

Specialist Accreditation Scheme



2021 Public Law Assessment Requirements



THE LAW SOCIETY
OF NEW SOUTH WALES



These notes should be read in conjunction with the **2021 Guide to Application and Assessment**. They will assist practitioners interested in becoming accredited in Public 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
- The methods and dates of assessment which applicants are required to undertake

NOTE

The Law Society of New South Wales offers Specialist Accreditation in Public Law to those solicitors practicing in Government law, as well as private sector practitioners undertaking legal work for government clients.

The knowledge areas contained in Public Law excludes those areas already covered by other specialisations, such as Planning and Environment Law or Immigration Law. It is recognised that there are principles of administrative law that apply across other areas of specialisation, including procedural fairness and rights of review of government decisions.

The Specialist Accreditation Board is aware of the breadth of knowledge required for this area of accreditation. The assessments are structured to cover solicitors practising in State or Commonwealth jurisdictions and deal with commercial or public law.



Time management guide

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.

Task	Date
Question and Answer sessions for potential candidates	February 2021
Applications for Specialist Accreditation close	End March 2021
Candidature confirmed	Early May 2021
Mock File released	12 May 2021
Mock File due	26 May 2021
Take Home Examination released	27 May 2021
Take Home Examination due	10 June 2021
Peer interview	July 2021
Results released to candidates	October 2021
Reassessment and/or Appeal application close	14 days from notification of results
Reassessment results released	December 2021
Appeal results released	December 2021

A. Performance standard

Standard of Accredited Specialist

The Standard of an Accredited Specialist in Public Law is that of a ***'specially 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.

B. Core skills and knowledge areas

Practitioners wishing to be accredited in Public Law should be able to:

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

B.1 Core skills and capabilities

1. Statutory interpretation

Demonstrates a sound approach to statutory interpretation

The specialist Public Law solicitor should be able to:

- Identify the legislative provisions relevant to the issue/problem/situation;
- Identify aids to statutory interpretation, including intrinsic materials and extrinsic materials:
 - Intrinsic materials are those parts of a piece of legislation that do not form part of the text, including the long title; short title; preamble (in older acts); notes; section headings; and schedules; and
 - Extrinsic materials include explanatory memoranda (or equivalent); second reading speeches; text of Parliamentary debates; reports of Royal Commissions, Law Reform Commissions, Committees of Inquiry or similar bodies placed before Parliament during consideration of the legislation; reports of Joint or Select Committees made during the passage of the legislation.
- Identify legal presumptions, where relevant (eg legislative presumption against interference with certain rights, legislation not to operate retrospectively etc);
- Identify case law in which the legislative provisions have been considered and interpreted;
- Identify other material that may assist in statutory interpretation, such as legal texts and other publications;
- Apply the Interpretation Acts; and
- Apply the relevant legislative provisions to the issue/problem/situation.



2. Problem solving

Demonstrates a structured approach to legal problem solving

The specialist Public Law solicitor works with a sound knowledge base using a structured approach to legal problem solving to assist the client.

The specialist Public Law solicitor:

- Always acts in accordance with properly obtained instructions;
- Adopts an ordered approach to eliciting information, checking with the client and the client's records to clarify data;
- Identifies the relevant issues of fact, law, probity and policy, as relevant;
- Distinguishes between realistic and unrealistic expectations of the client and clarifies the client's expectations;
- Appraises the situation so as to identify matters of urgency and respond immediately with court or administrative action, and in respect of other matters he or she responds promptly and as appropriate;
- Adopts an orderly and creative approach to gathering and assessing relevant information and keeps a full and accurate record of the information obtained;
- Identifies relevant law and considers other relevant material;
- Analyses and applies the law to the facts/issue/problem; and
- Decides if the client's problems are capable of resolution and if so, selects options and solutions, including legal and other course of action.

