



**LAW
INSTITUTE
VICTORIA**



2022 Accredited Specialisation Assessment Guidelines

Workplace Relations

Contact

T 03 9607 9311

specialisation@liv.asn.au

www.liv.asn.au

Table of Contents

Assessment Guidelines Overview	3
Performance Outcomes	3
Methods of Assessment.....	3
Results	4
Supplementary assessment.....	4
Key Milestones & Program Timetable	5
SCHEDULE 1: ASSESSMENT COMPONENT PART 1	6
Assessment overview	6
Assessment criteria.....	6
Assessment conditions	6
SCHEDULE 2: ASSESSMENT COMPONENT PART 2	7
Assessment overview	7
Assessment criteria.....	7
SCHEDULE 3: ASSESSMENT COMPONENT PART 3	8
Assessment overview	8
The examination is divided in two parts:	8
Assessment Criteria	9
Candidates will be assessed on their:.....	9
Examination Conditions	9
Access to Support Materials	10
SCHEDULE 4: TOPICS FOR ASSESSMENT	11
Outline of Knowledge Requirements	11
Basic Understanding	11
Intermediate Understanding	11
Advanced Understanding	11
SCHEDULE 5: RELATED LEGISLATION & OTHER MATERIALS	24
Related legislation:.....	24
Commonwealth	24
State	24
State (cont.).....	25
Suggested reading	25
Loose-leaf and online services	25
General reading	26

Other reading	26
SCHEDULE 6: RECOMMENDED COMPUTER REQUIREMENTS FOR ASSESSMENTS	27
Written Examination Devices Specification.....	27
Oral Assessments.....	27

Assessment Guidelines Overview

Lawyers who are accredited as specialists are recognised as having enhanced skill levels, as well as substantial involvement in established legal specialty areas. The Law Institute of Victoria requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an accredited specialist is meaningful, credible and reliable.

These Assessment Guidelines should also be viewed in conjunction with the **Application Guidelines** and the **Accredited Specialisation Scheme Rules**.

Performance Outcomes

Specialist Accreditation is a structured assessment process which requires the candidate to draw on their existing knowledge and skills to demonstrate their competency and expertise in their chosen area of law.

Practitioners wishing to be accredited should be able to:

1. perform at a superior standard which is expected of practitioners wishing to hold themselves out as specialists in the area
2. display a superior standard of knowledge of the law and procedure which underpins the performance of tasks in this area of practice.

Specific assessment criteria and performance outcomes are listed under the details of individual assessments that follow.

Methods of Assessment

The LIV Accredited Specialisation assessments are all delivered in a digital environment. This provides equitable access for all candidates irrespective of location, and is also aligned with the nature of legal practice in today's digital world. There is a base level of computer literacy required indicative of the skills required of a specialist lawyer. It is incumbent upon candidates to have access to suitable technology and infrastructure to perform in the most optimal way. Details of these requirements are outlined in [Schedule 6](#).

Three assessments make up the Accredited Specialisation program in **Workplace Relations Law**.

1. [Letter of Advice](#)
2. [Advocacy](#)
3. [Written Exam](#)

The three assessments are weighted equally, and candidates must achieve a satisfactory grade of at least 50% in all three assessments. Candidates who complete all three assessments to the performance standard are eligible for accreditation as a specialist in Workplace Relations Law.

The below schedules include further details in relation to each of the three assessments along with details of topics for assessment and relevant legislation that you will need to know to undertake the program.

Candidates may, in any or all of the assessment program, be assessed on any or all of the Assessment Topics and Legislation listed in Schedules [4](#) and [5](#). Further details of the assessment program and procedures are contained in the schedules within.

Candidates will be examined on the law as it stands at the date of assessment.

Results

Results are only released after the completion of all three assessments and with all candidates results, regardless of area of law being issued on the same day.

As outlined in Rule [4.11.6 of the scheme rules](#), all assessments undergo a rigorous marking process. Any assessment that is deemed to have not achieved a satisfactory result will go through an independent second round of marking before a recommendation is made to grant or deny Accredited Specialisation.

It is important to note the following information about results:

- **You will not be provided with individual assessment marks**
- **Outcomes are delivered as either satisfactory or unsatisfactory for each assessment component with an overall satisfactory in all three resulting in being granted specialisation.**
- **Candidate Assessment Reports (CARs) will be provided to candidates on any assessment where an unsatisfactory grade is attained. The CAR will provide constructive feedback for improvement to the candidate. No further feedback or grades will be disclosed.**

Supplementary assessment

Candidates may be required to undertake additional assessment at the discretion of the Specialisation Board. The Specialisation Board will only consider a recommendation from an advisory committee for a proposal of a supplementary assessment being offered to a candidate due to exceptional circumstances. Candidates will be notified the decision of the Specialisation Board in their official notification of results.

Key Milestones & Program Timetable

Candidates are advised that the Accredited Specialisation program requires a significant commitment in order to achieve a satisfactory outcome. Based on feedback from previous candidates the number of hours of study is in excess of 100.

We encourage you to dedicate and manage time in the lead up to and during the assessment period. Candidates need to plan their workload well in advance of the key assessment dates and are encouraged to seek support in the form of study leave from employers where possible to optimise performance across all assessment tasks.

ITEM	DATE
Applications Open	Mid-January 2022
Applications Close	25 March 2022
2022 Accredited Specialisation Program begins <ul style="list-style-type: none"> – Welcome Orientation Session – Access to the LIV Student Portal and resources 	03 May 2022
Candidate support sessions: <ul style="list-style-type: none"> – Study techniques series – Online exam platform familiarisation 	May-August
Candidate self-guided study: <ul style="list-style-type: none"> – Review assessment guidelines & make study notes – Form study groups – Work with mentors 	May-August
Practice Written Exam & Familiarisation Exam access available	July
Assessment Period <ul style="list-style-type: none"> Part 1: Letter of Advice (Schedule 1) Part 2: Advocacy (Schedule 2) Part 3: Written Examination (Schedule 3) 	Friday 29 July Tuesday 02 August Saturday 13 August
Results Released	Early November
Conferral Ceremony	Early December

Note: The above dates are correct at the time of publishing. Should any changes need to occur, they will be communicated directly to candidates throughout their assessment program as early as possible.

