



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH AND COMMUNITY WELLBEING
Mr Johnathan Davis MLA (Chair), Mr James Milligan MLA (Deputy Chair),
Mr Michael Pettersson MLA

Submission Cover Sheet

Inquiry into Carers Recognition Bill 2021

Submission Number: 03 - University of Canberra

Date Authorised for Publication: 27 July 2021

The Committee Secretary
Standing Committee on Health and Community Wellbeing
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601
LACommitteeHCW@parliament.act.gov.au

23 July 2021

Inquiry into the Carers Recognition Bill 2021

This submission responds to the Committee's invitation to contribute to the inquiry into the *Carers Recognition Bill 2021* (ACT).

Summary

In summary the Bill –

- is a welcome and commendable step towards greater recognition of the significance of caring in the Australian Capital Territory. That significance is often under-recognised because caring (alongside unremunerated activity within households) is often unquantified and under-valued in an environment where monetary value is construed as the meaningful metric of 'value'.
- acknowledges the diversity of relationships and contexts in which caring takes place
- seeks to foster respect for carers and the people for whom they care as individuals rather than as objectified 'one-size-fits-all' care providers and recipients.
- is, alongside the *Human Rights Act 2004* (ACT) essentially aspirational, centred on a requirement to alert carers to the proposed Carer Principles and for organisations to report on that alerting.
- does not require support for carers, something that is important given the large official and scholarly literature on carer burn-out, and the exclusion regarding reporting is inappropriate.

We consider that the necessary next steps are for the ACT Government to

- foster development of a coherent national carer support program, through for example intergovernmental discussion at the National Federation Reform Council
- actively explore what support might be provided by the ACT Government, including prioritisation of access
- liaise with employer associations and other relevant groups to engender support for the more expansive definition of a carer under this Bill (as compared to the NES)
- aggregate and evaluate data provided through the individual reports mandated under the Bill. Reporting is a means to an end, rather than something undertaken for its own sake without any impact on policy-making and funding decisions.

Basis

The following pages provide an overview and then address the specific aspects of the Bill. They reflect our research and teaching on employment, discrimination and the social/economic benefits of carer support at the national and territory levels.

The submission does not represent what would be reasonably construed as a conflict of interest. It is independent of any employer body, union or other advocacy group.

Please contact Ms Diedricks in the first instance if you have any queries or how we can otherwise assist the Committee.

Ms Jane Diedricks Lecturer Canberra Business School University of Canberra	Dr Bruce Baer Arnold Associate Professor Canberra Law School University of Canberra	Dr Raechel Johns Professor Canberra Business School University of Canberra
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Inquiry into the Carers Recognition Bill 2021

Overview

Mechanisms to formally recognise, promote and value the role of unpaid carers within the Australian Capital Territory community (and by extension across all Australian jurisdictions) are commendable. Unpaid caring, whether by family members or others, provides a social good rather than merely individual benefit. Importantly, it also contributes to national productivity.

In particular, the Bill articulates care relationship principles in relation to the treatment of carers, consistent with the *Human Rights Act 2004* (ACT) and the fundamental international human rights agreements to which Australia is a signatory, and founded on the notion of respect. We emphasise the importance of avoiding objectification of carers and people who receive or need care, with the Explanatory Statement noting diversity – exemplified by the statements that

- ‘a carer is to be respected as an individual’,
- ‘carers are individuals in their own right’,
- ‘people receiving care are individuals in their own right’ whose ‘rights as an individual are to be respected and upheld’ and that
- ‘some carers require additional support’.

That acknowledgment of diversity and respect for cultural, cognitive or other difference is salient given the historic disregard of some care and carer support entities for sexual and other diversity.

Part Three of the Bill articulates Care Relationship Principles, which we discuss below. In essence those Principles are endorsed but in isolation, they are merely aspirational. Regrettably the history of public/private sector care provision over the past twenty years demonstrates that some organisations have not embraced values of respect and on occasion care and carer support entities have disregarded expectations regarding governance and diversity.

Clause 10 requires a care and carer support agency to

- alert the agency’s employees and agents and people receiving support from the agency to the Care Relationship Principles
- uphold those Principles when providing support services to people in care relationships
- to consult with carers and entities representing carers when planning, reviewing and developing support services, programs and policies that will affect people in a care relationship

The Bill does not provide for negative consequences if an agency fails to embrace those obligations, for example by engaging in a non-substantive ‘tick & flick’ consultation.

