

BUSINESS LAW 2010

specialist accreditation **assessment** guidelines



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1. Introduction

Specialist accreditation is a competency standard which signifies to peers and to the public that the legal practitioner has both a significant business law practice and recognised sets of skills and competencies.

These assessment guidelines will assist practitioners interested in becoming accredited in business law to understand and to prepare for the assessment process.

Set out below are:

- Important date
- Eligibility Criteria
- Application Information
- Performance Standards - the standards which form the benchmark for competent practice in this area and form the basis for the assessment for accreditation.
- Topics of Assessment - Core Areas of Knowledge, Specialisation and Experience
- Assessment – Methods and Dates
- Committee Members

Please note: these guidelines should be read in conjunction with the **Specialist Accreditation Handbook**.

2. Important dates

Applications must be completed and returned together with the application fee of \$880 (which includes GST) by the dates detailed below.

Late applications will only be accepted at the discretion of the Business Law Specialist Accreditation Advisory Committee.

Monday 22 March 2010	Specialist Accreditation Information Evening Applications open
Friday 30 April 2010*	Applications close (by 4pm)
May 2010*	Candidates advised of acceptance into program
Saturday 14 August 2010*	Written Examination held Simulated Client Interview (by appointment) Take Home Assignment distributed
Monday 6 September 2010*	Take Home Assignment due (by 4pm or sent by registered post postmarked no later than 4pm)
November 2010*	Candidates will be advised of results by mail

**The Business Law Specialist Accreditation Advisory Committee reserves the right to change these dates.*

2.1 Supplementary assessment

Candidates may be required to undertake additional assessment at the discretion of the Business Law Specialist Accreditation Advisory Committee or at the discretion of the Specialist Accreditation Board.

2.2 Privacy

QLS is committed to protecting your privacy and the confidentiality and security of personal information provided by you to us. The information you provide us will be used to process your registration and to contact you with further details of the program.

3. Eligibility criteria

Please read in conjunction with the Specialist Accreditation Handbook.

3.1 Application stage

To be eligible to apply for accreditation, an applicant must:

- be a member of the Queensland Law Society
- hold a current practising certificate
- have been engaged in full time legal work in Australia for at least five years' following the date of their admission to practice
- demonstrate substantial involvement (at least 25%) in this area of practice over the past three years (see section 3.4 Resume of Work)
- provide three references in support of the application (see section 3.3 - Referees)
- provide a resume of work (see section 4 - Resume of work)

Note:

An applicant who is not able to satisfy fully the standards concerning:

- years of experience in practice
- level of involvement in the area of practice

may be accepted as a candidate at the discretion of the Business Law Specialist Accreditation Advisory Committee.

A request for discretion to be exercised must be made in conjunction with this application and must be accompanied by supporting documentation.

It is a condition of application for accreditation that consent be given for the Professional Standards Department of the Law Society and the Legal Services Commission to provide to the Board and/or the Business Law Specialist Accreditation Advisory Committee any information, the release of which is not prohibited by statute.

3.2 Assessment stage

Once an application is accepted, an applicant must successfully complete the prescribed assessment program to be awarded specialist accreditation.

3.3 Referees

3.3.1 Applicants are required to nominate three referees who can attest to the applicant's competence and involvement in the area of Business Law. Applicants are urged to consider carefully when selecting their referees. The following guidelines should be observed:

- the referees should normally be a legal practitioner resident in Australia
- references may be obtained from members of other professions, provided that the referees have appropriate expertise in the field in which their reference is sought
- it is desirable that some of the referees have acted on the other side of a transaction or matter in which the applicant has been involved
- none of the following is eligible to act as a referee:
 - partner, associate, employer, employee (i.e. another member of the applicant's firm), or relative of the applicant
 - another applicant in the area of practice (cross-references are not acceptable)
 - Specialist Accreditation Board members or members of the Business Law Specialist Accreditation Advisory Committee in the nominated area of practice
 - Queensland Law Society staff
- the Business Law Specialist Accreditation Advisory Committee reserves the right to seek additional references from referees and other people.

3.3.2 A Referee Report form has been included in the application kit. Please note that as an applicant of the prescribed program, the responsibility for distribution of referee reports lies with the applicant. The report must be returned to QLS by the date stipulated within. This may be done by the referee themselves.

3.3.3 Applicants will not proceed to the examination stage unless they can supply three references in support of their application.

