



**Submission to the
Inquiry into the effectiveness
of the *Commonwealth Sex Discrimination
Act 1984***

July 2008

This submission was prepared by:

Queensland, New South Wales and Victoria Carers Associations with input from Carers Australia

Title:

CA Submission to the Inquiry into the effectiveness of the *Commonwealth Sex Discrimination Act 1984*

Date:

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Executive Summary

Family carers are an extraordinary group of Australians who provide unpaid care for a family member, relative or friend with a disability, mental illness or disorder, chronic condition, terminal illness or who are frail. The majority of carers are female and of working age.

Carers Australia and the Network of Carers Associations believe this is an important and timely inquiry from the perspective of Australia's estimated 2.6 million carers. The way a society cares for people with disability, frailty, mental illness, chronic conditions and terminal illnesses is a key measure of that society's values. Carers are the foundation of Australia's health, disability and community care systems and their contribution underpins the overall social and economic wellbeing of individuals, families and communities.

Carers have historically experienced disadvantages as a direct consequence of their caring role particularly in relation to their employment and education prospects, their financial position, their health and wellbeing and their ability to participate in social and community life. Legislation that addresses the inequities that carers experience and ensures that family carers have equal rights, choices and opportunities is therefore warranted. This legislative framework would also recognise the significant contribution that carers make both to the person for whom they care and to society in general.

Internationally, Australia now lags behind other OECD countries in some policy areas – carers and employment, carers and health and national carer legislation. But Australia is faced with the same competing policy pressures – to provide care for an ageing population and the need to address labour and skills shortages. Carers' efforts to provide high quality care to the person they are caring for and their efforts to successfully participate in labour market are not been adequately protected by the Act in its existing form.

Additionally, the Human Rights and Equal Opportunity Commission (HREOC) identified the need to remove legal, policy and social barriers which continue to shape Australian workforce participation and family arrangements in its report – *It's About Time, women, men and family* released in March 2007.

Carers Australia believes that sex discrimination legislation cannot by itself promote the systemic and social changes required to promote gender equity and that interlinking reform across a number of portfolios is required.

Several other jurisdictions across Australia have legally recognised the extraordinary circumstances of carers with specific provisions for them in anti-discrimination and equal opportunity legislation and almost all states and territories have introduced carer policies, carer legislation and/or carer action plans. However no national framework exists. Details of the current state and territory legislation/policies and actions plans are outlined in Appendix A.

Most employers understand the situation of parents of children, but other caring situations are not well understood by employers and work colleagues. This lack of knowledge may influence an employer's ability and willingness to provide carer-friendly workplaces. Evidence demonstrates that far from compromising business objectives, providing carers with flexible working arrangements can bring considerable business benefits.

Current federal anti-discrimination laws do not provide sufficient protection for employees with caring responsibilities. This is reflected in the fact that the 'family responsibilities' provisions of the Sex

Discrimination Act are rarely utilised despite the known impacts of caring generally and, of particular relevance to this discussion, the impact of caring on employment.

In its present form, the *Sex Discrimination Act* does not take into account the totality of caring relationships. Carers Australia contends that it is the provision of care that matters not the type of relationship in which the care takes place.

Current legislation only prohibits direct discrimination in the form of dismissal of an employee on the grounds of family responsibilities. Evidence suggests that much of the unfavourable treatment people with caring responsibilities experience in the workplace is the indirect effect of workplace policies and practices. An extension of coverage under the legislative framework to make unlawful indirect discrimination would enhance the ability of the legislation to address structural and systemic issues for carers.

Additionally, the *Sex Discrimination Act* is seriously deficient in the coverage that it provides men with caring responsibilities. Even though the family responsibilities provision of the Act is available to both men and women, men have rarely made use of them.

Carers are potentially a large skill source and yet, little attention has been given to the barriers they face in returning to, or remaining in paid employment. There are almost 2 million carers of workforce age and the majority of these are women. Carers face significant barriers not experienced by other job seekers in relation to their ability to participate in the workforce and the *Sex Discrimination Act* does not adequately address these barriers. At a time when the Australian Government is looking for ways to address the national skills shortage and improve productivity, more flexibility and innovation is required to assist carers participate in paid employment.

Losing carers from paid employment, limiting their ability to work, and working below skill levels are losses for the carer, their family, their employer and the economy.

Recommendations

Carers Australia recommends that:

- the Australian Government, in line with states and territories, introduce a National Carer Action Plan which includes national carer legislation and policy providing for carer recognition and caring as a shared responsibility
- the Australian Government fund a national awareness campaign for employees and employers on the situation of employed carers
- the Australian Government fund a national campaign to promote to employers the benefits associated with providing carer-friendly workplaces
- the Australian Government fund a national program similar to the UK Employers for Carers program to assist employers with education and resources to support carers in the workforce
- the Australian Government fund a program to provide information and resources to employed carers to assist them to combine paid work with their caring responsibilities
- the Australian Government introduce a separate specialised Family Responsibilities and Carers' Rights Act as recommended by HREOC
- carers are identified as a specific target group in terms of employment service requirements
- employment service providers are provided with timely information and resources to assist them in providing appropriate and responsive support to carers
- policies and procedures ensure employment service providers demonstrate carer-friendly practice in the provision of their full range of assistance.

1. About Carers Australia

Carers Australia is the national peak body representing those Australians who provide unpaid care and support to family members and friends with a disability, mental illness or disorder, chronic condition, terminal illness or who are frail.

Carers Australia's members are the Carers Associations in each state and territory that deliver specialist information, counselling and others services to carers in the community.

Carers Australia is informed about carer issues through its member Carers Associations (the Network of Carers Associations) and its participation in national and international forums.

We believe that all carers are entitled to the same rights, choices and opportunities as other Australians in order to enjoy optimum health, social and economic wellbeing and to participate in family, social and community life, employment and education.

2. About Australia's Carers

Australia has almost 2.6 million carers, and nearly 500,000 of these are primary carers – the people who provide the most care. Many carers are termed 'sandwich carers or the sandwich generation' because they care for more than one person – a frail parent, a partner or a child with a disability or chronic condition. The majority of these carers are women. ¹

Nearly 2 million carers are of workforce age, but many have had to leave the workforce, reduce the hours they work, or work below their skill capacity because of their caring responsibility.

