



Australia's insecure work crisis: Fixing it for the future

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Insecure work in Australia

The incidence of non-standard work in Australia is alarming. The fact that our national government and some employer groups seek to deny this reality and refuse to support reforms to better protect workers in insecure non-standard employment is a disgrace¹.

The truth is Australia is rapidly changing and is now bearing an even greater resemblance to some of the worst aspects of American society. In both countries workers have been waiting many years for a decent pay rise, income inequality is at record levels, working hours are long or unpredictable and penalty rates are being cut or do not exist. For many workers stress related illnesses due to intense work pressures are common and large sections of the workforce live in fear of being sacked without notice or redundancy pay because employment security provisions have been eroded.

We have seen the consequences of these trends in America. These are the working conditions that lead to a broad range of health and social problems and that allow extremists and some politicians to divide populations. These are the conditions that if allowed to spread and fester can tear apart the fabric of decent society. They can eventually threaten democratic institutions.

Fortunately, Australia has not yet reached that point. But when the Government seeks to deny that the spread of non-standard insecure work is a problem we will not be able to address it. It is time to draw a line in the sand. We must not allow our country to go any further down this treacherous path.

The terms insecure work, precarious work and non-standard employment have been used interchangeably in much of the academic literature and policy debates. There is legitimate discussion about exactly what these terms cover. But there is near universal agreement among expert labour statisticians, reputable multilateral and tripartite institutions including the OECD and ILO, as well as among an extremely wide range of governments that these terms include several different categories of work. The exception to this consensus appears to be the Turnbull Government who has incorrectly asserted that only casual jobs are insecure. In their view all other forms of work constitute standard employment.

¹ Minister Laundy in an interview with Fran Kelly asserted that there was no increase in non-standard work in Australia. In so doing he asserted that only casual employment is insecure and the ratio of casual work to total employment remained at the same level as 20 years ago. RN Breakfast, ABC Radio, 21 March 2018.

Let there be no doubt, casual jobs are definitely insecure, and there are far too many casual jobs in Australia with roughly one in every four people employed on a casual basis. However, employers have discovered many other ways to move workers from standard to non-standard insecure forms of employment. These strategies include: using labour hire companies to create triangular employment relationships; sacking people in standard employment and rehiring the same workers to do exactly the same job but calling them “independent contractors” to lower their labour costs; using multiple short term contracts to avoid workers acquiring benefits that are only applicable to those in full-time permanent positions; replacing standard full-time workers with part-timers who face variable hours from week to week and who cannot get as many hours work as they would like; exploiting temporary visa holders and other groups of exploited workers are all in non-standard forms of employment and face high levels of insecurity².

Problems associated with the expansion of non-standard employment are not confined to Australia. This is a global trend that has concerned many international institutions including the OECD, IMF, The World Bank and the ILO. All of these institutions are currently engaged in major reviews concerning the future of work.

It is also a major concern of statisticians and those that generate the labour market data that economist and policymakers use. In October 2018 the 20th International Conference of Labour Statisticians will take place and issues related to the measurement of non-standard employment will be high on the agenda. In preparation for this conference experts from national statistical offices around the world have already met four times and a draft of the resolution to be debated and adopted at the conference in October this year is now publically available³. Interestingly an ex-staff member of the Australian Bureau of Statistics has led the research work of the secretariat in preparation for the conference.

²In particular the number of dependant contracts is rising in Australia. Dependent contractors appear largely indistinguishable from employees in the way they work but who do not enjoy the standard rights and benefits of employees. Many of whom are workers in occupations which used to be full time secure jobs. Now the workers are told they are self-employed contractors and must get an ABN e.g. cleaners, truck drivers and hairdressers just to name a few occupations where this dramatic change in the labour market is taking place.

³ See International Labour Office (ILO), MEPICLS/2018, “ 20th International Conference of Labour Statisticians resolution concerning statistics on work relationships”, 5-9 February 2018. And MEPICLS/2018/1 “ Final report of the meeting pf experts in labour statistics in preparation for the 20th International Conference of Labour Statisticians, Geneva, 5-9 February 2018

These meetings of experts, and the resolution they have prepared, make it absolutely clear that the definition of non-standard employment must go well beyond casual employment. At the expert meeting of labour statisticians held in February 2018, Mr David Hunter (the former ABS official) outlined the issue this way:

“As working relationships evolved ICSE-93 (which is the international classifications of employment that national statistical offices currently use) no longer adequately describe existing and evolving types of working relationships. These concerns centre on “non-standard” forms of employment where “standard” referred to work that is full-time, indefinite, formal and part of a subordinate relationship between an employee and employer. Forms of employment not fitting the description “standard” include multi-party employment relationships, dependent self-employment and various forms of non-permanent employment arrangement..... The proposed new set of standards sought to address these varying limitations”.⁴

If the Australian Government and employers continue to insist that casual workers are the only people engaged in non-standard employment they will stand alone outside the global consensus on this topic.

While there is absolutely no doubt that non-standard insecure work goes well beyond casual work, there has been legitimate debate about how to classify part-time workers. For example, the most recent meeting of expert Labour Statisticians decided that: “Part-time work was considered non-standard but did not necessarily infer the transfer of risk to the jobholder”.⁵ In other words all part-time work was considered to be non-standard but perhaps not all people in part-time jobs are insecure. The ACTU acknowledges that a proportion of part-time workers choose this form of work because it suits their work-family life balance or other personal reasons. However, a very large proportion of people working part-time do so involuntarily, because they cannot find a standard full-time job. Many would prefer to work more hours but this option is not made available to them. People engaged in involuntary part-time work should definitely be considered insecure and non-standard.

⁴ ILO, MEPICLS/2018/1, page 3, paragraph 13.

⁵ ILO, MEPICLS/2018/1, pages 3-4, paragraph 18.

The growth of insecure work is no accident. It is a result of a conscious business model that promotes the fragmentation of traditional employment arrangements and the shifting of financial risk from employers to workers. Labour hire and sham contracting are clear examples of this business model.

We need to restore balance to our labour market. For this we must: revise our labour laws and labour market institutions; re-visit our wage fixing mechanisms; reconsider the unfettered expansion of precarious employment arrangements; and, strengthen the capacity for workers to protect their rights by organising in their trade unions.

Australia is a divided nation

Australia is increasingly a divided nation. On one side of our vast chasm sit a small elite that enjoy a Hollywood lifestyle; opulence bankrolled by exorbitant executive salaries and untaxed capital gains derived from soaring stock prices and multiple investment properties in the prestige suburbs of our capital cities.

On the other side of this great divide resides the vast majority of our population. Despite Government claims in the recent Budget about more rapid economic growth and tight labour markets the reality of daily life for workers has been steadily deteriorating for the last decade. This is because the vast majority of the workforce, outside the small elite, has not had an increase in their real take-home pay for years.

