



ALS

Aboriginal Legal Service (NSW/ACT) Limited

Guardianship orders - what are they?

- Information about child protection and FaCS -

WHAT IS A GUARDIANSHIP ORDER?

A guardianship order is an order made by the Court for the children to live with a guardian, and not their parents.

A guardianship order can be made for a child where the Court does not think a child will be able to return home to their family.

A guardianship order can be made for a child until they are 18 years old.

The person who is given the guardianship order looks after the child who has already been removed or is in out-of-home care. They are required to make all major decisions for the child.

This is a final order and cannot be made on a temporary basis.

A "guardianship order" is different to an order simply allocating parental responsibility to the carer, because a "guardianship order" cannot be shared with the Minister for Community Services and the Court has to be sure that the carer or carers will not need the support of FACS in any way.

WHEN CAN THE COURT MAKE A GUARDIANSHIP ORDER?

Before making a guardianship order, the Court must know:

- That there is no real possibility of the child being returned to the care of their parents;
- That the guardian will provide a safe, nurturing, stable and secure environment for the child now and in the future;
- If the child is Aboriginal or Torres Strait Islander – that the child is placed according to the Aboriginal Child Placement Principles; and
- If the child is over 12, they must give consent (say "yes") to the guardianship order being made.

WHO CAN APPLY FOR A GUARDIANSHIP ORDER?

An application for a guardianship order can only be made by the Secretary (FACS) or by an agency or 'suitable person' with the written approval of FACS. When a relative or kin of the child wishes to apply for a guardianship order, they will need to be assessed by FACS.

The parents of the child must be notified of the application and be given an opportunity to seek legal advice. If you need advice regarding guardianship orders, please call the ALS.

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