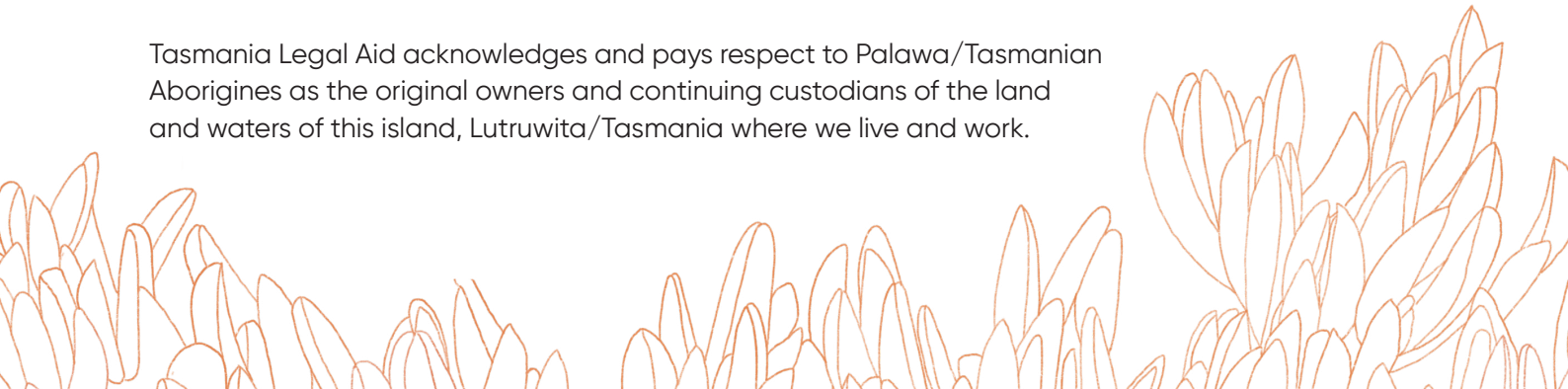


**Independent
Children's
Lawyers
Practice
Standards
& Guidelines**



Tasmania
Legal Aid

Tasmania Legal Aid acknowledges and pays respect to Palawa/Tasmanian
Aborigines as the original owners and continuing custodians of the land
and waters of this island, Lutruwita/Tasmania where we live and work.



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About this document

The *Independent Children's Lawyers Practice Standards and Guidelines* is a resource for legal practitioners who perform the role of Independent Children's Lawyer (ICL) and act as best interests representatives for children in Tasmania.

These standards and guidelines reflect research on ICLs and best practice representation of children.^{1 2} While some information is specific to Tasmanian practice and the availability of resources across Tasmania, the resource aligns with the national *Guidelines for Independent Children's Lawyers*, endorsed by Federal Circuit and Family Court of Australia.³

Purpose, focus and goals

The *Independent Children's Lawyers Practice Standards and Guidelines* recognise that ICLs have responsibilities beyond the provision of general legal services.

The purpose is to support ICLs to place the child and the child's best interests at the centre of their practice and to deliver best-practice, trauma-informed and child-centric services.



How to use the Independent Children's Lawyers Practice Standards and Guidelines

The resource sets out guidelines and related standards of practice prescribed by Tasmania Legal Aid for ICLs who are employed or funded by Tasmania Legal Aid.

A number of appendices provide additional resources, including a standalone set of the *Independent Children's Lawyers Practice Standards*.

1 Refer to the *Independent Children's Lawyers Study: Final report (2nd ed)* at www.ag.gov.au/sites/default/files/2020-03/IndependentChildrensLawyerStudyFinalReport.pdf

2 Refer to *Children and young people in separated families: Family law system experiences and needs* at <https://aifs.gov.au/publications/children-and-young-people-separated-families-family-law-system-experiences>

3 Refer to the *Guidelines for Independent Children's Lawyers* at www.fcfcqa.gov.au/fl/pubs/icl-guidelines

2 The role of the Independent Children's Lawyer

The role of an Independent Children's Lawyer (ICL), in a family law case, is to ensure that the best interests of a child are given proper consideration and that the child's views are conveyed to the Court and the parties.⁴

The ICL makes sure that if the child expresses a view, it is fully presented to the Court. The ICL also makes informed decisions about the best interests of the child, based on all available evidence.

The ICL acts as a bridge between the child and the Court. The ICL doesn't act on the direct instructions of the child; rather, they ensure the child is respected and kept up-to-date with what is happening in their case. The ICL also makes sure that the Court has the information it needs to consider the child's best interests. The ICL performs this role by:

- developing and following a case plan
- gathering relevant and independent evidence to guide the Court's decision-making
- making sure that expert evidence and reports are made available to the Court.

While the ICL is an impartial and independent presence in proceedings, it is critical that there is a trusting and professional relationship between the ICL and the child. Building this relationship involves the ICL:

- engaging in a meaningful way with the child
- taking into account the child's age, capacity, cognition, emotions and developmental levels
- not making promises that they cannot keep
- telling the child immediately (or before) any report is released and having a contingency plan
- supporting the child so that they experience as little trauma as possible from proceedings
- continually assessing any risk of harm to the child.

It is important that the ICL avoids overstepping their professional role with the child. It is not the ICL's role to conduct disclosure interviews, become a witness in proceedings, or to counsel the child. Guidance should be sought from a Court Child Expert or other professional if needed.

The ICL should be cautious and alert to the child becoming overly dependent on them and should refer the child to appropriate services and supports if necessary.

ICLs should be aware of, and practice consistently with, the United Nations (UN) Convention on the Rights of the Child.⁵

The general principles of the best interests of the child and the child's right to have a say are complementary. Article 3 of the UN Convention on the Rights of the Child establishes the objective of achieving the best interests of the child. Article 12 provides the methodology for hearing the child.

⁴ The role and duties of an ICL are outlined in s 68LA of the *Family Law Act 1975* (Cth) which is available at www.legislation.gov.au/Details/C2022C00126

⁵ The *UN Convention on the Rights of the Child* is available at www.ohchr.org/en/professionalinterest/pages/crc.aspx

Article 3

All organisations concerned with children should work towards what is best for each child.

Article 12

Children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.⁶



There can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.⁷



⁶ Refer to a simplified version of the UN Convention on the Rights of the Child at www.unicef.org.au/upload/unicef/media/unicef-simplified-convention-child-rights.pdf

⁷ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), refer to www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf

3 Working with the child

The child's participation in proceedings

As an ICL, it is important that you support the child to participate in proceedings in a meaningful way.

Guiding principles

The following principles are adapted from requirements identified by the UN Committee on the Rights of the Child and should guide your work.⁸

1. Voluntary participation

Encourage and support the child to participate; never coerce the child to express views against their wishes. Let the child know that they can change their views or withdraw their involvement at any stage.

2. Transparent and informative practice

Provide the child with complete, accessible, age- and culturally appropriate information about the role of an ICL, the child's right to express their views, and how those views will be considered in the decision-making process.

Avoid using jargon and legal terminology so the child can make a well-informed decision about their views.

3. Relevant information

Help the child to understand the real-life implications of proposals and decisions. To do this, you will need a good understanding of the child's life and the things that are important to them. As well as asking questions of the child, provide opportunities for the child to raise things.

It is important to many children to know how the practical aspects of their lives work; they may feel that this is not recognised by adults, including their parents. As the ICL, you can make sure that practical aspects are considered in negotiations and decision-making. These may include:

- the timing of situations (e.g. time with parents) interfering with school or extracurricular activities
- having what they need, such as clothes and toys
- having contact with specific people who are important to them, e.g. friends or extended family
- wanting to do things independently, e.g. catching a bus to school
- which school they attend
- spending time with friends and going to birthday parties and other events.

4. Child-friendly interactions

Allocate adequate time and attention to make sure the child is best prepared and has the confidence and opportunity to contribute their views. Adapt your language, communication style and meeting locations (where possible) to reflect the child's capacities and preferences.

⁸ Refer to the *UN Committee on the Rights of the Child, General Comment No. 12 (2009)* – the right of the child to be heard, at <https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf>

5. Respectful relationships

Treat the child's views with respect, even where these differ from your personal or professional view or those of other professionals, or when these views do not seem to serve the child's interests. Recognise that children of even a very young age are able to form views and have a unique perspective on their own lives.⁹

6. Inclusive engagement

Some children face barriers to their participation in proceedings, e.g. children with disability or health issues, children from diverse cultural/religious/language groups, and children who have experienced marginalisation on the basis of their gender, sexuality or other attribute.

Children who have experienced trauma may find it difficult to engage in a meaningful way with unfamiliar people. They may also experience fear about talking about their experience or getting themselves or a parent/caregiver into 'trouble'.

Be alert to these barriers. Take particular care to encourage and enable the participation of children in these situations, drawing on the assistance and expertise of others where appropriate.

7. Safe and risk-sensitive practice

Take steps to minimise any risk to the child associated with their participation in proceedings and discuss with the child the real or potential risks of any arrangement the child wants.

Where you are concerned about the risk of harm to the child, address this in line with professional standards and obligations and, where possible, let the child know what steps you are taking and why.

8. Accountable practice

Commit to follow up with the child in your practice as an ICL.

Clearly communicate how you will represent the child's views in proceedings and let them know what happens, including how their views influenced (or did not influence) outcomes.

Give the child opportunities to give feedback about working with you, including what worked well and what could be improved.

9. Continuous improvement

Maintain and improve your skills and knowledge in areas of practice including specialised communication, child development, and trauma.

9 *ibid*

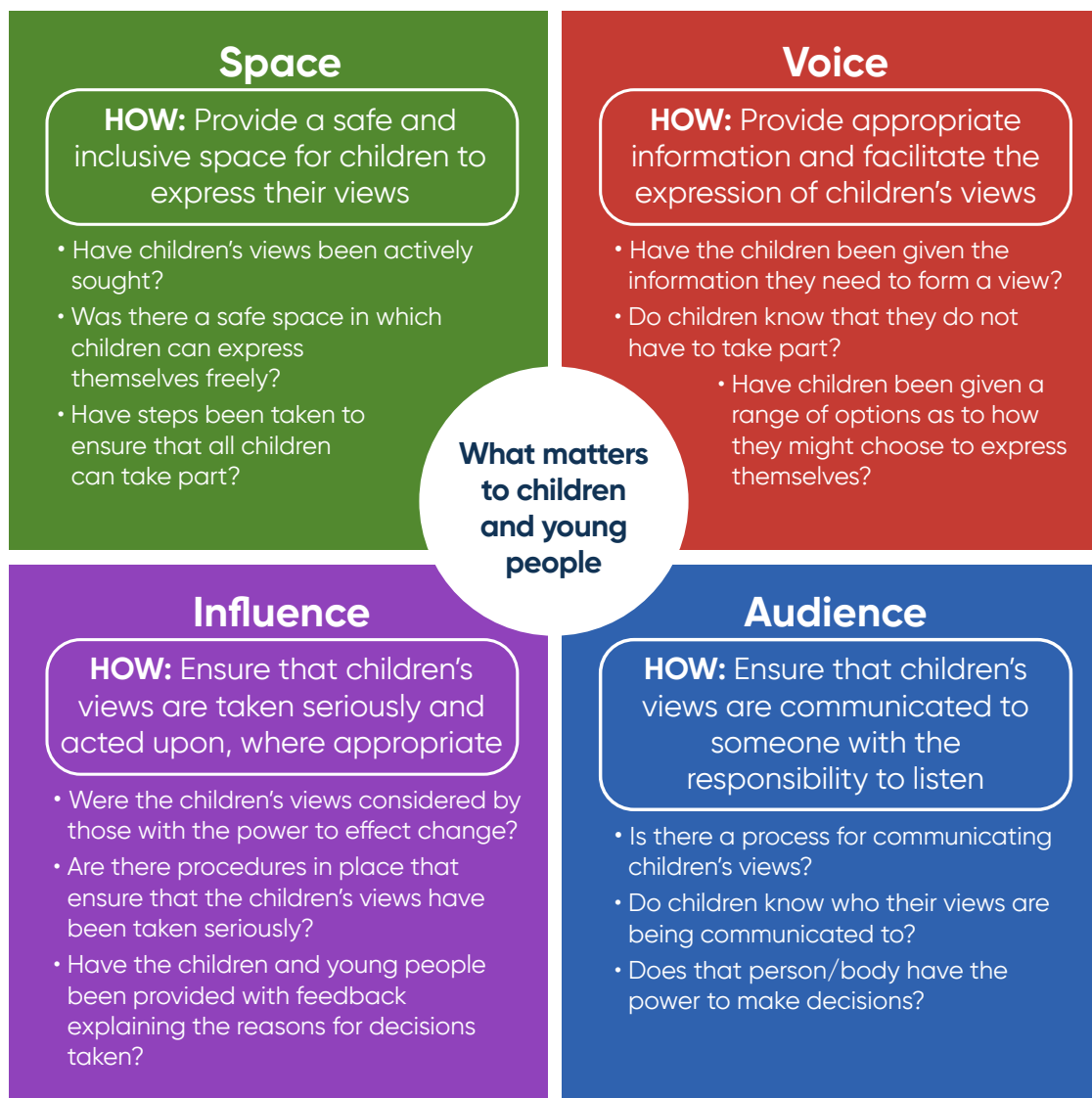
A model of child participation

General Information

The approach that adults take to engage a child in decision-making processes can have a significant bearing on how that child feels understood, valued and believed.

It can be helpful to use a model of child participation to help you focus on the child's right to participate in their family law case.

The Lundy Model of Child Participation offers guidance and points of reflection which can support you before, during and after any engagement with the child.¹⁰ Guidance about the model is given below.



¹⁰ The *Lundy Model of Child Participation* was developed to help educators to meaningfully implement a child's right to participate by focusing them on the distinct but interrelated elements of the right as embodied in article 12 of the *United Nations Convention on the Rights of the Child*. This model is also relevant and helpful in regard to the work undertaken by ICLs.

Space

Space can include both physical space and relational space.

Here are some questions to consider as you plan your interactions with the child:

- Where is a suitable place to meet with the child?
- What choice can the child have in where you meet?
- Would the child prefer to meet on a video call first?
- How might the child experience you?
- Are you willing to go at the child's pace?
- Are you willing/able to answer the child's questions about yourself and what you're doing?
- What are the core messages that will be communicated to the child before the meeting?
- Do you need to engage with the child more than once before they are comfortable to share their views? If so, are you able to do this?



Voice

Here are some things to consider as you provide information to the child and support their voice:

- How will you provide information to the child that is appropriate and sensitive to their age and stage of development?
- What additional support is needed to identify the child's needs, based on verbal and/or non-verbal signs?
- How will you get to know the child and their interests first? Can you have a general chat before you talk about the big issues?
- What is the best way to ask questions?
- Are there resources that will help you engage with the child? Are these resources appropriate to the child's stage of development and culture?



Audience

Explore with the child the issue of sharing of their views. Find out:

- what information the child feels comfortable sharing
- who the child is comfortable sharing information with
- whether there is anyone the child does not want their views shared with.

Make sure you understand and are clear about the sharing and information preferences of the child. Ways to do this include:

- writing down the child's views and reading over them with the child
- repeating the child's views back to them so that the child is confident that their view has been accurately captured
- asking what information the child wants next from you
- letting the child know they can provide information in their own writing, or in a drawing.



Influence

As you assess how the child's views can be taken seriously and acted on if appropriate, consider the following questions:

- What weight can the child's views have in the decision-making process?
- How will the child be informed if the child's views are not factored into decisions?
- Will the child understand the reason for the decision?
- Does the child have a right to complain about or appeal any decisions?



Child-aware approach

A child-aware approach puts the needs, views and aspirations of children and young people at the heart of actions to improve child and family wellbeing and safety.

A helpful resource for planning your approach is *The good practice guide to child-aware approaches – keeping children safe and well*.¹¹

The resource covers the following child-aware approaches and accompanying principles.

Approach	Principles
Family-sensitive	Principle 1. Identify and respond to the needs of the family. Principle 2. Acknowledge and build on family strengths while responding to family stressors and risk factors for child abuse and neglect.
Child-inclusive	Principle 3. Understand and apply knowledge of children's needs at each stage of their physical, cognitive, emotional and social development. Principle 4. Recognise and be sensitive to each child's unique perspective and experience. Principle 5. Include children as active participants in decisions that affect them. Principle 6. Promote child-safe environments.
Strengths-based	Principle 7. Enable parents by promoting their parenting role as a motivator for positive change. Principle 8. Build children's resilience by addressing their vulnerabilities and promoting effective, consistent caregiving.
Collaborative	Principle 9. Develop and maintain connections between and child-focused and family-focused services.
Culturally competent	Principle 10. Understand cultural influences on family and parenting practices and respond in a culturally sensitive way.

¹¹ This resource was written by Cathryn Hunter and Rhys Price-Robertson for the Australian Institute of Family Studies (CFCA Paper No. 21, 2014) and is available at aifs.gov.au/cfca/sites/default/files/publication-documents/cfca21.pdf

Practice Standard 1: The child's participation in proceedings

1.1 The ICL must:

- at all times, communicate with the child in developmentally appropriate and child-friendly language
- give the child information about the proceedings
- assist the child to express their views/responses, taking into account the child's preferences regarding how their views are expressed
- inform the child of their (the ICL's) views
- explain to the child any proposed orders/decision
- give the child the opportunity to respond to the information, views and proposed orders/decision prior to it being presented to the Court
- provide the child with feedback following the Court process, depending on the child's wishes in this regard.

Trauma-informed practice

As an ICL, you are likely to work with children who have been impacted by trauma. The child you are representing may function and process things very differently from other children you have interacted with on a professional or personal level.

Childhood experiences that can cause trauma include:

- physical abuse
- sexual abuse
- emotional abuse
- family violence¹²
- neglect (emotional and physical)
- substance abuse by carers
- carers' mental illness
- parental separation or divorce
- a carer who is incarcerated.

The impacts of trauma can have developmental effects on a child. The trauma the child has experienced could be from events that occurred before or after you have met them.

Using a trauma-informed approach¹³ is essential at every stage of your engagement with the child, including when:

- organising meetings and contacting the child or their carer
- building a relationship and interacting with the child
- communicating with the child during and after meetings.

12 "The issue of family violence is pervasive within the family law system. As highlighted throughout the committee's first interim report, allegations of family violence are present in the majority of matters that reach the family court." Refer to the *Joint Select Committee on Australia's Family Law System Second Interim Report Chapter 3*: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Family_Law_System/FamilyLaw/Second_Interim_Report/section?id=committees%2freportjnt%2f024551%2f73763

There is more information on family violence on page 50 of the Practice Standards and Guidelines.

13 Refer to a resource written by Liz Wall, Daryl Higgins and Cathryn Hunter for the Australian Institute of Family Studies (CFCA Paper No. 37, 2016) that is available at aifs.gov.au/cfca/sites/default/files/publication-documents/cfca37-trauma-informed-practice.pdf

A trauma-informed approach upholds the safety, dignity and wellbeing both of people using services and people delivering services. It is supported through:

- policies, principles and practices at practitioner, service and system levels
- responses that centre on empathy and reflection
- seeking to understand, rather than pathologise
- recognising people as experts in their own lives.

This approach has long been considered good practice. An unsafe response can escalate and compound trauma, resulting in additional harm. This can trigger distress, create barriers to recovery and prevent future engagement with support services.

Working with, rather than working for, is the key to a trauma-informed approach, as the table below describes.

Traditional	Trauma Informed
Doing for people	Doing with people
What's wrong with you?	What's happened to you?
Service as expert	Person as expert on own life
Symptoms and pathologies	Coping mechanisms
Treatment and cure	Healing and recovery
Non-compliant/disengaged	How can we better support you?
These are the service options	What might you need to live well?

Keep up-to-date with research about the effects of trauma and seek out training and knowledge about how to best interact with a child affected by trauma.¹⁴

Practice Standard 2: Trauma-informed practice

2.1 The ICL must:

- complete foundation training in trauma and trauma-informed practice as soon as possible, and update this training every 2-3 years
- keep up-to-date with research about the effects of trauma; in particular –
 - o the effects of trauma on children
 - o the risk of vicarious trauma to ICLs as a result of the content and nature of their work.

¹⁴ The Australian Childhood Foundation runs a course called 'Understanding the neurobiology of complex trauma on children'. For more information, refer to professionals.childhood.org.au/course/understanding-the-neurobiology-of-complex-trauma

Best interests and confidentiality

Best interests of the child

The Family Law Act sets out what the Court must consider when making parenting orders.

The objectives of the Family Law framework for children are to:

- Ensure the fulfillment of the best interests of children, including their safety.
- Implement the principles outlined in the Convention on the Rights of the Child¹⁵.

The Family Law Act underscores that, when deciding on a specific parenting order concerning a child, the court must prioritise the best interests of the child.

When determining what arrangements are in the child's best interests, the Court considers:

- The safety of the child and their caregivers, including any history of family violence, abuse, or neglect, and any family violence orders.
- The child's views, giving weight based on their age, maturity, and ability to understand.
- The child's developmental, psychological, emotional, and cultural needs.
- The capacity of those with parental responsibility to meet the child's needs.
- The benefit to the child of maintaining significant relationships, where safe and appropriate.
- Any other relevant circumstances unique to the case¹⁶.

The Court applies a balanced approach to all considerations, without assigning greater importance to one factor over another.

For Aboriginal and Torres Strait Islander children, the Court must also consider:

- Their right to enjoy and participate in their culture, including maintaining connections with their community, country, and language.
- They have the support, opportunity, and encouragement necessary to develop a positive appreciation of their culture and cultural identity¹⁷.

Confidentiality and disclosure

As an ICL, you cannot offer the child a confidential relationship in the traditional lawyer-client sense.

You are not under an obligation to disclose what the child tells you to the Court, and you cannot be made to disclose it.¹⁸

You may only disclose information the child gives you to the Court, if it is in the best interests of the child to do so.

If the child makes a disclosure to you which suggests that the child is at risk, you must:

- use your judgement to make enquiries about whether this disclosure has been made to any other person
- assess the risk to the child arising from the disclosure.

If you suspect that the child has been abused or is at risk of being abused, as an ICL you are required to notify the Child Safety Service.¹⁹

On very rare occasions, you may be the only person the child has disclosed information to – in that situation, you may become a witness to the proceedings and would need to seek a discharge and the appointment of a new ICL.

¹⁵ Refer to s60B of the Family Law Act.

¹⁶ Refer to s60CC of the Family Law Act.

¹⁷ Refer to s60CC(3) of the Family Law Act

¹⁸ Refer to s 68LA (6) of the Family Law Act.

¹⁹ Refer to s 67ZA of the Family Law Act.

Having a witness when you are meeting with the child may not protect you from becoming a witness and having to give evidence. In some cases, both you and the witness could be called to give evidence.

