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| Community and Public Sector Union – State Public Services Federation Group Submission to Australian Council of Trade Unions Independent Inquiry into Insecure Employment. |
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# INTRODUCTION AND OVERVIEW

1. The State Public Services Federation Group (SPSF) of the Community and Public Sector Union (CPSU - a Federally-registered union), consists of six State Branches representing employees of the Crown in Right of the States and other State public sector entities.
2. The SPSF appreciates the opportunity to make a submission to this important Inquiry. This Submission comprises two parts. Part One surveys the overall state of insecure employment in the state public services and concludes with some recommendations for changes to employment legislation, government policy as employers and government procurement policy.
3. Part two consists of detailed submissions from our Western Australian and New South Wales branches and a case study and focus group of South Australian school support workers covered by our union.
4. The evidence clearly indicates a growing sector of the Australian workforce is now employed in insecure and non-standard forms of employment. This is also true for employment in the public sector. Over the last few decades the structural change that has occurred in the labour force has been haphazard and has lead to undesirable features that have resulted in workers having unequal access to employment rights and protections. We now have a divided workforce that does not fairly distribute the benefits of the Australian society and economy to all workers.
5. While structural changes have occurred in the economy these changes should not deliver ‘insecurity’. The challenge to this Inquiry and to Australian policy makers is to adapt to social and economic change but also enhance working and living conditions of all Australians so that all can share in our economic well being.
6. We submit that in many cases it is difficult to determine the nature of working contracts with their attendant ambiguities only favouring capital. The Inquiry should call for unambiguous legal clarification of employment/ engagement status for all current and future workers to ensure that use of workers in these categories does not remove rights and entitlements enjoyed by workers in secure employment arrangements.
7. We suggest that the issue of secure employment has been traditionally associated with full time permanent work. However we need to broaden security to include non standard employment. We suggest that working less than full time hours should not be insecure – that employer and worker demands for less than full time hours should also include fair pro rata rights enjoyed by securely employed workers.
8. In order to ensure that workers are not denied entitlements and to stem the problem of a workforce which is increasingly divided between workers who enjoy appropriate conditions and those less equal, who do not, we suggest that consideration ought also be given to entitlement *portability* arrangements – similar to those which exist for building workers in various jurisdictions.
9. We draw attention to the growing participation of women in the workforce and their desire for work which is less than full time hours. However this desire has resulted in workers being marginalised to lower paid positions with inferior rights and entitlements.
10. We also draw the Inquiry’s attention to legislation, awards and agreements that exacerbate the growth of insecure work forms. We suggest that industrial instruments, modern awards, place too much authority in the hands of employers when an employment contract is made. In modern awards a casual worker is ‘someone engaged as such’. Casual employment must be tightly defined to irregular and non systematic work. That is if you are placed on a work allocation roster you are not employed casually but permanent part time at the minimum. We also suggest that Labor Government as drafters of awards and agreements give greater attention to expeditiously removing *opting out* clauses and clauses that permit the cashing in or trading off of rights and entitlements.
11. We also draw to the attention of the Inquiry the detrimental impact that insecure forms of employment have on a worker’s superannuation and post work life. Casual and non-standard workers are often denied superannuation entitlements. This matter also has dire consequences for women in particular. Women workers have much less superannuation because of their work experiences than men. This has resulted in more women relying on welfare in their later life, having lower superannuation entitlements and less financial and social independence than men.
12. Another detrimental consequence of insecure work is its impact upon health. A new European paper[[1]](#footnote-1) suggests that ongoing temporary work damages temporary workers’ health. If these findings hold in the Australian context, then the public purse is presumably carrying the burden of these additional health costs, while private sector corporations profit from labour hire and contracting out of public sector work. These effects are another example of privatising profit and socialising losses.
13. Neo liberal policies reducing the public sector, the privatisation and corporatisation of services and the de-regulation of labour laws have greatly affected the public sector and delivery of public services. Public sector workers were seen as being part of the problem of public sector debt, expenditure and budgets. Budget reductions saw the shifting of debt from governments and out sourcing and privatisation of many services.
14. In the mid 1980s the Atkinson model of the core-periphery workforce greatly influenced policymakers. Workforces were divided into a stable core of workers with secure employment and entitlements and the periphery workers in short term employment with little rights and benefits. In the public sector many services were privatised and many workers who delivered what are generally considered to be public services found themselves in the employ of private contractors, often funded by government money.
15. Through this process many workers lost benefits that were often associated with public sector employment and many workers were placed on short term insecure contracts. Some workers found themselves delivering public sector services for several employers on less than full time hours. These practices undermined established public sector awards, collective agreements and standard employment rights. The delivery of services in non government organisations has often been provided by workers who are less secure in their employment, are paid less and have inferior entitlements. Our membership demands that workers have equal access to entitlements.
16. In 2011, the United Nations through the International Labour Organisation issued a report entitled “Social protection floor for a fair and inclusive globalization”[[2]](#footnote-2) .The SPSF sees this Inquiry as an ideal opportunity to implement such a call for insecure workers’ social protection.

## PUBLIC SECTOR WORKFORCE CHARACTERISTICS

1. As stated above, the Australian labour force has a high proportion of workers in insecure and non standard forms of employment. Much of the growth in employment in Australia has occurred in these forms of employment. The public sector also reflects this characteristic.
2. Australian Public Service profiles indicate that, while there has been small growth in employment, the increase in overall employment during the year 2009 -2010 was mostly due to large increases in non-ongoing employment with only a slight increase in ongoing employment (APS 2011:176). At June 2010 the APS had an 0.4% increase in ongoing employment whereas non ongoing employment grew by 18.6%. Non ongoing employees accounted for 8.3% of all employees. Agencies use non-ongoing employment to deal with peaks and troughs in work demands and budgeting limitations.
3. The numbers of non ongoing employment varies across departments and occupations – with some sectors particularly susceptible to the use of this form of employment. Education, welfare, caring and health have high incidences of non-standard and insecure employment. Women are over-represented, so are workers in lower classifications and younger workers.
4. The incidence of non ongoing employment is far greater for part-time employees with 38.2% of non ongoing employees working part-time compared with 13.7% of ongoing employees. The proportion of non ongoing employees working part-time grew by 5.6% in 2009-10. As women are a high proportion of part-time workers the high incidence of non ongoing employment for part-time workers has significant gender implications.
5. Further: high levels of non ongoing contracts and other forms of insecure employment appear in particular work and agencies. As stated above the gender pattern that emerges is very worrying. Particular agencies and jobs have high numbers of insecure employment arrangements. These jobs are often jobs where women are concentrated and in departments that have high proportions of women employed. The result being that public sector employers have created employment arrangements that discriminate against women.
6. This submission includes a case study of School Support Staff highlighting that these workers do not enjoy the security that exists for their fellow public sector employees. This case study exposes the gender discrimination and job insecurity that exists in the public sector. The outcome of these forms of employment is that these workers, who are often employed over a number of years on renewable arrangements, find themselves in insecure employment contracts. The insecure nature of this employment has resulted in large proportions of the workforce remaining in lower, poorly paid, classifications where the work they perform is underpaid when compared to similar work of equivalent value.
7. As mentioned above: the public sector has been subject to privatisation, corporatisation and contracting out of services. This makes any assessment of the public service workforce very difficult make. While State and Federal governments and departments publish employment figures, the relevance and accuracy of this data is questionable as it understates the level of fracturing of public sector employment. It is difficult to make clear assessments of *jobs lost* or *growth.*  We can say that in 1991 there was one public servant for every 106 Australians – in 2009 there was one public servant for every 135 Australians (Whelan 2011). Over this period many secure public sector jobs have been outsourced to private contracting arrangements.

# STATE PUBLIC SECTORS

## New South Wales

1. In terms of percentages, temporary employment in the NSW public sector in 2010 was 12.16% of the public sector workforce and casual employment was 6.42%. Health NSW and the Department of Education and Training employed the bulk of temporary and casual workers in the public sector. The data also shows that women predominate in insecure employment in the public sector with 71.15% of temporary employees and 70.25% of casual employees being women.
2. Figures obtained through the Department of Services, Technology and Administration (DSTA) showed that in 2009-2010 a total of $385,246,021 was spent on agency contract staff. This equates to approximately 5,682 equivalent full time positions.
3. At the time of writing this submission we received the equivalent labour hire data for the 2010 -2011 financial year. The data showed that the total amount spent by the NSW public sector in 2010-2011 on labour hire staff increased dramatically to $468,057,260. The data also showed that in the same year 11,976 labour hire staff were engaged by the NSW public sector with 7,031,982 hours worked. Insecure employment has escalated because Labor introduced a staff freeze and the O'Farrell Government has continued with it. It is a farce to say that the government will be cutting 5,000 public service jobs. All they will be doing is cutting 5,000 permanent staff and turning them into insecure employees.

## Western Australia

1. The most recent and complete figures relating to public sector employment are from June 2009: at that time the WA public sector employed 147,124 employees (representing 113,850 FTE) of these 147,124 employees, 54% are full time, 34% part time and 10% casual.
2. The WA public sector gender profile consists of women (68%) and men (32%). Women comprise a significantly higher proportion of the public sector workforce, as compared to 46% in the total WA workforce. However: men are more likely to be in permanent employment, 77.2% vs 68.3%. Women are more likely to be in fixed-term contracts, 19.2% vs 14% and casual employment 11.4% vs 6.2%.
3. A report released in November 2011 by the Western Australian Public Sector Commission supported the assertion that fixed-term contracts are on the rise in the public sector: the report noted that in 2010–11 permanent positions represented 47.5% of all advertised vacancies in the WA public sector, compared with 51% for 2009–10. This corresponded with an increase in the proportion of fixed-term positions, which represented 33.7% of vacancies in 2010–11, compared with 31% in 2009–10.

## Victoria

1. The Victorian public service employed 261,068 people in 2010. Of these, 80% were employed on ongoing contracts and 20% on fixed term and casual contracts. Full time workers comprise 59% of the workforce, part time workers were 41% of the workforce. Women are approximately two thirds of the part-time workforce, 29% of women work part-time and 11 % of men work part-time. As a proportion of the workforce, women are over-represented in non ongoing and less secure contracts. Women’s over representation in non on going contracts is influenced by the high incidence of part-time workers on non ongoing contracts and that non ongoing contracts are a feature of employment areas where women are concentrated, such as disability and caring work.

## South Australia

1. In 2010 there were 101,424 public sector employees, of these 64% were on ongoing contracts and the remaining 36% were on fixed term, short term and casual contracts. 37% of the workforce work part time and of these 84% are women. The employee types with the largest proportion of part time and casual employees were: school services officers; children’s services; and nurses. In 1998 75% of public sector employees were appointed on an ongoing basis. By 2007 this figure had declined to 64%.
2. The labour force of School Support Officers (SSO) is characterised by precarious employment. About 20% of the workforce is full –time, 80% part-time. Most of the workers do not have permanent status. 37.4 % are in ongoing employment and 62.6% are on contract/casual. Most workers are clustered around the bottom of the classification structure in the applicable South Australian State Awards.
3. Employment in South Australian public schools has approximately 60% on SSO1, 25% on SSO2, 9% on SSO3 and 6% on SSO 4 &5. These workers have very little opportunity for career progression and advancement. The insecure nature of employment discourages workers from seeking re-classification to higher positions in the salary scale. Non teaching careers offer little attraction, no financial rewards and no acknowledgement of the skills and expertise currently possessed by our members.

