

## Response to the Statutes Amendment (Attorney-General's Portfolio) Bill 2026

### About Carers SA

Carers SA is the peak advocacy body for Carers in South Australia. Raising the voice of Carers, and advocating for recognition of their rights, wellbeing and needs, is central to our work. We advocate across government, health and social services, business and communities to promote appropriate and meaningful support for Carers.

Carers SA works to ensure that the needs, wishes, values and perspectives of Carers inform government decision making, policy development and service design, with the aim of improving the lives and wellbeing of Carers across South Australia.

Carers SA is both an advocacy peak body and a service provider for Carers through the federal Carer Gateway program and a range of state funded carer programs. This dual role gives us a unique opportunity to understand the needs and experiences of Carers, identify service gaps and improvements, and engage with diverse Carers across South Australia. It also positions Carers SA to raise awareness of issues affecting Carers and to elevate their voices in policy and decision making.

Our advocacy seeks to enable Carers to:

- Have their voices heard on issues that matter to them,
- Defend and safeguard their rights,
- Be at the table as partners in decision making that affects them and the people they care for,
- Contribute to shared planning and problem solving to improve the lives of Carers.

Carers SA welcomes the opportunity to comment on the *Statutes Amendment (Attorney-General's Portfolio) Bill 2026*, particularly the proposed amendments to the

#### ***Criminal Law Consolidation Act 1935 in Parts 2, 4 and 5:***

##### ***Part 2***

***3 – Amendment of section 5AA, Aggravated offences***

***4 – Amendment of section 20A, Choking, suffocation or strangulation in a domestic setting***

• ..... *they are in a relationship involving the dependence of 1 of the people (the dependant) on the ongoing paid or unpaid care of the other (the carer).*

*And*

• ..... *a dependant is to be treated as being in a relationship with a carer for the purposes of an offence committed by the carer against the dependant, but not for the purposes of an offence committed by the dependant against the carer.*

##### ***Part 4***

#### ***6 – Amendment of section 34U, Interpretation***

• ***s34U(1)*** *a person is the carer of another person if the other person is dependent on the ongoing paid or unpaid care of the person*

- **s34U(1)**, definition of member of a person's family, (i) subject to subsection (3), a carer of the person
- **s34U (3)** For the purposes of paragraph (i) of the definition of member of a person's family in subsection (1), a carer is to be treated as a member of a person's family for the purposes of an offence committed by a carer against the person, but not for the purposes of an offence committed by the person against the carer.

## Part 5

### 7 – Amendment of section 8, Meaning of abuse, domestic and non-domestic

- **Section 8 (10)**, they are in a relationship involving the dependence of 1 of the persons (the dependant) on the ongoing paid or unpaid care of the other person (the carer).
- **Section 8 (10)** For the purposes of subsection (8)(k), a dependant is to be treated as being in a relationship with a carer for the purposes of an offence committed by the carer against the dependant, but not for the purposes of an offence committed by the dependant against the carer.

Carers SA fundamentally rejects the interpretation of a *Carer* as a person providing ongoing paid or unpaid care where another person is dependent on that care, and the subsequent treatment of that relationship as one that can be characterised as family for the purposes of criminal law.

Carers SA considers these amendments to create circumstances for the purposes of criminal law that do not reflect either the lived reality of caring relationships or the established legal distinction between unpaid care, paid care and family relationships.

To establish the context for this response, it is necessary to clarify the distinct role of unpaid family, friend and kinship Carers, and the need for greater recognition of the impact of caring on their health and wellbeing.

Carers SA challenges the use of language that equates unpaid family, friend and kinship Carers with the paid care workforce. This framing fails to acknowledge:

- The depth and complexity of unpaid caring relationships,
- The nature of care and its impact on Carers own health and wellbeing,
- The limited choice and control many Carers have over their own lives,
- The reality that many Carers themselves live with disability, chronic illness, mental ill health or age-related frailty while continuing to provide care,
- The experiences of Carers who may themselves be subjected to abuse by the person they support.

## ❖ Key issues in response to the amendments

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### Conflation of professional care with family and domestic relationships

The amendments define a Carer *as a person who provides ongoing paid or unpaid care to another person*. This collapses two legally distinct categories, informal unpaid care relationships and paid employment-based care relationships. Australian law has historically treated these categories differently.

