

Independent Children's Lawyers



What is an ICL?

This fact sheet provides information for complainants who are concerned about the conduct of an Independent Children's Lawyer.

What is an Independent Children's Lawyer?

Independent Children's Lawyers (ICL's) are appointed in both family law and care and protection jurisdictions.

ICLs are specially trained legal professionals who are appointed by the Court to look at a matter from the perspective of the children's best interests. They form an impartial view, based on the evidence available and ensure that they gather and put before a court all information necessary to assist the court in making an order that is in the child's best interests.

The ICL is not the child's representative and they are not obliged to act on the instructions of the child. Nor do they act for either party in proceedings. They do not take sides. They are obliged to consider the views of the child, but ultimately provide their own, independent perspective about what arrangements or decisions are in the child's best interests.

What is an ICL's role?

The ICL:

- deals impartially with parties to proceedings;
- ensures any views expressed by the child are put before the Court;

- analyses any reports or documents relating to the child that are to be used in proceedings and brings the most significant information to the attention of the Court;
- arranges for the collation of all relevant and reasonably available evidence including expert evidence where appropriate, and otherwise ensures to the extent possible, that all evidence relevant to the best interests of the child is before the Court;
- endeavours to minimise any trauma for the child that is associated with proceedings; and
- facilitates an agreed resolution (such as consent orders,) to the extent that is in the best interests of the child.

What information does an ICL consider to determine what is in the children's best interests?

The ICL may:

- meet with the children. This is usually the case, unless the child is under school age, or there are exceptional circumstances;
- speak to the children's counsellors, school teachers and principals;
- examine documents from organisations such as schools, Department of Family & Community Services, the Police, and medical, psychiatric and psychological records of the children and their parents;
- question witnesses, including parents and experts, at the final hearing;
- arrange for a family report from a family consultant.

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What is a family report?

A family report is a social assessment which includes recommendations about arrangements for the child and is prepared by a family consultant, who is usually a psychologist or a social worker. The consultant sees the children, the parents, observes the children and parents together and sometimes sees other family members, such as grandparents.

Does the ICL have to disclose information communicated by the child?

The ICL is not obliged to disclose any information communicated by the child unless the ICL considers the disclosure is in the child's best interests.

Does the judge do what the ICL asks?

Not always. The ICL makes submissions or recommendations to the Court suggesting a particular course of action. However, the judge will consider all the facts and views given by all the parties and the child in making the ultimate decision.

Who has the power to discharge an ICL?

The Court has the power to request the appointment of an ICL. They also have the power to discharge the lawyer appointed as an ICL, usually on the application of a party.

Who pays the ICL?

Appointments are usually managed and funded by the Legal Aid Commission, though it is possible for an ICL to be privately funded by one or both of the parties. The Court can order the parties to contribute to the cost of the appointment and/or at the conclusion of the case order a –or both- party to reimburse the Legal Aid Commission for the cost of funding the appointment.

Can I complain about an ICL?

Please remember the role of the ICL is to be **independent**. The fact they may not agree with your view or decline to do everything you want is not – of itself – a basis to complain. In such cases you might wish to ask the ICL why they have adopted the course they have. However if you have concerns about the conduct of an ICL then if your matter is still proceeding through a court, you should first raise any concerns you have about the actions of the ICL with that ICL. If you are dissatisfied with the ICL's response and believe he/she is failing in their duty you should bring your concerns to the attention of the judicial officer. If you are self-represented, a duty lawyer at the Court might provide you with assistance. You might also make a complaint to the Legal Aid Commission. In serious cases you can complain to this office.

For more information about ICLs see

<http://www.legalaid.tas.gov.au/factsheets/what-is-an-independent-childrens-lawyer-fact-sheet/>

<http://www.bestforkids.org.au/>

<http://www.legalaid.nsw.gov.au/what-we-do/family-law/independent-childrens-lawyer>

<https://www.legalaid.tas.gov.au/wp-content/uploads/2022/06/TLA-ICL-Standards-Guidelines-FINAL.pdf>

Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

The information contained in this fact sheet does not constitute legal advice.

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