

Insecure Work in Australia

ACTU submission to the Senate Select Committee on Job Security: Inquiry into the impact of insecure or precarious employment

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Introduction

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For over 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

Executive Summary

1. Insecure work is experienced by workers in a wide range of situations including casual work, sham contracting and on-demand work, outsourcing, hyper-competitive supply chains, labour hire, rolling fixed term employment contracts, underemployment, temporary work visas, and non-recurrent government funding.
2. Insecure work is problematic for the community at large when it is used to substitute for, or undermine, ongoing direct employment. Non-permanent working arrangements have outcomes for workers that frequently include financial insecurity, difficulty planning and saving for the future, and stress (including in the management of working time and family commitments). Many workers in this position would prefer more ongoing or permanent forms of work¹.
3. All Australians have seen the devastating impact that insecure work can have in times of crisis, such as during the coronavirus (COVID-19) pandemic. For workers who are casual or otherwise who have no sick leave entitlements, the pandemic created a dilemma - a potential choice between self-isolation and having their income abruptly cut off. This had flow-on consequences and raised broader public health considerations.
4. In 2021 the Morrison Government had the opportunity to reset Australia's labour market based on secure jobs with certainty that would drive both productivity and domestic demand but instead chose to press ahead with changes to legislation governing casual employment which will lock in insecure work and perpetuate low productivity growth and inequality. The *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* allows an employee to be treated as casual at the election of the employer even though this may not reflect the substance of the working relationship.

¹ Forsyth, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report*, Department of Economic Development, Jobs, Transport and Resources, State Government of Victoria, 2016, p.16, accessed 10 March 2021.

As a consequence, some employers will be even more likely to engage casual workers, knowing that by simply applying the casual label at the point of engagement they can shift risk and engage workers on an insecure basis, regardless of whether the work has the other hallmarks of permanent employment.

5. Insecure work leaves a large section of the workforce not sharing in our national economic recovery. These workers have inferior rights, entitlements, and job security as well as lower wages growth. It makes it tough for working families to plan for their future when they cannot rely on regular incomes, but have rising household costs, and are shouldering more and more household debt.
6. The rise of insecure work in Australia is the result of a business model that shifts the risks from the employer to the employee. A strong, prosperous economy is not inconsistent with quality jobs and respect for workers' rights. Workers should have jobs they and their families can rely on with fair and predictable pay and hours of work, access to important conditions like annual leave, paid sick leave, protection from unfair dismissal, and quality skills and training and career opportunities.
7. The proliferation of the various forms of insecure work has not occurred by accident. Conscious business and policy decisions based on cost and risk allocation have been the key drivers.
8. The COVID19 pandemic has highlighted the serious shortcomings of allowing insecure work to flourish. We are now at a crossroad. We should be taking the opportunity to strengthen and improve the underlying structure of our working arrangements. Unfortunately, all indications are that the Morrison Government will continue to facilitate the growth of insecure work and that working Australians will suffer the consequences.
9. The economic downturn and more recently the economic recovery, has been dominated by insecure work. Australians are being forced to work two or more jobs. For many, this is not a matter of workplace flexibility but one of economic necessity. We now have the highest proportion of Australians working two or more jobs in the history of ABS statistics, (Labour Account data series)².
10. We have seen the fastest expansion in the number of Australians working two, three or more jobs in the history of the ABS Labour Account. The growth of secondary jobs highlights the impact of stagnant household incomes, the decline in traditional full-time permanent employment arrangements and the shift towards insecure work arrangements³.

² ABS statistics, Labour Account data series

³ Ibid

Key Points

- Australia has one the highest levels of insecure work in the OECD⁴
- Millions of workers in Australia are in some form of non-standard, insecure working arrangements (including 2.3 million casuals, over a million so-called ‘independent’ contracts and over 400,000 fixed term contracts).
- The Government’s recent industrial relations changes will make jobs less secure; they will make it easier for employers to ‘casualise’ what would otherwise be permanent jobs. It will leave us with a completely unbalanced system that will make jobs more insecure and cut living standards for working people.
- The recovery is dominated by very insecure jobs. Almost 60% of net new jobs created since the worst period of the pandemic have been casual jobs. And almost two-thirds have been part time positions. More Australians have now been forced to work two or three jobs just to get by than ever before.
- Casual employment grew by over 400,000 positions in the rebound between May and November 2020 – an average of 2,200 new casual jobs per day⁵. That is by far the biggest and fastest expansion of casual employment in Australia’s history⁶.
- The economic downturn and more recently the economic recovery, has been dominated by insecure work. Australians are being forced to work two or more jobs. For many, this is not a matter of workplace flexibility but one of economic necessity. We now have the highest proportion of Australians working two or more jobs in the history of ABS statistics, (Labour Account data series)
- We have seen the fastest expansion in the number of Australians working two, three or more jobs in the history of the ABS Labour Account. The growth of secondary jobs highlights the impact of stagnant household incomes, the decline in traditional full-time permanent employment arrangements and the shift towards insecure work arrangements.
- The surge in women’s casual work has widened the gender pay gap. Women disproportionately suffered job losses when COVID-19 hit, and as the economy recovers, are returning to insecure work. From May through to November, casual jobs made up over 60% of new jobs and women filled 62% of those jobs.

⁴ ‘Australia has a high rate of casual work and many jobs face automation threats: OECD’ ABC, 2019 <https://www.abc.net.au/news/2019-04-25/australia-sees-increase-in-casual-workers-ai-job-threats/11043772>

⁵ Centre for Future Work, ‘Submission to the Senate Select Committee on Job Security’, March 2020

⁶ Ibid

- 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 employment⁷.
- Employers have discovered many ways to move workers from permanent to 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, including standard employee entitlements and ‘on-costs’ such as workers compensation; using multiple short term contracts to avoid workers acquiring benefits that are only applicable to those in permanent positions; replacing standard full-time workers with part-timers many of whom cannot get as many hours work as they would like; engaging low paid temporary visa holders rather than investing in traineeships and apprenticeships to meet skilled labour needs.
- The level of financial insecurity and low pay for non-standard insecure workers is significant. 45% of casuals have their pay set by the award compared to 13% of permanent full-time workers. The submission by the Morrison Government to the 2021 Annual Wage Review, which effectively green lights a cut in real wages for minimum wage and award reliant workers by arguing a higher minimum wage could “dampen employment” and impose a “major constraint” on the post-COVID recovery. The reality is that this would reduce the living standards of the low paid. The Morrison Governments argument is based on outdated economic ideas. The evidence from economic research over the past few decades suggests boosting wages back to a normal trajectory would strengthen aggregate demand and consumer confidence, help keep inflation on target, and bolster government revenues at a vital moment in the post-COVID recovery
- Millions of Australians are living pay cheque to pay cheque. New ABS data reveals 1.5 million working Australians cannot raise \$2000 in a week for something important and 570,000 working Australians cannot even raise \$500. Millions of Australians are one unexpected bill away from financial disaster.
- The majority of workers who are low paid, in insecure work and facing financial insecurity are women.
- Insecure and precarious work is a design feature of the Morrison’s Government economic policy that serves the purpose of big business to suppress wages growth. Cuts to Job Seeker are another arm of this policy.
- The ACTU is calling for a national target to halve the proportion of insecure jobs in Australia by the end of 2030.

⁷ David Peetz, Professor Emeritus of Employment Relations Griffith University, ‘Submission to the Senate Select Committee on Job Security’2021

Terms of Reference

The Senate Select Committee on Job Security (Committee) is conducting an inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, with particular reference to:

- a. the extent and nature of insecure or precarious employment in Australia;
- b. the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis;
- c. workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy;
- d. the aspirations of Australians including income and housing security, and dignity in retirement;
- e. the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;
- f. accident compensation schemes, payroll, federal and state and territory taxes;
- g. the interaction of government agencies and procurement policies with insecure work and the 'on-demand' economy; and
- h. any related matters

The ACTU is pleased to provide the Committee with this submission providing information and drawing on several relevant recent inquiries and significant pieces of research. We address the Terms of Reference below.

a. The extent and nature of insecure or precarious employment in Australia

1. The incidence of insecure work in Australia is significant and alarming.
2. 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 a very wide range of governments that these terms include several different categories of work.
3. Insecure work is often associated with certain forms of employment, including casual work, fixed-term work, seasonal work, independent contractors and labour hire. It is also increasingly a problem faced by workers employed part-time and workers in non-traditional workplaces, such as home-based outworkers.

4. Insecure work is often work that provides workers with little economic security and little control over their working lives. Indicators of insecure work include⁸:
 - unpredictable, fluctuating pay
 - inferior rights and entitlements, including limited or no access to paid leave
 - irregular and unpredictable working hours, or working hours that, although regular, are too many or too few and/or non-social or fragmented;
 - uncertainty and/or lack of security over the length of the job; and
 - lack of voice at work on wages, conditions and work organisation.

5. Insecure work can have profound implications for the quality of working life. It is often accompanied by other negatives, such as low pay, less access to opportunities for training and skill development, lack of career path or promotional opportunities, a lack of voice in the workplace and a higher risk of occupational illnesses and injury, insecure or inadequate housing, poor health outcomes, inequality and inequity, sexual harassment, bullying and wage theft.

People in insecure work are less likely to be aware of and to enforce their rights and entitlements. Insecure work is often experienced by those in our workforce with the least bargaining power. This includes those with lower skills, young workers, women, indigenous workers, migrant workers and workers with disabilities.

6. Casual jobs fall within the accepted meaning of insecure work, and Australia has a disproportionately high number of employees within this category with roughly one in every four employees employed on a casual basis.

Incidence of Insecure Work

Casual Work

7. There were just under 2.3 million casual employees (those without access to paid leave entitlements) in Australia in August 2020 and around 8.1 million permanent employees (those with access to paid leave entitlements)⁹.

8. The use of casual employees in Australia grew strongly from the early 1980s. During this time, the casual share of all employees increased from around 13 per cent to 22 per cent¹⁰. While the proportion of employees has been at or above a very high 20% for the past decade, the characteristics of these workers has changed markedly. In 2001 almost two-thirds of casual employees were women and by 2020 the gender balance was almost equal¹¹. At the same time Australia has retained a highly gendered

⁸ Independent Inquiry into Insecure Work in Australia, [Lives on Hold: Unlocking the Potential of Australia's Workforce](#), was publicly released at the ACTU Congress on 16 May 2012

⁹ ABS Cat. No. 6333.0 *Characteristics of Employment*, Australia, August 2020

¹⁰ ABS Cat. No. 6333.0 *Characteristics of Employment*, Australia, August 2020

¹¹ Source: ABS Labour Market Statistics, July 2014 (Cat. No. 6105.0), Aug 1992-2013; ABS Characteristics of Employment, Aug 2019 (Cat. No. 6333.0), Aug 2014-2019; *Note: 2020 data represents latest data from ABS Labour Force, Australia, Detailed, Quarterly, May 2020.

job segmentation with women numerically dominating certain industries and men others.

9. In Australia the term “casual” is used 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. As has been pointed out in other submissions to this inquiry, Australia has one of the lowest levels of employees with paid leave entitlements in the developed world.¹² This is largely attributable to the ease with which employers can designate employment as casual rather than permanent. This process of declaring employees to be casual has been entrenched by the Federal Government through the passage of amendments to the Fair Work Act 2009. Under the provisions of the recently passed *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021* employers can, at the point of engagement through the terms of an employment offer, effectively designate what would otherwise be regular full-time and part time jobs to casual status and treat those who are in substance ongoing permanent workers as casual employees.
10. This goes to the heart of the problem of insecurity - employers have the power to call an employee a “casual” and remove the rights and benefits of permanent work, even if this worker is subsequently provided with ongoing work and regular rosters.
11. 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. Instead of legislating to overcome the problem of employers treating those who are in substance, permanent employees as casuals, the Government has passed laws that actively facilitate it. These new laws are contrary to longstanding and carefully reasoned decisions by the courts which describe the ‘essence of casualness’ as being inconsistent with the notion that employees can have a firm advance commitment to continuing work according to an agreed pattern and still be regarded as casual employees.
12. In many cases it is large employers, including multinational labour hire agencies, who are most actively misclassifying permanent employees as casuals. Two thirds of all casuals are employed by businesses with more than 20 employees and the single biggest cohort of casuals of more than 1 million people are employed by large businesses of 100 plus employees¹³.

