



Closing the Loopholes: Casual Work

ACTU Research Note – May 2023

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From insecure work to wage theft, big business has found too many ways to exploit weaknesses in Australia’s workplace laws to enable it to pay people less. They have been aided by 9 years of Coalition Governments either making things worse or just turning a blind eye. This has held back wage growth and held back people’s lives.

This ACTU Research Note dives deeper into a key example of this: casual work. It finds that:

- Casual employees now earn \$11.59 less per hour than permanent employees. This is a gap of 28.6%, the highest gap on record.¹
- Even when comparing workers at the same skill level or in the same occupation, the pay gap between casuals and permanents is still between \$3.55 to \$3.84 an hour or about 11%. This is despite casuals supposedly getting a 25% loading.
- Low pay and the cost of living crisis are creating extreme financial stress for casual workers. 50% of casual workers report being financially worse off than they were 12 months ago, up from 36% recorded a year earlier.
- Most casuals are casual in name only. The majority work regular hours, week in, week out and have been in their job for more than a year. Changes made by the Morrison Government in early 2021 made it perfectly lawful for this to happen.
- Where casuals aren’t “permanent casuals”, they are often crying out for more hours of work. 70% of all workers facing underemployment are “part time casuals”.

Changes to the law by the previous Coalition Government in early 2021, make it very easy for an employer to call any worker a casual, locking in all of these problems. And superficial attempts to provide some mechanism for casuals to become permanent, so-called casual conversion mechanisms, have proven useless.

¹ All figures quoted in this research note, unless otherwise stated, are from the ABS’s latest Characteristics of Employment survey from August 2022. Any calculations based on that data have been performed by the ACTU.

To close the “casual work loophole” the ACTU suggests:

1. Introducing a common sense definition of “casual employee” into the *Fair Work Act* that only covers work arrangements that are genuinely irregular, intermittent or unpredictable.
2. Giving the Fair Work Commission the powers to quickly sort out a dispute over who is and who isn’t a casual – rather than leave it to expensive litigation, where those with the deepest pockets usually win, years later.
3. Giving the Fair Work Commission further powers to be able to arbitrate disputes over casual conversion, which have proven to be largely useless in practice.
4. Making sure workers misclassified and underpaid as casual workers can recover their full and fair wages and entitlements in accordance with the well-developed common law principles of set off.

Who is a casual employee?

A worker engaged on a casual basis was supposed to be one who worked irregular or unpredictable hours and had no firm commitment of future work. They have no paid leave entitlements and limited job security. In return, a casual employee is supposed to receive a loading, usually 25% extra pay, on top of their base rate of pay, and a partial right to say no to requests by their employer for them to work.

Today, close to 2.6 million people are on casual work arrangements, or a little under 1 in 4 employees.² While casual employment was at a record high just before the pandemic, 2020 saw more than half a million casual workers lose their jobs as many customer facing businesses were forced to close their doors. Businesses preferred to let casuals go, particularly as many of them weren’t initially eligible for JobKeeper payments. Levels of casual employment have now largely recovered.

