

The Future of Work: Greater Inequality and Insecurity Unless We Act

ACTU Submission to the Senate Select Committee on the
Future of Work and Workers Inquiry

26 February, 2018

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Introduction: The Future of Work and the Digital Revolution

The Australian Council of Trade Unions ('ACTU') is pleased to make a submission to the Senate Select Committee on the Future of Work and Workers Inquiry. The ACTU is the peak body representing working Australians through some 43 affiliated Australian unions and trades and labour councils.

New advances in digital technologies such as automation, machine learning, big data collection and analysis and pervasive computerisation, as well as the emergence of new business practices made possible by these technologies, have the potential to significantly transform the world of work. The possible impacts of what is being described as the 'Digital Revolution' or the 'Fourth Industrial Revolution' include the radical transformation or elimination of a significant proportion of existing vocations, a decline in job quality, and the further loss of the security and rights of traditional employment through the rise of non-standard work arrangements, including virtual jobs, speculative jobs, crowd working and the 'sharing economy'.

The growth in complex labour force management structures including the use of corporate subsidiaries, franchising, labour hire, outsourcing and a variety of labour engagement practices designed to avoid the traditional employer/employee relationship has already exposed some of the shortcomings of Australia's existing labour laws.

The Fair Work Act 2009 was designed to deliver on the promise of the ALP to repeal the deeply unpopular and unfair WorkChoices legislation that was introduced by the previous Howard Government. The Fair Work Act was the mechanism that delivered that promise. Ten years later, Australia needs to be developing a framework that offers protection to working people now, and for the next generation, in a rapidly changing economy and where the workforce is unrecognisable from that which existed in 2007. That framework must be flexible enough to meet its fundamental function of protecting the interests of working people in an economy where capital is highly mobile and the power relationship between labour and capital is inherently unequal.

Already, despite Australia being well into its twenty-seventh consecutive year of economic growth, we are experiencing 70 year highs in inequality, we have a wages crisis with the lowest wage growth recorded and 40% of the workforce in insecure employment. The changing workplace and corporate structures being used by business and government to organise their workforce requires a new approach to legislated rights, arbitrated rights and bargaining rights for working people and a new approach to compliance regimes to give effect to these rights.

Australia currently relies upon a narrow application of universal protections through a legislative regime underpinned by the traditional binary employment relationship. This reliance has left a swath of workers potentially or actually denied those protections because their work is structured so as to appear to be outside the traditional indicia tests of employment.

The arbitrated award system was designed to be a safety net for those workers who did not enter into enterprise agreements with their employer but its narrow range and limited criteria for improvement has left a vast number of workers with a wage below the internationally recognised poverty line of 60% or median wages. In a rapidly changing world up to date community standards are not easily reflected through the current NES, general protections and award system due to the difficulty in making positive changes to those mechanisms. A new approach is required.

The narrow enterprise bargaining system that has been the only vehicle for collective bargaining in Australia since 1993 has had its limits exposed by changes in the economy, the workforce and business models. There are fewer workers covered by enterprise agreements today than at any time since 2006.

The emergence of wage theft as a business model has been highlighted with the exposure of high profile examples such as 7-Eleven, Caltex, Bakers Delight and celebrity chef restaurants where the slow and expensive court system serves as the only vehicle for workers to access justice has shown itself to be inefficient at resolving these issues and ineffective at deterring the perpetrators of wage theft. Cases that were exposed in the media 18 months ago still have not been resolved with many workers still waiting for their hard-earned money.

Australia has a pervasive gender based pay gap that is stubbornly high and has been for decades. This pay gap is now manifesting in even greater gender based inequity in retirement incomes. Last year, women were retiring with an average superannuation balance \$140,000 less than men. The superannuation system leaves too many women over the age of 55 at high risk of homelessness because they do not have enough super, cannot obtain sustainable employment and are forced to fall back on a social security system that is hopelessly inadequate. Without a concerted policy response, this injustice will be exacerbated in the future.

Unmanaged, the Digital Revolution is likely to exacerbate Australia's current insecure work crisis and existing inequalities, with the most impact on middle to low paid jobs that are not professional, technical or creative, and to especially impact women in intermediary roles and workers living outside inner urban areas. The changes are also being used to justify pro-business policies and to expand managerial prerogative.

Yet, if managed properly, new technologies and new ways of organising work have great potential to reduce rather than exacerbate inequality. They can increase rather than degrade job quality and improve the material and working conditions of workers. For example, robotisation has the potential to increase productivity, reduce hazardous work, improve job quality, reduce working hours and extend the weekend. Productivity improvements and the creation of whole new classes of jobs that do not exist today provide an opportunity to design better and more meaningful work.

Whether workers benefit from future technological developments or instead find their job security and pay and conditions eroded; whether robots and computers complement rather than substitute human labour; and whether workers get a say in the design of their new jobs and a fair share of the new wealth created, depends, not on technology but on our policy choices in response to technological change. This in turn depends on the power balance between labour and capital and the potential for workers to influence policy choices.

Unfortunately, workers' bargaining position, industrial representation and political enfranchisement and the receptiveness of government to policy input from civil society has diminished in recent times in Australia. The current Federal government and business lobby groups have been successful in framing the policy responses to the Digital Revolution in terms that are likely to be detrimental to many workers, calling for greater managerial control, reduced regulation and greater employer-oriented flexibility. In fact, increased employer-flexibility is being touted as one of the inevitable forces of the Digital Revolution rather than a policy response to it.¹

During previous technological and industrial revolutions, such as the computerisation of factories in the 1980s, the information society/information superhighway of the 1990s, and the 'dot.com' boom of the

¹ For example, see comments by the Hon Michaela Cash, MP, referred to in David Marin-Guzman, 'Govt makes "future of work" IR battleground for election', *WorkForce Insight*, 26 April 2016, available at: http://sites.thomsonreuters.com.au/workplace/2016/04/26/govt-makes-future-of-work-ir-battleground-for-election/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+WorkplaceRelations+%28Workplace+Insight%29, accessed January 2018..

early 2000s, technological developments were also used as a cover for eroding industrial entitlements and workers' share of profits. As a recent working paper for the European Trade Union Institute notes,

“Closer analysis of the processes underlying job creation and loss reveals that technology is often used as a pretext or opportunity to push through industrial restructuring processes motivated primarily by financial profitability, wage cost reduction or international competition considerations (for evidence that this is not a new observation, see Freeman and Soete 1994)”.²

Hence, it is imperative to separate rhetoric from reality, the old from the new, and economic and technological forces from policy choices. The focus of the debate about the future of work should thus be on how to manage the Digital Revolution to ensure Australia's growing inequality and insecure work crisis can be reversed, not exacerbated, through the opportunities provided by technological change.

The union movement believes the future of work is what we make it. If we leave things to the 'free market' and the interests of business, that future will be bleak for many, but with strong institutions, reform of the industrial relations system, support from government and a prominent role for unions and civil society, we can co-manage technological change towards a future that benefits us all.

Demographic and other future trends

Several broad trends relevant to the future of work are worth noting. Firstly, Australia's population is projected to age significantly, particularly over the next fifty years. The Australian Bureau of Statistics ('ABS') projects the median age will increase from 37.3 in June 2012 to between 38.6 years and 40.5 years in 2031, and between 41.0 years and 44.5 years in 2061.³ Australians are also projected to work and live longer with life expectancy at birth to rise from 91.5 years today for men and 93.6 years for women to 95.1 years for men and 96.6 years for women in 2054/5.⁴ The size of the population is projected to double by 2075.⁵

Australians will also increasingly be living in cities. Australia is already one of the most urbanized countries in the world and likely to become more so. Infrastructure Australia predicts the share of the

² Valenduc and Vendramin, *Work in the digital economy: sorting the old from the new*, European Trade Union Institute Working Paper, March 2016.

³ ABS cat 3222.0, released 26 November 2013.

⁴ Australian Treasury, *2015 Intergenerational Report*, Chapter 1, p1.

