



## Consumer and Commercial Division Guideline February 2020

# Representatives for people who cannot represent themselves (GALs)

## What does this Guideline explain?

1. This Guideline answers the following questions:
  - a) What is a guardian ad litem (GAL)?
  - b) How and when is a GAL appointed?
  - c) What is the process for appointing a GAL?
  - d) What will the Tribunal take into account when deciding whether to appoint a GAL?
  - e) What is the role of a GAL?
  - f) What are the other parties' obligations if a GAL is appointed?
  - g) Can the Tribunal reverse its decision to appoint a GAL?

## Definitions

2. Definitions that explain words or concepts used in this Guideline are at the back of the Guideline.

## What is a guardian ad litem (GAL)?

3. A guardian ad litem is a person who the Tribunal appoints to represent a party who is totally or partly incapable of representing themselves in a Tribunal case. The representative is called a **GAL** for short. The GAL speaks for the party at all Tribunal hearings and resolution processes such as mediations. The GAL is not a lawyer but may arrange to have a lawyer represent them.

## How and when is a GAL appointed?

4. Any party may apply to the Tribunal for a GAL to be appointed for themselves or for another party. Even if no-one applies, the Tribunal may appoint a GAL for a party.
5. The Tribunal may appoint a GAL if a party is totally or partly incapable of representing themselves. For example, the person may not be able to understand or respond to the real issues in the case.

## What is the process for appointing a GAL?

6. The Tribunal will tell the parties when an application is made for the appointment of a GAL or if the Tribunal is thinking about appointing a GAL. The Tribunal will ask the party whether or not they agree to the appointment.

7. If the party agrees to have a GAL appointed to represent them, the Tribunal will ask whether there is a relative or friend who is available to be appointed. If that person is suitable, the Tribunal may appoint the relative or friend as the party's GAL. If not, the Tribunal may appoint a person from the GAL Panel. The GAL Panel is a panel of suitable people managed by the Legal Services Branch of the Department of Communities and Justice.
8. If the party does not agree to have a GAL appointed to represent them, the Tribunal will decide whether or not to appoint a GAL. If the Tribunal needs more information about the person's capacity to represent themselves, the Tribunal may ask the parties to provide that information or get the information from another person by using a summons.
9. If the Tribunal decides to appoint a GAL from the GAL Panel, the Tribunal will ask the GAL Coordinator from the Department of Communities and Justice to allocate a GAL. The Coordinator will tell the parties who the GAL is. Normally the GAL will get in touch with the party he or she is representing.

### **What will the Tribunal take into account when deciding whether to appoint a GAL?**

10. The Tribunal will take into account:
  - a) the "guiding principle" of the Act which is to facilitate the just quick and cheap resolution of the real issues in the proceedings
  - b) the nature and extent of the party's incapacity
  - c) the effect of any incapacity on the party's ability to represent themselves.
11. In particular, the Tribunal will take into account the effect of the party's incapacity on their ability to:
  - a) understand the nature of the matter or the issues in dispute
  - b) present their views
  - c) respond to the other party's arguments
  - d) act in their own best interests

### **What is the role of the GAL?**

12. The role of a GAL is to resolve the case or run the hearing on behalf of the party. The GAL must always act in a way that is in the best interests of the party. The GAL does not have to do what the party wants them to do. If the parties agree to settle the case, the Tribunal must take into account the interests of the party being represented by a GAL before approving any settlement.
13. The Department of Communities and Justice and the Tribunal require GALs to:
  - a) promote the autonomy of the party
  - b) safeguard and represent that party's interests

- c) take into account the views, opinions, wishes and feelings of the party; and
- d) take into consideration any other special circumstances.

### What are the other parties' obligations if a GAL is appointed?

14. If a GAL is appointed the other parties and their lawyers must communicate directly with the GAL. They must give all documents to the GAL as if the GAL is the party. Other parties and their lawyers must also cooperate with the Tribunal to give effect to the guiding principle of the Act. The guiding principle is to facilitate the just quick and cheap resolution of the real issues in the proceedings.

### Can the Tribunal reverse its decision to appoint a GAL?

15. Yes, the Tribunal can revoke an order appointing a GAL. That could happen if the party regains capacity, for example.

### Can a party appeal from the Tribunal's decision to appoint or not to appoint a GAL?

16. A party can only appeal if the Appeal Panel gives permission for the party to appeal. The Tribunal's decision to appoint or not to appoint a GAL is known as an "interlocutory" decision. A party can only appeal from an interlocutory decision if the Appeal Panel gives permission or "leave" to appeal.

### What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013 (NSW)*
- **Party or parties:** A person or entity involved in a particular case or joined to the proceedings under section 44 of the Act. The Tribunal calls the person or entity that brings an application 'the applicant' and the person or entity they seek orders against 'the respondent'.
- **Registrar:** The Principal Registrar or any other person employed as a Registrar of the Tribunal
- **Resolution process:** A resolution process is defined in s 37(2) of the *Civil and Administrative Tribunal Act 2013* as "any process (including, for example, alternative dispute resolution) in which parties to proceedings are assisted to resolve or narrow the issues between them in the proceedings."
- **Rules:** Civil and Administrative Tribunal Rules 2014
- **Tribunal:** The NSW Civil and Administrative Tribunal (NCAT).

### This Guideline applies to:

Proceedings in the Consumer and Commercial Division of the Tribunal.

## Effective Date

13 February 2020

## Notes

You must use the latest version of this Guideline. The latest version of this Guideline is on the [NCAT website](#).

The law about the information in this Guideline is mainly in the *Civil and Administrative Tribunal Act 2013*, which we have called “the Act” and specifically the following sections and regulation:

- Sub-section 45 (4)(a) of the Act
- Section 36 of the Act
- Sub-section 38 (5)
- Sub-section 80 (2) of the Act
- Clause 37 of the Rules

There is a copy of this Act on the [NSW Legislation website](#).

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