

# Guardian ad Litem Handbook

The Guardian ad Litem Handbook (the Handbook) provides guidance to members of the Guardian ad Litem Panel administered by the NSW Department of Communities and Justice (DCJ), during their appointments as a Guardian ad Litem (GAL) in proceedings.

The Guardian ad Litem Handbook (the Handbook) is to be read in conjunction with the Guardian ad Litem Code of Conduct (the Code).

You must read this handbook before starting any GAL duties. Failure to follow correct procedures when undertaking GAL duties may cause your designation to the GAL Panel or appointment in specific proceedings to be reviewed.

The latest information and any updates to this handbook are available at <https://www.dcj.nsw.gov.au/guardians-ad-litem>

Printed copies of this document may not be up to date.

Please ensure you have the latest version before using this document.

# Table of Contents

<b>1</b>	<b>Scope</b>	<b>6</b>
<b>2</b>	<b>Purpose</b>	<b>6</b>
<b>3</b>	<b>Definitions</b>	<b>6</b>
<b>4</b>	<b>The GAL Panel and membership of the Panel</b>	<b>7</b>
4.1	An Overview	7
4.1.1	Special Commission of Inquiry into Child Protection Services	7
4.1.2	Transfer of administrative responsibility	7
4.1.3	Expansion of the GAL Panel	7
4.2	Court and Tribunal Contacts	8
4.2.1	Children’s Court Contacts	8
4.2.2	District Court Contacts	8
4.2.3	Supreme Court Contacts	8
4.2.4	NSW Civil and Administrative Tribunal Contacts	9
4.3	Relevant Documents and Laws	9
4.3.1	Guardian ad Litem Documents	9
4.3.2	Relevant Laws	9
4.4	Guardian ad Litem Panel Jurisdictions	9
4.5	The role of Guardians ad Litem (GALs)	9
4.6	Membership on the GAL Panel	10
4.6.1	Recruitment of members for the GAL Panel	10
4.7	General GAL Responsibilities	11
4.8	Professional Development and Training	11
4.8.1	Mentoring	11
4.8.2	Professional Development and Training	11
4.8.2.1	Relevant areas of professional development and training	11
4.9	Complaint and Feedback Handling	12
4.9.1	Making a complaint	12

4.9.2	Recording Complaints	12
4.9.3	Authority of GAL to Offer Redress	12
4.9.4	Review Process	12
4.10	Suspension from the GAL Panel	13
4.11	Removal from the GAL Panel	13
<b>5</b>	<b>GAL appointments in proceedings</b>	<b>13</b>
5.1	Allocation of GALs to cases	13
5.2	GAL personal security	13
5.2.1	Contact between you, your client and other parties	14
5.2.2	Court and Tribunal Attendances	14
5.2.3	Emergency situations	14
5.3	Contacting your client	14
5.3.1	Preparations prior to meeting with your client	14
5.3.2	Briefing your client about your role	15
5.3.3	Difficulties contacting the subject person/client	15
5.4	Conflicts of Interest	15
5.5	Interpreting and translation services	15
5.5.1	Translation services available through the Court/Tribunal	15
5.5.2	Interpreting and translation services from Multicultural NSW	16
5.5.3	Interpreting	16
5.5.4	Translation	16
5.5.5	How to book Multicultural NSW language services	16
5.6	Access to Information	16
5.7	Instructing a Legal Representative	16
5.7.1	Children's Court Matters	17
5.7.2	District Court Matters	17
5.7.3	Supreme Court Matters	17
5.7.4	NSW Civil and Administrative Tribunal	17
5.8	Dismissing a Legal Representative	17

5.9	Attending Court/Tribunal	17
5.10	Responsibilities of the GAL during proceedings	18
5.10.1	Responsibilities	18
5.10.2	Model Litigant obligations	18
5.11	Awareness of client's capacity and dismissal mid proceedings	19
5.11.1	Client's Capacity	19
5.12	Confidentiality and Privacy	19
5.13	Indemnity and Statutory Protections	20
5.14	Finalising your GAL Duties	20
5.15	Ceasing to act as a GAL	20
5.16	Client Referrals	21
5.17	Record Keeping and Disposal of Information	21
<b>6</b>	<b>Administrative Procedures</b>	<b>21</b>
6.1	Invoicing Requirements	21
6.1.1	General Requirements	21
6.1.2	Timeframes	21
6.1.3	Tax Invoice	22
6.1.4	Expenses	22
6.1.5	Schedule of Attendances	22
6.1.6	Payment of Invoices	22
6.2	Travel Requirements	22
6.2.1	Public Transport	23
6.2.2	Use of Private Vehicles	23
6.2.3	Cab Charges	23
6.2.4	Hire Car, Airfares or Accommodation	23
6.3	Travel and Meal Allowances	23
6.3.1	Allowance for private vehicles	23
6.4	Ensuring Public Resources are used in a proper manner	24
6.5	Record Keeping	24

6.6	Change of Contact Details	24
<b>7</b>	<b>Children’s Court Proceedings</b>	<b>24</b>
7.1	An Overview	24
7.2	The role of the Children’s Court of New South Wales	25
7.3	The Role of the Magistrate	25
7.4	The role of the Registrar at the Children’s Court	26
7.5	The role of the Children’s Registrar	26
7.6	The role of Child Protection services	26
7.7	The role of the Children’s Legal Representative	26
7.8	The role of the parent’s legal representative	27
7.9	The role of the Children’s Court Clinic	27
7.10	Sections 100 and 101 of the Care Act	28
7.11	The role of the GAL in care and protection proceedings	28
7.12	Allocation of GALs to cases	28
7.13	Reports for the Court	28
7.14	Dispute Resolution Conferences (DRC)	28
<b>8</b>	<b>NSW Civil and Administrative Tribunal</b>	<b>30</b>
8.1	About NCAT	30
8.2	Divisions of NCAT	30
8.2.1	Administrative and Equal Opportunity Division	30
8.2.2	Consumer and Commercial Division	30
8.2.3	Guardianship Division	30
8.2.4	Occupational Division	30
8.2.5	Internal Appeals Panel	30
8.3	Types of NCAT matters	30
8.3.1	Consumer and Commercial Division	31
8.3.2	Administrative and Equal Opportunity Division	31
8.3.2.1	Review of administrative decisions	31
8.3.2.2	Anti-discrimination	31

8.3.3 Guardianship Division	31
8.4 Instructing a Legal Representative	32
<b>9 District Court Proceedings</b>	<b>32</b>
9.1 Appointment of a GAL	32
9.2 Appointment of a legal representative	32
<b>10 Document history</b>	<b>33</b>
<b>Schedule 1: List of Relevant Policy</b>	<b>33</b>
<b>Schedule 2: Relevant Legislation</b>	<b>33</b>

## 1 Scope

The Handbook has been written to help you in your role as a GAL, to understand your duties and to carry out those duties in a proper and responsible manner. The Handbook is a guide only and should be read in conjunction with the Code and other relevant documents outlined in Schedule 1.

## 2 Purpose

The Handbook clarifies your obligations and duties. It aims to provide information on matters that may arise during your designation to the GAL panel or appointment in proceedings.

## 3 Definitions

**"Appointed"** means selected to act as a Guardian ad Litem for particular proceedings.

**"Client"** means the child, young person, parent or parents or other person for whom a Guardian ad Litem has been appointed in particular proceedings.

**"Designation"** means the selection of a person by the Secretary for the Guardian ad Litem Panel.

**"Secretary"** means the person holding office or acting as the Secretary of DCJ.

**"DCJ"** means the NSW Department of Communities and Justice.

**"GAL"** means a person designated as a member of the Panel by the Secretary.

**"GAL Panel"** means all persons designated as members of the Guardian ad Litem Panel.

**"Handbook"** means the *Guardian ad Litem Handbook*.

**"Incapacity"** means a person that is:

- incapable of representing themselves
- incapable of giving proper instructions to their legal representative, and/or
- under legal incapacity, due to age, mental illness or incapacity, disability or other special circumstances.

**"Policies"** includes but not limited to policies of DCJ.

## 4 The GAL Panel and membership of the Panel

### 4.1 An Overview

In January 2002, the Department established a panel of suitably qualified persons to be eligible for appointment as a Guardian ad Litem (GAL) by the Children's Court under sections 100 and 101 of the *Children and Young Persons (Care and Protection) Act 1998*.

