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## **Disability Advocacy Practice Manual**

(Disability Advocacy NSW is a registered business name of Advocacy Law Alliance Inc.)

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## Definition of Key Terms

**DANSW:** Disability Advocacy NSW or “DA”

**ALA:** Advocacy Law Alliance Inc. the association and legal entity which governs Disability Advocacy NSW and the Mid North Coast Community Legal Centre.

**MNCCLC:** Mid North Coast Community Legal Centre

**Client:** A person or group of people with a disability or carer or family who is being advised and/or assisted by DANSW’s advocates (i.e. service user, consumer etc.).

**Advocate:** A member of DANSW’s team who is representing and/or advising a Client.

**EMRSO:** External Merits Review Support Officer

**Coordinator / Manager:** Senior advocacy staff who supervise advocates e.g. Regional Coordinators / Regional Managers

**AC:** Advocacy Coordinator

**CEO:** Chief Executive Officer

**EO: Executive Officer:** Executive Officer – Social Advocacy

**EO: Executive Officer:** Executive Officer – Legal Advocacy

**AFO:** Administration & Finance Officer

**Board:** The term “board”, meaning board of management is used to replace the term “management committee”

**Disability:** A broad definition of ‘disability’ is utilised by DANSW, as suggested by the Disability Discrimination Act 1992, namely; “(a ) total or partial loss of a person’s bodily or mental functions; or ( b ) total or partial loss of a part of the body; or ( c ) the presence in the body of organisms causing disease or illness; or ( d ) the presence in the body of organisms capable of causing disease or illness; or ( e ) the malfunction, malformation or disfigurement of a part of the person’s body; or ( f ) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or ( g ) a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; and includes a disability that: ( h ) presently exists; or ( i ) previously existed but no longer exists; or ( j ) may exist in the future; or ( k ) is imputed to a person.”

## 1. Philosophy, Aims, Strategies & Key Concepts

### 1.1. Philosophy

DANSW believes that people with disabilities have the same rights (and responsibilities) as people without disabilities.

### 1.2. Aims

DANSW aims to ensure that people with a disability realise these rights in practice by advocating with and for them.

### 1.3. Strategies

DANSW will use a combination of the strategies below to meet its aims.

#### 1.3.1. Individual Advocacy

Assisting individuals to deal with disadvantage, discrimination and other barriers which they face because of their disability.

#### 1.3.2. Advocacy Information and Advice

Provision of information and advice to ensure that people with a disability and those who support them have the best access to relevant information and advice on advocacy matters.

#### 1.3.3. Systemic Advocacy

Assisting individuals or groups to deal with recurrent or systemic problems which relate to disability. This strategy may involve assisting people to undertake community action such as lobbying decision makers, or using community development strategies to reduce disadvantage

#### 1.3.4. Education

Educate the community and people with a disability in order to reduce disadvantage and discrimination faced by people with a disability. This strategy will promote the abilities of people with a disability and inform them of their rights and ways to obtain them.

#### 1.3.5. External Merits Review

With the introduction of the National Disability Insurance Scheme (NDIS) which is a reform that focuses on the support needs and choices of people with a disability through partnerships between state and Federal Governments. Certain decisions made by the National Disability Insurance Agency (NDIA) as a result of a participant's application may be reviewed. If a person has exhausted all internal review processes with NDIA but is still dissatisfied, they have the option to apply for an External Merits Review (EMR) in the Administrative Appeals Tribunal (AAT). The applicant will be notified of the availability of an EMR Support Person (EMRSP) to help them through the process. The EMRSP are available to assist by;

- Helping applicants navigate the EMR process
- Helping applicants self advocate
- Provide individual advocacy for applicants
- Supporting applicants at hearings and case conference
- Helping applicants access legal services

#### 1.4. Key Concepts

The following section contains discussion of key principles and ideas which underpin policies in this document.

##### 1.4.1. Self determination

One of the key concepts related to advocacy by DANSW is client self determination. This is where advocates act to achieve outcomes requested by clients based on the client's informed consent. However, the outcome the client desires must also be balanced by two key concepts: capacity and duty of care.

##### 1.4.2. Capacity

DANSW must seek to act on the instructions of the client but this is balanced with the client's capacity to give the advocate instructions. Capacity in this context means that a client has the ability to understand the information that is relevant to the decision; is able to balance the various risks and benefits associated with the available alternatives and on this basis make a decision.<sup>i</sup> In addition, capable decisions are not based on delusional constructs.<sup>ii</sup> For clients of DANSW there will be a presumption of capacity. Also capacity will be considered as decision specific (i.e. capacity is considered in relation to a *specific decision*, at a specific time and under specific circumstances).

##### 1.4.3. Duty of Care

DANSW must also balance against the client's instructions its duty to take reasonable care to avoid causing harm by its actions<sup>iii</sup>.

To ensure that reasonable advocacy actions on behalf of a client are not excessively subdued by duty of care requirements the Advocate will:

- Assess the likelihood and extent of the foreseeable harm
- Assess the likelihood and extent of the foreseeable benefit
- Look for ways to minimise the risk of harm without sacrificing the benefits of the advocacy intervention
- Balance the foreseeable harm against the benefit.<sup>iv</sup>

##### 1.4.4. Advocacy & Case Management

DANSW's main role is to provide advocacy. However there is often confusion and overlap between what is commonly known as case management and advocacy. This section should be read in conjunction with other relevant policy in this document such as entry and exit policy.

A common definition of an advocate is an individual who speaks on behalf of another. Implicit in the concept is the notion that the person represented lacks the knowledge, skill, ability, or standing to speak for themselves.

A common definition of a case manager is an individual who facilitates the access of a client to appropriate support programs, and coordination of the delivery of services. This role may involve liaison with various professionals and agencies and advocacy on behalf of the client.

The key differences between advocacy and case management relates to the concepts of independence and service provision. A case manager is often part of an organisation which provides services whereas an advocate strives to be as

independent as possible from disability service providers (see following Conflict of Interest Policy). An advocate will become involved where there has been a violation of a clients rights or unfair treatment whereas the basic task of a case manager will be to facilitate and coordinate service delivery.

While an advocate may become involved in facilitating service delivery (for instance if access to a service has been unfairly denied) this will be part of a specific advocacy plan related to an outcome requested by the client.

Where DANSW believes that client needs case work type assistance it will seek to refer the client to the appropriate case work service. Nevertheless, DANSW sometimes has to make difficult decisions in situations where there are no case management services available or where poor access to case work services may be the advocacy issue itself.

### **1.4.5. Individual & Systemic Advocacy**

DANSW will seek to use both forms of advocacy to get the best outcomes for clients. Systemic advocacy actions will be based on evidence from actual client issues and evidence from research. In systemic advocacy actions DANSW will take reasonable steps to get informed consent from clients. DANSW will also seek to take up systemic advocacy issues in alliance with people with disability and carers. In circumstances when consent is not possible (e.g. lack of capacity) DANSW will take reasonable steps to safeguard the interests and rights of clients where there is well founded evidence of a systemic problem.

### **1.4.6. Legal Advice**

Disability Advocates do not provide legal advice as part of their role. Clients are notified of this in a number of ways:

- at intake when a potential client contacts DANSW;
- verbally by advocates in initial discussions with clients;
- in the Client Handbook which all clients receive before using DANSW for each advocacy issue;
- on the Disability Advocacy NSW website [www.da.org.au](http://www.da.org.au) ;
- in initial correspondence when clients are offered service;
- in the process of creating a disability advocacy agreement with a client;
- in regular correspondence with the client.

If legal advice is needed as part of assisting a client this will be done through assisting the client to obtain advice from a qualified legal practitioner.

If an advocate is not sure if the information or assistance they may provide to a client could be construed as legal advice they will contact their supervisor.

## **2. Service Access**

### **Policy Statement**

DANSW will ensure that each person or group has access to the Service on the basis of relative need and available resources. DANSW adopts, applies and promotes non-discriminatory entry rules in respect of age, gender, race, culture, religion or disability, living arrangements, consistent with the contractual obligations and purpose of the agency.

### **Accessible Information – Service Access**

DANSW will provide information about DANSW and its policies in a range of formats which are appropriate for clients. Policy and procedure summary is provided to all clients in the form of a Client Handbook. When the Advocate first meets the client the Advocate will provide an oral summary of key policies contained in the Client Handbook at a level compatible with the client's level of understanding.

### **Procedure**

The Service will:

- identify and address barriers to access for people in the target group/s.
- use service planning to maximise accessibility for people in the target group/s, ensuring that all services, activities, facilities and premises are designed to maximise physical and cultural accessibility for service users
- use proactive information strategies for potential service user groups to increase knowledge of and understanding about the organisation and the services offered
- regularly review how accessible services are and use this information to improve access wherever possible.

### **Identifying barriers to access**

The Service provides services to meet the following:

All disadvantaged groups with a special focus on people with a disability and indigenous people

In order to identify barriers to access, the organisation will:

- compare the profile of service users with local population data and past service records on an annual basis to identify groups who are underrepresented
- review relevant literature and practice experience
- consult with service users and/or their advocates, other agencies and staff
- seek advice from relevant community groups or members

Regional Coordinators will be responsible for coordinating this process and reviewing the research outcomes as part of the annual planning process.

### ***Ensuring physical and cultural access***

The service will ensure the following:

- Its premises are accessible by public transport
- Its premises and facilities are physically accessible to people with limited mobility or disability.
- Its opening hours provide access to the full range of service users.
- Services are provided in as flexible manner as possible to meet the needs of individuals.
- It maintains effective messaging systems for service users to contact the organisation.
- Client areas are kept clean, comfortable and welcoming.
- The cultural and language needs of people within the target group/s are identified and accommodated.
- Interpreters or bilingual staff are available for any person requiring this assistance.

See strategic plan for detailed activities to continually improve access.

### ***Promotion of service***

Regional Coordinators will be responsible for developing and reviewing a service promotion and information strategy.

The Service will produce information about its services and activities in a range of formats suitable for the full range of people who may need to access them.

***Monitoring access strategies***

CEO and Executive Officers will be responsible for reviewing the effectiveness of physical and cultural access strategies as part of the annual planning process.

**2.1. Entry Criteria**

DANSW will advocate with and for people with a disability, and the carers\* or families\* of these people (\*see conflict of interest policy).

If a person is not eligible for advocacy, DANSW will endeavour to help with or suggest alternative assistance when appropriate.

If a person is not eligible they will be told why (without disclosing confidential information) and when appropriate provided with the Client Handbook which details DANSW's complaints and resolution process.

The Regional Coordinator will record on the IVO client database how and why the client has been deemed eligible or ineligible and note the reasoning for the client's priority rating.

**2.2. Detailed Entry Criteria**

A person will be eligible for advocacy assistance if:

**2.2.1. Disability**

The person has a disability or is a carer whose interests are compatible with those of the person with a disability (note: the client will be the person with a disability).

**2.2.2. Geographic Area**

The person lives within the geographic areas DANSW is funded to cover.

**2.2.3. Unfair Treatment**

The person with a disability has been treated unfairly. This occurs if the person is treated contrary to: law, human rights, policy, standards or well accepted conventions (such as procedural fairness).

**2.2.4. Conflict of Interest**

There is no conflict of interest in DANSW advocating for the person (see conflict of interest policy).

**2.2.5. Case Management**

The matter that a person needs assistance with is advocacy as opposed to case management (see definitions at the beginning of this policy document).

**2.2.6. More Appropriate Agency Available**



There is no other more appropriate agency that the person is able to seek assistance from either independently or with a specific referral from DANSW.

**2.2.7. Staff Safety**

The client does not display behaviour that endangers DANSW's staff (see also exit policy for further detail).

**2.2.8. Reasonable Prospect of Success**

There remains a reasonable prospect of success (i.e. all reasonable avenues of complaint and appeal in relation to the advocacy matter have not been exhausted and further effort is not futile or unwarranted on the evidence available (see also exit policy for detail)).

**2.2.9. Disputes and Apprehended Personal Violence Orders (APVO).**

An advocate can assist with disputes and APVO's only when mediation has been attempted and when it is a reasonable option to resolve the dispute (e.g. neighbour dispute) and that assistance from other appropriate agencies (e.g. court support scheme) has been sought.

