

## Guardianship and Aboriginal Children

For Aboriginal children and young people (child) in the Permanency Support Program (PSP), guardianship is the most preferred permanency option when a child is unable to be returned safely to their parents. This is set out in the Permanency Placement Principles, section 10A of the Children and Young Persons (Care and Protection) Act 1998 (the Care Act).

However, making decisions about permanency for an Aboriginal child, particularly if they are not living with relatives or Aboriginal carers, can be difficult. There are mixed views in Aboriginal organisations and communities about whether this type of permanency is in the best interests of Aboriginal children.

The NSW Child, Family and Community Peak Aboriginal Corporation (AbSec), the representative body for Aboriginal child and family organisations, opposes guardianship orders for Aboriginal children. This is because of their worries about whether these types of orders uphold the rights of Aboriginal children and support them to thrive. After the making of a permanency order such as guardianship, the Department of Communities and Justice (DCJ) and Permanency Support Program (PSP) providers are not involved in the lives of these children anymore. AbSec, and some Aboriginal community-controlled organisations, are concerned that no one will be checking to see that:

- the child is happy, safe and thriving
- their cultural and spiritual needs are being met
- they are continuing to have ongoing relationships with their Aboriginal family and community.

It is important for caseworkers to keep an open mind when it comes to guardianship for Aboriginal children, as each child is unique, and their situations will differ. Some casework practitioners support guardianship for Aboriginal children, especially when the guardian is a family member and/or it is a decision led by the family.

This is because this gives Aboriginal children who cannot return home safely to their parents the chance to:

- let their family decide what is best for them

- experience a sense of permanency and belonging that a legal order can promote
- leave behind the stigma that being in out-of-home care (OOHC) can bring
- experience family life without a caseworker being involved in their lives.

It also helps reduce the over representation of Aboriginal children in OOHC.

## Considerations for Guardianship of Aboriginal Children

When considering guardianship for an Aboriginal child, you must carefully consider if a guardianship order will ensure a child's holistic wellbeing, now and into the future, with particular focus on their cultural needs, connection to family, community, culture, and Country. To do this, you will need to assess the qualities and attitudes of the prospective guardian/s, meaningfully consult with community, and create a comprehensive cultural plan. You, the child, and their families, may also want to consider a contact order. These can range from one year to when the child turns 18 years of age.

### Qualities of the Guardian

When determining whether guardianship is the most suitable permanency option for Aboriginal children, the Children's Court must consider how the order meets the Permanency Placement Principles outlined in Section 13 of the Children and Young Persons (Care and Protection) Act 1998. Please see the fact sheet: [Foundations of Guardianship](#) for more information about guardianship care and the placement principles.

Prospective guardians must be able to demonstrate, over their history of providing care to a child, their ability to keep children connected to Aboriginal family, community, culture, and country.

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 Aboriginal children in a non-Aboriginal placement, DCJ will only consider guardianship in exceptional circumstances. For guardianship to proceed in these circumstances it requires:

- extensive cultural planning,

- cultural consultation using Aboriginal family led decision making with family, kin and communities
- approval from the DCJ Executive District Director (EDD).

To be satisfied that the prospective guardian/s can meet an Aboriginal child's cultural needs, the DCJ EDD will need to see evidence of cultural competency, engagement, and a comprehensive cultural plan which details how the child's cultural needs will be met.

### Aboriginal Family-Led Decision Making and Consultation

When considering guardianship for an Aboriginal child, you need to work with the family, kin, extend family, and community via the Aboriginal family-led decision-making process. Your consultation must consider whether guardianship is in the child's best interest and how the proposed order can meet the child's holistic needs now and in the future.

Aboriginal family-led decision making will support you and the family in making decisions about guardianship. Aboriginal family-led decision making is a process that allows families to have meaningful participation in case planning. It recognises that families are the experts in their own lives. For more information on family-led decision making, read this [factsheet](#).

