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27 March 2014

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

community.affairs.sen@aph.gov.au

Dear Committee Secretary,

Re: Senate Inquiry: Grandparents who take primary responsibility for raising their grandchildren

About National Legal Aid (NLA)

National Legal Aid (NLA) represents the Directors of the eight state and territory legal aid commissions (commissions) in Australia. The commissions are independent statutory authorities established under respective state or territory enabling legislation. They are funded by state or territory and Commonwealth governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

Inquiry Terms of Reference and this submission

The terms of reference for this Inquiry are Attachment "A" to this submission.

Legal aid commissions often assist grandparents who take primary responsibility for raising their grandchildren. This submission attaches some case studies which highlight the common issues faced by grandparents in such matters, and generally addresses aspects of the Terms of Reference (TsOR) but particularly:

TsoR d. the barriers that grandparents raising their grandchildren face in acquiring legal recognition of their family arrangements, including legal aid entitlements for grandparents seeking to formalise their custodial arrangements through the Family Law Courts;

TsoR e. the practical measures that can be implemented by the Commonwealth, state and territory governments and the community sector to better support grandparents raising their grandchildren, including key priorities for action.

Legal aid commission services and eligibility ("legal aid entitlements" TsoR d.)

There is a need for services which exceeds the capacity of the commissions to provide them, including in the area of family law. Decisions about whether or not to make a grant of aid are therefore made in the context of competing priorities for limited funds.

The applicants who receive grants of legal aid for representation in family law matters are those who are involved in the most serious of cases involving children, and who have passed each of strict eligibility tests in relation to matter type, merits, and means including income and assets tests. Grants of legal aid can be made by a commission to a private legal practitioner or to an in-house commission lawyer.

Matter type Guideline 4 of the template Commonwealth Legal Aid Guidelines is the relevant matter type for grandparents seeking orders from the family law courts that their grandchildren live with them, and is Attachment "B" to this submission. Each legal aid commission uses a matter type guideline consistent with this template.

Means and merits tests are applied to grandparent applicants as they are to other people involved in family law matters. Means tests take into account both the income and assets of the applicant and any financially associated person. Our experience is that grandparents will often fail the means test because of the assets that they have, for example a family home against which they could borrow.

If a person, including a grandparent, is not eligible for a grant of legal assistance for representation, they may be able to access other services provided by a commission such as assistance from a family law duty lawyer service, and/or advice and minor assistance from a commission office or commission outreach service. These services are generally free and not means tested.

A general description of commission services is Attachment "C" to this submission.

The family law duty lawyer protocol is Attachment "D" to this submission.

The pamphlet “Having a Grandchild in your care” produced by all legal aid commissions is Attachment “E” to this submission¹.

Consequences of legal recognition

Legal recognition entails the following important consequences:

- if the child is removed from the care of that person recovery of the child can be more easily effected;
- the person can give consent for medical treatment for the child;
- the person can enrol the child at school and or day care and make decisions related to the child’s education (including whether they can be removed from school or day care by their parent);
- the person’s consent for a passport for the child is required, and
- increased clarity re entitlement of the person to payment of any Centrelink benefit associated with the child.

Case studies and issues

11 legal aid case studies involving grandparents and the care of their grandchildren are Attachment “F” to this submission.

These case studies reflect issues commonly seen by commissions in such matters including:

- Incapacity of one or both parents to care for the children. This is usually by reason of one or more factors such as mental health, substance abuse, child abuse, family violence, and homelessness.
- Children with particular needs by reason of disability/health conditions (eg asthma, autism, ADHD, dental conditions etc) and/or trauma, (eg speech therapy, occupational therapy, ongoing counselling etc).
- Involvement of the state/territory child protection authority (CPA). The CPA may have approached the grandparent/s to take on care of the child. Care and protection orders may not be considered appropriate or necessary by the CPA if the child/ren are living with the grandparents. In our experience the CPA will often suggest that the grandparent/s need/s to make application to the family law court for orders.
- Legal proceedings can be complex, and inter-related proceedings in multiple courts may be necessary, eg in the family law court for “live with” orders; in the state/territory local court for personal protection orders; in the state/territory care and protection jurisdiction court; and in a state/territory

¹ Tasmanian version

court with criminal jurisdiction if charges have been brought as a result of an alleged incident relevant to the issue of whom the child should live with.

- Ownership of assets, such that not all applicants pass means testing for a grant of legal aid, but are not able to afford private legal representation, with the consequence that people are left to prepare, file, and negotiate complex and/or daunting legal proceedings either on their own or with very limited legal assistance, and are also likely to have to pay court filing fees.

The issues above are not limited to matters involving grandparents. It is the case, however, that the complete cohort of these issues is often found in matters in which grandparents are involved.

A further issue for grandparents, if they have to bring proceedings in the family court, is that they face the additional stress and potential volatility associated with initiating legal proceedings against their own child. In those cases where the CPA is involved, there is a real benefit to grandparents in managing their relationship with the parents of the children to be able to say that CPA is responsible for the decision making and the action being taken.

Where the CPA is involved, grandparents will also often require advice as to whether a care and protection order or a parenting order is in the best interests of their grandchildren, particularly if the children require ongoing therapeutic, medical and/or dental management which come at a cost that the grandparents may not be able to afford without assistance.

It should be noted that just as serious issues can be raised in relation to the capacity of some parents to provide care, so they can also be raised in relation to some grandparents. It is not uncommon for legal aid commissions to see cases where family dysfunction stretches over generations.

Practical measures that can be implemented & key priorities for action (TsoR e.)

In recent years there have been a number of inquiries, and research projects, about improving the family law and related systems responses to issues such as child abuse, family violence and family breakdown, and there is ongoing collaborative work between the Commonwealth and the States and Territories in relation to issues that have been identified.

The current collaboration between the federal family law system and the state and territory based child protection/child welfare authorities about sharing information such as experts reports, and streamlining processes across the systems, can be expected to ultimately benefit the children caught up in the family law and child protection systems and those who are endeavouring to provide care for them including grandparents.

