

# Specialist Accreditation Scheme



## 2021 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 is that of a 'specially competent practitioner' in the core skills and practical capabilities in his or her 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 Specialist Accreditation 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 2021 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](https://lawsociety.com.au/specialists)

## Timetable

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

Candidates need to:

- focus on this timetable and plan their workload well in advance;
- dedicate and manage their time during this period to optimise their performance across all assessments; and
- remember that participating in the Specialist Accreditation program requires a considerable level of commitment.

Activity	Date
Question & Answer sessions for potential candidates	February 2021
Applications for Specialist Accreditation close	End March 2021
Candidature confirmed	Week commencing 3 May 2021
Take Home Written Exam	Released: Wednesday, 12 May 2021 Due: Wednesday, 2 June 2021
Mock Hearing	Released: Saturday, 24 July 2021 Assessment: Saturday, 7 August 2021
Briefing	Sunday, 8 August 2021
Results released to candidates	Early October 2021
Reassessment and/or Appeal applications close	14 days from notification of results
Reassessment results released	December 2021
Appeal results released	December 2021

# Core Skills and Knowledge Areas

## Core Skills

Candidates undertaking the Specialist Accreditation program in Criminal Law must be able to demonstrate the following skills to the Performance Standard.

### 1. Information gathering

#### 1.1 *Eliciting information from clients, law enforcement officers and witnesses*

- elicit information from clients, law enforcement and witnesses;
- use an interpreter when required;
- be able to gather information:
  - while considering the relevant law, policy and procedure; and
  - in difficult circumstances and/or under time constraints;
- use different communication techniques for different types of clients and witnesses, including children and the intellectually impaired; and
- display tolerance and understanding at all times.

#### 1.2 *Obtaining information from other sources*

- identify and use appropriate external sources of information; and
- use investigators and expert witnesses when appropriate.

### 2. Planning and preparation

#### 2.1 *Identifying relevant issues*

- recognise the client's objectives;
- assess the merits of a case; and
- identify:
  - special needs of a client such as health, linguistic or cultural needs;
  - the law, procedure and policy relevant to a case;
  - available statutory or common law defences;
  - appropriate charges; and
  - the relevance and admissibility of evidence provided.

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### 2.2 *Legal drafting*

- prepare documentation accurately and in accordance with relevant law, policy and procedure;
- prepare written submissions, requests for further particulars and representations to police or the Office of the Director of Public Prosecutions; and
- prepare documentation to meet deadlines when required.

### 2.3 *Developing and implementing a plan*

- organise gathered information and evidence provided;
- apply a methodical approach to problem solving;
- incorporate community resources and services such as medical treatment, interpreters and community assistance;
- develop a plan in collaboration with the client; and
- execute a plan in accordance with preparation.

## 3. **Giving advice**

- inform relevant parties of all available options;
- offer practical recommendations and alternatives;
- communicate a clear understanding of the issues, rights, risks, relevant policies, obligations and any conflict of interest; and
- give on the spot advice.

## 4. **Advocacy**

### 4.1 *Dealing with interested parties*

- effectively negotiate with the police, prosecuting authorities, defence solicitors and counsel; and
- liaise appropriately with support agencies, court administrators, other professionals, victims and legal representatives for any co-accused.

### 4.2 *Organising cases*

- conduct matters efficiently by organising all relevant evidence including lay witnesses, experts and documentary evidence.

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### 4.3 *Instructing Counsel*

- recognise appropriate counsel to brief and when;
- provide counsel with relevant observations on procedural, substantive and evidence law;
- actively participate in the preparation of the case;
- take an active role in conferences and the presentation of the case;
- provide good administration support, including organising witnesses;
- act as an effective liaison between counsel and the client, police, prosecuting authorities and/or witnesses;
- assist in strategic planning of examination in chief, cross-examination and re-examination; and
- monitor court proceedings and activities.

### 4.4 *Representing the client/public interest through skilful advocacy*

- identify the crucial issues of the case;
- appropriately address deficiencies in the case;
- use knowledge of procedural, substantive and evidence law to present the case;
- plan examination in chief, cross-examination and re-examination; and
- demonstrate:
  - an understanding of hearing etiquette;
  - tolerance to adverse comment;
  - ability to work effectively under pressure; and
  - a mastery of plea-making.

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### Knowledge Areas

Candidates undertaking the Accredited Specialist program in Criminal Law must be able to demonstrate a sound knowledge of the following areas to the Performance Standard.

#### Law

- Elements of offences (State and Commonwealth);
- Sentencing (State and Commonwealth);
- Mental health legislation (State and Commonwealth);
- Proceeds of crime legislation (State and Commonwealth);
- Police powers including arrest, entry, search and seizure;
- Listening devices, telecommunications interception and electronic warrants;
- Law enforcement controlled operations;
- Forensic evidence including fingerprints and DNA;
- *Crimes (Domestic and Personal Violence) Act 2007* (NSW);
- *Evidence Act 1995* (NSW) and related case law;
- *Bail Act 2013* (NSW);
- *Child Protection (Offenders Registration) Act 2000* (NSW);
- *Child Protection (Offenders Prohibition Orders) Act 2004* (NSW);
- *Crimes (High Risk Offenders) Act 2006* (NSW);
- *Criminal Records Act 1991* (NSW); and
- *Terrorism (High Risk Offenders) Act 2017* (NSW).

