

## What are guardianship orders?

Guardianship orders aim to provide greater stability for children\* when the Children's Court makes a decision they cannot live with their parents.

Guardianship orders are a way of helping ensure a child has a more stable, nurturing and safe home, without cutting legal ties to their family. Guardianship orders can only be made on a final and long-term basis. That is, until the child reaches 18 years of age.

Under a guardianship order, a child is not in foster care or out-of-home care but in the independent care of their guardian. This means that there is no ongoing case management support provided by the Department of Communities and Justice (DCJ) or a Funded Service Provider (FSP). Guardianship for a child can be held by one person or jointly by more than one person.

## How does the Children's Court decide whether to make a guardianship order?

The Children's Court can make a guardianship order for a child who is in need of care and protection or who is in out-of-home care.

Guardianship orders can be made if the Children's Court is satisfied that:

- there is no real possibility of a child returning to the care of their parents
- parties have sought legal advice, in the case of guardianship by consent
- the prospective guardian will provide a safe, nurturing, stable and secure environment for the child now and into the future
- if the child is Aboriginal or Torres Strait Islander, their permanent placement under a guardianship order satisfies the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles
- written consent is given by the child if they are 12 years of age or older and capable of giving consent.

## Can other orders be made in conjunction with a guardianship order?

The only other orders that can be made in conjunction with a guardianship order are:

- a contact order
- an order prohibiting action (e.g. an order prohibiting a parent from going to a child's school).

A contact order cannot be made if DCJ or a FSP is required to coordinate or provide supervision of family time with parents or other relatives.

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## What is a guardian?

Guardians play an important role in caring for children who cannot live safely at home with their parents.

A guardian has full care and legal responsibility for the child in their care, including making decisions about their health and education, as well as managing, and where required, supervising contact (known as family time) with their parents, family and important people in their life.

A guardian ensures the child's emotional, social, cultural and spiritual needs are met as outlined in their care or case plan.

## Who may be considered a suitable guardian?

A guardian can be a relative or kinship carer or another 'suitable person'. There is no legal definition of who may be a suitable person. However, as a guide, this could include a family member, friend or a DCJ or FSP authorised carer who has an established and positive relationship with the child and is willing and able to take care of them until they are at least 18 years of age.

For Aboriginal children, guardians who are not relatives or kin should be Aboriginal people in order to be considered 'suitable persons'. For example, Aboriginal guardians assessed as 'suitable persons' may include a member of the Aboriginal community to which the child belongs. Guardians must be able to demonstrate their ability to keep children connected to family, culture and country.

## Who can express interest in becoming a guardian?

The request could come from:

- a relative or kinship carer who has been assessed for an emergency placement, authorised as a carer and has had the child in their care for significant period of time
- an authorised DCJ or FSP carer who has had the child in their care for a significant period of time and is interested in exploring the option of becoming a guardian
- a person who has an established and positive relationship with the child, but who has not previously been assessed as a carer.

## What does a guardianship order mean for a child?

If a guardianship order is made, the child will be cared for by their guardian until they turn at least 18 years of age, or the Children's Court changes the order.

The child will still have family time (contact) with their parents, family and important people in their life, as outlined in their care or case plan or court orders. It is important that every child has opportunities to

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learn about their family heritage, even if they do not have contact with them. This enables them to have a strong and healthy sense of self and identity.

If the child is Aboriginal or Torres Strait Islander, or from a multicultural background, they have the right to maintain connections with their culture and community and have a cultural support plan in place. The guardian must ensure the child's cultural needs are met and encourage and facilitate their participation in cultural activities and events.

## What will change about family time (contact) arrangements under a guardianship order?

If there is a court order outlining arrangements for family time (called a contact order), this order must be followed as a minimum after the guardianship order is made, unless an application is made to the Children's Court by the guardian or parent to change it. Alternatively, the frequency of family time (contact) can be increased by mutual agreement between the parent and the guardian.

A guardian is responsible for arranging, coordinating and (where required) supervising family time (contact) between the child, their family members, and other important people in their life.

Family time (contact) arrangements outlined in the care plan should remain in place unless it is in the child's best interests to change them and this has been negotiated with all relevant parties or has been through the mediation process as outlined below.

It is important for anyone thinking of becoming a guardian to know that DCJ or the FSP responsible for case management will no longer have any responsibility for supervising or supporting family time (contact) arrangements.

## What if there is a disagreement over family time (contact) arrangements after a guardianship order has been made?

If there is an ongoing disagreement about family time (contact) arrangements, Legal Aid may be able to provide help through the mediation process. Sometimes the practical part of family time (contact) can be difficult to negotiate and Legal Aid can help people talk about issues and try to find solutions in a way that keeps relationships intact.