¹² David Peetz, Professor Emeritus of Employment Relations Griffith University, ‘Submission to the Senate Select Committee on Job Security’ 2021 p 6

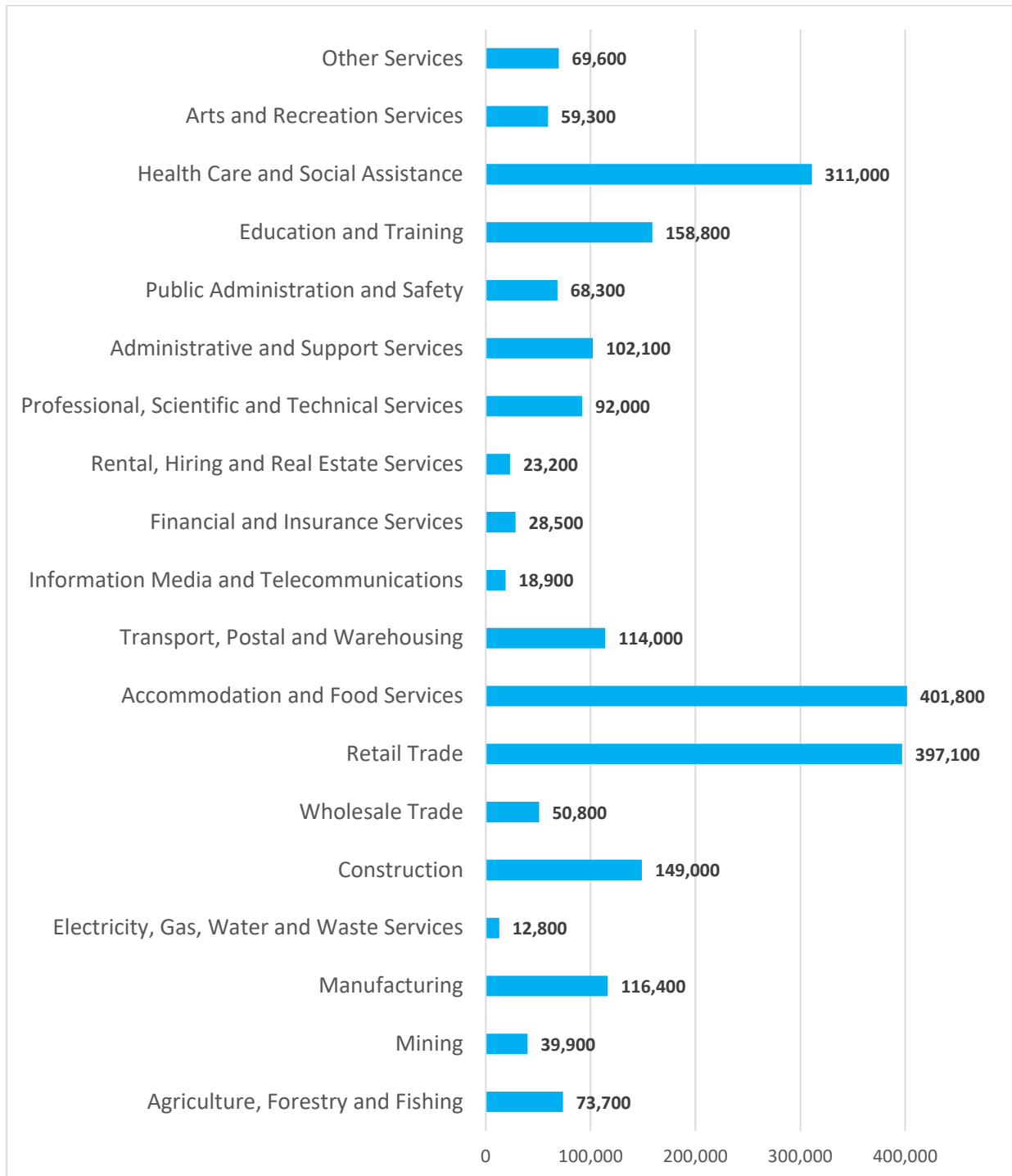
¹³ ABS Employee Earnings and Hours, May 2018 (Cat No. 6306.0), unpublished data.

Casual Employment by Industry

13. Casual employees continue to be heavily concentrated in several industries: retail (20% of all casuals) and accommodation and food services (19% of all casuals). Casual density is highest in accommodation and food (where over half of all employees are casual), followed by agriculture, forestry and fishing (43%); retail (33.6%) and arts and recreation services (with around 29.5% of all employees being casual) (see Figure Two). Casual work is concentrated in the low paying sectors of the economy. However casual work is not confined to these sectors.

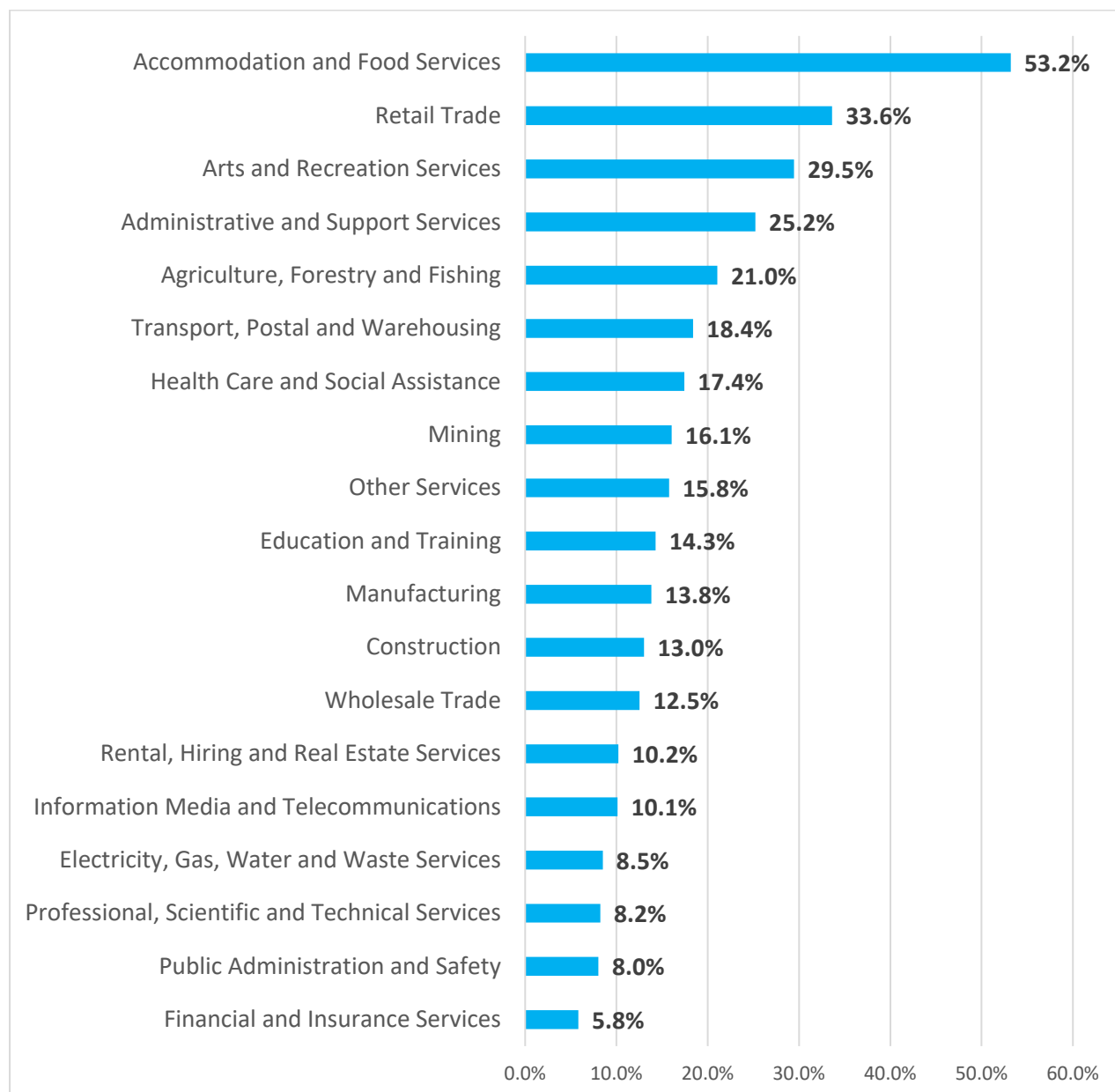
14. We can see below that Accommodation and Food services (401,800), Retail Trade (397,100), Healthcare and Social Assistance (311,000) Education and Training (158,800), and Construction (149,000) are industries where many casuals work.

Figure One: Casual employment by Industry



Source: ABS Characteristics of Employment August 2020

Figure Two: Share of Casual Employment by Industry



Source: ABS Characteristics of Employment August 2020

15. It is clear from the above graphs that a high proportion of casuals work in low paid, award reliant work. Three of the top four industries with the highest share of casual employment are the most award reliant sectors. These include Accommodation and Food Services (53.2%), Retail Trade (33.6%) and Administrative and Support Services (25.2%). These industries are dominated by low paid, insecure work.

Over half of all casual employees can be classified as “Permanent Casual”

16. 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 years¹⁴. A significant proportion (76.2%) of casual workers have had continuous employment with one employer for over 6 months¹⁵. A high proportion have an expectation of ongoing employment with their employer. 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.

17. In theory, all casual workers should receive a premium on their hourly wage, the “casual loading”. This loading (generally 25% in most Modern Awards) was historically designed to compensate casuals for the loss of accrued leave and public holidays and for the nature of casual employment. However, median wages data demonstrates that casuals are actually paid less than their permanent counterparts on an hourly basis. Full time casuals are paid \$8.00 per hour less than full time permanent employees and part time casuals are paid \$6.00 per hour less than their permanent part time counterparts¹⁶.

While a high proportion of casual employees have long term continuous employment with one employer, this does not mean they are fully employed or that they have regular working hours. On the contrary, many casual workers are 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 another. ABS data 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 hours¹⁷;
- far more likely to have large fluctuations in working hours from one week to the next¹⁸ ; and,
- three times more likely to want additional working hours¹⁹

18. The category “casual worker” does not exist in many advanced economies. Rather, 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.

¹⁴ Parliamentary Library ‘Characteristics and use of Casual Employees in Australia’ 19 January 2018

¹⁵ Ibid

¹⁶ ABS Characteristics of Employment, August 2019 (Cat No. 6333.0) Casual earnings include 25% loading

¹⁷ ‘Characteristics and use of casual employees in Australia’ Parliamentary Library, 2018

¹⁸ Ibid

¹⁹ Ibid

19. Nonetheless, it is clear that Australia has an extremely high proportion of temporary workers compared to other OECD countries²⁰. Spain is one country that approaches a similar level of temporary work as Australia. However, when we examine temporary employees in Spain 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 caused by lack of certainty as to employment duration. Casuals in Australia enjoy none of the basic rights such as sick leave and annual leave that permanent employees enjoy.

Independent contractors

20. There are over one million 'independent' contractors in Australia. Nearly one third of them are engaged in the construction industry. Whilst there are many bona fide contractual relationships in that industry, many employees are falsely classified and treated as independent contractors. The CFMMEU has estimated that between 26% and 46% of so-called independent contractors in the industry are engaged on sham subcontracting arrangements.²¹

21. In recent decades, the use of so-called independent contractors has increased significantly in other parts of the economy in both 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.

22. Again, a large proportion of the workers in this category are not really "independent". 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 work. Many of these contractors are economically dependent on a single business 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.

23. 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, 37.7% of people who are classified as "independent contractors"

²⁰ OECD Statistics

²¹ CFMMEU, Race to the Bottom, CFMMEU Research Paper, 2011

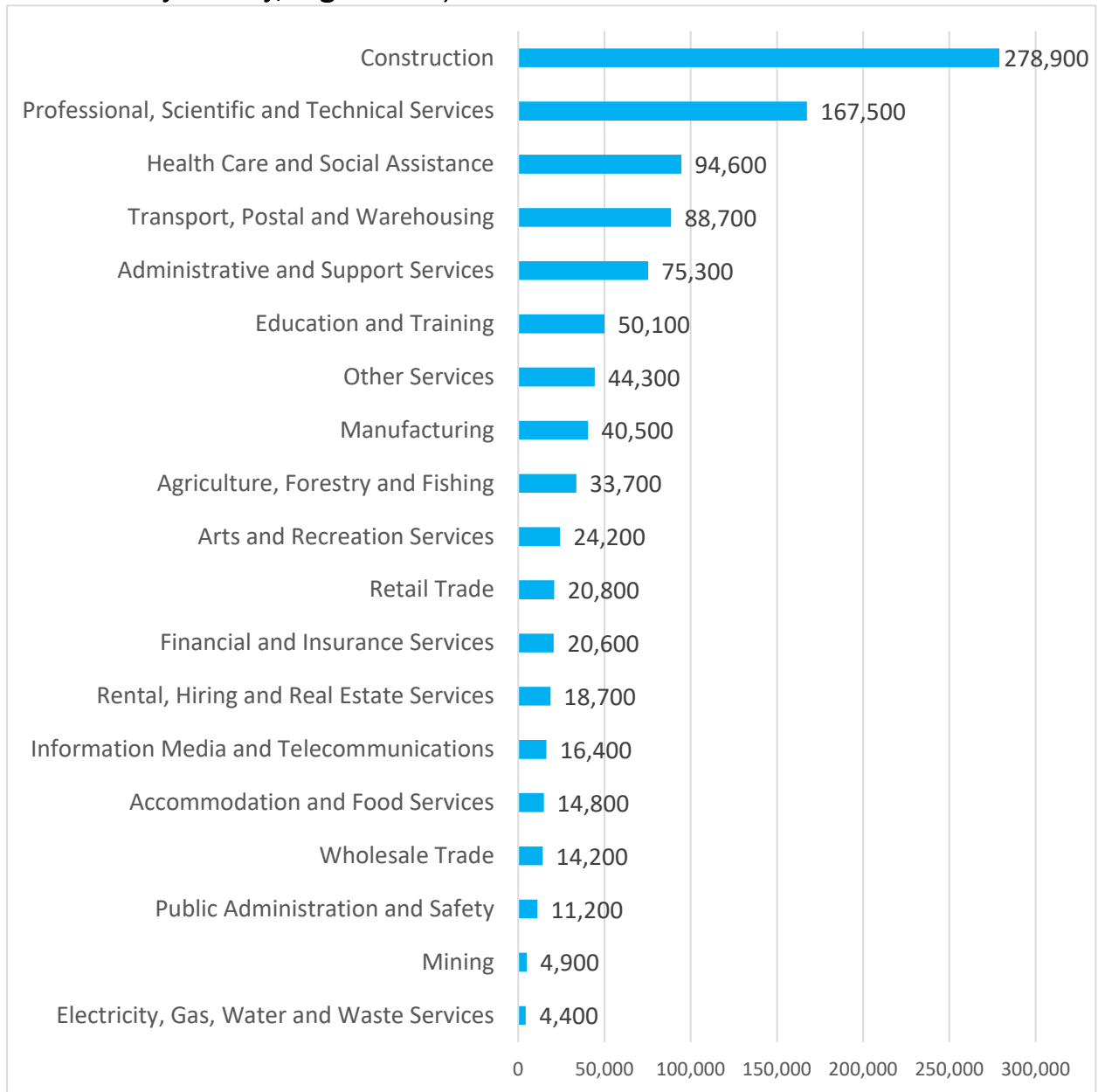
indicated they do not have authority over their own work²². In construction 33.65% of independent contractors” indicated they do not have authority over their own work²³.

