

# Grandparents and Family Law Matters



## Family Law Parenting Matters

BCLS provides legal advice in relation to family law parenting matters. We are seeing an increase in grandparents contacting us for legal advice in relation to their grandchildren. This factsheet has been prepared to provide grandparents with guidance on what steps they must take to resolve parenting disputes.

## Relevant Law

The Family Law Act 1975 (“the Act”) deals with parenting disputes. The Federal Circuit and Family Court of Australia has jurisdiction in this area.

The Act provides that children have the right to spend time and communicate regularly with both parents and others who are significant to their care, welfare, and development.

The Act specifically states that a grandparent, or any other person concerned with the welfare of a child, can apply for parenting orders. When making parenting orders, the Court must regard the best interests of the child as the most important consideration.

When determining what the best interests of a child are, the primary considerations are:

1. the need to protect the child from physical or psychological harm from being subjected to or exposed to abuse, neglect or family violence; and
2. the benefit to the child of having a meaningful relationship with both parents.

Of these two considerations, the need to protect the child is the most crucial in determining the child’s best interests.

Other factors the Court considers includes:

- the nature of the child's relationship with other persons (including any grandparent)
- the likely effect of any changes in the child's circumstances (such as the effect on a child of being separated from any grandparent with whom they have been living or spending time)
- the capacity of any other person (including any grandparent) to provide for the needs of the child, including their emotional and intellectual needs.

In saying this, while the Act does make specific reference to grandparents, it does not mean that grandparents have an automatic right to spend time with a child. Rather, the best interests of the child will be the primary consideration.

In some situations, it may be in the best interests of the child to live with a grandparent or other significant person. For example, this may be because of the child being at risk of harm in their parent's care.

## Mediation

If direct negotiation with the other party (or parties) does not resolve the dispute, the next step is to attend family dispute resolution (FDR). The Family Law Act 1975 makes FDR a requirement before anyone can seek parenting orders from court.

People are required to make a genuine effort to resolve their dispute themselves before asking the court to intervene. There are limited circumstances where you are exempt from obtaining a certificate from an FDRP before you file a parenting orders application. You should get legal advice about whether any exemption applies to your situation.

Family dispute resolution is where an independent person trained to help families assists to facilitate discussions with the parties about issues in dispute and explore possible solutions. The most common FDR process is mediation.

Mediation involves an independent person, called a 'mediator', providing guidance and helping the parties come to an agreement about their dispute while remaining child-focused. If parties do not want to be in the same room as each other, other options are available. For instance, the FDR can be done as a 'shuttle mediation', with the mediator speaking with each person separately and working towards resolution. Some mediations are able to occur virtually such as via Skype or Zoom.

Generally, during mediation, any agreement reached is not legally binding unless further steps are taken.

## Parenting Plans and Consent Orders

To make an agreement legally enforceable, you will have to lodge an Application for Consent Orders with the court. Consent Orders document in writing the agreement between you and the other party. Once the court has approved them, the Orders are legally binding.

In mediations involving children, it is possible to enter into a parenting plan. A parenting plan is any agreement (in writing), dated and signed by both parents that sets out arrangements regarding the children. It must be entered into willingly and free from threat, duress, or coercion. A parenting plan does not have to be drafted up in a legal way or witnessed by a lawyer or Justice of the Peace to be valid.

Although a parenting plan is not a court order (and is not binding on the parties who signed it), the court must consider the terms of the most recent parenting plan if it is required to make a decision about the children later on.

If the grandchild's parents are separated, grandparents can request to be included in parenting arrangements (either a parenting plan or consent orders) or they can apply to the Court for parenting orders.

All the requirements of an Application for parenting orders will apply, including compulsory family dispute resolution prior to the lodgement of an Application by a grandparent.

## What to do if Mediation is Unsuccessful

If FDR is unsuccessful, the mediator will issue you with a section 60I certificate. This will enable a grandparent to initiate court proceedings if they wish.

There are five different types of certificates that a family dispute resolution practitioner may issue depending on your circumstances:

1. The person did not attend FDR due to the refusal or failure of the other person or people to attend.
2. The person did not attend FDR because the practitioner did not consider it would be appropriate to conduct FDR.
3. The people attended FDR, conducted by the practitioner, and all people made a genuine effort to resolve the issue or issues in dispute.
4. The people attended FDR, conducted by the practitioner, but one or more of them did not make a genuine effort to resolve the issue or issues in dispute.
5. The people began FDR, but partway through the practitioner decided it was not appropriate to continue.

A section 60I certificate can only be issued by a family dispute resolution practitioner.

There are however additional steps which need to be taken prior to filing an Application to the court for parenting Orders. You should get legal advice prior to filing an Application.

## How can I get further legal advice?

You can contact BCLS to book an appointment if you need legal advice about a family law matter. We can also refer you to other services if required. See our details below to get in contact with us.

Bayside Community Legal Service acknowledges the traditional owners of the lands across Queensland, and in particular the Quandamooka peoples, the traditional owners of this land where our Bayside community is situated. We pay our respect to elders past, present and emerging.



### Contact Bayside Community Legal Service

**Website:** [www.bcls.org.au](http://www.bcls.org.au)

**email:** [info@bcls.org.au](mailto:info@bcls.org.au)

**Phone:** (07) 3162 3282

**Office Hours:** 8:30am-4:30pm Monday to Thursday

**Address:** Wynnum Community Centre, 105 Florence Street, Wynnum QLD 4178  
PO Box 103, Wynnum QLD 4178