#### 4.1.1 Special Commission of Inquiry into Child Protection Services

Although the panel has been operating effectively, there were limited formal structures to support its operation. The Special Commission of Inquiry into Child Protection Services in NSW (the Inquiry) heard evidence about the role of GALs in care proceedings, including from the Senior Children's Magistrate who indicated his belief that the system of having a GAL between a child and their lawyer is a better system than a lawyer alone.

The Inquiry was of the view that the development of a coordinated capacity in NSW to appoint GALs in care and other proceedings should be pursued.

The Inquiry also supported the development of a Code of Conduct to govern the role of GALs in legal proceedings, and arrangements for monitoring compliance. Further, the Inquiry encouraged the development of requirements to ensure that GALs have the relevant qualifications and experience and that they attend relevant and regular training.

#### 4.1.2 Transfer of administrative responsibility

On 1 July 2009 the administrative responsibility for the GAL Panel was transferred from Court Services to the Office of the General Counsel (OGC).

Since the transfer, OGC worked to review and reform the administration of the GAL Panel by updating guidelines and procedures.

The reforms to the GAL Panel are in accordance with the recommendations of the Special Commission of Inquiry into Child Protection Services in NSW.

The reforms play an important part in addressing the aims of the NSW Government to provide and support the most vulnerable in society, including those with a disability or mental health issue. Persons with either intellectual disability or mental health issues can be significantly disadvantaged in our court system, and there are real challenges for government, the judiciary and the legal profession to ensure there is equality in access to justice.

On 1 October 2022 the administrative responsibility for the GAL Panel was transferred from OGC to Division Support and Public Accountability (DSPA) within DCJ.

DSPA helps to administer the GAL Panel by:

- Administering GAL appointments to Court/Tribunal proceedings.
- Managing recruitment of new GALs.
- Managing training for existing GALs.

Parties involved in proceedings may notify DSPA of any Court or Tribunal ordered appointments however DSPA cannot proceed with the GAL appointment until the relevant Court/Tribunal provides confirmation of the orders made.

#### 4.1.3 Expansion of the GAL Panel

Since 2007, the role of the GAL Panel has expanded and is now available to a range of participating Courts and Tribunals.

The GAL panel has provided services to the Supreme Court of NSW, the District Court of NSW and the NSW Civil and Administrative Tribunal.

It is possible that you may be appointed as a GAL in any of these jurisdictions as is discussed further under GAL Panel Jurisdictions.

## 4.2 Court and Tribunal Contacts

### 4.2.1 Children's Court Contacts

If you have enquiries related to an appointment in the Children's Court please contact the Registrar at the relevant location.

*Specialist Children's Courts Contacts:*

Court	Phone	Email
Broadmeadow Children's Court	(02) 4915 5200	<a href="mailto:cc_broadmeadow@justice.nsw.gov.au">cc_broadmeadow@justice.nsw.gov.au</a>
Campbelltown Children's Court	(02) 4629 9777	<a href="mailto:cc_campbelltown@justice.nsw.gov.au">cc_campbelltown@justice.nsw.gov.au</a>
Port Kembla Children's Court	1300 679 272	<a href="mailto:local-court-port-kembla@justice.nsw.gov.au">local-court-port-kembla@justice.nsw.gov.au</a>
Parramatta Children's Court	(02) 8688 1888	<a href="mailto:childrens.court@justice.nsw.gov.au">childrens.court@justice.nsw.gov.au</a>
Surry Hills Children's Court	(02) 8667 2100	<a href="mailto:cc-Surry-Hills@justice.nsw.gov.au">cc-Surry-Hills@justice.nsw.gov.au</a>
Woy Woy Children's Court	(02) 4344 0111	<a href="mailto:local-court-woy-woy@justice.nsw.gov.au">local-court-woy-woy@justice.nsw.gov.au</a>
Wyong Children's Court	1300 679 272	<a href="mailto:local-court-wyong@justice.nsw.gov.au">local-court-wyong@justice.nsw.gov.au</a>

Local Courts Sitting as Children's Courts contacts can be found at:

[http://www.localcourt.justice.nsw.gov.au/Pages/contact\\_us/court\\_locations/court\\_locations.aspx](http://www.localcourt.justice.nsw.gov.au/Pages/contact_us/court_locations/court_locations.aspx)

### 4.2.2 District Court Contacts

If you have an enquiry related to an appointment in the District Court please contact the Registrar of the relevant location. A list of District Court locations can be found at:

*District Court at Sydney CBD*

<http://www.districtcourt.justice.nsw.gov.au/Pages/contactus/contactus.aspx>

*District Court outside of Sydney*

[http://www.localcourt.justice.nsw.gov.au/Pages/contact\\_us/court\\_locations/court\\_locations.aspx](http://www.localcourt.justice.nsw.gov.au/Pages/contact_us/court_locations/court_locations.aspx)

### 4.2.3 Supreme Court Contacts

If you have an enquiry related to an appointment in the Supreme Court please contact the Duty Registrar on 1300 679 272 or at [sc.enquiries@justice.nsw.gov.au](mailto:sc.enquiries@justice.nsw.gov.au).



## 4.2.4 NSW Civil and Administrative Tribunal Contacts

*Administrative and Equal Opportunity Division and Occupational Division:*

Phone 1300 006 228 and select Option 3

*Guardianship Division:*

Phone 1300 006 228 and press 2

*Consumer and Commercial Division:*

Phone: 1300 006 228 and select Option 1

## 4.3 Relevant Documents and Laws

### 4.3.1 Guardian ad Litem Documents

As members of the Guardian ad Litem Panel you must be familiar with the following documents:

- Guardian ad Litem Code of Conduct
- Guardian ad Litem Complaints Guidelines
- Guardian ad Litem Fee Schedule
- Guardian ad Litem - Employee (or GAL) Assistance Policy
- Guardian ad Litem - Dispute Resolution Conference Guidelines

The documents are available at <https://www.dcj.nsw.gov.au/justice/guardians-ad-litem.html> or you can email the Guardian ad Litem Co-ordinator at [guardian-ad-litem-panel-co-ordinator@justice.nsw.gov.au](mailto:guardian-ad-litem-panel-co-ordinator@justice.nsw.gov.au).

### 4.3.2 Relevant Laws

Your duties as a GAL when appointed in legal proceedings may be governed by legislation specific to the jurisdiction in which the proceedings are bound by. Although it is not a prerequisite for you to have a legal background, basic knowledge on the relevant laws to the jurisdiction that you are working within is required. Schedule 2 provides a list of all the relevant laws you might need to be familiar with. This is not an exclusive list.

## 4.4 Guardian ad Litem Panel Jurisdictions

A GAL may be appointed to proceedings in a variety of jurisdictions. There are several participating Courts and Tribunals that seek independent GAL appointments from the GAL panel.

Current participating Courts and Tribunals are:

- Supreme Court of New South Wales;
- District Court of New South Wales;
- Children's Court of New South Wales; and
- NSW Civil and Administrative Tribunal (NCAT)

## 4.5 The role of Guardians ad Litem (GALs)

GALs, also referred to as a tutor or special representative, are appointed by a Court or Tribunal to act in the best interests of a person, where that person is incapable of representing themselves, incapable of giving proper instructions to their legal representative,

and/or under legal incapacity due to age, mental illness or incapacity, disability or other special circumstances in relation to the conduct of the proceedings.

GALs are generally professionals with qualifications and experience in social, health or behavioural sciences or related disciplines. Some of the panel members also have legal qualifications or skills in alternative dispute resolution and advocacy.

The role of a GAL is to protect or promote the interests of the person for whom they have been appointed. A GAL must make decisions relating to the conduct of the proceedings.

A GAL will be appointed in legal proceedings where a person is:

- incapable of representing themselves
- incapable of giving proper instructions to their legal representative, and/or under legal incapacity
- or due to age, mental illness or incapacity, disability or other special circumstances in relation to the conduct of the proceedings.

## 4.6 Membership on the GAL Panel

A GAL may be designated as a member of the GAL Panel by the Secretary for a period of up to 3 years. A GAL may be designated as a GAL Panel member for successive periods and a reappointment offered once the initial 3 year period has lapsed. A GAL designated as a GAL Panel member is eligible for appointment as a GAL in proceedings under order of a Court or Tribunal. A GAL must be reasonably available to accept appointments as a GAL in proceedings.

