

Casework Procedure

1. Legislative Environment

1.1 Equal Opportunity

The DDLS recognises and celebrates the diversity of people with disabilities and the general community, and the right of all peoples to participate and contribute their unique and diverse skills and experience, free from all forms of discrimination. In particular, the DDLS recognises its responsibilities under the:

1. *Equal Opportunities Act 1995* (Vic)
2. *Disability Discrimination Act 1992* (Cth)
3. *Sex Discrimination Act 1984* (Cth)
4. *Racial Discrimination Act 1975* (Cth)

1.2 Legal Practice

1.2.1 The DDLS recognises its obligations to provide legal services that are regulated by the *Legal Profession Act 2004* (Vic). In particular the DDLS recognises its responsibility to ensure that the principal legal practitioner should:

- (a) In the service of a client, act-
 - (i) honestly and fairly in the client's best interests;
 - (ii) so as not to engage in, or assist, conduct that is calculated to defeat the ends of justice or is otherwise in breach of the law;
 - (iii) with all due skill and diligence; and
 - (iv) with reasonable promptness.
- (b) Report regularly to a client on the progress of the matter;
- (c) Maintain a client's confidences;
- (d) Avoid conflicts of interest- (See also *Conflicts of Interest*)
 - (i) between the practitioner or firm and a client; and
 - (ii) between 2 or more clients;
- (f) Act with honesty and candour in all dealings with courts and tribunals and otherwise discharge all duties owed to courts and tribunals;
- (g) Observe any undertaking given to a court or tribunal, the Legal Board, an RPA or another practitioner or firm;
- (h) Act with honesty, fairness and courtesy in all dealings with other practitioners and firms in a manner conducive to advancing the public interest; and

Casework Procedure

(i) Conduct all dealings with other members of the community with honesty, fairness and courtesy and in a manner conducive to advancing the public interest.

1.2.2 The Service also complies with the Mandatory Legal Practice Requirements of the National Association of Community Legal Centres' (NACLC) Professional Indemnity Insurance Compliance Manual.

1.2.3 The Service conforms to standards imposed by its Service Agreement with the Commonwealth, in relation to Reporting Requirements, Data Collection, Client satisfaction, and Access to premises and records.

1.3 Duty of Care

The Service acknowledges its duty to provide sound, competent legal advice under common law, the Legal Profession Act 2004 (Vic), and legal professional ethics.

2. Eligibility Criteria

2.1 To receive services from DDLS, a person or party must be:

- a. A Victorian resident
- b. A person with a disability or their advocate, associate or parent
- c. a representative body of people with disabilities.
- d. Experiencing (or have experienced in the past) discrimination on the basis of their disability
- e. Not an employee, volunteer, or management committee member of DDLS
- f. Not possessing any qualities which may pertain to a Conflict of Interest
- g. In agreement with the aims and philosophy of the Service

2.2 Any person not fitting these criteria may be referred to an appropriate source of assistance if possible.

2.3 In addition to the above, persons seeking Casework assistance must have a disability discrimination complaint fitting the Criteria for Casework Assistance. (see 6.2)

3. Charter of Rights

Casework Procedure

Clients of DDLS have the right to:

- a. Confidentiality
- b. Respect for their dignity, rights and values
- c. Be fully informed of all options to resolving problems
- d. Receive the highest standard of legal service possible
- e. Legal advice free from conflicts of interest
- f. Have all case files and consumer complaints treated with absolute privacy
- g. All records being kept secure
- h. Access to written records in line with privacy legislation
- i. Referral to other services if their needs cannot be met by DDLS
- j. Have their grievances heard and resolved
- k. Participate in service evaluation processes

4. Privacy and Confidentiality

All staff, volunteers and Management Committee members at the DDLS are committed to protecting the privacy of our clients and all those people from whom we collect information. Refer to the DDLS Privacy Policy.

5. Legal Advice

- 5.1 DDLS provides free legal advice to individuals and other community centres by telephone appointments, or face to face when required.
- 5.2 DDLS solicitors are responsible for handling all advice appointments. Other staff members and volunteers are able to provide basic information, make appointments and refer callers to other organisations if appropriate.
- 5.3 A Client Advice sheet must be completed prior to ending each appointment, for data collection purposes. These sheets are given to the Administration Officer, for entry into CLSIS on a weekly basis.
- 5.4 If there is more than one Solicitor (including Volunteer Solicitors) at the DDLS, they are to meet fortnightly to discuss issues arising from Client Advice.
- 5.5 Client advice times are reviewed every year, but at least one evening per week is set aside for advice to ensure flexibility in service delivery.