24. The practice of sham subcontracting seriously undermines employment standards. It involves wholesale avoidance of our system of industrial regulation and allows employers to avoid legal minima and costs associated with standard forms of employment such as annual leave and sick leave. Other statutory obligations such as payroll tax, superannuation contributions and workers compensation insurance are ignored. Cost and responsibility is shifted to employees. Those engaging in unlawful sham contracting arrangements are given an unfair competitive advantage over those who are complying with their employment obligations.

²² ABS Cat 6333.0 Characteristics of Employment, Australia, August 2020

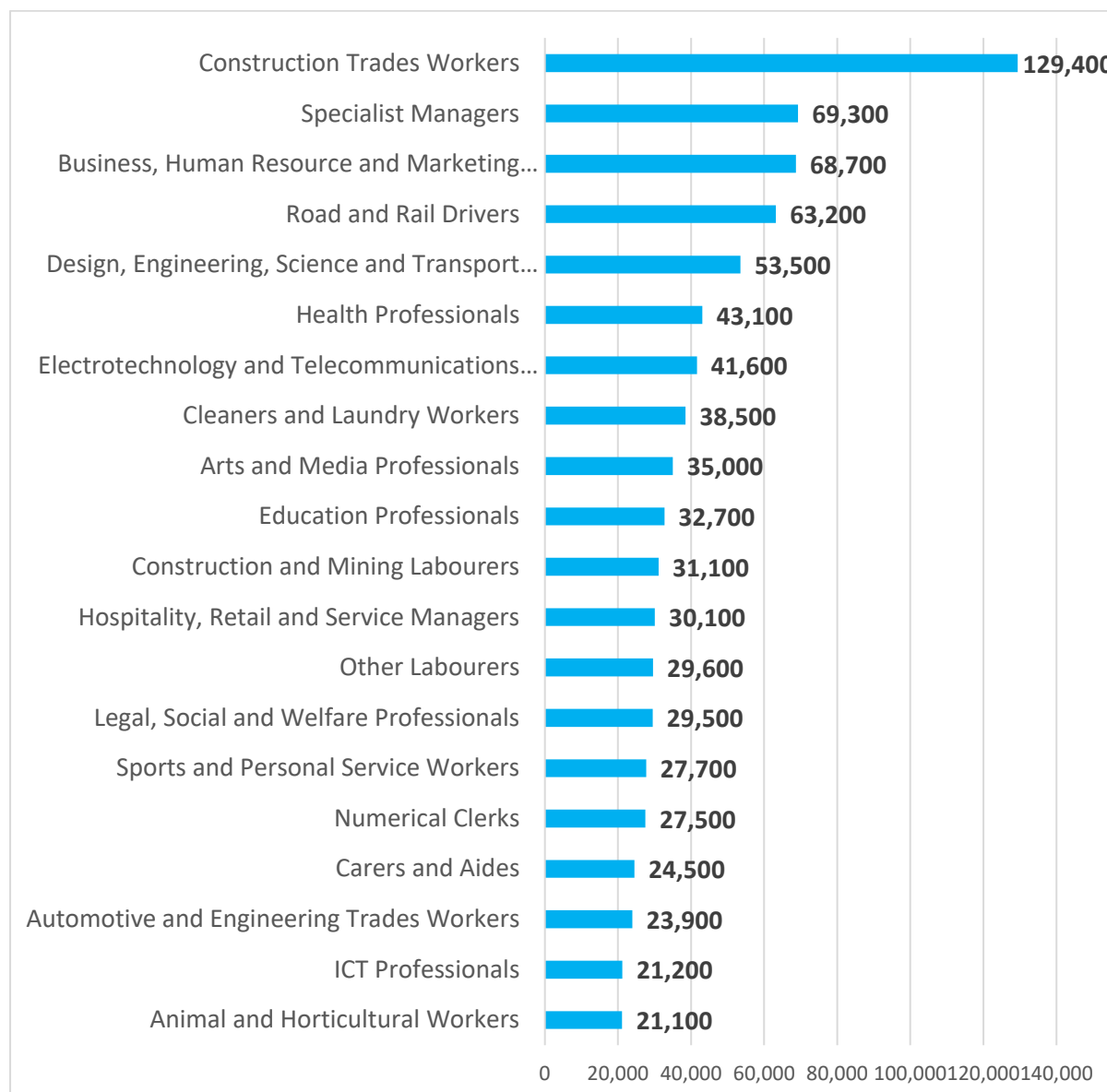
²³ Ibid

Figure Three: There are over one million independent contractors (Independent contractors by industry, August 2020)



Source: ABS Characteristics of Employment August 2020

Figure Four: Independent contractors by occupation, August 2020



Source: ABS Characteristics of Employment August 2020

Fixed term contracts

25. The ILO has recently stated that fixed term contracts (FTC's) 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, this temporary employment may be a dead end, and these workers will slip back into unemployment at the end of

the contract or become “trapped” in nonstandard employment if subsequent employment relationships are also non-standard.’²⁴

26. We note that fixed term contracts are increasingly misused in the public sector. 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, ongoing 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.

27. In Australia there were 413,000 employees on fixed term contracts as of August 2020²⁵. 43.7% of these contracts have fewer than 12 months duration with Education and Training being the industry where fixed term contracts, under 12 months, are the most prevalent. A third of all fixed term contracts, under 12 months, were in education and training.

28. Australia’s higher education sector employs over 220,000 individuals, the majority of whom are highly educated and highly skilled. Yet, the higher education sector has become heavily reliant on fixed term contracts and casual employment –and these forms of employment are growing. The number of casual and fixed term staff in the sector has increased by 89 percent since 2000²⁶, while the number of continuing staff has increased by only 49 percent over the same period²⁷. Together, casual and fixed term staff now account for 66 percent of all persons working in higher education²⁸.

29. Tertiary education is characterised by one of the highest levels of precarious employment in Australia. The NTEU conservatively estimates that fewer than 36% of all university employees have continuing employment. The excessive use of casual and limited term employment in higher education does untold damage to the lives of thousands of Australian workers, as well as significant damage to the quality of provision of education, and to the public interest.

30. The responsibility for this situation is twofold –in the first instance, blame is shifted by government onto universities, with the government rightly saying that universities are autonomous institutions responsible for their own industrial relations practices. Alternatively, the universities conveniently shift the blame for this situation onto government, saying that the level of funding per student for teaching, and the way university research is funded, encourages systemic precarious employment. The truth is that inadequate funding has combined with poor management practices, and the losers are Australia’s students, the public, staff and universities themselves.

²⁴ ILO, “Non-standard employment around the world: Understanding challenges, shaping prospects”, 2016.

²⁵ ABS Characteristics of Employment August 2020

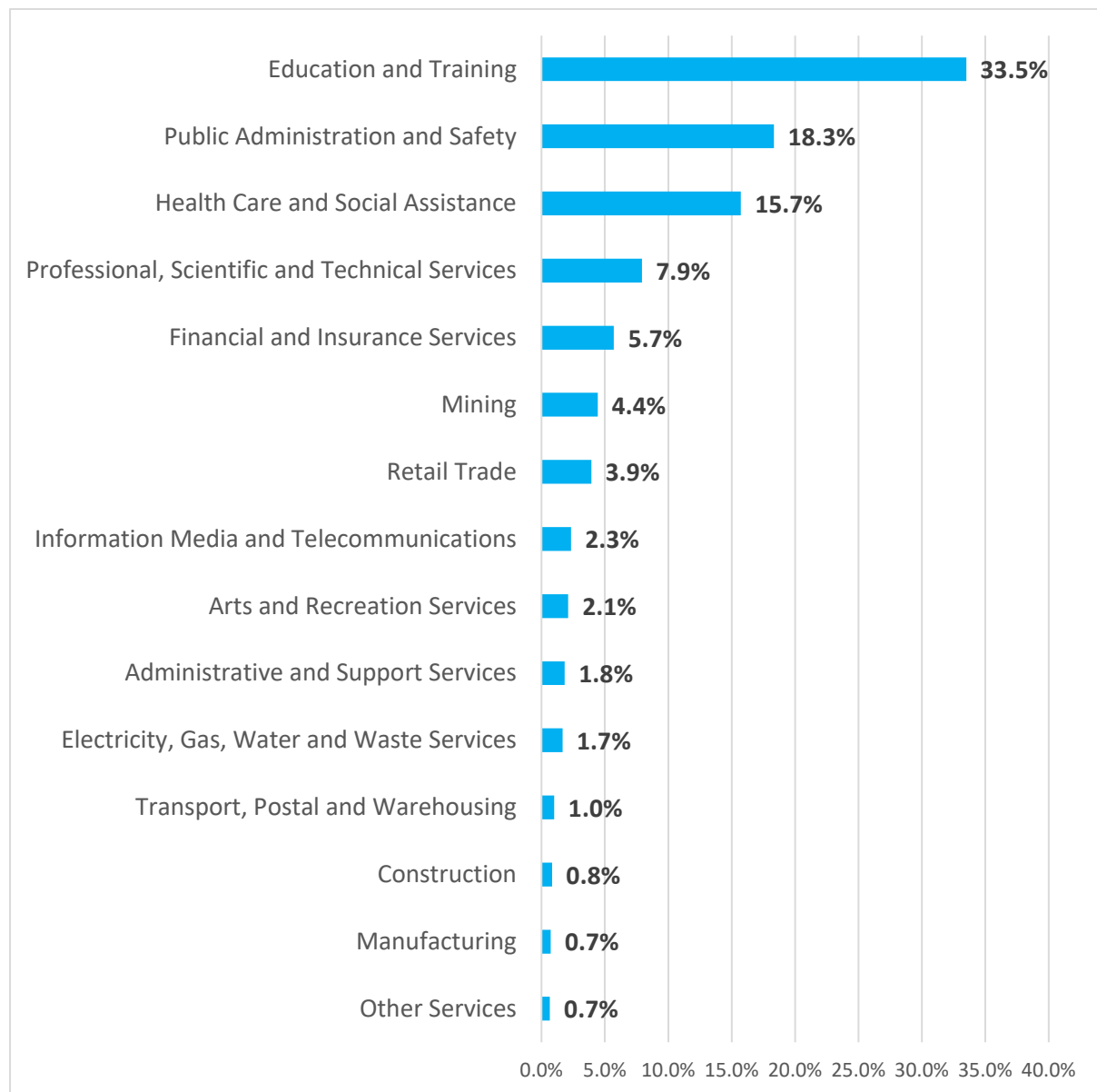
²⁶ Source: Department of Education, Selected Higher Education Statistics Series, multiple years

²⁷ Ibid

²⁸ Ibid

31. The ILO's Termination of Employment Convention 1982 (No. 158) states that 'adequate safeguards ...be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.' The Termination of Employment Recommendation, 1982 (No. 166) supplements this provision. It recommends limiting fixed term contracts to temporary work, deeming those contracts which are ongoing to be open-ended and those that are renewed on one or more occasions to be permanent employment. Australia ratified this Convention in 1993 but has not provided safeguards for fixed term employment. In fact, Australia is only one of seven OECD countries not to regulate the use of fixed term contracts.