Carers are the foundation of our aged, disability and community care system, and the annual replacement value of the vital care they provide is over \$30.5 billion. In 2005 it is estimated that carers provided 1.2 billion hours of unpaid care and the productivity loss of this care is approximately \$4.9 billion. ²

Diversity of carers

Carers are from all walks of Australian society and come into the caring journey at various stages throughout their life. The Australian Bureau of Statistics has identified: ^{3,4,5}

- 380,000 Australians under the age of 26 provide care to a family member who has a disability, or a mental or chronic illness
- 170,000 carers under the age of 18
- 31,600 Indigenous carers over the age of 15
- 620,000 of Australia's carers born outside Australia
- 366,700 of those born in other than main English-speaking countries
- 71% of primary carers are women
- 78% of primary carers care for a person living in the same household
- 26% of primary carers care for a child
- 42% of primary carers care for a partner
- 23% of primary carers care for a parent.

3. Our submission

Carers Australia's submission addresses a number specific terms of reference that impact on family carers. In particular:

- a. the scope of the Act, and the manner in which key terms and concepts are defined
- d. consistency of the Act with other Commonwealth and state and territory discrimination legislation, including options for harmonisation
- g. preventing discrimination, including by educative means
- i. addressing discrimination on the ground of family responsibility
- j. impact on the economy, productivity and employment (including recruitment processes).

a. The scope of the Act

General

The *Commonwealth Sex Discrimination Act* has provided a valuable means of raising awareness of discrimination on the grounds of sex, marital status, pregnancy, family responsibilities and harassment in many areas of public life particularly education and employment. In particular it has contributed to promoting the equality between men and women in the workplace. It has provided people who believe they are discriminated against with an avenue for complaint and resolution.

However, sex discrimination legislation, by itself, cannot promote the systemic and social changes required to promote gender equity. This is particularly so in relation to disadvantages which result from a culture that sees caring responsibilities as largely the province of women, and that sees caring as being separate and of less value, economically and socially, than participation in paid employment. Currently, community attitudes, gender expectations, workplace cultures and issues around pay equity continue to lock many men into bread winner roles and reduce their options for choice about work life balance. Men are less likely to reduce their paid work in order to provide care. Women who care, particularly at the high intensity end, are more likely to be excluded from opportunities to participate in paid employment, and more likely to experience poverty, poorer health and well being and social exclusion. As noted above 71% of primary carers are women.

I still think there is a presumption in society that women want to care and will do so altruistically. A lot of women have difficulty saying 'no' because they are expected to be superwomen and juggle life's inexpectancies.' Carer.

Additionally, the Human Rights and Equal Opportunity Commission (HREOC) noted in its Report: *It's About Time: Women, men, work and family* that:

- men and women with family and carer responsibilities may find themselves disadvantaged in the workplace when compared to workers without these responsibilities
- at a federal level, workers have some protection against discrimination on the grounds of family and carer responsibilities, but these protections have significant limitations
- current federal anti-discrimination law provides insufficient protection for men and women workers with family and carer responsibilities, and a limited platform to support and promote systemic change.⁶

Carers are an integral part of Australia's health system and are the foundation of our aged, disability and community care systems. 64 per cent of primary carers over the age of 15 spend more than 40 hours per week caring for a person with a profound core activity limitation. Additionally, carers caring for a person with a mental illness or disorder, on average contribute 104 hours per week caring.⁷

A new paradigm is therefore needed in which caring is valued and is seen as comparable with paid employment. Carers should be supported to participate in the workforce should they so chose. In addition, Carers Australia believes that caring should be a shared responsibility between individuals, families, communities, business and governments. This will reduce the inequity and costs of caring for individual carers. Most people will participate in the provision of care at various points in their lifecycle.

While major cultural and attitudinal changes are required to reduce the inequity for men and women who care, much can be achieved through reforms across several areas of government policy. For example, a variety of interlinked government policies are in place to support parents participate in paid employment and to protect families with young children from financial hardship. These include social welfare provisions, family tax benefit part A and B and Child Care Benefit.

In addition, the recently released National Employment Standards provide a framework that can assist parents of preschool children to increasingly share the care while participating in employment. The significant enablers are the right to request flexible work to accommodate family responsibilities, together with parental leave provisions for up to two years per couple. These are accompanied and supported by access to appropriate forms of alternative child care.

Family carers should have access to these same entitlements. Interlinking policy reform and investment are required to achieve this.

Carers Australia has advocated for:

- recognition of carers embedded in legislation with a national carer framework and action plan
- measures to alleviate the costs of caring and the economic disadvantage through income security and support and appropriate taxation arrangements
- workplace policies and practices that provide job security and flexibility for individuals in balancing work and caring responsibilities
- a cohesive framework across all levels of government to strengthen the integration of support available to caring families.

In addition, Carers Australia strongly supports recommendations in the HREOC Report in relation to a *Family Responsibilities and Carers Rights Act*.

Recommendation 4

That a federal *Family Responsibilities and Carers' Rights Act* be introduced to provide protection from discrimination for employees with family and carer responsibilities and a right to request flexible work arrangements.

Recommendation 5.

That the Australian Government fund HREOC to establish a Family Responsibilities and Carers' Rights Unit to promote the principles of the new legislation, undertake educational and promotional activities, and contribute to policy and legislative development in the area of family responsibilities discrimination and carers' rights.⁸

Gay, lesbian, bisexual and transgender carers

The primary source of discrimination against same-sex couples in federal laws conferring financial and work-related entitlements is the way in which terms such as 'spouse', 'de facto spouse', 'partner', 'member of a couple' and other similar terms are defined in legislation. These definitions routinely include an opposite-sex partner and exclude a same-sex partner.⁹

Whilst gay, lesbian, bisexual and transgender (GLBT) carers may be afforded some level of rights protection within state/ territory and other federal legislations, their exclusion from the definitions contained within the *Sex Discrimination Act* has a particularly negative effect upon their capacity to fulfil both their caring responsibilities and participate in the paid workforce.

GLBT carers of partners or non biological children are strongly disadvantaged and discriminated against by the *Sex Discrimination Act's* failure to recognise their relationships.¹⁰

Their exclusion from the definitions of *de facto spouse* and *near relative* means that the *Sex Discrimination Act* fails to provide legal remedy in circumstances where GLBT carers experience discrimination based on sexual orientation.