*[A common advocacy issue for DANSW occurs when people with a disability seek an APVO against a neighbour, workmate or a former acquaintance following conflict. Many of these disputes also involve situations where people with a disability are in conflict with each other. Often assisting clients in this area is a significant drain on DANSW's resources with little positive outcomes for people with a disability involved. From experience, DANSW has observed that the most successful way to resolve such disputes is through mediation services such as the Community Justice Centre.*

*To limit the drain on resources and to encourage people to deal with such disputes themselves when they can, DANSW will only assist when the person has made an attempt to resolve the matter through mediation services which are freely available. This would exclude matters where there is evidence of serious violent threats or acts of violence -- where the police should be involved. DANSW may offer limited support to clients with a cognitive disability (e.g. intellectual disability) who may find it hard to participate in mediation and other communications necessary to resolve the dispute however court support schemes may also offer such support and the availability of such support will be explored before DANSW provides assistance.*

*Should a person continue to seek an APVO following failure of mediation, DANSW will refer the person to available court support schemes for people with cognitive disabilities or advise the person on obtaining private legal representation. In exceptional cases (e.g. where the person may be potentially the victim of vexatious APVO application or be opposed by a non –disabled person with superior resources) DANSW will work with court support schemes and legal services to ensure such a person receives fair treatment.]*

**2.3. Access Priorities**

DANSW will endeavour to assist all individuals and groups in the above categories who seek its assistance. However, the following factors will be taken into account if assistance needs to be prioritised or alternative assistance needs to be recommended to the potential clients.

**2.3.1.** The actual or potential seriousness of the problem the person or group is facing.

- 2.3.2. The lack of alternative assistance to resolve the problem
- 2.3.3. The seriousness of the person's disability in terms of the way it affects his or her ability to deal with the problem they are facing.
- 2.3.4. The probability of successful outcome for the person in relation to: (a) DANSW's resources and (b) other high priority advocacy matters. (See Service Procedure "Priority Rating – Advocacy Assistance").
- 2.3.5. DANSW will generally only deal with one advocacy issue per client at a time for reasons of fairness to all people eligible to use DANSW.

If a client has additional issues DANSW will attempt to work on what the client sees as the most important issue at the time.

Should other issue/s come up while an advocate is working with a client each issue will be reassessed through the eligibility and prioritisation guidelines as a new matter.

The Regional Coordinator has some discretion in allowing advocates to take on multiple issues so long as:

- I. advocacy does not become case management (see Key Concepts definition and discussion),
- II. taking on the issue does not disadvantage new clients' access to DANSW,
- III. there is not a more appropriate person to advocate for the client (e.g. a solicitor in a legal matter)
- IV. the client does not have the ability to self advocate.

If the Regional Coordinator has doubts or concerns about taking on multiple issues, they should discuss with supervisor.

- 2.3.6. The ability of DANSW to ethically deal with the matter in relation to DANSW's "Independence & Conflict of Interest" policy (see following policy).
- 2.3.7. If DANSW is unable to assist the person it will ensure that advice about alternative sources of help is given. DANSW will endeavour to provide assisted or "warm" referrals and where appropriate will follow up on this referral in a reasonable amount of time to ensure such referral is appropriate and has been actioned.

If the person must wait for a significant period of time before being given assistance DANSW will provide the estimated waiting time.

#### **2.4. Priority Rating – Advocacy Assistance**

In accordance with DANSW's policy the seriousness of a person's disability (especially when it affects a client's ability to advocate for themselves) and the lack of alternatives for advocacy assistance should be taken into account when assessing priority.

Notes will be made in the client's file (IVO Client Management System) summarising the reasoning for the priority rating given to a client. This will normally be done by the Regional Coordinator prior to allocation. The Regional Coordinator must allocate advocacy cases within 72 hours of completion of Intake. If through the intake process it is determined that the advocacy issue is a crisis situation, intake and allocation must be completed to allow for the Initial Contact by the Advocate to be completed within 24 – 48 hours of initial contact with DA.

#### 2.4.1. Rating Categories:

##### High

*Requires, Initial Contact Date within one week of allocation or less.*

Emergency situation – a client is extremely vulnerable because of presenting issue and there are no other reasonable alternatives for assistance.

*For example:*

- *A vital service (e.g. accommodation, income support) is at immediate risk.*
- *A client needs assistance with a serious criminal matter (e.g. sexual assault).*
- *A vital court hearing or meeting is to be held which will have a significant impact on a client's life.*
- *A client is in extreme distress and advocacy intervention has the potential to alleviate this distress.*
- *The unfair treatment of a client is extreme or likely to have a serious effect on many others.*

##### Medium

*Requires Initial Contact Date within two weeks of allocation or less. .*

Immediate response is not vital but the issue is still important and must be dealt with as soon as DANSW's resources allow.

*For example:*

- *A vital service is at risk in the near future.*
- *A vital court hearing or meeting is to be held in the near future.*
- *The unfair treatment of a client is relatively serious.*
- *Advocacy action within the medium priority time frame will provide a satisfactory outcome for the client.*
- *A dispute where a short cooling off period may potentially benefit the client before making decisions about outcomes required.*

##### Low

*Requires Initial Contact Date within two to four weeks of allocation or less.*

Response is not as urgent High or Medium priority because the presenting issue is one where the response time will not unduly affect the outcome.

*For example:*

- *Where a client may request an outcome to a less serious issue that has the potential to use significant DANSW's resources.*
- *A long running issue that has only recently been referred to DANSW (e.g. assisting a client to get legal help to write a will).*
- *Issues where the client cannot yet be clear about the outcomes they require (e.g. a client may raise an issue of unfair treatment but is yet unsure if they wish to follow through with any action).*

- *A dispute where a longer cooling off period may potentially benefit the client before making decisions about outcomes required (e.g. dispute with a neighbour where violence is not involved).*
- *A situation where a client, having the ability to do so, has taken no action to rectify the issue (e.g. a neighbour dispute where a previous agreement has not been adhered to by the client).*

**Hold\***

(No response time indicated).

In these cases the initial enquiry will be held in the intake folder on IVO and reviewed regularly as the presenting issue has not developed to a stage where advocacy action is clear; or where serious staff safety concerns about contact with the client are yet to be clarified.

*For example:*

- *Enquiry made by a person who may not have the clear permission of, or direction from the client.*
- *General enquiry by a client or concerned person where they are not sure if they want action taken.*
- *An anonymous complaint.*
- *A client may have a history of violence/aggression and will not agree to reasonable requests from staff to meet in an environment safe for staff.*

\* Advocacy matters that have already been allocated can also be put on hold by an Advocate where there is no immediate action required on the part of the advocate, or the advocate is waiting for the client or another party to obtain information/ documents that are needed for advocacy to proceed.

*For example:*

- A situation where an Advocate has helped the client submit an appeal or complaint to an organisation which has mentioned that a decision will be made within a specified period of time. The matter can be put on hold while waiting for the decision. Once the decision is delivered, if more advocacy is required e.g. for a further appeal, the matter will be reopened without going through the intake process
- Another situation an Advocate may put a matter on "Hold" is where a client needs to obtain medical documents before advocacy can be provided, e.g. a DSP or NDIS appeal. If the client is delayed getting their medical documents, the matter can be put on hold for maximum four weeks. The client should be informed that their matter has been put on hold until they obtain their documents; however if they do not contact the Advocate within the four weeks that the matter is on hold, a letter should be sent to them informing them that the matter will be closed. The client can re-contact DA at a later stage to request advocacy. Relevant time frames should be relayed to the client so they make an informed decision.

Matters should be left on hold for no more than four weeks before they are closed. An exception applies to matters awaiting a decision regarding a complaint or appeal.

If a client comes back with the same advocacy issue within 3 months their matter must be prioritised through the intake process and,

wherever possible, allocated to the same advocate who worked on that matter. This will ensure continuity for the client.

**2.5. Safety Risk Assessment**

As part of DANSW's safety risk management approach all new clients will receive a simple assessment based on the facts available to ascertain the safest location for the advocate to meet with the client (e.g. it may not be safe for the advocate to meet with the client in the client's home). This risk assessment will be documented on the client's file in IVO client management system. The assessment will be updated by the advocate in consultation with the Regional Coordinator when any new information comes to hand. (Refer to Disability Advocacy NSW – Specific Procedure “client risk assessment” below for more details).

**2.6. Targeting**

DANSW will ensure that Aboriginal people and people from a non-English speaking background have access to DANSW by actively seeking connections with these communities. DANSW will take appropriate measures to make sure these people feel comfortable about accessing and using the Service. DANSW will also ensure that appropriate translating or interpreting services are provided, if required, assisting the client during the assessment of eligibility and entry process.

**2.7. Following Eligibility Establishment**

Once entry eligibility has been established, our service will:

- send out a response letter within 72 of completion of intake which states the initial contact date and attach a copy of the Client Handbook
- describe to the person what our agency does and how advocacy will be undertaken (Client Handbook)
- describe to the person any relevant specific agency or program information, and provide written material (Client Handbook) relating to relevant specific advocacy activities or programs
- provide an oral summary of key policies contained in the Client Handbook at a level compatible with the client's level of understanding when the Advocate first meets with the client.

If resources are currently unavailable, our agency will:

- inform the person of the approximate waiting period (initial contact date)
- provide interim information and/or referral, as appropriate.

If the person is not eligible, our agency will:

- provide the person with the reason (without breaching privacy policy)
- document the reason
- provide information and/or referral as appropriate
- provide information about complaints and disputes (contained in Client Handbook).

**2.8. Procedure for NDIS calls from the Nepean / Blue Mountains Region**

**2.8.1. Inquiries<sup>1</sup>**

If a client or service provider from the Nepean / Blue Mountains Region calls with an inquiry regarding the NDIS (does not have to be EMR specific), volunteers / staff who answer the phone should transfer the call to the Intake Officer (IO). If the Intake officer is not available the call should be transferred to one of the EMR staff in the office. If none of the EMR staff are available the volunteer / staff members should take a message with the caller's details and send the information to the Intake Officer.

The IO / EMR staff will then provide the caller with relevant information regarding their query about the NDIS and / or refer them to a more appropriate service.

**2.8.2. Request for Advocacy Support<sup>2</sup>**

If a client or service provider from the Nepean / Blue Mountains Region calls and states they are seeking advocacy support regarding the NDIS, volunteers / staff who answer the phone should transfer the call to the IO. If the IO is unavailable the call should be transferred to one of the EMR staff in the office.

If the IO finds that the matter is an 'Advocacy' issue, a waiting list record should be created and the formal intake process completed. Once intake is complete, the matter should be transferred to one of the EMR staff in the office.

If the IO assesses the matter as a 'B' advocacy issue the IO should transfer the call to one of the EMR staff to follow up. If none of the EMR staff are available, the IO should inform the client that their details will be passed on to the relevant person who will return their call. The IO should then forward those details to one of the EMR staff.

**2.8.3. Request for External Merits Review Support<sup>3</sup>**

If a client or service provider from the Nepean / Blue Mountains Region calls and states they are seeking EMR support, the phone call should immediately be transferred to an EMR staff member. If none of the EMR staff members are available the call should be transferred to the IO. If the IO is unavailable, volunteer / staff members should take a message with the caller's details and send the information to an EMR staff member.

The EMR staff member will make contact with the client within three working days from the time of the clients call. A waiting list record should be created by the EMR staff member or IO as soon as possible and the intake process finalised

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<sup>1</sup> An inquiry is a request for information

<sup>2</sup> Advocacy support in this instance refers to supporting a client to have their voice heard. This could be done via information provision to empower the client to self advocate or via individual advocacy, i.e. assist the client on that specific issue to help them achieve the outcomes they are seeking

<sup>3</sup> External Merits Review Support is provided to clients who wish to appeal an NDIS internal review decision. i.e. a person unhappy with an NDIS decision may request an internal review of the decision and if they are still dissatisfied with the outcome of the internal review, they may request an external merits review in the Administrative Appeals Tribunal

by the IO. Once intake is complete the matter should be passed on to the RC for allocation to the EMR staff member who spoke to the client.

## **2.9. Exit Criteria**

DANSW or the client may stop the provision of advocacy support in the following circumstances.

Sometimes the client may not agree with the decisions and has a right of appeal through the DANSW complaints process. When making a decision about concluding advocacy with a client where the client may potentially disagree with the decision an advocate should consult with the Regional Coordinator who will ensure consistence of application of the exit policy by then consulting with the Advocacy Coordinator (or if not available the Executive Officer) .

### **2.9.1. Issue Resolution**

The issue that the client sought assistance with is resolved. (Note a new application for advocacy assistance may need to be made for new issues).

### **2.9.2. Client Decision**

The client decides not to continue or decides to pursue an alternative type of resolution.

### **2.9.3. Effective Assistance No Longer Possible**

DANSW believes it can no longer effectively assist the client. DANSW will assist the person to pursue alternatives if this is possible. Some examples are listed below to clarify this policy.

(Note: on exiting of an advocacy matter the client will receive a cover letter and a client exit survey)

#### **2.9.3.1. Negative Impact on Service:**

A client's requested action may negatively affect DANSW's advocacy for other clients.

