

## What to do if you have a complaint

The best approach always is to arrange a meeting with the Families SA worker and their supervisor to discuss your concerns.

If that doesn't resolve your issue, you have the right to speak to the customer relations officer (telephone 1800 003 305) who can discuss your concerns and explain your rights and options. If you are still not satisfied, you have the right to refer matters to the Health and Community Services Complaints Commissioner (HCSCC).

Health and Community Services Complaints Commissioner (HCSCC)

### HCSCC Enquiry Service

Hours: Monday-Friday 9am-5pm

Phone: 08 8226 8666

Phone: 1800 232 007 Country SA (from landline)

Web: [www.hcsc.sa.gov.au](http://www.hcsc.sa.gov.au)

PO Box 199, Rundle Mall Adelaide 5000

You may also find the organisations listed here useful.

### Ombudsman SA

Phone: 1800 182 150

Email: [ombudsman@ombudsman.sa.gov.au](mailto:ombudsman@ombudsman.sa.gov.au)

Web: [www.ombudsman.sa.gov.au](http://www.ombudsman.sa.gov.au)

PO Box 3651, Rundle Mall SA 5000

### Office of the Guardian for Children and Young People

Phone: 08 8226 8570

Phone: 1800 ASK 006

Email: [gcyp@gcyp.sa.gov.au](mailto:gcyp@gcyp.sa.gov.au)

Web: [www.gcyp.sa.gov.au](http://www.gcyp.sa.gov.au)

## The court process

The parties of the original care and protection application are invited to an initial hearing where the Crown makes a request to 'add the carers as a party'. Following the initial hearing, the carers and the birth parents are both informed of the next court hearing and the documents are served on the birth parents, the carers and also the child, if over 10 and of a suitable developmental age. When considered inappropriate to serve the court documents on the child, special dispensation must be sought from the court for this not to occur. The court process will be discussed during the assessment process.

While Families SA and the carer will share interests in the OPG court application, carers do not need to have separate legal representation. They can, however, choose to be separately represented, but this is usually at the carers' own cost.

## Support after OPG

Once OPG is granted, the carer becomes the child's legal guardian and is encouraged to use their own private or community supports if required.

We recognise that children who have been abused and neglected are likely to have significant ongoing needs, that parenting these children can be difficult, and transferring guardianship does not automatically reduce the child's needs.

Subject to the assessed needs of the child and the OP guardian's circumstances, it is possible for them to continue to receive a carer payment and for the child to continue to receive some entitlements to services similar to those provided to all children and young people under the guardianship of the minister.

## Reviews of support

On transfer of guardianship, Families SA ceases case management of the child as an annual review of the child's circumstances is not a legal requirement. However, where an OP guardian continues to receive the basic subsidy, they will be required to sign a statutory declaration on an annual basis to confirm the child or young person is still in their care. Where additional financial and other Families SA supports are agreed to, an annual financial review is required.

## OP guardians wanting to travel interstate/overseas

OP guardians are free to travel interstate and overseas as long as the travel arrangements do not contravene the agreed family contact arrangements. If the travel interstate or overseas does contravene existing access arrangements, there will need to be negotiations with the parents/family of origin. If there is disagreement, the parties will need to use the pre-agreed dispute resolution process to resolve the matter.

## OPG orders interstate or overseas

An OPG Court Order is a state-based order and has no legal authority interstate. However, a care and protection order granting guardianship of the child to an OP guardian(s) may be registered in the Family Court, pursuant to Section 70C of the *Family Law Act 1975*, and the Family Law Rules, 2004.

Once the OPG order, referred to as 'SCO' (State Child Order) in the *Family Law Act 1975* has been registered, the order will have the same effect as an order made in the Family Court. This option would then allow an OP guardian to move interstate and for the order to have legal authority.

If OP guardians want to move interstate or overseas with the child, they will need to negotiate with the parents/family of origin about existing access orders. They will also need to negotiate with Families SA about existing financial arrangements.

All parties will need to be satisfied with the new arrangements before the child/family can move. All decisions need to be made in the best interests of the child. If there is disagreement, then the parties will need to use the pre-agreed dispute resolution process to resolve the matter.

## Resolving disagreements

Families SA acknowledges that despite the best planning and support, disagreements between the parties may arise after an OPG order is granted. The care plan informs the parties about the processes available, should any disputes arise in the future.

A dispute resolution process could involve the following options:

- All parties agree to clarify, discuss and resolve concerns informally between themselves without involvement by Families SA
- All parties agree to use a community mediation service to clarify, discuss and resolve concerns
- A more formal meeting can be facilitated at a Families SA office to clarify, discuss and resolve concerns—this may be facilitated by a case manager, senior practitioner, supervisor, manager, or principal social worker or principal Aboriginal cultural consultant
- A young person could approach the Office of the Guardian for Children and Young People for help and advice
- An application to the Youth Court by any party to vary or revoke the existing court orders – this should only be considered when all other options have been exhausted

# Families SA

## Information for carers about other person guardianship (OPG)



Government of South Australia  
Department for Education and  
Child Development

## Introduction

Children who cannot live at home with their parents due to abuse, neglect, trauma or parental incapacity have a right and a need to be cared for by loving and nurturing caregivers. It is best for these children to be in a secure environment that most closely resembles what many other children experience in family life.

The Department for Education and Child Development has strengthened the long-term placement options for children through the use of other person guardianship (OPG). The aim of OPG is to provide children with stable, consistent and loving care, where carers are given the day-to-day parenting responsibility and decision-making authority.

## OPG legal context

Under Section 38 (1) (d) of the *Children's Protection Act 1993*, the Youth Court can appoint up to 2 people, other than the Minister for Education and Child Development, to be the legal guardian(s) of a child. An order transferring guardianship under Section 38 means that the carers of a child become their legal guardians, called OP guardians.

