

WORKPLACE RELATIONS 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 workplace relations practice and recognised sets of skills and competencies.

These assessment guidelines will assist practitioners interested in becoming accredited in Workplace Relations Law to understand and to prepare for the assessment process.

Set out below are:

- Important dates
- Eligibility Criteria
- Application Information
- Performance Standards
- 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 Workplace Relations Specialist Accreditation Advisory Committee.

Monday 22 March 2010	Specialist Accreditation Information Evening
Friday 30 April 2010 *	Applications close (by 4pm)
May 2010 *	Candidates advised of acceptance in program
Wednesday 7 July 2010 *	Part 1 A Written Submissions Fact Scenario mailed to candidates
Wednesday 21 July 2010 *	Part 1A Written Submissions Final date for return of written submissions to QLS (by 4pm)
Saturday 31 July 2010 *	Parts 2A & 2B Written Examination 9:30am – 1:00pm
Friday 13 August 2010 *	Part 1B Advocacy Oral submissions to a tribunal or court
November 2010*	Candidates will be advised of results by mail

**The Workplace Relations Specialist Accreditation Advisory Committee reserves the right to change these dates.*

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 Practice)
- provide three references in support of the application (see section 3.3 - Referees)
- provide a resume of work (see section 3.4 - Resume of Practice)

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 Workplace Relations 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 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 complete the prescribed assessment program set out below to be awarded specialist accreditation.

As outlined later in this document, the assessment program for specialist accreditation in Workplace Relations is in four parts.

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

Part 1A	Written Submissions
Part 1B	Advocacy - Oral Submissions
Parts 2A & 2B	Written Examination

Exemption from the Written Examination

Candidates may apply in advance for an exemption from the written examination if they have recently studied subjects relating to workplace relations in a postgraduate course at a tertiary institution.

Any such exemption is entirely at the discretion of the Advisory Committee and will be assessed on a case by case basis but the Committee may take into account:

- how recently the subjects were undertaken
- the number and type of subjects completed by the candidate
- the quality of the course
- the nature and content of the subjects undertaken
- the level obtained by the candidate in the subjects (ordinarily it would be expected that the candidate would have achieved at least a credit or H2B standard in relevant subjects)
- recent changes to the law that may not have been covered by the subject.

Any application for an exemption should be made at the time of lodging the application form, which is to be lodged no later than **4.00pm Friday 30 April 2010**.

Supplementary assessment

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

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 Workplace Relations. 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 Queensland
 - 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 Advisory Committee in the nominated area of practice
 - Queensland Law Society staff
 - the 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 Practice

- 3.4.1 Applicants must submit, at the time of applying, a resume of their professional activities relevant to practice in workplace relations law. The resume should give the Board an overall picture of the applicant's experience and expertise in Workplace Relations law, with an emphasis on involvement over the past three years. It is not expected that a comprehensive *curriculum vitae* will be submitted.
- 3.4.2 No standard format is prescribed. However, applicants might find it helpful to use some or all of the following headings:
- broad description of current practice activities
 - experience in specific areas of activity in workplace relations law
 - involvement with relevant professional organisations
 - relevant publications and presentations
 - academic qualifications
 - other

3.5 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.

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 at www.qls.com.au.

4.1 Applicant checklist

1. the completed application form
2. Resume of Practice
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	tel: 07 3842 5929
Queensland Law Society	fax: 07 3221 2279
GPO Box 1785	email: specaccred@qls.com.au
Brisbane Qld 4001	

5. Performance standards

Practitioners wishing to become accredited should be able to:

- (a) display knowledge of the law and procedure which underpins the performance of tasks in this area of practice, and
- (b) perform the tasks set out below.

The tasks are not listed in a strict temporal sequence.

5.1 Gathers information and takes instruction from client by:

5.1.1 *Listening and questioning the client at initial interview and examining material provided*

The specialist displays an ability to communicate effectively with clients to elicit all relevant details, by listening actively and asking open and closed questions to encourage the client to confide underlying and apparent concerns. The specialist is guided by knowledge of the common law of employment, statute law and the tribunal and regulatory systems relating to employment and industrial relations when developing a framework to assist the client. The specialist displays a professional, objective attitude, tries to establish rapport with the client and uses language that is sensitive to the client's situation (eg non-discriminatory language, plain English). The specialist demonstrates a thoroughness of approach in assembling information, checking with the client by clarifying and amplifying data, including the client's records.

