

Legal Aid NSW

Submission to the Productivity Commission

INQUIRY INTO THE WORKPLACE RELATIONS FRAMEWORK

ISSUES PAPERS

March 2015

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979 (NSW)* to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 36 community legal centres and 28 women's domestic violence court advocacy services.

The Civil Law Division of Legal Aid NSW provides information, advice, minor assistance and representation for workers in NSW. More information on Legal Aid NSW employment law related services is set out in Appendix 1 to this document.

Legal Aid NSW welcomes the opportunity to provide comments on the Productivity Commission Inquiry into the Workplace Relations Framework.

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Introduction

1. Legal Aid NSW targets its employment law services towards disadvantaged workers. Many of the clients we advise, assist and represent are among the most vulnerable workers in the community.

One or more of the following usually applies to our clients:

- have only casual or unstable short term employment
- undertake low paid work and low skilled work
- have low levels of formal education and literacy
- are from non-English speaking backgrounds
- are indigenous
- are younger workers (teens and early 20s) or older workers (over 60)
- live in geographical areas of social and economic disadvantage, including regional and remote NSW
- have been demonstrably underpaid or had termination entitlements unlawfully withheld
- have been grossly and unlawfully exploited
- have experienced discrimination, typically pregnancy discrimination, disability discrimination or sexual harassment
- are forced to work as independent contractors and thereby denied the rights and protections of ordinary employment
- allege to have been bullied and harassed at work
- have suffered a workplace injury
- are sponsored workers on a '457' visa in low paid jobs
- are at serious risk of long-term unemployment in the event that they lose their employment, and will likely experience a range of very serious economic and legal problems within weeks of losing their job.

The delivery of legal services to workers in these circumstances informs the observations and comments we set out in this submission.

Issues Paper 2: Safety Nets

2.2 Federal Minimum Wage

General Comments

2. It is the strongly held view of Legal Aid NSW that minimum legal wages and conditions are an essential pillar of fairness and social justice in Australia. A fair living wage is one of the surest ways to promote and protect full participation in Australian society. The workers Legal Aid NSW sees support the idea of a safety net for wages and conditions. A significant number of workers seek our assistance because they are not being paid the minimum wage to which they are entitled, and consider this to be a grave injustice.
3. The view that the minimum wage contributes to unemployment or that market forces alone should determine wages is an extreme view at the very edge of

debates about labour economics. There are numerous academic studies that discredit the notion that the minimum wage causes unemployment.¹

4. We note the nexus between the federal minimum wage and the lower classification levels in many awards. Workers on the lower award classifications are usually dependant on movements in the federal minimum wage for their income to keep pace with rises in the cost of living.
5. Legal Aid NSW assists many low paid workers who are reliant on the federal minimum wage, or the lowest classification level in the relevant award. Many modern awards apply the federal minimum wage, currently \$16.87 per hour.
6. There are better placed organisations to comment on diminution of the federal minimum wage relative to average weekly earnings.² However, it is not controversial to say that living in a capital city or high cost region and supporting dependents on the federal minimum wage is extremely difficult and may place a person in economic hardship.
7. The vast majority of the workers we see have little or no capacity for individual bargaining. They seldom belong to unions and therefore have no real opportunity to engage in meaningful collective bargaining. They work for the wages offered rather than the wages arrived at through any negotiations.
8. Protection of these workers and their living wage requires an effective form of central minimum wage fixing. Such a mechanism presently exists in the annual national wage case review undertaken by the Fair Work Commission (“**FWC**”), and the subsequent orders made by the FWC that then flow through to all awards. Usually it is only the FWC review that ensures a very modest cost of living increase in the wages received by these workers. We see no substantial evidence that the majority of low paid workers (on the minimum wage) would receive an annual wage increase entirely at the discretion of their employer.
9. Legal Aid NSW supports the continuance of the FWC review and minimum wage fixing process. The process is transparent and the interests and submissions of relevant parties are fully taken into account in a public forum, and are carefully balanced. The FWC draws upon the long history and experience of its predecessor industrial tribunals as it undertakes this task. The FWC is a trusted and impartial national institution that has adapted to the changing needs of Australian employers and workers.
10. The vulnerable workers which Legal Aid NSW sees who are reliant on the FWC minimum wage fixing process include:
 - workers in unskilled jobs where the minimum wage is not likely a stepping stone to better jobs and higher pay, for example process workers in factories
 - workers from culturally and linguistically diverse (“**CALD**”) backgrounds, often in low skilled jobs

¹ It is beyond the scope of this submission to review the academic literature on the minimum wage.

² In Nov 2014 Full time adult average weekly earnings = \$1539.40 pw (<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0>).

- workers in particular service industries such as retail, hospitality, fast food and child care
 - workers employed by small businesses
 - apprentices and trainees beginning in the workforce, who are paid significantly less than the federal minimum wage, and
 - low paid sponsored workers on '457' visas, who are often frightened of losing their visa and therefore are reluctant to attempt any robust pay negotiations with their employer.
11. Legal Aid NSW notes that low paid part time workers, casual workers with low hours, students and those who by necessity accept part time employment are dependent on the FWC review and minimum wage fixing process. Even where these workers' hourly rates of pay are above award, their take home pay may be quite low. It is important that there is a fixed mechanism (beyond just individual bargaining) to ensure annual increases in take home pay consistent with cost of living increases.
12. Legal Aid NSW strongly opposes the idea that market mechanisms alone (in the absence of enforceable federal minimum wage rates) should be allowed to set the wages of low paid workers. To do so will expose the most vulnerable workers to exploitation in an environment where:
- Centrelink benefits (such as 'Newstart allowance') are set very low,
 - unemployed are required to take up any job by Centrelink strategies and Job Service Providers, and
 - there are moves to abolish Centrelink support for young people.
13. It is wrong to suggest that the market would not set alarmingly low rates of pay. An example of total market failure at setting fair wages is the rise of unpaid internships. In contemporary Australia there are now large numbers of mostly young workers desperate for employment opportunities who work for no wages as 'interns'. Legal Aid NSW is concerned that unregulated market forces may result in the most vulnerable workers receiving poverty wages and/or having less of an incentive to enter the workforce.
14. There is much complexity within the award system, sometimes making it difficult for employers and workers to know which rates under which award applies. Legal Aid NSW sees this problem in the context of underpayment disputes. Consequently, Legal Aid NSW supports a further simplification of the award system, but recognises that there is no easy 'one size fits all' approach to minimum wage fixing. Different rates are necessary for different jobs and different industries. The information provided by the Fair Work Information line operated by the Fair Work Ombudsman ("**FWO**") is a good source of information about wage rates and entitlements.

