



**ANDERSONS**  
S O L I C I T O R S

LawTalk Blog



## Can you only issue proceedings in children's matters if you are a biological parent?

Author: [Stefanie Wheare](#)

Email: [swheare@andersons.com.au](mailto:swheare@andersons.com.au)

Phone:

Date: Tuesday October 6, 2020

The short answer is no.

The *Family Law Act 1975* ("the Act") has a wide scope for who can institute proceedings for children's matters in both the [Federal Circuit and Family Court](#) of Australia.

Commonly people believe that only a biological parent or grandparent is allowed to institute legal proceedings in Family Law in relation to a child. This is incorrect.

### Who can apply for a parenting order?

Under s65C of the Act, a [parenting order](#) in relation to a child may be applied for by:

1. *either or both of the child's parents; or*
2. *the child; or*
3. *a grandparent of the child; or*
4. *any other person concerned with the care, welfare or development of the child.*

## Who is included as "any other person concerned with the care, welfare and development of a child"?

With reference to "any other person concerned with the care..." it means that the scope for who can institute proceedings for children's matters is open and it is not uncommon for this category to include aunts, uncles, extended family members, step-parents of a child and even non-related parties.

First and foremost, the court's position is to consider the "[best interests of the child](#)" under s60CC of the Act. This is paramount, regardless of whether someone is seeking regular time with the child or whether they are seeking that the child live with them.

Ultimately, if the best interests of a child align with that child being cared for by a party other than that child's biological parent(s) or spending formal and regular time with someone other than the biological parents, the court has the power to make such an order and does so regularly.

## Reasons a court would not award full custody to a child's biological parents?

It is not uncommon in today's modern society for the court to make orders awarding full custody and parental responsibility to grandparents and step parents over a child's biological parents. The reasons for doing so are vast and can include such factors as the mental and physical health of the parties involved, the needs of the child and the lifestyle of the parties. Ultimately, it comes down to the discretion of the court in deciding what is best for the child.

It must be noted that each matter is looked at factually by the court on a case-by-case basis. No two matters are ever the same. Therefore simply because you are a step-parent, does not automatically mean that you will end up with the same result as your friend who is also a step-parent.

If you are a grandparent, step-parent, aunt, uncle or family friend seeking to spend time with a child, for whatever reason, we recommend that you [obtain legal advice](#) as early as possible to consider your options moving forward. These options include out of court resolution by way of mediation and negotiation which can be much more cost effective and timely.

---

*Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal and South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.*