3. Ethical decision making

Meets ethical, professional and departmental responsibilities of a specialist Public Law solicitor

The specialist Public Law solicitor faces particular issues in relation to ethics and professional responsibilities involving public interest, public accountability and transparency, and the role and purpose of government and public administration.

The specialist Public Law solicitor should, depending on their area of practice, be able to:

- Deal with the question of the identity of the client to which fiduciary and other duties are owed;
- Provide legal services competently, diligently and independently, and in common with all lawyers, which should include being able to advise or represent their clients in order to preserve them from legal harm;
- Uphold the duty of confidentiality unless the client lawfully authorises disclosure, or there is an overriding legal obligation to make the disclosure, or a legal immunity for doing so;
- Act in accordance with "model litigant" obligations and properly advise their clients about these obligations;
- Avoid any conflict between his/her duty to the client and his/her own interest;
- Deal with the situation in which he/she may be required to give policy advice as well as legal advice and separate the two sorts of advice carefully;
- Demonstrate familiarity with relevant probity concerns and issues, and
- Select and deal with external legal advisors based on the interests of the agency (and Government), avoiding favouritism and acting diligently in each matter.



4. Communication

Demonstrates the effective communication skills required of the Public Law solicitor

There are a range of contexts and environments in which the Public lawyer will be required to employ communication skills, including dealings with: clients, other lawyers, the Minister and ministerial staff, officers from other agencies and stakeholder groups.

The specialist Public Law solicitor should be able to:

- Use active and reflective listening skills;
- Explain complex information using language appropriate for the audience;
- Structure information clearly and succinctly, both orally and in writing;
- Build and sustain a diverse range of relationships with key contacts in other organisations such as the Minister's office, other agencies, the private sector, industry groups and relevant stakeholder groups;
- Take steps to ensure the provision of prompt, efficient and responsive client service;
- Anticipate conflict and use negotiation and dispute resolution strategies to resolve conflict when it arises;
- Work collaboratively and cooperatively; and
- Promote information exchange by maintaining open communication channels.

5. Advice

Provides sound, comprehensive and timely advice

The specialist Public Law solicitor may:

- Have various types of government clients (e.g. government agency, another business unit within a government agency, a Minister, Cabinet);
- Provide advice in a range of contexts (e.g. in the course of dispute resolution/litigation, contract negotiations, transaction work, during the Cabinet or Parliamentary process); and
- Be required to provide advice by various means (e.g. formal written advice, written or verbal briefings)

The specialist Public Law solicitor should be able to:

- Understand the context in which the advice is being sought/provided and how the advice will be used;
- Identify and consider relevant legal and non-legal considerations;
- Identify the risks associated with different options;
- Assess the costs/benefits of different options;
- Recommend options (including a preferred option) or solutions that directly respond to the issue/problem/situation;
- Provide advice that is accurate, comprehensive, pragmatic and timely; and
- Provide the advice in the appropriate format/medium (e.g. formal written advice, written briefing, and verbal briefing).



6. Advocacy

Effectively advocates on behalf of the client

There are a range of contexts and environments in which the Public Lawyer may be required to demonstrate advocacy skills, including: courts, tribunals, parliamentary and inter-departmental committees, commissions, advices or inquiries.

The specialist Public Law solicitor should be able to:

- Present messages in a way that facilitates the desired outcomes;
- Ensure that negotiations remain focused on relevant issues;
- Offer a convincing rationale and make a strong case while remaining professional and courteous;
- Analyse other agendas and identify potential areas of vulnerability;
- Anticipate the position of other parties in order to identify areas of potential compromise;
- Focus on the desired objectives and ensure negotiations remain on track; and
- Position a case by clearly highlighting its merit.

B.2 Core knowledge areas

Part A

Candidates will be expected to display a sufficient knowledge of the core areas (at the standard of a specially competent practitioner) as well as to recognise typical problems, construct an advice to a client and to outline the steps which would be taken to deal with particular issues.