SCHEDULE 1: ASSESSMENT COMPONENT PART 1

Letter of Advice

Assignment Release Date:	Friday 15 July
Assignment Due Date:	Friday 29 July, 4pm
Assignment Submission:	Assignment to be submitted via the LIV Student Portal

Assessment overview

A mock file will be provided to candidates via the online student portal which will contain an agreed fact situation. Candidates will be asked to draft a Letter of Advice (not exceeding 4 A4 pages) to advise a respondent employer on the merits of a jurisdictional objection based on an agreed fact scenario relating to a potential unfair dismissal claim made under the *Fair Work Act 2009* (Cth).

Assessment criteria

Candidates will be assessed on their:

- Identification of relevant issues from the given fact situation
- Judgement and decision-making skills
- Knowledge of relevant law and skill in applying that knowledge in practice
- Awareness of practical considerations
- Ability to identify and address any ethical issues

Assessment conditions

Candidates may use the resources of their offices in completing this exercise. However, consultation with any other person in completing the exercise is **not permitted** and the material submitted must be entirely your own work.

The assessment must be submitted as a word or PDF document through the online student portal by no later than 4pm on the due date advised. Late submissions will not be accepted.

Further details are provided when the assessment is released.

In order to achieve a satisfactory mark candidates must achieve at least 50% in this assessment.

SCHEDULE 2: ASSESSMENT COMPONENT PART 2

Advocacy Oral Submission

Date:	Tuesday 02 August
Time:	20 min scheduled by appointment closer to the date
Venue:	Via Zoom or Microsoft teams, candidates must use a device with a working camera

Assessment overview

The fact situation provided in [Part 1 \(Letter of Advice\)](#) will be the same as that for Part 2 (Advocacy Oral Submission). As part of the assessment:

- Candidates will be asked to make an oral submission before a person sitting as a member of a tribunal or court in a mock hearing of a jurisdictional objection.
- No written submission should be filed or presented.
- Candidates will act for the applicant in opposing the jurisdictional objection.
- The submissions will be recorded for assessment by the examiners.
- The member can ask questions of the candidate during the submissions.

Assessment criteria

This assessment will test a range of skills including:

- Identification of relevant issues
- Assessment of facts and legal options
- Ability to argue a case and answer points raised
- Judgement and decision-making skills
- Composure in presentation and assessment
- Knowledge of relevant law and skill in applying that knowledge in practice
- Ability to identify and address any ethical issues

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

In order to achieve a satisfactory result, candidates must achieve no less than 50% in this assessment.

SCHEDULE 3: ASSESSMENT COMPONENT PART 3

Written Examination

Exam Date:	Saturday 13 August
Time:	Three hours and 30 minutes inclusive of reading, writing, and planning time
Venue:	LIV online exam platform (refer to application guidelines for full details)

Assessment overview

The examination is divided in two parts:

PART A

- This section will test general knowledge across all areas of workplace relations. Questions in this section will require only brief answers.
- In Part A of the examination candidates are required to answer five out of eight questions which may be taken from the following subject areas of the Knowledge Requirements:
 1. The Contract of Employment
 2. Industrial Relations Systems (Commonwealth and Victoria)
 3. Statutory Unfair Dismissal
 4. General Protection Claims
 5. Discrimination Law
 6. Minimum entitlements under Modern Awards and the National Employment Standards
 7. Enterprise Agreement Making under the *Fair Work Act 2009* (Cth)
 8. Registered Organisations
 9. Transfer of Business Issues
 10. Leave Entitlements
 11. Workers' Compensation
 12. Work Health & Safety Law
 13. Workplace Bullying and Sexual Harassment
 14. Independent Contractors
 15. Fair Work Act compliance
 16. Miscellaneous Federal and State Statutory Topic areas, including:
 - privacy issues
 - statutory regimes relating to Misleading Conduct
 - taxation, superannuation and insurance premiums
 - *Corporations Act 2001* (Cth)
- In planning and time management, it is recommended candidates spend approximately 12 minutes answering each question and spend approximately one hour on this part of the examination.

PART B

- In Part B of the examination 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 inquiries which it is considered should be undertaken.
- Candidates will be asked to provide advice on the following topics:
 - The Contract of Employment
 - Industrial Relations Systems
 - Discrimination & General Protections Law.

Please note: *this section of the written exam requires detailed answers and answers given should demonstrate an advanced understanding of these topics.*

- These questions will relate to the topics listed in [SCHEDULE 4: TOPICS FOR ASSESSMENT](#)
- In planning and time management, it is recommended candidates spend approximately two hours on this part of the examination.

IMPORTANT: In order to pass the written examination, candidates will need to achieve a minimum of 50% in each part of the exam.

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
- Awareness of practical considerations in dispute resolution
- Ability to identify and address any ethical issues

Examination Conditions

- Access to a computer with webcam and microphone
- Access to the exam is via the safe exam browser, once installed on your computer, this will be located on your desktop and called Exam Launch File, LIV Online Assessment Candidate App (the app)
- All questions must be answered within this digital environment
- All questions can be reviewed and updated prior to submitting the exam
- Once the exam is submitted, there is no opportunity to revisit or change your responses
- Access to any external sites including email is disabled for the duration of the exam.
- Once you submit the exam you will be automatically redirected to the confirmation of submission screen.
- You will need to logout of the safe exam browser once you have completed your exam. Candidates will not have access to their computer applications and programs until logging out of the site.
- Refer to [Schedule 6: Recommended Computer Requirements for Assessments for more information](#)

Access to Support Materials

- This examination is an open book exam.
- Prior to the exam, you will be asked to save your digital notes on the device on which you will be completing your examination. These can be saved in a drive that does not require access via the internet or document management system. You are also encouraged to have these available on a USB stick as a backup.
- The format of accessible files include word, excel and PDF.
- You may access your digital notes via the exam delivery system. There will be two windows within the browser – one for your notes, the other for your examination. These can be located on dual screens.