A potential response to the situation, which will require further consideration, is that where the CPA's investigations suggest that it is appropriate for someone other than a parent to have primary responsibility for raising a child, that the relevant CPA pursue parenting orders in the favour of that other person in the family court.

Such a response would:

- i) Overcome the need for grandparents to initiate proceedings against their own child in the federal family law courts jurisdiction/s.
- ii) Obviate the need for representation of the grandparent in the child protection proceedings.
- iii) Remove or reduce the potential for further damage to the grandparent/parent/child relationship because of any perception that the grandparent was responsible for the removal of the child from the parent and associated proceedings.

Alternatively, as NLA understands happens in New Zealand, the relevant CPA could fund the legal representation of grandparents to obtain the necessary parenting orders, taking into account the consequential savings achieved by the children not being taken into care.

It is anticipated that the CPAs would require significant additional resources if they were to take up either of these options.

Conclusion

We thank you for the opportunity to make this submission. Please do not hesitate to contact us if you require any further information.

Yours sincerely,



George Turnbull
Chair



Terms of Reference

Grandparents who take on the primary responsibility for raising their grandchildren when parents are unable or unwilling to do so, through a formal or informal care arrangement, including:

- a. the practical challenges facing grandparents raising their grandchildren, and their support needs;
- b. the role and contribution of grandparents raising their grandchildren, and how this should be recognised;
- c. other challenges that grandparents raising their grandchildren face in undertaking their role, including in circumstances complicated by family conflict, mental illness, substance abuse, homelessness, child abuse or neglect, or family violence;
- d. the barriers that grandparents raising their grandchildren face in acquiring legal recognition of their family arrangements, including Legal Aid entitlements for grandparents seeking to formalise their custodial arrangements through the Family Law Courts;
- e. the practical measures that can be implemented by the Commonwealth, state and territory governments and the community sector to better support grandparents raising their grandchildren, including key priorities for action;
- f. the specific needs of particular groups within the caring population, including Aboriginal and Torres Strait Islander grandparent carers, grandparents caring for grandchildren with disability, grandparents from culturally and linguistically diverse backgrounds, grandparents with mental health needs and grandparents with an informal care arrangement for their grandchildren; and
- g. other related matters.

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Parliament House
Canberra ACT 2600

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Attachment "B"

Guideline 4 - Parenting Orders

4.1 Assistance for parenting orders

The Commission may make a Grant of Legal Assistance for a court application for a parenting order under the *Family Law Act 1975* if the Commission is satisfied that:

- (a) there is a dispute about a substantial issue, and
- (b) any of the following circumstances apply:
 - (i) the party has a certificate under section 60I of the *Family Law Act 1975* in relation to the dispute;
 - (ii) participation in FDR Services is inappropriate in accordance with guideline 2 of this Part 2.

4.2 Assistance for applications to discharge or vary parenting arrangements

(1) Subject to guideline 4.2(2), the Commission may make a Grant of Legal Assistance for a court application to discharge or vary a parenting order or to set aside a registered parenting plan under the *Family Law Act 1975* if the Commission is satisfied that:

- (a) there is a dispute about a substantial issue, and
- (b) any of the following circumstances apply:
 - (i) the party has a certificate under section 60I of the *Family Law Act 1975* about the dispute;
 - (ii) participation in FDR Services is inappropriate in accordance with guideline 2 of this Part 2, and
- (c) any of the following circumstances apply:
 - (i) there has been a material change in circumstances since the parenting order was made or the parenting plan was registered, or
 - (ii) the court application is imperative.

Examples

1. The likelihood of violence, or physical or mental harm, to the applicant or a child.
2. The removal or risk of removal of a child from an applicant who has primary residence responsibilities.
3. The removal or risk of removal of a child from the jurisdiction of the Court.
4. The need for an applicant with primary residence responsibilities to move permanently overseas, interstate or elsewhere with a child, if consent is unreasonably refused by another person.

Attachment “B”

(2) If the material change in circumstances referred to in guideline 4.2(1)(c)(i) has been caused by the applicant for assistance, the Commission must consider the circumstances surrounding that change in determining whether it is appropriate to make a Grant of Legal Assistance to the applicant.

4.3 Assistance to parties who are not parents

(1) The Commission may make a Grant of Legal Assistance to a party who is not a parent in court proceedings relating to a parenting order under the *Family Law Act 1975* if:

- (a) the party is significant to the care, welfare and development of the relevant child,
or
- (b) the Commission considers it to be in the child’s best interests.

Example

It may be in the child’s best interests if the child’s safety or welfare is at risk.

(2) Notwithstanding 4.1(a) above, in circumstances where a child protection authority is involved and is supportive of the third party, the Commission may grant aid to the extent necessary to secure the child’s best interests.

4.4 Assistance where care and protection proceedings

The Commission may make a Grant of Legal Assistance for a court application for a parenting order under the *Family Law Act 1975* even if there are current care or protection orders in force under a State or Territory law, or court proceedings under a State or Territory child welfare law are currently taking place, in respect of the child.

Attachment “C”

Legal Aid Commission services

Commissions provide assistance to as many people as possible to help them with their legal problems. They do this through a mix of legal information, telephone and face to face advice, minor assistance, and representation, provided from head offices in capital city locations and regional offices in various metropolitan and rural locations.

- Legal Representation

This involves representation by a lawyer provided either upon a grant of legal assistance being made to a person by a Legal Aid Commission, or by “Duty Lawyers”.

- Grant for legal assistance

The lawyers who represent people upon a grant of assistance being made are from the in-house legal practices of the Legal Aid Commissions or are members of the private profession to whom the grant of legal assistance from the Commission is assigned. Whether a grant of legal assistance is made will depend on available funding and an application of the relevant guidelines. Clients may have to make a contribution to the cost of legal representation. This will depend on the nature of the matter and the applicant’s means.

- Duty Lawyers

Duty lawyer services are provided by the in-house practices of LACs or private practitioners retained by Commissions for the purpose. Duty lawyers attend at many Courts to provide advice and to assist unrepresented people with restraint orders, to seek remands, apply for bail and/or present pleas in mitigation. They are frequently called upon by the Judges and Magistrates to assist people who are appearing unrepresented. Duty lawyers also attend some registries of the Family Courts. In some jurisdictions, duty lawyers also attend Mental Health Tribunals. Duty lawyer services are generally provided free of charge.

