

Specialist Accreditation



2026 Elder Law Assessment Requirements



THE LAW SOCIETY
OF NEW SOUTH WALES

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Elder Law Definition

Elder Law is law most likely to affect older people as relates to:

- Capacity in various contexts and in engagement with a client;
- Equitable remedies (elder abuse focus);
- Substituted and supported decision making with a focus on contested procedures in the Supreme Court and NCAT;
- Accommodation; and
- Planning for the future.

Performance Standard

Standard of an Accredited Specialist

The Standard of an Accredited Specialist in Elder Law is that of a 'specially competent practitioner' in the core skills and practical capabilities in the selected area of practice, as assessed against the spectrum of capability of all practitioners in that area of practice. This standard is to be distinguished from the idea that the Scheme requires the highest technical legal knowledge across all aspects of the selected area of practice.

In Elder Law this standard is defined as the ability to work at the level of an experienced practitioner in complex matters within New South Wales.

In all tasks and at all times, the specialist:

- Acts in a timely and competent manner;
- Keeps the client fully informed, using clear and concise language; and
- Demonstrates professional responsibility including costs disclosure requirements.

Important

Candidates are advised to read and familiarise themselves with the [2026 Guide to Application and Assessment](#) which contains important information regarding application, process, resources and special consideration etc. This document can be found at: lawsociety.com.au/specialists

Timetable

The shaded area below shows the core assessment period including the dates associated with each assessment.

Candidates need to focus on this core assessment timeframe and plan their workload well in advance.

Based on feedback reports, candidates are encouraged to dedicate and manage their time during this period to optimise their performance across all assessment tasks.

Candidates are reminded that participating in the Specialist Accreditation program requires a considerable level of commitment if candidates are to achieve their desired outcome.

| Activity | Date |
|---|--|
| Q&A sessions for potential candidates | Mid-February 2026 |
| Applications for Specialist Accreditation close | Early Bird: Saturday, 28 February 2026 Standard: Tuesday, 31 March 2026 |
| Candidature confirmed | Friday, 24 April 2026 |
| Mock File | Release: Wednesday, 13 May 2026 Due: Wednesday, 3 June 2026 |
| Written Examination | Saturday, 4 July 2026 |
| Peer Interview | Sunday, 5 July 2026 |
| Results released to candidates | Friday, 2 October 2026 |
| Reassessment and/or Appeal applications close | 14 days from notification of results |
| Reassessment results released | Late November 2026 |
| Appeal results released | Late November 2026 |

Core Skills and Knowledge Areas

Candidates wishing to become an Accredited Specialist should be able to:

- display knowledge of the law and procedure which underpins the performance of tasks in this area of practice; and
- demonstrate the following tasks to the level of the performance standard.

Core Skills

1. Obtains information and instructions from the client

1.1 Establishing a relationship with the client

The specialist acts in a professional manner to create an atmosphere to gain the client's confidence, communicate effectively and address the client's needs.

For the interview, the specialist:

- obtains any prior relevant background information available to the specialist;
- conducts the interview in an appropriate manner and setting;
- understands and assesses the client's personal circumstances, vulnerabilities, their needs, constraints, wishes and feelings;
- looks for and identifies any communication or engagement issues or impediments and appropriate strategies to minimise the impact of the same;
- provides information in a way that the client can understand, taking into account their personal circumstances and any particular vulnerability, ensuring that communication achieves its intended objective, and manages the expectations of the client regarding outcomes;
- is mindful of the influence family members or friends might bring to bear on the client, or on the practitioner, or the practitioner's understanding of the issues and/or the client's wishes;
- is patient, reassuring and sensitive to the client's needs; and
- discusses, and deals appropriately with, the issue of costs and expenses.

The specialist takes appropriate steps to ensure compliance with their ethical obligations and to act in the best interests of the client and being able to identify potential risks, throughout the retainer.

