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**Australian Council of Trade Unions (ACTU)
Women's Committee Submission to the
Secure Jobs Inquiry**

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ACTU

Level 6, 365 Queen Street

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ACTU WOMEN'S COMMITTEE

SUBMISSION TO THE SECURE JOBS INQUIRY

1. Australian women are disproportionately represented in insecure forms of work.

Women constitute around two thirds of part time and casual workers, with almost one third of all women workers employed as casuals.¹

A significant proportion of women in part time and casual employment work irregular and unpredictable hours. The 2011 ACTU Working Australia Census² analysed the women respondents who were in insecure employment. Nearly a quarter of the respondents cited that their hours varied from week to week. A further 12% indicated they worked on-call, 10% worked rotating shifts and 40% regularly worked weekends.

The irregular hours result in an unpredictable income, which means many women take on multiple casual jobs. Two in five respondents to the ACTU Census had been in their current job for less than 12 months and over half worked in more than one job to make ends meet.

2. The forms of insecure work women are employed in vary in nature and across industries.

For example, participants at a recent ACTU women's forum on insecure work held in December 2011, experienced the following examples of insecure work:

- Hairdressers hired as self-employed business owners on low pay, bearing the costs of insurance and work cover and without basic entitlements such as superannuation, paid leave and redundancy;
- Parcel delivery employees working under sham contract arrangements, earning \$1 per parcel delivered before costs and without basic entitlements such as superannuation, paid leave and redundancy;
- Women employed by labour hire companies to perform outsourced call centre, clerical and administrative work for banks, telecommunications companies and airlines on lesser terms and conditions;
- Teachers, lecturers and school support staff on sessional, rolling and casual contracts without job security or basic entitlements such as paid leave;
- Social and Community services workers on perpetual rolling short term contracts because of the prevalence of short term funding cycles in the sector; and
- Women working two, sometimes three, casual jobs in retail and hospitality sectors just to make sure they earn enough money to pay the bills from week to week.

¹ ABS 6150.0 Labour Market Summary October 2011

² The Working Australia Census was conducted by the ACTU in 2011 with approximately 40,000 respondents.

3. Women are employed in insecure work are due to a number of inter-connected factors.

To a large extent women are in insecure work because:

- Non –standard hours of work to balance family and caring commitments are mostly available in casual and contract work;
- Female dominated occupations and industries, such as the retail, food, hospitality, social and community services sectors, are amongst the highest employers of casual, part time and contract workers;³
- Women have less bargaining power, are less likely to be unionised or have negotiated a workplace agreement; and
- Women are likely to work in caring services work which is subject to short-term funding cycles.

4. Increased participation of women in the labour force has put pressure on families with caring responsibilities.

A recent comparison of ABS data collected 50 years ago highlights the strides women have made into the Australian labour force. The number of women returning to the workforce after having children has increased dramatically from 34% in 1961 to 59% in 2011. Women now make up around half of the paid labour force and total union membership in Australia. The majority of families (55%) now have both parents in paid work.⁴

In fact, accessing flexible work arrangements to balance work and caring affects both women and men, and was the 2nd highest industrial issue (first was wages) reported by both women and men in the ACTU Working Australia Census 2011. In particular, ‘sandwich generation’ employees, caring for both children and parents, indicated that the single biggest thing that would improve their work life was having the flexibility to balance work and family.⁵

Employees’ have a wide range of caring responsibilities which are much broader than for young children. In 1998, there were about 2.6 million Australians who cared of over one million people with a disability or frailty. The majority of these carers are, or would like to be, employed.⁶

³ For example, two of the top three occupations most likely to work irregular hours were community, personal service workers and retail. ABS, Working Time Arrangements, Trends in Hours Worked; Cat no. 6105.0, July 2010.

⁴ ABS Australian Social Trends 4102.0 December 2011, “Fifty Years of Labour Force: Now and Then”, p. 2.