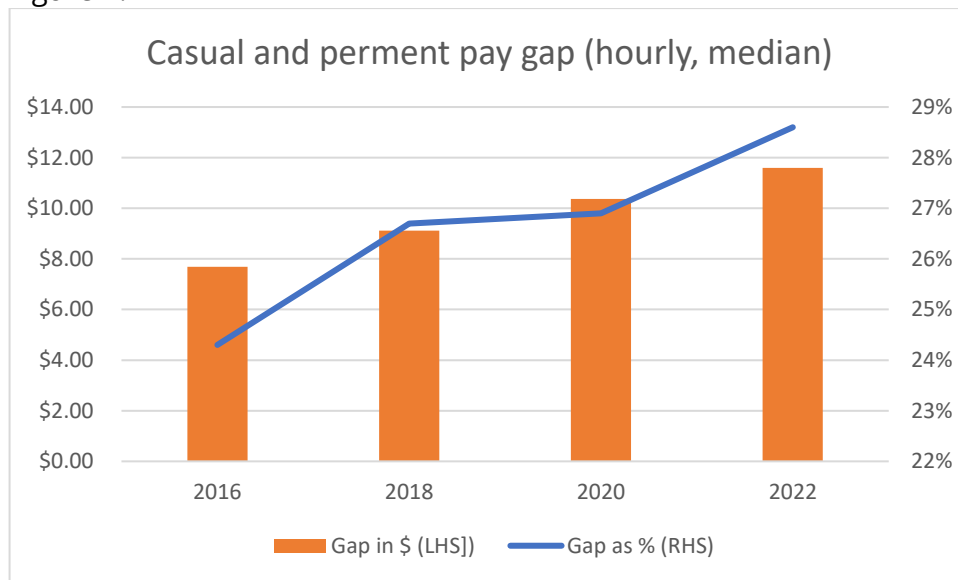
Women make up 55% of all casual employees. While 40% of casual employees are between the ages of 15 to 24, there are people of all ages on casual work arrangements. Retail, accommodation and food services and health care and social assistance together employ 55% of all casual employees.

² ABS Labour Force Detailed (March 2023)

The growing casual pay gap

Across the whole workforce, permanent employees earn \$40.54 an hour, whereas casuals only earn \$28.95 per hour based on median hourly pay. That is a gap of \$11.59 an hour, or 28.6%, Alarminglly, this is a growing gap and the highest on record as Figure 1 below shows.

Figure 1.



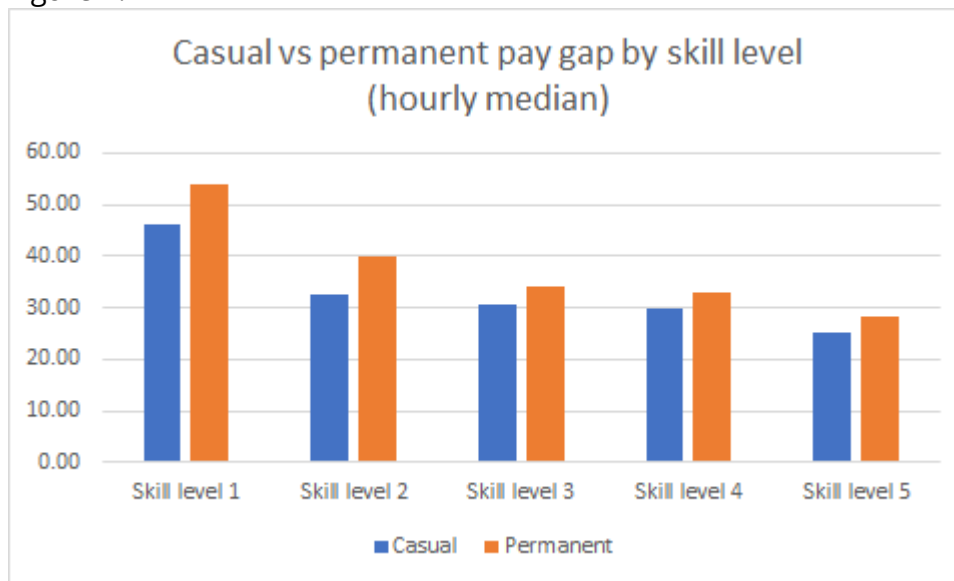
Comparing like with like

The economy-wide comparison of casuals and permanents does mask a wide variety of different jobs that can influence the size of the pay gap. However, when making a comparison across groups of workers with the same skill levels or in the same occupation, there is still a considerable pay gap. Comparing casual and permanent workers at the same skill level, as per Figure 2 below, casual workers are paid less at every level. The median pay gap across all skill levels is \$3.54 an hour or 11%.³