1.2 Eliciting information and facts

The specialist elicits information from the client and ascertains the client's objectives by:

- observing the client, asking effective questions, listening carefully and confirming mutual understanding;
- applying as relevant their understanding of a range of disorders and health conditions that can affect elderly clients and the way in which these may impact upon a person's behaviour and/or capacity to make decisions; and
- guiding the process by knowledge of the relevant law and giving appropriate advice.

The specialist demonstrates thoroughness in ordering and recording accurately the information and advice.

2. Analyses information

2.1 Identifying facts and issues

The specialist analyses the information provided by the client and identifies:

- the relevant issues of fact and law;
- any applicable limitations of the available knowledge base and when research is needed;
- appropriate methods of research and investigation and suitable sources;
- the most suitable ways to interpret and apply any results obtained;
- when it is appropriate to engage with other specialist advisers, including but not limited to, medical practitioners, as appropriate; and
- matters requiring instructions for further research or investigation, including from whom to obtain the same.

Like most areas of legal practice, Elder Law overlaps with many other areas of law but it does have a particular focus of growing social importance that warrants specialisation.

A distinguishing feature of Elder Law is its focus on inter vivos transactions entered into by the elder, or a decision-making agent on his or her behalf.

Of particular relevance are circumstances of domestic vulnerability. Causal factors include not just longevity but the growing extent, complexity and fluidity of:

- (a) traditional social networks such as an elder's family, friends and neighbours;
- (b) accumulated personal wealth;
- (c) preferences and needs for accommodation and care; and
- (d) physical and emotional dependence through chronic conditions such as dementia.

2.2 Legal knowledge and conducting legal research

The specialist knows the sources most likely to be of assistance and carries out the necessary legal research arising from the issues, including:

- legal/mental/functional/decision making capacity;
- different legal tests and relevant case law, approaches to assessment of capacity, including consideration and use of aids, adaptations, environments, and methods, to communicate effectively with clients;
- different common law tests for mental capacity depending on the advice or transaction;
- knowledge of fiduciary duties and obligations;
- ensuring that any advice provided is informed by appropriate legal and factual analysis and identifying the consequences of different options; and
- relevant legislation and case law of all areas affecting Elder Law.

2.3 Obtaining further information and verifying facts

The specialist knows what further information is required and when and how to verify the facts, including checking received information with sources, such as government and other professionals, particularly details (as applicable) relating to:

- identifying the client – the elder, a person genuinely concerned with his or her welfare, his or her decision-making agent or, indeed, an actual or intending perpetrator of financial elder abuse;
- age;
- current assets and liabilities;
- accommodation preferences and needs, and the likely effect on the age pension, if applicable, including:
 - retirement villages;
 - residential lease parks (formerly 'manufactured home parks');
 - granny flats;
 - subsidised home care for all the above; and
 - residential aged care facilities;
- loss of functional capacity to care for self (cognitive and physical) with existing and potential supports available;
- relationships and family structure, especially those where any vulnerability is indicated, be that family members, friends, carers or acquaintances, and identifying potential issues;
- mental capacity as regards:
 - appointing an enduring power of attorney or an enduring guardian (**delegated decision-maker**);
 - applying to the NSW Civil and Administrative Tribunal (**NCAT**) for the appointment of a financial manager or guardian (**substitute decision-maker**);

- anticipated, or actual entering into a, financially improvident transaction by the client or agent of the client, as commonly occurs under:
 - granny flat arrangements;
 - cash 'gifts' by elderly parents to adult children; or
 - enduring powers of attorney involving the possibility of a breach of fiduciary duty, fraud on the power, or breach of warranty of authority
- identifying elements of relevant equitable and statutory remedies and defences where the client is the victim of financial elder abuse;
- defence of transactions entered into by the older person against claims of proprietary/promissory estoppel, undue influence and unconscionable conduct;
- identifying the perpetrators and their motivations, including by understanding the relationship between non-financial abuse and financial abuse; and
- understanding of the fears and concerns of the older person over diminishing or loss of functional capacity to care for self and consequential vulnerabilities to abuse.

