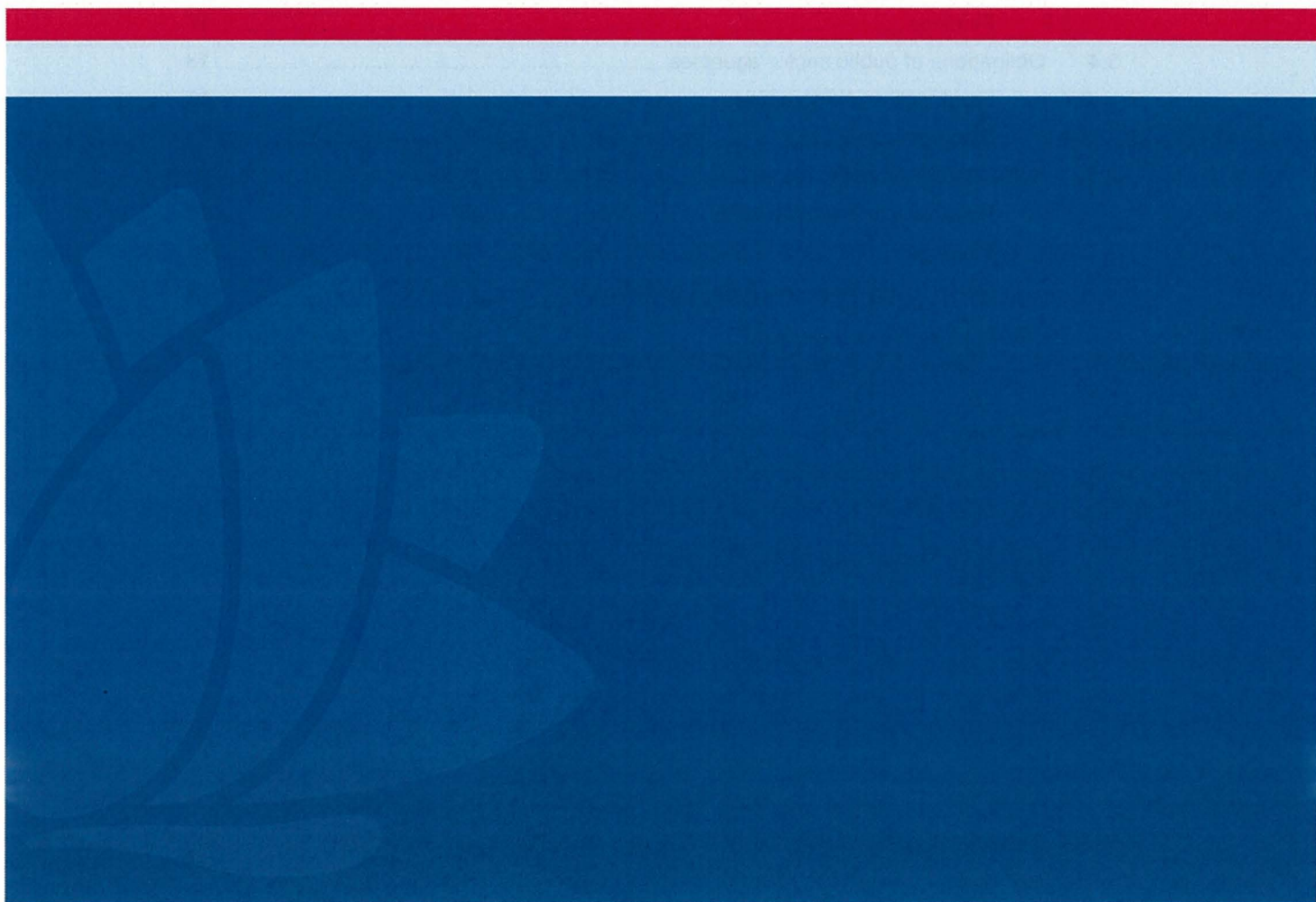


Report of the statutory review of the *Carers (Recognition) Act 2010*

November 2016



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Executive summary

The enactment of the *Carers (Recognition) Act 2010* (the Act) on 19 May 2010 was an historic moment for carers in NSW. It marked the commitment of the NSW Government to formally recognise, in legislation, the significant contribution that carers make in NSW.

The objects of the Act are to:

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

Section 15 of the Act requires that the Act be reviewed after five years from its commencement, to determine whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives. The Minister for Disability Services (the Minister) announced the statutory review on 29 February 2016.

The Department of Family and Community Services (FACS) undertook an extensive consultation process following the release of a Discussion Paper, in which over 800 people and more than 50 organisations from across NSW participated. Consultation mechanisms comprised forums, and online and written submissions. The experiences and advice that carers and others shared throughout the consultation process were invaluable in informing the key findings and recommendations of this review.

