



Justice &
Attorney General

Guardian ad Litem Code of Conduct



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Guardian ad Litem Code of Conduct

The Guardian ad Litem Code of Conduct ('the Code') is a guide to the conduct and integrity expected of all persons designated by the New South Wales Department of Justice and Attorney General ('DJAG') as members of the Guardian ad Litem panel ('the GAL panel').

The Code sets out minimum standards of conduct expected from a Guardian ad Litem ('a GAL') and applies to all aspects of a GAL's activities as a designated member of the GAL Panel.

The Code provides an ethical framework for a GAL's decisions, actions, conduct and integrity.

Essential Summary

Abiding by the Code is a condition of a GAL's designation to the panel. A GAL who is found to be in breach of the Code may be subject to disciplinary action as outlined in the *Policy and Procedure for the Resolution of Complaints* by DJAG.

Principles

A GAL in the exercise of their duties is 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 his or her 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 to the Director of the Legal Services Branch, DJAG;
- Ensure public resources are used in a proper manner; and
- Act with diligence, care and attention.

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1 Scope

This Code outlines the conduct expected from a GAL. Adherence to the code is a condition of being designated a GAL panel member.

2 Purpose

In the interests of the administration of justice and the protection of clients, the Code establishes standards of conduct expected of a GAL of his or her duties during the period of their designation as a GAL panel member.

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 Director General for the Guardian ad Litem Panel.

"Director General" means the person for the time being holding office or acting as the Director of DJAG.

"Director" means the person for the time being holding office or acting as the Director of the Legal Services Branch, DJAG.

"DJAG" means the New South Wales Department of Justice and Attorney General.

"GAL" means a person designated as a member of the Panel by the Director General.

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

"GALPAC" means the Guardian ad Litem Professional Advisory Committee.

"Handbook" means the *Guardian ad Litem Handbook* that contains policy, procedures and guidelines for a GAL.

"Incapacity" means a person that is:

- incapable of representing him or her self

- incapable of giving proper instructions to his or her legal representative, and/or
- under legal incapacity,

due to age, mental illness or incapacity, disability or other special circumstances.

"Policy and Procedure for the Resolution of Complaints" – means the Guardian ad Litem Policy and Procedure for the Resolution of Complaints.

"Policies" includes but not limited to policies of DJAG.

4 Designation and appointment of a Guardian ad Litem

A GAL designated as a member of the GAL Panel is bound by the Code of Conduct and related policies.

A GAL may be designated as a member of the GAL Panel by the Director General for a period of up to 3 years.

A GAL may be designated as a GAL Panel member for successive periods.

A GAL designated as a GAL Panel member is eligible for appointment as a GAL in proceedings under order of a Court or Tribunal and at the discretion of the Director.

A GAL must be reasonably available to accept appointments as a GAL in proceedings.

5 Role of a Guardian ad litem

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

- incapable of representing him or her self,
- incapable of giving proper instructions to his or her 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. The role of a GAL is to protect or promote the interests of the person in relation to whom they have been appointed ('the client').

5.1 Responsibilities

A GAL has responsibility and authority 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.

A GAL must notify the Court if there is any change in the circumstances that gave rise to his or her appointment by the Court.

5.2 Legal Representation

A GAL appointed to a matter by an order of the court has the authority to retain, instruct and dismiss a legal representative.

A GAL is responsible for arranging legal representation for his or her client. Representation must be sought through legal aid or on a pro bono basis.

If representation is arranged other than through legal aid or on a pro bono basis a GAL is legally responsible for paying the clients lawyer, however he or she is entitled to be indemnified by the client. Where appropriate a GAL should instruct the lawyer to seek an order for the client's costs. A GAL should ensure an appropriate cost disclosure is made and a cost agreement negotiated.

6 Comply with the law, policies and any lawful direction

6.1 Obligation to comply with laws and policies

A GAL is to comply with relevant laws, policies and procedures and to know and understand the law applicable to the performance of their duties.

If support is required on relevant laws, policies and procedures (including the Code), a GAL can contact the Guardian ad Litem Panel Advisory Committee ('GALPAC') or refer to the Handbook.

6.2 Model Litigant obligation

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:

- a) not causing unnecessary delay in the proceedings;
- b) acting consistently in the proceedings;
- c) not relying on technical defences unless the interests of a GALs client would be prejudiced by the failure to comply with a particular requirement;
- d) not undertaking and pursuing appeals unless there is a reasonable prospect for success or the appeal is otherwise justified in the public interest; and
- e) apologising where a GAL is aware that his or her 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 his or her lawyer to:

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

7 Provide quality, timely and accurate service to the client

A GAL must provide quality services to the client and ensure fairness. This entails:

- acting efficiently, equitably and professionally; and
- treating individuals courteously, attentively and sensitively.

A GAL should:

- inform the client of the procedures to be followed and his or her rights and obligations;
- consider the client's views before making a decision;
- advise the client of the reason(s) for a decision;
- not consume alcohol to excess or be under the influence of alcohol to a degree that adversely affects the capacity to work, not abuse prescription drugs and not use any form of illicit drugs or substances, while carrying out functions as a GAL;
- not use offensive or obscene language and; and
- wear attire which reasonably reflects public expectations and community standards.

8 Treat everyone with respect, courtesy and fairness

A GAL must treat everyone involved in the proceedings in which he or she is appointed with respect and courtesy. This includes refraining from discriminating, harassing, or bullying behaviour or treating anyone inappropriately, including colleagues, members of the public, other parties and their legal representatives and court personnel.

