Grandparents: Parenting and Family Law

Some grandparents are assuming responsibility for the full-time care of their grandchildren, just at the time when they were anticipating retirement or relaxing more.

There are many services available that can provide support to cope with the changes that occur.
Grandparents: Parenting

Grandparents are important members of our communities. Many provide significant financial and practical assistance such as offering emotional support in times of crisis, caring for family members, assisting their families with major purchases and minding grandchildren. In 1999, the Australian Bureau of Statistics found that 57% of children in Australia receiving informal childcare were looked after by grandparents.

Bob and Mary’s Story

Bob and Mary were in their 60s when their daughter Kylie’s son Jake was born. Over the last seven years Kylie has often left Jake to live with Bob and Mary for differing lengths of time.

When Jake is living with Kylie, she goes out to clubs most nights leaving Jake at home alone. Kylie does not allow Bob and Mary to visit her flat, and she often does not have any money for food.

Jake is currently staying with Bob and Mary and says that he does not want to return to live with his mother. Whenever Bob and Mary try to talk to Kylie about a more permanent living arrangement she gets angry and threatens to take Jake back to live with her.

In some cultures it is usual for grandparents to be the major carers for grandchildren when the parents cannot. However, in others, just at the time when grandparents are anticipating retirement
and relaxation, they need to assume responsibility for full-time care of their grandchildren or other young people.

This often happens because of family complications such as death, divorce, substance abuse, incarceration, abandonment and child abuse. In these situations there are many stresses that grandparents and grandchildren face while adapting to the change in circumstances. These can include:

- Lifestyle changes
- Financial hardship
- Emotional upheaval
- Legal difficulties
- Schooling changes
- Conflict between the generations

It is not unusual during this time for children, parents and grandparents to experience feelings of:

- Confusion
- Insecurity
- Anger
- Sadness or grief
- Guilt
- Relief

Coping with the changes
Due to changes in lifestyles, parenting styles, children’s and family expectations, some grandparents find they benefit from information and courses on parenting. This helps grandparents maintain close nurturing relationships with their grandchildren.
To help cope with added parenting responsibilities, you need to plan for your own well-being. This can include:

- Balancing time for yourself with family time;
- Building relationships with people who share your interests and experiences;
- Participating in hobbies and activities;
- Allowing yourself ‘time out’; and
- Speaking with those who support you.

Children and young people often ‘act out’ when they are struggling with change or sadness. Counselling may help your grandchildren to cope. Please refer to the ‘Useful Places to Contact’ section.

Support can help

Grandparents are well aware that grandchildren are energetic and can be very demanding. Once in school, they can require additional assistance. There is a range of services and groups that can support you and your grandchildren with your emotional and practical needs such as:

- Grandparent support groups
- Child care centres
- In-school tutoring
- Parentline

Your library, community centre or the internet is a good source of free information about how to cope with the demands of parenting today.
**Things to organise**
There are a number of practical matters that need to be organised when you take on the full-time care of a grandchild. For example:

- Arranging for the child to be listed on your Medicare card;
- Notifying the child’s school of the change in their residence and primary care giver;
- Claiming for any Centrelink allowances you may be eligible for;
- Obtaining a school bus pass or subsidy from the Department of Transport; and
- Thinking about what you will do in case the child needs medical or dental care.

**Long term planning**
Long term planning is vital for the stability and emotional well-being of children. If you continue to provide full-time care of a grandchild there are a number of important things to consider such as:

- What type of education is desirable and do you need to enrol the child early?
- Can your house accommodate a larger family?
- Who will care for the child should you no longer be able to do so?
- Have you made provision in your Will for the child’s future care?
Are you concerned about your grandchild’s safety?
To ensure children’s safety there are some serious situations that the authorities should be told about. Examples include:

- Suspected sexual abuse of a child;
- Ongoing neglect of children, including inadequate supervision;
- Excessive physical discipline;
- Scapegoating or other emotional abuse; and
- Repeated exposure to family violence.

The name of any person advising the Department of Families about suspected child abuse or neglect remains confidential. To get advice or report your concerns, contact your local Department of Families Area Office.

If you think a child is at immediate risk, contact your local police, or telephone Crisis Care on 3235 9999, or freecall 1800 177 135.

Children have a right to love their parents and grandparents equally and not feel they need to choose between them.
Points to consider

- Will your health allow you to cope with the rigours and demands of caring for a grandchild?

- Whether to report your concerns to a child welfare agency rather than take on the issues yourself.

- Exposing children to ridicule of their parents may add to the children’s distress.

- Seeking counselling or professional assistance for grandchildren may be beneficial for them and can strengthen cases in court actions.

- Balancing your concerns for your grandchild with the possible damage that legal proceedings may have on your family relationships.

- Discussion or mediation may be a better way to handle your concerns or situation rather than through the law.

Before taking action to seek a “Residence Order” for your grandchild, obtain professional advice on practical & financial matters.
In 1995, changes to the *Family Law Act* confirmed the importance of children having a relationship with their grandparents, whether they are from a marriage or de facto relationship.

**Eileen’s Story**

James moved to Sydney with Eileen’s three grandchildren after separating from her daughter, Jane. Before he moved, Eileen used to baby-sit and visit her grandchildren regularly. Eileen misses them greatly and wishes to visit her grandchildren during Easter and Christmas holidays. Eileen has telephoned and written to James to ask about arranging this, but her son-in-law refuses to let her see them. A friend suggested that Eileen should go to court to get a legal order, but she is concerned about the cost and how a legal battle might affect her grandchildren.

For grandparents to obtain legal rights of residence, guardianship or contact, they would need to make an application to the Family Court of Australia.

