

Insecure Work in Australia: General Comments and Three Focal Issues

Gender Dimensions

Indigenous Women, Immigrant Women, Women with Disabilities

Tertiary Education Casualisation

Submission to the Independent Inquiry into Insecure Work in Australia
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Summary

- In Australia a high proportion of working people are employed in insecure work, compared with nations such as the UK and New Zealand.
- Insecure work is known to have negative implications for pay, conditions and health and safety at work.
- Around twice as many women as men work in insecure employment in Australia. This both reflects and reinforces gender inequalities.
- Women in precarious employment are amongst the most vulnerable workers in the economy. In outwork and sham contracting, and in employment across a range of occupations, women's safety and health is being compromised through the working conditions and stress associated with job insecurity.
- Young men's physical safety is put at risk in labour-hire work.
- Insecure work has negative implications for the entire labour force and for Australian families, communities and society. It is the result of a 'race to the bottom' in labour standards that has shifted risk to individual workers, eroding the social wage, and the economic viability of an ageing population.
- Indigenous women, immigrant women and women with disabilities experience specific and extreme forms of insecurity, which must be addressed by listening to their voices, as well as by regular data collection and analysis.
- Job and pay insecurity has spread to industries and occupational areas not normally associated with deprivation and hardship. It is resulting in under-utilisation and under-development of workforce skill. The renewal and development of our skill and research base is itself facing a hidden crisis, as a generation of tertiary education workers has been lost to insecurity.
- Insecure employment does not ensure family-friendly flexibility. It is the price that care-givers are being forced to pay to remain in a labour market that is polarising between very long-hours jobs (often with limited security) and insecure 'part-time' work.
- Insecure work is produced by a labour law system that actively excludes certain categories of workers from substantive rights under the NES, or sanctions less favourable treatment. It is also a result of lack of access to the support needed to ensure that individuals' labour rights are supported. The National safety net needs to be strengthened to remove loopholes allowing employers to evade their responsibility to provide decent work.
- Labour rights, and the capacity to have them enforced, are inalienable human rights. By allowing the spread of insecure work, especially amongst female workers, Australia is compromising its ability to meet international obligations, especially the United Nations Millennium Development Goals for 2015 of promoting gender quality, empowering women and eradicating poverty, and the International Labour Organisation's goal of decent work for all.

Recommendations

Protecting all workers from job insecurity and related problems

- Use casual engagements only for irregular, intermittent or very short-term work
- Legislate to prohibit creating temporary jobs if the work is ongoing
- Convert temporary jobs to permanent ones after three months.
- Extend all rights to paid holiday, sick, bereavement & parental leave to casual & temporary workers
- Review the policies and practices that have encouraged job insecurity
- Promote compliance by employers
- Expand and strengthen labour inspection
- Ensure unions participate in monitoring compliance
- Clearly set out minimum standards of pay, conditions, rights and protections
- Make the main beneficiaries of supply chains accountable for OHS
- Close compliance loopholes

Recognising and addressing the gendered nature of job insecurity

- Implement work/life balance initiatives in *all* jobs
- Fully recognise women's need for a secure income
- Require that part-time *permanent* jobs, provide the option of returning to full time
- Work to promote equal pay in annual earnings
- Collect gender-based statistics on job security
- Conduct gender impact assessments for policies that affect job security
- Assess the gendered health and safety risks of insecure work
- Government Working Group on after-school care

Shaping opinion and practice

- Governments to avoid funding mechanisms that encourage workforce casualisation
- Governments to tie tendering practices to decent work requirements
- Require corporate governance disclosure of insecure work levels along supply chain.

Equity/inclusion initiatives

- Consult Indigenous community groups, immigrant advocacy groups and disability advocacy groups (including groups representing women), on approaches to overcoming work insecurity
- Regularly collect labour market statistics for equity groups
- Urgently investigate the claim that under the new CDEP, full-time skilled work is being done for Newstart wages, half of which are quarantined under the NTER
- Build personal, maternity, recreational, sick, long service and cultural leave, int CDEP; attach superannuation and ongoing training to CDEP
- Fund community-based education programs for Indigenous and Culturally and Linguistically Diverse women on cross-cultural and employment rights issues
- Ratify International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Support job maintenance of women with disabilities by extending 'reasonable adjustment' supports to domestic sphere, improving child care and mandating flexible start/finish times.

Practical steps - tertiary education

- Temporary/fixed term contracts for all regularly timetabled work
- Mandatory office and internet facilities, regardless of hours taught
- Mandatory pay for course preparation, marking, travel to workplace assessments, consultation
- Pro rata accumulation of service, regardless of breaks, for leave and incremental entitlements
- Pro rata pay for non-classroom work on an hour for hour basis/for time actually worked
- Limitation of fixed-term contracts to defined limited term purposes
- Pay for 4 weeks before each teaching session for preparation and marking
- Maintenance of on-line and library access over the mid-year and summer recess
- Remove \$450 threshold on Superannuation Guarantee;
- Sectoral employer-contribution insurance fund to cover casual leave entitlements
- Implement Casual University Workers' Charter and develop a similar one for TAFE

1. Introduction

Job security is one of the internationally recognised features of decent work. The International Labour Organisation (ILO) states that decent work takes place under 'conditions of freedom, equity, security and human dignity, in which rights are protected and adequate remuneration and social coverage is provided' (ILO, 1999).

Economic security and economic independence also feature strongly in the United Nation's Millennium Development Goals (MDGs) for 2015. These MDGs include the eradication of poverty, promotion of gender equality and empowerment of women. All 193 UN member states including Australia have agreed to these.

However, in recent decades, one concomitant of the growth of free trade has been a de-regulation of national labour markets. 'Liberal' industrialised countries such as Australia, New Zealand, Canada, the United States and the United Kingdom have opened their economies to international competition more than most other rich nations have done. They have also changed the regulation of their industrial relations systems in a way that has weakened labour rights, both procedural (collective organisation and representation), and substantive (income, hours of work, leave entitlements, working conditions, workplace health and safety, and protections against income loss through disability, job loss and retirement) (Quinlan and Sheldon, 2011). The decentralisation of industrial relations practice to workplace level and the recent centralisation of its oversight to national level have posed new challenges for the enforcement of labour standards (Goodwin and Machonachie, 2011).

Precarious employment has increased world-wide, especially since the global economic crisis of 2008 (ITUC, 2011:7). Even full time 'permanent' jobs have become less secure than previously, as large organisations have undergone repeated rounds of restructurings and downsizings (Quinlan, 2003: 2). The dispersal of work along supply chains raises new issues for both regulation and enforcement (Weil, 2009).

As in other countries, Australian public and private sector employers have been cutting labour costs and employing more staff on casual and temporary contracts. In Australia today, a relatively high proportion of working people are in insecure work. The combination of casual, fixed or short-term contracts, labour hire, and contracting has almost doubled in the last two decades to make up about 40 percent of the workforce. The majority of casual jobs are also part-time (Campbell and Brosnan, 2005), and two thirds of part-time jobs are insecure (Vosko, 2010:104), so that many job-holders are unable to earn a reliable and adequate wage. As a result, work is increasingly characterised by Standing's familiar seven types of insecurity (Standing, 1997, 1999):

- *Labour market insecurity* (the need to constantly look for work; or to rely on multiple insecure jobs);
- *Employment insecurity* (vulnerability to job loss, often at short notice);
- *Income insecurity* (unstable and unpredictable earnings; no buffer against earnings loss; inability to save for future needs; including retirement);

- *Work insecurity* (limited say over hours, work schedules or work location);
- *Task insecurity* (limited ability to negotiate job roles, tasks and boundaries);
- *Skill reproduction security* (limited access to training and skill recognition);
- *Representation insecurity* (disempowerment; lack of voice; fear of asserting rights or seeking union or collective support).

Insecure work lacks many key aspects of what the ILO calls 'decent work'. As adapted by the ACTU (2011), the 'decent work agenda is based on an inclusive workplace providing equal opportunities for all, and recognition and respect for cultural rights. Decent work provides job roles that are safe, environmentally and socially friendly, productive and satisfying, with reasonable control over duties, and encouragement of continuous learning. Decent work involves hours that are reasonable, predictable and within the control of the employee. 'Decent' employers treat their staff fairly and in good faith, accepting the need for consultation, union representation and protection from unfair dismissal. Decent work promotes the full range of employees' human rights, freedoms, expression and privacy, with respect for the autonomy and dignity of each worker. In decent work, technology is used to improve employees' working lives, not to erode their autonomy, intensify their work or allow work to creep into personal life. Insecure work however fails to meet most of these decent work criteria.

Nearly two thirds of people in insecure work are women. This submission focuses on the impact of casualisation and the growth of other insecure work forms upon women and gender relations in Australia. Partly because of the widespread use of insecure employment, women have less access to 'decent work'; on average still earn considerably less than men, lack economic independence and are more likely to be in poverty despite working. These economic disadvantages reinforce traditional gender divisions and are barriers to women's empowerment. Insecure work is a particular issue for Indigenous women, immigrant women and women with disabilities. Whilst having no authority to speak for these groups, this report cannot fail at least to point to some disturbing findings from recently published studies that do have such authorisation.

The submission includes a case study of women in tertiary education, many of whom find themselves confined to precarious work in the 'ivory basement'. Whilst the public perception of TAFE teachers and university staff is not one of low paid workers, the startling reality is that a majority of those responsible for skilling Australia's future workforce are in fact themselves insecure workers, with limited access to skill development or career prospects. The Australian Vocational Education and Training sector is one of the nation's most casualised industries – for example in NSW TAFE, it is now estimated that 70% of teachers are hourly-paid, are not recompensed for many required aspects of their work. and are laid off for 16 weeks of every year without guarantee of re-engagement. Nor is it widely known that only 52% of Australian university staff have secure jobs, even translating actual numbers into full-time equivalent terms. As a result of deregulation between 2004 and 2008, fixed-term and casual university jobs expanded rapidly, and recent evidence (May et al., 2011) suggests that once full-time equivalence is translated to

numbers, 60% of those in the academic labour market are now hourly-paid casuals, spread thinly across available jobs.

Because of the adverse impact of insecurity on workforce skill development and social cohesion, it will be in the national interest to articulate an agenda and plan of action for turning back the tide of insecurity in Australia. Employment security, however, goes beyond questions of national interest. Labour rights are inalienable human rights (Adams, 2011), and it is the responsibility of government, unions, employers and community groups to steadfastly pursue the right of all workers to decent, secure work.

2. Forms of Insecure Work and Gender

Major societal changes have occurred in the English-speaking nations since the 1980s. Nearly half of all employees are women. For example, in Australia in 2006 over 46 percent of paid workers were women (Pocock, 2007). Women are also now on average more highly educated than men. In many Australian families a woman is bringing up children alone and working to support them. And the majority of two-parent families are now reliant on the earnings of both parents¹.

At the same time, however, job insecurity has also increased. Today, around 64 percent of people in insecure work in Australia – almost two thirds - are women: a situation described as ‘gendered precariousness’ (Vosko, 2010: 107). A high proportion of women in precarious work are aged 25-45, many with dependent children and at a stage of life when they most need a reliable income. There is international evidence that once women have moved into precarious work they are also more likely than men to remain there (European Agency for Safety and Health at Work, 2003).

Many of the insecure jobs for women in Australia today are poor quality jobs, rather than ‘decent work’. For example, many women now work in outsourced and deregulated roles that were once part of the public sector, and formerly had job security and relatively good conditions. Some women workers now have no fixed or predictable hours and may be ‘on call’ whether or not this fits with family life.

Insecure employment of women takes a variety of forms, discussed in detail in Section 3.

2.1. Casual Work

Australia has a higher proportion of casual jobs than most OECD countries. Over the past 20 years, casual employment has expanded here in an unusually degraded form, often being hourly-paid and lacking many leave entitlements, even when the work is regular and of long duration. Casual density is highest for women, young workers and part-timers (Burgess et al., 2008: 167). Casual work has spread across most occupations and industries but is especially prevalent in several sectors employing a high proportion of women workers, such as retail, food and hospitality, health services, tertiary education and social care.

About a quarter of employed women in Australia (and a majority of part-timers) are on casual contracts, and about 60 per cent of casuals are women. Casual work has also increased significantly amongst men, although from a lower base, having risen from 11 percent in 1992 to 16 percent in 2009 (ABS, 2010).

Casual work can only partly be explained by a shift to employment in sectors requiring at call or seasonal labour. It may, but does not necessarily, provide flexibility for caregivers, although in other countries, such insecurity is not a price

¹ This is due partly to falls in the value of male wages in real terms during this time.

that needs to be paid in order to gain access to part-time hours. Other key reasons for the growth of casual employment are the mutually reinforcing tendencies of changes in employment relations regulation and employer labour management strategies (Burgess et al., 2008).

Casual work may be 'irregular' (short term or 'on call') but it may also be 'regular' (long-term or ongoing, sometimes lasting for years, but nevertheless insecure). It is over ten years since labour lawyers drew attention to the self-contradictory concept of 'permanent casual' work (Owens, 2001). Recent Federal Court case law (*Williams v MacMahon Mining Services*, 2010) reinforces earlier judgments (*Reed v. Blue Line*; *Hamzy v. Tricon*) that work is unlikely to be genuinely casual, in situations where the employee:

- Will be working regular hours or a regular roster for a defined period,
- Is given some certainty as to the hours or days of work week to week,
- Is required to notify of a period of absence (HWL Ebsworth, 2012).

Whilst law firms and employer organisations (Australian Business, 2012) may be advising clients/members to limit casual contracts to jobs that meet these criteria, the reality is that that 'ongoing casual' employment remains rife and largely unchallenged. It appears that the Fair Work Ombudsman and Inspectorate may need to run a vigorous education and compliance-monitoring campaign to prevent casual employment practices that, although common, have been ruled unlawful.

Since 2009, Australia's national employment relations system has been based on a safety net of ten National Employment Standards (NES) (*Fair Work Act 2009*: Part 2-2), topped up by 122 Modern Awards that are supposed to cover employers and employees in all industries and occupations. Together and as a floor for enterprise agreements, they provide a regulatory basis for enforcing labour rights in a way that is expected to meet specific industry needs whilst defining decent works standards.

Many Modern Awards provide for a variety of forms of employment, including casual. The *Hospitality Industry Award* (MA000009) is typical of many in defining the casual employee rather unhelpfully as one who is 'engaged as such', and in requiring a 25% pay loading to compensate for the casual's lack of annual and personal/carer's leave, termination notice, redundancy and other full/part time employee entitlements. Minimum duration of and pay for any attendance is 2 hours. There is however an implicit acceptance of regularity and duration in the provision that employees can elect or seek conversion to full- or part-time employment after 12 months. In the *General Retail Industry Award* (MA000004), the pay is hourly and the minimum engagement is 3 hours (one and a half for school students), but there is no explicit conversion clause.

In manufacturing, various Modern Awards define the minimum pay as being for an engagement of 4 hours and the hourly pay rate as 1/38 of the weekly minimum plus the 25% 'all purpose' compensatory loading, with provision for conversion after 6 months (see for example the *Manufacturing and Associated Industries and Occupations Award 2010* (MA000010) and the *Food, Beverage and Tobacco Manufacturing Award* (MA000073). The *Clerks - Private Sector Award* (MA000002) has a similarly-defined rate, a minimum engagement of 3 hours, and provision for weekly or fortnightly payment options. Again, this implies acceptance that casual work may be regular and of some duration, but there is no explicit conversion clause.

The *Building and Construction General On-site Award 2010* (MA000020)ⁿ allows the practice of daily hire. According to Clause 11 of this Modern Award, either party can give one day's notice of termination at or before the usual starting time. Whilst there is clearly an element of unpredictability in building and construction, there would appear to be scope for the abusive application of the daily hire provision to longer-term work. Enforcement of the restriction of the provision to its intended use will, however, be difficult given restrictions on union right of entry to building and construction worksites.

The *Live Performance Award 2010* (MA000081) provides for a range of more justifiable arrangements for engagement and pay by the week. Actors may be paid weekly or for the run of a play or plays. Striptease artists must be paid after each performance unless they elect to be paid weekly or fortnightly. This award therefore caters for different forms of intermittency and predictability.

With arguably much less justification, several education industry Modern Awards sanction forms of ongoing insecure work. The *Higher Education Industry Academic Staff Award 2010* (MA000006) provides for full-time, part-time, fixed-term and casual employment categories, with casual work paid, as elsewhere, per hour at 1/38 of the weekly rate, to which is added the 25% loading in lieu of award-based benefits. These provisions, however, do not match the reality of the hourly paid employee engaged (and terminated) for a succession of 12 to 16 week periods ('sessions'), punctuated by breaks of up to 3 months. The *Education Services (Post-Secondary Education) Award 2010* (MA000075) provides for both casual and sessional categories, the latter involving what is in effect engagement on a fixed-term contract of from 4 to 40 weeks in a year with conditions pro-rated to those of full-time continuing employment – a model that has variable application in different parts of Australia.

Thus the first concern in relation to the regulation of Australian casual work is that the definition of casual work as irregular and intermittent seems to be little more than a legal fiction. This is because Modern Awards seem to be accepting, and thus legitimating, the very widespread practice of hourly or weekly pay for work that is actually regular and ongoing. Modern Awards address this contradiction through voluntary conversion mechanisms of varying strength. These generally involve an employee's 'right to request' conversion and the employer's 'right to refuse' it on reasonable grounds.

The second concern is that if ongoing, regular, hourly paid work is a widespread *de facto* reality, despite its dubious legality, this is a regulatory gap and the other part of the safety net, the NES, are not stepping into the breach to minimise the resulting substantive gap in conditions between casual and ongoing work. Instead, the NES maintain the fiction that all casual work is of short duration, irregular and intermittent. If Modern Awards cannot effectively restrict casual work to its legally-defined form, then it falls to the NES to ensure that ongoing casual work carries as few penalties as possible.

It appears, however, that the NES, which are supposed to define fairness, are operating to exclude some workers, wrongly defined as casual, from substantive and procedural employment rights. This is a striking instance of explicit regulatory exclusion from decent work standards. Both 'genuine' casuals and those wrongly classed as casuals are affected, the impact falling disproportionately on women:

- Care-givers' weak 'right to request' flexible working arrangements (NES 2) applies only to those casuals who have more than 12 months of continuous service. For all employees, the 'right to request' is a procedural, not a substantive right, and can be refused on 'reasonable business grounds'. Women without employment security are particularly unlikely to risk job loss by making such a request or by challenging the grounds of a refusal, particularly as civil remedies are unavailable even for unreasonable refusals..
- Casuals with less than 12 months of 'continuous service' immediately before the birth of their child are not entitled to parental leave and related entitlements (NES 3).
- All workers defined as casual are excluded from the right to 4 weeks' annual leave (NES 4) and from paid sick leave, presumably on the basis of an assumption that the casual loading fully compensates for lack of leave and other entitlements – an assumption that has long been recognised as a fiction (Smith and Ewer, 1999).
- Casuals are entitled to two days unpaid carer's leave and two days' unpaid compassionate leave per occasion (NES 5), and to community service leave (NES 6), but not to the 10 days' paid jury service leave that is an entitlement for non-casual employees. Casuals' entitlement to leave on public holidays is qualified by provision for a 'reasonable request' by the employer that they come to work (NES 8).
- Casuals are not covered by NES 7, which preserves certain long service leave entitlements held before 1 January 2010 pending the development of a uniform national long service leave standard. This omission is based on the legal fiction that casual work is never long-term. Moreover, it ignores the frequency with which women who have left secure long-term jobs for child-rearing may return on a casual basis, carrying unused long-service leave with them.
- NES 9, which provides for notice of termination and redundancy pay, does not apply to fixed-term employees, to people engaged for a specific task, or to casual or seasonal employees.
- Casuals are covered by the NES 10 requirement that employers provide new employees with a Fair Work Information Statement explaining the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, right of entry, transfer of business and the roles of Fair Work Australia and the Fair Work Ombudsman. Again, however, this is little more than a weak procedural standard. As Owens et al. (2011: 313) note that there is no duty on employers to provide a statement of *actual* entitlements such as pay rates, allowances, starting and finishing times and so on. Such information may be vital evidence for casuals to use in ascertaining whether their working arrangements meet the legal definition of 'casual' work, and whether they are missing out on substantive entitlements. Organisations representing migrant women workers have emphasised the importance of requiring that both general information on employment rights and job-specific information on employment conditions be made available in the relevant community language – a necessity in a multilingual labour market.

Workers on permanent/ ongoing contracts have four weeks annual leave and up to 10 weeks a year sick leave. It has been noted that the higher rate of hourly pay ('loading') designed to compensate casuals for the lack of paid holidays and sick pay does not really cover the value of these entitlements (Smith and Ewer, 1999). Moreover many casuals say they do not receive the casual loading (ACTU, 2011). The majority of casual workers would prefer to have paid leave instead; and a majority (52%) would also prefer ongoing employment (ABS, 2010).

It stretches belief and contradicts everyday experience to accept that over 25% of the Australian workforce, of whom nearly two-thirds are women, are engaged on such an irregular and intermittent basis as to warrant the exclusions from the National Employment Standards just listed. Overall, these exclusions and limitations continue to provide employers with an incentive to offer work on a casual basis. They sanction arrangements that would not pass the 'no less favourable treatment' criterion of the European Council *Fixed-Term Work Directive 1999*, which also covers hourly-paid casual employment (where this exists in Europe). Whatever difficulties of implementation and enforcement have arisen in European 'no less favourable treatment' practice, it is surely inappropriate that Australian industrial relations legislation should be so designed as to actually help entrench the less favourable treatment of casual workers.