5.1.2 *Appraising the situation*

The specialist analyses the information provided by the client and identifies the relevant issues of fact, law and principles, and the extent to which these are clear and settled. The specialist also appraises what information the client has not provided (eg employment contract) and assesses how this impacts on the matter. The specialist identifies the immediately apparent options available to the client including appropriate legal and non-legal courses of action. The specialist communicates clearly the factors relevant to the choices between each of the available options or courses of action and the consequences of each, including procedural requirements, timeframes and the costs. The specialist checks to ensure the client's understanding, reviews the resources available to the client to undertake the various options, and advises on and recommends interim actions in light of the client's responses.

5.1.3 *Responding*

The specialist acts efficiently and effectively. The specialist identifies matters of urgency and then responds, if necessary, by immediate initiation of court or industrial tribunal proceedings.

5.1.4 *Explanation about costs*

The specialist has an understanding of legal costs, including the difference between solicitor/client costs and party/party costs. The specialist discusses with the client the cost consequences of the jurisdiction, if any, and the likely costs of the matter to the client. In particular, the specialist advises the client about the likely recovery of costs from the other party and the cost consequences of losing the matter and, therefore, being responsible for paying the legal costs of the other party.

5.2 Obtains further information

5.2.1 Accessing standard sources of information

The specialist knows what information is readily obtainable from employers, employer organisations, unions, government authorities and other sources. The specialist obtains relevant information in an expedient manner by appropriate enquiry and correspondence (eg wages records, industrial instruments, employment agreements, union rules, employment data).

5.2.2 Conducting legal research

The specialist:

- knows the sources most likely to be accurate and of assistance
- accesses them promptly and efficiently (eg textbooks, authorised case reports, reporting services and newsletters, services and statutes, award reporting services, parliamentary materials, official reports, the Internet and relevant databases), and
- researches and develops arguments where legal principles are likely to be an issue.

5.2.3 Interviewing witnesses

When interviewing witnesses the specialist demonstrates an understanding of relevant and necessary facts. The specialist demonstrates an ability to communicate with a variety of people explaining the processes of the relevant jurisdiction and regularly checking, testing, clarifying and amplifying the information from interviewees. The specialist maintains a professional objective attitude and assists each witness to produce a structured, comprehensive and coherent statement of the relevant information within the knowledge of each witness.

5.2.4 Inspecting (Viewing)

When conducting inspections the specialist is guided by the purpose of the inspection and ensures that the inspection provides maximum information by obtaining answers to all relevant questions. The specialist tries to ensure the attendance of appropriate people such as site manager, experts, potential witnesses and investigators.

5.3 Develops a plan by:

5.3.1 Identifying options

The specialist analyses the key features of the client's instructions in light of all the information so far obtained:

- The specialist considers and assesses the viability of non-legal options:
The specialist knows and understands the service appropriate to the client's situation; (eg government department or agencies (State/Federal); industrial organisations; other professions or advisers; welfare organisations).
- The specialist considers and assesses the viability of non-litigious action:
The specialist understands the commercial and industrial reality of the client's position, and evaluates the other party's position. The specialist compares the interests of the respective parties for points of overlap/divergence and identifies the necessary processes and documentation for various alternatives. The specialist also considers methods of alternative dispute resolution.

- The specialist considers and assesses the viability of litigation:

The specialist assesses the client's position by reference to the strengths and weaknesses of the parties' respective cases; the possible jurisdictions and different proceedings; the likely scope of the evidence; the opponent's range of options, the possible outcomes and adverse consequences, including the imposition of a costs order.

5.3.2 *Assisting client to choose course of action*

The specialist advises by communicating clearly the possible options to the client, ensuring the client's understanding of the rights, obligations and risks for each option and the reasons why some options may not be viable. Assessing risk includes identifying compliance requirements and the industrial/human resource implications flowing from decisions made by employers and decisions made by courts/tribunals. The specialist explains the processes required by each option. In making a recommendation, the solicitor takes into account the client's objectives, priorities, resources and any special needs.

5.3.3 *Developing a plan*

In the light of the client's instructions, the specialist develops an initial plan to secure the outcome sought. This includes: actions required, the allocation of responsibility for the action, the allocation of resources from solicitor or client and identification of other support required, the timetable and a reconsideration of relevant law and procedures.

5.4 *Implements plan by:*

5.4.1 *Managing the plan*

Throughout the matter the specialist constantly reviews the plan in light of changing circumstances (eg clarification or changes in the position of the other parties; procedural requirements, information gained, judicial or arbitral decisions, legislative changes). The specialist informs the client of any changes and explains their impact on the plan and any variation in prospects, including costs implications. The specialist advises in relation to options which respond to the circumstances and obtains the client's instructions in relation to their options.

