

## Independent Inquiry into Insecure Work in Australia

### Written submission cover sheet

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Mr Brian Howe  
Chair  
Insecure Work Enquiry Panel  
inquiry@securejobs.org.au  
20 January 2012

Dear Mr Howe

The National Network of Working Women's Centres (NWWC) are pleased to have the opportunity to submit this submission.

Our submission includes a number of relevant case studies. Names and other identifying details have been changed to ensure confidentiality.

Please note that we have not included responses to all questions, just those where the experiences of our staff and clients can be adequately represented.

We are happy to be contacted about this submission.

Yours sincerely

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## The workers that are most at risk of insecure work and why.

In the experience of NWWC there are particular groups of people that are more at risk of insecure work than others. NWWC identify those groups as including the following;

- mature age workers
- pregnant workers
- workers with young children, children with disabilities and who have other caring responsibilities
- workers experiencing domestic or family violence
- Aboriginal workers, especially those in regional, rural and remote locations
- people from migrant and refugee backgrounds
- workers in sectors that are considered 'underground' such as the sex industry
- casual employees

### Case study – mature age worker:

A 63 year old worker contacted the NTWWC after her demotion to a casual position. She had previously held a permanent administrative job for 17 years in a remote NT community. She felt that she had no realistic alternative option other than to accept the casual job given the extremely limited labour market that she lived in and her age. She identified that there were no other employment opportunities available to her without relocating at least 500kms from her long term home.

Mature age workers report to NWWC that they are discriminated against due to unfounded and stereotyped perceptions about their skills and ability. Such misperceptions lead to discrimination with current and prospective employers. It is common place for mature age workers seeking information or advice from NWWC to express the view that they are better off to continue within their current place of employment despite existing industrial issues without 'rocking the boat'. They fear termination from their employment and the inability to secure a new job due to their age. This leads mature aged workers to take the decision of sticking with the status quo rather than attempting to address inappropriate or unlawful workplace actions.

### **Case study – pregnant worker:**

Theresa worked at the checkout of a small locally owned supermarket. She had worked for 7 months when she informed her employer that she was pregnant. She did so because she had required 4 days off due to sickness. Upon Theresa's return to work her employer told her that they didn't need her any more and she would not receive any more shifts. At the time of losing her shifts she was 5 months pregnant and showing. She feared that she would not gain any further work while she was pregnant nor when she had a small baby. She did not qualify for the Government paid parental leave scheme due to her short length of service.

The case study above depicts a common pregnancy discrimination scenario of NWWC clients. Whilst the setting is a small business the experience of NWWC is that pregnancy discrimination occurs across the range of industries in the private, community and public sectors. Multi-national business with large Human Resources departments and the public sector are not immune from pregnancy discrimination.

### **Case study – migrant worker**

Louise is a migrant woman employed in the banking and finance sector. Her employer had merged with another employer and as a result there were significant changes in her workplace. Furthermore, as a result of these changes, management put in place a different reporting/ hierarchy system. Louise's manager then proceeded to systematically bully and terrorise Louise. Finally, after months of this bullying and abusive behaviour, she lodged a complaint with the HR department and this was escalated to her manager's manager.

The Manager's manager made verbal assurances of how the process would proceed but this was not followed. Upon returning from leave, Louise had a 6 month probationary review meeting and was dismissed without reason.

Due to the service time requirements under the Fair Work Act, Louise was unable to lodge an unfair dismissal claim. She was however, able to lodge a claim for general protections.

### **Issues for sex workers**

NWWC have a history of working with representatives from sex worker advocacy groups to raise awareness of workplace issues for sex workers and also to assist sex workers with accessing the law where they can. Sex workers comprise a diverse group of people and sex

work is performed in many different ways. For example, workers may work in brothels, be based on the street or work from clubs or hotels independently or with others.

Currently in South Australia the WWC SA is working with SIN (Sex Industry Network) and SWAGGERR (an unfunded independent group of SA sex workers and their supporters who have formed to lobby for law reform) on decriminalising sex work. The Hon Steph Key MP plans to introduce a private Member's Bill in State Parliament to decriminalise sex work and is currently consulting widely on a draft Bill. Scarlet Alliance (the Australian sex workers umbrella organisation) is also involved and supportive of this campaign.

There is no doubt that the illegal nature of sex work in SA makes workers, predominantly women, in the industry vulnerable and therefore sex workers and their specific issues deserve consideration in this enquiry into insecure work.

NWWC note that most sex workers work outside the coverage of the Fair Work Act<sup>1</sup> and that even where legislation makes some forms of sex work legal (such as the Prostitution Act 1999 in Queensland for example), the legislation works to actively reduce the health and safety of such workers. In Queensland, if sex workers want to work lawfully, then they must work in one of the 23 licensed brothels in the state or work alone. They cannot work with another sex worker. Sex work is the only occupation in which laws actively undermine health and safety, and it is predominantly women who bear the brunt of this.

### Case study

Lea's main occupation was school teaching. She was new to South Australia and it took some time before she got registration and employment. As she needed to supplement her income she chose to perform sex work, then when she was employed on short-term contracts, ceased working in the sex industry. Lea was employed at a school where everything was going really well. One day she had to meet with the Principal to discuss something and when she turned up for the meeting, the Principal's husband was just leaving his wife's office. Lea and the husband recognised each other, as he had been one of her clients. Shortly after that the Principal's attitude to Lea changed dramatically. Lea suspected that the husband was influencing his wife and that he had reported Lea to the Department of Education and she was forced to leave.

### Case Study

Jo was working in hospitality in a club that has quite exclusive membership. She was having a drink with the chef after work, debriefing about patrons and other

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<sup>1</sup> Sex workers could access adverse actions claims where they are contractors in brothels.

staff – some would say ill advised 'bitching'. Jo revealed during this conversation that she also did X-rated massage. Jo reported that somehow a recording of the message on her business telephone was uploaded on to Face book so that anyone could hear it, including co-workers and patrons. Jo had no proof it was the chef who did this. Rumours about Jo were spreading amongst staff and patrons and she was being treated very poorly. She was still employed when she rang us for assistance but her employment relationship was looking pretty precarious.

SIN and the WWC SA are calling for the decriminalisation of all forms of sex work in South Australia. We believe sex work is work and must be seen as such. We believe that sex workers must have the freedom to choose to work in their industry and to have access to regulations over their working lives and conditions. We believe that by removing the current laws that criminalise sex work, sex workers will have more equitable access to industrial rights and OH&S protections, which they are currently denied. We believe that decriminalisation will assist in breaking down barriers that currently stop sex workers from accessing legal avenues if they become victims of crime or when their industrial rights are violated. Removing laws that criminalise sex work would also mean that sex workers would have protection under equal opportunity and human rights laws.

#### **Case study**

Reeny is sex worker who is flown in to work at periods of high demand. When she is flown in she is required to stay in accommodation provided for her by the agency. All other sex workers who are flown in are required to stay in the same accommodation. When Reeny flies in for work she is effectively on duty for the entire duration, this is usually for a week at a time. If she is not seeing a client she is required to remain at the accommodation and be available to go to a job at any moment, irrespective of the time of day or night. Reeny is not paid for her work if a customer complains. The withholding of her pay occurs without investigation and is irrespective of whether she is responsible or has contributed to the customer being unsatisfied.

