"Vulnerable women workers: are the regulatory changes improving their position?"
Issues for vulnerable women accessing Working Women's Centres

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Background to our work, our clients and issues that impact on service delivery

The end of WorkChoices after Labor was elected to government in November 2007 was met with jubilation by advocates for the most vulnerable workers. The WorkChoices years had delivered little by way of fairness to those workers typically in low paid and insecure positions, workers who were non union and had no union presence in their worksites. The capacity for workers to be dismissed with no access to unfair dismissal provisions, simply on the basis of the size of their workplace left many of the women who accessed our service feeling disempowered and aggrieved. The hardest thing for them to come to terms with was being given no reason for their termination, no chance to process what had happened to them or to correct what they typically thought was a failing of their making. When women question their worth in this way as a result of a sacking it is difficult for them to take steps to secure their next job. Relationships of trust and being treated with dignity along with the Australian love of being given a fair go are immensely important to a woman's sense of loyalty to her employer. Leaving a workplace with a huge sense of unfairness about her termination does little for a woman's capacity to balance the important care work for herself and her family.

As clever as we were at finding other remedies, perhaps under human rights and discrimination law, we just could not get around the fact that some employers terminated their workers and there was no remedy. We saw an upsurge of women being dismissed under the WorkChoices regime just before they became eligible for their long service leave entitlements. Again there was a spike in dismissals just before the end of the making of new Australian Workplace Agreements took effect on 27 March 2008. It wasn't until 1 July 2009 that the new Fair Work Laws took effect with the introduction of the new safety net provisions under the National Employment Standards. Of course later we saw that great challenge to the economy, the 'global financial crisis' become a convenient shield for women to be terminated – no doubt some of these terminations were for genuine business reasons but many were not. Often, apparently to soften the blow of sacking an employee, an employer will use the term 'redundancy'. In many cases these 'redundancies' are not genuine. This style of termination is not a new phenomenon but it seems there will always be opportunists under any government regime and vulnerable women workers are amongst those most likely to be the casualties at times of legislative change.

Why then are the women we provide a service to, not members of a trade union? Surely vulnerable workers are the ones who most need the protection of a union at the workplace level? We encourage and support women to consider union membership once we have assisted them to settle their matter. We enjoy strong relationships with unions in South Australia and believe we are well regarded for the joint work on campaigns, education and project work we undertake in partnership with our union comrades. WWC SA was set up 31 years ago with Union involvement and we continue to honour our beginnings with the Movement.

There are however a range of reasons why women don't join unions. It may be that they are the sole worker in a small business with only the owner of the business to work with. It may be that women are unaware that there is a union for them to join, for instance her employer may have made comments to the effect that she doesn't need a union because 'everyone is family here and you'll be looked after'. It may be that she has been told there is no union, that it is illegal for people in this workplace to join a union or that 'we just don't join unions here' or there may be other reasons for

her not joining. Never being approached to join is one reason women give. Another is that they are 'only casual or part time' and that it's too expensive to join, especially when there might be quite long periods of non-engagement with work. It may be that there is a hostile attitude to unions in her family – yes, shockingly, women are still influenced by their fathers and husbands about these issues. Women who have come here from other countries may have little knowledge of the systems in place to support them at work or indeed be very suspicious of unions if they have previously experienced non democratically elected practices ie employer representatives presenting themselves as 'union' in their countries of origin.

Working Women's Centres are very effective at assisting women to address individual workplace issues but WWC's have no workplace presence, no capacity to enter a workplace to represent a woman and no invested power to speak with her employer if there is no willingness by the boss to engage. Nor do WWC's have the resources to have a worksite presence in every workplace across the State or Territory in which they operate.

Joanne contacted the Working Women's Centre to seek assistance resolving a workplace issue. When asked if she was a member of a union she replied,'No. Our boss doesn't allow us to join a union here.'

So, it was with a sense of 'back to the good old days' when we moved Forward with Fairness and welcomed the re-introduction of access to remedies for unfair and unlawful termination with the Fair Work Act. The rhetoric at least on 'fairness' reigned. Vulnerable workers were once again to be treated with fairness under new fair work laws that gave them a fair go. New bodies which embodied the nomenclature of fairness morphed from the old regime – Fair Work Australia, the Fair Work Ombudsman and the Fair Work Information Line had us speaking a new language of FWA, FWO and FWIL. At WWC SA we were particularly excited about the possibilities as we saw it that the 'general protections' and 'adverse actions' provisions could deliver. These had particular relevance to women workers who experience discrimination and perform the well known juggling roles between work and life. Our sense of hope in being able to deliver fairness again was high. Once again we would have remedies that looked to deliver options, quick remedies and recognition that all workers, not just the most vulnerable, deserve to be treated with fairness and to have systems of work in place that deliver fair treatment.

