THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CARER RECOGNITION BILL 2010

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Families, Housing, Community Services and
Indigenous Affairs, the Hon Jenny Macklin MP)
The Carer Recognition Bill 2010 establishes a legislative framework to increase recognition and awareness of informal carers and acknowledge the valuable contribution they make to society.

The Bill is to:

- establish a broad and encompassing definition of carer;
- establish the Statement for Australia’s Carers, which states key principles on how carers should be treated and considered;
- establish that all public service agencies should have an awareness and understanding of the Statement for Australia’s Carers and develop internal human resources policies, in so far as they may significantly affect an employee’s caring role, with due regard to the Statement for Australia’s Carers;
- establish that public service care agencies should take action to reflect the principles in the Statement for Australia’s Carers in developing, implementing, providing or evaluating care supports, consult with carers and involve them in the development or evaluation of care supports, and report on compliance with the obligations established; and
- establish that associated providers should have an awareness and understanding of the Statement for Australia’s Carers and take action to reflect the principles in the Statement for Australia’s Carers in developing, implementing, providing or evaluating care supports.

It is not intended that the Bill establish carers’ rights or create enforceable obligations binding carers, entities affected by this legislation, or the Commonwealth.

Financial impact statement

The Bill will have no financial impact.
NOTES ON CLAUSES

PART 1 – PRELIMINARY

Clause 1 – Short title

This clause provides for the Act to be cited as the Carer Recognition Act 2010.

Clause 2 – Commencement

This clause provides for the Act to commence on the day it receives the Royal Assent.

Clause 3 – Object of Act

This clause provides that the object of the Act is to increase recognition and awareness of carers and to acknowledge the valuable contribution they make to society.

Clause 4 – Definitions

This clause sets out the defined terms used in the Bill.

In particular, subclause (1) provides:

agent includes a contractor.

annual report, in relation to a public service care agency, means an annual report relating to the activities of the public service care agency that is required by a provision of the Public Service Act 1999, or by a provision of another Act that establishes the agency.

associated provider has the meaning given by subclause (2).

carer: see clause 5.

care supports means policies, programs or services directed to carers or the people for whom they care.

public service agency means an Agency within the meaning of the Public Service Act 1999.
A public service agency is defined as follows by the *Public Service Act 1999*: ‘Agency means:

(a) a Department; or  
(b) an Executive Agency; or  
(c) a Statutory Agency.’

**public service care agency** means a public service agency that is responsible for developing, implementing, providing or evaluating care supports.

**reporting period**, in relation to a public service care agency, means a period of 12 months to which an annual report of the agency relates.

**Statement for Australia’s Carers**: see clause 6.

Subclause 4(2) provides that, if a public service care agency enters into a contract or funding arrangement with another person or body (called the *first entity*) for the first entity to develop, implement, provide or evaluate care supports (called the *funded activities*), then the first entity is an *associated provider* in relation to the funded activities. Also, if the first entity enters into a contract or funding arrangement with another person or body (called the *second entity*) for the second entity to undertake all or part of the funded activities, then the second entity is an *associated provider* in relation to the funded activities or the part of the funded activities (as the case requires).

Subclause 4(3) provides that subclause 4(2) does not apply to a contract or funding arrangement that a public service care agency, or another person or body, enters into with a State or Territory.

**Clause 5 – Meaning of carer**

This clause defines *carer* for the purposes of this Bill.

Subclause 5(1) adopts a broad definition of carer. The definition encompasses all people who provide personal care, support and assistance to individuals who need support due to disability, a medical condition, including a terminal or chronic illness, mental illness or fragility due to age.

Subclause 5(2) provides that an individual is not a carer for the purpose of the Bill in respect of care, support or assistance they provide:

- under a contract of service or a contract for the provision of services; or
- in the course of doing voluntary work for a charitable, welfare or community organisation; or
- as part of the requirements of a course of education or training.
This subclause means that an individual is not a carer for the purpose of this Bill if they only provide care under these circumstances.