### 4.6.1 Recruitment of members for the GAL Panel

Expressions of interest for membership on the Guardian ad Litem Panel are advertised on the Guardian ad Litem website <https://www.dcj.nsw.gov.au/justice/guardians-ad-litem.html>.

The desired qualifications and experience required of a GAL includes:

- Qualifications in social, health or behavioural sciences or related disciplines, or equivalent experience.
- Mediation, advocacy and decision making skills.
- Ability to communicate effectively with various professionals and family members.
- Basic knowledge of legal proceedings and the legal process.
- Knowledge of issues affecting children and young people, people with illness, disability or disorder which may affect their decision-making capacity.

When necessary, the Department will interview and recruit eligible applicants in accordance with its recruitment policies.

#### Checks prior to designation to the GAL Panel

- The role of the GAL falls within the definition of child related employment as contained in the *Child Protection (Prohibited Employment) Act 1998*. An appointment to the GAL Panel is subject to a satisfactory Working with Children Check.
- The check is mandatory for all persons in child related employment under the *Child Protection (Prohibited Employment) Act 1998* and the *Child Protection (Offenders Registration) Act 2000*.
- It is an offence for a prohibited person to apply for, undertake or remain in child related employment.

- If your status changes to that of a ‘prohibited person’ then you must immediately inform the Court and/or remove yourself from the panel of GAL.
- Penalties are imposed for non-compliance with the child protection legislation.

## 4.7 General GAL Responsibilities

Once appointed to the GAL Panel, you are, in the exercise of your duties expected to:

- Comply with the law, any policy stated in the code and any lawful direction;
- Provide quality, timely and accurate services to the client;
- Treat everyone with respect, courtesy and fairness in relation to the proceedings;
- Never compromise personal safety;
- Respect the privacy of individuals and maintain appropriate confidentiality of information;
- Act honestly, ethically and with integrity and avoid conflicts of interest;
- Decline gifts or benefits that affect or may be seen to affect impartiality;
- Report instances of fraud, corruption, serious and substantial waste, or maladministration;
- Ensure public resources are used in a proper manner; and
- Act with diligence, care and attention.

These principles are outlined in detail in the Guardian ad Litem Code of Conduct.

Some principles are also addressed in more detail throughout this Handbook.

## 4.8 Professional Development and Training

### 4.8.1 Mentoring

There are opportunities for GALs to be mentored by other experienced GAL Panel members when:

- A GAL is newly appointed to the Panel; and/or
- A GAL is unfamiliar with one of the jurisdictions of the GAL panel.

Mentoring allows GALs to observe but not participate in a GAL appointment. Approval is required from the Court/Tribunal beforehand.

If you are interested in joining the mentoring program as either a mentor or mentee, please contact the GAL Panel Co-ordinator at [guardian-ad-litem-panel-coordinator@justice.nsw.gov.au](mailto:guardian-ad-litem-panel-coordinator@justice.nsw.gov.au).

### 4.8.2 Professional Development and Training

You are required to complete a minimum of eighteen (18) hours of Professional Development and Training each calendar year. Professional development and training may be attained through a variety of ways. These include, but are not limited to:

- Face to face training
- Any professional development courses (related to other professional accreditation)
- Seminars
- Project work
- Research work or published articles
- Mentoring by another GAL

#### 4.8.2.1 Relevant areas of professional development and training

Relevant areas of professional development and training include:

- Any type of professional development listed above relating to the process and procedures of any of the participating courts or tribunals.
- Any type of professional development or training listed above relating to people who are incapable of representing themselves, incapable of giving instructions to their legal representative, and/or under legal incapacity due to age, mental illness or incapacity, disability or other special circumstances.

If you are unsure if any completed training meets the professional development and training requirements, please contact the Guardian ad Litem Co-ordinator for clarification.

## **4.9 Complaint and Feedback Handling**

The following information is a summary of the complaints and handling policy, you should refer to the policy for more detailed information.

### **4.9.1 Making a complaint**

While acting in your capacity as a GAL it is possible that you, DSPA or the applicable Court/Tribunal may receive a complaint about you.

Any person may make a complaint or provide feedback:

- Verbally or in writing to the GAL
- By writing a letter to:

Director, Division Support and Public Accountability, Locked Bag 5000, Parramatta NSW 2124

- By sending an email to [guardian-ad-litem-panel-coordinator@justice.nsw.gov.au](mailto:guardian-ad-litem-panel-coordinator@justice.nsw.gov.au).

The person making the complaint may be requested to put the complaint in writing if the matter is complex or contentious.

### **4.9.2 Recording Complaints**

All incoming complaints must be recorded in the GAL Panel complaints register. Complaints must be forwarded to the Guardian ad Litem Panel Coordinator in person or by email as soon as possible. Complaints that are received verbally and involve certain subject areas do not need to be recorded. Please consult the complaints and handling policy for more information.

### **4.9.3 Authority of GAL to Offer Redress**

Where a GAL Panel Member considers it is appropriate to offer redress to the client, in responding to a complaint, then a range of responses will apply – refer to the policy.

### **4.9.4 Review Process**

Where any doubt exists, the Guardian ad Litem Panel Co-ordinator will be consulted and where necessary an internal review will be conducted.

A request for an internal review can be made by the complainant or GAL Panel Member, either in writing or verbally. The GAL Panel Member should refer the complaint to the GAL Panel Co-ordinator or Director, DSPA.

Internal reviews are completed within three (3) weeks of receipt. If this is not possible, an interim response must be sent to the complainant within three (3) weeks.

## 4.10 Suspension from the GAL Panel

As stated in the GAL Code of Conduct, a GAL may be suspended from the Panel upon written notice to the GAL in the following circumstances:

- for a criminal offence.
- if a GAL is being investigated by any relevant professional or regulatory body;
- by DCJ following a complaint alleging a breach of the Code; or
- in any other special circumstances as determined by the Secretary.

The period of designation of a GAL to the Panel will continue to run during the period of suspension, however, a GAL who is suspended will not be eligible for allocation to any new matters during the period of suspension.

A GAL must notify the Court or Tribunal of any of the above circumstances if they are presently appointed in proceedings. The Court or Tribunal may remove the GAL from their appointment.

## 4.11 Removal from the GAL Panel

As stated in the GAL code of conduct, a GAL may be removed by written notice by the Secretary to a GAL if:

- there is a conviction or a finding that an offence is proven;
- there is an adverse finding by a relevant or professional body;
- there is a finding that there is a breach of the Code; or
- the Secretary is satisfied that there are special circumstances that warrants the removal.

A GAL must notify the Court or Tribunal of any of the above circumstances if they are presently appointed in proceedings. The Court or Tribunal may remove the GAL from their appointment.

# 5 GAL appointments in proceedings

## 5.1 Allocation of GALs to cases

When it is determined by a Magistrate/Judge that a GAL is to be appointed to a child/young person or adult, the Registrar of the Court/Tribunal will notify DCJ, who then administers the allocation of a GAL from the GAL Panel. When allocating a GAL, DCJ will take into consideration:

- the skills and experience of the GAL relevant to the type of proceedings and the needs of the client;
- the location of the GAL, the client and the proceedings; and
- any other relevant circumstances such as cultural requirements or other criteria specified

Although many GALs have work and other commitments you must be reasonably available to accept appointments as a GAL in proceedings.

Once an appropriate GAL has been identified for the appointment, a DCJ staff member will make contact to ensure that the GAL is available for the period leading up to when the matter is listed in the Court/Tribunal.

It is important to note, that although the GAL is usually not required to attend certain procedural hearings, the GAL must be available to assist in the early and effective preparation of the case.

## 5.2 GAL personal security

On some occasions, your appointment as GAL may be contrary to the wishes of your client or other parties involved in the proceedings. You should ensure your personal safety throughout your GAL appointment by:

- Keeping your residential address and phone number confidential. The Court/Tribunal will be provided with your contact details on the proviso that they are held in confidence.
- Meet with your client in a safe environment. If your client poses a risk to your safety ensure that you organise to meet in a public place such as the Courthouse or Tribunal Registry. If necessary, you can organise for security.

### **5.2.1 Contact between you, your client and other parties**

Where possible you should encourage all communication to occur through the legal representative and have them as the first point of contact.