*Example 1: A client wishes DANSW to assist them to go to the media or write a letter using DANSW's letterhead, when there is limited evidence to back up the client's case. This may damage DANSW's ability to take such actions for other clients if DANSW is seen to make unsubstantiated claims.*

*Example 2: A client wishes to pursue a matter, however based on the limited chances of a successful resolution continued advocacy assistance negatively impacts on other client matters with a high priority*

*Example 3: A client wishes DANSW to participate in making a false statement to a government department*

**2.9.3.2. Negative Impact on Client:**

After DANSW has made attempts to resolve the advocacy matter, a client wishes to persist with the advocacy matter that will clearly have a significant and foreseeable negative impact on their life.

*(Example1: Against independent advice a client may wish to pursue action that may cost them their savings or jeopardise access to subsidised accommodation).*

**2.9.3.3. Lack of Confidence:**

A client may express a lack of confidence in an advocate to pursue the outcome they wish.

*(Example: A client may express the view that DANSW does not have the skills or experience to pursue his/her advocacy matter.)*

Note if the client wishes to appeal the decision about lack of confidence in the advocate, advocacy should be suspended while the appeal is considered.

**2.9.3.4. Lack of Capacity:**

A client's mental state at the time may render them incapable of giving DANSW clear directions for advocacy actions<sup>v</sup>.

*(Example: A client experiencing an episode of mental illness who is requesting DANSW to take advocacy action that may have a significant negative impact upon the client and DANSW). DANSW may seek advice from an alternative decision maker in some circumstances.*

**2.9.3.5. More Appropriate Service Available:**

A client may be better assisted by another service.

*(Example: A client who needs to seek legal advice and representation to properly deal with an advocacy issue.)*

**2.9.3.6. Staff Safety**

The client displays behaviour that endangers Service's staff.<sup>vi</sup> If there is a dispute regarding the conditions of a client leaving DANSW, DANSW's complaints procedure may be followed (See complaints policy in following section). However in situations where there are threats that endanger staff safety, the client involved must seek the assistance of an independent external Service (e.g. NSW Ombudsman or CRRS) to challenge DANSW's decision to discontinue service.

**2.9.3.7. No reasonable prospect of success**

There is no reasonable prospect of success as all reasonable avenues of complaint and appeal in relation to the advocacy matter are exhausted and further effort is futile or unwarranted on the evidence available.

*(Example: A client wishes to continue appealing decisions which she believes are unfair when all reasonable avenues have been explored*



*and continued advocacy assistance may have a negative impact on the client or DANSW)*

## 2.10. Client Feedback

### **Policy Statement**

The Service actively seeks the input of clients and encourages them to provide feedback, both positive and negative, as a source of ideas for improving services and activities. The organisation will:

- foster a service culture that encourages open and honest communication
- inform clients about the standard of service they can expect
- protect the right of clients to provide feedback and to make complaints about service delivery
- encourage and make it easy for people to provide feedback
- provide anonymity to people providing feedback
- record and analyse information arising from feedback and use it to improve services.

### **Procedures**

[Procedure reviewed and updated by CEO 30 March 2014]

#### ***Encouraging client feedback***

All staff and volunteers will be responsible for ensuring that clients are informed of what they can expect from the service and how they may provide feedback. Information will be provided to clients through a Client Handbook and exit surveys sent to clients as well as client consultations and phone surveys.

All staff and volunteers working with clients are responsible for ensuring they are familiar with the procedures for clients to provide feedback, and for:

- accepting and reporting informal feedback
- offering clients an opportunity to provide formal feedback when appropriate.

#### ***Initiating and collecting client feedback***

Feedback may be provided by individual clients [and stakeholders] on their initiative or in response to requests from the organisation.

Individual clients may provide feedback by:

- exit surveys
- intake surveys
- annual face to face consultations with a sample of clients
- complaints
- unsolicited feedback
- website feedback form
- Telephone survey

For DANSW the Advocacy Coordinator will be responsible for receiving and making a record of feedback and reporting on de-identified feedback to the CEO and Board. The Advocacy Coordinator will be responsible for reviewing feedback records and identifying any action required.

#### ***Using feedback for service improvement***

The CEO/EO will work with the Advocacy Coordinator in maintaining and managing de-identified feedback statistics for service improvement.

The CEO will be responsible for preparing a report on de-identified feedback to the Board and to members in the Annual Report.

Results from client de-identified feedback will be reviewed by senior staff and Board and used to:

- Inform service planning by including a review of client feedback in all service planning, monitoring and evaluation activities
- inform decision making by including a report on client feedback as a standard item on staff and management meeting agendas

### **3. Individual Needs**

#### **Policy Statement**

DANSW will ensure that each person with disability receives advocacy that is designed to meet their individual needs and interests.

#### **Procedure**

- 3.1.1.** DANSW will ensure that the individual advocacy process meets the individual need of the client through negotiating an individual advocacy agreement with clients.
- 3.1.2.** DANSW's actions on behalf of the client in the advocacy process will be planned around the preferred outcome of the client.
- 3.1.3.** The advocacy process will be sensitive to each client's age, sex, cultural and religious background.
- 3.1.4.** Where feasible DANSW will provide estimates of the time frame for undertaking actions requested by the client. If this time frame alters significantly DANSW will inform the client.
- 3.1.5.** When appropriate, DANSW will follow up clients after advocacy assistance. During the follow up outcomes will be checked and clients/ will have the opportunity to review the role of DANSW (exit survey).
- 3.1.6.** See also *Decision Making and Choice Policy* for more information about client participation in individual advocacy process.

### **4. Decision Making and Choice**

#### **Policy Statement**

DANSW will ensure that each person with disability has the opportunity to participate as fully as possible in making decisions about the advocacy activities undertaken.

DANSW is also aware that the law indicates that decision making capacity of young people with a disability (i.e. under the age of 18) is not automatically referred to parents or guardian. Therefore, when feasible the Advocate will seek the views of the young person, who is a client. Advocates also understand that common law\* says that the older the young person is (e.g. 14-18) the greater the input they will generally have into decision making should they have the mental capacity to do so.

\*a young person has the capacity to consent if he/she has “sufficient understanding and intelligence to enable [him/her] to understand fully what is proposed” (‘Gillick Test’). DANSW’s approach is to encourage and support clients to make informed choices about advocacy support. However, in some circumstances this must be balanced against DANSW’s responsibility not to participate in decisions by a client that might pose a significant and foreseeable risk to: the client’s safety or interests; DANSW’s ability to assist other clients and the safety of staff and volunteers.

### **Procedure**

The following are basic principles which will guide advocates in the process of assisting clients with advocacy matters.

#### **4.1. Self Determination**

Advocates respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Advocates may limit clients' right to self-determination when, in the advocate’s judgment, a client’s actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others (see Service Access Policy).

#### **4.2. Informed Consent**

**4.2.1.** Advocates should provide services to clients only in the context of valid informed consent. Advocates should use clear and understandable language to inform clients of the purpose of advocacy actions, risks related to advocacy actions, limits to advocacy because of the requirements of the funding body, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Advocates should provide clients with an opportunity to ask questions.

**4.2.2.** In instances when clients are not literate or have difficulty understanding local language, advocates should take steps to ensure clients' comprehension. This may include providing clients with a detailed verbal explanation, providing information in pictorial format or arranging for a qualified interpreter or translator whenever possible.

**4.2.3.** In instances when clients lack the capacity to provide informed consent, advocates should protect clients' interests by seeking permission from an appropriate third party recognised by the law (e.g. guardian, parent, person responsible), informing clients consistent with the client’s level of understanding. In such instances advocates should seek to ensure that the third party acts in a manner consistent with client’s wishes and interests. Advocates should take reasonable steps to enhance such client’s ability to give informed consent.

**4.2.4.** If there is no alternative decision maker for the client DANSW will, in the first instance, support relevant agencies or people to make application to the Guardianship Tribunal. DANSW will take this avenue in the first instance to allow the advocate more freedom to support the client through the Guardianship Tribunal process if necessary. However, in circumstances where DANSW is particularly concerned about client’s welfare and there are no alternative

applicants it may seek to make an application for an alternative decision maker itself.

- 4.2.5. In instances when clients are receiving services involuntarily (e.g. a financial management or community treatment order), advocates should provide information about the nature and extent of services and about the extent of clients' right to refuse service.

#### 4.3. **Clients Who Lack Decision Making Capacity & Non Instructed Advocacy**

If there is no alternative decision maker, or the decision maker appears to be acting against the client's wishes or interests the advocate should take reasonable steps to safeguard the interests and rights of the client. In doing so the Advocate may use the following principles to guide their actions.

- 4.3.1. Take the least restrictive option. The intervention by the advocate will be the least restrictive in relation to the freedom of the client.
- 4.3.2. Consider the client's wishes. The advocate will take into account the client's present and past wishes and feelings so far as they can be ascertained.
- 4.3.3. Consult with relevant others. The advocate will seek and take into account the views of relevant people who are close to the client or who may know the client well. In weighing up the views of relevant others the advocate will consider issues such as conflict of interest.
- 4.3.4. Encourage and support clients to use whatever skills he or she has. The advocate will encourage their client to exercise whatever skills he or she may have to participate in decision making about their welfare and, where practicable, help the client develop new skills.

#### 4.4. **Advocacy Procedure**

[Procedure reviewed and approved by CEO May 2013]

Advocates of DANSW will ensure that clients, if they so wish, participate in decision making during the advocacy process and will follow a procedure (listed below) with each client or group of clients to ensure this happens.

The following procedure should be undertaken as soon as possible after the client has contacted DANSW.

- 4.4.1. Clarify with the client what their preferred outcome is regarding the issue they have raised and plan the advocacy process around this preferred outcome.
- 4.4.2. Clarify with the client any foreseeable consequences of actions that may achieve their preferred outcome. This may involve suggesting a range of actions along with providing alternative information sources.
- 4.4.3. Inform the client about options for participating in the advocacy process. For example, the client may prefer DANSW to handle the matter based on the client's instructions, or DANSW could support the client to undertake the advocacy process themselves.

- 4.4.4. Does the client understand the options before him or her? Would the advocacy process be improved if the client was supported by a family member, friend etc. who knows the client well?
- 4.4.5. Inform the client about DANSW's policy relating to consent if the client wishes information disclosed to people outside DANSW during the advocacy process.
- 4.4.6. If feasible, provide the client with an estimation of how long any action may take.
- 4.4.7. Arrange to provide the client with information about DANSW's policies in an appropriate format. This may mean discussion of the main points of our policies with the client in an easily understandable way.
- 4.4.8. Work with the client to create an advocacy agreement (also known as an advocacy plan) which will describe the advocacy issues to be worked on, provide a summary of options discussed (following discussion of the pros and cons of these options) and agreed actions to be undertaken by both the client and advocate in addressing the advocacy issue.
- 4.4.9. Advocates will not commence advocacy actions in accordance with the advocacy agreement in full advocacy matters ('A' matters) until the client; guardian or 'person responsible' has approved the agreement. Preferably this will be done by signature or voice recorded consent. However, in special circumstances where the client finds it difficult to sign or the matter is urgent an advocate may undertake agreed actions based on noted verbal consent.
- 4.4.10. Advocates will also record the status in relation to approval of the advocacy agreement on the copy of the advocacy agreement form (e.g. awaiting approval, posted to client for signature or obtained verbal consent to begin actions in accordance with the advocacy agreement over the phone on 01 December 1957 as client is not comfortable with being recorded and have sent a copy of the agreement to the client).

Advocates will regularly review advocacy agreements with clients. Clients with long term issues should have their advocacy agreement reviewed at least annually. Unless there are major changes to the advocacy agreement (where a new agreement will be created) advocates will record the review in the notes function of the client management system – IVO with the heading "REVIEW OF ADVOCACY AGREEMENT".

## 5. Confidentiality & Privacy

### Policy Statement

DANSW will ensure that clients have the same right to privacy, dignity and confidentiality as other citizens.

To maintain consistency across the whole organisation (ALA) detailed policy and procedure on privacy and confidentiality is contained below and in the ALA Policy Manual. *Please see Privacy and Access to Confidential Information.*

### Procedure Summary

**5.1. Client information**

- 5.1.1. Any information obtained by DANSW about clients, both past and present, must be regarded as confidential and must not be used for any purpose other than that for which it is given (i.e. to provide quality advocacy support). This includes discussion or disclosure of any information likely to identify a client on social networking sites).
- 5.1.2. A client will be advised and made aware of what information is kept about him or her, why it is kept and who has access to it.
- 5.1.3. DANSW will only collect client information that is directly relevant to effective advocacy assistance.
- 5.1.4. DANSW client paper records will normally be destroyed by shredding after five years.

**5.2. Information Disclosure & Consent**

Each client has the right to access any information that DANSW keeps about him or her. Any person except an advocate, approved student advocate and approved volunteer must obtain consent from the client before obtaining access to the client's file.

