



Attorney General
& Justice

Guardian ad Litem Handbook



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Guardian ad Litem Handbook

About this handbook

The Guardian ad Litem Handbook ('the Handbook') is to be read in conjunction with the Guardian ad Litem Code of Conduct ('the Code'). The Handbook provides guidance to you as a Guardian ad Litem ('GAL') designated as a member of the Guardian ad Litem panel ('the GAL panel') by the New South Wales Department of Attorney General & Justice ('DAGJ').

Using this handbook

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 will be available at www.gal.nsw.gov.au.

Printed copies of this document may not be up to date.
Ensure you have the latest version before using this document.

Table of Contents

About this handbook	1
Using this handbook	1
1. Scope	6
2. Purpose	6
3. Definitions	6
PART A:	8
THE GUARDIAN AD LITEM PANEL AND MEMBERSHIP ON THE GUARDIAN AD LITEM PANEL	8
4. An Overview	8
History of the GAL Panel	8
The Special Commission of Inquiry into Child Protection Services in NSW	8
Transfer of administrative responsibility to LSB	8
Expansion of the GAL panel	9
5. Legal Services Branch	9
Administration of the Panel by the Legal Services Branch	9
6. Relevant Contacts	10
Legal Services Branch Contacts	10
Finance Branch Contacts	10
Children's Court Contacts	11
District Court Contacts	11
Supreme Court Contacts	11
Administrative Decisions Tribunal Contacts	11
7. Correspondence with LSB	12
8. Relevant documents	12
DAGJ Documents	12
Relevant laws	12
9. GAL Panel Jurisdictions	13
10. The role of Guardians ad Litem (GALs)	13
11. Membership on the Guardian ad Litem Panel	13
12. Recruitment of members for the Guardian ad Litem Panel	14
Desired qualifications and experience	14
Checks prior to designation to the GAL Panel	14

13. General GAL Responsibilities	15
14. Guardian ad Litem Professional Advisory Committee (GALPAC)	16
15. Professional Development and Training	16
Mentoring program	16
Methods of professional development and training	16
Methods of professional development and training	17
Relevant areas of professional development and training	17
16. Complaints and Handling Information	18
Making a complaint	18
Recording Complaints	18
Authority of GAL to Offer Redress	18
Review Processes	18
17. Suspension from the Panel	19
18. Removal from the GAL Panel	19
PART B:	21
GUARDIAN AD LITEM APPOINTMENTS IN PROCEEDINGS	21
19. Allocation of GAL to cases	21
Factors taken into consideration when allocating a GAL	21
20. GAL Personal Security	21
Contact between you, your client and other parties	22
Court/Tribunal Attendances	22
Emergency Situations	22
21. Contacting your Client	22
Preparations prior to meeting with your client	23
Briefing your client about your role	23
Difficulties contacting the subject person/client	23
22. Conflicts of Interest	24
Translation Services available through the Court/Tribunal	24
Interpreters and Translation Services directly through Community Relations Commission	25
Interpreting	25
Translation	25
How to book CRC interpreter services	25
23. Access to Information	26
24. Instructing a Legal Representative	26
Children's Court Matters	26

District Court Matters (Appeals)	27
Supreme Court Matters	27
Administrative Decisions Tribunal	27
Memorandum of Understanding Matters	27
25. Dismissing a Legal Representative	27
26. Attending Court/Tribunal	28
27. The role of the guardian ad litem during the proceedings	29
Responsibilities	29
Model Litigant obligation	29
28. Awareness of Client's Capacity during the proceedings and GAL dismissal mid proceedings	30
Client's Capacity	31
29. Confidentiality and Privacy Issues	31
30. Indemnity and Statutory Protections	32
31. Finalising your GAL Duties	32
32. Ceasing to act as GAL	33
33. Client referrals	33
34. Record Keeping and Disposal of Information	33
PART C: ADMINISTRATIVE PROCEDURES	35
35. GAL Allowance	35
36. Fee Schedules	35
37. Invoicing Requirements	35
General Guidelines	35
Timeframes for invoicing	36
Tax invoice	36
Payment of invoices	36
Contact Finance Branch	36
38. Submitting Travel Requests	38
39. Travel and meal allowance	39
Allowances for private motor vehicles	39
40. Ensure public resources are used in a proper manner	40
41. Ensure public resources are used in a proper manner	40
42. Record Keeping	40
43. Change of Contact Details or availability	40
An Overview	42
The role of the Children's Court of New South Wales	43