The review has found that the objectives of the Act remain valid and its provisions remain appropriate for pursuing those objectives. Although recognition of carers has improved since the Act was introduced five years ago, there remains a continuing need to ensure appropriate action is taken to promote the objects of the Act and to maintain an ongoing focus on raising awareness of carers and supporting them in their caring role. To that end, this report recommends some minor legislative changes to update and modernise the NSW Carers Charter to more clearly articulate its purpose. The report also recommends that the obligations of public sector agencies be amended to encourage increased consultation with carers and that the membership and chairing arrangements of the NSW Carers Advisory Council be modified.

This report also recommends that a number of matters identified in consultations are better addressed through supporting policy, guidelines and education, rather than legislative amendment.

1 The Statutory Review

1.1 Carers (*Recognition*) Act 2010

The main features of the NSW *Carers (Recognition) Act 2010* are:

- the objects (Part 1 section 3);
- the definition of a carer (Part 1 section 5);
- the NSW Carers Charter (Part 2 and Schedule 1);
- obligations of NSW public sector agencies (Part 2); and
- the role and membership of the Carers Advisory Council (Part 3).

The objects of the Act are to enact a Carers Charter to recognise the role and contribution of carers to our community and to the people they care for, and to increase the awareness of the valuable contribution that carers make to our community.

The Act provides a definition of 'carer' for the purposes of the Act, and also contains a NSW Carers Charter with 13 principles.

The Act requires that NSW Government public sector agencies take all reasonable steps to ensure all staff and agents of the agency have an awareness and understanding of the NSW Carers Charter. All public sector agencies are also required to consider the NSW Carers Charter when developing human resource policies that will affect carers and to consult with appropriate organisations or bodies that represent carers.

Human service agencies have additional obligations, including that staff and agents of the agencies must take action to reflect the principles of the Charter in their work. Human Service agencies are also required to report on their compliance with the Act in the agency's annual report.

Part 3 of the Act establishes the NSW Carers Advisory Council, and sets out the membership, procedure and functions of the Council. The Council's role is to advance the interests of carers, and to review and make recommendations to the Minister on any legislative or policy proposal, or any other matter, relating to carers referred to the Council by the Minister. Section 11 requires that membership consist of the Minister, other Ministers with responsibility for the provision of key support services to carers and other members appointed by the Minister. Section 11(2) requires that the majority of Council members must be primary carers. Section 11(3) states that meetings are to be co-chaired by the members of the Council who are Ministers.

1.2 Requirement for review

This review is conducted pursuant to section 15 of the Act, which requires that a review be undertaken as soon as possible after a period of five years to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The review commenced on 29 February 2016.

The Act has not been amended since it was enacted other than to maintain currency with changes to other legislation including the *Health Services Amendment (Local Health Networks) Act 2010*, *Health Services Amendment (Local Health Districts and Boards) Act 2011* and the *Disability Inclusion Act 2014*.

1.3 Review methodology

In conducting the review, FACS undertook the following:

- Background research on carer legislation in other jurisdictions and other relevant NSW legislation;
- A review of issues raised in previous consultations held to inform the *NSW Carers Strategy 2014-19* (input was received from over 2,000 individuals and organisations);
- Consultation facilitated through a Discussion Paper with 15 questions covering all the significant provisions of the legislation, including an online survey; and
- Carer and public sector forums to ensure key stakeholders had the opportunity to provide more in-depth input into the review.

In designing the review methodology and preparing the Discussion Paper, FACS sought input from the NSW Carers Advisory Council and the Ministry of Health.

The communication strategy to promote the review included direct correspondence with government agencies, website information, promotion via stakeholders, and flyers and invitations to participate in forums.

On completion of the consultations, FACS analysed the feedback received to identify key themes and consider whether the issues raised were most appropriately addressed through a legislative amendment of the Act.

1.3.1 Consultation steps

Discussion Paper

The Discussion Paper on the statutory review of the *Carers (Recognition) Act 2010* provided background information about carers and the review, information and discussion questions about the Act, and information about ways people could provide input into the review.

Online Have Your Say Survey

The survey was published on the 'Have Your Say' website. It reflected the questions in the discussion paper and was open for two months, from 29 February to 29 April 2016. Of the total 693 respondents to the survey, 643 were individuals (of whom 477 identified as carers) and 50 responded on behalf of organisations. 16.5 per cent of respondents were males. 2.3 per cent of respondents identified as Aboriginal and 17.2 per cent of respondents identified as being from a culturally and linguistically diverse (CALD) background.

Feedback was received across all age groups, with more than half the responses being from people aged between 45 and 64 years.

Responses were received from people across the state, with just over 50 per cent of responses from Sydney, just over 30 per cent from major towns of regional centres, and just under 20 per cent from rural areas.

