



27 September 2024

**Submission by the Working Women's Centre SA Inc.**

**ROYAL COMMISSION  
INTO DOMESTIC, FAMILY AND SEXUAL VIOLENCE**

### **Introduction**

The Working Women's Centre SA Inc (**WWC SA**) welcomes the opportunity to make this submission to the South Australian Royal Commission into Domestic, Family and Sexual Violence.

The WWC SA is a not-for-profit advocacy, legal and industrial relations centre that provides free legal and industrial advice, information, support, and representation to vulnerable, non-unionised workers about their rights at work. The three arms of our work are legal support, policy advocacy and workplace training. We predominately service people identifying as women, and we are experts in gender-based workplace issues.

The impact of domestic, family and sexual violence reaches far beyond the domestic sphere, into public and professional spaces. In our experience, domestic, family and sexual violence jeopardises the ability of workers to access safe ongoing employment, even since changes have been made to workplace laws prohibiting discrimination on the basis of domestic abuse. In the past year, the WWC SA has received multiple requests for assistance from workers whose workplaces discriminated against them based on their experiences of family and domestic violence. Every year, we receive hundreds of requests for assistance from women and vulnerable workers experiencing sexual harassment, sex-based harassment and sex discrimination in the workplace. Many of these workers have experienced physical violence, such as violent assaults, as well as sexual abuse including sexual assault and rape, in connection with their employment.

### **Workplace drivers of domestic, family and sexual violence**

There are structural factors in the workplace which drive gendered violence, including hierarchical power dynamics, pay inequity and precarious employment conditions. For example, in a study of working Australians, those in precarious employment were more likely to have experienced unwanted sexual advances at work than those in other employment categories, even when the data was adjusted to take age and gender into account.<sup>1</sup>

Pay inequity contributes to conditions of poverty which make women vulnerable to violence, and economic and financial abuse are forms of domestic violence often made possible by these gendered financial inequalities.<sup>2</sup>

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<sup>1</sup> Anthony LaMontagne et al, 'Unwanted sexual advances at work: Variations by employment arrangement in a sample of working Australians,' Australian and New Zealand Journal of Public Health, 2009. Page 176.

<https://doi.org/10.1111/j.1753-6405.2009.00366.x>

<sup>2</sup> 'Change the Story – A shared framework for the prevention of violence against women and their children in Australia', OurWatch, VicHealth & ANROWS, 2015, page 24. <https://www.ourwatch.org.au/resource/change> -



Inequities at the workplace level can make it more difficult for women to resist gendered violence, as resistance may have greater repercussions for workers who have less power in the workplace. For example, through punitive rostering, violent employers or managers can exert control over workers in response to rejection or resistance to harassment. Women on temporary visas are particularly vulnerable, because the threat of losing their job if they resist sexual harassment is exacerbated for those who may also be threatened with losing their visa.<sup>3</sup>

These same inequities make it much harder for workers to report the violence, or to access the resources they need to recover. Workplace inequities intersect with broader crises including the cost-of-living crisis and housing crisis, making workers more vulnerable to harassment and violence.

### **Current workplace protections for domestic and family violence**

On 1 September 2023, the *Equal Opportunity Act 1984 (SA) (Equal Opportunity Act)* was amended to prohibit discrimination on the basis of domestic abuse. Section 85T(1)(g) of the Equal Opportunity Act defines discrimination as to discriminate on the basis of being, or having been, subjected to domestic abuse. Division 2 applies to discrimination against workers, and states that it is unlawful for an employer to discriminate against an employee:

- (a) *In the terms or conditions of employment; or*
- (b) *By denying or limiting access to opportunities for promotion, transfer, or training, or to other benefits connected with employment; or*
- (c) *By dismissing the employee; or*
- (d) *By subjecting the employee to other detriment.*

As at 1 February 2023, the *Fair Work Act 2009 (Cth) (Fair Work Act)* was amended to provide all national system employees, including full time, part time and casuals, with access to 10 days of paid family and domestic violence leave each year. Employees of small businesses have been able to access this leave since 1 August 2023. Employees experiencing family and domestic violence can use this leave as needed to deal with the practical impacts of experiencing violence, such as making arrangements for their own or a family member's safety, attending court or police services, or attending counselling.

An employer is able to ask for evidence to substantiate the employee's need for paid family and domestic violence leave, which could include a statutory declaration, family violence support services documentation, police documents or a court order. While employers are required to take reasonable steps to keep this information confidential, we remain concerned about the possibility of data breaches for this highly sensitive material.

Any reference to the taking of family and domestic violence leave must not be recorded on an employee's payslip as anything other than ordinary hours or another innocuous leave type for the employee's safety.

