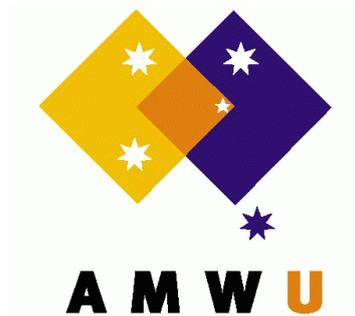


AUSTRALIAN MANUFACTURING WORKERS' UNION



**Submission to the Independent Inquiry into Insecure Work in Australia
January 2012**

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1 INTRODUCTION

- 1.1 The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” is known as the Australian Manufacturing Workers’ Union (AMWU). The AMWU represents over 110,000 members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations in engineering and across diverse industries including food technology and construction. The AMWU has members at all skills/ classification from entry level to degree.
- 1.2 Our submission traverses broad data relating to insecure forms of employment however predominantly relies on feedback from members¹ identifying their experiences as casual workers/workers in insecure employment. The AMWU conducted a survey of casual members through mid November-12 December, 2011. The survey form is attached and marked “1”.
- 1.3 The experiences of employees, union and non-union members, in insecure jobs are further highlighted in the report generated by the AMWU’s Help Desk. The Help Desk provided a report regarding callers who rang regarding issues relating to their casual and other non-permanent forms of employment.
- 1.4 The evidence highlights the gap between legislative and awards rights for casual employees and their ability to access those rights. The fact of being “casual” and having limited job security is the fact driving the access “catch 22” gap. There is little point in having an entitlement if it cannot be accessed. The transition from casual to permanent work through prescribed circumstances is a significant tool in assisting precariously employed workers improve their work, their work life balance and their safety at work.
- 1.5 The following submission will:
- Identify the nature of the manufacturing industry and the extent of insecure work within manufacturing industries; (section 2)

¹ The Union delivered a Survey to capture member’s experiences of working in insecure jobs. The survey is attached and marked “A”.

- Review the decision and reasoning of the Full bench in the casual conversion case and the Union’s CASE STUDY experiences of the operation of the clause ; (section 3)
- Explore findings from the AMWU’s survey data and Help Desk call’s report; (section 4)
- Identify particular occupational health and safety issues linked with insecure forms of work; (section 5) and
- Provide recommendations (section 6)

2 THE AUSTRALIAN MANUFACTURING INDUSTRY AND INCIDENCE OF CASUAL FORMS OF EMPLOYMENT

THE INDUSTRY

The manufacturing industry is the fourth-largest sector in the Australian economy, employing 8.3% of the total workforce (at August 2011). The major sectors contributing to employment within manufacturing are food product manufacturing (22.1%), machinery and equipment manufacturing (12.3%) and metal product manufacturing (10.7%).² A decade ago, manufacturing was the largest employing sector, accounting for 11.4% of total employment. This decline – driven by the structural shift in the Australian labour market – has been reflected in ten of the fifteen sectors within manufacturing, led by fabricated metal product manufacturing (down 31.8%) and textile, leather, clothing and footwear manufacturing (down 25.2%). However, some sectors have recorded employment gains over the last decade, notably food product manufacturing (up 6.7%) and metal product manufacturing (up 11.1%).³ Both sectors are with the AMWU’s coverage.

Activity in the sector as a whole is primarily concentrated within large businesses (those employing over 200 people), which in 2010-11 employed 39% of the workforce and contributed 51% of the value added by the entire industry.⁴ However, this is not reflected in many of the low-income areas of the sector. Notably, the contribution of large businesses is less significant in the fabricated metal, wood product and polymer and rubber product subdivisions.⁵

THE WORKFORCE

2.1 A range of ABS workforce data⁶ is contained at Attachment 2. The data identifies that in 2010:

- * 75% of the manufacturing workforce is male, 25% female;
- * 61.1% of the casual manufacturing workforce is male and 38.9% female;

² Labour Force Survey (trend data) ABS cat. no. 6291.0.55.003

³ *Ibid.*

⁴ Australian Industry, 2009-10, ABS Cat. No. 8155.0

⁵ Australian Fair Pay Commission, *Manufacturing Industry Profile*, Research Report 6/09, p20-21.

⁶ Australian labour market Statistics, ABS Cat no.6105.0; Employee Earnings and Hours May 2010, ABS Cat no. 6306

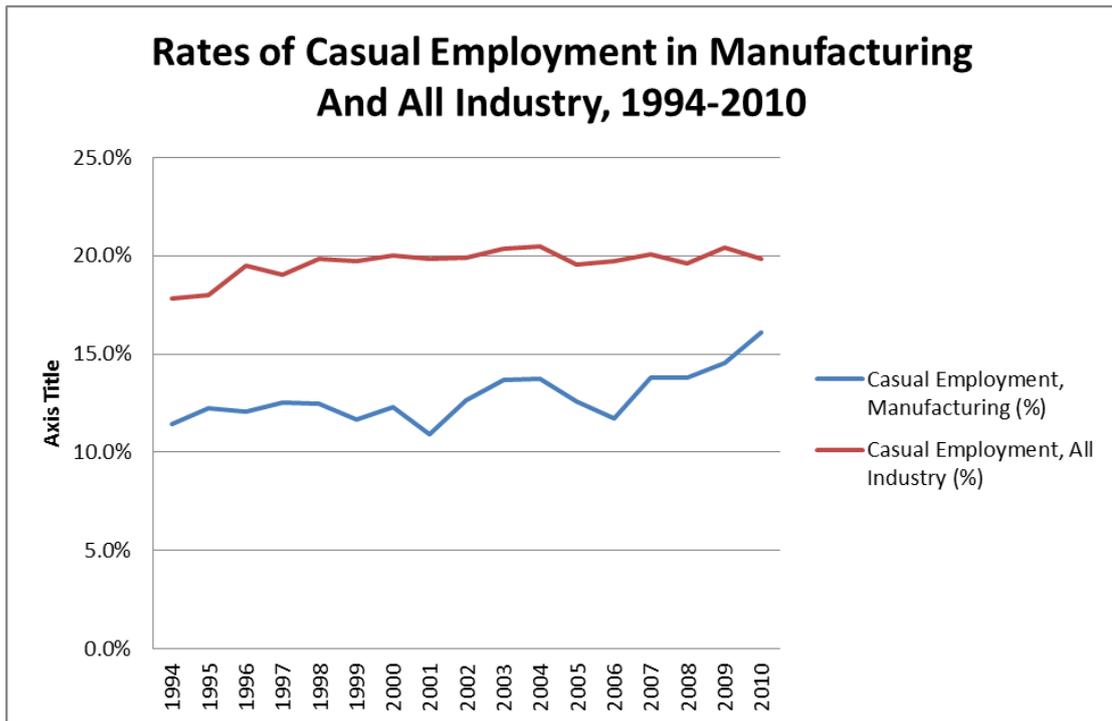
- * 14.6% of manufacturing employees relied on the award only to set their pay, 26.4% had a collective agreement, 55.8% had individual pay setting arrangements and 3.2% were the owner/manager of an incorporated enterprise.
- * literacy and numeracy skills are below all worker levels. The ABS in 2006⁷ (refer attachment 2) identified Level 3 as the "minimum required for individuals to meet the complex demands of everyday life and work in the emerging knowledge-based economy". Within manufacturing 51.2% of employees are below the level 3 literacy score, 45.5% were below level 3 for document literacy, 52.3% were below level 3 numeracy levels and 74.1 fell below level 3 on the problem solving score.

2.2 The Australian Labour Market Statistics (cat no. 6105.0) prepared by the ABS provide a guide to the rate of casual employment in Australian industry. The ABS defines casual employment on the basis of employee entitlements; that is, employees with no leave entitlements are considered casuals for the purposes of this data. Owner-managers of incorporated and unincorporated businesses are treated separately, making leave entitlements a valid and reliable factor in determining casual status.

2.3 Chart 1 below compares the proportion of casual employment in manufacturing to the proportion of casual employment in all industry, from 1994 to 2010. The data shows that while the rate of casual employment in manufacturing is generally lower than the national average, the industry closely follows national trends. This reflects the volatility of the manufacturing sector and its vulnerability to general economic movements. It also reaffirms the relevance of debates concerning rates of casualization, as it is likely that any general increase or decrease in the level of casual employment will be directly and immediately reflected in the manufacturing sector.

⁷ Adult Literacy and Life Skills Survey Summary results, Australia 2006; ABS Catalogue No.4228

Chart 1



ABS cat no. 6105.0

- 2.4 For the purpose of the submission the AMWU relies on the ABS definition of casual employees that is those identified as not receiving paid leave entitlements. References to other forms of potentially insecure forms of employment such as fixed term are identified separately.
- 2.5 The ABS has identified 2 other definitions of casual employees consolidated from various data collection surveys including those who self identify as a casual and those who receive a casual loading. Using the various definitions the ABS identified in November 2006 that 16.3% of the manufacturing work force did not receive leave entitlements and were identified as casuals, 16.1% of the manufacturing workforce self identified as a casual employee and 11.2% of the manufacturing workforce received a casual loading. The discrepancy between the latter and former group may be understood by the ABS' identification of the deficiencies in the latter's definition:

“However, a key disadvantage is that the person responding to the survey (ARA) may not know about their own pay components, or about the pay components of others in the household. In addition, the casual loading measure relies upon the assumption that casual employees actually receive a higher rate of pay to

compensate for the lack of paid leave entitlements, whereas not all casual employees may receive a higher rate of pay.”⁸

The ABS point to two significant issues comprising the working life of casuals – a lack at awareness regarding entitlement and an inability to access entitlements.