2.3 National Employment Standards (“NES”) in the *Fair Work Act 2009 (Cth)* (“*FWAct*”)

What, if any, particular features of the NES should be changed?

15. The experience of Legal Aid NSW is that the NES provide a vital safety net for all workers, not just the low paid. As such the NES may reflect shared community values about:

- the rights of all workers, and
- the entitlements around which workers can reliably organise their lives.

NES entitlements such as annual leave, personal leave, parenting leave, access to flexible work arrangements, and termination/redundancy entitlements clearly have a societal as well as an individual benefit.

16. Consideration ought to be given to amending section 113 of the *FWAct* to legislate a national Long Service Leave (“**LSL**”) entitlement enforceable under the *FWAct*. Legal Aid NSW deals with many unpaid LSL claims under the present arrangements.

17. In many cases, unpaid LSL entitlements must be pursued in a state court different to where the worker’s unpaid wages and NES entitlements claims can be pursued. The NSW legislation was drafted in 1955 and does not reflect contemporary employment patterns and the language is difficult to interpret. Also, in the case of NSW it is not clear who has the role of enforcing LSL obligations as between the FWO and the NSW Office of Industrial Relations.

18. Legal Aid NSW has identified as a major problem the lack of a single ‘all purpose’ statutory definition of “*casual*” employee in the *FWAct*. At the moment there are inconsistent uses of the term at common law, in the *FWAct* and in awards. On a widespread basis employers and workers misunderstand and misapply the term. This leads to workers being denied their leave, notice of termination and other safety net entitlements by virtue of the exceptions expressed in sections 86, 95 and 123(1)(c) (amongst others) of the *FWAct*. Legal Aid NSW sees many workers that are termed ‘casual’ employees. Of these ‘casual’ workers, many work regular hours and full time shifts for the same employer for many years, often without a paid holiday break in their employment.

19. It is apparent to Legal Aid NSW that in many instances employers actually mislead workers about ‘casual’ status to avoid providing safety net entitlements. Without a single, simple statutory definition, it is difficult to understand what actually constitutes casual employment and the uncertainty is exploited.

20. There are some industries that are notorious for using the term ‘casual’ to avoid NES obligation, for example cleaning and security. We also see the misleading use of the term ‘casual’ in manufacturing, food and beverage, meat and warehousing industries. In the labour hire industry the business model is for long term workers (sometimes with many years of service) to be called ‘casual’ by the labour hire firms. Workers receive no redundancy payment when work is no longer available. Labour hire firms assert that these workers have not had their employment terminated but that there is simply ‘no more casual work

available'. This model is clearly and intentionally designed to circumvent the notice, redundancy and leave provisions of the NES.

21. On many occasions we have seen employers 'convert' permanent workers to 'casual' as a precursor to ending the worker's employment. The employer uses this mechanism to gradually reduce the casual hours to nothing, rather than fairly and properly terminating the worker's employment with a notice and/or redundancy payment.
22. Legal Aid NSW has further general concerns about the casualization of employment. First, the casual loading is the recognised compensation for the loss of NES benefits over time. But casual employees are often reluctantly casual as this is the only employment status on offer and the true loss of paid leave benefits is not readily monetized. Alarming, Legal Aid NSW sees many so called 'casual' workers who are not even being paid the applicable casual loading. Second, casual employment can be a 'one way street'. Employers expect some casual workers to work what are full time hours or more, sometimes without payment of overtime, and when the worker requests unpaid time off as is their right, the worker loses their employment on the basis that they have become unreliable.
23. Reasonable overtime could be more precisely defined in section 62 of the *FWAct*. Legal Aid NSW sometimes sees disputes between employers and workers over excessive hours. The lack of definition allows scope for exploitation in cases where workers are vulnerable and have little bargaining power to resist employer demands. Some employers force 'time off in lieu' arrangements, in exchange for unpaid overtime, and are then reluctant to allow the worker to take paid time off. We see this often in small business employment.
24. The failure to make timely superannuation payments on behalf of employees is a widespread problem. The Australian Taxation Office has the role of enforcing the superannuation requirement on employers, however enforcement is very slow, cumbersome and indirect because it is via the tax system. We often see employer companies go into liquidation with no assets owing years of unpaid super, and the Government's 'Fair Entitlements Guarantee' scheme will not pay superannuation amounts. Superannuation obligations should be entrenched in the NES and not just the awards, allowing workers to take direct legal action against employers for breach of the NES in the event that superannuation contributions are not paid monthly.
25. Legal Aid sees many people who report their employer's non-compliance with parental leave provisions under sections 65 to 85 of the NES. We find common instances of this in all sectors, affecting workers across the income spectrum. This submission does not address this aspect of the NES as it was the subject of a 2014 report by the Australian Human Rights Commission ("**AHRC**"), and Legal Aid NSW refers to its submission made to the AHRC.³

³ <http://www.legalaid.nsw.gov.au/what-we-do/law-reform/2014-submissions>

2.5 Penalty Rates (“Additional Payments”)

General comments

26. Legal Aid NSW believes that the use of the word ‘Penalty’ is unhelpful. It immediately casts the debate in terms of an onerous, unnecessary or unfair impost on employers. These allowances may once have played a role in discouraging employers from having workers work unsociable hours. However, these allowances no longer serve that role, and rather they have become an integral part of the take home living wages of millions of workers. In this submission Legal Aid NSW will refer to these overtime, shift and special allowance payments as “Additional Payments”.
27. Legal Aid NSW sees many low paid workers. These workers time and time again express the view that the Additional Payments are a vital part of their take home pay, without which they would experience economic hardship or poverty.
28. We see many low paid workers who are required to and do work overtime and weekend shifts on a regular basis, at times when other workers enjoy family and recreation time. Many of these workers report working 60 to 70 hours per week. Typically, these are not temporary or cyclical arrangements, but rather the routine working lives of low paid workers, for which they should be appropriately compensated with Additional Payments.
29. Additional Payment rates are in reality quite modest. For example, a worker on the lowest classification under the *Food, Beverage and Tobacco Manufacturing Award 2010* is paid the federal minimum wage, being \$16.87. If they work an early morning shift commencing at 3.00am, then the hourly rate as adjusted for the shift penalty is still only \$18.97.
30. It would be contrary to public policy that a worker commencing a shift at 3.00am, or in the tenth hour of their day shift or at work on a weekend, would be paid only the federal minimum wage of \$16.87 per hour.
31. It is fair and reasonable that Additional Payments are mandatory to compensate workers for the inherent anti-social, family ‘unfriendly’ and sometimes exhausting and unhealthy nature of these arrangements.
32. For those employers and workers who desire greater flexibility around the Additional Payments system, enterprise bargaining under the *FWAct* is available. However, caution is also needed in this regard. Legal Aid NSW sees a number of workers who do not belong to unions but have nonetheless become subject to an enterprise agreement in their non-unionised workplaces. These enterprise agreements typically bargain away Additional Payments for a very small uplift in the ordinary time rate. Subsequently, workers are then forced to work long extra hours. Some workers tell us of experiences where they felt that an enterprise agreement was forced upon the non-unionised workforce, and that the amount of likely overtime was understated by the employer in the bargaining and approval stages of the enterprise agreement. There needs to be great diligence in the application and enforcement of the agreement making provisions of the *FWAct*.

