Accredited Specialisation
Reading Guide 2014

Children’s Law
GENERAL KNOWLEDGE:
As outlined in the Accredited Specialisation Application Guidelines, applicants are expected to display a working knowledge of all the practice areas listed in the General Knowledge section of topics, as well as to recognise typical problems, construct an advice to a client and to outline the steps which would be taken to prepare the matter for hearing.

Relevant legislation includes:
- Bail Act 1997
- Civil Procedure Act 2010 (Vic) Parts 2.1 - 2.3
- Charter of Human Rights and Responsibilities Act 2006
- Children Youth & Families Act 2005 (Vic)
- Crimes Act 1958 (Vic)
- Criminal Procedure Act 2009 (Vic)
- Evidence Act 2008 (Vic)
- Evidence Act 1995 (Cth)
- Family Law Act 1975 (Cth)
- Family Law (Child Abduction Convention Regulations (1987)
- Family Law (Family Dispute Resolution Practitioners) Regulations 2008 reg 25 -29
- Family Violence Protection Act 2008 (Vic)
- Family Law Rules
- Federal Circuit Court Act 1999 (Cth)
- Federal Circuit Court Rules
- Magistrates’ Court Act 1989 (Vic)
- Personal Safety Intervention Orders Act 2010 (Vic)
- Summary Offences Act 1966 (Vic)

Other recommended materials – Case Law, references and websites

Aboriginal Placement Principles and Cultural Issues
- Bringing them Home
- Dardee Boorai: Victorian Charter of safety and wellbeing for Aboriginal Children and Young People, December 2008
  - DHS Advice Number 1060 – Guide to Cultural Plans
- Protocol between DHS child protection service and VACCA, April 2002
- Little Red Yellow Black website

ADR
- Children’s Court of Victoria Guidelines
- “Issues of Fairness and Justice in ADR” NADRAC report published November 1997
- “Mediation for Lawyers” Samantha Hardy and Olivia Rundle 2010 CCH Australia especially chapters 4 and 5 on lawyers involvement before and during a mediation
- National Mediator Accreditation Scheme Practice Standards
- National Principles for Resolving Disputes and supporting Guide NADRAC (National Alternative Dispute Resolution Advisory Council) April 2011
- New model conference guidelines and practice directions

Child abuse allegations in family law courts
- Donaghey & Donaghey [2011] FamCA 13
- Protocol between the DHS, FCoA and FMC, May 2011
- “Co-operative and co-ordination evaluation of the Family Court Australia’s Magellan Case Management Model” Daryl Higgins
Communication with Child Clients
- DHS Beginning Practice Participant notes – Interviewing Children Part 1 and 2
- Lawrie Maloney “Children’s voices reflections on the telling and the listening” Journal of Family Studies, Volume 11, number 2, October 2005 216-227
- VLA, Children’s Court Criminal Division – Guide to assessing capacity and taking instructions from very young and/or intellectually disabled clients (2013)
- VLA, Children’s Court Criminal Division capacity checklist (2013)
- VLA, Children’s Court Criminal Division pre-interview advice checklist (2013) coming soon
- VLA, Children’s Court Family Division – Guide to assessing capacity and taking instructions from young, trauma affected and/or intellectually disabled clients (2013) updated version coming soon
- VLA, Children’s Court Family Division capacity checklist (2013)

Child development & impact of trauma
- DHS – Child development and trauma guide
- Search Institute - 40 developmental assets lists:
  - Adolescents (ages 12-18)
  - Middle Childhood (ages 8-12)
  - Grades K-3 (ages 5-9)
  - Early childhood (ages 3-5)
- DHS Beginning Practice Participant notes – Victimology Part 1 and 2
- OCSC From Isolation to Connection – A guide to understanding and working with traumatised children and young people

