



## Grandparents' rights to see their grandchildren

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As the social and legal definitions of 'family' continue to change and expand, [parenting disputes](#) often involve more parties than just the two biological parents of a child. A very common example of this is grandparents who want to make sure that they can spend time and communicate with their grandchildren; including after separation of the grandchild's parents or during other family law disputes.

### Do grandparents have rights in family law?

The short answer is yes – sort of.

The *Family Law Act 1975* (Cth) ('the Act') is structured in a way that [provides children with the right to spend time and communicate with](#) people significant to their care, welfare and development (such as grandparents). This 'right' lies with the children in question, but not with the grandparents.

While grandparents do not have an automatic 'right' to see, spend time with or care for their grandchildren, they are entitled under the family law to make an application for parenting orders about their grandchildren. Although applications for parenting orders are most commonly brought by parents, there is nothing to stop grandparents (or others who have a significant role in a child's life) from making their own application.

### What requirements must be met for grandparents to make an application for parenting orders?

The requirements for grandparents to make an application for parenting orders are the same as they would be for parents or any other person concerned with the care, welfare and development of the children.

Parties wanting to make an application for parenting orders must first attempt to resolve the dispute out of court, through [family dispute resolution or mediation](#) (including [child-inclusive mediation](#)). This requirement can sometimes be waived in circumstances of urgency, or where mediation is inappropriate (for example, [family violence](#)).

## What kind of orders can be made in relation to grandparents?

The same sorts of parenting orders that are made regarding the children's parents can also be made for grandparents. The same considerations must still be taken into account by the court – the paramount consideration being whether the order is in the child's best interests.

If a grandparent can show that the order they are seeking is in the child's best interests, they can obtain orders on the following:

- Where the child lives/who the child lives with;
- The time the child is to spend with others;
- The types and frequency of communication the child has with others; and/or
- Any aspect of the care, welfare or development of the child.

## Is there a hierarchy or preference for people applying for parenting orders?

There is no simple 'hierarchy' or preference for people concerned with the care, welfare or development of a child. Anyone can make an application, and the court will consider all applications equally.

In saying this, one of the primary considerations in determining the best interests of the child is the benefit for a child to have a meaningful relationship with both parents (provided there is no risk of abuse, neglect or family violence). It will not always be in the best interests of the child to have a meaningful relationship with one of their parents, or sometimes even both of them. It will depend entirely on the families' circumstances.

Where the court is satisfied that it is in the child's best interests to live with a grandparent, rather than their parents, the court can make that order.

Of course, orders do not always have to provide for the child to live with a grandparent instead of a parent. They could simply allow, for example, for the child to spend a weekend a month with their grandparents, or speak to them on the phone occasionally.

The court can make any parenting order it sees fit, as long as it is in the child's best interests to do so.

# Options for grandparents outside of court

Grandparents can still be a part of their grandchildren's lives without having to go to court. If parents going through separation agree to less formal arrangements (e.g. through informal agreements or through a parenting plan), time and communication with the grandparents can be included in these agreements.

Before making an application to the court, parties must make the effort to resolve parenting disputes outside of court through [mediation](#). It may be worthwhile for grandparents to take the time to discuss with their children (if they are comfortable doing so), how they can best support them and their children, and in what capacity they can be involved in their grandchildren's lives.

## The inclusion of grandparents in the Family Law Act

Grandparents were not always specifically referred to in the Act. In 2000, the Act was amended to specifically [identify grandparents as a category of potential applicants for parenting orders](#).

Previously, grandparents were still able to apply for parenting orders under the umbrella of a person who is 'concerned with the care, welfare and development of the child'. The specific reference to grandparents emphasises the benefit to children of having relationships with their grandparents (and wider family).

As grandparents are expressly named in the Act, they no longer have to provide extra evidence to show the court how they are concerned with the care, welfare and development of the child – it is automatically assumed.

This has been affirmed in the case of [Aldridge & Keaton \(2009\)](#) where the judgment confirmed that expressly naming grandparents in the Act was 'intended to highlight the importance of grandparents in the life of a child'. Grandparents do not face higher hurdles to make an application for parenting orders than the parents of the child.

## How a family lawyer can help

If you are concerned about the time and communication you have with your grandchildren, [contact us](#) to discuss your situation with one of our experienced family lawyers.

We can help express and negotiate your position with the other parties, identify whether going to court is an option and whether your application is likely to be successful.

## Contacting Smith Family Law

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