

Navigating family law matters as a grandparent

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111

Family law matters can be complex and confusing at the best of times, including for grandparents. There may be circumstances where a grandparent wants or needs to become involved in parenting proceedings involving their grandchildren, however, the Court has seldom provided clear information about this. This blog will assist those who are navigating the family law system as a grandparent.

What rights do I have to spend time with my grandchildren?

Under the *Family Law Act 1975* (the Act) there is no automatic right for grandparents to see or care for their children. The primary object of the Federal Circuit and Family Court of Australia (the Court) when making any decision involving children is the best interests of the child.

In ensuring that the best interests of the child are met, the Court has regard to a list of six considerations, which includes "*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*".

It is important to note that without any specific Court Orders, there are no rights nor obligations for grandchildren to spend time with their grandparents.

Do I have a voice in my family law matters that involve my grandchildren?

Parents are not the only persons who can make an application to the Family Court for parenting orders.

Under section 65C of the Act any of the following persons can bring a parenting application before the Court:

1. Either or both of the children's parents;
2. The children themselves;
3. The children's grandparents; and
4. Any other person concerned with the care, welfare, and development of the child/children.

Will someone represent the best interests of my grandchildren if I am not involved?

The Court can appoint an Independent Children's Lawyer (ICL) to represent a child's best interests.

An ICL is usually appointed in circumstances where there are:

- allegations of abuse, neglect and/or family violence;
- high levels of conflict between the parents;
- matters involving challenging and complex issues; and
- significant concerns held regarding the mental health of one or both parents, or the child.

The ICL is responsible for providing their own independent perspective as to those decisions and/or arrangements that are most consistent with the best interests of the child. Section 60CC of the Act sets out those matters which the Court must consider in determining what is in the best interests of the child, these factors will be taken into consideration by the ICL in preparing their submissions to the Court.

Do I need to go to Court to seek orders as a Grandparent?

Before filing an application to commence proceedings in Court, a person must comply with the mandatory pre-action procedures required by the Court.

This involves taking genuine steps to attempt to resolve the issues in dispute by attending alternative dispute resolution, such as mediation. There are limited circumstances where attempting alternative dispute resolution prior to filing an application in the Court is not required, including when it would be unsafe to do so.

You can learn more detailed information in our blog, "Pre-action procedures before filing in the Family Law Courts".

What type of Orders can I get at Court as a grandparent?

The Federal Circuit and Family Court of Australia can make Orders for a child to live with, communicate or spend time with their grandparents.

The most common applications for parenting orders for grandparents are:

1. Allocation of parental responsibility: this relates to the decision-making of major long-term issues such as the child's health, education, living arrangements, and religion; and
2. Time arrangements: this relates to how much time the child spends with a person.

Can I get the same time with my grandchild as their parent?

If a child has a safe and meaningful relationship with both parents, a grandparent's application will generally not have equal time awarded as a parent. However, there are cases where the Court has determined that it is in the best interests of the child that they live with the grandparent.

Each case is unique and will be assessed on its individual facts and merits.

What will the Court look at when making its decision?

The paramount consideration of the Court in matters which involve children is the best interests of the child.

In determining what is in the best interests of the children, the Court will have regard to six factors:

1. what arrangements would promote the safety (including safety from family violence, abuse, neglect, or other harm) of the child and each person who has care of the child (whether or not a 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, and
6. anything else that is relevant to the particular circumstances of the child.

In matters which involve grandparents, a court will likely have regard for other considerations which are deemed relevant, such as:

- the relationship between parent and grandparent;
- what is practical;

- whether such arrangements are likely to succeed or alternatively give rise to ongoing conflict and dispute; and
- how stressful the arrangements will be for the parents.

How can I support my child without joining proceedings or going to Court?

A grandparent can always consider providing an affidavit and being a witness to any parenting application in Court.

If you'd like to discuss any aspect of a family law matter involving your grandchildren, our highly experienced team of family lawyers can talk you through the options available to support your grandchildren.

Contacting a family lawyer

For more information or to arrange a consultation with a lawyer, you can call or email us.

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This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.