Written submissions

FACS received 11 written submissions, including submissions from Carers NSW, NSW Ministry of Health, Local Government NSW and individual carers.

Face-to-face consultations

Three carer forums (in Sydney, Port Macquarie and Wagga Wagga) were attended by 53 people, 45 of whom were carers and eight who attended in their professional capacity (from disability service providers, carer organisations and health services).

Two informal 'carer conversation' events were led by the Hon John Ajaka MLC, Minister for Disability Services and Minister for Ageing, with 25 carers invited by Carers NSW and the Sutherland Shire Carer Support Service.

A public sector forum held in Sydney was attended by 28 people representing 19 public sector organisations.

1.4 Legislative and policy context

The Act commenced operation on 19 May 2010. As outlined in the second reading speech delivered by the then Parliamentary Secretary on behalf of the then Attorney General, the aims of the Act are to recognise the role and

contribution of carers, and increase public awareness of the valuable role that carers play in the community.

The Act is principles-based legislation. It does not give carers legal rights or entitlements. It does however, impose obligations on public service agencies and human services agencies to ensure that carers are recognised and supported.

The Act complements other legislation that promotes carer recognition including: the *Disability Inclusion Act 2014* (NSW); the *National Disability Insurance Scheme Act 2013* (Cth); the *Mental Health Act 2007* (NSW); and the *Anti-Discrimination Act 1977* (NSW). These and other legal and policy instruments that support carer recognition were outside the scope of this review.

The Minister for Disability Services is responsible for administering the Act. Responsibility for leading the implementation of the Act passed from the Ministry for Health to the former Department of Ageing Disability and Home Care, which is now part of the Department of Family and Community Services (FACS).

FACS engaged with key stakeholders to develop the *NSW Carers (Recognition) Act 2010 Implementation Guidelines for Public Sector Agencies* and a range of resources to support agencies to implement the Act. Resources included an annual reporting template, fact sheets, a team meeting pack, brochures about the Act and the NSW Carers Advisory Council, and posters promoting the NSW Carers Charter. These resources, along with the *Carers (Recognition) Act Implementation Plan 2011 – 2014* are available at:

http://www.facs.nsw.gov.au/reforms/carers/nsw_carers_recognition_act_2010

To encourage awareness and understanding of the Act, FACS also facilitated over 30 face-to-face training sessions with public sector employees around the State in 2012 and 2013, with additional sessions for human service agencies.

In 2014 the NSW Government released the *NSW Carers Strategy 2014 – 2019*, a five year plan to improve the position of carers. Its vision is that:

- carers and caring are respected and valued;
- carers have the time and energy to care for themselves; and
- carers have the same rights, choices and opportunities as other members of the community.

The *NSW Carers Strategy* provides a broader context for the ongoing implementation of the Act. Implementation of the Strategy is guided by the principles in the NSW Carers Charter, and delivery of the strategy projects supports and contributes to compliance with the Act for participating government agencies.

2 Carers in NSW

The Australian Bureau of Statistics (ABS) estimates there are 904,400 carers in NSW.¹ Carers come from all walks of life, backgrounds and age groups. Each caring situation is unique, and each carer has individual needs. Carers can be family members, friends, housemates or neighbours. A carer may provide care for more than one person and care may be provided by multiple carers.

The type of support carers provide is varied, depending on the individual's need and caring relationship. Caring may involve, but is not limited to, providing personal care, providing emotional support, assisting someone to attend medical appointments or providing assistance to enable someone to be independent and participate in their community.

Cultural factors impact on caring. People from CALD backgrounds may have different expectations about who will provide care, and how this care will be provided. Aboriginal people often have large caring roles due to the higher rates of disability and illness in Aboriginal communities and the important cultural values surrounding family obligations for Aboriginal people.²

Carers play an invaluable role by supporting people to live full and independent lives, and to remain in their home and community. In 2015 it was estimated that it would cost approximately \$60.3 billion to replace the care provided by carers in Australia with formal services.³

¹ Australian Bureau of Statistics, 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015, released on 18 Oct 2016.

² Australian Bureau of Statistics, 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2014-15, released 28 April 2016.

³ Deloitte Access Economics, *The economic value of informal care in 2015*, Carers Australia, June 2015, www.carersaustralia.com.au/storage/Access%20Economics%20Report.pdf.

3 Findings of the review

3.1 Objects of the Act

The objects describe what the Act is for, and what it is trying to achieve. The first object to 'enact a Carers Charter to recognise the role and contribution of carers to our community and to the people they care for' is addressed in section 3.3 of this report. The second object is to increase the awareness of the valuable contribution that carers make to our community.