Figure Five: Share of fixed term contracts under 12 months by industry



Source: ABS Characteristics of Employment August 2020

Labour Hire

32. 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.
33. Historically the use of triangular employment relationships of this nature 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, has expanded to a range of industries and occupations and has increased substantially as it is being used as a means to reduce labour costs and transfer risk to workers.
34. Labour hire has involved exploitative practices in particular sections of the economy as identified in previous inquiries including the Commonwealth's Migrant Workers Taskforce, the [2016 Report of the Queensland Parliamentary Finance and Administration Committee](#) into the practices of the labour hire industry in Queensland and the Victorian Inquiry into the Labour Hire Industry and Insecure Work. Many companies replace permanent workers with labour hire workers further entrenching insecure work in the labour market.
35. There has been continued substantial growth of labour hire agencies in recent years. Labour hire is now a \$19 billion a year industry.
36. The abovementioned inquiries found incidents where labour hire agencies ignored the provisions of industrial instruments and applicable laws. These businesses were avoiding tax liability, and not paying or underpaying workers compensation insurance premiums.
37. Corporations and some government agencies have opted for labour hire as part of complex industrial arrangements designed to facilitate the stripping of conditions and driving wages down below industry standards. They use labour hire as a means of putting wages into competition through outsourcing that puts the workforce beyond the reach of enterprise bargaining with the host business.
38. The use of labour hire firms is used as a mechanism to not only divert employment costs and obligations, but to divert risk on to the labour hire firm and individuals - this results in an extraordinary level of unmanaged risk and exposure to serious litigation in some industry settings if and when the system fails. This includes;
 - the lack of opportunity to negotiate fair terms - as is the case with independent contractors, it is common for professionals to be offered a contract through a labour hire arrangement on a "take it or leave it basis" without the opportunity to negotiate fair terms which suit both parties. This largely reflects the differential bargaining power of the parties.

- the lack of protection against outer limit contracts - even where it is stated that a contract is for a particular term, a client or agency's right to terminate at their discretion or convenience means that the contract is not a fixed-term contract but effectively an outer-limit contract. This means that if terminated prior to the conclusion of the stated term, the contractor has no entitlement to damages for the unexpired balance of the contract. Where there is no provision entitling the contractor to terminate the contract, the contractor effectively has no rights at all under the terms of the contract in relation to termination. This also means that in the event that the contractor is unable to fulfil the obligations under the contract, the other party is able to claim damages for the lost balance of the contract, especially where there is no provision for substitution or a sub-contractor to be brought in to complete the work. This form of contract is not uncommon and demonstrates the significant imbalance in the parties' rights and obligations arising under the contract; such terms are not reasonably necessary to protect the legitimate interests of the party that would be advantaged by the term;
- the imposition of unfair non-solicitation terms on professionals - Professionals Australia has found that it is not uncommon for unreasonably lengthy periods of non-solicitation following a period of engagement to be imposed on labour hire workers by a labour hire firm;
- a lack of transparency around the fees paid to workers as a proportion of that charged to the client – that is, a disproportionate cut taken by the agency - many contractors working through a labour hire firm find it frustrating not knowing the rate the principal client pays for the provision of the contractor's labour - that is, the agency is not transparent about the rate they charge the principal client compared with the rate the contractor receives.;
- long-term implications of contracting out to labour hire agencies in relation to professional development and in turn, workforce planning and development - labour hire firms can be reluctant to invest in training and professional development for their employees. In accessing labour hire arrangements, employers effectively buy in the skills needed rather than being prepared to invest in skills development for their own staff and this in turn can have significant implications for workforce development and growing our skills base in the longer-term.;
- contingent engagement impacting on the capacity of workers to report abuse or exploitation - Professionals Australia members have reported that they are unable to report abuse, exploitation, safety concerns or injuries for fear that doing so would lead to loss of shifts or the loss of work altogether.

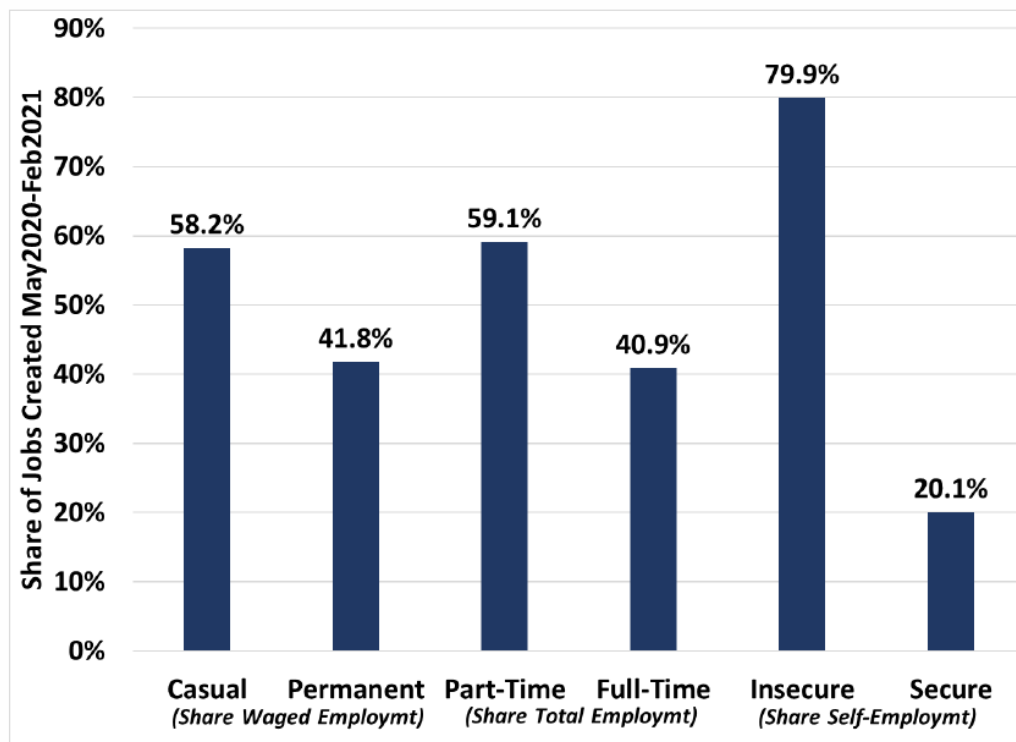
The Recovery has been dominated by Insecure Work

39. Workers in insecure jobs bore the lion's share of dislocation during the initial stage of the pandemic. But now these insecure forms of employment are roaring back as the economy recovers from the downturn. Most of the new jobs that have been created

since the trough of the employment recession in May are insecure jobs. Almost 60% of all new jobs created from May through February (most recent data available) are casual positions (see Figure 6. An even larger share of new jobs created in this time were part-time positions²⁹. Indeed, the share of part-time jobs in total employment, which initially declined during the COVID-19 shutdowns (due to so many part-time workers losing their jobs), came roaring back to set an all-time record high in October, of 32.3%³⁰.

40. Another dimension of the burgeoning insecurity in Australia’s post-COVID employment rebound is the high proportion of new self-employment that consists of very marginal, insecure positions. Almost 80% of all self-employed positions created since the employment trough last May consist of individuals who either have no other employees³¹ (working on an own-account basis) and/or are not incorporated. These are highly precarious undertakings (including gig economy jobs), in which individuals have no access to normal entitlements and protections (including paid sick leave), and are highly vulnerable to economic shocks and fluctuations.

Figure Six: Growth of insecure work in the recovery to February 2021



Source: Calculations from ABS Labour Force Statistics, Table 1, and Labour Force, Detailed, Table EQ04

²⁹ The part-time share has since moderated slightly, to 32.1% as of March 2021

³⁰ Nahum and Stanford (2020) discuss the dominant role of insecure work in the employment recovery, and its worrisome economic and social consequences.

³¹ Ibid

The resurgence of insecure jobs in the aftermath of the pandemic is recreating extreme vulnerability for millions of Australians³².

41. It is forcing many Australians to piece together a living from multiple insecure jobs: indeed, one-third of all jobs created between the June and December quarters in Australia last year were 'secondary' jobs, meaning that the person filling them was already working in another position³³. And the proportion of those secondary jobs in total employment reached the highest share by end-2020 (7.2% of all jobs) in the history of ABS statistics on this issue. Multiple job-holding is not only stressful and insecure for affected workers; it also poses significant public health risks during a pandemic, because infected workers are more likely to transmit disease in multiple work locations (This is discussed in greater detail in the section below).
42. The economic recovery should be an opportunity to strengthen the underlying structure of Australian jobs: moving away from casual and other precarious forms of employment, and supporting the development of better, more stable positions. Instead, the Coalition Government is doubling down on its embrace of insecure work as the new normal – typified by its newly-passed changes to the Fair Work Act which confirm and liberalise employers' ability to hire workers in casual arrangements for any job they desire.

More Australians are working more than one job than ever

43. We have also recently seen the fastest expansion in the number of Australians working two, three or more jobs in the history of the ABS Labour Account. The growth of secondary jobs highlights the impact of stagnant household incomes, the decline in traditional full-time permanent employment arrangements and the shift towards insecure work arrangements.
44. The primary reasons workers hold more than one position is that no single job provides a sufficient income. Wage growth has been treading water since 2013. The net result is rising debt uncertainty and instability as many workers are forced to work two or more jobs just to get by.
45. The growth of secondary jobs highlights the impact of stagnant household incomes and the shift towards part-time work and insecure work arrangements. The labour market has shifted to one that is less able to allow people to survive on one income than ever before.
46. The reasons for workers, particularly those who are award covered, seeking second or even third jobs are primarily financial. Low-paid workers who work multiple jobs do so out of necessity to "make ends meet".

³² Nahum and Stanford (2020) discuss the dominant role of insecure work in the employment recovery, and its worrisome economic and social consequences.

³³ Calculations from ABS Labour Account, Table 1.

Taking a second job has been regularly reported as being for reasons of financial necessity³⁴. Cairnduff et al (2018) chart the changing nature of work, and the particularly pronounced effect that technological change and new forms of work are having on young Australians. These young workers are typically taking longer into their working lives to obtain secure work (if able to do so at all)³⁵.

47. Kimmel & Conway (2001), whilst acknowledging that some people take on multiple employment for reasons other than to alleviate hardship, found that:

*'most moonlighters in our sample work full time on their primary jobs and 15 to 20 hours a week on lower-paying second jobs and, despite these long hours, tend to be somewhat poorer than the average worker. This suggests that most are moonlighting due to the constraint motive and that moonlighting is not entirely eliminating economic hardship.'*³⁶

48. Mastermann-Smith & Pocock (2018), in an Australian study of cleaners and early childhood educators, draw attention to how low-paid workers supplement income through multiple jobs³⁷.

49. The Australian Labour Account provides quarterly and annual time series data, consisting of four quadrants: Jobs, Persons, Hours and Payments. It also provides information on the number of Secondary Jobs. Secondary jobs are where a person is working more than one job at the same time and may consist of one or more additional jobs. These jobs can be held by people who have their main job in the same or a different industry. In seasonally adjusted terms for the December quarter 2020:

- Secondary jobs increased by 77,900 (or 8.3%)³⁸.
- The proportion of secondary jobs to filled jobs was 7.2% compared to 6.8% in the previous quarter³⁹.

50. The three industries with the highest number of secondary jobs were administrative and support services, health care and social assistance, and education and training. As we can see from the graph below there is now a record number of jobs that are a person's second (or more) job:

³⁴ The Advertiser (Adelaide, South Australia, Australia) 2019, 'More of us take on a second job to pay the bills', viewed 17 February 2020; The Advertiser (Adelaide, South Australia, Australia) 2018, 'More seek income top up with second job', viewed 17 February 2020; The Courier-Mail (Brisbane, Queensland, Australia) (2018) 'Aussies forced to take second job to survive' viewed: 17 February 2020; The Mercury (Hobart, Tasmania, Australia) 2018, 'More people looking for second job', viewed 17 February 2020; Parramatta Advertiser (New South Wales, Australia) 2018, 'Juggling a second job for extra cash', viewed 17 February 2020.

³⁵ Cairnduff, A., Fawcett, K., & Roxburgh, N. (2018). Young Australians and the disrupted economy. In Stewart A., Stanford J., & Hardy T. (Eds.), *The Wages Crisis in Australia: What it is and what to do about it* (pp. 251-262). South Australia: University of Adelaide Press.

