



# Becoming a guardian

## What is the assessment process?

### What are guardianship orders?

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

Guardianship orders are a way of helping ensure a child or young person has a more stable, nurturing and safe home until they are at least 18 years of age, without cutting legal ties to their family.

Under a guardianship order, a child or young person is not in foster care or out-of-home care but in the independent care of their guardian.

Guardianship orders can only be made on a final and long-term basis, that is until the child or young person reaches 18 years of age. The only other orders that can be made in conjunction with a guardianship order are an order for contact, and an order prohibiting action. However, a contact order cannot be made if FACS or an agency is required to coordinate or provide supervision of contact with birth parents or other relatives. An example of a prohibition order would be an order prohibiting a parent from going to a child's school.

### 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 or young person 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 or young person returning to the care of their parents
- the prospective guardian will provide a safe, nurturing, stable and secure environment for the child or young person now and into the future
- if the child or young person is Aboriginal or Torres Strait Islander, their permanent placement under a guardianship order follows the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles
- written consent is given by the child or young person if they are 12 years of age or older and capable of giving consent.

### What is a guardian?

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

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A guardian has full care and legal responsibility for a child or young person in their care, including making decisions about their health and education, as well as managing, and where required, supervise a child's contact with their parents, family and important people in their life.

A guardian ensures the child or young person'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. As a guide, this could include a family member, friend or an authorised carer who has an established and positive relationship with the child and young person and who is willing and able to take care of the child or young person until they are at least 18 years of age.

For Aboriginal children and young people, 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 or young person 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 or young person in their care for significant period of time
- an authorised FACS or out-of-home care agency carer who has had the child or young person 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 or young person, but who has not previously been assessed as a carer.

## What does a guardianship order mean for a child or young person?

If a guardianship order is made, the child or young person 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 or young person will still have 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 and young person has opportunities to learn about their family heritage, even if they do not have contact with their family. This enables them to have a strong and healthy sense of self and identity.

If the child or young person is Aboriginal or Torres Strait Islander, or from a different cultural background to their guardian, 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 or young person's cultural needs are met and encourage and facilitate their participation in cultural activities and events.

## What will change about contact arrangements under a guardianship order?

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

A guardian is responsible for arranging, coordinating and (where required) supervising contact between the child or young person and their family members.

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Contact arrangements outlined in the care plan should remain in place unless it is in the child or young person's best interest 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 FACS or the out-of-home care agency responsible for case management will no longer have any responsibility for supervising or supporting contact arrangements.

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

If there is an ongoing disagreement about contact arrangements, Legal Aid may be able to provide help through the mediation process. Sometimes the practical part of contact can be difficult to negotiate and Legal Aid can help people talk about issues and try to find solutions.

FACS or the agency previously responsible for case management will not be involved in the discussions.

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

## What support is provided to guardians?

Guardians receive an allowance, known as a guardianship allowance, to enable them to meet the needs of the child or young person. The guardianship allowance is paid at the same rate as the FACS statutory care allowance. The guardianship allowance is based on the individual needs of the child or young person as outlined in their care or case plan.

Guardians may 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.

While there may be differences in the care allowance rates between FACS and out-of-home care agencies, once a guardianship order is made, the guardianship allowance will be paid at the same rate as the FACS statutory carer allowance.

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

Each year FACS 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 or young person. If the annual review report declaration is not returned to FACS their guardianship allowance will cease. Guardians must let FACS know within 21 days if the child or young person leaves their care before they turn 18 years of age. An example would be if the child or young person returns to their birth family or other family members.

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

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 Community Services Centre may be able to help guardians contact these services.

## What services are not available under guardianship orders?

Guardians are assessed on their ability to independently meet the long-term needs of a child or young person without ongoing assistance and support from FACS or an out-of-home care agency. 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 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 or young person and with their parents about:

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

### 2. Case plan meeting

If it is agreed during initial discussions that guardianship should be considered, the next step will be for FACS or the out-of-home care agency with case management responsibility to organise a case plan meeting.

This meeting should involve the child or young person (where developmentally appropriate), the carer and prospective guardian, their parent or parents as well as other significant people in their life. The meeting is an opportunity to focus on the assessed short term and long term needs of the child or young person, and then discuss what would be the most appropriate court order to meet the long-term needs of the child or young person, including exploring the option of guardianship.

If it is agreed that guardianship may be suitable to meet the long-term needs of the child or young person, the guardianship assessment will proceed to assess the suitability of the prospective guardian.

## 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.

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## What are the criteria for becoming a guardian for a child or young person?

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

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

The applicant/s will also need to demonstrate they have:

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

## Guardianship applications made by out-of-home care agencies or existing relative, kinship or authorised carers

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

The processes and procedures for guardianship applications made by out-of-home care agencies 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 information about becoming a guardian.
2. The applicant completes a guardianship application form.
3. The child or young person over the age of 12 years must provide ~~written~~ consent (where capable) to the guardianship order. The signature will be witnessed by the child's independent legal representative.
4. The applicant and all household members, including young people 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.

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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.

- FACS checks
  - information obtained from other agencies including an accredited adoption service provider
  - information obtained regarding the 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 or young person 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 or young person into adulthood.
6. A series of face-to-face interviews are held, including interviews with the child or young person, their parents and family members, the applicant and any children and other people living in the applicants' home.

The interviews will cover many topics including family background and relationships, the applicant's relationship with the child or young person 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 or young person and how they plan to meet these needs into the future.

If the child or young person is Aboriginal or Torres Strait Islander or from a different cultural background to their prospective guardian, consultation with the child's extended family, kinship and community are 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 FACS or out-of-home care agency caseworker 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 or young person. 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 or young person.

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

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

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

If the guardian, parents or FACS 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.

## How do I get started?

If the child or young person 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 FACS or the agency responsible for the child or young person'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 or young person you would like to care for, or are already caring for.

One important step will be a case plan review meeting with the child or young person, their parents, the prospective guardian, as well as other significant people in the child's life. This is an opportunity to discuss the most appropriate options, including exploring guardianship. If it is decided that guardianship may be suitable to meet the needs of the child or young person, the guardianship assessment process will be undertaken.

## Further information

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

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

Alternatively, contact:

- NSW Connecting Carers on 1300 794 653
- The Aboriginal Child, Family & Community Care State Secretariat (NSW) Inc. (AbSec) Foster Care Support Line on 1800 888 698