## CONCLUSION

1. The SPSF believes that the clear evidence from our Branches shows the deleterious effects of three decades of neo-liberal inspired government assaults on standard public sector employment. These effects have augmented the segmentation of public sector employment such that lower paid women bear the brunt of the transfer of risk from their employer.
2. Australia is not only a wealthy country, but one of the globe’s wealthiest countries. With these resources, Australia should be leading the way through best practice security enhancing government employment and procurement policies to raise the living standards of those workers worn down by neo liberal policy.
3. It is unacceptable from a public policy perspective, for hundreds of millions of dollars of taxpayers’ funds to annually flow to private sector employment agencies’ profits without any foreseeable end.
4. As the debate over infrastructure funding in a parallel case has also shown; in the end it is the public sector that is cheaper, more efficient and more consistent in providing infrastructure and services that citizens require as their rights in return for their payment of taxation.
5. Much of the work preformed by women in the public sector is clearly underpaid and undervalued and should be subject to action under the Equal Remuneration Provisions of the Fair Work Act. Gender discrimination is a major feature of the casualisation of the public sector workforce. Further, Australia is a signatory to a number of UN and ILO conventions and recommendations that cover issues of discrimination, equal remuneration, workplace health and safety and minimum wage standards.
6. We submit that governments have a responsibility to ensure that the international standards we have endorsed are granted to all workers and in particular to government employees. Governments have a responsibility to set standards that comply with our international obligations and be best practice employers.
7. Public sector unions have fought for and won many conditions that infer rights and entitlements that assist workers through changing circumstances in the life cycle. It is important that the structural changes that have occurred in the workforce are addressed and that change is not to the detriment of job security for workers.
8. Demographic, industrial, economic and social changes require that Australian society consider seriously the impact of employment policies. The trade union movement has a right and an obligation to investigate and make recommendations on how Australian workers will fare and how best they will benefit from change. We congratulate the ACTU and the members of the Inquiry on their endeavours to uncover and redress the important issues that arise from the development of this feature of the Australian workforce.

# RECOMMENDATIONS

1. To remedy the worsening effects of insecure public sector employment the SPSF calls on the state public sectors to rediscover their purpose as model and best practice employers through implementing the following *Secure Employment Better Future* reforms.
2. The SPSF calls on the Council of Australian Governments to revise their priorities from the economically focused ‘*seamless national economy*’ to encompass a broader social vision of an Australia that is a:

*Seamless national economy, ensuring equity and opportunity, through the maximum possible level of secure employment for its residents.*

*Recognising that providing secure employment and robust social protection for all is an indispensable part of implementing a seamless national economy that serves a fair society.*

COAG plays a unique role in coordinating reform in the jurisdictions of the Commonwealth. It effectively operates as a closed shop and needs to be restructured to facilitate genuine dialogue and engagement with the labour movement, the NGO sector and the community more broadly. The following recommendations all flow from these premises being genuinely embraced by all COAG members.

**Legislative changes:**

* + - Clearly define in all employment laws and industrial instruments, the categories of employment and rights and entitlements that attach to those categories.
		- Explicitly limit the use of casual employment to irregular and intermittent work only.
		- Modern awards to be reviewed to examine definitions, opting out and trading off of rights clauses. Awards must not allow for employers or workers to contract out of minimum standards.
		- Ensure that rights and entitlements enjoyed by permanent full time workers are extended to those in non standard forms of employment and that consideration be given to portability of rights and entitlements.
		- Ensure all workers who are engaged, in whatever form, on an ongoing and regular basis for more than 12 months with the same employer are employed on a permanent basis.
		- Ensure all remaining employees of labour hire companies are engaged and remunerated under the same industrial instruments of the majority of staff at that work site.
1. **Government employers policy changes:**
	* + Encourage governments to undertake workforce audits that provide better evidence of the depth of non-standard employment, characteristics of the workforce and conditions that attach to these forms of employment.
		+ Encourage governments to undertake research into the health effects of insecure work. Such research would both evaluate the health effects of insecure work and identify the hidden subsidy to the private sector via the associated socialised health costs.
		+ Engage permanent public servants in place of all temporary, casual and labour hire staff, excepting genuine irregular and intermittent work only.
		+ Extend all rights and entitlements to the whole of the workforce and provide for portability arrangements.
		+ Provide accessible procedures for conversion of non ongoing contracts into permanent employment.
		+ Increase salaries to attract the staff that agencies are reporting they are having trouble engaging on a permanent basis.
		+ Investigate the relationship between poorly funded departments and agencies and the level of non standard employment. We would argue that poor funding often occurs in sectors that employ women and that these workers are often employed under insecure contracts and their work is often underpaid and undervalued – again this highlights the gender inequity that manifests from insecure employment.
		+ Establish state government agencies to provide permanent pool staff to fill unexpected and short term staff vacancies as they arise across the state public sectors.
		+ Unattached public servants to be placed where equivalent or near equivalent contract positions exist, so removing the need to contract out such positions.
		+ Government contracts to comply with standards stipulated in awards and agreements and to ensure that workforce impact assessments be conducted to ascertain likely impacts on employment.
		+ In the event that a state government agency cannot fill all irregular and intermittent vacancies from a central pool of public sector workers and does engage labour hire workers due to unavoidable skills shortage, state government procurement policies must require the following:
		+ labour hire workers be engaged under the industrial instruments applying to the majority of staff at that work site;
		+ labour hire workers are informed at the earliest opportunity of their right to join a union; and
		+ labour hire workers must have access to the same dispute resolution procedures as the majority of staff at that worksite.
2. **Union Coverage:**

The SPSF supports the rights of all workers to join the appropriate trade union. In the case of labour hire employees, the Association supports the ACTU in developing policy to ensure that workers are able to join the union that covers the majority of workers at the worksite that they are engaged.

1. **Special Commissions of Inquiry into labour hire and other forms of insecure work in the public sector**

Due to the increasing use of labour hire and other forms of insecure workin the state public sectors, the SPSF supports the establishment of special commissions of inquiry into labour hire in the state public sectors.

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# Insecure forms of work in the WA public sector

The public service was traditionally a place of permanent, secure work. In recent times, however, insecure forms of work - that is, employment that provides little social and economic security and little control for workers over their working lives[[3]](#footnote-3) – have become a growing trend in the WA public sector. Fixed-term employment contracts, part-time work, casual work, higher duties, and labour hire are all forms of insecure work that are becoming more common in the public service, with fixed-term contracts being particularly ubiquitous throughout the sector.

This growing trend of insecure forms of work is not only an issue of concern for the individual workers affected, but also for the broader community. As explained by Maxine Murray, former Commissioner for Public Sector Standards, two core principles of public sector governance “...are the permanency of public servants (who do not change when the government does); and the neutrality or political impartiality of the public service.”[[4]](#footnote-4) It is in the community’s interest to have a permanent, independent public service which can provide ‘frank and fearless’ advice to the government of the day.

Insecure work undermines these fundamental Westminster principles that are the basis of the WA political system. Public servants who are insecure in their employment could be compromised or limited in their ability to give ‘frank and fearless’ advice to the government of the day, due to the tenuous nature of their employment. Additionally, the loss of knowledge and skills from the sector when workers’ contracts expire, or they seek secure work outside of the sector, is likely to have a detrimental impact on the quality of the public service as a whole. It is also particularly important that members of the Senior Executive Service (a cohort of executive officers in the WA public service with managerial responsibilities in agencies) are appointed permanently to ensure a politically neutral public service. A permanent workforce is essential for ensuring a public sector that can uphold these principles in order to best serve the community.

This submission will give an overview of the types and prevalence of insecure forms of work throughout the WA public sector, and offer some explanation for the rise in insecure work in the public sector. The most common forms of insecure work in the public sector will be examined, with particular regard to the impact of this type of work on employees, and some solutions will be offered for a way forward for employment in the WA public service.

# Part 1

## Overview of employment in the WA public sector

The most recent and complete figures relating to public sector employment are from June 2009: then the WA public sector employed 147,124 employees (representing 113,850 FTE)[[5]](#footnote-5).

**Table 1: Employment arrangements as percentage of total WA public sector workforce**[[6]](#footnote-6)

|  |  |
| --- | --- |
| **Employment arrangement** | **% of Employees** |
| Full-time  | 54%  |
| Part-time  | 34%  |
| Casual  | 10%  |
| Other  | 2%  |

The WA public sector gender profile is comprised of women (68%) and men (32%). Women comprise a significantly higher proportion of the public sector workforce, as compared to 46% in the total WA workforce[[7]](#footnote-7), however men are more likely to be in permanent employment, and women are more likely to be in fixed-term and casual employment.

**Table 2: Employment arrangements as percentage of total WA public sector workforce by gender[[8]](#footnote-8)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Gender** | **Permanent** | **Fixed term** | **Casual** | **Others** |
| Women  | 68.3%  | 19.2%  | 11.3%  | 1.3%  |
| Men  | 77.2%  | 14.0%  | 6.2%  | 2.6% |

Figures that show the current overall level of permanent, fixed-term and casual employment across the WA public sector are not readily available. By extrapolating from the figures in Table 2 and based on the 2009 figure of 147,124 employees in the WA public sector, however, the following table shows the approximate levels of various modes of employment in the public sector.

**Table 3: Employment arrangements as a percentage of total WA public sector workforce**

|  |  |  |  |
| --- | --- | --- | --- |
| **Permanent** | **Fixed term** | **Casual** | **Others** |
|  71.2% | 17.5% | 9.6% | 1.7% |

The level of permanent employment in the WA public sector has declined significantly – in 1994 85% of employees were permanent; compared with 71.2% in 2009[[9]](#footnote-9) - the levels of permanency in the WA public sector have reduced almost 14% within a 15 year period.

A report released by the Public Sector Commission in November 2011 also supports the assertion that fixed-term contracts are on the rise in the public sector, while the number of permanent positions advertised is declining. The report noted that in 2010–11 permanent positions represented 47.5% of all advertised vacancies in the WA public sector, compared with 51% for 2009–10. This corresponded with an increase in the proportion of fixed-term positions which represented 33.7% of vacancies in 2010–11, compared with 31% in 2009–10.[[10]](#footnote-10)

An examination of the level of contract employment of a five government agencies over the last five years generally supports the assertion that contract employment is on the rise. The cases where contract employment appears to have decreased slightly can be explained by the implementation of “FTE ceilings” on employment in many government agencies. In 2009 the newly elected Liberal-National Coalition government led by Premier Colin Barnett implemented an “efficiency dividend”, which meant that each agency had to cut 3% from its budget, and many agencies had to impose arbitrary FTE ceilings. Due to the FTE ceilings, many agencies simply did not renew the contracts of fixed-term workers. This policy can account for the slight dip in contract use in some government agencies.

