

How to satisfy permanency planning to achieve short term care orders: guardianship

The 2019 amendments to the *Children and Young Persons (Care and Protection) Act 1998* allow for short-term care orders (STCOs) to be made that allocate parental responsibility to the Minister for a maximum of 24 months¹, when the child or young person's permanency goal is restoration, guardianship or adoption.

Permanency plan involving guardianship

Section 79(9) of the Care Act allows the Children's Court to make a STCO allocating parental responsibility solely to the Minister for up to 24 months², where the permanency plan involves guardianship.

The permanency plan should be consistent with the Permanent Placement Principles in s.10A of the Act. It must also adhere to the principle that the younger the child, the greater the need for early decision making s.83(5).

Section 78A(2A) states that a permanency plan does not need to provide details of the specific long-term placement of the child or young person. However, it must be clear and provide the court with a reasonably clear picture about how the child's safety, welfare and well-being will be met in the future.

Care plan involving guardianship

Stating to the court that you intend to undertake guardianship casework, such as a guardianship assessment, is not enough to persuade the court that permanency planning has been appropriately and adequately addressed. The court needs to be provided with detailed evidence that the proposed orders are real and viable and are not merely aspirational or "a plan for a plan".

All care plans need to:

- Provide for a timely permanent placement for the child or young person
- Avoid the instability and uncertainty that can occur through a number of different placements or temporary care arrangements

¹ In special circumstances the court can make a STCO for a period exceeding 24 months under s.79(10).

² As above.

- Be implemented in a timely manner to provide a safe, nurturing, stable and secure placement
- Adhere to the principle that the younger the child, the greater the need for early decisions to be made in relation to their permanent placement.

What should be included in the care plan?

The following information must be included in the care plan for a STCO involving guardianship:

1. Allocate all aspects of parental responsibility to the Minister, pending an application for a guardianship order being made.
2. Clearly state that the child's permanency plan is guardianship with the prospective guardian/s. The plan must be real and achievable and not be a mere possibility or aspirational.
3. Provide a clear picture of how the permanency plan will meet the child or young person's needs, welfare and well-being in the foreseeable future.
4. Explain the purpose of the STCO and what is to be achieved during the period of the STCO.
5. Include details of any services and supports for the prospective guardian/s that DCJ or other agencies are able to provide or arrange during the period of the STCO.
6. Include details of other services that the Children's Court could request (such as other government departments or funded NGOs) to provide to the child or young person and the prospective guardians to ensure guardianship can proceed.
7. Describe the actions, events and outcomes that DCJ believes must be achieved within the period of the STCO before guardianship can progress. Specify the - who, what, where and when.

For example, include:

- a. What services, programs, supports or resources are required?
- b. Who will provide these services, programs, supports or resources?
- c. Are these services, programs or supports currently available? If not, when will they be available?
- d. Where will these services, programs and supports be delivered? E.g. at the prospective guardian's home, at the service provider's office?
- e. When will the services, programs or support start, and when do they need to be completed?
- f. What are the expected goals of the service provision?
- g. When will the guardianship assessment be completed?

- h. What, if any, other checks or assessments need to be completed and when will these be completed by?
8. Explain how DCJ will monitor progress of the implementation of the plan.
9. Include an explicit commitment to bring the matter back to court before the STCO expires.
10. Explain what processes will be put in place to ensure the matter will be brought back to court before the expiration of the STCO. There should be sufficient information provided so that the court can be confident that the matter will be brought back before the STCO expires.
11. Set out the date by when DCJ will bring the matter back to court to seek a guardianship order. You should allow enough time for preparation of the guardianship care plan, financial plan and any other court documents and to undertake any further consultation.
12. Provide details of what will happen if the plan is unable to be implemented or guardianship cannot progress. This includes information about any triggers that would indicate that the permanency plan is no longer viable and details of any alternative plan for the child or young person.
13. Set out the date by when DCJ will bring the matter back to the court via a s.90 application if the guardianship plan changes. This also should be outlined in the s.82 report.

What evidence is needed to support a permanency plan of guardianship?

You will need to file detailed evidence to demonstrate that a future application for guardianship is likely to be successful and that this plan is realistic and achievable. This should include evidence of what progress the prospective guardians have already made in caring for the child or young person and providing them with a safe, nurturing, stable and secure home.

This evidence might include:

- A positive outcome of a preliminary assessment for guardianship, where it has been recommended that further time is required before applying for a guardianship order. During this time, support can be provided to the prospective guardian to enable them to care for the child or young person independently
- Evidence of the care that the prospective guardians have been providing to the child or young person

- Evidence of the relationship that the prospective guardians have with the child or young person and their commitment to care for the child or young person into the future.

Supporting evidence may also include expert evidence and social science research that supports the legislative preference for guardianship orders over long-term orders allocating parental responsibility to the Minister.

The views of prospective guardians should be obtained and evidence of their views provided to the court. This is usually included in the Care Plan section on views and evidenced by the prospective guardians signing the agreement to become guardians which is attached to the Care Plan.

Evidence of no realistic possibility of restoration to the parents

You need to ensure that there is sufficient information and evidence before the court so that the court is able to make a finding that there is no realistic possibility of restoration to the parents. This could include reference to the court's previous findings and evidence that the parents have not addressed the issues that resulted in the child or young person entering care, such as evidence of the subsequent removal of other children.

It is important to remember that even in cases where siblings have been restored or the parents have retained care of children, this on its own will not necessarily mean there is a realistic possibility of this child or young person being restored within a reasonable period. There are a range of other factors that need to be considered to make this assessment, including the length of the current placement, the stability of the placement, the child or young person's attachment with the prospective guardians and what placement would best meet the child or young person's needs and best interests, including the child or young person's need for a safe, nurturing, secure and stable long-term placement.

Monitoring of the permanency plan

The court should be provided with section 82 progress reports on the implementation of the care plan over the course of the STCO (up to 24 months). These reports should also include an update on when the section 90 application will be filed.

More information

For more information on STCO and guardianship, visit Casework Practice in particular the practice minute on STCO or email the PSP on permanency.support@facs.nsw.gov.au.