Law Institute Victoria

Specialist Accreditation
Law Institute of Victoria

SPECIALISATION SCHEME RULES
MARCH 2002

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Definitions

Law Institute of Victoria	*a registered name of Victorian Lawyers RPA Ltd ACN 075 475 731.*
Law Institute	*Law Institute of Victoria*
Scheme	*Specialisation Scheme*
Board	*Specialisation Board*
Committee	*Advisory Committee*
Council	*The Board of Directors of Victorian Lawyers RPA Ltd*
President	*The President of Victorian Lawyers RPA Ltd*
applicant	*a person who submits an application for accreditation as a specialist*
candidate	*a person whose application is accepted and who is admitted to an assessment program*
practitioner	*a person holding a practising certificate in Australia*

PART 1 - INTRODUCTION TO THE SPECIALISATION SCHEME

1 Specialist Accreditation

The Specialisation Scheme of the Law Institute of Victoria was established to recognise members who have demonstrated proficiency in areas of practice in which they specialise. Candidates for accreditation are required to demonstrate sufficient knowledge of substantive law, procedure and practice, and sufficient skill, proficiency and experience in the area of practice for which accreditation is sought as is necessary to justify the representation of special competence to the public and to the legal profession.

2 Aims

The Specialisation Scheme aims to benefit the public and the profession in three ways:

- by offering the public and other professionals a reliable means of identifying legal practitioners who are recognised by their peers as having special competence in particular areas of practice;
- by providing an incentive and an opportunity for legal practitioners to reach and maintain higher levels of competence in their chosen areas of practice;
- by encouraging improvement in the quality, speed and cost-efficiency of legal services.

3 Eligibility for Accreditation

Specialist accreditation is available only to members of the Law Institute of Victoria who satisfy the conditions established by the Specialisation Board.

4 Individual Attainment

Specialist accreditation is an attainment of an individual practitioner and does not pertain to his or her firm.

5 Period of Accreditation

Accreditation as a specialist is for a period of 3 years. This period will be extended if the accredited specialist satisfies the conditions for re-accreditation established by the Specialisation Board.

6 No Limitation on Rights of Practice

Participation in the Scheme is voluntary. No legal practitioner is required to be accredited before practising in any particular area of practice. At the same time, accreditation as a specialist does not in any way limit the right to practise in other areas of practice.

PART 2 - THE SPECIALISATION BOARD

1 Status

The Specialisation Board is a committee of the Council of Victorian Lawyers RPA Ltd. The Council has delegated to the Board the power to oversee and administer all aspects of specialist accreditation.

2 Powers and Duties of the Board

The Board has general jurisdiction in all matters pertaining to the Specialisation Scheme. It has the power and duty:

- to administer the Scheme;
- to determine areas of practice in which specialists may be accredited;
- to appoint and supervise the Advisory Committees and in its discretion to act on the recommendations of those Committees;
- to make and publish standards for the accreditation of specialists, such standards to be designed to produce a uniform level of competence amongst the various specialties in accordance with the nature of those specialties;
- to accredit specialists or to deny, suspend or revoke the accreditation of specialists;
- to establish and publish rules, policies and procedures for the administration of the Scheme;
- to set and collect fees payable by applicants and by accredited specialists;
- to make recommendations to the Council for amendments to the Scheme whenever appropriate;
- to report annually to Council on the conduct of the Scheme.

3 Membership of the Board

(a) The minimum number of Board members is seven and the maximum number is ten.

(b) At least three members of the Board must be members of the Council. The President of the Council is an ex officio member of the Board.

(c) At least three members must be accredited specialists.

(d) No more than two members may be persons who are not current practitioners.

(e) Board members are appointed by the Council.

(f) Appointment to the Board is for a term of three years.

(g) Board members are eligible to serve on the Board for no more than ten years. Years of service need not be consecutive.

PART 3 - ADVISORY COMMITTEES

1 Status

The Board will establish an Advisory Committee for each area of practice in which it is intended that practitioners be accredited. The Board is not bound to act in accordance with the advice provided to it by an Advisory Committee on any issue.

2 Role of an Advisory Committee

Each Advisory Committee is to assist the Board in administering the Scheme generally and to advise the Board on matters relating to the particular area of specialty. Matters on which an Advisory Committee is expected to advise and assist the Board include the following:

- conditions for gaining and maintaining accreditation;
- application procedures;
- assessment procedures;
- accreditation of candidates;
- continuing accreditation and re-accreditation;
- suspension and revocation of accreditation;
- continuing legal education.

