

Young **W**orkers **L**egal **S**ervice

ANNUAL REPORT 06 07



Young **W**orkers **L**egal **S**ervice

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The Young Workers Legal Service has grown from being an inspired idea to provide assistance to young workers, to being a professional, effective and sought after advocacy service for young people in South Australia.

In November 2007, we celebrate our 4th birthday. It's timely that it coincides with a Federal election in which Australian voters decide what type of country, community and workplace they want for themselves, their children and future generations.

As this report will detail, *WorkChoices* has changed how the Young Workers Legal Service assists young workers. Advocacy is still our number one priority but education and advice about their legal rights and options is gaining importance.

Although the unfair industrial laws further limit young peoples rights it was vital for the Service not to take a defeatist attitude. The laws require us to be more creative; when we see an injustice, we investigated every possibility to help our clients.

This report summarises the work of the Service in the 2006-2007 year, including demographic details of our clients, the main issues facing young workers and the industries causing the most problems. The report also comments on how the *WorkChoices* legislation has affected young people, particularly in the areas of unfair dismissals, individual agreements and changing workplace environments. ●





For most of 2006, the Service, like many advocates and agencies working in Industrial Relations, grappled with understanding the complex, confusing and extreme *WorkChoices* legislation. In 2007 we moved from trying to make sense of the laws, to dealing with their consequences. We provided assistance to young workers who were dealing with hostile employers, higher work pressures and little flexibility in the workplace. This hostility did not stop at the workplace; we found that resolving disputes has been difficult as some employers refuse to conciliate matters, emboldened by the knowledge that there are now few legal constraints on managerial prerogative.

Hence, our role as an advocate for young workers has been more challenging this year. It has been disappointing for me and our volunteers, to meet young people who are in trouble, who now no longer have legal remedies that were available last year.

Our role as an educator increased in 2007. We have explained the pitfalls of *WorkChoices* and why employees have few options if their job is contingent on an AWA, and why their rights if they are sacked have been all but eliminated.

The last 12 months has seen a change in the nature of the Service's work. We still receive calls regarding underpayment of wages, unfair dismissals and discrimination. However, we have experienced an increase of calls reporting a change in the atmosphere of many workplaces. Callers report that work is becoming more demanding, and they feel they are being bullied by their manager or boss. Workers report that taking time off for sick leave or to care for children is problematic, and life is 'difficult' when they return to work. Others are simply terminated either while on sick leave or carer's leave or after they return to work.

Work should be an exciting experience but for too many young people the workplace is an environment of fear and intimidation. Some employers use the removal of the unfair dismissal jurisdiction in an intimidating fashion, secure in the knowledge that there is no challenge to termination, provided they steer clear of obvious signs of discrimination.

Public speaking and education

In the 2006-2007 year, the Service increased its public speaking and education role. The Service has spoken at schools, youth centres, conferences and addressed government agencies and departments. We explain the role of the Service and provide an overview of the issues that are facing young workers. Over the course of the year, we have addressed hundreds of young workers, and participated in, for example;

- SA Unions Forum– "What does the future hold for young workers?" in July 2006
- Young Christian Workers "Just Work" Forum in October 2006
- Presentation to the Legal Services Commission – December 2006
- Presentation to the 2007 Savanna Soy SA Unions internship participants
- Participation at the Women and *WorkChoices* Roundtable in March 2007
- Presentation and discussion at *The Volt*, Aldinga youth centre – March 2007
- Presentation to Transition Brokers forum, for work education teachers – April 2007
- Facilitated a workshop for Multicultural Youth SA, at the "Speak up! Conference", at UniSA – April 2007
- Presentation at Marryatville High School, for three Year 12 classes of Society and Environment
- Presented at the SA Unions "Young Workers Conference" – July 2007

Liaising and networking within the industrial relations area

The Young Workers Legal Service gains clients from referrals, our network of supporting agencies, community centres and other advocates. We are in regular contact with these groups and keep them up to date with changing trends and issues for young workers. In particular we value our association with;

- Conciliators from the South Australian Equal Opportunity Commission
- Conciliators from the Human Rights and Equal Opportunity Commission
- Project Officers at Multicultural Youth SA
- Training and Skills Commission
- Consultants at the Traineeship and Apprenticeship Management
- Industrial Inspectors of SafeWork SA
- Industrial Officers at the Working Women's Centre

These groups refer clients and are a valuable source of information and help. I'd like to thank all our supporters for their assistance throughout the year.

Industrial proceedings

The main role of the YWLS is to provide advice and advocacy on individual matters. However we have also used our experience and expertise on matters pertaining to young workers to advocate broader change.

The YWLS assisted in the action in the SA Industrial Relations Commission proceedings supporting a General Child Labour Award. We remained part of that action and are providing information on the importance of such an Award for child workers in our state.

The Minister for Employment, Training and Further Education announced a review of the *Training Skills Development Act 2003* (SA) in 2006. The Service has had a long involvement in the training system, providing advocacy assistance to trainees and apprentices. The Service provided a submission for the review and will continue to provide suggestions and recommendations as requested.

Finally, the YWLS welcomed the announcement that the South Australian Industrial Relations Commission would conduct an Inquiry into the effect of the *WorkChoices* legislation. Submissions were provided by many bodies in the industrial relations field, including unions, government departments, and agencies and other community organisations. The YWLS also provided a submission, drawing on our contact with young workers since the legislation took effect in 2006. We also assisted three young people who were willing to be witnesses for the Inquiry. They all had been unfairly dismissed but were prevented from taking legal action on jurisdictional grounds. It is gratifying that the Commission's report notes the role of the Service in protecting young people and supports its continuation.

Staff and volunteers

In the 2006-2007 year, I worked with 2 fantastic industrial officers and I would like to take this opportunity to thank them for their support. Joe Szakacs was our industrial officer between July and December 2006. A former volunteer of the Service, his knowledge in workers compensation was of great assistance to the volunteers and to our clients. He brought a lot of energy and political debate to the Service, and now works as an industrial officer at the Firefighters Union. In March 2007, Nadine Levy, took on the role of industrial officer, after working at the

CFMEU and as a YWLS volunteer. Her rapport with the volunteers makes Tuesdays enjoyable and her union background brings a wealth of knowledge for our volunteers. Nadine and Joe's commitment to their clients, their compassion and industrial knowledge has helped raise the reputation and success of the Service.

None of the work of the Service would be possible without our wonderful volunteers. Every volunteer brings something unique to the Service, with different backgrounds, life experiences and ideas. Their contribution and tireless work can never be understated and again I thank them for their role within the Service.

I would also like to thank the support of the YWLS Management Committee. The Committee has given me much support over the past year in the general operation of the Service. The expertise of committee members has been invaluable in providing me and the volunteers with help and advice.

The future of the Young Workers Legal Service

I strongly believe that a service such as the YWLS is needed in South Australia. Young workers are in a vulnerable position. They can be easily exploited, they are viewed as 'disposable,' and they rarely know where to go for help and advice. Even if they believe they have a case to run, many feel too intimidated to take action, or they may feel that no one will take them seriously.

The YWLS in part addresses the power imbalance and provides necessary information and advice. By working closely with our clients, and involving them in the process, they gain skills and knowledge that they can use in their working future. In this way, our clients gain much more than simply their entitlements.

On a personal note, it continues to be my absolute honour to be an advocate for young workers across the State. The feedback from people who hear about the Service for the first time is consistently positive; they are amazed to learn the Service is unique to Australia. I look forward to working at the Young Workers Legal Service in 2008. I believe there is a lot more that the Service can do to assist young people in South Australia. We aim to work with governments to bring about a fairer system for working Australians, in which the mantra of 'a fair go' is a reality not an advertising slogan. The YWLS will continue to do everything it can to give young workers a voice and we will campaign to assure they have clear, fair and enforceable rights at work. ☉



The Young Workers Legal Service continues to be a vital service provided through SA Unions for young workers in South Australia.

Over the last 12 months *WorkChoices* has hit young people hard and this has been reflected in the work of the Service and in this year's Annual Report.

From every academic study about *WorkChoices*' impact on youth, it is clear that the vulnerability of young people in the workforce, the weaker position they hold in the labor market and their low levels of union membership means that they are more likely to be exploited, badly paid and unfairly dismissed. The long term impact of *WorkChoices* could be that young people come to expect poor treatment at work instead of looking forward to work as a positive life experience.

This year's Annual Report is released immediately following the independent report of the South Australian Industrial Relations Commission concerning the impact of *WorkChoices* on this South Australia. The YWLS' submission provided an opportunity for the voice of young workers to be heard in this important and timely Inquiry. We note the Inquiry strongly supports measures which better protect young people at work.

The Annual Report also comes during a federal election where industrial relations and workers' rights are key issues in the campaign. Regardless of the outcome of the campaign, the Young Workers Legal Service will have important work to do, either in continuing to support young people who are victims of these unfair laws, or in a new industrial environment where young people will need information and assistance to manage it. We hope that there will be a change of laws so once again young people can access unfair dismissal protection and their basic conditions and wages are protected in collective Agreements and Awards.

The Service also continues to remind us of the crucial and complex job we have in ensuring young people know how they can be protected by union membership. The philosophy that continues to be articulated to clients of the Service is that young people are best protected if they are members of their union.

Finally, the Service would not operate without the great work of the volunteers and the excellent leadership of Olivia Guarna who coordinates the Service. We are please to have been able to continue to also employ an additional advocate in Nadine Levy. All those who work in the Service remind us of the talent, professionalism and passion of the young people coming through our law schools. They had added life and energy to our organisation and give us great hope for the future. ☺



The removal of unfair dismissal protection and the increased use of Australian Workplace Agreements have emerged as the main issues for young workers in the past year.

