



# Independent Children's Lawyer Panel Document

2025

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## **Acknowledgement of Country**

Tasmania Legal Aid acknowledges and pays respect to the Palawa/Tasmanian Aboriginal people as the Traditional Custodians of the land and waters of this island, Lutruwita/Tasmania, where we live and work.

## Part A - Introduction

Tasmania Legal Aid (TLA) is a statutory body, funded by State and Commonwealth Governments. It is the largest provider of legal services to the Tasmanian community, including to children and young people.

TLA helps the Tasmanian community understand their rights, navigate the legal system and get the assistance they need. TLA's vision is for a Tasmanian community that is safe, respected and where voices are heard.

TLA's Strategic Plan 2023-2027 identifies children and young people as a key focus area. In addition to representing children and young people, TLA commits to advocating for system and law reform that is child-centric, reflective of the voices of children and young people, and promotes their safety and wellbeing.

A key component of our commitment to Tasmanian children and young people is the appointment, training and provision of Independent Children's Lawyers (ICLs). Tasmania Legal Aid funds ICLs to represent children in family law proceedings under the *Family Law Act 1975* (Cth). The role of the ICL is to act as a bridge between the child and the Court to make sure that the child is respected, their voice is heard, and they are kept up to date with their case. ICLs ensure that the child's best interests are considered.

Given the importance of an ICL in advocating for and delivering the best outcomes for children, it is essential that Practitioners interested in, or appointed as ICLs have and adhere to training requirements, performance standards and engage in continuous learning and improvement.

This document creates a panel of private and in-house lawyers who will be allocated ICL appointments, known as the 'ICL Panel'. This ICL Panel Document explicitly sets out the expectations, requirements and responsibilities of ICLs, as well as providing processes for complaints and quality assurance of ICLs.

This document compliments the existing *Independent Children's Lawyers Practice Standards and Guidelines* (PSG) and should be read in conjunction. The PSG outlines best practice principles for the representation of children and identifies the importance of child-focused trauma informed practice. Children and young people who receive representation services from an ICL deserve:

- To have clarity about the role, expectations and limitations of ICL's scope of practice;
- To have their ICL engage in best practice, trauma informed and child focused representation; and
- A process to complain about ICLs.

In return, ICL's deserve:

- To have clearly identified requirements for appointment to the ICL Panel; and
- To have a clearly defined scope for their work as well as performance standards.

This document creates:

- A panel of lawyers who can accept an appointment as an ICL;
- A process for the appointment of lawyers to the ICL Panel;
- Requirements to perform the role of an ICL; and
- A performance management and complaints process.

This document commences operation on 14 February 2025.

## Part B – Definitions

**Assigned matter** means a matter that is the subject of a grant of aid from TLA and which has been allocated to a Practitioner for the provision of legal services;

**Assisted person** means a person who has applied for and is receiving a grant of aid;

**Business Day** means a day, other than a Saturday, Sunday or public holiday;

**Complex parenting matter** means a matter which involves one or a combination of risk factors that has the potential to impact on the welfare and safety of the child. These factors include but are not limited to:

- a) Family violence;
- b) Alcohol and substance abuse;
- c) Mental health difficulties;
- d) Complex needs related to gender or disability.

**Court** or **Courts** means the Federal Circuit and Family Court of Australia or any other court exercising jurisdiction under the *Family Law Act 1975*;

**Director** means the Director of Tasmania Legal Aid appointed under Section 8 of the *Legal Aid Commission Act 1990*, including a person nominated by the Director to act as a delegate;

**Determination** means any finding, opinion or conclusion necessary to underpin a recommendation;

**Existing Tasmanian ICL Practitioner** means all current legal Practitioners appointed by TLA as ICLs as at [insert date]

**Files** includes any Family Law Act proceedings where the Practitioner has been appointed as the ICL;

**Grant of aid** means the funding of legal services by TLA;

**Independent Children's Lawyer** means a legal Practitioner appointed pursuant to Section 68L of the *Family Law Act 1975* to independently represent a child's interest in proceedings before a Court exercising jurisdiction pursuant to the *Family Law Act 1975*;

**ICL** has the same meaning as "Independent Children's Lawyer";

**ICL Practitioner** has the same meaning as "Independent Children's Lawyer";

**ICL Panel** means the panel of ICL Practitioners established pursuant to this Document consisting of Practitioners eligible to provide legal services as an ICL;

**ICL Practice Standards and Guidelines** means the TLA Practice Standards and Guidelines launched June 2022 and available online at: <https://www.legalaid.tas.gov.au/wp-content/uploads/2022/06/TLA-ICL-Standards-Guidelines-FINAL.pdf>

**Infringement** has the same meaning as "infringement notice"

**Infringement notice** has the same meaning as prescribed by the *Monetary Penalties Enforcement Act 2005* (Tas) and means a notice, including a traffic infringement notice, which

- a) is authorised by an Act; and
- b) sets out particulars of an alleged offence; and
- c) gives an alleged offender the option of paying the penalty set out in the notice or having the matter dealt with in court.

