

Specialist Accreditation Scheme



2020 Immigration Law Assessment Requirements



THE LAW SOCIETY
OF NEW SOUTH WALES



These notes should be read in conjunction with the **2020 Guide to Application and Assessment**. They will assist practitioners interested in becoming accredited in Immigration Law to understand and prepare for the assessment process.

Included are:

- The performance standard which is the benchmark for competent practice in this area and the performance criteria which form the basis for the assessment;
- A list of the core skills and areas of knowledge; and
- The methods and dates of assessment which candidates are required to undertake.



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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
Mock File	Released: 13 May 2020 Due: 3 June 2020
Written Examination	Saturday, 25 July 2020
Simulated Interview	Sunday, 26 July 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

A. Core skills and Practical Capabilities

1. Take instructions and give initial advice by:

1.1 Developing a relationship with the client

- Through a broad knowledge of other cultures, world affairs and human experiences the specialist Immigration Law solicitor demonstrates an understanding of the issues and concerns particular to immigration clients.
- The solicitor adopts a non-discriminatory, empathetic and ethical approach to encourage the client to give full instructions.
- The solicitor communicates with the client in plain language using interpreters effectively.

1.2 Taking instructions

- The specialist Immigration Law solicitor works from a sound knowledge base including an understanding of all aspects of Immigration Law, policy, and departmental practices enabling the solicitor to identify relevant facts to question and to **obtain the client's** account of facts and his or her expectations.
- The solicitor adopts an ordered approach to eliciting information, checking with the client and the client's records to clarify data.
- The solicitor displays familiarity with appropriate documentation.

1.3 Appraising the situation

- The specialist Immigration Law solicitor analyses the information provided by the client and identifies the relevant issues of fact, law and policy, and the extent to which these are clear and settled.
- The solicitor distinguishes realistic and unrealistic expectations and decides if the **client's problems are capable of resolution**.
- The solicitor identifies the immediately available options including appropriate legal and other courses of action.
- The solicitor communicates clearly to the client the factors relevant to choosing between available options and courses of action and the consequences of each including procedural requirements, time frames, costs and the dynamic nature of the law.
- The solicitor checks to ensure **the client's understanding of the advice and reviews** the resources available to the client to undertake the various options. The solicitor advises on and recommends interim actions in the light of the client responses.

1.4 Responding

- The specialist Immigration Law solicitor identifies matters of urgency and responds immediately with court or administrative action.
- In respect of other matters, he or she responds promptly and as appropriate.
- At all times the solicitor acts in accordance with properly obtained instructions and keeps the client fully informed.

2. Research and investigate by:

2.1 Gathering information

- The specialist Immigration Law solicitor adopts an orderly and creative approach to gathering and assessing relevant information.
- The solicitor demonstrates an ability to communicate with a wide variety of people who may assist, and to access potential sources of information.
- The solicitor keeps a full and accurate record of the information obtained.

2.2 Analysing information obtained

- The specialist Immigration Law solicitor analyses the information provided by the client and obtained from third parties, including experts, government and non-government agencies and through appropriate enquiry or investigation.
- The analysis of the facts involves a cross-referencing of documents and statements and obtaining relevant expert comment on the evidence.
- The solicitor also assesses the reliability of witnesses, the competence of experts as witnesses, the relative weight of evidence and, where necessary, determines what is admissible.

2.3 Determining legal issues

- The specialist Immigration Law solicitor recognises the legal issues arising from the facts and identifies the extent to which the legal principles are clear.
- The solicitor identifies areas where the law is unsettled or where arguments can be developed.
- The solicitor promptly and efficiently identifies the sources available to resolve legal issues, e.g. legal texts, law report, tribunal decisions, legislation, explanatory memoranda, departmental instructions, circulars and relevant databases.
- The solicitor determines whether to seek counsel's opinion on the legal issues and seeks appropriate instructions.

3. Develop a plan by:

3.1 Formulating options

- The specialist Immigration Law solicitor develops courses of action in the light of relevant legislation, case law, departmental practices and the client's instructions and circumstances.
- The solicitor displays a comprehensive knowledge of immigration law and related areas to identify all available options. Such options may include:
 - Doing nothing
 - Non legal action
 - Applications to and negotiation with Department of Home Affairs (Department) and other agencies
 - Tribunal and court action.