3.4 Resume of work

3.4.1 The purpose of the resume

- the purpose of the resume of work is to demonstrate the applicant's experience and capacity in the area of business law
- this element will be assessed by reference to the resume demonstrating the applicant's ability to prepare, conduct and represent clients to a high standard in business law
- the resume of work is an eligibility pre-requisite. **Applicants will not proceed to the examination stage unless the resume of work meets all criteria as outlined.**

3.4.2 General requirements of the resume

- the resume should be formal, concise and carefully presented. It should not exceed 4 pages (exclusive of any necessary attachments)
- the applicant should seek to address the specific requirements as set out below by reference where possible to the business law specialist accreditation performance standards
- the resume should be set out as per the content requirements below, addressing each point
- applicants are required to use 12pt font, 1.5 line spacing, with 2cm margins
- submit two (2) complete copies of your resume with your application.

3.4.3 Specific content requirements of the resume

- It should state your date of admission to practice in Australia or elsewhere, and give a broad description of your legal career since your admission. It should outline the experience you have had in business law including:
 - the percentage of time spent in the practice of business law over the last five years and, in particular, the last twelve months
 - specification of the types of matters that you have been engaged in, and details of your role.

3.4.4 It should describe the experience that in the past three years you have acted in and advised on the following matters in relation to businesses:

- buying
- selling
- structures
- buy sell agreements
- employment
- intellectual property
- securities and guarantees

- taxation
- leases
- franchising; and
- trade practice issues.

3.4.5 It should provide a brief description (not exceeding 250 words) of at least one but no more than three matters you have conducted in the last 12 months which involved some degree of complexity in law, procedure or fact. A short narrative of the circumstances and the issues involved and how you dealt with them should be provided. No documents are needed.

3.4.6 It should list any lectures, seminars, workshops, continuing legal education courses or publications you have conducted or been involved in over the last 12 months in business law. The nature of your involvement should be specified.

4. Application information

Applications must be made on the prescribed application form. The “Specialist Accreditation Application Kit” can be downloaded from the Specialist Accreditation section of the Queensland Law Society website.

4.1 Applicant checklist

Please forward your full application to the Queensland Law Society, including:

1. the completed application form
2. Resume of Work
3. three references
4. application fee of \$880.00 (including GST) payable to the Queensland Law Society Inc.

4.2 Closing dates

Applications close on Friday 30 April 2010 at 4pm.

4.3 Application submission / General enquiries

Specialist Accreditation
Queensland Law Society
GPO Box 1785
Brisbane Qld 4001

tel: 07 3842 5929
fax: 07 3221 2279
email: specaccred@qls.com.au

5. Performance standards

Practitioners wishing to become accredited should be able to:

- display knowledge of the law and procedure which underpins the performance of tasks in Business Law practice; and
- perform the below tasks.

In addition to these tasks, a legal practitioner accredited as a Business Law Accredited Specialist is expected to be able to provide sound preliminary advice on all of the topics listed in the **Topics of Assessment** (see section 7). These topics are divided into core or **major** topics, and non-core or **other** topics.

In all matters:

5.1 The legal practitioner obtains full details by:

5.1.2 Eliciting details of agreement/transaction

The legal practitioner elicits information from the client by employing a systematic and thorough approach, which is appropriate for the client and the complexity of the matter. The legal practitioner displays an attitude of constructive scepticism to the information supplied.

5.1.3 Identifying the parties and key issues

The legal practitioner demonstrates sufficient breadth of knowledge of core areas of law to identify the key legal issues, including advising on appropriate parties/structures and also commercial issues such as costs.

5.1.4 Gathering data from external sources including government bodies and other professionals

The legal practitioner uses appropriate sources of information, complies with the requirements of regulatory bodies and where necessary researches industry requirements. The legal practitioner liaises with other professionals to access information and is able to interpret data, e.g. the legal practitioner uses company accounts and documents to confirm instructions and to identify gaps in the instructions including obvious contradictions with instructions or other information.

5.2 The legal practitioner determines plan and advises client by:

5.2.1 Formulating a plan

The legal practitioner demonstrates an ability to recognise the legal, commercial and personal consequences of the proposal for the client and for any associated party.

The plan should address the questions of:

- the client's objectives
- liability between the participants in the structure
- liability of the entity itself to third parties
- liability of the participants to third parties
- jurisdiction of various regulatory authorities
- administration and reporting to government authorities
- transfer duty, land tax and other State revenue imposts
- CGT and income tax consequences for the entity and the participants
- assessment of financial arrangements
- family law, succession planning and asset protection; and
- commercial effectiveness.

Where appropriate the legal practitioner researches or uses other specialists to complete gaps in knowledge.

