



24 January 2012

Independent Inquiry into Insecure Work in Australia
Level 6
365 Queen Street
Melbourne
Victoria 3000

Dear Mr Howe,

Re: Independent Inquiry into Insecure Work in Australia

Thank you for the opportunity to comment on the Independent Inquiry into Insecure Work in Australia which has been initiated by the ACTU as part of its *Secure Jobs. Better Future Campaign*. My response, outlined in this letter, will focus on the impact of insecure work on gender equality.

As the ACTU's Discussion Paper 'Insecure Work, Anxious Lives: The growing crisis of insecure work in Australia' notes, there has been an increase in the insecure forms of work in Australia. This Inquiry provides an important opportunity to assess the impact of this on workers, their families and the Australian community and I welcome the focus on:

- the prevalence, causes, effects and cost of insecure work in Australia;
- identifying those at risk of working in insecure work;
- Relevant international human rights and labour standards; and
- Australian entitlements/working conditions relevant to providing security for workers

As the ACTU Discussion Paper notes, 'insecure work' refers to 'work that provides little economic security and little control over working lives'. There are a range of human rights standards identified under human rights conventions signed and ratified by the Australian Government, relevant to addressing the issue of insecure work including:

- *Covenant on Economic, Social and Cultural Rights* (Article 6, the right to work)
- *Convention on the Elimination of All Forms of Discrimination Against Women* (Article 11, employment)¹
- *Convention on the Rights of Persons with Disabilities* (Article 27, work and employment)

- International Labour Organization Convention 110 (*Discrimination (Employment and Occupation) Convention*, 1958), and 175 (*Part-Time Convention* 1994)

I note that the Australian Government has not ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. The Commission has previously recommended the Government sign this Convention, and this was also a recommendation made to the Government at its Universal Periodic Review in 2011. The Australian Government has not ratified the *ILO Convention 189 on Decent Work for Domestic Workers* (2011) and ratification of this Convention should also be encouraged.

Impact of Insecure Work on Gender Equality

As the Sex Discrimination Commissioner, I am particularly concerned about the impact of insecure work on gender equality in Australia. Insecure work negatively impacts both the participation of women in the workplace and the achievement of gender pay equity. Women in insecure work are unable to determine with certainty when and where they will be working, and what level of income they will be receiving in any given week. They are more vulnerable to discrimination and less able to seek redress. Insecure work also negatively impacts the wellbeing and health of workers and the ability to balance work with their family and caring responsibilities.

Forty percent of Australian workers are employed in contract and casual work and this number is on the rise.² Women are disproportionately represented in casual work, with 28% of all female employees working in casual employment, compared to 20% of male employees. Over half (56%) of casual employees are women.³

While it is important that both men and women have the choice to participate in part-time and casual employment, it is important to focus on reducing the number of workers in Australia who are in *insecure* work situations, particularly given the disproportionate risk of women being engaged in insecure work.

We must ensure that all Australian workers have access to decent work, including secure, part-time and flexible employment. Workers who do seek flexible working arrangements and/or reduced hours of work should receive the same protection and equivalent pay and conditions afforded to full time workers.⁴

The CEDAW Committee in its concluding comment on its Review of the implementation of CEDAW in Australia in 2010 recommended the Australian Government:

- ...take concrete measures to eliminate occupational segregation, including by removing barriers to women in all sectors and to ensure equal opportunities for, and equal treatment of, women and men in the labour market.
- ...develop a national pay strategy and establish a specialized unit within the new wage-setting body of Fair Work Australia to develop and monitor pay gaps mechanisms.
- ...provide a comprehensive assessment of the effectiveness of the Fair Work Act in eliminating pay gap in its next periodic report.⁵

Equal Participation of Women in the Workplace

The Commission is particularly concerned about the ways in which the increase of insecure work impacts the participation of women in the workplace.

