



Government of **Western Australia**
Department of **Communities**

Review of the Carers Recognition Act 2004:

 Report to Parliament



Contents

Overview of the Act.....	2
Object and purpose of the Act	2
Review of the Act	4
Review Working Group	5
Methodology	5
Findings and recommendations.....	6
Table 1 Findings and recommendations of the 2018 review of the <i>Carers Recognition Act 2004</i> ...	7
Summary of Findings	11
Limitations of the Review.....	11
Implementation.....	12
Conclusion	12
Appendix One: Carers recognition legislation in Australia.....	13
Appendix Two: <i>Carers Recognition Act 2004</i> - definition of carer	14
Appendix Three: Methodological approach.....	15
Discussion paper	15
Online survey.....	16
Consultations, workshops and meetings	16
Review limitations	16

Overview of the Act

In 2004, Western Australia became the first Australian jurisdiction to introduce carer specific legislation. The *Carers Recognition Act 2004* (**the Act**) commenced on 28 October 2004, with the object of recognising the role of carers and providing a mechanism for their involvement in the provision of services that affect them and their role.

The Hon Simone McGurk MLA, as Minister for Community Services (**the Minister**), is responsible for the administration of the Act. The Department of Communities (**Communities**) is the agency which principally assists the Minister to undertake this responsibility.

All Australian jurisdictions (the Commonwealth, States and Territories) have implemented legislation to recognise carers. A list of the relevant legislation is included at Appendix One.

Object and purpose of the Act

The *Carers Recognition Act 2004* is an Act to provide for the recognition of carers by certain persons and bodies, and for related purposes. The object of the Act, provided in Part 1 section 3, is:

- a) to recognise the role of carers in the community; and
- b) to provide a mechanism for the involvement of carers in the provision of services that impact on carers and the role of carers.

Under section 5 of the Act, a person is defined as a *carer* for the purposes of the Act if they provide ongoing care or assistance to:

- (a) a person with a disability as defined in the *Disability Services Act 1993*;
- (b) a person with a chronic illness, including a mental illness as defined in the *Mental Health Act 2014*;
- (c) a person who, because of frailty, requires assistance with carrying out everyday tasks; or
- (d) a person of a prescribed class (no additional persons have been prescribed in regulations).

Section 5 also contains exclusions and additional clarification, as follows, to help further define who is a carer under the Act:

- A person is not a carer if he or she provides the assistance under either a contract for services or a contract of service, or while doing community work.
- A person is not a carer only because he or she is a spouse, de facto partner, parent or guardian of the person being cared for, or because he or she is a foster carer for a child who is in the care of the Chief Executive Officer of the Department of Communities.

The complete definition of a 'carer' (i.e. section 5) is included at Appendix Two.

Schedule 1 of the Act sets out the Western Australian Carers Charter (**the Carers Charter**), which provides a clear direction on how carers defined under the Act are to be treated and involved in the delivery of services by “applicable organisations”.

The Carers Charter states that:

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 considered 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.

Part 3 Division 1 of the Act establishes the Carers Advisory Council (**the Council**) with the following functions set out in section 9(1):

- (a) to work to advance the interests of carers and promote compliance by applicable organisations with the Carers Charter; and
- (b) to make recommendations to the Minister on fostering compliance by applicable organisations with the Carers Charter; and
- (c) to provide general advice to the Minister on matters relating to carers; and
- (d) to carry out other functions as directed by the Minister.

Applicable organisations under the Act are either ‘reporting organisations’ or ‘other organisations’ and are defined by reference to Schedule 2 of the Act. All applicable organisations must ensure their compliance with the Carers Charter, but only reporting organisations must provide the Council with annual reports on their compliance or non-compliance, including that of their respective other organisations.

Currently, the ‘reporting organisations’ under the Act are: the Department of Health; Health Service Providers¹ established under the *Health Services Act 2016*; and the Disability Services Commission,² and the ‘other organisations’ are contractors of those organisations providing a service to others.

Whilst the WA Machinery-of-Government reforms in 2017 amalgamated the Disability Services Commission and a number of other Government agencies into the Department of Communities, the Disability Services Commission continues to exist as its own legal entity pursuant to the *Disability Services Act 1993*. Notably, the transition to the National Disability Insurance Scheme has resulted in most disability service providers no longer being contracted by the Disability Services Commission and no longer being bound to comply with obligations in the Act. This has also

¹ The Child and Adolescent Health Service; North Metropolitan Health Service; South Metropolitan Health Service; East Metropolitan Health Service; WA Country Health Service; Health Support Services; PathWest; and the Quadriplegic Centre.

significantly reduced the data collected by the Disability Services Commission as a 'reporting organisation' from those service providers as 'other organisations'.

