

# CLIENT CONSENT POLICY

## INTRODUCTION

This policy has been developed to assist support workers and supervisors to clearly understand the concept of consent and the range of options open to them in relation to assisted decision making.

Gaining informed consent is extremely important, particularly when considering medical procedures, the use of medication, making financial decisions, negotiating relationships or during the design and implementation of individual programs.

## DEFINITIONS

### Consent

Consent is 'an agreement to do or to act' or 'compliance with a request or instruction' given by one person to another. It may be explicitly stated or implied.

The essential elements of the law about consent for the purposes of this document are as follows:

- The person who is giving consent must have the intellectual capacity and maturity to understand the situation they are consenting to, the choices that are available and the consequences of their decision (ie the likely risks and benefits). This applies to all people, regardless of age and whether or not they have a disability;
- In order for a person to provide informed consent, the person must be given sufficient accurate information about the matter or procedure and that information must be presented in such a way that the person can fully understand it;
- Any consent must be freely given and must not be obtained by force, threat, deception or undue influence.
- A person may be able to make decisions and give valid consent in some areas of their life but not in others depending on their skills and experience.

### Person Responsible

- In the specific instance of medical treatment, a 'person responsible' is able to give consent to certain procedures or treatments where the client lacks the capacity to do so.
- The Guardianship and Administration Act (1996) specifically excludes paid staff or paid carers from being a 'person responsible'.
- To qualify as a 'person responsible' the individual must be a family member, close friend or unpaid carer of the client and must maintain a close personal relationship through frequent personal contact and have a personal interest in the welfare of the person with a disability. A legally appointed guardian can also be the 'person responsible'.
- NOSS will accept the 'person responsible' nominated by the client, residential service or parent unless that person appears to be inappropriate. NOSS may require that person responsible to sign a Statutory Declaration declaring that they are the person responsible or produce a guardianship certificate.
- If there is a dispute about the identity of the 'person responsible' or there is disagreement about appropriate consent, NOSS will contact the GAB who will, if necessary, make a determination.

## **GUIDELINES**

### **Determining capacity to consent**

When deciding whether or not a client has the capacity to consent, staff must consider the knowledge and skills (decision making, communication etc) of the client (assessed through direct past experience, file notes and other documentation) and the complexity of the issue in question.

Staff must check to see if the person can demonstrate a knowledge and understanding of the issues, proposed actions, benefits and risks, other alternatives.

Staff must check that there are no external pressures influencing the person which may affect the person's decision.

The complexity of the process should reflect the seriousness of the issue in question. In complex situations where there is doubt about whether or not a person is able to consent, staff must refer the matter to the NOSS General Manager who may seek advice from the Guardianship and Administration Board (GAB).

Good practice entails not only enabling the 'person responsible' to provide informed judgment about consent but actively involving and encouraging the 'person responsible' to participate in the process.

### **Consent and Privacy**

All clients are requested to sign a consent form, on an annual basis, authorising NOSS to collect and release certain personal information in order to safely provide a quality service. For more information regarding release of information refer to the NOSS Privacy Policy.

### **Consent and Lifestyle issues**

Lifestyle issues are those areas of a person's life relating to decisions about accommodation, accessing services, leisure activities, relationships, work, transport, day programs etc. It does not include consent to medical treatment or major financial decisions.

- Staff members should endeavour to gain consent from the client, (taking into account their level of understanding) before planning any activity such as when and where to have lunch.
- If a client is unable to provide informed consent about an important issue (e.g. community access program, finances, relationships) consultation and agreement would need to occur between the key people involved with that issue (e.g. residential staff, family members, advocates, other service providers). Staff should refer these matters to the Community Access Manager.
- For day-to-day decision making (e.g. what to eat, choice of activities) it may be possible to make a decision based on the implied consent of the client. Factors to take into account in this situation would be knowledge of the person, evidence of preference through documentation and reactions.
- Where the proposed activity or issue involves an element of risk, staff members should consult with the Community Access Manager.
- Where there is any conflict about a proposed course of action which cannot be resolved, consultation must occur with the NOSS General Manager who may consult the Guardianship and Administration Board (GAB).

### **Consent and medical treatment**

Written consent must be obtained from the client (or their 'person responsible') who will receive the proposed medical treatment or intervention, unless the treatment is **urgent** or **minor** (see below).

- Consent is not required where the treatment is urgent (e.g. necessary to save a person's life) or minor (e.g. non-intrusive examination, first aid, administering non-prescription drugs).
- Further information about consent to medical and dental treatment can be obtained from the Guardianship and Administration Board's Fact Sheet 'Consent for Medical Treatment' or from their web-site ([http://www.justice.tas.gov.au/guar/info\\_3.htm](http://www.justice.tas.gov.au/guar/info_3.htm).)

**Consent and financial issues**

- Staff members should, if possible, obtain consent from a client (taking into account their level of understanding) before planning any use of funds on their behalf.
- If the client is unable to provide informed consent about a financial issue (e.g. going to Launceston Show) consultation and agreement would need to occur between the key people involved with that issue (e.g. residential service, family members, advocates). In these instances, staff should refer the matter to the Community Access Manager.