



Family law covers all areas of family relationships. If you are married, in a de facto relationship, separated or divorced, the Family Law Act will cover any disagreements you might have about your children or property.

This fact sheet only covers family law issues specific to people who are unwell, including with cancer.

When a parent becomes ill

Separated or divorced parents may have court orders or informal arrangements that outline who cares for children. These arrangements cover who the children should live with, how much time they will spend with the other parent, and other matters.

If a parent is diagnosed with cancer, these arrangements may or may not need to be changed. Some people with cancer maintain their parenting arrangements, while others may need time without the children to recover.

If a parent is too ill to manage the usual arrangements for a period of time, the parents may want to think about who else can help. This may include the other parent, grandparents, siblings, neighbours and friends.

Even if everybody agrees to the new arrangement informally, the parents may wish to have a parenting plan written, or change an existing parenting

plan. Updating the parenting plan can give all of the people involved some certainty with the new schedule.

If the parents can't agree on the new arrangements, either of them can apply to the Federal Magistrates Court for a *parenting order* to determine who will care for the child. The parents must attend family dispute resolution before applying to the Court.

When making a parenting order, the Court's main concern is the best interests of the child. This includes:

- the capacity of each parent to provide for the child
- the health of each parent
- any family violence
- the relationship between the child and each parent
- the practical difficulty and expense involved with a child spending time with each parent.

The wishes of the child may be taken into account. Generally the court will listen closely to children aged 14 and over, as well as younger children who are very mature.

When a parent is terminally ill

If a parent is terminally ill, they will need to make arrangements for their children after they have died. The arrangement could be with the other parent, a grandparent, other relatives or friends. This person will be known as the *guardian*.

The guardian can be appointed:

- through a parenting plan
- through a parenting order.

Although a person can express their wishes for who will care for the child in their will, this is not binding (see next page).

Parenting plans and consent orders

If a terminally ill parent would like someone other than the surviving parent to care for their children

tip

A *parenting plan* is a written, signed and dated agreement between both parents (or carers) setting out parenting arrangements. If this agreement is registered with the Family Court, it becomes a consent order.



after they die, they will need formal Court orders. The parent may want to make a *parenting plan*, and have it registered by the Family Court as a *consent order*, to formalise the arrangements about who will look after the children.

Parenting order

If the parents and other relatives cannot agree on what contact they will have with the children, a *parenting order* from the Family Court or Federal Magistrates Court may be required.

The will

A terminally ill parent can write down their wishes for who will look after their children in their will. This person is known as the *testamentary guardian*. However, this is not binding.

Under the *Testamentary Guardianship Act* if there is a surviving parent, then the surviving parent and the appointed guardian become the joint guardians of the children unless there are exceptional circumstances or orders in place.

If the testamentary guardian does not want to share responsibility with the surviving parent, he or she can ask the Court to make orders. The Court will then decide who should have parental responsibility – the surviving parent, the testamentary guardian, or someone else.

If you have named a testamentary guardian in your will, the Court may take this into account when making orders. However, the Court has the power to appoint a different guardian if it thinks this is in the children's interest.

Rights of grandparents

Grandparents have the right to apply to the Court for a parenting order. The Court will take the best interests of the child into account, as well as an older child's wishes.

Grandparents who are primary carers are eligible to receive financial assistance from Centrelink. Payments include the Double Orphan pension (if both parents have died, or one parent has died and the other is uncontactable), and Family Tax Benefit Part A and B. The child may also be added to a grandparent's Pensioner Concession Card, and receive prescription medicines at the pensioner rate. Grandparents may also receive a Relatives Allowance Package from the Department of Health and Human Services.

Grandparents are also eligible to receive child support from the surviving parent. An application for a child support assessment can be made through the Child Support Agency.



Where to get help and information

- Family Law Courts
www.familylawcourts.gov.au
- Legal Aid ACT
www.legalaidact.org.au
1300 654 314
- Cancer Council
13 11 20

This fact sheet provides general information, which may be relevant to ACT only, and is not a substitute for legal advice. You should talk to a lawyer about your specific situation.