DEALING WITH WORKPLACE BULLYING
A Practical Guide for Employees
Workplace bullying is a significant problem in today's workforce. In 2005 the Interagency Round Table on Workplace Bullying was created to draw on the experience of organisations, non-government and government agencies that were involved in the provision of advocacy, information and advice, or investigation of workplace bullying. The following agencies were represented on the Interagency Round Table:

Equal Opportunity Commission SA
Department of Further Education, Employment, Science and Technology
Office of Public Employment
Public Sector Workforce Relations
SafeWork SA

DISCLAIMER
This resource has been developed with the assistance of the Interagency Round Table on Workplace Bullying. Every effort has been made to ensure that the information contained in this practical guide is free from error and/or omissions. However it does not substitute for appropriate advice and the authors accept no responsibility for any claim that may arise from any person acting on information contained herein.

The Interagency Round Table on Workplace Bullying would like to acknowledge the assistance of WorkSafe WA in the production of this document.
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Bullying is not acceptable workplace behaviour and it should not be tolerated in any form.

This practical guide has been developed to help employees identify and deal with bullying in the workplace. It aims to provide practical advice and information on making workplaces safer for everyone concerned.

This guide recommends that workplace bullying be treated like any other health and safety hazard. As part of normal workplace risk management procedures, bullying incidents, practices or potential for bullying should be identified, assessed for risk, and steps taken to minimise the risk. Follow-on procedures should ensure bullying does not occur or continue.

Bullying can adversely affect the health and safety of employees. It is unacceptable under the Occupational Health, Safety and Welfare Act 1986, (the OHS&W Act) and the Occupational Health, Safety and Welfare Regulations 1995.

The legislation requires employers to attempt to resolve health and safety issues with Health and Safety Representatives, Health and Safety Committees and employees.

Due to the sensitivity of many bullying incidents, this guide strongly recommends that, wherever possible, agreed procedures are conducted as informally as possible in confidence, and with fair procedures to minimise conflict and stress for the individuals involved.

Employees are encouraged to participate in developing safe work procedures to deal with bullying, and providing it is safe to do so, should report incidents of bullying to an appropriate person at the workplace.
WHAT IS WORKPLACE BULLYING?

The following definition is included in section 55A (1) of the Occupational Health, Safety and Welfare Act 1986:

‘Workplace bullying means any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety.’

Repeated refers to the persistent or ongoing nature of the behaviour and can refer to a range of different types of behaviour over time.

Systematic refers to having, showing or involving a method or plan. Whether behaviour is systematic or not will depend on an analysis of the circumstances of each individual case with this general guideline in mind.

Risk to health and safety includes the risk to the emotional, mental or physical health of the person(s) in the workplace.

EXAMPLES OF BULLYING BEHAVIOUR

Bullying behaviour can be obvious and aggressive. Examples could include:

- Abusive, insulting or offensive language;
- Behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling and screaming;
- Teasing or regularly making someone the brunt of practical jokes;
- Displaying material that is degrading or offending;
- Spreading gossip, rumours and innuendo of a malicious nature.

Violence, assault and stalking are extreme forms of bullying that constitute a criminal offence. Such behaviour should be reported directly to the police. Examples include, but are not limited to:

- Harmful or offensive initiation practices;
- Physical assault or unlawful threats.

Workplace bullying can also be subtle and may include behaviour such as:

- Deliberately excluding, isolating or marginalising a person from normal workplace activities;
- Intruding on a person’s space by pestering, spying or tampering with their personal effects or work equipment;
- Intimidating a person through inappropriate personal comments, belittling opinions or unjustified criticism.

Covert behaviour that undermines, treats less favourably or disempowers others is also bullying. For example:

- Overloading a person with work;
- Setting timelines that are very difficult to achieve, or constantly changing deadlines;
- Setting tasks that are unreasonably beyond a person’s ability;
- Ignoring or isolating a person;
- Deliberately denying access to information, consultation or resources;
- Unfair treatment in relation to accessing workplace entitlements, such as leave or training.
WHAT ISN’T BULLYING BEHAVIOUR?

