



Submission to the Productivity Commission- Workplace Relations Framework Inquiry

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1. Introduction

The National Working Women's Centres (NWWCs) in South Australia, the Northern Territory and Queensland are community-based not-for-profit organisations that support women employees whatever their age, ethnicity or work status by providing a free and confidential service on work related issues. All three Centres are small agencies that rely on funding from the Commonwealth Fair Work Ombudsman, as well as State (SA) and Territory governments (NT). Federal funding comes through the CBEAS (Community Based Employment Advisory Services) program that was initiated to recognise the high unmet need in the areas of employment advice for vulnerable workers particularly women.

The Working Women's Centres opened in 1979 in South Australia and in 1994 in the Northern Territory and Queensland. Since their beginnings, the Centres have worked primarily with women who are not represented by a union, their own lawyer or other advocate. We provide advice, information and support in lodging complaints and claims. As we are not legal services and can not provide legal advice, we refer women with legal needs to appropriate legal services. Many women who contact our Centres are economically disadvantaged and work in very precarious areas of employment.

NWWCs also conduct research and project work on a range of issues that women experience in relation to work. These have included access to child care, Repetitive Strain Injury, outwork, family friendly practices, WHS, workplace bullying, the needs of Aboriginal and Torres Strait Island women, pregnancy and parental status discrimination, Community Development Employment Project (CDEP), work/life balance, pay equity and the impact of domestic violence on women workers and their workplaces. Although some of the issues have changed for women since the Centres began operation, the work that we do remains consistent with the philosophy that all women are entitled to respect, to information about their rights and equal opportunity in the workplace.

We would also like to endorse the submission presented to the Productivity Commission by the National Foundation for Australian Women.

2. Summary of NWWC Recommendations

Recommendation 1: That there is legislative reform to provide pregnant employees with the entitlement to paid antenatal leave.

Recommendation 2: That there be legislative reform to provide working mothers with adequate paid breastfeeding or lactation breaks and access to appropriate facilities for breastfeeding or lactation, including a lockable, private room (not a toilet) with power and access to refrigeration.

Recommendation 3: That current legislation is amended to allow for a right to part-time or other form of flexible work for parents returning to work after parental leave, for organisations of 15 or more employees.

Recommendation 4: That current legislation be amended to allow for an employee to appeal by way of Dispute Provisions to the Fair Work Commission against an employer's refusal to a request for part-time or other flexible work arrangements, and that there be a clearer definition of what constitutes reasonable business grounds for refusal.

Recommendation 5: That there be a positive requirement for employers to hold a meeting with their pregnant employee who has notified her employer of her pregnancy, and to provide her with a template information sheet on her rights and responsibilities under the Fair Work Act, occupational health and safety laws and anti-discrimination laws, as well as any relevant award, enterprise agreement, individual contract or workplace policy and procedures.

Recommendation 6: That there be a positive requirement for employers to provide an employee returning from parental leave a template information sheet on her rights and responsibilities under the Fair Work Act, occupational health and safety laws and anti-discrimination laws, as well as any relevant award, enterprise agreement, individual contract or workplace policy and procedures.

Recommendation 7: That current legislation be amended to allow for an employee to appeal by way of Dispute Provisions to the Fair Work Commission against an employer's refusal to a request for extended parental leave, and that there be a clearer definition of what constitutes reasonable business grounds for refusal.

Recommendation 8: That a casual conversion clause be re-introduced into all Modern Awards to allow casual employees to convert to permanent employment after 12 months.

Recommendation 9: That minimum working hours are established in all modern awards, including a minimum engagement of 3 hours for casual workers, and requiring written agreement to a regular pattern of hours and adequate notice of changes to hours for part-time workers.

Recommendation 10: That there is no reduction in penalty rates.

Recommendation 11: That the Stop Bullying Jurisdiction be available to workers in non constitutional corporations.

Recommendation 12: That research is conducted to follow up on workers who have successfully negotiated staying on at work with some agreed safeguards in place.

Recommendation 13: That the FWC develop a screening process to compile a list of preferred providers in the fields of workplace bullying training, counselling, mediation etc to ensure that practitioners have appropriate skills, experience and knowledge in this field.

