

Grandparents – protection and care (grandchildren)



This information sheet will help you if you are a grandparent who is concerned for the wellbeing of your grandchildren. It explains:

- protection and care laws
- options you have if you are worried about welfare and safety
- where to get legal or other help.

Although this information sheet uses the term “grandparent”, the information may also apply to other relatives or kinship carers, such as aunts, uncles or other family members who are concerned with the care of a child or young person.

This information sheet cannot replace legal advice.

For more information about family law and applying for parenting orders and related issues, see Legal Aid WA’s Information Sheet Grandparents – family law (grandchildren).

What is protection and care law?

The *Children and Community Services Act 2004* (WA) is the law in Western Australia when the Department of Communities Child Protection and Family Support (“the Department”) believes that a child is not safe living with their family or that a child’s family needs extra support to make a child safe.

The Department can support families to look after their children, or can remove children from their parents if this seems necessary for their safety, welfare and well-being, or if they are at risk of harm.

If this happens the Department will apply to the Children’s Court of WA for a protection order. Grandparents can get involved when the Department make decisions about the care of the children. Sometimes the children may be placed in their care. Grandparents can apply to the Children’s Court of WA to become a party to protection proceedings started by the Department so that they can have a role in the decision making process of the court.

Family law is different to protection and care law. If an application for a protection order is started before an application in the family court has been finalised the family court will usually delay any further hearing of the case until the protection application has been finalised. The family court

cannot make orders if there is an unfinalised application for a protection order in the Children’s Court, where the child is in the care of the Department, unless the Department agrees, or the orders come into operation when the child is not in the care of the Department.

What if I am concerned about the children’s safety?

If you have concerns for your grandchildren’s welfare or safety in their current living situation you can talk to the police, get legal advice about applying to the family court for parenting orders, or report your concerns to the Department.

Talk to the police

If you hold fears for your grandchildren’s immediate safety you can talk to the police who may investigate your concerns. To contact the police call **131 444** or **000** for life threatening emergencies.

Apply to the family court for parenting orders

You (or any other person concerned with the care, welfare or development of the child) may be able to apply to the family court for orders that the children live with you. You should get legal advice

as a first step before you apply for parenting orders.

Report your concerns to the Department

If you report your concerns to the Department it is possible that this might lead to the Department making a protection application in the Children's Court. This is different to a family court application. You may want to get legal advice as a first step before you contact the Department.

You can report your concerns to the Department by calling your local Department office or the central office on **(08) 9222 2555**. After hours you need to contact **Crisis Care** on **(08) 9223 1111** or **1800 199 008**. Any report you make will be treated confidentially. The Department will investigate your concerns and decide what to do.

The Department can:

- arrange for support services to be provided to the family
- come to an agreement with the parents that the child be placed in temporary alternative care
- develop a care plan with the family to meet the needs of the child
- develop a parental responsibility contract with the primary caregivers of the child or young person, or
- remove the child or young person from their family.

What orders can the Children's Court make?

If the court finds a child or young person in need of protection and care the Children's Court can make one of the following protection orders:

- Supervision – where parents keep parental responsibility, the child or young person stays with the family, with the Department monitoring conditions on the order. The order can last for up to two years.
- Time-limited – where the Department has parental responsibility, the child or young person is usually removed from the family and placed into foster care or with relatives for up to two years. Reunification with a parent or parents is the goal during the two years.
- Until 18 – the child or young person is usually not in the care of the parents. The Department

has parental responsibility until the child or young person reaches the age of 18 years.

- Special guardianship – the carer is given parental responsibility for the child or young person until they reach the age of 18 years.

Children's Court orders can be revoked (cancelled) if an application is made by a party to the initial court case and a magistrate thinks it is in the best interests of the child or young person. Usually you have to show what has changed since the order was made to get the court's permission to go ahead with the application and reconsider what is in the best interests of the child.

An application to cancel a protection order (time limited) or protection order (until 18) and replace it with a protection order (special guardianship), can be made by the Department. It can also be made by a long term carer of a child or young person where the child has both been in their care and on a protection order (time limited) or protection order (until 18) order for at least the two years immediately before the application is made.

For more information see the Legal Aid WA information sheet **Protection orders in the Children's Court of WA**.

What happens after an application for a protection order is made?

After an application has been made, the Children's Court will set a date for the parties (usually the Department and the parents) to go to court (called a "court date"). This is usually within three days after the application for a protection order is made.

Sometimes the children stay in the care of their parents when an application is made. Often they are removed and placed with family or in foster care. Unless the court makes different temporary or interim orders, the Department will initially make arrangements for the care of the child and will also take over parental responsibility for the child (unless the application is for a protection order (supervision)). This means that any decisions about the child or young person's care, which would normally be made by the parents, are made by the Department.

There may be several court dates before the matter is finalised.

The case is finalised when:

- No order is made if the magistrate decides a protection order is not needed or the magistrate agrees to the withdrawal of the protection application.
- A protection order is made either with the agreement of the parties or by order of a magistrate after a hearing.

If I am a grandparent or other relative, can I have a say at court?

Unless you are a party (usually just the parents are parties) to proceedings you cannot have a direct say at court. You can make an application to be made a party. In most cases you will have to file an application and an affidavit in support. These forms are available from any Children's Court registry or the [Children's Court of WA](#) website. A magistrate may grant your application if you can show you have a "**direct and significant interest**" in the wellbeing of a child or young person. In your affidavit you could cover things such as the specific details of your relationship with the child and what your significant interest in the child is. Get legal advice before making your application.