The above information is based on the WA public service as a whole. The CPSU/CSA represents a significant number of employees across all WA government agencies. As of June 2009, there were 42,282 workers in the WA public sector under CPSU/CSA coverage, with an equivalent FTE of 35,538.03 [[11]](#footnote-11)

**Table 4: Employment arrangements of WA public sector workers under CPSU/CSA coverage[[12]](#footnote-12)**

|  |  |  |
| --- | --- | --- |
| **Employment arrangement** | **Number of employees**  | **% of employees** |
| Permanent Full Time | 24628 | 58.2% |
| Permanent Part Time | 8684 | 20.5% |
| Fixed-Term Full Time | 4278 | 10.1% |
| Fixed-Term Part Time | 2591 | 6.1% |
| Casuals | 1446 | 3.4% |
| Trainees | 150 | 0.3% |
| Sessionals | 311 | 0.7% |
| Others | 194 | 0.4% |

**Table 5: A comparison of employment arrangements between workers in the WA public sector as a whole and workers under CPSU/CSA coverage.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Permanent** | **Fixed-term** | **Casual** | **Others (incl. Trainees and sessionals)** |
| WA Public Sector |  71.2% | 17.5% | 9.6% | 1.7% |
| CPSU/CSA | 78.7% | 16.2% | 3.4% | 1.4% |

One group of workers not mentioned here is labour hire workers. The government does not collect data on the engagement of labour hire workers throughout the public sector; anecdotally, however, we know that labour hire is widely used throughout the public sector. For more information on labour hire workers, see section 3.5.

## Factors leading to the increase in insecure work arrangements for CPSU/CSA members in the WA public sector

There are a number of reasons why insecure work arrangements are increasing and permanent jobs are decreasing in the WA public sector. In general, a workforce of employees in insecure forms of work is a more compliant, passive workforce than workers who are secure in their employment. As noted in ACTU’s report *Insecure work, anxious lives: the growing crisis of insecure work in Australia,* workers in insecure work are less likely to join unions and to speak out on issues in their workplace such as occupational health and safety, pay, and conditions.[[13]](#footnote-13) So the move towards insecure work can be seen as an erosion of worker power in the workplace.

In terms of the WA environment, the Barnett government has a clear agenda to privatise and outsource public service functions to not-for-profit organisations and private companies. On being elected in 2008 one of the first actions of the Barnett government was to establish the Economic Audit Committee to conduct a wide-ranging review of the public service. In 2009 the Committee released its report called *Putting the Public First: Partnering with the Community and Business to deliver outcomes.* The report recommended that the public service should act as a facilitator of services, rather than a direct provider, “with all areas of service delivery opened to competition.”[[14]](#footnote-14) Premier Barnett voiced his support for the substance of the report, stating that his government would shift the delivery of services away from government agencies.[[15]](#footnote-15) Privatising public sector functions brings with it a deterioration of job security, wages and conditions.

The WA public service is better unionised than the private sector, so when public services are outsourced to private companies and not-for-profit organisations, these less unionised sectors deliver less job security, wages and conditions to workers. Thus the Barnett government’s agenda of privatisation presents a threat to the secure work that exists within the public sector if those functions are privatised and those permanent public sector jobs become insecure private sector jobs. The agenda of privatisation coupled with the government policy of public sector cut-backs (as evidenced by the aforementioned ‘efficiency dividend’ policy of 3% cuts across the board and FTE ceilings) creates an environment and an incentive for employers to move towards employing people in insecure forms of work, because those people are easier to dismiss than permanent staff in the event of a government cut-back or selling off of a government function to the private sector.

This uncertainty can be used as a rationale for government agencies to employ workers on contract until the agency ‘review’ or ‘restructure’ is finalised – a process which can take years.

CPSU/CSA members are cognisant of this issue of insecure work and the way it intersects with and is exacerbated by government cut-backs and privatisation. This is evidenced by ‘job security’ being ranked as the most important issue to CPSU/CSA members in a recent survey.[[16]](#footnote-16)

## 3: Types of insecure work for CPSU/CSA members in the WA public sector

In November 2011 the CPSU/CSA sought feedback from workers in a mix of government agencies to investigate the prevalence of insecure work, and the impact of insecure work on individuals. Over 500 workers provided feedback to the CPSU/CSA; the majority through face-to-face conversations with CPSU/CSA organisers, and a small number of workers provided feedback online. The subsections below explore the most common types of insecure work in the WA public sector, and the impacts of these work arrangements on employees.

### 3.1: Fixed-Term Contract

As outlined in Section 1, the most prevalent form of insecure work in the public sector is fixed-term contract. There are legitimate reasons why a worker may be engaged on a fixed-term contract; as specified in clause 8(5)b the *Public Service Award 1992:*

In exercising their employing authority employers may only employ a person as a fixed term contract officer in the following circumstances:

 (i) covering one-off periods of relief;

(ii) work on a project with a finite life: Where a project is substantially externally funded including multiple external funding, the employer must present a business case supporting the use of fixed term contract officers in such positions to the Peak Consultative Forum. Where external funding has been consistent on an historical basis and it can be reasonably expected to continue the employer shall assess the percentage of positions for which permanent appointment can be made;

(iii) work that is seasonal in nature;

(iv) where an officer with specific skills is not readily available in the public sector is required for a finite period; or

(v) in any other situation as is agreed between the parties to this Award.[[17]](#footnote-17)

Due to these legitimate reasons, there will always be a number of workers engaged on fixed-term contracts in the public sector. However the number of workers presently engaged in fixed-term contracts is high, which points to the widespread misuse of contract employment in the public sector. Anecdotally, some government agencies have a tendency to use contracts as de facto probation periods; ie. new employees are engaged on a fixed-term contract, after which they may be made permanent or have to merit select for a permanent position. One worker surveyed, aged 20-29, stated that they were on a 6 month contract and they stated that this was “a probation period with a view to becoming permanent.” This misuse could be because there is a misconception that it is difficult to dismiss permanent workers in the public sector, and so employers could be taking the lazy way out – rather than manage underperforming staff through the various mechanisms that exist (such as the 3 month probation period at the commencement of employment), employers are simply engaging people on fixed-term contracts in order to not renew the contracts of underperforming workers. This is extremely unfair for the worker involved, who has the right to be made aware of their underperformance and given the chance to improve. Non-renewal of a contract in place of performance management is unjust, and can have a detrimental effect on the confidence of the worker, who in some cases may have no idea that they were deemed to be underperforming. The WA community should be able to have confidence in the government to treat it’s public servants fairly.

Of the workers who provided feedback on insecure work, fixed-term contracts were overwhelmingly viewed as a negative employment arrangement. Only a few workers indicated that being on contract had no negative consequences for them, and that they preferred the freedom and flexibility of being on contract.

The most common impact of being on a fixed-term contract for employees who provided feedback was a lack of financial security and ability to plan for the future, eg. difficulty accessing bank loans. As these workers explain:

“I can’t access loans, and I have no long term security to assist with family planning – ie. I can’t take maternity leave.”

– fixed-term contract employee, Department of Environment and Conservation.

“I don’t feel secure in my job, and I can’t get a loan as I am not permanent.”

– fixed-term contract employee who has had a 3 month contract renewed 7 times, Department of the Attorney General.

“[Fixed-term contracts] made it hard to gain necessary pre-requisites to apply for home loans because there was never any guarantee that I would be employed long enough to be able to pay those loans back.”

 – former fixed-term contract employee, WA Police Department

This lack of security is particularly difficult when the worker is the sole bread-winner. The lack of certainty about future employment puts a lot of stress on the employee, both emotionally and financially, and this stress can also often impact the employee’s family. This stress can also cause or exacerbate existing health issues.

“There is a total lack of financial security...I am a single mum with 4 kids.”

– fixed-term contract employee, Department for Child Protection.

“I am a 40 year old single father with no partner. As my income is our household’s only income I have found it impossible to secure a housing loan and at times had difficulty in securing leases as I do not have permanent employment.”

 – fixed-term contract employee, Department of Education.

“When I didn’t have permanent employment I would have uncertainty about meeting mortgage repayments and my family’s overall lifestyle was severely impacted.”

– former fixed-term contract employee in the Department of Environment and Conservation.

“I am currently working on a full time fixed term contract and have been for the last 14 months. My position is due to be advertised at the end of the month and I have to apply for it. This is causing me great stress and anxiety, knowing that even though I have been in this position for over a year I may still not be successful in acquiring this position permanent fulltime. I am renting in public housing, and I have been given notice to vacate as I am currently earning too much money... All this uncertainty with my work is impacting on my living and my health as I have chronic depression and heightened anxiety that I am being treated for, and my employer was aware of this condition when I started working here.”

– fixed-term employee, Lotteries West

Due to their insecure work arrangements, many of these workers find it difficult to access leave provisions. Many workers on short-term contracts do not have the opportunity to accumulate much annual leave. As these workers explain:

“...having no leave accrued makes things difficult, particularly around Christmas.”

– fixed-term contract employee, Department of the Attorney General.

“I could not plan annual leave, because my contracts only lasted 3 months at a time and there meaning there was no real insight as to being able to plan any type of extended leave...I had no guarantees of ongoing employment to be able to freely plan my life around work.”

 – former fixed-term contract employee, WA Police Department

Fixed-term contract workers are not given access to purchased leave, and rarely have access to long service leave - despite the fact they may have worked in the WA public sector long enough to be eligible:

“I’m close to being eligible for long service leave, but will lose that if there is a break in my contract.”

– fixed-term contract employee, Department of Housing.

“I am now permanent, but before that I was bouncing from contract to contract, all the while losing accrued leave and entitlements.”

 – former fixed-term contract employee, Department of the Attorney General.

Workers on fixed-term contracts also note that they have limited access to training and career development opportunities: one worker on short-term based project funding had her contract renewed 22 times, and was frustrated by her inability to gain career development opportunities such as being a member of various internal departmental committees.

The misuse of fixed-term contract employment also has a negative effect on the corporate knowledge of the public sector, as this worker notes:

“There are too many people on contract, and when their contract is up and they leave, their experience leaves with them.”

 – permanent employee, Department of Housing.

This loss of corporate knowledge from the public sector, coupled with the loss of corporate knowledge from long-serving employees retiring and others leaving the sector to capitalise on the private-sector mining boom, can only be detrimental to the quality of public service delivery in Western Australia.

### 3.2: Part-time employment

Part-time employment is relatively common in the WA public service, with many workers taking up this form of employment to fit in with caring responsibilities, for example. Part-time workers can be employed on either a permanent or contract basis. Permanent part-time employment tends to work well for employees - it offers more flexibility to fit in with caring responsibilities than full-time employment, while permanency offers more security and stability than casual employment or contract part-time employment. Permanent part-time employment enables employees to maintain their career paths, while offering a balance between their work-life and their personal-life. This mode of employment is also positive for employers, as it generally means that employees are more likely to stay with the government agency for longer periods of time, despite changes in their life (ie. returning to work after having children, phasing into retirement, etc). The exception to this overwhelmingly positive view of permanent part-time employment is a small group of workers in the Department for Child Protection who expressed dissatisfaction with their part-time status – they wish to work full-time hours (see case study 1).

The option to work permanent part-time is generally taken up by those employees already in permanent full-time positions in the public sector; those outside the sector who are seeking to enter government to work part-time tend to be employed on a fixed-term contract basis. Of the workers who provided their feedback on insecure work to the CPSU/CSA, part-time workers who expressed dissatisfaction with their current arrangement were those who were on fixed-term contracts – they did not express dissatisfaction with part-time status, but were dissatisfied with their fixed-term contract status, and wished to work permanent part-time. The reasons for their dissatisfaction were the same as those reasons cited in section 3.1; however, undertaking contract part-time work was the only way this group of workers could achieve the balance they needed. Had a permanent part-time option been offered, this would have been preferable for these workers.

