

Guardianship Orders

Section 79A of the Children and Young Person's (Care and Protection) Act 1998, allows a Magistrate to make a Guardianship Order for a child or young person (child).

Guardianship is one of three pathways for permanency for children in the Permanency Support Program (PSP), the other two being restoration and adoption.

- Guardianship orders aim to provide greater stability for children when the Children's Court makes a decision they cannot live with their parents.
- Guardianship orders are a way of helping to ensure a child has a 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 is not in foster care or out-of-home care but in the independent care of their guardian.

For guardianship to be considered, the court must find there is no realistic possibility of restoration and that the prospective guardians can independently meet all of the child's ongoing needs and provide a safe, nurturing, stable and secure environment for the child until they reach 18 years.

If a child is 12 years of age or over at the time guardianship is being considered, they must give their written consent to the court.

Who Can Be a Guardian?

A guardian can be a relative, kinship or foster carer or other 'suitable person', who is willing and able to care for a child without DCJ or agency support. This includes independently managing family time (contact) until the child is 18 years.

There is currently no legal definition of a 'suitable person'. As a guide, this could be:

- a family friend
- a person close to the child, such as a teacher or sports coach

- an authorised carer who has been caring for the child
- any other person who can demonstrate an established positive relationship with the child.

Pathways to Guardianship

There is no initiating Guardianship application. For a Magistrate to make a guardianship order, a child's permanency must be considered by the Children's Court as part of a care proceeding.

There are three pathways to guardianship:

1. s61 application initiating care proceedings – which is the initiating application that brings a child into care. S61 applications can only be filed by DCJ. Once a care application is filed, the applicant can seek guardianship orders pursuant to s79A.
2. s90 application to vary or rescind orders – which seeks to change or revoke existing orders. S90 applications can be filed by DCJ, parents, the child or the potential guardian. This occurs after a child's case plan goal is reviewed and changed to guardianship.
3. Application for Guardianship by consent s38. This means all parties (including the parents) have agreed that a guardianship order is the best option for the child and have signed a consented care plan. In these cases, the court does not have to establish that there is no realistic possibility of restoration.

Guardianship for Aboriginal Children and Young People

When determining if guardianship is the most suitable permanent placement option for an Aboriginal child, the Children's Court must have regard to the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles, s13 of the Children and Young Persons (Care and Protection) Act 1998. There must also be a comprehensive Cultural Support Plan in place to meet the current and ongoing cultural needs of the child.

For Aboriginal children, guardians who are not relatives or kin should, where practicable and in the child's best interests, 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 belongs.

For Aboriginal children in a non-Aboriginal placement, guardianship will only be considered in exceptional circumstances. This requires extensive cultural planning, supportive outcomes from cultural consultations with family/kin and communities and approval from the DCJ Executive District Director (EDD) for guardianship to proceed.

Please see [Common Orders in Child Protection](#) and [General Court Terms and Definitions](#) factsheets for more information.