Issues Paper 4: Employee Protections

4.2 Unfair dismissal

Do Australia's Unfair Dismissal processes achieve their purpose, and if not, what reforms should be adopted, including alternatives (or complements) to the Unfair Dismissal provisions?

33. Legal Aid NSW believes that the current Unfair Dismissal processes meet the purpose of providing remedies to workers where they are unfairly dismissed, while balancing the rights of employers and business realities.
34. Given the large number of Unfair Dismissal applications made by workers who also have claims for unpaid statutory notice, there may be merit in considering the extension of the FWC jurisdiction to include the power to arbitrate on entitlements disputes, to the extent permitted under the Constitution.

Are the tests used by the FWC appropriate for determining whether conduct is unfair, and if not, what would be a workable test? Are the exemptions to Unfair Dismissal appropriate, and if not, how should they be adapted?

35. Legal Aid NSW is of the view that the criteria used by the FWC when considering unfairness of conduct, as set out in section 387 of the *FWAct*, strike the appropriate balance between business imperatives and workers' rights. Legal Aid NSW supports the power given to the FWC to take into account, in addition to the specific criteria in section 387, any other matters it considers relevant.⁴
36. The current employment threshold of 6 months (and 12 months for small business employees) is appropriate as it provides necessary flexibility for both workers and employers to terminate the employment relationship in its early stage if it becomes clear that the worker is unsuitable for the position.

In cases where employers are required to pay compensation in lieu of reinstatement, are the current arrangements for a cap on these payments suitable?

37. Legal Aid NSW notes that the current limit on compensation is the lesser of 26 weeks' pay or half of the high income threshold. Legal Aid NSW submits that the current cap on compensation seems suitable in the majority of claims we have been involved in.
38. Legal Aid NSW further submits that the criteria the FWC takes into account when assessing an award of compensation also seems suitable, balancing the worker's right to adequate compensation with the obligation to mitigate their loss.⁵ However, Legal Aid NSW is of the view that the criteria could be broadened so awards of compensation could more fully take into account the particular circumstances of vulnerable workers. Legal Aid NSW suggest the following further criteria:

⁴ *FWAct 2009* (Cth) s 387(h).

⁵ *Ibid*, s 392.

- whether or not the worker is particularly disadvantaged in the workforce by reason of age, disability and other social circumstances, and
 - the extent of the worker's education, training and/or transferrable skills and the effect that has on the prospects of securing future employment.
39. An Unfair Dismissal can have serious psychological impact on workers. Legal Aid NSW encourages a reconsideration of section 392(2) with a view to repealing or modifying that provision so that mental distress associated with the most egregious Unfair Dismissals can be compensated.

What are the main grounds on which people assert Unfair Dismissal?

40. Legal Aid NSW regularly sees workers making Unfair Dismissal applications for one or more of the following reasons:
- failure by the employer to provide reasons for termination
 - failure by the employer to provide notice of termination
 - failure by the employer to raise performance issues with the worker (early on) or failure to provide the worker with training and support and an opportunity to improve
 - failure by the employer to provide the worker with an opportunity to respond to allegations of misconduct, where the worker is summarily dismissed for serious misconduct, and
 - termination by way of redundancy when the redundancy is not genuine.

Do Unfair Dismissal actions disproportionately affect any particular group of employees (for example, by gender, ethnicity, geographical location, industry, union affiliation, occupation or business size)?

41. Based on the services Legal Aid NSW provides to a wide range of workers, the Unfair Dismissals we see disproportionately involve the following groups of vulnerable workers:
- workers from CALD backgrounds
 - workers employed in the cleaning industry
 - workers employed in the hospitality industry
 - small business employees
 - workers in rural areas, where employment opportunities are limited
 - older workers (over 60)
 - pregnant mothers, and
 - sponsored workers on 457 visas.

What are the impacts on employees of unfair dismissal, both personally and in terms of altered behaviours in workplaces?

42. Legal Aid NSW regularly sees workers who have been dismissed and have been refused a reference or a statement of service by the employer, and in our experience, this can have a significant impact on a dismissed worker's ability to secure future employment. Legal Aid NSW notes the obligation under social security legislation for employers to provide workers with an Employment

Separation Certificate upon request.⁶ Legal Aid NSW believes that a similar statutory requirement on employers to provide a statement of service to workers could be of benefit.

43. Legal Aid NSW sees that serious adverse impact of unfair dismissal on many of our clients, including:
- loss of income leading to financial hardship and major associated problems such as loss of dwelling
 - long term unemployment which can lead to social exclusion, given employment is a major way in which people connect and participate in society, and
 - physical health issues and psychological problems ranging from distress and loss of self-esteem to significant mental illness.

Other general comments

44. Legal Aid NSW regularly sees workers who agree to settle Unfair Dismissal applications along with unpaid entitlements claims to avoid going to a hearing in the FWC. It is often publically asserted by employer groups that employers have to pay “go away” money in response to claims that lack merit. Legal Aid NSW considers this may be an exaggeration. There is no objective evidence that “go away” money is often being paid. Furthermore, workers who have settled their claims without lawyers often tell us about their settlements, and it is our view that unrepresented workers regularly agree to settlement amounts well below the compensation that should be paid and often below mere statutory entitlements. Commonly workers settle Unfair Dismissal applications without having received notice, redundancy pay and final wages.
45. The fact that many settlements may be for small amounts does not necessarily reflect the merit of the claims, and rather it is often because the worker lacks the knowledge, assistance and fortitude to proceed to a full hearing on their own against a sophisticated employer with legal advice and representation.

