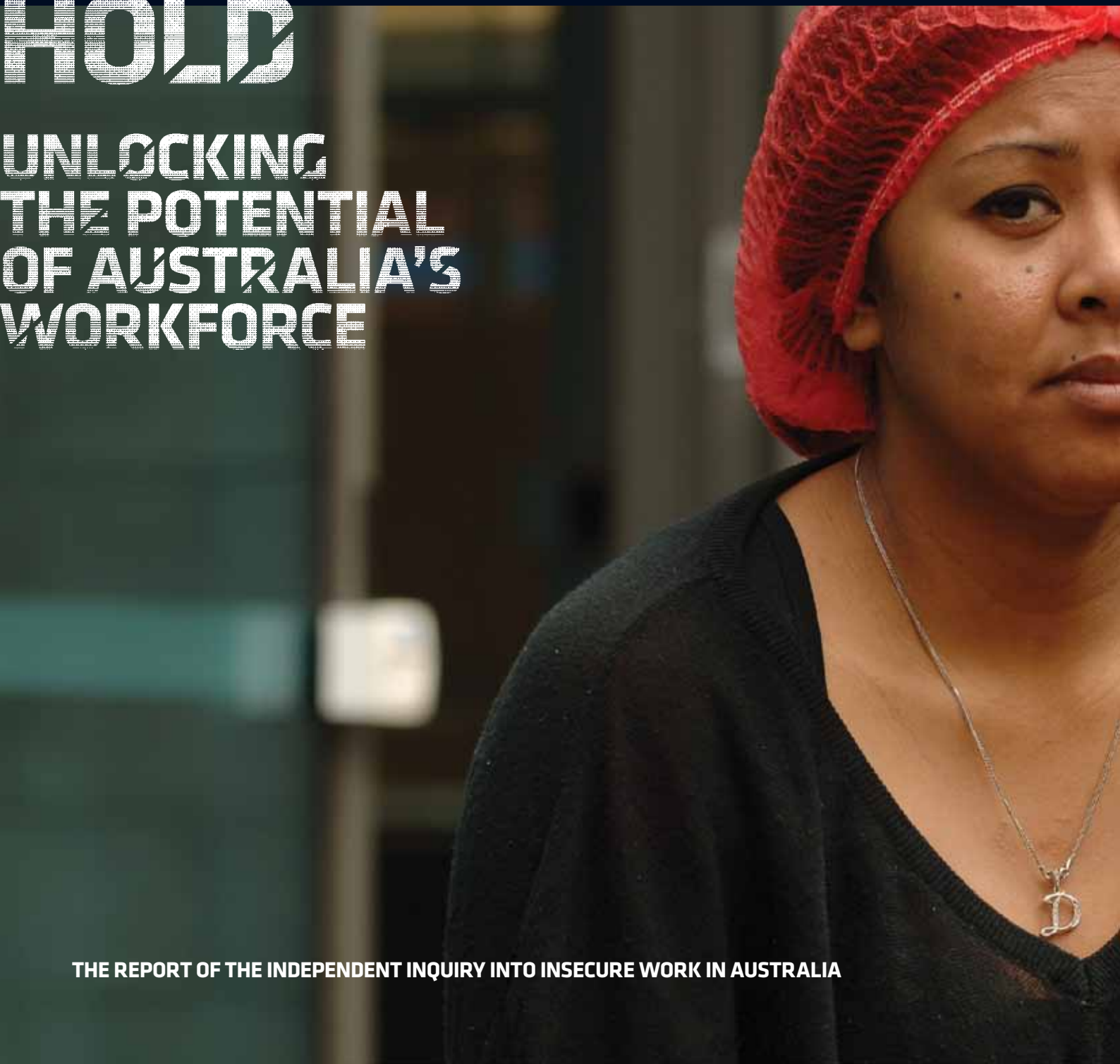
LIVES ON HOLD

UNLOCKING THE POTENTIAL OF AUSTRALIA'S WORKFORCE

INDEPENDENT INQUIRY into **Insecure Work**



THE REPORT OF THE INDEPENDENT INQUIRY INTO INSECURE WORK IN AUSTRALIA

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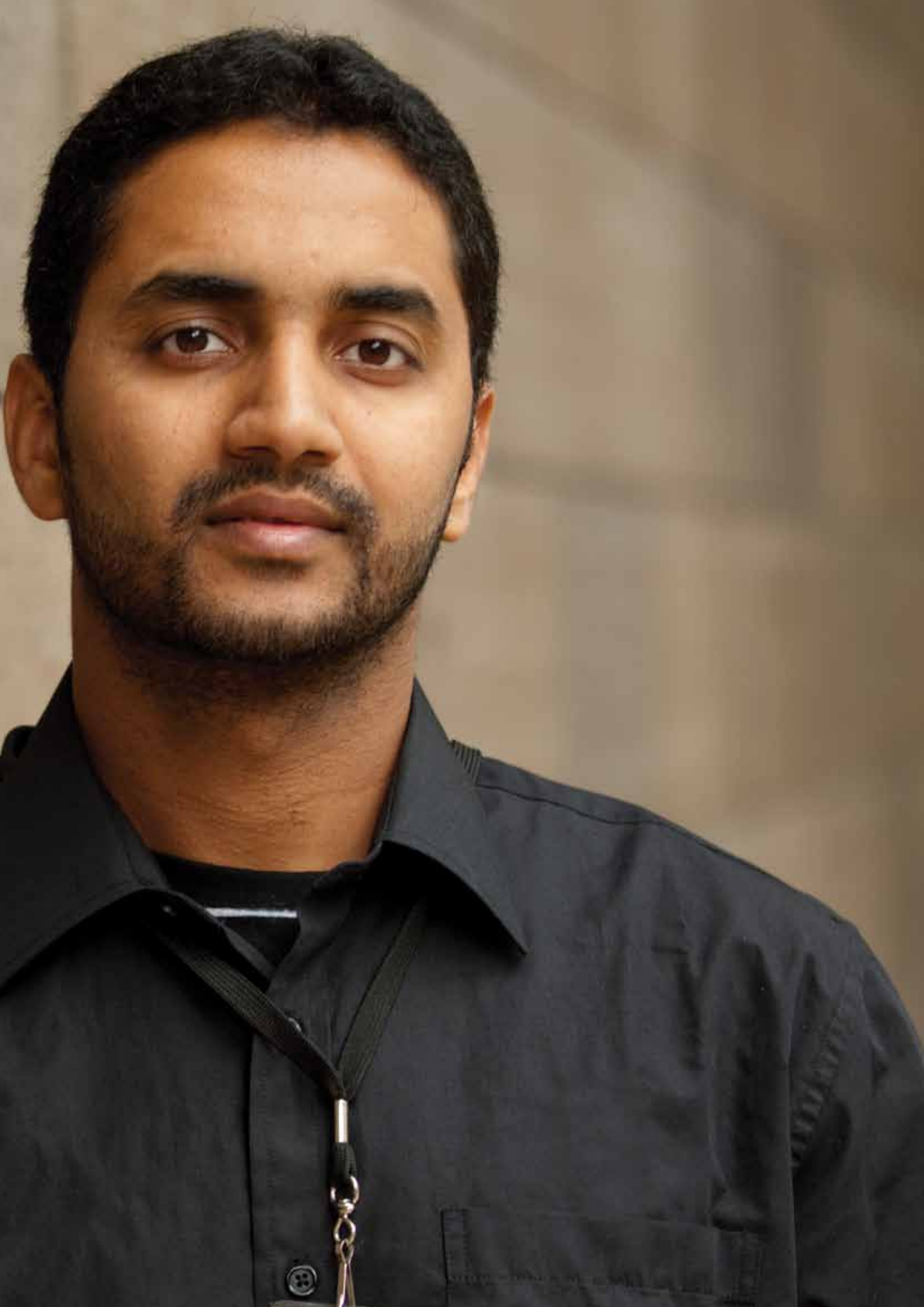

ACKNOWLEDGEMENTS

The inquiry panel would like to thank all the organisations and individuals who provided us with submissions or gave evidence during our investigations. We give particular thanks to those workers who had the courage to share their stories about insecure work.

CASE STUDIES

The case studies used throughout this report have been drawn from submissions made to the inquiry, witnesses who gave evidence to the hearings, and further interviews. In some cases, minor details have been changed to protect the anonymity of the case study at their request.

ABOUT THE IMAGES

All photos within this report, including the cover, were taken by Grant Hobson.

Grant Hobson, a Melbourne based photographer and artist, was asked to produce a series of portraits of people in insecure work for this report. His photography of 25 years spans a range of subjects including a strong emphasis on Australians at work, Australian masculinity and society and conservation on South Australia's West Coast. www.granthobson.com

"Making these images was an exercise in self reflection. These people are, in fact, me. Crippling housing and living costs are compounding the difficulty for artists and creative people to remain independent and productive in our society. Work is a fundamental expression of who people are. If employment in Australia is increasingly insecure, impermanent and dealt to us from the bottom of a deck then the implications are that we are all in for a rough time ahead. I wish to extend my gratitude to all those who graciously volunteered to be photographed as part of this project."

This inquiry was commissioned by the Australian Council of Trade Unions: www.actu.org.au
The ACTU is the nation's peak body for organised labour, representing 1.9 million Australian workers and their families.

The panel wishes to particularly thank the following ACTU staff for their assistance:
John Ryan, Paul Erickson, Matthew Hammond, Thirza White, Emma Brelsford, Alison Rahill, Mark Phillips.

Further contact details about this report:
tel: 1300 362 223; email: inquiry@securejobs.org.au
www.securejobs.org.au

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ABOUT THE INQUIRY

The Independent Inquiry into Insecure Work in Australia was announced on 24 October 2011. The media release is available at: www.actu.org.au/Media/Mediareleases/UnionslaunchnewinquiryintoinsecureworkaspartofpushforbetterfutureforAustralianworkers.aspx

The inquiry accepted written submissions between 2 November 2011 and 20 January 2012. Hearings were held around Australia between 13 February 2012 and 22 March 2012. A timeline and hearing program are attached to this report as appendices.

TERMS OF REFERENCE

DEFINITION

For the purpose of this inquiry, insecure work is defined as that which provides workers with little social and economic security, and little control over their working lives. Indicators of insecure work are:

(i) unpredictable, fluctuating pay;
(ii) inferior rights and entitlements, including limited or no access to paid leave;
(iii) irregular and unpredictable working hours, or working hours that, although regular, are too long or too few and/or non-social or fragmented;
(iv) lack of security and/or uncertainty over the length of the job; and
(v) lack of voice at work on wages, conditions and work organisation.

Insecure work can be experienced by all workers. Certain forms of employment are prone to insecure work, including casual work, fixed-term contracts, seasonal work, contracting and labour hire. These forms of employment will be of particular attention for the inquiry. Also of consideration will be the problems faced by workers employed part-time and workers in non-traditional workplaces, such as home-based outworkers.

TERMS OF REFERENCE

The ACTU is committed to consulting widely with the Australian community and invites all interested stakeholders to make written submissions. Public hearings will be held around Australia during February and March 2012.