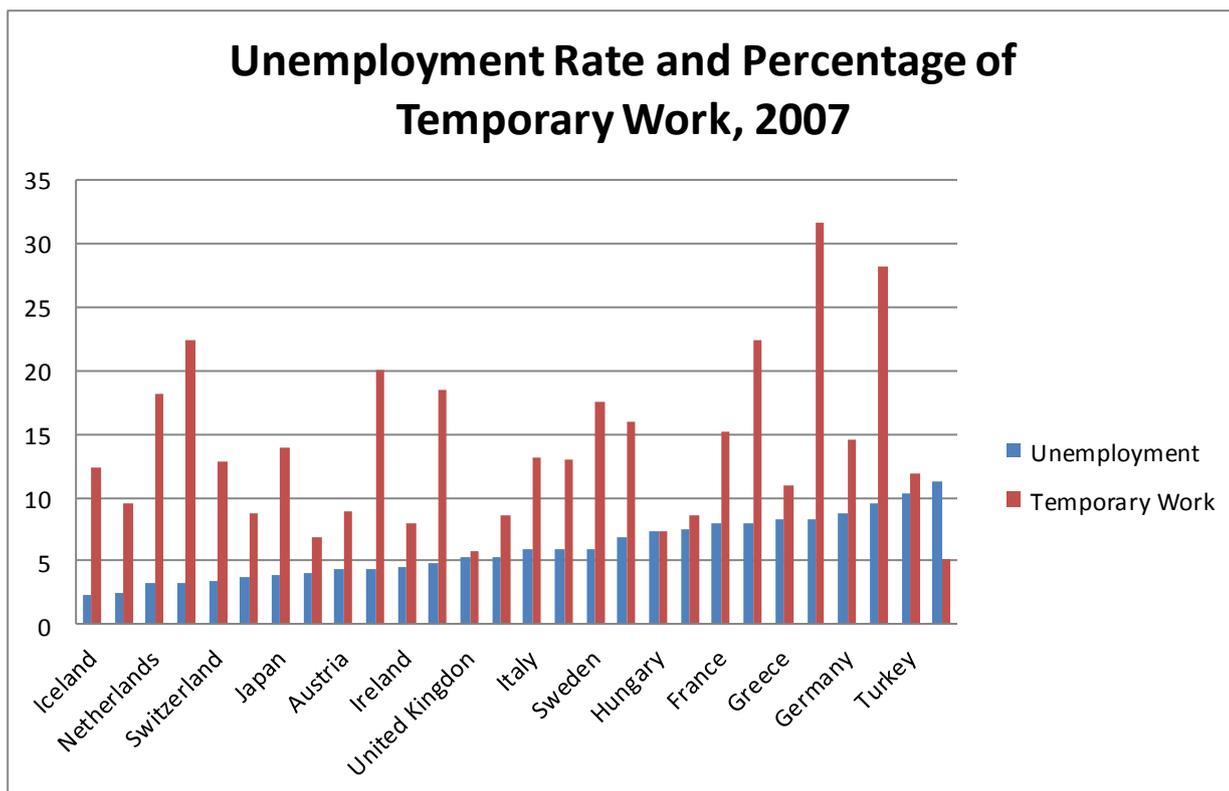
- 2.6 The ABS survey material and Help Desk data lends support for the proposition that some casuals receive neither the casual loading or leave entitlements and are moved from permanent to casual or casual to permanent without their knowledge and without a change in their pay.
- 2.7 The rate of casualization has been steadily increasing. Explanations for this include structural change in the economy favouring the hospitality and retail sectors where casual employment has always been a significant feature of the workforce. This explanation fits poorly with the evidence that manufacturing, where casualization had previously not been a significant factor has one of the fastest rates of growth.⁹ Chart 1 above demonstrates that from 2009 the general incidence of casual employment has been in decline whilst the level of casualisation of the manufacturing workforce has increased.

AUSTRALIA’S RATE OF CASUALISATION VIS OECD NATIONS

- 2.8 Another explanation for the rise in casualization is instability in the global economy and the need for economies to have maximum flexibility to survive through uncertain times. The graph below compares rates of casualization and rates of unemployment in OECD countries. There is no consistent correlation between high unemployment and low rates of casualization or low unemployment and high rates of casualization. For example the United Kingdom with an unemployment rate of 5.3% has a temporary labour force of 5.3% (low unemployment high temporary) whilst Australia during the period had an unemployment rate of 4.4% and a temporary workforce comprising 20.10% of all employed persons (low unemployment high temporary). This would reduce reliance on arguments that maximum workforce flexibility is required to build strong economies. Strong economies are built on the flexibility of high skilled, engaged workers who can access opportunities to build their skills and/or “re-tool” to adjust to structural changes in the economy and technological advances. Demographic profiles of casual employees and the AMWU’s evidence identify that casuals are less likely than other employees to have access to training and skills acquisition.

⁸ Measures of casual Employment; October 2008 Australian Labour Market Statistics; cat no 6105.0

⁹ Robyn May, Iain Campbell, John Burgess: the rise and rise of casual work in Australia: Who benefits Who Loses: Paper for seminar 20 June, Sydney University; <http://www.aeufederal.org.au/Women/Risefall.pdf>



OECD, Employment Database: Labour Force Statistics (MEI), *Harmonised Unemployment Rates and Levels (All Persons) 2007*; OECD, Employment Database: Labour Force Statistics (MEI), *Incidence of Temporary Employment 2007*

CASUAL JOBS AS A PATHWAY TO PERMANENT EMPLOYMENT

- 2.9 An argument in support of short and long term casual employment is that regardless of “job quality” casual employment provides a pathway to secure jobs of improved job quality. This is summarised as “any job is better than no job”. The AMWU disagrees with this proposition. A dead end, insecure job can inhibit career progression by limiting opportunities for training, skills acquisition and career progression.
- 2.10 Australian studies on the transition between permanent and non-permanent work have not demonstrated a consistent trend toward employees transitioning from casual work to more secure permanent employment. There is evidence to suggest that accepting casual work provides some advantage in obtaining permanent work, particularly for people already disadvantaged in some way in their pursuit of permanent employment.¹⁰ However, this

¹⁰ See, eg, Jenny Chalmers and Guyonne Kalb, *Are Casual Jobs a Freeway to Permanent Employment?* Working Paper 8/2000, Department of Economics and Business Statistics, Monash University Australia, pp 22-6..

benefit is not universally enjoyed by all employees. For example, men enjoy significantly more benefits from casual work than women.¹¹

2.11 Further, the same disadvantaged groups that theoretically enjoy the strongest benefits are also more likely to remain in casual work for longer periods of time.¹² Long-term engagement is in fact a general feature of casual work in Australia; the majority (57%) of casual workers, rather than taking on short-term casual work, in fact remain in the same job for upwards of one year.¹³ Over a quarter of casual workers remain in the same job for over two years.¹⁴ This indicates the pervasiveness of so-called ‘permanent casual’ employment, where rather than transitioning to more secure work employees find themselves trapped in casual arrangements. Research has identified that these ‘permanent casuals’ make up a significant and growing part of the casual workforce.¹⁵ It is clear that any benefit to the ability to transition to permanent work created by casual employment must be balanced against the reality of long-term insecurity.

2.12 The creation of “casual conversion” clauses within the Australian industrial award system was a response to the increasing trend for casual workers to be engaged for extended periods in the same position. In effect if the conversion clauses were capable of implementation they allowed the competing claims of whether it is an employee, employer or both who desire the flexibility of casual work, to be illuminated.

3 THE CASUAL CONVERSION CASES

3.1 In August 1999 the Australian Industrial Relations Commission¹⁶ inserted a “casual deeming” provision into the Graphic Arts General Interim Award 1995 (the GAA) in what was known as the “allowable award matters” review of Awards.¹⁷ Prior to the variation the GAA contained a casual deeming provision requiring casuals to be deemed permanent after two weeks continuous work at the same hours worked by permanent employees. During the arbitrated allowable matter’s case the evidence was that the provision was either breached, or evaded, by employers engaging casuals for slightly less than 38 hours.

¹¹ *Ibid*, table 4.

¹² See, eg, Jenny Chalmers and Guyonne Kalb, *Are Casual Jobs a Freeway to Permanent Employment?* Working Paper 8/2000, Department of Economics and Business Statistics, Monash University Australia, pp 27-29.

¹³ Mark Wooden, *Casual Employment in Australia: Evidence from HILDA – Data Tables*, Presentation to the Industrial Relations Society National Convention, Adelaide 2003, pp 3.

¹⁴ Hielke Buddelmeyer et al, *Transitions from Casual Employment in Australia: Report Prepared for the Australian Government Department of Employment and Workplace Relations under the Social Policy Research Service Agreement* (2006: Melbourne Institute of Applied Economic and Social Research).

¹⁵ Barbara Pocock et al, ‘Meeting the Challenge of Casual Work in Australia: Evidence, Past Treatment and Future Policy’, (2004) 30 ABL 1, pp 19.

¹⁶ Print R7898, March, SDP, pp39-41

¹⁷ The allowable award matters cases were required and prosecuted under the Workplace relations and Other Legislation Amendment Act 1996; Item 51, Part 2, Schedule 5

3.2 The new deeming provision was similar to that then current in other industry awards¹⁸ and provided for:

- Full-time, part time and irregular casual employment
- Full time and part time casuals to be employed on a continuous basis for 12 weeks;
- The extension of the 12 weeks by agreement for another period of up to a maximum of 12 weeks; and
- The automatic conversion of the casual worker (deeming) to a permanent where the maximum agreed period was exceeded or not recorded in the time and wages book and 12 weeks continuous engagement had expired

3.3 The provision was successfully implemented in many enterprises where the union had members employed for long periods as part or full time casuals. The provisions operated to “meet a number of objectives with flexibility being afforded to employers together with fairness to employees”.¹⁹

3.4 In 2000, the AMWU successfully applied for the Metal, Engineering and Associated Industries Award 1998²⁰ (the 1998 Award) to be varied to include a casual conversion clause.²¹ However, a related application to introduce a maximum time limit on the period of casual employment similar to that arbitrated into the GAA did not succeed. The 1998 Award, including the casual conversion provision, has now been consolidated into the [Manufacturing and Associated Industries and Occupations Award 2010 \[MA000010\]](#). Despite the specific industry evidence accepted during the GAA casual conversion matter, during the 2008 Award Modernisation proceedings the weaker clause of the Manufacturing Award which lacks automatic deeming unless was inserted into the [Graphic Arts, Printing and Publishing Award 2010 \[MA000026\]](#).

3.5 The lack of the deeming provision has reduced the effectiveness of the conversion clause, making the clause difficult to implement in the absence of arbitration under award dispute settlement clauses.

3.6 Survey evidence brought by the AMWU during the 2000 casual conversion case revealed that 75% of casual employees in the industry were engaged continuously for more than

¹⁸ Furnishing Industry General Victoria, Sth Australian and Tasmanian Consolidated Award 1996 ;Print Q3877, Plumbing Industry Awards; Print Q8609

¹⁹ Marsh, SDP; Print 7898; p.40

²⁰ The 1998 Award has now been subsumed into the Manufacturing and Associated Industries and Occupations Award 2010 (MA10). The casual conversion clause from the 1998 Award is included in MA10.

²¹ Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union - re application for variation of award - casual employees - T4991 - 29 December 2000

three months, and 50% were engaged continuously for twelve months or more. The AMWU also identified that the use of casual employment tended either toward extremely temporary periods of work of four weeks or less or toward engaging people continuously over long periods of time; that is, as 'permanent casuals'.

- 3.7 While the decision emphasized the importance of casual labour as a flexibility tool for employers, the Commission, as it was known prior to becoming Fair Work Australia, shared the AMWU's view that the growth of 'permanent casual' as an employment category inherently undermines workplace standards and detracts from the integrity of the award system.²² However, in the absence of submissions in relation to the effectiveness of other recently-adopted award clauses, such as found in the GAA, imposing a time limit for casual employment, the Commission declined to introduce a similar provision in the 1998 Award and determined in favour of introducing an option to convert to permanent employment after six months (extendible to twelve months).²³ The reasoning behind the decision indicated a pervasive concern with the use of casual employment to undermine labour standards, tempered by the recognition of the need for workplace flexibility in some circumstances.
- 3.8 This reasoning was followed in the 2005 decision inserting a casual conversion clause in the same terms into the Food Preservers Award 2000. As well as the prevalent issue of 'permanent casuals', the AMWU pointed to the detrimental nature of this kind of employment, including irregular hours, uncertain income and the lack of career development opportunities, and the fact that the choice of casual employment was driven primarily by employer preference. In particular, the AMWU noted the disproportionate amount of women engaged as casual labour. The casual conversion clause, by providing a pathway to the benefits of permanent employment, thus acts as a mechanism for addressing this indirect discrimination against women. The operation of the casual conversion clause in the food industry also further highlights the difference between 'regular' and 'irregular' casuals. The application distinguished between seasonal workers - a feature of the industry - and ongoing casuals employed in positions that are permanently available, highlighting the increasing divide between the traditional concept of casual labour and the employer-driven injection of insecurity into jobs that would previously be regarded as permanent. The clause was retained in the Modern [Food, Beverage and Tobacco Manufacturing Award 2010 \[MA000073\]](#)

²² Ibid, at 106

²³ Ibid, at 115.