2.2. Self-Employment and Contracting

In Australia, between 1973 and 2006, self-employment rose from 10 percent to 15 percent of all employment (Vosko, 2010: 170). Women's self-employment grew much faster than men's during this time. In the 1970s the typical self-employed person was a male employer. In Australia today, 60 percent of self-employed people are sole traders. Women are over-represented amongst sole trader self-employed people (Vosko, 2010:170-1). Self-employed people (especially sole traders) are more likely than full time employees to be in precarious work. Their patterns of work are often indistinguishable from those of employees (Campbell, Whitehouse and Baxter, 2009:5). The ILO (2006:76) has described their situation as a 'disguised' employment relationship in which 'the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee'. Some contractors have greatly inferior working conditions – self-employed home-based outworkers are a case in point. Many of these nominally self-employed workers are excluded from job security, health and safety provisions (such as protective equipment) and other forms of labour rights and social entitlements.

The distinction between an employee and a self-employed worker is not hard and fast. Rather it has been argued that there is a continuum of arrangements, with independent and dependent service contractors occupying intermediate positions, the latter in particular being likely to be in disguised employment relationships (O'Donnell, 2004).

As with casual employment, the issue of insecurity in self-employment is again one of regulatory inclusion in, or exclusion from, the right to protection by labour law. Before the 2005 *WorkChoices* legislation, a range of state-level industrial relations laws contained provisions that 'deemed' some contractors to be employees (Kaufman 2010: 7-8), providing (for example) severance benefits and the right to

lodge a complaint about being paid less than an employee for the same work. In 2005 the Howard government introduced the *Independent Contractors Act 2005*, designed to over-ride these state-based unfair contracts laws, replacing them with weaker provisions that put the onus on contractors to challenge unfair agreements. At the same time the *WorkChoices* legislation was enacted, which contained provisions controlling 'sham' contracts. The sham contracting provisions were carried over into the *Fair Work Act 2009* in a clarified and slightly strengthened form, shifting the onus to the employer to establish that any dismissal of employees was not primarily for the purpose of re-engaging them as contractors (Kaufman 2010:12-13).

Whilst the current government has undertaken to set up a low-cost dispute settling process for former employees who have been turned into contractors, the 'sham' contracting provisions the *Fair Work Act 2009* are still considered to be a weak protective mechanism (Stewart, 2008). Stronger legislative and administrative protections need to be framed that will bring all forms of work along the self-employment continuum within an effective labour rights compliance framework.

2.3. Home Work/Outwork

Broadly, outwork is paid work done in a private home, away from the employer's premises. The employment relationship may be disguised as a contract for services. Under various state laws now absorbed into or superseded by the national employment relations system, outworkers were typically defined as people who work on, process, clean or pack articles or materials, or who carry out clerical work at a private residence or other premises not conventionally regarded as a place where business or commercial activities are carried out (Rawlings 2009). The *Fair Work Act 2009* gives greatest salience to textile, clothing and footwear industry outwork, to which most regulatory and enforcement attention has been paid.

Certainly, a high proportion of Australian outworkers are in the clothing industry. Home-based clothing work is one of the older forms of insecure employment (Nossar et al., 2003). But the precise numbers and distribution of outworkers are unknown, and despite the legal regulation, enforcement is problematic (Harpur, 2007). Much of the clothing carrying the label 'made in Australia' for domestic and international markets is produced in employees' own homes. Many garment manufacturers do not directly employ workers. It is common for companies to give their work out to contractors who then often sub-contract to other companies. Subcontracted employment of homeworkers under insecure conditions transfers the risks associated with changes of demand in the notoriously fickle fashion industry, from the supplier to the employee (Webber and Weller, 2001: 139). So home-based clothing workers may be working excessive hours one week and unemployed the next.

Low rates of pay mean that outworkers are not able to save to cover periods of time when they have no work. Home workers frequently work for extremely low pay, typically a third to a quarter that of factory workers, often below award levels and sometimes as little as \$3 per hour (Fair Wear Australia, 2011).

The great majority of outworkers are women. Migrant women are especially vulnerable to being exploited in this way (Ethical clothing Australia, 2011; Fair Wear

Australia, 2011). Because outworkers tend to be isolated and fragmented it is difficult for them to discuss their concerns with other workers (Harpur, 2007: 47).

At the time of the formation of the national employment relations system and the making of Modern Awards, Rawling (2009) expressed fears that some effective state-level outwork regulation might be lost, either by narrowing the focus too much to Textile, Clothing and Footwear, or through incomplete translation of effective state-level protections deeming outworkers to be employees, even if they were working under a contract for services rather than under a contract of service. State legislation had required the pay and conditions of outworkers (including those designated 'independent contractors') to be 'fair and reasonable' compared with the pay and conditions of employees performing the same kind of work under an award. In dealing with outworker claims to pay parity with factory workers, the onus of proof lay with business parties along the supply chain who might want to content such claims.

In fact, much, but not quite all, of this regulatory framework appears to have survived the transition to the national employment relations system. The *Fair Work Act 2009* (S12) defines an outworker as:

- (a) an employee who, for the purpose of the business of his or her employer, performs work at residential premises or at other premises that would not conventionally be regarded as being business premises;
- (b) an individual who, for the purpose of a contract for the provision of services, performs work (i) in the textile, clothing or footwear industry; and (ii) at residential premises or at other premises that would not conventionally be regarded as being business premises.

On the face of it, this definition does seem to imply that outworkers other than in the TCF industry are covered only if they are 'employees', whereas the Act's protection of TCF contractors is explicit. By contrast the Queensland legislation had defined an outworker as 'a person engaged, for someone else's calling or business, in or about a private residence or other premises that are not necessarily business or commercial premises, to (a) pack, process, or work on articles or material; or (b) carry out clerical work' (*Industrial Relations Act 1999* (QLD) Schedule 5).

This problem of regulatory coverage may or may not be resolved by the definition of 'outworker entity' (entity engaging outworkers) in the *Fair Work Act 2009*. The basic definition of an 'outworker entity' (an entity engaging outworkers) is a person other than a national system employer who arranges for work to be performed for the person (either directly or indirectly), where the work is of a kind that is often performed by outworkers (ss12, 30F, 30Q). The term 'of a kind that is often performed by outworkers' is however open to interpretation. Certainly an information leaflet by the Northern Territory Working Women's Centre (2010) accepts that the *Fair Work Act* provisions apply to outworkers in a range of industries:

Outwork can include clerical work, sewing, computer processing, child care, and food preparation. There are many outworkers in the clothing industry who work at home or outside a factory making garments or parts of garments.

At least in the TCF industry, there may be a resolution of concerns over whether the national system sufficiently incorporates former state legislative provisions applying across the length of the supply chain. An amendment to the *Fair Work Act* introduced in the Senate in November 2011 extends the operation of most provisions of the *Fair Work Act 2009* to TCF contract (as well as employee)

outworkers, provides a mechanism to enable TCF outworkers to recover unpaid amounts up the supply chain, extends certain specific right of entry rules that apply to suspected breaches affecting outworkers (allowing entry without 24 hours notice), and enables a TCF outwork code to be issued (*Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011*).

Happily, the National Employment Standards and the National Minimum Wage are clearly defined in the *Fair Work Act 2009* as applying to outworkers, and this message is made very clear on the website of the Fair Work Ombudsman (FWO 2010a):

From 1 January 2010, the National Employment Standards (NES) replace the non-pay rate provisions of the Australian Fair Pay and Conditions Standard (the Standard).

Employers (in the national system) who engage outworkers MUST provide them with the entitlements set out by the NES from 1 January 2010.

In addition they must pay the rate of pay under any relevant modern award or the national minimum wage.

The safety net for outworkers is further extended where Modern Awards contain outworker clauses. Loopholes are prevented by the provision in the *Fair Work Act 2009* (S57A) that if a Modern Award contains clauses applying to outworkers, an enterprise agreement cannot water down these protections or allow the establishment of new outworker arrangements outside the coverage of the Modern Award. The *Textile, Clothing, Footwear and Associated Industries Award 2010* (MA000017, Clause 17) preserves state-level protections of outworkers. The *Clerks—Private Sector Award 2010* (MA000002) and the *Manufacturing and Associated Industries and Occupations Award 2010* (MA000010) two Modern Awards covering industries with outworkers, do not make reference to outworkers, but there appears to be a general principle (explicit, for example in the case of on-hire workers discussed in Section 2.5 below) that the relevant industry or occupational award applies to all workers, including outworkers.

With regulation in place, through a combination of legislation, the NES, and the Modern Award, the key issue for outworkers, then, becomes one of effective enforcement. This is taken up in Section 9 below, in the discussion of insecure work and migrant women.

2.4. Fixed-Term Contracts

A small but increasing number of employees in Australia work on fixed-term contracts. In 2006, five percent of employees were working on fixed-term contracts. Slightly more women than men were on fixed term agreements. Such contracts provide the employee with temporary job security, as any attempt to terminate the employment before the end of the term is a breach of the contract, unless it contains a clause allowing for early termination. Many employees on fixed-term contracts expect to have their contracts renewed if the work is ongoing (Australian Bureau of Statistics, 2008).

Fixed-term employment is used more in the public sector than the private sector, and is most common in areas such as education and public policy (Australian Bureau of Statistics, 2008). As our tertiary education industry case study reveals (Section 11 below), fixed-term employment grew rapidly in the university sector between 2004 and 2009, after the Howard Government imposed heavy funding

sanctions on attempts to restrict the use of fixed-term or casual contracts. The growth of this form of insecure employment is therefore a product of regulation, not of regulatory oversight.

Repeated extensions of short-term contracts create at least two of our 'seven types of insecurity' – labour market insecurity (a constant need to seek out the next job), and skill reproduction (career path) insecurity. People working on fixed-term contracts generally have less access to staff training and development, and to career and pay progression. This may lead workers to impose other types of insecurity on themselves – task insecurity (a fear of saying no to whatever workload requirements are placed on them, and representational insecurity – a fear of speaking out or becoming active in the union for fear of contract non-renewal.

Fixed-term staff tend to be concentrated in positions that would once have had job security and career structures, but no longer. Fixed-term contracts also impose a form of income insecurity that hampers workers' capacity to make long-term decisions, including family formation, housing loan applications, and retirement planning.

The European Council Fixed-Term Work Directive explicitly defines employment on the basis of a succession of fixed-term contracts as an 'abuse' (EU 1999; Vigneau et al. 1999). Noting that more than half of fixed-term workers in the European Union are women, this Directive promotes a framework agreement designed to help improve equality of opportunities between women and men. In a landmark 2008 decision, the European Court of Justice confirmed the equality of rights of fixed-term and permanent workers in areas such as pay and pension entitlements (EurActiv 2008). Under the framework agreement, ongoing employment is the norm, and departures from it must be justified by reference to objective and specific conditions mutually agreed at the beginning of a contract. The framework is designed 'to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination', and to 'prevent abuse arising from the use of successive fixed-term employment contracts or relationships'. The requirement that objective reasons be provided for the use of fixed term contracts is seen as one way of preventing abuse.

In Australia, the 'objective criteria' approach has been adopted in the *Higher Education Contracts of Employment Award 1998*, mirrored in enterprise agreements, albeit with an enforced hiatus between 2004 to 2009. Typical criteria include requirements that the fixed-term contract involve one of the following:

- Work on a particular project;
- Replacement of an ongoing employee who is on leave or secondment for a definable period; or
- A pre-retirement contract.

A measure of the effectiveness of this provision is that In the university sector between 1998 and 2004, even decentralised adoption of this provision in enterprise agreements was accompanied by a noticeable decline in fixed-term staff numbers. The National Tertiary Education Union (NTEU) estimates that this criteria-based approach was responsible for approximately 10,000 conversions from fixed-term to continuing positions before the Howard government in late 2003 imposed funding requirements that prevented its further use – a restriction lifted by the Rudd-Gillard

government. Because the union had not been able in 1998 to gain arbitration of parallel clauses restricting casual employment, there was also some displacement from fixed term contracts to hourly-paid casual work. This suggests that regulation needs to be designed to avoid enforcement loopholes.

2.5. Labour Hire/On-Hire/Temporary Agency Work

Labour hire, on-hire or temporary agency work is characterised by a three-way relationship between agency, firm and worker (Johnstone and Quinlan, 2005:3). The employer/employee relationship between the agency and the worker is accompanied by a commercial agreement between agency and host firm. Contracts may be long-term or short-term. Most labour-hire employees are blue-collar. Starting from a relatively low base, the practice of using labour-hire workers has become more common in Australia in the past 20 years.

As with other areas of the economy, labour-hire work is divided by gender. The overall majority of labour-hire workers are young men, employed mainly in the construction, transport, mining and manufacturing industries. Female labour-hire workers are found mainly in clerical, sales, education, health and community work.

Employers use agency staff to cover periods of peak demand. In addition, however, some employers are using labour-hire staff to replace their permanent workforce. As with the growth in self-employment, labour-hire can be used as a way to evade responsibility for health, safety and job security of workers. The responsibility for paying tax, workers compensation insurance, public liability insurance and superannuation is also transferred from the employer to the individual worker. Most do not receive paid holidays or sick leave.

Peck et al. (2005: 4) argue that in the USA temporary agency industry,

‘staffing firms are not simply supplying services ... [t]hey facilitate new kinds of intermediated employment practices and forms of labour contingency that otherwise would be logistically and socially infeasible’.

Coe et al. (2009) challenge claims that in Australia, the temporary staffing market is so fragmented and highly competitive that the dominant business model is simply one of covering absent staff and short-term workload peaks. They cite arguments by the ACTU that labour hire has become a strategy for undermining job security, moving beyond the provision of short term substitute staffing and specific expertise, to the offer of a complete HR function involving the wholesale replacement and management of manufacturing sector workforces.

Labour-hire is different from genuine independent contracting. Self-employed contractors are on average more likely to be highly skilled and to receive higher rates of pay (although see comments above). By contrast, labour-hire is seen as a way to undermine pay, conditions and protection. Some firms have been found to use labour-hire as a way of undermining or removing unions from key areas of their organisations (Underhill, 2004).

If labour hire workers are being used to displace and undercut the ‘regular’ workforce, this means that they are working under less favourable and less protected conditions. Vosko (2009) cites figures suggesting that in the EU, immigrant workers without citizenship rights are over-represented in temporary

agency work. She argues that the *EU Directive on Temporary Agency Work* (2008) is not adequate to address the issues, because the concept of no less favourable treatment on the basis of form of employment does not define an adequate floor of minimum standards and requires a comparator. She argues that the focus of regulation should be on the lack of citizenship rights that pushes immigrant into exploited work patterns - for example the interaction between residency restrictions and temporary work. The regulation actually reinforces the legal legitimacy of temporary agencies as employers, reinforcing an acceptance of the employment relationship as being between the worker and the agency, letting the host firm off the hook. By allowing fixed term work in the host firm to constitute the comparator, the Temporary Directive is undercutting the norm of the permanent job and unlike the 1999 Fixed-term Directive, makes no provision for conversion to permanency.

In Australia, the NES plus the relevant industry or occupational Modern Award provide the safety net of pay and conditions for on-hire workers. On-hire employees are covered by the relevant Modern Award and also by the NES regardless of the employment arrangements in place at the host organisation. Moreover there are legal obligations on both the supply agency and the host company to ensure occupational health and safety and anti-discrimination/sexual harassment safeguards.

The Fair Work Ombudsman and the Office of the Australian Building and Construction Commissioner (FWO/ABCC 2012) have issued joint advice to agencies employing on-hire workers. As the employer, the on-hire business is responsible for ensuring that employees receive their minimum employment entitlements at all times. Nevertheless, on-hire employees will not be covered by an enterprise agreement made between a host organisation and its own direct employees unless the on-hire business itself is a party to the agreement. An on-hire business may have its own (less generous?) enterprise agreement covering on-hire employment. This may replace the provisions of the modern award though not undercut it overall.

The safety net provided by the Modern Award and NES is normally well below the conditions in a relevant enterprise agreement. The enterprise agreement in place in the labour hire firm, while above the award, may well still be below the going rates in agreements in the industry. Thus on-hire workers can certainly find themselves in the unenviable position of being used to undercut the conditions of the host workforce,

3. Insecure Work versus Protection from Unfair Dismissal

Fear of redundancy is a major source of insecurity, but for many workers, so is fear of unexpected dismissal, in the absence of a genuine downturn or operational change, and without any misconduct or under-performance having been discussed with the employee. Under Part 3-2 of the *Fair Work Act (2009)* and administrative amendments made to it in January 2011, only certain categories of worker are entitled to lodge a complaint against their dismissal and seek to have it judged harsh, unjust or unreasonable. They are:

- Full time, part-time or regular casual employees covered by the national employment relations system, who have worked for the same medium or large scale employer (head count of 15 or more) for at least 6 months;
- Full time, part-time or regular casual employees covered by the national system, who have worked for the same small business employer (head count under 15) for at least 12 months;

The headcount of 15 includes casuals employed on a regular and systematic basis, employees of associated entities, and the employee/s being dismissed; it was changed from 15 full-time equivalent on 1 January 2011. The employee contesting dismissal must be covered by a Modern Award or an enterprise agreement, and if a casual, must have a reasonable expectation of continuing employment. The remedies that can be sought are reinstatement or compensation.

In determining if a dismissal is harsh, unjust or unfair, Fair Work Australia will take into account;

- Whether there were valid reasons relating to the employee's conduct or capacity;
- Whether the employee was notified of the reason and given an opportunity to respond;
- Any unreasonable refusal by the employer to allow the employee to have a support person present at any discussions relating to dismissal;
- If the dismissal relates to unsatisfactory performance, whether the employee was warned and given a chance to rectify it before the dismissal;
- The impact of the size of the employer's enterprise on the dismissal process, including the absence of dedicated human resource management specialists or expertise;
- Any other factors (FWO 2010b).

If the employer is a small business and has followed the Small Business Fair Dismissal Code when dismissing an employee, these tests are likely to be determined in the employer's favour.

As pointed out in the *Making it Fair* Report (Parliament of Australia, 2009: 121-2),, these provisions provide no security for many part time and casual employees in areas where small business predominates, such as retail, catering and restaurants. As a result, a large number of women employed in these areas of small business do not enjoy equal protection from unfair dismissal. Fair Work Australia may

consider employer lack of HR capability a mitigating factor: this suggests that women are being asked to bear the consequences of poor HR practice. To address this concern, the Centre for Work+Life recommended to the *Making it Fair* inquiry that a Small Business Advocate be established to assist small business in HR practice (p. 369). We are not aware that *Making it Fair* proposals such as this have been addressed at this stage.

4. Insecure Work versus Equal Pay

Pay inequity is a form of income insecurity in its own right, and a by-product of other forms of insecurity that undermine job quality and decent work.

Women enter the labour market at a pay disadvantage – for example in 2011, there was an average 3.8% gap between the starting salaries of male and female graduates rising to 14% in fields such as earth sciences and architecture (EOWA, 2012). The pay and income gap then widens year by year (Armstrong, 2007). In Australia, retired men aged 55 to 64 have around 1.7 times the disposable weekly income of retired women in this age group – a 60% gap (AMP/NATSEM 2009: 28; data from HILDA Wave 6).

Despite women's major progress and achievements, women still lack equal pay. In Australia in 2011 there is still a 17.2 percent gender pay gap between the hourly rates of men and women working full time. The pay gap will not go away of its own accord. In fact it increased by two percentage points in Australia between 2004 and 2006 (ITUC, 2008). On Equal Pay Day 2011, Human Rights Commissioner Elisabeth Broderick commented;

Women will have to work 63 extra days to gain the same amount of pay this year, reflecting the 17.2% pay gap compared to male earnings," said Commissioner Broderick. "This means that today, women still only earn around 83 cents in the male dollar (Australian Human Rights Commission, 2011.).

When part-time and insecure work are taken into account there is an even wider gender pay gap (Australian Human Rights Commission, 2008). There was a 28 percent gender gap in annual earnings in Australia in 2006 (World Economic Forum, 2006).

In Australia's labour market there is a high concentration of insecure jobs in female-dominated industries like retail, health care and social services and education (Pocock, 2007:12). These jobs are already lower paid than male-dominated jobs where the work is of similar value. Job insecurity reduces incomes further in two ways: through greatly reduced opportunities for pay progression and through intermittent bouts of involuntary unemployment.

Job insecurity, far from being compensated through higher wages, goes together with lower rates of pay (ITUC, 2011:21). Because casual and temporary workers tend not to receive the same pay rises as permanent employees, casualisation negatively affects hourly and weekly earnings. Temporary staff are also not normally eligible to apply for promotion.

Simply being in precarious employment reduces annual incomes, as insecure work tends to reduce the average number of paid hours worked during the year. For example, people working on temporary contracts in the education sector, the majority of them women, are normally not paid during the summer. Other women in precarious work have intermittent bouts of unemployment.