4.3 Anti-bullying laws

General comments

46. Legal Aid NSW welcomed amendments to the *FWAct* in 2014 which introduced provisions regarding workplace bullying and harassment.
47. The powers of the FWC, which do not include the ability to order compensation, strike an appropriate balance between the protection of workers and the preservation of employers’ ability to manage employees in the workplace. Legal Aid NSW notes the vast majority of these matters seem to be resolved at conciliation, which is appropriate.

⁶ *Social Security (Administration) Act 1999* (Cth) s 199.

4.4 General protections and adverse action

General comments

48. Legal Aid NSW sees many clients with General Protections claims. We see consistently high numbers of claims of:

- discrimination, particularly on the grounds of disability and pregnancy
- adverse action on the basis of exercising a workplace right, particularly where a worker has complained about underpayment or has made a workers compensation claim, and
- sham (independent) contracting.

Do the General Protections within the FWAct, and particularly the ‘adverse action’ provisions, afford adequate protections while also providing certainty and clarity to all parties?

49. The General Protections provisions in the *FWAct* provide important protection for workers who have experienced unfair treatment in the workplace. However the provisions lack clarity in several important respects which are outlined below.

To what extent has the removal of the ‘sole or dominant’ test that existed in previous legislation shifted the balance between employee protections and employer rights?

50. The explanatory memoranda to the *Fair Work Bill 2008* indicates that for the purposes of section 360 of the *FWAct*, an action is taken for a prohibited reason if it is “an operative or immediate reason for the action.”⁷ This is a stricter test than the test under federal discrimination law, where the reason for the doing of an act need only be a reason.⁸ Legal Aid NSW considers that section 360 in its current form appropriately strikes the balance between employee protections and employer rights.

Is there scope for consolidating or clearly separating the mechanisms by which employees can seek redress for unfair conduct by others in the workplace?

51. The term ‘adverse action’ is defined in section 342 of the *FWAct* and is used in sections 340, 346 and 351. Section 342 likely limits the relationships in which adverse action can occur. For example, it seems that the various permeations of labour hire arrangements may place some workers outside of the protections. Section 342 is complex and unduly confusing.

⁷ Fair Work Bill 2008 Explanatory Memoranda at [1458].

⁸ *Racial Discrimination Act 1975* s 18, *Sex Discrimination Act 1984* (Cth) s 8, *Disability Discrimination Act 1992* (Cth) s 10, *Age Discrimination Act 2004* (Cth) s 16.

52. Legal Aid NSW submits that to be consistent with discrimination law:
- section 342 of the *FWAct* should be removed or amended to ensure it does not limit the types of protected relationships, or at least amended to fully protect labour hire workers, and
 - sections 340, 346 and 351 should be amended to proscribe direct and indirect discrimination in the full range of workplace relationships.

Are the discrimination provisions within the General Protections effective, and are they consistent with other anti-discrimination regulations that apply in Australia?

53. Some aspects of the discrimination provisions in the *FWAct* are effective. Particularly, Legal Aid NSW observes that the reverse onus in section 361 of the *FWAct* appropriately strikes the fairness balance between employers and employees. Employers generally have, or should have, information in their possession to allow them to explain the basis on which a decision was made. It is therefore appropriate that an employer is required to satisfy the court that it did not act for a discriminatory reason. It can be difficult for workers to prove events and conversation which occurred in their absence in cases where discrimination has occurred.
54. The discrimination provisions within the General Protections are not consistent with other Australian anti-discrimination laws. The discrimination provisions in the *FWAct* are markedly narrower than discrimination provisions under federal and state law. Federal and state discrimination laws apply to a broader range of workplace relationships and often proscribe discrimination against associates of persons with a protected attribute. Discrimination laws often cover discrimination on the ground of an attribute that is a characteristic extension of a particular attribute or has been imputed to a person.
55. Many discrimination laws also prohibit vilification and harassment on the basis of a protected attribute and victimisation on the ground that a person has made a complaint of discrimination.
56. Federal and state anti-discrimination laws generally prohibit direct and indirect discrimination. Discrimination laws apply to a broader range of discriminatory events than those outlined in section 342 of the *FWAct*.
57. The term 'discrimination' in section 342(1) of the *FWAct* is not defined. Some cases have found that this term encompasses both direct and indirect discrimination. Legal Aid NSW submits that the *FWAct* should be amended to expressly provide that individuals are protected from both direct and indirect discrimination.
58. The grounds upon which individuals are protected from discrimination are not defined in section 351 or elsewhere in the *FWAct* as they generally are under discrimination law. One case has suggested that the term 'disability' in the *FWAct* does not have the same meaning as the term has under the Disability Discrimination Act 1992 (Cth) ("DDA"). It is desirable for all parties that words used in federal laws in a similar context have consistent meaning. Uniform laws are simpler for all parties and thus reduce compliance costs.

59. Legal Aid NSW sees many individuals who are discriminated against due to their criminal record. Our clients' criminal convictions are often old, for minor offences or have no bearing on their current job. Legal Aid NSW notes that there is some protection against discrimination on the grounds of criminal record under the *Australian Human Rights Commission Act 1986* (Cth)⁹ and under some state anti-discrimination laws.¹⁰ Legal Aid NSW submits that section 351 *FWAct* should be amended to include criminal record as a ground of discrimination, subject to an inherent requirements defence.
60. The *FWAct* does not expressly prohibit sexual harassment. In some circumstances, conduct amounting to sexual harassment which occurs at work may constitute adverse action by an employer against an employee on the ground of sex.¹¹ However, in other circumstances, sexual harassment that occurs at work may not be unlawful under the *FWAct*.
61. Legal Aid NSW sees a significant number of clients with complaints of sexual harassment. We observe that both male and female workers who are young, low paid or from a culturally and linguistically diverse backgrounds are particularly vulnerable to sexual harassment. It is desirable from a policy perspective that workers have the same protection from sexual harassment in the *FWAct* as they do from discrimination generally.
62. There is no express requirement under the *FWAct*, as there is under the *DDA*,¹² for employers or prospective employers to make reasonable adjustments for employees with disabilities. In one case it has been suggested that section 351 of the *FWAct* imposes no such obligation.¹³ It is desirable that section 351 of the *FWAct* be amended to expressly require that employers make reasonable adjustments. Further, Legal Aid NSW submits that the duty on employers to make reasonable adjustments should be extended to a duty to make reasonable adjustments for pregnant workers.
63. Section 351(2)(a) of the *FWAct* provides a defence to discrimination. The section states that subsection (1) does not apply to action that is "not unlawful under any anti-discrimination law in force in the place where the action is taken". The explanatory memoranda indicates that the defence would apply "for example, where the action is exempt from being discrimination because it was taken to protect the health and safety of people at a workplace (see relevant exemption in section 108 of the *Anti-Discrimination Act 1991* (Qld))."¹⁴
64. It would seem section 351(2)(a) requires that, after forming the view that conduct breaches section 351 of the *FWAct*, a judge should then consider applicable exemptions under federal and state anti-discrimination law and satisfy themselves that no exemption applies. But this is not certain. It is possible to argue that certain discrimination must first be unlawful in the relevant state otherwise section 351 cannot apply. However, this would be an

⁹ *Australian Human Rights Commission Act 1986* (Cth) s 3 and *Australian Human Rights Commission Regulations*, Reg 4(a)(iii).