Recommendation 14: That Section 351(1) of the Act is amended to extend protection to employees experiencing domestic violence by naming the status of victim of domestic violence. This should also include employees who provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

3. Response to questions posed by the Productivity Commission

The NWWCs have concentrated our submission on particular aspects of the workplace relations system. These are the discrete areas where we see the need for adjustment to ensure enhanced equity for women workers.

In general, with the exception of these discrete areas where we recommend adjustment, our recommendation is that the current workplace relations system, including the unfair dismissal and general protections provisions of the *Fair Work Act 2009* (Cth) ('the Act') remain largely unchanged.

3.1 The National Employment Standards (NES)

The NWWCs support the existing suite of entitlements encompassed by the NES. We do not support any deletions or reductions to the current scheme.

The NWWCs have long advocated for greater flexibility in the workplace to take account of parental responsibilities and improved work/life balance. Together, the NWWCs have prepared a number of submissions¹ advocating for greater flexibility in the workplace, highlighting the discrimination that women still face in the workplace on account of pregnancy or parental responsibilities.

It is our submission that greater flexibility in the workplace for both women and men improves productivity and workplace participation.

We propose additional entitlements to be included in the NES, as follows.

Antenatal leave

There is currently no legislated right to leave for pregnant employees to attend antenatal appointments. There has been no legislative clarification on whether an individual's personal leave may be used to cover these appointments, and too often, pregnant employees do not wish to stir the pot any more than necessary by asking for an unclear entitlement. In Norway and the Netherlands pregnant employees are entitled to paid time off from work for antenatal examinations.

Recommendation 1: That there is legislative reform to provide pregnant employees with the entitlement to paid antenatal leave.

Entitlements to paid breastfeeding breaks and access to facilities

In Australia at present there is no right to paid (or unpaid) breastfeeding/lactation breaks or right to access appropriate facilities in the workplace in which a working mother can breastfeed a baby or

¹ The submissions can be found on the National Working Womens Centre Website www.org.au and include: [Submission to Fair Work Act Amendment Bill \(Better Work Life Balance\).pdf](#); [Submission to Fair Work Australia Report into NES Right to Request.pdf](#); [Submission on pregnancy discrimination and return to work](#); [Submission on Fair Work Act Amendment Bill.pdf](#); [Fair Work Act Review 2012.pdf](#)

express milk. Australian women are protected by the anti discrimination legislation that prohibits discrimination against breastfeeding women, and imposes a duty on employers to make reasonable adjustments for their needs. However, this falls far short of legislated rights to paid breaks and facilities. Without positive statements in legislation, the level of breastfeeding support required by workplaces is open to interpretation and assumes all women have the confidence to raise the issue with their employer.

Several European countries have legislated these rights, including Germany (paid breaks of half an hour at least twice a day until the child is one year old) and the Netherlands (paid breaks of least 15 minutes, as often and for as long as necessary, up to 1/8 of total working hours). Netherlands industrial law also requires employers to provide rest areas for pregnant employees as well as those breast-feeding or expressing milk. In Timor-Leste women have a 6 month entitlement to paid leave breaks after their return to work to allow for continued breastfeeding.² Recently, the Queensland public service introduced an entitlement of one hour of paid lactation break for every eight hours worked, and several other organisations have this in their enterprise agreements.

These entitlements are in line with the International Labour Organisation Maternity Protection Convention, 2000 (No. 183), Article 10, which states that:

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly

Recommendation 2: That there be legislative reform to provide working mothers with adequate paid breastfeeding or lactation breaks and access to appropriate facilities for breastfeeding or lactation, including a lockable, private room (not a toilet) with power and access to refrigeration.

Right to flexible work

The most obvious gap in the current range of entitlements in this area, and one that has been highlighted time and time again by the NWWCs, as well as many other key groups, is the lack of a right to flexible work and the lack of an appeal process for the refusal of requests for flexible work.

Currently an employee has the right to request flexible work arrangements on a variety of grounds, including caring responsibilities and if experiencing domestic violence. The NWWCs maintain that a right to *request* an entitlement has little substance as an enforceable right. Codifying an existing right (the right to ask) may be a useful attempt to change workplace culture, but it certainly does not strengthen women's and parent's workplace rights. Parents whose requests for flexible leave are

² www.worldpolicyforum.org

refused have little choice. They either accept the (usually) full-time position, or make childcare arrangements (often difficult or impossible), or they tender their resignation.

