



Saving your rights to see your grandchildren

If you are a grandparent and face the sad circumstance of a break up in your family group, through separation or unforeseen events, you may be worried about your right to continue seeing much-loved grandchildren. Unfortunately, some grandparents only see their grandchildren at crowded school events or from the sideline at sporting occasions. In Australia, grandparents have legal rights to approach Courts for orders that they be allowed to spend time with their grandchildren.

If you have concerns about the welfare of your grandchildren, you may be concerned about how to help protect them.

What rights exist?

When it comes to the law, grandparents do have some rights. The law's focus is on the well-being of the child, that includes a child's right to know and have contact with both parents and others seen as significant for their care and development, including grandparents. However, it is important to note that grandparents do not have an automatic right to spend time with their grandchildren; rather they have *standing* to seek orders from the Courts.

Parents who are separating often make plans for the future care of their children informally, and will agree on where their children will live. Some may draw up a written parenting plan setting out their arrangements for caring for the children. They can make this more formal by registering it with the courts in Consent Orders.

If you are concerned about your future contact with your grandchildren, you can ask to be included in such plans if they are being drawn up. If you can't agree with separating parents about your future contact with the children, you can apply to the courts for parenting orders yourself.

Are the rights automatic?

Grandparents don't have automatic rights to see their grandchildren. However, amendments to the law have given them recognition and status. The courts emphasise the importance of children having contact with as much of their wider family as possible and of growing up feeling part of an extended and supportive family group. Others with a close ongoing relationship or who can show they are involved in the children's welfare can also apply to the courts for parenting orders.

Twenty years ago in a case where a grandmother had applied to be allowed to have contact with her grandson the judge stated that "we live in troubled economic times and

by way of example, in 20 years' time, the child may have need for finance in establishing a house, in purchasing a car, in any number of areas. The more people that are loving and close to him and can help him, who feel an obligation towards him, the healthier it would be for the child."

An order may enable you to have some visits, or communicate with your grandchild, perhaps by phone or email. It will be up to the court to decide what should happen, based on what it thinks is in the child's best interests. Although you have a right to apply for parenting orders, this does not mean the courts will necessarily decide in your favour.

What is the process?

The law requires that families first attend family dispute resolution, or mediation, before going to court. An independent person trained in helping families discuss their differences will try to help everyone come to an agreement. You will need a certificate from an accredited dispute resolution practitioner to show you've attempted mediation before you can take court action.

If mediation fails, you will need legal advice before going to court. You need to find out how strong your case is, what forms and documents you will need to lodge with the court to support your case (these are called affidavits), what orders you should ask for, which court is better to start the case in, and the costs of taking legal action. Even if you decide to represent yourself in court, it is recommended to get legal advice about how to prepare your case. You must remember that the child's best interests are always the first priority. You will also need to consider the practicalities of being able to implement any arrangements you wish to make.

Grandparents can sometimes get involved and can apply to the Children's Court to have the children placed in their care.

You can apply to court for your grandchildren to live or spend time with you whether their parents are together or separated. You will not need a certificate of dispute resolution if there is a fear of violence or the matter is urgent, or a party can't take part in mediation because of a disability.

In cases where there is strong parental opposition to Court orders sought by grandparents, a Court appointed Family Consultant may be required to prepare a family report for submission to the court, to assist the court in deciding whether to grant a parenting order for the grandparent.

If you are concerned about you grandchildren's welfare for any reason, or know people who are, please call us on 03 9387 2424 or email info@rrlawyers.com.au.