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Committee Secretary
House of Representatives Standing Committee
on Education and Employment
Parliament House
CANBERRA ACT 2600

Thank you for the opportunity to make a submission to the House of Representatives Standing Committee on Education and Employment Inquiry into insecure work.

I support measures to guard against the improper use of insecure working arrangements. The Australian Public Service (APS) has long had safeguards in place to ensure that non-ongoing and casual work is only used for defined periods where it is clearly the most appropriate way to fill a vacancy.

On this basis, I am concerned that the provisions of the Fair Work Amendment (Tackling Job Insecurity) Bill (the Bill) would be onerous and unnecessary for the APS and that the proposal, whereby an agency could be compelled to offer ongoing employment to an individual, would interfere with a cornerstone of APS employment; that all employment decisions are based on merit.

Non-ongoing employment in the APS

The APS is one of Australia's largest employers. Statistical data gathered in the annual *State of the Service Report* (www.apsc.gov.au/publications-and-media/current-publications/state-of-the-service/new-sosr) showed that at 30 June 2012 there were 168,580 APS employees, of which 154,307, or 91.5%, had ongoing (permanent) status. The remaining 14,273 employees, or 8.5% of the total APS workforce, were engaged on a non-ongoing (temporary) basis, including approximately 5,460 on irregular or intermittent (casual) contracts.

The proportion of APS employees engaged on non-ongoing contracts has remained relatively stable over the past decade, although the figure of 8.5% as at 30 June 2012 is slightly higher than the ten-year average of 7.7%.

The APS has a robust employment framework enshrined in the *Public Service Act 1999* (the Act). The Act makes it clear that the usual basis for engagement in the APS is as an ongoing employee, but provides a means to engage employees on a temporary basis where it is more appropriate to do so.

The Public Service Regulations provide that a person can be engaged as a non-ongoing employee:

- for the duration of a specified task, if the agency can reasonably estimate the duration of the task at the time of engagement,
- to enable the agency to meet a temporary increase in the workload of the agency, or of a component of the agency, that the agency head does not expect to continue,
- if the agency has a temporary demand for employees with particular skills (provided ongoing APS employees in the agency with the skills required to undertake duties in relation to the task have been given the opportunity to express interest in, and be considered for, performance of the duties), or
- to replace an ongoing APS employee who is on leave or temporarily assigned to other duties.

With the exception of engagement for a specified task, the period of engagement on a non-ongoing contract cannot exceed three years.

The amendments to the Act passed by the Senate on 7 February 2013 do not make any significant changes to non-ongoing employment in the APS, although proposed changes to the Public Service Regulations will give the Public Service Commissioner the power to authorise an extension of a non-ongoing contract to four years in exceptional circumstances.

Operational guidelines published by the Australian Public Service Commission draw to the attention of APS agencies that ongoing employment is the usual basis of engagement. A copy of the guidelines can be found at www.apsc.gov.au/aps-employment-policy-and-advice/recruitment-and-selection/recruitment-and-selection-in-the-aps.

The proposed Bill

The Bill gives the Fair Work Commissioner the power to issue a 'secure employment order' that would require an employer to provide ongoing employment to an employee, on application. The Bill and accompanying Explanatory Memorandum set out the matters that the Fair Work Commissioner must consider before making an order, including:

- an employer's capacity to make use of insecure employment arrangements where it is genuinely appropriate to do so, and
- the size of the employer (and presumably the capacity of the employer to absorb employees if business requirements change).

While it would clearly be at the discretion of the Fair Work Commissioner to decide on the facts of each case as it comes to hand, it is my view that APS legislation, policy and guidelines governing non-ongoing employment in the APS provide sufficient assurance against the inappropriate use of this form of labour.

Impact on the APS merit process

The Act requires all employment decisions to be based on the principle of merit, and for all eligible members of the community to be given reasonable opportunity to apply. A competitive

merit selection process must be held to fill all vacancies with the exception of those that involve the movement of an existing APS employee at level.

Ongoing positions, or those that are likely to be available for more than 12 months, must be advertised in the APS Employment Gazette and therefore visible to the Australian community at large. There are less stringent requirements for filling vacancies that are expected to be for 12 months or less which can be filled from temporary employment registers held by agencies or through referrals from recruitment agencies.

The proposed powers given to the Fair Work Commissioner under the Bill would compromise the APS merit principle if the Commissioner makes an order giving an employee ongoing status without the requirement for a full merit selection process.

Leave entitlements

I note that the *Lives on Hold* report identifies the lack of access to leave entitlements for workers in insecure work as an issue of concern. On this matter, APS employees on non-ongoing contracts accrue annual leave, personal (sick) leave and long service leave in a way that is similar to those in ongoing employment. Only those employees engaged on contracts for irregular or intermittent duties (casuals), which accounts for 3.2% of the overall APS workforce, do not accrue annual and personal leave. These employees receive a wage loading of at least 20% in lieu. Like both ongoing and non-ongoing employees, casual employees in the APS accrue long service leave.

Yours sincerely

Penny Weir
Acting Public Service Commissioner

3 April 2013