Knowledge

Candidates' attention is drawn to the following knowledge which underpins the performance of tasks.

Candidates are expected to have general familiarity with the machinery of Government legislation, policy, and conventions associated therewith. Certain topics are listed below because they state or illustrate significant principles.

B.2.1 Core knowledge

1. Statutory interpretation

- Law reform
- Approaches to interpretation
- Relevant legislation and principles
- Any new relevant case law on the point



2. Practical Public Law

- Key legislation
- Important case law
- Practice and Procedure
- Government financial mechanisms
- Delegations – financial, legal and procedural
- Policy, law and regulation
- Government employment law and processes
- The machinery of Government and Parliament

3. Legislative process and parliament

- Important case law
- Different government bodies
- Stakeholder input
- Working with Cabinet, Ministers and Ministries
- Constitutional law
- Parliamentary committees
- Governance arrangements
- Functions and Powers

4. Accountable government

- Key legislation
- Important case law
- Procedural fairness in the Government context
- Decision-making and review
- Types of review
- Preparing advice for decision review
- Governance arrangements
- Crown Immunity
- Confidentiality
- Freedom / Disclosure of Information
- Privilege – legal, parliamentary and public interest
- Ethics
- Dealing with the media and lobbyists
- Whistleblowers protections
- Information privacy laws (insofar as relevant to information held by Government)
- Government Codes of Conduct
- Working with oversight agencies e.g. ICAC, Ombudsman, Auditors General

5. Government contracting and outsourcing

- Legislation, Policies and Guidelines
- Important case law
- Government power to contract
- Risk management
- Principles of disclosure (commercial in confidence)
- Protection of Government Intellectual Property
- Crown's status in trade practices/fair trading legislation e.g. exemptions for Crown conduct
- Competitive neutrality – basic understanding of legal regulation (through variety of methods) and when Government is expected to act on a competitively neutral basis
- Procurement, Commissioning & Outsourcing
- Managing external lawyers on Government matters

6. Disputes involving government

- Dispute resolution between Government agencies – Premiers' Memoranda, OLSC guidelines
- Model Litigant policies
- Public interest immunity
- Client legal privilege - application to Policy Lawyers
- Role of ADR
- Advocacy on behalf of your client
- Privilege – legal, parliamentary and public interest

B.2.1 Core Legislation

Candidates will be expected to have a working knowledge of the core legislation, including subsidiary legislation, which is essential to practice as a specialist Public law solicitor. Some legislation is also relevant for specialist Public Law solicitors with which it is desirable that candidates are familiar. In addition, there may be legislation of a more specialised nature which may occasionally require consideration, and general knowledge of legislation and Government policy documents not listed below may also apply.

FEDERAL		
Core legislation	Relevant legislation	Specialised legislation
Commonwealth of Australian Constitution Act	Auditor-General Act 1997	Australian Human Rights Commission Act 1986
Acts Interpretations Act 1901	Archives Act 1983	Age Discrimination Act 2004
Administrative Appeals Tribunal Act	Federal Court of Australia Act 1975	Disability Discrimination Act 1992
Administrative Decisions (Judicial Review) Act 1977		Equal Opportunity for Women in the Workplace Act 1999
Freedom of Information Act 1982	Archives Act 1983	Migration Act 1958
Public Interest Disclosure Act 2013	High Court of Australia Act 1979	Racial Discrimination Act 1975
Regulatory Powers (Standard Provisions) Act 2014	Australia Act 1986	Sex Discrimination Act 1984
	Judiciary Act 1903	Work Health & Safety Act 2011
	Ombudsman Act 1976 Jurisdiction of Courts (Cross Vesting) Act 1987	Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015
	Privacy Act 1988	Modern Slavery Act 2018