5.4.2 *Effecting settlement*

When negotiating, the specialist demonstrates an ability to put the client's case in the best light, assesses the opposition's needs, strengths, weaknesses and likely final position. The specialist knows the procedural requirements for implementing settlement and uses best endeavours to effect settlement if appropriate. The specialist keeps the client informed, and where appropriate, involves the tribunal in discussions and liaises with courts and tribunals on the progress of settlement negotiations and the format of the proposed settlement. The specialist ensures that the client understands the short and long term consequences of settlement and recommends whether the final offer ought to be accepted. The specialist endeavours to obtain prompt finalisation of the matters by settling precise terms with other parties, settling documents that accurately reflect the negotiated agreement and fulfilling any procedural requirements of the tribunal or courts.

5.4.3 *Preparing and conducting hearing*

The specialist conducts proceedings, prepares court documents which properly present the case and complies with court rules and practices. The specialist conducts any interlocutory procedures relevant to the jurisdiction and prepares witness statements, outlines of submissions and affidavits. The specialist

researches and provides copies of authorities to be relied on. Where necessary, the specialist advises on, prepares and conducts any appeal.

5.4.4 Where necessary, briefing counsel and acting as instructing solicitor

The specialist considers when it is appropriate to brief counsel, having regard to such factors as the length of trial, the nature and complexity of the issues, the particular knowledge and experience of the specialist, the costs of legal proceedings and the likelihood of success. The specialist chooses the appropriate barrister for the matter. An instructing solicitor understands the relationship between barrister and client, plays an active role in the conduct and management of the case and acts as liaison between the barrister and the client.

5.4.5 Acting as advocate

When appearing in shorter matters the specialist is well prepared, organised, clear and effective with the ability to think quickly on his or her feet. The specialist tries to achieve the best result he/she can, having regard to the client's instructions, the limits of the law and the remedies available. Where useful, the specialist prepares written submissions. The specialist prepares the client and witnesses to give evidence. The specialist presents the case in a manner that takes account of the knowledge and experience of the court or tribunal concerned. (eg Fair Work Australia, the Magistrates Court and other State Courts and the Federal Courts).

The specialist is able to act as advocate in appropriate circumstances in short matters and interlocutory steps, for example:

- recovery of unpaid entitlements including wages, annual leave and/or long service leave
- plea in mitigation for offences under the *Workplace Health & Safety Act* before the Magistrates Court
- applying for and defending unfair dismissal & unlawful termination actions under the *Fair Work Act 2009 (Cth)* or the *Industrial Relations Act 1999 (Qld)*, including jurisdictional hearings;
- various applications before Fair Work Australia such as secret ballot orders, good faith bargaining orders and proceedings in relation to industrial relations;
- conciliation conferences, pre-hearing conferences and mediations;
- conferences, mediations, arbitrations and interlocutory hearings before the Queensland Anti Discrimination Commission and the Queensland Civil and Administrative Tribunal (QCAT) and the Australian Human Rights Commission (AHRC);
- directions hearings in the Magistrates Court of Queensland, the Industrial Court of Queensland and in the Federal Courts.

5.4.6 Finalising matter

The specialist ensures that all necessary documentation and correspondence to conclude the matter are prepared and processed. The solicitor advises as to the outcome of the matter and any obligations on the client, including payment of any outstanding accounts and expenses.

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

The specialist needs to possess knowledge of a wide range of topics. A comprehensive reading guide appears at the end of these guidelines.

In practice of course, the client base and practice experience of the applicant will result in that applicant having a greater degree of familiarity with some of these topics than others. Over a period of years those topics with which the applicant will be most familiar within the speciality may fluctuate as the client base changes.

Nevertheless, every applicant needs to be aware that once accredited as a specialist in this area, the practitioner will be in effect holding himself or herself out to potential clients as having a knowledge of all of the topics that fall within the speciality. The examiners will expect that for some topics the applicant will have an advanced understanding, but for other topics only a basic or an intermediate understanding is required.

To assist applicants, a description of the levels of basic, intermediate and advanced as used in the knowledge requirements, is set out below:

(a) **Basic Understanding**

The applicant would be expected to have a general awareness or overview of the topic. For example, the applicant should be able to identify the names of relevant Acts and show awareness of general concepts and principles.

(b) **Intermediate Understanding**

The applicant would be expected to have more than a general awareness or overview of the topics. For example, the applicant should be able to identify and explain the relevant sections in legislation and key cases.

(c) **Advanced Understanding**

The applicant must have extensive knowledge of legislation and cases relevant to the topic. For example, the applicant would be expected to know:

- (i) differences in the approaches (if any) adopted in the key cases relevant to the topic
- (ii) contending interpretations (if any) of relevant sections in legislation
- (iii) relevant government policies, and
- (iv) relevant bills introduced into the Parliament.

The assessment will be structured so that the applicant will be required to demonstrate knowledge in topics for each level of understanding (basic, intermediate and advanced). The applicant will have a choice of topics from which to select.

