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Submission No. 999  
(Inq into better support for carers)



**Human Rights and Equal  
Opportunity Commission**  
*humanrights.gov.au*

**Submission of the  
HUMAN RIGHTS AND EQUAL OPPORTUNITY  
COMMISSION (HREOC)**

**to the**

**House of Representatives Standing Committee  
on Family, Community, Housing and Youth**

**on the**

**Inquiry into Better Support for Carers**

**15 July 2008**

**Human Rights and Equal Opportunity Commission**

**Level 8, 133 Castlereagh St**

**GPO Box 5218**

**Sydney NSW 2001**

**Ph. (02) 9284 9600**

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# Introduction

1. The Human Rights and Equal Opportunity Commission ('HREOC') makes this submission to the House of Representatives Standing Committee on Family, Community, Housing and Youth ('the Committee') in its Inquiry into Better Support for Carers ('the Inquiry').
2. HREOC is Australia's independent national human rights institution.<sup>1</sup>
3. This submission draws on recent work undertaken by HREOC in relation to legal protection and workplace policies to support carers<sup>2</sup> in the workplace, and improved access to services and supports for people with disability to live, work and participate in the community. In particular, this submission draws on:
  - findings and recommendations developed during HREOC's *Women, Men, Work and Family* Project, contained in: *Striking the Balance: Women men, work and family Discussion Paper 2005* ('*Striking the Balance (2005)*')<sup>3</sup> and *It's About Time: Women, Men, Work and Family Final Paper 2007* ('*It's About Time (2007)*');<sup>4</sup>
  - *Not for Service: Experiences of injustice and despair in mental health care in Australia (2005)*;<sup>5</sup>
  - *WORKability II: Solutions – People with Disability in the Open Workplace* ('*WORKability II (2005)*');<sup>6</sup> and

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<sup>1</sup> HREOC is established by the *Human Rights and Equal Opportunity Commission Act 1986* ("HREOC Act"). Sections 11 and 31 of the HREOC Act set out HREOC's functions relating to human rights and equal opportunity in employment respectively. HREOC also has functions under the *Commonwealth Sex Discrimination Act 1984*, *Racial Discrimination Act 1975*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004*.

<sup>2</sup> Following the definition adopted by the Inquiry, the term 'carers' is used in this submission to mean 'individuals providing unpaid support for others with ongoing needs due to a long-term medical condition, a mental illness, a disability or frailty'.

<sup>3</sup> Appendix 1

<sup>4</sup> Appendix 2

<sup>5</sup> *Not for Service: Experiences of injustice and despair in mental health care in Australia (2005)*. A report of consultations by the Mental Health Council of Australia and the Brain and Mind Research Institute in association with the Human Rights and Equal Opportunity Commission. Available at

<http://www.mhca.org.au/notforservice/>

- HREOC's Submission to the Australian Government Department of Education, Employment and Workplace Relations on the Discussion Paper: National Employment Standards Exposure Draft (2008).<sup>7</sup>

## Summary

- HREOC acknowledges the valuable contribution of carers to the Australian community and strongly supports government efforts to provide greater support and recognition to carers.
- HREOC has identified support for carers in paid employment as a key area in which further government funding, support and policy development is required. HREOC has undertaken considerable work in this area and encourages the Committee to consider our previous reported findings and recommendations particularly those contained in *It's About Time (2007)*.
- Many carers are disadvantaged in seeking and retaining paid work compared to people without caring responsibilities. HREOC recommends this disadvantage be redressed by increasing legal protections for carers facing discrimination in employment, extending legislative entitlements to personal/carer's leave, introducing a new unpaid Carer's Leave Standard for employees who need to attend to the care of a seriously or terminally ill dependent, and supporting employers to provide flexible working arrangements and carer-friendly workplace policies.
- HREOC also outlines a range of additional practical measures to support carers including funding the collection of comparable data on different types of care arrangements across the life cycle.
- HREOC recognises that a strategy to 'assist carers to access the same range of opportunities and choices as the wider community, including strategies to increase the capacity for carers to make choices within their caring roles,

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<sup>6</sup> Available from

<[http://www.humanrights.gov.au/disability\\_rights/employment\\_inquiry/final/index.htm](http://www.humanrights.gov.au/disability_rights/employment_inquiry/final/index.htm)> at 8 July 2008

<sup>7</sup> Appendix 3

transition into and out of caring, and effectively plan for the future' is to improving access to supports and services for people who are receiving care. This will not only enable many carers to participate in employment and have wider opportunities and choices due to a reduction in caring responsibilities, but also potentially enable more people with disability to participate in the social and economic life of the community.