- Primary Dispute Resolution (PDR) services:

Grants of legal assistance for PDR (generally in family law) are also made. Grants for PDR will usually be made before any grant of aid to commence legal proceedings except if PDR is not appropriate in the circumstances of the case. As for other grants of legal assistance, contributions for PDR services may be payable.

Other services:

The following services are generally provided free of charge and are not means tested:

- Telephone and face to face legal advice
- Minor assistance services (eg letter drafting)
- Legal information and referral services, including publications and other resources for public and worker use.
- Community legal education.



Australian Government

Attorney-General's Department

**Indigenous Justice and
Legal Assistance Division**

Commonwealth Attorney-General's Department

National Legal Aid

Family Court of Australia

Family Court of Western Australia

Federal Magistrates Court

Family Law Duty Lawyer Scheme

National Protocol

February 2007

Family Law Duty Lawyer Scheme

National Protocol

1. GENERAL PRINCIPLES

- 1.1 The Family Law Duty Lawyer Scheme National Protocol (this Protocol) sets out guidelines for the provision by legal aid commissions of duty lawyer services in family law matters before the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court.
- 1.2 This Protocol was produced following discussions between the Commonwealth Attorney-General's Department, National Legal Aid, the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court (the Agencies).
- 1.3 The aims of the Family Law Duty Lawyer Scheme (the Duty Lawyer Scheme) are, subject to the guidelines set out in this Protocol, to:
- provide assistance to people who are unrepresented by a lawyer (unrepresented party) in family law matters before the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court
 - enhance the legal aid commissions' commitment to service delivery by providing an effective, efficient and economical delivery of high quality duty lawyer services to unrepresented parties involved in family law matters, and
 - assist the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court to enhance delivery of justice with particular regard to unrepresented parties.

2. DUTY LAWYER SERVICES

- 2.1 For the purposes of this Protocol, duty lawyer services mean assistance provided by legal aid commission lawyers (in-house practitioners), or by private legal practitioners by arrangement with the legal aid commissions, to unrepresented parties at the Family Court of Australia, the Family Court of Western Australia or the Federal Magistrates Court in relation to an imminent court event.
- 2.2 Assistance may include:
- provision of legal advice and information
 - explanation and completion of simple documentation
 - representation for adjournments and short or procedural mentions
 - representation for limited negotiations with a view to drafting consent orders

- preliminary assessment of eligibility for legal aid, assistance with an application for legal aid and, if appropriate, referral to an in-house or private practitioner to pursue an application for legal aid, and
 - coordination of legal aid commissions' conference appointments.
- 2.3 Assistance may, subject to the discretion and availability of the duty lawyer, also include:
- representation for recovery orders, and
 - urgent injunctions regarding children.
- 2.4 Assistance will not normally be provided for:
- completion of complex documentation such as complex affidavits
 - representation for interim hearings, contravention applications and final hearings
 - appearance in the defaulter's list or to issue a trial notice, or
 - appearance or appointment as a child representative.
- 2.5 Where it is considered that assistance should be provided in a complex matter or in a matter in which the duty lawyer has not prioritised assistance under clause 3.1, that assistance will normally be limited to the provision of information, advice and representation for an application for adjournment.

3. PRIORITISATION

- 3.1 In determining whether to provide assistance in a matter and, if so, the level of assistance, the duty lawyer is to consider the following:
- whether the unrepresented party is seeking assistance for a matter for which legal aid is available under the legal aid commission's policy guidelines
 - whether the unrepresented party cannot afford the cost of representation but falls outside the legal aid commission's means test
 - whether the unrepresented party has already been refused a grant of legal aid
 - whether the unrepresented party has previously obtained assistance from a duty lawyer in relation to these or other family law proceedings
 - in a matter on the child support duty list, whether the unrepresented party is a payee
 - *T and S* considerations—whether there are specific issues relating to family violence which impact upon the unrepresented party's capacity to appear on their own behalf, and
 - whether there are other special circumstances which impact upon the unrepresented party's capacity to appear on their own behalf such as disability, literacy, language barrier, cultural issues or geographical location.
- 3.2 Assistance by the duty lawyer will normally be provided on one occasion only during the course of proceedings.

- 3.3 The decision of the duty lawyer in relation to the application of the principles of prioritisation, as outlined in clause 3.1, and the level of assistance provided under this Protocol will be final.

4. CONFLICT OF INTEREST

- 4.1 The duty lawyer will take all reasonable steps to avoid situations in which a conflict of interest exists or could be perceived to exist.
- 4.2 Issues relating to potential conflict of interest will be dealt with on a case-by-case basis, having regard to relevant professional and statutory obligations and any policy guidelines developed by the legal aid commission on conflict of interest.
- 4.3 The Duty Lawyer Scheme users meetings will be a forum for discussion of conflict of interest issues as appropriate or necessary (see also Part 9).

5. RELATIONSHIP BETWEEN JUDICIAL OFFICERS AND DUTY LAWYERS

- 5.1 Judicial officers may refer unrepresented parties directly to the duty lawyer or, alternatively, may request the duty lawyer's appearance before the court.
- 5.2 The duty lawyer will, subject to the guidelines set out in this Protocol, use their best endeavours to accommodate the needs of the unrepresented party and the court.
- 5.3 When appropriate, judicial officers will assist to:
- provide the duty lawyer with access to the court file relating to the unrepresented party, and
 - permit the duty lawyer to interpose and/or stand a matter in the list, if required.
- 5.4 In the following situations:
- complex matters, and
 - matters in which the duty lawyer has not prioritised assistance under clause 3.1

the duty lawyer will normally restrict assistance to the provision of information and advice, and will normally limit any representation to an application for adjournment.

If the application for adjournment is refused and the matter is likely to run to a defended hearing on that day, the duty lawyer is to notify the court of the duty lawyer's intention to withdraw from the matter. In this situation, the duty lawyer is not to be obliged to continue in the matter.

- 5.5 When the duty lawyer has completed all matters in which assistance is to be provided on a particular day, the duty lawyer will advise the court of the duty lawyer's intention to withdraw.