- 3.9 The use of casuals as “permanent casuals” remains a significant feature of casual employment with the ABS identifying that “Many casuals have long-term and regular jobs. In August 2004, 55% of the 2.0 million casual employees in Australia had been with their employer for 12 months or more, compared with 83% of the 5.7 million on-going employees.”²⁴ In 2006²⁵ only 23% of casual employees in businesses of more than 15 employees had less than six months service with the employer.
- 3.10 Further Research²⁶ confirms that there is a significant proportion of the casual workforce that has been in their current job for lengthy periods of time, with around one-quarter employed with the same firm for 2 to 5 years and another 15 per cent for 5 years or more. Fifty seven per cent of casual employees have been employed with the same firm for more than one year with 43.4% engaged between 2 and 10 years. The mean number of year’s tenure for casual employees is 4.4 years.
- 3.11 Our submission is that the conversion clause has been useful in some circumstances however its effectiveness is significantly reduced through:
- ❖ the lack of deeming after a maximum period of casual employment;
 - ❖ the increasing use of “host” companies to access their workforce through labour hire companies;
 - ❖ evidence indicating employers do not notify casuals of their right to elect to convert to permanency;
 - ❖ the ability of the employer to refuse permanency without the reasonableness of their refusal able of being effectively tested within FWA;
 - ❖ the unenforceability of the casual conversion provision except through expensive and time exorbitant Federal Court proceedings; and
 - ❖ the vulnerability of casual workers, who for a variety of reasons including fear of losing their job, lack of awareness of rights, heavy concentration in occupations at the low end of the skills spectrum, have a limited capacity to negotiate;
- 3.12 The union’s case studies and help desk report and survey material profile the problems identified at 3.11 above. Our recommendations at Section 6 address the conversion clause’s

²⁴ 1301.0 - Year Book Australia, 2006

²⁵ Fair Work Bill 2008, Explanatory Memorandum, House of Representatives, p.86

²⁶ Mark Wooden and Diana Warren, The Characteristics of Casual and fixed-Term Employment: Evidence from the HILDA Survey, Melbourne Institute Working Paper No. 15/03, June 2003.

shortcomings to effectively regulate the growth of the employment type oxymoronically referred to as “permanent casual”.

- 3.13 The casual loading provided in lieu of entitlements available to permanent workers does not include a component for the inconvenience and stress experienced by “permanent casuals” wishing to become actually permanent nor does the loading reflect a component for inability to access entitlements for fear of being sacked e.g. Unpaid community service leave and sick leave.

CHRISTIE TEA

- 3.14 Christie Tea, a South Australian tea packing company has been in operation for approximately 20 years. The workers at Christie Tea, who blend and mix tea for ALDI, IGA and other supermarket brands, are mainly migrant , female and Filipino. There are 24 workers, 17 of whom are engaged as casuals. One worker has been engaged as a casual for 20 years, one person for 13 years with the majority of casuals having 5-6 years of casual service. Most workers are paid under the [Food, Beverage and Tobacco Manufacturing Award 2010 \[MA000073\]](#) at the minimum award rate. MA73 has a casual conversion provision at Clause 13.4 in similar terms to the casual conversion clause in MA10.
- 3.15 During 2011 the Union became known to employees at Christie Tea, with 4 employees identifying that they wished to convert to permanent employment. The 4 employees respectively had 4, 4.5, 7.5 and 8 years service as casuals at Christie Tea.
- 3.16 Despite the 4 employees having service well in excess of the 6 month period following which an election to convert can be exercised, the company refused to meet the request on the grounds that they had always employed casuals and that the other casuals would not like it if the 4 became permanent. The matter has been before FWA twice. On the first occasion²⁷ FWA recommended that the “parties consider their positions in the light of the above observations”. Those observations included that “it is the policy of modern award (SIC) to encourage and facilitate the conversion of eligible casuals to full and part-time positions”²⁸ and :

“[15] I would observe that given the relative size of the business, the fact that the employees concerned have several years of regular and systematic employment, and the fact that the nature of the supply contracts is not in itself unusual,

²⁷ [2010]FWA 10121, PR506683

²⁸ Ibid, paragraph 10

Christie would need to demonstrate something well beyond inconvenience and the need to introduce some additional administrative structure in order to justify its position.”²⁹

3.17 On the second occasion³⁰ FWA’s recommendation included:

1. Resolve the **matter by the employees accepting Christie’s refusal to allow the conversion.** (emphasis added)
2. Resolve the matter by Christie accepting the requested conversions to full/part-time employment as sought by the employees.
3. Undertake further discussions and exchange of information (concerning hours of work and production schedules etc) designed to reach an agreed outcome.
4. Submit the matter, by agreement, to Fair Work Australia for arbitration.
5. One or both parties to submit the matter to a Court of competent jurisdiction to determine whether the refusal to convert complies with the modern award requirements.

3.18 Christie Tea continued to refuse the employee’s conversion request however with no enterprise bargaining agreement (EBA), let alone an EBA allowing FWA to arbitrate and, no arbitration provided for in MA73’s dispute settlement provision³¹ there is no way to test the “reasonableness” or otherwise of Christie Tea’s refusal outside of expensive, time consuming Federal Court proceedings which can be particularly intimidating for employee’s whose employment is not secure.

3.19 The casual conversion clauses require an ability for FWA to **determine** disputes arising under their provisions. Arbitration will allow, where appropriate FWA to effect “the policy of modern award(s) to encourage and facilitate the conversion of eligible casuals to full and part-time positions”³². Arbitration is appropriate in the special circumstance of Award based casual employees.

CEREBOS

3.20 Another case where the entitlements under the casual conversion clause are thwarted due to the lack of FWA’s decision making powers occurred at CEREBOS, NSW. The site has a

²⁹ Ibid, paragraph 15

³⁰ [2011] FWA 905; PR506673

³¹ MA73, Clause 10

³² Ibid

preserved state agreement³³ underpinned by MA 73, including the casual conversion clause at 13.4 and MA10 and including the casual conversion provisions at Clause 14.

- 3.21 This matter involved a man directly engaged by Cerebos as a casual in the occupation of fitter/fabricator. The employee had been engaged as a casual for more than 3 years when in November 2011 he requested permanent employment. The man worked an average of at least 42 hours a week for the last 3 years (the site has a 36 hour week). Whilst they had not implemented the casual conversion provisions of MA10 Cerebos conceded the conversion provisions applied at the site however not to the individual as he had been employed on a “special project” and the project was finished. Permanency became more important to our member when he was refused a home loan on the basis of his insecure employment.
- 3.22 Following the man’s November request for conversion in early December Cerebos advised him that his hours were being reduced. The AMWU lodged an application under s.372 of the FWAct 2009³⁴ in FWA. Neither the relevant agreement nor Award provides for arbitration of the matters in dispute unless both parties agree. Cerebos refused the Union’s request that the matters at issue be arbitrated.
- 3.23 At the moment the Union believes that Cerebos is in breach of the casual conversion provisions in the awards; Clause 8.4 “Temporary employment” and clause 12.4 “ Labour Requirements Review” of the site agreement. Cerebos can choose to ignore all these provisions on the basis there is no provision for arbitration. The AMWU and our members’ only option is to run a case/s in the Federal court on all these issues. This is despite the clear intent of the modern awards that “it is the policy of modern award to encourage and facilitate the conversion of eligible casuals to full and part-time position”³⁵
- 3.24 There are also 7 production employees who have been directly employed on ongoing ‘temporary contracts’ which are now well in excess of the 6 months maximum term allowed by the EA but the company has ignored the Union’s requests for permanent employment.

FOXTEQ

- 3.25 When Foxteq came to light in 2010 they employed mainly casuals, around 120, through a labour hire agency. Employees were paid on the award rate with a 25% casual loading.

³³ AG870053 PR984069

³⁴ C2011/6767

³⁵ Ibid

Employees at Foxteq had an average of more than 4 years service. Employees, for the entire time they worked at Foxteq would not know until the afternoon before the next days' shift whether they were required the next day. Employees would receive a text, usually around 4pm or 5pm, although sometimes as late as 8pm, stating they were required to attend work the next day at 6.30am.

- 3.26 Employees were never informed of how many hours they were required for; sometimes they worked the minimum daily hours and were then sent home, sometimes a full shift and sometimes they were required to work overtime. If employees could not attend their shift for whatever reason including illness or caring responsibilities they were dropped from the pool of Foxteq casuals.
- 3.27 The long term impact of precarious engagement and uncertainty had detrimental effects on both the individual employees and their families. A history of the Foxteq matter is contained at Attachment "4".

4 IMPACTS ON EMPLOYEES OF CASUAL EMPLOYMENT

- 4.1 There is no dispute casual employment is the preferred employment type for a percentage of the casual workforce. However for employees who have no choice about whether they are casual and who prefer permanent employment, the effects of "permanent casual" work can be destabilizing.
- 4.2 International research has made it clear that the global growth of insecure work has directly and indirectly caused detriment to the personal well-being of employees and society generally. This is in part a result of the centrality of job security to employee perceptions of what constitutes 'decent work'. For example, the International Social Survey Program found in 1997 that job security was the most significant factor in determining whether a job was a 'good job', followed by the nature of the work and finally wages, flexibility and opportunities for progression. These findings were repeated in 2005.³⁶ These findings indicate that employees in practice generally perceive insecure work as highly detrimental and unappealing, supporting more specific concerns about the negative impact of insecure work.
- 4.3 The most immediate impact insecure work has on the wellbeing of employees is a reduction in their wages and conditions. A feature of insecure work is a lack of control over hours and

³⁶ Rafael Muñoz de Bustillo, 'Determinants of Job Insecurity in Five OECD Countries', (2010) 16 *European Journal of Industrial Relations* 1, p 6.

working arrangements, which in turn leads to an unpredictable and often unstable income flow. Globally, studies have shown a direct correlation between insecure work and lower wages. For example, in Great Britain a highly disproportionate amount of insecure work is concentrated within low-paid, low-skills entry-level positions.³⁷ This is supported by Australian data, which shows that casual workers on average earn lower pay than permanent workers, and in general are significantly more likely to be award dependent³⁸ As well as this immediate financial disadvantage, international studies indicate that workers in insecure work, like all part-time workers, are likely to suffer lifetime disadvantages through their lack of access to training and other career development opportunities.³⁹ This is supported by Australian research which indicates that many workers have difficulty transitioning from casual to permanent employment.