Practice Standard 3: Confidentiality and disclosure

- 3.1 At the first meeting, the ICL must explain, in child-friendly language:
- that during meetings with the ICL, the child does not have to talk or answer questions if they do not want to
 - that the child's parents and the Judge cannot make the ICL tell them what the child has talked about during meetings
 - that the only time the ICL will tell anyone what the child has talked about during meetings, is if the child says something that makes the ICL worry that the child is not safe (notifying the Child Safety Service).
- 3.2 Where the ICL does not have grounds for suspecting abuse, ill-treatment or psychological harm, they must talk to the child about what things the child would like the ICL to share.
- 3.3 In notifying the Child Safety Service or disclosing information in the best interests of the child, the ICL must:
- inform the child about what they intend to disclose and, if the child objects to the disclosure, discuss the child's concerns with them
 - develop a disclosure plan that addresses the child's concerns and the risks and possible impact of disclosure on the child
 - consider the impact of the disclosure on the child and the child's relationships with parents, significant others and with professionals such as psychologists, counsellors and teachers.

Meeting arrangements

ICLs are required to meet with the child and provide them with an opportunity to express their views about matters relevant to the proceedings. This requirement applies to all cases where an ICL is appointed, including and Hague Convention proceedings²⁰.

When you are meeting with the child, consider the situation from their perspective.

Depending on the child's age, developmental levels and demographics, they may find some or all aspects of a meeting overwhelming, confronting, intimidating and strange. It may be an uncomfortable and emotional experience for the child to meet with a new adult (you) one-on-one.

It can be helpful to the child to remind them about an upcoming meeting, particularly if it will impact on their school day or after-school activities. They may feel anxious if they have forgotten about the meeting and are suddenly asked to meet with you. Even if the child does know about the meeting, they may need extra support from their parents (or other support people) to manage their emotions in the lead-up to the meeting.

It can be useful to talk with the child's teachers, therapist, doctor and allied health workers (e.g. speech therapist, occupational therapist) before meeting with the child. Ask them about the child's needs and whether they might be able to support the child during meetings.

²⁰ Refer to s68LA(5A) of the Family Law Act.

Exceptions

ICLs are not required to meet with the child or provide them with an opportunity to express their views if:

- The child is under 5 years of age.
- The child does not wish to meet with the ICL or express their views.
- Exceptional circumstances make it inappropriate to meet with the child²¹.

In such cases, alternative methods of communication may be considered, such as written or electronic correspondence. The ICL retains discretion in determining the most appropriate approach, always prioritising the child's best interests.

Organising the meetings

You must meet with the child, ideally giving the child a chance to have a say in arrangements for the meeting. This gives the child autonomy and voice to decide on the space (how and where) and the audience (who) for their meetings with you.

If a child is pre-verbal or pre-school age, you must try to meet with and observe the child, e.g. by observing the child at childcare/kindergarten, or in the context of the primary caregiving relationship.

Timing and number of meetings

Meetings must be held soon after your appointment (before an interim hearing), before the final hearing, and when the matter concludes. Other meeting opportunities include before mediation or after the release of an expert or family report.

How and where to meet

You can use or adapt the questionnaire in Appendix 1 to ask the child's parents for suggestions on where to meet with the child.

You can also video call or telephone the child to ask them directly – older children may appreciate this approach.

When you are considering the child's location preferences, be aware of factors such as influence and privacy/confidentiality which may have an impact on the meeting.

There are a number of locations and approaches that may be suitable for meetings with the child.

Meeting remotely/virtually

You can use virtual means to meet with a child who lives in a remote area, e.g. King Island or Flinders Island.

Virtual meetings may also be the child's preferred method for communication.

A useful resource that may help you communicate with the child in this way is *COVID-19: Good practice guide for lawyers-meeting with children via technology*.²²

Meeting at the child's school

Be mindful that the child may feel uncomfortable and self-conscious meeting you at their school and that meeting there might be disruptive or interfere with the child's extracurricular activities.

You should avoid meeting at school unless you know that the child is comfortable with this. You should not automatically assume that the child would prefer to meet you at their school.

To meet at the child's school or at an after-school activity on school property, you will need permission from both the child and the school's principal.

²¹ Refer to s68LA(5B) and s68LA(5C) of the Family Law Act.

²² This resource is available at [icl.gov.au/wp-content/uploads/2020/04/Factsheet-Meeting_with_children-002.pdf](https://www.icl.gov.au/wp-content/uploads/2020/04/Factsheet-Meeting_with_children-002.pdf)

Meeting at your office

If the child is comfortable going to your office for a meeting, it is likely that the child will be brought to and collected from the office by a parent. Be aware of the possibility that the parent who is not transporting the child may feel that the other parent has benefited from the interaction.

It is important to familiarise the child with their surroundings and help them feel comfortable, e.g. by letting them know where exits and bathrooms are and offering them a glass of water.

Meeting at another agreed location

The child may like to meet at a location of their own choosing. You can guide the child on safe places to meet, such as at a park or in a café.

Remind the child that if the meeting is not at their school or at your office, it is important that you meet at a place where the child feels comfortable, but where there are enough people around to ensure both the child's and your safety.

Meeting attendees

You and the child

It is expected that you will meet one-on-one with the child if they can express their views. It may take more than one meeting for the child to feel comfortable to do this.

The only exceptions are if the child wants a support person, or if you are meeting a sibling group. If meeting a sibling group, check if the children are comfortable with a combined meeting, or would prefer a combined meeting for introductions, followed by separate meetings to ascertain their views.

Potential additional attendees at your meetings with the child include the following:

Support person

The child may choose to have another adult present at the meeting. This support person cannot be the child's parent.

If you are working in southern Tasmania, you may be able to arrange for the child's therapist to support the child when meeting with you. This option may not be readily available in northern and north-western Tasmania.

The support person must be an independent third party, such as an advocate, therapist, counsellor, teacher or teacher's aide. Their role is support only, with no input to the content of the meeting. Set this boundary at the start of the meeting.

Interpreter

If an interpreter is needed, make sure the child is aware of this, as well as the reason for the interpreter's presence.

Witness

Some ICLs feel they (the ICL) need a witness present when they meet with the child. It is important to be aware of the difference between a support person for the child and a witness for you as the ICL.

The child should not experience any surprises in their meeting with you.

Consider the child's needs for the meeting ahead of your concern about the possibility of a disclosure being made. The presence of another person in the room may affect the quality of the information the child shares.

You will need to obtain consent from the child to have a witness present who is not the child's support person. Before you seek the child's consent, explain to them that the witness is there to help you, and that the witness may take notes for you – again, only with the child's permission.

Contacting the child

Depending on the age of the child, your contact with them may be by phone, text message or email with the child directly or with their parent or carer.

Limit your communication with the child to organising meetings. Remind the child that any questions or discussions about their case must be during meetings only. This ensures confidentiality and a child not feeling influenced by others. This may be an issue if the child speaks with you on the phone or by video and others hear, or if their written communication is read by a parent or carer. Be mindful of the potential consequences for children if parents, carers or others can listen to, or read, private details meant only for you.

Practice Standard 4: Meeting arrangements

- 4.1 The ICL must meet with the child and provide the child with an opportunity to express any views in relation to the matter in accordance with Section 68LA(5A), whilst having regard to sections 68LA(5B), (5C) and (5D).
- 4.2 The ICL must have a plan for contact with the child and must meet with the child:
 - at a minimum, soon after appointment as ICL, before the final hearing begins, and upon conclusion of the matter
 - in person, unless –
 - the child is in an extremely remote location
 - the child would prefer to meet by virtual means
 - there is evidence that the child is refusing a meeting and would be traumatised if a meeting was to take place
 - the child is pre-verbal; in this case, the ICL must observe rather than meet with the child
 - one-on-one, unless –
 - a support person or interpreter is needed
 - the child agrees to a witness for the ICL being present
 - at a neutral location.
- 4.3 If there is alleged abuse by a parent, the ICL must keep the child safe and avoid placing the child in proximity to an alleged perpetrator of harm. Visual or verbal contact between the child and party may be traumatic for the child. The ICL needs to consider whether the interview arrangements and physical settings need to be structured to protect the child.
- 4.4 The ICL must obtain consent from the child for another person to be present during any meetings involving the child and the ICL.
- 4.5 The ICL must arrange a registered interpreter (not a family member) for meetings if English is not the child's first language, or if the child uses sign language.

The ICL/child/parent relationship

As the ICL, you may have to interact with the child's parents or carers – usually in the context of organising and attending meetings.

During interactions with parents and carers, be respectful and provide explanations without giving legal advice.

Practice Standard 5: The ICL/child/parent relationship

5.1 The ICL must:

- avoid being critical of the child's parent/s during meetings, respecting the long-term and ongoing nature of the child/parent relationship and avoiding the possibility of further trauma or detriment to the child
- request that the child's parent/s not ask the child questions about the child's meetings with the ICL or ask what the child has disclosed during meetings
- not provide advice to the child's parent/s regarding anything of a legal nature or answer questions about how the parent/s' case must be conducted.
- limit the information they provide the child's parent/s to matters relating to Court or administrative processes; parents who are represented must be referred back to their lawyer.

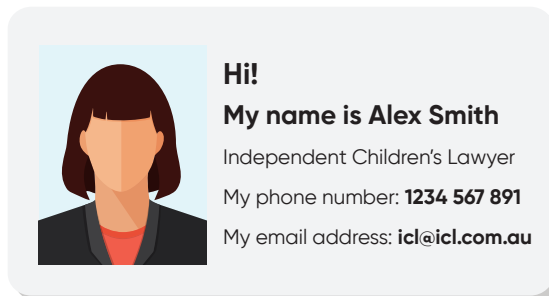
4 The child - views and diversity

Representing the child's views

There are many things you can do to build a relationship of trust with the child so that they feel comfortable and confident in exploring and sharing their views with you. Some of the ways you can build trust are described below.

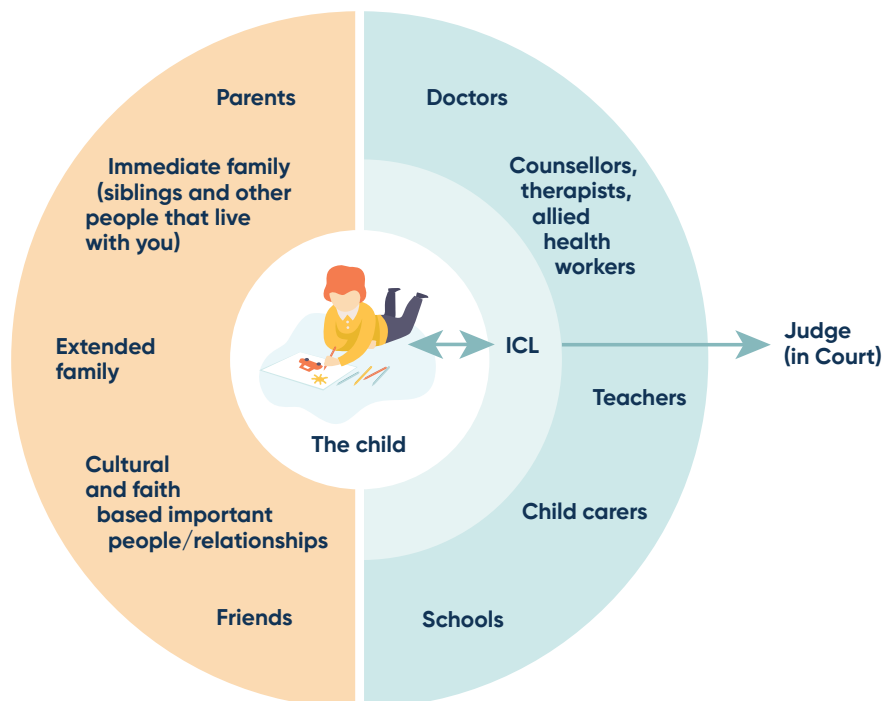
Explain who you are

Introduce yourself and explain your role and its limits. Do this both verbally and visually. You could have your photo and details printed on a card to give the child.



Using different ways to communicate information

Explain things by using pictures, shapes, and words to represent people - draw the child and then different people around them (e.g. you as the ICL, parents, teachers, doctor, Judge). Draw lines between people, to show who you communicate with, and who is making the decision (the Judge in Court).



Identify what safety means

Discuss with the child what safety means and what this might feel and look like. Talk about being in a safe place – drawing is a great way to discover this information.

Ask the child ‘What does safety mean to you?’ and ‘When/where do you feel safe?’

Give the child examples of safety might look and feel like:

- ‘I have a roof over my head’
- ‘Food in my tummy’
- ‘No one yelling’
- ‘No one physically hurting me’
- ‘I feel comfortable when I am safe’
- ‘I feel calm when I am safe’
- ‘I feel scared when I am not safe’
- ‘I feel like running away when I don’t feel safe at home’
- ‘I feel safe when my parents are happy’

Hopes, worries and good things

There is an activity in Appendix 4 that you can use to help the child to draw or write down their hopes, worries and good things. You could offer to scribe or draw for the child as the child communicates their thoughts.

If the child has a counsellor or therapist, you can ask them to complete this activity with the child and give it back to you. This will ensure that the child has the support they need as they share their hopes, worries and good things.

Helping the child feel at ease



Dress less formally

When meeting with the child, help the child feel comfortable by not dressing ‘like a lawyer’. If possible, wear smart-casual clothing rather than corporate wear or a suit.



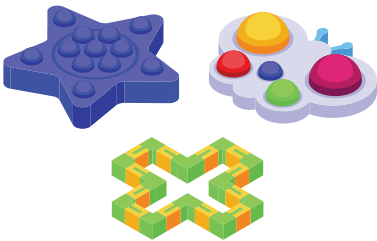
Consider sitting on the floor

Ask the child where they would like to sit. Think about the space you’re in and if there is a playmat to sit on, desk and chairs (including child-sized ones), beanbags etc. Consider sitting on the floor with the child when asking them questions.



Play games

Playing games is a good ice-breaker and can help the child feel comfortable in the space and with you as a new adult in their life. Card games can be a good icebreaker for older children.



Fidget and sensory toys

Have on hand a few age-appropriate sensory or other toys for the child to hold as they get to know you, e.g. a Rubik's Cube, fidget toys, soft toys and puppets.

Feedback on ICLs from children

The following feedback information was supplied by Communities Tasmania.

I would want my lawyer to be not as formal, more empathetic, more enthusiastic, basically less Mark Zuckerberg and more Elon Musk.

My lawyer was fun. They were not lawyer-like. They explained the legal jargon, heard me out, asked me what I wanted. They were energetic, enthusiastic, positive, and made it so it was not daunting. They were able to communicate really well.

My lawyer has information about me and acts as though they know me. Please don't pretend that you know me. I need to get to know you to keep this at an equal pace. Before meeting me, share some superficial details about yourself as an ice-breaker. Maybe explain to me what your job is. This is only your job, but it's my life.

My lawyer should have asked me how I needed it. My lawyer needed to slow it down. They didn't tell me what I needed to know, when I needed to know it.

Be more human. Don't wear a suit and provide food and drink breaks when you're talking with me.

Lawyers need to ask for feedback, even like one of those emoji tablet type of surveys that you get when you walk out of the supermarket.

My lawyer didn't understand the context, the emotion, the discomfort or the repercussions. Put me on the spot and treated me like an adult.

Does the lawyer actually like children? Not every personality can do the job. It's like, if you're going to be a paramedic, you need to be okay with blood. If you're going to be a lawyer representing children, you need to like children.

I genuinely wish I'd known that I had a lawyer. Our lawyers need to make themselves known and meet with us.

If I'm not sure what the lawyer means, I don't know how to go about finding out or how to ask them.

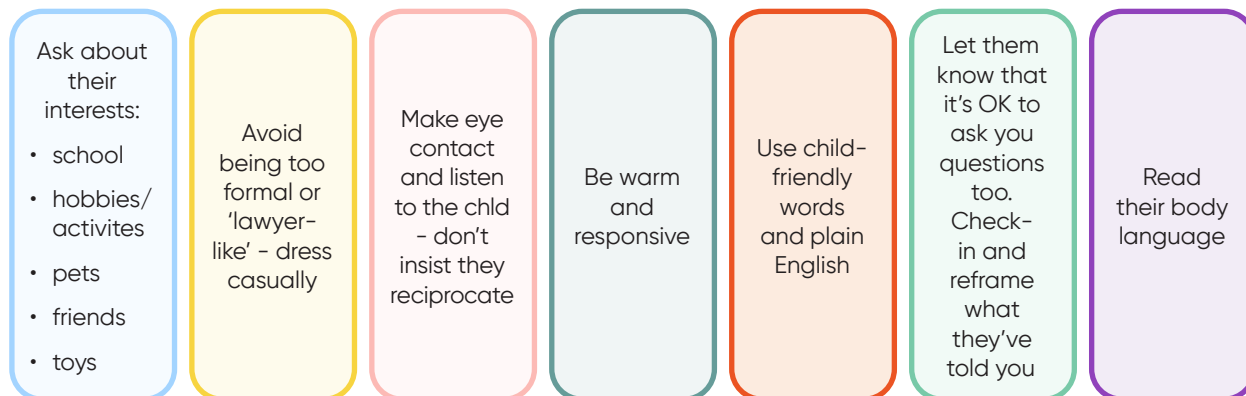
My lawyer spoke legal jargon at me, and I didn't know what it meant. They didn't tell me what was happening.



Ways to get to know the child

The graphic below describes some of the ways you can get to know the child during your early interactions with them.

Getting to know the child



You can also ask the child to draw a picture or write a story of themselves and their family. This is a good ice-breaker that gets the child to use their hands as they are thinking. Not all children like drawing and may become anxious about the task, so check with them first. You can also offer to draw for the child as they talk.

For many children, this is a good first activity, before you move on to find out the child's views on their family situation. If you are concerned about anything the child writes or draws, seek guidance from a mental health professional.

Things to keep in mind as you get to know the child include the following:

- The child may have misconceptions about who makes the decisions. Many children think it is the ICL who makes the decisions that will affect them.
- Understand that children don't necessarily use words to communicate; they often use behaviours.
- Try to alternate easy and hard questions. Try asking a 'getting to know you' question and then a trickier one.
- You can help build a connection and make the child feel less 'put on the spot' by making statements or asking questions such as:
 - 'I wonder if that's really hard for you?'
 - 'I wonder why you might feel worried at [that parent's] house?'
 - 'Can you tell me why [that parent] is on the edge of the picture you drew?'
- Words may not match a child's non-verbal cues; be aware of body language.
- Explain to the child that they are not to blame for what is happening in their family and that their family has asked the Court to help them sort things out.

PACE concept

As an ICL, you can use the PACE concept to show curiosity when asking the child questions.²³ This shows curiosity and empathy without making assumptions about how the child is feeling. The child may then be able to regulate enough to talk about things that are hard to discuss. The concept is illustrated as follows.



The focus of PACE includes the following elements.

Whole child

Rather than focusing solely on a child's behaviour, PACE considers the whole child. Applying the concept may help the child feel more secure with you and help them to reflect on their response to what is happening for them during proceedings.

Safety

If the child feels secure with you, they may feel more able to interact with you. They learn that they can rely on you and trust you to really get to know them. They also learn that you'll support them in a way that helps their voice be heard by the Court.

Understanding

The child may feel that you – as a trusted adult – will genuinely try and help them. They will be able to experience that you are doing the best you can to understand them and help them make sense of and manage what they are feeling, thinking and doing in relation to their case.

If you use PACE most of the time, you can reduce the level of conflict, defensiveness and withdrawal that may be present in the child's life. Using PACE enables you to see strength and positive features when working with the child, including when the child is experiencing challenges.

Things to discuss with the child

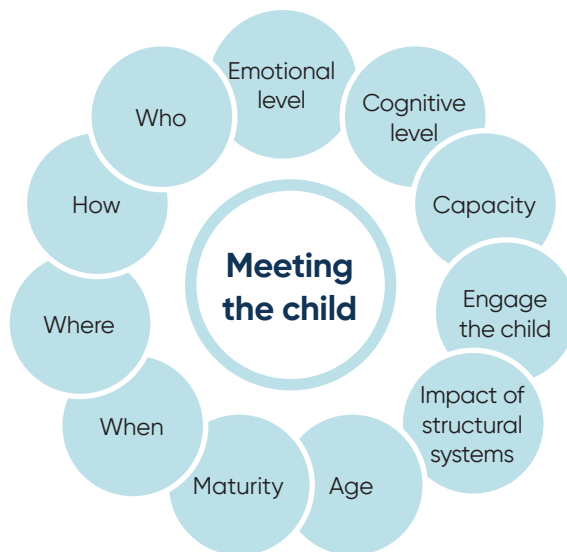
Some topics to introduce and discuss with the child to help them understand the process they are involved in include the following:

- What your role is, how you will keep in touch with the child, and how the child can contact you.
- Why the child is meeting with you.
- What a Judge is and the role the Judge will take in the child's case.
- How you, as an ICL, helps the Judge.
- That the child does not have to say anything to the Judge in Court – that it is your job to tell the Judge how the child is feeling or what the child is thinking.
- What 'best interests representation' means and that you may tell the Judge what you think is best for the child, even if that is not what the child wants.
- What, if anything, you are currently considering telling the Judge and the child's parents about the child's best interests.
- The limits of confidentiality – that you can keep some things to yourself that the child tells you, but not everything.
- What the family and/or expert report processes are.
- What the milestones are in the child's case.

²³ The PACE concept was developed by Dan Hughes and is described at danielhughes.org/p.a.c.e.html.

Communicating with the child in meetings

There are many factors to consider when meeting with the child, as can be seen by the figure below.



The child may not be comfortable speaking with you in an open manner at the first meeting. Children sometimes need multiple engagements with an unfamiliar adult to feel safe enough to express their views.

The child may not want to speak to a stranger, particularly about stressful matters and their views. Trauma can also impact on a child’s ability to connect with an unfamiliar adult. Use age-appropriate strategies to help the child feel comfortable and to build a professional relationship with the child.

What the child talks about and how they express their views will depend on their developmental level, along with other factors. Be alert to signs of distress or discomfort exhibited by the child and respond appropriately.

Being aware of the child’s verbal and non-verbal behaviours

ICLs should avoid	Verbal signs from the child	Non-verbal signs from the child
<ul style="list-style-type: none"> making assumptions about the child’s understanding telling the child new information about their situation or history -never assume the child knows their trauma history taking things personally. A child who has been through trauma might reject or be overly familiar with you. This behaviour may reflect a child’s discomfort with the new relationship. 	<ul style="list-style-type: none"> mumbling or quiet shouting crying stating that they don’t want to talk or answer questions swearing asking for their parent/carer avoiding questions and talking about other things 	<ul style="list-style-type: none"> lack of eye contact fidgiting and restless slouching looking around or at the door looking distracted unresponsive rapid movements throwing objects jumping on furniture overly-familiar physical behaviour towards you, e.g. hugging, sitting on your lap

Some general tips about interacting successfully with the child include the following:

- Follow the child's lead with what they're discussing.
- Be calm and personable – be your natural self not your 'lawyer self'.
- Re-direct or refocus the child in a calm and respectful way if they are not engaging in the conversation. Offer them a break, a new toy or a new activity.
- Use language and resources that are age-appropriate, without jargon, and which respect the abilities of the child. Find and use evidence-based resources that have already been developed for children around family separation.²⁴

Finding out about the child's views

You are required to meet with the child and provide the child with an opportunity to express their view, unless the child is under 5 years of age, the child does not wish to meet with the ICL or express their views, or there are other exceptional circumstances²⁵.

Supporting the child to express their views is a fundamental part of your role. It is not a one-off task; rather it is a process that you will follow throughout proceedings.

