



Communities
& Justice



My Forever
Family NSW

Guardianship



Agenda

1. Why were guardianship orders introduced?
2. The Permanent Placement Principles
3. When might guardianship be considered appropriate for a child?
4. Guardianship for Aboriginal children
5. What supports are available to guardians?
6. The guardianship process – guardianship assessment, suitability criteria
7. Legal aspects of guardianship
8. Q&A



Why were guardianship orders introduced?

- Consistent feedback from carers
- Reviews of other child protection systems showed that guardianship often meant:
 - Children were able to grow up outside of the care system
 - Some carers were eligible to receive allowances
 - Decrease of 'drift in care'
- To provide permanency and a 'home for life' for those children who cannot live safely with their parents.



Permanent Placement Principles

- a) Restoration
- b) Guardianship
- c) Open Adoption (except for Aboriginal children)
- d) Parental Responsibility to the Minister
- e) Open Adoption Aboriginal children (if a, b or d not practicable)

What is guardianship?

Guardianship is:

- An order made by the Children's Court of NSW until the child turns 18 years of age
- A permanency option when restoration to parents is not realistic
- A permanency option that provides greater stability for children and normalises childhood.

A guardian can be a relative or kin, foster carer or other 'suitable person'.



When might guardianship be considered appropriate?

If the prospective guardian can:

- demonstrate they can meet the long-term needs of a child without casework support
- manage and supervise family time (if required) and support a child to have strong connections with their family members, kin and community
- meet the ongoing cultural support needs as outlined in the Cultural Support Plan
- If the child aged 12 or over provides their consent



When is guardianship not considered appropriate?

- A child aged 12 or over does not consent
- The carer is in poor health or does not have the capacity to meet *all* of the child's long-term needs independently
- The carer has no previous experience or is unable to manage or supervise family visits independently



Guardianship orders for Aboriginal children

- The Children's Court can only make a guardianship order for Aboriginal children, if there is evidence that:
 - the Aboriginal & Torres Strait Islander Child Placement Principles have been met
 - there is a comprehensive Cultural Support Plan in place that is being followed that meets the current and ongoing cultural needs of the child.



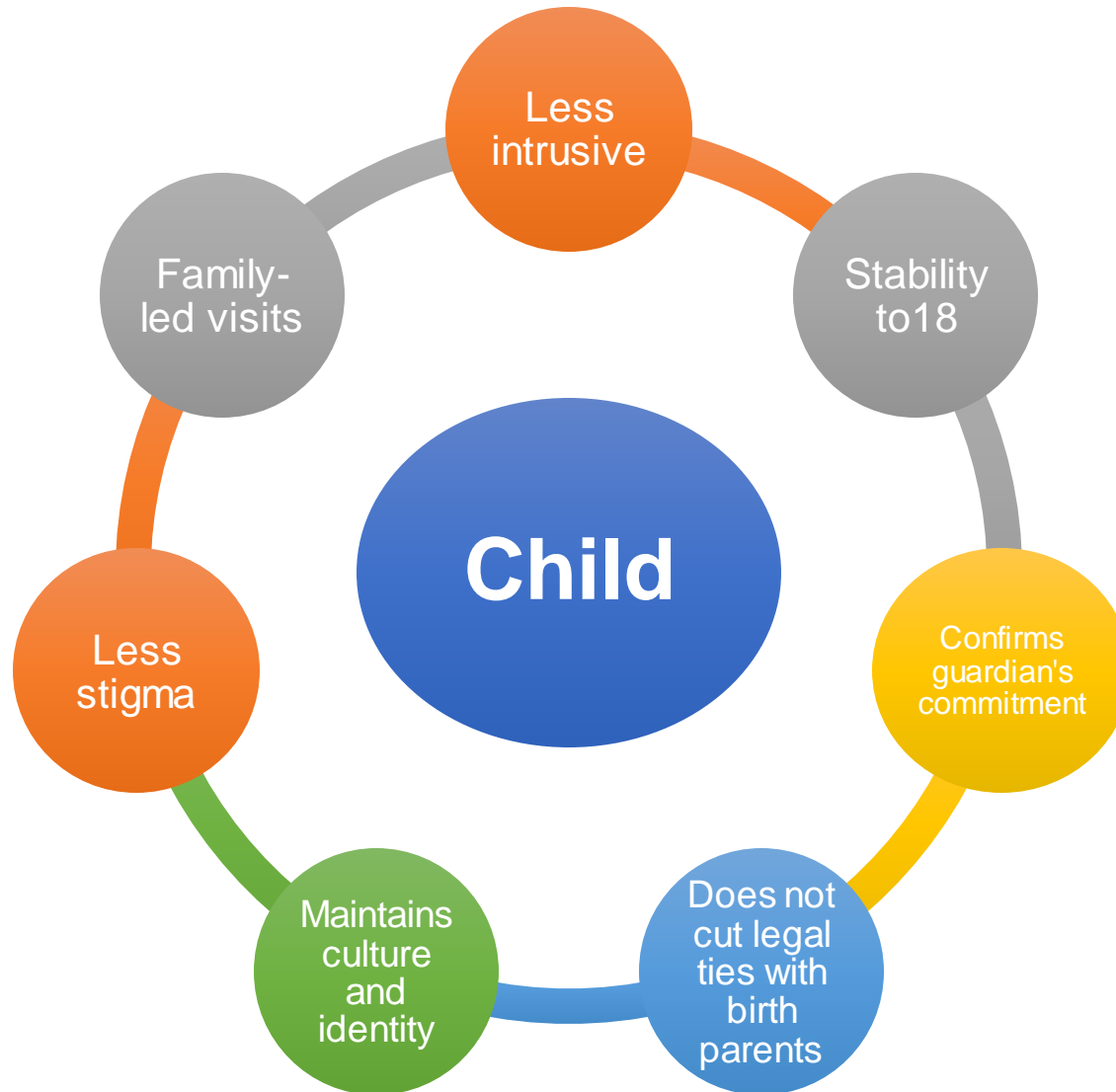
Guardianship orders for Aboriginal children

