



NT Working Women's Centre

**NT Working Women's Centre Submission to  
The Northern Territory  
Gender Equity Framework**

**August 2019**

## About the NTWWC

The Northern Territory Working Women's Centre Incorporated (NTWWC) is a community based, not-for-profit organisation that provides free and confidential advice and support services on work-related matters to vulnerable female employees in the NT. Services commenced in 1994, and we operate across the NT, from two offices in Darwin and Alice Springs.

The NTWWC works primarily with women who are not represented by a union, lawyer or other advocate. Women who contact our Centre are often economically disadvantaged and work in precarious areas of employment. Many women who contact our service experience domestic or family violence.

We also conduct research and project work on a range of issues that women experience in relation to work. These have included access to childcare, family friendly practices, the needs of Aboriginal and Torres Strait Islander working women, pregnancy and parental status discrimination, work/life balance, pay equity and the impact of domestic violence on women workers and their workplaces. In conjunction with the National Alliance of Working Women's Centres, we provide expert advice to government on legal and policy reform.

On average we provide over 3,500 contacts per year. Around 18% of our clients are Aboriginal and/or Torres Strait Islander women, and around 16% of our clients are women from culturally and linguistically diverse backgrounds. The service also provides community education and training around domestic and family violence as a workplace issue, workplace bullying, and general industrial entitlements.

We are very grateful for the support of the NT Government (Department of Trade, Business and Innovation) and the Federal Government (Fair Work Ombudsman).

Further information about the Centre is available on our website: [www.ntwwc.org.au](http://www.ntwwc.org.au)

## Scope of submission

As the NTWWC is an organisation which focuses on industrial issues for women workers this submission will provide feedback on those questions that intersect with workplace issues.

Case studies are used throughout the submission. To protect the anonymity of clients details are changed and/or omitted but the integrity of the story remains.

## Focus area 1: Safety

Question 8. What are people's experiences in relation to safety in your community? How do people with different gender identities experience safety?

NTWWC clients regularly seek our assistance with a range of Work Health and Safety (WHS) issues. The most common WHS issues women workers raise with the NTWWC are workplace bullying and sexual harassment. Other WHS issues also raised with the NTWWC include sexual assault, working safely during pregnancy and discrimination.

Whilst WHS issues are always in the four or five most commonly raised issues, in 2018 -2019 WHS issues reached a record high level in the history of NTWWC service provision. In 2018 – 2019 WHS issues were the second most common issue raised at 15.5% of all client contact (the first being issues associated with termination of employment at 16.5%). Our analysis of this change in data is that a greater proportion of NTWWC clients are seeking assistance with workplace bullying and sexual harassment.

This is a concerning trend for the NTWWC for many reasons but particularly because assistance with these issues from the NT WHS regulator, NT WorkSafe, is difficult to obtain.

### *Workplace bullying*

Concerns about the prevalence and severity of workplace bullying in the Northern Territory have been previously raised by the NTWWC, the NT Council of Social Service<sup>1</sup> and the Office for the Commissioner for Public Employment.<sup>2</sup>

The NTWWC has also previously raised concerns about inadequate regulatory responses to workplace bullying complaints. Some of our concerns have been addressed, and we appreciate the regulator's responsiveness on these issues. However, in this submission we briefly reiterate those concerns that remain to be addressed. The NTWWC submission to the [NT Workplace Health and Safety Review 2018](#) is *separately attached* for fuller details on our concerns regarding the regulatory response to workplace bullying in the NT. For the purposes of this submission they can be summarised as follows:

- Materials made available by the WHS regulator discourage workplace bullying complaints
- Publicly available resources as well as internal practice explicitly limit the role of the regulator in responding to workplace bullying complainants
- There are inconsistencies in the response process to workplace bullying complaints
- There are gaps in capability, skills and expertise

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<sup>1</sup> An NTCOSS survey of workers in the community services industry found that one of the top three reasons for employees leaving the sector was workplace bullying. (2007)

<sup>2</sup> The 2016 OCEPE People Matter Report found 22% of NTPS survey respondents have experienced bullying. This statistic has been relatively stable since the first NTPS employee survey in 2009. The level of witnessed bullying was significantly higher than that of experienced bullying (34%). The recent coronial enquiry into the suicide of an NT government employee also raised serious questions about the management of workplace bullying. <http://www.abc.net.au/news/2018-07-25/nt-families-department-bullied-worker-before-suicide-coroner/10033402>

- It is very difficult to locate relevant evidence such as: the number of enquiries to NT WorkSafe about bullying, the number of workplace bullying complaints made to NT WorkSafe, the number of investigations conducted and the number of issued Improvement Notices in relation to workplace bullying

The NTWWC asserts that a stronger workplace bullying response is required in the NT. Whilst provisions exist in the Fair Work Act (Commonwealth) for workers to apply for a stop bullying application to the Fair Work Commission, those provisions are very limited and accessible to few workers. In 2018 the NT government asked the Law Reform Committee to investigate, examine and report on whether the NT government should enact law similar to 'Brodie's Law' to make serious workplace bullying an offence. The committee recommended that the Northern Territory government should enact legislation that criminalises bullying, where the bullying is of the most serious kind.<sup>3</sup> Whilst the NTWWC is of the view that criminalising bullying in the criminal code is a valuable move, more can and ought to be done within the system as it currently exists. The Best Practice Review of Workplace Health and Safety in the Northern Territory 2019 final report reports on completed prosecutions and enforceable undertakings since the commencement of the Work Health and Safety Act in 2012<sup>4</sup>. According to the report there have been no prosecutions or enforceable undertakings of psychological injuries since the commencement of the Act. This position serves to communicate to the community that physical injuries will be prosecuted but psychological injuries will not.

Traditionally, WHS has been associated with the physical health of workers. The focus has been on protecting workers' physical health and safety by identifying and responding to known risks, such as dangerous chemicals or faulty equipment. With the increased awareness of workplace bullying, this focus has widened to psychosocial risks and the understanding of the need to regulate and respond to these hazards. However, the response to psychosocial risks is still developing and requires additional resources and refinements, as discussed above.

The reason this issue is raised in the context of gender equity is that workplace bullying and occupational violence are issues that disproportionately affect women. Whilst it is difficult to obtain data regarding the prevalence of workplace bullying by gender, data published by Safe Work Australia regarding workers compensation claims depicts that women are almost three times more likely to have an accepted workers compensation claim for bullying and/or harassment<sup>5</sup>.

#### *Gendered violence at work – sexual harassment, sexual assault and domestic violence*

The NT is experiencing an epidemic of domestic and family violence (DFV). There are 61 incidences relating to domestic and family violence on average in the NT per day, the victimisation rate is three

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<sup>3</sup> [https://justice.nt.gov.au/\\_data/assets/pdf\\_file/0009/596637/ntlrc-report-44-bullying-august-2018.pdf](https://justice.nt.gov.au/_data/assets/pdf_file/0009/596637/ntlrc-report-44-bullying-august-2018.pdf)

<sup>4</sup> Best Practice Review of Workplace Health and Safety in the Northern Territory (2019), Tim Lyons. [https://justice.nt.gov.au/\\_data/assets/pdf\\_file/0004/664213/Best-Practice-Review-of-WHS-in-the-NT-Final-Report-opt.pdf](https://justice.nt.gov.au/_data/assets/pdf_file/0004/664213/Best-Practice-Review-of-WHS-in-the-NT-Final-Report-opt.pdf)

<sup>5</sup> Psychosocial health and safety and bullying in Australian workplaces, [https://www.safeworkaustralia.gov.au/system/files/documents/1801/psychosocial\\_health\\_and\\_safety\\_and\\_bullying\\_in\\_australian\\_workplaces\\_-\\_4th\\_edition.pdf](https://www.safeworkaustralia.gov.au/system/files/documents/1801/psychosocial_health_and_safety_and_bullying_in_australian_workplaces_-_4th_edition.pdf)

times higher than any other jurisdiction and sexual assault rates are almost 50% higher than the next highest jurisdiction in Australia.<sup>6</sup> DFV, sexual harassment and gender inequity are inextricably linked.

