



Council of Social Service of New South Wales

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29 October 2014

Linda Mallett
Deputy Chief Executive, Policy and Reform
Ageing, Disability and Home Care
Department of Family and Community Services
Level 5, 83 Clarence Street
Sydney NSW 2000

Re: Consultation Draft *Disability Inclusion Regulation 2014*

Dear Ms. Mallett,

Thank you for the opportunity to comment on the draft *Disability Inclusion Regulation 2014* (the Regulation). NCOSS has consulted with members and the NSW Disability Network Forum regarding the draft Regulation, and submits these comments for your consideration.

Disability Planning

NCOSS notes that, while the draft Regulation only discusses the dates by which public authorities are required to have Disability Inclusion Action Plans, section 12(3)(e) of the *Disability Inclusion Act 2014* (the Act) provides for the Regulation to also specify other matters that must be included in Disability Inclusion Action Plans. NCOSS recommends that, in addition to the mandatory requirements in the Act, Disability Inclusion Action Plans must also detail the resources involved in delivering them, how the plan will be monitored and evaluated, and how people with disability can address any problems with implementation of plans. This would strengthen Disability Inclusion Action Plans, provide clarity to the community, as well as providing baseline information about a range of matters relevant to access and inclusion of people with disability.

Recommendation 1

That Part 2 of the Regulation requires Disability Inclusion Action Plans to detail:

- resources to be committed to the plan;
- how the plan will be monitored and evaluated, including the progress measures to be used;
- how people with disability can address any problems with implementation of plans.

NCOSS recommends that Part 2 of the Regulation includes a provision that representative bodies of people with disability must be involved in developing the State Disability Inclusion Plan and Disability Inclusion Action Plans. Representative bodies provide useful input to government based on sustained engagement with their members, the community, and government. Most representative bodies have considerable engagement with current Disability Action Planning processes, and have found more effective planning and implementation where they are involved. This role is recognised in Articles 4 and 29 of the UN *Convention on the Rights of Persons with Disabilities* (CRPD).

Recommendation 2

That the Regulation specifies that the Department must consult with representative organisations in developing the State Disability Inclusion Plan.

Recommendation 3

That the Regulation specifies that public authorities must consult with representative organisations when developing Disability Inclusion Action Plans.

Definition of ‘supported group accommodation’

NCOSS does not believe that excluding premises owned or occupied under a residential tenancy agreement by 2 or more people with disability from the definition of ‘supported group accommodation’ would meet the objectives of the Act. The specific tenure arrangements of people with disability using disability supports will be increasingly varied. For instance, people living in traditional group home accommodation may have a residential tenancy agreement with their service provider or may enter into a tenancy agreement counter-signed by another person. NCOSS is also aware of service providers who have located rental accommodation for clients because they have had challenges in the private rental market, and where the service provision has been otherwise traditional. This is increasingly common as other housing options become less affordable. People in these circumstances would require the safeguards available to other people with disability living in supported group accommodation.

At present the definition of supported group accommodation confers requirements on service providers to report any serious incidents under Part 3C of the *Ombudsman Act 1974*. NCOSS believes that service providers working with people with disability living in private rental or owner-occupied accommodation must have the same obligations, as many of the mainstream safeguards remain inaccessible, unresponsive or exclusive of people with disability. Specialist safeguards, such as the NSW Ombudsman, are also limited without the enhanced role under Part 3C of the *Ombudsman Act*.

The definition of supported group accommodation in section 8(2)(b) also appears to be ambiguous and may create confusion. In accordance with the NSW Disability Service Standards, independence must be promoted in all service delivery, including in supported group accommodation. There are some services which meet all other specifications in the definition of supported group accommodation in the Act, but which would be inadvertently exempt, such as transitional housing for people to develop independent living skills, under section 8(2)(b).

Recommendation 4

That section 8(2) is removed from the Regulation.

Supported accommodation and service standards

NCOSS also recognises that section 21 of the Act makes provision for the development of supported accommodation and service standards. The information booklet accompanying the draft Regulation suggests that these may include limitations on the size and type of supported accommodation. NCOSS supports the development of such standards.

Section 2(h) in Schedule 1 to the previous *Disability Services Act 1993* included a provision that prohibited a single service provider from exercising control over all or most aspects of a person’s life. This provision has been useful to ensuring that large institutions are closed, and to diversifying housing and support options for people with disability. This provision has not been incorporated into

the *Disability Inclusion Act 2014*. NCOSS suggests that this provision is included in the Regulation until supported accommodation and service standards are developed. As this provision was included in the previous *Disability Services Act*, it will support the continuation of current practice.

Recommendation 5

That Part 3 of the Regulation prohibits a service provider exercising control over all or most aspects of a person's life.

