



**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 will 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.

### 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.*

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.

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, it is important to make arrangements for someone to care for any dependent children after the parent has died. This person (the *guardian*) could be the other parent, a grandparent, relatives or friends.

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 below).

## Parenting plans and consent orders

Where a terminally ill parent would like someone other than the surviving parent to care for their children after they die, they will need formal Court orders. The parent may want to make a *parenting plan*, and have it registered by the Court as a consent order, to formalise the arrangements about who will look after the children.



## Family Dispute Resolution

Family Dispute Resolution is available through Family Relationship Centres and other community based organisations. A Family Dispute Resolution Practitioner can work with families to discuss arrangements for children and help them prepare a Parenting Plan when agreement is reached.

## Parenting order

If the parents and other relatives cannot agree on what contact they will have with the children, even after Family Dispute Resolution, a parenting order from the Family 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 Guardianship of Infants Act, the surviving parent becomes the guardian, unless there are exceptional circumstances or orders in place (e.g. the parent who dies has sole custody).

If someone other than the surviving parent wants to look after the children, he or she can ask the Court for orders to override the surviving parent. The Court will then decide who should have parental responsibility—the other 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 necessary.

If the terminally ill parent who dies has sole parental responsibility, the surviving parent has no automatic rights to guardianship. In this situation, the Court will make a decision on guardianship based on what is in the best interests of the child.

## 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 Statutory Care Allowance from the Department of Community 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](http://www.familylawcourts.gov.au)
- Legal Services Commission of South Australia  
[www.lsc.sa.gov.au](http://www.lsc.sa.gov.au)  
(08) 8463 3576.
- Cancer Council Legal Referral Service  
13 11 20
- Family Relationship Advice Line  
1800 050 321

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