For the purpose of this response, the definition of Carer recognised by peak bodies, Carer service providers and funders is reflected in Carer Recognition legislation, which recognises Carers in a caring relationship as:

- Unpaid.
- In a family, friendship or kinship relationship, with an existing personal relationship that may or may not involve family membership.
- Providing care because of disability, medical condition, mental illness or frailty due to age.
- Under the [Carer Recognition Act 2010 \(Cth\)](#) a carer is recognised as an individual who provides personal care, support and assistance to someone who needs it due to disability, medical condition, mental illness, or frailty due to age.
- Under the newly proclaimed [SA Carers Recognition \(Miscellaneous\) Amendment Act 2025 \(SA\)](#), commencing on 1 July 2026, Carers are distinguished from employees:

**5 – Meaning of care relationship and carer**

*(1) Subject to this section, a person is in a care relationship with another person for the purposes of this Act if the first person (the carer) provides personal care, support or assistance to the other person for 1 or more of the following reasons:*

- (a) the other person has a disability;*
- (b) the other person is experiencing mental ill health;*
- (c) the other person has a medical condition (including a terminal or chronic illness, or dementia);*
- (d) the other person is frail due to age;*
- (e) the other person is experiencing alcohol or other drug dependence;*
- (f) any other reason prescribed by the regulations.*

And explicitly states that:

*(2) A person is not in a care relationship with another person if the person provides personal care, support or assistance to that person*

- (a) under a contract of service or a contract for the provision of services*

Both Commonwealth and state Carer Recognition legislation therefore exclude care provided under a contract of service or contract for the provision of services.

**There is a clear legislative demarcation. Unpaid caring is treated as a social and personal relationship, while paid care work is labour provided under contractual and regulated employment arrangements.**

The context of paid care workers is antithetical to that of unpaid Carers. Paid care workers:

- Provide services under employment or contractual arrangements.
- Work within standards, guidelines and employer, sector and government regulation.
- Have access to training, supervision, reporting pathways and escalation processes.
- May access leave, adjust shifts, change clients or change jobs.
- Are entitled to workplace psychosocial safety protections and employer obligations under legislation.
- Do not have a familial or ongoing personal relationship with the person or their family outside their paid work.

Carer Recognition legislation is clear, Carers and paid care workers are not the same. Given this distinction, and for the purposes of this response the terms:

- ❖ **Carer** will be used to refer to family/friend/kinship caring relationships that are unpaid and have an ongoing personal relationship with the person as defined by the Carer Recognition (Miscellaneous) Amendment Act (SA) 2025 and the Carer Recognition Act 2010(Cth).

- ❖ **Care Worker** will be used to refer to paid care and support workforce who may provide support within the person's home and/or other care settings and who do not have a personal relationship with the person outside of their paid work.

## 1. The Bill is inconsistent with the newly proclaimed *Carers Recognition (Miscellaneous) Amendment Act 2025 (SA)*

The amendments outlined in this Bill are inconsistent with the newly proclaimed [Carers Recognition \(Miscellaneous\) Amendment Act 2025 \(SA\)](#)

That Act includes related amendments to the following legislation that directly conflict with the approach proposed in this Bill:

### **Schedule 1 – Related Amendments**

#### **Part 1 – Amendment of Criminal Law Consolidation Act 1935**

##### **1 – Amendment of section 5AA—Aggravated offences**

**Section 5AA(4a) (k)**, delete "the carer (within the meaning of the Carers Recognition Act 2005) of" and substitute:

*in an ongoing care relationship (within the meaning of the Carers Recognition Act 2005) with*

##### **2 – Amendment of section 20A—Choking, suffocation or strangulation in a domestic setting**

**Section 20A(3) (k)**, delete "the carer (within the meaning of the Carers Recognition Act 2005) of" and substitute:

*in an ongoing care relationship (within the meaning of the Carers Recognition Act 2005) with*

