

Fact Sheet 17 - Independent Children's Lawyer

July 2015

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.

What is a family report?

A family report 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?

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 dismiss an ICL?

The Court has the power to request the appointment of an ICL. They also have the power to discharge 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.

Can I complain about an ICL?

If your matter is still proceeding through a court, you should first bring any concerns that you have about an ICL to the attention of the judicial officer. If you are self represented, a duty lawyer at the court might provide you with assistance. You may also make a complaint to the ICL themselves or to Legal Aid if the ICL is funded through a grant of legal aid, or to this Office.

For more information about ICLs visit Legal Aid NSW [Best for Kids](#) and [Family Law Independent Children's Lawyer](#).