- 5.2.1. Before any client information is disclosed to, or obtained from, an individual or organisation, written or audio authority is to be obtained from the client (DANSW has standard authority forms available for this purpose). An authority can also be sound recorded when appropriate and feasible. Verbal authority may be obtained from the client if information is of a less sensitive nature and there is an urgency that corresponds with the client's best interests. If verbal authority is obtained an advocate must make clear notes about reasons, date and time this verbal authority was obtained. (See Decision Making and Choice Policy for an intake procedure which sets out information and procedures advocates must follow during initial contact with a client.)
- 5.2.2. Advocates should be aware that some individuals and organisations (including those who refer clients to DANSW) may have a conflict of interest with the client. Sharing information with such individuals/organisations regardless of a client's authority may have a detrimental effect on a client's interests. Advocates should discuss implications of sharing authorised information with individuals/organisations whose interest's conflict with the client with the Executive Officer/Coordinator. (This section should be read in conjunction with all parts of "Information Disclosure & Consent" policy).
- 5.2.3. If another organisation wishes to make contact with a client, DANSW may either invite the client to contact the organisation or obtain consent from the client to provide relevant information.
- 5.2.4. A client's file will be placed into secure storage upon the client ending their association with DANSW. Such files will be destroyed after five years.

**5.3. Access to Confidential Information  
Policy Statement**

DANSW is committed to transparency in its operations and to ensuring it is open to public scrutiny. It must also balance this with upholding the rights of individuals to privacy and of the organisation to confidentiality on sensitive corporate matters.

DANSW will prevent unauthorised persons gaining access to an individual's confidential records and permit individuals access to their own records when this is reasonable and appropriate.

Accordingly, access to DANSW's documents and records will be limited to specified individuals and not be available to others for viewing.

This policy applies to the internal records, client records and unpublished materials of the Service.

### **Procedure**

#### **Client records**

Client records will be confidential to clients and to authorised staff members and volunteers (note special policy re information barriers between DANSW and CLC clients.)

Information about clients may only be made available to other parties with the consent of the client, or in the case of:

- **Subpoena** (unless legally privileged information)  
If a client's file is ordered by a subpoena, the client will be notified as soon as possible. Only information ordered by subpoena will be released. In this instance, the information may be photocopied. The Advocacy Coordinator or EO is to be notified immediately. (The CEO delegates authority to the AC and EO to deal with subpoenas in accordance with the most recent legal advice. The CEO should be notified of the subpoena, using de-identified information).
- **Necessity**  
Where DANSW reasonably believes that the use of disclosure is necessary to prevent:
  - a serious and imminent threat to the individual's life, health or safety or,
  - a serious threat to public health or safety.

A decision to disclose information to seek help or protect the client will pay due regard to the particular clients capacity to make decisions.

Any need to disclose client information on the basis of necessity should be discussed with the Advocacy Coordinator or EO where ever possible.

- **Standards Auditing/ Cross Checking**  
As part of the Service's funding contracts and to independently improve the quality of advocacy, DANSW regularly undergoes standards auditing or cross checks. This process entails a person independent of the service checking a sample of individual files and records of complaints to ensure that the service is complying with the agreed standards.

In terms of privacy legislation this is a secondary purpose (checking that good quality disability advocacy is carried out) that directly relates to the primary purpose (providing good quality advocacy assistance) of gathering client information. Clients will be informed of this process in the client handbook (which all clients receive when any new issue is opened). Advocates also explain key policies, including confidentiality, to clients who may have difficulty understanding the client handbook at the first meeting. Clients will have the option of opting out of standards auditing by indicating that they do not wish to be included in the standards audit (this note will be documented in the client synopsis on Ivo)

Standards auditors will be required to sign and adhere to a confidentiality agreement that prohibits them disclosing or identifying any client information they view during the audit.

- **Complaints Processes**

Should a complaint occur about the operation of the Service, a delegated member of the Board may have access to the nominated client's file in order that the Board member can participate in the resolution of the complaint. Any complaints will also adhere to the Information Barriers Policy.

- **Legislation**

Under the *Children and Young Persons (Care and Protection) Act 1998*, the Service's disability advocates may be defined as "mandatory reporters" (legal advice suggests that this is still an uncertain area of law). However, the Service believes on ethical grounds that it should disclose relevant client information to the Department of Community Services if that staff member has reasonable grounds to suspect that a child is at risk of serious harm.

NB. Any need to disclose client information on the basis of mandatory reporting should be discussed with the Advocacy Coordinator first.

All client records will be kept securely in a lockable or electronically protected by password filing system. The client records will be updated, archived and destroyed according to the organisation's client records policy.

### **Requests for access - client records**

All clients have the right to access their records and advise the organisation about inaccuracies.

- Clients informed of their right to access records containing personal information about themselves in the client handbook
- Requests can be made in writing or in person with sufficient identification provided.
- Providing a copy of the document requested may take between 1-2 weeks and must be approved by the Advocacy Coordinator
- A record of the request and information provided will be kept on the clients file in Ivo.
- Generally, only a photocopy of the documents will be supplied to the client.
- The Advocacy Coordinator will seek to make fair and appropriate decisions about permitting or refusing access to personal information.



Requests for information about clients from outside agencies or individuals will be referred to the Advocacy Coordinator before any information is released. The designated person will contact the client concerned to obtain consent.

### **Appeals**

Individuals who are refused access to their own records or information files may appeal by contacting the Advocacy Coordinator who will review the decision in the context of this policy.

## **5.4. Maintenance of files**

- 5.4.1. Documentation should contain objective information. Care should be taken with the choice of language used (see also valued status policy).
- 5.4.2. Ivo client management system should contain copies of the originals of incoming documents and copies of any outgoing correspondence.
- 5.4.3. All incoming and outgoing correspondence must be dated.

## **5.5. File Security**

- 5.5.1. Client files will be kept in a locked cabinet when not in use.
- 5.5.2. Information kept on computer and back up will be kept in a secure fashion and password protected.
- 5.5.3. A client file should not be removed from the office unless special circumstances prevail and permission is first sought from the Regional Coordinator. If a file is removed from the office in a special circumstance it must be kept in a plain folder that covers the client's name and details to protect confidentiality.

## **5.6. Filing and Records Management**

[reviewed and updated and approved by Board as part of 'information barriers' review 23 September 2014].

### **Policy Statement**

All the Service's records will be filed and managed systematically so that:

- material related to the governance and administration of the Service is clearly identified and retained for the required periods of time;
- material of ongoing relevance to the Service's activities or of potential historical significance is identified and archived accordingly;
- material related to clients and service users is stored, reviewed, archived and disposed of according to the Service's procedures for client records;
- regular reviews remove and dispose of material that is no longer required;
- disposal methods protect the privacy of individuals and the confidentiality of the Service's business.

### **Procedure**

#### **5.6.1. Records Management**

- Client records DANSW: These are kept in each regional office and managed by the local advocate. Access is restricted to DANSW advocates and approved volunteers.

- The Service's staff are responsible for maintaining files relevant to their own work and projects, and for providing copies of key project documents to their supervisor for inclusion on the project file.

#### **5.6.2. Retention and Archiving**

- All staff are responsible for reviewing their own files annually and identifying material they no longer require. This material should be culled.
- The archiving storage or disposal of DANSW client files is the responsibility of the Advocacy Coordinator in consultation with the EO – Social Advocacy.

Copies of all correspondence relating to individual clients must be attached to the client's file in Ivo. In line with the Service's privacy policy, the Board do not have access to such correspondence without specific permission from the client.

#### **5.7. Personal Privacy**

DANSW will respect client's rights to personal privacy.

### **6. Participation and Integration**

#### **Policy Statement**

DANSW will ensure that clients are supported and encouraged to participate and be involved in the community. In accordance with the philosophy and aims of DANSW, clients will be supported to obtain the things reasonably expected by people without disabilities.

#### **Procedure**

##### **6.1. DANSW will:**

- educate staff regarding the importance of ending the discrimination, segregation and neglect of people with disability in the community
- educate staff regarding the importance of participation by people with disability in regular activities in the community
- encourage staff, volunteers and advocates to develop links between DANSW and people and groups that will benefit people with disability
- participate in community education or activities to promote understanding and awareness of disabilities

To enable effective integration and participation, DANSW has relationships with the local community as well as coordinating with other agencies to be an effective community partner.

DANSW where appropriate will:

- provide information about resources, activities and opportunities for client participation and inclusion in local community events/ activities. Information will be filed and updated regularly, and made available for clients' use
- provide clients with information about general community facilities and services and how to use them
- support people with disability to form and maintain a variety of appropriate ties, connections and involvements in the community.

##### **6.2. Self Advocacy**

An important part of DANSW's philosophy is for clients to participate directly in the advocacy process. This includes, where appropriate, undertaking agreed tasks to help reach the outcome the client has requested. The advocate will advise, and where appropriate, assist the client with some self advocacy tasks. Self advocacy tasks will be noted in the advocacy plan/agreement.

DA NSW's limited resources and the potential success of achieving a positive outcome for a client will sometimes be dependent upon the client undertaking some self advocacy tasks.

Self advocacy will potentially provide a client with skills to deal with issues they may face in the future.

### **7. Valued Status**

#### **Policy Statement**

DANSW will ensure the intrinsic value of each person with a disability is recognised and each person is supported and encouraged to enhance their valued status in the community. In accordance with DANSW's philosophy and aims, clients will be supported to achieve valued status in the community through the advocacy process of supporting them in practical ways to obtain the same rights as others.

#### **Procedure**

##### **7.1. Supporting People with a Disability to Achieve 'Valued Status'**

DANSW will:

- support people with disability to obtain the same rights as others through the advocacy process (whether on a collective or individual basis)
- encourage people with a disability to work and volunteer for the DANSW
- operate from a physical environment which encourages participation of people with disability and their family members/ carers (fully accessible premises in local community areas)
- ensure that venues for meetings, conferences, workshops, etc. are accessible
- involve people with disability in the governance, planning or operations of the DANSW, where possible and appropriate
- work with the broader community to foster opportunities for people with disability to participate in ways which will be valued.
- provide clients with real opportunities to maintain and develop skills and capacities which will support their aspirations and strengths (e.g. self advocacy)
- be responsive to the individual needs of people with disability wishing to develop and maintain valued roles in the community
- support each person with disability to have the opportunity to develop and maintain skills, capacities and lifestyles that are valued in the community

##### **7.2. Promoting 'Valued Status' in the Community**

DANSW's community education/ awareness strategy will promote the abilities and competencies of people with disability. DANSW recognises and promotes the inherent value of all people with disability and values the contributions and skills of people with disability and their family members/ carers.

Any publications or promotional material produced by our Service will promote the abilities, skills and contributions to the community of people with disability, by:

- advocating that language not acceptable to people with a disability must not be used to describe people with a disability
- not use the term 'disability' in a negative way to attract support, financial or otherwise
- present the concerns of people with disability and their carers positively to the media, in publications, conferences etc.
- provide the best quality information available to people from an Aboriginal or Torres Strait Islander or Culturally and Linguistically Diverse background with disability and their carers in a culturally appropriate way.

### 8. Disability Advocacy NSW – Specific Procedure

#### Policy Statement

The intake process will be a fair, timely and clear process for assessing the needs of requests for assistance against DANSW's eligibility criteria (contained under Service Access). The intake process will also take into account DANSW's WHS responsibilities to its staff.

#### Procedure

Intake, Assessment and Advocacy Process Guidelines

(N.B. formerly known as 'Intake, Assessment and Advocacy Flow Chart')

#### 8.1. Request for Advocacy Assistance

##### Direct Contact by Potential Client

Person with a disability or carer with advocacy issues contacts the service directly seeking assistance.

##### Referred by Agency or Professional

Referrer (e.g. social worker, solicitor, disability service provider, government agency, guardian who has been in contact with the client and recognises there is an advocacy issue) makes written referral (with client's permission) to the service based on referral form that is available online or on request from the service.

##### Gathering Information about the Advocacy Issue

The intake officer takes call from or calls the referrer or potential client to obtain basic details about the advocacy issue, assist in clarifying the problem and get a basic idea of what the client wants.

##### Initial Assessment

The Intake Officer, in consultation with the Regional Coordinator, makes an initial assessment with regard to whether the advocacy issue falls into the following groups:

- "A" (full advocacy matter),
  - "B" (partial advocacy/advice matter) or
  - "C" (brief advocacy-related advice or referral (i.e. IVO dataset "inquiry")).
- If the matter is likely to be an "A" (full advocacy matter), the Intake Officer makes an initial risk assessment and forwards the matter to the Regional Coordinator.