The Northern Territory government's Domestic, Family & Sexual Violence Reduction Framework 2018-2028 states that 'reducing domestic, family and sexual violence requires united action across all parts of society' and that 'achieving long term social and cultural change requires concerted and sustained effort through shared responsibility and partnerships'.<sup>7</sup> The framework acknowledges that preventing domestic violence relies on 'addressing the factors that lead to or condone violence...respectful relationships and non-violent behaviours are embedded and normalised in our community, *wherever we live, learn, work and play*'.<sup>8</sup>

The NTWWC agrees with the Framework that in order to reduce domestic and family violence it is essential to address all forms of discriminatory and disrespectful behaviours against women, including sexual harassment. There is now consensus in international research regarding the nexus between domestic and family violence and gender inequality. 'Violence against women is inextricably bound to gender inequalities in public and private life.'<sup>9</sup> In order to successfully reduce the rates of domestic and family violence in the NT the issue of gender inequity must be addressed.

Domestic and family violence is preventable<sup>10</sup>. Gendered violence, including sexual harassment, is driven and reinforced by a range of factors, one of which is the condoning of violence against women. The condoning of violence against women is enabled through legal, institutional and organisational structures.<sup>11</sup>

Domestic and family violence is also now recognised as an industrial concern. 1 in 4 women have experienced domestic and family violence, with far higher rates and severity of injuries for Aboriginal and Torres Strait Islander women.<sup>12</sup> Two-thirds of women who have experienced domestic and family violence are in employment. For 20% of these women, the violence has continued at the workplace, in the forms of stalking, harassment via technology, abusive calls and messages, and the attendance of the violent person at work.<sup>13</sup> In 12% of cases, the perpetrator of the violence was also a work colleague.<sup>14</sup> In one of the extreme examples of domestic and family violence entering the workplace,

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<sup>6</sup> Northern Territory Government, (2017), Domestic, Family & Sexual Violence Reduction Framework 2018-2028.

<sup>7</sup> Northern Territory Government, (2017), Domestic, Family & Sexual Violence Reduction Framework 2018-2028, p. 2.

<sup>8</sup> Northern Territory Government, (2017), Domestic, Family & Sexual Violence Reduction Framework 2018-2028, p. 6.

<sup>9</sup> Our Watch, (2015), Change the Story, A shared framework for the primary prevention of violence against women and their children in Australia, Melbourne.

<sup>10</sup> Northern Territory Government, (2017), Domestic, Family & Sexual Violence Reduction Framework 2018-2028. Our Watch, (2015), Change the Story, A shared framework for the primary prevention of violence against women and their children in Australia, Melbourne.

<sup>11</sup> Our Watch, (2015), Change the Story, A shared framework for the primary prevention of violence against women and their children in Australia, Melbourne.

<sup>12</sup> <https://www.ourwatch.org.au/understanding-violence/facts-and-figures>

<sup>13</sup> Australian Bureau of Statistics, *Personal Safety Survey*, Catalogue No 4906.0 (2005), 11, 34.

<sup>14</sup> Ludo McFerran, National Domestic Violence and the Workplace Survey 2011

[https://www.arts.unsw.edu.au/media/FASSFile/Key\\_Findings\\_National\\_Domestic\\_Violence\\_and\\_the\\_Workplace\\_Survey\\_2011.pdf](https://www.arts.unsw.edu.au/media/FASSFile/Key_Findings_National_Domestic_Violence_and_the_Workplace_Survey_2011.pdf)

a high school teacher in suburban Darwin was shot at work by her ex-husband, who then turned the gun on himself.<sup>15</sup> There is also research that shows that perpetrators of domestic and family violence have impaired safety records in the workplace.<sup>16</sup>

One way the NT government has sought to facilitate safety for victims of domestic and family violence is through the introduction of paid DFV leave for its workforce. The NT government Action Plan 1: Changing Attitudes, Intervening Earlier and Responding Better (2018-2021) states that the NT public service *'leads the way for Territory employers on domestic and family violence leave policy, including paid leave'* (outcome 5.2 (a)). The NT government should be commended for setting such an ambitious goal.

But whilst the paid leave is now enshrined in NT public service entitlements, and the leave is generous by Australian standards, the effectivity of the strategy is not certain. NTWWC is of the view that introducing leave is not effective where it is not supported by appropriate policy, where there is a low level of awareness of the policy and where Managers and HR Personnel are not appropriately trained in the issues. NTWWC evaluation data shows that only 10% of Managers and HR Personnel in one government agency can correctly identify DFV leave provisions available to employees. Currently there is no way to evaluate the take up rate of leave for issues associated with DFV as the category of 'miscellaneous leave' cannot be disaggregated from leave for issues not related to DFV i.e. blood donors leave.

Perhaps most concerning of all for NT public service employees who are affected by DFV is a lack of workplace based safety planning guidance or advice for Managers and HR Personnel who are attempting to support affected employees and keep them safe from harm whilst at work. Safety planning guidance ought to be provided by the Office of the Commissioner for Public Employment and NT WorkSafe.

In 2019 the Fair Work Ombudsman published an [Employer guide to family and domestic violence](#) following the introduction of unpaid DFV leave into the National Employment Standards. The guide states that workplaces are responsible for providing and maintaining a safe workplace and refers the reader to the WHS regulator in their state or territory for assistance. Unfortunately, for workers in the NT, this is a dead end referral as no domestic and family violence safety planning material is provided by NT WorkSafe. In other words, private and public sector employers have nowhere to turn in the NT should they wish to obtain advice and assistance regarding the safety of their workers who are at risk of harm due to domestic and family violence.

The NTWWC is also aware that for private and public sector workers there is no government supported guidance to assist workplaces respond when a member of their staff is a person who uses violence. Sometimes in these cases the person who they use violence against, is also an employee at the same workplace.

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<sup>15</sup> <http://www.territorystories.nt.gov.au/bitstream/10070/231678/42/ntn27mar11042x.pdf>

<sup>16</sup> University of Toronto, 2017

[https://www.arts.unsw.edu.au/media/FASSFile/Key\\_Findings\\_National\\_Domestic\\_Violence\\_and\\_the\\_Workplace\\_Survey\\_2011.pdf](https://www.arts.unsw.edu.au/media/FASSFile/Key_Findings_National_Domestic_Violence_and_the_Workplace_Survey_2011.pdf)

The NTWWC is of the view that there is currently no clear remedy for women who are discriminated against on the grounds DFV in either NT or federal legislation. Whilst it is arguable that the current marital status provision of the NT Anti-Discrimination Act is accessible in some cases, its usefulness is unclear and existence little known for women experiencing DFV.

