



## Council of Social Service of New South Wales

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Placement Policy Feedback,  
APD Directorate, DADHC,  
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Dear APD Directorate,

Thank you for the opportunity to provide feedback on the DADHC Maintaining Respite Capacity Policy.

### About NCOSS

Established in 1935, the Council of Social Service of NSW (NCOSS) is an independent non-government organisation and is the peak body for the non-government human services sector in NSW. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in New South Wales.

NCOSS is part of a national network of Councils of Social Service, which operate in each State and Territory and at Commonwealth level.

NCOSS membership comprises community organisations and interested individuals. Affiliate members include local government councils, business organisations and Government agencies. Through current membership forums, NCOSS represents more than 7,000 community organisations and over 100,000 consumers and individuals.

### General Comments

NCOSS absolutely recognises the need for a policy which clearly and transparently details the steps for supporting and managing people who overstay their respite allocation. Therefore, NCOSS welcomes the development of this policy towards a more standard and improved practice. Several of the NCOSS responses have been repeated in this submission, simply because they relate to recurring and specific clauses in the policy document. Please note that there may be subtle differences in application to children, young people and adults with disability.

While this policy really only affects a very small number of families who are so desperate that they relinquish the care of an often much-loved person with disability into respite, we are disappointed at the unnecessarily punitive, threatening and authoritative attitude that the policy document conveys.

NCOSS fears that such a conveyed attitude could have the unintended consequence of pointlessly terrifying prospective respite users with the possible result of escalating their need for support services. NCOSS also believes this could lead to an ever worsening scenario of people with disability being relinquished in hospitals and police stations.

It is reported to NCOSS that this relinquishing of care increasingly occurs due to identified failure of critical systemic supports:

1. inadequate supply of respite and other supports
2. inadequate supply of timely and responsive supported accommodation

DADHC must recognise that any deliberate overstay is usually the result of a long and emotionally charged situation which came eventually or suddenly into crisis. There is no mention or acknowledgement in the policy of the emotional, psychological, physical and/or health impact on the person with disability in ongoing care or indeed that of the family.

DADHC cannot develop a policy to solve problems of systems failures.

## **Specific Comments on the Policy Document**

### **EXECUTIVE SUMMARY**

#### **Key Component 2**

- Trespasser: this word is both totally unacceptable and extremely inappropriate to appear in a DADHC document. NCOSS understands that DADHC wants to send a strong message but criminalising people with disabilities is completely unacceptable. Should the word *trespasser* remain in the finalised policy after consultation, serious social justice issues would arise on which NCOSS would be forced to take action.
- There is an inherent contradiction in this point. The entire policy is about what DADHC will do if a person overstays their respite. Therefore, the phrase "...DADHC no longer accepts responsibility for providing care to the client" contradicts its real and actual duty of care in the rare circumstance of a person being relinquished in respite.

#### **Key Component 3:**

NCOSS welcomes the appointment of a case manager as an appropriate and strong practice, to support the person and their family through an inevitably difficult time.

There are many reasons a person with disability might overstay in respite. Some overstays are the result of a deliberate intention, others are unintentional (sudden family crisis or hospitalisation). The Case Manager must be enabled to use reasonable judgement in implementing this policy especially regarding guardianship orders and alternative placements. The first action must be DO NO HARM, ie. do not take actions that cause deliberate family disconnections with longer term impacts for people with disability or family/carers.

## **Key Component 5**

The review panel must be required to make decisions in concert with the provisions of the NSW Disability Services Act. Essential considerations must be considered when determining an appropriate placement, such as

- Maintaining contact with personal and social networks
- Reasonable family proximity
- Compatibility with others at the placement location

NCOSS fears that the policy will direct DADHC officers to simply place the person wherever there is an available placement regardless of its suitability. NCOSS recognises that this is not the fault of Departmental officers but that the overwhelming demand on an already inadequate system could and does have an extremely negative impact on people with disability in this situation. The needs and wellbeing of the person, however, must prevail.

## **1 POSITION STATEMENT**

### **Point 2 Respite is time-limited**

NCOSS supports the DADHC statement that respite is not an appropriate long-term accommodation option. NCOSS acknowledges that, due to the failure of other appropriate supports to people with disability and families, DADHC has at times maintained people in respite for long periods.

### **Point 4 Access to respite**

The inclusion of this point is unproductive and serves only to make the person and their family guilty. In most such cases, the family has already broken down.

- NCOSS recommends that this point be deleted or at the very least rephrased to explain that there is a high demand for carefully planned respite services from many people and families. DADHC must acknowledge that the greatest proportion of people and families in an overstay situation are in severe stress, emotion and exhaustion.
- The inclusion of *risk of harm* in this point sounds like a threat. Without further explanation it is punitive and should be deleted.

### **Point 7 Capacity for decisions**

NCOSS supports the inclusion of this point and DADHC has properly listed the principles from the Capacity Toolkit. This Toolkit is very clear that the person should be assessed for capacity for each and every separate decision in every instance; thereby avoiding an enduring blanket decision of permanent substitute decision-making for all but a very few. This should be made clearer within this point.

