation of the Civil Liability Act 2002 (NSW) [CLA];
- Is familiar with leading cases on occupier's and public authorities liability, including road authorities, and the statutory modification of common law principles;
- Determines the areas of investigation to garner evidence to mount or meet a claim for damages;
- Evaluates medical information to advise the prospective Plaintiff or Defendant as to legal costs limitations under the *Legal Profession Act 2004* (NSW) and implications for costs recovery by the prospective Plaintiff;
- Evaluates medical, lay and expert evidence to assess the solicitor’s obligations in signing a Certificate under s 347 of the *Legal Profession Act 2004* (NSW);
- Advises clients as to prospects of success, associated risks and judicial interpretation (particularly by the NSW Court of Appeal) of similar claims;
- Obtains instructions to proceed with or defend claims and obtains appropriate expert evidence to support or meet claims; and
- Calls on CCTV footage where applicable.

3. **WORKERS COMPENSATION & WORK INJURY DAMAGES**

The specialist personal injury solicitor is expected to display a working knowledge of:

- The heads of damages available;
- Thresholds;
- Procedural requirements;
- *Workers Compensation Act 1987* (NSW);
- *Workplace Injury Management and Workers Compensation Act 1998* (NSW);
- *Workers Compensation Commission Rules 2011* (NSW);
- *Law Reform (Miscellaneous Provisions) Act 1946* (NSW);
- *Work Cover Guides for Evaluation of Personal Injury (3rd Edition)*;
- *AMA Guides to the Evaluation of Permanent Impairment (5th Edition)*; and
- Is aware of the requirement to obtain funding from the Work Cover Independent Review Office (WIRO).

4. **MEDICAL NEGLIGENCE**

The specialist personal injury solicitor is expected to display a working knowledge of:

- Is familiar with the applicable common law principles with respect to medical negligence for both informed consent and treatment error claims and the relevant provisions of the *Civil Liability Act 2002* (NSW);
- Is familiar with leading cases on medical negligence and the statutory modification of common law principles;
- Is familiar with the general provisions of the CLA regarding breach of duty, causation and damage;
- Is able to access medical records from public and private hospitals, medical practitioners (under State and Federal Privacy legislation) and is aware of pre-trial discovery provisions under UCPR;
- Is familiar with Supreme and District Court practice notes and rules concerning professional (medical) negligence matters including expert witness briefing protocols;
- Determines the areas of investigation to garner expert evidence on breach, causation and damage to mount or meet a claim for damages;
- Evaluates medical information to advise the prospective Plaintiff or Defendant as to legal costs limitations under the *Legal Profession Act 2004* (NSW) and implications for costs recovery by the prospective Plaintiff;
- Evaluates medical lay and expert evidence to assess solicitor’s obligations in signing Certificate under s 347 of the *Legal Profession Act 2004* (NSW); and
- Advises clients as to prospects of success, associated risks and judicial interpretation of similar claims.
5. **DUST DISEASES**

The specialist personal injury solicitor is expected to display a working knowledge of:

- How to investigate a claimant’s exposure history;
- How to locate relevant insurance of a defendant;
- Principles of foreseeability, breach of duty, causation and apportionment as they apply to dust litigation;
- The main types of dust diseases;
- Procedural requirements of the Claims Resolution Process, including Contributions Assessment;
- How to manage disputes about insurance;
- Heads of damage and the Tribunal’s approach to each (including the relevance of Dust Diseases Board Benefits); and
- Appeal rights.

**B 2.1 GENERAL CORE KNOWLEDGE**

**COMMON LAW PRINCIPLES**

Common law principles as modified by statute:

1. **Liability in negligence**
   1.1 **The duty of care**
      - General principles for establishing a duty of care, particularly in novel cases; and
      - Variations to common law principles in statutes relating to product liability, CTP claims, public liability, workplace injuries, “blameless accidents” and medical negligence claims.
   1.2 **Breach of duty and the standard of care**
      - The standard of care - general principles; issues of foreseeability; probability and magnitude of risk etc; professional standards, including the relevance of common practice; and circumstances impacting on the standard of care;
      - Proof of negligence - general principles and the onus of proof; contributory negligence; res ipsa loquitur; and
      - **Civil Liability Act 2002** (NSW).
   1.3 **Damage**
      - Causation of damage - general principles and tests of causation; intervening actions; and
      - Remoteness of damage - general principles.