As stated in section 55A (2) of the Occupational Health, Safety and Welfare Act 1986 bullying behaviour does not include:

- A decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee’s employment;
- Reasonable administrative action taken in a reasonable manner by an employer in connection with an employee’s employment; or
- Reasonable action taken in a reasonable manner under an Act affecting an employee.

FACTORS CONTRIBUTING TO WORKPLACE BULLYING

There are a variety of reasons why a person may bully another person in the workplace. These reasons may include:

POWER

A person may use their position of power or their physical dominance over those who are perceived to be weaker. The bullying is often dependent upon the perceived power of the bully over their victim.

SELF-ESTEEM

Bullies may put down others to boost their own self-esteem and confidence to help deal with personal feelings of inadequacy.

DIFFERENCE

An individual or group may become targets of workplace bullying because others perceive them as being new or different.

PERCEIVED THREAT

Some people bully others because the other person is perceived as a threat to them personally, or a threat to their position within the company.

ORGANISATIONAL CULTURE

The culture of a workplace is often shown by its values, beliefs and what is considered to be normal behaviour. When the culture is positive it encourages individuals to adopt appropriate behaviours that promote respect of others.

Conversely, employees may find themselves in a negative culture where inappropriate behaviours and attitudes are encouraged or condoned by management and bullying is seen as normal behaviour for the majority of people in the workplace.
ORGANISATIONAL FACTORS
People may harass or bully others due to dissatisfaction with organisational arrangements. Factors may include:
- Job insecurity;
- Restructuring or downsizing;
- Changes such as a new manager/supervisor, new rosters or new procedures;
- Inadequate supervision;
- Change in ownership;
- Introduction of new technology;
- Inappropriate initiation practices;
- Inadequate support or training;
- Poor skills and practices in people management.

WORKING ARRANGEMENTS
Some working arrangements mean that individual employees or workgroups are separated from supervisors and others in the workplace. This can allow bullying to go undetected and prevent effective monitoring and leadership. Examples include, the physical work layout, employees located in different offices or work locations, work scheduling including fieldwork and shift work and also people in positions of authority separating individuals from co-workers.

In some industries it is the client or customer who threatens or bullies employees. If this is identified as a risk then it should be controlled in the same way as other identified risks. Training staff in dealing with difficult customers, procedures for withdrawal from potentially risky situations and access to counselling/debriefing can all assist to control this risk.

IMPACT OF WORKPLACE BULLYING
Workplace bullying may cause extensive health problems for employees exposed to this hazard, including physical and psychological illnesses and injuries. It can impact on co-workers, clients, customers, business associates, family and friends.

The reaction of individual employees will vary according to the nature of the bullying. It is possible that employees who are bullied may experience some of the following effects:
- Stress, anxiety or sleep disturbance;
- Panic attacks or impaired ability to make decisions;
- Incapacity to work, concentration problems, loss of self-confidence and self-esteem or reduced output and performance;
- Depression or a sense of isolation;
- Physical injury;
- Reduced quality of home and family life;
- Suicide.

The costs to the organisation include reduced efficiency, unsafe work environment, increased absenteeism, poor morale, increased workers compensation claims and civil action.
WHAT CAN YOU DO ABOUT IT?

Bullying can and should be stopped. Every situation is different and how you handle bullying will depend on your particular work environment, the systems available in your workplace and the nature of the bullying.

If you are being bullied, you could take action yourself or follow a more formal approach. The following personal and informal steps are recommended as a first approach in dealing with most bullying cases.

CHECK FOR A WORKPLACE BULLYING POLICY AND COMPLAINT PROCEDURE
Check whether your employer has a policy and complaint resolution procedure for workplace bullying. It may be available in the organisation’s induction package for all new employees, or it may be included in the in-house newsletters or displayed on notice boards. There may also be grievance procedures in your industrial award or employment agreement.

Most complaint procedures have an informal resolution process aimed at resolving issues as quickly as possible in a no blame, conciliatory manner, as well as a more formal investigation process.

SEEK ADVICE
If available in your workplace, seek advice from your Contact Officer or Grievance Officer, Health and Safety Representative, Human Resources Officer or Union Official. You should not make allegations about bullying behaviour or harassment to people who are not involved in the handling of complaints in your workplace. The alleged bully is protected by confidentiality provisions in law and may be able to take action if the complaint is not handled properly.