Students, teachers and YWLS clients recount first hand experiences:

- Young people are signing AWAs under duress
- Young people aged under 18 are signing AWAs without their parent's involvement
- There is often no negotiation of wages and working conditions when an AWA is offered, with many young people reporting they are being given standard AWAs to sign
- High school students are working longer hours and this is impacting negatively on their studies
- Young people are not approaching their employers about workplace issues for fear of being sacked

Since the last Young Workers Legal Service report, approximately 2400 students at 17 public high schools and 9 independent/Catholic colleges in Years 10-12 have attended presentations as part of the U-Who *WorkRight Education Program*.

The aim of the program is to increase young people's awareness of their rights at work, highlight the common issues young people experience in the workplace and explain the role of unions. Students are also provided with information about the range of industrial and work-related services and agencies available to them, including the Young Workers Legal Service.

Despite the negative impact of the *WorkChoices* legislation on young workers, over the past year I have observed a marked increase in young people's awareness of industrial matters. More importantly, students are actively engaging in discussions about their rights in the workplace and comparing what is being said in the media and government advertising with the realities of their work experiences.

We believe that by providing information to young people about their work rights before they enter the workplace or while they are new to the workplace, they will be in a better position to question behaviour, actions or decisions that are to be unfair.

The Young Workers Legal Service offers young people the opportunity to tell their story and explore what their legal options are. They receive an essential service that is delivered by their peers in a supportive environment. Many young people come to the Service in crisis and with very strong emotions about how they have been treated. However, the experience gives them a better understanding of their rights and they leave better equipped to deal with and resolve workplace issues in the future. ☺



Many of the people who approach the Young Workers Legal Service for assistance are trainees or apprentices.

There are just over 34,000 people in SA who have a formal contract of training covering their traineeship/apprenticeship.

Table 1 details the numbers currently enrolled in the 16 largest trades and occupations and includes total number in all courses and numbers commencing, completing and withdrawing. Of concern is the fact that on average 22% in the year have cancelled or withdrawn from their training. This ranges from under 10% withdrawal/cancellation for Engineering (Mechanical) through to 33% for Retail Operations and Hairdressing. There are a range of reasons why people do not complete their qualification, but one reason is that conflicts do arise in the workplace. Other sections of this report highlight some of the issues that confront these workers – eg underpayment, unlawful termination, employer refusing time off for training, withdrawal of shifts and so on.

An important feature of the system that governs apprentices and trainees is contained in the Training and Skills Development Act (SA) 2003. Amongst other rights, there is a dispute resolution process available if a conflict does arise. If an issue cannot be resolved by more informal mediation processes organised through the Department of Further Education Employment Science and Technology (DFEEST) there is access to a more formal process.

Since the last annual report there have been a range of improvements in the way the process has operated. In particular, detailed reasons for decisions made by the Grievance and Disputes Mediation Committee (GDMC) are provided to all parties which has had the added bonus of encouraging compliance with those decisions. Hearings into the issues at dispute are being convened more quickly, evidence for aggrieved parties is being collated more quickly and decisions are also being made more quickly. Additionally, many potential cases do not go through to the formal dispute process as they are dealt with through the mediation process set up with DFEEST. YWLS staff and volunteers often work with DFEEST staff to get some issues sorted at this stage.

However, the entire process is still quite lengthy and can involve a range of discussions and involvement from different organisations until the matter is finally dealt with. In the case of serious disputes by the time the matter gets to the GDMC, the relationship between the apprentice/trainee and the employer has invariably broken down.

Consequently, SA Unions and YWLS have made suggestions to the Minister about further improving the process which included the following principles.

Principles for improving dispute resolution process

- Sufficient information and resources are available to enable all parties to comply with the terms of the contract of training
- That a reasonable balance be struck between the need to approve contracts of training quickly against ensuring that terms of the contract of training meet required standards and that all parties are aware of rights and obligations
- Early intervention to assist with resolving issues and to encourage completion of the contract of training
- Clear timeframes for mediation
- If the matter is still not resolved then it is referred to GDMC as a formal dispute for consideration
- Where there is evidence of a breach of the conditions of contract of training the matter immediately referred for investigation and action. This may result in a referral to GDMC if action is not taken to rectify the breach

Role of DFEEST

Information

DFEEST does provide ongoing advice and information to parties to contract of training and other relevant organisations. However, we considered that DFEEST could do further work to ensure that a pre employment orientation take place. These sessions could cover OHS matters, Contract of Training system, wages, working conditions, proposed employment arrangements, EEO and harassment policies, with information and presentations from unions and employer associations.

Regulation/approval of Contract of Training

Sufficient DFEEST resources are required to undertake follow up contact with parties within 1 month of approval of the contract of training to ensure obligations understood; where to go for advice etc.

Early intervention and mediation

Early intervention and mediation through DFEEST staff where a conflict has arisen is essential to maintain the training/employment arrangement. However, there should be strict timeframes (certainly no longer than 2 weeks) to undertake this task. However, once all parties have been given the opportunity to use this service, the matter should be dealt with as a formal dispute.

We believe there is considerable merit for cases considered by the GDMC to be summarised in a quarterly, published report. The aim would be to canvass the issues involved and the reasoning behind the decision without reference to personal details or other matters that would require confidentiality. Such a publication would also assist organisations and individuals better understand the contract of training system.

There needs to be provision for advocates to appear for young workers at a hearing. It needs to be recognised that young workers in particular, are not on an equal footing with their employer, and often require assistance in dealing with disputes at work or over training matters. Advocates would be able to advise parties, assist the process, and prepare documentation. It should be specified that legal counsel shall not be engaged for a hearing. s.46 of the Act allows for a less 'adversarial' legal approach by virtue of its' emphasis on 'inquiry' and this is a feature that YWLS and SA Unions wishes to retain. The Human Rights and Equal Opportunity Commission uses a model that encourages informality and conciliation but enables advocates to appear to assist the process. Once a trainee or apprentice has engaged an advocate, all future discussion and actions undertaken by TAM about the issue must be directed through that advocate.

Regulatory provisions for students without a registered contract of training

The processes and mechanisms above should extend to all VET students, in particular international students. YWLS and SA Unions is aware of a number of cases where students on temporary class 442 visas (vocational training and work) have been subjected to extraordinary problems associated with their training and employment and have had to deal with a range of organisations after a dispute arose over the terms of their training agreement. Added to this, if they have their employment terminated they are in breach of visas conditions and can be deported.

What next?

These and related issues are currently under consideration by Minister Paul Caica and decisions by government on these and other related issues are expected shortly. ●

Apprentice and trainee numbers by Training Package qualification, South Australia

12 months ending 31 March 2007: **Commencements** **Cancellations/withdrawals** **Completions** **In training**

Certificate II in Automotive Manufacturing	20	90	600	880
Certificate III in Automotive (Mechanical – Light Vehicle)	70	120	150	650
Certificate III in Carpentry	390	80	(a)	530
Certificate III in General Construction	(a)	60	210	560
Certificate III in Plumbing	290	60	(a)	530
Certificate III in Business	830	180	400	740
Certificate IV in Business (Frontline Management)	1,920	310	440	2,950
Certificate III in Engineering – Mechanical Trade	120	70	160	730
Certificate III in Engineering – Fabrication Trade	190	140	170	700
Certificate III in Transport and Distribution (Warehousing and Storage)	510	160	270	860
Certificate III in Transport and Distribution (Road Transport)	630	260	350	890
Certificate III in Hospitality (Commercial Cookery)	370	220	110	740
Certificate III in Electrotechnology Systems Electrician	640	190	230	1,730
Certificate III in Hairdressing	450	310	210	950
Certificate II in Retail Operations	2,440	1,280	540	3,880
Certificate III in Retail Operations	570	150	190	640
Total (All Training Packages)	20,410	7,470	10,290	34,280

Source: NCVET National Apprentice and Trainee collection, June 2007 estimates, unpublished
Data provided by National Centre for Vocational Education Research June 2007 estimates (a) = less than 10

The Management Committee of the Young Workers Legal Service comprises a dynamic group of staff, volunteers and supporters of the Service, who oversee the strategic direction, budget, file load, volunteer management, staffing and promotion of the Service as well as assist with a range of operational issues.

The Committee meets on the first Tuesday of every month, except January, June when the Committee holds an annual planning day and November, to allow for the launch of the Annual Report.

Membership

In July 2006, Matt Windsor ceased to be a volunteer representative on the Management Committee when he commenced employment with the Australian Education Union. He stayed on the Committee as a Union Representative and currently remains an active member of the Committee in the capacity of a former volunteer and Supporter.

Lucy Jensen and Andrew Crabb replaced Matt as the volunteer representatives. Andrew remained on the Committee until he departed for a full-time role at the Australian Industrial Relations Commission in Sydney in May of this year, and Lucy made a very strong contribution until her studies prevented her from continuing to volunteer on Tuesdays. In May 2007 we warmly welcomed Louise Staker as the volunteer representative. Louise brings a wealth of experience as a volunteer, being the longest serving volunteer of the Service with a strong commitment of over three years standing.

Graham Willcox, of the Australian Services Union, took a leave of absence as a Union Representative on the Committee in February 2007. We were delighted to have Patrick North of the National Union of Workers join us to replace Graham in March 2007. Patrick is an inaugural volunteer of the Service who also served as Acting Co-ordinator from February to May 2005.

