

# Grandparents – family law (grandchildren)



This information sheet will help you if you are a grandparent who is providing care for your grandchildren, or you are finding it difficult to make arrangements to spend time with or communicate with your grandchildren.

Although this information sheet uses the term ‘grandparents’, the information may also be useful to other relatives or kinship carers, such as aunts, uncles or other family members who are caring for or raising children.

## Are grandparents recognised in family law?

Family law recognises the importance of children having a relationship with their grandparents. In fact, grandparents are specifically mentioned in family law as being able to apply to the Family Court for orders in relation to their grandchildren. However it is important to be aware that this does not mean that grandparents (or indeed parents) have an automatic right to spend time and communicate with grandchildren.

Family law makes it clear that the **best interests of the child** is the most important factor when it comes to decisions about parenting. Best interests has a particular meaning in family law. For more information, see the Legal Aid WA information sheet “**Best interests of the child**”.

Grandparents can apply to the Family Court for orders that their grandchildren live with, spend time with or communicate with them. Grandparents can do this whether the parents of the children are together or separated.

## How are arrangements for children made when their parents separate?

Many separating parents can agree about arrangements for children without the need to go to court. If parents agree, they can make a written agreement called a parenting plan (which is not enforceable in the Family Court) or they can seek consent orders from the Family Court (enforceable in the court).

If the parents cannot agree, even with the assistance of family dispute resolution (see further below), then they can ask the court to make a decision for them.

## What can I do if I can't see my grandchild?

Sometimes grandparents are prevented from having a relationship with their grandchildren. This can happen where the relationship with their own child has broken down (but the parents' relationship remains intact), or where the parents have separated and one parent refuses to let them see their grandchildren.

Grandparents do not have an automatic right to have a relationship with a grandchild. However, grandparents, and anyone who has an ongoing relationship with the child, or any other person who can show that they are concerned with the care, welfare or development of a child (including grandparents) can apply to the court for parenting orders.

A parenting order can allow you to spend time with or communicate with the child. It will be up to the court to decide what will happen, based on what is in the child's best interests. If you are being prevented from seeing or speaking to your grandchild you can take the following steps to try to change the situation:

### STEP 1 – GET LEGAL ADVICE

This information sheet is limited to general information. You should get legal advice to help

you understand the options in your particular situation.

You may be able to get free (or nominal-fee) legal advice from Legal Aid WA or free or low-cost legal advice from a community legal centre. Another option is to engage a private solicitor.

Legal Aid WA also provides a duty lawyer service at the Family Court of Western Australia in Perth. The duty lawyer may be able to assist with urgent family law matters. Urgent matters include where there is a risk to the safety or welfare of a child or where one party intends to take a child overseas without permission.

The Legal Aid WA Infoline also provides free telephone legal information and referrals to other services that may be able to help you. They can also let you know if you are eligible for other Legal Aid WA services. Call **1300 650 579**.

## STEP 2 – DISPUTE RESOLUTION

You can try speaking directly to your grandchild's parent/s, as long as it is safe to do so. If they will not speak with you or you cannot come to an agreement this way, you can try a process such as Family Dispute Resolution (FDR).

FDR involves a qualified and independent third party assisting the people involved to discuss the issues, explore potential solutions and hopefully come to an agreement.

If you come up with an agreement about arrangements for your grandchild, it can be a good idea to put the agreement in writing, either through a parenting plan (not enforceable through the Family Court) or by seeking consent orders from the court (enforceable in the Family Court). For more information about parenting plans and consent orders see the Legal Aid information sheet “**Making arrangements for your child**”.

If you would like to try FDR, Family Relationship Centres (FRCs) are a good place to start. They can provide free or low cost family dispute resolution or refer you to other family dispute resolution services. You can find out more about FRCs at [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au) or by calling **1800 050 321**.

Legal Aid WA is an accredited family dispute resolution provider through its Dispute Resolution (DR) program. This program is different from most other dispute resolution services because you can

attend with a lawyer employed by Legal Aid WA or a private lawyer paid for by Legal Aid WA. The lawyer will give you advice and support at the DR conference and help you explore options for settlement with the parents, who will also have legal assistance. To find out more and see whether you might be eligible for the program, contact the Legal Aid WA Infoline on **1300 650 579**.

## STEP 3 – GOING TO COURT

If you are not able to reach agreement about spending time with your grandchild through FDR you can apply to the Family Court for an order that your grandchild spend time with, live with or communicate with you.