3 Membership of an Advisory Committee

(a) The minimum number of Advisory Committee members is five and the maximum number is seven, or such other number as the Specialisation Board permits.

(b) No more than one member may be a person who is not a current practitioner.

(c) A practitioner appointed to an Advisory Committee must be an accredited specialist in the area of practice concerned, unless accreditation has not been made available in that area of practice.

(d) Practitioners appointed as initial members of an Advisory Committee must be eligible for accreditation in the area of practice.

(e) Committee members are appointed by the Specialisation Board.

(f) Appointment to an Advisory Committee is for a term of three years.

(g) The term of appointment of an initial member of an Advisory Committee is calculated from the date on which the first candidates in that area of practice are accredited. Any time served as an Advisory Committee member before that date is not counted as part of the three-year term.

(h) An initial member of an Advisory Committee who is eligible for accreditation can be accredited as a specialist from the date on which the first candidates in that area of practice are accredited.

(i) Advisory Committee members are eligible for re-appointment as follows:

- Advisory Committee members who have passed the assessment program are eligible to serve on the committee for no more than ten years. Years of service need not be consecutive.
- An Advisory Committee member who has not passed the assessment program may be re-appointed for no more than one three-year term.

(j) In order to maintain accreditation as a specialist after leaving the Advisory Committee an initial member of an Advisory Committee must pass the assessment program within two years (or such longer time as the Board may allow in exceptional circumstances). An initial member may not undertake any assessment program set while that person was a member of the Advisory Committee.

PART 4 - GAINING ACCREDITATION

1 Membership of the Law Institute of Victoria

Applications will only be accepted from full members of the Law Institute of Victoria.

2 Application Fee

An application must be accompanied by the fee set by the Board.

3 Current Practising Certificate

An applicant must hold a current practising certificate in Australia, or must be eligible to hold a current practising certificate and be engaged in legal work as an employee of a State or Territory Government or the Commonwealth Government.

4 Experience in Practice

(a) An applicant must have been engaged in legal work after admission to practice for a total period equivalent to at least 5 years' full-time practice. At the Board's discretion, activities such as research, teaching, writing, and judicial or court occupations may be accepted as legal work.

(b) Where an applicant has not engaged in legal work after admission to practice for a total period of at least 5 years, the Board may exercise its discretion in favour of the applicant in special circumstances.

(c) Years of practice need not be consecutive.

(d) Part-time experience may be counted on a *pro rata* basis.

5 Substantial Involvement

(a) An applicant must demonstrate substantial involvement in the area of practice in each of the three years immediately preceding application.

(b) "Substantial involvement" means legal work in the area of practice which is equivalent to at least 25 per cent of the total workload of a practitioner engaged in normal full-time practice. The level of involvement may be measured by time engaged in work relevant to the area of practice, by the number and nature of matters handled, or by a combination of these and other factors, at the discretion of the Board.

(c) In exceptional circumstances, the Board may accept an application from a practitioner who is not able to satisfy the conditions regarding continuity of involvement or level of involvement in each of the preceding three years.

(d) The Board may vary the standards for substantial involvement in a particular area of practice, having regard to the characteristics of that area of practice.

6 Professional Conduct

The Board may decline to accept an application on the ground of misconduct or unsatisfactory professional conduct as defined by s.137 of the Legal Practice Act 1996 or on the ground of conduct related to the practice of law which in the opinion of the Board is likely to bring accredited specialists or the specialisation scheme into disrepute.

7 References

(a) Applicants for accreditation must submit three references in the form prescribed by the Board.

(b) The references must attest to the applicant's competence and involvement in the area of practice.

(c) Referees must have known the applicant for at least three years.

(d) At least one referee must be a legal practitioner with at least five years' experience in practice, who is significantly involved in the area of practice. A referee who is not a legal practitioner must have appropriate experience in a field closely related to the area of practice.

(e) None of the following is eligible to act as a referee:

- partner, associate, employer, employee, or relative of the applicant;
- another applicant in the area of practice (cross-references are not acceptable);
- Specialisation Board member or member of the Advisory Committee in the area of practice;
- staff member of Victorian Lawyers RPA Ltd.

8 Assessment

(a) A candidate for accreditation must pass an assessment program which includes a written examination and any other form of assessment determined by the Board.

(b) Candidates are assessed against the standards for accreditation in the area of practice, not against each other.

(c) The Advisory Committee will satisfy itself that the work submitted by a candidate for assessment meets the required standard before deciding that the candidate has passed the assessment program. The Advisory Committee will recommend for accreditation any candidate who passes the assessment program.

