

Carer Recognition Bill 2010

This is a later edition of a Bills Digest previously prepared for the 42nd Parliament

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Carer Recognition Bill 2010

Date introduced: 29 September 2010

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: On the day of Royal Assent.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills page, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

This Bill lapsed on the proroguing of Parliament in July 2010. It has been re-introduced without any significant changes.

Purpose

The Bill creates a *Statement for Australia's Carers* which includes ten key principles regarding carers and how they should be treated by Commonwealth public service agencies and their funded providers. However, the Bill does not establish carers' rights or create legally enforceable obligations for carers, public service care agencies or associated providers.

Background

Basis of policy commitment

During the 2007 election campaign, Labor acknowledged the 'immense importance' of carers in the provision of support for people with disabilities and announced that it would focus the disability service system on the needs of carers and review the need for legislative reform to recognise the role and rights of carers.¹

The election policy document noted that some states and territories had passed Carers Recognition Acts 'to set a legislative standard for the treatment of carers by government services'² and that if elected, Labor would focus on the needs of carers and consider what legislation may be required at the federal level.³

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1. Senator J McLucas (Shadow Minister for Ageing, Disabilities and Carers), *Disability and carers*, 7 November 2007, pp. 2 and 5, viewed on 9 April 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fparty%2F09VO6%22>
 2. The jurisdictions that have passed Carers Recognition legislation are New South Wales, South Australia, Queensland, Western Australia and the Northern Territory. See further footnote 19 in Main Provisions.
 3. McLucas, op. cit., p. 7.

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In May 2008, the new Minister for Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) requested that the House of Representatives Standing Committee on Family, Community, Housing and Youth conduct an inquiry into better support for carers. The Committee tabled its subsequent report, *Who Cares?... Report on the Inquiry into Better Support for Carers*, on 25 May 2009.⁴

The report made fifty recommendations, including:

- that the Australian Government and each jurisdiction review existing legislation and policy relating to health and community care to ensure that carers are adequately recognised, and
- that the Government develop a nationally consistent carer recognition framework, comprising:
 - national carer recognition legislation, which complements state and territory carer legislation
 - a national carer strategy which builds on and complements state and territory carer policies.⁵

In its response to the report the Government reiterated its support for the ‘vital role that carers play’ and included a commitment to:

- ensure that carers are appropriately recognised by introducing Commonwealth carer recognition legislation in 2010, and
- develop a national carer recognition framework, including a national carer strategy which complements and builds on state and territory carer recognition legislation and policies, in conjunction with the development of the *National Disability Strategy*.⁶

On introducing this Bill on 29 September 2010, the Parliamentary Secretary for Community Services noted that the Bill is the ‘first element’ in the Government’s commitment to developing a *National Carer Recognition Framework*.⁷

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4. House of Representatives Standing Committee on Family, Community, Housing and Youth, *Who Cares?... report on the inquiry into better support for carers*, 2009, viewed 9 April 2010, <http://www.aph.gov.au/house/committee/fchy/carers/index.htm>
 5. *Ibid.*, p. xxii.
 6. Australian Government, Government response to the House of Representatives Standing Committee on Family, Community, Housing and Youth, *Who cares? ... report on the inquiry into better support for carers*, 29 October 2009, p. 1, viewed 9 April 2010, <http://www.aph.gov.au/house/committee/fchy/carers/report/GRwhocares.pdf>
 7. J Collins, ‘Second reading speech: Carer Recognition Bill 2010’, House of Representatives, *Debates*, 29 September 2010, viewed 30 September 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-09-29%2F0081%22>

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Position of significant interest groups

At the time of the last Australian Bureau of Statistics (ABS) *Survey of Disability, Ageing and Carers* conducted in 2003, it was estimated that there were at least 2.5 million carers supporting people with disabilities (or the elderly) in Australia, of which about 474 600 were primary carers (an individual providing the primary care for the person requiring support).⁸ The shift in emphasis in recent years from institutional care towards ‘ageing at home’ and community care has seen the role of carers become even more important in the community.

