

The Guardianship Process

This factsheet discusses the process that Permanency Support Program (PSP) casework staff must undertake to have guardianship orders considered by the Children's a Court for a child or young person (child) in out-of-home care (OOHC).

Throughout the process speak often with the child or engage them in activities so they understand what guardianship means for them.

1. Considering Guardianship

Considering whether guardianship is the right decision for a child and their family is the first step in the guardianship process, refer to the factsheet: [Considering Guardianship](#). You may wish to consult with your Permanency Coordinator (PC).

For more information about guardianship orders see: [Guardianship Orders](#).

2. The Conversation

You will need to gather everyone's views such as the child, carers, and their family and the child's parents and extended family. Provide the carers with information and the fact sheet, [Becoming a Guardian](#). Give the child age-appropriate information including one of booklets that you can find [here](#). Provide the child's parents with information the fact sheet, [Information for Parents](#). It is important that all involved with this process have a good understanding of what guardianship means for them.

3. Carer Review or Eligibility Meeting

Record the carers interest in guardianship at their next carer review, or sooner at a meeting you arrange to discuss whether they might be eligible.

At the meeting you and the carer should complete a [Guardianship pre-assessment criteria checklist](#). Take into account the carers views, other relevant information and the views of the child you are gathering as part of your ongoing casework.

The meeting will also allow you and the carer to identify any areas that may require further casework and support, in order meet the suitability criteria.

4. Change of Case Plan Goal

If you decide guardianship is likely to be right for the child, your manager will need to support your recommendation to change the child's case plan goal to guardianship. Your PC will help you seek the approval of the DCJ Child and Family District Unit's (CFDU) to change the case plan goal to guardianship. You will need to be able to demonstrate to your PC and DCJ that the carer is ready and will be supported by you and your agency to achieve this permanency goal within two years for more information see [Who are Permanency Coordinators?](#) and [Permanency Planning Overview](#).

5. Case Plan Review Meeting

Once DCJ approves and they change the case plan goal, there may be parts of the child's case plan that will need to change. Organise a case plan review to update the annual case plan. Include what casework needs to occur and record everyone's views.

The meeting should focus on:

- the child's needs and their long-term outcomes
- the child's views (if the child is 12 years or over, the law requires the child to consent to the guardianship order)
- training and supports for the prospective guardians and their family

It is important that this meeting includes:

- the prospective guardian/s
- the child
- the parents or other significant people
- relevant service providers, including DCJ (where appropriate, such as when the child is under interim orders).

Gather the views of those who may not be able to attend or do not feel comfortable and share their views and at the meeting. Record their views too. Ensure that the meeting is relaxed and comfortable and everyone is provided a space to be heard.

Any requirements or outstanding casework tasks need to be detailed and recorded in the plan, for example, the child's carer may need to be more involved in facilitating family time, to show they are able to manage this if a guardianship order is made. See [Considering Guardianship](#) for more information on how to do this.

Now is a good time to start drafting a guardianship financial plan which will meet the needs of the child.

For more information, see: [Cultural Planning in Guardianship](#) and [Financial Support for Guardians](#).

6. Formal Guardianship Application Process

The prospective guardians will need to complete a guardianship application [form](#) as the first step of the formal assessment process. Your organisation may have their own application form, or you can use DCJs.

You will need to work collaboratively with DCJ. Children on interim orders will have an allocated DCJ caseworker within the Community Services Centre (CSC) so you will work with them. For children on long-term orders, you will work with your local CFDU.

In addition to a completed guardianship application form, prospective guardians must also:

- provide details of two personal referees (who are not related)
- complete a Health Checklist and a Medical Check Form (completed by a GP).

The prospective guardians and all household members 16 years and over must complete suitability checks, including:

- 100-point identity check
- a Working with Children Check (WWCC).
- a Nationwide Criminal History Check

- Community Services checks (including ChildStory checks), usually through your local Child & Family District Unit.
- Designated agency checks (information obtained from other agencies if relevant)
- You might also collect information about the prospective guardian's employment or other relevant activities.

Note: each person who lives at the same property as the prospective guardian/s for more than 21 days is a household member for the purpose of assessment.

Even though these checks will have been completed as part of their carer authorisation, you need to complete them again.

7. Assessment

Many PSP Service Providers use independent assessors, either those on the [DCJ panel](#) or their own. Some service providers may conduct the assessment themselves. If you use an independent assessor, you will need to support them with the following:

- child and family introductions
- access to review previous assessments and carer reviews.

You, or an independent assessor, must complete:

- review of previous assessments and carer reviews
- a home inspection
- face-to-face interviews with:
 - the child
 - the child's parents and family
 - the prospective guardian/s and any other people (including other children) in the home
- a placement review
- review of referee reports including speaking with them.