Inclusion of formal relationship recognition through new definitions of *de facto spouse* and *near relative* would remove ongoing discrimination against same-sex couples who assume carer responsibilities.

d. Consistency of the Act with other Commonwealth and state and territory discrimination legislation, including options for harmonisation

Several other jurisdictions across Australia have legally recognised the extraordinary circumstances of carers with specific provisions for them in anti-discrimination and equal opportunity legislation including:

- the Australian Capital Territory (Discrimination Act 1991)
- New South Wales (Anti-discrimination Act 1977)
- Victoria (Equal Opportunity Act 1995).

The New South Wales Government introduced the Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000 that came into effect on 1 March 2001. Under the Act, a carer includes anyone who is responsible both currently and in the future to care for or support a child or another immediate family member. The legislation requires employers to implement flexible work arrangements which accommodate employees who have caring responsibilities. There are exemptions to the Act, including a business where there are five or less employees.

The Equal Opportunity Act in Victoria makes it unlawful to discriminate against someone because they are a parent or carer in areas such as employment, education, accommodation, goods, services and clubs. In addition, in Victoria, the Equal Opportunity Amendment (Family Responsibilities) Act 2008 protects working parents and carers from discrimination in trying to balance their work and family responsibilities. The amendments require an employer to not unreasonably refuse to accommodate within work arrangements the parental or carer responsibilities of an existing employee or person offered employment. It obliges employers to individually consider each request and to give clear business reasons if a request is refused. If agreement is not reached, an employee who believes their employer has unreasonably refused to accommodate their parental or carer responsibilities can make a complaint of discrimination to the Victorian Equal Opportunity and Human Rights Commission.

Clearly, the extent of protection provided for carers under the Commonwealth *Sex Discrimination Act* is narrower than that provided under some state legislation.

Specific carer policy and legislation

Most state/territory jurisdictions in Australia have introduced carer policies, carer legislation and/or carer action plan. However, no national framework exists.

Appendix A details the current state and territory legislation/policies and action plans specifically around carers.

Recommendation

- That the Australian Government, in line with states and territories, introduce a National Carer Action Plan which includes national carer legislation and policy providing for carer recognition and caring as a shared responsibility.

g. Preventing discrimination, including by educative means

Understanding the responsibilities of carers

Most employers understand the situation of parents of children, but other caring situations are not well understood by employers and work colleagues. This lack of knowledge may influence an employer's ability and willingness to provide carer-friendly working arrangements. Employers may also experience pressure from other employees about providing perceived 'special' benefits for carers.

We need a DVD on 'a day in the life of a carer' to show my work mates so they'll understand I'm not just taking time off for no reason. ... Carer.

Carer-friendly workplaces

Evidence demonstrates that offering carers flexible ways of working far from compromising business objectives, actually results in considerable business benefits including:

- lower staff turnover
- reduced recruitment and training costs
- greater productivity
- lower absenteeism
- higher staff morale
- higher levels of trust in working relationships
- improved company image
- improved recruitment.

Organisations that have introduced flexible working and special leave arrangements for carers have judged them a success.

Employer case study

The BT Group in the UK¹¹

The BT Group is a leading provider of communications solutions serving customers throughout the world, and was formerly known as British Telecom. Three quarters of BT's 100,000-strong workforce work flexibly. By flexible working, BT means giving its people the ability to take control of their work-life balance. It does this by raising awareness of the various working patterns available, using information and communications technology (ICT) to help people work from different locations and by offering different ways of working, such as job share. Its flexible working policies help people to balance their different commitments in a changing world.

'Achieving the Balance,' BT's flexible working portfolio, covers flexible working, home working, part-time working, job sharing, maternity and paternity leave, adoptive leave, parental leave, special leave and leave for carers. The company has identified the following benefits:

- productivity gains averaging 21 per cent for employees working flexibly
- cost savings, including £1 billion in office costs and equipment for home workers
- greater customer satisfaction. BT's customers rate the quality of service has risen by five per cent since flexible working was introduced.
- more creativity and energy because flexible working produces twice as many new ideas
- reduced sick leave - (less than three days a year for home workers.)
- staff turnover of less than four per cent
- a trust-based relationship with employees that is "worth its weight in gold"
- reduced CO2 emissions and traffic nuisance – flexible working saves 12 million litres of fuel a year.

Resources and support for employers to create carer-friendly workplaces

Internationally, there is an increased emphasis on carers and paid work – particularly, through the European Union Social Fund's Equal Community Initiative. Carers UK has focused on this issue for several years, and is the lead organisation in a program part-funded through the European Union's initiative. The Employers for Carers Program is a partnership with major employers who want to help their staff with caring responsibilities. Partners include BT Group, HSBC, Pricewaterhouse Coopers, and the Department for Constitutional Affairs. The program objectives are to identify and promote the business benefits of supporting carers in the workplace, and to influence employment policy and practice to create a culture which supports carers in, and into, work.

While Carers UK are taking the lead, other countries such as Estonia, Italy, Latvia and the Netherlands are running parallel programs.

There are also some initiatives at Australian state and territory level. For instance, in Western Australia, the Department of Consumer and Employment Protection has produced a *Work and Family – Employer Information Kit* for employers who are interested in implementing or extending work and family initiatives in their workplace. It outlines the rationale and business benefits of work and family practices, key implementation issues, and discusses in detail the types of options that can be made available to employees.

The rationale for its production is that *“It is widely accepted that both employers and employees can achieve significant gains from establishing a workplace culture in which family responsibilities are recognised and accommodated.”* Of significance is that the kit states that *“It is important to remember that balancing work and family is not just an issue for people with young children. Family life continues to impact on work throughout an individual’s working life”*. The department has also developed a guide for employers: *Creating Carer Friendly Workplaces*. This was developed with the assistance of Carers WA.

Resources and support for employed carers

Information and resources can similarly assist carers to balance paid work with care by providing carers with an understanding of their rights and responsibilities in employment, knowledge of strategies to share the care with family and friends and improved access to services.

One example of a project currently assisting employed carers is the Working Carers Gateway¹². The Working Carer’s Gateway provides information and support to low income and isolated carers in NSW who are juggling both caring and workplace demands. Their website offers a range of resources to provide support to carers.