The ACTU has asked the panel chaired by the Hon Brian Howe, to consult and report on the issue of insecure work in Australia. The inquiry panel has been asked to consider:

- The extent of insecure work in Australia;
- The causes of insecure work and its prevalence in modern Australia;
- The workers that are most at risk of insecure work and why;
- The level of compliance with applicable labour laws and any barriers to their effective enforcement;
- The effect of insecure work on:
  - Financial security,
  - Occupational health and safety of workers and workplaces,
  - Wellbeing and health of workers outside the workplace, including impact on family and other relationships,
  - Training and skills development,
  - Career progression and opportunities,
  - Regional communities, Social inclusion,
  - Community organisations;
- The social and economic cost of insecure work to employees, employers, government, and the Australian community;
- The rights and entitlements/working conditions that can best assist to provide security for workers;
- Relevant international human rights and labour standards.

The inquiry will provide recommendations to address any negative effects that it identifies as being associated with insecure work and/or insecure work itself. Without otherwise limiting the nature of the recommendations the independent inquiry may wish to make, in formulating its recommendations it must have regard to:

- International examples of effective measures that can be taken;
- Protections that currently exist that could be effective if better enforced and/or which require amendment;
- Additional measures that can be taken by;
  - Unions,
  - Employers,
  - Government.

This inquiry will produce a report by 18 April 2012 that will be considered at the ACTU Congress 15-17 May 2012.

The Panel (l-r):
Jill Biddington,
Brian Howe (chair),
Paul Munro (deputy chair),
Sara Charlesworth.

THE PANEL

The panel was chaired by **Brian Howe**, AO. Mr Howe was Deputy Prime Minister for the Labor Government between 1991 and 1995. He was a Member of Parliament for the seat of Batman from 1977 to 1996, and a Minister between 1983 and 1995, whose portfolios included Social Security, Health, Housing and Community Services. Brian Howe is a Professorial Associate at the Centre for Public Policy at Melbourne University, and author of Weighing Up Australian Values: Balancing transitions and risks to work & family in modern Australia (UNSW Press, 2007). He lives in Melbourne.

The deputy chair was the Hon. **Paul Munro.** From 1986 to 2004, he served as Justice Munro, a Senior Presidential Member of the Australian Industrial Relations Commission. He was admitted to the NSW Bar in 1961, and between then and 1986 served in legal practice, interspersed with periods of service as a national public sector union official, including about five years as a member of the ACTU Executive. He served on the Royal Commission into Australian Government Administration chaired by Dr H.C. Coombs in 1974-76. Since retiring from the AIRC, Mr Munro has written papers for or spoken at a number of academic and policy institutions, industrial relations or law conferences and has maintained an active role as an occasional consultant and mediator. Paul Munro is Vice-President of the Australian Institute of Employment Rights. He lives in Sydney.

Jill Biddington is a former union official and educator. She entered the union movement as a rank-and-file member in the finance industry, and was leader of the one of the five unions that amalgamated to form the Finance Sector Union. She has also worked for the New South Wales Nurses' Association, the Liquor, Hospitality and Miscellaneous Workers Union, Unions NSW, and the ACTU Organising Centre. She has a particular interest in the training and development of union leaders and managers specifically around change, development and democratisation for the increased participation of rank and file members. She lives in Sydney.

Sara Charlesworth is Associate Professor and Principal Research Fellow at the Centre for Work+Life, University of South Australia. She was a member of the Equal Opportunity Board (Victoria) from 1988 – 1994 and a member of federal Social Security Appeals Tribunal from 1995 – 2001. With qualifications in social work, political science, government law and legal studies, Associate Professor Charlesworth's research interests centre on gender inequality in employment at the labour market, industry and organisational levels, focusing on the intersection of job quality and sex discrimination. She has published and presented widely in a range of academic, policy and community forums and has been involved in a number of key gender and discrimination policy reviews and debates. Associate Professor Charlesworth is a co-convenor of the Work+Family Policy Roundtable, a member of the Discrimination Law Experts Roundtable and a member of the Regulating for Decent Work Network. She is currently working on two Australian Research Council-funded projects on decent work & gender equality and on sexual harassment in Australia. She lives in Adelaide.

MESSAGE FROM ACTU PRESIDENT GED KEARNEY

It has always been the role of unions to defend and extend rights at work. Creating and protecting secure jobs is a top priority of Australian unions.

Over the past few decades – despite strong and sustained economic growth – we have seen a worrying and dramatic rise of insecure work in Australia. Today, only about 60% of workers are in full or part-time ongoing employment; the rest – some 4 million workers – are engaged as casuals, on short-term contracts, in labour hire, or as "independent" contractors.

Insecure work leaves a large section of the workforce not sharing in our national economic prosperity. They have inferior rights, entitlements, and job security to their counterparts in ongoing employment. It makes it tough for working families to plan for their future when they cannot rely on regular incomes, but have rising household costs, and are shouldering more and more household debt.

The rise of insecure work in Australia is the result of a business model that shifts the risks from the employer to the employee. Australian unions do not believe a strong, prosperous economy must come at the expense of quality jobs, of respect for workers' rights, and of workers exercising some control over their working lives.

We believe reliable workers should have jobs they and their families can rely on with fair and predictable pay and hours of work, access to important conditions like annual leave, paid sick leave, overtime, penalty rates and long service leave, protection from unfair dismissal, and quality skills and training and career opportunities.

In 2011, the Australian Council of Trade Unions (ACTU) launched the Secure Jobs. Better Future campaign to begin fighting back against the growth of insecure work.

We determined that the policy solutions we proposed must undergo rigorous independent, evidence-based assessment, which is why the ACTU commissioned the Independent Inquiry into Insecure Work.

This has been a mammoth undertaking. More than 500 submissions were received from workers, academics, community organisations and unions. Dozens of witnesses gave evidence over 25 days of hearings in 23 different towns and cities.

The results are contained in this report. This is a landmark document that not only describes the nature of work in Australia today and the impact of insecure work on individuals and society, but lays out a vision for work and for unions for the next decade and beyond.

The ACTU wishes to thank the chairman of the Inquiry, Brian Howe, the deputy chair, Paul Munro, and the panel members Jill Biddington and Sara Charlesworth. Thank you also to the many ACTU staff who provided assistance to the panel.

Now it is over to the ACTU and unions. This report and its recommendations will be considered and debated at the ACTU Congress in May 2012. From there, we will develop a plan to delivering secure jobs for Australians.

Australian unions fought for good jobs in the Your Rights At Work campaign. We showed what could be done when we stand together about issues that matter to all working Australians. We will do it again.

Ged Kearney

President, Australian Council of Trade Unions

CHAIR'S FOREWORD

Over the past few decades, a new divide has opened in the Australian workforce.

No longer between the blue-collar and white-collar worker, it is between those in the "core" of the workforce and those on the "periphery".

Those in the core are likely to be in full-time employment, either permanently within organisations, in management positions, or possessing skills for which there is steady demand and for which they can charge a premium. They are likely to enjoy sick leave, paid holidays and in many cases parental leave above the government's universal scheme.

For them, flexibility means the chance to work in a variety of industries, to work overseas, to earn good money freelancing or in a secure part-time arrangement. Periods of unemployment are likely to be short or voluntary.

Below and around this group are those on the periphery. They are employed on various insecure arrangements, casual, contract or through labour hire companies, on low wages and with far fewer if any benefits.

Many do not know what hours they will work from week to week, and often juggle multiple jobs to attempt to earn what they need.

If their skills are low, or outdated, they are not offered training through work. They shift between periods of unemployment and underemployment that destroy their ability to save money.

Their work is not a "career"; it is a series of unrelated temporary positions that they need to pay rent, bills and food.

For them, flexibility is not knowing when and where they will work, facing the risk of being laid off with no warning, and being required to fit family responsibilities around unpredictable periods of work.

Although 40% of Australian workers are in insecure work, this is a development that has avoided proper examination and scrutiny for too long. There has been growing interest and research by individual academics, but it has slipped under the radar of our political class.

The Independent Inquiry into Insecure Work in Australia was commissioned by the ACTU to examine this phenomenon in depth. This inquiry has sought to fill a gap in our knowledge about insecure work that has been caused by the absence of any thorough investigation by government.

Our terms of reference, published in full in this report, required us to not only explore the scale of the issue and its effects on not just workers but the community but to propose recommendations to address the problems identified.

This inquiry has effectively consisted of two parts.

Initially, we called for written submissions, with a particular interest in hearing stories from workers about their individual experiences of insecure work. We draw widely on published academic research, and received dozens of submissions of written papers from academics and community organisations.

In total, 521 submissions were lodged, including 458 from individual workers.

The second part of the inquiry was a series of public hearings at 22 towns and cities around Australia. This gave the panel the opportunity to discuss in more detail the impacts of insecure work on people's lives, but more importantly, to test and probe potential solutions. We heard from dozens of witnesses – again including many workers.

This report is informed by a shared view that Australia can be proud that it was one of the first nations to grasp that the arbitrary outcomes of the labour market do not lead to fairness, and can damage society in the long-term.

The Harvester Judgement established the concept of a living wage that was enough for a worker to keep his family in frugal comfort.

In the post war period most households were one income, and male breadwinners were offered the security of permanent employment generally at a living wage, including enough to service a mortgage.

We now live in a society where the "Harvester man" model of social protection is no longer relevant, inequalities in wealth between households are larger, and social stratification is greater.

Our approach, which in part reflects our backgrounds, may be described as holistic. We have not adopted a narrow focus on industrial regulation alone as a "cure" to insecure work, but believe the social consequences are just as important, and must be addressed through a range of policy actions that will encompass housing policy, the skills agenda, and the tax and transfer and welfare systems.

"Without very serious investment in marginal workers nothing much is going to change."

Insecure work represents a commoditisation of workers that uses people in an instrumental and short-term manner as opposed to investing in their capabilities.

Contrary to the views of some in the business lobby that workers are attracted to casual and temporary work because of the flexibility it offers, the evidence we heard confirms that there are huge number people engaged in insecure work who want more secure and stable working arrangements.

The technological and information revolution (the "third industrial revolution") is of course transforming the nature and organisation of work, requiring an ongoing commitment to improving the education and skills of our work force if it is not to be polarised. As our workforce ages, skill shortages will get more serious if we do not act now.

Without very serious investment in marginal workers nothing much is going to change.

There is a message here (also) for Australian business, which ignores the rise of insecure work at its peril. A business model that is predicated on short-term profits generated by widespread use of insecure work is unsustainable in the long run.

This has been highlighted during the shallow national debate around productivity, in which business groups have attempted to convince us that the only way to increase productivity is to cut wages and conditions.

This ignores the fact that the main long-term drivers of productivity are investment in industry, infrastructure and in the skills of workers.

It also ignores the long-term effects of casualisation on the skills base of Australia, in particular of workers on the periphery of the economy.

In the long-term the insecurity of workers should be a concern for business, due to the loss of skills and motivation which it represents for many members of our workforce.

Although the creativity and ingenuity of Australian business has a role to play, there is no escaping the need for greater regulation to reduce insecure work.

Laws must recognise that workers who want secure work have a right to it, with the entitlements that involves, if it is possible for employers to offer it.

Arrangements which keep workers in casual contracts for years, solely for the convenience of employers, need to be discouraged.

There must be a point where a worker in a de facto permanent position earns the entitlements associated with permanent work.

Labour hire arrangements and sham contracting should not be used solely to minimise tax or an employer's responsibility to protect workers from injury.

As well as regulating, governments at all levels should take the lead as major employers by reducing the amount of contracting and insecure work that they create.

There is much for the union movement to do to position itself as a representative of those in insecure work. This will require a rethinking by unions that have traditionally serviced those in permanent, fixed employment. Collective strength has always been a mechanism for better labour rights, and unions must adapt to organise the new peripheral workforce.

