



TRANBY

NATIONAL INDIGENOUS ADULT
EDUCATION & TRAINING

SINCE 1957

10861NAT Diploma of Aboriginal and Torres Strait Islander Legal Advocacy

LEARNER MANUAL

Block 1 Advocacy & Support

**NAT10861002 Advocate for clients in need of legal
assistance**

**CHCCOM002 Use communication to build
relationships**

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969 (Cth)

WARNING

This material has been reproduced and communicated to you by or on behalf of Tranby National Indigenous Adult Education & Training (*Tranby*) pursuant to Part VB of the *Copyright Act 1968* (Cth) (the Act).

The material in this communication may be subject to copyright under the Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act. Do not remove this notice.

Table of Contents

Introduction to NAT10861002 Advocate for clients in need of legal assistance	4
Clients in care, custody or in need of assistance	4
<i>A Client ‘in care’</i>	<i>5</i>
<i>A Client ‘in custody’</i>	<i>6</i>
<i>A Client ‘in need of assistance’</i>	<i>8</i>
Identify client rights and needs.....	9
<i>Why is advocacy important?</i>	<i>9</i>
<i>At the outset – the initial client interview</i>	<i>10</i>
<i>Research Client Rights.....</i>	<i>12</i>
<i>Seeking Assistance</i>	<i>19</i>
The Provision of Legal Information to the Client.....	20
Advocating on behalf of the client	22
What is communication? Why is it important?.....	25
Introduction to CHCCOM002 Use communication to build relationships	27
Making a great first impression	27
Communicating effectively with clients and co-workers	30
Conducting interviews	31
Giving feedback and advice	34
Demonstrating respect	35
Communicating with clients with disabilities.....	36
Ensuring communication represents the organisation	39
Contributing to the implementation of effective communication strategies.....	41
Using specific communication techniques.....	48
Facilitating discussions	52

Introduction to *NAT10861002 Advocate for clients in need of legal assistance*

This unit describes the performance outcomes, skills and knowledge required to advocate on behalf of an Indigenous client in need of legal assistance. This unit applies to those working within an organisation which provides services to Indigenous clients.

This section addresses the steps to identify the client rights and needs while conducting the first interview. It covers how to conduct client interview and what are the main issues that need to be addressed in order to avoid any ethical conflicts and to ensure client participation. Also it explores how to seek assistance during the process where required.

Next the material explores the importance of delivering accurate and clear information to the client. This includes a consideration of the various options available to the client and the legal process associated with. Eventually, the material explores the ways by which to developing the right strategy to advocate on behalf of the client.

Clients in care, custody or in need of assistance

There is a range of different circumstances where you may need to help or advocate on behalf of your client. Depending where you are working your client will have different needs and you will need to use different types of advocacy skills to assist them. Your client may be an adult or a juvenile. As we have seen in previous units, the client interview is a really important step to help you to identify exactly what your client needs, what law is relevant and what steps you need to take to assist them.

You may need to provide assistance across a range of legal practice areas. For example:

- Care and Protection Law
- Criminal Law
- Elder Law
- Immigration Law
- Family Law
- Domestic Violence Law
- Disability or Anti-discrimination Law

Your client may be in care or custody or in need of assistance. In each different context your client will need legal advice and you may be asked to advocate on their behalf. Different needs arise depending on the client's circumstances so you need to think about exactly what they need and what laws apply to their situation.

What exactly do each of these terms mean?

A Client 'in care'

Children in Care

In each state and territory in Australia there is legislation in place that gives power to a designated state department to intervene if a child is at risk or in need of care and protection. In NSW this department is called the Department of Child Protection¹. The relevant legislative instrument that governs the law in this area is called the *Children and Young Persons (Care and Protection) Act (NSW) 1998*.

In these cases, you may need to advocate on behalf of or assist your client with a range of issues. For example:-

- It may be that a parent or grandparent of a child who has been placed in the care of the Department comes to you for help.
 - They may need legal representation for their court case at the Children's Court.
 - They may need you to write a letter to the Department about contact arrangements for a child.
 - They may have concerns about medical treatment for the child and ask you to provide the Department with some information about that.
- In some cases a lawyer in your office may be a 'legal representative'² for a child in care. In this example, you will be providing direct representation for the child and acting in their 'best interests'.
- There may be an allegation of abuse of a child who is in foster care.

¹ See, http://www.community.nsw.gov.au/welcome_to_docs_website.html

² See section 99, *Children and Young Persons (Care and Protection) Act 1998* (NSW)

Elderly People in Care

In each state and territory in Australia there are laws in place that deals with issues that may arise for elderly people, broadly this is called Elder Law. This area of law applies to elderly people, including those who are in care in an aged care facility. A number of different laws may apply in this area depending on the issue that arises for your client. Some laws will be state or territory based, such as the *Powers of Attorney Act 2003* (NSW) and the *Guardianship Act 1987* (NSW) . Some laws that apply will be Commonwealth, such as the *Aged Care Act 1997* (Cth) and the *Quality and Care Principles 1997* (Cth).

In these cases, you may need to advocate on behalf of or assist your client with a range of issues.

For example:-

- An issue may arise about healthcare or accommodation.
- There may be an abuse allegation of an elderly person in an aged care facility.
- There may be a dispute or issue relating to a client's will or estate.
- You may need to assist in relation to an Aged Care or Nursing Home Agreement.
- There may be a Guardianship issue.

A Client 'in custody'

Police Custody

In each state and territory in Australia there is legislation in place that deals with the responsibilities of police and the rights of people who are in police custody. The key legislative instruments that govern this area of law are the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) and the *Law Enforcement (Powers and Responsibilities) Regulation 2005* (NSW) . These laws proscribe important rules about treatment of person's in custody and deal with a person's legal rights, health and safety whilst in custody. The *Bail Act 2013* (NSW) is an important piece of legislation as it proscribes the procedures and processes relating to bail applications for a person in custody. You need to also be familiar with the *Crimes Act 1900* (NSW) as this will assist you with your client's substantive matter.

In these cases, you may need to advocate on behalf of or assist your client with a range of issues.

For example:-

- Your client may ask you to make a bail application on their behalf.

- There may be an allegation of mistreatment of a person in police custody.
- The circumstances of their arrest may be relevant to the running of your client's case.

Prison Custody

In each state and territory in Australia there is legislation in place that deals with the responsibilities of Corrective Services and the rights of people who are in prison custody. There are a lot of legislative instruments that are relevant to persons in custody, including the *Crimes (Administration of Sentences) Act 1999* (NSW) and the *Crimes (Interstate Transfer of Community Based Sentences) Act 2004* (NSW). The Department of Corrective Services³ is responsible for correctional services and programs for people in custody throughout NSW. These programs are directed toward reducing re-offending and also enhancing community safety. The *Bail Act 2013* (NSW) is an important piece of legislation as it proscribes the procedures and processes relating to bail. You need to also be familiar with the *Crimes Act 1900* (NSW) as this will assist you with your client's substantive matter.

In these cases, you may need to advocate on behalf of or assist your client with a range of issues. For example:-

- You or the family may have a welfare concern about a client.
- They may need to get some legal advice about their case.
- Your client may need some assistance in accessing support services or programs.
- There may be an allegation of mistreatment whilst in custody.
- Your client may need representation at their parole hearing.

Immigration Detention

In Australia, Immigration Law is governed by Commonwealth legislation. If a person from another country is in Australia without a valid visa then they may be detained in immigration detention⁴. The key piece of legislation that deals with this area of law is the *Migration Act 1958* (Cth) and the *Migration Regulations 1994* (Cth).

³ See, <http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/related-links/about-us/about-us.aspx>

⁴ See, <http://www.border.gov.au/about/corporate/information/fact-sheets/82detention>

In these cases, you may need to advocate on behalf of or assist your client with a range of issues.

For example:-

- You or the family may have a welfare concern about a client held in detention.
- Your client may need to get some legal advice about their visa application.
- Your client may need some assistance in accessing support services.
- There may be an allegation of mistreatment whilst in detention.

A Client 'in need of assistance'

There is a range of legal issues that may arise for your client where they may be in need of some advice or some advocacy assistance. Your client may be in custody or they may be at liberty. Remember that often a person may have more than one legal issue at a time. For example, they may be on remand in prison custody for a criminal matter and also have an Apprehended Violence Order matter listed in court as well. The client may also need your assistance in arranging contact with their children who are in State care.

In some cases, your client may have special needs arising from a disability, due to language or because they are an Indigenous or Torres Strait Islander person. This may impact upon their needs and the way that you communicate with them. For example, they may need a support person, an interpreter and / or you may need to take into account cultural considerations as part of your engagement. Remember also that juveniles have different needs to adults; in many cases there are special laws in place to ensure their rights are protected given their age and vulnerability.

Your client may need assistance from you in relation to any of the practice areas mentioned above. For example:

Domestic Violence

In each state and territory in Australia there is legislation in place that deals with Domestic or Family violence. In NSW the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) is the key piece of legislation for this area of law.

In these cases, you may need to advocate on behalf of or assist your client with a range of issues.

For example:-

- You may need to provide legal advice to a victim about applying for an AVO.
- You may need to provide advice if there is an allegation that an AVO has been breached.
- You may need to refer your client to some support services.