⁵ Voices from Working Australia, Key Findings from the Working Australia Census 2011, “The Sandwich Generation”.

⁶ Australian Institute of Health and Welfare (AIHW), Research Report No. 16, p.103.

5. Despite the issue being significant to all working parents, it is mostly women who are affected by the need to balance work and caring responsibilities.

Women still perform more than 2/3 of domestic and caring work within families and they are far more likely to take extended leave to care for dependents. And employed women made up 34% of all primary carers.⁷

Consequently, the barriers to continuing permanent employment and balance caring commitments disproportionately disadvantages women.

6. Australia is unique in that the solution to the needs of working parents is almost exclusively limited to part-time and casual work.⁸

The problem is that the part time and casual work available to employees with caring responsibilities is often inferior to the quality, pay and status of the employee's ability and offers limited career development opportunities.

In addition, the part-time hours are most likely to be available in insecure employment arrangements (55% of part-time jobs in Australia are casual jobs). Australia has one of the highest rates of part-time work in the OECD and at the same time offers a very narrow range of alternative options for employees wanting to stay in the jobs they held prior to needing to balance work and family commitments.⁹

Studies show that there is no evidence that employees with caring responsibilities actually choose casual work.¹⁰ Rather, discrimination, lack of access to flexible working arrangements combined with inadequate social support for employees with caring responsibilities, often forces them out of permanent, full time employment into insecure forms of employment, often on lower status, wages and conditions.

7. Employment regulation and workplace practices, have not kept pace with the changes brought about by a greater sharing of caring responsibilities in modern working families.

To stem the flow of skilled, experienced women workers into insecure work, it is critical that the Secure Jobs campaign focus on providing greater options for employees with caring responsibilities to stay in secure employment.

The introduction of Australia's first Paid Parental Leave scheme in 2011 has assisted primary carers to return to their existing job and maintain their career in the short-term. But, there is still no obligation on an employer to make reasonable accommodations for an employee to return from parental leave to their job on a flexible or part-time basis, in order to help them balance their ongoing caring responsibilities. This effectively forces many women to have to choose between returning full-time and placing their baby into fulltime care or leaving their jobs and seek flexible working hours in insecure employment.

⁷ Australian Institute of Health and Welfare (AIHW), The Future Supply of Informal Care 2003-2013, p.32.

⁸ Australia has one of the highest rates of part-time work in the OECD: OECD Employment Outlook 2008

⁹ HREOC Report, "It's About Time", 2007.

¹⁰ A NSW Office for Women's Policy survey found that almost 60% of women worked part in order to care for children. Twenty four percent would have preferred to work more hours: NSW Department of Premier and Cabinet, Office for Women's Policy, Key facts and trends in Part time Work, February 2011.

8. Whilst the government introduced the right for employees with caring responsibilities to request flexible working arrangements under the Fair Work Act, access to the right is restricted to some employees only and there are limited rights to procedural fairness.

The right to request flexible working arrangements is only available to employees with children under school age or with a disability under the age of 16. This effectively discriminates against the significant number of employees who care for school aged children, adult dependents with a disability and elderly parents.

In addition, the right to request flexible working arrangements places no obligation on employers to give proper consideration to a request or to reasonably accommodate the request.

The ACTU has a great deal of anecdotal evidence of women returning from maternity leave who request flexible work arrangements but who are told they can't have their old job back unless they work full time.

Frustratingly, in many instances, line managers show a lack of interest, care or incentive to try to accommodate the employee's request. Often, refusals simply are not justified as the job could easily be done part time and sometimes the mother has even found someone who was willing to job share with them. But employers are under no obligation to show that they have properly considered or tried to make reasonable adjustments to accommodate the employee's request, forcing mothers to choose between leaving their new baby in care every day or leaving their job and their career.

