Grandparents and family dispute resolution in Western Australia

A practical guide to the law, FDR and possible next steps

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Grandparents can apply for parenting orders in Western Australia, but they do not have an automatic legal entitlement to spend time with a grandchild or make decisions for them. Being eligible to apply does not mean an order will be made. If a court is asked to decide, the child's best interests are paramount. The court considers safety, the child's views and needs, and the benefit of important relationships where it is safe to do so. Family dispute resolution can help adults discuss arrangements, but it cannot impose an outcome.

This guide explains the general family law position, how FDR may work in practice, and what to consider before taking the next step. It covers ordinary disputes about a child's care, time and communication. It is general information, not legal advice about a particular family or court matter.

The law in Western Australia

Western Australia has two laws for parenting matters. The Family Law Act 1975 (Cth) generally applies where the child's parents are or were married to each other. The Family Court Act 1997 (WA) generally applies where the child's parents were never married to each other. The WA Act was amended to align its main parenting reforms with the federal changes. Those WA reforms commenced on 10 February 2025. Which Act applies can depend on the parents' legal relationship history and the proceedings already under way, so obtain legal advice if you are unsure.

Both Acts expressly allow a grandparent to apply for a parenting order. They also allow an application by another person concerned with the child's care, welfare or development. The legislation therefore recognises that a child's important relationships can extend beyond their parents. It does not give every grandparent an automatic right to contact, care or decision-making.

What a grandparent may ask the court to consider

A parenting order can set out who a child lives with, the time a child spends with another person, communication with a child, and who has parental responsibility for particular decisions. A grandparent may ask for an order about time or communication. In some cases, a person may ask for a child to live with them or for parental responsibility to be allocated to them. Those are significant, fact-specific applications. They do not follow automatically from a person's status as a grandparent.

Parental responsibility is the legal authority and responsibility for making decisions about a child's care and welfare. It is different from spending time with a child. A court order can allocate parental responsibility to someone other than a parent, but the court must decide whether that arrangement serves the child's best interests.

If there is already a parenting order, family violence order, guardianship order or child protection arrangement, read it carefully before proposing or changing contact. An informal agreement may not change an existing order. Get legal advice before acting in a way that may be inconsistent with an order.

How the court decides

The child's best interests are the paramount consideration. The court must consider the circumstances of the individual child, including:

- what arrangements would promote the safety of the child and each person who cares for them, including safety from family violence, abuse, neglect and other harm;
- any views expressed by the child;
- the child's developmental, psychological, emotional and cultural needs;
- the capacity of each person who has, or is proposed to have, parental responsibility to meet those needs;
- the benefit to the child of relationships with their parents and other people significant to them, where it is safe to do so; and
- anything else relevant to the child's particular circumstances.

The court must also consider any history of family violence, abuse or neglect involving the child or a person who cared for them, and relevant family violence orders. A close relationship or a history of caregiving may matter, but it does not displace the court's responsibility to assess safety and the child's circumstances as a whole.

For an Aboriginal or Torres Strait Islander child, the court must consider additional cultural matters, including the child's right to enjoy their culture with support and opportunities to connect with family, community and culture, and the effect of proposed arrangements on that connection. The WA Act also directs the court to have regard to kinship obligations and child-rearing practices. These considerations are specific to the child's family and cultural context.

When FDR is relevant

FDR is generally confidential. An independent practitioner helps people discuss a family law dispute and consider possible agreements. It can be used for a dispute about a grandparent's or another family member's time with a child even when the child's parents have not separated. It is not a hearing, and the practitioner does not decide who is right or what the outcome must be.

In most contested applications for parenting orders, the applicant must make a genuine effort to resolve the dispute through FDR before applying to court. This requirement can apply to grandparents as well as parents. The pre-court certificate must be issued by a practitioner who is authorised to issue the relevant statutory certificate; a general mediation certificate may not meet the requirement. In a federal matter, the certificate is generally issued under section 60I of the Family Law Act. In a WA state matter involving a child whose parents were never married to each other, the relevant certificate is generally issued under section 66H of the Family Court Act.

Both Acts allow exceptions to pre-court FDR, including consent, urgent matters, family violence or child abuse, and inability to participate effectively. Courts decide statutory exemptions; authorised practitioners may certify that FDR should not start or continue. Seek legal advice.

A certificate records a statutory circumstance, such as an attempt at FDR, a person's non-attendance, a lack of genuine effort, or the practitioner's assessment that FDR was not appropriate. It does not decide the dispute, prove that a grandparent should receive time, or predict what a court will order.

What FDR may look like in practice

Before any joint discussion, the practitioner usually speaks with each person separately. This gives the practitioner an opportunity to understand the dispute, identify who may need to participate, check for safety concerns, and consider whether the process is appropriate. The practitioner should also discuss access, communication or other participation needs that could affect someone's ability to take part.

If FDR is suitable, the practitioner and participants can consider how to meet. Depending on the assessment and the service, this may include a joint meeting, separate rooms or online participation. These arrangements can reduce some risks or barriers, but they do not make every matter suitable for FDR. The practitioner may decide that FDR should not proceed or should stop if safety or fairness cannot be maintained.

The adults may discuss practical details such as the frequency and length of visits, handovers, transport, holidays, calls or video contact, and how changes will be communicated. They can also discuss what information may be shared about the child's health, school or important events, taking account of privacy and any legal orders. The aim is to develop arrangements that fit the child's needs and can be followed in real life.