Internationally, the scene is very different. Since 1978, Swedish parents have had the right to work six hours a day (at *pro rata* pay) until their children turn eight. Germany now grants the right to work part-time to employees in enterprises with more than 15 workers; the Netherlands enacted a similar right in enterprises of 10 or more workers. Belgium grants employees the right to work 80% time for five years.

Recommendation 3: That current legislation is amended to allow for a right to part-time or other form of flexible work for parents returning to work after parental leave, for organisations of 15 or more employees.

Right to request flexible work - lack of an appeal process

Currently under the Act an employee who has had their request for flexible work arrangements, whether reasonably or unreasonably, has **no** mechanism for appeal unless this has previously been agreed to in a contract or enterprise agreement. This severely limits the enforceability of the provision, leaving many employees seeking flexible work and extended parental leave (predominantly women) with rights on paper only. This has been a serious impediment to achieving greater work life balance for employees.

Further, there is no definition of ‘reasonable business grounds’ in the Explanatory Memorandum to the Act. This merely provides examples of what may contribute to ‘reasonable business grounds’.

NWWCs are aware of numerous cases where workers with legitimate needs for flexible working arrangements have had their request unreasonably denied. These employees are often faced with being forced to work full time, convert to casual employment or withdraw entirely from the labour market via resignation.

NWWCs are of the view that a right to request without a process of appeal of the decision of the employer leaves workers with rights on paper only. We find that the ‘reasonable business grounds’ defence has been used by many employers to refuse requests for flexible working hours, without any elaboration or definition of these specific grounds. In many cases, employers have not put their response in writing. In some cases employers have become hostile when a request is made and refused to recognise the entitlement at all.

NWWCs are aware of numerous cases where workers with legitimate needs for flexible working arrangements have had their request unreasonably denied or in some circumstances partially granted or ‘drip fed’ with the need to constantly renegotiate conditions. These employees are often faced with being forced to work in ways that are clearly unsuitable to their circumstances such as: working more hours than they have capacity to, accepting demotion, converting to casual employment or resigning. Many of our clients report high levels of stress at this time.

Melissa's Story³

Melissa was employed part time as a teacher by a private school in Adelaide.

In early 2013 she notified her employer that she was pregnant and this was met with a positive response.

She commenced her unpaid parental leave at the end of a semester in 2013. She was due to return the following year in 2014.

In early 2014, Melissa requested a flexible return to work, seeking a return to work on a part time basis (0.4).

This was rejected by the employer as they did not believe two individuals sharing one position could maintain the high standard of teaching that was required. They consistently said that Melissa's teaching was of a very high standard and that both the teachers and the parents appreciated and valued her work. The employer's main argument was that they were unwilling to advertise for a job share partner as they maintained that the quality of applications would be low and they would not find someone suitable. Melissa wanted them to at least try to find someone for her to job share with. The person who had replaced her whilst she was on leave was not considered to be suitable for the position.

Melissa was upset at not being able to return on a part time basis as she wanted to spend some time at home with her baby. She sought advice from the Working Women's Centre and with support she lodged a sex and family responsibilities discrimination complaint against her employer.

The parties attended a conciliation conference which was very positive and productive. Melissa wanted the employer to at least advertise a job share position before deciding if a job share arrangement was suitable and appropriate. After some extensive negotiations, the employer agreed to advertise for a job share partner for Melissa and if a successful person could be found, to review the arrangement.

Taylor's Story

Taylor worked as a designer for a retail outlet.

She had her first baby and had arranged to take a period of 8 weeks maternity leave. The written agreement was that she would return to work after the 8 weeks, working 4 days from home and one day in the business.

Everything had been set up prior to the arrival of the baby and Taylor had been working from home successfully for some time. The employer had agreed to do this as a test run to ensure the arrangement would work after the baby was born. Everyone was happy with the way things were going.

³ All names and identifying details in case studies have been changed to protect the confidentiality of our clients.