Guardianship Assessment Report

Once the assessment activities have been completed you, or the independent assessor, present this information in a [guardianship assessment report](#) which includes recommendations about the suitability of the prospective guardian/s. Review any other information you hold as well as the independent assessor's recommendations to make an informed decision on guardianship.

Discuss with your manager and the prospective guardian any tasks recommended in the assessment that do not require DCJ involvement i.e.:

- carer support to facilitate family time
- additions to the financial plan.

Provide support and guidance about how to achieve them within the required timeframe. Advise all those involved of the assessment outcome and next steps.

It is important that no matter what the outcome of the assessment is, that the child, carer, and family are updated and supported to understand the decisions made.

Once the assessment report is complete, you will need to speak with DCJ and advise them that the guardianship assessment has been completed and the prospective guardian/s have been recommended to become the guardians. Some districts may want a copy of the report, speak with your DCJ contact about what their process is.

Speak with the prospective guardian about the application, whether it is approved or not, the next steps and options available to them.

For more information see: [Guide for conducting a guardianship assessment](#).

8. Victims of Crime Compensation Application

Now is a good time to make the Victims of Crime referral for the child. Mark the referral as urgent – child potentially leaving out-of-home care for guardianship. See [Victims of Crime](#) factsheet for more information on what to do here.

Note that any payment is likely to come through after the final guardianship orders have been made. Ensure the prospective guardians contact details are on the referral. Let the guardian know they will be contacted at that time.

Note that all Victims Services recognition payments for young people under 18 years of age are automatically paid into a Trust account with NSW Trustee.

9. Outcome of Guardianship Application

If DCJ approve the application, a letter stating the guardianship application has been approved will be sent to the prospective guardian/s outlining the Children's Court (the Court) process. Check this with your DCJ contact as different districts have different processes. Usually if an assessment recommends guardianship, DCJ will approve the application.

If the application for guardianship is not approved, they will be given a letter outlining the reasons for the decision and the appeal process.

10. Preparing Court Documentation

The documents you are required to complete or compile for court include:

- a guardianship application with current court orders attached (this will be completed jointly with DCJ, as DCJ will be filing the application)
- an affidavit with annexures including:
 - Guardianship Suitability Statement
 - Guardianship Assessment Report (already completed)
 - copy of reports or documentation regarding the health, education or social wellbeing of the child
 - home visit records and any other relevant evidence
 - placement review
 - a draft care plan which includes the case plan
 - draft financial plan
 - draft cultural plan (where applicable).

DCJ have created [this affidavit template](#) to help you.

11. Care Plan Drafting and Meeting

The care plan is the document that is lodged at Court that details the important elements of guardianship that the guardian will need to adhere to.

You will need to draft all of these documents and then finalise them in consultation with DCJ. This is a collaborative process between yourselves and DCJ. The care plan meeting will finalise:

- how the prospective guardian will meet the needs of the child until they turn 18. You will need to consider the following:
 - the services the child will be involved with
 - the network the guardian and child will have around them to support the child
 - if the child has access to the NDIS
 - any other relevant information
 - the process for coming back to DCJ for any unforeseen events.
- family time (contact) plan (this is part of care plan)
- cultural support plan (if applicable) (this is part of care plan document)
- guardianship financial plan
- other relevant court documentation (e.g., placement review).

A copy of the child's annual case plan will also be attached the care plan.

DCJ Legal will review all these documents once you have finalised them with either the CFDU or the CSC.

12. Documentation Lodged at Children's Court

Where there is a current long-term order in place a section 90 (s90) will need to be lodged. DCJ will lodge the final documentation for the guardianship order to the Court after the care plan meeting once all documents have been finalised and 'settled'.

All parties will be provided with a copy of the court documents and parents must be given enough time to seek independent legal advice about the proposed guardianship order. DCJ will inform all parties about the decisions made in the Court.

For more information see: [Guardianship application form](#).

Once the documents have been lodged, DCJ will inform your agency (usually you and your manager) of the court date. You will need to let the relevant people know, including the prospective guardian/s. In some cases, and where appropriate, the prospective guardians and the child may want to be in the court when the order is made. At times magistrates have liked to hear directly from children and prospective guardians about their views regarding guardianship.

13. Consent of the Child

The Court will appoint an independent legal representative for the child once the application is filed or at the first court mention. After the guardianship application has been filed, for a child 12 years of age or older, their legal representative will gain their written consent to the guardianship order. The child's views about the guardianship must have been heard, considered, and noted when you were considering guardianship. If the child is aged under 12 years, they do not need to give written consent. In some districts the magistrate will appoint a Guardian Ad Litem (GAL).