Disability Law

Anti-discrimination law based on a person's disability is governed at both state and commonwealth level. In NSW the *Disability Inclusion Act 2014* (NSW) deals with a range of human rights issues relating to persons living with a disability. At the commonwealth level there is the *Disability Discrimination Act 1992* (NSW) which promotes equal opportunity, rights and access for persons with disabilities. It may be that other legislation is also relevant such as employment or tenancy law.

In these cases, you may need to advocate on behalf of or assist your client with a range of issues.

For example:-

- You may need to give some advice around a discrimination issue.
- Your client may need a referral to some support services.
- You may need to write a letter to advocate for some changes in the workplace.

Every client is unique: their legal issues, their circumstances and their needs are also unique.

Whilst you need to know the law that applies in your case it is really important that you listen carefully to your client and clearly identify what it is that they need from you. Once you have done this you can work out what advocacy strategies will best meet these needs.

Identify client rights and needs

Why is advocacy important?

Advocacy is an important process that can help a client to realise and protect their human rights. You may be requested to support the client in exercising his/her rights. Examples of rights you could be asked to support include:

- The right to privacy and confidentiality;
- The right to respect and dignity;
- The right to quality services;
- The right to information to inform decision making;
- The right to choice and control;
- The right to make and resolve complaints;
- The right to non-discriminatory service; and
- The right to protection of legal and human rights, and freedom from abuse and neglect

Each of these rights should be protected and realised. However, people in care or custody can be vulnerable to exploitation by others and may not be able to protect their own legal interests.

This may be due to lack of knowledge, understanding, mis-use of power and in some cases, as a consequence of unique vulnerabilities. Laws are in place to ensure that power is balanced with responsibility and rights can be protected through fair process. The role of the advocate is to know the law and to use a broad skill base, including effective communication, to assist their clients.

At the outset – the initial client interview

Advocacy skills may involve speaking, acting or writing on behalf of an individual (or group) who has limited ability to exercise his/her rights. They include in court and outside of court advocacy skills.

To advocate effectively you need to have skills that help you to carry out a basic assessment of your client's needs and whether they require special assistance. Once you have done this you can analyse what law applies to their case and then move on to making a plan about how to best advocate on their behalf.

This initial assessment as to whether or not a person requires special assistance involves three steps:

1. Making an initial, preliminary assessment looking for warning signs using basic questioning and observation of the client.
2. If doubts arise, seeking a clinical consultation or formal evaluation of the client's capacity.

3. Making a judgment about their needs and take proper action to provide assistance.

It is important to recognise clients' needs in order to represent and assist them in making informed decisions. Understanding the nature of the person's vulnerability and their special assistance they require is essential to ensuring:

- effective representation of that person;
- the court is aware of the nature of their needs and level of vulnerability;
- ensuring the client understands court proceedings which is essential to obtaining proper access to justice and protect their rights;
- appropriate referrals are made to ensure they receive appropriate assistance

In some cases those identified needs are quite simple like the need to make a phone call to a family or to have access to proper clothing in custody however, they are essential for a person who is in custody. Sometimes clients are on medications and they need access to their medicine or they suffer physical disability and need proper instruments.

On the other hand, some clients have more complicated needs in particular if their mental capacity is in doubt and they are not able to indicate what they want to achieve. There are some general warning signs that point to the need for further investigation but they are not exhaustive and should not be used as grounds for a definite diagnosis.⁵ These include:

- A client demonstrates difficulty with recall or has memory loss
- A client has ongoing difficulty with communications
- A client demonstrates a lack of mental flexibility
- A client is disoriented
- A client is in hospital or a residential aged care facility when instructions are taken
- A client is accompanied by many other friends, family or carers to interviews with the solicitor but is not given the chance to speak for themselves
- A client shows a limited ability to interact with the solicitor
- A client shows a limited ability to repeat advice to the solicitor and ask key questions about the issues

⁵ NSW Law Society, when a client's capacity is in doubt: A Practical Guide for Solicitors. Retrieved from <http://.....>
Accessed 13/1/15

If you recognise any of these factors are present then this will help to inform you about how you can best communicate with the client, who you may need to refer them to and exactly how to develop an advocacy plan that will best meet their needs.

There are a number of other techniques that advocates can use to provide a comfortable environment for clients. This will help to maximise their ability to understand the discussion and to accommodate any disabilities or impairments they may have. These include giving clients more time to read documents, putting a client at ease and providing aids where the client has hearing or vision impairments, support persons or interpreter.

Research Client Rights

Once you have conducted your first client interview you should have a much clearer picture about what the legal issue is and what steps need to be taken to assist them. An important thing to always consider when you are looking at the law is what human rights are relevant here. Different cases will require you to consider different types of human rights.

For example, are we concerned about:-

- Child protection
- Protecting someone from being intimidated or put in fear
- Procedures relating to communication
- Court procedures
- Police Powers
- Access to information

Understanding the relevant law that applies in your client's case will put you in the best position to assist them.

Issues you will need to consider include:

- Can they take their case to court?
- Who is the other party?
- Do we need to write a letter?
- Do we need to file documents?
- Do we need to negotiate?

- Who has the power to help us?
- Who is making decisions that affect our client?

Thinking about all these questions will help you to better understand who you can help you client exercise their rights.

Case Study : Criminal Case

At the heart of our common law is a person's right to refuse to answer questions put by people in authority, and to refuse to accompany those in authority to any particular place unless they have been formally arrested. Those rights, however, can be, and have been, eroded by laws made in parliament. Police powers have been extended by legislation, and a complex set of rules has evolved in an effort to strike a balance between protecting people's rights and liberties and ensuring effective law enforcement.

The following section details some of the issues and relevant laws that may apply in a criminal case to assist an advocate in working out how to help a client protect their rights.

1- Limitation on police power before arrest

There are no special provisions in the *Crimes Act 1914* (NSW) or *Evidence Act 1995* (NSW) requiring Aboriginal people under arrest to be treated any differently when being interrogated by police. NSW police powers to arrest, detain, search and issue directions are generally the same for Aboriginal people as they are for non- Aboriginal people (*Crimes Act 1900* (NSW), Pts 10, 10A and 10B). However, each State and Territory has related legislation in this regard. In NSW, *Law Enforcement (Power and Responsibilities) Act 2002* (NSW) (LEPRA) contains specific limitations on police powers to arrest, detain, search or issue directions.

Some of the limitations in relation to Aboriginal people are:

1. An Aboriginal person who has been arrested can be detained for questioning for up to two hours. This may be extended to eight hours, with a magistrate's approval, if the offence being investigated is punishable by imprisonment for more than 12 months.
2. The investigating police must notify an Aboriginal legal aid organisation when an Aboriginal person is arrested. The person is entitled to have a legal practitioner present to give advice during questioning.
3. If the person is arrested more than once in 48 hours, the investigation period for each arrest is reduced by the period of the previous investigations.
4. At the end of the investigation period the person under arrest must be released, either unconditionally or on bail, or brought before a magistrate as soon as practicable.
5. A person who has not been arrested may not be detained against their will.

6. The person being investigated must be cautioned, in a language in which they can communicate with “reasonable fluency”, that they do not have to say anything during questioning. In some circumstances an interpreter is needed. The person must be told of their right to communicate with a friend, relative or lawyer, and be allowed to do so. If practicable, the caution should be recorded.
7. An Aboriginal person under arrest is entitled to have a friend or support person present during questioning

Prior to arrest, police officers have the power to demand the name and address of any person:

- in relation to certain motor traffic and drug offences
- where the police hold a reasonable suspicion that the person:
 - was a witness to a crime
 - has stolen goods in their car
 - has a dangerous implement, or
 - possesses or is consuming alcohol in a public place.

2- At the police station

A person who has been arrested will be taken to a police station. Then a *custody manager* (a senior officer) gives the person a form explaining their rights and advising (*cautioning*) them that they are not obliged to answer questions. At this stage the police must tell the person why they are being detained; give the person the opportunity to get legal advice (either at their own expense or, if appropriate, from the Legal Aid Commission or the Aboriginal Legal Service); and give the person the opportunity to communicate privately with a friend or relative. The only time police may not permit communication is where there is a reasonable fear that it might lead to an accomplice escaping or evidence being destroyed.

Police have the power to detain a person, who is lawfully arrested, for the purpose of investigation for a “reasonable time”. The matters to be taken into account in determining what is a “reasonable time” are set out in the act. The maximum time period which a person in NSW can be detained is 4 hours, unless a warrant is granted to extend this time period for up to an extra 8 hours.

The LEPR allows police to detain a person found intoxicated in a public place who is behaving in a disorderly manner, or is likely to cause injury or damage property, or is in need of physical protection. People may be detained for up to eight hours in a police station, but must be released earlier if they cease to be intoxicated, or a responsible person is prepared to care for them. There is no court appearance since drunkenness is no longer a criminal offence.

There are time periods which are to be disregarded when calculating what is a “reasonable time” and these include things such as arranging equipment for investigation, communicating with friends, relatives or lawyers. There are a whole range of other “time-outs” which are listed in section 117 of the Act.

Any detention after arrest is to be counted towards any future sentence a person is to serve.