⁵ Ibid.

population living in cities will rise from 66.0 per cent in 2011 to 69.3 per cent in 2031 and 73.4 per cent in 2061 and the States and Territories have made similar projections.⁶

On current trends, the economy, productivity and incomes are predicted to grow at slower rates than in previous years without policy intervention.⁷

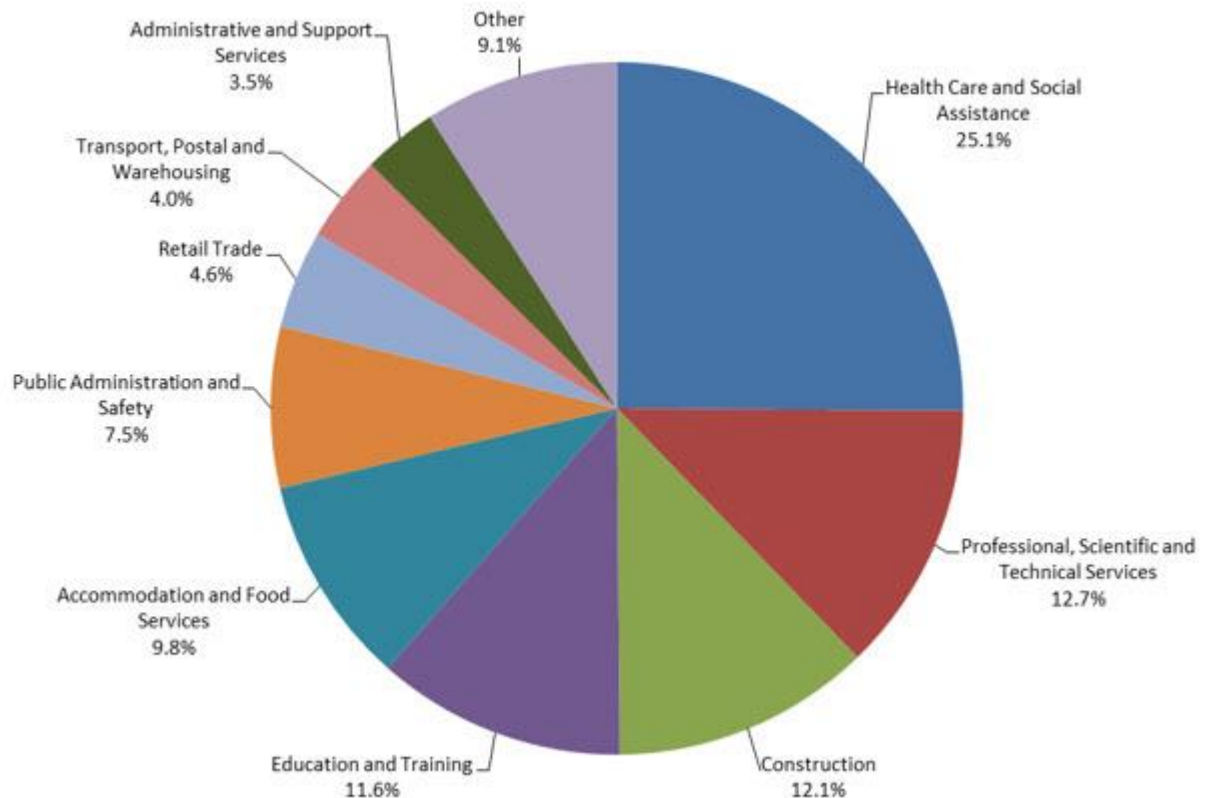
The trend away from manufacturing towards services is likely to continue. Based on a mathematical projection of recent trends, the Department of Jobs and Small Business projects total employment to increase 7.8 per cent over five years from May 2017 to May 2022 in 16 of the 19 broad industries and employment to decline in Manufacturing, Electricity, Gas, Water and Waste Services and Agriculture, Forestry and Fishing, marking a continuation of a long term structural shift towards services industries.⁸

⁶ Infrastructure Australia, *Population Estimates and Projections: Australian Infrastructure Audit Background Paper*, April 2015.

⁷ Australian Treasury, *2015 Intergenerational Report*, Chapter 1, p1.

⁸ See Department of Jobs and Small Business, *Industry Employment Projections 2017 Report*, August 2017

Share of projected employment growth, by industry¹ - five years to May 2022



Source: Department of Jobs and Small Business, *Industry Employment Projections 2017 Report*, August 2017, based on ABS Labour Force Survey.

These projections however, do not specifically take account of the potential impact of increased technological change and projections that attempt to do so differ markedly depending on the assumptions made.

Assessing the impact of technology

The OECD has found that globalisation and technology have already had a mutually-reinforcing effect of hollowing out the labour market, showing a decline in middle-skill/middle pay jobs in advanced countries throughout the OECD and a rise in low-skill/low pay and high-skill/ high pay jobs.⁹ Highly-skilled workers have tended to benefit relatively more from technological change, whilst the share of employment in middle-skilled jobs has decreased. Low and medium-skilled workers are most at risk of

⁹ OECD, *OECD Employment Outlook 2017*, June 2017, p87.

technological displacement and job polarisation. There is a real risk of an exacerbation of the trend towards lower job quality in the middle and bottom of the labour market. Strong unions are essential in ameliorating these polarising effects. OECD research confirms, for example, that “stronger unions reduce the effect of ICT [information and communications technology] on bottom polarisation.”¹⁰

One reason that, without intervention, technological change is likely to exacerbate income inequality is the opportunities it provides for circumnavigating labour standards. Another is because technology and automation tend to substitute for routine tasks but complement non-routine cognitive tasks.¹¹ This tends to support job polarisation as routine tasks exist in jobs requiring low and middle levels of education but routine tasks are even more prevalent in the middle educated (and middle earning) group of workers. Non-routine, non-manual work tends to be unaffected by growth in ICT, whereas those industries that experience the fastest growth in ICT tend to have the fastest falls in demand for workers with intermediate education levels.¹² In addition, in an environment where worker’s power is low, the benefits from technology-driven productivity improvements are likely to continue to go disproportionately to capital owners rather than workers, thereby exacerbating both income and wealth inequality.

Much concern about mass unemployment and job displacement as a result of computerisation and automation can be traced to the impact of Frey and Osborne’s 2013 study that estimated 47 per cent of total employment in the United States was at high risk of automation within a decade or two.¹³ In particular, the study predicted transport and logistics occupations, the bulk of office and administrative support workers and labour in production occupations as well as a substantial share of service occupations were susceptible to computerisation, particularly in low skill and low wage jobs.¹⁴ Frey and Osborne cite social intelligence tasks (for example, care, negotiation and persuasion) and creative intelligence tasks (for example, musical composition, artistic design and cooking) as well as perception and manipulation tasks in unstructured environments as resistant to at least the current generation of automation technology.

¹⁰ OECD, *OECD Employment Outlook 2017*, June 2017, p82.

¹¹ See David, Frank Levy, and Richard Murnane, “The Skill Content of Recent Technological Change: An Empirical Exploration,” *Quarterly Journal of Economics*, 118 (2003), 1279–1333

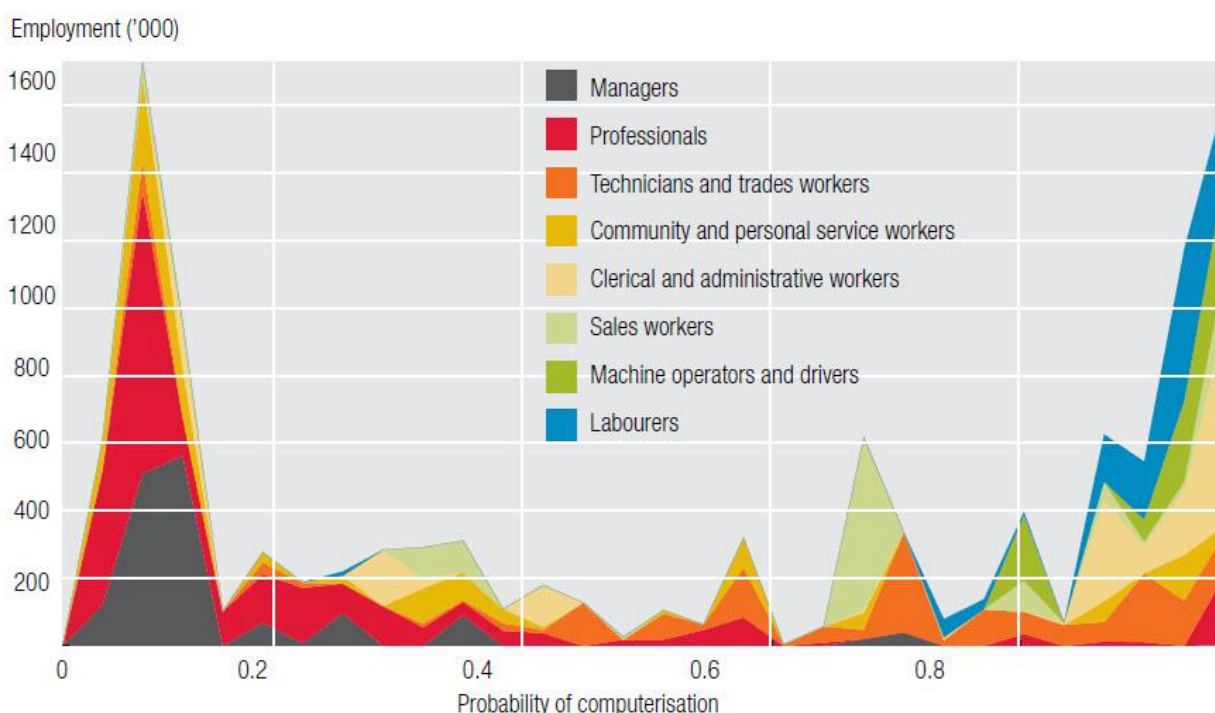
¹² See Michaels, G., Natraj, A., Reenen, J. V., 2009. Has ICT polarized skill demand? Evidence from eleven countries over 25 years, *Review of Economics and Statistics* 96 (1), 60–77.

¹³ Frey, C and Osborne, M, *The Future of Employment: How Susceptible are Jobs to Computerisation?* (Oxford Martin School, University of Oxford, Working Paper (2013) p48.

