



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2023-2024

Mr Mark Parton MLA (Chair), Ms Jo Clay MLA (Deputy Chair),
Mr Michael Pettersson MLA

ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

Asked by [Ms Jo Clay MLA] on [17 August 2023]: [Ms Elena Rosenman] took on notice the following question(s):

[Ref: Hansard Transcript [17 August 2023] [PAGE 110]]

In relation to: Access to independent children's lawyers

MS CLAY: But I will bowl out my question. As well as funding, there is also sort of training and cultural change. Do you think our courts are getting any better at recognising and dealing with coercive control and the behaviours they see, and are they getting any better at ensuring that children have access to a children's lawyer? You know, those measures of, you know, here are the things that we know are happening and that we have funded, is that actually helping once people reach the court system?

Ms Rosenman: Look I think that is a good question. There are some initiatives coming down the line, particularly from the Commonwealth government to improve responses or understandings of coercive control within the judiciary, and certainly what we see is there is absolutely still a need for that. I think your question—sorry, and the other thing I would say obviously that makes a difference in the judiciary's ability to understand and the legal system's ability to understand and respond to coercive control is women having access to legal assistance that can actually lay out what coercive control is and what it looks like. so, that is why I think legal assistance services are such a critical part of building the capacity on that issue.

With your permission I would like to take the question about access to independent children's lawyers on notice because I think there have been some issues that we have observed in the system about that.

MS CLAY: I would love to see that on notice, thank you.

[Ms Elena Rosenman]: The answer to the Member's question is as follows: –

Access to Independent Children's Lawyers in the ACT

The role of an Independent Children's Lawyer (ICL) is to represent and promote the wishes and best interests of a child in family law proceedings, enabling the child (if appropriate) to be involved in decision-making.

An ICL must be independent of the Court and the parties to the proceedings.

ICLs can be appointed by the Court at any stage in the proceedings. In the Centre's experience, ICLs are regularly appointed in matters where domestic and family violence is present. In these matters, an ICL can give children an important voice into decision making about their best interests and can gather additional independent evidence to support the Court to make a more informed decision about care arrangements and other parenting issues. The views of ICLs are often given significant weight by the Court. When this role is executed with adequate time, care and expertise, we have seen better understanding of the experience and impact of domestic and family violence on children and safer decisions about parenting post separation. If the role is not performed with a high degree of attention and care and in accordance with the Federal Circuit and Family Court of Australia *Guidelines for Independent Children's Lawyers*, the consequence for children can be disastrous.

Unfortunately, there is currently a critical shortage of ICLs in the ACT.

The Centre has observed this shortage has led to delay in representation of children and the quality of representation they receive. In matters represented by the Centre there have been instances where the Court has appointed an ICL, but an ICL cannot be secured or where matters have had to be delayed while an ICL is found. These delays can cause significant harm and distress to the women we represent and extend insecurity and uncertainty for children.

ICLs are funded by the Commonwealth Government and administered in the ACT by Legal Aid ACT. Legal Aid ACT employs a mix of private practitioners and in-house lawyers to undertake ICL work. The Centre understands that currently there are only 14 legal practitioners undertaking ICL work for Legal Aid ACT. Three of those work in NSW and predominantly do NSW ICL work. We understand the internal Legal Aid ICLs are required to carry an almost unsustainable file load to try and meet the need in the ACT community.

There is significant difficulty in attracting appropriately experienced practitioners to undertake ICL work in the ACT. There are a number of factors driving this reticence. These include concerns about the nature of the work – that it can be difficult, traumatic and that ICLs have been subject to criticism and blame when harm has come to children following orders made for their care. ICLs can also be subject to threats and safety concerns. The Centre is aware of one highly experienced, thorough, and well regarded ICL in the ACT who recently ceased ICL work fear for her safety and that of her family.

Importantly, ICL work is not adequately remunerated. If Legal Aid ACT were better resourced to support this function, they would be able to both employ a larger number of suitably qualified ICLs and increase the rates of pay for inhouse and external ICLs. This would increase the value and prestige of this work and build the willingness and availability of appropriately skilled practitioners available in the ACT. This would support them to expeditiously fulfill their obligation to the Courts to appoint ICLs, increase children's access to the justice system and ensure the Court is able to better understand the best interests of children.

The Centre also recommends dedicated funding be directed to appointing First Nations practitioners as ICLs when First Nations children are the subject of litigation. These ICLs would be better able to assist the Court with evidence of the cultural considerations that should be included in consideration of the best interests of the children before it. This could include First Nations

children who are the subject of proceedings in the ACT Children's Court, where the ACT Government could have immediate influence on access to justice for these children.

Approved for circulation to the Select Committee on Estimates 2023-2024

Signature:



Date:

17/08/23

By Ms Elena Rosenman