**Legal Profession Board** has the same meaning as prescribed by Section 589 of the *Legal Profession Act 2007* (Tas)

**Practitioner** means a legal Practitioner as defined by the Legal Profession Act, including an ICL Practitioner.

**Professional rules** means all rules made, or applying, under the *Legal Profession (Solicitors' Conduct) Rules 2020* (Tas), and the *Legal Profession Act 2007* (Tas); and all other rules or guides to professional or ethical conduct published from time to time by the Legal Profession Board or Law Society of Tasmania.

**Reportable conduct:** has the same meaning as prescribed by the *Child and Youth Safe Organisations Act 2023* (Tas) and means:

- a) a relevant offence committed against, with or in the presence of a child, whether or not criminal proceedings in relation to the offence have been commenced or concluded; or
- b) sexual misconduct, that does not form part of a sexual offence, against, with or in the presence of a child; or
- c) physical violence against a child; or
- d) grooming of a child; or
- e) conduct that causes, or is likely to cause, significant emotional or psychological harm to a child; or
- f) significant neglect of a child; or
- g) conduct prescribed for the purposes of this section – regardless of whether or not the alleged conduct occurred within the course of a worker's duties in respect of an entity.

**Independent Regulator** means the person established under Section 11 of the *Child and Youth Safe Organisations Act 2023* (Tas) to oversee Tasmania's compliance with the Child and Youth Safe Organisations Framework.

**Tasmania Legal Aid** means the body corporate established by Section 4 of the *Legal Aid Commission Act 1990* (Tas)

**TLA** has the same meaning as "Tasmania Legal Aid"

## Part C – Appointments

### 1. Entry Requirements

#### 1.1 General requirements

- a) The applicant must hold a current practicing certificate or is taken to hold a practicing certificate under Section 41 of the *Legal Profession Act 2007* (Tas);
- b) The applicant's name must appear on the High Court of Australia's Register of Practitioners;
- c) The applicant's principal place of practise must be in Tasmania; and
- d) The applicant must have a current and unrestricted Registration to Work with Vulnerable People, permitting them to engage in child-related activities in their role as an ICL.<sup>1</sup>

#### 1.2 Admission requirements

In addition to the general requirements, the applicant must have:

- a) Completed the National Independent Children's Lawyer Training Course within the last three years and provide a copy of the completion certificate;
- b) At least five years' experience in family law;
- c) An understanding of the principles and skills required to undertake ICL work;
- d) Experience in court advocacy;<sup>2</sup>
- e) Had carriage of three complex parenting matters within the last five years. Matters must have been prepared for final hearing;<sup>3</sup>
- f) Have completed at least three compulsory professional development 'CPD' points covering family law, family violence, trauma informed practice and/or child development within the last 12 months;
- g) Provide contact details for two referees who can attest as to the applicant's experience and suitability for the role of an ICL; and
- h) If required, attend an interview.

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<sup>1</sup> As defined under Section 4A (1)(a) of the *Registration to Work with Vulnerable People Act 2013* (Tas).

<sup>2</sup> Court advocacy is not limited to the family law jurisdiction, and may include advocacy in interim hearings, contravention hearings, or matters involving examination in chief or cross-examination.

<sup>3</sup> Prepared for final hearing means that the matter must have been listed for final hearing with all necessary information obtained and case planning and affidavits complete in preparation for hearing, but the matter may be resolved before the final hearing occurs.

### 1.3 *Disclosure requirements*

Applicants must disclose:

- a) All findings of professional negligence, unsatisfactory professional conduct or professional misconduct made by the Legal Profession Board, Legal Disciplinary Tribunal, the Supreme Court of Tasmania or their interstate equivalent.
- b) All current or ongoing complaints or investigations into alleged professional misconduct or alleged unsatisfactory professional conduct.
- c) Any findings of guilt for any criminal offence other than an infringement.

