

Independent Children's Lawyers

This infosheet has information about the role and responsibilities of an Independent Children's Lawyer (ICL) in a family law case in the Family Court. It explains what an ICL can and cannot do in a family law case.

What is an Independent Children's Lawyer?

An Independent Children's Lawyer (ICL) is an experienced lawyer appointed by the Family Court to represent a child's best interests in a family law case.

They have family law expertise and have completed special training about representing children in family law proceedings.

How is an ICL appointed in a family law case?

The Family Court decides if an ICL is appointed in a family law case.

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A parent or another person in the case can ask the court to appoint an ICL for a child. Alternatively, the court can decide to appoint an ICL if they think one is needed, even if the parents or other people involved in the case have not asked the court for an ICL.

An ICL can be appointed to represent one or more children in a family law case.

When is an ICL appointed for a child?

The Family Court will not appoint an ICL in every family law case.

An ICL is usually only appointed when there are complex issues in a family law case, such as allegations of:

- family violence,
- child abuse,
- neglect,
- mental health concerns, or
- drug or alcohol concerns.

However, the Family Court might decide an ICL should be appointed in a family law case for other reasons.

For example, in cases where there is a high level of conflict between parents or to obtain the views of a child.

What is the role of an ICL?

The role of the ICL is to represent and promote the best interests of your child in a family court case. A key part of the role of the ICL is to gather information to make sure the court has all the information it needs to make a decision.

This includes gathering information about your child and significant people in their life. For example, step-parents, grandparents and new partners.

The ICL may also get information from services and organisations that have been involved with your family.

After considering all of the information in the case and any views expressed by your child, the ICL may make recommendations to the court about what orders would be in the best interests of your child.

What does an ICL do?

What the ICL does will be different in each case. This is because each case and each child is different.

Some common things an ICL does in a family law case include:

- writing to the child's daycare or school to ask for information about how they are going and if they are attending regularly,
- making sure the court has all the information it needs to be able to make a decision about what arrangements will be in the best interests of the child,
- meeting with the child,
- making sure the court is told about the child's views (if the child wants the court to know their views or the ICL thinks it is in the child's best interests to tell the court),
- helping parents and other people in the case try to reach an agreement which is in the best interests of the child, and
- representing the child at court hearings.

Telling the court your child's views

An important part of the ICL's role is to meet with your child to give them the opportunity to express their views and to tell the court your child's views. The ICL may also get a Single Expert Witness to tell the court your child's views.

Sometimes a child will want the court and their parents to know all about how they think and feel. However, the law says that a child is not required to tell the ICL or the court what their views are unless they want to. The ICL will not pressure your child to tell them their views if they don't want to.

If there is a court hearing, the ICL will attend and represent the best interests of your child in court.

Your child will not attend court. The ICL may tell the court something your child has told them, even if your child does not want them to, if the ICL believes telling the court is in the best interests of the child.

Who will the ICL get information from?

Who the ICL will get information from will be different in each case because each case will have different issues.

Some common services an ICL may get information from include:

- the police,
- hospitals,
- counsellors,
- psychologists,
- psychiatrists, and
- the Department of Communities (often called Child Protection).

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 does not act on the instructions of your child. However, the ICL will give your child the opportunity to express their views and listen carefully to what your child has to say about how they feel and what they want.

The ICL must tell the court your child's wishes and views if your child wants the court to know, even if the ICL does not agree with them. However, the ICL would usually explain to your child if they are going to ask the court to do something different to what your child wants and why they are asking for something different.

Will the ICL meet with my child?

In most cases the ICL will meet with the child they represent. The ICL will decide when any meeting will take place. If a family law case goes for a long time, the ICL may decide to meet with the child several times during the court case.

It is common for an ICL to meet with the child they represent at the end of the court case. This is so the ICL can explain the court orders to them and answer any questions they have about the court orders.

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

However, the ICL is not required to meet with a child if:

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

It is expected that in the future these changes to the law will also apply in cases where parents were in a de facto relationship.

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 negatively affect their wellbeing.

Some examples of why the court may decide the ICL should not to meet with the child include:

- if there is an ongoing police investigation,
- if the child has already met with a number of professionals (for example, the police, a counselor, a psychologist or Department of Communities' workers).

What will the ICL talk to my child about when they meet?

Some common things the ICL will talk to a child about when they meet include:

- the role of the ICL,
- how they can contact the ICL if they want to,
- their views and wishes (if the child wants to talk about these),
- other services and people the child may meet during the court case and the reason why the child may meet them (for example, the ICL may explain to your child a Single Expert Witness has been appointed who will meet with them), and
- everyday things like school, sport, friends and what they like doing with their parents.

The ICL will also answer any questions your child has about the court case using simple and age appropriate language.

Can I attend the meeting between the ICL and my child?

You cannot attend the meeting between the ICL and your child. Your ex-partner and other people in the case cannot attend the meeting either. If the meeting is at the office of the ICL you will need to wait outside.