Pay Equity cases in Australia have relied in part on indicia or indicators of the likelihood of under-valuation in jobs where women are concentrated. These indicators include a number of other forms of insecurity, indicated in italics in the list below (we have added the comments in bold and brackets to indicate which of our 'seven types of insecurity' is involved):

- female dominated industries/occupations and female characterisation of work;
- often *no work value exercise conducted; inadequate application of equal pay principles* (***insecurity of skill recognition***);
- *weak union; few union members; consent award/agreements* (***insecurity of representation or voice***);
- *large component of casual workers* (***labour market and employment insecurity***);
- *lack of, or inadequate recognition of, qualifications (including misalignment of qualifications)* (***skill recognition insecurity***);
- *deprivation of access to training or career paths* (***skill reproduction insecurity***);
- *small workplaces* (***employment insecurity – eg vulnerability to unfair dismissal; task insecurity – informal HR practices***);
- new industry or occupation; service industry;
- *home based occupations* (***insecurity of employment, work, task and representation/voice***) (ASU 2009) Exhibit ASU 92: 46–7 Equal Remuneration Case.

Italics have been added to indicate those indicators that are linked to the seven types of insecurity outlined in this submission.

In short, insecure work contributes to the gender pay gap and undermines progress towards gender equality.

5. Insecure Work and Gender-Based Disempowerment

Casual workers in Australia share in the basic right to a safe workplace, free from discrimination. However, women in insecure employment may be more reluctant than other workers to complain if they suffer bullying, sexual harassment or discrimination at work (Pocock, 2009:8). Women in precarious work are also liable to go to work when they are sick, partly due to lack of paid leave and partly through fear of taking time off. They may be reluctant to request flexible work arrangements that would help them to balance paid work and family life.

Women in precarious employment are also less likely than other workers to join a union, and so lack 'voice' (Pocock, 2007:5).

Achieving economic independence for women has been at the core of the vision for gender equality across the globe...It is about recognising women's work, paid and unpaid, as valuable, both socially and economically (Australian Human Rights Commission, 2008).

Insecure employment is not an appropriate way of addressing caregiving responsibilities. Certainly, people in insecure employment are in the weakest position of all to enter into individual negotiation with employers for the recognition of their caregiving rights.

Charlesworth et al. (2011: 47) draw attention to the strong entrenchment in Australia of 'the normative one-and-a-half-earner model in couple families, where fathers typically work full-time and mothers work short part-time hours' – a norm that is underpinned by tax law. This norm perpetuates women's income and employment insecurity, disempowering them in both the household and the labour market.

The assumption that they do not need an adequate and reliable income is disempowering to women. Although the 'male breadwinner/ dependent wife model' of employment was formally abandoned in the 1970s (Pocock, 2009:6), major elements of it remain. 'Non-standard' work – the majority of which in Australia is also insecure and low paid – was and is still seen as appropriate for women, especially those with children; whereas the more secure and well paid full time 'standard' forms of employment have always been designed around people who do not have caring responsibilities – or more accurately, whose caregiving responsibilities are not recognised in the workplace. In Australia in 2006 nearly two thirds (63%) of full time permanent workers were men (Vosko, 2010:76).

Campbell et al (2009: 69) argue that, without the protection of regulation of long and very long hours, Australian men have moved over the past 20 years from having working hours that were amongst the lowest in the OECD to amongst the highest. Being forced to work 48 hours a week or more is also a form of insecurity. It reflects the inter-related issues of lack of power to control workload, inability to claim payment for overtime, and powerlessness to gain recognition of unpaid caregiving roles. It reinforces gender stereotypes of paid work and care, denying the access of men and of families to male caregiving.

One of the reasons for the 'one-and-a-half worker' model and its polarisation of working hours, is the limited availability of alternative arrangements for the care of family members.

5.1. Disempowerment and Caregiver Rights in the Workplace

Australian women typically study, then gain work experience for a number of years, and have children relatively late. Before having children, a high proportion of Australian women work in full-time permanent jobs. But once they return to paid work after having children, they frequently take part time work, and most of this is insecure (Australian Human Rights Commission, 2008).

Lack of access to substantive leave and care arrangements, or lack of the procedural power to negotiate access to those provisions that are available, contribute to broken employment patterns and truncated careers. Section 2 of this submission argued that the lack of leave entitlements in 'non-continuing' jobs is based on the myth that such work is always of short duration. In fact many workers are employed in a succession of insecure jobs throughout the life course, denied the right to accumulate benefits and leave entitlements. The past 150 years' government regulation of the employment relationship has been posited on the understanding that, if only to safeguard workers' productive capacity and the reproduction of society, the state must ensure that employers as a class accept their responsibility to maintain and reproduce the wellbeing of workers, the family and community. Insecure work, stripped of benefits and leave entitlements, is the result of allowing individual employers to evade and undercut the collective interests, not only of workers, but of employers as a group.

Ways of protecting insecurely employed workers from being disempowered through neglect of their ongoing well-being were addressed in the 2009 *Making it Fair* Report, and certain of these recommendations deserve to be revived. Submissions to that Inquiry drew attention to the need for women to accumulate long service leave despite broken service, as well as the need to count unpaid maternity leave as service in the calculation of long service (Parliament of Australia, 2009: 331). An example was cited from the Australian Capital Territory, where portable long service leave is available in the cleaning and construction industries and in 2009 was under consideration in community services (ibid: 259). The Report recommended the establishment of a Government-provided long service leave scheme providing portability of service for workers, together with an equitable application of long service leave contributions by employers in appropriate industries (Recommendation 40, ibid.: xxx).

5.1.1. Undermining of the Right to Care for Children

Workplace disempowerment is still likely to affect each stage of maternity and parenthood. Despite the fact that Australia finally has a paid maternity leave scheme, individuals still experience difficulties in exercising their right to access it, and subsequent to quality part-time work and flexible work-time arrangements.

These difficulties are compounded by the problem of accessing quality, affordable child care.

The 2009 *Making it Fair* Report tabled evidence from the Kingsford Legal Centre of the vulnerability of pregnant women to job insecurity and harassment by employers, particularly small employers unaware of their obligations (Parliament of Australia 2009: 330). Baird and Charlesworth (2007) have demonstrated how, even in large organisations, workers may lack the power to access entitlements that on paper are readily available. In practice, the way work is organised may make it very difficult to take advantage of the right to request part-time and flexible work. The choice to do so may mean career marginalisation and disempowerment.

For women in some occupations, the disempowerment is even greater. Moving into part time employment to accommodate childcare responsibilities may require an occupational switch that entails downward mobility (Dex et al., 2008; Tomlinson et al., 2009) and financial insecurity. When manageable hours are available only through insecure contracts, parents are unlikely to have the power to obtain the 'flexibility' to balance paid and unpaid work.

Limited child care access creates disempowerment through lack of genuine choices. Labour market and employment insecurity flow from workers' lack of power to negotiate family-friendly arrangements, particularly in regional areas where jobs and child care facilities are sparse. As one submission to the *Making it Fair* Report expressed it, responsibility for providing safe, affordable child care falls 'neatly in the gap between government and companies', beyond the power of individuals to influence. Nevertheless, lack of child care is a key factor preventing parents from returning to work (Ms Donna Frater, Chair, Women in Mining Network, Australasian Institute of Mining and Metallurgy, cited in Parliament of Australia, 2009: 332). Another submission, by Business and Professional Women, explained why accessibility of services affects negotiating power in the workplace:

As long as flexible work arrangements depend on an individual woman's ability to negotiate then it is unlikely that pay equity or equitable working conditions will be obtained. The ability to negotiate can be diminished by numerous external factors such as the availability and affordability of childcare, after school care provisions as well as individual personal communication skills and knowledge (cited in Parliament of Australia, 2009: 335-6).

Childcare availability continues to affect parents' power to manage in the workplace once children reach school age. This was eloquently argued in submissions to the *Making it Fair* Inquiry from the National Foundation for Australian Women and an organisation called Security for Women. Siobhan Austen argued that greater child care availability helps explain the higher workforce participation rates of Canadian women (Parliament of Australia, 2009: 336-339).

Recommendations 61 and 62 of the *Making it Fair Report* suggested a review of policies designed to encourage and support employers to provide child care, and the also the creation of a specific federal government portfolio to provide a focus for policy development in the area of after school care. We are not aware that these recommendations have been acted on, and consider that it is important to do so.

5.1.2. Denial of the Carer Rights of Older Workers

The impact of care commitments on older workers' employment security has received very little attention. Austen and Ong (2009) are amongst the few Australian researchers who have looked at this issue in terms of security of negotiating rights in the workplace. They point out that there is significant national policy interest in keeping older Australians in the workforce, in a context of looming skill shortages and demographic shift. They report findings, using HILDA data, that older women caring for an elderly parent or disabled family member have substantially lower chances of remaining in paid work than other women. The probability of retaining paid work falls somewhat for each additional hour of care each week. This effect is irreversible: if the care role ceases, the chances of re-entering paid work do not seem to increase.

Employment and earnings security for older women with large caring roles are significantly affected by their level of access to leave entitlements and their power to negotiate flexible arrangements. Austen and Ong (2009) point out the contradictions in a policy approach that seeks to keep older people at work by reducing pension access, whilst making employment benefits the subject of direct bargaining between individual employers and employees. As insecure employment is inimical to the retention of older workers with care responsibilities, Austen and Ong argue for a strong protection of leave entitlements, coupled with improved elder care facilities.

5.2. Disempowerment at Home

The 2006 Census shows that Australian women continue to do twice as much unpaid work as men. Men's and women's unequal earnings (described in Section 4) are frequently cited as the reason for this (Australian Human Rights Commission, 2008).

On average, women in Australia work longer total hours than men and have less free time. In Australia in 2006 women worked on average an hour longer each day than men: women worked 8.9 hours, compared with 7.9 hours for men (Vosko, 2010:92). This is because women spend so much time working unpaid (Leahy, 2011). In Australia, women are on average only paid for 30 percent of the hours they work. By contrast, men are paid for 62 percent of the time they spend working. This is a wider gender gap than in the other English-speaking nations (United Nations Planning for Action Committee, 2007).

Low paid, intermittent, insecure employment engenders a weak negotiating position in the home as well as the paid workplace. Women who have irregular or unpredictable earnings and do not earn enough to be economically independent are more likely to depend on male partners. This is not a strong position from which to negotiate a fairer sharing of domestic and caring work. And the larger domestic load carried by women leaves less time for paid work, thus reinforcing women's economic dependence. Lack of economic independence makes women second class citizens (Lister, 1999).

Becoming a parent has a negative effect on women's job security and earnings but a positive effect on men's (Gornick, 2004). Both mothers and fathers tend to make the rational choice to prioritise the career of the partner who has the greater job security and the higher earnings, and this is usually the father. This means that within two-parent families the power imbalances that come from women's secondary earner status are increased once children are born².

Insecure work also makes it difficult or impossible for women alone to obtain home loans or keep up with loan repayments. It is therefore difficult for a woman who does not have a secure well paid job to leave a violent or abusive relationship and establish a separate home for herself and her children without having to live in poverty.

² Note that not all women in insecure work have caring responsibilities. Insecure work is sometimes incorrectly conflated with part-time work (Vosko, 2010). *Insecure* work is not designed to assist women with caring responsibilities, and can make life much more difficult for carers, especially when it involves variable hours or being on call. By contrast, part-time work does not need to be insecure. It could have the pro-rata terms and conditions of permanent work, and be 'reversible', that is, carry the right to revert full-time hours.

6. Insecure Work versus the Eradication of Poverty

Poverty affects one in seven Australian children. Australia's relatively high minimum wage has protected many low paid women, families and children from poverty (Pocock, 2007). However, a fundamental aspect of job insecurity is lack of protection against unfair dismissal. People in precarious work are in constant danger of becoming intermittently or permanently unemployed, which is a major cause of poverty.

Compared with social-democratic nations, Australia has a high proportion of households are living in poverty even though at least one adult is in paid employment - people in this situation are the 'working poor'. Both one-parent and two-parent families are at risk of poverty if they are in precarious employment. Household bills for mortgages or rent, food, heating, transport and clothing still need to be paid; and if paid work is intermittent and insecure, indebtedness and poverty are frequently the results (ACTU, 2011: 5).

Women are more likely than men to be poor, due to the combination of low average earnings, discontinuous earnings and 'career breaks' when they have children. Using early waves of the Negotiating the Life Course Survey, Breush and Gray (2004:125) found that Australian women with an average amount of education (up to year 12) lose around 31 per cent of lifetime potential income for a first child, an additional 13 per cent for a second child, and a further 9 per cent for a third child: in other words in a family with three children it is likely that the mother will lose half of her lifetime earnings.

One major reason for the size of these lost earnings is that mothers who return to paid work part-time are most often also in insecure work with no opportunities for career progression. It means that women have an insufficient income to save to avoid poverty in their old age (Australian Human Rights Commission, 2008). Using further waves of the National Life Course Survey, Chalmers and Hill (2007) found that women in part time work lose 6% per year in earnings growth compared to their full time counterparts and that this loss accumulates to 49% after ten years: they called this the 'wage-scarring effects' of part-time work.

Because casual and part-time jobs tend to lack career paths, they fail to provide women with economic returns for experience and skill gained on the job. The result is a widening of the gender pay gap with years of service (Armstrong, 2007).

Precarious forms of work provide inadequate superannuation savings, particularly in the case of multiple part-time and casual job-holders. Indeed a quarter of women have no superannuation, and overall, women's superannuation payouts are one-third of men's (Clare 2007: 4). In 2009 in Australia, women's average superannuation accumulations at retirement were \$65,000, compared with \$140,000 for men. These averages hide a polarisation, with 70% of retirees having less than the average accumulation (Bateman 2010). Jefferson and Austen (2005) predict a minimum ongoing 35 percent gender gap in retirement incomes for baby boomers, based solely on gender differences in time in paid employment: to this gap must be added the effects of occupational structure, and gender differences in returns to experience and access to training and promotion. Prolonged insecure employment places women at the bleaker end of this prospective poverty spectrum.

7. Precarious Employment versus Safe, Healthy Work

Australian research and the international literature have found that precarious employment and job insecurity create serious problems for maintaining standards in occupational health and safety regimes. The rising proportion of casual, temporary, home-based employees and subcontractors and reductions in full time permanent staff through downsizings reduces the extent of worker involvement in occupational health and safety. Between three quarters and four fifths of international studies on the topic have clearly linked precarious employment to inferior occupational health and safety outcomes in terms of higher injury rates, exposures to hazards, diseases and work-related stress (Nossar et al., 2003; Quinlan, 2003: 6).

The difference in physical and mental health between people in insecure work and those in secure work is particularly marked amongst members of ethnic minorities (Burgard et al., 2009). This may be due to insecure workers' concerns that discrimination will prevent them from finding other work if/ when their job ends.

These poorer health and safety outcomes amongst people in precarious employment are associated with poorer monitoring of their working conditions. For example, although home-based outworkers have the same legal health and safety protections as 'standard' workers, in practice they are at higher risk of injury because their working conditions are normally not monitored (Harpur, 2007: 41). One Australian study found that home-based outworkers were three times as likely as factory workers doing the similar tasks to have been injured at work. This was attributed to work pressure, exploitative situations and often very long hours worked by outworkers (Mayhew and Quinlan, 1999).

Labour-hire employees are similarly more likely to be injured at work, and to have more serious injuries, than permanent directly-employed staff (Underhill, 2002). It is not always clear who has responsibility for the health and safety of staff indirectly employed by organisations, or for rehabilitation of injured workers (Hall, 2002). Employing agencies have the legal responsibility for health and safety and can be prosecuted, but do not directly supervise workers and so have a limited role in the provision of safe and health working conditions (Johnstone and Quinlan, 2005: 27-8). Sometimes it is work that is inherently dangerous that is contracted out (Underhill, 2004). The majority of labour-hire workers are young men employed in the already high-risk industries of construction, transport, mining and manufacturing.

Temporary workers in general are less likely to become actively involved in promoting workplace health and safety, receive less training on safety (Brennan et al., 2003) and so are less aware of hazards, especially if they are on short-term contracts³. People in precarious work are less likely to be members of unions and may be fearful of individually raising health and safety concerns in case their contacts not are renewed.

Employees in insecure employment are vulnerable to anxiety and stress from having discontinuous and unreliable earnings. Stress is now one of the world's

³ A high proportion of accidents at work happen during an employee's first few weeks in the job.

major causes of premature death and disability, including suicide. It was once thought that work-related stress mainly affected senior executives, but is now known to be more of a health risk to people in subordinate and relatively powerless roles at work.

The stress levels of working women have been found to be higher than those of men, whether self-reporting or objective measures (such as monitoring blood pressure or cortisol levels) are used (Lundberg, 1999; Briar, 2009:72). Women in precarious work are especially vulnerable to job strain. Reasons for this can include:

- Low and/or unpredictable earnings
- Low status in the workplace and inability to progress
- Effort/reward imbalances
- High demands and pressure combined with low control over the work process
- Powerlessness to address an unsupportive or negative working environment: for example, bullying, harassment or discrimination.

An association has been found between prolonged work-related stress/ job strain and depression (Mausner-Dorch and Eaton, 2001). Approximately twice as many women as men suffer from depression world-wide (Le et al., 2003; Piccinelli and Wilkinson, 2000; Nolen-Hoeksema, 2002), and women also have longer/ recurrent bouts of depression (European Agency for Safety and Health at Work, 2003: 45).

Large-scale studies have found that long-term depression and stress are associated with heart disease and fatal heart attacks in women and men equally once they are over the age of 50 (Chandola et al., 2008). Middle aged women with a history of depression have been found to have symptoms of hardening of the arteries before they notice any symptoms (Agatista et al. 2005). The risk is higher if people are in high demand/low control work (Radi et al., 2005) and those who are being bullied in the workplace (Kivimaki et al., 2003).

In short, insecure work affects the health and safety of employees in a number of ways. Temporary and part-time workers have too little 'down time' to insist on healthy and safe conditions. Precarious employment is associated with low pay, and this in turn correlates with poorer mental and physical health. Insecure workers, as we saw above, are less able than permanent staff to challenge discrimination, bullying or harassment, all of which have negative implications for health. And for many women in insecure jobs, especially those who are well qualified, there are likely to be significant effort-reward imbalances.

8. Insecure Work and Aboriginal and Torres Strait Island Women

It will be very important that this Independent inquiry collect the views of Aboriginal and Torres Strait Island people. The ACTU and a number of unions, as well as community organisations, have Indigenous caucuses and units that will oversee this. We apologise that we have not consulted with any Indigenous people in writing this section, and are in no way setting ourselves up to speak on behalf of any person or group. We have simply collected some available recent published information in order to indicate the importance of ensuring that the voice of Indigenous people is well-heard during the inquiry.

Coming out of the 2008 Pay Equity Inquiry, the *Making it Fair* Report expressed disappointment that '[t]he Committee had hoped for further evidence to the inquiry with regard to Indigenous women and their participation in the workforce', ut that this information was not forthcoming' (Parliament of Australia, 2009: 322). The Committee's Recommendation 55 was that '...the Government as a matter of priority collect relevant information of workforce participation of Indigenous women to provide a basis for pay equity analysis and inform future policy direction' (ibid.). It is even more vital that this be done through consultation and discussion with communities, including remote communities, using protocols developed by the appropriate Aboriginal and Torres Strait Island communities.

In 2011, EOWA compiled a snapshot of the place of Aboriginal and Torres Strait Island women in the Australian labour market, using ABS labour force and demographic data.

- In 2009, an estimated 196,500 Indigenous people aged 15+ were in the labour market – a participation rate of 56%, compared with 66% for all Australians. The participation rate for Indigenous males (63%) was a little higher than that for non-Indigenous females (58%) and considerably higher than for Indigenous females (49%).
- In 2009, an estimated 161,200 or 46% of Indigenous Australians were in paid employment, compared with 65% of non-Indigenous Australians.
- The employment to population ratio for Indigenous females fell from an estimated 44% in 2006 to 40% in 2009.¹
- By 2009, the labour force participation rate for Indigenous males in remote areas was no longer considerably higher than females (50% and 48% respectively) (EOWA, 2011).

These figures suggest a **labour market security** gap, particularly for Aboriginal and Torres Strait Island women and for remote community men and women.

The income security gap was between Indigenous and non-Indigenous Australians, more than between Indigenous women and men.

- Overall, the median individual incomes for Indigenous women and men were virtually identical (\$278 per week for women and \$277 per week for men).

This was 76% of the median \$376 for Non-Indigenous women and 44% of the median \$627 for non-Indigenous men.

- For those in employment, the median gross individual income for Indigenous people was \$520 per week, or 72% of the non-Indigenous median (\$722).
- Employed Indigenous women earned a median income of \$477 per week, or 84% of the Indigenous male median of \$565. The gender pay gap was less than for non-Indigenous women. Who earned 69% of the male median. Employed Indigenous people working full-time reported a median income of \$702 per week compared with \$884 for non-Indigenous people.
- For people employed full-time, Indigenous women earned a median income of \$680 per week, which was 95% of the Indigenous male median (\$718). The full-time employed Indigenous gender pay gap was thus less than the 84% pay gap in the non-Indigenous workforce.
- On the other hand the full-time employed pay gap between Indigenous and non-Indigenous women (\$791 per week) was 86% and the gap between Indigenous and non-Indigenous men (\$941) was 76% (EOWA, 2011).

Significant sources of **income insecurity** in Aboriginal and Torres Strait Island communities are **skill recognition and skill development insecurity**. Using 2006 Census data, EOWA compiled the following comparisons.

- In 2006, 25% of Indigenous people had a post-school qualification (up from 20% in 2001), compared with 47% of non-Indigenous (up from 42% in 2001)
- In 2006 for 7% of Indigenous but 23%% of non-Indigenous people this qualification was at university level.
- The situation is not about to change as in 2006, 6% of indigenous and 25% of non-indigenous people aged 18-24 were attending university.