The evidence of discrimination against women experiencing DFV is clear and the need for protection against discrimination is well established:

- 62.3% of women who report violence by a current partner are in employment<sup>17</sup>
- In 2012, The Senate Legal and Constitutional Affairs Committee in their review of the Exposure Draft of the Human Rights and Anti-Discrimination Bill recommended the inclusion of domestic violence into federal discrimination legislation<sup>18</sup>
- The Australian Domestic and Family Violence Clearinghouse argued in their submission to the Senate Committee that the inclusion of domestic violence into federal anti-discrimination legislation was necessary to meet Australia's international human rights treaty obligations, in particular the Convention on Elimination of all forms of Discrimination Against Women and ILO Discrimination (Employment and Occupation) Convention 1958 (ILO 111)<sup>19</sup>

In June 2019 the International Labour Organisation adopted a ground-breaking treaty to protect violence against women in the world of work<sup>20</sup>. Governments who ratify the treaty will be required to develop national laws prohibiting workplace violence, require workplaces have workplace policies and run information campaigns, introduce preventative measures, monitor the issues and a range of other things rating specifically to complaint making. The Australian government voted in favour of the treaty.

Women regularly seek assistance from the NTWWC in relation to discrimination in employment on the basis of DFV. To date no federal legislation has been amended to provide adequate protection against DFV discrimination; South Australia and the Australian Capital Territory are the only jurisdictions to make such a move.

A growing understanding of psychosocial health as a legitimate WHS concern has paved the way for the same framework to be applied to occupational violence as a serious health and safety risk. Occupational violence, which includes sexual harassment, sexual assault and domestic violence at work seriously compromise the physical and psychological health of workers, as well as having negative consequences for colleagues, business and the economy as a whole. Safe Work Australia statistics show that women are disproportionately affected by workplace violence making more than twice the rate of claims due to workplace violence than men<sup>21</sup>.

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<sup>17</sup> Ludo McFerran, (2016), Expert report of Ludo McFerran, Section 156 – 4 Yearly Review of Modern Awards, Family and Domestic Violence Leave (AM2015/1), Fair Work Commission.

<sup>18</sup> The Senate Legal and Constitutional Affairs Committee, (2012), Exposure Draft of the Human Rights and Anti-Discrimination Bill, p. 97.

<sup>19</sup> Australian Domestic and Family Violence Clearinghouse, (2012), Submission to Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper, Submission number 24.

<sup>20</sup> [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_711891/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_711891/lang--en/index.htm)

<sup>21</sup> Psychosocial health and safety and bullying in Australian workplaces, [https://www.safeworkaustralia.gov.au/system/files/documents/1801/psychosocial\\_health\\_and\\_safety\\_and\\_bullying\\_in\\_australian\\_workplaces\\_-\\_4th\\_edition.pdf](https://www.safeworkaustralia.gov.au/system/files/documents/1801/psychosocial_health_and_safety_and_bullying_in_australian_workplaces_-_4th_edition.pdf)

Prevalence statistics on sexual harassment in the workplace are particularly disturbing, and reflect the fact that sexual harassment at work is persistent and pervasive. *In the last year* almost 1 in 4 women and 1 in 6 men experienced sexual harassment in the workplace.<sup>22</sup> Other studies report much higher levels of workplace sexual harassment. The International Trade Union Congress reports that worldwide, 35 percent of women experience direct violence in the workplace and between 40% and 50% experience unwanted sexual advances, physical contact or other forms of sexual harassment.<sup>23</sup>

The impact of gendered violence at work is significant. Victims sustain serious injury and illness including Post Traumatic Stress Disorder, depression, anxiety, suicide, and physical injuries. Such mental health effects are evident over the longer term. Compared to men, women who experience sexual harassment are twice as likely to show persistent psychological distress two years later. They also have more significant physical health symptoms and reduced satisfaction with their health.<sup>24</sup>

The Australian Human Rights Commission is currently undertaking a major National Inquiry into Sexual Harassment in Australian Workplaces. This is the largest inquiry of its kind in the English speaking world with the final report due to be published in October 2019. Whilst it is not yet possible to predict what the recommendations of the report will be, significant recommended reforms ought to be expected.

Everyone's business: Fourth national survey on sexual harassment in Australian workplaces shows that 85% of Australian women and 57% of men 15 years and older have been sexually harassed at some point in their lifetimes.<sup>25</sup> It also found that whilst there was no significant difference between rates of lifetime sexual harassment between Aboriginal and non-Aboriginal people the rates differed when comparing the experiences of Aboriginal and non-Aboriginal people in the workplace. Workplace specific data showed that the prevalence of sexual harassment experienced in the workplace in the last five years was higher among Aboriginal people at 53% compared with non-Aboriginal people at 32%.<sup>26</sup>

Currently the NT government has no sexual harassment policy for its staff. This is a shocking situation and one that should be immediately addressed. There simply can be no justification for the NT government to not immediately introduce a sexual harassment policy to prevent and respond to sexual harassment in the public service.

In 2018, the NT Attorney General announced a review of the NT Anti-Discrimination Act but whilst submissions closed more than 18 months ago, we await an announcement regarding proposed reforms. The NTWWC submission to the Attorney General called for reforms in relation to sexual harassment by a customer. Workers who are sexually harassed by a customer are not covered by the

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<sup>22</sup> Australian Human Rights Commission (2018), *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, Australian Human Rights Commission, Sydney.

<sup>23</sup> [https://www.ituc-csi.org/gender-based-violence?lang=en&debut\\_documents\\_583=6](https://www.ituc-csi.org/gender-based-violence?lang=en&debut_documents_583=6)

<sup>24</sup> <https://theconversation.com/workplace-sexual-harassment-is-a-public-health-issue-and-should-be-treated-as-such-98937>

<sup>25</sup> Australian Human Rights Commission (2018), *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, Australian Human Rights Commission, Sydney.

<sup>26</sup> Australian Human Rights Commission (2018), *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, Australian Human Rights Commission, Sydney.



Anti-Discrimination Act. This is of particular concern in the hospitality and retail industries which have high rates of young workers in insecure employment and who experience very high rates of sexual harassment.

The NTWWC also supports an expanding definition of work in the NT Anti-Discrimination Act as the current definition is unclear. The NTWWC submits that a new definition must include CDP workers, students on placement, shared work, workers at the same work site who have different employers and volunteers.

Finally, the NTWWC called for protection against sexual harassment in all areas rather than maintaining the current protection which applies in the areas of work, goods, services and facilities, accommodation, education, clubs, superannuation and insurance only.

Now is the opportunity for government to demonstrate to the community that the pledge to introduce gender equity measures will be enacted at all available opportunities and disrespectful attitudes and behaviours towards women are not tolerated or condoned in any area of public life. Currently, disrespectful attitudes and behaviours towards women in the form of sexual harassment are condoned and tolerated in some areas of public life namely those that fall outside of the areas of work, goods, services and facilities, accommodation, education, clubs, superannuation and insurance.

#### *Remote workers*

Whilst the NTWWC does not have access to data about WHS issues for women who work in remote locations anecdotally we observe that remote workers may experience greater WHS risks and injuries and can report that some of the most confronting client stories fall into this category.

We can report a number of women who have been sexually assaulted by a work colleague during or after their working hours. In some instances, the perpetrator of the assault is an employee of the same employer, in some instances the perpetrator of the assault is a contractor to another organisation. Sometimes, due to very remote nature of the work, the survivor of the assault has been forced to continue to work and/or travel with the perpetrator of the assault for up to two days post assault. Our clients report having to work and travel with colleagues that they feel very uncomfortable with, having to live in close proximity to or share accommodation with colleagues that make them feel unsafe or who have harmed them, and not having access to equipment that would support their safety such as a satellite phone.

With regard to the issue of sexual assault the NTWWC needs to better understand the specific nature of the incidents reported to us prior to making any recommendations. We would appreciate the opportunity of discussing this further with the Office of Gender Equity and Diversity in due course.

Question 9. What are the most important areas to focus on to reduce rates of gender-based violence in the Northern Territory?

The NTWWC submits that real and lasting gender equality improvements will only be achieved by taking gender equity steps in all areas of life and through the life cycle.

