

CARERS RECOGNITION BILL 2004

EXPLANATORY MEMORANDUM

The purpose of the Bill is to formally recognise carers and their needs as partners in the provision of care for people who are frail, chronically ill or have a disability.

This legislation also aims at improving the culture of service providers by their involving and partnering with carers in the delivery of care.

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

Part 1 – Preliminary

This Part contains the title of the Act, the commencement provision, objects of the Act, definition of terms used within the Bill and the meaning of 'carer'.

Clause 1: Short title

The Short Title of the proposed Act is the Carers Recognition Act 2004.

Clause 2: Commencement

This Act comes into operation on a day fixed by proclamation.

Clause 3: Object of Act

The object of the Act is to recognise the role of carers in the community; and to provide a mechanism for the involvement of carers in the provision of services that impact on carers and the role of carers.

Clause 4: Terms used in this Act

Provides the definitions of terms used in the Bill to ensure the provisions of the Act are applied as intended.

Clause 5: Meaning of "carer"

Identifies who will be covered by this Act.

Subclause (1) provides that for the purposes of this legislation a person is a carer if he or she is an individual who provides ongoing care or assistance to a person with a disability as defined in the *Disability Services Act 1993* section 3, a chronic illness, including a mental illness as defined in the *Mental Health Act 1996* section 3, or who is frail and therefore needs assistance with carrying out everyday tasks.

There is the capacity to extend the meaning of carer to other situations by prescribing other categories of persons being cared for.

Subclause (2) excludes from the above meaning persons who are paid to provide care and assistance under a contract, except those entered into under the *Disability Services Act 1993* section 25, or who provide care as part of their community or volunteer work as defined in the *Volunteers (Protection from Liability) Act 2002* section 3(1).

In this way the close personal and informal nature of the care relationship remains central to the meaning of 'carer' under the proposed Act.

Subclause (3) provides further clarification of the term carer.

People are not carers solely by virtue of:

- being in married or de facto partnerships, parent/child and guardian/child relationships;
- providing care to children under an arrangement with the chief executive officer of the department principally assisting the minister administering the *Child Welfare Act 1947* in the administration of that Act.

This excludes persons, generally referred to as 'foster carers', who are providing care to children under an arrangement with the Director General of the Department for Community Development.

However, people in these situations are considered carers if they are caring for a child who is frail, has a disability or chronic illness as defined in this Bill

Part 2 – Compliance with the Carers Charter

This part sets out the requirements of complying with the Carers Charter, which organisations are required to demonstrate or report on that compliance to the Carers Advisory Council and the content and nature of these reports.

Clause 6: Applicable organisations to ensure compliance with the Carers Charter

Subclause (1) provides that Applicable Organisations must take all practicable measures to ensure that the organisation, its officers, employees, or agents comply with the Carers Charter in providing a service of that organisation.

This means that Applicable Organisations will need to inform and promote compliance with the Carers Charter to its officers, employees and agents.

Subclause (2) provides that applicable organisations which are a public sector body must further involve carers, or persons or bodies that represent carers in the development of policies and programs, and in strategic and operational planning, that might affect carers and the role of carers.

This provision requires that carers needs and issues will be considered in all areas of an organisation's work that culminate in the design and delivery of services or procedures which are likely to impact on carers.

Clause 7: Reports to the Council

Subclause (1) Provides that a reporting organisation must deliver by no later than 30 September of each year its annual report to the Carers Advisory Council on the performance of the organisations' obligations under the proposed Act, the organisation's compliance or non-compliance with the Act and with the Carers Charter, and on the compliance or non-compliance with the Carers Charter of any person or body providing a service to others under a contract with the organisation.

Subclause (2) provides that if the organisation is a public sector body the report must include details of the organisation's compliance or non-compliance with section 6 (2), and any other specific information prescribed by regulations.

Subclause (3) provides that a reporting organisation may at any time report to the Carers Advisory Council on any matter relating to the operation of the proposed Act.

Subclause (4) provides that a reporting organisation must ensure that a report under this section is made available to the public by publication in the manner set out in regulations.

Part 3 – Carers Advisory Council

Division 1 – Establishment and functions

Clause 8: Carers Advisory Council established

Subclause (1) provides for the Minister to appoint no more than 10 persons who have knowledge of, and experience in, matters relevant to carers to be the members of a body called the Carers Advisory Council.

Subclause (2) provides that the members the Minister appoints to the Carers Advisory Council are chosen to reflect the interests of carers.

Subclause (3) requires the Minister appointing persons to the Carers Advisory Council to consult with the Minister administering the *Disability Services Act 1993* and the Minister administering the *Hospitals and Health Services Act 1927* on who is selected.

This allows the Ministers with the health and disability services portfolios to have input into the selection process for members of the Carers Advisory Council.

Clause 9: Function of the Council

Subclause (1) sets out the function of the Carers Advisory Council and includes

- working to advance the interests of carers and promote compliance by applicable organisations with the Carers Charter;
- making recommendations to the Minister on fostering compliance by applicable organisations with the Carers Charter;
- providing general advice to the Minister on matters relating to carers; and carrying out other functions as directed by the Minister.

Subclause (2) enables the Carers Advisory Council to make a written request to a reporting organisation to provide any information relevant to the exercise of the Council's function.

Subclause (3) requires a reporting organisation to comply as far as is practicable with the above request from the Carers Advisory Council, unless the organisation is expressly prohibited from doing so under another written law.

Clause 10: Reports to the Minister

Subclause (1) requires the Carers Advisory Council to provide annual reports, and other reports as requested by the Minister on performance and compliance issues.

Subclause (2) specifies that the above report must include details on the compliance or non compliance with section 6(2).

