



Closing the Casual Work Loophole for Tasmania

ACTU Research Note – January 2024



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Next month the Australia Parliament will consider the remainder of the *Closing Loopholes Bill*, which will seek to close the casual work loophole introduced into the Fair Work Act by the former Morrison Government nearly three years ago, among other things.²

Those changes have effectively allowed an employer to label any employee a casual in their contract of employment and made the pathway for those employees that want to challenge or change their work status even more difficult.

This research note draws on a new survey by the ABS to highlight the damage that these Morrison-era changes have created for many Tasmanian workers.³ It finds that:

- An estimated 11,200 Tasmanian workers who have been with their employer for at least 12 months want to convert to permanent work.
- Yet less than 5% of them – or a bit over 500 of them, have been able to convert to permanent work because the current rules are flawed.

The research note also finds that casuals in Tasmania are being hit the hardest by the cost of living crisis: earning \$600 a week on a median basis or \$42 less than the national figure of \$642. That crisis is also falling more on the shoulders of women: 58% of casuals in Tasmania are women compared to 53% nationally.

¹ This research note is authorised by Jess Munday, Secretary, Unions Tasmania, Hobart. Document Number 5/2024

² The first part of the Closing Loopholes Bill was split out and passed late in 2023.

³ The ACTU has also produced this analysis on a national basis. See ACTU Research Note, *Closing the Casual Work Loophole*, January 2024.

For many, and especially those on the frontline of the cost of living crisis, this Bill would provide them with much needed security in their lives. For those employees who prefer casual work, it enshrines their right to remain casual. Accordingly, Unions Tasmania and the ACTU call on the Australian Parliament to pass the remainder of the Closing Loopholes Bill as soon as possible.

How many casual workers in Tasmania want to become permanent?

To better understand the extent to which people change between casual and permanent working arrangements, the Australian Bureau of Statistics conducted a new survey module run throughout the 2022-23 financial year.⁴

Under the Fair Work Act, an employee has to be with an employer for at least 12 months before they can access the provisions to seek to convert to permanent work. This survey showed that 70% of employees identifying as casual would meet this requirement of being “long term”. Of those employees 29% would prefer to be permanent, 58% would prefer to continue with working casually and 13% were unsure.

To better understand the scale of this demand, Unions Tasmania and the ACTU applied these rates to the ABS Labour Force survey which provides a more representative measure of total casual employment. Today there are some 55,000 employees in Tasmania that do not receive paid leave entitlements - the broadly accepted measure of casual employment.

⁴ ABS Labour Multi-Purpose Household Survey 2022-23, included in its Working Arrangements release on 13 December 2023. See: <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/aug-2023>

Using that total figure, an estimated 11,200 long term casuals would prefer to be permanent.⁵ This figure does not include casuals who have been with their employers for less than 12 months but want to convert. This estimate is also likely different from the actual number of casuals who would be eligible to apply to convert to permanent work under the proposed changes in the Closing Loopholes Bill No.2 because eligibility under the Bill's measure would kick in at 6 months for employees at a business with 15 or more employees⁶, and the test applied is slightly different.⁷

Those wanting to convert to permanent work cited job security (61.6%) and paid leave entitlements (22.2%) as their top reasons. Those not wanting to convert cited higher hourly pay (20.4%) and flexibility (39.4%) as key reasons.