#### **Some Current IR issues for sex workers:**

- No protections as workers
- No minimum conditions as workers
- Fines/shift fees/bonds are still in place in some businesses

- Unfair dismissal – not recognised while sex work is considered illegal
- When pay is withheld (which is rare) there is nothing a worker can do in this case
- Tax being a national system means sex workers are forced to pay tax but receive no other protections as workers. The illegality of their work can also mean that often insurance schemes will not pay out.
- No sick pay/annual leave means workers sometimes work when they are unwell, suffering burnout
- No superannuation – means sex workers are unfairly disadvantaged workers

#### **Some Current OHS issues:**

- Sex workers often must supply/pay for their own protective equipment (condoms, lube etc)
- This equipment can then be seized by police to use as evidence of the crime of sex work
- Worker training is often not provided
- Sex industry specific OHS information is sometimes used against sex workers as evidence of the crime of sex work
- Tobacco (high use of, and no regulation re: smoke free workplace), ergonomic furniture (beds) and other issues are often ignored
- Physical safety strategies play second to police evasion strategies

#### **Recommendations:**

SIN along with NWWC currently calls for the removal of all laws that criminalise sex workers and their workplaces including: private sole operator sex workers, brothel-based sex workers, escort or visiting sex workers, street-based sex workers, cooperatives of sex worker

Further details about the workers that are most at risk of insecure work is found in sections below.

## **The level of compliance with applicable labour laws and any barriers to their effective enforcement.**

### **Workplace bullying**

Under occupational health and safety legislation employers across Australia have a general duty of care to employees to ensure that workplaces are healthy and safe. This requires them to address the issue of workplace bullying as it arises. Whilst jurisdictions differ markedly in so far as whether Codes of Practice or Guidance Material on workplace bullying are in place, ultimately employers are required to protect employees from psychological or physical injury as a result of workplace bullying.

NWWC acknowledge that the level of compliance regarding workplace bullying varies across jurisdictions but maintains that it is generally extremely low in QLD, SA and the NT. NWWC also acknowledge that the harmonization of occupational health and safety legislation across Australia in 2012 is likely to have an impact on compliance in this area that is as yet unknown. Whilst a draft Code of Practice regarding workplace bullying has been released for public comment by SafeWork Australia and is welcomed by NWWC, our Centres share the concerns of the ACTU that more needs to be done to ensure compliance and put effective remedies in place when employers fail in their duty of care to protect workers from bullying.

At this point in time workplace bullying remains poorly understood by the wider community. In the NT, QLD and SA even government agencies, community leaders and human resources departments of large employers lack a thorough knowledge of what workplace bullying is and how to most effectively address it.

Workplace bullying is always one of the top four issues women seek assistance from NWWC on.

Occupational health and safety regulators across jurisdictions vary in their capacity to enforce protections against workplace bullying. In QLD specialist inspectors are employed to respond to workplace bullying complaints. In the NT there are usually no specialist workplace bullying inspectors.

Workplace bullying complaints are complex and resource intensive to respond to. NWWC assert that occupational health and safety regulators are in the main, ill resourced to respond appropriately to workplace bullying enquiries and complaints. A poor community understanding of workplace bullying and poorly resourced and equipped occupational health

and safety regulators are significant barriers to the effective enforcement of legislative protections against workplace bullying.

### **Recommendations:**

That the Australian Government amends the model occupational health and safety legislation to include in the Act a reference to the protection of workers against workplace bullying. This protection should provide clear definitions and requirements of employers to prevent and handle complaints of workplace bullying.

That all occupational health and safety regulators across Australia are equipped with specialist workplace bullying inspectors and complaints officers to ensure that complainants and employers are offered high quality, effective and timely services that includes but is not limited to:

- Accurate general information about workplace bullying
- Highly skilled investigations
- Appropriate support for complainants, employers and alleged perpetrators
- Advice or referral for assistance with policy development and implementation
- Prosecutions for breaches of legislation

That Safe Work Australia and occupational health and safety regulators across jurisdictions undertake a major community education campaign regarding workplace bullying. The campaign ought to focus not only on the type of workplace bullying found in male dominated workplaces such as the so called 'initiation practices' that involve physical assault, but include other more subtle forms of workplace bullying common to the experience of women. The campaign should include training for employer associations, union officials and delegates, human resources professionals, small employers and the wider community.

### **Sex discrimination**

Sex discrimination is notoriously difficult to prove. NWWC provide advice to thousands of women a year who have been discriminated against because of their sex, the far majority of whom are unable to pursue a successful discrimination complaint due to a lack of evidence and/or fear of retribution.

The wages that women earn are on average 18% less than men. Research that has investigated the reasons and quantum of this pay gap has found that although some of the gap can be explained by a range of demographic and labour market variables as much as

70% of the gap is 'simply due to women managers being female'<sup>2</sup>.

Anti Discrimination laws exist but the time and expense and the complainant driven process deter many women from upholding their rights. While many organizations have clear policies and practices against sex discrimination, it is often at the level of middle management that these fail due to inadequate skills and assessment of situations. Additionally, the burden that falls on individual workers to prove that they may be discriminated against simply because they are female, as demonstrated in research quoted above, is too difficult to prove.

Insecure workers of both genders and from other marginalized groups are also less likely to make complaints when their employment is not permanent.

Sex discrimination has led to unequal participation of men and women, higher dependence on welfare or on partners by women and the likelihood of poverty for women in retirement.

While there are several factors that impact upon women's insecure work, the effect of direct and indirect sex discrimination needs to be more closely scrutinized in terms of women's relative position to men in employment. Women's status as parents and carers disproportionately disadvantages them at work and the NWWC assist a high proportion of women who are not adequately protected by the existing legislation. Pregnancy discrimination complaints are commonly received by the NWWC and for insecure workers such as casuals, contract and short-term employees the avenues of redress are limited. A study<sup>3</sup> done by QWWS examined 318 cases of alleged workplace pregnancy discrimination reported to the centre over 3 years. Circumstances surrounding pregnancy discrimination included derogatory comments about physical appearance, changed working conditions, denial of access to opportunities and less favorable work performance appraisals. Dismissal or constructive dismissal was often reported. The study also highlights the complexity and difficulty in navigating formal complaints processes and examines some of the outcomes for women who choose this course of action. The study revealed that of the cases brought to conciliation the mean compensation achieved by the complainant was \$2,295.

Sexual harassment complaints are also common at NWWC, and demonstrate poor prevention and management practices as well as lack of awareness of the devastating

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<sup>2</sup> Watson, I. (2009), The Gender Wage Gap within the Managerial Workforce: An Investigation Using Panel Data, 2009 HILDA Survey Research Conference, The University of Melbourne, 17 July 2009: 28, available at; [http://www.melbourneinstitute.com/conf/hildaconf2009/Papers/Session%207A/Watson,%20Ian\\_paper.pdf](http://www.melbourneinstitute.com/conf/hildaconf2009/Papers/Session%207A/Watson,%20Ian_paper.pdf)

<sup>3</sup> McDonald, P Dear, K Backstrom, S. (2007) Expecting the Worst: Circumstances surrounding pregnancy discrimination at work and progress to formal redress. *Industrial Relations Journal* 39:3

impact of this behavior towards women in organizations and in the broader community.

**Case Study:**

Jenny worked as a receptionist at a mechanics workshop. When she was 6 months pregnant she requested a seat at her standing workstation and was provided with a rubbish bin. When she complained about her treatment she was dismissed.

**Case Study:**

Sabina held a professional position in a regional agency. At the Christmas party a work colleague assaulted her while another colleague took compromising photos. When she complained her employer asked her to forget about it and move on. This led to Sabina's resignation due to the stress and humiliation she experienced. The matter was conciliated for financial compensation but Sabina lost her job, her career and moved interstate.

**Recommendation:**

Proactive awareness raising about discriminatory work practices based on gender including gender pay discrimination, pregnancy discrimination and sexual harassment and the resultant high personal, social and organizational costs is called for from unions and governments. The impact on organisations including poor staff morale, low employment expectations and high turn over need to be emphasized to employers to encourage strategies for addressing gender inequities in their workplaces.

## **The effect of insecure work on financial security**

Insecure work leads to unstable employment and a lack of predictability of regular income. This increases the costs to government. For women it affects her capacity to have a reasonable level of superannuation. Furthermore, the fragmented nature of this work leads to greater reliance on welfare payments, however, the requirement for mandatory employment to be eligible for payments adds to the anxiety.

There is little capacity to make long term financial plans or commitments. Living in an area identified as having a lower economic status increases the potential for being employed in this way.

