



FAMILY LAW: INDEPENDENT CHILDREN'S LAWYERS

This fact sheet has information about Independent Children's Lawyers in the Family Court, including how they are appointed and their role.

What is an Independent Children's Lawyer?

An Independent Children's Lawyer, or "ICL" is an experienced lawyer appointed by the Family Court to represent and promote the best interests of a child in a family law case.

ICLs are not appointed to every family law case and will usually only be appointed in cases where there are allegations of:

- drug and alcohol issues,
- family violence, abuse or neglect issues, or
- other risk issues where the court has serious concerns about the wellbeing of a child.

What is the role of the ICL?

When an ICL is appointed to a case, their role is to act in the child's best interests and to ensure the court is aware of any important issues in the case. To help the ICL perform their role, the ICL will usually gather information about your child, significant people in their life, and services or organisations that have been involved with your child.

Who will the ICL get information from?

Who the ICL will get information from will be different in each case, but some examples include:

- you and your ex-partner,
- your child's grandparents,
- your child's school or day care,
- the police,
- the Department of Communities (often called Child Protection), and
- a Single Expert Witness.

Will the ICL tell the court my child's views and wishes?

A key part of the role of the ICL is to tell the Family Court your child's views and wishes.

It is important to know that your child does not have to tell the ICL or court their views if they don't want to. The law makes this clear and the ICL will not pressure your child to tell them their views.

Sometimes a child will want the court and their parents to know all about how they think and feel. Other times a child may not want to express a view. This may be for many reasons including being worried about hurting their parent's feelings.

Will the ICL do what my child tells them to do?

The ICL does not have to do what your child tells them to do. This is because the ICL's role is to do what they believe is in your child's best interests. However, the ICL will make sure the court is told your child's views, even if they do not agree with them.

Will the ICL meet with my child?

In most cases the ICL will meet with the child they are representing.

From 6 May 2024, in cases where parents were married, an ICL must meet with the child and give them the opportunity to express their views unless:

- the child is under 5 years old,
- the child does not want to meet with the ICL, or express their views,
- there are exceptional circumstances why the ICL shouldn't meet with the child.

What are exceptional circumstances?

The court will decide if there are exceptional circumstances (reasons) why the ICL shouldn't meet with a child. This would include situations where it would be harmful to the child or have a negative impact on their wellbeing.

Do the changes to the law apply in cases where parents weren't married?

At this stage the changes to the law about ICLs meeting with children only apply in cases where parties were married. However, it is expected that in the future, the changes will also apply in cases where parents weren't married.

Can the ICL make recommendations to the court?

After considering all the information in your family law case, and any views expressed by your child, the ICL may make a recommendation to the court about what orders they believe would be in the best interests of your child. The court will listen to what the ICL has to say, and also what yourself and your ex-partner, and any other people in the case have to say before making a decision about what will happen.

How can Legal Aid WA help?

You can find more information about family law including the role of the Independent Children's lawyer, and information about what steps you can take if you believe the ICL is not performing their professional obligations on the Legal Aid WA website www.legalaid.wa.gov.au

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