##### Detailed Assessment and Allocation

The Regional Coordinator:

- Assesses details provided by the Intake Officer and discusses details with them for clarification of ambiguous matters. .
- Makes an assessment of the priority rating of advocacy issue in accordance with policy, and notes this on IVO database/file.
- Makes an assessment of any relevant safety issues in accordance with risk management criteria and notes this on IVO database/file.
- May contact client (or delegate to the Intake Officer) if further clarification is needed.
- Sends a letter to the client stating clearly what date the Advocate will contact them.
- Supplies client with copy of Client Handbook as an attachment to the above letter & notes this on IVO database.
- Allocates the matter to an appropriate Advocate and discusses the risk management criteria with that Advocate.

### **Advocacy Assistance**

The Advocate:

- Discusses the relevant safety risk factors and how to address them with Regional Coordinator
- Meets the client (in accordance with the risk management assessment) to clarify the advocacy issue. Reports back to RC to consult on safety issues that may arise in the course of advocacy. If relevant, the risk assessment is also updated at this time.
- Explains in detail to the client, issues in the Client Handbook and matters relating to the client's rights and responsibilities.
- Prepares an advocacy agreement listing all options & choices for the client.
- Assists client to select desired outcome from options by explaining all the pros and cons.
- Obtains any relevant authorities to speak to particular people or agencies about the advocacy issues.
- Works with other relevant advocacy agencies to achieve client's desired outcome while keeping client up-to-date with any progress.

### **Outcome**

Has the advocacy outcome been achieved or otherwise? Advocate has discussions with client about how to proceed in another way (possibly review advocacy agreement) if outcome not achieved or not achievable. Client may exit from the service if their situation meets policy guidelines.

### **Evaluation of Advocacy Support**

Did the intervention by the advocate or the support for self advocacy achieve the agreed outcome? Client has a chance to complete "exit survey" re outcomes of agreed advocacy action.

## **8.2. Advocacy Matter Classification**

[Procedure reviewed and updated 06/12/2012 by CEO]

To assist DANSW to target and manage its assistance the following guidelines are used:

### **A (full advocacy matter)**

“A” intakes meet advocacy entry criteria and are allocated to an advocate for follow up.

- Complete intake on IVO.(including COI, allocation and prioritisation check and file notes)
- Complete risk assessment (including noted discussion with advocate of safety precautions if home visit involved. See working at external locations guide check list)
- Intake response letter with ICD and Client Handbook sent out (check tick box on IVO).
- Record information on IVO.
- An advocacy agreement must be drafted (and updated with new plans if the situation changes).
- Exit survey sent on closure (except where it may have a significant negative impact on client).
- All documents are to be stored in the company drive client file and Ivo.

### **B (partial advocacy/advice matter)**

“B” intakes may or may not meet all the advocacy entry criteria. However, the client may need assistance to work through the options they have, receive advice and information about self advocacy, or receive help with a referral to a more appropriate service. “B” matters are usually matters which involve no less than 20 minutes, and no more than 3 hours work.

This may mean that the Intake Officer, Regional Coordinator (RC), or Advocate may have to do considerable work to investigate the matter, research information, provide advice and information, write letters or make formal referrals.

- Complete intake on IVO (including COI, allocation and prioritisation check and file notes)
- Only complete risk assessment if face-to-face contact is expected or in the judgement of RC if it is necessary.
- Record information on IVO and attach documents as appropriate.
- Send a concluding letter\* (most often with the Client Handbook attached). It is optional to send a client exit survey form.)
- No formal advocacy agreement is necessary. However, the notes should include something like a simple advocacy agreement i.e. the options offered and what the client wanted IO, RC or Advocate to do.
- Verbal permission to seek further information can be used as long as it is noted on the client notes and does not disclose significant personal information. Written or voice recorded authorities should be used where possible and when significant personal information needs to be shared.
- Send the client a concluding letter \*, Client Handbook, exit survey and concluding letter **if appropriate** (i.e. only in more complex “B” case).

\* “B” concluding letter sample:

Dear Client,

Our service recently assisted you with some advice and information about advocacy. Attached is our Client Handbook.

If you require further assistance with advocacy please contact us.

### **C (brief advocacy-related advice or referral (i.e. IVO “inquiry”))**

“C” intakes will essentially be very short (less than 20 minutes work) advocacy advice and referrals for people who probably do not meet the advocacy criteria. Otherwise log as a “B” case.

Examples may be out-of-area referrals (request for advocacy assistance for a person outside our geographical area) or referrals to more appropriate advocacy service that the person is capable of following up by themselves or referrals to other appropriate general services (e.g. a request to assist with obtaining casework services where the person with a disability or carer is capable of following up themselves).

- Complete IVO “inquiry”.
- Make relevant notes on IVO inquiry about actions and advice.
- Sending Client Handbook is optional and is generally not required.
- No exit survey is sent.

### 8.3. Client Risk Assessment

[procedure reviewed and approved by CEO 28/05/2012]

In order to ensure a safe environment for staff who work with clients, a risk assessment and management approach will be taken. DANSW believes that clients with a disability are no more violent than non-disabled people. However, the aim of this risk assessment and management procedure is to ensure staff and volunteers are safe whilst limiting the effect on clients.

As noted in “Intake, Assessment and Advocacy Process Guidelines” above, the Intake officer will make an initial risk assessment during intake and the Regional Coordinator will finalise the assessment with regards to the potential risk of each new client that requires full advocacy assistance at intake. The RC will work with the advocate to reassess this if new information comes to hand.

The risk assessment criteria are as follows

	Assessed risk (past and present)?*
1. Physical aggression / challenging behaviour / self harm?	Yes – No – Unknown
2. Verbal aggression?	Yes – No – Unknown
3. Significant substance abuse?	Yes – No – Unknown
4. Other is relevant?	Yes – No – Unknown

Method of client contact is based on the following guide:

Very Low Risk i.e. 4/4 ‘no’	Low Risk i.e. ¾ ‘no’ 1 ‘unknown’	Medium Risk I.e. default status if all unknown or insufficient information (or a ‘yes’ with a low risk of reoccurrence)	High Risk i.e. 1 ‘yes’
Flexible contact OK but keep supervisor updated on any	May interview client in office with other colleagues close by	Only interview client in office with other colleagues close by	Phone assistance only Only interview client in

<p>changes in situation</p> <p>May do a home visit with colleague if there are no doubts or home risk issues</p>	<p>and notify them of interview</p> <p>May interview the client in their home after first interview at a safe external venue or with a colleague (e.g. neighbourhood centre, library etc.)</p>	<p>and notify them of interview (multi-staff office)</p> <p>Only interview client at a safe venue with other workers or colleagues present (e.g. neighbourhood centre (single staff offices)</p> <p>Only interview at client's home with another staff member present</p>	<p>a formally supervised secure situation (in multi staffed offices)</p> <p>This may be with colleagues specifically monitoring the interview</p>
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**8.4. Individual Advocacy Agreements and Authority Forms**

(This policy should be read in conjunction with 'Decision Making and Choice' policy) Individual advocacy agreements (sometimes referred to as advocacy plans) should be completed and reviewed regularly for all clients. The agreement should list; the advocacy issue, summary of options offered and agreed actions for all parties involved. The advocacy agreement must then be signed by the advocate and the client.

Sample advocacy agreements are saved on the services computer drive.

It should be noted on the individual advocacy agreement form that there is a check box for completing a client authority form. It is important in all advocacy matters that you get an authority form signed by a client, carer or guardian (as appropriate). These forms can be found under 'templates'.

**8.5. Client Notes**

**Policy Statement**

The Service requires disability advocates to keep high quality and timely notes on clients that is directly relevant to effective advocacy assistance.

**Procedure**

(This procedure should be read in conjunction with "Confidentiality and Privacy Policy" Procedure.

Client notes must:

- be a concise summary of interaction with the client and other relevant people involved in the advocacy action;
- contain references to any correspondence written or received (correspondence should also be attached to the file);
- be of a factual nature (if relevant opinion is expressed it should be indicated that it is so);
- contain information about why and when a file is closed;



- be updated regularly;
- identify the author at the end of each entry (this can be an initial).

Advocates to type out client file onto IVO CMS and destroy hand written notes.

## 8.6. Staff and Team Meetings

### Policy Statement

DANSW staff are expected to work together in a collaborative manner, coordinating the planning and completion of tasks and keeping one another informed on relevant issues.

Staff will meet in their work teams on a regular basis to exchange information, identify and address workplace issues and plan work activities.

### Procedure

Staff meetings will consist of:

- a meeting of all staff twice per year
- a team meeting of regional advocates/staff every 4-8 weeks
- coordinators' meetings every 4 weeks
- any other meetings deemed necessary by staff to assist coordination and cooperation in the Service

Executive Officer Social Advocacy will coordinate and convene meetings for Coordinators and general staff meetings.

Regional Coordinators will convene regional meetings

Staff meetings will provide an opportunity for staff to:

- identify emerging issues
- resolve any concerns or issues
- discuss responses and priorities for work in an area
- raise WHS risk issues
- identify any issues to be raised with the senior staff or the Board.

The EO, AC or Regional Coordinators will prepare an agenda for each meeting and ensure that the agenda and any other relevant material is distributed to relevant staff members 1 week prior to the meeting.

Minutes of the meeting will be taken by a nominated staff member who will distribute the minutes and any relevant action plans to all relevant staff within one week after the meeting.

## 9. Complaints

### Policy Statement

DANSW will ensure that each person with a disability, who has a complaint or dispute with DANSW, is encouraged to raise it, and have it resolved, without threat of retribution.

### Procedure

The following points set out the stages which should be undertaken if a dispute or complaint occurs. It is aimed at solving problems quickly at the lowest possible level.

However, if serious complaints occur (e.g. alleged sexual abuse) it is appropriate for the complainant to skip stages and not to raise the issues directly with the person involved.

DANSW notes that in some cases it has a duty to report allegations to an external body (e.g. criminal allegations will be reported to police).

Formal complaints will be dealt with as soon as possible and DANSW will endeavour to contact the complainant, within 7 days.

Quick resolution of complaints will be a priority. DANSW will endeavour to resolve or make a decision about a complaint within 30 days. Following a decision about a complaint, the client has the right to appeal the decision to an external independent body (e.g. NSW Ombudsman or CRRS)

**When processing the complaint the relevant person (Advocacy Coordinator/Regional Coordinator) should document the process in the following way:**

#### **IVO**

Create a complaint under the client's name in IVO - to do this go to "Create New Item" and click on "Complaint against Advocacy Law Alliance". Under Activity Title add a brief description of the complaint. Once the complaint is open continue to document the complaint as with any other client file, including adding client notes, attaching emails and correspondence etc. Close on IVO when the complaint is resolved with details of the outcome.

#### **Complaints Register**

Complete the complaints register. Provide only a brief description of the complaint and refer back to IVO for further information. For "Location of File" put IVO and include the Activity ID. Complaints register is saved under Essentials, Clients, Complaints Register.

#### **Hard Copy**

Keep a hard copy of all documents and on completion of the matter forward the hard copy file to Advocacy Coordinator for filing (keeping your own copy for your records).

### **9.1. Dealing Fairly with Difficult Clients and Complainants**

#### **Policy Statement**

DANSW endeavours to assist clients and applicants for service fairly. However the Service has limited resources and therefore has specific eligibility criteria. Therefore DANSW cannot feasibly assist all people who wish to use the service. Often clients or complainants take up an excessive amount of staff time and the following procedure has been adapted to fairly deal with this situation. The policy does not restrict the client or complainants right to follow the formal complaints mechanism.

#### **Procedure**

The Service adopts the following procedures:

(NSW Ombudsman Guidelines)

"Some ... agencies find it difficult to deal with complaints. Many try to dismiss negative or embarrassing feedback by "shooting the messenger". This happens to members of the public as well as complainants from inside the organisation itself.

Complaints are an important source of feedback and the concerns they raise can highlight shortcomings (both major and minor) in the way an agency is functioning. Agencies should strive to improve their operations, and using all kinds of feedback is critical to achieving this.

When an agency receives a complaint, it should focus on the substance of the complaint and its accuracy. A proper assessment needs to be made to decide what action is required (e.g. whether or not the issues need to be investigated) or a remedy (e.g. an apology) needs to be offered.

