

# WHAT IS AN INDEPENDENT CHILDREN'S LAWYER?

AN INDEPENDENT CHILDREN'S  
LAWYER IS A LAWYER  
WHO WILL REPRESENT  
YOUR CHILD'S BEST  
INTERESTS IN THE CURRENT  
FAMILY LAW COURT CASE.

independent  
children's  
lawyers



## WHY WILL MY CHILD HAVE A LAWYER TO REPRESENT THEM?

Because your child won't attend court, an Independent Children's Lawyer will tell the court about your child's welfare and views during the case.

## WHAT DOES THE INDEPENDENT CHILDREN'S LAWYER DO?

The Independent Children's Lawyer will present information to the court about your child's welfare and views.

Each child's case is different but generally before making a submission to the court, the Independent Children's Lawyer will:

1. Read all the affidavits.<sup>1</sup>
2. Examine any subpoenaed<sup>2</sup> documents.
3. Talk with your child (depending on their age and the circumstances of the case).
4. Talk to the family consultant and other relevant people including teachers, doctors, psychologists or counsellors to help inform their recommendation to the court.
5. Listen carefully and consider the evidence<sup>3</sup> if a case goes to hearing. Not all information is evidence; the Independent Children's Lawyer can only rely on evidence.

The Independent Children's Lawyer then applies

family law cases and law to all this information. While each case is different, the lawyer may look at past similar cases to decide what submission to make to the court. It is important to remember that the Independent Children's Lawyer will follow the law.

With the evidence and this information, the Independent Children's Lawyer will form an independent view of what is in the best interests of the child to present to the court. The court will also be made aware of any views expressed by your child.

## HOW WILL THIS INFORMATION BE PRESENTED TO THE COURT?

At the court hearing, the Independent Children's Lawyer conducts the case for the child in the usual way, including:

- cross examination
- presenting evidence
- making submissions.

## WHEN DOES THE INDEPENDENT CHILDREN'S LAWYER MAKE A RECOMMENDATION TO THE COURT?

In some cases an Independent Children's Lawyer will know early in a matter what orders they seek

<sup>1</sup> Affidavit - a written statement confirmed by oath or affirmation, for use as evidence in court.

<sup>2</sup> Subpoena - a document that compels a person to give evidence and or to produce documents in their possession to the court.

<sup>3</sup> Evidence – information in some form that proves or disproves an allegation.



on behalf of the child. If the Independent Children's Lawyer does know, then they will tell the parents' lawyers or you if you are not represented by a lawyer. This can help negotiations. In other cases, the child's best interests may be unclear and the Independent Children's Lawyer may be unable to make a recommendation until much later or sometimes not at all.

## CAN THE INDEPENDENT CHILDREN'S LAWYER CHANGE THEIR RECOMMENDATION?

Yes. An Independent Children's Lawyer's recommendation will be based on the evidence available at the time. If new evidence becomes available before the court has made final orders, the Independent Children's Lawyer will need to consider the impact of this on any recommendations.

## DOES THE COURT ALWAYS MAKE THE ORDERS THE INDEPENDENT CHILDREN'S LAWYER ASKS FOR?

The judge listens carefully to what everybody in the case says and makes his or her decision based on all evidence provided.

## WHAT ELSE DOES AN INDEPENDENT CHILDREN'S LAWYER DO?

- Encourages and takes part in any negotiations to settle the matter in your child's interests.
- Seeks that proper arrangements are made to protect the child's interests until the case is finalised.

## WHAT IS A FAMILY REPORT/SINGLE EXPERT REPORT?

In difficult cases the court will order a written report about a child, the parents and anybody else involved in the matter. An application for this order will often be made by the Independent Children's Lawyer. This report is prepared by a family consultant, social worker, child and family psychologist or psychiatrist, depending on the case. The information is obtained by interviewing the people concerned in the matter. The report will be released by the court and given to your lawyer (or you if you are representing yourself) and the Independent Children's Lawyer. It may assist in discussions leading to an agreement to settle the case. If the case is not settled, the report will form part of evidence considered by the judge.

## WHAT HAPPENS WHEN THE CASE IS OVER?

- The Independent Children's Lawyer explains the court orders to your child (if they are old enough to understand).
- The Independent Children's Lawyer may also be involved in follow up arrangements in relation to any court orders.

## IMPORTANT THINGS TO REMEMBER

- Make sure your child attends all appointments arranged by the Independent Children's Lawyer.
- To ensure the Independent Children's Lawyer stays independent in the case he or she will be limited in what they are able to discuss with you, even if you are not represented by a lawyer. If you are legally represented, any matters you wish to raise should be raised with your own lawyer who will contact the Independent Children's Lawyer.

- Please don't question your child about his or her sessions with the Independent Children's Lawyer. They should remain private and between your child and the lawyer.
- Please allow your child to freely contact the Independent Children's Lawyer.

## WHAT IF YOU ARE UNHAPPY WITH YOUR LAWYER?

If you have a problem, it is always best to talk about it with that person. But if you need more help, go to your local State or Territory Legal Aid website.

You can find more information and videos about the Independent Children's Lawyers at <http://www.bestforkids.org.au/kids>



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