It is to the credit of the ACTU and its affiliates that by commissioning this inquiry – they are prepared to confront those challenges.

How we structure work, and what we demand of workers will shape the nature of our society in the 21st century.

We cannot nor should we go back to the 1960s, and the era of one male breadwinner as the norm. We cannot expect lifetime employment in the same organisation, or even the same industry, as the norm.

But we can ask is the new workplace fair? Are we creating a starker split between winners and losers? Are good employers being undercut by businesses who are prepared to take the low road and exploit gaps in the law?

This report and its recommendations answer some of those questions, and paves the way for further discussion about the nature of work in Australia in the 21st century.

On behalf of the panel, we would like to thank the ACTU for giving us the opportunity to conduct this inquiry into an issue of such importance in the modern workplace. It has been a privilege to hear from so many courageous workers who have told their stories.

The panel wishes to place on the record its thanks to all the ACTU staff who have helped in the conduct of this inquiry and preparation of this report.

Brian Howe,
Chair

GABRIELLE'S STORY

CASUAL EMPLOYMENT AND NO INCOME SECURITY

Gabrielle was employed part-time as an administration assistant for the University of Ballarat TAFE but was desperately looking for full-time work when she decided to apply for a role through a national labour hire company.

The job turned out to be 38 hours a week, but casual with no sick leave or annual leave entitlements. The labour hour company would assign her to different host employers to fill temporary positions.

She worked through labour hire for a year, before returning to her old workplace on a fixed-term contract which she hopes to turn into permanent full-time employment.

The experience of casual employment through labour hire has left a bitter taste in her mouth.

"Trying to find a job today that is permanent is like trying to get blood out of a stone," she says.

"I am moving from five days a week as a casual to two-and-a-half days a week, but I have more hope that this job will turn into permanent job. I feel now that the only way to get a traditional, permanent full-time job is to go via casual or labour hire types of employment."

While the labour hire job provided 38 hours of work a week, it came with no entitlements such as sick leave or paid annual leave.

The labour hire firm stipulated that she take 22 days unpaid annual leave each year, the real purpose she believes was to avoid requirements that after a period of time employees should be transferred to regular, full-time employment.

Casual employment provided no income security.

"My husband and I don't have any dependents living at home, however, my husband can't work and I am the sole income earner in this home. If I didn't work we would really struggle. I feel like I am constantly working because if I'm not at work I am looking for full-time work or trying to make money some other way.

"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 labour hire company], 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."

Gabrielle has no doubt who casual employment is designed to benefit.

"When a person can only choose between casual employment (which benefits the employer and not the employee), and unemployment, then this is not a free market... It is a very unhealthy way to live as it causes a great deal of financial, emotional and psychological stress, especially in times of sickness and unpaid public holidays. This is not the way forward; in fact, it is a backward step into the early industrial age where workers were disposable and undervalued."

Gabrielle gave evidence at the inquiry hearing in Ballarat, Victoria


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

EXECUTIVE SUMMARY

This Inquiry was commissioned by the ACTU to investigate insecure work and its impact on workers, their families and the community, and to provide recommendations on what might be done.

The internationalisation of Australia's economy over the past 30 years has undoubtedly improved living standards in Australia. At the same time however, the changes that have occurred in our economy and society have also given rise to the unprecedented growth of insecure work.

This has occurred for a number of reasons, but the key driver has been the emergence of a business model across both the private and the public sectors that shifts the risks associated with work from the employer to the employee, and minimises labour costs at the expense of job quality.

An open economy in an internationally competitive environment like Australia's will never be able to compete by driving down labour costs. Instead we need to focus on innovation, improving the skills of our workforce, and improving productivity.

To do that, we need to be radical in thinking about new approaches to training and educating our workforce.

And we must ensure that labour law provides protection to all workers, rather than legally sanctioning exceptionalism by removing a whole range of securities and entitlements from certain workers.

We have made a number of recommendations setting out how we believe this might be achieved.

First, labour law must be reformed to provide a universal set of protections to all Australian workers. In **Chapter 2** we have recommended that:

- **Australia must pursue universality in labour law. Doing this effectively requires:**
  - **Expanded definitions of "employer" and "employee";**
  - **Reforms to better capture indirect employment arrangements like labour hire and dependent contracting;**
  - **A firmer definition of casual work; and**
  - **Expanded National Employment Standards that create a set of inclusive minimum standards that protect all employees.**
- **Fair Work Australia should be given stronger powers to determine where joint employment relationships exist and to grant "Secure Employment Orders".**
- **A licensing system for the labour hire industry should be established.**
- **The ACTU should develop a "gradual deeming" mechanism that would see casual employees accumulate entitlements like annual leave over time.**
- **The Federal Government must invest more resources in enforcing the Fair Work Act.**

However, simply refining labour market regulation won't limit the growth of insecure work. To provide decent work for all, we also need to ensure that an effective safety net is in place for people who fall out of work and invest more in our workforce – especially the most disadvantaged.

These proposals should be seen as alternative to using temporary overseas workers as a substitute for investing in the Australian workforce – an approach that employers and Government are increasingly turning to. The move to a "guest worker" model of immigration is a stark shift away from post-war patterns of migration, and will only offer the country a short-term escape from the need to skill-up our workforce.

In **Chapter 3** we have called for a number of reforms aimed at achieving a more skilled workforce, including:

- **A broader focus on work-life transitions, rather than the narrow preoccupation with the transition between employment and unemployment that has led to an emphasis on "Welfare-to-Work" initiatives.**
- **A commitment to lifelong learning, including a call for the ACTU to investigate learning accounts as a model for investing in the capability of workers over the lifetime.**
- **Reform to Australia's tax and transfers system to provide a stronger safety net by:**
  - **Addressing the inadequacy of the Newstart Allowance;**
  - **Simplifying income declaration systems; and**
  - **Abolishing the Liquid Assets Waiting Period.**
- **Changes to the way Job Services Australia interacts with forms of insecure work such as labour hire.**

We have also called for the ACTU to investigate models for a comprehensive system of employment insurance.

Government also needs to take its role more seriously, and recognise just how influential it is as one of the largest employers in the country. **Chapter 4** sets out a comprehensive approach that would see **Governments at all levels make stronger use of their leverage as employers, funders and purchasers to support secure forms of employment.**

We have made a number of recommendations for how this can be achieved in direct government employment in the Commonwealth and State public services, in funded sectors such as public and tertiary education, and through government procurement.

Finally, **Chapter 5** sets out some ideas for how the challenge of insecure work can be tackled by the union movement and by potential partners in civil society. In many ways, our Inquiry has barely scratched the surface of the issue of insecure work. To take this work forward, we are calling for the ACTU and the broader union movement **to commit to a broader and deeper engagement with civil society organisations around insecure work.** We have also identified a number of areas where our **understanding of the nature and impact of insecure work could be improved, and some ideas for how the union movement could link the research that is needed to action.**

CHAPTER 1
THE NEW DIVIDE: THE GROWTH AND EXTENT OF INSECURE WORK IN AUSTRALIA

Our inquiry was commissioned by the ACTU to investigate insecure work and its impact on workers, their families and the community, and to provide recommendations on what might be done.

We defined insecure work as poor quality work that provides workers with little economic security and little control over their working lives.

The characteristics of these jobs can include unpredictable and fluctuating pay; inferior rights and entitlements; limited or no access to paid leave; irregular and unpredictable working hours; a lack of security and/or uncertainty over the length of the job; and a lack of any say at work over wages, conditions and work organisation.

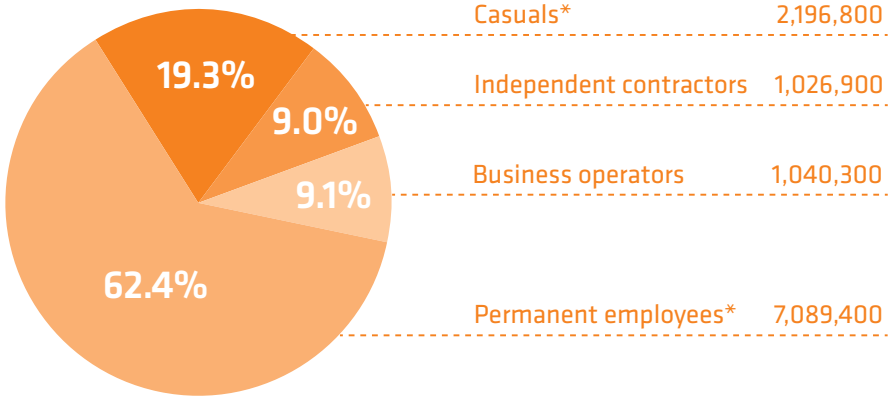
These challenges are most often associated with non-permanent forms of employment like casual work, fixed-term contracts, independent contracting and labour hire – all of which are growing.

THE SCALE OF THE PROBLEM

While it can be difficult to precisely quantify the extent of insecure work in Australia, Australian Bureau of Statistics data provides an understanding of the scale of the problem.

Almost one quarter of all employees in Australia (23.9% or 2.2 million workers), and one fifth of the total workforce, are engaged in **casual employment.**[1] The proportion of Australian employees engaged in casual work has grown significantly over the past decades: from 15.8% in 1984 to around 27.7% in 2004, before declining slightly and remaining relatively stable at around a quarter of all employees since then.[2] This decline is partly explained by the growth of alternative forms of insecure work such as fixed-term contracts, labour hire and independent contracting, which have given employers other options for minimising costs and shifting risks on to their employees.

Figure 1: Forms of employment, Australia, 2011

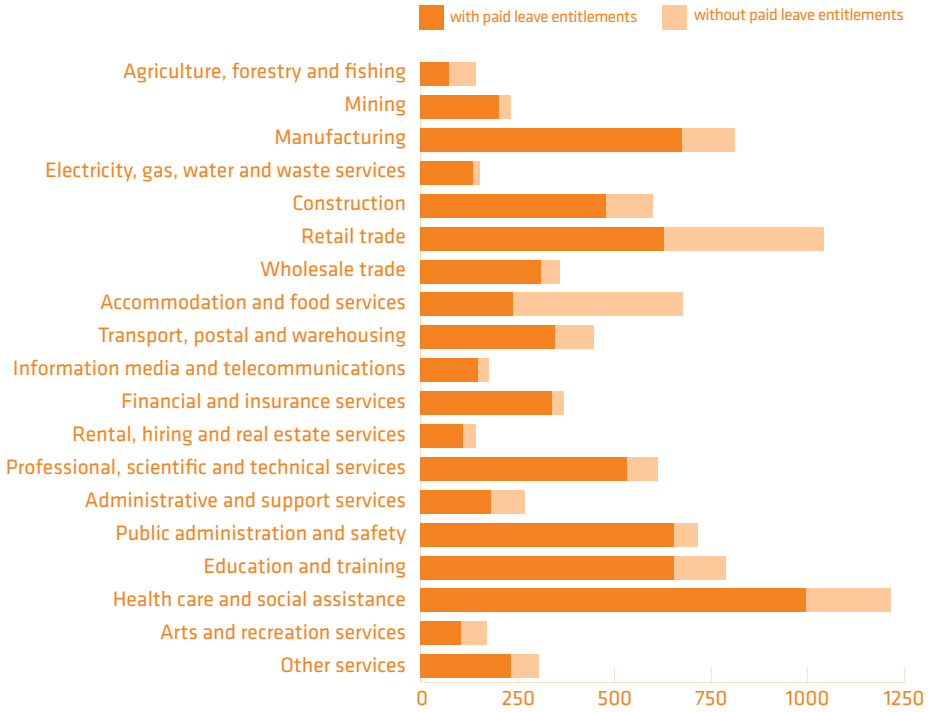


*These categories include 389,500 fixed-term employees and 605,400 labour hire employees.