SCHEDULE 4: TOPICS FOR ASSESSMENT

Outline of Knowledge Requirements

The specialist needs to possess a 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 themselves out to potential clients as having a knowledge of all of the topics that fall within the specialty. 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:

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.

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.

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:

- differences in the approaches (if any) adopted in the key cases relevant to the topic
- contending interpretations (if any) of relevant sections in legislation
- relevant government policies
- 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. Candidates may be called on to demonstrate knowledge of any of the following topics:

1. The contract of employment

- The employment relationship, including its formation, and being able to distinguish it from other working relationships (eg independent contractor, partnership, volunteer).
- Contractual construction, performance of a contract and variation of a contract.
- The implication of terms in contracts of employment (eg duties of confidentiality, fidelity, loyalty and good faith, entitlement to wages for being available for work, reasonable notice of termination, implied ownership of inventions).
- All aspects of termination of employment (including termination on notice (express or implied), summary dismissal for misconduct, redundancy, constructive dismissal, repudiation of contract).
- The content and application of the doctrines of duress, unconscionability, undue influence and estoppel to employment issues.
- Remedies for breach or anticipatory breach of the employment contract.
- Employment restraints of trade and on the use of confidential information (including restrictions imposed by the *Corporations Act 2001 (Cth)*).
- The key aspects of the economic torts including interference with contractual relations, intimidation, conspiracy and interference with trade.

An [advanced](#) understanding

2. Industrial relations systems (Commonwealth and Victoria)

- The basic constitutional principles relating to the exercise of federal power (including the use of the corporation power, the conciliation and arbitration power and external affairs power) and the coverage of the federal system.
- The provisions of the *Fair Work Act 2009 (Cth)* and *Fair Work (Commonwealth Powers) Act 2009 (Vic)* relating to the referral of industrial relations power by Victoria.
- Resolution of industrial disputes generally under the *Fair Work Act 2009 (Cth)*.
- The core functions, powers and procedures of the Fair Work Commission (including the approval of enterprise agreements, enforcing good faith bargaining, regulating industrial action, resolution of disputes, the making and adjusting of wages and modern awards conditions, unfair dismissal, and general protection claims).
- The law (statutory and common law) relating to industrial action (including industrial action in the building and construction industry), including proceedings in the Fair Work Commission and the courts.
- The core functions, powers and procedures of the Fair Work Divisions of the Federal Court of Australia and Federal Circuit and Family Court and the Magistrates' Court of Victoria in relation to breaches of the *Fair Work Act 2009 (Cth)* (including enforcement of Fair Work Commission orders, *Australian Competition and Consumer Act 2010 (Cth)* proceedings and underpayment claims).
- The functions and powers of the Australian Building and Construction Commission.
- The functions and powers of the Registered Organisations Commission.
- The functions and powers of the Wage Inspectorate Victoria

An [advanced](#) understanding

3. Statutory unfair dismissal

The unfair dismissal jurisdiction of the *Fair Work Act 2009* (Cth), including:

- statutory exclusions
- conciliation and arbitration procedures
- criteria to determine whether a dismissal is unfair
- the available remedies
- circumstances which may give rise to costs orders including security for costs.

An [advanced](#) understanding

4. General protection claims

- General protections provisions contained in Part 3–1 of the *Fair Work Act 2009* (Cth), including the meaning of “adverse action”, the protected attributes and activities, the operation of the reverse onus of proof and causation issues

An [advanced](#) understanding

5. Discrimination law

- The principles under the *Equal Opportunity Act 2010* (Vic) and the *Racial and Religious Tolerance Act 2001* (Vic).
- The principles under various federal statutes providing rights and remedies in relation to discrimination matters, including:
 - the relevant provisions of the *Fair Work Act 2009* (Cth)
 - *Racial Discrimination Act 1975* (Cth)
 - *Sex Discrimination Act 1984* (Cth)
 - *Disability Discrimination Act 1992* (Cth)
 - *Australian Human Rights Commission Act 1986* (Cth)
 - *Age Discrimination Act 2004* (Cth).
- The concepts of direct and indirect discrimination and reasonable adjustments/accommodation under legislation.
- The core functions, rules and procedures of the Fair Work Commission, Fair Work Ombudsman, Victorian Equal Opportunity and Human Rights Commission, Australian Human Rights Commission, Victorian Civil and Administrative Tribunal, Federal Circuit and Family Court and the Federal Court as they relate to discrimination law.

An [advanced](#) understanding

- The existence of available claims and remedies in Australian state and territory jurisdictions other than Victoria.

A [basic](#) understanding

6. Minimum entitlements under Modern Awards and the National Employment Standards

- The operation and content of minimum employment entitlements (“Minimum Entitlements”) under the *Fair Work Act 2009* (Cth).
- The relationship between National Employment Standards, enterprise agreements, modern awards, national minimum wage orders and common law contracts of employment.
- The functions and powers of the Expert Panel of the Fair Work Commission.

An [advanced](#) understanding

- How Minimum Entitlements are established.
- Enforcement mechanisms in relation to Minimum Entitlements.
- Variations to modern awards.
- Interpretation of awards and enterprise agreement
- The operation of Division 2 of Part 2-9 of the *Fair Work Act 2009* (Cth)

7. Enterprise agreement making under the Fair Work Act 2009 (Cth)

- The types and effect of available agreements.
- The required and permissible content of agreements.
- Requirements for approval, lodgement, variation and termination of agreements.
- Enforcement of agreements including penalties for breaches.
- Better off overall test.