Carers would benefit from a similar initiative at a national level.

Recommendations

- That the Australian Government fund a national awareness campaign for employees and employers on the situation of employed carers. This campaign would be an essential adjunct to the new legislative framework.
- That the Australian Government fund a national campaign to promote to employers the benefits associated with providing carer-friendly workplaces.
- That the Australian Government fund a national program similar to the UK Employers for Carers program to assist employers with education and resources to support carers in the workforce.
- That the Australian Government fund a program to provide information and resources to employed carers to assist them to combine paid work with their caring responsibilities.

i. Family responsibilities provisions

Current federal anti-discrimination laws do not provide sufficient protection for employees with caring responsibilities.

This is reflected in the fact that the ‘family responsibilities’ provisions of the *Sex Discrimination Act* are rarely utilised despite the known impacts of caring generally and, of particular relevance to this discussion, the impact of caring on employment. Complaints on the grounds of family responsibilities constitute only around 4% of complaints received under the *Sex Discrimination Act*¹³. For instance, of the 399 complaints received under the *Sex Discrimination Act* in 2001-2002, only 16 related to family responsibilities¹⁴. An analysis of HREOC’s Annual Reports suggests this figure is similar for other years.

Carers Australia’s considers that the limited use of the *Sex Discrimination Act* by carers could be attributed to the following limitations of the Act:

Limitations of ‘family responsibilities’ in covering all care situations

In its present form, the *Sex Discrimination Act* does not take into account the totality of caring relationships. The current definition of ‘family responsibilities’ contained in the Act does not reflect the full diversity of caring relationships. Under Sections 4 and 4A, the *Sex Discrimination Act* only provides coverage to those supporting a ‘dependent child’ or an immediate family member. ‘Dependent child’ includes an adopted child, step child or ex-nuptial child wholly or substantially dependent on the employee. ‘Immediate family member’ includes a spouse, adult child, parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

However, caring relationships do not always correlate with legal, blood and domestic relationships. Carers can provide support and assistance to friends, neighbours, non-cohabiting long-term partners, extended family, Indigenous kinship systems, same sex partners and their family, and others. While the grounds of ‘family responsibilities’ meets the needs of some carers, it does not meet the needs of all carers. As a consequence, some carers remain vulnerable and open to discrimination. All carers deserve to be afforded fair treatment and equality of opportunity.

Carers Australia contends that it is the provision of care that matters not the type of relationship in which care takes place. Coverage should therefore occur on the basis of a person’s caring responsibilities rather than the carer’s relationship to the person who requires support.

Caring should therefore be recognised through a protection from discrimination specifically on the grounds of ‘caring responsibilities’ or ‘status as a carer’. Several other jurisdictions within Australia – New South Wales, Victoria and the ACT – have specific provisions for carers in Anti-Discrimination or Equal Opportunity Legislation. In this respect, these acts surpass the protection provided under the *Sex Discrimination Act* for carers. State/Territory Legislation is discussed further in the section of this submission addressing Term of Reference D.

Limited coverage of ‘family responsibilities’ provisions in employment

The *Sex Discrimination Act* provides limited protection for people with family responsibilities. The legislation only prohibits direct discrimination in the form of dismissal of an employee on the grounds of family responsibilities.

However, the documented effect of caring on paid employment is very broad with research showing that:

- 21% of employed primary carers reduced their hours of paid work due to caring responsibilities¹⁵
- as the intensity of care increases, the less likely carers are to be working – especially full time¹⁶
- 11% of primary carers left work in order to commence caring or increase their hours of care¹⁷ (23,500 primary carers left work to commence care and 16,800 primary carers left work to increase care.)
- one in ten employed primary carers had, at some time, left their paid work for at least three consecutive months due to their caring role¹⁸
- nearly half (44%) of working carers had selected a role at work below their skill level because it provided greater flexibility¹⁹
- the majority of employed carers receiving Carer Payment or Carer Allowance had reduced hours or changed jobs because of their caring responsibilities. A significant number had also stopped work at some stage to provide care²⁰
- carers are more likely than non-carers to reduce their hours of work or exit from the labour force.²¹

This evidence suggests that much of the unfavourable treatment that people with caring responsibilities experience in the workplace is the indirect effect of workplace policies and practices. However, the Act's ability to address these factors is very limited as it only currently covers direct discrimination.

An extension of coverage under the legislative framework to make unlawful indirect discrimination would enhance the ability of the legislation to address structural and systemic issues for carers (i.e. inflexible workplace policies and procedures such as requirements to work full-time, work overtime or rotating shifts) alongside direct discrimination such as dismissal.

Such a move would also be in keeping with Australia's obligations under Convention (No 156) Concerning Equal Opportunity and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities to take account of the needs of workers with family responsibilities in terms and conditions of employment.

Indirect Discrimination – Rohan's story

Rohan works part-time in order to provide support to his father who has developed dementia. Rohan's employer has a policy that only full-time staff are able to access training opportunities. As a result, Rohan has had no training since he moved to part-time work. This has directly impacted on his opportunities for promotion within the company.

Limited coverage of 'family responsibilities' provisions outside of employment

The *Sex Discrimination Act* only provides protection on the grounds of family responsibilities in the area of employment. The legislation does not provide coverage in other areas of public life such as education or access to goods and services.

However, caring clearly has implications for all aspects of a carer's life – not just employment. For instance, caring impacts on people's ability to complete education, participate in the community and access goods and services. The necessity for the legislative framework to address discrimination related to caring responsibilities in all areas of life is therefore warranted.

Limitations of the *Sex Discrimination Act* in providing coverage to men

The *Sex Discrimination Act* is seriously deficient in the coverage that it provides to men with caring responsibilities.

Even though the family responsibilities provision of the Act is available to both men and women, men have rarely made use of them. Men made only 3 of the 16 complaints received in 2001-02 under the family responsibilities provisions of the *Sex Discrimination Act*. Of the nineteen complaints made in 2002-03, three were made by men and of the 14 in 2003-04, one was made by a man²².