## **9.2. Steps to Complaints Resolution**

- 9.2.1.** At any stage a person may seek help from an advocate to support them. Each party at any stage may enlist the assistance of a mutually agreed independent party.
- 9.2.2.** Where appropriate the complaint should initially be discussed with the person concerned. Every effort should be made to resolve the complaint at this level before moving on to the following steps.
- 9.2.3.** If the complaint is not resolved satisfactorily through the Advocacy Coordinator and Executive Officer – Social Advocacy, the matter can be brought to the attention of the CEO (If the complaint involves the CEO then the president of the board can be involved). Before taking this step, the client must be informed about the “Information Barrier” which is in place to stop Advocacy Law Alliance and Mid North Coast Community Legal Centre from knowing a client’s confidential information. The Advocacy Coordinator will take the time to clarify the reason for this step. The client must then be given an opportunity to decide whether they consent to their personal information being shared across the “Information Barrier”. If the client consents to this, the client must sign an Authority agreeing to provide confidential information to part of the organisation that would not normally have access to it. The client’s name should then be recorded in CLSIS for future conflict checking purposes, as the Board and hence their staff i.e. the Principal Solicitor will be deemed to know that information under the law of agency (all staff are the agents of the Board and what the Board knows all their agents are deemed to know).
- 9.2.4.** Any complaint which has been fully discussed between the relevant parties and the CEO and is still unresolved will be brought to the attention of the President or board member nominated by the President for mediation. The President will then meet with the CEO and the parties involved and try to resolve the matter.
- 9.2.5.** Any complaint which has been fully discussed between the President, the CEO and person(s) involved and is still unresolved may be referred to the Board for decision.
- 9.2.6.** If after this process the complaint is still not resolved, the President in consultation with the parties involved may determine the next course of action. This may necessitate the involvement of other services and/or agencies as mediators.

- 9.2.7. If at the end of this entire process, a person is still unhappy with the outcome, then s/he may wish to contact other groups that may be relevant to the complaint (i.e. The NSW Ombudsman 1800 451 524, or, Complaints Resolution and Referral Services (CRRS) 1800 880 052).

### 9.3. **Complaints Management**

[updated and approved by Board 23 September 2014

#### **Policy Statement**

DANSW is committed to ensuring that any person or organisation using the programs or affected by its operations has the right to lodge a complaint or to appeal a decision of the organisation and to have their concerns addressed in ways that ensure access and equity, fairness, accountability and transparency.

The organisation will provide a complaints and appeals management procedure that:

- is simple and easy to use
- is effectively communicated and promoted to all clients and stakeholders
- ensures complaints or appeals are fairly assessed and responded to promptly
- is procedurally fair and follows principles of natural justice
- complies with legislative requirements
- complies with the Advocacy Law Alliance Information Barrier Policy

#### **Principles**

The service will consider all complaints it receives, treat all complainants with respect, recognising that the issue of the complaint is important to the complainant by:

- maintaining confidentiality of parties involved keeping any information private to those directly involved in the complaint and its resolution
- ensuring advocacy is available to clients who make a complaint and require support
- resolving complaints where possible to the satisfaction of the complainant
- dealing with all complaints in a timely manner
- keeping all parties to the complaint informed of the progress of the complaint
- ensuring that board members, staff and volunteers are given information about the complaints procedure as part of their induction and are aware of procedures for managing client feedback and complaints
- ensuring all program users, stakeholders and members are aware of the complaints policy and procedures
- ensuring that a complainant is not penalised in any way or prevented from use of services during the progress of an issue
- ensuring that feedback data (both positive and negative) is considered in organisational reviews and in planning service improvements

#### **Complaints Involving Both Programs (DANSW and MNCCLC)**

If DA receives a complaint that involves the CLC or if the CLC receives a complaint about DA, the complaint should go to the AC and Principal Solicitor jointly after informing the person of the information barrier and getting them to sign an authority to share information across the service.

A separate register and file will be kept in relation to complaints that have been escalated to the CEO and/or Board and access to these will be restricted to the CEO and the Board.

The Regional Coordinators and Advocacy Coordinator will provide a de-identified summary of complaints and appeals to the CEO prior to each Board meeting.

A de-identified summary of complaints and appeals will also be reported by the CEO to the Board at each meeting.

Results from this report will be reviewed by CEO and Board and used to:

- inform service planning by including a review of complaints and appeals in all service planning, monitoring and evaluating activities
- inform decision making by including a report on complaints and appeals as a standard item on staff and management meeting agendas

### **Complaints involving conduct of CEO or Board Members**

Complaints involving the CEO will be managed by the President. Complaints made against a member or Board member will be referred to the President. The President, or their delegate, will:

- notify the person about whom the complaint is being made and its nature
- investigate the complaint and provide the member with an opportunity to respond to any issues raised
- attempt to mediate the dispute (if appropriate) and /or attempt to resolve the matter to the satisfaction of the outside party

Where the President is the subject of a complaint, the complaint should be referred to an executive Board member e.g. Vice President.

If the matter remains unresolved, the President will raise the matter at the next Board meeting. Depending on the seriousness of the complaint the Board may deal with the matter at its meeting or refer the matter to the process outlined in the Service's constitution.

### **9.4. General**

- 9.4.1.** These procedures will be made freely available to applicants and clients in an easily understood format (Client Handbook)
- 9.4.2.** Complaints and disputes will be handled in a manner consistent with ALA's privacy policy.
- 9.4.3.** Records will be kept of complaints and disputes raised, action taken, outcomes reached, method of resolution and feedback from originating person through a complaints register. Records will also be kept of any policy and procedure which may have been altered as a result of this process.
- 9.4.4.** DANSW will provide education and information to clients, volunteers and staff to prevent the offences such as physical, sexual, emotional and verbal abuse from occurring.
- 9.4.5.** DANSW will use the principles of procedural fairness when dealing with complaints.

## 10. Service Management

Note this section is a general summary of key policy areas of service management.

*A detailed policy about service management is contained in the Advocacy Law Alliance Inc. Policy Manual.*

### **Policy Statement:**

DANSW will adopt quality management systems and practices that optimise the effectiveness of advocacy for each person with a disability and facilitate continuous improvement.

### **Procedure**

DANSW seeks to meet the above policy by the following actions:

#### **10.1. Input into the Quality Assurance and Planning Process**

DANSW is committed to a process of quality assurance through continually reviewing and improving the way it operates and the way it meets the needs of its client target group.

#### **10.2. Quality Assurance -- Linking Improvements to Planning and Actions**

DANSW is committed to quality assurance approach by linking, assessments/audits, feedback and ideas about improvement into the planning process and actions. The Service seeks to continuously improve its performance through, self assessment, peer assessment/cross checking, third party audits and feedback from clients.

#### **10.3. Strategic & Business Planning**

The Board will set the strategic directions for the work of the organisation through a 3 year strategic planning process involving consultations with the Board, staff, members, client and community representatives and other stakeholders.

The Strategic Plan outlines the key goals and objectives of ALA as well as broad strategies to meet these objectives.

The Strategic Plan will be the main reference point for any work undertaken by ALA.

An annual business plan for DANSW will be developed by the Executive Officer in consultation with the CEO, the Board, staff, members, clients and community representatives and other stakeholders, which links to the ALA strategic plan.

## 11. Family Relationships

### **Policy Statement**

DANSW is committed to preserving the importance of family relationships, maintaining informal social networks.

### **Procedure**

DANSW recognises the role as an advocate for people with disabilities may, at times, create a conflict of interest with the client's family and thus affect the relationship between them.

Because of this, DANSW will endeavour at all times to consider closely this relationship when deciding a course of action during the advocacy process and endeavour to minimise any impact the action may have on the client's family and social relationships.

Family relationships policy should be read in conjunction *decision making and choice* and *conflict of interest policy*.

## 12. Protection of Human Rights and Freedom from Abuse

### Policy Statement

DANSW will act to prevent abuse and neglect and to uphold the legal and human rights of each person with disability. DANSW will uphold the United Nations Convention on the Rights of People with Disabilities (CRPD).

### Procedure

#### 12.1. Personnel Requirements

All personnel will:

- sign a code of conduct to ensure that they understand that abuse and/or harassment of a person/ people with disabilities will not be tolerated. Personnel who engage in such activity will be liable to dismissal from their position.
- receive orientation and training to ensure that they possess a full understanding of the legal and civil rights of people with disability.

DANSW will:

- seek potential staff, volunteers and Board Members who are committed to defending the legal and human rights of people with disability.
- provide adequate training for personnel in reporting and supporting clients in relation to abuse.
- ensure that all staff recruited and potential advocates are screened with police checks (and working with children checks as appropriate) as a safeguard to minimise the risk of exposing people with disability to abuse.
- source and make available relevant information and resources which can assist in dealing with issues relating to abuse.
- provide information to clients (and their families and carers, as appropriate) about their right to live free from abuse and their entitlement to independent advocacy and support if their human rights are infringed.
- ensure that the legal and human rights of people with disability involved with the DANSW are upheld, both in the context of the advocacy undertaken and in the community in general.

#### 12.2. Outreach to vulnerable people with disability

The Service will:

- endeavour to seek people with disability who would not otherwise have come to the attention of the Service, or may have a limited ability to access our Service
- seek out people with disability who may have been subject to abuse or neglect.

DANSW will seek vulnerable clients through outreach education programs (within resources that are available) and promotion of DANSW to vulnerable groups.

### 12.3. Working with Vulnerable Persons

#### Policy Statement

The service has contractual and risk management obligations in relation to vulnerable people who the service works with. The Service is committed to ensuring the people it works with are kept safe and under takes police checks or working with children checks on staff and volunteers as required by contract or legislation.

#### Procedure

See 'Schedule 1 - Working with Vulnerable Persons Procedure' which forms part of the employee conditions of employment and volunteer work agreements, found in the ALA Policy Manual.

### 12.4. Reporting Abuse and Neglect – Ethical and Policy Considerations

DANSW is committed to ensuring that people with a disability are not abused or neglected. However there are a number of important ethical issues advocates must consider when dealing with or reporting abuse.

There are other important policies in this manual that advocates need to consider in dealing with actual or potential abuse.

- "Key concepts" at the front of this manual. (Particularly in relation to self determination and decision making capacity.)
- Decision making and choice, which deals with issues of client self determination.
- Privacy and confidentiality.
- Non-instructed advocacy.
- Family relationships policy.

DANSW seeks to deal with these complex ethical decisions in a consistent fashion while protecting clients from abuse through a system of consultation with senior advocacy staff.

Therefore if an advocate encounters a situation of abuse or neglect the advocate will discuss the situation with their supervisor and the Advocacy Coordinator .The Advocacy Coordinator will work with the advocate and supervisor to consider and apply policy, "key concepts" and relevant legal issues on the particular case at hand and carefully document the decision making process.

The final responsibility for dealing with or reporting abuse and neglect will be with the Executive Officer in consultation with the Advocacy Coordinator.

Reports of abuse and neglect, subsequent deliberations and reasons for decisions in dealing with such will be recorded on the client's file under client notes.

## 13. Independence and Conflict of Interest

### Policy Statement

DANSW, with a high level of independence, will advocate for members of its target group. DANSW will strive to minimise conflict of interest wherever it may affect, or be seen to affect, the advocate—client relationship. DANSW acknowledges that conflict of interest cannot be completely eliminated and will endeavour to deal with conflict of interest issues in an open and transparent fashion.



DANSW is committed to ensuring that actions and decisions taken at all levels in the organisation are informed, objective and fair. A conflict of interest may affect the way a person acts, decisions they make or the way they vote on group decisions.

Conflicts of interest must be identified and action taken to ensure that personal or individual interests do not impact on the organisation's services, activities or decisions.

All Board members, staff, volunteers and contractors are required to act in the interests of the organisation at all times, and to notify the organisation when this conflicts with other interests or commitments.

Declaration and management of conflicts of interest are specifically required for Board members as part of their legal responsibilities as Board members.

### **13.1. Conflicts of Interest**

This policy requires that all staff, volunteers and Board members:

- act impartially and without prejudice
- declare any potential or actual conflict of interest
- do not accept gifts or benefits that would influence a decision

This will include situations in which:

- close personal friends or family members are involved, such as decisions about employment, discipline or dismissal, service allocation or awarding of contracts
- an individual or their close friends or family members may make a financial gain or gain some other form of advantage
- an individual is involved with another organisation or offers services that are in a competitive relationship with our organisation and therefore may have access to commercially sensitive information, plans or financial information
- an individual is bound by prior agreements or allegiances to other individuals or agencies that require them to act in the interests of that person or agency or to take a particular position on an issue.

#### **Procedure**

Register of known conflicts of interest

A register of conflicts of interest will be kept and all board members, staff and volunteers (if applicable) will be asked to declare:

- potential or actual conflicts of interest that exist when a person joins the organisation
- conflicts of interest that arise during their involvement with the organisation

The register will be maintained by the CEO. All potential and actual conflicts will be recorded in the register showing:

- the name of the individual
- their position or role in the organisation
- the nature of the interest they hold
- the date of the record

- any incidents that arise where the interest comes into conflict with the interest of the organisation, the date of the incident and a summary of how it was managed

#### **Identification and declaration of conflicts of interest**

In addition to an initial declaration of any potential conflicts of interest at the beginning of their involvement with the organisation, all Board members, staff and volunteers are required to declare any potential or actual conflicts of interest they are aware of by:

- At the beginning of any meeting or decision making process, informing those present when a conflict becomes apparent.
- Outside of a meeting, informing CEO when a conflict becomes apparent.
- Providing formal notification in writing to the Secretary (for board members and the CEO (for staff or volunteers)).

