

ACCREDITATION BOOKLET 2021

Family Law

Approved by Council 31 March 2021 (C310321D2)

Introduction

The accreditation scheme was established by the Law Society of Western Australia in 1992 to provide encouragement to practitioners wishing to specialise.

At the time of printing the only group of members who have sought specialist accreditation are those practising in Family Law.

The Society appreciates the voluntary effort of the Accreditation Committee and the Society staff that oversee and work to maintain the integrity of specialisation in Western Australia.



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The Law Society of Western Australia

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RULES FOR THE ACCREDITATION OF LEGAL PRACTITIONERS IN WESTERN AUSTRALIA

1. Accreditation Committee

The Accreditation Committee ("the Committee") is a committee consisting of persons appointed by the Council of the Law Society of Western Australia ("the Council"), who shall have held a practising certificate for a period of not less than five years. Subject to the overall direction and supervision of the Council, the Committee has responsibility for all matters relating to accreditation.

2. Functions of the Committee

The Committee has, in particular, responsibility for:

- (a) the administration of the accreditation scheme adopted by the Council ("the scheme") generally;
- (b) recommending to the Council the making or amending of rules concerning accreditation;
- (c) in consultation with the Council, determining the areas of practice in which accreditation may be gained;
- (d) in consultation with the Council, the fixing of application fees and annual fees as appropriate from time to time;
- (e) the appointment and supervision of advisory committees (if any) in relation to each such area of practice;
- (f) the setting of standards for accreditation (with the advice of any relevant advisory committee concerned) including the establishment of the examination process and reasonable and uniform practice equivalents, relating but not limited to involvement in Law Society committees, teaching, judicial, government or corporate legal experience, advanced course work and publications;
- (g) the setting of standards for continuing accreditation (with the advice of the advisory committee concerned, if any) including the recognition to be given to the CLE component that may be required from time to time in any particular area of practice;
- (h) upon the recommendation of any advisory committee or of its own volition, accrediting, imposing conditions on accreditation, declining to accredit, suspending or revoking the accreditation of practitioners;

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- (i) where there is no advisory committee for an area of practice, reforming and carrying out the functions which would otherwise be performed by the advisory committee; and
- (j) making recommendations to the Council for the amendment of the scheme where necessary.

3. Advisory Committees

The committee may recommend to the Council that it constitute an advisory committee in relation to any area of practice in which it considers that practitioners may wish Advisory Committee to become accredited, the members of which should generally be member of the Law Society ("Society") currently practising or having extensive experience in that area - and in either case having practised for no less than three years in that area and having held a practising certificate for not less than five years.

4. Functions of Advisory Committees

In relation to the particular area of practice with which it is concerned, an advisory committee shall have responsibility for making recommendations to the Committee regarding:

- (a) standards for accreditation and continuing accreditation;
- (b) the refusal, suspension or revocation of accreditation where appropriate;
- (c) accreditation by mutual recognition;
- (d) the Continuing Legal Education ("CLE") component of continuing accreditation; and
- (e) applications to be completed, references to be gathered and assessed and for examination to be set and marked.

5. Standards for Accreditation

In order to be accredited, a practitioner shall meet the following requirements:

- (a) having been engaged in the practice of law on a full-time basis for a total period of at least five years (or equivalent) in Australia or a jurisdiction the operation of the law in which is sufficiently comparable to satisfy the Committee, which need not be consecutive (that generally implying primarily the provision of legal advice or representation - although teaching, judicial, government or corporate legal work during that period may also be taken into account where appropriate);

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- (b) having been substantially involved in the area of practice in which accreditation is sought for a period of at least three years immediately preceding the date of application (substantial involvement generally to mean no less than 25% of full-time practice (or equivalent) of a practitioner, although the number and nature of the matters dealt-with, teaching, related judicial, government or corporate legal work may all be taken into account);
- (c) having completed the prescribed application form and paid the application fee;
- (d) having provided with the application the names of at least three referees who can attest to his or her involvement and competence in the area of practice in which accreditation is sought (being generally barristers and/or solicitors of good standing - at least three of whom shall not be partners, employers or employees of the applicant) none of whom shall be related to the applicant by blood or by marriage and whom may be contacted by staff of the Society to confirm the reference;
- (e) having passed a form of examination as may be determined from time to time by the Committee; and
- (f) being the holder of a current practising certificate and being a financial member of the Society.

6. Standards for Continuing Accreditation

In order to continue to remain accredited, a practitioner shall meet the following requirements:

- (a) continuing to be the holder of a current practising certificate and being a financial member of the Society;
- (b) paying the prescribed annual fee as it falls due; and
- (c) making application for re-accreditation every three years, at the time;
 - (i) completing the prescribed application form and paying any fee charged;
 - (ii) demonstrating that there has continued to be a substantial involvement (as previously defined in paragraph 5b) since the date of accreditation or of the last re-accreditation; and
 - (iii) demonstrating that he or she has participated in CLE to such extent as the Committee may (on the recommendation of any advisory committee concerned) require from time to time.

