

Who is an Independent Children's Lawyer?

An Independent Children's Lawyer ('ICL') is a legal representative appointed by the Court under s68L of the Family Law Act to represent the child's interests in family law proceedings. The ICL acts on the best interests of the child, not on direct instructions.

While the ICL is appointed by the Court, Legal Aid NSW is responsible for allocating the ICL for a matter.

When is an ICL appointed and what is their role?

ICL's are generally only appointed in cases where there are issues raised in the family law proceedings about the safety, welfare and well-being of a child.

An ICL must:

- Form an independent view, based on the evidence available to the ICL, of what is in the best interests of the child, and
- Act in the proceedings according to what the ICL believes to be the best interests of the child.

Guidelines for how the ICL is to undertake their role are available at the link here:

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/guidelines-independent-childrens-lawyer>

Information sharing between the ICL and DCJ

In matters where an ICL has been appointed, it is likely that DCJ will hold records for the child and their family. DCJ may even be involved in providing ongoing casework or be undertaking an assessment or investigation.

For the ICL to fulfil their role, the ICL will require information from DCJ in order to understand the nature of any child protection concerns that the family may be experiencing. In matters where DCJ has declined to be a party, the ICL may also ask DCJ to provide an affidavit as part of the ICL's case, to ensure the Court has evidence about relevant concerns and casework.

Information between DCJ and an ICL can only be shared as permitted by the law. The *Information Sharing Agreement about Independent Children's Lawyers in proceedings under the Family Law Act 1975* (Agreement) entered into between DCJ and Legal Aid was established to facilitate collaboration and information sharing between DCJ and ICLs.

The Agreement operates within the principles of both the Family Law Act and the Care Act in relation to making decisions about children. The Agreement also acknowledges the 'one court principle', and that DCJ will, wherever possible and appropriate, seek to intervene in any current family law proceedings rather than commence fresh proceedings in the NSW Children's Court.

A link to the Agreement is here:

https://intranet.facs.nsw.gov.au/_data/assets/pdf_file/0020/409034/0130_001.pdf

What information will the ICL ask for?

The ICL will seek information from DCJ about:

- Whether there are care orders relating to the child and if so, what they are and whether DCJ will consent to the jurisdiction of the Family Law Act
- If DCJ has any records for the child
- If DCJ is currently involved with the child and their family and if so, whether DCJ is conducting an investigation or assessment. If DCJ is conducting an investigation or assessment when will this likely to be concluded
- Advice about whether DCJ is anticipating any care proceedings in relation to the child or is likely to intervene in the family law proceedings
- Whether the DCJ caseworker can provide an affidavit for the ICL regarding current or prior casework.

What information can DCJ ask the ICL for?

The ICL can provide DCJ with information about:

- Details of any allegations of abuse that have been made
- Any orders made under s91B seeking DCJ intervene
- Any urgent interim hearing where DCJ may be required or where DCJ records might be subpoenaed
- Any expert reports or assessments that raise significant concerns for the child
- When the matter is listed for final orders and the outcome of any hearing.

The ICL will not normally be permitted to provide copies of court documents to DCJ, however where this is required for DCJ to appreciate any concerns held by the court or the ICL, they can seek an order for documents to be released to DCJ. DCJ can also request documents from the court under section 248 of the Care Act..

How does the ICL seek information?

The current Agreement provides that the ICL will liaise with a Legal Officer within DCJ Legal. The process is that the ICL writes to DCJ Legal advising of their appointment and they are advised of the Legal Officer's name who they can liaise with to seek information. The Legal Officer then obtains the relevant information and provides that to the ICL.

While the Agreement provides for the ICL to liaise with the Legal Officer, there is nothing that prohibits an ICL from making contact directly with DCJ caseworkers to seek information about a family and on an urgent basis this may be appropriate. A Legal Officer will always be available to provide advice about what information you can and can't share with the ICL. A case note regarding any information shared will need to be recorded in ChildStory.