Source: ABS, Forms of Employment, November 2011 (Released April 2012), Cat 6359.0

Casual employees continue to be heavily concentrated in several industries: retail (20% of all casuals) and accommodation and food services (20% of all casuals). Casual density is highest in accommodation and food (where 64% of all employees are casual), followed by agriculture, forestry and fishing (48%); retail (40%) and arts and recreation services (with around 39% of all employees casual) *(see Figure 2)*.[3] However it is important to note that casualisation has not been limited to these areas of the economy: nearly all industries have seen a strong growth in casual density over the past few decades.[4]

Figure 2: Casuals by industry – number of employees (thousands), 2011



Source: ABS, Forms of Employment, November 2011 (Released April 2012), Cat 6359.0

There is a strong relationship between casual employment, age and gender. Casual employment is most common among young workers, with 20% of all casual workers aged between 15-19 years and just under 60% of all casual workers under 35 years of age.[5] Women are much more likely to be in casual employment than men: with 25.5% of all female employees are casual compared to 19.7% of male employees. Most workers in Australia who work part-time (54%) work in casual employment. Just over 30% of casual employees work full-time hours.[6]

Over half of all casual employees are "permanent casuals" in that they have long-term, ongoing and regular employment but, by virtue of being a casual, have none of the basic entitlements associated with ongoing employment. Over half of all casuals have been employed in their current job for over a year and over 15% of casuals have been in their job for more than 5 years.[7] ABS data shows that more than half of all casual employees would prefer ongoing work.[8]

Fixed-term employment accounts for just over 4% of all employees, but it is heavily concentrated in just a few sectors: education (120,600 workers or 31% of all workers on fixed term contracts), public administration and safety (54,300 or 14%) and health care and social assistance (66,400 or 17%).[9] Fixed-term employees generally have similar wages and conditions to ongoing employees, with the important exception of job security. In addition, many workers on fixed-term contracts face difficulties accessing similar training and career opportunities to their permanent counterparts.

Over one million workers in Australia (9% of the workforce) are **independent contractors.** Most independent contractors work in the construction industry (330,400 workers), followed by the professional, scientific and technical services industry (133,300 workers), administrative and support services (84,000 workers) and transport, postal and warehousing industry (83,800 workers). They account for 32%, 15.5%, 21.3% and 14.7% of the labour force in each of these respective industries.[10]

Many contractors, though independent by law, are in reality economically dependent on a single client. The number of **dependent contractors** in the workforce is difficult to estimate. From ABS statistics, however, we know that around 40% of all contractors (406,200 workers) are dependent contractors in that they have no authority over their own work.[11] Dependent contracting is a particular problem in industries such as road transport and construction.

A significant number of contractors are engaged in **sham contracting** arrangements, whereby an employment relationship is misrepresented or disguised as a contracting one. Research by the CFMEU has recently estimated that between 26 and 46% of all contractors in the construction industry (between 92,000 and 168,000 workers) are engaged in sham contracting.[12]

Accurate and recent data on the extent of **labour hire** arrangements in Australia is not readily available. ABS data indicates that, in 2011, around 605,400 or 5% of Australian workers obtained their jobs through labour hire firms/ employment agencies, but less than a quarter of these (141,700 workers) were paid directly by the labour hire firm. The ABS, however, is likely to under-estimate the number of labour hire workers.[13] While estimates vary, labour hire workers constitute between 2 and 4% of all workers in Australia, and are concentrated in manufacturing, property and business services and health and community services.[14] Evidence suggests the use of labour hire has increased significantly in the past decades, with the Productivity Commission estimating in 2005 that the number of labour hire workers in Australia had increased from 33,000 in 1990 to 190,000 in 2002 – a rate of growth of 15.7 % a year.[15]

A further group of workers that are at high risk of insecure work are workers that perform **work outside premises conventionally considered to be workplaces.** This practice is increasingly common, and is fuelled by the outsourcing by firms of functions once done in-house. Home-based outwork is particularly common in the textile, clothing and footwear industry, where it accounts for the majority of Australian clothing manufacturing. It is also increasingly common in service sectors such as telemarketing

Our Inquiry also heard evidence about insecure work arrangements that are relatively unique to certain industries. One disturbing example is the widespread practice in the taxi industry of designating taxi drivers as "bailees" rather than employees, meaning they have no entitlement to sick leave, holiday leave or superannuation.[16]

Workers also experience insecure work in the form of **working time insecurity.** For many workers, this takes the form of too few or irregular hours of work. There are over 850 000 workers in Australia working part-time hours who would like to work more.[17] Working time insecurity in the form of irregular or fragmented hours is common in industries and sectors such as retail, hospitality and health services, where employers have sought to enhance flexibility and reduce costs by reducing or removing restrictions on working time arrangements: widening the span of ordinary hours, averaging working hours, removing or reducing penalty payments for extended or unsociable hours, and reducing minimum periods of engagement. Lack of predictability of scheduling (on a daily and weekly basis) has further eroded job quality.

These types of insecurities are particularly experienced by casual workers and, in some sectors, increasingly also by part-time employees. ABS data also shows that 37% of all employees working part-time hours have no guaranteed minimum number of hours of work[18] and that many casual workers face insecurity in the form of too few hours, with 29% of all casuals wanting to work more hours than they current work.[19] Casuals also experience significant variability in working hours, with 35% of casual workers in jobs where hours varied weekly.[20]

Working time insecurity is also experienced in the form of **excessive hours.** Australia outranks 22 OECD countries for the average hours worked by full time workers.[21] Extremely long working hours (50 hours or more per week) have become increasingly common for full-time workers, especially among males. In 2011, over 1.8 million workers (15.9% of all employed persons) report usually working 50 hours or more a week. This includes 22.9% of male workers (1.4 million workers) and 7.5% of female workers (391,900 workers).[22] Research conducted by the Workplace Research Centre at the University of Sydney has also found that found that a pervasive long-hours culture exists in Australian workplaces. According to ABS data, around 60% of full time employees who usually worked very long hours would prefer to work fewer hours. One in five of Australian workers (21% or 2.2. million) would prefer to work fewer hours.[23]

A further group of insecure workers are those that experience **fluctuating pay/ income.** There are two main causes of unpredictable pay. The first is through working irregular hours: this is interwoven with working time insecurity above. The second main cause of income insecurity is where workers have a significant proportion of their pay at risk, in terms of being contingent upon individual, group or organisational performance. While the extent of variable pay is difficult to determine in Australia, ABS data indicates that 25% of employees have earnings/income that varies from one pay period to the next. This includes 19% of employees working full-time hours and 41% of employees working part-time hours.[24]

WHERE IS INSECURE WORK GROWING?

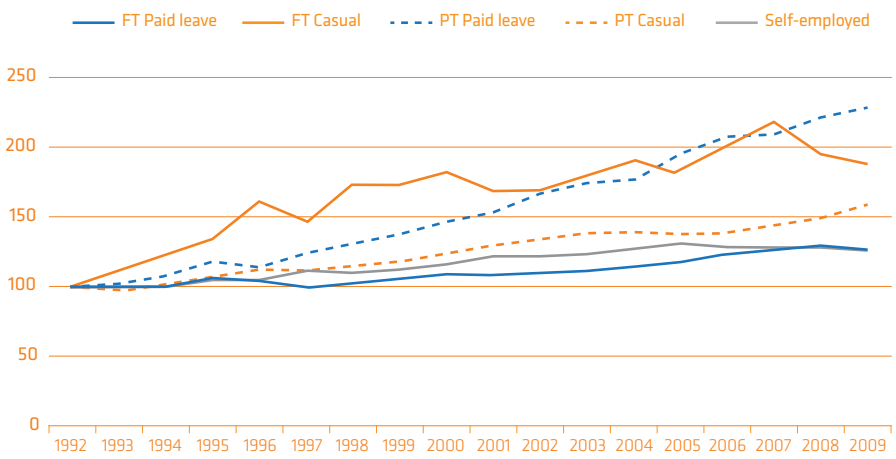
To an extent, the growth of these jobs has taken place under the radar. It is surprising that there has been no thorough public inquiry into the effects of a trend which sees 40% of the workforce in non-permanent forms of employment, and sees a quarter of employees with no entitlement to sick leave or paid leave.

Indeed, while there are more jobs in our economy than ever before they are not the secure, full-time jobs that existed a generation ago.

We saw evidence of this right across the economy:

› In every city and town we visited we met school teachers, TAFE teachers and university staff who were employed on a casual basis or on fixed-term contracts. Their stories were backed up by research provided to the Inquiry which shows that the number of casual employees in Australian universities has increased by 81% since 1996, and employees on fixed-term contracts has increased by 47% over the same period.[25] We saw similar trends in primary and secondary education – in Victoria, 58 % of teachers in the first five years of teaching in State schools are on short-term contracts, mostly for 12 months or less. What was once seen as a life-long vocation at the end of years of tertiary study is now treated by the Government as a temporary job.

Figure 3: Growth in non-standard forms of employment, 1992 – 2009, Base Index = 100



Source: ABS, Labour Market Statistics, *Cat 6105.0.*
Self-employed are owner managers of incorporated and unincorporated enterprises

- We met countless casual workers in low-paying industries like security, contract cleaning, call-centres, child care, the horticultural industry and food processing. In each of these industries we heard variations of the same story – workers facing unstable and variable incomes and working hours, pay so low that many of them have to hold down two or three jobs to make ends meet, little or no access to paid leave, little or no voice at work about wages, conditions or work organisation, and uncertainty over how long they'll continue to have work.
- In Sydney we heard from women working in the textiles sector – both in factory-based production and those performing outwork – who are paid piece rates that amount to $4 to $5 per hour to produce garments with a retail value of up to $1,000. The nature of the multilayered supply chain they work in means there might be five or six contracting levels between the worker and the retailer, leaving these women with no bargaining power and no ability to push back against intimidation, harassment and bullying. Many face chronic health problems from long hours spent at machines, heavy lifting and from handling of dyes and chemicals.
- Insecure work is rife in the not-for-profit sector, which provides around 8.5% of total employment in Australia – particularly amongst frontline workers delivering critical community services.[26] Severe underfunding, a lack of adequate indexation, and uncertainty about funding arrangements leave not-for-profits with little choice but to employ their workforce on insecure work arrangements, contributing to critical pay disparities that make it impossible for community sector organisations to attract, retain and train staff.
- The Commonwealth and State public services are increasingly engaging fixed-term contractors and labour hire agencies to deliver core activities, at the expense of ongoing employees. A lack of transparency about the numbers and costs involved make it difficult to track the scale of the problem – but the Inquiry took note of evidence that the NSW State Government spends up to $500 million annually employing nearly 12,000 temporary employees through labour hire agencies, and the Commonwealth spends more than $2 billion per annum employing workers outside of the Australian Public Service (APS). In 2005-06 this included $709 million spent employing dependent contractors whose work effectively replicated that of APS employees.
- We heard many accounts of contractors working in the telecommunications industry who, though independent by law, are in reality economically dependent on a single client and in some cases explicitly required under the terms of their contracts not to accept any other work. Some forms of work appear to only be available to technicians who are prepared to operate as independent contractors. There is little "choice" being exercised by workers who enter into this work on a contracting basis when there is no alternative for their skill-set.
- Workplaces have emerged in manufacturing, warehousing and logistics where the vast majority of workers are employed through labour hire agencies – an environment where employees are afraid to raise issues about their pay, conditions or occupational health and safety for fear of not being given any more shifts.
  In one case in western Sydney, the Inquiry encountered a manufacturing plant were the entire staff were 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.