The week prior to Taylor's agreed return to work date, she went in to her place of employment to arrange what day she would be working in the office, only to be told that they had changed their minds about the agreement. Taylor was told she was to either return to work on a full time basis from the following Monday or take a full 12 months unpaid leave.

Taylor went into panic mode as she had no chance of arranging full time childcare with less than 4 days notice. The care that Taylor and her partner had arranged for the baby was with grandparents and not in a childcare facility. Taylor was not in a financial position to maintain full time childcare fees, or to be on unpaid leave for 12 months.

At this point Taylor experienced health issues including depression and anxiety. Her milk flow was affected and her baby's sleeping and feeding were also affected. She became very unwell.

We believe that there is the need for a clear definition of 'reasonable business grounds', a clear dispute settling mechanism, and a clear process for both employees and employers to deal with those situations where a request is not assented.

Recommendation 4: That current legislation be amended to allow for an employee to appeal by way of Dispute Provisions to the Fair Work Commission against an employer's refusal to a request for part-time or other flexible work arrangements, and that there be a clearer definition of what constitutes reasonable business grounds for refusal.

Enhanced information for pregnant employees and employees returning to work following parental leave

Despite the existence of protections in the NES and elsewhere in the Act, many of our clients report attitudinal changes from managers following an announcement of their pregnancy. Previously harmonious work relationships may become strained, and often performance issues are raised seemingly out of the blue. Employees may be made to feel uncomfortable, embarrassed, or inconvenient when asking for their basic entitlements in relation to their pregnancy or their return to work rights. Many employees still see their employment entitlements as *privileges* not rights, and feel hesitant to 'push their case' for these. In many cases this is exacerbated by the employee's lack of knowledge and information about what they are entitled to, as well as an employer's lack of knowledge about their legal obligations towards pregnant or returning employees. All too often the employee-employer interaction over this issue is one of gratefulness and largesse rather than an engagement about managing inherent rights to maximise productivity and care.

Some of the greatest areas of discomfort arise from the lack of mandated formal processes in discussing an employee's pregnancy, negotiating parental leave and return to work plans. The onus may be placed entirely on the individual employee to research and understand her entitlements according to her individual contract, enterprise agreement, award and organisational policies and to advocate for herself within these borders. This contributes to the feeling many employees report of

going 'cap in hand' to their employer to inform them of their pregnancy and their need to access their entitlements, such as safe no paid job leave or unpaid parental leave.

We believe that these amendments are crucially important in addressing the current absence of enforceable provisions for workers seeking flexible work.

Recommendation 5: That there be a positive requirement for employers to hold a meeting with their pregnant employee who has notified her employer of her pregnancy, and to provide her with a template information sheet on her rights and responsibilities under the Fair Work Act, occupational health and safety laws and anti-discrimination laws, as well as any relevant award, enterprise agreement, individual contract or workplace policy and procedures.

Recommendation 6: That there be a positive requirement for employers to provide an employee returning from parental leave a template information sheet on her rights and responsibilities under the Fair Work Act, occupational health and safety laws and anti-discrimination laws, as well as any relevant award, enterprise agreement, individual contract or workplace policy and procedures.

Right to request extended parental leave – lack of appeal process

As is the case with requests for flexible work, the Act currently provides no dispute mechanism procedures for employees who have requested extended parental leave and had their request refused. We believe that there is the need for a clear definition of 'reasonable business grounds', a clear dispute settling mechanism, and a clear process for both employees and employers to deal with those situations where a request is not assented.

Recommendation 7: That current legislation be amended to allow for an employee to appeal by way of Dispute Provisions to the Fair Work Commission against an employer's refusal to a request for extended parental leave, and that there be a clearer definition of what constitutes reasonable business grounds for refusal.

3.2 The Award system

Casuals and conversion

In the process of creating the Modern Awards, casual conversion clauses have been removed from many Awards. As a result, many Award-based casual workers have lost the right to request permanent employment after completing 12 months of casual work. 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 who make up a large percentage of NWWC clients.

Many NWWC clients are long-term casual employees. NWWC 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 years⁴.

