



# Caring for your grandchildren

## information for grandparents

### CHILDREN'S RIGHTS

Children are entitled to communicate and spend time with people who are important in their lives and for their development. This includes people who are significant to the child's care, welfare and development such as extended family members (e.g. grandparents, aunts and uncles).

Grandparents do not have the automatic right to see their grandchildren, however, grandparents have the right to apply for a court order to communicate with or spend time with their grandchildren.

Sometimes, grandparents care for their grandchildren and take on parental responsibility for the grandchildren.

### PARENTAL RESPONSIBILITY

Parental responsibility includes responsibility for the day-to-day and long-term decisions that affect a child for example choosing a child's school, where a child lives, the type of medical treatment the child receives and who they spend time with.

### WHO HAS PARENTAL RESPONSIBILITY

Parents are presumed to have joint parental responsibility for their children. However, the court can make orders (parenting orders) that give parental responsibility to someone else, such as a grandparent.

### OBTAINING A PARENTING ORDER

Any person concerned with the care, welfare and development of a child can apply for parenting orders at any time. This may include the child's parents, grandparents or other relatives.

As well as parental responsibility, the court can make parenting orders about:

- who the child lives with
- how often the child spends time with parents or grandparents
- how the child communicates with each parent or grandparent.

In making an order, the court's paramount consideration will always be the best interests of the child(ren). Other factors that the court will consider include, but are not limited to, the views of the children, the demonstrated capacity of the relevant party to meet the child's needs and the demonstrated capacity of the relevant party to facilitate a child's association with their Aboriginal and Torres Strait Islander or other culture.

These matters are heard in the Federal Circuit and Family Court of Australia (FCFCA).

### When the parties agree

If the child's parents consent to parental responsibility being assigned to someone else, consent orders can be filed with the court.

Consent orders are court orders that set out what parents and/or grandparents must do. They have the same force and effect as if you



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had gone to court and the court official, such as a judge, made the decision after a hearing.

Consent orders can only be made if all relevant parties agree to the terms of them and sign the consent orders. Consent orders make the agreement enforceable by the court (this means the court will make sure all persons comply with the orders).

The FCFCA publishes a [kit that includes instructions on how to draft the orders](#).

### **When the parties disagree**

An application will need to be made to the court if the parties do not agree. Before you file the application, the applicant and the parents will need to participate in a mediation. A mediation is a process whereby a third-party mediator helps the parties reach an agreement together.

If an agreement is reached, the parties can file consent orders to make the agreement legally enforceable. If there is no agreement made at mediation, the next step is an application to the FCFCA. You should seek legal advice prior to commencing court proceedings.

### **INFORMAL CARE ARRANGEMENTS**

Rather than a court order, the parents and grandparents may enter into a parenting plan. A parenting plan is a written agreement that is signed by all parties. The plan sets out the parties' agreement with respect to where the child will live, when and where they will spend time with each parent or grandparent, and any other agreement concerning issues affecting the child.

A parenting plan is not enforceable unless it is filed in the court via consent orders. However, the court may consider a breach of a parenting plan that has not been filed when deciding parenting matters. A parenting plan made after a court order has been issued may vary the order.

### **HOW WE CAN HELP GRANDPARENTS REALISING THEIR RIGHTS**

#### **Parenting agreements**

We can assist with drafting an agreement that the child's parents and any other relevant party will need to sign.

#### **Negotiations**

We can assist with talking or writing to the child's parents to propose an agreement.

#### **Mediation**

We can apply to represent you at a mediation for the purpose of trying to reach a parenting agreement.

#### **Consent orders**

We may be able to assist with preparing consent orders for you to file in court once an agreement has been reached.

#### **If an agreement cannot be reached**

When an agreement cannot be reached, we may be able to help prepare court documents to commence proceedings and/or provide court representation.



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### CAXTON COMMUNITY LEGAL CENTRE

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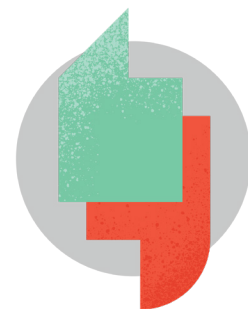
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This information is current at January 2022.



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