Inform the child who you will discuss their views with, as well as why and how you will do this. Consider any concerns that the child has about this, and only proceed if it is the child's best interests to do so.

If the child agrees to their views being shared, or if it is in the child's best interests to share their views, you can tell the parties in an ICL conference and/or summarise the child's views in correspondence. You can also tell the Court about the child's views in submissions, which can be made at an interim or final hearing.

Never pressure a child to express a view where they are unable or reluctant to do so. Where a child has expressed views only on certain matters before the Court, put their views as given and don't make any independent conclusions about the child's views on issues the child has not talked about.

You can explore child's views in a number of ways, including the following:

- Explain to the child the main issues that the Court has been asked to decide.
- Talk about confidentiality; what it means and what its limits are.
- Ask the child if they would like to tell you about what they would like to happen.
- Keep your questions grounded, realistic and practical; don't ask the child about their 'wishes', 'dreams', or what they would do if they had a 'magic wand'. Using this kind of language may make the child believe that wishes and magic happen and may unrealistically raise their expectations.
- If the child suggests some arrangements, explore with them how they would see that working. This may include exploring the reasons for the child's views, whether these new arrangements would be a big change and how they and their family might feel about that. You may also need to explore logistics, e.g. geographical locations and travel arrangements. In doing this, try not to make assumptions; it might be, for example, that the child sees a long journey to school or to spend time with the non-residential parent as a break from their parents' conflict, rather than the travel being a burden.
- Discuss the impact that the child's extracurricular activities (musical, sporting, clubs) and their social relationships and commitments have on their views.
- Ask the child what they think their parents would think about their ideas.
- If there is a sibling group, talk with the child about how their views would work or not work for their siblings.
- Explore whether the child's views are based on a desire for fairness or wanting to please their families.

²⁴ For example, a children's book called Tommy and Tiger Terry, described at tobeloved.org.au/product/tommy-and-tiger-terry. The Australian Government also provides information about relevant resources at familyrelationships.gov.au/documents

²⁵ Refer to s68LA(5B) and s68LA(5C) of the Family Law Act.

Asking the child questions about their views

If the child has drawn a picture during the above 'getting to know you' stage, use this as a prompt before asking questions like:

- Tell me about who lives in your home. Who else is in your family?
- Where does the rabbit live?
- Where does [that parent] live?
- Where do you like to live?
- Where do you feel most safe? Don't ask the child where they would be happy.
- When do you feel most safe?

Documenting the child's views

Check with the child that they are comfortable with you taking notes during the meeting and explain why you want to do so, e.g. so that:

- you remember what the child has told you
- you can confirm with the child what they have told you
- you will be able to tell the Judge what the child's views are.

Providing information to the child

Let the child know that if they agree to you sharing their views, you can tell the Court and their parents what the child wants (and does not want). It's important to also let them know that if they do share their views with you, there is no guarantee that they will get what they want.

Other information it is important to provide to the child includes:

- whether you intend to recommend something to the Court that is different from the child's views and, if so, the reasons for this
- how you will tell the Judge their views, e.g. explain that this might be in a report and how the report process works
- what to do if they change their views or want to discuss their views with you again.

A change in the child's views

Sometimes children change their views, or only express views about some things and not about all the matters the Court must decide. The child may not want to express a view about a parent. This may be because they feel conflicted or disloyal to a parent or family member if they express a particular view, or because they don't understand certain complex aspects of the proceedings.

Where a child's views are confused or inconsistent:

- confirm that you have understood the child correctly to make sure this is not due to miscommunication or misunderstanding
- explore with the child why their views have changed, and explain that the Court will want to know the reasons for the change to help its decision-making
- put to the Court the child's views and their reasons for any inconsistency with previous views, taking care not to impose any reasoning that the child has not talked about.

If you notice that the child's views are changing, explore this by asking something like, 'A few weeks ago you said -----. What has changed since then?'

Avoid being judgemental; instead, stay curious and ask more questions as needed.

If the child has totally changed their language and presentation when expressing their views, consider whether the child might have been coached or told what to say.

If there is a profound shift in language, or the child looks like they are rehearsing something, let it go and come back to it later to see if they have a different view.

Remind the child of your role as you ask questions, e.g. by saying, 'Part of my job is to gather lots of information about you and how to keep you healthy and safe'.

Confirming the child's views

In concluding your conversation with the child, provide a recap of their views as you understand them to be.

If age- and developmentally appropriate, give the child a chance to read your notes and ask them if anything should be changed, is inaccurate, or should be expressed differently.

At this point, it is worthwhile to reiterate with the child who/what service is going to learn about their views and if there is anyone in the child's network that they do not want to have their views shared with.

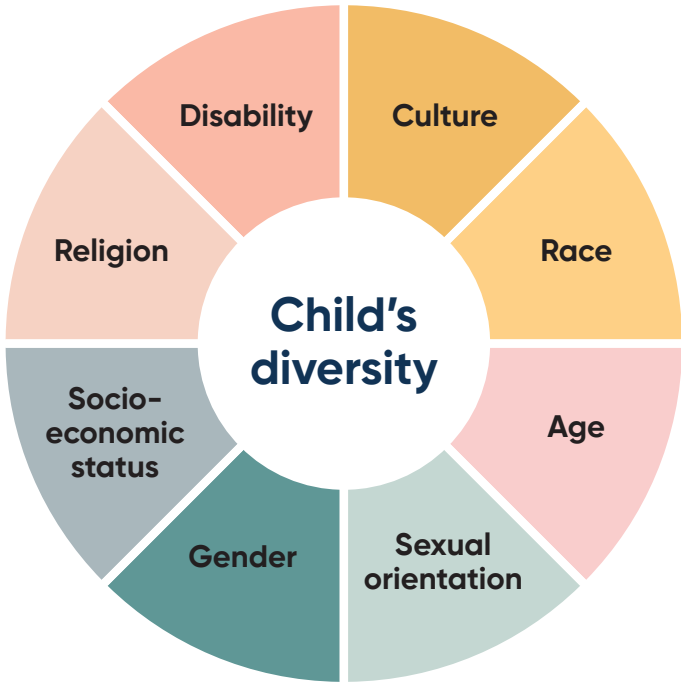
Diversity

General information

As an ICL, you need to be aware of the background, situation and circumstances of the child and their family. These factors will influence your approach and interactions with the child.

While you need to adapt your approach to suit each child you work with, some children may require significant adaptation in your approach to provide them with the best opportunity to participate in the proceedings. This includes considering:

- culturally and linguistically diverse children
- Aboriginal and Torres Strait Islander children
- children with disability or those with diverse needs
- the child's sexuality, gender and sex.



Culturally and linguistically diverse children

Issues to consider

As an ICL, it is important to be aware of and sensitive to the importance of culture, language and religion to the child and to other parties. These factors may impact how the child sees and experiences the world, as well as their family law case.

If the child does not speak English as their preferred language, provide an interpreter at your meetings through the Australian Government’s Translating and Interpreting Service (TIS).²⁶ This is a phone-based translating and interpreting service. If the interpreter comes onsite, there may be an additional charge. It is not appropriate to use a family member or friend as an informal interpreter.

For your meetings with the child, or for ICL conferences, you will need to arrange the interpreter and apply for a disbursement grant for this.

You should also consider the need for an interpreter for Court events and conferences and make the Court aware if this is likely. This will give the Court time to organise an interpreter. Let the Court know if you are aware that the parties have a preferred interpreter (from an interpreting service).

Particular issues to consider when working with culturally and linguistically diverse children and their families include the following:

Be aware	Be mindful	Be proactive	Be understanding
<ul style="list-style-type: none"> of the child and family’s level of English language skills that the child may not be familiar with social and legal concepts in the case due to cultural differences of the child and family’s length of time in Australia Of the child and family’s pre-arrival experiences 	<ul style="list-style-type: none"> that the child and family may be fearful of authority figures, such as the Court and the government that the child may be fearful of expressing views in line with or contrary to religious and cultural norms and beliefs that the child and their family may be on visas 	<ul style="list-style-type: none"> identify and assist the child to access culturally appropriate services utilise the expertise of an expert involved in the case use a registered interpreter to communicate with the child in meetings 	<ul style="list-style-type: none"> that the child may be fearful of isolation from their community or the community becoming aware of the proceedings that the child might need more time or different methods to express their views

Be conscious of the following factors as you consider your approach:

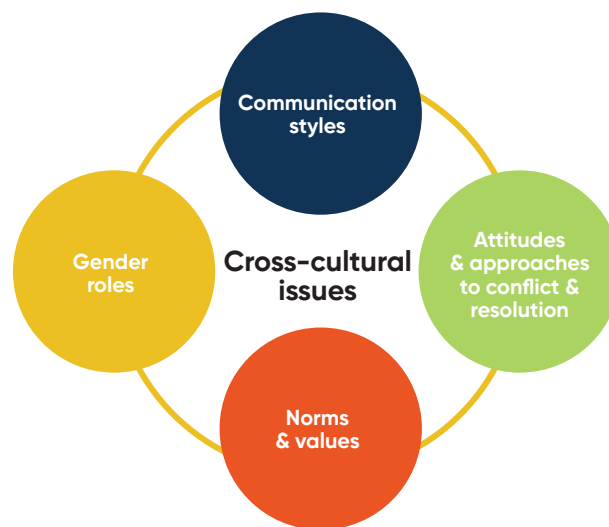
- Don’t make assumptions about the child based on their background or cultural stereotypes; rather, find out about the child’s individual circumstances. Always consider and question your own conscious or unconscious bias.
- Be aware that the child may be suspicious of your role as an ICL, particularly if they don’t trust strangers or authority figures. Some children might try to avoid you and look to their parents to guide their responses in the proceedings.
- Establish trust and boundaries with the child and their family. If necessary, remind the family of their role, and that families must not tell the child what to say to you. It may also be necessary to gently remind them of their rights and responsibilities, and what the rules (laws) in Australia require them to do/not do.

26 Refer to the TIS website at [tisnational.gov.au](https://www.tisnational.gov.au)

- Give the child and their family information about your role and involvement in their case, and the process ahead. You can get assistance from organisations such as the Migrant Resource Centre and Refugee Legal Service to frame material in a way that is linguistically and culturally appropriate.²⁷
- Be aware that some cultural groups may be ashamed of separation and divorce and try to keep it out of the legal system. Reassure the child and their family that you are there to help the child and that you have an independent role in their case.
- You may be able to make a warm referral to a service or agency. The Migrant Resource Centre can assist in identifying appropriate services and centres.

Cross-cultural issues

If the child has come from an intercultural marriage, there might be a competing issue across the two cultural groups. Try to be well-informed regarding cross-cultural issues that may arise throughout the matter, including their impact on the child.



Strategies for effective cross-cultural communication



²⁷ Refer to the following websites for particular services – *Statewide*: Migrant Resource Centre Tasmania at <https://mrctas.org.au/>, *North and North-West Tasmania*: Migrant Resource Centre North at <https://mrcltn.org.au/>, *Statewide*: Tasmania Refugee Legal Service at <https://www.trls.org.au/>

Cultural awareness training

Cultural awareness training is recommended as a professional development opportunity to help you work with culturally and linguistically diverse children and their families. The Migrant Resource Centre Tasmania and the Migrant Resource Centre North run courses that are useful for ICLs.²⁸

Aboriginal and Torres Strait Islander children

Issues to consider

There are specific factors to consider if you are working with Aboriginal and Torres Strait Islander children.

The concepts of the best interests of the Aboriginal and Torres Strait Islander child and their community are interrelated and interdependent: ‘... the ‘best interests of the Aboriginal child’s community’ must inform the best interests of that child and any associated placement or custody decisions. Recognition must be afforded to the fact that “the best interests of the child and the community are profoundly intertwined and inseparable”.’²⁹

The definition of ‘relative’ of a child under Section 4 of the Family Law Act expands the definitions of ‘relative’ and ‘member of the family’ to include Aboriginal and Torres Strait Islander concepts of family.

This provides that if a person is an Aboriginal or Torres Strait Islander child, a person is a relative of that child if, in accordance with that child’s Aboriginal or Torres Strait Islander culture (including but not limited to any kinship systems of that culture), they are related to the child.

For an Aboriginal or Torres Strait Islander child, a collective approach may nurture the child and provide a clear identity and sense of belonging. A child’s connection to culture cannot be achieved by only occasional contact with family and community.

As the ICL for the child, you must consider the broader community and extended family support available to the child in recognition of the important role played by extended family members in the raising of Aboriginal and Torres Strait Islander children. Be aware of the capacity of the extended family and community network to promote the best interests of the child. This includes consultation with extended family members and significant others from within the child’s broader family and cultural group.

Cultural awareness training is recommended as a professional development opportunity to help you work with Aboriginal and Torres Strait Islander families in a culturally appropriate way. This training is provided by different organisations around the state.

Cultural awareness includes but is not limited to the following:

- Considering and recognising the support from extended family members in the raising of Aboriginal and Torres Strait Islander children – and the capacity of this extended family and community network to promote the best interests of the child
- Facilitating consultations with the extended family and significant others from the child’s broader family and cultural group. This can assist in obtaining family backgrounds, identifying services/programs already in place, while keeping connections with their cultural group
- Meeting with the child, people from their community and people from Aboriginal and Torres Strait Islander organisations in their preferred location³⁰
- Ensuring that any expert report writer is knowledgeable, trained and experienced in working with Aboriginal and Torres Strait Islander families and has the capacity to relate to Aboriginal and Torres Strait Islander families in a sensitive and appropriate manner
- Communicating in plain English when talking to children and their families
- Not using stereotypes or language that is racist

28 For details about Migrant Resource Centre Tasmania training, refer to their website at mrctas.org.au/training. For details about Migrant Resource Centre North training, refer to their website at mrcltn.org.au/mrc-services/cultural-awareness-training

29 Lynch, Philip 2001, ‘Keeping them home’, *Sydney Law Review*, vol 23, no. 4, pp 501-542, citing Beamish C, 1993, ‘Parenting disputes: Across cultural lines’, *Special Lecture*, Law Society of Upper Canada.

30 Community elders and Indigenous support organisations can provide you with guidance about how to make a space culturally appropriate and inviting.

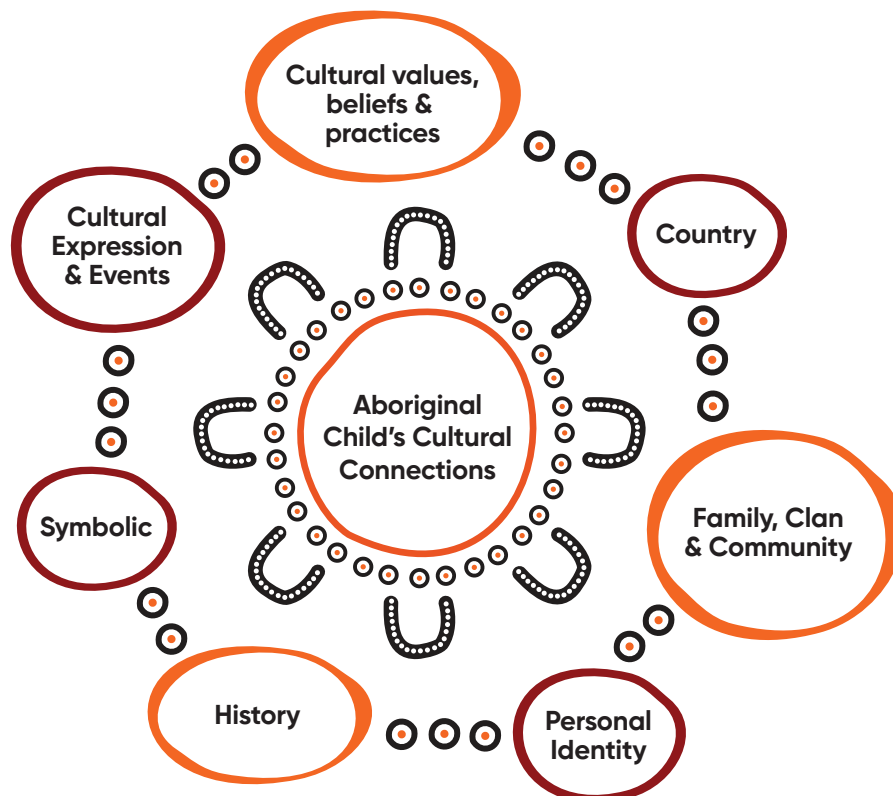
- Asking if an explanation would help with documents and processes
- Not asking what cultural activities and events the family has been 'doing' or 'attending' with the child. Aboriginal and Torres Strait Islander children learn about and are exposed to their culture in many different ways, day-to-day, beyond formal Aboriginal events and activities
- Understanding the history of dispossession, discrimination and disadvantage experienced by Aboriginal and Torres Strait Islander people, and the intergenerational impacts of this history on the child and their family.



The role and involvement of cultural organisations and supports

Make sure you contact any cultural organisation or support person that the child's family has a connection with. This group or person can provide valuable support to the child and family – as well as provide information to you about the child's needs.

If the family agrees, a child's cultural organisation and/or support person should be invited to participate in conferences and other decision-making processes. The ICL should always ask whether these invitations and opportunities have been provided. If the family does not agree, the ICL can speak to the cultural organisation/support person and bring that information to the conference or negotiations.



Aboriginal and Torres Strait Islander cultural services in Tasmania

It is important to refer Aboriginal and Torres Strait Islander children and families to culturally appropriate services. There are many different services in Tasmania that children and their families can engage with, based on their particular location.³¹

Laws relating to Aboriginal and Torres Strait Islander children

The following laws relate to Aboriginal and Torres Strait Islander children:

- s 60CC of the Family Law Act
- s 61F of the Family Law Act
- Article 30 of the United Nations Convention on the Rights of the Child.³²

Additional resources

Resources that may assist you in working with Aboriginal and Torres Strait Islander children and families include the following:

- *Working with Aboriginal children, families, and communities: Lessons from practice* (Source: the Australian Institute of Family Studies)³³
- *Working with Aboriginal people and communities – a practice resource* (Source: New South Wales Department of Community Services)³⁴
- *Working with Aboriginal and Torres Strait Islander families and children toolkit* (Source: Emerging Minds).³⁵

Children with disability or diverse needs

Issues to consider

One of an ICL's duties is to make sure that the child can express their views in a way that best suits that child and their needs. To facilitate that outcome, you need to act with sensitivity and extra care when working with children with disability or diverse needs.

There are different types of disabilities or diverse needs that may affect the child's experience in their case. They can also influence how the child engages, participates, and expresses their views.

Speaking to important people in the child's life

Make sure you talk to the child's therapist, allied health workers (doctors, speech therapists and occupational therapists) and teachers before meeting with the child. Any of these people may be known to the child as an 'important person'.

You should consult with the 'important person' to identify who the right person is to tell the child about you, and how the child will be told. The child must not find out about you when meeting you for the first time.

Ask the 'important person' about the child's developmental stage/needs – this will help you become informed about the child in a developmental sense, and to make a plan for communicating with the child in the most effective way.³⁶

31 Refer to the following websites for particular locations – *Statewide*: Tasmania Aboriginal Centre at tacinc.com.au, *Southern*: Karadi Aboriginal Corporation at karadi.org.au, *Southeast*: Southeast Tasmanian Aboriginal Corporation at setac.org.au, *Northwest*: Circular Head Aboriginal Corporation at chac.com.au

32 Refer to the UN Convention on the Rights of the Child at un.org/esa/socdev/unpfii/documents/CRC.GC.C.11_EN.pdf

33 Refer to aifs.gov.au/cfca/publications/working-indigenous-children-families-and-communities-lessons-practi

34 Refer to community.nsw.gov.au/_data/assets/pdf_file/0017/321308/working_with_aboriginal.pdf

35 Refer to emergingminds.com.au/resources/toolkits/working-with-aboriginal-and-torres-strait-islander-families-and-children/

36 The therapist and the child may have worked on something that helps the child express who they are and about their family (an 'all about me' book).

With regard to a child with communication challenges, their NDIS workers might hold a lot of information about how the child communicates and expresses things. Children with disability may be able to engage with you using communication aids or interpreters.

Make sure you check that the 'important people' are able to speak with you, or if you will need funding to cover the meeting.

Some questions to ask an 'important person' include the following:

- Is the child ready to meet you?
- Is the child verbal or able to communicate using communication aids?
- Does the child need their therapist or support person to be there?
- Where would be a safe and accessible place to meet?
- Is there anything you can bring with you to make the child feel comfortable?
- Is there anything you need to be aware of that may overwhelm the child, e.g. colours, shapes, smells?
- What's a good time of day to meet the child? For some children, meeting early or late in the day is not ideal.

Support person

Ask the 'important person' whether the child should have a support person with them for the meeting and who that might be. This person may be useful for the child to:

- talk about their experience meeting the ICL
- discuss what happened at the meeting
- ask questions about information that was shared with them.

The support person may be also able to support the child to ask questions about what might happen for the child.

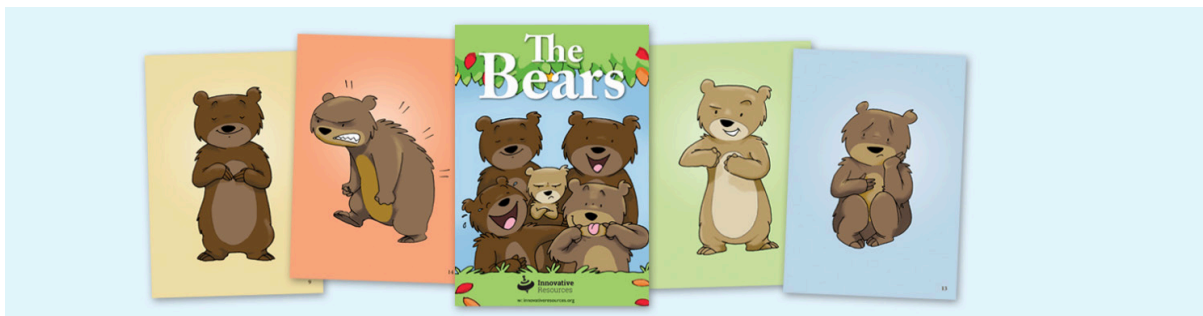
Communicating with a child with disability or diverse needs

Children with communication and cognitive diversity may need resources such as language boards, sign language, and Braille to assist them in communicating with you.

Resources such as emotion cards, e.g. Bear Cards, can be used for the child to point at as you talk to them.³⁷ These resources are picture dominant, and show that you are not aligned to either parent – that you are there for the child. Questions you can ask using the Bear resource include:

- 'How did that make you feel?'
- 'Which one of the bears looks like how you feel when you are at home?'

Bear Cards



Cognitive capacity and communication

Some children may have challenges with cognitive capacity and communication. When this is the case, talk first with the child's 'important people' (therapists, doctors, allied health workers, caregivers).

The child has the right to have meaningful time with you. The child's 'important people' can help you prepare for the meeting with the child and work out how the child – and you – can get the most out of the meeting.

Some children may:

- not make eye contact
- not respond to questions
- fall asleep.

In these cases, you can tell the Judge that, although the child's voice could not be heard during the meeting, their needs/wants can be observed from the therapist's report and other information.

Each child is different and it is important to use an individualised approach when working and communicating with children with disability or diverse needs.