Recommendation 8: That a casual conversion clause be re-introduced into all Modern Awards to 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.⁵

Hours of work

At present, the NES (and modern awards) provide protection for the rights of full-time, permanent workers but not the rights of non-standard workers such as casual workers to minimum hours for an engagement. Security and predictability of hours are very important to working women.⁶

Recommendation 9: That minimum working hours are established in all modern awards, including a minimum engagement of 3 hours for casual workers, and requiring written agreement to a regular pattern of hours and adequate notice of changes to hours for part-time workers.

3.3 Penalty Rates

Penalty rates are a common feature in many of the Awards that underpin the employment of many of the women contacting our services for assistance. For example industries such as hospitality, retail and community and disability care. Many of the employees whose work attracts penalty rates are working hours on weekends and late into the evening or very early. Traditionally these hours are considered anti-social and counter to the regular rhythms of family and business hours, therefore have been compensated with extra pay. Current ABS data shows that time away from work on weekends remains a strong feature in the lives of Australian workers with 70% of single job holders working on weekdays only⁷.

Many of the workers in these industries are already low paid and part time and rely on the penalty rates for their living wage.

⁴ The NWWC supported a casual employee of 18 years to make a claim for unfair dismissal.

⁵ Hospitality Industry (General) Award 2010.

⁶ The AWRS (2015) shows that compared to full-time employees, a greater proportion of employees working part-time reported a preference to work more hours – 27 per cent and 39 per cent respectively. Almost half (46 per cent) of casual employees indicated they would prefer to work more hours (for more income).

⁷ Australian Bureau of Statistics, 6342.0 - Working Time Arrangements, Australia, November 2012

A reduction in penalty rates may disproportionately affect women who are award reliant, who are often employed in the hospitality, retail and community and disability care industries and who juggle their hours around family responsibilities and work hours where childcare is available via their partners or family. Quality affordable child care is difficult to access on weekends so many women rely on family.

Recommendation 10: That there is no reduction in penalty rates.

3.4 Unfair Dismissals

It is our submission that the current protections for individual workers contained within the Act in relation to unfair dismissals reflect and uphold the modern Australian values of fairness, due process and equal treatment. As such we firmly believe that they foster trust, transparency, stability and accountability in the workplace.

In our experience of advising women who have been terminated from their employment, the tests to be applied in determining whether a termination was unfair or unlawful are reasonable, logical and readily understood. We would strongly oppose any watering down of employee rights, protections or any constriction of the tests to be applied in unfair dismissal cases.

We believe it is essential that the avenues for seeking redress for unfair dismissals remain accessible.

The NWWCs represent many hundreds of women each year as applicants in unfair dismissal applications. In general, we have found the Fair Work Commission's practices and procedures to be accessible and highly efficient.

That conciliations are listed within a short period of time, are relatively informal, and have the ability to assist the parties to reach pragmatic and expedient outcomes, has enabled countless of our clients to feel a sense of justice, relief and closure. Importantly this leads to the restoration of clients' sense of self worth and self esteem and expedites their readiness to return to employment.

On the issue of 'go away' money, we do not believe that Conciliation proceedings place any undue burden on blameless employers to offer compensation, nor do we believe they short-change a worthy Applicant. In our experience, conciliation conferences usually settle appropriately. This is because the process sufficiently exposes the strengths and weaknesses in each party's position, allowing the conciliator to gently 'reality-check' the parties about the tests to be applied.

Generally, where Applicants have stronger cases, the settlements are higher; where they have weaker cases, they settle for less – perhaps only a week's pay. Whether or not this is regarded by the employer as 'go away' money, it is still better than nothing from where an Applicant stands, still of the belief that they were unfairly or unlawfully terminated.

The benefit to employers when an outcome is conciliated is usually a Deed of Settlement that confirms their indemnity against future claims arising out of the employment. Such a Deed gives

both parties a clear guide as to their responsibilities to each other including the benefits of provisions such as confidentiality.

In the very rare cases that we have ultimately seen a Conciliation to have absolutely no merit, the employer has rightly refused to offer any financial settlement at all. It has never been our experience that they somehow feel blackmailed into offering 'go away money'. Nevertheless, other non-financial settlement terms (such as changing a termination to a resignation or providing a statement of service) have occasionally been offered in such cases, arguably at no cost to the employer, but to great gain for the terminated worker.