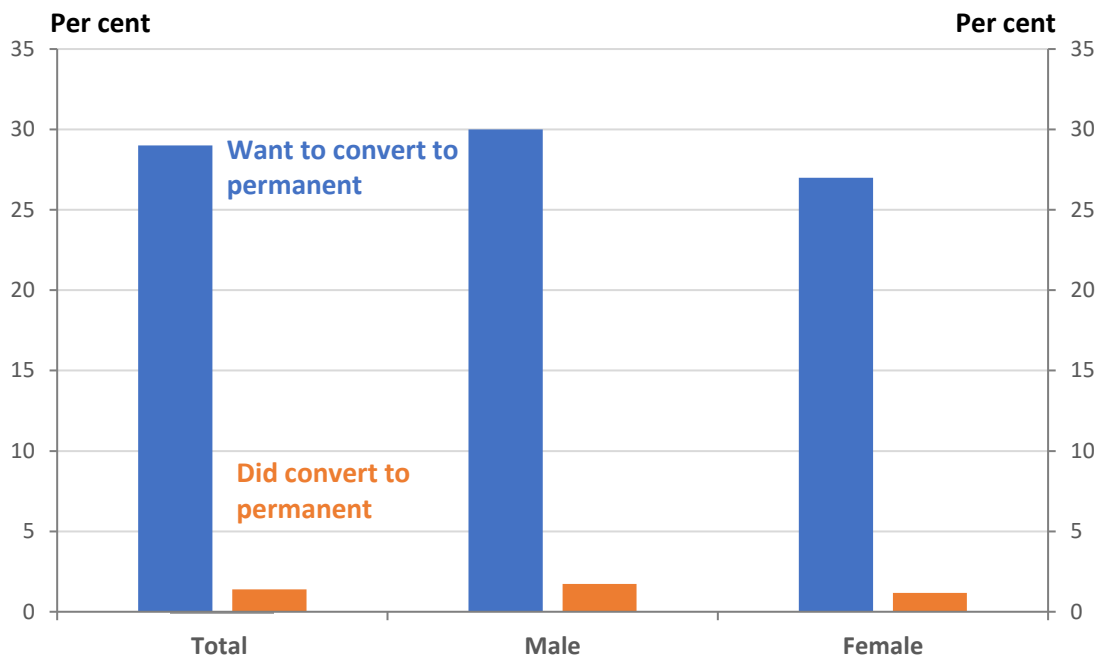
The new ABS survey module also asks whether or not an employee had a conversion conversation with their employer and then whether or not they actually converted to permanent work. The results are startling: only 1.4% of long-term casuals actually converted, despite 29% wanting to do so. The situation is slightly worse for women, where only 1.2% achieved conversion.

5 70% of casuals are assumed to be long term consistent with the ABS estimate. Approximately 29% of them wish to be permanent. Applying these rates gives the estimate quoted above where : long term casuals (70%) x long term casuals who want to be permanent (29%) x total casual employment (2.73 million)

6 Employees working for an employer with less than 15 employees have to be employed for 12 months before being able to access this right.

7 Data on these two variables is not available in this new ABS data release but has been estimated by the Government in the Explanatory Memorandum to the Closing Loopholes Bill.

Chart 1: The casual conversion gap, 2022-23



Source: ABS Multi-Purpose Household Survey Module (2022-23); ACTU calculations.

Measured against the total pool of Tasmanian casual workers, this suggests that only a bit over 500 long term casuals achieved permanent work during the survey period of 2022-23. To put it another way, less than 5% of long-term casuals who want to convert to permanent work have been able to do so under the current process. The current pathways to permanent work for casuals are clearly deeply flawed.

The casual work pay gap

Casual workers are feeling a greater cost of living crunch because they are earning far less than permanent workers, both on an hourly and weekly basis. While this is unsurprising given that casual workers tend to be concentrated in lower paid occupations and sectors, the growing pay gap between the types of employment is a worrying trend.

Casual employees now earn \$11.90 less than their permanently employed counterparts: \$31 an hour compared to \$42.90 per hour when compared on a median basis. This is a 27.7% pay gap.⁸ This is the largest gap ever in both dollar and relative terms.

In Tasmania, the situation for casual workers is even worse: The median weekly earnings of casuals in Australia is \$642, compared to median weekly earnings of \$600 for casuals in Tasmania, or a gap of \$42.⁹

Casual workers in Tasmania are also more likely to be women: 58% of casuals in Tasmania are women compared to 53% nationally. Around 32,000 of casuals in Tasmania are women, or around 13.1 per cent of total employed persons in Tasmania, while around 23,000 are men, or around 9.7 per cent of total employed persons in Tasmania. In contrast women, employed as casuals make up around 12.7 per cent of total employed persons in Australia, while males employed as casuals make up around 10.8 per cent.