When calling your client set your mobile phone so it appears as a private number on caller ID.

If you have a PO Box it is recommended that you use this to receive correspondence from parties. You should not provide your residential address to your client.

If you are concerned for your personal safety, please contact the GAL Panel Co-ordinator.

### **5.2.2 Court and Tribunal Attendances**

The Sheriff's Office provides security and threat assessment services for Courts and Tribunals and works in conjunction with other law enforcement agencies to protect our courts, visitors, judges and magistrates. If you are at the Court/Tribunal you can get assistance from the Sheriff Officers.

### **5.2.3 Emergency situations**

If it is an emergency, contact Police on 000. If you are a victim of a crime, other than life threatening or time critical emergency situations, contact the Police Assistance Line (131 444).

## **5.3 Contacting your client**

Your client to whom you have been appointed should be contacted as soon as practicable, or in any event within 1-2 days if the matter is next listed within 14 days.

At the time of your appointment, you will be provided with as much information as possible about the person to whom you have been appointed. In many cases however the information is quite limited. The Court/Tribunal or legal representative should then provide you with further and more specific information on the matter and your client.

### **5.3.1 Preparations prior to meeting with your client**

Prior to meeting with your client, you should read all the documentation provided to you and be well briefed in the matter.

You will need to determine on the information provided if it will be necessary for you to meet with your client in person, or if contact can be made over the phone or writing. The most appropriate method will depend on the circumstances of the matter and your client's specific needs.

You will also need to determine whether it will be necessary to have the legal representative meet with you and the client.

### **5.3.2 Briefing your client about your role**

It is important at this initial stage that you inform the person for whom you have been appointed about your role and that you are there to protect and promote their interests as they are affected by the proceedings (Clause 27.1 of the Code). Please bear in mind that some people may not understand who you are or your involvement in the proceedings.

### **5.3.3 Difficulties contacting the subject person/client**

In some circumstances, it may be difficult to contact the person to whom you have been appointed.

If the person to whom you have been appointed cannot be contacted over the phone, by post, or in person, you are expected to keep records that you have made sufficient attempts to contact your client and then act in good faith based on all the information that is available to you.

If you have exhausted all avenues reasonably available to you and you still cannot contact your client, then you may be required to act in your client's best interest with the information that has been made available to you by the Court/Tribunal.

## **5.4 Conflicts of Interest**

At the time of your appointment you have an obligation to notify the GAL Panel Coordinator if there are or could be any conflicts of interest arising out of your appointment in relation to the client or the matter generally.

A conflict of interest is a situation in which a GAL's objectivity is compromised, or perceived to be compromised by a current or previous relationship with a client or party to the proceedings.

An example of a conflict of interest could be:

- if you have or have had a relationship with a client or the family of the client or other party to the proceedings. In some instances GALs have acted as GAL for other parties in previous proceedings and at this stage should decline the appointment.

You should also be mindful of what may be perceived as conflicts of interest by persons outside the client/GAL relationship. These situations need to be avoided to maintain the integrity of the court and its proceedings.

It is your responsibility to establish a clear framework for your working relationship with a client. If circumstances arise which challenge the boundaries of this professional relationship then the GAL must report the matter to the Court and notify the Secretary in writing.

If you are unsure whether a conflict of interest exists, you should contact the GAL Panel Coordinator for advice.

## **5.5 Interpreting and translation services**

An interpreter may be arranged to assist you in communicating with your client or family members who are from a non-English speaking background or who are hearing impaired.

### **5.5.1 Translation services available through the Court/Tribunal**

In most circumstances the Court/Tribunal in which you have been appointed will be able to arrange the services of an interpreter either by telephone link or for attendance at Court/Tribunal.

You should specify the date, time and location when the interpreter is required. Interpreters are available for all languages. DCJ will meet the cost of the interpreter provided it is booked and confirmed through the Court/Tribunal.

## 5.5.2 Interpreting and translation services from Multicultural NSW

If you are having any difficulties organising an interpreter through the Court/Tribunal you can also contact Multicultural NSW Language Services directly but ensure you involve the Court/Tribunal for payment.

Multicultural NSW Language Services are available to all NSW Government departments and agencies, as well as private and commercial organisations, community groups and individuals.

## 5.5.3 Interpreting

Multicultural NSW Language Services offer onsite interpreting in a wide range of areas including legal matters, police investigation, community interviews, as well as individual or client-group interviews. Face-to-face interpreting services are available 24 hours a day 7 days a week.

## 5.5.4 Translation

Multicultural NSW Language Services offer a variety of translation services, which includes personal documents (e.g. drivers licences, birth certificates, qualifications), sight translations, multilingual translations of pamphlets, transcription of audio/video tapes as well as checking and proofreading of translated material.

Multicultural NSW Language Services translation services can be provided within 24 hours, 7 working days and 14 working days.

## 5.5.5 How to book Multicultural NSW language services

Bookings for the Division's interpreter and translator services may be made on 1300 651 500 for the cost of a local call; or, by emailing the Division on [languageservices@multicultural.nsw.gov.au](mailto:languageservices@multicultural.nsw.gov.au).

## 5.6 Access to Information

In matters where proceedings are currently on foot, you will be provided by the Court/Tribunal with all of the information that would normally be available to your client. In some instances your legal representative may be required to issue subpoenas to produce or to appear as part of the discovery process.

If you have concerns that you have not been provided with all the necessary information by the Court/Tribunal, you should raise this issue, or get the legal representative to raise this issue, directly with the Registrar of the appropriate Court/Tribunal otherwise it may prejudice your client's case.

Please see section on Appointments under the MoU in relation to accessing information in these matters as the process is different in matters prior to the commencement of proceedings.

## 5.7 Instructing a Legal Representative

The procedure for appointing a legal representative will vary depending on the jurisdiction of your appointment.

DCJ has adopted a dual representative model for proceedings where a party may lack capacity or is unable to represent themselves. That is, a GAL is appointed who instructs a legal representative. The legal representative should not be acting as a GAL and the GAL should not be acting in a legal representative role. There is an important distinction between the roles of the GAL and the legal representative.



In general, the role of the Guardian ad Litem is to safeguard and represent the interests of the person for whom they have been appointed. A GAL stands in the shoes of the person they have been appointed. On the contrary the role of a legal representative or Independent Children's Lawyer is to act on the instructions of the Guardian ad Litem and deal with them directly as their client.

### **5.7.1 Children's Court Matters**

In Children's Court matters, usually a legal representative will already be instructed at the time of your appointment. In the event that a legal representative is not instructed, you will need to instruct a legal representative on your client's behalf. GALs are permitted in Children's Court matters to instruct any legal representative that is on the Legal Aid NSW panel:

<https://www.legalaid.nsw.gov.au/get-legal-help/applying-for-legal-aid/panels-database>

### **5.7.2 District Court Matters**

The majority of District Court matters are appeals from the Children's Court. Often the legal representative at first instance will be an appropriate choice of representation for the appeal, unless issues of their conduct are subject to the appeal. The benefit of instructing the same legal representative is that they will already be familiar with the matter. However, if the issues on appeal where the actions or conduct of the legal representative at first instance is in question then a different legal representative should be sought.

### **5.7.3 Supreme Court Matters**

Legal representation is essential for all Supreme Court matters and a legal representative in most cases, will already be appointed.

### **5.7.4 NSW Civil and Administrative Tribunal**

NCAT is designed for people to represent themselves at a hearing; as such legal representatives may not have been instructed in the matter and you are not required to instruct legal representatives on your client's behalf.

## **5.8 Dismissing a Legal Representative**

A GAL and Legal representative should have a good working relationship in order to act in the best interest of the person to whom they have been appointed.

When you are appointed as a GAL, you are standing in the shoes of your client and as such it is within your power to dismiss a legal representative in relation to the proceedings in which you have been appointed. However, it must be noted that dismissing a legal representative is a serious step and should only be done in exceptional circumstances. Such a step should only be taken after efforts to address the issues giving rise to the view that the legal representative should be dismissed. Consideration must also be given to the effects of such a decision on the further entitlement of the client to legal assistance (e.g. Legal Aid) and the efficient conduct of proceedings.

The best interest of your client should always be of paramount consideration.