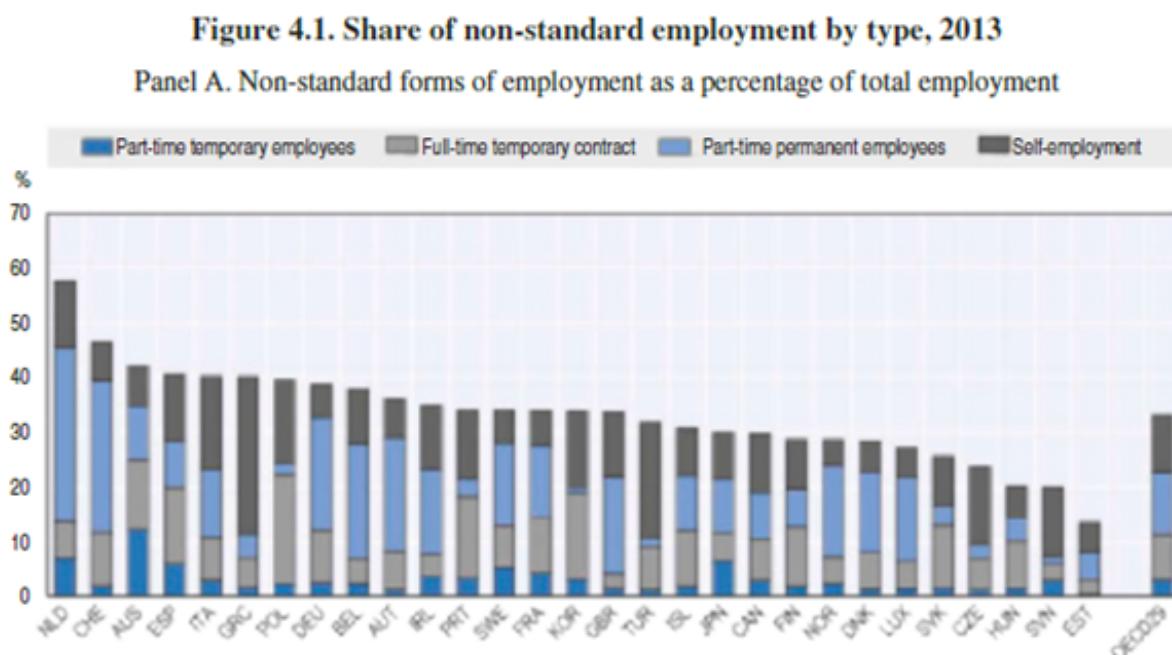
And a global pacesetter in creating insecure work

Australian politicians regularly mention that we hold the world record for the longest run without a recession. But the injustice in our society is multiplied by other fundamental changes in the nature of work. The damage to families and society caused by low pay is exacerbated greatly by the increasing precarious nature of work.

Unfortunately Australia is a global pacesetter when it comes to reliance on non-standard working arrangements. Even the Productivity Commission have acknowledged that a third of all Australian

workers are in non-traditional forms of employment⁶. In its 2015 publication on inequality the OECD “awarded” Australia a podium finish in the race for the highest proportion of “non-standard workers”. Australia, the so-called lucky country, finished in the top three OECD countries when measuring the proportion of non-standard workers in total employment⁷. See Figure 1 below which is reproduced from the OECD publication. It can be seen from Figure 1 that the OECD concluded in 2015 that roughly 40% of all employment in Australia is non-standard.

Figure 1: Non-standard employment as a share of total employment



Source: OECD, “In it together: Why less inequality benefits all”, May 2015, Figure 4.1.

Because Australia has been a global pacesetter in creating precarious jobs, today only about 60% of total employment is comprised of standard jobs. The remainder of our employed

⁶ The Role of Non-Traditional Work in the Australian Labour Market’ Productivity Commission Research Paper May 2006

⁷ OECD, “In it together: Why lower inequality benefits all” 2015, Figure 4.1, Page 140. In this publication the OECD defines non-standard workers as the proportion of own-account, self-employed, temporary workers and part-time workers in total employment. As noted above there is ongoing discussion among Labour Statisticians about whether part-time employment should be counted as non-standard and insecure. However up until now both the OECD and the ILO have included part-time workers in their definition and assessment of non-standard work. For the ILO perspective on this see their publication “Non-standard employment around the World”, 2016 pp 75 to 86. In the future it is possible that the OECD will alter their definition to only include involuntary part-time employment in the measurement of “non-standard employment”. But even on this revised definition Australia still finishes among the 4 OECD countries with the highest proportion of non-standard employment in total employment.

workforce – some 4 million people – are engaged as casuals, on short-term or part-time contracts, through labour hire companies or as so-called “independent” contractors.

Life is very tough for workers in insecure jobs

It is widely accepted that the vast majority of non-standard workers have been treated worse than regular full-time workers in recent decades. Both groups of workers have been denied their fair share of our national economic prosperity. But those in precarious or non-standard jobs have been hit the hardest. The vast majority of them have inferior rights, entitlements, and job security to their counterparts in regular ongoing employment. While all working families are suffering, those that depend on non-standard jobs face the biggest risks.

The ACTU acknowledges that not every worker in a non-standard working relationship is being exploited. Wages, employment conditions and labour rights are not identical for all workers without regular full-time time work. But that is also the case even within subcategories of non-standard work. For example, not all casual work is homogenous, nor is all part-time work identical. It is also worth noting that not all people in regular full-time jobs are secure. Some of them are exploited and are not provided the wages or working conditions they are legally entitled to receive.

Nevertheless, there are many common characteristics across the vast majority of non-standard jobs. For example, these jobs often involve working hours that are excessive to earn a very low wage and usually involve working hours that are incompatible with a stable family life. The remuneration for non-standard, precarious or insecure work is usually insufficient to provide a family with a living wage and for many the weekly family income can fall to zero without warning, merely because the boss decides that you are not needed for the next few days. Employment conditions that were considered standard for much of the last century, like paid holidays and sick leave, are often not available to those in non-standard employment. Importantly, most non-standard workers have no, or very limited, employment protection and they normally find it very difficult to enforce their fundamental rights to freedom of association and collective bargaining.

Just because not every person in a non-standard working relationship is being exploited is no excuse to ignore the fundamental problems facing the vast majority of insecure workers. We should not design public policy to suit a small elite that can look after themselves. It has never been considered appropriate to design national labour laws and labour market institutions based on the working conditions that prevail for the highest paid workers. On the contrary, our laws and institutions should be designed to protect everyone, especially those most vulnerable to

exploitation. The basic premise of labour law is that a power imbalance exists between the individual worker and the employer. That imbalance is particularly pronounced for the vast majority of non-standard workers. Our labour laws, and labour market institutions, should be reformed to assist this vast majority of non-standard workers who face a very dramatic power deficit in their employment relationship.

Economic risk has been transferred to the workers

The dramatic expansion of non-standard work in Australia in recent decades is the result of a business model that has shifted economic risks from the employer to the worker. Entrepreneurs in Australia like to brag that they are the risk takers on the cutting edge of the competitive market place. They claim that they deserve high profits and incomes because of this risk-taking activity. The reality is far different. If Australia is hit by a global financial crisis or domestic demand diminishes, it is labour, not capital, that absorbs most of the pain. Because of the very high proportion of insecure jobs, Australian employers can rapidly and substantially reduce their labour input and labour costs in a downturn. This was not the case when the vast majority of workers were in regular full-time jobs with adequate notice about termination and redundancy packages.