³ The ABS defines "skill levels" as covering the range and complexity of the set of tasks performed in a particular occupation. Skill level 1 occupations require a Bachelor Degree or higher qualification or at least five years of relevant work experience. Skill level 5 requires compulsory secondary education or an AQF Certificate 1. For more information on the ABS measure of skill levels see:

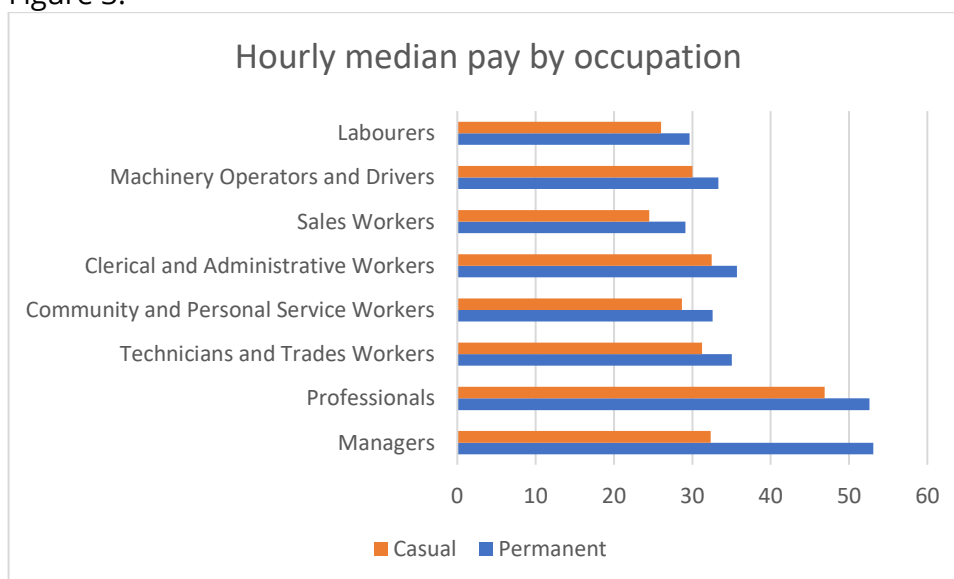
<https://www.abs.gov.au/ausstats/abs@.nsf/0/598C2E23628BB8FDCA2575DF002DA6B8?opendocument>

Figure 2.



Similarly, the pay gap by occupation also shows casual workers behind, despite doing the same or similar work as permanent employees, as Figure 3 shows. Again, the median pay gap measured across all occupations is \$3.84 or 11.4%.

Figure 3.



These results are counter-intuitive and alarming because casual employees are supposed to be paid a loading of usually 25% under most Awards above permanent employees. But instead of being 25% ahead on pay, casuals are generally 11% worse off.

