



Tasmanian Council of Social Service Inc.

Submission to the National Disability Insurance Scheme

Code of Conduct Discussion Paper

June 2017



**INTEGRITY
COMPASSION
INFLUENCE**

About TasCOSS

TasCOSS is the peak body for the community services sector in Tasmania. Our membership includes individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

Please direct any enquiries about this submission to:

Kym Goodes
CEO Ph. 03 61699500
Email: Kym@tascoss.org.au

Thank you for the opportunity to comment on the National Disability Insurance Scheme (NDIS) - Code of Conduct Discussion Paper.

TasCOSS is the peak body for the community services sector in Tasmania. TasCOSS advocates for the interests of the sector and the people the sector supports. Our submission reflects consultation with our member organisations who provide a range of services to Tasmanians who are vulnerable or experiencing disadvantage. The consultation included both service providers and organisations representing people with disabilities.

TasCOSS welcomes a National Disability Insurance Scheme Code of Conduct (the Code), including the new NDIS Quality and Safeguards Commission to oversee the Code. We agree that a national Code consistent across all states is necessary. When implemented well, it has the potential to reinforce safe, ethical service delivery and culture in organisations and prevent harm to people living with disability. It also has the potential to empower people with a disability to uphold their rights in the event of unacceptable conduct.

There are gaps in the Code in its current form, for example it does not adequately define the roles and responsibilities of providers and workers. We have a number of concerns, questions and ideas for improvement that are summarised below.

What is included in the Code?

We support the nine obligations. We believe that obligation number two, to: “Actively prevent all forms of violence, exploitation, neglect and abuse” will include the prevention of any sexual violence, exploitation and abuse by workers or providers. It is also necessary to include the separate and related obligation number seven to: “Not engage in sexual misconduct”. However, we find the commentary about number seven confusing. It should clearly define sexual misconduct as a term designed to address conduct that does not amount to a criminal offence. For example, the NSW Ombudsman lists the categories of sexual misconduct as: crossing professional boundaries, sexually explicit comments and other overtly sexual behaviour, and grooming behaviour¹. These behaviours may not constitute a criminal offence and may not always seem non-consensual, however it must be clearly stated that these behaviours are not acceptable and are in breach of the Code. The commentary fails to clearly outline that any sexual activity by a worker (unwelcome or otherwise) involving a participant is sexual misconduct. Clause 13 in the Council of Australian Governments’ National Code of Conduct for health care workers² also provides a useful example of a sexual misconduct clause.

In addition to the listed examples, the Code should also explicitly state that workers must discourage and reject any advances of a sexual nature initiated by a participant towards the worker.

The Australian Code of Ethics for Direct Support Professionals³ offer useful commentary under the heading of Relationships where an existing relationship may exist between a client and worker, or where a new relationship may be emerging.

¹ https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0014/20534/Guide-for-services-Reportable-Incidents-Guide-Jul16.pdf

² <http://www.coaghealthcouncil.gov.au/NationalCodeOfConductForHealthCareWorkers>

³ <https://www.asid.asn.au/product/view/5>

It should also be noted that it is not sexual misconduct in the case of a participant requesting and accessing a sex worker for the explicit purpose of sexual contact.

Who will be covered by the Code?

The definition of ‘worker’ is awkward as it includes all individual service providers: employees, contractors, consultants, volunteers and people who are self-employed. It may be useful to include an explanation of the term in the glossary.

Volunteers make a significant contribution to the sector and TasCOSS supports that volunteers be included in the Code. It is important, however that roles and responsibilities are made clear for our unpaid workforce. Will organisations have access to support materials for induction and training of volunteers in the organisation? It is also noted that there is no Fair Work Ombudsman for volunteers. Apart from Anti-Discrimination Commission complaints processes, there are no current rights of appeal for volunteers. If a complaint is made against a volunteer, how will it be ensured that they are treated fairly by their volunteer-supporting organisation? If they are found to be in breach of the Code, it is important they are given the opportunity to appeal the decision in a fair way (in the way that paid workers can appeal unfair dismissal).

The rights and responsibilities of participants are a notable omission in the Code. We suggest they be included, and support materials developed to explain the Code of Conduct for participants, including their rights and responsibilities.

There is no mention of the National Disability Insurance Agency and its workers being obliged to comply with the Code. We think this should be considered.

How will the Code be applied?

Part 2 of the Discussion Paper needs to include more detail on how both providers and individuals are able to comply with the obligations. It would be useful to develop specific organisational requirements and separate requirements for individuals. Organisations have responsibility for safe and ethical systems, policies and procedures, linked to quality standards. There may be circumstances where a worker (for example a volunteer) who is simply following directions may be held solely responsible when their employer should share responsibility. Equally it is not clear what the sanctions will be for a breach.

It is also unclear whether organisations will receive support to implement compliance and reporting of the Code. It is recommended that organisations be supported with funding to cover the financial burden of putting the necessary systems in place for orientation, training, communication etc. It is important that implementation does not come at the expense of already stretched organisations.

Supporting documents, educational materials and training are considered essential to support the effective operation of the Code. Materials should be targeted to key audiences, such as individuals described as workers (employees, contractors, consultants, volunteers, people who are self-employed),

providers and professional associations. Such materials could explain in greater detail the obligations that apply under the Code and provide context for the various obligations.

It is recommended that the commentary for each obligation be more succinct and structured with sub-headings. Specific separate expectations and sanctions for providers and workers are required. The document should also provide a clear expectation of ethical behaviour. An example of where this is not the case can be found at the bottom of page 19 the Discussion Paper where it is stated that “There are a number of ways providers and workers may exploit people with disability they support for financial or other gain”. This statement suggests negative conduct of providers and workers, and needs to be re-written to articulate an expectation of ethical behaviour.

More scenario examples are needed and some of the current ones are simplistic and should be reworked to be more realistic. For example Scenario 2.2.1 requires positive behaviour support to be implemented. In order to increase staffing, a review of the plan and increased funding will also need to occur to support this.

Page 12 refers to ‘reportable incidents’. It is important that these be clearly described under each obligation and available to providers and workers.

More clarity is needed about how a complaint will be handled by the Commission, and what the process will be when the Code has been found to be breached. The Discussion Paper does not outline the process and timelines for complaints to be followed up. It is critical that this be done with sufficient rigour to protect both people using the scheme, and providers of services. TasCOSS would like to emphasise the importance of a transparent process, and having clear steps that will be taken when dealing with complaints. This includes timely communication of the progress and the outcome with all parties involved in the complaints process. Where a complaint has been investigated in a robust and rigorous process and is upheld by the Commission, this information should be made available to the public to inform decision making.

TasCOSS wants to ensure that organisations are supported to comply with the NDIS Code of Conduct as they provide high quality services to people with disability. It is essential that providers and workers have clearly defined roles and responsibilities, so that they are able to put systems into place to uphold their obligations and responsibilities under the Code. We are however concerned that the scheme is in the advanced stages and the Code will not take effect until the full scheme commences in Tasmania in 2019.

Thank you for the opportunity to comment on the NDIS Code of Conduct. We are happy to provide any additional information required.