

2006

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CARERS RECOGNITION LEGISLATION AMENDMENT BILL 2006

EXPLANATORY STATEMENT

Circulated by authority of
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Overview

In late 2004, the Department of Disability, Housing and Community Services engaged Minter Ellison Consulting to review, in consultation with the community, whether there was a need for new or improved legislation to support carers in the ACT.

The *Report on Review of Carers Legislation in the ACT* (the Report) found that there was no broad based support - nor a demonstrated need - for a stand-alone Carers Act in the ACT. However, the Report did recommend the development of an amendment bill, to amend some existing Acts so that they better support carers, as well as a range of non-legislative actions to facilitate greater use by carers of relevant legislative rights.

The Report was released in January 2005 for public comment on its findings and recommendations. A further fifteen written submissions were received from individual carers, community and government agencies. Overall, submissions supported the recommendations of the Report.

In the Government's Response to the Report (the Government Response), released in November 2005, a number of legislative amendments were recommended. This Bill seeks to implement these amendments.

Notes on Clauses

Clause 1: This is a naming provision.

Clause 2: Provides that commencement of the Act is by written notice from the Minister.

Clause 3: Provides that Part 2 amends the *Discrimination Act 1991*.

Clause 4: This amendment seeks to increase the recognition of carers, on an equal basis with "near relatives", under section 26 of the *Discrimination Act 1991*. The existing provision provides a limited exemption to allow for discrimination in the provision of accommodation services, where the resident and/or near relatives also live on the premises. The Bill includes carers of a person, along with near relatives of the person, within the ambit of this exemption. The result of the amendment is to provide appropriate recognition to the close relationship between a carer and a dependent person, which is much like a family relationship.

Clause 5: This provision provides a new definition of "carer" for the dictionary in the *Discrimination Act 1991*. An important feature of the new definition is that it makes explicit the possibility of multiple carers, with reference to section 145(b) of the *Legislation Act 2001* which includes the plural of a statutory term, and as illustrated by the example provided as part of the definition. The amendment also provides that a threshold level of care must be met before a person will qualify as a carer. This threshold is set out with reference to the provision of "ongoing care and assistance", and the dependent status of the person receiving the care. As the definition relates to the direct provision of caring services, it does not encompass indirect relationships such as any "parental responsibilities" of Chief Executives under the *Children and Young People Act 1999*. The

fact that care must be provided otherwise than on a commercial basis precludes persons who are carers on a "for profit" basis from benefiting under the new definition.

Clause 6: Provides that Part 3 of the Bill will amend the *Guardianship and Management of Property Act 1991*.

Clause 7: This is a technical renumbering amendment.

Clause 8: This amends section 5(3) and (4) of the *Guardianship and Management of Property Act 1991* by providing for the possibility that there are multiple carers which must be consulted with as part of the decision-making process. It removes the reference to "primary carer", replacing it with "carer".

Clause 9: This is a technical renumbering amendment.

Clause 10: This is a technical renumbering amendment.

Clause 11: This provision provides a new definition of "carer" for the dictionary in the *Guardianship and Management of Property Act 1991*. The old term "primary carer", is replaced by the new definition of "carer". An important feature of the new definition is that it provides for the possibility of multiple carers, with reference to section 145(b) of the *Legislation Act 2001* which includes the plural of a statutory term, and as illustrated by the example provided as part of the definition. The amendment also provides that a threshold level of care must be met before a person will qualify as a carer. This threshold is set out with reference to the provision of "ongoing care and assistance", and the dependent status of the person receiving the care. As the definition relates to the direct provision of caring services, it does not encompass indirect relationships such as any "parental responsibilities" of Chief Executives under the *Children and Young People Act 1999*. The fact that care must be provided otherwise than on a commercial basis precludes persons who are carers on a "for profit" basis from benefiting under the new definition.

Clause 12: On page 7 of the Government Response to the *Report on Review of Carers Legislation in the ACT*, recommendation 1F, the government gave a commitment to recognise a carer's relationship with a potential guardian or manager of a dependent person, when appointing a guardian or manager for that person under the Guardianship Act. This provision amends the Guardianship Act to implement this recommendation.

Clause 13: This is a technical renumbering amendment.

Clause 14: This clause will amend section 35(1)(ca) to make sure that any carers of a person receive written notice of an inquiry before the Guardianship and Management of Property Tribunal.

Clause 15: the new note assists the reader to understand that there may be multiple carers of a single person, each of whom would need to receive notice of an inquiry before the Guardianship and Management of Property Tribunal.

Clause 16: This is a technical renumbering amendment.

Clause 17: This is a technical renumbering amendment.

Clause 18: This is a technical renumbering amendment.

Clause 19: This is a technical renumbering amendment.

Clause 20: The definition of primary carer has been replaced by a definition of "carer" which provides that there may be multiple carers.

Clause 21: Provides that Part 4 amends the *Human Rights Commission Act 2005*.

Clause 22: See discussion under Clause 24.

Clause 23: References to 'carer' have been removed from subsection 43(1)(d), to remove confusion with the new definitions provided in other legislation.

Clause 24: On page 3 of the Government Response to the *Report on Review of Carers Legislation in the ACT*, recommendation 1E, the government made a commitment to amend the *Human Rights Commission Act 2005* to ensure that a person is not precluded from acting as an agent for the purpose of making a complaint just because the person is under a legal disability, so as to allow children and young people who are carers to lodge a complaint. Clause 24, together with Clause 22 of the Bill will amend the *Human Rights Commission Act 2005* to implement this commitment.

Clause 25: This clause changes references in subsections 43(3) and (4) from 'an aggrieved person' to 'the aggrieved person', in accordance with current drafting conventions.