2.4 Identifying solutions

The specialist analyses the key features of the client's instructions having regard to:

- all the information so far obtained;
- the law;
- procedural requirements; and
- possible non legal options.

The specialist then prepares initial strategies to be discussed with the client.

3. Develops a plan

3.1 Advising the client

The specialist advises the client on the relevant law and the available options, including advice, for each option, on:

- rights and obligations;
- processes and time frames;
- costs implications;
- viability; and
- settles the terms of the retainer with the client.

The specialist assists the client to formulate objectives taking into account the desired outcomes, priorities, resources and any special needs.

3.2 Confirming instructions

The specialist confirms the client's instructions and the terms of the retainer.

The specialist is aware of, and informs the client of, the time normally required for each step of the transaction, appointment or proceedings.

The specialist acts:

- in relation to an enduring power of attorney, enduring guardian or accommodation preference, the specialist acts promptly and efficiently in relation to the client's instructions; and
- for litigious matters – with regard to the time limits imposed by legislation and the Court.

4. Implements a plan

4.1 Drafting and advising on accommodation

When advising an older client on accommodation options, it is essential for the practitioner to understand and work within the relevant legislative framework and Guidelines of the NSW Law Society and incorporating any pertinent case law.

Consideration of accommodation options is benefited by a multidisciplinary collaboration approach including financial, medical, and social work expertise.

The specialist is able to:

- advise on the advantages and disadvantages, security of tenure, and the financial implications of accommodation options for older people including staying at home, downsizing, life estates, retirement villages, lifestyle villages and manufactured home parks, and residential aged care;
- advise on financing options such as reverse mortgages, sale/lease back arrangements, home equity access scheme (formerly the pension loan scheme, family loans, refundable accommodation deposit and daily accommodation payments);
- advise on care options and arrangements, including home care packages, carer benefits, and residential aged care fees;
- in relation to accommodation options, the specialist is able to take instructions and identify relevant factors;
- in relation to staying at home, the specialist is able to demonstrate knowledge of ownership options such as sole ownership, joint ownership, and life estates;

- provide advice and representation in relation to conflicts relating to adult children living at home, eviction of residents, and litigation for possession;
- in relation to retirement villages, the specialist is familiar with the laws and regulations and is able to provide advice on retirement village contracts including the rights and obligations of the village owner and the resident;
- in relation to both retirement villages, lifestyle villages and manufactured home parks, the specialist is able to demonstrate knowledge of the laws and regulations relating to eviction of residents and change of use;
- draft and negotiate granny flat agreements or care for accommodation agreements and family loan agreements, and provide advice on possible termination events and financial and social security consequences;
- in relation to residential aged care, the specialist is able to demonstrate knowledge of the regulations that apply to residential aged care facilities and to advocate for the rights of the older person; and
- identify relevant testamentary implications of accommodation options and advise the client accordingly.

The specialist drafts the advice:

- accurately and concisely;
- applying all relevant (mostly statutory) law to the contract or arrangement;
- considering whether accommodation reflected in the contract aligns satisfactorily with the client's stated goals;
- highlighting the costs initial and ongoing costs involved and, where applicable, on re-locating or on death; and
- highlighting any impediments to re-locating that are different to conventional ownership of a house.

4.2 Drafting and advising on enduring appointments

The specialist drafts enduring documents:

- accurately and concisely;
- applying all relevant law to the facts;
- if mental capacity is in doubt, seek consent to obtain a report from the client's treating GP or specialist as to his or her capacity to delegate decision-making;
- provides advice on the distinction between enduring guardianship, advance care directive and voluntary assisted dying and demonstrates an understanding of the process regarding the latter; and

- giving effect to the client's confirmed instructions as regards enduring powers of attorney and enduring guardianship having regard to the principal's age and family and financial circumstances and vulnerabilities.

The advice or draft document is considered by the client.

The specialist obtains proper execution of the enduring document, advises on storage and the need for future revision given certain changes in circumstances.

The specialist provides accurate and appropriate advice to those appointed under the enduring documents.