Whilst women's participation in the paid workforce has risen in the last three decades,⁶ Australia lags behind many other developed countries in terms of women's workforce participation rates, ranked No. 45 by the World Economic Forum.⁷ In Australia in 2011, only 59% of all women were in the labour force.⁸ This may be contrasted with Norway, for example, where 69% of women over the age of 15 are in the labour force.⁹

In November 2011, 45.6% of the labour force was women.¹⁰ However, 45.8% of women who undertake employment work on a part-time basis. This is a stark comparison to the 16.2% of employed men who work part-time.¹¹ Indeed, whilst women constitute 70.1% of all part-time employees, they constitute just 35% of all full-time employees.¹²

Many women working in part-time work have a lack of control over their working lives, potentially resulting in situations of insecure work. A NSW Office for Women's Policy survey revealed that women in childbearing years (25-44) work part-time largely for childcare reasons, with nearly 60% of part-time women workers reporting this as their main reason.¹³ Only 10.5% of those aged 25-34 and only 16.5% of 35-44 year old women who work part-time indicate that they do so because they prefer part-time work.¹⁴ Indeed, 24% of women working part-time indicate that they would prefer to work more hours.¹⁵ The most recent HILDA Survey reports that less than half of women who indicated that they were underemployed in 2007 had achieved longer hours in 2008, with 12% working even fewer hours than the previous year.¹⁶

Industries and occupations in Australia remain highly segregated by gender and women's work is still often undervalued.¹⁷ Workplace structures have evolved around an 'ideal worker' norm of the traditional male breadwinner who is supported by a wife working full time in the home raising children.¹⁸ Work that is predominantly performed by women tends to be undervalued and women are concentrated in lower level work classifications with fewer opportunities for training and skill development.

Pregnancy is a time when women are particularly vulnerable to discrimination and inequality in the paid workforce. This can take the form of termination of employment, demotions, missing out on promotions, redundancies, denial of family friendly conditions and even bullying in some cases.¹⁹ Almost one in every five pregnant working women experiences at least one difficulty in their workplace in relation to being pregnant.²⁰

After the birth of a child, a woman may take on paid work which allows her to accommodate her family responsibilities. However, women may have to take on paid work which does not fully reward their skills and experience, in order to work part-time or secure flexible working arrangements. Such trade-offs between conditions and pay were reported to the Commission throughout the Women, Men, Work and Family project, as reported in *It's About Time* (2007).²¹

The *ILO Convention 175 on Part-Time Work* (1994), which the Australian Government ratified in 2011,²² requires State Parties to ensure part-time workers to

receive a wage that is at least equal to the wage payable to a full time worker when calculated proportionately. The Convention also requires that part-time employees receive the same protections afforded to full time workers in relation to occupational health and safety, leave entitlements, discrimination in employment and occupation as well as the right to organise and bargain collectively. Article 7 of the Convention also ensures that part-time employees receive the same full-time benefits in relation to maternity protection.

Barriers to women's full and equal participation in the workforce include, but are not limited to:

- limited availability of decent, secure part-time work
- limited access to secure, flexible working arrangements
- limited availability of family-friendly workplace policies
- lack of access to quality, affordable child care facilities.

Marginalised groups of women commonly experience multiple barriers to participation in the paid workforce. Women with disability,²³ Aboriginal and Torres Strait Islander women²⁴ and women from culturally and linguistically diverse backgrounds have lower rates of paid workforce participation compared to women generally.²⁵ The barriers experienced by these groups of women include the non-recognition of overseas qualifications; discrimination based on race or disability; or limited employment opportunities in rural and remote communities.

The Commission's *Gender Equality Blueprint* published in 2010 outlines a number of recommendations to achieving gender equality including the following:

Recommendation 1:²⁶ To ensure women experience equal outcomes in the workplace the following recommendations, which are proposed in the Equal Opportunity for Women in the Workplace Act (EOWA Act) reforms, should be implemented:

1. the EOWW Act should be amended to change its name to the Gender Equality in the Workplace Act and rename the Equal Opportunity in the Workplace Agency as the Gender Equality in the Workplace Agency;
2. the achievement of gender equality should be a key object of the EOWW Act;
3. the EOWW Act should be amended to cover Australian Government departments and statutory agencies with 100 employees or more;
4. the EOWW Act should be amended to include pay equity as a separate 'employment matter'.