An [advanced](#) understanding

- Bargaining including:
 - bargaining representatives
 - bargaining orders
 - suspension and termination of Industrial Action (including cooling off periods)
 - workplace determinations.
 - Protected industrial action including secret ballots.
 - Measures available in the Fair Work Commission and Federal and State courts in response to unprotected action.

An [intermediate](#) understanding

8. Registered organisations

- 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 organisations under the *Fair Work (Registered Organisations) Act 2009* (Cth).
- Rights of entry of registered organisations under the *Fair Work Act 2009* (Cth) the *Occupational Health and Safety Act 2004* (Vic) and the model *Workplace Health and Safety Act*.
- Powers and functions of the Fair Work Commission and the Registered Organisations Commission in relation to registered organisations.

A [basic](#) understanding

9. Transfer of business issues

The operation of the *Fair Work Act 2009* (Cth) as it relates to transfer of business, including an understanding of:

- The obligations of the first employer to transferring employees, as well as employees to be terminated.
- The obligations of the second employer to transferring employees, as well as new recruits.
- The connection between the first employer and the second employer and the consequences that flow from that connection.
- Transfer of employment situations that effect the obligation to pay redundancy pay.
- The work that is transferred.

An [intermediate](#) understanding

- Instruments that are transferred.
- The capacity of the Fair Work Commission to modify the outcomes in transfer of business situations.
- The effect on entitlements to long service leave for transferring employees.

10. Leave entitlements

- Entitlements, and enforcement of rights, relating to leave under the National Employment Standards in the *Fair Work Act 2009* (Cth), *Modern Awards and the Long Service Leave Act 2018* (Vic).

An [advanced](#) understanding

- Long service leave entitlements in Australian state and territory jurisdictions other than Victoria.
- The Federal Government's Paid Parental Leave and Dad & Partner's Pay schemes.

A [basic](#) understanding

11. Workers' compensation

i. The contract of employment

- The employment relationship, including its formation, and being able to distinguish it from other working relationships (eg independent contractor, partnership, volunteer).
- Contractual construction, performance of a contract and variation of a contract.
- The implication of terms in contracts of employment (eg duties of confidentiality, fidelity, loyalty and good faith, entitlement to wages for being available for work, reasonable notice of termination, implied ownership of inventions).
- All aspects of termination of employment (including termination on notice (express or implied), summary dismissal for misconduct, redundancy, constructive dismissal, repudiation of contract).
- The content and application of the doctrines of duress, unconscionability, undue influence and estoppel to employment issues.
- Remedies for breach or anticipatory breach of the employment contract.
- Employment restraints of trade and on the use of confidential information (including restrictions imposed by the *Corporations Act 2001* (Cth)).
- The key aspects of the economic torts including interference with contractual relations, intimidation, conspiracy and interference with trade.

An [advanced](#) understanding

ii. Industrial relations systems (Commonwealth and Victoria)

- The basic constitutional principles relating to the exercise of federal power (including the use of the corporation power, the conciliation and arbitration power and external affairs power) and the coverage of the federal system.
- The provisions of the *Fair Work Act 2009* (Cth) and *Fair Work (Commonwealth Powers) Act 2009* (Vic) relating to the referral of industrial relations power by Victoria.
- Resolution of industrial disputes generally under the *Fair Work Act 2009* (Cth).
- The core functions, powers and procedures of the Fair Work Commission (including the approval of enterprise agreements, enforcing good faith bargaining, regulating industrial action, resolution of disputes, the making and adjusting of wages and modern awards conditions, unfair dismissal, and general protection claims).
- The law (statutory and common law) relating to industrial action (including industrial action in the building and construction industry), including proceedings in the Fair Work Commission and the courts.

An [advanced](#) understanding

<ul style="list-style-type: none"> • The core functions, powers and procedures of the Fair Work Divisions of the Federal Court of Australia and Federal Circuit and Family Court and the Magistrates' Court of Victoria in relation to breaches of the <i>Fair Work Act 2009</i> (Cth) (including enforcement of Fair Work Commission orders, <i>Australian Competition and Consumer Act 2010</i> (Cth) proceedings and underpayment claims). • The functions and powers of the Australian Building and Construction Commission. • The functions and powers of the Registered Organisations Commission. • The functions and powers of the Wage Inspectorate Victoria 	
iii. Statutory unfair dismissal	
<ul style="list-style-type: none"> • The unfair dismissal jurisdiction of the <i>Fair Work Act 2009</i> (Cth), including: • statutory exclusions • conciliation and arbitration procedures • criteria to determine whether a dismissal is unfair • the available remedies • circumstances which may give rise to costs orders including security for costs. 	An advanced understanding
iv. General protection claims	
<ul style="list-style-type: none"> • The general protections provisions contained in Part 3–1 of the <i>Fair Work Act 2009</i> (Cth), including the meaning of “adverse action”, the protected attributes and activities, the operation of the reverse onus of proof and causation issues. 	An advanced understanding
v. Discrimination law	
<ul style="list-style-type: none"> • The principles under the <i>Equal Opportunity Act 2010</i> (Vic) and the <i>Racial and Religious Tolerance Act 2001</i> (Vic). • The principles under various federal statutes providing rights and remedies in relation to discrimination matters, including: • the relevant provisions of the <i>Fair Work Act 2009</i> (Cth) • <i>Racial Discrimination Act 1975</i> (Cth) • <i>Sex Discrimination Act 1984</i> (Cth) • <i>Disability Discrimination Act 1992</i> (Cth) • <i>Australian Human Rights Commission Act 1986</i> (Cth) • <i>Age Discrimination Act 2004</i> (Cth). • The concepts of direct and indirect discrimination and reasonable adjustments/accommodation under legislation. • The core functions, rules and procedures of the Fair Work Commission, Fair Work Ombudsman, Victorian Equal Opportunity and Human Rights Commission, Australian Human Rights Commission, Victorian Civil and Administrative Tribunal, Federal Circuit and Family Court and the Federal Court as they relate to discrimination law. 	An advanced understanding
<ul style="list-style-type: none"> • The existence of available claims and remedies in Australian state and territory jurisdictions other than Victoria. 	A basic understanding
vi. Minimum entitlements under Modern Awards and the National Employment Standards	
<ul style="list-style-type: none"> • The operation and content of minimum employment entitlements (“Minimum Entitlements”) under the <i>Fair Work Act 2009</i> (Cth). • The relationship between National Employment Standards, enterprise agreements, modern awards, national minimum wage orders and common law contracts of employment. • The functions and powers of the Expert Panel of the Fair Work Commission. • How Minimum Entitlements are established. 	An advanced understanding

