

Criminal Law

Assessment Criteria 2024



Specialist Accreditation

Distinction in law



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1. INTRODUCTION

The 2024 Criminal Law Specialist Accreditation Program Guide is designed to assist practitioners to understand, prepare for and undertake the assessment specific to this area of accreditation.

This document is to be read in conjunction with the 2024 Specialist Accreditation Scheme Handbook which contains the policies and procedures relevant to all areas of accreditation.

2. CONTACT DETAILS

Please address all enquiries regarding specialist accreditation in Criminal Law to the QLS Specialist Accreditation Team at spec@qls.com.au.

3. IMPORTANT DATES

1 March 2024	Applications open.
31 March 2024	Applications close, 5pm.
Mid-late April 2024	Notification of candidates accepted into the program.
14 May 2024	Assessment Briefing Evening, more information will be provided to all candidates via Canvas and the Specialist Accreditation Team.
4 July 2024	Take Home Assignment scheduled to be released.
26 July 2024	Take Home Assignments scheduled to be due.
7 September 2024	Mock Court Hearing will be conducted in person, more information will be provided to all candidates via Canvas.
8 September 2024	Written Examination conducted via Microsoft Teams and Canvas.
Mid-late November 2024	Candidates advised of results

Queensland Law Society reserves the right to change any of these dates. Sufficient notice will be provided to candidates. Please note that further information regarding each assessment component and how it will be conducted will be outline on Canvas.

4. ASSESSMENT PROGRAM

Learning Outcomes and Objectives

As part of this program, Candidates will undertake practical exercises in:

- Conducting necessary research on relevant law and court procedure;
- Providing advice on courses of action available in the criminal jurisdiction;
- Drafting legal process and documents;
- Advocacy; and
- Comprehending the ethical rules applicable to the conduct of legal practitioners in the course of the criminal jurisdiction.

Candidates must pass the prescribed assessment program set out in this section to be awarded specialist accreditation in this area of accreditation. Candidates wishing to be accredited should demonstrate a high standard of:

- (a) knowledge of the law and procedure which underpins the performance of tasks in this area of practice; and
- (b) oral and written advocacy which is expected of practitioners wishing to hold themselves out as specialists in the area.

For the purposes of these Learning Objectives, “high standard” means the standard expected of a specialist legal practitioner with enhanced skills, superior knowledge, significant experience and a high proficiency in Criminal Law, as reflected in the skills set out in Section 6 of this Guide – SKILLS. A candidate must demonstrate a “high standard” to meet the standard of accreditation.

Details of the knowledge and skills expected are contained in Parts 5 and 6 of this document.

The assessment program for specialist accreditation in criminal law is in three parts. All parts are weighted equally.

Part 1 Take Home Assignment

Part 2 Written Examination

Part 3 Mock Court Hearing

Standard of Accreditation

Candidates will be advised of the standard of accreditation in the instructions for each assessment item. The assessments will be graded on either a percentage score or on a scale of 1 – 5.

Candidates wishing to be accredited must:

- a. perform at a high standard which is expected of candidates wishing to hold themselves out as specialists in the area; and
- b. display a high standard of knowledge of the law and procedure which underpins the performance of tasks in this area of practice.

How the Assessments will be Conducted / Delivered

The Assessments will be conducted / delivered online using our Learning Management System Canvas. Assessment details will be confirmed by the QLS Specialist Accreditation Team ahead of the assessment dates via Canvas. All registered candidates for this program will be provided with student access accounts for Canvas.

The Take Home Assignment will be accessible by candidates on Canvas. Candidates will either upload their Assignment to the Canvas, or email the Specialist Accreditation Team at spec@qls.com.au by the required due date set by the Advisory Committee.

At the time of settling this publication, consideration is being given to the format for the Mock Hearing (eg. in person or virtually via Microsoft Teams). The Specialist Accreditation Team will update candidates in this regard in due course.

Note: In the event it is determined that the format of the mock hearing is 'in-person', candidates who are unable to travel to the in-person assessment location will be permitted to request an appearance via Microsoft Teams (and the Advisory Committee is likely to be sympathetic to reasonable requests in this regard).

The Written Exam will be delivered online via Canvas. The Specialist Accreditation Team will provide further instructions about the exam ahead of the assessment.