### **Recommendations:**

1. Review the eligibility for welfare support when women are adversely affected in their employment.
2. Review access requirements to financial services within the public sector.

## **The effect of insecure work on wellbeing and health of workers**

Job insecurity is the fear of job loss and unemployment. This job insecurity can be the result of a number of factors outside the control of the individual. The type of work, diminishing opportunities, the organisations policies and the perceived threats during discussions about redundancies and general flexibility, may cause this insecurity in some cases. In addition previous experience with unemployment increased susceptibility. This can also result when significant changes to the role and responsibilities within the position are made. Changes in jobs can be at odds with efforts to improve the quality of the working environment.

Often insecure employment involves intense work, shorter periods of non-social and excessive daily working hours and conditions and lack of control. Women are over represented in the part time, casual or temporary positions. For many the effect on their life is quite significant and is compounded when other personal issues are occurring at the same time.

The immediate impact is on self-esteem and this can quickly lead to reluctance to embrace any change. Subsequently, perceptions arise about a lack of cooperation. Workers in insecure employment are generally dissatisfied with their jobs. Performance related matters are discussed and warnings and dismissals follow.

The impact on overall health and wellbeing correlates to an increase in absenteeism and Workcover claims particularly for physical, mental health and stress related injuries. The effect of insecure work has a ripple effect impacting adversely on all family members.

### **Recommendations:**

1. Job insecurity needs to be addressed promptly to reduce the impact on the health of the worker/employee.
2. Policies put in place to better reduce the number and types of insecure positions.

## **The effect of insecure work on training and skills development and career progression and opportunities.**

Training and skill development are presumed to increase the level of job security. Importance has been placed on increased skill levels to produce a growth in national productivity. Although many are university qualified, the cost associated with gaining formal qualifications can be prohibitive in an environment where financial security is at risk. The emphasis on qualifications as one measure for promotion restricts the opportunity for career development and increased wages. It is a perception that insecure work will always lead to a permanent position and many women move from one insecure position to another. It is also a perception that each move leads to a higher status position.

Many women in these positions miss or are not included in training or additional experiences or opportunities provided within the workplace.

### **Recommendations:**

1. Funding provided that ensures specific training in all areas rather than the narrow national target areas for those women in insecure employment.
2. Funding is not linked to training in short term programs but provides long term employment opportunities.

## **The rights and entitlements/working conditions that can best assist to provide security for workers.**

### **Equal pay and equal opportunities for progression**

Insecure work cannot be addressed without consideration of the gender pay gap. In Australian society financial remuneration sends a fundamental message to the worker about their value to the community. Those of high value and significant community benefit are remunerated highly; those of little value are paid accordingly. Women earn 18% less than men on average. The message this sends to women is that their work is of lesser value and importance.

The link between the gender pay gap and prevalence of women in part time, insecure and award reliant work is clear. Workers in hospitality, retail, community services and child care industries fall into the category of low paid, female dominated industries. They are highly casualised and have a high proportion of part time workers and opportunities for career progression are often restricted to full time employees.

Labour flexibility demands have caused an increase in the casualisation of employment and these casual employees are disproportionately disadvantaged in an economic downturn. Almost a quarter of all employees in Australia are casual employees and almost two thirds of these are the main income earner in the family.

Training and skill development are presumed to increase the level of job security, however the cost associated with gaining formal qualifications can be prohibitive in an environment where financial security is at risk. The emphasis on qualifications verses relevant experience as one measure for promotion restricts the opportunity for career development and increased wages.

#### **Recommendations:**

That the Australian Government takes the lead on a national holistic campaign to address the pay inequity between women and men. The campaign must be multi faceted and involve people across all levels of the community. Whilst a detailed description of an effective equal pay campaign is outside of the scope of this enquiry NWWC believe an effective equal pay campaign would include the following:

1. Equal Pay cases like the social and community services sector test case in female dominated industries such as retail, child care and hospitality.
2. Community education and new provisions to enable workers to appeal a denial of a request for flexible working arrangements in order to promote quality part time work for men and women. A focus should be on part time work as important and meaningful in its own right and not as a second class alternative to the preferred full time model.
3. The promotion of a broad suite of flexible working conditions suitable and attractive to men and women.
4. The promotion of permanent part time work as an alternative to casual work and opportunities for career progression of part time workers.
5. Accessible provisions to enable women paid less than their male counterparts to take

successful discrimination claims.

6. The promotion of policies and processes to address the pay gap in enterprise bargaining.
7. Enforceable protection for all financial entitlements (superannuation, long service leave, annual leave etc) including a reporting requirement for all monies held for this purpose.

### **Legislating the right to appeal flexible working arrangements decisions under the National Employment Standard.**

NWWC clients with caring responsibilities are disproportionately disadvantaged in terms of career progression and promotion, pay and job security.

Parents returning to work after parental leave and who are requesting flexible working arrangements are only able to do so whilst their child is under school age or is up to 18 if the child has a disability.

The provision to request flexible working arrangements currently can not be appealed to Fair Work Australia unless it is provided for in an Enterprise Agreement or Award. Consequently NWWC have concern for the workers with legitimate needs for flexible working arrangements but whose employers deny their requests unreasonably and who have no right or avenue of appeal. Such employees are often faced with choosing to work full time against their wishes, convert to casual employment or resign.

#### **Case study:**

Jody was a Manager in a non government organization. She had worked for them for 6 years prior to taking parental leave and had been promoted 3 times during her employment. Upon her return to work after parental leave she was granted the flexibility to work from home for a period of 6 months. After a period of 6 months she was told she either had to return to her pre parental leave Management position in a full time capacity or accept a demotion into a less senior part time job. She agreed to accept the demotion, as she did not wish to put her baby into care at such a young age.

#### **Case Study:**

Shelly was to return from parental leave with second child to occur at end of October. Shelly works as a drafts person and is paid \$50,000 per year. At the beginning of October toward the end of her leave she requested to return to work 3 days per week on the basis of family responsibilities and breastfeeding (under

NES).

Her employer resisted then offered 4 days per week and will not move from that and has offered a contract for 4 days until the 31<sup>st</sup> of January at which time insists Shelly is to return to 5 days (on take it or leave it basis). The employer has said they will only consider 3 days after this if medical evidence for breast feeding is provided. The employer has cited business grounds and has been very uncooperative in his responses. Shelly is considering a family responsibilities discrimination claim and has ongoing contact with QWWS.

### **Recommendation:**

To introduce provisions that enable workers whose requests for flexible working arrangements are rejected to make an appeal to Fair Work Australia. Appeals should be conciliated at first instance with the option of progressing to hearing if they are not settled.

### **Reliable minimum hours for part time workers**

Part time workers can be assisted by the knowledge that they have regular, reliable work that is unlikely to fluctuate dramatically without their consent. Employees covered by the Social, Community, Home Care and Disability Services Industry Award 2010 do not enjoy such certainty due to the omission in that award of the following clause:

*At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.<sup>4</sup>*

Part time workers covered by the Social, Community, Home Care and Disability Services Industry Award 2010 may have their hours radically changed with 2 weeks notice of a new roster and/or 7 days notice of a change in roster. Social, Community, Home Care and Disability Services Industry Award 2010 workers do not have an entitlement to minimum or regular hours of work as agreed upon commencement of employment that other Award based workers enjoy such as those in child care, hospitality or administrative positions.

### **Case study:**

Jenny is a young Indigenous woman who attended the NTWWC for advice when her

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<sup>4</sup> Children's Services Award 2010, Hospitality Industry (General) Award 2010, Clerks Private Sector Award 2010.

employer drastically cut her hours of work. Jenny had signed a contract of employment for a permanent part-time position in a community sector organisation, as a domestic worker but with the promise of training to work directly with clients.

A few days after commencing, she was approached by her supervisor and advised that a government department official had told him that she was not suitable to work with their clients and could not be employed in that capacity. This was despite Jenny having obtained the required clearances to do so. Despite her repeated requests, no further information or written confirmation of this was supplied by the employer, who simply told her to contact the department.