Men's underutilisation of the family responsibilities provisions of the Act could obviously be the product of the fact that women continue to carry out the bulk of care work and that they therefore utilise this provision of the Act more than men. The underutilisation of the Act by men could also be attributed to the common perception that the *Sex Discrimination Act* relates only to women. In either case, the Act appears to do little to encourage men to play a more substantial role in care.

Men who are caring also often can not make use of the indirect sex discrimination provisions of the Act to address discrimination because women continue to carry out the overwhelming majority of unpaid caring work and, as such, continue to incur the impact.

As a consequence of all these factors, Carers Australia questions the appropriateness of the *Sex Discrimination Act* as the avenue to address the issue of family and caring responsibilities. The current legislative approach could be seen to reinforce gender stereotypes and therefore discourage the sharing of family and carer responsibilities more equitably between men and women.

As discussed above, it is important that if we are to encourage both men and women to share responsibility for care and also both participate in paid work, these stereotypes must be overcome. Carers Australia supports HREOC's statement in its report *It's about time: Women, men, work and family* that family and caring responsibilities discrimination is 'distinct from sex discrimination and warrants its own legislative framework and policy support'. Carers Australia also concurs that a separate Family Responsibilities and Carers' Rights Act would be a more appropriate framework as it would combat the idea that family and caring responsibilities are the preserve of women only.

Requirement to accommodate workers with family and carer responsibilities

Carers Australia believes that the legislative framework should include a positive duty upon employers to accommodate employees with family and carer responsibilities. Anti-discrimination legislation has traditionally resulted in little in the way of wide-scale reform. A requirement to accommodate would have a much more substantive effect for workers.

The intent of such a policy would be further enhanced through the enshrinement of similar rights in the Industrial Relations arena. Most notably through progressively extending the provisions in the National Employment Standards currently available to parents of children to people who care for adolescents, adults and older people with a disability or chronic illness and eventually to all employees. Legislation in the anti-discrimination arena can provide additional safeguards.

Evidence suggests that the effect that this would have on employers is minimal as the benefits to private and public employers of accommodating employees with family and caring responsibilities are now becoming clear. Employers who support carers benefit from greater stability, skill retention and improved workplace morale, which in turn leads to increased productivity²³. These gains have flow-on effects to the whole economy.

Australia is far behind other jurisdictions, such as the United Kingdom, in relation to supporting workers with caring responsibilities. However, Australia is faced with the same competing policy pressures – to provide care for an ageing population and simultaneous efforts to address labour and skills shortages. These tensions between policies aimed at support for care and support for employment participation have not been adequately considered within national Anti-discrimination and Industrial Relations legislation.

Other countries have introduced the right to flexible working arrangements to recognise the economic and productivity benefits to the carer, their family, the government and businesses.

The United Kingdom's flexible working law, the Employment Rights Act 1996, was amended in 2006 by the Work and Families Act to extend the right to request flexible working arrangements to all people with caring responsibilities – including those caring for adults as well as those supporting children with disability or illness. The Act also provides certain leave entitlements to carers. The Act defines a carer as someone who cares for, or expects to care for, a husband, wife or partner, a relative such as a child, uncle, sister, parent-in-law, son-in-law or grandparent, or someone who falls into neither category but lives at the same address as the carer. People who care, say, for an elderly neighbour, fall outside the remit of the Act. An employer can only refuse a request on certain legislated grounds.

In November 2007, the New Zealand Government passed the Employment Relations (Flexible Working Arrangements) Amendment Bill which amends the Employment Relations Act 2000 to give a statutory right to request a variation of working arrangements if they have the care of any person. This includes not just those who have a responsibility for children but also for carers who support a person with an impairment and older or sick relatives or whanau [extended family – Maori word]. An employer may refuse a request only if it cannot be accommodated on certain grounds. And if an employer does not deal with a request in accordance with the process specified the matter can be referred to mediation and then to the relevant authority.

The Netherlands' Work and Care Act (2001) includes a provision that employees who have been with their employer organisation for over 12 months have the right to ask for a flexible work arrangement that fits their personal circumstances. Employers are obliged to handle requests in fairness, however they do have the right to reject these when they affect the overall interest of their business. A 2001 survey showed that 50 per cent of all requests were honoured. In smaller organisations these were often informal arrangements²⁴.

Right to request

One of the forms of accommodation that Carers Australia supports is the right to request flexible working arrangements with a corresponding duty on employers to reasonably consider their request. This would necessarily be accompanied by guidelines regarding what constitutes reasonable grounds for refusal. Also essential to providing employees with true opportunities for negotiation is the development of a compliance regime and grievance mechanism.

Disclosure and confidentiality: Carers have indicated that they are uncomfortable with disclosing information that they believe is confidential about the person for whom they care to an employer (a third party) in order to receive support for their caring role.

Many issues arise in this process. In particular:

- what information is needed by an employer to determine access to flexible working arrangements.
- what constitutes adequate "proof" of a caring role?
- to what extent will employees feel the need to provide information about their caring role in order to persuade an employer of the importance of flexibility?
- how will information provided by the carer be kept and used by the employer?
- how will information about the care recipient be kept confidential by the employer?

The Carers UK Employees guide to work and caring²⁵ includes an application for flexible working. Minimal information about the details of an employees caring situation are requested, and includes these questions:

- I meet each of the eligibility criteria
- I care or expect to be caring for (name)
- Who is my (relationship)?

The disclosure and confidentiality issues involved in requesting flexible working arrangements need to be addressed within the context of any legislative framework granting such a right to request. The framework should determine what the employer needs to know about the person(s) the carer supports, what the carer feels comfortable disclosing to access carer entitlements, and any privacy legislation implications.

Recommendations

Given the limitations of the *Sex Discrimination Act*, Carers Australia therefore recommends that the Australian Government introduce a separate specialised: 'Family Responsibilities and Carers' Rights Act'.