- 4.4 Insecure work also indirectly affects the well-being of both employees and the community generally. Long-term job insecurity has been found to increase the risk of depression in employees.⁴⁰ More generally, a study of insecure work within five OECD nations noted that insecure work of whatever duration reduces job satisfaction and creates feelings of distress for the employee.⁴¹ This has been supported by Australian studies, and there is evidence to suggest that the detrimental effect of insecure work increasingly has a flow-on cost impact for governments arising from the costs of responding to these health issues.⁴² Finally, job insecurity has been linked to negative attitudes toward the job and employer in question, which may lead to lower productivity and higher turnover.⁴³ This is again supported by Australian research, which has shown that the growth of insecure work has led to lower levels of employee commitment and skill development and higher labour turnover, creating problems for long-term productivity.⁴⁴

THE EVIDENCE: AMWU SURVEY and HELP DESK SUMMARY

- 4.5 The evidence supplied by AMWU members through the survey and help desk and through non members accessing our call centre , supports the general overseas and Australian

³⁷ Gregg, P and J Wadsworth (2000) "Mind the gap please: The changing nature of entry jobs in Britain." *Economica* 67(268): 499-524.

³⁸ Van Wanrooy et al, *Australia@Work: In A Changing World*, Workplace Research Center: University of Sydney, 2009.

³⁹ Tam, *Part-time employment: A bridge or a trap?* (Aldershot: 1997).

⁴⁰ Rocha et al., "The Effects of Prolonged Job Insecurity on the Psychological Well-Being of Workers", (2006) 3 *Journal of Sociology and Social Welfare* 33, p 11.

⁴¹ de Bustillo, 'Determinants of Job Insecurity in Five European Countries' (2010) 16 *European Journal of Industrial Relations* 1.

⁴² See, eg, McCann, *Health, Freedom and Work in Rural Victoria*, Interim Research Report, Social Justice Initiative, University of Melbourne, 2010.

⁴³ Näswall et al, "Who feels insecure in Europe? Predicting job insecurity from background variables", (2003) 24 *Economic and Industrial Democracy* 3.

⁴⁴ Buchanan, 'Paradoxes of Significance: Australian Casualisation and Labour Productivity', ACIRRT Working Paper 93, Sydney, 2004.

findings referred to earlier in our submission. The evidence is compelling in its consistency and calls for legislative reform.

- 4.6 The evidence is consistent with the findings of the Australia at Work report that “Casual employees are much less likely than permanent employees to feel they have the opportunity to negotiate their pay and are much more likely to report reliance on awards for the determination of their pay and conditions. This presents a major challenge for the Fair Work Act in enabling these employees access to collective bargaining. The low-paid bargaining stream for multi-employer bargaining has the potential to do this. If this isn’t achieved, the role of the NES and Minimum Wage Panel in maintaining an adequate safety net will be extremely important”⁴⁵
- 4.7 The AMWU’s proposals for reform are contained in Section 6.

THE SURVEY

- 4.8 During the period mid November to 12 December, 2011 the AMWU distributed the survey (attached and marked “1”) amongst its membership. The survey was posted on the AMWU’s website, distributed through our Help Desk facility and sent directly by email to those of our members who at one time had been identified as casual employees working 20 hours or less. The survey resulted in 156 returned forms.
- 4.9 Of the 156 some had gained permanent work or had left the workforce. Eighty four members identified as casual employees, 2 as temporary and 5 as temporary labour hire. The 91 workers were working both full time and part time hours. The following responses are those supplied by the 91 workers currently engaged in insecure employment. The age break down of respondents was 9.1% aged 21-30 years, 20.45% aged 31-40, 20.45% ages 41-50, 42.05% were aged 51-65 and 7.95% were aged more than 65. Males comprised 72.41% of survey respondents and females 27.59%.
- 4.10 **The survey data identified:**
- 70% of respondents wanted permanent work
 - 33.33% had been employed in their current job for less than a year, 34.44% had been engaged for between 1 and 3 years and 32.22% had been engaged for more than 5 years
 - 86.52% of respondents worked solely for the one person or company

⁴⁵ Van Wanrooy, B; Buchana, J et al: Australia at Work: In a Changing World; Workplace resource Centre; November 2009

- A quarter had been refused a housing loan, a rental property or some other loan because they were not in permanent work
- 40.45% responded that it was possible or definite that there would be repercussions for their employment if they raised concerns about safety or workplace rights
- 46.07% responded that their income varied a lot between pay packets
- 53.93% said their income varied a little or not at all between pay packets
- 64.44% responded that their hours of work changed from week to week and 35.56% said their hours did not vary.
- 31.33% responded their hours varied less than 5 hours each week, and 28.92% identified their hours varied between 5-10 each week
- 80.22% identified their employer as having the most say over setting their hours
- 54.65% said that nothing would happen if they asked for a greater say over how many hours they worked and when those hours would be worked , 29.07% believed they would lose hours if they sought more say and 16.28% believed there would be a positive change in their hours if they requested
- A third of respondents identified they were given less than a days' notice of a change in hours, 21.84% identified less than a weeks notice and 9.20% stated they were give a weeks notice.
- When respondents were asked to nominate the 3 conditions they most valued or would like to have, 88.89% identified sick leave, 77.78% identified annual leave, 48.89% identified LSL, 21.11% identified carers' leave , 13.33% identified notice of roster change, 13.33% identified redundancy, 12.22% notice of termination and 5.56% paid parental leave

4.11 Question 30 of the attached survey asked members the open ended question “thinking about insecure work- what rights, conditions, or entitlements would make a difference? What changes to your working arrangements would help?” Many respondents identified “set hours”, “sick leave, holiday leave and notice periods”, “ the same rights as permanents”, “job security”, “knowing what hours we are going to do and more notice”; “permanent employment”.

4.12 Specific responses to Q.30 included:

- “secure employment, tighter controls over labour hire agencies and their contractors to be equally accountable for wrongful dismissal without fair reason” (casual, PMP Print, WA)
- “more voice, need to be listened to” (casual, Flint Group, Vic)
- “more permanent jobs would give better family security” (casual, Isaac Plains Coal, Qld)
- “more notice, have to keep mobile in my pocket, its my ball and chain. If I miss the call I miss the shift” (casual, NSW, requested that workplace name be withheld)
- “same wages and conditions as permanent staff on site. Treated differently. In many cases with labour hire arrangements you are paid less than staff on site and don’t get same treatment for example uniforms being cleaned and dangerous chemicals” (full time permanent, anonymity requested)
- “freedom to speak without fear of retribution. Regular hours and leave entitlements” (casual, NSW, requested that workplace name be withheld)
- “to be offered a permanent post after more than 2 years service. I have worked 8 years in the same setup. A certain level of job security after proven loyalty to the company for many years. Not like now where as a casual I can be made redundant at any time by informing my employment agency that my services are no longer needed” (casual, Qld, requested that workplace name be withheld)
- “more notice. More job security. Greater rights for casuals in terms of bullying and discrimination” (casual, Streets Ice Cream, NSW)
- Casuals should be converted to permanents after a short period in any situation where the work is ongoing” (casual, Qld, requested that workplace name be withheld)

AMWU HELP DESK SUMMARY

4.13 The AMWU’s Help Desk keeps a record of calls it receives with the subject matter and progress or resolution of the call recorded. The Help Desk was asked to provide a report on the number and type of queries relating to casual employment. The summary report of calls is found at Attachment 3. Extracts from the full report⁴⁶ at paragraph 4.11 below relate to calls received in 2011. The issues raised by members and non-members highlight that employer flexibility in the reported instances is less about managing labour supply due to the peaks and troughs of the business cycle than having the flexibility to avoid minimum

⁴⁶ The Full report is not included as the callers were not asked at the time of their call if they required privacy relating to their call and therefore the report must remain confidential. The report is available for Inquiry Members if required.

standards of employment available to permanent employees. This is what the Commission identified in 2000 referring to employers using permanent casuals as an employment category which inherently undermines workplace standards and detracts from the integrity of the award system.⁴⁷ .

4.14 The data does not imply that all employers undermine minimum conditions for casual workers through ignorance or design. The data does demonstrate however that casual workers face additional barriers in accessing their minimum conditions and that legislative change is required to ensure the intent of the Australian Fair Work Act 2009 and the rights and responsibilities of modern awards can be accessed.

4.15 Recorded Help Desk issues included:

- Paid less than permanents and directly employed casuals if from labour hire agency
- Member working at xxxxx in xxxxxxx through a Labour Hire agency. He has a contract that sets out pay rates. These rates have increased with yearly pay increases at host company. Rates have now reduced and allowances taken away, Member told by Labour Hire agency if he wants to continue working he has to accept the new conditions. Nothing in writing, but they have told him that he has to accept the new conditions, and have started paying him at the lower rate.
- Has been working for xxxxxxx xxxxxxxx for the last 3 years. He is a casual employee. He arrived at work 2 weeks ago to be told that there wasn't any work available for him
- Contracts signed with Labour Hire company specify the casual employee will not work for a "host" for 6 months following resignation from the labour hire company
- Paid below the minimum award rate
- Loading not paid on overtime or other parts of all purpose rate, no standing by, no casual loading on shift
- Requests for conversion left unanswered or refused without reason
- Casual conversion delayed as employee had taken sick leave
- Following injury on way to work the host company said there was no more work. The labour hire agency has ceased offers of work at other sites
- Feel pressure to work overtime when it is not convenient due to job security concerns

⁴⁷ Ibid, at 106

- Threatened with reduction in base/award rate if casual conversion entitlements pursued
- Employers constantly breaching casual conversion provisions through ignorance or intent. Casuals with the specified period of service not advised by employer of the right to elect to become permanent
- Sacked if raising an issue or have an OH and S problem
- Worked for two years as a casual. When employee advised the company he had to take two days off, no more shifts have been offered
- 17 years as a casual and no entitlements on closure for redundancy
- Permanent employees concerned casuals jeopardize their job security
- Permanent employees concerned the use of casuals at lower rates threatens their overtime
- Casuals paid overtime after 40 hours, permanent employees paid OT after 36.5
- Site works 40 hours to build up RDO however casuals do not receive the RDO and are not paid overtime
- Concerns regarding job security.
- Short notice of shifts and regular shifts cancelled at short notice
- Work night shift and then the day shift without ten hour break or penalty payment
- Employed for long periods however never accrue LSL
- Casual for 5 years, regular shifts. Shifts dried up following complaint made about bullying and harassment
- Not paid tool allowance

4.16 The double bind for precariously engaged employees is that the insecure nature of their engagement prevents them from raising the issues let alone attempting to negotiate with their employer. Q11 of the AMWU survey asked respondents *“Have you ever avoided bringing up an issue at work (eg wages, rosters) because you’ve been afraid of how your boss might react? (eg fear of being sacked of hours being cut?) Please indicate below”*. Of the 91 casual respondents 44% responded that they would be afraid to raise an issue with their employer. Responses included:

- “Yes, intimidation”
- “Yes, often afraid”
- “Yes, but when it was unavoidable I found my shifts were cut and I received workplace bullying”
- “yes, felt insecure as casual- supervisor made distinct difference between casuals and permanents and felt too insecure”
- “yes, better refer it to the AMWU rep”
- “fear of not getting shifts”
- “ yes I have been bullied at work for many years “
- “yes, going on a holiday I was told I might not have a job when I get back”
- “yes, there was so little transparency and fairness in the rosters, but I thought if I mentioned it that it would be held against me”
- “Yes, I have had bad experiences in the past about unfair shifts/workloads etc”
- “yes, Workplace assisted my immigration to Australia. Never complained about his work or conditions because he was afraid of being fired and deported”
- “yes, he has spoken out(before) and got shifts cut. Best to shut up and turn up and get paid”.

