Indigenous guardians ad litem are needed in child protection court cases

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Introduction

Australia has inherited the legal and social concepts of guardianship under English common law, which informs the statutory model of guardianship.\(^3\) A guardian ad litem is ‘someone who is responsible for the conduct of legal proceedings for 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.’\(^4\) A guardian ad litem is appointed in special circumstances where age, disability or illness is a factor and a guardian ad litem is to instruct the lawyer (acting for the child or young person) in accordance with the child or young person’s ‘best interests’.\(^5\) In the Children’s Court of New South Wales (‘NSW’), a guardian ad litem may also be appointed to safeguard the interests of parents and to instruct the lawyer.\(^6\) In many cases a guardian ad litem is appointed by the court or tribunal in which proceedings are being conducted and the role of a guardian ad litem is to protect or promote the interests of the person for whom they have been appointed.\(^7\)

We argue in this paper that, in order to be responsive to the care & protection and cultural & identity needs of Aboriginal and Torres Strait Islander (‘ATSIC’) children,

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\(^6\) Ibid.

it is vital that Indigenous guardians ad litem are appointed in all child care and protection court proceedings concerning young children, up to and including 11 years of age. Once a child attains the age of 12 years, in NSW, they are presumed to be capable of giving proper instructions to their legal representative.\(^8\)

The objects of the NSW *Children and Young Persons (Care and Protection) Act 1998* (‘Care Act’) are to provide for the ‘care and protection of’, \(^9\) and to ‘promote a safe and nurturing environment for’, \(^10\) children and young persons. Section 11 of the Care Act provides that it is a principle of administration under the Care Act that ATSIC people are to participate in the care and protection of their children and young persons with as much self-determination as possible. It is therefore of major concern that the NSW State Government has not actively recruited, trained, and mentored Indigenous people to serve on the state funded guardian ad litem panel that services the Children’s Court, and also other courts and tribunals in NSW.\(^11\) While an independent legal representative acts in the ‘best interests’ of the subject child (0-11 years), \(^12\) and a direct legal representative acts on the instructions of the child or young person (12-17 years), before the Children’s Court, \(^13\) a guardian ad litem acts in the place of the child\(^14\) (or adult)\(^15\), and the legal representative for the child is required to act in accordance with the instructions of the appointed guardian ad litem.

**From a practice perspective in the Children’s Court**

In 2009 Bao-Er wrote an article published in the NSW Law Society Journal titled: ‘*Indigenous Guardians ad Litem are required in the Children’s Court*’. \(^16\) The article highlighted the fact that Indigenous people did not fulfill direct decision-making roles in the Children’s Court of NSW, in particular the role of guardian ad litem. Bao-Er, as the independent legal representative\(^17\) for three Aboriginal children (all under 5 years of age), had applied to the Children’s Court for the appointment of an Indigenous guardian ad litem on behalf of the Indigenous children; \(^18\) the application for the appointment of an Indigenous guardian ad litem was made solely on the basis that the children were identified as ‘Aboriginal’.

In 2010, the then President of the Children’s Court, Judge Mark Marien published his decision\(^19\) rejecting the application made by Bao-Er for the appointment of an

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\(^8\) This presumption is rebuttable. Section 99B *Children and Young Persons (Care and Protection) Act 1998* NSW.

\(^9\) Section 8(a) *Children and Young Persons (Care and Protection) Act 1998* NSW.

\(^10\) Section 8(c) *Children and Young Persons (Care and Protection) Act 1998* NSW.

\(^11\) GAL Panel members may also be appointed to other Courts and Tribunals in New South Wales. GALs have been appointed in proceedings in the Supreme Court, District Court and the Administrative Decisions Tribunal. Lawlink Attorney General & Justice Guardians ad litem http://www.gal.nsw.gov.au/gal/gal_what_is_gal.html,c=y (accessed 15.11.12)

\(^12\) Section 99A(2) & 99D(b) *Children and Young Persons (Care and Protection) Act 1998* (NSW)

\(^13\) Section 99A(1) & 99D(a) *Children and Young Persons (Care and Protection) Act 1998* (NSW)

\(^14\) Section 100 *Children and Young Persons (Care and Protection) Act 1998* (NSW)

\(^15\) Section 101 *Children and Young Persons (Care and Protection) Act 1998* (NSW)

\(^16\) Dr Bao-Er, ‘Indigenous guardians ad litem are needed in the Children’s Court’ Law Society Journal (NSW) December 2009 pp.64-65

