



Practitioner resources for Meeting with Children and Participation: Skills Session

Legal resources

[A Mandatory Reporter's Guide To Selecting A Decision Tree \(nsw.gov.au\)](https://www.nsw.gov.au)

[ICL Meeting with Children: Good Practice Guide](#)
(see following page for 13 page guide)

Family Law: Working with Children

A GOOD PRACTICE GUIDE

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Family Law: Working with Children Good Practice Guide



The role of the Independent Children's Lawyer (ICL) is not always well understood by children or their parents. The nature of the 'best interests' role can be especially confusing because it differs from parents' own experiences with legal professionals and from images of ICLs children may have seen on television. This discrepancy between expectations and experience may result in a disappointing or negative experience for children engaged in legal matters. It can also mean that children may not share information that could help determine what would be in their 'best interests.'

This Best Practice Guide aims to help ICLs improve children's experience with the legal service. It emerged out of a project undertaken by Legal Aid NSW in conjunction with the Centre for Children and Young People at Southern Cross University and researchers

at the University of Sydney, University of Wollongong and Charles Sturt University. The project focused upon improving children's understandings and experiences of family law processes. It collated the best available research evidence into a literature review (Bell, 2015) and undertook a survey of 54 children and young people accessing the services of Legal Aid NSW (Anderson, 2016). The insights gained from this literature review and survey have informed the development of this Good Practice Guide.

The suggestions outlined in this Good Practice Guide are not intended to be all-encompassing but rather to provide a stimulus for ICLs and others to reflect on a) the ways they currently engage with children; and b) how this may impact on children's understanding and experience of family law processes.

THE INITIAL MEETING

Apart from exceptional circumstances (such as systems abuse concerns) it is usually preferable to meet with children face to face (at least initially) including pre-school aged children (especially if they are able to accompany older siblings who you plan to meet with. Key issues to consider closely when setting up the first meeting:

- How will the child likely get to the meeting? How long will it take to travel there? Will one parent have to transport them? Will the parent have to wait outside the office door? These factors may influence what the child discloses and how comfortable they feel.



- Make an assessment after reading the available material, considering the logistics of a meeting place and considering the advantages of the various available options, where it might be best to meet with a child. It may not be appropriate, for example, to meet children at their home or a potential witness' home (e.g. Grandparents) as this may expose the ICL to being called as a witness in the proceedings. Another example of a situation which should be avoided is to meet a child at the home of a parent that it, is alleged, they are strongly aligned with.
- It is usually best to avoid meeting initially in child-minding rooms at the Court, as the toys can be a distraction for children and to distinguish the ICL meeting from the experience of attending on a Family Consultant writing a report for Court.
- If it is possible and appropriate, ask the child/ren where they would feel most comfortable to meet perhaps at school, or another neutral location. Discussing this helps establish the foundation for a respectful engagement. It may be appropriate to have this conversation with the child after the initial meeting at your office (about future meetings) once a rapport has been established.
- Make time to see each child from a family on their own.

BUILDING RAPPORT WITH CHILDREN

Most ICLs want to establish a warm, professional rapport with the children they are working with. Introduce yourself and allow a little time to get to know the child. Children repeatedly state that they feel at ease (and 'not scared') with the people they need to talk to when they are 'kind and friendly'. Consider your body language, tone and word choice (also see section on communication below). The aim is to ensure children feel psychologically comfortable before they voice their story, share any concerns and ask questions. In the ICL role you may consider:

- Arranging the seating, if meeting in your office, by giving the child the choice of where they would like to sit, for instance suggesting to the child they may like to sit behind your desk instead of you.
- Helping the child to navigate the space where you are meeting (for instance, suggest where they might sit if in an unfamiliar environment).
- Advising the child where their parent is (if they brought them there) and reassure them they will return to them afterwards.
- Showing the child where the bathrooms are located.
- Offering them a drink, especially if meeting after school.

AS AN ICL YOU MIGHT WELCOME THE CHILD BY ASKING:

“How was your day?
If you weren't here,
what would you
normally be doing?
What do you normally
like to do after
school?”

USE WORDS THAT FEEL AUTHENTIC TO YOU.