Although Jenny had a contract as a permanent part-time worker, there was no minimum number of hours specified in it, and the Social, Community, Home Care and Disability Services Industry Award 2010 does not require there to be. Jenny was therefore faced with only being offered a few hours a week alternative employment and no recourse to her contract or the award to argue against this.

#### **Case study:**

Karen is a young CALD woman who had been working for a small community organisation for some time as a casual. Karen sought advice from the WWC when she was offered a transfer to permanent part-time employment in the same role. Karen's concern was that the organisation were not providing any guarantee of minimum weekly hours in her new contract, meaning she was not trading her casual loading for any extra security of a regular income.

The WWC advised Karen that under clause 10.3 the Social, Community, Home Care and Disability Services Industry Award 2010, the definition of part-time employee states only that they have 'reasonably predictable hours of work'. At clause 25.5, it is required that rosters stating their hours will be posted in a fortnightly roster, which can however be altered with seven days notice.

Karen was advised that her employer could not force her to change from casual to permanent part-time if she didn't wish to, however if she did, the WWC would assist her to attempt to negotiate a guarantee of a minimum amount of hours per fortnight.

#### **Recommendation:**

The introduction of the clause above to ensure that Social, Community, Home Care and Disability Services Industry Award 2010 workers have an entitlement to a regular pattern of work with minimum hours as agreed.

## Casual conversion

Many Award based casual workers have lost the right to request permanent employment after completing 12 months of casual work. Casual conversion clauses have been removed from many Awards. The right to request a casual conversion remains in the Hospitality Industry (General) Award 2010 but does not in the Children's Services Award 2010, Clerks Private Sector Award 2010 or Social, Community, Home Care and Disability Services Industry Award 2010. These are all female dominated industries with high rates of women in insecure employment and who make up a large percentage of NWWC clients.

Many NWWC clients are long term casual employees. NWWC's have assisted casual employees to claim long service leave and have been found to have been continuously employed on a casual basis for up to 18 years<sup>5</sup>.

### Recommendation:

Casual workers would be assisted by the re-introduction of casual conversion clauses into all Modern Awards that allow casual employees to convert to permanent employment after 12 months. The following clause provides an example:

*A regular casual employee who has been engaged by a particular employer for at least 12 months may elect (subject to the provisions of this clause) to have their contract of employment converted to full-time or part-time employment.*<sup>6</sup>

## Responding to the impact of domestic and family violence on women.

NWWC wish to make special mention of the impact of domestic and family violence on women's abilities to find and retain secure work. NWWC have been working closely with the Domestic Violence Workplace Rights and Entitlements Project (Safe at Home Safe at Work Initiative) of the Australian Domestic and Family Violence Clearinghouse (ADFVC) and pay particular regard to this work in our discussion. We also make reference to the work of Franzway, S, Zufferey, C & Chung, D 2007 'Domestic violence and women's employment.' WWC SA were community partners in this research.

The statistics of the numbers of women in Australia are sobering. Two thirds of women who have experienced domestic violence with their current partner are in paid employment (ADFVC Resource). At a time when a woman's personal life may be in crisis, what she most needs to do is to keep her job and her income.

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<sup>5</sup> The NWWC supported a casual employee of 18 years to make a claim for unfair dismissal.

<sup>6</sup> Hospitality Industry (General) Award 2010

It is the experience of NWWC however that it is most likely that if domestic or family violence is impacting on the workplace, particularly if both partners work at the same worksite, then it is most likely that it is the woman who loses her job.

Many women who experience domestic or family violence report that they are reluctant to sign up for full time permanent positions. For a woman to manage the effects of abuse and violence it is often seen by her to be better to 'go casual' so that if she needs days off to recover (or for her injuries to not be seen), or because it is not safe for her to go to work on a day when she is offered a shift, then she can 'knock back a few shifts' until she can work again. Obviously there is an economic cost to her of doing this. This is not to suggest that casual work per se is the best option for women experiencing domestic or family violence and therefore we should not interfere with the high rates of casual work. Casual work will always be a reasonable option for some jobs in some workplaces and for some workers. It is far preferable that as a workers' movement, we address the systemic impact of domestic or family violence on workers, employers and their workplaces, rather than expecting individual women to simply cobble together the best arrangements they can in an effort to deal with domestic or family violence.

Women experiencing domestic or family violence live with high levels of fear – fear of their partner or family member not letting them get to work or causing them to be late for work, fear of their partner coming in to or phoning the workplace, fear of getting too close to workmates who may discover that violence and abuse is happening, fear of getting too involved in social activities at work or after hours and fear of losing their jobs.

Women report that they are often punished if they appear to 'love their job and their colleagues more than their partner'.

Women also report that their capacity to access and complete appropriate education and training whilst experiencing domestic or family violence is severely compromised. Abusive partners often feel threatened and escalate levels of control over women who are seeking to improve their chances of securing or retaining better work by retraining. Women have reported to us that abusive partners have destroyed their course notes, textbooks and computers, denied them use of the car to get to classes or refused to assist with child care. An inability to undertake activities to improve economic stability and security entrenches women experiencing domestic or family violence in insecure and precarious work.

In most instances reported to us by our clients it is the partner who is abusive, although there have been some circumstances where a son or a father or mother may be perpetrating violence. (In the case involving the mother it was clear that she was experiencing mental

health issues. She would constantly attend the daughter's workplace and cause problems that impacted on other customers, rather than being a situation where she was abusive and violent towards her daughter or other workers.)

From time to time we are contacted by workplaces seeking help with a situation where one of their workers is experiencing threats of violence at the workplace. Employer responses to these situations are patchy – on the whole women are advised to leave their jobs (for their own or their colleagues' safety), are sacked or feel bullied out of their jobs. Sometimes women are told that it would be best if they worked at home but safety plans are rarely put in place making the woman even more vulnerable. On only a few occasions, workplaces report that they have put in place a safety plan to assist their worker to maintain safe employment.

Women report a range of impacts of domestic and family violence – feeling uneasy, edgy or anxious, feeling too ashamed of injuries to turn up to work, feeling they have to take days off because they fear for the safety of their children or because the abusive partner refuses to assist with child care, feeling like they have to look over their shoulder all the time, feeling that their work performance is not up to scratch, or feeling exhausted from the need to be vigilant or to cover up violent and abusive acts all the time. Women who experience the impacts of domestic or family violence in their workplaces also often talk about the shame that goes with having their situation exposed. For many women it is not safe nor is there a level of trust high enough for her to disclose to her employer or anyone else at the workplace that she is experiencing domestic or family violence.

The following cases display a range of impacts of domestic and family violence on women workers. All cases have been de-identified.

#### **Case study - Lucille**

WWC SA was contacted by Lucille's father who was referred by a SafeWork SA Inspector. He encouraged Lucille to phone us. Lucille's husband had found a text message from a co-worker which said 'I'm sitting at your desk.' This co worker was from interstate and had been flown in for the day. He sent the text to Lucille as a courtesy. She worked part time and wasn't at work that day. The husband flipped when he saw the text message, rang the workplace and told them, 'The last person who had a crush on my wife spent 6 months in hospital.' Lucille then fled, taking the children with her. Her husband and 2 of his mates then spent the day outside the workplace in the city and watched everyone who left to see if they could identify the person who may have sent the text. The interstate worker had already been flown back to his home due to the threat. This all happened on a day when Lucille did not work anyway. When she got back to work the employer

summoned Lucille to his office. Lucille let him know that she had left her husband. The employer said, 'I can't believe you have the audacity to think you can have your job back.' The husband had told her to 'pack her shit and get out' which she had done. Lucille felt she was not at risk but would be once her husband learnt that this was final. She made it quite clear to the employer that she had no intention of resigning, that she was the victim and not responsible for her husband's behaviour, that she loved her job, that she'd left him, that she had 2 children to support and now had no home and that there had never been any performance issues in the past.

