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LawTalk Blog



What is an independent childrens lawyer?

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When a matter is listed in the Federal Circuit Court of Australia or the Family Court of Australia, a Judge may make Orders appointing an independent lawyer to represent the children in the matter. This lawyer is referred to as an Independent Children's Lawyer (known as an "**ICL**").

What is important to understand is that the Independent Children's Lawyer is impartial and they do not take the side of any of the parties in the proceedings but simply act in the child's best interests.

The role of the independent childrens lawyer

The role of the Independent Children's Lawyer is to find out the child's views and make sure those views are put before the Court. The ICL may do this by speaking to the child directly and informing the child of the role the ICL has in court proceedings. This meeting will normally only take place when the child is of school age.

The child may also contact the ICL directly to express their views.

The role of the ICL is also to form their own view with all the relevant information before them, which will also include the child's view, and act in the children's best interest at all times.

Sometimes the ICL may form a view in Court that is not the same as the child's wishes; however, they will be acting in the child's best interest and taking into account all of the other relevant information before them and the Court.

The ICL will always act in an impartial manner towards both parties and will voice their opinion in respect to the living arrangements for the children. However, this does not mean that they are on the other party's "side". Furthermore, they may also recommend certain Orders be put in place to protect the child. There are many Orders that the ICL could seek and recommend and they could include Orders to monitor or restrict a party's behaviour in some way to ensure the safety of the child. An example of this would be to seek an Order that a party or both parties undergo a random drug test.

Like the parties in the matter, the Independent Children's Lawyer also may subpoena material from the Police, Families SA or any other relevant person or organisation to bring that evidence before the Court.

The Independent Children's Lawyer is not free. They will issue and account for half of their fees to each of the parents. This is calculated on the Legal Aid scale and in the first instance is usually about \$1,200.00 per party (current as at publication of this article). This can increase depending on the complexity of the matter and how long it proceeds. A party can apply to have these legal fees waived if they are in financial hardship or in receipt of Legal Aid for the matter. Otherwise, you will be required to cover the legal costs for the ICL.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.