TOP TIPS

- 1.** NOTE DOWN SOME OF THE CHILD'S PERSONAL INTERESTS, SUCH AS THEIR FAVOURITE SPORT, TELEVISION SHOW (OR WHATEVER THEY TALKED ABOUT DURING THE RAPPORT BUILDING)
- 2.** ASK A PRIMARY SCHOOL AGED CHILD TO DRAW YOU A PICTURE TO KEEP.
- 3.** ASK ABOUT THE CHILD'S PERSONAL INTEREST OR SHOW THE CHILD THE PICTURE THEY DREW FOR YOU WHEN YOU NEXT MEET TO SHOW THAT YOU REMEMBER THEM AND TO HELP MAINTAIN RAPPORT.
- 4.** IF THERE IS SUFFICIENT INFORMATION ABOUT THE CHILD IN THE DOCUMENTS PRODUCED OR FILED IN THE PROCEEDINGS THIS CAN PROVE A USEFUL SOURCE OF TOPICS THAT THE ICL CAN DISCUSS WITH THE CHILD TO PERSONALIZE THE MEETING.

In addition to getting to know the child, it is important to help put children at ease early on about the format and purpose of the meeting. In the ICL role you may consider:

- Explaining clearly at the outset what you would like to cover in the meeting.
- If you are taking notes during the meeting explain why you need to do this. You might say: "I see many children and this helps me remember what we talked about".
- Advising the child that they can end the meeting at any time if they have had enough.
- Choosing words that will be easily understood by children.

AS AN ICL YOU MIGHT SAY:

“I will tell you a bit about me and we’ll also talk about why you’re here. Then, if you want to, you can ask me some questions or tell me your views. At the end I’ll check in with you about what we’ve talked about. Does that sound OK with you?”

COMMUNICATING WITH CHILDREN

Beyond rapport building and consideration of word choice, body language and tone, there are three key aspects of communication critical to improving children's experiences:

1. Clear explanations about the legal process;
2. Being heard (not just listened to); and
3. On-going contact.





1. Explaining the Legal Process

Children need a clear, simple, neutral explanation about the legal process their family is involved in and why (e.g. live with, spend time with arrangements etc.). They also need accurate information about what their involvement in this process is or can be. ICLs will likely need to discuss or explain:

1. Why the child is there;
2. Who the ICL is and what the ICL does in the proceedings;
3. That the ICL has been asked to help by the judge and explain what a judge is;
4. Explain the role of the Judge using age appropriate language and analogies (for example how a Principal or teacher resolves conflict between children at school)
5. That the ICL can tell the judge how the child is feeling or what the child is thinking about the proceedings, but the child does not have to say anything. It is important to remember that the key purpose of the meeting is to give the child the opportunity to participate in the proceedings and express their views to the extent to which they wish to do so;
6. When acting as a best interests representative, that the ICL (may) also tell the judge what the ICL thinks is best for the child, even if that is not what the child wants;
7. What (if anything) the ICL is currently considering telling the judge about the child's best interests;
8. The limits of confidentiality – that the ICL can keep some things to him/herself, but not all;
9. If a child has not been through a report process, the ICL may need to explain this process and what the child can expect. If the child has already been through a report process, the ICL may wish to explain the differences between the report writer and the ICL;
10. When and if the child will see the ICL again.

In this way, ICLs can help address the kinds of procedural issues children commonly worry about (but may not always voice), such as:

- Will I have to go to court?
- Will the ICL tell my parents what I have said?
- Who is making the decision?
- Do I have to see anyone else?
- When will all of this be over?
- What happens if parents reach agreement?

2. Children being heard not just listened to

To help children feel listened to and understood, ask them how they feel about their family's situation. When communicating with children it is important to really listen – not just to the words they are saying but also often to what it is they are not saying. A key concern for ICLs is whether children have been scripted or otherwise influenced ('told what to say') by a parent. Children may also strive to give what they think may be the 'right' answer to a professional adult. Open-ended questions can help to address these issues since they don't 'lead' or prescribe the response. They offer the child the opportunity to construct a narrative from their own perspective, and hence may offer some unanticipated insights. Examples of open-ended questions might include:

- Can you tell me about why you're here?
- Can you tell me a bit more about your sister?
- So you said your Nana usually takes you to see your Dad, can you tell me a bit more about that?

In responding to these kinds of questions, children can better assess how their story is received and elaborate further or make changes. At the end of the meeting repeat the story, as you understand it, to check for accuracy. Explain whether and how the information the child has provided will influence any decisions made.

TOP TIP

DESCRIBING A FICTIONAL CHILD CLIENT MIGHT BE A USEFUL DISCUSSION PROMPT FOR SOME CHILDREN. FOR EXAMPLE:

“I saw a girl about your age last week, and we discussed some options for how she could spend time with both her parents”

THIS HELPS TO REMIND CHILDREN THAT YOU REPRESENT OTHERS LIKE THEM ALL THE TIME, AND THEY ARE NOT ALONE IN EXPERIENCING THEIR SITUATION.