Policy clarification of 'suitable persons' for Aboriginal children (effective April 2016)

- 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.
- Only in exceptional circumstances when Aboriginal children are residing in a non-Aboriginal placement will guardianship be considered.



What does guardianship mean for the child?



What does guardianship mean for the guardian?



What supports are available to guardians?

- **Guardianship allowance**
 - same rate as the DCJ statutory care allowance
 - may be eligible for Guardianship +1 and Guardianship +2
- **Where approved in the financial plan** limited additional support payments for:
 - cultural support plan and life story work (includes supporting family time)
 - education
 - child care
 - medical and dental
 - professional therapy.



Supports available for guardians

- **Teenage Education Payment**
 - young people aged 16 years+ to assist in education and training
- **Work exemption status of guardians**
 - only guardians who are relatives or kin are eligible
 - Work Certificate Exemption Form to be completed by DCJ after Annual Review Report returned by the guardian
- **Commonwealth benefits** – Centrelink grandparents line – 1800 245 965
- **Australian Taxation Office advice**
 - The guardianship allowance, as with the carer allowances, is not taxable income



Supports not provided to guardians

- casework support from DCJ or an NGO
- access to respite or support workers
- support for the coordination or supervision of family time (contact) visits
- leaving care and after care services
- TILA (Transition to Independent Living Allowance)