Recommendation 2:²⁷ To make life in retirement fair for both women and men:

1. the superannuation co-contribution scheme should be extended;
2. an independent inquiry into recognising unpaid caring work within Australia's superannuation and pension schemes should be undertaken.

Gender Pay Equity

The Commission is also particularly concerned with the impact that insecure work has on achieving gender pay equity.

One of the major indicators of women's economic inequality is the ratio of women's to men's earnings – commonly known as the gender pay gap. In February 2011, the gender pay gap was 17.2%. The average weekly ordinary time earnings of females working full-time were \$1,139.80 per week - \$237.50 per week less than their male counterparts, who earned an average of \$1,337.30 per week in February 2011.²⁸ In the *Global Gender Gap Report 2011*, Australia scored poorly in the category of 'wage equality for similar work', achieving a score of 0.64. In contrast, the Philippines, for example, achieved 0.76 in the same category.²⁹

The gender pay gap is even greater when women's part-time and casual earnings are considered, with women earning two thirds what men earn overall.³⁰ As we have stated previously, in Australia women constitute a higher proportion of casual workers, are more likely to be working under minimum employment conditions and to be engaged in low paid occupations and industries. Women are under-represented in senior and decision-making roles across business, government and the community. Australian women continue to experience workplace discrimination on the basis of sex, pregnancy, potential pregnancy and family responsibilities.³¹

The effects of this persistent gender inequality are far reaching and the gender pay gap has a number of critical flow-on effects. For example, having earned less than men and carrying a significantly greater share of unpaid caring work, on average women retire with significantly less retirement savings compared to men.³² In addition, current research indicates that just under half of retired women in Australia have no super at all to speak of, compared to 25% of men.³³

This gender gap arises from the linking of the retirement income system, specifically superannuation, to engagement in paid work. Instead of accumulating wealth through the retirement income system as intended, due to experiences of inequality over the lifecycle women are more likely to be accumulating poverty. The most serious consequence of the gender gap in retirement savings is the likelihood of poverty for women in retirement.³⁴

The causes of pay inequity are complex and multifaceted as they are embedded in industrial, organisational and socio-historical structures.³⁵ One of the known reasons for the gender pay gap is women's continuing greater responsibility for the care of dependent family members such as children, elderly parents or people with disability requiring care.³⁶ More time spent in the unpaid work of care inevitably means less time available for paid work although mothers of young children in particular work very long combined paid and unpaid hours of work.³⁷

Australia's progress on closing the gender pay gap has stalled in recent years despite the continued movement of women into universities and vocational education and training.³⁸

Closing the gender pay gap is a national priority in eliminating discrimination and promoting substantive gender equality in Australia. Australia has an international obligation to take all reasonable steps to respect, protect and fulfil the right of all workers to receive equal pay for work of equal value, regardless of their gender.

Recommendation 3:³⁹ To ensure women receive the same pay as men for doing paid work of equal or comparable value:

1. the EOWA Act should be amended to make pay equity a specific 'employment matter';
2. Fair Work Australia should establish a specialist unit to develop and monitor pay equity mechanisms;
3. measures should be put in place to promote greater transparency in relation to pay rates, including in individual contracts ;
4. transitional funding should be provided to ensure that any decision of Fair Work Australia arising from the Australian Services Union's application for an Equal Remuneration Order on behalf of Social and Community Service workers can be implemented without job losses or reduction of services.

Mainstreaming Flexible Work Practices

Some women end up in insecure work because it is the only way they can achieve some flexibility to balance work with their caring responsibilities. However, insecure work can also have the negative impact of irregular and unpredictable working hours, making it even more difficult to balance family responsibilities.