## **5.9 Attending Court/Tribunal**

You are required to attend court on all hearing dates listed unless excused from attendance by the Court or Tribunal. A GAL is not eligible to claim payment for attendance in matters where the GAL has been excused.

Matters listed for procedural purposes, such as a case conference, status conference etc. usually will not require the attendance of a GAL, however whether it is necessary for you to attend will depend on the circumstances of each matter. Generally, you will be required to work with the legal representative in preparation for any mentions or case management proceedings and then the legal representative should be in a position to appear at court on their own.

Only as a guide, these are some of the required attendances that are expected of a GAL:

- Attend Court/Tribunal for the Hearing;
- Meet with the client and legal representative in preparation for the hearing or case management hearings (in circumstances where the client is incoherent, it won't be necessary to meet with them in person, for example an elderly person with progressive dementia).
- In Children's Court proceedings you are required to attend any Alternative Dispute Resolution meetings.

These are some of the attendances that generally are not expected of a GAL:

- Case management hearings, including mentions; and
- Handing down of judgments

You should ensure you are dressed appropriately when you attend Court/Tribunal.

It is in your best interest to ensure you are aware of the time you are required at court for the commencement of proceedings and after adjournments. The Court/Tribunal will be able to assist.

## **5.10 Responsibilities of the GAL during proceedings**

### **5.10.1 Responsibilities**

A GAL is responsible and authorised to make decisions in relation to the client only in relation to the legal proceedings in which they have been appointed.

A GAL when making decisions shall:

- promote the autonomy of the client
- safeguard and represent the interests of the client
- take into account views, opinions, wishes and feelings as expressed by the client
- instruct the legal representative of the client in the conduct of the proceedings; and
- take into consideration any other special circumstances.

### **5.10.2 Model Litigant obligations**

A GAL is appointed to a matter under an order of the court or tribunal. Accordingly, a GAL has a duty to act as a model litigant.

The obligation to act as a model litigant requires more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for GALs to act in accordance with their ethical obligations. It is a requirement to act with complete propriety, fairly and in accordance with the highest professional standards.

The obligation requires GALs to act honestly and fairly in legal proceedings by:

- not causing unnecessary delay in the proceedings;
- acting consistently in the proceedings;
- not relying on technical defences unless the interests of a GAL's client would be prejudiced by the failure to comply with a particular requirement;
- not undertaking and pursuing appeals unless there is a reasonable prospect for success or the appeal is otherwise justified in the public interest; and
- apologising where a GAL is aware that their lawyer has acted wrongfully or improperly.

The obligation does not require that a GAL be prevented from acting firmly and properly to protect the interests of the client. It does not prevent all legitimate steps being taken in pursuing litigation, or from testing or defending claims made.

In particular, the obligation does not prevent a GAL from instructing their lawyer to:

- enforce costs orders or seek to recover costs;
- rely on claims of legal professional privilege or other forms of privilege;
- plead limitation periods;
- oppose unreasonable or oppressive claims or processes; or
- require opposing litigants to comply with procedural obligations;
- move to strike out untenable proceedings

## **5.11 Awareness of client's capacity and dismissal mid proceedings**

You may be dismissed from your GAL appointment during the proceedings in limited circumstances, subject to Court approval or a Court order:

- If the Court orders that you are no longer required to act as GAL for the Client;
- If you deem it necessary to no longer act as GAL for the client due to the client regaining capacity.
- If your membership on the GAL Panel is compromised then you must notify DCJ and the Court and the Court will decide if your appointment will continue.

### **5.11.1 Client's Capacity**

One of the grounds that you may be dismissed, irrelevant to your conduct as a GAL, is if your client becomes in a position where they are:

- capable of representing themselves,
- capable of giving proper instructions to their legal representative, and/or
- no longer under legal incapacity due to age, mental illness or incapacity, disability or other special circumstances in relation to the conduct of the proceedings.

The Court may make a formal order relieving you from your duties as a GAL.

In other circumstances you may be required to inform the Court if you are of the opinion that your client no longer requires a GAL to be acting on their behalf. You should be mindful of your client's circumstances as they may change during your appointment.

## **5.12 Confidentiality and Privacy**

During your appointment as GAL, you will be privy to confidential information.

At all times you must respect the confidentiality of your client and all parties to the proceedings to which you have been appointed. You must also ensure that your client's legal professional privilege is maintained.

Information received by you relating to your client's proceedings should not be released either verbally or in writing to any person other than in accordance with an order of the Court or other legal requirement.

All enquiries for information by third parties, including the media, should be referred directly to the Registrar of the Court where the matter was heard.

In some circumstances you may be required to provide information concerning your appointment to DCJ in order to improve the administration of the panel. The information required should not breach any confidentiality requirements with your client.

As far as possible you shall be guided by information protection principles set out in the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

### **5.13 Indemnity and Statutory Protections**

Under the *Courts and Crimes Legislation Further Amendment Act 2010* you are provided with a statutory defence to any to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of representing your client. Instead, any such liability will attach itself to the Crown.

The Act amended the following legislation:

- *Civil and Administrative Tribunal Act 2013* – Section 89 – Protection of representatives, witness and staff members
- *Adoption Act 2000* – Section 124A - Exclusion of Personal Liability
- *Children and Young Persons (Care and Protection) Act 1998* – Section 101A Guardian ad Litem – Exclusion of Personal Liability
- *Community Services (Complaints, Reviews and Monitoring) Act 1993* – Section 33 Right of Appearance

Accordingly, DCJ will support and provide assistance to any GAL that has acted in good faith during their appointment.

### **5.14 Finalising your GAL Duties**

In some situations you may be required to perform the following duties at the completion of the matter:

- Inform your client that you are no longer acting as GAL on their behalf and that you are unable to assist them in your capacity as GAL any further. If they wish to make any further contact they can contact the GAL Panel Co-ordinator;
- Prepare any reports as requested by the Court/Tribunal; and/or
- Obtain copies of the judgment or final orders and explain the implications of these to your client, and.
- Inform the Guardian ad Litem Co-Ordinator in writing that your appointment as GAL in the matter has been completed.

### **5.15 Ceasing to act as a GAL**

Your role as GAL in proceedings will cease if any of the following circumstances occur:

- When the Court proceedings to which you have been appointed are finalised. This normally occurs with the handing down of the final judgment (but may not always be the case);
- The Court mid-way through the proceedings dismisses you. For example if your client's circumstances change and they have capacity to act without you; or
- If you inform both the Court and GAL Panel Co-ordinator that your personal circumstances no longer permit you to act as a GAL for your client.

It is important to note that once your appointment ceases, you will no longer be protected under the statutory protections outlined in the previous section. You should refrain from acting in your capacity as GAL or purport to be acting in your capacity as GAL towards the client or any of the parties.

## 5.16 Client Referrals

In accordance with the previous section (Ceasing to Act as GAL), you should refrain from providing additional support outside of your GAL role to your client.

You can refer your client to a service that may be able to assist them.

## 5.17 Record Keeping and Disposal of Information

You must keep proper records (including information stored by computer and other devices) relating to the matter in the event that your conduct becomes subject to a complaint of a review.

You are required to hold the following types of information for a period of 7 years:

- Invoices
- Any Affidavits you dispose in relation to a GAL appointment
- Copies of correspondence sent and received; and
- Any legal advice received.

# 6 Administrative Procedures

## 6.1 Invoicing Requirements

### 6.1.1 General Requirements

All air travel, overnight accommodation and travel/sustenance expenses exceeding \$50 must have pre-approval of the Guardian ad Litem Co-ordinator.

All fees exceeding the maximum time stipulated in the relevant fee schedule must be pre-approved by the Director or Manager of Division Support and Public Accountability (DSPA).

All hourly rates are to be rounded to the nearest half hour.

Items not specifically included in the guidelines are subject to separate negotiations. For example, if you have a matter with circumstances that will require you spending longer than the prescribed timeframes, please send a brief email to the GAL Panel Co-ordinator providing reasons, and if necessary an extended timeframe can be approved.

### 6.1.2 Timeframes

You must provide DSPA with an invoice:

- Within 28 days of the matter being finalised;
- Every three months of the proceedings, starting from when the Guardian ad Litem was appointed; or
- For any period where the cost of services provided to date exceeds \$1,500.