Annual review and authorisation

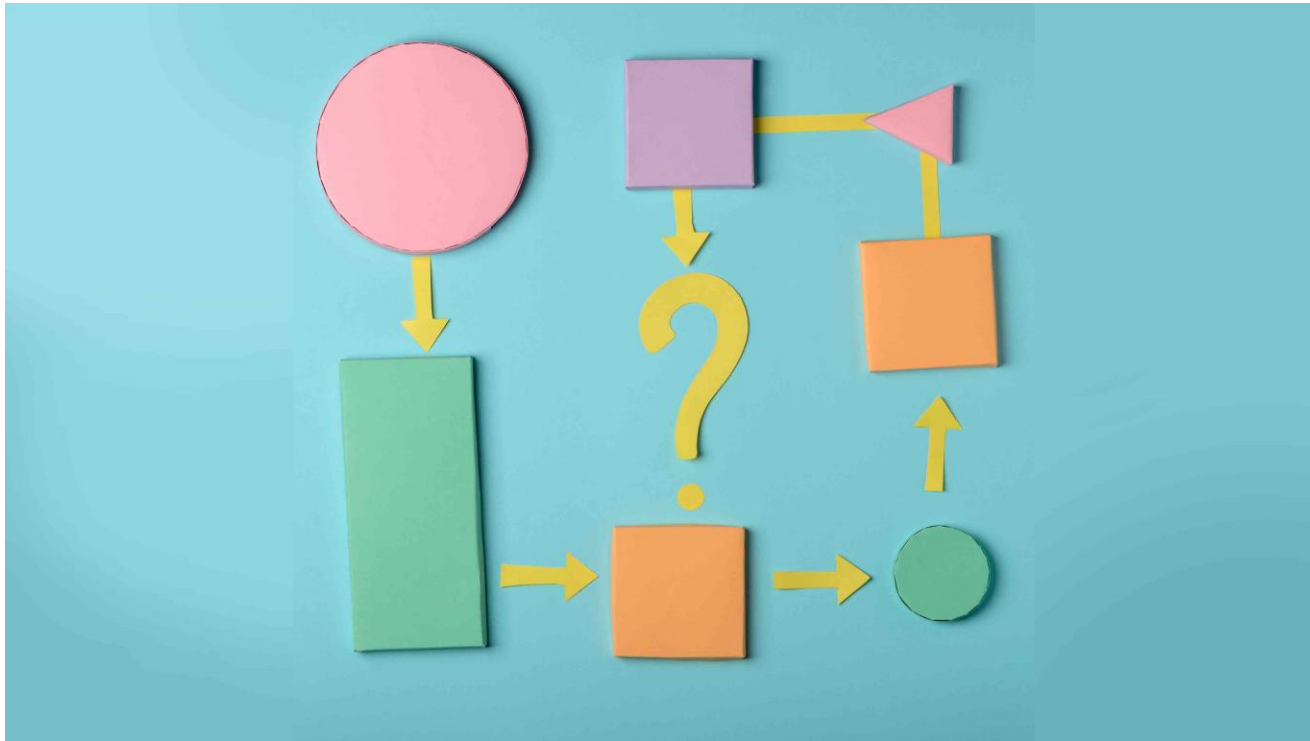
Annual review process

- Guardians must confirm that the child is still in their care on an annual basis
- Guardians must advise DCJ if the child leaves their care

