

Long-term Guardianship (Specified Person) Policy

1. Purpose

This policy clarifies the Department for Child Protection's (DCP) position regarding the transfer of legal guardianship of a child or young person to an approved carer.

2. Scope

This policy applies to DCP staff involved with case management of children and young people who may be eligible for Long-term Guardianship (Specified Person) (LTGSP) and staff assessing carers applying for LTGSP.

3. Authority

3.1 Legislative context

- Sections 55 and 89 of the [Children and Young People \(Safety\) Act 2017](#)
- [Children and Young People \(Safety\) Regulations 2017](#)
- Sections 38A, 39(3) of the [Births, Deaths and Marriages Registration Act 1996](#)
- [Coroners Act 2003](#)
- Sections 70C and 70D of the [Family Law Act 1975 \(Cth\)](#)
- Sections 12 and 13 of the [Guardianship of Infants Act 1940](#)
- Section 6 of the [Consent to Medical Treatment and Palliative Care Act 1995](#)
- Sections 21 and 22 of the [Transplantation and Anatomy Act 1983](#)

3.2 Whole of Government requirements

- [Charter of Rights for Children and Young People in Care, Office of the Guardian for Children and Young People in Care](#)

3.3 DCP requirements

- [Investing in their future](#)

3.4 Principles

- The safety of children and young people is the paramount consideration.
- Children and young people's views and rights must be considered.
- The critical need of children and young people to develop secure attachments is reflected in case planning and timely decision making.
- Decision making about the long-term care of Aboriginal children and young people is guided by the Aboriginal and Torres Strait Islander Child Placement Principle (ACPP) and must be supported by a comprehensive cultural support plan (ACIST) that meets the current and ongoing cultural needs of the child and young person.
- Decision making processes about transfer of guardianship of an Aboriginal child or young person must include the child or young person's family to ensure family can provide their view about how their child can remain connected to their family, community, culture and Country.

- Cultural connection and participation are essential for ensuring the long-term safety and wellbeing of children and young people.
- For Aboriginal children and young people, long-term care arrangements must uphold their rights to their identity, name, culture, language and family relationships to:
 - know their Country and language
 - know their family kinship relationships and connections
 - learn their histories, stories and traditions
 - participate in cultural practices, including arts, songs, dance and ceremonies
 - learn and speak their language without discrimination.
- Children and young people's right to know about and experience their family, culture, community and Country must be actively supported through long-term care planning.
- Planning and critical decision making must be done in partnership and participation with children and young people, families and carers.
- Relationships between children and young people, and their carers are valued and protected.

4. Policy requirements

Under section 89 of the *Children and Young People (Safety) Act 2017* (CYPS Act), an approved carer who has cared for a child or young person for at least two years may apply to the Chief Executive to become the child or young person's guardian. The Chief Executive may also consider applications from carers who have cared for a child or young person for a shorter period.

Once an application is received, the department must assess whether the carer is suitable to be the child or young person's guardian in a timely manner. A LTGSP application is assessed in two phases. Phase 1 is conducted by the child or young person's DCP case worker and Phase 2 is conducted by the LTGSP Assessment team. The allocated DCP office must continue to provide active case management throughout the entirety of the LTGSP application process until such time as an order is granted.

If a carer is considered a suitable guardian for the child or young person, the department must prepare a long-term care plan and without undue delay, can apply for a court order to place the child or young person under the carer's guardianship. This is called Long-term Guardianship (Specified Person) (LTGSP).

For a LTGSP application to progress:

- it must be in the best interests of the child or young person
- the child or young person must currently be residing in a long-term, stable placement
- the carer(s) must have demonstrated a commitment to the child or young person
- the carer(s) of an Aboriginal child or young person must have demonstrated a commitment to maintaining an Aboriginal child or young person's connection to their family, community and culture.

LTGSP provides certainty and increased security for vulnerable children and young people in out of home care (OOHC). In order for this to be successful for an Aboriginal child or young person, connection to family, community and culture must be upheld. Prior to an application to the Youth Court for LTGSP, the best interests of the child and their long-term care must be identified, articulated and documented in the long-term care plan.

When a LTGSP order has been made, the carer becomes the lawful guardian of the child or young person to the exclusion of all others and, assumes responsibility for decision making in relation to the child or young person without being required to consult with the department or anyone else. If it is considered in their best interests, the child or young person will continue to have contact with their birth family to help maintain a

strong and healthy sense of identity. In the majority of matters, this arrangement will be established by the department and outlined in the long-term care plan prior to transfer of guardianship, to be maintained by the carer thereafter.

Both Aboriginal children and young people and children and young people from culturally diverse backgrounds have a right to maintain connection with their community and culture.