In recent times economic risk has been transferred to the workers but the financial rewards that flow in the good times has not. This employment model might be considered more fair if the hourly wage for precarious work was substantially above average hourly earnings, and the labour share of national income had been increasing in the last few decades as workers were forced to accept the risks associated with the ups and downs of the business cycle. But in fact the opposite is the case. Despite provisions like the so-called casual loading, average hourly earnings in most non-standard jobs are below total average hourly earnings, and the labour share of income has undergone a steep decline. The declining wage share in national income is a result of both stagnant real wages and the expansion in non-standard employment.

Meanwhile, the profit share in national output has increased significantly. The balance between risk and reward in the Australian labour market has shifted significantly in favour of the small elite. Workers absorb most of the risks and the bosses take all the rewards. This is a major factor behind the great divide in our nation. This business model thrives because public policy supports this approach. Governments can, and should, intervene to ensure a better alignment between risk and reward in the labour market.

One often hears the argument from conservative quarters that Australia needs even more labour market flexibility to compete in global markets and to promote growth. This is economic

nonsense. Every economy needs to balance labour market flexibility and security. All societies need to balance risk and reward. But public policy in Australia over the last 30 years has gone too far in promoting downward wage flexibility and flexible forms of work. This is why we have a great divide.

Consequences of precarious work

As noted above, Australia is now characterised by a great divide between a small wealthy elite and the vast majority of the population who have not had a real pay increase or improved living standards for many years. Within this large majority of workers there are further divisions.

A critical secondary dichotomy is between a core group of workers and those on the periphery of the workforce. Those within the core are in full-time employment and many are either in managerial positions or they possess specific technical skills that the organisation requires. Companies are keen to attract and retain such staff and will often pay a high premium to ensure their competitors cannot poach these valued workers. These workers are likely to enjoy reasonable salaries, sick leave, paid holidays, parental leave and some other benefits.

Beyond the core there will often be a large additional workforce with much lower wages, benefits and rights. This large peripheral workforce is engaged through various insecure arrangements. They include workers we commonly call casuals as well as contract workers engaged in sham subcontracting arrangements or those in triangular employment relationships that may involve labour hire companies. Part-time workers and those doing on-call work also fall outside the core workforce.

The objective of an employer in using contract workers is often to disguise a genuine employment relationship and give the appearance that the worker is self-employed and thus not entitled to the rights and protections provided by labour law. Alternatively when using a triangular employment relationship, such as a labour hire company or agency workers, the objective is to protect the end user enterprise from any of the legal consequences associated with direct engagement. In other cases, such as the hiring of casuals or part-time workers the objective of the employer is usually to lower total labour costs and move economic risk from the enterprise and onto the worker.

It is not just the worker who suffers as the magnitude and types of insecure work multiply. Society and our national economy are also negatively impacted. One adverse economic consequence of precarious work is low productivity. Employers are unlikely to invest in training

and firm specific skills, let alone transferable skills, for workers who will not have an ongoing relationship with the firm. As the magnitude of insecure work has expanded over recent decades private investment in human capital development has declined and more and more employers become “free-riders” relying on the state or other employers to train staff. The declining level of apprenticeships is evidence of this trend.

The consequences are most severe for the individual worker trapped in a precarious working relationship. It is a myth that non-standard jobs provide a stepping stone to permanent decent jobs. This is evident when one reviews the age profile of casual, contract and part-time workers which span the generations. For these people, working life often becomes a long series of short term precarious jobs interspersed with periods of unemployment or underemployment. Economists use the phrase “labour market churning” to describe this phenomena. Other workers remain in the same low paid job with the one employer for very lengthy periods without any chance of advancement.

These workers are trapped between various insecure jobs and unemployment with the majority never moving up a career ladder or experiencing the satisfaction and security that comes with promotion. In the process, confidence and aspirations are damaged. The costs to society can be significant. People without hope for a better future are more likely to suffer physical and mental health issues.

The vast number of insecure workers are always living on the edge and in fear of the boss who can send them packing without notice. Loss of this precarious job will usually mean falling back into even deeper poverty and desperation. Because of such fears, even if in theory precarious workers have some limited protections under the existing laws, they are unlikely to take any action to defend themselves or enforce their rights. Similarly they are less likely to join a union if they think the employer will be displeased and replace them with another worker. This is one reason why wage theft has become a growing problem in Australian workplaces and may in part explain the declining incidence of enterprise bargaining.

Workers do not desire the “flexibility” of non-standard work regardless of what employers and conservative groups may say. Workers want continuity in employment so that they know when they will be paid next. They want work that allows them to balance their professional and personal life and that at the same time provides a decent income. They expect a fair wage and equal pay for equal work. Workers want protection in the event of illness, accident, unemployment or old age. They want safe and healthy workplaces. They want to have opportunities for training so that they can develop their skills and further their careers. And they

want the right to be represented at the workplace. Young people deserve and want the same rights the vast majority saw their parents and grandparents enjoy – paid holidays.

Labour is not just an input into a production process. How you treat workers is about fundamental human rights and the type of society we want to create. Without fundamental reform to our industrial relations system the ACTU believes the decades ahead will leave more workers trapped in these precarious forms of work. It is important to shape our labour laws and institutions for the challenges ahead.

Categories and trends in insecure work

The following section reviews recent trends in several of these subcategories of non-standard work.

(a) Casual employment

In Australia we use the term “casual” to cover a large and somewhat diverse section of the labour force. The Australian Bureau of Statistics defines casual workers as employees without access to leave entitlements. Case law merely defines a casual employee as someone who is engaged and paid as such. The unfortunate reality is that employers often unilaterally convert regular full-time employees to those with casual status or treat those who are in substance full-time workers as long term or ‘permanent’ casual employees. This goes to the heart of the problem, employers have all the power to call an employee a “casual” and remove all the rights and benefits of permanent work, even if this worker is rostered ongoing and regular hours. Among casual workers there is a divide between those who are engaged for irregular hours and have short-term job tenure and those that are on a regular roster and are more likely to have employment that continues into the future, so-called permanent casuals.⁸ A significant proportion of casuals are engaged on a “cash-in-hand” arrangement and they work outside the tax and social protection system, meaning they almost certainly suffer from wage and superannuation theft.

The number of workers in casual employment increased by over half a million between 2005 and 2016, to reach 2.5 million workers. But the proportion of Australian employees engaged in

⁸ Campbell, I and De Stefano, V “Casual work in contemporary industrialized societies”, ILO, 2017.

casual work has fluctuated significantly over the past decades: it increased from 15.8% of total employment in 1984 to 27.7% in 2004, before declining slightly to its current ratio which is around 25%. This marginal decline in recent years resulted from a more rapid expansion in alternative forms of insecure work such as fixed-term contracts, labour hire arrangements and ‘independent contracting’, which have provided employers with alternative ways to secure their labour inputs while minimising labour costs and shifting the economic risk on to their employees.

