



Tasmanian Council of Social Service Inc.

TasCOSS Submission – Carer Recognition Legislation Proposal

December 2021



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About TasCOSS

TasCOSS's vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users 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.

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Introduction

Thank you for the opportunity to make a submission to the Department of Communities in relation to the proposed introduction of legislation recognising Tasmanian carers.

Background

The Tasmanian Government seeks to recognise the contribution of the over 80,000 Tasmanians who provide unpaid support and care to family members and friends. The proposed Carer Recognition Legislation is designed to formally acknowledge the importance of this work and to support the participation of carers in the community.

TasCOSS supports the introduction of legislation which recognises the work of carers, who perform work vital to the healthy functioning of our households, workplaces, communities, and our economy. Our response to the Discussion Paper includes several recommendations to ensure the legislation establishes mechanisms that will make a material difference to lives and work of carers and of those they support.

How can we ensure that Carer Recognition legislation makes a practical difference to carers and care relationships?

TasCOSS supports the introduction of legislation which clearly outlines the principles governing care in Tasmania. As the State with the highest per capita rate of carers,¹ we believe it is important that the Government acknowledges the work of carers, particularly given the impacts of Covid-19 as outlined in the Covid-19 Carer Survey.

We would recommend the Government also consider introducing clauses in the legislation to promote awareness of the carer policy principles. Examples of this model can be found in legislation from other Australian jurisdictions - for example, s11 of the *Carers Recognition Act 2012 (Vic)*:

- (1) *A care support organisation must—*
 - (a) *take all practicable measures to ensure that its employees and agents have an awareness and understanding of the care relationship principles; and*
 - (b) *take all practicable measures to ensure that persons who are in care relationships and who are receiving services in relation to the care relationship from the care support organisation have an awareness and understanding of the care relationship principles; and*
 - (c) *take all practicable measures to ensure that the care support organisation and its employees and agents reflect the care relationship principles in developing, providing or evaluating support and assistance for persons in care relationships.*

In our view, the introduction of similar clauses will encourage awareness and promotion of the carer policy principles throughout the sector.

¹ Australian Bureau of Statistics (ABS) Survey of Disability, Aging and Carers reported there were 80 100 carers in Tasmania, 15.5% of the Tasmanian population.

Recommendation: the legislation should include specific clauses promoting awareness, understanding and promotion of the carer policy principles within care support organisations

Do you think that the definition of carer in Supporting Tasmanian Carers should be used in the Carer Recognition legislation? If not, what do you think the definition should be?

Recent reports show the proposed change in definition has arisen through consultation with carers throughout Tasmania.² Responding to feedback that the existing definition was not reflective of the lived experience of Tasmanian carers, the Government is now proposing to change the definition of ‘carer’ to the definition used by Carers Tasmania, the peak body, who use a broader and more inclusive definition:

A carer is someone who provides unpaid care and support to family members and friends who have a disability, mental illness, chronic or life limiting condition, alcohol or drug dependence, or who are frail and aged.

TasCOSS supports a legislative definition which is consistent with the language used by the peak body.

Recommendation: the definition used by Carers Tasmania should be adopted in the legislation

Do you think the Tasmanian Carer Policy 2016 Principles require updating? If yes, what do you think should be included and/or removed?

The Carer Policy Principles are as follows:

1. Carers are to be acknowledged and treated as individuals with their own needs within and beyond their caring role.
2. Carers are to be acknowledged as a diverse group of people, coming from all walks of life and life stages.
3. Carers are to be provided with relevant information and referred to appropriate services to assist them in their caring role.
4. Carers are to be respected as valued members of a care team.
5. Carers’ expertise and experience are recognised and used in the development and evaluation of policies, programs and services that affect them and the people receiving care.
6. The development, evaluation and delivery of policies, programs and services for carers are to take into account carers’ age, gender identity, sexual orientation, cultural and linguistic background, abilities, religion, geographical location and socio-economic status.
7. To the extent possible, carers are to be supported to enjoy optimum health, social and economic wellbeing, and access to educational and employment opportunities.
8. The carer and the person receiving care are to be regarded as a partnership, in which each person has rights and responsibilities.

² Department of Communities Tasmania, Supporting Tasmanian Carers: Tasmanian Carer Action Plan 2021-2024 (June 2021), 8.

9. Complaints by carers on decisions and services that affect them and their caring role are to be resolved promptly and without any fear of reprisal.