## **3 APPOINTMENT OF CASE MANAGER**

As previously stated, NCOSS agrees with this practice, as long as the Case Manager can use reasonable judgement in each case as to whether to commence or progress with the procedure.

## **4 EXIT PLANS**

### **Point 4.6 Documented evidence**

The Exit Plan must also contain documented evidence of engagement with and consideration with and for the person with disability of their emotional, physical, psychological and spiritual health and wellbeing as well as their maintenance of functioning.

**Point 4.8 More preferable location**

NCOSS welcomes this as a good policy. However, the DADHC track record for people and families in temporary placements is poor. NCOSS recognises this is due to demand and supply pressures on the system, but the negative impact for the person and family is unacceptable and serves only to create family disconnections and unnecessary dependencies for the person.

**5 RESIDENCY CHARGE**

**Point 5.1 Amounts levied**

The residency charge must not exceed that which is applied to people in DADHC supported accommodation placements.

**Point 5.2 Liability for fees**

Beware prohibitive and/or burdensome paperwork.

**Point 5.3 System of payment**

NCOSS welcomes the hardship waiver. The term *unavailable respite* in this context is unnecessary and absurd. NCOSS suggests *overstaying in respite*.

**6 CHILDREN**

**Point 6.1.1.6 Risk of Harm report**

It seems that these conditions will mean that EVERY case of respite overstay will result in a risk of harm report to DoCS. Is this the intention? Surely the Case Manager can be empowered to use reasonable judgement in particular circumstances.

**Point 6.1.2.1 Parental responsibility**

There seems to be no understanding or scope for parents or families who wish to retain parental responsibility but who are no longer able to provide on-going care due to the intensive support needs of the child. In most cases, this is not a situation of active neglect but one of outright exhaustion and hopelessness.

**Point 6.2.1 Refusal of an offer**

The best interests of the child, closely followed by the maintenance of family connections must be primary considerations in this instance, both by DADHC and the family. NCOSS fears that the criteria for supported accommodation deemed appropriate by DADHC will first be influenced by the supply and demand pressures on the accommodation system. In other words, an ordinarily and otherwise unacceptable placement for a child could be determined appropriate by DADHC simply because there is no suitable vacancy available. The best interests of the child must come first and creative appropriate solutions found. NCOSS knows that temporarily inappropriate placements have become long-term due to a (perceived) lack of suitable options. It is better to get it right in the first instance.

**Point 6.2.6 NSW Ombudsman**

NCOSS is alarmed that this policy seeks to overturn the NSW Ombudsman powers to uphold a complaint and take action to improve the outcomes for the child and family. This clause negates powers of the NSW Ombudsman described in the Glossary and must be immediately amended.

## **7 YOUNG PEOPLE**

### **Point 7.2.1 Refusal of an offer**

The best interests of the young person, closely followed by the maintenance of family connections (if the young person so wishes), must be primary considerations both by DADHC and the family. NCOSS fears that the criteria for supported accommodation deemed appropriate by DADHC will first be influenced by the supply and demand pressures on the accommodation system. In other words, an ordinarily and otherwise unacceptable placement for a young person could be determined appropriate by DADHC simply because there is no suitable vacancy available. The best interests of the person must come first and creative appropriate solutions found. NCOSS knows that temporarily inappropriate placements have become long-term due to a (perceived) lack of suitable options. It is better to get it right in the first instance.

### **Point 7.2.6 NSW Ombudsman**

NCOSS is alarmed that this policy seeks to overturn the NSW Ombudsman powers to uphold a complaint and take action to improve the outcomes for the young person and family. This clause negates powers of the NSW Ombudsman described in the Glossary and must be immediately amended.

## **8 ADULTS**

### **Support for family involvement**

There should be a statement in this section, reflecting that in sections 6 and 7 for children and young people, which says that DADHC staff should support family and/or carers to be involved with the people with disability according to the wishes of the person with disability.

### **Point 8.1.2 Unable to return home**

This should be called Death or serious illness of the parent or carer as the section seems to relate specifically to these circumstances.

### **Point 8.1.2.2 Seeking a Guardianship Order**

This point takes no account of the frequent possibility that a parent or carer can still retain capacity for decisions during hospitalisation or serious illness. This should be made very clear within this policy. Seeking a Guardianship Order by DADHC must be a last resort option only.

### **Point 8.2.1 Refusal of an offer**

The best interests of the adult, closely followed by the maintenance of family connections (if the person so wishes) must be primary considerations, both by DADHC and the family. NCOSS fears that the criteria for supported accommodation deemed appropriate by DADHC will first be influenced by the supply and demand pressures on the accommodation system. In other words, an ordinarily and otherwise unacceptable placement for an adult could be determined appropriate by DADHC simply because there is no suitable vacancy available. The best interests of the person must come first and creative appropriate solutions found. NCOSS knows that temporarily inappropriate placements have become long-term due to a (perceived) lack of suitable options. It is better to get it right in the first instance.

### **Point 8.2.6 NSW Ombudsman**

NCOSS is alarmed that this policy seeks to overturn the NSW Ombudsman powers to uphold a complaint and take action to improve the outcomes for the adult person

and family. This clause negates powers of the NSW Ombudsman described in the Glossary and must be immediately amended.