The role of the Magistrate	43
The role of the Registrar of the Children’s Court	44
The role of the Children’s Registrar	44
The role of Community Services	44
The role of the Children’s Legal Representative	45
44. The role of the Parents Legal Representative	46
45. The role of the Children’s Court Clinic	47
46. Sections 100 and 101 of the Act	47
47. The role of the guardian ad litem	47
48. Allocation of GAL to cases	48
49. Reports for Court	48
50. Dispute Resolution Conferences (DRC)	48
PART E:	51
ADMINISTRATIVE DECISIONS TRIBUNAL PROCEEDINGS	51
51. About the ADT	51
52. Types of ADT matters	52
Guardianship and Protected Estates	52
Community Services Division	53
Equal Opportunity Division	53
53. GAL Appointments	54
54. Instructing a Legal Representative	54
PART F:	56
DISTRICT COURT PROCEEDINGS	56
Appointment of a GAL	56
PART G:	57
MATTERS UNDER THE MEMORANDUM OF UNDERSTANDING	57
55. The Memorandum of Understanding	57
56. Requirements of a GAL appointed in MoU matters	57
57. Document information	59
58. Document history	59

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 all 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 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 DAGJ.

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

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

"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 DAGJ.

PART A:

THE GUARDIAN AD LITEM PANEL AND MEMBERSHIP ON THE GUARDIAN AD LITEM PANEL

4. An Overview

History of the GAL Panel

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*.

The Special Commission of Inquiry into Child Protection Services in NSW

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 interposing a GAL between a child and his or her 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.

Transfer of administrative responsibility to LSB

On 1 July 2009 the administrative responsibility for the GAL panel was transferred from Court Services to the Legal Services Branch (LSB).

Since the transfer, LSB has been working 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 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 an 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 that there is equality in access to justice.

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 Administrative Decisions Tribunal.

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

5. Legal Services Branch

Administration of the Panel by the Legal Services Branch

One of the functions of the Legal Services Branch is to administer the Guardian ad Litem Panel.

Part of this function requires LSB to:

- Administer appointments under Court and Tribunal orders where there is no other independent person available to be appointed as a GAL or where a child or young person may have a claim against the state. More information on these types of GAL appointments are available under the specific sections.
- Develop the Codes of Conduct.
- Manage recruitment.
- Convene and develop the GAL Panel.

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

6. Relevant Contacts

If you have an enquiry or require assistance in relation to your designation on the GAL Panel or appointment in specific proceedings, a list of contacts are provided below:

Legal Services Branch Contacts

If you have any queries in relation to your role as a GAL, please contact the Guardian ad Litem Co-ordinator at guardian_ad_litem_panel_co-ordinator@agd.nsw.gov.au.

Please copy the Guardian ad Litem Co-ordinator in on any correspondence, to ensure you receive a response to your query.

Members from the LSB that may be able to assist you further with your enquiries are:

Bernhard Ripperger
Manager, Legal Services Branch
Phone (02) 8224 5481
Bernhard_Ripperger@agd.nsw.gov.au

Laura Joseph
Legal Services Branch Officer
(02) 9224 5182
Laura_Joseph@agd.nsw.gov.au

Gail Mitchell
Legal Services Branch Officer
(02) 8224 5330
Laura_Joseph@agd.nsw.gov.au

Finance Branch Contacts

If you have a query regarding an invoice issued by you that has already been processed for payment by LSB, then please follow up the status of your payment with the Department's Finance Branch.

Please read the procedures for payment of GAL invoices at section 37 *Invoicing Requirements*, prior to calling, as it might answer your query.

Finance Branch - Accounts Payable
(02) 8688 8426
902) 8688 6743

Children's Court Contacts

Please contact the Registrar of the Children's Court at the location of the proceedings in which you have been appointed. A list of children's Court locations can be found at:

Specialist Children's Courts

- http://www.lawlink.nsw.gov.au/lawlink/childrens_court/ll_cc.nsf/pages/CC_contact_us

Local Courts Sitting as Children's Courts

- http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/pages/lc_location

District Court Contacts

Please contact the Registrar of the District Court location that is relevant to your proceedings. A list of District Court locations can be found at:

District Court at Sydney CBD

- http://www.lawlink.nsw.gov.au/lawlink/district_court/ll_districtcourt.nsf/pages/dc_sydneylocation

District Court outside of Sydney

The Registrar of the Local Court is also the Registrar of the District Court at these places. The Registrars contact details for these venues are the same as the Local Courts.

- http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/pages/lc_location

Supreme Court Contacts

Steven Jupp
Principal Development Officer
Supreme Court New South Wales
(02) 9377 5963
Steven_Jupp@agd.nsw.gov.au

Administrative Decisions Tribunal Contacts

Pauline Green
Registrar
Administrative Decisions Tribunal
(02) 9231 9103
Pauline_Green@agd.nsw.gov.au

7. Correspondence with LSB

If you have any queries in relation to your role as a GAL, please contact the Guardian ad Litem Co-ordinator at guardian_ad_litem_panel_co-ordinator@agd.nsw.gov.au.