3.2 Advising client

- The specialist Immigration Law solicitor communicates clearly the possible courses of action open to the client and the procedures involved in each option.
- The solicitor clearly explains the legal and practical consequences of each option, the **advantages and disadvantages and the extent to which each will achieve the client's objectives**.
- The solicitor is aware of Legal Aid arrangements.

3.3 Confirming instructions for action

- The specialist Immigration Law solicitor obtains feedback from the client on relevant issues, recommends the preferred option and determines with the client the plan to be implemented.
- The solicitor confirms very **clearly the client's instructions, preferably in writing**.

3.4 Use of interpreters

- As required the specialist Immigration Law solicitor uses competent interpreters in clarifying instructions and confirming content with clients.

4. Implement plan by:

4.1 Conducting negotiations

- When negotiating, the specialist immigration Law solicitor assesses the client's eligibility and legal entitlements against the Department's position and demonstrates an ability to put the client's case coherently and persuasively.

4.2 Preparing written submissions to department

- The specialist Immigration Law solicitor prepares submissions and documents which are clear, concise and comprehensive. Submissions, whether written or oral, summarise the relevant evidence and legal issues in a logical sequence, relate the evidence to the matters in issue, and emphasise key issues in a structured way.
 - The solicitor prepares a plan for each submission to ensure all relevant matters are addressed, including:
 - Facts
 - Law and policy
 - Areas of discretion
 - **Previous decisions of Courts and Tribunals and their application to the client's case.**
- The **solicitor prepares submissions in a form which assists the decision maker's consideration of the case and argues the client's case persuasively.**
- The solicitor is conscious of the parameters in which the decision maker operates.

4.3 Preparing and conducting hearings

- The specialist Immigration Law solicitor is familiar with the rules and practice of the courts and the Administrative Appeals Tribunal.



- The solicitor operates effectively within the framework of the non-adversarial jurisdictions.
- The solicitor initiates proceedings and prepares supporting documentation, including submissions, statements, declarations and affidavits.
- The solicitor conducts interlocutory procedures and where necessary advises on appeals.

4.4 Briefing counsel

- The specialist Immigration Law solicitor considers when to brief counsel, having regard to the nature and the complexity of the issues and the likelihood of success.
- The solicitor chooses the appropriate barrister for the matter and knows when the registration requirements are involved.
- An instructing solicitor understands the relationship between barrister and client and plays an active role in the conduct and management of the case and acts as liaison between the barrister and the client.

4.5 Acting as advocate

- When appearing the specialist Immigration Law solicitor is well prepared, organised, clear and effective with the ability to think quickly on his or her feet.
- The solicitor tries to achieve the best result having regard to the client's instructions and the limits of the law and the remedies available.
- The solicitor prepares the client and witnesses to give evidence and may prepare written material for tender.
- The solicitor operates effectively within the non adversarial system and demonstrates a knowledge of the rules of evidence and the rules of natural justice and other administrative law principles as well as current legal principles and case law that apply to the case.

4.6 Managing the plan

- The specialist Immigration Law solicitor constantly reviews the plan in the light of changing circumstances in particular resulting from clarification or changes in the position of the other parties; procedural requirements, information gained, judicial or arbitral decisions, actual or proposed legislative changes.
- The solicitor informs the client of any changes and explains their impact on the plan, any variation in prospects and the impact on costs.

4.7 Finalising the matter

- The specialist Immigration Law solicitor ensures all necessary documentation and correspondence are prepared and processed.
- The solicitor advises, as to the outcome of the matter, any further work required on the case and how to meet any obligations arising therefrom, including payments of any outstanding accounts and expenses.