Commonly used terms

You don't need to use the word 'disability' to meet the child's needs. Ask the child what language they prefer. The child's support network can provide important information to you about the child, e.g. that the child does not know about their disability yet.

³⁷ Refer to innovativeresources.org/resources/card-sets/bears-cards

The table below provides some examples of terminology to use when appropriate.

People with physical disability	<p>People/person/children with disability</p> <p>Zhang has a chronic health condition</p> <p>Vanessa has paraplegia/quadruplegia</p> <p>Aya uses a wheelchair or mobility device</p>
People with cognitive/intellectual disability	<p>Suresh has a cognitive disability/intellectual disability</p> <p>Sarah has Down syndrome</p> <p>Maria has dementia</p> <p>Will has acquired brain injury</p>
Neurodiverse people	<p>Karim has autism, or Karim is on the autism spectrum</p> <p>Sue is autistic/Autistic (if they identify that way)</p> <p>Li is neuroatypical/neurodiverse/neurodivergent</p> <p>Marcia has ADHD</p> <p>Florence has a learning disability</p>
People with psychosocial disabilities	<p>Lowana has psychosocial disability/a mental health condition</p> <p>Benjamin has schizophrenia</p> <p>Jolene has borderline personality disorder</p> <p>Van has depression</p>
People with sensory disability	<p>Martin is d/Deaf, hard of hearing (HOH)</p> <p>Mina is blind, has a vision impairment, Mina is a person with low vision</p> <p>Frances is non-verbal</p>

The child's sexuality, gender and sex

General Information

Gender, sex and sexuality are all separate concepts. Gender, sex characteristics or sexuality are not preferences or choices, they all refer to how people are. A person's gender does not necessarily mean they have particular sex characteristics or a particular sexuality, or vice versa.

Family can pose challenges for their child regarding their gender or sexuality. Children and young people may or may not have come out to all/some of their family. Their family may or may not be supportive. The child may be worried about coming out to their family, particularly if they believe the family will not be supportive.

You should use any information provided to you from the Independent Children's Lawyer Questionnaire About the Child (Appendix 1) and check this with the child.

Some children will not be heterosexual, and may be exploring or unsure about their sexuality. Some children may find it hard to answer questions about their gender or sexuality or may identify differently later down the track.

Some children will be gender diverse. They may identify as transgender or be exploring their gender identity. They may not use the pronouns you assume so ask them what pronouns they use, even if this was filled out on the ICL questionnaire. They may also use an alternate name which they want you to use. This may not be their official name. Recognise that using the child's preferred name and pronouns shows that you respect the child and that you take them seriously.

If the child tells you about their gender identity and/or if they identify as LGBTIQ+, you should ask them whether their family know about this, and whether they want/don't want their family to know about this. You should also ask the child whether they want this raised in the case. If they want this information kept confidential, you should explore this with the child.

Gender and gender identity	Sex	Sexuality or sexual orientation
<p>Gender is part of how you understand who you are and how you interact with other people. Many people understand their gender as being female or male. Some people understand their gender as different to the sex they were assigned at birth, some as a combination of these or neither. Gender can be expressed in different ways, such as through behaviour, names, pronouns, or physical appearance. However, it is not always possible to 'guess' a person's gender based on these factors alone.</p>	<p>Sex refers to a person's biological sex characteristics. This has historically been understood as either female or male. However, we now know that some people are born with natural variations to sex characteristics.</p>	<p>Sexuality or sexual orientation describes a person's romantic and/or sexual attraction to others.</p>

LGBTIQ+

LGBTIQ+ stands for lesbian, gay, bisexual, trans and gender diverse, intersex, queer and questioning.

- The LGB in LGBTIQ+ refers to a person's sexuality
- The T in LGBTIQ refers to a person's gender, where that gender is something other than the gender they were assigned at birth.

The I in LGBTIQ+, or intersex, is a person born with atypical natural variations to physical or innate sex characteristics such as variations in chromosomes, hormones or anatomy.³⁸

Working with LGBTIQ+ children and families

As an ICL, it is important for you to be aware of and sensitive to LGBTIQ+ children and their families. These factors may impact how the child sees and experiences the world, as well as their family law case.

The child could:

- identify as being other than heterosexual
- identify as being trans or gender diverse
- be intersex.

A child's parent, grandparent or other significant person could identify as being other than heterosexual, could identify as being trans or gender diverse or could be intersex.

Be conscious of the following factors as you consider your approach with the child:

- Don't make assumptions about the child's sexuality based on sexual or gender stereotypes (for example how they look); rather, find out about the child's individual circumstances. Always consider and question your own conscious or unconscious bias

³⁸ Refer to <https://ihra.org.au/19853/welcome/>

- Be aware that the child may be suspicious of your role as an ICL, particularly if they don't trust you to be understanding or sensitive to their age and LGBTIQ+ status.

Things to be mindful of with the child's sexuality and their family:³⁹

- Avoid using language such as 'wife' or 'husband' that assumes all relationships are heterosexual, as this excludes non-heterosexual people and devalues their relationships. Words and phrases such as 'partner', 'parents', 'relationship', 'in a relationship' are examples of LGBTIQ+ inclusive language.
- Establish trust and boundaries with the child and their family. It is important for you to communicate to the child that they can discuss any issues with you regarding them being part of the LGBTIQ+ community.
- Family members may not be on the same page, or in the same stage of the child's journey. The child and their family may find it very complex.
- Be an ally as you work with the family throughout the family law system. For example, if heteronormative language is being used by a judicial officer, or incorrect pronouns being used by a mediator, be prepared to correct it (whilst always ensuring you are informed by the child, and are not making assumptions).

Working it Out

Working It Out is Tasmania's sexuality, gender and intersex status support and education service. Working It Out provides support and advocacy services for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) Tasmanians and education and training programmes to schools, workplaces, government, and non-government organisations.

Working it Out is a service that you can seek information from and refer children and their families to. It also provides education and training to support service providers to work effectively with LGBTIQ+ people.

Website: <https://www.workingitout.org.au/>

Phone: (03) 6231 1200

Gender and gender identity⁴⁰

Gender is a spectrum – it isn't set in stone and some people have fluid or fluctuating gender identities. People's anatomy doesn't determine their gender identity.

People may identify and be recognised within the community as:

- a gender other than the sex they were assigned at birth or during infancy
- a gender which is not exclusively male or female.

Be conscious of the following factors as you consider your approach with the child:

- Don't make assumptions about the child's gender based on gender stereotypes (for example how they look); rather, find out about the child's individual circumstances. Always consider and question your own conscious or unconscious bias
- Be aware that the child may be suspicious of your role as an ICL, particularly if they don't trust you to be understanding or sensitive to their gender identity.

³⁹ Information provided by Working it Out Tasmania.

⁴⁰ Refer to <https://www.amnesty.org.uk/LGBTQ-equality/gender-identity-beginners-guide-trans-allies>

Respect the child's name and pronouns

Pronouns are one way people refer to each other and themselves.

- Most but not all men (including trans men) use the pronoun 'he'
- Most but not all women (including trans women) use the pronoun 'she'
- Some people use a gender-neutral pronoun such as 'they' (e.g., 'Pip drives their car to work. They don't like walking because it takes them too long').

If you're unsure what the child's pronoun is, you can ask them respectfully, and preferably privately. Use a question like 'Can I ask what pronoun you use?.' Do not ask 'What pronoun do you prefer?' A person's pronoun and identity are not a preference.

Some children's pronouns may be context-specific. A child may not use their pronoun in a particular environment or around particular people because they do not feel safe or comfortable to do so, for example, around family and teachers.

Gender identity and inclusive communication for ICLs⁴¹

Elements of inclusive communication	Inclusive communication	Exclusive communication
Gender pronouns	'Hi Alex, before I introduce you, what are your pronouns?'	'This is Alex, she's here to meet me.'
Gender neutral language	'The person in the waiting room is about to come in to see me.'	'The girl in the waiting room is about to come in to see me.'
Accepting differences in families	'What does your parent(s) or caregiver(s) do?'	'What does your Mum and/or Dad do?'

The child's gender identity and gender expression may be different

- Gender identity is someone's personal and intimate sense of their own gender
- Gender expression is how they choose to reflect their gender identity in their physical appearance.

Gender expression

A person's appearance may not reflect their gender identity or the appearance usually associated with their gender identity. For example, a person may identify as woman, but reflect their gender identity as in a way society might typically identify with men.

Gender expression is how a person outwardly shows their gender identity. It includes physical expressions such as person's clothing, hairstyle, makeup, and social expressions such as name and pronoun choice.

⁴¹ Adapted from the *Inclusive communication with LGBTIQ+ clients - CFCA Evidence to Practice Guide* found at https://aifs.gov.au/cfca/sites/default/files/publication-documents/2110_inclusive_communication_with_lgbtiq_clients_e2pg.pdf

Inclusive practices as an ICL⁴²

You should familiarise yourself with resources about the LGBTQI+ community, and inclusive and appropriate language.⁴³ Remember that inclusive language is ever evolving, and you are not expected to get it right every time.

Communicate in a way that welcomes LGBTQI+ clients. Avoid assumptions and talk openly with the child, while also taking active steps to protect their privacy after the conversation.

Take the lead from the child. Recognise different preferences for disclosure and whether disclosure is relevant to the service being provided.

Learn common LGBTQI+ terms. Consider how sexual orientation, gender identities and variations of sex characteristics might influence the service required. For example, they can help to understand the child's network of support.

Signal inclusivity to all the child and their family. Place LGBTQI+ related posters or stickers in your office or wear a LGBTQI+ related lanyard.

Participate in training. LGBTQI+ specialist organisations run a variety of training packages that can increase your knowledge and confidence. Training is accessible in Tasmania with Working it Out.⁴⁴ If you are part of a firm or practice group, encourage undertaking training together.

Research information about specialist services for LGBTQI+ care. Make appropriate referrals when misunderstandings or issues beyond mainstream service expertise arise. There are LGBTQI+ support and health services you can refer children and their families to.⁴⁵ Many of these have contact details for Tasmanian based services.

⁴² Adapted from the *Inclusive communication with LGBTQI+ clients - CFCA Evidence to Practice Guide* found at https://aifs.gov.au/cfca/sites/default/files/publication-documents/2110_inclusive_communication_with_lgbtqi_clients_e2pg.pdf

⁴³ Refer to the *LGBTQI+ Inclusive Language Guide* at <https://www.vic.gov.au/inclusive-language-guide>

⁴⁴ Working it Out provide 'LGBTQI+ cultural awareness and inclusivity training', developed specifically for Tasmania. Further information can be found at <https://www.workingitout.org.au/for-organisations/>

⁴⁵ More information can be found at <https://www.health.tas.gov.au/health-topics/sexual-and-reproductive-health/lgbtqi-health-services-and-groups> and <https://au.reachout.com/articles/lgbtqi-support-services>

Practice Standard 6: The child – views and diversity

6.1 The ICL must:

- explain the main issues that the Court is being asked to decide
- explain what the child's 'views' means, i.e. what the Court wants to learn from the child
- explain to the child how the child's views will be put before the Court
- explain the limits on confidentiality between the ICL and the child
- discuss how the Court will consider the child's views.

6.2 The ICL must:

- consider the child's diversity, background, and needs, and how they will communicate their views
- explore the child's preferences and reasoning for their views
- give the child a recap of their views and reiterate to who, and how, their views will be heard
- talk to the child about what things they would like the ICL to share
- inform the child what they (the ICL) will do with the information the child provides to them
- consider the child's concerns about their views being shared
- inform the child if they (the ICL) intend to recommend something different to the child's preferences and the reasons for doing this.

6.3 The ICL must:

- explain to the child what to do if they change their views
- respond to the child's change in views by presenting to the Court the child's current views and the child's reason for their change in views
- not impose any personal interpretation or reasoning about the child's changed views when informing the Court.

Conduct and primary functions of the ICL

Honest broker

As an ICL, it can be useful to think of yourself as an honest broker working on behalf of the child and in the matter overall.

As an honest broker, you:

- act impartially and independently
- facilitate and assist parties to reach a resolution, by negotiation or judicial determination, that is in the child's best interests
- act in a timely manner regarding resolutions and proceedings
- advise other parties of your ICL role and its limitations, and make referrals where appropriate.

Your responsibilities in your honest broker role include the following:

- making applications upholding the best interests of the child, supported by evidence
- avoiding making applications which ought to be made by one of the parties
- bringing an application that would normally be brought by a party when it is necessary to protect the interests of a child and it is clear that a party will not make the application. For example, you may apply to vary orders where the arrangements are inconsistent with the needs of the child, and where a party cannot afford representation and feels unable to file the application themselves.

Independence does not stop you from supporting the position of one parent/party, as long as it is consistent with the child's best interests. Likewise, you can tell a parent/party that you will oppose a course of action or application.

You must bring to the Court's attention any facts which would question the advisability of any agreed settlement. In addition, you must not consent to any agreement reached by the parties unless you are independently satisfied that the agreement is in the child's best interests.

At all stages of the proceedings, consider opportunities to settle or limit the scope of the dispute. Engage the parties in negotiations and hold an ICL conference where appropriate, potentially at the following stages:

- prior to an interim hearing, where you have access to all filed and subpoenaed material, have met the child and have formed an interim view
- prior to the final hearing, after the release of the expert evidence and the filing of final hearing affidavits
- during the proceedings, when new interim or contravention issues arise.

Ethical obligations unique to ICLs

An ICL is appointed by the Court to represent the interest of the child and not the interests of a party. As an ICL, you don't have a client, and are not bound by instructions – your role is obligation based.

You have a unique role as an ICL and you are required to be transparent and open in all of your dealings. You have an obligation to ensure that evidence relevant to the Court's enquiry is put before the Court. This includes evidence that is contrary to your case or to your view.

The outcome you are seeking is one that is consistent with, and informed by, the best interests of the child.

In most cases, the best interests of the child will be achieved by upholding your role as an honest broker. This includes standing up to the Court if you disagree with a proposal that you don't think is in the child's best interests. Occasionally, that will put you in a very difficult position; if that happens, it may be helpful to seek guidance from a senior ICL.

You also have the same ethical obligations to the Court as any other solicitor. This includes being bound by the Australian Solicitors Conduct Rules 46, the *Legal Profession Act 2007* (Tas) 47, the Legal Profession (Barristers) Rules 2016 (Tas) 48, and relevant case law.

Practice Standard 7: Conduct and primary functions of the ICL

7.1 The ICL must:

- conduct themselves in an impartial and independent manner
- seek an outcome consistent with the best interests of the child and informed by the child's perspective
- bring to the Court's attention any facts which question the advisability of an agreed settlement
- not consent to any agreement unless independently satisfied that the agreement is in the child's best interests
- actively consider opportunities to settle or limit the scope of the dispute, including negotiating and holding conferences
- ensure that evidence relevant to the Court's enquiry is put before the Court, including evidence contrary to the case or view of the ICL.

Upon appointment as an ICL

As soon as possible after you are appointed:

- file and serve a Notice of Address for Service
- let parties and key stakeholders know about your appointment, including –
 - o represented parties
 - o self-represented parties
 - o the Child Safety Legal group (Department of Public Prosecutions, who represent the Child Safety Service – Department of Communities)
 - o the Court Child Expert (if applicable)
 - o the Department of Education or, if an independent/private school, the child's school directly
- send each party a letter of introduction with information about your role

46 Refer to lawcouncil.asn.au/files/web-pdf/Aus_Solicitors_Conduct_Rules.pdf

47 Refer to legislation.tas.gov.au/view/html/inforce/current/act-2007-024

48 Refer to legislation.tas.gov.au/view/html/inforce/current/sr-2016-077

- give each party a questionnaire requesting information about the child's needs, education and health. An example questionnaire is at Appendix 1
- arrange to meet with the child – you may like to first provide the child (through their parents) with a letter of introduction which includes a brief biography (including a photo), information about your role as an ICL⁴⁹, a copy of your working with vulnerable people card, and some personal details about you and your interests.

Practice Standard 8: Upon appointment as an ICL

8.1 Upon appointment, the ICL must promptly:

- file a Notice of Address for Service
- advise parties and key stakeholders of their appointment as the ICL
- send each party a letter of introduction, information about the role of the ICL, and a questionnaire regarding the child
- provide the child with information about the ICL and their role
- arrange to meet with the child as soon as possible.

Risk assessment and management

Conducting a risk assessment about the child's safety is part of your role; consult first with a Senior Court Child Expert. Risks to the child can include:

- abuse and/or neglect and/or ill-treatment of the child
- exposure to family violence
- proceedings affecting the child's mental health
- the child being denied an education and not attending school
- the psychological impact if the child is removed from their primary carer or siblings and placed with others
- the child being taken for medical examinations unnecessarily, including frequent and invasive examinations, or being constantly assessed for mental health issues
- a child not being taken for medical assistance when unwell, either physically or mentally.

A risk assessment involves evidence gathering, risk identification (including whether the risks are current, past or future), and risk mitigation.

During the evidence-gathering phase, consider any risks to the child within the current circumstances and speak to witnesses or issue subpoenas to inform the Court of the extent of those risks.

Where you identify a risk for the child, make referrals for the child as early as possible for further support. Referrals can be made to school counsellors, Headspace or psychologists, keeping in mind practical aspects such as accessibility.

Risks may not be in a 'high-risk' category and can include issues at home, school, or in sporting and social groups. In these situations, you should support or, if necessary, facilitate any referral. Including the child in the referral process can help them feel empowered, rather than overwhelmed, when accessing external supports.

⁴⁹ Best for Kids website at <http://bestforkids.org.au/for-kids/when-families-separate.html>

Reportable risks

You must contact the Child Safety Service regarding a risk to the child and seek an order under s 67ZA of the Family Law Act.

You must actively seek orders to mitigate risks to the child, for example:

- orders restraining a party from using alcohol and drugs around the child
- orders restraining a party from denigrating the other party in the child's presence or hearing
- orders requiring that a child go to school
- orders that the child have or not have therapy or medical or health treatments
- orders that a party have medical or mental health therapy or treatment
- orders requiring a party not to bring a child into contact with people who pose a risk to the child
- orders restraining parties from taking the child to places of risk.

Consider protective orders such as these carefully, as the child's and other parties' circumstances may change. For example, a parent may move house, separate from an existing partner or re-partner.

Your risk management process is not a one-off task; you must constantly assess risks to the child from the time of your appointment through to final orders.

Any mandatory reporting obligations regarding abuse to the child must be in writing.

The inquest and findings into the deaths of John, Jack and Jennifer Edwards demonstrate the importance of ICLs following guidelines and best practice and, in particular, applying a robust approach to evidence gathering and risk assessment. By continually considering risk, the ICL may help prevent risk of harm and, possibly, tragic consequences.⁵⁰

The ICL for Jack and Jennifer Edwards (children) failed to make the Court aware of their father's history of family violence and failed to tell the Court that the children had told the Family Consultant (Court Child Expert) and family therapists that they did not want to see their father. The ICL downplayed the father's behaviour and told the Court it was 'heavy-handed parenting' and 'a bit overbearing'. The ICL put forward a proposal that in effect placed the children in regular contact with an alleged perpetrator of physical harm, contrary to the information the ICL had received.

Serious risk to the child

In rare situations, an ICL may become aware of a serious and imminent risk to the child. If this happens to you:

- speak with the Child Safety Service directly and find out if that service intends to take immediate protective action
- if the Child Safety Service will not take immediate action, speak with a Court Child Expert about a plan to keep the child safe
- consider making an ex-parte application to the Court for the immediate and interim removal of the child from a party who poses a serious and imminent risk
- make discrete enquiries about alternative arrangements for the child's care if the removal occurs
- in exceptionally rare circumstances you may need to contact emergency services.

Ecological model of child development – relationship to risk assessment

When you are assessing risk to the child, be aware of the Ecological Model of Child Development theory.⁵¹

50 Details of the inquest can be found at www.coroners.nsw.gov.au/documents/findings/2021/Inquest_into_the_deaths_of_John_Jack_and_Jennifer_Edwards_-_findings_of_State_Coroner_dated_7_April_2021.pdf

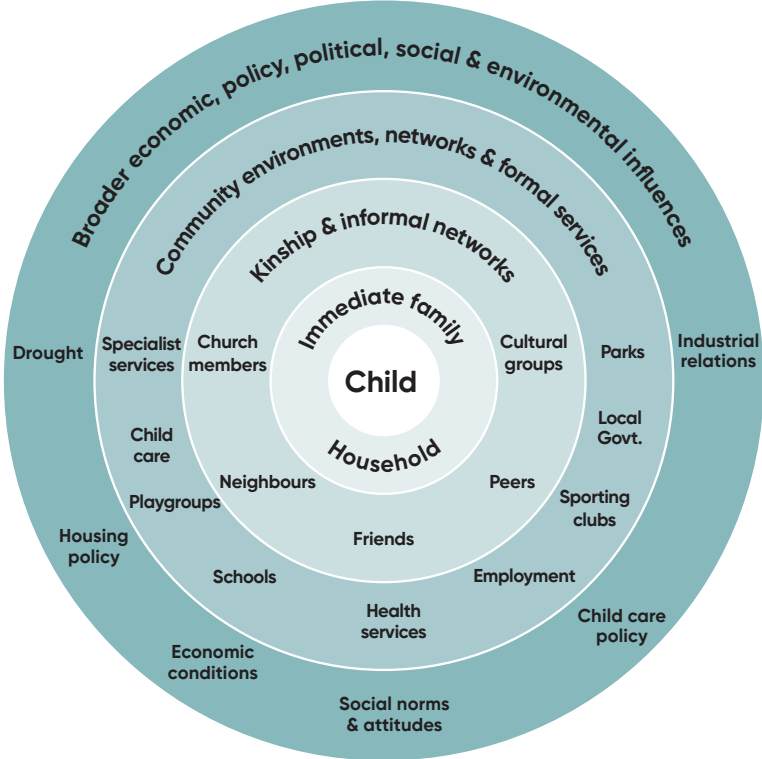
51 Bronfenbrenner, Urie. *The Ecology of Human Development: Experiments by Nature and Design*. Cambridge, Mass: Harvard University Press, 1979

This theory looks at a child’s development within the context of the system of relationships that form their environment, which includes their immediate environment and their interaction with the larger environment.

The Ecological Model of Child Development is relevant because, as an ICL, you need to:

- consider a child’s development and anything that impacts on it within the context of the whole child, i.e. the influence of their environment
- develop an awareness and understanding of the child’s family’s values and beliefs, and the way these influence and shape the child’s developing identity
- recognise that there will be key differences from one family’s culture (values and beliefs) to the next, as well as differences between your family and values and the child’s
- identify what’s working well for the child and family and note that this is equally as important as understanding risks.

Ecological Model of Child Development



Practice Standard 9: Risk assessment and management

9.1 The ICL must:

- gather evidence about risks to the child, and put that evidence before the Court in admissible form
- in the case of imminent risk:
 - o speak with the Child Safety Service directly
 - o make a plan with the Court Child Expert, if the Child Safety Service will not act
 - o if necessary (e.g. where the parties are unaware of the evidence about risk and it is necessary for the ICL to make an ex-parte application), make an urgent application to the Court
- actively seek orders or negotiate agreements to mitigate risks to the child
- make any mandatory report in writing.