Casual employees continue to be heavily concentrated in a few industries. Around 20% of all casual workers in Australia are engaged in the retail sector and a further 20% are in the accommodation and food services sector. Casual density is highest in accommodation and food sector where 64% of all employees in the sector are casual. This is followed by the agriculture, forestry and fishing sector where just under half the workforce is casual, and the retail sector as well as the arts and recreation services sector where about 40% of all workers are casual.

Casual work is concentrated in the low paying sectors of the economy. However it is important to note that casual work is not confined to these sectors. Virtually all parts of the economy have witnessed significant growth in casual density over the past few decades.

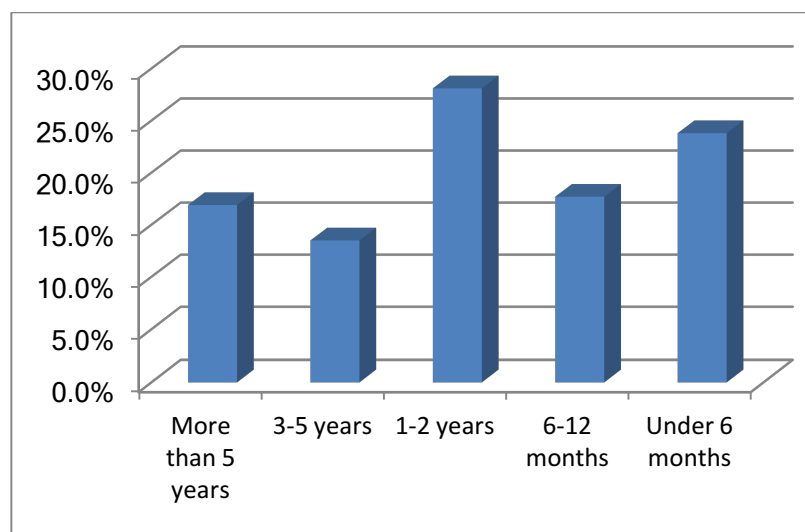
Over half of all casual employees can be classified as “permanent casual” in that they have a long-term ongoing employment relationship but this does not mean they receive the employment conditions associated with regular employment. Close to 60% of all casuals have been employed in their current jobs for over a year and 17% of casuals have been in their job for more than five years⁹. A significant 76.2% of casual workers have had continuous employment with one employer for over 6 months¹⁰. Despite this, all casual workers are denied paid annual leave and sick leave and very often do not receive other benefits that are available to regular employees. In theory casual workers should receive a premium on their hourly wage, the “casual loading”. But due to the increasing prevalence of wage theft this is not always paid.

It is a myth that people choose casual work because it suits their work-life balance. In fact more than half of all casual employees would prefer to be in regular full-time work.

⁹ Parliamentary Library ‘Characteristics and use of Casual Employees in Australia’ 19 January 2018

¹⁰ Ibid

Figure 2: Proportion of casual workers experiencing various lengths of continuous employment with one employer



Source: Parliamentary Library 'Characteristics and use of Casual Employees in Australia' 19 January 2018

Given the long periods of continuous employment with one employer it is clear that a majority of casual workers are economically dependent on a single employer and should be classified as either permanent part-time employees or permanent full-time employees and given all the rights and protections that apply to these workers.

While a high proportion of casual employees are economically dependent on a single employer this does not mean they are fully employed or that they have normal working hours. On the contrary, casual workers are highly likely to endure irregular and insufficient hours of work. This generates large fluctuations in earnings, with around 53% of casuals experiencing variable earnings from one pay period to another¹¹. ABS data for August 2016 reveals the following additional characteristics about casuals. Compared to regular full-time or part-time employees they are:

- much less likely to be guaranteed a minimum level of weekly working hours;
- far more likely to have large fluctuations in working hours from one week to the next ; and,

¹¹https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/CasualEmployeesAustralia

- three times more likely to want additional working hours.¹²

The category “casual worker” does not exist in many advanced economies and people doing this type of work will often be classified as “temporary workers” in the definitions that apply in many OECD countries. Temporary work is conventionally seen as a synonym for non-permanent wage work. In this approach, wage work is often grouped into two main categories: “permanent” and “temporary”. The definition of temporary work in most countries overlaps with the category of casual in Australia but there are also important differences.

Nonetheless, it is clear from the Table below that Australia has an extremely high proportion of temporary workers compared to other OECD countries. Spain is one country that approaches a similar level of temporary work as Australia. However when we examine temporary employees in Spain carefully it becomes evident that the main form of temporary employment is fixed term contracts. These workers obviously suffer employment insecurity as a consequence of the limited duration of the employment. However in Australia the difference between casuals and permanent workers goes far beyond employment insecurity. Casuals in Australia enjoy none of the basic rights such as sick leave and annual leave that permanent employees enjoy.

The proportion of workers who are denied basic rights in Australia makes our country only comparable to the USA among advanced economies. This is not a record or comparison that any country would envy. The vast majority of OECD countries have nowhere near the level of worker rights abuses that are being experienced in both Australia and the USA.

¹² Ibid page 13

Table 1: Temporary employees as a proportion of total employees in selected OECD countries, 1983-2016 selected years

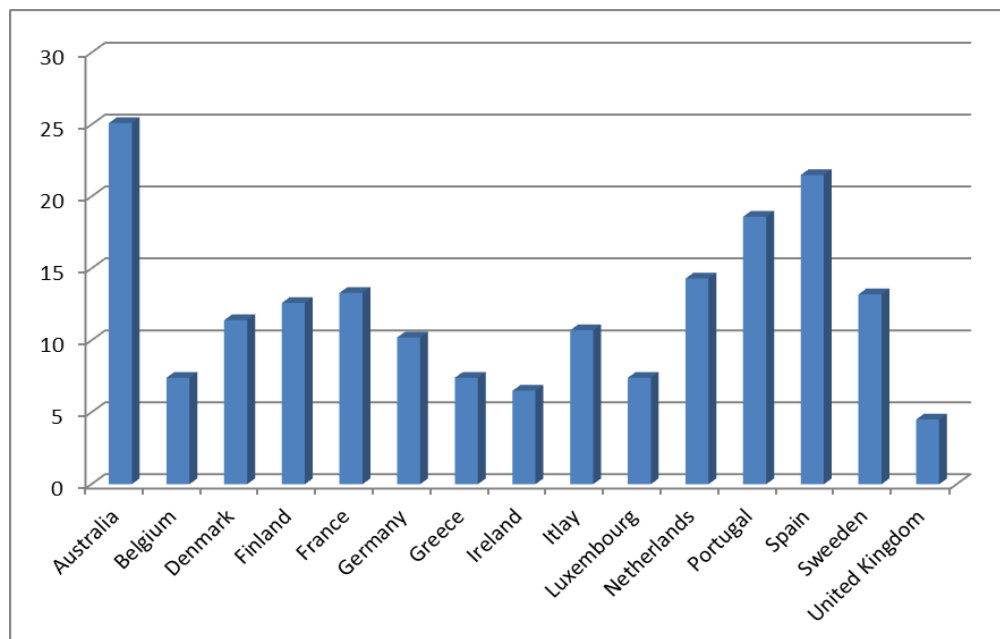
	1983	1994	1998	2002	2006	2010	2014	2016
Australia	15.6	23.5	26.9	27.3	24.3	24.2	23.8	25.1
Belgium	5.4	5.1	7.8	7.6	6.9	6.5	7.0	7.4
Denmark	12.5	12	10.1	8.9	7.2	7.0	7.0	11.4
Finland	11.3	13.5	17.7	17.3	13.2	12.4	12.2	12.6
France	3.3	11	13.9	14.1			12.6	13.3
Germany	10	10.3	12.3	12	10.5	11.0	10.0	10.2
Greece	16.2	10.3	13	11.3	6.8	8.1	7.5	7.4
Ireland	6.1	9.4	7.7	5.3	6.0	7.6	7.5	6.5
Italy	6.6	7.3	8.5	9.9	9.4	9.3	10.2	10.7
Luxembourg	3.2	2.9	2.9	4.3	5.1	5.9	6.7	7.4
Netherlands	5.8	10.9	12.7	14.3	11.9	13.0	15.1	14.3
Portugal	14.4	9.4	17.4	21.8	15.7	18.2	17.6	18.6
Spain	15.7	33.7	32.9	31.2	27.1	20.3	19.6	21.5
Sweden	12	13.5	12.9	15.7	13.3	12.6	13.6	13.2
United Kingdom	5.5	6.5	7.1	6.1	4.4	4.7	4.8	4.5