\(^17\) Section 99 *Children and Young Persons (Care and Protection) Act 1998* (NSW)

\(^18\) Section100 Section 99 *Children and Young Persons (Care and Protection) Act 1998* (NSW)

\(^19\) Department of Human Services and “Kieran”, “Siobhan” and “Robert Isaac” Children’s Court of New South Wales – Children’s Law News May 2010 pp 1-9
Indigenous guardian ad litem. Essentially, Marien J. held that ‘being Aboriginal’ did not in itself constitute ‘special circumstances’ under the Care Act, which is a precondition that must first be met before the Children’s Court can appoint a guardian ad litem. Marien J. was of the view that the experience and expertise of lawyers who acted as independent legal representatives was of a sufficiently high standard to ensure that the best interests of Aboriginal children would be upheld; that it was open to the court appointed independent legal representative, whenever he or she deemed it necessary, to place expert opinion before the court to address relevant cultural issues.

While Marien J. acknowledged the very long history of ‘extreme disadvantage and deprivation suffered by Aboriginal people’, he rejected the argument that being both (1) ‘Indigenous’ and (2) ‘a child brought before the Children’s Court on the basis of being in need of care and protection’, could alone constitute ‘special circumstances’ under the Care Act and, therefore, warrant the appointment of an Indigenous guardian ad litem by the Children’s Court.

The decision of Marien J., serves to highlight a range of issues in relation to the care and protection of Indigenous children, foremost among these issues is the failure of current legislation to clearly acknowledge and account for the especially vulnerable nature of Indigenous children brought before a Children’s Court on the basis that they are in need of care and protection. Simply being called ‘Indigenous’ sets the child apart, not only in terms of perceived socio-economic status but also in terms of the administrative and legislative processes of government. Almost every questionnaire and government document requires an answer to the question: whether or not the applicant or subject person is Aboriginal or Torres Strait Islander? Yet, when a care application involving the protection of an Indigenous child is lodged with the Children’s Court the subject Indigenous child is to be dealt with no differently than a non-Indigenous child within the Australian community. This is despite the fact that their identity as an Indigenous child features prominently in the care application. We maintain that such an apparently ‘non-discriminatory’ approach serves only to further entrench and perpetuate discrimination.

The concept and inclusion of Indigenous identity

The United Nations Declaration on the Rights of Indigenous Peoples21 (‘UNDRIP’) recognizes:

'[I]n particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child’ and ‘that the situation of

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20 The authors are mindful of the need not to breach the confidentiality provisions of the Children and Young Persons (Care and Protection) Act 1998 (NSW). Under section 105(4), a reference to the name of a child or young person includes a reference to any information, picture or other material: (a) that identifies the child or young person, or (b) that is likely to lead to the identification of the child or young person. (5) The offence created by this section is an offence of strict liability’. On the basis that reference is not being made to material that could identify the children, family, or lawyers involved in the case the authors will focus only on the primary reasons given by Marien J, as the decision is very relevant to the issues the authors seek to address in this paper.

21 Adopted by the United Nations General Assembly on 13 September 2007; Australia endorsed the Declaration in 2009. The Declaration is not a binding instrument under international law. However, it informs policy and legislative decision-making.
indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration’ [Preamble].

Article 18 of UNDRIP provides that:

*Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*

Although a guardian ad litem scheme has now operated in NSW since 2002, not one member of any Indigenous community in NSW (as at 30 July 2012) has been appointed to the NSW Government funded guardian ad litem panel. The fact that this scheme has functioned for an entire decade without the involvement of a single Indigenous person flies in the face of the ATSIC principles of self-determination and participation embedded in the Care Act.

The Aboriginal Policy Statement of the Office of the NSW Children’s Guardian declares:

*It is not acceptable from the perspective of Aboriginal people, that the majority of decisions made in relation to their children and young persons are made by non-Aboriginal people. The legislation states that Aboriginal people, including communities and community groups, are to be given the opportunity to participate in decisions that concern the placement of their children and young persons.*

22 Article 8.2 of UNDRIP expresses that, 'States shall provide effective mechanisms for prevention of, and redress for: a. [any] action which has the aim or effect of depriving them [Indigenous peoples] of their integrity as a distinct peoples, or of their cultural values or ethnic identities.' Further, Article 13.2 of UNDRIP provides that, 'States shall take effective measures… to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

23 Article 18 of UNDRIP expresses that ‘Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.’


26 Section 100 of the Children and Young Persons (Care and Protection) Act 1998 (‘Care Act’) was enacted in February 2002

27 Confirmatory email (re: telephone conversation) dated 30 July 2012 from Dr Bao-Er to Mr Bernhard Ripperger, Officer in Charge, Guardian ad Litem Programme, Legal Services Branch, NSW Department of Attorney General & Justice and email response dated 31 July 2012 by Mr Ripperger.