Guardianship is transferred from the Minister for Education and Child Development to the carers by the Youth Court. A carer needs to undergo the assessment and approvals process before an application is made to the Youth Court.

### It's important to note that OPG is not adoption.

Adoption permanently changes the legal status of the child as birth parents are no longer recognised by law as the child's parents, thus severing all their parental rights. OPG on the other hand, supports the importance of maintaining birth family connections, where possible.

## The best outcome for a child

OPG is not appropriate for all children in care. OPG is pursued when the interests of the child, the carer, family and the birth parents have been thoroughly considered. To ensure that an OPG arrangement is the most appropriate legal arrangement for the child, there is a thorough assessment and planning before the formal application to transfer guardianship to a child or young person's carers.

Families SA will identify if OPG is an appropriate arrangement through consultation with the child, the carers, the birth family and all relevant key professionals and specialists (eg psychologist, teacher, placement support worker etc). This consultation will allow them to assess whether all 5 conditions for OPG are fully met (refer to 'The assessment process' section in this brochure).

Families SA will make the final determination that an OPG arrangement is the best outcome for a child.

Delegation to proceed is made by Families SA. Families SA then proceeds to court.

## Cultural considerations – Aboriginal

Aboriginal children must be appropriately assessed for OPG arrangements in accordance with the Aboriginal Child Placement Principle. The initial assessment will be based on the criteria previously outlined, with a particular focus on the carer's demonstrated commitment to maintain the child's connections to their family of origin, community and culture.

Carers must demonstrate 1) what they have done to gain more knowledge and understanding of the child's extended family and community and 2) what plans, mechanisms or supports are in place to support the carer in maintaining and strengthening the child's connection to their culture and community.

All assessments for OPG involving Aboriginal children require consultation with a Families SA principal Aboriginal consultant and, where appropriate, extended family and community members.

## Cultural considerations – culturally and linguistically diverse families

There is no 'one-size-fits-all' when working with culturally and linguistically diverse communities, particularly when making an assessment of the long-term care arrangements of a child. OPG assessments must consider individual cultural issues as an integral part of formal assessment and planning processes.

## OP guardians' rights and responsibilities

OP guardians have day-to-day parenting and decision-making responsibility for a child. Some examples include decisions about education, health, child care arrangements and holidays. The appointed OP guardian(s) can exercise their rights to the exclusion of all others.

OP guardians are also responsible for following any conditions set in the Youth Court order and the care plan, such as agreements about access and contact with the child's birth family.

## Birth parents and OPG

When an OPG order is in place, birth parents still retain some decision-making responsibilities for their child. This includes decisions related to formal name change and organ donation. In the tragic event of the death of the child, the carer needs to inform the birth parents and Families SA. The birth parents retain the legal right to make decisions about funeral and burial arrangements. If need be, Families SA would provide assistance to encourage the child's birth parents to involve the OP guardian in the decision-making process and to resolve any potential disputes that may arise.

It is preferable for birth parents to give their consent to an application for OPG. However, the absence of parental consent does not prevent an application to the Youth Court for OPG if assessed as being in the child's best interests.

Concerns from birth parents (and extended family) can be about a fear of loss of contact and connection. These concerns are usually addressed before the application to the Youth Court. They can be further eased by ensuring that the OPG care plan covers issues such as family contact and dispute resolution.

## The assessment process

Families SA use the following criteria to decide whether OPG is in the best interest of the child:

- The carers have demonstrated their capacity to provide a high level of care for the child.
- The carers have sufficient personal and professional support and resources to provide care for the child both now and into the future.
- The carers have demonstrated commitment to the child maintaining connection to their family of origin, community and culture.

- The carers have made a lifelong commitment to the child.
- A close relationship exists between the carer(s) and the child.

## Future planning

During the assessment process, discussions will need to occur around plans for the child's future care arrangements, in the event of a carer's death, serious injury or illness. The carers will need to have a plan about who will care for the child/ren and the financial arrangements should something unexpected happen to them.

## OPG care plan details

A formal OPG care plan covers the child's care and future needs, with the aim that all parties agree and have input into the plan. It must include adequate detail to provide guidance to all parties, but be flexible enough to allow for changes based on the child's developmental stages.

The OPG care plan must cover the following areas (as appropriate to the child's needs):

- How the child's health, educational and social needs will be met
- How the child's special needs (trauma or disability) will be met
- How the child will maintain connection to their family of origin, community and culture  
How the child will have regular family contact/ access visits and how this will be facilitated by the OP guardian and birth family

- What support and services are required, how they will be delivered and how these requirements will be reviewed
- How any future disputes between the parties will be resolved.

Time and effort spent in talking about understandings, fears and expectations are very important to the future success of care arrangements.

## Making an application to the Youth Court

Any person who was a party to the original care and protection application to the Youth Court can make an application for OPG. However, in most cases it will be Families SA making an application on behalf of the Minister for Education and Child Development to vary the child's existing care and protection order. The person(s) the minister is nominating to become the OP guardian(s) will need to be involved in the court process, as will the birth parents.

### Please note

Carers' names cannot be withheld from court documents except in very extreme and exceptional circumstances and only as determined by Crown Law. Court documents have to be served on all parties including birth parents.

Addresses can be withheld from court documents. Please discuss this with the Families SA social worker if you have any concerns.

When considering an OPG application, the Youth Court may grant guardianship of the child to 1 or 2 carers. This allows for single or partnered carers to become OP guardians. It also allows for a primary carer and another person to become joint OP guardians eg aunt and grandmother.