

Western Australia

Carers Recognition Act 2004

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Carers Recognition Act 2004

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Western Australia

Carers Recognition Act 2004

An Act to provide for the recognition of carers by certain persons and bodies, to amend the *Disability Services Act 1993* and the *Health Services (Conciliation and Review) Act 1995*, and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Carers Recognition Act 2004*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. Object of Act

The object of this Act is —

- (a) to recognise the role of carers in the community; and
- (b) to provide a mechanism for the involvement of carers in the provision of services that impact on carers and the role of carers.

4. Terms used in this Act

In this Act, unless the contrary intention appears —

applicable organisation means a person or body specified in, or prescribed under, Schedule 2;

carer has the meaning given to that term in section 5;

Carers Charter means the Western Australian Carers Charter set out in Schedule 1;

Council means the Carers Advisory Council referred to in section 8(1);

public sector body has the meaning given to that term in the *Public Sector Management Act 1994* section 3(1);

reporting organisation means a person or body specified in, or prescribed under, Schedule 2 Division 1.

5. Meaning of “carer”

- (1) Except as provided in subsection (2), a person is a carer for the purposes of this Act if he or she is an individual who provides ongoing care or assistance to —
- (a) a person with a disability as defined in the *Disability Services Act 1993* section 3;
 - (b) a person who has a chronic illness, including a mental illness as defined in the *Mental Health Act 1996* section 3;
 - (c) a person who, because of frailty, requires assistance with carrying out everyday tasks; or
 - (d) a person of a prescribed class.
- (2) However a person is not a carer if he or she —
- (a) provides the care or assistance under a contract for services (other than an agreement entered into under the *Disability Services Act 1993* section 25) or a contract of service; or
 - (b) provides the care or assistance while doing community work as defined in the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002* section 3(1).
- (3) A person is not a carer for the purposes of this Act only because —
- (a) the person is a spouse, de facto partner, parent or guardian of the person to whom the care or assistance is being provided; or
 - (b) the person provides care to a child under an arrangement with the chief executive officer of the department principally assisting the Minister administering the *Child Welfare Act 1947* in the administration of that Act.

[Section 5 amended by No. 53 of 2006 s. 12(1).]

Part 2 — Compliance with the Carers Charter

6. Applicable organisations to ensure compliance with the Carers Charter

- (1) Subject to any other written law, an applicable organisation must take all practicable measures to ensure that the organisation and its officers, employees or agents comply with the Carers Charter in providing a service of that organisation.
- (2) Without limiting subsection (1), an applicable organisation that is a public sector body must involve carers, or persons or bodies that represent carers, in any —
 - (a) policy or program development; or
 - (b) strategic or operational planning,that might affect carers and the role of carers.

7. Reports to the Council

- (1) As soon as practicable after each 1 July and not later than 30 September, a reporting organisation must prepare and deliver to the Council a report on —
 - (a) the performance of the organisation's obligations under this Act;
 - (b) the organisation's compliance or non-compliance with this Act;
 - (c) the organisation's compliance or non-compliance with the Carers Charter; and
 - (d) the compliance or non-compliance with the Carers Charter of any person or body providing a service to others under a contract with the organisation,during the year that ended on the preceding 30 June.

- (2) The report must include —
 - (a) if the organisation is a public sector body, details of the organisation's compliance or non-compliance with section 6(2); and
 - (b) any other specific information prescribed by the regulations.
- (3) A reporting organisation may at any time report to the Council on any matter relating to the operation of this Act.
- (4) A reporting organisation must ensure that a report under this section is made available to the public by publication in the prescribed manner.

Part 3 — Carers Advisory Council

Division 1 — Establishment and functions

8. Carers Advisory Council established

- (1) The Minister is to appoint no more than 10 persons who have knowledge of, and experience in, matters relevant to carers to be the members of a body called the Carers Advisory Council.
- (2) In appointing the members the Minister is to ensure that they are chosen so as to reflect the interests of carers.
- (3) Before appointing a person under subsection (1), the Minister is to consult with —
 - (a) the Minister administering the *Disability Services Act 1993*; and
 - (b) the Minister administering the *Hospitals and Health Services Act 1927*.

9. Functions of the Council

- (1) The functions of the Council are —
 - (a) to work to advance the interests of carers and promote compliance by applicable organisations with the Carers Charter;
 - (b) to make recommendations to the Minister on fostering compliance by applicable organisations with the Carers Charter;
 - (c) to provide general advice to the Minister on matters relating to carers; and
 - (d) to carry out other functions as directed by the Minister.
- (2) The Council may, in writing, request a reporting organisation to provide any information relevant to the exercise of the Council's functions.

- (3) A reporting organisation must, as far as practicable, comply with a request under subsection (2) unless the organisation is expressly prohibited from doing so under another written law.