The Guardian ad Litem Co-ordinator should be copied in on any correspondence, to ensure you receive a response to your query.

All e-mails referring to a specific matter should include the client's SURNAME in the subject heading. This will ensure your enquiry will be dealt with as quickly as possible.

8. Relevant documents

As a member of the GAL Panel, you must be familiar with the following documents and have a basic understanding of the relevant laws:

DAGJ Documents

- GAL Code of Conduct
- GAL Handbook
- Guardian ad Litem Professional Advisory Committee
- GAL Complaints Handling Procedure
- Education and Training Policy

All documents need to be read in conjunction with the Code.

The documents are available online at www.gal.nsw.gov.au or can be obtained by e-mailing the Guardian ad Litem Co-ordinator at guardian_ad_litem_panel_co-ordinator@agd.nsw.gov.au.

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.

It is also recommended that you should ask the legal representative acting for your client, if a legal representative has been appointed, any queries you may have in relation to the legal requirements for your specific matter.

Alternatively, you may contact the Guardian ad Litem Professional Advisory Committee for support services.

9. GAL 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
- Administrative Decisions Tribunal.

10. The role of Guardians ad Litem (GALs)

GALs, also referred to as a tutor of 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 him or herself, 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.

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.

11. Membership on the Guardian ad Litem Panel

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 and a reappointment offered by LSB 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 and at the discretion of the Director.

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

12. Recruitment of members for the Guardian ad Litem Panel

Expressions of interest for membership on the Guardian ad Litem Panel are advertised on the Guardian ad Litem website and from time to time in newspapers, government bulletins and other sources.

Desired qualifications and experience

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, LSB will interview and recruit eligible applicants in accordance with the Departments 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 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.

13. 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 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, DAGJ;
- Ensure public resources are used in a proper manner; and
- Act with diligence, care and attention.

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

Some principles are also addressed in more detail through out this Handbook.

14. Guardian ad Litem Professional Advisory Committee (GALPAC)

If you have any queries relating to your membership on the GAL Panel or an appointment to specific proceedings, the Guardian ad Litem Professional Advisory Committee ('GALPAC') has been set up to:

- Provide guidance, support and assistance to you on issues relating to the Code of Conduct ('the Code'), the functions of GALs and any procedure required by GALs;
- Provide comment or opinion on issues relating to the Code or alleged breach of the Code in accordance with complaints being made; and
- Accredite training and other professional development activities relating to section 15 of the Code.

15. Professional Development and Training

Mentoring program

LSB provides opportunities for GAL members 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 is considered as a form of training and as such LSB are unable to reimburse GAL Panel members being mentored for any attendance at Court/Tribunal that falls outside of a GAL Appointment.

Mentoring allows GALs to observe but not participate in a GAL appointment. In some instances, if it is a closed Court, permission may be required from the Court beforehand.

If you are interested in joining the mentoring program as either a mentor or mentee, please contact the GAL Panel Co-ordinator.

Methods of professional development and training

You are required to complete a minimum of eighteen (18) hours of Educational Training and Professional Development each calendar year.

Professional development and training may be attained through a variety of ways. These include, but are not limited to:

Methods of professional development and training

- 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

Relevant areas of professional development and training

Relevant areas of professional development and training include:

- any type of professional development listed above relating to processes and procedures in any of the participating courts or tribunals:
 - Supreme Court NSW
 - District Court NSW
 - Children's Court NSW
 - Administrative Decisions Tribunal
- any type of professional development or training listed above relating to people who are incapable of representing him or herself, 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. For example people with a mental illness, Children and so on.

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

For more information on the Professional Development and Training requirements, please refer to the Professional Development and Training policy.

16. Complaints and Handling Information

The following information is a summary of the complaints and handling policy, you should refer to the [Complaints and Handling Policy](#) for more detailed information.

Making a complaint

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

Any person may make a complaint or provide feedback in the following manner:

- Verbally or in writing to you
- By writing a letter, e-mail or fax to LSB
- By sending an email to director_lsb@agd.nsw.gov.au
- By submitting the on line web form at www.gal.nsw.gov.au
- Verbally over the telephone

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

Recording Complaints

All incoming complaints must be recorded in the GAL Panel complaints register, situated at the Legal Service Branch, DAGJ.

Complaints must be forwarded to the Guardian ad Litem Panel Co-ordinator 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. If this is the case, you are still required to explain to clients why they are unable to assist.

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.

Review Processes

Where any doubt exists, the Director, LSB/ 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, LSB.

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.

If a complaint is still unresolved, the complaint will be referred to GALPAC, whose decision will be final.