3.1.1 Feedback and discussion

Feedback was sought on whether the Act has increased awareness of the contributions that carers make to our community, with 44.54 per cent of survey respondents answering 'to some extent' and 9.7 per cent answering 'yes'.

Feedback indicated a view that carer recognition has somewhat improved. There was strong consensus that while some progress has been made in terms of recognising the role that carers play, the objects of the Act remain valid and important, and therefore there is still a need for the Act. The majority of forum participants and online survey responses (77 per cent) considered the current objects of the Act to be valid.

However, some respondents considered the Act should provide legal rights for carers. The written submission from Carers NSW recommends that the legislation be revised to establish carers' rights to assessment and support. The submission cites the United Kingdom's *Care Act 2014* as the model for this reform.

There was some feedback that a central agency should have responsibility for administering the Act. In its written submission to the review, Carers NSW recommended that 'an independent body, such as the NSW Ombudsman, be authorised to investigate complaints and oversee the implementation of the legislation'.

It is noted that the NSW Ombudsman has oversight of the provision of community services and can investigate and make recommendations in response to complaints made by carers. The Ombudsman also has powers to conduct reviews and investigate systemic issues.

3.1.2 Findings

The review found that the objects of the Act remain valid and its provisions remain appropriate for pursuing those objects.

Although the United Kingdom has arguably the most extensive legislation of any jurisdiction relating to the rights and recognition of carers, the specific purpose is not carer recognition.⁴

The NSW Act is principles-based, recognition legislation. NSW has shown its commitment to the principles embodied in the Charter by enshrining those principles in law, which is of great symbolic value. This does not mean the impact of the legislation does not have a tangible effect on carers. While it does not create legal rights or entitlements for carers, the Act does impose obligations on public sector agencies and human service agencies in relation to carers.

Carers are also specifically recognised in other relevant NSW legislation. For example, carers may bring complaints to the Anti-Discrimination Board if they feel they have been unlawfully discriminated against on the basis of their carer responsibilities.⁵ Under the *Mental Health Act 2007*, a principle for care and treatment (section 68 (j)) states that 'the role of carers for people with a mental illness or mental disorder and their rights under this Act to be kept informed, to be involved and to have information provided by them considered, should be given effect.' Specific provisions in the Act also set out when a designated carer should be informed about particular aspects of a patient or detained person's care and treatment.

Under the National Disability Insurance Scheme (NDIS), carers can have a separate conversation with the planner, making a Carer Statement about the support they provide and their wishes for their future role. During the NSW transition to the NDIS, participants can make a complaint about service providers to the NSW Ombudsman. They can also apply to the National Disability Insurance Agency (NDIA) to have a decision reviewed, and also make a complaint to the Commonwealth Ombudsman if they are not satisfied with the internal NDIA review.

The review recommends that, together with relevant agencies, FACS undertakes to increase access to information about other legislation or programs that includes provisions for carers and complaints mechanisms that protect carers. FACS proposes to work with the NSW Ombudsman to increase awareness of the NSW Ombudsman as an independent complaints mechanism accessible to carers.

⁴ The UK *Care Act 2014* deals with the overall reform of adult social care and support and has significant practical implications for carer recognition and support. The *Care Act 2014* creates duties on local authorities in relation to carers and prevention, information and advice, and independent advocacy. Critically, it gives carers the right to receive an assessment, and the right to receive services based on that assessment.

⁵ The *Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000* (NSW) amended the *Anti-Discrimination Act 1977* (NSW) by introducing a new ground of unlawful discrimination - discrimination in relation to employment on the ground of carers' responsibilities. The amendment defines 'responsibilities as a carer' as a person's responsibility to care for or support a child or another immediate family member in need of care and support.

The review recommends that responsibility for the administration of the Act remains with FACS.

The review finds that annual reporting is an appropriate mechanism to ensure that the key agencies providing services to carers and the people they care for, including the human service agencies, take responsibility for complying with the Act. However, feedback indicates limited awareness of the activities undertaken by human services agencies under the Act. To raise the profile of compliance activities, it is proposed that FACS collates and publishes agency compliance statements on its website for easier access and provides a report to the Minister.

Recommendation 1

That FACS facilitates access for carers to information about protections for carers embedded in other specific legislation, and about existing complaints mechanisms carers can access.

Recommendation 2

That FACS makes arrangements with human service agencies to collate and publish their reports on compliance with the Act (as included in their annual reports). FACS will then provide an annual collated report to the Minister.

