

Consent by Clients Policy

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Contact:	Director, Disability and Community Services
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Policy Type:	DHHS-wide Policy
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Approval

Prepared by	Senior Program Officer Disability Services Policy and Programs	1300 135 513	17 June 2014
Through	Manager Disability Services Policy and Programs	1300 135 513	09 July 2014
Through	Director Disability and Community Services	1300 135 513	15 July 2014
Cleared by	Deputy Secretary Disability, Housing and Community Services	1300 135 513	15 July 2014

Revision History

Version	Approved by name	Approved by title	Amendment notes

This Policy may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for the Department of Health and Human Services. **PLEASE DESTROY PRINTED COPIES.** The electronic version of this Policy is the approved and current version and is located on the Department of Health and Human Services' Strategic Document Management System. Any printed version is uncontrolled and therefore not current.

Purpose

- This Policy and its Procedure is developed to assist all service providers who are supporting or working with Tasmanians with disability, their families and carers to better understand the concept of consent and the range of options open to them in relation to assisted decision making.
- This policy provides the direction all service providers must take when considering medical procedures, the use of medication, making financial decisions, negotiating relationships or when designing and implementing individual programs.
- All services provided or funded, in whole or in part, by Department Health and Human Services (DHHS) are required to incorporate the meaning and intent of this policy into any existing policy and procedures relating to consent by clients or any policy and procedures that are developed in the future.

Transition to the NDIS

- Until commencement of the Full Scheme NDIS on 1 July 2019 all providers delivering DCS funded specialist disability services and services to NDIS funded participants are required to maintain compliance with DCS policies and procedures.
- Working collaboratively, open communication and information sharing during this transition period are essential. Providers with questions about DCS policies and procedures should contact their DCS Area Office, Community Partnership Team for clarification.
- Existing arrangements relating to Quality and Safety will remain in place for all individuals and NDIS participants until a National Approach is finalised. Eg. providers are required to comply with the *DHHS Quality and Safety Standards Framework for Tasmania's Agency Funded Community Sector* and ensure compliance with the *Tasmanian Disability Services Act (2011)* and *Tasmanian Disability Services Regulations (2015)*. Providers will be notified formally of any change in arrangements relating to quality assurance.

Mandatory Requirements

- This is a Department Health and Human Services (DHHS) wide policy and must not be re-interpreted so that subordinate policies exist. Should discreet operational differences exist, these should be expressed in the form of an operating procedure or protocol.
- The *Tasmanian Disability Services Act 2011* provides the legislative basis for the provision of specialist disability services.
- The Act defines disability as an impairment that:
 - is attributable to a cognitive, intellectual, psychiatric, sensory or physical impairment, or a combination of these, and
 - is permanent or likely to be permanent, and
 - results in a substantial reduction in the capacity of the person to participate in everyday life, and
 - requires continuous significant support services, and

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- may or may not be of a chronic episodic nature.
- To be eligible for specialist disability services in Tasmania, a person must:
 - have a disability as defined under the Act
 - live permanently in Tasmania
 - be an Australian citizen, or a permanent Australian resident, or a Temporary Protection Visa holder, or a member of a family on a work or study visa sponsored by the Australian Government
 - have a disability that manifests before the age of 65 years.
- The Tasmanian *Disability Services Act 2011* (50 (1)) describes information sharing entities and names those entities that may share information.
 - information-sharing entity means –
 - (a) a prescribed person; or
 - (b) a State Service officer or State Service employee employed in or for the purposes of the Department or another department, within the meaning of the *Administrative Arrangements Act 1990*; or
 - (c) a manager of a private medical establishment, within the meaning of the *Hospitals Act 1918* or of an establishment to which a licence under the *Health Service Establishments Act 2006* relates; or
 - (d) a controlling authority of an approved hospital, assessment centre, or secure mental health unit, each within the meaning of the *Mental Health Act 1996*; or
 - (e) the person in charge of a funded disability services provider; or
 - (f) the person in charge of an organisation that receives funding from the Secretary under a funding agreement to provide drug or alcohol treatment services; or
 - (g) the person in charge of an organisation that receives a referral from the Secretary or a Community-Based Intake Service, within the meaning of the *Children, Young Persons and Their Families Act 1997*; or
 - (h) the Chief Forensic Psychiatrist; or
 - (i) any other person, or organisation, prescribed in the regulations;
- In line with the requirements of the Tasmanian *Disability Services Act 2011* (section 50 (6) b) all information sharing entities must seek the consent of an individual in order to share information and can only share relevant information to enable assessment, determine the goods and services to be provided and/ or for the safety and wellbeing of a person.
- The Act requires an information sharing entity to gain consent of a person with disability but provides exception where sharing information is required for the safety of the person or others.

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- Consent must be sought from a person with disability before service providers initiate or implement any planned activity relating to that person.
- If the person with disability lacks the capacity to give consent, service providers or organisations must proceed in accordance with the Guidelines relating to this policy.
- Clients who meet the eligibility requirements for the National Disability Insurance Scheme (NDIS) trial 2013 – 2016 will become the responsibility of the NDIS. Some policies, procedures and guidelines will remain relevant in delivering services to this cohort group.
- **Failure to comply with this policy**, without providing a good reason for doing so, may lead to disciplinary action.
- Disciplinary action in this context may be a Penalty under the *Tasmanian Disability Services Act 2011* or constitute a breach of your Funding Agreement with Department Health and Human Services (DHHS).

Roles and Responsibilities/Delegations

All Service Providers:

- Must comply with the intent of the *Tasmanian Disability Services Act 2011* in relation to information sharing entities.
- Must seek consent from the person with disability before they commence or implement any planned activity relating to the person with disability.
- Are required to provide reasonable information to the person with disability, their family or and/or carer as not providing reasonable information may result in breach of duty of care.
- Must ensure that where a person with disability lacks capacity to provide consent, their 'responsible person' is informed of the proposed treatment and given an appropriate opportunity to provide informed consent or otherwise.
- Must ensure that the person who is giving consent must have the intellectual capacity and maturity to understand the situation that they are consenting to, the choices that are available and the actual or likely consequences of their decision. This applies to all people regardless of age and whether or not they have a disability.
- Are to note that in order for a person to provide informed consent, a person must be given sufficient information about the matter or procedure, and that information must be presented in such a way that a person can fully understand it. Any consent must be freely given and must not be obtained by force, threat, deception or undue influence.
- Ensure that all staff are informed that if they are unclear about the need to refer to a legally appointed guardian for a decision they should check the client's file for details of the guardians function and contact the guardian to discuss.
- Must be aware that a client who lacks capacity to give or withhold consent (and does not have informal decision making support from a family member or other support person), may have

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frequently occurring and important decisions to make that require a legally appointed guardian with a specific decision making function.

Risk Implications

- Non- compliance with this policy will result in a breach under the Tasmanian *Disability Services Act 2011*.

Training

- Specialist disability service providers are to ensure that all staff, whether employees or volunteers are appropriately qualified and skilled and, where appropriate, credentialed and registered.
- All staff, whether employees or volunteers are to be provided with adequate support, training, debriefing and directions to enable them to effectively perform their duties.

Audit

- This policy will be included in the work program of the Department Health and Human Services (DHHS) Internal Audit function.
- This work program is approved by the Audit and Risk Committee.
- The total focus of this assessment will be one of continuous quality improvement.

Attachments

1. Consent by Clients Guidelines Procedure P2012/0177-015.
2. Consent by Clients Definitions.

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