IMPORTANT NOTE FOR ONLINE ASSESSMENTS: Candidates attending any online assessments:

- (a) must have a strong and reliable internet connection;
- (b) will be solely responsible for any malfunctions, errors or technical problems of any kind associated with the electronic devices they use for the assessment;
- (c) will not be provided any additional time to complete an online assessment due to any malfunctions, errors or technical problems of any kind in relation to the electronic advice they use to complete the assessments, or due to their own poor internet connection or usage outages, without approval from the Advisory Committee on a case-by-case basis; and

(d) absent Advisory Committee approval, candidates who fail to undertake or complete an online assessment due to any malfunctions, errors or technical problems of any kind in relation to the electronic advice they use to complete the assessments, or due to any their own poor internet connection or usage outages, will fail that assessment.

4.1 Take home Assignment

Candidates will be required to complete a take home assignment, which is subject to strict time and length limits and will assess the candidate's ability to handle matters in practice. The assignment will assess a variety of skills which may include preparation of documents, knowledge of procedures, and the identification and application of legal principles.

- This assessment will be uploaded to Canvas for candidates to access. Candidates will be provided with instructions about how to submit their completed assessment to QLS.
- Candidates may use the resources of their offices in completing this assessment task. **Candidates will face automatic disqualification from the accreditation program if any assessment material is referred to counsel or any other person for opinion or assistance.**
- Submissions received after the due date will not be assessed. Candidates should refer to the appropriate section of the *Specialist Accreditation Scheme Candidate Handbook* if they experience a problem completing the assessment by the due date.
- No reference or marks which may identify the candidate, or their firm, should appear anywhere in the candidate's work.
- Candidates will be allotted a period of time to complete this assessment, up to a maximum of 3 weeks. Candidates will be informed by the QLS Specialist Accreditation Team about the exact assessment duration period in advance of the assessment being released.

4.2 Written Examination

The written examination will cover a wide range of Criminal law matters that may be encountered in practice. Candidates will be expected to demonstrate a high standard of knowledge of Criminal law and associated practices and procedures as outlined in Part 5 of this document.

It is expected that responses are appropriately detailed, identifying the key issues and advice appropriate to the specific situation.

Examination Conditions

- The duration, including perusal time, will be 3 hours and 30 minutes.
- Further guidance will be provided in advance of the examination, as to the written and/or electronic reference material which candidates may access during the examination.
- Answers must be typed out using the allocated text box on Canvas.

Note: Queensland Law Society will take no responsibility for any issues experienced on electronic devices during the written examination. Malfunctioning of electronic devices during the written examination will not constitute grounds for a special consideration application.

4.3 Mock Court Hearing

The Mock Court Hearing will involve a hypothetical scenario. This scenario can, but won't necessarily, be based on a factual matrix of the take home assessment.

This assessment is designed to test a range of skills, including those dealing with the presentation of a client's case to the court, identifying the crucial issues of the case and demonstrating knowledge of procedure and advocacy skills. Candidates will be expected to actively engage with the bench.

The assessment will require candidates to present, in oral form, in a way candidates would be expected to experience in daily practice. For example, it may involve a client interview, presenting a court application, conducting sentencing proceedings, cross-examination of witness/es, or submissions to the bench (or a combination thereof).

More information about the candidate instructions and relevant materials, as well as the anticipated duration of the mock hearing, will be confirmed with candidates by QLS staff prior to the assessment date.

Note: The Advisory Committee and QLS reserve the right to modify any of the above assessment conditions, as required, with advance notice to candidates.

5. KNOWLEDGE

5.1 Core areas of knowledge

For the purposes of the criminal law specialist accreditation assessment program, the core areas of knowledge have been identified as:

- evidence
- police station practice
- warrants for search, listening and surveillance devices and telecommunications interception
- arrest and summons
- bail
- sentencing
- jurisdiction of courts relating to mode of hearing and appeals
- criminal procedure
- offences and defences
- domestic violence
- ethics
- prosecution policies and guidelines
- mental health
- advocacy, including leading evidence in chief and cross examination
- confiscation proceedings – both State and Commonwealth (including knowledge of *Uniform Civil Procedure Rules* ('UCPR') 1999 (QLD)).

5.2 Expected areas of knowledge

The list below is not exhaustive but is set as a guide to candidates as to the type of matters that may be raised in the criminal law specialist accreditation assessment program.

Topics are grouped under headings as a matter of convenience only. Not all the topics listed will be tested and any matter relevant to practice in criminal law may be examined.