Source: Updated from 'Casual Work and Casualisation: How does Australia Compare' Iain Campbell Centre for Applied Social Research RMIT University p15 Figures in the first two columns are from the OECD report (1996: 8). Figures in the third and fourth columns are from official labour force data for Australia (ABS Employee Earnings, Benefits and Trade Union Membership Australia, Cat. No. 6310.0) and Europe (Eurostat 1999, 2000) Recent figures from eurostat:

<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=tesem110&language=en>

The information presented in the Table above can be seen more clearly in Figure 3.

Figure 3: Temporary employees as a proportion of total employees in selected OECD countries in 2016



Source: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=tesem110&language=en>

A 2007 study by the ABS found that around 52% of casual employees would prefer to be in permanent employment (ABS, 2010). If applied to ABS figures on total casual employees (ABS, 2014), this would equate to around 1.2 million workers who are currently in casual work but would prefer to be in permanent employment. More recently, an ACTU survey, which focused on part-time casuals, found that around 49% of those surveyed were in casual employment because there was no other work available. This equated to 1.1 million workers. These results suggest that roughly half of casual employees would prefer to be in more permanent employment.

For many casual employees, their insecure status subjects them to hours which are not only dictated by the employer, but are unpredictable and variable, and subject to short-term changes beyond the control of the employee.

(b) “Independent” contactors and disguised employment relationships

Data from the ABS would suggest there are over 1 million “independent contractors” in Australia. Nearly one third of them are engaged in the construction industry. In fact, the CFMEU have suggested that between 26% and 46% of so-called independent contractors in their industry are engaged on sham contracts¹³.

While the construction and transport industries have historically been sectors that use a large number of contractors: both genuine independent contractors and “sham” contractors who should be classified as regular employees. In recent decades the use of so-called independent contractors has increased significantly in other sectors of the economy including the public and private sectors. One example of this trend is the professional, scientific and technical services industry which is now the second largest employer of “independent contractors” with roughly 16% of all contractors operating in this sector.

However a large proportion of the workers that fall into this category are not really “independent”. Many of them are economically dependent on a single employer and have limited discretion over when or how they work. In many cases these bogus contractors work alongside regular employees doing the same or similar tasks and even using tools, equipment and other inputs supplied by the same employer. One key difference between a genuine independent contractor and a regular employee is the level of control or independent authority the person has over the performance of their work¹⁴.

The classic example of a genuine independent contractor would be the tradesperson who has established their own micro enterprise, who undertakes work for different and multiple clients from one week to the next, supplies their own tools and materials and can make decisions about the work schedule and work methods without instructions from a supervisor. It is evident from data compiled by the ABS that a majority of workers currently classified as “independent contractors” would not meet the above mentioned criteria. In fact a massive 64 % of people who

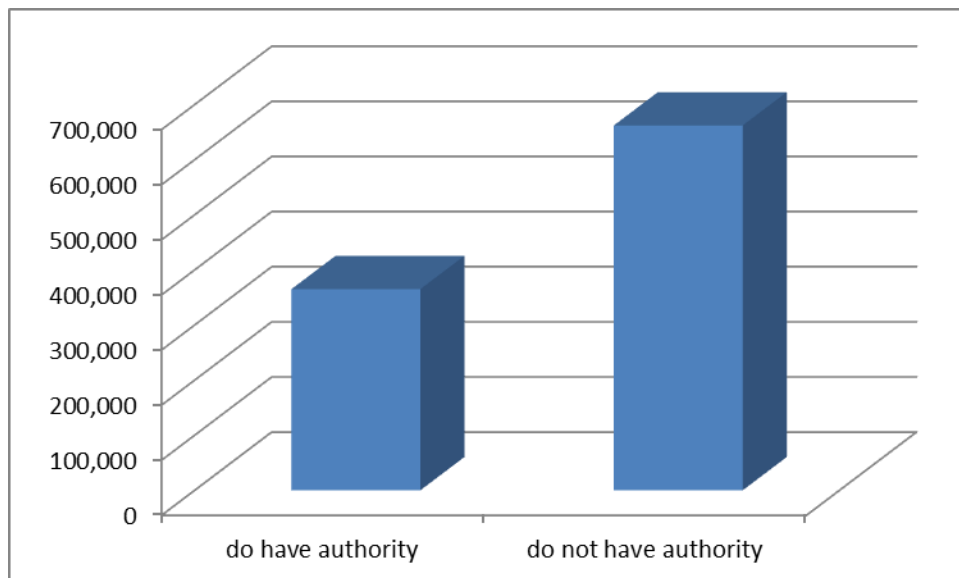
¹³ CFMEU, Race to the Bottom, CFMEU Research Paper, 2011

¹⁴ The draft resolution for the 20th Conference of Labour Statisticians defines independent workers in the following way:

“Independent workers own the economic unit in which they work and control its activities. They make the most important decisions about the activities of the economic unit and the organization of their work. They may work on their own account or in partnership with other independent workers and may or may not provide work for others”.

are classified as “independent contractors” indicated they do not have authority over their own work.