DCJ or the FSP previously responsible for case management will not be involved in the discussions. Where there are concerns about family time (contact) having a negative impact on the safety and well-being of a child, and mediation does not help to resolve these concerns, an application to make or change a Contact order can be made to the Children's Court. This application can be made by the parent, guardian or DCJ.

Free advice and assistance about this process is available by contacting the Legal Aid Family Law Early Intervention Unit on 1800 551 589.

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## What support is provided to guardians?

Guardians receive an allowance to enable them to meet the needs of the child in their care. While there may be differences in the carer allowance rates between DCJ and FSPs, the guardianship allowance will be paid at the same rate as the DCJ statutory carer allowance, and is based on the individual needs of the child as outlined in their care or case plan.

Once the guardianship order is made, DCJ then becomes responsible for managing guardianship allowance payments and annual reviews.

Each year DCJ will send an annual review report letter to guardians that **must be completed and returned within 21 days** to confirm they are still caring for the child. If the annual review report declaration is not returned to DCJ during this time, their guardianship allowance will cease. Guardians must also let DCJ know within 21 days if the child leaves their care before they turn 18 years of age. An example would be if the child returns to their parents or other family members.

The guardianship allowance is provided by DCJ as a contribution to the cost of caring for a child. The Australian Taxation Office has stated that under TD 2006/62 the guardianship allowance, as with the carer allowance, is not taxable income.

In addition to the guardianship allowance, a Guardianship Financial Plan will be developed for the child prior to the guardianship order being made which will detail any other financial support that the child is eligible for throughout the life of the guardianship order. This could include childcare, cultural and life story work or professional therapies.

Although case management and support is not provided, guardians can still seek help, support and advice from local services including child and family support, family counselling, health services, youth programs, disability and child care services. The local DCJ Community Services Centre may be able to help guardians contact these services.

Guardians may also be eligible for support from the Commonwealth Department of Human Services (Centrelink) which delivers a range of Australian Government benefits and concessions to the general community including:

- child care benefit
- child care rebate
- ABSTUDY
- Youth Allowance
- Work Exemption.

Information about the full range of Australian Government assistance, including payment rates and eligibility criteria, is available on the Centrelink website at [www.humanservices.gov.au](http://www.humanservices.gov.au) or by contacting Centrelink on 13 61 50. You can also visit a Centrelink Customer Service Centre for more information.

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## What services are not available under guardianship orders?

Guardians are assessed on their ability to independently meet the long-term needs of a child without ongoing assistance and support from DCJ or a FSP. Therefore, guardians are not eligible for:

- ongoing case management and support after the guardianship order has been made
- funding for respite arrangements, costs and services related to family time (contact) and respite support workers.

Additionally, young people under guardianship orders are not eligible for:

- leaving care and after care services
- the Commonwealth transition to independent living program (TILA) payment.

## What are the first steps when considering a guardianship order?

### 1. Initial conversations about the option of guardianship

Caseworkers will have initial discussions with the current carer or prospective guardian, the child and their parents about:

- the long-term needs of the child
- the different care options and which order would be the most appropriate to meet the long-term needs of the child.

### 2. Case plan meeting

If it is agreed during initial discussions that guardianship should be explored further, the next step will be for DCJ or the FSP with case management responsibility to organise a case plan meeting.

This meeting should involve the child (where appropriate), the child's parent/s as well as other significant people in their life, and the prospective guardian.

The meeting is an opportunity to focus on the assessed short-term and long-term needs of the child, and then discuss what would be the most appropriate court order to meet them, including exploring the option of guardianship.

If it is agreed that guardianship may be suitable to meet the child's long-term needs, the guardianship assessment will be completed to assess the suitability of the prospective guardian and make a decision about the case plan goal of guardianship.

## How is a person assessed to be a guardian?

This will depend on whether they have been previously assessed as an authorised carer, the type of assessment and when the assessment was completed.

The caseworker will talk with the prospective guardian about the assessment process before the assessment begins.

## What are the criteria for becoming a guardian?

The applicant's suitability for becoming a guardian will be assessed on the following criteria:

- successful outcomes from completed suitability checks for applicants and all household members
- medical evidence confirming they have the physical and mental health to care for the child until they are at least 18 years of age
- personal references from two people who can comment on the suitability of the prospective guardian to care for a child.

The applicant will also need to demonstrate they have:

- the ability to independently meet the long-term needs of the child without the case management and supervision from DCJ or FSP. This includes demonstrating they have a network of family and friends who can provide support and the capacity to meet the needs of the child with limited financial support
- an established and positive relationship with the child and an understanding that the needs of the child will change over time
- an understanding of the child's trauma experience, and how they will manage its potential impact on the child's longer-term development
- the capacity to understand the child's identity and their role in supporting the child through life story work
- the capacity to meet the child's ongoing cultural needs
- the capacity to establish and maintain a safe and respectful approach with the child's parents, siblings and significant others in their life
- the capacity and willingness to arrange, coordinate and, where required, supervise safe family time (contact) with the child's family and ability to negotiate through difficulties that may emerge
- adequate and safe accommodation for a child.