17. Suspension from the 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:

- a) for a criminal offence.
- b) if a GAL is being investigated by any relevant professional or regulatory body;
- c) by DAGJ 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 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 of any of the above circumstances if he or she is presently appointed in proceedings. The Court may remove the GAL from their appointment

18. Removal from the GAL Panel

As stated in the GAL code of conduct, 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; or
- d) the Director General is satisfied that there are special circumstances that warrant the removal.

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

PART B:

GUARDIAN AD LITEM APPOINTMENTS IN PROCEEDINGS

19. Allocation of GAL to cases

Factors taken into consideration when allocating a GAL

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 the LSB. The LSB then administers the allocation of a GAL from the GAL Panel.

When allocating a GAL, the LSB 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 by the court.

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, the GAL Panel co-ordinator will make contact, usually by telephone to ensure that the GAL is available for the period leading up when the matter is listed in 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.

20. 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 that 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.

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.

If you have a PO Box it is preferred that you provide this information not your residential address.

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

Court/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.

Emergency Situations

If it is an emergency, contact the police on 000.

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

21. 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.

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 to you whether 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.

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.

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 can not 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.

22. Conflicts of Interest

At the time of your appointment you have an obligation to notify the GAL Panel Co-ordinator 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 Director, in writing.

If you are unsure whether a conflict of interest exists, you should contact the GALPAC or GAL Panel Co-ordinator for advice.

Interpreters 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.

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. The Department will meet the cost of the interpreter provided it is booked and confirmed through the Court/Tribunal.

Interpreters and Translation Services directly through Community Relations Commission

If you are having any difficulties organising an interpreter through the Court/Tribunal you can also contact the Community Relations Commission (CRC) directly but ensure you involve the Court/Tribunal for payment.

CRC services are available to all New South Wales Government departments and agencies, as well as private and commercial organisations, community groups and individuals.

Interpreting

CRC 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.

Translation

CRC 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.

CRC translation services can be provided within 24 hours, 7 working days and 14 working days.

How to book CRC interpreter 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@crc.nsw.gov.au.

Tel: 1300 651 500

Fax: (02) 8255 6711

TTY: (02) 8255 6758

23. 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.

If you have been appointed in a MoU matter, this process is different again as you will not be able to have subpoenas prior to commencement of the proceedings. Please see section on Appointments under the MoU in relation to accessing to information in these matters.

24. Instructing a Legal Representative

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

The DAGJ has adopted a dual representative model for proceedings where a party may lack capacity or is unable to represent themselves. That is, a GAL be 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 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 to. 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.

Children's Court Matters

In Children's Court matters, majority of the time 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 be provided with the contact details of at least three legal representatives that are known to the Registry and frequently act in Care matters. The names of three legal representatives

If you still have difficulties instructing a legal representative, contact the Legal Services Branch and further information will be provided on other Legal Representatives that appear on the Legal Aid Panel.

Guardians ad Litem are permitted in Children's Court matters to instruct any legal representative that is on the Legal Aid Panel.

District Court Matters (Appeals)

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. 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.

Supreme Court Matters

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

Administrative Decisions Tribunal

In many ADT matters, a legal representative will not already be instructed as the proceedings are often less formal in nature, however, it is the preferred model in line with international conventions that all GALs instruct a legal representative. The process in ADT proceedings requires an application to be made to legal Aid grant before a legal representative can be instructed.

Memorandum of Understanding Matters

Please see the specific section on MoU under Part F.

25. 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 exception 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 (eg. Legal Aid) and the efficient conduct of proceedings.

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

26. Attending Court/Tribunal

You are required to attend court on all hearing dates listed unless excused from attendance by the Court or Tribunal. Other The GAL will not be eligible to claim payment for attendance in instances 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.

27. The role of the guardian ad litem during the proceedings

You will be appointed in legal proceedings where a person is:

- incapable of representing him or herself,
- 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.

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 he/she has 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
- or take into consideration any other special circumstances.

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:

1. not causing unnecessary delay in the proceedings;
2. acting consistently in the proceedings;
3. not relying on technical defences unless the interests of a GALs client would be prejudiced by the failure to comply with a particular requirement;
4. not undertaking and pursuing appeals unless there is a reasonable prospect for success or the appeal is otherwise justified in the public interest; and
5. 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; or
- e. require opposing litigants to comply with procedural obligations;
- f. move to strike out untenable proceedings

28. Awareness of Client's Capacity during the proceedings and GAL 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 DAGJ and the Court and the Court will decide if your appointment will continue.

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 him or herself,
- capable of giving proper instructions to his or her 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.

29. Confidentiality and Privacy Issues

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 DAGJ 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*.

30. 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:

- *Administrative Decisions Tribunal Act 1997* – Section 71 - Representation of Parties
- *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
- *Consumer, Trader and Tenancy Tribunal Act 2001* – Section 36 Representation of Parties

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

31. 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.
-

32. Ceasing to act as 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 permits 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.

