

## Independent Inquiry into Insecure Work in Australia

### Written submission cover sheet

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<b>CONTACT PERSON</b>					
<b>Organisation name (if relevant)</b> National Tertiary Education Industry Union (NTEU)					
<b>First name</b>		Jeannie		<b>Surname</b> Rea	
<b>Phone</b> 03 9254 1910		<b>Mobile</b>		<b>Email</b> <a href="mailto:jrea@nteu.org.au">jrea@nteu.org.au</a>	
<b>Street address</b>		Level 1, 120 Clarendon Street			
<b>Suburb</b> South Melbourne		<b>State</b> Victoria		<b>Postcode</b> 3205	

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## SUMMARY OF RECOMMENDATIONS

The NTEU's overall position is framed by the ILO principle of 'decent work' that labour should be produced 'in conditions of freedom, equity, security and human dignity'<sup>1</sup> and that the use of insecure employment should be limited to contexts in which they are necessary.

**Recommendation 1:** The Federal Government should create a public policy regime that encourages tertiary education institutions to meet minimum standards of decent employment and educational quality. *(see page 6)*

**Recommendation 2:** The Victorian Parliament should make a new referral of powers to the Commonwealth which, at the very least, ensures that arbitral that arbitral tribunals and the Commonwealth power include the capacity to regulate types of employment. *(see page 20)*

**Recommendation 3:** Amend the *Fair Work Act 2009* to incorporate a Secure Employment Principle for Modern Awards and Enterprise Agreements. *(see page 28)*

**Recommendation 4:** Extend and strengthen the right to request flexible work arrangements by:

- including the ability to challenge decisions of employers to deny requests for flexible work arrangements in Fair Work Australia.
- extending the ability to request flexible working arrangements to all workers, not just limited to workers with caring responsibilities. *(see page 29)*

**Recommendation 5:** Make improvements to the Bargaining System through the removal of existing restrictions on the content of agreements, particularly as they relate to the use of contractors and labour hire. *(see page 30)*

**Recommendation 6:** Limit Non-Standard Employment through bargaining and legislation through the use of clear and enforceable definitions and limits on the use on all forms of precarious employment. *(see page 30)*

**Recommendation 7:** Ensure access to unfair dismissal remedies in circumstances where the purpose of the use of limited term employment is to avoid the employer's obligations. *(see page 30)*

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<sup>1</sup> ILO Director-General (1999) *Report of the Director General: Decent Work*.

## 1. ABOUT THE NATIONAL TERTIARY EDUCATION UNION (NTEU)

The National Tertiary Education Union (NTEU) represents over 25,000 staff employed in tertiary education in Australia. Tertiary education includes Higher Education, Vocational Education and Training (VET) and Further Education. Tertiary education covers a wide range of institutions that deliver post-secondary education, including universities, TAFEs and other education providers. The Union's coverage also includes research centres and institutes that drive Australia's national innovation, research and development effort.

The workers who make up our sector are diverse. They include academics across all disciplinary areas, world-renowned experts and public intellectuals, laboratory technicians and librarians, staff who work for student unions, as well as staff who work at student centres. The NTEU has exclusive coverage of academic staff, and complete coverage of general staff. From industry experts to postgraduate tutors these workers fall within the NTEU's coverage.

The NTEU acknowledges that there are similar problems around job insecurity that face workers across the tertiary education sector, for instance, staff who work at TAFEs. In this submission we focus upon where the vast majority of our members are employed, in higher education in universities. While the submission addresses job insecurity amongst general and academic staff in universities, the particular circumstances and extreme magnitude of the insecurity in academic work in Australia merits special attention. The NTEU considers that in submitting predominantly on this matter that we can make a unique contribution to this Inquiry.

Over a considerable period of time the NTEU has demonstrated a commitment to both industrial and policy advocacy to improve the conditions of work and job security for irregular, casual and contract-based higher education workers:

- In the most recent round of enterprise bargaining, NTEU members fought to reinstate many of the job security provisions stripped away by *WorkChoices* and the Howard Government's *Higher Education Workplace Relations Requirements (HEWRRs)*;
- Over a decade ago NTEU fought to reinstate limitations to insecure employment that resulted in the landmark *Higher Education and Contract Employment (HECE) Award (1998)*;
- In the last three years the NTEU has consistently proposed the introduction of Workforce Development and Indigenous Workforce Programs in Federal Budget submissions;
- The NTEU is co-sponsoring an Australian Research Council (ARC) research grant, *Gender and Employment Equity: Strategies for Advancement in Australian Universities in tertiary education employment*, a major component of which addresses casual and sessional teaching staff;
- Through the NTEU National Academic Casuals Committee (NACC) and in collaboration with the Council of Australian Postgraduate Associations (CAPA), the NTEU works to promote casual and sessional employment issues through publications such as *Connect* magazine and resources for casual staff such as the *Smart Casuals* booklet;
- In late 2011 the union's preeminent policy-making body, the NTEU National Council, affirmed campaign activity around the insecure work conditions of casual and sessional academics, focusing upon implementation of the casual clauses in industrial agreements and campaign activity leading to the next round of enterprise bargaining.

As a prominent and persistent advocate against insecure employment in the tertiary education sector, we welcome the opportunity to make a submission in response to the *Independent Inquiry into Insecure Work in Australia*.

## 2. INTRODUCTION: AUSTRALIAN UNIVERSITIES ARE INSECURE WORKPLACES

Amongst the major industry groups, tertiary education is characterised by one of the highest levels of precarious employment in Australia. Less than 36% of all university employees have continuing employment and the figure for 'all employees' already excludes those employed on an ad hoc or occasional basis. The excessive use of these levels of casual and limited term employment does untold damage to the lives of thousands of Australian workers, as well as significant damage to the quality of provision of education, and to the public interest.

Taking one small part of the problem as an example, there are probably eight to ten thousand casual teaching employees with PhDs earning \$10,000 to \$25,000 a year in precarious teaching-only employment. This is a waste of human talent and of the public resources which have gone into their education.

On one hand, the responsibility or blame for this situation is shifted by government onto universities, with the government rightly saying that universities are autonomous institutions responsible for their own industrial relations practices. On the other hand, universities conveniently shift the blame for this situation onto government, rightly saying that the level of funding per student for teaching, and the way university research is funded, encourages bad employment practices.

Ambiguity about who is to blame serves the convenience of both government and the employers. The truth is that inadequate funding has combined with poor management practices, and the losers are Australia's students, the public interest, the staff and the universities themselves.

The conclusions which can be drawn from the data, information, analysis and research results which follow are, in summary:

- Only a small minority of casual employment in universities is genuinely 'casual' in nature at all. Casual employment is used primarily to deny people employment rights, to create a compliant workforce, and to cut costs. It is not a function of the nature of the employment itself;
- Fixed term employment in many cases is used in circumstances where it would not be necessary with a modicum of planning at the institutional or industry level. Many employees in work for many years on fixed term contracts. Many have broadly transferable skills and/or specialist skills clearly in ongoing demand. Insecure employment arrangements in these circumstances is largely a result of incompetence;
- In the case of academic employment, precarious employment is not consistent with one of the defining characteristics of university education – intellectual freedom. Intellectual freedom only exists when it is supported by both the culture of the institution *and* enforceable rights which give employees redress against breaches of intellectual freedom. The existing regime, where two-thirds of academics do not enjoy these rights, and a majority of teaching is done by staff without these rights, seriously undermines the claim of Australian institutions that they provide a genuine university education experience;
- The existing unfair dismissal regime contains a serious flaw which means, for example, an employee can be employed on a fixed term contract for (say) 15 years solely to avoid the unfair dismissal jurisdiction, and still have no redress against the arbitrary or capricious non-renewal of contract.

The NTEU has always considered that a certain level of fixed term and casual employment in higher education is necessary, and in some cases desirable. Casual employment is, for example, appropriate for expert lecturers who may present a series of lectures based on

their active professional practice. There are certain types of grant-funding arrangements where there is no reasonable prospect that ongoing employment can be provided beyond the grant. Nevertheless, on these few legitimate foundations has now been built an edifice of low-quality and exploitation.

The success of the *Higher Education Contract of Employment (HECE) Award 1998* has demonstrated that a regulatory approach is required. Such a regulatory approach will focus the minds of senior university leaders, as well as government, on an appropriate funding regime necessary to meet minimum standards of decent employment and educational quality. In this respect, the approach proposed is similar to that taken in the Pay Equity Case in the Community Services Sector.

The precarious employment experiences and labour practices imposed upon tertiary education staff, and in particular limited-term contract research staff and casual teaching-focused academic staff, provide a disturbing precedent for other Australian workplaces. The overuse of insecure modes of employment in areas so crucial to the functions of Australian universities is not only against the interests of individual employees, but against the public interest of ensuring a high quality tertiary education sector. The workforce data demonstrates that the situation is fast reaching breaking point.

**Recommendation 1: The Federal Government should create a public policy regime that encourages tertiary education institutions to meet minimum standards of decent employment and educational quality**

### 3. THE EXTENT OF INSECURE WORK IN AUSTRALIAN UNIVERSITIES

Formerly known as the Department of Employment, Education and Workplace Relations or DEEWR now the Department of Industry, Innovation, Science, Research and Tertiary Education or DIISRTE, staffing data collected for Australian universities by the relevant Commonwealth Department classify university employees according to the following work contract categories:

- Continuing
- Limited-term
- Casual

For the purposes of this submission and to ensure consistency of terminology, the NTEU will use the above employment categories. However, we note that enterprise agreements in the higher education sector refer to limited-term employment as fixed-term employment. A brief explanation of the terminology used follows:

#### ***Continuing Employment***

References to continuing employment include employment of a continuing nature that may be either full-time or part-time.

#### ***Limited-term Employment***

The analysis of the employment data includes staff engaged on a limited-term basis. In tertiary education, staff employed on a limited-term basis might have contracts ranging in length from anywhere between one semester (12-14 weeks) to upward of five years. This mode of employment is common amongst research-focused academics and researchers employed on fixed-term research grants. It is also increasingly prevalent for academics in the early to mid-career phase, either because they are employed based upon postdoctoral fellowships or are simply not provided more permanent employment opportunities

#### ***Casual Employment***

The nature of casual employment in tertiary education is often characterised by staff employed on a semester-by-semester or seasonal basis, resulting in a long break of no paid employment in the periods from the end of second semester to the start of first semester the following year. In relation to casual employment for academic staff, the term 'sessional' employment is often used interchangeably with the term 'casual' to describe long-term casual engagement.

Where an academic employed on a continuing basis will contribute to the university through a wide range of teaching, research and other activities including: teaching classes, coordinating courses, publishing journal articles, monographs and textbooks, tutoring, marking essays, attending faculty meetings, engaging in scholarship and the professional life of the university, casual and sessional academics are paid to deliver specific outcomes, most commonly in relation to teaching such as tutoring, marking assignments, engaging with students. A good analogy is that an academic employed on a continuing basis is akin to a citizen of the university community, attracting both status and obligations. In contrast, the inclusion of casual and academic in the life of the university turns largely upon the extent of institutional, school or faculty, and supervisor support.

Examples of casual or sessional academics include staff employed to deliver lectures and tutorials during semesters, and casual general staff employed as library assistants usually for nine months of the year during peak periods of the week. This can result in an employment relationship with one tertiary institution that can be long-standing and regular,

characterised by a break in service between semesters over the Summer period or long breaks during non-peak work periods.