If a Single Expert Witness has been appointed in the case, they will usually meet with the child and parent together as part of preparing their report for the Family Court.

Some things the ICL will not do when meeting with your child

The ICL will **not** do the following when meeting with your child:

- ask your child questions about allegations that have made in the case (for example, the ICL will not ask your child about allegations of family violence or child abuse),
- provide therapy or counselling to your child, or
- pressure your child to tell them their views and wishes if your child does not want to.

How can I help my child?

You can help your child by:

- making sure they attend all meetings arranged by the ICL,
- allowing your child to freely contact the ICL and talk in private,
- not asking your child about what they have said to the ICL.

How can I communicate with the ICL?

If you are represented by a lawyer, your lawyer will communicate with the ICL for you. For example, your lawyer may send an email to the ICL.

If you do not have a lawyer, you can communicate directly with the ICL. For example, you can email the ICL and they will write back to you.

It is common for an ICL to ask for all communication with them to be in writing. This will be up to the lawyer who is the ICL in the case.

What you and your lawyer say to the ICL is not private. This is the same for anything that your ex-partner or their lawyer says to the ICL.

When you write to the ICL, you must send a copy of your email or letter to your ex-partner and any other people involved in the court case.

When you write to the ICL, you must send a copy of your email or letter to your ex-partner and any other people involved in the court case.

If you have a lawyer they must make sure a copy of everything they send to the ICL is sent to the other people involved in the court case.

Everything the ICL writes to you or your ex-partner (or your lawyers) must also be copied to everyone in the case. This is to make sure everyone has the same information.

Can the ICL give me legal advice?

The ICL cannot give you legal advice or help you run your legal case.

Can I have a meeting with the ICL?

Every ICL will run their case differently but an ICL will not usually have a meeting with a parent or other people in the case. However, if you do not have a lawyer, the ICL may sometimes need to speak with you to ask you questions or to help with negotiations.

It is part of the role of the ICL to help you and your ex-partner (or other people in the case) try to reach an agreement which is in the best interests of your child. If you have a lawyer, the ICL will usually speak to your lawyer but may also sometimes speak to you with your lawyer.

Will the court always make the orders the ICL asks for?

The court will look at all the information in the case and listen to what everyone has to say and then decide what orders to make. There are many different voices in the court and the ICL is just one of them. It is up to the court to decide what orders will be in the best interests of the child.

Who funds the ICL?

Legal Aid WA pays the costs of an ICL under a funding arrangement with the Commonwealth Government. However, parties in a case may be required to help pay the cost of the ICL and/or the cost of the Single Expert Witness.

When the Family Court makes an order appointing an ICL, the parties will be asked to complete a [Financial Statement \(Form 13\)](#) and provide this to Legal Aid WA. This helps Legal Aid WA decide if the person will be required to help pay the cost of the ICL.

Legal Aid WA makes a final decision at the end of the court case about whether a party is required to help pay the costs of the ICL. Legal Aid WA must ask a party to help pay the costs in some circumstances, under the funding arrangement with the Commonwealth Government.

The ICL can also ask the Family Court for their costs to be paid by the parties at the end of the case.

Can the ICL have a position in a case?

An ICL is independent. This means that they are not on your side or the side of your ex-partner. However, the ICL must act in the best interests of your child and can take a position about what orders they think will be in the best interests of your child based on the evidence in the case.

This may include asking the court to make:

- orders that are the same as what you want,
- orders that are the same as what your ex-partner wants,
- some orders you want and some orders that your ex-partner wants, or
- orders that are different to what you or your ex-partner want.

Where can I find more information about the role of the ICL?

You can find out more information about the role of the ICL here:

- [Independent Children's Lawyers](#) – a video and fact sheet by Legal Aid WA.
- [What is an Independent Children's Lawyer?](#) – a brochure for parents by National Legal Aid.
- [Best for kids](#) – a Legal Aid NSW website which has posters and videos to help explain the role of the ICL to children.
- [Guidelines for Independent Children's Lawyers](#) – national guidelines have been approved by the court and provide guidance for ICLs in their role.

What can I do if I am not happy with the job the ICL is doing?

What an ICL does may not always meet with the approval of parents or other people involved in the court case. This does not mean that the ICL has acted inappropriately or failed to do their job properly.

If you believe the ICL is not performing their professional obligations, the first step is to get legal advice about your situation. As an ICL is appointed by the Family Court, Legal Aid WA cannot remove the ICL from a case unless the ICL agrees to this or the Family Court makes an order.

You have the following options:

- Make an application to the [Family Court of WA](#) for the removal of the ICL. You should get legal advice about this. Speak to your lawyer about this (if you have one).
- Make a complaint to the [Legal Profession Complaints Committee](#) (LPCC) that an ICL is not doing their job. The main role of the LPCC is to ensure ethical conduct and professional behaviour in the legal profession.
- Make a complaint to Legal Aid WA, who may be able to investigate some aspects of the conduct of the ICL.

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