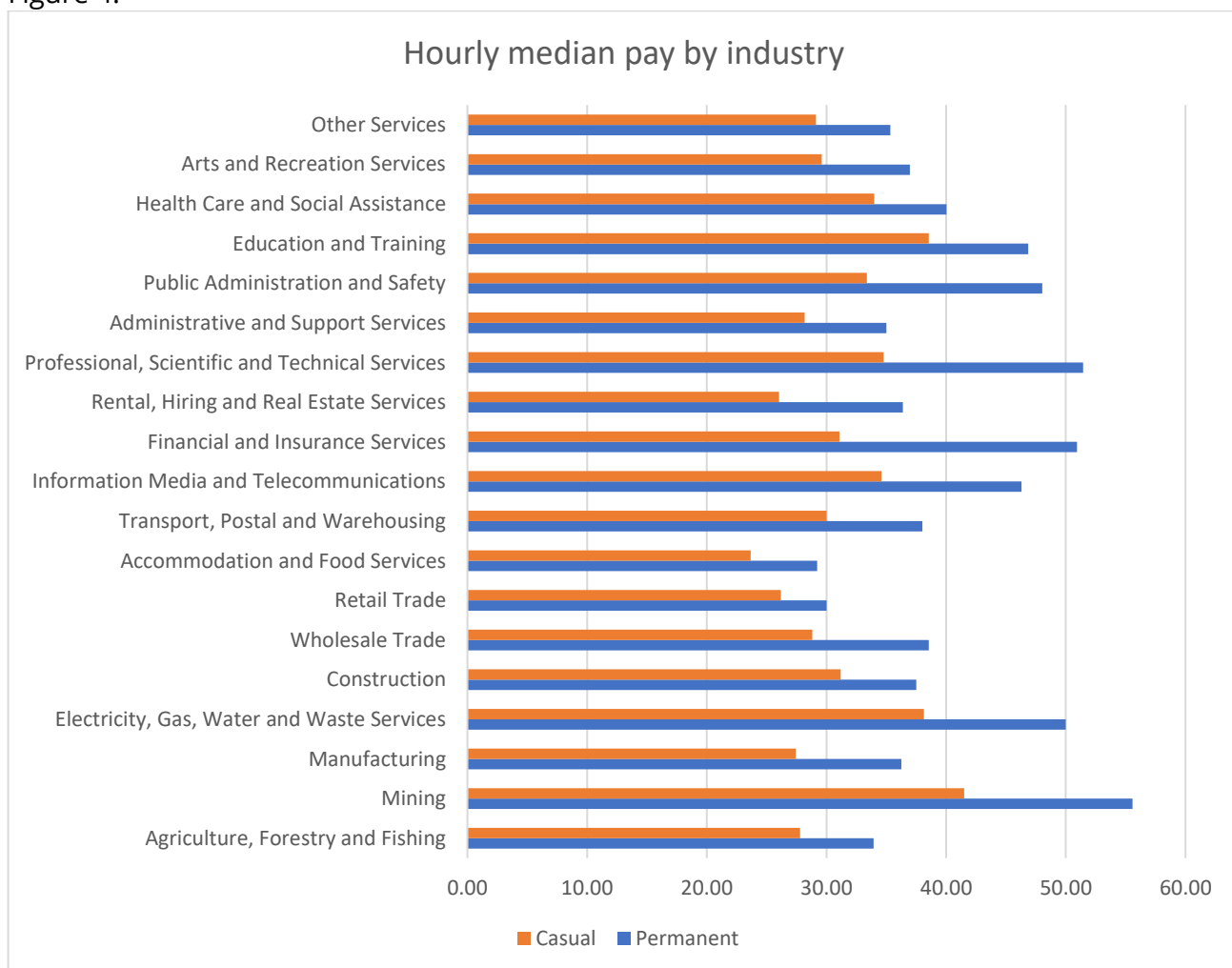
A part of the issue is that more than 1 in 3 casual employees don't get paid any loading at all, according to research by Peetz and May (2022). The authors speculate that this was because casual workers were either the victims of wage theft or had rolled-up rates that were

inclusive of the casual loading.⁴ Given the extent of the pay gaps facing casual workers, the explanation is more likely to be the former cause than the latter.

Pay gaps by industry

Casuals earn less than their permanent colleagues in every industry, with the scale of the gap being very industry specific. The gaps are largest in industries where permanents can secure high rates of pay, including in finance, professional services and utilities. While the gaps are lower in low paying industries such as retail, accommodation and food services where casual work is rife.

Figure 4.