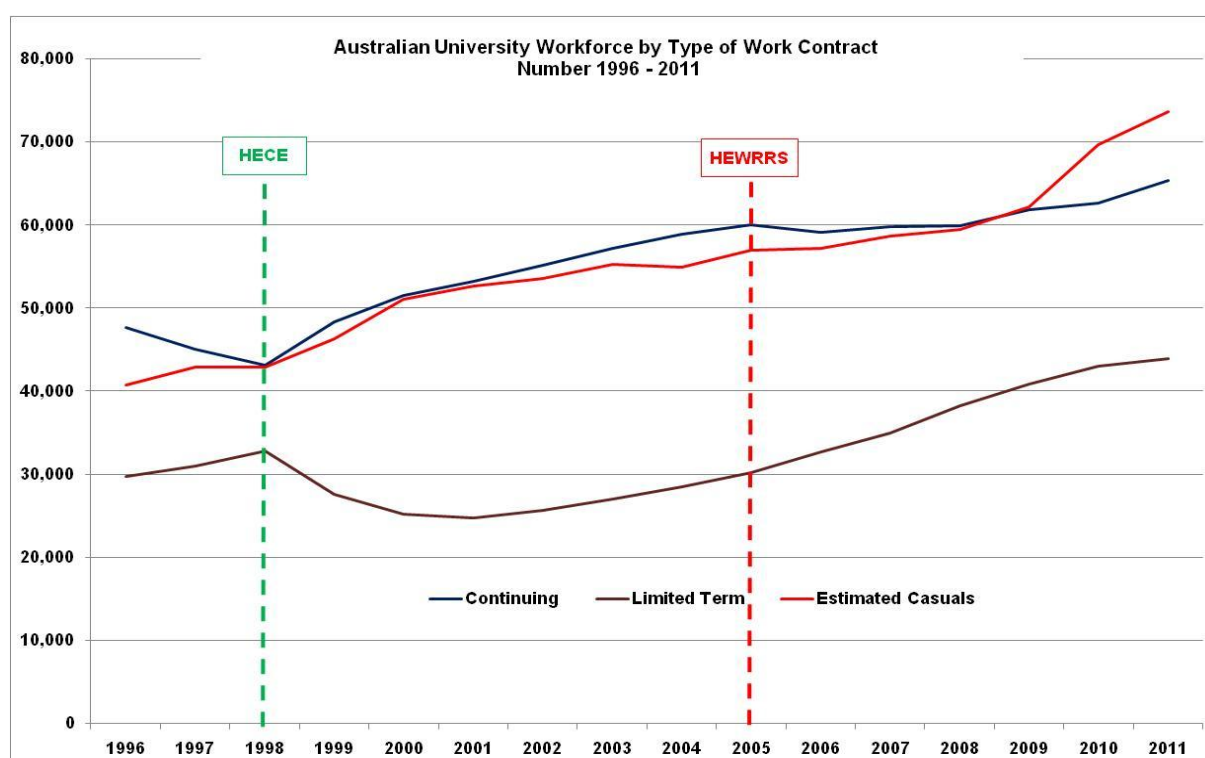
## Analysis of Employment Data

The data depicted in Figure 1 below displays the number of all employees, both academic and general, based upon the three major categories of employment from 1996 to 2011. It reveals a number of interesting aspects of university employment over the last 15 years.

It should be noted that while the officially published data on continuing and limited-term employment at Australian universities is published in terms of the number of employees (head count) as well as on a Full Time Equivalent (FTE) basis, university data on casual employees is published only on an FTE basis. The casual data was estimated by multiplying data on FTE casual employment by four, and the multiplier of four was chosen based on research undertaken by the Australian Learning and Teaching Council (ALTC) and Robyn May.<sup>2</sup> Importantly, May's estimate of 67,000 head count is of casuals in 'jobs', and does not include more irregular employment, such as the kinds of guest lecturing performed by industry experts.

Figure 1 (below) illustrates the dramatic decline in the number of limited-term employment, and a corresponding increase in the number of full-time and casual employees following the introduction of the *Higher Education Contract of Employment (HECE) Award 1998*. It also illustrates the drop in employment of continuing employees following the introduction of the *Higher Education Workplace Relations Requirements* (the HEWRRs) by the Howard Government in 2005.

**Figure 1**



<sup>2</sup> The ALTC criticised the use of FTE stating, 'The FTE collapses large numbers of contingent and often dispersed sessional teachers into small numbers. For example, in one university 69 sessional teachers with various roles dispersed across a range of locations were collapsed into 9.25 FTE; in another, 62 sessional teachers were collapsed into 2.64.' See A. Percy, et al (2008) *The RED Report*. ALTC, Sydney. Also R. May (2011) 'Casualisation; here to stay. The modern university and its divided workforce,' R. Markey, (ed.), *AIRANZ 2011*, City: AUT: Auckland New Zealand.



**Source. Higher Education Statistics Collection (deewr.gov.au)**

Figure 1 also reveals the extent to which total employment at Australian universities has increased over the last decade and a half. The total number of employees (including NTEU estimates of the number of casuals) increased from about 120,000 in 1996 to over 183,000 in 2011 – an increase of about 63,000 employees or 53% over 15 years. By contrast the number of:

- Continuing employees increased by only 37% (from 47,636 to 65,306)
- Limited-term employees increased by 47% (from 29,768 to 43,860)
- Estimated number of casual employees increased by 81% (from 40,740 to 73,592)

This increase in employment reflects the rapid expansion in student numbers over the same period, noting however that the increase in employment has not kept pace with the full extent of growth in student numbers. Between 1989 and 2011 the total number of domestic and international students enrolled in courses at Australian universities increased threefold from 441,000 to 1,192,657. Of these students, 93.2% are enrolled at public universities.

### ***Higher Education Contract of Employment (HECE) Award 1998***

From 1998 until the introduction of the Howard Government HEWRRs regime in 2005, the use of limited-term employment in the tertiary education sector was largely regulated by the *Higher Education Contract of Employment Award 1998* (the HECE Award). The HECE Award applied to academic and general staff employed at most universities, however did not apply to English-language teaching staff. It was most common for the terms of the Award to be incorporated into the terms of enterprise agreements in the university sector.

The terms of the HECE Award have now largely been incorporated into the new modern awards, *Higher Education Industry – Academic Staff – Award 2010* [MA000006] and the *Higher Education Industry – General Staff – Award 2010* [MA000007]. An extract from the Academic Staff Modern Award is attached to this submission at **Attachment A**.

The decision of the Full Bench of the then Australian Industrial Relations Commission (AIRC) to arbitrate the HECE Award was made after the tribunal heard extensive evidence and argument about the use of precarious employment in higher education.

The most significant elements in the award were the limitations on the use of fixed-term/limited-term employment. Under the award, fixed-term employment could only be used in eight defined circumstances. These circumstances were defined by reference to the circumstances of the employment or the identity of the employee, as follows:

- Specific task or project with anticipated timeframe
- Externally funded position (but not student fees or operating grants from government)
- Research only functions
- Replacement employee
- Employee where curriculum requires recent vocational professional practice
- Pre-retirement contract
- Student doing work related to study
- Apprentice or trainee.

In addition, the Award provided notice and severance payments for certain categories of fixed-term staff in circumstances where their employment was not renewed, according to the scale in the 1984 'TCR' standard.

Unfortunately, the Full Bench decided not to impose any restrictions regarding the use of casual employment at the time that the HECE Award was made.

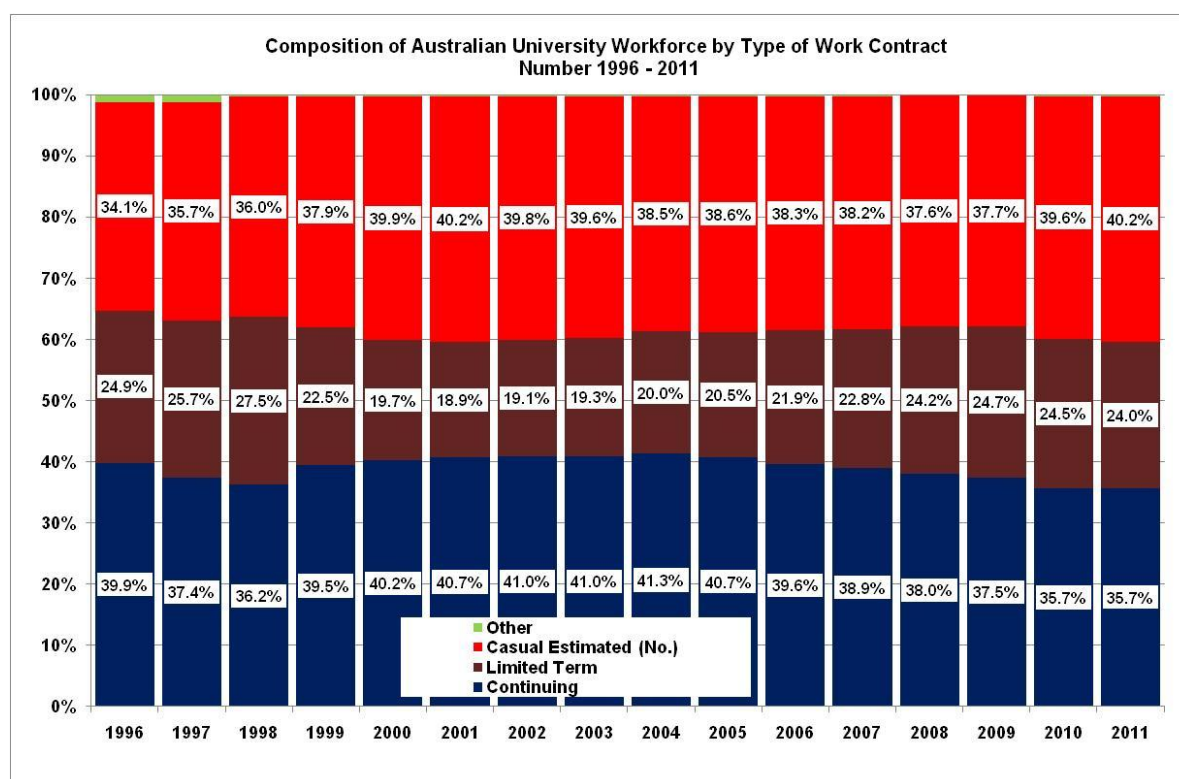
As demonstrated in Figure 1 above, the HECE Award provided a practical and effective limitation on the use of limited-term contracts and was directly responsible for the conversion of 5000 employees to continuing forms of employment immediately following its introduction.

### Higher Education Workplace Relations Requirements (the HEWRRs)

In 2005, the HECE Award and mirror entitlements in enterprise agreements were overridden by the introduction of the Howard Government's *Higher Education Workplace Relations Requirements* (the HEWRRs). The HEWRRs represented a wide-ranging and fundamental attack on the rights and entitlements of tertiary education employees. More than \$500 million of existing university funding was directly linked to a range of outcomes, including industrial relations requirements. One of the requirements included the abolition of any restrictions on the type of employment offered to staff. As a consequence, the HECE Award provisions, which had been replicated in all university enterprise agreements, were no longer allowable and any university that continued to incorporate these restrictions in their enterprise agreements faced a loss in Commonwealth funding that was not insignificant. In addition, any similar provisions restricting the use of casual employment were also deemed in breach of the HEWRRs. Figure 1 above graphically illustrates the impact of the loss of the ability to restrict and control precarious forms of employment in the tertiary education sector through the terms of enterprise agreements.

The following table at Figure 2 (below) highlights how the greater use of casual and fixed-term employment has impacted on the composition of the university workforce. In 2011 only about one in three university employees (36%) had continuing or secure employment. The largest proportion of employees (40%) was employed as casuals and about 25% were employed on a limited-term basis.

Figure 2



Source. Higher Education Statistics Collection (deewr.gov.au)

While the sector has expanded significantly over the last decade, the data demonstrates that universities have largely increased the use of insecure and precarious forms of employment.

The 2011 Department of Innovation, Industry, Science and Research (DIISR) report *Research Skills for an Innovative Future* at least recognised that there were detrimental implications upon the university sector and future of Australian innovation;

*Within the university sector, a lack of significant growth in academic appointments in the 1990s and lengthy periods of academic tenure have contributed to a workforce that is considerably older than the professional workforce as a whole and an increasing propensity for less secure, contract-based and casual modes of employment. The long-term career needs and goals of the generation now embarking on an academic career are not well served by such an environment.<sup>3</sup>*

The data shows that the tertiary education sector represents one of the industries most affected by insecure employment within Australia.

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<sup>3</sup> Department of Innovation, Industry, Science and Research (2011) *Research Skills for an Innovative Future*, Commonwealth of Australia: Canberra: 28.

#### 4. THE CAUSES OF INSECURE WORK IN AUSTRALIAN UNIVERSITIES

Since 1997, comprehensive transformations in the relevance of tertiary education in relation to global economic activity have positioned universities in greater competition with one another and left national governments with the task of determining the exact balance of public and private goods that they are willing and capable of subsidising. These tensions have previously pushed universities in countries like Australia to obtain more of their operating revenue from private sources, and in effect to push Australian academics and researchers to do more with less.