Family violence

Family violence is a serious issue and you must consider it at every stage of the case: from initial evidence gathering and risk assessment to ongoing risk assessment, and in any resolution or orders. If a parent perpetrates family violence, this will be directly relevant to their capacity to parent (abusive parenting).

Historically, some ICLs have been criticised for not recognising and dealing with family violence issues. As noted previously, the Edwards inquest is a good example of this.

Family violence in a relationship commonly changes over time. In many cases, it begins as psychological violence and progresses to physical forms of violence. Be aware, too, that perpetrators can use court processes, including family law processes, to continue control and abuse.

The issue of family violence is always relevant to both the safety and the best interests of the child. Children's views and experiences are critical when gathering evidence about family violence. The child's experience of family violence must be at the forefront of your enquiries. Children are never 'just' witnesses to family violence. Any family violence experience has an impact on the child, regardless of whether the child witnesses it.

Children are not little adults, they are beings in their own right as children, and future adults. Their brains are wired to have attachment with both parents. A child's attachment to a parent as well as the family narratives (about who is to blame for abusive and violent conduct) may affect whether the child can accurately assess their safety. Parents' voices can become the child's internal voices. Just because a child loves and wants to be with a parent, it does not mean that this parent is safe. Experiences of family violence often undermines the parenting confidence of the victim and can result in further violence towards the victim and the child.

Impacts of family violence on children

In your role as ICL, it is important to understand the impacts of family violence on children, including the following:

- Children are denied their right to, and sense of, personal safety
- Children are presented with poor role models
- Children may learn to use aggression as their main way to solve problems
- Children may become fearful and withdrawn
- Children may blame themselves for causing a parent's anger/violent behaviour or for the harm caused to the victim
- Children may blame themselves for not being able to stop or prevent the family violence
- Children may 'switch off' to help protect themselves from emotional trauma
- Children may have difficulty concentrating
- Children may suffer from post-traumatic stress
- Children may not be getting the care they need from parents or family.

The tables below identifies some of the short-term and long-term signs of distress for children who are exposed to family violence.

Short-term signs of distress for children exposed to family violence

- feelings of fear, anger, depression, grief, shame, despair and distrust
- anxious, nervous and withdrawn behaviour
- a lack of confidence and an increasing sense of powerlessness
- disturbed sleep and nightmares
- delays or problems with language development in young children
- physical reactions including headaches, stuttering, stomach cramps, eating difficulties, frequent illness
- unusual bed-wetting or soiling
- a change in personality, e.g. used to be happy and outgoing but now quiet and reserved
- cruelty to animals
- behavioural problems
- use of aggressive language and behaviour
- developmental delays caused by low self-esteem, poor concentration, poor school performance, difficulty relating to peers
- substance abuse

Long-term signs of distress for children exposed to family violence

They may grow up to:

- believe that violence and abuse in relationships is normal
- believe that fear is normal in a relationship or family
- enact behaviour witnessed as they grow up
- choose or remain with an abusive partner
- normalise violence as a response in all situations

An attack on a parent is an attack on the child. It is important to understand that a parent's fear may impact on their ability to provide safety for the child when they are at home. A child may notice if a parent is checking security cameras at home or when going to Court or taking different routes home to avoid the perpetrator. A perpetrator's behaviour directly affects the child, as the child will know if a parent feels unsafe.

As an ICL, you must have a comprehensive understanding about the impact and significance of non-physical forms of violence and coercive and controlling behaviour.

You should seek out training and keep up-to-date with research on the effects of family violence.

Definition of family violence

The definition of 'family violence' can be found in s 4AB of the Family Law Act and reads as follows:

- (1) For the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to):
 - (a) an assault; or
 - (b) a sexual assault or other sexually abusive behaviour; or
 - (c) stalking; or

- (d) repeated derogatory taunts; or
 - (e) intentionally damaging or destroying property; or
 - (f) intentionally causing death or injury to an animal; or
 - (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
 - (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
 - (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
 - (j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.
- (3) For the purposes of this Act, a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.
- (4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:
- (a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or
 - (b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or
 - (c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or
 - (d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or
 - (e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

Gathering and presenting evidence about family violence

In your role as an ICL, you must always put evidence about family violence and the impact on the child before the Court. You must also produce evidence about the risks to the child caused by exposure to family violence. This is of particular importance when there are self-represented parties.

This will include the impacts upon the child of:

- the effect of family violence on the parent
- any underlying attitudes of entitlement or blame
- the ability of an abusive parent to encourage or support a relationship with the other parent.

You must present evidence about:

- safety factors for the child and the family
- the likely future impacts (direct and indirect) if the conduct continues long-term
- how the risk is likely to fluctuate over time
- options for and likely outcomes of therapeutic or rehabilitative intervention.

Information about family violence may be kept by Tasmania Police, the Child Safety Service, the child's school/s, health services (such as the hospital, CHAPS nurses, GPs). In some cases, victims may not have previously disclosed the family violence to professionals.

A common way to elicit evidence about family violence, impacts and risks is through the Court Child Expert's family report. In developing the terms of reference, include questions about family violence and its direct and indirect impacts and risks.

As noted previously, you should consider family violence in the risk assessment phase of your role. Remember, too, that risk assessment must not be confined to one point in time. Risk fluctuates over time, and family law court and other events have been found to increase risk – parenting and property proceedings provide both opportunities and motives for further offending. This may impact the child.

It is important that as the ICL, you do not make arrangements for the child that could expose the child to family violence. In making arrangements, make sure that you have assessed the risks and taken measures to sufficiently mitigate risks. Questions you must pose include the following.

- What are the impacts of the behaviours upon the child and other parent?
- Are the behaviours understood (by the parties, support services and the Court)?
- Are the behaviours preventable or can they be controlled?
 - What interventions may be effective?
 - Would any intervention be effective?
 - What further information is needed to determine the above?
- Are there rehabilitation options?
- Has rehabilitation been successful and do arrangements reflect this?

Be aware of some of these issues in family violence:

- Societal myths, e.g. –
 - 'If it's true, why didn't she leave earlier?'
 - 'Just because there's conflict, it doesn't make him a bad parent.'
 - 'He says he's a victim, so he can't be an offender.'
 - 'She was violent too.'
 - 'The child wasn't home when the violence happened, so they weren't impacted.'
- Legal myths – if it isn't proven to the criminal standard, the Court must treat it as if it didn't happen. Also, the ability to distinguish between real and forced 'choices' and where acquiescence or acceptance is a choice
- Misidentification of offenders
- Comorbidities
- The efficacy (and availability) of rehabilitation
- Failure to recognise or give adequate recognition to the impacts of non-physical forms of violence
- The inability of perpetrators to understand the impact of their behaviour.

Practice Standard 10: Family violence

10.1 The ICL must:

- use a trauma-informed approach when working with a child exposed to family violence
- put before the Court evidence about family violence and the impact of family violence on the child and their family
- consider family violence in the risk assessment aspect of the role
- consider whether a family report or expert evidence is required where family violence is an issue
- complete and keep up-to-date with training about family violence and its impacts
- keep up-to-date with current family violence legislation and any changes to this.

Case planning

Soon after you are appointed, you will need to develop a case plan. You must then provide an outline of the case plan to all parties (the steps you intend to take). This does not mean you must provide the entire case plan, as this could place the child or other parties at risk.

Tasks that may be identified in your case plan include to:

- identify the issues as well as risk factors to the child
- develop a chronology
- liaise with the Court Child Expert or other professionals involved in the child's life to create and review the case plan, and to safety plan, including minimisation of trauma to the child
- plan the child's participation, including meeting with the child (initially, during and on conclusion of the matter) and considering whether the initial or any meeting should be in the presence of the Court Child Expert (this is not available in all areas of Tasmania)
- contact other parties relevant to the child and their best interests, e.g. schools, childcare centres, support services and other agencies
- subpoena relevant material
- review documents produced on subpoena and released for inspection (and copying)
- identify appropriate witnesses for affidavits
- consider if expert evidence is required
- refer the child and/or other parties to appropriate support services where necessary or to seek independent legal advice
- consider if interim or procedural orders are required and make those applications
- consider the final hearing, the witnesses and the time required
- consider at what stage conferencing will be of assistance and conduct those conferences
- make a plan to review and update evidence prior to the final hearing
- consider whether third parties ought to participate or intervene and where appropriate, seek orders to facilitate that participation or intervention.

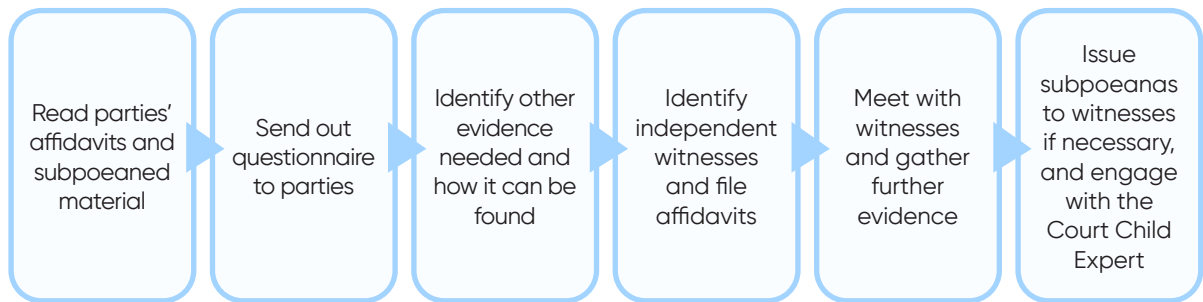
A sample checklist for ICLs to use can be found in Appendix 3.

Practice Standard 11: Case planning

- 11.1 The ICL must develop a case plan soon after being appointed.
- 11.2 The case plan must identify issues and risk factors and contain a chronology, a plan for the child's participation, a safety plan, and a plan for evidence gathering, including expert evidence.
- 11.3 The ICL must communicate an outline of the case plan to all parties.

Evidence gathering

Child's views



As you gather evidence, always consider the child's experiences and views. As you read material, plan what further evidence is required and where you can find this.

Identify independent witnesses who could inform you and the Court of issues from the child's perspective.

Witnesses may include doctors, teachers, childcare workers, police, child protection agencies, counsellors, sports coaches, religious or cultural leaders, and family members.

Important factors to consider in your dealings with witnesses include:

- planning who to speak to, rather than taking a generalised approach
- filing affidavits from any independent witness as early as possible. These affidavits must be available for interim hearings (if there has not been an interim hearing) and in plenty of time for experts, the Court Child Expert and the final hearing
- organising in-person, video or phone meetings with the witnesses
- considering what evidence will be required by health professionals or other stakeholders to verify your request for information.

After considering all the material, identify if you should issue subpoenas – think about what independent evidence should be available to inform the Court on the issues it will determine. Commonly, subpoenas are issued to the Child Safety Service, police, doctors and psychologists.

Subpoenas should be issued as soon as you have had the opportunity to consider all the evidence available at the time of your appointment, and before the appointment of an expert and a Court Child Expert, so that the information is available to them. Consider whether any of the subpoenaed material needs updating before the final hearing and update the subpoena, or ask that a party update theirs.

Practice Standard 12: Evidence gathering

- 12.1 The ICL must read all material immediately following their appointment.
- 12.2 The ICL must make a plan for the evidence they intend to gather.
- 12.3 The ICL must put the evidence gathered into admissible form as early as possible.
- 12.4 The ICL must identify what evidence will need to be gathered by subpoena and issue those subpoenas.

Importance of the ICL having a view

As an ICL, you add considerable value by forming and expressing a view as early as possible in proceedings. Ideally, you will be in a position to express a view at an interim hearing. You should, however, revisit your view throughout proceedings, in light of new evidence, and communicate any changes in your view to the child, other parties and the Court.

Appropriate times to share your views include:

- prior to an ICL or other dispute resolution conference
- following the release of expert or family reports
- well before the final hearing – the parties should not be reading your view for the first time in the case outline.

Sometimes you will only be able to express a conditional view. In these cases, outline which evidence being proven would direct your view either way.

Working with schools and school staff

When you want to request the input of teachers and school counsellors, do so well in advance. Make sure you know school holiday periods in Tasmania and note that school staff are not expected to reply or be available during school holidays.

When making contact, provide evidence of your appointment and preferably the child's full name, date of birth and school.

Contacts in Tasmania

Public schools: Legal Services, Department of Education. ⁵²

Catholic schools: Catholic Education Tasmania. ⁵³

Independent/private schools: Contact the school directly.

If the child is enrolled in a public school, the Department of Education's Legal Services will facilitate your introduction to the school, and will usually invite you to contact the school directly to arrange meetings with school staff.

After that, most of the contact will be between you and the school; however, Legal Services will settle any document prepared by you on behalf of a school staff member. You must provide draft documents to both the school and Legal Services and you should make any requests for school staff to give evidence both to the school and to Legal Services.

Teachers and other school staff supporting the child

The child may nominate a teacher or school counsellor as their support person when they meet with you. It is important to consider the availability and willingness of school staff to assist with these conversations. This may involve being flexible with times that suit school timetables and availability of space at the school if the meeting is to take place there. It is also important that school staff are aware they are there in a support role, and not required to participate or have input.

Case planning note

When preparing a matter for Court, be aware of school staff availability and negotiate suitable times and dates. When the matter is listed for final hearing, you must be in a position to advise the Court of times that school witnesses are unavailable.

⁵² Email Legal Services, Department of Education via legal.services@education.tas.gov.au

⁵³ Email Catholic Education Tasmania via ceo@catholic.tas.edu.au

Supporting school staff

School staff are skilled professionals in their field; they are not legally trained and may be unfamiliar with Court and legal processes. Schools and their staff may be heavily impacted by involvement in these processes both personally and from a school resourcing perspective. To minimise this impact:

- explain in detail what is required of school staff
- explore the logistical impacts on the school
- brief staff on what to expect at each stage of proceedings.

Briefing school staff for the final hearing

Tell school staff what to expect when giving evidence and being cross-examined, including any documents they should bring to Court. Be careful not to coach them and only provide information about the processes and proceedings. If they have concerns or questions about their evidence, direct them to their school's legal department or officer.

Subpoenas

Before issuing a subpoena, contact Legal Services, Department of Education, or Catholic Education Tasmania, or the independent/private school's legal department. Discuss time frames and whether the information can be released without the need for subpoena.

Dealing with represented and self-represented parties

Represented parties

Send a letter of introduction that includes:

- a clear explanation of your role and informative resources (see Appendix 2)
- clear instructions for them to communicate with you via their legal representative only – in the case of an emergency, relevant information would need to be communicated to your secretary
- a questionnaire about the child's needs.

If you need to have direct contact with a party during the course of the matter, you must seek consent from all parties via their representatives.

Self-represented parties

The letter of introduction to a self-represented party must include the same content as it would to a represented party. Make sure you communicate in plain English.

In addition, the letter must include information about the limitations of your role in assisting the self-represented party, including that you cannot give them legal advice. You can let them know, however, that you can provide them with some procedural information, as well as referrals.

Unlike your dealings with represented parties, you can deal directly with self-represented parties, including by correspondence, telephone and in person.

Important things to consider in your dealings with a self-represented party include:

- holding meetings in the presence of all parties wherever possible
- taking precautions to avoid being misinterpreted or misreported –
 - keep accurate and detailed records of all contact (verbal and written)
 - consider limiting face-to-face discussions with a parent/party where there is not a witness present
- remaining unbiased, independent, objective and focused on the best interests of the child.

Communicating with parties

Regardless of how parties are represented, each party needs to be informed of your communication with another party. All correspondence from you to a particular party must be circulated to all parties,

unless you determine that it would be contrary to the child's best interests to do so.

If a party is self-represented and then becomes legally represented, all correspondence from you must be directed to the party's legal representative from that point.

Co-location Pilot

The Australian Government has funded a pilot initiative to co-locate state and territory child protection and other officials in Federal Circuit and Family Court of Australia Court Registries.⁵⁴ The pilot aims to improve the timeliness and quality of information shared between the Federal Circuit and Family Court of Australia and state agencies, and to facilitate more collaborative inter-jurisdictional working arrangements.

There are three liaison roles operating under the pilot in Tasmania – one statewide liaison for Tasmania Police and one northern and one southern liaison for the Child Safety Service. All liaisons co-locate between the nearest Commonwealth Court building and their 'home' agencies.

Tasmania Police Liaison Officer

The Tasmanian Police Liaison Officer provides information to the Family Law Court through voluntary information sharing under s 37 of the *Family Violence Act 2004* (Tas)⁵⁵ and s 9 of the *Personal Information Protection Act 2004* (Tas).⁵⁶ Information is provided in writing but can also be given orally in Court for urgent matters, such as Recovery Orders. Oral evidence is not provided in non-urgent matters.

The Tasmania Police Liaison Officer can also provide a written response to an order made under s 69zw of the Family Law Act. The response can summarise a specific event and/or provide information on one or more parties, which can include criminal conviction history, pending charges before the criminal courts, active investigations, family violence records, current or lapsed orders and other police involvements.

Child Safety Family Law Liaison Officer

The Child Safety Family Law Liaison Officer can provide information to the Family Law Court at Duty Lists, and other Court events. They can advise the Court about a family's involvement with the Child Safety Service and/or the Strong Families Safe Kids Advice and Referral Line (SFSK).

Information can be provided in response to a question from a Judicial Officer, and the Liaison Officer can offer up information where appropriate. The kind of information the Child Safety Family Law Liaison Officer may provide includes:

- whether a family is known to the Child Safety Service or the SFSK
- the nature of concerns and the nature and level of involvement
- how the Child Safety Service or the SFSK intend to proceed.

The Child Safety Family Law Liaison Officers will also work with staff from the Child Safety Service or the SFSK to ensure that reports provided to the Family Law Court – such as Notice of Risk responses and responses to orders made under s 69ZW or s 91B of the Family Law Act – are provided in a timely manner and are as useful as possible for the Court.

Liaison Officers and ICLs

The Police and Child Safety Family Law Liaison Officers work as collaboratively as possible with ICLs within the bounds of procedural fairness and their respective legislative limitations.

The Police Liaison can tell you if a party is known to police and recommend the most effective way for you to gather relevant information and present it to the Court.

⁵⁴ For more information about the pilot program, refer to plan4womenssafety.dss.gov.au/initiative/co-location-of-state-and-territory-child-protection-and-other-officials-in-family-law-court-registries

⁵⁵ Refer to the *Family Violence Act 2004* (Tas) at legislation.tas.gov.au/view/html/inforce/current/act-2004-067

⁵⁶ Refer to the *Personal Information Protection Act 2004* (Tas) at legislation.tas.gov.au/view/html/inforce/current/act-2004-046

The Child Safety Family Law Liaison Officer can, as noted above, advise you outside of Court if a family is known to the Child Safety Service or the SFSK and how extensive that involvement has been. They can also advise whether there may be benefit in you seeking a report from the Child Safety Service or the SFSK about their involvement or making a request for the Child Safety Service to intervene in proceedings.

Where a Liaison Officer has already provided a report, they can tell you if subsequent events or involvement might warrant you seeking a further report or making a request for the Child Safety Service to intervene.

Liaison Officers are happy to be approached by you in your role as an ICL to discuss matters, explore what they can and can't provide, and identify the best way for that to occur. This ability to information share is limited to you as the ICL and does not extend to lawyers acting for parties or to self-represented parties.

Before the interim hearing

Keeping the child informed

At every stage of the proceedings, it is important to remember that it is the child's case and they must know what is happening. Sharing information can prepare the child for what may be coming and may help them avoid catastrophising things.

Before the interim hearing, give the child a summary of:

- what you have done so far
- where the case is at and what this means
- possible outcomes from the hearing.

In providing this information, you can be detailed or brief, depending on the child. In your first meeting with the child, you would have asked the child about how they would like to receive this information (in person, video, writing, phone, with a support person).

Factors to consider include:

- whether the child would like more information
- whether the information is confronting for the child to hear
- whether the child needs support.

Preparing submissions

In preparing submissions for the interim hearing, you must consider the relevant sections of the Family Law Act:

- s 61C – each parent has parental responsibility (subject to court orders)
- s 60CA – the child's best interests are the paramount consideration in making a parenting order
- s 61D, s 65DAA, and s 65DAB – establishes that parental responsibility is shared unless otherwise ordered
- s 60CC – the need to protect the child from harm and from being exposed to domestic or family violence or abuse
- s 60CH – the need to notify the Court where the child is subject to child welfare laws
- s 60CF, s 67ZBA and s 67ZBB – the need to notify the Court of relevant family violence orders and the Court to take prompt action
- s 65DAB – the most recent parenting plan
- s 60B – objects and principles
- s 60CC, s 61F – factors used to determine best interests, including for Aboriginal and Torres Strait Islander children

- s 63DA – the option of using parenting plans rather than Court orders
- s 65M–65P – the general obligations created by parenting orders.

Practice Standard 13 sets out the steps you must take to prepare for the interim hearing.

Practice Standard 13: Before the interim hearing

13.1 In preparing for the interim hearing, the ICL must:

- access and read all affidavit and subpoenaed material from the parties
- meet with the child and have an understanding of their experience and views (if any)
- apply for a grant of aid for the interim hearing
- meet with important independent witnesses such as school teachers and counsellors
- file short affidavits from independent witnesses
- file subpoenas to gather independent evidence relevant to the issues
- call an ICL conference, if time permits
- where possible, form and communicate to the parties a view about the interim issues and case plan
- prepare draft interim orders and circulate to all parties
- draft submissions, relevant to the Family Law Act, linking the evidence in the affidavit material and subpoenas to the issues the Court will be asked to determine on an interim basis
- consider if expert evidence and/or a family report are appropriate, draft suggested terms of reference, and make enquiries about availability and timing
- consider whether the Cross-Examination of Parties Scheme will apply and be prepared to address the Court about whether the evidence would support the making of a ban on personal cross-examination.



At the interim hearing

Practice Standard 14 sets out what you will need to present and/or provide to the Court at the interim hearing.

Practice Standard 14: At the interim hearing

14.1 At the interim hearing, the ICL must:

- provide the Court with the case plan, a summary of what they have done as the ICL, a chronology and their assessment of the issues to be determined
- inform the Court of the child's views
- inform the Court of any view they have formed and provide draft interim orders reflecting these views
- outline what future directions will be required and be prepared to tell the Court about witnesses and an estimate of the time required for the final hearing
- provide the Court with a summary of any agreements that have already been reached, outlined in a Minute of Order
- make their submissions, drawing together the evidence and the law as they relate to issues to be determined (the ICL is not an expert and cannot express an opinion). The ICL's submission or argument must be supported by admissible evidence and/or law
- provide the Court with an assessment of the evidence of each party and explain how this supports or does not support the interim view
- if expert evidence or a family report is appropriate, have orders prepared that incorporate the terms of reference for the expert evidence
- if relevant, address the issue of a ban on personal cross-examination.

After the interim hearing

It is important that you explain to the child, in developmentally appropriate language, the outcome of the interim hearing and what that means for the child. If the outcome is likely to be distressing for the child or involves a significant and sudden change, you must urgently arrange for support for the child. This could be a parent (if appropriate), another family member, or a service provider.

Practice Standard 15 sets out what you are required to do between the interim hearing and final hearing.

