

Long-term guardianship to a suitable person

Information for **carers**



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The *Child Protection Act 1999 (the Act)* requires that, where possible, a child who has been removed from their family is to be safely returned home. However, sometimes it is not possible or in the best interests of the child to return to their parents. In these cases, the Act states that a child has the right to receive an alternative long-term stable living arrangement.

A Long-term Guardianship Order is made when the child does not have a parent who is willing and able to protect them in the foreseeable future, or when the child's need for emotional security will be best met by the Order.

A Long-term Guardianship Order may be granted by the Childrens Court if it is satisfied that:

- efforts have been made to locate both parents
- significant work has been undertaken to assist the family to care for the child (except where the parent is unavailable or unable to meet the child's needs, for example, due to a significant intellectual disability)
- the Department of Communities, Child Safety and Disability Services assesses that a long-term stable living arrangement is in the child's best interest, and that the child's need for emotional security and stability will be best met in the long-term by the Order.

If a Long-term Guardianship Order is made, Child Safety will no longer continue working towards returning a child to their parents' care. The Childrens Court may grant a Long-term Guardianship Order to:

- a suitable person, other than a parent of the child, who is a member of the child's family
- another suitable person, other than a member of the child's family, nominated by the department — for example, a foster carer
- the chief executive of the department.

What is long-term guardianship to a suitable person?

An order granting long-term guardianship to a suitable person appoints that person as the legal parent (guardian) of the child until the child turns 18 years of age.

Under this arrangement, the guardian accepts full parental responsibility for all aspects of the child's care. This enables the guardian to make all decisions about the child's daily needs and long-term care, wellbeing and development.

Granting guardianship of a child to a suitable person enhances the child's sense of belonging and stability, by providing them with a home they can call their own, for as long as they need it.

This reassures the child that the relationships they have developed with their guardian, and the guardian's family and community will continue for the rest of the child's life, through good and bad times.

What is meant by full parental responsibility?

The guardian is relied upon to care for the child and to respond to their needs, as would a parent of any other child who lives in the general community.

This means that the guardian will be fully responsible for:

- making all decisions about the child, except for a decision about the publication of information by the media
- identifying and responding to, or arranging for a service to respond to the child's needs (health, educational, cultural, counselling or behavioural needs)
- actively assisting and supporting the child to plan for their future, and preparing and supporting them to become an independent, successful, young adult who can participate effectively within the general community.

Why is long-term guardianship to a suitable person the preferred option for a child, wherever possible?

There are two types of long-term guardianship orders:

1. **Long-term guardianship to a suitable person** — the suitable person (guardian) plans for and makes all decisions about the child and their future. Child Safety no longer makes any decisions about the child or their future.
2. **Long-term guardianship to the chief executive of Child Safety** — the Department of Communities, Child Safety and Disability Services plans for and makes decisions about the child and their future.

Long-term guardianship to a suitable person is the preferred Order for the child, wherever possible and appropriate. In addition to providing the child with a permanent family and lifelong relationships, the Long-term Guardianship Order takes the child out of the child protection system, and gives the child a normal or regular family life (as much as possible) — like other children who live at home with their parents.

The child will no longer be in out-of-home care, and will no longer be a foster child. The level of intrusion by Child Safety is significantly reduced, as the department no longer plans for, or makes decisions about the child and their future.

Following the granting of a Long-term Guardianship Order to a suitable person, some of the processes and programs that were available to the child from Child Safety will either no longer apply, apply less often, or be taken over by the guardian (as the legal parent). Please refer to the table on pages 20-21 of this booklet for an overview of what will change if a person is granted long-term guardianship of a child.

Despite the reduced level of intervention by Child Safety following the making of the Order, the department will continue to support the child and their guardian. A support program is available should the needs of the child or guardian change.

What are some of the long-term issues guardians should consider?

When considering becoming a guardian for a child, it is critical that you think about some of the long-term circumstances which may arise, and how they may impact on your ability to continue to fulfil your guardianship responsibilities for the child.

Long-term considerations:

- How old am I and the child now, and how old will I and the child be in 5, 10 or 15 year's time? Will I be prepared and able to continue to care for the child in the future if I am faced with significant health or mobility issues?
- Am I prepared to actively identify and provide information to the child, as they head into their teenage years, about services and supports available through community and government organisations (to help the child make an effective transition to adulthood)?
- What if, at 18 years of age, a child does not have the skills or financial resources to live independently, or they indicate they are not ready to leave the family home? (Not all young people will become fully independent upon turning 18 years of age, and may continue to require practical assistance and emotional support from you as their guardian.)
- What if, due to significant disabilities, the child is unlikely to ever be able to live independently? Would I continue to care for the child following their 18th birthday and if not, what other options would I consider?