5. Cultural Competence:

Cultural competence has been described as:

a set of congruent behaviours, attitudes and policies that come together in a system, agency or among professionals and enable that system, agency or those professionals to work effectively in cross-cultural situations. (Cross, Bazron, Dennis & Isaacs)

As a concept, true competence requires more than awareness of different cultures or 'practising tolerance'. It involves empathetic understanding built on awareness of both your own culture and expectations as well as acceptance that another person's culture and background can mean that they behave and see the world differently. In the words of Walker, Schultz and Sonn:

Cultural competence encompasses and extends elements of cultural respect, cultural awareness, cultural security and cultural safety. Cultural competence encompasses the knowledge, awareness and skills aimed at providing a service that promotes and advances cultural diversity and recognises the uniqueness of self and others in communities.

The literature in this growing area of cultural studies suggests that there are three components to 'competency' in this area: awareness, respect and safety.

Cultural Awareness

The starting point for cultural competence in any practitioner is self awareness in the sense of recognising our own biases, values, assumptions and patterns of cultural behaviour. This becomes the basis for understanding and accepting that others can see the world differently and that there are cultures that promote behaviours and reactions that are different to those 'we' assume are 'normal'.

Cultural Respect

Respect of another culture extends beyond tolerance to active acceptance that another person has a right to maintain, protect and develop their culture. So it is that the next step for practitioners is to develop an open and inquiring mindset when faced with individuals from different cultural backgrounds. It may never be possible to know or understand all the nuances of human societies. However, a competent practitioner will recognise cultural difference and seek to acquire relevant knowledge so as to enhance their understanding and modify expectations of how a client is likely to behave and react in different contexts. Respect of an individual recognises that the starting point for such learning will often (but not always) be the client themselves.

Cultural Safety

Many aspects of cultural competence derive from the global efforts of indigenous societies to fight for the preservation and promotion of the ancient cultures of 'first nation' people. Cultural safety was developed as a concept in training nurses in Aotearoa New Zealand to be more accepting of the health and welfare practices of the country's Maori population. The idea turns on the notion that practitioners actively embrace cultural practices so as to make an individual feel comfortable and safe. In this way, safety is a structural concept that sounds in how a client feels in a professional context.

For migration practitioners, cultural competence is reflected in efforts made across a workplace to make clients from different cultures feel at home and safe. In the stressful context of formal interviews and processes, the task of making an individual feel comfortable and safe will be exponentially more difficult. However, there may be small things that practitioners can do to place an individual at ease, whether it is in assuring the provision of the correct religious text for taking oaths, assuring that young people are interviewed or represented by individuals of the same gender or, if possible with the same or similar faith or cultural backgrounds. In other respects, knowledge of basic cultural practices, including the timing of religious rituals, is critical to creating cultural safe spaces.



B. Performance Standard

The standard of an Accredited Specialist

The standard of an Accredited Specialist in Immigration 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.

Legislation and other provisions

Candidates should be familiar with the relevant parts of legislation and relevant case law relating to the selected topics for assessment, and the legislation listed in point D on page 21.

C. 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:
 - Migration Act 1958, Migration Regulations 1994, Policy (Procedural Advice Manuals (PAMS) and Fast Load Instructions (FLIs) and Federal Legislative Instruments); 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 ultra vires
- changes in the law and determining what law applies at a particular time
- Transitional arrangements
- Definitions contained in the *Migration Act 1958* 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 - 13
- Resident return visas, authority to return and return endorsements
- Conditions of visas
- EOI, SkillSelect
- Criteria for a valid application
 - Application fee
 - Base charge
 - Dependents' charge
 - Subsequent temporary application charges
 - Non-Internet application charges, credit card surcharge and waivers
 - Location of applicant
 - Section 48(A) and 48(B)
 - Section 46(A) Schedule 1



- Time when criteria must be met
- Requirements for a favourable decision
- Codes of procedure for dealing with visa applications including time limits
- Method and place of lodgement of applications and internet applications
- Exclusion periods
- Period of validity of visas
- 2nd VAC
- Health charges
- English language charges
- Settlement criteria
- Sponsorship and nomination
- Key definitions under s5 Migration Act and regulation 1.03
- Limitations on sponsorship/nomination
 - Family related
 - Guardian of a child
 - Business sponsorship
 - State/Territory sponsorship/nomination
 - Capacity of sponsor
- Assurance of support and bond
- Capping and queuing
- Time limits for lodgement of primary applications and review applications
- Schedule 3 criteria
- 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 and waiver requirements