2. **Liability in public nuisance**

3. **Liability in assault and battery and for some intentional acts excluded from the Civil Liability Act**

4. **Liability in contract**
5. Defences

5.1 Voluntary assumption of risk
5.2 Contributory negligence
5.3 Intoxication
5.4 Disclaimers and exclusion of liability (Competition and Consumer Act 2010 (Commonwealth) Part VI B)
5.6 Fraud and misleading statements and conduct
5.7 Illegality
5.8 Failure to mitigate loss
5.9 Civil Liability Act 2002 (NSW)

6. Assessment of damages

6.1 Special damages
- Medical expenses; modified accommodation; care and respite care; transport, cost of equipment and aids and increased costs of holidays.

6.2 General damages (Non-economic loss)
- Pain and suffering; loss of amenity and enjoyment of life; loss of expectation of life; disfigurement.

6.3 Economic loss
- General principles regarding loss of income claims;
- Statutory caps on loss of income claims; and
- Use of actuarial tables including deferred calculations and life expectancy tables.

6.4 Particular issues
- Voluntary care; interest on awards; overlap with other claims; contributory negligence of claimant or third party; statutory limitations; and
- Cost of funds management.

6.5 Compensation to relatives claims
- Loss of expectation of financial support;
- Loss of domestic services; and
- Apportionment of damages.

7. Choice of Law
- Choice of law rules applicable in interstate and international accidents.
8. **Time limitations**

8.1 **Common law principles as to when cause of action arises, e.g. with the onset of disease**

8.2 **Statutory limitations and notice provisions**

**COURT PROCEEDINGS**

1. **Case Management**
   - Commencement of proceedings (including consideration of appropriate Jurisdiction and bars to litigation);
   - Serving originating process;
   - Defences;
   - Timetables;
   - Statements of particulars;
   - Applicable Practice notes;
   - Professional negligence lists;
   - Pre-trial conferences/status conferences/call overs;
   - Arbitration hearings and mediations;
   - Service medical reports/experts’ reports; and
   - Mediation, Conciliation & Arbitration.

2. **Defence of proceedings**
   - Appearances and defences;
   - Third Party Notices;
   - Cross claims;
   - Specific pleadings; and
   - Applications for security for costs.

3. **Interlocutory procedures**
   - Discovery;
   - Interrogatories;
   - Subpoenas;
   - Notices to Produce; and
   - Notices to Admit.

4. **Pre-trial procedures**
   - Service of medical and/or experts’ reports;
   - Preparation of chronologies;
   - Preparation of schedules of out-of-pocket expenses and medical reports;
   - Agreements on heads of damages; and
   - Compulsory settlement conferences.
5. Special procedures in cases of legally disabled

- Tutor documents;
- Appointment of trustee;
- Settlement of claims for "legally" disabled; and
- Appointment of a trustee.

6. Settlement procedures

- Pre-trial conferences/issues and listings conferences/final conferences;
- Mediation, Conciliation and Arbitration;
- Preparation of terms of settlement/orders for judgment;
- Authorities to receive; and
- Written instructions.

7. Procedures for judgment

- Obtaining default judgment; and
- Preparing terms of settlement and orders for judgment.

8. Re-hearing/appeals

- Leave to appeal from interlocutory judgments;
- Leave to appeal from District Court and Workers Compensation decisions;
- Requests for re-hearing from arbitrations;
- Appeals to Court of Appeal from District Court and Supreme Court; and
- Applications for leave to appeal to the High Court.
B.2.2 CORE LEGISLATION

Assessment tasks may refer to the following legislation. All legislation is enacted in New South Wales unless otherwise indicated.

1. Civil Liability Act 2002 (NSW)
2. Civil Procedure Act 2005 (NSW) and Uniform Civil Procedure Rules 2005 (NSW)
3. Companion Animals Act 1998 (NSW)
4. Commonwealth Employees Rehabilitation and Compensation Act 1988 (Cth)
5. Compensation to Relatives Act 1897 (NSW)
6. Competition and Consumer Act 2010 (Cth) Part VI B
   - Section 68 B
   - Part VA liability for products
7. Employees Liability Act 1991 (NSW)
8. Law Reform (Miscellaneous Provisions) Act 1944 (NSW)
   - Part 2 survival of actions on the death of plaintiff or defendant, limitations on damages
   - Part 3 nervous shock claims. (Note Schedule 1, Clause 11 of the Civil Liability Act 2002 (NSW) in respect of Part 3)
   - Section 5: proceedings against and contributions between joint and several tortfeasors
10. Law Reform (Miscellaneous Provisions) Act 1965 (NSW)
11. Law Reform (Vicarious Liability) Act 1983 (NSW) (as amended)
12. Legal Profession Act 2004 (NSW)
13. Limitation Act 1969 (NSW)
14. Motor Accidents Compensation Act 1999 (NSW)
15. Transport Administration Act 1988 (NSW), Section 121
16. Workers’ Compensation Act 1987 (NSW), Sections 151AAA, 151AB, Division 7 of Part 7 (Insurers’ Guarantee Fund)
17. Workplace Injury Management and Workers Compensation Act 1998 (NSW)
B.2.3 NON CORE LEGISLATION

Candidates should also be aware of the general provisions of these Acts but assessment tasks may not directly refer to them.