If an applicant fails to make full and frank disclosure, their application may be rejected without further consideration of its merits.

## **2. Appointments to the ICL Panel**

### 2.1 *Applications*

To apply to the ICL Panel, a Practitioner must meet the entry requirements and submit an ICL application form.

### 2.2 *Transition of existing ICLs*

All existing ICL Practitioners shall be deemed to accept the terms and conditions outlined in this document and will automatically transition to the ICL Panel upon its commencement. Existing ICLs who do not wish to join the panel may opt out by providing written notice to TLA within 28 days of the commencement of this document.

## **3. The Assessment Process**

### 3.1 *Selection Committee*

Applications are assessed by members of the ICL Panel Selection Committee.

The Selection Committee will comprise of three members and include:

- a) TLA Associate Director of Family Law;
- b) One current TLA member of the ICL Panel; and
- c) One external member of the ICL Panel.

During the assessment process, the Selection Committee may seek further information from the applicant in relation to their application and may contact nominated referees. The applicant may also be required to attend an interview with the Selection Committee.



TLA will endeavour to determine applications within six weeks.

### *3.2 Intention to not appoint*

In the event that the Selection Committee intends to refuse an application, the applicant will receive written notification of the proposed determination with reasons for the decision.

The applicant will be provided 14 days to address those concerns and to provide further information before a final determination is made.

### *3.3 Refusal of application*

Where a final determination is made to refuse an application, the Selection Committee must provide the applicant with written reasons for the decision.

The decision of the Selection Committee is final. In the event of a refusal, the applicant may reapply to the ICL Panel 12 months after receipt of a written refusal.

### *3.4 Successful applicants*

Successful applicants will be notified by TLA in writing and will be required to sign and return a copy of the ICL Undertaking.

Successful applicants will not be accepted as a member of the ICL Panel, nor eligible to undertake work as an ICL, until TLA has received the Practitioner's signed ICL Undertaking.

Successful applicants are encouraged to participate in the National Legal Aid Mentor Program.<sup>4</sup>

### *3.5 Duration on the panel*

The ICL will remain on the ICL Panel until removed by TLA, or by the Practitioner's own request. The request for removal by a Practitioner must be in writing and addressed to the Director of TLA.

## **4. Interstate ICLs**

Practitioners who have been members of interstate ICL Panels that relocate to Tasmania are invited to apply to join the ICL Panel.

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<sup>4</sup> For further information about the National Legal Aid Mentor Program, visit the National ICL website at: <https://icl.gov.au/forum/mentoring-program/>

Such Practitioners must satisfy the general entry requirements as outlined in Section 1.1 of this Document, in addition to being required to meet the following admission entry requirements:

- a) Have completed the National Independent Children's Lawyer Training Course and provide a copy of the completion certificate;
- b) Have completed at least three compulsory professional development 'CPD' points covering family law, family violence, trauma informed practice and/or child development within the last 12 months;
- c) Provide contact details for two referees who can attest as to the applicant's experience and suitability for the role of an ICL; and
- d) If required, attend an interview.

Interstate ICL Practitioners who meet the general and admission entry requirements must submit an application form in accordance with Section 2.1 of this document, and shall be subject to the same application process as outlined in Section 3.

## **5. Service**

Any communication with the Practitioner pursuant to this Document will be sent to the Practitioner at their last known professional email address.

Any notice shall be deemed to have been served on the Practitioner on the date the email is delivered to the Practitioner.

## Part D – Terms and Conditions of the ICL Panel

### 6. Conditions and Practice Standards

#### 6.1 *Professional conduct and standards*

In performing Legal Aid work as an ICL, Practitioners must:

- a) Comply with the Tasmania Legal Aid ICL Practice Standards and Guidelines;<sup>5</sup>
- b) Comply with all obligations and performance standards as set by TLA, including the *Legal Aid Commission Act 1990* (Tas), and the *Legal Aid Guidelines 2020* (Tas);
- c) Comply with all professional rules and regulations including the *Legal Profession (Solicitors' Conduct) Rules 2020* (Tas), and the *Legal Profession Act 2007* (Tas);
- d) Ensure all work is performed to a high professional and ethical standard;
- e) Comply with all relevant practice rules, guidelines and directions as made by the Courts from time to time; and
- f) Continue to satisfy the general entry requirements as outlined in Section 1.1 of this document.