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the-story-a-shared-framework-for-the-primary-prevention-of-violence-againstwomen-and-their-children-in-australia/

<sup>3</sup> Paloma E. Villegas, "'I made myself small like a cat and ran away": workplace sexual harassment, precarious immigration status and legal violence', *Journal of Gender Studies*, 19 April 2019, Page 676. <https://www-tandfonlinecom.proxy.library.adelaide.edu.au/doi/pdf/10.1080/09589236.2019.1604326?needAccess=true>.



Further, as at 15 December 2023 the General Protections provisions in the *Fair Work Act 2009* were strengthened to include a prohibition against discrimination on the basis of family and domestic violence. Section 351 of the *Fair Work Act 2009* holds that an employer must not take adverse action against an employee or prospective employee on the basis that that person has been or would be subjected to family and domestic violence. This means that any employee or prospective employee who, for example, has had their shifts cut, is not offered work, is terminated from their employment, is denied access to leave, or experiences any other detriment in the workplace on the basis of their experience of family and domestic violence, is able to access recourse via the Fair Work Commission under the General Protections provisions.

### **Barriers to accessing domestic and family violence protections**

While these amendments are a positive step forward for addressing the impact of family and domestic violence in the workplace, prohibitive structural barriers continue to prevent women and vulnerable workers from accessing mechanisms for making complaints.

For many women and vulnerable workers that we speak with, a lack of safe, easy-to-understand public education around their rights at work means that it takes some time for them to seek advice and support. By the time they have contacted the WWC SA for advice, the Fair Work Commission's strict limitation period for filing a complaint has already passed, seriously impacting that worker's ability to access complaint mechanisms.

Further, a lack of emotional and mental bandwidth due to both experiencing abuse, and a workplace that has failed to support them in their time of greatest need, also prevents many women from being able to progress a complaint, even with legal support. For women and vulnerable workers without stable accommodation, access to internet, and the time and space to work with our lawyers to compile and file a complaint and attend a conciliation conference or hearing, progressing a complaint can feel like an insurmountable hurdle.

### ***Case Study – Jodie's Story***

*Jodie\* was an early childhood educator who was experiencing family and domestic violence at the hands of a former partner and father of her young children. After she attended the police station with her children, Jodie's former partner and his family began contacting her workplace in a campaign of harassment, pretending to be members of the public, and making complaints about Jodie. They said, among other things, that she had been seen in her work uniform in public behaving inappropriately. Her workplace was aware of her personal situation, and that the complaints were unsubstantiated and spurious, motivated out of a desire to harm Jodie and her reputation. Her employer knew that the ex-partner had a history of stalking Jodie, including at her workplace. Jodie's employer spoke to her about the complaints they had received, noting that they were aware the complaints were false. Nonetheless, they gave her a letter of concern and told Jodie that they needed to let her go because they were scared about what her ex-partner could do to their business, including by leaving negative reviews online. They terminated Jodie that day, with only one week of notice, "for misconduct". Jodie was left without an income, or support. Jodie came to the WWC for advice but ultimately chose not to proceed with making a General Protections claim due to her poor mental health following the situation.*

\*Denotes name-change for privacy reasons



### **Case Study – Maria’s Story**

*Maria\* was working for a petrol station as a casual employee for over a year. Upon disclosing that she had experienced domestic violence, resulting in her having a black eye and being unable to work the following day, her employer directed her to take the rest of the week off. The following week she was not rostered on for any of her shifts. Despite her enquiries, Maria continued not to receive any of her usual shifts from this point on. She did not at any time receive any family and domestic violence leave, despite her clear eligibility.*

*The WWC SA filed a General Protections claim on Maria’s behalf on the basis that by cutting her regular and systematic shifts as a result of her providing notice of her experience of family and domestic violence and attempting to access leave, her employer engaged in adverse action against her and caused her financial injury. At the time of Maria's shifts being cut, experiencing domestic violence was not a protected attribute within discrimination legislation, so the WWC SA had to be ingenious with what claim Maria could make in her circumstances.*

### **Sexual harassment and Sex-Based harassment as Sexual Violence**

It is accepted that sexual harassment is prevalent in South Australian workplaces. The WWC SA provides hundreds of advices relating to sexual harassment and sex discrimination each year. Examples of workplace gendered violence that clients of the WWC SA encounter range from sexist slurs and inappropriate joking through to sexual assault and rape.