The topic areas for which an applicant is required to have knowledge are set out below.

6.1 The common law of employment

An **advanced** understanding of:

- the employment relationship, including its formation, and being able to distinguish it from other working relationships (eg independent contractor, partnership)
- the common implied terms in contracts of employment (eg duties of confidentiality, fidelity and good faith, entitlement to wages for being available for work, employer's duty of trust and confidence, reasonable notice of termination)
- all aspects of termination of employment (including termination on notice (express or implied), summary dismissal for misconduct, redundancy, constructive dismissal, repudiation of contract)
- the application of the doctrines of duress, unconscionable dealing and estoppel to employment issues
- the remedies of damages and injunction for breach or anticipatory breach of the employment contract
- post employment restraints on trade and on the use of confidential information (including restrictions imposed by the *Corporations Act 2001* (Cth)), and
- the key aspects of the economic torts including interference with contractual relations, intimidation, conspiracy and interference with trade.

6.2 Industrial Relations systems (Commonwealth and Victoria)

An **advanced** understanding of:

- the basic constitutional principles relating to the exercise of Federal power and the coverage of the Federal system.
- resolution of industrial disputes generally under the *Fair Work Act 2009* (Cth)
- the core functions, powers and procedures of Fair Work Australia (including the resolution of disputes, the making of awards, unfair dismissal, conciliation and arbitration)
- the core functions, powers and procedures of the Queensland Industrial Relations Commission (including the resolution of disputes, the making of awards, unfair dismissal, conciliation and arbitration)
- the law (statutory and common law) relating to industrial action (including industrial action in the building and construction industry) including proceedings in Fair Work Australia or the Queensland Industrial Relations Commission and the courts
- the core functions, powers and procedures of the Federal Court of Australia, Federal Magistrates Court in relation to breaches of the *Fair Work Act 2009* (Cth) (including enforcement of Australian Industrial Relations Commission orders, *Trade Practices Act 1974* (Cth) proceedings and underpayment claims)

- the core functions, powers and procedures of the Industrial Court of Queensland and the Queensland Magistrate Courts.
- the functions and powers of the Australian Building and Construction Commissioner
- freedom of association – legislative and case law development in the Federal jurisdiction
- secondary boycotts - the operation of the *Trade Practices Act 1974* (Cth) including enforcement and remedies.

6.3 Statutory unfair dismissal and unlawful termination (Cth)

An **advanced** understanding of:

- the unfair dismissal jurisdictions of the *Fair Work Act 2009* (Cth) and *Industrial Relations Act 1999* (Qld) including:
 - statutory exclusions
 - conciliation and arbitration procedures
 - criteria to determine whether a dismissal is unfair
 - the available remedies – re-instatement and compensation and
 - circumstances which could give rise to costs orders including security for costs.
- the availability or suitability of unfair dismissal remedies under the *Fair Work Act 2009* (Cth) in comparison to other remedies that may be available including:
 - adverse action/workplace rights under the *Fair Work Act 2009* (Cth)
 - unlawful terminations under Part 6-4 of the *Fair Work Act 2009* (Cth) and
 - breach of contract at common law.

6.4 Discrimination Law

An **advanced** understanding of:

- the principles under the *Anti Discrimination Act 1991* (Qld)
- the principles under various federal statutes providing rights and remedies in relation to discrimination matters, including:
 - *Racial Discrimination Act 1975* (Cth)
 - *Sex Discrimination Act 1984* (Cth)
 - *Disability Discrimination Act 1992* (Cth)
 - *Age Discrimination Act 2004* (Cth)
 - *Australian Human Rights Commission Act 1986* (Cth), and
 - the relevant provisions of the *Fair Work Act 2009* (Cth).
- the concepts of direct and indirect discrimination under legislation, and

- the core functions, rules and procedures of Fair Work Australia, and QCAT, the AHRC, Federal Magistrates' Court and the Federal Court as they relate to discrimination law.

A **basic** understanding of the existence of available claims and remedies in Australian state jurisdictions other than Queensland.

6.5 Minimum Entitlements under Modern Awards and National Employment Standards

An **advanced** understanding of:

- the operation and content of minimum employment entitlements (“**Minimum Entitlements**”) under the *Fair Work Act 2009 (Cth)* as established by The National Employment Standards (NES), awards, or transitional instruments
- the operation and content of Minimum Entitlements under the *Industrial Relations Act 1999* (Qld)
- the relationship between Minimum Entitlements and enterprise agreements under the *Fair Work Act 2009 (Cth)* and common law contracts of employment
- the functions and powers of the Minimum Wage Panel of Fair Work Australia
- how Minimum Entitlements are established at a federal level
- enforcement mechanisms in relation to Minimum Entitlements under Commonwealth law and under Queensland law
- award modernisation under *Fair Work Act 2009 (Cth)*, and
- transitional arrangements.