- HREOC makes seven recommendations to the Committee:

## ***Recommendations***

4. HREOC recommends that the Committee support implementation of the practical measures to improve support for carers outlined in recommendations 18, 29, 31, 32, 43 and 44 of *It's About Time (2007)*.
5. HREOC recommends that the Australian Government strengthen legal protection for carers in employment. HREOC urges the Committee to consider possible legislative models for recognising carer's rights as part of the current Inquiry.
6. HREOC recommends that the Australian Government extend legislative entitlements to personal/carer's leave by increasing the Personal/Carers Leave Standard from 10 days to 20 days per annum with 10 days to be non-accumulative.
7. HREOC recommends that the Committee examine HREOC's previous proposal for a new unpaid Carer's Leave Standard to be made available to employees who need to attend to the care of a seriously or terminally ill dependent. Like the Parental Leave Standard, this new Standard should be job protected and available to employees who have 12 months continuous service.
8. HREOC recommends that the Australian Government provide greater support for employers to provide carer-friendly workplace policies and flexible working arrangements to employees with all forms of family and caring responsibilities and to employees with a disability.

9. HREOC recommends that the Australian Government fund the collection of comparable data on different types of care arrangements for children, older people and people with disability requiring care, including information on the employment experiences of carers in order to measure and inform progress in this area.
10. HREOC recommends that the Australian Government uphold the rights of people with disability to have choice, live with dignity and work and participate in the community as outlined in the *Convention on the Rights of Persons with Disability*, through the implementation of whole-of-government responses in the National Mental Health and Disability Employment Strategy and National Disability Strategy. Both strategies are currently in various stages of development. While the National Mental Health and Disability Employment Strategy seeks to address the myriad barriers for people with disability and employers, the National Disability Strategy will attempt to address the complex needs of people with disability and their carers.

## **HREOC's Previous Work on Supporting Carers**

11. HREOC welcomes the opportunity provided by the Inquiry to examine the role and contribution of carers, the barriers they experience in relation to social and economic participation, and the practical actions and strategies that would increase support for carers in their role and improve their ability to participate fully in public life.
12. HREOC has undertaken considerable work in this area. Most recently, HREOC's *Women, men, work and family* project examined the relationship between all forms of family responsibilities – including carer responsibilities – and paid work. In 2005, HREOC released a discussion paper, *Striking the Balance* (2005). Following community consultations and the consideration of public submissions, in 2007 HREOC released the Final Paper on the project *It's About Time* (2007).

13. *It's About Time (2007)* contained a number of findings and recommendations relevant to the Inquiry, many of which will be outlined in this submission.<sup>8</sup> However this submission focuses particularly on those recommendations relevant to the participation of carers in employment, given that this policy area has received relatively little attention despite its importance for the social and economic wellbeing of carers.
14. HREOC acknowledges the many federal, state and territory government initiatives that provide support and recognition to carers such as income support payments, respite services and financial assistance. However, support for carers in paid employment is a key area in which further government funding, support and policy development is required.
15. More than 2.6 million Australians provide informal care to a person who needs assistance due to disability, chronic illness or old age and almost half a million of these are primary carers.<sup>9</sup> It is estimated that, in 2005 alone, carers provided approximately 1.2 billion hours of care at an estimated replacement value of \$30.5 billion.<sup>10</sup> In addition to the economic value of care, caring work is also highly valuable because it is central to a cohesive and functional society. Care of course has intrinsic, personal value for the those receiving care and those providing care, many of whom do so because of feelings of love and familial duty

## **Access to services and supports for people receiving care**

16. While greater recognition and support for carers is required, this recognition must not be to the exclusion of addressing the needs and rights of those receiving care. For example, one of the inadvertent outcomes of a policy focus on people with

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<sup>8</sup> For more detail on HREOC's findings and recommendations see in particular Chapters 2, 3, 4, 8 and 10 and Recommendations 2, 4, 5, 6, 13, 16, 17, 18, 29, 31, 32, 41, 42, 43, 44 and 45.