3. On-going Contact

ICLs are often concerned about the impact of repetitive interviewing. However, children can sometimes feel disillusioned with only one meeting. A review of the literature reveals that the majority of children want an ongoing relationship with their ICL.

It is important that the child can contact you if they need to do so. Discuss the available options with the child, including who might be able to help them contact you (for example a school teacher) if they are too young to do so by themselves, and make sure to provide details of how best to do this.

Options available in appropriate cases include:

- Phone call (check with the child whether they have their own phone to use to call you or whether they would be calling you from their parent's phone).
- Text message (check with the child whether they have their own phone to use to text you or whether they would be texting you from their parent's phone).
- Via email (check the confidentiality of the email account the child is proposing to use to communicate on).



DISCLOSURE OF CHILDREN'S VIEWS/WISHES IN THE PROCEEDINGS

Confidentiality is a key concern of children, yet at the same time children can feel disillusioned and angered if their views appear not to have been taken into account. ICLs must be very clear with children regarding whether and how children's views will be reported to the judge and, particularly, to their parents. Once you hear from the child, discuss with them what you intend to recommend to the judge and / or what is likely to be included in any expert report.

For older children, where a report has been prepared for the case, after careful consideration and consultation with the report writer, the most ethical approach may be to offer to read to them (or allow them to read) relevant sections of the report.

In some instances it may be preferable to present children's views in generalised terms, such as, "Young children often..." This is something that can also be discussed with children, building trust and transparency.



AS AN ICL YOU
MIGHT APPROACH
CONFIDENTIALITY ISSUES
IN THE FOLLOWING WAY:

AFTER HEARING FROM THE CHILD, CONFIRM WITH THEM WHAT CAN BE SHARED / NOT SHARED,

“OK, you told me that Dad yelling at you really upsets you. Are you ok if I tell the judge about that? It is important for you to know that if I do that dad will get to know.”

TOGETHER YOU MIGHT BE ABLE TO COME UP WITH WAYS TO SHARE THE KEY MESSAGE, WITHOUT DISCLOSING MORE DETAILS THAN THE CHILD WANTS. FOR INSTANCE,

“What if I just ask the judge to make an Order that your parents not yell at you?”

IF YOU THINK THERE IS SOMETHING THE JUDGE REALLY SHOULD KNOW, YOU SHOULD HIGHLIGHT THIS TO THE CHILD E.G.

“I know you don’t want me to share it. I think it is important for the judge to know that happened? How about if I explain it like this...?”

ENSURE THAT YOU ARE VERY CLEAR ABOUT YOUR ROLE SO THAT CHILDREN WILL NOT BE LEFT DISHEARTENED. AS AN ICL YOU MIGHT SAY:

“I’m going to try my best to help you as much as I can, and explain your point of view, but in the end it is the judge that makes the decision.”

THE COURT OUTCOME

Children will learn Court Orders anecdotally from one or both parents or guardians. However, this may not be the best culmination of their participation in the legal system. It is important to meet (or communicate directly in another agreed way) with the child. This need only be a short meeting, but key points to cover include:

- Reading aloud or explaining Court Orders
- Explaining why certain decisions were made
- Explaining how the child's views were taken into account in the proceedings
- Letting the children know that their parents were able to agree
- Relaying any positive comments the judge made about the child, such as 'The judge talked about how things must have been really hard for you over the past two years.'
- Offering the child the opportunity to ask any final questions they may have.



The following documents offer further background information connected to this Good Practice Guide:

ANDERSON, D. (2016). LEGAL AID NSW INDEPENDENT CHILDREN'S ICLS: SURVEY OF CHILDREN AND YOUNG PEOPLE. REPORT OF KEY FINDINGS. LISMORE: SOUTHERN CROSS UNIVERSITY.

BELL, F. (2015). DISCUSSION PAPER: FACILITATING THE PARTICIPATION OF CHILDREN IN FAMILY LAW PROCESSES. LISMORE: SOUTHERN CROSS UNIVERSITY.

ICL GUIDELINES AIDE- MEMOIRE

A. Initial meeting

Plan for a face to face initial meeting and consider:

- location
- time
- your preparation
- whether to consult with the child first
- who should be at the meeting?