A GAL must not discriminate against a person because of race, ethnic or national origin, and gender including breastfeeding, age, marital status, pregnancy, disability, transgender status, sexual preference, political or religious beliefs or responsibilities as a caregiver.

9 Act honestly, ethically and with integrity and avoid conflicts of interest

9.1 Conflict of Interest

A GAL is required to contact the Director in writing to advise of any actual or potential conflicts of interest which may impact on their performance as a GAL.

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

Examples of a conflict of interest include:

- if a GAL has a relationship with a client or the family of the client or other party to the proceedings; or
- if a GAL is currently or becomes an employee of the Department of Human Services.

A GAL 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 a GAL's responsibility to establish a clear framework for his or her 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 Director, in writing.

If a GAL is unclear whether or not a conflict of interest exists, they should contact the GALPAC for advice.

9.2 Misleading statements

A GAL must not, in any communication with another person on behalf of a client:

- a) represent to that person that anything is true which a GAL knows, or reasonably believes, is untrue; or
- b) make any statement that is calculated to mislead or intimidate the other person.

A GAL must take all necessary steps to correct any misleading statement made by a GAL to a court as soon as possible after he/she becomes aware that the statement was misleading.

10 Decline gifts or benefits which affect or may be seen to affect impartiality

Gifts or benefits that may be intended or likely to influence, or could be reasonably perceived as being intended or likely to influence a GAL, should be declined.

A GAL must not seek, accept, or expect to receive any payment other than those fees approved for payment for acting as a GAL, gift or benefit from any person in an official capacity.

A GAL should not display favour or bias toward or against any person in the course of his/her duty, even if there is no payment or return favour.

If any offer or suggestion of a bribe is made directly or indirectly, the facts must be reported in writing by the GAL to the Director as soon as possible.

11 Report instances of fraud, corruption, serious and substantial waste, or maladministration

A GAL must make a written report to the Director, or otherwise in accordance with the DJAG *Fraud, Corruption and Prevention Policy* of any facts outlining any suspected corrupt or unlawful conduct, maladministration or serious and substantial waste of public resources.

12 Ensure public recourses are used in a proper manner

A GAL is expected to be efficient and economical in the use and management of public resources, including his or her own work time.

A GAL shall only seek payments for work undertaken in accordance with an appointment and the schedule of fees as approved by the Director General.

13 Exercise diligence, care and attention in performing duties

A GAL shall perform his or her duties in a diligent manner and with all necessary skill and care expected in accordance with the performance of such duties.

A GAL should serve clients competently and diligently.

A GAL should not, in the service of his or her client, engage in, or assist, conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law.

A GAL should never compromise his or her personal safety.

14 Respect the privacy of individual and maintain appropriate confidentiality of information

A GAL must respect the confidentiality of his or her client and all parties to the proceedings to which a GAL has been appointed and ensure that legal professional privilege is maintained. Information received by a GAL relating to the client's proceedings should not be released either verbally or in writing by a GAL 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.

A GAL may be required to provide information on their appointment to DJAG in order to improve the administration of the panel. The information required should not breach any confidentiality requirements with their client.

As far as possible a GAL 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*.

15 Keeping of records

A GAL 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 in accordance with the Handbook.

16 Professional development and training

A GAL panel member must, during each year in which a GAL is a panel member complete a minimum of eighteen (18) hours of educational training and Professional Development by completing a course of education that satisfies the requirements as specified in the Professional Training and Development Policy.

17 Complaints Procedure

GALS shall comply with the *Policy and Procedure for the Resolution of Complaints*.

18 Disclosure Requirements

A GAL must, for the term of his or her designation as a GAL Panel member, comply with any disclosure requirements as contained in all legislation, regulations and policies applicable to GALs.

- 1) A GAL has an obligation to notify the Director of a change of his or her:
 - a) Name,
 - b) Postal and/or email address,
 - c) Telephone number on which he or she can be contacted in relation to GAL services.
- 2) A GAL must notify the DJAG in writing immediately upon becoming aware of the existence, or possibility, of a conflict of interest.
- 3) A GAL must notify the Director in writing if:
 - a) he or she is charged or investigated for a criminal offence;
 - b) he or she is investigated by any relevant professional or regulatory body;
 - c) a complaint is made alleging a breach of the Code; or
 - d) in any other special circumstances as determined by the Director General.

19 Suspension from the Panel

A GAL may be suspended from the Panel upon written notice to the GAL in the following circumstances:

- a) for a criminal offence;
- b) if a GAL is being investigated by any relevant professional or regulatory body;
- c) by DJAG following a complaint alleging a breach of the Code; or

- d) in any other special circumstances as determined by the Director General.

The period of designation of a GAL to the Panel continues to run during the period of suspension. A GAL who is suspended will not be allocated to any new matters during the period of suspension.

A GAL must notify the Court of any of the above circumstances if he or she is presently appointed in proceedings. The Court may remove the GAL from their appointment.

20 Removal of name from the GAL Panel

A GAL may be removed by written notice by the Director General to a GAL if:

- a) there is a conviction or a finding that an offence is proven;
- b) there is an adverse finding by a relevant or professional body;
- c) there is a finding that there is a breach of the Code; of
- d) the Director General is satisfied that there are special circumstances that warrant the removal.

21 Document information

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