Basic social science
- Newman, Developmental Implications of Early Trauma (2011 ppt, available on the Children’s Court website)
- Perry, Bonding and Attachment in Maltreated Children: Consequences of Emotional Neglect in Childhood
- Moloney & Robinson, AFRC Briefing No 17 2010 - Family violence: Towards a holistic approach to screening and risk assessment in family support services
- Vincent Papaleo, Developmental considerations in contact residence and re-location disputes Family Law Intensive Family Law Section 12 February 2005
- Lamont NCPC Resource sheet April 2010 - Effects of child abuse and neglect for children and adolescents
- Lamont NCPC Resource sheet April 2010 - Effects of child abuse and neglect for adult survivors
- Bromfield et al NCPC Issues Paper No 33 2010 - Issues for the safety and wellbeing of children in families with multiple and complex problems
- Meeting children’s needs when the family environment isn’t always “good enough”: A systems approach
**Child Protection**
- Springvale Legal Service, Lawyers Practice Manual Victoria, looseleaf, Law Book Co
- “Protection proceedings in the Children's Court” chapter
- DHS - Guide to court practice for child protection practitioners
- NCPC Issues Paper No 34 2011 - Child Protection and family law... Joining the dots

**Construction of Childhood and Children’s Rights**
- Secretary to the DHS v Sanding [2011] VSC 42 (22 February 2011)
- A & B v Children's Court of Victoria & Ors [2012] VSC 589 (5 December 2012)
- United Nations Convention on the Rights of the Child
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- David Archard (2006 revised) 'Children's Rights'
- www.hrlc.org.au

**Civil Law**
- “Am I Old Enough? Common Legal Issues for Young People”, available on the Victoria Legal Aid website publications page
- Lawyers Practice Manual Victoria, Volume 2,

**Ethics**
- Best Practice Guidelines for lawyers doing family law work, Law Council of Australia, 2nd edition 2010
- “Being a family lawyer and being child focused – A question of priorities? 21 (1) Australian Journal of Family Law 37

**Family Violence**
- Jaeger and Jaeger (1994) FLC 92-492
- JG and BG (1994) FLC 92-512
- A and A (1998) 92-800
- “Family Violence Best Practice Principles” Family law courts www.familycourt.gov.au

**Independent Children’s Lawyer (ICL)**
- Re:K (1994) FamCA 1994,
- P & P (1995) FLC 92-615,
- Knibbs and Knibbs (2009) FamCA 840,
- B & R and the Separate Representative (1995) FLC 92-636,
- R v R: Children’s Wishes (2000) FLC 93-000,
- T & L (2000) FLC 93-056,
- T & S (2001) FAM CA 1147,
- T & Anor (2000) FLC 93-049,
- T & N (2003) FLC 93-172
- Re F (Litigants in Person Guidelines) (2001)
- De Roma & De Roma [2013] FamCA 566
- Guidelines For Independent Children's Lawyers (2013)

**Family Violence Intervention Orders and Personal Safety Intervention Orders**
- Judicial College of Victoria *Family Violence Bench Book*
- Judicial College of Victoria *Personal Safety Intervention Orders Bench Book*

**Model Litigant**
- Cracknell v TAC (General) [2007] VCAT 1615
- Melbourne Steamship Co. Ltd v Moorehead (1912) 15 CLR 333  (standard of fairplay to be observed by the Crown, per Griffiths CJ)
- Kenny v State of South Australia (1987) 46 SASR 268
- Moline and Comcare (2003) AATA 827
- Yong Jun Qin v The Minister for Immigration and Ethnic Affairs (1997) 75 FCR 155
- Code of Conduct for Victorian Public Sector Employees (No.1) 2007
- Schedule 8 – Model Litigant Guidelines, Victoria
- Buchanan, Lynn & Dr John Lynch ‘Model Litigant Rules, OK? LIJ, March 2011, 41

**Youth Crime**
- Springvale Legal Service, Lawyers Practice Manual Victoria, looseleaf, Law Book Co "Criminal Prosecutions of Children” – Part 6 Criminal Prosecution of Children
PRACTICE AREAS
As outlined in the Accredited Specialisation Application Guidelines, applicants are expected to demonstrate an in-depth knowledge of one of three practice areas: Child Protection, Independent Children's Lawyers and Youth Crime. Candidates are reminded that topics covered are set out in Schedule 4 of the Application Guidelines. Candidates are expected to address more complex issues specific to their particular chosen practice area.

