

# Parenting Orders: Can a Grandparent Apply for a Parenting Order?



Article by Townsville Family Lawyer, Emma Donald

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## What are Parenting Orders?

When the court makes any orders about children, they are called parenting orders. A parenting order may deal with:

- Who a child will live with;
- How much time the child will spend with each parent and with other people, such as grandparents;
- The allocation of parental responsibility;
- How the child will communicate with parents they don't live with, or other people;
- Any other aspects of the care, welfare or development of the child.

The Court's main consideration when making any type of parenting orders is *what is in the child's best interest*.

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## Who can Apply?

You don't have to be a parent to apply to the Federal Circuit Court or the Family Court of Australia for parenting orders.

There is no 'right' to apply for a parenting order. However, the *Family Law Act* provides that, **as long as it is in the child's best interests**, children have the right to spend time and communicate with both of their parents, **as well as** people who have played a significant role in their care, welfare and development, such as **grandparents, relatives and members of extended families**. Accordingly, a grandparent can apply for parenting orders.

Section 65C of the *Family Law Act* specifically says: "A parenting order in relation to a child may be applied for by:

- (a) Either or both of the child's parents;
  - (b) The child; or
  - (c) A grandparent of the child; or
  - (d) Any other person concerned with the **care, welfare or development of the child.**"
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## When will the Court make a Parenting Order?

Sometimes, grandparents take on a more permanent caring role for a child than is usual and they wish to have a parenting order made so there is clarity around this.

There are several reasons as to why a grandparent (or other 'non-parent') may need to apply for parenting orders, which can include:

1. The person applying is a family-member of the child, and one of the parents has passed away;
2. The person applying is an ex-partner of the primary carer and played a significant role in the care, welfare and development of the child.
3. The parent/s of the child have substance abuse / mental health issues with mean that they do not have the capacity to parent the child/ren;
4. The person who is applying is being denied a relationship with the child by the child's carer; or
5. The person applying is the non-biological parent from a same-sex relationship.

It is also important that the person seeking a parenting order is concerned with the *care, welfare or development of the child*.

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## Care, Welfare or Development of the Child: The Case of KAM v. MJR

In *KAM v MJR* (1998) the Court looked into what it means to be a person concerned with the “*care welfare and development*” of a child. In that case, the applicant asserted that she had previous on-going contact with the child and had undertaken many duties of a carer's role for the child.

The judge, Burr J, said that the threshold determinant for deciding if someone is a person concerned with the care, welfare and development of a child, was that a person “*must have an 'interest in' or 'concern about' the child*”. In all cases, the circumstances of this are on a case-by-case basis.

In the case of *KAM v MJR* the court was satisfied that the applicant met the threshold test of being a person concerned with the care, welfare and development of the child because of (but not limited to):

1. The applicant had contributed to the care of the child both during and after her relationship with the mother (approx. 7 years); and
2. That care, which included overnight stays and also taking the child to extra-curricular activities, had taken place.

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This case set out that a person applying for parenting orders must have a concern with one of the issues of care, welfare or development – you do not have to satisfy all three.

In making appropriate parenting orders, the court will then go through the process of looking at *what will be in the best interests of the child*.

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## Summary

Grandparents (and other 'non-parents') can seek parenting orders. However, these types of cases are less straightforward than applications for parenting orders made by parents as the applicant must pass the threshold test first.

In cases where a grandparent (or 'non-parent') is applying for a parenting order. They will need to:

1. Firstly show they are a person concerned with the care welfare and development of a child.
2. Show that the orders they are seeking are in the best interests of the child.

O'SheaDyer Solicitors have acted for grandparents over the years who are applying for parenting orders. If you need advice about this, we recommend you speak with an experienced family lawyer who can advise specifically to your situation.

We offer new clients a first appointment with an experienced family lawyer for a low fixed fee of \$220. Please call us on 47 725 155 to make an appointment. We would love to help you.

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**Emma Donald** is a senior family lawyer at OSheaDyer Solicitors, Townsville. Emma was Admitted in 2015 and has worked exclusively in family law since 2015. Emma is a Collaboratively Trained Family Lawyer.

Everyone's situation is unique. We always recommend that people see an experienced family lawyer so you can discuss your situation and obtain customised advice about how this process specifically applies to you.

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