<sup>9</sup> Access Economics *The Economic Value of Informal Care*, Report for Carers Australia, August 2005, i.

<sup>10</sup> *ibid*

disability as people requiring care can be a perception that people with disability are only recipients of care and income support.<sup>11</sup>

17. Another inadvertent outcome is the perception that people requiring care are not capable of contributing or participating to the life of the Australian community. Both people with disability and their carers benefit by improving the independence of people with disability.
18. HREOC has undertaken considerable work in this area, particularly in relation to people with disability and the right to employment.
19. HREOC's National Inquiry into Employment and Disability found that many people with disability want to work and are capable of work but are unable to find employment for a variety of reasons.<sup>12</sup>
20. The final report of the Inquiry, *WORKability II: Solutions*, produced a series of recommendations aimed at better enabling people with disability to secure and retain employment.<sup>13</sup> Recommendation 30 suggested the Commonwealth government lead the development of a National Disability Strategy, with a whole-of-government approach, to tackle the myriad barriers for people with disability and employers.
21. For people with mental illness, the national consultations conducted between 2003-2005 with the Mental Health Council of Australia and the Brain and Mind Institute also revealed that due to an inability of people with mental illness and their carers to access necessary services and supports, drastic consequences followed for all concerned:

*What this cumulative data shows is that after 12 years of mental health reform in Australia, any person seeking mental health care runs the serious risk that his or her basic needs will be ignored, trivialised or neglected. The adverse health, social and economic effects of Australia's mental health care system falls largely on those with recurrent or*

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<sup>11</sup> Disability Council of NSW, Submission 76, 1 (submission to HREOC's *Women, men, work and family* Project).

<sup>12</sup> See *Workability I: Barriers. Employment of people with disability in the open workplace. Interim report of the National Inquiry into Employment and Disability*. Available at

[http://www.humanrights.gov.au/disability\\_rights/employment\\_inquiry/index.htm](http://www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm)

<sup>13</sup> See *WORKability II*



*chronic disorders and their families and carers. These are some of the most vulnerable people in our community.*

*In the short-term, the system as it currently operates may result in a failure to provide basic medical and psychological health care, inappropriate use of short term seclusion, confinement or over-reliance on sedating medications. Longer-term, the impact may include deteriorating mental health and wellbeing, suicide, higher rates of homelessness, prolonged unemployment, incarceration or increased financial burden and poverty. Failure to attend to the urgent needs of those with severe mental disorders on a systemic basis may also lead to infringements of the wider rights of the community to reside in a safe and secure environment. For many people, ongoing financial and personal support from family and friends is the only real safeguard against these outcomes.<sup>14</sup>*

22. *Not For Service* details numerous accounts of negative repercussions that followed as a result of people with mental illness and their families and carers being unable to access the necessary services and supports when needed. These failures in service delivery were noted across all Australian States and Territories.
23. Numerous recommendations were made to address the situation to improve access to community-based supports and services and to promote and protect the right of people with mental illness.<sup>15</sup>
24. It is also important to note that many people with disability are also carers - close to 40 per cent of primary carers<sup>16</sup> report that they have some kind of disability.<sup>17</sup>

## **Legal Protection for Carers**

25. Australia has a range of obligations at both domestic and international levels relevant to people with care responsibilities.<sup>18</sup>

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<sup>14</sup> *Not for Service*, Executive summary, pages 14-15.

<sup>15</sup> *Not for Service*, Recommendations, pages 17 and 18

<sup>16</sup> Australian Bureau of Statistics *Australian Social Trends 2005* Cat No 4102.0, 39. The ABS use the term "primary carer" to refer to a person aged 15 years or over who provides the majority of the ongoing informal (unpaid) assistance to a person with disability who has a limitation in one of the core activity areas of self care, communication or mobility.