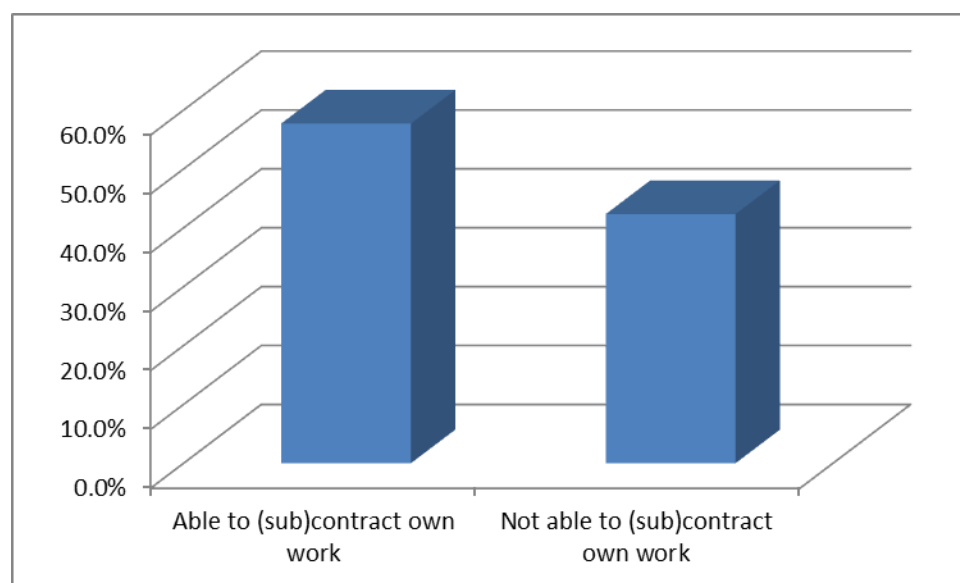
Figure 4: Proportion of persons classified as “independent contractors” who reported they do not have authority over their work



Source: 6333.0 Characteristics of Employment ABS August 2016, released May 2017

If an independent contractor does not have authority over their work, (and are actually economically dependent on one employer), then they should be employees and entitled to all the benefits and rights that accrue to other permanent employees they work alongside. A similar test of whether a contractor is truly independent or bogus is the ability to sub-contract out work they are engaged upon. As can be seen in Figure 5 roughly 40% of so-called independent contractors report that they are not allowed to sub-contract out work.

Figure 5: Proportion of persons classified as “independent contractors” who reported they are not able to sub-contract out own work



Source: 6333.0 Characteristics of Employment ABS August 2016, released May 2017

Case study: Independent contractor in retail sales

There are more than 1 million workers classified as “independent contractors” in Australia. Joan is one of them. She took up a contract as a sales representative on a commission basis after unsuccessfully searching for a full time position over the previous 18 months. Her contract provided for a \$100 a week retainer for the first four weeks and then a 22% commission on sales. Her job involved selling books to schools. Her work schedule was set out by the company over 4 periods of 10 weeks each, in line with the school calendar. According to Joan: “The company I worked for had only intermittent reps beforehand. So I needed to establish contact with the schools across my territory which meant visiting each school.

The position required me to set up a home office. I purchased equipment which cost me approximately \$600.

I am responsible for the cost of petrol, stationary, wear and tear on the car, telephone calls and internet access. Even though I have worked on average 3 to 4 days a week over a 20 week period, I have received only \$5000 from the company but I have spent at least \$1200 on the set up, petrol and phone calls and other expenses.

I do not receive sick pay, holiday pay, superannuation or any of these kinds of workplace entitlements.”

Source: The Report of The Independent Inquiry into Secure Work in Australia, ‘Lives on Hold: Unlocking the Potential of Australia’s Workforce’

The problem of using sham or bogus contractors to disguise what should be a regular employment relationship has expanded considerably in recent years. In 2011 ABS data indicated there were 406,200 people classified as “independent contractors” who claimed they had no authority over their own work. This represented about 40% of all so-called independent contractors. By 2016 this ratio had increased to 64%. That is a very rapid increase in just 5 years. This casts serious doubt over the “independence” of almost two-thirds of all workers now classified as “independent contractors”.

Sham contracting arrangements are an attempt to deny workers the protection provided by labour laws and institutions like the Fair Work Commission and trade unions. They also seek to place workers beyond the reach of basic industrial standards such as the minimum wage and annual leave, sick pay, superannuation, or other benefits that are considered standard provisions in a country as wealthy as Australia. Instead these people must try and extract a fair deal for themselves from their much more powerful employers on the basis of commercial law. They are unable to collectively bargain and attempting to do so can lead to them falling foul of laws designed to prohibit price fixing among companies. Needless to say most of them end up failing to get a fair deal and are exploited.

In fact government authorities have recognized that bogus or sham contracting strategies are widespread. For example, in the past the Fair Work Ombudsman has called particular attention to such practices in cleaning services and call centres.¹⁵ Nevertheless little action has been taken to reverse these trends. The ACTU fears that this trend towards bogus or sham contracting will continue in the coming decades unless the Federal Government reforms our workplace laws.

(c) Private employment agency (or labour hire) work

As indicated above the terms labour hire or private employment agency work are used to describe a triangular employment relationship that includes the worker, the employment agency who is nominally the employer and the end-user enterprise where the work is undertaken. The end user enterprise is often a large company and in many cases this company will use both its own regular employees alongside workers engaged through the private employment agency or labour hire company. Historically the use of triangular employment relationships of this nature

¹⁵ Fair Work Ombudsman, 2011

was confined to very specific tasks outside the core business of the end user enterprise, or to fill genuine short-term shortages. Over time, the ACTU has observed the use of this form of employment expand to a range of occupations and has increased substantially as it is being used as a means to reduce wage costs and transfer risk to workers.

Unfortunately reliable data on the extent of triangular employment arrangements is out dated and patchy. Back in 2008 the ABS estimated that 576,700 workers, or 5% of employed people, had found their current job through a labour hire agency. Some 97% of these workers were engaged as employees and 3% were estimated to be independent contractors. Regularly updated statistics are urgently required to monitor these trends.

It has been estimated that there are between 2,000 and 3,500 private employment agencies operating in Australia. The top ten agencies have a combined market share of less than 20% of the total market and fewer than 2% of agencies employ more than 100 workers. While the industry is largely directed by big firms such as Skilled, Manpower, Spotless, Programmed Maintenance Services and Chandler Macleod, there are a large number of small players and considerable scope for unethical practices.

It is increasingly common for the Commonwealth and state governments to utilise labour hire, rather than directly employing public servants to carry out core public service work of policy advice, program design and service delivery. Governments are using labour hire as a vehicle to outsource public service work, undermine collective bargaining and the rights of workers, and to avoid Ministerial accountability and transparency. Cuts to public service jobs and setting arbitrary 'staffing caps' also contribute to the increasing government use of labour hire, as there are simply not enough public servants to do the work. The actual numbers of labour hire workers engaged by state and Commonwealth government is unknown as agencies do not record or publicise that information, however an analysis of data on labour hire arrangements and total expenditure on labour hire provided to the Australian Senate showed that at least \$447m was spent in 2015-16 on more than 4,000 labour hire employees federally. Actual spending on labour hire will be even higher as those figures did not include all federal agencies. The use of labour hire in the public service is detrimental to workers, and inimical to the accountability, transparency and democratic control of Government and public services.

The dominant private employment agencies also utilise workers engaged through labour-hire subcontractors and a multitude of the smaller players. Hence, an employee engaged in this manner may be involved in complex layers of inter-corporate subcontracting arrangements, as well as the commercial arrangements between the private employment agency and the end user

enterprise. Rather than a triangular employment relationship the worker may find themselves in a multi- dimensional relationship with no idea about who is ultimately responsible for their wages and employment conditions.