4.1 Significant decisions for Aboriginal children and young people

For Aboriginal children and young people in care, a significant decision is a decision that is likely to have an enduring and substantial impact on their lives. A decision to apply for a LTGSP order must take into account the likely long-term outcomes for an Aboriginal child or young person's cultural connections, identity and social and emotional wellbeing.

Family led decision making is facilitated when Aboriginal children, young people and their families are supported to participate in decision making. It is important that those who may be affected, particularly the child or young person, their birth parents and key family and community members, are able to participate in significant decisions as early as possible in the decision making process.

For further support when working with Aboriginal children, young people and families, refer to the [Aboriginal and Torres Strait Islander Child Placement Principle \(ACPP\) practice paper](#) and the [Family Led Decision Making for Aboriginal families Framework](#).

4.2 Children and young people from culturally and linguistically diverse (CALD) communities

LTGSP for children and young people from CALD backgrounds requires special consideration in relation to maintaining the child or young person's cultural connection.

To ensure cultural connections are developed, maintained and strengthened for the child or young person, DCP staff must consult with appropriate DCP Multicultural Services departmental staff, family and community members regarding the cultural needs of CALD children and young people. Refer to [Working with Diversity – Culturally and Linguistically Diverse people – Practice Paper](#).

4.3 Eligibility

An approved carer who has cared for a child or young person for a period of at least two years (or a shorter period if deemed appropriate by the Chief Executive) and who, if caring for an Aboriginal child or young person, has upheld the ACPP and participated in nurturing the child or young person's connections to family, community and culture, may apply to the Chief Executive for an application to be made for a court order transferring the child or young person's guardianship to the carer. Once an application is received, the department must undertake an assessment to determine the suitability of the approved carer to become the child or young person's guardian. If the proposed guardian is considered suitable, then a long-term care plan must be prepared.

4.4 Long-term care plan (Specified Person)

Every child who is transitioning to LTGSP must have a [Long-term care plan \(Specified Person\)](#). Once the LTGSP order is granted, the long-term care plan will supersede the Guardian of the Chief Executive (GOCE) case plan for the child or young person. The long-term care plan sets out the intended future care arrangements for the child or young person. The long-term care plan must consider the child or young person's views and be written in consultation with the proposed guardian(s), the birth parents (where possible), other significant family members, relevant professionals and DCP case management staff. For an

Aboriginal child or young person, consultation with a Principal Aboriginal Consultant (PAC) is required. The views and recommendations of the PAC are to be documented in the long-term care plan.

The long-term care plan must be prepared and submitted with the LTGSP application to the Youth Court.

Once the LTGSP order has been granted, the long-term care plan will only be reviewed by the department at the guardian's request or when the guardian informs the department of a significant change in the child or young person's circumstances and the department determines that a review is necessary.

4.5 Contact with birth family

The ability of the guardian to maintain contact with the birth family of the child or young person in their care should be assessed as part of both Phase 1 and Phase 2 of the LTGSP assessment.

Where family contact cannot be facilitated by the guardian, the DCP case worker should explore alternative arrangements and document these in the long-term care plan. This may be particularly relevant for maintaining an Aboriginal child or young person's cultural connections to Country and their community. Challenges associated with contact arrangements with birth families should not prevent the department from undertaking a full LTGSP assessment or making an application to the Youth Court.

If a LTGSP order is granted, the guardian will be responsible for supporting and maintaining family contact arrangements as specified in the long-term care plan, except in circumstances where the department agrees, prior to the LTGSP order being made, to assist in the ongoing management of contact.

4.6 Carer payments

The guardian will continue to receive base rate carer payments until the child or young person's LTGSP order expires. [Current payment rates and loadings](#) are available on the DCP intranet. Any specialist carer payments will cease once the LTGSP order is granted.

If the child or young person has been assessed as having challenging behaviours or disability or other significant needs, the guardian will continue to receive a special needs loading in addition to their base rate payment. This loading is provided to fund the additional costs associated with caring for the child or young person (see [carer loadings](#) on the DCP intranet for more information).

Special needs loadings will only be provided where an assessment has been completed in accordance with the [Care Support Payments \(family based payments\) procedure](#).

The level of special needs loading will be assessed at the time of the LTGSP application. The loading amount will depend on the child or young person's level of need, and must be approved using the [Special Needs Loading application form](#).

All payments, including base rates and special needs loadings, are subject to annual financial review by the LTGSP case management team.

Following transfer of guardianship, the department will honour previous agreements with regard to the payment of school fees and therapy, where negotiated as part of the LTGSP assessment or at the annual financial review, should they continue to be assessed to be in the child or young person's best interests by the LTGSP case management team.