In May of this year Angas Story replaced Janet Giles as the SA Unions staff representative on the Committee. We look forward to working with Angas into the future.

The following people compose the current membership of the YWLS Management Committee:

Olivia Guarna – Co-ordinator
Jodie Schluter – Youth Program Co-ordinator
Ada Lester – Supporter and Former volunteer
Greg Stevens – Supporter
Emma Thornton – Supporter and Former Co-ordinator
Louise Staker – Volunteer Representative
Patrick North – Union Representative and Former volunteer
Matt Windsor – Supporter, Former volunteer and Union Representative
Angas Story – SA Unions Staff Representative

We appreciate the commitment of our current Committee members and thank former members for their efforts.

Priorities

The Committee held the annual planning day on 3 June 2007. This meeting gave us an opportunity to reflect on outcomes of strategic directions set at the May 2006 Planning evenings, set the priorities for the 2007-2008 year and establish a long-term vision for the YWLS.

The Committee has spent much of its time evaluating the file load of the paid staff and volunteers and issues that arise in file management and client service. We are provided with monthly statistics specifying the nature of matters being run by the Service and case studies of various clients. This assists in keeping us abreast of trends in the nature of matters and classes of clients and provides a basis for consideration of education and lobbying campaigns around issues of concern for young workers.

The issues of particular concern to the Committee in the 2006-2007 period have been the lack of education amongst young workers about Australian Workplace Agreements and negotiation of individual contracts and exploitation of overseas students who are also undertaking paid work. Of long-term concern to the Committee is the under-reporting by young workers of workplace injuries and their reluctance to lodge workers compensation claims.

The Committee has kept at the forefront of its mind the impact of the Howard Government's Industrial Relations Laws on the clients of the Service and noted the limits legislative changes have placed on the level of assistance and advocacy the Service can provide to clients.

The Committee directed the planning and implementation of an outreach program in 2007 that saw the Service undertaking work in the Northern and Southern metropolitan areas. The Committee will review the outcomes of this work and discuss development of the Outreach service in 2007-2008.

Of particular highlight for the Management Committee was a social event in September this year with the current volunteers of the Service. The Committee was very impressed with the commitment and energy the volunteers showed for their work at the Service. As has historically been the case, the Service continues to recruit excellent volunteers that we hope to see working in the Industrial Relations field in the future continuing to advocate for working people. We also commend the Co-ordinator, Olivia Guarna and the current Industrial Officer Nadine Levy for their hard work and commitment to young workers. They are both assets to the Service. ☺

The Young Workers Legal Service is staffed predominantly by our volunteer advisors. Every Tuesday they attend the office to interview clients, undertake research, prepare legal documents, answer correspondence and attend to phone and email inquiries.

Though still law students, their work is of an incredibly high standard, they are professional, polite and efficient. Most importantly, they always treat the clients with respect.

One of the fundamental aspects of the YWLS is that the Service is not condescending or patronizing towards young workers. Our advisors understand they are in a fortunate position to be undertaking a legal education. Yet it comes back to our belief that we are working in partnership with our clients. The clients are continually involved in the progress of their file and are encouraged to take ownership of their dispute.

Due to the number of young workers contacting the Service, our volunteers must manage several files at once, each with its own complexities and issues. While they are in many ways, thrown into the deep end from their first week, there is also a great sense of camaraderie and friendship amongst the group. The new volunteers are paired with a 'buddy/mentor' for the first few weeks to learn the systems and processes around the office. It is also a clear indication of the character of the volunteers that genuine friendships are forged that last well after their volunteering days. The strong social network that includes current and former volunteers indicates the unique experience that the YWLS offers.

Finally, the wonderful work of the Service was acknowledged in two special ways by Volunteering SA. In May 2007, a joint event was hosted by SA Unions and Volunteering SA to formally recognise the voluntary work of union workplace representatives, occupational health and safety representatives and general union members assisting in the workplace. Included in this group were the YWLS volunteers who all received certificates from the Minister for Volunteers, the Hon Jennifer Rankine. Shortly after this, 2 YWLS volunteers, Fattimah Imtoul and Louise Staker wrote an article for the Autumn edition of Volunteering SA's Journal, Vitality.

The YWLS volunteers are intelligent and dedicated students. They are remarkable in that they also study full time, many work part-time jobs, and have other community involvements including sports, Amnesty International and the arts. They are committed to the YWLS, passionate about social justice and are sincere in their role to help improve the situation for young workers in South Australia.

The volunteers who have assisted at the Service in the 2006-2007 year include:

Louise Staker, Matoula Makris, Andrew Crabb, Fattimah Imtoul, Lucy Jensen, Mark Stokes, Mia Showell-Woodsmith, Matthew Kandelaars, Nadine Levy, Katharine Couzner, Francesca Ho, Tom Nguyen, Xavier Bell, Erin Smithers, Catherine King, Christian Dargatz, Sarah Ford, Jessica Greatwich

We would like to publicly thank the fantastic work of the students and for their involvement the past year.

The volunteers have also been involved in the wider union movement. Volunteers took part in our stall at the Royal Show in September 2006, attended public lectures and sessions as part of SafeWork Week in October 2006, and attended public union activities. They continue to promote the fairer industrial laws for young people.

Many of our volunteers have continued their interest in labour law and social justice as they gain employment in areas such as the Fire Fighters Union, Legal Services Commission, Slater & Gordon lawyers, Duncan Basher Hannon lawyers, as an Associate in the Australian Industrial Relations Commission and at the South Australian Council of Social Services.

Training

It is important to the running of the Service that our volunteers are kept up to date with developments in Labour Law, industrial organisations and practical legal skills. Upon commencement of their role as a volunteer, the advisors undertake an intensive 2 day training course which covers the basics of the Service, an overview of both the Federal and State industrial relations systems and specific areas of the law.

Ongoing training is provided in house every few weeks and we are very thankful to all our supporters who have provided training to our volunteers pro bono. Some of the trainers who have spoken to the volunteers this year include:

- Graham Warren, Senior Inspector for SafeWork SA, discussing the role Industrial Inspectors in the South Australian industrial relations framework
- Laura Butterworth, Industrial Officer with the WWC, training on pregnancy discrimination and maternity leave rights
- Rex Munn, retired MUA Secretary, talking about the history of unionism
- Liz Ahern, from the Legal Services Commission, training on how to deal and respond to "difficult clients"
- Sally Jeremic, Chief Executive of the Training and Skills Commission, discussing the Training System and the role of the Grievances and Disputes Mediation Committee
- Attending the public lecture of 3 low paid American workers, who told of their experiences living and working in America on minimum wage

We would like to thank all of our friends and supporters who have provided training and assistance to our volunteers. We would also like to thank our strong network of union industrial officers, government officers and community workers, who have provided advice and information. ☺





As a volunteer I have seen a huge change in the focus of the Service this year as the impact of WorkChoices has hit our clients.

I've learned how sad it is to have to tell a client that what happened to them was unjust, but that because of the new laws there is nothing we can do to help them. Explaining to clients that 'unfair' isn't the same as 'unlawful' has always been a hard part of the volunteers' work but it is becoming an increasingly common task.

This year we have had one of the most devastating cases I have ever heard of as a volunteer. It involves a young boy who was exploited, ridiculously underpaid and carelessly exposed to asbestos. Young people are often inexperienced, need the money and are uncertain about their rights. The willingness of some employers to take advantage of this shows how big a need there is for a service like the YWLS and I am very proud to be a part of it.

My experience at the YWLS has been an amazing learning curve. I have now been with the Service for nearly three years and in that time I have met many people who have taught and inspired me. Volunteering with the Service has brought me into contact with the dedicated workers at SA Unions – they are always willing to share their knowledge and experience and they don't complain when Tuesdays get a little noisy. This year I have also been the Volunteer Representative for the Coordination Team which meets once a month. This has given me an insight into the thought and planning which keeps the Service running smoothly.

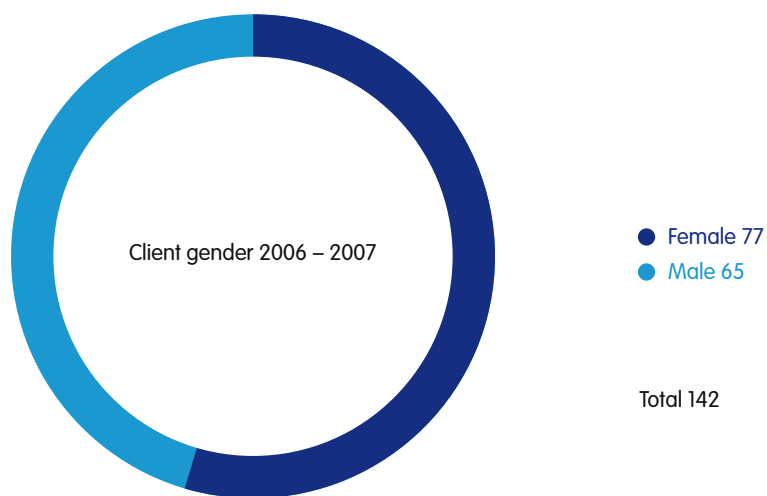
More than anything I have met many wonderful volunteers. These are warm, compassionate people whose enthusiasm for the struggle against injustice has inspired me hugely. Every volunteer has taught me valuable skills and I am so privileged to have worked with them. It's also nice to think that there is a growing support network out there of young lawyers who have been affiliated with the Service. There is always someone to turn to for support or advice. This is especially true of our Industrial Officer, Olivia Guarna. The Service runs on Olivia's knowledge, dedication and sheer hard work and I know she will always be there for her volunteers. ☺

The Service has noticed that the rapid increase in client numbers in 2005-2006 slowed in the 2006-2007 year. This is in part explained by the reduction of callers contacting YWLS regarding their unfair dismissal rights. As we largely operate through referrals, other organisations and agencies are likely to have advised

callers of their lack of rights under unfair dismissal and not refer them to us for advocacy. However, there is still a clear indication that young workers are experiencing problems as evidenced by the still consistently high number of clients and callers.

