

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Carers Recognition Legislation Amendment Bill 2006

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(Attorney-General)

Carers Recognition Legislation Amendment Bill 2006

A Bill for

An Act to amend laws in relation to carers, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Carers Recognition Legislation Amendment*
4 *Act 2006*.

5 **2 Commencement**

6 This Act commences on a day fixed by the Minister by written
7 notice.

8 *Note 1* The naming and commencement provisions automatically commence on
9 the notification day (see Legislation Act, s 75 (1)).

10 *Note 2* A single day or time may be fixed, or different days or times may be
11 fixed, for the commencement of different provisions (see Legislation
12 Act, s 77 (1)).

13 *Note 3* If a provision has not commenced within 6 months beginning on the
14 notification day, it automatically commences on the first day after that
15 period (see Legislation Act, s 79).

1 Part 2 Discrimination Act 1991

2 3 Legislation amended—pt 2

3 This part amends the *Discrimination Act 1991*.

4 4 Domestic accommodation etc 5 Section 26 (1) (a) (i) and (ii)

6 *substitute*

- 7 (i) the person who provides or proposes to provide the
8 accommodation, or a near relative or carer of the person,
9 lives and intends to continue to live on the premises; and
- 10 (ii) the accommodation provided in the premises is for not
11 more than 6 people, not including the person mentioned
12 in subparagraph (i) and any near relative or carer of the
13 person; or

14 5 Dictionary, definition of *carer*

15 *substitute*

16 *carer*—a person is a *carer* of someone else (the *dependant*) if—

- 17 (a) the dependant is dependent on the person for ongoing care and
18 assistance; and
- 19 (b) the person cares for the dependant otherwise than because of—
20 (i) a commercial arrangement; or

1 (ii) an arrangement that is substantially commercial.

2 **Example of a carer**

3 Ms W suffers from multiple sclerosis and requires constant care. Her spouse and
4 3 children aged 21, 16 and 11 share her care and would each be a ‘carer’.

5 *Note* An example is part of the Act, is not exhaustive and may extend, but
6 does not limit, the meaning of the provision in which it appears (see
7 Legislation Act, s 126 and s 132).

1 **Part 3** **Guardianship and Management**
2 **of Property Act 1991**

3 **6** **Legislation amended—pt 3**

4 This part amends the *Guardianship and Management of Property*
5 *Act 1991*.

6 **7** **What are a person's interests?**
7 **Section 4**

8 *relocate as section 5A*

9 **8** **Principles to be followed by decision-makers**
10 **Section 5 (3) and (4)**

11 *substitute*

- 12 (3) Before making a decision, the decision-maker must consult with
13 each carer of the protected person.
- 14 (4) However, the decision-maker must not consult with a carer if the
15 consultation would, in the decision-maker's opinion, adversely
16 affect the protected person's interests.
- 17 (5) Subsection (3) does not limit the consultation that the
18 decision-maker may carry out.

19 **9** **Section 5**

20 *renumber as section 4*

21 **10** **When does someone have impaired decision-making**
22 **ability?**
23 **Section 6**

24 *renumber as section 5*

11 **New section 6**

in part 1A, insert

6 **Meaning of carer**

In this Act:

carer—a person is a **carer** of someone else (the **dependant**) if—

- (a) the dependant is dependent on the person for ongoing care and assistance; and
- (b) the person cares for the dependant otherwise than because of—
 - (i) a commercial arrangement; or
 - (ii) an arrangement that is substantially commercial.

Example of a carer

Ms S suffers from a severe brain injury because of a car accident and requires constant care. Her spouse, 2 children aged 18 and 11 and a family friend share her care and would each be a ‘carer’.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

12 **Considerations affecting appointment**
Section 10 (4)

substitute

- (4) For subsection (3), the matters the tribunal must take into account include—
 - (a) the views and wishes of the person (the **protected person**) for whom a guardian or manager is to be appointed; and
 - (b) the desirability of preserving existing relationships with family and any other carers; and

- 1 (c) whether the proposed guardian or manager is compatible with
2 the protected person; and
- 3 (d) whether the proposed guardian or manager lives in the ACT;
4 and
- 5 (e) whether the proposed guardian or manager will be available
6 and accessible to the protected person; and
- 7 (f) the nature of the functions to be exercised under the order and
8 whether the proposed guardian or manager is competent to
9 exercise them; and
- 10 (g) whether the interests and duties of the proposed guardian or
11 manager are likely to conflict with the protected person's
12 interests to the detriment of the protected person's interests.

13 **13 Powers to be least restrictive**
14 **Section 11, note**

15 *omit*

16 (see s 5)

17 *substitute*

18 (see s 4)

19 **14 Notice of inquiry**
20 **New section 35 (1) (ca)**

21 *insert*

- 22 (ca) if the person has a carer who would not otherwise be given
23 written notice of the inquiry under this section—the carer; and

1 **15 Section 35 (1), new example**

2 *insert*

3 **Example of people who must be given notice of inquiry**

4 Mr B has dementia and requires constant care. Mr B's brother (and guardian), his
5 niece and a close family friend share his care. Each person must be given notice
6 of an inquiry in relation to a matter affecting Mr B.

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

10 **16 Dictionary, new definition of *carer***

11 *insert*

12 *carer*—see section 6.

13 **17 Dictionary, definition of *decision-making principles***

14 *substitute*

15 *decision-making principles*—see section 4.

16 **18 Dictionary, definition of *impaired decision-making ability***

17 *substitute*

18 *impaired decision-making ability*, for a person—see section 5.

19 **19 Dictionary, new definition of *interests***

20 *insert*

21 *interests*, of a person—see section 5A.

22 **20 Dictionary, definition of *primary carer***

23 *omit*

1 **Part 4** **Human Rights Commission Act**
2 **2005**

3 **21** **Legislation amended—pt 4**

4 This part amends the *Human Rights Commission Act 2005*.

5 **22** **Who may make a complaint under this Act?**
6 **Section 43 (1) (b)**

7 *substitute*

8 (b) an agent of the aggrieved person; or

9 **23** **Section 43 (1) (d)**

10 *substitute*

11 (d) if a person has guardianship or control of the affairs of the
12 aggrieved person under another law or an order of a court or
13 tribunal—that person; or

14 **24** **New section 43 (2A)**

15 *insert*

16 (2A) To remove any doubt, a carer may make a complaint as an agent of
17 the aggrieved person under subsection (1) (b) even though the carer
18 is under a legal disability (for example, if a child is a carer of the
19 aggrieved person, the child may make a complaint as an agent of the
20 person).

1 **25 Section 43 (3) and (4)**

2 *omit*

3 an aggrieved person

4 *substitute*

5 the aggrieved person

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