## Guardianship applications made by FSPs or existing relative, kinship or authorised carers

The consent of the Secretary of DCJ is required for a guardianship application to proceed.

The processes and procedures for guardianship applications made by FSPs or existing relative kinship or authorised carers are available from each agency.

### What are the formal steps in the guardianship assessment process?

1. The prospective guardian is provided with information about becoming a guardian.
2. The prospective guardian completes a guardianship application form.
3. If a young person is 12 years or older, their consent is needed in order to be eligible to proceed towards guardianship. The caseworker will obtain their verbal consent before proceeding and if an application is filed for guardianship, the child's independent lawyer will obtain their written consent during the court process.
4. The applicant and all household members aged 16 years and over, complete suitability checks including:
  - 100 point identity check
  - updated Working with Children Check
  - nationwide criminal check for all household members over the age of 16 years, including a household member who is 14 years and over if the assessment deems necessary.  
**Note:** Applicants or household members who are authorised carers or prospective adoptive parents under the *Adoption Act 2000* will not be required to provide the above mentioned information if the information or checks have been completed recently.
  - DCJ checks
  - information obtained from other agencies including FSPs and accredited adoption service providers
  - information obtained regarding the prospective guardian's employment or other activities.
5. Applicants provide:
  - contact details of two personal referees who will be required to provide references concerning the suitability of the prospective guardians to care for a child long-term
  - health checks on the physical and mental health of the prospective guardian and current medical reports
  - evidence of financial capacity to support the child into adulthood.
6. A series of face-to-face interviews are held, including interviews with the child, their parents and family members, the applicant and any children and other people living in the applicants' home.

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The interviews will cover many topics including family background and relationships, the applicant's relationship with the child and their parents, their knowledge of their trauma experience and how this may impact on children and families, their understanding of the long-term needs of the child and how they plan to meet these needs into the future.

If the child is Aboriginal or Torres Strait Islander or from a multicultural background, consultation with the child's extended family, kinship and community is required and should be considered in all cases. Where a prospective guardian of an Aboriginal child is not a relative or kin, they should be an Aboriginal person, most likely a member of the child's community.

7. A home inspection is undertaken to assess the safety and suitability of the home.

8. The DCJ or FSP caseworker or an independent assessor will write a guardianship assessment report, including a recommendation of whether a guardianship order is assessed as being in the best interests of the child. This report will be reviewed and approved by delegated managers as per the agency's approval procedures. Obtaining further information or conducting further checks may be made any time before the making of a guardianship order.

The caseworker will discuss the outcome of the guardianship assessment report with the applicant and will send the applicant a letter confirming the outcome of the assessment.

If the application is declined, the reasons for declining the application will be provided in a signed letter. The applicant will be advised that they have the right to apply to have the decision reviewed.

9. A guardianship suitability statement will be prepared for the Children's Court and a copy provided to all relevant parties. The guardianship assessment report and suitability statement will inform the Children's Court and guide the Court's decisions about whether a guardianship order is the best option to meet the needs of the child.

## Who makes the final decision about a guardianship order?

The Children's Court makes the final decision about a guardianship order for a child.

## Can the guardianship order be changed once the order has been made?

If the guardian, parents or DCJ would like any part of the guardianship order to be changed, they have the right to make an application to the Children's Court to have the order changed.

A guardianship order may be changed if there has been a significant change in circumstances since the order was made. For example, if the guardian has a serious illness, and is unable to continue to care for the child.

Parties are advised to seek legal advice if this is an option they would like to consider.

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## How do I get started?

If the child is already in your care, take time to talk to them about what guardianship will mean for them. It is important they understand that under guardianship orders, there is no longer a caseworker to support them.

Talk to your caseworker or contact DCJ or the FSP responsible for the child's case management to find out more. This will help you make an informed decision about whether guardianship is the best option for the child you would like to care for, or are already caring for.

## Further information

For more information you can contact your local Community Services Centre or visit the DCJ website: [www.facs.nsw.gov.au/psp](http://www.facs.nsw.gov.au/psp)

You can also call the DCJ guardianship information line on 1300 956 416.

Alternatively, contact:

- My Forever Family on 1300 782 975
- The Aboriginal Child, Family & Community Care State Secretariat (NSW) Inc. (AbSec) Foster Care Support Line on 1800 888 698.



\* Throughout this document we use the term child to refer to children and young people up to 18 years of age, unless otherwise stated.