

CRIMINAL 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 criminal law practice and recognised sets of skills and competencies.

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

The Criminal Law Specialist Accreditation Advisory Committee is mindful of the distinction between the competence and specialisation of a solicitor in criminal law from experience and skill as a criminal law advocate. Specialist accreditation in criminal law will focus on the conventional aspects of a solicitor's work. However, experience and capacity as a criminal law advocate will be a feature of assessment for accreditation in recognition that advocacy is an increasingly important aspect of a solicitor's work in this area.

Set out below are:

- Important dates
- 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 including GST by the dates detailed below.

Late applications will only be accepted at the discretion of the Criminal 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
Wednesday 7 July 2010*	Take Home Written Test distributed
Wednesday 28 July 2010*	Take Home Written Test due (by 4pm or sent by registered post postmarked no later than 4pm)
Saturday 21 August 2010*	Mock Hearing & Interviews (by appointment)
November 2010*	Candidates will be advised of results by mail

**The Criminal 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 Criminal Law Specialist Accreditation Advisory Committee or 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 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 3.4 - Resume of work)

Please be aware that your resume will form part of the assessment process.

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 Criminal 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 Criminal Law Specialist Accreditation Advisory Committee any information, the release of which is not prohibited by statute.

Note: Some abridgement short of 5 years will be considered by the Criminal Law Specialist Accreditation Advisory Committee, in special circumstances, which will weigh the nature of the experience in exercising its discretion. However an abridgement greater than 6 months will not be granted.

3.2 Assessment stage

Once an application is accepted, an Applicant must successfully complete the prescribed assessment program (set out in section 7) 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 practice. Applicants are urged to consider carefully when selecting their referees. It is important that the referees be able to objectively attest to the applicant's competence in performing tasks as outlined in the performance standards. The reference is to be based on the referee's own knowledge. The Specialist Accreditation Board advises:

- a referee can not be a partner or co-worker in the applicant's current place of employment
- at least two referees must have practised in Queensland in recent years and for a substantial time
- one reference may be sought from members of other professions provided that the referees have appropriate experience in the nominated area of practice (in this case, criminal law)
- members of the Criminal Law Specialist Accreditation Advisory Committee, Specialist Accreditation Board, or QLS staff are not eligible to act as referees
- the Society/Committee reserves the right to seek additional information from referees and other people.

3.3.2 Applicants are required to send their nominated referees the reference form contained within the application kit. Completed reference forms should be submitted with the application.

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

3.4 Resume of work

3.4.1 The purpose of the resume

- the purpose of the résumé of work is to demonstrate the applicant's experience and capacity in the area of criminal law
- this element will be assessed by reference to the résumé demonstrating the applicant's ability to prepare, conduct and appear in criminal matters to a high standard
- the résumé of work is an eligibility pre-requisite. Applicants will not proceed to the examination stage unless the résumé of work meets all criteria as outlined. **Candidates need to be aware that their resume will form part of the assessment process. If a candidate fails the resume component, they cannot move on to the assessment stage**
- where the Criminal Law Specialist Accreditation Advisory Committee proposes to reject an application, the applicant may be given the opportunity to meet members of the Advisory Committee to clarify aspects of the application before the application is denied

3.4.2 General requirements of the resume

- the résumé should be formal, concise and carefully presented. It should not exceed 10 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 performance standards
- the résumé 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
- applicants are required to submit two (2) complete copies of their résumé with their application.

3.4.3 Specific content requirements of the resume

- it must state your date of admission to practice and give a broad description of your legal career since your admission. It must outline the experience you have had in the criminal law jurisdiction including:
 - the percentage of time spent in the practice of criminal law over the last ten years, the last five years and,
 - in particular, the last twelve months.
- specification of the courts/tribunals and the types of matters that you have been engaged in and those in which you have appeared on e.g. "instructed at" or "appeared at" "committal hearings, summary trials, District Court sentences; Supreme Court bail applications etc".
- it must include three of the following documents which you have prepared in the last twelve months:
 - materials, including submissions (if prepared by you), used in a bail application in the Supreme Court

- written submissions made pursuant to s 590AA of the Criminal Code
- written submissions made to a prosecuting authority
- written submissions which were tendered in court on any criminal law matter
- a written advice or report, e.g. Advice to your client or Observations to Counsel
- any other document which might evidence satisfaction of performance standards, such as seminar papers you have prepared and delivered.

