

The Role of an Independent Children's Lawyer in Child Inclusive Mediation in Complex Parenting Disputes

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Abstract : In Australia, an independent children's lawyer is appointed to represent a child in parenting disputes in the Federal Circuit and Family Court of Australia, where there are complex issues such as child protection, family violence, high conflict, relocation, and parental alienation. The appointment of an Independent Children's Lawyer is to give effect in the family law proceedings of the United Nations Convention on the Rights of the Child, in particular Article 3.1, 12.1, and 12.2. There is a strong focus on alternative dispute resolution in the Australian Family Law jurisdiction in matters that are before the Court that has formed part of the case management pathways. An Independent Children's Lawyer's role is even more crucial in assisting families in resolving the most complex parenting disputes through mediation as they are required to act impartial and be independent of the Court and the parties. A child has the right to establish a professional relationship with the Independent Children's Lawyer. This relationship is usually established over a period of time, and the child is afforded the opportunity to talk about their views and wishes and participate in decisions that affect them. In considering the views and wishes of the child, the Independent Children's lawyer takes into account the different emotional, cognitive, and intellectual developmental levels, family structures, family dynamics, sibling relationships, religious and cultural backgrounds; and that children are vulnerable to external pressures when caught in disputes involving their parents. With the increase of child-inclusive mediations being used to resolve family disputes in the best interests of a child, an Independent Children's Lawyer can have a critical role in this process with the specialised skills that they have working with children in the family law jurisdiction. This paper will discuss how inclusive child mediation with the assistance of an Independent Children's Lawyer can assist in the resolution of some of the most complex parenting disputes by examining through case studies: the effectiveness and challenges of such an approach; strategies to work with child clients, adolescents, and sibling groups; ways to provide feedback regarding a child's views and wishes and express a child's understanding, actual experiences and perspective to parties in a mediation and whether it is appropriate to do so; strategies and examples to assist in developing parenting plans or orders that are in the best interest of a child that is workable and achievable; how to deal with cases that involve serious child protection and family violence and strategies to ensure that child safety is paramount; the importance of feedback to the child client. Finally this paper will explore some of the challenges for Independent Children's Lawyers in relation to child-inclusive mediations where matters do not resolve.

Keywords : child inclusive mediation, independent children's lawyer, family violence, child protection

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