On one hand, Australian tertiary education has faced massive changes from international trends, in particular, globalisation and massification. Economic globalisation has compelled universities and governments to adapt to greater competition as the international mobility of students and academics has accelerated, and as nations have invested and sought to develop their higher education systems. Massification has meant universities have had to reconfigure themselves from elite to mass modes of tertiary education, and adapt to new patterns of funding, with tertiary education being increasingly constructed as a driver of economic growth and national prosperity.<sup>4</sup>

On the other hand, Australian tertiary education has also grappled with more domestic challenges. During the last twenty years Australian universities have been exposed to long periods of serious decline in public funding. From 1995-2005 public funding per student fell by 28% in real terms and universities adapted by cross-subsidising the costs of research and teaching through other funding sources, such as international education, or the entry of full-fee paying international students into the post-secondary student cohort including, but not limited to, universities.

In this time the regulatory burden upon universities also massively increased, meaning both more market-oriented approaches and more prescriptive performance management cultures. As asserted by Professor Simon Marginson, a higher education expert from the University of Melbourne, universities have simultaneously become more regulated and more exposed to the vagaries of the market.<sup>5</sup> To some extent this has been unsurprising following the Dawkins reforms in 1988, which established the 'unified national system' of higher education. This made institutional funding a direct Ministerial responsibility and pushed institutions to be increasingly reactive to government intervention, particular in relation to funding.<sup>6</sup> There have been massive internal changes as universities have devolved budgeting and lifted internal competition between faculties.<sup>7</sup>

Academics, university teachers and researchers have seen immense upheaval in the idea of the university and their professional status.<sup>8</sup> The Australian academic workforce has been ageing and the age profile of Australian universities indicates a major shortfall in academic staff is imminent.<sup>9</sup> The nature of academic work has fragmented with the growth of teaching-

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<sup>4</sup> Philip G. Altbach, Liz Reisberg, Laura E. Rumbley (2009) *Trends in Global Higher Education: Tracking an Academic Revolution A Report Prepared for the UNESCO 2009 World Conference on Higher Education*, UNESCO: World Conference on Higher Education.

<sup>5</sup> S. Marginson (2009) 'National system reform in global context: The case of Australia', *Reforms and consequences in higher education system: An international symposium*, City: National centre of sciences, Hitotubashi Chiyoda-ku: Tokyo.

<sup>6</sup> Suzanne Ryan, James Guthrie and Ruth Neumann, 'Australian higher education transformed: from central coordination to control,' in Carmelo Mazza et al (ed), *European Universities in Transition: Issues, Models and Cases*, Edward Elgar Publishing, Cheltenham: 171-87 at 174-77.

<sup>7</sup> H. Coates and L. Geodegebuure (2010) *The Real Academic Revolution: Why we need to reconceptualise Australia's future academic workforce, and eight possible strategies for how to go about this*, LH Martin Institute for Higher Education Leadership and Management, Melbourne: 13.

<sup>8</sup> E. Bexley, R. James, and S. Arkoudis (2011) *The Australian academic profession in transition: Addressing the challenge of reconceptualising academic work and regenerating the academic workforce*, CSHE, Melbourne: 49.

<sup>9</sup> G. Hugo and A. Morriss (2010) *Investigating the Ageing Academic Workforce: Stocktake*, University of Adelaide, Adelaide: 80

only and research-only positions<sup>10</sup> and insecure employment has created gaps in the development of younger early-career and mid-career academics. Limited employment academic opportunities have generated large and underemployed labour pools in disciplines such as the arts and humanities.<sup>11</sup> Academics in teaching and research positions are overwhelmed by their workloads, and there is a lack of confidence that higher education is heading in the right direction or that there is strong support for the university sector from government.

Coates and Geodegebuure have suggested a range of reasons why employers have shifted to a reliance on casual modes of academic teaching.<sup>12</sup> The most common claim used by universities themselves is that insecure modes of employment suit certain university staff who prefer flexibility and these arrangements provide universities with greater discretion about accessing particular kinds of expertise. However, amidst the push for productivity gains and competitiveness between institutions, casual academics are also vastly easier to dismiss, and represent a lower industrial risk in the eyes of employers. Realistically, casual and sessional employment is one of the most powerful weapons a university employer can exercise in sustaining a docile and industrially acquiescent workforce.

For contract researchers, sustained use of fixed-term contracts is also related to the fact that staff are easier to effectively dismiss through the effluxion of time, but are more uniquely impacted upon by the nature of the research grant cycle, especially for contract researchers working under external funding arrangements and ARC and National Health and Medical Research Council (NHMRC) postdoctoral fellows.<sup>13</sup>

It is instructive to note the comments made by the Full Bench in August 1997 in its Interim Decision leading up to the ultimate making of the HECE Award:

*We are satisfied that the sort of 'abuses' raised by the NTEU and CPSU in relation to non-continuing employees can and do occur. In part, they appear to be a product of the diffuse and very diversified managerial structure characteristic of some higher education institutions. Further the resort to non-continuing forms of employment appears, in part, to be a reaction to concessions made in the past. Continuing employees have long been accorded a relatively high level of protection through conditions of employment (tenure and more recently, higher level redundancy benefits) and practices in relation to termination of employment. It is not difficult to infer from much of the evidence that many university managers, academic or otherwise, would prefer to allow a contract to come to an end through the effluxion of time, than to manage, and perhaps terminate, an employee who is not performing. To the extent that this occurs, it is unfair on employees generally to visit upon them any inadequacies in sound management practices.*<sup>14</sup>

The comments from the Full Bench in 1997 continue to resonate today, with evidence that many tertiary institutions continue to misuse casual and fixed-term employment to shift risk to the employee, drive down costs and to minimise potential exposure to industrial claims.

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<sup>10</sup> See D. Anderson, R. Johnson & L. Saha, (2002) *Changes in academic work*, Commonwealth of Australia, Canberra; H. Coates and L. Geodegebuure (2010) *The Real Academic Revolution*; R. May (2011) 'Casualisation; here to stay. The modern university and its divided workforce'; E. Bexley, R. James, and S. Arkoudis (2011) *The Australian academic profession in transition*.

<sup>11</sup> E. Bexley, R. James, and S. Arkoudis (2011) *The Australian academic profession in transition*: 9

<sup>12</sup> H. Coates and L. Geodegebuure (2010) *The Real Academic Revolution*. See also I. Campbell (2001) 'Casual employees and the training deficit: Exploring employer contributions and choices', *International Journal of Employment Studies*, vol. 9, no. 1, pp. 61-101.

<sup>13</sup> I. Dobson (2010) 'Uneven development: The disjointed growth of university staffing since Dawkins', *People and Place*, vol. 18, no. 1 and G. Hugo and A. Morriss (2010) *Investigating the Ageing Academic Workforce*, Adelaide.

<sup>14</sup> Print P4083 Higher Education General and Salaried Staff (Interim) Award Full Bench Decision (1989): 31

Following a decade of public underfunding and institutional cross-subsidisation of teaching and research, studies on insecure employment at universities largely indicate that universities are more intent upon institutionalising insecure modes of employment than systemically reintegrating the value of academic labour.<sup>15</sup> While there has been significant work intensification for permanent staff, including the recruitment, management and day-to-day supervision of contract and casual staff, this intensification has also occurred in work that has been transferred to an invisible industry of insecure employment, such as casual teachers who have needed to cope with expanding class sizes, online teaching delivery and ICT changes that have required greater availability of teaching staff to students and assume ongoing availability of staff to students. This assumption is at odds with employment based on an hourly class room delivery rate of pay.

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<sup>15</sup> A. Percy and R. Beaumont (2008) 'The casualisation of teaching and the subject at risk', *Studies in Continuing Education*, vol. 30, no. 2, pp. 145-157; also R. May (2011) 'Casualisation; here to stay'.

## 5. UNIVERSITY WORKERS MOST AT RISK

Numerous tertiary education experts recognise the extent to which academic staff growth has not kept pace with the student body.<sup>16</sup> Student to staff ratios have increased from 13:1 to over 21:1 between 1986 and 2010.<sup>17</sup> It is now common for academic staff to talk about tutorial sizes in excess of 30. The magnitude of this problem is accentuated when we recognise that the staff in charge of such large classes are predominantly casuals and sessional academics, many of whom are tutoring for the first time, others of whom are tutoring to supplement insufficient income from Higher Degree Research (HDR) scholarships or other forms of government assistance.

The limited growth in the university workforce has been worsened by a range of significant shifts within the balance of secure and insecure employment, particular in relation to academic, teaching and research staff. Edwards, Bexley and Richardson have remarked upon the trend toward limited-term contracts rather than the standard tenured positions, now described as the 'postdoctoral treadmill', where early career graduates cycle from research grant to postdoctoral fellowship, awaiting opportunities for teaching and more permanent employment.<sup>18</sup>

The Australian higher education sector now disproportionately relies upon workers employed on an insecure basis in a range of discrete employment arrangements to deliver fundamental and indispensable functions, in particular, teaching and research.

### **Gender**

Employment in Australia is marked by ongoing gender inequalities. While there has been a significant increase in the employment of women and of gender equity in the higher education sector, gender based inequity remains. Today, higher education employment has been greatly feminised up to senior lecturer in the academic classifications and supervisory, but not management, levels in the Higher Education Worker (HEW) classifications. Women are still less likely to be promoted into senior positions. Though the gender gap is closing, it is closing inequitably.

Mirroring the Australian workforce at large, severe occupational and disciplinary segregation of the university workforce has moved only a little in the last forty years. Women predominate in academic disciplines and general staff occupations that are traditionally associated with women. In Australia women are still a tiny minority in engineering and most technical fields (16% in Engineering, Maths and IT and 29% in Science courses), while predominating in health science, arts, education and humanities, while still largely avoiding politics and economics – especially to senior levels.

The FASTS (now Science and Technology Australia or STA) 2009 report *Women in Science* demonstrated that even since the mid 1990s, the gender pay gap and significant patterns of gender segregation remain.<sup>19</sup> The Report found that women were less likely to be employed as full-time science professionals than men, and were also more likely to be working part-time at lower levels of classification. The issues facing many women were more pronounced

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<sup>16</sup> I. Dobson (2010) 'Uneven development: The disjointed growth of university staffing since Dawkins', *People and Place*, vol. 18, no. 1: 31; H. Coates and L. Geodegebuure (2010) *The Real Academic Revolution*: 1,7; L. Gottschalk and S. McEachern (2010) 'The frustrated career: casual employment in higher education,' *Australian Universities' Review*, 52 (1): 37.

<sup>17</sup> Universities Australia (2007) *2006 Student to Teacher Ratio For Academic Staff with Teaching function*, Universities Australia, Canberra.

<sup>18</sup> D. Edwards, E. Bexley and S. Richardson (2010): 10; also L. Gottschalk and S. McEachern (2010) in the 'The frustrated career' asserted that in the ten years prior to 2005 casual staff numbers increased by 40 per cent, while overall university employment only increased by 11 per cent.

<sup>19</sup> S. Bell (2009) *Women in Science in Australia: Maximising productivity, diversity and innovation*, Federation of Australian Scientific and Technological Societies: Canberra: 37-9.

with it being particularly difficult to combine and advance an academic or research science career with family responsibilities.