6. Casework

- 6.1 The main function of the legal service is to manage cases under the DDA and EOA. The Service should have a maximum caseload of 40 active cases.

Casework Procedure

6.2 Criteria for Casework assistance

6.2.1 Once a client has informed the Solicitor that they wish to lodge a complaint under the DDA or EOA, the Solicitor must judge the complaint according to DDLS criteria to determine whether or not DDLS can offer the client casework assistance. Criteria are as follows:

- (a) The legal merits of the case;
- (b) The resources available at DDLS to undertake the case;
- (c) The complainant's ability to access and/or pay for other suitable sources of assistance.

6.2.2 The Service **will not** take on cases which:

- (a) Seek to obtain results which are contrary to the aims and objectives of the Service as listed in the DDLS Constitution;
- (b) Are of a vexatious nature;
- (c) Have a strong likelihood of setting a negative precedent if the case is unsuccessful; and not meeting the criteria set out in 6.2.1 (a);
- (d) Give rise to, or may be seen as, a conflict of interest.

For these cases, alternative services should be considered if appropriate, and the complainant referred.

6.2.3 Prioritising cases

When taking a case to a court of tribunal, the Service will take on cases of high or multiple priority before those of low and/or single priority. Priorities are as follows:

- (a) **Public Interest Case** – the case must involve issues that are likely to have a positive impact on the greater disability community rather than an individual.
- (b) **Test Case** – the case is likely to change the law and practice in an area of law, or clarify a question of law.
- (c) **Special Characteristics** - Any special circumstances surrounding the case, such as ethnicity, remoteness, marginalisation etc.

Casework Procedure

- (d) **Individual Case** – the case is likely to achieve a positive outcome for an individual.

When cases meet the criteria in 6.2 the Caseworker should discuss the decision to decline the case with the Manager. If agreement cannot be reached, the Management Committee may be consulted.

6.3 Casework Procedure

6.3.1 The Caseworker will provide the client with a full explanation of the processes followed if a complaint is to be lodged under the DDA or EOA, *before* offering assistance beyond the advice stage. The Caseworker is responsible for explaining each new stage or development within the complaint process.

6.3.2 After having the process explained to them, the client must decide whether to continue with the complaint process. The Caseworker will not take any further action on behalf of the client if the client states that they do not want to continue with the complaint.

6.3.3 The Caseworker will always advise a client of all alternative dispute resolution options (of which he or she is aware) for resolving the complaint. The Service will only provide **ongoing** casework assistance for cases, which are complaints under the DDA or EOA.

6.3.4 The Caseworker will make an initial assessment of the circumstances of a complaint, and may provide one or more of the following to the complainant:

- a. Encouragement, guidance or assistance to enable the person to attempt to resolve the complaint themselves. Clients who are lodging or who have lodged a complaint should not be encouraged to handle the complaint themselves;
- b. Appropriate referral to another source of assistance;
- c. One off legal advice;
- d. Draft, or assist the person to draft, a letter or complaint under the DDA or EOA;
- e. Negotiation on behalf of the complainant;
- f. Legal representation for the complainant;
- g. Application for an Urgent Interim Order under the DDA if necessary;

6.3.5 If the solicitor decides to open a file on a new client, a CLSIS “Case eOpen Form” is filled out and the summary details entered on the Monthly Intake Form in the front of the Intake Folder. The client details are entered in to CLSIS, which will allocate an Identification number to

Casework Procedure

that client. A first letter is sent to the client outlining our services, a Client Information Pack, Privacy Policy, Grievance Procedure and a Client Agreement which is required to be signed and returned.

- 6.3.6** In relation to the drafting of complaints, while DDLS staff may not have the resources to draft all complaints for people requiring assistance, it is accepted that the future outcomes of a complaint may rely in large part on the content of the initial complaint. Therefore DDLS solicitors should at least offer to view a person's complaint prior to it being lodged to ensure that a person maximises the opportunity for their complaint to be accepted and to properly reflect their circumstances.
- 6.3.7** If a case meets the criteria set out in 6.2 and the DDLS agrees to represent a client, this representation should continue until the matter is finalised. It should be accepted that to assist a client up to a point and to then withdraw or to refer is not an ideal outcome for the client. Valid reasons for withdrawal could be:
- (a) A breakdown in the relationship with the client;
 - (b) Discovery of information which would have affected the DDLS' acceptance of the case under 6.2.