#### **Case study - Mary**

Mary had worked for 2 months and in that time had been promoted to Manager. Her husband had come in to the workplace one day and caused problems. After another incident at home she rang her boss to say she would be in a bit late as she was at the police station reporting a domestic violence incident and had been delayed. He sacked her as he said she was just too difficult.

#### **Case study - Anna**

Anna had worked for her sister in law for 15 years. Anna divorced her husband following domestic violence. When she spoke about the DV to her sister in law (also the Boss) she was sacked.

#### **Case study - Donna**

Donna disclosed to her boss that she was experiencing domestic violence. Donna had been head hunted for this position but once she revealed the DV she was systematically bullied out of her position.

#### **Case study - Kelly**

Kelly worked for a short time in a small boutique in a regional town. Her husband came in to the store and went 'nuts'. The store owner lives in Victoria so didn't know about the incident but other women who worked there rang and told him. Kelly had to go to have a cat scan because her husband had hit her so hard. She let the owner know about this. He then told her she had to choose between her job and the CAT scan – he said 'you can't have both.' Kelly was then dismissed for very vague reasons – 'it's not working out, etc'. Kelly rang HR who told her she would be paid a week's notice but the payment never appeared. When she rang to enquire again, HR told her that she wouldn't be getting it as she'd been dismissed for gross and wilful misconduct. When she asked what this meant she was told there was an accusation of stealing but they couldn't give any

details of what or when she had allegedly stolen something. Kelly asked if she had stolen something why hadn't she been told and why hadn't it been reported to the police. She was given no reason. Kelly now works in the shop next door.

### **Case study - Sylvia**

Sylvia worked as a community support worker. She was experiencing domestic violence from her husband who was also coming in to Sylvia's workplace. She was often late for work and the violence was impacting on her performance generally. Sylvia was terminated for performance issues (lateness).

Sylvia then left the relationship. She has a domestic violence order against her husband which covers her in her workplace.

Sylvia applied to work at another organisation. She did very well at the interview and was sure they would offer her work which they did. The new employer then rang the former employer for a reference. He told them that she'd had heaps of personal and family problems, that there'd been issues with attendance and that the abusive husband had been coming on to work premises causing problems.

The new workplace has not withdrawn the offer of work but have requested a statutory declaration (they are emailing her what they want her to sign) from her saying that she has nothing to do with her ex husband. They also want a copy of the order as they say it covers them.

Her question to us was 'Can they do this?'

She has no children. There are no issues which indicate this could be a case of disability discrimination. At the time Sylvia was advised that the Australian Human Rights Commission was keen to run a test case where domestic violence is seen as the reason for possible discriminatory treatment. Sylvia was not keen to be a test case and did not proceed with an AHRC complaint.

### **Case study - Bev**

Bev rang 2 different Industrial Officers at the Working Women's Centre on 2 different days. We realised later that her husband had also rung 'on behalf of a friend'. He was extremely patronising and arrogant.

Bev was advised by our 2 Industrial Officers that she had no jurisdiction for an unfair dismissal. She had been employed for less than 6 months and her complaint was out of time. She said she had been terminated for assaulting

someone at work and reported that 3 colleagues had told this to the boss. She said she'd been given no chance to defend her story. Bev said she'd been extremely frustrated during a meeting at her unreasonable workloads and had thrown a box of tissues down and left the room to go to the toilet to compose herself.

Unbeknown to us, Bev's husband also contacted the Employee Ombudsman and was sent papers to lodge an unfair dismissal claim at the South Australian Industrial Relations Commission. The SAIRC advised that the matter was federal and sent them forms to lodge there which they did, along with an extension of time. The husband was nominated as the advocate.

We got a phone call saying Bev was confirming her meeting with our Industrial Officer, but no meeting had been made. Bev's husband then rang us. He was very demanding, insisting that they be seen. We rang the AIRC to see if they knew anything about the matter and were told that Bev had rung the registrar and instructed them not to send any more correspondence to her husband as they'd separated. The registrar told Bev that she would have to remove him as her advocate.

Bev came in for the meeting that had been arranged at short notice. Her husband accompanied her, despite us having been informed of her call to the Registrar indicating they had separated. We organised for both Industrial Officers who had spoken with Bev to be in the meeting. We tried to see her on her own but were aware we didn't want to make the situation worse for her. She said she wanted him in the meeting as her advocate. The lack of jurisdiction was explained to them – he was trying to insist she had rights but under law she didn't. His behaviour in the meeting was very arrogant and he refused to grasp the information given to him. He was very domineering and manipulative in his behaviour.

Whilst no disclosure was made by Bev of domestic violence, our industrial staff had major concerns about her husband's behaviour and his role in trying to resolve her industrial issue. Our Industrial Officers explained that it is our policy not to advocate where someone else has already been nominated.

### **Case study - Alex**

Alex worked in an administrative position in the transport industry where she experienced workplace bullying. She had lodged a WorkCover claim and had

had a breakdown in her health resulting in time off work and a loss in wages. Part of the impact of her injury, loss of wages and the bullying was that her husband got fed up with the whole thing. He blamed her for not bringing in an income and told her he couldn't handle her emotional needs. He left the relationship and the family home, leaving her with the care of 2 children and the property and in debt. He has told her that her not earning enough has impacted on his lifestyle. He is still in contact – at times promising her money, to pick up the children or to help with maintenance on the house but then lets her and the children down. He has given her \$100 since he left in March. Sadly, Alex believes that once she receives a payment for her injury that her husband will return.

### **Case study - Pam**

Pam worked for a trade business, running their office and accounts. She confided in her boss that she had some personal issues and took a week off to sort them out. During her time off she asked that her employer not inform her husband where she was or that she was having time off work.

When she returned to work she found that her boss had breached her confidence and had told her husband that she had taken time off. She was also handed a letter of warning stating that as the business had a duty of care to the other employees and couldn't guarantee their safety if Pam's husband returned to the workplace they didn't want her back at work until she could guarantee that she had sorted out her personal life.

Pam then disappeared as a client although we did receive a message saying that she had worked things out with her husband and that there was no way she would be returning to that workplace.

### **Case study - Melanie**

Melanie began work at a workshop in a regional town in SA. After she had worked there for a couple of months she and the owner of the business began a relationship. She moved in with him. Things did not go so well in the relationship and Melanie had grave concerns about staying with her partner. They were in a personal and a workplace relationship for 3 years. Eventually she told her partner that she couldn't live with him any more and moved out. The breakup was very nasty and not at all amicable. He then sacked her. She initially lodged a complaint of unfair dismissal with Fair Work Australia but subsequently withdrew the matter, advising our staff member that she felt she had resolved the matter

but wouldn't disclose how she had done this or what agreement if any she had reached.

### **Case study - Lucy**

Lucy is a young woman who works in a large agency in the city. Her parents had recently separated. A relative of her father had passed away when Lucy and her sister were younger and unbeknown to Lucy and her sister had willed them a property. Lucy's father had handled the property on their behalf but after the separation and the division of the family assets was refusing to hand the property over to his daughters. He had on a number of occasions tried to trick them into signing the deeds of the property over to him. When they refused he became increasingly abusive. He would phone Lucy and visit her house, often sitting in his car out the front waiting for her to come out and then abuse her loudly. When Lucy phoned us her father had taken to phoning Lucy's employer and telling her workplace that Lucy was a thief and a dishonest person and that they should sack her. He had also visited Lucy's workplace, demanding to talk to her boss. The father's threats and abuse were escalating.

Lucy had fortunately alerted her boss well before this happened that she was experiencing problems from her father and was fearful of her safety, including coming to and leaving work.

Lucy's boss immediately gave her a special access code to allow her entry via a side door not accessible to the public. He had also employed a security guard and assured Lucy he would do this as long as he needed to make her feel safer. Her boss refused to speak or meet with her father and put in place measures to ensure that calls from him were not put through to Lucy or anyone else at work. The boss supported Lucy to report matters to the police and gave her time off to attend lawyer's appointments.

