



Becoming a special guardian

This information sheet explains what a protection order (special guardianship¹) is – referred to throughout as a special guardianship order (**SGO**) – and what it would mean for you should you wish to become a special guardian for a child in the care of the Chief Executive Officer (**CEO**) of the Department of Communities (**the Department**).

What is a special guardianship order?

An SGO is an order granted by the Children’s Court of Western Australia (**the Court**) that gives an individual or two individuals joint parental responsibility for a child, to the exclusion of any other person, until the child reaches 18 years of age.

SGOs are intended to provide stable, long-term living arrangements for a child who is in the CEO’s care or subject to a protection application in the Court. They are one of the Stability and Connection Planning options available when it is considered that a child’s reunification with parents is not possible or in the best interests of the child.

An SGO is a way of providing the child with a stable, caring home while maintaining connections with family members and other people important to them. Maintaining these connections can help to enhance the child’s sense of belonging with both their birth family and special guardian/s, and to provide the security they need to do well into the future.

Once the Court grants an SGO, the child is no longer in the CEO’s care and the special guardian(s) has full parental responsibility for the child. This means being responsible for the child’s daily needs and the long-term care, wellbeing and development of the child. The child would no longer have an assigned child protection worker and you, as the child’s special guardian, would not need to discuss any decisions about the child’s care with the Department.

An SGO remains in place until a child turns 18 years old, unless the Court revokes the order, or it is replaced by an adoption order.

Who can apply for an SGO?

Either the Department or, in certain circumstances, a child’s carer may apply to the Court for an SGO. A carer is eligible to make an SGO application for a child only if:

- (a) they have been the carer of the child; and
- (b) the child has been under a protection order (time-limited) or protection order (until 18),

for at least two years immediately before the application is made.

The Department will only support a carer’s application for an SGO if it is assessed as being in the child’s best interests.

¹ The legislative authority for this order is section 60 of the *Children and Community Services Act 2004* (the Act).



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Will an SGO be considered for an Aboriginal child?

Maintaining an Aboriginal child's connection to family, community and culture is of fundamental importance to the child's wellbeing. Care arrangements for Aboriginal children are therefore very carefully considered by both the Department and the Court.

When assessing the suitability of a proposed special guardian for an Aboriginal child, the Court must have regard to the Aboriginal and Torres Strait Islander child placement principle in section 12 of the *Children and Community Services Act 2004*.² The Court must also take into account the child's cultural identity and the need to maintain the child's connection with the lifestyle, culture and traditions of Aboriginal people.³

The Department will speak with an Aboriginal officer or Aboriginal person who has relevant knowledge of the child and their family or the child's community, or an Aboriginal community-controlled organisation, to determine if an application for an SGO is in the child's best interests and should be supported.

How do I know if an SGO is right for my family and me?

When considering becoming a special guardian, you will need to think about some of the long-term situations that may arise, and how these could affect your ability to provide care and support for the child. Things to consider include:

- Will you be able to encourage and support the child to maintain contact with their parents, siblings, other relatives and with other people who may be important to them?
- If the child is Aboriginal or from a culturally or linguistically diverse background, will you be able to help the child maintain a connection with their culture?
- If the child has a disability or high care needs, will you get funding support through the National Disability Insurance Scheme or from the Department?
- Will you be able to manage the child's medical, dental or psychological needs, including any associated costs?
- If the child has a potential legal claim (such as criminal injuries compensation), will you be able to pursue the claim and support the child through the process?
- Will you be able to manage and provide information to the child about services and supports available in the community as the child moves through adolescence, to support their transition to adulthood?

² *Children and Community Services Act 2004*, s.12 – Aboriginal and Torres Strait Islander child placement principle.

³ *Children and Community Services Act 2004*, s.8(j)



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- Many young people do not become fully independent upon turning 18 years of age and may not be ready to leave the family home – could you continue to care for the young person?
- Who would provide care for the child should anything happen to you if, for example, you have a serious medical condition?
- Will you be able to care for the child in the future if you are faced with significant health or mobility issues?

Department staff will discuss these areas with you as part of its SGO assessment process

How does the Department determine if an SGO will be supported?

The Department would talk with you, your family, the child, child's parents, siblings and other family members, and others significant to the child about the proposed SGO to determine if an SGO is appropriate, and in the child's best interests.