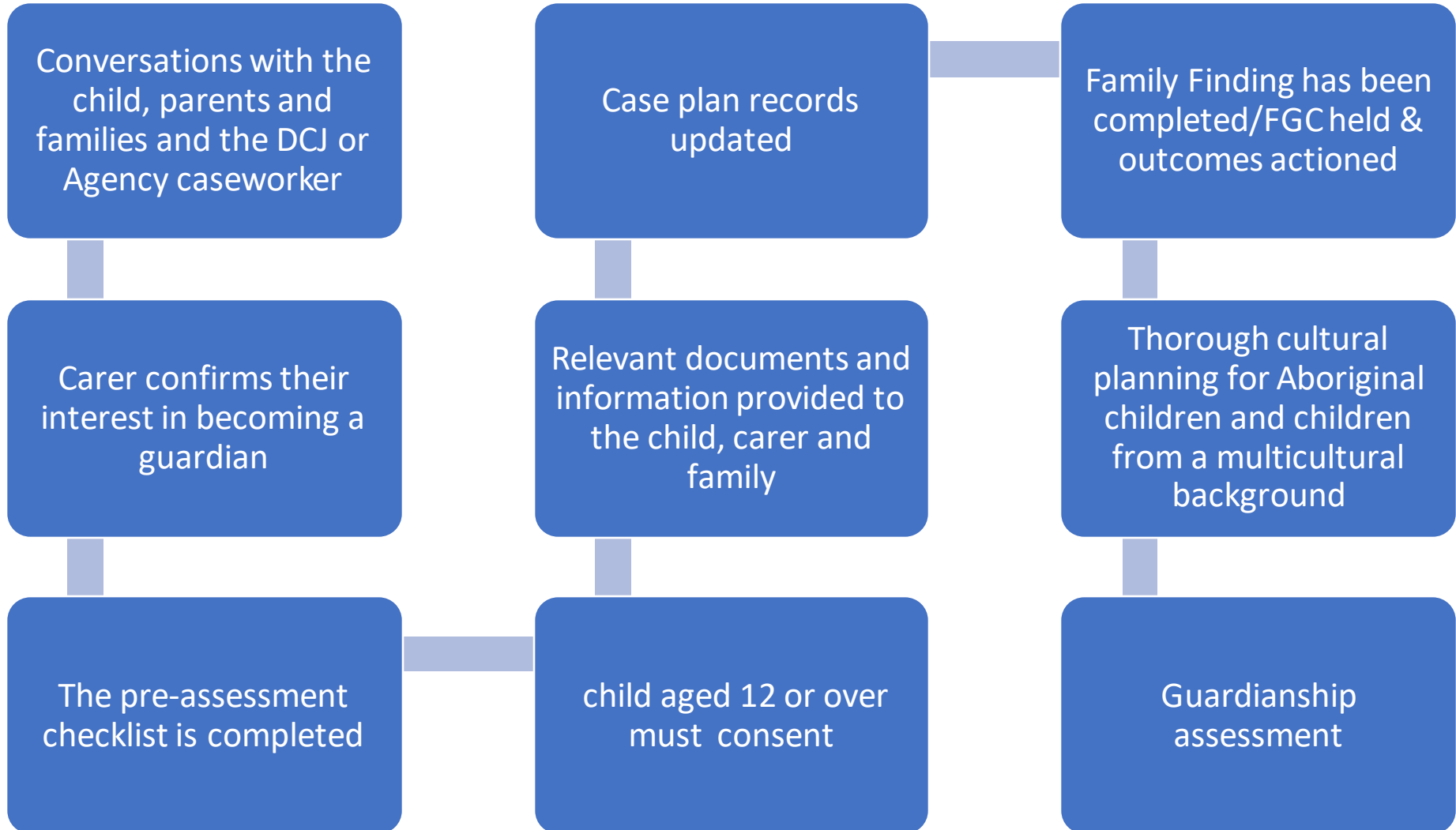
Authorisation

- A guardian ceases to be an authorised carer on the day the final guardianship order is made for that specific child ***unless*** the carer is authorised to care for other children, then authorisation continues

The guardianship process



What are the steps involved in becoming a guardian?



The guardianship assessment

A guardianship assessment looks at:

- Carer's suitability to meet all the child's needs now and into the future
- Is it in the child's best interest?
- Is guardianship appropriate now or could it be at some time in the future?



Who completes a guardianship assessment

A guardianship assessment is conducted by:

- A caseworker from DCJ or an OOHC agency
- An independent assessor



Assessment of suitability

- Completion of the guardianship application form
- Pre-assessment criteria successfully met
- Successful outcomes from suitability checks:
 - Health, medical, ID, DCJ, WWCC and criminal
 - Home check list and personal references