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7. Waiver or Alteration of Standards and Requirements

The Committee may (on the recommendation of any advisory committee or of its own volition) waive any standard or requirement or impose more stringent standards for accreditation or continuing accreditation, provided that such standards are applied uniformly to all applicants for accreditation or continuing accreditation in particular area of practice in which it is sought or sought to be continued.

8. Assessment

The Committee will determine the process for obtaining accreditation and this will, as far as practicable, be consistent with the process in other States and will be set out in the Accredited Specialisation Application Guidelines provided in each year that accreditation is offered.

9. Confidentiality

The Committee and any advisory committee shall at all times maintain confidential all information concerning applications for accreditation or re-accreditation, references, the results of examinations and the like - to the end that only the names of accredited practitioners in a particular area of practice at any time shall be made public.

10. Right of Reassessment

10.1 This is a merits review which is available to a candidate if they fail only one of the three items of assessment. Reassessment is not available if there has been a failure in more than one item of assessment. The candidate should consider whether the marker's comments adequately reflect their performance before submitting an application for reassessment.

10.2 An application for reassessment must be received by the Secretary to the Committee within 14 calendar days of the date of issue of the results letter. Applications must be no longer than two A4 typed pages, and must state:

- Candidate reference number only;
- The item of assessment seeking to be reassessed;
- The reason(s) for seeking reassessment – briefly setting out specific examples of where you believe the marker's comments do not reflect your performance.

Applications must be accompanied by a non-refundable fee, to be determined by the Society and made available to candidates at the time of application.

- 10.3 Reassessment is carried out by an assessor who is considered to have specialist knowledge in the area of accreditation, is not a member of the relevant committee and has not previously assessed the candidate's performance. The re-assessor is asked to:
- Review the assessment against the relevant marking guide, completing a blind marking of the assessment;
 - Compare this marking to the previous mark/s;
 - Consider the points made in the candidate's application;
 - Determine whether he or she agrees or does not agree that the assessment does not meet the required standard for accreditation.
- 10.4 The determination of the re-assessor is final and the candidate will be advised of the outcome in writing. The re-assessor may, but cannot be compelled to, provide reasons and there is no further avenue for reconsideration of assessment i.e a candidate cannot submit an appeal on the basis of the result of a reassessment.

11. Right of Appeal

- 11.1 This is a process review option which provides an opportunity for a practitioner to submit an appeal where they believe that their performance or result has been affected by alleged procedural error in the way the assessment process is alleged to have occurred. Appeals will consider whether procedures were applied differently and adversely in the case of the candidate.
- 11.2 The test for procedural error is where one or more of the following applies:
The candidate was not given the opportunity to seek special consideration for problems affecting candidacy;
- a) The candidate was given wrong, incomplete or conflicting information in writing;
 - b) The candidate demonstrates that there was bias in the assessment process that disadvantaged them;
 - c) The advised procedure for assessments for that exam process, was not followed.

11.3 Appeal submissions must be received in writing by the Secretary to the Committee as soon as practicable and by no later than within 14 calendar days of the date of issue of the results letter. Submissions must be no longer than two A4 typed pages, and must state:

- Candidate reference number only;
- The ground/s for procedural error the candidate seeks to rely on;
- Details of how the candidate's performance or result has been affected by the alleged procedural error in the way the assessment process is alleged to have occurred.

Submissions must be accompanied by a non-refundable fee, to be determined by the Society and made available to candidates at the time of application.

11.4 Any appeal will be considered by an Appeals Committee to be comprised of:

- One member of the Executive of the Society,
- The convenor of the relevant committee, and
- One member of the relevant committee.

No member of the Appeals Committee will have previously assessed the candidate's performance in any assessment that would have identified the candidate.

11.5 The Appeals Committee will:

- Review submissions, assessment results and other relevant information,
- Consider whether the assessment process was applied differently and adversely in the case of the candidate, compared to other candidates, and
- Consider whether the candidate was otherwise likely to have met the required standard.

11.6 The Appeals Committee will then determine whether to:

- a) Grant the appeal,
- b) Grant the appeal and impose any specific conditions, or
- c) Deny the appeal.

11.7 The determination of the Appeals Committee is final and a candidate will be notified of the outcome in writing.

12. Advertising

A duly accredited practitioner shall comply, as a requirement of continued accreditation, with the rules relating to advertising contained in the Professional Conduct Rules.

13. Rights to Practice

The scheme shall be entirely voluntary, and no practitioner shall be required to be accredited in order to practise in any area of law. No standard shall be set which in any way limits the right of an accredited practitioner to practice in any area of law other than that in which he or she is accredited.

