

Specialist Accreditation



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1992-2017

2017 Criminal Law Assessment Requirements



THE LAW SOCIETY
OF NEW SOUTH WALES

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Performance Standard

Standard of Accredited Specialist

The Standard of an Accredited Specialist in Criminal Law is that of a 'specially competent practitioner' (the specialist) in the core skills and practical capabilities in the 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 Program requires the highest technical legal knowledge across all aspects of the selected area of practice.

Important

Candidates are advised to read and familiarise themselves with the 2017 Guide to Application and Assessment which contains important information regarding application, process, resources and special consideration etc. This document can be found at: lawsociety.com.au/specialists

Timetable

The shaded area below shows the core assessment period including the dates associated with each assessment.

Candidates need to focus on this core assessment timeframe and plan their workload well in advance.

Based on feedback reports from previous years, candidates are encouraged to dedicate and manage their time during this period to optimise their performance across all 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.

Activity	Date
Question & Answer sessions for potential candidates	February 2017
Applications for Specialist Accreditation close	Monday 10 April 2017
Candidature confirmed	Week commencing 8 May 2017
Take Home Written Exam	Released: Wednesday 17 May 2017 Due: Wednesday 7 June 2017
Mock Hearing	Released: Wednesday 28 June 2017 Assessment: Saturday 15 July 2017
Briefing	Sunday 16 July 2017
Results released to candidates	Late October 2017
Reassessment and/or Appeal applications close	14 days from notification of results
Reassessment results released	December 2017
Appeal results released	January 2018

Core Skills and Knowledge Areas

Core Skills

Practitioners wishing to become an Accredited Specialist in Criminal Law should be able to demonstrate the following skills to the level of the performance standard.

1. Gathers and marshals information to conduct the case by:

1.1 Eliciting information from the client and witnesses / eliciting information from law enforcement officers and witnesses

The specialist elicits information from the client and witnesses. The specialist uses different communication techniques for different types of clients and witnesses including children and the intellectually impaired and uses an interpreter where warranted. The gathering of information is conducted in a way which demonstrates (a) preparation and; (b) knowledge of the relevant substantive law, policy and procedure. If necessary the solicitor is able to perform in difficult circumstances and/or time constraints, such as in a police station and at all times displays a tolerance and understanding of the client, and an ability to give on the spot advice.

1.2 Obtains information from other sources

The specialist uses appropriate sources of information. The specialist displays knowledge of the use of investigators and expert witnesses and is skilled in relevant procedures, for example drafting subpoenas and particulars. The specialist demonstrates good organisational skills and a methodical approach to problem solving.

2. Plans and advices by:

2.1 Identifying legal effect of facts

The specialist develops a strategy after analysing the facts in light of the relevant law, procedure and policy including the law of the relevant charge, statutory and common law defences and the law of evidence. The specialist is able to identify the critical issues and to assess the merits of the case.

2.2 Communicating all available options of plan of action at all stages

The specialist informs relevant parties of the options available and a tentative plan which, where possible, offers practical recommendations and alternatives. This should include, for a client as a defendant, the ability to plan and recognise the client's objectives, and special needs such as health, linguistic and cultural needs, and make proper use of community resources such as medical, interpretation and community assistance.

The specialist identifies and communicates a clear understanding of the issues, rights, risks, relevant policies, obligations and any conflict of interest in the course of a prosecution. As appropriate, a final plan is developed in collaboration with the client.

3. Implements plan by:

3.1 Preparing documentation

The specialist accurately prepares documentation in accordance with policy, procedure and practice notes. The specialist has an ability to act promptly and effectively when required.

3.2 Dealing with interested parties

The specialist negotiates effectively with the police, prosecuting authorities and defence solicitors, counsel and liaises as appropriate with support agencies, court administrators, other professionals, victims and solicitor legal representatives for any co-accused.