- If applicable, would my continuing role as a foster or kinship carer impact on my ability to carry out the additional responsibilities I will have for any child in my future guardianship?
- Is my partner committed to continuing as a guardian, and providing direct care for the child or young person, should anything happen to me. (For example, unexpected death or serious medical condition? If not, would any of my family or community members be available to care for the child?)

What are the legal responsibilities of guardians?

The *Child Protection Act 1999* (the Act) places the following ongoing legal responsibilities upon the guardian (unless the Childrens Court order states otherwise):

- keeping the child's parents informed about where the child is living
- continuing to provide information to the child's parents about their care
- continuing to provide opportunities for the child to have contact with their parents and/or other appropriate members of their family
- allowing Child Safety to have contact with the child at least once every 12 months.

If Child Safety assesses that there are significant risks associated with the parents knowing where the child is living or being provided with opportunities for ongoing contact with the child, the only available options for the department are to:

- ask the Childrens Court (upon the application for the Long-term Guardianship Order) to order that some or all of the requirements do not apply to the guardian or only apply to a stated extent, or
- apply for an order granting long-term guardianship to the chief executive of the department.

Another legal responsibility relates to the child's direct care. It is anticipated that the child will continue to live with their guardian until they turn 18 years of age, or until they live independently. However, the Act requires the guardian to immediately inform Child Safety in writing if the child leaves the guardian's care. This written advice must also include information about the child's current address, if known.

The guardian is required to fulfil all legal responsibilities until the child turns 18 years of age.

Guardians are not required to hold blue cards or renew their carer approval. However, guardians who continue or want to provide foster or kinship care to other children are required to hold a current blue card and maintain their carer approval.

What are the responsibilities of Child Safety?

Guardianship is granted to a suitable person to allow them to assume the full-time parenting of the child in their care. Child Safety takes a reduced role in the child's life, to allow the guardian increased autonomy to provide care for the child.

Under the Act, Child Safety must contact the child every 12 months to give the child an opportunity to make comments or queries about, or ask for a review of their case plan.

In addition, if (following the making of the Order) Child Safety approves the payment of the high-support-needs allowance on an ongoing basis, or child-related costs for a period of more than 12 months, the department is required to review the case plan every 12 months.

Child Safety may also request a review of the case plan if:

- the child or guardian has raised issues about the guardianship arrangement, or requests support
- the case plan is no longer meeting the child's protection and care needs, and additional actions are required, or
- advice is received that the child is no longer in the direct care of the guardian.

Child Safety is responsible for responding in a timely way to requests for support made by the child or guardian. In many circumstances, Child Safety will be able to respond to support needs without undertaking a full case plan review.

What are the guardian's legal rights?

Under the *Child Protection Act 1999* (the Act), guardians have the right to:

- request Child Safety to review the case plan at any time following the making of a Long-term Guardianship Order
- be provided with written advice about how to request an external review (through the Queensland Civil and Administrative Tribunal) if Child Safety decides not to review the case plan at the guardian's or child's request
- be treated as parents and respond to any Childrens Court matters if concerns arise about the guardians' care of a child or the department applies to vary or revoke the Order.

What financial support is available for guardians?

An approved foster or kinship carer who is granted long-term guardianship of a child is eligible for the following financial supports, where approved:

- **Fortnightly caring allowance** — which covers the basic costs associated with the care and support of a child.
- **Regional remote loading** (where applicable) — an additional financial support for approved carers and eligible guardians whose physical location impacts on their day-to-day costs of out-of-home care.
- **High-support-needs allowance** — a supplement to the fortnightly caring allowance in which a child has needs that require a high level of support, consistently resulting in costs that exceed the fortnightly caring allowance. The allowance may be paid on a time-limited or ongoing basis (subject to an annual case plan review) depending on the nature of the child's needs.
- **Child-related cost reimbursement** — provided for significant or ongoing costs that are specific to the child's individual needs over and above the financial support provided in the fortnightly caring allowance and the high support needs allowance. An annual case plan review applies to child-related costs approved for a period of more than 12 months.
- **Dual fortnightly caring allowance** — paid if the guardian is eligible for 'emergent' respite. Emergent respite is only available to eligible guardians where emergent circumstances arise (for example, the sudden hospitalisation of a sole guardian) and there is no other option available within the guardians' existing support network.

In addition, all long-term guardians are able to claim for a special payment (if for example, the guardian has suffered a loss or property damage caused by a child in their care), subject to the Special Payments (including Ex-gratia) policy and procedure.

If payment of the high-support-needs allowance or child-related costs is time-limited, and guardians identify a need for these payments to be extended beyond the approval end date, the guardian is responsible for contacting Child Safety to request a further period of approval.

