

# Being a guardian for a child or young person

Facts for carers



# Are you thinking about becoming a guardian for a child or young person in your care?

This fact sheet tells you what to think about when you decide to either:

- ask the Secretary of the Department of Family and Community Services (FaCS) for permission to apply for a guardianship order, or
- agree to FaCS applying for a guardianship order for you.

The Secretary must agree before you can apply for a guardianship order.

## What should I do if I want to become a guardian?

If you would like to become a guardian you should:

- meet with the child's caseworker to find out if you are someone who can be a guardian—you must be able to provide a safe, nurturing, stable and secure environment for the child or young person and obtain a Working with Children Check.
- ask the caseworker to organise a case plan meeting with you to talk about whether a guardianship order is the best way to meet the long-term needs of the child or young person.
- get independent legal advice before you make a decision about guardianship. You can find out where to get legal help under **Where can I get legal help?**

## What happens after I become a guardian?

A guardianship order gives you all the responsibility parents have for making decisions about a child until they turn 18. The child will usually still have contact with their parents, siblings and other important people in their life.

A guardianship order is a final order for the permanent living arrangements for a child or young person. A court order is needed to change a guardianship order.

There are some important differences between a Children's Court order that:

- gives the Minister parental responsibility for the child until they are 18,
- gives you parental responsibility, or
- makes you the child or young person's guardian.

You should talk to a lawyer about this because it may affect what payments and support services you and the child or young person may be entitled to receive.



### **Will FaCS or the foster care agency still be involved?**

No. Once a guardianship order is made:

- there will be no FaCS caseworker or foster care agency support for the placement, and
- there will be no funding for supports such as respite care or supervision of the child's contact with their parents.

You will still receive an allowance—see **What payments can guardians get?**

### **Who can make decisions about the child?**

A guardian can make all decisions about the child—including where they will live, where they will go to school, and what medical treatment they should receive.

### **Can the family have contact?**

A guardian is responsible for organising family contact and making arrangements for the contact to be supervised if it is necessary.

The Children's Court cannot order FaCS to supervise contact. So it is very important that you think about and discuss contact—including how it will take place and who is responsible—as part of the case planning process before you decide to become a guardian.

### **You will need to have a suitability assessment**

Anyone who wants to be a guardian, and any members of their household, must do a suitability assessment with FaCS or the out of home care agency that manages your placement.

A suitability assessment must make sure that you, and any adult who lives with you, has a Working with Children Check clearance.

It also includes these checks:

- An identification check
- A nationwide criminal record check
- A Community Services Check, and
- A designated agency or adoption service provider check (if this is relevant to you).

They must also:

- get references from at least 2 people about your suitability to care for a child
- get a statement from you about your physical and mental health and a medical report (unless you are already the child's authorised carer), and
- do an inspection of your home.



## What payments can guardians get?

### The Guardianship Allowance

At this time guardians receive an allowance that is paid at the same rate as the Carer Allowance. The allowance is intended to cover the typical costs of day-to-day care such as food, clothing, schooling, travel, recreation and general medical costs.

The Guardianship Allowance stops when the child turns 18, or is no longer in your care. It is not taxable income.

It is important to consider the ongoing costs of caring for a young person when they reach adulthood. Those costs may include education, medical, and accommodation costs—and these costs can grow when a young person is following pathways into work, further education or life in the community.

If your current Carer Allowance includes a '+1' or '+2' amount to meet the special needs of a child, that rate should continue (although there will be an annual review of the child's needs).

You should discuss this with the caseworker to make sure that what is agreed, including extra support payments, is reflected in your financial plan.

### FACS Guardianship Allowance Fortnightly Rates (\$AUD)

Age Range	Standard Care	Care +1	Care +2
0–4	484	728	962
5–13	546	819	1078
14–15	733	1097	1447
16–17*	488	853	1206

Rates effective as at 31 Oct 2017  
\*Teenage Education Payment may be available – discuss with your caseworker

### Extra support payments

You may be able to get some extra support payments—for example, if a child has extra support needs and you haven't been able to receive adequate support from the Government (such as through the National Disability Insurance Scheme).