Carer payments will cease when the:

- child or young person reaches 18 years of age unless the young person is eligible for the [Stability in Family Based Care](#) program
- order is revoked
- child or young person leaves the care of the guardian before they attain the age of 18 years.

Guardians who wish to live in another state or territory have the same payment rights as guardians living in South Australia, including base rate payments and special needs loading. In the event that the order is transferred interstate, South Australian payment rights will no longer apply.

4.7 Impact on other placements

The household dynamics and the carer's capacity to continue to care for the LTGSP child or young person, and any other children or young persons (in relation to respite, short or long-term care) will be taken into consideration prior to any further placements within the household.

Children and young people under LTGSP orders will not be included when calculating the total number of foster children who can be placed with a registered foster or kinship carer. If the carer wishes to provide care to additional children, the allocated service provider or support worker should assess the carer to determine their maximum capacity. This assessment should then be provided to CARU who will approve the carer for their maximum capacity as evidenced in the assessment report.

4.8 Support following the transfer of guardianship

Children and young people will be allocated to the central LTGSP case management team for administrative purposes inclusive of annual financial reviews and long-term care plan reviews. The LTGSP case management team will provide information and support to guardians to access community resources and service providers.

While there is no responsibility for the previously allocated DCP office to provide active case management, family contact will be supported and facilitated by the DCP office if this has been previously agreed in the long-term care plan.

Kinship care and foster care support workers will not provide support to guardians following the transfer of guardianship. However, support will continue to be provided when there are other children or young people in the placement who are under the custody or guardianship of the Chief Executive.

A child or young person placed under a LTGSP order is entitled to state and federal government assistance in the form of ambulance cover, school card and access to Dame Roma Mitchell Trust grants. These benefits can be accessed by the guardian. A child or young person placed under a LTGSP order may be entitled to federal government assistance in the form of a Health Care Card, Youth Allowance and Transition to Independent Living Allowance (TILA¹). These benefits can be accessed by the guardian.

Children and young people placed under a LTGSP order with a permanent or significant disability will be eligible to access National Disability Insurance Scheme (NDIS) payments. The child or young person's DCP case worker will be responsible for ensuring NDIS arrangements are in place prior to transfer of guardianship; from which point the guardian will be responsible for NDIS arrangements. In the event that the

¹ Information regarding State and Commonwealth benefits, and referral for assistance post LTGSP can be found in the Transition to adulthood chapter of the Manual of Practice

child or young person's disability emerges after the LTGSP order is established, the guardian is responsible for making NDIS arrangements.

4.9 Interstate and overseas travel

Guardians can make decisions regarding the child or young person's interstate and overseas travel. DCP case workers should refer guardians to the [Australian Passports Office website](#) for guidance about obtaining a passport for a child or young person under a guardianship order.

Where interstate travel is required to maintain contact with the child or young person's birth family, guardians should register the LTGSP order in the Federal Circuit and Family Court to assist with the enforcement of the guardianship and any other related orders (ancillary orders) if needed.

Guardians who wish to relocate to another state or territory on a permanent basis must:

- register the LTGSP order in the Federal Circuit Family Court under sections 70C or 70D of the *Family Law Act 1975 (Cth)* so that it has the same force and effect as if it were an order made by the Federal Circuit Family Court
- reach agreement about contact with the child or young person's birth family prior to moving.

4.10 Victims of crime compensation or other legal claims

The child or young person's eligibility to claim victims of crime compensation should be considered and noted in the child or young person's long-term care plan.

Where a legal claim has been identified but not finalised, it is expected the guardian will assume responsibility for pursuing the claim on behalf of the child or young person at an appropriate time.

4.11 Change of name

A child or young person may choose to change their name informally (for example, at school). However, this name will not appear on legal or official documents such as passport, driver's licence or South Australian Certificate of Education, for example.

In limited circumstances, a child or young person placed under a LTGSP order may seek to formally change their name. For further guidance, refer to [Support the child or young person to change their name](#) in the DCP Manual of Practice.

4.12 Change in living arrangements

If the child or young person's living arrangements change or the child or young person ceases to be in the guardian's full-time care, the guardian must notify the LTGSP case management team. The LTGSP case management team, in partnership with DCP Finance, will cease the carer payments, including any loadings and incidental payments.

4.13 Variation, revocation or discharge of LTGSP orders

Any party to the LTGSP order may apply to the Youth Court, pursuant to section 55(1) of the CYPS Act for the revocation or variation of the order. In the event of one guardian passing and leaving a sole guardian, they may wish to approach DCP to seek a variation of the order to add an additional guardian.