4.17 The survey responses and help desk issues speak for themselves and confirm findings from the research literature. This writer was surprised at the number of respondents who identified “bullying” as a concern. Bullying was received from both employer representatives and permanent employees who feel casual employees threaten permanent worker’s job security and reduce their access to overtime. Having access to functioning conversion clauses would assist casual workers escape this hideous and damaging behavior.

- 4.18 The evidence provided above should be appropriately weighted considering that the majority of survey respondents and Help Desk callers were AMWU members and therefore, theoretically, had greater access to union advocates and knowledge of their rights. The literature confirms that casuals are less likely to be union members and therefore the AMWU evidence, whilst compelling and significant may not fully reflect the extent of difficulties faced by the broader group of casuals and other precariously employed workers.

5 INSECURE FORMS OF WORK AND HEALTH AND SAFETY OUTCOMES

One of the more dramatic implications of precarious work is that almost all precarious workers share an increased risk of higher work-related injury or illness. (Lewchuk et al. 2006: 144) In their broad survey of existing literature, Lewchuk et al identified increased risks that included: ergonomic risks, heavier workload, greater exposure to toxic substances, back pain, muscular pain, fatigue and lower levels of job satisfaction. (Lewchuk et al. 2006: 144, Lewchuk et al 2003) Another review completed in 2003 covered, "more than 90 studies (mostly undertaken in Europe, North America and Australasia though with some studies from Asia, Africa and South America), found a clear adverse association between precarious employment and OHS, with over 80% of studies finding these work arrangements were associated with inferior OHS outcomes."⁴⁸

- 5.1 Occupational health and safety research links insecure work with poor safety and negatively impacts on the short and long term health of workers. The mechanisms for this relationship are multifactorial and complex.⁴⁹ In manufacturing work it is incontestable that insecure work, through a variety of mechanisms, increases the exposure to safety risks and the incidence of injury. Similar mechanisms, but by more complex pathways are also responsible for poorer health outcomes due to the both the direct and indirect health effects of the insecure work and the social context of those workers who are more likely to be exposed to insecure work.

Also, precarious employees suffer adverse health effects through the action of material or social deprivation and hazardous work environments. Thus, the experience of various kinds of precarious jobs and the insecurity and vulnerability associated with them is likely to be associated to more hazardous working conditions and to higher income inequality. For example, temporary employees are exposed to hazardous working conditions, work more often in painful and tiring positions, are more

⁴⁸ John Evans & Euan Gibb, *Moving from Precarious Employment to Decent Work*. Chapter 5, Discussion paper 13, Global Union Research Network, ILO Geneva 2009

⁴⁹ See figures 1 and 2 in *Employment Conditions and Health Inequalities Final Report to the WHO Commission on Social Determinants of Health (CSDH) Employment Conditions Knowledge Network (EMCONET)*. Benach, J, Muntaner, C, and Santana, V. (Chairs) September 2007

*exposed to intense noise, perform more frequent repetitive movements, have less freedom to choose when to take personal leave and are far less likely to be represented on health and safety committees. A systematic review of studies of temporary employment and health suggests that temporary workers suffer from a higher risk of occupational injuries compared with permanent employees.*⁵⁰

Insecure work is associated with increased risk of injury, more severe injuries and experience greater difficulties in returning to work post injury (Underhill). Quinlan and Bohle have proposed a model to explain this phenomenon: “pressures, disorganisation and regulatory failure”.⁵¹

- 5.2 Insecure work is recognised as a contributor to psychosocial risk factors (stress, bullying, harassment etc.) which are associated with poorer health outcomes such as diabetes, cardiovascular disease (CVD) and metabolic syndrome. The mechanism for these relationships appears to be directly through exposures to risk factors and indirectly through the increased likelihood of poor health behaviours by insecure workers⁵².
- 5.3 Insecure work is more common amongst the lower paid and the lower skilled (see earlier chapter). Poorer people, even in wealthy industrialised nations, (Wilkinson and Pickett⁵³) have a higher incidence of high blood pressure, higher cholesterol, have higher rates of smoking (ABS tradespersons and labourers 38% compared to 18%) and eat less healthy foods. The Organisation for Economic Cooperation and Development has said that changes in working conditions such as decreased physical activity at work, increased levels of stress and job insecurity and longer working hours was one of the three major factors that have contributed to recent rises in chronic conditions, mainly through their effect on lifestyle choices⁵⁴.
- 5.4 Many of these differences between the health and safety outcomes of insecure workers and those in more permanent work arrangements will not be known by the individual worker individually i.e. how is an injured labour hire worker to know their injury is likely to be more

⁵⁰ Ibid Executive Summary

⁵¹ Underhill E and Quinlan M, *Improving the effectiveness of OHS regulation in the Australian labour hire sector* International Symposium on Regulating OHS for Precarious Workers, Deakin University, Melbourne, June 2011 and Quinlan and Bohle, 2004, 2009;

⁵² *Unhealthy work: causes, consequences, cure*. Editors Schnall, P. Dobson, M and Roskam, E. Baywood 2009

⁵³ *The premise of The Spirit Level is that well-being is patterned on something other than individual wealth. Rather, physical and social health is spread among particular groups according to a recurring pattern—that of income inequality. Where there are bigger differences in the distribution of wealth, undesirable health and social outcomes are more prevalent.* Emily Maddocks, Volume 36, Number 1, March/mars 2010 Canadian Public Policy. E-ISSN: 1911-9917 Print ISSN: 0317-0861

⁵⁴ Barham, H. V.-J. a. L., *Healthy Work Challenges and Opportunities to 2030*. Page 30, 2009. Bupa. London.

severe and it will take them longer to return to work when compared with permanent workers? It is therefore important to look at the research.

Despite some improvements in the efforts of OHS regulators and parts of industry to improve the work health and safety of insecure workers, the evidence submitted in 2005 by the AMWU⁵⁵ to *The House of Representatives Employment, Workplace Relations and Workforce Participation Committee Inquiry into Independent Contracting and Labour Hire Arrangements* has not substantially changed.

Even comparatively comprehensive labour standards and social protection regimes (in countries where unions have retained influence) have been unable to do more than mitigate the consequences for ill-health because the growth of insecure and arrangements have bypassed or weakened these very regimes (Bernstein et al. 2005; Johnstone and Wilson 2006). The growth of precarious employment has weakened mechanisms for worker voice or involvement (workplace committees and health and safety representatives) under OHS legislation, in some countries exacerbated by declining union presence (Baugher and Timmons Roberts 2004; Johnstone et al. 2005).

In developed countries, government responses to these issues has been belated and fragmentary, including amending Occupational health and safety and minimum labour standard laws, codes, and guidance material; adding contractual obligations (e.g., occupational health and safety provisions in government tender standards); strategic enforcement campaigns; industry-specific packages (e.g., tripartite agreements dealing with small builders and subcontractors in construction); and the establishment of (often union-backed) roving safety representatives (e.g., the Swedish regional safety representatives system; see Walters 2004).⁵⁶

5.6 A similar conclusion can be reached in Australia, where there have been recent legislative changes (2011 Model WHS Act clearly relates to ALL workers and has the potential for improved representation of workers), improved industry guidance and information (all State regulators have information for contractors and labour hire companies) and recognition of some of the increased risk of exposure to hazards such as bullying for insecure/vulnerable workers (Draft Code of Practice, Safe Work Australia Guidance Preventing and Responding to Bullying at Work, page 9 job insecurity and change).

5.7 However, there has been no intervention by OHS authorities to address or recommend changes in the labour market and its regulation to decrease the exposure of workers to these “unhealthy” work arrangements. Additionally there has been the removal of provisions dealing with OHS from industrial awards to the performance based OHS

⁵⁵ The House Of Representatives Employment, Workplace Relations And Workforce Participation Committee Inquiry Into Independent Contracting And Labour Hire Arrangements March 2005 AMWU Submission Chapter 4 - Impact On Occupational Health And Safety

⁵⁶ EMCONET, page

legislation. The latter is performance based legislation which mitigates against prescriptive clauses for issues such as work break, shift arrangements, first aid provisions etc. Quinlan and Johnstone expand this argument to conclude that *the de-collectivist changes to IR exacerbated problems posed by the growth of flexible work arrangements and a drop in union density, weakening participatory provisions in OHS laws and promoting work arrangements that undermined OHS standards*.⁵⁷

5.8 The tensions between improving health and safety outcomes by removing exposures to unhealthy and unsafe work arrangements and the continuing pressure of capital for a deregulated or *atomised* regulation of the labour market have not lessened and consequently the effects of insecure work on indirectly on health and directly on health and safety have not been reduced.

5.9 Two key features of the H&S of Insecure work:

A. Increased injury rates and severity of Injuries

Australian researchers, Underhill and Quinlan have documented the increased injury rates and that those injuries are more severe in temporary agency workers. Underhill has found that a *significant proportion of these workers are injured early in their placement, suggesting that unfamiliarity plays an important role in increasing their risk of injury*.⁵⁸

AMWU's experience supports the model of "pressures, disorganisation and regulatory failure" used by these researchers to explain the risk factors insecure workers are exposed. The responses to the AMWU's survey question 22 confirms the researcher's "disorganisation" model with 54.02% of casual respondents stating that apart from initial induction training their employer had never provided any training or development. Specifically 28.41% of respondents stated they had never received any occupational health and safety training. When asked whether speaking out about health and safety concerns or other workplace rights would have employment repercussions 40.45% of respondents said "possibly" or "yes".

⁵⁷ Quinlan, M, Johnstone, R, *The implications of de collectivist industrial relations laws and associated developments for work health and safety in Australia, 1996-2007*, Industrial Relations Journal, 40:5,426-443 and see also Quinlan, M. *We've been down this road before: evidence on the Health Consequences of Precarious Employment in Industrial Societies, 1840-1920*. AAHANZBS Conference 2009

⁵⁸ Underhill, E, *Temporary Agency Workers and the Contribution of Workplace Unfamiliarity to Workplace Injury*, 2011 (in press)

The “pressures” identified in the table below also reflect the experiences of AMWU survey respondents. When asked at Q25 whether they would be “prepared to speak out if there was a hazard at your workplace”, 10% of the casual respondents said they would not, recording comments such as “No, I’d probably get the sack”, “probably not” and “No- get the sack, avoid”.

Effort/Reward Pressures	Disorganization	Regulatory Failure	Spill-over Effects
Insecure jobs (fear of losing job)	Short tenure, inexperience	Poor knowledge of legal rights, obligations	Extra tasks, workload shifting
Contingent, irregular payment	Poor induction, training & supervision	Limited access to OHS, workers comp rights	Eroded pay, security, entitlements
Long or irregular work hours	Ineffective procedures & communication	Fractured or disputed legal obligations	Eroded work quality, public health
Multiple jobs (may work for several employers)	Ineffective OHSMS / inability to organise	Non-compliance & regulator oversight (stretched resources)	Work-life conflict

5.10 Underhill ⁵⁹ proposes that the proactive steps used by temporary agency employers to mitigate the factors listed above include:

- Long term relationships with host employers
- OHS qualifications and training of agency managers
- Regular interaction and host work site visits
- Roving health and safety representatives.