6.6 Agreement Making

6.6.1 Under the Fair Work Act 2009 (Cth) - collective and individual

An **advanced** understanding of:

- the types and effect of available enterprise agreements
- the required and prohibited content of enterprise agreements
- requirements for approval, lodgement and termination of enterprise agreements
- enforcement of enterprise agreements including penalties for breaches
- the better off overall test.

An **intermediate** understanding of:

- enterprise bargaining including:
 - bargaining representatives
 - initiation of bargaining periods
 - majority support determinations
 - good faith bargaining
 - suspension and termination of bargaining periods (including cooling off periods), and

- the potential involvement of Fair Work Australia in relation to bargaining, including workplace determinations
- protected industrial action including secret ballots, and
- measures available in Fair Work Australia and Federal and State courts in response to unprotected action.

6.6.2 Under the Industrial Relations Act 1999 (Qld)

An **advanced** understanding of:

- the types and effect of available certified agreements
- the required and prohibited content of certified agreements
- requirements for approval, lodgement and termination of certified agreements
- enforcement of certified agreements including penalties for breaches, and
- no disadvantage test.

An **intermediate** understanding of:

- bargaining periods including:
 - bargaining agents
 - initiation of bargaining periods, and
 - suspension and termination of bargaining periods (including cooling off periods).
- protected industrial action including secret ballots, and
- measures available in the Queensland Industrial Relations Commission and State courts to respond to unprotected action.

6.7 Registered Organisations

A **basic** understanding of the:

- system for registration of organisations (employer and employee) under the *Fair Work (Registered Organisations) Act 2009* (Cth)
- legal status and judicial supervision of registered organisations and unregistered organisations (employer and employee)
- accountability of officers of registered organizations under the *Fair Work Act 2009* (Cth), and
- rights of entry of registered organisations under the *Fair Work Act 2009* (Cth) and the *Workplace Health and Safety Act 1995* (Qld).

6.8 Transfer of business issues

An **intermediate** understanding of the operation of the *Fair Work Act 2009* (Cth) as it relates to transfer of business.

6.9 Leave entitlements

An **intermediate** understanding of:

- the entitlements, and enforcement of rights relating to leave under the NES the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1999* (Qld), and
- common modern award provisions relating to leave (eg personal leave, family leave, annual leave loading, casuals loading, overtime, public holidays payments).

A **basic** understanding of annual and long service leave entitlements (residence test) for employees based in Australian State jurisdictions other than Queensland whose employment is not covered by the *Fair Work Act 2009* (Cth).

6.10 Workers compensation

A **basic** understanding of:

- concepts and entitlements under the *Workplace Compensation and Rehabilitation Act 2003*, and
- rights and entitlements of impaired workers to common law remedies.

An **intermediate** understanding of the interaction between statutory unfair dismissal and unlawful termination provisions (both Commonwealth and Queensland) and relevant anti-discrimination laws.

6.11 Occupational health and safety law

An **intermediate** understanding of:

- the relevant principles under the *Workplace Health and Safety Act 1995* (Qld), the regulations and Codes of Practice
- prosecutions under the *Workplace Health and Safety Act 1995* (Qld)
- Prevention of Workplace Harassment Code of Practice 2004, and
- the liability of officers under the *Workplace Health and Safety Act 1995*(Qld).

A **basic** understanding of the proposed national harmonisation of occupational health and safety laws.

6.12 Independent Contractors

An **intermediate** understanding of the law relating to independent contractors including:

- the difference at common law between an independent contractor and an employee
- the relevant provisions of the *Industrial Relations Act 1999* Qld
- the *Independent Contractors Act 2007* (Cth)
- the sham arrangements provisions in the *Fair Work Act 2009* (Cth)

6.13 Compliance and Prosecutions

An **intermediate** understanding of the:

- record keeping and payslip obligations under the *Fair Work Act 2009 (Cth)* and the *Fair Work Regulations 2009 (Cth)*
- civil remedy provisions of the *Fair Work Act 2009 (Cth)* in relation to the NESand industrial instruments
- strike pay provisions of the *Fair Work Act 2009 (Cth)*
- powers of the Fair Work Ombudsman, and
- penalties for hindering or interfering with a Fair Work Inspector.

A **basic** understanding of the equivalent provisions (if any) in the *Industrial Relations Act (1999) Qld*.

6.14 Miscellaneous Federal and State Statutory Topic Areas

6.14.1 Privacy issues

An **intermediate** understanding of the application of the following legislation to the employment relationship, specifically to the monitoring of employee activities and the collection of personal information from employees and job applicants:

- *Workplace Surveillance Act 2005 (NSW)*
- *Privacy Act 1988 (Cth)*
- *Information Privacy Act 2009 (Qld)*, and
- *Right to Information Act 2009 (Qld)*.