Client gender

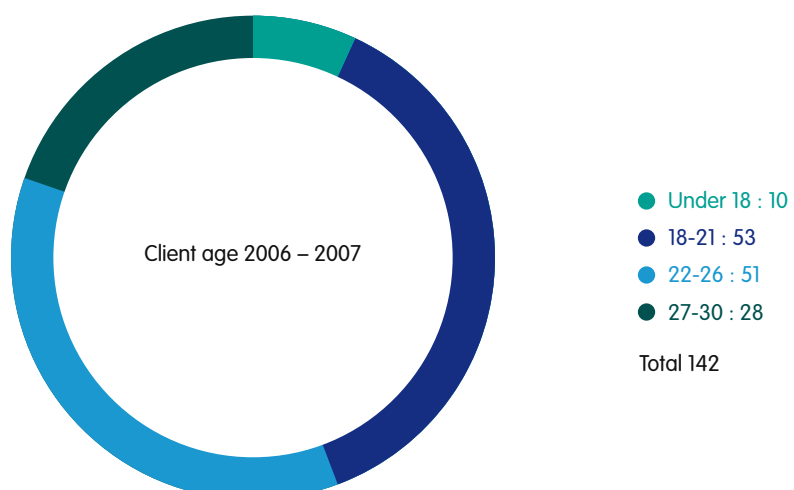
In 2006-2007, 142 young people received direct advocacy or specialized advice from the YWLS. Nearly 300 more have been assisted with phone and email advice.



Client age

The age of our clients in the 2006-2007 year fell predominantly in the 18-26 age group. 7% of our clients were under 18 years of age, 38% were aged 18-21, 36% between 22-26 and 19% aged 27-30 years of age.

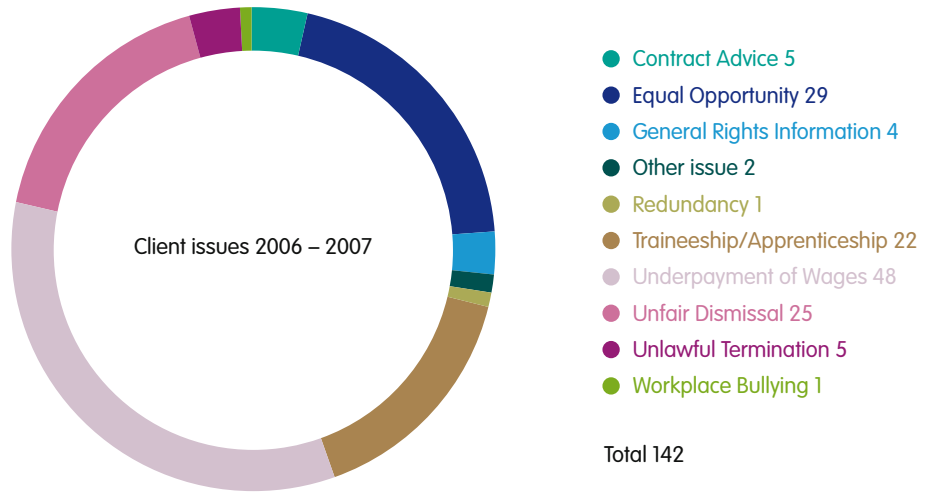
In particular, the early 20s is the age group that makes up most of our clients – 47 of our 142 clients were aged 20-22 years of age. Reaching young workers under 18 years of age is very difficult as they are unlikely to make independent inquiries as to their rights. We rely significantly on parents and occasionally school teachers, to contact and notify us of a workplace issue.



Client issues

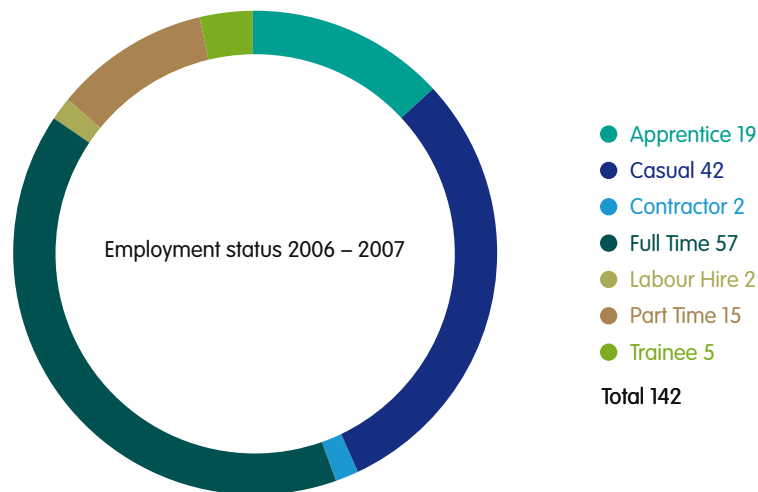
The types of issues coming through the Service are still consistent, with underpayment of wages being the most common concern. The drop in unfair dismissals was expected following the restrictions and exclusions introduced by *WorkChoices*. The number of complaints regarding equal opportunity, including sexual harassment and discrimination has increased as a direct result.

38 files had multiple issues of concern. 20 of these involved an underpayment of wages as well as another issue. Where possible, we attempt to resolve all complaints in a single action.



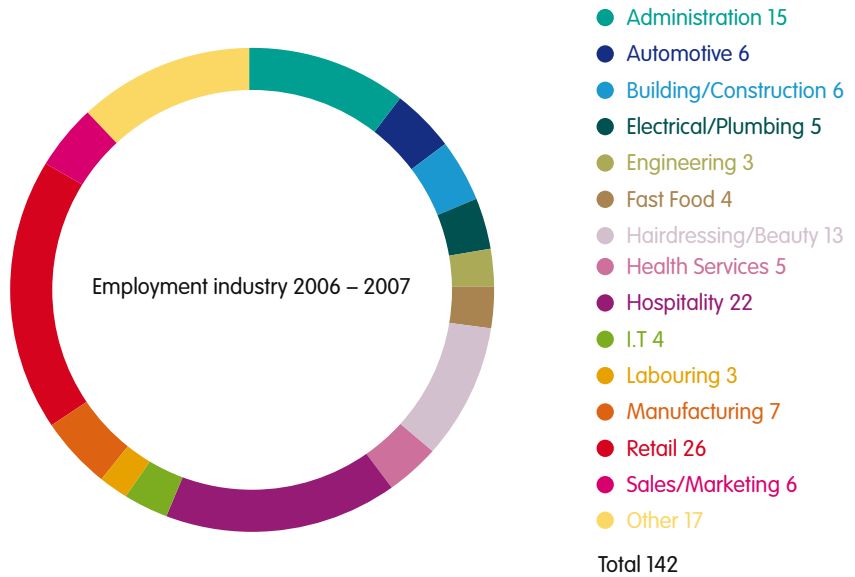
Employment status

In the 2006-2007, 40% of our clients were employed full time. Not surprisingly, the size of the casual workforce amongst young workers is high. 30% of our clients were casual. Also growing is our representation of apprentices and trainees, 13% and 5% respectively.



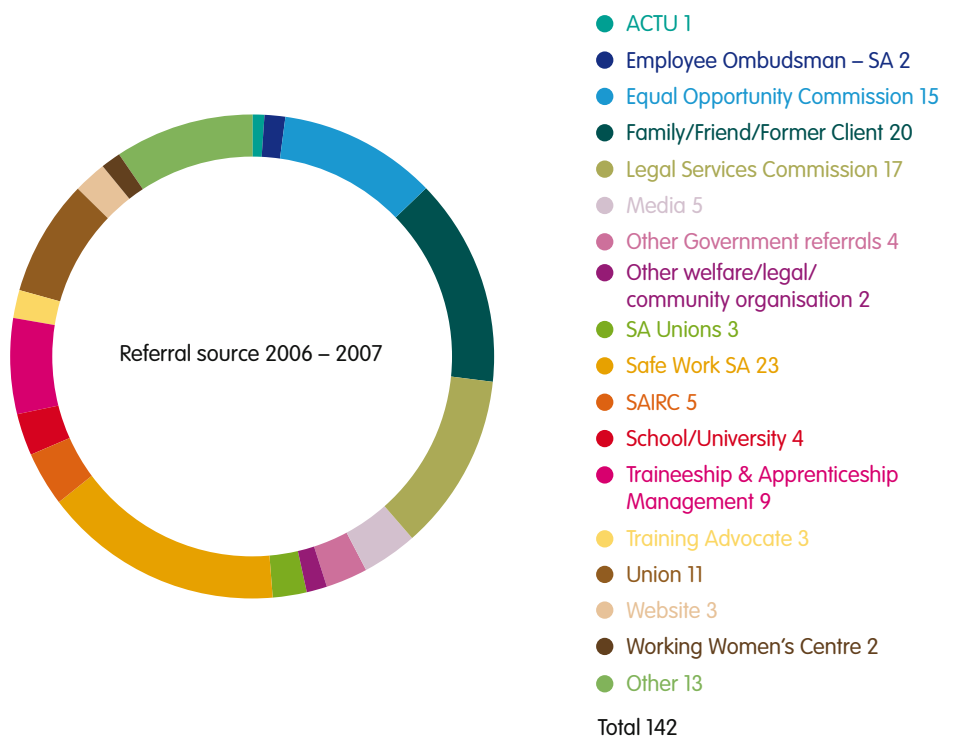
Employment industry

The main industries that young people work in have not varied from previous years. Retail (19%) and hospitality (16%) are the two biggest industries of our clients. Close behind is administration and clerical (11%) and the hairdressing/beauty industry (9%).