It is envisaged that the new legislative framework would:

- recognise caring responsibilities alongside family responsibilities to provide full coverage to all those in a caring role
- provide coverage in relation to discriminatory practices on the basis of family/caring responsibilities in all aspects of life i.e. including education, access to goods and services

- provide coverage of discriminatory practice in relation to all aspects of employment including making unlawful indirect family and caring responsibilities discrimination
- provide a requirement to accommodate workers with family and carer responsibilities. In doing so, the Act could include a right to request for workers with family and carer responsibilities with a corresponding duty on employers to reasonably consider those requests, taking account of disclosure and confidentiality issues associated with such a request. This would be a retrospective right.
- include complementary legislation in the Industrial Relations arena to accommodate workers with family and caring responsibilities. Most notably through an extension of the National Employment Standards to all employees with family and caring responsibilities.

j. Impact on the economy, productivity and employment

Australia's rapidly ageing population is a key driver in Australian public policy. As in other industrialised countries, there is concern about the costs of an ageing population coupled with a shrinking workforce. An aspect of this debate is the need to maximise workforce participation (particularly of women aged 35-54 years) and to provide adequate levels of community care for people as they age. Women in the 35-54 age group typically provide this community care. At the same time, the predominantly female aged care workforce is also ageing, and this presents a challenging workforce dilemma for the aged and community care sectors and the Australian Government.

At a time when the Australian Government is looking for ways to address the national skills shortage and improve productivity, ***little attention has been given to a largely under-utilised resource - the almost 2 million carers of workforce age*** - many of whom want to work.

This will become a much larger issue. One in three Australians surveyed by the Taskforce on Care Costs (2007) expect to care for an aged person and/or a person with a disability in the next five years and workplace flexibility will be what they are looking for to allow them scope to care and stay in the workforce. It is imperative that governments, employers and services meet this challenge head on with carefully designed policy and strategies.

Carers face significant barriers not experienced by other job seekers in relation to their ability to participate in the workforce and the *Sex Discrimination Act* does not adequately address these barriers. This in turn impacts on the economy, productivity and employment.

Systems barriers include:

- lack of assistance for people with disabilities, illness, mental illness and older people – ie lack of quality alternative care for the person they support
- perceived and real financial disincentives in the income support/tax system to combine care with work and/or training
- poor recognition from employment service providers to identify carers and address their needs.

Labour market barriers include:

- lack of understanding from employers about the caring role in recruiting and employment arrangements
- lack of understanding from colleagues and co-workers
- lack of flexible working arrangements available to carers
- lack of recognition of carers' transferable skills.

Other available data also indicates the impact of caring on employment. For example, Australian Institute of Health and Welfare (AIHW) data indicates for carers and non carers of prime working ages 25-54 that:

- 18 per cent of female primary carers aged 25–54 years were in full-time paid employment compared with 39 per cent per cent of women who were not primary carers
- approximately 47 per cent of male primary carers aged 25–54 years were employed full-time compared with 80 per cent of men who were not primary carers.²⁶

Further, AIHW has projected that by 2013, 265,200 of primary carers between the ages 25-54 will be women. Of these, 121,900 (or 46%) will be unemployed or not in the labour force.²⁷

One further example of the impact of caring on employment is young carers who are at a higher risk than others of their age and often find it difficult to make the transition from school to work or move into further education. Only 4 per cent of primary carers between the ages of 15-25 years are still at school. This compares to 23 per cent of the general population in that age group. Additionally, an ABS survey found that 60 per cent of young primary carers aged 15-25 were unemployed or not in the paid work force compared to 38 per cent of the general population of 15-25 year olds.²⁸

Other groups of carers such as sole parent carers, Indigenous carers and culturally and linguistically diverse (CALD) carers also face barriers to their workforce participation.

The *Caring and women's labour market participation study*²⁹ undertaken by the Australian Institute of Family Studies found that the number of people receiving government payments that support carers is substantial and increasing. In June 2007 there were 116,614 people receiving Carer Payment and 393,263 receiving Carer Allowance an increase of 145% in Carer Payment and a 102% increase in Carer Allowance since June 2000^{30, 31}. Associated with the increase in the number of carers are increases in government expenditure, with a 283 per cent increase in the cost of Carer Payment and a 223 per cent increase in the cost of Carer Allowance since June 2000.^{32, 33}

These increases in government expenditure on carer payment and carer allowance are quite alarming and highlight the urgent need to address the barriers to workforce participation for those carers who wish to return to, or remain in, paid employment.

Losing carers from paid employment, limiting their ability to work, and working below skill levels are losses for the carer, their family, their employer and the economy.

Recruitment

Carers are not readily recognised in the current employment services system and employment service providers are not adequately resourced to understand carers needs and appropriately support them. There is a general lack of understanding of the difficulties that caring for a person with a disability, mental illness or disorder, chronic condition, terminal illness or who is frail can have on their daily life and, more broadly, caring is not currently validated by employment service providers or society generally.

Recommendations

- Carers are identified as a specific target group in terms of employment service requirements.
- Employment service providers are provided with timely information and resources to assist them in providing appropriate and responsive support to carers.
- Policies and procedures ensure employment service providers demonstrate carer-friendly practice in the provision of their full range of assistance – preparation of employment pathway plans, education and training and work experience.

Appendix A

4. Carer legislation or policy in Australia

Most states and territories in Australia have introduced carer legislation or policies. The Australian Government has no carer legislation or policy in place.

A summary of state and territory legislation and/or policies is outlined below:

[Queensland](#)

[New South Wales](#)

[ACT](#)

[Victoria](#)

[South Australia](#)

[Western Australia](#)

[Northern Territory](#)

[Tasmania](#)

Queensland

The Queensland Government Carer Recognition Policy was first released in 2003. It was updated without substantive changes in 2007 to coincide with the release of the Queensland Government Carer Action Plan 2006-2010.

Carer Recognition Policy 2007

Policy statement

In developing and delivering State Government policies and services, the Queensland Government will acknowledge carers and recognise and respect them as individuals and partners in care with the person they care for.

Purpose

The Carer Recognition Policy provides Queensland Government departments and agencies with a framework to identify and recognise the important role of carers. It provides a clear set of principles and guidelines for Queensland Government agencies to adopt in recognising the role of carers in the design and delivery of relevant policies, programs and services, now and into the future.