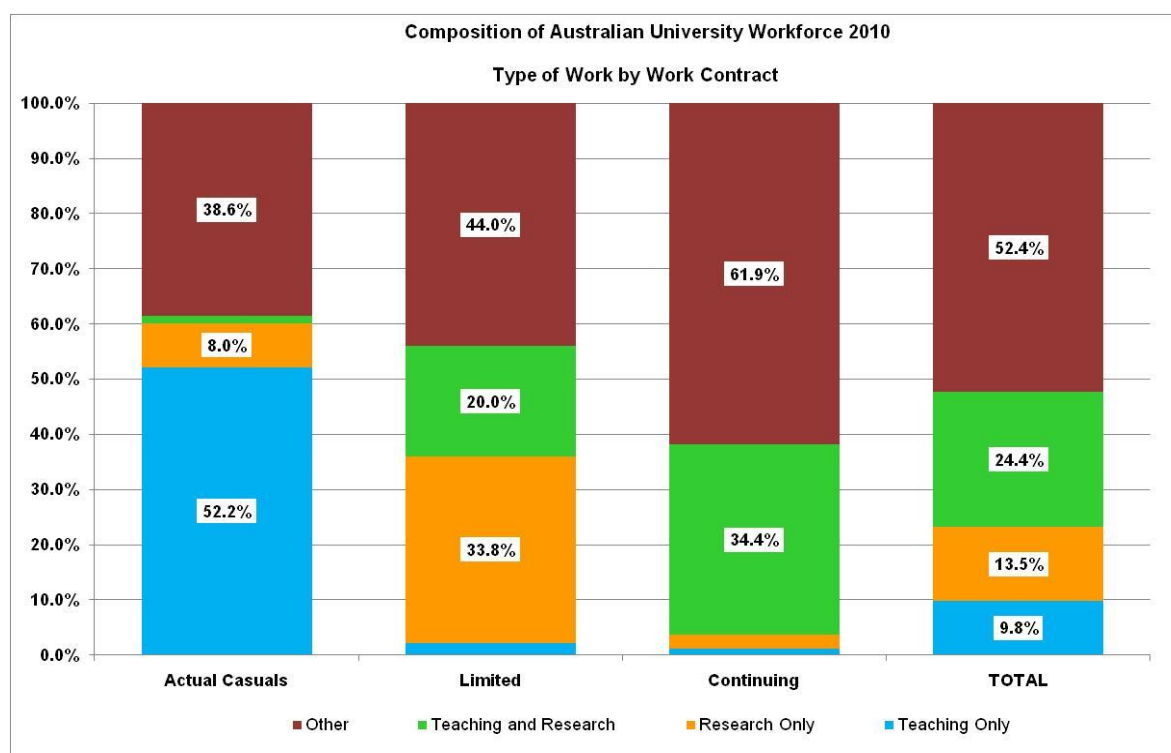
Whilst the university sector has led in paid and unpaid parental leave provisions and other family friendly flexibility clauses in enterprise agreements, these benefits are only available to workers in continuing forms of employment. For women, in particular, in insecure modes of employment, despite the rhetoric, flexibility works in the employer's rather than their favour.

Robyn May estimated that of the 67,000 or more casual academic staff employed in universities in 2011, 57% are women.<sup>20</sup> The scale of increase in fixed-term and casual employment means that female workers have already borne the brunt of growing employment insecurity. The crude figures also do not reveal the whole story. Combined with the need for more flexible employment conditions, many women find themselves even more entrapped in casual and contract employment over many years with no opportunities for career advancement.

The NTEU is co-sponsoring a comprehensive research project led by Professor Glenda Strachan at Griffith University, *Gender and Employment Equity: Strategies for advancement in Australian Universities in tertiary education employment*. The research will deliver important guidance about the nature and magnitude of gender based barriers to advancement, and includes a significant focus upon casual and insecure employment.

### Type of Work

Figure 3



Source. Higher Education Statistics Collection (deewr.gov.au)

Figure 3 (see above) shows the composition of the university workforce (FTE basis) for 2011 by type of work undertaken. Not surprisingly there are substantial differences in the nature

<sup>20</sup> R. May (2011) 'Casualisation; here to stay'.

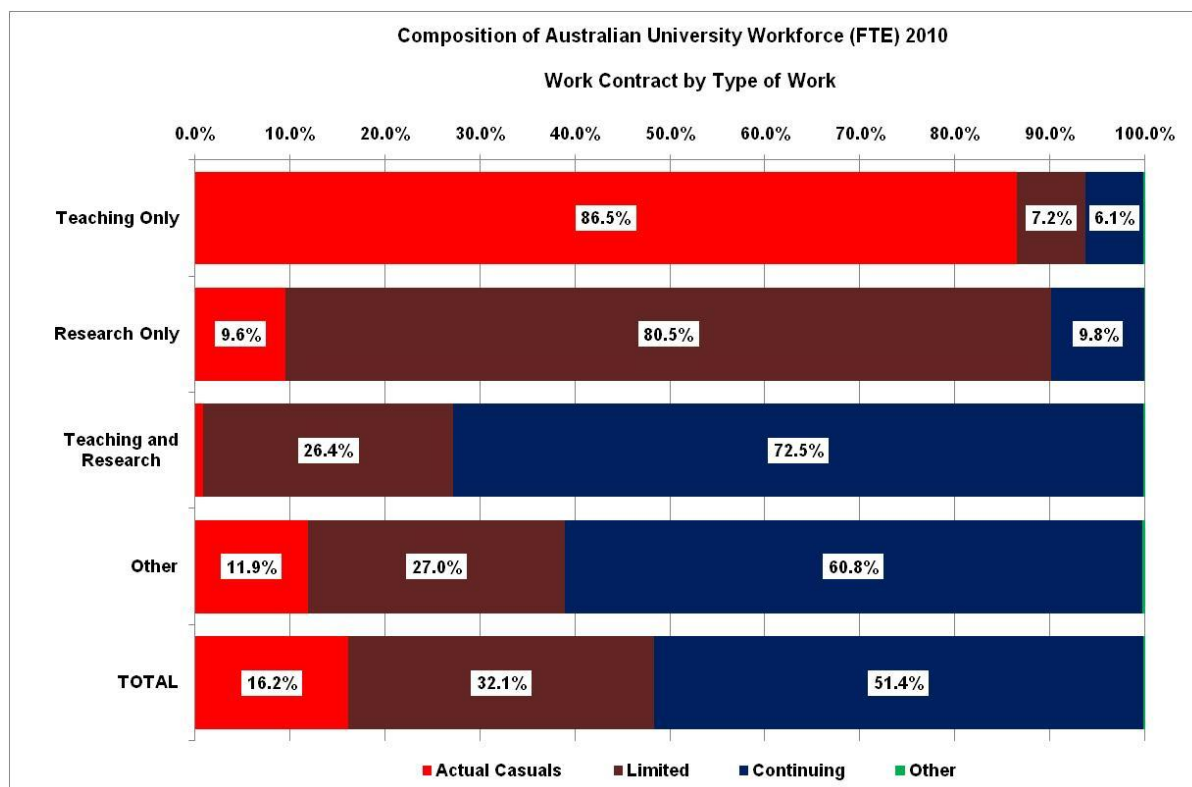


of work-by-work contract, but interestingly the use of casual and limited-term contract workers is less intense in administrative and professional roles than it is in teaching and research. While 52.4% of all university employees are employed in non teaching and/or research roles, these general staff account for 61.9% of continuing employees and only 38.6% of casuals and 44% of limited-term employees.

Breaking down the types of academic employment reveals further differences in the types of roles undertaken by staff employed on different types of work contract. The data show that teaching only employees account for more than half of all casual employees (FTE basis) and research-only staff account for one third of limited-term employees. The insecurity of teaching-only staff in particular is demonstrated by the fact that more than two out of three teaching-only employees are employed at the lowest level – that is at a Lecturer Level A or Associate lecturer level (date not shown). As the data in Figure 3 shows teaching-only and research-only employees account for a very insignificant proportion of continuing employees.

The vulnerability of these staff to insecure employment is emphasised in Figure 4 (see below), which demonstrates the bifurcated character of insecure employment in these types of work. In 2010 less than 10% of teaching-only or research-only staff (measured on a full time equivalent basis) were employed on a continuing basis. However, as the data shows there are stark differences between teaching-only and research staff. Almost nine out of ten (86.5%) teaching-only staff were employed as casuals in 2010. Eight out of ten (80.5%) research-only staff were employed on a limited-term basis.

**Figure 4**



**Source.** Higher Education Statistics Collection (deewr.gov.au)

It is now estimated that approximately 60% of academic staff in Australia's universities (on a headcount basis) are employed as casual (hourly paid) staff with more than half of all undergraduate teaching in Australia's universities performed by casual academic staff.<sup>21</sup>

<sup>21</sup> Ibid.

Complementing the scholarship on casuals, some scholars have indicated that recent growth in staffing numbers has predominantly been in terms of research-only staff, reaching 9,000 in 2007.<sup>22</sup>

It is thus difficult to characterise casual academics as merely industry professionals and PhD students.<sup>23</sup> Many have PhDs and cannot get more secure work. The use of insecure employment within the permanent academic workforce is commonplace, with new lecturers, course coordinators and research fellows frequently employed on casual and fixed-term contracts. A survey conducted in 2008 by the NTEU University of Queensland Branch Research Committee highlighted that amongst 100 research-only staff who had largely been employed full-time on rolling fixed-term contracts had, on average, been employed by the university for 8.6 years.<sup>24</sup>

In Australia, there is a two-tiered system of academic labour between what Queensland University of Technology researcher, Megan Kimber, once described as the 'tenured core' and the 'tenuous periphery'.<sup>25</sup> Though the variety of modes of insecure employment share many elements that are detrimental, particularly in terms of the limits to career development and institutional risk, they also have more nuanced implications for various employment types. In particular, the financial insecurity of fixed-term contract researchers is as much tied to external factors such as the structure of research grant funding defined by grant bodies such as the ARC and NHMRC.

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<sup>22</sup> I. Dobson (2010) 'Uneven development: The disjointed growth of university staffing since Dawkins.'

<sup>23</sup> H. Coates and L. Geodegebuure (2010) *The Real Academic Revolution* and R. May (2011) 'Casualisation; here to stay'.

<sup>24</sup> NTEU-UQ Research Staff Committee (2008) *UQ Research Staff Survey*, unpublished.

<sup>25</sup> M. Kimber (2003) 'The tenured 'core' and the tenuous 'periphery': The casualisation of academic work in Universities', *Journal of Higher Education Policy and Management*, vol. 25, no. 1, pp. 41-50.

## 6. LEVEL OF COMPLIANCE WITH APPLICABLE LABOUR LAWS AND BARRIERS TO EFFECTIVE COMPLIANCE

As noted earlier, key efforts made by the NTEU to attempt to restrict the use of precarious employment in the tertiary education sector have included negotiating restrictions on the circumstances in which employees are engaged in insecure forms of employment. In addition, the NTEU has negotiated conversion clauses for long term casual staff and contingent funded contract research staff. We also continue to negotiate improved conditions of employment for insecure employees, including higher casual loadings, improved superannuation entitlements and improved access to leave, including parental leave and long service leave in some of our enterprise agreements.

The evidence presented by the NTEU during the making of the HECE Award is instructive in understanding the methods used by some employers to avoid compliance with applicable labour laws and to minimise costs. The evidence provided at the time included:

- *Persons being employed on eleven month contracts and not offered employment over Christmas;*
- *Placing employees on 364 day contracts with employment to cease on 31 December to avoid a twelve month threshold for a higher level of entitlements to superannuation contributions and other employer financed benefits;*
- *Termination of non-continuing employees without due process;*
- *The denial of, or apparent inadvertence to, the benefits and reasonable obligations of an employer in developing redeployment opportunities for non-continuing employees; and*
- *Causing prolonged uncertainty as to further employment through lack of notice of the offering or non-offering of a further contract of employment, and the associated timing of decisions about such matters without adequate regard to the reasonable need of an employee to know whether and when work will be available.<sup>26</sup>*

It has been the unfortunate experience of the NTEU that some employers continue to seek to use employment practices such as those presented above to attempt to circumvent restrictions on the long term use of precarious forms of employment.

The current *Higher Education Industry – General Staff – Award 2010* includes a casual conversion clause that provides the ability for individual casual employees to apply for conversion in circumstances where:

- *The employee has been engaged over the immediately preceding period of 12 months and worked an average of at least 50% of the ordinary weekly hours that would have been worked by an equivalent full-time employee; or*
- *Over the immediately preceding period of at least 24 months.<sup>27</sup>*

The full extract of these provisions are attached at **Attachment B**. The casual conversion provisions from the General Staff Modern Award have been replicated in university enterprise agreements. Similar to the evidence presented before the HECE Full Bench proceedings outlined above, the NTEU is now aware of situations where casual employees are engaged by universities in such a way as to avoid triggering the eligibility criteria for conversion.

