

Carers (Recognition) Bill 2008

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Lindy Nelson-Carr MP

Title of the Bill

Carers (Recognition) Bill 2008

Objective of the Amendments

The objective of the amendments is to ensure the legislation is meaningful, effective and harmonises with the generally uniform approaches of other jurisdictions that have carers' legislation.

Consistency with fundamental legislative principles

It is considered that the Bill is consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

Consultation

Community

No external consultation was conducted.

Government

The following Government departments were consulted and support the amendments: the Department of the Premier and Cabinet; Queensland Treasury; Queensland Health; the Department of Communities; the Department of Education, Training and the Arts and the Department of Employment and Industrial Relations.

The Department of Justice and Attorney-General was consulted.

Notes On Provisions

Clause 1 inserts a heading for Part 1 of the Bill.

Clause 2 removes clauses 2 to 6 of the Bill and:

- inserts a new clause 2 that the Act commences on a day to be fixed by proclamation and a new clause 3 that confirms that the Act binds all persons, including the State.
- inserts a new clause 4 that sets out the objects of the Act. This clause is necessary to clearly state the aim of the Act which is to recognise the valuable contribution of carers to the people they care for, to recognise the social and economic benefit that carers provide to the community, to provide for the interests of carers to be considered in the provision of services that impact on the role of carers and to provide for the Carers Advisory Council.
- inserts a new clause 5 which is a general definition clause. In this clause a *public authority* is defined as meaning a department or a statutory body. The term *statutory body* means a statutory body under the *Financial Administration and Audit Act 1977*, section 5.
- inserts a new clause 6 which defines the meaning of ‘carer’. The definition is intended to apply only to individuals providing care or assistance in a non-contractual and unpaid capacity. The definition is not intended to exclude carers who receive a carer allowance or payment from the Federal Government.

The definition of carer leaves outside its scope a person who is the spouse, parent or guardian of a person to whom domestic care is provided. This is intended to exclude care or assistance given in a routine domestic setting. For example, a parent who is a full time carer for an infant child would not be a carer under this definition.

Under the definition a person is not a carer if the person provides the care as a volunteer for a voluntary organisation. The philosophy underpinning this exclusion is that the recognition of carers should extend only to those who have an ongoing personal relationship with the person being cared for, as distinguished from a volunteer that may provide “one-off” care or assistance to a number of different people.

- inserts a new clause 7 that provides for the Queensland carers charter.

- inserts Part 2, which deals with the purpose and the application of the part (clause 8), the obligations of public authorities to consider the carers charter (clause 9) and reporting obligations (clause 10).
 - *Clause 8* states that it is Parliament's intention that the part is to be complied with but that failure to comply by a public authority does not invalidate a decision. The clause also provides that if a public authority must, under another Act or law, consider or comply with principles or requirements in the exercise of its functions or powers, the obligations under part 2 do not apply to the public authority to the extent that the principles of the carers charter or requirements under part 2 would conflict with or otherwise detract from the public authority properly complying with the other considerations. Clause 8(4) and (5) are intended to remove any doubt about what a public authority should do in relation to the obligations imposed under part 2 and conflicting obligations imposed on the authority under another Act or law. For example, under this clause the obligations under part 2 are displaced to the extent that they conflict with the mandatory requirements placed on a person or other entity that performs a function or exercises a power under the *Guardianship and Administration Act 2000* to apply the general principles and the health care principle for a matter in relation to an adult with impaired capacity.
 - *Clause 9* provides that a public authority must ensure that its officers and employees have an awareness and understanding of the carers charter; and take action to reflect the principles of the charter in providing services which affect carers and the persons they care for. This clause also provides that a public authority must consult with the representative bodies it is satisfied represent the carers affected when making strategic policy or strategic planning decisions relevant to carers and the persons they care for. This clause is not intended to capture day-to-day operational decisions including decisions about individual cases made in accordance with established policy or established operational plans or services.
 - *Clause 10* provides that the public authority must report about the ways it is meeting its obligations under clause 9. Reporting is a way of ensuring continuous improvement in the way public authorities meet the objectives of the legislation. The practical

effect of this clause is to require each public authority to implement a process to ensure that the carers charter is considered when providing services of the authority which affect carers and the people they care for.

- inserts Part 3 Division 1, which establishes the Carers Advisory Council.
 - *Clause 11* establishes the Carers Advisory Council.
 - *Clause 12* sets out the functions of the Carers Advisory Council, which include promoting compliance with the carers charter by public authorities, making recommendations and giving advice to the Minister and carrying out other functions as directed by the Minister.
 - *Clause 13* confirms that the Carers Advisory Council performs its functions under the general direction and control of the Minister and is subject to any specific written instructions given to it by the Minister. If given a written direction, the Carers Advisory Council must publish the direction in its next annual report.
- Inserts Part 3 Division 2, which deals with membership of the Carers Advisory Council.
 - *Clause 14* provides the membership of the Carers Advisory Council.
 - *Clause 15* creates the position of chairperson and deputy chairperson. The chairperson is appointed from one of the members of the Carers Advisory Council by the Minister. The deputy chairperson is elected by the Carers Advisory Council from its members.
 - *Clause 16* provides that a member is to be appointed for no more than two years and that the member may be reappointed at the expiration of their term of appointment.
 - *Clause 17* provides for the payment of remuneration and allowances to members who are not public service employees.
 - *Clause 18* sets out that a member's office becomes vacant if the member dies; resigns by signed notice given to the Minister; or if their appointment is ended by the Minister.

- inserts Part 3 Division 3, which deals with the conduct of meetings of the Carers Advisory Council.
 - *Clause 19* provides that the Carers Advisory Council may conduct its meetings as it considers appropriate.
 - *Clause 20* states that the chairperson is to preside at meetings if present. If the chairperson is not present, the deputy chairperson is to preside at the meeting. If both the chairperson and the deputy chairperson are not present, the members present would choose one of the members to preside.
 - *Clause 21* requires the Carers Advisory Council to keep a record of the minutes of its meetings and decisions.
- inserts Part 4 clause 22, which is a general regulation making power.

Clause 3 changes the title to the schedule from the Carer's charter to the Queensland carers charter.

Clause 4 omits the reference to section 4 in the schedule and replaces it with a reference to section 7.

Clause 5 amends the schedule to insert a preamble to the Queensland carers charter. The preamble is intended to articulate Parliament's recognition of the important role that carers play in the lives of the people they care for and the significant contribution they make to the social and economic wellbeing of the community.

Clause 6 amends clause 4 of the Queensland carers charter to stress that the importance of carers' work means the role of carers should be recognised by including carers, or their representative bodies, in the assessment, planning, delivery and review of services affecting carers. This amendment is required as a consequence of the new clause 8 which states that it is Parliament's intention that the Queensland carers charter is to be complied with but that failure to comply by a public authority does not invalidate a decision. Unless the amendment to clause 4 of the Queensland carers charter is made, the statement of the 'right' of carers or their representative bodies will be inconsistent with clause 8.