



Australian Capital Territory

Carers Recognition Legislation Amendment Act 2006

A2006-47

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Australian Capital Territory

Carers Recognition Legislation Amendment Act 2006

A2006-47

An Act to amend laws in relation to carers, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Carers Recognition Legislation Amendment Act 2006*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Part 2 Discrimination Act 1991

3 Legislation amended—pt 2

This part amends the *Discrimination Act 1991*.

4 Domestic accommodation etc Section 26 (1) (a) (i) and (ii)

substitute

- (i) the person who provides or proposes to provide the accommodation, or a near relative or carer of the person, lives and intends to continue to live on the premises; and
- (ii) the accommodation provided in the premises is for not more than 6 people, not including the person mentioned in subparagraph (i) and any near relative or carer of the person; or

5 Dictionary, definition of *carer*

substitute

carer—a person is a ***carer*** of someone else (the ***dependant***) if—

- (a) the dependant is dependent on the person for ongoing care and assistance; and
- (b) the person cares for the dependant otherwise than because of—
 - (i) a commercial arrangement; or

(ii) an arrangement that is substantially commercial.

Example of a carer

Ms W suffers from multiple sclerosis and requires constant care. Her spouse and 3 children aged 21, 16 and 11 share her care and would each be a ‘carer’.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 3 Guardianship and Management of Property Act 1991

6 Legislation amended—pt 3

This part amends the *Guardianship and Management of Property Act 1991*.

7 What are a person's *interests*? Section 4

relocate as section 5A

8 Principles to be followed by decision-makers Section 5 (3) and (4)

substitute

- (3) Before making a decision, the decision-maker must consult with each carer of the protected person.
- (4) However, the decision-maker must not consult with a carer if the consultation would, in the decision-maker's opinion, adversely affect the protected person's interests.
- (5) Subsection (3) does not limit the consultation that the decision-maker may carry out.

9 Section 5

renumber as section 4

10 When does someone have impaired decision-making ability? Section 6

renumber as section 5

11 New section 6

in part 1A, insert

6 Meaning of carer

In this Act:

carer—a person is a **carer** of someone else (the **dependant**) if—

- (a) the dependant is dependent on the person for ongoing care and assistance; and
- (b) the person cares for the dependant otherwise than because of—
 - (i) a commercial arrangement; or
 - (ii) an arrangement that is substantially commercial.

Example of a carer

Ms S suffers from a severe brain injury because of a car accident and requires constant care. Her spouse, 2 children aged 18 and 11 and a family friend share her care and would each be a ‘carer’.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**12 Considerations affecting appointment
Section 10 (4)**

substitute

- (4) For subsection (3), the matters the tribunal must take into account include—
 - (a) the views and wishes of the person (the **protected person**) for whom a guardian or manager is to be appointed; and
 - (b) the desirability of preserving existing relationships with family and any other carers; and

- (c) whether the proposed guardian or manager is compatible with the protected person; and
- (d) whether the proposed guardian or manager lives in the ACT; and
- (e) whether the proposed guardian or manager will be available and accessible to the protected person; and
- (f) the nature of the functions to be exercised under the order and whether the proposed guardian or manager is competent to exercise them; and
- (g) whether the interests and duties of the proposed guardian or manager are likely to conflict with the protected person's interests to the detriment of the protected person's interests.

13 Powers to be least restrictive
Section 11, note

omit

(see s 5)

substitute

(see s 4)

14 Notice of inquiry
New section 35 (1) (ca)

insert

- (ca) if the person has a carer who would not otherwise be given written notice of the inquiry under this section—the carer; and

15 Section 35 (1), new example

insert

Example of people who must be given notice of inquiry

Mr B has dementia and requires constant care. Mr B's brother (and guardian), his niece and a close family friend share his care. Each person must be given notice of an inquiry in relation to a matter affecting Mr B.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

16 Dictionary, new definition of *carer*

insert

carer—see section 6.

17 Dictionary, definition of *decision-making principles*

substitute

decision-making principles—see section 4.

18 Dictionary, definition of *impaired decision-making ability*

substitute

impaired decision-making ability, for a person—see section 5.

19 Dictionary, new definition of *interests*

insert

interests, of a person—see section 5A.

20 Dictionary, definition of *primary carer*

omit

Part 4 Human Rights Commission Act 2005

21 Legislation amended—pt 4

This part amends the *Human Rights Commission Act 2005*.

22 Who may make a complaint under this Act? Section 43 (1) (b)

substitute

(b) an agent of the aggrieved person; or

23 Section 43 (1) (d)

substitute

(d) if a person has guardianship or control of the affairs of the aggrieved person under another law or an order of a court or tribunal—that person; or

24 New section 43 (2A)

insert

(2A) To remove any doubt, a carer may make a complaint as an agent of the aggrieved person under subsection (1) (b) even though the carer is under a legal disability (for example, if a child is a carer of the aggrieved person, the child may make a complaint as an agent of the person).

25 Section 43 (3) and (4)

omit

an aggrieved person

substitute

the aggrieved person

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 August 2006.

2 Notification

Notified under the Legislation Act on 28 November 2006.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Carers Recognition Legislation Amendment Bill 2006, which was passed by the Legislative Assembly on 14 November 2006.

Clerk of the Legislative Assembly