Practice Standard 15: After the interim hearing

- 15.1 Following the interim hearing, the ICL must:
 - explain to the child the outcome of the interim hearing and what that means for the child
 - if there is a breakdown in arrangements for the child, take steps to minimise the impact on the child, including arranging appropriate support for the child
 - consider how to keep the child engaged and informed and whether further counselling or therapy might be appropriate
 - consider the ongoing relationships between the child and others.
- 15.2 The ICL must review and update their case plan.
- 15.3 The ICL must tell all witnesses that they may be required for cross-examination.
- 15.4 The ICL must give witnesses and any expert witnesses notice of the final hearing date; if there are issues with their availability, the ICL must notify all parties and the Court and seek directions in relation to that evidence.
- 15.5 The ICL must consider:
 - re-listing the matter (if issues arise)
 - the ongoing relationships between the child and others
 - organising the ICL conference
 - any further reports or information to assist in negotiations.

Contravention applications

An ICL's role is generally limited in contravention applications. Usually, the ICL does not participate in contravention proceedings. Sometimes, the ICL will ask for the opportunity to make submissions about penalty if a contravention is made out. These submissions would focus on any impact of the penalty or orders arising from the finding on the children. More rarely, the ICL will participate in the contravention hearing itself, to make sure the Court is aware of impacts upon the child if an order is/is not enforced, as well as the child's needs, if the contravention is made out or not made out.

If this situation applies to you, you will need to decide whether to participate in the contravention process or seek leave to withdraw. Be mindful that s 70NBA of the Family Law Act provides that a parenting order can be varied as a consequence of the filing of a contravention application (regardless of whether the contravention is proved or excused). Your input as an ICL may be very important at that stage.

Expert evidence and reports

A Court Expert is the Court's witness, not a witness for a party. They must be impartial and objective and are commonly psychologists, psychiatrists, and doctors.

The Court will decide whether it requires expert evidence to determine the facts and issues.

The Federal Circuit and Family Court of Australia (Family Law) Rules 2021 state that a single expert must only be pursued if there is an issue in dispute that requires their expertise.⁵⁷

Your role is to critically examine whether expert evidence is required and, if so, to make an application for this.

Practice Standard 16: Expert evidence

- 16.1 The ICL must critically examine whether expert evidence is required or whether this evidence can be elicited in another way.
- 16.2 If the ICL assesses that expert evidence is required, the ICL must:
- set the scope for the expert advice and draw up terms of reference limited to the scope
 - identify appropriate experts
 - negotiate an agreement about the terms of reference, the expert, and who will bear the costs of the report
 - confirm the availability of the expert, request tentative interview dates, establish how quickly the report could be released, and obtain a quote for the expert's fees
 - if Tasmania Legal Aid is to bear any part of the costs, make an application for legal aid to cover that cost.
- 16.3 In arranging for expert advice to be provided, the ICL must:
- draw and file orders for the expert report, including –
 - o seeking leave for the expert to have copies of or access to filed and subpoenaed materials
 - o seeking leave for the expert to examine the child if relevant
 - o giving the expert the consent of the parties to access material
 - o giving details of how the cost of the expert will be borne
 - brief the expert and provide copies of affidavits and subpoenaed materials
 - liaise with the expert and identify further information the expert may need, e.g. speaking to other people involved with the child
 - arrange interviews and undertake safety planning that includes how each interviewee can safely travel to and from the interview and attend the interview
 - respond to queries or requests for further information
 - apply for grants of aid to make applications for expert evidence and, if the parties are legally aided, for a disbursement grant to cover part or all of the expert's costs
 - seek another grant of aid before approval is given to any work being done by the expert that is beyond the original agreed scope of work.

⁵⁷ Refer to Rule 7.04, Federal Circuit and Family Court of Australia (Family Law) Rules 2021 at legislation.gov.au/Details/F2021L01197

16.4 Following receipt of the expert report, the ICL must:

- ensure the report is filed with the Court before any Court event in case the Court wishes to read the report before a hearing
- assess the veracity of the expert's opinion, and whether it aligns with the known facts
- decide whether a report or opinion requires updating
- ensure that the expert is available for cross-examination and facilitate their attendance for this purpose
- seek feedback from the expert during negotiations and whether the settlement proposals are consistent with the child's best interests.

Child impact reports

A child impact report is written by a Court Child Expert⁵⁸, and is a child-focused preliminary assessment which involves meeting with parties and the child. The report provides guidance to parents and the Court about the needs and wellbeing of the child, to support interim hearings and dispute resolution.

A child impact report is best suited to new parenting matters where a range of issues (including risk, relationships, and developmental needs) needs to be considered to support early decision-making. The child impact report does not provide an assessment suitable for cross-examination or final hearing.

Family report

A family report assesses family relationships and dynamics, as well as the views of all parties, including the child. A Court Child Expert, or a Regulation 7 Family Consultant, can be appointed by the Court to give expert evidence about a child's best interests. The Court can ask a Court Child Expert/Regulation 7 Family Consultant to prepare a family report which is delivered directly to the Court.

A Court Child Expert and a Regulation 7 Family Consultant must be impartial and objective, as they are the Court's witness.

In your ICL role, consider if a family report will assist the Court in its determination. If there are no expert witnesses, the Court may be assisted by a family report. Sometimes, the Court may be assisted by a very limited expert report (e.g. on the topic of capacity of one of the parties) alongside a family report.

If you form a view that a family report is appropriate, advise the parties of your intention to make that application. You will need to contact the Court Children's Service to make enquiries about the availability and timing of family reports before you make the application.⁵⁹

When preparing an application for a family report:

- advise the Court how its enquiry would be assisted by that report
- submit proposed terms of reference
- explain why a family report is the most appropriate evidence about the family and the family dynamics
- advise the Court about the timing of the release of the report, if one is ordered.



⁵⁸ Refer to s 62G of the Family Law Act.

⁵⁹ You can email the Court Children's Service at Tasmania.CCS@fcfcoa.gov.au

- Seek a family report order that allows the Court Child Expert to access all filed and subpoenaed material. Where there is a lot of filed material, you will need to provide direction as to which material must be prioritised for review. When you do this, you must provide a copy of your correspondence to the parties. It's also important to consider whether the Court Child Expert should speak to extended family or other parties (e.g. stepparents) and seek orders to support this.

If you are working as an ICL on the North-West coast of Tasmania or representing children in regional or remote areas, you should warn parties that travel will be required for the report. Some families may be unable to attend appointments for reasons such as limited public transport, access to private vehicles, costs, and significant travel times. Tell the Court about any issues which would impact on a party's ability to attend an interview with the Court Child Expert. In some circumstances, it might be possible for interviews to occur via virtual means.

Make sure you file all the material the Court Child Expert needs, before any family report interviews. This includes affidavits from independent witnesses and subpoenas issued to people or organisations with relevant information about the child or family. Completing an index, which can be updated from time to time, is a good way of keeping track of the documents that have been submitted.

Practice Standard 17: Family report

- 17.1 Where the ICL determines that a family report is appropriate, they must advise the parties of their intention to make that application.
- 17.2 When making an application for a family report, the ICL must advise the Court how its enquiry would be assisted by the report and propose terms of reference, including allowing the Court Child Expert to access filed and subpoenaed material.
- 17.3 The ICL must file any material relevant to the family report before the family report interviews occur.

Before the final hearing

The final hearing is the culmination of all of your work throughout the case and draws together all of your case planning, evidence gathering and relationship building.

Practice Standard 18 sets out the steps you must take to prepare for the final hearing.

Practice Standard 18: Before the final hearing

18.1 The ICL must:

- meet with the child and have an up-to-date understanding of their views
- start the process of preparing the child for the end of the proceedings and the ICL-child relationship, approaching the conversation in the way that best reflects the ICL's knowledge of and existing relationship with the child
- consider whether the child's views are properly reflected in the evidence the ICL will be putting before the Court
- if the filed material about the child's views is not reflective of their current views, make an application to the Court for that evidence to be updated.

18.2 The ICL must:

- apply for a grant of aid for final hearing preparation
- read all affidavits, case summaries and subpoenaed material from the parties
- consider if affidavit material from independent witnesses needs to be updated and file such updated material as required
- consider if any subpoenas need updating or whether, in light of the final hearing material, any additional subpoenas must be filed.

18.3 The ICL must:

- update the chronology and list of issues
- consider calling an ICL conference to explore a full settlement or settlement of discrete issues
- form and express a view about the current issues and case plan and communicate this to the parties; where the ICL's view is contingent on certain evidence or findings, make this clear.

18.4 The ICL must:

- prepare case summary documents and file these on time
- prepare draft orders and circulate to all parties.

18.5 The ICL must:

- prepare evidence-in-chief and cross-examination that tests the evidence on the issues and law that the Court will need to determine
- if intending to object to any evidence, communicate this in writing to the party and attempt to reach agreements about the evidence
- if objections cannot be agreed, ask to relist the matter to deal with objections before the hearing
- where there are self-represented parties, consider whether to call or test evidence which would normally be called or tested by a party
- make a final hearing plan outlining the witnesses to be called and a time estimate of each and circulate this to all parties
- assist the parties in reaching an agreement about the final hearing plan

- give witnesses written notice that they will be required to give evidence, providing as much information as possible about when and for how long they will be required
 - where required, file a subpoena requiring a witness to give evidence (e.g. for reluctant witnesses or where an employer requires a subpoena for an employee)
 - give all parties written notice of which of their witnesses the ICL requires for cross-examination, for approximately how long they will be needed, and what documents each witness must bring with them – this may require the ICL to subpoena hospital records, or the child’s school file.
- 18.6 The ICL must draft opening and closing statements which link the evidence the ICL will be calling to the issues and law.
- 18.7 The ICL must make a recommendation to the Tasmania Legal Aid Grants Officer about whether the ICL ought to be making an application for costs against one or more of the parties.
- 18.8 In making such a recommendation, the ICL must advise the Grants Officer regarding:
- any information about the financial capacity of one or more of the parties
 - whether one or more of the parties receives an income-tested benefit or pension
 - an assessment of one or more of the parties’ prospects of success and whether the parties are likely to be wholly unsuccessful
 - the conduct of one or more of the parties during the proceedings
 - any impact that making the application for costs could have on the child, including ramifications for the child, e.g. if a parent would not be able to afford ongoing housing for the child, would not be able to afford to continue the child’s private schooling, or where a parent’s anger about a costs order could be directed at the child.



At the final hearing

Practice Standard 19 sets out what you will need to present and/or provide to the Court at the final hearing.

Practice Standard 19: At the final hearing

- 19.1 The ICL must:
- be flexible about when to present their case, e.g. it may be helpful to the Court and the parties to test the expert evidence at the beginning of the final hearing
 - be prepared to tell the Court about the final hearing plan.
- 19.2 The ICL must:
- make a brief opening statement, outlining their view and how the evidence they submit will support that view
 - address the Court on the views of the child and what evidence supports and does not support these views
 - in cross-examination, make sure that all questions relate to the issues to be determined – questions must test the evidence to elicit evidence that both supports and does not support the ICL’s view
 - keep notes on the evidence and identify the evidence they will use in closing submissions
 - update closing submissions at the end of each day to include the evidence identified during each day of the hearing
 - keep the parties and the Court updated regarding any changes to witness availability or changes to time estimates.
- 19.3 The ICL must:
- make the Court aware of any significant events coming up for the child, particularly where there will be an adjustment or transition
 - make the Court aware if either interim or other orders will be required to support the child.
- 19.4 The ICL must consider settlement opportunities and seek leave of the Court to negotiate wherever appropriate – this may involve a request to stand a matter down to allow negotiations, or to allow negotiations to occur while a witness is under cross-examination.
- 19.5 The ICL must make closing submissions which draw together all the evidence relevant to the issues and express a final view based on that evidence.
- 19.6 The ICL must, if their view has changed, immediately inform the parties. In informing the Court, the ICL must outline the basis for the change in view.
- 19.7 The ICL must ask the Court to extend their appointment for a short period so they can have a final meeting with the child.

Extension of the ICL's appointment

Extension to explain the orders

You may need to seek orders for the Court to extend your appointment as the ICL so you can meet with child to explain the orders, answer any questions about the process and your role, and to conclude your relationship with the child. You can apply for a grant of aid to explain the orders to the child and conclude the relationship.

Where you believe the Court Child Expert must be involved in explaining the order to the child, you must seek orders to support this. This may not be an option in some areas of Tasmania.

Examples of extension orders include:

Where agreement is reached by consent –

The ICL will explain the operation of the order to the child and the fact that it represents a resolution reached between the parents, and to which each parent agreed, rather than a determination of the Court imposed on the parents and the child.

Extension for explanation –

That the Independent Children's Lawyer's appointment be extended for 14 days from the date of the order and the Independent Children's Lawyer is granted leave to meet with the child and a Court Child Expert to explain the terms of these Orders during the extension period.

Extension for explanation via technology –

Within 14 days of the date of these Orders the ICL do all acts and things to explain the effect of these Orders to the child via Microsoft Teams or similar electronic communication.

Extension for therapy/monitoring

The extension of your appointment can be agreed during negotiations or can be suggested by the Court. Where it is agreed, all parties will need to make submissions to the Court about why the appointment must be extended. Extension is subject to a grant of aid being made by the Grants Officer, although usually the Court's request is taken into account. Most orders for extension are prefaced with, 'subject to a grant of Legal Aid funding'.

The extension of your role may be appropriate:

- where the child's welfare needs independent monitoring, particularly where there are changes or adjustments for the child
- where the child requires therapeutic support – to ensure that this occurs
- where the parents need therapy/treatment/education – to see if the parents are proactively addressing concerns.

Where the parties would like your appointment extended, and where the Court is likely to order this, you must email the Grants Officer to ask if Tasmania Legal Aid will fund the extension before any order for extension is made.

Practice Standard 20: Extensions

20.1 In seeking an extension of the ICL's appointment, the ICL must:

- make submissions to the Court about how the ICL can add value to the child's representation during any extension of appointment
- ensure that there is a clear outline of the tasks the ICL will perform during the extended appointment
- make sure that details of these tasks are communicated to the child, the Court, and to the parties; this will clearly identify the ICL's responsibilities and enable the management of expectations.

Services and support for the child

Be prepared to advocate for services and supports for the child and, where necessary, for their family.

For example, you may need to advocate for:

- appropriate therapeutic and medical services for the child ⁶⁰
- the child's educational needs, including staying at a school, moving to a new school (including specialist schools) or accessing additional educational support
- services or support to be provided to a parent that will address protective concerns.

Practice Standard 21: Services and support for the child

21.1 The ICL must advocate and seek orders for relevant and appropriate services and supports for the child, including, if necessary, an extended period of support from the ICL in a monitoring role.

Court orders for services

It is important to consider the support needs of the child and their family throughout the proceedings and following the final order. The Court may also ask you to recommend a psychologist and/or a family therapist for the child and their family.

Useful resources, directories and service information are available through:

- The Tasmanian Family Law Pathways Network – provides a directory that contains information about services that help separating or separated families ⁶¹
- Safe Homes, Families and Communities – provides a directory for family violence support services ⁶²
- The Family Advocacy and Support Service – Social Support Workers can help ICLs with referrals and information about support services. ⁶³

⁶⁰ This can be particularly challenging in regional areas, where there are few services and long waiting lists.

⁶¹ Refer to the Tasmanian Family Law Pathways Network directory at tasfamilylawpathways.com.au/service-directory/

⁶² Refer to the Safe Homes, Families and Communities directory at safefromviolence.tas.gov.au/resources-hub/service-directory

⁶³ Refer to the Family Advocacy and Support website at www.legalaid.tas.gov.au/need-help/family-advocacy-support-service-fass/

Practice Standard 22: Court orders for services

- 22.1 Where the Court has made specific orders for the child to receive counselling or therapy, the ICL must:
- find out what services are available in the child's area
 - explore options, including costs and logistical considerations
 - outline options with the parties and assist them to negotiate agreement about the service and to access the service.
- 22.2 Where the Court has made orders that a party engages in services, the ICL must:
- offer to link that party to a service that can help them identify and access the appropriate services
 - check that the party has accessed the recommended services.
- 22.3 Where a party refuses to access a service and this has an impact on the best interests of the child, the ICL must:
- if the ICL has liberty to apply, ask for the matter to be relisted
 - if the ICL does not have liberty to apply, consider making a notification to the Child Safety Service or other appropriate service.

After the final hearing

Final meeting with the child

It is best to meet with the child to conclude your relationship. The final meeting is like an exit interview and may give the child a sense of closure.

Even if you have only had a limited relationship with the child due to their age or particular circumstances, you should still consider carefully how to conclude the relationship with the child. The end of the relationship must not come as a surprise or create distress for the child and/or their family.

You might be only one of many professionals in the child's life and communication may have been limited or difficult during the case. For a different child, you may have become a consistent, supportive adult presence in their life. Be particularly sensitive to the needs of the child, discuss any support needs they have and who they can talk to about these.

Communicating orders to the child

It is very important that you arrange for orders to be explained to the child. This can occur in a number of ways:

- in a meeting with you
- in a meeting with you and the Court Child Expert
- in a meeting with you and another expert or professional
- by the Judge
- in limited circumstances, by an expert or professional without you being present.

Once orders are made, you must meet with the child as soon as possible to explain them, in developmentally appropriate language. If you expect that the child will be unsatisfied with the orders, you may seek orders for the Court Child Expert to help you communicate the orders to the child. This may not be an option in some areas of Tasmania.

You must review all published orders to ensure that they conform to the Court's declared orders.

Where a matter resolves by consent, explain to the child that their parents agreed to the orders, and

that both asked the Court to make those orders. It is helpful for the child to know that an agreement was not forced upon either parent. Some parents may tell the child things like 'I had no choice' or 'I had to agree'. This might be confusing for children, so you may like to remind the child of support options such as their therapist or school counsellor.

Where a matter was not resolved by consent, it can be helpful to explain to the child that it was a difficult job for the Court to make the decision, and the things that the Court had to think about when making the decision.

Discuss the order and its consequences with the child and check that the child understands what is to happen next. Always communicate the outcome of the case to the child. This must be done verbally. Be careful to respect the child's relationship with their parents when discussing the orders or conditions, e.g. if a child asks why the orders contain certain conditions. Some older children will appreciate a written explanation of the orders; this is something that can be explored during the conversation and is not a substitute for talking with the child.

Sometimes, the child may prefer someone else to explain the orders to them in developmentally appropriate language. This might be the case for younger children, depending on their age and developmental level. You must be the person to decide who explains the orders to the child, because you will consider the child's views, safety and best interests. It is important not to be influenced by parents' views about who is to speak with the child about the orders, unless those views are aligned with the child's. It is part of your role to help identify an appropriate person. This could be a counsellor, treating psychologist or other professional working with the child. In more limited situations, a family member might be the best person.

Where the decision of the Court is not in line with what the child wants, take extra care as you have this conversation with the child, as they may be upset and express this in a range of different ways. Take time to discuss with the child:

- the Court's decision and reasons for this
- any particular issues causing the child distress
- who might help to support the child following your discussion.

Conclusion of proceedings

At the conclusion of the proceedings, write to the experts and thank them for their engagement and work. It is an option to summarise parts of the judgement where the expert may have been praised or criticised. This may assist the expert in their future work.

Writing to witnesses and thanking them for their assistance and cooperation is another step you can take to conclude the matter in a professional way.

You may also choose to write to the other parties in the matter. The letter might describe and/or explain:

- the difficulty of the processes to reach the outcome
- the outcome or Court orders now in place
- the importance to the child of a fresh start between parties regarding the child
- that the process may have been hard on the child and that they may be feeling vulnerable and that they had no control over the outcome
- that the relationship for the parents could be like a business-like, co-operative parenting alliance – united in the best interests of the child
- that the parties may like to seek assistance from counselling services
- the benefits of a post-order parenting program if not already mentioned in the order by the Court.



Appeal against Court decision

It is rare for an ICL to appeal the Court's decision.

Before deciding whether to apply for aid for an appeal, you must find out if any other party intends to appeal. If you apply for aid for an appeal, the application must set out in detail the proposed grounds of appeal and an assessment of the prospects of success and/or the public interest considerations.

You would need to satisfy the Grants Officer of the following:

- that the application serves the best interests of the child
- that there are no other means to achieve the desired outcome
- that the process is likely to deliver an outcome that addresses the issues in the appeal
- whether, by the time the appeal is determined, the issues will still be relevant
- that the application is a good use of public funds
- an assessment of the prospects of success.

Practice Standard 23: Appeals against Court decisions

23.1 When assessing whether a recommendation to the Tasmania Legal Aid Grants Officer for an appeal is appropriate, the ICL must consider whether:

- the decision is contrary to the views of the child and the Court has not given reasons for the decision, or has given inadequate reasons
- the decision is contrary to, or inconsistent with, evidence about the best interests of the child
- there has been an error of law which has led to a decision inconsistent with the child's clearly expressed views or best interests
- the decision is inconsistent with the facts that were before the Court.

Conflicts

Multiple children in one family with different views

You may find a conflict arises where you are representing multiple children (siblings) with different views.

Questions to consider include the following:

- Can you adequately present the views of each of the children?
- Is each child's voice heard and their views considered regarding their best interests?
- Are there strongly divergent views within the sibling group?
- Are the children already in split sibling and split care groups? Does this greatly affect their views?

If each child's view is gathered and can be put before the Court in admissible form, separate ICLs may not be needed. If this is not the case, you must raise the situation with the Court, and an additional ICL may be appointed.

Child's views differ to siblings and the ICL's view of best interests

There may be circumstances where a child's views vary greatly to those of their siblings and also differ considerably to your view of what's in the best interests of the child.

If this occurs, consider whether the child needs a separate ICL. Speak to the child about this and ask how they feel about it. You should then consider all the factors and the child's views (including about a separate ICL) and decide whether to make an application for a separate ICL.

Restraining and discharging the ICL

It is possible for a party to apply to:

- restrain you, as the ICL, from accepting or continuing your appointment
- discharge you as the ICL altogether.

Restraining the ICL

You should consider the basis of the opposition and whether at law, there is a conflict of interest, apprehension of bias, or the parents (or one of them) have objectively and validly called into question your conduct (the Judge will decide this). If you need advice or an independent opinion about the application, contact Tasmania Legal Aid or a senior ICL or a practitioner on the Law Society of Tasmania's Senior Practitioner list.⁶⁴

Where conflict or bias is accepted, contact the Grants Officer as soon as possible and request the appointment of a new ICL. If you have formed a relationship with the child, make sure that you explain what has happened and introduce the new ICL.

Discharging the ICL

When facing an application to discharge you, seek advice or an independent opinion about the merits of the application. You must consider, as objectively as possible, if there has been any malpractice – incompetence, unsatisfactory conduct, bias or other breach of a solicitor's duty.

Application to discharge the ICL

As an ICL, you are the child's voice in the proceedings. Bringing the voice and the interests of the child to the forefront of the matter adds significant value to the proceedings.

At all stages of the proceedings, you should consider whether you are adding value in your role. Sometimes, you will help the parties refine the issues, with the remaining issues not requiring the assistance of an ICL. If you form the view that your role is no longer adding value to the proceedings, you must raise this with the child, parties and the Court, and seek a determination about the role continuing. The child's view about this must be made known to the Court.