<sup>17</sup> Compared with 21 per cent of people aged 15 years and over who weren't primary carers. The higher rate of disability among primary carers partly reflects their older age profile. Nine per cent of all primary carers had a disability with a profound or severe core activity limitation. Consistent with this, eight per cent of primary carers were receiving help with core activities, as well as giving it: Australian Bureau of Statistics *Australian Social Trends 2005 Services and Assistance: Carers* Cat No 4102.0 July 2005.

26. Carers may find themselves disadvantaged in the workplace compared to workers without caring responsibilities. Drawing on the research and consultation conducted in preparation of *It's About Time (2007)*, HREOC recommend additional legal protection for carers in paid employment in two key areas: protection from discrimination and additional unpaid carer's leave.

## ***Protection from Discrimination***

27. Anti-discrimination laws covering employment provide individual workers with a legal avenue for redress for discriminatory acts and practices, and act as public policy statements of the right to equality in employment and as such, promote the principles of non-discrimination to individuals and institutions. These twin capacities of anti-discrimination laws should be central to any consideration of law reform to better protect carers in employment.
28. The *Disability Discrimination Act 1992 (Cth)* prohibits discrimination against a worker because they are an "associate" of a person with disability.<sup>19</sup> The term "associate" includes a carer.<sup>20</sup> The *Disability Discrimination Act* makes it unlawful for an employer to discriminate against a person on the ground of a disability of any of that person's associates:<sup>21</sup>
- in the arrangements made for determining who should be offered employment
  - in determining who should be offered employment
  - in the terms or conditions of employment
  - by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment
  - by dismissing the employee, or

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<sup>18</sup> *It's About Time (2007)* 47-51

<sup>19</sup> Part 2, Division 1

<sup>20</sup> Section 4 *Disability Discrimination Act 1992 (Cth)*

<sup>21</sup> Sections 15(1) and (2)

- by subjecting the employee to any other detriment.
29. However, the *Disability Discrimination Act* also provides the employer with a defence to a claim of unlawful discrimination in circumstances where:<sup>22</sup>
- a person is unable to carry out the inherent requirements of the particular employment and
  - unjustifiable hardship would be imposed upon an employer in order for them to avoid discriminating against the aggrieved person.
30. In *It's About Time (2007)*, HREOC recommended that the Australian Government introduce a *Family Responsibilities and Carer's Rights Act* in order to prohibit direct and indirect discrimination on the grounds of family and caring responsibilities in employment. The new Act would also provide workers with family or caring responsibilities, a right to request a variation of working arrangements with a corresponding duty on employers to reasonably consider these requests. A refusal to reasonably consider a request could then be the subject of a complaint to HREOC.<sup>23</sup>
31. Since this time, the Australian Government has released its proposed new National Employment Standards ('NES'). The proposed Flexible Working Arrangements NES provide those with 'responsibility for the care of a child under school age' the right to request a variation of working arrangements.<sup>24</sup>
32. HREOC recommends that the new proposed Flexible Working Arrangements NES be extended to men and women with *any form of caring responsibilities* and encompass a corresponding duty on employers to reasonably consider these requests.<sup>25</sup>
33. In light of the limited nature of the NES, in HREOC's view, there is still a need for stronger legislative protection for carers, particularly with regard to their right

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<sup>22</sup> Section 15(4)

<sup>23</sup> See *It's About Time (2007)*, 61-64 for more information about how the right should operate

<sup>24</sup> Division 3 of the National Employment Standards,

<<http://www.workplace.gov.au/workplace/Publications/News/NewNationalEmploymentStandards.htm>> at 8 July 2008

<sup>25</sup> For further discussion see HREOC's Submission on the National Employment Standards Exposure Draft, 8-11

to employment. HREOC urges the Committee to consider possible legislative models for recognising carer's rights as part of the current Inquiry. HREOC will be addressing this issue more fully in our submission to the current Senate Legal and Constitutional Affairs Committee Inquiry into the *Sex Discrimination Act 1984* (Cth).

