

Specialist Accreditation Scheme



2020 Children's 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 Children's Law is that of a *specialty competent practitioner* 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 Scheme requires the highest technical legal knowledge across all aspects of the selected area of practice.

Knowledge Areas and Core Skills

Solicitors wishing to be accredited in Children's Law should be able to:

- Display knowledge of the law and procedure which underpins the performance of any tasks related to the care or crime jurisdiction; and
- Demonstrate the required skills to the level of the performance standard.

In addition, candidates must select **one** of the relevant Children's Law sub-specialties from the below two options:

- Child Representation in either care and protection or crime; and
- Other Parties Representation in care and protection.

Candidates should be able to demonstrate, to the level of the performance standard, an in-depth knowledge of relevant principles, law and procedures. This knowledge underpins the performance of tasks in a wide range of areas which a Children's Law specialist can be expected to encounter in the ordinary course of a practice, with a particular emphasis on their chosen sub-specialty.

Note: In the remainder of this document, the word 'child' includes 'young person' as defined in the *Children and Young Persons (Care and Protection) Act 1998*.

Important

Candidates are advised to read and familiarise themselves with the 2020 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	3 – 5 March 2020
Applications for Specialist Accreditation close	27 March 2020
Candidature confirmed	Week commencing 4 May 2020
Take Home Assessment	Released: 13 May 2020 Due: 3 June 2020
Simulated Interview	Saturday, 8 August 2020
Mock Hearing	Saturday, 8 August 2020
Results released to candidates	Early October 2020
Reassessment and/or Appeal applications close	14 days from notification of results
Reassessment results released	December 2020
Appeal results released	December 2020

Knowledge Areas

Candidates should be able to demonstrate special competence in the relevant case and statute law regarding either the care and protection jurisdiction or criminal law relating to children, a general familiarity with the relevant case and statute law relating to family law and civil areas and in particular where and how these areas can overlap with the care and crime jurisdictions. Where either legislation or cases are listed, candidates should not assume that these cases or legislation are exhaustive of all of the principles that relate to the topic.

This material is prepared as at December 2019. In the event that any new legislative reforms become effective before the date of assessment, solicitors are required to be aware of the changes resulting from the legislation.

Note: This section refers to both specific legislation and areas of law with which you should be familiar. To assist candidates, a description of the levels of advanced and general knowledge as used in the Knowledge Areas is set out below.

Advanced Knowledge

The candidate is expected to demonstrate a solid understanding of the law and practice in these areas.

General Knowledge

The candidate is expected to demonstrate a general understanding of the law and practice in these areas to recognise where there is an issue arising and where to refer for further advice/assistance.

1. Child representation

All candidates will be required to demonstrate **advanced** knowledge of the different modes of representation in the care and protection jurisdiction for children of varying ages and when each may be applicable, as well as of options available when a child client may not have capacity to give instructions.

All candidates will be required to demonstrate **advanced** knowledge of the relevant professional standards when solicitors appear for children in the care and protection jurisdiction, including an **advanced** understanding of:

- Law Society of New South Wales publication – Representation Principles for Children's Lawyers [4 Edition 2014: accessible by following the link under "Children's Legal Issues" at: <http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/026517.pdf>
- General rights and obligations of child representatives
- United Nations Convention on the Rights of the Child (CROC).

Candidates in the Child Representation sub-specialty will be required to demonstrate practical steps they can take to ensure they are acting in a manner consistent with relevant professional standards in appearing for children.

2. Court practice and procedure relating to child welfare

Candidates in both the care and crime streams require an **advanced** understanding of:

- *Children's Court Act 1987 (NSW)*
- *Children's Court Regulation 2014 (NSW)*
- *Children's Court Rule 2000 (NSW)*
- Children's Court practice and procedure, including Practice Notes, Protocols, and Guidelines
- District Court practice and procedure, including relevant Practice Notes, legislation and caselaw relating to appeals
- Supreme Court practice and procedure, including relevant Practice Notes, legislation and case law relating to the original, statutory and supervisory jurisdictions of the Supreme Court
- *Civil Procedure Act 2005 (NSW)*
- *Uniform Civil Procedure Rules 1995 (NSW)*
- *Administrative Decisions Review Act 1997 (NSW)*
- *Civil and Administrative Tribunal Act 2013 (NSW)*
- *Community Services (Complaints, Reviews and Monitoring) Act 1993 (NSW)*
- NSW Model Litigant Policy for Civil Litigation