### CASE STUDY 1:

### FAMILY RESOURCE EMPLOYEES IN THE DEPARTMENT FOR CHILD PROTECTION

Family Resource Employees (FRE’s) are an occupational group in the Department for Child Protection. Their role is to provide supervision and transport to families, children and young people as well as providing information and support to families about how to access the Department and community resources provided for them. They also provide support services to the metropolitan district offices. As at June 2009, there were 166 FRE’s employed by the Department for Child Protection, with an equivalent FTE of 69.21. FRE’s are employed at level 1, and the vast majority of FRE’s (the figure at June 2009 was 140) work a permanent part-time arrangement, with an additional 24 employed as fixed term part-time, and 1 person employed on a fixed-term fulltime basis, and another on a casual basis. The vast majority of FRE’s are women; at June 2009 146 females and 20 males were working as FRE’s.

With the exception of two, all FRE’s are employed on a part-time basis, and the vast majority pick up casual shifts to the point where in reality they are working full-time hours. FRE’s rely on these additional casual hours to boost their take-home pay, however FRE’s generally express that they would like these casual hours to be permanently allocated to them, so they can have the security of full-time permanent employment. Since these additional hours are not guaranteed, it is often used as a way for management to divide the workforce and “play favourites” with the staff. This puts FRE’s in a precarious position – many are afraid to speak out on workplace issues for fear of losing the additional casual hours.

The part-time with additional casual hours arrangement has many negative effects on FRE’s: whenever FRE’s take leave, they are only paid for their permanent days – this makes the prospect of taking annual leave unattractive for many; as one FRE says: “I can’t afford to take holidays.” Similarly, if a FRE is sick on a casual work day, it can negatively impact their financial situation. FRE’s report that this work arrangement means that they have very limited financial security, as one FRE notes: “I would like to increase my permanent hours...15 hours is not enough to ensure financial planning and security; I’m finding it hard to get a loan.” The casual shifts can also have a negative impact on the work-life balance of FRE’s, with many of the shifts being split-shifts to accommodate the clients before and after school.

FRE’s undertake challenging work in difficult environments; they often have to deal with aggressive clients, and facilitate prison and hospital visits. FRE’s undertake this work individually, and are concerned about the safety implications of working alone. This issue is further compounded for FRE’s in regional areas who often have to drive long distances to undertake their work. Due to the tenuous nature of their employment, however, FRE’s are often worried that raising Occupational Health and Safety issues with their employer will result in them not receiving additional casual hours.

## 3.3: Casual

Although casual work is less widespread in the WA public sector than in the private sector, there are pockets of casual workers throughout the public sector. Of the workers who provided their feedback on insecure work to the CPSU/CSA, the majority of casual employees were dissatisfied with their employment arrangement. Those who were dissatisfied were either seeking permanent employment, or were working casual arrangements because they perceived it was the only way they could gain flexibility to balance with their caring responsibilities:

“I’m casual, but I don’t want to be. There is too much insecurity, but I enjoy the ability to take school holidays off.”

 – Casual employee, Department of Training and Workforce Development.

“My shifts change every week, so I have difficulties with stability and with getting loans.”

 – Casual employee, Legal Aid.

 “I don’t want to be casual...There’s no sick leave, no holidays”

 – Casual worker, Department of Water.

These workers have no job security, and no access to rights and entitlements enjoyed by other public sector workers, such as personal leave and annual leave. It should be noted that some of the casual workers who provided feedback were satisfied with their current employment arrangement. This was a particular group of workers aged 20-29, currently studying at University, and working in the “Info-Line” call centre in Legal Aid.

The above information indicates that the majority of casual workers in the public sector are seeking an employment arrangement that offers flexibility to fit in with personal commitments, and these workers are also seeking job security and entitlements such as leave. Casual employment should not be used to fill the ongoing, long-term needs of government agencies; instead, permanent part-time arrangements would be better suited to filling this need. This would provide workers with the flexibility, job security, entitlements and career path they are seeking. Although there is a pocket of workers in Legal Aid who are satisfied with their casual employment arrangements as it fits in with their study schedules, it could be that if the option was available, these workers may choose to take up permanent part-time employment for the reasons of job security and accessing other entitlements associated with permanent work. The data on whether casual workers are engaged legitimately (ie. for short-term, sporadic needs, rather than on an ongoing basis for a long period of time) is not readily available, and this will have to be further explored to determine whether government departments are using casuals for legitimate purposes.

**3.4: Higher Duties**

There are many instances of employees undertaking higher duties – ie. acting in higher level positions throughout the WA public sector that are vacant because the employee is on extended leave, on secondment, etc. Undertaking higher duties is an opportunity for professional development and career advancement. It is difficult to get data on how many employees across the public sector are acting in a higher position and how long they have been acting for, however anecdotally we know that there are many people who are undertaking higher duties for an extended period of time in the public sector. This can often create uncertainty and stress (emotional and financial) for the employee. As one worker states:

“I have spent 4 years [acting] at level 4, and now am being sent back to my substantive level 2.”

– permanent employee undertaking higher duties, Department of the Attorney General.

Workers who have been undertaking higher duties for an extended period of time cite similar difficulties workers in other forms of insecure work in applying for loans and having financial stability. Again, it is difficult to quantify whether higher duties are being widely misused across government, however anecdotally we know of instances where an employee will be undertaking higher duties for years in a position that is vacant but has just not been advertised. If senior positions are left vacant, this can create a significant flow-on effect with many workers undertaking higher duties down the line. To minimise this, it is essential that vacant positions are permanently filled in a timely manner. In other instances, the relentless restructuring and realignment of government agencies leads to situations where workers can be undertaking higher duties until the restructure is finalised. This process can take years, and leads to a cascading effect where several workers down the line are undertaking higher duties. This is inefficient, and leads to an uncertain, insecure situation for workers.

## 3.5: Labour Hire

Labour hire/external contractors are prevalent throughout government, most commonly to carry out IT and administrative functions. In specific instances, a small number of labour hire workers are engaged to provide specialist knowledge and skills not available in the public sector, however the majority of labour hire workers provide services that could easily be provided directly by the public sector. The policy of FTE ceilings may have exacerbated the use of labour hire, as agencies are unable to employ more staff to carry out necessary functions, however the use of labour hire is not counted under the FTE ceiling. Labour hire are perhaps the most vulnerable category of workers, however they are also the category we know least about as they are widespread throughout agencies, there can be high staff turnover, they are a transient workforce, and these workers are not covered by the CPSU/CSA.

The labour hire staff who provided the CPSU/CSA with feedback were all dissatisfied with their employment arrangement – many expressed a desire to become permanent staff. One employee in the Department of Housing commented that they had been a labour hire “temp” for 18 months, and was seeking to be made permanent, however there were “no positions available.” Labour hire employees expressed the same kinds of frustrations in regards to securing a loan and having job security as fixed-term contract and casual workers, and like casuals, were dissatisfied with the lack of leave (annual and sick leave):

“There is no annual leave, no sick leave, no job security.”

– labour hire employee, Department of Finance.

“I’m not able to plan holidays, I have an uncertain future.”

– labour hire employee, Department of Agriculture and Food.

Similar to fixed-term contract and casual employees, labour hire employees stated that they do not have a career path:

“I have difficulties accessing loans, very low job security, and cannot achieve my career targets and personal targets.”

– labour hire employee, Department of Agriculture and Food.

Labour hire is a false economy for government departments. Although they have managed to circumvent the government’s FTE ceiling by engaging labour hire, this comes at a significant financial cost. As one worker commented:

“Departments try to hide the costs of [labour hire] contractors – they are more expensive than permanent staff.”

– permanent employee, Department of Housing.

In a similar way to the misuse of fixed-term contracts, engaging labour hire to do work that could be done by permanent public servants leads to a “brain drain” from the public sector – the loss of corporate knowledge and skills due to the transience of this workforce. The engagement of labour hire to do work that could be undertaken by permanent public servants is “privatisation by stealth” which erodes the working conditions and security of employment that have been long fought for by CPSU/CSA members.

## CASE STUDY 2:

## LABOUR HIRE IN LEGAL AID

Legal Aid WA engages a high proportion of labour hire employees to undertake work that could be done by permanent public servants. Legal Aid has a 328 staff members (as at June 2011, *WA public sector workforce report June 2011)*, plus a total of 94 labour hire/external contractors.

The labour hire contractors work in the following areas:

* Finance:
	+ There are only a few labour hire employees in this area, and they appear to be contracted to fill vacancies.
* Information Management:
	+ There are a number of independent companies who are contracted to supply IT support to Legal Aid.
* Client Services:
	+ These workers are primarily law students who work casually at Legal Aid to provide phone advice to clients. Originally these workers were employed directly by Legal Aid, but moved to labour hire – apparently because Legal Aid did not have the resources to train staff, and the payroll system could not cope with a casual workforce.
* External solicitors:
	+ Legal Aid also employ solicitors that work for private firms. These solicitors work off-site at their own firms, however Legal Aid does pay these firms for their services (ie. these are not pro-bono services). The engagement of these external solicitors means that Legal Aid does not have to employ as many in-house solicitors.

##  4: Conclusions

Insecure forms of work are rife throughout the WA public sector, and insecure work is growing, while permanent work is decreasing. In particular, the use of fixed-term contracts is widespread. The CPSU/CSA proposes the implementation of the following measures to counter the growing problem of insecure forms of work in the WA public sector:

1. **State government needs to ensure that it complies with provisions in the *Public Service Award 1992* in relation to engaging workers on fixed-term contracts**

As outlined in section 3.1, there are some legitimate reasons for engaging employees on fixed-term contracts, however it is clear that fixed-term contracts are widely misused in the WA public sector. This has a detrimental impact on the individual workers, as well eroding the Westminster principle of a permanent public service. There is currently a lack of regulation over the engagement of fixed-term contract employees in the WA public sector. When government agencies advertise vacancies, they should be advertised as permanent, unless they can demonstrate the need for a fixed-term contract as per the criteria set out in the *Public Service Award.* In order to ensure the principle of a permanent and politically neutral public service is upheld, the Senior Executive Service must also be permanently appointed.

1. **Government should collect data on the use of labour hire by public sector agencies, and identify areas where services could be provided directly by government**

The data on how many labour hire workers are employed by government agencies is not collected by the Public Sector Commission. There are a few legitimate circumstances where an agency could engage labour hire workers, such as to provide specific specialist knowledge or skills not available in the public sector, however by collecting the data on the use of labour hire it should become clear that agencies are engaging labour hire for illegitimate reasons. There is no reason why government could not provide IT, administration, and other services directly, employing workers on a permanent basis.

1. **State government must abandon the use of the FTE ceiling for public sector agencies**

The imposition of FTE ceilings on public sector agencies has exacerbated the use of labour hire by government agencies. The FTE ceiling is an arbitrary cap on the number of full-time equivalent staff an agency can employ in order to save costs for government. In reality, however, where agencies require more staff to achieve their outcomes, they employ labour hire workers as they are not counted toward the FTE ceiling. This produces an artificial cost saving on paper, however in reality it is a false economy – engaging labour hire companies costs a significant amount of public money, which is being directed towards a private company instead of being invested in the public sector. The money spent engaging labour hire companies needs to be invested in employing more permanent public sector workers to directly provide services.