Our Watch identifies workplaces, corporations and employee organisations as a priority setting for action to reduce violence against women because there is significant practice expertise and/or evidence that demonstrates its potential for impact. *‘Through activity to influence aspects of organisational culture, work environment and practices, there is strong potential to shape social norms and relationships. Organisations can derive direct benefits from this activity’<sup>27</sup>*. The NTWWC shares this view and sees workplace cultures as microcosms of the broader society, reflecting gender inequity within the structures, policies and culture of the organisation in a range of varying ways. But workplaces are microcosms where governments can influence cultural change through legislation, policy and regulation.

Question 10. What suggestions do you have to improve safety and people’s feelings of safety in your community?

### *Recommendations*

1. That NT Worksafe makes a clear and unambiguous statement that workplace bullying complaints will be responded to in the same manner and with the same resources and attention as is provided to other hazards. That is, that a thorough investigation of workplace bullying complaints will be conducted in order to ascertain whether employers have met their obligations under the Act, and that NT WorkSafe has the authority to conduct workplace visits, audits, inspections and can prosecute employers that fail to comply with the legislation.
2. That NT WorkSafe materials in relation to workplace bullying are reviewed to ensure that they provide a clear, consistent and transparent workplace bullying complaints process and that this process be followed consistently.
3. That NT Worksafe access specialist training around workplace bullying, and employ specialist positions dedicated to responding to workplace bullying complaints.
4. That NT WorkSafe collects and publishes detailed data about workplace bullying enquiries and complaints.
5. That the above recommendations are adopted immediately to bring the NT in line with other jurisdictions in Australia. A delay of the adoption of such recommendations as a result of Safe Work Australia’s Consultation Regulation Impact Statement addressing recommendations of the Boland Review<sup>28</sup> would demonstrate a failure to bring the NT up to the current standard of other Australian jurisdictions.
6. That NT Worksafe develop education materials, guidance materials and campaigns as preventative measures to address the issue of gendered violence risks in the workplace.
7. That NT Worksafe develop (or contract in) the expertise and capacity to respond seriously to complaints of gendered violence.

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<sup>27</sup> Our Watch, Australia’s National Research Organisation for Women’s Safety (ANROWS), and VicHealth (2015) *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, p. 39, Our Watch, Melbourne, Australia.

<sup>28</sup> <https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws/review-model-whs-laws>

8. That NT WorkSafe demonstrates a willingness to prosecute and enter into an enforceable undertaking where the injury to the worker is a psychological injury.
9. That NT WorkSafe take a leading role in supporting employers in implementing best practice DFV policies with a particular emphasis on advising employers how they can conduct workplace based safety planning.
10. That NT Worksafe collect and publish sex disaggregated data on gendered occupational violence complaints.
11. That the Office of the Commissioner further develops information provided on their website regarding DFV and the public service. In particular, guidance should be provided on safety planning and how to respond when a staff member uses DFV against others, including when the victim and perpetrator are both employees of the same agency.
12. That the government offers ongoing training to managers and HR Personnel on how to respond when an employee is affected by DFV.
13. That the NT government enact a new provision in the NT criminal code which criminalises bullying.
14. That the NT Anti-Discrimination Act is amended to include domestic and family violence as a protected attribute.
15. That the NT Anti-Discrimination Act is amended so that the restriction of areas of activity on sexual harassment is removed. This will ensure that sexual harassment is prohibited in all areas of life.
16. The NT Anti-Discrimination Act is amended to expand the definition of work as the current definition is unclear. A new definition must include CDP workers, students on placement, shared work, workers at the same work site who have different employers and volunteers.
17. That the NT government reviews recommendations to be made by the Australian Human Rights Commission National Inquiry into Sexual Harassment in Australian Workplaces with a view to support and enact recommendations which support better sexual harassment prevention and response.
18. That the NT government works with the Office of the Commissioner for Public Employment and the Office of Gender Equity and Diversity to introduce a sexual harassment policy for the public service as a matter of urgency.

## Focus Area 2: Health and Wellbeing

Question 11. In what ways does gender impact on your health, access to services or health outcomes?  
And,

Question 14. Please describe particular groups in the Northern Territory community that experience adverse health outcomes due to gender.

There are many ways in which gender and sex directly affects a woman's health thus affecting her ability to participate at work.

### *Reproductive Health*

Health issues that are more closely related to sex than gender, but which directly impact on a woman's ability to participate in the workforce are: menstruation, pregnancy, live birth, premature birth, return to work, breastfeeding, miscarriage, still birth, infertility, and menopause. The NTWWC regularly provides services to clients who struggle with these issues, many in silence and fear as they worry about the workplace response to a disclosure of personal health information.

The NTWWC is of the view that the provision of paid leave for menstruation and menopause is one way to address the taboo that surrounds these issues and mitigate the pain that some women suffer. A Western Sydney University study found that 90% of young women experienced period pain in the last three months, and 40% of women had taken a day off uni or work.<sup>29</sup> It is clear that women suffer varying degrees of pain associated with their period, some suffer debilitating pain and others do not. The NTWWC was prompted to address this issue after the Victorian Women's Trust introduced and publicised what appears to be the first ever menstruation and menopause leave policy in 2018. As far as we are aware, in May 2019 the NTWWC has become the first employer in Australia to enshrine the right to take menopause and menstruation leave in an Enterprise Agreement.<sup>30</sup>

Whilst a woman's reproductive health needs can impact on her work, the reverse is also true, that is when the workplace can seriously impact an individual's reproductive health. Risks to a worker's reproductive health can include exposure to physical and chemical hazards for male and female workers who are trying to conceive, and for female workers who are pregnant or breastfeeding. Workplace hazards can lead to certain reproductive health problems, such as, reduced fertility or infertility, menstrual cycle and ovulatory disorders, hormonal imbalances, miscarriage, stillbirth, babies born too soon or too small, birth defects and child developmental disorders. NT Worksafe has no publically information available on their website to address any of these issues.

#### *Case study - Dori<sup>31</sup>*

*Dori was employed as a receptionist. During her first trimester of pregnancy, she began to feel sick and dizzy while standing up at work. She requested a stool from her employer and it was denied due to a lack of space. Dori had to take time off work. When she returned her employer placed a higher workload on her with significant time pressures. She was later placed on performance management. She took more time off as she was unable to sleep and became anxious about the health of her baby and her job performance. She did not return to work. She was unpaid prior to the birth of her child, was not eligible for paid parental leave and had no job to return to. Dori reported feeling depressed and anxious about future job prospects.*

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<sup>29</sup> <https://www.abc.net.au/triplej/programs/hack/should-we-have-paid-period-leave/10090848>

<sup>30</sup> <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae504015.pdf> see clause 27.

<sup>31</sup> Names and identifying details of case studies are changed and omitted to protect the anonymity of clients.

