



# Understanding the role of an Independent Children's Lawyer (ICL)

## What is an ICL?

An Independent Children's Lawyer, ICL is "a lawyer who represents the child's interests in proceedings" (Section 4(1) of the Family Law Act 1975 (Cth)). The appointment of an ICL in parenting matters can be made by an application by one party or on the court's own initiative where the court considers that it is in the best interests of the child to do so (Section 68L of the Family Law Act 1975 (Cth)).

**An ICL will often be appointed in parenting proceedings where one or more of the following circumstances are present:**

1. There are allegations of family violence, or allegations of abuse or neglect of the child.
2. There is a high level of conflict between the parents.
3. One of the parties, or the child, experience serious mental health issues.

4. There are difficult and complex matters at play.
5. The child is expressing a view, and the child is of a mature age to express those views.
6. Where one or more of the parties are self-represented.
7. Where there is a proposed separation of siblings.
8. Where it is not appropriate for the child to live with either parent.

The above list of circumstances arises from the 1994 decision of *Re K* (1994) FLC 92-461, however, it is not exhaustive and there are many circumstances where the court may consider an ICL necessary.

The ICL is not obliged to act on the child's instructions, despite being engaged to act in the child's best interests, nor do they take a 'side' in the proceedings. Instead, they must provide an independent view about the parenting arrangements for the child moving forwards whilst putting the child's views before the court (Section 68LA of the Family Law Act 1975 (Cth)). Ultimately, the ICL will attempt to provide a voice for the child in the proceedings which are affecting them.

## How does an ICL consider what is in the child's best interests?

An ICL must meet with the child to whom the proceedings relate to obtain their views, unless the child is under 5 years old, or the child does not want to meet with the ICL.

The ICL can also speak to the child's schoolteachers and counsellors, examine medical, psychiatric or psychological records of the child and their parents and also examine documents from professional bodies such as the police, the child's school, and child welfare authorities.

The ICL is also likely to read all the material that has been filed in court by all of the parties to form a view.

## How is an ICL funded?

Usually, an ICL is funded by the relevant Legal Aid body of the state or territory. However, if the parties are privately paying for their legal fees, it is likely that an account will be issued to each parent in a 50% share. The fees of the ICL can increase depending on the complexity of the matter. A party can apply to have their share of the ICL fees waived if they are suffering from financial hardship or are in receipt of Legal Aid.

## How Can Andersons' Help?

We have a team of [Family Lawyers](#) experienced in all aspects of separation, divorce, property settlements and children's matters and we have 6 locations across South Australia that we practice from.

If you would like to have a confidential discussion on your personal situation, please contact our

friendly Family Law team on 8238 6666 or alternatively, send email [enquiry@andersons.com.au](mailto:enquiry@andersons.com.au).