Particularly for people in remote communities, the issue of insecurity in employment, income and skills development/recognition is linked to debates over how to interpret the CDEP (Community Development Employment Projects) program, its relationship to the Northern Territory Emergency Response, its recent restructuring, and its overall impacts. For example, the Northern Territory Working Women's Centre (2010) has issued this advice:

Many indigenous people in remote communities are employed under the Community Development Employment Projects (CDEP) programme. Some CDEP participants also get extra money, called 'Top-Up', if they participate in CDEP for more hours than required. If you get Top Up money, you are considered an employee, and then you have all the rights of an employee, such as leave entitlements, or the right to make an unfair dismissal claim.

These issues were discussed in a 2011 report (Burn et al, 2011) to which the Jumbunna House of Indigenous Learning, UTS, made a contribution. Its purpose was to 'surface... gaps in knowledge and services relating to the labour of women in Australia' (p. 4). Overall the report argued (p. 4):

There is a clear history of exploitation of Indigenous women by way of overwork or government control of work or earnings. The situation of disadvantage in work remains in place for many today. Indigenous women are overrepresented among the unemployed and discouraged workers. Through the CDEP many are in effect underpaid for highly skilled

work and long hours. The status of CDEP participants needs to be established so that more equitable outcomes can be put in place.

The researchers acknowledged that the report was done at short notice, without time for best practice protocols, and relies on anecdotal evidence. It made the following recommendations for further research (p. 12):

- To ascertain whether or not Community Development Employment Projects (CDEP) participants are employees within the meaning of the *Fair Work Act 2009*
- To determine the legal entitlements of CDEP workers, including but not limited to, paid parental leave and superannuation
- In relation to the impacts of the Northern Territory Emergency Response on the labour rights of Indigenous women and in particular, the effects of income management ...

Overviewing existing knowledge and knowledge gaps, Burn et al. (2011: 43-44) note:

- A 2007 unemployment rate for Indigenous women of 14.7 percent; more than three times the national female average;
- A discouraged worker rate three times the national female average, probably linked to lack of access to child care;
- Over-representation in the part-time workforce;
- Workplace discrimination including racist comments, bullying, being overlooked for promotions and managers' reluctance to respond appropriately to complaints;
- Labour market outcomes linked to homelessness, poor health, and other indicators of social marginalisation.

According to Burn et al., (2011: 43-47) The CDEP began in 1977, as an income support system and expanded during the 1980s into urban areas. It currently has over 7000 women participants. CDEP enabled communities some flexibility in determining their priorities for development, funding projects ranging from delivery of essential services to community enterprises. Participants could fulfil cultural responsibilities, or work for longer hours for 'top up' wages. Without a firm legislative basis, the program had ambiguities: for example the Department of Social Security ruled it was an employment scheme, rendering recipients ineligible for supplementary benefits such as rent assistance, despite poverty line income levels. In a 1995 inquiry the Federal Race Discrimination Commissioner criticised the program for potentially jeopardising human rights through lack of a guaranteed minimum income. The 1997 Spicer Review noted a degree of success in creating jobs and community cohesion but a lack of success in raising Indigenous incomes and problems of non-compliance with award and legislative regulation of OHS, unfair dismissal and superannuation. In a 2006 report, the Aboriginal and Torres Strait Islander Social Justice Commissioner criticised the CDEP for

- Streaming Indigenous peoples out of the local labour market even when other jobs are available;
- Being a trap not a pathway to 'real' and sustainable employment;

- Letting governments evade responsibility for providing essential services;
- Devaluing work done by participants by not offering a 'real wage'; and
- Denying recipients access to superannuation, long-service leave and union membership.

On the one hand, the CDEP program can be seen as supporting national goals of land and sea management, allowing indigenous people to remain on their own land, and providing essential services such as child care, health services, interpreting, night patrols and waste disposal. On the other, Burn et al. cite an unpublished report by the Northern Territory Working Women's Centre stating that women's traditional skills are being under-recognised and under-valued, and that OHS and award conditions are being ignored, with participants called out to dangerous situations at any hour seven days a week without award rates, penalty rates, or conditions of service such as paid maternity leave. Burn et al. (2011:46-7) cite this report as saying;

...many women on CDEP reported that they did not have long term economic security or personal, maternity, recreational, sick or cultural leave, no superannuation, no long service leave or ongoing training, and no long term job security even though they had identified the CDEP placements as being long term positions. This reflected the lack of job prospects in their community.

The ambitious targets of the Closing the Gap strategy may have shifted some CDEP participants out of the frying pan into the fire. The program is now geared to work readiness, not community development. Its operation cannot be disentangled from the impacts of the Northern Territory Emergency Response (NTER). As part of this response the Howard Government abolished the CDEP, but the impact of this led the Rudd Government to reinstate it. The 'old' CDEP is being phased out, and the 'new CDEP' is seen as akin to work for the dole. Income management under the NTER quarantines 50% of income support payments and 100% of lump sum payments for expenditure on essentials, via debit card that can be used only at licensed stores. Burn et al., 2011: 47-48) call for an investigation into whether CDEP workers in the Northern Territory are performing often skilled work for the Newstart Allowance, half of which is quarantined.

To give some sense of the disempowerment created by what appears to be this *imposition* of multiple forms of insecurity, we take the liberty of summarising the story of an individual, provided to Burn et al. by a researcher from the Jumbunna Indigenous House of Learning. Rosie, a single mother of six, a gifted and-established artist, is now living in a tin shed on the equivalent of half the New Start allowance. For this she works a 40 hour week as the Coordinator of an Art Centre, for which she was developing a business plan when the NTER began. She is responsible for managing incoming stock, computer-based record-keeping and portfolio management for all 40 artists registered in the area. She supplies outstation artists with canvas and materials, arranges displays and sales, and cleans and maintains the Art Centre premises and grounds. She has lost her former access to the Women's Bus on which she used to travel to Alice Springs for supplies and to attend exhibitions. Her work and that of other women was exhibited at a major Alice Springs arts festival in 2009, without permission and with no consultation about pricing or opportunity to attend the opening (summarised from Paddy Gibson, cited in Burn et al. 2011: 48-49).

This story involves the loss of every form of security. Rosie is clearly extraordinarily resilient. It is a mistake to describe workers in her situation as 'vulnerable': they and their human rights are under attack. No wonder Burn et al. (2011:49) describe a 'profound despair and disempowerment' amongst CDEP workers, who feel that they have been deprived of 'the most basic statutory protections available to workers'. Burn et al. call for an investigation of these claims.

9. Insecure Work and Immigrant Women

To begin with an extreme form of immigrant **labour market insecurity**, the introduction of temporary work visas over the past decade has now made Australia one of those countries with a two-tier system of labour standards, opening up new areas of insecure work. The *Migration Legislation Amendment (Worker Protection) Act 2008* requires employers who sponsoring migrant workers on temporary visas to ensure they are employed under the same conditions of employment and salary as Australian workers with the same skills and qualification. Nevertheless Quinlan and Sheldon (2011) note statutory limits to worker entitlements (including workers compensation) in the case of temporary workers or, more generally, workers on temporary migration visas. Poor enforcement has meant insecure protection from **health and safety insecurity**, as well as inadequate regulation of **underpayment** and pressure to work **excessive hours** or hours in excess of visa restrictions. Workers fear to report such pressure for fear of penalties of visa breach, and access to medical care is problematic for the same reason or because of lack of medical access by workers without social security entitlements. This insecurity is exacerbated for day labourers working in regional locations where OHS laws are routinely violated, and for outworkers (Quinlan and Sheldon, 2011). Toh and Quinlan (2009) report a situation whereby an off-shore labour hire company in China was requiring that temporary workers leased to Australian firms must sign a contract that precluded them from joining a union or 'political organisation'. Whilst such practices are a breach of Australian law, they are unlikely to be undetected, and even less likely to be dealt with by Australian labour rights enforcement mechanisms.

More generally, **work insecurity** is an issue across many areas of Australia's culturally and linguistically diverse workforce. Addressing the labour market situation of immigrant women is one of 15 action points that arose out of the 2010 Report on Australia under the United Nations Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), to which Australia is a signatory. A report is required by 2014 on implementation of an action plan, which includes addressing the human rights of trafficked women, and improving the workplace participation and rights of migrant and culturally diverse women workers through increasing access to appropriate services and bridging courses (YWCA, 2011). The 2010 CEDAW country review of Australia stated:

The Committee ... notes with concern [migrant women's] low levels of participation in the labour market and their concentration in low-paid jobs" (para 44)

The Committee urges the State party to take targeted measures to address existing barriers to workplace participation of migrant women, to develop a policy of equal access to effective job training and placement services that are not limited to traditional employment areas (para 45)

Australia should support the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (para 49) (cited in YWCA, 2011: 54)

Precarious immigration status can leave migrant women particularly vulnerable to **exploitation** in the workplace. But for culturally and linguistically diverse women in general, protection cannot effectively overcome the combined effects of cultural

barriers, financial disadvantage, family pressures, **perceptions of low skill**, incomplete educational background and isolation (Burn et al., 2011: 69-70). In their submission to the *Making it Fair* inquiry, Taksa and Junor (2008) argued:

Culturally and linguistically diverse women are at a range of disadvantages in the workplace, not because of individual deficits such as low skills, but because erosion of English language tuition over the past 20 years, and strict guidelines governing timing of post-arrival access, have made access to English impossible for women with children. Status as spouse of a primary immigrant, ongoing issues of overseas skills recognition, loss of skills currency in fields such as IT and engineering, religious discrimination based on dress codes and the low value given to fluency in other languages, have all been barriers to employment. The migrant resource centres, including women's centres, which flourished before 1995, have lost most of their funding. The upshot is a tendency to concentration in low-paid occupational segments regardless of skill levels, and a denial of voice and organising capacity (Submission 109, cited in Burn et al., 2011: 69-70).

Because their jobs are likely to be casual, culturally and linguistically diverse women are particularly likely to be excluded from some of the NES (Burn et al., 2011: 69-70). These authors cite Riley et al., 2011:313) in underlining the incomplete enforcement of NES 10 in the case of workers from non-English speaking backgrounds, who

...require more than a general pointer to the legislative scheme as is found in the Fair Work Information Statement: they require a simple statement that explains the nature of their legal relationship with their employer and written confirmation of the terms of their actual entitlements in order for them to understand whether or not their legal entitlements are being met.

Community organisations such as Asian Women at Work, based in Western and Southwestern Sydney, attest that the NES offer little practical protection or security. It was argued in Section 2.5, however, that the outworker and supply chain provisions of the TCF Modern Award do at least provide a platform for defending the labour rights of outworkers along the supply chain. The Textile, Clothing and Footwear Union of Australia has been very active in working with community organisations and resource centres in education campaigns, and in pursuing legislative and award breaches. Effective work has been done to mobilise the support of consumers through publicity campaigns and to use shareholder activism to hold retailers responsible for pay and conditions along the supply chain. But in the end what is required is enforcement of regulation at the local and workplace level.

As Zhang (2010) argues, greater **labour market, employment and work** security will result only from a concerted and well-resourced multilingual campaign to educate immigrant women in their legal rights at work, to support them in their pursuit of redress, and to educate employers as to their responsibilities. An effective inspection regime is seen as critical to change. Unfortunately the NES are set too low, with too many let-out provisions, and place too much onus on disempowered individuals to seek enforcement (Zhang, 2010). The small business exemptions to unfair dismissal protections are cited by community organisations as undermining efforts to protect employment rights. The pursuit of enterprise agreements is seen as unrealistic in a small business environment, as a result of the power given to employers under the *Fair Work Act* through the Individual Flexibility Arrangements clause. Community groups say that employees will simply be called in to the office of the boss and told to sign an agreement (often not in their own language) to accept family-unfriendly rosters on a take-it-or-lose-the-job basis. As an example of

the vindictiveness and bad faith of some employers, Zhang (2010) provides the example of a small employer who took out an apprehended violence order against an employee who dared to make an approach seeking redress for a breach, leaving the complainant living in fear.

It is for reasons such as this that relevant unions and community organisations are seeking funding for education campaigns and for programs to build the confidence and political lobbying capability of women, for example through the telling of their stories. Burn et al. (2011:69-70) list the components of education programs that have proved effective:

- Subsidised child care – seen as a critical success factor;
- Training for employers on the problems faced by immigrants; and assistance in implementing diversity management practices
- Cross-cultural training about workplace culture, including the relationship between employers and employees, how to ask questions at the workplace, and how to speak up when something is wrong;
- Training about Australian workplace laws, rights at work; and ways of resolving workplace situations
- Education about available services if problems arise;
- Mentoring, personal development and motivation – seen by many projects as central to the long-term effectiveness of programs
- Wider job options for women;
- Support for young women around difficulties involved in leaving education and entering the workforce, including work readiness programs of six months or more, to allow time for development of language skills and cultural adjustment to the workplace;•
- Work experience and job placements;
- Follow-up, building an ongoing relationship and evaluation.

Government funding of community-run programs in these fields would help in preparing for the 2014 CEDAW review.

10. Women with Disabilities and Insecure Work

This section of our submission draws on evidence provided by Women with Disabilities Australia (WWDA) to the 2005 Inquiry by the Human Rights and Equal Opportunity Commission into Employment and Disability, to the House of Representatives Pay Equity Inquiry that resulted in the 2009 *Making it Fair* Report, and to the 2010 Productivity Commission National Inquiry into a Long-term Care and Support Scheme for People with Severe and Profound Disability in Australia (WWDA, 2005, 2008, 2010). WWDA is a not-for-profit body that is the peak organisation for women with all types of disabilities in Australia.

Disability can be permanent or temporary, episodic, intermittent, and either perceived or imperceptible (WWDA, 2008). Workers with disabilities, and women workers with disabilities in particular, have a strong experience invisibility when it comes to discussions of employment issues. A recommendation of *Making it Fair* (Parliament of Australia, 2009) was the need for employment and education data to be disaggregated according to factors such as gender, disability, age, Indigenous status and ethnicity, with such data routinely collected, analysed and published.

WWDA was therefore very concerned that the terms of reference of the 2010 Productivity Commission Inquiry failed to take gender into account. Yet women with disabilities:

- Are poorer, and have to work harder, than disabled men to secure their livelihoods;
- Have less control over income and assets;
- Bear the responsibility for unpaid work in the private and social spheres;
- Have a smaller share of opportunities for human development;
- Are subject to violence, abuse and intimidation;
- Have a subordinate social position; and,
- Are poorly represented in policy and decision-making (WWDA, 2010).

The labour market and employment insecurity of workers with a disability are reflected in higher than average unemployment rates and lower than average labour force participation rates. For women with disabilities, these rates are considerably below those for men. In its 2008 submission to the Pay Equity Inquiry behind the *Making it Fair* Report, WWDA was obliged to rely on the 2003 disability data used by HREOC in 2005 – a statistical aspect of the invisibility issue. These data suggest labour force participation rates of 47% for women with disabilities and 59% for men with disabilities compared with 65% in the workforce overall. The unemployment rate for disabled men was 8.8%, whilst that for disabled women was 8.3%, compared with overall workforce unemployment rates of 4.8% for men and 5.3% for women (WWDA, 2008: 9). These differences are a measure of **labour market and employment insecurity** and result from the difficulty of accessing and keeping a job when health status fluctuates.

For women with disabilities, **labour market and employment insecurity** (the right to gain and hold a job) are compounded by issues of work/life balance, as paid jobs do not provide the needed flexibility of both time and place. Fatigue resulting from disability is exacerbated by the demands of family responsibilities and child care, making it even less likely than women with disabilities can work for pay while their children are very young (WWDA, 2008).

As well as the fatigue factor, there is a time factor. Women with disabilities are more likely than any other group to need to spend more time on unpaid household tasks, regardless of their living arrangements, leaving them with less time as well as less energy for paid work. If they try to fit everything in, they have increased risk of becoming ill (**insecurity** in the form of **health risks** arising from **lack of control over work tasks**). This may result in the need for time off work or even job loss. WWDA (2008) cite research indicating that men with disabilities are more likely than women to seek help for activities of daily living (eg: cooking, cleaning, bathing etc). Women with disabilities are more often expected to look after themselves and family members as well.

We have defined **job** and **task insecurity** as involving **lack of control** over the **timing of tasks** and over **intensity of work**. Many women with chronic illness or disability experience unpredictable fluctuations in their capacity to work. WWDA argue that it is important not to expect women in this situation to push themselves, but rather, to respect their need 'to be incredibly attuned to their bodies and decide hour by hour what they need to do to care for themselves that day' (WWDA, 2008). The workplace, however, defines economic contribution in terms of continuity of performance or production. This is the case even though over the past 15 years, employers have themselves increasingly taken to themselves the right to vary hours or offer jobs intermittently on the basis of workflow peaks and troughs. Because casual jobs are actually a means of work intensification, with employers reluctant to pay for production down-time, there has been no attempt to match flexible schedules to the fluctuating health status of employees with disabilities. What is needed is to define flexibility in terms of give and take, without the imposition of employment and job insecurity.

The concepts of **work**, **task** and **income insecurity** refer to the **quality** of jobs available. WWDA (2008) argue that those women with disabilities who are in paid employment, are overrepresented in poorly paid jobs. Regardless of qualifications, they tend to be steered towards traditional areas of female employment that are often below their qualifications and skill level, as well as to be denied opportunities for further training and job advancement (**skill reproduction insecurity**).

The legal right to 'reasonable adjustment' tends to be handled unimaginatively and inflexibly in the case of women with disabilities. **Poor job design** and **inappropriate physical work environments** have resulted in 'a restricted or closed working environment for many women with disabilities' (WWDA 2005). Flexible work conditions and the capacity to vary and/or share hours are vital in gaining and retaining a job. Supports at work need to be supplemented by supports at home, to enable women with disabilities to stay in the job. This expanded definition of **work** and **task security** is important for people with disabilities.

Many women with disabilities would have more time and energy for work, and hence would be more productive, if they had more time for sleep and health care. By pushing themselves unreasonably, they worsen their health condition and

exacerbate their disability. Supports at home in the form of labour saving devices and paid domestic assistance, allowing employers to retain the services of women with disabilities and maximise their contribution sustainably, would be an investment well spent. WWDA therefore argue that

- 'Reasonable adjustment' measures should include an extension of the definition of employment supports to include those in the domestic sphere.
- Accessible child care is even more important for women with disabilities in the workforce.
- Flexibility of start/finish time are vital for many women with disabilities, as the time and energy taken to get ready for and travel to work far exceeds that of their non-disabled counterparts.

Income security for women with disabilities would be enhanced by measures fostering their labour market participation sustainably (**skill reproduction and recognition security**). WWDA argue (2008) that women with disabilities are less likely than their male counterparts to receive vocational rehabilitation, entry to labour market programs, or upper secondary and tertiary education. 'Women with disabilities earn less than disabled men, are in the lowest income earning bracket, yet pay the highest level of their gross income on housing, and spend more of their income on medical care and health related expenses' (WWDA, 2008: 8).

A form of **labour market** and **income security** that is vital for women with disabilities is the capacity to move between paid employment and income support as needed, without disruption to cash flow or services. At present, the more money the disabled woman earns, the more money she loses in income support. These tapers occur without any recognition of the need to insure against the future labour market instability that is likely to be experienced by people with disabilities – particularly women – coupled with the fluctuating and/or cyclical nature of some disabilities. It may take time for problems to manifest, and so a way needs to be explored of establishing transitional periods or buffers, as a sort of income maintenance insurance in the form of government-subsidised employee- and employer-contributions, allowing both income and income support to be saved against the risk of future employment loss.

As with other forms of social insurance, these measures to enhance the workforce participation, and fully use the skills, of workers with disabilities involve some redefinition of the roles of government, employers and workers in contributing to the security of our society through the social contract on which national wealth, well-being and sustainability are based. They would increase the labour force participation of women with disabilities, without counter-productively requiring them to shoulder the risk of exacerbating their condition and in the end increasing the burden of illness and welfare dependence. Business would benefit through a shift in government expenditure from social security to subsidised 'reasonable accommodations' and through a redistribution of the tax and pension burden through the tax and superannuation contributions of higher proportions of people with disability. The result would be greater security all round.

11. Case Study: The Hidden Crisis of Insecurity in Tertiary Education

The spread of insecure work within the tertiary education sector has reached dimensions that would surprise anyone accustomed to thinking of vocational education and training (VET) and university employment as relatively privileged. Yet the 'ivory tower' now rests on a very large low-paid and insecure 'ivory basement'. Even secure jobs are characterised by work intensity and very long hours.

Policy-makers and analysts are now talking of a 'crisis of workforce renewal' in the tertiary sector, but it has remained largely hidden to those outside the sector.