#### 6.2 *Ongoing professional development*

ICLs must:

- a) Attend all ICL related trainings provided by TLA where reasonably practicable; and
- b) Complete at least three CPD units covering either family violence, child development, or another topic directly relevant to ICL practice in each CPD year. Attendance at the ICL trainings may be credited towards these CPD unit requirements.

#### 6.3 *Working with TLA*

ICLs must:

- a) Respond promptly to any request from the Director for information or advice about any ICL file.
- b) Make legally aided ICL files available to the Director when requested.
- c) Promptly notify the Grants Team if a view is formed that a party should pay a contribution towards the professional and/or disbursement costs of the ICL.

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<sup>5</sup> The ICL Practice Standards and Guidelines are available online at: <https://www.legalaid.tas.gov.au/wp-content/uploads/2022/06/TLA-ICL-Standards-Guidelines-FINAL.pdf>

- d) Make contact with TLA if at any time the Practitioner does not have capacity to take on new ICL files and indicate the expected duration of such capacity constraints.

#### 6.4 *Notification*

ICLs must notify TLA in writing, within ten business days if:

- a) Any finding is made by the Legal Profession Board against the ICL for professional misconduct or unsatisfactory professional conduct.
- b) Any claim is made against the ICL for professional negligence.
- c) Any criminal proceedings are commenced against the ICL.
- d) The ICL ceases to hold an unrestricted practising certificate.
- e) The ICL changes their place of employment and/or contact details.

ICLs must notify TLA in writing immediately if their Registration to Work with Vulnerable People is suspended, cancelled, or has expired.

#### 6.5 *Briefing*

ICL Practitioners must personally have primary carriage of ICL files that have been assigned to them.

ICLs must obtain written approval from TLA to brief another Practitioner unless:

- a) The appearance is an adjournment or a procedural hearing where substantive submissions are not required; or
- b) The other Practitioner is or has previously been a member of the ICL Panel.

## Part E – Quality Assurance

TLA is committed to ensuring that ICLs provide consistently high-quality services to children. As part of this commitment, TLA undertakes quality monitoring through audits and by investigating complaints received.

### 7. Audits

TLA may conduct quality audits on closed files to assess an ICL's compliance with TLA's Practice Standards and Guidelines. The purpose of these audits is not to penalise or criticise an ICL, but to ensure that the services provided to children are consistently of the highest quality.

Audits will be conducted by an external member of the ICL Panel where possible. If an external auditor is not available, an internal member of the ICL Panel may perform the audit, ensuring adherence to TLA's MCCIP Policy regarding conflicts of interest and confidentiality.

All information obtained during the audit process will remain confidential, except where disclosure is mandated by law.

The auditing process aims to be educative and conducive to working with ICLs. Should any issues be identified during the audit, TLA will work with the ICL to identify any training, support or other needs to assist them in complying with the Practice Standards and Guidelines.

### 8. Complaints

TLA will accept complaints about ICLs where the complaint relates to:

- a) Safety concerns about a child that arise from the actions of the ICL and are not already before the court.
- b) An ICL not adhering to TLA's ICL Practice Standards and Guidelines.

Where a complaint of the safety of a child includes allegations of reportable conduct by an ICL, TLA must report the concern to the Office of the Independent Regulator. The Independent Regulator will provide oversight of how TLA investigates and responds to the complaint. TLA will not conduct a separate internal investigation alongside the one conducted with the Independent Regulator.

TLA will not accept complaints about ICLs where the complaint:

- a) Involves allegations involving unprofessional conduct or professional misconduct.

- b) Has already been appropriately addressed and does not justify further action.
- c) Is considered to be frivolous or vexatious.

Any complaints involving allegations of unprofessional conduct or professional misconduct are to be handled by the Legal Profession Board of Tasmania and the complainant will be directed to their complaint's procedure.

If TLA does not accept a complaint relating to an ICL, the complainant will be advised with reasons for the decision.

### 8.1 *Complaint's process*

Complaints may be made online, in person, by phone, or by email in accordance with TLA's Complaint Policy. Complaints will be received by TLA's Client Engagement Officer, who will log the details and ensure all necessary information is recorded. The complaint will be triaged to the Associate Director of Family Law to determine whether the complaint falls within TLA's scope.

Where the complaint does fall within TLA's scope, the Associate Director will:

- a) confirm the complainant has provided authority to provide a copy of the complaint to the ICL.
- b) with authority, TLA will provide the ICL with a copy of the complaint and request a response within 14 days.
- c) investigate the complaint, which may include calling for the ICL's file, reviewing relevant documentation, and interviewing involved parties.