Subclause (3) provides that the Minister must cause the above report to be laid before each House of Parliament within 14 sitting days of that House after the Minister receives it.

Clause 11: Powers, generally

The clause provides that the Carers Advisory Council has all the powers it needs to perform its functions.

Clause 12: Minister may give directions

Subclause (1) provides for the Minister to give written directions to the Council with respect to the performance of its functions, and requires that the Council give effect to any such direction.

Subclauses (2) to (5) specifies that the Minister will provide the text of any direction given under subsection (1) to each House of Parliament, and the process whereby this will occur.

Subclauses (6) and (7) provide that the text of a direction given under subsection (1) is to be included in the annual report submitted by the accountable officer of the department responsible for administering the Act.

Clause 13: Minister to have access to information

Subclauses (1) to (4) provides that the Minister is able to access all information held by the Carers Advisory Council.

Division 2 – Ancillary and procedural matters

Clause 14: Term of Office

Subclause (1) provides that the term of office for a person appointed to the Carers Advisory Council is not to be longer than 2 years.

Subclause (2) provides for members of the Carers Advisory Council being reappointed to the Council once their term ends and for a term of up to two years.

Clause 15: Casual Vacancy

This clause provides for how a position on the Carers Advisory Council becomes vacant by a member resigning, dying or having their appointment terminated by the Minister.

Clause 16: Chairman

This clause requires that the Chairman of the Carers Advisory Council is appointed by the Minister and that a deputy chairman is elected by the Council to perform the Chairman's duties when that person is not available.

Clause 17: Remuneration and allowances

This clause provides that members of the Council are entitled to any remuneration and allowances that the Minister may from time to time determine on the recommendations of the Minister for Public Sector Management.

Clause 18: Presiding at meetings

This clause establishes who will preside at Carers Advisory Council meetings.

Clause 19: Procedure at meetings

This clause provides that except as otherwise stated in this Act, the Council is to determine its own meeting procedures.

Clause 20: Minutes

This clause requires the Council to ensure that accurate minutes are kept of its meetings.

Part 4 – Miscellaneous

Clause 21: Regulations

This clause provides for the Governor to make regulations to support the operation and effectiveness of the Act.

Clause 22: Review of Act

This clause provides:

- for the Minister to carry out a review of the Act as soon as is practicable after 3 years from the date of its commencement; and
- that the report of the review is laid before each House of Parliament no later than four years after the date of the Act's commencement.

Part 5 – Amendments to other Acts

Division 1 – Amendments to the *Disability Services Act 1993*

Clause 23: The Act amended

This clause provides that the amendments in this Division are to the *Disability Services Act 1993*.

Clause 24: Section 3 amended

This clause provides for the insertion into Section 3 of the *Disability Services Act 1993* of the term 'carer'.

Clause 25: Section 3A inserted

This clause provides for a common definition of the term 'carer' to be used in this Bill and the *Disability Services Act 1993*.

Clause 26: Section 30 amended

The clause provides for the insertion into Section 30 of the *Disability Services Act 1993* the term 'Carers Charter' as used and with the same meaning as in this Act.

Clause 27: Section 32 amended

This clause provides for Section 32 of the *Disability Services Act 1993* to be amended to enable carers to complain on their own behalf.

Clause 28: Section 33 amended

This clause provides for Section 33 of the *Disability Services Act 1993* to be amended so that carers can complain about the Disability Service Commission or service providers providing disability services not complying with the Carers Charter.

Clause 29: Section 40 amended

This clause provides for Section 40 of the *Disability Services Act 1993* to be amended to require the Director considering a complaint made under section 33(2) of that Act to also have regard for the Carers Charter.

Division 2 – Amendments to the *Health Services (Conciliation and Review) Act 1995*

Clause 30: The Act amended

This clause provides that the amendments in this Division are to the *Health Services (Conciliation and Review) Act 1995*.

Clause 31: Section 3 amended

The clause inserts into Section 3(1) on the interpretation of terms used within the *Health Services (Conciliation and Review) Act 1995* of the term ‘carer’ with the same meaning as given in Section 5 of this proposed Act.

Clause 32: Section 19 amended

This clause amends Section 19 of the *Health Services (Conciliation and Review) Act 1995* to enable a carer to make a complaint on their own behalf about a matter referred to in section 25(1).

Clause 33: Section 25 amended

This clause amends Section 25 of the *Health Services (Conciliation and Review) Act 1995* to enable a carer to make a complaint that a provider of a health service has failed to comply with the Carers Charter as defined in section 3 of this proposed Act.

Clause 34: Section 30 amended

This clause amends Section 30 of the *Health Services (Conciliation and Review) Act* to require that a carer making a complaint has to the satisfaction of the Director considering the complaint, tried to resolve the matter with the service provider as is required of other users of health services.

Schedule 1 – The Western Australian Carers Charter

This schedule sets out the Western Australian Carers Charter.

1. Carers must be treated with respect and dignity
2. The role of carers must be recognised by including carers in the assessment, planning, delivery and review of services that impact on them and the role of carers.
3. The views and needs of carers must be taken into account along with the views, needs and best interests of people receiving care when decisions are made that impact on carers and the role of carers.
4. Complaints made by carers in relation to services that impact on them and the role of carers must be given due attention and consideration.

Schedule 2 – Applicable organisations

Division 1 – Reporting organisations

Lists the reporting organisations. These are the Department of Health, public hospitals and the Disability Services Commission.

It also includes the ability to add other persons or bodies to this list of reporting organisations.

Division 2 – Other Organisations

Establishes that other organisations providing a service under contract to a reporting organisation, are applicable organisations and are required to comply with the Western Australian Carers Charter, but are not required to report directly to the Carers Advisory Council.

It also includes the ability to make other persons or bodies applicable organisations for the purposes of this Act.