Underhill observes that the factors contributing to good OHS outcomes for temporary agency workers, as identified by the study participants, “*building long term relationships, strategic planning in labour placement and niche operations*” tend to contradict the attraction of temporary agency workers i.e. greater flexibility of workers to jobs.

⁵⁹ Underhill, E. & Quinlan, M. *Beyond Statutory enforcement – alternative approaches to improving OSH in temporary agency sector*, Policy and Practice in Health and Safety (in press)

B. Worker participation

- 5.11 One of the preconditions for good health and safety outcomes is the active involvement of the workforce.

*A growing body of research shows that actions of health and safety representatives can effectively lead to a number of health benefits to the workers and the improvement of occupational health. For example, it has been shown that joint consultative committees with all employee representatives appointed by unions significantly reduce workplace injuries relative to those establishments where the management alone determines health and safety arrangements.*⁶⁰

- 5.12 Others have described the conditions necessary for workers representation that promotes health and safety outcomes as

*..... a strong legislative steer, effective external inspection and control, demonstrable senior management commitment and capacity towards both health and safety and a participative approach, competent hazard/risk evaluation and control, effective autonomous worker representation at the workplace and external trade union support.*⁶¹

The arrangements of insecure work do not lend themselves to these types of arrangements. The work by Underhill has noted lack of training and familiarity with work place hazards as a feature of temporary agency workers. Other temporary workers such as contractors or casuals experience the same impediments.

- 5.13 Participation in workplace consultative arrangements is difficult for insecure workers for a variety of reasons:

- Workers concerned about their job security often do not speak up about health and safety issues as they may be unlikely to get another placement, their work can be terminated easily and they may not be familiar with the reporting arrangements as the site
- Workers who are not always at the work site are forgotten about or not included in consultative arrangements (despite legal requirements, see Case Study) i.e. election of H&S Reps, representation on H&S Committees or direct consultation with the employer. In labour hire, the triangulation between host and direct employer muddies the chains of responsibilities.” In work with large seasonal component, the consultative structures may include only the permanent workers: the large variation

⁶⁰ Menendez, M et al, *The impact of Safety Representatives on occupational health: a European perspective (the EPSARE project)* presentation at Conference of ETUI-REHS Brussels, 2008

⁶¹ David Walters, Theo Nichols, Judith Connor, Ali C. Tasiran and Surhan Cam. *The role and effectiveness of safety representatives in influencing workplace health and safety*, Cardiff University for HSE, UK. 2005

and temporary nature of the workforce makes it more difficult and time consuming to involve temporary workers.

- Culture of creating and maintaining divisions between categories of workers e.g. contractors, labour hire, temporary workers. Informal reporting mechanisms only function when workers know each other or are familiar with each other's concerns.
- Workers may be less knowledgeable about their rights to participate in health and safety. An understanding of health and safety rights is one of the benefits of union membership. In our experience non-unionised workers are often uninformed about the health and safety rights, the solutions to risks and the processes that can be utilised to improve working conditions.

5.14 A 2001 review conducted for South Australian WorkCover reported that

Participants reported that casual, part-timers, temporary and contract workers tended to be excluded from OHSW consultation and participation processes. Contributing to this was the difficulty in providing training and induction at short notice. Participants suggested that contractors and other temporary employees are not part of the culture of the organisation. It was reported that in some industries, temporary staff are often rostered on shifts where there is no HSR, or other responsible person who can provide induction or other training. This, coupled with the lack of permanency of these workers, means that they have no access to consultative processes.

The outcome of this, as participants reported, is that these workers were seen to cause 'gaps' in the OHSW system. Their activities are regarded as outside of the organisation's normal procedures for control of OHSW issues. As one person put it, 'Contractors would get away with whatever they could if the company didn't enforce it. They don't care about OHSW. They just want to get the job done and get out of there.'

Given the increase in part-time, casual and contract work in South Australia, it is important to include these workers in OHSW consultation and means of achieving this need to be addressed.⁶²

5.15 The Model Work Health and Safety Act 2011 has replicated provisions, already existing in Victorian law, for the negotiation of work groups and election of health and safety representatives (H&S Reps) where there are multiple work sites and/or multiple employers involved. These provisions are potentially very useful but rely on the ability of workers to negotiate effectively across sites and employers. This is relatively unrealistic and has only been utilised in specific sectors of the economy. The more innovative approach of regional or roving H&S Reps, as found in Sweden, has not been adopted. Regional/roving H&S Reps

⁶² Blewett, V. *Working Together, A review of the effectiveness of the health and safety representative and workplace health and safety committee system in South Australia*, WorkCover South Australia 2001

have been shown to be particularly useful to the employers and workers in small and medium sized enterprises.⁶³

Workers Compensation

- 5.16 The experience of the AMWU supports research findings⁶⁴ that insecurely employed injured workers often have a more difficult time returning to work and during the workers compensation processes. For example workers may be confused regarding which legal entity with which to lodge their workers compensation claim. Delays in determining liability of claims often is an impediment for getting access to medical assistance, rehabilitation and return to work arrangements. Regularly labour hire workers are not provided with light or suitable duties for their return to work. Delays in return to work are a determinant of worse injury recovery and vocational outcomes. These difficulties are encountered more often by workers who do not have a permanent job, have more than one employer responsible for their health and safety or where there is an argument about who is liable to process the claim.
- 5.17 Lippel et al (2004) reported that workers in non-standard employment situations often encounter specific problems in the claims process. These people sometimes hold several jobs and extremely irregular work hours, making determination of their pre-injury income much more complex.

Their professional retraining options are also more limited. In some cases, even an issue as simple as identifying their employer can become a source of litigation. The case for an occupational disease claim is often more difficult to prove, as the exposure to hazardous substances that cause occupational diseases is harder to document. Their rate of unionization is much lower, and their workmates, whom they often don't know, are less likely to offer support when the time comes to present evidence of an occupational injury. We met one worker, a truck driver employed by a temporary employment agency, who, when his accident occurred, had to ask his wife to come several hundred kilometres to pick him up because the owner of the truck and the agency both insisted that the ambulance fee was not their responsibility. These workers often experience greater financial pressures because they are in a more precarious situation than people who work full time for a single employer. People working

⁶³ Ibid Menendez et al 2008

⁶⁴ Katherine Lippel, Marie-Claire Lefebvre, Chantal Schmidt and Joseph Caron; *Managing Claims or Caring for Claimants: Effects of the Compensation Process on the Health of Injured Workers*, 2007, University of Ottawa, Canada

*for subcontractors, who may be exposed to various chemical products at different worksites, sometimes fall through the cracks of the protective mechanisms put in place by the CSST to prevent excessive exposure to toxic substances. Furthermore, the right to return to work in the case of a worker employed by a subcontractor is often illusory.*⁶⁵

5.18 Recommendations for ameliorating negative OH and S and Workers' Compensation outcomes for workers in precarious employment are included in the following section.

6 RECOMMENDATIONS

6.1 The Australian Fair Work Act 2009 requires amendment to ensure that casual conversion clauses can operate as intended. Amendments are required which recognise and reflect the particular vulnerability of casual workers. Amendments allowing FWA to arbitrate casual conversion disputes recognise that the time delays, length and cost of Federal Court proceedings are an inappropriate and ineffective remedy for casual workers. Specific variations to the Act include:

- Insert "including casual conversion" following "casual employment" in s.139(1)(b)
- Insert a new sub-paragraph at s.739(4)(b) "notwithstanding any limitation in the term referred to at s.739(3) FWA must arbitrate at the request of a party involved in a "casual conversion" clause dispute covered by s.738.
- Insert deeming after a certain period of casual engagement

6.2 Casuals who convert to permanency need to have their regular and systematic casual service prior to conversion recognised for the purposes of notice of termination, unfair dismissal and other entitlements linked to periods of service accruing under the Act. The *Workplace Relations Act 1996* specified that an employee under a probationary period was not entitled to unfair dismissal protections (s 638 (1) (c)). Casuals of any kind were also not entitled to protection (s638 (1) (d)). Under this Act, it was possible to 'reset' an employee's probationary period in circumstances where a change in the terms of employment was significant enough to be considered new employment, such as converting from casual employment to permanent (*Sleepmasters Case*)⁶⁶.

⁶⁵ Ibid

⁶⁶ PR957560

- 6.3 To become entitled to unfair dismissal protection under the *Fair Work Act*, an employee must complete a six-month period of continuous service (s382). Unlike the *Workplace Relations Act*, it is not possible to increase the length of this period by contract. The Act requires clarification to ensure casuals, with often lengthy periods of service are able to claim that service vis unfair dismissal provisions, when they convert to permanent employment.
- 6.4 The casual loadings in many AMWU Awards has not been increased for more than a decade. The loading does not reflect a sufficient benefit for offsetting the catalogue of issues identified in the evidence and research referred in our submission. The loading does not encompass the inability of casual workers to access their paper rights such as unpaid community leave or carers' leave due to the threat or potential of having shifts withdrawn and/or job loss. The loading needs to be increased.
- 6.5 Creation of a portable entitlement fund for casual workers funded through an increase to the casual loading and long service leave premiums. Existing levels of casual loading would stay with the employee however the increase would be deposited in an employee's account in the portable fund. Funding would also be provided by the employer moving their casual workers' LSL liability of their account books and into the casual worker's portable account. This account would then fund leave, on application by the employee or, a wage during periods between casual work engagements.
- 6.6 Low paid bargaining to be available on an enterprise as well as industry basis where sought by a majority of employees
- 6.7 Require host site industrial instruments to apply to labour hire employees where they are superior to those of the labour hire agency
- 6.8 Directly employed casuals to receive same industrial arrangements and training as permanent employees.
- 6.9 Improve minimum periods of engagement for casual workers and improved minimum periods of notice for requirement to attend and/or change rosters

OH&S Recommendations

- 6.10 Legislative change to re insert broad health and safety matters into industrial awards as minimum requirements e.g. hours of work, work breaks, first aid requirements, prohibition on the use of insecure workers for high risk work
- 6.11 Removal of workers compensation insurance premium setting that allows the “shifting of risk” to temporary agency employers
- 6.12 Removal of the workers compensation financial incentives for the employment of workers in triangulated arrangements e.g. requirement for host employers to provide work for labour hire and injured workers
- 6.13 Legislative change to allow for the establishment of regional and roving Health and safety representatives
- 6.14 Licensing arrangements for labour hire companies to mitigate the poor H&S practices with placement of workers etc.
- 6.15 Workers Compensation system needs to be designed such that:
- Labour hire agencies and host employers are liable for premiums
 - Make premiums experience rating for both host and labour hire agencies
 - Prohibition of Hold harmless clauses.