An **intermediate** understanding of:

- the *Guidelines on Workplace E-mail, Web Browsing and Privacy* issued by the Federal Privacy Commissioner
- common law principles which may impact on the monitoring of employees' activities or on the disclosure of personal information about employees. For example, breach of duty of trust and confidence.

A **basic** understanding of privacy statutory regimes in Australian state jurisdictions other than Queensland.

6.14.2 Statutory regimes relating to misleading and deceptive conduct

An **intermediate** understanding of:

- the relevance of the *Trade Practices Act 1974 (Cth)* (TPA) and the *Fair Trading Act 1989 (Qld)* (FTA) to representations made to job applicants
- the relevant sections of the TPA and the FTA, including:
 - section 51AB TPA and section 39 FTA – unconscionable conduct
 - section 52 TPA and section 38 FTA – misleading or deceptive conduct; and
 - section 53B TPA and section 41 FTA – misleading conduct in relation to employment

- the ability to bring an action for damages for breach of these sections.

6.14.3 Taxation, superannuation and insurance premiums

A **basic** understanding of:

- the PAYG system;
- the difference in taxation of earnings for independent contractors compared to employees;
- the taxation rules applicable to termination payments (eg genuine redundancy, eligible termination payments, payments in lieu of notice);
- the law relating to superannuation, in so far as it relates to the Superannuation Guarantee legislation including choice of fund;
- the definition of wages under the *Payroll Tax Act 1971* (Qld).

6.14.4 Corporations Act 2001 (Cth) matters

A **basic** understanding of the:

- priority of employee entitlements in an insolvency;
- system for enforcement of employee priority rights in an insolvency.

An **intermediate** understanding of the:

- General Employee Entitlement and Redundancy Scheme, which provides limited financial entitlements on the insolvency of an employer;
- restrictions on retirement and severance payments to directors, officers and employees under *Corporations Act 2001* (Cth);
- duties of officers (as defined) and employees under the *Corporations Act 2001* (Cth).

6.14.5 Other Legislation

A **basic** understanding of the following legislation:

- *Public Service Act 1996* (Qld)
- *Whistleblowers Protection Act 1994* (Qld)
- *Commission for Children and Young People Act (2000)* Qld
- *Child Employment Act (2006)* Qld
- *Criminal Law (Rehabilitation of Offenders) Act (1986)* Qld

7. Assessment – Methods and Dates

The assessment program for specialist accreditation in Workplace Relations is in four parts.

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

Part 1A	Written Submissions
Part 1B	Advocacy - Oral Submissions
Parts 2A & 2B	Written Examination

7.1 Part 1A - Written Submissions

Date of distribution: Fact scenario mailed to candidates Wednesday 7 July 2010

Date of return: No later than 4.00pm Wednesday 21 July 2010

Candidates will be asked to draft written submissions based on an agreed fact scenario.

Candidates will act for a party.

The file will be made up of documents for all parties.

7.1.1 Assessment criteria

This exercise will test the following skills:

- Identification of relevant issues from the given fact situation
- Judgment and decision making skills
- Knowledge of relevant law and skill in applying that knowledge in practice
- Awareness of practical considerations

7.1.2 Examination conditions

- You may consult any materials in completing this exercise. However, the material submitted must be entirely your own work. Consultation with any other person is prohibited.
- Two complete hard copies of the assignment must be submitted.
- Written submissions must be either:
 - Hand delivered to the Queensland Law Society, 179 Ann Street, Brisbane by **4.00pm Wednesday 21 July 2010**, or
 - E-mailed to the Qld Law Society at specaccred@qls.com.au by **4.00pm Wednesday 21 July 2010**. (Proof of e-mail receipt must be retained), or
 - Forwarded by registered mail posted no later than **4.00pm Wednesday 21 July 2010**. (Proof of posting must be retained).

Late submissions will not be accepted.

It is the sole responsibility of candidates to ensure all take-home examination material is received by the Law Society on or before the due date.

Failure of the examination material to reach the Law Society by the due date will result in failure of that examination component.

Particular care should be taken with all forms of electronic transmission to ensure it has been received by the Law Society in the time and the intended form.

7.2 Part 1B Advocacy – Oral Submissions

Date: **Friday 13 August 2010**

Time: By appointment. Allow at least 1 hour in total. (Actual submission will take approximately 20 minutes).

Venue: Law Society House, 179 Ann Street, Brisbane, 4000

Details will be forwarded prior to the examination.

The fact situation provided in Part 1A will be the same as that for Part 1B.