In many workplaces, caring is still seen as an individual choice. Workplaces do not adequately support employees who have caring roles. Many workers are not able to obtain the flexible work arrangements they need. When it gets too hard to juggle their various responsibilities, some have no option but to resign. The simple reality is that quality flexible working arrangements are still not common in Australian workplaces.

To be effective, flexible work arrangements need to be an accepted part of all Australian workplaces. There are a range of practical responses that employers can implement, such as offering greater flexibility around hours of paid work and, for many employees, shorter but more secure hours.

While there is no –'one-size fits all' solution for the diversity of industries, occupations and workplaces in Australia, all employers share a responsibility to assist their employees to meet their family and carer obligations.

Recommendation 4:⁴⁰ To make flexible work a normal part of workplace culture, the National Employment Standard and the Sex Discrimination Act should be amended to:

1. provide further protections from discrimination based on family and carer responsibilities for both women and men in all areas of employment;
2. place a positive duty on employers to reasonably accommodate a worker's family and carer responsibilities, including through the provision of flexible work arrangements;
3. extend the right to request provision under the NES to accommodate other family and caring responsibilities including, caring for older people and people with disabilities.

Striking the Balance in the Family

Issues concerning employment equality and the economic opportunities and outcomes available to men and women in Australia are critical elements of achieving substantive equality. We therefore welcome the review of the impact of insecure work

on the wellbeing and health of workers and their ability to balance work with their family and caring responsibilities.

Insecure work and pay inequity affect the ability of families to make real choices about how to balance work and family life.⁴¹ Increased paid work opportunities for women in the past 20 years have not produced a corresponding change in the division of unpaid responsibilities between men and women. In households where men are the higher earners, men do progressively more hours of work and enjoy less time with their families.

Meanwhile, women who work, gradually find themselves with reduced capacity for economic security, less able to contribute to their retirement savings and, in the case of marginalised worker families, less able to contribute to household income should the man's job be threatened or reduced in some way. Women with family/carer responsibilities also carry a disproportionate share of unpaid work, including child care, elder care and associated housework.

Despite a decade or more of economic growth and prosperity, many Australians say they are not living the lives they want. They feel pressured, stressed and constrained in the choices they can make, particularly at key points in their lives. Family relationships top their list of priorities, but the demands of paid work increasingly undermine the time that people have to care for their children, parents and other family members.

For both men and women, the imbalance of paid work and family/carer responsibilities has a direct impact on their life outcomes, including their social and economic status, participation in public life, health and emotional wellbeing. This imbalance has a direct and measurable effect on men and women, compromising their finances, relationships, physical health and emotional wellbeing.

A truly prosperous society values time as well as money, whether this is time spent with family, working voluntarily in the community or meeting the daily care needs of others.

The Commission's Report *It's About Time: Women, Men, work and Family* published in 2007 outlines a number of recommendations to achieve a balance between paid work and family responsibilities including:

Recommendation 5:⁴² To assist families to balance family roles and responsibilities the Australian Government should:

1. fund a national multi-media community awareness campaign about workers with family/carer responsibilities, including the diversity of workers and families and with a targeted component for men with family/carer responsibilities;
2. conduct an audit of Commonwealth, State and Territory programs in family and health services to assess how well they prepare families for sharing care;
3. fund the development of resources to assist newly partnered couples, and in particular prospective and new parents, to consider options and discuss arrangements for sharing care. These resources should be distributed through Family Relationship Centres and relevant community organisations.

In conclusion, the Commission welcomes the opportunity to respond to the Independent Inquiry on Insecure Work in Australia. As stated previously, I am especially concerned about the impact of insecure work on gender equality in Australia – the impact on workforce participation, pay equity and balancing work and caring responsibilities.