Children are not expected to carry messages or choose between adults. A child's views may be relevant to a court decision. Whether a child should take part in an FDR process is a separate decision that requires careful consideration of the child's age, needs, safety and the process available.

What an agreement can and cannot do

If everyone reaches agreement, they may record it in writing. A parenting plan is a written agreement, but it is generally not enforceable in the same way as a court order. A court may take a later parenting plan into account when deciding what order is in the child's best interests. A parenting plan should not be assumed to override an existing order.

If the parties want legally binding arrangements, they can ask the court to make consent orders. The court must consider whether proposed parenting orders are in the child's best interests, and statutory requirements may apply to orders involving a non-parent. FDR itself does not create an enforceable order.

If there is no agreement, the parties can consider legal advice about their options. Where the statutory requirements are met, the practitioner may issue a certificate for a court application. The certificate is not a court endorsement of one person's position.

Safety and when FDR may not be appropriate

Family violence, coercive control, threats, child abuse, fear or a serious power imbalance can affect whether a person is able to negotiate freely.

Raise safety concerns privately before any joint meeting. The practitioner should assess whether FDR is safe and appropriate, and whether safeguards could meaningfully address the risks. Some disputes should not proceed to mediation.

The law provides exemptions from the usual pre-court FDR requirement in specified circumstances, including some matters involving family violence, child abuse or urgency. An unsafe person should not be pressured into joint mediation. Tell the practitioner about safety concerns privately and seek legal advice about the available exemption or certificate pathway. If there is immediate danger, call 000. If you are concerned about a child's safety, seek urgent legal advice or contact the appropriate child protection service.

FDR is generally confidential, but confidentiality has legal limits. Before the process begins, ask the practitioner to explain confidentiality and any circumstances in which information may need to be disclosed for safety or legal reasons.

If child protection is involved

Family law parenting disputes are different from child protection proceedings. If a child is in the care of the Department of Communities, subject to a protection order, or placed under a statutory care arrangement, the Children and Community Services Act 2004 (WA) and the child's care arrangements may affect what can be agreed or ordered. Grandparents seeking contact or care in those circumstances should obtain advice from a lawyer experienced in child protection law. Legal Aid WA has separate information for grandparents concerned about a grandchild's welfare or safety.

Questions people commonly ask

Do grandparents automatically have a right to see their grandchildren?

No. There is no general automatic family law entitlement to visits because someone is a grandparent. A grandparent may apply for a parenting order, and the court decides any application by reference to the child's best interests.

Can a grandparent apply if the parents are still together?

Yes. A dispute about a child's relationship with a grandparent is not limited to situations where the parents have separated. FDR may be available if the people involved are willing and the practitioner considers the process appropriate.

Can a grandparent ask for the child to live with them?

A grandparent can apply for parenting orders, which can include who the child lives with. The court will assess the child's circumstances and safety. An application about a child's home or parental responsibility is significant and should be discussed with a family lawyer before filing.

What if a parent refuses to attend FDR?

The practitioner may be able to issue a certificate recording that the other person did not attend because of refusal or failure to attend. The certificate does not mean the court will make the orders sought.

Does the child have to decide whether to see a grandparent?

No. The child's views are one part of the assessment, considered in context. Adults should not pressure a child to choose sides or carry messages.

Can FDR change an existing court order?

FDR alone does not change an order. A written plan may affect an order in limited circumstances, depending on the order's terms and the people bound by it. Get legal advice before relying on an informal agreement or acting differently from an order.

Does a section 60I or section 66H certificate mean the practitioner supports my case?

No. The certificate records a circumstance specified in law. It is not a recommendation that a court grant an application.

Preparing for an FDR conversation

Before contacting the other people or an FDR service, consider what arrangement you are asking for and why it would support the child. It may help to prepare the following information:

- the child's current routines, care needs and important relationships;
- the nature and history of your relationship with the child, including any regular care you have provided;
- the child's views, if known, without asking them to take sides or repeat adult messages;
- any safety concerns, family violence orders, parenting orders or child protection arrangements;
- any cultural, kinship or community relationships relevant to the child; and
- a practical proposal covering time, communication, transport, handovers and how the arrangement could be reviewed.

Keep communication with other adults calm and focused on the child where it is safe to communicate. If direct contact is unsafe, use a legal representative or another suitable communication method. Avoid involving the child in adult negotiations.

Legal advice and further information

A family lawyer can advise which Act applies, whether FDR is required, what orders may be available, and how existing orders or child protection arrangements affect your situation. Beyond the Binary provides family dispute resolution where the practitioner assessment indicates that the process is appropriate. FDR is not legal advice, and the practitioner does not act as a lawyer for either person.

For general information, see the official sources below. Contact details and legal rules can change, so check the linked pages before relying on them.

- Family Law Act 1975 (Cth), including sections 60CA, 60CC, 60I, 63C, 64B and 65C
- Family Court Act 1997 (WA), including sections 66A, 66C, 66H, 76, 84 and 88
- Family Court of Western Australia, changes to the Family Court Act commencing 10 February 2025
- Attorney-General's Department, Family dispute resolution
- Attorney-General's Department, section 60I and section 66H certificates
- Legal Aid WA, Grandparents and others
- Legal Aid WA, Family Dispute Resolution
- Legal Aid WA, Grandparents protection and care information sheet

Legal information checked 22 October 2026. Laws and guidance may change. This guide is general information and is not legal advice or a prediction of what a court will decide.