4. Represents client/public by:

4.1 Promoting the client's case through skilful advocacy or representing the public interest through skilful advocacy

When appearing, the specialist identifies the crucial issues of the case and seeks to appropriately address deficiencies in the case. The specialist employs knowledge of procedural, evidentiary and substantive law to present the case and to assist in the strategic planning of evidentiary issues, such as examination in chief, cross-examination and re-examination. The manner of the specialist reveals an understanding of hearing etiquette, tolerance to adverse comment and ability to work effectively under pressure. The specialist demonstrates a mastery of plea-making.

4.2 Organising presentation of cases

The specialist conducts matters efficiently by organising all relevant witnesses (including experts), documentary and other evidence.

4.3 Instructing Counsel

The specialist recognises when to brief counsel and which counsel to brief. The brief to counsel will include observations on procedural, evidentiary and substantive issues. The specialist actively participates in the preparation of the case and takes an active role in conferences and the presentation of the case. The specialist provides good administration support, including organising witnesses and other material. The specialist acts as an effective liaison between counsel and the client / law enforcement officer/agency and witnesses and monitors court proceedings and activities.

Knowledge Areas

Practitioners wishing to become accredited in Criminal Law should be able to display knowledge of the law, practice and procedure, ethical considerations, and any relevant policy considerations, including any significant proposed changes which underpin the performance of tasks in the area of practice, for example as set out below:

Law

- Law of entry, search and seizure
- Law relating to listening devices, telecommunications interception and electronic warrants
- Law enforcement controlled operations
- Law relating to arrest
- Law and practice relating to bail
- Evidence law
- Sentencing law and principles (State and Commonwealth)
- Mental health issues and the criminal law (State and Commonwealth)
- DNA evidence
- Law relating to disclosure
- Proceeds of crime legislation (State and Commonwealth)
- Domestic Violence Act
- Criminal groups offences
- Criminal Law in Children's Court

Practice and procedure

- Bail applications and reviews
- Summary hearings
- Committal hearings
- Jury/judge alone trials
- Applications on interlocutory matters
- No Bill submissions/charge negotiation
- Requests for particulars, answering particulars
- Conducting sentences across all jurisdictions
- Cost applications
- Evidence Act 1995
- Written submissions
- Appellate procedures

- Proceedings before inquisitorial bodies, for example: Royal commissions, coroners, Australian Crime Commission, NSW Crime Commission, Independent Commission Against Corruption, State Parole Authority and Police Integrity Commission
- Criminal procedure legislation and relevant practice notes

Ethics and policy

- Prosecution policies and guidelines
- Relevant Revised Professional Conduct and Practice Rules (2013)

Suggested Reading Materials and Resources

Books

- Bagaric, M., *Ross on Crime* (Thomson Reuters, 7th ed., 2016)
- Blackmore, M., and Hosking, G., *New South Wales Criminal Law 2016* (Thomson Reuters, 2016)
- Chhabra, A., *Exclusionary Provisions in the Uniform Evidence Law* (Thomson Reuters, 2015)
- Freckelton, I., and Selby, H., *Expert Evidence: Law, Practice & Advocacy* (Thomson Reuters, 5th ed, 2013)
- Heydon, J. D., *Cross on Evidence* (LexisNexis, 10th ed, 2014)
- Odgers, S., *Uniform Evidence Law* (Thomson Reuters, 12th ed, 2016)
- Williams, N., Anderson, J., Marychurch, J., and Roy, J., *Uniform Evidence in Australia*, (LexisNexis, 2015)

Online and loose-leaf

- LexisNexis, ABC of Evidence (1995 – updated regularly)
- LexisNexis, *Australian Criminal Trial Directions* (1995)
- Thomson Reuters, *Australian Sentencing*, (2011)
- LexisNexis, *Criminal Practice and Procedure NSW* (updated annually)
- LexisNexis, *Federal Criminal Law* (2013)
- Thomson Reuters, *Federal Offences* (2012)
- Thomson Reuters, *Criminal Procedure NSW* (2012)