You should not have to submit a written complaint when making an informal complaint, although you may be advised to keep a record of what is happening.

KEEP A RECORD
Make a detailed record of what happened - place, date, time, persons (both those involved and those present) and what was said or done. Ensure that your records are accurate. This information may be useful later, particularly if more formal steps need to be taken.

APPROACH THE BULLY
If any form of bullying happens to you and you feel safe and comfortable to do so, make it quite clear to the bully as soon as possible that the behaviour is unwanted and unacceptable and that you will not tolerate it.

Silence allows the bully to continue intimidating you. If you don’t say something, the harassment may get worse. Body language is also an effective way to communicate, especially when combined with a clear statement.

You may decide to discuss how you should approach the bully with a Contact Officer or Grievance Officer, if available, before doing so.

Another informal way to stop the behaviour is to ask someone else, such as the Grievance Officer, to approach the bully on your behalf or to mediate or facilitate face-to-face discussions and find a resolution that is acceptable to everyone involved.

USE A COUNSELLING SERVICE
Some workplaces offer counselling services to employees. This may be provided free if your organisation provides an employee assistance program. Counselling may help you to develop ways of dealing with a bully or the effects of bullying.

Your Human Resources Officer should have information on an employee assistance program if there is one. Your union may also be able to provide information. The WHERE TO GO FOR FURTHER INFORMATION AND ASSISTANCE section of this booklet provides information on external agencies that you can approach for advice or assistance.

USE MORE FORMAL PROCEDURES
A formal investigation may be required if the informal procedures are not successful or in situations where the allegations are more serious and there has been less favourable treatment or actual physical or psychological harm. This would usually be confirmed by preliminary enquiries undertaken by a Grievance Officer before a formal investigation is undertaken.
You may decide, or be required (if your workplace has a complaint process) to lodge a written complaint to your employer. If a formal investigation does occur, an impartial person who is not involved in the particular situation should carry this out. The investigator should document your report and keep a record of information gathered in the course of the investigation and you should be advised of the outcome.

Further, in the event that an investigation goes ahead you should be advised of:

- Your right to representation;
- Who will conduct the investigation;
- Measures in place to protect confidentiality and procedural fairness;
- The timeframe for the investigation;
- Possible outcomes and actions by the employer;
- Who will be provided with a copy of your statement and any report that may be produced;
- Your entitlement to a copy of your own statement.

**HEALTH AND SAFETY REPRESENTATIVES AND HEALTH AND SAFETY COMMITTEES**

You may decide to contact your Health and Safety Representative to discuss a problem with workplace bullying.

The functions of an elected Health and Safety Representative include liaising with employees on health, safety and welfare matters, and reporting to the employer any hazard or potential hazard to which employees might be exposed. Where there is a Health and Safety Committee, the Health and Safety Representative may refer the matter to the Health and Safety Committee.

Consultation with Health and Safety Representatives and Committees should be part of the processes used to develop anti-bullying strategies and the ongoing monitoring and review of the effectiveness of the strategies.

Where bullying is an identified workplace hazard the employer is obliged to provide the Health and Safety Representative with any information the employer has, or can be expected to have about bullying.

If workplace bullying is reported, the employer should consider the extent to which the Health and Safety Representative should be involved in resolving the issue, and the rights of both parties to confidentiality pending investigation.

The workplace policy and procedures should address both of these issues.

**RESOLVING ISSUES**

The OHS&W Act requires employers to attempt to resolve health, safety and welfare issues with the Health and Safety Representative, Health and Safety Committee or employees, according to the relevant procedures for the workplace. If these procedures do not succeed, the OHS&W Act sets out steps to resolve the issue.

If an issue remains unresolved and/or there is a risk of serious and imminent injury or harm to someone, either the employer or a Health and Safety Representative may request an OHS Inspector to attend the workplace.

If there is no Health and Safety Representative or Health and Safety Committee, you or another employee may lodge a complaint with SafeWork SA. An OHS Inspector will then attend the workplace and take whatever action under the legislation she or he considers appropriate.