#### **Part 2 – Amendment of Evidence Act 1929**

##### **3 – Amendment of section 34U – Interpretation**

**Section 34U (1)**, definition of member of a person's family, (i), delete "a carer of the" and substitute:

*a person who is in an ongoing care relationship with*

#### **Part 3 – Amendment of Intervention Orders (Prevention of Abuse) Act 2009**

##### **4 – Amendment of section 8 – Meaning of abuse – domestic and non-domestic**

**Section 8(8)(k)**, delete "the carer (within the meaning of the Carers Recognition Act 2005) of" and substitute:

*in an ongoing care relationship (within the meaning of the Carers Recognition Act 2005) with*

These amendments recognise care relationships without redefining paid care workers as members of a person's family. It specifically states that care under contractual arrangements is outside of the definition of Carer or a care relationship.

By contrast, the current Bill significantly departs from the established policy and legislative distinction between family and kinship care, and employment or contract-based service delivery. In doing so, it creates a category error by treating a contractual service relationship as a familial one.

## 2. Assumption that 'dependence' is equivalent to a family relationship

Firstly, Carers SA is concerned about the use of the term 'dependence' in the Bill and the assumption that a person's requirements for care support means the person is 'a dependent'. It suggests that all aspects of that person's life make them dependent. This language is no longer the contemporary view and is inconsistent with a human rights recognition and approach in legislation, policy and models of care and support in disability, aged care or health systems and services today.

Given its use however, we identify a fundamental flaw in the assumption that a person's 'dependence' on another for ongoing care establishes a familial relationship.

This perceived 'dependency' does not equate to a family membership. A person may rely on functional support, activities of daily living, personal care, health care, emotional support, transport or attendance at appointments. Some people may be at greater risk because of the type or intensity of support they require and the environment in which they receive care. However, 'dependency' is not itself a marker of incapacity, altered legal status or family membership.

### **Equating care 'dependency' with family relationship risks reinforcing coercive and protectionist models of disability and ageing that contemporary policy frameworks have sought to dismantle.**

Across disability, ageing and healthcare, modern policy frameworks are grounded in rights-based principles that uphold autonomy, dignity, self-agency, choice, control and independent living. These frameworks do not require paid care workers to be classified as family members in order to recognise or address assault, abuse, neglect or exploitation.

### **3. Defining family status by virtue of workplace location**

Further to 'dependence' is the issue of defining a paid care worker as a *member of a person's family* because they provide paid care which occurs in a domestic context.

The relational context remains contractual. There is no requirement, inference or implication of kinship, emotional bond, shared domestic life, community or friendship or cohabitation as family. Nor is there any requirement for the relationship to continue beyond paid service delivery. There is no obligation for this relationship to be ongoing. In practice, it ends when the paid arrangement ends. This interpretation creates legal inconsistency. In Australian law, family membership generally arises through marriage, de facto relationship, parentage, children's welfare or kinship, including under the [Family Law Act 1975 \(Cth\)](#) and domestic partnership or familial ties under state domestic violence legislation. It does not arise by virtue of employment.

By deeming paid care workers to be *family members* for the purpose of domestic violence related offences, the amendment introduces a legal fiction not grounded in family law, contract law, employment law or established safeguarding frameworks. This undermines legal coherence.

### **4. A directional classification of abuse**

Most significant is the apparent intent to apply a one directional classification of abuse under domestic violence law. A dependant is treated as being in a relationship with a Carer for offences committed by the Carer against the dependant, but not for offences committed by the dependant against the Carer. This creates a one directional legal fiction in which the relationship exists only when the merged definition of Carer is the alleged perpetrator. It does not exist when the Carer is the alleged victim. This asymmetry suggests the classification is being constructed solely as an instrument to elevate offences by paid care workers into aggravated or domestic violence categories.

## ❖ Implications

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The issues raised have the potential for far reaching consequences that may not be intended by the amendments and may have broad negative impacts. Carers SA identifies the following implications.

### Blurring regulatory boundaries between workplace safeguarding and family violence

By defining paid care workers as family members, the workplace is legally reframed as a domestic relationship space and employment misconduct is reframed as domestic violence. This risks distorting domestic and family violence data, blurring the boundaries between workplace safeguarding and family violence systems, and undermining sector specific safeguarding mechanisms.

