# The role of an independent children’s lawyer

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Contents

[About this fact sheet 1](#_Toc100216747)

[What is an independent children’s lawyer? 1](#_Toc100216748)

[What does the independent children’s lawyer do? 1](#_Toc100216749)

[Does the independent children’s lawyer have to meet the child? 2](#_Toc100216750)

[Does the independent children’s lawyer have to do what the child asks? 2](#_Toc100216751)

[Does the judge do what the independent children’s lawyer asks? 2](#_Toc100216752)

[Who finds out what the independent children’s lawyer recommends? 2](#_Toc100216753)

[What is a family report? 3](#_Toc100216754)

[Who pays the independent children’s lawyer? 3](#_Toc100216755)

[What can I do to help? 3](#_Toc100216756)

[Communications with the independent children’s lawyer 3](#_Toc100216757)

[More help and information 4](#_Toc100216758)

## About this fact sheet

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:

* decide what they think 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
* ask the court to 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 thoughts or feelings that the child has spoken about, to do with the case
* make sure the court is aware of important issues, to do with the child’s best interests, in any reports or documents, including any reports to the Department of Families Fairness and Housing Services that involve other children in the household
* 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?’)
* giving information to the court, including asking witnesses to give evidence
* asking witnesses questions, including parents, at the final hearing
* telling the court on how the law applies to the disagreement in the family
* recommending how court orders could be written 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. They will ask if the child wishes to let the court know what the child thinks. A child does not have to do this. 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 the lawyer thinks it is in the child’s best interests.

## Does the judge do what the independent children’s lawyer asks?

The lawyer tells the court what they think based on all the evidence. They are 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 or children.

## 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 think about what the lawyer has said to the court, and try to come to agreement with each other about the case.

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 things in the family 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 usually 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 ask a court family consultant or other professional to talk to the family. Families do not have to pay for these reports, but they can take a long time. The court does not generally order a family report for short term (‘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 have received a grant of legal aid, 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 part of 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 does not have to pay anything. If you have a question about what you are asked to pay, call the telephone number 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 talk about 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.

## Communications with the independent children’s lawyer

* If you have a lawyer, the Independent Children’s Lawyer will not be able to talk to you about your case. Talk to your lawyer about any issues, and your lawyer can then talk to the Independent Children’s Lawyer. If you are representing yourself, you may communicate directly with the Independent Children’s Lawyer
* The Independent Children’s Lawyer must at all times be independent and at arm’s length from any party to the proceedings. The Independent Children’s lawyer cannot keep confidential any information received from either party to the proceedings or anyone associated with the parties. The Independent Children’s Lawyer may disclose any information provided to them to any of the other parties and/or to the court.
* Children should be free to contact the independent children’s lawyer at any time in private.
* Teachers, counsellors and other professionals working with the child can 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 the [Federal Circuit and Family Court of Australia website](https://www.fcfcoa.gov.au/fl/children/icl).

## More help and information

### Victoria Legal Aid

**Legal Help**

For free information about the law and how we can help you.

Tel: 1300 792 387

Visit the [Victoria Legal Aid website](http://www.legalaid.vic.gov.au)

### Do you need help calling us?

Translating and Interpreting Service

Tel: 131 450

National Relay Service

TTY: 133 677

Speak and listen: 1300 555 727

Visit the [National Relay Service website](http://www.relayservice.gov.au)

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

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