In most advanced economies there are strict licensing arrangements and regulations governing the operations of private employment agencies.¹⁶ In some countries the laws make the employment agency and the end user enterprise jointly responsible for ensuring that the worker receives the pay and benefits to which they are entitled. Thus if the employment agency does not meet its obligations, the worker can take steps to secure compensation from the enterprise in which they perform their work. These provisions have helped reduce worker exploitation and wage theft. Even in the U.S., joint employment is a longstanding feature of labour laws regulating agency work. The Australian common law has yet to give effective recognition to the notion of joint employment.

Unfortunately in Australia an enterprise that chooses to engage some, or all of their workers through a private employment agency, has very few obligations to those workers. Previous research has suggested that this gives rise to some very critical shortcomings in the Australian labour market. For example¹⁷:

- The common law does not generally see an employment relationship between the end user enterprise that directs the work and the worker;
- Workers engaged in this manner cannot bargain for a collective agreement with the end user enterprise, or in the absence of specific provisions, benefit from collective agreements that enterprise may have with its regular workers who are performing similar or even identical work duties. Whilst the workers can conclude a collective agreement with the private employment agency, the agency is not the organization that controls the work and the conditions under which the work is performed;
- Labour hire workers cannot make an unfair dismissal claim against the end user enterprise, even where this enterprise makes the decision as to whether the worker will have a continuing job at the workplace or not;

¹⁶ Many countries have adopted laws based on ILO Convention 181 and Recommendation 188 concerning Private Employment Agencies. These International Labour Standards were adopted in 1997 with very strong support from international and national employer associations.

¹⁷ ACTU submission on Labour Hire

- Workers in triangular arrangements are less inclined to defend their rights because they realise the end user enterprise can terminate their employment without any adverse consequences.

The experience of Gabrielle in a triangular employment relationship

Gabrielle was employed part time as an administration assistant for the University of Ballarat TAFE but was desperately looking for full-time work. So she decided to apply for work through a large private employment agency. The job turned out to be 38 hours a week but on a casual basis so she received no sick leave or annual leave entitlements. The employment agency would regularly assign her to different end user enterprises to fill temporary positions. She worked in this way for a year before returning to her old workplace on a fixed-term contract which she hopes to turn into permanent full-time employment. This experience has left Gabrielle both angry and fearful. She says:

“Trying to find a job today that is permanent is like trying to get blood out of a stone.”

She also explains that:

“We can’t go on a holiday. I am scared to get a cold or get sick because I can’t take time off work. During a forced period of leave at [the private employment agency], I found two weeks of work at my old job because I couldn’t survive without the pay. We always have to pay bills in instalments. We have done this for so long now I forget what it’s like to get a bill and just pay it.”

In addition to providing no sick leave or paid annual leave, the employment agency stipulated that she take 22 days unpaid annual leave each year. The real purpose of this was to avoid requirements that after a certain length of tenure she should be transferred to regular, full-time employment.

Source: The Report of The Independent Inquiry into Secure Work in Australia, ‘Lives on Hold: Unlocking the Potential of Australia’s Workforce’

(d) Fixed term contracts

The use of fixed term contracts (FTC) in Australia is less extensive than in many other OECD countries. Fixed term employment accounts for around 4 % of all employees and is heavily concentrated in just a few sectors: education, public administration and safety and health care and social assistance. In Australia employers have a strong preference for using casual workers rather than fixed term employees because the latter must receive similar wages and conditions

to regular employees although they do not have job security. In addition many workers on fixed term contracts face difficulties accessing similar training and career opportunities that are available to their permanent counterparts.

The ILO has recently stated that FTCs typically offer a lower level of protection to workers in terms of termination of their employment, as usually no reasons need to be given by the employer to justify the end of the employment relationship, beyond the fact that the end date of the FTC is reached. There is usually no severance pay at the end of a FTC and in most instances, the end of the FTC means the end of the employment relationship. Instead of being a stepping-stone to regular employment, temporary employment may be a dead end, and these workers will slip back into unemployment at the end of the performed task, or become “trapped” in nonstandard employment if subsequent employment relationships are also non-standard.’¹⁸

We note that fixed term contracts are increasingly misused in the public service. Rather than being used to fill temporary vacancies (such as parental leave or long service leave cover) or to conduct project work which is finite in nature, many workers are employed on fixed-term contracts by default and kept on ‘rolling’ contracts for years at a time, despite them carrying out essential, on-going work. This is a source of insecurity and stress for the individual worker, and is problematic for the public service and community as a whole. It is a foundation of our democratic system to have a permanent, independent public service which can provide ‘frank and fearless’ advice to the government of the day. Insecure work undermines these principles, as workers in tenuous employment may feel limited in their ability to provide robust advice. Additionally, the loss of knowledge and skills from the sector when workers’ contracts expire, or they seek stable work elsewhere, has a detrimental effect on the capability of the public service as a whole.¹⁹ A permanent workforce is essential for ensuring that the public sector is able to best serve the community through giving quality advice to the government of the day, and having the capacity and capability to deliver quality public services

We have noted a growth of fixed term contract employment in the non-government community sector where the length of a funding agreement is used as the justification, even when these

¹⁸ ILO, “Non-standard employment around the world: Understanding challenges, shaping prospects”, 2016.

¹⁹ See the Centre for Policy Development report Grand Alibis: how declining public sector capability affects services for the disadvantaged
<https://cpd.org.au/2015/12/grand-alibis-how-declining-public-sector-capability-affects-services-for-the-disadvantaged-report-december-2015/>

funding agreements are rarely revoked. In reality, these contracts are continually renewed but they deny workers the right to redundancy payments, unfair dismissal protections and the security of a permanent job.

(e) The special case of the gig economy

Gig work comes in many forms, in many different parts of the economy. But several key practices are common to most digital platforms. These include:

- On-call work: workers are hired and paid only when needed, with no guarantee of continuing work or regular hours.
- Piecemeal pay: workers are paid according to a specific job or task, not by the hour or the day.
- Provision of capital equipment: workers are required to supply the direct capital needed for work – including a place to work (home or a car), and the tools or equipment which they directly use.
- Workers are treated by the facilitating companies as independent contractors and lack standard employment entitlements and conditions including sick leave, minimum wages, annual leave and access to workers' compensation

While the gig economy currently represents a minor part of total employment reliance on platform-based business models is likely to expand rapidly across the service sector, including in areas such as disability and aged care, education, health, legal, financial and accounting services. Jim Stanford has argued that many of the characteristics of the gig economy hark back to bygone era.

“Casual, seasonal, and contract labour were the predominant forms of paid work as capitalism first emerged..... these practices were even described as “precarious work” in nineteenth century policy discourse”.²⁰

²⁰ Historical and Theoretical Perspectives on the Resurgence of Gig Work'

The ACTU agrees with this proposition. These precarious work practices are also prevalent in most developing economies. Australia should not be expanding work practices that were common in first industrial revolution or those that are common in the least developed nations today.

Literature on Airtasker

Unions NSW argues that the main objective of digital platforms is to bypass many of the obligations and labour cost that should be borne by the employer.¹ They explain that the ambiguity about whether gig economy workers are independent contractors, dependent contractors or employees allows employers to undermine minimum wages and other legislated employment conditions. She supports reform of our current labour laws and institution 'to catch up to the new reality of this form of work and develop new tools to protect and enhance minimum standards for workers in digital platform business'.

