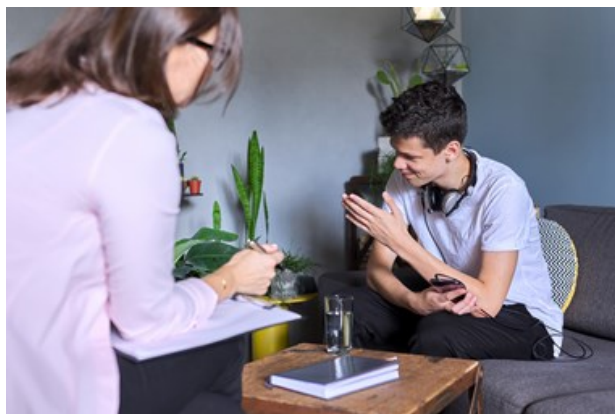




What is an Independent Children's Lawyer?

Date: Sunday November 12, 2023

E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

[CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111](tel:0299972111)

An Independent Children's Lawyer (ICL) is appointed by the Court to represent a child's interest in family law proceedings. The ICL must act independently of the Court and the parties and use their own judgement to determine what orders would promote the best interests of the child. ICLs are required to meet with the child and provide the child with an opportunity to express a view unless an exception applies.

The appointment of an Independent Children's Lawyer

In family law parenting proceedings, if it appears to the Court that the child's interests in the proceedings should be independently represented, [section 68L](#) of *The Family Law Act (1975)* enables the Court to make an order for the appointment of an Independent Children's Lawyer.

An Independent Children's Lawyer (ICL) is typically appointed by the Court when one of the parties applies and/or one or more of the following situations are present:

- Accusations of child abuse or neglect have been made;
- There is a significant level of conflict and disagreement between the parents;
- Allegations have been raised concerning the child's opinions, and the child is of an age where they can express their views;
- There are claims of [domestic and family violence](#) within the family;

- Serious mental health challenges affect one or both parents or the child;
- The case involves intricate and challenging issues.

The role of the Independent Children's Lawyer

The general role of the independent children's lawyer is to:

- form an independent view, based on the evidence available to the independent children's lawyer, of what is in the best interests of the child; and
- act in relation to the proceedings in what the independent children's lawyer believes to be in the best interests of the child;
- represent the child's interests (not the child) - so is not obliged to act on the child's instructions in relation to the proceedings;
- make submissions for the Court to act in a particular way in the best interests of the child;

The ICL's specific duties include:

- to act impartially in dealings with the parties;
- to ensure that any [views expressed by the child](#) in relation to the matters to which the proceedings relate are fully put before the Court; and
- if a report or other document that relates to the child is to be used in the proceedings:
 - analyse the report or other document to identify matters most significant for determining what is in the best interests of the child; and
 - ensure that those matters are properly drawn to the court's attention; and
- To endeavour to minimise the trauma to the child associated with the proceedings; and
- to facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child.

ICL requirement to meet with the child

For proceedings instituted on or after 6 May 2024, or beforehand where a final hearing has not commenced, an ICL is required to meet with the child and provide the child an opportunity to express a view unless an exception applies. Section 68LA(5AA) specifically provides that an ICL has discretion in relation to when, how often and how meetings with the child take place, and when, how often and how the child is provided with an opportunity to express views.

The ICL is not required to perform a duty if the child is under 5 years of age or the child does not want to meet the ICL or express their views. An ICL is also not required to perform a duty if there are exceptional circumstances that justify it. This includes but is not limited to circumstances which would expose the child to a risk of physical or psychological harm that cannot be safely managed or would have a significant adverse effect on the wellbeing of the child (new subsection 68LA(5C)).

There is no specific time that an ICL must perform these duties because this will depend on the facts and circumstances of each case. It is only required that the ICL must perform these duties at some point.

It is also noted that the independent children's lawyer may disclose to the Court any information that the child communicates to them if they consider the disclosure to be in the best interests of the child.

Who pays for the Independent Children's Lawyer?

In many situations, the appointment of an ICL is funded under a Commonwealth, State or Territory Legal Aid Scheme. Whilst some ICLs may be privately funded, the Court generally considers ICLs to be unfunded and, therefore, makes orders requiring the parties to share the costs associated with the appointment of the ICL.

Depending on a party's financial circumstances, an application may be made to the Legal Aid Commission for a waiver of their contribution to the costs of the ICL's appointment. Whether that party's costs can be waived will depend on evidence being provided of their financial position.

It is important to note that even if a waiver has successfully been obtained, this does not prevent the ICL from seeking costs against that party at a later stage, particularly if that party's financial position has changed over time.

Who can be appointed as an Independent Children's Lawyer

When the Court makes an order for an ICL, it also requests the Legal Aid Commission in the State or Territory in which the proceedings are being conducted to make an appointment of an ICL to that case.

Each State or Territory Legal Aid Commission has a panel of practitioners who have completed specialist training through the Family Law Section of the Law Council of Australia and are able to satisfy the commission that they have appropriate experience and expertise to be included on that panel.

The panel typically consists of in-house solicitors who work for the commission and solicitors from privately run firms who seek to undertake this type of work.

Explaining the role of the Independent Children's Lawyer to your child

Understandably most parents want to distance their child from what is going on when family law proceedings are on foot. This becomes a bit more difficult when the Court decides that the child's interests should be independently represented and an ICL is appointed.

How parents choose to discuss this with their child will ultimately be guided by the age of their child and their ability to understand what is going on and why they need to meet with the ICL. In recognition of this difficulty, National Legal Aid has produced a range of brochures ([available in both downloadable PDF format or interactive videos](#)) aimed at various age groups to assist the child in

understanding the court process and the role of the ICL.

Get help from a family lawyer

If you have any further questions about the role of the Independent Children's Lawyer or a parenting dispute in general, you should contact one of our experienced family law solicitors, who can assist you with any of your family law queries.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](tel:0299972111)

info@ealawyers.com.au

This article 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 E&A Lawyers.