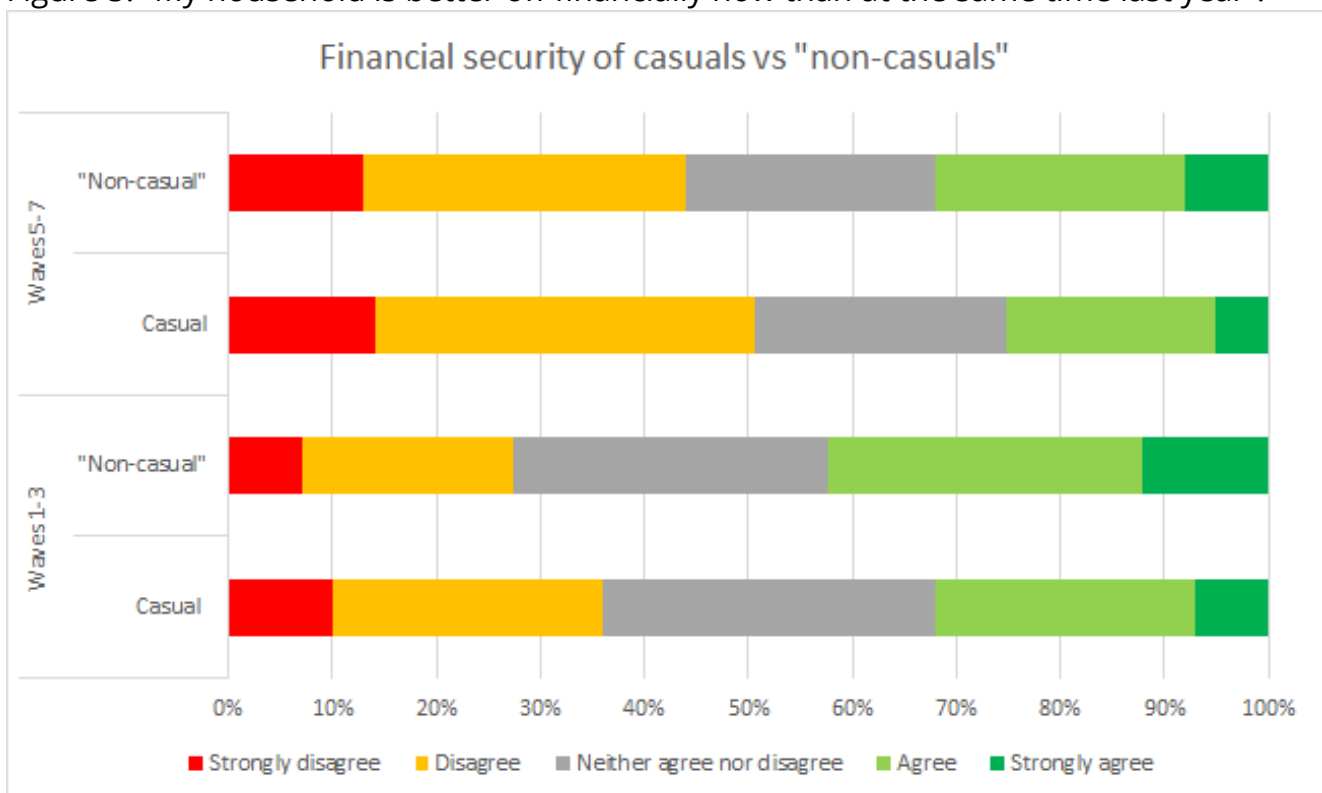


⁴ Peetz, D., & May, R. (2022). Casual truths: What do the data on casual employment really mean? *Journal of Industrial Relations*, 64(5), 734–758. <https://doi.org/10.1177/00221856221097474>

Nothing casual about the cost of living crisis

Low pay is hitting casual workers the hardest during the current cost of living crisis. Half of casual workers now disagree with the statement that “my household is better off financially now than the same time a year ago”, a 14 percentage points increase on the same answer 12 months earlier, according to the ACTU’s Attitudes, Sentiments and Knowledge survey, a quarterly tracking survey of the labour market.⁵ For the rest of the workforce, 44% recently disagreed with this proposition compared to 27% earlier.

Figure 5. “My household is better off financially now than at the same time last year”.



Source: ACTU ASK Survey, waves 1 to 7. “Non casuals” includes all workers who are permanent employees and contractors.