## FLOW CHART 4: EXIT PLANNING

This chart assumes that a DADHC application for Guardianship will be successful in every instance. It does not show the possibility and consequent pathway when the Guardianship Tribunal maintains parental/family decision responsibility.

## GLOSSARY

- The term *Carer* must be included in the Glossary. This term appears over 80 times within this document. NCOSS recommends the use of the Carers NSW definition of carer - see website [www.carersnsw.asn.au](http://www.carersnsw.asn.au)
- The *Respite* definition contains errors. The words *voluntary* and *intellectual* must be deleted.
  1. The use of the term *voluntary* in this context may be considered offensive. Carers NSW (and Carers Australia) defines carers as family &/or friends who provide ongoing care, not people who are employed to do so.
    - Where *voluntary* infers choice: Many carers do not consider themselves as voluntary or volunteers because they are willingly and lovingly responding to family responsibility and duties, not necessarily making an active choice to do so. For most carers there is simply no choice.
    - Where *voluntary* infers “not employed” to provide care. This definition is unnecessary because of the proposed inclusion of the Carers NSW definition of the term *carer* in this Glossary. DADHC should note that people employed in caring roles are staff or workers, not carers. DADHC should further note that while staff and workers can cease their caring responsibility at the end of their shift, this is not so for carers regardless of respite or other support services.
  2. Respite is not provided exclusively for children, young people and adults with intellectual disability.

## CONTRACTS OF STAY for children and young people

### Point 7 Reporting to DoCS

NCOSS believes this clause to be in error. DADHC does not only report the parent to DoCS but principally the child. This clause should be rewritten to eliminate its threatening nature.

### Point 8 DADHC assumes decisions

- Please refer to previous comments in this submission labelled Points 6.2.1, and 7.2.1
- Because DADHC is required to implement a process whereby the family or carer as primary decision-maker remains involved with the person with disability, this clause may be in error. Families must not be required to consent to DADHC decision making before using respite. In most cases of overstay, something completely unanticipated happens for the family which may not require DADHC to automatically assume decision-making powers. The process for this is set out clearly in the policy.

- Therefore, this clause should be rewritten along the lines of:  
If I do not collect <client> from <respite> on the departure date, I understand that DADHC will remove <client> from <respite> and place <client> in alternative accommodation according to the process set out in the DADHC Maintaining Respite Capacity Policy, which will be provided to me by the appointed Case Manager within <specified timeframe> .  
[No more words necessary]

### **Point 12 Exchange of Information**

While NCOSS recognises that most young people will be at school, some young people with disability using respite will have already left school. Accordingly, the reference to the Department of Education should be rewritten to include the young person's day program or other support involvements.

### **Threatening order of clauses**

The order in which the clauses are set out conveys a punitive rather than the preferred serious or business-like nature. Points 9 to 11 should appear before the threatening clauses of points 5 to 8. In this way, the Contract of Stay logically sets out the clauses to properly enable the provision of respite first, then describes the provisions and consequences if something goes wrong or circumstances change.

## **CONTRACT OF STAY for adults**

### **Point 6 DADHC assumes decisions**

- Please refer to previous comments in this submission labelled Point 8.2.1
- Because DADHC is required to implement a process whereby the family or carer as primary decision-maker remains involved with the person with disability, this clause may be in error. Families must not be required to consent to DADHC decision making before using respite. In most cases of overstay, something completely unanticipated happens for the family which may not require DADHC to automatically assume decision-making powers. The process for this is set out clearly in the policy.
- Therefore, this clause should be rewritten along the lines of:  
If I do not collect <client> from <respite> on the departure date, I understand that DADHC will remove <client> from <respite> and place <client> in alternative accommodation according to the process set out in the DADHC Maintaining Respite Capacity Policy, which will be provided to me by the appointed Case Manager within <specified timeframe> .  
[No more words necessary]

### **Point 11 Exchange of Information**

While NCOSS recognises that some people with disability remain at school after the age of 18 years, by far most adults with disability using respite are not a school. Accordingly, the reference to the Department of Education should be rewritten to include the person's day program or other support involvements.

### **Threatening order of clauses**

The order in which the clauses are set out conveys a punitive rather than the preferred serious or business-like nature. Points 8 to 11 should appear before the threatening clauses of points 5 to 7. In this way, the Contract of Stay logically sets

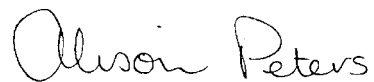
out the clauses to properly enable the provision of respite first, then describes the provisions and consequences if something goes wrong or circumstances change.

**Conclusion**

NCOSS appreciates the opportunity to provide feedback on the DADHC Maintaining Respite Capacity Policy.

Should you require any further information, please contact Samantha Edmonds, Deputy Director, Policy & Communications on 9211 2599 ext 111 or [samantha@ncoss.org.au](mailto:samantha@ncoss.org.au)

Yours faithfully

A handwritten signature in cursive script that reads "Alison Peters".

Alison Peters  
Director  
August 2008