#### *Case study – Small Business Employer*

*A small business employer rang the NTWWC. He had just been informed that one of his employee's was pregnant, and he wanted to ensure that the workplace would be safe for her during her pregnancy. The NTWWC staff member explained the legislative requirements to the employer. The employer then requested guidance materials, including a risk assessment checklist for pregnant workers. He said he had been unable to get any guidance from NT Worksafe and there were no materials on the website.*

#### *Case study - Kathryn*

*Kathryn worked as an administrator. Kathryn became pregnant and her doctor placed her on light duties due to a history of previous miscarriages. Her employer failed to put light duties in place. After a few weeks, she had a miscarriage. She was simultaneously bullied by her colleagues across the span of a year. She had a minor heart attack at work, caused by stress. She returned to work on light duties and informed her employer about the bullying. Her employer failed to address the bullying and Kathryn continued working in stressful conditions. She felt distressed to return back to the work environment and was deemed unfit for work by her doctor.*

It is now widely acknowledged that infants should be breastfed for the first six months of their life for optimal infant and mother health. Indeed the need for six months of leave was considered by the Productivity Commission in 2009 when it recommended a tax payer funded paid parental leave scheme of 18 weeks at the level of the federal minimum wage.<sup>32</sup> Of significance is the fact that the Productivity Commission took into account the array of existing employer provided paid parental leave schemes when it recommended a tax payer funded scheme of 18 weeks at the federal minimum wage. The system, as it was designed, was intended to bring together employer provided paid parental leave together with a tax payer funded scheme so that a majority of families could fund six months of paid parental leave without significant financial hardship. The reality however is that the most disadvantaged and lowest paid workers do not have access to any employer provided paid parental leave, are reliant on the 18 week tax payer funded government scheme only and therefore do not have access to the health benefits offered by six months of leave.

The NTWWC acknowledges that the NT public service offers 14 weeks of paid parental leave to employees who have between 12 months and five years of service and 18 weeks of paid parental leave to employees who have more than five years of service. The NTWWC also acknowledges that the NT public service pays superannuation on parental leave and commends this initiative. However, our concern remains for employees who are offered little or no employer paid parental leave as well as those employees who do not qualify for the government scheme. These employees are overwhelmingly already the lowest paid workers and are further disadvantaged by being forced to return to work earlier than they would chose due to financial pressures and the associated health consequences of doing so.

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<sup>32</sup> Productivity Commission (2009), Paid Parental Leave: Support for Parents of Newborn Children, Report number 47, Canberra.

### *Case study - Maria*

*Maria is pregnant with her third child. She was working as a casual cleaner when she suffered a workplace injury. Her employer dealt with this poorly and she does not feel safe to return despite now being fit for work. She is looking for a new job and is being assisted by a rehab/employment service. She is so worried that she will not pass the work test for government paid parental leave, she thinks she will return to the unsafe job regardless. Her family desperately need her to qualify for this financial benefit.*

### *Case study - Janelle*

*Janelle did not qualify for 12 months unpaid parental leave because she would only have been employed for 11 months when she was due to take leave. Because of the quality of Janelle's work, when she was 6 months pregnant her manager offered that Janelle could return after a period of unpaid parental leave. It was agreed in writing that Janelle could return to her full time and permanent position after three months unpaid leave. When seven months pregnant, Janelle took some leave as she was experiencing pregnancy complications. She was due to return to work after three weeks off. Over this time, Janelle was advised that the CEO had overturned the decision to allow her to have three months of unpaid leave and return to her job. Further, her employer assumed she would not return from her personal leave and advertised her job. NTWWC negotiated with a settlement with Janelle's employer.*

### *Premature Birth*

At present there is a restriction as to the commencement date of parental leave for parents of premature babies. The wording of NT public service Enterprise Agreements is;

*An employee who is pregnant may commence primary caregiver parental leave at any time within six weeks immediately prior to the expected date of birth of the child. The period of parental leave must commence no later than the date of the birth of the child.*

This wording emulates the wording of the Fair Work Act.

The Fair Work Act and NT public service Enterprise Agreements thus proscribes that parental leave must start no later than the date of birth of the child. For the majority of employee parents accessing this entitlement, the wording presents no problem. However, for many employee parents of premature babies, this wording has proved problematic.

Approximately 8% of babies are born prematurely in Australia (before 37 weeks' gestation). 11% of those babies are born before 28 weeks' gestation, when survival rates are lower, and life-long problems and disabilities are high risk. Typically, these babies are placed in the care of the hospital's Neonatal Intensive Care Unit (NICU). The average length of stay in hospital can vary between 80-143 days. During this time, all responsibility for the premature babies' care is in the hands of the NICU medical staff. While parents are valued and kept as involved as possible, there is a very limited amount of care they can provide their babies. Many of these parents wish and need to continue working during this period of time, which may extend up to at least three months.

Due to the restrictive wording of the Fair Work Act, however, these employees are *prohibited* from returning to work during this period if they are to maintain their entitlement to 52 weeks unpaid parental leave and its associated entitlements under the Fair Work Act.<sup>33</sup> If they were to return to work during this time, they would lose these entitlements.

### *Women in male dominated workplaces*

Everyone's business: Fourth national survey on sexual harassment in Australian workplaces reports that for more than two in five people (42%) workplace sexual harassment occurred in a workplace with an equal mix of female and male employees<sup>34</sup>. However, anecdotally the NTWWC observes severe and high rates of sexual harassment, sex discrimination and bullying in workplaces that are dominated by men. Female members of rigid hyper masculine workplace cultures suffer hugely from the health impacts of ongoing sexism, sexual harassment and bullying. They also suffer at the stress of being overlooked for promotion and opportunity in favour of less talented male colleagues. Many of these workplaces simply do not understand these issues or the impact of them on women and need education, assistance and support to change.

### *Insecure work*

The NTWWC is concerned about the increased casualization of work and inappropriate use of fixed term contracts largely in industries that are female dominated such as cleaners, care workers, the community sector and the public service, namely education. In some industries this has the additional disadvantage of being dominated by female workers who are also members of minority groups. Anecdotally the NTWWC can report of high numbers of Filipino care workers and cleaners in this category.

The impact of insecure work is broad. The NTWWC observes;

- poor mental and physical health when workers cannot take time off for fear their job will not exist after a period of leave
- an inability to plan for their futures
- an inability to gain finance for a home, car or even much smaller assets
- stress, worry and anxiety about the continuation of their work
- the decision to leave the NT due to job insecurity

An Independent Inquiry into Insecure Work in Australia closely examined the nature of insecure work in Australia. It defined insecure work broadly and included a range of employment arrangements including work that has; unpredictable and fluctuating pay, no or inferior paid leave, fluctuating hours of work, too few hours, socially unacceptable hours, lack of job security or certainty over the length

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<sup>33</sup> These include: section 83 (consultation requirements whilst on unpaid parental leave) and section 84 (return to work guarantee)

<sup>34</sup> Australian Human Rights Commission (2018), *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, p. 65, Australian Human Rights Commission, Sydney.

of the job and a lack of voice over wages and conditions.<sup>35</sup> This definition includes fixed term employment, which is a key feature of the NT public service.

The inquiries findings support the observations made by the NTWWC. It made a number of recommendations to improve security of employment, many of which relate to the federal industrial relations system and not the jurisdiction of the NT government. However, the NTWWC has long held concerns about the over reliance of fixed term employment in the NT public service and sees the application of fixed term contracts to be inappropriate in many instances and potentially unlawful in some.

The Independent Inquiry into Insecure Work in Australia found that women are over-represented in fixed term employment. It also found that insecure employment has adverse effects on the health of safety of workers in the short term and anxiety associated with insecure work damages the health of workers in the long term.<sup>36</sup>

#### Question 13. What can be done to improve health outcomes for Northern Territorians?

##### *Recommendations*

19. That NT Worksafe develop education materials, guidance materials and campaigns as preventative measures to address the issue of reproductive health risks in the workplace including a pregnancy health checklist.
20. That NT Worksafe develop (or contract in) the expertise and capacity to respond seriously to complaints of reproductive health risks.
21. That NT WorkSafe take a leading role in supporting employers in implementing best practice reproductive health workplace policies.
22. That NT Worksafe collect and publish sex disaggregated data on workplace reproductive health and safety complaints.
23. That the NT government become the first public service in Australia to introduce Menopause and Menstruation Leave.
24. That the NT government advocates for a universal paid parental leave scheme that entitles workers to six months of paid parental leave at income replacement levels.
25. That NT public service Enterprise Agreements be amended to ensure flexibility for the employee parents of premature babies as to the commencement date of their unpaid parental leave.

