

The independent representation of children

Sometimes in a family law case about the care of children, the Court will appoint an Independent Children's Lawyer. The Independent Children's Lawyer is a lawyer whose role it is to represent the interests of the children. In the Children's Court, a child's lawyer will speak to the child and act in accordance with the wishes of the child. That is not how an Independent Children's Lawyer represents the children's interests in a family law matter. In a family law matter, the Independent Children's Lawyer will:

- Ensure the Court has all the evidence the Court will require to decide the case;
- Facilitate negotiations between the parties;
- Arrange for experts such as psychologists to speak with the child to ascertain the child's view;
- Analyse the evidence and make submissions about what will promote the child's best interests.

Unless there is a very good reason, it is expected that the Independent Children's Lawyer will meet with the children they represent. The Independent Children's Lawyer will try to explain the Court process to the child, and answer any questions the child may have. They may also ask them questions about school, their family, friends and their everyday life. It is up to the Independent Children's Lawyer to decide what they discuss with the child, and the Independent Children's Lawyer cannot be forced to divulge their discussion with the children to the Court.

Often people ask about how their child's voice will be brought to the Court's attention. The Independent Children's Lawyer is responsible for ensuring that the child's perspective is communicated to the Court. A common way for this to be done is by the child speaking with an appropriately qualified professional such as a psychologist or social worker about their wishes and their perspective of the family. That professional will then report to the Court the child's point of view. The Independent Children's Lawyer does not have to adopt the child's position; sometimes what the child wants is not necessarily the best for them, but the Court is assisted by knowing what the child says and thinks.

Independent Children's Lawyers are generally funded by Victoria Legal Aid. If an Independent Children's Lawyer is appointed in your case, you may be asked to make a contribution to their professional fees. There are about 20 Independent Children's Lawyers in Victoria. Applications are considered by a panel comprising of representatives of the family law Courts, Victoria Legal Aid, and the professional organisations of barristers and solicitors, and reviewed, generally every 2 years.

Maria Kourtis
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Expert advice. Practical solutions. Personal service.

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