¹⁴ Ibid.

Further studies, using a similar methodological model to that developed by Frey and Osborne were made of the United Kingdom, Europe and Australia. The Australian study, by Hugh-Whyte et al. and published by CEDA in 2015, predicted as much as 40 per cent of Australian jobs could be replaced by computers within ten to fifteen years, a quantum less than in the United States but comparable to that in the United Kingdom.¹⁵ They conclude that occupations most likely to be affected include labourers, machinery operators, drivers and clerical workers, whilst personal service workers and professionals are least likely to be affected, although some particular jobs in these groupings are still at high risk of automation. Overall, they contend professional, technical and creative jobs are least susceptible to automation.¹⁶ The researchers' preliminary analysis suggests jobs in outer urban areas have a higher probability of computerisation than inner urban areas and regional areas are more susceptible still, particularly regional areas with high dependence on mining such as in Western Australia and Queensland.¹⁷

DISTRIBUTION OF JOB CATEGORIES AGAINST PROBABILITY OF COMPUTERISATION



¹⁵ Durrant-Whyte, McCalman, O'Callaghan, Reid and Steinberg, 'The impact of computerization and automation on future employment' in Committee for Economic Development of Australia (CEDA) June 2015, *Australia's Future Workforce*, (2015) viewed February 2017 <http://www.ceda.com.au/CEDA/media/ResearchCatalogueDocuments/Research%20and%20Policy/PDF/26792-Futureworkforce_June2015.pdf>, p58.

¹⁶ Ibid p63.

¹⁷ Ibid p60-62.

The methodology underpinning these studies addressed the tasks and occupations susceptible to computerisation without considering the new or adjusted jobs that are likely to be created via new technology. In the past, productivity enhancing technologies have tended to lift incomes and lower prices, creating higher demand and generating new jobs throughout the economy, at least in the medium to long term. However, these developments have also been marked by periods of unemployment and great worker dislocation and hardship, sometimes even leading to political upheaval in the interim as classes of jobs and whole industries have become obsolete.

It is easier to determine which jobs are susceptible to automation than it is to predict which jobs will be created by new technologies. The new jobs created will not be the same as the old and there is no guarantee that many of the new jobs will be of the same quality. The capacity of new technology to empower business to circumnavigate labour standards through the platform economy and other non-standard work arrangements suggests quality jobs are already being replaced by lower quality jobs. Without intervention, it is likely that many good, secure and high-quality jobs will be replaced with insecure, low-quality jobs involving inferior pay and conditions, especially for certain groups.

Given the increasingly internationalised nature of the global economy, there is no guarantee that the new jobs will be in Australia – new technology could facilitate the offshoring of employment in certain areas. Just as inexpensive telecommunications technology allowed the offshoring of data processing, call centres and telephone work, the migration of tasks to online services and automation is enabling new classes of work to be offshored further up the corporate ladder. For several years, Australia's largest corporations have begun offshoring back office operations to India and South-East Asia. Automation and remote operation now allows for the offshoring of whole mining operations to neighbouring countries with lower labour standards, just as air traffic control has become remotely operated offshore in some European countries.

In 2017, a team including Osborne from the original Frey and Osborne study, used an expanded model that attempted to include the impact of automation not only on job loss but also on job creation, as well as the impact of other trends such as globalisation, population ageing, urbanisation, rising inequality demographic change and the rise of the green economy. They found that 9.6% of the US and 8.0% of the current UK workforce is in an occupation that will very likely experience an increase in workforce share and 18.7% (21.2% for the UK) are in an occupation that will very likely experience a fall, implying that “a large mass of the workforce in both the US and UK have highly uncertain demand prospects.”

Accordingly, they emphasise the importance of investing in skills and education, noting “History is a reminder that investments in skills must be at the centre of any long-term strategy for adjusting to structural change”.¹⁸

Avent (2016), however, argues that the past approach of educating workers to lift them into more productive and highly skilled jobs may run its course – that recent technological change has created a surplus of labour leading to workers moving into lower skilled and low productivity work.¹⁹ Many economists are questioning whether there is something qualitatively different about the current technological revolution that means many jobs that are destroyed will not be replaced in sufficient numbers with a resulting rise in unemployment and underemployment. If this proves the case, Government will need to be more involved in job creation, for example, through greater stimulus spending. With the notable exception of the Rudd Government’s response to the global financial crisis in 2008-2009, government has been loath to adopt greater stimulus spending in recent decades despite chronic and structural unemployment and underemployment.

Whether or not technology causes gross aggregate unemployment in Australia, the changes could lead to unemployment and underemployment in certain industries, sectors and geographic regions, particularly as permanent employment is substituted for variable non-standard work. It is not yet known if the utilisation of artificial intelligence, automation, big data and other new technologies will lead to an acute transitional period of increased disruptive change or, as some have argued, ongoing accelerated disruption. Hence, the Digital Revolution has the potential to exacerbate the current dual crisis of inequality and insecure work in Australia in the short, medium and possibly long-term.

The Australian labour market already has a high level of insecure work and income inequalities are greater than at any time in the last 70 years.²⁰ Small elites have amassed vast fortunes and massive political power while for working people, living standards have declined and job security has disappeared. We discuss precarious work and inequality in more detail below.

¹⁸ Bakhshi, Downing, *Osborne and Schneider, The Future of Skills: Employment in 2030* (2017), p89.

¹⁹ See Avent, R., *The Wealth of Humans* (2016).

²⁰ See ACTU, *Rising Inequality: An Australian Reality* (2017) <<https://www.actu.org.au/media/1033439/actu-inequality-report-2017.pdf>>, accessed February 2018.

The Great Divide: Australia is a Global Pacesetter on Precarious Work

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

Despite headlines announcing robust growth, steady productivity improvements and declining unemployment, the reality of daily life for workers has been steadily deteriorating for the last decade. This is because the workforce, outside the small elite, has seen a dramatic erosion in their job security and many have not had an increase in their real take-home pay for years. Today Australia is experiencing both a job security crisis and a wages crisis.

In a country that brags about having the world record for the longest run without a recession, this is simply not fair. But the injustice in our society is multiplied by other fundamental changes in the nature of work. The damage to families and society caused by low pay is exacerbated greatly by the increasing precarious nature of work.

Unfortunately, Australia is a global pacesetter when it comes to reliance on non-standard working arrangements. In fact, according to the OECD, Australia has secured a podium finish. The OECD, the highly respected economic think-tank for rich and powerful nations has compiled data on what they define as “non-standard workers”. Australia has finishing in the top three OECD countries when it comes to the proportion of “non-standard workers” in total employment.²¹

²¹ OECD, *In it together: Why lower inequality benefits all* (2015), Figure 4.1, Page 140. In this publication the OECD defines non-standard workers as the proportion of own-account, self-employed, temporary workers and part-time workers in total employment. There is some discussion about whether part-time employment should be counted as non-standard work but both the OECD and the ILO have included part-time workers in their definition and assessment of non-standard work. For the ILO perspective on this see their publication “Non-standard employment around the World”, 2016 pp 75 to 86.

Non-standard employment as a share of total employment

Figure 4.1. Share of non-standard employment by type, 2013

Panel A. Non-standard forms of employment as a percentage of total employment



Source: OECD

The terms non-standard work, precarious work and insecure work have been used interchangeably in the academic and policy literature in recent years. It may be inappropriate to lump all non-standard work together. Wages, employment conditions and labour rights are not identical for all workers without a regular full-time time work. But that is also the case even within subcategories of non-standard work. For example, not all casual work is homogenous, nor is all part-time work identical.

But there are many common characteristics across the vast majority of non-standard employment. For example, it often involves working hours that are excessive to earn a very low wage and can involve working hours that are incompatible with stable family life. The remuneration for non-standard, precarious or insecure work is usually insufficient to provide a family with a living wage and for many the weekly family income can fall to zero merely because the boss decides that you are not needed for the next few days. Employment conditions that were considered standard for much of the last century, like paid holidays and sick leave, are often not available to those in non-standard employment. Importantly, most non-standard workers have no or very limited employment protection and they normally find it very difficult to enforce their fundamental rights to freedom of association and collective bargaining.

That said, it must also be acknowledged that a very small minority of non-standard workers receive very high pay. For example, people like the mathematical geniuses working for Google, Facebook and other leading tech companies who are designing new algorithms and making these companies billions of dollars are sometimes engaged on non-standard work contracts. These rare individuals are earning massive sums but they comprise a very small proportion of the non-standard working population. On the other hand, workers even at these most successful tech firms with lower skills and in less demand can sometimes experience quite poor pay and conditions.²²

For this discussion, it is important to recognise that not all non-standard workers are being exploited but we should not design public policy to suit a small elite. It has never been considered appropriate to design labour laws and labour market institutions based on the conditions that prevail for a small elite. The basic premise of labour law is that a power imbalance exists between the individual worker and the employer. That imbalance is particularly pronounced for the vast majority of non-standard workers. Our labour laws and labour market institutions should be reformed to assist this vast majority of precarious workers who face a very dramatic power deficit in their employment relationship.