33. 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. For example:

- [Mental health and well being](#)
- [Capacity Toolkit](#)
- [Intellectual Disability Rights Service](#)

For more referral services, refer to the GAL website at: www.gal.nsw.gov.au.

34. 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.

PART C: ADMINISTRATIVE PROCEDURES

35. GAL Allowance

Membership on the GAL panel is on a volunteer basis however an allowance is paid in respect of a GAL appointment. The allowance is paid in accordance with the scheduled fee. The relevant fee schedule is determined by the date of appointment as a GAL in particular proceedings.

36. Fee Schedules

One of three fee schedules may be applicable in relation to a matter, based on the date of appointment.

1. [Guardian ad Litem Fee Schedule \(for all appointments made after 21 March 2011\);](#)
2. [Guardian ad Litem Fee Schedule \(for all appointments between 1 July 2010 and 20 March 2011\);](#) and
3. Guardian ad Litem fee schedule (for all appointments before 1 July 2010.

The fee schedule relevant to your appointment will depend on the date that your appointment occurred. If you need any assistance identifying the correct fee schedule, please contact the GAL Panel Co-ordinator.

37. Invoicing Requirements

General Guidelines

All air travel, overnight accommodation and travel/sustenance expenses exceeding \$50 must have pre-approval of the Director or Manager of the Legal Services Branch.

All fees exceeding the maximum time stipulated in the relevant fee schedule must be pre-approved by the Director or Manager of the Legal Services Branch.

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 e-mail to the GAL Panel Co-ordinator providing reasons, and if necessary an extended timeframe can be approved.

Timeframes for invoicing

You must provide LSB 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.

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 e-mailed to:

guardian_ad_litem_panel_co-ordinator@agd.nsw.gov.au

Or posted to:

GPO Box 6, Sydney 2001.

Payment of invoices

DAGJ will endeavour to pay you in the shortest possible time. Please be aware that as per section 17 of the DAGJ's Accounting manual the payment terms for all suppliers is 30 days.

(This is notwithstanding that LSB is required to report on any invoice not paid within 14 days).

Contact Finance Branch

The Legal Services Branch sends your invoice to our Finance Branch for payment as soon as possible.

If you have any queries in relation to payment of your invoice, you can contact:

Accounts Payable
8688 8426, or
8688 6743.

Please allow sufficient time for the Finance Branch to process and pay your invoice before contacting them.

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 approved under the GAL Panel include (but are not limited to):

- public transport;
- using your own vehicle;
- taxi;
- hire car; and/or
- plane

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.

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

Use of a private vehicle

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.

Cab charges

If you require cab charges for your appointment, please sent an e-mail, with as much notice as possible to the GAL Co-ordinator e-mail address - guardian_ad_litem_panel_co-ordinator@agd.nsw.gov.au.

Cab charges are normally issued for travel to and from the GALs home to the airport, from the airport to the Court.

Please state how many cab charges you require.

Hire Car

In some instances it may be necessary to hire a car. If you require a Hire Car you must complete a travel request form and e-mail it to the GAL Panel Co-ordinator. The GAL Panel Co-ordinator will organise the hire car through DAGJ's preferred provider.

Booking flights

For regional, country or matters greater than 4 hours drive, providing there is an airport, it is accepted that flying will be the most appropriate method of transport.

If you require an airfare you must complete a travel request form and e-mail it to the GAL Panel Co-ordinator. The GAL Panel Co-ordinator will organise the airfare through DAGJ's preferred provider.

38. Submitting Travel Requests

To put in a request for your travel (for a hire car or flight) you will first need to have an account with Carlson Wagonlit, set up by the GAL Panel Co-ordinator.

The travel request form can be found on the GAL website, under "Information for GALs".

Then follow the steps below:

Step 1: Log on to the website:

Click on the following link:
<https://sbt.carlsonwagonlit.com/thetravelersite?NSWGOV>
Enter your CWT profile pin: <To be provided>
Your password: <To be provided>

Step 2: Search flights

Once you have logged in, click on the tab at the top called "Booking Services". Enter the information in the search box with the dates and times you wish to travel and it will provide you with a list of options. Choose the flight options that are suitable for the appointment.

Step 3: Send a travel request form to LSB

Please complete the travel request form and send it to the Legal Services Branch, GAL Panel Co-ordinator.

39. Travel and meal allowance

GALS are paid the same travel and meal allowances as public sector employees.

Please see item 6 of the attached link:

http://www.dpc.nsw.gov.au/coe2009/part_b_-_monetary_rates

Note that the travel and meal allowances frequently change. Please make sure you are use the most up to date rates.

Allowances for private motor 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.

1. The casual rate is payable if a staff member elects, with the approval of the Department Head, 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.
2. 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.

40. Ensure 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 ADT matter or similar situation, without a legal representative).