For many years, carers and other stakeholders have expressed concerns on the levels of unmet need for carers and people with disabilities. One key report in recent years, *The Hidden Face of Care: Combining Work and Caring Responsibilities for the Aged and People with a Disability*, noted that:

...although public rhetoric acknowledges the need to help carers of the aged and people with a disability to balance their work and caring responsibilities, in reality tangible support is insufficient and ineffective. This is evident in relation to public policy e.g. legislation, financial support and service provision.⁹

Stakeholders have lobbied governments for better carer support over the years, particularly with regard to rights, respite care and entitlements. In response to the Standing Committee on Family, Community, Housing and Youth inquiry into better support for carers over 1300 submissions were made, many expressing concern and anger at a perceived lack of support for carers, such as:

The National Carers Coalition contend that what is abundantly evident from all the research available to government is that unpaid family carers have—no legal rights, no government legislated entitlements, no family carer advocacy and no voice in policy and planning.¹⁰

Some of the stakeholder groups have acknowledged the progress made by the Rudd Government, but have argued there is a need for much more:

[National Disability Services] NDS welcomes the Australian Government's commitment to develop (with states and territories) a National Disability Strategy and its recent injection of new money (\$1 billion) into the Commonwealth State and Territory Disability Agreement. However, as the Government itself has acknowledged, this is only a first step towards tackling the chronic under-funding of disability support services.¹¹

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8. Australian Bureau of Statistics (ABS), *A profile of carers in Australia*, 2008, viewed 9 April 2010, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4448.0>
 9. Taskforce on Care Costs, *The hidden face of care: combining work and caring responsibilities for the aged and people with a disability*, 2007, p. 4, viewed 9 April 2010, http://www.tocc.org.au/media/Final_TOCC_2007_Report_The_Hidden_Face_of_Care_16_Nov_2007.pdf
 10. National Carers Coalition, Submission to the 2008 Standing Committee on Family, Community, Housing and Youth, *Inquiry into better support for carers*, viewed 9 April 2010, <http://www.apf.gov.au/house/committee/fchy/carers/subs/sub571.pdf>
 11. National Disability Services (NDS), Submission to the 2008 Standing Committee on Family, Community, Housing and Youth, *Inquiry into better support for carers*, viewed 9 April 2010, <http://www.apf.gov.au/house/committee/fchy/carers/subs/sub579.pdf>

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With the introduction of the Carer Recognition Bill, some stakeholders were supportive, while noting a need for more practical support in the future:

Carers Australia welcomes the tabling of the National Carer Recognition Bill in Parliament today as an important first step in the introduction of a broader framework to support carers ... This legislation is an important landmark and one that we have been working towards for some time. We believe all carers should have the same rights and opportunities as other Australians to enjoy optimum health and social wellbeing and to participate in family, social and community life. It is encouraging that this is reflected under the principles of the legislation.

While this legislation is a valuable progression, many carers still struggle financially, find themselves socially isolated and have difficulties accessing appropriate services. It is important that we continue to work towards the development and implementation of more practical measures and supports.¹²

However, others have not been so supportive:

Family carers have lobbied for legislation that gives them legal status, rights and entitlements. And what do we get? A Bill that will legislate for us to get a pat on the back ... The Bill introduced to the Parliament by Minister Macklin is a waste of time ... because the provisions of the Bill provide for nothing, not even legal status ... In the UK carers legislation has been in place for a decade and a half giving family carers legal status, rights and entitlements to services. Far from being landmark legislation this is a sad political game played with the lives of vulnerable people who deserve better than legislated lip service. We expected better of a compassionate Rudd government.¹³

Carers Alliance is profoundly disappointed in the Carer Recognition Bill tabled yesterday ... It is a very watered down version of what Carers Alliance has lobbied for in our campaign for family carers to be recognised by legal status with rights and entitlements to services ... It is unfortunate, but this Bill is not even a first step, it is actually marking time, going nowhere and providing nothing but legislative platitudes. It is most unsatisfactory and very disappointing.¹⁴