Casual in name only

Casual work was supposed to be work that is irregular or intermittent. However the majority of casual employees work the same hours, week in, week out, and often for years. Based on the latest ABS data:

- 59% of casuals (1.5 million) say they usually work the same hours each week.

⁵ To ensure statistically significant answers, the ACTU has combined the survey results from three waves to produce sample sizes of 515 and 568 for waves 1-3 and waves 5-7 for casual workers respectively. For “non-casuals” the sample sizes were 4,654 and 5,452 respectively. Waves 1-3 took place from 22 November 2021 through to 30 May 2022. Waves 5-7 took place from 31 October 2022 through to 10 May 2023.

- 43% of casuals (1 million) have income that is the same from week to week.
- 54% of casuals (1.3 million) have been in that job for more than one year.
- 28% of casuals (682,000) work full time hours.

These work arrangements have now been given the painful oxymoron of “permanent casuals”. The Courts were starting to clamp down on this practice by determining the key Federal Court cases of *WorkPac v Skene* and *WorkPac v Rossato* that workers on such arrangements should rightly be permanent workers and receive the backpay owing.

In response the former Morrison Government amended the *Fair Work Act* in early 2021 to make it legal to employ anyone as “permanent casuals”, and effectively deny anyone fair backpay in the *Skene* or *Rossato* scenarios.

The new definition of “casual” only considers what happens at the point an offer of employment is made, and not what happens after that. There is nothing to stop an employer getting a new employee to sign a contract stating that they are a casual with no firm advance commitment to continuing work, but to then put them on permanent hours the next day.

Even KPMG, the big four accounting firm that gives big business workplace relations advice, said that these new laws could “permit an employer to engage a casual employee under a sham arrangement” and recommended the law be changed.⁶

The Morrison Government also included a “casual conversion” process at the same time which requires an employer to offer permanent employment to a casual if they had been employed for 12 months, have worker a “regular pattern of hours on an ongoing basis for at least the last 6 months”, and the business does not have “reasonable grounds for not making an offer”.

In practice this mechanism has been next to useless. Some unions report that as few as 1% of casual employees in workplaces are being converted to permanent employment.⁷ A key problem is that if an employer rejects a casual conversion claim on “reasonable grounds”, the recourse for an employee is painfully limited.

No security over hours

While many casuals are permanent in all but name, another cohort of casuals have a different problem: being denied enough hours of work. Here, the issue of low pay is even worse if you can’t secure the hours of work that you need. Underemployment – those in work but wanting to work more hours – has grown significantly over the past decade, prior to the

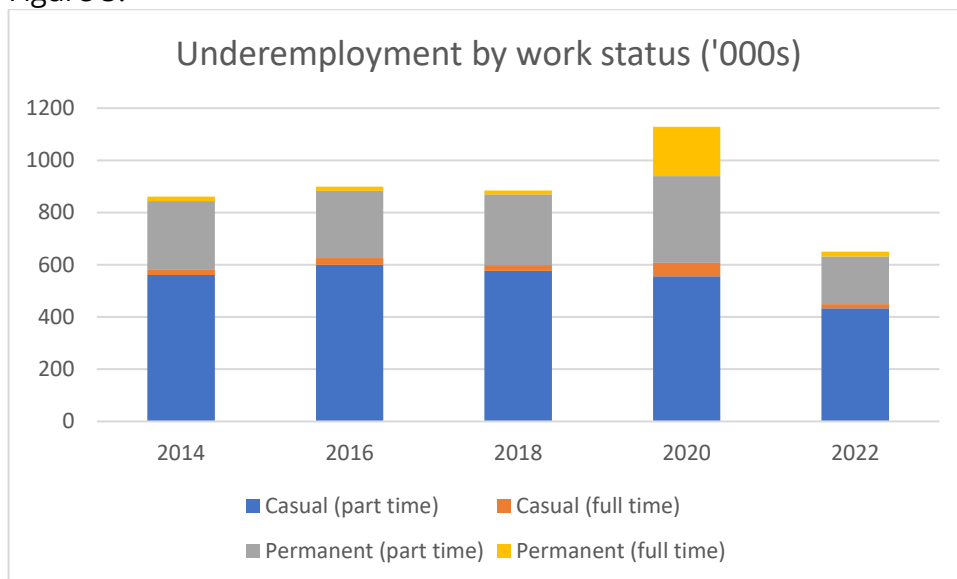
⁶ KPMG (2023) *Review into Casual Laws*, page 6.