6. OBLIGATIONS OF DUTY LAWYERS

6.1 The duty lawyer will endeavour to:

- understand the provisions of the legal aid commission's enabling legislation and associated policies, including Commonwealth family law guidelines and the means test
- be present at court from 9.00am on agreed duty days
- ensure that the unrepresented party completes relevant parts of the duty lawyer form
- consider applications or requests for duty lawyer assistance in accordance with the guidelines set out in this Protocol
- take all reasonable steps to avoid a potential conflict of interest
- prioritise assistance in accordance with the principles outlined in clause 3.1 on a case-by-case basis
- use a qualified interpreter, if required
- take as detailed instructions as possible within the time constraints
- request the court file, if necessary
- explain to the unrepresented party the nature of the assistance and the basis of representation
- inform the unrepresented party that assistance is normally limited to one occasion only and that the unrepresented party may need to make an application for legal aid or arrange private representation for the next occasion, if necessary
- assist the unrepresented party to complete an application for legal aid, as appropriate, and
- refer the unrepresented party to a private practitioner, a legal aid commission or other agency, as appropriate.

6.2 Following a duty appearance the duty lawyer will:

- complete the Duty Lawyer form, including, as the nature of the case requires and in accordance with the level of assistance provided:
 - a summary of the unrepresented party's instructions
 - copies of any relevant documents, where available
 - details of results, and
- return the Duty Lawyer form to the legal aid commission that day or as soon as possible.

6.3 Duty Lawyer forms will be retained in specific folders and kept in accordance with the legal aid commission's record keeping policies.

6.4 Information contained in Duty Lawyer forms will be confidential and will not be made available to the court.

7. USE OF INTERPRETERS

- 7.1 It is acknowledged that in situations where the court has identified the need for interpreter assistance, the court will endeavour to order an interpreter to appear on behalf of a party.
- 7.2 Where an interpreter is not available and the duty lawyer considers that the unrepresented party will be disadvantaged by the absence of an interpreter, the duty lawyer may:
- request the Court to authorise and book the services of an interpreter for the unrepresented party, or
 - arrange for the use of an accredited interpreter service by telephone.
- 7.3 In situations arising under clause 7.2, assistance by the duty lawyer will normally be limited to providing the unrepresented party with general information and, if appropriate, indicating any limited instructions to the court and seeking an adjournment of the matter.

8. INFRASTRUCTURE

- 8.1 The court will endeavour to provide the following resources to facilitate the provision of duty lawyer services in the court:
- a room or rooms to accommodate the duty lawyer/s, each with adequate signage, lockable door, desk or workstation, lockable filing cabinet, Internet access, telephone and duress alarms, and
 - access to a photocopier and facsimile machine.
- 8.2 The legal aid commission will supply computers and printers for the room/s, as necessary.

9. DUTY LAWYER SCHEME USERS MEETINGS

- 9.1 The duty lawyer will convene Duty Lawyer Scheme users meetings, as appropriate, to discuss any issues arising at the particular court registry in connection with the Duty Lawyer Scheme.
- 9.2 The meetings will normally include representatives from the legal aid commission and the court, a judicial officer utilising the Duty Lawyer Scheme and a member of Client Services.

10. STATISTICAL REPORTING

- 10.1 The legal aid commission will, as far as possible, collect the data set out in the Schedule to this Protocol to assist in the future evaluation of the Duty Lawyer Scheme.

11. REVIEW AND VARIATION OF PROTOCOL

- 11.1 The Agencies will review the provisions of this Protocol from time to time as need be to ensure that this Protocol reflects the aims of the Duty Lawyer Scheme and best practice in the matters covered.
- 11.2 This Protocol may be varied by written agreement between the Agencies.
- 11.3 If agreement cannot be reached about an issue covered in this Protocol, the Agencies will endeavour to meet as soon as possible and reach a mutually acceptable solution.

Having a grandchild in your care



Are you a grandparent who is raising a grandchild? Do you look after a grandchild for long periods of time? Are you thinking about doing this? If so, this pamphlet has been written for you.

This pamphlet is not for people who do regular babysitting, for example, caring for a grandchild while the parents are working or studying.

The information in this pamphlet may also apply to other extended family members who may have a child relative in their care, for example, aunts, uncles or cousins.

How family law applies to you

In Australia family law deals with:

- separation and divorce
- who a child lives with and spends time with
- how property is divided.

The law says that a child has the right to be cared for by both parents, regardless of whether their parents are married, separated, have never married or have never lived together.

The law says that a child has a right to communicate and spend time on a regular basis with both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives).

The family court will make decisions about this based on what it considers to be in the child's best interests. The best interests of the child are the most important thing in any family law case.

It is *not* the parents' right or your rights as a grandparent, which is important. It is the needs of the *child* and their right to spend time with both parents, and other significant people such as grandparents.

A grandparent does not automatically have the right to spend time with their grandchild or have their grandchild live with them.

When you have a grandchild in your care

As a grandparent you may find yourself looking after your grandchild if the parent/s of that child cannot care for that child, because for example:

- they have drug or alcohol problems
- they have mental health problems
- they are in jail
- they are working or studying away from home
- the child has been removed from their care by state child protection agencies.

It may also be that you have been the primary carer for your grandchild for a while and the parent wishes to take the child back into their care.

What you can do

If you have a grandchild in your care you may want to know if you need to do anything formal or official. You may want to have this arrangement formalised if, for example, evidence of care is required for Centrelink purposes or when consenting to medical treatment for your grandchild.

Verbal or informal agreement

When parents separate they will often come to an agreement about who the child will live with, who the child will spend time with and other areas of the child's life such as schooling and medical treatment, etc. This can be done verbally (informally) without signing any documents or going to court.

You may be able to come to an agreement with the parents of your grandchild about your involvement in the child's care arrangements. This option works well if everybody involved trusts each other and can talk well with each other.

Parenting plan

Sometimes parents prefer to have their agreements put in writing. This can be done in a parenting plan. The plan states, in writing, the living and care arrangements for their child. Parenting plans can be changed by agreement if future arrangements for the child change.