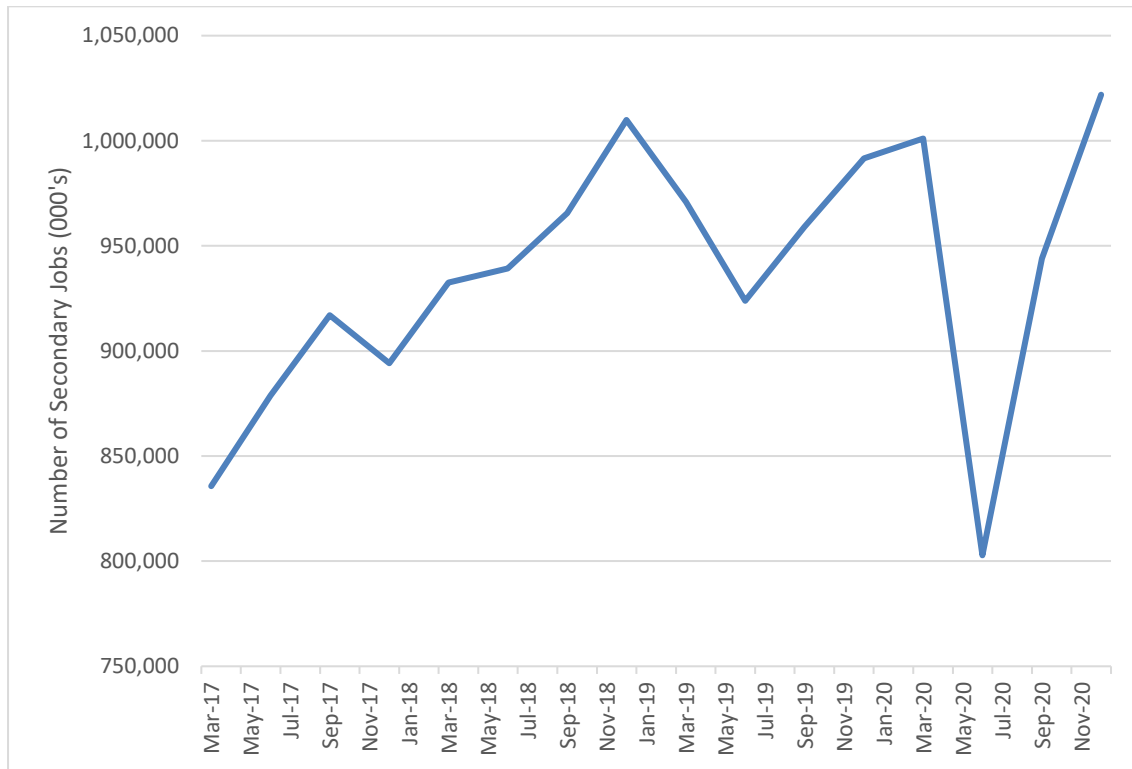
³⁶ Kimmel, J & Conway, KS (2001), 'Who Moonlights and Why? Evidence from the SIPP', *Industrial Relations*, 40 (1), 89-120, 91

³⁷ Mastermann-Smith and Pocock 2018 in Bamberly, L & Campbell, I 2012, 'Multiple Job Holders in Australia: Motives and Personal Impact', *Australian Bulletin of Labour* 38(4), 293-314, 296

³⁸ ABS 6150.0.55.003 Labour Account Australia

³⁹ Ibid

Figure Seven: Number of Secondary Jobs 2017- 2020

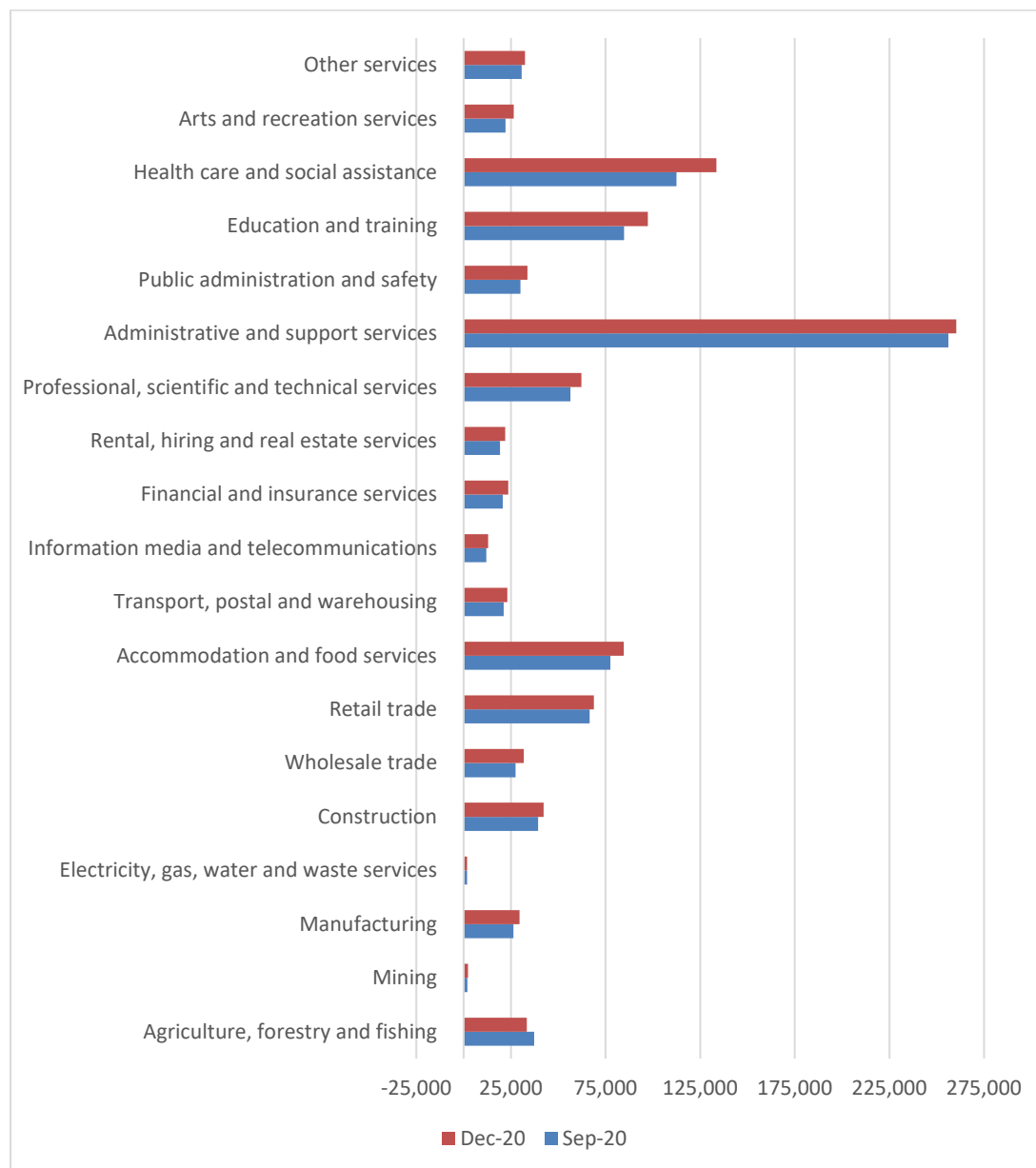


Source: ABS 6150.0.55.003 Labour Account Australia

51.As reported above there has been a significant increase in the number of secondary jobs from the September quarter 2020 to the December quarter 2020 (the most recent data)⁴⁰. This can be seen using the industry breakdown in Figure 4 below.

⁴⁰ ABS 6150.0.55.003 Labour Account Australia

Figure Eight: The number of secondary jobs by industry - September quarter 2020 to the December quarter 2020

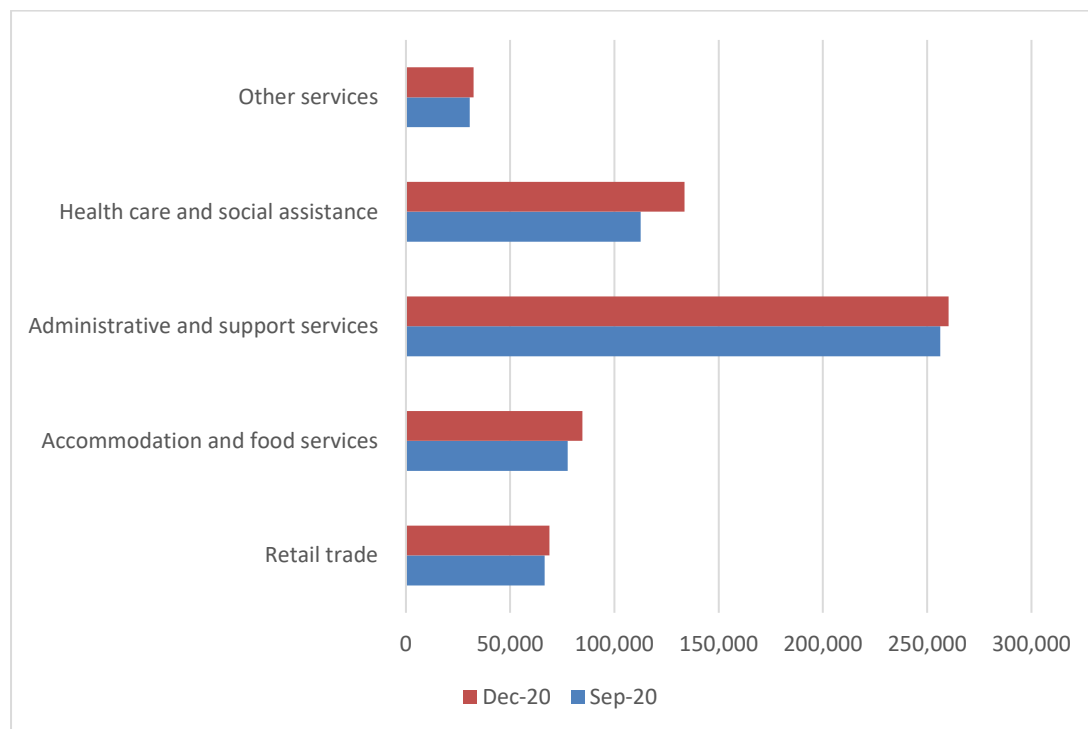


Source: ABS 6150.0.55.003 Labour Account Australia

52. The number of secondary jobs in the award sectors make up over half (56%) of all secondary jobs with administrative and support services having the most secondary jobs of any sector⁴¹.

⁴¹ ABS 6150.0.55.003 Labour Account Australia

Figure Nine: Number of secondary jobs by award sector - September quarter 2020 to the December quarter 2020



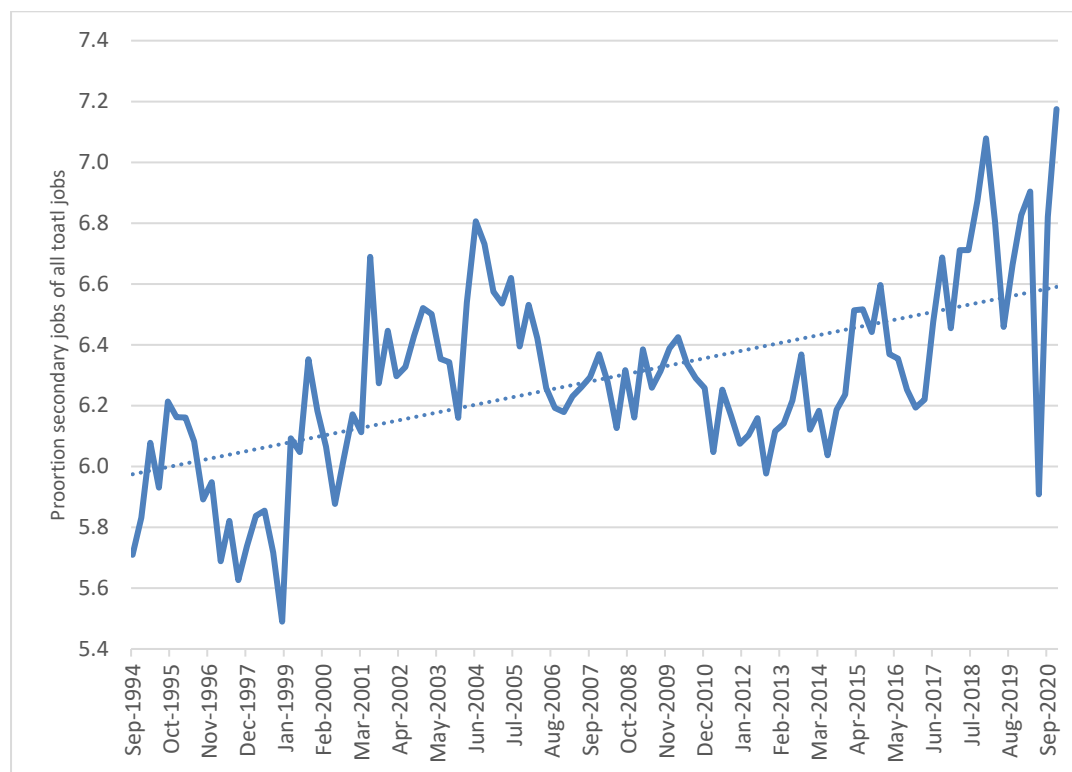
Source: ABS 6150.0.55.003 Labour Account Australia

53. In the last half of 2020, the number of jobs increased by 655,600 yet a third of these were “secondary jobs”. In the September quarter the number of multiple job holders in Australia increased by 17.5 per cent before another 8.3 per cent increase in December⁴².

54. We can see in Figure Nine below that there is a rising trend of the proportion of secondary jobs relative to total jobs in all industries. This proportion is now at the highest level in the history of Labour Account data series. With more than 7% of workers having at least two jobs, with over 27% of secondary jobs being in administration and support services.

