



New South Wales

Carers (Recognition) Act 2010 No 20

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New South Wales

Carers (Recognition) Act 2010 No 20

Act No 20, 2010

An Act to provide for the recognition of carers; and for other purposes. [Assented to 19 May 2010]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Carers (Recognition) Act 2010*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Objects of Act

The objects of this Act are:

- (a) to enact a Carers Charter to recognise the role and contribution of carers to our community and to the people they care for, and
- (b) to increase the awareness of the valuable contribution that carers make to our community.

4 Definitions

In this Act:

carer—see section 5.

exercise a function includes perform a duty.

function includes a power, authority or duty.

human service agency means a public sector agency that provides services directed at carers or persons being cared for by carers.

NSW Carers Charter means the Charter set out in Schedule 1.

parent, of another person, includes a person who has been allocated parental responsibility or has care responsibility for the other person under the *Children and Young Persons (Care and Protection) Act 1998*.

public sector agency means any of the following:

- (a) a Division of the Government Service,
- (b) an area health service or statutory health corporation (within the meaning of the *Health Services Act 1997*),
- (c) the NSW Police Force,
- (d) a NSW Government agency or other authority of the State,
- (e) a local council,
- (f) a State owned corporation,
- (g) any other person or body that is prescribed by the regulations for the purposes of this definition.

reporting period, for a human service agency, means a period of 12 months to which an annual report of the agency relates.

5 Meaning of “carer”

- (1) For the purposes of this Act, a person is a *carer* if the person is an individual who provides ongoing personal care, support and assistance to any other individual who needs it because that other individual:
 - (a) is in the target group (as referred to in section 5 (1) of the *Disability Services Act 1993*), or
 - (b) has a medical condition (including a terminal or chronic illness), or
 - (c) has a mental illness, or
 - (d) is frail and aged.
- (2) Despite subsection (1), a person is not a carer for the purposes of this Act in respect of care, support and assistance that the person provides:
 - (a) under a contract of service or a contract for the provision of services, or
 - (b) in the course of doing voluntary work for a charitable, welfare or community organisation, or
 - (c) as part of the requirements of a course of education or training.
- (3) To avoid doubt, a person is not a carer of another person for the purposes of this Act merely because the person:
 - (a) is the spouse or de facto partner of the person, or
 - (b) is the parent, guardian, child or other relative of the other person, or
 - (c) lives with the other person.

Part 2 NSW Carers Charter

6 Charter for recognition of carers

The NSW Carers Charter is set out in Schedule 1.

7 Obligations of public sector agencies

- (1) A public sector agency must take all reasonable steps to ensure that the members of staff and agents of the agency have an awareness and understanding of the NSW Carers Charter.
- (2) A public sector agency must consult with such bodies representing carers as the agency considers appropriate when developing policies that impact on carers.
- (3) A public sector agency's internal human resources policies, so far as they may significantly affect the role of a member of staff of the agency as a carer, are to be developed having due regard to the NSW Carers Charter.

8 Additional obligations of human service agencies

- (1) A human service agency must take all reasonable steps to ensure that the agency, and the members of staff and agents of the agency, take action to reflect the principles of the NSW Carers Charter.
- (2) A human service agency must prepare a report on its compliance with this Act in each reporting period. The report must be included in the agency's annual report for the reporting period.

9 Legal rights not affected

- (1) Nothing in this Act gives rise to, or can be taken into account in, any civil cause of action, and without limiting the generality of the foregoing, nothing in this Act:
 - (a) operates to create in any person any legal rights not in existence before the enactment of this Act, or
 - (b) affects the validity, or provides grounds for review, of any judicial or administrative act or omission.
- (2) If a public sector agency is required by another law to consider particular matters, or to comply with particular requirements, in the exercise of its functions, nothing in this Act is to be taken to require the agency to act inconsistently with that law.

Part 3 Carers Advisory Council

10 Establishment of Carers Advisory Council

There is established by this Act a Carers Advisory Council.

11 Membership and procedure of Carers Advisory Council

- (1) The Carers Advisory Council is to consist of the following members:
 - (a) the Minister administering this Act,
 - (b) such other Ministers who, in the opinion of the Minister administering this Act, are responsible for the provision of key support services to carers,
 - (c) persons appointed as members by the Minister administering this Act who, in the opinion of the Minister, have relevant knowledge of and experience in matters relevant to carers.
- (2) The Minister is to ensure when appointing members to the Carers Advisory Council that the majority of members on the Council are persons who the Minister considers are primary carers.
- (3) Meetings of the Carers Advisory Council are to be co-chaired by the members of the Council who are Ministers.
- (4) Subject to this section, the Minister may determine the term of office and remuneration of members and the procedure of the Carers Advisory Council, including the procedure for the appointment of deputies of members.

12 Functions of Carers Advisory Council

The Carers Advisory Council has the following functions:

- (a) to advance the interests of carers,
- (b) to review and make recommendations to the Minister on any legislative or policy proposal, or any other matter, relating to carers referred to the Carers Advisory Council by the Minister,
- (c) to carry out such other functions relating to carers as may be directed by the Minister.

Part 4 Miscellaneous

13 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

14 Transitional provision

Section 8 (2) does not apply to a reporting period of a human service agency that commenced before the commencement of this Act.

15 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 NSW Carers Charter

(Section 6)

- (a) The valuable social and economic contribution that carers make to the community and the persons for whom they care should be recognised and supported.
- (b) Carers' health and wellbeing are to be given due consideration.
- (c) The views and needs of carers and the views, needs and best interests of the persons for whom they care must be taken into account in the assessment, planning, delivery and review of services provided to persons who are cared for.
- (d) Carers should be referred to, and made aware of, appropriate services to assist carers in their caring role. Such referrals should be made after an assessment of the needs of carers or as part of the assessment or provision of services to the person being cared for.
- (e) The relationship between carers and the persons for whom they care should be respected.
- (f) Carers are to be acknowledged and recognised as having their own individual needs within and beyond their caring role. This acknowledgement and recognition is to take into consideration Aboriginal or Torres Strait Islander culture, age, disability, religion, socio-economic status, cultural differences, gender identification and place of residence.
- (g) Children and young people who are carers have the same rights as all children and young people.
- (h) Children and young people who are carers face additional difficulties and burdens and should be supported in overcoming these difficulties and burdens.
- (i) Carers should have the same rights, choices and opportunities as other Australians.
- (j) Carers' choices in their caring role should be supported and recognised, including the recognition of carers in the assessment, planning, delivery and review of services that impact on carers and their role as carers.
- (k) The additional difficulties faced by remote and rurally based carers caused by isolation should be recognised and acknowledged.

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- (l) Support for carers should be timely, responsive, appropriate and accessible.
- (m) Carers' unique knowledge and experience should be acknowledged and recognised.

[Agreement in principle speech made in Legislative Assembly on 21 April 2010
Second reading speech made in Legislative Council on 12 May 2010]

BY AUTHORITY