<ul style="list-style-type: none"> • Enforcement mechanisms in relation to Minimum Entitlements. • Variations to modern awards. • Interpretation of awards and enterprise agreements. • The operation of Division 2 of Part 2-9 of the <i>Fair Work Act 2009</i> (Cth) 	
vii. Enterprise agreement making under the <i>Fair Work Act 2009</i> (Cth)	
<ul style="list-style-type: none"> • The types and effect of available agreements. • The required and permissible content of agreements. • Requirements for approval, lodgement, variation and termination of agreements. • Enforcement of agreements including penalties for breaches. • Better off overall test. 	An advanced understanding
<ul style="list-style-type: none"> • Bargaining including: <ul style="list-style-type: none"> – bargaining representatives – bargaining orders – suspension and termination of Industrial Action (including cooling off periods) – workplace determinations. – Protected industrial action including secret ballots. – Measures available in the Fair Work Commission and Federal and State courts in response to unprotected action. 	An intermediate understanding
viii. Registered organisations	
<ul style="list-style-type: none"> • System for registration of organisations (employer and employee) under the <i>Fair Work (Registered Organisations) Act 2009</i> (Cth). • Legal status and judicial supervision of registered organisations and unregistered organisations (employer and employee). • Accountability of officers of registered organisations under the <i>Fair Work (Registered Organisations) Act 2009</i> (Cth). • Rights of entry of registered organisations under the <i>Fair Work Act 2009</i> (Cth) the <i>Occupational Health and Safety Act 2004</i> (Vic) and the model <i>Workplace Health and Safety Act</i>. • Powers and functions of the Fair Work Commission and the Registered Organisations Commission in relation to registered organisations. 	A basic understanding
ix. Transfer of business issues	
<p>The operation of the <i>Fair Work Act 2009</i> (Cth) as it relates to transfer of business, including an understanding of:</p> <ul style="list-style-type: none"> • The obligations of the first employer to transferring employees, as well as employees to be terminated. • The obligations of the second employer to transferring employees, as well as new recruits. • The connection between the first employer and the second employer and the consequences that flow from that connection. • Transfer of employment situations that effect the obligation to pay redundancy pay. • The work that is transferred. • Instruments that are transferred. • The capacity of the Fair Work Commission to modify the outcomes in transfer of business situations. • The effect on entitlements to long service leave for transferring employees. 	An intermediate understanding

x. Leave entitlements	
<ul style="list-style-type: none"> The entitlements, and enforcement of rights, relating to leave under the National Employment Standards in the <i>Fair Work Act 2009 (Cth)</i>, <i>Modern Awards and the Long Service Leave Act 2018 (Vic)</i>. 	An advanced understanding
<ul style="list-style-type: none"> Long service leave entitlements in Australian state and territory jurisdictions other than Victoria. The Federal Government's Paid Parental Leave and Dad & Partner's Pay schemes. 	A basic understanding
xi. Workers' compensation	
<ul style="list-style-type: none"> Concepts and entitlements under the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i>. Rights and entitlements of impaired workers to common law remedies. 	A basic understanding
<ul style="list-style-type: none"> The interaction with the <i>Fair Work Act 2009 (Cth)</i> (especially unfair dismissal and general protection provisions) and relevant anti-discrimination laws. 	An intermediate understanding
xii. Work health and safety law	
<ul style="list-style-type: none"> The relevant principles under the <i>Occupational Health and Safety Act 2004 (Vic)</i>, the regulations and Codes of Practice. Prosecutions under the <i>Occupational Health and Safety Act 2004 (Vic)</i> including the Worksafe Victoria General Prosecution Guidelines. The Guidance Notes on workplace violence and bullying issued by Worksafe Victoria. The liability of officers and employees under the <i>Occupational Health and Safety Act 2004 (Vic)</i>. 	An intermediate understanding
<ul style="list-style-type: none"> The relevant principles under the model <i>Work Health and Safety Act</i> and regulations made under the Act. The liability of officers and employees under the model <i>Work Health and Safety Act</i>. 	A basic understanding
xiii. Workplace Bullying and Sexual Harassment under the <i>Fair Work Act 2009 (Cth)</i>	
<ul style="list-style-type: none"> The federal Workplace Bullying and Sexual Harassment provisions under the <i>Fair Work Act 2009 (Cth)</i> 	An advanced understanding
xiv. Independent contractors	
<ul style="list-style-type: none"> The difference at common law between an independent contractor and an employee and the laws relating to sham contracting under the <i>Fair Work Act 2009 (Cth)</i>. 	An advanced understanding
<ul style="list-style-type: none"> The <i>Independent Contractors Act 2006 (Cth)</i>. 	An intermediate understanding
<ul style="list-style-type: none"> The operation of the <i>Owner Drivers and Forestry Contractors Act 2005 (Vic)</i>. 	A basic understanding
xv. Fair Work Act compliance	
<ul style="list-style-type: none"> Record keeping and payslip obligations under the <i>Fair Work Act 2009 (Cth)</i> and the <i>Fair Work Regulations 2009 (Cth)</i>. 	An advanced understanding

