

What is an Independent Children's Lawyer?

Author: Jane Holford
Email: jane@smithfamilylaw.com.au
Date: **Monday November 30, 2020**

In a court case concerning children, the paramount consideration is making a decision that is in the best interests of the children. Sometimes, the Court needs help in determining what the best interests of the child are from an impartial third party. In these cases, the Court may appoint an Independent Children's Lawyer ('ICL') to make recommendations.

What is an ICL?

An ICL is an independent, impartial party to family law proceedings.

As children are not allowed to attend court, sometimes an ICL will be appointed to represent the child's best interest in a family law matter. A Court will appoint an ICL when it needs to hear an independent assessment about the child/ren's best interests.

An ICL will carefully consider the evidence of both parties and will make a recommendation to the Court about what they believe to be in the best interests of the child.

Does an Independent Children's Lawyer have specific training?

ICL's must meet specific training requirements before they are allowed to become ICLs.

They need to complete specialised training programs about the complexities of the role and have at least 5 years experience doing family law work in cases involving children's issues. These requirements are in place to ensure ICL's have the experience necessary to provide a reliable and valuable recommendation to the Court.

You can learn more about ICL training requirements on the government's ICL website.

When is an ICL usually appointed?

An ICL can become involved in a family law matter when the Court makes an order to do so.

A Court may make an order for an ICL to become involved in certain cases, including:

- where there are older children expressing clear views;
- where the parents are involved in a high conflict dispute;
- where there are allegations of family violence, abuse, mental health issues in relation to the children or parents:

Can I request an ICL be appointed for my child?

An ICL can become involved in a family law matter when the Court makes an order to do so.

A Court may make an order for an ICL to become involved in the following circumstances:

1. The Court thinks it is necessary for the child's best interests to be independently represented;
2. The child makes an application for an ICL;
3. A person concerned about the best interests of the child makes an application (e.g. other family members such as a grandparent); or
4. An organisation concerned about the best interests of the child makes an application (e.g. child protection, welfare agency or school).

As a person concerned about the best interests of your child, you can make a request to the Court that an ICL be appointed to your matter.

Does the ICL have to talk to my child?

The Independent Children's Lawyer is required to perform the following duties (though not necessarily at the same time):

- Meet with children subject to family law parenting matters; and
- Give the children the opportunity to express their views (though not necessarily at the same time).

The ICL has discretion in relation to when, how often and how meeting/s with children take place and when, how often and how the child is provided with an opportunity to express views.

The ICL is not required to meet with the children or provide the children with an opportunity to express their views if:

- the child is under 5 years old;
- the child does not want to meet with the ICL or does not want to express their views; or
- there are exceptional circumstances that justify the ICL not performing these duties.

Examples of ‘exceptional circumstances’ can include whether the child would be exposed to a risk of physical or psychological harm that cannot be safely managed or if the child would experience a significant adverse effect on their wellbeing).

Ultimately, it is a matter for the Court to decide whether it is satisfied that exceptional circumstances exist that justify not meeting with the child or providing the child with an opportunity to express their views.

If the Court determines that exceptional circumstances do not exist to warrant an exemption to the ICL performing their usual obligations, it can make an Order that compels the ICL to meet with the child or provide the child with an opportunity to share their views anyway.

What if the ICL disagrees with what my child says?

It is important to recognise that the role of an ICL is different to that of the child’s legal representative. This means that the ICL does not have to follow instructions given to them by the child. They have the option to disagree with the views expressed by the child where they believe what they are saying is not in their best interests.

The ICL’s job is to listen to the views of the child (where appropriate) and provide an independent assessment of what they believe to be in the child/ren’s best interests. This means the ICL can make a recommendation to the Court that goes against the child’s wishes, where the ICL believes the child’s wishes are not in their best interests.

Does the Court have to follow the ICL’s recommendation?

Like all material submitted in a Family Law matter, the Court will carefully consider the ICL’s recommendation. The ICL is appointed to provide an impartial recommendation on what is in the best interests of the child/ren, but the Court is under no obligation to follow this recommendation.

Is what my child says to the ICL confidential?

The ICL is under no obligation to disclose anything they have discussed with your child to the Court, nor can the Court or the parties require the ICL to disclose.

That being said, the ICL may choose to disclose to the court any information that they believe is in your child’s best interests. Even if this disclosure goes against your child’s wishes.

How much will an ICL cost?

ICLs are funded by state and territory Legal Aid Commissions. If you and the other party are not legally aided (meaning you do not have a grant of funding from Legal Aid), you are required to pay a lump sum contribution amount for the cost of the ICL.

Currently, the average cost for an ICL is $3,342.50 for each party in a Division 1 Federal Circuit and Family Court matter and $4,782.50 for each party in a Division 2 Federal Circuit and Family Court matter. These fees are subject to change.

How a family lawyer can help

If you're unsure whether an ICL would be beneficial to your matter, or if an ICL has been appointed to your matter and are unsure of next steps – we can help.

Get in touch with one of our family lawyers for a free initial discussion to find out what your options are.

Contacting Smith Family Law

03 8625 8957

info@smithfamilylaw.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.