1. **State government must abandon its privatisation agenda**

As outlined in section 2, the Barnett government’s privatisation agenda is leading to a rise in insecure work. In anticipation of an area of government being privatised, an agency may employ workers on fixed-term contracts to avoid paying severances if and when the area is privatised. When a public service is privatised, the work will usually be more insecure, as private companies and not-for-profits provide less job security than the public sector.

1. **Speed up processes of filling positions**

Anecdotally we know that many vacant positions in government are not filled in a timely manner. This could be due to the perception the that merit selecting new staff is onerous and time consuming, and requires a rigid process to meet public sector standards. As Maxine Murray argues, this could be due to the misconception that the *Public Sector Management Act 1994* removed the right to appeal a recruitment decision on the basis of merit; instead workers can appeal on the basis of a breach of process. Murray argues that this has led human resource departments to rigidly observe the process, rather than applying flexibility while still conforming to the principles of merit selection.[[18]](#footnote-18) If agencies take a more flexible approach to recruitment, rather than simply a rigid application of process, it is likely that vacancies could be filled more quickly than at the present time.

The government has a responsibility to provide secure forms of work for public sector workers. This will ensure that workers can have job security, financial stability, an appropriate work-life balance, and access to rights and entitlements. Secure work in the public sector is also key to upholding the principles of good public sector governance – a permanent and impartial public service. The CPSU/CSA calls on the government to immediately rectify the growing issue of insecure work in the public sector to provide stable and secure for work for public servants, so that they are better able to deliver frank and fearless advice to government, and quality services to the community into the future.

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# Part 2

# Insecure forms of work in the NSW public sector

**The Public Service Association is the NSW Associated body of the CPSU SPSF and its members form the NSW Branch of the Union.**

## PSA COVERAGE

The Public Service Association of NSW (PSA) is a registered union under the Industrial Relations Act 1996, representing New South Wales public sector employees and general staff in universities. The union represents approximately 44,500 members spread over 4,000 worksites across the sector.

The PSA’s membership includes:

* people who work for NSW government departments
* people who work in NSW budget funded agencies
* general staff in NSW universities
* school administrative and support staff in NSW public schools
* general staff in TAFE
* non-uniformed staff in the Police Service
* correctional officers
* some classes of employees in statutory authorities and State Owned Corporations such as, Landcom, Pillar Administration electricity generators, Roads and Traffic Authority and many others.
* employees in some privatised bodies, for example irrigation companies.

###  OVERVIEW OF INSECURE EMPLOYMENT IN THE NSW PUBLIC SECTOR

The *NSW Public Sector Workforce: A 2010 Snapshot and Snapshot Tables* produced by the Department of Premier and Cabinet (DPC) shows the extent of insecure employment in the NSW public sector. The DPC data shows that there were 322,542 full time equivalent (FTE) staffing positions in the NSW public sector in 2010. Temporary FTE positions numbered 39,202; with there being 20,629 casual FTE. (see Attachment A)

In terms of percentages, temporary employment in the NSW public sector in 2010 was 12.16% of the public sector workforce and casual employment was 6.42%. Health NSW and the Department of Education and Training made up the bulk of temporary and causal employment in the public sector. The data also shows that women predominate in insecure employment in the public sector with 71.15% of temporary employees and 70.25% of casual employees being women.

In early 2011, the PSA sought information under the *Government Information (Public Access) Act 2009* pertaining to the extent of the use agency staff in the NSW public sector. The report was prepared by the Department of Services, Technology and Administration (DSTA) and showed that in 2009-2010 a total of $385,246,021 was spent on agency contract staff. This equates to approximately 5,682 FTE jobs, paid at the NSW public sector average annual total gross earnings of $67,791. (Amount is from *NSW Public Sector Workforce: A 2010 Snapshot and Snapshot Tables).* Data supplied by DSTA shows that 2009 -2010 a total of 10372 labour hire staff were engaged across the NSW public sector with a total of 6,103,960 hours worked by labour hire staff.

At the time of writing this submission the Association received the equivalent labour hire data for the 2010 -2011 financial year. The data showed that the total amount spent by the NSW public sector in 2010 – 2011 on labour hire staff increased dramatically to $468,057,260. The data also showed that in the same year 11,976 labour hire staff were engaged by the NSW public sector with 7,031,982 hours worked

###  TEMPORARY EMPLOYMENT IN THE NSW PUBLIC SECTOR

#### Public Service

The *Public Sector Employment and Management Act 2002* (PSEM Act) regulates the employment of Departmental temporary employees in the NSW public service. Section 27 of the PSEM Act allows for the appointment of Departmental temporary employees. It is important to note that the PSEM Act also states that the usual basis for employment of staff is to be the employment of permanent officers.

The PSEM Act states that Departmental temporary employees may be employed for the following reasons:

(a) for the duration of a specified task or project,

(b) to carry out the duties of a position that is temporarily vacant,

(c) to provide additional assistance in a particular work area,

(d) in connection with the secondment or exchange of staff,

(e) to undertake a traineeship or cadetship, or

(f) for any other temporary purpose.

The maximum period for which a Departmental temporary employee may be employed at any one time is 3 years.

Section 31 of the PSEM Act states that a long term temporary employee who has had continuous employment for 2 years maybe be appointed permanently. There is a range of criteria that a long term temporary employee must meet before they can be appointed permanently.

Section 32 of the PSEM Act also allows for the appointment of special temporary employees who are employed by a “political office holder”.

**NOTE: Departmental temporary employee’s salary and conditions of employment are the same as permanent employees.**

#### School Administrative and Support Staff

The *Education (School Administrative and Support Staff) Act 1987* states that school and administrative support staff maybe employed on a temporary basis in any classification.

The Act states that a temporary employee may be employed for a period not exceeding 4 months, but may, from time to time, be employed at the end of that period or any subsequent period for a further period not exceeding 4 months.

Further, the Act states that a person must not be employed under this section for a continuous period of 12 months, or two or more periods that together are in excess of 12 months in any period of 2 years.

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| **CASE STUDY ONE – School Learning Support Officers** In late 2010 the Public Service Association won permanency for approximately 4,000 long term temporary School Learning Support Officers.In 2007 the Association conducted a survey of its members and as a result became aware that many School Learning Support Officers had had a series of temporary appointments for periods well in excessof 12 months, and in some cases for periods over ten years, and in one case 29 years. All of the 4,000 temporary staff had to reapply for their jobs at the beginning of each school year or school term.The Association produced a you tube video that outlined the problems that long term temporary stafffaced. Which can be accessed by going to this link *http://www.youtube.com/watch?v=ReTf9x6hhr4*On the video long term temporary School Learning Support Officer, Elizabeth Gawthorne, explains what itis like to be a long term temporary employee. “I’m always asked back every year, for the last ten years. So I must be doing something right.”“I have good rapport with the kids but it is the job security, just knowing that I got all of this experience and that at the end of the year I could be let go and I I’d have to go and find a job somewhere else, start again somewhere else. Other schools don’t know who I am and what I am capable of doing.”In 2009 the Association presented a petition with 3,000 signatures to the then Minister for Education, Verity Firth. In late 2010 the Minister agreed to develop criteria to appointment long term temporary School Learning Support Officers to permanent positionsThere are a range of agreed criteria for appointing long term temporary School Learning Support Officers to permanent positions including the ongoing need and funding for a permanent SLSO, and that the SLSO must have at least two years continuous service at the school. |

The PSA is concerned that devolved decision making initiatives driven by both the State and Federal Governments will undermine these recent gains and lead to an escalation of insecure work for school staff. The Federal Government's *Empowering Schools* and the NSW

Government's Local Schools, Local Decisions initiatives, focus on devolving decision making but only as it relates to budgets, staffing and resources.

This type of devolution policy has the potential to undermine employment security as outgoing permanent staff are increasingly replaced with temporary staff on the premise that it increases the capacity of Principals to determine the staffing mix for their school on an ongoing basis, and increases their capacity to remove so-called underperforming staff

## CASUAL EMPLOYMENT IN THE NSW PUBLIC SECTOR

Casual employment only became a feature of public sector employment in 2002 when the PSEM Act was amended to allow casual employment. The intended purpose of the new provisions were identified in the Second Reading Speech of the then Minister, the Honourable John Della Bosca, in the Legislative Council on 18 June 2002 as follows:

*Under the new provisions there will be three categories of employment in public service departments: ongoing as an officer, temporary or casual. The bill introduces temporary employment for a period of up to three years in specific circumstances—for example, when recurrent funding is not available or when there is a specific time frame for a project. Employment for periods in excess of 12 months will be subject to merit selection. Longer-term temporary employment—as opposed to four months—will provide greater financial security for employees. The bill also recognises a category of casual employment. Casual work is justified in certain circumstances—for instance, when there are unplanned absences in critical front-line positions. It is defined as employment for work that is irregular or intermittent. Casual employment is to be used only when a department’s workload needs to be addressed in the short term or in an urgent or emergency situation.* ***Direct engagement of casual employees is to be preferred to the use of staff provided by labour hire firms.*** *I reiterate at this point that the Government has made a strong public commitment to preventing the casualisation of employment within the New South Wales public sector, and the bill makes it clear that the usual method for employment in the public service is ongoing, as a permanent officer.*

Section 38 of the PSEM Act allows for the employment of casual employees. This section of the PSEM Act states that a person may be employed as a casual employee:

1. to carry out work that is irregular or intermittent, or
2. to carry out work , on a short-term basis, in an area of the Department with a flexible workload, or
3. to carry out work of a position for a short period pending the completion of the selection process for the position, or
4. to carry out urgent work or to deal with an emergency.

**Again it must be noted that the Act states that officers should usually be appointed permanently.**

## Casual Pay Rates and minimum hours

The *Crown Employees (Public Service Conditions of Employment) Award 2009* states that casual employees are to be engaged for a minimum of three consecutive hours for each day worked.

The Award states that the ordinary hourly pay rate is calculated by dividing the annual salary (as per the *Crown Employees (Public Sector – Salaries 2008)* by 52.17857, then dividing the weekly rate by the weekly hours worked of the classification. (That is either 35 hours or 38 hours per week).

The casual loading is 15% on Monday to Fridays, 50% on Saturdays, 75% on Sundays and 150% on public holidays.

Casuals also receive a 1/12th loading in lieu of annual leave.