The ACTU hears an alarming number of these stories, such as for example, the recent case of a local government employee who returned from parental leave and sought to return to her job on a part-time basis, as she had done following her first period of parental leave. However, during her leave, a new manager had been appointed who refused to allow her to do so. It took six months of protracted, stressful negotiations, until a settlement was finally reached with the assistance of her union. However, the member went through a terribly stressful period where the difficult process of returning to work with a young baby and a toddler was made harder through the consistent refusal of the employer to accommodate her new caring responsibilities in any way.

The lack of obligation to properly consider a request also affects men with family and caring responsibilities. Many report a cultural bias against men seeking flexible work arrangements to care for a dependent. For example, a father of four young children working in a government department told us that he applied for purchased leave in order to help provide after school care for two children and all day care for a toddler and a baby in July 2009. He has applied four times since and each time he is met with resistance from his manager with responses such as "I can tell you now this application won't be approved" and "I'm not letting you in before anyone else."

Such experiences are commonly reported by men and serve as a deterrent for others who would like to request flexible work and carer's leave, undermining the cultural shift in modern families towards greater sharing of caring roles.

The *Fair Work Act* stipulates that employees have no right to appeal an employer's unreasonable refusal of a request, unless the parties have agreed to allow such appeals in their workplace agreement. This is highly ironic as it is women who are likely to need the

right to request flexible working arrangements and yet because of their weak bargaining power, are mostly likely to be locked out of workplace bargaining and have no right to appeal an unreasonable refusal.

Recently published data from Fair Work Australia indicated that for the October-December 2011 quarter, only 10 appeals against employer's refusals have been heard by the Tribunal.¹¹ This is not surprising given employers are not legally obliged to seriously consider the request and in any event most employees do not have the right to take an appeal of an unreasonable refusal to Fair Work Australia.

The provision *appears* to provide right to help balance work and family, but in reality employees are disappointed and frustrated at the lack of genuine rights it gives them in the face of a prevalent workplace culture which rewards working long hours and disadvantages those who cannot.

Almost one quarter of respondents to the CPSU What Women Want Survey 2010 said taking time out for family and personal matters was frowned on in their workplace. One third said that unless you put work before family or personal matters you don't get noticed by management, with forty-five percent believing that taking time out for family reasons will disadvantage an employee's career prospects.¹²

Fifteen percent said the ability to work long hours to demonstrate commitment was very important or important in their job and over one third believed that employees who 'get ahead' work long hours on a regular basis (e.g. 50 hours).

9. Employees must have better access to a range of carer's leave arrangements to assist them to maintain their job and meet sporadic caring commitments.

Improving employees' access to carer's leave and arrangements would also help employees manage sporadic periods where caring responsibilities escalate. For example, additional (dedicated) carer's leave to assist with illness, injury, emergencies or the need to support or assist a dependent would alleviate the pressure on carer's accrued paid leave entitlements.

Forms of paid and unpaid leave to assist with school holidays or palliative care would assist employees manage those peak times of responsibility. There are many stories of employees with caring responsibilities simply giving up because without rights to support their employment and caring roles, it's simply 'too hard'.

For example, one mother told of how her six year old son was diagnosed with a terminal illness. Her employer denied her request for access to flexible work arrangements or a period of leave so that she could spend more time with her son. She resigned. Many carers' also then explain how, having been forced into resigning from a job, they find it very difficult to return to the workforce, having lost valuable skills, contacts and confidence.

¹¹ Fair Work Australia, Quarterly report to the Minister, October-December 2011.

¹² CPSU What Women Want survey, 2010

10. Even for those who are able to access flexible work and leave arrangements to accommodate their caring responsibilities, many still face discrimination at the workplace and are pushed out of quality jobs into less secure, lower status work.