3.2 Definition of carer

Section 5 of the Act defines a 'carer' as an individual who provides ongoing personal care, support and assistance to any other individual who needs it because that other individual:

- a) *is a person with disability within the meaning of the Disability Inclusion Act 2014; or*
- b) *has a medical condition (including a terminal or chronic illness); or*
- c) *has a mental illness; or*
- d) *is frail and aged.*

A person is not a carer for the purposes of the 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*
- 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.*

A person is not a carer of another person for the purposes of the 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.*

3.2.1 Feedback and discussion

While the majority of carers and stakeholders who provided feedback on the definition said they supported it in its current terms, some people said they found the definition complicated, particularly in the way it refers to family members. This has led to some confusion about its interpretation. A number of comments received on the online survey show that people have misinterpreted the exclusions in section 5(3), believing them to mean that family members and people who live with the care recipient are excluded from being carers under the Act.⁶

There was also some concern that the terms 'ongoing' and 'personal care' in the opening paragraph of the definition had the effect of excluding some persons as carers. Some respondents submitted that 'personal care' could be interpreted narrowly as referring to providing physical care only, which would exclude a significant number of carers and caring responsibilities. 'Ongoing' was also seen as problematic as it too could be interpreted narrowly to exclude people who care for others who have episodic conditions.

Some respondents suggested that if the definition were to be revised, consideration be given to the following:

- Including reference to carers of people who need support due to drug or alcohol dependencies;
- Including reference to carers of people with dementia;
- Adapting the definition to be more appropriate for a diverse range of carers, particularly Aboriginal carers;
- Recognising that carers can be any age, including the role of siblings and young carers;
- Recognising that there may be multiple carers;
- Clarifying how guardianship is different to being a carer; and
- Making clearer the distinction between paid support worker, foster carers and unpaid carer.

These suggestions did not propose changing the scope of the current definition, but were suggestions as to how it may be clarified.

3.2.2 Findings

The review finds that the definition does not require legislative clarification in the manner proposed above. The definition is framed in broad enough terms to cover carers of persons who are suffering from dementia, as dementia is both a medical condition under section 5(1)(b) and a disability within the meaning of the *Disability Inclusion Act 2014* under section 5(1)(a). For carers of people with drug and alcohol dependency, the review notes that if care is required, there will be a co-morbidity of factors such as mental illness or other chronic illnesses such that those carers would fall within the definition.

⁶ Of the 164 online survey respondents who provided comments on how the definition could be improved, over 70 comments related to confusion about section 5(3).

Furthermore, the current definition does not preclude the possibility that a person may have multiple carers, or that carers can be of any age.

If legislation seeks to be overly prescriptive in listing particular conditions, there is the danger of inadvertently omitting a relevant condition, over-complicating the Act, causing ambiguity and confusion, or causing a narrow interpretation to be adopted.

It is apparent from a number of the comments received, however, that there is some confusion about who is considered a carer under the definition and who falls outside the scope of the definition.

The review recommends that these issues be addressed through the development and dissemination, by FACS, of policy guidelines and supporting information materials to ensure the meaning of carer under the Act is well understood.

Recommendation 3

That FACS revises the existing *NSW Carers (Recognition) Act 2010 Implementation Guidelines for Public Sector Agencies* to provide explanation and clarification on section 5, the meaning of 'carer' under the Act, including:

- a) clarifying who is considered a carer under the Act. For example, confirming that carers of the following groups are covered by the definition - people with dementia and people affected by drug and alcohol issues;
- b) clarifying that section 5(3) needs to be read in context with all of section 5 (meaning of 'carer') and is not intended to exclude family members or people who live with the person they are caring for; and
- c) providing information about cultural concepts of caring.

3.3 NSW Carers Charter

The NSW Carers Charter (the Charter) is set out in Schedule 1 of the Act. Its purpose is to recognise the role and contribution of carers. The Charter contains 13 principles to guide agencies in supporting carers.

One principle recognises that carers have their own needs and should be referred to appropriate support services.

Two principles specifically deal with the needs of children and young people who have caring responsibilities. The Charter expressly acknowledges that these young carers may need additional support in order to access the rights of all children and young people.

The Charter also includes principles about carers' health and wellbeing and their unique knowledge and experience.

The Charter recognises the diversity of carers and also acknowledges the additional needs of remote and rural carers.

The Charter principles provide important guidance to public sector agencies about acknowledging, interacting with and supporting carers. The Act requires that NSW public sector agencies ensure their staff are aware of and understand the Charter. Human service agencies must also take steps to ensure they reflect the principles of the Charter.

NSW Carers Charter (Schedule 1 of the Act)

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

3.3.1 Feedback and discussion

The strongest feedback about the NSW Carers Charter was that it is not well known. Other feedback is summarised below.

Structure: Feedback received from carers and stakeholders during the consultations indicated that many people find the current 13 principles in the Charter repetitive, and that some rationalisation was appropriate.

For example, it was suggested that principles g) and h) about young carers could be combined into one strong and clear principle stating that young carers should enjoy the same rights as other young people and they should be supported to manage the additional challenges they have as carers and to enjoy those rights. Similarly, some other principles that overlap could be combined.