4.3 Applying to NCAT

The specialist ensures that:

- the appropriate division of NCAT is identified;
- if leave is not applied for or granted, that the client is aware of the alternative assistance they can give to the client in the application to NCAT;
- the relevant statutory and contractual provisions are identified;
- procedural and timing requirements under the NCAT rules and regulations are observed including:
 - ascertaining the whereabouts of all family members and other interested parties; and
 - time limits and bases upon which an appeal to the Appeals Panel may be lodged
- evidentiary requirements are met;
- jurisdictional issues are addressed; and
- defences likely to be advanced by the respondent are anticipated.

4.4 Applying to the Supreme Court

The specialist demonstrates an understanding of the Protective List of the Supreme Court including:

- jurisdiction including overlap with NCAT;
- procedure in the Protective List;
- types of orders likely to be made; and
- s41 NSW *Trustee and Guardian Act 2009*.

In contested financial elder abuse matters (or guardianship), the specialist:

- advises and initiates, intervenes in or defends proceedings in the Supreme Court, and prepares court documents which present the case properly and comply with court rules and practices of the Protective List;

- identifies the relief sought and the grounds for that relief including:
 - at equity:
 - under statute:
 - *Property (Relationships) Act 1984 (NSW)*
 - *Contracts Review Act 1980 (NSW)*
 - *Powers of Attorney Act 2003*
 - *Guardianship Act 1987*
 - *NSW Trustee and Guardian Act 2009.*
 - identifies appropriate defences and evidence to the relief sought;
 - conducts any interlocutory procedure relevant to the jurisdiction and prepares witness statements and affidavits;
 - where necessary, advises on appeal; and
 - considers when to brief counsel, chooses an appropriate barrister and acts appropriately as the instructing solicitor.

When undertaking these tasks, the specialist is guided by a thorough knowledge of:

- the law involving the rights and duties of:
 - the accommodation or care provider and resident,
 - the donor or protected person and the appointees; and
 - the victim and perpetrator of an improvident domestic transaction
- the procedural and evidential requirements of the forum in which proceedings are to be heard;
- sensitivity to the financial and emotional stress of applying to NCAT and, even more so, the Equity Division of the Supreme Court; and
- advice on the likely or possible cost orders made by the Supreme Court (Protective List).

Knowledge Areas

Candidates will be expected to demonstrate knowledge of the current law including applicable case law affecting Elder Law.

Candidates should be aware of all recent and impending amendments to legislation. All assessments will be based on the law as at the date of the assessment.

1. Core legislation/rules

- *Aged Care Act 1997 (Cth)* and various specific Principles
- *Aged Care Act 2024 (Cth)*
- *The Aged Care Rules 2025 (Cth)*
- *Civil and Administrative Tribunal Act 2013 (NSW)*
- *Conveyancing Act 1919 (NSW)*
- *Guardianship Act 1987 (NSW)*
- *NSW Trustee and Guardian Act 2009 (NSW)*
- *Powers of Attorney Act 2003 (NSW)*
- *Property (Relationships) Act 1984 (NSW)*
- *Residential (Land Lease) Communities Act 2013 (NSW)*
- *Retirement Villages Act 1999 (NSW)*
- *Retirement Villages Regulation 2017 (NSW)*
- *Retirement Villages Regulation 2025 (NSW)*
- *Social Security Act 1991 (Cth)*
- *Supreme Court Rules 1970 (NSW)*
- *Uniform Civil Procedure Rules 2005 (NSW)*

1.1 Transitional legislation

The following legislation has been repealed but may be relevant in some situations. Regard should be given to any transitional provision.

- *Residential Parks Act 1998 (NSW)*
- *Retirement Villages Amendment Act 2008 (NSW)*
- *Retirement Villages Amendment (Standard Contract) Regulation 2013 (NSW)*

2. Ancillary legislation

There are portions of the legislation that are relevant to this area of law. Candidates are expected to be familiar with those parts.