Recently, Jennifer Davidson, a former media agency manager, sued her employer of discrimination against her following her pregnancy. After returning to work part-time after the birth of her baby, she was made redundant. Evidence revealed the employer's desire to 'weed out' part-time staff, with one email by the Chairman, stating, "I don't know what has happened in the past but the way we are going to operate in the future is that we are only having full-time employees on the payroll".¹³

Elly Sugiato, a former finance manager with the Commonwealth Bank, was similarly 'restructured' out of the organisation. She sued her employer for discrimination after returning to work from maternity leave and being told she was no longer required. "What made me very angry was they told me to stay at home from now on." Her lawyers said hers was the fifth such case they had handled against the Bank in as many years.

Jennifer and Elly's cases were successful because they were able to find the 'smoking gun' evidence to prove the discriminatory intentions behind their employer's actions. On the whole though, it is incredibly difficult for employees to prove that the reasons they are denied requests for part time or flexible work arrangements are discriminatory and not based on legitimate operational reasons.

It is for this reason that the ACTU supports adopting a reverse onus of proof model (as in the *Fair Work Act*) in federal discrimination law, which would be less onerous on victims to prove discrimination in cases where it is made to appear as an operational reason.¹⁴

For example, in a recent case a former director of a childcare centre sued her employer for a breach of the *Fair Work Act* protections against adverse action on the grounds of her pregnancy. When she returned from parental leave, she was told that her employment was no longer as a fulltime, permanent Director of the centre but as 'staff relief float' on a casual basis and would not be entitled to paid leave or holidays. When she refused to accept the demotion, her employer terminated her employment on the grounds of 'poor performance'. Her case was able to succeed because the reverse onus of proof provisions of the Fair Work Act meant the employer could not simply 'hide' the discrimination behind the façade of performance issues.¹⁵

Without genuine rights to flexible work arrangements to accommodate caring responsibilities, and effective protection against discrimination, most primary carers will continue to either resign and leave to work somewhere where flexible hours are not only available but are culturally accepted by management, or they are moved to a 'comparable' position within the organisation, but usually in an area with lower status and fewer career prospects.

¹³ "Discrimination case is Settled Out of Court", Sydney Morning Herald, 27 October 2011, p.3

¹⁴ For example, the reverse onus of proof model (as in the FWA) requires applicants to establish a prima facie case of discrimination after which the defendant must prove their actions were not discriminatory.

¹⁵ *Ucchino v Acorp Pty Ltd [2012] FMCA (27 January 2012)*

11. In many female dominated industries, insecure work is the predominant type of work on offer.

The short-term, competitive government funding models prevalent in the female dominated Social and Community sector leaves many women in perpetual job insecurity.

SACs workers who attended the ACTU Women's Forum on Insecure Work talked of working in the sector for decades and still not being eligible for housing loans or able to make major commitments because they never know if their agency or program will be funded from one year to the next. They talked of an exodus of young people from the sector because they simply weren't prepared to put up with the job insecurity and the low wages.

Particularly for women in rural, remote environment or indigenous communities the availability of employment with part time or flexible hours of work may be severely limited.

One woman at the ACTU Women's Forum shared the story of working as a sham independent contractor for Australia Post. The women perform parcel delivery services in an outer suburb of Melbourne where there are few job opportunities or out of school hours care services.

The self-managed time schedule allows them to drop off and pick up her children from school each day. They start early in the morning and finish late in the evening, taking breaks to take their children to and from school. They earn \$1 per parcel delivered and are required to provide and pay for all their car, petrol and insurance and are not paid any superannuation or paid leave by their employer. After costs, they make very little money and are not accruing any retirement savings, long service leave and have no job security.

Women workers generally enjoy less bargaining power, are less likely to be unionised or have workplace agreements and are more likely to be dependent on minimum award terms and conditions. Women with caring responsibilities have further restricted bargaining power because they are limited by the working arrangements that they can work, particularly in areas where childcare services are inaccessible or unaffordable. They are more likely to trade off terms and conditions simply to access family friendly working hours.

It is no coincidence that female dominated industries and occupations are amongst the most highly casualised.

12. Women are already more likely to be employed on minimum wages – those working in insecure employment suffer a double whammy of low wages.