4.14 Enforcement of a LTGSP order

The department does not have the power to enforce LTGSP orders. However, a person who contravenes or fails to comply with a LTGSP order may be guilty of an offence.

Where the department believes the guardian, birth parent or other party has breached the LTGSP order and any other associated order, the DCP office may consult with DCP Legal Services to consider possible pathways to address this.

If the LTGSP order is registered in the Federal Circuit Family Court, other enforcement options may be available.

DCP staff should discuss enforcement options with DCP Legal Services prior to taking any action.

If a birth parent or guardian wishes to take an enforcement action, the department will not provide advice or funding.

4.15 Future child protection matters

Any allegation of harm, where the alleged perpetrator is the guardian or a family member of the guardian, will be recorded, assessed and investigated by the department (if required) as per existing departmental policy and procedure in relation to responding to notifications.

4.16 Medical treatment

If the child or young person is under 16 years of age, their guardian can consent to medical treatment. If the young person is 16 years of age or over, they may make decisions about their own medical treatment as validly and effectively as an adult².

4.17 Death of a child under a LTGSP order

The death of a child or young person under LTGSP may be a reportable death under the *Coroners Act 2003*. Refer to the [Death of a child or young person in care Procedure](#) for further guidance.

The death of a child or young person under a LTGSP order is considered a significant incident. Refer to the [Significant Incident Reporting Procedure](#) for further information.

Decisions regarding the donation of organs³, funeral and burial rights revert to the 'senior available next of kin' following the death of the child or young person. Senior available next of kin means (in order of priority):

- a parent of the child or young person
- the child or young person's brother or sister, who has attained the age of eighteen years
- a guardian of the child or young person.

The guardian may apply to the Registrar of Births, Deaths and Marriages to request that their name be added to the Death Register and death certificate⁴ in addition to the parents' names.

4.18 Death of a guardian

Where the Youth Court has granted joint guardianship or parental responsibility to two people and one person dies, the surviving guardian will continue as the child or young person's guardian (subject to the terms of the order)⁵.

² Section 6, *Consent to Medical Treatment and Palliative Care Act 1995*

³ Sections 21-22, *Transplantation and Anatomy Act 1983*

⁴ Sections 38(A) and 39(3), *Births, Deaths and Marriages Registration Act 1996*

⁵ Section 12, *Guardianship of Infants Act 1940*

If the guardian's death is expected, the remaining guardian should notify the department.

In the event where the sole guardian passes away, or both guardians pass away, the child's guardianship will likely revert to the biological parents of the child. The Department will have to assess whether the child or young person is at risk, as defined by the CYPs Act, and action appropriately.

The guardian/s should make appropriate arrangements for the department to be notified in circumstances where both guardians pass away simultaneously. The child or young person's situation will then be referred to the relevant DCP office to ensure that appropriate arrangements are put in place for the child or young person's ongoing care.

Only the biological mother or father of the child or young person can appoint a guardian by deed or will⁶. A guardian cannot appoint another guardian by deed or will in the event of their death.

4.19 Review

Any person who is aggrieved by a decision made by the department about LTGSP may make an application for an internal review. Refer to the DCP [Internal Review Procedure](#) for further guidance.

5. Compliance, monitoring and evaluation

This document will be reviewed every three years to ensure currency and applicability, or more frequently if there are any changes to workplace practices or relevant legislation.

6. Related documents

Related documents, forms and templates
Aboriginal and Torres Strait Islander Child Placement Principle Practice Paper
Manual of Practice – Long-term Guardianship (Specified Person) chapter
Long-term care plan template
Significant Incident Reporting Procedure
Death of a Child or Young Person in care Procedure
Internal Review Procedure

⁶ Section 13, *Guardianship of Infants Act 1940*

Document control

Reference No./ File No.			
Document Owner		Lead Writer (name, position)	
Directorate/Unit: Long-term Guardianship Assessment Team		Melisa Zummo-Gorgone, Lead Project Officer Out of Home Care, Operational Support	
Accountable Director: Sue Barr, Executive Director Out of Home Care			
Commencement date	05 August 2022	Review date	31 August 2025
Risk rating Risk Assessment Matrix	Consequence Rating	Likelihood	Risk Rating
	Minor	Unlikely	Low

REVISION RECORD		
Approval Date	Version	Revision description
16 May 2017	1.0	Final
21 September 2018	1.1	Amended and Document approved
10 March 2019	1.2	Amended and Document approved
05 August 2022	2.0	New Policy template Document aligned with Manual of Practice – Long-term Guardianship (Specified Person) Chapter LTGSP Case Management Team established