It was also suggested that the principles should be reordered to present a more logical flow, for example principle (m) 'Carers' unique knowledge and experience should be acknowledged and recognised', would be better placed earlier in the Charter or combined with principle (e).

Language: Feedback suggested the language in the Charter is more complicated than necessary and should be clear, concise and positive. An example of more positive language, suggested by the NSW Carers Advisory Council, is to replace the word 'burden' with 'challenge' in principle (h). Another example is feedback from the consultation forums that the language used in principle (b) is too passive, currently stating that 'Carers health and wellbeing are to be given due consideration'.

Recognition of carers' role: The Charter already recognises carers' 'unique knowledge and experience' and their role in 'assessment, planning and delivery of services'. Feedback indicates that carers wish to be recognised as 'partners in care'. A key concern for carers is inadequate communication with service providers. The Carers NSW submission notes that the Statement for Australia's Carers, the national equivalent to the NSW Carers Charter, has given effect to this principle, by establishing that carers 'should be considered as partners with other care providers in the provision of care, acknowledging the unique knowledge and experience of carers'.

Carer diversity: Many stakeholders suggested the Charter needs a stronger focus on the cultural context of caring in Aboriginal and CALD communities. There was concern that recognising carer diversity is not clear enough in the current principle (f). It was also suggested the principle relating to diversity needs to be modernised to reflect gender diversity.

Working carers: Some stakeholders noted that the Charter does not make specific mention of working carers and that there would be benefit in raising awareness of the needs of a carer to balance work and care, as this is an increasingly important issue for carers.

Hidden carers: Carer forum participants suggested that 'hidden' carers should be addressed in the Charter. Hidden carers are carers who do not consider themselves to be a carer, and therefore they do not access services and supports for carers. For example, a carer from a CALD background caring for a family member with a disability may not see themselves as a 'carer'. FACS proposes to revise policy guidelines and educational materials to prompt an increased awareness of the importance of reaching hidden carers.

3.3.2 Findings

In response to the consultation feedback, amendments to the Charter are proposed to update and modernise the language and structure of the Charter, to strengthen recognition of some carer groups and to introduce the concept of carers as 'partners in care'.

It is proposed that the Charter acknowledges the needs of working carers and the need to balance work and care. The Act already recognises working carers through section 7(3) in relation to the obligations of public sector agencies.

It is also proposed that FACS will develop promotional materials to raise the profile of the revised NSW Carers Charter.

Recommendation 4

That the NSW Carers Charter (Schedule 1 of the Act) be amended to:

- a) Update and modernise the language used to reflect current social context;
- b) Highlight the importance of considering carers' cultural and linguistic diversity, including Aboriginal culture, in policy, programs and service delivery;
- c) Acknowledge the needs of carers who work to balance their work commitments and their caring role;
- d) Combine principles (g) and (h) to clarify and strengthen the Charter's principle about young carers;
- e) Include the wording 'partners in care' in the current principle (m); and
- f) Consolidate and reorder the principles to aid clarity and logical flow.

Recommendation 5

That FACS develops promotional material on the revised NSW Carers Charter to aid its promotion and visibility.

Recommendation 6

That FACS profiles examples of good practice and commitment by agencies implementing the NSW Carers Charter.

3.4 Obligations of public sector agencies

Section 7 of the Act creates obligations for public sector agencies, defined in the Act, and including NSW Government agencies and local councils, to take reasonable steps to ensure that members of staff and agents of the agency are aware of and understand the NSW Carers Charter. Public sector agencies must also consult with organisations that represent carers as they consider appropriate, when developing policies that impact on carers and must consider the NSW Carers Charter when developing internal human resource policies.

The Act places additional obligations on 'human service agencies', defined as public sector agencies that provide services directed at carers or the people they care for (for example health, disability or care services). As well as being aware of and understanding the NSW Carers Charter, human service agencies must ensure that all of their staff and agents take action to reflect the principles of the Charter. Human service agencies must also report on their compliance with the Act in their annual report.

The Act refers to 'agents' of public sector agencies. This does not include organisations funded to deliver services on behalf of an agency.⁷

To assist public sector and human service agencies with their compliance, documents were developed to support implementation including an annual reporting template, *NSW Carers (Recognition) Act 2010 Implementation Guidelines for Public Sector Agencies*, fact sheets for managers and staff, a team meeting pack, a brochure about the Act and posters promoting the NSW Carers Charter. Training was also provided to public sector agencies in 2012 and 2013.