### 6.1.3 Tax Invoice

A copy of a template tax invoice can be found on the GAL website, under “Information for GALs”. For consistency in invoicing, it is preferred that you use the template provided.

Invoices and tax invoice queries should be emailed to [guardian-ad-litem-panel-coordinator@justice.nsw.gov.au](mailto:guardian-ad-litem-panel-coordinator@justice.nsw.gov.au) or posted to:

Guardian ad Litem Co-ordinator  
 Department of Communities and Justice  
 Locked Bag 5000, Parramatta NSW 2124

### 6.1.4 Expenses

To assist in the timely processing of invoices please provide all receipts for expenses incurred directly related to your appointment. Please ensure you keep a copy of the receipts for your records. For information on claimable expenses please refer to the GAL Fee Schedule.

### 6.1.5 Schedule of Attendances

Invoices should be accompanied by a short schedule of attendance that outlines the work undertaken for an appointment each day and the time spent.

### 6.1.6 Payment of Invoices

DCJ will endeavour to pay you promptly. The payment terms for all suppliers is 30 days.

## 6.2 Travel Requirements

To fulfil your role as a GAL, you may be required to travel for a variety of reasons including (but not limited to):

- to see the person you are appointed for,
- to provide instructions to the legal representative or
- attend Court/Tribunal.

There are a variety of transport options available to you, depending on the circumstances, location and urgency of the proceedings.

The main forms of transport approved under the GAL Panel include (but are not limited to):

- public transport;
- using your own vehicle;
- taxi;
- hire car;
- plane; and/or
- ride share, for example Uber

The most appropriate means of transport will vary depending on access to public transport, the geographical location to where you are travelling, the amount of material/documentation you are required to transport and timeframes for urgent matters.

Each travel option is discussed below.

### **6.2.1 Public Transport**

If possible, you are encouraged to travel by public transport. Public transport is often most suitable for travel around city centres.

The appropriateness of public transport will depend on the distance you are required to travel and the geographical area you are travelling to. If public transport is a viable option, then this method should be used.

You are able to claim the actual cost of out of pocket expenses for public transport

### **6.2.2 Use of Private Vehicles**

If you have a private vehicle, you may use your own vehicle

As a guide, if travel greater than 4 hours by car is required, travel by plane may be a more efficient means of travel

### **6.2.3 Cab Charges**

If you require cab charges for your appointment, please send an e-mail, with as much notice as possible to the GAL Co-ordinator at [guardian-ad-litem-panel-co-ordinator@justice.nsw.gov.au](mailto:guardian-ad-litem-panel-co-ordinator@justice.nsw.gov.au).

Cab charges are normally issued for travel to and from the GAL's home to the airport, from the airport to the Court. Please state how many cab charges you require.

### **6.2.4 Hire Car, Airfares or Accommodation**

If you require car hire, flight booking or accommodation for your appointment please send an email to [guardian-ad-litem-panel-co-ordinator@justice.nsw.gov.au](mailto:guardian-ad-litem-panel-co-ordinator@justice.nsw.gov.au). Where possible please inform the Guardian ad Litem Co-ordinator at least 5 days before you require your booking.

## **6.3 Travel and Meal Allowances**

GALS are paid the same travel and meal allowances as public sector employees. Please refer to <https://www.dcj.nsw.gov.au/justice/guardians-ad-litem.html> for the current rates. These rates change on a regular basis and you should review these when you travelling for an appointment.

### **6.3.1 Allowance for private vehicles**

Different levels of allowance are payable for the use of a private motor vehicle for work depending on the circumstances and the purpose for which the vehicle is used.

- The casual rate is payable if a staff member elects, with the approval of the Secretary, to use their vehicle for occasional travel for work. This is subject to the allowance paid for the travel not exceeding the cost of travel by public or other available transport.
- The official business rate is payable if a staff member is directed, and agrees, to use the vehicle for official business and there is no other transport available. It is also payable where the staff member is unable to use other transport due to a disability. The official

business rate includes a component to compensate a staff member for owning and maintaining the vehicle.

## 6.4 Ensuring Public Resources are used in a proper manner

You are able to claim reasonable disbursements that are directly relating to your appointment as a GAL in proceedings. Reasonable disbursements may include:

- Photocopying (receipt required);
- Destruction of documents (receipt required);
- Annual cost for a small/medium PO Box (if you are appointed in an NCAT matter or similar situation, without a legal representative).

## 6.5 Record Keeping

You must keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in relevant commercial practice in respect of charges, fees, and/or billing, and any reimbursements payable.

## 6.6 Change of Contact Details

If your contact details change at any time then you are obliged to notify the Guardian ad Litem Panel Co-ordinator in writing at [guardian-ad-litem-panel-co-ordinator@justice.nsw.gov.au](mailto:guardian-ad-litem-panel-co-ordinator@justice.nsw.gov.au).

If you are acting in your capacity as a GAL in a matter before a court/tribunal, then the Registrar/Clerk of the Court/Tribunal will also need to be notified in writing of the change of details. This will also include any change to your availability due to illness or leave.

# 7 Children's Court Proceedings

## 7.1 An Overview

The *Children and Young Persons (Care and Protection) Act 1998* (the Act) commenced in December 2000. The objectives of the Act as contained under Section 8 are:

- to ensure that children and young people receive the care and protection necessary for their safety, welfare and well-being;
- to ensure that institutions, services and facilities responsible for the care and protection of young people provide a safe environment for children and young people, which fosters their health, developmental needs, spirituality, self-respect and dignity; and
- to ensure appropriate assistance is provided to parents and other people responsible for rearing children and young people in order to promote a safe and nurturing environment.

The administration is underpinned by the principles contained in Section 9 of the Act:



- When acting or making decisions under the Act, the safety, welfare and well-being of the child or young person is the paramount consideration;
- When a child or young person is capable of forming a view concerning their welfare they are given the opportunity to freely express that view and have it taken into consideration in the decision making process;
- When decisions are made that significantly impact on the life of a child or young person, consideration must be given to the culture, religion, language, disability and sexuality of the child or young person;
- When intervention is necessary it must be the least intrusive option available whilst ensuring the child or young person is protected from harm and their development is promoted;
- When a child or young person is deprived of their family environment, special protection and assistance will be provided by the State whilst preserving the name, identity, language, cultural and religious ties of the child or young person;
- When a child is placed in out-of-home care the child or young person is entitled to maintain relationships with people significant to them e.g. parents, siblings, friends, extended family; and
- The child or young person must be given adequate information in a manner and language appropriate to enable them to fully understand the processes, interventions and decisions being made relating to their welfare.

## 7.2 The role of the Children’s Court of New South Wales

Proceedings under the Act are heard in the Children’s Court of NSW. The proceedings are conducted with as little formality and legal technicality as the case permits. Proceedings are not conducted in an adversarial manner. The Children’s Court takes all measures practicable to ensure that a child or young person has every opportunity to be heard and participate in proceedings and that the proceedings, decisions or rulings are understood by the child or young person.

The court is able to make a variety of orders with respect to the care and protection of a child or young person. These include:

- interim care orders;
- orders for supervision;
- orders allocating parental responsibility for a child or young person;
- orders prohibiting an act by a person with parental responsibility;
- contact orders;
- orders for the provision of support services; and
- orders to attend therapeutic or treatment program.

The Children’s Court is required under the Act to hear all matters expeditiously.

## 7.3 The Role of the Magistrate

Children’s Magistrates sit in the six specialist Children’s Courts as well as regular sittings at Local Courts sitting as Children’s Courts in Nowra, Sutherland, Woy Woy, Hornsby, Maitland, Cessnock, Raymond Terrace, Wyong, Bourke, Brewarrina, Walgett, Lightning Ridge, Nyngan, Warren, Cobar, Narromine, Parkes, Condobolin, Lake Cargelligo. Children’s Magistrates also sit in other regional locations on a needs basis.

Children’s Magistrates undergo training by the Judicial Commission relating to their role and meet tri-annually for conferences pursuant to section 16 of the *Children’s Court Act 1987* to discuss issues and receive training related to the jurisdiction.

## **7.4 The role of the Registrar at the Children's Court**

The Registrar of the Children's Court is responsible for the daily management and administration of the court. The Registrar maintains the records of the court, provides client service, prepares and issues court process, manages and supervises staff and manages the building and property.

