

The role of an independent children's lawyer



This fact sheet will help you to understand:

- what an independent children's lawyer does
- how family reports work
- what you can do to help your child
- where to get help.

What is an independent children's lawyer?

Sometimes in family law cases the court will ask Victoria Legal Aid to appoint an independent children's lawyer. This is what used to be called the child representative. This lawyer helps the court decide what arrangements are in the best interests of the child or children. The court can make an order allowing the lawyer to find out the child's views.

What does the independent children's lawyer do?

The independent children's lawyer must:

- form their own view about a child's welfare and best interests, based on evidence in the case
- act in a way that they believe is in the child's best interests
- recommend the court take action, if the lawyer believes it is right to do so
- be completely independent (this is called acting 'impartially')
- make sure that the court knows about any views that the child has expressed
- make sure the court is aware of important issues, to do with the child's best interests, in any reports or documents to be used in the hearing
- do their best to lessen any trauma to the child caused by the family law case
- do their best to help everyone involved in the case (the 'parties') make a final agreement, where the lawyer believes this is best for the child.

The lawyer usually does these things by:

- collecting information about the case and the child. This can include meeting the child and talking with people like teachers, doctors, psychologists or counsellors
- encouraging the parties to put the child first, and to make an agreement that will meet the child's needs, where possible
- asking the court to order a family report, where needed (see 'What is a family report?')
- presenting relevant material to the court, including calling witnesses to give evidence
- questioning witnesses, including parents, at the final hearing
- advising the court on how the law relates to the dispute in the family
- recommending how court orders could be worded to make sure the child's interests are protected.

Does the independent children's lawyer have to meet the child?

If the child is mature enough and old enough, the lawyer will usually meet them, unless there are special circumstances. The lawyer will explain what they do and how court works and see if the child wishes to express a view about the case. A child does not have to express a view. Also, the lawyer does not have to tell the court any information that the child may give them, unless they believe this is in the child's best interests.

Children do not normally give evidence or go to court.

Does the independent children's lawyer have to do what the child asks?

No, but the lawyer will do this where it is in the child's best interests.

Does the judge do what the independent children's lawyer asks?

The lawyer provides an independent view and is listened to by the judge. However, many people give information to the court. The judge considers all the facts and views given by all the parties and the child.

Who finds out what the independent children's lawyer recommends?

If the lawyer makes a recommendation to the court early in the case they will tell the parties' lawyers or the parties directly, if they do not have a lawyer. This is so everyone can consider this recommendation and try and sort out the dispute.

The independent children's lawyer may decide not to make recommendations until after they have heard all the witnesses give evidence in court. If new information becomes available or if family circumstances change, the independent children's lawyer may change their recommendations. Once final orders are made the independent children's lawyer is no longer involved.

What is a family report?

A family report is a written report about the family for use in court. Family report writers generally have qualifications in social work or psychology. They speak to family members and other significant people.



A family report includes recommendations about arrangements for the children. It gives the judge an expert's opinion about the issues affecting the child.

Any party involved in a case can ask for a court order for a family report to be prepared. Either the court, or the independent children's lawyer and the parties can arrange the report.

If the court organises the family report it will arrange for a court family consultant or other court-approved professional to talk to the family. Families do not have to pay for these reports but there can be long delays. The court does not generally order a family report for interim applications.

If the parties (including the independent children's lawyer) organise the family report, the family will talk to a qualified private psychologist, social worker or other expert. These reports can be arranged more quickly, and early in the case, but parties must each pay for their share of cost of the report. If you are legally aided, you can ask that Victoria Legal Aid pays your share. However, the court must first make an order that you need a report.

Who pays the independent children's lawyer?

Usually Victoria Legal Aid pays the costs of the independent children's lawyer. However, Victoria Legal Aid generally asks each party to pay a contribution to this lawyer's legal costs.

A party's capacity to pay is taken into account. For instance, a party whose case is funded by Victoria Legal Aid will not be required to make a contribution. If you have a question about what you are asked to pay, contact the grants officer named in the grants letter from Victoria Legal Aid.

The independent children's lawyer can ask the court for their costs to be paid by the parties at the end of the case.

What can I do to help?

- Court cases can be very stressful for children. Support the child in any way you can and get information on how best to help them through the experience.
- Do not discuss details of the court case in front of the child.
- If the independent children's lawyer asks to see the child, parents should make sure this happens. Do not coach a child before any meetings with the independent children's lawyer or ask them questions about the meeting before or afterwards.
- Children should be free to contact the independent children's lawyer at any time in private.

- You can meet the independent children's lawyer, but if you have a lawyer the independent children's lawyer will not be able to talk to you about the case. Talk to your lawyer about any issues, and your lawyer can then talk to the independent children's lawyer.
- Teachers, counsellors and other professionals working with the child should contact the independent children's lawyer if they want to talk about any issues.

For more information about the role of the independent children's lawyer, ask your lawyer or go to www.familylawcourts.gov.au

Victoria Legal Aid Legal Information Service

Open Monday to Friday, 8.45 am to 5.15 pm

Telephone 9269 0120 or 1800 677 402 Country callers

Contact us for free information about the law and how we can help you. You can speak to someone in English or ask for an interpreter.

Victoria Legal Aid regional offices

Open Monday to Friday, 8.45 am to 5.15 pm

Bairnsdale	5153 1975
Ballarat	5329 6222
Bendigo	5448 2333
	Toll free 1800 254 500
Broadmeadows	9302 8777
Dandenong	9767 7111
Frankston	9784 5222
Geelong	5226 5666
	Toll free 1800 196 200
Horsham	5381 6000
	Toll free 1800 177 638
Morwell	5134 8055
Preston	9416 6444
Ringwood	9259 5444
Shepparton	5823 6200
Sunshine	9300 5333
Warrnambool	5559 7200

All Victoria Legal Aid offices are accessible to people with a disability.

The information in this pamphlet was current at the time of printing, but may change without notice. Always check for changes with a Victoria Legal Aid office.