<ul style="list-style-type: none"> • Civil remedy provisions of the <i>Fair Work Act 2009</i> (Cth) and the different penal implications of these and criminal provisions (eg s25 <i>Occupational Health and Safety Act 2004</i> (Vic)). • Strike pay provisions of the <i>Fair Work Act 2009</i> (Cth). • Powers of the Fair Work Ombudsman. • Penalties for failing to comply with a notice given by or a requirement of a Fair Work Inspector. • Accessorial liability provisions of the <i>Fair Work Act 2009</i> (Cth) 	
xvi. Miscellaneous Federal and State Statutory Topic Areas	
<p>a) Privacy issues</p> <p>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:</p> <ul style="list-style-type: none"> • <i>Surveillance Devices Act 1999</i> (Vic). • <i>Privacy and Data Protection Act 2014</i> (Vic). • <i>Health Records Act 2001</i> (Vic). • <i>Privacy Act 1988</i> (Cth). • <i>Telecommunications (Interception and Access) Act 1979</i> (Cth). 	An intermediate understanding
<ul style="list-style-type: none"> • Application of Australian Privacy Principles to a workplace and relevant guidelines issued by the Australian Information Commissioner. • Common law principles which may impact on the monitoring of employees' activities or on the disclosure of personal information about employees. 	An intermediate understanding
<ul style="list-style-type: none"> • Privacy statutory regimes and workplace surveillance legislation in Australian state and territory jurisdictions other than Victoria. 	A basic understanding
<p>b) Statutory regimes relating to misleading conduct</p> <ul style="list-style-type: none"> • The relevance of the Australian Consumer Law (ACL) set out in Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) (CCA) and the <i>Fair Trading Act 1999</i> (Vic) (FTA) to representations made to job applicants. • The relevant sections of the CCA and the FTA, relating to unconscionable conduct, misleading or deceptive conduct, misleading conduct in relation to employment and representations as to future matters: <ul style="list-style-type: none"> • Part 2–2 ACL and section 7 FTA – unconscionable conduct • Part 2–1 ACL and section 9 FTA – misleading or deceptive conduct • section 31 ACL and section 13 FTA – misleading conduct in relation to employment • The remedies for breach of these sections. 	An intermediate understanding
<p>c) Taxation, superannuation and insurance premiums</p> <ul style="list-style-type: none"> • The PAYG system. • The difference in taxation of earnings for independent contractors compared to employees. • The taxation rules applicable to employment termination payments. • The law relating to superannuation, in so far as it relates to the Superannuation Guarantee legislation including choice of fund. • The definition of deemed worker under the <i>Payroll Tax Act 2007</i> (Vic) and <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (Vic). • Consequences for companies and directors of non-payment of superannuation contributions and remittance of group tax. 	A basic understanding

<p>d) Corporations Act 2001 (Cth) matters</p> <ul style="list-style-type: none"> The priority of employee entitlements in an insolvency and the system for enforcement of employee priority rights in an insolvency. 	<p>A basic understanding</p>
<ul style="list-style-type: none"> <i>Fair Entitlements Guarantee Act 2012</i> (Cth), which provides limited financial entitlements on the insolvency of an employer. Restrictions on retirement and severance payments to directors, officers and employees under <i>Corporations Act 2001</i> (Cth). Duties of officers (as defined) and employees under the <i>Corporations Act 2001</i> (Cth). 	<p>A basic understanding</p>
<p>e) Other</p> <ul style="list-style-type: none"> dealing with permission to appear for lawyers and paid agents, and costs orders and summons. <i>Charter of Human Rights & Responsibilities Act 2006</i> (Vic). <i>Working with Children Act 2005</i> (Vic). <i>Public Administration Act 2004</i> (Vic), to the extent it regulates Victorian public sector employment Operation of Labour hire licensing laws. An employer's ability to lawfully suspend or stand down an employee (with or without pay) under a contract of employment, Fair Work Act, or an industrial instrument. 	<p>A basic understanding</p>
<ul style="list-style-type: none"> <i>Workplace Gender Equality Act 2012</i> (Cth). Whistleblower protection under the: <ul style="list-style-type: none"> <i>Protected Disclosure Act 2012</i> (Vic) <i>Public Interest Disclosures Act 2013</i> (Cth) <i>Corporations Act 2001</i> (Cth) 	<p>A basic understanding</p>
<ul style="list-style-type: none"> Key functions of the <i>Wage Theft Act 2020</i> (Vic) Concepts and entitlements under the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (Vic). Rights and entitlements of impaired workers to common law remedies. 	<p>An intermediate understanding</p>
<ul style="list-style-type: none"> The interaction with the <i>Fair Work Act 2009</i> (Cth) (especially unfair dismissal and general protection provisions) and relevant anti-discrimination laws. 	<p>An intermediate understanding</p>
<p>12. Work health and safety law</p>	
<ul style="list-style-type: none"> The relevant principles under the <i>Occupational Health and Safety Act 2004</i> (Vic), the regulations and Codes of Practice. Prosecutions under the <i>Occupational Health and Safety Act 2004</i> (Vic) including the Worksafe Victoria General Prosecution Guidelines. The Guidance Notes on workplace violence and bullying issued by Worksafe Victoria. The liability of officers and employees under the <i>Occupational Health and Safety Act 2004</i> (Vic). 	<p>An intermediate understanding</p>
<ul style="list-style-type: none"> The relevant principles under the model <i>Work Health and Safety Act</i> and regulations made under the Act. The liability of officers and employees under the model <i>Work Health and Safety Act</i>. 	<p>A basic understanding</p>

13. Workplace Bullying and Sexual Harassment under the *Fair Work Act 2009* (Cth)

<ul style="list-style-type: none"> The federal Workplace Bullying and Sexual Harassment provisions under the <i>Fair Work Act 2009</i> (Cth) 	An advanced understanding
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14. Independent contractors