Key principles

The key principles spell out the Queensland Government's philosophy in relation to carers. The Queensland Government will:

- 1) acknowledge, respect and support the valuable contribution made by Queensland carers to those they care for and to the community;

- 2) accept the significance of the role of carers, along with those receiving care and with service providers;
- 3) ensure information is provided to carers on their rights when dealing with Queensland Government agencies;
- 4) acknowledge carers as individuals with their own needs within and beyond the caring situation;
- 5) value the expertise and skills of carers in relation to their caring role;
- 6) acknowledge and identify the diversity of carers' individual needs, taking into consideration cultural differences, age, disability, religion, socio-economic status, gender identification and where people live in Queensland;
- 7) ensure programs and services for carers are responsive, timely, coordinated, innovative, flexible and appropriate;
- 8) ensure the appropriate sharing of information and decisions on care with carers in matters that affect them or the care they provide.

The Carer Recognition Policy also has a set of operational guidelines that outline the Queensland Government's specific commitments in relation to carers.

The full document can be downloaded at:

<http://www.disability.qld.gov.au/community/carer-recognition/documents/carer-recognition-policy.pdf>

Carer Action Plan 2006-2010

The plan sets out a series of actions that will improve the lives of carers and the people they care for. The plan also describes how departments will work with carers as partners in care. Key initiatives are identified under the following priority areas:

- carers as partners in care
- work/life balance
- young carers
- ageing carers
- information for carers.

The full document can be downloaded at:

<http://www.disability.qld.gov.au/community/carer-recognition/documents/carers-action-plan.pdf>

New South Wales

The New South Wales Government Carers Statement was first introduced in 1999 and outlined its reasons for supporting carers, the characteristics of carers, the effects of caring, current support in NSW and several issues the Government considered in enhancing its support. The statement can be downloaded at:

<http://www.dadhc.nsw.gov.au/NR/rdonlyres/AD83F531-ED4F-4ECF-8E3A-36FCE980DA04/428/CarersStatement.pdf>

In July 2005, a review of the 1999 NSW Government Carers Statement was undertaken with a view to developing a policy response on how best to recognise and support carers in NSW.

The background paper guided the development of the NSW Carers Action Plan 2007-2012. It considered the caring role, its impact, what makes a difference, future trends and initiatives in NSW, other states and internationally.

The NSW Carers Action Plan outlines the Vision, Principles and Priorities for Action and describes the next five years of action to be taken by the NSW Government.

Vision

The NSW Government will contribute to carers achieving quality of life for themselves and the people they support. In the context of their caring role, carers will be:

- supported to achieve physical and emotional wellbeing and to participate in work and community life
- valued as key contributors to community wellbeing and as key partners and providers of care considered in the development of public policy in NSW.

Principles

- Carers' physical, emotional and career needs are identified, acknowledged and responded to.
- Carers are supported by quality services that are affordable, flexible, culturally competent, coordinated, accessible and available.
- Strategies are developed to identify and support people who do not identify as carers and who may be disadvantaged by social, cultural or economic circumstances or location.
- Carers are able to exercise choice in their role as a carer and are supported in transitioning from caring when this is necessary.
- Caring relationships are recognised as diverse, dynamic, complex, with changing needs over time.
- Carers are recognised, valued and respected.
- Carers have access to information, resources and opportunities to develop their skills to provide quality care.
- Carers are included in every stage of assessment and care planning with the agreement of the care recipient and are consulted in the planning, delivery and review of services that impact on their role.
- Carers are supported by family friendly policies in the workplace.

Priorities for Action

1. Carers are recognised, respected and valued.
2. Hidden carers are identified and supported.
3. Services for carers and the people they care for are improved.
4. Carers are partners in care.
5. Carers are supported to combine caring and work.

The full document can be downloaded at:

http://www.health.nsw.gov.au/policies/pd/2007/pdf/PD2007_018.pdf

Australian Capital Territory

Caring for Carers Policy 2003

The Caring for Carers Policy introduced in 2003, was a whole of government project to define the ACT Government's commitment to better acknowledge carers and address their needs. In 2006 the Carers Recognition Legislation Amendment Bill was enacted.

The ACT Government also introduced a Caring for Carers in the ACT – a plan for action 2004 – 2007. The action plan ceased at the end of 2007 and was reviewed early in 2008. Following the release of the final report of the review, the ACT Government considered the report and developed a model to progress the principles of the Caring for Carers Policy.

Future model

The new model will be implemented in 2008 and will include:

- an overarching objective that will incorporate three key priority action areas of:
 1. carer recognition
 2. supporting carers
 3. carer choice
- reporting against the areas of action with key performance indicators to occur annually
- the Department of Disability, Housing and Community Services will be the lead agency for the implementation of the model with the Carer Implementation Partnership monitoring, evaluating and reporting progress made on the lives of carers.

The full response to the review can be downloaded at:

http://www.dhcs.act.gov.au/_data/assets/word_doc/0005/29633/Government_Response_to_Review.doc

Victoria

The Victorian Government has established a policy framework and action plans that support carers of older Victorians, people with a mental illness and people with a disability.

Recognising and Supporting Care Relationships: A Department of Human Services Policy Framework 2006

The policy is a framework for the Department of Human Services in support the provision of informal care. It builds on and extends innovations in policy and program development across the department. The document outlines a set of overarching principles that capture the most important elements of supporting caring relationships within a human services context.

Principles

1. Recognition and respect of the carer as well as the person needing care;
2. Support for both parties to the relationship as well as for the relationship itself;
3. Participation by both carers and people needing care.

The policy will be implemented through the development of action plans by relevant Department of Human Services programs areas, based on the policy and its principles and directions.

This document can be downloaded at: http://www.dhs.vic.gov.au/pdpc/downloads/framework_ap.pdf

To support the department's policy framework, program areas have developed action plans that acknowledge and address the important elements of care relationships.

Recognising and supporting care for older Victorians

The purpose of Recognising and supporting care relationships for older Victorians Action Plan 2006–2009 is to improve recognition of, and support for, care relationships for older Victorians through policy and service development and delivery.

This plan identifies actions to support care relationships for older people and their unpaid carers:

- within current programs and services, including making changes to improve what program areas already do
- through new initiatives.

This action plan can be downloaded at: http://www.dhs.vic.gov.au/pdpc/downloads/agedcare_ap.pdf

Disability Services Carer Action Plan

The Disability Services Carer Action Plan is designed to support and enhance the care relationships between informal carers and children and adults with a disability.

The action plan has been developed to:

- outline the policy context that directs attention to the recognition and support of the caring relationship
- identify existing services that recognise and support the caring relationship
- describe innovative program and service developments that support and enhance mutually beneficial caring relationships
- outline future directions for policy and program development to more adequately
- reflect a relationship-focused model of caring.

