

# Legalquotes News

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## INDEPENDENT CHILDREN'S LAWYERS

Many parents are able to agree about the parenting arrangements for their children after separation without needing to commence Court proceedings. For some families however this is not the case and the Court is required to determine the parenting arrangements that are in their children's best interests.

In more difficult cases the Court may order that the child or children be independently represented by a solicitor. This person will be a suitably qualified and experienced family law practitioner and they are known as an Independent Children's Lawyer.

The circumstances in which an Independent Children's Lawyer may be appointed in a matter was considered by the Full Court of the Family Court in the case of *Re K* (1994). In that case the Court held that the general principle is that the appointment of an Independent Children's Lawyer should be made when the Court considers the child's interests require independent representation. The Court also suggested that the appointment of an Independent Children's Lawyer should normally be made in the following circumstances:

- There are allegations of child

abuse, whether physical, sexual or psychological

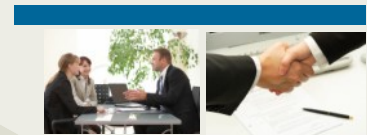
- There is an apparently intractable conflict between the parents
- The child is not speaking to one or both parents or otherwise appears alienated from one or both parents
- There are cultural or religious differences affecting the child
- The sexual preferences of either or both parents, or another person who is significant in the child's life, are likely to affect the child's welfare.
- Where one or both parents, or another person who is significant in the child's life, is behaving or has behaved in a way that is anti-social and is likely to affect the child's welfare.
- Where one or both parents, or another person who is significant in the child's life, or the child has a significant medical, psychiatric, or psychological illness or personality disorder.
- Where neither parent appears to be a person suitable to care for the child.
- The child is mature and is expressing strong views which, if implemented, would change a long standing arrangement about where the child lives or would result in the child stopping all contact with one parent.
- Where one party wishes to move with the child to a location that would greatly restrict the time the child could or would spend with the other party.
- There is a proposal to separate siblings.
- Where no party is legally represented.
- Where the application involves the



**Rankin Nathan Lawyers**  
**1300 727 813**

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Court's welfare jurisdiction, relating in particular to the medical treatment of the child, where the child's interests are not adequately represented by one of the parties.

The existence of one or more of the above does not automatically mean an Independent Children's Lawyer will be appointed and the Court must still be satisfied that the child's interests require the appointment. Additionally, the above list is not exhaustive and there may be other circumstances in which an Independent Children's Lawyer will be appointed in a case.

If an Independent Children's Lawyer is appointed their role is described in *s68LA Family Law Act 1975* and in the publication *Guidelines for Independent Children's Lawyers*, which has been endorsed by the Family Court of Australia and the Federal Magistrates Court of Australia. The role of the Independent Children's Lawyer includes:

- Representing the child's interests
- Ensuring all relevant information is provided to the Court about the child's welfare.
- Talking to the child and informing the Court about any views expressed by the child.
- Considering all of the evidence in the case and making submissions to the Court about the arrangements they think are in the child's best interests
- Endeavouring to minimize any trauma to the child
- Encouraging and facilitating negotiations between the parties to try and resolve the case in a way that is consistent with the child's best interests.

Whilst an Independent Children's Lawyer is required to ascertain any views expressed by the child they are not the child's legal representative and are not bound to act in accordance with a child's views if



those views are inconsistent with the child's best interests.

An Independent Children's Lawyer will also often be responsible for considering and arranging any independent expert evidence that may assist the parties and the Court to consider what arrangements are in the child's best interests. Such evidence may include a report prepared by a Family Consultant, psychologist or psychiatrist which, amongst other things, may include recommendations about the future arrangements for the child.

The appointment by the Court of an Independent Children's Lawyer can be done on the application of one or more of the parties or of the Court's own volition. Once appointed, the Independent Children's Lawyer can play a key part in helping to identify the arrangements that are in the best interests of the child. It is important therefore that parties obtain advice from their own legal representatives about the role the Independent Children's Lawyer will play in their case and what may be expected of them to ensure the Independent Children's Lawyer can fulfil their obligations.