13. Mutual Recognition

A practitioner who is accredited in another jurisdiction may apply to this Committee for recognition in WA of their accreditation and consequent accreditation in Western Australia. An Advisory Committee for area of practice shall determine from time to time requirements which the applicant for mutual recognition shall meet, and if no Advisory Committee exists for the relevant area, this task shall be carried out by the Committee.

STANDARDS FOR ACCREDITATION SPECIALIST FAMILY LAWYER

1. Requirements

In accordance with the provisions of Rules for the Accreditation of Legal Practitioners of the Law Society of Western Australia ("Rules") the following requirements must be met by an accredited practitioner wishing to remain accredited in Family Law:-

- 1.1 Continue to hold a current practising certificate and be a financial member of the Society;
- 1.2 Demonstrate substantial involvement in the area of Family Law;

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- 1.3 Demonstrate participation in CLE as required by the Committee from time to time to include submitting by 31 May a statement of CLE attendances up to 31 March in each year;
- 1.4 Payment of the prescribed fee;
- 1.5 Application for re-accreditation every 3 years.

2. Substantial Involvement in Family Law

- 2.1 An applicant must comply with paragraphs 5(b) and 6(c)(ii) of the Rules.
- 2.2 For the purposes of those Rules, substantial involvement will generally mean maintaining no less than 25% Family Law of the total full time practice (or equivalent) of a practitioner, although the number and nature of the matters dealt with, teaching, related judicial, government or corporate legal work may all be taken into account.

3. Continuing Legal Education

Under these accreditation standards, involvement in CLE activities which may satisfy this requirement includes (but is not limited to) lectures, seminars, workshops, conferences, discussions, demonstrations, recorded visual presentations (with or without live commentary), audio presentations, research and publication of legal articles or works or other similar means of formal instruction and have the following characteristics:

- 3.1 Be of sufficient intellectual or practical content and deal primarily with matters directly related to the practice of Family Law;
- 3.2 Be relevant to an Applicant's immediate or long term needs in relation to professional development and the practice of Family Law;
- 3.3 Presented by persons who are qualified by practical or academic experience in the subjects covered;
- 3.4 Total no less than 10 units from activities attended during each period 1 April – 31 March in accordance with these standards and commencing 1 April 2009;

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- 3.5 If a practitioner does not accumulate 10 CLE units in any one year, then the practitioner must apply to the Committee when sending his or her statement under Clause 4, stating reasons why 10 units were not attained and seeking to make up the shortfall in the following year (in addition to the annual 10 units required in that following year);
- 3.6 The Committee, in determining any application made under Clause 3.5, will have regard to the following factors:
- involvement in a long-running trial;
 - extended leave or serious illness;
 - the absence of a National conference that year (vis a vis CLE activities that year made available within WA);
 - the practitioner's previous CLE attendance record;
 - any other circumstance of a compelling or extenuating nature.
- 3.7 A practitioner granted an extension under Clause 3.5 must sign an undertaking in accordance with Schedule B that he or she will make up that required shortfall.

4. Verification

- 4.1 Applicants who seek to be re-accredited must submit to the Accreditation Committee (the Committee) by no later than 31 May in each year a statement in accordance with Schedule A and signed by the practitioner declaring that the information contained in the statement is true.
- 4.2 The Committee may, at its discretion, require further evidence of an Applicant's satisfactory compliance with the CLE requirements.
- 4.3 An Applicant may obtain CLE units for any particular activity where the Applicant satisfies the Committee that the Applicant has undertaken and completes the activity in good faith and has reasonable grounds to believe that the activity undertaken would entitle the Applicant to claim the units.
- 4.4 An applicant should apply to the Committee for a determination on the number of CLE units allocated to an activity prior to or as soon after the activity as is reasonably practicable.

5. Units for CLE Activities

Subject to the Committee declaring the number of points for each activity an Applicant shall be entitled to claim the following units for CLE activities:

5.1 General Attendance

1 CLE unit for each period of 60 minutes of attendance at a CLE activity which takes the form of a lecture, seminar, workshop, conference, discussion, demonstration or other similar activity up to a maximum of 10 units for any single activity.

5.2 Preparation and Presentations

1 CLE unit for each period of 60 minutes for either or both of the following:

- a) the preparation of written or oral material which is part of a CLE activity (other than a live commentary on a visual recording).
- b) the presentation of that written or oral material in the CLE activity;

A maximum of 5 units only may be claimed under this category of Preparation and Presentations. Where a presentation is repeated, units may only be claimed for the initial preparation and presentation.