5.2.2 Communicating position clearly to client and confirming commitment

The legal practitioner offers practical alternatives, if necessary, that reflect the client's commercial aims. The legal practitioner clearly communicates the rights, obligations, risks and overall costs to the client and any associated third party. The communication is appropriate to the client's level of business experience and sophistication. The legal practitioner assists the client to achieve a realistic understanding of the agreement/transaction.

In transactional matters:

5.3 The legal practitioner implements plan by:

5.3.1 Negotiating terms of agreement

When negotiating, the legal practitioner displays familiarity with the facts and instructions and an awareness of the legal problems. The legal practitioner should display a perception of commercial solutions and likely

acceptable compromises. The legal practitioner utilises constructive problem solving while taking account of the client's commercial goals and has an awareness of the other parties' objectives and tactics.

5.3.2 Drafting or scrutinising documents

The legal practitioner ensures that all documents reflect what the client understands as the agreement and achieves the client's aims. The legal practitioner drafts accurate documents in understandable English and tailors precedents to fit the particular transaction. The legal practitioner is able to interpret documents prepared by another party and to recognise if any aspect of the agreement as negotiated is missing, or if any other element has not been adequately covered. All documents are dealt with promptly and thoroughly.

5.3.3 Transactions

When exchanging the legal practitioner demonstrates knowledge of the rules of land and non land transactions. The legal practitioner is organised and is able to handle last minute changes and undertakings.

5.3.4 Finalising pre-settlement matters

The legal practitioner conducts the research and searches promptly and thoroughly. The legal practitioner deals effectively with all parties to finalise financial arrangements. The final figure is accurately calculated with the proper adjustments, costs and disbursements.

5.3.5 Settling and notifying relevant bodies

The legal practitioner completes matters with a due regard to time limits. The legal practitioner notifies the appropriate regulatory bodies in accordance with the proper procedures and deals with all post-settlement matters promptly and thoroughly.

In non-transactional matters:

5.4 The legal practitioner assists by:

5.4.1 Advising client

The legal practitioner is able to advise and assist the client with management of obligations and risks of the business and its operating structure including:

- powers, rights, duties and liabilities associated with ownership and management
- internal business disputes
- regulatory compliance
- fair dealing by and within business entities; and
- directors' responsibilities.

5.4.2 Representing client in disputes

The legal practitioner recognises disputes as they arise and advises the client on appropriate options to resolve conflict. The legal practitioner advises the client on the best course of action to avoid disputes that may arise among parties in business or with other business entities and customers. The legal practitioner, guided by knowledge of the remedies, advises on the documentation needed the actions to be undertaken by the client and the business procedures that should be adopted. The legal practitioner will negotiate on the client's behalf, mindful of the need to protect the client's position if the matter is litigated in the future.

Where a dispute has arisen the legal practitioner identifies remedies and courses of action available to the client in dealing with the dispute and advises the client in relation to:

- the remedies available
- the practical and legal consequences of pursuing the available options
- ensuring that a commercially acceptable result is likely to be achieved
- the preferred course of action
- the cost, timing and action needed by both the client and the legal practitioner
- the best method of negotiation and the tactics to be employed; and
- the choice of suitable representation in matters which proceed to dispute resolution or litigation.

5.4.3 Representing client, eg before regulatory body

When making representations on behalf of a client, the legal practitioner identifies the appropriate body and understands its processes. The legal practitioner communicates the client's case clearly and persuasively.

6. Topics of assessment - Core areas of knowledge, specialisation and experience

Assessment for specialist accreditation in business law focuses on advice and guidance to small and medium-sized enterprises (SMEs). Matters relating to public companies e.g. the law relating to takeovers are generally outside the scope of this assessment program.

A legal practitioner accredited as a business law accredited specialist is expected to be able to provide sound preliminary advice on all of the topics listed in the Topics for Assessment and more. More importantly, it is expected that a business law accredited specialist would be able to provide detailed advice on certain core topics, such as buying and selling of a business, leasing and business structures.

It is understood that business law accredited specialists differ from each other because of a number of factors including:

- the number and variety of their existing clients in terms of size, structure and fields of business activity
- individual preference for legal work of certain types
- referrals of new clients based on individual expertise
- opportunities available for diversification.

It should be noted that some areas of practice relevant to business law accredited specialists are assessed in depth in other specialties offered under the Specialist Accreditation Scheme, e.g. Property Law.

Topics for assessment are listed below in two groups – **major topics (Group A)** and **other topics (Group B)**. The topics listed will be assessed only to the extent that they impinge on business in the SME sector. The topics should not be regarded as mutually exclusive.