The OHS Inspector’s role is to ensure the employer and employees meet their obligations under the legislation, not to mediate between the bullied person and the alleged bully. However, if after investigation into the matter, the OHS Inspector believes the involved parties can resolve the issue they may refer the case to the Industrial Relations Commission (IRC) for conciliation or mediation.

A summary of relevant legislation and contacts for further advice are provided at the end of this booklet (see Appendix One and page 13).

**END RESULTS**

In situations where the employer or the OHS Inspector concludes that the complaint of workplace bullying is justified there may be disciplinary action, usually in accordance with the anti-bullying policy and with relevant legislation. The employer is also required to make changes to the workplace to ensure that any breach of occupational health and safety legislation is rectified and the bullying ceases. These changes may include counselling for the alleged bully to enable them to recognise and take action to change their behaviour.
WHAT THE LAW SAYS

OCCUPATIONAL HEALTH, SAFETY AND WELFARE

The OHS&W Act deals with the general wellbeing of employees at work. Section 4 (4(a) The prevention of work related injuries and illness are both matters related to occupational health, safety and welfare. Section 4 (4(b)

Incidences of workplace bullying can have an adverse impact on the psychological wellbeing of an employee and prolonged bullying often manifests as a physical health issue for the aggrieved party. As such, matters of workplace bullying fall within the jurisdiction of the OHS&W Act.

A person who is the subject of bullying behaviour, can make a complaint to SafeWork SA. SafeWork SA will investigate and ensure the employer and employees meet their obligations under the OHS&W Act.

An OHS Inspector does not mediate between the employer and employee or between the bully and bullied person(s). However, the inspector may refer the matter to the IRC for conciliation or mediation.

Employees’ Responsibilities

Employees have a duty under the OHS&W Act. An employee must take reasonable care to avoid adversely affecting the health and safety of any other person through an act or omission at work. Section 21 (1a) This duty means an employee may actually be in breach of the Act by failing to act where appropriate. Such action does not necessarily mean an employee must directly intervene when they become aware of workplace bullying. In some circumstances it may be more prudent to bring the matter to the attention of the appropriate person within the workplace. All staff should be made aware of their duty toward fellow employees, particularly those staff in positions of authority, whose actions and messages to lower status employees may have a more significant impact than anticipated or intended. The maximum penalty for breaching section 21 (1a) of the OHS&W Act is a fine of $5000.

Responsibilities of All Persons

When a person (who could be an employer or employee) has actual knowledge that another person’s health and safety is being endangered, and is recklessly indifferent as to whether this person is being endangered, that person could be liable for committing an aggravated offence. Section 59 Offences under this section are considered very serious. They are minor indictable criminal offences, and carry a maximum 5 year term of imprisonment, and/or double the prescribed penalty. Whilst this section would only be used in extreme circumstances, it could be actioned if an employer (or employee) was involved or complicit in serious bullying behaviour in the workplace.

EQUAL OPPORTUNITY

Sometimes bullying behaviour involves elements of discrimination. The types of discrimination covered by South Australian law include disability, race, sex, age, sexuality, pregnancy and marital status. Employees being bullied on any of these grounds can make complaints to the Equal Opportunity Commission, who will try to resolve the complaint privately by conciliation. If settlement cannot be reached, cases can be referred to the Equal Opportunity Tribunal for a public hearing and decision. Under discrimination laws, all types of employees are covered, including casuals, volunteers and those on contract or probation. The Commission’s website (www.eoc.sa.gov.au) has extensive information about discrimination and everything you need to know about lodging a complaint.
APPRENTICESHIPS AND TRAINEESHIPS

In South Australia, contracts of training are the legal basis for traineeships and apprenticeships, which are governed by the Training and Skills Development Act 2003 (the T&SD Act).

Contracts of training and the T&SD Act set out some of the rights and responsibilities of employers, trainees and apprentices. For example, the contract of training requires employers to meet all legal requirements, including occupational health and safety requirements. It also requires employers, trainees and apprentices to try to resolve any complaint, grievance or dispute between themselves. If they can not resolve the issues, they are required to contact Traineeship and Apprenticeship Services to request assistance or to access the appropriate dispute resolution processes.