The Unions NSW paper notes that the Airtasker website did not provide information regarding minimum wage rates, the terms of relevant Awards, or other employment standards. However, it does provide recommended hourly rates of pay for the most common job categories (Airtasker, 2017b).

When Unions NSW analysed recommended rates of pay, many were below the relevant Award minima.

For example:

- In August 2016, Airtasker's lowest suggested hourly rate was for data entry with a suggested rate of \$17.00 per hour. When the 15% Airtasker fee was deducted, this resulted in workers being paid \$14.45 per hour. Well below the minimum award rate of \$23.53 and even lower than the statutory minimum wage of \$17.70.
- The recommended rate for cleaning was \$20.00 per hour with \$17.00 paid to the worker.
- Airtasker workers are not paid superannuation, casual loadings or additional allowances. Taking into account these additional costs, Airtasker's recommended rates of pay in August 2016 represented a significant underpayment compared to the relevant Awards. The rates contained no allowances for tools, travel time, or other related costs incurred by workers.

NSW unions (2017) explain that Airtasker defines its workers as independent contractors who are engaged directly by the job posters. Under this view workers are governed by commercial rather than employment law and thus Airtasker does not see itself responsible for minimum payment or other features of the normal employment safety net. Obviously mobilising labour in the form of independent contractors significantly reduces the business's labour costs.

However the nature of the work by Airtasker workers is different from an independent contractor arrangement because Airtasker takes an active role in regulating both the performance of the work and the relationship between the job posters and work. The paper is clear that as long as workers on Airtasker and similar platforms are being treated as independent contractors it will be difficult for minimum rates of pay to be truly enforceable.

(f) Working time insecurity

Working time insecurity is also on the rise. For many workers, this takes the form of too few or irregular hours of work. Australia ranks near the top of all OECD countries for the high incidence of part-time workers among both men and women. If all these workers were content to be engaged on a part-time basis this may not be a serious problem. Unfortunately this is not the case. There are now around 1.1 million workers working less than fulltime hours who would like to work more. Working time insecurity in the form of irregular or fragmented hours is common in industries and sectors such as retail, hospitality, and health services. In these sectors employers have sought to enhance flexibility and reduce costs by: reducing or removing restrictions on working time arrangements; widening the span of ordinary hours; removing or reducing penalty rates for extended or unsociable hours; and reducing minimum periods of engagement. Lack of predictability of scheduling (on a daily and weekly basis) has further eroded job quality. For example both casual and 'permanent' part-time home care workers have highly fragmented working hours. Many of these workers experience multiple short shifts, with long periods of non-pay and no paid breaks²¹.

Changing the Rules: Our Policy Solutions

The neoliberal philosophy that has guided changes in our industrial relations system over the last 30 years has contributed to the overall expansion in insecure work and the emergence of new categories of non-standard work. This has been a major factor contributing to growing income inequality and social problems. It is also a fundamental factor explaining why large sections of the population are disillusioned with our political process and many of our important public institutions. Curtailing the spread of non-standard employment and improving the protection and rewards available to non-standard workers must be a priority.

Unfortunately the Turnbull Government has rejected such suggestions and refuses to acknowledge that insecure work is a major problem in Australia.

²¹ See Charlesworth, Sara and Malone, Jenny (2017) 'Re-imagining decent work for home care workers in Australia', *Labour and Industry*, published online 8 November 2017, available at: <https://www.tandfonline.com/doi/abs/10.1080/10301763.2017.1400420>

The ACTU recommendations that the following list of reforms be urgently implemented:

1. Casual work should be limited and properly defined

Our current laws do not properly define casual work. As a result workers can remain casual for years – the average tenure of a casual is just over four years - not because all those people want casual work, but because they are given no other option. Workers deserve the right to convert to permanent work if they so desire and casual work should be clearly defined.

2. We need a complete overhaul of the use of (labour hire employment)

This includes introducing a national labour hire licensing scheme. Labour hire companies have been involved in a litany of exploitative, illegal practices including wage theft, coercion and substandard living conditions. Well enforced national regulation which includes a tightly controlled licensing scheme and monitoring process is urgently required. Governments should also eliminate the use of labour hire in the public sector and ensure work is done by directly employed workers in secure permanent jobs

3. Bargaining for more secure work

We need to get rid of the complex web of rules and regulations that give far too much power to employers in bargaining. Workers should be free to bargain collectively and reach a negotiated agreement with employers without restrictions. New rules should lift the restrictions on who can be covered and what can be included in a collective agreement. Workers and their representatives must be allowed to negotiate with people who have the economic power to say yes, whether that is at the enterprise level, supply chain, site or project level.

4. We need equal rights for all workers

All workers regardless of their status should have the same basic rights to access the minimum wage, paid leave, public holidays, occupational health and safety protections and collective bargaining

5. End the uncapped temporary working visa system

The system should favour permanent migration with temporary visas being issued only for genuine shortages with strong protections in place to prevent abuse, including access to their union. Local workers should always be offered jobs first and training programs should ensure that a skills shortage only lasts as long as it takes to train a local worker. All workers, no matter

where they are from need the right to be paid properly, be safe and have basic working conditions.

6. Skills for the future

Governments need to invest in our TAFE and university systems so workers are able to participate in the jobs that are needed now and in the future.

7. Prioritising local jobs over multinational profits in trade deals

Australia's government must only enter into trade agreements which defend and improve the job security and wages of Australian workers. Trade agreements which allow multinational corporations to by-pass our laws regarding the movement of people between countries benefit the corporations not the people and must be stopped.

8. Governments should be model employers

Permanent employment must be the norm in the public service, and governments must end the misuse of fixed-term contracts: Fixed term contracts should only be used to cover one-off periods of relief, such as long service leave or parental leave, or project work that is finite or seasonal in nature. Permanency should be the norm in order for public servants to be secure to give the government of the day quality advice and have the capability to provide the public with quality services. Governments should reduce the use of contractors, casual and non-ongoing positions. No privatisation: Privatisation of public services often leads to a reduction of workers' job security, pay and conditions in an effort for the new provider to cut costs. Governments must ensure that if a privatisation occurs, there will be no forcible transfer of public sector workers to the private sector, and the new provider must maintain the same employment conditions and standards as the government service it replaced.

9. Governments need to act within their supply chain to improve job security

The commonwealth procurement rules and state government procurement policies must be re-written to ensure that the local businesses that pay fairly and provide secure jobs are not disadvantaged by unscrupulous suppliers who profit at workers expense. Governments must set a fixed tender price that ensures cost is removed from the decision process and tenderers are competing on the basis of quality and social outcomes. By ending the race to the bottom of the cheapest bid we can ensure the greatest economic benefit for Australia rather than the most financial benefit for corporations.

10. Time to care not a sentence to insecurity

We need to ensure that when workers are doing part-time hours or casual work so that they can care for a loved one or raise their children that they are not sentenced to a lifetime of insecure work. A right to reduced hours with a right to return to fulltime hours must be available to all workers with caring responsibilities.

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