### **Case Study - Sarah’s Story**

*Sarah\* is a young woman working in hospitality. Shortly after commencing work as an assistant manager, her manager began sexually harassing her by touching her body inappropriately, slapping her buttocks and making sexualised remarks. The harassment occurred when the manager would drink to excess whilst working and would regularly become visibly intoxicated during shifts.*

*The harassment escalated into physical abuse, where the manager would slap and shove Sarah, and would throw things at her as she tried to work. Sarah began to feel unsafe leaving the venue for fear that he would sexually harass or assault her and would need other staff to walk her to her car for her safety. When she ultimately made a complaint of sexual harassment to the business owner, the owner refused to investigate her complaint and told her that, as an up-and-coming worker in the hospitality industry, it would not be in her interests to make a complaint against her manager, forcing her to resign.*

*The WWC SA represented Sarah to make a complaint of sexual harassment, sex-based harassment, sex discrimination and victimisation in the Australian Human Rights Commission and at conciliation. We successfully negotiated a settlement from the employer as well as from the manager personally as compensation.*



### ***Jessie's Story***

*Jessie\* is a young worker in her early 20s. Shortly after she started work in a transportation business in an administrative role, her manager began propositioning her sexually. He would not take her repeated no for an answer, and when she tried to leave the workplace during a night shift, he raped her. Jessie went to the police and her supervisor was arrested for sexual assault. Jessie has been unable to work since this time because of the trauma, and the likelihood of contact with her manager. As a result, Jessie is experiencing financial hardship and has had to apply for workers' compensation.*

### Barriers to accessing sexual harassment complaint mechanisms

Despite the rapid increase in awareness of the prevalence and impact of sexual harassment on Australian workers, and an increase in available regulatory frameworks for making a complaint, it can still be very difficult securing a positive outcome for clients who have experienced sexual violence in the workplace.

Whilst the Australian Human Rights Commission (**AHRC**) is a leader for providing a trauma-informed approach for complaints alleging workplace sexual violence, the delays around having a complaint accepted for filing and conciliation are prohibitive, sometimes with waits of more than twelve months.

Once a matter is listed for conciliation, complainants face the barrier of having to face the co-workers against whom they have alleged workplace sexual violence, and their lawyers, in a manner that can often become combative.

Complainants who can settle their matters are often encouraged, and even pressured, into accepting highly restrictive non-disclosure and confidentiality agreements as part of settlement. While the AHRC has issued guidelines around the use of these clauses as more of a "last resort" rather than as *de rigueur*, lawyers representing employers and perpetrators will regularly demand the inclusion of non-disclosure clauses without the possibility of negotiation. Recent research has confirmed that strict non-disclosure agreements are used as standard practise in most settlements of sexual harassment complaints.<sup>4</sup> The impact of being silenced, even in the context of a substantial payment of compensation, can serve to further disempower complainants who are already traumatised.

If a client is unable to settle their complaint, the cost of taking a matter beyond conciliation for arbitration is usually prohibitive. Access to justice and the inability to self-fund litigation is a significant barrier to making and pursuing a complaint. Chronic underfunding of community legal centres results in thousands of people unable to access legal assistance. If a client does not have access to substantial private funding to place in trust for a trial, they will usually have no option but to abandon their complaint unresolved.

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<sup>4</sup> Regina Featherstone and Sharmilla Bargon, 'Let's talk about confidentiality: NDA use in sexual harassment settlements since the Respect@Work Report.' The University of Sydney Law School, 2024.  
<https://www.sydney.edu.au/law/our-research/research-projects/lets-talk-about-confidentiality.html>



## **Intersection of workplace exploitation with sexual and domestic violence**

It is well-established that First Nations women experience much higher rates of domestic, family and sexual violence, being on average 34 times more likely to be hospitalized for family violence than non-Indigenous people.<sup>5</sup> We find that this inequity is also deeply entrenched in the workplace for First Nations women.

Wage theft, both historic and continuing, is an injustice that disproportionately affects First Nations workers. An inability to access fair work for fair pay, and structural pressures to accept wage theft as a condition for remaining in employment, both serve to keep First Nations women in violent workplaces and family situations. Where workers are empowered to access their lawful entitlements at work, including wages at the appropriate award minimum, leave entitlements, and basic workplace health and safety regulations, those workers will be better placed to advocate for themselves, their rights and their wellbeing in and outside of the workplace.

Historically, the WWC SA has seen that wage theft for First Nations workers has occurred alongside domestic, family and sexual violence, with ramifications which continue to this day.

### ***Case Study: Jean's Story***

*Jean is an elderly First Nations woman living in a regional community. She grew up on a mission run by a religious group and the State Government during the 1960s and 1970s. While living on the mission, Jean was sent to out to perform domestic work under the direction of the State Welfare Officer.*

*When Jean was 15, she was removed from school to be put to work. She was not given a choice or agency in this. Instead, she was told that if she didn't agree to perform this work, the police would be contacted. Jean worked long hours from 7am to 8pm each day and received very little, and often no, wages. Jean witnessed violence towards Aboriginal people on a regular basis, and perverted sexual behaviour directed towards her and her young sister by white men. She was forced to leave her first job, for which she received no wages, because she was sexually assaulted and abused by the white manager there. She was only 15 years old. From this point, Jean was forced to engage in a pattern of work where she had no agency, experienced racism on a regular basis and was persistently exploited by the State and her employers. While performing domestic work, Jean experienced regular verbal abuse from her employer. In many of her placements, Jean received no wages and was told that she could not leave as she was under the control of the State Welfare Officer who would call the police and incarcerate her if she tried to escape. To this day, Jean has not received compensation for her stolen wages, or an apology for the treatment she endured, from the State Government.*