		Government Procurement (Judicial Review) Act 2018
	Public Governance, Performance and Accountability Act 2013	Law Enforcement Integrity Commissioner Act 2006
	Public Service Act 1999	
	Competition and Consumer Act 2010	
	Government Procurement (Judicial Review) Act 2018	
	Federal Circuit Court of Australia Act 1999	
	Legislation Act 2003	
STATE		
Core legislation	Relevant legislation	Specialised legislation
Constitution Act 1902 No 32	Independent Commission Against Corruption Act 1988 No 35	Procurement (Enforceable Procurement Provisions) Direction Act 2019
	Public Authorities (Financial Arrangements) Act 1987 No 33 and Treasurer's Directions	
Civil and Administrative Tribunal Act 2013	Public Finance and Audit Act 1983 No 152 and Treasurer's Directions	
Government Information (Information Commissioner) Act 2009 No 53	Royal Commissions Act 1923 No 29	
Government information (Public Access) Act 2009 No 52	Government Sector Employment Act 2013	
Interpretation Act 1987 No 15	Subordinate Legislation Act 1989 No 146	
Privacy and Personal Information Protection Act 1998 No 133	State Records Act 1998 No 17	
Protected Public Interest Disclosures Act 1994 (NSW)		
	Government Sector Finance	Legal Profession Uniform Law



	Act 2018	(NSW)
Procurement specific		
Public Works and Procurement Act 2012 No 43		Public Works and Procurement Act 1912 No 45
		Infrastructure Implementation Corporation Act 2005 No 89
Anti-Discrimination and Privacy specific		
Privacy and Personal Information Protection Act 1998 No 133	Anti-Discrimination Act 1977 No 48	



C. Methods of assessment

Take Home Written Advice

Candidates will be given a factual scenario and will be required to draft a detailed written (possibly staged or multi part) advice of up to 5,000 words.

The take home written advice will assess the candidate's ability to deal with general principles of Public Law as well as more complex factual, policy/political and legal issues.

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) Depth of knowledge of the law and skill in applying that knowledge to the given fact situation
- c) Ability to provide practical, clear and accurate advice that is comprehensive understandable and set out in a logical manner.

Release date: 12 May 2021

Due date: 26 May 2021



Take Home Examination

Candidates will be required to complete a take home written examination which will be subject to strict time and word limits. It will assess the candidate's ability to explain and apply legal principles across the areas specified in the Knowledge Requirements.

The take home written examination may contain either or both problem based and essay type questions and will consist of:

- One (1) compulsory question from a choice of two (one state based and one federal)
- Three (3) other questions from a choice of six (6).

Each answer will be restricted to 1,200 words.

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) Demonstrate capacity to apply the law (legislative and case) to the facts
- b) Demonstrate ability to write clearly, succinctly, understandably and wherever possible using plain English
- c) Ability to identify client's options and assess best approach
- d) Meets the ethical and professional responsibilities of a Public Law solicitor
- e) Demonstrates a sound approach to statutory interpretation.

Release date: 27 May 2021

Due date: 10 June 2021



Peer Interview with résumé

Candidates will be interviewed by a panel of practitioners (for approximately 45 minutes).

The interview will take the form of discussion of issues focusing on situations to assess a variety of issues such as depth and adequacy of knowledge and performance standard which may include identifying options, communicating legal knowledge, developing and managing a plan and so on.

The assessors will also discuss with the candidate, to the extent they believe appropriate, the matters addressed or required to be addressed by the candidate in the Written Advice and Take Home Examination.

Assessors will also discuss with the candidate their resume and the scope of Public Law work undertaken to date.

Methodology

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) Experience and expertise in this area of law
- b) Ability to communicate clearly and effectively
- c) Offers a convincing argument in support of a stated position
- d) Knowledge across core areas not covered by the other methods of assessment.

Peer interview date: Sunday, TBC July 2021*

Peer interview venue: The Law Society of New South Wales (TBC)

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

Résumé

Candidates must submit a résumé as part of the peer interview assessment.

Candidates will be able to download the specific template and instructions which they must use for this purpose.

Resume due date: July 2021