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.

41. Ensure public resources are used in a proper manner

You are expected to be efficient and economical in the use and management of public resources, including your work time.

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

42. 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.

43. Change of Contact Details or availability

If your contact details change at any time then you are obliged to notify the Guardian ad Litem Panel Co-ordinator in writing (email or facsimile) of such change.

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.

A Guardian ad litem - Contact details/availability form can be found on the GAL website at: www.gal.nsw.gov.au.

PART D:

CHILDREN'S COURT PROCEEDINGS

An Overview

The *Children and Young Persons (Care and Protection) Act 1998* (the Care 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 a number of principles contained in Section 9 of the Care 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 his/her welfare he/she is 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 his/her development is promoted;
- When a child or young person is deprived of his/her 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 him/her eg. 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.

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.

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

s.16 of the Children's Court Act to discuss issues and receive training related to the jurisdiction.

The role of the Registrar of 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.

The role of the Children's Registrar

The Children's Registrar undertakes quasi-judicial and administrative functions 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 (ie: 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.

The role of Community Services

Community Services (CS) 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, family support services.

The CS also receives reports from people who suspect that a child or young person is at risk of harm. On receipt of such a report the CS 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 the CS must take

whatever action is necessary to safeguard or promote the safety, welfare and well being 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 his/her family;
- developing a care plan to meet the needs of the child or young person and his/her family (such a plan may be registered with the Children's Court);
- exercising the CS's emergency protection powers provided for under the Act; and
- seeking appropriate orders from the Children's Court.

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.

The Legal Aid Commission 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 persons 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.

44. The role of the Parents 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 him or herself, it may require the person to be legally represented.

The Legal Aid Commission will represent parents who meet the Commission's 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.

45. The role of the Children's Court Clinic

The Children's Court Clinic (CCC) has been established pursuant to the Children and Young Persons (Care and Protection) Act 1998.

The CCC consists of a small unit of staff, administered by the Director, who are responsible for the provision of the statewide service. The CCC is presently located at the Hospital Road Court complex behind the Mint Building in Macquarie Street, Sydney.

The Clinic employs on a contractual basis, 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 Children and Young Persons (Care and Protection) Act 1998.
- Conduct assessments in a manner that is appropriate to the ethnicity and culture of the client, particularly indigenous clients.

46. Sections 100 and 101 of the Act

Section 100 of the *Children and Young Persons (Care and Protection Act) 1998* ('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 his/her legal representative. A GAL may be appointed where a child, young person or parent has an intellectual disability or mental illness.

47. The role of the guardian ad litem

Section 100 of the Care Act enables the Children's Court to appoint a guardian ad litem (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 his/her legal representative. Circumstances that may warrant the appointment of a GAL include where a child, young person or parent has an intellectual disability or mental illness.

The role of the 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.

48. Allocation of GAL 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 the LSB who will allocate a GAL from the panel.

49. Reports for 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.

50. Dispute Resolution Conferences (DRC)

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. Alternative 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 Community 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* (NSW) (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 will facilitate discussions on the different issues and options raised by the parties; "reality test" any options that are generated; express views on what the Court could consider, and might order, should the matter go to hearing; and are responsible for managing the process. 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 Community 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.

PART E:

ADMINISTRATIVE DECISIONS TRIBUNAL PROCEEDINGS

On 1 July 2010, the administration of Special Representatives appointed in the Administrative Decisions Tribunal (ADT) was transferred to the Legal Services Branch.

Under section 71 (4) of the [Administrative Decisions Tribunal Act](#), the ADT may appoint another person, a special representative, to represent the party, if it appears that a party is an incapacitated person.

51. About the ADT

The Administrative Decisions Tribunal (ADT) was established to provide for independent, external review of administrative decisions; and to deal with other types of cases, such as discrimination complaints and professional misconduct inquiries.

There are six Divisions of the Tribunal and an Appeal Panel.

- [General Division](#) including the [Guardianship and Protected Estates](#) list
This Division hears most applications by citizens for review of administrative decisions and administrative conduct including Freedom of Information, Privacy and Personal Information, Security Industry, and Transport Industry. It also deals with professional discipline in relation to certain professions including architects, surveyors and vets.
- [Community Services Division](#)
This Division hears applications for review of various administrative decisions made in the Community Services sector.
- [Revenue Division](#)
This Division hears applications for review of various State taxation decisions.
- [Legal Services Division](#)
This Division hears complaints referred under the *Legal Profession Act 2004* against legal practitioners and licensed conveyers.
- [Equal Opportunity Division](#)
This Division hears complaints of unlawful discrimination referred to it by the President, Anti Discrimination Board under the *Anti Discrimination Act 1977*.

- [Retail Leases Division](#)
This Division hears claims by parties to retail shop leases made under the *Retail Leases Act 1994*.