You may prefer this option if you feel more comfortable having a written agreement with the parents about your grandchild's living and care arrangements.

Consent orders

Consent orders are another way of formalising an agreement for the living and care arrangements for a child. Consent orders can be registered with the family court. This option gives the parties some protection if the agreement is broken by one of them. The family court can then enforce the agreement.

You may prefer to have consent orders prepared if you have any concerns about one of the parents sticking to the agreement you have with them about your grandchild.

Having a grandchild in your care



Financial support

Government payments

If you have a grandchild in your care, there are a number of payments you may be able to get. Contact the Family Assistance Office on 136 150 for assistance.

Medicare benefits

You can claim Medicare benefits for medical expenses for your grandchild whilst they are in your care. Contact Medicare on 132 011.

Child support

It may be possible to get child support payments from your grandchild's parents. Child support can be a complex part of family law. It is important to get legal advice about this before you apply. You can get legal advice about child support from any legal aid commission or some community legal centres.

Help at legal aid

The first step is to get legal advice about your individual circumstances.

Telephone information and legal advice

Call the Legal Aid telephone service. This service provides free information and/or can refer you to other services which may help.

Legal advice

You may be able to go to your local legal aid office to speak to a lawyer face-to-face in private, or obtain an advice session over the phone. These are generally short sessions in which brief advice is given. Most legal aid offices provide this service free of charge; however, some may require a small fee. Contact the telephone service to find out the availability of these sessions.

Family court duty lawyer

If you need to go to court you may be able to see a duty solicitor on the day for advice if you have not had time to get legal help. Duty solicitors are very busy so it is always best to get legal help before you go to court.

Family law information sessions

Legal aid lawyers sometimes run family law information sessions. These sessions give information only. Legal advice is not given on individual cases at these sessions. Contact your local legal aid office to find out if there are any family law information sessions offered in your area.

Representation

Once you have received some advice, you may need to apply for legal aid. If legal aid is granted, you will have a legal aid lawyer represent you in your matter.

Family dispute resolution conferences

These conferences aim to resolve family disputes at an early stage. Everyone involved has a chance to work out an agreement without going to court. If agreement is reached, consent orders may be drafted and filed with the family court.

You may need to go to one of these conferences if you receive legal aid for your family law matter and cannot reach agreement with the other party.

For further information see the contact details below.

Legal Aid Commission of Tasmania

Telephone Advice Service

Tel: 1300 366 611

Monday - Friday 9 am - 5 pm

www.legalaid.tas.gov.au



Attachment "F"

Case Study 1

The maternal grandparents were in their late sixties. The grandchild, the subject of the matter, was 11 years old. The mother and her new husband used illicit drugs, were aggressive, erratic, verbally and emotionally abusive towards the child, the maternal grandparents and each other. The mother had a history of drug use (heroin, amphetamines). The father of the child was not involved in his life.

For most of his life the child had lived with the mother but spent weekends and holiday time with the maternal grandparents. They would take him to extracurricular activities, and provided some financial support. At the end of a weekend visit to the grandparents the child refused to return to the mother's house, saying that he wanted to stay with the grandparents.

The first contact Legal Aid had with the grandparents was when they presented at the Legal Aid duty lawyer service at the family court. They had previously obtained some limited advice from a private lawyer, and had attempted to draft and file court documents themselves. They became very distressed when the documents were not accepted for filing by the court. The court registry staff referred them to the Legal Aid duty lawyer service for assistance.

The grandparents explained that when they had attempted to communicate their plans to the mother she had become emotionally and verbally abusive to them and the child, threatening to burn the possessions the child had left at her home. This response and previous threats to their personal safety and property caused the grandparents to be very fearful of the mother and her husband. They were terrified that the mother would pick up the child from school, or try to remove him from their care and that they would be powerless to prevent this from occurring.

They instructed the duty lawyer that they had attended a police station and been told that the police could not intervene unless an incident of violence occurred. They were advised to seek a protection order which they did without legal advice or representation. Their application was dismissed due to lack of evidence of the threats to them by the mother and her husband.

The Legal Aid duty lawyer helped them to prepare documents and obtain an urgent hearing.

Issues:

- The grandparents did not qualify for a grant of legal aid for ongoing representation because although they were in receipt of the aged pension, they had assets and some savings.
- The grandparents had been referred to various services in the two weeks since the child came into their care including the child protection authority, the police, the Magistrates Court, the child's school, a private practitioner and the duty lawyer service. They were very frustrated about having to tell their story to numerous people and agencies and considered that they had not made any progress until the duty lawyer service helped them to obtain an urgent hearing.

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- The grandparents were not accustomed to court processes including having to complete court forms, and represent themselves.
- The child protection authority had previously been involved with the family but the file was closed. It is likely that the file was closed because of the “safety net” provided by the grandparents through their heavy involvement in the child's life. The child protection authority indicated that they would support the grandparents’ application for shared parental responsibility and “live with” orders.
- The grandparents applied for urgent orders asking for a hearing within a few days but were not given a hearing until two weeks later, taking into account the age of the child and the fact that the child was safe and attending school.
- It was stressful for the grandparents to be engaged in court proceedings against their own child. They were very worried about how the mother would respond to their application and for the grandchild’s and their own safety as a result.

Case Study 2

The Legal Aid duty lawyer service assisted the maternal grandmother to apply for ex-parte child recovery orders, and interim orders that the child live with the maternal grandparents. The maternal grandmother also sought an injunction preventing the mother from removing the child from the care of the maternal grandparents and the child's school, and that all parties are restrained from bringing the child into contact with the mother's partner "S".

The history of the matter was that the mother, father and child moved into the maternal grandparents’ home for six months following the birth of the child. During that time the maternal grandmother shared the child's primary care.

The mother and father separated. The father moved into shared accommodation with friends and the mother moved to the maternal great grandmother’s home with the child. During this time the maternal grandparents maintained a close, loving, supportive relationship with the child and played a significant role in the child's care.

Three years later the mother commenced a relationship with S, which became a de facto relationship. S was an intravenous drug user. The mother and father were also intravenous drug users; however, at the time of the maternal grandmother’s attendance at the duty lawyer service, the mother had significantly reduced her drug use.