To a large degree our sense of optimism for the new laws remains although as in other countries, such as New Zealand, that 'return' to more encompassing industrial laws for workers, after a period of conservative workplace laws, did not return things completely to the way it used to be or indeed to be even better than things had been before. Whilst we are pleased that we are able to represent and advocate for many more women who have been terminated we initially found the telephone conciliation conferences a foreign environment. We still find the 14 day limit for lodging a notice of unfair dismissal is an impediment for some women, particularly those from NESB or CALD backgrounds,women with little or no access to computers, women with mental health issues and women who live in rural, regional or remote areas. The 14 day time limit has also concentrated the amount of time our Industrial staff have to meet with women and assist them to adequately prepare for their conference. This has created internal pressures for staff managing already intense workloads. With little capacity to be flexible around the scheduling of conferences, staff have experienced a clash of commitments to clients in jurisdictions other than FWA. Staff are finding that as there are more options for remedy to canvass with women more time is taken with clients in the information giving stage and again at the decision making stage. Staff report they are taking special care not to overwhelm women with information. At times they feel, because of the tight time frames to prepare a case for conciliation that their capacity to adequately represent their clients is at times compromised. We have alerted FWA to these concerns and expect to put them again as part of the review of the new FWA procedures currently being undertaken. Whilst staff are adapting their

approaches it is interesting to note from client evaluations that women who use our service remain largely unaware of these changes. It is important to us that we continue to provide a high level of service but we note we are consistently doing this with fewer resources and more demands on our time.

The single biggest impediment to vulnerable women workers that we have detected in our statistics is, we believe, an unintended consequence of better access to unfair dismissal remedies. Yes we have been able to assist more women with unfair dismissal applications and remedies than during the WorkChoices years. However what we are increasingly seeing is a rise in workplace bullying complaints. Employers are mostly aware that they can no no longer sack a woman for no reason. The WorkChoices years appear to have made many employers very lazy when it comes to respectful and fair performance management. If you didn't like a worker or their work pre 2007 it was easy to part company with them, with little regard to due process or natural justice principles. Since the introduction of the Fair Work Act and improved access to remedies for unfair dismissal, it seems the weapon of choice for employers who want to 'let their worker go' is workplace bullying. The new 'fair' approach seems to have engendered a checklist such as 'Don't offer support for women to address perceived problems, don't undertake a performance process that is well understood and documented and that has been implemented following consultation with the Union, in fact don't treat a worker more 'fairly' at all – just apply pressure and bully them until they 'choose' to leave of their own accord.' Workplace bullying is a much more insidious problem to deal with than a sacking on the spot as bullying often goes on for months before the worker even has a name for it. Bullying erodes a worker's self esteem and confidence, inevitably causing the worker to question their own capacity to do the job they once did well. In our latest analysis of statistics workplace bullying has ascended the ranks of most called about issues. This is a worrying trend, especially given the OHS Harmonisation to one national system. In South Australia, where our State OHS laws currently make specific reference to workplace bullying and have a procedural remedy, we are very eager to see a National Code of Practice to address and prevent workplace bullying. Given the seriousness of the Brodie Panlock case in Victoria, without a national, consistent and well resourced approach, it is only a matter of time before we see more workplace deaths as a result of bullying.

Other barriers that have arisen or deepened as a result of an eroding of resources

- Despite undergoing 2 reviews of our services by the Commonwealth since 2008, WWC's have had no increase in Commonwealth funding. Whilst still Deputy Prime Minster, Julia Gillard did recently acknowledge the valuable work of the Centres and committed the government to a 2 year funding agreement (with service agreement terms to be negotiated) and then a further 3 year agreement. We welcome this development but note that to date there is still no increase in real terms, not even CPI.
- The WorkChoices and subsequent Fair Work years have been very confusing for many stakeholders and not least our client group. We noted a pervading sense of helplessness under the WorkChoices era, with many women feeling they had lost all their rights at work and there was really nothing they could do to remedy poor treatment by employers. Conversely, many women presumed that when Labor came to power they got rid of the WorkChoices laws (encouraged by talk of 'ripping up WorkChoices') and were disappointed to learn that this was not the case. Whilst there is no doubt that the new laws do offer better remedies in many areas, there are instances where remedies don't apply. The 'right to request' flexible return to work after maternity leave is a case in point where there is no right of appeal should an employer refuse this request. An employer simply has to give reasons why a part time or flexible return to work can not be accommodated. There is no capacity for FWO to assess the validity of these reasons or for a worker to challenge the reasons given. Of course we note that many of our client group have a strong perceived sense of laws that should deliver 'justice'. Our staff spend many hours explaining what the law can

and can't deliver. What the law and the processes of FWA and FWO can deliver is often at odds with the remedies and outcomes desired. We do acknowledge this and note that our skill is in explaining this in plain language that accords with women's understanding of their particular situation.