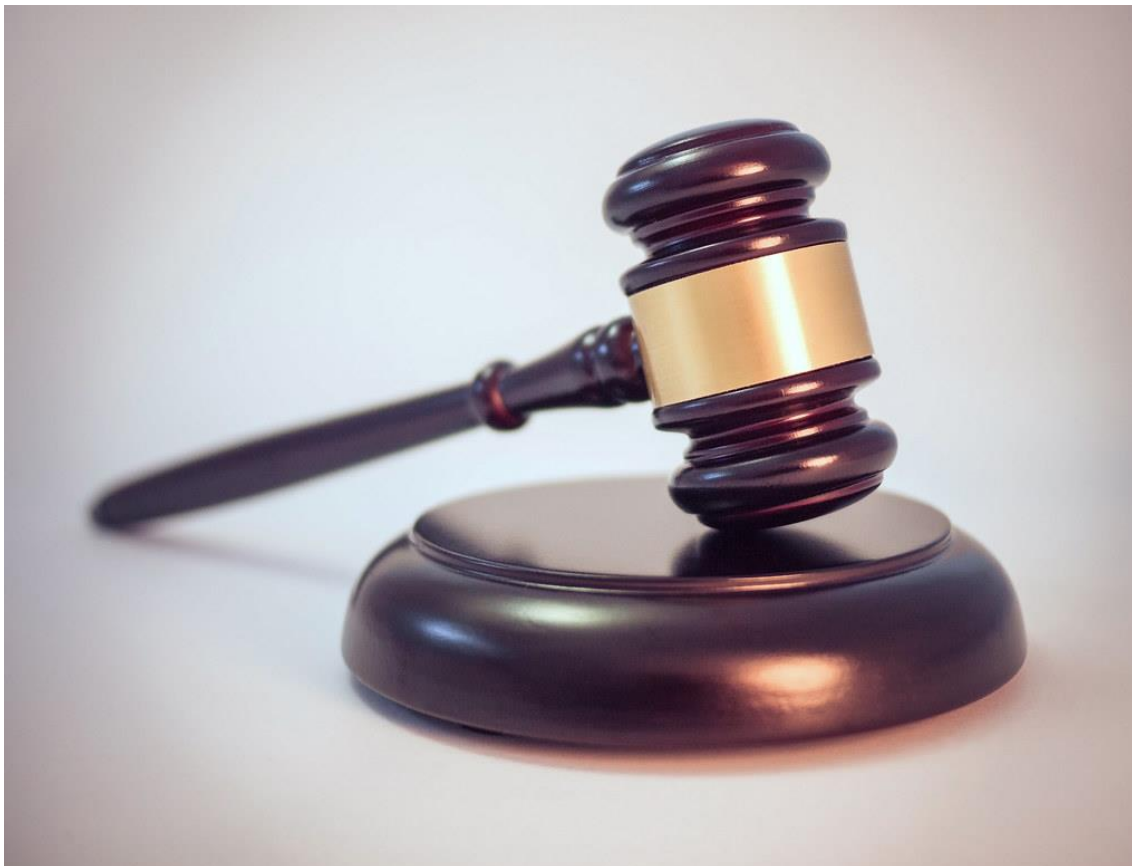
After the guardianship assessment is completed

The caseworker will:

- Discuss the application with their manager casework to seek approval
- Discuss the outcome with the applicant
- Send a letter confirming the outcome
- If not approved, the letter will state reasons and outline the appeal process
- DCJ files on behalf of the agency.



Legal process



Guardianship court application

- Guardianship orders are made in the NSW Children's Court.
- A guardianship order can be made in either:
 - S61 care proceedings
 - S90 application
 - S38 Care Plan by Consent



Guardianship legal documentation

The following must be filed in the NSW Children's Court:

- A court application
- An affidavit with any relevant reports
- A Care Plan with the guardianship financial plan and prospective guardian agreement

Consent – child aged 12 or over

- Must be in writing
- Taken by a legal practitioner (witness)
- The witness must advise the child of:
 - The impact of parental responsibility to a guardian until they turn 18 years
 - A guardianship order can be changed
 - They are entitled to independent legal advice
- Consent



Contact orders

Contact orders

- Can be made as a minimum to ensure family time (contact) occurs
- Family visits can be increased by mutual agreement

Ongoing disagreement about family time (contact) arrangements

- Legal Aid offers mediation services ADR@legalaid.nsw.gov.au
- Free advice and assistance **1800 551 589**

Changing or altering contact orders

- Contact orders can be changed or varied through mediation with Legal Aid



Legal representation after final orders

If DCJ agrees with guardian:

- DCJ is likely to appear in s90 proceedings
- The DCJ lawyer will not represent the guardian, but will rely on the instructing DCJ officer for instructions
- This support will be in place for up to three years post order, after which the issue is a “private matter” for the guardian

If DCJ disagrees with guardian:

- Where DCJ has a different position to the guardian, guardians should obtain their own legal representation

Key contacts

www.dcj.nsw.gov.au

DCJ Guardianship Information line

P: 1300 956 416

E: GuardianshipInformation-NSWFACS@fac.nsw.gov.au

My Forever Family NSW Carer Support Line

P: 1300 782 975

AbSec Foster Care Support Line

P: 1800 888 698

Centrelink Grandparent Advisors

P: 1800 245 965

Law access

P: 1300 888 529



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Q&A