For further available financial support, refer to the Foster and Kinship Carer Handbook at www.communities.qld.gov.au/childsafety

What non-financial support is available for guardians?

All guardians are eligible for the following non-financial supports from Child Safety:

- **Assistance with family contact** — support to help the guardian resolve issues or circumstances preventing or impacting a child’s ongoing contact with parents and other members of the child’s family. The guardian remains responsible for providing opportunities for family contact, including transportation.
- **Casework in response to emergent issues** — support may be provided to the child and guardian for up to three months, where emergent circumstances arise that are likely to impact on the stability or quality of the care arrangement if intervention by Child Safety is not provided.
- **Referral for active intervention services** — intensive family support services provided to children and their families for up to six months (note: a Referral for Active

Intervention service cannot occur where Child Safety is providing casework in response to emergent issues).

- **Foster and kinship carer support line** — provides access to after-hours positive behavioural support, counselling and information on departmental policies and procedures. Call **1300 729 309** on Monday to Friday from 5 pm – 11.30 pm and on Saturday to Sunday from 7 am – 11.30 pm.
- **Access to counselling** — available in some circumstances in response to a traumatic event involving a child subject to the Long-term Guardianship Order.
- **Training** — the guardian may choose to participate in standard or advanced training to help them care for and support the child in their guardianship.

What other additional supports are available?

In addition to support available from Child Safety, the following additional supports may also be available:

- **Specialist disability services** — a child who has a disability may be eligible for disability services. For further information, visit the department's website **www.communities.qld.gov.au/disability**
- **Transition to Independent Living Allowance** — children who are, or have been in out-of-home care may be eligible for this Commonwealth Government benefit to help with upfront costs associated with accessing employment, education or accommodation. For further information, visit **www.tila.org.au**
- **Child support** — a guardian who is a relative of the child may be eligible for child support. For further information, call the Child Support Agency on **131272** or visit **www.csa.gov.au/ChildSupportFormula**

- **Commonwealth benefits** — a guardian may be eligible for support from the Commonwealth Government, such as health care cards and pharmaceutical benefits.
- **Foster Care Queensland** — provides information, support and advocacy to all foster and kinship carers in Queensland (membership is voluntary). Call **3256 6166** or visit **www.fcq.com.au**
- **CREATE Foundation** — represents children and young people in out-of-home care, and ensures that their views are heard by key decision-makers in government and the out-of-home care sector. Call **1800 655 105** (free call) or visit **www.create.org.au**

For more information about additional supports, refer to the Foster and Kinship Carer Handbook at **www.communities.qld.gov.au/childsafety**

Frequently asked questions

Can a guardian remain or become a foster or kinship carer of other children?

Yes — a long-term guardian may also provide foster or kinship care to other children. However, interest in commencing or continuing to provide care for other children should be carefully considered when deciding if guardianship of a particular child is the best option.

The potential guardian and the department needs to be satisfied, prior to proceeding with an application for a Long-term Guardianship Order, that the needs of the child will not be compromised by the guardian's ongoing role and responsibilities regarding the needs of other children placed in their care.

What if a child or a guardian requires support?

At any time following a Long-term Guardianship Order, the child or guardian may request support from Child Safety. The Child Safety Officer is responsible for discussing the request with the Team Leader, facilitating the provision of support and if applicable, obtaining approval of requests for financial support for an eligible guardian.

Can anyone appeal against the making of a Long-term Guardianship Order?

Once a Long-term Guardianship Order is granted, Child Safety will inform the child and the parents of the decision in writing. The child and the parents have 28 days to appeal the decision through the Childrens Court.

Can a Long-term Guardianship Order be revoked?

A Long-term Guardianship Order to a suitable person is not the same as adoption. While the relationship between the child and their guardian is for the rest of the child's life, the Order does not result in a permanent change to the child's legal status. The Order does not result in the irreversible relinquishment of parenthood as it only applies until a child turns 18 years of age.

The Act allows the Childrens Court to revoke a Long-term Guardianship Order where an authorised officer, a child's parent or the child applies to the court to revoke the Order. This usually only takes place when there is a significant change in circumstances.

Upon receiving an application to revoke the Order, the court must consider the child's need for emotional security and stability, as well as whether the order is still appropriate and desirable to protect the child.

Do Community Visitors continue to visit the home of guardians?

The Community Visitor program by the Office of Public Guardian makes regular visits to children in out-of-home care to make sure that the concerns, views and wishes of children are listened to and seriously considered.

When a child is subject to a Long-term Guardianship Order, Community Visitors are not required to visit that child. However, the child or guardian may request support by calling **1800 661 533** or visiting **www.publicguardian.qld.gov.au/child-advocate**

Is a child in the long-term guardianship of a suitable person eligible for a Child Health Passport, Education Support Plan, transition from care planning, Evolve Interagency Services or a Cultural Support Plan?