Part 9 also sets out the nature of the cautions which must be given and information regarding a person rights in custody (s122) as well the following rights/matters:

- Right to communicate with friend, relative, guardian or independent person and Australian legal practitioner (s123)
- Right of foreign national to communicate with consular official (s124)
- Circumstances in which certain requirements need not be complied with (s125)
- Provision of information to friend, relative or guardian (s126)
- Provision of interpreter (s128)
- Right to reasonable refreshments and facilities (s130)

As soon as the detention period is over the person must be:

- released, or
- taken before a magistrate to be formally charged, or
- given a court attendance notice and police bail (see Bail section below).

Additionally, the LEPR Regulation set out in r.33 extra provisions for Aboriginal and Torres Strait Islanders person as follows:

Legal assistance for Aboriginal persons or Torres Strait Islanders

- (1) If a detained person is an Aboriginal person or Torres Strait Islander, then, unless the custody manager for the person is aware that the person has arranged for a legal practitioner to be present during questioning of the person, the custody manager must:

- (a) immediately inform the person that a representative of the Aboriginal Legal Service (NSW/ACT) Limited will be notified:
 - (i) that the person is being detained in respect of an offence, and
 - (ii) of the place at which the person is being detained, and
- (b) notify such a representative accordingly.

If a person who has been arrested doesn't want to say anything to police, this attitude should be made clear and never changed. Name and address should be stated, and every other question answered with words such as "I do not want to say anything at this stage". There should be no change to this reply, even if the police ask about the reason for this attitude.

It may be in the interests of a person who has been arrested to make a statement or participate in a recorded interview, if there is a valid explanation for the behaviour in question (for example, in the case of a charge of theft, if the owner's consent had been given). Whatever the circumstances, it is important to seek legal advice before making a statement.

Forensic Evidence

There became a time where a person in custody might be required to give forensic evidence. Following the introduction of the *Crimes (Forensic Procedures) Act 2000* (NSW), there are clear rules as to how police may obtain bodily samples for forensic purposes. A distinction is made between *intimate* and *non-intimate* procedures.

Non-intimate procedures

A non-intimate sample might consist of:

- fingerprints
- hair
- nail scrapings
- body moulds
- photographs (s 3(1)).

A non-intimate procedure can be carried out under an order from a senior police officer (*Crimes (Forensic Procedures) Act 2000* (NSW) s 17).

Intimate procedures

An “intimate forensic procedure” includes:

- examination of the genitals
- taking a sample of blood, saliva or pubic hair
- taking dental impressions (s 3(1)).

To carry out such procedures the police officer must have either: the consent of the person from whom they wish to obtain the sample, or a court order (ss 7, 22). A sample that has not been obtained in accordance with the Act is not admissible as evidence in court (s 82).

Intimate procedures and Aboriginal people

If the police wish to carry out an intimate procedure on an Aboriginal person, an *interview friend* (a support person chosen by the person) must be present when the person is asked for their consent, unless they have expressly and voluntarily waived their right to have an interview friend present. The police must also inform the person that the relevant Aboriginal legal service will be notified of the proposal to ask for consent (s 10). An interview friend or legal representative must be present when the procedure is being carried out on an Aboriginal person (s 55).

Reasons for the provisions

The special provisions in relation to Aboriginal people arise in part from an inquiry by the NSW Legislative Council Standing Committee on Law and Justice into the *Crimes (Forensic Procedures) Act 2000* (NSW) . The Aboriginal and Torres Strait Islander Commission and the NSW Aboriginal Land Council made submissions to this inquiry, pointing out that bodily samples are used by Aboriginal people for spiritual purposes and as a result Aboriginal people may be particularly reluctant to give such samples.

Bail

Bail is the authority to be at liberty for an offence until the proceedings for the offence finish. Bail can be granted to any person accused of an offence or where a person is required to appear in court as a witness but has been arrested to secure their attendance. Whether or not bail is required at all, whether it will be granted, and any conditions that are to apply, are decided soon

after the person has been charged, first by a police officer and later by a court. Subject to certain conditions that decision can be revisited or appealed.

Once granted, bail continues until revoked or varied. If bail is granted to a person in custody they are released once any pre-release conditions are met. The right to bail is dealt with in the *Bail Act 2013* (NSW). Section 17(3)(j) of the *Bail Act 2013* (NSW) requires the bail authority to take into account any special vulnerability or needs the accused person has being an Aboriginal or Torres Strait Islander when considering bail.⁶

Seeking Assistance

A good advocate can identify relevant personnel or agencies who can assist them. This is often a government department such as the Police, Immigration or Child Protection departments. Personnel from within these departments are always a good place to start so that you can find out as much information you can about the case, and potentially do some negotiation at an early stage. It may be that your client is already engaged with a number of services and this is relevant to your advocacy strategy. You may need to call a Police Officer, a case worker or probation and parole officer. You may need to write a letter to a Departmental Representative or a psychologist or Youth Worker. You may need information or you may need to request a letter of support. In some cases a Department representative may not be aware of the services your client is working with. If you get support letters and share them this may help to change their view about an issue in dispute.

It may also be important to make an appropriate referral for your client to another service. This may be a support service such as a counselling or some other specialist service. In some cases it may be another legal service.

⁶ For more information on bail, refer to the bail unit

Aboriginal Legal Services

Aboriginal legal services were established in the 1970s. The ALS offers free legal advice and representation for Aboriginal and Torres Strait Islander people. ALS lawyers work in the areas of criminal law, family law and children's care and protection law. For civil law matters they give information and referrals to other service providers. There is no means test except for contested family law hearings.

In 2006 the six Aboriginal legal services in NSW and ACT were amalgamated to form a single service, called the Aboriginal Legal Service (NSW/ACT) Limited (ALS), which continues to be an Aboriginal community controlled organisation. There are 23 offices in NSW and ACT in metropolitan and regional areas.

The Provision of Legal Information to the Client

It is imperative to understand what outcomes the client believes can be delivered as well as their expectations. It is also imperative the client understands what expectations their lawyer may have of them, and what they will be required to do to ensure their matter progresses satisfactorily. Once a common understanding is reached a strong communication relationship can begin.

The following list provides communication recommendations specifically for lawyers interacting with clients. These involve the following:

1. Keep up regular communication with clients – notify them of any developments and updates to progress.
2. Make every effort to explain things clearly.
3. Legal terms and processes that are common to lawyers but foreign to most clients may need to be explained. Seek feedback that demonstrates clients have understood key terms or processes.
4. Establish practice management systems that enable efficient procedural responses to queries and complaints.
5. Keep all matters confidential and refuse to act for anyone else if doing so may compromise that confidentiality.

Effective communication also involves being considerate of a client's concerns and priorities and practising good management and administration.

It is important that your client is given accurate legal advice and information about their options so that they can make an informed decision, and provide their lawyer with instructions on that basis. Legal advice includes information about what laws apply, and what a person's rights and responsibilities are in a particular situation. It may be that a lawyer provides a combination of written and oral legal advice to assist a person in making a decision.

Depending on the type of case there may be a range of advocacy options available. For example:-

- A lawyer may firstly try to negotiate on behalf of their client to resolve a matter without the need to go to court.
- In other cases, mediation, family dispute resolution or conciliation may be an option. Obviously there are some cases where the case must be resolved in court.
- There are also options available during a court case. The client must clearly understand their rights and different strategies available so that they can instruct their lawyer about how they want their case run.
- In some cases it may be appropriate to write a submission to a government department. This can be done on behalf of an individual or in some cases it may be on behalf of a group of affected people.

In some cases there may be an issue that arises in relation to a conflict of interest. Usually this matter is resolved at the beginning of a case when an organisation first agrees to assist a person. However, there are some cases where a conflict of interest arises after the first meeting or whilst the case is on foot. If this happens it is very important that this information is clearly communicate to the client and an appropriate referral is made so that they can access assistance from another legal service.

There are other situations where it may be appropriate to refer your client to another service who may be better placed to assist. It may be that they have special needs or vulnerabilities. It may be that the organisation has specialist skills that can best help your client. For example:-

- Your client may have a mental health problem and need assistance from a specialist service before you can help them.
- You may need to refer you client to a counselling service or domestic violence support service.
- The Australian Human Rights Commission might be in a better place to conciliate a Disability Discrimination matter.
- Your client may need to detox from drugs or alcohol before they can provide instructions and properly understand your legal advice. In which case a referral to an appropriate service is required.
- Your client might feel comfortable engaging with Indigenous Service providers.
- Your client may be a juvenile and need to be referred to some youth services.
- A homeless client will need to be referred to some crisis accommodation services.

In each of these examples you would need to explain your concerns with your client and provide them with the information about the referral service. They may or may not wish you to make the referral. In your discussion with them you need to reiterate your confidentiality obligations and seek permission to disclose any information and to act on their behalf in any way. Once you have made the referral make sure you provide your client with all the important information they will need to follow up on the referral.

Advocating on behalf of the client

Once you have met your client and identified their needs you will need to think about the best advocacy strategy or plan you can put in place to assist your client. As already mentioned, you may need to draw on resources from both inside and outside your office. In many situations you will find that there are many relevant stakeholders, organisations or individuals who may end up playing an important part you achieving your advocacy goals.

You may need to convene a staff meeting to brainstorm what the best way is to approach the case. By doing this you can discuss ideas, the law and your client's instructions with your colleagues. They may have some suggestions or experiences that can help you with our case and / or you may decide to collaborate and work together on a case.