- *Civil Procedure Act 2005 (NSW)*
- *Contracts Review Act 1980 (NSW)*

- *Duties Act 1997 (NSW)*
- *Family Law Act 1975 (Cth)*
- *Interpretation Act 1987 (NSW)*
- *Inclosed Lands Protection Act 1901 (NSW)*
- *Income Tax Assessment Acts 1936 and 1997 (Cth)*
- *Legal Profession Uniform Law (NSW)*
- *Legal Profession Uniform Law Application Act 2014 (NSW)*
- *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*
- *Real Property Act 1900 (NSW)*
- *Residential Tenancies Act 2010 (NSW)*
- *Succession Act 2006 (NSW)*
- *Supreme Court Rules 1970 (NSW)*
- *Voluntary Assisted Dying Act 2022 (NSW)*

3. Core knowledge

3.1 Elder accommodation and agency

Sources of regulation

- Primary sources
 - Statutes and regulations
 - Contract, subject to statute
- Enforcement and review
 - NCAT
 - Consumer and Commercial Division for accommodation
 - Guardianship Division for the review of the appointment or conduct of delegated and substitute decision-makers
 - Supreme Court, Equity Division
- Statutory interventions, especially for granny flat arrangements (including Severance of joint tenancy; Appointment of trustees for sale of co-owned property; Application for orders for vacant possession of premises; Application for a statutory Will in the Probate Division)
- Equitable remedies in relation to granny flat arrangements or financial elder abuse

Formal statutory requirements

- Execution of documents (may include accommodation agreement and registration; delegated decision-making agreement; substitute decision making order)
- A substitute decision-maker periodically reporting to, or seeking specific authorisation from, the NSW Trustee and Guardian
- Commencing proceedings in cases of financial abuse, including the appointment of a tutor and joining potentially interested parties

Costs

The costs of accommodation under the contract, and as augmented by statute if applicable:

- on moving in, including transfer duty and the potential for diminution in pension entitlements,
- variations in ongoing costs while living there (e.g. strata levies recurrent charges, site fees, means tested care fees), and
- on moving out, including:
 - legal limitations on leaving or transferring title,
 - liability for fees and charges (e.g. departure fees in a retirement village), and
 - any adverse ramifications as regards liability to taxation; pension entitlements, and the realisation of the elder's testamentary intentions.

3.2 Equitable remedies

Types

- Equitable charge
- Constructive trust
- Setting aside a transaction (subject to a right of residence for a stipulated period).

Relevant considerations

- Adverse consequences on innocent third parties
- Joining all relevant parties
- Apportionment of expenses and liabilities between co-owners of property or parties to a de facto or close personal relationship.

Defences

- Laches, acquiescence and delay
- Limitation Act
- Actual or ostensible to act under an enduring power of attorney.

Methods of Assessment

There are three methods of assessment. Candidates must pass all three in order to gain Specialist Accreditation.

Mock File

Release date: **Wednesday, 13 May 2026**

Due date: **Wednesday, 3 June 2026**

The purpose of the Mock File is to assess the candidate's ability to perform tasks undertaken by specialists in this area of practice.

The Mock File will be made available to candidates on the indicated release date.

Candidates will be required to work independently and to upload the completed work on the specified due date through the Candidate portal.

Assessment Criteria

In your response you will be assessed on the following general performance criteria. You will be required to perform each criterion to the level of the performance standard.

- a) Analysing the facts and identifying relevant legal principles;
- b) Review alternatives with client;
- c) Implement and review plans and finalise a matter; and
- d) Demonstrate an ability to draft appropriate documents.

Written Examination

Examination date: **Saturday, 4 July 2025**

Venue: **Online**

The purpose of the Written Examination is to assess the candidate's breadth and level of knowledge.

The written examination is open book and 3 hours duration plus 30 minutes reading time, consisting of problem solving and knowledge questions and short or long answer questions.

Candidates are permitted hard copy resources and/or downloaded digital copies of resources on their computer desktop in the examination room. Internet/AI access is strictly prohibited.