Review of the Act

The Minister announced a review of the Act on 29 May 2018 (**the Review**) with a focus on five areas:

1. The effectiveness of the Act in increasing awareness and recognition of carers' roles and contributions to the community and ensuring their involvement in service decisions and provision.
2. Whether the current definition of a 'carer' captures the diversity of caring roles and responsibilities, and the implications this may have for achieving awareness and recognition of carers.
3. Whether the Carers Charter has made a positive difference to the degree of applicable service providers' recognition of the role and contribution of carers.
4. Whether the applicable organisations are implementing and complying with the Carers Charter, and whether the Act should apply to other agencies, organisations and service providers.
5. Carer interaction with the Council and the currency of the Council's functions under the Act.

The Act had been in operation for 14 years, and the length of operation coupled with changes to the strategic and policy environment warranted a review of the operation and effectiveness of the Act to ensure that it remains fit for purpose. The strategic and policy environment has included factors such as:

1. the effects of state and Commonwealth government policy and funding decisions on service delivery and availability that impact on carer access to appropriate services and information
2. social and economic conditions that impact on carers' ability to have the same life choices and opportunities as other members of the community
3. the implementation of WA's first Carers Strategy in 2016 to guide whole of community action towards greater support for and recognition of carers
4. WA's transition to the full-scheme roll out of the National Disability Insurance Scheme (**NDIS**) - Carers have anecdotally raised concerns regarding changes to funding models and supports, and the capacity of these changes to meet their needs.

A statutory review of the Act was conducted in 2008 on behalf of the then Minister Hon Robyn McSweeney MLC and tabled in Parliament on 13 November 2008 (**2008 review**) in accordance with section 22 of the Act. The 2008 review was required to consider the effectiveness of the operation of the Council, the need for the continuation of the functions of the Council and any other matters that appear to the Minister to be relevant to the operation and effectiveness of the Act.

The 2008 review found that the Act had not been effective in achieving its objective but noted that this might have resulted from the short period of time it had been in

operation. It made 16 recommendations, 11 of which were endorsed by the Minister and seven implemented by the State Government.

Review Working Group

Communities undertook the Review on behalf of the Minister. The Review has been managed by a working group comprising Communities' staff and representatives from the Council and Carers WA (**Review Working Group**). The Council and Carers WA are key partners in the State Government's efforts to support and recognise carers.

The Council is supported by Communities. It reports to the Western Australian Parliament on applicable organisations' compliance with the Act and provides advice to the Minister.

Carers WA is the peak body dedicated to improving the lives of the estimated 320,000³ carers living in Western Australia. Carers WA is funded by the state and Commonwealth governments to provide a range of counselling, support, advocacy and information services to carers, their families and significant others.

The Review Working Group's Terms of Reference established its role as being to:

- manage the review process and communication strategies
- provide a forum for exchange of information between the representative parties on the current operation of the Act and associated issues
- advocate on behalf of key stakeholders to provide strategic advice on current issues and trends that affect carers and may impact on the objectives of the Act and the Carers Charter.

Methodology

A comprehensive, multi-method public consultation process was undertaken from 29 May 2018 to 31 December 2018. The Review commenced with the release of a discussion paper⁴, which was disseminated widely amongst stakeholders. Communities invited carers, Aboriginal community-controlled health services, community members, service providers and other relevant stakeholders to contribute to this review. Multiple engagement methods were used to ensure accessibility to a wide range and number of stakeholders. These engagement methods were:

- an online public survey available through Survey Monkey
- ten regional and metropolitan consultations
- face to face sessions and meetings with carers, peak bodies, service providers, and state and local government agencies
- written submissions responding to a discussion paper.

³ Please note, this is the figure used by Communities and the State Government based on internal modelling. Carers WA noted that it cites the estimated figure of 230,000 as per the Australian Bureau of Statistics 2018 Survey of Disability, Aging and Carers (SDAC). Carers WA further noted that it believes the SDAC figure to be a significant underestimate.