10. Government agencies are to be given appropriate support to understand and respond to the needs of carers.

TasCOSS supports the introduction of carer policy principles in the legislation as a means of formally recognising their role, and for their voice to be heard as a formal part of care arrangements. We believe this is an acknowledgement of the expertise and experience of carers and will hopefully allow for greater participation from carers into the planning and decision-making process. Feedback from stakeholders suggests carers' knowledge of those they support is not always acknowledged. When this occurs in healthcare settings, for example, it means information relevant to the care of the supported person can be missed or ignored.

Ensuring recognition of and support for carers should not, however, create situations in which the person receiving care is disempowered or disadvantaged. For example, principle 8 could be interpreted as giving equal weight to both carers and individuals needing care. TasCOSS believes that, where possible, a person needing care must be supported to make their own decisions, even when this may not be consistent with the views or opinions of their carer. This view is consistent with principles around decision-making contained within existing pieces of Tasmanian legislation; for example, the *Mental Health Act 2013 (Tas)*.³

TasCOSS recommends the legislation include a specific clause stipulating that the carer policy principles do not affect the rights conferred on individuals and groups by other pieces of legislation. For example, s6 of the Carers Recognition Act 2012 (Vic) states: '*If there is any inconsistency between this Act (other than section 12) and any other Act, the provisions of the other Act prevail.*' A similar provision in the Tasmanian legislation would make it clear that the carer policy principles do not take away existing rights.

Recommendation: the carer policy principles are to be included in the legislation, as well as a clause specifying that in the case of inconsistency between the carers recognition legislation and other pieces of legislation, the provisions of the other legislation will prevail

Do you agree with the addition of carers with a lived experience on the Group? How do you think the governance structure could be improved to ensure it is effective?

The 'Group' is the Carer Issues Reference Group, which currently meets twice a year and includes the CEOs of Carers Tasmania, Mental Health Families and Friends Tasmania, and representatives from the relevant Commonwealth and Tasmanian Government Agencies and the National Disability Insurance Agency. The Group has a consultative function and provides advice and feedback to the Tasmanian Government in relation to issues affecting carers, as well as assisting with the sharing of information between the state and federal governments and community sector organisations.

TasCOSS strongly supports the inclusion of carers with lived experience in the Group, particularly as this is a recommendation which has come directly from the Group (which includes the peak bodies in this

³ See for example s62 in relation to the rights of involuntary patients, which includes:

(b) the right to have his or her decision-making capacity promoted, and his or her wishes respected, to the maximum extent consistent with his or her health or safety and the safety of other persons

area). We also invite the Group to consider whether it would be beneficial to include members with lived experience of receiving care as well as lived experience of providing care.

Carers Tasmania also advocate for the elevation of the Carers Issues Reference Group to be a Ministerial reference group, chaired by the Minister rather than a Departmental Secretary. This would send a strong signal to carers that their crucial role in Tasmania's society and economy is recognised and valued, and would ensure the Minister can work directly with carers and other stakeholders to ensure those working in this vital sector of our economy are appropriately supported. TasCOSS supports this recommendation, noting there are examples from other jurisdictions employing this model. For example, Part 3 of the *Carers (Recognition) Act QLD 2008* establishes the Carers Advisory Council, a group which makes recommendations and provides advice to the Minister, as well as working to advance the interests of carers and to promote compliance with the carers' principles outlined in the Act.⁴ In the case of the Queensland legislation, the relevant Minister is the Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships.

Recommendation: carers with lived experience to be included in the Carers Issues Reference Group, which should be elevated to a Ministerial reference group

Do you agree with the proposed reporting format or do you have any suggestions how it could be improved?

The reporting format imposes obligations on Tasmanian Government agencies to report to the Group. Currently all agencies report annually to the Group, and the Discussion Paper proposes a continuation of annual reporting requirements.

Annual reporting seems consistent with requirements in other jurisdictions: for example, the *Carers (Recognition) Act 2010* (NSW) mandates annual reporting from human services agencies in relation to their compliance with this legislation.⁵

TasCOSS supports the inclusion of provisions regulating reporting requirements, particularly in relation to obligations placed on Government agencies or Departments to report to the Group. However, if the intention of the legislation is to impose reporting requirements on care support organisations (such as those contained in the Victorian legislation),⁶ TasCOSS notes the already limited capacity of community sector organisations, who must prioritise the delivery of services to those needing support and care.