6.1 Group A - Major Topics

A1 - Buying and Selling of a Business, including:

- establishing a new business

A2 - Business Structures, including:

- corporation law
- partnerships, trusts and sole proprietorship
- powers, rights, duties and obligations of owners, directors and managers
- succession planning
- superannuation

A3 - Securities and Guarantees, including:

- mortgages, debentures and guarantees

A4 - Taxation, including:

- income tax, capital gains tax, GST, state taxes

A5 - Leases, including:

- impact of the *Retail Shop Leases Act 1994*

A6 - Employment, including:

- equal opportunity and anti-discrimination
- employment agreements
- termination
- restraints and confidential information
- occupational health & safety issues
- fringe benefits

A7 - Intellectual Property, including:

- trade marks, passing off, business names and company names
- copyright
- websites
- IP licenses

A8 - Franchising, including:

- a working knowledge of the *Franchising Code*

A9 - Trade Practices, including:

- misleading and deceptive conduct
- restraint of trade
- unconscionability
- consumer protection

6.2 Group B - Other Topics

B1 - Insolvency, including:

- | | |
|--|---|
| <ul style="list-style-type: none">▪ Voluntary administration▪ Bankruptcy and arrangements without sequestration▪ Liquidation | <ul style="list-style-type: none">▪ Receivership▪ Preferences and fraudulent disposition |
|--|---|

B2 - Insurance

B3 - Incorporated Associations (non-profit sector)

B4 - Planning and Environmental matters in-so-far as they relate to the acquisition, operation and sale of a business, including:

- | | |
|---|--|
| <ul style="list-style-type: none">▪ Contamination | <ul style="list-style-type: none">▪ zoning |
|---|--|

B5 - Statutory licensing in-so-far as it relates to the acquisition, operation and sale of a business

B6 - Business Disputes, including:

- | | |
|--|---|
| <ul style="list-style-type: none">▪ litigation | <ul style="list-style-type: none">▪ alternative dispute avenues |
|--|---|

B7 – Privacy, including:

- the basic privacy principles contained in the Commonwealth and State legislation.

7. Assessment – methods and dates

The assessment program for specialist accreditation in business law is in three parts.

To gain accreditation candidates must obtain a satisfactory mark in each part of the program.

Part 1 Written Examination

Part 2 Simulated Client Interview

Part 3 Take Home Assignment

7.1 Written exam

Candidates will sit for a written exam which focuses on knowledge essential to a legal practitioner wishing to gain accreditation in business law in addition to assessing their ability to identify problems in a range of areas. The examination is likely to take the form of short-answer and problem-solving questions. It will be three hours in duration with twenty minutes reading time and will be open book. Candidates will have a choice of questions. Candidates will be advised of the exact time closer to the exam.

Date:	Saturday 14 August 2010
Venue:	QLS Auditorium, 179 Ann St, Brisbane Qld 4000

7.2 Client interview

Candidates will be asked to conduct a simulated interview with a person acting in the role of a client. The exercise will take about 30 minutes and **will be** visually recorded. Candidates are advised that:

- they will need to extract relevant factual information, address relevant issues and give pertinent advice
- the visual recording will be assessed by the examiners.

This exercise is intended to assess a wide range of performance standards, including those relating to interaction between the legal practitioner and the client, protecting the client's interests, taking instructions and giving advice, assessing facts and legal options, eliciting relevant facts, canvassing the options with the client and developing the initial plan

Candidates will be notified of their time once all applications are finalised. Every effort will be made to accommodate regional practitioners so that they need only make one trip to Brisbane.

Date:	Saturday 14 August 2010*
Venue:	QLS Auditorium, 179 Ann St, Brisbane Qld 4000

*Additional dates may be required dependant upon final candidate numbers

7.3 Take home assignment

Using the instructions and background material for the take-home assignment provided on the date listed below, candidates will be expected to demonstrate the ability to provide advice on complex issues and to draft appropriate materials in the environment of their own workplaces.

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. Candidates will be required to provide a signed statement to that effect.

7.3.1 Assessment criteria for take home assignment

Candidates will be assessed on their ability to:

- identify relevant issues from the materials provided
- apply the relevant law, including significant recent decisions
- apply relevant procedural rules and principles
- draft or amend original documents
- inform their clients of their rights and obligations
- provide practical, clear and comprehensive advice
- demonstrate an understanding of business considerations.

Date distributed:	Saturday 14 August 2010
Date returned:	Monday 6 September 2010 (by 4 pm, or sent by registered post, postmarked no later than 4pm)

8. Business Law Specialist Accreditation Advisory Committee 2010

Damien Clarke

Peter Jolly

Dennis Standfield

Stephen Woodward (Chair)