Referral source

Our client referral bodies have been consistently supportive. Our main source of clients are from referrals from SafeWork SA, the Equal Opportunity Commission, the Legal Services Commission and from other Unions. We are noticing an increase of referrals coming directly from former clients, which is perhaps the best feed back we can ask for.



Assistance to young South Australian workers

The Service has recorded at least 278 phone inquiries from young workers and from concerned friends and family members in the 2006-2007 year.

Calls have concerned a wide range of issues including wages and entitlements, bullying, sexual harassment, discrimination, dismissal, questions about contracts of training and how to resolve disputes in the workplace. General information can be provided over the phone, but where further detail advice is needed we make face to face appointments.

This number of almost 300 young people is in addition to the 142 young people who have become clients of the Service and received direct advocacy assistance in 2006-2007.

Since the inception of the Young Workers Legal Service in 2003 until November 2007, the Young Workers Legal Service has provided direct assistance to over 600 clients from around South Australia. We hope to continue our role in helping young workers be treated fairly and equitably in the workplace, so that they may build on their skills and better their work performance with confidence, self-respect and job satisfaction.



Money recovered

Since 2003, the Young Workers Legal Service has assisted young workers recover a total of \$434,920.35. This amount includes unpaid wages and entitlements, unpaid overtime, recovered Superannuation, compensation from sexual harassment and discrimination complaints, orders from the Grievances and Disputes Mediation Committee for trainees and apprentices, and settlements from unfair dismissal and unlawful termination claims.

Union membership

The YWLS strongly encourages membership of unions. Our clients usually come to us after a horrible experience at work, and where there is a legal option to pursue, we provide the necessary assistance. It is so important for us that our clients take away an understanding as to how to prevent such things from happening again in the future. This is best achieved by actively engaging with their union and their co-workers. We provide all our clients with information about their right to join a union and to bargain with their employer collectively. We connect our clients with their relevant union so that they can put their experiences into a national context.

In 2006-2007, many of our clients joined their relevant union. The unions they joined included the Australian Manufacturing Workers Union (AMWU), the Liquor Hospitality and Miscellaneous Workers Union (LHMU), the Australian Workers Union (AWU), the Association of Professional Engineers, Scientists and Managers Australia (APESMA), the National Tertiary Education Union (NTEU), the Communications, Electrical, Electronics, Plumbing and Allied Services Union (CEPU), the National Workers Union (NUW), the Construction Forestry Mining Energy Union (CFMEU), the Transport Workers Union (TWU), the Community and Public Sector Union (CPSU), Unions Australia and the Shop Distributive and Allied Employees Association (SDA).

Young workers, due to their limited industrial knowledge and their highly precarious employment situations, are amongst the most vulnerable workers in Australia. It is for this reason that they should be members of the union movement and develop the skills to protect themselves from future exploitation. ●

Underpayment of wages

Monetary claims, or underpayment of wages has been the bread and butter work for the YWLS since its inception. This is not surprising given that many young workers are unaware of their minimum entitlements under law. They are an easy and vulnerable target for exploitation. For young workers on junior rates, receiving every last cent is vital, considering they are already earning significantly less than their adult counterparts.

After having meet and worked with hundreds of young people, we have been able to hear their stories, experiences, and thoughts about work. The reasons why young people work are quite varied. Some work to take the first step towards independence. Others work to learn how to time manage several elements in their lives – balancing school, work and social lives. There are others who work not to earn their own pocket money, but to help provide for the family income. The lack of financial support for students of higher education mean that working while studying is rarely a choice, but rather a necessity. Young workers should not be considered greedy or selfish in claiming unpaid wages, or demanding that they receive all their entitlements. They are simply doing all they can to remain independent, hard-working and conscientious.

Cash in hand work is also a very common occurrence amongst younger workers. While there are obvious tax implications, our greater concern is the absence of a paper trail. When someone is not “on the books”, there is no record of their employment. They may find themselves in a dangerous situation should they injure themselves at work. There is no record that they are an employee, making it very simple for an employer to deny their employment. We have found that along with cash in hand payments, young workers are also working without an accurate record of their hours of work. Many work without a time book at all and consequently, their overtime is not detailed and not paid at all.

There are numerous ways in which young workers are underpaid. They don’t receive the correct hourly rate in the relevant Award or agreement; they miss out on penalty rates, and overtime; they are not paid their annual leave at the end of the employment; they do not receive notice period; or they are simply not paid at all for the work they have performed. Employers will also try to avoid their obligations to pay compulsory Superannuation. Some will not pay it in the hope the employee will not notice or not be aware of this entitlement. More shrewd employers will also not pay Superannuation, but record it on pay slips and time books, as if it had been paid.

We have seen an increase in employers describing their employees as ‘contractors’ in an attempt to circumvent their obligations as employers. Young workers are encouraged to obtain an Australian Business Number

and set themselves up as contractors. Consequently, the employer then shirks responsibility for taxation, Superannuation, leave entitlements, notice period, insurance, and workers compensation obligations, amongst other things. We have seen an increase of this occur with international students working in sales. The students we have met have not been paid at all for work performed. We are following up these claims as an underpayment of wages where we believe the “contractor” arrangement is a sham.

Case study one – Dan*

Dan* began working for a courier / truck company and was given a contract to sign upon commencement. It explained that he was a “contractor” driver and would be earning \$12 an hour. The contract however made other references to Dan being “employed” and set out other conditions including his requirement to give 2 weeks notice that he was working “on call”, that he wear a uniform with company logo, and he was representing the company at all times. Dan’s hours were set by the company and he was not in a position to decline shifts. A couple of weeks later he was presented with another contract that was similar to the first, but that his earnings would be “capped” at \$300 a week, regardless of hours worked. The YWLS calculated an underpayment in reference to the Transport Workers Award (SA) and pursued the claim in the SA Industrial Relations Court. In all, Dan worked for just under 5 months and the Court held that he was underpaid \$11,165.96 in wages and Superannuation.

Case Study two – Beth*

Beth had a month trial as a travel agent. She did not sign a contract or any type of agreement when she began. During her first month, she worked Monday – Friday, 8.30am – 5.30pm. She also worked Saturday mornings. In this time she made a few mistakes in the bookings, however she was learning and the mistakes were minor. As a result of this, she was terminated. Beth was asked to sign a document which said she would forfeit her wages for the time she worked, in exchange for the employer not recovering the “losses Beth had caused.” She did not sign the letter. The YWLS negotiated with her employer to pay her the month’s wages, and argued that the mistakes were genuine and would be covered by vicarious liability legislation. The wages and Superannuation were recovered for Beth.

Case Study – Simon*

Simon worked for about 6 months for a company that rented out radios and audio equipment used in pubs, hotels and for concerts. His tasks varied – sometimes he would work in the store and assist customers and clients with their orders. Other times he went on site

* All names have been changed to ensure client confidentiality

to help set up equipment and preparing the radios at big events such as the Clipsal and touring concerts at AAMI Stadium. As he was a casual, his hours varied, but he would consistently work around 20-30 hours a week. After a few weeks, his wages became too sporadic and unpredictable. Random lump sums would be deposited into his account, but sometimes he worked weeks without getting paid. When he asked his employer, he was told that he would get paid after they received payment for a big music festival. Simon made the decision to resign as he wanted consistent payment. The YWLS calculated an underpayment of wages claim using his time book. He also did not get paid Superannuation. In all, he was underpaid around \$8,000. The matter was settled before proceeding to a conciliation conference.

Termination of employment

The unfair dismissal jurisdiction has for the most part been removed for most young workers by the *WorkChoices* legislation. However it is clear that young workers are still being fired from their jobs for little or no reason. With the current IR laws, we are left with few options. If they fall within the State jurisdiction, and are eligible under the *Fair Work Act 1994* (SA), then they have the ability to pursue unfair dismissal. This is a very rare occurrence, which is unfortunate as our experience is that the South Australian Industrial Relations Commission provides fair and balanced conciliation. Another option is that they fall within the narrow eligibility for unfair dismissal in the Federal system. This is also infrequent and rarely occurs. As will be detailed further in the report, there are many hurdles an employee must overcome in this jurisdiction. The system includes an extended minimum length of service for both permanent (6 months) and casual employees (12 months); a restriction on the size of the business (more than 100 employees); and the final provision that an employer may claim 'operational reasons' as a complete defence.

The final option, is that they may have an argument for unlawful termination under the *Workplace Relations Act*. This is much harder to pursue, as there needs to be a clear, demonstrated, causal link between the termination, and one of the prohibited grounds. However, employers have rarely been careless enough to state this outright. The main ground for unlawful termination that we have pursued is for temporary absence due to illness or injury. The termination occurs either while the worker is on sick leave or when the return to work after the absence. The main problem with this jurisdiction is that should the matter not settle at conciliation, the worker must elect to take the complaint to the Federal Court. This is simply not an option for anyone who has just lost their job, even more so when they are a young worker. While eligible applicants can

receive government funded legal advice, they must still fund their own representation for the trial.