Counselling and mediation are preferred ways of resolving disputes informally and amicably. In 95% of cases a settlement is reached before a final hearing in the Family Court.
Counselling
- Can help you sort out family arrangements, understand what the main issues are and how to go about resolving them.
- Is required by the Family Court before a parenting order can be made on behalf of someone other than the parent.
- Is confidential and cannot be used as evidence in the Family Court.

Mediation is used in the Family Court as a way of negotiating family disputes. For mediation to be successful all the parties, that is the grandparents and parents, need to attend and be willing to negotiate. This process can help to:
- Understand what the dispute involves;
- Hear everyone’s needs or interests;
- Explore possible solutions; and
- Determine the family’s best solution.

Grandparents who are in conflict with a child’s parents can seek free counselling through the Family Court. To make an appointment telephone 3248 2200.
Consent Orders and Parenting Plans
If you and the parents can agree, it is wise to write a legally binding consent order or parenting plan.

A parenting plan clearly outlines each other’s expectations and roles regarding the child’s upbringing. Each of you can include important aspects such as education, cultural awareness, and contact arrangements into the plan.

Parenting Plan Kits can be obtained free of charge from the courts. It is important to seek assistance in developing a parenting plan and have it registered at the Family Court or Federal Magistrates Court to be legally binding.

Family Court applications
When an agreement cannot be reached with the parents about the care of a child, you may need to consider making an application to the Family Court.

Steps to be considered when making a Family Court application include:
- Find out if there are existing orders;
- Think through what the problems actually are;
- Decide what kind of contact or conditions you want;
- Apply for legal aid;
• Consult a solicitor;
• Locate the court where you want your application heard, eg., near your or the parents’ residential area; and
• Prepare your application.

**Keeping notes**
Recalling and providing specific details of events and other information can be difficult and anxiety provoking. It is wise to keep notes of relevant incidents or assistance you have sought for your grandchild in case evidence is needed in future to prove your claims in mediation or the court. Examples include:
• Dates your grandchildren attended counselling;
• Dates of school support sessions; and
• The parent failing to arrive to take the child for a pre-arranged visit.

To determine the best interests of a child the court will consider the:

- age and wishes of the child;
- health, age and financial circumstances of the grandparents;
- bonding and relationship between the grandparent and the child;
- status and circumstances of the parents; and
- maintaining cultural ties.
Useful Places to contact

Family Court of Australia  3248 2200
This court is able to assist with accessing counselling, conciliation and mediation, as well as making decisions about family court applications. It also has a range of brochures and booklets about family law and how to manage difficulties arising from the break up of families. These can be ordered or accessed via the internet at www.familycourt.gov.au

Federal Magistrates Service  1300 367 110
This service provides a simple and accessible alternative to applying through the Family Court for less complex matters not exceeding two days hearing time. It has the same powers as the Family Court. In Queensland it is available at Brisbane and Townsville, with circuits in Mackay, Rockhampton, Cairns and Bundaberg. Information can also be accessed via the internet at www.familycourt.gov.au

Legal Aid Queensland  1300 65 11 88
To be eligible for legal aid representation you must meet a means test, a merit test and have a case that falls within legal aid guidelines.

Legal aid provides free telephone advice and information to callers outside Brisbane for the cost of a local call. Alternatively, visit one of the many Community Legal Centres across Queensland. Legal Aid Queensland also has a range of information brochures and self-help kits
that can be ordered or accessed via the internet at www.legalaid.qld.gov.au

**Parentline 1300 30 1300**
Parentline is a confidential telephone service that provides professional counselling and support for carers of children and young people in Queensland. The service is available every day from 8am-10pm, for the cost of a local call.

**Kids Help Line 1800 55 1800**
This is a free 24 hour telephone counselling service for young people aged 5 to 18 years. Counselling is provided anonymously and confidentially. Counselling can also be provided via the internet by emailing counsellor@kidshelp.com.au

When young people call Kids Helpline they can choose the gender of the counsellor and access the same counsellor each time.

**Grandparents Support Groups**
These are support groups of grandparents who are caring for, or who have been denied contact with, their grandchildren. They share information and provide support and social contact with others in similar situations. For a list of groups in Queensland telephone **Seniors Enquiry Line** on 1300 135 500
Commission for Children and Young People
1800 688 275
If you have concerns about services to a child or any other matter affecting a child or young person, you can contact the Commission. The Commission can provide information and advice and can intervene with a service provider to protect children’s rights, interests and well-being.

Child Care Information Service
1800 637 711
or 3224 4225
This service provides information about the types of child care available, locations and hours of operation.

Other helpful services include:

Queensland Law Society
3842 5888
www.qls.com.au

Dispute Resolution Service
1800 017 288

Relationships Australia
Family Mediation
1300 364 277

Aboriginal and Torres Strait Islander Legal Service
1800 012 255
or 3221 1448

Seniors Enquiry Line
1300 135 500

Foster Care Queensland
3857 3753
or 1800 635 634

Centrelink Family Assistance Office
136 150
PLEASE NOTE:

This material is provided for public information and while copyright is asserted by the Queensland Department of Families, permission is granted to copy or use this material without alteration on a not for profit basis for the public benefit.

The information contained in this publication is for information only and is not to be relied upon as legal advice. You are encouraged to consult a solicitor, or call Legal Aid Queensland or a community legal centre, if you are unsure of how laws apply to your situation.

The Queensland Department of Families and the Queensland Law Society have made every effort to ensure the information is accurate and up to date as at February 2003 and do not accept responsibility for any errors or omissions.