¹⁰ *Anti-Discrimination Act 1998* (Tas) s 16(q) (irrelevant criminal record), *Discrimination Act 1991* (ACT) s7(o) (spent conviction), *Anti-Discrimination Act* (NT) s 37 (irrelevant criminal record).

¹¹ See *Kassis v Republic of Lebanon* [2014] FCCA 155.

¹² See *Disability Discrimination Act 1992* (Cth), ss 5 and 6.

¹³ *Hodkinson v Commonwealth* [2011] FMCA 171 [187].

¹⁴ Explanatory memoranda [1429].

unfortunate outcome and most likely contrary to Parliament's intention. Perhaps section 351(2)(a) should be amended to make clear that the provision is about ensuring specifically legislated exceptions in the states are not overridden by section 351.

65. The connection between discrimination law and the discrimination provisions of the *FWAct* is inconsistent. One case has held that discrimination laws do not inform the interpretation of section 351 of the *FWAct*.¹⁵
66. Legal Aid NSW submits that if all of the exemptions are to be imported from applicable discrimination law, workers should also have protection under the *FWAct* which is co-extensive with that which applies under discrimination law.

In regard to dismissal-related General Protections, to what extent do the current arrangements for the awarding of costs and convening of conferences produce outcomes that are problematic?

67. The FWC is established by beneficial legislation aimed at the conciliation and arbitration of disputes arising in the workplace and the protection of workers. The FWC should have clear and enforceable powers to convene conferences and the costs provisions should remain as they are.
68. Costs provisions and the threat of costs should not be allowed to deter workers from seeking the assistance of the FWC as 'umpire' to conciliate and arbitrate disputes.
69. Legal Aid NSW often learns of situations where lawyers representing employers threaten vulnerable workers with the potential of costs orders if the worker commences or continues proceedings in the FWC. Under such threats many workers abandon their claim or settle for much less than they should. Given the FWC is mostly a 'no costs' jurisdiction, some of these threats made by lawyers to unrepresented workers are highly inappropriate. It would be helpful at conciliations if the FWC could remind the parties that it is a 'no costs' jurisdiction (except in vexatious or unreasonable claims) and that the parties ought not to be afraid to seek the assistance of the FWC.
70. Legal Aid NSW is of the view that the costs provisions in the *FWAct* applicable to General Protections litigation in the Federal Court and the Federal Circuit Court strike an appropriate balance between allowing applicants to pursue their rights and dissuading vexatious proceedings and unreasonable litigation conduct.

To what extent has the recent harmonisation of the time limits for lodgements of General Protection dismissal disputes and Unfair Dismissal claims increased certainty for all parties involved and reduced 'gaming' of such processes?

71. Legal Aid NSW observes that a common time limit for dismissal related claims is easier for clients to understand and thus comply with. Accordingly, a uniform time limit for dismissal claims is welcome.

¹⁵ See n8 above.

72. However, Legal Aid NSW notes that a 21 day time limit is a short time frame for our clients to obtain legal advice and lodge a claim. Individuals are often shocked, distressed and confused when their employment is terminated. Many of our clients do not speak English or have low levels of education and literacy. A significant number do not access the internet.
73. Legal Aid NSW has seen the practice of some unscrupulous employers of creating uncertainty around the date and reasons for termination, which makes it difficult for the worker to decide when to file with the FWC. In such cases the worker may miss the time limit. For example, an employer may tell an employee that their job has been made redundant, but then hires a replacement employee after 21 days. The dismissed worker will learn that it was not a genuine redundancy too late to file a claim.
74. Most of the Legal Aid NSW employment law clinics have at least a 3 week waiting period for an advice appointment. While Legal Aid NSW attempts to triage clients who have dismissal related claims, this is not always possible. Further, clients are often confused about which agency to contact about the termination of their employment, particularly given the similarity in names of the FWC and the FWO. Some clients wrongly think that a complaint to the FWO will action an Unfair Dismissal claim.
75. Legal Aid NSW submits that the time limit for dismissal related claims should be extended to 60 days. Legal Aid NSW notes that outside migration law, a 21 day time limit is one of the shortest time limits for commencing legal action under federal law. Legal Aid NSW submits that it is a comparatively small extension of the time limit.
76. Another possibility which could address the potential injustice of the short time limit is to amend section 394(3) to make it easier to get an extension of time where there is demonstrated ignorance of the time limit is the reason for a short delay, and the limitation period has only been missed by a matter of days or weeks.

Issues Paper 5: Other Workplace Relations Issues

5.2 How well are the institutions working

How are the FWC and the FWO performing?

77. Legal Aid NSW regularly assists clients to lodge Unfair Dismissal and General Protections claims with the FWC, and complaints about underpayment and breach of the *FWAct* with the FWO. Our clients are often confused about the functions of the two agencies. We are frequently told by clients that they have contacted 'Fair Work' and when we ask the client whether they have contacted FWC or FWO, they are unable to tell us. Consideration should again be given to changing the name of one of these agencies to better distinguish them.
78. Legal Aid NSW observes that the FWC plays a vital role resolving workplace disputes and setting minimum wages and conditions. Its processes are generally quick and user-friendly.