Lucy rang us as the company was being taken over by new owners and she was fearful that the arrangements put in place might cease. Lucy was embarrassed about the situation her father had created for her at work, was very thankful that she had a good boss but found it hard to face having to explain herself all over again to new business owners. WWC assisted Lucy with strategies to do this.

### **Recommendations:**

1. The National Employment Standards should be amended to provide for a new minimum statutory entitlement to 10 days paid family violence leave. An employee should be

entitled to access such leave for purposes arising from the employee's experience of family violence, or to provide care or support to a member of the employee's immediate family or household who is experiencing family violence.

2. The Australian Government should encourage the inclusion of family violence clauses in Enterprise Agreements.
3. In its review of Modern Awards, Fair Work Australia should consider the ways in which family violence may be incorporated into awards in keeping with the modern award objectives.
4. Safe Work Australia should include information on family violence as a work health and safety issue in relevant Model Codes of Practice.
5. Sections 351(1) and 772 (1)(f) of the Fair Work Act should be amended so that discrimination on the grounds of domestic violence is a grounds for an adverse action and unlawful termination application to Fair Work Australia.
6. Domestic violence be included as an attribute in the Commonwealth anti-discrimination legislation.
7. NWWC commends the work of the specialist agency the Australian Domestic and Family Violence Clearinghouse (ADFVC), in particular its resource 'Domestic Violence and the Workplace'. NWWC support the ongoing funding of research, training and resources specific to domestic and family violence and the workplace.

## **Better protection for 457 visa holders**

### **Insecure work 457 Visas**

NWWC Industrial Officers respond to enquiries from women workers on 457 visas and where possible and appropriate provide case work assistance to these workers. The industry most represented in the matters we are seeing is Health and Community Services. It is a matter of concern to the Working Women's Centres that workers on 457 visas report experiencing unfair, discriminatory and unlawful treatment by employers with the added threat or fear of being sent back to their countries, to a higher than acceptable or reasonable level.

In a prosperous country such as Australia the 457 visa has the potential to offer valued solutions and opportunities to employers and employees alike and it not only distresses us to deal with instances of obvious exploitation but it is resource intensive work for our staff to assist 457 workers to find remedies and resolution to their industrial issues. It is a matter of grave concern when women workers on subclass 457 visas report to us that they feel they have no other option than to return to their own countries with ongoing work injuries and poor experiences of work in this country.

This submission summarises the common issues that women workers on 457 visas have raised relevant to the terms of this enquiry on insecure work. These include:

1. Lack of appropriate induction and training, sometimes resulting in injury
2. Racism
3. Workplace bullying, particularly after raising a question or complaint at the workplace, often in relation to terms and conditions of work or in relation to an injury
4. Lack of awareness of union membership or difficulty in being represented by the union
5. Health insurance cover for illnesses not related to work – who pays?
6. Fear of reporting injuries and illnesses
7. Lack of awareness of workplace entitlements, including in relation to workers' compensation and discrimination
8. Employers not meeting their obligations under State legislation including under equal opportunity law and OH&S
9. Sexual harassment
10. Loss of face, feeling shame
11. Financial and accommodation insecurity
12. Fear of deportation
13. Lack of family and support systems
14. Precariousness if terminated from employment, especially if also ill
15. Complexities when the employment relationship arises from a friendship relationship
16. Exploitation of Subclass 457 visa workers – being given the hardest areas in which to work, the shifts which no-one else wants to do etc
17. Lack of flexibility for workers who are paying for and attending English classes
18. Lack of knowledge of where to go for help, who to trust and fear about giving us details so that we can stay in touch with clients
19. Threats of de-registration if workers speak up or complain

The comments offered are drawn from the information that we receive from the stories, experiences and life situations of working women in Australia.

### **Lack of appropriate induction and training, sometimes resulting in injury**

Women on 457 visas who have contacted our Centres, report to us that there is often inadequate training made available to acquaint them with systems or processes of work that may be different to how they have been trained. Women workers also tell us that they are often expected to know a lot about the workplace culture when this is different to their experience of work in other countries. Women report to us that they are sometimes ridiculed for not knowing procedures of work such as appropriate ways of lifting or using equipment, nor where to find equipment and that this compromises their ability to do their job and feel valued. One worker reported that she wasn't even told where the toilets were on her first day on the ward. For the first few days at work she used the public toilets as she was unaware that there were staff toilets. Workers report to us that whilst they are competent and skilled to do the work required there are often differences in equipment used, procedures and in nursing, for instance, different names for drugs. They feel that more needs to be done to recognise this and that adequate familiarisation with Australian workplaces needs to be implemented.

### **Racism**

Workers on 457 visas have reported to us that disparaging comments are made about their race.

#### **Case study**

*Carla, on her first day at her new workplace, was eating her lunch. A group of co-workers expressed surprise that she was using a knife and fork. When she said she was using them to eat her lunch they remarked that they had expected people like her to eat with her fingers.*

#### **Case study**

Ginny received comments from her co-workers about her jewelry. When she asked if wearing a gold chain necklace was a problem she was told it wasn't. Her workmates just said that they thought she was there because she was poor and asked how she could afford gold jewelry.

**Workplace bullying, particularly after raising a question or complaint at the workplace, often in relation to terms and conditions of work or in relation to an injury**

**Lack of awareness of workplace entitlements, including in relation to workers' compensation and discrimination**

**Lack of awareness of union membership or difficulty in being represented by the union**

Some 457 visa workers report that they have been consistently bullied, particularly after they have sustained a work injury. They say that they are made to feel guilty about 'costing' the employer money, that barriers are placed in their way when they are supposed to be attending medical appointments and that co-workers accuse them of not pulling their weight. They report being ostracized and isolated, of having rosters continually changed, not being given clear information about their rights, of not having reasonable adjustments made to accommodate an injury and of being threatened with being 'sent back' if they don't get well quickly. Some 457 visa workers report that they have not been made aware of their entitlement to workers' compensation for work related injuries.

### **Case study**

Rosa injured her back whilst using lifting equipment that she hadn't been shown how to use correctly on the intensive care ward. Rosa was initially pressured not to report the injury, to just go to the doctor and get it seen to. Rosa's injury was exacerbated as she felt under pressure to return to work before she was fully recovered for fear of losing her job and being sent back to her country. She had left all her family to come to Australia to work and had no-one to assist her with home duties. The employer made it difficult to get adequate treatment and to attend specialist appointments. Rosa attempted to get help from her union but felt that her case became very resource intensive and that the union was unable to assist her any further. Rosa tried to persevere but her health was compromised by her injury and she suffered a breakdown. Her employer threatened to have her deregistered by the Nurses' Registration Board. Her WorkCover claim was rejected and Rosa had no time or the resources to lodge an appeal. She felt her only option was to return home and try to recover.

## **Health insurance cover for illnesses not related to work – who pays?**

### **Fear of reporting injuries and illnesses**

#### **Threats of de-registration if workers speak up or complain**

Clients on 457 visas report that they are confused about what insurance cover they should have to cover them for illnesses or injuries not sustained on the job, if Medicare applies to them and whether they will be covered for medical treatment if they lose their sponsor, especially if losing their sponsor means that they are in breach of their visa. Women workers on subclass 457 visas report fear around reporting work injuries in case this might result in loss of employment. Women report to us that secondary bodies such as Registration Boards are often held out as an added threat if they speak up or complain about work entitlements.

#### **Employers not meeting their obligations under State legislation including equal opportunity law and OH&S**

In one matter a worker had her sponsorship withdrawn when it was obvious that she was pregnant. She had indicated that she was pregnant in her first application to come to Australia but this had not been passed on to the sponsoring organisation. She was given no opportunity to discuss whether she could fulfill the requirements of the position. Nor was she given any information about what other options she may have to remain in Australia and find alternative work. Working Women's Centre SA felt that the act of withdrawing the offer of employment because of pregnancy was discriminatory. Some employers seem to not understand their responsibilities at law and cite their fear of breaching immigration law as an excuse for treating 457 visa workers unfairly or unlawfully.