WHAT HAS DRIVEN THE GROWTH OF INSECURE WORK TO CRISIS LEVELS?

For many, life in insecure work is not a temporary situation – there is no pathway in to a secure, permanent job. As the Workplace Research Centre at the University of Sydney found in the *Australia At Work* research, "jobs without paid leave entitlements in Australia are just as likely to play the role of conveyor belt out of the labour market as they are to be an escalator up to better and brighter jobs".[27]

This was not always the case.

The growth of insecure work is the result of a business model that shifts the risks associated with work from the employer to the employee. This has been driven by the internationalisation of our economy, rapid technological change, and changes to our household arrangements.

The internationalisation and liberalisation of our economy were necessary to secure Australia's future as a modern, open society – and an inevitable part of that project was changing the way we regulate our labour market.

As a society though, we need to consider the social ramifications of economic change. One direct result of these reforms has been greater employer control over the ways through which labour is engaged, which employers have used to minimise their costs and shift the risks posed by working life on to their workforce.

This has especially occurred where gaps in the way we regulate the labour market have failed to provide adequate protections to workers, or where our approach to regulating the labour market hasn't kept up with new forms of work organisation like the labour hire industry and supply chain outsourcing.

Technology has transformed the very nature of the work we do and the skills we need. An economy that was once dominated by production jobs in industries like manufacturing and agriculture has been transformed, with almost all employment growth over the past half century in the service sector.[28] Technology has also intensified the nature of work – but this has coincided with the growth of insecure work that sees little invested in workers' skills by their employers.

Community expectations of what government can do for citizens, and our policy makers' preferred means of delivering services, have shifted in ways that have changed the nature of public sector employment.

The structure of government funding in certain sectors such as education actually promotes greater casualisation, the misuse of fixed-term contracting, the deterioration of working conditions and increased insecurity for those engaged in more permanent jobs. In other areas, privatisation and contracting out have had the same effect.

The emergence of complex outsourcing arrangements and contracting chains have also caused insecure work to grow. These systems are often elaborate, and frequently involve the extensive use of sham and dependent contracting arrangements. They are clearly designed to maximise profit and minimise liabilities, which has the effect of shifting the risks and costs associated with employment on to vulnerable workers at the bottom of the supply chain who can least afford them.[29]

The nature of our relationship with work has also shifted dramatically. Women have entered paid employment in increasing numbers, with a large share of this growth in part-time work. In couple families with dependent children, women still take on the major share of domestic work and family care.

There has also been a rise in female-headed single parent families, with many women workers, both single and partnered, likely to have some care responsibilities for children, aging parents and/or other family members, often at the same time. Not surprisingly then many women express a preference for part-time hours, even if this means working in industries and occupations where poor quality part-time work, both casual and ongoing, predominates.

People change their work status much more frequently – moving between jobs, between education or caring and work, from unemployment to employment or from employment to retirement. These shifts have further displaced the single breadwinner in full-time employment model of working life, and fed demand for more part-time jobs.

WHAT ARE THE IMPACTS ON WORKERS AND THEIR FAMILIES?

Insecure jobs invariably mean lower pay and less rights and entitlements. The fear, vulnerability and powerlessness experienced by workers engaged in insecure work mean they are also less likely to raise health and safety concerns, accept poor conditions and exploitation, and face greater risks of injuries and illness. Training and career development opportunities are much less likely to be available.

However, the impacts on workers, their families and communities go far beyond the workplace itself.

The lack of income security that insecure work offers can have severe impacts on workers' living standards and financial independence. Throughout our Inquiry we heard countless stories of individual workers who were unable to secure a home loan or a car loan because of their lack of job security. When they were able to secure a loan, it was often from a second-tier lender meaning they faced higher rates of interest.

Similarly, many insecure workers struggle to find accommodation in the private rental market without the secure income that ongoing employment would offer. We heard from workers who hold down two and three jobs just to make ends meet, and who struggle to maintain relationships because of the uncertainty that their lack of job security creates.

We also heard from a number of workers who suffered serious health impacts after extended periods in insecure work. The evidence we received reaffirmed existing findings of international bodies such as OECD and World Health Organisation – that insecure work in all its forms has negative impacts on the safety of workers in the short term, and the uncertainty and anxiety associated with experiencing insecure work damages the health of workers in the longer term.

As a result, the continued growth of insecure work will, over time, contribute to a widening of health inequalities.[30] Similarly, workers compensation outcomes for those engaged in insecure work compare unfavourably to those of their colleagues who enjoy secure employment.

We met people trapped in a cycle of insecurity at work and unaffordability in the housing market, with low-paid work and variable hours making it impossible to secure affordable accommodation.

As Hanover Welfare Services highlighted in their submission, "it is often incorrectly assumed that people who experience homelessness are not engaged in the labour market or seeking employment". In fact the opposite is the case – as Hanover demonstrated, low-income levels rather than a lack of employment are often the most significant factor contributing to homelessness, with up to 40% of people experiencing homelessness also working, usually in low-paid and insecure work. The "spatial polarisation" of our cities and communities, with affordable housing located further and further away from lower-paid work, is exacerbating this problem.[31]

Insecure work also has a significant impact on governments' ability to meet citizen's needs and on the quality of the services we all rely on. The prevalence of insecure work in primary, secondary and tertiary education is undoubtedly impacting on the quality of teaching and the student experience. The growth of insecure work in the Commonwealth, State and Territory public services has serious implications for public accountability and service capability. And the failure of many public and private employers to invest in their workforces and take the low road of cost cutting and risk shifting will, over time, have a detrimental impact on productivity.

Beyond the impacts on revenue – the CFMEU has estimated that sham contracting in the construction industry alone costs the Commonwealth $2.3 billion in lost tax revenue every year[32] – there are also significant costs to government as individuals have less superannuation to rely on in old age, find themselves more reliant on pensions and the welfare safety net, and suffer from negative impacts on their health and well-being.

WHO IS MOST EFFECTED?

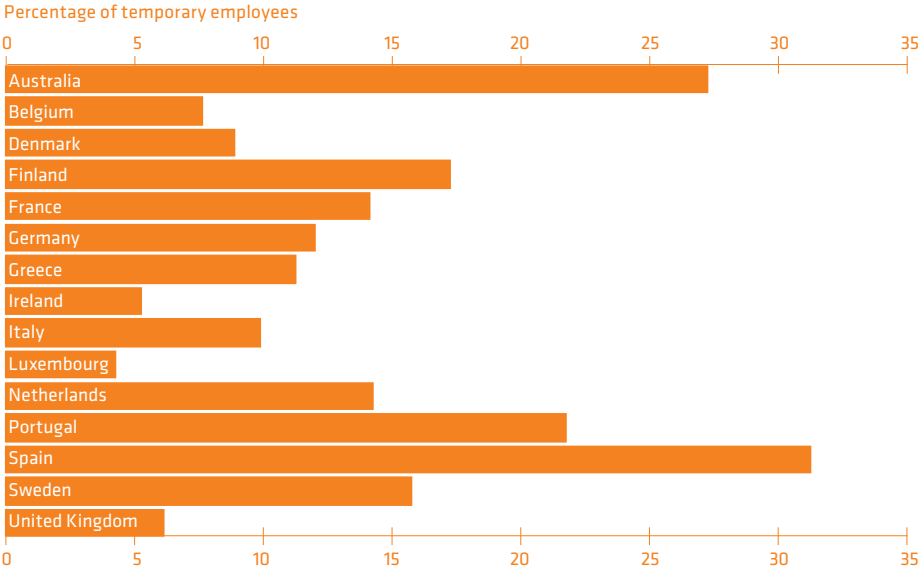
For too many workers, there is no choice but to forfeit basic rights like job security and paid leave in order to find work – and often the only work they can get is in poor paying jobs where they have little control and face many of the downsides our Inquiry heard of.

The lack of flexible working arrangements and social support for working parents forces many women into insecure work, especially those with caring responsibilities. Most part-time jobs in Australia are casual jobs, and 55% of casuals are women – as a result 25.5% of all women workers find themselves in casual employment.[33] Industries that predominantly employ casual and insecure workers such as health care and social assistance and the retail trade are heavily female dominated. As a result over a quarter of women employees do not have access to paid leave entitlements, compared to around one fifth of men.[34]

If women are predominately employed in insecure arrangements, while a higher proportion of men have access to more secure working arrangements it only serves to increase the gender gap in pay equity, superannuation equity and in workplace equity. As casual and insecure jobs are generally not managerial positions, which are more likely to be held by men, insecure work has the potential to create a labour market that is not only segregated between secure and insecure workers, but also entrenches segregation between men and women.

Women are also more likely to experience insecure work because of the need to have flexible working arrangements that allow for caring responsibilities. While this is an issue for both men and women the reality is that women still perform more than two thirds of the domestic and caring work within families and are far more likely to take extended leave to care for dependents.[35]

Figure 4: Australia compared with the OECD



Graph: Temporary employees as proportion of total employees in selected OECD countries, 2002

JOAN'S STORY

INDEPENDENT CONTRACTOR IN SALES

There are more than 1 million independent contractors in Australia. Joan is one of them. She took on a contract as a sales representative on a commission basis in August 2011 after unsuccessfully searching for a full-time position over the previous 18 months.

Her arrangement included a $100 a week retainer for the first four weeks, and then a 22% commission on sales. Her job was to sell books to schools and therefore was set out over four periods of 10 weeks each, in line with the school calendar.

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

"The company had only intermittent reps beforehand and so I needed to establish contact with the schools across my territory which meant visiting each school," Joan says.

"The position required me to set up a home office. I purchased equipment to the cost of 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 a three to four day week over 20 weeks, I have been paid approximately $5000 but I have also spent at least $1200 on the set up, petrol and phone calls, etc.

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

Joan made a submission to the inquiry.

Workers from culturally and linguistically diverse (CALD) backgrounds are also particularly vulnerable to finding themselves trapped in insecure work. This can result from social isolation, low English literacy, discrimination in the workplace and a lack of education and information about rights and entitlements at work in languages other than English. Critically however, there is limited accurate statistical information about the extent of insecure work amongst CALD communities, leading many to label this an "invisible" issue.[36]

For young people, opportunities to find full-time work have declined dramatically over the past 25 years, the stability of working life has decreased, the nature of the working environment young people experience has changed significantly as increasing numbers find themselves in casualised industries, and long-term unemployment remains higher than among the rest of the population.[37]

As a result, 40% of all casual workers are now aged between 15 and 24, and young people in casual work are more likely to be sexually harassed, discriminated against and underpaid.

A further group who are more likely to be affected by insecure work are workers from Aboriginal and Torres Strait Islander backgrounds. Australia's indigenous population is growing rapidly, now making up 2.5% of the population. The Indigenous population more than doubled in the period from 1991 to 2006 and is relatively young, meaning that education and employment programs are more important than ever.

However, participants in many programs targeted at Indigenous people such as CDEP are not employees and, while expected to work in job settings, do not enjoy formal rights to annual or personal leave, the right to collectively negotiate with employers, or access to dispute resolution.