- Conversely many women feel that now that the Howard Government has gone there is some automatic magic we can apply to their situations. Confusion over rights and entitlements has not just been the domain of researchers and practitioners in the field – consider the plight of the low paid vulnerable worker. Women who are long term casuals working regular and systematic hours are particularly confused about what provisions apply to them. The transitional arrangements for many workers have added to this confusion.
- Whilst the laws that govern work change, many aspects of women's lives do not. Typically we see many more women clients presenting with multiple disadvantage – loss of job, loss of health, loss of home, loss of support in their community, relationship breakdown, domestic violence, debt, poverty and addiction. Maintaining children's schooling and friendship networks, carrying the responsibility for the welfare of their family, managing the family budget all pose particular challenges. If a woman loses her job whilst balancing the other areas of her life, sometimes even having a remedy at law will not encourage her to access it. When life is so hard that day to day survival is paramount, women often do not have the energy or resources to pursue an unfair dismissal for instance.

Alison contacted the Working Women's Centre as her employment was terminated whilst she was still recovering from a workplace injury. Our Industrial Officer assisted Alison to start to put in place a remedy but then lost contact with Alison. Weeks later our Industrial Officer was attending a community event in her area and bumped into Alison. As a result of losing her job and not being able to work because of her injury, Alison had lost her home and had been couch surfing with her 3 children. She had spent time at her sister's but the environment wasn't suitable fer Alison and her children. Alison was now living in her car in a shopping centre car park with her son who has learning and behavioural difficulties. Her other 2 children were staying with friends. Alison drove her son to his school each day to ensure he had that stability in his life. Alison completed the paperwork to lodge a claim of disability discrimination. This was eventually successfully conciliated and Alison received a payment that allowed her to upgrade her car and secure a housing trust property so that she could get her children back. The property she was allocated was the home she grew up in. Alison was overwhelmed with the outcome to her matter. Without the intervention and assistance of the WWC, Alison did not have the resources to pursue a remedy.

- Working Women's Centres work closely with other Services that support women at times of crisis. Domestic violence and its impact on women and their workplaces presents more frequently but is still a hidden issue shrouded in shame and fear for women workers. There is growing awareness of domestic violence in relation to work but much more needs to be done before this issue is seen as a legitimate work life balance issue for far too many women who continue to work.

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.

- With the arrival in to South Australia of women from other countries, especially those seeking refuge, language presents major barriers for these workers. The language and

culture of workplaces is specific and complex. Attitudes to new workers by existing staff are not always managed well. We are seeing a repeat of poorly handled induction and management of cultural change in industries such as Aged Care which, with staff shortages, low wages and little capacity to attract and retain staff has become the new 'first port of call' for migrant workers.

Marmawa secured work in an Aged Care facility after completing her Aged Care Certificate. She had to work to tight deadlines and when assisting with washing elderly residents was constantly pressured to move on to the next person. She felt bad about not having enough time to complete the bathing and spend time conversing with the residents. She was constantly bullied by the non African workers, was told she stank, that her 'arse was too big' and that her English couldn't be understood because of her accent. Marmawa has spoken English since childhood – in fact she speaks 5 languages.

Issues to be explored by participants in the Workshop

- 'General protections provisions' is it delivering what we thought it would?
- Discrimination matters – where to lodge? The Australian Human Rights Commission is a specialist discrimination jurisdiction. On the whole clients feel their matters are understood in this jurisdiction. Fair Work Australia now has the capacity to conciliate discrimination issues. General protections matters are called on very quickly so outcomes can be reached more swiftly than in the discrimination jurisdictions. Does this mean that Fair Work Australia is the better jurisdiction?
- Harmonisation of OHS – will there be a national Code of Practice for Addressing and Preventing Workplace bullying that will see a reduction in the current spike in workplace bullying matters?
- Flexibility provisions – the 'right to request' part time and flexible provisions on return from maternity leave. How will this provision be monitored and reviewed, particularly with the introduction of the government paid parental leave scheme?
- Issues such as an increase in bullying (often caused by an employer wanting to keep on the replacement worker in preference to the one returning from leave, especially if she wants to return part time), misunderstandings about what arrangements were agreed to, problems accessing child care and the breakdown of negotiations at the point of returning to work from parental leave are not new issues. They were raised as part of submissions to the new Fair Work laws but they continue to be a large part of the work WWC does with clients. With the introduction of the new government paid parental leave scheme from 1 January 2011, this remains a weak area of redress for women. What can be done to strengthen the negotiation powers of women returning from parental leave?
- We of course celebrated the news that the paid parental leave laws had passed through parliament but we are left wondering if women have been delivered a workplace entitlement or an extension of the welfare system. How will the industrial rights of women workers play out under the new scheme to be administered by the Family Assistance Office?

What then can Working Women's Centres and other employment law Centres do to improve 'fairness' of the new system for vulnerable women workers? (This will form the recommendations arising from our workshop)

- Lobby government
- Be better resourced
- Secure more funding
- Have a voice on behalf of our clients
- Be consulted, particularly with regard to our specialist skills

- Extend the coverage of Centres in Australia.