- Relevant merits and judicial review decisions
- Australian values statement
- PIC 4020 - bogus documents/false or misleading information/identity

2.3 Points tests and skills determination

- *Migration Act 1958* ss 92-96, Regulations Div 2.6 Prescribed qualifications and Point Systems, allocation of points, applications for skills assessment and relevant sources:
 - ANZSCO Dictionary, PAMS, NOOSR Country Education Profiles
- Application of transitional arrangements
- Schedules 6, 6A, 6B, 6C, and 6D allocation of points, definitions, pass, nominated occupation, role of "relevant assessing authorities"
- Publications, guidelines of "relevant assessing authorities"
- Business skills points test -schedule 7A
- Processing directions
- Relevant merits and judicial review decisions
- Medium and Long-Term Strategic Skills List (MLTSSL)
- Short-term Skilled Occupation List (STSOL)
- SkillSelect – EOI
- Australian Study Requirement
- English Requirement

3. Migrant/Residence entry

- Family
 - Partner
 - Child
 - Parent
 - Contributory parent
 - Orphan relative
 - Aged dependent relative
 - Remaining relative
 - Adoption
 - Carer and **'member of the family unit' definition**; and
 - **'Dependent'**



- Skilled categories
 - Independent
 - Family sponsored
 - State/Territory nominated
 - Skilled graduate and skilled recognised graduate
- Employer Nomination Scheme (ENS) and Regional Sponsored Migration Scheme (RSMS) including- approved appointments Regulation 5.19 and transitional arrangements
- Business skills, business innovation visas and post settlement business surveys
- Distinguished talent including Global Talent Independent program
- New Zealand citizens
- Special categories including:
 - Former citizen
 - Former resident
 - Resident return
- Quotas, capping and priorities
- Relevant merits and judicial review decisions

4. Temporary entry

- Visitors
 - Visitor visa for parents of Australian children
- Students
 - Genuine Temporary Entrant
 - Simplified Student visa framework
- Student Guardian Visas
 - Temporary residents, including 457/Temporary Skill Shortage visa, Skilled Employer Sponsored Regional (Provisional) visa
 - Sponsorship & nomination criteria including sponsorship obligations
 - Specialist temporary entry i.e. 400, 403, 407, 408 Skilled temporary visas Working Holiday/ Work and Holiday visas
- Labour Agreements including Designated Area Migration Agreements and Global Talent Employer Sponsored
- New Zealand citizens (including family members)
- Business skills, business innovation visas,
- Temporary Parent visa
- Miscellaneous temporary entry categories (e.g. medical treatment, transit, dependent child, maritime crew, diplomatic)
- Relevant merits and judicial review decisions

5. Change of status

- Development of options and strategies (including lateral thinking)
- Validity
 - Differentiate between criteria for applications vs. criteria for granting a Visa
- General issues
 - Limitations on applications i.e. schedules 3, 4, 5 and 8, ss 41, 46A, 48, 48A, 48B
 - Substantive visa requirements
 - Assurances of support
 - "Old" legislation/regulations and policy
 - Family violence, death of partner, parenting arrangements and other exemption provisions
 - Substantial compliance issues
- 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 and waiver
- Business skills/business innovation provisional to permanent visas
- General Skilled Migration provisional to permanent visas
- Statutory visas including:
 - Absorbed person
 - Special purpose
 - Criminal justice
 - Ex-citizen visa
 - Enforcement visas
- Applications by unlawful non-citizens and holders of bridging visas
 - Schedule 3 criteria
- Processing of applications
 - Bridging visas
 - Change of conditions
 - Evidence required
- Effect of certain visa conditions on subsequent applications
- No further stay conditions and provisions for waiver
- Relevant merits and judicial review decisions

6. Refugee and humanitarian entry

- General
 - Refugee Convention and Protocol
 - Section 5H – 5M
 - Section 91A – 91XA
 - Convention Against Torture, ICCPR, Convention on the Rights of the Child