(d) Before deciding that a candidate has not passed the assessment program and recommending that the candidate not be accredited, the Advisory Committee will ensure that the work submitted for assessment by that candidate is re-assessed and that the reasons for declining to pass the candidate are endorsed by the Advisory Committee. In exceptional circumstances, the Advisory Committee may require a candidate to undertake further assessment before a decision is made.

(e) The Board will notify each candidate of its decision to grant accreditation or to deny accreditation. The Board is not bound to provide reasons for a decision to grant or deny accreditation.

(f) There is no right of appeal against a decision of the Board that a candidate not be accredited.

(Written examinations are usually open-book exams of one or more parts. Simulated interviews, mock file exercises, drafting exercises and simulated court appearances are examples of other forms of assessment used in recognition of the variety of knowledge and skills used in practice and the differing characteristics of areas of practice.)

9 Application Guidelines

Members may obtain information about all aspects of the Specialisation Scheme, including application procedures, areas of practice in which accreditation is offered and the timing of assessment programs from Specialist Accreditation staff at the Law Institute.

PART 5 - MAINTAINING ACCREDITATION

1 Membership of the Law Institute of Victoria

An accredited specialist must be a full member of the Law Institute of Victoria.

2 Annual Fee

An accredited specialist must pay the annual fee set by the Board.

3 Current Practising Certificate

An accredited specialist must hold a practising certificate in Australia, or must be eligible to hold a current practising certificate and be engaged in legal work as an employee of a State or Territory Government or the Commonwealth Government.

4 Substantial Involvement

An accredited specialist must maintain substantial involvement in the area of practice in which accreditation is held, unless given leave by the Board.

5 Professional Conduct

An accredited specialist can have his or her accreditation revoked on the ground of misconduct or unsatisfactory professional conduct as defined by s.137 of the Legal Practice Act 1996 or on the ground of conduct related to the practice of law which in the opinion of the Board is likely to bring accredited specialists or the specialisation scheme into disrepute.

6 CLE Participation

(a) Each year an accredited specialist must be able to demonstrate to the Board satisfactory participation in continuing legal education (CLE) by maintaining a record of participation in CLE and reporting to the Board as required.

(b) "Satisfactory participation" means participation which is sufficient to indicate commitment to the continuing development of expertise in legal practice with an emphasis on maintaining a high level of competence in the area of practice in which accreditation as a specialist is held.

(c) In determining satisfactory participation, the Board is wholly concerned with the quality and usefulness of the activities undertaken. The Board does not prescribe a minimum number of hours of participation or apply any points system to measuring the level of participation.

(d) There is no list of "approved" activities. An accredited specialist is free to determine which activities will help attain the objectives of satisfactory participation in CLE. The Board expects that in selecting CLE activities, proper weight will be given to such matters as the experience and standing of institutions, appropriateness of the learning method employed, relevance to practice in the area in which accreditation is held, capacity to broaden the specialist's field of expertise and the level at which the material or activity is pitched.

(e) Examples of CLE activities which might count towards satisfactory participation when undertaken for the specific purpose of acquiring knowledge and skill are listed below:

- Courses of education leading to recognised qualifications;
- Short courses, workshops, seminars, lectures;
- In-house training and development activities;
- Participation as a lecturer or leader in activities of the kind listed above;
- Writing and publishing text books, conference papers, book reviews, journal articles;
- Participation in the development of Law Institute policy through active membership of Institute committees;
- Viewing and listening to films, television and radio broadcasts, videotapes and audiotapes;
- Reading of significant text books, articles, papers and law reports.

7 CLE Records and Reports

(a) An accredited specialist must maintain in each year an up-to-date record of participation in CLE.

(b) Specialists accredited for three years or less must submit a CLE report each year.

(c) Specialists accredited for more than three years are required to submit a CLE report only if directed by the Board. However, these specialists must make an annual declaration that they have complied with the CLE requirements.

(d) The Board will conduct an annual audit to verify compliance with the requirements. The Board will examine the CLE reports of selected specialists to satisfy itself that the reports demonstrate satisfactory participation in CLE.

(e) The Board will accept CLE reports in any form which includes the following essential elements:

- Dates and times of each activity;
- Objectives of each activity;
- Format of each activity;
- Comment on the quality and usefulness of each activity.

8 Re-accreditation

(a) An accredited specialist must apply for re-accreditation every three years.

(b) An accredited specialist seeking re-accreditation must include in the application:

- a declaration that he or she continues to satisfy the conditions for maintaining accreditation;
- the names and particulars of three referees who will attest to the applicant's competence in the area of practice.