79. Legal Aid NSW finds our clients receive variable assistance from the FWO is. For underpayment claims, the FWO sometimes provides our clients with written information about their award rates of pay and the small claims procedures of the Federal Circuit Court. However, in other matters, our clients simply receive correspondence from the FWO noting that the FWO contacted their employer, and as the employer did not wish to cooperate, the FWO has closed the file.
80. From our perspective, it is common practice for the FWO to simply refer legally difficult matters to Legal Aid NSW, Community Legal Centres or LawAccess. We appreciate that all public regulatory agencies have finite resources. However, there is a strong perception among workers, and lawyers who assist workers, that the FWO is not adequately fulfilling a role of protecting vulnerable workers. Furthermore, there is a perception that the FWO is not acting decisively on well-grounded complaints about breaches of the *FWAct* and awards.
81. Too often Legal Aid NSW sees the FWO telling vulnerable workers to commence small claims proceedings in the Federal Circuit Court where the worker is incapable of doing so on their own.
82. The FWO seems to have retreated from using its investigative powers and making findings and determinations. Unscrupulous employers we encounter seem undeterred by the possibility the FWO could take enforcement action against them. Bodies such as WorkCover NSW seem much more adept at instilling and enforcing a culture of compliance.
83. Legal Aid NSW is of the view that the FWO should re-invigorate its investigation and findings and determination functions.

Should there be any changes to the functions, spread of responsibility or jurisdiction, structure and governance of, and processes used by various Workplace Relations institutions?

84. As stated above, it is the experience of Legal Aid NSW that where clients have a General Protections or Unfair Dismissal claim they often also have an underpayment claim. While nothing prevents the parties from trying to resolve all claims in one forum, it would simplify the process if one forum had power to resolve complaints of underpayment and General Protections and Unfair Dismissal claims. That said, Legal Aid NSW appreciates the complex constitutional issues involved in vesting jurisdiction in federal courts and tribunals.

How effective are FWO and FWC in dispute resolution between parties?

85. Legal Aid NSW has generally found the FWC to be a quick, efficient and effective dispute resolution body.

86. Conciliation conferences in Unfair Dismissal claims and conferences in General Protections claims are scheduled within a short time of filing of the claim, and this is generally welcomed. While a respondent is required to file a response to the claim,¹⁶ when this does not occur the conference proceeds without a written response from the employer. It is difficult to advise our clients about the merits of a matter and appropriate settlement without the employer's response. The FWC should ensure that its procedures are followed and employers file their response prior to the conference.
87. Conciliation conferences of Unfair Dismissal claims are convened by staff members of the FWC. Conferences almost always occur by telephone and are scheduled for less than two hours. At times, the speed with which some Unfair Dismissal telephone conciliations are conducted may disadvantage more vulnerable workers. Having said that, short telephone conciliation conferences benefit stakeholders like Legal Aid NSW which have limited resources.
88. The FWC alternative dispute resolution ("ADR") process is generally faster than those of the discrimination agencies, which unlike the FWC, investigate claims before attempting to resolve them. The FWC ADR process is more in the nature of positional bargaining than interest-based negotiation.¹⁷ This is not unwelcome and is consistent with the historical approach of the federal industrial tribunal in its various iterations.
89. Legal Aid NSW has concerns about the FWO attempting mediations in entitlements matters. On one hand the FWO is an agency tasked with enforcing minimum wages and conditions for workers. On the other hand, the FWO mediators allow, and seemingly sometimes encourage, workers to accept less than their legal entitlements to resolve disputes. This tolerance of small scale non-compliance inherently contradicts the law enforcement function of the FWO and in practice, sends an unfortunate message that employers need not adhere to legal minimums because disputes can be settled for a lesser amount at an FWO conciliation. Again, Legal Aid NSW has dealt with unscrupulous employers who seem undeterred by the possibility of a complaint being made to the FWO.

What, if any, changes should they make to their processes and roles in this area?

90. Legal Aid NSW suggests that the FWC should vary its standard process where the resolution of a matter is more likely if the conference is held in person or a longer time was allowed for the conference.
91. Legal Aid NSW considers that the FWO should review its mediation practices to ensure that workers are not encouraged to accept less than their legal entitlements. It may be appropriate for FWO mediators to express a view about the legitimacy of a worker's claim and caution employers about the consequences of non-compliance. This is often the approach of the Commissioners in FWC conciliations.

¹⁶ *Fair Work Rules 2013* (Cth) rules 19, 21, 22, 23A.

¹⁷ See Ball, J and Raymond T. 'Facilitator or Advisor?: A discussion of conciliator intervention in the resolution of disputes under Australian human rights and anti-discrimination law 2004' <<https://www.humanrights.gov.au/our-work/complaint-information-service/publications/facilitator-or-advisor-discussion-conciliator>> (viewed 12 March 2013).

5.6 Alternative forms of employment

Are there any general concerns about the Workplace Relations system as it applies to independent contractors?

92. Legal Aid NSW sees many workers who are engaged under independent contracting arrangements. Some of these workers are quite vulnerable and are exploited through contract arrangements that provide for pay below minimum award rates and do not provide basic employment entitlements such as paid annual leave, personal leave and protection from unfair dismissal. Often these workers do not benefit from the freedom and flexibility associated with independent contracting arrangements. They experience all of the control associated with employment but none of its protections and benefits.
93. Most sham contracting arrangements that Legal Aid NSW sees in connection with our clients are clearly intended to circumvent employee protections. Some of these arrangements are extremely complex and have been implemented after careful construction by lawyers and human resources experts. Other arrangements can be quite unsophisticated, to the extent of being clumsy.
94. Legal Aid NSW observes that despite a requirement to contribute superannuation for some independent contractors who provide their physical and intellectual labour, principals are not making these contributions and the Australian Taxation Office is not taking sufficient compliance action.
95. Legal Aid NSW proposes that workers could be better protected by introducing into the *FWAct* a requirement that employers ensure that workers engaged as independent contractors are 'better off overall' than if they were engaged as employees. This could operate in a similar way to section 144(4)(c) of the *FWAct*, which requires employers to ensure that any individual flexibility agreement results in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to.
96. In Legal Aid NSW's view, a 'better off overall' requirement for independent contractors is appropriate given workers engaged under independent contracts do not have minimum safety net entitlements. While the *Independent Contractors Act 2006* (Cth) enables the Federal Court or Federal Circuit Court to provide a remedy where a contract in relation to services is unfair or harsh, this avenue has been rarely used to remedy unfair independent contracting arrangements and may not facilitate the payment of compensation where a worker has been worse off under a sham contracting arrangement.
97. In Legal Aid NSW's view, including a 'better off overall' requirement in the *FWAct* would enable workers to more easily gain redress for unfair contracting arrangements and reduce the incentives for sham contracting, while not undermining genuine independent contracting arrangements that are beneficial to both firms and workers.

What are the advantages and disadvantages of creating a statutory definition of an 'independent contractor'?

98. Legal Aid NSW believes that including a statutory definition of 'independent contractor' would be a positive development that would simplify the law in this area and likely reduce instances of sham contracting.