29 The Office of the NSW Children’s Guardian has no involvement at all in the Guardian ad litem Scheme which falls under the auspices of the NSW Attorney-General and Justice Department.

30 The Children’s Guardian of NSW – Aboriginal Policy Statement – pp. 1-7 p.4

Australia is geographically vast, has a large diverse range of Indigenous groups and is possessed of numerous legal jurisdictions. Historically, government oversight of, and intervention into, Indigenous communities has had devastating consequences. The 1997 Human Rights and Equal Opportunity Commission Report: ‘Bringing Them Home: National Inquiry Into the Separation of Aboriginal and Torres Strait Islander Children From Their Families’ highlighted the dangers inherent in government policies targeted at Indigenous communities that effectively exclude Indigenous peoples from exercising direct involvement in the decision-making processes that affect their communities.

Indigenous people constitute only 2.3 per cent (2006 Census) of the Australian population, yet the number of Indigenous children and young people that are taken before courts and placed in Out of Home Care (‘OOHC’) on the basis that they are deemed to be in need of care and protection is exceptionally high. The Council of Australian Governments (‘COAG’) found that from 1999/2000 to 2007/08, the rate of substantiated notifications for child abuse or neglect across Australia for Indigenous children had increased from 16 to 35 per 1000 children, whereas, in stark contrast, the rate for non-Indigenous children during the same period had only increased from 5 to 6 per 1000 children. Indigenous children were more than six times as likely as non-Indigenous children to be the subject of a substantiation of abuse or neglect in 2007/08. The substantiation rate for Indigenous children had increased from 14.8 to 37.1 per 1000 children between 1999-2000 and 2009-10, while the rate for non-Indigenous children had only increased from 4.2 to 5.0 per 1000 children. In 2010, 48.3 per 1000 Indigenous children aged 0–17 years were the subject of care and protection orders throughout Australia, compared to 5.4 per 1000 non-Indigenous children.

In the 2008, the NSW Government announced that it ‘will work with Aboriginal communities and organisations to support communities to address the unacceptable overrepresentation of Aboriginal children and young people in the child protection system’, following recommendations of the Report of the Special Commission of Inquiry into Child Protection Services in New South Wales that identified the over-

31 Federal and State (New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, Northern Territory, Australian Capital Territory).
33 2011 Census figures yet to be released.
35 While the Australian Capital Territory aims “to work to improve interactions between care and protection and the legal system, including the court.”
representation of Indigenous children in the state’s child protection system. The Annual Statistical Report of the NSW Department of Family and Community Services (‘FACS’) 2010/11 states:  

Of the 61,132 children and young people involved in ROSH [Risk of Significant Harm] reports in 2010/11, 19.3 per cent were recorded as being Aboriginal and/or Torres Strait Islander. The rate of Aboriginal and/or Torres Strait Islander children and young people reported at ROSH per 1,000 population is substantially higher than the rate of non-Aboriginal children and young people with 187.4 per 1,000 Aboriginal and/or Torres Strait Islander children and young people reported in 2010/11 compared with 32.8 per 1,000 of non-Aboriginal children and young people.  

At a political and strategic level, Babington advises that:  

[T]he National Framework [for Protecting Children] is significant in three respects: it was the first time that a Commonwealth Government had explicitly stated its intention to play a major leadership role on national child protection matters; secondly, state and territory governments agreed to work in concert with the Commonwealth and NGO [Non-Government Organisations] sector to develop a better planned and coordinated system; and thirdly, the NGO sector was acknowledged as a major partner by governments in the development of policy and the oversight of National Framework implementation (COAG [Council of Australian Governments], 2009b).  

The National Framework contains six supporting outcomes, one of which is that:  
Indigenous children are supported and safe in their families and communities.  

Included as one of the main actions to occur during the first three-year action plan is:  

Building capacity and expertise (supporting outcomes 3 and 5). This priority has two elements: support the education, professional development and retention of the children protection and welfare workforce, including a focus on enabling the Indigenous workforce to be more actively involved in tertiary child protection; and have the Commonwealth take a broader human services definition of ‘workforce’ to look at ways in which professionals in a range of fields can contribute to the protection of children, including with cultural sensitivity (our emphasis).  