#### Practice and procedure

- Disclosure;
- Release applications, detention applications and bail reviews;
- Children's Court criminal proceedings;
- Summary hearings;
- Committal process;
- Criminal trials, both jury and judge alone;
- Interlocutory applications;
- No Bill submissions/charge negotiation;
- Requests for particulars, answering particulars;
- Conducting sentences across all jurisdictions;
- Cost applications;
- Written submissions;





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- Proceedings before inquisitorial bodies including: NSW Coroner's Court, Australian Criminal Intelligence Commission, NSW Crime Commission, Independent Commission Against Corruption, State Parole Authority and Law Enforcement Conduct Commission;
- Post-conviction orders and outcomes;
- Appellate procedures; and
- Criminal procedure legislation and relevant practice notes.

## Ethics and policy

- Prosecution policies and guidelines;
- *Legal Profession Uniform Law (NSW) 16a*;
- *Legal Profession Uniform General Rules 2015*;
- *Legal Profession Uniform Legal Practice (Solicitors) Rules 2015*;
- *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*;
- *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015*; and
- Any applicable case law.



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# Methods of Assessment

Three assessments make up the Specialist Accreditation program in Criminal Law:

1. **Take Home Written Exam**
2. **Mock Hearing**
3. **Briefing**

The three assessments are weighted equally.

Candidates who complete all three assessments to the Performance Standard are eligible for accreditation as a Specialist in Criminal Law.

## Take Home Written Exam

**Release date:** **Wednesday, 12 May 2021**

**Due date:** **Wednesday, 2 June 2021**

Candidates will be required to complete a Take Home Written Exam within the three-week period allocated. The exam will contain a number of separate questions and will assess a variety of core skills and knowledge areas. The exam will also be subject to strict formatting and word limit requirements.

In your response, you will be assessed on the following criteria:

- Sound knowledge of:
  - State and Commonwealth criminal legislation and related case law;
  - the *Evidence Act 1995* (NSW) and related case law;
  - criminal procedure legislation; and
  - relevant investigative and prosecution policies;
- Ability to:
  - identify the relevant legal issues;
  - apply legal principles;
  - draft documentation including written submissions; and
  - provide concise and clear advice;
- Demonstrate a knowledge of recent developments in criminal law;

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- Reference in accordance with the *Australian Guide to Legal Citation*, 3<sup>rd</sup> ed.; and
- Keep within the set word limit.

## Mock Hearing

**Release date:** Saturday, 24 July 2021

**Hearing Date:** Saturday, 7 August 2021

**Time and venue:** To be advised prior to the assessment date

Candidates will be required to conduct a matter in a mock court and can choose to represent either the defence or prosecution. The Mock Hearing is designed to assess a range of core skills and knowledge areas with particular emphasis on advocacy skills.

The Mock Hearing materials will be released to candidates two weeks prior to the hearing date which will be available for download via the candidate portal.

During the mock hearing, candidates will be assessed on the following criteria:

### 1. *Presentation skills:*

- Observe appropriate etiquette, procedure and protocol, including court attire;
- Demonstrate effective organisational skills;
- Communicate clearly and confidently;
- Logically and appropriately present the facts and evidence; and
- Respond to any variations which may arise.

### 2. *Evidence, research and argument skills:*

- Show an understanding of the key issues;
- Make accurate and persuasive submissions on issues of fact and law;
- Identify and apply the relevant legislation and case law;
- Tender relevant materials; and
- Effectively use external information sources.



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### Briefing

**Date:** **Sunday, 8 August 2021**

**Time and venue:** **To be advised prior to the assessment date**

Candidates will be given 90 minutes to study a mock file, and can choose to represent either the defence or prosecution. They will then be required to brief a panel of assessors and respond to questions and issues raised by the panel. This briefing may last up to 30 minutes. Candidates are permitted to bring resources with them into the briefing session.

During the briefing, candidates will be assessed on the following criteria:

- Identify relevant issues and law;
- Communicate clearly and confidently;
- Assess facts and legal options;
- Indicate procedural steps;
- Develop a strategy, and evaluate the strengths and weaknesses of the strategy;
- Justify adopting of a course of action;
- Exercise realistic forensic judgment;
- Respond adequately to questions and issues raised by the panel; and
- Formulate advice to the client.

## Suggested Reading Materials and Resources

### Books

- Bagaric, M., *Ross on Crime* (Thomson Reuters, 8<sup>th</sup> ed., 2018)
- Bronitt, S., McSherry, B., *Principles of Criminal Law* (Thomson Reuters, 4<sup>th</sup> ed., 2017)
- Crofts, P et al., *Waller and Williams Criminal Law Text and Cases* (Lexis Nexis, 14<sup>th</sup> ed., 2020)
- Dal Pont, G., *Lawyers' Professional Responsibility* (Thomson Reuters, 7<sup>th</sup> ed., 2020)
- Esparraga, F., *Ethical Legal Practice and Professional Conduct* (LexisNexis, 2019)
- Freckelton, I., and Selby, H., *Expert Evidence: Law, Practice, Procedure & Advocacy* (Thomson Reuters, 6<sup>th</sup> ed, 2019)
- Heydon, J. D., *Cross on Evidence* (LexisNexis, 11<sup>th</sup> ed, 2017)
- Howie, R., Johnson, A., *Annotated Criminal Legislation New South Wales 2020-2021* (LexisNexis, 2021)
- Howie, R., Sattler, P., Hood, M., *Hayes & Eburn Criminal Law and Procedure in New South Wales* (LexisNexis, 6<sup>th</sup> ed., 2019)
- Odgers, S., *Uniform Evidence Law* (Thomson Reuters, 15<sup>th</sup> ed, 2020)
- Williams, N., Anderson, J., Marychurch, J., and Roy, J., *Uniform Evidence in Australia*, (LexisNexis, 2<sup>nd</sup> ed., 2018)

### 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)
- Thomson Reuters, *Criminal Law New South Wales* (1996)



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### 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>
- The *Bugmy* Bar Book: <https://www.publicdefenders.nsw.gov.au/barbook>