These payments are only for education, childcare, medical or dental services, professional therapy and activities that support the child's cultural identity and life story work. They are paid directly to the service provider—for example, the school, childcare centre or doctor.

The decision to give you extra support payments is made when the care plan is being developed. So it is important that you identify what extra support the child needs with the caseworker who is managing your guardianship application.



Your child's needs must be written in the care plan that is given to the Court with your application. The care plan includes a guardianship financial plan. Check this plan carefully and clarify any concerns you have with the caseworker before you sign it.

### **Centrelink payments**

You may also be eligible for support from Centrelink (Australian Department of Human Services). You should ask Centrelink about this.

### **Your payments will be reviewed every year**

If you receive a '+1' or '+2' allowance, a FaCS caseworker will review this assistance every year. You must provide any supporting documentation, for example specialist reports. Your eligibility for a '+1' or '+2' allowance may change if the child's needs change.

### **Payments that are not available to the young person**

If a child or young person is under a guardianship order or an order that gives you all parental responsibility, they will not be able to get the payments set out below:

### **Transition to Independent Living Allowance**

This allowance is now a payment up to \$1,500, but could change.

### **Leaving out-of-home care assistance and support**

A young person who is 15 years old or older and who is leaving out-of-home care can get this assistance until they reach the age of 25. The Minister will look at what is necessary for the child's safety, welfare and well-being.

This might include things like:

- getting accommodation
- setting up a house
- education and training
- finding employment, and
- counselling and support.

The government's policy is that a child or young person under a guardianship order or an order that gives you parental responsibility cannot get this payment. However in some cases the government can decide to allow this assistance and support.

### **What else should I know?**

#### **What will happen if I leave NSW?**

If you decide to move and live outside NSW, your guardianship allowance may only continue for 12 weeks. To get any more payments you will need approval from FACS.

#### **Will I have to pay to be a guardian?**

If you agree to become a guardian you won't need to pay any fees to apply to the Children's Court, and you will not be charged any court costs.

## Where can I get legal help?

### LawAccess NSW

A telephone helpline that gives free legal information, referrals to other services and legal advice in some cases. Call 1300 888 529 or visit [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

### Legal Aid NSW

You can get free legal advice, and in some cases, representation in court from Legal Aid NSW. To find your closest office call 1300 888 529 or look under 'Get legal help' at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

### Aboriginal Legal Service (NSW/ACT) Ltd (ALS)

If you are Aboriginal or Torres Strait Islander you can also contact the ALS for free legal advice. To find your closest ALS office call 1800 733 233 or visit [www.alsnswact.org.au](http://www.alsnswact.org.au)

## Out-of-home care agencies

Some out-of-home care agencies give carers legal advice. Ask your caseworker if your agency can arrange for you to get independent advice.

### Private lawyers

If you see a private lawyer you will be charged a fee. To keep the costs down, take all the information you have to your appointment—such as the application for the guardianship order, court documents, any assessments of the child or young person or of you and your family and, any plans you developed with your caseworker.

## Where can I get more information?

You can get more information about guardianship, including becoming a guardian, support for guardians and lots more at [www.community.nsw.gov.au/permanency-support-program/paths-to-permanency/guardianship](http://www.community.nsw.gov.au/permanency-support-program/paths-to-permanency/guardianship)

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### Do you need an interpreter?



If you need help to talk to us in your language, call the **Translating and Interpreting Service (TIS)** on **131 450** (9am – 5pm).

### Do you find it hard to hear or speak?



If you find it hard to hear or speak, call us through the **National Relay Service** on **133 677** or [www.relayservice.gov.au](http://www.relayservice.gov.au)

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation. The information is correct at the time of printing. However it may change.

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