⁴² ABS 6150.0.55.003 Labour Account Australia

Figure Ten: Proportion of secondary jobs of total jobs in all industries 1994-2020



Source: ABS 6150.0.55.003 Labour Account Australia

55. As Figure Eight above shows, secondary employment grew in all of the top 5 award reliant industries. With the proportion of secondary jobs in administration and support services now 27.2%.

b. The risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis

56. The dramatic expansion of insecure 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. The usual justification offered by big business for the increasing share of economic activity going to high profits rather than wages growth is because of investment in risk-taking activity. The pandemic has shown it is labour, not capital, that absorbs much 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.

57. In recent times economic risk has been transferred to the workers but the financial rewards that flow in the good times have not. This employment model might be considered fairer 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 fuelled by the expansion in non-standard employment.

58. Meanwhile, the profit share in national output has increased significantly. The balance between risk and reward in the Australian labour market has shifted appreciably in favour of business interests. Workers absorb most of the risks and big business takes the rewards. 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 the Morrison Government's policy settings are promoting downward wage flexibility and uncertain and unstable forms of work.

c. Workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy

59. On one view, the gig economy is comprised of companies that provide assignments of work on a task or 'gig' basis via online digital platforms. These companies maintain that they connect workers that they nominally engage as independent contractors with purchasers of the worker's services. The gig economy is associated most especially with ride hailing platforms such as Uber, food delivery platforms such as Deliveroo and Foodora, and temporary labour providers such as Airtasker, Freelancer and Sidekicker. The term is often used synonymously, and in our view, erroneously, with the term 'sharing economy' or 'access economy', and to also include companies like AirBnB, Stayz or Car Next Door, that facilitate the renting and access of goods and assets like accommodation and motor vehicles rather than the provision of labour.

60. The operating models of gig economy companies are diverse. Some companies operate in a horizontal 'peer-to-peer' fashion, as 'facilitator' between freelance service providers who are genuinely engaging in independent contracting arrangements with the purchasers of their work. Companies like Upwork or Freelancer appear closest to this model. Alternatively, platforms, even if they present themselves in a similar way, are often in fact operating in a more vertical fashion, in a hierarchical arrangement between worker and consumer and ought to be regulated accordingly. Uber and Foodora appear to fit more closely with this model.

61. Both models tend to be exploitative. In both cases, workers perform work without basic worker protections on substandard pay and conditions compared to employees in conventional arrangements, because they sit outside the employment regulatory regime as invariably, low-paid, so-called independent contractors.

62. The size of the gig economy is currently relatively small and difficult to measure but it is likely to grow rapidly. Platforms are already operating in many industries but especially transport, fast food, health, aged care, disability care, and education and training⁴³
63. As platforms have the potential to operate in all sectors, it may not be appropriate to describe the gig economy as a discrete 'sector' as such, but rather as a mode of allocating services and work via online digital platforms in terms of discrete tasks or 'gigs'.
64. Advocates for the gig economy will argue that it is a modern, inevitable and welcome if not utopian mode of working, unshackling workers from out-dated modes of engagement and giving them freedom to set their own hours and run their own innovative businesses. Uber, for example, describes its drivers not as workers but "Uber entrepreneurs", managing their own businesses in a sharing economy, with "no office, no boss" and the ability to "make good money", and the freedom to work when and where they like.⁴⁴ However, the hype belies the reality of substandard pay and conditions and unsafe work practices attending this form of work. Uber drivers work under conditions and rates of pay unilaterally determined by Uber. They are not able to hire people, scale up or make their own business decisions, and they regularly earn well below minimum wages.
65. A study by the Centre for Future Work at The Australia Institute estimates Uber drivers earn on average less than \$15 per hour before tax and net of expenses, an amount below the Federal minimum wage and approximately half the award minimum wage for transport drivers⁴⁵. A TWU survey suggests most ride-hailing drivers are both reliant on this work for income and also receive too little to make it worthwhile. Rather than freely chosen for its flexibility, half report doing it full-time, and almost one third are doing it because they have debts to pay⁴⁶. 85% of drivers say they are unhappy with the pay, and three quarters say that company commissions are too high. As a result of the very low conditions in the industry, an extraordinary 50% of Australian ride-hailing workers leave within the first three months⁴⁷. A United States survey suggests a staggering 96% of American Uber drivers leave within their first year⁴⁸. It seems that after discovering the cumulative impact of GST, cost of fuel, insurance, vehicle maintenance, and other expenses on their take home wages, as well as the impact of the lack of paid leave, large numbers of drivers exit as soon as possible.

⁴³ Examples of gig economy operators in these areas are Uber, Ola, DiDi, Shebah, Deliveroo, UberEats, MenuLog, [Vygo](#), [Hireup](#), [Mable](#) (formerly Better Caring), and [Airtasker](#) (which covers a wide and growing variety of tasks across many industries, including now even aged and disability care)

⁴⁴ For example, see the Uber recruitment page for Australian drivers: https://www.uber.com/a/join?ec_exp=1&exp=70801t and Uber promotional video, 'The story of Daniel, Uber Entrepreneur': <https://www.youtube.com/watch?v=Eiq68uYHGOA>

⁴⁵ Jim Stanford, Subsidising Billionaires: Simulating the Net Incomes of UberX Drivers in Australia, Centre for Future Work at the Australia Institute, March 2018

⁴⁶ See TWU, Rideshare Drivers Survey, available at <https://www.twu.com.au/home/campaigns/rideshare-drivers/>; Ally Foster, 'Drivers ditching rideshare apps due to low pay and long hours', *News.Com.au*, 13 November 2018.

⁴⁷ *ibid*

⁴⁸ Chantel McGee, 'Only 4% of Uber drivers remain on the platform a year later, says report', *CNBC*, 20 April 201

66. Like Uber drivers, many other gig workers are generally nominally engaged as independent contractors and paid per task. However, many are in fact underpaid employees engaged under sham contracting arrangements. The Fair Work Commission found a Foodora delivery rider was an employee⁴⁹ and the Australian Tax Office and Revenue NSW have both ruled Foodora riders were employees for tax purposes⁵⁰. Whilst an unrepresented Uber driver failed to establish he was an employee in the Fair Work Commission for the purposes of unfair dismissal law, Uber drivers have been found to be employees in the United Kingdom,⁵¹ and New York City, and litigation challenging ride-hail workers' status persists around the world⁵².

67. Gig economy workers are invariably subjected to:

- a) lack of standard employment protections such as minimum wages, paid sick leave and holiday pay, superannuation;
- b) various forms of work insecurity (intermittency of work, varied start and finish times, unpredictable pay, job insecurity, and most especially, disaggregated working time, short shifts, and unpaid downtime between gigs whilst still being 'at work');
- c) lack of coverage by the platform operators' workers' compensation insurance;
- d) pay below the legal minimum that would apply to employees, in many cases, well below. Food delivery riders report being paid as little as \$6 per hour;¹²
- e) continuous competition with other workers for work and shifts. This can take the form of pressure to underbid or undercharge for work on platforms like Airtasker or pressure for food delivery riders to be available to accept work and deliver at unsafe speeds;
- f) unreasonable surveillance and continuous performance pressures, due to digital tracking and harsh, and usually unchallengeable, consumer feedback ratings that can limit or end work opportunities;
- g) an inability to find sufficient work
- h) poorer health and safety outcomes.
- i) gig work has a negative impact on training, service quality and skills due to a number of factors. The lack of a clearly identified employer means that the obligation to provide workers with information, instruction and training under

⁴⁹ See *Klooger v Foodora Australia Pty Ltd*, [2018] FWC 6836, 16 November 2018.

⁵⁰ Anna Patty, 'Foodora faces claims for unpaid tax and superannuation', *Sydney Morning Herald*, 28 August 2018.

⁵¹ Linton Besser, 'Uber loses landmark case over worker rights, entitling UK drivers to minimum wage and sick leave', *ABC News online*, 20 December 2018

⁵² Dan Rivoli, 'N.Y. judge grants Uber drivers employee status', *NY Daily News online*, 13 June 2017.

Occupational Work Health and Safety legislation is not enforced. Platforms such as Airtasker have been shown to actively circumvent consumer protections including the requirement for electricians and other high risk occupations to hold a valid licence to perform the work. This poses a threat to both the gig workers health and safety but also that of consumers;⁵³ and

- j) being engaged through start-up businesses with a high chance of failure or closure and lost wages and entitlements or outright entitlements theft. For example, Foodora recently exited from Australia in the wake of prosecution for sham contracting and the threat of class actions from thousands of workers owed millions of dollars in backpay and superannuation⁵⁴.

d. The aspirations of Australians including income and housing security, and dignity in retirement

Income Insecurity

68. New data from the Melbourne Institute's Survey of the 'Impact of COVID-19 in Australia' shows the group most vulnerable to adverse income shocks (being financially stressed or just making ends meet) are those on fixed-term contracts (73 per cent) and those on casual contracts (77 per cent). Despite the recovery according to the report 'there are disturbing increases in the proportions of people reporting financial stress and experiencing mental distress⁵⁵'.

69. The report says:

'The proportion of survey participants reporting financial stress (in terms of paying for essential goods and services) has crept up to 31 per cent and it now exceeds the proportion making ends meet (26 per cent). Additionally, the proportion experiencing mental distress (i.e. feeling depressed and anxious most of the time) is now at 24 per cent, a record high for the survey. Job insecurity has been suggested as a possible cause of financial stress and mental distress⁵⁶'

70. The report notes that at the other end of the spectrum, those employed on a continuing basis have the lowest proportion of employees who self-report being financially stressed or mentally distressed⁵⁷.

71. The ABS 'Household Impacts of COVID-19 Survey, 2021' further adds to the evidence of the proportion of Australians facing income insecurity. The survey reveals 13.4% of Australians in work reported their household could not raise \$2,000 for something

⁵³ See concerns raised by Unions NSW in Katherine Gregory, 'Airtasker: Unions raise safety concerns over 'gig economy' cowboys', *ABC News Online*, 9 March 2018

⁵⁴ See David Marin-Guzman, 'Foodora Administrators admit 'misclassified' delivery riders underpaid \$7.5m', *Australian Financial Review*, 8 November 2018.

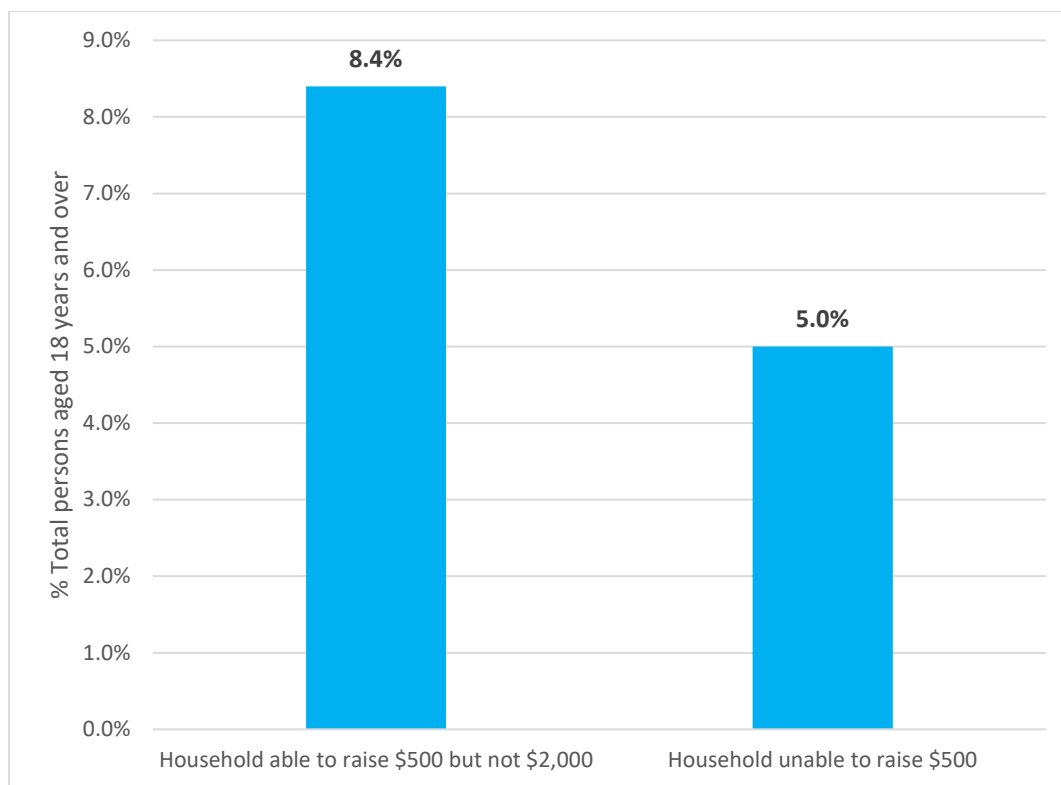
⁵⁵ Melbourne Institute's Survey of the 'Impact of COVID-19 in Australia' 2021

⁵⁶ *Ibid*

⁵⁷ Melbourne Institute's Survey of the 'Impact of COVID-19 in Australia' 2021

important within a week. 8.4 % of households are able to raise \$500 but not \$2,000 and 5% of households were not able to raise \$500 for something important⁵⁸.