AMWU SURVEY INTO INSECURE WORK

1. Are you currently working ?

- Yes
- No

2. What type of job do you have or if not working, what was your last job?

- Full Time Permanent
- Temporary Labour Hire
- Part Time Permanent
- Fix Term
- Casual
- Independent Contractor (worker with an ABN number)
- Temporary
- Seasonal

Other (please specify)

3. If fixed term: How many contracts have you had at this workplace? Please indicate below.

4. How likely is it that it will be renewed? Please choose from the drop down menu as below

5. If you are an independent contractor: Do you have control over when you work?

- Yes
- No
- Not applicable

6. In your job do you work solely for one person or company or do you work for other people?

- One person or company
- More than one

7. How long have you been in this job?

- Less than one year
- Between 1 and 3 years
- More than 5 years

8. Is this your only job ?

- Yes
- No

9. What proportion of the workers at your workplace would be hired in a similar way to you (e.g. casual, fixed term contract, independent contractors or labour hire) ? Please indicate below.

10. Why do you think employers use this kind of work? Please indicate below

11. Have you ever avoided bringing up an issue at work (e.g. wages, rosters) because you've been afraid of how your boss might react? (e.g. fear of being sacked or hours being cut? Please indicate below.

12. Does your income vary between pay packets?

- A lot
- A little
- Not at all

13. When was the last time your income increased (put down the year)

14. What was this income increase due to (please select)

- Union Collective Agreement
- Rise in the minimum Award Rate
- Progress through a Salary Structure
- Promotion
- Don't know
- Other (please specify)

15. Identify the 3 conditions you either value the most or would like to have (Select the boxes for the three most important conditions to you)

- Sick leave
- Annual leave
- Family leave
- Redundancies
- Notice of Termination
- Paid Parental Leave
- Long Service Leave
- Notice of Roster Changes

16. Do your hours change from week to week ?

- Yes
- No

17. Thinking about how your hours change from week to week – by how many hours can your working week vary ?

- Less than 5 hours a week
- Between 5 and 10 hours
- Between 10 – 20 hours
- More than 20 hours a week

18. Who has the most say over setting your hours?

- You
- Your employer
- Equal say

19. What do you expect would happen if you asked for a greater say over how many hours you worked and when you worked?

- Nothing
- You would lose hours for speaking up
- You would see a positive change in your hours

20. How much notice are you given for each week's hours?

- Less than a day
- Less than a week
- One week
- Two weeks
- More than two weeks notice
- Other (please identify)

21. How much notice for change of roster would you like to be given ?

- Between 1 and 2 weeks notice
- Between 2 and 4 weeks notice
- More than 4 weeks notice

22. Apart from the initial training you received from your job – when was the last time your employer provided training and development for you?

- In the last 12 months
- Between 12 months and 3 years ago
- Over 3 years ago
- Never

23. Do you have a formally recognized trade, technical or other qualification and if so what is it's title?

- No, I have no formal qualification
- Yes, I have a formal qualification (Please specify)

Qualification:

24. Have you received any Occupational Health and Safety Training?

- Yes
- No

25. Would you be prepared to speak out if there was a hazard at your workplace? Please indicate below.

26. Would there be repercussions for you in your employment if you were to raise concerns about safety or other workplace rights?

- Definitely not
- Possibly
- Yes

27. Thinking about your financial situation, have you ever been refused a housing loan, a rental property or some other loan because you are not a permanent worker ?

- Yes
- No

Please provide further information if yes

28. How important is it to you to know how much you will get paid from week to week ?

29. How easily are you able to change your working hours to suit your family / social situation? Please indicate below.

30. Thinking about people in insecure work – what rights, conditions or entitlements would make a difference to you? What changes to your working arrangements would help. Please indicate below.

31. Would you like permanent work?

- Yes
- No

Please give reason if 'No'

32. Gender?

- Male
- Female

33. Age

- 16-20
- 21-30
- 31-40
- 41-50
- 51-65
- 65+

34. Would you be interested in being involved in a campaign to make jobs in Australia and your workplace more secure?

- Yes
- No

If 'Yes' please provide your email address for update

35. For our record check, what is your name? Please indicate below

36. Do you want your name to remain confidential in our submission?

- Yes
- No

37. Name of workplace and suburb where you work. Please indicate below.

38. Do you want the name of your workplace to remain confidential in our submission ?

Yes

No

39. Do you have any other comments on what changes you would like to see? Please indicate below.

Thank you for your time – filling out this survey will make a difference in the campaign for more secure jobs.

EMPLOYMENT BY GENDER**Employment in Manufacturing By Gender (000's)**

	2008	2009	2010
Males	750.0	712.8	727.6
Females	260.3	261.3	256.0
Total	1010.3	974.0	983.5

Proportion of Employment in Manufacturing By Gender

	2008	2009	2010
Males	74.2%	73.2%	74.0%
Females	25.8%	26.8%	26.0%
Total	100.0%	100.0%	100.0%

Casual Work in Manufacturing By Gender (000's)

	2008	2009	2010
Males	81.8	82.2	96.6
Females	57.6	59.7	61.4
Total	139.4	141.9	158.1

Proportion of Casual Work in Manufacturing by Gender

	2008	2009	2010
Males	58.7%	57.9%	61.1%
Females	41.3%	42.1%	38.9%
Total	100.0%	100.0%	100.0%

Source: Australian Labour Market Statistics, ABS Cat no. 6105.0

* References to 'casual' work indicate measures of employees without paid leave entitlements

METHOD OF SETTING PAY

**Method of Setting Pay in Manufacturing, May 2010
(000's)**

	Award Only	Collective Agreement	Individual Agreement	Owner/Manager of Incorporated Enterprise	Total
Manufacturing	120.8	218.2	462.4	26.6	828
All Industry	1361.2	3891.9	3346.3	368.4	8967.7

Method of Setting Pay in Manufacturing, May 2010 (%)

	Award Only	Collective Agreement	Individual Agreement	Owner/Manager of Incorporated Enterprise	Total
Manufacturing	14.6%	26.4%	55.8%	3.2%	100.0%
All Industry	15.2%	43.4%	37.3%	4.1%	100.0%

Source: Employee Earnings and Hours May 2010, ABS Cat. No. 6306

LITERACY RATE

	Level 1	Level 2	Level 3	Level 4/5	Total
Manufacturing	192.7	357.1	397.3	126.8	1073.9
Total Employed	1201.7	2996.2	317.5	2091.5	10606.9

	Level 1	Level 2	Level 3	Level 4/5	Total
Manufacturing	17.9%	33.3%	37.0%	11.8%	100.0%
Total Employed	11.3%	28.2%	3.0%	19.7%	100.0%

Document Literacy (000's)

	Level 1	Level 2	Level 3	Level 4/5	Total
Manufacturing	183.7	305.1	416.5	168.7	1073.9
Total Employed	1230.2	2865.2	4189.1	2322.4	10606.9

Document Literacy (%)

	Level 1	Level 2	Level 3	Level 4/5	Total
Manufacturing	17.1%	28.4%	38.8%	15.7%	100.0%
Total Employed	11.6%	27.0%	39.5%	21.9%	100.0%

Numeracy (000's)

	Level 1	Level 2	Level 3	Level 4/5	Total
Manufacturing	236.4	325.9	338.1	173.5	1073.9
Total Employed	1596.8	3115.2	3758.2	2136.8	10606.9

Numeracy (%)

	Level 1	Level 2	Level 3	Level 4/5	Total
Manufacturing	22.0%	30.3%	31.5%	16.2%	100.0%
Total Employed	15.1%	29.4%	35.4%	20.1%	100.0%

Problem Solving (000's)

	Level 1	Level 2	Level 3	Level 4/5	Total
Manufacturing	401.5	394.1	235.2	43.1	1073.9
Total Employed	2903	3892.1	3086.4	725.5	10606.9

Problem Solving (%)

	Level 1	Level 2	Level 3	Level 4/5	Total
Manufacturing	37.4%	36.7%	21.9%	4.0%	100.0%
Total Employed	27.4%	36.7%	29.1%	6.8%	100.0%

Source: Adult Literacy and Life Skills Survey, Summary Results, Australia 2006, ABS Cat. No.4228.0

Notes:

Prose literacy: the ability to understand and use information from various kinds of narrative texts, including texts from newspapers, magazines and brochures.

Document literacy: the knowledge and skills required to locate and use information contained in various formats including job applications, payroll forms, transportation schedules, maps, tables and charts.

Numeracy: the knowledge and skills required to effectively manage and respond to the mathematical demands of diverse situations.

Problem solving: goal-directed thinking and action in situations for which no routine solution is available.

Proficiency is measured on a 500-point scale, with continuous scores broken into 5 groups. 4 and 5 are listed together due to the small proportions of people in group 5.

Level 3 is regarded as the "minimum required for individuals to meet the complex demands of everyday life and work in the emerging knowledge-based economy"

OCCUPATION

ANZSCO Occupations, November 2011 (000's)

	Managers	Professionals	Technicians and Trades	Community and Personal Services	Clerical and Administrative	Sales	Machinery Operators and Drivers	Labourers	Total
Manufacturing	132	85	266	7	99	50	136	177	953
All Employed	1484	2436	1690	1096	1719	1062	800	1151	11438

ANZSCO Occupations, November 2011 (%)

	Managers	Professionals	Technicians and Trades	Community and Personal Services	Clerical and Administrative	Sales	Machinery Operators and Drivers	Labourers	Total
Manufacturing	13.9%	8.9%	27.9%	0.7%	10.4%	5.2%	14.3%	18.6%	100.0%
All Employed	13.0%	21.3%	14.8%	9.6%	15.0%	9.3%	7.0%	10.1%	100.0%

Source: Labour Force, Australia, Detailed, Quarterly, Nov 2011, ABS Cat No. 6291.0.55.003

Most occupations within these ANZSCO major groups fall within the following skill levels:

Managers: Skill Level 1-2

Professionals: Skill Level 1-2

Technicians and Trades: Skill Level 2-3

Community and Personal Services: Skill Level 2-5

Clerical and Administrative: Skill Level 2-5

Sales: Skill Level 2-5

Machinery Operators and Drivers: Skill Level 4

Labourers: Skill Level 4-5

ANZSCO Skill level definitions (see ABS Cat No 1220.0):

Skill Level 1: Bachelor degree or higher qualification. At least five years of relevant experience may substitute for the formal qualification

Skill Level 2: AQF Associate Degree, Advanced Diploma or Diploma, or at least three years of relevant experience

Skill Level 3: AQF Certificate III including at least two years of on-the-job training, or AQF Certificate IV, or at least three years of relevant experience

Skill Level 4: AQF Certificate II or III, or at least one year of relevant experience

Skill Level 5: AQF Certificate I, or compulsory secondary education

Precarious Employment Calls by Resolution

	Casual (Members)	Casual (Non- Members)	Total Casual	Labour Hire (Members)	Labour Hire (Non- Members)	Total Labour Hire	Grand Total
2005 (partial year)	18	16	34	6	6	12	46
2006	51	18	69	9	8	17	86
2007	39	33	72	17	7	24	96
2008	58	21	79	23	3	26	105
2009	57	14	71	10	2	12	83
2010	67	16	83	6	3	9	92
2011 (to-date)	61	24	85	24	4	28	113
Total 2005- 2011	351	142	493	95	33	128	621

1. Introduction

In 2010 the AMWU was contacted by a labour hire employee of Weststaff placed at host company Foxtex regarding concerns about their employment. The Australian Manufacturing Workers Union subsequently conducted investigations into the conditions of work, remuneration, safety and employee rights at the Foxtex computer assembly plant in Rydalmere.

