



Having a grandchild in your care

December 2012

Are you a grandparent who is raising a grandchild? Do you look after a grandchild for long periods of time? Are you thinking about doing this? If so, this fact sheet has been written for you.

This fact sheet is not for people who do regular babysitting, for example, caring for a grandchild while the parents are working or studying.

The information in this fact sheet may also apply to other extended family members who may have a child relative in their care, for example, aunts, uncles or cousins.

How family law applies to you

In Australia family law deals with:

- separation and divorce
- who a child lives with and spends time with
- how property is divided.

The law says that a child has the right to be cared for by both parents, regardless of whether their parents are married, separated, have never married or have never lived together.

The law says that a child has a right to communicate and spend time on a regular basis with both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives).

A court will make decisions about this based on what it considers to be in the child's best interests. The best interests of the child are the most important thing in any case about arrangements for children.

It is *not* the parents' rights or your rights as a grandparent, which are important. It is the needs of the *child* and their right to spend time with both parents, and other significant people such as grandparents.

A grandparent does not automatically have the right to spend time with their grandchild or have their grandchild live with them.

When you have a grandchild in your care

As a grandparent you may find yourself looking after your grandchild if the parent/s of that child cannot care for that child, because for example:

- they have drug or alcohol problems
- they have mental health problems
- they are in jail
- they are working or studying away from home
- the child has been removed from their care by state child protection agencies.

It may also be that you have been the primary carer for your grandchild for a while and the parent wishes to take the child back into their care.

What you can do

If you have a grandchild in your care you may want to know if you need to do anything formal or official. You may want to have this arrangement formalised if, for example, evidence of care is required for Centrelink purposes or when consenting to medical treatment for your grandchild.

Verbal or informal agreement

When parents separate they will often come to an agreement about who the child will live with, who the child will spend time with and other areas of the child's life such as schooling and medical treatment. This can be done verbally (informally) without signing any documents or going to court.

You may be able to come to an agreement with the parents of your grandchild about your involvement in the child's care arrangements. This option works well if everybody involved trusts each other and can talk well with each other.

Parenting plan

Sometimes parents prefer to have their agreements put in writing. This can be done in a parenting plan. The plan states, in writing, the living and care arrangements for their child. Parenting plans can be changed by agreement if future arrangements for the child change.

You may prefer this option if you feel more comfortable having a written agreement with the parents about your grandchild's living and care arrangements.

Consent orders

Consent orders are another way of formalising an agreement for the living and care arrangements for a child. Consent orders can be filed with the court. This option gives the parties some protection if the agreement is broken by one of them. The orders can then be enforced.

You may prefer to have consent orders prepared if you have any concerns about one of the parents sticking to the agreement you have with them about your grandchild.

Having a grandchild in your care



Financial support

Government payments

If you have a grandchild in your care, there are a number of payments you may be able to get. Contact the Family Assistance Office at the Commonwealth Department of Human Services on 136 150 for assistance.

Medicare benefits

You can claim Medicare benefits for medical expenses for your grandchild whilst they are in your care. Contact Medicare at the Commonwealth Department of Human Services on 132 011.

Child support

It may be possible to get child support payments from your grandchild's parents. Child support can be a complex part of family law. It is important to get legal advice about this before you apply. You can get legal advice about child support from any legal aid commission or some community legal centres.

Help at legal aid

The first step is to get legal advice about your individual circumstances.

Telephone information and legal advice

Call the Legal Aid telephone service. This service provides free information and/or can refer you to other services which may help.

Legal advice

You may be able to go to your local legal aid office to speak to a lawyer face-to-face in private, or obtain an advice session over the phone. These are generally short sessions in which brief advice is given. Most legal aid offices provide this service free of charge; however, some may require a small fee. Contact the telephone service to find out the availability of these sessions.

Family law duty lawyer

If you need to go to court you may be able to see a duty lawyer on the day for advice if you have not had time to get legal help. Duty lawyers are very busy so it is always best to get legal help before you go to court.

Family law information sessions

Legal aid lawyers sometimes run family law information sessions. These sessions give information only. Legal advice is not given on individual cases at these sessions. Contact your local legal aid office to find out if there are any family law information sessions offered in your area.

Representation

Once you have received some advice, you may need to apply for legal aid. If legal aid is granted, you will have a legal aid lawyer represent you in your matter.

Family dispute resolution conferences

These conferences aim to resolve family disputes at an early stage. Everyone involved has a chance to work out an agreement without going to court. If agreement is reached, consent orders may be drafted and filed with the court.

You may need to go to one of these conferences if you receive legal aid for your family law matter and cannot reach agreement with the other party.

For further information see the contact details below.

Legal Services Commission

Legal Help Line
1300 366 424

Monday - Friday 9 am - 4.30 pm

www.lsc.sa.gov.au



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