<ul style="list-style-type: none"> The difference at common law between an independent contractor and an employee and the laws relating to sham contracting under the <i>Fair Work Act 2009</i> (Cth). 	An advanced understanding
<ul style="list-style-type: none"> The <i>Independent Contractors Act 2006</i> (Cth) 	An intermediate understanding
<ul style="list-style-type: none"> The operation of the <i>Owner Drivers and Forestry Contractors Act 2005</i> (Vic). 	A basic understanding

15. Fair Work Act compliance

<ul style="list-style-type: none"> Record keeping and payslip obligations under the <i>Fair Work Act 2009</i> (Cth) and the <i>Fair Work Regulations 2009</i> (Cth). Civil remedy provisions of the <i>Fair Work Act 2009</i> (Cth) and the different penal implications of these and criminal provisions (eg s25 <i>Occupational Health and Safety Act 2004</i> (Vic)). Strike pay provisions of the <i>Fair Work Act 2009</i> (Cth). Powers of the Fair Work Ombudsman. Penalties for failing to comply with a notice given by or a requirement of a Fair Work Inspector. Accessorial liability provisions of the <i>Fair Work Act 2009</i> (Cth) 	An advanced understanding
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16. Miscellaneous Federal and State Statutory Topic Areas

i. Privacy issues

<p>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:</p> <ul style="list-style-type: none"> <i>Surveillance Devices Act 1999</i> (Vic). <i>Privacy and Data Protection Act 2014</i> (Vic). <i>Health Records Act 2001</i> (Vic). <i>Privacy Act 1988</i> (Cth). <i>Telecommunications (Interception and Access) Act 1979</i> (Cth). 	An intermediate understanding
<ul style="list-style-type: none"> Application of Australian Privacy Principles to a workplace and relevant guidelines issued by the Australian Information Commissioner. Common law principles which may impact on the monitoring of employees' activities or on the disclosure of personal information about employees. 	An intermediate understanding

<ul style="list-style-type: none"> Privacy statutory regimes and workplace surveillance legislation in Australian state and territory jurisdictions other than Victoria. 	A basic understanding
ii. Statutory regimes relating to misleading conduct	
<ul style="list-style-type: none"> The relevance of the Australian Consumer Law (ACL) set out in Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) (CCA) and the <i>Fair Trading Act 1999</i> (Vic) (FTA) to representations made to job applicants. The relevant sections of the CCA and the FTA, relating to unconscionable conduct, misleading or deceptive conduct, misleading conduct in relation to employment and representations as to future matters: <ul style="list-style-type: none"> Part 2–2 ACL and section 7 FTA – unconscionable conduct Part 2–1 ACL and section 9 FTA – misleading or deceptive conduct section 31 ACL and section 13 FTA – misleading conduct in relation to employment The remedies for breach of these sections 	An intermediate understanding
iii. Taxation, superannuation and insurance premiums	
<p>A basic understanding of:</p> <ul style="list-style-type: none"> The PAYG system. The difference in taxation of earnings for independent contractors compared to employees. The taxation rules applicable to employment termination payments. The law relating to superannuation, in so far as it relates to the Superannuation Guarantee legislation including choice of fund. The definition of deemed worker under the <i>Payroll Tax Act 2007</i> (Vic) and <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (Vic). Consequences for companies and directors of non-payment of superannuation contributions and remittance of group tax. 	A basic understanding
iv. Corporations Act 2001 (Cth) matters	
<ul style="list-style-type: none"> Priority of employee entitlements in an insolvency and the system for enforcement of employee priority rights in an insolvency. 	A basic understanding
<ul style="list-style-type: none"> <i>Fair Entitlements Guarantee Act 2012</i> (Cth), which provides limited financial entitlements on the insolvency of an employer. Restrictions on retirement and severance payments to directors, officers and employees under <i>Corporations Act 2001</i> (Cth). Duties of officers (as defined) and employees under the <i>Corporations Act 2001</i> (Cth). 	A basic understanding
v. Other	
<ul style="list-style-type: none"> Dealing with permission to appear for lawyers and paid agents, and costs orders and summons. <i>Charter of Human Rights & Responsibilities Act 2006</i> (Vic). <i>Working with Children Act 2005</i> (Vic). <i>Public Administration Act 2004</i> (Vic), to the extent it regulates Victorian public sector employment 	A basic understanding

<ul style="list-style-type: none"> • Operation of Labour hire licensing laws. • An employers ability to lawfully suspend or standdown an employee (with or without pay) under a contract of employment, Fair Work Act, or an industrial instrument. 	
<ul style="list-style-type: none"> • <i>Workplace Gender Equality Act 2012</i> (Cth). • Whistleblower protection under the: <ul style="list-style-type: none"> - <i>Protected Disclosure Act 2012</i> (Vic) - <i>Public Interest Disclosures Act 2013</i> (Cth) - <i>Corporations 2001</i> (Cth). 	A basic understanding
<ul style="list-style-type: none"> • Key functions of the <i>Wage Theft Act 2020</i> (Vic) 	An intermediate understanding

Across all assessments candidates will be assessed on ethics as they relate to ethical obligations to clients and the court.

SCHEDULE 5: RELATED LEGISLATION & OTHER MATERIALS

Related legislation:

This list indicates the range of matters which could be addressed in the assessment program. This is not necessarily an exhaustive list. Candidates will be examined on the law as it stands at the date of assessment.