For more information on talking with children about guardianship see: [Guardianship brochure - under 12](#) and [Guardianship brochure - over 12](#).

14. Children's Court Makes a Guardianship Order

Once the Court has made the guardianship order, if you are not at court, DCJ will inform you and your manager and provide you with a copy of the court documentation. A copy of the legal order will be provided to the carer and birth parents.

The guardianship order can bring up mixed emotions for everyone involved. Birth parents, guardians, and children may need extra emotional support. Read the factsheets about talking with [children](#), [carers](#), and [parents](#) about guardianship for hints on how to do this (factsheets coming soon).

15. Tasks After the Guardianship Order is Made

There are several administrative tasks that you must complete after the guardianship order is made. These include:

- updating the placement records on ChildStory
- attaching a copy of the guardianship order to the child and guardian's files
- providing a letter to the guardian/s to advise them of their change in carer status and provide them with an information package
- update the Office of the Children's Guardian (OCG) Carer Register to remove the "new guardian from the carer register (where applicable)
- ensure guardian's banking details are correct and provide them to the relevant DCJ CSC.

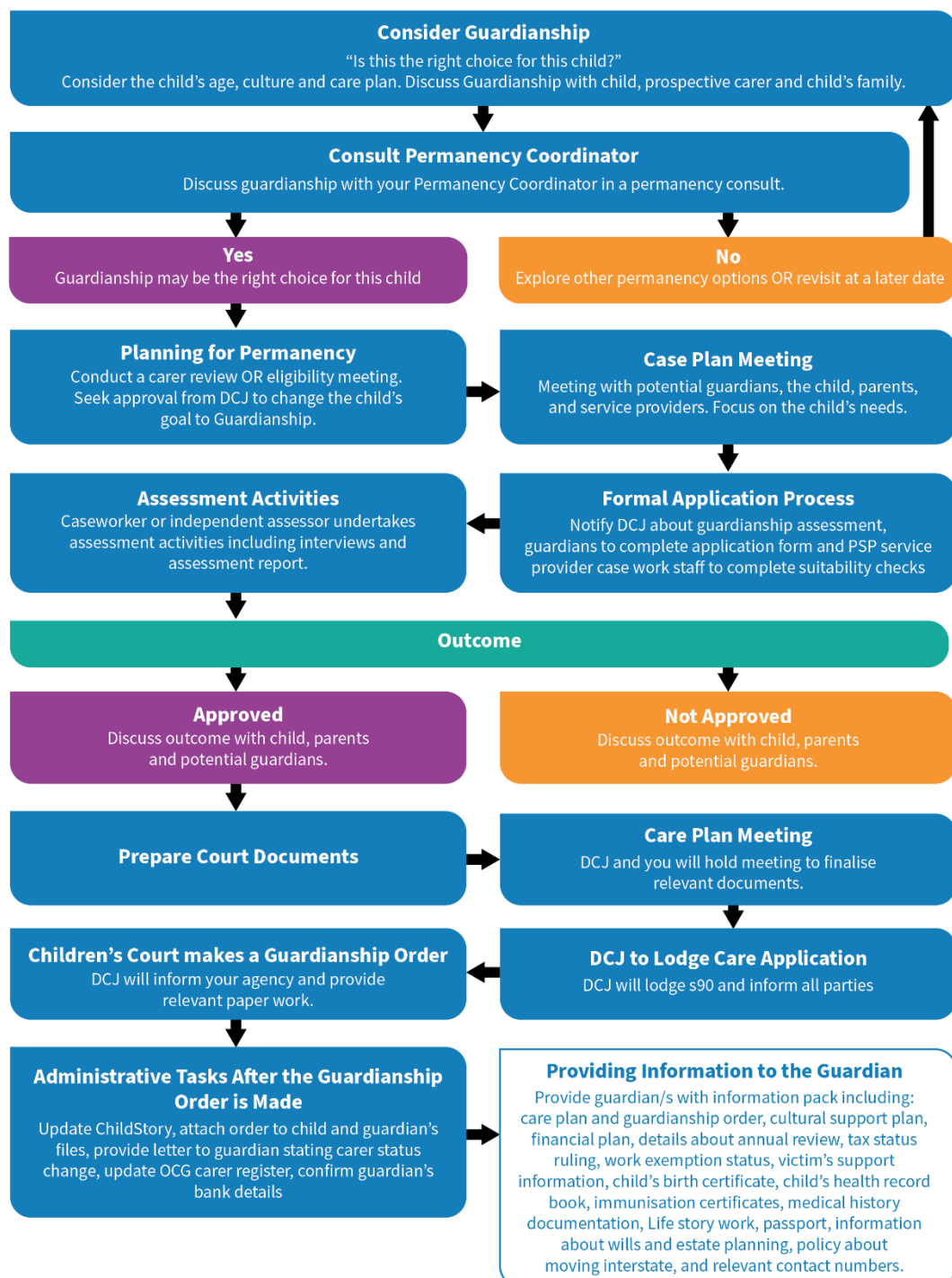
16. Providing Information to the Guardian