52. Types of ADT matters

It is likely that GALs will only be appointed in the following matters as a special representative.

- [Guardianship and Protected Estates](#)
- [Community Services Division](#)
- [Equal Opportunity Division](#)

One of the areas GALs are more frequently appointed is in Guardianship and Protected Estate matters.

Guardianship and Protected Estates

The Administrative Decisions Tribunal (ADT) can decide appeals against certain decisions of the Guardianship Tribunal, the Mental Health Review Tribunal and Magistrates made under the [Guardianship Act 1987](#), the [NSW Trustee and Guardian Act 2009](#) and the [Powers of Attorney Act 2003](#). These appeals are called external appeals.

The Tribunal can also review certain decisions of the NSW Trustee and Guardian (formerly called the NSW Trustee and Guardian and the NSW Trustee and Guardian). These applications are called applications for review.

An external appeal can be lodged with the ADT if the Guardianship Tribunal makes a decision under the following sections of the Guardianship Act 1987:

- A review of the appointment of an enduring guardian under s6K.
- The substitution of an enduring guardian under s6MA.
- The making of a guardianship order under s14.
- The review of a guardianship order under s25C.
- The making of a financial management order under the *NSW Trustee and Guardian Act 2009* by the Guardianship Tribunal under s25E.
- The making of an interim financial management order (as above) under s25H.
- The review of a financial management order under s25P.
- The review of the appointment of a manager of a protected estate under s25U.

- The giving of directions as to the exercise of a guardian's functions under s28.

Community Services Division

The main function of the Community Services Division is to review certain decisions made by the NSW Government agencies in the Community Services sector.

The Administrative Decisions Tribunal (ADT) reviews decisions by standing in the place of the government agency that made the original decision and making a fresh determination. It will decide what is the correct and preferable decision having regard to the material before it.

The type of decision that can be reviewed by the Community Services Division of the ADT include decisions:

- granting to or removing from an 'authorised carer' the responsibility for the day-to-day care and control of a child or young person
- authorising or not authorising a person to be an 'authorised carer', imposing conditions on an authorisation or cancelling or suspending a person's authorisation
- providing financial assistance where the provision of assistance does not conform with the objects and principles of the Disability Services Act
- accrediting or refusing to accredit an adoption service provider or imposing conditions on their accreditation
- failing to provide information or assistance under the Adoption Act
- refusing to terminate the Minister's guardianship of a ward
- terminating a person's custody of a child who is a ward
- directing a licensee of a family day care children's service to remove the name of a family day carer from the register for the service
- suspending a family day care carer's name from the register for the service

Equal Opportunity Division

The Equal Opportunity Division of the Administrative Decisions Tribunal (ADT) deals with complaints of discrimination, harassment, vilification or victimisation in employment, education, accommodation, registered clubs and the provision of goods and services. The ADT can only deal with complaints that have been referred to the ADT by the President of the NSW Anti-Discrimination Board.

53. GAL Appointments

The appointment process of the GAL in ADT proceedings is similar to the procedure outlined in PART B.

The main difference is that GALs will in most cases need to be available to travel to where their client is located and be in a position to attend.

The ADT has published [Practice Note 32 - Appointing a Guardian Ad Litem - Guideline](#) on their website. The Practice Note provides further details on the appointment of a GAL in ADT proceedings.

54. Instructing a Legal Representative

The procedure for appointing a legal representative varies in each jurisdiction.

In general, ADT proceedings are less formal in nature and many parties are often unrepresented. As such, it is common that at the time of your appointment, a legal representative will not already be instructed.

For all GAL appointments, the preferred model, in accordance with international conventions is that a legal representative be instructed and a Guardian ad Litem be appointed.

In some ADT proceedings GALs have experienced difficulties obtaining a legal representative through Legal Aid.

To overcome this issue, a contact person at Legal Aid now specifically deals with s71(4) GAL appointments in ADT proceedings. This should streamline the process and make it a lot easier to obtain a Legal Aid Grant.

If you are in ADT proceedings and need to organise a Legal Aid grant, please follow the procedure below:

- Complete the legal Aid application as far as possible (not all the information will be available to you)
- Submit the application form along with a cover letter addressed to "Senior Solicitor - Grants - Civil". The letter should indicate they are a GAL appointed by the ADT (and in what division, and if known on what basis - ie intellectual disability, protected person child etc).

- The letter should also indicate the next listing date and if the matter is urgent.
- Contact details should be provided.
- The matter should be dealt with in 3-5 days.

The contact person at Legal Aid to contact is:

Name: - Alexander Grosart

Phone: - 9219 5830

Email - alexander.grosart@legalaid.nsw.gov.au

If you have any difficulties obtaining Legal Aid through this process, please contact the GAL Panel Co-ordinator.