In addition, ensure that:

- the child has a current, comprehensive case plan that clearly identifies the needs of the child and the strategies and supports in place to meet these needs
- the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles have been applied when exploring options for the living arrangements of Aboriginal children
- all possible culturally appropriate caring options have been explored and considered
- culturally appropriate consultation has taken place to discuss the child's cultural needs, particularly in circumstances where the applicant is from a different community to the child and their family
- conversations have been had with the current carer and/or prospective guardian, the child and the parents about the long-term needs of the child, the benefits and reduced level of support of a guardianship order, and whether other orders may be more appropriate.

In all casework, building relationships with children and creating opportunities for them to voice their opinions is paramount. Involving them in age-appropriate ways in decisions about guardianship will help you have respectful conversations with the child's family and other people in their life.

When working with Aboriginal families you need to make proactive efforts in finding family, kin, extended family and community to support the family in using the Aboriginal family-led decision-making process. This is required under the [Aboriginal Case Management Policy](#) that applies to all agencies. During the Aboriginal family-led decision-making process you should work diligently, respectfully, and in a culturally sensitive way in engaging the family to part take in decision-making. This process empowers families in the decision-making process, leading to better outcomes for their families.

Other forms of consultation may occur with the following:

- speaking with the family, listening to their wishes and recording their views. The family should lead this process. By using Aboriginal family-led decision making you put the family at the centre of the decision making. This means more than mum and dad and is likely to involve grandparents, siblings, aunts, uncles, kin and community members.
- speaking with an Aboriginal Permanency Coordinator
- finding ways to connect the child to their culture during family time (contact). You and the prospective guardian/s must be open to adjusting what family time looks like to facilitate strong connections to family, culture and community so they feel like they belong
- speaking with Aboriginal educators at a child's school to understand what elements of cultural education resonate most with the child
- if the child has a formal or informal Aboriginal mentor, speak to them about how to support cultural connection and belonging
- speaking respectfully with local Aboriginal Community Controlled Organisations (ACCO), even those who might not agree with guardianship
- making a Link-Up referral to learn more about the child's heritage (although if a child's family has intergenerational interaction with the child protection system, including Stolen Generations, it may not always be possible to do family tracing)
- connecting with community not only where the child lives but also where the child's mob is from to ensure there is connection to their mobs' country.

The key with meaningful consultation is that you take the input from the Aboriginal family-led decision-making process and put this into action.

## Cultural Planning

When the Children’s Court is asked to consider guardianship orders for an Aboriginal child, you will need to submit a comprehensive and meaningful cultural plan for the court to review and approve.

For more information, please see [Cultural Planning in Guardianship](#).

## AbSec’s Position About Guardianship

AbSec is the NSW Aboriginal child and family peak organisation. AbSec provides child protection and OOHC policy advice on issues affecting Aboriginal children, young people, families, and carers.

AbSec’s position in relation to guardianship and permanent care orders is that the orders *“inherently fail to safeguard Aboriginal children and young people in out-of-home care and do not promote their best interests, including their rights to safety, to family, to community, to culture and identity, and to ongoing support and periodic review of their placement and treatment”* (AbSec).

AbSec are working on a Guardianship Support Model (GSM) proposal that will be distributed to ACCOs to ensure that Aboriginal children who are the subject of a guardianship order have access to ongoing supports. This model is still in the development stage and this factsheet will be updated when the model is released. See [AbSec’s website](#) for updates.

## References

AbSec (n.d). Aboriginal Guardianship Support Model for Better Outcomes. Retrieved from <http://absec.org.au/guardianship>.

AbSec (2015). 'Guardianship Orders for Aboriginal children and young people'. <https://www.absec.org.au/images/downloads/Guardianship-Orders-Position-Paper-November-2015.pdf>

SNAICC (2019). 'Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle. New South Wales 2019'. [https://www.snaicc.org.au/wp-content/uploads/2020/01/ATSICPP-compliance-review-2019\\_NSW.pdf](https://www.snaicc.org.au/wp-content/uploads/2020/01/ATSICPP-compliance-review-2019_NSW.pdf)