Candidates will be asked to make submissions before a person sitting as a member of a tribunal or court. The examiner will have been provided with a copy of the candidate's written submissions prior to the oral submissions taking place.

Candidates will act for a party. Candidates will have been provided with a mock file which will contain an agreed fact situation. Candidates will be expected to make their oral submissions on the basis of their written submissions.

The format and content of the material provided will be dependent on the particular circumstances of the case.

The submissions will take a maximum of 20 minutes and will be videotaped for assessment by the examiners. The member can ask questions of the candidate during the submissions.

Arrangements for this part of the program will be confirmed once the number of candidates is known.

7.2.1 Assessment criteria

This exercise will test a range of skills including:

- Identification of relevant issues
- Assessment of facts and legal options
- Ability to argue a case and appropriately concede a point
- Judgement and decision making skills
- Confidence in presentation and assessment
- Knowledge of relevant law and skill in applying that knowledge in practice, and
- Awareness of practical considerations.

A sound knowledge of the relevant law, rules and procedures will also be required.

7.3 Parts 2A & 2B Written Examination

(3.5 hours *including* time for reading and planning)

Date: **Saturday 31 July 2010**

Time: 9.30am to 1.00pm

Venue: Law Society House, 179 Ann St, Brisbane

Parking and catering details will be forwarded prior to the examination.

Part 2A (allow approximately 1 hour)

This section will test general knowledge across all areas of Workplace Relations. Questions in this section will require only brief answers.

Candidates must answer **5 out of 8** questions which may be taken from the following subject areas of the Knowledge Requirements:

- The Common Law of Employment
- Industrial Relations Systems (Cth and Queensland)
- Statutory Unfair Dismissal and Unlawful Termination
- Discrimination Law
- Minimum Entitlements under Awards and the National Employment Standards
- Statutory Regimes Relating to Misleading Conduct
- Privacy Issues
- Compliance and Prosecutions
- Transfer of Business Issues
- Independent Contractors
- Workers' Compensation
- Occupational Health and Safety Law
- Leave Entitlements
- *Corporations Act 2001* (Cth) matters
- Taxation and Superannuation
- Enterprise bargaining
- Registered Organisations

Part 2B (allow approximately 2 hours)

Candidates will be asked to provide advice on the following topics:

- The Common Law of Employment
- Industrial Relations Systems (Commonwealth and Queensland), and
- Discrimination Law

Candidates will be asked to evaluate a fact situation, identify the key issues to be addressed, and prepare appropriate advice. The answer should include clear descriptions of any assumptions made and of any additional enquiries which it is considered should be undertaken.

Please note that the answer given should demonstrate an advanced understanding of these topics.

7.3.1 Examination conditions

- The written examination is an open book exam.
- Candidates may take into the examination room any books, notes or other written material
- Portable computers may be used for reference purposes on a read-only basis so long as their use does not disturb other candidates. Access to the internet is strictly prohibited
- Mobile telephones are not permitted.
- Questions must be answered in the booklets provided.
- Handwriting must be legible
- Each candidate will be issued with an examination number.
- The names of candidates must not appear on any material submitted for assessment

The written examination will be held in the Law Society House, 179 Ann St, Brisbane

7.3.2 Assessment criteria

Candidates will be assessed on their:

- Ability to identify relevant issues from a given fact situation
- Knowledge of relevant law (including significant recent decisions) and skill in applying that knowledge in practice
- Knowledge of the procedural rules
- Ability to provide practical, clear and comprehensive advice, and
- Awareness of practical considerations in dispute resolution

8. Suggested reading and references

Set out below are some references that may assist applicants. It is not intended to be an exhaustive list.

8.1 Texts and general reading

Australian Fair Work Act 2009 : with regulations and rules, CCH Australia, 2009

Australian Master Workplace Relations Guide. 4th Edition with Fair Work Act changes, CCH, 2009

Catanzariti & Byrnes, *Fair Work : A user-friendly guide*, Thomson Reuters, October 2009

Creighton & Rozen, *Occupational Health & Safety Law in Victoria*, 3rd Edition, Federation Press 2007

Creighton & Stewart, *Labour Law: an Introduction*, 4th Edition, Federation Press 2005

View electronic supplements via Federation Press website :

<http://www.federationpress.com.au/bookstore/book.asp?isbn=186287543X#booksupplements>

Fair work legislation 2009 / with an overview by Andrew Stewart, Thomson Reuters, 2009

With all legislation consolidated to 24 July 2009, access news of later developments from Thomson Reuters' free website: Workplace: Fair Work.