Recently some of the centres have had discussions about inconsistent approaches and rushed conciliation conferences where Commissioners have stated that they are pressured for time or have asked our Industrial Officers to take over negotiations. We believe that while this is not common it may be reflective of the high volume of work that Commissioners and Conciliators are required to perform and the at times stressful nature of these activities. Overall we see conciliation as a valued tool for alternative dispute resolution and we recommend that FWC continues to be properly resourced to conduct effective conferences.

3.5 Bullying

On the whole NWWCs commend the introduction of a specialist jurisdiction to deal with workplace bullying. Each of our Centres attests to the resource intensive requirements of assisting clients who have been bullied at work. It is useful to point to a jurisdiction where complaints can be heard as encouragement to workplaces to have decent policies in place, to provide training and to ensure everyone at the workplace knows that workplace bullying will not be tolerated.

Given the high rate of workplace bullying in the Health and Community sector (consistently the highest sector in NWWC reporting data) it is somewhat puzzling that the laws don't cover non-constitutional corporation employees. This means that workers in some sectors have access to a remedy and others don't. Many non-trading organisations are managed by volunteer boards or committees whose members may be well intentioned but not always able to manage the complex dynamics of workplace bullying within a community organisation.

Part of the time and resources utilised in workplace bullying matters are devoted to explaining all of the different avenues and overlap in laws that are available in some States but not all e.g. Work Health and Safety laws, discrimination law (both State and Federal for some workers), Brodie's law (Victoria), and the common law.

There is a need to strengthen (perhaps by way of a Memorandum of Understanding in each State and Territory), the connection between the Federal Stop Bullying Jurisdiction and the relevant Work Health Safety Agency. To date it is not clear of the relationship between the Fair Work Commission and the State and Territory regulators in terms of sharing reports of bullying investigations or recommending compliance activities. NWWCs also note varying responses from Work Health and

Safety Agencies across jurisdictions where by some Agencies are engaged in the issue of workplace bullying and others less so.

For some NWWC clients the option of accessing the Stop Bullying Jurisdiction carries too much fear. For some clients, this avenue is no longer available to them as their employment relationship breaks down usually due to ill health. Many of our clients just opt to leave the workplace because they have nothing left to fight with.

Sharon's Story

Sharon lived and worked in a regional area in a close knit community where everyone knew each other and town gossip was rife. Sharon had worked in horticulture for over 20 years.

When she contacted us she had been experiencing sustained harassment from a work colleague for over 10 months. Sharon had been called names, humiliated, had her work records sabotaged, been isolated from her work mates, had her life and safety threatened, had her family jeered at both at work and at public venues. This behaviour occurred on a daily basis. Sharon chose to put her head down and get on with her work. She had to live alongside the people she worked with and thought the behaviour would stop. She let her supervisor know but his response was that Sharon would just have to sort it out.

In the main Sharon handled this and just wanted to work a couple more years until her retirement. Sharon was advised to report the behaviours to her boss, the police and to the relevant authorities. There came a point after nothing changed where Sharon's health rapidly deteriorated and she was urged by her family to just quit. Sharon is currently receiving medical help and considering her options but says she feels too tired and broken to do anything else.

NWWCs commend the FWC resources available to workers who feel bullied. The Benchbook is clear, the forms are very specific in explaining who is eligible to make a complaint and also guide the complainant in the information they need to supply to have their claim considered.

The Stop Bullying Jurisdiction allows parties to explore non monetary settlements that can include systemic improvements at the workplace such as transfer to other areas, a mentor to monitor any agreements between the parties, a pay rise, training for managers and workers, the development of proper policies and procedures etc.

NWWCs find the published outcomes very useful in guiding applicants in this jurisdiction. We look forward to at some point, the publication of external research that looks at following up complainants in the future to see if an applicant's experience in making a complaint is a positive or negative one and whether they have been able to maintain their employment at the same organisation.

It would be helpful if the FWC could provide lists of preferred providers for counsellors, trainers etc. In our view these providers must have been able to provide proof of them undertaking specialist training in workplace bullying themselves as inexperienced practitioners in this field can sometimes exacerbate an already difficult situation for a worker who is experiencing workplace bullying.