In view of the fact that Indigenous children comprise a considerable proportion of the children who are the subject of care and protection applications before NSW
Children’s Courts, it is incumbent on administrators and courts alike to ensure that the self-determination provisions of the Care Act are not only acknowledged but also put into practice.

**Indigenous decision-making**

Although there is a significant number of Indigenous staff employed by the NSW Department of Family and Community Services (‘FACS’), there are relatively few Indigenous lawyers representing Indigenous parents, let alone Indigenous children, in the Children’s Court. While the Aboriginal Legal Service (‘ALS’) does represent Aboriginal parents, the majority of ALS lawyers involved in care and protection services are non-Indigenous lawyers.

The role of a lawyer representing adults, and also lawyers representing children 12–17 years, is to act on the *direct instructions* of their client. The role of the independent legal representative, who represents children 0–11 years, is to *act in the best interests of the child*, which can sometimes mean acting contrary to the explicit wishes of the child (while still putting the wishes of the child before the court). Because of the extraordinary number of Indigenous children (0-11 yrs) being brought before the court by the government (FACS), on the basis that they are deemed to be in need of care and protection, it is vital that the processes and procedures before the court are as clear, open and transparent as possible. It is crucial that Indigenous communities are also given the opportunity to directly participate in decision-making concerning the care and protection of children from their own communities, while also ensuring that the voices of Indigenous children are heard.

The institutionalised paternalism of the past saw Indigenous children removed from their parents because it was deemed to be in the ‘best interests’ of the children concerned, as understood by the social values and mores of the period. Today Indigenous children continue to be removed from the care of their parents because it is deemed to be in their ‘best interests’, in order to ensure their ‘safety, welfare and wellbeing’. Indigenous communities were not involved in this process of child removal in the past and, effectively, they do not have direct decision-making involvement in the court processes today. While there has been an extended trial of a form of alternative dispute resolution (‘ADR’) called a ‘Care Circle’, involving local Aboriginal communities on the South Coast of NSW (serviced by the Nowra

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42 Family & Community Services, Community Services Aboriginal Employment Development Policy July 2011  
43 This is based on anecdotal evidence, as the available ALS figures are unclear: ‘We have 23 offices and 187 Aboriginal and non-Aboriginal staff across ACT and NSW..’ NSW Aboriginal Legal Service  
http://www.alsnswact.org.au (accessed 17.11.12)  
44 Section 99 Children and Young Persons (Care and Protection) Act 1998  
45 Article 12 United Nations Convention on the Rights of the Child - 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
Children’s Court), and Aboriginal mediators are now being employed in limited instances of ADR, the direct institutionalised involvement of Indigenous communities in actually making decisions regarding the care and protection of their own children has not been realized.

Indigenous children have in the past become lost within child protection and out-of-home care systems, and Indigenous children, as a distinct cohort of children, are subject to a range of risk factors directly associated with the fact that they are Indigenous children. As the statistics set out above clearly identify, Indigenous children are exposed to extraordinarily high levels of risk, as opposed to non-Indigenous children, within our community. There exists a sufficiently high degree of difference between these two cohorts of children to justify the introduction of measures aimed at specifically addressing such glaring disparities. The difference between 33 per 1000 Risk of Significant Harm Reports for non-Indigenous children as opposed to 188 per 1000 Risk of Significant Harm Reports for Indigenous children, is of such a magnitude that a range of proactive measures needs to be urgently introduced on a trial basis and, if proved effective, adopted in order to rapidly reduce the huge gap between the care and protection of Australia’s Indigenous and non-Indigenous children.

Within the child care and protection court jurisdiction, with the odd exception, there are no Indigenous judges and magistrates, relatively few Indigenous lawyers, and no Indigenous guardians ad litem. Yet a sizeable proportion (arguably a quarter to a third) of all children being brought before the Children’s Court as children in need of care and protection are identified as Indigenous. Of great significance is the fact that the lawyers being appointed as independent legal representatives by the Children’s Court are almost invariably non-Indigenous. No matter how much experience and expertise a non-Indigenous independent legal representative may possess there is and will always be the public perception of a non-Indigenous legal representative acting paternalistically in the ‘best interests’ of an Indigenous child. This perception is powerful, and serves to reinforce the relative powerlessness of Indigenous people. If progress is ever to be made in significantly reducing the rates of Indigenous child abuse, a fundamental change in thinking and ‘power & authority’ needs to take place.