B. Physical environment

- Give the child a choice of where they would like to sit;
- Show the child where the bathrooms are located;
- Offer them a drink, especially if meeting after school;

C. Communicating with children

- Introduce yourself;
- Consider your body language, tone and choose words that will be easily understood by the child;
- Note down some of the child's personal interests, perhaps ask primary school aged child to draw you a picture;
- Describe a fictional child to prompt discussion;
- Explain key purpose of meeting;
- Use open ended questions;
- Address things we know children worry about, reassuring them: "Sometimes children will tell us they are worried about these things, so I just want to explain about a few of those worries and if you have any others, you can tell me if you want to?" (see pg 6 of guidelines: common worries);
- At the end of the meeting repeat the story to check for accuracy;

Explaining the legal process

10 fundamental points to deal with when communicating to children:

1. Why the child is there;
2. Who the ICL is and what the ICL does;
3. What a judge is and how the ICL helps the judge;
4. Explain the ICL can tell the judge how the child is feeling or what the child is thinking, but the child does not have to say anything;
5. Explain best interests representation, that the ICL may tell the judge what they think is best for the child, even if that is not what the child wants;
6. What (if anything) the ICL is currently considering telling the judge and parents about the child's best interests;
7. The limits of confidentiality - that the ICL can keep some things to themselves, but not all;
8. Explain family or expert report process;
9. When and if the child will see the ICL again;
10. Discuss options for how the child can contact the ICL;

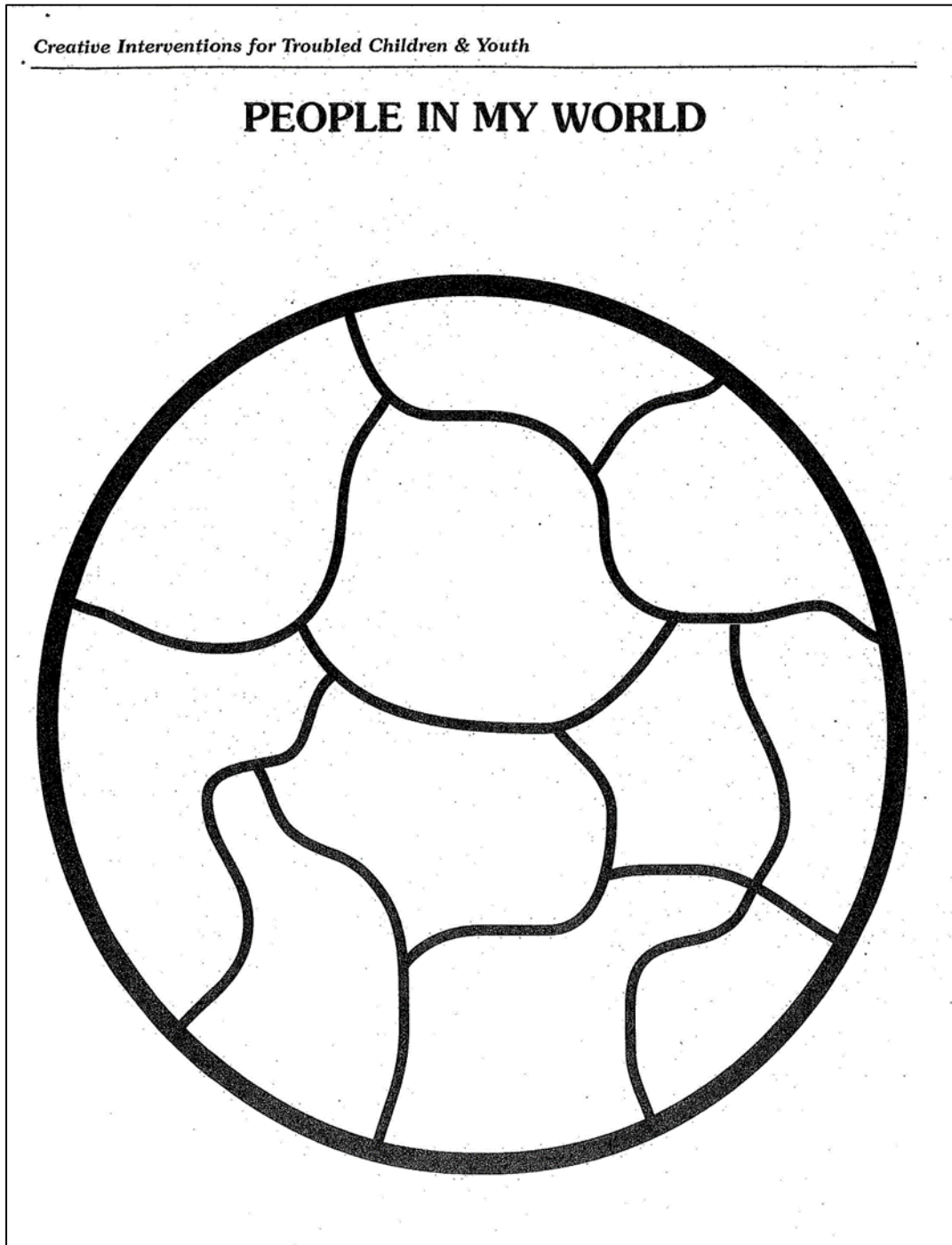
D. Court outcome

- Meet (or communicate) with the child about the Court Orders and offer the child an opportunity to ask any final questions.