Almost one in five women employees' working arrangements are regulated solely by awards. Women working insecure workers are even more likely to rely on the award safety net, with over one quarter of part-time women employees' wages and conditions regulated solely by awards.¹⁶

Unsurprisingly, casual and part time employees earn, on average, less than permanent employees. A full time casual worker, for example, earns on average \$215 less each week than a full time permanent worker.¹⁷

¹⁶ ABS Cat no. 6306.0 May 2010, p.11.

¹⁷ ABS, Employee Earnings, Benefits and Trade Union Membership, Cat. 6310.0, 2010

For example, the aged care sector employs some of the lowest paid workers in the country and is one of the highest employers of part-time, casual and contract workers – with the mostly (90%) women in the industry earning about half the average national wage.¹⁸

13. A significant number of these women are the primary income earners for their families

However, for many women, stereotyped notions of women's work as supplementary to male bread winner's earnings continues to exist. A member of Business and Professional Women (BPW) told the ACTU Women's Committee that, when she queried why her male colleague had received a bonus and she hadn't, she was told that it was because he had just had a baby and his family would need the extra income.

The Working Australia Census revealed that two thirds of women employed in insecure work were the primary income earners for their household. Typically over 35, half had dependent children, a quarter were divorced and their typical household income was less than \$60,000. Over one third were home renters and reported their main expenditure areas as the basic necessities of mortgage / rent, utility costs, food and groceries.

The unpredictability of hours and low wages has a significant effect on women and their families. One in five women responding to the ACTU census reported having to seek help from a charity or welfare agency, or borrow money from a pawn shop or a similar lender.¹⁹

The report found that many can't afford to take a day off even when they are sick or someone they care for was sick because of the loss of pay (70.9%), or they were worried they would not be offered another shift (59.6%).²⁰

14. Insecure employment attracts inferior employment rights and benefits.

Casual employees do not get basic employment entitlements such as paid sick, carers and annual leave. Compared to employees generally, labour hire workers were more likely to be without paid leave or sick leave entitlements (79% compared with 23%).²¹

Many rights are contingent on employees having at least 12 months service with an employer. However, a significant proportion of women are in their current job for less than 12 months, and therefore are excluded from a range of workplace rights, including, for example unpaid parental leave.²²

Further, although occupational health and safety legislation covers all workers, those working irregular hours often find it difficult to access information about workplace safety and are less visible to employers charged with ensuring a safe workplace.

Over time, the effects of inferior wages and conditions accumulates, and many older women workers do not accrue long term benefits such as long service, access to benefits

¹⁸ 'Poorly Paid Aged Care Workers Demand \$8 per hour Wage Rise, The daily Telegraph, 8 February 2012, p. 16

¹⁹ ACTU, Secure Jobs, Insecure work, anxious lives: the growing crisis of insecure work in Australia, 2011.p.17

²⁰ ACTU, Secure Jobs, Insecure work, anxious lives: the growing crisis of insecure work in Australia, 2011.p.17

²¹ ABS, Working Time Arrangements, Labour Hire Workers, Cat no. 6105.0, July 2010.

²² This was recognised in the Government's Paid Parental Scheme in which employees are eligible for payment if they have worked for a period of time across any number of employers.

related to seniority such as tenure and sabbaticals as well as inadequate superannuation savings.

In addition, they are less likely to have rights which protect their financial security such as redundancy entitlements- instead most likely are the “first cabs off the rank” to go when there are job losses as a result of company restructuring or downsizing.

15. Insecure work stunts career progression and provides fewer training and skills development opportunities.

Part time and casual work offers fewer opportunities for career advancement or skills development.²³ Almost two thirds of the women respondents to the ACTU Census working insecure jobs were dissatisfied with their opportunities for advancement, just under half were dissatisfied with the amount of say they have in their workplace and with the amount of job training or career development they receive.²⁴

Similarly, the Community and Public Sector Union (CPSU) “What Women Want” Survey 2010 found that part time employees face much more difficulty accessing (both in terms of time and approval) training to advance their career.²⁵

The CPSU survey also found that mothers returning to work from parental leave on part-time or casual employment arrangements reported being placed on the ‘mummy track’ and not being taken seriously until they have returned to full-time work.

