

Submission from Gosnells Community Legal Centre to:

Committee Inquiry:

Grandparents who take primary responsibility for raising their grandchildren

We are making this submission to the inquiry because we recognize the enormous challenges faced by grandparents who find themselves in the situation of raising their grandchildren, and in particular because of the legal and financial challenges that they face due to the role that they have taken upon themselves. Our Centre provides legal advice and assistance for clients with Family Law issues. We also provide a walk in service and financial counsellors to assist people experiencing financial hardship. A significant number of our clients are grandparents needing legal and financial assistance. We will specifically address two of the Terms of Reference, namely item 'a' in relation to the practical challenges facing grandparents raising their grandchildren and item 'd' relating to the barriers that grandparents raising their grandchildren face in acquiring legal recognition of their family arrangements.

Grandparents are usually in the role of primary carers of their grandchildren because they or the State child protection authority have concerns about the safety of the children if they were to remain with both or either of their parents. There may be issues of drug and alcohol dependency as well as mental health issues and family violence involving one or both of the parents. In WA the relevant State department is Child Protection and Family Support ("CPFS").

Practical Challenges: Financial

We are aware of the financial strain born by grandparents. Many are retired or close to retirement and living on modest incomes. They don't have the capacity to supplement their incomes due to their commitment to be available to children who are often traumatized and in need of specialist assistance. We support the calls of many grandparent carers that they be given the same financial assistance as foster parents.

Where there is an informal arrangement between the parents and the grandparents the State government does not pay foster parent payments to grandparents. The reasons could be

- a. Grandparents are not foster parents. They care for their grandchildren because of their love and affection for members of their families.
- b. Grandparents are entitled to the usual payments which parents are entitled to from Centrelink.
- c. The current government's insistence that people should not expect government to pay for what they can do for themselves.

If grandparents can and are willing to care for children who cannot be cared for by their parents, this should be encouraged. Grandparents bring their natural love and affection to their grandchildren. The families are kept together, the grandchildren not separated from each other. The arrangements are likely to be more lasting and stable. It is a regrettable situation if the government pays foster parents to care for children when grandparents refuse or are unable to do so (sometimes for financial reasons). The best possible solution is for children to be cared for by family members, most often a grandparent, if their parents are not able to take on that role.

In some instances where Child Protection orders are in place, grandparents do receive financial support from the state government. But when CPFS forms the view that the children are no longer in need of protection and propose to withdraw from the legal proceedings by not pursuing further protection orders, there is a negative impact for the grandparents because the financial support is withdrawn upon the grandparents assuming full parental responsibility for the children.

Child Support legislation does allow for grandparents to apply for Child Support from both parents where there is a Family Court Order in place or where the parents have both agreed about the care arrangement. But sometimes the parents deliberately provide false information to the Department of Human Services (“DHS”) and in those cases DHS are unable to make a Child Support Assessment and the grandparent will need to apply to the Family Court for a court order.

There have been situations where the relationship between the grandparents breaks down and they separate after many years of sharing responsibility for the grandchildren. However, the grandparent who the children continue to live with cannot apply for Child Support from the other grandparent as there is no provision for this under current Child Support legislation. The only alternative is to make an application for child maintenance under the Family Law Act.

Recommendations

- An assessment should be made by the State child protection authority to determine if the child would be likely to be placed in care if it were not for the grandparent stepping in. If so, the grandparents should be entitled to foster parent payments – subject to a means test.
- CPFS should look at whether the child was abandoned with the grandparent. Abandonment should be deemed to be evidence that the child is in need of care due to neglect. Currently if, upon the abandonment of the child by a parent and the grandparent takes over the care of the child, the protection authorities consider the child no longer falls within their jurisdiction and the grandparents are left to their own devices without assistance from the department.

- Any response should be coordinated between State and Commonwealth governments as they provide different services and payments to foster parents and parents.
- There should be an onus on the child protection services such as CPFS to proactively investigate the circumstances and not expect grandparents to prove everything to them.

Barriers to legal recognition

In some instances grandparents who are already exercising primary responsibility for raising their grandchildren may wish to formalize the current arrangement to make those arrangements clear to all the parties concerned. They may need to have Orders in place that allow them to make major decisions in regard to the children, for example, in relation to education, medical or travel issues. The grandparent may need advice about the amount of time the children should spend with their parents, if any.

Where children are in the care of grandparents but without the involvement of child protection authorities, grandparents need the assistance of a family lawyer to advise them about the requirements of Family Law and the options of perhaps entering into Parenting Plan or obtaining Parenting Orders by consent. If one or other of the parents is not willing to formalize the current arrangement then ultimately the grandparents will have no option but to start Family Court proceedings. This can be a daunting process and grandparents can feel overwhelmed in dealing with both parents who must be parties to the case. Anecdotally, we understand that in these situations where there is no current risk to the children and where there is no real dispute about who the children should live with, that the grandparent will not be eligible for Legal Aid.

We have seen a number of situations where CPFS have been involved with the family and where child Protection Orders have been in place for some time. The grandparents are told by the CPFS that they no longer consider the children to be in need of protection. The grandparents are then referred for legal advice and assistance to apply for Parenting Orders in the Family Court of WA. Sometimes there is pressure on the grandparents to commence proceedings in the Family Court as CPFS wish to withdraw from the Children's Court matter but insist that Parenting Orders be obtained so that the status quo continues. Grandparents can find this transition from one jurisdiction to another is quite confusing. They are often not aware that there are two separate pieces of legislation and two Courts which can make decisions about children.

Again we have seen that these grandparents were not eligible for grants of Legal Aid because the children are safe in their care and their application for Legal Aid does not satisfy the 'child at risk' test. Of course we acknowledge that all applications for Legal Aid are treated on a case by case basis according to their merit. It may also be possible that the means test would preclude some grandparents. Our Centre can provide initial advice and minor

assistance to these clients by preparing the Family Court documents but as we do not represent clients in Court we are concerned that they face severe disadvantage as self represented litigants in the Family Court process. These clients are often stressed from the responsibility of raising young children and dealing with ongoing conflict in their family. They are physically exhausted from caring for children while often dealing with their own health problems associated with advancing age. It is unjust that they should also have to initiate Family Court proceedings without legal assistance and representation.

Recommendations

- That Legal Aid be available to grandparents to assist them in making applications for Parenting Orders, especially in circumstances where CPFS have determined that the children are no longer in need of protection and there needs to be a transition from Children's Court to Family Court proceedings.
- Legal education seminars to inform grandparents about some of the issues arising from having primary responsibility for their grandchildren.
- Legislative amendments to recognise grandparents as a special class of foster parents with quasi parental responsibilities in areas such as education, health, passports, travel.