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<sup>35</sup> Independent Inquiry Into Insecure Work in Australia (2012), *Lives on Hold – Unlocking the Potential of Australia’s Workforce*, ACTU, Australia.

<sup>36</sup> Independent Inquiry Into Insecure Work in Australia (2012), *Lives on Hold – Unlocking the Potential of Australia’s Workforce*, ACTU, Australia.



26. That the NT government fund and make available training to assist NT workplaces meet the [Workplace Equality and Respect Standards](#) produced by Our Watch.
27. That the NT government investigates the usage of fixed term contracts in the NT public service. The investigation ought to consider: the gender breakdown of employees on fixed term contracts, the levels at which fixed term contracts are used, whether the characteristics of fixed term contracts are consistent with Fair Work Commission case law and opportunities for the reduction of fixed term contracts without reducing existing employee flexibilities such as the right to access paid parental leave.

## Focus Area 3: Economic Security

Question 15. What are the economic security difficulties experienced by particular groups because of their gender? And,

Question 17. What are some of the causes of economic insecurity in the Northern Territory?

### *Domestic and Family Violence*

There can be no doubt that DFV is a cause of economic insecurity for employees in the NT with a victimisation rate that is about three times higher than any other jurisdiction<sup>37</sup> and two thirds of people experiencing DFV being in paid employment<sup>38</sup>. Anecdotally the NTWWC is certain that DFV prevents women from obtaining employment, results in women resigning, results in the termination of their employment, can lead to extensive periods of paid or unpaid leave, impacts on their ability to perform at work and results in missed promotional opportunities.

#### *Case study - Marika*

*Marika worked in an administrative position in a community outside of Darwin. She had recently separated from her partner due to DFV. One evening her former partner assaulted her. Her employer found out about the assault through informal means and terminated her with immediate effect for bringing harm to the reputation of the organisation.*

#### *Case study - Sophie*

*Sophie and her boyfriend worked in the building industry and were employed by the same company. They did not work together directly, but they were often on the same work site. When he started to engage in violence Sophie took out a DVO against him. A DVO was also taken out against her.*

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<sup>37</sup> Northern Territory Government (2018), Domestic, Family and Sexual Violence Reduction Framework 2018 – 2020, Northern Territory Government, NT.

<sup>38</sup> Ludo McFerran, (2016), Expert report of Ludo McFerran, Section 156 – 4 Yearly Review of Modern Awards, Family and Domestic Violence Leave (AM2015/1), Fair Work Commission.

*Conditions of the DVOs required that they were not allowed to attend each other's workplaces. When the employer learned that there were DVOs in place and that they couldn't both be at work at the same time they said that one of them would have to go.*

*Sophie ended the relationship and attempted to negotiate with her now x-boyfriend to amend the DVO so that they could both be at work at the same time. He refused to agree to this. Shortly afterwards, her employer terminated her employment via a forced resignation.*

#### **Case study - Gillian**

*Gillian worked in the hospitality industry. She was young and had been managing a relationship with her boyfriend that included domestic violence.*

*When Gillian ended the relationship the threats and abuse escalated. In particular, he threatened to come to her workplace and make things difficult for her.*

*Gillian asked him not to come to her workplace as it would make things at work hard but he chose to do so and to make a scene in front of colleagues and clientele.*

*Gillian was terminated from her employment the following day. Her manager told her that she was terminated as she was a too much of a risk to have around.*

#### **Case study - Eleni**

*Eleni was a long term employee in the finance industry with more than 10 years' service. She had separated from her former partner who was abusive towards her for many years. Eleni was required at court on numerous occasions to deal with the violence against her and associated family matters. Whilst she had required many periods of leave, the requests were not unreasonable and not outside her industrial rights.*

*After a period of time her employer told Eleni that she would be converted from permanency to casual employment because of the periods of leave that she had taken. A number of months later she was told that she would be terminated due to her leave requirements.*

Whilst the NTWWC is uncertain if any research may have been undertaken that quantifies the cost of DFV to the NT economy we are certain that no research has been undertaken to properly measure the impact of DFV on NT employees, employers and businesses. Indeed in Australia only one such piece of research was undertaken in 2011 entitled Safe at Home Safe at Work – National Domestic Violence and the Workplace Survey<sup>39</sup>. Though ground-breaking at the time the survey was conducted, this survey is now of limited application in the NT because of the rapid pace of industrial change since 2011, the survey having an Aboriginal and Torres Strait Islander participation rate of 2%, respondents

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<sup>39</sup> Ludo McFerran (2011), Safe at Home Safe at Work – National Domestic Violence and the Workplace Survey, University of New South Wales, Sydney.

not including Territorians and respondents overwhelmingly being unionised professionals from the professions of teaching and nursing.

In 2018 – 2019 the NT government funded a pilot project together with the NTWWC entitled Managing Domestic and Family Violence in the Workplace Project to increase the awareness, competency, comfort and responsiveness of NT public service staff when implementing the NT public service's Domestic and Family Violence staff entitlements. Whilst considerable gains were made during the life of the project the NTWWC is of the view that the NT public service has much to do to minimise the impact of DFV on the economic security for NT public service employees. This issue has been addressed in extensive detail in a separate report to the Office of Gender Equity and Diversity in April 2019.

### *Pregnancy*

The financial implications of pregnancy are briefly considered in conjunction with the need for appropriate parental leave in Focus Area 2: Health and Wellbeing – Reproductive Health. In addition to the health related information provided in that section, the NTWWC seeks to raise the issue of pregnancy and return to work discrimination in the NT. In the last 10 years of NTWWC data, pregnancy related discrimination remains a consistent issue women seek our assistance with and one of most common forms of discrimination.

#### *Case study - Freda*

*Freda qualified for 12 months unpaid parental leave after being employed for two years as a full time, permanent employee. While she was on leave, there was a transfer of business. Freda was not consulted with. All other employees kept their jobs and had their employment transferred to the new owner. When Freda contacted the business and spoke with the new owner she was advised he had never heard of her and there was no job for her.*

#### *Case study - Sharon*

*Sharon worked for more than a year in a full time, permanent role. She qualified for 12 months unpaid parental leave. When she contacted her employer to return to work she was advised she could return, but only in a casual position and a more junior role.*

#### *Case study - Amirah*

*Amirah worked for her employer for more than four years in a permanent full time role. After 12 months parental leave when she returned to work she was advised there was only a part-time and more junior role available for her.*

#### *Case study – Sarah*

*Sarah took 12 months parental leave after working for her employer for more than three years in a permanent, full time role. When she returned from parental leave, she negotiated to work part-time. However when she returned, she was advised there were only more junior roles available to her.*

## Caring

A gendered analysis of economic security for women cannot exclude consideration of the additional responsibilities women have in the area of caring. Women in the 15-64 age group comprise 73.5% of primary carers according to national data.<sup>40</sup> Whilst not all carers access external support, Carers NT report that 74% of their clients are women. The caring responsibilities of women places pressures on their own health, economic security and the need to balance paid work and caring.

