

Carers Recognition Bill 2021

Explanatory Statement

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Introduction

This explanatory statement relates to the *Carers Recognition Bill 2021* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The explanatory statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The Carers Recognition Bill 2021 is a bill to recognise, promote and value the role unpaid carers have within our community. The bill will put in place measures requiring certain entities and organisations to consider and adapt business practices to support the care relationship that exists between carers and the people they care for.

The bill establishes a set of principles relating to supporting people in care relationships. The bill also places obligations on care and carer support agencies to uphold, and report on compliance with, the care relationship principles.

Carers are some of the most selfless people in our community who work very hard supporting those within our community who need care. The work of carers is generally unrecognised and carers themselves often do not receive the support they need to carry out their caring responsibilities or to look after themselves.

Better recognition of carers and their needs will improve support to carers, which will in turn improve the health and wellbeing of carers as a group in our community.

The bill is not intended to create a hierarchy between carers and those receiving care, it is about all people in the care relationship being seen, heard and respected. Where a dispute between a carer and a person receiving care occurs, the bill is not intended to be used as a means for reconciling that individual dispute. Nor is the bill intended to give one person in the care relationship more say than others. This is particularly important to recognise given power imbalances can and do occur in care relationships and where this does occur those matters must be resolved with respect to the human rights of the individuals.

Consultation Undertaken

A consultation draft of the Carers Recognition Bill 2021 was released in January 2021. Several individuals and organisations provided feedback on the consultation draft. In addition, two forums, one with Carers ACT and one with ACTCOSS were held to receive feedback on the consultation draft from their membership.

Human Rights Compatibility

The bill engages the following rights:

- Recognition and equality before the law

Rights Promoted

The right to recognition and equality before the law for carers is promoted through the enactment of principles to recognise the role of carers and acknowledge carers as individuals with particular needs in areas identified as points of misunderstanding that can, if left unaddressed, lead to discrimination.

The right to recognition and equality before the law for people receiving care is promoted through part 3, section 9 which acknowledges that people receiving care are individuals in their own right and that their rights as an individual are to be respected and upheld.

Rights Limited

No rights are limited by the bill.

Proportionality

Not applicable.

Outline of the Provisions of the Bill

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause sets out the name of the Act.

Clause 2 Commencement

This clause sets out that the Act (other than section 17) commences on a day fixed by the Minister by written notice. Section 17 establishes a new Carers Recognition Regulation and commences on the Act's notification day. Section 17 needs to commence on notification to enable an 'as notified' version of the new regulation to be published on the Legislation Register on the day the Act is notified. This is important for accessibility, especially if the regulation has a delayed commencement.

Clause 3 Dictionary

This clause states that the dictionary at the end of the bill is, once enacted, part of the Act.

Clause 4 Notes

This clause states that a note included in the bill is explanatory and, once enacted, is not part of the Act.

Part 2 OBJECTS AND IMPORTANT CONCEPTS

Clause 5 Objects of Act

This clause sets out the objects of the Act. Carers often experience misunderstanding of what their role in a care relationship is and may even experience disrespect and marginalisation when undertaking their caring role. The objectives of the bill outline the core principles that underpin the bill, addressing the need for greater understanding of the carers role and how carers can be better supported.

Clause 6 Meaning of *care relationship*

This clause defines the terms *care relationship* and *carer* for the Act.

Clause 7 Meaning of *care and carer support agency*

This clause defines the term *care and carer support agency* for the Act.

Part 3 CARE RELATIONSHIP PRINCIPLES

Clause 8 Care relationship principles – treatment of carers

This section creates a set of care relationship principles in relation to the treatment of carers. The principles detail that a carer is to be respected as an individual and as a carer, that the care responsibilities that a carer takes on need to be respected and supported, and that the wellbeing of the carer is to be supported through the approach taken by care and carer support agencies. The principles also note that certain characteristics of some carers require additional support, for example, supporting young carers with their education.

The care relationship principles in relation to the treatment of carers are central to achieving the objectives of the bill. The principles are based on the barriers identified by carers that they experience which make it difficult to undertake their caring role and ultimately impact their own wellbeing.

A key tenant underpinning the principles is that carers are individuals in their own right and with their own needs. The principles acknowledge that the caring role that carers undertake can, and does, impact other areas of a carer's life in a way that people who do not have caring roles would not experience.

By drawing specific attention to the areas where negativity is experienced by carers the principles set a clear expectation of how carers should be treated so that they are valued and respected and able to carry out their caring role and maintain their own wellbeing.

Clause 9 Care relationship principles – treatment of people receiving care

This clause sets out that people receiving care are individuals in their own right and that their rights as an individual are to be respected and upheld. The recognition of people receiving care is as integral to respecting the care relationship as recognising carers. It is important to acknowledge people receiving care do not cease to have autonomy over their decisions simply by the fact they receive care or are in a care relationship. To prevent this bill being used as a mechanism for disrespecting the rights of people receiving care it is important that this clause be included.

PART 4 OBLIGATIONS RELATING TO CARE RELATIONSHIP PRINCIPLES

Clause 10 Obligations of care and carer support agencies relating to care relationship principles

This clause sets out the obligations of care and carer support agencies under the bill. This clause requires a care and carer support agency to make both the agency's employees and agents, and people receiving support from the agency, aware of the care relationship principles. The agency is also required, along with the agency's employees and agents, to uphold the care relationship principles when providing support services to people in care relationships. In addition, this clause requires care and carer support agencies to consult with carers and entities representing carers when planning, reviewing and developing support services, programs and policies that will affect people in a care relationship.

Throughout consultation carers have consistently provided feedback for the need for care and carer support agencies to provide transparency and accountability in how the objectives of the bill are realised. There was a concern that, if no accountability was placed on care and carer support agencies, the objectives of the bill would not be realised. By providing a publicly available report, care and carer support agencies will be clearly stating what they have done to uphold the care relationship principles in an open manner, providing for transparency and accountability.

Clause 11 Reporting obligations of care and carer support agencies

This clause sets out the obligations of care and carer support agencies in relation to reporting. An agency must report annually on the steps they have taken to uphold the care relationship principles and the agency's obligations. For public sector support agencies, reporting is to be included in their annual report. Funded support agencies are required to report annually, this could be, for example, in their own annual report or by publishing a statement on their website. For secondary funded support agencies, the provision of a public report is encouraged, rather

than required, to balance the reporting obligations of smaller organisations. The reporting obligations provide transparency and accountability and are a crucial part of realising the objects of the bill.

PART 5 MISCELLANEOUS

Clause 12 Legal rights not affected

This clause sets out that the Act does not create in any person any legal right or give rise to any civil cause of action.

Clause 13 Inconsistency with other territory laws

This clause sets out that where an inconsistency arises with another territory law, the other law prevails.

Clause 14 Regulation-making power

This clause sets out that the Executive may make regulations for the Act.

Clause 15 Review of Act

This clause sets out that the operation and effectiveness of the Act must be reviewed as soon as practicable after the end of the Act's 5th year of operation.

Clause 16 New Carers Recognition Regulation

This clause creates a new Carers Recognition Regulation. The new regulation is taken to be notified on the same day as the Act, however, the regulation does not commence until the commencement of the Act, schedule 1.

Schedule 1 New Carers Recognition Regulation

This schedule creates the *Carers Recognition Regulation 2021*, which sets out the information required from care and carer support agencies to meet reporting obligations under the Act, section 12 (3).

Dictionary

The dictionary defines terms used in the Act.