Indigenous history, culture, and identity have the potential to play a very positive role in creating a socio-cultural environment in which Indigenous children can be protected from harm. Involving Indigenous people with the relevant experience and expertise at the very commencement of care proceedings, where an Indigenous person is able to exercise a genuine decision-making role in the court, would be one significant concrete step towards achieving true participation and self-determination for Indigenous peoples.

48 It is fully acknowledged however that there has been a significant improvement in the number of Indigenous children being placed in kinship care:
The failure, for whatever reason, to appoint Indigenous members to the NSW Guardian ad litem panel serves to confirm and further promote the continued disadvantage of Indigenous children and young persons, by depriving courts of the opportunity to appoint and receive the benefit of being assisted by publicly trained and funded Indigenous guardians ad litem. As a consequence, the current child protection court system lacks the capacity to implement decision-making that is culturally appropriate and informed from an Indigenous community perspective. Indigenous communities are effectively alienated from participating directly in the determination of what is and is not in the ‘best interests’ of Indigenous children and informing and participating in the actual decision-making of the court with respect to all matters concerning their children.  

**Appointing Indigenous guardians ad litem**

While it is highly unlikely that adequate numbers of potential Indigenous lawyers will be located, trained, and recruited in the short term, there is every prospect that, if a concerted recruitment campaign is undertaken, sufficiently skilled and experienced Indigenous guardians ad litem can and will be found in most Indigenous communities to provide a critical pool of Indigenous guardians ad litem that can then be appointed on behalf of Indigenous children who are the subject of care and protection applications before the Children’s Court. The current criteria for appointment as a guardian ad litem does not in itself constitute an onerous barrier to recruitment, and many Indigenous people, with strong encouragement and active mentoring, would certainly prove eligible for appointment should they apply.  

- **Qualifications in social, health or behavioural sciences or related disciplines, or equivalent experience** (our emphasis).  
- **Mediation, advocacy and decision making skills.**  
- **Ability to communicate effectively with various professionals and family members.**

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At 30 June 2011, most children and young people in OOHC were placed in relative and Aboriginal kinship care (51.7 per cent) or in foster care (38.2 per cent). Between 30 June 2009 and 30 June 2011, the number of children and young people placed into relative and Aboriginal kinship care increased by 9.7 per cent. The number of children and young people placed in foster care showed an increase of 11.4 per cent over the same period. At 30 June 2011, 81.3 per cent of Aboriginal and/or Torres Strait Islander children and young people were in the care of a relative or Aboriginal carer. More than two-thirds of Aboriginal and/or Torres Strait Islander children and young people in OOHC were placed with Aboriginal carers. The majority of these were in relative and kinship care or foster care (47.6 and 16.2 per cent respectively). An additional 14.3 per cent were placed with non-Aboriginal parents or a non-Aboriginal carer in relative and Aboriginal kinship care.’ NSW Department of Community Services ‘Working with Aboriginal People and Communities: A Practice Resource’ February 2009.

NSW Department of Family and Community Services Community Services, Annual Statistical Report 2010/11, January 2012, Information Management Branch, Planning and Corporate Performance Directorate. p.5  

NSW Guardian ad litem Panel, Attorney General and Justice NSW Government, ‘Expressions of Interest for Guardian ad Litem Panel Members’  

National Indigenous Legal Advocacy Courses – Aboriginal & Torres Strait Islander Social Justice - Australian Human Rights Commission  

Guardians ad litem NSW Website – Lawlink Attorney General & Justice:  
• Basic knowledge of legal proceedings and the legal process.
• Basic knowledge of the Children and Young Persons (Care and Protection Act) 1998.
• Knowledge of issues affecting children and young people, people with illness, disability or disorder which may affect their decision-making capacity.

Once Indigenous guardians ad litem are appointed, lawyers representing an Indigenous child would be required to act on the instructions of the court appointed Indigenous guardian ad litem. The wishes of the child, would still be placed before the court, but the important difference is that an Indigenous guardian ad litem, familiar with the Indigenous community in which the Indigenous child lives, would be directly instructing the child’s lawyer in care proceedings before the Children’s Court of NSW.