Australia has been a global pacesetter in creating precarious jobs

Because Australia has been a global pacesetter in creating precarious jobs, today only about 60% of total employment is comprised of regular full-time or ongoing part-time jobs. The remainder of our employed workforce – some 4 million people – are engaged as casuals, on short-term contracts, through labour hire companies or as so-called “independent” contractors.

It is widely accepted that the vast majority of non-standard workers have been treated worse than regular full-time workers in recent decades. Both groups of workers have been denied their fair share of our national economic prosperity. But those in precarious jobs have been hit the hardest. They have inferior rights, entitlements, and job security to their counterparts in regular ongoing employment. While many working families are suffering, those that depend on non-standard jobs face the biggest risks. Their family income and living standards can fall dramatically with little or no warning. These are the people who suffer the most when there is a sudden jump in energy costs, rents or interest rates. These families face catastrophic consequences when a breadwinner falls badly ill and cannot work.

²² For example, Silicon Valley’s cafeteria workers reportedly earn less than US\$700 per week, with two thirds of their pay check consumed by rent: see Michelle Chen, ‘500 Workers Staffing Facebook’s Cafeteria Just Voted to Unionize’, *The Nation*, 31 July 2017 < <https://www.thenation.com/article/500-workers-staffing-facebooks-cafeteria-just-voted-to-unionize/>>, accessed February 2018.

Economic risk has been transferred to the workers

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

In recent times economic risk has been transferred to the workers but the financial rewards that flow in the good times has not. It might be argued that this was fair if the hourly wage for precarious work was substantially above average hourly earnings and the labour share of national income had been increasing in the last few decades as workers were forced to accept the risks associated with the ups and downs of the business cycle, but in fact the opposite is the case. The current loading that is paid to casuals represents a cashing out of accrued leave entitlements rather than compensation for accepting the risks of precarious and insecure work arrangements. Despite provisions like casual loading, average hourly earnings in most non-standard jobs are below total average hourly earnings, and the labour share of income has undergone a steep decline. The declining wage share in national income is a result of both stagnant real wages and the expansion in non-standard employment.

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

One often hears the argument from conservative quarters that Australia needs even more labour market flexibility to compete in global markets and to promote growth. This is economic nonsense. Every economy needs to balance labour market flexibility and security. All societies need to balance

risk and reward. But public policy in Australia over the last 30 years has gone too far in promoting downward pressure on wages and increased employer prerogative described as flexible forms of work.

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

The Future of Work is within our control

There is a very grave danger that without significant changes in government policy the future of work in Australia will involve an acceleration of past trends towards more insecure work and greater inequality. Without significant changes to our industrial relations system we run the risk of having: a majority of Australian workers in precarious forms of work; real wage levels that continue to stagnate and depress growth; and, working conditions that continue to deteriorate.

Much of the discussion surrounding the future of work focuses on how expected demographic and technological changes will create additional challenges for labour markets. While we cannot prevent these trends from unfolding, we can use public policy to significantly influence how they influence our workplaces and our society. In some countries, like Japan, an ageing population is the major force impacting on the future of work as the supply of labour diminishes. In Australia, it is essential that we retain a demographic profile that is compatible for robust productivity improvements and a sustainable dependency ratio (the relationship between those contributing to our tax base and those depending on social security). A sensible and pragmatic long-term approach to permanent migration has a role to play in meeting these requirements. We need to preserve the social benefits of a multicultural society, maintain political stability and ensure an adequate labour supply through managed permanent migration flows, rather than a migration system that advocates for an exploited underclass of temporary migrant workers.

Technological change has been influencing labour markets for centuries. The pace of change is expected to accelerate in the near future as artificial intelligence and labour-saving robotics are mainstreamed into more manufacturing and service industries. In Australia, as elsewhere, the substitution of capital equipment for labour of this nature and magnitude will generate significant challenges. On the positive side, these structural reforms may give a much needed boost to productivity

growth and generate additional national wealth. In the short term, such changes are likely to entail significant job losses in particular sectors of the economy. The total net impact of these changes on the quantity of jobs is unclear. It will depend, in part, on how the benefits of productivity improvements and wealth generation are distributed and the impact this has on future consumption and investment patterns. It will also depend on investments in training and social protection to assist the transition.

Recent trends of rising income inequality and the expansion of precarious work will not assist a smooth transition. If these trends are maintained, a small section of our population will continue to accrue all the additional wealth that is derived from faster productivity growth. If this happens consumption levels and aggregate demand are unlikely to be sufficient to generate the number of new jobs required to absorb the workers who are replaced by robots and other advances in technology. On the other hand, if real wages are rising we can be confident that consumers will react as they did in other periods of rapid capital/labour substitution and will discover new products and services that are deemed essential and must be purchased. Thus, boosting the overall demand for labour and providing workers made redundant by robots a second chance in the labour market.

These issues are exercising the minds of policy makers in most countries. Several multilateral institutions are currently conducting their own investigations into the Future of Work. These include the OECD, IMF, World Bank and the ILO. Australia can both benefit and contribute to this research and dialogue.²³ Alongside these investigations the ILO and the OECD have also undertaken considerable research on the magnitude and implications of non-standard work because the issues are closely related.²⁴

One common conclusion that is already emerging from this research and discussion is the importance of having a highly educated and multi-skilled workforce plus a social protection system that provides income support and retraining for workers made redundant by technological advances. Consensus is also emerging that the countries that will cope best with these challenges are those that enhance functional flexibility and skilled based adaptation rather than promoting downward wage flexibility or the expansion of precarious work.

²³ For example, the World Bank will devote the next *World Development Report* to the Future of Work and the ILO has established a Global Commission on the subject.

²⁴ See International Labour Office, *Non-standard employment around the world*, Geneva, 2016. Also see OECD, *Revised Job Study* (forthcoming).

The ability of the workforce to adapt and manage more complex technology

Functional flexibility concerns the ability of the workforce to adapt and manage more complex technology and tasks as more work practices are automated. For this to occur a country needs public policies that promote the acquisition of new skills. This requires the right mix of incentives for both the worker and the employer. The worker needs to know that an investment in skills will lead to higher pay, better conditions and more job security. On the employer side, it has long been recognized that there is a positive relationship between job tenure and investment in human capital. Employers will not invest heavily in the skills of casual and contract workers who are likely to regularly move between jobs. Our labour laws can both promote productivity improvements and protect the rights of workers by discouraging precarious work and encourage full time regular employment.

If Australia is to thrive in the emerging global environment where technological change is rapid and far reaching we will need a system of workplace relations and labour laws that encourages structural change away from industries and jobs that survive through pushing wages down, minimizing labour costs and making work more intensive. We need to encourage companies and individuals to work smarter not harder. Our labour laws and wage fixing process can play a fundamental role in promoting structural change towards high productivity enterprises that prize functional flexibility. This can be done by placing a robust floor under wages and working conditions and preventing a race to the bottom on labour standards.

Characteristics and consequences of non-standard work

As noted above Australia is now characterized by a great divide between a small wealthy elite and a workforce that is experiencing a jobs crisis and facing real wage stagnation. Within this workforce there are further divisions.

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

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

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

It is not just the worker who suffers as the magnitude and types of insecure work multiply. Society and our national economy are also negatively impacted. As already mentioned one adverse economic consequence of precarious work is low productivity. Employers are unlikely to invest in training and skills for workers who will not have an ongoing relationship with the firm. As the magnitude of insecure work has expanded over recent decades private investment in human capital development has declined and more and more employers become “free-riders” relying on the state or other employers to train staff. The declining level of apprenticeships is evidence of this trend.

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

Many workers are trapped between various insecure jobs and unemployment, never moving up a career ladder or experiencing the satisfaction and security that comes with promotion. In the process, confidence and aspirations are damaged. The costs to society can be significant. People without hope

for a better future are more likely to suffer physical and mental health issues or may even be drawn into petty crime or violent behaviour.

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

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

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.

Trends in non-standard work

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

(a) Casual employment

In Australia we use the term “casual” to cover a large and somewhat diverse section of the labour force. The Australian Bureau of Statistics defines casual workers as employees without access to leave entitlements. Some industrial tribunals have concluded that casual employees are simply those

engaged and paid as such. The unfortunate reality is that employers often unilaterally convert regular full-time employees to those with 'casual' status. 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.²⁵ A significant proportion of casuals are engaged on a "cash-in-hand" arrangement and they work outside the tax and social protection system.

The number of workers in casual employment increased by over half a million between 2005 and 2016, when it reached 2.5 million workers. But the proportion of Australian employees engaged in casual work has increased significantly over 30 years: it increased from 15.8 % of total employment in 1984 to its current level which is around 25 %. Recent years has seen a more rapid expansion in alternative forms of insecure work such as fixed-term contracts, labour hire arrangements and 'independent contracting', which have provided employers with other ways to secure their labour inputs while minimizing labour costs and shifting the economic risk on to their employees.