#### **Management of conflicts of interest**

Where a conflict of interest is declared or identified:

##### **For staff members:**

- The conflict will be assessed by the staff member's immediate supervisor, or by the CEO or Chairperson.
- Where the conflict concerns a group process, the assessment may be conducted by the group convenor or the staff team concerned.
- If a conflict of interest exists or there is a perception that a conflict exists, the staff member may be asked to:
  - contribute to the discussion but abstain from voting or taking part in a decision on the matter
  - observe but not take part in the discussion or decision making
  - leave the meeting during discussion and decision on the matter

#### **Staff involvement in external activities**

DANSW encourages and supports staff members becoming involved in community activities and volunteer work in their personal lives. However, it is possible that staff members may undertake volunteer or professional roles outside the organisation that give rise to a conflict of interest, or a perception of conflict (e.g. staff undertaking consultancy work for member organisations or government agencies).

As a result DANSW expects that all staff members declare their involvement in external activities related to the work of the Service when they are employed, and discuss and plan with their supervisor how any potential conflicts of interest can be managed. Staff members taking on other (new) work outside the Service need to consult with their supervisor and assess potential conflict of interest.

#### **Contractors**

All contracts with external consultants being engaged by the organisation will include a declaration that no conflict on interest exists.

#### **Procedure**

To be as independent as possible DANSW will:

### **13.2. Management Conflict of Interest**

- 13.2.1.** Not provide direct disability services (e.g. day programs, recreation, accommodation, employment, equipment services, etc.). DANSW will, however, continue to provide disability information as part of the advocacy process. DANSW may undertake projects such as research and training, which the board believes will not directly compromise its ability to independently advocate for people with a disability.
- 13.2.2.** Board members serve as individual members and not as representatives of other organisations (e.g. direct disability service providers).
- 13.2.3.** If individual board members, staff members or volunteers are aware of associations or situations that may potentially cause a conflict of interest they must declare this interest and remove themselves from the decision making or advocacy process.
- 13.2.4.** Individual Advocacy matters are not taken to the board as a whole, nor are they discussed with individual board members unless a board member is providing supervision or professional advice with the consent of the client.
- 13.2.5.** Board members shall not be paid employees of DANSW. If a board member wishes to apply for a paid position, he or she must first resign from the board. Generally, a board member will not be immediately replaced in this situation and is free to re-apply to be a board member if he or she fails the selection process.
- 13.2.6.** Ideally board members shall not be active operational volunteers (e.g. volunteer advocates, office support volunteers) of DANSW. However if this does occur such board members should closely adhere to DANSW's conflict of interest policy and must declare this interest and remove themselves from the decision making process.
- 13.2.7.** People with a disability and carers are strongly encouraged to be board members. If a board member is also a client of DANSW and they are involved in a complex personal advocacy matter (i.e. a high level of conflict) a board member may stand down or resign from the board if there is a possible conflict of interest. A board member should discuss any such concerns with the board as a whole or to the President before making this decision.

*Practice example:*

*A board member with a disability is a manager of a local business. A client comes to DANSW with a disability discrimination complaint against this business. The advocate who initially handles the complaint discusses this conflict of interest with the Advocacy Coordinator. Following this discussion, the advocate lets the client know about the potential for conflict of interest. DANSW helps the client locate an alternative advocate (e.g. a worker at an independent community legal centre).*

**13.3. Conflict of Interest – Clients**

**13.3.1. Client – Advocate Conflict of Interest**

DANSW expects Advocates to act with loyalty to the organisation's objectives and interests and must be independent and free from compromising influences or loyalties when providing advocacy services to clients. A conflict of interest exists where there is a divergence between the individual interests of an advocate and their professional obligation to the Service.

Even if there is no evidence of improper actions, a conflict of interest can create an appearance of impropriety such that an independent observer might reasonably question whether the professional action or decisions of the advocate are influenced by their own interest.

Advocates should take all appropriate steps to avoid conflicts of interest occurring in their work with clients. Where a conflict of interest does arise, it should be declared to the advocate's supervisor and advice sought on how to proceed.

Clients will be made aware of the potential for conflict of interest (*e.g. an advocate declares that he/she has worked for a service in the past that the client wishes to complain about*).

To deal with this issue:

- The client will be involved in decisions about appropriate actions if the potential for conflict of interest is low.
- If the potential or perceived conflict of interest is high DANSW will seek to offer the client a referral to an alternative service or advocate.

*Practice example:*

*In the past Pat, an advocate with DANSW has been a board member for disability social group. The advocate receives a complaint about a worker at the disability social group from an existing client. The advocate should declare this interest to the Advocacy Coordinator and the client. The resulting action, in consultation with the client, may be that this Pat will not handle the issue related to this disability social group if there is likely to be a high level of conflict of interest. Thus, another advocate may handle the complaint or an advocate from another service may be requested. Alternatively the client may feel confident that Pat can act independently and still choose to continue with Pat as advocate).*

### **13.3.2. Client – Advocate Conflict of Interest (Pre-existing Relationships with Clients)**

Conflict of interest can occur where an advocate is acting for a client with whom they have a pre-existing personal relationship (such as a family member or friend). In these circumstances, the advocate's personal feeling for the client may impede or impair their ability to exercise independent professional judgement or to provide objective, independent professional advice to their client. It should be noted that enmity as well as friendship or family ties can give rise to perceptions of a conflict of interest.

*Practice Example:*

*Pat, an advocate of the service, has been approached by her friend Jane whose daughter has an intellectual disability and has been on the waiting list for supported accommodation for the past 6 months. Jane wants Pat to help her*

*with this issue and has been phoning Pat both at work and at home about this. Pat believes that her friendship with Jane is affecting her ability as an advocate to remain objective. She declares this conflict of interest to her Regional Coordinator (or the Advocacy Coordinator) and requests that another advocate is allocated to Jane's matter.*

### **13.3.3. Client – Client Conflict of Interest**

At intake of all potential clients, staff involved in the process must conduct a conflict of interest check using DANSW conflict check database.

In order to be able to undertake the conflict check, the staff member doing the intake must ask the potential client their name and the name(s) of potential or actual other parties in the matter. If the other party is an organisation (e.g. government department or agency, non government service or business) it is not necessary to conduct a conflict check. In all other cases, a conflict check must be conducted in the DANSW client database.

The conflict check must be recorded as having been done by the Intake officer or the person who has done the intake.

If there is a match/hit in the DA database a Regional Coordinator or Advocacy Coordinator must be consulted. The Regional Coordinator or Advocacy Coordinator will then consider whether the client should be refused assistance on the basis of the conflict. The Regional Coordinator or AC decisions and brief reasons must be recorded on the intake form.

DANSW Advocates must sometimes deal with dilemmas involving clients with conflicting interests. For instance, individuals from both sides of a dispute (e.g. divorce); or situations where two clients may have different points of view about outcomes (e.g. child custody matter).

To deal with this issue:

- If there is a conflict of interest DANSW will normally assist the first person who has come to it for assistance. If both people are currently clients DANSW will make an assessment of the situation and use its priority entry criteria to choose which client it assists (if appropriate). Alternatively if this is ethically difficult given DANSW may have private information on both parties it will advise or assist both parties to seek independent assistance from another service.
- Where possible DANSW will inform the clients/potential clients why it cannot assist (without disclosing confidential information). However DANSW's duty of confidentiality may prohibit it from disclosing that the other person has been a client. DANSW may seek to assist the person to find an alternative advocate.

*Practice example:*

- a) *Pat was an advocate for Sue and John Smith in a Care and Protection matter which has concluded. Sue and John have now ended their relationship and John seeks help with legal and court support related to the divorce and residency of their children. After consideration of the sensitive nature of the information*

*DANSW holds on both clients DANSW decides to advise and assist both former clients to seek out advocates independent of DANSW.*

- b) Tom and Bob both have a disability. Tom says he lent Bob some money now he won't pay it back. Bob calls DANSW to say he has Centrelink debt problems that he needs some help with. Tom calls DANSW the next day to get some help getting his money back. DANSW decides to help Bob because he called first but helps Tom find an advocate with another service to help him with his issue.*
- c) The natural mother, grandmother and aunt all with a disability come to DANSW seeking advocacy help about the residency of a child. However after talking to all three the advocate realises each have a different perspective on what would be best for the child. The advocate after consultations with their supervisor assists the natural mother based on the priority criteria of DANSW but advises and assists the grandmother and aunt to seek alternative independent advocacy support.*
- d) Elizabeth is a past client of DANSW with issues to do with the Public Trustee. Jane is referred to DANSW about a problem with one of the co-residents in her group home. The other resident is allegedly bullying Jane and stealing her money. No conflict of interest is picked up on intake. However, after Jane is allocated to an advocate, it becomes clear that the conflict is with Elizabeth, the past client. Although the advocate acting in this instance was different to the person who had assisted Elizabeth, it was difficult for Elizabeth to understand why DANSW was now not on her side. The advocate, after consultations with their supervisor, assists Jane to find an advocate with another service to help her with her issue.*

#### **13.3.4. Conflict of Interest – Person with a Disability - Carers**

DANSW tries to assist both carers and individuals with a disability in the advocacy process. However if there is a conflict of advice from the carer and person with a disability, DANSW will in general take the advice of the client subject to other sections of the *Decision Making and Choice Policy*.

*Practice Example:*

*Phil a 45 year old man with a disability has been living in a large institution for 10 years. He has been offered a chance to move into a community group home and seems happy if a little nervous about this big change. His ageing mother is not so enthusiastic about the change as she is happy with his current accommodation and is worried about his care after she dies. The advocate focuses on Phil's wishes but also tries to consult with his mother and keep a good relationship with her as she is a very important part of Phil's life and support network.*

#### **13.3.5. Conflict of Interest – Special Advocates**

From time to time board members may also be individuals who advocate for people with a disability in their professional capacity (e.g. legal practitioners, tenant advocates, financial counsellors/advocates etc.). To minimise conflict of interest, especially in relation to paid professional services, DA advocates will offer clients who need a particular professional advocacy service a range of practitioners to choose from and to clearly disclose any board members on this

list. This would mean that clients have a range of options to choose from but would not be excluded from using assistance of a person on the board if they freely choose this as their best option.

*Practice example: A client with a disability seeks an advocate's assistance to make a personal injury claim but needs specialist legal assistance to do so. The client is not eligible for legal aid funding. A board member is also a lawyer with particular skills in assisting people with a disability (she has a disability herself). The advocate draws up a list of lawyers with relevant expertise and will include the board member if appropriate. The advocate will notify the client that one of the lawyers is also a board member*

**13.4. Client – Advocate Conflict of Interest**  
(Pre-existing Relationships/Connections with Potential Clients)  
[Approved update – CEO 27 July 2014]

Advocates are responsible for setting clear and appropriate professional boundaries and need to be mindful of how their relationships with family and friends might affect their work as an advocate. Personal and family relationships have the potential to create a conflict of interest – that is, to influence an advocate's judgement, impartiality and independence.

A conflict of interest can occur where an advocate is acting for a client with whom they have a pre-existing personal relationship (such as a co-worker or volunteer, family member, friend or a close family member of a co-worker, volunteer or friend). In these circumstances, the advocate's personal feeling for the client may impair their ability to exercise independent professional judgement or to provide objective, independent professional advice to their client. It should be noted that enmity as well as friendship or family ties can give rise to perceptions of a conflict of interest.

Given the potential risks of this situation, but also considering the needs of the person requiring advocacy assistance, DA's responsibility is to work with the person to find an alternative advocate or support person for the person requesting advocacy in this situation. DANSW acknowledges that this is often a difficult task in smaller communities.

Note: Many people from time to time advocate for friends and family. DA does not restrict staff from doing this in their own time. If a DA staff member chooses to advocate for a family, friend or colleague with a disability in their own time they must first notify their supervisor and update their conflict of interest register.

A DA staff member who does choose to advocate for family, friend or colleagues in their own time should at no stage use their status as a DA NSW employee in any assistance they provide for a family member, friend or colleague with a disability.

**13.5. Sexual Relationships with Clients**  
Staff (including volunteers) should under no circumstances engage in sexual activities or sexual contact with clients whether such contact is consensual or not.