When providing these documents, care must be taken to limit any material to that which is necessary to assess your capacity e.g. transcripts of proceedings etc would not usually assist the Criminal Law Specialist Accreditation Advisory Committee. The aim of this part of the résumé is to show the Criminal Law Specialist Accreditation Advisory Committee what you as a lawyer can produce, not the responses and outcomes of your matters.

- it must 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, or which required skill and sensitivity. A short narrative of the circumstances and the issues involved and how you dealt with them should be provided. No documents are needed.
- it must include a brief description (not exceeding 250 words) of a matter you have conducted in the last 2 years which involved a client with any of the following issues related to a criminal law matter: alcohol and drug dependence, language or cultural requirements, mental illness or intellectual disabilities. You must provide a brief description of how these problems affected the way in which you dealt with this client and how you responded to these difficulties. No documents are needed.
- it must list lectures, seminars, workshops, continuing legal education courses or publications you have conducted or been involved in over the last 12 months. The nature of your involvement must be specified.
- it must outline one court/tribunal matter in which you personally appeared in the last 12 months. You must detail the manner in which you organised yourself to conduct the trial or hearing, including how you assessed the prosecution case, the obtaining of defence statements (if that was necessary), obtaining instructions from the client on various aspects of the case, cross-referencing the law (if required), any relevant cases obtained, submissions prepared and any other means used by you in the preparation of this matter (the outline should not exceed 250 words).
- it must outline a matter in which you have briefed counsel in the last 12 months. You must explain the manner in which you prepared and organised the brief to counsel. As part of this requirement you may decide to attach material including any memorandum to counsel, index to brief, research notes or summation of evidence or other relevant documents. It must only include material prepared by you. No prosecution material or other evidence should be included (the outline should not exceed 250 words).

3.4.4 All material in the resume will be treated as confidential.

3.4.5 All material in the resume will be returned to your following assessment if requested.

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

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 specialists in criminal law must be able to display knowledge of the law, practice and procedure, including ethical considerations and policy, which underpins the performance of tasks in the area of criminal practice and the practical skills in application of that knowledge. Substantial experience in these areas must also be demonstrated.

They must be able to demonstrate a capacity to perform particular tasks including:

5.1 Ascertaining the materials and evidence (both from the client and from law enforcement and prosecutorial agencies) necessary to advise and represent an accused.

5.1.1 A specialist criminal lawyer must be able to:

- appropriately elicit, when necessary, information from the client which is relevant and necessary to properly represent a person accused of a criminal offence
- identify the legal issues that are raised
- recognise when it is necessary to obtain assistance from experts and professionals in other disciplines, for example, engineers, psychiatrists, pathologists; and to recognise and accommodate matters concerning the client such as mental illness, social dysfunction, gender, age, ethnicity, or their status as Indigenous Australians in order to effectively elicit instructions
- act ethically and with integrity with the confidential information obtained
- draw a detailed statement from an accused addressing all aspects of the prosecution case.

5.1.2. This compilation of information must be undertaken in a way which meets the exigencies associated with the urgency, complexity and seriousness of the matter; and demonstrate knowledge of the relevant substantive law, policy and procedure associated with the charge/s faced.

5.1.3 Moreover, and most importantly, a specialist criminal lawyer must have the capacity to discern when it is appropriate to elicit such factual instructions from an accused having proper regard to the premise that the criminal law operates within an adversarial system which requires the Crown to establish matters to a criminal standard of proof.

5.1.4 A specialist criminal lawyer must also be experienced in and capable of:

- performing professionally and effectively in difficult circumstances, such as in a police station or at the scene of arrest or the crime and at all times displaying a tolerance and understanding of the client and the investigating officers; an ability to deal with investigators with appropriate firmness; and, an ability to give timely and where necessary 'on the spot' advice. There must be a demonstrated capacity to act urgently when the circumstances so require it
- demonstrating knowledge of the use of investigators and expert witnesses; being skilled in the use of procedural aids, for example subpoenas and particulars, and able to apply the law of evidence relating to presumptions and the onus of proof
- demonstrating good organisational skills and methodical precision in problem solving.