PROVIDING DECENT WORK FOR ALL

There is no reason why Australia should accept that a modern economy must also drive insecurity at work.

We must acknowledge, however, that the shift towards the core-and-periphery model of the labour market is not a temporary phenomenon.

It the result of a major restructuring of our economy, and it is changing the nature of working life.

Our workforce has been transformed, as we've replaced jobs in production industries with jobs in service industries that rely on workers constantly updating their skills to keep track with changing technologies.

The "use-and-throw-away" mentality of many employers, however, means that these workers can no longer rely on their workplaces to provide the training that they need.

If their skills are low or outdated they are not offered training through work. As a result if they are retrenched they are more likely to find themselves shifting between periods of unemployment and underemployment that destroy their ability to save money than finding a stable, ongoing job.

We have identified a number of areas where Australia needs to shift its thinking and adopt creative, progressive reforms.

Our vision is an inclusive society that provides sustainable and decent work for all, and strikes a balance between maintaining our economic competitiveness and giving weight to security for workers.

To achieve this we need to reform labour law to provide greater protections to all workers. And we need to invest more in our workforce – especially the most disadvantaged – and ensure that our economy can meet the challenges of labour and skill shortages.

The alternative is to continue on the path where gaps in the way we regulate work will see insecure work continue to grow while the social protections of minimum employment conditions are further eroded, and our workforce becomes more and more divided.

KATHY'S STORY

40 JOBS IN 12 MONTHS

In the past 12 months, Kathy has had 40 jobs, mostly through recruitment and labour hire companies she is registered with. During that time, her longest position was almost six months; she suspects it was terminated by the employer to avoid converting her to permanent.

Though desperate to study and obtain the skills to gain a permanent job, she has is caught in a perpetual cycle of short-term jobs, mainly in manufacturing but also transport and logistics, and administration.

Aged 40 and single with a mortgage, she cannot afford not to work.

She says the symptoms of insecure work include anxiety and depression and a feeling of powerlessness.

"It's really soul-destroying," she says.

"I have had 40 jobs with 20 different agencies/ labour hire over the past year. They tell me it could lead to permanent employment but it never does. We are always let go and sent somewhere else at the end of our three-month trial.

"We are made to feel disposable and some places I am sent to the managers and employees say 'Oh you're just a casual'. This might be true but I still need to eat!

"I am always negotiating with the bank around my mortgage because I can't lock in secure work."

A typical day may begin with phone calls to agencies at 6am, and end late at night with a scan of agency websites for any positions the following day.

"I wake up every morning and make a phone call if I haven't heard from them the night before. Sometimes they only give us half an hour to get to a job and sometimes the job is a two-hour drive away for a four-hour shift. If you knock back a job they blacklist you and you won't be asked again.

"You can't afford to have an off day or underperform at a job because they'll never call you back.

"I can't function like this. None of it runs smoothly from the job networks, to employment agencies to Centrelink."

Kathy made a submission to the inquiry


“It’s really soul-destroying… we are made to feel disposable.”


metolyse

CHAPTER 2
REFORMING LABOUR LAWS TO PROVIDE PROTECTION TO ALL WORKERS

Australia's industrial relations system has evolved to see an array of working arrangements with differing terms, conditions and uses. The Inquiry noted that four broad legal categories of employment predominate in Australia:

- **Ongoing, permanent full-time employment,** with agreed working hours, benefits and entitlements that accrue with service, and which continues unless terminated for cause or with reasonable notice;
- **Regular part-time employment,** which is fairly closely related to permanent full-time employment in that is usually ongoing with conditions related to the hours worked, and entitlements that are accrued on a pro-rata basis;
- **Fixed-term or specific task employment** where workers are employed on common-law contracts that set a defined and limited term for employee tenure; and
- **Casual employment,** a distinct but amorphously defined type of indefinite employment that sees employees paid on an hourly basis, with exact conditions determined by the relevant modern award. The test under many modern awards rises no higher than that a "casual employee is an employee engaged as such".

Under the *Fair Work Act* all employees in the national industrial relations system are protected by the National Employment Standards (NES), which provide a minimum set of employment conditions and entitlements.

The NES only partially apply to casual workers, who are not entitled to many of the benefits attached to standard employment such as paid leave or personal leave or notice of termination.

Outside these categories of employment, over one million Australians now operate as **independent contractors** who are not covered by the *Fair Work Act*.

The Inquiry found significant evidence that fixed term and casual employment, independent contracting and labour hire are being used as substitutes for ongoing employment:

- Fixed-term employment is being used heavily by employers to avoid the costs associated with standard employment conditions like leave and the notice of termination – particularly in the public sector. We encountered several instances of rolling fixed-term engagements that stretched over many years; in many instances contracts appeared to be designed to avoid paying for accrued entitlements.[1]
- Casual employment has been transformed and entrenched in the system as a tool to minimise costs rather than to deal with temporary or intermittent variations in the patterns of work. Over half of all casuals are "permanent casuals" who have been employed in their current job for over a year and over 15% of casuals have been in their job for more than five years.[2] ABS data shows that more than half of all casual employees would prefer ongoing work.[3]
- The growth of the workforce management industry and the use of labour hire have created new avenues for transforming permanent jobs into casual positions.
- Independent contracting is being misused to mask employment relationships through dependent and sham contracting. ABS data suggests that around 40% of independent contractors have no authority over their own work,[4] and sham contracting is far too common in some industries such as construction.

As a result, the National Employment Standards do not operate at all in application to many in the workforce. Working arrangements that are minimally regulated or exist outside of the *Fair Work Act* provide employers with flexibility on terms that suits them, but deprive employees of their ability to balance their paid work with their lives at home and in their local community.

This legally sanctioned exceptionalism removes a whole range of securities and protections from workers – the entitlement to paid annual leave and personal leave, a presumption of continuity in their work, protection against unfair dismissal, predictability of hours and income, and access to training and career pathways or a say in the workplace.

What's more, too many workers engaged in insecure work feel completely powerless to do anything about it. They hold the genuine fear that if they raise workplace safety issues, engage in union activity, or do not attend work when they are called up, they will not be offered any more work.[5]

THE PRINCIPLES FOR ESTABLISHING STANDARDS WITH FLEXIBILITY

Of course, it would be futile to advocate a return to 20th century models of protection that sought to shield Australian society from global competition. The global economy requires a new approach to ensuring fairness in the workplace, and a return to old models won't prevent insecure work from continuing to grow.

Instead, the real task is to seek "regulated flexibility" which provides the reasonable flexibility that employers need in a globalised economy, and the time and income security and dignity that workers should expect.

We received a number of submissions citing the International Labour Organisation's Decent Work Agenda as a basis for achieving this, and highlighted the need for universality in employment regulation.

The Australian Institute of Employment Rights (AIER) set out a definition of decent work:

Decent work means productive work in which rights are protected, which generates an adequate income, with adequate social protection. It also means sufficient work, in the sense that all should have access to income-earning opportunities. It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers' rights and social standards.[6]

Properly applying universality would see all workers equally entitled to protections in labour regulation irrespective of their contractual arrangements.

Achieving this requires a recognition that labour should not be treated as a commodity – and an understanding that the emphasis on "flexibility" as it taken to mean in Australia today is driving the commodification of labour.

To address this trend, Australia needs to pursue universality in labour law. Doing this effectively in the Australian context requires:

- A broader definition of who is a worker or an employee,
- A definition of what casual work is, and
- A set of inclusive minimum standards that protect all employees, including specific groups of precarious workers.

A number of submissions supported these principles and provided practical recommendations for how they could be applied under the *Fair Work Act*.

The University of Melbourne's Centre for Employment and Labour Relations Law argued that the economic insecurity faced by many workers is a result of gaps in the regulatory framework of labour law, and that additional protections under the *Fair Work Act* should be extended to select groups of workers most exposed to insecure work – seasonal workers being a prime example.[7]

The Industrial Relations Research Centre at the University of New South Wales argued that the growth of insecure work is the result of a system that actively excludes categories of workers from substantive rights under the NES, or sanctions their less favourable treatment. Their submission proposed changes to the NES that would extend basic entitlements to all workers by removing loopholes and restricting the use of indefinite casual engagements.[8]

Similarly, the Australian Institute of Employment Rights developed a broad agenda for establishing a standard set of rights for all workers, and proposed a definition of a "worker" who these rights should apply to under the *Fair Work Act*. The AIER also argued that this definition should be linked to a test for determining who the "true employer" of a worker is, which could overcome problems associated with the use of labour hire to avoid duties and liabilities, and sham contracting. The AIER proposed recasting law so that every worker has access to a suite of minimum rights and entitlements on a pro rata basis, with no ability to contract out of these.[9]

As a first step in tackling insecure work, **more effective definitions of employment must be established. The Inquiry recommends that:**

The *Fair Work Act* be amended to:

- **Expand the definitions of "employer" and "employee" to capture disguised employment arrangements such as sham contracting;**
- **Introduce a statutory presumption that a dependent worker is an employee for the purposes of the Act;**
- **Provide a default deeming provision for determining that labour hire agencies and businesses that engage workers as dependent contractors are in fact employers; and**
- **Provide an effective and accessible means of determining that a person is an employee or employer where there is a dispute.**

DEFINING CASUAL WORK

We received a number of submissions outlining shortcomings with the prevailing definitions of certain types of work, and the exceptions that exclude casual employees from the rights and entitlements guaranteed under the National Employment Standards.

This sentiment is best summed up by Professors Rosemary Owens and Andrew Stewart of the University of Adelaide Law School:

Australia is the only country in the world to have a formal classification distinguishing part-time and casual workers that pervades directly or indirectly almost every aspect of the regulation of work. The concept of casual employment is entrenched in legislation such as the Fair Work Act *2009, which denies casuals entitlements to annual leave, paid personal leave and severance pay. But more importantly, it is enshrined in awards which make no attempt to confine its use to temporary, short-term or irregular engagements. As we and many other researchers have pointed out, this has led to a situation where a large number of "casuals" are performing regular and predictable work.*

While the examination of modern awards is not within the terms of reference of the Inquiry, the pervasiveness of the effects of the classification found in awards means in our view that it cannot be ignored.[10]

Similarly, the Industrial Relations Research Centre's submission provided a comprehensive review of the reasons why the existing treatment of casuals and fixed term employment in Australia falls well below appropriate levels of protection for workers who undertake flexible work.[11]

The question of whether a particular employee is a "casual" employee, including for the purposes of industrial relations laws, is something that the courts have been required to decide from time to time. The common law approach adopted by the courts is one that considers the features of a given employment relationship in an overall sense rather than attempting to identify a single concrete characteristic, the presence or absence of which will in all cases deem employment to be "casual" or "not casual". The courts accordingly refer to a "concept" of casual employment, which involves work which is discontinuous – intermittent or irregular – with the essence of casualness being the absence of a firm advance commitment as to the duration of the employee's employment or the days or hours the employee will work. The Inquiry encourages support for the retention of this conceptual definition, as it presently is understood and described, through selected enforcement, but we would not understate its present or future fragility.