The AMWU's investigations discovered serious industrial and health and safety breaches including non compliance with the casual conversion provisions of MA10.

After many months of denial and avoidance in late 2011 Foxtex, the AMWU and the new labour hire agency Resco have entered into arrangements enabling an orderly transfer of long term casual labour hire workers to permanent employment at Foxtex with set minimum hours.

The Foxtex case highlights how powerless some casual workers are and the imperative to ensure an effective casual conversion clause enabled by the FWA's right to determine applications for conversion.

PRELIMINARY INVESTIGATIONS

The following is a summary of the results of preliminary investigations. The AMWU uncovered a workforce with insecure employment. The workforce is structured as a form of command and control of employees. The insecure employment arrangement has led to poor safety standards, low morale and a culture of fear and uncertainty for employees.

Employment at Foxtex is fundamentally premised on a 'take it or leave it' basis, abusing the weak bargaining position of vulnerable, low wage workers.

In summary, the AMWU has found:

- Employees at the Foxtex site regularly report a fear for their continued job security. They have no control over their working hours to suit their personal and family needs, and for many, the current working arrangements have led to severe personal and financial hardship.
- The Occupational Health and Safety standards at the Rydalmere premises are well below industry standards and the standards prescribed by the *NSW Occupational Health and Safety Act*
- Any continuing arrangement that sees the majority of workers employed under a third party labour hire basis will be an obstacle to improving conditions on the site.

2. Foxtex Operations and Employment Arrangements

Foxteq employs approximately 100-130 staff at its Rydalmere site who assemble and package computers solely for Hewlett-Packard.

Approximately 40 staff are employed directly by Foxteq. These staff members are predominantly in management and administrative roles.

The remainder of employees work as assembly workers in the packaging and assembly areas. None of these employees are directly employed by Foxteq, rather they are hired through labour hire firm Westaff.

Employees work under the terms and conditions of the Manufacturing and Associated Occupations Award 2010. All are employed on a casual basis on a rate of approximately \$19 per hour (the Award minimum rate plus 25%). This is below the market rates for employees in similar occupations in the Sydney area and certainly well below rates for electronic assembly workers in AMWU collective agreements

	Foxteq (Computer Assembly)	HPM (Electrical Components assembly and manufacture)	Resmed (Medical device manufacturer)	Cochlear (Medical Device Manufacturer)
Base Hourly Rate at C13 Classification	\$15.43	\$16.36	\$19.00-\$21.00	\$24.00-\$26.00

2.1 Hours of Work

A survey of employees run by the AMWU (See attachment A) has indicated that most workers are employed on average about 20-30 hours per week, which may reflect the recent poor volumes of work at the site. When engaged by Westaff, employees are told that they will need to be available Monday to Friday for work, as well as being available for overtime.

Workers are generally notified of their following day's hours via a text message sent to them the afternoon beforehand. Text messages will ordinarily be received between 4:00 – 5:00pm however, on occasion, employees will be notified as late as 8:00pm.

On arriving at work, employees are given no indication of their finishing time. Some days they will work up to 10 hours, on other days they will be sent home after 4 hours (sometimes even less). Employees continually report the following to us in respect of their hours of work:

- Where employees are unavailable for a shift or refuse to do overtime, they are threatened with the loss of continuing shifts in the future. These threats have certainly been acted on in the past, even if employees provide legitimate reasons for their unavailability, including illness, caring for children, or holidays (see case study 1).
- The arrangement of hours, as well as the ongoing threat of having your hours cut, means that employees have no opportunity to accept supplementary work to bolster the short hours they get at the Foxteq site.

- Some employees have worked at the site for up 8 years without any holidays (see case study 2).
- The arrangement of hours makes dealing with personal and family crises virtually impossible. Employees have reported being unable to get time off to visit dying family members overseas, or during pregnancy.

3. Health and Safety Standards at the Rydalmere Site

On Wednesday 3rd November and Monday 15 November representatives of the Australian Manufacturing Workers Union used their inspection powers under the NSW Occupational Health & Safety Act to conduct a safety inspection at the Rydalmere site.

AMWU representatives conducting the inspection were extremely concerned by the lack of safety standards that they saw. Following the inspection, the AMWU sent a rectification notice to Foxteq, outlining the improvements necessary to comply with the standards of the Act C). The following are some of the issues of particular concern:

- The use of domestic electrical boards and leads in a high volume, industrial environment;
- A failure to consult with employees about Occupational Health and Safety particularly given there is no OH&S Committee with employee representation as required by the Act for workplaces with more than 20 employees;
- Employees are dissuaded from lodging workers compensation claims if they are injured at work;
- A lack of basic hygiene and capacity in the lunchroom and toilet facilities.

4. Sham contracting and employment by TSSWestaff

The terms of the Award require that where a casual employee has been engaged on a regular basis for six months, that employee has the right to request permanent employment with their employer. An employer can only refuse this request on reasonable grounds:

14.4 Casual conversion to full-time or part-time employment

(a) A casual employee, other than an **irregular casual employee**, who has been engaged by a particular employer for a sequence of periods of employment under this award during a period of six months, thereafter has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond the conversion process.

Following the AMWU intervention at the site, Westaff made employees aware of their conversion right, and made an offer to each employee to consider permanent employment. We do not believe that this offer resolves the fears and concerns of the assembly and packaging employees at the site. The AMWU makes the following observations of the offer:

1. It was at the award rate, hence an immediate 25% reduction in pay;
2. There was no guarantee of hours or set hours so employees were still in the same boat regarding certainty and their ability to look for other work; and

- The AMWU has further serious concerns about this offer in the context of the corporate structuring of TSSWestaff. Attachment B outlines the corporate structuring that TSSWestaff has engaged in.

The primary concern of the AMWU is that the employing entity of employees at Foxteq will be “Foxteq NSW Staffing Pty Ltd”. The establishment of this company as the employment entity further compounds the separation of this group of vulnerable employees from their real employer at Foxteq.

This company is a subsidiary of TSSWestaff but has virtually no value. If employees are engaged by this entity they will have no recourse to pursue unpaid wages and entitlements.

It is hard to envisage (in the absence of union, government and stakeholder action) how employees can resolve any of the issues that confront them if they are employed by a valueless company separated from both Foxteq and TSSWestaff.

Case Studies of Employees

Note: names in these case studies have been changed to protect the identity of the Individuals involved

Case Study 1

Graham is a male employee at Foxteq who has worked there for approximately four years. He migrated to Australia from Vietnam over 20 years ago and is aged 55 years old. He has no formal trade qualifications and has been working at the Foxteq site since 2006.

The conditions at the Foxteq site have put Graham in significant financial hardship. This hardship has seen the breakdown of his marriage and has forced him to sell his house. When asked why he hasn’t left Foxteq to find new work, Graham explains that his age, lack of formal qualifications and his limited English make it almost impossible for him to find new work.

Case Study 2

John is a male employee at Foxteq who has worked there for approximately eight years. He migrated to Australia in the early 1990s and has no formal qualifications.

In the time he has worked at Foxteq, he has had no holidays. John complains that his time working at Foxteq has meant that he struggles to make ends meet from week to week. He does not know his hours, or his pay rate, from week to week and this makes it difficult to budget for bills and rent.

Attachment A – Results of AMWU Survey of employees at Foxteq Rydalmere Premises

	Number of People Surveyed	Average Weekly hours	Average length of service at the Rydalmere premises	Do you want regular guaranteed hours of work?
Results	30	26 hours per week (17 responses)	4 years and 1 month (27 responses)	Yes – 26 No – 0 (26 responses)

Attachment B – Corporate Structure of TSS Westaff

Humanis Group

- Humanis Group is a private equity backed firm that purchased TSSWestaff in 2008
- Since its' creation in 2008, it has been aggressively pursuing market share in the recruitment and labour hire industry

TSSWestaff

- Recruitment and labour hire firm operating across Australia with a head office based in Perth
- Has numerous shelf companies set up with very little assets which become employing companies for employees placed at host sites.
- The AMWU is concerned with this method of employing workers through shelf companies because it becomes virtually impossible to pursue the employer for liabilities if the employer gets into financial difficulties

Foxteq NSW Staffing Pty Ltd

- Wholly owned by the Humanis Group
- Has 1000 shares with a paid up capital of \$10
- The AMWU believes this to be the shelf company that Westaff proposes to employ workers at the Foxteq site under

Sydney Morning Herald Article November 10, 2010

 **Unions seek action on Depression-era packers**

Paul Bibby and Asher Moses

November 10, 2010



[Click to play video](#)

The Hungry Mile all over again

A former Foxteq employee speaks out about the appalling work conditions he experienced at the behest of a labor hire company.

The computer giant Hewlett-Packard is under pressure to review its contract with the packing company Foxteq amid claims of exploitative employment practices and revelations that Foxteq is the sister company of the infamous iPhone manufacturer Foxconn.

As more workers from Foxteq's Rydalmere, NSW factory spoke out about their experiences in the completely casualised workplace, unions asked why Hewlett-Packard had not already investigated the matter.

A number of the company's customers which receive computers packed by Foxteq - including IBM, News Limited and Paperlinx - said they would investigate the matter or raise it with HP senior management.



Security check ... workers at the Foxteq factory. *Photo: Carlos Furtado*

Foxconn made headlines earlier this year when 13 workers in China attempted suicide at its plant in Shenzhen.

The multibillion-dollar manufacturing empire is notorious for demanding long hours for low pay and its workers are driven by the insatiable demands of consumers hungry for technology. Workers at Foxteq Australia blew the whistle on the operation on Monday.

They described Depression-era employment conditions where staff await text messages telling them whether there is work for them the next day.

Those who do score a shift must come in at 6.30am to learn whether their services are required for a full day or a few hours.

Among the workers to speak out yesterday was Tan Cuong Vo, who told how he had been threatened with dismissal when he asked for three days off for the birth of his daughter. "I had to take a day off before she was born for a false alarm, but when I asked for more time they said they might have to replace me," Mr Cuong Vo said. "I only took one day off when she was born. I was scared about losing my job."

Weststaff, the labour firm Foxteq uses to run the operation, said it could not comment on Mr Cuong Vo's case for privacy reasons. Both Weststaff and Foxteq have confirmed the method of employment at the factory, but deny that workers are intimidated or treated badly.

The Australian Manufacturing Workers Union and the ACTU said Hewlett-Packard, which publicly trumpets its sense of corporate social responsibility, needed to answer questions about its involvement with Foxteq.

"You would think they would be aware of the reputation of the company in China and have investigated but they just can't have," the AMWU's NSW secretary, Tim Ayres, said.

Hewlett-Packard would not comment on alleged exploitation of workers. Susan Attwood, from the public relations firm Webber Shandwick, said the company was investigating the matter

Read more: <http://www.smh.com.au/technology/technology-news/unions-seek-action-on-depressionera-packers-20101109-17m2e.html#ixzz1gYJY0yD>