The absence of the unfair dismissal jurisdiction is being exploited by some employers who feel they can now set the bar as high as they like in the workplace. The jurisdiction was created to prevent workers from being accused of poor work performance or misconduct without a fair hearing. The removal of this right has led to unsubstantiated allegations or unreasonable demands on work performance.

Case Study – Danni*

Danni worked at an Adelaide based photographic studio. It was a constitutional corporation with related companies interstate. Danni had a variety of tasks including reception duties, greeting clients, payroll, invoices and correspondence. She worked full time, often working Saturdays as well. She was seriously injured when she was hit by a drunk driver while she was crossing the road out of work hours. She spent 7 days in hospital. She was in considerable pain and spent a week resting at home on unpaid leave. Her doctor said she could return to work, initially on reduced hours, building up to full time. After a few months, she was almost at full time hours. Her doctor was still concerned on the stress to her body. She was terminated without representation, without warning, and after her employer contacted her doctor without her permission inquiring into her health and progress. The matter was settled at the AIRC.

Case Study – Belinda*

Belinda worked as a beauty therapist for a beauty salon that fell within the State jurisdiction. Upon starting work in September, she notified her employer that she wanted to take 2 days annual leave the following February. During her employment, Belinda and her co-worker were subjected to verbal harassment, when her employer would refer to them as his 'whores' and 'bitches'. When she finished her shift before going on annual leave, she requested that she have her leave paid to her, as pursuant to the Award. Her employer refused and said that she had to wait until the following week. After a heated argument between the two, Belinda was told to leave and not come back. The matter went to the South Australian Industrial Relations Commission and was settled at conciliation.

Unlawful termination

The YWLS has assisted young workers to use the unlawful termination jurisdiction where appropriate. One young man was terminated after almost 3 years of service. He was not able to pursue unfair dismissal for jurisdictional reasons. He was only provided with 1 week notice, while the Award stated he must receive 3 weeks.

The Service assisted him to recover the additional 2 weeks, and negotiated payment of annual leave accrual on the total 3 weeks notice.

Another young man was terminated when he was on sick leave after being assaulted in an unrelated incident outside of work hours. He was only 16 years old and was devastated when he was told that there was “no work available for him.” He was advised of this the day he returned to work after sick leave. He was casual, which made his employment situation precarious in any case, but there was a nexus between the end of his employment and his absence on sick leave. The matter was settled at conciliation in the AIRC.

Case Study – Jeremy*

Jeremy worked as a panel beater for a crash repairs workshop. He had been working there full time for just over 1 year. He never had any issues raised with him about his work performance. Jeremy noted that his workplace was not the nicest place to work. He got on well with his co-workers and never had any problem with them. However, Jeremy’s boss did not communicate effectively with him, he was abusive and would yell constantly, and he would blame Jeremy and the other workers when parts were not in the shop. It got to the point where he was stressed at work and one Thursday called in sick as he was feeling stressed and physically unable to go to work. He notified his manager that morning he wouldn’t be able to work that day. The next day, he was still feeling anxious and sick, and called in to say he couldn’t attend work. He went to the Doctor who provided a sick certificate for the 2 days. Later that day he received a phone call from his boss. His boss was abusive and threatening over the phone, referring to his sick leave. He said he was sacked and he was to pick up his tool box the next Monday. Jeremy was so intimidated by his employer that he notified the police, who accompanied him when he picked up his tool box. Though he was already fired, Jeremy handed his sick certificate to his boss anyway. Jeremy was advised of his legal right to pursue unlawful termination for temporary illness, however, after receiving his entitlements and final wages, he decided against it. He was anxious and scared for his safety, as he was concerned what might happen when he faced his former employer.

The atmosphere and environment within the workplace has changed. We have assisted 4 young workers who have been terminated while on sick leave since the March 2006 amendments. We feel this to be an indication of an increasingly hostile workplace.

Equal opportunity

The unfair dismissal jurisdiction was all but dismantled by the *WorkChoices* legislation in March 2006. The equal opportunity jurisdiction took on greater importance to properly protect younger workers. Equal opportunity laws will never completely take the place of unfair dismissal laws, because it doesn’t consider situations where someone has been treated unfairly or unreasonably, unless there is an element of discrimination. Further, rarely are employers so careless as to say a dismissal is for reasons of gender or impairment, or race. Therefore, provided an employer is careful with their words, they can avoid liability under equal opportunity, unfair dismissal and unlawful termination laws.

Discrimination occurs at all stages of the employment relationship. Usually, YWLS clients have been mistreated during the course of their employment by either their employer or a co-worker. Other situations have seen the discrimination occur at the end of the relationship, usually surrounding the termination at the employer’s initiative. Fortunately, we have both State and Federal legislation to provide recourse for eligible young workers who feel aggrieved.

The impact from such an experience is ongoing and can consume all areas of one’s life. Unlike other grievances, discrimination has an altogether different impact on the young worker. It can never be anything less than a personal violation because the discrimination is an attack on their identity. Whether it is their race, their sexuality, their gender – they have been mistreated, harassed or ridiculed because of who they are. This is not easy to come to terms with. Confidence is shattered and trust is abused. It can cause anxiety and emotional problems, and often leads to sleeping problems, depression, or can exacerbate pre-existing conditions. It can affect their relationships with their family and friends, having an impact far beyond their employment.

Deciding to make a complaint is a decision that our clients do not make lightly. Simply confronting their employer is an achievement. For every person who does make an official complaint, there are countless others who will never have their voice heard. The jurisdiction is not highly lucrative in terms of financial compensation, dispelling the myth that people only go through with it for the money. The process causes complainants to re-live the harassment or discrimination, which is often not worth the small sum they may receive as compensation.

If this experience happens in the early stages of their working lives, the impact can stay with the young person for years. The type of impact most reported by our clients is that they feel their trust has been betrayed

and they have difficulty trusting again. They become cynical, suspicious and wary of others. This is clearly not what we want for our young workers, but unfortunately this would be the expected result for anyone who has been exploited and victimized.

Case Study – Shaun*

Shaun was employed by a labour hire company and began working at a call centre as a casual employee. He had never been “out” in a workplace before. His sexuality was made public by a co-worker. Though it was not his decision, Shaun did not make an attempt to deny who he was. His Team Leader, employed by the call centre, started to publicly ridicule Shaun about his sexuality. He referred to Shaun as the “big gay bird” and “poof,” both to Shaun directly and when he wasn’t present. He often publicly humiliated Shaun by implying falsely that he was making sexual advances to him, and when he directed him to sing at a staff meeting when no one else was asked. A complaint was lodged with the Human Rights and Equal Opportunity Commission against the individual employee and the call centre for sexual harassment and discrimination. The matter was settled against both respondents.

Case Study – Wanda*

Wanda was 17 years old when she started working as a casual waitress for a popular café franchise. After a few months, her employer started making sexual comments to her, some of which concerned Wanda’s mother. She began to feel very distressed about the situation and the comments but did not feel like she could do anything about it. The situation worsened when he showed her pornography on his phone. Wanda developed sleeping trouble, and the stress aggravated prior health problems. Wanda resigned when she could not face going back to work. A complaint was made to the Equal Opportunity Commission. The matter was settled at conciliation for compensation, an apology and a sexual harassment policy implemented in the workplace.

Case Study – Graham*

Graham started working at a big department store as a casual employee. After several promotions in 5 years and a traineeship, he became a Manager. He started experiencing pains in his chest. A couple of times he had to end his shifts early due to the pain. After seeing his doctor, he was advised to take some time off work – he also learned it was a non-work related injury. His employer agreed and advised him to return to work when he got a full clearance. Given his varied duties, Graham believed he could continue to work on light duties, and offered to work on less responsibilities and pay, suggesting the checkout. This was denied by the employer. In this time, Graham was seeing his doctor and tried to find the source of his complaint. The employer terminated Graham after 4 months of

unpaid sick leave pursuant to the *Workplace Relations Act*, citing the expiration of 3 months of unpaid leave for non-temporary illness. Graham had surgery 1 month after he was terminated and since, he did not have any other problems. The matter was pursued as impairment discrimination in EOC. It was settled for compensation and a statement of service, which was vital as it was the whole of his employment experience.

Case Study – Isabel*

Isabel worked for 2 years as an administration clerk. Her set hours were from 9:00am – 2:00pm. Her tasks included mainly customer service and administrative support. Isabel planned to have a child, presuming that she would be entitled to her job when she returned from maternity leave. Isabel took 12 months maternity leave and a month before returning to work she was informed by the boss that her job was ‘no longer available’. She was offered a data entry position that did not involve any customer contact. The hours of the new position were from 4:00pm – 8:00pm. Isabel could not commit to these hours because as the predominant carer for her child and found it virtually impossible to find child care at that time. Isabel also felt that the position was not comparable in status; she loved customer service and had never worked in data entry. A complaint was made to the Human Rights and Equal Opportunity Commission. The matter was settled and Isabel received general damages for pain and suffering and damages for the loss of earning capacity. She also received a statement of service and a written apology and her former employer committed to attending an equal opportunity training session.

Traineeships and apprenticeships

Given the current skills shortage in Australia, undertaking a traineeship or apprenticeship can provide a range of opportunities for young workers. Combining training and employment gives trainees and apprentices grounding from which to develop and perfect their skills. The Young Workers Legal Service supports the training system and the opportunities it offers young people.

