

Assisting self-representing litigants for non-lawyers



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Janet Loughman, Principal Solicitor, Women's Legal Services NSW on 14 April 2015. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

- Why your client might be unrepresented
- Understanding some key issues in family court proceedings
- Some tips on how you can help
- Where to get help for you and or your client

Why your client might be unrepresented

- Legal aid refused
- Grant of legal aid cut off
- Not eligible for legal aid and can't afford private lawyer
- Choosing to self represent
- In 2012-13 the number of applications for final orders in both Federal Circuit Court and the Family Court of Australia by self-representing litigants was 34%

Is your client eligible for Legal Aid?

- Worth looking into if your client is eligible, sometimes advocacy is needed to get the grant
- Your client must meet the relevant **Means Test** - this is an assessment of an applicant's income and assets
 - To find out if your client satisfies the Means Test, they can use Legal Aid's 'Means Test Indicator' at <http://laxextra.legalaid.nsw.gov.au/meanstestindicator/>
- Your client must meet the relevant **Merit Test** - this is an assessment of whether an applicant's case has a reasonable prospect of success
 - Family violence is part of the legal aid guidelines for looking at the merit test and may be an 'exceptional circumstance' or 'special disadvantage' to assist with eligibility
 - To find out if your client's case would have reasonable prospect of success, refer them to a family lawyer. Advice is available at Legal Aid (drop-in or by appointment) and Community Legal Centres (including Women's Legal Services NSW)

Tip 1: Refer for legal advice

- **Early advice** – refer to a lawyer for advice as to whether it really is a good idea to apply for orders; or if your client is responding to an application, advice about what he is seeking and how to respond. Refer your client to Legal Aid or a Community Legal Centre for an initial advice
- **Advice at different stages** - eg, has your client been refused legal aid or had legal aid revoked; or if the Independent Children's Lawyer (ICL) or family report writer is making recommendations contrary to the client's proposed order
- **"Unbundled" legal services** - getting a lawyer to help draft documents can be an effective strategy, however, can be complicated and some lawyers may not be able to help with just a bit of a case
- **Help drafting documents** – eg, a well drafted affidavit is very important. At interim hearings, the affidavit is relied on for the decision without cross examination. A well drafted trial affidavit sets out clearly and concisely the client's history, why they want the orders they are seeking and puts it within the context of the relevant part of the Family Law Act
- **Duty solicitors at court**



Tip 2: Help with domestic violence history

- Help clients write a history of the family violence they have experienced
- Help with Notice of Risk Form and Form 4 - Every case in Federal Circuit Court must have a Notice of Risk completed. In Family Court, a Form 4 must be completed if family violence relevant. It is important to complete the forms carefully
- Context - impact on children
- Context - impact on parent
- Understand trauma

Tip 3: Understand how family law courts can help

- www.familylawcourts.gov.au - contains do it yourself kits, help with forms page and lots of information sheets
- Family Court Info line (National Enquiry Centre): 1300 352 000 – provides information about family law court procedures, about applications, information about a case, referrals to legal advice and other services and copies of divorce certificates and orders
- Duty Registrar cannot help with legal advice but can help with advice about court process and procedure.

Tip 4: Record Keeping

- Help organise and keep important documents eg:
 - Court documents
 - Correspondence
 - Reports (note confidentiality)
 - Copy AVOs
 - 'Diary' of problems at changeover, AVO breaches (separate from a personal diary)

Tip 5: Safety Plan at Court

- If your client has concerns about their safety at court, they should call the info line in advance: 1300 352 000
- Separate entry and exits and times
- Security guard can meet the client in the foyer and accompany them to a locked room
- Attendance at court by phone or audio visual link
- Use of safe rooms
- Court publication - 'Do you have fears for your safety when attending court'

Tip 6: Support at Court

- Go to court with your client especially at the hearing
- Cross examination by SRL
- Separate rooms
- ICL goes first
- Judge can intervene if questions inappropriate

Tip 7: Help your client understand the role of judge

- Have to maintain impartiality while also 'helping' SRLs – balance these
- Obligation to conduct court proceedings to safeguard parties against family violence



- Can use powers to limit or not allow cross-examination
- Parties can never contact judge directly

Tip 8: Help your client understand the role of Independent Children's Lawyer (ICL)

- The ICL is a lawyer appointed by the Family Court or Federal Circuit Court to represent the child's interests in parenting order cases and help the court reach a decision which is in the best interest of the child
- An ICL can assist with some, but not all, evidence gathering for the SRL– they cannot give legal or personal advice but should be honest and transparent in dealings with the SRL
- An ICL can:
 - Makes sure court gets all the information it needs
 - Subpoenas material
 - Interviews the child
 - Recommends reports be obtained
 - Explains orders made to child
 - Make recommendations to the judge

Tip 9: Help understand the role of the family or report writer

- Appointed in difficult cases
- Family Court counsellor, child psychiatrist etc, depending on the case
- Interviews people concerned
- The report will be evidence in the case
- Problems if comments or recommendations made are not supportive of client

Tip 10: Know resources and referrals for your client

- Family Court
www.familylawcourts.gov.au
Family Law Courts Info Line: 1300 352 000
- Legal Aid
www.legalaid.nsw.gov.au/publications
Legal Aid Early Intervention Unit: 1800 551 589
www.legalaid.vic.gov.au - How to Run Your Family Law Case
- Women's Legal Services NSW
www.womenslegal.asn.au
Women's Legal Contact Line: 8745 6988
Related webinars/factsheets (eg, on ICLs and Legal Aid in Family Law Matters): www.asklois.org.au