Unlike children in foster and kinship care, those being cared for and supported by a guardian no longer require access to the above programs. The guardian assumes full responsibility for identifying and responding to all of the child's care needs (for example, the child's ongoing cultural or health needs).

As is the case for parents, guardians are responsible for identifying and obtaining any necessary services from within the child's community.

However, if the necessary services are not publicly available and the cost of obtaining the services is considered by the department to be significant and/or ongoing, an eligible guardian may request child-related cost reimbursement. The child safety service centre manager, or another financial delegate, is responsible for deciding whether to approve a request for child-related costs.

What happens in the unfortunate event of the death of a child in the long-term guardianship of a suitable person?

If a child in the long-term guardianship of a suitable person dies, the guardian should notify Child Safety as soon as practically possible.

Upon the death of a child who is subject to any Child Protection Order, including a Long-term Guardianship Order, the duties, powers and responsibilities of the guardian are returned to the child's parents. This includes decisions about the child's funeral and the handling of the child's belongings. Financial support will be available from Child Safety to assist with the expenses associated with the child's death, such as funerals and memorial services.

Is a guardian able to give the care of the child to someone else?

The legal authority to care for, and make decisions about the child subject to a Long-term Guardianship Order is limited to the person stated on the Child Protection Order. The Order does not allow guardians to give the care of a child to someone else on an ongoing basis.

If this occurs, the person selected by the guardian has no legal authority to care for or make decisions about the child. The birth parents could remove the child at any time, potentially placing the child at risk of harm. Further, Child Safety cannot, in any circumstance, pay allowances to a person other than the court appointed guardian (where eligible).

Giving the care of a child to someone else on an ongoing basis would exclude circumstances where the child is to return to the guardian, for example, following family contact, holidays, hospitalisation or school excursions.

If exceptional circumstances arise and a guardian decides that they are no longer able or willing to provide daily care for the child, the guardian is to contact Child Safety.

What happens if long-term guardians separate or divorce?

In the event of a separation or divorce, both guardians continue to hold guardianship responsibility for the child. As is the case for parents in the general community, the guardians need to consider the child's views and the circumstances of the separation or divorce, and negotiate future plans for the daily care and guardianship of the child. Guardians may, but are not required to, apply for orders from the Family Court.

Only one guardian can continue to receive the fortnightly caring allowance following separation or divorce. If the future daily care of the child is to be shared, the guardians need to decide who will be paid the allowance. In this circumstance, the guardian in receipt of the allowance may, but is not obligated to, pay part of the allowance to the other guardian.

If a guardian subsequently remarries or re-partners, there is no legal requirement for the new partner to be approved as a guardian to provide care for the child.

What will change if a suitable person is granted guardianship?

There are key differences between what happens when the child is subject to a short-term Child Protection Order, and if they are subject to the long-term guardianship of a suitable person.

There is no difference between what happens when the child is subject to a short-term Child Protection Order and if the chief executive of the department is granted long-term guardianship of the child.

The table over the page provides information about how things will change if a suitable person is granted long-term guardianship.

	<p>What happens now if a child is on a short-term Child Protection Order? and What will happen when a child is in the long-term guardianship of the chief executive?</p>
Child's contact with the Child Safety Officer	At least monthly
Child's contact with the Community Visitor	Yes
Case plan review	Six-monthly
Transition from care case planning and support by Child Safety	Yes
Transition to Independent Living Allowance	Yes, pending Commonwealth Government approval
Education Support Plan	Yes
Cultural Support Plan	Yes
Child Health Passport	Yes
Expiry of the Order	For a short-term Child Protection Order, the expiry date is recorded on the Order. If the child is subject to the guardianship of the chief executive of the department, the Order expires on their 18th birthday.
Placement	Change is possible in some circumstances.

What will happen when a child is in the long-term guardianship of a suitable person?	
	At least yearly
	No
	Each year the child will be asked if they want their case plan reviewed. Also, at any other time, the guardian and the child can ask for a case plan review.
	No — the guardian will help the child to plan and prepare for their future as a young adult, and access the services or supports the child might need.
	Yes, pending Commonwealth Government approval
	No — the guardian will help the child to identify their education needs, and access the services or supports the child might need.
	Yes — the child still has a Cultural Support Plan but the guardian will help the child to identify their cultural and identity needs, and access the services or supports the child might need.
	No — the guardian will help the child to identify their health needs, and access the services or supports the child might need.
	The Order expires on the child's 18th birthday
	Permanent placement with the guardian

An eligible guardian can request financial support in some circumstances to help meet the child's health, educational, counselling, transition into adulthood and cultural needs.

