

Independent Children's Lawyers in the Family Court



When parents cannot agree and the Family Court is concerned a child's interests are not being properly brought to its attention, it may order that a child be separately represented by a lawyer. This lawyer is called an Independent Children's Lawyer. Representation by an Independent Children's Lawyer will help the court make a decision in the best interests of your child.

What is the role of an Independent Children's Lawyer?

The role of the Independent Children's Lawyer (ICL) is to help the court to decide what is in the best interests of your child. The ICL must come to their own view about what is in your child's best interests based on the evidence that is available.

What does the ICL do?

The ICL will:

- collect information about your child from people such as teachers, doctors, psychologists and counsellors
- make sure the court receives all necessary information about your child's welfare
- ensure any views expressed by your child are clearly put before the court and clearly outline where their own views differ from that of your child. Your child will rarely give evidence in court, but there may be times where the ICL will need to consider what direct role your child will have in the proceedings if any
- where necessary, apply to the court for a single expert to make an assessment of the parties in the case and your child and prepare a report;
- talk with your child if necessary, explaining the ICL's role and what the court process is
- try to help all parties reach a final agreement that is in your child's best interests
- do whatever is necessary to protect your child until a final agreement is reached and to

provide information to the court about any family violence and abuse, and

- the ICL will where necessary explain personally or organise court staff to explain to your child the outcome of the court proceedings and why the court may or may not have made a decision in harmony with your child's wishes.

The ICL is **not** a child's legal representative and is not required to act on a child's instructions.

What the ICL does not do

The ICL will not:

- question your child about allegations that have been made
- become a witness in the proceedings
- conduct therapy or counselling with your child
- require your child to express their views about something if your child does not want to.

Will the ICL meet with my child?

Whether the ICL will meet with your child is a decision for the ICL.

An ICL will usually meet with a child unless:

- your child is under school age (but may still choose to in some cases)
- there are exceptional circumstances (for example an ongoing police investigation)
- there are practical difficulties with meeting with your child (for example the child lives in a remote location).

In court

In court, the ICL will:

- question any witnesses
- organise professional people who know your child to come to court and give evidence
- make sure the court knows what your child's views are, and
- make suggestions about what would be best for your child based on their professional judgment.

Written reports

The court may order a written report about a child and the child's family. A family consultant, child psychologist, child psychiatrist or other expert, depending on the circumstances, prepares this.

The ICL does not prepare it.

If a family consultant is directed to give the court a report, they must find out what the views of the child are and include those views in the report. This will not be required if due to the child's age or maturity or some other special circumstances, it would not be appropriate. Your child is not required to express a view about something if they do not wish to.

The report will be given to you or your lawyer and to the ICL.

You can help

As a parent, you can help by:

- making sure your child attends all appointments arranged by the ICL and any other experts who are asked to provide information to the court
- allowing your child to contact the ICL whenever they want to and letting them talk in private, and

- not asking your child questions about what was discussed at appointments with the ICL or other experts who have been asked to provide reports to the court.

Your relationship with the ICL

When you have your own lawyer, you should not make direct contact with the ICL – your lawyer should make all necessary contact.

If you do not have a lawyer, you will need to communicate directly with the ICL yourself. It is always best to put any concerns you have in writing. The ICL must tell the court and other parties anything discussed with you about the welfare of your child.

When an agreement or decision is made

After an agreement or decision has been made, the ICL will:

- if appropriate, explain the decision and the court orders to your child;
- be there to help your child with any further problems or questions.

Your cooperation in making this process work is in the best interests of all concerned.

If you have any further questions, ask your lawyer.

Where can I get more information?

- The Best for Kids website from Legal Aid NSW contains two videos about the role of ICL – one for parents and one for children, which is correct for Western Australian audiences. See: www.bestforkids.org.au (for referrals appropriate for Western Australia please contact the **Legal Aid WA Infoline on 1300 650 579**).

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
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Midwest & Gascoyne Regional Office

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