



Guardianship orders

Information for parents

What are guardianship orders?

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

Under a guardianship order, your child is not in foster care or out-of-home care (OOHC) but in the independent care of their guardian. A guardianship order does not cut your legal ties to your child.

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 the Department of Family and Community Services (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.

What is a guardian?

A guardian is a person who plays an important role in caring for your child by providing a safe, stable and caring home until he or she is at least 18 years of age.

A guardian has full care and legal responsibility for your child including making decisions about their health, education, and managing contact with their family and significant people in their life.

A guardian ensures your child's emotional, social, cultural and spiritual needs are met until they become an adult as outlined in their care or case plan.

What does a guardianship order mean for my child?

If a guardianship order is made, your child will remain in the care of their guardian until they are at least 18 years of age or the Children's Court changes the order.

Guardianship orders are different to adoption. Under guardianship orders, you will still be recognised as your child's parent. Your child will still have contact with you, other members and important people in their life, as outlined in their case or care plan or court orders.

If your child is from an Aboriginal or Torres Strait Islander background, or from a different cultural background to their guardian, they will continue to maintain connections with their culture and community, learn about their family heritage, and have a cultural support plan. You have the right to participate in the cultural planning process and ensure your child's cultural needs are identified.

To ensure that Aboriginal children and young people maintain their cultural connections, FACS requires that guardians who are not relatives or kin of the child or young person 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.

It will be the guardian's responsibility to ensure your child's cultural needs are met as identified in their cultural support plan. They will encourage and facilitate your child's participation in cultural activities and events.

What will change about contact arrangements under a guardianship order?

If there is a court order in place 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.

You and your family will still have contact with your child, as long as it is safe to do so. Their guardian will be responsible for arranging, coordinating and (where required) supervising contact between you and your child, and between your child and other family members, as long as it is in your child's best interests.

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

Any party can make an application to the Children's Court to have a contact order changed. Parents are advised to seek legal advice if this is an option they would like to consider.

Will my child's caseworker still have a role?

If a guardianship order is made, case management support will no longer be provided to the guardian, your child, you and your family. Supervision of contact will not be provided by FACS.

Guardians will provide an annual review report declaration to FACS once a year to confirm that they are still caring for your child. They must also tell FACS if your child leaves their care before they turn 18 years of age.

How does someone become a guardian?

All prospective guardians must undertake a detailed assessment and review process, which includes seeking the views of the child or young person, their parents and family, and their carer or carers. A child or young person who is 12 years of age or older must give written consent to a guardianship order being made, where they are capable.

The assessment will determine whether guardianship is in your child's best interests and if the prospective guardian is able to meet your child's long-term needs without ongoing casework support from FACS or other OOHG agencies.

Who makes the final decision?

The Children's Court will make the final decision about the most appropriate order for your child.

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

A guardianship order may be changed if there has been a significant change in circumstances since the order was made.

If you, the guardian, or FACS believe it is the child or young person's best interest for the guardianship order to be changed, an application can be made to the Children's Court for the order to be changed.

You are advised to seek legal advice if this is an option you would like to consider.

Further information

For more information about guardianship, talk to your child's caseworker, contact your local FACS Community Services Centre or your OOHC agency.

You can read more about guardianship at www.facs.nsw.gov.au/psp

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

Alternative contacts

NSW Connecting Carers 1300 794 653

Alternatively, contact:

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