



# Grandparents rights to see their grandchildren

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Many children spend such significant time with their grandparents, that grandparents can be a primary carer in a child's life. The *Family Law Act* ('the Act') acknowledges this. Under the Act, grandparents can [apply to a Court for orders](#) relating to who their grandchildren live with or [who their grandchildren spend time with](#). Such an application can be made even if the parents of the children are not separated.

It is important to note though, that grandparents' visitation rights are not automatic under the Act. When the Court is determining who can spend time with children (or grandchildren), the same principles for assessing any matter involving children will be used. That is, what is in the best interests of the child?

## What types of issues can the Court look at?

Like when there is a dispute between the child's parents when there is a matter to determine with grandparents, the Court can deal with:

where the child lives;

who should make decisions for the child;

who the child should spend time with;

who should the child communicate with when they are not spending time with such party;

holiday and special occasion time;

travel and holidays; and

any other matter concerning the welfare of the child.

## How does the Court make a decision?

The Court will look at a number of factors, however, there are two primary considerations:

The benefit to the child having a meaningful relationship with both parents;

The need to protect the child from harm.

When considering the primary considerations, the Court will look at a number of secondary considerations, including the child's relationship with their grandparents.

These factors include:

The [views of the child](#);

Each parent's willingness and ability to facilitate the relationship with the other person;

The effect of any change to the child;

Practical difficulties of spending time with each party – including parents and grandparents;

Capacity of all parties to meet the needs of the child (for grandparents, this consideration is often the state of health of the grandparent, their age, their financial circumstances, their capacity to care for young children, including infants and toddlers);

The maturity, sex, lifestyle and background (including culture and traditions) of the child and the other parties;

If the child is Aboriginal or Torres Strait Islander;

Each party's attitude;

Any [family violence](#).

## Withholding grandchildren from grandparents – what are the rights of grandparents

At the time of separation, emotions can be very high. One parent may have significant difficulty in contemplating handing their child over to their former partner's parents. It's a problematic time for everyone, with a priority being [protecting the child from any conflict](#).

Grandparents do not have an automatic right to have a relationship with a grandchild. However, if a grandparent has an ongoing relationship with a child, they can [apply to the Court for Parenting Orders](#).

## Steps grandparents should take before applying to the Court

Get legal advice – by [engaging an experienced family lawyer](#), grandparents can be guided through the process with the hope of a more positive, expeditious outcome. It can be a complicated path and dynamic to navigate. We would always recommend you speak to a lawyer before working through that path.

Dispute resolution – going to Court is the last step! It is an awful day to walk into the Family Court to fight for a child. We would encourage grandparents to [explore every other avenue possible to reach an agreement](#) before taking a parent to Court. Further, the *Family Law Act* requires parties (in most circumstances) to attempt [Family Dispute Resolution](#) before an application is filed. Family Relationship Centres can assist in finding Family Dispute Resolution.

Going to Court – once mediation has been attempted, if no resolution is reached, the mediator should issue a Section 60I Certificate. This enables grandparents to file an application with the Court for parenting orders. Grandparents should seek legal advice before filing an application with the Court and navigating what Orders should be sought.

## Where to from here?

At Meillon & Bright Legal, we have guided several grandparents in relation to their rights to see grandchildren. We help grandparents who have grandchildren living with them or those seeking to spend regular time with their grandchildren, both at Court and through the dispute resolution process.

Our team of lawyers have the experience to assist you.

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*The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*