Financial implications

As the Explanatory Memorandum comments, and in line with its non-legally binding status, the 'bill will have no financial impact.'¹⁵

Key provisions

In summary the Bill seeks to create a new Act (the *Carer Recognition Act 2010*), which will contain a 'Statement for Australia's Carers' (**proposed section 6** and **Schedule 1**). This Statement sets out a series of aspirational principles regarding carers (a carer is defined in **proposed section 5**), however the Act specifies that it does not create legally enforceable obligations (**proposed section 10**).

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12. Carers Australia, *Carers Australia welcomes national carers recognition legislation*, media release, 17 March 2010, viewed 9 April 2010, <http://www.carersaustralia.com.au/?/national/news/view/1692>
 13. Carer's Voice, *The Carers Recognition Bill is the equivalent of Clayton's legislation—the legislation you have when you're not legislating*, media release, 18 March 2010.
 14. Carer's Alliance, *Federal carers recognition legislation a pale version of what family carers want*, media release, 18 March 2010.
 15. Explanatory Memorandum, Carer Recognition Bill 2010, p. 1.

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The Statement

The Statement for Australia's Carers provides ten dot points which to some extent restate or reframe certain fundamental human rights principles with reference to the status of the individual as a carer. So children and young carers should have the same rights as other children and young people and should be supported to reach their full potential (**proposed principle 2**)¹⁶ while carers should have the same rights as other Australians on a non-discriminatory basis (**proposed principle 1**). Interestingly the basis for the non-discriminatory principle extends beyond the usual 'age, race, sex' etc to include 'socioeconomic status or locality'.¹⁷

Proposed principles 3-5 and 8 reflect on the value of the carer and the need to acknowledge them (for instance proposed principle 8 articulates the need to treat carers 'with dignity and respect'). While **proposed principles 6 and 7** reflect on the relational nature of carers, so that the Statement stresses that the relationship between carers and the cared for should be recognised and respected (**proposed principle 6**) and suggests that carers should be considered as partners with other care providers... in particular 'acknowledging the unique knowledge and experience of carers' (**proposed principle 7**).

Proposed principles 9 and 10 provide more specific guidance on the treatment of carers and are reproduced in full here:

- 9 Carers should be supported to achieve greater economic wellbeing and sustainability and, where appropriate, should have opportunities to participate in employment and education.
- 10 Support for carers should be timely, responsive, appropriate and accessible.

The Bill

Proposed section 3 sets out the objects of the Act: 'to increase recognition and awareness of carers and to acknowledge the valuable contribution they make to society,' while **proposed section 4** sets out various definitions, most particularly defining the agencies to which the Act's provisions will have a statutory application, i.e. a public service agency, public service care agency and associated provider.

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- 16. This reflects principles contained in the Convention on the Rights of the Child, incorporated into Australia's domestic law through the Australian Human Rights Commission's legislation.
 - 17. The classic statement is contained in the Universal Declaration of Human Rights which says in Article 2 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.'

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The Bill's definition of a public service agency refers to the definition of an Agency in the [Public Service Act 1999](#). That Act defines an Agency as:

- (a) a Department; or
- (b) an Executive Agency; or
- (c) a Statutory Agency.¹⁸

Public service care agencies are those public service agencies which are responsible for 'the development, implementation, provision or evaluation of care supports.' 'Care supports' are defined as 'policies, programs or services directed to carers of the persons for whom they care.' Finally associated providers are people or agencies funded (or sub-contracted) to develop or implement (etc) care supports. This definition could potentially apply to a range of bodies, for instance a medical practice accepting Commonwealth funding for those who are cared for by carers (for instance the frail and aged), may be covered by the definition of an associated provider.