You should consider whether the grounds for your appointment continue to be issues for the Court to determine.⁶⁵

Practice Standard 24: Conflict

- 24.1 The ICL must actively consider throughout the proceedings whether there is a conflict.
- 24.2 The ICL must, if they believe there may be a conflict, bring this to the Court's and the parties' attention, along with a proposed plan or order, e.g. a plan or orders to waive the conflict, to seek the appointment of a separate ICL, or for the discharge of the ICL's appointment and/or the appointment of a new ICL.

⁶⁴ Refer to the Senior Practitioner list at lst.org.au/senior-practitioners-list

⁶⁵ *Re K (1994) FLC 92-461*

Criticism of the ICL

General information

ICLs may receive criticism from the solicitor for a party or from self-represented parties (or, occasionally, from third parties).

It is important to distinguish an enquiry about your practice from a criticism of your practice. Sometimes, parties simply need you to explain why you have or have not done something. A proper explanation will often resolve the enquiry.

Some of the criticisms you may experience as an ICL include that you:

- have acted on personal views rather than evidence-based views, e.g. by making value-based statements such as 'A daughter must always live with her mother' or 'Children under five must be with their mother'
- have not adequately considered the impact of family violence on children
- are focused on the child's relationship with a parent without full consideration of the child's best interests, e.g. if you assume that a child must have a relationship with a parent when there is evidence of significant risk factors associated with that relationship
- are 'part of a system' which sides with a particular group, e.g. you may hear things such as 'You are all anti-Dads' or 'You only do what the Mums want'.

Managing criticism

If you are criticised, take the criticism seriously, acknowledge it, and consider what all parties can do to remedy it.

The criticism may be valid, e.g. that you have not met with the child or have failed to speak with the child's school.

Reflect on the criticism. If necessary, seek out guidance from a senior ICL or a practitioner on the Law Society of Tasmania's Senior Practitioner list.⁶⁶

Address the criticism. If you accept the criticism and form a view that you cannot independently and impartially represent the best interests of the child, you must raise this with the Court and seek to be discharged.

If you reject the criticism, clearly communicate this to the parties. You may wish to tell the party that they can apply to the Court to have you removed as the ICL. You should communicate your proposed response to any application, including the possibility that you would be directed by Tasmania Legal Aid to seek an order for the costs of that application.

Practice Standard 25: Criticism of the ICL

- 25.1 Where an ICL receives criticism, they must provide a response.
- 25.2 If the ICL accepts the criticism and forms a view they cannot independently and impartially represent the child, they must raise this with the Court and seek to be discharged.
- 25.3 If the ICL rejects the criticism, this must be clearly communicated to all parties.

⁶⁶ Refer to the Senior Practitioner list at lst.org.au/senior-practitioners-list

Child/ICL relationship – contact, complaints, termination

Issues may arise in the relationship between you and the child. Reasons for this can include:

- a child thinking that you are not representing their views properly
- difficulties in communication
- where your assessment of best interests differs from the child's views and they cannot be reconciled.

Things you can do to try to avoid these issues include, clearly explaining your role at your first meeting with the child and maintaining regular contact with the child throughout proceedings.

Where an issue does arise, first try to resolve this directly with the child. Criticism from the child does not need to lead to a breakdown of the relationship.

Take any concerns raised by the child seriously and consider whether the issues compromise your ability to fulfil your role. Can you properly put forward the views of the child notwithstanding the criticism? It is important that you take into account the child's view, and act impartially, despite the criticism.

If you believe the child's best interests would be served by the appointment of a different representative, you must raise this with the Court. You also must let the child know that they can make a complaint to Tasmania Legal Aid's Associate Director of Legal Services if they are unhappy with you as their ICL.⁶⁷ You can help the child identify a different adult to help them with this process.

Practice Standard 26: Child/ICL relationship – contact, complaints and termination

- 26.1 The ICL must maintain regular contact with the child.
- 26.2 If the child wishes to make a complaint about the ICL, the ICL must direct the child to the Associate Director of Legal Services at Tasmania Legal Aid.
- 26.3 If the relationship between the child and the ICL breaks down, the ICL must consider if the child's best interests would be served by the appointment of a different ICL and, if so, raise this with the Court.

⁶⁷ Refer to Tasmania Legal Aid's contact details at www.legalaid.tas.gov.au/contact

Costs

On an administrative level, you must ensure that all expert accounts and other ICL disbursements have been paid. You will also need to cost and claim grants of aid.

Practice Standard 26 sets out your responsibilities in relation to costs.

Practice Standard 27: Costs

- 27.1 If directed to do so by a Tasmania Legal Aid Grants Officer, the ICL must seek an upfront contribution to the ICL's costs from any party who is not legally aided.
- 27.2 The ICL must, after filing the Notice of Address for Service, contact the Grants Officer to seek a direction about any contribution required and the cost of the contribution.
- 27.3 The ICL must seek the upfront contribution from the non-legally aided party or parties as soon as possible.
- 27.4 The ICL must seek a direction from the Grants Officer if a non-legally aided party says they cannot afford to pay the upfront contribution or raises any other issue about the payment.
- 27.5 When seeking such a direction from the Grants Officer, the ICL must give the Grants Officer any information relevant to the party's capacity to make the contribution.
- 27.6 The ICL must tell the Grants Officer the amount of any upfront contribution or subsequent contribution that is made by a party.
- 27.7 The ICL must tell the Grants Officer if a non-legally aided party does not pay a levied contribution and that party has not been granted an exemption from payment.
- 27.8 The ICL must seek the direction of the Grants Officer in relation to the payment of any disbursement, including for expert reports and expert witness costs – usually, a non-legally aided party will be required to contribute partly or wholly to any disbursement costs.
- 27.9 In any terms of reference or orders where disbursement costs are to be paid, the ICL must ensure that those orders address how and by whom the costs will be paid.
- 27.10 Where Tasmania Legal Aid pays the report costs upfront, the orders for the expert must state that the ICL reserves the right to seek part or all of those costs from one or more of the parties.

Reporting and record-keeping requirements

Reporting to Tasmania Legal Aid Grants Officer

The Tasmania Legal Aid Grants Officer might ask you for a report on the proceedings and positions of the parties. If that happens:

- set out your view and summarise the evidence supporting that view
- don't make subjective assessments that are not based on evidence – your view can have an impact on the Grants Officer's assessment of a party's merit.

ICL's file

Throughout proceedings, make sure you:

- keep files (including electronic files) organised in such a way that if anyone else assumes management of, audits, or reviews the file, that person can immediately find key information, including important dates and deadlines
- ensure that the file contains documented forensic and legal analysis of the matter as well as the case plan and the child's views
- ensure that all important documents are easily identifiable in the file, and the file is maintained in chronological or other logical order
- clearly indicate any document in draft form
- retain files in accordance with legislative requirements.

Destruction of documents

Since December 2019, a disposal freeze applies to all organisations or agencies providing services to children, as defined in the *Archives Act 1983* (Tas).⁶⁸ This means that all records that contain information about children, services provided to them and employees that provide the service must be kept until 2029. The disposal freeze was issued to allow identification of records that may be relevant for future disclosures of child abuse.⁶⁹

Once the disposal freeze has ended in 2029, you will have an obligation to keep the file and its documents for a minimum of seven (7) years from the conclusion of the matter.⁷⁰

As an ICL, you may be required to keep files for more than seven (7) years. According to the Legal Profession Board Tasmania, factors to be considered in relation to keeping a file for a longer period include 'the age of the child or children, the type of matter or the type of documents contained in the file, possible taxation implications and any statutory limitation period that might be relevant'. Where a minor is concerned, lawyers generally keep the file until seven (7) years after the minor has reached 18 years of age.⁷¹

68 Refer to the *Archives Act 1983* (Tas) at legislation.tas.gov.au/view/whole/html/inforce/current/act-1983-076

69 Refer to the Notice of a disposal freeze on records relating to children at informationstrategy.tas.gov.au/Resources/Documents/Disposal%20freeze%20for%20records%20relating%20to%20children%20-%20RCIRCSA%20toolkit.pdf#search=children

70 Refer to s 650, Legal Profession Act

71 Refer to the Legal Profession Board of Tasmania's *File Ownership and Handling* at lpbt.com.au/wp-content/uploads/2020/10/File-ownership-and-handling-review-24.09.20.pdf

Practice Standard 28: Reporting and record keeping requirements

- 28.1 If requested, the ICL must provide a report to the Tasmania Legal Aid Grants Officer which contains a summary of their views and the evidence both supporting and not supporting those views.
- 28.2 The ICL's file must be well organised, well documented, labelled, and satisfy legal professional requirements.
- 28.3 The ICL file must be retained as per legislative requirements.
- 28.4 The ICL must keep all files and records until 2029 (the disposal freeze).
- 28.5 After the disposal freeze has ended, the ICL must keep all files and records until seven (7) years after the child has reached 18 years of age.

6

Acknowledgements & appendices

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Independent Children's Lawyer Questionnaire About The Child

(To be completed by the parent)

Completed by _____

Please Note: If you need more space to write your answers, please attach additional pages to the questionnaire.

1. Where is your child living? (Please provide full address)

2. Who else is living at this address?

Name	Date of birth	Relationship to child
------	---------------	-----------------------

3. How long has your child lived at this address? _____

4. If your child has been living at this address for less than 2 years, please give the following details of each other address your child has lived at during the last 2 years.

Address	Dates	Names of other occupants	Dates of birth	Relationship to child
			/ /	
			/ /	
			/ /	
			/ /	

5. If your child does not live with you, what time (when and how long) are they spending with you?

6. If your child attends a day care centre/other childcare/pre-school/school, please give the name and address of the centre/carer/pre-school/school and the approximate date your child first attended.

For each name you give, please make sure you fill out and sign one of the blank authorities enclosed with this questionnaire.

Name	Address	Date your child first attended (If you don't know the exact date, please give a general idea of the date)
		/ /
		/ /
		/ /
		/ /

7. If your child has attended any other day care centre/other childcare/pre-school/school during the last 2 years, please give the names and addresses of the centres/carers/preschools/schools and the approximate dates your child attended.

For each name you give, please make sure you fill out and sign one of the blank authorities enclosed with this questionnaire.

Name	Address	Date your child attended (If you don't know the exact date, please give a general idea of the date)
		/ /
		/ /
		/ /
		/ /

8. Please give the names, addresses and telephone numbers of any family doctor or other medical practitioner or any hospital your child has attended during the last 3 years and the approximate dates and reasons your child attended.

For each name you give, please make sure you fill out and sign one of the blank authorities enclosed with this questionnaire.

Name	Address	Telephone number	Date & reason your child attended (If you don't know the exact date, please give a general idea of the date)

9. Please give the names, addresses and telephone numbers of any counsellors (including school counsellors), therapists (including speech and occupational therapists), social workers, child psychologists, or psychiatrists your child has attended in the last 3 years and the approximate dates your child attended.

For each name you give, please make sure you fill out and sign one of the blank authorities enclosed with this questionnaire.

Name	Address	Telephone number	Date & reason your child attended (If you don't know the exact date, please give a general idea of the date)

10. Has your child ever experienced trauma or displayed symptoms of this? Please give details.

11. Does your child have a disability and/or diverse needs or are they being assessed for this? Please give details.

12. Have you applied to the National Disability Insurance Scheme (NDIS) for your child? Please give details.

13. Does your child have any needs or difficulties in relation to health or education (disability and/or diverse needs)? If so, please give details.

14. To your knowledge, has there been any contact with any officer of Child Safety Services (Communities Tasmania) and/or the police involving your child? If so, please give the names of any officers, which office/offices were involved and the approximate dates.

For each name you give, please make sure you complete and sign one of the blank authorities enclosed with this questionnaire.

Name of officer	Name of office	Address	Date (If you don't know the exact date, please give a general idea of the date)
			/ /
			/ /
			/ /
			/ /

15. Have you been to Family Dispute Resolution/mediation? Yes No

If yes, what is the name of the Family Dispute Resolution Practitioner/mediator and the organisation they work for?

Name: _____

Organisation: _____

Dates: _____

16. Are there any Court Orders relating to your child, in any Court, in Tasmania or any other State, which were made before or after the current proceedings started? If so, please give details.

Date of Order	Name & place of Court	Details of Order made (If you don't know the exact date, please give a general idea of the date)

17. Are there any Family Violence Orders made in Tasmania or any other State involving yourself, the other party/parties or your child? If so, please give details.

Date of Order	Name & place of Court	Details of Order made
/ /		
/ /		
/ /		
/ /		

18. Have you experienced or been affected by family violence?

Yes No

If yes, please give details.

19. Has your child experienced or been affected by family violence?

Yes No

If yes, please give details.

20. Have you been charged and/or convicted as an adult of any offence in any State of Australia? If so, in relation to each charge, please give details (if there is more than one charge, give details on an attached page).

a. Date of charge _____

b. What is/was the charge? _____

c. Which police office investigated the charge? _____

d. Date of hearing _____

e. Place of hearing _____

f. Name of Court _____

g. Was there a plea of guilty/finding of guilty? If so, what was the conviction or penalty? _____

h. Please give these details of the results of your case: Did Court proceedings happen? Were the charges dropped? Please give any other information. _____

21. Do you have children from any other relationship? Yes No

If yes, please give details.

Name	Date of birth	Who does the child live with?	If not living with you, what time do you spend with the child (when and how long)?
	/ /		
	/ /		
	/ /		

22. Were you born in Australia? Yes No

If No, where were you born? _____

When did you start living in Australia? _____

23. Was your child born in Australia? Yes No

If No, where was the child born? _____

When did the child start living in Australia? _____

24. Do you identify as Aboriginal or Torres Strait Islander?

Yes No Prefer not to say

25. Does your child identify as Aboriginal or Torres Strait Islander?

Yes No Prefer not to say

26. Do you identify as being culturally and/or linguistically diverse (for example: you/your parents were born overseas and/or English is not your first language)?

Yes Details: _____

No Prefer not to say

27. Do you need an interpreter?

Yes Language: _____

No

28. Does your child identify as being culturally and/or linguistically diverse (for example: was the child born overseas and/or is English not their first language)?

Yes Details: _____

No Prefer not to say

29. Does your child need an interpreter?

Yes Language: _____

No

30. Do you identify as LGBTIQ+?

Yes No Prefer not to say

Any other information you would like to give: _____

31. Does your child identify as LGBTIQ+?

Yes No Prefer not to say

Any other information you would like to give: _____

32. Pronouns

• she/her • he/him • they/their

Your pronouns: _____ Your child's pronouns: _____

33. Do you have suggestions on where your child would be comfortable meeting with their lawyer? (lawyer's office, school, park, café, therapist's/counsellor's office)

34. Is there any other information your child's lawyer needs to know before meeting your child?

35. Does your child have any particular interests that would be helpful for their lawyer to know?

36. What do you and your child like to do together?

37. Please describe your child's personality.

38. Is there a fun fact or something unique about your child that their lawyer should know?

Explaining the role of the ICL – information for the child and their family

As an ICL, you may like to use these resources to help the child and their family understand your role:

What is an Independent Children’s Lawyer?

Brochure (Source: Independent Children’s Lawyer national website)

Available at [icl.gov.au/wp-content/uploads/2015/09/ICL-factsheet-for-parents-generic-version-for-website-002.pdf](https://www.icl.gov.au/wp-content/uploads/2015/09/ICL-factsheet-for-parents-generic-version-for-website-002.pdf)

Independent children’s lawyer for kids

Video (Source: NSW Legal Aid)

Available at www.bestforkids.org.au/for-kids/when-families-separate.html

Independent Children’s Lawyer

Website (Source: Legal Aid Queensland)

Available at www.legalaid.qld.gov.au/Find-legal-information/Relationships-and-children/Children-and-parenting/Independent-Childrens-Lawyer

ICL Checklist

File Name:	File Number:
------------	--------------

Part A: Open file and start proceedings

STAGE	TASK	DETAILS & DATE			
OPEN FILE	Appointment by Court	1. Conflict check			
		2. File notice of address for service			
	Letter to parties re appointment as ICL	1. Request signed authority from parties to contact professionals and agencies			
		2. Request copies of all filed documents			
		3. Request copy of s 11F report, child impact report and family report if completed			
		4. Include ICL fact sheet, Information for the child (bio) and questionnaire for parents			
	If no report	1. Ascertain who is the allocated Court Child Expert			
		2. Liaise with Court Child Expert where appropriate (check if expert needs to inspect subpoenaed documents)			
	Undertake urgent work outlined in order or appointment	For example, appoint a person to conduct assessment, request drug screen			
	Receipt of docs from parties	1. Signed authority	Appl	Resp	OP
		2. Copy of documents	Appl	Resp	OP
		3. Client questionnaire	Appl	Resp	OP
		4. s 11F/family report			
	Direction about contributions	Give recommendations and seek direction about contributions to be paid by any non-legally aided party			
	Contact professionals e.g. school, childcare, therapist, counsellor. Consider best way to gather evidence (in person, phone, email).	Professionals contacted			Date of contact
	Read documents and start case plan Print completed case plan for file.				
Prepare chronology					

STAGE	TASK	DETAILS & DATE			
PREPARE FOR PROCEEDINGS	Structure file Separate folders in file for letters, court docs & brief.				
	Consider issuing subpoenas Before issuing subpoenas, consider whether one is necessary.	1. Tasmania Police Liaison and Child Safety Services Officer Does a s 67Z or s 69ZW report already exist? After reading the report, consider whether a subpoena is necessary.			
		2. Police records	Child	Appl	Resp
		3. Medical records Include details, e.g. treating practitioner, hospital. Consider relevance of material sought and impact on therapeutic relationships between treating professional and child/parties.	Child	Appl	Resp
		4. Other records	Child	Appl	Resp
	Authorisation to provide copy of subpoenaed material to experts	1. Include in Orders seeking expert report(s)			
		2. Where order for expert already made: • Draft Minutes • Send to parties, seek consent • File with Court			
	Read subpoenaed material Review Case Plan at this point. Consider: Do I have all relevant material? What else do I need?				
	Meet with the child				
	Consider FDR processes Consider TLA Court-ordered mediation, ICL Conference or Court-based ADR				
	Prepare and file court documents				
	Appear at first return date Where required, seek an order for copying of: • S 11/family report • Tasmania Police Liaison and Child Safety Services Officer material • Subpoenaed notes to go to Court Child Expert, or other expert				
	Comply with orders made on first return date	1. Organise family or expert report and documents to Court Child Expert and experts			
		2. Organise assessments			
		3. Organise counselling/family therapy			
4. Send out drug screen request					
5. Other					
Critically assess all reports Consider: • what material was available to the report author • who they met with and who they did not meet with • what enquiries were made or not made • how they got to the conclusions reached (reasoning) • whether the writer is qualified to give their opinion – this includes Court Child Experts if they go beyond their scope or expertise.					
Other tasks					

Part B: Interim hearing

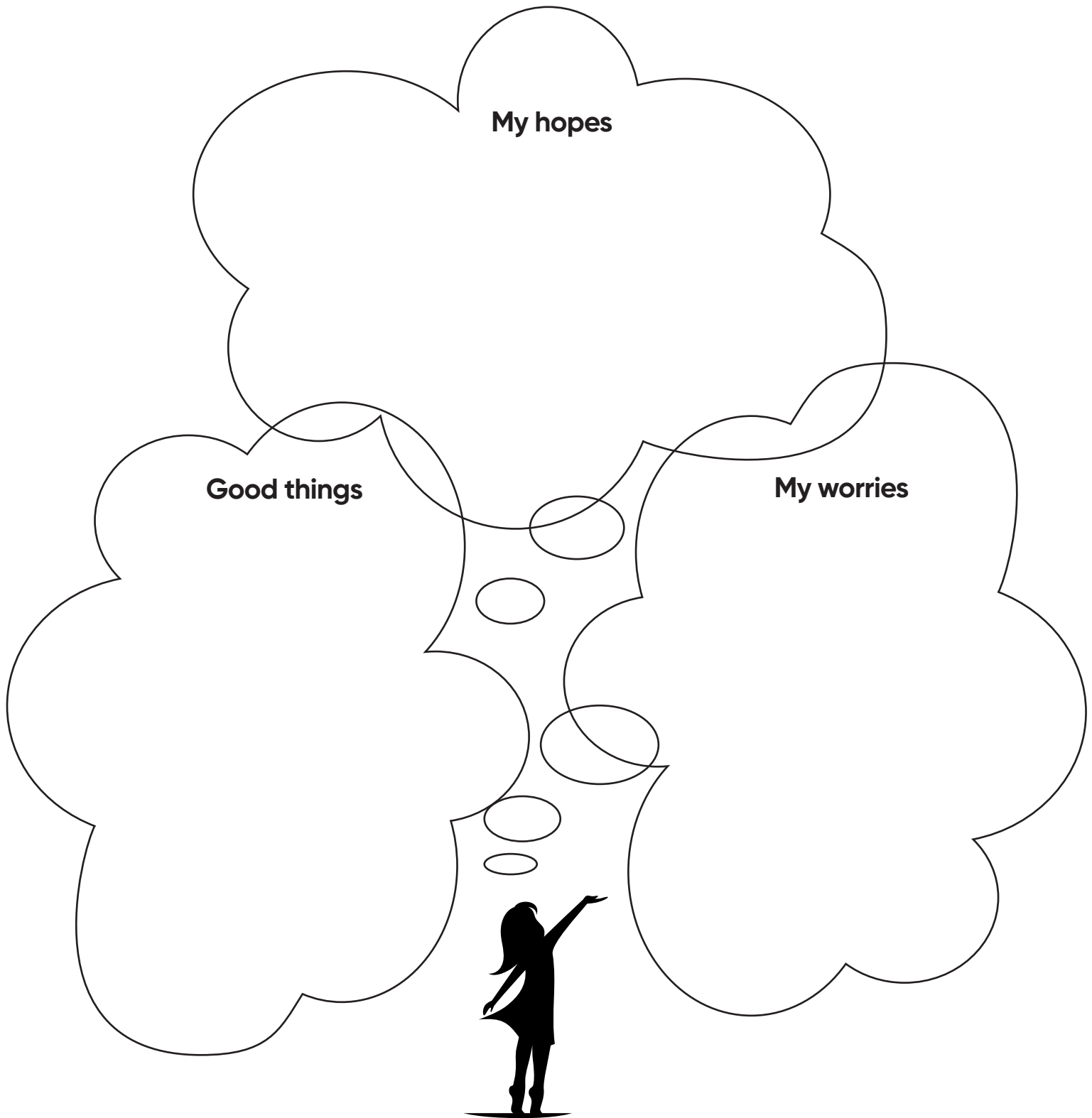
STAGE	TASK	DETAILS & DATE	
	File affidavits	In interim matters - affidavits to be no longer than 25 pages in length & to contain no more than 10 annexures (without leave).	
	Update case plan/chronology		
	Consider calling ICL conference		
	Form and express view about interim issues		
	Draft interim orders and circulate		
	Address outcome of hearing	1. Record outcome	
		2. Engross orders (if Court orders)	
		3. Follow up sealed orders	
		4. Consider issuing additional subpoenas where required	
Inform the child of outcome	Tell the child about the outcome of interim hearing.		