At the time the maternal grandmother sought assistance from the duty lawyer the child was with the maternal grandparents in their home from Saturday morning to Sunday evening each week but living with the mother’s aunt “D”. The maternal grandmother was worried that the child was in danger of witnessing significant domestic violence between the mother and S and believed that, in the absence of court orders, D would return the child to the mother and he would be exposed to significant emotional harm.

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Issues:

- Concerns about safety and well-being of the child and the parties involved in proceedings.
- Complexity by reason of the number of parties, grandparents and separated parents, also potentially D and S, to proceedings, and their circumstances.
- The maternal grandmother not eligible for a grant of legal aid for ongoing legal representation by reason of her means.

Case Study 3

The Legal Aid duty lawyer service assisted the maternal grandmother to file an urgent application for parental responsibility and "live with" orders.

The history of the matter was that the mother and the 2 year old child had been involved in a car accident. The mother died and the child was hospitalized in a capital city.

At the time of the accident the mother, the child and the father were living in a regional location. The parents had separated and there had been family court proceedings in their regional location. Interim Orders were in place giving the mother sole parental responsibility and the proceedings had been adjourned to a court date that was after the accident.

At the time of the accident the father was spending time with the child supervised by the mother a few times a week. Supervision was required because of concerns that the father did not have stable accommodation, consumed alcohol and drugs daily and had tried to physically harm the child when the child was younger. The mother had stopped taking the child to see the father a few weeks before she died, as a friend of the father had assaulted her during a contact visit.

The maternal grandmother had always been involved in the child's life and had shared the child's primary care with the mother for the first six months of the child's life. At the time of the accident they were living in different towns. The mother and the child would visit the grandmother every few weeks and there was daily telephone contact.

The child was due to be released from hospital, but the release was delayed because the hospital considered that this was not possible as there was no adult with parental responsibility. The hospital alerted the child protection authority to the situation due to their concern.

Whilst the hospital and the child protection authority were considering how to manage this issue the paternal grandfather contacted the maternal grandmother and informed her that the father had tried to discharge the child from hospital.

Issues:

- The grandmother did not have experience of court proceedings and processes and did not know how to complete the court forms.

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- The proceedings were more complicated because the grandmother had to intervene in existing proceedings commenced in a regional location at a distance from the grandmother and the child and it was necessary for ongoing communications with the child protection authority which had an interest in the outcome. A number of court hearings were likely to be necessary.
- The grandmother was refused a grant of legal aid for ongoing representation on the basis of means. She was initially assisted by the Legal Aid duty lawyer service and also had minor assistance from Legal Aid on two further occasions as she was unable to manage the proceedings by herself.
- It was very stressful for the grandmother to be filing an urgent application within a week of the death of her daughter, while her grandchild was in hospital recovering from the same accident, and to have to do so with only limited assistance

Case Study 4

In this matter the maternal grandfather initially received assistance from the Legal Aid duty lawyer to make an application to intervene in family court proceedings between the mother and the maternal grandmother to seek interim and final "live with" orders, and to obtain urgent injunctions restraining the mother from removing the primary school age child from the State, from the maternal grandfather's care and control and from the child's school. The father was unknown.

At the time of intervening in the proceedings the grandfather had been the primary carer of the child for some time, taking the child to school and sports activities as well as making long-term decisions in relation to the child's care.

The proceedings in which he intervened had been initiated by the maternal grandmother. The grandfather had supported the grandmother in the proceedings but had not been a party. The maternal grandfather and grandmother were divorced and each had remarried.

The mother had Attention Deficit Hyperactivity Disorder. She was abusing her prescription medication which was causing her behaviour to be very erratic and unpredictable. Her behaviour towards the grandfather included verbal and emotional abuse, swearing and threats to "smash" him "up" and physical abuse such as striking, kicking and pushing. The grandfather had reported this behaviour to the police and the child protection authority. The grandfather also had a current protection order against the mother's boyfriend "K". K had serious alcohol abuse issues and an extensive criminal history of violent offending (including a serious assault against the grandfather resulting in the grandfather suffering broken ribs). K had been violent towards both the grandfather and the child.

The mother had gone interstate 5 weeks earlier to spend 2 weeks with K. She returned and a week later K came to spend time with the mother, staying at the grandfather's home. The grandfather allowed this to occur as K promised not to consume alcohol and appeared to have "cleaned up his act". It soon became apparent that K was still very volatile and was drinking excessively. The grandfather asked him to leave the

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premises and the mother left with him. The child stayed with the grandfather. As K left he kicked and smashed the cars of the grandfather and his wife, resulting in outstanding arrest warrants for criminal damage.

The mother returned later that night and became violent, punching the grandfather's wife in the face causing bruising. Police were called and a 72 hour police order issued against the mother. The mother called the next day and told the grandfather that K had money coming to him that Friday and they were going to use it to relocate interstate. She told the grandfather she would forcibly take the child with her.

The Legal Aid duty lawyer assisted the grandfather to obtain injunctions as a matter of urgency restraining the removal of the child from the grandfather. The Legal Aid duty lawyer service then assisted the maternal grandfather to apply for a grant of legal aid for ongoing representation in relation to "live with" orders.

Legal aid was granted on the basis of a requirement for the grandfather to sign a memorial in relation to his property. Aid was subsequently terminated a short time later as a consequence of his failure to provide the signed memorial. It was reinstated almost 18 months later when the signed memorial was provided to the legal aid commission.

Issues:

- The mother's mental health issues, substance abuse and violent behaviour and her relationship with a volatile, violent partner caused serious concerns for the safety of the child, the grandfather and his wife. The grandfather was also afraid that the mother would remove the child from school and that he would be powerless to stop this from happening.
- It was procedurally complex to be intervening in ongoing family court proceedings. The grandfather was not familiar with the court process and did not know what court forms were required or how to complete them.
- It was very stressful for the grandfather to be engaged in court proceedings against his own child.
- The matter was not likely to be resolved in one hearing.