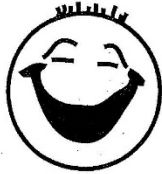


Children's Court Clinic resources.

Resources to help engage children in your meetings.



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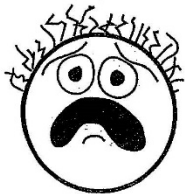
Happy



Mad



Nervous



Scared



Loved



Guilty



Jealous



Sad



Relieved



Basketball

Happy Face Question Cards

<p>What is your favorite meal?</p>	<p>What do you like to do for fun?</p>	<p>When was the happiest moment of your life?</p>
<p>What's something that money can't buy that brings you happiness?</p>	<p>Tell about a time someone in your family did something nice for you.</p>	<p>Tell about a time you and your family did something fun together.</p>
<p>Name one kind or loving thing you do for someone in your family.</p>	<p>Name someone outside your family whom you care about.</p>	<p>What's one of the best things that has happened in your family?</p>
<p>Tell about a time your family was able to solve a problem.</p>	<p>Tell about a family holiday or celebration that you enjoy.</p>	<p>What are you looking forward to doing together as a family?</p>

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What's the best thing that ever happened to you?

What are three things you like about yourself?

What makes you feel upset?

What's the best thing about your family?

What would you like to change about your family?

What is your biggest worry?

Tell about a time you felt you did something wrong or bad.

Tell about a time you cried because you were upset.

What do you think about a lot?

If you could make three wishes, what would they be?



Recommended tools and toys to use in interviewing and connecting with child clients.



LIST OF TOYS AND TOOLS

- Marshmallow People
- Puppets
- Postcards to
- Letters - start with a sentence to complete
- List on a Page: what would be : Good News? Bad News ? OK News?
- Plastic Animals
- Coloring pages or books
- Story Books
- Australian Childhood Foundation Handouts - Activity Alphabet
- Choose a few tools, get comfortable and specialize in them.
- Power poses – Amy Cuddy (look on TED talks)
- Post its to put message into a frame
- Blocks –
- Food (check)
- Lego
- Jigsaw puzzles
- Connect 4
- Snakes and Ladders – a metaphor



Reference list of books

Book title	Reference
Dibs in search of self	Axline, Virginia M. 1986. Dibs in Search of Self. New York, NY: Ballantine Books.
Yarning cards	Yaali Collective
Favorite Therapeutic Activities for Children, Adolescents and Families	Edited by Liana Lowenstein, MSW
Creative Intervention for troubled children and youth	Liana Lowenstein, MSW
A GUIDE TO INTERVIEWING CHILDREN: Essential Skills for Counsellors, Police, Lawyers and Social Workers	J. Clare Wilson, Martine Powell. Allen & Unwin, 2001
Attachment Parenting: Developing Connections and Healing Children	Arthur Becker-Weidman, Deborah Shell Jason Aronson, 2010
Helping Abused and Traumatized Children	Gil, Eliana. (2006). Helping abused and traumatized children: Integrating directive and nondirective approaches. Guilford Press.
Childrens Solution Work	Children's Solution Work. Insoo KimBerg and Therese Steiner. W.W. Norton & Company, New York, London, 2003.
Protecting Children from Domestic Violence: Strategies for Community Intervention	Jaffe, P. G., Baker, L. L., & Cunningham, A. J. (Eds.). (2004). Protecting children from domestic violence: Strategies for community intervention. The Guilford Press.
The Child's World: Third Edition	Horwath, Jan (Editor) ; Platt, Dendy (Editor). / The Child's World : The essential guide to assessing vulnerable children, young people and their families. 3rd ed. London : Jessica Kingsley Publishers, 2019. 695 p.
Talk Less: Listen More – Solutions for childrens difficult behavior	Michael Hawton, 2013. Jane Curry Publishing.
Helping Babies and Children Aged 0-6 to Heal After Family Violence	Dr Wendy Bunston. June 2017.
The Living Legacy of Trauma (Trauma flip chart)	Dr Janina Fisher