

Fact Sheet

Independent Children's Lawyer

An Independent Children's Lawyer (**ICL**) represents the best interests of the child.

The South Australian and Commonwealth legal systems recognise that legal proceedings involving children can be emotionally volatile and that it is often best for children to have a solicitor appointed to provide an independent perspective about what arrangements or decisions are in a child's best interests.

This fact sheet is directed to the conduct of ICLs in the family law system, however, similar principles apply to lawyers acting as child representatives in the State child protection system.

THE ROLE OF THE ICL

ICLs provide their own, independent, perspective to the court for the court's consideration.

In many cases, and depending upon the age and maturity of the child, the ICL will consider the views of the child and will inform the court of the child's view.

While a child's views may influence an ICL, an ICL is not bound to support the views of the child if they reach a different conclusion as to what is in the child's best interests.

HOW THE ICLs PERFORM THEIR ROLE

An ICL performs their role in much the same way as the other lawyers involved in family law and child protection proceedings. An ICL will:

- read all affidavits filed in the proceedings;
- read any subpoenaed documents;
- talk with the child or children (depending upon their age and circumstances);
- talk with family consultants, teachers, doctors and other relevant people to help form a view as to what is in the child's or children's best interests and to obtain evidence to present to the court;
- form a view as to what is in the child's or children's best interests and inform the court of that view; and
- attend court proceedings and participate in the usual way including by calling evidence and cross-examining witnesses.

Often, an ICL will recommend or encourage parties to reach an agreement which the ICL considers is in the best interests of the child.

An ICL may speak with the legal representatives for the other parties and, if one or more of the parties does not have legal representation, may speak to the parties directly. If you have a lawyer, the ICL will not communicate directly with you but will do so through your lawyer.

COMPLAINTS ABOUT ICLs

The Legal Profession Conduct Commissioner can investigate a complaint about misconduct by an ICL.

The Legal Profession Conduct Commissioner cannot order, direct, recommend or otherwise act to have an ICL removed from legal proceedings. Nor can the Legal Profession Conduct Commissioner join in legal proceedings to make submissions about the conduct of an ICL or other lawyer.

A complaint about misconduct must be more than a disagreement with the approach taken by, or the judgment of, an ICL. Where you disagree with an ICL's recommendations, you will have an opportunity to put your views to the court and to provide evidence to support your views.

The courts are generally best placed to decide whether an ICL is meeting their obligations to the child or children and to the court. The Court may disagree with the views of the ICL but that does not mean that the ICL has not met their obligations.

Before making a complaint about an ICL, please consider the following:

- An ICL will determine what evidence to collect and consider to fulfil their obligations. This will include who they wish to speak to, what reports if any they consider necessary, and who to call as witnesses.
- An ICL will determine when it is appropriate to speak with the child or children and who may be present for any discussion.
- An ICL may consider it necessary to speak, from time to time, to the other parties or their legal representatives. You are not entitled to be present for such discussions. An ICL speaking to your former partner or their lawyers in your absence is not evidence of bias.
- If you do not qualify for legal aid, an ICL may seek to recover some costs from you. More information about the costs of an ICL is available from the Legal Services Commission (Family Law Guideline 5).

The Legal Profession Conduct Commissioner may close a complaint at any time and without consideration of the merits of the complaint if certain criteria are met. Those criteria are set out in section 77C of the Legal Practitioners Act 1981. The merits of complaints regarding the conduct of ICLs will not be considered where the complaints do not include evidence of misconduct or where the substance of the complaint is better addressed by the courts.

Further information regarding ICLs can be found at:

- Federal Circuit and Family Court of Australia: <https://www.fcfcoa.gov.au/fl/pubs/icl-guidelines>;
- Commonwealth government: <https://icl.gov.au>; and
- Legal Services Commission: https://lsc.sa.gov.au/cb_pages/guidelines_family_law.php.

If, having read this guide, you are of the opinion that an ICL has committed misconduct, you may make a complaint using the Complaint form found on the LPCC website.