A carer is defined in **proposed section 5** as someone who is providing care to someone needing assistance because they have a disability, a medical condition or a mental illness, or because they are frail and aged. Note that this precludes carers of children (if the child does not also satisfy one of the four specified criteria). Furthermore the section specifies that living with or being a family member of someone needing care does not of itself qualify an individual as a carer (**proposed subsection 5(3)**). The definition also precludes those providing care on the basis of paid employment, for educational purposes or those volunteering from the definition of carers (**proposed subsection 5(2)**).

The Bill provides in **proposed Part 3** that public service agencies should take account of the Statement in developing their internal human resources policies and should ensure that their employees or agents are aware of and understand the Statement (**proposed section 7**). Similarly associated providers are to do their best to ensure awareness and understanding of the Statement and to reflect the principles of the Statement in developing, implementing and evaluating care supports (**proposed section 9**). Finally there is a particular responsibility on public service care agencies who must not only observe the standard requirements applying to public service agencies but must also reflect the Statement in developing, implementing or evaluating care supports and must consult carers or bodies that represent carers when developing or evaluating care supports (**proposed subsection 8(2)**). Public service care agencies must also provide a report on compliance with the requirements to promote the Statement to staff and in their internal human resources policies in their annual report (**proposed subsection 8(3)**).

18. The *Public Service Act* goes on to define:

- a Department as a 'Department of State, excluding any part that is itself an Executive Agency or Statutory Agency' (section 7),
- an Executive Agency as an agency which can be created or abolished by the Governor General (section 65) and
- a Statutory Agency as a 'body or group of persons declared by an Act to be a Statutory Agency for the purposes of this Act' (section 7).

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Finally **proposed section 10** curtails the functionality of the proposed Act by stipulating that it does not create legally enforceable obligations, in particular it does not create rights or duties that are legally enforceable and a failure to comply with the Act does not affect the validity of any decision and is not grounds for reviewing or challenging a decision. This ‘exemption provision’ also recognises the primacy of any contrary State and Territory legislation, as does **proposed section 11**.¹⁹

Concluding comments

It is to be noted, once again, that this Bill represents just the first aspect of the Government’s plans in the field. The legislation is just one part of a broader National Carer Recognition Framework announced by Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, in October 2009. Future action may counter the perceptions discussed above that this Bill, since it is legally ineffectual, could be seen as a legislative platitude.²⁰

Another counter to this argument that the Bill is entirely ineffectual might focus on the awareness raising aspects of its provisions. Furthermore it is arguable that public service agencies will seek to comply with the Bill’s provisions, even in the absence of an enforcement mechanism. A comparable provision of the *Australian Human Rights Commission Act 1986* provides that while there is no enforcement mechanism for certain breaches of human rights it is nevertheless possible to refer such a matter to the Commission for its consideration.²¹ The Commission also has an awareness raising role and it could be argued that this process has served to promote the more general observation of human rights. Nevertheless a significant difference between the current Bill’s mechanisms and the Commission is the existence of an agency funded to promote the relevant principles.

19. It should be noted that, as at the time of writing, there were a range of other carers’ legislation in Australia, in particular the Western Australian [Carers Recognition Act 2004](#), South Australia’s [Carers Recognition Act 2005](#), the Northern Territory’s [Carers Recognition Act 2006](#) and Queensland’s [Carers \(Recognition\) Act 2008](#). Another jurisdiction, the Australian Capital Territory, does not have standalone legislation but the [Carers Recognition Legislation Amendment Act 2006](#) amended a variety of Acts, while in May the [Carers \(Recognition\) Act 2010](#) was passed through the NSW Parliament, which enacted a NSW Carers Charter, which required certain public sector agencies to reflect the principles of the NSW Carers Charter when providing services that affect carers, and established the Carers Advisory Council. Tasmania and Victoria do not currently have carers’ legislation.

20. Carer’s Alliance, *Federal carers recognition legislation a pale version of what family carers want*, media release, 18 March 2010.

21. *Australian Human Rights Commission Act 1986* subsection 11(f).

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