Assessment Criteria

In your response you will be assessed on the following performance criteria. You will be required to perform each criterion to the level of the performance standard.

- a) Knowledge of relevant law and procedure;
- b) Identifying the relevant law and applying it to the relevant facts; and
- c) Providing advice on the given fact situation having regard to the relevant legal principles.

*Candidates will be notified of the examination time in early June.

Peer Interview

Interview date: **Sunday, 5 July 2026**

Venue: **Online**

During a Peer Interview, a candidate will be interviewed by a panel of up to two assessors.

The candidate is allowed to bring the following items into the room: clean paper or a notebook and a pen and (if applicable) a copy of any reading material provided for the interview for their reference. No other resources will be allowed.

The assessors will question the candidate as to how they would deal with typical professional situations in order to assess the candidate's understanding of the area, their ability to plan and communicate ideas, as well as their capacity to run matters efficiently and any office/file management and ethical issues.

This interview will run for 45 minutes and will be recorded for assessment purposes.

Assessment Criteria

Candidates must perform each one of the assessment criteria listed below to the level of the performance standard in order to pass this assessment overall.

Candidates will be assessed on their ability to:

- a) Demonstrate clear oral expression;
- b) Analyse quickly without references to notes or other materials;
- c) Engage clearly and constructively with the assessors;
- d) Show that their Elder Law knowledge is correct and can be brought to immediate use in a coherent and meaningful way;
- e) Identify and address any ethical issues;
- f) Identify relevant issues (both immediate and longer-term which impact upon any Elder Law strategy being proposed);
- g) Accurately assess facts and legal issues, and options;
- h) Indicate procedural steps and timelines for responses;
- i) Develop an initial plan; and
- j) Provide advice that sets out the best option(s), steps and timelines and identify strategies.

**Candidates will be advised of their Peer interview time in mid-June.*

Suggested Resources

Candidates may find it useful to refer to the following materials (being careful to ensure the sources reflect the current status of the law). This is not meant to be a prescriptive or exhaustive list and candidates are encouraged to conduct their own research. Practitioners should be mindful of legislative changes to the law since the date of publication of the resources.

Textbooks

Field S; Sappideen C; Williams K; *Elder Law: A guide to working with older Australians* (The Federation Press, 2018)

Lane, R and Whittaker N (2023) 2nd edn. 'Downsizing Made Simple' (Amazon.com.au)

Lewis R; *Elder Law in Australia* (Lexis Nexis, 2011) (3rd edition due 2026)

McCullagh R; *Australian Elder Law* (Thomson Reuters, 2018)

McCullagh R; *Retirement Village Law in NSW* (Thomson Reuters, 2013)

Online Resources (last accessed 19 November 2025)

Australian Law Reform Commission, (ALRC Report 131) 'Elder Abuse - A National Legal Response' @ [Elder Abuse—A National Legal Response \(ALRC Report 131\) | ALRC](#)

Eden P and Mathiessen J (2025) 'From reform to reality: navigating the transition to the new Aged Care Act 2024' LSJ Online @ [Navigating the transition to the new Aged Care Act 2024](#)

Field S (2025) 'Practising with care: anticipating legal tangles in the new aged care system' LSJ Online @ [Anticipating legal tangles in the new aged care system](#)

Koumoukelis A and Nguyen H (2025) 'The Practicalities of the New Aged Care Act' LSJ Online @ [The practicalities of the new Aged Care Act](#)

Websites (last accessed 19 November 2025)

Australian Government Department of Health, Disability and Aged Care 'New Aged Care Act' @ [New Aged Care Act | Australian Government Department of Health, Disability and Ageing](#)

Australian Government Australian Institute of Health and Welfare 'Family, Domestic and Sexual Violence' – Older People @ [Older people - Australian Institute of Health and Welfare](#)

Compass.info @ <https://www.compass.info/>

New South Wales Government, Fair Trading 'Housing and Property' @ [Housing & property | NSW Fair Trading](#)

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