Figure Eleven: 13.4% of Australians in work reported their household could not raise \$2,000 for something important within a week



Source: ABS, Household Impacts of COVID-19 Survey, 2021

72. This is a significantly higher proportion of employee households than what has been reported by the HILDA survey. HILDA reported that only 5% of employee households were unable to raise \$3,000 in a week for something important in 2018. This new data from the ABS suggests that the proportion of employee households unable to raise \$2,000 for something important has grown significantly.

73. Over 1.5 million in-work Australians reported their household could not raise \$2,000 for something important within a week. We estimate that over 960,000 Australians households in work were able to raise \$500 but not \$2,000 - and over 570,000 were unable to raise \$500.⁵⁹

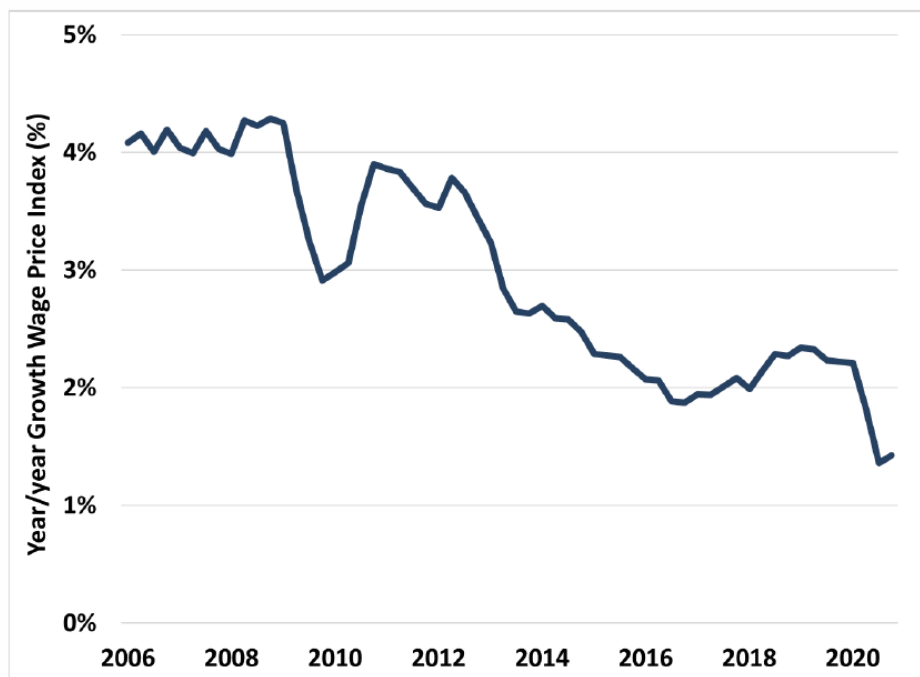
⁵⁸ ABS, Household Impacts of COVID-19 Survey, 2021

⁵⁹ ABS, Household Impacts of COVID-19 Survey, 2021

Income Insecurity and record low wages growth

74. Australian wage growth was setting post-war record lows for years before the pandemic hit. Since 2013, wages decelerated dramatically from their normal pace (of 3-4% per year, or even higher in good years). Wage growth (measured by the ABS's Wage Price Index) fell by almost half, averaging just 2% per year since 2015 (see Figure x). That was already the slowest sustained period of wage growth in Australia's post-war history – so any attempt to blame COVID-19 for the miserable state of Australian wages should be immediately rejected. The deceleration in Australian wages in this period was the worst of any major industrial country⁶⁰. The problem has been obvious for many years. And repeated government assurances that this was just a temporary problem and would be automatically fixed by market mechanisms and lower unemployment, were hollow. Indeed, in each year's Federal Budget, the government predicted an imminent rebound in wage growth – and each time, that prediction was wrong⁶¹.

Figure Twelve: Australian Wage Growth, 2006 -2020



Source: Calculations from ABS Wage Price Index.

75. The sustained weakness of Australian wages has contributed to the dramatic shift in the distribution of income in Australia (between households, and between factors of production). At 2% per year, nominal wages (on average) have barely kept up with consumer price inflation, implying virtually no improvement in real wages for Australian

⁶⁰ Stewart, Andrew, Jim Stanford, and Tess Hardy (2018). *The Wages Crisis in Australia: What It is and What to Do About It* (Adelaide: University of Adelaide Press). Chapter 2

⁶¹ Ongoing forecast errors in Coalition budget projections of wage growth are compiled by Centre for Future Work (2019).

workers in the better part of a decade. But labour productivity has continued to grow in this period – albeit unevenly and unimpressively, as a result of the failure of government to properly nurture innovation, investment, and the growth of high-value industries in Australia. The combination of flat real wages with rising productivity translates into a falling labour share of total output. (It also directly drives the increase in profits detailed above.) Indeed, in 2019, before the pandemic hit, labour compensation (including superannuation contributions) had declined to just 47% of GDP – the lowest since the ABS began collecting this data in 1959. (

76. Government actions – capping public sector pay, liberalising casual employment, and most recently opposing a strong minimum wage increase before the Fair Work Commission – have made the wages problem worse. And the dominance of insecure jobs (including casual, part-time, and gig positions) in the post-COVID rebound is also further undermining wage pressures across the labour market.

Superannuation and Insecure Work

77. The effectiveness of Australia’s compulsory superannuation system is undermined by the exemption of some workers from the scheme and the illegal underpayment or non-payment of superannuation contributions. Around 6 per cent of full-time employees did not receive superannuation, and around 20 per cent of casual and part time employees do not receive superannuation on top of their wages.⁶² Workers not legally entitled to superannuation include those earning less than \$450 per month from a single employer, those under 18 and working than 30 hours per week, and those working as a private or domestic worker for less than 30 hours per week.

78. Treasury estimates 311,000 workers did not receive superannuation payments on their wages because they earned below \$450 per month from a single employer in July 2019. They further estimate that this amounts to \$90 million per year in foregone superannuation contributions. 63 per cent of those workers are women, who retire with less than half of the superannuation of men on average.⁶³

79. Workers are not required to be paid superannuation if they are an independent contractor. Workers routinely misclassified as independent contractors, including gig economy workers, can expect to retire with 49% less superannuation as a result of their nature of work.⁶⁴

80. Workers in precarious work are also more likely to be subject to superannuation theft. More than 2.85 million have more than \$5.94b in superannuation stolen each year.⁶⁵ Workers in less secure industries such as hospitality, construction and transport are more likely to be underpaid superannuation.⁶⁶

⁶² The Treasury, Commonwealth of Australia, *Retirement Income Review*, 2020, p. 299.

⁶³ The Treasury, Commonwealth of Australia, pp. 300–301.

⁶⁴ The Treasury, Commonwealth of Australia, p. 309.

⁶⁵ Industry Super Australia, *Super Scandal: Unpaid Super Guarantee in 2016-17* (Melbourne: Industry Super Australia, 2019).

⁶⁶ The Treasury, Commonwealth of Australia, p. 303; Industry Super Australia, p. 3.

e. The effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies

The Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021

81. In 2021 the Morrison Government had the opportunity to reset Australia's labour market based on secure jobs with certainty that would drive both productivity and domestic demand but instead chose to press ahead with changes to legislation governing casual employment which will lock in insecure work and perpetuate low productivity growth and inequality.

82. *The Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* allows an employee to be treated as casual even though this may not reflect actual working arrangements, thus denying them rights and entitlements and reducing their bargaining power because of the precarious nature of their employment. In consequence, some employers will be even more likely to engage people as casual workers, knowing that by simply applying the casual label in the offer of employment they can shift risk and engage workers on an insecure basis, regardless of whether the position is indistinguishable from permanent employment.

83. Australia needs to take a different direction. Australia needs a comprehensive plan to deal with insecurity in the labour market and create more secure jobs that tackle uncertainty and instability;

1. A new employment security Division inserted into the National Employment Standards of the Fair Work Act. These new provisions should include:-

- (i) A revised statutory definition of casual employment that is objective and takes into account all the characteristics of the working arrangements and is not limited by or to the terms of the offer of employment.
- (ii) A meaningful and enforceable right for casual employees to transition to permanent employment, including the capacity to have conversion issues arbitrated in the Fair Work Commission.
- (iii) A cap on the total duration of back-to-back fixed term contracts
- (iv) A minimum of ten days paid family and domestic violence leave.
- (v) A new 'same job, same pay' provision requiring labour hire firms to provide wages and conditions of employment that are equal to or better than those that would have been received by those directly employed by the host employer had the work been performed by them.

2. An extension to the coverage of the industrial system to workers in non-traditional working arrangements but who are not genuinely conducting a business on their own account. This could include a new statutory definition of workers covered by the *Fair Work Act* and the capacity for the Commission to bring workers within the

scope of the Act for specified purposes. Workable unfair contracts provisions should be reintroduced to protect those workers who are genuinely conducting a business but who are subject to unfair commercial pressure from larger operators.

3. Tighter restrictions on and stronger deterrents against sham contracting arrangements. This would include removing the defence that allows employers to escape liability based on their subjective state of mind as to the relationship and increasing the penalties for those found to be in breach.
4. A national labour hire licensing scheme that provides protections and imposes obligations are at least equivalent to those provided by existing state schemes. Government procurement policies that give preference to firms providing secure work for local communities and government employment practices that set an example by prioritising secure work arrangements for public sector employees.

Labour Hire

84. The Morrison Government went to the 2019 election promising to regulate the labour hire industry off the back of findings of serious exploitation and non-compliance by the Vulnerable Workers Taskforce. Almost two years after making this promise, there is still no national labour hire licensing scheme.

85. Labour hire must be regulated to ensure that it is not based on a business model that relies on leveraging reductions in workers' pay, conditions and rights. We need a national system of regulation that includes a labour hire licensing scheme that has the following features:

- a. Applies to all labour hire providers across all industries;
- b. Requires all labour hire service providers to hold a license and users of labour hire services to be required to use only licensed providers;
- c. Establishes a publicly accessible register of licensed labour hire providers
- d. Imposes minimum capital requirements for any person or company seeking to register a labour hire agency and regular reporting obligation relating to compliance with legal obligations;
- e. includes a 'fit and proper person' test for all licensees and the ability of interested person to object to the granting of a labour hire license;
- f. Contains multiple avenues for monitoring and enforcement of licensing conditions and workplace and other legal obligations;
- g. Includes sanctions for companies in breach of their obligations that include disqualification from government tender lists and publicly funded contracts/projects, pursuing legal action and revoking licenses

Anti-Avoidance Mechanisms

86. There are inadequate measures to ensure employers, including host employers, cannot avoid responsibility for the people performing work for them through legal arrangements, including:

- principal or host employers are not made responsible for keeping employment records for all of the workers performing work for them (whether directly employed or not); and
- principal or host employers are not held responsible for all work-related compliance including unfair dismissal and underpayments, in relation to all of the workers performing work for them (whether directly employed or not).

Government contracts to companies and organisations that offer secure work for their employees.

87. There is a lack of proper accountability or acceptance by the government for the impact of procurement policies and practices on insecure working arrangements. When opening public procurement contracts (above a certain threshold) to bid by private and non-profit suppliers, governments should require in advance a full and transparent reporting by prospective suppliers regarding their adherence to labour standards (including the principle of paying at least living wages) and compliance with relevant employment law, and the nature of their own sub-contracting and supply chain relationships with other suppliers.

A cap on back-to-back short term contracts for the same role

88. The Morrison Government has ignored the need to cap back-to-back fixed term contracts. We have seen that in certain sectors such as Education and Training short term fixed contracts, under 12 months, is rife.

Current limitations in enterprise bargaining

89. Australia's system for bargaining is at the extreme end in terms of its level of decentralisation. Most other OECD countries have a more moderate mix of coordination and decentralisation. With only 11 per cent of private sector employees covered by a current enterprise agreement, Australia's highly decentralised enterprise-level bargaining system is failing to extend bargaining rights to the majority of workers. Having spotted this power imbalance, many employers have exploited it⁶⁷.

90. Decades of neoliberal economic restructuring have increased inequality, removed key workplace protections, eroded workers' bargaining power, and led to a dramatic rise in the incidence of precarious and insecure work, underemployment, wage theft, and wage stagnation⁶⁸.

⁶⁷ UWU submission to the Select committee on Jobs Security, March 2021

⁶⁸ UWU submission to the Select committee on Jobs Security, March 2021

91. We believe that workers must be able to collectively bargain for improved workplace standards with the controlling economic entities across industries and along supply chains. Workers need to be able to bargain with the host business in labour hire; with franchisors; with lead businesses in supply chains; and across industries. Industry bargaining is a necessity for resolving worker bargaining imbalances created by increased contracting out, labour hire, insecure working conditions, decentralised working and attacks on unions that create barriers for union power in the workplace⁶⁹.

92. The case for implementing this change in Australian labour law is even stronger in light of the devastating impact of the COVID-19 pandemic on workers. Inclusion of all workers in a functional system of collective bargaining, that goes beyond the enterprise that happens to directly employ them, is not just a matter of economic power. It is a vital mechanism to ensure workers have control over the safety of their work, across sectors, industries, franchises, labour hire arrangements, supply chains – or however work is configured⁷⁰. While its precise shape requires much further consideration, for industry bargaining to be successful it must follow these three principles⁷¹:

- It must be universal: it must meet the needs of workers who have fallen through the gaps in the current system.
- It must be accessible in that all workers, including labour hire and contractors, must be able to benefit.
- It must give workers a real voice and restore their power to determine their living standards.