Casual employees continue to be heavily concentrated in a few industries. Around 20 % of all casual workers in Australia are engaged in the retail sector and a further 20 % are in the accommodation and food services sector. Casual density is highest in accommodation and food sector where 64 % of all employees in the sector are casual. This is followed by the agriculture, forestry and fishing sector where just under half the workforce is casual, and the retail sector as well as the arts and recreation services sector where about 40 % of all workers are casual. Casual work is concentrated in the low paying sectors of the economy. However, it is important to note that casual work is not confined to these sectors. Virtually all parts of the economy have witnessed significant growth in casual density over the past few decades.

Over half of all casual employees can be classified as "permanent casual" in that they have a long-term ongoing employment relationship but this does not mean they receive the employment conditions associated with regular employment. Close to 60 % of all casuals have been employed in their current jobs for over a year and 17 % of casuals have been in their job for more than five years²⁶. A significant 76.2 % of casual workers have had continuous employment with one employer for over 6 months²⁷.

²⁵ Campbell, I and De Stefano, V., *Casual work in contemporary industrialized societies*, ILO, 2017.

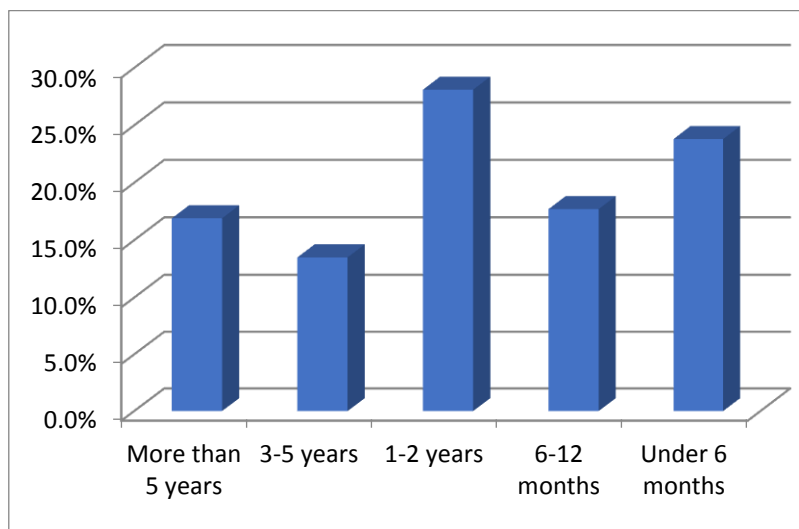
²⁶ Geoff Gilfillan, *Characteristics and use of casual employees in Australia*, Australian Parliamentary Library, 19 January 2017 <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/CasualEmployeesAustralia>, accessed February 2018.

²⁷ Ibid.

Despite this all casual workers are denied paid annual leave and sick leave and very often do not receive other benefits that are available to regular employees. In theory casual workers should receive a premium on their hourly wage, the “casual loading”. But this is not always paid.

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

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



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

Given the long periods of continuous employment with one employer it is clear that a majority of casual workers are economically dependent on a single employer and should be given all the rights and protections that apply to other workers.

While a high proportion of casual employees are economically dependent on a single employer this does not mean they are fully employed or that that they have normal working hours. On the contrary casual workers are highly likely to endure irregular and insufficient hours of work. This generates large fluctuations in earnings, with around 53 % of casuals experiencing variable earnings from one pay

period to another²⁸. ABS data for August 2016 reveals the following additional characteristics about casuals. Compared to regular full-time or part-time employees they are:

- much less likely to be guaranteed a minimum level of weekly working hours;
- far more likely to have large fluctuations in working hours from one week to the next; and,
- three times more likely to want additional working hours.²⁹

(b) “Independent” contactors and disguised employment relationships

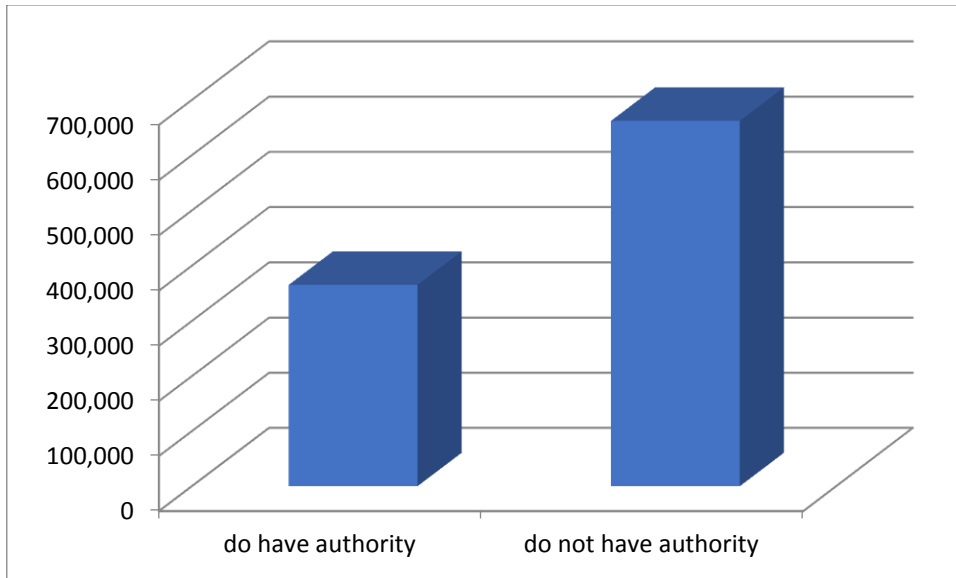
Data from the ABS would suggest there are over 1 million “independent contractors” in Australia. Nearly one third of them are engaged in the construction industry. In fact, the construction and transport industries have historically been sectors that use a large number of contractors: both genuine independent contractors and “sham” contractors who should be classified as regular employees. In recent decades the use of so-called independent contractors has increased significantly in other sectors of the economy including the public and private sectors. One example of this trend is the professional, scientific and technical services industry which is now the second largest employer of “independent contractors” with roughly 16 % of all contractors operating in this sector.

However, a large proportion of the workers that fall into this category are not really “independent”. Many of them are economically dependent on a single employer and have limited discretion over when or how they work. In many cases these “contractors” work alongside regular employees doing the same or similar tasks and even using tools, equipment and other inputs supplied by the same employer. One key difference between a genuine independent contractor and a regular employee is the level of control or independent authority the person has over the performance of their work. 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 contracts” would not meet the above criteria. 64 % of people who are classified as “independent contractors” indicated they do not have authority over their own work.

²⁸Geoff Gilfillan, *Characteristics and use of casual employees in Australia*, Australian Parliamentary Library, 19 January 2017 <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/CasualEmployeesAustralia>, accessed February 2018.

²⁹ Ibid page 13.

Figure 3: Proportion of persons classified as “independent contractors” who reported they do not have authority over their work



Source: ABS

If an independent contractor does not have authority over their work, (and are actually economically dependent on one business entity), then many of these workers should really be permanent employees and are being denied the basic rights at work to which they are entitled.

Case study: Independent Contractor in Retail Sales

There are more than 1 million workers classified as “independent contractors” in Australia. Joan is one of them. She took up a contract as a sales representative on a commission basis after unsuccessfully searching for a full-time position over the previous 18 months. Her contract provided for a \$100 a week retainer for the first four weeks and then a 22% commission on sales. Her job involved selling books to schools. Her work schedule was set out by the company over four periods of 10 weeks each, in line with the school calendar.

According to Joan,

“The company I worked for had only intermittent reps beforehand. So, I needed to establish contact with the schools across my territory which meant visiting each school. The position required me to set up a home office. I purchased equipment which cost me approximately \$600.

I am responsible for the cost of petrol, stationary, wear and tear on the car, telephone calls and internet access. Even though I have worked on average three to four days a week over

a 20 week period, I have received only \$5000 from the company but I have spent at least \$1200 on the set up, petrol and phone calls and other expenses.

I do not receive sick pay, holiday pay, superannuation or any of these kinds of workplace entitlements.”³⁰

The problem of using sham or bogus contactors to disguise what should be a regular employment relationship has expanded considerably in recent years. In 2011 ABS data indicated there were 406,200 people classified as “independent contractors” who claimed they had no authority over their own work. This represented about 40 % of all so-called independent contractors. By 2016 this ratio had increased to 64 %. That is a rapid increase in 5 years. This casts serious doubt the ‘independence’ of almost two-thirds of all workers now classified as “independent contractors.” Workers who end up in this situation need to try and extract a fair deal for themselves from their employers on the basis of commercial law and without the help of trade unions or labour institutions.

Despite legislative and common law restrictions, government authorities have recognized that bogus or sham contracting strategies are widespread. For example, the Australian Tax Office accepts that there is widespread abuse of Australian Business Numbers by so-called independent contractors. ‘Sham contracts’ are used by employers to avoid paying entitlements to workers who should have been hired as employees. These entitlements can include holiday pay, sick pay, employer contributions to superannuation and a range of other benefits. In some industries, the illegal use of sham contracting is rife. In the construction industry the CFMEU estimates that between 26% and 46% of so-called independent contractors are engaged in sham contracts.³¹

The ACTU fears that this trend towards bogus or sham contracting will continue in the coming decades unless the Federal Government works with unions to take action that alters law and practice in this area.