The Registrar is the appropriate person to contact if you have any enquiries relating to a court case. They will be able to provide guidance on court procedures, assist by providing information for matters such as referral to local agencies, parties to the proceedings etc.

## **7.5 The role of the Children's Registrar**

The Children's Registrar undertakes a quasi-judicial and administrative function which provides support to the Children's Court to ensure effective delivery of Children's Court services in an efficient and timely manner.

The Children's Registrar conducts call overs, preliminary conferences and hears applications for adjournment, discovery or return of subpoena. Call overs may result in care applications being directed to the appropriate forum for resolution (i.e.: preliminary conferences or immediate referral to a Magistrate). Preliminary conferences may result in the Children's Registrar making orders that parties attend Alternative Dispute Resolution (ADR), directions for preparation for hearing, and interim consent orders.

The Children's Registrar also conducts research and provides advice to the Senior Children's Magistrate and Executive Officer on the Children's Court case flow management systems, listing and other practices.

## **7.6 The role of Child Protection services**

Child Protection provides assistance and advice to children, young people and parents, and in providing assistance may make referrals to other services i.e. counselling, emergency financial assistance, and family support services.

Child Protection also receives reports from people who suspect that a child or young person is at risk of harm. On receipt of such a report Child Protection conducts an investigation and assessment to determine whether the child or young person is at risk of harm. If a child or young person is found to be in need of care and protection then Child Protection must take whatever action is necessary to safeguard or promote the safety, welfare and wellbeing of the child or young person.

Such action may include:

- providing, or arranging for the provision of, support services for the child or young person and their family;
- developing a care plan to meet the needs of the child or young person and their family (such a plan may be registered with the Children's Court);
- exercising Child Protection's emergency protection powers provided for under the Act; and
- seeking appropriate orders from the Children's Court.

## **7.7 The role of the Children's Legal Representative**

The Children's Court may appoint a legal representative for a child or young person, who is the subject of proceedings, if it appears to the court that the child or young person needs to be represented.

Legal Aid NSW makes arrangements for legal representatives appointed by the Children's Court for a child or young person and either provides an in-house solicitor or funds a private solicitor to appear for the child or young person.

Where the Court has not appointed the legal representative who seeks to appear for a child or young person, that legal representative may only appear with the leave of the court.

The child or young person's legal representative has the following roles:

- to ensure that the views of the child or young person are placed before the court;
- to ensure that all relevant evidence is adduced and, where necessary, tested; and
- to act on the instructions of the child or young person, or as the separate representative of the child or young person or on the instructions of a guardian ad litem.

Where the child or young person is aged 10 or above, there is a rebuttable presumption that the child or young person is "capable of giving proper instructions" to his or her legal representative and the legal representative must act on those instructions unless otherwise instructed by the Children's Court.

However, a legal representative may apply to the Children's court for a declaration that the child or young person is "incapable of giving instructions" and that the legal representative should act as a separate representative (i.e. in the child's best interest rather than on instructions).

Where a child is under the age of 10, the legal representative should act as a separate representative. A legal representative may seek a declaration that the child under the age of 10 is "capable of giving instructions".

Where a guardian ad litem is appointed the legal representative is to act on the instructions of the GAL.

## **7.8 The role of the parent's legal representative**

In any proceedings with respect to a child or young person, each person having parental responsibility for the child or young person has the right to appear and examine or cross-examine witnesses on matters relevant to the proceedings.

They may appear in person, be legally represented or, by leave of the Children's Court, be represented by an agent.

If the Children's Court is of the opinion that a person who seeks to appear in person is not capable of adequately representing themselves, it may require the person to be legally represented.

Legal Aid NSW will represent parents who meet its means and/or merit tests. Otherwise, the person must obtain and fund the legal representative.

A legal representative for a parent must act on the instructions of the parent unless a GAL is appointed.

The Act sets out some circumstances in which a Court may conclude that the parent is incapable of giving proper instructions to the legal representative, which include where a parent has an intellectual disability or is mentally ill.

When a GAL is appointed, the role of the GAL is to safeguard and represent the interests of the parent and to instruct the legal representative of the parent.

## **7.9 The role of the Children's Court Clinic**

The Children's Court Clinic (CCC) was established pursuant to the Care Act. It consists of a small unit of staff who are responsible for the provision of the state-wide service. The CCC is presently located at the NSW Children's Court building at Parramatta.

The CCC employs a number of accredited clinicians located throughout the state. These clinicians are known as Authorised Clinicians.

The role of the Authorised Clinician is to:

- Provide an objective assessment of the client/s situation, which addresses the questions, or concerns of the Magistrate.
- Prepare assessment reports for the Court, which include recommendations that are in accordance with the objects, principles, and responsibilities outlined in the Care Act.
- Conduct assessments in a manner that is appropriate to the ethnicity and culture of the client, particularly indigenous clients.

## **7.10 Sections 100 and 101 of the Care Act**

Section 100 of the Care Act enables the Children's Court to appoint a GAL for a child or young person when there are special circumstances to warrant the appointment and the child or young person will benefit from the appointment.

Section 101 of the Care Act enables the Children's Court to appoint a GAL for the parent of a child or young person if it is of the opinion that the parent is incapable of giving proper instructions to their legal representative. A GAL may be appointed where a child, young person or parent has an intellectual disability or mental illness.

## **7.11 The role of the GAL in care and protection proceedings**

In care and protection proceedings the role of a GAL is to:

- safeguard and represent the interests of the child, young person or parent;
- instruct the legal representative of the child, young person or parent; and
- to perform any services specified in the GAL Handbook. This may include being the tutor for an infant beneficiary in relation to the administration of a will.

## **7.12 Allocation of GALs to cases**

When it is determined by a Magistrate that a GAL is to be appointed to a child/young person or parent, the Registrar of the Children's Court will notify DCJ who will allocate a GAL from the panel.

## **7.13 Reports for the Court**

The Care jurisdiction of the Children's Court is primarily a court of affidavit evidence. This means that evidence to be relied upon by a party to proceedings is submitted to the court in writing, either by way of affidavit or report. This material is made available to all parties to the proceedings, who may then elect to call an author of an affidavit or report to be cross-examined in court on issues of contention.

The court may require a GAL, to provide evidence in writing of their instructions on issues to be considered by the court. This evidence may be provided by way of affidavit, which would be prepared by the solicitor acting for the child, young person or parent for whom the GAL has been appointed, or by a report prepared by the GAL.

## **7.14 Dispute Resolution Conferences (DRC)**

The majority of Court ordered appointments are from the Children's Court, in a variety of locations across the State.

The Children's Court is encouraging the greater use of Alternative Dispute Resolution during care and protection proceedings. Alternate Dispute Resolution (ADR) is an umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them.

ADR in care and protection proceedings is designed to facilitate the greater direct participation of families in decisions about their child's future care. The Children's Court expects that the use of ADR will include and empower children and families in decision-making; produce child protection decisions that are better informed and more responsive; foster collaborative, rather than adversarial relationships between Child Protection services and families; and lead to outcomes that are better accepted by all parties, and therefore more likely to be implemented.

One such ADR program is Dispute Resolution Conferences (DRCs), which are conducted under section 65 of the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act). The purpose of a DRC is to provide the parties with an opportunity to agree on the action that should be taken in the best interests of the child. If the parties cannot reach an agreement on the day, then they should identify areas in agreement, and issues in dispute. The purpose of this is to narrow the scope and length of any hearing.

Once a care application has been filed in the Children's Court, the Magistrate or Children's Registrar responsible for the management of the case will, in consultation with the parties, determine if and when a DRC should take place. DRCs are conducted by Children's Registrars, and take place within courthouse accommodation. Conferences run for approximately two hours.

The conferences follow a standard model of conciliation, in which the Children's Registrar facilitates discussion of the issues and options raised by the parties, "reality tests" any options generated, and expresses views on what the Court could consider and order, should the matter go to hearing.

All parties to the proceeding (with the exception of the child or young person) are expected to attend the conference in person, and any party may be legally represented. A Court-appointed Guardian ad Litem (GAL) is also expected to attend a conference in person. Where a GAL does attend a conference, they are expected to prepare for the conference appropriately (considering the issues around the child's care that need to be resolved, identifying different options for the child's care in light of their best interests, and considering the case from Child Protection services' perspective); commit to attending for the full duration of the conference; act in good faith; represent their client's views/ interests appropriately; and act in a non- adversarial manner.