10. Reports to the Minister

- (1) As soon as practicable in each year, and whenever directed by the Minister to do so, the Council must prepare and deliver to the Minister a report on —
- (a) the performance by reporting organisations of their obligations under this Act;
 - (b) compliance or non-compliance by reporting organisations with this Act; and
 - (c) compliance or non-compliance by reporting organisations with the Carers Charter,
- during the year which ended on the preceding 30 June.
- (2) The report must include —
- (a) details on the compliance or non-compliance with section 6(2) by reporting organisations that are public sector bodies; and
 - (b) any other information prescribed by the regulations.
- (3) The Minister must cause the report received under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after the Minister receives it.

11. Powers, generally

The Council has all the powers it needs to perform its functions.

12. Minister may give directions

- (1) The Minister may give written directions to the Council with respect to the performance of its functions, either generally or in relation to a particular matter, and the Council is to give effect to any such direction.

- (2) The Minister must cause the text of any direction given under subsection (1) to be laid before each House of Parliament, or dealt with under subsection (3), within 14 days after the direction is given.
- (3) If —
- (a) at the commencement of the period referred to in subsection (2) a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that that House will not sit during that period,
- the Minister is to transmit a copy of the direction to the Clerk of that House.
- (4) A copy of a direction transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (5) The laying of a copy of a direction that is regarded as having occurred under subsection (4) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.
- (6) The text of a direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the department under the *Financial Management Act 2006* Part 5.
- (7) In subsection (6) —
- department** means the department principally assisting the Minister in the administration of this Act.
- [Section 12 amended by No. 5 of 2005 s. 36; No. 77 of 2006 s. 17.]

13. Minister to have access to information

- (1) In this section —
- document** includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

information means information specified, or of a description specified, by the Minister that relates to the functions of the Council.

- (2) The Minister is entitled —
 - (a) to have information in the possession of the Council; and
 - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
 - (a) request the Council to furnish information to the Minister; and
 - (b) request the Council to give the Minister access to information.
- (4) The Council has to comply with a request under subsection (3).

Division 2 — Ancillary and procedural matters

14. Term of office

- (1) The term for which a person is appointed to be a member of the Council is to be fixed in the instrument of appointment and is to be not longer than 2 years.
- (2) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

15. Casual vacancy

- (1) A member of the Council may at any time resign from office by notice in writing delivered to the Minister.

- (2) The Minister may terminate the appointment of a member —
- (a) if, in the opinion of the Minister, the member is unable, through illness or absence from the State, to perform the functions of the office;
 - (b) if, in the opinion of the Minister, the member misbehaves, neglects his or her duties, is incompetent or has ceased to be a person who would be eligible to be appointed to the office if it were to become vacant;
 - (c) if the member is an insolvent under administration, as that term is defined in the *Corporations Act 2001* of the Commonwealth;
 - (d) if the member is absent, without leave and without reasonable excuse, from 3 consecutive meetings of the Council of which the member has had notice; or
 - (e) for any other act or omission that in the opinion of the Minister may adversely affect the functioning of the Council.
- (3) If, before the term of office for which a person was appointed as a member of the Council expires, the person dies, resigns, or is removed from office, the office becomes vacant.

16. Chairman

- (1) The Minister is to appoint one of the members of the Council to be the chairman.
- (2) The Council is to elect one member to be the deputy chairman.
- (3) The deputy chairman is to perform the functions of the chairman when the chairman is unable to do so by reason of illness, absence or other cause, or when the office of chairman is vacant.

17. Remuneration and allowances

Members of the Council are entitled to any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Minister for Public Sector Management.

18. Presiding at meetings

- (1) The chairman, if present, is to preside at a meeting of the Council.
- (2) If the chairman is not presiding under subsection (1), the members present at the meeting are to appoint one of their number to preside.

19. Procedure at meetings

Except as otherwise stated in this Act, the Council is to determine its own meeting procedures.

20. Minutes

The Council is to cause accurate minutes to be kept of the proceedings at its meetings.

Part 4 — Miscellaneous

21. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

22. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 3 years from its commencement and in the course of that review the Minister is to consider and have regard to —
 - (a) the effectiveness of the operations of the Council;
 - (b) the need for the continuation of the functions of the Council; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the expiration of the 3 year period referred to in subsection (1)), cause it to be laid before each House of Parliament.

Part 5 — Amendments to other Acts

Division 1 — Amendments to the *Disability Services Act 1993*

23. The Act amended

The amendments in this Division are to the *Disability Services Act 1993*.

24. Section 3 amended

Section 3 is amended by inserting in the appropriate alphabetical position —

“

carer has the meaning given to that term in section 3A; ”.

25. Section 3A inserted

After section 3 the following section is inserted —

“

3A. Meaning of “carer”

- (1) Except as provided in subsection (2), a person is a carer for the purposes of this Act if he or she is an individual who provides ongoing care or assistance to a person with a disability.
- (2) However a person is not a carer if he or she —
 - (a) provides the care or assistance under a contract for services (other than an agreement entered into under section 25) or a contract of service; or
 - (b) provides the care or assistance while doing community work as defined in section 3(1) of the *Volunteers (Protection from Liability) Act 2002*.

