



## NCAT Administrative and Equal Opportunity Division Procedural Direction 5

### APPOINTING A GUARDIAN AD LITEM

<b>This Procedural Direction applies to:</b>	Proceedings in the Administrative and Equal Opportunity Division
<b>Effective Date:</b>	11 March 2014
<b>Replaces Procedural Direction:</b>	Administrative Decisions Tribunal's Appointing a Guardian Ad Litem: Guideline
<b>Notes:</b>	You should ensure that you are using the current version of this Procedural Direction. A complete set of Procedural Directions and Guidelines is available on the Tribunal website at <a href="http://www.ncat.nsw.gov.au">www.ncat.nsw.gov.au</a>

#### Purpose

1. This procedural direction sets out the procedure to be followed by the Tribunal when appointing a person to act as guardian ad litem (GAL) for a party under s 45(4)(a) of the Civil and Administrative Tribunal Act 2013 ("NCAT Act"). A GAL may be appointed for a person who is totally or partially incapable, because of age, illness or disability, to represent himself or herself in the proceedings. This procedural direction also sets out the role of the GAL. It does not apply to the appointment of a GAL or a separate representative for a child under s 33 of the Community Services (Complaints, Reviews and Monitoring) Act 1993.

#### Relevant Legislation

2. *Civil and Administrative Tribunal Act 2013*, s 45(4)(a)

#### When may a GAL be appointed?

3. The Tribunal may appoint a GAL to represent a person who is under the age of 18 or who is totally or partially incapable of representing himself or herself. Incapacity may be a result of an intellectual, psychological or physical disability, physical or mental illness or advanced age.

## Procedure for appointment of a GAL

- 4.1 Any party may apply to the Tribunal for the appointment of a GAL. Alternatively, the Tribunal may appoint a GAL on its own initiative.
- 4.2 When an application is made or the Tribunal is contemplating the appointment of a GAL it will:
  - (a) advise the parties and ask the person for whom the appointment is being considered whether they agree to or oppose the appointment;
  - (b) if agreed, ask whether the person has a suitable relative or friend who can fulfil the role;
  - (c) if opposed, make directions for the filing and service of evidence of capacity or incapacity;
  - (d) conduct a hearing either in person or 'on the papers' as to whether a GAL should be appointed;
  - (e) if an appointment is made and no suitable relative or friend is available, the Tribunal will notify the GAL co-ordinator from the Department of Attorney General and Justice within 2 working days and request that he or she allocate a GAL to the party.
- 4.3 The Tribunal will provide the following details to the GAL co-ordinator:
  - (a) the name of the person for whom the GAL is appointed and whether the person is a child under the age of 18 or an adult;
  - (b) the names of the parties to the proceedings, the file number and the nature of the proceedings;
  - (c) any written reasons for a decision relating to the appointment of a GAL;
  - (d) the date and time the matter is next listed and whether it is listed for directions, planning meeting, case conference, mediation or hearing;
  - (e) if the person is legally represented, their details;
  - (f) any other matter relevant to the appointment of a GAL.
- 4.4 Within 2 working days of receiving this information, the GAL co-ordinator will notify the Tribunal of the identity and contact details of the GAL including their postal address.
- 4.5 The Tribunal will notify all parties of the GAL's name and contact details.

## The role of the GAL

- 5.1 Subject to any directions or orders of the Tribunal in a particular case, the role of a person appointed as a GAL is to be a "best interests" representative for the person. That means that the GAL is to conduct the proceedings in a way he or she considers to be in their best interests rather than on the basis of the person's views or 'instructions'.

5.2 The role of the GAL includes:

- (a) attempting to ascertain the person's views about the issues in dispute;
- (b) ensuring that the person understands and participates in the proceedings as much as is practicable in the circumstances;
- (c) assessing the specific needs of the person he or she is representing and attempting to accommodate those needs if possible;
- (d) determining what is in the best interests of the person;
- (e) if the GAL does not have legal representation, conducting the proceedings in accordance with those interests;
- (f) participating in any alternative dispute resolution process which he or she considers to be in the best interests of the person.

5.3 Each party must serve all documents on and communicate with the GAL as if the GAL, rather than the person being represented, is the party to the proceedings.

### Legal representation for the GAL

6. A GAL may arrange to be represented by an Australian legal practitioner. If the GAL is represented by a lawyer, the lawyer will conduct the proceedings in accordance with the GAL's instructions.

(Sgd)

11 March 2014

MAGISTRATE NANCY HENNESSY

Deputy President