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## Grandparent carers and their legal options

Onjawli Chakravarty, Solicitor



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## ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the Traditional Custodians of the lands of this nation, particularly those of North and Far North Queensland, within which our Service is privileged to operate.

We pay our respects to Elders past, present and emerging and note their continuing connection to land, sea and community. Sovereignty was never ceded. It was and always will be, their land.

We also acknowledge the contributions that Aboriginal and Torres Strait Islander women have made, and continue to make, to our community.

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Disclaimer:

*The guidance provided in this presentation is not legal advice, it is information only. It has been designed for you to use with legal help from a lawyer.*

*NQWLS believes the information contained within this presentation is accurate as at May 2022 and does not accept responsibility for any errors and omissions.*

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## About NQWLS

- Specialist community legal centre run by women, for women.
- Receive funding from State and Federal Government.
- Provide free legal advice and assistance to women in relation to family law, domestic and family violence, child protection, sexual assault, discrimination, human rights and Victim Assist.
- Provide information and referrals in all areas of law.
- Offices in Townsville and Cairns but provides outreach services throughout our broad service region.

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## Today

- About NQWLS
- The difference between family law and child protection
- Grandparents' standing under the *Family Law Act*
- Domestic Violence
- Services you can talk to with concerns
- Services you can obtain legal advice from
- Q & A – time for discussion

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## Family Law v Child Protection

- The Family Law system is where **private applicants** (i.e. parents or family members) make applications for orders relating to **children's best interests, living arrangements and parental responsibility**.
- The Child Protection system is a **government system** in which the Department of Children, Youth Justice and Multicultural Affairs (sometimes known as DOCS or Child Safety) seek orders relating to child custody to protect children from significant harm or risk of significant harm and **whose parents are unable and unwilling to protect them**.

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### Can you seek orders in Family Court?

- Yes. Grandparents have standing to seek parenting orders.
- Orders can range from seeking time with the child to seeking full parental responsibility and care of the child where one or both of the parents are unable to provide a safe home environment for the child.
- If there are already court orders in place for a child and there has been a **material change in circumstances**, grandparents also have standing to apply to re-open the case and vary the orders if the child's best interests are not being met by the current orders.

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### Best Interests of the Child

The paramount consideration in making parenting orders is determining what the **best interests** of the child are. These include:

1. Ensuring the children have the benefit of both of their parents having a **meaningful involvement** in their lives **to the extent it is safe**
2. **Protecting children from physical or psychological harm**, or being exposed to abuse, neglect or family violence
3. Ensuring children receive **adequate and proper parenting** to achieve their full potential
4. Ensuring that **parents fulfil their duties and meet their responsibilities**, concerning the care, welfare and development of their children

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### Do I need Family Court orders?

- The short answer is no.
- A grandparent can informally be a guardian without court orders for things like school contacts or medical authorities if the parents consent.
- It is trickier where one or both parents **do not consent**.
- Parents are presumed to have **equal shared parental responsibility** for all long term decisions (health, education, living arrangements etc).
- If a grandparent wishes to overturn this presumption so that they can make decisions for the child, they will need to apply to Court. It requires evidence of **excessive risk of abuse, neglect or family violence** (or exposure to).

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### Applying for Family Court orders

1. Invite the parents to mediation.
  2. If no resolution at mediation, you will receive a s60I certificate which is valid for 12 months and enables you (or the other parties) to apply to court.
  3. Send a written letter to the parents advising of your intention to commence proceedings.
  4. If no reply, you can apply to court.
- NB: There may be an exemption to mediating if the matter is urgent or if significant domestic violence is occurring that would make mediation unsafe.

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### Family Court process

- First return – what steps are needed to proceed?
- Interim orders in child's best interests
- Family Report – all parties and the children will be interviewed by a Family Consultant who will produce a report with recommendations for the children's best interests.
- Drug testing if required
- Independent Children's Lawyer
- Psychological / Psychiatric reporting if required
- Family Dispute Resolution
- Hearing and decision

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### What is Domestic Violence?

- "Behaviour used to exert **power and control** over someone through **fear**" (DV Connect website)
- Family relationship, current or previous partner, informal care arrangement
- Some types of abuse:
  - Physical abuse
  - Financial abuse
  - Verbal abuse
  - Damage to personal property
  - Emotional abuse
  - Social isolation
  - Digital abuse
  - Spiritual/cultural abuse
  - Stalking
  - Sexual abuse



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## Domestic Violence Orders

- Available for people in a **relevant relationship**, who have experienced at least **one act of domestic violence** where the court feels that it is **necessary or desirable** for them to be protected.
- A relevant relationship includes people in a couple relationship, spouses, ex-partners and family members including parents.
- Children can be protected on orders as "Children of the aggrieved" which extends protection to the child from domestic violence and exposure to violence.
- Range of conditions can be included.
- 5 year standard duration.
- Orders can be changed.

## Process for Applying for DVO

- Applications can be made by the police or by individuals.
- Fill out the application form.
- Tell the court if you would like a temporary protection order.
- Once the other party is served (given a copy of the application), they will be asked if they agree with the order being made or not.
- If they agree the order is made. If not the court the court will ask for more evidence and set a hearing date.

## Services you can contact

At any time a grandparent is concerned, you can contact the following authorities:

- Request the police conduct a **welfare check**
- Contact Child Safety to report any concerns about the **child's welfare and protection**
- Report any **risks or allegations of domestic violence** to the police
- Have a discussion with a **mandatory reporter**:
  - Doctors
  - Registered nurses
  - Police officers with child protection responsibilities
  - Psychologists, psychiatrists and counsellors
  - Teachers and early education professionals

## Where to Find Legal Assistance

- **North Queensland Women's Legal Service**  
Townsville: 4772 5400; Cairns office: 4033 5825
- **Legal Aid Queensland**  
1300 651 188 or visit your local Legal Aid office
- **Aboriginal and Torres Strait Islander Legal Service (ATSILS)**  
1800 012 255 or visit your local ATSILS office
- **Queensland Indigenous Family Violence Legal Service (QIFVLS)**  
1800 887 700 or visit your local QIFVLS office
- **Aboriginal and Torres Strait Islander Women's Legal Services NQ**  
4721 6007 / 1800 082 600
- **Community Legal Centres (CLCs)**  
Visit [www.communitylegalqld.org.au](http://www.communitylegalqld.org.au) to find your nearest CLC
- **Private solicitors**  
Visit [www.qls.com.au](http://www.qls.com.au) and use the Find a Solicitor tool to locate a private solicitor

## Contact Us

[www.asknola.com.au](http://www.asknola.com.au)  
[www.nqwls.com.au](http://www.nqwls.com.au)

### Townsville Office

4772 5400  
[tsvadmin@nqwls.com.au](mailto:tsvadmin@nqwls.com.au)  
PO Box 2209  
Townsville QLD 4810

### Cairns Office

4033 5825  
[cairns@nqwls.com.au](mailto:cairns@nqwls.com.au)  
PO Box 2542  
Cairns QLD 4870