### 8.2 *Support*

TLA acknowledges that ICLs who are subject to a complaint may experience an impact on their wellbeing. To address this, TLA will endeavour to provide comprehensive support to the ICL throughout the complaints process by facilitating access to resources and support services. At TLA, our goal is to create an environment where ICLs feel supported throughout the complaints process.

### 8.3 *Outcomes*

Upon investigating the matter, TLA may do one or more of the following:

- a) Dismiss the complaint without further action.
- b) Work with the ICL to identify any training, support or other needs to assist them in complying with the Practice Standards and Guidelines.

- c) Remove the ICL from the file related to the complaint.
- d) Suspend the ICL from the Panel if a referral has been made to the Independent Regulator or a serious complaint is made to police related to the fitness of the ICL to discharge their duties.

TLA will advise the complainant in writing of the outcome of their complaint and reasoning for the decision.

## Part F – Suspension and Removal

### 9. Suspension

#### 9.1 *Grounds for suspension*

A Practitioner may be suspended from the ICL Panel on any of the following grounds:

- a) If a referral has been made to the Independent Regulator relating to the ICL's conduct.
- b) If a serious complaint has been made to police in relation to the fitness of an ICL to discharge their duties.
- c) If the ICL's Registration to Work with Vulnerable People is suspended, cancelled or has expired.

#### 9.2 *Notice to suspend*

Where TLA determines that Practitioner is to be suspended from the ICL Panel, the Director will serve the ICL with a notice to suspend.

The notice to suspend must provide details of:

- a) The basis on which the determination to suspend has been made;
- b) The length of the suspension and the date it will take effect;
- c) Details about any action TLA requires of the Practitioner during the suspension period; and
- d) The ICL's right to respond to the concerns raised.

#### 9.3 *Effect of Notice to suspend*

A notice to suspend prevents a Practitioner from:

- a) Being allocated any new ICL matters; and
- b) Continuing to act in any current assigned matters.

The Practitioner subject to a notice to suspend must transfer any existing files to another ICL as nominated by the Director.

Following the suspension period, or in the course of the suspension period, TLA may do any of the following:

- a) Reinstatement the Practitioner to the ICL Panel.
- b) Require the Practitioner to engage in training or supervision.
- c) Remove the Practitioner from the ICL Panel.

TLA may extend the period of suspension where an investigation by TLA or other regulatory body remains ongoing, or the Practitioner has



failed to complete any actions required by TLA as part of the suspension.

## 10. Removal

### 10.1 *Grounds for removal*

A Practitioner may be removed from the ICL Panel on any of the following grounds:

- a) Information supplied by the Practitioner in support of their appointment to the ICL Panel is found to be substantially inaccurate or false.
- b) TLA reasonably believes that the Practitioner has committed a serious breach of the conditions of this Document.
- c) The Practitioner is found liable for professional negligence by a Court, or guilty of professional misconduct or unsatisfactory professional conduct which impacts upon their fitness to be an ICL.

### 10.2 *Notice of removal*

Where TLA determines a Practitioner should be removed from the ICL Panel, the Director must serve the Practitioner with a notice of removal.

The notice of removal must provide details of:

- a) The basis on which the determination to remove the Practitioner has been made;
- b) The date on which the removal will take effect;
- c) How the Practitioner's files are to be dealt with; and
- d) The Practitioner's right to appeal.

### 10.3 *Effect of Notice of Removal*

Unless the Practitioner appeals, the Practitioner's name will be removed from the ICL Panel.

Where a Practitioner has been removed from the Panel, TLA may:

- a) Advise any third parties, including Courts, that the Practitioner has been removed from the ICL Panel.
- b) Direct the Practitioner, by notice in writing, to take certain action in relation to ICL files.

### 10.4 *Self-removal*

If an ICL wishes to remove themselves from the ICL Panel, they must send a written request to the Director of TLA.

## **11. Panel re-inclusion following removal**

### *11.1 Self-removal*

Where a Practitioner is removed from the Panel by the Practitioner's own request, the Practitioner may reapply and must satisfy the general requirements as set out in Section 1.1 of this Document.

### *11.2 Removal by TLA*

A Practitioner that has been removed from the ICL Panel by TLA may reapply after a period of 2 years from the effective date of removal.

In addition to meeting the entry requirements, Practitioners must also satisfy:

- a) They have addressed the issue that resulted in removal; or
- b) There has been a material change in circumstances such that the same issues are unlikely to arise again.