Subclause 5(3) provides, to avoid doubt, that an individual is not a carer simply because they:

- are the spouse, de facto partner, parent or other relative or guardian of an individual; or
- live with an individual who requires care.

For example, a foster carer is not a carer for the purpose of the Bill, unless the child being cared for needs support due to disability, a medical condition, including a terminal or chronic illness, or mental illness.
PART 2 – THE STATEMENT FOR AUSTRALIA’S CARERS

Clause 6 – The Statement for Australia's Carers

This clause provides that the Statement for Australia’s Carers is set out in Schedule 1.
PART 3 – OBLIGATIONS OF PUBLIC SERVICE CARE AGENCIES AND ASSOCIATED PROVIDERS

Clause 7 – Obligations of all public service agencies

Subclause 7(1) provides that each public service agency is to take all practicable measures to ensure that their employees and agents have awareness and understanding of the Statement for Australia's Carers.

Subclause 7(2) provides that each public service agency is to develop internal human resources policies, in so far as they may significantly affect an employee’s caring role, with due regard to the Statement for Australia’s Carers.

Clause 8 – Additional obligations of public service care agencies

This clause places additional obligations on public service care agencies as they have responsibility for policies, programs and services directed to carers or the people for whom they care and, as such, has a significant impact on the role of carers.

Subclause 8(1) provides that each public service care agency is to take all practicable measures to ensure that it, and its employees and agents, take action to reflect the principles of the Statement for Australia’s Carers when developing, implementing, providing or evaluating care supports (as defined).

Subclause 8(2) provides that public service care agencies are required to consult carers, or bodies that represent carers, on the development and evaluation of care supports (as defined).

Subclause 8(3) provides that each public service care agency must, in its annual report for each reporting period to which this proposed section applies, report on its compliance as regards clause 7 and this clause in that period.

Subclause 8(4) provides that subclause 8(3) applies, in relation to a particular public service care agency, to the first full reporting period of the agency that starts on or after the commencement of the Bill, and all subsequent reporting periods of the agency.

Clause 9 – Obligations of associated providers

Clause 9 provides that each associated provider is to take all practicable measures to ensure that its officers, employees and agents have awareness and understanding of the Statement for Australia’s Carers and take action to reflect its principles in developing, implementing, providing or evaluating care supports (as defined).
PART 4 – OTHER MATTERS

Clause 10 – Act does not create legally enforceable obligations etc.

Subclause 10(1) provides that the Bill does not create rights or duties that are legally enforceable in judicial or other proceedings.

Subclause 10(2) provides that a failure to comply with the Bill does not affect the validity of any decision, and is not a ground for the review or challenge of any decision. For example, this Bill would not affect a decision made about an individual’s qualification for carer payment under the Social Security Act 1991.

Subclause 10(3) provides that, if a public service agency, or an associated provider, is required by another law of the Commonwealth, or by a law of a State or Territory, to consider particular matters, or to comply with particular requirements, in the exercise of its functions or powers, nothing in this Bill is to be taken to require the public service care agency, or the associated provider, to act inconsistently with that law.

Clause 11 – Act not intended to exclude similar State or Territory laws

This clause provides that the Bill is not to prevail over any State or Territory legislation that establishes a Carers Charter (however described) or that otherwise provides for the recognition of carers.

Clause 12 – Regulations

This clause provides a power for the Governor-General to make regulations necessary and convenient for carrying into effect any provision of the Bill.
SCHEDULE 1 – THE STATEMENT FOR AUSTRALIA’S CARERS

This Schedule includes the Statement for Australia’s Carers, which is referred to in clause 6 of the Bill.

The Statement for Australia’s Carers articulates principles for dealing with carers in a policy, program or service delivery setting. The Statement for Australia’s Carers will not create rights, but will instead establish key principles on how public service care agencies and associated providers should treat carers when developing, implementing, providing and evaluating care supports (as defined).