- Definition of “refugee” as modified by legislation and judicial interpretation
- Stateless persons
- Offshore
 - Unauthorised maritime arrivals and transitory persons
 - Refugee subclass 200
 - Special humanitarian programs subclasses 201-204
 - Approved proposing organisations
 - Temporary safe haven visas
- Onshore
 - Protection visas
 - Temporary protection visas
 - Safe haven enterprise visas
 - Temporary humanitarian
 - Complementary protection
- 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
 - Personal identifiers
 - Costs of detention, removal and deportation, recovery
- Offences under the Migration Act
 - People trafficking
 - Contrived relationships
 - Offences relating to work, including civil penalty provisions (employer sanctions)
- Powers and procedures for cancellation: Division 3, subdivisions C-H, *Migration Act*,
 - Incorrect information s109
 - General s 116, s 128
 - Business visas s134
 - 134B emergency cancellation on security grounds



- Student visas s 116
- Regional sponsorship employment visas s 137Q and 137T (consequential cancellation)
- Consequential cancellation power s 140
- Temporary safe haven visas 500A
- Personal powers section 133(A) – 133(F)
- Character s 501, 501A, 501B, 501C (revocation of decision under 501(3) or 501A(3) 501F (consequential cancellation) and s 502
 - Refusals (including refusals by the Minister personally)
 - Cancellations (including refusals by the Minister personally, mandatory cancellations and revocation)
 - Review by the AAT
- 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
- Review powers and jurisdiction of the AAT
- Time limits
- Detainees
- Non detainees
- Ministerial discretion
- Requests to the Minister seeking his personal intervention Ministerial override of character decision by delegate or AAT under ss. 501A, 501B and 501C
- Relevant merits and judicial review decisions

8.2.1 Judicial review

- Definition of judicially reviewable decision
- The privative clause
- Grounds for judicial review
- Time limits
- Powers of the Federal Court and Federal Circuit Court
- Role of High Court

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
- Children born under offshore commercial and onshore non-commercial surrogacy arrangements
- 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
- Relevant merits and judicial review decisions

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
- Costs/charging
- Potential deregulation

12. Regulation of migration agents

- OMARA's powers
- Appeal rights
- Migration agent regulations - Code of Conduct
- Consumer guide
- Criteria for registration
- CPD and English for migration agents
- Professional indemnity insurance
- Average fees charged
- Client contract

13. Other issues

- Freedom of Information
- Legal Aid and Pro Bono schemes
- Alternative avenues of redress
 - HREOC
 - Ombudsman
 - MPs
 - UNHCR
- Privacy Commissioner
- Relevant merits and judicial review decisions
- Lawyers practicing overseas



NOTE

Any matter relevant to practice in **Immigration Law** may be assessed, including the areas listed above and all related case law. The 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, related case law and other materials not listed in these guidelines. The list is not intended to be an exhaustive list but merely a guide.

D. Related Legislation and Other Materials

Legislation, related regulations, case law and other materials

Acts Interpretation Act 1901 (Cth) and Act Interpretation (Registered Relationships) Regulations 2008 (Cth)
Administrative Appeals Tribunal Act 1975 (Cth)
Administrative Decisions (Judicial Review) Act 1977 and Regulations (Cth)
Australian Citizenship Act 2007 (Cth), Australian Citizenship (Transitionals and Consequential) Act
2007 and Australian Citizenship Regulation 2016
Australian Human Rights Commission Act 1986 (Cth)
Australian Passports Act 2005 and Regulations
Butterworths Australian Immigration Law Service (looseleaf/electronic)
Commonwealth Gazette Notices
Convention Relating to the Status of Refugees 1951 as amended by the Protocol.
Education Services for Overseas Students Act 2007 (Cth)
Education Services for Overseas Students National Code of Practice
Fair Work Act 2009 (Cth)
Federal Circuit Court of Australia Act 1999 (Cth) and Rules
Federal Court of Australia Act 1976 (Cth) and Rules
Freedom of Information Act 1982 (Cth)
Health Insurance Act 1973
Immigration (Guardianship of Children) Act 1946 (Cth)
Immigration (Guardianship of Children) Regulations 2001 (Cth)
International Covenant on Civil and Political Rights, United Nations 1966
Judiciary Act 1903 (Cth)
Legislative Instruments Act 2003 (Cth)
Marriage Act 1961
Migration (United Nations Security Council Resolutions) Regulations 2007
Migration (Visa Application) Charge Act 1997 (Cth)
Migration Act 1958 (Cth)
Migration Agents Regulations 1998
Migration Amendment (Temporary Sponsored) Visas Act 2013
Migration Amendment (Visa Application Charge and Related Matters) Regulation 2013
Migration Reform (Transitional Provisions) Regulations
Migration Regulations 1994 (Cth) as amended
Ministerial Directions issued under s.499
Ombudsman Act 1976 (Cth)
Privacy Act 1988 (Cth)
Same-sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008 (Cth)
Social Security Act 1991 (Cth)
UN Convention against Torture
UN Convention on the Rights of the Child
Other relevant International Instruments including International Trade Agreements