⁴ [Consultation paper: Review of the Carers Recognition Act 2004, Government of Western Australia Department of Communities, 2018](#)

In total, approximately 200 responses were received by the Review Working Group. A detailed summary of the methodology is provided at Appendix Three.

Findings and recommendations

The findings of the consultation were classified into five priority areas:

1. Purpose and object of the Act.
2. Definition of *carer*.
3. Purpose of the Carers Charter.
4. Compliance with the Carers Charter.
5. The Carers Advisory Council.

The findings, and recommendations against them, are listed in Table 1.

Table 1 Findings and recommendations of the 2018 review of the *Carers Recognition Act 2004*

Section 1 – Purpose and Object of the Act		
Finding 1:	The purpose and object of the Act remain valid.	Recommendation 1:
Findings 2 & 3:	Further action is required to achieve greater and wider community awareness, recognition and understanding of carers.	Develop and implement a multi-faceted campaign, including training, to raise service provider and community awareness of carers, the Act, the Carers Charter and the WA Carers Strategy.
Finding 4:	Further action is required to achieve greater and more consistent levels of carer involvement in decision making.	Recommendation 2: Develop and implement a multi-faceted campaign to explain and promote: <ul style="list-style-type: none"> • carers’ social and economic contribution to the community • the caring role and responsibilities, and carers’ unique expertise • the difference between unpaid carers and paid care support workers. Recommendation 3: Develop and distribute resources to support organisations and service providers to: <ul style="list-style-type: none"> • identify whether a person is a carer under the Act • routinely involve carers in service provision and decision-making.

Section 2 – Definition of a Carer		
Finding 5:	The definition of carer in the Act does not describe the diversity of carers and care relationships.	<p>Recommendation 4</p> <p>Develop supplementary resources and plain English guidelines that clearly explain that the Act and Carers Charter:</p> <ul style="list-style-type: none"> • applies to people who have secondary and multiple caring roles • includes children/young carers • includes carers whose roles may be ongoing or intermittent • applies to carers of people with alcohol and other drug addiction, with mental illness, and who are receiving palliative care.
Section 3 – Purpose of the Carers Charter		
Finding 6:	Further action is required to achieve consistent understanding and application of the Carers Charter.	<p>Recommendation 5</p> <p>Develop resources to support consistent understanding and application of the Carers Charter by organisations and service providers.</p>
Finding 7:	Further action is required to achieve wider carer and service provider awareness of a carer’s right to lodge complaints, and where and how to lodge them.	<p>Recommendation 6</p> <p>Develop and implement initiatives to raise awareness amongst:</p> <ul style="list-style-type: none"> • carers of their right to lodge a complaint about non-compliance, and how and where to lodge one • service providers of carers’ right to lodge complaints and providers’ responsibilities to facilitate complaint lodging and resolution.

Section 4 – Compliance with the Carers Charter		
Finding 8:	Many non-applicable organisations are acting in accordance with the Carers Charter, which suggests that compliance may not be fully attributable to the Act’s reporting requirements.	<p>Recommendation 7</p> <p>Develop and implement initiatives that encourage and support:</p> <ul style="list-style-type: none"> • other relevant service delivery organisations (such as those relating to education, training, transport and housing) to recognise and include carers; and • all state government agencies and organisations to recognise and include carers.
Finding 9:	Expanding compliance reporting to other/all state government agencies may achieve greater carer awareness, recognition and inclusion.	
Finding 10:	Services funded through the NDIS are not bound to comply with the Act or Carers Charter.	<p>Recommendation 8</p> <p>Explore options to encourage all state government agencies that engage with carers to apply and to report on their compliance with the Carers Charter. Options include:</p> <ul style="list-style-type: none"> • issuing Premier’s and Public Sector Commissioner’s Circulars or instructions to request that all state government agencies comply with the Carers Charter; and/or • requesting relevant state government agencies to survey carers’ service experiences. <p>Recommendation 9</p> <p>Develop and distribute resources to guide state government agencies in identifying and supporting employees who are carers.</p> <p>Recommendation 10</p> <p>Implement initiatives that encourage and support NDIS-registered providers providing services under the National Disability Insurance Scheme in WA to recognise and include carers in accordance with the Act.</p>

Section 5 – The Carers Advisory Council		
Finding 11:	Further action is required to widen community awareness of the Council, and the difference between it and Carers WA.	<p>Recommendation 11</p> <p>Communities works with the Council to enhance and build its capacity to balance its compliance, advisory and advocacy functions.</p> <p>Recommendation 12</p> <p>Make the compliance process more manageable by engaging an independent and professionally accredited agency or organisation to undertake reporting.</p>
Finding 12:	Stakeholders believe that the Council should be better supported and better resourced to balance compliance, advocacy and engagement activities.	
Finding 13:	Carers and service providers believe that the Council should be better supported and better resourced to balance its advocacy and compliance functions.	