If at any time the nature of the complaint changes, or for any other reason the Caseworker believes that there is a need to reassess the continued involvement of the Service in the case, the matter is to be referred to the Manager.

6.3.7 Case Open – Short Term

CLSIS definitions of advice and open cases are different from the usual definitions that lawyers may use in the course of their work. In order to meet targets, CLSIS definitions must be adopted and run parallel with usual legal procedure. To that end, short term case open files are run.

- a) If a DDLS staff member has provided more than one advice, and has undertaken any follow up action for a client a blue CLSIS 'Case Open' form should be filled out. This should not be done if a client agreement is being prepared and sent out.
- b) These should be filed in the "Casework CLSIS" file, and given to administration for entering in CLSIS.
- c) These forms and any relevant attachments should be kept for three months. The DDLS solicitors will review the file monthly, and any cases that have not had any further action will be put through CLSIS for closure.

Casework Procedure

- d) Solicitors will transfer cases in to individual case files when circumstances warrant the transfer.

6.3.8 File Review

The DDLS Casework and Advice files are reviewed according to national standards, quarterly. File reviews are carried out by a Solicitor from another Community or Specialist Legal Centre. Any discrepancies identified in the file review process must be brought to the attention of the Management Committee.

6.3.9 Litigation

- a) All deadlines for pleadings, including witness statements, should be diarised in the DDLS Microsoft outlook public diary both five days prior to the due date, and on the due date..

6.3.10 Delegation of Authority

- a) All pleadings should be provided to the Principal Solicitor for review an authorisation prior to filing and serving. This includes witness statements and affidavits.
- b) It is accepted that the professional indemnity rules reflect that the Principal Solicitor has the responsibility for Casework, and hence that positions authorisation.
- c) If DDLS solicitors have differing views as to the running of the case, or the contents of pleadings,:
 - i. Principal Solicitor will make the final decision; or
 - ii. the matter may be assisted by an external second opinion
- d)

6.3.11 Solicitor Absences

There will be times when solicitors are on annual leave, or other planned leave. To ensure that there is minimum disruption to case work, prior to a solicitor taking leave s/he will develop a handover summary of current cases, including contact names and numbers for the relevant persons (eg. the client, barrister, investigating officer), and any other relevant instructions.

The handover document should be given to the remaining solicitor with a copy to the manager, three days in advance in order that clarifying questions can be asked.

Casework Procedure

6.3.12 Conflict of Interest

- a) The Service recognises the right of all clients to be protected from conflicts of interest, and is committed to working in a way that prevents conflicts of interest.
- b) The Service can advise one party or person in a dispute only. Therefore, if the other person(s) involved in the dispute approached the Service about the issue or another issue, the Service could not assist them because this would cause a 'conflict of interest'; there is a risk that the Service might acquire information that is detrimental to its client in some way. Solicitors must prevent this situation from occurring under the rules that govern their work.
- c) A conflict of interest can also occur when a caseworker or legal volunteer's firm of solicitors is involved in the matter for the other party or has acted for the other party to the dispute in a previous job.
- d) A Conflict of Interest Check is unnecessary in most circumstances, as the DDLS does not offer legal assistance to respondents to disability discrimination complaints. As there are no circumstances in which two opposing parties to a disability discrimination complaint could be eligible for DDLS assistance, conflict checks are unnecessary regarding the DDLS' assistance.
- e) Where a legal volunteer has any doubt about the existence of a conflict of interest (for example, a conflict could be perceived), they should immediately seek advice from the Caseworker. If this is not possible, the staff member or volunteer should:
 - (i) Refer the matter to the Caseworker; or
 - (ii) Provide the person with appropriate referrals.
- f) The onus is on each individual staff member and volunteer to notify the Caseworker if a potential, perceived or actual conflict of interest arises in relation to a matter being handled at the DDLS, and any work/involvement they may have external to DDLS.
- g) If legal advice has been given prior to discovering that a conflict of interest exists, the Service will be unable to provide advice or act for either client and both clients shall be referred outside of the DDLS. A full explanation of what has

Casework Procedure

occurred, and an apology for its occurrence, shall be provided to both

6.3.13 Second Opinions

It is not DDLS policy to give internal second opinions if requested by clients. If a client requests a second opinion, DDLS refer them to an alternative discrimination legal service, such as Victoria Legal Aid or AED Legal Services.

6.3.14 Referral

The Caseworker or a Legal Volunteer will not refer out clients on a fee basis to a practice in which they work or have an interest.