- Memorandums of Understanding
 - The memorandum of understanding between the Family Court of Australia and the NSW Department of Communities and Justice
 - The memorandum of understanding between the Federal Circuit Court of Australia and the NSW Department of Communities and Justice
- The Ombudsman's 'Joint Protocol for Young People in residential Out of Home Care'

3. Child welfare law

Candidates in the care stream should demonstrate an **advanced** understanding, and candidates in the crime stream require a general understanding of:

- *Children and Young Persons (Care and Protection) Act 1998* (NSW)
- *Children and Young Persons (Care and Protection) Regulation 2012* (NSW)
- *Children (Protection and Parental Responsibility) Act 1997* (NSW)
- *Adoption Act 2000* (NSW)
- *Family Law Act 1975* (Cth), in relation to:
 - Dealing with matters involving child abuse allegations
 - Parental responsibility and parenting orders
 - Recovery and enforcement orders
 - Representation of children
 - Court sanction of medical procedures
 - International child abduction
- *Education Act 1990* (NSW)
- *Child Protection (Working with Children) Act 2012* (NSW)
- *Crimes (Domestic and Personal Violence) Act 2007* (NSW)
- *Ombudsman Act 1974* (NSW)
- *Status of Children Act 1996* (NSW)
- Law relating to warrants and enforcement
- Relevant case law relating to child welfare
- Role of the Children's Guardian in the administration of the WWCC and the regulation and accreditation of OOHC and adoption services

4. Criminal law

Candidates in the crime stream require an advanced understanding of the following, and candidates in the care stream must demonstrate general understanding of the interactions between the criminal and care and protection jurisdictions:

- *Bail Act 2013* (NSW)
- *Crimes Act 1900* (NSW)

- *Young Offenders Act 1997* (NSW)
- *Children (Criminal Proceedings) Act 1987* (NSW)
- *Children (Protection and Parental Responsibility) Act 1997* (NSW)
- *Crimes (Domestic and Personal Violence Act) 2007* (NSW)
- *Crimes (Forensic Procedures) Act 2000*
- Special presumptions in relation to children:
 - Doli incapax
 - Procedure for police interviews
- Practice and Procedure in the Children's Court including:
 - Sentencing principles
 - Special programs for children
 - Availability of Legal Aid

5. Common law and Civil law

A **general** understanding of:

- *Minors (Property and Contracts) Act 1970* (NSW)
- *Social Security Act 1991* (Cth)
- *Anti-Discrimination Act 1977* (NSW)
- *Education Act 1990* (NSW)
- *Evidence Act 1995* (Cth)
- *Victims Rights and Support Act 2013* (NSW)
- Role of a lawyer in using alternative dispute resolution options in civil complaints
- Negligence/civil claims

6. Immigration

A **general** understanding of:

- Framework of the *Migration Act 1958* (Cth) as it relates to residency visas and citizenship
Migration Regulations 1994
- *Immigration (Guardianship of Children) Act 1946* (Cth)

Core Skills

All candidates must be aware of the nature and form of the basis upon which solicitors act for child clients in the care and protection jurisdiction and understand the nature and differences involved in each role.

1. **Develop a relationship with a client and take initial instructions and preferences**

All candidates must be aware of the nature and form of the basis upon which solicitors act for child clients in the care and protection jurisdiction and understand the nature and differences involved in each role.