16. Financial security

Workers in insecure employment experience short term financial insecurity due to unpredictable, fluctuating pay, lack of security or uncertainty over the length of the job. ABS data suggests that, of the employees who did not usually work the same number of hours per week, less than 15% were guaranteed minimum hours.²⁶

This lack of long term financial security results in employee’s inability to secure mortgages or access credit for major life commitments such as getting married, buying a house or having children.

This financial insecurity is compounded by the shift of employment related risks from employer to employee, for example in the payment of insurance, savings to cover for pregnancy, sickness and other emergencies that permanent employees would receive paid leave for, superannuation and the like.²⁷ The shifting of government services to an increased reliance on personal contributions for example to the costs of housing, health insurance, childcare, school fees and retirement savings for example add financial pressure on families.

Consequently, Australian households are experiencing rising costs of living and record levels of household debt. The impact of this is greatest amongst low income families and has

²³ Buchanan, J., Paradoxes of Significance: Australian Casualisation and Labour Productivity, ACCIRT Working Paper 93, Sydney, 2004

²⁴ ACTU, Secure Jobs, Insecure work, anxious lives: the growing crisis of insecure work in Australia, 2011, p.18.

²⁵ Community and Public Sector Union (CPSU) “What Women Want” Survey, 2010

²⁶ ABS, Working Time Arrangements, Cat no. 6105.0, July 2010.

²⁷ M Rafferty and S Yu, Shifting Risk: Work and Working Life in Australia, A Report for the ACTU, Workplace research centre, University of Sydney, September 2010.

created a sub-class of working poor, and women with little job and financial security, in particular, single mothers, feature amongst this group.

Many have negative experiences combining irregular work and the welfare system. 'Self-reporting' and predicting future incomes in a complex welfare payment system is difficult when their hours of work are unpredictable. Some have faced prosecution and penalties as a result of not being able to accurately estimate their fluctuating income.

Others report the impact of effective marginal tax rates, costs of childcare and disproportionate reductions of welfare payments as disincentives to entering and remaining in the workforce.

17. Retirement income adequacy

Employers are not required to pay superannuation contributions to employees who earn less than the superannuation guarantee threshold of \$450.00 in a calendar month. The Working Australia Census highlighted the significant proportion of employees, particularly women with caring responsibilities, who work multiple part-time or casual jobs to make ends meet. Many of these women would not meet the superannuation guarantee threshold for each individual employer and would therefore not be accruing employer contributions to their retirement savings.

The ACTU recognises the remedial measures recently adopted by the Government to boost the retirement savings of women, such as the co-contribution scheme and provisions to encourage women over the age of 50 to increase their retirement savings.

However, to address the inadequacy of women's retirement savings, the underlying, systemic causes of the gender gap in superannuation must be addressed. This requires addressing the policies which restrict savings such as the superannuation guarantee policy and the bias in tax savings to high income earners. Employment law and policies aimed at encouraging and supporting women with caring responsibilities to maintain ongoing participation in quality, permanent jobs such as paid parental leave, rights to flexible work and leave arrangements will minimise career breaks and insecure, irregular employment. Payment of superannuation on periods of parental leave and fostering career and earnings progression will be reflected in better stocked superannuation accounts.

18. Insecure work is one of the drivers of the gender pay gap

Insecure work contributes to the gender wage gap because it:

- pays low wages;
- forgoes benefits such as paid leave;
- does not provide for long-term accrual of entitlements;
- stunts career progression and skills advancement;
- places employees in vulnerable negotiating positions;
- is often subject to discriminatory practices; and
- restricts employee's capacity to save for retirement.

