



Parenting: Can a non-parent seek parenting orders?

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While most people understand the meaning of the word “*parent*” in its basic form, it is less clear how the Court treats other individuals in the family law system who might also wish to seek parenting orders.

An individual other than a parent can apply for parenting orders in relation to a child or children if they are:

1. The child in question;
2. A grandparent of the child; or
3. Any other person concerned with the care, welfare or development of the child.

In the event you are not a parent, child or grandparent, you must meet the threshold test, namely, that you are a *person concerned with the care, welfare and development of the child*, to have standing to apply for a parenting order.

This definition might sound broad, however, the Courts have narrowly construed this definition when considering applications for parenting orders by persons other than parents or grandparents of a child. In other words, it can be more difficult to seek parenting orders if you are an individual other than grandparents or parents of a child and depending on the circumstances of your case.

The circumstances where an individual with an interest in a child and their welfare might make an application for non-parent parenting orders in the Courts include where:

- The parent/s with care of the child is/are alleged to have a drug problem/mental health issue or other issue effecting their capacity to parent the children;
- The person applying is being refused contact with the child by the primary carer;
- The person applying is the non-biological parent from a same sex relationship;
- The person applying is an ex de facto partner of the primary carer and played a significant role in the care and welfare of the child during the child’s life.

The Courts have not adopted a formula to determine whether a person is a person concerned with *the care, welfare and development* of the child. The Courts have instead determined this on the different facts and



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The Courts have instead determined this on the different facts and circumstances in each case.

Whether a grandparent or another individual, it will be important if making an application, to present as much evidence as possible to support your position that the child would benefit from having you in their life.

Cases involving “non-parents” are less straightforward than applications for parenting orders between parents. These applications involve a two-step process and there is a threshold question that needs to be resolved prior to any consideration being given to the question of spend time orders.

[What happens if a non-parents application is not successful?](#)

In the event a Court determines you are not a person concerned with the *care, welfare and development of a child*, there may be cost implications for you. Under the Family Law Act there are provisions which allow for costs to be imposed on a party to proceedings in circumstances their application is *vexatious* and or an abuse of process.

There are a number of examples where third parties have been ordered to pay costs of the parent after being unsuccessful in the application. It is therefore important to consider the strength and nature of any application brought to establish that you are a person concerned with the *care, welfare and development* of a child. Our family law team has experience in not only bringing these sorts of applications, but defending them.

If you are thinking of initiating an application of this sort, or need assistance defending one, be sure to book an initial consultation with one of our expert family lawyers to have a confidential discussion about your specific circumstances.

[How we can help](#)

We are pleased to offer expertise in the area of Family law from our Sydney and Melbourne offices. We have Accredited Specialists in Sydney and Melbourne who are more than happy to assist with any enquiry you may have. For any enquiry in Sydney, please contact our national head of Family law [Amy Jenkins](#). If your enquiry relates to a matter in Melbourne, please contact [Nicky Neville-Jones](#) – Special Counsel and Accredited Specialist in Family Law .

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