99. In Legal Aid NSW's view, a statutory definition could more simply articulate the difference between an independent contractor and an employee than existing common law definitions. This would allow both workers and employers to better understand the legal meaning of an independent contractor, and therefore more easily assess the true nature of work arrangements.
100. A statutory definition would better protect workers engaged under sham contracting arrangements by making it more difficult for employers to prove that they did not know, and were not reckless as to whether the contract was a contract of employment rather than a contract for services under section 357(2) of the *FWAct*. It would also provide workers with a reference point to respond to employers who attempt sham contracting.
101. A statutory definition may also reduce the complexity of sham contracting litigation.

Are the current provisions in the FWAct sufficient to discourage sham contracting?

102. Legal Aid NSW believes that if a definition of 'independent contractor' was inserted in the *FWAct*, the existing provisions may be sufficient to discourage sham contracting.
103. Legal Aid NSW is of the view that the FWO ought to more aggressively enforce the current provisions. In a number of significant cases the FWO seems to have settled for enforceable undertakings rather than obtaining a judgement which would have further clarified the law and sent a strong deterrence message to employers.

To the extent that the current provisions are insufficient, what changes could be made to strengthen the FWAct?

104. Legal Aid NSW refers to that the changes that could be made to strengthen the *FWAct* discussed above.

In what industries is sham contracting most prevalent? Have instances of sham contracting become more or less common over time? How much sham contracting is deliberate rather than mistaken?

105. Legal Aid NSW has observed a wide variety of workers forced or misled into sham contracting arrangements. Many workers who seek our assistance with sham contracting problems work as:
- cleaners
 - transport drivers
 - fitness instructors
 - information technology workers, and
 - farm labourers.

Alarming, Legal Aid NSW has also seen the following types of workers forced to work as independent contractors:

- dry cleaning workers
- meat/poultry processing workers
- clerical workers and book keepers
- dental nurses, and
- ordinary labourers, including labourers on building sites.

106. Legal Aid NSW sees numerous cases where sham contracting is intentional and designed specifically to circumvent employment entitlements and exceptions. Sham contracting seems to be more prevalent now than in the past, and is being attempted by both sophisticated and unsophisticated employers.

Are there any general concerns about the treatment of labour hire workers under the FWAct?

107. Legal Aid NSW believes that labour hire workers should benefit from the same protections under the *FWAct* as employees engaged directly by employers. However, we observe that in many respects labour hire arrangements seem structured to avoid employment protections, particularly any obligations of host firms towards labour hire employees.

108. In Legal Aid NSW's view, there is some doubt about the protection of labour hire workers from adverse action taken by host firms under sections 342(3) and 342(4) of the *FWAct*. The General Protections provisions should be amended to make clear that labour hire workers are protected, including in circumstances where the labour hire employer may not have been involved in the contravention of the General Protections provisions.¹⁸

109. Legal Aid NSW has observed that labour hire employees have very limited access to unfair dismissal remedies when their assignment with a host firm comes to an end. Joint employment relationships have not been recognised in Australian law,¹⁹ workers cannot make an Unfair Dismissal claim against the host firm unless it is established that the host is the true employer,²⁰ and in many instances the worker is not regarded as having been dismissed by the labour hire employer.²¹ This is despite the practical end of paid work at the initiative of the host employer.

¹⁸ Where both the labour hire employer and the host firm are involved in a contravention of the General Protections provisions, the labour hire employee can make a General Protections claim as an employee against their employer (the labour hire firm) and include the host firm as a respondent under section 550 of the *FWAct* as a 'person involved in the contravention'.

¹⁹ *FP Group Pty Ltd v Tooheys Pty Ltd* [2013] FWCFB 9605.

²⁰ *Beazley v Visy Paper Pty Ltd trading as Visy Recycling* [2012] *FWAct* 5136, *FP Group Pty Ltd v Tooheys Pty Ltd* [2013] FWCFB 9605.

²¹ For example, *Derar v Recruitco Pty Ltd* [2013] FWC 9791 *Bradford v Toll Personnel Pty Ltd T/A Toll Ipec* [2013] FWC 1062 *Shelton v Ultra NDT ATF The O & A Kavanagh Family Trust T/A Ultra NDT Pty Ltd* [2014] FWC 2646. Legal Aid NSW notes that in some instances labour hire employees have been regarded as having been dismissed when an assignment has come to end, see for example *Matthew Reid v Broadpectrum Australia Pty Ltd* [2014] FWC 7108, *Diana Sherwin v Adesse Pty Ltd Hey* [2008] AIRC 900.

110. In addition, when the employment has practically ended it is the established practice of labour hire firms to maintain the fiction that the 'casual' worker has not been dismissed. This is done to avoid the provision of notice and the payment of redundancy entitlements. The worker effectively 'falls between the cracks' without recourse to Unfair Dismissal laws and is unable to readily claim termination payments. This places labour hire employees in an even more vulnerable position than casual employees.

How does the Workplace Relations system affect the use of sponsored foreign workers?

111. Legal Aid NSW provides advice and assistance to many sponsored workers on 457 visas. Many are employed in occupations where there is no local skills shortage.

112. Almost invariably, sponsored workers do not belong to unions. Legal Aid NSW has observed that the workplace relations system and migration system do not adequately protect the employment rights of sponsored workers and they are very vulnerable to underpayment and other forms of exploitation.

113. In the experience of Legal Aid NSW many sponsored workers visas are not paid in accordance with minimum award rates, and many are obliged to work excessive hours. As the worker's ability to stay in Australia is dependent on working for the sponsor company, many are reluctant to raise these issues with their employer, complain to the FWO or make any legal claims for fear this will jeopardise their employment and ability to remain in Australia. Legal Aid NSW sees many situations where it would appear that sponsored workers have been employed because they are more compliant than local workers and will endure illegal employment practices.

114. In Legal Aid NSW's view, conditions of the 457 visa also make it difficult for workers to access protections in the *FWAct* including Unfair Dismissal and General Protections. This is because workers on 457 visas may only remain in Australia for 90 days after their employment has ceased. In many instances this is not enough time for an Unfair Dismissal or General Protections claim to be finalised. While workers may be able to apply for a bridging visa to pursue legal claims, this is rarely financially viable due to the application fee and the restrictive work rights of bridging visas.

115. Legal Aid NSW is concerned that the lack of enforcement of sponsored workers' rights under the *FWAct* and awards is creating a 2-tiered employment system, where sponsored foreign workers do not receive the same pay, conditions and protections as Australian workers and where the 457 scheme is undermining the universality of employment law protections in Australia.