Restricting the full participation of skilled and experienced women has a negative impact on the strength of the Australian labour market and the economy. Policies and practices which aim to encourage and support the full participation of women workers deliver skills

retention benefits to employees, employers, the government, economy and the Australian community.

19. Quality of life and social inclusion

Insecure work and irregular hours severely restrict employees' ability to plan for major family and social events such as holidays and weddings. Needing to work as many hours as possible, or working fragmented on non-social hours to compensate for job insecurity and uncertainty, compounds the effect on worker's capacity to plan and commit.

Ironically, the reason many women are in insecure employment is to access non-standard hours of work which enable them to meet their family and caring commitments. However, the irregular and unpredictable hours, particularly those working multiple jobs, makes it difficult for them to plan for child care needs or commit to attend children's extracurricular activities.

Unpredictable earnings and inability to balance work and caring responsibilities place significant strain and pressure on family relationships and can create more stressful home environments. Studies show a direct impact of poor quality, insecure work and poor work-life balance on worker's stress and health.²⁸ Workers' capacity to enjoy hobbies or engage in community activities outside of work or family commitments is also hindered by insecure and unpredictable hours of work.

For example, Chris Eleanor, a full time lecturer and tutor at University of western Sydney is on an hourly contract that's renewed each semester. That means no pay during semester breaks and no sick leave or other paid leave. "One of the major sources of stress is a feeling of lack of control over your life. This is what happens with casuals: someone else is determining your future and where you are going. It makes it very difficult to organise your family life, social life and, in my case, my musical life."²⁹

20. Family and domestic violence

Women who have experienced family violence³⁰ are more likely to have disrupted work patterns, receive lower incomes and consequently are often in casual and part-time employment.

One of the key targets of perpetrators is to remove the victim's independence, including the economic security of having a permanent job. Ninety-five percent of victims whose partners stalk them also harass them in their workplace.³¹ About half of the respondents to the "*Safe at Home Safe at Work National Domestic Violence and the Workplace Survey*" (2011) reported that family violence had affected their capacity to get to work, through for example, physical injury or restraint, hiding keys and failing to care for children. Women reported that family violence negatively affected their performance at work, including

²⁸ B Pocock, N Skinner and P Williams, *Work, Life and Time: The Australian Work and Life Index (AWALI) 2007*, Centre for Work + Life, University of South Australia, 2007.

²⁹ From an interview with The 7.30 Report, 25 October 2011 "*Casualising the Workforce*". www.abc.net.au/7.30/content2011/s3347953.htm

³⁰ The incidence of domestic violence in Australia is quite high, with over one third of Australian women reporting having experienced some sort of physical or sexual violence or controlling behaviour: ABS, *Personal Safety Survey 2005*, ABS 2006, p.11 and Mouzos & Makkai 2004, p.48

³¹ Logan et al 2007

absenteeism, being late, being unwell, distracted or stressed and having to take time off work- all of which jeopardised their ability to maintain their employment.³²

The ACTU supports the Australian Law Reform Commission (ALRC) *Report into Family Violence and Commonwealth Laws*, including in particular, the recommendation for inserting a paid domestic violence leave provision in the *Fair Work Act* to assist women to remain in secure employment despite their experiences of family violence.³³ Unions will also continue to seek improvements such as paid domestic violence leave in workplace agreements where possible.

21. The Government has an opportunity to show leadership and generate cultural change through legislation, programs and supportive infrastructure.

In striving for equal opportunity for all Australians to meaningful and rewarding employment and to achieve equality for workers in insecure employment arrangements, improvements are needed to:

- (1) Provide sufficient flexibility in permanent working arrangements for employees with caring responsibilities so that they are not forced into insecure work;
- (2) Improve the rights of those who are working in insecure work so that they are entitled to greater control over working hours, basic entitlements and better job security; and
- (3) Promote and encourage more equal sharing of caring roles in modern families, through workplace regulation and programmes.

