# ICL Litigation Checklist

## Using this checklist:

* Type file name and number, print and attach to all new ICL litigation files
* Complete manually as the file progresses

## Purpose of checklist:

Completing this checklist fully and accurately will help:

* Demonstrate that you have met the duties of competence and standard of care expected of an ICL
* Demonstrate that you have met Legal Aid’s expectations of practitioners undertaking legally aided work, articulated in the [Quality Standards](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0012/41511/Quality-Standards.pdf)
* Another solicitor in the event they need to quickly identify the progress you have made with this matter
* If you are audited by Legal Aid

## Note:

* This tool is designed as a prompt only. It does not proscribe how litigation should be conducted in ICL matters and is not exhaustive.
* ICLs should be familiar with the Best Practice Guide for Meeting with Children and the aide memoire at Appendix A. Both documents are available on the website.
* All references to the “website” are to the National ICL Website, icl.gov.au, a tool for ICLs which includes precedents, guides and other important resources.
* This document could potentially be considered a client document and provided to the client upon request (rule 14 Australian Solicitors’ Conduct Rules) or as a result of a GIPA request

# Part A: Open File and Start Proceedings

## Step One - Open File

| **Task** | **Details/Date Done** |
| --- | --- |
| Conflict check |  |
| File a Notice of Address for service |  |
| Letter to parties re appointment as ICL (precedent letter and attachments on website)  Include:   * ICL factsheet * Questionnaire for parent (available on the national ICL website) * Fee scale/contribution information sheet   Request copies of all filed documents (attend registry and copy from court file if necessary) |  |
| Obtain completed questionnaires from parties – applicant, respondent, other parties |  |
| Obtain copies of all court documents – applicant, respondent, other parties |  |
| Obtain copy of s11F report or family report if completed |  |
| Liaise with any Family Consultant or other expert who has been involved in the matter |  |
| Undertake urgent work outlined in orders for appointment of ICL  (eg appoint a person to conduct assessment, request drug screen) |  |
| Letter to Department of Communities and Justice re appointment (precedent letter on website) |  |
| Send any requests for waiver of contribution to Grants Division for determination |  |

## Step Two- Prepare for Proceedings

| **Task** | **Details/Date Done** |
| --- | --- |
| Read documents and start formulating case strategy |  |
| Prepare draft chronology |  |
| Consider issuing subpoenas (check if leave required/obtain leave) |  |
| Department of Communities and Justice liaison - consider whether a subpoena to DCJ necessary  Does a Magellan report already exist or are there records already available? |  |
| Consider subpoenas to obtain:   * Police records * Medical records (consider the relevance of material sought and impact on therapeutic relationships between treating professional and child/parties) * Other relevant material |  |
| Consider whether Family Report or Expert Report is appropriate |  |
| Where order for appointment of expert is appropriate:   * Make enquiries with experts re availability and fees * Obtain approval from the Grants Division for funding of expert if parties or a party legally aided or if exceptional circumstances exist * Draft Minutes and letter of instruction * Send to parties, requesting consent * Send to Associate or Case Co-ordinator if appropriate * Include leave to provide copy of subpoenaed material to expert * Ensure funds are held in trust if parties are funding the report privately before expert is briefed * Send draft letter to expert to parties * Brief expert |  |
| Meet with child(ren) taking into account the age, cognitive ability and emotional maturity of child(ren) and any other circumstances (refer to aide memoire at appendix A) |  |
| Prepare and file court documents as required (Case Outline, Minute of Order) |  |
| Appear at first return date |  |
| Comply with orders made on first return date |  |

# Part B: Interim Hearings

Complete for all interim hearings

|  |  |
| --- | --- |
| **Task** | **Details/Date Done** |
| **Outcome of hearing** |  |
| Record outcome |  |
| Prepare engrossed orders |  |
| Follow up sealed orders |  |
| Consider issuing additional subpoenas where required |  |
| Meet with child/ren if appropriate to explain outcome |  |

## Part C: Preparation for Trial

## Step One- Consider Family Dispute Resolution

|  |  |
| --- | --- |
| **Task** | **Details/Date Done** |
| Make appropriate referrals to Legal Aid NSW family dispute resolution conferences in the course of proceedings |  |
| If the matter is referred to FDR, co-operate with the Legal Aid NSW FDR Unit |  |
| Diarise date of FDRS conference |  |
| Prepare for FDRS conference |  |
| Meet with child/ren before and after FDRS conference if appropriate (refer to aide memoire at Appendix A) |  |

## Step Two- Trial Preparation

| **Task** | **Details/Date Done** |
| --- | --- |
| Inspect subpoena documents |  |
| Consider settlement negotiations |  |
| Consider appropriateness of meeting with the child/ren before the final hearing |  |
| Comply with trial directions including advising the expert/family consultant of the final hearing dates in writing |  |
| Ensure funds are in trust if expert is required to give evidence/obtain approval from the Grants Division to pay for expert’s attendance |  |
| Ensure witnesses are on notice and prepare documents as directed  (e.g. witness affidavits, subpoenas etc) |  |
| File additional affidavits where required and as appropriate (from teachers, counsellors, case workers) |  |
| Seek approval of the Grants Division for counsel to be briefed |  |
| Brief counsel with adequate experience/ICL training |  |
| Promptly reassign the Grants Online invoice for counsel’s fees to counsel, to enable them to claim their fees directly from Legal Aid NSW |  |
| File case outline |  |
| Promptly provide instructions to counsel in writing, including a complete memorandum and brief |  |
| Prepare ICL costs notice |  |

## Step Three- Trial

|  |  |
| --- | --- |
| **Task** | **Details/Date Done** |
| Attend trial to appear/instruct counsel |  |
| Record outcome |  |
| Prepare engrossed orders (where ordered) |  |
| Email court engrossed orders (where ordered) |  |
| Follow up sealed orders (where required) |  |
| Meet with child/ren to explain outcome (refer to aide memoire at Appendix A) |  |
| Undertake any post-order work in accordance with orders |  |
| Make an application for costs at trial (unless negotiated or waived) |  |

## Step Four- Finalise File

|  |  |
| --- | --- |
| **Task** | **Details/Date Done** |
| Ensure all follow up is complete |  |
| * Orders provided to relevant people and agencies   e.g. schools |  |
| * Meet with child(ren) to explain orders, if required (refer to aide memoire at Appendix A) |  |
| * Other |  |
| Submit a File Outcome to the Grants Division |  |
| Provide copy of any costs order made to Grants Division |  |

## Appendix A