It is important you work with DCJ to gather the following information and provide it to the guardians:

- a copy of the care plan and final court order for the child
- the cultural plan (where applicable)
- guardianship financial plan
- details of allowance review processes including annual review
- taxation status ruling
- work exemption status (if child is aged under 6, the guardian/s may be eligible for parenting payments from Human Services)
- victim support information (where applicable)
- birth certificate for the child
- child's personal health record book
- immunisation certificate/s
- medical history documentation
- life story work information
- passport (where available)
- information about wills and estate planning
- allowance policy related to moving interstate
- contact numbers for:

- local services in the community
- My Forever Family
- AbSec (where applicable)
- Create Foundation.

GUARDIANSHIP PROCESS FLOWCHART



See the table below for a list of all the documents used in this process:

Name of document	Description
<u>Guardianship Affidavit Template</u>	<p>An affidavit is a written document used to provide information to a Court. It is a statement of evidence or facts as known by the author, which is voluntarily made and ‘affirmed’ or ‘sworn’ to be true.</p> <p>An Affidavit will attach relevant evidence as ‘annexures’.</p>
Care Plan	<p>The care plan is a document that must be prepared by DCJ and approved by the Court before a final order is made.</p> <p>A care plan must include:</p> <ul style="list-style-type: none"> • who is in a child’s family • why they were removed • what their permanency goal is • how family and cultural ties will be maintained • how the child’s needs will be met
Case Plan	<p>A case plan is a document that identifies how a child’s needs will be met in OOHC.</p> <p>A case plan must be made in collaboration with the child and the people important to them. It includes the 8 domains of wellbeing and must be reviewed annually or after a significant change.</p>
<u>Cultural Planning in Guardianship</u>	<p>A document that details how a child’s cultural needs will be met after a guardianship order is made</p>

Family (Contact) Plan (factsheet coming soon)	A document that details how a child will spend time with their birth family and other significant people in their lives once the guardianship order is made. The family time plan can last up until the child turns 18 years old
Final Court Orders	The final order made in the Children's Court regarding guardianship
Financial Plan	A document that outlines how a child's financial needs will be met after a guardianship order is made
Financial Support for Children and Young People in Guardianship Arrangements	Resource outlining the financial entitlements for guardianship arrangements
Guardianship Annual Review report	This form is used to document annual review for guardianship and continuation of guardianship. Completed by DCJ.
Guardianship Application Advice form	Advice letter to guardianship applicant when approved. This form is used to inform a guardian applicant that they have been approved for guardianship
Guardianship Application form	Guardianship application form for the applicant. This form is provided to the prospective guardianship applicant as part of the application package to become a guardian
Guardianship Assessment Report template	Template report and assessment for guardianship assessment. This form is used to document the assessment of prospective guardianship applicants
Guardianship Health Checklist form	Health questionnaire form for guardianship applicants. This form is provided to the applicant as part of the

	prospective guardian application package
Guardianship Home Inspection Checklist form	Home inspection checklist for caseworker to complete for assessing guardianship applicants. This form is used to document the assessment of a prospective guardian's home as part of the assessment of prospective applicants
Guardianship Medical Check form and letter	Letter with consent and medical assessment by GP for guardianship applicant. This form is used to obtain medical assessment for a guardianship applicant. It is provided to the applicant as part of the prospective guardian application package
Guardianship Personal Referee form	Form for personal reference for guardianship applicant. The form is used as part of the assessment process for prospective guardianship applicants to obtain personal referees
Guardianship Pre-Assessment Checklist	A list of criteria that a prospective guardian must meet before a guardianship application can be made
Section 90 (s90)	The document submitted to the court with other evidence to apply for a guardianship order
Suitability Statement for a Guardianship Order	Suitability statement to signed by your manager for a guardianship application to proceed to court. This form confirms suitability for a guardianship order after all information gathered has been considered

<u>Victims of Crime Referral</u>	A referral made to Victims Services to assess whether the child is entitled to victims' compensation
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References

The Office of the Children's Guardian (2020). Authorised carers and adult household members (2020). Available: <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/working-with-children-check/applicant/authorised-carers-and-household-members>