Case Study 5

The paternal grandmother came to the Legal Aid duty lawyer service seeking parenting orders to have her very young grandchildren live with her. She was concerned about the welfare of the children in the care of their mother due to drug use, exposure to domestic violence, the mother's physical health and her capacity to care for them properly. In addition the oldest child who had reached school age was not registered to attend school.

The paternal grandmother had attended a Family Relationship Centre, and reported to the duty lawyer that she had been told that she would need to go through mediation, which would take 6-8 months to resolve. The grandmother considered the matter needed to be resolved earlier due to safety concerns for her grandchildren.

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The paternal grandmother reported her concerns to the child protection authority who referred her to the family court indicating that they would support her application for parenting orders.

The duty lawyer service assisted her to make an application for a grant of legal aid for ongoing representation which was granted, however proceedings were not then pursued by the paternal grandmother as the children were returned to her care in the interim, and she was concerned not to be involving authorities and potentially causing further upset if there was no need.

Some months later the paternal grandmother sought further assistance from the Legal Aid duty lawyer service as she was worried that the mother was going to take the children again. The duty lawyer service assisted her by preparing an application for parenting orders and an urgent injunction which subsequently had to be amended to seek a recovery order as the mother took the children before the paternal grandmother could file her application.

The paternal grandmother was successful in obtaining a recovery order. The Legal Aid duty lawyer service then assisted her to apply for a grant of legal aid for ongoing representation in parenting order proceedings. That application for aid was granted.

Case Study 6

The paternal grandmother had several occasions of assistance from the Legal Aid duty lawyer service including in relation to two applications for a recovery order. She also had several occasions of minor assistance in relation to child support issues. She obtained a grant of legal aid for ongoing representation after the first recovery order application.

The paternal grandmother had concerns about the transient lifestyle of the mother, and her illicit drug use. There was a history of significant involvement with the child protection authority.

On the first occasion the paternal grandmother received assistance from the duty lawyer service when the child was very young. The paternal grandmother succeeded in obtaining an urgent recovery order when the mother threatened to leave with the grandchild and relocate to another town causing the grandmother and the child protection authority to be very concerned for the child's welfare. The paternal grandmother was successful in obtaining a grant of legal aid for ongoing representation.

Orders were subsequently made for the child to live with the paternal grandmother. There were no spend time with orders made for the mother and she did not apply for spend time with orders. The grandmother was the primary carer following the making of those orders. She allowed the child to spend time with the mother for 3-4 days at a time every 2-3 months. This would occur when she could make contact with the mother or whenever the mother asked to see the child so long as the grandmother knew where the mother would be staying and the mother appeared stable.

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Two years later, after the orders in the grandmother's favour had been made, and her grant of legal aid had been finalised, the paternal grandmother again sought the assistance of the Legal Aid duty lawyer service as another recovery order was necessary.

The paternal grandmother had agreed to allow the child to spend 5 days with the mother at the home of the maternal grandmother. It was the mother's birthday and she wanted to spend it with the child. The paternal grandmother called the mother at the end of the agreed period and the mother requested more time with the child. The grandmother agreed to extend the visit for 3 more days. The paternal grandmother called the mother 3 days later and was told that the mother would not be returning the child as she didn't think she cared for her properly. The grandmother confirmed that the child needed to be returned and the mother became abusive and agitated. The paternal grandmother terminated the phone call and sent the child's father to collect the child. No one was present at the maternal grandmother's address and the child was unable to be located.

As the grandmother was being assisted to prepare her application for a recovery order she became aware that the mother had arrived at the family court and was also seeking assistance from the duty lawyer service. The grandmother was very concerned that if the mother found out about the application she might leave the court and she would not be able to find her or the child and that some harm could come to the child.

The duty lawyer made some security arrangements with the court and arranged for the mother to be assisted by a private practitioner on a legal aid referral, thereby ensuring the mother had some assistance and avoiding conflict issues.

Issues:

- Stressful situation in which the grandmother feared for her own safety.
- Complexity of the mother's mental health issues, substance abuse, threats to harm self, risk of harm to child and others.

Case Study 7

In this matter the paternal grandfather and his wife received assistance from the Legal Aid duty lawyer service in relation to "live with" orders regarding his very young grandchild. The father of the child was living with them but was unable to care for the child. The mother was unable to care for the child because of her serious mental health and drug and alcohol issues. The mother had 3 other children in the care of the child protection authority because of the effect of a combination of these issues on the children.

Issues:

- The paternal grandfather and his wife did not qualify for legal aid on means but did not earn enough to pay a private lawyer. In addition, as they were not eligible for a grant of aid for representation, they would be required to pay court filing fees for their parenting order application.

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- The paternal grandfather and his wife had little understanding of the legal issues associated with the involvement of the child protection authority and the limits to the assistance they would be able to receive. Their perception was that the focus of the child protection authority was on the parents and whether they could be reunified with the child rather than what was necessary, including family court orders, to maintain the current care arrangements for the child to ensure the child's safety.
- There were complexities associated with the grandparents getting assistance from Centrelink and significant documentation was required to resolve these issues. The parents were still receiving benefits for the child and the grandparents had to pay substantial bills owed to the child's child care centre to enable the child to continue to receive day care at the centre.
- The grandfather was required by the child protection authority to institute proceedings against the parents, including his own child, to obtain court orders to clarify the parenting role for the child and to manage contact the mother has with the child.
- The paternal grandfather and his wife were not accustomed to courts or filling out forms. The proceedings were likely to be protracted and to involve multiple hearings.

Case Study 8

In this matter the grandmother received assistance from the Legal Aid duty lawyer service to obtain an urgent recovery order and a "live with" order for the children.

The grandmother had been caring for her 2 primary school aged grandchildren for 5 years following intervention by the police and the child protection authority due to severe family violence and alcohol abuse. Care arrangements were agreed as part of a "family arrangement" with the parents and the child protection authority. There were no family court or child protection orders. The grandmother also had another primary school age child in her care after similar issues arose with that child's parents. She was also about to assume the care of another young child as a foster carer.

During the period that the grandchildren had been in her care ad hoc arrangements had been made to enable her to obtain financial assistance from Centrelink. The grandmother was able to meet the educational and health needs of the children. There had been no contact from the parents throughout this time.