You may need to contact support services, institutions, family or the employer of your client. They may have important information that could help your client. They may be able to give evidence in a court case or prepare a support letter. A support letter may be helpful in a court case but it may also be an essential part of a negotiation process. Remember you must make sure you have asked your client for permission before you contact anyone on their behalf. It is best to get written permission. Usually your employer will have some pro forma consent documents ready for your client to sign. It is a good idea to have this at hand and get them signed at your first client interview. It is also important to be clear about the scope of the authority your client has given you. For example, they may give you permission to contact their employer but they may not want you to disclose any material detail about their case. You must ensure you comply with all your ethical duties at all times, especially relating to maintaining client confidentiality.

Your client's legal issue will play a big part in shaping the kind of advocacy plan that is appropriate. For example:-

- If your client is on remand waiting for a trial in their District Court you would expect that a key part of your advocacy plan will relate to the running of the trial. It may be that you need an interpreter to do your job properly. You would need to be open to negotiating with the Police and / or DPP. Some custodial issues may also arise that require your attention.
- If your client has drug and alcohol addiction issues and some other legal issues you would expect to refer them to some support services as part of your advocacy plan. In many cases you may not be able to get reliable instructions until the person gets some help and is sober.
- If your client is a victim of domestic violence you would expect to provide them with legal advice around obtaining an AVO. You may refer them to the police and specialist Domestic Violence or Counselling Services. You may write a letter to these support services providing them with important background material and a case history.
- If your client is a concerned grandmother of a five year old who is state care you would expect to provide her with some general advice. You would need to get information from

her about which departmental office is involved and you would need to locate the caseworker to get some of the preliminary information to start making an advocacy plan.

- If your client comes to because they feel they have been discriminated in the workplace based on their disability you would expect to give them some general legal advice about their options. You may end up referring them to the Australian Human Rights Commission.

As you can see, in each of these cases a slightly different approach is required. The common theme is that issues are often complex and require a multi-faceted approach to be effectively resolved. You will need to engage with different government personnel, organisations and individuals. In some cases, a client's family may be heavily involved.

Legal problems generally take some time to resolve, sometimes months and years. For this reason it is really important to maintain good communication with your client and provide them with updates about the progress of your advocacy initiatives and their case. This can be done verbally (documented with a file note) or via letter. A mixture of both forms of communication may be appropriate in some cases. There will be some clients who have literacy issues, so you will need to ensure you keep this in mind and preference verbal communication.

What is communication? Why is it important?

We use communication skills in our everyday life. Sometimes we are unaware that we are communicating, as we use both verbal and non-verbal communication skills.

Communication helps us to say something, tell someone something, ask for some information or to get an idea across to someone else. It can also help us to understand what the other person is saying to us, what they need us to understand.

Communication is a two-way street. Effective communication often requires both parties to be actively engaged in the process.

In the context of Advocacy, communication is an essential part of your work. You will need to effectively communicate with a range of people, including:

- Your client
- Court personnel
- Departmental personnel
- Your colleagues
- Service providers
- Counsellors
- Police Officers
- Lawyers
- Family members

Each situation will require you to draw on different communication skills. Think about who your audience is and ask yourself:

- *What do they need?*
- *Why are you communicating with them?*
- *What are you trying to achieve?*
- *Do you need more information?*
- *Where can you find that information?*
- *Do you need to speak to someone?*

- *Do you need to write to someone?*
- *What law is relevant?*
- *What human rights are relevant?*
- *What assistance do they need?*

Thinking about all these questions will help you to target your communication so that you can achieve your goals, and ultimately assist your client with their goals.

The following section of this Learner Guide provides further information on communication.

Introduction to CHCCOM002 Use communication to build relationships

This unit describes the skills and knowledge to apply specific communication techniques to establish, build and maintain relationships with clients, colleagues and other stakeholders based on respect and trust.

This unit applies to work across a range of workplace contexts where workers at all levels may communicate with individuals and/or groups both in person and in writing.

Making a great first impression

It takes just a quick glance, maybe three seconds, for someone to evaluate you when you meet for the first time. In this short time, the other person forms an opinion about you based on your appearance, your body language, your demeanour, your mannerisms, and how you are dressed.

With every new encounter, you are evaluated and yet another person's impression of you is formed. These first impression can be nearly impossible to reverse or undo, making those first encounters extremely important, for they set the tone for all the relationships that follow.

So, whether they are in your career or social life, it's important to know how to create a good first impression. The following are some useful tips to help you do this.

Be on Time

Someone you are meeting for the first time is not interested in your "good excuse" for running late. Plan to arrive a few minutes early. And allow flexibility for possible delays in traffic or taking a wrong turn. Arriving early is much better than arriving late, hands down, and is the first step in creating a great first impression.

Be Yourself, Be at Ease

If you are feeling uncomfortable and on edge, this can make the other person ill at ease and that's a sure way to create the wrong impression. If you are calm and confident, so the other

person will feel more at ease, and so have a solid foundation for making that first impression a good one.

You can explore your own relaxation techniques to find out how to calm that adrenaline!

Present Yourself Appropriately

Physical appearance matters. The person you are meeting for the first time does not know you and your appearance is usually the first clue he or she has to go on. But it certainly does not mean you need to look like a model to create a strong and positive first impression.

The key to a good impression is to present yourself appropriately. They say a picture is worth a thousand words, and so the "picture" you first present says much about you to the person you are meeting. Is your appearance saying the right things to help create the right first impression? Start with the way you dress. What is the appropriate dress for the meeting or occasion? In a business setting, what is the appropriate business attire? And ask yourself what the person you'll be meeting is likely to wear.

For business and social meetings, appropriate dress also varies between countries and cultures, so it's something that you should pay particular attention to when in an unfamiliar setting or country. Make sure you know the traditions and norms. And what about your grooming? Clean and tidy appearance is appropriate for most business and social occasions. Appropriate dressing and grooming also help you feel "the part", and so feel calmer and more confident. Add all of this up and you are well on your way to creating a good first impression.

A Word about Individuality

The good news is you can usually create a good impression without total conformity or losing your individuality. Yes, to make a good first impression you do need to "fit in" to some degree. But it all goes back to being appropriate for the situation. If in a business setting, wear appropriate business attire. If at a formal evening social event, wear appropriate evening attire. And express your individuality appropriately within that context.

A Winning Smile!

There is nothing like a smile to create a good first impression. A warm and confident smile will put both you and the other person at ease. So smiling is a winner when it comes to great first impressions. But don't go overboard with this – people who take this too far can seem insincere or can be seen to be "lightweights."

Be Open and Confident

When it comes to making the first impression, body language as well as appearance speaks much louder than words. Use your body language to project appropriate confidence and self-assurance. Stand tall, smile (of course), greet with a firm handshake. All of this will help you project confidence and encourage both you and the other person to feel better at ease. Almost everyone gets a little nervous when meeting someone, which can lead to nervous habits or sweaty palms. By being aware of your nervous habits, try to keep them in check.

Small Talk Goes a Long Way

Conversations are based on verbal give and take. It may help you to prepare questions you have for the person you are meeting for the first time beforehand. Or, take a few minutes to learn something about the person you meet for the first time before you get together. Is there anything that you know of that you have in common with the person you are meeting? If so, this can be a great way to open the conversation and to keep it flowing.

Be Positive

Your attitude shows through in everything you do. Project a positive attitude, even in the face of criticism or in the case of nervousness. Strive to learn from your meeting and to contribute appropriately, maintaining an upbeat manner and a smile.

Be Courteous and Attentive

It goes without saying that good manners and polite, attentive and courteous behaviour help make a good first impression. In fact, anything less can ruin the one chance you have at making that first impression. One modern manner worth mentioning is "turn off your mobile phone". What first impression will you create if you are already speaking to someone other

than the person you are meeting for the first time? Your new acquaintance deserves 100% of your attention. Anything less and you'll create a less than good first impression.

Communicating effectively with clients and co-workers

Creating and nurturing a strong rapport with a client is key to the ongoing relationship.

Listed below are 8 Steps for consideration:

1. Research the client. Learn about the client. Look into the history of the client, the current issues, and the names of key stakeholders and other contacts..
2. Identify client needs and wants. This is accomplished by employing the dual processes of interacting with the client while also making use of background research. Using both approaches makes it possible to meet identified needs while anticipating future needs and presenting the client with a solution.
3. Maintain multiple lines of communication that the client may use. Multiple options means that clients who do not care for telephone calls and prefer the convenience of communicating via email or texting can participate in ongoing interaction on their terms.
4. Provide full disclosure when interacting with a client. This means focusing on providing a complete answer in response to customer queries and concerns. Be honest in those communications and set reasonable expectations for getting back to clients if you need to do some research before making a response. Doing so leaves the impression that what the client thinks matters greatly and that the client is in fact your priority.
5. Actively seek client feedback. Always listen carefully and respond in a manner that lets the client know you understand the suggestions or critiques that have been offered. Thank the client even if the comments are negative.

6. Avoid arguing with a client. Even if the client is operating under a false assumption or incomplete information, acknowledge that you understand what the client is conveying. Repeat the key points and ask if you have grasped the particulars properly. Then set a specific date and time to get back to the client with answers. This makes it possible for the client to feel that he or she has been heard and helps to set reasonable expectations for some type of resolution to take place.