Children are entitled attend a DRC where appropriate, and their attendance will be determined by their legal representative and the Children's Registrar, in consultation with the other parties. Attendance of people who are not a party to proceedings is at the discretion of the Children's Registrar, in consultation with the other parties, or with the leave of the Court.

Any conciliated agreements will be drafted by one of the legal representatives as a draft Minute of Care Order, which will be provided to the Magistrate when the matter is next mentioned. The Magistrate will make the order if they agree that the agreement is in the child's best interests. A second DRC may also be ordered if necessary.

Parties to care and protection proceedings within the Children's Court may also be referred to an external mediation service under section 65A of the Care Act where appropriate. The purpose of an external mediation conference is the same as a DRC, although the format of the conference may differ. A skilled mediator, independent of the Children's Court, conducts these conferences. The content of these conferences, along with DRCs, is confidential, subject to certain exceptions.

## 8 NSW Civil and Administrative Tribunal

Under section 45 (4)(a) of the *Civil and Administrative Tribunal Act 2013*, the Tribunal may appoint a person, acting as a Guardian ad Litem, to represent the party, if it appears that a party is an incapacitated person. Section 10 of the *Civil and Administrative Tribunal Regulation 2013* allows for the appointment of a GAL from the GAL Panel.

### 8.1 About NCAT

The NSW Civil and Administrative Tribunal (NCAT) is the one-stop-shop for specialist tribunal services in NSW. NCAT was established on 1 January 2014 by the *Civil and Administrative Tribunal Act 2013*.

NCAT deals with a broad and diverse range of matters, from tenancy issues and building works, to decisions on guardianship and administrative review of government decisions.

Consolidating the work of 22 former tribunals into a single point of access for specialist tribunal services in NSW, NCAT provides services that are prompt, accessible, economical and effective.

### 8.2 Divisions of NCAT

#### 8.2.1 Administrative and Equal Opportunity Division

The Administrative and Equal Opportunity Division reviews administrative decisions made by NSW Government agencies and resolves discrimination matters.

#### 8.2.2 Consumer and Commercial Division

The Consumer and Commercial Division resolves a wide range of everyday disputes such as tenancy and other residential property issues, and disputes about the supply of goods and services.

#### 8.2.3 Guardianship Division

The Guardianship Division determines applications about people with a decision making disability and who may require a legally appointed substitute decision maker.

#### 8.2.4 Occupational Division

The Occupational Division reviews decisions by government agencies about licensing and complaints concerning professional conduct and discipline.

#### 8.2.5 Internal Appeals Panel

In certain circumstances parties can appeal a decision to NCAT's Internal Appeal Panel. Internal appeals can be made on a question of law. An application can only be made about the merits of a decision if the Appeal Panel gives permission. Some Division decisions are not subject to an internal appeal and may be appealed directly to the Supreme Court or Court of Appeal.

### 8.3 Types of NCAT matters

GALs are appointed in a range of matters before NCAT but they are most likely to be appointed in the Consumer and Commercial Division, Administrative and Equal Opportunity Division and the Guardianship Division.

### **8.3.1 Consumer and Commercial Division**

NCAT's Consumer and Commercial Division resolves a wide range of everyday disputes such as tenancy and other issues relating to residential property, and disputes about the supply of goods and services.

### **8.3.2 Administrative and Equal Opportunity Division**

NCAT's Administrative and Equal Opportunity Division reviews administrative decisions made by NSW Government agencies and resolves anti-discrimination matters.

#### **8.3.2.1 Review of administrative decisions**

NCAT can review decisions made by NSW Government agencies, including decisions about:

- access to information held by government
- use of and access to personal information held by government
- firearms licences
- guardianship and financial management
- administrative decisions made in the community services sector
- review of various State taxation decisions
- vocational training (including apprenticeships and traineeships).

#### **8.3.2.2 Anti-discrimination**

NCAT resolves complaints referred by the Anti-Discrimination Board for alleged breaches of the *Anti-Discrimination Act 1977*. They relate to discrimination, harassment, victimisation and vilification. NCAT can also:

- give permission for a complaint to go ahead after it has been declined by the Anti-Discrimination Board
- register conciliation agreements made at the Anti-Discrimination Board so it can be enforced
- review Anti-Discrimination Board decisions about an application for exemption.

### **8.3.3 Guardianship Division**

NCAT's Guardianship Division makes decisions about people who have a decision making disability. The Guardianship Division determines applications about adults who are incapable of making their own decisions and who may require a legally appointed substitute decision maker.

Applications to the Guardianship Division include:

- Guardianship orders to appoint a guardian to make personal or lifestyle decisions for someone with decision making disabilities.
- Financial management orders to appoint a financial manager for someone who is not capable of managing their affairs.
- Consent for treatment by a doctor or dentist.
- Review an enduring power of attorney.
- Review an enduring guardianship appointment.
- Approval of a clinical trial so that people with a decision making disability can take part.
- Applications must be about people who are in NSW or have property or other financial assets in NSW.

The *Guardianship Act 1987* sets out the limits of its responsibilities and functions and the principles to be applied when making decisions.

## 8.4 Instructing a Legal Representative

NCAT is designed for people to represent themselves at hearing. This provides a low cost, accessible and efficient means of resolving a dispute. As such, it is common that at the time of your appointment, a legal representative will not already be instructed.

You are not required to instruct a legal representative in NCAT matters, however Legal Aid NSW can provide advice on the merits of your client's claims. If you require this service please contact Legal Aid NSW on (02) 9219 5790.

# 9 District Court Proceedings

The majority of GAL appointments in the District Court are appeals from Children's Court proceedings. The role of the GAL in care proceedings remains, in essence, the same. There are some procedural differences in the District Court jurisdiction that you will need to be aware of, if not, your legal representative should be able to explain these to you. If you require more information on the procedures of the District Court, please contact the relevant Registry.

## 9.1 Appointment of a GAL

The GAL appointed at first instance will often be an appropriate choice of representation for the appeal, unless issues of their conduct or a potential conflict are subject to the appeal. It should not be assumed the GAL involved in proceedings at first instance in the Children's Court will automatically be appointed in the appeal. An appeal in the District Court warrants a new GAL appointment, this can be the GAL from first instance or a new independent GAL.

## 9.2 Appointment of a legal representative

The legal representative instructed at first instance is often an appropriate choice of representation for the appeal, unless issues of conduct are subject to the appeal.

The benefit of instructing the same legal representative is that they will already be familiar with the matter. On the contrary, if the issues on appeal where the actions or conduct of the legal representative at first instance is in question then a different legal representative should be sought.



## 10 Document history

Version	Date	Reason for Amendment
1.0	1 January 2012	
2.0	2018	Update
3.0	March 2023	Update

## Schedule 1: List of Relevant Policy

- *Guardian ad Litem Code of Conduct*
- *Guardian ad Litem Fee Schedule*
- *Guardian ad Litem Handbook*
- *Guardian ad Litem Complaints Guidelines*

## Schedule 2: Relevant Legislation

Jurisdiction	Legislation/Rules	Section/ Rule
<b>Local Court, District Court and Supreme Court</b>	<i>Uniform Civil Procedure Rules 2005 (NSW)</i> <i>Civil Procedure Act 2005 (NSW)</i>	Rule 7.14, Rule 7.15 and Rule 7.18
<b>Children's Court</b>	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>	sections 100, 101
<b>NSW Civil and Administrative Tribunal</b>	<i>Civil and Administrative Tribunal Act 2013</i>	sections 45, 89

### Matter specific legislation on GAL appointments

<b>Mental Health Review Tribunal</b>	<i>Mental Health Act 2007 (NSW)</i>	section 152
<b>Community Services Matters (NCAT)</b>	<i>Community Services (Complaints, Reviews and Monitoring) Act 1993 (NSW)</i>	section 33
<b>Adoption Matters (Supreme Court)</b>	<i>Uniform Civil Procedure Rules 2005 (NSW)</i> <i>Adoption Act 2000 (NSW)</i>	Rule 56.6  sections 123, 124

### Information handling legislation

<b>Dealing with information</b>	<i>Privacy and Personal Information Protection Act 1998</i> <i>Health Records and Information Privacy Act 2002.</i>	
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