The mother had recently made contact with the grandmother following an assault by the children's father that has resulted in her being hospitalized. She called the grandmother asking for a place to stay. While she was staying with the grandmother she took the children out for a short visit and refused to return them.

Issues:

- The grandmother was the carer for a number of children whose parents are unable to care for them with no financial or practical support from the parents. The grandmother was in receipt of a low income and was dependent on state housing.

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- The father was violent and both parents had severe alcohol problems.
- There was a concern about the children possibly having foetal alcohol syndrome. Both children had “ear problems” and one had bladder control issues which required extra medical help and support.
- The grandmother did not have experience of court proceedings and processes and did not know how to complete the court forms.
- The proceedings were procedurally more complex because of the overlap between the child protection and the family court jurisdictions. A number of court hearings were likely to be necessary.

Case Study 9

In this matter the paternal grandmother received assistance from the Legal Aid duty lawyer service to obtain a recovery order. She also had subsequent assistance from the duty lawyer service and minor assistance from Legal Aid on a number of other occasions for parenting order related matters.

When the paternal grandmother first sought assistance from the Legal Aid duty lawyer service she had been caring for her two primary school age grandchildren for the previous 18 months and was receiving the parenting payment for them. She had agreed for the maternal grandmother to take the children to visit their maternal grandfather in hospital. The maternal grandmother did not return the children following the visit and the children were missing school.

Three years earlier the maternal grandmother had removed the children from the paternal grandmother’s home by threatening her and leaving with the children in a stolen car.

Issues:

- Stressful situation in which the paternal grandmother feared for the children’s safety with the maternal family, and also for her own safety.
- The child protection authority was involved but informed the grandmother that they could not assist her in having the children returned to her care because the children were not the subject of child protection orders.
- The paternal grandmother did not have experience of court proceedings and processes and did not know how to complete the court forms.
- The proceedings were procedurally more complex because of the overlap between the child protection and the family court jurisdictions. A number of court hearings were likely to be necessary.

Case Study 10

The Legal Aid duty lawyer service assisted the paternal grandmother whose son and his partner and their three preschool children had lived with the paternal grandmother and her husband in the paternal grandparents' household until 18 months prior. The paternal grandmother had then asked the mother to move due to her drug use and general lack of care for the children.

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The eldest child was still living with the paternal grandmother and she had the child enrolled in school. The youngest two children were living with the mother and the maternal grandmother. The paternal grandmother considered the maternal grandmother to be a protective factor for the children.

The mother had begun to allege that the two youngest children were not the children of the paternal grandmother's son but were the children of her current partner with whom she had reunited. He was in jail and the mother had informed the paternal grandmother that on his release they were planning to relocate interstate with the children. The grandmothers (paternal and maternal) wanted the eldest child to live with the paternal grandmother, the middle child to live with the maternal grandmother with the care of the youngest child to be shared between the two of them.

The paternal grandmother was concerned that the mother was involved in prostitution and that her drug use had increased. The mother's sister had told the paternal grandmother that the mother was currently suffering from drug-induced psychosis. The paternal grandmother was also concerned about the mother's violence. The paternal grandmother said that the mother had pulled a knife on the father in front of the children, had threatened to kill herself and the two youngest children, there was violence between the mother and her sister and the mother had threatened to smash the paternal grandmother's car up. The paternal grandmother had reported all her concerns to the child protection authority.

Issues:

- The paternal grandmother did not qualify for a grant of legal assistance for representation because her husband worked.
- The paternal grandmother would need to self-represent or engage a private lawyer whom she could not afford, and she would not be exempt from court filing fees.
- She was upset and frustrated because she felt that she had received minimal support from the child protection authority.
- Issues with receipt of Centrelink payments as the mother had been claiming Centrelink payments while the children had been living with the grandmother at least part of the time.
- She did not have experience of court proceedings and processes and did not know how to complete the court forms.
- The proceedings were procedurally more complex because of the child protection and family law issues. A number of court hearings were likely to be necessary.
- Complexity of the mother's mental health issues, substance abuse issues, threats to harm self, children, violent behaviour and the complicating factor that the mother was alleging that two of the children were not her grandchildren.
- Grandfather was reluctant to have other children living in the home and the father of the children was tired of dealing with the mother wanting to focus on his studies leaving the responsibility to the grandmother.

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Case Study 11

In this matter the Legal Aid duty lawyer service assisted the paternal grandmother to obtain interim orders that the mother be restrained by injunction from removing the child from her care and control or from the child's day-care centre and that the mother spend time with the child on one day of the weekend each week.

The grandmother had serious concerns in relation to the mother's drug and alcohol issues, domestic violence in the mother's home, the mother's anger management issues and neglect of the child in the past. There was a history of involvement with the child protection authority in another state.

The history of the matter was that the paternal grandmother had applied to get "live with" orders as the child had lived with her for most of her life. She had also asked for spend time with orders for the mother. Final court orders were made by consent that the child live with the parents and spend regular time with the grandmother. The grandmother's instructions were that she was unrepresented and didn't understand the court process and so she had agreed to something that she should not have.

Some months later the mother rang the grandmother and told her to come and pick up the child. For several months the mother had irregular contact with the child.

One day whilst travelling with the grandmother and the child in the car the mother told the child that she was now going to live with the mother. The grandmother told the mother that she would organise family dispute resolution through Legal Aid. The mother became very aggressive, yelling and screaming at the grandmother, who was driving the car. The mother then assaulted the grandmother. The grandmother applied for a personal protection order against the mother.

The mother removed the child from day care a few days before the final protection order hearing. The grandmother then applied for a grant of aid for ongoing representation for "live with" orders supported by the father.

Issues:

- She was not granted aid on means because of her husband's income and had limited capacity to self-represent. The duty lawyer service assisted her to make her application and represented her in court at the first hearing.
- She did not have experience of court proceedings and processes and did not know how to complete the court forms.
- The proceedings were procedurally more complex because of the number of parties and the overlap between the child protection and family law issues. A number of court hearings were likely to be necessary.
- The complexity of the issues, drug and alcohol abuse and violence.
- Grandmother feared for her own safety.

End.