⁴ Section 12: *Functions of the Carers Advisory Council*

The functions of the council are to—

- (a) work to advance the interests of carers and promote compliance by public authorities with the carers charter; and*
- (b) make recommendations to the Minister on enhancing compliance by public authorities with the carers charter; and*
- (c) provide general advice to the Minister on matters relating to carers; and*
- (d) carry out other functions as directed by the Minister.*

⁵ Section 8 (2): *A human service agency must prepare a report on its compliance with this Act in each reporting period. The report must be included in the agency's annual report for the reporting period.*

⁶ See for example s12 of the Carers Recognition Act 2012 (Vic):

- (1) Despite anything to the contrary in any other Act, a care support organisation must prepare a report on its compliance with its obligations under section 11.*
- (2) A report required under this section must—*

TasCOSS also supports annual reporting from Tasmanian Government agencies to Parliament, and recommends a clause be added to allow for the tabling of the annual reports from Tasmanian Government agencies in Parliament, as well as the publication of relevant reports to community service organisations.

Recommendation: annual reporting from Tasmanian Government agencies to the Carers Issues Reference Group, as well as annual reporting to Parliament

How do you think Carer Recognition legislation can help to ensure that the difficulties experienced by carers are considered in decision making during a crisis such as COVID-19?

Some jurisdictions have included clauses in their legislation mandating consideration of the carers' principles by Government agencies. For example, the *Carers (Recognition) Act 2010 (NSW)* includes the following section:

7 Obligations of public sector agencies

- (1) A public sector agency must take all reasonable steps to ensure that the members of staff and agents of the agency have an awareness and understanding of the NSW Carers Charter.*
- (2) A public sector agency must consult with such carers or bodies representing carers as the agency considers appropriate when developing policies that impact on carers.*
- (3) A public sector agency's internal human resources policies, so far as they may significantly affect the role of a member of staff of the agency as a carer, are to be developed having due regard to the NSW Carers Charter.*

The inclusion of a similar clause in the Tasmanian legislation could help to ensure Government agencies consider the carers' principles in their decision-making processes, including emergency measures enacted for public health purposes.

Recommendation: inclusion of clauses to mandate consideration of the carers policy principles by public sector agencies

Do you have any other suggestions to help us develop the Carer Recognition legislation?

Fundamental to acknowledging and assisting carers is ensuring that they, and the people they care for, remain supported by other organisations and services – for example, adequate access to physical and mental health services. Any shortages in the areas of frontline service delivery, particularly for people with mental and/or physical illness or disability, is likely to have a significant impact on carers and their ability to effectively look after themselves and others. This was a clear finding from the Covid-19 Carer Survey,⁷ which highlighted the impact of the pandemic on carers' access to and use of support services,

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- (a) be included in the care support organisation's annual report; and*
 - (b) relate to the period to which the annual report relates; and*
 - (c) include any additional information required by the regulations.*

⁷ Muir, G., Beasley, A., Shackleton, F., Davis, E., Armstrong, K., Hayes, L., (2020) *Caring during Coronavirus: Results of the COVID-19 Carer Survey*, Caring Fairly, Melbourne.

work and income, and health and wellbeing.⁸ So while we see carers recognition legislation as an important element in recognising and supporting the vital work of carers in Tasmania, we will really demonstrate our support when carers and those they care for have access to the services they need to support their physical and mental wellbeing. TasCOSS therefore recommends increased funding to frontline services in public health, disability and mental health.

Recommendation: the Government commit to ongoing resourcing and funding of community service organisations working in the area of public health, disability and mental health

Recommendations

- 1. The legislation should include specific clauses promoting awareness, understanding and promotion of the carer policy principles within care support organisations**
- 2. The definition used by Carers Tasmania should be adopted in the legislation**
- 3. The carer policy principles are to be included in the legislation, as well as a clause specifying that in the case of inconsistency between the carers recognition legislation and other pieces of legislation, the provisions of the other legislation will prevail**
- 4. Carers with lived experience to be included in the Carers Issues Reference Group, which should be elevated to a Ministerial reference group**
- 5. Annual reporting from Tasmanian Government agencies to the Carers Issues Reference Group, as well as annual reporting to Parliament**
- 6. Inclusion of clauses to mandate consideration of the carers policy principles by public sector agencies**
- 7. The Government commit to ongoing resourcing and funding of community service organisations working in the area of public health, disability and mental health**

⁸ Ibid, 3-6.