7. Use the client's name in all types of communication. The salutation should always reflect the preferences of the client. This means that if the client prefers to be addressed with the use of a title and a surname that is the approach you will use. Only use first names if the client has given permission to do so.

8. Be honest with the client at all times. Attempts to earn trust by making commitments that cannot be kept will only hurt the client relationship. As the client grows to trust your honesty and integrity, the relationship will deepen over the years, and be of great value to everyone concerned.

Conducting interviews

There are three key steps for conducting a client interview:

1. Explain the purpose and format of interview to the client
2. Following statutory and workplace guidelines when conducting a client interview- confidentiality and conflict of interest⁷
3. Record client responses in an appropriate format

1. Explain the purpose and format of interview to the client

⁷ Library Council of New South Wales. 2011. *Find Legal Answers- Information about the law in New South Wales*. Retrieved from http://www.legalanswers.sl.nsw.gov.au/guides/hot_topics/you_and_your_lawyer/confidentialty_conflict_of_interests.html, accessed on 4 August 2014.

When a lawyer first meets a client, he/she needs to interview the client and gather facts about their problem in order to understand the client's needs and assist the client in making an informed decision. Interviews with client's will be vital in obtaining information necessary to prepare their legal proceedings, inform clients of court procedures and respond to any questions or concerns the client may have regarding their circumstances.

The structure of an interview can vary. It can range from an informal first point of contact to a relatively formal meeting. Your interview may also vary in nature, from meeting with a client in person, to speaking with a client over the phone and what is becoming increasingly popular, interviewing a client via video conference. Regardless of the nature of formality of the interview, it is of upmost importance to ensure the client feels comfortable. Building rapport is essential, and first impressions are very important. It is necessary to gauge how you will structure the interview based on the needs of the client, which is particularly relevant for Indigenous clients.

2. Following statutory and workplace guidelines

Client interviews must be conducted bearing in mind principles of confidentiality and conflict of interest. It is essential these principles are explored and where necessary explained to the client before or at the commencement of any legal interview.

Dealing first with confidentiality, lawyers generally cannot be forced to disclose information which has been communicated, orally or in writing, for the 'dominant purpose' of giving or obtaining legal advice. There is also the client's legal professional privilege. The principle of legal professional privilege is designed to promote the right of a client to communicate with a lawyer for the 'dominant' purpose of obtaining advice in relation to legal or administrative proceedings. It is intended to create an environment in which clients will give a full and frank disclosure of all the circumstances of the situation.

However, there are exceptions to this duty of confidentiality. Lawyers are required to disclose information where:

- communication is made by the client to the solicitor for the purpose of being guided or helped in committing a crime; or
- there is a duty under legislation or common law to disclose information (for example, search warrants).

Another important principle of legal representation is that legal practitioners must seek to avoid representing a client where to do so would give rise to a 'conflict of interest'. A conflict of interest would exist where a legal practitioner's duty to one client conflicts with their duty to another (as distinguished from a conflict of interests between the solicitor and client). Generally, the rules of courts require that parties who are in conflict with each other have separate legal representatives. A conflict of duty can arise in a range of situations and works against the lawyer's duty to use all the relevant information to further the interests of one client while maintaining the confidentiality of another. Conflict of duty issues can be a serious problem in country areas, where there is sometimes only one solicitor available and often results in one of the clients having to find legal advice in another town.

A conflict of interest can also arise in relation to a previous client. Solicitors have an obligation not to breach the confidentiality of a prior client. This can be a problem in large firms and because practitioners commonly move between firms. Some firms have developed the concept of 'Chinese walls', or 'information barriers' whereby procedures are established to prevent information held by one solicitor being communicated to others in the office. Courts have not always accepted this as a legitimate means of avoiding a conflict of interests.

Also, a solicitor should not act for a person if they themselves have a particular interest in a matter, which they could put before their duty to act in the best interests of their client.

3. Record client responses

It is important to take notes about important details throughout the interview, but not write down everything the client says. Names and dates are often important to write down as the client is talking given that they can be easily forgotten or confused over time. However, the interviewer must remain focused on the client, with their head up and keeping eye contact (if

appropriate). After the conclusion of the interview, the interviewer can then include more detail in their notes while all of the information is still fresh. You may also consider at times video or voice recording an interview with a client, but these are less commonly used techniques and would certainly require permission.

In some circumstances, to properly prepare for a court case, it may be necessary to take a formal statement from the client in which the client's version of events is recorded word for word and the client signs the statement as a true record of their instructions

Giving feedback and advice

An essential skill of a legal practitioner is being able to identify the nature of the client's problem, and what area of law it falls into e.g. civil, family, or criminal. A practitioner should have an approximate idea following the initial interview with the client. After the client has provided the practitioner with all of the relevant information, the practitioner will explain the next steps in the process before the conclusion of the interview. This is dependent on what area of law their matter will come under.

Further steps taken by the practitioner may range from informing the client that the practitioner will discuss their matter with an instructing solicitor, or other relevant personnel. The practitioner may, if appropriate, also remind the client that their next court appearance is on a specified date. The practitioner may request the client to return with more information or specific documentation. Finally, the practitioner will provide the client with their business card and letting them know that they will contact them within 7 days, or for the client to call if they have any questions or have any information to add.

More on debriefing the client after an interview

Debriefing a client after interview is essentially explaining 'where to from here?' After the client has provided the interviewer with all of the relevant information to take preliminary instructions with, the interviewer will explain the next steps in the process before the conclusion of the interview. In a criminal context, this may be ensuring that a client is aware

of their current bail conditions, or what would happen if they breached bail. The practitioner may explain what is likely to happen at the next court date and the approximate time frames for proceedings.

Additionally, the interviewer will inform the client what steps they will take on behalf of the client. Such as, they may discuss their matter with an instructing solicitor, or other relevant personnel. If relevant, they may organise rehabilitation services or liaise with a psychologist. Moreover, the practitioner will indicate anything the client needs to do for them, such as complete an application form, send through relevant documents, contact any particular services, or to come into the office for a further appointment at a given time.

Demonstrating respect

Communicating with Aboriginal people

From: I tried to tell them: criminal law multi-media training kit⁸

Lawyers are trained in the adversarial method of seeking information: asking direct and specific questions and expecting – indeed, demanding – direct and specific answers. However, when a lawyer needs to obtain information from an Aboriginal person, it will need to be in a way that which acknowledges Aboriginal cultural approaches to obtaining information, which tend to be in a way indirect means rather than by a confronting style of questioning.

- Establish trust – take time
- Silence as part of the process
- Direct eye contact is discomforting
- Is the person ‘bicultural’
- Aboriginal English
- Interpreter needed?
- Ask questions indirectly

⁸ University of Wollongong Library, 1997, Call No-[KM/526/ITR/1](#)

Respect and Sensitivity⁹

Respect is very important in every social structure in Aboriginal communities. Respect for Elders, the land, animals and ancestors are fundamental aspects of Aboriginal culture.

Be sensitive to the use of nonverbal communication cues which are a part of Aboriginal communication patterns. The use of silence does not mean Aboriginal people do not understand, they may be listening, remaining non-committal or waiting for community support.¹⁰

Communicating with clients with disabilities

People with disabilities, along with their families and friends, travel, shop, do business, engage in activities in the community, attend and/or send their children to the local school just like everyone else. By providing service that welcomes people with disabilities, you can offer better service to everyone.

Treat people with disabilities with respect and consideration.

Here are some ways you can provide better services to your customers with disabilities:•
Patience, optimism, and a willingness to find a way to communicate are your best tools.

- Smile, relax, and keep in mind that people with disabilities want to experience helpful customer service.
- Don't make assumptions about what type of disability or disabilities a person has.
- Some disabilities are not visible. Take the time to get to know your customers' needs.

⁹NSW Department of Community Services. 2009. *Working with Aboriginal Peoples and Communities: A Practice Resource*. Accessed at http://www.community.nsw.gov.au/docswr/assets/main/documents/working_with_aboriginal.pdf at page 18.

¹⁰ Ibid at 23.

- Be patient. People with some kinds of disabilities may take a little longer to understand and respond.
- If you're not sure what to do, ask your customer, "How May I help you?"
- If you can't understand what someone is saying, just politely ask again.
- Ask before you offer to help — don't just jump in. Your customers with disabilities know if they need help and how you can provide it.
- Find a good way to communicate. A good start is to listen carefully.
- Look at your client, but don't stare. Speak directly to a person with a disability, not to their interpreter or someone who is with them
- Use plain language and speak in short sentences.
- Don't touch or address service animals – they are working and have to pay attention at all times.
- Ask permission before touching a wheelchair or a piece of equipment.
- Every business should have emergency procedures for customers with disabilities. Make sure you know what they are.

Source: *Ontario Education Services Corporation*. (n.d.). Tips on Serving Customers with Disabilities. Retrieved from <http://www.alcddb.on.ca/aboutus/pdf/accessibility/accessibilitytipbooklet.pdf> accessed 4/8/14

If communication breakdown occurs

If you experience communication breakdown with a client, that is you can no longer communicate effectively with that client, it is often appropriate to consider referring them to an alternative staff member. Communication breakdowns can occur for any number of reasons. You may be finding it difficult to contact a client by any means (e.g. phone, e-mail, mail, etc.), you may have had a disagreement with a client who no longer wishes to talk to you or alternatively your organisation may not be able to do exactly what your client expects but the client blames it on yourself. In any event, often a client might respond better if referred to an alternate staff member who may be in a better position to build a positive rapport. This may not always be possible, then you must do your best to personally respond to the concerns of the client and find a way to defuse the communication breakdown. This is often achieved by making the client feel heard, like the client is a name not just a number.