Criminal record checks

NCOSS supports the inclusion of sole traders and partnerships as entities eligible to receive funding under the draft Regulation. This will increase the options available to people with disability. Appropriate criminal record checks must be conducted for sole traders and partnerships as they must be for employees of other types of eligible entities. NCOSS recommends that the Regulation specifies that sole traders and partnerships must provide a criminal record check or statutory declaration to the Department.

Recommendation 6

That the Regulation specifies that sole traders and partnerships are required to provide a criminal record check or statutory declaration to the Department to be eligible for financial assistance.

Appointment of Chairperson and Deputy Chairperson of the Disability Council

NCOSS supports the requirement in the draft Regulation for annual review of the appointment of the Chairperson and Deputy Chairperson of the Disability Council. NCOSS also suggests that maximum terms for these roles are specified in the Regulation. This will ensure that a range of Disability Council members have opportunities to hold these roles.

Recommendation 7

That the Regulation specifies maximum terms for the Chairperson and Deputy Chairperson of the Disability Council.

Further provisions to support the Act

Restrictive Interventions

The Consultation Draft of the *Disability Inclusion Act 2014* proposed measures to regulate the use of restrictive interventions. While it may be out of place for legislation about inclusion of people with disability in the community to allow restrictive practices, the use of restrictive practices in disability services requires oversight and clear parameters. The Consultation Draft version of the Act included many useful measures, such as prohibiting the seclusion of persons under 18 years of age, and the requirement that a person must consent to the use of seclusion and restraint. NCOSS would support including measures about restrictive practices in the Regulation. This would strengthen practice in NSW.

Recommendation 8

That the Regulation includes provisions to regulate the use of restrictive practices.

Privacy and information sharing

While the Act supports the right of people with disability to privacy and confidentiality, it does not set out the substantive measures that must be taken by public and non-government agencies to fulfil

this right. There must be clear measures protecting the privacy of individuals in relation to information about financial assistance, probity checks, reportable incidents under the *Ombudsman Act*, and other actions under the *Disability Inclusion Act*, as well as clear indications to relevant agencies about their obligations to share certain information. NCOSS recommends that the Regulation specifies information and privacy obligations of agencies under the Act.

Recommendation 9

That the Regulation specifies privacy and information sharing obligations in relation to the Act.

Measures to support the rights of people with disability

NCOSS recommends that the Regulation incorporates some provisions available in the previous *Disability Services Act 1993* but which have not been incorporated into the *Disability Inclusion Act 2014*. Section 2, Schedule 1 of the *Disability Services Act 1993* offers useful provisions that would give effect to the *Disability Inclusion Act*, and support practice. These include sub-sections (i), (l), (n) and (o), which specify that that:

- people with disability must have access to information for services to be accountable;
- people with disability need access to independent advocacy to participate in decisions that affect them;
- avenues to pursue grievances must be appropriate for the circumstances of the person, and the person must suffer no reprisal for raising a grievance;
- people with disability must have opportunities to participate in planning, policy and program development, and that this must be encouraged.

These provisions recognise that services must be accountable to the people using them, that people with disability may require support to engage meaningfully with decisions that affect them, and that grievance mechanisms require specific provisions to be accessible to people with disability. NCOSS believes that these provisions support the objects and principles of the Act, and recommends that they are included in the Regulation.

Recommendation 10

That the Regulation specifies that:

- people with disability must have opportunities to participate in planning, policy and program development, and that this must be encouraged;
- people with disability must have access independent information and independent advocacy to participate in decisions that affect them, at no cost to the person;
- avenues to pursue grievances must be appropriate for the circumstances of the person, and the person must suffer no reprisal for raising a grievance; and
- services must be accountable to people with disability.

About NCOSS

The Council of Social Service of NSW (NCOSS) is the peak body for the not-for-profit community sector in New South Wales. NCOSS provides independent and informed policy advice, and plays a key coordination and leadership role for the sector. NCOSS works on behalf of disadvantaged people and communities towards achieving social justice in NSW.

About the NSW Disability Network Forum

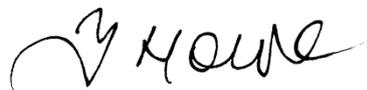
The NSW Disability Network Forum comprises non-government, non-provider peak representative, advocacy and information groups whose primary aim is to promote the interests of people with disability. The aim of the NSW Disability Network Forum is to build capacity so that the interests of people with disability are advanced through policy and systemic advocacy. NCOSS provides secretariat support to the Disability Network Forum.

Conclusion

NCOSS appreciates the opportunity to comment on the draft Regulation and looks forward to the release of the final version.

For further information please contact John Mikelsons, NCOSS Deputy CEO, at john@ncoss.org.au or (02) 9211 2599 ext 116.

Yours sincerely,

A handwritten signature in black ink that reads "Tracy Howe". The signature is written in a cursive style with a large, stylized initial 'T'.

Tracy Howe
NCOSS CEO