WORKER’S COMPENSATION

Though the Workers Rehabilitation and Compensation Act 1986 does not mention bullying specifically, psychiatric disabilities caused by bullying at work, are compensable if, and only if, the employment was a substantial cause of the disability. An employee may make a claim for compensation regarding any compensable injury that arises out of, or in the course of their employment. For more details refer to section 30A of the Workers Rehabilitation and Compensation Act 1986.

INDUSTRIAL RELATIONS

There is no specific provision in the Fair Work Act 1994 that deals with workplace bullying, however, where an employee is dismissed or forced to resign as a result of workplace bullying, the worker may be entitled to make a claim under the unfair dismissal provisions of that Act.

Where it can be demonstrated that an industrial dispute exists between an employer and employee and all of the necessary requirements of the Act have been met, a notice of industrial dispute can be lodged with the Industrial Relations Commission of South Australia to seek its assistance to resolve the dispute.

CRIMINAL LAW

Workplace bullying may also amount to criminal behaviour in breach of various criminal legislation. Examples include assault and unlawful threats.

See Appendix One for an overview of the relevant legislation and legal obligations.
**Appendix One**

**OVERVIEW OF RELEVANT LEGISLATION**

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<td><strong>Common Law and/or Employment Acts</strong></td>
<td>Behaviour that is workplace bullying, pursuant to the Occupational Health, Safety and Welfare Act 1986, may also be in breach of an employee’s contract of employment at common law and/or an Act of Parliament under which the employee is employed. This may render the employee, responsible for the bullying behaviour, liable to disciplinary action.</td>
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| **Commonwealth Legislation**             | **Racial Discrimination Act 1975**  
                                          | **Sex Discrimination Act 1984**  
                                          | **Disability Discrimination Act 1992**  
                                          | **Human Rights and Equal Opportunity Commission Act 1986**  
                                          | **Trade Practices Act 1974**  
                                          | **Age Discrimination Act 2004**  
                                          | Commonwealth discrimination laws protect people from discrimination in the workplace and in public life. Complaints are assessed in order to determine whether they should be investigated under Commonwealth law or referred to State law. |
| **Criminal Law**                         | When workplace bullying involves behaviour that on its face is in breach of criminal laws, the incident becomes a police matter and may be dealt with in the criminal jurisdiction. |
| **Duty of Care**                         | An employer has a duty of care at common law to reasonably protect employees from behaviours that amount to bullying under the Occupational Health, Safety and Welfare Act 1986. |
| **Fair Work Act 1994**                   | There is no specific provision in the Fair Work Act 1994 that deals with workplace bullying. However, where an employee is dismissed or forced to resign as a result of workplace bullying, the employee may be entitled to make a claim under the unfair dismissal provisions of that Act.  
                                          | Where it can be demonstrated that an industrial dispute exists between and employer and employee and all the necessary requirements of the Act have been met, a notice of industrial dispute can be lodged with the Industrial Relations Commission of South Australia to seek its assistance to resolve the dispute. |
| **Industrial Instruments**               | Industrial instruments such as enterprise agreements and awards usually contain grievance procedures that can be used to assist in resolving disputes involving bullying. |
## Appendix One
### OVERVIEW OF RELEVANT LEGISLATION continued

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| **Occupational Health, Safety & Welfare Act 1986** | Section 19 of the Act requires that all employers provide a safe working environment and this applies to all areas including the employee’s mental health and wellbeing.  
Section 21 (1a) of the Act requires that an employee must take reasonable care to avoid adversely affecting the health or safety of any other person through an act or omission at work.  
Section 55A of the Amended Act includes a definition of Workplace Bullying and details the methodology involved for the investigation, mediation and conciliation of involved parties. |
| **South Australian Equal Opportunity Act 1984**   | Where bullying in the workplace involves acts of discrimination, a complaint may be lodged with the Commissioner for Equal Opportunity. Discrimination, includes unfair treatment based on a person’s disability, race, sex, age, sexuality, pregnancy and marital status.  
Equal opportunity laws also protect employees against sexual harassment. It is also unlawful for anyone to victimise a person because they have made, or intend to make, a discrimination complaint. |
| **Workers Rehabilitation and Compensation Act 1986** | An employee may make a claim for compensation regarding any compensable injury if it arises out of, or in the course of their employment. Though the Act does not mention bullying specifically, psychiatric disabilities caused by bullying at work, are compensable if, and only if, the employment was a substantial cause of the disability. Refer to section 30A of the Workers Rehabilitation and Compensation Act 1986. |
WHERE TO GO FOR FURTHER INFORMATION AND ASSISTANCE

Stop Bullying in SA Website
www.stopbullyingsa.com.au

Or contact one of the following associations.