**13.5.1.** Staff (including volunteers) should under no circumstances engage in sexual activities with relatives of clients or other individuals with whom clients maintain

a close personal relationship when there is a risk of exploitation or potential harm to the client

**13.6. Gifts and Other Benefits from Clients**

Staff (including volunteers) should be conscious of the perception to others of accepting **gifts and other benefits**. Staff must not solicit or accept anything of value from a client or associate which might interfere with their independence and the conduct of their duties and responsibilities. The very acceptance of a gift may create the perception that staff member's independence and integrity has been compromised.

**13.6.1.** In general gifts of any type should be politely declined. However a token gift may be accepted if there are circumstances where it would cause offence or disrespect to the gift giver to refuse the gift or where it may jeopardise the positive working relationship with the person. An example of a token gift might be flowers, chocolates, home-made produce, and modest refreshments etc. with a value of no more than \$50. If a staff member is unsure about the status of a particular gift he or she should discuss with the Regional Coordinator.

**13.6.2.** Staff (including volunteers) should not enter into any financial transactions or arrangements with clients. Examples of a financial transaction with a client may be purchasing service/equipment or accepting a loan of money/goods. If there is any doubt the staff member should discuss the matter with the Regional Coordinator.

**14. Systemic Advocacy**

**Policy Statement**

DANSW conducts research, and systemic advocacy activities as one of its core functions. DANSW is committed to systemic activities that achieve equality and social justice for people with a disability.

DANSW's research, systemic advocacy work will aim to:

- analyse the unfair or unjust treatment of people with a disability
- draw the attention of government and other relevant institutions, as well as the broader community, to any unfair or unjust treatment
- recommend changes to the practices, policies and laws and to challenge unfair/unjust practices, policies and laws
- advocate and lobby for change relevant to clients and the community.

DANSW is committed to conducting well researched and effective systemic advocacy within its areas of expertise. Wherever appropriate, systemic advocacy activities will be undertaken collaboratively, in partnership with other relevant organisations or groups.

DANSW's systemic advocacy work will:

- be designed within a community development framework
- be relevant to the community and respond to an identified need
- have its priorities and objectives set according to assessed community needs and available resources
- be informed by a strategic linking of individual advocacy with community disability advocacy education and systemic advocacy work.
- engage with the community, drawing on community and stakeholder input and feedback



- be evaluated on the basis of stakeholder feedback and improvements made as a result of evaluation outcomes.

The CEO will ensure that adequate budgetary allocation (subject to resources) is made for identified and approved projects and activities.

Community Development Framework:

DANSW's systemic advocacy activities are guided by the principles of community development and undertaken within the following framework:

- consultation and research will be conducted to identify priority issues
- evaluation of systemic advocacy work will include input from community stakeholders
- DANSW's will ensure that its systemic advocacy activities are responsive to emerging and changing needs of the community.

### Procedure

#### 14.1. Scope of Research and Systemic Advocacy Activities

Research and systemic advocacy may include, but are not limited to, the following types of activities:

- Conducting research into areas of inequity or injustice in the application of law or policy.
- Advocating on behalf of representatives or groups of people with a disability experiencing disadvantage or injustice.
- Providing comments on draft legislation, policies, procedures or other regulatory instruments.
- Preparing formal submissions and responses to inquiries and reviews established by Government or other organisations.
- Making direct representation or lobbying Government, regulators, politicians and/or other organisations for improvements policies, law or its administration.
- Reporting systemic issues to Government, regulators and/or other organisations, and identifying areas for change.
- Raising awareness of relevant issues and promoting possible solutions.
- Conducting and/or lobbying for resources for policy research.
- Monitoring overseas approaches and developments.
- Conducting or participating in public campaigns to highlight an issue and/or generate support for change.

Proposed research and systemic advocacy activities will be assessed and prioritised according to:

- the extent to which the issues affect the organisation's target group/s
- the extent to which the issues relate to priorities identified in the DA Business plan
- the likely impact and effectiveness of the proposed action
- available resources and expertise
- the best use of resources

#### 14.2. Planning for Systemic Advocacy Activities

- 14.2.1.** The Advocacy Coordinator will be responsible for coordinating and overseeing research and systemic advocacy.

**14.2.2.** Initial priorities for the year will be set as part of DANSW Business Plan for which Advocacy Coordinator in consultation with other advocacy staff will provide an analysis of:

- identified areas of policy and practice requiring attention
- emerging issues identified from individual advocacy, community education, client consultations/feedback or other sources
- requests from other agencies for the organisation to take action
- available resources
- outcomes of evaluations for previous systemic advocacy activities

**14.3. Specific Programs and Activities will be decided by the Advocacy Coordinator**

Systemic activities will be a standing item on staff meeting agendas addressing:

- reports on activities under way or completed
- discussion of newly identified or emerging issues
- issues arising from individual advocacy and community education with implications for systemic advocacy work
- discussion of proposals for new activities or projects.

Decisions about new projects and allocation of responsibilities for delivery will be made by the CEO in consultation with Executive Officer and Advocacy Coordinator.

Decisions about ad hoc or one-off actions in response to policy decisions, initiatives or changes by external agencies and the allocation of responsibilities for preparing comment or response will be made by the Advocacy Coordinator in consultation with the CEO/Executive Officer.

**14.4. Proposals for Systemic Advocacy Activities**

Proposals for new systemic advocacy activities may come from any staff member or as a request from an external agency or group.

Written project proposals are preferred. A proposal format can be supplied.

A proposal or request should be discussed in the first instance with Advocacy Coordinator who will assess whether the proposed activity:

- meets identified priorities and community needs
- is within the organisation's areas of expertise
- has acceptable levels of risk and benefit
- can be delivered within available resources and workloads
- requires partnership with another agency
- requires more information or research before a decision can be made

Advocacy Coordinator, Executive Officer and CEO together will then decide whether the activity should proceed or not, and who will be responsible for delivering it.

Requests or proposals for additional activities or an extension to an existing project should be referred to CEO who will assess the availability of resources to meet the request and make a decision in consultation with staff delivering the project.

Where a request for support or assistance from an external agency or group cannot be met, the staff member responsible will:

- let the agency or group know the reason

- endeavour to put them in contact with any other organisation that may be able to assist.

**14.5. Policy Positions**

Formal or public policy positions to be taken by the organisation on legislation, policy, government policy or and related issue must be approved by the CEO.

**14.6. Documentation of Research and Systemic Advocacy Issues**

**14.6.1. Systemic Advocacy Documentation**

Documentation of the current year's activities is kept [location] and contains the following:

- Current project plan/calendar of events
- Completed project plans
- File notes, summaries of ad hoc action or representation (e.g. support letters for campaigns initiated by other agencies)
- List of materials used (e.g. media releases etc.)
- Ideas, action plans and contacts]

This documentation is maintained, reviewed and updated by the Advocacy Coordinator

Systemic advocacy work will be reflected in the DA Business Plan, planned project work will be documented in staff work plans and an annual report of completed systemic advocacy work will be prepared by the Advocacy Coordinator for inclusion in the organisation's Annual Report.

**14.6.2. Project Documentation**

A general file for ad hoc or one-off advocacy or systemic advocacy action will be maintained by Advocacy Coordinator and kept in electronic and paper format. A summary of any action will be filed, showing:

- date of action
- type of action
- summary of action
- copy of any written material related to the action
- name and signature of approval for release of any written material

At the commencement of a research, systemic advocacy project, a project file will be opened for the project by the Advocacy Coordinator. An electronic file folder will be set up "networking & projects". This file will contain all electronic materials related to the project.

- a hard copy file will be set up [describe location and naming protocol]. This file will contain all hard copy materials such as correspondence and hard copy versions of key documents including:
- a completed project outline
- date of project commencement and project completion
- list of materials used or produced
- evaluation report
- dates of data entry in IVO client management system

**14.7. Evaluation of Systemic Advocacy Activities**

Evaluation of systemic advocacy activities will vary depending on the nature of the activity. Where feasible, the staff member conducting the project should conduct an evaluation addressing the following indicators:

- Whether identified objectives of the project have been met
- Whether the processes and strategies were considered effective by stakeholders.

### **14.8. Completion of Activity Report**

At the completion of a systemic advocacy project, Advocacy Coordinator will complete a final report appropriate to the size of the project covering:

- Project purpose and objectives
- Staff members responsible for delivery
- Date of start and completion of project or campaign
- Overview of any research, consultation, stakeholder or community input
- Description of the project or activity
- Summary of activities, including target audience, action taken, time frame of the project and project partners or other participants
- Summary or copies of responses from media or other agencies
- Evaluation, including observed outcomes, target audience response and feedback from other staff or stakeholders
- Staff comments or analysis, and recommendations for improvements for future projects

The report should be submitted to CEO and a copy filed at “networking & projects”

### **14.9. Media Statements and Written Material**

All media releases and statements must be prepared and approved as specified in the Service’s publications and media policy.

The CEO is the authorised staff to speak on behalf of the DANSW on systemic advocacy and policy matters.

Information materials developed for use in a systemic advocacy activity must be checked by CEO. A signed approval form must remain with the master copy of the materials.

A copy of any new content created is to be added to the systemic advocacy folder of resources at the completion of the activity by the Advocacy Coordinator. All materials must carry:

- An identifying title
- Date of publication
- Date, name and title of responsible person authorising the content
- Location of the master copy (electronic and/or hard copy)

These resources should be consulted prior to the development of any new resources, and where necessary, checked and updated prior to use.

### **14.10. Research Ethics and Privacy**

Any research project involving human subjects must be conducted in accordance with the organisation’s Privacy Policy and with ethical procedures. People being invited to participate in a research project must be:

- given a choice about participating or not
- given the right to withdraw at any time
- informed about the purpose of the research project, the information to be collected, and how information they provide will be used.
- offered copies of any subsequent publications.

Any research report, systemic advocacy or campaign material must also adhere to the organisation's privacy policy. No information about individuals, images, case studies or other descriptive material that may lead to the person being identified may be used in any form without the formal permission of that person

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<sup>i</sup> Villamanta Legal Service, Information Sheet on Consent September 2004, Geelong Victoria.

<sup>ii</sup> "Who Can Decide", P Darzins, D Molloy, D Strand (eds), 2000 Memory Press Aust.

<sup>iii</sup> Duty of Care is more than the legal concept in this case and relates to the principle of non-maleficence which can be summed up by the famous saying "*primum non nocere*" which means "above all do no harm". The principle is also stated in the Hippocratic Oath where it says: "I will use treatment to help the sick according to my ability and judgement, but I will never use it to injure or wrong them". (Ethics and Law for the Health Professions 2<sup>nd</sup> Ed, 2005, Ian Kerridge, Michael Love and John McPhee).

<sup>iv</sup> "Question of Rights", Intellectual Disability Rights Service, 1998.

<sup>v</sup> Capacity in this context means that a client has the ability to understand the information that is relevant to the decision; is able to balance the various risks and benefits associated with the available alternatives and on this basis make a decision. In addition capable decisions are not based on delusional constructs.

<sup>vi</sup> (*Workcover Authority of New South Wales (Inspector Pompili) v Central Sydney Area Health Service [2002] NSWIRComm 44*). New South Wales Industrial Relations Commission.

This case involved a complaint that serious failures of a psychiatric hospital's management of patients resulted in a serious assault of staff by an ill patient, armed with broken glass, in an area that had no controlled point of entry. In considering the balance that must be arrived at between the care and treatment of patients and the safety of staff the Commission said:

"Given the evidence as to the conditions from which TR and other patients treated at Rozelle suffer, and the fact that the defendant and those whom it employs are dedicated to the care and treatment which such people require, it can readily be appreciated that staff might be slow to move to physically restrain a patient. That, indeed, would seem consistent with the policies in evidence. Empathy, care and even pity for such patients are, however, not a proper basis upon which employees may be permitted to place themselves into danger. There can be no doubt that in a situation where the choices facing the defendant are physical intervention in order to ensure that a patient is restrained from hurting others and a risk to the health, welfare or safety of employees, if such steps are not taken, the absolute obligations imposed upon the defendant by s 15 of the Act, require that safety of employees be preferred.

No matter how dedicated to patient welfare a nurse or other employee might be, it is inconsistent with the requirements of the [Occupational Health and Safety] Act, that the defendant permit them to be the subject of physical assault, or indeed repeated physical assault, by patients who are not restrained from harming others. Employment on such a basis is not permitted by the Act.

The evidence which the defendant led was that it is only a small percentage of patients who give rise to risk of assault of staff and others to whom the defendant owes obligations under the Act. That fact does not, however, detract from the need for the defendant to ensure that its obligations are met, when such patients are admitted at Rozelle Hospital. (at [89]-[91J]."

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(\*DANSW acknowledged that this policy has used information and ideas from other agencies to develop this policy document. Some sections have been informed by approaches of the AASW, PIAC, PWD Australia, DSS NDAP Quality Improvement Toolkit, Regional Information and Advocacy Council, NACLC and Fife Advocacy, Scotland.)