This list indicates the range of matters which could be addressed in the assessment program. It is not necessarily an exhaustive list. Candidates will be assessed 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 (being careful to ensure the sources reflect the current status of the law):

Costello C; *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press, 2014)

Crock, M and L Benson (eds, *Protecting the Migrant Child: Central Issues in the Search for Best Practice* (London: Elgar Publishing, 2018)

Crock M and L, Berg; *Immigration, Refugees and Forced Migration: Law, Policy and Practice in Australia* (Sydney: Federation Press, 2011)

Foster M; *International Refugee Law and Socio-economic Rights: Refugee From Deprivation* (Cambridge University Press, 2007)

Goddard J; R, Germov; P Papadopoulos, *Australian Immigration Law (Looseleaf and online)** (LexisNexis, since 1990) (*includes PAMs and FLIs)

Goodwin-Gill G and J, McAdam; *The Refugee in International Law* (Oxford University Press, 2007)

Hathaway J.C; *The Rights of Refugees Under International Law* (Butterworths, 2006)

Hathaway J.C. and M, Foster; *The Law of Refugee Status* (Cambridge University Press 2nd ed, 2014)

Immigration Review, (LexisNexis Butterworths)

McAdam J and F Chong, *Refugee Rights and Policy Wrongs* (Newsouth Books, 2019)

Rubenstein K, *Australian Citizenship in Context* (2nd Edition, Sydney: Law Book Co, 2017)

Springvale Legal Centre, Thomson Reuters, *Lawyers Practice Manual*, Immigration Chapter (Looseleaf and online)

ebooks and online subscriptions

Aronson, M and Groves, M, *Judicial Review of Administrative Action* (Thomson Reuters 5th ed 2013)

Immigration Advice and Rights Centre, *Immigration Kit* (online subscription service – <https://iarc.worldsecuresystems.com/immigration-kit-secure-zone>)

Legendcom – Department of Home Affairs online subscription service for Migration and Citizenship law and policy – <https://immi.homeaffairs.gov.au/help-support/tools/legendcom>

LexisNexis Practical Guidance – Immigration Law

Pearce, D and S Argument, *Delegated Legislation in Australia*, (LexisNexis 4th ed, 2012)

Pearce, D. C and R S Geddes, *Statutory Interpretation in Australia*, (LexisNexis 8th ed, 2014)

Any other relevant cases



On cultural competence

Cross T, Bazron B, Dennis K, Isaacs M. *Towards a culturally competent system of care* (vol. 1). Washington, DC: CASSP Technical Assistance Center, Center for Child Health and Mental Health Policy, Georgetown University Child Development Center. 1989.

Roz Walker, Clinton Schultz and Christopher Sonn, 'Cultural competence – Transforming Policy, Services, Programs and Practice in *Working Together | Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*.