All Candidates are expected to know relevant and current case law and keep abreast of any developments in the law in their chosen practice area, therefore case law is generally not listed below.

However, a list of cases has been included in the Child Protection Practice Area and under ‘Adoption’ in the ICL Practice Area as it is acknowledged that some case law in these areas may be either difficult to access (or in the case of adoption matters, rarely accessed).

Candidates are nevertheless expected to make their own enquiries as to whether any new cases add to, modify or over-turn any listed cases.

1. CHILD PROTECTION – PRACTICE AREA

Case Law
- *Buckley v Buckley*, unreported SCV decision of O'Bryan J, 11 December 1992
- *DHS v HW Peter Power*, unreported SCV decision of McDonald J, 28 June 1996
- *DHS v Ross* [2003] VSC 172 (*R*)
- *DHS v Yalniz*, unreported SCV decision of Nathan J, 13 July 2001 (*R*)
- *JA and others v. Millar and others*, unreported SCV decision, 21 May 1992
- *M. and Others v. M. and Others* [1993] 1 VR 391
- *PA v Angela Karavidas and others* [2001] VSC 185
- *Perry v DHS*, unreported SCV decision of Cummins J, 27 February 1997
- *Perry v DHS and Others*, unreported SCV decision of Cummins J, 4 March 1997
- *Fiddler v Cantor*, unreported SCV decision of Beach J, 24 January 1994
- *Grandell v Hartrick (no 1)*, unreported SCV decision of Beach J, 1 February 1994
- *Grandell v Hartrick (no 2)*, unreported SCV decision of Beach J, 10 August 1994
- *Purcell v RM (no 1)* [2004] VSC 14
- *CC & JC v DHS* [2003] VSC 134
- *Secretary to the DHS v Sanding* [2011] VSC 42 (22 February 2011)
- *DHS v Children's Court of Victoria & Ors* [2012] VSC 422 (10 September 2012)

**NB**: The LIV has arranged the permission of the President of the Children’s Court to access the unreported cases listed above. To obtain copies, please email special@liv.asn.au.

Further reading – Practice & Procedure
- Frederico et al – Child Practitioners and the Law: Toward a Shared Knowledge Base (2011 ppt) available on the Children’s Court website
- Children's Court of Victoria - Research Materials - Family Division - General
- Children's Court of Victoria - Research Materials - Family Division - Child Protection
- Children’s Court of Victoria – Virtual Court, http://childrenscourt.courtnexus.com/

DHS material
- DHS – Best interests series – The Best Interests principles: a conceptual overview
- DHS – Best interests series – Cumulative harm: a conceptual overview
- DHS – Guidance on promoting children’s stability
- DHS – A Framework to promote children’s safety, wellbeing and development
- DHS – Substantiation and risk assignment
- DHS – Adoption and Permanent Care
- DHS – permanent care process – flow chart
- DHS Child Protection Practice Manual Court Kit
- DHS Child Protection Practice Manual Practice Resources – Specialist practice resources and Practice guidance sections
Aboriginal Placement Principles and Cultural Issues
- Strong culture, peoples and strong families - towards a safer future for Indigenous families and communities

Social Sciences
Attachment Theory
- McIntosh, Guest Editor’s Introduction – Attachment (2011) 49 Family Court Review 418

Brain Development
- Perry, Examining child maltreatment (2009) Journal of Loss and Trauma 240-255

Child Trauma
- Terr, Childhood Traumas: An Outline and Overview [2003] 1(3) Focus 322-333

Child Sex Abuse
- DHS - Child sexual abuse: understanding and responding
- Fergua & Keel, ACSSA Wrap No 1 November 2005 – Adult victim/survivors of childhood sexual assault