5.3 Visual recordings and Audios

- a) One half CLE unit for each period of 60 minutes of visual recording (without live commentary) or audio recording instruction;
- b) One CLE unit for each period of 60 minutes of visual recording instruction conducted in conjunction with a live commentary;
- c) The visual recording commentary may be either a suitably qualified and experienced individual member of the group for whom the session of visual recording with commentator is presented or a qualified and experienced outside practitioner.
- d) A group member who seeks to be a commentator may acquire the necessary background knowledge of the topics under discussion either by

a prior viewing material of the visual recording and study the accompanying material or by undertaking appropriate independent research.

- e) A maximum of 5 units only may be claimed under this category of Visual recording and Audios with a maximum of 2 units only under category (a).

5.4 Publications

For any published legal work, a maximum of up to 5 units may be claimed under this category of Publications

5.5 Fractions of Units

A fraction of a CLE unit, calculated to the nearest quarter unit, for a proportionate involvement in a CLE activity where that involvement does not precisely equate to the times or amounts specified in sub-paragraphs 5.1 to 5.4. For example, the following CLE units may be claimed:

- a) A general attendance referred to in paragraph 5.1 of 1.75 hours – 1.75 units;
- b) For the delivery of a 1 hour lecture involving 3.5 hours of preparation - 4.5 units;
- c) For writing an article of 1,800 words published in a law journal - 1.75 units;
- d) Viewing a 30 minute visual recording without live commentary - 0.25 units;
- e) Any individual, firm or organisation may apply to the Committee for the allocation of units for a planned activity.

5.6 Additional Criteria and Activities

- a) Any individual, firm or organisation may apply to the Committee for the allocation of units for a planned activity;
- b) In determining allocation of CLE points in respect to sub-paragraph (a) 8.6(c) or in respect to any activity not specifically covered by any of the criteria set out in paragraph 5, the Accreditation Committee must have regard to paragraph 3;

- c) Where an applicant or organisation seeks the allocation of CLE points to an activity, the applicant may write to the Committee (c/- Law Society) seeking a provisional allocation of units pending any final determination or verification by the Committee as the Committee may see fit;
- d) The Committee, may make such a provisional allocation of CLE points as it considers appropriate;
- e) Where a provisional allocation of CLE units is made under subparagraph (c) it will be subject to the need for that applicant to verify to the Committee, in such detail as may be required by the Committee, that the activity in question reasonably meets the requirements of paragraph 3 of these standards;
- f) The Committee may determine the allocation of CLE units to an activity occurring in another State of Australia or another country in accordance with any allocation of CLE units made by a similar Committee in that other State or country;
- g) Without limiting the enquiries that the Committee may make of any application for allocation of CLE points, the Committee will generally require of any applicant:
 - A detailed Program or agenda, naming the presenters, times of each session and the content;
 - An extract of the conference papers;
- h) Additional criteria and activities which attract CLE units may be advised from time to time by the Committee;

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6. Units for Part Year of Accreditation

The Committee may determine the appropriate units required by applicants who first qualify as accredited practitioners during the relevant 12 month period.

7. Appeal

Any person aggrieved by any decision of the Committee has a right of appeal to the Council of the Law Society of Western Australia against that decision.

8. Application for Re-Accreditation

All applications for re-accreditation by applicants who qualified as accredited practitioners:

8.1 In all cases be made by, 30 June of the third year of the practitioner's accreditation.

9. Leave of Absence

The Committee may, on receipt of a written request, grant leave of absence to an accredited specialist in certain circumstances, and who has adopted the following guidelines:

9.1 Leave NOT exceeding 12 months

- a) The usual re-accreditation fee must be paid;
- b) He or she will be maintained on published lists of accredited specialists and the person may hold him or herself out as an accredited specialist;
- c) The Committee will waive the requirement for substantial involvement during the period of leave;
- d) The CLE requirement will apply on a pro rata basis;
- e) The person must continue financial membership of the Law Society of Western Australia;
- f) The person is to notify the Committee upon returning to practice.

9.2 Leave EXCEEDING 12 months

- a) The re-accreditation fee is not payable for the period of leave. If upon return to practice the person seeks reinstatement as an accredited specialist and the Committee approves, then the fee shall be levied on a pro rata basis;
- b) The person shall be removed from published lists of accredited specialists and shall be advised that he or she must not hold themselves out to be an accredited specialist;
- c) The person undertakes as much CLE as possible if he or she intends to seek reinstatement at a later stage;
- d) The person must contact the Committee upon return to practice if seeking to be reinstated. Reinstatement is entirely at the discretion of the Committee. Factors to be considered include the length of time the person has been away from practice, any relevant Family Law work undertaken during the leave of absence, and the persons participation in CLE activities during the absence.

10. Miscellaneous

The Committee may, in determining the eligibility for accreditation or reaccreditation, determine that a requirement has been satisfied by compliance with a more stringent equivalent requirement. The Committee shall have the power in its discretion to waive the necessity for compliance with the formal requirements if satisfied that there are proper reasons for so doing. When exercising such a discretion the Committee must record its reasons.

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