



THE LAW SOCIETY  
OF NEW SOUTH WALES

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17 December 2012

Guardian ad Litem Panel Coordinator  
Legal Services Branch  
Department of Attorney General and Justice  
DX 1227 SYDNEY

**Email:** [guardian\\_ad\\_litem\\_panel\\_co-ordinator@agd.nsw.gov.au](mailto:guardian_ad_litem_panel_co-ordinator@agd.nsw.gov.au)

Dear Sir/Madam,

**Guardian ad Litem Panel: Aboriginal and Torres Strait Islander peoples**

I write to you on behalf of the Indigenous Issues Committee ('Committee') of the Law Society of New South Wales. The Committee represents the Law Society on Indigenous issues as they relate to the legal needs of people in NSW and includes experts drawn from the ranks of the Law Society's membership. The Committee has identified the issue of the appointment of Aboriginal and Torres Strait Islander peoples to the Guardian ad Litem Panel ('Panel') as a priority action on its agenda.

The Committee notes that the Department of Attorney General and Justice ('Department') administers the Panel. The Committee notes also that where a guardian ad litem is appointed for a child or young person, his/her functions are to safeguard and represent the interests of the child or young person, and to instruct the legal representative of the child or young person.<sup>1</sup> Similarly, a guardian ad litem appointed for the parent should carry out the same functions in relation to the parent.<sup>2</sup>

The Committee also notes the information provided on the Department's website which states that when making decisions, the guardian ad litem should:

- Promote the autonomy of the person;
- Safeguard and represent the interests of the person;
- Take into account views, opinions, wishes and feelings as expressed by the person; and/or
- Take into consideration any other special circumstances.<sup>3</sup>

The Committee is concerned that Aboriginal people are not represented on the Panel. The Committee would strongly recommend that eligible Aboriginal people be appointed to the Panel to ensure that Aboriginal children and Aboriginal parents are provided with relevant culturally appropriate support.

<sup>1</sup> Section 100(3), *Children and Young Persons (Care and Protection) Act 1998* (NSW)

<sup>2</sup> Section 101(3), *Children and Young Persons (Care and Protection) Act 1998* (NSW).

<sup>3</sup> Attorney General and Justice Guardian Ad Litem Homepage, available here:

[http://www.gal.nsw.gov.au/gal/gal\\_what\\_is\\_gal.html,c=y](http://www.gal.nsw.gov.au/gal/gal_what_is_gal.html,c=y) (accessed on 1 November 2012)

The Committee's view is that if a guardian ad litem is required to safeguard and represent the interests of an Aboriginal child, young person or parent, then the guardian ad litem Selection Criteria should prioritise appointing Aboriginal guardians ad litem. As a guardian ad litem is responsible to ensure that the principles set out above are upheld when making decisions, the Committee respectfully submits that Aboriginal guardians would be better placed to consider and determine the relative importance of the various factors, including the social, family and cultural knowledge that should play a prominent role in the decision making process.

On the position set out above, the Committee would appreciate if the Department could provide the Committee with further information about the Panel:

1. How many persons are currently on the Panel;
2. The term of appointment applicable to Panel membership;
3. The timing of the next round of appointments to the Panel and how applications are made;
4. How many of the current Panel members identify as Aboriginal or Torres Strait Islander; and
5. Any other information that might be relevant to the Committee's concern in this regard.

Whilst the Committee appreciates that this may not fall within the Department's knowledge, the Committee would welcome receipt of information on the number of Aboriginal children involved in Children's Court matters, and whether the number of Aboriginal children in care is increasing.

If you have any questions, please contact Vicky Kuek, policy lawyer for the Committee on 9926 0354 or [victoria.kuek@lawsociety.com.au](mailto:victoria.kuek@lawsociety.com.au).

Yours sincerely,



Justin Dowd  
**President**