(c) Referees must have known the applicant for at least three years.

(d) At least one referee must be a legal practitioner with at least five years' experience in practice, who is significantly involved in the area of practice. A referee who is not a legal

practitioner must have appropriate experience in a field closely related to the area of practice.

(e) None of the following is eligible to act as a referee:

- partner, associate, employer, employee, or relative of the accredited specialist;
- Specialisation Board member or member of the Advisory Committee in the area of practice;
- staff member of Victorian Lawyers RPA Ltd.

(f) An accredited specialist will be re-accredited for 3 years without further assessment, provided that all other conditions for accreditation are satisfied, unless the Board determines otherwise.

(g) The Board may require accredited specialists in a particular area of practice to undertake further assessment before re-accreditation if the Board considers that changes to that area of practice make further assessment necessary.

9 Notification of Change of Circumstances

An accredited specialist who becomes unable to satisfy the conditions for maintaining accreditation must notify the Board in writing at the earliest opportunity.

10 Leave of Absence

An accredited specialist who is unable to maintain the required level of involvement in the area of practice because of illness or other extenuating circumstances may obtain leave of absence for a limited period of time at the Board's discretion.

11 Suspension or Revocation of Accreditation

(a) The Board may suspend or revoke accreditation if an accredited specialist fails to satisfy any of the conditions for maintaining accreditation.

(b) Suspension may be for a fixed time or until such time as the accredited specialist satisfies conditions set by the Board.

(c) A practitioner whose accreditation is suspended or revoked must immediately discontinue holding himself or herself out as an accredited specialist.

12 Certificate Of Accreditation

A certificate of accreditation is given to each candidate who satisfies the conditions for accreditation. A replacement certificate is given to each accredited specialist who satisfies the conditions for re-accreditation. The certificate must be returned to the Law Institute if accreditation is suspended or revoked, and if accreditation is surrendered or expires.

PART 6 - GENERAL PROVISIONS

1 Areas of practice

The Board will approve accreditation of specialists in areas of practice where there is sufficient support from practitioners and potential clients, subject to the availability of resources.

2 Limit on number of areas of practice in which accreditation can be held

(a) The number of areas of practice in which a practitioner may hold accreditation is limited by the requirement to demonstrate substantial involvement in an area of practice.

(b) A practitioner who seeks accreditation in more than two areas of practice must obtain the permission of the Board before undertaking any further assessment.

3 Opportunities for Accreditation

The Board will use its best endeavours to ensure that eligible practitioners are given adequate opportunity to gain accreditation. When accreditation is first offered in an area of practice, it will normally be offered for the second time approximately one year later. Under normal circumstances, accreditation will then be offered once every two years.

4 Referrals

An accredited specialist receiving a referral of a matter from another practitioner is required to do all in his or her power to ensure that the referred client returns to the referring practitioner for all other legal work , and is required to notify the client of this obligation in writing at the earliest opportunity.

5 Advertising

(a) Accredited specialists are entitled to advertise their accreditation by using titles such as Accredited Business Law Specialist, and Accredited Specialist in Property Law. Condensed versions of such titles may be used as post-nominals, for example, Accred. Spec. Bus. Law, or Accred. Spec. (Comm. Litig.).

(b) Accredited specialists are required to identify the state in which they are accredited when advertising outside that state, for example, Accredited Personal Injury Law Specialist (Victoria).

(c) Accredited specialists may use the specialist accreditation logo only in accordance with the specialist accreditation logo licence agreement between the Law Society of New South Wales and the Law Institute of Victoria.

6 Appeals

(a) The Council will establish an Appeal Panel to hear appeals against decisions of the Board as the need arises. Appeals may be made against the following categories of decisions of the Board:

- that an applicant is not eligible to be admitted to an assessment program;
- that an accredited specialist will not be re-accredited;
- that the accreditation of a specialist be suspended or revoked.

(b) Decisions of the Appeal Panel are final.

(c) A practitioner wishing to appeal against a determination of the Board must lodge the appeal in writing within 14 days of the date that notice of the Board's determination is given. An appeal must be accompanied by a non-refundable fee determined by Council.

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Specialist Accreditation
Law Institute of Victoria

Specialisation Board

Annemaree Lanteri (Chairman)	Best Hooper
Roger Batrouney	Secombs
John Bennison	Solicitor
Ken Gray	Arnold Bloch Leibler
David Brett	Coadys
John Weigl	Doyle Considine
Kriss Will	Kriss Will Consulting
Mark Woods	Tyler Tipping & Woods
LIV President, Bill O'Shea	Law Institute of Victoria