The impact of caring on a woman's need to balance work and life cannot be underestimated. Unpaid caring work increases the likelihood of being employed in more vulnerable forms of employment such as casual, part time and contract work.<sup>41</sup>

A paper produced by the Workplace Gender Equality Agency claims that;

- Women are three times more likely to be in part-time employment than men
- Women choose part time employment or employment below their level of skill in order to be able to balance their work and caring needs
- Working part-time includes a reduction in promotion opportunities
- Part-time jobs do not have the same security and predictability as full time jobs, are perceived as being less challenging, result in fewer promotions, are paid less, and are less likely to encompass senior management roles.<sup>42</sup>

*'This low percentage of part-time employment in management limits women's capacities to take up or stay in senior leadership roles if they are carers'.*<sup>43</sup>

Workplace Gender Equality Agency claims are consistent with anecdotal evidence of NTWWC clients. NTWWC clients across all sectors regularly report being pressured to not work part time, or to work part time for only a brief period thus inferring a return to a more 'normal' mode of work is desired as soon as possible. Our clients report that their expectations of promotion or experience of being groomed or mentored for a more senior position vaporise with the onset of part time work due to caring responsibilities. Our clients also report this as happening to their male partners as workplaces model and demonstrate to the workforce the expectation that senior positions are generally full time positions only. This model of work indirectly discriminates against women.

The NT public service State of the Service report states that 85% of women and 95% of men work full time, this presents a very low prevalence of part time work. A gendered breakdown of the part time workers shows that women make up 84% of part time workers and that *'men are proportionately far*

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<sup>40</sup> <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/investing-care-recognising-and-valuing-those-who-care>

<sup>41</sup> Workplace Gender Equality Agency, Unpaid Care Work and the Labour Market, <file:///K:/COMMUNITY%20ED%20RESOURCES/Submissions/Gender%20Equity/australian-unpaid-care-work-and-the-labour-market.pdf>

<sup>42</sup> Workplace Gender Equality Agency, Unpaid Care Work and the Labour Market, <file:///K:/COMMUNITY%20ED%20RESOURCES/Submissions/Gender%20Equity/australian-unpaid-care-work-and-the-labour-market.pdf>

<sup>43</sup> Workplace Gender Equality Agency, Unpaid Care Work and the Labour Market, <file:///K:/COMMUNITY%20ED%20RESOURCES/Submissions/Gender%20Equity/australian-unpaid-care-work-and-the-labour-market.pdf>

*less likely to be engaged in part-time work for all age groups.*<sup>44</sup> Moreover, whilst improvements have been made in terms of women being appointed to the most senior positions, men are promoted at greater levels, women comprise 64% of the NT public service but 46% of executive contracts.<sup>45</sup>

The report also details the percentage of agencies in which employees are accessing flexible workplace practices, it does not provide information on what proportion of employees within those agencies access the flexibilities;

- 90% of agencies have no employees accessing job sharing
- 90% of agencies have no employees accessing extended leave schemes
- 82% of agencies have no employees accessing part year employment
- 55% of agencies have no employees accessing career breaks
- 18% of agencies have no employees accessing home based work/telework
- 9% of agencies have no employees accessing flextime
- 9% of agencies have no employees utilising recreation leave at half pay
- 9% of agencies have no employees working part time
- 41% of agencies have no employees purchasing additional leave
- 78% of agencies have no employees accessing short term absences for family and community responsibilities.<sup>46</sup>

The NTWWC asserts that in order to support gender equality 100% of NT government agencies should offer and have employees taking up the flexible workplace practices above.

#### **Case study - Olivia**

*Olivia is a public servant and was due to return to work after parental leave. Herself and a colleague had negotiated to job share and both work part-time. A few weeks before she was due back at work she was advised herself and the colleague would be made redundant. They were the only redundancies. All the other workers in the unit, who worked full time, kept their jobs.*

#### **Case study – Jackie**

*Jackie is a shift worker. After much negotiation she managed to arrange to return to work in a part-time position for one year after she returned from parental leave. After this year was completed, Jackie returned to full-time hours. Her rosters are completed many months in advance which allows Jackie to see the shifts she will need to swap in order to care for her child. Shift swaps must be approved by the manager. Jackie has adhered to this policy for every swap. Swaps are common place. Jackie has been asked to attend a performance meeting to discuss her swapping shifts.*

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<sup>44</sup> Office of the Commissioner for Public Employment (2018), State of the Service Report 2017 – 2018, p. 55, Northern Territory Government, NT.

<sup>45</sup> Office of the Commissioner for Public Employment (2018), State of the Service Report 2017 – 2018, p. 55, Northern Territory Government, NT.

<sup>46</sup> Office of the Commissioner for Public Employment (2018), State of the Service Report 2017 – 2018, p. 24, Northern Territory Government, NT.

### *Case study - Kirsty*

*Kirsty is a shift worker and so is her husband. After her period of parental leave, she negotiated to return to work, working only the afternoon shift. Her husband works night shifts only so there is always someone home with their young child. All shifts have been changed from 8 to 12 hours in length and Kirsty has been advised she will have to work a regular roster. Kirsty cannot achieve this as there will be no one to care for child. She is not the only one in this situation as no child care operates for 12 hours in a day.*

Some employees can access a remedy under the NT Anti-Discrimination Act if they are discriminated against due to their caring responsibilities or if their employer fails to accommodate their special needs as a result of caring responsibilities. However, being a 'carer' is not a protected attribute under the Anti-Discrimination Act. Whilst caring responsibilities attributable to parenthood are covered by the attribute of 'parenthood', protection from discrimination when caring for an elderly parent or person with a disability is less clear. In these circumstances it is arguable that a complaint may be made to the Anti-Discrimination Commission on the basis that the complainant is 'associated with a person who has' an 'impairment'.

The NTWWC submits that the language in the Anti-Discrimination Act fails to protect the breadth of caring responsibilities that women and men are required to engage in and that the Act should be modernised by replacing the word 'parenthood' with 'carer'. The NTWWC also notes that submissions for the review of the Anti-Discrimination Act were closed in January 2018, however any outcome from the submission process is not yet known.

A strength of the current Anti-Discrimination Act is that it places a positive obligation on employers to accommodate special needs as they relate to 'parenthood' and special needs as they relate to 'association with a person who has' an 'impairment'. It is our view that this is a little known aspect of the NT Anti-Discrimination Act and one which could be used to leverage cultural change in NT workplaces in so far as encouraging and promoting workplace flexibilities is concerned.

### *Sexual harassment, sexual assault and sex discrimination*

Currently no reliable data is available on the cost of sexual harassment to the Australian community. The Australian Human Rights Commission National Inquiry into Sexual Harassment in Australian Workplaces will attempt to quantify the cost for the first time. The NT government ought to look to the Inquiry report when it is released in October 2019 to understand the economic cost of sexual harassment.

In terms of the cost to the individual worker, the NTWWC knows that the impact of sexual harassment, sexual assault and sex discrimination is great, sometimes overwhelming. For some the cost of the harassment or discrimination is limited to a doctor's visit and/or prescription medication, for some it includes unpaid time off work, for many it results in the loss of income entirely. This view is supported by Morrison, Quadara and Boyd who found that the financial costs of sexual violence can include 'loss of earnings, loss of earnings capacity, medical expenses, counselling expenses and a myriad of

intangible costs not measurable in monetary terms'.<sup>47</sup> Workers who make a successful workers compensation claim as a result of harassment or discrimination enjoy income protection, medical and rehabilitation costs. However anecdotally the NTWWC knows that many victims do not make workers compensation claims for a range of valid and complex reasons. In any event workers compensation is only available where the offending behaviour occurred in the workplace, it does not apply where the sexual violence has no connection to work.