Relevant professionals and specialists would also be consulted to determine if an SGO is the best outcome for the child; for example, the Aboriginal Practice Leader, a psychologist, teacher, health practitioner etc.

You and your family would be able to voice any views regarding the proposed SGO application. These views can influence whether the Department decides to seek an SGO on behalf of the child or support your application for an SGO should you wish to make one.

The Department would also assess how you have provided and intend to provide ongoing support for the child to remain connected to their family and community, and preserve their cultural and religious values and traditions. This is particularly important for Aboriginal children and children from culturally and linguistically diverse backgrounds.

The Department must provide a report to the Court as part of the SGO application process. The report must address all the things the Court is required to consider before being satisfied that granting the SGO is in the best interests of the child. The Department would discuss the report and its recommendations with everyone involved before giving it to the Court.

If the Department does not support an SGO application, the reasons for this are included in the Court report.

What happens about contact between the child and their family?

In its report to the Court the Department may make recommendations regarding contact between the child and the child's family. The Court will consider the Department's report and may include conditions about contact between the child and another person in the order.

Once an SGO is granted, the Department no longer has a role in organising contact arrangements. As the special guardian, you would be responsible for managing contact even if there was a disagreement about the arrangements.



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Private or community-based children's contact services may be able to transport and supervise the contact arrangements if you needed such support. The Department would discuss this during the assessment process, as you may be responsible for paying the service's fee.

Can contact arrangements be changed?

Yes - a parent, special guardian, or anyone else who was a party to the initial SGO proceedings can apply to the Court to change the contact arrangements in the order.

The Court only agrees to hear an application to change contact arrangements if there are new facts or circumstances, or if each party to the initial proceedings consents to the application.

Are there costs associated with an SGO application?

Yes - However, if the Department is making the application on behalf of the child, it may not be necessary for you to have legal representation. This should be discussed with the child's child protection worker and team leader.

The Department does not assist with legal costs for carers making a direct application to the Court for an SGO. As the applicant, you would be responsible for these costs. Legal Aid WA may assist with legal advice and representation, or you could seek assistance from an independent lawyer.

Can the SGO be changed?

Yes - a parent, special guardian, or anyone else who was a party to the initial SGO proceedings can ask the Court to revoke the order. The Court may or may not agree to revoke an order.

If a child's family makes an application to revoke the order, the Department reviews the child's circumstances and provides a report to the Court.

If the Department considers that it is in the child's best interests to remain under the SGO, the Department may assist the child or special guardian with legal support.

What financial support is available to a special guardian?

A party to an SGO application can ask the Court to order the Department to make fortnightly payments to the special guardian. An application for SGO payments can be made at the time of the initial application or at any time during the life of the order.

SGO payments are like the foster care subsidy paid to help with the cost of caring for children in the CEO's care. The Department makes the SGO payment instead of the foster care subsidy, which ceases once an SGO is granted. The SGO payment would continue



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until the child ceases to be in your full-time care (in which case you must advise the Department), the child turns 18 years of age, or where the Court revokes the order.⁴

If you receive a Special Needs Loading payment for the child, the Department may continue to provide this financial support. However, this would need to be reviewed and approved by the Department before an SGO application is made.

If it is identified that you would require additional financial support for the child under an SGO, this would also need to be approved prior to an SGO application being made.

As a special guardian, you may be eligible for Commonwealth Government (Centrelink) payments, such as Parenting Payment, and the child will be entitled to a Foster Child Health Care Card and Youth Allowance (from 16 years old if they are eligible). Youth Allowance may be paid regardless of the assets or income of the special guardian, provided that the young person meets the standard criteria such as studying, training or looking for a job.

In addition, you could be eligible for an exemption from the Centrelink activity test and work participation requirements. The Department could provide you with a letter of support for the exemption to present to Centrelink.

For information and eligibility criteria, check the Services Australia website www.servicesaustralia.gov.au, telephone 132 307, or visit your local Services Australia service centre.

A Grandparent Adviser can also help you understand the payments and services that you may be eligible to receive as a special guardian (call 1800 245 965).

What other support can the Department provide?

You or the child may seek assistance from the Department throughout the life of the order. You would be able to contact your local district office for information and advice.

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⁴ Any party to the initial proceedings may apply to the Court for the revocation of an SGO.