Part C: Preparation for final hearing and post-final hearing

STAGE	TASK	DETAILS & DATE	
	Meet with the child		
CONSIDER FDR	Consider FDR		
	Organise release of the family report/expert to FDR Chair		
	Organise FDR conference		
	Prepare for FDR conference Ensure that all reports and documents are available to parties.		
HEARING PREPARATION	Critical assessment of family/expert report Consider: <ul style="list-style-type: none"> what material was available to the report author who they met with and who they did not meet with what enquiries were made or not made how they got to the conclusions reached (reasoning) whether questions should be put to the expert for clarification. 		
	Consider settlement negotiations		
	Prepare documents as directed (e.g. witness affidavits, subpoenas etc.)	Filing date	
		Filing date	
		Filing date	
	Brief to counsel (if applicable)		

STAGE	TASK	DETAILS & DATE
	Put witnesses on notice <ul style="list-style-type: none"> Refer to list of witnesses in Case Plan. Expert witnesses, including family report writer, to be provided with 14 days notice. Some witnesses may require a subpoena. Consider whether a video link is required. 	
	Give notice of intent to cross-examine other parties' witnesses	
	File case outline	Send brief to counsel
	Direction about costs Give recommendations and seek direction about making an application for costs.	
FOLLOWING HEARING	Address outcome of hearing	1. Email court engrossed orders (where ordered)
		2. Follow up sealed orders (where required)
		3. Meet with child(ren) to explain orders
		4. Orders provided to relevant people and agencies with leave (e.g. schools)
FINALISE FILE	Make recommendation to Grants Officer about cost recovery. (contributions from parties)	
	Ensure all follow up is complete Claim grants used within 28 days of final event Once discharged, close file. Retain file until 2029, pursuant to Archives Act 1983 (Tas)	

When I think about my family at the moment...¹



Name: _____

Age: _____

1. Adapted from Turnell A. & Edwards S. (1999), Signs of Safety : A solution and safety oriented approach to child protection case work. WW Norton, New York.

Practice Standard 1: The child's participation in proceedings

- 1.1 The ICL must:
- at all times, communicate with the child in developmentally appropriate and child-friendly language
 - give the child information about the proceedings
 - assist the child to express their views/responses, taking into account the child's preferences regarding how their views are expressed
 - inform the child of their (the ICL's) views
 - explain to the child any proposed orders/decision
 - give the child the opportunity to respond to the information, views and proposed orders/decision prior to it being presented to the Court
 - provide the child with feedback following the Court process, depending on the child's wishes in this regard.

Practice Standard 2: Trauma-informed practice

- 2.1 The ICL must:
- complete foundation training in trauma and trauma-informed practice as soon as possible, and update this training every 2-3 years
 - keep up-to-date with research about the effects of trauma; in particular –
 - the effects of trauma on children
 - the risk of vicarious trauma to ICLs as a result of the content and nature of their work.

Practice Standard 3: Confidentiality and disclosure

- 3.1 At the first meeting, the ICL must explain, in child-friendly language:
- that during meetings with the ICL, the child does not have to talk or answer questions if they do not want to
 - that the child's parents and the Judge cannot make the ICL tell them what the child has talked about during meetings
 - that the only time the ICL will tell anyone what the child has talked about during meetings, is if the child says something that makes the ICL worry that the child is not safe (notifying the Child Safety Service).
- 3.2 Where the ICL does not have grounds for suspecting abuse, ill-treatment or psychological harm, they must talk to the child about what things the child would like the ICL to share.
- 3.3 In notifying the Child Safety Service or disclosing information in the best interests of the child, the ICL must:
- inform the child about what they intend to disclose and, if the child objects to the disclosure, discuss the child's concerns with them
 - develop a disclosure plan that addresses the child's concerns and the risks and possible impact of disclosure on the child
 - consider the impact of the disclosure on the child and the child's relationships with parents, significant others and with professionals such as psychologists, counsellors and teachers.

Practice Standard 4: Meeting arrangements

- 4.1 The ICL must have a plan for contact with the child and must meet with the child:
- at a minimum, soon after appointment as ICL, before the final hearing begins, and upon conclusion of the matter
 - in person, unless –
 - the child is in an extremely remote location
 - the child would prefer to meet by virtual means
 - there is evidence that the child is refusing a meeting and would be traumatised if a meeting was to take place
 - the child is pre-verbal; in this case, the ICL must observe rather than meet with the child
 - one-on-one, unless –
 - a support person or interpreter is needed
 - the child agrees to a witness for the ICL being present
 - at a neutral location.
- 4.2 If there is alleged abuse by a parent, the ICL must keep the child safe and avoid placing the child in proximity to an alleged perpetrator of harm. Visual or verbal contact between the child and party may be traumatic for the child. The ICL needs to consider whether the interview arrangements and physical settings need to be structured to protect the child.
- 4.3 The ICL must obtain consent from the child for another person to be present during any meetings involving the child and the ICL.
- 4.4 The ICL must arrange a registered interpreter (not a family member) for meetings if English is not the child's first language, or if the child uses sign language.

Practice Standard 5: The ICL/child/parent relationship

- 5.1 The ICL must:
- avoid being critical of the child's parent/s during meetings, respecting the long-term and ongoing nature of the child/parent relationship and avoiding the possibility of further trauma or detriment to the child
 - request that the child's parent/s not ask the child questions about the child's meetings with the ICL or ask what the child has disclosed during meetings
 - not provide advice to the child's parent/s regarding anything of a legal nature or answer questions about how the parent/s' case must be conducted.
 - limit the information they provide the child's parent/s to matters relating to Court or administrative processes; parents who are represented must be referred back to their lawyer.

Practice Standard 6: The child – views and diversity

6.1 The ICL must:

- explain the main issues that the Court is being asked to decide
- explain what the child's 'views' means, i.e. what the Court wants to learn from the child
- explain to the child how the child's views will be put before the Court
- explain the limits on confidentiality between the ICL and the child
- discuss how the Court will consider the child's views.

6.2 The ICL must:

- consider the child's diversity, background, and needs, and how they will communicate their views
- explore the child's preferences and reasoning for their views
- give the child a recap of their views and reiterate to who, and how, their views will be heard
- talk to the child about what things they would like the ICL to share
- inform the child what they (the ICL) will do with the information the child provides to them
- consider the child's concerns about their views being shared
- inform the child if they (the ICL) intend to recommend something different to the child's preferences and the reasons for doing this.

6.3 The ICL must:

- explain to the child what to do if they change their views
- respond to the child's change in views by presenting to the Court the child's current views and the child's reason for their change in views
- not impose any personal interpretation or reasoning about the child's changed views when informing the Court.

Practice Standard 7: Conduct and primary functions of the ICL

7.1 The ICL must:

- conduct themselves in an impartial and independent manner
- seek an outcome consistent with the best interests of the child and informed by the child's perspective
- bring to the Court's attention any facts which question the advisability of an agreed settlement
- not consent to any agreement unless independently satisfied that the agreement is in the child's best interests
- actively consider opportunities to settle or limit the scope of the dispute, including negotiating and holding conferences
- ensure that evidence relevant to the Court's enquiry is put before the Court, including evidence contrary to the case or view of the ICL.

Practice Standard 8: Upon appointment as an ICL

8.1 Upon appointment, the ICL must promptly:

- file a Notice of Address for Service
- advise parties and key stakeholders of their appointment as the ICL
- send each party a letter of introduction, information about the role of the ICL, and a questionnaire regarding the child
- provide the child with information about the ICL and their role
- arrange to meet with the child as soon as possible.

Practice Standard 9: Risk assessment and management

9.1 The ICL must:

- gather evidence about risks to the child, and put that evidence before the Court in admissible form
- in the case of imminent risk:
 - speak with the Child Safety Service directly
 - make a plan with the Court Child Expert, if the Child Safety Service will not act
 - if necessary (e.g. where the parties are unaware of the evidence about risk and it is necessary for the ICL to make an ex-parte application), make an urgent application to the Court
- actively seek orders or negotiate agreements to mitigate risks to the child
- make any mandatory report in writing.

Practice Standard 10: Family violence

10.1 The ICL must:

- use a trauma-informed approach when working with a child exposed to family violence
- put before the Court evidence about family violence and the impact of family violence on the child and their family
- consider family violence in the risk assessment aspect of the role
- consider whether a family report or expert evidence is required where family violence is an issue
- complete and keep up-to-date with training about family violence and its impacts
- keep up-to-date with current family violence legislation and any changes to this.

Practice Standard 11: Case planning

- 11.1 The ICL must develop a case plan soon after being appointed.
- 11.2 The case plan must identify issues and risk factors and contain a chronology, a plan for the child's participation, a safety plan, and a plan for evidence gathering, including expert evidence.
- 11.3 The ICL must communicate an outline of the case plan to all parties.

Practice Standard 12: Evidence gathering

- 12.1 The ICL must read all material immediately following their appointment.
- 12.2 The ICL must make a plan for the evidence they intend to gather.
- 12.3 The ICL must put the evidence gathered into admissible form as early as possible.
- 12.4 The ICL must identify what evidence will need to be gathered by subpoena and issue those subpoenas.

Practice Standard 13: Before the interim hearing

- 13.1 In preparing for the interim hearing, the ICL must:
 - access and read all affidavit and subpoenaed material from the parties
 - meet with the child and have an understanding of their experience and views (if any)
 - apply for a grant of aid for the interim hearing
 - meet with important independent witnesses such as school teachers and counsellors
 - file short affidavits from independent witnesses
 - file subpoenas to gather independent evidence relevant to the issues
 - call an ICL conference, if time permits
 - where possible, form and communicate to the parties a view about the interim issues and case plan
 - prepare draft interim orders and circulate to all parties
 - draft submissions, relevant to the Family Law Act, linking the evidence in the affidavit material and subpoenas to the issues the Court will be asked to determine on an interim basis
 - consider if expert evidence and/or a family report are appropriate, draft suggested terms of reference, and make enquiries about availability and timing
 - consider whether the Cross-Examination of Parties Scheme will apply and be prepared to address the Court about whether the evidence would support the making of a ban on personal cross-examination.

Practice Standard 14: At the interim hearing

14.1 At the interim hearing, the ICL must:

- provide the Court with the case plan, a summary of what they have done as the ICL, a chronology and their assessment of the issues to be determined
- inform the Court of the child's views
- inform the Court of any view they have formed and provide draft interim orders reflecting these views
- outline what future directions will be required and be prepared to tell the Court about witnesses and an estimate of the time required for the final hearing
- provide the Court with a summary of any agreements that have already been reached, outlined in a Minute of Order
- make their submissions, drawing together the evidence and the law as they relate to issues to be determined (the ICL is not an expert and cannot express an opinion). The ICL's submission or argument must be supported by admissible evidence and/or law
- provide the Court with an assessment of the evidence of each party and explain how this supports or does not support the interim view
- if expert evidence or a family report is appropriate, have orders prepared that incorporate the terms of reference for the expert evidence
- if relevant, address the issue of a ban on personal cross-examination.

Practice Standard 15: After the interim hearing

15.1 Following the interim hearing, the ICL must:

- explain to the child the outcome of the interim hearing and what that means for the child
- if there is a breakdown in arrangements for the child, take steps to minimise the impact on the child, including arranging appropriate support for the child
- consider how to keep the child engaged and informed and whether further counselling or therapy might be appropriate
- consider the ongoing relationships between the child and others.

15.2 The ICL must review and update their case plan.

15.3 The ICL must tell all witnesses that they may be required for cross-examination.

15.4 The ICL must give witnesses and any expert witnesses notice of the final hearing date; if there are issues with their availability, the ICL must notify all parties and the Court and seek directions in relation to that evidence.

15.5 The ICL must consider:

- re-listing the matter (if issues arise)
- the ongoing relationships between the child and others
- organising the ICL conference
- any further reports or information to assist in negotiations.

Practice Standard 16: Expert evidence

- 16.1 The ICL must critically examine whether expert evidence is required or whether this evidence can be elicited in another way.
- 16.2 If the ICL assesses that expert evidence is required, the ICL must:
- set the scope for the expert advice and draw up terms of reference limited to the scope
 - identify appropriate experts
 - negotiate an agreement about the terms of reference, the expert, and who will bear the costs of the report
 - confirm the availability of the expert, request tentative interview dates, establish how quickly the report could be released, and obtain a quote for the expert's fees
 - if Tasmania Legal Aid is to bear any part of the costs, make an application for legal aid to cover that cost.
- 16.3 In arranging for expert advice to be provided, the ICL must:
- draw and file orders for the expert report, including –
 - seeking leave for the expert to have copies of or access to filed and subpoenaed materials
 - seeking leave for the expert to examine the child if relevant
 - giving the expert the consent of the parties to access material
 - giving details of how the cost of the expert will be borne
 - brief the expert and provide copies of affidavits and subpoenaed materials
 - liaise with the expert and identify further information the expert may need, e.g. speaking to other people involved with the child
 - arrange interviews and undertake safety planning that includes how each interviewee can safely travel to and from the interview and attend the interview
 - respond to queries or requests for further information
 - apply for grants of aid to make applications for expert evidence and, if the parties are legally aided, for a disbursement grant to cover part or all of the expert's costs
 - seek another grant of aid before approval is given to any work being done by the expert that is beyond the original agreed scope of work.
- 16.4 Following receipt of the expert report, the ICL must:
- ensure the report is filed with the Court before any Court event in case the Court wishes to read the report before a hearing
 - assess the veracity of the expert's opinion, and whether it aligns with the known facts
 - decide whether a report or opinion requires updating
 - ensure that the expert is available for cross-examination and facilitate their attendance for this purpose
 - seek feedback from the expert during negotiations and whether the settlement proposals are consistent with the child's best interests.

Practice Standard 17: Family report

- 17.1 Where the ICL determines that a family report is appropriate, they must advise the parties of their intention to make that application.
- 17.2 When making an application for a family report, the ICL must advise the Court how its enquiry would be assisted by the report and propose terms of reference, including allowing the Court Child Expert to access filed and subpoenaed material.
- 17.3 The ICL must file any material relevant to the family report before the family report interviews occur.

Practice Standard 18: Before the final hearing

- 18.1 The ICL must:
- meet with the child and have an up-to-date understanding of their views
 - start the process of preparing the child for the end of the proceedings and the ICL-child relationship, approaching the conversation in the way that best reflects the ICL's knowledge of and existing relationship with the child
 - consider whether the child's views are properly reflected in the evidence the ICL will be putting before the Court
 - if the filed material about the child's views is not reflective of their current views, make an application to the Court for that evidence to be updated.
- 18.2 The ICL must:
- apply for a grant of aid for final hearing preparation
 - read all affidavits, case summaries and subpoenaed material from the parties
 - consider if affidavit material from independent witnesses needs to be updated and file such updated material as required
 - consider if any subpoenas need updating or whether, in light of the final hearing material, any additional subpoenas must be filed.
- 18.3 The ICL must:
- update the chronology and list of issues
 - consider calling an ICL conference to explore a full settlement or settlement of discrete issues
 - form and express a view about the current issues and case plan and communicate this to the parties; where the ICL's view is contingent on certain evidence or findings, make this clear.
- 18.4 The ICL must:
- prepare case summary documents and file these on time
 - prepare draft orders and circulate to all parties.
- 18.5 The ICL must:
- prepare evidence-in-chief and cross-examination that tests the evidence on the issues and law that the Court will need to determine
 - if intending to object to any evidence, communicate this in writing to the party and attempt to reach agreements about the evidence
 - if objections cannot be agreed, ask to relist the matter to deal with objections before the hearing

- where there are self-represented parties, consider whether to call or test evidence which would normally be called or tested by a party
 - make a final hearing plan outlining the witnesses to be called and a time estimate of each and circulate this to all parties
 - assist the parties in reaching an agreement about the final hearing plan
 - give witnesses written notice that they will be required to give evidence, providing as much information as possible about when and for how long they will be required
 - where required, file a subpoena requiring a witness to give evidence (e.g. for reluctant witnesses or where an employer requires a subpoena for an employee)
 - give all parties written notice of which of their witnesses the ICL requires for cross-examination, for approximately how long they will be needed, and what documents each witness must bring with them – this may require the ICL to subpoena hospital records, or the child's school file.
- 18.6 The ICL must draft opening and closing statements which link the evidence the ICL will be calling to the issues and law.
- 18.7 The ICL must make a recommendation to the Tasmania Legal Aid Grants Officer about whether the ICL ought to be making an application for costs against one or more of the parties.
- 18.8 In making such a recommendation, the ICL must advise the Grants Officer regarding:
- any information about the financial capacity of one or more of the parties
 - whether one or more of the parties receives an income-tested benefit or pension
 - an assessment of one or more of the parties' prospects of success and whether the parties are likely to be wholly unsuccessful
 - the conduct of one or more of the parties during the proceedings
 - any impact that making the application for costs could have on the child, including ramifications for the child, e.g. if a parent would not be able to afford ongoing housing for the child, would not be able to afford to continue the child's private schooling, or where a parent's anger about a costs order could be directed at the child.

Practice Standard 19: At the final hearing

- 19.1 The ICL must:
- be flexible about when to present their case, e.g. it may be helpful to the Court and the parties to test the expert evidence at the beginning of the final hearing
 - be prepared to tell the Court about the final hearing plan.
- 19.2 The ICL must:
- make a brief opening statement, outlining their view and how the evidence they submit will support that view
 - address the Court on the views of the child and what evidence supports and does not support these views
 - in cross-examination, make sure that all questions relate to the issues to be determined – questions must test the evidence to elicit evidence that both supports and does not support the ICL's view
 - keep notes on the evidence and identify the evidence they will use in closing submissions
 - update closing submissions at the end of each day to include the evidence identified during each day of the hearing
 - keep the parties and the Court updated regarding any changes to witness availability or changes to time estimates.
- 19.3 The ICL must:
- make the Court aware of any significant events coming up for the child, particularly where there will be an adjustment or transition
 - make the Court aware if either interim or other orders will be required to support the child.
- 19.4 The ICL must consider settlement opportunities and seek leave of the Court to negotiate wherever appropriate – this may involve a request to stand a matter down to allow negotiations, or to allow negotiations to occur while a witness is under cross-examination.
- 19.5 The ICL must make closing submissions which draw together all the evidence relevant to the issues and express a final view based on that evidence.
- 19.6 The ICL must, if their view has changed, immediately inform the parties. In informing the Court, the ICL must outline the basis for the change in view.
- 19.7 The ICL must ask the Court to extend their appointment for a short period so they can have a final meeting with the child.

Practice Standard 20: Extensions

- 20.1 In seeking an extension of the ICL's appointment, the ICL must:
- make submissions to the Court about how the ICL can add value to the child's representation during any extension of appointment
 - ensure that there is a clear outline of the tasks the ICL will perform during the extended appointment
 - make sure that details of these tasks are communicated to the child, the Court, and to the parties; this will clearly identify the ICL's responsibilities and enable the management of expectations.

Practice Standard 21: Services and support for the child

- 21.1 The ICL must advocate and seek orders for relevant and appropriate services and supports for the child, including, if necessary, an extended period of support from the ICL in a monitoring role.

Practice Standard 22: Court orders for services

- 22.1 Where the Court has made specific orders for the child to receive counselling or therapy, the ICL must:
- find out what services are available in the child's area
 - explore options, including costs and logistical considerations
 - outline options with the parties and assist them to negotiate agreement about the service and to access the service.
- 22.2 Where the Court has made orders that a party engages in services, the ICL must:
- offer to link that party to a service that can help them identify and access the appropriate services
 - check that the party has accessed the recommended services.
- 22.3 Where a party refuses to access a service and this has an impact on the best interests of the child, the ICL must:
- if the ICL has liberty to apply, ask for the matter to be relisted
 - if the ICL does not have liberty to apply, consider making a notification to the Child Safety Service or other appropriate service.

Practice Standard 23: Appeals against Court decisions

- 23.1 When assessing whether a recommendation to the Tasmania Legal Aid Grants Officer for an appeal is appropriate, the ICL must consider whether:
- the decision is contrary to the views of the child and the Court has not given reasons for the decision, or has given inadequate reasons
 - the decision is contrary to, or inconsistent with, evidence about the best interests of the child
 - there has been an error of law which has led to a decision inconsistent with the child's clearly expressed views or best interests
 - the decision is inconsistent with the facts that were before the Court.

Practice Standard 24: Conflict

- 24.1 The ICL must actively consider throughout the proceedings whether there is a conflict.
- 24.2 The ICL must, if they believe there may be a conflict, bring this to the Court's and the parties' attention, along with a proposed plan or order, e.g. a plan or orders to waive the conflict, to seek the appointment of a separate ICL, or for the discharge of the ICL's appointment and/or the appointment of a new ICL.

Practice Standard 25: Criticism of the ICL

- 25.1 Where an ICL receives criticism, they must provide a response.
- 25.2 If the ICL accepts the criticism and forms a view they cannot independently and impartially represent the child, they must raise this with the Court and seek to be discharged.
- 25.3 If the ICL rejects the criticism, this must be clearly communicated to all parties.

Practice Standard 26: Child/ICL relationship – contact, complaints and termination

- 26.1 The ICL must maintain regular contact with the child.
- 26.2 If the child wishes to make a complaint about the ICL, the ICL must direct the child to the Associate Director of Legal Services at Tasmania Legal Aid.
- 26.3 If the relationship between the child and the ICL breaks down, the ICL must consider if the child's best interests would be served by the appointment of a different ICL and, if so, raise this with the Court.

Practice Standard 27: Costs

- 27.1 If directed to do so by a Tasmania Legal Aid Grants Officer, the ICL must seek an upfront contribution to the ICL's costs from any party who is not legally aided.
- 27.2 The ICL must, after filing the Notice of Address for Service, contact the Grants Officer to seek a direction about any contribution required and the cost of the contribution.
- 27.3 The ICL must seek the upfront contribution from the non-legally aided party or parties as soon as possible.
- 27.4 The ICL must seek a direction from the Grants Officer if a non-legally aided party says they cannot afford to pay the upfront contribution or raises any other issue about the payment.
- 27.5 When seeking such a direction from the Grants Officer, the ICL must give the Grants Officer any information relevant to the party's capacity to make the contribution.
- 27.6 The ICL must tell the Grants Officer the amount of any upfront contribution or subsequent contribution that is made by a party.
- 27.7 The ICL must tell the Grants Officer if a non-legally aided party does not pay a levied contribution and that party has not been granted an exemption from payment.
- 27.8 The ICL must seek the direction of the Grants Officer in relation to the payment of any disbursement, including for expert reports and expert witness costs – usually, a non-legally aided party will be required to contribute partly or wholly to any disbursement costs.
- 27.9 In any terms of reference or orders where disbursement costs are to be paid, the ICL must ensure that those orders address how and by whom the costs will be paid.
- 27.10 Where Tasmania Legal Aid pays the report costs upfront, the orders for the expert must state that the ICL reserves the right to seek part or all of those costs from one or more of the parties.

Practice Standard 28: Reporting and record keeping requirements

- 28.1 If requested, the ICL must provide a report to the Tasmania Legal Aid Grants Officer which contains a summary of their views and the evidence both supporting and not supporting those views.
- 28.2 The ICL's file must be well organised, well documented, labelled, and satisfy legal professional requirements.
- 28.3 The ICL file must be retained as per legislative requirements.
- 28.4 The ICL must keep all files and records until 2029 (the disposal freeze).
- 28.5 After the disposal freeze has ended, the ICL must keep all files and records until seven (7) years after the child has reached 18 years of age.



Tasmania
Legal Aid

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