There is a need for credible data that effectively recognises the complexity of care delivery, environments of care and the range of discrete and distinct roles of care providers. Such data needs to be designed in such a way that it sufficiently records complex, often nuanced relationships but does not conflate these relationships but provides greater validated and comprehensive information to form policy, service delivery and legislation.

Domestic and family violence legislation is premised on power and control dynamics within intimate, familial or kinship relationships. Paid care worker relationships may also involve power imbalance, but are regulated through employment contracts, professional standards, codes of conduct, safeguarding legislation, screening, mandatory reporting, complaints processes, auditing and compliance mechanisms, and oversight by sector regulators and safeguarding Commissions.

Expanding the meaning of *family* to include paid care workers risks diluting the conceptual clarity of family violence frameworks, which depend on relational intimacy and personal connection, rather than contractual service provision.

### Blurred civil liability boundaries

If a paid care worker is legally treated as a family member, civil liability boundaries may become unclear. There may also be unintended interaction with care workers compensation legislation, vicarious liability principles and professional indemnity coverage.

The consequences for unpaid family Carers may be substantial and were surely never intended to be captured by the Bill. Any outcome in which family members may require professional indemnity insurance to care for their own relatives in their own home would be untenable. These potential consequences require careful statutory mapping.

### Presumption of the Carer as the sole perpetrator of abuse

The impact of a Carer's rights to safety are at risk due to the one directional classification of abuse under domestic violence definitions where the proposed merged definition of carers are classified as family only for the purposes of alleged abuse but not when the victim. This risks reducing recognition of violence against both unpaid Carers and paid care workers. It limits reciprocal protections where the Carer or care worker is the victim of abuse by the person they support and reinforces a presumption that the Carer or care worker is always the aggressor.

For paid care workers, this may be inconsistent with work health and safety obligations, which recognise violence against workers as a workplace risk. For unpaid family Carers, it continues to ignore the impact on Carers own health, wellbeing and safety. This is covered in more detail later in the submission to provide a context and raise awareness of its impact on unpaid Carers.

## Erosion of the identity and recognition of Carers

There is a significant risk of further eroding the identity of unpaid Carers in policy. Carers are already under recognised and many do not identify themselves as Carers. They often understand their role in terms of family, duty and responsibility, and may not access the services and supports they need.

**Carer organisations have long advocated for recognition of Carers and the value of unpaid care, both to the people they support and in terms of the economic cost that would arise if that care had to be replaced by paid services.**

By equating paid care workers with unpaid Carers, this Bill undermines the conceptual foundation of Carer recognition legislation and policy as established in state and federal Carer Recognition Acts. It also weakens commitment to the [National Carer Strategy 2024–2034](#) and the National [Carer Strategy Action Plan 2024–2027](#), which are directed toward supporting Australia’s unpaid Carers.

## ❖ Carers

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Carers, and the people they care for, are ordinary people who often find themselves in circumstances they did not choose, with significant emotional and practical consequences for their lives in both the short and long term.

**There are 3 million Carers in Australia<sup>1</sup>. In South Australia there are approximately 245,000 Carers<sup>2</sup>. Unpaid Carers are estimated to save governments \$71.9 billion in Australia each year.**

Their caring relationship is distinct from, and separate to, the role and function of Care Workers. Carers may be direct or extended family members, including parents, siblings, aunts, uncles and grandparents, or other kinship relations. They may also be friends or neighbours who have taken on a caring role. They are not paid, are often untrained, do not have a job description, and do not work under formal policies, standards or guidelines. They are not employed by accredited service providers and do not have the protections, oversight or accountability structures available to the paid care workforce. They cannot take sick leave or simply take a day off.

Carers fill the gaps in services and support even where the person they care for receives formal assistance. Carers themselves often have little access to routine respite. They cannot step away from their caring responsibilities when those responsibilities become too difficult.

Carers often also live with disability, health complex health issues, including mental distress and mental illness and are aging. They are often in the same demographic as the people they care for.