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| --- |
| **CASE STUDY TWO - Correctional Officers**In 2008 Corrective Services NSW (CSNSW) implemented a policy of only employing casual Correctional Officers. As a result of this policy approximately 300 casual correctional officers were engaged by CSNSW. Casual Correctional Officers are unable to do the full range of duties as a permanent officer, as they are classed as the equivalent of a probationary correctional officer.In 2010 the PSA ran a case in the Industrial Relations Commission of NSW seeking declarations by the Court that the employment of casuals by CSNSW to perform the work of long term vacant officer positions was inconsistent with certain provisions of the *Public Sector Employment and Management Act* 2002 ('the PSEM Act') and, accordingly, not permitted by law. **(Public** **Service Association and Professional Officers' Association Amalgamated Union of New** **South Wales v Department of Justice and Attorney General (Corrective Services NSW)****[2010] NSWIRComm 148)**The Commission did not grant the orders sought by the Association. However in his decision Justice Boland identified that in some instances casual correctional officers were not being engaged for the purpose of carrying out work that is available on an irregular or intermittent basis. On the other hand Justice Boland did recognise that were circumstances were the engaged of casual correctional officers was consistent with the provisions of the PSEM Act.As a result of this dispute CSNSW agreed to convert 70 casual Correctional Officers to permanent employment.However, in 2011 the newly elected Liberal Government slashed jobs in CSNSW, with the result being that most casual Correctional Officers were not re-engaged by CSNSW. |

## LABOUR HIRE IN THE NSW PUBLIC SECTOR

### Extent of labour hire in the NSW public sector

In early 2011, the PSA sought information under the *Government Information (Public Access) Act 2009* pertaining to the extent of the use labour hire in the NSW public sector. The report was prepared by the Department of Services, Technology and Administration (DSTA) and showed that in 2009-2010 a total of $385,246,021 was spent on labour hire staff. A total of eighteen private sector organisation supplied labour hire staff in that year. (see table 1.1)

**TABLE 1.1 Suppliers of labour hire staff by money spent 2009-2010**

|  |  |
| --- | --- |
| **Supplier Name** | **Total** |
| Smalls & Associates Pty Ltd | $ 65,593,041 |
| Ranstad Pty Ltd | $ 56,384,992  |
| Peoplebank Australia Ltd | $ 51,820,924 |
| Talent International (NSW) Pty Ltd | $ 45,537,302 |
| Finite Recruitment Pty Ltd | $ 32,790,848 |
| Quay Appointments | $ 28,586,984 |
| RossJuliaRoss | $ 22,112,776 |
| Hays Specialist Recruitment | $ 20,758,095 |
| Workforce International | $ 14,590,912 |
| Paxus | $ 12,914,755 |
| Clicks Recruit Pty Ltd T/A Click Recruitment | $ 11,206,740 |
| Hamilton James & Bruce | $ 6,988,117 |
| Chandler Macleod Group | $ 6,806,658 |
| Hudson | $ 5,878,632 |
| Michael Page International | $ 2,412,008 |
| IPA | $ 797,163 |
| Australia Personnel | $ 34,915 |
| Rubicor | $ 31,141 |
| **GRAND TOTAL** | **$385,246,021** |

The top 5 agencies that spent the most on labour hire staff were the Roads and Traffic Authority, Department of Education and Training, Businesslink, NSW Health and the Department of Services, Technology and Administration. (see table 1.2)

**TABLE 1.2 Amount spent on selected NSW Government agencies on labour hire staff 2009-2010**

|  |  |
| --- | --- |
| **Agency** | **Amount Spent** |
| RTA | $72,282,609 |
| Department of Education and Training | $56,705,170 |
| Businesslink | $28,459,479 |
| Department of Health | $22,507,049 |
| Community Services | $19,437,791 |
| Department of Services, Technology and Administration | $17,391,454 |
| Housing NSW | $16,344,239 |
| NSW Police | $15,298,449 |
| Attorney General’s | $14,738,018 |
| Environment and Climate Change | $10,974,639 |
| NSW Transport | $ 9,478,878 |
| TAFE Commission | $ 8,298,263 |
| Ageing, Disability and Home Care | $ 5,286,832 |
| Corrective Services | $ 2,609,037 |
| NSW Fire Brigades | $ 3,840,641 |
| Department of Premier and Cabinet | $ 3,485,891 |
| Department of Industry and Investment | $ 762,683 |
| Legal Aid Commission | $ 182,551 |

In 2009 -2010 a total of 10,372 labour hire staff were engaged across the NSW public sector with a total of 6,103,960 hours worked. (see table 1.3)

**TABLE 1.3 Number of labour hire staff engaged and hours worked in selected agencies in 2009 -2010**

|  |  |  |
| --- | --- | --- |
| Agency | Staff employed | Hours worked |
| RTA | 1,663 | 1,328,123 |
| Education and Training | 989 | 797,723 |
| Department of Health | 718 | 344,296 |
| Businesslink | 499 | 359,942 |
| Housing NSW | 498 | 259,454 |
| DSTA | 479 | 262,460 |
| TAFE Commission | 454 | 246,195 |
| Attorney General’s | 420 | 185,872 |
| Environment and Climate Change | 381 | 214,504 |
| Community Services | 337 | 246,086 |
| NSW Police | 319 | 218,976 |
| NSW Transport | 209 | 117,523 |
| Ageing, Disability and Home Care | 186 | 98,617 |
| Department of Premier and Cabinet | 164 | 63,207 |
| NSW Fire Brigades | 135 | 64,290 |
| Corrective Services | 85 | 54,481 |
|  Industry and Investment | 48 | 13,369 |
| Legal Aid Commission | 12 | 2,833 |

### 2010 -2011 data

At the time of writing this submission the Association received the equivalent data for the 2010 -2011 financial year. The data showed that the total amount spent by the NSW public sector in 2010 – 2011 on labour hire staff increased dramatically to $468,057,260.

**TABLE 1.4 Suppliers of labour hire staff by money spent 2010-2011**

|  |  |
| --- | --- |
| **Supplier Name** | **Total** |
| Peoplebank Australia Limited  |  60,569,970 |
| Talent International (NSW) Pty Ltd  |  60,169,043  |
| Randstad Pty Limited  |  57,185,497  |
| Small & Associates Pty Ltd T/A Greythorn Smalls  |  52,127,563  |
| Finite IT Recruitment Pty Ltd Consortium  |  43,799,227  |
| RossJuliaRoss  |  39,127,085  |
| Quay Appointments  |  39,054,320  |
| Hays Specialist Recruitment  |  31,122,242  |
| Paxus  |  15,242,064  |
| Workforce International  |  14,571,940  |
| Clicks Recruit Pty Ltd T/A Click Recruitment  |  13,620,129  |
| Chandler Macleod Group  |  10,120,056  |
| Hamilton James Bruce Pty Ltd  |  9,419,937  |
| Michael Page  |  8,455,583  |
| IPA  |  7,729,122  |
| Hudson  |  5,301,401  |
| Challenge Recruitment Ltd |  375,053  |
| Australia Personnel  |  67,025  |
| **GRAND TOTAL** | **$ 468,057,260**  |

The top five agencies that spent the most on labour hire 2010 – 2011 are Transport NSW, Education and Communities, Department of Finance and Services, Department of Family and Communities and Department of Trade and Investment, Regional Infrastructure and Services. (see Table 1.5). In 2011 the new Liberal Government created 8 mega departments – list of the bodies included in each mega Department can be found in Attachment B – Definitions of mega Departments.

**TABLE 1.5 Amount spent by NSW Government mega Departments on labour hire staff 2010-2011**

|  |  |
| --- | --- |
| **Agency** | **Amount Spent** |
| Transport  |  104,821,170  |
| Education & Communities  |  70,652,681 |
| Finance & Services  |  63,984,300  |
| Family & Community Services  |  59,780,967  |
| Trade & Investment, Regional Infrastructure & Services  |  54,420,670  |
| Attorney General & Justice  |  49,591,943  |
| Health  |  39,936,087  |
| Premier & Cabinet |  23,082,006  |
| Treasury  |  1,787,438  |
| **GRAND TOTAL** |  **468,057,260**  |

In 2010 – 2011, 11,976 labour hire staff were engaged by the NSW public sector with 7,031,982 hours worked. (See table 1.6)

**TABLE 1.6 Number of labour hire staff engaged and hours worked in mega Departments 2010-2011**

|  |  |  |
| --- | --- | --- |
| **Agency** | **Staff employed** | **Hours worked** |
| Attorney General & Justice  |  1,511 |  732,184  |
| Education & Communities  |  1,852 |  1,170,167  |
| Family & Community Services  |  1,458 |  894,102  |
| Finance & Services  |  1,543 |  896,176  |
| Health  |  1,461 |  760,450  |
| Premier & Cabinet  |  1,037 |  425,843  |
| Trade & Investment, Regional Infrastructure & Services  |  986 |  575,242  |
| Transport  |  2,086 |  1,555,560  |
| Treasury  |  42 |  22,259  |
| **GRAND TOTAL** |  11,976 |  7,031,982  |

## Procurement Guidelines

There are strict procurement guidelines that an agency must follow to engage labour hire staff. These guidelines are outlined in the document *Contract 100 – Contingent Workforce Contact. (Contract 100)*

*Contract 100* states that NSW Government Agencies “may have a requirement” to hire “contingent labour” in the following situations:

* To replace personnel for short periods
* To engage personnel quickly
* To obtain personnel with particular skills
* To cover unexpected vacancies
* To work on projects
* To meet the need for extra personnel during busy periods
* To meet recruitment needs in changing times
* To cover unexpected increases in workloads

These requirements do not differ to those in the *Public Sector Employment and Management Act 2002* that regulate the employment of temporary and casual staff in the NSW public sector. The Association is of the strong view that the use of labour hire staff is not necessary considering that the PSEM Act allows for the employment of casual staff.

This view was supported by the Government of the day when the PSEM Act was amended to allow for the employment of casual staff in the NSW public service. The then Minister, the Honourable John Della Bosca, in the Legislative Council on 18 June 2002 said:

***Direct engagement of casual employees is to be preferred to the use of staff provided by labour hire firms.***

### Pay Rates

*Contract 100* refers to Personnel Pay Rate bands for pricing a job, as well as providing minimum and maximum rates. *Contract 100* also states that Suppliers are obligated to comply with minimum award pay rates were they exist.

The Association has obtained the Personnel Pay Rate bands for each of the sixteen Suppliers, and it is clear that these rates to do not directly correlate to the salary rates for public sector workers paid under the *Crown Employees (Public Sector – Salaries 2008) Award*. (See Attachment B - an example of a Price Schedule from Ranstad)

In many cases the Personnel Pay Rates provided are less than what a casual public servant paid under the *Crown Employees (Public Sector – Salaries 2008)* would expect to be paid*.* For example, the maximum rate for an Administrative Assistant engaged through Randstad is the equivalent to what a casual public servant engaged as a Step 4 General Scale Clerk, which is the minimum rate for a twenty year old clerk in the public service. Likewise, an accountant can expect to be paid anywhere from the equivalent of a casual Step 11 General Scale Clerk to a casual Grade 7 Clerk rate of pay. A permanently employed qualified accountant employed by the NSW public sector would expect to be paid at, at least Clerk Grade 7 level. (See Attachment C - comparing Ranstad rates with casual public sector rates)

In addition, there does not seem to be any fair and transparent process in determining at which Personnel Pay rate a person is paid. It seems to be purely arbitrary.

### NSW AUDITOR GENERALS’ REPORTS TO PARLIAMENT

Each year the NSW Auditor-General reports to Parliament on a range of issues including the employment of contract employees in the NSW public sector. **(NOTE: ‘Contract employees” are referred to as labour hire staff else where in this submission)**

What is interesting is that many agencies report to not have a central registrar of contract employees, and have inconsistent methods of managing contracts. For example, in the 2010 the Land and Property Management Authority reported that:

*However, the Authority does not have a central registry of all contractors and is unable to determine how many contractors are working at one time and how long they have been engaged by the Authority.*

In addition, many agencies also noted that they needed to assess the risk of losing critical business knowledge when the contractors left the agency.

### Length of time contractors engaged

Most agencies reported that because they did not keep a central register of contractors they were unable to report accurate figures as to how many contractors were engaged and the period of service. However, some agencies did report engage contractors for long periods. This information is provided in Table 6.1.

