

Independent Children's Lawyer Panel Information and Application

In cases where the Federal Circuit and Family Court of Australia makes an order that the child's interests in proceedings in the Court ought to be independently represented, the Court requests the Legal Services Commission to arrange the appointment of an Independent Children's Lawyer (ICL).

The role of an ICL is set out in s 68LA of the Family Law Act 1975 (Cth). The principal functions of an ICL include:

- arranging for necessary evidence, including expert evidence, to be obtained and put before the Court
- facilitating the participation of the child in the proceedings in a manner which reflects the age and maturity of the child and the nature of the case
- acting as an honest broker between the child and the parents and facilitating settlement negotiations where appropriate.

A practitioner will only be appointed as an ICL by the Legal Services Commission if the practitioner is a member of the Independent Children's Lawyer Panel.

The number of practitioners appointed to the Panel will be determined by the Legal Services Commission, taking into account:

- the number of ICL appointments being made by the Court
- the desirability of each ICL maintaining a reasonable number of ICL cases.

Minimum requirements for consideration for inclusion on the Independent Children's Lawyer Panel

To be considered for inclusion on the Independent Children's Lawyer Panel a practitioner must:

- a) be a member of the General Panel established by the Legal Services Commission
- b) have completed the Independent Children's Lawyer National Training Program
- c) have a minimum of five years recent post admission experience in family law
- d) be currently primarily practising in family law matters
- e) hold a current DHS Working with Children Check.

Application for inclusion on the Independent Children's Lawyer Panel

An application for inclusion on the Independent Children's Lawyer Panel must be made on the attached form and submitted to the Legal Services Commission. An applicant may then be asked to attend an interview.

If an applicant is refused inclusion on the Independent Children's Lawyer Panel the Director must provide written reasons for refusal.

Removal from the Independent Children's Lawyer Panel

A practitioner will be removed from the Independent Children's Lawyer Panel if the practitioner is no longer a member of the General Panel.

A practitioner may be removed from the Independent Children's Lawyer Panel if:

- 1) the practitioner fails to comply with the Independent Children's Lawyer Practice Standards (attached); or
- 2) the Director forms the view that the practitioner is no longer an appropriate person to be included on the Panel.

Notice to a practitioner removing the practitioner from the Independent Children's Lawyer Panel must state the reason for removal.

Appeal to the Commission

If a practitioner receives written notice:

- a) refusing the practitioner's application for inclusion on the Independent Children's Lawyer Panel; or
- b) removing the practitioner from the Independent Children's Lawyer Panel,

the practitioner may, within one month of receiving the notice, appeal in writing to the Commission against the decision.

Application for inclusion on the Independent Children's Lawyer (ICL) Panel of the Legal Services Commission

Name:

Are you a member of the General Panel of the Legal Services Commission?

Yes ☐ No ☐

If not, please apply for inclusion on that panel concurrently.

Have you completed the Independent Children's Lawyer National Training Program?

Yes ☐ No ☐

If yes, please attach supporting documentation.

Have you had at least five years recent post admission experience in Family Law?

Yes ☐ No ☐

Are you currently primarily practising in family law matters?

Yes ☐ No ☐

Do you hold a current DHS Working with Children Check?

Yes ☐ No ☐

If yes, please attach supporting documentation.

To be included on this Panel you must accept the following:

I, (full name) agree to
comply with the attached Independent Children's Lawyer Practice Standards.

.....
Signature

.....
Date

The Legal Services Commission reserves the right to seek further information from you before finally determining your application.

Please forward this application, with:

- a copy of your practising certificate
- proof of completion of the Independent Children's Lawyer National Training Program
- a copy of your current DHS Working with Children Check
- a copy of your CV
- any references you wish to include.

to:

The Panels Officer
Legal Services Commission
PO Box 1718
Adelaide SA 5001

Or by email to:

panels@lsc.sa.gov.au.

Independent Children's Lawyer Panel Practice Standards

A practitioner appointed to the Independent Children's Lawyer Panel must:

- 1) comply with the General Panel Agreement and General Practice Standards;
- 2) act in accordance with s68LA(5) of the Family Law Act 1975 (Cth) which provides that an ICL must:
 - a) act impartially in dealing with the parties to the proceedings; and
 - b) ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the Court; and
 - c) if a report or other document that relates to the child is to be used in the proceedings:
 - i. analyse the report or other document to identify those matters considered most significant for determining the best interests of the child; and
 - ii. ensure that those matters are properly drawn to the Court's attention; and
 - d) endeavour to minimise the trauma to the child associated with the proceedings; and
 - e) facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child;
- 3) read and observe the Commonwealth Legal Aid Guidelines, in particular the provisions in relation to the contribution of parties to the costs of the ICL;
- 4) read and comply with the National Guidelines for Independent Children's Lawyers (see nationallegalaid.org/assets/Family-Law/ICL-Guidelines2013.pdf), including meeting the child unless the child is under school age or there are exceptional circumstances or significant practical limitations, the assessment of which is a matter for the ICL;
- 5) enable the child to be involved in decision making, taking into account factors that indicate the appropriate degree of involvement such as:
 - a) the extent to which the child wishes to be involved; and Please attach the following information:
 - b) the extent to which involvement is appropriate having regard to the child's age, developmental level, cognitive abilities, emotional state and views;
- 6) act proactively when carrying out the functions of an ICL;
- 7) personally attend Court hearings and FDR conferences unless:
 - a) counsel has been briefed; or
 - b) circumstances arise beyond the control of the ICL;

- 8) if briefing counsel, ensure counsel is a member of the Legal Services Commission's General Panel and
 - a) has completed the Independent Children's Lawyer National Training Program; or
 - b) has a minimum of five years recent post admission experience in family law;
- 9) attend to all ICL solicitor work personally, except minor discrete tasks which may be delegated if properly supervised;
- 10) respond in a timely fashion to a request from the Legal Services Commission for a specific report;
- 11) inform the Legal Services Commission of any issues, developments or practice matters arising from a file that may have significance for ICL matters generally;
- 12) on receiving a case:
 - a) read the file and ensure that copies of all documents and Court orders have been provided by the parties; and
 - b) file a Notice of Address for Service and check the Commonwealth Portal for hearing dates and any relevant documents and Court orders not provided; and
 - c) write to the other parties or their solicitors:
 - i. advising of the practitioner's appointment as the ICL;
 - ii. requesting a contribution towards the ICL's legal fees;
 - iii. explaining the process for communicating with the ICL; and
 - iv. enclosing relevant pamphlets and a waiver form; and
 - d) as appropriate, make arrangements to meet with the child to explain the role of the ICL and to discuss how the child will have input into the case; and
 - e) consider what actions in line with the National Guidelines for Independent Children's Lawyers need to be followed and seek an appropriate extension of assignment to cover this work;
- 13) on concluding a case:
 - a) consider whether the ICL, or another appropriate person, should meet with the child to explain the orders that the Court has made; and
 - b) ensure that the final order provides for the discharge of the appointment of the ICL; and
 - c) provide a final report to the Legal Services Commission, including a copy of the final order.
- 14) at least once in each year of mandatory CPD points undertake a session of training aimed specifically at ICL practice.