Principles

As statements of aspiration the Principles are laudable. Importantly however they are merely aspirational. They are not enforceable by people receiving/seeking care and by people providing care.

The Principles specifically refer to a carer as being

- supported as an individual and as a carer, including during changes to the care relationship; and
- recognised for their efforts and dedication, and for the social and economic contribution they make to the community as a carer

The proposed legislation does not provide carers or people receiving care to enforce the provision of support.

As with the *Human Rights Act 2004* (ACT) the unavailability of scope for enforcement by those individuals, particularly with regard to carers and their own employment when taking unpaid/paid carers leave, and the vagueness of language regarding recognition for ‘efforts and dedication’ means that recognition may likely be ineffectual in practice to support the wellbeing of carers and by extension, the individual receiving care.

Principle (f) more positively refers to carers having

- the effect of their role as a carer on their participation in employment and education recognised and considered in decision-making

The Bill does not require that consideration to be substantive and would not override the overall national employment framework. For example, under the current National Employment Standards (‘NES’), individuals may access paid and unpaid carers leave as a component of the 10 days per annum allocated to ‘personal leave’. Furthermore, the consideration of the role of the employee as a carer is narrowly defined by reference to the requirement that the individual receiving the care is ‘a member of their immediate family or household’. The term ‘immediate family’ is then defined to mean – a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of an employee; or a child, parent, grandparent, grandchild or sibling of the employee’s spouse or de facto partner. This definition and application have the potential to limit the expansive definition of ‘caring relationship’ in the Bill, and following from this, may limit the ability of the individual’s role as carer to be substantively recognised.

Furthermore, in relation to the Bill, the meaning of ‘care relationship’ is arguably more expansive than the NES, however reference to kinship is limited to the care of a child or young person. As such, should the Bill consider extending recognition of the carer role in relation to kinship relationships more generally and other relationships formed through community, affinity and/or social ties?

In relation to education, it is worth noting that tertiary education institutions, such as the University of Canberra, already make allowance for the carer role in decision-making regarding student compliance with deadlines or other aspects of study.

Principle (g) refers to provision of support that

is timely, responsive, appropriate, respectful and accessible

That principle is truly commendable and might appropriately be embraced by public/nongovernment entities involved in a wide range of services to people in the ACT rather than merely to carers. Consistent with the above comments however it appears to be a matter

of exhortation rather than an obligation or what people could otherwise rely upon. We note the specific obligations under the Bill below

Principle (h) refers a requirement that carers who receive support services from a care and carer support agency be made aware of the care relationship principles and have their views considered in the

assessment, planning, delivery, management and review of support services, programs or policies relating to the carer and the care relationship

This principle is also commendable, but to be implemented effectively, consideration of the power imbalance between a carer agency and carer should be factored into developing a formalised approach to seeking feedback from carers who receive support services (see below for further discussion).

Obligations

Section 10 obligates care and carer support agencies to ‘take all practicable measures’ to ensure specified people are aware of and understand the Principles and to uphold the Principles. Presumably a failure would be reflected in non-renewal of government funding or perhaps a communication requesting (as opposed to *requiring*) corrective action be taken?

We commend the requirement for agencies to consult with carers (and an entity representing carers) when ‘planning or reviewing support services and programs’, including internal human resource policies. Consideration should be given to the facilitation of such an independent publicly-funded and carer-oriented representative entity or appropriate funding for representation through the ACT Human Rights Commission.

Preceding paragraphs have indicated that governments in funding service providers on an ongoing or project basis need to evaluate and publicly report on that evaluation with sufficient specificity for independent assessment rather than simply collecting data about activity. Section 11 of the Bill provides for mandatory reporting on an annual basis by most agencies of compliance with obligations under section 10. The Bill provides that a public sector support agency must include the report in that agency’s annual report and that a funded support agency publish a corresponding report.

We consider that to give effect to the Bill there should be a requirement that the Government within six months after the reporting period should release a readily accessible analysis that identifies the performance of the various agencies under the proposed legislation. The administrative burden for agencies might be reduced through use of a web-based template.

We note the exclusion from reporting of secondary funded support agencies, which are only required to ‘consider’ making the report available. Our view is that all agencies that receive ACT government funding should be required to commit to transparency and that perceived administrative burdens can be fundamentally reduced through standardised reporting formats alongside drafting of the report as activity takes place rather than as an afterthought at the end of the reporting period.