### **Sexual harassment**

#### **Loss of face, feeling shame**

#### **Complexities when the employment relationship arises from a friendship relationship**

Several workers have reported to us that they are experiencing sexual harassment from their sponsoring employer and feel that the fact that they are here on a 457 visa is used to threaten and intimidate them into engaging in sexual acts or face losing their job and being sent out of the country. These women are professional, well skilled and experienced workers but feel unable to negotiate safely due to the abuse of power. Often women lack knowledge of our laws and systems but are also unwilling to complain for fear of losing face

and because they don't know who to trust.

### **Case study**

Lily was recruited to come to Australia by a fellow countryman who lived in Australia and who visited her country on a recruitment drive. Lily became friends with the man and trusted him. She felt coming to Australia presented a great opportunity to her and her daughter. She sold up her belongings and her home. When she arrived she found that the place of work was quite isolated in a regional town. She and her daughter lived with the employer and his wife. Her employer began to tell her about his private life and told Lily that his marriage was over. Lily felt very uncomfortable about this. He began to use threats and requested sexual favors from her. When she refused he sacked her. Lily did not know who to approach for assistance and she had no jurisdiction for unfair dismissal. Her ex-employer assaulted her and the police were involved. He promised that if she withdrew the criminal complaint he would pay her what she was owed. She found refuge with a family but then had limited time to find replacement work with a sponsor. Lily was very ashamed and fearful of returning home, especially as she had used up her savings and would not be able to afford to return to her old life.

Women tell us that they have taken on a lot of expectations from family and friends to come to Australia for work and that they feel pressure to succeed and be able to support their families at home as well. To have to return home, less financially well off and having experienced sexual harassment makes them feel ashamed and lose face.

### **Financial and accommodation insecurity**

#### **Precariousness if terminated from employment, especially if also ill**

457 visa workers often sell up their homes and belongings before coming to Australia. Workers report to us that they sign on to rental agreements, sometimes for 12 months, often before they have begun work. If the offer of work is withdrawn, if they are terminated or become ill they have to use their own savings and feel under financial pressure. In one case a woman and her partner had to not only face possible deportation, seek another sponsor, deal with medical bills, investigate other visa options and apply, lodge a complaint of discrimination and have it fast tracked but also appeal for someone to house them and fight to have their bond recovered from a landlord.

### **Fear of deportation**

From the reports of women workers on 457 visas there is inevitably an underlying fear of deportation if they don't conform or comply with employers' requests and expectations. Working Women's Centres feel that this fear is often exploited and places workers in unreasonable situations.

### **Lack of family and support systems**

#### **Exploitation of Subclass 457 visa workers – being given the hardest areas in which to work, the shifts which no-one else wants to do etc**

Some workers all from the same country reported to us that they tried to get their employer to help them arrange accommodation close together. They found that they were often placed on night shift rosters and had to rely on public transport to get home after hours. They explained that they would have felt safer if they weren't doing this alone but no effort was made to consider their requests. Settling in to a new country and its ways takes time and more support could be given to ensure that workers' fears are addressed, given that there may not be extended support services available outside the workplace.

#### **Lack of flexibility for workers who are paying for and attending English classes**

457 visa workers report to us that whilst they are assured that their level of English is appropriate for the job, when they start work they find that there is wide use of technical and colloquial language that makes them feel not confident in their work. Many workers enroll in private English classes at their own expense to improve their work efficiency but then find that there is a lack of flexibility around the allocation of shifts and rosters that makes it difficult for them to attend class. There is little or no encouragement given by some employers to enable 457 visa workers to improve their skills.

#### **Lack of knowledge of where to go for help, who to trust and fear about giving us details so that we can stay in touch with clients**

Women on 457 visas who use our Centre will sometimes be very reluctant about giving their details as they fear being reported to an authority. Workers coming here on 457 visas need to be made aware of where to go for help and how to access services independent of government to ensure they can feel safe about raising issues in confidence. A number of our clients have become uncontactable and we are left wondering what has become of

them.

### **Recommendations:**

1. That all 457 visa workers be given clear information about their rights and entitlements to be treated without discrimination and be shown safe systems of work.
2. That a hotline/helpline (independent of the Department of Immigration) be set up for 457 visa workers and employers to access clear information. Many 457 visa workers by the time they reach us have tried to access around 6 other agencies for help and information.
3. Information about unions and non government agencies that may assist 457 visa workers needs to be supplied. This includes information on workplace entitlements and information on 'settling in' to a new country or city.

### **Fair working conditions for CDEP participants**

The Community Development Employment Project (CDEP) has undergone extensive reform in the last 3 years. Whilst CDEP has been abolished from capital cities and regional centres it continues to provide work for women in approved remote areas where there are limited employment opportunities and remains an important feature of the labour market for Indigenous Australians.

CDEP is a form of Indigenous 'work for the dole' that dates back to 1977 but the value of CDEP policy is contested amongst Aboriginal people. Some individuals and communities have advocated for CDEP to continue as it has for decades and others have advocated for its abolishment.

The views of clients of NWWC also reflect a diversity of views about CDEP. Some clients report that their CDEP work is valuable to them and their community, is an important source of income, provides the opportunity to earn 'top-up' and results in community services. But women have also reported that the lack of workplace rights and low pay leaves them feeling devalued and demoralised and has not lead to 'real employment'. CDEP has been referred to by a mature Aboriginal women client of the NTWWC as 'kids money'.

CDEP has undergone extensive reform since 2007. As the CDEP program has been wound back across Australia the number of CDEP participants and programs has reduced dramatically. Whilst there are now no longer CDEP programs where there are established labour markets, CDEP continues to provide work for Aboriginal people in remote areas. New CDEP participants no longer receive 'wages' from their CDEP provider but income support via Centrelink and from April 2012 all long term (or 'grandfathered') CDEP

participants will be transitioned off 'wages' and onto income support.<sup>7</sup>

The reformed CDEP is funded from FaHCSIA and sits within Centrelink policy. NWWC argue that CDEP participants are insecure workers because of their general lack of workplace rights, vulnerability due to the geographic remoteness of the work and low wages.

CDEP participants do not meet the definition of 'employee' under the Fair Work Act and therefore do not enjoy the usual workplace rights and entitlements that other Australian workers take for granted. CDEP participants are not entitled to paid leave of any form, long service leave, allowances, unfair dismissal protections, unlawful termination protections or the opportunity for a pay rise or incremental increase in recognition of skill development and experience. In addition high levels of workplace bullying and discrimination against CDEP participants and major occupational health and safety issues are reported to NWWC.

Prior to recent reforms a distinct advantage for CDEP participants in terms of workplace rights was for those who received 'top-up'. Top-up was for those CDEP participants that worked additional hours to the minimum required as CDEP participants. Hours performed in addition to the required CDEP scheme were paid to the participant as a usual employee. These top-up hours qualified the CDEP participant for employee entitlements in the Fair Work Act and could be used as the basis of a claim for rights such as paid leave or unfair dismissal.

#### **Case Study:**

Jo managed a program about caring for country in the NT when she was terminated from her job without warning or reason. She had worked for the organisation for more than 5 years and had at times worked only for CDEP wages and at times for CDEP wages and top-up.

As her working conditions regularly changed from being a straight CDEP worker to one that also received top-up the NTWWC argued that she qualified for unfair dismissal protection. She was in receipt of top-up at the time of the termination. The matter proceeded to jurisdictional objection and the client was represented by a law firm. She won the jurisdictional objection because of the top-up she received and was referred back to the NTWWC who represented her in conciliation. The conciliation settled with a payment for compensation for unfair dismissal.

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<sup>7</sup> Macklin, J., Arbib, M. and Plibersek, T., (2010), 'Increasing employment and participation in remote Indigenous communities', Media release.