General referral information can be found in the Information and Referral Procedure.

6.3.15 Advice

- a. Many clients who call will speak to a solicitor once, and be referred or for other reasons not pursue their matter.
- b. For one off advice recording, fill out a CLSIS "Client Advice" form, put form in the Intake Folder, and enter the summary details on the Monthly Intake Form. Enter the details into CLSIS where a client number will be automatically generated.
- c. If an Advice client re-contacts the agency and becomes an ongoing client, use the same number generated by CLSIS, and fill in a "Case Open Form" – follow the procedure in 6.3.5.

6.3.16 Email

Occasionally emails will be received asking for advice. When responding to emails please observe the following protocols:

- a) Ensure correct email address;
- b) Copy all advice emails to the principal solicitor;
- c) Ensure the email is sent only to the client recipient. All advice must contain the following:
'This email and any attachments transmitted with it are confidential. If you are not the intended recipient or

Casework Procedure

person responsible for delivering the email to the intended recipient, you are prohibited from disclosing, copying or using the information contained in it. If you have received this email in error, please inform us by email reply and delete the message and attached documents.”;

- d) Ensure that emails are written in a size 12 font unless a larger print is requested or deemed more appropriate;
- e) Try and match the level of English as sent in the email to you – that is if it is clear that English is someone’s second language, use simple English in return;
- f) The name and the position of the person giving advice must be indicated clearly on the email advice;
- g) Pose a hard copy of the email advice to the client’s postal or residential address if a reply from the client is not received within three days of the advice. If the advice contains limitation dates that may expire within a 10 day period, a follow up telephone call should also be made where possible.
- h) Requests for advice should be answered within three days unless there are circumstances requiring an immediate response.
- i) Provide the contact details of the following organisations where the client may be able to seek a second opinion:
 - Disability Employment Action Centre 9650 2533
 - Villamanta Disability Rights Legal Service Inc: 1800 014 111
 - Law Institute Victoria – Referral Service: 9607 9550

6.3.17 Recording Telephone Conversations

At the beginning of a TTY conversation, clients must be informed that DDLS has a TTY printer and **may** keep a copy of the transcript of the conversation for file keeping purposes.

Similar information is provided whenever a need to use an audio recording device arises in standard telephone conversations.

Casework Procedure

6.4 Client Files

6.4.1 Accessing Client Files

Clients are able to access their casework or advice files as per the Privacy Policy. Clients will access their file in the presence of the relevant DDLS Solicitor.

A client's file will only be provided upon request to another practitioner upon receipt of a signed authority by the client authorising file transfer.

6.4.2 Closure and Record Retention - Client Files

When the Caseworker is satisfied that a client file can be closed, the file will be closed using the following procedure:

- (a) The Caseworker reviews the file.
- (b) The Caseworker notifies the client by letter that their file will be closed within 14 days and that the file will be held for a period of 7 years, and then destroyed. Refer to the DDLS Record Retention Procedure.
- (c) After 14 days from the initial letter, the Caseworker checks for any disbursement outstanding and monies held in trust. The disbursement Summary sheet on the file's inside cover should also be checked.
- (d) The Caseworker undertakes final CLSIS data entry.
- (e) In CLSIS, the Caseworker enters "closing of file" in the CLSIS File Register (electronic), finds the relevant file number, and completes the relevant section of page, in relation to closure. The Caseworker fills out the CLSIS Case Closure sheet and places it in the file.
- (f) The Caseworker marks the file as closed and gives it to the Administration Officer for archival as per the DDLS Record Retention Procedure.
- (g) Casework files are reviewed every month by the relevant solicitor to ensure closure occurs in a timely manner.

Casework Procedure

6.4 Costs

- 6.4.1 While DDLS provides a cost free service to clients, it may, and should recover costs from Respondents when possible.
- 6.4.2 Complaints referred to the Victorian Civil & Administrative Tribunal, Federal Magistrates Court or Federal Court may result in recoverable costs being ordered.
- 6.4.3 To that end, DDLS solicitors should fill out a Running Sheet for those matters on a daily basis. Details should summarise the hours spent and the tasks done. To that end, if costs are recoverable at any stage, information from the Running Sheet can be compiled with other case notes and correspondence to form a taxable invoice.

6.5 Evaluation

As per the VLA service agreement, clients will be sent a survey once per year to elicit feedback on our services. This will be done by sending out a written survey in a prepaid envelope to be returned to the Manager.