116. Although outside the scope of this review, Legal Aid NSW is also aware of many instances of employers requiring sponsored workers to pay for the cost of their own recruitment in breach of the *Migration Act 1958* (Cth). Many workers comply with this because they fear losing their job and their ability to remain in Australia.

Conclusion

117. Legal Aid NSW is of the view that generally the *FWAct* provisions and award system are adequate and often operate well to protect the vulnerable clients to whom we target our services. We strongly support the maintenance of the federal minimum wage as fixed by the FWC and believe that Additional Payments (that is, penalty rates) are an integral part of the take home pay of low paid workers. The federal minimum wage and Additional Payments must continue to be at the centre of the Workplace Relations system if the system is to ensure a living wage for the poorest workers.
118. The experience of Legal Aid NSW with the FWC is generally positive and the FWC processes allow us to obtain good outcomes for our vulnerable clients.
119. The most significant concern of Legal Aid NSW relates to the enforcement of the *FWAct* and awards, most particularly the enforcement of minimum wages and entitlements. Many of our vulnerable clients who do not belong to unions are not capable of navigating the claims processes of the Federal Circuit Court, including its small claims process, on their own. The limited resources of Legal Aid NSW and community legal centres cannot redress enforcement failures in the Workplace Relations system. It is our strongly held view that the FWO needs to increase its investigation, findings and determinations and enforcement activities, and be better resourced to do so if resourcing is the issue.

Appendix 1

Legal Aid NSW Employment Law Services

Overview

Legal Aid NSW assists some of the most vulnerable workers with their employment related legal problems. Many of our clients are at risk of long term unemployment – an outcome that we aim to prevent.

We provide workers with advice, assistance and representation. The workers we help have no other way to access appropriate legal or advocacy services – we see many workers who do not belong to unions and cannot afford the fees of private solicitors.

Some of the types of vulnerable workers we give ongoing assistance to and represent include:

- casual / temporary workers and labour hire workers
- workers with disabilities
- workers with very poor education and literacy
- indigenous workers
- young workers (in their teens and early 20s) and older workers (over 60)
- workers who live in regional and remote areas, where there are high levels of unemployment and relative poverty
- pregnant workers
- migrant workers, including former refugees and workers exploited on 457 work visas
- workers who have been the victim of gross unlawful exploitation.

The level of assistance and representation we provide depends on the application of our policies and guidelines.

Our services

In accordance with our policies, grants of legal aid for litigation are available for the following types of matters:

- **Unfair dismissal proceedings** in the Fair Work Commission.
- **Unfair work contract proceedings** in the Federal Court or the Federal Circuit Court. This may include review proceedings under the *Independent Contractors Act 1996 (Cth)*.
- **Recovery of unpaid entitlements** in the Federal Circuit Court or the Chief Industrial Magistrates Court of NSW (which is now vested with Federal jurisdiction). (The worker must have exhausted other resolution avenues, for example made a complaint to the Fair Work Ombudsman).

- Proceedings for **contravention of the General Protections** found in the *Fair Work Act*. Namely the:
 - 'workplace rights' protection
 - protection against discrimination
 - 'absence for illness' protection
 - 'sham contractor arrangements' protection.

Grants of aid are subject to the application of a means and merit test. For a grant of aid the worker must also be at 'special disadvantage', unless there is a credible discrimination allegation in the litigation (in which case the 'special disadvantage' requirement will not be applied).

Where for policy reasons a grant of aid is not available, we may provide some limited assistance on a duty basis (in accordance with guidelines and discretions) where the worker is vulnerable and the matter has significant merit. This type of assistance can include advocating for a worker at a Fair Work Commission conciliation.

Our advice sessions (clinics) at Head Office in Haymarket and throughout NSW are open to any worker who needs initial advice. This advice service is currently not means tested.

Service objectives

The fundamental objective of employment law services provided by Legal Aid NSW is to assist workers at risk of unemployment and its consequences, namely social disadvantage and serious economic hardship. We seek to provide our services on an early intervention basis and to utilize dispute resolution processes such as conciliations. Wherever possible, we strive for outcomes that will allow the worker to remain in employment or assist them back into the workforce as soon as possible.

Our employment law services focus on:

- maintaining employment through negotiation and dispute resolution
- achieving reinstatement where possible
- assisting dismissed workers to obtain a reference and other practical outcomes to enhance their ability to quickly return to employment
- recovering unpaid wages and entitlements
- compensation to alleviate financial hardship while the worker seeks new employment
- advocacy for workers in Fair Work Commission conciliations, where the worker would not be able to advocate for themselves - usually because the worker is vulnerable and there is a significant power imbalance
- strategic litigation where there are systemic breaches of the law and where public interest issues arise, and
- referral to appropriate agencies and dispute resolution forums.

The employment law team

Legal Aid NSW's specialist Employment Law service was established in 2011. It comprises a Senior Solicitor and specialist in employment law, four employment law solicitors and a paralegal.

This team has increased the level and depth of employment law advice, assistance and representation. All generalist civil law solicitors at Legal Aid NSW also provide employment law services.

The employment law team facilitates and resources specialist employment law advice clinics throughout NSW. These clinics are in addition to the employment law advice already given in our general civil law clinics.

Recent service data

From July 2014 to date, Legal Aid NSW has provided employment law advice on 2600 occasions. During the same period we have provided ongoing legal assistance/representation on 1084 occasions. Assistance and representation in a significant number of matters has included advocacy at Fair Work Commission conciliations. Legal Aid NSW has also granted aid in a number of significant cases in order to pursue litigation in the Fair Work Commission, the Federal Circuit Court of Australia and the Federal Court of Australia.

Important information resources

In the second half of 2013 Legal Aid NSW produced an important written resource for workers: *'Ripped Off? Your Rights about Unpaid Wages & Entitlements at Work'* - a substantial 45 page plain English publication about wages, entitlements and practical steps that workers may take to recover unpaid amounts. While the publication is useful for all workers, aspects of its design and layout make it accessible and appealing to younger workers.

Legal Aid NSW has developed a number of plain English employment law fact sheets targeted at vulnerable workers, alerting them to unlawful employer practices and informing workers of their rights. Legal Aid NSW has also produced an information sheet that provides important information to workers about their rights when work is disrupted by natural disasters. Legal Aid NSW also delivers regular employment law 'webinars' and is presently developing other community legal education resources.

Important employment law information is also available to the public on our internet site <http://www.legalaid.nsw.gov.au/what-we-do/civil-law/employment-law-services>.