Closing the casual work loophole

In early 2021, the former Morrison Government created a new loophole in the law to make it easier for an employer to call an employee a casual – denying them leave entitlements, predictable hours of work, and job security.

The Closing Loopholes Bill introduced into Parliament on 4 September 2023 seeks to address these flaws by introducing:

- a commonsense definition of casual employment that better reflects the case law prior to 2021, and

⁸ ABS Characteristics of Employment, August 2023. ACTU calculations.

⁹ ABS Characteristics of Employment, August 2022.

- a fairer test for an employee to convert from casual work to permanent, based on whether or not they are indeed a permanent worker, rather than just letting the employer decide if they can accommodate the change on “reasonable business grounds”.
- Enabling the FWC to arbitrate on a dispute as a matter of course, rather than requiring employer consent.

While parts of the Closing Loopholes Bill were passed by the Parliament in late 2023, the measures on casual work will be debated by the Parliament in early 2024.

For many, and especially those on the frontline of the cost of living crisis, this Bill would provide them with much needed security in their lives. For those employees who prefer casual work, it enshrines their right to remain casual.

Accordingly, Unions Tasmanian and the ACTU call on the Australian Parliament to pass the remainder of the Closing Loopholes Bill as soon as possible.

It's good to have breathing space to see family

Angelique works retail in Launceston working around 25 hours per week. She is from a close family and loves to spend time with them whenever she can. She also wants to start a family of her own one day but was concerned that the lack of security around her shift, and no paid time off for leave or if she was sick would be a barrier to her.

She requested to be taken on as a permanent part time worker and was one of the small number of workers in Tasmania who have been fortunate to make that shift.

She says its heartbreaking seeing other workers on regular hours not being able to access secure work when they too want to be able to manage family and work life. She appreciates that now, if she's sick she doesn't lose out financially. She can also visit family interstate without worrying about money "It's been good to have breathing room to take time off to see my family without losing pay" she says.

The security of a regular income now has Angelique planning for her first home, something that would only be a dream on a casual contract.

I have been unable to take time off to support my partner

Sarah has worked in higher education as a casual for 15 years. She moved from Canberra to lutruwita/ Tasmania in 2014 to undertake a PhD with an Australian Post Graduate Award. Bringing her disciplinary knowledge and teaching expertise to the University. Sarah is a well-regarded researcher and educator in her field and has received awards for her contribution to teaching.

She has been a casual lecturer at her current university since 2014. The casual teaching work is terminated the end of each semester, presenting her with periods of no work during the mid-semester breaks and between academic years. As a young academic this arrangement provided her with flexibility to pursue my other interests. However, as she now requires more financial security to life plan and invested more of her skills and intellectual property into the workplace, she has sought to be converted to a permanent position

Sarah says "The instability and insecurity of casual work creates major financial and phycological stress. Not knowing if you will be employed again semester to

semester, how much work will be offered, and whether to take other work can create much distress. It also makes it difficult to make financial progress such as securing bank loans. I was reliant on my partners employment status to secure my first home loan”

Sarah is concerned that insecure work makes people less likely to speak up against workplace issues. She says that has been demonstrated by the many cases of wage theft in her sector.

The ability to take time off has been particularly difficult for her. She says “ Having no sick leave and other leave entitlements puts you and others at risk, because you are more likely to make decisions to protect your income rather than your health and wellbeing. In recent years, I have had significant caring responsibilities for my partner who incurred permanent disabilities due to workplace injuries. I have been unable to take time off to support them. This has been emotionally and physically exhausting to manage and contributed to burnout”

Being in insecure employment has also impacted her career progression, she mentions that as a casual she is excluded from research activities and denied the opportunity to build her academic career.

Sarah desperately wants to see improved casual conversation rights that acknowledge ongoing service, support career progression and improved tertiary institutions.