

What are guardianship orders?

Guardianship orders aim to provide greater stability for children* when the Children's Court makes a decision that they cannot live safely 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 can only be made on a final and long-term basis. That is, until your child reaches 18 years of age. However, guardianship orders do not cut your legal ties to your child.

The only other orders that can be made in combination with a guardianship order is an order for contact (known as 'family time') and an order prohibiting action. An example of a prohibition order would be an order prohibiting a parent from going to a child's school.

A contact order can be made until the child reaches 18 years of age. However, a contact order cannot be made if the Department of Family and Community Services (FACS) or a Funded Service Provider (FSP) is required to coordinate or provide supervision of contact with parents or other relatives.

What is a guardian?

A guardian is a person who plays an important role in caring for your child by providing a permanent, safe, stable and caring home until they are 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 family time (known as contact) and time spent with significant others in their life.

A guardian ensures your child's physical, emotional, social, cultural and spiritual needs are met until they become an adult as outlined in their care 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. Under guardianship orders, the legal ties with your child remain and you will still be recognised as your child's parent. Your child will still have family time with you, other members of the family and important people in their life, as outlined in their care plan or as specified in the court orders.

If your child is from an Aboriginal or Torres Strait Islander background, or from a culturally and linguistically diverse (CALD) background, 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 maintain their cultural connections, FACS requires that guardians who are not relatives or kin of the child should be Aboriginal people in order to be considered 'suitable persons'.

Guardianship Taskforce

e: GuardianshipInformation-NSWFACS@facs.nsw.gov.au

p: 1300 956 416

For example, Aboriginal guardians assessed as 'suitable persons' may include a member of the Aboriginal community to which the child 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 family time arrangements under a guardianship order?

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

If there is a court order in place outlining contact arrangements, this order must be followed as a minimum. However, the frequency of contact can be increased by mutual agreement between the parent and the guardian.

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

If there is a dispute regarding family time, an application can be made to Legal Aid to mediate between yourself and the guardians.

There is an expectation that the guardian will maintain and support the family time. However, if it isn't occurring as planned the guardian or parents can approach Legal Aid NSW for free mediation

Will my child's caseworker still have a role?

If a guardianship order is made, casework support by FACS or FSP will no longer be provided to the guardian, your child, you and your family. Supervision of family time (contact) will not be provided by FACS or a FSP. Guardians will provide an annual review report which requires the guardian to declare and confirm to FACS once a year 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 participate in a thorough assessment and review process, which includes seeking the views of the child, their parents and family, and their carer/s.. A child who is 12 years of age or older must give written consent to a guardianship order being made, where they are deemed capable. Where children are under 12 years of age, their views will be considered and documented in the guardianship assessment.

The assessment will consider 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 a FSP.

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.

We encourage all people considering guardianship to seek independent legal advice.

Further information

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

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

- My Forever Family on 1300 782 975 or visit their website <http://www.myforeverfamily.org.au/>
- 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.