22. These improvements can be achieved through:

(1) Amendments to employment legislation and improvements to the safety net by:

- Extending the right to request flexible work arrangements to include all employees who care for or support, or expect to care for or support, a person who reasonably relies on them for care or support;
- Requiring employers to properly consider and reasonably accommodate employees' requests for flexible work arrangements to meet family and caring responsibilities;
- Ensuring all employees have a right to appeal an employer's unreasonable refusal to Fair Work Australia;
- Extending the amount of (dedicated) carer's leave available to employees;
- Extending the scope of carer's leave to include providing support for a dependent not just in circumstances of illness or emergency;
- Inclusion of insecure workers in the safety net system, (for example extending the definition of 'employee') to provide equal entitlements to basic rights including some forms of paid leave, superannuation and insurance;

³² Domestic Violence Workplace Rights and Entitlements Project, "Safe at Home Safe at Work National Domestic Violence and the Workplace Survey" (2011) Report, pp.8-10

³³ ALRC Report into Family Violence and Commonwealth Laws. Found at:

<http://www.alrc.gov.au/publications/family-violence-and-commonwealth-laws-improving-legal-frameworks-alrc-report-117>

- Improve the rights for insecure workers to elect to convert to permanent employment status, including the proposed 'secure employment orders'; and
- Legislate for host employer's workplace agreements to apply to all workers in connection with that employer, including labour hire, agency, temporary, casual and contract employees where the host agreement is superior.

It is important to note that, particularly in the case of vulnerable workers such as those on insecure employment arrangements, relying on improvements through workplace bargaining is insufficient. Firstly, women are less likely to access workplace bargaining. They are also less likely to do well out of it. It is important therefore that improvements are made via the safety net to ensure access to the workers who most need the improvements.

Conversely, women are also more vulnerable to being disadvantaged in the negotiation of individual arrangements, particularly those with caring commitments who are limited by the days and shifts they can work. Data provided to the Senate Estimates Committee by the Office of the Employment Advocate in May 2006 confirmed that 100% of individual workplace agreements removed at least one protected award condition and that the effect was the greatest on part-time women.³⁴ The ACTU opposes the use of individual flexibility arrangements as a mechanism to assist employees with caring responsibilities.

(2) Improved protection against discrimination and enforcement of rights through:

- Amending federal and state anti-discrimination legislation to a new reverse onus of proof model as has been adopted in the Fair Work Act;
- Extending the powers of the Australian Human Rights Commission (and other public interest organisations where appropriate) to advocate and initiate cases of discrimination and investigate and make recommendations to eliminate systemic discrimination in workplaces; and
- Maintain protections and support for employees with respect to individual flexibility agreements which have been proven to disadvantage women workers and employees with family responsibilities in particular.

(3) Programs to support equal employment opportunity and best practice which:

- Encourage and support work practices aimed at ensuring workplace diversity and equal opportunity; and
- Implement a stringent reporting, monitoring and enforcement framework aimed at preventing discrimination.

(4) Revision of Government funding models to the community services sector to:

- Eliminate short-term funding cycles with a view to improving workers' job security, the sector's capacity to attract and retain qualified and skilled staff and the quality of services provided to the community.

³⁴ In 2006-7, women on AWAs earned an average of \$87 less per week than their counterparts on collective workplace agreements, with part-time women earning up to \$140.00 less. One Year On: The Impact of the New IR Laws on Australian Working Families, ACTU Publication, March 2007.

(5) Improved community based support for carers which:

- Provides accessible, affordable, quality child and out of school hours care, including facilities and support programs for dependents with a disability and the frail and elderly living in the community.

The members of the ACTU Women's Committee wish to thank the Panel for the opportunity to make the above comments and is happy to arrange for representatives (and witnesses where possible) to appear at Inquiry hearings to discuss this submission further should the Panel wish.