Summary of Findings

The Review highlighted the following:

- The Carers Charter is broadly supported as a positive step towards carer recognition, but its implementation has not been uniform, thereby undermining its effectiveness.
- There has been an increase in general awareness of carers, particularly by service providers, but there is still not a full understanding of the carer role and caring responsibilities, the challenges carers face, or the contribution they make to the community.
- There is inconsistent carer involvement in decision making, care planning and policy development within applicable organisations.
- There remains a need for greater awareness and recognition of carers, particularly within the broader community.
- There needs to be a better understanding of the full diversity of carers
- There is general support for the Act to be more broadly applied across state government agencies.

The Review found that there has been an observable improvement in carer recognition, involvement and awareness since the Act and Carers Charter commenced in 2004. However, this is not as widespread or consistent as it could or should be, and environmental changes may present new obstacles to increasing carer recognition and involvement.

Limitations of the Review

The survey response rate of approximately 200 is low compared to the proportion of carers in WA, which makes it difficult to extrapolate findings to the entire WA carer population. It was noted that this response rate is consistent with many state government and Parliamentary Committee reviews and inquiries.

It is important to recognise that over the course of the Review, the service and policy environment has changed. Changes to the environment in which the Act and Carers Charter operate, which were not fully evident at the time of consultation, have impacted both positively and negatively on carer recognition, involvement and awareness. This environment includes factors such as:

- The effects of state and Commonwealth government policy and funding decisions on service delivery and availability that impact on carer access to appropriate services and information; in particular, the roll-out of the NDIS across the state.
- The social and economic conditions that impact on carers' ability to have the same life choices and opportunities as other members of the community.
- The implementation of WA's first Carers Strategy in 2016 to guide whole of community action towards greater support for and recognition of carers.
- WA's transition to full-scheme NDIS which may impact carer access to funding and support.

Further, changes to, and undertaken by, the Council have created opportunities for improved and wider carer recognition, involvement and awareness. The Council's proactive approach to member recruitment, carer and stakeholder engagement has better positioned it to understand and represent the spectrum of carer experiences and concerns and become a more representative 'carer' voice.

These gains contrast with the feedback that carers have provided to the following: to the NDIS (on their experiences of the transition); to the Royal Commission into Aged Care Quality and Safety; and to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. What emerges is a picture of inconsistent carer recognition, involvement and awareness. Added to this are the ongoing challenges arising from the COVID-19 pandemic.

Implementation

Communities will work with key stakeholders, including the Council and Carers WA, to design an implementation plan, and develop and deliver appropriate and targeted response initiatives.

Conclusion

In summary, the Review has shown that the recognition of carers has positively progressed since the introduction of legislation in 2004 and since the statutory review of the Act conducted in 2008. The findings demonstrate an emphasis on the importance of educational initiatives to continue to improve carer recognition. The operational environment and the role of stakeholders will influence the implementation of a considered response to the Review.

Appendix One: Carers recognition legislation in Australia

All states and territories and the Commonwealth have legislation recognising carers:

- *Carer Recognition Act 2010* (Cwth)
- *Carers Recognition Act 2021* (ACT)
- *Carers Recognition Act 2010* (NSW)
- *Carers Recognition Act 2006* (NT)
- *Carers (Recognition) Act 2008* (QLD)
- *Carers Recognition Act 2005* (SA)
- *Carers Recognition Act 2005* (TAS)
- *Carer Recognition Act 2012* (VIC)
- *Carers Recognition Act 2004* (WA)