Commonwealth

- Age Discrimination Act 2004 (Cth)
- Australian Human Rights Commission Act 1986 (Cth)
- Competition and Consumer Act 2010 (Cth)
- Corporations Act 2001 (Cth)
- Building and Construction Industry (Improving Productivity) Act 2016 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Disability Discrimination Regulations 2019 (Cth)
- Fair Work (Registered Organisations) Act 2009 (Cth)
- Fair Work Act 2009 (Cth)
- Fair Work Regulations 2009 (Cth)
- Independent Contractors Act 2006 (Cth)
- Privacy Act 1988 (Cth)
- Public Interest Disclosure Act 2013 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Sex Discrimination Regulations 2018 (Cth)
- Superannuation Guarantee (Administration) Act 1992 (Cth)
- Superannuation Guarantee Charge Act 1992 (Cth)
- Surveillance Devices Act 2004 (Cth)
- Telecommunications (Interception and Access) Act 1979 (Cth)
- Workplace Gender Equality Act 2012 (Cth)

State

- Charter of Human Rights and Responsibilities Act 2006 (Vic)
- Child Employment Act 2003 (Vic)
- Equal Opportunity Act 2010 (Vic)
- Fair Work (Commonwealth Powers) Act 2009 (Vic)
- Health Records Act 2001 (Vic)
- Labour Hire Licensing Act 2018 (Vic)
- Long Service Benefits Portability Act 2018 (Vic)
- Long Service Leave Act 2018 (Vic)
- Occupational Health and Safety Act 2004 (Vic)
- Owner Driver and Forestry Contractors Act 2005 (Vic)
- Payroll Tax Act 2007 (Vic)
- Privacy and Data Protection Act 2014 (Vic)
- Protected Disclosure Act 2012 (Vic)
- Public Interest Disclosures Act 2012 (Vic)

State (cont.)

- Racial and Religious Tolerance Act 2001 (Vic)
- Surveillance Devices Act 1999 (Vic)
- Victorian Civil and Administrative Tribunal Act 1998 (Vic)
- Wage Theft Act 2020 (Vic)
- Working with Children Act 2005 (Vic)
- Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)

Suggested reading

- Breen Creighton and Peter Rozen, *Health & Safety Law in Victoria* (4th edn), 2017, Federation Press.
- Andrew Stewart, Anthony Forsyth, Mark Irving, Richard Johnstone and Shae McCrystal, Creighton & Stewarts Labour Law (6th edn), 2016, Federation Press. [View electronic supplements via Federation Press website.](#)
- Mark Irving, *The Contract of Employment*, 2012, LexisNexis.
- Rob Jackson, *Post-employment Restraint of Trade*, 2014, Federation Press.
- Richard Johnstone, *Occupational Health & Safety Law & Policy* (2nd edn), 2004, Lawbook Co.
- Richard Johnstone, Elizabeth Bluff & Alan Clayton, *Work Health & Safety Law & Policy*, (3rd edn) 2012 Thomson Reuters (Charles – suggest relevant to Qld candidates)
- Marilyn Pittard and Richard Naughton, *Australian Labour and Employment Law*, 2015, LexisNexis.
- Rosemary Owens, Joellen Riley and Jill Murray, *The Law of Work* (2nd edn), 2014, Oxford University Press.
- Allen, Rees & Rice *Australian Anti-Discrimination Law: Text, Cases and Materials* (3rd edn), 2018, Federation Press.
- Joellen Riley, *Employee Protection at Common Law*, 2005, Federation Press (out of print)
- Joellen Riley, *Independent Work Contracts*, 2007, Lawbook Co. (out of print)
- Chris Ronalds, *Discrimination Law and practice* 5th edn), 2019, Federation Press.
- Carolyn Sappideen, Paul O'Grady, Joellen Riley, *Macken's Law of Employment* (8th edn), 2016, Thomson Reuters.
- Andrew Stewart, *Stewart's Guide to Employment Law* (7th edn), 2021, Federation Press.
- Michael Tooma, *Tooma's Annotated Health & Safety At Work Act 2015* (2nd ed), 2017, Thomson Reuters.

Loose-leaf and online services

- Wolters Kluwer CCH Pinpoint Employment Law
- CCH Pinpoint Discrimination Law
- CCH Pinpoint Work Health & Safety Law
- CCH Pinpoint Competition & Consumer Law
- Employment Law Case Alert and Latest News @ pinpoint.cch.com.au/home/employment_law
- Thomson Reuters (Lawbook Co)

General reading

Subscription-based

- Australian Journal of Labour Law, LexisNexis
- Discrimination Alert, Thomson (Lawbook Co)
- Employment Law Bulletin, LexisNexis - 10 issues per year
- Workplace Express - www.workplaceexpress.com.au

Free

- Fair Work Commission – Benchbooks
- Fair Work Commission – Announcements
- Fair Work for Small Business newsletter and website
- Fair Work Ombudsman

Other reading

- Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015

SCHEDULE 6: RECOMMENDED COMPUTER REQUIREMENTS FOR ASSESSMENTS

All assessments are delivered in a digital format including via the LIV student portal for release and submission of assessments and the LIV online exam platform Assess App or Zoom/ for oral assessments. You are required to ensure you have all the required infrastructure, and access to the digital assessment platforms prior to the completion of your assessment. To ensure you are set up to succeed, here are some things to consider in advance to check that your computer meets the following recommended computer requirements of optimal performance of the platforms.

You will require access to a computer with a working webcam and microphone to complete the assessment program.

Written Examination Devices Specification

Windows	
Processor	i5 2.2GHz /AMD A6 1.8Ghz
Operating system	Windows 10 64-bit
Memory	8GB
Hard drive	250GB SSD (solid state drive)
Display	14" screen with 1920 x 1080 screen resolution
Battery life	8 hours under normal use

The following devices cannot currently be used to access the LIV online exam platform:

- Mac (we anticipate having Mac compatible with the Safe Exam Browser by the time of the 2022 Written Examinations)
- iPads
- Chromebooks.
- Smartphones: this includes iPhones, Android devices, and any other mobile OS devices

Successful applicants will have access to one on one support from our exam provider to set up the applications and work through all requirements for exam setup.

Oral Assessments

Oral assessments will be conducted via Zoom. In addition to a working web camera and microphone, Zoom support recommends minimum internet speeds for clear and high-quality video and audio throughout. For more information on minimum internet speeds for video conferencing visit the below two useful websites.

- [Reviews.org - breaks down requirements in a simplistic way](#)
- [Zoom Support - System Requirements](#)