Would this add an unbearable cost to care proceedings? Initially there would be added expenditure, such as the need to amend current legislation and boost training. However, over time, as the Indigenous Guardian ad litem Program evolved, there would be higher levels of participation and self-determination by Indigenous communities, the development of a pool of experience and expertise in Indigenous matters and this in itself, we believe, would serve, in time, through grass roots empowerment, to reduce the number of cases of Indigenous children being reported to the government as at risk of serious harm and taken before the Children’s Court.

How would this reduction occur? Currently Indigenous communities are subject to external authority, with experts, including magistrates and lawyers, in many instances ‘flying in’ and ‘flying out’ of Indigenous communities. By training up members of local Indigenous communities, the authority and responsibility for Indigenous children would over time gravitate back to local communities. This is because effective solutions to address the very high levels of risk of significant harm to Indigenous children will only ever come from within those Indigenous communities. Not until members of these communities are given the authority to make real decisions on behalf of their own children will fundamental changes be made and, most importantly, sustained.

The appointment of an Indigenous guardian ad litem for each Indigenous child taken before the Children’s Court of NSW would demonstrate the commitment of the NSW government and community to making a paradigm shift in the way the State of NSW undertakes the care and protection of Indigenous children within Indigenous communities. Motherhood policy statements and orchestrated activities concerning participation are no substitute for Indigenous communities exercising real decision-making authority on behalf of their own children. Until a fundamental shift in decision-making is undertaken Indigenous child protection policy will continue to remain in a most unsatisfactory state.

**International recognition**

The benefits of a guardian ad litem scheme is internationally recognized. The *Children Act 1989*\(^{52}\) in the United Kingdom provides for a ‘guardian ad litem’ to be

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\(^{52}\) Section 41 Children Act 1989 (UK)
appointed in each and every case involving the care and protection of a child, regardless of the child’s status. In the semi-autonomous homeland of the Navajo in western USA,\footnote{Navajo Children's Code Rules of Procedure - RULE 5 Guardian Ad Litem.} the Navajo Common Law provides for the appointment of a guardian ad litem to investigate a child's case and report to the court as the child's non-legal spokesperson. The Tribal Court of the Tohono O'odham Nation is continually updating best practice for Indigenous guardians ad litem,\footnote{Indigenous Peoples Law & Policy Program The University of Arizona \url{http://www.law.arizona.edu/depts/iplp/courses/courseDetail.cfm?id=3114} (accessed 15.11.12)} as are other first-nation peoples in the USA.

The August 2012 submission of Australia’s Child Rights Non-Government Organisations to the United Nations Committee regarding the Implementation of the International Covenant on Civil and Political Rights maintains that:

\begin{quote}
Throughout this submission it can be seen that Indigenous children in Australia experience significant disadvantage when compared to their non-Indigenous counterparts, including experiencing lower levels of overall health and wellbeing than non-Indigenous children and a considerable gap in development outcomes, education and employment levels [FN 94 Productivity Commission, Australian Government, Overcoming Indigenous Disadvantage Key Indicators 2009 (12 May 2010).] Without a foundation of mutual respect and shared understandings, it is unlikely that the Government’s policy response to Indigenous issues will ensure the entrenched cycle of disadvantage is finally broken and guarantee that all Australians have an equality of rights and opportunities.\footnote{Australia’s Child Rights NGO Submission to the United Nations Human Rights Committee for the List of Issues Prior to Report on Australia’s Implementation of the International Covenant on Civil and Political Rights 3 August 2012 p.11 \url{http://www2.ohchr.org/english/bodies/hrc/docs/ngos/NCYLC_Australia106.pdf} (accessed 18.11.12)}
\end{quote}

Indigenous children undoubtedly have very special needs. These special needs cannot be adequately addressed without specific reference to their Indigenous cultural environment, a concept of special care well enshrined in the United Nations Convention on the Rights of the Child.\footnote{Article 5 United Nations Convention on the Rights of the Child ‘States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.’} The appointment of an Indigenous guardian ad litem ensures that ‘services’ and ‘consistency for the child’ are preserved, particularly when there are changes in non-Indigenous child protection caseworkers, legal representatives and presiding judicial officers during care proceedings. The
appointment of culturally appropriate professional advocates who report to the court, not only on the wishes of the child and their best interests, but also on the unique fabric of the Indigenous child's relationships and extended family identity, will constitute a fundamental structural change. We believe that only by embracing such changes, where non-Indigenous decision-makers demonstrate a willingness to relinquish some control of the child protection court process, will we begin to see a noticeable decline in the levels of alienation and dysfunction that continue to plague many Indigenous communities in this second decade of the twenty-first century.

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