PART F:

DISTRICT COURT PROCEEDINGS

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.

http://www.lawlink.nsw.gov.au/lawlink/local_courts/lc_location

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.

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.

PART G:

MATTERS UNDER THE MEMORANDUM OF UNDERSTANDING

The purpose of Memorandum of Understanding (MOU) is to ensure children/young people in out of home care have access to independent legal advice with regards to their prospects of making a claim, or seeking any other legal remedy, against the State of NSW and to bring such a claim or seek such remedy reasonable to do so.

55. The Memorandum of Understanding

A MoU has been signed by the DAGJ, Legal Aid New South Wales (Legal Aid) and Department of Human Services, Family and Community Services (FACS) in relation to children and young persons in out of home care who may have claims against the State of NSW.

In order to avoid a clear conflict of interest, the MOU provides for the appointment of a Guardian ad Litem (GAL) by DAGJ, at the request of CS, to manage the process of obtaining legal advice in relation to a possible claim against the State. Legal Aid has agreed to arrange for legal advice on instructions from a GAL in relation to the merits of any possible claim. In appropriate cases, the GAL may continue as tutor for the child or young person in proceedings against the State.

The MOU provides a range of protections for GALs in these matters and FACS will meet the costs of the scheme.

See [Memorandum of Understanding](#) on the GAL website.

56. Requirements of a GAL appointed in MoU matters

If you accept a GAL appointment in an MoU matter, the following tasks will be expected of you:

- A copy of the material available in the matter to you (a spare copy will also be provided). You are required to become familiar with the material (your time spent doing so may be invoiced as preparation time)- MoU, clause 5.1.

- You will need to make a Legal Aid application for a grant noting that the matter falls under the MOU.
- You will then need to forward a spare copy of the material to either the Legal representative appointed to the child/young person OR provide the material to Legal Aid directly, by cover of letter. (A sample letter is attached, including that it is a matter falling under the MOU matter, the child/young person involved and advice sought).
- You may then be required to provide further information/instructions to the legal representative, ensuring all necessary information has been considered so accurate legal advice is provided. This may involve liaising with the child or docs caseworker to obtain more information.
- Ensure legal advice is received from the legal representative **within 3 months** of instructing them. If legal advice is not provided within this timeframe, contact the Legal Representative at first instance, if unsuccessful then Legal Aid.
- Once receiving the advice, forward a copy of the advice to the Legal Services Branch via e-mail at guardian_ad_litem_panel_co-ordinator@agd.nsw.gov.au or post at Legal Services Branch, Department of Attorney General and Justice, GPO Box 6, SYDNEY NSW 2001.
- Make a determination based on the advice on whether or not legal action should be taken.
- If a determination is made not to take legal action, inform LSB for the file to be closed.
- If a determination is made to take legal action, LSB should be contacted and assistance provided to instruct a Legal Aid grant or pro bono legal assistance.

The Department of Family and Community Services indemnifies you from any legal action taken against you where you have acted in good faith in performing your duties – (MoU, Clause 7.5).

57. Document information

Title:	Guardian ad Litem Coordinator
Business Centre:	Legal Services Branch
Author:	Laura Joseph
Approver:	Bernhard Ripperger
Date of Effect:	1 January 2012
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Key Words:	Guardian ad Litem code of Conduct, GAL, Roles and Responsibilities

58. Document history

Version	Date	Reason for Amendment

SCHEDULE 1

List of relevant documents:

- *Guardian ad Litem Code of Conduct*
- *Guardian ad Litem Fee Schedule*
- *Guardian ad Litem Handbook*
- *Policy and Procedure for the Resolution of Complaints.*
- *Guardian ad Litem Education and Training Policy*

SCHEDULE 2

Jurisdiction	Legislation/Rules	Section/ Rule
Local Court, District Court and Supreme Court	<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
Children's Court	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>	ss100, 101
Administrative Decisions Tribunal	<i>Administrative Decisions Tribunal Act 1997(NSW)</i> *Also see Practice Note 15	s71
Guardianship Tribunal	<i>Guardianship Act 1987 (NSW)</i>	s58
Consumer, Trader and Tenancy Tribunal	<i>Consumer, Trader and Tenancy Tribunal Act 2001 (NSW)</i>	s36

Matter specific legislation on GAL appointments

Mental Health Review Tribunal	<i>Mental Health Act 2007 (NSW)</i>	s152
Community Services Matters (Administrative Decisions Tribunal)	<i>Community Services (Complaints, Reviews and Monitoring) Act 1993 (NSW)</i>	s33
Adoption Matters (Supreme Court)	<i>Uniform Civil Procedure Rules 2005 (NSW)</i> <i>Adoption Act 2000 (NSW)</i>	Rule 56.6 ss123, 124

Information handling legislation

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