Online

- Children's Court of NSW Resource Handbook <http://jirs.judcom.nsw.gov.au/menus/bbks.php>
- Criminal Trial directions bench book <http://jirs.judcom.nsw.gov.au/menus/bbks.php>
- Judicial Commission of NSW website <http://jirs.judcom.nsw.gov.au/>
- Local Court bench book <http://jirs.judcom.nsw.gov.au/menus/bbks.php>
- Sentencing bench book <http://jirs.judcom.nsw.gov.au/menus/bbks.php>

Methods of Assessment

There are three methods of assessment - a Take Home Written Exam, Mock Hearing and a Briefing. The three areas of assessment are weighted equally. Candidates must pass **all three** assessments to achieve Specialist Accreditation.

Take Home Written Exam

Release date: Wednesday 17 May 2017

Due date: Wednesday 7 June 2017

Candidates will be required to complete a Take Home Written Exam. The exam will be subject to strict time and word limits and will assess the candidate's ability to address matters in practice. The written exam will assess a variety of core skills and knowledge areas which may include preparation of documents, knowledge of procedures, and the identification and application of legal principles.

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. Sound knowledge of State and Commonwealth criminal legislation and related case law;
- b. Sound knowledge of the *Evidence Act 1995* (Cth) and related case law;
- c. Sound knowledge of criminal procedural practices;
- d. Sound knowledge of relevant investigative and prosecution policies;
- e. Ability to identify the relevant legal issues from a given set of facts;
- f. Ability to apply legal principles to a given set of facts;
- g. Ability to draft documentation relating to a given fact situation;
- h. Ability to draft written submissions relating to a given fact situation;
- i. Ability to apply a knowledge of criminal procedural practices to a given fact situation;
- j. Ability to apply a knowledge of relevant investigative and prosecution policies to a given fact situation;
- k. Ability to provide concise and clear advice;
- l. Demonstrate a knowledge of recent developments in criminal law; and
- m. Ability to keep within the word limit set in an assessment task.

Mock Hearing

Date: Saturday 15 July 2017

Venue: TBC*

Candidates will be assessed on their advocacy ability. The mock hearing will involve the presentation of a matter in a mock court. There will be the option for a defence or prosecution role.

The mock hearing is designed to assess a range of core skills and knowledge areas with particular emphasis on the skills and knowledge required for the presentation of a case in court.

The mock hearing scenario will be released to candidates two weeks prior to the mock hearing assessment date:

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.

1. Presentation skills including:

- a. Observe appropriate etiquette, procedure and protocol, including court attire;
- b. Demonstrate effective organizational skills at the bar table;
- c. Present the facts in issue in a clear and methodical manner; and
- d. Make a logical and appropriate presentation of the facts and evidence, including the ability to respond to any variations which may arise on the day or during the course of the hearing.

2. Evidence, research and argument skills including:

- a. Show understanding of the key issues;
- b. Make accurate and persuasive submissions on issues of fact and law;
- c. Identify and apply the relevant legislation and case law;
- d. Tender materials that are relevant; and
- e. Use external sources of information effectively.

**All candidates will be advised of the mock hearing time and venue prior to the assessment date.*

Briefing

Date: Sunday 16 July 2017

Venue: TBC*

Candidates will be required to make a presentation to a panel of assessors, lasting up to 30 minutes. Candidates will be given 1.5 hours prior to their presentation to study a file. Candidates are not permitted to bring any resources with them; all relevant preparation materials will be provided on the day. Candidates will then 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 assessors. Candidates will need to identify the strengths and weaknesses of the case and what advice they would give their client. Candidate will be provided with full instructions prior to the assessment date.

Assessment Criteria

- a. Identify relevant issues and law;
- 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 adoption of a course of action;
- g. Exercise realistic forensic judgement; and
- h. Formulate advice to the client

*All candidates will be notified of time and venue prior to the assessment date.