If I am a grandparent or other relative, can I have the children placed with me while the case is still at court?

If the parties are not satisfied with the temporary arrangements made by the Department for the child, they can ask the court to make "interim" (temporary) orders. If you have been made a party, you can also apply for these orders. .

If you are a relative of a child in foster care or in a placement that you do not think is best for the child and you want to be assessed as a potential alternative carer, contact the child's Department case worker as soon as possible.

If the Department does not agree to place the child in your care, you can apply to the court for an order for the child to be placed in your care. The court's decision will be based on the "best interests of the child". You should get legal advice if possible before you make this application.

If the Department has parental responsibility for the child and you wish to have the child placed with you, the Department will need to assess you and your household to make sure that you will

provide a safe placement for the child. This is the case even if you have been the person who has cared for your grandchild informally in the past. Working with Children checks will be required.

What does the court take into account in working out what is in the best interests of the child?

The "best interests of the child" section 8 in the *Children and Community Services Act 2004 (WA)* focuses on:

- the need to protect the child from harm
- the capacity of the child's parents to protect the child from harm
- the capacity of the child's parents, or of any other person, to provide for the child's needs
- the nature of the child's relationship with the child's parents, siblings and other relatives and with any other people who are significant in the child's life
- the attitude to the child, and to parental responsibility, demonstrated by the child's parents
- any wishes or views expressed by the child, having regard to the child's age and level of understanding in working out the weight to be given to those wishes or views
- the importance of continuity and stability in the child's living arrangements and the likely effect on the child of disruption of those living arrangements, including separation from -
- the child's parents
- a sibling or other relative of the child
- a carer or any other person (including a child) with whom the child is, or has recently been, living, or
- any other person who is significant in the child's life
- the need for the child to maintain contact with the child's parents, siblings and other relatives and with any other people who are significant in the child's life
- the child's age, maturity, sex, sexuality, background and language
- the child's cultural, ethnic or religious identity (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal people or Torres Strait Islanders)

- the child's physical, emotional, intellectual, spiritual and developmental needs
- the child's educational needs
- any other relevant characteristics of the child
- the likely effect on the child of any change in the child's circumstances.

Additional matters may be taken into account in working out what is in the best interests of a child.

What can I do after a protection order is made if I want to get involved or have contact?

If you are a relative wanting contact or some other involvement with a child or young person in the care of the Department, contact the child or young person's Department case worker.

Decisions about your involvement will be made as part of the child or young person's care plan. A care plan is a written plan that sets out the needs of a child or young person and how those needs will be met. It also sets out decisions about the care of a child or young person including contact and placement arrangements. These decisions are called care planning decisions.

If you are not satisfied with a care planning decision, and you can show you have a direct and significant interest in the wellbeing of the child or young person, you can seek a review of the decision. Time limits apply.

How can Legal Aid WA assist?

Contact the **Legal Aid WA Infoline** on **1300 650 579**:

- for referral to a private lawyer, or for information about whether you are eligible for legal aid or other assistance with a protection and care matter, or
- for information and referrals if you need urgent telephone advice.

If you are not sure what would be the best option for you to take if you have concerns for your grandchild you should get legal advice.

In some situations you may be able to get help from Legal Aid WA with seeking a review of a care plan decision.

Legal Aid WA also has information sheets that may help you if your case is going to a final hearing.

Where can I get more information?

- [Grandcare](#) (Wanslea Family Services) does not provide legal advice but services, including initial support and information, for grandparents who are raising their grandchildren on an informal basis. This service can be contacted on **1800 008 323** (9am-4pm Mon to Fri). Call **1800 794 909** (10am-3pm Mon to Fri) for the Grandcare Support Scheme for financial support.
- If you are a grandparent caring for a child in WA and want information on **Centrelink** support, contact the **Grandparent Adviser** on **1800 245 965** (free call from a landline).
- If you are an Indigenous grandparent you may be able to get assistance from **Aboriginal Family Support Service**. Call **(08) 6330 5400** or go to: <https://whfs.org.au/services/aboriginal-family-support-service/>.
- The Department brochure **Care Plan Review Panel** is available from the Department or online at: www.dcp.wa.gov.au/ComplaintsAndCompliments/Pages/CaseReviewPanel.aspx. You can get an application form from a Department district office or contact the **Care Plan Review Panel** on **(08) 9222 2593**.
- Contact the [Family Inclusion Network of Western Australia Inc](#) (FINWA) on **(08) 9328 6434**.
- Contact the **Department** on **(08) 9222 2555** or **1800 622 258** (country free call) for information including a factsheet on an Establishment Payment for foster grandparents looking after grandchildren or go to the Department's website at: www.dcp.wa.gov.au/Pages/Home.aspx.
- The **Children's Court of WA** website: www.childrenscourt.wa.gov.au/ has information on the court process and forms you might need.
- "**Grandfamilies: a resource guide for Western Australian grandparents raising their grandchildren**" can be downloaded at: <http://www.dlqc.wa.gov.au/AdviceSupport/Pages/Grandfamilies.aspx>.

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Perth Office

32 St Georges Terrace, Perth, WA 6000
1300 650 579
(08) 9261 6222

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building, 20 Jalan Pantai
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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