On interviewing techniques

Clare Wilson and Martine Powell, *A guide to interviewing Children: Essential skills for counsellors, police, lawyers and social workers* (Allen & Unwin, 2001)

Lani Blackman, *Representing Children and Young People: A Lawyers Practice Guide* (Victoria Law Foundation, 2002)

Law Society of NSW, *Representation Principles for Children's Lawyers* (Law Society of NSW, 3rd ed, 2007)

Other online resources

Administrative Appeals Tribunal – Migration and Refugee Division, *Policies, guidelines and principal member directions* – www.aat.gov.au

Australian Bureau of Statistics and Statistics New Zealand, *Australian and New Zealand Standard Classification of Occupations 2013 (ANZSCO Dictionary) (Version 1.2)* – www.abs.gov.au

Department of Education and Training, *Country Education Profiles* – <https://internationaleducation.gov.au/Services-And-Resources/Services/Country-Education-Profiles/Access-CEP/Pages/Default.aspx>

Migration Institute of Australia - *Migration Case Law Newsfeed* (member e-bulletin) – www.mia.org.au

Websites (government etc.)

Administrative Appeals Tribunal – www.aat.gov.au

Australian Bureau of Statistics – www.abs.gov.au

Australian Legal Information Institute – www.austlii.edu.au

Federal Register of Legislation – <https://www.legislation.gov.au/>

Department of Home Affairs – www.homeaffairs.gov.au

- Australian Citizenship Instructions (ACI)
- The Procedures Advice Manual (PAMs)
- Fast Load Instructions (FLIs)

Immigration Rights and Advice Centre – www.iarc.asn.au

Parliament of Australia – www.aph.gov.au



E. Methods of Assessment

There are three components to the assessment:

- Schedule 1: Mock file;
- Schedule 2: Written examination; and
- Schedule 3: Simulated interview.

In order to obtain accreditation, candidates must achieve a pass in all of the three assessment components.

The performance standard necessary for a candidate to achieve a pass is a demonstration of skills and abilities of the “specially competent practitioner” across all criteria in their dealings with clients as outlined in the various assessment tasks.

Schedule 1: Mock File

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.

The mock file will be available for download on the date of release.

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; and
- Ability to provide practical, clear and comprehensive advice.

Release date: 10am, 13th May 2020

Due date: 4pm, 3rd June 2020



Schedule 2: Written Examination

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.

Written 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
- Tablets may be used; however, they must be set on "flight mode"
- Internet access is strictly prohibited and will be monitored
- Mobile phones are not permitted
- Answers must be written in the booklets provided
- Answers must be numbered correctly
- Handwriting must be legible
- Candidate numbers (not names) must be written on all answer books submitted

Assessment criteria

Candidates will be assessed on their ability to:

- a) Identify relevant issues;
- b) Demonstrate knowledge and understanding of the relevant law; and
- c) Present clearly expressed practical advice that is both comprehensive and legally correct.

Date: Saturday, 25th July 2020*

Venue: TBC

*Candidates will be advised of the written examination time in mid-July.



Schedule 3: Simulated Interview

The candidate will conduct a simulated first interview with a person acting in the role of a client. The exercise will take up to 50 minutes and will be recorded for assessment purposes.

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 assessors in conjunction with the recorded interview.

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

This simulated interview is intended to assess a wide range of assessment criteria including those relating to interaction between the solicitor and client, taking instructions and giving advice, terms of engagement, assessing facts and legal options, canvassing the options with the client and developing the initial plan.

The candidate is expected to demonstrate a clear ability to take and receive instructions, deliver preliminary advice and provide information to the "client" in a manner which satisfies the assessment criteria, core knowledge areas and the performance standard.

Assessment criteria:

Candidates must perform each one of the assessment criteria listed below to the level of the performance standard in order to pass this assessment overall.

Candidates will be assessed on their ability to:

- a) Elicit relevant information and facts from the client;
- b) Obtain and clarify instructions;
- c) Identify relevant issues (both immediate and longer term which impact upon any visa or citizenship strategy being proposed);
- d) Communicate clearly with the client;
- e) Accurately assess facts and legal issues and options;
- f) Indicate procedural steps and timelines for responses;
- g) Develop an initial plan; and
- h) Provide advice on the client's current circumstances and on any strategies identified.

Date: Sunday, 26th July 2020*

Venue: The Law Society of New South Wales

*Candidates will be advised of their simulated interview time in mid-July.

END