

Caring for Grandchildren

This information is based on the law as at July 2010. It is written for the use and benefit of women who contact the Women's Legal Centre (ACT) and is to be read in conjunction with the specific advice given to those women when they contact the Centre.

As a grandparent you may become involved in legal matters involving your grandchild for a variety of reasons. For example:

- you do not see as much of your grandchild as you would like, even though your grandchild's parents are still together
- your child (your grandchild's parent) separates from his/her partner and you do not then get to see your grandchild as much as you used to, particularly if your grandchild is now living with your child's ex partner
- your grandchild lives with you because your grandchild's parents are unable to cope with raising your grandchild themselves or one or both of the parents has died

What if the parent(s) do not allow me to see as much of my grandchild as I want?

You can use Family Dispute Resolution (FDR) services to help you work out an agreement with your grandchild's parents. See the Centre's tip sheet *Family Dispute Resolution*. You can also attend with your grandchild's parents at a Family Relationship Centre (FRC). The FRC in Canberra is situated at Woden and offers three hours free mediation with your grandchild's parent(s). See *Where do I go for information and advice?*

If you cannot work out an agreement you can apply to the Court for an order to see your grandchild. See the Centre's tip sheets *Parenting Orders in the Family Court and the Federal Magistrates Court* and *How do I Apply for a Parenting Order in the Federal Magistrates/Family Court ?*

The Court generally considers that it is in a child's best interests to spend time with their grandparents and that they may be somehow missing out on what is a normal part of growing up if they do not have this time with them.

What sort of orders will the Court make?

The orders made by the Court may involve visits, phone calls, letters, gifts or emails. The orders will usually depend upon:

- how much time and what type of communications you have previously had with your grandchild
- the age of your grandchild
- where your grandchild lives

- the other arrangements in place with the parent your grandchild does not live with
- your grandchild's schooling and other activities
- your grandchild's views
- your grandchild's cultural background
- any issues of family violence

If you have not had any communications with your grandchild for some time, and the Court thinks that it is in your grandchild's best interests to spend time with you, it may order that the visits start slowly and build-up over time.

What do I do if my grandchild lives with me?

If your grandchild lives with you, you and your grandchild's parents may simply choose to have an informal arrangement in place in relation to seeing their child. There is no legal requirement that you have to have an order. However, if you don't have an order you may find that you have problems:

- getting the necessary financial assistance, both through the Child Support Agency (CSA) and Centrelink (see below)
- in communicating with your grandchild's teacher or doctor
- if your grandchild's parents ever want your grandchild returned

What if I want an order that states that my grandchild lives with me?

If you and the parents come to your own agreement about your grandchild (for example through the Family Relationship Centre) you can ask the Court to make consent orders. The Court will usually require that you then all go to a conference with a family consultant who will then prepare a report for the Court to consider before it approves the consent orders.

There is a presumption of equal shared parenting responsibility between a child's parents. This means that both parents have an equal role in making the "big" decisions such as what type of education your grandchild will receive or what religion, if any, they will practise. It is usual for a parent to retain this responsibility even if your grandchild does not reside with them. If you want to have this responsibility yourself, then this is something which you will need to discuss with your grandchild's parents, or ask the Court to consider.

What if there is no agreement about where my grandchild should live?

If you cannot agree with your grandchild's parents about your grandchild living with you, you will have to apply to the Court to make an order. You may not particularly want to do this, but you may feel you have to because you think that neither parent is capable of looking after your grandchild. This may be due to such issues as one parent's drug dependency or mental health issues.

Your matter might also end up in Court if, for example, your child has died and your grandchild has had little to do with their other (surviving) parent. If it does then become a dispute between you and the other parent as to where your grandchild should live, the Court will look at any wishes expressed by your deceased child in

their will. These wishes are not, however, binding upon the Court, and an assessment will still have to be made about what is in the overall best interests of your grandchild.

A child's parents are not automatically favoured over a grandparent when the matter goes before the Court.

What if I was initially asked to look after my grandchild?

