



## Grandparents rights to see their grandchildren

**Date: Monday July 19, 2021**

Grandparents usually play a significant role in a child's life. In some instances, they may even be the de-facto primary caregiver to the child, for a number of reasons. Unfortunately, when relationships break down and children are involved, grandparents time with the children is often reduced or prevented completely.

This blog provides general information on what the law is with respect to grandparent's rights to access grandchildren. We will also discuss what financial assistance is available for grandparents who are successful in their application for sole parental responsibility.

### Grandparents' rights under the Family Law Act

[Section 60B of the Family Law Act \(1975\)](#) provides children the right to maintain regular communication and contact with those who are considered important to the child's welfare, care and development. The Act specifically refers to grandparents in this category.

Sadly, after the breakdown of a relationship or marriage grandparents do not have an automatic legal right to contact with, or spend time with their grandchildren as they previously may have. Therefore, a court will have to consider the child's best interest in making any [Parenting Orders](#) for the child to spend time or communicate with the grandparent.

In circumstances where there is little to no conflict between grandparents and parents, there is a greater likelihood that the court will determine that it is in the child's best interest to have a relationship and spend time with their grandparent.

If a grandparent has a good relationship with their own adult child, then it may be the case that the grandparent reaches an agreement with the adult child to see their grandchildren during the time they spend with that parent. This option is the most cost-effective and informal option.

However, even if the grandparent has a good relationship with their own adult child, there may be friction with the other parent, which could lead to denial of access or reduction in access to the grandchildren. Further, if the relationship between the parents

and grandparents sour over time (particularly after separation), then it may also lead to the grandparents' time being ceased or reduced.

## Grandparents' options to seek a Parenting Order

A grandparent is entitled to initiate court proceedings for a Parenting Order or join as a third party to current family law proceedings.

In certain situations, a grandparent can now apply for parental responsibility and care of the child where:

the parent is unwilling or unable to care for the child:

- the parent lacks the capacity to care for the child;
- there is [family violence](#).

For a court to grant such an order, it will need to be satisfied that the child's parent falls into one of these categories and can't meet the needs of the child or that the child is at risk of physical or psychological harm or neglect in the care of the parent(s).

In unfortunate circumstances where there may be evidence of child abuse, neglect and/or substance abuse by the parent caring for the child, then a court will more likely make an order in favour of the grandparents. The order may give the grandparents full parental responsibility or shared parental responsibility with the parent(s) depending on the evidence and severity of the alleged abuse/neglect.

## What does parental responsibility mean for a grandparent?

Parental responsibility, either sole or joint, is a significant responsibility as it means the grandparent will have authority to make decisions for the child without requiring the consent of the parents. Grandparents can then make decisions about the grandchild's care, welfare and development such as their grandchild's religion, schooling and health.

Although most disputes surrounding grandparents care are resolved before the courts, it is not always necessary to commence this expensive and prolonged process to gain time with a grandchild.

## Attending mediation to resolve any disputes

Another alternative to consider may be for the parties to agree to [attend a mediation](#) where each party attempts to resolve the issue and reach an agreement that reflects the best interests of the child. This process can only be successful if all parties are agreeable to attend mediation with a view of resolving the dispute. It is important to note that the mediator should be qualified as a Family Dispute Resolution Practitioner (FDRP).

## Financial assistance for grandparents

Grandparents who have full parental responsibility and care of their grandchildren can apply to Centrelink for financial payments to help provide care for the grandchild.

Alternatively, if a grandparent has at least 35% care of the child, they may wish to consider applying for [child support](#) through the Child Support Agency.

## Concerned about the welfare or safety of a child?

If you have immediate concerns regarding the safety and welfare of a child, please contact the Department of Child Safety on [1800 177 135](#) (this operates 24/7).

## Hall Payne no longer provides services in family law

If you require assistance with your family law matter, we recommend you contact the relevant Law Society in your State or Territory for a referral:

- **Queensland:** [1300 367 757](#)
- **NSW:** [02 9926 0333](#)
- **Victoria:** [03 9607 9311](#)
- **Tasmania:** [03 6234 4133](#)
- **South Australia:** [08 8229 0200](#)
- **Western Australia:** [08 9324 8600](#)
- **Northern Territory:** [08 8981 5104](#)
- **ACT:** [02 6274 0300](#)

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