The Inquiry recommends that:

- **Wherever casual employment continues to be a recognised category of employment, it should be defined in a manner consistent with the established common law approach where informality, uncertainty and irregularity of the engagement determine the character (and therefore use) of casual labour.**
- **The established common law approach to defining casual employment should be proposed for inclusion in all modern awards and enterprise agreements.**
- **The prerequisites for engaging casual labour should be tied to the definition of casual work and the requirement to consult at the enterprise, such that:**
  - **Casual engagements must only be utilised for irregular, intermittent or very short-term work;**
  - **There should be a prohibition on creating temporary jobs where there are reasonable grounds to expect that the work will be ongoing; and**
  - **There is consultation with the existing workforce and their representatives prior to a decision to engage or expand the casual workforce.**

UNIVERSAL NATIONAL EMPLOYMENT STANDARDS AND PORTABILITY OF ENTITLEMENTS

The third step required to address the growth of insecure work is to establish an inclusive set of minimum standards that protect all employees.

Our view is the simplest way to achieve this would be to expand the National Employment Standards, and remove exemptions that exclude casual employees from the standards. This would make the NES a truly universal set of minimum employment standards – as was the Labor Government's stated intention in 2007.

Stronger National Employment Standards could also offer insecure workers much better protections around working time insecurity by introducing new rights and extending others. This should be complemented by a recognition that the nature of contracting chains in many industries mean that even those who are employed on an ongoing basis can lose their jobs and any accrued entitlements like long-service leave when a contract changes.[12]

Possible solutions proposed to the Inquiry included portable leave accounts modelled on the superannuation system or administered by a central government fund, and industry based portable long-service schemes along the lines of the schemes introduced in the contract cleaning industry in some states in recent years.

The Inquiry recommends that:

- **The National Employment Standards be strengthened by:**
  - **Extending the coverage of the National Employment Standards to all employees, including casuals.**
  - **The Right to Request flexible work arrangements should apply to all workers and not just limited to workers with caring responsibilities for children under school age. Current service requirements and restrictions on access to dispute resolution processes should be removed and employees should be able to challenge any employers' decisions to deny a request for flexible work arrangements in Fair Work Australia.**
  - **Fair Work Information Statements provided to new employees should be expanded to provide details of the award under which the worker is employed, any enterprise agreements which covers the worker, the contractual status of the worker, the classification in which the worker is employed, the applicable rates of pay, any applicable loadings or penalties, hours of work and other basic entitlements including to notice, and grievance mechanisms.**
- **Additional National Employment Standards should be introduced:**
  - **A right for all workers to refuse overtime.**
  - **A floor for minimum hours for part-time workers and minimum engagements for casual workers.**
  - **A right to consultation about work to be performed and changes to that work.**
- **The Federal Government support the expansion of portable long service leave schemes for insecure workers, particularly in contracting industries where workers are most exposed to poor job security.**

WHAT ARE THE NATIONAL EMPLOYMENT STANDARDS?

The National Employment Standards (NES) are 10 minimum employment standards set out in the *Fair Work Act*:

1. **Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.
2. **Requests for flexible working arrangements** – allows parents or carers of a child under school age or of a child under 18 with a disability, to request a change in working arrangements to assist with the child's care.
3. **Parental leave and related entitlements** – up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, and other forms of maternity, paternity and adoption related leave.
4. **Annual leave** – 4 weeks paid leave per year, plus an additional week for certain shift workers.
5. **Personal/carer's leave and compassionate leave** – 10 days paid personal/carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.
6. **Community service leave** – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
7. **Long service leave** – a transitional entitlement for employees who had certain long-service leave entitlements prior to the 1st of January, 2010, pending the development of a uniform national long service leave standard.
8. **Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.
9. **Notice of termination and redundancy pay** – up to 4 weeks' notice of termination (5 weeks if the employee is over 45 and has at least 2 years of continuous service) and up to 16 weeks redundancy pay, both based on length of service.
10. **Provision of a Fair Work Information Statement** – employers must provide this statement to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, right of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

CASUAL WORKERS & THE NATIONAL EMPLOYMENT STANDARDS

Casual employees are not covered by many of the National Employment Standards, so that only some of the conditions apply:

- 2 days unpaid carer's leave and 2 days unpaid compassionate leave per occasion
- Maximum weekly hours
- Community service leave
- A day off on public holidays, unless the employer reasonably asks the employee to work
- The Fair Work Information Statement.

Source: Fair Work Ombudsman

SUPPORTING CASUAL AND FIXED-TERM EMPLOYEES TO CONVERT TO PERMANENCY

To confine casual employment to circumstances where it is used for temporary, short-term or irregular engagements, it is essential to support casuals who want to convert to more permanent and ongoing employment.

We were struck by the inadequacy of existing mechanisms, particularly casual conversion clauses. While they have been useful in some circumstances, the effectiveness of conversion clauses has been limited by the lack of any deeming provisions that set out a maximum period of casual employment, employers' discretion to refuse conversion, the rise of labour hire and the expense of taking Federal Court proceedings to secure enforcement. Their limited success also owes something to the fact that many low paid workers are in such fear of losing their job altogether they are unwilling to access the conversion process. Casual workers are also often underemployed, meaning they can't afford to choose between their casual loading and the benefits permanency would offer – particularly paid annual and personal leave and more security in working hours and income.[13]

We believe these shortcomings could be addressed through a "gradual deeming" mechanism under which casual employees automatically accrue rights and entitlements they are currently excluded from on a gradual basis.

We also heard multiple examples of employees engaged on continual fixed-term contracts that are "rolled over" at the expiry of each term. This has the obvious benefit to employers of preventing employees who are in effect permanent from accruing entitlements such as annual leave and long-service leave. We were particularly struck by how rife this practice is in some parts of the public sector, such as teaching in public education. It was not uncommon during our hearings to meet teachers who had been employed "on-contract" for up to two decades.

To address this, we were attracted to the proposal for "secure employment orders" which would grant Fair Work Australia the power to make an order that an employer offer permanent employment to workers who are employed on insecure work arrangements but perform "permanent" functions within a firm or organisation.

We also believe there should be stronger safeguards in place, such as employee and union consultation, to make sure that casual or contract work is only used when necessary and in particular that they are not used to undercut existing conditions in the workplace.

The Inquiry recommends that

- **The ACTU develop a model "gradual deeming" mechanism under which casual employees incrementally accrue access to rights and entitlements currently available only to permanent employees.**
- **Greater requirements be placed on employers to consult with unions with respect to the engagement of casual, fixed term, labour hire workers and contractors.**
- **Fair Work Australia be granted jurisdiction to resolve disputes about the operation of the above matters, including by making "secure employment orders".**

INDIRECT EMPLOYMENT RELATIONSHIPS – LABOUR HIRE

Some of the most startling evidence the Inquiry heard focused on the growth of the workforce management industry and the use of labour hire as the go-to providers of workers as a resource no different to any other business input. This has created new avenues for transforming permanent jobs into casual positions.

While the use of labour hire has grown rapidly since the 1990s, the number of workers employed under labour hire arrangements is haphazardly measured. The prevailing estimate appears to be that labour hire employment covers around 3 to 4% of the workforce and is growing rapidly,[14] and the number of labour hire agencies in Australian is somewhere between 2000 and 3500. In some industries such as warehousing, the only path to employment is via labour hire.

The most common complaint of labour hire employees was about the chronic lack of certainty around continuity in employment and income. As one union official in Queensland told the Inquiry, managers make the reality brutally plain and simple:

"Labour hire suits us because it's like a tap. We turn it on when we want it, we turn it off when we don't." [15]

The weight of evidence we heard about the effects this has on workers was overwhelming. We heard of cases of:

- 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, 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.

It was clear to the Inquiry that general protections under the *Fair Work Act* do not effectively apply for many labour hire employees. Tests and conditions applicable to standard employment relationships are not well-adapted to triangular relationships between host employer, labour hire agency and labour hire employee or contractor. Engagements with host employers are often ended abruptly by not offering the worker any more shifts.

Submissions acknowledged that for some workers, employment through labour hire agencies had positive aspects. Labour hire can offer a path to secure employment or a means of avoiding underemployment or time-consuming job-seeking. Several unions also acknowledged that there were "good" employers among labour hire firms, a number of whom reach enterprise bargaining agreements with their employees.

We believe this is all the more reason to establish a national registration and licensing regime for labour hire agencies – employment agencies and labour hire operators who don't exploit existing failures of regulation would have nothing to fear, and may benefit from undercutting behaviour being stamped out.

This would not be a unique or radical move – throughout the OECD Canada, Korea, Japan, Germany, Austria, Spain, Luxembourg, the Netherlands, Sweden, Belgium, France, Italy and Portugal all operate licensing systems or codes of conduct that protect the rights and entitlements of labour hire employees.[16] Similarly, in the UK the Gangmasters Licensing Authority regulates labour hire providers in the agriculture, horticulture, forestry, shellfish gathering and food and drink processing and packaging industries.

However, licensing and regulation alone will not be successful without further law reform to address the joint employment nature of arrangements between host employer, labour hire provider and worker. The *Fair Work Act* should be amended to recognise that both labour hire operator and host employer have a role in observing workers' rights and entitlements.

The Inquiry recommends that:

- **A comprehensive national scheme for the registration, licensing and regulation of labour hire agencies be established.**
- **The *Fair Work Act* be amended to allow Fair Work Australia to determine that where two or more parties are exercising functional control or taking the benefits from a work arrangement, a joint employment relationship exists.**

INDIRECT EMPLOYMENT RELATIONSHIPS – DEPENDENT CONTRACTING AND SHAM CONTRACTING

The Inquiry heard significant evidence that the current provisions in the *Fair Work Act* and competition law are failing to deal with exploitative contracting arrangements that mask employment relationships, such as dependent contracting and sham contracting.

Independent contractors, using the ABS' definition, are employed people who operate their own business and who contract to perform services for others under a commercial contract, rather than as an employee under an employment contract.[17] Over one million workers in Australia (10% of the workforce) are employed as independent contractors, with the largest concentrations in the construction industry (330,400 workers), the professional, scientific and technical services industry (133,300 workers), administrative and support services (84,000 workers) and transport, postal and warehousing industry (83,800 workers). They account for 31.9%, 15.5%, 21.3% and 14.7% of the labour force in each of these respective industries.[18] Contracting is not limited to the private sector either – as demonstrated by the Australian National Audit Office's report on the use of Non-APS workers by Commonwealth agencies, which found that in 2005-06 the Commonwealth spent $709 million employing contractors whose work effectively replicated that of APS employees.

While proponents of independent contracting argue that it offers independence and flexibility, the reality can be very different. By employing workers under commercial contracts rather than as employees, businesses avoid having to pay entitlements like superannuation and leave, and evade the minimum employment standards set out in the National Employment Standards and Awards.

We heard many accounts of contractors who, though independent by law, are in reality economically dependent on a single client and in some cases explicitly required under the terms of their contracts not to accept any other work. Further, in certain industries such as telecommunications some forms of work appear to only be available to technicians who are prepared to operate as independent contractors. There is little "choice" being exercised by workers who enter into this work on a contracting basis when there is no alternative.

Under the *Fair Work Act* employers cannot knowingly misrepresent an employment relationship as a contracting arrangement. However, these provisions are clearly failing to stamp out the practice.

Although the number of dependent contractors in the workforce is difficult to estimate, we know from ABS statistics that around 40% of all contractors (441,500 workers) admit that they have no authority or control over their own work.[19]

The CFMEU provided the Panel with its report on sham contracting in the construction industry, Race to the Bottom, which estimated that between 26% and 46% of all contractors in the construction industry (between 92,000 and 168,000 workers) are engaged in sham contracting.[20] Our attention was also drawn to the Fair Work Ombudsman's recent audit of 102 businesses in the cleaning services, hair and beauty and call centre industries. Of the enterprises that engaged contractors, 21 were found to have misclassified employees as independent contractors and one third of those were found to have done so knowingly or recklessly and therefore contravened the Act.

