Independent Inquiry into Insecure Work in Australia

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1. I apologise for the cursory nature of this submission, given the gravity of the topic. I am currently on leave from the University.
2. This brief submission comments on developments in international labour law which may influence regulatory approaches in Australia.
3. The ILO Convention on Domestic Work: in 2010, the International Labour Organisation created a Convention on Domestic Work. This fact alone is significant for the Inquiry, because it marks a tangible extension of regulatory effort to a previously neglected, extremely vulnerable form of labour performed by millions of workers throughout the world.
4. Indeed, domestic work may be seen as quintessentially insecure. Workers often cross national borders to undertake care work and other domestic labour in the homes of other families, so that questions of statehood and access to national protective regimes are often raised from the outset. The work is inherently precarious, because it is performed away from public scrutiny in the home: workers are essentially subject to the unalloyed direction of their employing families. The work is often undervalued, and abuses of standard employment practices are common. The power relation between employing family group and their domestic staff may be complicated by the interpersonal character of the work, especially between domestic workers and those they care for. Normal employment rights, such as the right to time off work and time away from the work place, are likely to be severely compromised (see McCann and Murray, ILO, 2010), and regulatory oversight of any employment rights is difficult because of the domestic setting.
5. The new Convention represents an importance advance because is firmly places this insecure, precarious yet common form of labour in the context of validly regulated work. Such work takes its place amongst the more common forms of standard work in factories, hospitals, farms and schools etc. Australia can learn from this bold step by rejecting traditional marginalisation of certain kinds of work from the mainstream labour law protections. This learning applies not just to domestic work but to other forms of 'invisible' labour such as sex work, volunteer labour (see Murray in Arup et al), 'work experience' and the many forms of marginal 'small' insecure jobs embedded in many industries. Each form of insecure work needs to examined and made visible to regulation – grand categories set at the national level are likely to miss the real character of exploitation which may be evident at the micro-level.
6. The Convention's terms suggest a number of areas for regulatory reform in Australia. First, the Convention recognises that the contractual status of insecure workers needs to formalised and understood by the worker. This is the key to fair dealing and regulatory oversight.

7. Secondly, contractual terms must adhere to the principles of decent work, and ensure that insecure workers receive commensurate rights with other workers. This 'mirroring' principle is of limited value where the standard to which insecure workers are matched is itself falling, as UK academic Sandra Fredman noted some years ago. The existence in Australia of the National Employment Standards and the modern award framework, however, gives at least a minimal set of entitlements which could be accessed by currently excluded groups. These minimal Australian standards are far from perfect, as most people agree (albeit for differing reasons), and active consideration should be given to their reform to enhance work/life principles and support improved productive workplaces. In any event, I suggest that particular attention should be paid to any laws which exclude groups of workers from these mainstream protections, as I understand is the case with some migrant labour schemes. Law-created exceptionalism is often the mechanism creating insecure work, and as such should be subject to the highest public and Parliamentary scrutiny. Transparency of operation of such schemes and regular public reviews considering the costs and benefits of continuing exclusion are vital.
8. Third, the Convention adopts a broad regulatory scope which extends beyond the traditional 'bread and butter' concerns of old-fashioned labour law such as pay and working time. It engages with the lived experience of domestic workers, and, for example, contains a provision addressing questions of violence and abuse. Not all insecure workers are likely to be vulnerable to physical attack, but any Australian legislation or policy on insecure work should be similarly grounded in a detailed understanding of the dynamics of exploitation as they exist and evole in particular sectors. For example, in other forms of insecure work such as temporary work, security of a living wage and interface with the social security system might be of paramount concern. Creative efforts to document then deal with these particularised issues will be needed.
9. Finally, and as part of this broad, creative approach, the Convention is couched in the language of human rights. The interaction between general human rights standards and insecure work is likely to be complex and dependent upon the particular economic and social context of the individual forms of insecure work. However, from the regulatory perspective, all that is necessary is a global law that ensures that all workers have sufficient protection against human rights abuses at work. This means ensuring that Australia's Federal and State anti-discrimination schemes cover all workers and that the most vulnerable workers (those without adequate incomes, lacking education and/or economic means to access rights enforcement) are provided with adequate assistance within these institutions. But there are gaps in the legal protection of many human rights standards including the fundamental civil liberties likely to be at risk in exploitative workplaces. Given that Australia's human rights culture is relatively weakly developed, and that it is not protected by comprehensive Constitutional or legislative codes, such a general law in the labour field is likely to be

contentious. I suggest that further research by human rights experts into the realities of insecure work would be a useful first step.

10. I am not an expert in the empirical facts of insecure work in Australia, but it seems that at least some forms of insecure work are difficult to organise and these workers may not have the benefit of this important form of self-expression, civic engagement, empowerment and protection. Australia has various binding international obligations to ensure freedom of association and the right to collectively bargain of all workers. Again, creative, forceful and well-resourced actions should be taken by the Australian government to guarantee the collective rights of insecure workers.
11. I also draw the Committee's attention to the ILO Recommendation on Secure Employment. This document was the product of rather fraught negotiations at the international level. It was extremely difficult to reach consensus given the differing national definitions of non-standard work, and to some extent these problems are reflected in the vague terms of the Recommendation and the fact that no protections for insecure work per se are currently embodied in an ILO Convention. Having said this, the Recommendation may assist in providing some framing language for the Inquiry's deliberations. Many other ILO Conventions (for example, on part-time work and employment security) are potentially relevant and much more helpful to the Inquiry, but I am not able to discuss these here. I am happy to meet with the Committee to provide any further information it may require on these standards once I return to work if my other work commitments permit me to do so.