You can only lodge an application with the court if you have a certificate from an accredited family dispute resolution practitioner (such as an FRC or Legal Aid WA) to show that dispute resolution was attempted or was deemed not to be suitable in your situation.

There are limited exceptions to the requirement for compulsory FDR in situations where there has been or is a risk of child abuse or family violence, if the matter is urgent or where someone is unable to participate – for example, because of a disability.

You should get legal advice before applying to the court, including advice about how strong your case is, what forms and documents you might need to support your case, the orders you should ask for, the costs of taking legal action, and whether or not you fall into one of the exceptions to FDR.

If the case goes to court, the court will decide what arrangements are in the best interests of the child and make orders that are binding on all the parties to the case. The court can also require the parties to continue to try to resolve the dispute themselves. For more information about the Family Court of WA and its processes and procedures, go to [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au).

For most people, going to court is a last resort. Court can be very stressful, time consuming and expensive, and a particular outcome can never be guaranteed. However, in some circumstances it might be necessary to go to court. Legal advice can help you decide if going to court is the best option in your situation.

### **I already care for my grandchild – do I need to formalise this arrangement?**

There is no legal requirement to put arrangements for children into writing or to get parenting orders. In some cases you will be able to make arrangements with the child's parents without the need to formalise them. You might find that having a parenting plan or informal arrangements which are not written down work well enough for your family.

Parenting orders, a parenting plan or the permission of parents, may be required in circumstances where your grandchild requires medical treatment, to travel overseas, or in circumstances where you want to ensure that the parents cannot remove the child from school or from your care. You should get legal advice as to whether you might need parenting orders in your circumstances.

It is important to keep in mind that parenting orders are enforceable in the court – that is – you can take action in the Family Court if an order is breached or broken. Parenting plans cannot be enforced in the same way through the court. It is also important to get legal advice about the effect of parenting plans entered into after Family Court orders have been made.

### **I have been caring for my grandchild and the parents want them back.**

If you have been caring for your grandchild without court orders and you don't think it would be in the best interests of the child to go back to living with their parents, you may need to think about applying to the Family Court to get orders that the child live with you (parenting orders).

See Steps 1 to 3 under **“What can I do if I can't see my grandchild?”** for the process you will need to follow.

If there are parenting orders in place that the child live with you and the parents wish to have the child live with them, they will need to follow Steps 1 to 3 above to try to have the parenting orders changed. The parents will need to show the court that circumstances have significantly changed since the parenting orders were originally made, and that it is in the child's best interests to live with them.

### **I am concerned about my grandchild's safety.**

For more information about what to do if you are concerned for your grandchild's wellbeing, see the Legal Aid WA information sheet **“Grandparents – care and protection (grandchildren)”**.

*In life threatening emergencies, call the police on 000.*

**If you have any further questions, ask your lawyer or call the Legal Aid WA's Infoline on 1300 650 579 for legal information and referrals.**

### **Where can I get more information?**

- If you are a grandparent caring for a child in WA and want information on support available to you from **Centrelink**, contact the **Grandparent Adviser** on **1800 245 965** (free call from a landline).
- The **Department of Local Government and Communities (DLGC)** **‘Grandfamilies: a Resource Guide for Western Australian Grandparents Raising Grandchildren’** has information on a range of topics and is available to download at [www.communities.wa.gov.au](http://www.communities.wa.gov.au). A Grandparenting Parenting WA Guide is also available.

## Legal Aid WA Offices

**TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)**  
Infoline open Monday to Friday 9.00 am to 4.00 pm  
(Australian Western Standard Time) except public holidays

**Translating and Interpreting Service 131 450**  
**National Relay Service (for hearing and speech impaired) 133 677**

[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

### **Perth Office**

32 St Georges Terrace, Perth, WA 6000  
1300 650 579  
(08) 9261 6222

### **Southwest Regional Office**

7<sup>th</sup> Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230  
(08) 9721 2277

### **Great Southern Regional Office**

Unit 3, 43-47 Duke Street, Albany, WA 6330  
(08) 9892 9700

### **Goldfields Regional Office**

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430  
(08) 9025 1300

### **Midwest & Gascoyne Regional Office**

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530  
(08) 9921 0200

### **Pilbara Regional Office**

28 Throssell Road, South Hedland, WA 6722  
(08) 9172 3733

### **West Kimberley Regional Office**

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725  
(08) 9195 5888

### **East Kimberley Regional Office**

98 Konkerberry Drive, Kununurra, WA 6743  
(08) 9166 5800

### **Indian Ocean Office**

Administration Building, 20 Jalan Pantai  
Christmas Island, Indian Ocean, WA 6798  
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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