3.4.1 Feedback and discussion

Feedback suggested support for extending the range of organisations that need to meet the obligations in the Act. There was support at the carer forums for the obligations to also apply to:

- all non-government organisations (NGOs) and private providers funded by government to provide services for carers or the people they support;
- other individuals / small businesses / sole traders who provide services for carers or the people they support (e.g. private psychiatrists and psychologists, allied health professionals); and
- education providers, including universities and private schools.

⁷ As noted in the *NSW Carers (Recognition) Act 2010 Implementation Guidelines for Public Sector Agencies*, 'agent' refers to an entity authorised to act on behalf of an agency with third parties where the agency remains legally responsible for what the agent does. This could include, for example, contractors engaged by the agency to provide a service to people who are direct clients of the agency. 'Agent of the agency' does not generally refer to an entity funded to provide a service to their own clients under their own name.

Feedback from the public sector forum indicates the definition of a 'human service agency' needs further explanation as some agencies were unclear about which organisations would be considered human service agencies. It was also suggested that the annual compliance reports should be considered and provided to the Ministers and senior executives or to the NSW Carers Advisory Council.

Feedback from carers emphasised that the obligation under section 7(2), which states that a public sector agency must consult with 'such bodies representing carers as the agency considers appropriate when developing policies that impact on carers' should be taken further to widen opportunities for consultation and to encourage organisations to consult directly with carers. This may include consulting with carers who are staff, carers who are clients, or carers of clients, as well as or instead of organisations representing carers.

3.4.2 Findings

The review found that the obligations of public sector agencies under the Act are appropriate, given the purpose of the Act.

It is not proposed to extend obligations beyond public sector agencies through legislative amendment.

In relation to extending the obligations to other relevant organisations funded by government, consideration should be given to increasing awareness of the Act and including compliance with the Charter through funding arrangements where relevant.

It is also recommended that FACS should review and revise the *NSW Carers (Recognition) Act 2010 Implementation Guidelines for Public Sector Agencies* to support the implementation of the Act. These guidelines will include clarification about which organisations the obligations apply to and information about annual reporting. FACS will undertake to profile examples of good practice and commitment by agencies implementing the Charter.

The focus should be on achieving strong compliance by public sector and human service agencies. Information materials should also be developed to encourage other organisations to be aware of the Act and the Charter.

One legislative amendment is proposed – to encourage consultation with carers by enabling public sector agencies to consult with carers in addition to 'bodies representing carers'.

Recommendation 7

That the obligations of public sector agencies to consult in section 7(2) be amended to state 'carers and/or bodies representing carers'.

Recommendation 8

That FACS revises supporting guidelines and materials to confirm the extent of obligations of public sector and human service agencies and clarify which organisations need to meet the obligations.

Recommendation 9

That FACS undertakes to extend compliance with the NSW Carers Charter to relevant FACS funded service providers through future funding arrangements.

3.5 NSW Carers Advisory Council

The NSW Carers Advisory Council is a statutory body, established in 2010 under section 11 of the Act. Its role is to promote the interests of carers and to review and provide advice and recommendations to the Minister on legislative and policy matters relating to carers. The Council can also carry out any other functions relating to carers as directed by the Minister.

The Council is made up of:

- the Minister;
- other Ministers responsible for key services for carers; and
- individuals whom the Minister believes have relevant knowledge and experience in matters relevant to carers.

Carers are appointed to the Council by the Minister, following an advertised recruitment process. Under the Act, the Minister must ensure that the majority of members are 'primary' carers.

Meetings of the NSW Carers Advisory Council are to be chaired by the Minister, and co-chaired by other members of the Council who are also Ministers.

More information about the Council is online at:

http://www.facs.nsw.gov.au/reforms/carers/nsw_carers_advisory_council

3.5.1 Feedback and discussion

Online survey feedback indicates a significant number of people were not aware of the Council and its role. Those respondents who were aware of the Council expressed support for the requirement in the Act that the majority of members are carers.

Feedback suggests the Council should be chaired by an independent person, rather than by the Minister(s). The feedback suggested that the appointment of an independent chair would raise the profile of the Council and carers more generally.

This view is supported by current members of the Council, who note the functionality of the Council could be more effective with the separation of the Minister's role in referring matters and receiving advice and the role of member and Chair.

Within Australia, Carers Advisory Councils are also established by carer recognition legislation in Western Australia and Queensland. The NSW Act is the only legislation to specify that the Minister is a member of the Council.

Some feedback also suggested that the role of the Council could be expanded, particularly in the areas of offering specialist advice to organisations and reviewing annual reports from human service agencies on meeting Act obligations.

Feedback also recommended that the term 'primary' be deleted from section 11(2), as this is not a term defined in the Act or relevant in this context.

3.5.2 Findings

The review recommends that the terms of the Act be changed to allow for the Minister to appoint an independent Chair of the Council.