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<sup>1</sup> Carers Australia

<sup>2</sup> Carers SA

The ABS [Disability, Ageing and Carers, Australia 2022](#) findings reported:

- Around one in eight (11.9%) Australians provide unpaid care to people with disability and older people
- Almost two in five Carers (38.6%) had disability, an increase from 32.1% in 2018
- More Carers aged 65 years and over had disability (59.6%), compared with 31.5% of Carers aged 15 to 64 years
- Of the 1.2 million primary Carers, 43.8% had disability
- 10% cent of Carers are supporting people with mental illness<sup>3</sup>.

The Carers Australia [2024 National Carers Wellbeing Survey](#) reported that:

- 28.2% of more than 9,000 survey respondents were identified as having the highest probability of serious mental illness on the Kessler Psychological Distress Scale
- This increased to 37.3% among Carers supporting a person with mental illness
- Psychological distress scores correlated with high loneliness and low satisfaction with personal relationships and community inclusion
- 72.8% of these Carers had not accessed psychological support in the previous 12 months despite scoring highly on the Kessler scale

An international review found that the proportion of Carers experiencing suicidal ideation ranged up to 71%, and also reported evidence of suicide attempts and deaths, with 1 in 6 Carers likely to attempt suicide and 1 in 10 Carers already having attempted suicide<sup>4</sup>. Carers are more than twice as likely to have low wellbeing and experience higher rates of psychological distress than the average Australian.

Where unpaid Carers are defined within the same relational category as paid care workers, negative implications are likely to include, but are not limited to:

- Minimisation of abuse against Carers, and continued invisibility of Carers as victims.
- Increased legal and emotional scrutiny without corresponding structural protections.
- Under recognition of abuse of Carers, including coercive control and other forms of abuse.
- Added psychological impact on Carers who are already under stress and burnout.
- Collapse of care arrangements where safety seeking results in disrupted care without continuity safeguards.
- Continued lack of recognition of unpaid Carers as a distinct social role.

**Carers SA strongly supports legislative changes in parallel to regulatory practices that better ensure safeguards for people receiving care, whether paid or unpaid, and who are at greater risk of coercion, abuse, neglect and violence. We believe however that there are alternative legislative approaches to these safeguards that do not require the conflation of unpaid Carers with paid workforce.**

We provide the following alternatives for consideration.

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<sup>3</sup> Mind Australia / University of Queensland. *The economic value of informal mental health caring in Australia* (2017).

<sup>4</sup> Carers Australia. *The value of informal care in 2020*. Deloitte Access Economics

## ❖ Alternative Legislative Approaches

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### Recognise aggravating circumstances through abuse of trust

If the legislative objective is to recognise heightened risk arising from care, that objective can be achieved without redefining paid care workers as members of a person's family. These recommendations are intended to strengthen protections for people receiving care, including older people, by ensuring abuse of trust in care relationships is recognised as an aggravating circumstance.

Criminal law commonly recognises aggravating circumstances where an offender abuses a position of trust, authority or power. This directly addresses the risk factor while preserving conceptual clarity between family/kinship relationships and contractual and regulated employment relationships. Specific aggravating factors for abuse of trust or authority should be included in the legislation where the risk of abuse may be heightened by:

- Control over daily living supports.
- Access to intimate personal information.
- Physical proximity and privacy.
- Influence over decision making.
- Isolation and lack of close support networks or family.

These factors create risk not because the relationship is familial, but because it involves trust and authority.

Australian criminal law already recognises abuse of trust as an aggravating factor in multiple contexts, including sexual offences, guardianship arrangements and institutional care settings. The relevant principle is misuse of entrusted power, not kinship. By focusing on abuse of trust, the legislation could capture misconduct by both paid care workers and unpaid Carers without merging their definitions, preserve consistency with safeguarding frameworks and Carer Recognition legislation, and maintain the doctrinal integrity of domestic and family violence law.

#### **Recommendation 1**

- *Carers SA recommends addressing increased risk factors through aggravation mechanisms grounded in abuse of trust, rather than by reclassifying employment relationships as familial.*

#### **Recommendation 2**

- *Carers SA recommends inserting a standalone aggravating circumstance provision focused on abuse of trust and authority, without amending the definition of member of a person's family, including where the victim was reliant on the offender for ongoing personal care, support or assistance, whether paid or unpaid, and the offender abused that position.*

### Refer to care service providers without redefining family

The current amendment treats paid care workers as members of a person's family for limited purposes. This approach risks blurring the boundary between domestic violence law and workplace misconduct and undermining established statutory definitions of family. It further risks creating interpretive inconsistency across legislation and minimising recognition of unpaid Carers and the important role they play.