Out-of-home care
- Bromfield and Osborn NCPC Child Abuse Prevention Issue No 26 2007 - Getting the big picture: A synopsis and critique of Australian out-of-home care research

Physical abuse

Resilience

Therapeutic services

DHS, Evaluation of the Therapeutic Residential Care Pilot Programs Report 2011
2. INDEPENDENT CHILDREN’S LAWYERS (ICL) – PRACTICE AREA

Hague Convention on the Civil Aspects of Child Abduction
- International law and the child – Australian Government Attorney General’s website (www.ag.gov.au)

**Practice and procedure**
- Family Court of Australia Practice Directions

**Social sciences**
- Refer to readings under ‘social sciences’ in Child Protection Practice Area of this guide
- David Edney and David Deam “Drug testing in Family Law”, Law institute Journal Volume 80, number 4, April 2006 48-53
- J McIntosh and R Chisholm “Shared Care and Children’s Best Interests in Conflicted Separation” (2007) 20 Australian Family Lawyer 1
- Alley Robinson, Brian Rogers, Bruce Smyth “Mental health and the Family Law system” Journal of Family Studies, 2 10 (1) April 2004
- Special Issue on Alienation – *Family Court Review*, Volume 48, number 1 January 2010, pp 6 – 47.

3. YOUTH CRIME – PRACTICE AREA

**Legislation**

Commonwealth
- *Crimes Act* 1914 (Cth)
- *Criminal Code* 1995 (Cth)
- *Crimes Legislation Amendment (Telecommunications offences and other Measures) Act (No.2)* 2004 (Cth)

State
- *Appeals Cost Act* 1998 (Vic)
- *Bail Act* 1997 (Vic)
- *Charter of Human Rights and Responsibilities* 2006 (Vic)
- *Children, Youth and Families Act* 2005 (Vic)
- *Control of Weapons Act* 1990 (Vic)
- *Crimes Act* 1958 (Vic)
- *Criminal Procedure Act* 2009 (Vic)
- *Crimes (Mental Impairment and Unfitness to be Tried) Act* 1997 (Vic)
- *Drug Poisons and Controlled Substances Act* 1981 (Vic)
- *Evidence Act* 2008 (Vic)
- *Graffiti Prevention Act* 2007
- *Road Safety Act* 1986 (Vic)
- *Sex Offenders Registration Act* 2004 (Vic)
- *Summary Offences Act* 1966 (Vic)

**Further Reading**
- Freckleton, Ian Indictable Offence in Victoria, 5th ed, Law Book Company 2008
- Freckleton, Ian Criminal Law Investigation and Procedure Victoria, Looseleaf, 5 vols, Law Book Co
- Judicial College of Victoria
  • Search Warrants Manual
  • Victorian Criminal Proceedings Manual
  • Victorian Criminal Charge Book
  • Victorian Sentencing Manual
  • Sexual Assault Manual: Investigation, Prosecution and Sentencing in Victoria
  • Uniform Evidence Manual
- Magistrate Peter Power's Research Materials
- Nash QC, Gerard & Bargaric, Mirko Criminal Legislation Victoria, Annotated. 2011: Bourke's Criminal Law, soft cover, Butterworths
- Odgers, Stephen, Uniform Evidence Law, 10th Ed
- Bagaric, M., Ross on Crime, Ed 6
- Springvale Legal Service, Lawyers Practice Manual Victoria, looseleaf, Law Book Co Part 6 – Criminal Prosecution of Children
- Operating Procedures of the Victoria Police Manual
  • Procedures and Guidelines – Cautions
  • Policy Rule – Disposition of Offenders
  • Procedures and Guidelines – Disposition of offenders.
- DHS advices on referrals from Children’s Court Criminal Division and Therapeutic Treatment Report and Order www.dhs.vic.gov.au/cpmanual
- DHS Practice Resources in particular
  • Adolescents and their families
  • Adolescents with sexually abusive behaviours