However, we have several concerns about the ways in which both the system and young workers can be exploited. Unfortunately, we do hear of young trainees not receiving any training; not being properly supervised; or the “tick and flick” training consisting of reading through a manual. In this way, employers are getting cheap labour while avoiding their obligation to provide genuine learning and training.

Some of the matters that the YWLS provides assistance in includes underpayment of wages claims. Fortunately, trainees and apprentices have 2 jurisdictions to bring these claims. In situations that also involve training issues, it can be easier to bring both disputes before the Grievances and Disputes Mediation Committee (GDMC).

One case initially involved an unlawful termination of contract of training. It was in preparing the submission that the Service discovered that the client had not been paid any tool allowance during his employment, though he had to pay for his own tools. It was shown that this allowance was an Award entitlement and the GDMC calculated and awarded the back pay of 72 weeks.

Other concerns about the system include the inadequate provision of safety equipment; working unpaid overtime; bullying and harassment; and the unlawful termination of the training contract. The *Training and Skills Development Act 2003* (SA) provides for the cancellation of contracts, and the process is strict but fair. The Service has encountered several young trainees and apprentices who have been forced to sign a "mutual cancellation" form under duress or after being misinformed. In other situations, the trainee is sacked and told not to come back to work, without any notification to the Training and Skills Commission, a clear breach of the Act.

Case Study – Tony*

Tony was 17 years old when he started his apprenticeship in Commercial Cookery at a pub. He had been working for approximately 8 months, working long hours including considerable overtime. He was not paid penalty rates for weekends, public holidays, or overtime, though the relevant Award provided for such additional rates. On a rostered day off, his employer called his mother and accused Tony of using drugs, having a bad attitude and being late for work. It was conveyed that his employment had been terminated. The issue could not be resolved through mediation and was referred to the GDMC. The YWLS argued that no investigation had been completed into the accusations of drug use. Also, his time books showed frequent 10 and 11 hour days displayed dedication and commitment to his training and employment. The GDMC ruled that the apprenticeship be suspended to allow for a transfer and the payment of back pay in overtime and penalty rates.

Case Study – Simone* and Anna*

Simone and Anna were hairdressing apprentices at different year levels working at the same salon. They have both raised several concerns about their former employer. While apprentices, neither was allowed to take their meal breaks; instead they were directed to 'eat out the back' in case the seniors needed help. They also had to attend compulsory training and product evenings once a week, none of which were paid. Simone and Anna did not fill in their own time books. Their employer brought the books in every 4 or 5 weeks with the hours already completed. The apprentices were then directed to sign the books without an opportunity to verify the accuracy of the recorded hours. They did not receive pay slips and so

did not know of any accrued leave entitlements. The disputes are being pursued through the Training and Skills Commission and the GDMC.

Case Study – Bill*

Bill started a Mechanical Engineering apprenticeship when he was 18 years old. For the first 2 months of his apprenticeship, he was supervised by a second year apprentice and an unqualified supervisor. At the end of his third month, he took some sick leave following an operation. He provided a medical certificate for this time. When he returned to work, he was sacked for "not progressing" and was told that he would "not have a successful career in the industry." Three days later, the employer directed Bill to return to work, by this stage, he felt intimidated and unwanted to the workplace. The sacking occurred 2 weeks after the conclusion of the 3 month probation period. The matter was referred to the GDMC, where the Committee found that Bill had not been given sufficient feedback to modify or improve his performance. The Committee awarded Bill 8 weeks wages following the termination of his contract.

Bullying and workplace safety

Early in 2007, the YWLS received a call from the mother of a 13 year old boy who reported that her son had been assaulted at work. Her son, William*, works at a fast food outlet. Even though he is only 13 and still at school, William would work very late shifts on school nights, as late as 1.30am. His employment arrangement required him to work at least one late shift during the week. While working one late shift, he was assaulted by an older co-worker; he was punched in the arm and the stomach. William was the youngest person on the shift. William spent the last hour of his shift in the bathroom and did not leave until his mother came to pick him up, at around 1.30am. He was taken to hospital for x-rays, though fortunately he was left with only bruising. William reported that upon his commencement, he was not trained in any occupational health and safety procedures, including what to do if he injured himself at work. The YWLS assisted William to make a complaint to SafeWork SA regarding the bullying and OH&S issues.

The Service was notified of another young man who has also experienced a significant breach of OH&S laws. Andy* was 17 years old when he came to see YWLS. He was working as a general labourer for a building and maintenance company. He started work when he was 16 years old. Throughout the 18 months of his employment, he experienced several concerning breaches of occupational health and safety laws, which left him with workplace injuries. On one occasion, they were working on a site that contained asbestos. While waiting for the asbestos remover to arrive, Andy was directed to start work on a wall using the jackhammer. The only protection he had was a generic dusk mask, which he put on simply because it was dusty. Andy had no prior knowledge about working with asbestos. When the contractor arrived, he was shocked to see Andy removing the asbestos, and told him to stop immediately. Andy injured himself at work on 2 other

occasions. While assisting to cut down a tree, a large branch hit him on his forehead above his eye. When he notified his employer over the phone, he was told not to go to the doctor, and that it was “just a scratch”. The gash left a scar. Another time, Andy stepped on a nail which went through his shoe and caused him significant bleeding. He was taken to a hospital to get a tetanus shot, and was specifically directed not to say it happened at work. Andy feared for his job and said he did it while helping out his family. The doctor told him to keep off the foot for a few days. At this suggestion, Andy’s employer laughed, said he would be fine and that he would be picked up the next day at 6.30am for work. The final element to Andy’s experience occurred when he was fired from his employment because a relationship broke down between his employer and his mother. As the company employed less than 100 employees, Andy was prevented from pursuing a clear unfair dismissal action. The YWLS is now assisting Andy in making a report of these incidents to SafeWork SA, as well as pursue a substantial underpayment of wages claim. The CFMEU has been particularly helpful and supportive to both Andy and the YWLS volunteer advisors working on the case. ●



Young Workers Legal Service assisted me in the resolution of a dispute with my previous employer. In essence this employer failed to remunerate at an acceptable level of classification under award conditions, failed to pay any overtime, failed to pay annual leave entitlements upon my resignation, and failed to pay my Superannuation entitlement.

It was extremely disheartening being treated in this manner, particularly by a young employer. Basically in the last few hours on the last day of my employment I was told by my employer that I was not entitled to any annual leave. I was relying heavily on this annual leave entitlement to purchase new clothing for a position I was commencing 1 week later. I had an 11 month old daughter to look after as well at the time. In the end I had to purchase business attire from second hand clothing stores to get by for my new position as I simply could not afford anything else.

Whilst agreement was not met with regard to overtime, the other 3 matters were resolved and came to fair conclusion.

In my experience I have found the Young Workers Legal Service to be extremely professional, courteous, efficient and understanding. It was great to have young people representing young people, which I feel complemented the approaches undertaken and also assisted in the understanding that we can and do move around in the workforce. My situation was somewhat unique and it was reassuring that a support network is in place for young people with work related issues. ☉

I fully support YWLS and their cause, and wish them well in the future. Keep up the good work!

In May 2007, the South Australian Industrial Relations Commission, as directed by the State Government, announced an inquiry into the effect of *WorkChoices* on the lives of South Australian workers. The Young Workers Legal Service provided a submission to the Inquiry. The submission detailed the stories of young workers who have been negatively affected by the laws, as well as our experiences working with the laws. The evidence covered the unfair and unlawful dismissal jurisdictions, the use of Australian Workplace Agreements and the change in the workplace environment.

The following is an abbreviated version of the submission (a full version of which can be viewed on the SAIRC website.)

Unfair dismissals

The greatest area of impact of the *WorkChoices* laws has related to unfair dismissal. The jurisdictional barriers to pursuing this right has been significantly restricted in the expansion of categories of excluded employees. In addition to this, is the generally confusing nature of the legislation; for example, the young people we have encountered do not know what is meant by the phrase “constitutional corporation”. This does not make for a fairer and simpler system.

In the 2005-2006 year, the YWLS had 167 clients, of which 46 related to inquiries concerning unfair dismissals and 23 files proceeded to either the SAIRComm or the AIRC to a conciliation conference.

In the 2004-2005 year, the YWLS had 158 clients, of which 47 related to unfair dismissal applications.

Between 26 March 2006 and 1 June 2007, only 11 YWLS clients have proceeded to make a formal application of unfair dismissal, of which 7 clients have filed an application in the AIRC, and 4 have filed an application in the SAIRComm.

Loss of Unfair Dismissal = Loss of Natural Justice

The *WorkChoices* amendments to unfair dismissal laws exclude many employees from defending themselves against all types of accusations and allegations in the workplace. Procedural fairness, acknowledged by the International Labour Organisation and its international conventions, as being a fundamental right of employees, has been removed from their workplaces. Procedural fairness was previously an important element in determining whether a dismissal was considered “harsh, unjust or unreasonable.” Written or verbal warnings about work performance, providing an opportunity to improve and allowing the employee to defend or

explain themselves are examples of fair and balanced procedures before an employer ends the employment relationship.

Without the forum or jurisdiction to argue one has been treated unfairly, employees are effectively denied these safeguards and protections. There is no requirement for an employee to be warned or put on notice about unsatisfactory performance. Further, there is no obligation for an employer to provide any reasons whatsoever upon termination.

Many young workers are denied the right to have an impartial, neutral body to assess what occurred was fair. The Service must now explain to young workers that while factually the dismissal is harsh, unjust or unreasonable, this means absolutely nothing if they do not fit the narrowed jurisdictional requirements of who has the right to challenge a termination. The result is that some have job security and others do not; some have the right to natural justice, while many others do not.