This action plan can be downloaded at: http://www.dhs.vic.gov.au/pdpc/downloads/disability_ap.pdf

Caring together - An action plan for carer involvement in Victorian public mental health services

The Mental Health Branch has developed this participation action plan, based on an understanding of the role and needs of carers involved with mental health services. This action plan addresses the experiences of the last decade in terms of achievements and areas for improvement and provides strategies for implementation over the next five years

The action plan aims to improve the participation of carers of people with a mental illness in the planning, development, implementation, delivery and evaluation of mental health services in Victoria, including clinical mental health services and the psychiatric disability rehabilitation and support services (PDRSS) sector.

This action plan can be downloaded at: http://www.dhs.vic.gov.au/pdpc/downloads/mental_health_ap.pdf

South Australia

The Carers Recognition Bill was passed through Parliament and commenced on 1 December 2005.

The main aims of the *Carers Recognition Act 2005* are to:

- recognise and support carers in their role in the community
- enshrine the Carers Charter in legislation (Schedule 1 of the Act)
- require that certain organisation report on the action taken to reflect the principles of the Carers charter in the provision of services relevant to carers and the person they care for.

Requirements under the Act

The Act states that certain organisations must ensure that the organisation itself, and those who work for it, take action to reflect the principles of the Carers Charter in their provision of services to carers and the persons they care for. It also requires that certain organisations must, where there is relevance to carers or the persons they care for, consult carers or bodies that represent carers in:

- development of policies and programs
- strategic or operational planning.

Organisations must report on the actions taken in relation to these matters.

Principles

1. Carers have choices within their caring role.
2. Carers' health and well-being are critical to the community.
3. Carers play a critical role in maintaining the fabric of society.
4. Service providers work in partnership with carers.
5. Carers in Aboriginal and Torres Strait Islander communities need specific consideration.
6. All children and young people have the right to enjoy life and reach their full potential.
7. Resources are available to provide timely, appropriate and adequate assistance to carers.

The Carers Recognition Act can be downloaded at:

http://www.familiesandcommunities.sa.gov.au/DesktopModules/SAHT_DNN2_Documents/Download/633530259809939872/Carers%20Recognition%20Act.pdf

SA Carers Policy

In 2006, a Carers Policy was introduced to provide further direction to the South Australian Government and to community organisation receiving government grant funding to provide guidance and assist in the implementation of the principles of the Carers Charter.

The SA Carers Policy – Supporting carers can be downloaded at:

http://www.familiesandcommunities.sa.gov.au/DesktopModules/SAHT_DNN2_Documents/Download/633530261346549408/Final%20Carers%20Policy.pdf

Western Australia

Carers Recognition Act 2004

The *Carers Recognition Act 2004* came into effect on 1 January 2005 and is an important step in supporting the crucial and often difficult and complex role of carers.

The *Act* is aimed at changing the culture of service providers so that the impact on carers is considered when services are assessed, planned, delivered and reviewed.

Included in the Carers Recognition Act is a Carers Charter that sets out a number of principles to foster the acknowledgement and recognise the role of carers.

Principles

1. Carers must be treated with respect and dignity.
2. The role of carers must be recognised by including carers in the assessment, planning, delivery and review of services that impact on them and the role of carers.
3. The views and needs of carers must be taken into account along with the views, needs and best interests of people receiving care when decisions are made that impact on carers and the role of carers.
4. Complaints made by carers in relation to services that impact on them and the role of carers must be given due attention and consideration.

The Carers Recognition Act can be downloaded at:

[http://www.slp.wa.gov.au/statutes/YrByYr.nsf/2c010fb704a430a348256865002a4868/5C682DF4354B673C48256F3C002B93BB/\\$file/04037.rtf](http://www.slp.wa.gov.au/statutes/YrByYr.nsf/2c010fb704a430a348256865002a4868/5C682DF4354B673C48256F3C002B93BB/$file/04037.rtf)

Please note: This copy is not an authorised version. The only authorised version is the hardcopy (printed) version published under authority of the Government Printer, available from the State Law Publisher, 10 William St Perth W.A. 6000.

The government also introduced a Carers' Action Plan for Western Australia 2004-2007. The action plan has now expired and is currently being reviewed and renegotiated.

Northern Territory

Carers Recognition Act 2006

The Carers Recognition Act was introduced in November 2006. The objects of the Act are:

- a) to recognise the role of carers in the community; and
- b) to provide for the reporting by organisations of the action taken to reflect the principles of the Carers Charter in providing relevant services.

The Act requires services to consider the needs and roles of carers in the services they provide. It also states that applicable organisation must take all practicable measures to ensure the organisation and its officers, employees or agents:

- a) have an awareness and understating of the Carers Charter; and
- b) take action to reflect the principles of the Charter in providing relevant services of the organisation.

Further, the Act requires an applicable organisation that is an Agency to consult carers, or entities that represent cares, in:

- a) policy or program development; or
- b) strategic or operational planning, relevant to carers and the persons they care for.

Northern Territory Carers Charter

1. Carers must be treated with respect and dignity;
2. Carers must be acknowledged as individuals with their own needs within and beyond the role of carer;
3. The diversity of carers' individual needs must be acknowledged and identified, taking into consideration cultural and linguistic differences, age, disability, religion, socioeconomic status, gender identification and where people live. In particular, it is important to recognise the needs of Aboriginal carers and children and young people who are carers;
4. Carers must receive information on their rights when dealing with Agencies;
5. The role of carers must be formally recognised by including carers in the assessment, planning, delivery and review of services that impact on them and their caring role;
6. The views and needs of carers must be taken into account along with the views, needs and best interests of people receiving care when decisions are made that impact on carers and their caring role;
7. Programs and services for carers must be responsive, coordinated and appropriate;
8. Complaints made by carers about services that impact on them and the role of carers must be properly considered.

The Act can be downloaded at:

[http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/5e447349df8e7af2692572350077eb27/\\$FILE/Repc101.pdf](http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/5e447349df8e7af2692572350077eb27/$FILE/Repc101.pdf)

Tasmania

Tasmania does not have specific legislation or policies in relation to carers at this stage.

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