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

As indicated above the terms labour hire or private employment agency work are used to describe a triangular employment relationship that includes the worker, the employment agency who is nominally the employer and the end-user enterprise where the work is undertaken. The end user enterprise is

³⁰ See [Lives on Hold: Unlocking the Potential of Australia’s Workforce, the Report of the Independent Inquiry into Insecure Work in Australia](#), Commissioned by the Australian Council of Trade Unions, Chaired by Brian Howe AO, 2012, p22.

³¹ CFMEU, [Race to the Bottom – Sham Contracting in Australia’s Construction Industry](#), CFMEU Research Paper, 2011.

often a large company and in many cases this company will use both its own regular employees alongside workers engaged through the private employment agency or labour hire company. Historically, the use of triangular employment relationships of this nature was confined to very specific tasks outside the core business of the end user enterprise, such as security and catering services. Over time the range of occupations and the proportion of workers engaged in this manner has grown.

Unfortunately, data on the extent of triangular employment arrangements is dated and patchy. Back in 2008 the ABS estimated that 576,700 workers, or 5 per cent of employed people, had found their current job through a labour hire agency.³² Some 97% of these workers were engaged as employees and 3% were estimated to be independent contractors.³³ More recent data that is regularly updated is required to monitor these trends and the ACTU calls on government to reverse its cuts to the ABS so they can collect it.

The majority of the labour hire industry is dominated by large firms such as Skilled, Manpower, Spotless, Programmed Maintenance Services and Chandler Macleod. The dominant private employment agencies also utilize workers engaged through labour-hire subcontractors and a multitude of the smaller players. Hence, an employee engaged in this manner may be involved in complex layers of inter-corporate subcontracting arrangements as well as the commercial arrangements between the private employment agency and the end user enterprise. Rather than a triangular employment relationship the worker may find themselves in a multi-dimensional relationship with no idea about who is ultimately responsible for their wages and employment conditions.

In most advanced economies there are strict licensing arrangements and regulations governing the operations of private employment agencies.³⁴ In some countries the laws make the employment agency and the end user enterprise jointly responsible for ensuring that the worker receives the pay and benefits to which they are entitled. Thus, if the employment agency does not meet its obligations, the worker can take steps to secure compensation from the enterprise in which they perform their work. These provisions have helped reduce worker exploitation and wage theft.

³² See ABS 6105.0 - Australian Labour Market Statistics, Jan 2010.

³³ Ibid.

³⁴ The ILO *Private Employment Agencies Convention, 1997 (No. 181)* and the attendant recommendation, *Private Employment Agencies Recommendation, 1997 (No. 188)*, provide some guidance in this regard.

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

- The common law does not necessarily see an employment relationship between the end user enterprise that directs the work and the worker;
- Workers engaged in this manner cannot bargain for a collective agreement with the end user enterprise, or benefit from collective agreements that enterprise may have with its regular workers who are performing similar or even identical work duties. Whilst the workers can conclude a collective agreement with the private employment agency, the agency is not the organization that controls the work and the conditions under which the work is performed;
- Labour hire workers cannot make an unfair dismissal claim against the end user enterprise, even where this enterprise makes the decision as to whether the worker will have a continuing job at the workplace or not;
- The “General Protections” contained in the *Fair Work Act 2009* are difficult to apply in triangular employment relationships because in the main any “adverse action” suffered by the workers will result from actions by the end user enterprise which is not covered by the provisions in the Act; and,
- Workers in triangular arrangements are less inclined to defend their rights because they realize the end user enterprise can make them redundant without any adverse consequences.

Case study: Gabrielle’s experience in a triangular employment relationship

Gabrielle was employed part time as an administration assistant for the University of Ballarat TAFE but was desperately looking for full-time work. So she decided to apply for work through a large private employment agency. The job turned out to be 38 hours a week, but on a casual basis so she received no sick leave or annual leave entitlements. The employment agency would regularly assign her to different end user enterprises to fill temporary positions. She worked in this way for a year before returning to her old workplace on a fixed- term contract which she hopes to turn into permanent full-time employment. This experience has left Gabrielle both angry and fearful. She says: “Trying to find a job today that is permanent is like trying to get blood out of a stone.”³⁵

³⁵ See [Lives on Hold: Unlocking the Potential of Australia’s Workforce, the Report of the Independent Inquiry into Insecure Work in Australia](#), Commissioned by the Australian Council of Trade Unions, Chaired by Brian Howe AO, 2012, p8.

She also explains that:

“We can’t go on a holiday. I am scared to get a cold or get sick because I can’t take time off work. During a forced period of leave at [the private employment agency], I found two weeks of work at my old job because I couldn’t survive without the pay. We always have to pay bills in instalments. We have done this for so long now I forget what it’s like to get a bill and just pay it.”³⁶

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

The Howe Inquiry heard many accounts from workers engaged in triangular employment relationships. The Report from this Inquiry summarized many of these accounts. Below are just a few extracts from the summary contained in the Report:

“Workplaces where the entire workforce was employed as casuals through a labour hire firm. Employees were expected to be available for a full-working week, and were notified by text message around 4pm each day of whether and when they were required to turn up the next day – but without any information about how long their shift would be;

Employers using labour hire in the workplace to foster divisions among their ongoing staff and temporary workers, weakening workers’ bargaining power and leading to lower rates of pay and lesser entitlements; Indirect discrimination on the basis of union activity, age and other grounds being tacitly applied by simply not offering certain workers any more shifts;

Labour hire workers feeling unable to report bullying, injuries suffered in the workplace, or occupational health and safety risks for the fear that exercising their rights would lead to censure,

³⁶ Ibid.

*the loss of shifts or the loss of a job altogether; and Labour hire workers finding themselves unable to secure a home loan or a car loan because of their lack of job security.*³⁷

(d) Fixed term contracts

The use of fixed term contracts (FTC) in Australia is less extensive than in many other OECD countries. Fixed term employment accounts for around 4 % of all employees and is heavily concentrated in just a few sectors: education, public administration and safety and health care and social assistance. In Australia employers have a strong preference for using casual workers rather than fixed term employees because the latter must receive similar wages and conditions to regular employees, although they do not have job security. In addition, many workers on fixed term contracts face difficulties accessing similar training and career opportunities that are available to their permanent counterparts.

The ILO has recently stated that FTCs typically offer a lower level of protection to workers in terms of termination of their employment, as usually no reasons need to be given by the employer to justify the end of the employment relationship, beyond the fact that the end date of the FTC is reached. There is usually no severance pay at the end of an FTC and in most instances, the end of the FTC means the end of the employment relationship. Instead of being stepping-stone to regular employment, temporary employment may be a dead end, and these workers will slip back into unemployment at the end of the performed task, or become “trapped” in nonstandard employment if subsequent employment relationships are also non-standard.’ (ILO 2016)

(e) The special case of the gig economy

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

- On-call work: workers are hired and paid only when needed, with no guarantee of continuing work or regular hours;
- Piecemeal pay: workers are paid according to a specific job or task, not by the hour or the day;

³⁷ See [Lives on Hold: Unlocking the Potential of Australia's Workforce, the Report of the Independent Inquiry into Insecure Work in Australia](#), Commissioned by the Australian Council of Trade Unions, 2012, p34.

- Provision of capital equipment: workers are required to supply the direct capital needed for work – including a place to work (home or a car), and the tools or equipment which they directly use; and
- Workers are treated by the facilitating companies as independent contractors and lack standard employment entitlements and conditions including sick leave, minimum wages, annual leave and access to workers' compensation.

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

“...these practices were even described as “precarious work” in nineteenth century policy discourse. Similarly, requiring producers to supply their own capital equipment is a long-standing feature of work in many industries, including transportation, resource harvesting, construction, and personal services.”³⁸

The ACTU agrees with this proposition. These precarious work practices are also prevalent in most developing economies. Australia should not be expanding work practices that were common in first industrial revolution nor those that are common in the least developed nations today.

Case study: Airtasker

A Unions NSW research report (2016) argues that the main objective of digital platforms is to bypass many of the obligations and labour cost that should be borne by the employer. The research explains that the ambiguity about whether gig economy workers are independent contractors, dependent contractors or employees allows employers to undermine minimum wages and other legislated employment conditions. The research supports reform of our current labour laws and institutions to catch up to the new reality of this form of work and develop new tools to protect and enhance minimum standards for workers in digital platform business.³⁹

³⁸ See Jim Stanford, 'The resurgence of gig work: *Historical and theoretical Perspectives*' *The Economic and Labour Relations Review*, Vol 28 (3) 2017.

³⁹ See Unions NSW, [Innovation or Exploitation: Busting the Airtasker Myth](#) (2016), accessed February 2018.