Forsyth & Stewart, *Fair Work: The new workplace laws and the Work Choices legacy*, Federation Press, 2009

Johnstone, *Occupational health & Safety Law & Policy*, 2nd Edition, Law Book Company 2004

McCallum, *McCallum's Top Workplace Relations Cases: Labour Law and the Employment Relationship as defined by Case Law*, 1st edition, CCH 2008

Price, *Employment Law: In Principle*, 3rd Edition, Thomson Reuters 2009

Rees, Lindsay & Price, *Australian Anti-Discrimination Law: Text, Cases and Materials*, Federation Press, 2008

Riley, *Employee Protection at Common Law*, Federation Press, 2005

Riley, *Independent Work Contracts*, Law Book Company 2007

Sappideen, O'Grady & Warbuton, *Macken's Law of Employment*, 6th Edition, Lawbook Co, 2008

Stewart, *Stewart's Guide to Employment Law*, 2nd edition, Federation Press, 2009

Understanding the Fair Work Act : a practical guide to the new workplace relations system, CCH, 2009

Subscription-based

Australian Journal of Labour Law, LexisNexis 3 issues per volume

Discrimination Alert, Thomson (Lawbook Co) www.thomsonreuters.com.au/catalogue/ProductDetails.asp?ID=1098

Employment Law Bulletin, LexisNexis - 10 issues per year

Industrial Law News, CCH - 10 issues per year

Work Alert: Briefings On Employment Matters, CCH, issued monthly

Workplace Info www.workplaceinfo.com.au/

Workplace Express www.workplaceexpress.com.au

Workforce News Service, Thomson

Free

Fair Work Australia – Announcements (from the national workplace relations tribunal website)

http://www.fwa.gov.au/apps/subscription_service/member/sub-services.cfm

Fair Work for Small Business newsletter and website www.fairworkforsmallbusiness.com.au/

HR, Employment & Safety News, CCH (full text of selected articles - requires registration)

<http://www.cch.com.au/au/News/newstopicpage.aspx?TopicIDNews=9>

HR Insight, Thomson <http://sites.thomsonreuters.com.au/hrinsight/>

Workplace: Fair Work portal, Thomson www.thomsonreuters.com.au/workplace

8.2 Loose-leaf and online services

CCH

Australian & New Zealand Equal Opportunity Law & Practice

Australian Employment Law Guide

Australian Labour Law Reporter

Australian Occupational Health & Safety Law

Australian Trade Practices Reporter

Thomson (Lawbook Co)

National Workplace Relations

<http://www.thomsonreuters.com.au/catalogue/ProductDetails.asp?ID=%207465#mediaoptions>

Workplace: Fair Work portal at www.thomsonreuters.com.au/workplace

8.3 Legislation – Commonwealth

<i>Age Discrimination Act 2004 (Cth)</i>	<i>Racial Discrimination Regulations (Cth)</i>
<i>Building and Construction Industry Improvement Act 2005 (Cth)</i>	<i>Sex Discrimination Act 1984 (Cth)</i>
<i>Corporations Act 2001 (Cth)</i>	<i>Sex Discrimination Regulations 1984 (Cth)</i>
<i>Disability Discrimination Act 1992 (Cth)</i>	<i>Trade Practices Act 1974 (Cth)</i>
<i>Disability Discrimination Regulations 1996 (Cth)</i>	<i>Fair Work Act 2009 (Cth)</i>
<i>Australian Human Rights Commission Act 1986 (Cth)</i>	
<i>Privacy Act 1988 (Cth)</i>	<i>Fair Works Regulations 2009 (Cth)</i>
<i>Racial Discrimination Act 1975 (Cth)</i>	<i>Independent Contractors Act 2007 (Cth)</i>

8.4 Legislation – State

<i>Workplace Health and Safety Act 1995 (Qld)</i>	<i>Workers Compensation and Rehabilitation Act 2003</i>
<i>Industrial Relations Act 1999 (Qld)</i>	<i>Commission for Children and Young People Act (2000) Qld</i>
<i>Anti Discrimination Act 1999 (Qld)</i>	<i>Child Employment Act (2006) Qld</i>
<i>Public Service Act 1996 (Qld)</i>	<i>Criminal Law (Rehabilitation of Offenders) Act (1986) Qld</i>
<i>Whistleblowers Protection Act 1994 (Qld)</i>	<i>Payroll Tax Act 1971 (Qld)</i>
<i>Queensland Civil and Administrative Tribunal Act 2009 (Qld)</i>	<i>Right to Information Act 2009 (Qld)</i>
	<i>Information Privacy Act 2009 (Qld)</i>

**9. Workplace Relations Law Specialist Accreditation Advisory Committee
2010 (as at 1 January 2010)**

Amanda Coulthard (Chair)

Steven Bennett

Neil Henderson

Jill Hignett

John Lunny