

# Shaping a Better Child Protection System: Guardianship orders by consent

The reforms to guardianship orders empower families to decide who can best parent their children where they recognise they are unable to. Where both parents consent to a guardianship order, this means less time in court and a greater focus on the best interests of the child or young person.

The amendments make it clear that guardianship orders can be made by consent. Where a guardianship order is the agreed best possible outcome for a child or young person, these agreements can now be legally formalised in the Children's Court, without the need for a hearing. The Court will no longer need to rule that there is no realistic possibility of restoration.

## Legal advice

The amendments require that parties consenting to a guardianship order, taking parental responsibility away from a parent, must receive independent legal advice. The Children's Court must be satisfied that the parties understand the nature and legal effect of the proposed guardianship order and that their consent has been freely given. The Court can also appoint a legal representative for a child or young person to ensure that they also understand the proposed guardianship order.

## The child is at the centre of all decisions

The Children's Court must also be satisfied that the proposed guardianship order will not contravene the principles of the *Children and Young Persons (Care and Protection) Act 1998*. For example, the Court could refuse to make a guardianship order by consent if it finds that the order would contravene the principles that the paramount consideration is the safety, welfare and wellbeing of the child or young person. Or that the order will contravene the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles.

## Contact orders

Currently, where the Court decides that there is no realistic possibility of restoration of a child or young person to their parent and it grants a guardianship order, the Court is only permitted to make contact orders for 12 months in the first instance. The amendments provide that the Children's Court will be empowered to make contact orders for the life of a guardianship order if it is in a child's best interests. However, if a child's needs or circumstances change, parties may agree to vary or rescind the contact orders by a contact variation agreement. To be binding, these agreements need to be in writing and registered with the Children's Court. Free alternative dispute resolution is available from Legal Aid NSW for contact mediations where there is a dispute about contact or a proposal to change contact orders.



These changes don't mean that FACS intends to supervise contact where a guardianship order has been made by the Children's Court.

This will give children and young people, and their parents and families, the assurance of an ongoing connection with each other during the life of a guardianship order, where this is appropriate.