

# GRANDPARENTS AND GRANDPARENTING: EDITORIAL

## INTRODUCTION

In 2004, for the first time, the Australian Bureau of Statistics (ABS) included a question in its Family Characteristics Survey which sought information regarding families where grandparents, rather than parents, were acting as primary caregivers. This question was inserted at the initiative of the Council on the Ageing (COTA) in NSW. The result was a figure of 22,500 families in this situation, involving more than 30,000 children under 16 years of age.

The ABS figures were almost certainly an underestimate, like all previous estimates. For instance, the ABS estimated, on the basis of its 1999 Family Survey, that there were 12,000 families with grandparents as primary carers. Most academic investigators consider that the ABS methodology leads to undersampling, because a high proportion of these families are concentrated in a relatively small number of areas, especially near the coast, e.g. the central coast of New South Wales. Since then, the ABS has produced new figures which indicate a decline in the number of grandparent-headed families. This is a counter-intuitive result, which underlines the fact that research on this topic has barely scratched the surface. There can, however, be no doubt about the rapid increase in the numbers of children who have been placed in "out-of-home" care, i.e. not in the homes of their parents. In the period 1996 to 2005, there was a 70 per cent increase in these placements. Of these, 57 per cent were placed in foster care, and 42 per cent in "kinship care".

Kinship care has increased rapidly in recent years. This is a world-wide trend which has become the new orthodoxy among welfare authorities. In practice, the most important providers of kinship care are grandparents, particularly maternal grandmothers.

In Australia, there is a particularly high proportion of Aboriginal (or indigenous) children in kinship care, so that the role of grandmothers is correspondingly greater in indigenous communities. According to the Australian Institute of Health and Welfare, indigenous children are six times more likely to be in out-of-home care than non-indigenous children. (There is a correspondingly high proportion of grandmother-headed families in the African-American population, where the US Bureau of the Census estimated in 1997 that there were more than one million families headed by grandparents).

Apart from acting as parents, grandparents also play a major role in providing child care for working families, classified by the ABS as "informal" care. This has increased from 30 per cent of school age children in 1984 to more than 40 per cent at the present time. Grandparents, and especially grandmothers, are the largest source of informal care, accounting for more than half.

There appear to be four main factors which have brought this about:

1. Increased labour force participation by women
2. Increased rates of marriage breakdown
3. Increasing numbers of sole parents
4. Rising age of childbirth.

The continuing effect of these trends, combined with increased longevity and better health among older people, has been to affect family life in a number of ways, including the role of grandparents. These effects were already visible to some sociologists a generation ago, a notable example being Bernice Neugarten in the 1960s. (Neugarten, B.L. and Weinstein, K.K., 1964, "The Changing American Grandparent", *Journal of Marriage and the Family*, 26, 199-204). The consequences of these changes are now increasingly the subject of discussion among

grandparents themselves. In the present issue of *Elder Law Review*, we touch upon a number of these issues. In particular, it is evident that problems of law and practice are similar across a number of countries.

### CONFLICT OF JURISDICTIONS

The relations between grandparents, parents, and children can be complicated by contradictions in the role of different judicial bodies with overlapping responsibilities. In Australia, this commonly takes the form of conflicting decisions by the Family Court, a federal institution, and state government departments concerned with child welfare. Kim Dayton's contribution notes similar conflicts between state and local government authorities in her home state of Minnesota.

### RIGHT OF ACCESS

Right of access by grandparents to grandchildren is probably the most vexed aspect of the situation, and undoubtedly the one which evokes the greatest emotional stress. Anglo-Saxon jurisprudence generally confers no special rights on grandparent caregivers, so that children who have been raised by their grandparents can at any time be removed by a returning parent, whose right to do so will be upheld by the courts. A distressing example is reported in Linda Frow's contribution. Doron also describes how such cases have been dealt with by the courts in Israel, where judges have consistently ruled in favour of the parents in the event of conflict with grandparents. In such cases, the common judicial formula is to invoke the "best interests of the child". In the words of one Israeli judge, "the consideration of the best interests of the minor and his emotional and physical welfare are the deciding factors in reaching a decision". Such judgments do not, however, shed much light on how to determine the best interests of the child, and in practice the formula means that parents will generally win the case.

### ECONOMIC AND SOCIAL STRESS

Most grandparent caregivers have retired from paid employment, so the cost of rearing grandchildren must be met from savings or through self-denial. Backhouse, in her contribution, describes the pressures entailed in raising grandchildren – as-children. A common complaint in Australia has been that foster parents, who also play an important role in providing care for children from broken families, are treated better than grandparents who are fulfilling similar functions without similar recognition. Although governments in Australia have acted to improve support for grandparents, the situation remains unsatisfactory, as Backhouse points out.

### CONCLUSION

The increased, and increasing, role of grandparents as primary caregivers for their grandchildren poses a range of awkward legal and political questions for which no easy solutions are available. In this issue of *ELR*, we have been able to describe some of these difficulties and the extent to which the legal and welfare systems are tackling – or not tackling – them. There will doubtless be much more to be said on the subject in the future.