5.2 Advice

5.2.1 A specialist criminal lawyer must be able to:

- develop a strategy after analysing the facts in light of the relevant law, procedure and policy associated with the relevant charge, including statutory and common law defences and the applicable laws of evidence
- identify the critical factual and legal issues and to assess the merits of the case
- identify matters of mitigation for sentence
- advise the client of the options available and devise a tentative plan which, where possible, offers practical recommendations and alternatives. The plan should recognise the client's objectives, and special needs such as health, linguistic and cultural needs, and makes proper use of community resources such as medical, interpretation and community assistance. This advice should be given clearly, in appropriate language and with candour and independence. A final plan is developed in accordance with the instructions of the client
- ensure that all relevant and necessary advice is given at all stages both pre-arrest and post-arrest to fully protect the client's interests. This will include being attuned to all developments in the investigation and prosecution which might impact on the client's rights
- communicate in a manner which demonstrates a clear understanding of the rights, risks and obligations faced by an accused.

5.3 Implementation of 'plan'

5.3.1 A specialist criminal lawyer:

- documents (or ensures adequate documentation by others) all relevant and necessary information in a systematic and secure fashion
- is able to negotiate with the police, prosecuting authorities and other defence lawyers, and is able to liaise professionally with support agencies, court administrators and other professionals.

5.4 Representation / Advocacy

5.4.1 A specialist criminal lawyer:

- must be able to promote a client's interests through oral and written advocacy. This will usually involve a good knowledge of procedural, evidentiary and substantive law underpinning the case and will invariably require strategic planning of evidentiary issues, such as evidence-in-chief, cross-examination and re-examination
- is cognisant of court-room etiquette, procedure and nuances
- is able to demonstrate a proficient and effective capacity to:
 - appear on a Supreme Court bail application
 - appear on a sentence hearing in the District and Supreme Courts
 - appear before a coronial inquest
 - appear before a commission of inquiry or disciplinary hearing.
- demonstrates having effectively, by reference to case examples:
 - represented and advised a client both before and after arrest having regard to developments in the

- investigation or prosecution
 - instructed counsel in preparing for and attending on the totality of a Jury trial
 - made submissions to discontinue a prosecution
 - negotiated charges with prosecutors
 - appeared on a Magistrates Court bail application
 - appeared on a guilty plea in the Magistrates Court
 - prepared all documentation including written submissions for bail in the Supreme Court
 - prepared all documentation to support sentence submissions in the superior courts (either in a submission to the court or in written instructions to counsel)
 - appeared on a contested hearing before a Magistrates Court including a committal hearing and a summary trial
 - appeared before an investigative hearing.
- can identify the defence/s that an accused has available and seeks to promote and formulate a case theory including with the trial advocate if counsel is briefed and compile the evidentiary basis to best advance the client's chances of acquittal. Alternatively, the same skills are applicable to achieve the most favourable outcome possible for the client in a sentence proceeding.

5.5 Instructing counsel

5.5.1 A specialist criminal lawyer is able to comprehensively brief counsel to appear and /or advise in respect of all criminal matters.

5.5.2 A brief to counsel should invariably include:

- observations and instructions on procedural, evidentiary and substantive issues
- the relevant cases and other authorities
- clear and concise factual instructions from the client, including a detailed statement
- all relevant documents including independent reports.

5.5.3 In such cases (i.e. when counsel is briefed) the specialist criminal lawyer would actively participate in the preparation of the case and take an active role in conferences and the presentation of the case; provide good administrative support, including supervision of witnesses and other material and act as an effective liaison between counsel and the client.

5.6 Demonstrates Professional Responsibility

5.6.1 A specialist criminal lawyer should maintain high professional standards. These include a willingness to advise junior members of the profession; to educate others in legal issues which involve the criminal justice system; and to participate in discussions on the improvement of the criminal justice system.