Both authors of this submission have a background of research on employment insecurity, including studies in the education sector. Here we draw on a secondary analysis of published material, and on the products of original research dating back to 1994. Put together, this material provides an insight into the development of casualisation and its impacts across a 'lost generation' of tertiary education workers (Hugo, 2005). By assembling evidence from across this time period, we show how the same concerns have been articulated and remained unaddressed for many years. The quotations in our submission were selected as representative of many stored in the following records:

- Interviews conducted in 1994 with 25 hourly-paid NSW Technical and Further Education (TAFE) teachers;
- Interviews and focus groups in 1999-2000 with 20 TAFE casual and sessional teachers in NSW and the ACT;
- Quantitative and qualitative data derived from an Australian Research Council-funded survey conducted in 2001-2002 across five universities in NSW, Victoria, Queensland and the ACT, with responses from almost 2,500 casual and fixed-term staff, both academic and 'general' (now called 'technical and professional') staff (eg Junor, 2004);
- Quantitative and qualitative data from 1200 responses to surveys of TAFE casual and sessional staff, conducted in 2003-2005 in 5 TAFE colleges in Victoria, the ACT and via a NSW-wide on-line survey (eg Junor, 2005);
- A compilation of de-identified comments from 500 open-ended responses to an NTEU survey of casual academics, 2008 provided for the purposes of analysis and comparison.⁴

To these sources we have added more recent material from:

- A web video of statements by casual TAFE teachers and a report of findings from a survey of 1,300 TAFE casuals (NSWTF, 2011); and web statements by casual university staff (NTEU/CAPA, 2012).

This evidence can be further cross-referenced to published findings by other researchers (Coates et al., 2009; Brown et al., 2010; Gottschall and McEachern, 2010). There is a distressing consistency in all the data, despite some regulatory

⁴ Any data more than eight years old now exists only in electronic files that have been de-identified, consolidated and coded.

improvements. A new large-scale study of casual academics is under way (May et al., 2011) so it will be important to see how it updates the findings reported here.

11.1. The Role of Insecurity in the 'Crisis of Tertiary Education Workforce Renewal'

11.1.1. TAFE

Australian vocational education and training (VET) teachers are responsible for developing the skills on which national workforce development is based. Yet the production and reproduction of our national skills base rests on increasingly shaky foundations. For a decade, warnings have gone unheeded about the ageing of the permanently employed component of the VET workforce, and reliance instead on a growing precarious workforce. Public sector VET provision through Technical and Further Education (TAFE) colleges is now confronting a crisis of sustainability, quality and renewal. Since at least 2003, policy analysts (eg McNickle and Cameron 2003: 20) have been warning that 'succession planning has emerged as a critical issue for the TAFE sector as a whole'. Now, in 2011, the crisis has arrived. In NSW, for example, 67% of continuing TAFE teachers are aged 50 and older, and 42% are aged 55 and over (Lipscombe, 2011: 18).

In response to a decade and a half of funding constraint, state-level VET providers have been running a core/periphery labour market (Chappell and Johnston, 2003: 8). They have relied on shrinking numbers of people designated as VET 'professionals', responsible for policy, staff development and curriculum design, and on increasing numbers of low-paid 'practitioners', responsible for training package and assessment 'delivery'. The latter, despite their commitment to their students, to their industry sector and to TAFE, are engaged and re-engaged under highly insecure arrangements, lasting for the duration of a teaching 'session', and often paid on an hourly basis. Payment is likely to be for class contact hours only, and only in teaching weeks. For most, there are no pay increments from year to year for increased teaching skill, responsibility and experience, and no ongoing career prospects.

Yet arguably to keep pace with the skill needs of the 21st century workforce, VET teachers need higher levels of professionalism than ever before. There is an obvious paradox that a majority of those responsible for the nation's skill base should themselves be experiencing insecurity of skill recognition and skill reproduction. At the heart of the issue is the debate over whether the Certificate IV in Training and Assessment is a sufficient professional qualification for casual TAFE teachers. Palmieri (2003: 23) argues that the widespread substitution of this minimum credential poses succession problems, as retiring staff leave behind '... those with industry skills but with no deep knowledge of teaching and learning processes'. Forward argues that people who have come out of industry to teach are 'hungry' for professional development and keen to meet the increasingly complex needs of a diversifying client base (Forward, 2009: 12).

The extreme labour cost savings offered by TAFE casualisation, coupled with the pressures of competitive tendering for government funds, have locked state and territory TAFE systems into staffing practices that will be costly to reverse, despite their unsustainability. Casualisation appears to have rolled on, despite the negotiation in the early 2000s of regulatory conversion processes in Western

Australia, South Australia and Tasmania and a NSW ministerial/union agreement allowing for restoration to 55% of the proportion of classes taught by ongoing staff. Nevertheless, as Forward (2009: 12) notes, 'Every state and territory now has high levels of hourly paid or casual employment of TAFE teachers'. In NSW, for example, current estimates of TAFE casualisation run at 70% in head count terms (TAFE Part Time Casual Teachers Special Interest Group. 2011).

11.1.2. Universities

Similarly, Australian universities are thought to be facing a 'renewal crisis'. Again, securely-employed staff are concentrated in the over-50 age bracket and moving toward retirement, with the next generation 'lost' to casualisation' (Hugo 2005; Hugo and Morriss, 2010; May et al. 2011). What used to be the career entry point for higher degree graduates has been replaced by insecure employment, which does not appear to be a 'stepping stone' to ongoing work – indeed working as a casual may make the transition to secure employment more difficult (Barker, 1998). Women are entering university work in greater numbers, but are more likely to be locked into casual employment with limited career prospects.

The Report of the Bradley Review of tertiary education raised concerns about the impact of university casualisation on workforce renewal, with 'income insecurity, workloads beyond their paid hours, and feelings of isolation from the university community' reducing the attractiveness of the profession (Bradley et al., 2008: 23, 71). A recent survey in 20 universities, conducted for the Department of Education, Employment and Workplace Relations (DEEWR) by Bexley et al. (2011) received over 5,500 responses, including from fixed-term and casual employees. It indicated that:

- In the next 5-10 years, 26% plan to leave the university sector altogether, 25% plan to move to an overseas institution, and another 21% plan to retire;
- Among early career staff, 60% are dissatisfied with their job security and 40% are dissatisfied with their income;
- Over half of those intending to leave the Australian university sector, give reasons related to working conditions, particularly job insecurity and low pay;
- Almost half experience their workload as unmanageable; and a source of considerable personal stress (Bexley et al., 2011: xi-xii; 18, 21; 33).

Bexley et al (2011: 39) report that the 'primary theme' in open-ended responses from casual university staff was a desire for secure employment conditions. As 64% per cent indicated that they had a 'reasonably regular series of short term contracts'. Bexley et al comment (p. 39):

For reasons not clear from this study, these effectively 'continuing' academics are clearly not offered more stable, long-term contracts. Only 18 per cent reported their work to be irregular or sporadic one-off contracts, and another 18 per cent reported their work being on an occasional hourly basis.

11.2. Why the Tertiary Education Insecurity Crisis is ‘Hidden’

There are three sets of reasons why the severity of the casualisation crisis in VET and universities is not well understood. They have to do with

- Issues of invisibility and indivisibility;
- Resulting problems of documentation and counting, including massive under-estimates of the size of the casual workforce;
- Some real differences amongst different categories of insecurely-employed people, but problems arising from using these differences to shape policies.

11.2.1. Invisibility and Indivisibility

Casual and part-time work in the tertiary education sector has time aspects that make it particularly open to abuse, even while the ability to do some of the work from home makes the work accessible to carers.

Invisibility - In the case of teaching and research staff, for every hour in the classroom or at the laboratory bench, there are hours of preparation, networking and evaluation/analysis that do not have to be done in the workplace. Such work may go undocumented and all too often be unpaid.

Indivisibility – At the same time as the work can be divided between home and the workspace, it is hard to divide up into the hourly blocks on which concepts of part-time and hourly casual work depend. Hidden and visible work are inter-dependent:

You don't want to walk in front of the students and say, 'Well, that's the first ten minutes, and I didn't have time to prepare the rest, so goodbye.' Of course you're not going to do that: you've got responsibility and you've got your own sense of professional pride (TAFE teacher, ACT, 2000).

The unseen and unpaid hours have expanded in line with factors such as increased class sizes, new and increasingly complex subject matter, and the growing diversity of learners and their needs.

11.2.2. Problems with Documenting and Counting

TAFE

Since the early 1990s, the extent of TAFE casualisation has been unrecognised and/or unacknowledged, for a mix of reasons:

- Conceptual – there is still an outdated stereotype that all TAFE casuals have another main full-time job, and spend several hours per week as 'second-jobbers' in TAFE, passing on their industry expertise;
- Logistical – staffing trends have not been tracked effectively in an era of devolved budgeting;
- Pragmatic – fear that casualisation will be too expensive to reverse, in the context of competitive tendering for limited government funds.

As a result:

Governments have failed to keep track of the TAFE and VET workforce...There is no publicly available or accurate information about the size or composition of the workforce, the proportion of casual teachers, or the number of teachers with tertiary or other qualifications (Forward, 2009: 12).

VET providers are the source of the figures on which official statistics are based. They may produce data when it is required for a specific purpose but then not update it. For example in 2003 the Industrial Relations Commission of NSW required statistics on teaching loads to test the 'second-jobber' thesis. As a result, it was found that of 15,500 casual TAFE teachers, 24% (and 27% of women) were teaching more than 12 hours a week face-to-face (Dobbs, 2003). In fact the Commission determined a workload of 10 or more classroom hours would need to be backed by so many related non-classroom duties that it must be a 'main job'.

We are not aware of an update on these figures, but without such an evidence base, it is hard to monitor casualisation trends.

Universities

In the university sector, DEEWR annual staffing statistics help in monitoring fixed-term contracts. But in the case of hourly-paid casuals, it is not so easy:

Little is known about Australia's sessional academic workforce. Exact figures on the numbers of sessional academics employed by universities are not kept by DEEWR, and the characteristics of sessional and casual academics are therefore unavailable. A number of institutions who took part in the survey do not keep a database of sessional academics. (Bexley et al., 2011: 37)⁵

DEEWR figures on casuals are only as reliable as the annual returns provided by universities, already converted to full-time equivalence using a DEEWR formula. Because casual academics are all part-timers, (though casual technical and professional staff may work full-time hours), the real numbers are higher than shown in the full-time equivalent figures. The formula used for calculating full-time equivalence is artificial and much-debated.

Table 1, which shows combined academic and technical/professional staff numbers, is the best estimate that can be obtained from DEEWR on trends in the growth of insecure university work. It indicates that between 1996 and 2010, the proportion of university staff with secure jobs fell from 56% to 52%. These figures contradict the popular image of the secure ivory tower.

In the case of fixed-term staff, Table 1 indicates the remarkable success of a regulatory initiative introduced in 1998 but abolished by the Howard government in 2004. This initiative restricted fixed-term employment to work that was genuinely fixed-term, based on a defined set of criteria (See Section 11.2.4 below). Between 1996 and 2002-2004, this restriction reduced the proportion of staff on fixed-term contracts from 31% to a low of 25%. When the Howard government tied funding to the removal of this restriction, fixed-term employment climbed back, reaching 29% in 2007 and 32% in 2010. The limiting criteria have been restored in recent enterprise agreements, but it is too early to quantify the effects.

As Table 1 shows, the strongest employment growth in universities between 1996 and 2010 was in casual work. In full-time equivalent terms, the number of casuals in

⁵ Bexley et al. use the term 'sessional' to indicate that most university casuals are engaged for a teaching semester. Nevertheless, these workers are paid by the hour.

the sector rose by 73%, from 10,400 to almost 18,000. But new research shows the extent to which full-time equivalent figures mask the real extent of this growth.

Table 1 Full-Time Equivalent University Staff by Employment Mode, Australia, 1996-2010

Year	Ongoing	Fixed Term	Actual Casual	Total
1996	46,609 56%	26,094 31%	10,396 13%	83,099 100%
1999	45,602 56%	23,650 29%	12,082 15%	81,334 100%
2002	51,661 60%	21,279 25%	13,360 15%	86,300 100%
2004	55,047 60%	23,142 25%	13,563 15%	91,752 100%
2007	55,021 56%	28,908 29%	14,496 15%	98,425 100%
2010	57,318 52%	35,632 32%	17,979 16%	110,929 100%
Change 1996-2010	+23%	+37%	+73%	+33%

Source: DEEWR (2011) Staff 2011: Selected Higher Education Statistics Tables 1.1, 1.4, Appendix 1

May et al. (2011) have cleverly based an estimate of casual numbers on the fact that about 95% of casuals earning over the threshold of \$450 a month belong to a separate fund in the university sector superannuation scheme Unisuper, into which universities pay their 9% Superannuation Guarantee contribution. Any casual academic in this category will be providing at least a one-hour tutorial a week or a one-hour lecture a fortnight (Technical and professional staff are likely to be working 2-3 hours a week or more). By identifying the number of 9% accounts into which universities paid a contribution in the period March to October 2010, May et al. derived a headcount of the actual number of university casual staff for that year.

Their initial indications were of 110,000 casual staff working in universities, of whom 67,000 were academics and 43,000 were technical and professional staff (May et al., 2011: 194). Of this total, 57 per cent were women. The figure of 110,000 contrasts with the DEEWR full-time equivalent estimate of 18,000 casuals. In fact, it is equivalent to the DEEWR full-time equivalent total for ALL university staff! Hence the claim that Australian universities are now running on the work of a hidden army of insecure workers.

11.2.3. One-Size-Fits-All Approach versus Dangers of Type-Casting

We mentioned in Section 11.2.2 that a substantial proportion of TAFE teachers did not have a secure main job in industry but were depending on their TAFE work for a living. Yet attempts to define them as a group, in order to improve their entitlements, have created loopholes that employers have exploited, for example by keeping individuals' hours below conversion thresholds. Attempts to use worker characteristics or preferences to create categories such as 'genuine casuals', have thus tended to backfire.

It is true that there are different reasons for working casually in tertiary education, making a one-size-fits-all approach difficult. Indeed, even the distinction between 'academic' and 'technical and professional' staff has resulted in the overlooking of groups like contract research staff, and also to ignore the commitment to the sector of many technical and professional staff.

May et al. (2011) have drawn on earlier typologies of academics by Junor (2004) and Gottschalk and McEachern (2010), to come up with the following:

- Postgraduate student academic – wants a university career
- Postgraduate student – industry – wants a career
- Industry expert
- Industry expert seeking to transfer to academia
- Academic aspirant
- Casual 'by choice'
- Retiree.

Junor (2004) did not have a 'casual by choice' category, because her research showed that:

- Casual employment was not a free choice but a constrained choice – part of a package deal accepted in order to gain and retain work in academia;
- Across all groups, even retirees, there was strong desire for the security and conditions that at present come only with permanent part time work;
- More people were happy to accept casual work in the short term than were happy to still be a casual in five years' time.

A particularly important category to consider is that of 'multiple part-time casual jobholder'. Junor (2004; 2005) showed that a significant number of TAFE and university casuals were working across campuses, across education sectors and even across industries, doing three, four, even in extreme cases five or six jobs at a time, none of these jobs being secure 'main jobs'.

Table 2 Estimates of Casual Academics' Earnings per Semester, 2002, Indexed to 2012 Prices

Salary (Median and Inter- quartile Range)	Typology Group									
	Outside- Industry Oriented Postgrads n=118	Working across Uni/TAFE n=72	Outside Industry Experts n=210	All n=1136	Self- Employed n=236	Casual Academic as Only Job n=338	Multiple Part Time Casual Job Holders n=483	Academic Apprentice Postgrads n=205	Retirees n=76	Qualified Academic Jobseekers n=138
Q1	\$1,276	\$2,094	\$2,504	\$1,872	\$1,872	\$1,955	\$1,897	\$2,286	\$1,914	\$2,290
Median	\$2,527	\$3,729	\$3,827	\$4,188	\$4,253	\$4,567	\$4,710	\$4,945	\$5,071	\$6,445
Q3	\$4,547	\$6,616	\$7,308	\$8,062	\$8,238	\$8,327	\$8,637	\$8,419	\$9,333	\$8,982

Source: Survey 2001-2003 (Junor, 2004)

Table 2 shows that all types of casual academics are low-paid. It provides survey-based estimates of the pay per semester of 1,136 casual academics. For each group, this was calculated, multiplying weighted averages of appropriate pay rates

in the participating universities, by the hours of different types of work (lecturing, tutoring, marking, etc) performed. In Table 2 the results have been indexed by 35% to 2011 prices, in order to produce the salary figures in Table 2.

Most members of the typology groups could be assigned to one of two groups - Casual Academics Only or Multiple Part Time Casual Jobholders. The groups to the left of the 'All' column were not seeking ongoing academic careers: those to the right of Multiple Part Time Casual Jobholders were either retired academics or seeking to become academics. The interquartile range Q1 to Q3 contained 50% of all respondents for whom salaries were estimated: 25% in each typology group were paid above the Q3 amount for that group and 25% had lower pay than the Q1 rate for the semester. The only groups who could have held other well-paying full-time jobs were the Outside Industry Experts and some cross-sectoral education industry workers, employed in both Universities and TAFE.

These are rough estimates, but we can see from the median salaries that on average, 75% of all university casuals would have earned less than \$16,000 in today's money for the whole year, had they been engaged both sessions. These figures cover only the earnings in the universities hosting the survey: some multiple part time casual jobholders would have earned more from other university work. To our knowledge there has not been more recent work updating these estimates.

Because we are not aware of any subsequent research carried out on casual technical and professional (general) staff salaries, results from 2002 are provided for the five universities in the Junor survey. Of the 1154 technical and professional staff responding to the survey, 25% had higher degrees, 30% had bachelors degrees and another 20% had other post-school qualifications. Their salaries were aligned to the grades as set out in Table 3.

Table 3. Grade Levels by Work Areas, Casual General Staff, Compared with General Staff on Fixed-Term and Continuing Contracts (Survey Respondents, 5 Universities, Australia, 2002)

Organisation units/ Work areas (Combined)	Casual (n=1093)			Continuing/fixed term (n=116)		
	Salary/ classification range			Salary/ classification range		
	Level 1-2 & lower	Level 3-4	Level 5+	Level 1-2 & lower	Level 3-4	Level 5+
Admin, student support	287 (63%)	95 (21%)	71 (16%)	4 (5%)	22 (27%)	55 (68%)
Library, Technical, Facilities Management	103 (45%)	71 (31%)	57 (25%)	1 (4%)	9 (32%)	18 (64%)
Research, Demonstrating	126 (46%)	77 (28%)	69 (25%)	0 (0%)	2 (40%)	3 (60%)
Other (Exam Invigilation, Hospitality, etc)	39 (28%)	66 (48%)	32 (23%)	0 (0%)	0 (0%)	0 (0%)
Total	555	309	229	5	34	76
Per cent	(51%)	(28%)	(21%)	(4%)	(29%)	(67%)

Source: Survey, 2001-2003 (Junor, 2004)

Typologies might reflect people's circumstances and even wishes at a point in time, but they are not a firm basis for regulation or policy-making. As a TAFE casual stated (Part Time Casual Special Interest Group, 2011):

I originally chose casual employment because it suited my situation as a young wife and a mother, but after ten years my casual employment is no longer a choice but it is a decision that has actually been made for me.

Moreover, the individual's motivation for a career is in sharp tension with employer's motivation to lock experienced workers into their casual status. As noted by Junor (2004) and May (2011), the longer a casual remains a casual, the more benefits the employer derives – in the absence of pay increments, the employer is getting ever more experienced workers without having to pay a higher salary.

Despite the difficulties of a 'one-size-fits-all' approach, it seems to be important to introduce a universal floor of 'quality' part-time work standards. This would mean, to take one example, that the \$450 superannuation guarantee threshold would be scrapped, giving even very low earners access, as recommended in the *Making it Fair* Report. This Report also suggested a universal 'insurance' fund supporting portability of service accumulation for the purpose of calculating leave entitlements (Recommendations 37-40, p.xxix). These proposals too could be introduced on a sectoral basis in tertiary education for casual and fixed term employees. To objections based on expense or administrative difficulty, the response is simple: conversion to more secure employment mode is an immediately-available alternative. Such workforce stabilisation measures make economic sense, given the scale and duration of insecure employment in the industry and the looming crisis of the 'lost generation' of ongoing staff.

11.2.4 Progress in Regulating University and TAFE Casualisation

Underlying more recent attempts at regulating insecure employment is the basic 'decent work' principle that ongoing work should be staffed by ongoing employees. This has not been achieved in tertiary education. The most glaring departure from decent work standards continues to occur in situations where people are paid by the hour but end up being engaged for many years.

Attempts to regulate casual TAFE and university work have involved:

- **Criteria** (defining the allowable uses of fixed-term work);
- **Ceilings** on numbers or, more dangerously, on hours worked;
- **Conversion** based on hours per week (casuals – again risky) or on duration of employment (effective with fixed-term);
- Pro Rata **Conditions** – equity of access to standard benefits, removing the incentive to use casual contracts;
- **Compensation** - loadings for lack of leave entitlements; payment for all hours actually worked (I. Campbell, 2010)

Of these approaches, the use of ceilings is the least satisfactory. For example, the '60 per cent rule' in the first university industrial award of 1980 was designed mainly to protect ongoing staff from displacement by industry experts, by restricting the lecturing hours of such outsiders to 60% of a normal load – that is, about 4 per week (May, 2011). This rule, now defunct, simply led employers to restrict casual hours and pay, rather than offer conversion.

Since 1998, the best solution to university casualisation has been an alternative two-part **conversion** process, based on setting strict **criteria** under which non-continuing employment is allowable, backed by the introduction of **pro rata**

conditions, which remove the incentive to casualise. This two-part process involves moving ongoing hourly paid casuals onto fixed-term contracts, while establishing criteria which, if not met, will require further conversion of fixed term work to permanency.

