

***Does the new Act give
Grandparents encouragement
to intervene in parenting
applications?***

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The Statistics

- There was a lively debate and an abundance of literature generated targeted at “the rights” of grandparents.
- The ABS Australian Social Trends survey found that in 2003 there were 22,500 Australian families in which grandparents were the guardians of their children (31,000 children aged 0 – 17 years)
- Reported trends included:
 - Almost half of grandparent families were lone grandparent families, while 21% of other families with children aged 0 -17 years were lone parent families.
 - Most lone grandparents (93%) were lone grandmothers caring for grandchildren.
 - Grandparent families tended to live in regional areas, more so than other families.
 - Where children in grandparent families have parents living elsewhere, they remained in contact with these parents. In 2003, 28,700 children in grandparent families had a natural parent living elsewhere.



The social trends

- Changes to family and society have meant that:
 - Grandparents are major providers of childcare
 - Due to an increasing incidence of drug abuse, alcohol abuse and neglect in western societies grandparents are more frequently bringing up grandchildren because their parents are unable to do so.
- Patton said: “Amongst the most significant number of underlying factors that impact on transfer of the care of children from parent to grandparent is children’s exposure to parental drug abuse which may damage the psychological development of the children more than any other developmental area”.

Children's contact with grandparents after divorce

- The debate and the changes to the Act occurred in the context of the parliamentary enquiry into “joint custody”.
- The Standing Committee recommended that:
 - Contact with grandparents and extended family members be considered by parents when developing their parenting plan, and if in the best interests of the child, specific plans be made in the parenting plan
 - A range of strategies be developed to ensure that grandparents and extended family members, are included in mediation and family counselling activities, where it is in the best interests of a child.

Grandparenting in Divorced Families: The Studies

The Australian Institute of Family Studies reported and drew upon the results of UK research into grandparenting.

The four “grandparenting continua”

1. Grandparent as parent/grandparent as grandparent continuum
2. Adult centred/child centred continuum
3. Partisan/non partisan continuum
4. Reluctant/Enthusiastic continuum



The Findings

- Grandparents are an important source of help, advice and support for parents and children but the picture that emerged was distinctly mixed.

Of 44 families:

- In 4 the paternal grandparents had become excluded because they had quarrelled with their divorced son who might have otherwise brought their grandchildren to see them.
- In 6 families the mother had attempted to prevent her ex husband from contacting the children after the divorce. In 5 of those cases there was at least one paternal grandparent alive who was no longer able to maintain contact with his or her grandchild.
- Serious family quarrels or unresolved conflicts between the separated couple lay at the root of all these cases.

What changed?

- Significant changes relating to grandparents and parenting orders were introduced by the *Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)* (“amendment act”).
- A number of sections of the Family Law Act were amended to make specific references to grandparents. Previously when grandparents or other third parties had become involved in parenting proceedings they had done so under a “catch all” reference in the legislation as other persons “significant to a child’s care, welfare and development”.
- Section 65C (ba) provides that a grandparent of a child may apply for a parenting order in relation to a child. There is then a specific reference to grandparents in sections 60B, 60CC (3)(b)(ii), 60CC (3)(d)(ii), and 60CC(3)(f)(ii) of the Act.



What has changed?

- It is clear by the language used in the Explanatory Memorandum that there was an emphasis on encouraging and promoting the relationships that a child has with wider family and in particular, with grandparents.
- The explicit references to “grandparents” was said to give greater recognition to the important role that grandparents and other relatives play in a child’s life.
- Specific references to grandparents throughout the Amendment Act emphasized and encouraged the involvement and role of grandparents in children’s lives when considering post separation parenting arrangements.

Cases prior to the amendments

- There were a number of decided cases considered the importance of children having a relationship with extended family members including grandparents.
- The Court approached matters based on the facts of each case and the level of involvement by grandparents or other third parties in the child's life.



The Case Law

Tears & Tragedy

APPLICATIONS BY GRANDPARENTS FOR ORDERS THAT GRANDCHILDREN LIVE WITH THEM

- **WEST AND ANOR & WEST**
- **WELDON & SULTER**
- **POTTS AND BIMS AND ORS**

APPLICATIONS BY GRANDPARENTS TO SPEND TIME WITH GRANDCHILDREN

- **LOWY & LINDGREN**
- **NI & ZANG AND ORS**



TRENDS

- The intention of the amendments to the Act including specific references to grandparents and consideration of the importance to as to the relationships that grandparents have with their grandchildren post separation was clearly designed to encourage their involvement in dispute resolution processes and as a last resort, in parenting proceedings within the Court.
- An analysis of the case law post the amendments suggests that, as was the case prior to the amendments, the decided cases involving grandparents indicate that grandparents are becoming involved in matters where there is a necessity to do due to serious issues such as mental illness, drug or alcohol abuse, neglect or in circumstances where the grandparents have become estranged from their own children.



WHAT NEXT?

- The Australian Institute of Family Studies has launched an evaluation of the family law reforms. The study will focus on the impact that parental separation has had upon the relationship with grandparents have with their grandchildren. A national survey of grandparents of children aged between 2 -10 years whose parents have separated between 1 January 2004 and 31 December 2008 is currently being conducted on the Australian Institute of Family Studies website.

DISCUSSION & QUESTIONS