In certain circumstances you may not be able to mend the relationship with a client. In the event of a complete communication breakdown ensure you provide the client with sufficient information to engage any alternative service that may be able to assist them with their problem/s.

When it comes to communicating with both staff and clients, you should always respect and consider any difference in views in a way that values and encourages their contributions equally

Ensuring communication represents the organisation

Presenting a positive image of your organisation¹¹

It is very important that you represent your organisation in a positive way at all times. This is particularly important if you are a key service organisation, as the organisations members and community need to have confidence and trust in you - the people who protect their community.

The first thing you can do in order to represent your organisation in a positive way is to be professional. The public will expect to see you dressed in a certain way; for example, if your organisation has a uniform you will need to be wearing it correctly at all times when representing your organisation in public.

You will need to follow the organisation's procedures on addressing people, distributing information, answering the telephone, etc.

It is important for you to realise that when you represent your organisation, you are representing the whole organisation. The way one person acts will reflect on the entire organisation.

Members will take notice and form judgments on the image you present. This includes taking notice of your attitude, appearance, facial expressions, the way you address people, tone of voice, courtesy toward others and your overall level of professionalism.

It can help if you:

- are sincere & helpful
- use the person's name or title
- avoid sarcasm and flippancy

¹¹ Woombalah Festival. (n.d). *Presenting a positive image of your organisation*. Retrieved from https://nationalvetcontent.edu.au/alfresco/d/d/workspace/SpacesStore/7aacc5fe-bb7c-4635-9c2c-2c3f0d72c179/904/toolbox904/resource_centre/r6_dev_comm_awareness/r606_import_pres/r606_import_pres.htm, accessed on 4 August 2014

- suppress temper outbursts
- answer phone calls, emails, letters, etc promptly
- make sure all equipment is in a clean and serviceable condition
- be helpful when asked questions
- thank any people who may assist you.

Contributing to the implementation of effective communication strategies

Always keep in mind that the legal system is complex, and a client is often not as familiar with specific legal terminology and procedure. Therefore it is essential to continually clarify any advice given to the client, and ask questions to ensure that they are understanding the information provided.

Another technique to ensure mutual understanding between interviewer and client is to repeat what the client has just discussed with you, such as ‘my understanding of your situation is x, y and z’. This technique is known as ‘active listening’.

Facilitating access to interpretive and translation services

Most organisations you work in should have policy and/or procedures regarding the provision of services to culturally and linguistically diverse (CALD) clients. This is especially so in the case of clients not capable of communicating in English. There are people from many different cultures who speak many different languages living all throughout Australia. Each of these people will face legal dilemmas over the course of their lives. All people in Australia have the right to fair and equal access to services (whether it be legal or social services). This right of equal treatment has been entrenched in various pieces of state and Federal legislation (e.g. the *Anti-Discrimination Act 1977* (NSW) and the *Racial Discrimination Act 1975* (Cth)).

In a legal context, all are equal before the Australian legal system. As such, courts all over Australia must have services appropriate to provide a fair and just experience for people of all genders, races, ages and people of any mental and physical capacity. In *Ebatarinja v Deland* (1998) 194 CLR 444 at 545 Gaudron, McHugh, Gummow, Hayne and Callinan JJ (of the High Court of Australia) said that:

“on a trial for a criminal offence, it is well established that the defendant should not only be physically present but should also be able to understand the proceedings and the nature of the evidence against him or her,” and that “if the

defendant does not speak the language in which the proceedings are conducted, the absence of an interpreter will result in an unfair trial.”¹²

The following information is useful for clients who have difficulty speaking English yet are engaging with the court system in NSW.¹³

Contacting courts or tribunals by telephone

If you or someone you know needs an interpreter when you contact a court or tribunal, use the free Translating and Interpreting Service (TIS). Call **131 450** and tell them the telephone number you need to contact. An interpreter will call the number while you are on the phone and translate what the person on the line says to you.

Need an interpreter for court?

For some types of proceedings, the court or tribunal can arrange interpreters. The court or tribunal can also bear the costs of interpreters. Examples of matters in which the court or tribunal can arrange an interpreter include:

- Criminal proceedings
- Applications for an AVO; or breach of an AVO
- Administrative Decisions Tribunal proceedings
- Care proceedings in the Children’s Court
- Proceedings in the Coroner’s Court
- Proceedings in the Industrial Relations Commission
- Appeals of any of these matters

If you are not sure whether an interpreter can be arranged for you, contact the registry of the courthouse or tribunal which you will be attending.

To request an interpreter, contact the relevant registry. If possible, do this at least one week before the date you need to attend court. If you are in court or in a tribunal, tell the judicial

¹² http://www.courts.qld.gov.au/The_Equal_Treatment_Bench_Book/S-ETBB.pdf

¹³ NSW Government. (2012). *Courts and Tribunal Services, Attorney General & Justice*. Retrieved from <http://www.courts.lawlink.nsw.gov.au/cats/interpreters.html>, accessed on 6 August 2014.

officer that you need an interpreter. An interpreter will be arranged for your next court or tribunal appearance.

Arranging your own interpreter

For most civil proceedings, you must arrange and pay for your own interpreter. You can arrange an interpreter through the NSW Community Relations Commission Language Services Unit, or any accredited independent interpreting service. You can search for interpreters by language and location on the website of the National Accreditation Authority for Translators and Interpreters (NAATI).

Interpreters for court and tribunal proceedings must have at least a Level 3 accreditation from NAATI.

Translation services

If you need documents translated for a court or tribunal matter, you can arrange a translator through the NSW Community Relations Commission Language Services Unit, or any accredited independent translator.

The Department of Immigration and Citizenship provides a free translation service for non-English speaking people settling permanently in Australia. This service can be used only by eligible people in the first two years after entry to Australia.

Provide coaching in effective communication

How to influence others: Convincing others to say “Yes”

You've come up with a fantastic idea for a new project. Now you need to convince others to support it. So, how can you get everyone to support your idea?

Influencing others is challenging, which is why it's worth understanding the psychological principles behind the influencing process.

Below are some principles for consideration:

Reciprocity

As humans, we generally aim to return favours, pay back debts, and treat others as they treat us. According to the idea of reciprocity, this can lead us to feel obliged to offer concessions or discounts to others if they have offered them to us. This is because we're uncomfortable with feeling indebted to them.

For example, if a colleague helps you when you're busy with a project, you might feel obliged to support her ideas for improving team processes. You might decide to buy more from a supplier if they have offered you an aggressive discount. Or, you might give money to a charity fundraiser who has given you a flower in the street.

Commitment (and Consistency)

Psychologists say that we have a deep desire to be consistent. For this reason, once we've committed to something, we're then more inclined to go through with it.

For instance, you'd probably be more likely to support a colleague's project proposal if you had shown interest when they first talked to you about their ideas.

Social Proof

This principle relies on people's sense of "safety in numbers."

For example, we're more likely to work late if others in our team are doing the same, put a tip in a jar if it already contains money, or eat in a restaurant if it's busy. Here, we're assuming that if lots of other people are doing something, then it must be OK.

We are particularly susceptible to this principle when we're feeling uncertain, and we're even more likely to be influenced if the people we see seem to be similar to us.

Liking

We are more likely to be influenced by people we like. Likability comes in many forms – people might be similar or familiar to us, they might give us compliments, or we may just simply trust them.

Companies that use sales agents from within the community employ this principle with huge success. People are more likely to be influenced by people like themselves, from friends, and from people they know and respect.

Authority

We feel a sense of duty or obligation to people in positions of authority. This is why advertisers of pharmaceutical products employ doctors to front their campaigns, and why most of us will do most things that our manager requests.

It is important for people to feel that you have some control over the situation and feel more secure in participating in a new project if you have support from authority figures in the community.

Scarcity

This principle says that things are more attractive when their availability is limited, or when we stand to lose the opportunity to acquire them on favourable terms.

When you're using approaches like those listed above, make sure that you use them honestly – by being completely truthful, and by persuading people to do things that are good for them. A good reputation takes a long time to build, but you can lose it in a moment!

How to Apply these Principles

You can use these principles whenever you want to influence or persuade others.

First make sure that you understand the people in your audience and that you know why you want to influence them.

Think about your ultimate objectives, and decide which principles will be most useful in your situation.

We will now explore some strategies you can use with each principle.

Reciprocity

To use reciprocity to influence others, you will need to identify your objectives, and think about what you want from the other person. You then need to identify what you can give to them in return.

Remember that you can sometimes use this principle by simply reminding the other person of how you have helped them in the past.

Commitment

Here, try to get people's commitment early on, either verbally or in writing. For example, if you're building support for a project, talk about ideas early on with stakeholders, and take their comments and views into account.

Social Proof

You can use this principle by creating a "buzz" around your idea or product. For example, if you're trying to get support for a new project, work on generating support from influential people in your community. (These may not always be who you think they are!) Encourage people to talk about it using social media.

Liking

To **build good relationships**, ensure that you put in the time and effort needed to **build trust** and rapport with the people you wish to engage in your project and behave with consistency.