This can be addressed by creating a specific definition that identifies care service providers as distinct from intimate familial, friendship and kinship relationships, and from shared domestic life. Legislation

should name care service providers or paid care workers as a discrete category where relevant, rather than subsuming them within the meaning of family.

A care service provider would exist where the person is paid under a contract of service or a contract for the provision of services. This would be consistent with *the Carers Recognition (Miscellaneous) Amendment Act (SA) 2025*.

This approach preserves definitional clarity, reflects the true legal character of the relationship, and addresses risk without distorting the nature of family relationships.

### **Recommendation 3**

- *Carers SA recommends replacing the erroneously merged definition of paid care workers and unpaid Carers with separate and distinct categories and definitions in all relevant sections and clauses of the Criminal Law Consolidation Act 1935 identified in the Bill, including:*

#### **Part 2**

*3 – Amendment of section 5AA, Aggravated offences*

*4 – Amendment of section 20A, Choking, suffocation or strangulation in a domestic setting*

#### **Part 4**

*6 – Amendment of section 34U—Interpretation 1, 2 and 3*

#### **Part 5**

*7 – Amendment of section 8—Meaning of abuse—domestic and non-domestic*

## **Align with existing safeguarding frameworks, regulatory standards and rights conventions**

Paid care workers and service providers operate within safeguarding frameworks that already recognise a greater risk of vulnerability of the people they support and the risks associated with reliance on care, across disability, ageing, aged care, health and mental health systems. They recognise the need for strict regulation of worker conduct and the importance of safeguarding in service relationships. They exist within quality and safety standards, regulatory oversight and international human rights conventions. They are supported by safeguarding Commissions and regulatory bodies, worker screening systems, mandatory reporting obligations and auditing processes. Such frameworks, standards, regulatory compliance and oversight are already operationally consistent with existing criminal, employment and compliance law. Redefining paid care workers as family is an unnecessary and convoluted approach that risks legislative inconsistency, including with recent amendments to Carer Recognition legislation. It is cumbersome and does little to improve or strengthen oversight or preventative safeguards.

A more coherent approach is for criminal law to complement, rather than disrupt, these regulatory systems. For example, aggravation could be informed by whether the paid care worker was subject to statutory or regulatory obligations in relation to the provision of care, support or services to the victim, and whether those obligations were breached in the commission of the offence.

This approach would integrate safeguarding concepts, recognise professional regulatory standards, strengthen accountability of service providers and reinforce existing safeguarding mechanisms. It would also avoid merging unpaid Carers with paid care workers.

### **Recommendation 4**

- *Carers SA recommends, in conjunction with the preceding recommendations, that criminal law recognise care service providers as regulated service relationships, and that a further aggravating circumstance arise from breach of trust within that regulated context.*

## Maintain Carer policy integrity and adherence to Carer Recognition legislation

**Of significant concern is the disregard for Carer recognition and the misinterpretation of the meaning of the care relationship. In the statute amendments, dependency is used as the basis for arguing that dependency defines family. This is not the intent or meaning of a care relationship in either Commonwealth or state Carer Recognition legislation.**

Carer legislation clearly distinguishes between unpaid Carers embedded in personal relationships and paid care service providers. Conflating these roles weakens the legislative and policy imperative to recognise unpaid Carers. It undermines decades of advocacy differentiating informal care from service delivery and drawing attention to the role of Carers are advocates for the people they care for across health, disability, aged care, education and welfare services and supports. It also creates confusion in public policy and distorts statistical reporting and research in an area where identification of Carer harm is already limited.

### Recommendation 5

- *Carers SA strongly recommends that the Attorney-General's Portfolio Bill adhere to and protect the integrity of both Carer legislation and policy frameworks, as well as domestic and family violence legislation and frameworks, by maintaining clear legislative distinctions between unpaid Carers and paid service providers.*

## ❖ Co-signatories to this submission

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