The Chair would be appointed by the Minister for a fixed term. A deputy Chair may also be appointed to step into the position of Chair when the Chair is unavailable or if they have vacated the office. An independent Chair appointed by the Minister is consistent with other similar advisory bodies such as the NSW Ministerial Advisory Committee on Ageing.

The functioning of the Council would be improved with the removal of the current requirement on the Minister(s) to be member(s) of, and to chair the Council, given the functions to review and make recommendations to the Minister on any legislative or policy proposals that have been referred to it by the Minister.

The opportunity for the Minister to directly hear the experience and concerns of carers would remain and is not dependent upon Council membership.

It is recommended that consistent with the current section 11(1)(c), the person appointed as Chair would be someone with 'relevant knowledge of and experience in matters relevant to carers'. The role of the Chair will be, consistent with NSW Boards and Committees Guidelines, to lead the activities of the Council and to liaise with the Minister and the Secretariat on behalf of the Council to agree Council workplan and priorities.

The review also recommends the deletion of the term 'primary' from section 11(2) as it is not a well understood or relevant term. No change is recommended to the Act's provision for the majority of Council members to be 'carers'.

No amendment is proposed to the role and functions of the Council.

Recommendation 10

That section 11 be amended to:

- a) Permit the Minister to appoint an independent Chair and deputy Chair for a fixed term and to remove the Minister from being a member of the Council, and
- b) Remove the word 'primary' from section 11(2).

4 Conclusion and recommendations

The review has found that the objectives of the Act remain valid and its provisions remain appropriate for pursuing those objectives. Minimal legislative changes are proposed in this report of the statutory review of the Act. The proposed changes are consistent with comparable carer legislation in other Australian jurisdictions. Some issues raised do not require legislative amendment and can be more effectively addressed through supporting guidelines, policy and education.

The review provided valuable insight into how the Act is being interpreted and implemented. The public consultation also highlighted an opportunity to improve outcomes for carers through increased education about the Act and other legal and policy initiatives that support carers.

Recommendation 1

That FACS facilitates access for carers to information about protections for carers embedded in other specific legislation, and about existing complaints mechanisms carers can access.

Recommendation 2

That FACS makes arrangements with human service agencies to collate and publish their reports on compliance with the Act (as included in their annual reports). FACS will then provide an annual collated report to the Minister.

Recommendation 3

That FACS revises the existing *NSW Carers (Recognition) Act 2010 Implementation Guidelines for Public Sector Agencies* to provide explanation and clarification on section 5, the meaning of 'carer' under the Act, including:

- a) clarifying who is considered a carer under the Act. For example, confirming that carers of the following groups are covered by the definition - people with dementia and people affected by drug and alcohol issues;
- b) clarifying that section 5(3) needs to be read in context with all of section 5 (meaning of 'carer') and is not intended to exclude family members or people who live with the person they are caring for; and
- c) providing information about cultural concepts of caring.

Recommendation 4

That the NSW Carers Charter (Schedule 1 of the Act) be amended to:

- a) Update and modernise the language used to reflect current social context;
- b) Highlight the importance of considering carers' cultural and linguistic diversity, including Aboriginal culture, in policy, programs and service delivery;

- c) Acknowledge the needs of carers who work to balance their work commitments and their caring role;
- d) Combine principles (g) and (h) to clarify and strengthen the Charter's principle about young carers;
- e) Include the wording 'partners in care' in the current principle (m); and
- f) Consolidate and reorder the principles to aid clarity and logical flow.

Recommendation 5

That FACS develops promotional material about the revised NSW Carers Charter to aid its promotion and visibility.

Recommendation 6

That FACS profiles examples of good practice and commitment by agencies implementing the NSW Carers Charter.

Recommendation 7

That the obligations of public sector agencies to consult in section 7(2) be amended to state 'carers and/or bodies representing carers'.

Recommendation 8

That FACS revises supporting guidelines and materials to confirm the extent of obligations of public sector and human service agencies and clarify which organisations need to meet the obligations.

Recommendation 9

That FACS undertakes to extend compliance with the NSW Carers Charter to relevant FACS funded service providers through future funding arrangements.

Recommendation 10

That section 11 be amended to:

- a) Permit the Minister to appoint an independent Chair and deputy Chair for a fixed term and to remove the Minister from being a member of the Council; and
- b) Remove the word 'primary' from section 11(2).

4.1 Contact for more information

FACS will continue to provide information regarding the Act at:
http://www.facs.nsw.gov.au/reforms/carers/nsw_carers_recognition_act_2010

If you wish to make enquiries, you can send these to:
NSWCarersAct@facs.nsw.gov.au

Or

Ageing, Carers and the Disability Council NSW
Department of Family and Community Services
Level 4, 223 - 239 Liverpool Rd
Ashfield
NSW 2131