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<sup>26</sup> Print P4083 Higher Education General and Salaried Staff (Interim) Award Full Bench Decision (1989): 29

<sup>27</sup> Higher Education Industry – General Staff – Award 2010 [MA000007] Clause 12.3

Unfortunately, we are increasingly aware of circumstances where individual employees who may be eligible to make an application for conversion are reluctant to do so as they feel vulnerable and fearful of being portrayed as a 'trouble maker'.

### **State Employees and *Re AEU***

In addition to its membership in higher education, the NTEU has significant membership in the State of Victoria amongst *Professional Administrative Clerical Computing and Technical Staff* employed in Victorian TAFE Institutes.

In respect of the TAFE sector, NTEU members are very adversely affected by the combination of the High Court's Judgement in *Re AEU* [184 CLR 188] and the failure of the Victorian Parliament to make an appropriate referral of powers to the Commonwealth, in the *Fair Work Commonwealth Powers Act 2009 (Vic)*.

Amongst other things, the nature of Victoria's text-based referral of powers contains exemptions similar to the ones made in the 1996 referral, the effect of which is to place State public sector employers in Victoria outside any arbitral powers in relation to insecure forms of employment. This is not something which applies in other States (where State industrial tribunals can still regulate these matters) nor to other public employees (e.g. Commonwealth employees). This is a serious flaw in the regulatory regime about security of employment, by which hundreds of thousands of employees are excluded in relation to security of employment. (See for example *FWA Print R3868* – a Full Bench Decision regarding the TAFE PACCT Award). It should be emphasised that this is not a Constitutional issue – it is an issue which arises simply from the inadequacy of Victoria's referral and represents a significant barrier to this particular group of staff.

**Recommendation 2: The Victorian Parliament should make a new referral of powers to the Commonwealth which, at the very least, ensures that arbitral that arbitral tribunals and the Commonwealth power include the capacity to regulate types of employment.**

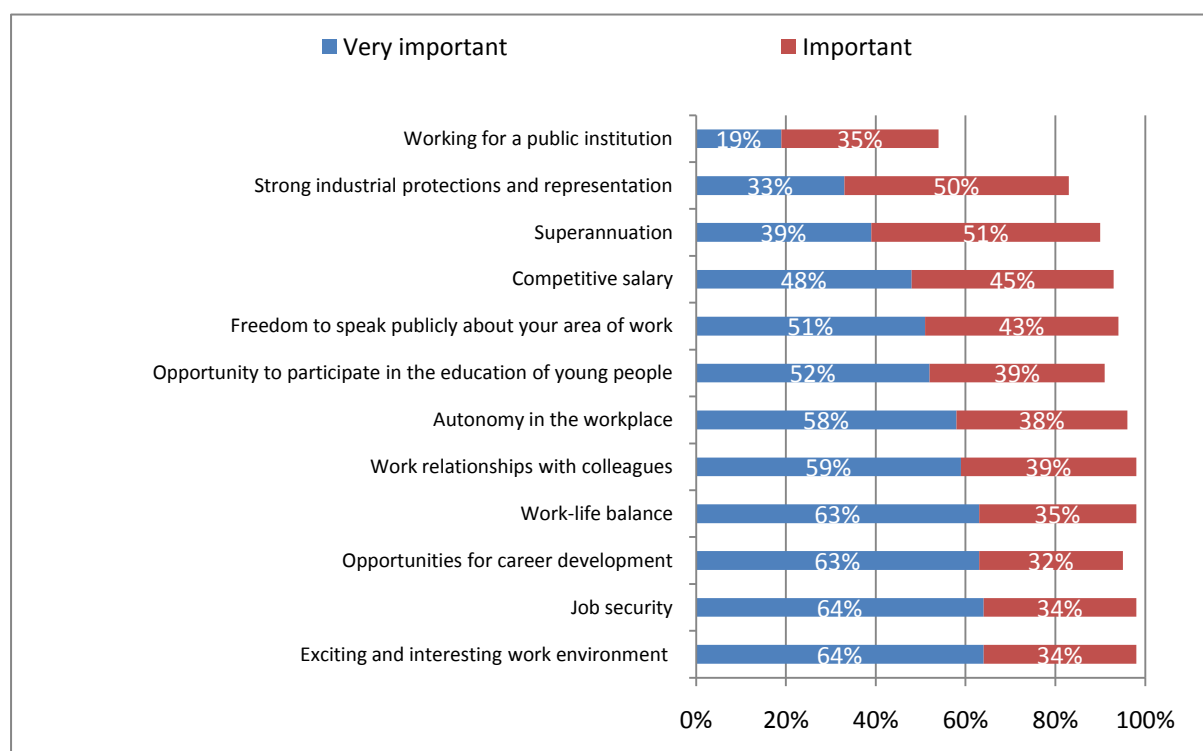
## 7. EFFECTS OF INSECURE WORK ON WORKERS, FAMILIES AND COMMUNITIES

Research on attitudes to Australian university employment have consistently indicated that both casual and fixed term contract staff want greater employment security, and that job security is a building block for regenerating a precariously-positioned academic workforce.<sup>28</sup> The NTEU University of Queensland Branch Research Committee 2008 survey highlighted amongst 100 research-only staff that the overwhelming concern amongst these staff members was conversion to continuing employment with 64% listing this as their most important issue.<sup>29</sup>

Amongst the 400 casual academics and early career researchers who responded to the 2011 NTEU university staff survey job security was the priority issue (see Figure 5 below). 97% of casuals and early career researchers thought job security was important or very important to their own employment, with 95% also saying opportunities for career development were important or very important. These were two of three most important issues for the survey group. Other results of the 2011 survey included that:

- 96% of casuals and early career researchers thought ensuring all university staff have secure employment was important;
- 93% said the recruitment of new academic staff was important;
- 52% of casuals and early career researchers related intellectual freedom to job security.

**Figure 5 Survey response to: What things are important to you in relation to working at university?**



**Source. NTEU's 2011 University Staff Survey**

Labour market and industrial experts have explored at length fairly unique employment

<sup>28</sup> H. Coates and L. Geodegebuure (2010) *The Real Academic Revolution*; R. May (2011) 'Casualisation; here to stay'; E. Bexley, R. James, and S. Arkoudis (2011) *The Australian academic profession in transition*.

<sup>29</sup> NTEU-UQ Research Staff Committee (2008) *UQ Research Staff Survey*, unpublished.

dynamics related to casual and sessional teaching. The sector's reliance on the casualisation of teaching is undoubtedly guided by the fact that it is the cheaper option.<sup>30</sup> In practice, the nature of casual and sessional teaching is characterised by academic supervisors relying upon students and professional networks to recruit casual staff. These patterns of recruitment are haphazard and opportunistic.<sup>31</sup> The highly personalised nature of casual and sessional recruitment is uniquely impacted upon by devolved budgetary structures, where budget decisions are made at higher organisational levels, but decisions between casual and permanent staffing are determined at the departmental or school level.<sup>32</sup> This devolved system of staff management has wider implications for the nature of academic work as well.

In tertiary education employers have been able to cut costs by shifting the risks of employment from employer to employee, and in particular onto highly skilled workers who are indispensable to the daily operations of the institutions that employ them. This environment has created a lost generation of PhD graduates who have not been able to find continuous employment in tertiary education. Some doctoral graduates have moved onto fulfilling careers in other industries. Others have been less fortunate and are still driving taxis or stacking supermarket shelves in the anticipation that their irregular opportunities for teaching and research will lead one day to a more permanent career. This environment has also created a generation of highly specialised research-focused experts who have been employed in some instances for decades on rolling contracts, periodically chasing funding grants, and who have neither had the opportunity to embed permanent careers, nor bring work/life balance into their lives.

### Implications for workers

In much of the government's reporting on insecure modes of university employment, the impacts and risks of casual and sessional teaching to individual workers are ignored, and are rather framed in terms of institutional risk.<sup>33</sup> Noting the centrality of intellectual capital to the teaching and research functions that Australian universities perform, it is peculiar that a stronger focus upon the implications of insecure work for workers themselves has not been properly investigated.

In spite of greater pay loading for casual and sessional teachers, studies indicate that casual employment is associated with lower levels of financial well-being compared to permanent workers.<sup>34</sup> Casual employment cannot provide financial stability, with both casual and fixed term contract academics concerned with the lack of notice around future contracts, and the need to identify employment before the contract expires. Workers in these situations are often unable to financially plan for medium to long term, and this can impact directly on a person's capacity to take out loans, mortgages or credit cards and is particularly obstructive for casual and sessional academics who are supporting dependents.

There are significant effects upon the health and well-being of staff experiencing insecure employment. Numerous casual and sessional staff report feelings of isolation from the university community and a lack of support networks.<sup>35</sup> This kind of isolation and the lack of

<sup>30</sup> A. Junor (2004) "Casual University Work: Choice, Risk, Inequity and the Case for Regulation." *The Economic and Labour Relations Review*, 14(2), 276-304; T. Brown, J. Goodman and K. Yasukawa (2010) 'Academic casualisation in Australia: Class divisions in the University', *Journal of Industrial Relations*, vol. 52, no. 2, pp. 169-182.

<sup>31</sup> D. Churchman (2005) 'You will do: The construction of meaning and identity by sessional academic staff', ANZCA, City: Christchurch, New Zealand.

<sup>32</sup> R. May (2011) 'Casualisation; here to stay'.

<sup>33</sup> S. Barrett (2004) 'Emotional labour and the permanent casual lecturer: Ideas for a research project', *International Education Journal*, (4) 4: 92-101; R. May (2011) 'Casualisation; here to stay'.

<sup>34</sup> Sandra Buchler, Michele Haynes and Janeen Baxter (2009) 'Casual employment in Australia: The influence of employment contract on Financial Wellbeing', *Journal of Sociology*, 45: 271-89.

<sup>35</sup> S. Barrett (2004) 'Emotional labour and the permanent casual lecturer'; T. Brown, J. Goodman & K. Yasukawa (2010) 'Academic casualisation in Australia: Class divisions in the University'.

value invested in casual staff lead to higher levels of stress. Sharni Chan, a union activist and tutor in industrial relations at Macquarie University, has written about the nature of the heightened stress facing casual academics, highlighting that casual employment in universities impacts upon so many who would prefer to work in permanent positions but are locked into casual modes of employment. She notes that the 'non-standard' characteristics of academic casuals are even extreme within the category of 'non-standard employment' leading to increased levels of stress and suffering. She argues that this scenario also leads to university workers delaying when they start families.<sup>36</sup>

### ***Professional disaggregation, fragmentation and disadvantage***

Casual and sessional teaching is overwhelmingly characterised by the lack of professional development and the decline of collegial engagement.<sup>37</sup> Barriers to career opportunities faced by casual and sessional teachers have given rise to labels such as the 'treadmill academic'; staff who participate in a range of short-term engagements to secure cost of living and academic experience.

Casual employees in higher education face a number of specific disadvantages which are perhaps more common than those in other industries. This is particularly the case for academic and research employees. All full-time professionals perform duties at a range of different work-value levels, but are generally remunerated for all their duties on the basis of their most significant duties. This is true in higher education – a professor is not remunerated at a lower level when she is doing simple marking. By contrast, this is not the case with academic casual employment. The Award and Agreement structures allow for different duties to be paid at different rates of pay. So when an employee is giving the lectures in a particular subject, she is entitled to one rate of pay, whereas when she is marking the exam papers for that same subject, she can be employed at the "simple marking" rate, which is 20% lower. This disaggregation of the work into separate rates of pay means that a casual employee is not paid at the same rate of pay as a non-casual employee would be paid for the same work. The Award structures also deny to long-term casual employees access to the work-value-based incremental pay structures which are applicable to non-casual employees.

Adding indignity to these injuries is the practice of universities requiring employees to inform the employer of their research publications, even when these have been done entirely in the employee's own unpaid time, and then claiming these publications as part of the University's research effort under various research-rewards schemes, with no remuneration flowing to the employee.