- (3) A person is not a carer for the purposes of this Act only because —
- (a) the person is a spouse, de facto partner, parent or guardian of a person with a disability; or
 - (b) the person provides care to a child with a disability under an arrangement with the chief executive officer of the department principally assisting the Minister administering the Child Welfare Act 1947 in the administration of that Act.

”.

26. Section 30 amended

Section 30 is amended by inserting in the appropriate alphabetical position —

“

Carers Charter has the meaning given to that term in section 5 of the *Carers Recognition Act 2004*;

”.

27. Section 32 amended

After section 32(3) the following subsection is inserted —

“

- (4) A complaint alleging the matter set out in section 33(2)(f) may be made to the Director by a carer about a person who —
- (a) is referred to in section 33(1); and
 - (b) is an applicable organisation as defined in section 4 of the *Carers Recognition Act 2004*.

”.

28. Section 33 amended

Section 33(2) is amended at the end of paragraph (e) by deleting the comma and inserting instead —

“

;

(f) failed to comply with the Carers Charter,

”.

29. Section 40 amended

Section 40(4) is amended as follows:

- (a) after paragraph (d) by deleting “and”;
- (b) at the end of paragraph (e) by deleting the full stop and inserting instead —

“

; and

(f) the Carers Charter.

”.

Division 2 — Amendments to the *Health Services (Conciliation and Review) Act 1995*

30. The Act amended

The amendments in this Division are to the *Health Services (Conciliation and Review) Act 1995*.

31. Section 3 amended

Section 3(1) is amended by inserting in the appropriate alphabetical position —

“

carer means a person who is a carer as defined in section 4 of the *Carers Recognition Act 2004* in relation to a user;

”.

32. Section 19 amended

- (1) Section 19 is amended by inserting before “A” the subsection designation “(1)”.
- (2) At the end of section 19 the following subsection is inserted —

“

- (2) A complaint alleging a matter referred to in section 25(1)(h) may be made to the Director by a carer.

”.

33. Section 25 amended

Section 25(1) is amended at the end of paragraph (g) by deleting the full stop and inserting instead —

“

;

- (h) a provider that is an applicable organisation as defined in section 4 of the *Carers Recognition Act 2004* has failed to comply with the Carers Charter as defined in that section.

”.

34. Section 30 amended

Section 30 is amended as follows:

- (a) in paragraph (a) by inserting after “user” —
“ or carer, as the case may be, ”;
- (b) in paragraph (b) by inserting before “if” —

“ in the case of a user, ”.

Schedule 1 — The Western Australian Carers Charter

[s. 4]

1. Carers must be treated with respect and dignity.
2. The role of carers must be recognised by including carers in the assessment, planning, delivery and review of services that impact on them and the role of carers.
3. The views and needs of carers must be taken into account along with the views, needs and best interests of people receiving care when decisions are made that impact on carers and the role of carers.
4. Complaints made by carers in relation to services that impact on them and the role of carers must be given due attention and consideration.

Schedule 2 — Applicable organisations

[s. 4]

Division 1 — Reporting organisations

- 1 The provider as defined in paragraph (c) of the definition of that term in the *Health Services (Conciliation and Review) Act 1995* section 3(1).
2. The Disability Services Commission referred to in the *Disability Services Act 1993* section 6.
3. A hospital board constituted under the *Hospitals and Health Services Act 1927* section 15, or the Minister in relation to any public hospital controlled by the Minister under the *Hospitals and Health Services Act 1927* section 7.
4. Any other person or body prescribed for the purposes of this Division.

Division 2 — Other organisations

5. A person or body providing a service to others under a contract with a reporting organisation.
6. Any other person or body prescribed for the purposes of this Division.

Notes

- ¹ This is a compilation of the *Carers Recognition Act 2004* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Carers Recognition Act 2004</i>	37 of 2004	28 Oct 2004	s. 1-2: 28 Oct 2004; s. 3-5, Pt. 2-5 and Sch. 1-2: 1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7127)
<i>Financial Administration Legislation Amendment Act 2005</i> s. 36	5 of 2005	27 Jun 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6243)
<i>Volunteers (Protection from Liability) Amendment Act 2006</i> s. 12(1)	53 of 2006	26 Oct 2006	2 Dec 2006 (see s. 2 and <i>Gazette</i> 1 Dec 2006 p. 5297)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

- ^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Health and Disability Services Legislation Amendment Act 2010</i> s. 53 ²	33 of 2010	30 Aug 2010	30 Nov 2010 (see s. 2(b) and <i>Gazette</i> 17 Sep 2010 p. 4757)

² On the date as at which this compilation was prepared, the *Health and Disability Services Legislation Amendment Act 2010* s. 53 had not come into operation. It reads as follows:

53. Carers Recognition Act 2004 amended

- (1) This section amends the *Carers Recognition Act 2004*.
- (2) In the long title delete “**to amend the *Disability Services Act 1993* and the *Health Services (Conciliation and Review) Act 1995*,**”.
- (3) Delete Part 5.
- (4) In Schedule 2 Division 1 clause 1 delete “*Health Services (Conciliation and Review) Act 1995*” and insert:

Health and Disability Services (Complaints) Act 1995