Top-up has been an important feature for CDEP participants not only as it increases their likelihood of employee protections under the Fair Work Act but as a valuable source of additional income. Early assessment of the impact of CDEP reform is that it has resulted in a significant reduction in top-up hours or in other words a reduction in the overall number of hours worked<sup>8</sup>. Indeed top-up is now longer able to be performed, any hours performed over and above the minimum CDEP requirement is usual income and results in a reduction of income support in the normal way. This was formerly not the case with top-up as CDEP participants could perform additional top-up hours without suffering a reduction in their CDEP payment. NWWC are concerned that CDEP reform results in an overall decline in the performing of top-up hours. This not only results in lower incomes for participants but in some cases removes access to employee entitlements under the Fair Work Act.

For Aboriginal people in the NT income support means income management. Income management is the process by which 50% of the CDEP workers pay is managed by Centrelink and can only be used for essential items such as food, clothing, petrol and housing. CDEP workers in the NT now find themselves in a situation where they not only lack basic employment rights afforded workers covered by the Fair Work Act such as paid leave and unfair dismissal protection, they have no opportunity for a pay increase, have their CDEP payment tapered if they perform additional hours of work and lack the right to control 50% of their CDEP income.

One of the intentions behind CDEP reforms is to transition CDEP workers into employment and this should be applauded. Many of the functions of CDEP workers were to provide essential Government services that ought to have been provided by properly funded positions for employees. This was recognised by Government and some funding was provided to transition CDEP positions into public service positions.

Whilst this has occurred information is not yet available regarding the number of CDEP positions that delivered essential Government services and the number that transitioned to employment or the level of retention of those former CDEP positions that have transitioned into real employment. NWWC fear that funding provided to transition CDEP participants into employment was insufficient and has resulted in a high percentage of CDEP participants whose work has not transitioned into employment without work of any kind. NWWC also understand that funding for transitioned positions is available until 2014 but are concerned for the future employment of those workers after that time. CDEP participants should not be left without work as a result of CDEP reform.

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<sup>8</sup> Jordan, K., (2011), 'Work, Welfare and CDEP on the Anangu Pitjantjatjara Yankunytjatjara Lands: First Stage Assessment, Australian National University.

In some communities a lack of transitioned CDEP positions into real employment has resulted in the closure of programs. Not only does this mean that CDEP workers have lost their jobs but important community services cease to exist.

#### **Case study:**

In a remote NT community CDEP workers supported the delivery of an aged care service. The CDEP workers would take dirty blankets from elderly people living around the community, wash and return them to the elderly people. CDEP workers also delivered food to elderly people and would pick them up and take them to a once a week recreational program. The facility of the recreational program was recently refurbished but since CDEP reform, is now not being used, blankets are no longer washed and food is no longer delivered. In the same community CDEP workers provided child care services and did screen printing. The child care and screen printing has also ceased. In fact members of that community report that there has been a complete withdrawal of CDEP across the whole community.

Over many years NWWC have had regular contact with CDEP participants as they sought assistance for their workplace problems but it would appear that the winding back of the CDEP program and reduction in top-up work performed has had an impact on the number of women contacting WWC's. NWWC have experienced a reduction in the number of women with CDEP issues seeking assistance. NWWC are concerned that this group of insecure workers is becoming 'out of sight, out of mind'.

#### **Recommendations:**

NWWC call for detailed research into the impact of CDEP reform on CDEP participants.

Research ought to establish;

- how many workers are without jobs since CDEP reform
- the level of retention of those workers transitioned into employment
- the impact of the reforms on the reduction of top-up
- the impact of CDEP on the overall number of hours worked

NWWC assert that all CDEP positions transitioned into employment for the delivery of essential Government services continue to be funded beyond 2014.

## Relevant international human rights and labour standards.

### ILO Conventions

- C1. Hours of Work (Industry) Convention 1919
- C47. Forty-Hour Week Convention 1935
- C87. Freedom of Association and Protection of the Right to Organise Convention 1948
- C97. Migration for Employment Convention (Revised) 1949
- C100. Equal Remuneration Convention 1951
- C111. Discrimination (Employment and Occupation) Convention 1958
- C138. Minimum Age Convention 1973
- C182. Worst Forms of Child Labour Convention 1999
- C189. Domestic Workers Convention 2011

### The Universal Declaration of Human Rights

#### *Article 8:*

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.

#### *Article 20:*

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

#### *Article 23:*

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

#### *Article 24:*

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

## **International examples of effective measures that can be taken.**

In September 2011, the Working Women's Centre Timor-Leste was officially opened. The Centre will initially focus on domestic workers in Timor-Leste. Domestic workers are those who travel from the regional areas to work in Dili. Their situation is precarious in the sense that they move out of their homes, into the homes of their employers and often work for simply accommodation and meals.

The Working Women's Centre Timor-Leste will provide advice and assistance to women in precarious employment situations.

### **Recommendation:**

That Working Women's Centres be established (where not existing) and properly funded in Australia in all States so they may also provide support and assistance to women in precarious work situations. In particular the re-instatement of Centres in Tasmania and NSW is called for where original centres have closed due to lack of funding.

## **Protections that currently exist that could be effective if better enforced and/or which require amendment.**

### **Unfair dismissal qualifying period**

#### **Case study:**

Mandy is a 19 year old woman who lives in a small rural community. She has been working in the local shop for four months. Last week, Mandy's boss accused her of giving a free chocolate bar to her friend. Mandy denied this. Mandy's boss then sacked her. As Mandy had not worked for the requisite 12 month qualifying period applicable to small businesses, she was unable to make an unfair dismissal claim. There are very few alternative employment options available to her in her small community, and Mandy worries that her former employer will be spreading rumours amongst the other small business owners that she is a thief. Mandy is a sole parent of two children to support, aged 2 and 9 months.

#### **Case study:**

Gen contacted QWWS 15 days after she was dismissed from her employment and exactly 6 months after she commenced her employment. It had taken Gen 2 weeks to recover from the shock of her termination before she began enquiries into her rights.

Gen's employer had told her there were performance issues but Gen believed she had

been dismissed because she requested time off during the school holidays. Gen was disappointed that she was out of time and considered an adverse action complaint but obtained alternative employment a couple of weeks later so decided not to take action against her employer.

The small business qualifying provisions for unfair dismissal exclude many women from making claims against termination of their employment that has been done in a harsh unjust or unreasonable manner. Additionally the 14 day limit on lodging applications has proven too short for many of our clients particularly those in regional areas or from disadvantaged backgrounds. Some clients are choosing to make adverse action claims that should really have been unfair dismissal claims when they discover that they are out of time for the claim.

**Recommendation:**

Reconsider the fourteen day time requirement for lodgement of the unfair dismissal application and reinstate the 21 day time limit that previously existed.

**General Protections**

When conciliation fails applicants have to go to the Federal Court. This is prohibitive in terms of cost and in a jurisdiction where costs may be awarded against applicants in certain circumstances.

In the case of non termination general protections applications conciliation can not be forced. This means that if the employer is unwilling to conciliate cases must be bought to trial. Many NWWC clients do not proceed to take their matters forward under these circumstances.

**Recommendation:**

Amend the legislation to require respondents to attend conciliation.

**Additional measures that can be taken by; Unions, Employers, Government**

A higher level of action is needed to expose sham or disguised employment contracts that provide for less entitlements than a genuine employment relationship.

The NWWC has provided support to many women who have had their employment conditions undermined including removal of workers compensation and public liability entitlements. Such contacts make the 'contractor' who would other wise be an employee responsible for payment of tax, superannuation and insurance. In all instances reported to the NWWC any over award payments made were far outweighed by these other on costs.

These contracted workers are effectively removed from workplace relations protections and

regulations and the benefits such as paid leave associated with employment relationships.

While provisions exist to determine if contracts are sham or unfair this relies on legal proceedings which are prohibitive to the majority of the NWWC client group and this serves as a deterrent to redressing the situation.