The report notes that the Airtasker website did not provide information regarding minimum wage rates, the terms of relevant Awards, or other employment standards. However, it did provide recommended hourly rates of pay for the most common job categories. When Unions NSW analysed recommended rates of pay many were below the relevant Award minima. For example:

- in August 2016, Airtasker's lowest suggested hourly rate was for data entry with a suggested rate of \$17.00 per hour. When the 15% Airtasker fee was deducted, this resulted in workers being paid \$14.45 per hour. Well below the minimum award rate of \$23.53,⁶ and even lower than the statutory minimum wage of \$17.70.
- The recommended rate for cleaning was \$20.00 per hour with \$17.00 paid to the worker.
- Airtasker workers are not paid superannuation, casual loadings or additional allowances. Taking into account these additional costs, Airtasker's recommended rates of pay in August 2016 represented a significant underpayment compared to the relevant Awards. The rates contained no allowances for tools, travel time, or other related costs incurred by workers.

Unions NSW (2016) explains that Airtasker defines its workers as independent contractors who are engaged directly by the job posters. Under this view workers are governed by commercial rather than employment law and thus Airtasker does not see itself responsible for minimum payment or other features of the normal employment safety net. Obviously mobilizing labour in the form of independent contractors significantly reduces the business's labour costs. However, the nature of the work by Airtasker workers is different from an independent contractor arrangement because Airtasker takes an active role in regulating both the performance of the work and the relationship between the job posters and work. The report is clear that as long as workers on Airtasker and similar platforms are being treated as independent contractors it will be difficult for minimum rates of pay to be truly enforceable.

Andrew Stewart and Jim Stanford argue that gig economy workers face working conditions, insecurity, and compensation that most of Australian society would consider unacceptable and the policy makers must face up to the challenges.⁴⁰ They argue that:

⁴⁰ Andrew Stewart and Jim Stanford, 'Regulating work in the gig economy: what are the options?', *The Economic and Labour Relations Review*, Vol 28 (3), 2017.

“It is vital that policy-makers recognise the challenges posed by the expansion of the gig economy to the existing regime of labour regulation... And so long as demand conditions in labour markets remain chronically inadequate, desperate workers will be pressured by economic circumstance to put up with those conditions. This is why proactive labour regulation remains essential, as the European Parliament (2017) has recently reaffirmed, to support the conditions and fairness of work across the whole spectrum of precarious, insecure work.”

(f) Occupational health and safety

Insecure workers, including casual, labour hire and gig economy workers, tend to have poorer occupational health and safety outcomes because they are more marginally attached to the workplace, enjoy lower rates of training, lower union density and higher rates of bullying, sexual harassment and financial stress. Many gig economy jobs such as bicycle courier jobs are dangerous with high rates of injury and fatality. As gig workers like those engaged through Airtasker are treated as self-employed independent contractors, they are not adequately covered by occupational health and safety (‘OH&S’) schemes, posing a great risk to themselves and do not provide proof of qualifications even when performing electrical, plumbing, building or other trade work leading to risks of endangering the public.⁴¹

The relationship between rising inequality and insecure work

Income inequalities in Australia are greater than at any time in the last 70 years. Debate continues to focus on the causes of rising income inequality and the appropriate policy responses. The common conservative explanation for rising income inequality is technological change and innovation that places a premium on high skilled jobs and this explains why executives of large corporations and those running banks and other financial institutions deserve their very high rewards. According to this perspective the answer to excessive income inequality is increased investment in skills and training so that a wide section of society has access to these high paying jobs.

Technological change may indeed be one factor contributing to widening income inequality. This is why the ACTU is concerned about cuts in the Federal Budget for training and apprenticeship schemes. It is bizarre that on one hand conservatives attribute rising income inequality to technological change and then on the other hand choose to cut the funding for training and apprenticeships. Technological change and re-training are not the sole cause and cure for income inequality.

⁴¹ See See Unions NSW, [Innovation or Exploitation: Busting the Airtasker Myth](#) (2016), accessed February 2018, p9.

It is not feasible to think that re-training workers leaving the resources sector or those currently engaged in the hospitality industry to be financial advisors and bankers is a catch-all solution. That said, greater investment in free education and training to give every person in Australia the opportunity to fulfil their potential is highly desirable from both an economic and social perspective.

However, the causes of rising income inequality go beyond technological change. They include the weakening of labour institutions such as trade unions, the diminished role of the independent umpire in determining wages and the rapid expansion of precarious forms of work. The fact that Australia has the third highest proportion of non-standard work in total employment among OECD countries is contributing to changes in the distribution of income and the declining wage share in national output. Globalization is another major factor underpinning widening income inequality. Globalization did nothing for blue collar workers in advanced economies trying to make a living by working in a factory or an occupation that could be transferred to a country without trade unions, collective bargaining and labour rights.

When it comes to policy reforms to contain the expansion of income inequality, the options are narrower. The future of technological change and globalization are largely beyond the control of Australia. On these issues we are merely one player among many. The policy variable that is most within our national control is our national labour institutions and labour laws. Moreover, our legal framework and practices can either encourage or discourage the further expansion of precarious work.

We must not continue the trend of the last 30 years and continue to weaken the protections provided by labour institutions and labour laws that were initially established because there is a massive power imbalance between the individual worker and the employer. If we continue on this trend we will end up like America with all the social problems that entails. If we want to stop rising inequality and create a better society we must stop the rapid expansion of precarious forms of work.

Addressing non-standard work and preparing for the future

In order to ensure a smooth and fair transition in the future of work, and that job quality is not diminished and is indeed improved by technological change, a comprehensive package of co-ordinated policies will be required, including facilitating worker redeployment, investing in skills, strengthening

social protections, reforming the industrial relations and social security system and allocating significant resources towards supporting the transition process, with unions playing a prominent role.

The ILO has recommended action in the following areas to reduce the negative consequences of non-standard work:

- (a) Plugging regulatory gaps.
- (b) Strengthening collective bargaining
- (c) Strengthening social protection.
- (d) Instituting employment and social policies to manage social risks and accommodate transitions.

The ACTU concurs that action is required on a number of fronts to address the situation we face in Australia.

(a) *Plugging regulatory gaps*

The above-mentioned ILO policy paper states that:

“Ensuring equal treatment for workers in NSE is essential; it is also a way of maintaining a level playing field for employers. Establishing minimum guaranteed hours and limiting the variability of working schedules can provide important safeguards for part-time, on-call and casual workers. Legislation also needs to address employment misclassification, restrict some uses of NSE to prevent abuse, and assign obligations and responsibilities in multi-party employment arrangements.”⁴²

Action on all these fronts is required in Australia. As a first priority however the ACTU is recommending reforms to limit the use of casual work. This can be achieved by guaranteeing that all casual workers will be automatically granted the right to convert to regular employee status, with all the benefits and rights that apply to regular full-time employees, after having completed a prescribed period of time working as a casual.

From an international perspective the widespread use of casual workers is unusual in advanced economies. It is a form of non-standard work that is largely confined to very poor developing

⁴² ILO, *Non-Standard Employment Around the World: Understanding challenges, shaping prospects*, 2017, p271.

economies. But even among developing economies it is common practice for governments to place restrictions on the maximum duration of casual contracts. According to the ILO:

“A maximum duration of six months is quite common, especially in the Middle East, but several shorter or longer durations can be found across jurisdictions. In some cases, the law fixes a maximum duration over a reference period: in Zimbabwe, for instance, casual workers are considered to have become permanent employees when the period of engagement with a particular employer exceeds a total of six weeks in any four consecutive months.”⁴³

The ACTU believes that it is essential to limit casual employment to very exceptional circumstances that are of a temporary nature. In Australia there are examples of casual conversion clauses in Enterprise Agreements. However the effectiveness of these clauses is limited by factors ranging from the absence of deeming provisions specifying a maximum period of casual employment to the recent FWC decision in *AMWU vs Visy Board Pty Ltd t/as Visy Board*⁴⁴ which ruled such clauses relating to casuals engaged through labour hire are non-allowable content because it does not pertain to the employment relationship between the employer and direct employees. In most cases employers retain the discretion to refuse conversion and most low paid precarious workers fear losing their job altogether if they seek application of the conversion process.

(b) Strengthening collective bargaining

To defend the interests of non-standard workers the ILO has strongly recommended action by governments to expand collective bargaining coverage and ensure that the provisions of ILO Convention No. 98, concerning the Right to Organize and Collective Bargaining are fully complied with. Article 4 of this Convention states:

“Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreement.”

⁴³ Ibid.

⁴⁴ [2018] FWCFB 8.

Australia has ratified this core ILO Convention and the ACTU believes that the Australian Government is in breach of its international obligations “to encourage and promote the full development and utilization” of collective bargaining. A review of recent trends in collective bargaining activity and coverage supports this proposition. Some key statistics highlight the problem:

- The number of private sector workers covered by an EBA declined by 170,000 in the September quarter of 2017 – one of the biggest quarterly drops ever;
- Only 1.19 million private sector workers are now covered by an EBA: the lowest since September 2006;
- The cumulative decline in private sector EBA coverage since the end of 2013 is now 758,000. That is a 39 % decline in less than four years;
- EBAs now cover just 11 % of workers in the private sector – compared to over 20 % a decade ago; and
- The erosion of EBA coverage corresponds to a rapid increase in the number of workers covered by the minimum terms of Modern Awards.