### ***Personal/Carer's Leave***

34. Under the proposed Personal/Carer's and Compassionate Leave NES, employees (other than casual employees) are entitled to 10 days of paid personal/carer's leave for each year of service and two days of unpaid carer's leave per occasion if paid leave is exhausted. Casual employees are entitled to two days of unpaid carer's leave per occasion.
35. An increase in the amount of personal/carer's leave available under the NES is a necessary support for employees with increasing caring responsibilities. HREOC recommends that the Australian Government extend legislative entitlements to personal/carer's leave by increasing the Personal/Carers Leave Standard from 10 days to 20 days for each year of service with 10 days to be non-accumulative.<sup>26</sup>
36. With Australia's ageing population and the corresponding ageing workforce, projected care needs are set to increase - older workers will increasingly be called upon to undertake unpaid care work, which for many will overlap with their longer working lives. To support this care, and cognizant of the cost to employers of a large scale exit from an ever-diminishing supply of workers, greater and expanded carer's leave provisions are a necessary expansion of legal rights. Job protection acknowledges both in practical terms and symbolically the importance of unpaid care to the community as a whole, including business and government.
37. Further, the ability to take additional unpaid carers leave is an important workplace flexibility for those whose need to provide care is more sporadic and less predictable. A new 12 month unpaid Carer's Leave Standard should be made available to employees who need to attend to the care of a seriously or terminally

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<sup>26</sup> See *It's About Time* (2007), 85-86 and Recommendation 15

ill dependent. Mirroring the Parental Leave NES<sup>27</sup>, this new Standard should be job protected and available to employees who have 12 months continuous service.<sup>28</sup>

## Workplace Policies

38. Three quarters of carers are of workforce age. Carers are more likely to be unemployed or not participating in paid work than those who are not carers.<sup>29</sup> However, one survey found that over a third (36 per cent) of primary carers who were unemployed indicated a desire to return to work, particularly part time.<sup>30</sup>
39. Recent research indicates that barriers to carers' participation in employment include the time required to provide care being incompatible with paid employment altogether, and the jobs available to carers not being offered flexibly enough to allow carers to balance paid employment with their care responsibilities.<sup>31</sup>
40. HREOC proposes that a national life cycle approach to balancing paid work with all forms of care responsibilities be developed which recognises the universal nature of the need for care.<sup>32</sup> For carers, this approach means encouraging and supporting carer-friendly flexibility in the workplace, ensuring that carers are financially supported so that their caring work does not leave them impoverished, and providing practical support and resources for the diverse range of carers.

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<sup>27</sup> Division 4, National Employment Standards,  
<<http://www.workplace.gov.au/workplace/Publications/News/NewNationalEmploymentStandards.htm>>  
at 8 July 2008

<sup>28</sup> See *It's About Time (2007)*, 85-86 and Recommendation 15

<sup>29</sup> ABS Disability, Ageing and Carers, Australia, 2003 Cat No 443.0 September 2004, p. 49 and 51

<sup>30</sup> Cited in Access Economics *The Economic Value of Informal Care Report for Carers Australia* August 2005, 11- 12. See also the Taskforce on Care Costs (ToCC) *Where to Now 2006 Final Report* 18 October 2006

<sup>31</sup> Matthew Gray, Ben Edwards and Norbert Zmijewski, 'Caring and women's labour market participation' (2008) 78 *Family Matters* 28, 30

<sup>32</sup> For further discussion on this approach see *It's About Time (2007)* 39-43