In the university sector, the *Higher Education Contracts of Employment Award 1998* prevented universities from filling ongoing jobs with people engaged on a succession of insecure contracts. Fixed-term contracts could be offered only when there was a clear rationale for doing so, such as temporary replacement of a staff member absent for a defined period; completion of a specific project; pre-retirement; or the need for recent professional/industry practice. These provisions survive in the *Higher Education Industry Academic Staff Award 2010* (MA000006) and after being removed from enterprise agreements during the Howard years, have been restored in varying forms in the 2009-2012 bargaining round.

Whilst securing this effective brake on abusive roll-overs of fixed term contracts (11.2.2 above) the National Tertiary Education Union was unable to gain tribunal support for the other arm of its strategy - restriction of casual employment. The resulting regulatory loophole meant that, while there were many conversions to permanency, unfortunately there was also a marked increase in university managers' resort to casualisation.

In the ACT, the *Canberra Institute of Technology Enterprise Agreement 2010-2011* reflects a similar approach to fixed-term conversion, and contains a possible mechanism for preventing abuse of casual engagements. It follows ACT public sector practice in allowing for the following types of non-continuing employment contract:

- short term temporary employment for a period not exceeding twelve months on a full-time or part-time basis, engaged for a specified period of time or for a specified task; or
- long term temporary employment for a period greater than twelve months but not exceeding five years on a full-time or part-time basis, engaged for a specified period of time or for a specified task; or
- temporary casual employment.

'Temporary' employees are defined as being engaged for a specific period of time or a specific task. This does seem to provide a mechanism for preventing the problem of long-term casual employment. Use of the employment duration criterion to define employment mode, however, exposes insecure workers to the risk of contract non-renewal, unless accompanied by a requirement that conversion to ongoing employment is the normal expectation where positions turn out to be ongoing.

The use of a job duration criterion seems to be a better mechanism than placing a ceiling on the hours of employment, beyond which conversion to ongoing status is required. Such a requirement is based on the full-time/part-time distinction, rather than the more relevant permanent/casual one. It is easier to evade contract conversion by manipulating hours than by manipulating contract duration. This was shown in the Victorian TAFE sector, where in the mid 2000s, some enterprise agreements contained a clause requiring any contract of more than 320 hours per session to be offered on a continuing basis. Many colleges simply reduced sessional staff

members' hours to below the conversion threshold, forcing people whose main job was indeed TAFE teaching to find work across two or three colleges.

Similarly, in the NSW TAFE sector, the ruling by the 2004 Industrial Relations Commission of NSW on behalf of TAFE casuals, providing pro-rata payment for teaching-related duties when class contact hours were 10 or more a week, has proved somewhat difficult to enforce. Many casuals have reported an artificial reduction in their hours to below the eligibility threshold, with employers spreading the work more thinly over more staff (NSWTF, 2011). The solution in this case is simple: pay for all teaching-related work performed, regardless of contact hours or main/second jobber status.

These issues indicate the importance of designing forms of regulation that can be enforced at the devolved level of individual managers who are working on short-term budgetary cycles to meet client demands within available funds.

11.3. Insecure Tertiary Education Work: Experiences and Impacts

In this section, we document both the human costs and the long-term irrationality of tertiary education casualisation.

11.3.1. Abuses of Flexibility, Disempowerment and Undermining of Skills Policy

The evidence is grouped to illustrate three main problems:

- Abuses of flexibility;
- The effects of disempowering a large section of the workforce responsible for education, research and workforce development; and
- A stunting of skill development and skill recognition, compromising the capacity of insecure workers to contribute fully to national innovation and workforce development.

The concept of 'abuse of flexibility' refers to the use of an employment mode designed for one purpose (filling interim job vacancies), in order to pursue quite a different purpose (cost-containment, risk-shifting), using yet other justifications such as claims that casual work is family-friendly or a stepping stone to a career. The following statements summarise many of the issues:

I have been working casually full time in education for or 9 years. I don't have any annual leave entitlement. I don't get paid when I am ill, for my marking and preparation, for the pastoral care/welfare role that I provide to students. I have no income during term/semester breaks. It's a very unfair system. We're just cheap labour – we save the colleges money; we enable others to be on better work arrangements ... I have felt very exploited at times as a casual. It's a system which makes you feel different, less valued (TAFE teacher, NSW, 2004).

If you are working day in day out, week in week out, year in and year out and retire after 25 years as a casual, there is something wrong (NSW, 2011).

11.3.2. TAFE Impacts

Abuses of Flexibility

Since at least 1994, increasing numbers of TAFE teachers find themselves having put together a livelihood by re-applying for work at least twice a year. Those lucky enough to obtain work from one teaching session to the next, must nevertheless subsist for approximately 16 weeks a year without pay. Each engagement is a new appointment, and it is up to the teacher to put together a viable work timetable from the various offers of work.

Participants described the resulting sense of ***labour market insecurity***:

It's just a constant cycle throughout the year, every six months we go through this cycle. I usually get rung the day before, sometimes I'm actually rung the night before, to start the next morning (Vic., 2003).

First of all I should point out that a typical day's work only happens throughout the 34 weeks of the year when the semesters are running because they're the weeks that I get paid, basically (ACT, 1999).

I have worked as a casual for 17 years, for every one of those years have had work at the same campus, mostly for over 10 hours a week but cannot gain a permanent part time position (NSW, 2011).

Clearly the flexibility is on the employer's side, and the one-sided nature of this flexibility has not lessened in 17 years. Further examples of labour market insecurity are illustrated in Exhibit 1.

Exhibit 1. Labour market insecurity in TAFE - Constant need to look for work; or to rely on multiple insecure jobs

So you know, you're sitting there the whole of the week before classes are starting, biting your nails, wondering about whether you're going to get classes (NSW, 1994).

At the beginning of each session, you don't know what work you've got for that year; you're waiting on the phone; and the calls start coming in; and you take what you can get; and if it's 12 hours' work over 4 days or something, you'll take it, because you actually think you're not going to get anything else (ACT, 2000).

If I could wish for one thing it would be some guarantee of future work (Vic., 2003).

Having put together a program of work for a semester or session, the TAFE casual teacher is still subject to the insecurity of knowing that part or all of the work can be lost at any time, at little more than an hour's notice. This is a second type of precariousness – ***employment insecurity*** (Exhibit 2).

Exhibit 2. Employment insecurity in TAFE - Vulnerability to job loss, often at short notice

On Easter Thursday, with no notice, my 6-hour class that I expected I'd have for the year, was taken off me, because a full-time teacher had come back and needed a program. And I didn't have time to say goodbye to my students, and it was really, just devastating (NSW, 1994)

In my section we were told last week that if you are a casual your classes will end a week earlier than planned because there isn't enough money in the budget (NSW, 2011).

I never feel totally grounded or safe in my position (NSW, 2011).

The flexibility is again one-sided, because in accepting an appointment, casuals are required to forward-commit to the planning of a 17-week program, yet they can lose this work at an hour's notice.

NSW casuals reported that they tend to take on excess hours at the beginning of a session, in case of the sudden loss of some or all of their hours. If this does not happen, they are stuck with a work overload for 16-18 weeks.

The term '**work insecurity**' refers to a third type of insecurity - the casual employee's lack of bargaining power over the number and timing of teaching hours and over the location of work (Exhibit 3).

Insecurity of hours makes it hard to arrange child care. Because of the need to book childcare ahead for the year, TAFE casuals are in a difficult position because they cannot predict their timetable beyond the present session, so may end up paying for child care hours they do not need, and not having care when they do need it. They are certainly likely to have to keep paying for care during the non-teaching weeks between engagements.

Exhibit 3. Work insecurity in TAFE - Limited say over hours or work schedules; Working family-unfriendly hours, or across several campuses

One head teacher actually said to me when I knocked a class back last semester, 'You realise that if you say no, I won't be able to give it to you again?' (NSW; 1994).

One day last semester, I taught from 9 in the morning till 9 at night on Monday, and across 2 campuses. And one head teacher actually put it to me, when he wanted me to take a Monday class, 'Couldn't you take that here, drive to M (15 km away), take that in the afternoon, and then drive back here for another class?' (ACT, 2000).

It is necessary to pay for 50 weeks childcare although I only work 36 weeks. I must pay for child care I don't need as my hours change every 6 months (NSW, 2011).

As well as lacking control over the timing of their class contact hours, TAFE casual teachers have very limited control over the volume of their workload. Examples of such **task or workload insecurity** are included in Exhibit 4.

The very insecurity of casual and sessional TAFE teaching engagements makes it more likely that the work that casuals accept will be very variable and include unfamiliar subjects, requiring more than average preparation. Some TAFE teachers noted that their permanent full-time colleagues taught the same courses regularly year after year, but gave casuals the new and less predictable subjects, involving heavier workloads:

I've had subjects put on me at the last minute that I haven't taught for 3-4 years. That means more preparation (NSW, 1994).

Accounts of large amounts of unpaid own-time preparation and marking have been a common refrain of casual and sessional TAFE teachers since 1994.

I worked three of the five mid-year weeks, unpaid, 9am-3pm, five days a week (ACT, 1999).

You attend for three days or two and a half days, and you work for five (Vic., 2003)

[One thing I would most wish for is] being paid for attendance at meetings and professional development especially if you are a long term sessional (Vic., 2003)

[One thing I would most wish for is] payment for travel between [workplace] assessments (ACT, 2003)

Exhibit 4. Task/workload insecurity in TAFE - Limited ability to negotiate job content and boundaries; Unpaid work elements and work intensity; Lack of leave entitlements

A typical day is just FLAT OUT ...Conversations on the run, everything on the run. It's like sprinting (ACT, 2000).

I would say my commitment is a full-time commitment for a part-time wage (Vic., 2003).

If I could wish for one thing it would be *some* recompense for the extra hours spent correcting assignments, setting up displays and organising industry contacts (Vic., 2003).

For my last two pregnancies, I had to work as far as I could into the pregnancy and return as soon as possible (NSW, 2011).

There was also a concern that:

We get no penalty rates for working at night or on weekends but [permanent] Full Timers do (NSW, 2004).

People do the unpaid work in order to develop and maintain the currency of their skill and knowledge, and because it is necessary if they are ever to be in the market for a permanent job. Indeed, TAFE teachers described how they turned up unpaid, after their contracts had expired, just to remain visible and be in the running for their next casual engagement.

The intensity of the work was also commented on – to the extent that it is a health and safety issue:

I do 5 hours straight: I do a 3-hour class and then a 2- and then I race off home to get my kids ...I don't have a lunch break on two days (NSW, 1994).

The final quotation in Exhibit 4, dating from 2011, refers to the need to work late into pregnancy and return early after childbirth – a health and safety issue. The casual pay loading for lack of leave entitlements was originally intended to make casual work more expensive for employers and thus remove the incentive for its abusive and inappropriate use. Clearly, this has not worked, and the result is that long-term casuals are in effect trading family-friendliness and health and safety for money:

The most important change would be sick pay and holiday allowances prorate of work hours (NSW, 2003).

I'm referred to as a part-timer, but I'm not a part-timer: a casual with limited sick leave, no holiday pay, no long service leave entitlements and no job security (NSW, 2011).

Disempowerment

One of the most disempowering aspects of casual work in TAFE is the ***insecurity of income*** (Exhibit 5) that overshadows workers' lives and reduces their power to resist inequitable conditions:

My partner and I simply could not pay our mortgage off on one income. We have two children: it's not pin money; it is supporting the family (NSW, 1994).

Casual work is really scary for a sole supporting mother (ACT, 2000).

If I could wish for one thing it would be enough work to earn a modest living (Victoria, 2003).

It is disempowering in the workplace, at home, and in the community to experience financial insecurity on an ongoing basis. Even travel to work can become an issue:

I cannot afford a safe car for night teaching (ACT 2000).

Casual TAFE teachers felt disempowered as parents and providers. They expressed concerns about inability to get a housing loan, and – a source of great distress – about inability to afford a university education for their children (Exhibit 5). There was the longer-term worry about saving against illness and about inadequate superannuation:

Superannuation entitlements are low or costly and can be jeopardised by discontinuity (Vic, 2003).

There were also day-to-day stresses, resulting from employers' cavalier approach to timely payment. Casuals reported an ongoing anxiety over being paid on time: 'this is a major concern' (Vic., 2003). Living from pay to pay, the impossibility of saving, and a few days' delay in being paid, can lead to humiliations such as the following:

Going shopping at Franklins not long after the holidays began...I went to pay for my groceries...my card was rejected because no salary had come in in the previous fortnight. And you feel pretty stupid at the supermarket when you can't pay for your groceries (NSW, 2011).

An interview participant wept as she described the impact of income loss on her family over the summer break:

January is a killer because you've got two teenagers at home and that's the time when they need money. And you can't - if you go on holidays you need petrol. It's depressing... (ACT, 2000).

Exhibit 5. Income insecurity in TAFE - Unstable and unpredictable earnings; No buffer against earnings loss; Inability to save for future needs

Banks won't give you a mortgage if you've got a part time job (ACT, 1999).

I cannot send my children to university (ACT, 2000).

You get to the end of November and you're not going to get another pay until probably the first week of March. And there's no way you could have saved out of \$400 a week, enough to see you through that time. (ACT, 2000).

Very hard to exist when only paid for 34 weeks of the year (Vic., 2003).

It is quite difficult to assert one's professional identity and value in the workplace, when undermined by this sort of insecurity. The form of disempowerment that seemed to rankle most is precisely the issue of **marginalisation and lack of voice** (Exhibit 6) in the workplace.

Exhibit 6 Representation Insecurity in TAFE - Lack of voice; fear of asserting rights, Marginalisation and exclusion, Lack of respect, rights and resources

We're non-residents, non-entities. So you don't have any place to sit and call your own. You can't leave things, you have to carry them backwards and forwards all the time (ACT, 2003).

If I could wish for one thing it would be more contact with other teachers to discuss student's progress, teaching materials – suggestions. support and socializing (Vic., 2003).

If I could wish for one thing it would be restoring/achieving a sense of worth/self-esteem (NSW, 2004).

I am too scared to have a say – even for the most union-active, that stress is there daily - I feel hesitant to claim my rights or speak out and ask for entitlements (NSW, 2011).

The most obvious disempowerment at work is lack of access to the most basic facilities. Even after-hours building access can be an issue. Very many casual teachers lack a desk, a computer, internet access, an email address, a pigeon hole, access to a phone, a photocopying card, or a private office where they can interview students.

Many spoke of supplying their own resources, despite their own income constraints. A very common refrain was the OHS issue of needing to 'lug books, papers, etc in the boot of my car', and to carry heavy folders around everywhere at work, for lack of secure storage space.

Sessional and casual staff spoke of lack of opportunity to network with colleagues to share teaching ideas and discuss learners' progress; of limited orientation (being left in a vacuum to 'get on with it' for 12 weeks); and even of a supervisor's failure to notify external exam results to a teacher had spent all year preparing the class

Staff meetings are scheduled without consultation on days when the casual teacher is not working. Some spoke of being made to feel unwelcome at staff meetings. Alternatively, one described turning up unpaid to a staff meeting on a day when she was not teaching, to find her name listed against items on which she was required, without prior warning, to report.

Invisibility can sit oddly with coordinating responsibilities, and with the fact that casuals often make up the majority of their work unit. This marginalisation of a large section of the TAFE workforce has implications for the quality of the learning environment and hence for the capacity of the VET sector to create a vibrant culture of innovation and skill renewal.

An important aspect of **representation insecurity** is inability to claim one's rights, and to work collectively to do so. In 2011, even a union activist, responsible for the survey from which we have been quoting, commented that she had to curb her own tendency not to speak up and claim entitlements in the workplace, for fear of not being given work in future.

Undermining the Security of Skill Reproduction

Fragmentation of communication and collaboration in the workplace is likely to undermine the informal workplace learning through which skill reproduction and innovation occur. Hence TAFE casualisation has the potential to undermine the security of skill reproduction at a social and industry level, as well as being likely to frustrate the skill and career development of insecurely employed staff.

Exhibit 7 illustrates aspects of the risk to individual and national skill reproduction security posed by TAFE casualisation. The 'hunger' of many TAFE casual teachers to become highly competent educators may lead them to pay for their own training, incurring the financial liability of a HECS debt, rather than having the security, available to permanent staff, of employer funding support for study.

One-sidedness characterises an employment relationship in which investment in postgraduate qualifications is a condition of employment (Exhibit 7) but in return no security of employment is provided.

Exhibit 7. Skill reproduction insecurity in TAFE - Limited access to professional/career development; Limited skill recognition

I've put myself through a [teacher education] degree, I'm paying for it on HECS. I haven't had any reimbursement from my employer, whereas if I had been a permanent they would have actually put me through a diploma (ACT, 2000).

There should be a better process to recognise my skills after three years with [this college] and twenty years in the industry. This would provide some sense of security and stability and also be fair recognition of the work done (Vic, 2003).

If I could wish for one thing it would be to be asked to attend professional development sessions and be paid for this and to be kept up to date (Vic, 2003).

In my field they even require us to have Masters degree to be considered for employment, but that doesn't mean anything in terms of security (NSW, 2011).

For those working as casual part-timers because of family responsibilities, attending professional development programs on non-teaching days involves more than donating unpaid hours – financial loss is incurred through the need to find additional child care. Thus a common wished-for change was:

Paid childcare support for attending professional development on days when not engaged – can't afford to attend otherwise (NSW, 2004)

As far back as 1994, this issue was creating cynicism and divisiveness:

Referring to the training session on the new syllabus, which a full-time permanent could find as part of their [normal] duties: one permanent part time worker said to me, 'I can't possible come, because it's not a rostered day for me, and it will cost me \$60 in child care to come to that, because I don't have my child booked in on Fridays'. The casuals came, because if they didn't come, they won't get more work: as simple as that. Kiss their foot and somehow terribly interested. So they'd have to shell out for child care (NSW, 1994).

TAFE Conclusion: Insecurity as False Economy

Many research participants were acutely aware that government policies were the ultimate source of their insecurity. They saw their own attempts to shore up the quality and resource gaps in service provision as exploitation. The following statement sums up their sense that their own attenuated circumstances were part of a larger picture of short-sighted lack of stewardship of national skills:

Really, in the long run, employing people either on permanency or 0.7 loads is an investment well spent...It's an investment in the future because you get committed staff.... They give us new packages to deliver, who's going to have the time to understand them and make them work? And it's our, basically our reputation on the line (Vic, 2003).

Given the crisis of renewal in tertiary education, this statement is even more relevant now than when it was made nearly a decade ago.

11.3.3. University Impacts

Insecure teaching work in TAFE and universities has a shared characteristic differentiating it from casual work in most other industries: the problem of reducing professional work to an hourly rate (May, 2011). In universities, unlike TAFE, a basic 'three-hour formula' dating back to the original 1980 academic award, has always ensured that loadings for non-classroom work are multiples of the hourly class contact rate. In rounds of enterprise bargaining over the past decade, a

sliding scale has been developed, whereby the loading factor ranges from one (ie zero additional hours' payment) for tasks requiring little background work, such as laboratory demonstrating, to four (ie an additional 3 hours' payment) for development of a 'distinguished expert' lecture.

Nevertheless, university casuals are finding themselves doing increasing amounts of unpaid work. The loading formula has become increasingly unrealistic, with a considerable expansion in the background work required for teaching. Tutorial class sizes have doubled since the early 1990s, effectively doubling the rate of marking and follow-up per class. The student demographic has changed, requiring more one-to-one out of class contact. Internet means that virtually all teaching now has an additional on-line component, requiring the elaborate preparation of supplementary resources, many with an 'infotainment' component. Email and social media make the hourly-paid casual or sessional staff member on-call to students at all times. It is only in the most recent bargaining round that the inclusion of additional payment for marking was achieved:

This semester I will be paid for half an hour each essay that I mark. As an experienced tutor, this is wonderful situation to finally find myself in. I always provided extensive feedback to my students on their essays, knowing that much of my time spent in doing so would, effectively, be free labour (NTEU 'casual Voices', 2010).

Whilst there is now a reasonable regulatory basis for addressing insecurity in the university sector, there remain major challenges of enforcement, with similar pressures of insecure funding and budgetary devolution to those in TAFE. Moreover, there are new pressures to contend with:

- The onset of demand driven funding in 2012 will exacerbate financial insecurity, with differential impact across the sector, and a direct flow-on to staffing insecurity;
- Research is managed in this country through self-funded research centres dependent on their capacity to bring in competitive grants, and cycles of limited-term grants never quite covering necessary outlays. This is a recipe for insecure staffing;
- For ongoing staff, managerialism has meant an exponential increase in administrative load. In addition, major competitive and performance management pressures for research output have generated a sense of insecurity in continuing staff, leading some universities to move to the US core/periphery staffing model whereby teaching is increasingly being done by fixed term and casual staff to allow continuing staff to focus on publishing.

In addition there is the challenge of repairing the legacy of the employment policies and practices that resulted in the 'lost generation' of university staffing. There is a strong continuity in statements made by university casuals in 2002, 2008 and now.

Abuses of Flexibility

Ongoing casual employment is abusive because of the disproportionate share of risk borne by workers. Being catapulted back into the labour market at the end of each teaching session is a source of crippling insecurity, rendering casual university worker powerless to organise their lives or work effectively:

Simply to move away from the insecurity and uncertainty of casual employment to one of being able to plan for the future of the family, plan for holidays etc. As it stands I do not know from semester to semester whether I have a job or not, virtually up to the week prior to lectures (2002).