### **Implications for colleagues**

As much as these kinds of employment arrangements impact negatively on individuals, there are a further host of implications for work colleagues and the work environment at universities. In direct terms, the devolution of managerial responsibility to academic supervisors adds to the burden of more permanent staff as they must manage the army of casual and sessional staff on top of their other duties.<sup>38</sup>

The supervisors of sessional teachers are the most crucial in establishing quality processes in teaching and learning and have the responsibility of assuring the quality of teaching in

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<sup>36</sup> S. Chan (2011) 'You can't raise a kid on a Casual income: The invisible risks of being a "non-standard" non-standard worker', *Connect Magazine*, (4) 2: 12-13.

<sup>37</sup> P. Toner, T. Turpin, R. Woolley and C. Lloyd (2010) *The role and contribution of tradespeople and technicians in Australian Research and Development – An initial study*, Report to the Department of Education, Employment and Workplace Relations, Canberra.

<sup>38</sup> Cowley 2010: 34

their programs through large numbers of sessional teachers.<sup>39</sup> This can contribute to increased work-related occupational stress and decreased productivity. The expansion of large casually-employed academic teachers facilitates less collegial and more exploitative relationships, signified in the documentation of limited access of casual and sessional academics to faculty meetings and minutes, as well as basic resources such as an office, email address and phone line.<sup>40</sup> Considering that casual and sessional teachers are often responsible for much of the teaching load, these arrangements not only deepen hierarchical behaviour, but diminish the teaching function performed by academics.

Because casuals possess lower organisational commitment than permanent staff, the reliance upon casuals discourages investment in teaching practices and the proper development of teachers.<sup>41</sup> The use of casual staff damages the quality of teaching at Australian universities to the extent that there is a lack of effective training opportunities for casual academics).<sup>42</sup> Increasingly there is a gap between those who conceptualise, design, write and review courses and those who do most of the teaching. This also undermines the capacity for curriculum development and the retention of expertise in universities itself.

### **Implications for the sector**

The extent of job insecurity within tertiary education employment has direct implications for the Australian economy. The education sector is Australia's third largest export industry, generating around \$19.1billion in export revenues in 2009-10. Universities account for more than half of this income at around \$10billion. Australian universities are also generators of research and innovation. Universities are the largest employers of people engaged in research activity in Australia. In 2008-09, it is estimated that Australia spent a total of \$27.7billion on R&D activities of which \$16.8billion (about 60%) was spent by the business sector but, almost \$7billion (approximately 25%) was spent by Australian universities. The influence of universities on Australia's R&D efforts is far more important, accounting for 60% of all expenditure on basic research (pure and strategic).

### **Implications for intellectual freedom**

Though the NTEU's concern for fair conditions of employment is central to this submission, public policy considerations arising from academic casual employment are by no means outside the terms of reference of the inquiry. One of the most important public policy considerations that is shaped by the proliferation of insecure employment is the capacity for universities to sustain and protect intellectual freedom. Unless academic employees have security of employment, and that security is protected by legal means, there is no intellectual freedom.

In contrast to many other kinds of tertiary education institutions, intellectual freedom is a defining factor of the university. Australia and many other countries are party to international instruments such as the UNESCO *Recommendation Concerning the Status of Higher-Education Teaching Personnel* (1997) which has its origins not in labour law but in the advancement of the highest standards of excellence in higher education in all countries.<sup>43</sup> For instance, the Recommendation states;

<sup>39</sup> A. Percy and R. Beaumont (2008) 'The casualisation of teaching and the subject at risk'; H. Coates, I. Dobson, D. Edwards, T. Friedman, L. Goedegebuure, and L. Meek (2009) *The attractiveness of the academic profession: A comparative analysis*; A. Madden (2009) 'Managing for the ideal research environment,' *Higher Education Policy and Management*, 31 (3), 271-282; G. Hugo and A. Morriss (2010) *Investigating the Ageing Academic Workforce*: 74

<sup>40</sup> A. Percy and R. Beaumont (2008) 'The casualisation of teaching and the subject at risk.'

<sup>41</sup> A. Percy, et al (2008) *The RED Report*; 8. E. J. Halcomb, S. Andrew, K. Peters, Y. Salamonson, and D. Jackson (2010) *Casualisation of the teaching workforce: Implications for nursing education*, *Nurse Education Today*, 30(6): 528-532; and R. May (2011) 'Casualisation; here to stay': 8.

<sup>42</sup> T. Brown, J. Goodman and K. Yasukawa (2010) 'Academic casualisation in Australia.'

<sup>43</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13144&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html)



## **B. Security of employment**

*45. Tenure or its functional equivalent, where applicable, constitutes one of the major procedural safeguards of academic freedom and against arbitrary decisions. It also encourages individual responsibility and the retention of talented higher-education teaching personnel.*

*46. Security of employment in the profession, including tenure or its functional equivalent, where applicable, should be safeguarded as it is essential to the interests of higher education as well as those of higher-education teaching personnel. It ensures that higher-education teaching personnel who secure continuing employment following rigorous evaluation can only be dismissed on professional grounds and in accordance with due process. They may also be released for bona fide financial reasons, provided that all the financial accounts are open to public inspection, that the institution has taken all reasonable alternative steps to prevent termination of employment, and that there are legal safeguards against bias in any termination of employment procedure. Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education.*

Given that two-thirds of academic staff in Australia do not have the types of protection afforded by continuing employment status, the argument that intellectual freedom is protected difficult to maintain.

It is often thought that cases of infringement of intellectual freedom are only those where an academic 'speaks out' on a controversial issue and then victimised for this. But the current employment scenario impacts the very construction of the university learning process, with causal academic teachers less likely to introduce new or challenging ideas or concepts if taught in a climate that an employment relationship could just as easily be discontinued. This view has been put forward by American Association of University Professors (AAUP) President Cary Nelson who stated;

*The AAUP was founded on the principle that academic freedom and job security are inextricably linked. You cannot have one without the other and it's a lesson that is now much more powerfully relevant to the American Academy than it has been for decades because our reliance on contingent faculty has really doubled in the past thirty years and 2/3rds of our teaching is now being done by people without any job security...*

Noting that the intrinsic value of intellectual freedom was enshrined through the introduction of Commonwealth legislation in 2011, the use of insecure modes of employment in academic and research contexts (where work is not in fact irregular in nature) is a diminution of the very principle of intellectual freedom.

### **Implications for the future workforce**

Researchers caution that casualisation peculiarly impacts upon younger academic staff, 'The use of flexible and casual working arrangements... disproportionately affects younger academics at the start of their careers and might serve to discourage young researchers from entering or remaining in the academic profession'.<sup>44</sup> Many of those who do casual teaching are higher degree research students themselves, with 70% of students currently

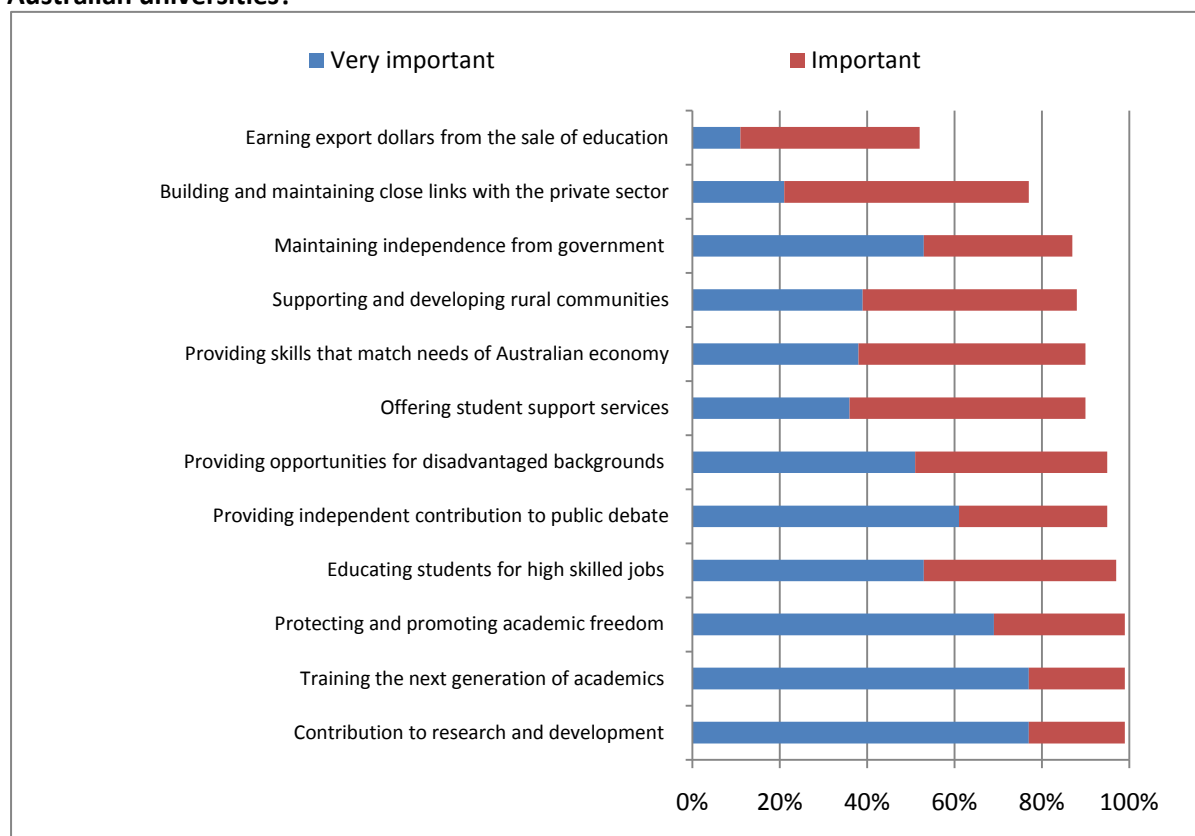
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<sup>44</sup> J. Kubler and C. DeLuca (2006) *Trends in academic recruitment and retention: A Commonwealth perspective*. London: The Association of Commonwealth Universities: 67.

employed at a university on casual or temporary contracts.<sup>45</sup>

Based upon the NTEU's own staff survey, the values of casuals and early career researchers reflect a strong commitment to the public good (see Figure 6 below). In terms of defining the most important roles performed by Australian universities, these were focused around the contribution to Australian research and innovation, the delivery of high quality teaching to students, freedom of expression and overcoming social disadvantage in Australian society. In essence, casual and sessional academics and early career researchers displayed well-intentioned ideals about the workplace.

**Figure 6 Survey response to: What do you consider to be the most important roles performed by Australian universities?**



Source. NTEU's 2011 University Staff Survey

As demonstrated in the results of the National Research Student Survey in 2011, at least 83 per cent of HDR students have seriously considered an academic career with 62.8 per cent indicating that they ideally wanted to follow an academic pathway following completion of their HDR degree.<sup>46</sup> For the majority of higher degree research students who want to transition towards an academic career, the sector's reliance upon casualisation and other forms of precarious employment alters their understanding of academic work, and thus detrimentally impacts upon the attractiveness of the academic career and the capacity of the tertiary education sector to retain intellectual capital.<sup>47</sup>

In this respect, the degree of casualisation in the university sector has an impact upon the desirability of an academic career: with casualisation meaning those who enter casual contracts face a far less certain professional future, than previous generations of academics. The oncoming academic workforce crisis, the lack of attractiveness in the academic career, and in the incapacity of universities to see these workforce issues as systemic does not

<sup>45</sup> E. Bexley, R. James and S. Arkoudis (2011) *The Australian academic profession in transition*.

<sup>46</sup> D. Edwards, E. Bexley and S. Richardson (2010) *Regenerating the Academic Workforce*.

<sup>47</sup> A. Percy and R. Beaumont (2008) 'The casualisation of teaching and the subject at risk.'

bode well for the future of the Australian higher education sector.

Systemic change requires the development of best practice workforce strategies and new thinking about professional learning, organisational development and support, intellectual property and talent management.

However, in spite of public investment, employers have become accustomed to sustained modes of insecure employment, and there are few external incentives for university managements to redress or correct the workforce challenges facing Australian universities.<sup>48</sup> In the performance-based funding provided by government, there is little regulatory burden for universities in relation to the pedagogic implications of these kinds of employment practices. The capacity to address the causes of insecure work will require greater convergence between staff, university employers and the Federal Government about the value of secure modes of employment for the long-term interests of Australian higher education.