Develop your *emotional intelligence* and *active listening skills*, and remember that there is no "one-size-fits-all" approach when it comes to relating to others.

Also, don't try too hard to be liked by others – people can always spot a phony!

Authority

Here you can use both your own authority, and the authority of others, as influencers.

When you use your own authority, be careful not to use it negatively.

To use authority, get support from influential and powerful people, and ask for their help in backing the idea.

Scarcity

With this principle, people need to know that they're missing out if they don't act quickly.

This principle can be trickier to apply within your community if you're trying to influence others to support your ideas or projects. You can, however, use urgency to get support for your ideas.

For example, you can highlight the possible urgent consequences of the problem that your idea helps to solve.

The Six Principles of Influence were created by Robert Cialdini, and published in his 1984 book, "Influence: The Psychology of Persuasion."

Using specific communication techniques

Listening is one of the most important skills you can have. How well you listen has a major impact on your job effectiveness, and on the quality of your relationships with others.

- We listen to obtain information
- We listen to understand
- We listen for enjoyment
- We listen to learn

Listening Skills: obtaining all relevant information during client interview¹⁴

Validate Feelings

Always deal with the emotions first. Sometimes people are overwhelmed by their emotions but are embarrassed at the same time. Make sure they know that you believe their emotions are valid. You may not agree with everything they are saying, but you can always acknowledge how they feel.

¹⁴ Ibid, p 45

For example ‘I can see how much this has upset you’ or ‘I’m sorry this has been a terrible experience for you.’

Don’t try to give advice about what they should have done. This is not the time.

Reflect the fact

‘While they are telling you their story, take note of the main facts (who was involved, when and where did it happen).

Don’t worry about trying to get the facts straight until the person seems a little calmer – this will happen if they feel their emotions have been accepted as valid.

Once the person has calmed down – then you can try to get the facts of the matter straight. When they have finished with their story, go back over it with them, at first just focus on the main facts, leaving out all the extra detail that is not essential. ‘So, let’s go back, what happened was you...’

Later you will need to go over all the finer details to make sure you get the whole story correctly described. You may need to do this a couple of times before it is finished. This is because when people are upset they often tell a story in a way that might leave important bits out. They may forget details or may be too embarrassed...’

Lots of detail will be irrelevant. Sometimes offensive behaviour may have been very upsetting but is not illegal. This may mean that nothing can be done, or it may just mean there are no legal tracks but there may be community and individual tracks that are worthwhile following.’

Keep a written record¹⁵

‘One of the most useful things you can do is to help the Complainant write a detailed record of the whole story – particularly if you think it may involve legal tracks. It may not be appropriate to try to do this when they first come to see you, especially if they are distressed, but it is important to do it as soon as possible to make sure they don’t forget important details.’

¹⁵ Ibid, p 46

‘It may help to get them to provide other details of the day when the incident happened, what the weather was like? How did they get to the place where the incident occurred, Did they drive? Who else was there? Questions like these will help the person remember the details of the incident.

When they describe the actual incident keep asking questions to fill in the detail. Who else was there then? Did they say anything?

When the whole story is written down, get the person to go over it again to see if they remember anything else.

When you have the full story, you can work through to see where the problems lie. Then you can begin to work out what information you need and how you might solve the problem.

In communities where there is a pattern of problems with a particular person or organisation, for example a store or health clinic, it is very useful for someone, perhaps from a community organisation, to keep a regular record of incidents. Make a note of the date, what happened and who was involved. Even if some incidents seem petty it may become important later to establish an ongoing pattern of behaviour.’

Analyse the Problem

Once you know what actually happened, the next step is to analyse the incident to work out why this was a problem. It is important to find out what should have happened in order to be clear as to exactly what the problem is, and how it can be remedied. Ask yourself:

- ***What should have happened?***
- ***Were there any laws broken?***

Sometimes it is not a matter of laws being broken, but that proper procedures were not followed.

Active Listening

Much of being a good listener and responding to client’s needs appropriately has to do with a skill known as ‘active listening’.

.... Becoming an Active Listener¹⁶

There are five key elements of active listening. They all help you ensure that you hear the other person, and that the other person knows you are hearing what they say.

1. Pay Attention

Give the speaker your undivided attention, and acknowledge the message. Recognize that non-verbal communication also "speaks" loudly.

- Look at the speaker directly (if culturally appropriate).
- Put aside distracting thoughts.
- Don't mentally prepare a rebuttal!
- Avoid being distracted by environmental factors. For example, side conversations.
- "Listen" to the speaker's body language.

2. Show That You're Listening

Use your own body language and gestures to convey your attention.

- Nod occasionally.
- Smile and use other facial expressions.
- Note your posture and make sure it is open and inviting.
- Encourage the speaker to continue with small verbal comments like yes, and uh huh.

3. Provide Feedback

Our personal filters, assumptions, judgments, and beliefs can distort what we hear. As a listener, your role is to understand what is being said. This may require you to reflect what is being said and ask questions.

- Reflect what has been said by paraphrasing. "What I'm hearing is," and "Sounds like you are saying," are great ways to reflect back.
- Ask questions to clarify certain points. "What do you mean when you say." "Is this what you mean?"
- Summarize the speaker's comments periodically

Tip:

¹⁶ Mind Tools. (2014). *Active Listening: Hear what people are really saying*. Retrieved from <http://www.mindtools.com/CommSkill/ActiveListening.htm>, accessed on 4 August 2014

If you find yourself responding emotionally to what someone said, say so, and ask for more information: 'I may not be understanding you correctly, and I find myself taking what you said personally. What I thought you just said is XXX; is that what you meant?'

4. *Defer Judgment*

Interrupting is a waste of time. It frustrates the speaker and limits full understanding of the message.

- Allow the speaker to finish each point before asking questions.
- Don't interrupt with counter arguments.

5. *Respond Appropriately*

Active listening is a model for respect and understanding. You are gaining information and perspective. You add nothing by attacking the speaker or otherwise putting him or her down.

- Be candid, open, and honest in your response.
- Assert your opinions respectfully.
- Treat the other person in a way that you think he or she would want to be treated.

'It is important to know when it is necessary to refer a conflict to external dispute resolution bodies'

Facilitating discussions

When you are meeting with a client it is very important to ensure that the client feels comfortable and that they are in a safe environment. Often when meeting to discuss legal issues with a client they may be nervous. These nerves could be due to a lack of familiarity with the type of legal issues they are encountering, a lack of trust of authority (often in the context of criminal legal proceedings) or it may be due to the sensitive nature of the problems they are encountering. In any event, part of your role when providing services to a client will be to ensure you gain the client's trust. This may take a little longer for some clients than others. This is why the first interaction with a client is extremely important. It is this initial meeting where the client will form

their first impressions of your service and decide whether they can confide in you fully when discussing their problems. Building rapport by making a client feel safe, comfortable and like they are not only being heard but understood, is a good way of getting the client professional relationship off to a good start.

Once you have established a positive rapport with the client you can begin extracting the relevant information that you need in order to provide them an effective service. The best way to begin this process is often with open ended questions that allow the client to tell their story. You should not continually interrupt the client to clarify information. Rather take appropriate notes, engage in active listening and clarify any relevant information after you have given the client an opportunity to tell you everything they feel is important.

To enhance your client's ability to fully explore all issues relevant to their problem/s, it is also important that you maintain continuing and open communication. Some clients may be overly demanding, wanting to speak with you everyday 2-3 times a day. Obviously this will not be possible and it is not fair to spend all of this time over-servicing one client if it is to the detriment of the service you are providing your remaining clients. Yet it will often be possible to maintain a sufficient level of communication with clients using a combination of phone conversations, letters and face-to-face meetings. This will often leave the client feeling that they are receiving an effective service and are able to discuss any important issues with you.

Encouraging all group members to participate equally

Principles of Planning Group Activities

1. Participation in activities depends on reward

For the members to remain involved and interested over long period of time, they must receive satisfactory rewards. The two kinds of rewards possible are gratification of member's need for such things as dominance, friendship, intimacy, opportunity to test ideas, and so forth; and satisfaction with group accomplishment of tasks.

2. Group works and employing energy on felt problems

The only matters on which group members will expend energy are those which they feel are problems, things about which they have feelings which they must deal with. Therefore, the survey of problems suggested by members is the starting point of the group activities.

3. Leadership is by team

Leadership is an important factor in group activities. This should be within the group. This kind of leadership encourages free expression of feelings and opinions and guides the group into action.

4. Membership should be based on willingness to work and not ideology

The basis of participation in group activities should be willingness to work in group. As long as there is willingness to work on problems ideological differences can be settled or avoided.

5. Activities should be problem centred

Members of the group must know that what, they are organising and doing, is for their welfare and for the solution of the problems.

Strategies for encouraging participation¹⁷

Within any large group of people you will generally find that there is someone who is quiet and keeps to themselves. This may be due to:

- the nature of the person
- a lack of confidence
- a lack of knowledge in the area being discussed

¹⁷ Woombalah Festival. (n.d.). *Strategies for encouraging participation*. Retrieved from [https://nationalvetcontent.edu.au/alfresco/d/d/workspace/SpacesStore/7aacc5fe-bb7c-4635-9c2c-2c3f0d72c179/904/toolbox904/resource centre/r6 dev comm awar/r611 strat encou/r611 strat encou.htm](https://nationalvetcontent.edu.au/alfresco/d/d/workspace/SpacesStore/7aacc5fe-bb7c-4635-9c2c-2c3f0d72c179/904/toolbox904/resource%20centre/r6%20dev%20comm%20awar/r611%20strat%20encou/r611%20strat%20encou.htm), accessed on 4 August 2014.

