



# INFORMATION SHEET FOR PROSPECTIVE SPECIAL GUARDIANS

This information sheet explains what a protection order (special guardianship)<sup>1</sup> is – referred to throughout as special guardianship order (SGO) – and what it would mean for you should you choose to become a special guardian<sup>2</sup> for a child in the care of the Chief Executive Officer (CEO) of the Department for Child Protection and Family Support (the Department).

## What is a special guardianship order?

A SGO is an order granted by the Children's Court that can only be made if the child is in the care of the CEO.

A SGO is a way of providing a child in the CEO's care with a stable, loving home while maintaining their connection with family and people important to them. The order provides greater legal security for the child than would be possible in long term foster care, without legally severing the link with the child's birth parents (unlike adoption).

Once the Court grants a SGO, the child will no longer be in the CEO's care and all parental responsibilities will be given to you as the child's special guardian. This will enable you to make all decisions about the child's daily needs and long term care, wellbeing and development. This will help to enhance the child's sense of belonging and provide them with the security they need to do well.

The child will no longer have an assigned child protection worker and you will not need to discuss any decisions about the child's care with the Department.

The SGO will remain in place until the child turns 18 years old, unless the Court revokes the order.

## Who can apply for a SGO?

The Department and carers can apply to the Court for a SGO. The Department can apply for a SGO when the child first comes into care or at any time while the child is in the care of the CEO.

Carers can apply for a SGO as long as:

- the child is in the care of the CEO under a protection order (time-limited) or (until 18); and

- they have had the continuous care of the child for at least two years from the time the protection order was granted.<sup>3</sup>

The Department may support a carer's application for a SGO.

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

When considering becoming a special guardian, you may 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. Some things to consider include:

- Your current age and that of the child – will you be able to care for the child in the future if you are faced with significant health or mobility issues?
- How will you manage and support the child to maintain their connection with their parents, other family members and people important to them?
- Will you be able to manage the child's medical, dental or counselling needs, including any associated costs?
- Will you be able to manage and provide information to the child about services and supports available in the community as they move through adolescence to help make an effective transition to adulthood?
- Not all young people 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, for example, a serious medical condition or unexpected death.

## The assessment process

The Department will talk to you, your family, the child, and their parents and family about a SGO to determine if this type of care arrangement is appropriate and in the child's best interests.

Relevant professionals and specialists will also be consulted to determine if a SGO is the best outcome for the child. For example, a psychologist, teacher, health practitioner etc.

You and your family will be able to voice any views regarding the proposed SGO application. These views can influence whether the Department decides to seek a SGO or support a carer's SGO application.

<sup>1</sup> The legislative authority for this order is section 60 of the *Children and Community Services Act 2004*

<sup>2</sup> Under section 60 of the Act, the Court can appoint up to two people, other than the CEO, to be the legal guardian(s) of a child (referred to as a 'special guardian').

<sup>3</sup> The two-year period does not include the time the child has been in care under a provisional protection and care order.

The Department will also assess how you will be able to help the child remain connected to their family and community, and preserve their cultural and spiritual identity. This is particularly important for Aboriginal children and children from culturally and linguistically diverse backgrounds.

The Department will give an assessment report to the Court as part of the application process for a SGO. The Department will discuss the assessment and any recommendations with everyone involved before giving it to the Court.

Where the Department does not support a carer's SGO application, the reasons for this will be included in the assessment report provided to the Court.

### **What happens about contact between the child and their family?**

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

Once the SGO is granted, the Department no longer has a role in organising contact. You, as the special guardian, will be responsible for managing contact even if there is disagreement about the arrangements.

Private or community based children's contact services may be able to transport and supervise contact between the child and their family if you need support. The Department will discuss this during the assessment process, as you may be responsible for paying the service's fee.

### **Can contact arrangements be changed?**

A parent, special guardian or anyone else who was part of the SGO application can apply to the Court to change the contact arrangements.

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

### **Are there costs associated with a 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 protection worker and their team leader.

The Department cannot assist with legal costs if you are making a direct application to the Court for a SGO; you will be responsible for these costs. Legal Aid WA may be able to assist with legal advice and representation, or you can seek assistance from an independent lawyer.

### **What financial support is available to a special guardian?**

An application to the Court for a SGO can include an application for SGO payments, although it may be submitted separately at any time during the life of the order.

The SGO payments are similar to the foster care subsidy to help with the cost of caring for the child. The Department will make the SGO payment instead of the foster carer subsidy, which ceases once the SGO is granted. The SGO payment continues until the child ceases to be in your full time care (in which case you must advise the Department), turns 18 years of age, or where the Court revokes the order.

If you are receiving a Special Needs Loading (SNL) payment for the child, the Department may continue to provide this financial support. However, this will need to be reviewed and approved by the Department before making an application to the Court.

If it is identified during the assessment process that you will require additional financial support for the child, this will also be discussed and need prior approval.

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. Youth Allowance may be paid if the child is studying or undertaking an approved course.

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

For information and eligibility criteria, contact the Department of Human Services (DHS) on 136 150, check the DHS website [www.humanservices.gov.au](http://www.humanservices.gov.au) or visit your local DHS Service Centre.

### **What other support can the Department provide?**

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

### **Can the SGO be changed?**

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

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

If the Department determines 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.