One or both of your grandchild's parents may have asked you to look after your grandchild on a temporary basis. A problem would then arise if they ask for your grandchild back and you think it would be better for your grandchild to stay with you.

The Court can make a decision about where your grandchild will live on an interim basis, that is, the time between when the matter first comes before the Court and the final hearing by the Court. This period is often around one year. If your grandchild has been in your care for some time, the Court will take this into account when making an interim order, and may order that this situation should remain in place, at least until the final hearing.

In some cases, the longer your grandchild lives with you, the harder it becomes for one, or both, of the parents to change that situation.

However, at a final hearing the Court is not necessarily going to decide that the current living arrangements should remain in place. In looking at the long term best interests of your grandchild, the Court might also consider issues such as:

- your age and state of physical and mental health, and how these affect your capacity to care for your grandchild
- your ability to communicate with your grandchild on issues such as schooling, discipline and friends
- your grandchild's own views

You may in fact only want your grandchild to live with you until such time as you believe that the parents (either individually or together) are in a position to resume caring for your grandchild. You can make a consent order that your grandchild lives with you and then later on ask the Court to make consent orders which discharge this previous order. If the original order is made after 1 July 2006 you could also make a parenting plan that changes the order, if the order allows this.

If I make an application what happens?

See the Centre's tip sheets *How do I apply to the Federal Magistrates/Family Court for a Parenting Order?* Both of your grandchild's parents need to be served with your documents, even if one of the parents might not have had anything to do with your grandchild for some time. If you do not know where one of the parents lives you will need to discuss this with a solicitor, as there are ways around this problem.

What if the Office for Children, Youth and Family Support (“Care and Protection Services”) are involved?

If Care and Protection Services have become involved in your matter there may be a *care and protection order* in place in your favour through the Children’s Court. If there is, you do not need to apply in the Family Court or the Federal Magistrates Court. If there isn’t, then you can apply in these Courts for a parenting order. See the Centre’s tip sheet on *Child Protection in the ACT*.

Will I get Legal Aid to cover my legal costs?

Grandparents sometimes find it difficult to get Legal Aid because they may have assets and therefore do not pass the means test imposed by the Legal Aid Office. If, however, you feel that your case is a worthy one, you should always apply for Legal Aid first. If you are unsuccessful with your application for Legal Aid and cannot afford a private solicitor, you should contact the Women’s Legal Centre for assistance with preparing the application yourself.

What financial assistance will I receive if I have the full-time care of my grandchild?

You can apply for child support through the Child Support Agency against one or both of the parents. See the Centre’s fact sheet Child Support through the *Child Support Agency (CSA)*.

You should also contact Centrelink or the Welfare Rights & Legal Centre to find out what income-tested benefit you might be entitled to. The amount of financial assistance you will receive could vary depending upon whether or not there is a Court order or parenting plan in place.

Where do I go for information and advice?

Legal Aid Office (ACT)

general enquiries	6243 3411
appointments for advice	6243 3471
legal advice line (weekdays 9am to 4pm)	1300 654 314

Welfare Rights & Legal Centre

admin	6257 2931
legal advice line (weekdays 9.30am to 1pm except Wednesdays)	6247 2177
	1800 445 665
night time "drop-in" service – Tuesday 6pm to 8pm	

Law Society . 6247 5700

Child Support Agency 131272

Centrelink 131021

Grandparents' Support Group (Marymead) 6162 5891

Family Relationship Advice Line

The Family Relationship Advice Line provides information on family relationship issues and advice on parenting arrangements after separation. It can also refer callers to local services that can provide assistance. Contact 1800 050 321 between 8 am and 8 pm Monday to Friday, and 10 am to 4 pm on Saturday.

About the Women's Legal Centre

The Women's Legal Centre (ACT & Region) Inc. is a community legal centre for women in Canberra and the surrounding area. The Centre is run by women and aims to improve women's access to justice. The Centre offers free, confidential telephone advice Monday to Friday from 9.30am to 12.00 noon, and face to face appointments, when appropriate.

The numbers for legal advice (weekdays 9.30am to 12 noon) are:

Local	6257 4499
Outside Canberra	1800 634 669

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