**Table 6.1 Contractors engaged in excess of 12 months 2009 -2010**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Agency | Number of contactor engaged for at least 12 months  | Number of contactor engaged for at least 2 years  | Number of contactor engaged for at least 3 years  | Number of contactor engaged for at least 5 years  |
| Department of Human Services | - | 65 | 42 | - |
| NSW Businesslink Pty Ltd | - | - | 53 | 34 |
| Department of Environment, Climate Change and Water | 120 | - | - | 3 |
| Department of Premier and Cabinet | “some contractors” |  |  |  |
| RTA | “56.6% of contractors” |  |  | Longest more than 8 years” |
| Historic Houses Trust | - | - | 3 | 1 |

### Reasons for engaging contractors

It is worth noting that the RTA advised the Auditor-General that the reasons contractors are used by the Authority are:

* skill shortages in engineering and information technology
* salaries offered being below comparables available in the industry
* New South Wales Government recruitment freeze
* Construction and information technology industry norms within of using contingent workforces
* Growth in the overall road program due to higher Australian Government funding levels.

### Auditor – Generals’ recommendations

The Auditor- General made the following recommendations to many Government agencies in relation to the engagement of contractors in the NSW public sector:

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## WOMEN

Women predominate in insecure employment in the public sector with 71.15% of temporary employees and 70.25% of casual employees being women.

There are reports of pregnant women not having their contracts renewed or being afraid of starting a family for fear of losing their jobs.

There is no equivalent data relating to labour hire staff.

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| **CASE STUDY THREE – Having a baby and long term temporary employment.**In 2010 the Association’s Women’s Industrial Officer represented a member who had been a long term temporary employee in the NSW public sector for nearly seven years.The member had just had a baby and was not offered further employment in the NSW public sector. She had also not been paid pro rata extended leave, or redundancy payment. The Association made representations on behalf of the member and was advised that the agency would not be paying her entitlements as she had not been “terminated.” When pushed, the employer representative admitted that the member was not offered ongoing employment because she was pregnant and about to have a baby.The Association notified a dispute in the Industrial Relations Commission of NSW and the matter was successfully conciliated. |

## OTHER PROBLEMS WITH LABOUR HIRE

The expansion of labour hire in the NSW public sector raises a number of problems that relate to both the workplace rights of public sector workers and the integrity of the public sector. These include:

1. The engagement of labour hire staff undermines the merit selection process leaving open the opportunity for nepotism, cronyism and corruption.
2. The notion of the ability of the public sector to be able to provide “frank and fearless” advice to Government is weakened when staff expected to give that advice have no security of employment.
3. The real costs of wages expenditure is hidden when labour hire staff are engaged.
4. Labour hire is the privatisation of the public sector by stealth.
5. Wages and conditions of public sector staff are undermined.

## HIGHER EDUCATION – UNIVERSITY AND TAFE

### Ability of Government to impose employment conditions.

In recent years we have seen our members affected by Government intervention in respect to conditions of employment, primarily through linking funding to the requirement to change. This was most pronounced in 2005-2007 with the Federal Government’s Higher Education Workplace Relations Reforms (HEWRRs)[[19]](#footnote-19).

The HEWRRs imposed a set of conditions which Universities were required to meet in order to receive all their funding. While the main conditions were predetermined, the final enterprise agreements were subject to departmental advice on wether the Agreements would conform.

The imposed conditions were aimed at reducing union involvement, reducing job security measures and promoting the use of Australian Workplace Agreements, (AWAs) as statutory individual agreements under the then WorkChoices legislation.

More recently we have seen the NSW Government impose a 2.5% wage rise cap, with additional pay rises conditional on employee related cost savings with “guaranteed minimum conditions”. These requirements are not currently linked to funding, but are implemented through legislation and public sector policy[[20]](#footnote-20).

The New South Wales Audit Office makes recommendations annually on the performance of public sector agencies, including Universities. Some of these recommendations relate to workforce matters and conditions of employment.[[21]](#footnote-21)

### Insecure Employment in Higher Education

PSA members face insecure work in Higher Education primarily due to funding. Employers are reticent to engage permanent staff where funding is uncertain. This increases the incidence of fixed term employment and temporary staff.

Universities are under pressure from contingent funding through grants and other externally funded sources. A majority of research grants are not provided from ongoing funds. With uncertain income from full fee paying students, employees are often refused ongoing employment. Approximately 55% of NSW University funding is from Australian Government grants and HECS receipts.[[22]](#footnote-22)

The Department of Education, Employment and Workplace Relations places the Full Time Equivalent level of casual employees at approximately 17% of Full Time Equivalent staff, inclusive of academics. For non-academic staff, DEEWR reports 2,061 FTE casuals out of 6,114 FTE staff, inclusive of casuals.[[23]](#footnote-23)

Historic restrictions on the use of fixed term contracts linked to eternal funding grants, has increased the use of casuals where these restrictions are onerous. Improvements to industrial entitlements, including conversion to ongoing for casuals and fixed term staff without exemptions, could improve levels of secure employment.

One measure introduced by the PSA at the University of NSW was a new category of employment called ‘Continuing (Contingent Funded Research) Employment’. This alleviates the employer’s concerns relating to external, limited term funding contracts and offers employees increased job security.

TAFE NSW non-teaching staff face tightening funding pressures, increasing insecure employment. The Sydney Morning Herald reported that *“from 1997 to 2007 show NSW has slashed more than $550 million from its annual spending”*.[[24]](#footnote-24) Between 2008 and 2011 student to FTE ratio has increased from 1:31.6 to 1:35.1.[[25]](#footnote-25)

PSA members have reported that TAFE Colleges no longer backfill non-teaching staff positions during semester and only backfill when staff use long service leave. TAFE staff are paid long service leave from Treasury budgets not from TAFE budgets. This is indicative of the tight budget pressures Colleges operate under, increasing workloads and workplace related stress for their employees.

TAFE NSW continued to engage class support staff on a permanent part year form of employment until the PSA successfully applied to the NSW Industrial Relations Commission to cease this practice as this was an illegal form of employment from 2006.

Increased funding for TAFE NSW is urgently required to provide sustainable workloads and secure employment for TAFE NSW non-teaching employees.

## RECOMMENDATIONS

Whilst the PSEM Act has an emphasis on the engaged of permanent officers over temporary or casual officers, insecure employment in the NSW public sector is on the increase. Accordingly, the Association is concerned with the increasing engagement of temporary and casual employment in the NSW public sector. In addition, the Association is alarmed at the high rate of labour hire staff being engaged in the sector. The Association’s concerns range from the erosion of workplace rights for our members to the undermining of the probity of government.

Accordingly, the Association puts forward the following recommendations to the Inquiry for its consideration.

### Legislative change

* 1. The Association supports legislative change that limits the use of casual employment to irregular and intermittent work,
	2. Legislation that requires all employees who are engaged on an ongoing and regular basis for more than 12 months with the same employer to be employed on a permanent basis,
	3. Legislative change that requires that employees of labour hire companies be engaged under the same industrial instruments of the majority of staff at that work site.

### Government employers

It is obvious from the evidence provided in this submission that the NSW Government requires additional staff to perform the functions of government. Accordingly, the Association calls on the NSW Government to:

1. Engage more permanent public servants in place of temporary, casual and labour hire staff,
2. Increase salaries to attract the staff that agencies are reporting they are having trouble engaging on a permanent basis, and
3. The establishment of a central Government agency to provide permanent pool staff to fill unexpected and short term staff vacancies as they arise across the public sector.

### Procurement Policy

In the event that a Government agency does engage labour hire staff, Government procurement policies must require the following:

1. Employees of labour hire companies be engaged under the industrial instruments applying to the majority of staff at that work site
2. Labour hire staff have a right to join a union
3. Labour hire staff must have access to the same dispute resolution procedures as the majority of staff at that worksite

### Union Coverage

The Association supports the rights of all workers to join the appropriate trade union. In the case of labour hire employees, the Association supports the ACTU in developing policy to ensure that workers are able to join the union that covers the majority of workers at the worksite that they are engaged.

### Special Commission of Inquiry into labour hire in the public sector

Due to the increasing use of labour hire in the NSW public sector the Association supports the establishment of a Special Commission of Inquiry into labour hire in the public sector.

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# Insecure Employment In The SA Public Sector –

## South Australia- School Support Staff

### Focus Group and Personal Accounts

This case study of School Support Staff highlights the problems that emerge from insecure employment for workers in the public sector. The preferred mode of employment for these workers has been non ongoing contracts. While many of the workers have been in the job for a number of years they have been employed on short term contracts, in lower classifications and their work is undervalued and underpaid. There is little incentive to undertake training and career advancement. We argue that the demographic composition of the workforce will hold particular labour resourcing problems in the future because the insecure nature of the employment holds no incentive for younger workers to consider a career in this occupation.

### South Australian School Support Staff

School support staff are a loyal, committed, hardworking workforce whose work is vital to the school and to the community. School support staff typically love their work, often described as a ‘labour of love’ and have strong commitment to the children and the local community.

The role and nature of work has changed over time with non teaching staff requiring skills to perform more complex tasks, greater inaction with staff and parents, and acquire technical and human care skills.

There are significant and increasing numbers of classroom assistants providing more complex support for learning and teaching and for care and welfare of children. Some classroom assistant’s roles are straying into the work of professionally trained and paid teachers and health care workers.

We draw the Inquiry’s attention to gender discrimination and the resulting pay equity problem that pervades the non teaching workforce. The workforce displays significant features of gender related discrimination identified in numerous equal remuneration cases. The work is poorly paid for the work performed, skills are unrecognised and undervalued, the work is insecure and workers lack industrial power.

School support staff are almost exclusively female, typically aged between 31-50 years tending to be concentrated at the top of this age range. The ageing nature of the workforce requires particular attention in workforce planning considerations. Much of the workforce will retire in 10-15 year time. The loss of these workers, projections of a declining Australian labour force taken with poor wages and an absence of training and skills accreditation will result in the sector not being able to meet workforce requirements. This issue must be addressed.

Non teaching staff are often employed on short term arrangements. Many workers have the experience of being continually re-appointed to short term contracts. Some workers have been on casual contracts for as long as ten years. These arrangements give no on going security to workers and they often face financial problems waiting for renewals to be put in place. Some workers are offered term by term or semester contracts which denies them leave arrangements enjoyed by the majority of the workforce. Some workers such as library technicians and lab assistants are `stood down’ over school holiday times. The unreliable status of their employment arrangements discourages workers from investing in their own human capital. Workers are unsure of their future in the sector and are discouraged from investing in training, formal skill accreditation and workforce attachment. Management is also discouraged from investing in staff development and training.

As indicated below non teaching staff in public schools are low paid in comparison with other public sector workers. This has serious implications in view of meeting the future workforce needs. Threatening labour market shortages will mean that potential workers will be more attracted to other areas of public sector employment or to private sector employment. These workers will choose better paid jobs.

The labour force is characterized by precarious employment status: About 20% of workforce are full –time, 80% part-time. Most of the workers do not have permanency status. 37.4 % ongoing employment and 62.6% on contract/casual. Most State awards have classification structures however most workers are clustered around the bottom of the structure. In the Victorian education sector we find that of 12,206 workers classified as education support staff approximately 10,000 or 82% are clustered ES1-1 and ES1-2 grades. Less than 1% of education support workers hold senior grade positions (Annual Report 2009-10 DEECD)

Employment in South Australia public schools also provides an example with approximately 60% on SSO1, 25% SSO2, 9%SSO3, 6% SSO 4 &5. These workers have very little opportunity for career progression and advancement. The insecure nature of employment discourages workers from seeking re-classification to higher positions in the salary scale. Non teaching careers offer little attraction, no financial rewards and no acknowledgement of skills and expertise currently performed by our members.