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<sup>5</sup> 'Family, domestic and sexual violence in Australia: continuing the national story', Australian Institute of Health and Welfare, 2019. Page 106. <https://www.aihw.gov.au/reports/family-domestic-and-sexual-violence/family-domestic-sexual-violence-australia-2019/report-editions>



### **Elements of a best practice legal response to domestic, family and sexual violence**

Victim-survivors of domestic, family and sexual violence should have access to legal advice, representation and support that is free, trauma-informed and culturally appropriate.

Victim-survivors pursuing employment law matters are likely already embroiled in criminal and/or family law matters. It is likely that while they are seeking advice in relation to a workplace matter, they are already paying fees for a criminal and/or family lawyer to assist them with intervention orders, shared family responsibilities and/or property settlements; while simultaneously trying to find a safe place to live, paying for a mortgage on their primary residence (which is no longer safe for them) and caring for their children or dependent family members. According to the Australian Council of Trade Unions leaving an abusive relationship can cost a victim-survivor up to \$18,250.00 and take up to 141 hours<sup>6</sup>.

The added stress of dismissal or demotion compounds a victim-survivors preexisting financial, psychological, and physical stress, and is an addition to the plethora of issues competing for their time and attention. It is incredibly important that victim-survivors have access to a legal service that not only assists to provide legal support if their employment relationship has ended, but also assists with other workplace interventions to keep the employment relationship alive.

It is important that victim-survivors have access to a legal centre with a holistic service delivery that includes advocacy and social supports, as well as legal support. Culturally informed supports, such as Aboriginal Liaison Officers, interpreters, and translators, are also essential for culturally and linguistically diverse victim-survivors navigating civil matters.

In relation to civil court matters, victim-survivors should be given thorough and comprehensive legal advice with regards to non-disclosure agreements (NDAs), to ensure they are not forced to sign an NDA and are aware they have alternative options. NDAs are used systematically in these types of cases and can have the effect of silencing and further traumatising victim-survivors and protecting perpetrators.

### **Legal and work-related interventions for South Australia in addressing violence against women**

There are a number of important work-related interventions which can prevent and address violence against women. Some key interventions include, but are not limited to:

1. **Improving rates of pay and job security for women in the workforce.** By increasing women's economic empowerment and decreasing power imbalances we can address gender inequality, which is at the core of domestic, family and sexual violence. This looks like supporting pay equity measures, improving pay for feminised sectors, and increasing access to secure employment, across all industries but in particular through public sector procurement processes.

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<sup>6</sup> *Inquiry into family, domestic and sexual violence* (ACTU D. No 33/2020) 31 July 2020, Page 7



2. **Prohibiting the use of non-disclosure agreements (NDAs) in sexual harassment cases**, unless requested by the victim-survivor. By ending the misuse of NDAs to silence victim-survivors, we can support women to speak out about violence they've experienced.
3. **Ensuring that high-risk industries undergo training** at the workplace level to shift attitudes and behaviours when it comes to violence against women. The Working Women's Centre's training work is focused on preventing and responding to violence in the workplace, and there is great potential for workplace education programs to be rolled out across industries with high rates of workplace sexual harassment.
4. **Ensuring community legal centres are adequately funded** to meet the demand of people experiencing domestic, family and sexual violence, who are seeking access to legal advice and representation.
5. **Redressing the historical stolen wages of Aboriginal women in South Australia.** Historical cases of wage theft, in which gender-based violence often also occurred, must be acknowledged and redressed to begin to address the systemic and historical factors which drive ongoing experiences of violence. One important and tangible solution is to decolonise access to historical records in line with the Tandanya Declaration.<sup>7</sup>
6. **Addressing the intersecting crises affecting women including the cost-of-living crisis and the housing crisis.** There are systemic barriers which make women more vulnerable to violence, such as costs of childcare and risk of homelessness. Without addressing these systemic issues, it will be impossible to fully prevent and address domestic, family and sexual violence. Solutions should be developed in consultation with victim-survivors, experts and relevant service providers.

The WWC SA recognises the enormous challenge of ending gender-based violence, and remain committed to listening to our clients, learning continually, and generating solutions.

The WWC SA welcomes the Commission to contact us should further information be sought.

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<sup>7</sup> 'The Tandanya Declaration,' International Council on Archives Expert Matters Indigenous Group, 2019.  
<https://www.naa.gov.au/about-us/partnerships/international-council-archives-ica/tandanya-declaration>