- Candidates who have selected the **Child Representation** sub-specialty will be required to demonstrate:
 - Skill in developing rapport with a child client;
 - An ability to consider the capacity of a child client to give instructions; and
 - Practical steps they can take to ensure they are acting in a manner consistent with relevant law and professional standards when appearing for children.
- Candidates who have selected the **Other Parties Representation** sub-specialty will be required to demonstrate:
 - Skill in developing rapport with an adult client;
 - An ability to consider the capacity of an adult client to give instructions; and
 - Practical steps they can take to ensure they are acting in a manner consistent with relevant law and professional standards when appearing for adults.
- All candidates will demonstrate skill in interviewing a child or adult client, depending on the sub-specialty selected, as well as practical steps that can be taken to assist the client to develop and maintain a solicitor/client relationship and to understand the nature of the proceedings.
- The solicitor should use language appropriate to the age, maturity and emotional needs, level of education, cultural context and degree of language proficiency of the client. The interview should be conducted in such a way that the gathering of knowledge from the client demonstrates preparation, knowledge of the facts of the case and of relevant substantive law, policy and procedure.
- The solicitor should advise the client of all relevant material including but not limited to:
 - The subject matter of the litigation;
 - Their rights and options;

- The purpose of the court attendance;
 - The solicitor's role;
 - The role of the other parties;
 - The limits, if any, of confidentiality;
 - The court system and what to expect in the legal process;
 - Possible outcomes and consequences for the child; and
 - Who else is involved and the nature of their role.
- Following the conclusion of the proceedings, the solicitor must ensure that the client is informed of the outcome of the proceedings and ensure to the fullest extent possible that the effect of any orders made is understood by the client.

2. Obtaining relevant information from sources other than the client

The solicitor will seek out other appropriate sources of information by:

- Conducting appropriate searches or making appropriate requests for documents and information from external bodies;
- Using skilled knowledge of other sources of information that may be available and identifying which experts or external supports may be available to assist the child client in the preparation of their case;
- Using court procedures to gather further evidence; and
- Where appropriate, obtaining corroborative evidence of instructions put by the child client.

The solicitor should demonstrate good organisational skills and a methodical approach to problem solving. The pursuit of information by the solicitor should be:

- Proactive and thorough;
- Make the best use of all available sources of information; and
- Ensure that such information is gathered in a manner which is admissible in the relevant proceedings.

3. Plan and advise the client by:

3.1 Identifying the legal effect/s of the evidence

- The solicitor will develop a strategy and plan of action after analysing the facts in the light of:
 - Relevant law;
 - Policy and procedure;
 - Expert evidence; and

- An assessment of the reliability of witnesses and the competency of experts in the professed area of opinion.

3.2 Understanding the roles, powers, responsibilities and service obligations of:

- Department of Communities and Justice NSW;
- NSW Police
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- Justice Health and Forensic Mental Health Network NSW;
- Juvenile Justice NSW;
- NSW Department of Education and Training NSW;
- NSW Office of the Children's Guardian;
- National Disability Insurance Agency;
- Being broadly familiar with Centrelink policies regarding income support of young people and their carers; and
- Knowledge of the Department of Communities and Justice Permanency Support Program.

3.3 Communicating to the client all available options contained in the plan of action at all stages

- The solicitor will inform the client and/or any other relevant parties of the options available, and will prepare a draft plan offering practical recommendations and alternatives;
- The plan will recognise the client's views, expectations and their special needs;
- The plan of action should include both legal and non-legal alternatives including, where appropriate, intervention by outside bodies and/or support agencies, together with diversion from the legal process by non-court based methods of resolution of the dispute in which the client finds themselves; and
- The solicitor will communicate with the client in a skillful manner ensuring to the fullest extent possible that the client understands the options and gives, where appropriate, firm instructions as to the manner in which to proceed.

4. Implement the plan of action

The solicitor, following confirmation of the plan of action with the client, will:

- Organise all types of witnesses, documents and other evidence;
- Where appropriate, brief counsel. Such brief should include observations on procedural, evidentiary and substantive issues;
- Actively participate in the preparation of the case and take an active role in conferences and in the presentation of the case;

- Provide good administrative support including supervision of witnesses and material; and
- Ensure that counsel acts in an appropriate and effective manner with the child client, and that the child client understands the information and advice provided to them by counsel.

5. Review and modify the plan in the light of changes

Throughout the course of the matter, the solicitor will:

- Review the objectives of the plan of action in the light of changed circumstances resulting from further instructions, other party's materials, expert opinion or information gathered during the course of investigations or court procedures;
- Present options responding to the changed circumstances to the child client; and
- Advise and seek appropriate instructions in the light of changed circumstances including, in criminal matters, the entry of admissions in criminal matters or, appropriate settlement negotiations in civil matters.