**Business SA**
Provides members with training, advocacy, support, and consultancy where appropriate.
Appointments can be made on (08) 8300 0101 anytime between 8am and 5.30pm Monday to Friday. Business SA is located at 136 Greenhill Road, Unley.
For more information on the services provided by Business SA go to www.business-sa.com

**Equal Opportunity Commission**
Provides an independent complaint handling service to help employees address sexual harassment and discrimination (based on disability, race, sex, age, sexuality, pregnancy or marital status). Also takes up discrimination complaints from job seekers, customers, students and tenants.
The Equal Opportunity Commission can be contacted on (08) 8207 1977, or on 1800 188 163 if outside the metropolitan area, between 9.30am and 4.30pm Monday to Friday, and is located at Level 2, 45 Pirie Street, Adelaide.
For more information on the services provided by the Equal Opportunity Commission go to www.eoc.sa.gov.au

**Industrial Relations Commission**
Provides mediation, alternative dispute resolution and support to persons (and their representative) involved in employment related disputes.
The IRC can be contacted on (08) 8207 0999 between 8.30am and 5.00pm Monday to Friday and is located at Level 6, Riverside Centre, North Terrace, Adelaide.
For more information on the services provided by the IRC go to www.industrialcourt.sa.gov.au

**Office of the Employee Ombudsman**
Provides an advisory service to all employees employed under the South Australian Fair Work Act 1994 awards and enterprise agreements.
The Employee Ombudsman can be contacted on (08) 8207 1970 between 9am and 5pm Monday to Friday and is located at Ground Floor, 200 Victoria Square, Adelaide.
For more information on the services provided by the Employee Ombudsman go to www.employment.sa.gov.au

SafeWork SA can be contacted on 1300 365 255, or (08) 8303 0400 for mobile or interstate callers, between 8.30am and 5pm Monday to Friday (except Wednesday when office hours are between 8.30am and 4.15pm) and is located at Level 3, 1 Richmond Road, Keswick.
For more information on the service provided by SafeWork SA go to www.safework.sa.gov.au

**SA Unions**
Provides information, training, advocacy, support, mediation and conciliation, investigation and access to alternative dispute resolutions to all union members.
SA Unions can be contacted on (08) 8279 2222 between 9am and 5pm Monday to Friday and is located at 46 Greenhill Road, Wayville.
For more information on the services provided by the SA Unions go to www.saunions.org.au

**Traineeship and Apprenticeship Services**
Provides information and advice, support, mediation and a dispute resolution service for trainees, apprentices (and their parents and guardians if they are under 18 years of age), and employers, who are engaged in contracts of training.
Traineeship and Apprenticeship Services can be contacted on 1800 673 097 between 8.30am and 5.30pm Monday to Friday and is located at Level 4, 11 Waymouth Street, Adelaide.
For more information on the services provided by Traineeship and Apprenticeship Services go to www.employment.sa.gov.au

**WorkCover SA**
Provides information and a complaint resolution service for employers and employees and/or representatives on the procedures, rights and obligations under the Workers Rehabilitation and Compensation Act 1986.
WorkCover can be contacted on 13 18 55 between 8.30am and 5.30pm Monday to Friday and is located at 100 Waymouth Street, Adelaide.
For more information on the services provided by WorkCover go to www.workcover.com

**Working Women’s Centre**
Provides resources, information, support, training and advocacy for working women who are not members of the union. It also provides resources, some training and consultancy for organisations who wish to implement strategies to address workplace bullying.
The Working Women’s Centre can be contacted toll free on 1800 652 697 between 9am and 5pm Monday, Wednesday, Thursday and Friday and is located at Level 1, Station Arcade, 52 Hindley Street, Adelaide.
For more information on the services provided by the Working Women’s Centre go to www.wwc.org.au