Appendix Two: *Carers Recognition Act 2004* - definition of carer

5. Term used: carer

- (1) Except as provided in subsection (2), a person is a carer for the purposes of this Act if he or she is an individual who provides ongoing care or assistance to —
 - (a) a person with a disability as defined in the *Disability Services Act 1993* section 3; or
 - (b) a person who has a chronic illness, including a mental illness as defined in the *Mental Health Act 2014* section 4; or
 - (c) a person who, because of frailty, requires assistance with carrying out everyday tasks; or
 - (d) a person of a prescribed class.
- (2) However a person is not a carer if he or she —
 - (a) provides the care or assistance under a contract for services (other than an agreement entered into under the *Disability Services Act 1993* section 25) or a contract of service; or
 - (b) provides the care or assistance while doing community work as defined in the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002* section 3(1).
- (3) A person is not a carer for the purposes of this Act only because —
 - (a) the person is a spouse, de facto partner, parent or guardian of the person to whom the care or assistance is being provided; or
 - (b) the person provides care to a child under an arrangement with the chief executive officer of the department principally assisting the Minister administering the *Child Welfare Act 1947*² in the administration of that Act.

[Section 5 amended: No. 53 of 2006 s. 12(1); No. 25 of 2014 s. 37.]

Appendix Three: Methodological approach

A comprehensive, multi-method public consultation process was undertaken from 29 May 2018 to 31 December 2018. Communities invited carers, Aboriginal community-controlled health services, community members, service providers and other relevant stakeholders to contribute to this review. Multiple engagement methods were used to ensure accessibility to a wide range and number of stakeholders. These engagement methods were:

- written submissions responding to the Review discussion paper, which was available for comment from 29 May 2018 to 31 December 2018
- an online public survey available through Survey Monkey from 29 May 2018 to 31 October 2018
- ten regional and metropolitan consultations held from July to December 2018
- face to face sessions and meetings with carers, peak bodies, service providers, and state and local government agencies.

Results were analysed using a mixed method approach.

Discussion paper

Communities invited stakeholders to comment on the Review discussion paper, which was approved by the Review Working Group prior to release and made available through Communities' website. The Minister invited relevant state and Commonwealth government agencies, State Government Ministers, and Ministerial Advisory Committees and Councils to provide written responses. Written submissions closed on 31 December 2018.

Forty-six submissions were received, of which 35 were useable. Eleven submissions were incomplete and therefore omitted. Of the 35 useable responses, 20 were from individual carers, six from service providers and other organisations and nine from following state and Commonwealth government agencies and other peak and advisory bodies:

- Australian Commission on Safety and Quality in Health Care
- Department of Social Services (Commonwealth)
- National Health Practitioner Ombudsman and Privacy Commissioner
- National Mental Health Commission
- Department of Local Government, Sport and Cultural Industries (WA)
- Mental Health Commission (WA)
- Minister for Citizenship and Multicultural Interests' Multicultural Advisory Group
- WA Country Health Service
- Carers WA.

The questions developed for the Review discussion paper were used in the online survey and for the consultation sessions.

Online survey

The online survey comprised quantitative and qualitative components and asked respondents to answer questions, based on their personal experiences, on:

- the object of the Act
- the definition of *carer*
- the purpose of the Carers Charter
- compliance with the Carers Charter
- the functions of the Carers Advisory Council.

The online survey also provided respondents with an opportunity to provide written feedback on these topics. There were 100 responses to the online survey, of which 91 were useable. Nine responses were omitted because they focused on carer types not defined in the Act, such as foster carers and paid care workers.

Consultations, workshops and meetings

Between July and December 2018, 10 consultation sessions were held across the metropolitan area, Albany, Busselton and Northam.

More than 100 people participated in these sessions, including:

- service users, and individuals and family members who provide and receive care
- service providers, including large and small employers, employees and their representative bodies
- representatives of community sector service providers and government agencies that provide support to carers.

Communities also undertook face to face sessions with stakeholders who could not attend the planned consultation sessions. This included sessions with:

- providers and recipients of unpaid care
- regional and metropolitan service providers
- peak bodies and advocacy groups, including Ministerial advisory groups
- representatives from state government and local government agencies.

Review limitations

Communities received around 200 responses to the Review. As a proportion of the total number of carers service providers in WA, this is low. However, the response rate is comparable to other State Government and Parliamentary Committee reviews and inquiries.

Communities undertook a comprehensive communication campaign to recruit review participants. This included direct written invitations to state and Commonwealth government agencies and Ministerial Advisory Councils, online and social media announcements and cross-posting by stakeholders, direct email to Communities' stakeholders, and Ministerial media statements. Further, the consultation process was extended from two to six months to encourage and facilitate further participation.

Communities' efforts were complemented and supplemented by the work of the Council and Carers WA to promote the review process through their networks, and to encourage and facilitate participation.