⁷ Guardian, (18 November 2021), Australia’s universities converting as little as 1% of casual staff to permanent despite labour law change. <https://www.theguardian.com/australia-news/2021/nov/18/australias-universities-converting-as-little-as-1-of-casual-staff-to-permanent-despite-labour-law-change>

pandemic. And it is casual workers working less than full time hours that have borne the brunt of it.

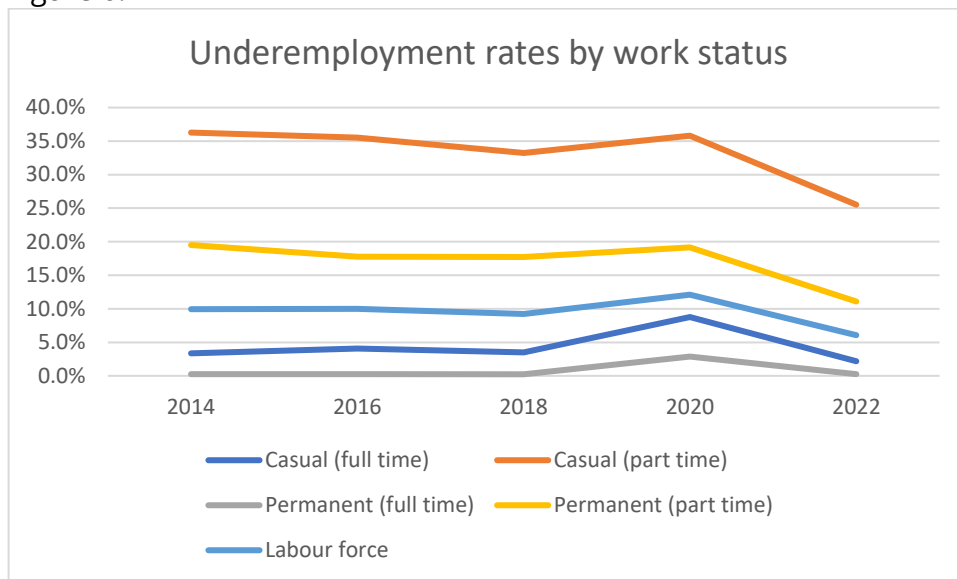
As Figure 5 below shows part time casuals dominate the ranks of workers wanting more hours, consistently making up about 70% of all underemployed workers. Permanent full-time workers started to struggle for hours during the depths of the pandemic in 2020, but the only reason casuals didn't struggle as much then was because hundreds of thousands had lost work altogether over that period.

Figure 5.



When considering the rates of underemployment by work status, more than 1 in 3 part time casuals typically need more hours of work as Figure 6 shows. Encouragingly, these figures have dropped recently in response to the tight labour market, dropping the underemployment rate down to about 1 in 4 for part time casuals. But the evidence is clear: part time casuals are used by business as shock absorbers against shifts in the economy labour market. If it worsens, they will be the first to lose the hours that they need.

Figure 6.



Close the casual work loopholes

Casual employment has become a giant loophole enabling big business to pay their workers less, and shift any business risks onto their shoulders by denying them enough hours to get by. Too many casual employees are casual in name only. Too many aren't given the pay or the hours they need to keep their heads above water – a crushing reality for workers in the midst of a deepening cost of living crisis. This has to end.

Encouragingly the new Government is committed to reform in this area. To close the “casual work loophole” the ACTU suggests:

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