

What is Guardianship – Guideline OG182

INFORMATION

If you're the guardian of a child, this means you have the right:

- To have custody of the child
- To control the child's upbringing

The guardians of a child can be:

- The natural mother and father of a child (if they aren't married, or weren't living together or married when the child was conceived, then the mother is the sole guardian)
- Someone appointed by another guardian to take over if he or she dies (this person is called a testamentary guardian)
- Someone appointed by the Family Court

If there is a dispute between guardians about something to do with guardianship, they can apply to the Family Court for guidance.

Guardianship ends when the child turns 18, or if a child aged 16 or 17 marries or enters a civil union (with their guardian's permission).

What is custody and how is it arranged?

Custody is the day-to-day care of a child. When parents break up, they have two custody options:

- Joint or shared custody - This is when both parents share the day-to-day care of their children
- Sole custody - This is when the child lives with one parent most of the time (in most cases the other parent will have access)

There are two ways a person can get custody of children. These are:

- By agreement - this happens when all potential guardians agree on who will have custody. The agreement can be signed and registered in the Family Court, in which case it becomes a Consent Order and can be enforced as a court order. If you are making a custody agreement, you should consult a [family lawyer](#) to make sure you understand what you are agreeing to
- By Court Order - to get custody by Court Order, the person wanting custody applies to the Family Court for a [Parenting Order](#). If you are applying for a court order, you should seek the help of a lawyer as the application can be complicated

Parents, step-parents, guardians and any other person who has the Court's permission can apply for custody. The Court will decide who gets custody by considering the welfare and interests of the child, and by looking at:

- The relationship between the child and its parents

- The child's feelings and wishes
- The parents' capabilities

The Court will appoint a lawyer to represent the child. [Legal aid](#) may be available for custody disputes.

There are guides to [parenting agreements](#) and [Parenting Orders](#) online, which might be useful to read if you are considering your custody rights.

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