It is also inimical to career plans:

The shortness of the semesters leaves almost six months a year that I need to organise other work, work which in no way contributes towards my future career as an academic (2008).

Main casual academics are earning a livelihood from university work, which is their main job. The statements in Exhibit 8 are likely to have been made by qualified academic jobseekers, as their teaching lives are so full that it is hard to imagine that they are still studying as 'academic apprentices'. Their chances of finding ongoing work, however, are being reduced by their working situation.

The third quotation in Exhibit 8 illustrates the situation of the 'multiple part-time casual jobholder', none of whose jobs is a 'main job'. The overloading of hours across three universities would make it hard to conduct research and thus to be competitive in applying for an ongoing job. In the other case, the capacity to use the unpaid summer months in self-funded research and writing is undermined by being cut off from library and internet facilities – it is necessary to be a university staff member to gain access to on-line academic publications, unless one is prepared to pay \$33 per article downloaded.

Exhibit 8. Labour market insecurity in universities - The constant need to look for work; or to rely on multiple insecure jobs

It's hard to organise your life as you don't know whether you'll have any work – nothing is definite...in 'no man's land' – it's as if you don't exist any more. Your email address is cut off between contracts and you have to go through the whole process of being 're-employed' each semester (2002)

I realise it is difficult to indicate hours etc until enrolments finalised but it is difficult to plan my life when I don't know if I will be required at all (2002).

I have casual/sessional employment in 3 universities (a mix of lecturing and tutoring)...I would like to be able to work sufficient hours at one university only so that I don't have to seek employment at 3 universities simultaneously. ...I need to accumulate sufficient funds during each semester to be able to maintain myself during non-teaching periods. This is extraordinarily stressful (2008)

One simple recommendation is thus that universities make research facilities and library access available to casual academics, on request, between November and March, in order to support research and writing.

Even if casual academics were able to secure the fixed-term contracts that would clearly be more appropriate to the work they are doing, a barrier to further conversion to ongoing employment mode is the need for a merit selection at some point. Excellent ongoing casual work may not count as 'merit'. The labour market transition problem, and the reason that casual academic work tends to be a 'trap' not a 'bridge', are illustrated in this statement:

Late last year I applied for an ongoing position at a regional university where I have worked as a sessional tutor and lecturer almost continuously since 1993. I was the second ranked applicant, and was told the panel struggled to decide between me and the successful applicant, but finally decided - with great difficulty I was told - on the basis that the other applicant was 'from elsewhere' and would bring 'fresh new ideas' to the school. Clearly this was not one of the selection criteria. ... I am an excellent teacher, receive great student

feedback every semester, have an excellent academic record and a PhD in a dynamic and very current area. It is devastating to feel that more than twenty years of study and hard work has amounted to nothing, and that my years of dedicated sessional experience have been used as a reason NOT to employ me in an ongoing position (NTEU/CAPA, 2011).

Compounding labour market insecurity is employment insecurity – the risk of losing work once it is obtained. Although hourly-paid, casual academics are engaged for the duration of a teaching session. Vulnerability to job loss normally occurs at the end of a session. Alternatively, having waited anxiously throughout the mid-year or end-of-year break, the casual is not told until the last minute that there will be no work forthcoming in the next six months.

The author of the first statement in Exhibit 9 believed that a deliberate policy of chopping and changing staff was used as a strategy by local managers in order to avoid building up any expectation of more on-going work. This sort of one-sided flexibility is in itself an abuse, if it works against the best interests of both the casual employee and the students, and is done purely for budgetary purposes.

Exhibit 9. Employment insecurity in universities- Vulnerability to job loss, often at short notice

They keep changing casual staff every semester which makes both students and tutors suffer (2002).

It becomes tense at the beginning of each term as students contact me but I don't know until the week before term starts if I am employed again! (2002).

Casuals are treated casually, like disposable people. The only plus side is that I can work part-time hours (2008).

In a statement that combines references to employment insecurity and income insecurity of insecurity, a casual academic commented:

...Last year I was course controller, took the lectures, some tutorials, set assignments and exams, coordinated the exam marking, dealt with student problems (including one seriously mentally ill student), liaised with other services etc. for the princely sum of \$7,000 between July-Jan. I found out 2 weeks before the semester started that I would not be needed this semester. This is all to do with funding. A second semester of repeat lecturing would at least have made all that work worthwhile...(2002).

This experience represents vulnerability to unexpected loss of a job in which the writer had invested so heavily that he/she felt a moral right to the program materials. . It also represents income insecurity and a very inequitable effort bargain.

Even if a fixed-term contract is offered for a session's work, the next contract that is offered may be a casual one:

I have co-ordinated units and been employed to do this on the basis of fractional part-time employment. Then, a semester later, the work dries up and I am a casual non fractional staff member. I'd like some fairness (2002).

A general (technical and professional) staff member commented on the cancellation of a fixed-term contract mid-stream:

I was originally advised that a 6 month work contract was applicable. This contract was signed by both parties. After completion of stocktaking of assets within a 3 month period I was advised no further work was available (2002).

An extreme case of employment insecurity is the following example of unlawful treatment of a contract research staff member:

I was asked to do work, and told I would be paid ('work needs to be done IMMEDIATELY'). I did the work in good faith and then they refused to pay, as it had not been approved by the head of school (2002).

To complain about such treatment would have jeopardised future work: the university was in a regional town with few alternative employers.

We turn next to a consideration of work insecurity. Lack of control over working hours was an issue for a number of participants in both the 2002 and 2008 surveys. A response to a question on the single most wished-for change was:

Simply that timetabling should have allowed me to travel to the uni only once instead of my workload being split up, necessitating multiple trips. It seems to be 'assumed' that you're an academic on campus full-time (2002).

Exhibit 10. Work insecurity in universities - Limited say over hours or work schedules

...at the moment I have 4 weekdays per week in which there are only two paid hours per day (2002).

Theoretically [casual work] gives you flexibility to say no to dodgy work - but in reality it's such as small world that being labelled as fussy or choosy could damage your future ability to attract work. ...[You are] expected to be grateful for small mercies and always say 'yes' to work even if you are already over-worked (2008).

Too much work or too little - never a balance, periods of poverty that you never quite catch up on during the periods of 'plenty' (2008).

Exhibit 10 includes thoughtful analyses of the one-sided flexibility in work scheduling that managers obtain from casual employment. A further comment was:

Universities hire you because you provide the organisation with flexibility benefits but in reality they expect 'predictability' from you that is over and above what I am contracted (or more appropriately not contracted) for (2008).

Several participants in the 2008 survey indicated that they were able to obtain the hours they needed in order to manage complex work/family arrangements. This came, however at the cost of employment security and income predictability:

I would prefer permanent part-time employment ... my husband has multiple health problems and is on disability support pension and is carer for elderly mother with mild Alzheimers disease, so I do not want a full time position. I am working on semester based contracts (currently my 7th semester). Despite assurances that there will be ongoing work for me, the uncertainty of how many hours I will be offered each semester (and how much income) is stressful. No income between semesters is a problem (2008).

The fourth comment in Exhibit 11 suggests that permanently employed colleagues can be sources of exploitation, and suggests the need for cultural change. The explanation, if not the justification, for such behaviour lies partly in the general context of resource constrain and pressure, which seems severe at this university.

Exhibit 11. Task/workload insecurity in universities - Limited ability to negotiate job content and boundaries; Unpaid work elements and work intensity; Lack of leave entitlements

You take what's given – no choices ever (2002)

One is often having to teach courses outside one's field; teach courses other people have developed; not having the chance to create or develop courses; having to continually write new lectures because one is assigned to a new course - this particularly is time consuming and exhausting; having to do the courses full-time lecturers don't want to do; having little say over the running of the program (2008).

I work at least 20 hours per week extra on my subject and get paid for 1.5 hours contact time (2002).

Casuals are used to write course materials, run on line discussion boards, do research assistant work and help lecturers manage their huge student loads in terms of administrative work with NO assistance apart from what they can sneak through in marking payments (2008).

A point illustrated by the following statement from a casual member of the general (technical and professional) staff is that continuing staff actually need managerial expertise if they are to direct the work of inexperienced casuals effectively. Too often, clear job descriptions are lacking. Casual general staff seem to be engaged at quite low grade levels – possibly for budgetary reasons - and the degree of day to day supervision needed at these levels may be quite beyond the time budget of the supervisor, resulting in too much or too little work being assigned:

More direction in duties – set rather than all over the place. With my job having set specific days and times to work rather than whenever. Uncertainty in areas of procedure and not knowing what other people's roles are. Higher level staff understanding our workload in response to their demands (2002).

Amongst casual academics, complaints about unpaid hours of work were frequent and often angry. Here are some examples:

At present the pay I receive is laughable for the huge number of hours spent researching, sourcing, preparing and marking. If work is not carried out adequately, lecturers are open to immense criticism from students who are encouraged to complain and criticise (2002).

[I want] pay for student consultation, preparation and marking. I work at least 20 hours per week extra on my subject and get paid for 1.5 hours contact time (2002).

My main concern is in the time for preparation (underlining in original), negotiating curriculum, developing teaching strategies with the peer-lecturer and tutor in the same course – none of this time is paid for (underlining in original). I am also marking 4 major assignments in my time/no pay As a tutor – I am only paid for 2 x 1 hour contact times in the week, but spend 8-10 hours in preparation (2008).

As payment for marking has become better regulated in the current round of enterprise agreements, the issue is now one of enforcement. There is still a very significant spill-over of time-consuming non-classroom duties, well beyond the loading or paid marking hours. In both the 2002 and 2008 survey responses, numerous academics commented on what one called a 'chicken and egg' situation: they took on the work in order to try to build a research and publication profile so as to have a realistic chance of applying for a continuing job, only to find the casual teaching workload so overwhelming that research and writing were out of the question. A polite version of many comments was the following:

Not enough time to do my own research and establish a publication record to make me competitive for fixed term and continuing academic positions (2008).

Very many also complained of lack of leave entitlements. Some, apparently unfamiliar with Australian labour law covering casual employment, reacted with shock:

The bare pay rates if you attend and teach, and nothing extra in terms of sickness and leave is an utter con (2002).

Others, more knowledgeable, counted the lack of such entitlements amongst the drawbacks of the work:

Insecure employment, low pay, high workload, unpaid sick leave, no paid annual leave, no long service leave, grace and favour nature of employment, no access to promotion (2008).

Disempowerment

Casual university employees experienced two sources of disempowerment: income insecurity and representational insecurity.

As the typical comments in Exhibit 12 indicate, income insecurity is a great source of stress. Many casual academics are earning a livelihood from university work, which is their main job. In order to remain in the labour market, they may even need to outlay more than they earn:

My only income at the moment is 3 hours at the uni. To do this work I drive for 6 hours on the same day and spend \$60 on petrol. If I could get one more day it would not be such a financial problem (2008).

After waiting anxiously from November to February, a casual academic may get a contract:

The contract arrives the day before work commences (2008).

Even then, there will be a delay of at least a fortnight, most likely longer, and in extreme cases six weeks or more, before the first pay goes into the casual's bank account:

Budget approval for my sessional teaching did not take place until the first week of teaching started. The contract was then slow in being made up. Then, as a result of poor communication, I was not told to pick it up from the office (or where, in fact to pick it up from). It is coming up to week 6 and still no payment as a result of these delays. I will get 3 pays at once and masses of tax taken out (NTEU/CAPA, 2011).

Exhibit 12. Income insecurity in Universities - Unstable and unpredictable earnings; No buffer against earnings loss; Inability to save for future needs

I have no money for Christmas presents for my children (2002).

It's very difficult to have your wages drop out at the middle of November and not pick up again until the beginning of March ... the best I can succinctly say is that that's very harrowing (2002)

Financial hardships become a 'nightmarish' journey, when caught between under-employment in a tertiary arena and expectations of mutual obligation from government employment policy. Add the burden of HECS debts already gained, and often ill-health is the end result (2008).

It costs money to teach casually: internet access and up-to-date software for computer so that students may access you beyond contact hours (as one has no office at university), buying books... (2008).

To the effects of low pay and income stream gaps (not being able to afford Christmas presents or holidays for children) must be added the risk of sudden loss of earnings if expected work does not materialise. The transition from casual pay to social security has time lags that create hardship, and for some, scholarship arrangements and HECS liability are further factors that do not mesh easily.

Australia is well behind parts of Europe in addressing the flexicurity agenda of facilitating seamless transitions between the labour market, social security and education systems.

For casual university workers, to the injury of insecure income must be added the rankling sense of insult, that the work being performed is under-valued, both at the base rate, and because of underpayment of aspects of the job:

\$25.70 [an hour] for a Research Assistant is terrible given the skills/qualifications we are expected to have (2008).

My wages have dropped substantially in the last couple of years, so that for one four hour 1st year painting class I am being paid between \$550 and \$800 LESS per semester this year than last year (the variation is dependent on whether I am involved in the examination or not) (2008).

A third income-related grievance is the lack of compensation for outlays and expenses associated with carrying out the job:

[The most important issue to address is] adequate pay for all work undertaken - payment for student liaison (email etc...real pay for real work trying to keep students in the courses for the Uni...without any financial rewards. Real payment for marking and feedback time for students. More assistance with planning of lessons or more pay for the planning (2008).

[The most important issue to address is] increasing rate of pay to take into account real time spent outside of face-to-face teaching, and the lack of security that comes with being a casual (2008).

[The most important problem is] being paid for administration time of student emails (2008).

In addition to the widely-articulated call to be 'paid as part-time permanent' (2008), a number of casual employee participants made concrete suggestions for mitigating some of these problems:

Higher superannuation contribution (almost nonexistent in the current situation) (2002);

A non taxable allowance for distance education casual academics for their office expenses (2008);

Being paid a stipend in the semester breaks (2008);

Review of the tax treatment of part time scholarships for researchers who supplement their income with casual academic work (2008).

The second source of disempowerment for casual university workers was their marginalisation, isolation and lack of voice (Exhibit 13).

Exhibit 13. Representation Insecurity; Disempowerment in Universities - Lack of voice; Fear of speaking out, Marginalisation and exclusion. Lack of respect, rights and resources

At the moment I feel largely invisible

I would like to be able to work adequate hours to ensure I am no longer invisible in the department....'

I do not feel part of the academic community although I have been employed (as a casual academic) at this university since 1999.

Access to a good work space, not simply a desk in the photocopy room and an old slow computer.

The physical manifestations of marginalisation were a strong theme in both 2002 and 2008. These included non-provision of a workspace, secure storage, email, phone and internet. They are essential tools of trade. Failure to provide them

involves the casual in the expense of supplying them instead, and indicates lack of respect for the dignity of the learning relationship with students:

Last year when being employed casually to teach total of approx 200 students, I did not have my own phone or office even when working 17 hrs/week contact time. Couldn't have students contact me easily except at home. Had no place to have private discussions with students (2008).

On some campuses, the scant regard for casuals' safety and well-being is indicated by the fact that:

Casuals are not given parking permits. I have to park a great distance and sometimes walk to the car in the dark (2002).

Casuals' degree of integration into the workplace was measured statistically in the 2001-2003 surveys in five universities. Responses from 1,337 casual academics indicated that:

- Advice on job requirements, methods and standards was hard to obtain (52%)
- There was limited contact with other staff (56%)
- Many casuals did not get performance feedback (58%)
- They were not included in social activities (70%)
- They were unable to attend conferences and seminars (70%)
- They had not been made aware of their entitlements under awards, agreements and policies (72%)
- They had not been advised of career options (80%)
- They were not included in meetings and decision-making processes (85%) (Junor, 2004)

There were concerns about invisibility and isolation. Hopefully, in the years since 2002, the following comment has become less applicable:

Once you sign a contract up in Orientation week you don't see or hear from anyone at the Uni (except students) until Week 12 (2002).

Nevertheless, a casual academic is still likely to feel that:

The quality of my work and commitment is invisible to the institution (2008)

Teaching and Learning Committees, both at local and at national network level, have started to address casuals' call for inclusion. With the sheer volume of casuals in the system, such initiatives face a steep challenge.

Casuals are locked out of research, and yet in the teaching area too, they tend to be denied autonomy:

It can be a strange working position when you do the job without having any input in the way it is shaped (negative for me and institution); prevents participation in a variety of academic activities reserved for permanent staff (2008).

One is often having to teach courses outside one's field; teach courses other people have developed; not having the chance to create or develop courses; having to continually write new lectures because one is assigned to a new course - this particularly is time consuming and exhausting; having to do the courses full-time lecturers don't want to do; having little say over the running of the program;... and generally being exploited (usually with a smile) (2008).

A final issue of representation insecurity is that of voice. In the workplace, powerlessness to assert one's rights was identified as a major issue:

A severe worry is the inability to express any dissatisfaction with any aspect of the position/university (2008).

The ability to network is also very useful. However given the lack of a clear career path this 'networking' has a tendency to turn into outright nepotism; a practice which fosters exploitation and works to stymie ones' political voice--who wants to be a squeaky wheel when it simply means getting the sack? (You want to be paid for marking? Sorry, no soup for you!) This environment also creates unhealthy competition between colleagues and kills cooperation (2008).

In terms of employment and labour rights, the work that has been done by the NTEU and CAPA since 2007 is starting to meet the need for non-nepotistic networking and collective organisation. The 2008 NTEU survey reached and was completed by casuals who, from their answers, had previously been unaware of the union. There was clearly a large information gap. Participants expressed a need for:

A sense of community with others who share similar circumstances, to reinforce it's not just that you are some how unemployable (2008).

Clear statements about what are our rights and entitlements in terms of number of hours work, pay rates, timeliness of payments etc - advice on pathways to more secure academic appointments (2008).

Skill Reproduction Insecurity: Two-Tier Workforce versus the Crisis of Renewal

Casual academics' marginalisation has a structural basis, with research being the fault line: They are caught in the middle of two contradictory forces, and which prevails will determine the shape of the Australian university sector for years to come. One model, driven by government research excellence policy, involves a move towards a two-tier academic labour market. A secure research-intensive segment has been recruited on the basis of international track record, whilst teaching is increasingly being hived off to insecure 'adjunct' staff. The other model will emerge from the interaction between a funding model driven by student demand, and the effects of the ageing and hollowing out of the permanent academic workforce during a period of enrolment expansion.

With university funding now being driven both by student demand and by rewards for research excellence, universities and work units will need to decide whether to invest in staff development for casual academics, and whether they will provide them with access to research support and training (2008).

At the moment, a major concern of casual academics is that their career pathways are blocked, that there is no transition to secure academic work (2008)

Exhibit 14. Skill reproduction insecurity in universities - Limited access to professional/career development; Limited skill recognition

Lack of ... career prospects if people remain in the casualised work force. It is vital that young academics be supported to stay in the sector (2008).

No access to career development eg can't access research funding, but must have it to be appointed as lecture B which is now entry level position ...so casual work only develops teaching capacity (2008).

I have contributed to research grants applications only to find that as a casual I cannot be included (2008).

Anxiety over career pathways was expressed by many survey participants, particularly in the 2008 survey, with word like 'trapped' being used commonly.

There is absolutely no support in any form, for a researcher's independent academic career. I feel like I am in a temping agency (2008)

Not included in any research funding applications so can't develop as a researcher (2008).

If casual academic work is to be a stepping stone and not a trap, casuals find they must fund their own research, and do it entirely in their own time. The costs are prohibitive, and there other barriers:

I must pay \$1200 to do NVivo(qualitative data analysis) or ACSPRI (statistics) course - from my own limited pay. I have asked if I could apply for an internal research grant as a long term employee (even if casual I have been there for a number of years) but was told no. This means I must not only research in my own time, but also fund from my own resources. As a casual it is difficult to have credibility - eg I was recently offered a small research project, but must apply for it under my own name, not use the university system. This means I must buy my own insurance and legal advice - or go without, or do no research which will almost certainly mean I never get employment (2008).

Conclusion – Universities

At the political level, factors such as funding policy based on unrealistic use of market mechanisms, short-term planning and devolved budgeting, need to be examined for their unintended consequences.

The key to change is an increased voice for casuals, in the workplace and in their union. The 2008 casual survey itself came up with an impressive and practical list of proposals, only some of which are included here, and some of which have begun to be implemented. It needs further additions to ensure that technical, professional and contract research staff concerns are included.

Proposed Casual University Workers' Charter

Inclusion: Paid meeting attendance, inclusion in research teams, paid professional development access

Rights and Resources: Transparent recruitment process; issue of ID and library card before session starts; signing of contracts before courses start; clear job description, appointment letter, office and resources

Career Issues: Fixed term contracts after 3 years; free access to education, professional development courses; recognition of casual service for tenure, entitlements

Pay: One month's pay before teaching starts; parking permit; pay nexus to continuing staff with increments; Pay for student consultation including email and on-line work; Sick pay and holiday pay for long-term casuals; Stipend in semester breaks

Research Access Issues: Research time to be factored into casual engagements; inclusion in research teams

Implementation Strategies

Casual university employee networking: Social events, regular conference; communication trees; meetings - especially start of semester;

Organising and Educating: Fact sheet, publicity on pay and conditions especially marking rates, training for voice, Year of the Casual;

Lobbying inside the university: Educate non-casual colleagues, course coordinators, Head of School;

Monitoring and audit: Of employment duration; of compliance breaches;

Servicing: Casual Resource Centre - photocopier etc; University or city wide casual pools; Online data base of casual vacancies;

Lobbying outside the university: National publicity campaign on university casualisation; Rating of universities on casual-friendliness; Legal challenge to unlawful employment practice.