93. The rules governing the content of enterprise agreements limit and prohibit many job security enhancements which could be agreed at an enterprise such as provisions which:

- Limit the employer's ability to use supplementary labour;
- Restrict the use of contractors to a proportion of the workforce;
- Extend the terms and conditions of employment under the Agreement to labour hire and contractors

94. However, both the Competition Policy Review and the Trade Union Royal Commission have recommended tighter measures to be implemented which make illegal any provisions in enterprise agreement that they deem as 'collusive'. There is a lack of acknowledgment that job security is usually the highest priority for employees when making enterprise agreements or that there is a benefit to companies in securing trust from their workers in adopting such measures.

⁶⁹ Ibid

⁷⁰ Alison Pennington, 'The Fair Work Act and the decline of enterprise bargaining in Australia's private sector' *Australian Journal of Labour Law* 33, 2020

⁷¹ Ibid

Positive duty to address gender inequality

95. A legislated positive duty to address gender inequality could assist in encouraging corporations and others to address the use of insecure forms of work.

g. The interaction of government agencies and procurement policies with insecure work and the 'on-demand' economy

96. Governments should and must be examples and promoters of good employment practices – with their own workforces and in their funding and contract arrangements with commercial and not-for-profit employers who engage thousands of employees in the private and not-for-profit sectors to perform services on their behalf. Public sector outsourcing and procurement policy is a driver of insecure employment.

97. A substantial contributor to the prevalence of casual work in disability services and early childhood education are the inadequate government funding models. For example, the government's ad hoc, impermanent commitment to the National Partnership on Universal Access to Early Childhood Education fails to provide funding stability to education providers, limiting their ability to engage permanent employees. In these sectors, the instability of the government's own funding models is a significant factor increasing insecure work.

98. The current models of government contracting and funding of activities to private sector and not-for-profit sector organisations directly contribute to the adoption of insecure employment mechanisms by those entities.

99. The challenge to government is to act to influence the adoption of fair and consistent employment practices, terms and conditions throughout their own internal operations, and also in those services provided for and on their behalf through procurement and through the provision of services delivered by the non-government sector but funded by the Commonwealth.

100. Unfortunately, the Morrison Government is directly facilitating insecure work arrangements including gig work. An example of the use of independent contractors and the gig economy is the platform Mable. The Federal Government entered into a \$5.77 million contract⁷² with Mable to try and meet surge workforce needs during the pandemic. Mable is a platform in which individual workers can be 'matched' with clients and is similar to other gig economy platforms such as Uber.

101. Workers must obtain an ABN and set their own rates. As independent contractors, these workers are excluded from the minimum wages and entitlements they would be

⁷² <https://www.health.gov.au/news/newsletters/protecting-older-australians-covid-19-update-7-april-2020>
For contract amount see: <https://www.thesaturdaypaper.com.au/news/politics/2020/05/23/exclusive-govs-58m-aged-care-app-offers-no-duty-care/15901560009868>. For more information see United Workers Union, 'Submission to the royal commission into aged care quality and safety on the impact of the coronavirus (covid-19) on the aged care sector' 24 July 2020

entitled to as employees under the award system. Gig economy platforms are unsuitable for emergencies such as COVID-19. The premise of gig economy platforms is 'flexibility' and there is no guarantee workers on a platform will be available at the location needed, and at the time needed. Mable also claims to have no 'duty of care' for the quality of its workforce or liability for the care provided.

102. The ACTU calls for a national target to halve the proportion of insecure jobs in Australia by the end of 2030

h. Any related matters

Insecure Work and Gender Inequity

103. Women were over-represented among workers in insecure and low-paid jobs and were shouldering the majority of unpaid domestic and care labour before the pandemic struck. Work predominantly performed by women – including much of the frontline and essential work which kept us safe during the pandemic – is more likely to be low-paid and insecure because of gendered assumptions and discriminatory views about the skills required and the value and complexity of the work.

104. Due to the COVID-19 crisis, 21% of the female workforce (or 1.3 million women) has lost work or is experiencing pressures on their capacity to retain paid work. Workers in insecure jobs in customer-facing female-dominated industries like hospitality and retail were most affected by the initial pandemic job losses⁷³.

105. Women have led the national pandemic response as frontline workers in healthcare, community and social services, education and retail, often putting their own health and safety on the line to keep essential services running. Women have also disproportionately carried the burden of an explosion in care and domestic demands from the pandemic. This increase in unpaid caring work at home places enormous strain on women workers, in turn reducing their capacity to do paid work.

Gendered Job Segregation

106. One major factor influencing women's high job losses during the COVID-19 crisis is the high level of gendered job segregation in Australia's labour market. There is more gender segregation in work in Australia than average in other OECD countries. The unequal distribution of men and women in Australian workplaces cuts three ways: across occupations, industries, and workplace hierarchies.

⁷³ 'Leaving women behind: The real cost of the Covid recovery' Australian Unions, 2021

107. Work predominantly performed by women is undervalued because of gendered assumptions about the ‘natural’ role of women (for example as ‘nurturers’ or ‘carers’) and the discriminatory view that the work of women is not as skilful or valuable as work done by men. Women are more likely to be employed in industries such as healthcare and social services (where women make up four-fifths of that broad sector’s workforce), clerical and administrative work, and hospitality jobs. Jobs in these highly feminised industries and occupations are more likely to be insecure and low paid, despite women’s high levels of education attainment, skills and experience.
108. Australia’s most-feminised industries – healthcare and social services, and education – have been placed under considerable strain during the pandemic, despite the critical importance of this work to our collective welfare. Women also comprised the majority of workers in the customer-facing industries initially shut down to curtail the spread of COVID-19 including tourism and travel (66% women), retail (56%), and accommodation and hospitality (55%). Women also constitute the majority of those at highest risk of exposure to infection in the healthcare and social services sectors.
109. Another key dimension of job segregation impacting on women’s higher COVID-era job loss is their under-representation in more senior roles. Where women do work alongside men, they are more likely to be working for them, and more likely to be employed in junior or lower-paid roles. This is true for all occupational hierarchies across all industry groupings in Australia. The economic shock from the COVID-19 health crisis threatened business incomes and profits, and the deepening recession has placed pressure on employers to decrease the number of staff on their books. With more women in junior roles (including administration and sales), and in short-term casual or insecure positions not covered by JobKeeper, employers were more likely to cut women’s jobs. High levels of job segregation across industries, occupations and within companies have significantly contributed to women’s disproportionate job loss in the COVID-19 crisis.

Women hold jobs with less security

110. Women have experienced worse job losses in the COVID-19 crisis because they hold jobs with less employment security. While the absolute level of women’s employment has continued to rise over decades, the availability of secure jobs has not followed suit. 57% of women workers experienced one or more forms of precarity in their work pre-COVID-19 with women more likely to be employed in reduced hours, casual, and temporary positions than men⁷⁴. Women’s jobs are characterised by fewer and less predictable hours, and fewer standard entitlements like sick leave, long service leave, holidays and superannuation. Insecure work in the social and community services sector is also less likely to have access to redundancy entitlements.

⁷⁴ Leaving women behind: The real cost of the Covid recovery’ Australian Unions, 2021

111. While women have been stuck on the treadmill of insecure work, full-time permanent work has been harder to obtain. Pre-pandemic, only 43% of employed Australian women worked in a full-time permanent job with entitlements such as paid sick leave. That compares with 57% of men in permanent full-time waged jobs⁷⁵.
112. Women are concentrated in short-hours jobs (which accounts for 46% of all women's jobs), in large part due to work and family life collision. Inadequate supports for working parents (such as access to secure and stable family-friendly work arrangements, affordable quality ECEC, and adequate paid parental leave) mean many women find part-time work is all they can manage⁷⁶. Part-time jobs can and should be secure and well-paid with access to pro-rated entitlements. However, about half of all reduced hours jobs are casual, meaning they do not offer paid sick or holiday leave or certainty of working hours: essential for workers with caring demands, and essential for allowing workers to follow health instructions when required to self-isolate or quarantine.
113. Despite the risks faced in these industries, workers have continued to put their health and safety on the line throughout the pandemic, yet work in these feminised sectors continues to be undervalued. The work is often insecure and underpaid, with high rates of casualisation and underemployment; these and other workers experienced dramatic reductions in hours of work as the pandemic hit. A United Workers Union survey revealed that almost half of home care workers reported working fewer hours during the pandemic, and many early childhood educators also had their hours dropped to the minimum in their contracts. The pandemic proved that these jobs, undervalued and taken for granted for too long, are in fact providing essential services. It is well past time for society to treat them as such.
114. The fact women are disproportionately employed in insecure jobs undermines their economic security, making them more vulnerable to job loss and poverty. Aboriginal and Torres Strait Islander women and migrant workers face a double burden of discrimination and inequity, with less access to secure work and fair pay because of both their race and their gender.
115. Insecure work means employers have little or no commitment to training, can cut hours, change rosters and terminate jobs without requirement to pay compensation. In any economic crisis, casual workers are simply the cheapest and easiest to fire, and the exclusion of short-term casuals from JobKeeper further exposed these predominantly female and young workers.

⁷⁵ Ibid

⁷⁶ Ibid

Insecure Work and Safe Workplaces

116. There is significant evidence that insecure work is not safe work. Workers in insecure work are more likely to be injured at work for a range of reasons, including inadequate training and induction, fear of reprisals for speaking out about safety concerns, lack of access to participation and consultation processes, lack of regulatory oversight, poor supervision, inadequate access to effective safety systems, and exposure to frequent restructuring and downsizing.

117. The most recent figures from the Australian Human Rights Commission show that close to half of all sexual harassment perpetrated in Australian workplaces occurred within four industry groups characterised by very high levels of insecure employment namely health care and social assistance, retail trade, education and training, and accommodation and food services. Recent Safe Work Australia statistics show an increase in mental stress claims, with female-dominated industries such as community and social services, particularly at risk.

COVID-19 has not only exacerbated risks to workers' economic security and health and safety, but it has also exposed insecure work as a serious public health hazard. Current estimates from Victoria are that 80% of COVID-19 outbreaks are connected with workplaces. Casual and insecure work has been a significant common factor in almost every major COVID-19 outbreak⁷⁷.

Conclusion

118. The industrial environment in Australia over recent decades has seen increases in productivity and flexibility with the majority of benefits geared towards business. Flexibility has manifested as increasing levels of casualisation, part-time work, short-term contracts and the use of independent contractors, all inherently insecure and precarious forms of work. This has resulted in a significant transfer of risk from employers to workers with workers foregoing job security, paid leave, minimum rates of pay, workplace conditions, workplace insurance and experiencing reduced workplace safety.

119. Australia has an insecure workforce of over 3.3 million with more than two million Australians employed casually. Part-time employment has reached an all time high of 32.3% of total employment, with Australia having the third-highest reliance on part-time work in the OECD. Ambiguity and loopholes in both state and federal legislation have been used to reduce employment standards and conditions under the guise of productivity and flexibility for business and the consumer. For example, gig economy workers are engaged as independent contractors in a practice lauded by the industry as flexible and progressive. In reality, these workers are often paid well below minimum

⁷⁷ Leaving women behind: The real cost of the Covid recovery' Australian Unions, 2021

wage, shoulder liability for their own tax, insurance and safety requirements and miss out on conditions such as paid sick and annual leave enshrined for employees in the National Employment Standards.

120. In 2021 the Morrison Government had the opportunity to reset Australia's labour market based on secure jobs with certainty that would drive both productivity and domestic demand but instead chose to press ahead with changes to legislation governing casual employment which will lock in insecure work and perpetuate low productivity growth and inequality. The *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* allows an employee to be treated as casual at the election of the employer even though this may not reflect the substance of the working relationship. As a consequence, some employers will be even more likely to engage casual workers, knowing that by simply applying the casual label at the point of engagement they can shift risk and engage workers on an insecure basis, regardless of whether the work has the other hallmarks of permanent employment.
121. 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 insecure, nonstandard workers. Our labour laws, and labour market institutions, should be reformed to assist this vast majority of insecure workers who face a very dramatic power deficit in their employment relationship.
122. 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.
123. 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.
124. Insecure work leaves a large section of the workforce not sharing in our national economic prosperity. They have inferior rights, entitlements, and job security to their counterparts in ongoing employment. It makes it tough for working families to plan for their future when they cannot rely on regular incomes, but have rising household costs, and are shouldering more and more household debt.
125. The rise of insecure work in Australia is the result of a business model that shifts the risks from the employer to the employee. Australian unions do not believe a strong,

prosperous economy must come at the expense of quality jobs, of respect for workers' rights, and of workers exercising some control over their working lives. We believe reliable workers should have jobs they and their families can rely on with fair and predictable pay and hours of work, access to important conditions like annual leave, paid sick leave, overtime, penalty rates and long service leave, protection from unfair dismissal, and quality skills and training and career opportunities.

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