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<sup>48</sup> A. Percy, et al (2008) *The RED Report*: 3; G. Hugo and A. Morriss (2010) *Investigating the Ageing Academic Workforce*: Stocktake: 85; H. Coates and L. Geodegebuure (2010) *The Real Academic Revolution*.

## 8. RIGHTS AND ENTITLEMENTS AND WORK CONDITIONS THAT CAN BEST ASSIST IN PROVIDING JOB SECURITY

The NTEU notes and endorses the ACTU paper outlining measures to promote job and income security “*The future of work in Australia: dealing with insecurity and risk*”. The NTEU agrees with the view outlined in the ACTU options paper that a range of responses are required due to the different forms that insecure work can take across different industries and occupations.

On this point we believe it is important to take a holistic approach to addressing insecure work in all its forms. Addressing only one particular aspect of insecure work in any particular industry or enterprise may result in inadvertent and unexpected consequences. For example, introducing restrictions on the use of long term casual labour may result in some employers looking at other forms of precarious employment, such as increasing the use of contract labour, to attempt to continue to shift risk back to the employee.

To attempt to address such an outcome, the NTEU believes it is important to ensure that overarching legislative protections are in place. The principle should be that the normal form of employment is continuing employment. The NTEU believes that an appropriate legislative response could be provided through the use of a secure employment principle to assist in achieving effective minimum standards across the Australian community.

The following measures are based upon the European Council Fixed Term Work Directive 1999<sup>49</sup> (which established minimum requirements relating to fixed term work to prevent abuse arising from the use of successive employment contracts) and measures adopted in the United Kingdom.<sup>50</sup>

### **Recommendation 3: Amend the *Fair Work Act 2009* to incorporate a Secure Employment Principle for Modern Awards and Enterprise Agreements.**

The NTEU recommends the *Fair Work Act 2009* (FW Act) be amended to incorporate a reference to a secure employment principle. This principle would act to ensure that continuing employment is the normal form of employment and is duly taken into account in the making and review of modern awards and the approval of enterprise agreements.

Part 2-3 of the FW Act deals with the operation of modern awards. The modern award objective in section 134 should be varied to include reference to the need to promote continuing employment through the secure employment principle.

Section 135 could then be amended in the following terms:

#### *Modern awards secure employment principle*

*(3) In making, varying or reviewing modern awards, FWA must give effect to the secure employment principle. For the purpose of this section, the secure employment principle means that;*

*(a) The normal form of employment should be continuing employment rather than casual, fixed term or temporary employment, subject to the following:*

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<sup>49</sup> Council Directive 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

<sup>50</sup> The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (UK) requires that employers give people on part time contracts equal pay to people on full time contracts who do the same jobs. It implements EU Directive 97/81/EC and forms part of the European Union’s programme to combat discrimination of atypical workers. Because the large majority of part time workers are female, it is also an important attempt to combat sex discrimination.

- i. The established need for genuinely short term or ad hoc employment to meet the genuine operational requirements of an employer or industry;*
- ii. The need to allow for seasonal or fluctuating employment in an industry or enterprise, to the extent that part-year or annualised arrangements are not practicable or appropriate, or not in the interests of employees;*
- iii. Appropriate accommodation of employment on projects of limited duration, or replacement of employees on leave, or like circumstances;*
- iv. Traineeships, apprenticeships, cadetships, internships or like arrangements where the relevant employees gain significant skills or experience which outweighs any disadvantage caused by a lack of job security;*
- v. The wishes of the majority of the relevant employees, and their representatives, in circumstances where FWA is satisfied that arrangements involving the use of non-continuing employees involve an clear overall advantage to employees, including those in less secure forms of work;*
- vi. Arrangements to protect the interest of any employee who was in a particular type of employment as at the [commencement of this Section] and wishes to remain in that type of employment;*

and;

*(b) Casual, fixed term, temporary and like employees who will be covered by the modern award will not be worse off overall in relation to modern award conditions than comparable continuing employees are or, if there are no comparable continuing employees, to a continuing employee who might be employed in the same circumstances to do the same work.*

The secure employment principle would then be reflected in other relevant sections of the FW Act including Part 2-4 Enterprise Agreements. The NTEU recommends that the general requirements for the approval of an enterprise agreement by FWA be amended to provide the following:

*186(2)(d) the agreement passes the better off overall test **and does not disadvantage precarious employees.*** [new text in bold]

A new provision in relation to passing the better off overall test could be included in section 193 as follows:

*193(1A) An enterprise agreement is taken to disadvantage precarious employees if a casual, fixed term and/or temporary employee would be worse off under the enterprise agreement than a comparable continuing employee employed under the enterprise agreement or if there are no comparable continuing employees, to a continuing employee who might be employed in the same circumstances to do the same work.*

The NTEU believes that such legislative changes would assist in providing an effective safety net for workers in precarious forms of employment as well as dealing with attempts by some employers to move to other modes of insecure employment in response to regulation of certain types of employment.

#### **Recommendation 4: Extend and strengthen the right to request flexible work arrangements by:**

- **including the ability to challenge decisions of employers to deny requests for flexible work arrangements in Fair Work Australia.**

- **extending the ability to request flexible working arrangements to all workers, not just limited to workers with caring responsibilities.**

As we have noted earlier in this paper under the discussion '*University Workers Most at Risk*', research conducted by May indicates that the extent of insecure work in Australian universities has a notable impact upon women. As we have also noted, the claim commonly made by many university managers is that casual modes of employment provide flexible work arrangements that are preferred by many workers. As indicated in our discussion of recent survey results of the NTEU members and the research conducted by Junor, the assertions of management are not borne out by survey results.

In any event, when often presented with casual employment as the only alternative to full-time continuing work, it is perhaps little wonder that many workers believe this is the only option available to manage family and caring responsibilities.

On this point, it is quite extraordinary to note that the only two provisions of the National Employment Standards that are specifically excluded from being dealt with as a dispute by FWA deal with matters that have a high impact upon women workers: requests for flexible working arrangements and requests to extend the period of unpaid parental leave.

The NTEU believes it is vitally important to promote and encourage part-time continuing work in order to challenge the view that casual employment is the only option available to provide flexible work arrangements.

The NTEU recommends that the FWA be amended to ensure that denials of requests for flexible work arrangements are able to be dealt with as a dispute regardless of whether or not the parties have agreed in a contract of employment, enterprise agreement or other written agreement to FWA dealing with the matter.

Further, the ability to request flexible working arrangements should be extended to all workers who need it and not just limited to workers with caring responsibilities.

**Recommendation 5: Make improvements to the Bargaining System through the removal of existing restrictions on the content of agreements, particularly as they relate to the use of contractors and labour hire.**

The NTEU is strongly supportive of the need to remove existing restrictions on the content of enterprise agreements and endorses the ACTU approach outlined in its options paper, particularly as they relate to the use of contractors and labour hire.

**Recommendation 6: Limit Non-Standard Employment through bargaining and legislation through the use of clear and enforceable definitions and limits on the use on all forms of precarious employment.**

The NTEU notes the discussion in the ACTU Options Paper regarding the need to limit non-standard employment to where it is necessary, fair and appropriate and supports this option. We trust that the discussion outlined in this paper regarding the impact of the introduction of the HECE Award is helpful to Committee members.

The experience of the HECE Award demonstrates the effectiveness of having clear and enforceable definitions and limits in place. The NTEU therefore recommends the pursuit of restrictions on the use of precarious employment in all its forms through enterprise bargaining, as well as giving consideration to legislative changes to support the promotion of continuing employment in the Australian community.

**Recommendation 7: Ensure access to unfair dismissal remedies in circumstances where the purpose of the use of limited term employment is to avoid the employer's obligations.**

There is a fatal and almost certainly unintended flaw in Section 386 of the *Fair Work Act 2009* which allows for abuses already widely evident in the education industry which could readily become a major reason for the excessive use of limited term contracts as well as a means effectively to avoid the unfair dismissal jurisdiction.

Section 385 of the Act says as follows:

**386 Meaning of dismissed**

*(1) A person has been dismissed if:*

- (a) the person's employment with his or her employer has been terminated on the employer's initiative; or*
- (b) the person has resigned from his or her employment, but was forced to do so because of conduct, or a course of conduct, engaged in by his or her employer.*

*(2) However, a person has not been dismissed if:*

- (a) the person was employed under a contract of employment for a specified period of time, for a specified task, or for the duration of a specified season, and the employment has terminated at the end of the period, on completion of the task, or at the end of the season; or*
- (b) the person was an employee:*
  - (i) to whom a training arrangement applied; and*
  - (ii) whose employment was for a specified period of time or was, for any reason, limited to the duration of the training arrangement;*

*and the employment has terminated at the end of the training arrangement; or*

*(c) the person was demoted in employment but:*

- (i) the demotion does not involve a significant reduction in his or her remuneration or duties; and*
- (ii) he or she remains employed with the employer that effected the demotion.*

*(3) Subsection (2) does not apply to a person employed under a contract of a kind referred to in paragraph (2)(a) if a substantial purpose of the employment of the person under a contract of that kind is, or was at the time of the person's employment, to avoid the employer's obligations under this Part.*

Sub-sections 386 (1) and 386 (2)(a) are really just statutory restatements of the common law position. This is supported by the Explanatory Memorandum of the FW Act at 1528-1532.

The real concern is, however, with Section 386(3). The Explanatory Memorandum, at 1536 says:

*1536. Subclause 386(3) is an anti-avoidance rule. It provides that where a substantial purpose of a person's engagement on a contract for a specified period of time, task or season is to avoid the employer's obligations under the unfair dismissal provisions, then paragraph 386(2)(a) does not apply.*

The fatal problem with Section 386 is that it can never have any effect whatever. If an employee's employment terminates in the circumstances set out in 386(2)(a) then it is clear that employee can never be as described in 386(1). This is because that employee's employment has not been terminated **on the employer's initiative** but has come to an end by the effluxion of time or the completion of the task or season – these are the only circumstances covered by 386(2)(a).

It therefore follows that 386(3), which says only that **386(2)(a)** does not apply where this is done to avoid the unfair dismissal jurisdiction, does not have the intended effect of bringing such employees within the unfair dismissal jurisdiction because no such employee could ever satisfy the inclusive definition of dismissal in Section 386(1). It therefore follows that there is no person to whom 386(3) could provide a benefit as it is definitionally impossible.

So long as it remains a requirement that dismissal be at the initiative of the employer (including constructive dismissal) then the scope of the jurisdiction cannot overcome sham fixed term contracts.

The NTEU proposes that this obvious flaw should be closed as follows:

**386 (3) Despite sub-sections (1) and (2) a person has been dismissed if:**

- (a) The person was employed under a contract of the kind referred to in (2)(a); and**
- (b) The employment has terminated at the end of the period, on the completion of the task, or at the end of the season; and**
- (c) A substantial purpose of the employment of the person under a contract of that kind is or was at the time of the person's employment, to avoid the employer's obligations under this Part, or under the Part 2-2 of the Act [the National Employment Standards].**

NTEU does not see this as an "education-specific" amendment, but can illustrate the need for it in the context of our industry. With the passage of the FWA, the previous exclusion of "probationers" from the unfair dismissal jurisdiction has been replaced with the exclusion of employees with less than 6 months' service. This has brought many academic probationers (who typically have probation periods of 12 months to 5 years) back within the scope of the unfair dismissal jurisdiction. In enterprise bargaining in 2010-2011, the University of NSW was determined in seeking an exemption from the restrictions on fixed term employment (of the type initially included in the Higher Education Contract of Employment Award 1998), which exemption would allow a new employee to be engaged on a fixed term contract, instead of as a probationary employee. The University was absolutely explicit that the reason it wanted to do this was so that such employees would not have access to any remedy for unfair dismissal.

The NTEU submits that a non-renewal of a fixed term contract should also fall within the jurisdiction of the unfair dismissal regime if it was entered into for the purpose of avoiding NES entitlements such as redundancy, parental leave or long service leave. Without such a right, the employee, for example, who is employed on 9.5 years of limited term contracts, and is not renewed because of a pending entitlement to long service leave, has no remedy, not meeting the definition of adverse action in Section 342.