5.6.2 A specialist criminal lawyer should possess and demonstrate personal integrity in the discharge of the onerous professional duties which attach to involvement in the criminal justice system, in particular discretion and independence.

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

The assessment process may cover any of the following core areas of knowledge, documents and procedures.

6.1 Core areas of knowledge

- All State statutory provisions relevant to the practice of criminal law.
NOTE: Candidates will be expected to have a thorough understanding of the (whether proposed or passed) legislation currently entitled *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2009* based on the Moynihan Report.
- All Federal statutory provisions relevant to the practice of criminal law.
- Relevant text books
- Police and prosecution publications
- Relevant case law
- Practice rules and directions
- *Legal Profession (Solicitors) Rule 2007*

6.1.1 The areas that may be the focus for assessment will include:

- law of evidence
- police station practice
- law relating to warrants for search, listening & surveillance devices and telecommunications interception
- law relating to arrest & summons
- law and practice relating to bail
- sentencing principles
- jurisdiction of courts relating to mode of hearing and appeals
- criminal procedure
- law relating to offences and defences
- ethics
- prosecution policies and guidelines
- mental health issues
- expert evidence issues including pathology, fingerprinting and DNA evidence

6.2 Core areas of documentation

- Bail applications and associated affidavit material
- Subpoenas/Summonses
- Affidavits
- Applications (e.g. special witnesses under s 21AG *Evidence Act*; confiscation proceedings)
- Submissions for discontinuance/charge bargaining
- Sentence submissions
- Advices
- Instructions to counsel
- Appeal documents
- Documents required for Mental Health Act emergencies
- Re-opening applications and submissions
- Relevant Judicial Review applications

6.3 Core areas of procedure - Hearings

- All proceedings in the Magistrates Courts (in particular committal proceedings, summary trials, bail applications and sentence hearings)
- Bail applications in the Supreme Court
- Sentence proceedings in the District and Supreme Courts
- Inquisitorial hearings and investigations such as Royal Commissions, Coronial Inquests, Australian Crime Commission and Crime & Misconduct Commission
- Disciplinary hearings

7. Assessment – Methods and Dates

The assessment program for specialist accreditation in criminal law is in three parts:

- Part 1** Take Home Written Test
- Part 2** Interview
- Part 3** Mock Hearing

Details of each of these parts are detailed below.

7.1 Take Home Written Test

Candidates will be required to complete, without consultation with others, a take home written test. The test will be subject to strict time limits and will assess the applicant's ability to handle matters in practice. The written test will assess a variety of performance and standards which may include preparation of documents, knowledge of procedures, the identification and application of legal principles.

Distribution date:	Wednesday 7 June 2010 (via email)
Return date:	Wednesday 28 July 2010 (by 4pm, or sent by registered post, postmarked no later than 4pm)

7.2 Interview

Examiners will ask a series of questions over a period of not more than 30 minutes and the interview will be visually recorded.

The questions will involve candidates responding with short answers or short discussion and explanation.

The visual recording will be assessed by the examiners.

This exercise is intended to assess a wide range of performance standards and the core knowledge areas.

Venue:	TBC – District Courts
Date:	Saturday 21 August 2010 (extra days will be arranged if registration numbers exceed time available on these days)

7.3 Mock Hearing

Candidates will be tested on their ability to present a matter in a mock court.

These situations are designed to test a range of performance standards, including those dealing with the presentation of the client's case and involving the identification of the crucial issues of a case, knowledge of procedure and advocacy skills.

It is expected that the mock hearing will take 20 minutes and that there will be active engagement between the bench and candidate.

Candidates will be provided with material prior to the Mock Hearing allowing time for preparation. The date of distribution will be advised after applications are approved.

Venue:	TBC – District Courts
Date:	Saturday 21 August 2010 (extra days will be arranged if registration numbers exceed time available on these days)

8. Criminal Law Specialist Accreditation Advisory Committee 2010 (as at January 2010)

Glen Cranny

Geraldine Mackenzie

Terence O’Gorman AM

Stephen O’Reilly

Sean Reidy (Chair)

Warren Strange

Penny White