While I believe that it is important for both men and women to continue to have the choice to participate in part-time and casual employment, we must focus on reducing the number of workers in Australia who are in *insecure* work situations.

Workers who do seek flexible working arrangements and/or reduced hours of work should receive the same protection afforded to full time workers and should not forfeit basic rights at work. Finally, to assist the balance between paid work and family caring responsibilities we need to do much more to ensure workers have access to quality and secure part-time and flexible employment.

Yours sincerely,

A handwritten signature in black ink, appearing to read "E. Broderick".

Elizabeth Broderick
Sex Discrimination Commissioner

T +61 2 9284 9600

F +61 2 9284 9611

E elizabeth.broderick@humanrights.gov.au

¹ The *Beijing Platform for Action* (1995) also identifies key areas relevant to decent work (Critical Area: Women and the Economy).

² Australian Council of Trade Unions, 'Secure Jobs Better Futures: About the Campaign', ACTU Website. At <http://securejobs.org.au/about-the-campaign/> (viewed 23 January 2012).

³ Australian Council of Trade Unions, *Insecure Work, Anxious Lives: The growing crisis of insecure work in Australia* (September 2011), p 15.

⁴ See the *ILO Convention on Part-Time Work 1994*.

⁵ CEDAW Committee *Concluding Observations Australia*, UN Doc CEDAW/C/AUL/CO/7 (2010) para 39. At <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm> (viewed 23 January 2012).

⁶ Australian Bureau of Statistics, *6202.0 Labour Force, Australia* (July 2009) Table 03 Labour Force Status by Sex. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6202.0Jul%202009?OpenDocument> (viewed 10 January 2012).

⁷ World Economic Forum, *2011 Global Gender Gap Report*, Australia Profile. At <http://www.weforum.org/reports/global-gender-gap-report-2011> (viewed 10 January 2012).

⁸ Australian Bureau of Statistics, *6202.0 Labour Force, Australia* (November 2011) Table 03 Labour Force Status by Sex. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6202.0Nov%202011?OpenDocument#Publications> (viewed 10 January 2012).

⁹ Statistics Norway http://www.ssb.no/aku_en/tab-2011-11-02-01-en.html (viewed 10 January 2012).

¹⁰ Australian Bureau of Statistics, *6150.0 Labour Market Summary* (October 2011). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6105.0main+features2Oct%202011> (viewed 10 January 2012).

¹¹ Australian Bureau of Statistics, *6150.0 Labour Market Summary* (October 2011). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6105.0main+features2Oct%202011> (viewed 10 January 2012).

¹² Australian Bureau of Statistics, *6150.0 Labour Market Summary* (October 2011). At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6105.0main+features2Oct%202011> (viewed 10 January 2012).

¹³ NSW Department of Premier and Cabinet, Office for Women's Policy, *Key Facts and Trends in Part-time Work: NSW Women* (February 2011). At

<http://www.women.nsw.gov.au/publications> (viewed 10 January 2012).

¹⁴ NSW Department of Premier and Cabinet, Office for Women's Policy, note 13.

¹⁵ Melbourne Institute, *Families, Incomes and Jobs, Volume 6: A Statistical Report on Waves 1–8 of the Household, Income and Labour Dynamics in Australia (HILDA) Survey* (2011) p 69. At

<http://melbourneinstitute.com/hilda/statreport.html> (viewed 10 January 2012).

¹⁶ Melbourne Institute, note 15, p 71.

¹⁷ See Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family - Final Paper* (2007), pp 79-81.

¹⁸ Human Rights and Equal Opportunity Commission, note 13, see discussion of the 'ideal worker' norm at pp 66-67.

¹⁹ Human Rights and Equal Opportunity Commission, *Pregnant and Productive: It's a right not a privilege to work while pregnant* (1999). At

www.humanrights.gov.au/sex_discrimination/publication/pregnancy/report.html (viewed 10 January 2012).