1. Animals Act 1977 (NSW)
2. Choice Of Laws (Limitation Periods) Act 1993 (NSW)
3. Civil Aviation (Carriers Liability) Act 1959 (Cth)
4. Civil Aviation (Carriers Liability Act) 1967 (NSW) Section 5
5. Crimes (Administration of Sentences) Act 1999 (NSW) (as amended)
6. Dust Diseases Tribunal Act 1989** (NSW)
7. Dust Diseases Tribunal (Standard Presumption-Apportionment) Order 2005 (NSW)
8. Dust Diseases Tribunal Regulation 2013 (NSW)
9. Dust Diseases Tribunal Rules 1990 (NSW)
11. Health Records and Information Privacy Act 2002 (NSW)
12. NSW Trustee & Guardian Act 2009 (NSW)
15. Victims Rights and Support Act 2013 and Regulation 2013 (NSW)
16. Workers’ Compensation (Dust Diseases) Act 1942 (NSW)
17. Work Health and Safety Act 2011 (Cth)
C. METHODS OF ASSESSMENT

C.1 MOCK FILE

Candidates will be given a mock file and will be required to complete specific tasks, which may include instigating inquiries, preparing pleadings, drafting a letter of advice including a detailed assessment of liability and damages. The mock file will assess the candidate’s ability to deal with more complex issues. Candidates will choose from one of the following core areas:

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<thead>
<tr>
<th>DEFENDANT/INSURER</th>
<th>PLAINTIFF/CLAIMANT</th>
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<tbody>
<tr>
<td>1. Motor Accident</td>
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<tr>
<td>2. Public Liability</td>
<td>2. Public Liability</td>
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<tr>
<td>4. Medical Negligence</td>
<td>4. Medical Negligence</td>
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<tr>
<td>5. Dust Diseases</td>
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</table>

Distribution Date: Wednesday 21 May 2014
Due Date: Wednesday 11 June 2014*

*(Please note: Late assessments will not be accepted, unless a formal extension of time has been granted. Please refer to the 2014 Guide to Application and Assessment for more detailed information).

ASSESSMENT CRITERIA

In your response you will be assessed on the following performance criteria. You will be required to perform each criterion to the level of the performance standard.

(A) Ability to identify relevant issues from a given fact situation
(B) Ability to provide practical, clear realistic and accurate advice
(C) Depth of knowledge of the law and skill in applying that knowledge to the given fact situation
(D) Knowledge of procedural rules and practices
(E) Use of clear and concise language

C.2 WRITTEN EXAMINATION

In 2014 the Personal Injury Law Written Exam will consist of:

Part A

Contains 2 (unseen) problem questions, i.e. hypothetical cases, in which candidates will be asked to advise the parties on matters such as possible causes of action, possible defences, appropriate jurisdiction, relevant legislation. The cases will cover the core areas of motor accidents, industrial accidents and civil liability generally.

Part B

Contains up to 20 questions out of a pool of up to 80. The 80 questions will be issued to candidates approximately two weeks in advance of the examination. The questions will require short answers ranging from a few lines to a maximum of half a page. These questions will examine basic knowledge and understanding of legal principles and statutes, the calculation of damages including use of actuarial tables, and medical terminology.

The examination will be a 3 hour closed book exam, plus reading time.

Date: Saturday 26 July 2014
Venue: The Law Society of NSW
ASSESSMENT CRITERIA

In your response you will be assessed on the following performance criteria. You will be required to perform each criterion to the level of the performance standard.

(A) Identify accurate knowledge of law
(B) Identify relevant issues given the facts
(C) Provide concise and clear advice
(D) Knowledge of procedural rules and practices

C.3 PEER INTERVIEW

Candidates will be interviewed by a panel of two assessors, in which they will be questioned as to how they would deal with a typical professional situation in order to assess the applicant’s understanding of the area, their ability to plan and to communicate ideas as well as their capacity to run matters efficiently and any office/file management and ethical issues. Assessment may include any of the performance standards, and refer to work presented in the mock file.

Date: Sunday 27 July 2014
Venue: The Law Society of NSW

Candidates will be notified of their interview time in mid-July.

ASSESSMENT CRITERIA

In your response you will be assessed on the following performance criteria. You will be required to perform each criterion to the level of the performance standard.

(A) Acknowledgement of errors in mock files
(B) Ability to defend your position
(C) Demonstrate knowledge and understanding
(D) Ethics; demonstrate an understanding of required professional standards
(E) Clear communication
(F) Presentation