6. Appear as an advocate

- When appearing as an advocate, the solicitor will identify the crucial issues of the case and seek to expose the weaknesses of the opponent's case;
- The solicitor will employ their knowledge of procedural, evidentiary and substantive law to present the case;
- The manner of the solicitor will reveal an understanding of hearing etiquette, tolerance to adverse comment and ability to work effectively under pressure; and
- Candidates who select the Child Representation sub-specialty will also ensure that any risk to the safety of their child client, when the child is required to attend interviews, hearings or other proceedings, is minimised as far as is possible within the control of the solicitor.

7. Demonstrate professional responsibility

The solicitor will maintain the highest standards of the profession and demonstrate a willingness to advise junior members of the profession, to educate others in legal issues and advise on improvements for the participation of children in the legal process and ensure that the rights and best interests of children are paramount.

Methods of Assessment

Take Home Assessment

Release date: 10am, 13th May 2020

Due date: 4pm, 3rd June 2020

Candidates will be required to complete a Take Home Assessment which will be subject to a strict time limit. This assessment component will assess the candidate's ability to handle matters in practice and will also assess a variety of performance criteria, which may include preparation of documents, knowledge of procedures, and the identification and application of legal principles. There will be general core questions and optional questions for each sub-specialty.

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 legal and ethical issues from a given fact situation, including any need to obtain additional information from sources other than the client;
- b. Capacity to apply the law to the facts;
- c. Depth of knowledge of the law and procedural rules/practices, and skill in applying that knowledge to the given fact situation, including skill in developing and implementing a plan of action and reviewing/modifying the plan in light of changes;
- d. Ability to write clearly, succinctly and in plain English; and
- e. Ability to provide practical, clear and accurate advice to the child client.

Simulated Interview

Interview date: Saturday, 8th August 2020

Venue: TBC*

*All candidates will be notified of the interview time and venue in advance of the interview date.

Child Representation

Candidates will be required to conduct a simulated first interview with a young person acting in the role of a child client. The candidate will then appear for the client in a short mock hearing.

The Simulated Interview is intended to assess a wide range of criteria (as below), including those relating to interaction between the solicitor and the child client, the taking of instructions and the giving of advice.

The interview will be recorded for assessment purposes.

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 develop a relationship with the child client;
- b. Depth of knowledge of Representation Principles for Children's Lawyers, understanding of legal ethics applicable to child representation and skill in applying that knowledge and understanding to a given fact situation; and
- c. Ability to provide practical, clear and accurate advice to the child client.

Other Parties Representation

Candidates will be required to conduct a simulated first interview with either a parent, departmental representative or other client. The candidate will then appear for the client in a short mock hearing.

This exercise is intended to assess a wide range of criteria which are outlined below.

The interview will be recorded for assessment purposes.

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 develop a relationship with the client; and
- b. Ability to provide practical, clear and accurate advice to the client.

Mock Hearing

Interview date: Saturday, 8th August 2020

Venue: TBC*

*All candidates will be notified of the Mock Hearing time and venue in advance of the mock hearing date.

The Mock Hearing will cover the presentation of the client's case and involve the identification of crucial issues of the case, knowledge of procedure and skilful presentation.

Assessment Criteria

Advocacy skills including:

- a. Observation of appropriate etiquette, procedure and protocol, including court attire;
- b. Effective organisational skills at the bar table;
- c. Presentation of the facts in a clear and methodical manner;
- d. Appropriate presentation of the evidence;
- e. Effective use of external sources of information;
- f. Depth of knowledge of Representation Principles for Children's Lawyers, understanding of legal ethics applicable to child representation and skill in applying that knowledge and understanding to a given fact situation;
- g. Ability to develop a relationship with a child or other client;
- h. Depth of knowledge of the law and procedural rules/practices and skill in applying that knowledge to a given fact situation, including skill in developing and implementing a plan of action and reviewing/modifying the plan in light of changes; and
- i. Ability to provide practical, clear and accurate advice and to demonstrate high level advocacy skills.

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