²⁰ R Cassells, R Miranti, B Nepal & R Tanton, *She works hard for the money: Australian women and the gender divide*, AMP NATSEM *Income and Wealth Report* (2009), Issue 22, p 18. At <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjA5fENoaWxkSUQ9LTF8VHlwZT0z&t=1> (viewed 10 January 2012).

²¹ See Human Rights and Equal Opportunity Commission, note 17, pp 76-77.

²² ILOLEX, *Database of International Labour Standards, Ratifications by Country: Australia*. At <http://www.ilo.org/ilolex/english/index.htm> (viewed on 10 January 2012).

²³ Women with disability are less likely to be in the paid workforce than men with disability: see Human Rights and Equal Opportunity Commission, *Issues Paper 1: Employment and Disability – the Statistics* (2005). At www.humanrights.gov.au/disability_rights/employment_inquiry/papers/issues1.htm (viewed 10 January 2012).

²⁴ Aboriginal and Torres Strait Islander people have a labour market participation rate of 56%. The labour market participation rate for Indigenous men is 65%, while for Indigenous women it is 48%: see Australian Bureau of Statistics, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2007* Cat No 6287.0 (2008).

²⁵ In 2004, migrant men had a similar age standardised labour force participation rate

(74%) to Australian-born men (75%). Migrant women's age standardised labour force participation (52%) was lower than Australian-born women (60%), and much lower than migrant men: see Australian Bureau of Statistics, *Australian Social Trends, 2006* Cat No 4102.0 (2006).

²⁶ Australian Human Rights Commission, *Gender Equality Blueprint* (2010), p 7, recommendation 13. At http://www.hreoc.gov.au/sex_discrimination/publication/blueprint/index.html.

²⁷ Australian Human Rights Commission, note 27, p 5, recommendation 5.

²⁸ Equal Opportunity for Women in the Workplace Agency, *Pay Equity Statistics Fact Sheet* (May 2011) p 1.

²⁹ World Economic Forum, *Global Gender Gap Report 2011* (2011). At <http://www.weforum.org/reports/global-gender-gap-report-2011> (viewed 10 January 2012).

³⁰ Australian Bureau of Statistics, *Average Weekly Earnings, Australia, May 2008*, Cat no. 6302.0 (2008).

³¹ See Australian Bureau of Statistics, *Forms of Employment, Australia* Cat No 6359.0 November 2007 (2008); Equal Opportunity for Women in the Workplace Agency, *2006 EOWA Census of Women in Leadership* (2006); and Human Rights and Equal Opportunity Commission, *Annual Report 2006-2007* (2007), pp 75-77.

³² Current superannuation payouts for women are one third of those for men: see Ross Clare, *Are retirement savings on track?* (2007).

³³ Australian Bureau of Statistics, *6238.0 Retirement and Retirement Intentions, Australia, July 2010 to June 2011* (December 2011). At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6238.0> (viewed 10 January 2012).

³⁴ Australian Human Rights Commission, *Accumulating Poverty? Women's Experiences of Inequality over the Lifecycle* (2009) p 22

³⁵ Queensland Industrial Relations Commission, *Pay Equity: Time to Act* (2007) pp 1-2.

³⁶ See Human Rights and Equal Opportunity Commission, note 12, pp 40-41 and pp 99-122. See also Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, men, work and family Discussion Paper* (2005) pp 52-55 and p 57.

³⁷ See Human Rights and Equal Opportunity Commission, *Striking the Balance*, note 36, pp 25-38.

³⁸ See Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal*

and Constitutional Affairs Committee on the Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality (September 2008) par 756.

³⁹ Australian Human Rights Commission, note 27, p 4, recommendation 4.

⁴⁰ Australian Human Rights Commission, note 27, p 4, recommendation 2.

⁴¹ This point was raised in most State and Territory consultations conducted around Australia throughout July – September 2005.

⁴² Australian Human Rights Commission, *It's about Time* (2007), p xxi, recommendations 22-24. At

http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html (viewed 10 January 2012).