##### Percentage of Part time Employees in the South Australian Public Sector on Short Term Contracts by Employee Type and Gender

Source: The South Australian Public Sector Workforce Information

June 2007: Summary Report

Part Time Employees as a Percentage of Total Work Force by Occupation

Source: The South Australian Public Sector Workforce Information

June 2007: Summary Report

We submit that these insecure employment arrangements perpetuate gender inequality and discrimination.

Grimshaw and Rubery (‘Undervaluing women’s work’ 2007, European Work and Employment Research Centre) found that part-time work increases the likelihood of undervaluation and discrimination. Not only does it fail to give access to higher earnings but it also has a sustained negative impact on future pay levels. (pvii)

Joshi and Paci (in Grimshaw and Rubery) suggest that women working part-time suffer a double wage penalty from their concentration in low paying firms, jobs and occupations as well as from their greater experience of discrimination. (p34)

The continuing flexibilisation of work and employment and part-time work in particular, deserves special consideration. Undervaluation interlocks with poor employee rights and entitlements in part-time work, including vulnerability, limited discretion over working hours, a pay penalty, work intensification and limited opportunities for career development or pay progression. (p92)

Further, these workers are low paid by public sector standards. When we examine their wages compared to other (male) workers in public sector occupations we find that work is undervalued and underpaid. The nature of their employment, their work, their desire to work with children is a classic illustration of how work associated with caring roles is undervalued and therefore underpaid.

##### Percentages of South Australian Government Employees Earning Low Wages

Sources: The South Australian Public Sector Workforce Information

June 2007: Summary Report

#### Wage rates clearly indicate that School support staff are low paid workers.

##### South Australia (2010)

SSO1 $36,763 $18.82 (hourly)

Top of band $43,046 $22.05

SSO2 $46,287 $23.73

Top of band $50.096 $25.68

##### New South Wales

On employment $31,044 $15.93

SSO1 $43,576 $22.37

4th year $51,948 $26.66

##### Australian Bureau of Statistics 6306.Ordinary time hourly earnings August 2008

Carers Aides $20.60

Education Aides $19.60

Child carers $20.60

Personal carers $21.70

Sales Support $20.80

##### National Minimum Wage

Weekly pay$589.30 $15.51 per hour (June 2011)

#### School Support Staff are underpaid when compared with wages paid in the general community.

##### Full time adult weekly earnings – ordinary time-

Weekly $1288.00 Yearly $66,976.

##### Females adult weekly ordinary time

Weekly $1141.80 Yearly $59,332.

(ABS Average Weekly Earnings February 2011)

SSO2 base rate cluster $46,287 is about 69% of full time AWE and about 78% of female average weekly earnings.

Another illustration of the poor pay can be gleaned from the NSW public sector where the median annualized remuneration for non casual females in 2008 was $61,686.00 and the School Learning Support Officer at the highest of the four yearly range was $51,948.00.

Their work is undervalued as much of their work is not visible in formal job description, their skills and nature of their responsibilities has been inappropriately valued, the valued added by classroom assistants is hard to quantify. Low wages have been seen as compensating for fitting in with their own family arrangements. However these are past ideas which are out of place in a modern workforce with high female participation rates and commitments to flexible work and requirement to balance work and family responsibilities.

International research also replicates and acknowledges the patterns of gender discrimination that are a feature of the workforce. The Department of Labour, Pay and Employment Equity Unit - New Zealand pay investigation comparing School Support Staff with Corrections Officers found that these jobs are of a similar job size to the Corrections Officer Level 1 position, and that they have been historically undervalued in the terms of actual skills, responsibilities, demands and working conditions required in the role.

These wage comparisons indicate that non teaching staff fit within the low paid sector of the workforce. They indicate that the wage paid does not properly value the type of work performed and is inconsistent with the desire to create a quality education system operating within an efficient labour market.

With greater integration of special needs students, changes in work functions, changing technology and increased responsibility, the skills of this work lack formal recognition and there is little reward for career development and formalised training. These employment features impinge upon investment in employment and the delivery of high

 quality education to all students and in particular to those with special needs.

Non teaching staff play an integral role in the education of students and specifically in the school experience of special needs students. The diagnosis of a wide range of special needs and disabilities requires more specialist training and assistance in the classroom if Governments are to meet their commitment to social inclusion and quality education.

Productivity Commission data shows that in 2009 79.1% of students with disabilities and special needs attend government schools. These students come with wide ranging and complex needs and abilities. Increasing integration of special needs students has created more diverse classrooms with workers required to undertake wide ranging occupational and functional abilities.

Non teaching staff perform general classroom duties assisting teachers with administration and teaching functions. They also assist pupils with education and practical tasks, help children with physical difficulties, assist in evaluating children’s learning and development. They attend to the welfare of children, managing behaviour, caring for minor accidents; they are often involved in medical situations such as administration of medicines and first aid. They often deal with children with autism and spectrum disorders. This often involves a mix of skills and knowledge that requires specialist training and protocols in behavioural control and specialist learning, personal and health care. Non teaching staff play an integral role in supporting both the school and the needs of students.

These features required in 21st century education should not be left to chance but require thoughtful evidence-based workforce policy and planning.

We draw the Inquiry’s attention to their recent report into the Aged Care Industry `Caring for Older Australians’. We note the similarities in the work performed by many school support staff and the work performed in the Aged Care sector. In Chapter 14 of this Report, the Productivity Commission highlights the nature of the formal aged care workforce and makes key points. The report indicates problems that will arise in the aged care sector that would reasonably be assumed to happen also in the area of non teaching staff in schools.

The supply of workers is problematic in attracting and retaining workers and these difficulties are expected to intensify due to increasing competition for workers. Workforce strategies should include paying fair and competitive wages, improving access to education and training, developing well articulated career paths and better management, providing professional development.

We further submit that the non teaching staff at schools bear all the hallmarks of gender discrimination and pay inequity. We point out that these workers would provide a good case for seeking equal remuneration under provision Part 2-7 of the Fair Work Act 2009.

We have also submit that the ad hoc nature of funding of the positions of school support staff has exacerbated problems and led to an incoherent manner of addressing the needs of the school, management, workers and students.

This unpredictable form of funding leaves both manager and workers with no security of employment and little encouragement to invest in human capital. Further the good nature of the workers is often exploited as they feel obliged to accept poor wages and conditions in fear that students might miss out.

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## Personal Accounts-Work as a School Support Officer – Focus Group

Below is a transcript of a small focus group conducted as part of this submission to give the Inquiry the views of some of the workers that feel the affects of employment policies that lack job security. The focus group was conducted at a Victorian Special School. It gives a small but indicative insight into the nature of work, the affect of insecure employment and the expectations of a few workers.

**Discussion:**

**Clare** is 27 and holds a Bachelor of Fine Arts and a Degree in Education. She is newly qualified and is employed as a teacher at a Melbourne Special School. Her students are teenage adolescent children with wide ranging needs and abilities. Prior to obtaining her formal qualification Clare worked as a teacher aide. She had experienced working as a teacher and as a non qualified aide. Clare was mindful of duties that she allocated to the teacher aides as she was aware that they are poorly paid. She has final responsibility for classroom outcomes. Clare chose to pursue formal qualifications as she liked working with special needs students and she was able to use her arts experience and pass it on to special needs students. She didn’t think that she could have remained in the sector as an aide as there was little room for career development and the pay was too low- the job was too insecure and had no future. Clare said that non teaching staff are required to perform many functions administrative, close student contact, some para health functions and assisting with remedial activities. She thought that non teaching staff were very poorly paid for the job and responsibilities that they perform.

**Christine** has worked for twenty years as a teacher aide. She worked part-time varying from 3-4 days per week. Her contract was usually determined by school funding and school numbers. However in the last few years her contract became more permanent and reliable. Christine’s functions involved assisting in the classroom with reading, setting up, helping students and knowing how to use computers for learning. Christine had to be aware of the medical, intellectual and physical abilities and needs of the students. `The kids have all sorts of medicines and health protocols – you have to make sure things are right’. Workers were often exposed to physical abuse – this was part of the job. Christine also organised theatre for special needs students. She organised the school theatre production and also took children to see other theatre and entertainment. Christine loved her work but felt that the pay was `really bad’. `You know that there is a limit on the school’s funding and that will affect your job and what the kids will get’. After years of work she has very little superannuation compared to many other workers because wages in the job are so low that this effects how much you have to retire on.

**Sam** is 21 and works as a teacher aide at a special school. It is unusual for a male to be doing this work. Sam has a short term part-time contract that will end at the end of the year. Sam is studying psychology at University. He also works as a casual retail assistant for a large department store chain. Sam earns more on an hourly basis as a sales assistant than he does at the school. The work at school is much more demanding and complex and ranges for taking kids on excursions, swimming etc, toileting, feeding, working in the classroom, yard duty and doing administrative jobs. `Dealing with a teenager that can’t control their body or emotions is harder than selling a teenager a pair of jeans’. It requires significant knowledge and skill to communicate with and assist the students. He does not see a career as a teacher aide as the pay is too poor and the skills are not adequately recognised. `Definitely not a career due to the wage’. There is a lot of stress put on you. Even if he works full time hours the wage was not enough to live on. The physical violence is a major stressor. Sam came to work as his father was a teacher and he knew what the work involved. You do similar work as the teacher but you are not paid the same. He didn’t think his friends would consider working in the job. Most of the School support staff are older women, the younger staff at the school tended to be teaching staff.

**Peter** is a Principal of a Special School. He has worked in schools for 30 years. It has been a very stressful job. Getting funding and treating staff and students well has been an ongoing issue. Peter has always been an active union member and has always fought for better conditions for both the students and staff. He was angry that staff had little permanency and tried at all times not to employ people on short terms contracts. He tried to look after his staff as much as he could and tried to give staff secure and reliable employment. He said that when funding decreased that his job was made worse with parents, teachers and students bearing the brunt. He had parents call him in the middle of the night in distressed states. He had introduced procedures for handling different types of behaviours and medical conditions. All staff needed to be aware of how to handle all sorts of situations. Workers had to be aware of all sorts of situations, needs, appropriate ways to handle a variety of problems, dealing with parents and often physical violence. ‘The pay’s lousy and the work is hard.’ The people do the job because they are caring people. The work also involved a lot of outside the job work – attending community functions and money raising activities for the school. Workers were involved in the local community and were often held in high esteem in the community.

I asked if he found it difficult to get staff. He said that for general staff people liked to work in schools because of public service conditions in State schools. he had no problem recruiting non teaching because of the age demographic- middle aged women who tended to stay in the job – it fitted with their family needs. He also had a few younger people on part-time arrangements but usually they didn’t stay in the role and he encouraged them to get qualifications – it was no future for them. Peter was adamant that workers should be given permanent employment rather than temporary unreliable contracts. Staffing was a matter of good luck and local employment.

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11. Based on a statistical analysis provided to the CPSU/CSA by the PSC in June 2009 relating to employees covered by CPSU/CSA agreements. [↑](#footnote-ref-11)
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16. By a clear margin, the issue that was ranked in first position as most important was job security (43% selected as their top ranked issue), and 72% of respondents put this issue in their top three. [↑](#footnote-ref-16)
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