Recommendation 11: That the Stop Bullying Jurisdiction be available to workers in non constitutional corporations.

Recommendation 12: That research is conducted to follow up on workers who have successfully negotiated staying on at work through the Stop Bullying jurisdiction with some agreed safeguards in place.

Recommendation 13: That the FWC develop a screening process to compile a list of preferred providers in the fields of workplace bullying training, counselling, mediation etc to ensure that practitioners have appropriate skills, experience and knowledge in this field.

3.6 General Protections and ‘adverse action’

In general, the NWWCs submit that the general protections within the Act, and particularly the adverse action provisions, afford adequate protections and require no adjustment.

Margie’s Story

Margie took parental leave and sought to return to work part time. At the time of her due return her employer (a large construction sales organisation) insisted that she had indicated she was only available part time and indicated to her that they were looking for a suitable redeployment as her position had been made redundant just prior to her return. After more than six weeks and during which they did not pay Margie, the employer offered her a part time position with substantially less responsibilities than she held. They then made Margie redundant when she hesitated about the new position, complained about her treatment and went on sick leave. At no point had they informed Margie about her rights in relation to parental leave or her right to request a flexible work arrangement. Margie felt she was dismissed when she tried to investigate and assert her rights and because she had taken parental leave with a preference for a part time return. Margie made an adverse action complaint on the basis of pregnancy and family responsibilities and her matter settled after conciliation.

The one area that requires improvement is domestic violence.

In 2013, domestic violence was included as a ground in the right to request flexible working arrangements (Section 65 (1A)(e)(f)). This entitles an employee who has experienced adverse action as a result of exercising their right to request flexible work arrangements on the grounds of domestic violence to lodge a general protections claim. It also entitles carers of victims of domestic violence the same protection.

However, this scenario will offer only very limited protection to a narrow group of employees. The NWWC remain concerned about the vulnerability of a broad range of workers experiencing domestic violence-related discrimination at work. There are still no protections for employees who experience discrimination based on domestic violence and who have not requested flexible working conditions.

Mary's Story

Mary worked as an attendant at a children's recreation venue. She had moved house following domestic violence, to escape her partner. She was worried that her ex-partner would try to come to work to find her because it was the only address he had for her. She told her boss what had happened and she asked the boss to have a photo of her ex-partner circulated to the staff so that they would be aware of him and could block his entrance. He refused to do this. He said, 'I'm not your personal security guard.' One day her ex-partner did indeed come to her work. He was let through and he verbally assaulted her in front of quite a lot of children and their parents. She was sacked. The boss said he was sorry, that he did not want to lose her but he had received complaints from parents following the incident and he said that his other staff felt unsafe and he had to protect them and to protect the children who frequent the venue. In this case she had no eligibility to claim unfair dismissal. She had worked there for only four months. Like many women escaping domestic violence, she had had a series of casual and short-term jobs. Even if she could meet the qualification period for unfair dismissal, the employer could mount a pretty strong argument for valid reason for the dismissal.⁸

NWWCs are of the view that Aboriginal women employees are particularly vulnerable to discrimination and termination of their employment because of their experiences as victims of domestic violence. Aboriginal women are **35 times** more likely to be victims of domestic violence and 10 times more likely to die due to family violence, than non-Indigenous women (ADFVC 2010).⁹ Aboriginal women are also approximately three times more likely to be unemployed¹⁰. It is the view of NWWC that domestic violence is a significant contributing factor to the unemployment rates of Aboriginal women as domestic violence contributes to the inability of some Aboriginal women to apply for and retain employment.

⁹ ADFVC 2010 Special Collections Indigenous people Viewed 4 October 2011
<<http://www.adfvc.unsw.edu.au/specialcollections.htm>>.

¹⁰ ABS Census Data cites the unemployment rate for non-Indigenous women across Australia at 5.2% and for Indigenous women at 16.2%. ABS (2011), Census Data, 62870DO006_2011.

We submit that in the Australian context it is appropriate and timely for the Act to include the personal characteristic 'status as a victim of domestic violence' in the list of attributes protected from discrimination.

Recommendation 14: That Section 351(1) of the Act is amended to extend protection to employees experiencing domestic violence by naming the status of victim of domestic violence. This should also include employees who provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family