The first ever Australian study of the impact of sexual violence on employees and their work was conducted in the NT. Report on a scoping study into the effects of sexual violence on employees and the workplace<sup>48</sup> investigated how a workplace is affected by an individual's experience of sexual violence. The study found that;

- Women had difficulty keeping their employment due to the need to take leave for a range of reasons and for varying lengths of time
- Women struggled to maintain their jobs due to low self esteem, depression and a sense of feeling shattered
- The performance of some women plummeted
- Some women left jobs that they loved without being able to explain what was going on for them
- Women were fearful of disclosing what had happened at work
- Some workplace situations were particularly harmful and could 'provoke extreme anxiety, distress or panic attacks, even dissociative episodes at work in the aftermath of sexual violence'<sup>49</sup>. They included; working with a male boss or male dominated teams, working with male clients, being involved in events that included the service of alcohol, providing training to men, colleagues speaking inappropriately about sexual violence and attending workplace discussions where sexual assault is discussed at length without prior warning.<sup>50</sup>

In 2012 the NT government made the decision to allow NT public servants access to paid miscellaneous leave for issues associated with domestic, family and sexual violence. Whilst this move was in line with many jurisdictions across Australia introducing paid domestic and family violence leave, the inclusion of sexual violence outside of a domestic or familial relationship was a first for Australia and a decision which was celebrated at the NTWWC.

Confusingly, the entitlement that allowed public servants to access the paid leave provision to deal with matters associated with sexual violence outside of a domestic or familial relationship was removed when the entitlement was inserted into public service enterprise agreements some time

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<sup>47</sup> Morrison, Z., Quadara, A., Boyd, C. (2007), 'Ripple Effects' of Sexual Assault, ACSSA, Issue number 7, June 2007, Australian Institute of Family Studies.

<sup>48</sup> Walden, I., McFerran, L. (2013), Report on a scoping study into the effects of sexual violence on employees and the workplace, Safe at Home Safe at Work Project, Gendered Violence Research Network, UNSW, Australia.

<sup>49</sup> Walden, I., McFerran, L. (2013), Report on a scoping study into the effects of sexual violence on employees and the workplace, p. 8, Safe at Home Safe at Work Project, Gendered Violence Research Network, UNSW, Australia.

<sup>50</sup> Walden, I., McFerran, L. (2013), Report on a scoping study into the effects of sexual violence on employees and the workplace, Safe at Home Safe at Work Project, Gendered Violence Research Network, UNSW, Australia.

around 2018. The NTWWC does not understand if this was an error, omission or a deliberate decision. Irrespective of how it came to be removed, the NTWWC deplores the removal of such a progressive and ground-breaking entitlement concerning the support of people who have experienced sexual violence.

### *Gender Pay Gap*

The gender pay gap is a complex area which requires detailed analysis and consideration. Whilst much is written about the gender pay gap from a national perspective, NT analysis is much more difficult to locate but should be carefully considered in the context of a gender equity framework. The NTWWC is unable to dedicate the time and resources required in order to provide a full analysis of the issues within the time constraints of the consultation period. However, we would welcome the opportunity to further discuss the gender pay gap in the NT with the Office of Gender Equity and Diversity and work collaboratively to devise appropriate and effective measures to address the pay gap.

The NT public service State of the Service report provides only very limited insights into the gender pay gap in the NT public service. Whilst it is likely that the Office of the Commissioner for Public Employment has detailed statistical information, only a snap shot is published for the usage of the general community.

The 2017 – 2018 report states that 64% of the NT public service is women. It also states that 69% of all workers earning less than the median amount (\$80,083) are women and 58% of those earning more than the median amount are women<sup>51</sup>. It is very difficult to understand from this data, what the gender pay gap might be in the NT public service. The data suggests that there is some preference to promote men into the higher paid positions but it does not provide the necessary detailed information such as what the gender pay gap is per agency, over the age ranges and at every level. It also does not provide necessary intersectional information to assist in understanding what the gender pay gap is when additional attributes are considered such as disability and race.

In terms of how women are faring in the most senior positions, the State of the Service Report again provides limited information. The report shows that over a 10 year period, the proportion of women in senior positions has increased from 37% in 2008 to 51% in 2018. Whilst this increase must be acknowledged as a positive improvement, it is difficult to understand the extent to which such data should be celebrated. What the data does not make visible to the community is where on the continuum of senior positions between SAO2 to ECO6 women are located. Are women clustered at the SAO2 level, or are they evenly distributed?

The gender pay gap across Australia can be attributed to;

- Discrimination and bias
- Female dominated industries attracting less pay
- Women carrying a disproportionate share of unpaid caring and domestic work
- A lack of workplace flexibilities to balance work and care, especially in senior roles

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<sup>51</sup> Office of the Commissioner for Public Employment (2018), State of the Service Report 2017 – 2018, p. 55, Northern Territory Government, NT.



- Women spending a greater proportion of their time outside of the workforce<sup>52</sup>

In 2012 the Australian Services Union won a historic pay equity test case in the Fair Work Commission for Social and Community Services workers. The case resulted in pay increases of between 19% and 41% for those covered by the Social and Community Services Award. It should be noted that the NT government subsequently increased funding to many NT agencies, to assist them to pay what became known as the Equal Remuneration Order. The increases in funding from the NT government to non government agencies was instrumental in ensuring that the full extent of the pay increases were passed on to NT workers.

What are some of the activities that could be done to minimise these difficulties? And,

What could be done to address some of these causes?  
(these are the second elements of questions 15 and 16)

### *Recommendations*

28. That the NT government undertakes a sustained education campaign across all NT government agencies that raises awareness of DFV related employee entitlements to support employee participation at work and teaches Managers and HR Personnel an appropriate response where their staff are affected.
29. That the NT government funds research, which investigates the impact of DFV on NT employees, employers and businesses.
30. That the NT public services creates wide spread cultural change whereby part time work and flexible ways of working are accepted as normal and not the alternative. In order to do this the NT public service must model part time and flexible ways of working in the most senior positions held by women and men.
31. That the NT Anti-Discrimination Act is amended so that the word 'parenthood' is replaced with 'carer' to provide protection against discrimination when providing care.
32. That the NT government resources a public education campaign to promote the benefits of flexible ways of working in NT workplaces and the positive obligation that exists in the NT Anti-Discrimination Act to accommodate the caring needs of employees.
33. That very detailed analysis of the gender pay gap in the NT and its causes is conducted or commissioned by the NT government.
34. That the Office of the Commissioner for Public Employment publishes data on the gender pay gap per agency, over the age ranges and at every level of employment. The Office of the Commissioner for Public Employment should also provide data that allows for intersectional analysis by including the gender pay gap for people with disability and by race. The publishing of this information is essential for transparency, accountability and action.

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<sup>52</sup> Workplace Gender Equality Agency (2019), Australia's Gender Pay Gap Statistics, Australian Government.

35. That the NT government fund and make available training to assist NT workplaces meet the [Workplace Equality and Respect Standards](#) produced by Our Watch (as per recommendation 26).
36. That the NT government fund and make available extensive primary prevention training for Territorians in all areas of life and over the life cycle.
37. That the NT government move to immediately include sexual violence in NT public service domestic and family violence leave entitlements. Such a move could be made immediately via the issuing of a direction from the Commissioner for Public Employment with amended Enterprise Agreement clauses to be included as soon as possible.

Question 16. What are some activities that could be undertaken to increase equity in unpaid work and caring responsibilities?

The NTWWC is of the view that in order to create real and lasting change in the home, real and lasting change must be made at work. How is it that men can spend less time at work and more time contributing at home if workplaces consciously and unconsciously deter men from accessing part time and flexible ways of working? How is it that unpaid work and caring responsibilities can be accepted as legitimate roles for men in the context of workplaces that preference and reward long hours and full time work? Please see the above section on Caring above for detail and associated recommendations.