## 9. RELEVANT HUMAN RIGHTS AND INTERNATIONAL LABOUR STANDARDS

Although the significance of international labour standards and basic conditions of work to universal human rights is articulated in the United Nations' Universal Declaration (1948) at Article 23,<sup>51</sup> the most important source of international human rights related to secure employment is through the International Labour Organisation (ILO), whose Conventions collectively form the basis of the international labour standards framework.

As a specialised agency of the United Nations, the ILO has the power to establish and shape international labour standards by both conventions and recommendations. It also operates as a forum to investigate instances of non-compliance by member states. The ILO's approach to international labour standards is underpinned by a number of key documents, such as the *Declaration of Philadelphia* (1944), which focused upon an approach to international labour standards framed by the fundamental human rights of workers, and later through the *ILO Declaration on Fundamental Principles and Rights at Work* (1998).

While there are a number of ILO Conventions that are highly relevant to the conditions of employment experienced by insecure, casual and contract workers in Australia, international labour standards related to insecure work are increasing conditioned by the effects of globalisation and the role of international markets and production chains in accelerating the prevalence of informal, insecure and unregulated labour.<sup>52</sup>

The Wage Indicator Foundation usefully defines the international labour standards relevant to decent work according to a range of key themes.<sup>53</sup> The themes relevant to Australian tertiary education include:

- Work and Wages (Convention 131 (1970) on Minimum Wage; Conventions 95 (1949) and 117 (1962) on Regular Pay; Conventions 47 (1935) and 106 (1957))
- Work and Holidays (Convention 132 (197) on Holidays with Pay Convention (Revised) and Work during Holidays and Weekends (Conventions 14, 47 and 106))
- Maternity and Work (Convention 183 (2000))
- Health and Safety at Work (Convention 155 (1981) on Occupational Safety and Health)
- Social Security (Convention 102 (1952), Conventions 121 (1964), 128 (1967), 130 (1969) and 168 (1988))
- Fair Treatment at Work (Convention 111 (1958) and 100 (1952))
- Trade Union Rights (Conventions 87 (1948) and 98 (1949))

The predominant basis for protecting workers from insecure work in the international labour standards arises out of the international research and reportage of the growth in the 'informal sector' and the ILO's 'Decent work' agenda beginning in 1999 under the auspices of the ILO's current Director General Juan Somavia. Key documents include *Report of the Director-General: Decent Work* and *Report 1(A)*, *Report of the Director-General: Reducing the decent work deficit - a global challenge*.<sup>54</sup> As defined by the ILO, decent work is work that takes place 'under conditions of freedom, equity, security and dignity, in which rights are protected and adequate remuneration and social coverage is provided'. The campaign for decent work has four pillars: employment, social protection, rights and social dialogue.

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<sup>51</sup> The Universal Declaration of Human Rights states that, 'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment' and that 'Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection', <http://www.un.org/en/documents/udhr/>

<sup>52</sup> ILO Director-General (1999) *Report of the Director General: Decent Work*, <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>

<sup>53</sup> WageIndicator.org, <http://www.wageindicator.org/main/decent-work-check/international-conventions>

<sup>54</sup> ILO Director-General (1999) *Report of the Director General: Decent Work*; ILO Director-General (2001) *Report of the Director-General: Reducing the decent work deficit - a global challenge*, <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-i-a.htm>

## 10. CONCLUDING COMMENTS

The precarious employment experiences and labour practices imposed upon tertiary education staff, and in particular contract research staff and casual academic staff, provide a disturbing precedent for other Australian workplaces.

With the overwhelmingly reliance upon casual and fixed-term employment in areas critical to the day-to-day functions of universities, the tertiary education sector is now perhaps the Australian industry most direly impacted upon by insecure modes of employment. While this reliance can in part be attributed to over a decade of severe underfunding, university leaders and senior managements have not demonstrated the capacity to reconfigure labour and workforce practices.<sup>55</sup> The NTEU is also not convinced that the Government considers workforce planning as a systemic issue requiring immediate attention to facilitate the sustainability and international reputation of the Australian higher education sector, or the future of Australian innovation.

The NTEU is not of the view that modes of insecure employment are an anathema to the modern university. It is clear that in situations where work is irregular in nature, or necessary to support discrete projects, there are sound justifications for fixed term or casual modes of employment. However, patterns of insecure employment that have flourished in Australian universities over the last decade demonstrate that universities have been willing to corrupt the provision of insecure employment.

Across tertiary education employers have been able to cut costs by shifting the risks of employment from employer to employee, including amongst highly-skilled workers who are indispensable to the daily operations of the institutions that employ them. It is now estimated that approximately 60% of academic staff in Australia's universities (on a headcount basis) are employed as casual (hourly paid) staff with more than half of all undergraduate teaching in Australia's universities performed by casual academic staff.<sup>56</sup>

The NTEU's overall position around insecure employment is that, consistent with the ILO's conceptualisation of decent work, is to 'promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity'.<sup>57</sup> This represents the improvement of the 'conditions of labour', whether organised or not, and wherever work might occur. The maintenance of decent work entails the protection of substantive rights in the workplace.

Commensurable with the status of Australian universities as autonomous, public institutions preeminent in the defence of Australian civil society and the public good, the NTEU calls for greater commitment to a common understanding that fair work means work performed according to conditions of freedom, equity, security and human dignity. This principle demands that where university workers work under insecure employment conditions, where that work is necessary to the business of the university, they deserve the opportunity to transition into more secure modes of employment.

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<sup>55</sup> For more information see the *NTEU Submission to the Base Funding Review* (2011), [http://www.nteu.org.au/campaigns/policy/funding\\_regulation/basefundingreview/submission](http://www.nteu.org.au/campaigns/policy/funding_regulation/basefundingreview/submission)

<sup>56</sup> R. May (2011) 'Casualisation; here to stay. The modern university and its divided workforce,' R. Markey, (ed.), *AIRAAANZ 2011*, City: AUT: Auckland New Zealand.

<sup>57</sup> ILO Director-General (1999) *Report of the Director General: Decent Work*.

**Extract from the Higher Education Industry—Academic Staff—Award 2010  
[MA000006]**

***Note: These same provisions are included in Clause 10.3 of the Higher Education Industry – General Staff – Award 2010 [MA000007]***

**11.3 Fixed-term employment** means employment for a specified term or ascertainable period, for which the instrument of engagement will specify the starting and finishing dates of that employment (or instead of a finishing date, will specify the circumstance(s) or contingency relating to a specific task or project, upon the occurrence of which the term of the employment will expire).

Fixed-term employment may contain a reasonable probationary period that is directly related to the nature of the work to be carried out under the contract. As a condition incidental to employment on probation, an employee must be advised of, and given an opportunity to make response to, any adverse material about the employee which the employer intends to take into account in a decision to terminate the employment upon or before the expiry of the period of probation.

Any second or subsequent fixed-term contract, with the same employer, must not contain a probationary period.

The use of fixed-term employment must be limited to the employment of an employee engaged on work activity that comes within the description of one or more of the following circumstances:

- (a) **Specific task or project** means a definable work activity which has a starting time and which is expected to be completed within an anticipated timeframe. Without limiting the generality of that circumstance, it will also include a period of employment provided for from identifiable funding external to the employer, not being funding that is part of an operating grant from government or funding comprised of payments of fees made by or on behalf of students.
- (b) **Research** means work activity by a person engaged on research only functions for a contract period not exceeding five years.
- (c) **Replacement employee** means an employee:
  - (i) undertaking work activity replacing a full-time or part-time employee for a definable period for which the replaced employee is either on authorised leave of absence or is temporarily seconded away from their usual work area; or
  - (ii) performing the duties of:
    - a vacant position for which the employer has made a definite decision to fill and has commenced recruitment action; or
    - a position the normal occupant of which is performing higher duties pending the outcome of recruitment action initiated by the employer and in progress for that vacant higher duties position
 until a full-time or part-time employee is engaged for the vacant position or vacant higher duties position as applicable.

**(d) Recent professional practice required**

Where a curriculum in professional or vocational education requires that work be undertaken by a person to be engaged who has recent practical or commercial experience, such a person may be engaged for a fixed period not exceeding two years.

**(e) Pre-retirement contract**

Where a full-time or a part-time employee declares that it is their intention to retire, a fixed-term contract expiring on or around the relevant retirement date may be adopted as the appropriate type of employment for a period of up to five years.

**(f) Fixed-term contract employment subsidiary to studentship**

Where a person is enrolled as a student, employment under a fixed-term contract may be adopted as the appropriate type of employment for work activity, not within the description of another circumstance in the preceding paragraphs of this clause, that is work within the student's academic unit or an associated research unit of that academic unit and is work generally related to a degree course that the student is undertaking within the academic unit, provided that:

- (i)** such fixed-term contract employment will be for a period that does not extend beyond, or that expires at the end of, the academic year in which the person ceases to be a student, including any period that the person is not enrolled as a student but is still completing postgraduate work or is awaiting results; and
- (ii)** an offer of fixed-term employment under this paragraph must not be made on the condition that the person offered the employment undertake the studentship.

**Extract from the Higher Education Industry—General Staff—Award 2010 [MA000006]**

**12.3 Casual conversion**

**(a) General**

- (i)** An employee must not be engaged and re-engaged nor have their hours reduced in order to avoid any obligation under this clause.
- (ii)** Upon appointment, the employer must advise a casual employee that, after serving qualifying periods, see clause 1.1(b), casual employees may have a right to apply for conversion and a copy of the conversion provisions of this award will be made available to such employees.
- (iii)** The employer must also take reasonable steps from time to time to inform casual employees of the conversion provisions of this award.
- (iv)** An eligible casual employee may apply in writing for conversion to non-casual employment in accordance with the conversion provisions of this award.

**(b) Eligibility for conversion**

- (i)** To be eligible to apply for conversion, a casual employee must be employed on a regular and systematic basis in the same or a similar and identically classified position in the same department (or equivalent), either:
  - over the immediately preceding period of 12 months and in those immediately preceding 12 months the average weekly hours worked equalled at least 50% of the ordinary weekly hours that would have been worked by an equivalent full-time employee; or
  - over the immediately preceding period of at least 24 months.
- (ii)** For the purposes of this clause occasional and short-term work performed by the employee in another classification, job or department must not:
  - affect the employee's eligibility for conversion;
  - be included in determining whether the employee meets or does not meet the eligibility requirements.

**(c) Application for conversion**

The employer will not unreasonably refuse an application for conversion. However, it may refuse an application on reasonable grounds. Reasonable grounds include, but are not limited to, the following:

- (i)** the employee is a student, or has recently been a student, other than where their status as a student is irrelevant to their engagement and the work required;
- (ii)** the employee is a genuine retiree;

- (iii) the employee is performing work which will either cease to be required or will be performed by a non-casual employee, within 26 weeks (from the date of application);
- (iv) the employee has a primary occupation with the employer or elsewhere, either as an employee or as a self-employed person;
- (v) the employee does not meet the essential requirements of the position; or
- (vi) the work is ad hoc, intermittent, unpredictable or involves hours that are irregular.

**(d) Offer of non-casual employment**

- (i) The employer must determine an application for conversion either by offering conversion to non-casual employment or by rejecting the application. If the employer rejects the application, it must provide written reasons for rejecting it. If the application is accepted, the employee will be offered a non-casual position.
- (ii) Conversion may be to either a continuing appointment or to a fixed-term appointment. The offer of conversion will indicate the hours and pattern of work which, subject to due consideration of the employer's operational requirements and the desirability of offering the employee work which is as regular and continuous as is reasonably practicable, will be consistent with the employee's casual engagement. The conversion offer will also constitute (and include such other details as are required for) an instrument of engagement under the award.
- (iii) Employees converted under this clause will not have their casual service count as service for the purpose of calculating any other existing entitlements except for:
  - long service leave, if, at the time of conversion, the employer provides casual employees with an entitlement to long service leave. In such a case casual service with the employing institution would count for the purposes of any qualifying period for long service leave, but would not give rise to any paid leave entitlement in respect of that casual service, except where institutions, at the time of making this award, pay long service leave to casuals in relation to their casual service; and
  - any applicable unpaid parental leave.

**(e) Further applications**

An employee whose application for conversion is rejected will not be entitled to apply again within 12 months except where:

- (i) that rejection is solely based upon the ground set out in 1.1(c)(iii); and
- (ii) that ground ceased to apply.