5.2.1 Documentation

- Bail applications and associated affidavit material
- Subpoenas/summons
- Affidavits
- Applications (e.g. special witnesses under s 21AG *Evidence Act 1977* (Qld); confiscation proceedings)
- Submissions for discontinuance/charge bargaining
- Sentence submissions
- Advices
- Instructions to counsel
- Appeal documents
- Proceedings under *Mental Health Act 2016* (Qld)
- Re-opening applications and submissions
- Communications under s110B of the *Justices Act*, Applications to cross- examine witnesses
- Prep for trial, witness statements, specialist reports

5.2.2 Advocacy

- 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
- District Court appeals
- Inquisitorial hearings and investigations such as Royal Commissions, Coronial Inquests, Australian Crime Commission and Crime & Corruption Commission hearings
- Disciplinary hearings.

5.2.3 Statutory provisions, rules and practice directions

- All State statutory provisions relevant to the practice of criminal law
- All Commonwealth statutory provisions relevant to the practice of criminal law
- Police and prosecution publications
- Relevant case law
- Practice rules and directions
- *Australian Solicitors Conduct Rules 2012*

6. SKILLS

The skills required to be demonstrated during the criminal law specialist accreditation assessment program include the following:

6.1 Ascertaining and obtaining information and evidence (both from the client and from law enforcement and prosecutorial agencies) necessary to advise and represent a client, namely:

- appropriately eliciting, when necessary, information from the client which is relevant and necessary to properly represent a person accused of a criminal offence.
- identifying the legal issues that are raised.
- recognising 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.
- acting ethically and with integrity with the confidential information obtained.
- drawing a detailed statement from an accused addressing all aspects of the prosecution case.
- compiling information 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.
- discerning 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.
- 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 including demonstrating an ability to deal with investigators with appropriate firmness.
- demonstrating an ability to give timely and where necessary on the spot advice and to act urgently when the circumstance so require it.
- demonstrating knowledge of the use of investigators and expert witnesses.

- demonstrating knowledge 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.

6.2 Providing legal advice, namely:

- developing 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.
- identifying the critical factual and legal issues and to assess the merits of the case.
- identifying matters of mitigation for sentence.
- advising the client of the options available and devising 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 should be developed in accordance with the instructions of the client.
- advising the client as to the prospects of success of each step/application and the likely costs associated with each step and likely option, in writing.
- ensuring 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; and
- communicating in a manner which demonstrates a clear understanding of the rights, risks and obligations faced by an accused.

6.3 Implementing a 'plan', namely:

- documenting (or ensures adequate documentation by others) all relevant and necessary information in a systematic and secure fashion
- negotiating with the police, prosecuting authorities and other defence lawyers, and liaising professionally with support agencies, court administrators and other professionals.

6.4 Representing and advocating, namely:

- promoting a client's interests through oral and written advocacy. This will usually involve a high standard of 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
- demonstrating a high level of oral advocacy to:
 - appear on a Supreme Court bail application;
 - appear on a District Court appeal;
 - appear on a Magistrates Court bail application;
 - appear on a guilty plea in the Magistrates Court;
 - 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;
 - appear before an investigative hearing;
 - instruct counsel in preparing for and attending on the totality of a jury trial;
 - make submissions to discontinue a prosecution;
 - negotiate charges with prosecutors; and
 - represent and advise a client both before and after arrest having regard to the developments in the investigation or prosecution.

- demonstrating a high level of written advocacy to:
 - prepare all documentation including written submissions for bail in the Supreme Court; and
 - prepare all documentation to support sentence submissions in the superior courts (either in a submission to the court or in written instructions to counsel).
- demonstrating knowledge of court-room etiquette, procedure and nuances
- identifying the defence(s) that an accused has available and seeks to promote and formulating a case theory (with counsel if briefed) and compiling the evidence to best advance the client's chances of acquittal or most favourable outcome possible for the client in a sentence proceeding.

6.5 Instructing counsel, namely:

- comprehensively briefing counsel to appear and/or advise in respect of all criminal matters, to include:
 - observations and instructions on procedural, evidentiary and substantive issues;
 - reference to the relevant cases and other authorities;
 - clear and concise factual instructions from the client, including a detailed statement; and
 - all relevant documents including independent reports.
- actively participating with counsel in the preparation of the case, such as:
 - taking an active role in conferences and the presentation of the case;
 - providing good administrative support;

- supervising of witnesses and other material; and
- acting as an effective liaison between counsel and the client.

6.6. Demonstrating professional responsibility, namely:

- maintaining high professional standards to include:
 - a willingness to advise junior members of the profession;
 - educating others in legal issues which involve the criminal justice system; and
 - participating in discussions on the improvement of the criminal justice system.
- possessing and demonstrating personal integrity in the discharge of the onerous professional duties which attach to involvement in the criminal justice system, in particular discretion and independence.