

Grandparents and Care of Grandchildren

This Factsheet provides information for grandparents:

- Wanting to know how they can see their grandchildren;
- Caring for grandchildren;
- Concerned about the safety of their grandchildren.

The information in this Factsheet also applies to other carers such as aunts and uncles or other family members who are caring for children.

Does family law apply to grandparents?

Grandparents can use the Family Law Act to apply for court orders allowing their grandchildren to live with them or spend time with them. Grandparents can seek orders where the parents of the children are together or separated.

The Family Law Act acknowledges the importance of children having a relationship with grandparents. This does not mean, however, that grandparents have an automatic right to have contact with their grandchildren.

The focus of the Family Law Act is on the rights of children to know and be cared for by both parents and also other family members such as grandparents and other relatives. The best interest of the child is the main consideration the Family Court takes into account when making decisions about parenting.

How are parenting arrangements made?

Most parents who separate can agree on who their children will live with, spend time with and communicate with. They can also agree on other aspects of their children's lives like where they will go to school, where they will spend holidays etc. These agreements can be informal and arrived at without going to court. These agreements can also be recorded as a Parenting Plan, or parents can register their agreement as Consent Orders lodged with the Family Court.

If you are concerned you may not have the same level of contact with your grandchildren that you had before their parents separated, you can talk with their parents about including you in a Parenting Plan or Consent Orders if these are going to be drawn up and lodged with the Court.

Do be aware that the best interests of your grandchildren must always be taken into account and the practicalities of implementing arrangements for you to spend time with your grandchildren will need to be considered by you and your grandchildren's parents.

When parents cannot agree on parenting arrangements between themselves or with the help of family dispute resolution services, they can apply to the Family Court or Federal Circuit Court for Parenting Orders.

When you and your grandchildren's parents cannot agree on what contact you will have with your grandchildren, you can also apply to the Family Court or Federal Circuit Court for Parenting Orders about your grandchildren.

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How are Parenting Orders made?

Parenting Orders can deal with:

- Where children live;
- Who children spend time with;
- Who can make decisions for children;
- What communication children are to have with other people, including by phone and email;
- Any other aspect of children's care, welfare and development.

The Court will decide what Parenting Orders to make based on what is in the best interests of the child.

How does the Family Court decide what is in a child's best interests?

To work out what is in the best interests of the child in the circumstances of the case, the Court is required to consider the following six matters:

1. what arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence abuse, neglect or other harm) of:
 - (a) the child; and
 - (b) each person who has care of the child, regardless of whether that person has parental responsibility for the child.
2. any views expressed by the child.
3. the developmental, psychological, emotional and cultural needs of the child.
4. the capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs.
5. the benefit to the child of being able to have a relationship with the child's parents, and

other people who are significant to the child, where it is safe to do so.

6. anything else that is relevant to the particular circumstances of the child.

In working out what arrangements would promote safety, the Court is specifically required to consider:

1. any history of family violence, abuse, or neglect involving the child or a person caring for the child;
2. any family violence order that applies or has applied to the child or a member of the child's family.

What can I do if I can no longer see my grandchildren?

You may be unable to see your grandchildren for a number of reasons:

- Your relationship with your own child has broken down (the parents' relationship may still be intact);
- Your grandchildren's parents have separated and one parent refuses to let you see your grandchildren;
- You have been the primary carer for your grandchildren and their parent returns to take your grandchildren back into their care.

If you are unable to see your grandchildren, you can apply to the Family Court for a Parenting Order that will allow you to spend time with or communicate with your grandchildren. It will be up to the Court to decide what contact you will be able to have based on what is in the children's best interests.

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If you are caring for your grandchildren with the agreement of your family, you may want to formalise the arrangement by putting it in writing and getting Consent Orders with the agreement of the parents and registering the Consent Orders with the Family Court. You should get legal advice to help you do this.

If you are caring for your grandchildren and there are already court orders in place that state your grandchildren are to live with you, then their parents will need to go back to Court to have the orders varied if they want to have the children back with them. Your grandchildren's parents will need to show the Court how their circumstances have changed since the orders were made and show that it is in the best interests of the children to be living with them.

If you have been caring for your grandchildren informally and you don't think it would be in your grandchildren's best interests to live with their parents, you will need to go to Court to obtain an order that your grandchildren are to remain with you. You should get legal advice to help you do this and to find out what orders you will need so that you are eligible to receive a carer's payment.

Can I receive financial support if I am caring for my grandchildren?

Yes, as long as you have legal responsibility for the day-to-day care of your grandchildren you may be eligible to receive financial assistance in the form of Commonwealth payments.

Details of all the payments you may be eligible to receive can be found at the Services Australia website or call 136 150. Click here to find out more: [Support for grandparent carers - Family Tax Benefit - Services Australia](#)

Financial support is available to kinship and foster carers. The ACT Child, Youth and Family Services (CYF) or ACT Together are responsible for providing financial support. Further information about the financial support that is available can be found in the Carer Handbook on the Community Services ACT website: www.communityservices.act.gov.au or call 133 427.

What can I do if I am concerned about my grandchildren's safety?

If you are concerned for the safety or welfare of your grandchildren, you can:

- Call the police on 000 if you are concerned your grandchildren are in immediate danger.
- You may be able to apply to the Family Court for orders that your grandchildren live with you. You should seek legal advice before you do this.
- Report your concerns to the CYF if you are concerned your grandchildren are at risk of being abused or neglected. You can contact the CYF on 1300 556 729. The CYF and the Australian Red Cross Birth Family Advocacy Support Service have created 'Working Together For Kids' – a series of practical and easy to read guides that outline the typical child protection process in the ACT. You can access the series on the ACT Community services website: [Working Together for Kids - Open Government Information](#)

If you are not sure what would be the best option for you to take if you have concerns for your grandchildren, you should get legal advice.

Grandparents and Care of Grandchildren

How Can Legal Aid ACT Help?

We recommend you seek expert legal advice to help you resolve your specific issues.

You can call our Free Legal Aid Helpline on **1300 654 314** between 8:30 am and 4:30pm Monday to Friday.

You can also contact the Older Persons ACT Legal Service (OPALS) on **6243 3436** or via email on opals@legalaidact.org.au.

Contact Details

Legal Aid ACT

www.legalaidact.org.au

Phone: **1300 654 314**

Family Relationship Advice Line

Phone: 1800 050 321.

Complaints & suggestions: If you have any complaints or suggestions about our services, please write to the Chief Executive Officer at our postal address.

Interpreter: If you need an interpreter, please contact Translating and Interpreting Service (TIS) on 131 450.

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