This is the major concern for the Young Workers Legal Service. Principles of natural justice are rarely present in the workplace; from warnings, disciplinary procedures right through to termination. Examples of procedural unfairness that the Service has encountered include:

- No final disciplinary or termination meeting
- No representation or support persons at meeting
- No witnesses
- No advance notice of the termination meetings
- No advance notice of any allegations to be raised
- Lack of warnings concerning alleged poor work performance or behaviour
- No reasons afforded at all
- Reasons for termination are unreasonable

On the latter point, reasons that have been provided have been unrelated to work performance or ability and many have been personal attacks. The following is an example of such an incident;

Case Study – Morgan*

Morgan was working in retail for the same employer for 2 years in total, as a casual, then as a permanent full time employee. At the conclusion of one of her shifts, she was quickly ushered into a termination meeting as she was walking out the door. She was told she was no longer required because she was “causing a stir” and she was “abrupt.” This was as much information as she was given. This was not elaborated, and they did not provide examples. She had absolutely no ability to challenge or defend herself from these accusations. The termination was effective immediately.

Not providing an opportunity for employees to explain their behaviour or improve alleged poor work performance, young workers will never work to the best of their ability. While all employees need to be guided and advised of areas of improvement, young workers with little experience in the workforce need this especially. Young workers may change industries several times and so will require time to learn new skills and ensure they are working to the required standard.

The “100 employee rule”

Arguably the most well known component of the *WorkChoices* amendments is section 643 (10) of the *Workplace Relations Act 1996 (Cth)* (“the Act”), which excludes employees of a constitutional corporation with 100 employees or less, from pursuing relief from unfair dismissal. This ‘rule’ is having a devastating effect on young people’s ability to challenge what they believe to be unfair dismissals. Based on our experience with young workers, this rule has caused confusion, complex hurdles and frustration for the individual.

Firstly, the majority of people are not completely certain of the total number of people employed by their employer. It is unlikely that anyone other than Management would be aware of the total workforce.

The legislation includes employees of ‘related corporate entities’ as part of the 100 employees, which causes further complications. Again, it is absurd to expect an employee to know if there are any other businesses run by their employer company and the total number of employees they engage. As we have found, it is near impossible to clarify this. These types of obstacles are very difficult and problematic for any young person to overcome.

Case Study – Gloria*

Gloria worked at a video store for 3 years as a casual employee. She was the longest serving employee and enjoyed her job. She worked a few shifts during the week as she was a university student. She had never had any issues raised with her in the past and no customer complaints had been made against her. She assumed that everything was fine with her job. At the beginning of one of her shifts, she was told that she was fired. Gloria was shocked and in disbelief and couldn’t understand why this had happened. She asked her employer why. A complaint had been made against Gloria, as the week previous she had refused a customer a video as they had outstanding fees. Gloria was following policy, and the system automatically prevents hiring videos to customers with fees. There was no possibility to challenge her termination, or to explain the unreasonableness of the situation, due the employer having less than 101 employees.

Casual employees

The *WorkChoices* legislation has also created a barrier for casual employees from accessing the unfair dismissal jurisdiction. Section 638 of *the Act* increases the minimum length of service to 12 months for casual employees. Casual employment is high amongst young workers, and since the establishment of the YWLS, casual employees has always been a significant portion of our client base.

- In the 2004-2005 year, 29% of clients were casual employees
- In the 2005-2006 year, 36% of our clients were casual employees
- In the 2006-2007 year, 30% of our clients were casual employees

While young workers understand that casual employment is by its nature non-permanent and can be sporadic, the Service does not accept that this justifies arbitrary and unreasonable terminations. This argument of employment being based on work available also lacks strength when the employee concerned has been in employment on a systematic and routine basis.

A witness for the Inquiry has stated how she worked for 10 months for a manufacturing company on the production line, consistently working full time hours as well as overtime. She revealed the confusion and devastation of losing her employment with no explanation provided and no prior performance issues. After she was fired, she saw an advertisement in the paper for the same job. She stated that she simply wanted to work and provide for her family. She couldn’t pursue unfair dismissal as she had not worked for the minimum of 12 months.

The Service is concerned that the growing level of casual employment is providing benefits to one party of the employment contract – the employer. Long term casuals should have job security, and the previous threshold of 6 months as contained in the *Fair Work Act 1994 (SA)* and relevant regulations, provided a decent safety net for employees.

It is our experience at the Service, that more people have been jurisdictionally excluded by *WorkChoices* from pursuing unfair dismissal, than have been able to use the laws.

Since the commencement of *WorkChoices* in March 2006 until 1 June 2007, the Service has encountered only 11 young workers who have had the jurisdiction to pursue unfair dismissal in either the state or federal jurisdiction.

This is in stark contrast to the 28 young workers whom we have encountered in face to face interviews and in phone inquiries, who have had no jurisdiction to challenge a termination that was harsh, unjust or unreasonable.

Australian Workplace Agreements / individual contracts

The Service is concerned about the use of Australian Workplace Agreements (AWA) for young workers. The rationale is that all workers are in a position to bargain and negotiate what they believe to be fair hours of work, wage and conditions, allowing flexible and 'individualised' working arrangements. The reality is that for young workers, this is simply not happening. The AWAs we have viewed are proforma and are standard for all employees.

From the statements of people we have spoken to about AWAs, negotiation does not occur. The AWAs are presented to the workers in its completed form. Ultimately, it is left for the worker to raise issues if they do not agree, or want to suggest other conditions. For a young worker who is in their first job, inexperienced in the workplace, or new to that particular industry it is unlikely they would feel confident or bold enough to suggest alternatives. Even with extensive experience or high skill levels, AWA negotiation places all responsibility on the individual. If someone is shy, reserved or lacks confidence, they are significantly disadvantaged. A successful bargaining process depends considerably on the individuals self esteem and outgoing nature. Added to this the uncertainty of their job security, and there is little to suggest that genuine bargaining is occurring in the workplace.

The AWAs that the Service has encountered clearly demonstrate our concerns about the lack of genuine bargaining. Some of the common clauses that we have seen in the AWAs include:

- That employees can be sent home after 1 hour's work if, in the employer's opinion, the level of trade does not necessitate their services
- Summary termination can occur if, in the employer's opinion, the employee becomes of 'unsound mind'
- Removal of overtime pay
- Any overtime 'requested' by the employee paid at the normal rate
- No annual leave loading.

The Service's other concern is that young workers do not know what they are signing. When they start a new job, they are often given several documents all at once, for example, a tax file number form, a contact details form, a payroll form, a Superannuation form, workplace policies, as well as a contract. This can be overwhelming and they may not take the time to consider the implications of signing the agreement. They may also be under pressure to sign it immediately without the ability to consider it at home. Without the experience, and without access for help, they are at considerable risk of accepting wages and conditions that will leave them worse off than under an Award.

Many young workers, when asked, do not know what an Award is. Without this basic information or knowledge, they are not in a position to assess what they are potentially sacrificing in signing an AWA. Young workers new to the workforce are more trusting and would not think to question that what they are offered is fair, or even the legal minimum. AWA rates of pay that we have come across, are significantly lower than the relevant Award. Many are working on flat rates and miss out on penalty rates sorely needed by workers already on reduced wages.

Their lack of industrial knowledge would likely continue due to the confidentiality clauses that are in many AWAs. While the theory supporting AWAs cites genuine bargaining and negotiation, this clause prevents the worker from discussing the contract with other people. Such a clause stands in the way of a worker obtaining outside advice as to what is fair, reasonable or legal. Therefore, while there are scores of companies and organisations promoting themselves as consultants for employers in creating AWAs, there is no such assistance for the worker. The recent television advertisements from the federal government do not offer any hope – they are not advocates for workers, but rather simply advising of what the employer must do to comply with the law. This demonstrates the clear power imbalance – the employer is able to seek outside professional and expert assistance in preparing the AWA, however the employee is gagged by confidentiality.

The other problem for young people is that when they are studying at school or university, many rely on penalty rates and overtime pay. Due to study, many work on weekends or nights and rely on the additional rate of pay. While other employees may receive a higher flat rate during the week and not miss out, those who work only at 'unsociable hours' will always be worse off under AWAs.

Hostile work environment

The Service has had an increase of inquiries from workers who want to find out about their legal rights at work, as they are feeling pressure or harassment in the workplace. For example, some are feeling pressure to take on longer hours, work through illness, or feel there has been a change in the workplace environment.

Case Study – Debbie*

Debbie is a university student and started working as a night operator at a law firm. She worked Tuesday to Thursday from 5pm until 8pm. The job involved filing, preparing documents and any other secretarial work that needed to be done. Initially the arrangement worked out well and she was happy with the hours. Her manager approached her after a few months work requesting a change to the arrangement. Debbie was asked while her shift would remain 5pm until 8pm, she would have to be “on call” until 10pm each shift. While she would be paid for time worked, she would not be paid for setting aside the time if she was not required. Furthermore, the overtime was not guaranteed, and she would be notified an hour before she would be required. If she accepted it, she would never be able to plan for any other study, family or personal commitments between 8pm and 10pm, though the work may never eventuate. Debbie felt under a lot of pressure to accept these terms, as she understood the precarious nature of her employment situation.

The effect of these laws is for workers to consider what action they take in response to such issues in the workplace. They must now think carefully about what their employer may do should they raise an issue about work hours or bullying. ☉

SPECIAL THANKS

SA Unions Executive – for supporting a service for young workers at a time when it is needed most

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