- them not being able to get a word in
- other members of the group being overbearing

You will not always be able to get this person to be more involved, but there are a few things you can try to help encourage them to have input.

- Provide them with information on the subject prior to the meeting.
- Ask open questions to the whole group, but direct your eye contact away from those members who are constantly holding the floor.
- Manage discussions so everyone has the opportunity to have input.
- Speak to the person before and after the meeting to see if you can find out why they do not have input into discussions.
- Give that person a job in an area they know about and are confident in talking to others about.

Contributing to and following objectives and agendas

Writing agendas¹⁸

An agenda is more than just a list of 'things to do' or 'things to be dealt with.' The content of your agenda will depend on the type of meeting you are holding. All participants should have the opportunity to:

- contribute to the agenda
- include questions and concerns raised by the membership
- consult with executive and chairperson
- refer to the preceding meeting's business, including all those items which required follow-up.

When writing your agenda the order should be carefully planned. A well planned agenda can:

¹⁸ Woombalah Festival. (n.d.). *Writing Agendas*. Retrieved from https://nationalvetcontent.edu.au/alfresco/d/d/workspace/SpacesStore/7aacc5fe-bb7c-4635-9c2c-2c3f0d72c179/904/toolbox904/resource_centre/r6_dev_comm_aware/r608_writ_agenda/r608_writ_agenda.htm, accessed on 4 August 2014.

- provide a logical guide
- bring harmony and efficiency to a meeting
- help restrain participants from speaking out of context.

The content of your agenda should not be too brief or vague. It is useful to include a brief reason for why each topic has been included. The content of your agenda will vary depending on the type of meeting you are holding.

Formal meetings:

- have more detail
- use formal language
- have a more structured layout
- contain cross references to other meeting documents.

Less formal meetings:

- are more brief
- use less formal language
- could contain jargon and concepts specific to the meeting audience.

An agenda will usually contain:

- welcome – general
- apologies / attendance
- minutes of previous meeting
- correspondence
- business arising
- general business
 - topics for information
- general business

- topics for discussion / resolution
- other business
- next meeting.

An agenda may also contain:

- suggested time allocations
- possible draft motions
- types of action required
- responsible agents
- additional space for notes.

When developing your agenda and getting it ready to print and distribute:

- use an easy to read font so users can see which items are most important
- use a hierarchy of fonts
- leave plenty of white space
- limit the use of bold and italic text formatting
- avoid the use of underlining
- it may be useful to number the agenda items
- star items if necessary
- provide an estimate of the time allocated
- clearly write the commencement time, time of any known adjournment and the conclusion time
- schedule breaks (morning tea, lunch).

Facilitating group discussions¹⁹

When facilitating group discussion in your meetings, consider the following:

- outline the issues

¹⁹ Woombalah Festival. (n.d.). *Writing Agendas*. Retrieved from https://nationalvetcontent.edu.au/alfresco/d/d/workspace/SpacesStore/7aacc5fe-bb7c-4635-9c2c-2c3f0d72c179/904/toolbox904/resource_centre/r6_dev_comm_aware/r608_writ_agenda/r608_writ_agenda.htm, accessed on 4 August 2014.

- clarify motions and amendments, especially after prolonged debate
- guide and regulate debate
- move the discussion forward
- keep the group focused
- progress through the agenda efficiently ensuring all items are covered
- summarise progress at regular points during and at the conclusion of the meeting
- put each question to a vote.

If things start to get a bit volatile and difficult, you should:

- stay calm
- focus on the facts
- try to see both sides of the argument
- never make personal comments
- use humour sparingly
- know the procedures
- call for a break
- if need be, close the meeting.

You should also be aware of non-verbal feedback. This may include:

- where participants sit
- who they sit with and who they avoid
- how they sit (posture)
- eye contact
- gestures
- fidgeting
- wandering eyes
- yawning
- repeatedly glancing at clock / watch
- frowns, scowls, grimaces, etc
- shuffling feet
- throat clearing

Engaging Facilitation Skills

1. DEMONSTRATING LEADERSHIP

Letting the group know who's in charge

Demonstrating leadership clearly identifies who will serve as the group leader and allows group members to know that someone is in charge who will provide guidance, support, and structure for the group. In many group settings, demonstrating leadership makes participants feel more comfortable, particularly when combined with an overview of the flow of the meeting or activity.

2. CREATING AN OPEN ENVIRONMENT

Inviting people to be a part of the group

A primary task of a group leader is to welcome new members to the group and make them feel included. A facilitator needs to ensure that each member of the group is welcomed and feels that they will be a valued participant in the group's activities. If a group member has a perception that everyone in the group knows the "secret handshake" and they are being excluded because they are not "in the know," they will feel like an outsider and may be reluctant to participate. A facilitator also must be aware of cultural differences between group members and actively work towards helping all members feel safe within the context of the group setting.

3. ENCOURAGING CONNECTIONS

Helping people get acquainted and connected

In order to feel connected to a group, participants need to get to know one another and see what they have in common. Each of us bring distinct backgrounds, interests, and values with us and will feel more comfortable in groups if we encounter similar others. In order to feel connected to a group, members need to get to know one another and see what they have in common. Unfortunately, similarities are not always readily apparent and part of group facilitation is making it easier for similar people in a group to find each

other and to share their common ground in a way that helps them feel invested in the group.

4. BUILDING GROUP RAPPORT

Facilitating a sense of teamwork and unity

One of the challenges of being a group facilitator is creating camaraderie and good will within the group. As a result, a leader must encourage positive interactions that make the participants feel good about being part of the group. If each group member feels connected to only one other, a facilitator has succeeded at encouraging connections but has not yet built group rapport. Group rapport goes beyond individual social contact to create a bond between each member and the group as a whole.

5. DEFINING GROUP IDENTITY

Establishing the group purpose and personality

Every group has an identity and an atmosphere. A facilitator can set the tone for defining what the group is all about and what it will feel like to be a participant. Most individuals would only want to join a group if they knew the purpose of the group and what it would feel like to be involved. As a result, a key component of group identity is guiding the group in the establishment of a sense of purpose. At the same time, the facilitator needs to foster a “feel” or personality for the group that can be as important a part of its identity as its name or mission statement.

Informing Facilitation Skills

1. PROVIDING INFORMATION

Presenting facts, resources, knowledge, theories, or data

One of the basic tools of group facilitation is providing the group with pertinent information that they do not already have. This information might include facts, resources, knowledge, theories, or data. However, this skill may not be as easy as it

seems. A facilitator needs to make sure that they understand what information is necessary before jumping in with answers. Knowing something is only the first step in being able to teach it.

Providing information puts the leader in an authoritative role that may detract from positive group dynamics or interactions. In addition, when leaders become less confident with their repertoire of diverse skills, providing information tends to be a fallback position. Facilitators need to be aware that providing information is one of many skills and should not be overused.

2. GATHERING INFORMATION AND EXCHANGING KNOWLEDGE

Asking questions, gathering data, surveying ideas, and encouraging the exchange of information

A facilitator often needs to collect information from the group participants. A group leader may assume that they know more than other group members. Although this assumption often is correct, it may not always be helpful. The group may benefit if the leader looks to the group first to tap its collective wisdom.

After gathering information, the facilitator may want to fill in the gaps with their own knowledge. Gathering information allows the facilitator to build group knowledge and to discover new ideas that they may not have considered. Encouraging group members to teach what they know is an important strategy to foster the exchange of knowledge between members.

3. CLARIFYING IDEAS OR CONCEPTS

Making sure everyone is on the same wavelength

Clarifying ideas or concepts involves making sure that there is a common understanding within the group. Complete agreement may not be necessary, but as a group shares information and chooses a direction, the facilitator must confirm that all the group members understand what is being said or agreed on—that everyone is “on the same page.”

4. CONCEPTUALIZING THE GROUP'S EXPERIENCE

Using outside formal concepts to describe what's going on in a group

Being a facilitator sometimes involves using formal concepts to describe group processes as a way for the group to reflect on itself. Sharing models, theories, or other knowledge can sometimes help a group to understand itself, resolve problems, and make progress.

Conceptualizing brings the group's attention back to the leader. Therefore, a facilitator should carefully observe the group before addressing the group's experience with outside knowledge. If a group leader can introduce theories, models, or strategies in a thoughtful way, this information can help move the group toward a higher level of understanding and performance.

5. PROVIDING FEEDBACK BASED ON OBSERVATIONS OF GROUP PROCESS

Sharing personal perceptions about group dynamics in order to facilitate awareness and change

Sometimes it is important for the facilitator to monitor group dynamics and inform the group about itself. One way that this can occur is for a group leader to provide feedback based on observations of group process. Group process refers to patterns of behaviour that occur in groups. For example, one member may dominate discussions, two factions may conflict, or the group may get distracted by trivial concerns. When a facilitator observes these (or other) group dynamics, they may find it helpful to share what they perceive in order to facilitate awareness and change.