

Grandparents – protection and care (grandchildren)

This infosheet will help you are worried about the welfare of a grandchild or other family member. It explains:

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

Although this infosheet uses the term ‘grandparent’, the information may also apply to other members of the child’s family or kinship carers, such as aunts, uncles who are worried about the care of a child or young person.

This infosheet cannot replace legal advice.

For more information about family law and applying for parenting orders and related issues, see Legal Aid WA’s infosheet *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, (“the Department”, sometimes called “Child Protection”) 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 help families to look after their children, or can remove children from their parents or other family members they are living with if this seems necessary for their safety, welfare and wellbeing, 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 worried 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 worries 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 worried about 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 worries 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. This is a written agreement about who makes any decisions about the child or young person's care, which would normally be made by the parents (or usual carers), or

- remove the child or young person from their family.

If the child or young person is removed and not returned to a parent within two working days a case will start in the Children's Court.

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 and 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 members of the child's family 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.

Can Children's Court orders be cancelled?

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 infosheet *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 (or usual carers), 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 by the Department.

- A protection order is made either with the agreement of the parties and the court or by order of a magistrate after a hearing.

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

Usually only people who are "parties to the proceedings" are allowed to talk to the court about what they would like to happen in the case. If your grandchild's case is in a special list at Perth Children's Court, such as the Pilot List, you may be able to have a say without being a party.

Parties to the proceedings are usually the parents of the child and Child Protection.

How can I become a party to the proceedings?

You can ask the court for permission to become a party to the proceedings. To do this you usually have to file an application and an affidavit in support with the Children's Court. These forms are available from any Children's Court registry or the [Children's Court of WA](https://www.legalaid.wa.gov.au/childrens-court) website.

You need to show the court you have a "direct and significant interest" in the wellbeing of the child. For example, you may have spent regular time with the child and provided care in the past.

The court will need to know about your relationship with the child and why you want to be involved in the court case.

It is up to the magistrate to decide whether you can become a party to the proceedings.

Get legal advice before making your application.

If I am a grandparent can I ask for the children to be placed with me while the case is still at court?

While the case is at court, if you think it would be best for the child to come and live with you and

the Department has parental responsibility, you can ask the Child Protection worker about this.

The Child Protection worker will need to assess you and your household to make sure you can provide a safe place for the child to live. The Child Protection worker will need to do an assessment even if you have cared for the child in the past.

Some of the things the Child Protection worker might do as part of the assessment include:

- visiting your home,
- speaking to you and other people who live in your home, and
- asking you to do a Working with Children Check.

If the Child Protection worker does not agree to the child coming to live with you, if you are a party to the proceedings, you can make an application to the Children's Court and ask the court to decide what should happen. You should get legal advice if possible before you make this application.

Child Protection will give the court a report which the court will consider when making its decision.

The court's decision will be based on what is in the best interests of the child.

What does the court look at to work out what is in the best interests of a child?

In working out the "best interests of the child", section 8 of 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 members of the child's family and with 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 member of the child's family
 - a carer or other person (including a child) with whom the child is, or has recently been, living, or
 - other people who are significant in the child's life
- the need for the child to develop and maintain contact with the child's parents, siblings and other members of the child's family and with 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 and religious identity (including the need for cultural support to develop and maintain a connection with the culture and traditions of the child's family or community)
- 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.

Other things may also 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 family member 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. For an Aboriginal child, Torres Strait Islander child or child of a culturally or linguistically diverse background, it will include a cultural support plan for a child. For a young person who has reached 15 years of age it will include a leaving care plan

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 help?

Contact the Legal Aid WA Infoline on 1300 650 579:

- for referral to a community legal service or a private lawyer, or for information about whether you are eligible for legal aid or other assistance with a protection and care case, 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 or other family member 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 infosheets 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. Call 1800 794 909 for information on 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-services/>.

The Department brochure Care Plan Review Panel is available from the Department or online at:

<https://www.wa.gov.au/government/document-collections/care-plan-review-panel/>

You can get an application form at this link or from a Department district office or contact the Care Plan Review Panel on 1800 681 842.

- Contact the [Family Inclusion Network of Western Australia Inc](#) (FINWA) on (08) 9328 6434.
- The Children's Court of WA website: <https://www.childrenscourt.wa.gov.au/> has information on the court process and forms you might need.

LEGAL AID WA OFFICES



Infoline: 1300 650 579



Translating & Interpreting Service:
131 450



Website/InfoChat:
www.legalaid.wa.gov.au



National Relay Service: 133 677
(for hearing and speech impaired)

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

Midwest & Gascoyne Office

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

West Kimberley Office

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

Great Southern Office

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

Goldfields Office

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

East Kimberley Office

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

Southwest Office

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

Pilbara Office

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

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas Island,
Indian Ocean, WA 6798
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