It is clear that in Australia we need to revise our labour laws to meet our international obligations to promote collective bargaining.

(c) Strengthening social protection

One of the major differences between a non-standard worker and a regular employee is access to social protection. In Australia many precarious workers are denied sick leave and their employers do not make superannuation contributions which means the worker will face a high probability of living in poverty in old age.

Because of the short duration of many precarious work contracts workers do not accumulate sufficient tenure to receive important benefits that apply to regular employees. Consequently an important policy recommendation for the ACTU is the introduction of portable long service leave and other entitlements.

(d) Instituting employment and social policies to manage social risks and accommodate transitions

In the future, as technological change accelerates and the use of robotics and AI is mainstreamed in many industries large scale job losses are inevitable. This does not necessarily imply higher levels of unemployment providing our education, training and social security systems are world class and can support the transition of workers from sectors where capital/labour substitution is occurring and into new and expanding sectors.

Australia's approach to structural adjustment has in the past often been ad hoc and ineffective. For example, the closure of Mitsubishi car operations in Adelaide in the first decade of the 21st Century had a devastating effect on many workers. As Andrew Beer found in his research on the economic impact of the closure, "A third of the workers moved into full time paid employment, a third of the workers moved into what we think of as casual or contract employment, and a third of the workers left the workforce entirely" with a subsequent economic shock to Adelaide's suburbs that has lasting effects today.⁴⁵

In contrast, a comprehensive system of social welfare and active labour market programs in Denmark ensured a smooth transition for workers during the closure of a major shipyard in Nakskov in Denmark the 1980s. The Danish State and the European Union proactively allocated funds to prevent regional and local economic inequality from reaching significant proportions. The funds were used to support investment in food, electronics and new metal industries and to provide training and improved management skills and improve the local physical environment and infrastructure. Hence, a very high proportion of the displaced workers were moved into new jobs in the emerging industries. Key to the program's success was that support was provided before the workers ceased employment and support was provided by both company and government funds.⁴⁶

Today, Denmark provides effective unemployment support to those whose jobs are destroyed and effective, active labour market programs to provide high quality training for re-employment.⁴⁷ The active labour market programs of the Nordic nations do much to shield workers from the effects of structural change, upskilling the workforce and supporting high levels of employment, productivity and innovation.

⁴⁵ See Professor Andrew Beer quoted in Andrew Scott, *Northern Lights: The Positive Policy Example of Sweden, Finland, Denmark and Norway*, Monash University Publishing (2014), p131.

⁴⁶ *Ibid*, pp 134-5.

⁴⁷ *Ibid*.

These efforts, combined with free tertiary and vocational education to facilitate life-long learning, upskilling and re-training is a reason why these countries are at the forefront in their capacity to harness the opportunities and manage the risks of the Digital Revolution.

The ACTU has proposed a transition plan for the coal-powered electricity generation industry workers that will be displaced by the inevitable transition to a clean, renewable energy economy.⁴⁸ This transition must occur, not only in order to fulfil Australia's commitment, along with 196 other States, under the Paris Agreement to limit global warming to 2 degrees, but in the face of superior renewable energy technologies coming online that perform coal on cost, pollution and stability. A broader system of active labour market programs, social security and investment in skills and training will be necessary to facilitate ongoing transitions throughout the economy as a result of the Digital Revolution.

Unfortunately, the Turnbull/Abbott Government has moved in the opposite direction and reduced expenditure in key areas. For example, TAFE funding has dropped 30% in a decade, with funding per contact hour dropping 14.8% between 2006 and 2015. TAFE has seen a collapse in enrolments, funding and teaching staff. Some Victorian TAFEs have seen 40% drops in enrolment and the Victorian TAFE system has lost 3300 educators in the past five years.

Australia also provides appallingly low social security to the unemployed and has not yet evolved a system of unemployment insurance as exists in many other countries. A study by Shaun Wilson and Alan Morris in 2014 noted that the Newstart payment of \$255.25 per week for a single person was well below the poverty line of \$408.98 per week for a single person (as at March 2014) and had steadily declined relevant to the Disability Support Pension and the Age Pension which were both \$421.40 per week.⁴⁹

Newstart provided for a mere 45 per cent of the minimum wage to the unemployed and is not available until one's personal savings are exhausted, essentially guaranteeing extended unemployment will result in hardship. This amounts to a paltry 28 percent of average weekly time earnings.⁵⁰ In contrast, unemployment benefits and insurance provide for over 70 per cent wage replacement in Central and

⁴⁸ See ACTU, *Sharing the challenges and opportunities of a clean energy economy: A Just Transition for coal-fired electricity sector workers and communities*, 2016.

⁴⁹ Alan Morris and Shaun Wilson, 'Struggling on the Newstart unemployment benefit in Australia: The experience of a neoliberal form of employment assistance', *The Economic and Labour Relations Review*, (2014) vol. 25 pp 202-221 at p203-4.

⁵⁰ *Ibid*, p206.

Northern Europe and 60 per cent wage replacement in Canada.⁵¹ Newstart allowance is currently a mere \$269.40 per week for a single person without children (February 2018).⁵²

There is much room for Australia to significantly increase social security and to increase spending on social welfare generally, given welfare spending as a proportion of GDP in Australia is amongst the lowest in the OECD and for several decades has barely kept pace with inflation.⁵³

Conclusion

The Australian workplace has changed drastically over the last 10 years, not to the benefit of working people, with more power being concentrated in the hands of corporations who have exploited new forms of working arrangements, corporate structures and capital mobility to reduce wages and shift economic risk onto working people.

The future of work in Australia will depend on the policy responses of government to the situation that now presents itself. If the current trend continues then the balance between employer and employee will continue to skew towards employers with workers shouldering more of the economic risk for lower and lower wages while employers reap larger and larger returns.

Alternatively, a decision to actively redress the power imbalance with a view to ensuring good secure work and wage rises that reflect a fair distribution of value will allow Australia to look at the potential future with a sense of hope about what technology can help us achieve.

There is no doubt that rapid technological and demographic changes will pose new and more complex challenges in the future. The future of work is largely within our control. This is despite the fact that the workplace will be impacted by a range of global factors.

Globalisation has exerted far reaching effects on the workplace in the last 30 years and significantly altered the balance of power between capital and labour. The future of international trading

⁵¹ See Andrew Scott, *A Proposal for Unemployment Insurance: Research report commissioned for Jobs Australia*, Jobs Australia, (June 2016).

⁵² Department of Human Services website < <https://www.humanservices.gov.au/individuals/services/centrelink/newstart-allowance/how-much-you-can-get>> , accessed February 2018.

⁵³ Richard Denniss, David Morawetz, Sharon Friel and Bob Doublas, *Advance Australia Fair? What to do about growing inequality in Australia: Report following a roundtable held at Parliament House Canberra* (2014), < <http://gallery.mailchimp.com/d2331cf87fedd353f6dada8de/files/1b2c7f48-928f-4298-81db-cf053a224320.pdf>>., p13.

arrangements, global supply chains and financial market integration is less certain today than it was just a few years ago. Widespread political backlash against widening income inequality means that further rapid integration of global product and financial markets may not occur as easily as in recent years.

Technological change, demographic shifts and globalisation can all have good or bad effects on the labour markets and society depending on the public policies we put in place to manage these changes. Unfortunately, the Turnbull government did not implement the right policies to manage globalisation and ensure it is positive influence for all our population. The economic benefits are monopolised by a few while the vast majority are denied a fair share in the increased productivity and wealth. This is reflected in stagnant real wages, widening income inequality and excessive levels of non-standard work.

It has been a mistake to simultaneously weaken our trade unions and the protections we provided to workers at the very time when globalisation was enhancing the power of multinational companies, big finance and capital more generally. The smart move would have been to reinforce multi-employment collective bargaining, support trade union organising efforts and maintain the Awards system that had served our national well for many decades. Instead we did the opposite and workers were hit by a “double whammy”: having to compete intensely with low wage countries like China and the rest of Asia while our labour laws and institutions were weakened in the name of “flexibility”.

We need to correct these failures of the past and avoid compounding our errors. Regardless of whether technological change displaces a large number of jobs, or simply changes the jobs we do, the point is that without being properly managed, either outcome will result in the benefits disproportionately flowing to a few (particularly where new jobs are increasingly non-standard). The benefits from technological change need to be fairly distributed and particularly where taxpayer funds are being invested in technological innovation which is making large profits for companies.

Calls for even greater labour market flexibility, lower wages, reduced benefits and greater reliance on non-standard forms of work must be rejected. Instead the ACTU recommends the policy reforms outlined in this paper.

If these recommendations are followed we have nothing to fear about the future of work. The complex challenges that we confront can be managed. All sections of society should share in the cost of making the transition as smooth as possible and in the rewards that can result from higher productivity and

wealth generation. If we all share in both the costs and the rewards on a fair basis our society will grow stronger and our political institutions will regain the public respect they once commanded. Alternatively, if we exacerbate current levels of income inequality and increase the reliance on non-standard forms of work we risk jeopardizing social harmony and political stability.

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