12. Discussion and Conclusions

12.1 Summary of the Current Situation

In Australia and similar nations there is a two-tier labour market. One tier is the 'core' market which is male-dominated and has a greater concentration of better paid and more secure jobs, often with career paths. The other tier is the female-dominated 'marginal' or contingent labour market, which has a high proportion of low paid, dead-end and insecure jobs. These 'core' and 'marginal' jobs sometimes co-exist in the same industries, the same occupations and even the same jobs. For example, in university teaching in Australia some tutors and lecturers have permanent contracts and career prospects, but a high and growing proportion do not. As we have seen, the majority of the university teachers whose jobs lack security and opportunities for progression are women.

The high prevalence of job insecurity amongst women is a prime example of ways in which prime age adult women, many of them supporting dependents, are still disempowered and denied economic independence. It affects women of all ethnic backgrounds, with a wide spectrum of skills and qualifications, in a range of industries.

Increased participation in paid work and high levels of educational attainment have not provided women with economic equality, empowerment, a safe and healthy work environment or freedom from poverty. And one of the major reasons for this is the growth in insecure work. Precarious and insecure work creates greater economic inequality, insecurity, and instability for workers, their families and communities.

In Australia the high prevalence of insecure employment is a major factor preventing the country meeting its international obligations of promoting gender equality, empowering women, eradicating poverty and creating decent work for all. It is one of the barriers preventing women from progressing to more senior leadership and decision-making roles. Casual and other forms of insecure work also limit many women's ability to achieve economic independence, negotiate equal partnerships with men in family life, leave abusive relationships and keep themselves and their children out of poverty.

Through the increased use of insecure work, downward pressure is exerted on wages, conditions and health and safety for both men and women. The costs and risks associated with working an unstable market are shifted from the employer to the employee. These include the costs of training, pensions, holidays, sick leave, maternity and paternity leave, and, in the case of many 'self employed' workers, the costs of tools, equipment and protective clothing. The erosion of wages, conditions and safe, healthy standards of employment ultimately affects the entire labour market if it is not checked. It also imposes significant 'externalities' – hidden costs being paid by families, communities and ultimately the whole of Australian society (Nossar et al., 2003: 21).

12.2. Challenges and Opportunities

World-wide, globalisation has significantly undermined nations' attempts to create and maintain decent work for all (Barrientos, 2007: 2). And the intersection of economic liberalism with traditional gender politics means that it is predominantly women who are found in work that is insecure and low paid, whilst young working class men are in insecure work where their physical health is put at risk.

We need to address the policies and practices that have encouraged the growth in job insecurity and contingent work in Australia. Deregulation of labour markets and direct competition with poorer nations with less than favourable working conditions has involved Australian firms and working people in a 'race to the bottom'. A way to create the economic conditions for reducing the high incidence of job insecurity work is to provide a greater focus on supporting the domestic market, through a more extended use of industry and workforce development programs. Whilst these were abandoned with the advent of neoliberal policies in the mid-1990s, the fallout, in terms of the loss of national productive capacity, now requires a stocktake, as competition on the basis of low-cost insecure labour has proven unsustainable.

Nevertheless, social policies make a difference, and some countries' policies provide for a much higher level of job security than others'. Australia has a relatively high rate of insecure work compared with most other OECD countries (ACTU, 2011), and this has risen significantly in recent decades. By contrast, in the United Kingdom, the proportion of jobs that were permanent increased for both men and women, both those in full time work and those who were part-time between 1996 and 2005. At the same time, protections for temporary workers have increased, and more now make the transition into permanent work (O'Reilly et al., 2009).

It has been noted that extending all rights to paid holidays and sick leave to temporary workers in New Zealand is associated with lower rates of insecure working (Campbell and Brosnan, 2005). It is likely that adopting this policy in Australia would have the same effect and reduce the incentive to employers to employ staff on casual contracts.

The shift from reliance on a failed strategy of competing on the basis of reduced labour costs and undercutting labour standards will require a sustained and steadfast program to reduce the extent of insecure work through a program of labour rights regulation, enforcement and education.

It is a mistake to see insecure employment as something that has crept into the labour market 'behind the backs' of regulators. Rather, as Campbell and Burgess have argued in the case of casual employment, it is an 'officially-sanctioned gap in protection'; a 'startling example of social exclusion at the very heart of the labour regulation system' (2001: 171; 176-8). Burgess et al. (2008: 168) comment:

Put simply, casual employment has developed since it is legal to do so and there are few restrictions placed upon it through the system of labour regulation in Australia.

To take one example, under the *Fair Work Act 2009*, some but not all precarious workers are covered by some but not all of the ten National Employment Standards which set the floor of labour rights in this country. By contrast, in Europe, despite variable implementation and enforcement, there is at least a clear regulatory principle that no employment mode should entail 'less favourable treatment' than

any other as such systemic differentiation counts as discrimination (EU, 1999; Euractiv, 2008). It is within the power of the national regulatory system to equalise protections across employment forms, removing incentives for employers to undercut decent work standards.

The gap between regulation and its enforcement will always be greater when it is left to individuals to claim their right to fair treatment through 'procedural justice'. Their task becomes all the harder to achieve when there are holes in the safety net, with regulatory loopholes created by a lack of clear, universal, substantive labour standards safeguarding security of employment, working conditions, income, skill development and voice.

The following recommendations seek to address these challenges.

13. Recommendations

The recommendations below include measures that would assist all workers – those currently in permanent jobs but at risk of having their pay and security eroded, plus all those men and women currently in precarious employment or vulnerable in the labour market.

They take account of the fact that the majority of people in insecure work are women, and this undermines progress towards gender equity.

Summary of Recommendations

Protecting all workers from job insecurity and related problems

- Use casual engagements only for irregular, intermittent or very short-term work
- Legislate to prohibit creating temporary jobs if the work is ongoing
- Convert temporary jobs to permanent ones after three months.
- Extend all rights to paid holiday, sick, bereavement & parental leave to casual & temporary workers
- Review the policies and practices that have encouraged job insecurity
- Promote compliance by employers
- Expand and strengthen labour inspection
- Ensure unions participate in monitoring compliance
- Clearly set out minimum standards of pay, conditions, rights and protections
- Make the main beneficiaries of supply chains accountable for OHS
- Close compliance loopholes

Recognising and addressing the gendered nature of job insecurity

- Implement work/life balance initiatives in *all* jobs
- Fully recognise women's need for a secure income
- Require that part-time *permanent* jobs, provide the option of returning to full time
- Work to promote equal pay in annual earnings
- Collect gender-based statistics on job security
- Conduct gender impact assessments for policies that affect job security
- Assess the gendered health and safety risks of insecure work
- Government Working Group on after-school care

Sources: ITUC 2011: 23; ACTU 2011; Vosko 2010; Nossar et al., 2003; Australian Human Rights Commission, 2008; Harpur, 2007; Campbell and Brosnan, 2005.

These further recommendations identify the role that government can play in enforcing labour standards for insecure workers.

They also recognise the particular labour market precariousness of many Indigenous and immigrant women, and of women with disabilities.

Further, they contain suggestions for tackling the severe but somewhat hidden scale of the insecure work problem in tertiary education.

Further Recommendations

Shaping Opinion and Practice

- Governments to avoid funding mechanisms that encourage workforce casualisation
- Governments to tie tendering practices to decent work requirements
- Require corporate governance disclosure of insecure work levels along supply chain.

Equity/inclusion Initiatives

- Consult Indigenous community groups, immigrant advocacy groups and disability advocacy groups (including groups representing women), on approaches to overcoming work insecurity
- Regularly collect labour market statistics for equity groups
- Urgently investigate the claim that under the new CDEP, full-time skilled work is being done for Newstart wages, half of which are quarantined under the NTER
- Build personal, maternity, recreational, sick, long service and cultural leave, into CDEP; attach superannuation and ongoing training to CDEP
- Fund community-based education programs for Indigenous and Culturally and Linguistically Diverse women on cross-cultural and employment rights issues
- Ratify International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Support job maintenance of women with disabilities by extending 'reasonable adjustment' supports to domestic sphere, improving child care and mandating flexible start/finish times.

Tertiary education

- Temporary/fixed term contracts for all regularly timetabled work
- Mandatory office and internet facilities, regardless of hours taught
- Mandatory pay for course preparation, marking, travel to workplace assessments, consultation
- Pro rata accumulation of service, regardless of breaks, for leave and incremental entitlements
- Pro rata pay for non-classroom work on an hour for hour basis/for time actually worked
- Limitation of fixed-term contracts to defined limited term purposes
- Pay for 4 weeks before each teaching session for preparation and marking
- Maintenance of on-line and library access over the mid-year and summer recess
- Remove \$450 threshold on Superannuation Guarantee;
- Sectoral employer-contribution insurance fund to cover casual leave entitlements
- Implement Casual University Workers' Charter and develop a similar one for TAFE

13.1 Protecting All Workers from Job Insecurity and Related Problems

We need to address the policies and practices that have encouraged the growth in job insecurity and contingent work in Australia. Deregulation of labour markets and direct competition with poorer nations with less than favourable working conditions has involved Australian firms and working people in a 'race to the bottom'. A way to create the economic conditions for reducing the high incidence of job insecurity work is to provide a greater focus on supporting the domestic market, through a more extended use of industry and workforce development programs. Whilst these were abandoned with the advent of neoliberal policies in the mid-1990s, the fallout, in terms of the loss of national productive capacity, now requires a stocktake, as competition on the basis of low-cost insecure labour has proven unsustainable.

The shift from reliance on a failed strategy of competing on the basis of reduced labour costs and undercutting labour standards will require a sustained and steadfast program to reduce the extent of insecure work through a program of labour rights regulation, enforcement and education.

At present in Australia many employees are kept on casual contracts for years. The measures that are needed to prevent this have been defined for some years now, in the quality part-time work agenda (Pocock et al. 2004; Charlesworth and Chalmers, 2005).

Essentially this agenda advocates the extension of minimum labour standards to all employees; linking reform of insecure employment to overall improvements in the quality of working life.

Pocock et al. (2004) have suggested the establishment of a comprehensive safety net for all workers based on labour security. This would involve:

- Applying strict irregularity/intermittency criteria to casual work and also imposing time limits on its duration;
- Specifying minimum shift hours;
- Because much casual work is currently accepted by employees as a way of accessing part-time hours, improving the quality and reversibility of part-time employment
- Reducing the conditions gap between casual and continuing employees, either by:
 - increasing the casual loading to the point where employers no longer see it as a lower-cost alternative to leave entitlements, and/or (preferably)
 - mandating a uniform level of entitlements to sick leave, family leave and recreation leave; and extending casuals' pension rights.

In Australia, some industries already provide for conversion from casual to permanent employment when it is clear that the work is regular and ongoing. This precedent can be generalised. A range of Modern Awards allow casual employees to elect conversion to permanent employment. The following are examples:

- Conversion after 6 months: *Manufacturing and Associated Industries and Occupations Award 2010; Food, Beverage and Tobacco Manufacturing Award 2010; Vehicle Manufacturing, Repair, Services and Retail Award 2010;*

- Conversion after 12 months: *Graphic Arts, Printing and Publishing Award 2010; Hospitality Industry (General Award) 2010; Road Transport and Distribution Award 2010; Transport (Cash in Transit) Award 2010.*

These provisions derive from the old Metal Industry standard, and reinstate entitlements that were ruled out under WorkChoices laws. Unions NSW launched a secure employment. In February 2006, a test case in the NSW Industrial Relations Commission resulted in across-the-board amendments to State awards to include an entitlement to opt for permanent employment after six months' service with the same employer (NSW IRC 2006). As in the case of some hard-won state-level outworker protections lost in transition, so casual conversion initiatives seem to have been set back in the move to a national industrial relations system.

A recurring theme in this submission has been the gap between procedural and substantive rights. This gap is evident in the case of applications for conversion from casual to permanent employment. Whilst the relevant Modern Awards state that an employer may not unreasonably refuse such requests, the problem with this approach is that it is based on the 'right to request' principle, leaving the conversion initiative to relatively powerless individual casual workers. The main obligation of the employer is simply to notify eligible casual employees in writing of their right to request, conversion, and to 'not unreasonably' refuse such requests.

A preferable approach would be the legislative deeming of all casuals to be ongoing employees after a certain period of time. Deeming places the onus on employers to establish that the work is not ongoing. A period of 3 months has been suggested by Canadian author Vosko (2010: 111). This may seem a short time frame, but it has the benefit of increasing the costliness of any temptation by employers to evade the conversion requirement: whereas it may be tempting to lay off and re-engage casual staff on a 12 monthly basis, the cost and bother of doing so every 3 months would be a more effective deterrent. The 6 months' time frame would not be a deterrent in TAFE and university settings, where casual staff are typically laid off after every 12 to 18 weeks. Three months would be an appropriate time period within which to establish whether a job met the legal criteria of intermittency and irregularity identified. The importance of an across-the-board legislative approach, based on limiting the duration of casual employment is that it establishes a level playing field amongst employers, reducing the incentive to use low labour costs to undercut competitors in a race to the bottom on labour standards.

It has already been noted that extending all rights to paid holidays and sick leave to temporary workers in New Zealand is associated with lower rates of insecure working (Campbell and Brosnan, 2005). It is likely that adopting this policy in Australia would have the same effect and reduce the incentive to employers to employ staff on casual contracts.

The differential application of the National Employment Standards (NES) to several forms of casual and contract work is arguably a breach of the 'no less favourable treatment' principle. The 2009 House of Representatives Committee Report *Making it Fair* recommended a legislative amendment of NES 2 to allow all casuals the right to request and be granted flexible working arrangements (Parliament of Australia, 2009: Recommendation 14). Our recommendation is that other NES, including leave and jury duty entitlements, be extended to cover insecure workers. This should not be an excuse for reducing the casual loading. Instead there needs to be an updating of the work done by Smith and Ewer (1999) to itemise and provide cost

estimates for the full range of other disamenities of casual work, including foregone salary increments and training and differential superannuation access.

Making it Fair contains specific recommendations as to how the gap between different employment modes in eligibility for entitlements could be narrowed in the case of superannuation and long service leave:

- A legislated extension of the Superannuation Guarantee fund to all low income earners, with employer co-contributions required for all employees, and the creation of a fund to consolidate contributions and reduce administration fees for multiple jobholders (Recommendations 37-39);
- A long service leave scheme allowing portability of service, based on a similar system of industry-based employer contributions (Recommendation 40).

In effect, these provisions would help ensure that the major difference between casual and other work was the former's short term nature and intermittency, with regular casual work being deemed to have permanent part-time status.

The EU Flexicurity agenda has been designed find ways of replacing one-sided flexibility with a model that reduces asymmetries between non-standard and standard employment through a combination of labour standards regulation, social security and life long learning, improving transition security and broadening and deepening skills investment (European Expert Group of Flexicurity, 2007: 5). The application of this approach needs to be investigated for Australia. For example, the case study of the situation of casual tertiary education workers, engaged on a succession of contracts for half to 60% of every year, has shown how they repeatedly fall between the cracks of the labour market, the social security system and (for those who are studying for higher degrees) the education support system.

It may require legislation to mandate the restriction of temporary, fixed-term and contract work to where it is genuinely needed (ITUC 2011: 14). Such legislation would be a new departure in Australia, where traditionally, the regulation of work matters has been based, not on legislation but on the industrial relations system. Arguably, however, a legislative approach is needed, to set a level playing field of conditions across the labour market, ensuring that employers who want to do the right thing are not disadvantaged by competitors' use of insecure employment as a labour cost-minimising strategy. Legislation would allow the focus to shift to enforcement, without the need for piecemeal pursuit of a uniform standard.

The tertiary education case study in Section 11 gave examples of the sidestepping of regulatory requirements. This points to two themes of this submission: a) that regulatory loopholes can best be avoided by across-the-board 'deeming' provisions; and b) that regulation establishing individual procedural rights, such as the rights to request security provisions, needs be backed by effective enforcement mechanisms, which in turn need to be further backed by education campaigns and employee voice.

Promoting compliance by employers can be achieved in a number of ways. It may be done partly by clearly setting out minimum standards of pay, conditions, rights and protections. Multi-lingual education will be required, including a widening and strengthening of NES 10, entitling all workers to specific information about their own jobs in their own language. There will also be a need for further expansion and

strengthening of labour inspections, reinforcing recent developments in this regard (Goodwin and Machonachie, 2011). Unions will have a valuable role to play in monitoring compliance.

One of the more challenging areas will be addressing the job insecurity affecting home-based outworkers. These difficulties arise because of the sheer complexity of the supply chains of contractors and sub-contractors (Nossar et al., 2003). It has been recommended making the main beneficiaries at the top of the supply chain the main focus of accountability for employee wellbeing, health and safety (Harpur, 2007).

Meanwhile, in Australia the better-than-average minimum wage (based on international comparisons) helps protect many, though not all, insecure workers from the worst forms of exploitation (Vosko, 2010), and it is important that this is safeguarded.

Implementing these provisions will assist with meeting the United Nations Millennium goals for 2015 of the abolition of poverty and the ILO goal of decent work for all.

13.2. Recognising and Addressing the Gendered Nature of Job Insecurity

Gender divisions and stereotypes at work (paid and unpaid) are still endemic. Because of this, job insecurity can affect women and men quite differently. Insecure work is known to be associated with poorer health and safety outcomes for both men and women, but the kinds of risks and outcomes are different. Collecting gender-based statistics and improving our understanding of gender divisions and dynamics at work is needed to effectively address job insecurity and promote better outcomes for women and for men.

Implementing work/life balance initiatives in *all* jobs would help to break down rigid gender divisions, allowing men to spend more time with their children and women to be paid for more of the hours they work (ITUC, 2011).

At present, women's need for a secure and adequate income is not fully recognised, even though the majority of households is now fully or partly dependent on a woman's earnings in Australia today. Yet nearly two thirds of workers in insecure jobs are women. This illustrates the failure to recognise that financial security is vital to women's equality, status and empowerment, and for the wellbeing of their families and communities.

Many mothers in Australia 'choose' part time work because of a shortage of quality affordable childcare, lack of access to paid leave, tax and welfare payments that discriminate against 'second earners' and because their partners are working long hours and may not be in a position to share the load.

However, two thirds of part-time jobs – the majority of them occupied by women - lack security. Women who may previously have been in secure jobs find themselves in precarious employment once they have children.

One way to address this is to offer part-time *permanent* jobs, with the option of returning to full time permanent work after an agreed period of time. It is important to ensure that in all occupations, part-time work:

- Is permanent rather than casual;
- Has pro rata conditions that make it different from full-time work only in hours;
- Is based on two-way mobility between part-time and full-time work through
 - Restrictions on very-long hours norms in full-time work; and
 - Two-way or reversible mobility between full-time and part-time work (Lyonette et al., 2010: 53-53).

One of the disadvantages of part-time work is that even while offering security, it may close off career paths (Junor, 1998). The regulatory enablement of employee mobility between permanent full-time and permanent part-time work, depending on caring responsibilities, is an important protection of career paths and life-cycle earnings. Entrenching this right would be a step to minimising the long-term penalties of care-giving. Only the gender-equalisation of career paths and earning capacity will provide a basis for gender equality in responsibility for care-giving.

Significantly reducing job insecurity would help to move towards equal pay in annual earnings.

Collecting and acting on gender-based statistics has the potential to be a lifeline some of the men in precarious employment. As we briefly saw, the majority of labour-hire workers are young men in dangerous occupations such as construction and mining. Labour-hire is often used for the most hazardous jobs (Underhill, 2004). These young men have a high incidence of injury, because they are in insecure work that is poorly monitored. Gender impact assessments are therefore required for both women and men, to assess the gendered health and safety risks faced by insecure workers and to monitor progress in addressing the problems.

The evidence is compelling that Aboriginal and Torres Strait Island women, culturally and linguistically diverse women, particularly many recent immigrants, and women with disabilities, all experience unique forms of labour market insecurity. We have summarised some of this evidence, together with recommendations made by people working in these areas.

Our tertiary education case study illustrated how surprisingly little statistical evidence there is in this area. Whilst the data we collected are not all gender-specific, the voices of women come through loud and clear, and implementing any or all of the recommendations and the draft Casuals' Charter will bring remedies to women employed insecurely in these industries.

Collecting gender-based statistics on job security is therefore important for both women and men. It is a precondition for promoting greater equality at work, greater safety and greater opportunities for men to be involved in family life, and allowing women to contribute fully and be recognised for their achievements, improve self esteem and mental and physical health and for creating healthier families and communities.

Just as important as statistics are ways of hearing the voices of women. It is the voices of women from equity groups and in the tertiary education case study that make a compelling case in this submission. Community and advocacy groups are

experienced in developing appropriate consultative and education programs. The University Casuals' Charter and Implementation Strategy contain tried and true methods of mobilising for change, and some innovative approaches as well.

The uncertain economic climate cannot be used as an excuse for delay. In Canada a 1984 Commission on Equality of Employment rejected the '...unacceptable premise that ... gender is a legitimate basis for imposing negative consequences, particularly when the economy is faltering (p. 234, cited in Equal Pay Coalition 2008: 3, 29). Over 20 years later, the current rallying cry for pay equity in Ontario is: 'The fiscal crisis is not an excuse to ignore the human rights crisis' and 'Women can't carry the fiscal crisis'.

Implementing these recommendations will assist with meeting the UN Millennium Goals of promoting gender equality and empowering women.

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