41. It also means recognising that many of the workplace flexibilities useful for assisting parents with child care responsibilities are also useful for carers and other groups such as people with disability and mature aged workers.<sup>33</sup>
42. The business case for facilitating flexible working arrangements is now well-established. Recognised benefits include improved productivity and employee morale, greater employee attraction and retention, as well as decreased turnover costs.<sup>34</sup> The same benefits apply where employers facilitate carer-friendly flexible working arrangements.
43. Further, the same kinds of flexibility which assist parents to manage paid employment are often the same as, or very similar to, the kinds of flexibilities which may be useful to carers. Examples of carer-friendly initiatives include reduced working hours, flex time or working from home, specific policies that are useful for elder care include capacity to monitor throughout the day through support phone calls, extended lunch breaks to allow for meal preparation and access to carer's leave to accompany to appointments. In most cases these policies will pose negligible costs for employers. Other useful workplace policies include the ability to take extra leave when paid leave runs out, being able to undertake carer training and support (as well as care itself) and greater promotion of family-friendly provisions generally to encourage acceptance within the workforce so that employees do not feel pressured to resign.
44. Many primary carers are unable to participate in paid work because of difficulty in arranging working hours, a loss of skills from being out of the workforce and a lack of alternative care arrangements. For many carers, participation in paid work may not be an option while for others part-time work may be the only feasible option.<sup>35</sup> Without access to flexible working arrangements and quality part time

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<sup>33</sup> Chapter 6 of *WORKability II (2005)*

<sup>34</sup> See for example, *Striking the Balance (2005)*, 98-100 and House of Representatives Standing Committee on Family and Human Services, *Balancing Work and Family Report of the inquiry into balancing work and family*, Commonwealth of Australia, Canberra, December 2006, 16-167.

<sup>35</sup> Carers are more likely to be working part time than full time. See Access Economics *The Economic Value of Informal Care Report for Carers Australia*, August 2005 at 12 which finds that the age-standardised rate of part time employment for primary carers is 28.8 per cent and for non-primary carers is 21.1 per cent compared to a rate of 17.2 per cent for the general population.

work, carers can become locked in a pattern of employment inequality, with lower wages and fewer opportunities.

45. Governments have an important role to play in supporting employers to provide part time and flexible work for staff with caring responsibilities. HREOC urges the Committee to support Recommendations 7, 8, 9, 18, 19, 22, 30 and 41 of *It's About Time (2007)* which outline practical measures to increase support to employers and in turn, to carers seeking to balance their caring role with paid work.

## Needs of Specific Groups of Carers

46. Some specific groups of carers experience particular difficulties and challenges in finding and retaining employment. For example, male carers, carers with disability, young carers, Indigenous carers and carers from culturally and linguistically diverse backgrounds have all been identified as having specific needs.<sup>36</sup> Additional specialist information resources should be developed to address those needs. Examples include resources specifically targeted towards young carers or translated into multiple languages advising carers of their rights and the services available to them.

## Addressing Research Gaps

47. There are a number of gaps in currently available research in the broad area of paid work and carer responsibilities. A particular gap identified by HREOC in *It's About Time (2007)* was the lack of comparable data on the care arrangements for children, older people and people with disabilities.
48. While a number of surveys measure different types of care, they do not facilitate a comprehensive comparison of care experiences across the life course. As overlap

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<sup>36</sup> See *It's About Time (2007)*, 184-186 for more information.

between these types of caring is expected to increase in the future, information on this trend will be even more necessary.

49. To compare the range of caring experiences across the life cycle –both formal and informal care - HREOC recommends the Australian Bureau of Statistics be funded to develop a set of questions on experiences of child care, elder care and care for people with disability for distribution either in appropriate regular national surveys of households, or a new specialist survey.
50. Policy makers and community stakeholders would need to be included in consultations to develop these survey questions. In particular, a standard definition of care that captures the full extent of care experiences is needed. Survey questions should cover the employment experiences of carers.

## Appendices

1. Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, men, work and family (2005)*. Go to [http://www.hreoc.gov.au/sex\\_discrimination/publication/strikingbalance/index.html](http://www.hreoc.gov.au/sex_discrimination/publication/strikingbalance/index.html).
2. Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family (2007)*. Go to [http://www.hreoc.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.hreoc.gov.au/sex_discrimination/its_about_time/index.html).
3. Human Rights and Equal Opportunity Commission, *Submission to the Australian Government Department of Education, Employment and Workplace Relations on the Discussion Paper: National Employment Standards Exposure Draft (2008)*. Go to <http://www.humanrights.gov.au/legal/submissions/index.html>.