To tackle these practices, the Inquiry believes there is a clear need to strengthen the legislative provisions in the *Fair Work Act* against sham contracting, provide contractors with the right to collectively bargain and be represented collectively, and provide a low-cost avenue for challenging unfair contracts.

The Inquiry recommends that:

- **The *Fair Work Act* be amended to make sham contracting a strict liability offence;**
- **The Federal Government ensure that contractors have rights to bargain collectively and to be represented in bargaining, including through amending the Australian Competition and Consumer Act 2010;**
- **The Federal Government ensure that contractors have access to low cost and effective remedies against unfair contracts, including through amending the Independent Contractors Act 2006**

ENFORCEMENT AND COMPLIANCE UNDER THE *FAIR WORK ACT*

Of course, simply extending the reach of the protections labour law offers will not address the problem of insecure work.

As the Centre for Employment and Labour Relations Law (CELRL) stated in their submission:

For those workers who are protected by statutory workplace entitlements governing wages, working time, and protection from unfair or unlawful dismissal, these entitlements are meaningful only in so far as they are complied with.[21]

Under our system, enforcement falls to the Fair Work Ombudsman (FWO). The scale of this task cannot be underestimated, particularly since the expanded mandate of federal industrial relations legislation since 2006 has seen the Ombudsman assume responsibility for enforcing standards that were previously the responsibility of State-based regimes.

Again, as the CELRL submission outlined the issue:

In addition to the issue of complexity, the agency has faced a range of compliance and enforcement challenges on other fronts, including: the resource problems associated with a heavy complaint caseload; the difficulty of identifying and assisting vulnerable workers; and the problems with obtaining evidence and bringing prosecutions against rogue employers who steadfastly refuse to co-operate.

These problems have not gone unnoticed by senior managers with the FWO who are increasingly aware that traditional regulatory processes are failing to keep up with the changes to the labour market, such as the growth in small or micro businesses, the fragmentation of the traditional employment relationship, the intensification of supply chain pressures and the accompanying rise in insecure working arrangements.[22]

Effective compliance also relies on employees being aware of their rights, entitlements and enforcement options, and feeling that enforcement options are readily accessible. As we found on a number of occasions, for too many vulnerable and low-paid workers employed insecurely, this is simply not the case.

Time and time again, we heard the stories of insecure workers who were unaware of their entitlements or who felt too vulnerable in their employment circumstances to pursue a complaint about their treatment. This was particularly the case for workers engaged through labour hire arrangements, pointing to the degree to which a regulatory system that relies on individual taking complaints to the Fair Work Ombudsman has not kept up with the fragmented nature of today's labour market.

ANDREA'S STORY

CASUAL CALL CENTRE WORK

Andrea has been in a string of casual jobs in the market research industry over the past 30 years. In one casual market research position she made a bullying complaint against her manager who was being physically aggressive with her in the workplace and she was soon fired. There had been no issues with her performance. She did not take this further. In her most recent casual position she raised an issue about her pay and following this the number of shifts she received reduced dramatically.

"My last job was as a casual for a major market research company," she says.

"They train lots and lots of people before an election and then work drops off. I wasn't one of their long-term employees so I didn't get much work. I worked weekends and nights for them in order to get shifts. I wasn't paid for something (I can't remember but I think it was a day of training) and I pushed it with them to be paid and then after that I didn't get as many shifts."

Andrea says her experience of full-time work in telemarketing has also not been positive. One full-time position only lasted seven weeks, which was a lot longer than many of her workmates, who struggle to meet unrealistic sales targets.

But most of her jobs over the years have been in casual positions.

> *"Financially it is very hard being casual."*

"In my casual job at [a national market research company] I had an issue with a manager and I complained about her bullying me. She was physically getting in my way, thumping my chair, etc., and after the meeting where I raised my bullying complaint, I was sacked.

"Often people are juggling two casual jobs in market research and then they say no to one shift in order to say yes to the other but then they cancel your shift and you can't go back to the other. You would get booked for work and get ready to be paid and they would cancel on you.

"This would happen at least once a month. Financially it is very hard being casual and I've had to move to a place with cheaper rent because my other place was going up and up.

"My new house is a bit dingier than I would normally like to live in, but I couldn't afford to pay $300 per week in rent when working casually."

Andrea made a submission to the inquiry

CHRISTINE'S STORY

CASUAL TAFE TEACHER

Christine works as a part-time casual teacher of English as a second language in the NSW TAFE system, between 10 and 18 hours a week. She has been doing this work on a regular basis for almost six years, mainly at the same college. She is provided with a timetable at the end of each semester. Occasionally she also does some replacement teaching.

Casuals in NSW TAFE are provided with some conditions, such as sick leave, on a pro-rata basis.

Christine finds the uncertainty about her work is constant, and makes her feel very vulnerable. After leaving in this situation for many years, she has become adept at managing her money and putting amounts aside on a regular basis for periods of non-teaching weeks when she has no income.

"Even so, the level of financial insecurity is very high and affects many things in my life. The main one is worry about my capacity to pay for essentials such as rent, bills, health insurance and transport. I live alone and must rely on my earnings and savings to live. I daren't take out a loan because I dread not being to repay it."

"I dread the arrival of holiday time."

Rent is one of Christine's constant worries, and she has found that although she reduced her rent by moving further from work, her transport costs increased.

The precarious nature of her employment means she cannot plan for the future as it is hard to estimate her annual income in advance. She fears she will have a superannuation shortfall in retirement as she has rarely been able to contribute to her own super.

Even the long nine week summer break when TAFE closes down offers no respite, and Christine generally tries to find some other education-related employment over this period to continue earning an income.

"For this reason, I dread the arrival of holiday time," Christine says.

Christine finds her contribution as a teacher is also affected by her insecure employment. The irregular hours she and her colleagues work mean they often cannot meet face-to-face to plan classes, and her meetings with students are conducted during her own, unpaid time. The same goes for class preparation and marking. She is rarely able to take advantage of professional development courses because they clash with her teaching commitments, and she would need to forego income to do so.

All of this – my high-level qualifications, my dedication, my professional expertise, my concern for student learning, my reputation with my managers for professionalism and reliability means nothing in terms of potential, secure work in the future.

"Provision of quality, public education is clearly not considered important by successive state and Federal governments. If it were, teachers, such as myself, would be offered secure employment. The work I do as a teacher cannot be considered casual."

Christine made a submission to the inquiry.

The CELRL submission highlighted some approaches being developed by the Ombudsman, including

- Targeted enforcement that moves beyond a reliance on individual complaints and ensures that resources are directed towards industries and regions that are in need of closer attention;
- Building stronger partnerships with unions, employers and community groups to inform and participate in targeted enforcement campaigns; and
- The more creative use of litigation and sanctions to deter employer practices that exploit vulnerable workers and breach the *Fair Work Act*.

The Inquiry endorses these approaches. However, given the scale of the task facing the Ombudsman, it remains an open question whether it can be successfully executed given the current level of resourcing.

The Inquiry was particularly attracted to the CELRL's suggestion that to make it easier for vulnerable workers to exercise their rights and gain access to justice, the no costs rule which generally applies to matters brought under the *Fair Work Act* should be reversed in matters involving underpayment or breaches of the National Employment Standards.

We also believe there is a greater role for unions to play in educating the public about how consumers can play a role. The NUW's Better Jobs 4 Better Chicken campaign and United Voice's First Star rating system for travellers who want to support ethical hotels demonstrate how unions can mobilise consumers against employers who are found to exploit vulnerable and low-paid workers.

To achieve a stronger culture of compliance and enforcement in the workplace, the Inquiry recommends that:

- **The Federal Government increase the resources allocated to the Fair Work Ombudsman to improve enforcement and compliance, with a focus on developing new approaches to protecting insecure workers.**
- **The Fair Work Act be amended to allow courts to order that employers found to have underpaid their workers or breached the National Employment Standards pay the costs of workers incurred through court proceedings.**
- **Unions continue to develop campaign models that enlist consumers in encouraging secure employment practices and highlight the exploitation of vulnerable and low-paid workers.**

CHAPTER 3
INVESTING IN OUR WORKFORCE

The solutions to insecure work need to be broader than solely refining labour market regulation.

To provide decent work for all, we need to strike a balance between better regulation that gives more security to workers, ensuring that an effective safety net is in place for people who fall out of work, and investing more in our workforce – especially the most disadvantaged.

TRANSITIONS BETWEEN WORK, FAMILY RESPONSIBILITIES AND EDUCATION

The Brotherhood of St Laurence's (BSL) submission set out the central challenge facing the country for achieving inclusive growth:

In a more volatile, globalised economy, it becomes increasingly important to have a social safety net that is capable of supporting higher numbers of unemployed, particularly the long-term unemployed, following a downturn or recession. Preventative policies in support of inclusive growth will strengthen the resilience of the labour market in such conditions. Measures should include ongoing skills development of employees to aid job retention but also improve their probability of securing another job; effective active labour market interventions targeted to those with barriers to finding work; and generous unemployment benefits, with reasonable levels of conditionality to activate job search and provisions to support retention.[1]

This emphasis contrasts with the preoccupation with the transition between unemployment and employment that dominated social policy in Australia during the 1980s and 1990s, which often reflected an assumption among policy makers that the unemployed had poor work attitudes. This led to an overwhelming emphasis on making people "work ready" through a focus on entry level training that taught a particular competency or skill.

Today the focus of social policy should be on "work-life transitions" – a framework that acknowledges the multiple transitions that people make throughout their lifetimes. The German social scientist Gunther Schmid identifies four key transitions involving paid employment:

- Education/training and employment;
- Private family-based activity and paid employment;
- Unemployment and employment; and
- Work into retirement or between periodic incapacity for work and employment.

As the *Australia at Work* project noted:

This framework acknowledges that it is uncommon for people to experience one standard and singular transition from school to work and then into retirement. Throughout their lifetime a person may make several of, if not all, the transitions specified by the framework. These transitions can either be made smoother or more difficult by the employment opportunities that are available, a person's human capital, and the conditions of employment.[2]

For the individual and at the societal level, managing these transitions will be much smoother if the risks associated with each transition are anticipated. This philosophy is behind the National Disability Insurance Scheme – by recognising that everyone faces a certain risk of incurring a serious disability that demands long-term rehabilitation and possibly life-long care, we can design universal insurance schemes that spread the burden of risk in a way that ensures both fairness and the optimum quality of rehabilitation and care.

Longitudinal research projects such as the Household, Income and Labour Dynamics in Australia (HILDA) Survey, the Institute of Family Studies' Stronger Families in Australia project and *Australia At Work* have assisted in shifting our thinking by highlighting the links between the labour market and living patterns throughout people's lifetimes – but more needs to be done.

The Commonwealth has recognised the usefulness of this framework in tackling the barriers to continued participation in the workforce that many Australians face, and understanding the costs of not doing so.

WORK AND FAMILY

Significant attention has been given to work and family transitions, notably via significant improvements in family payments, considerable efforts to increase the supply of quality child care and the recent introduction of paid parental leave. However, the normative "one and a half earner" model that sees fathers working full-time while women work part-time hours is deeply entrenched. This norm perpetuates women's income and employment insecurity and disempowers women in both the household and the labour market.

The challenges associated with transitions between paid work and caring roles, with respect to both children and older parents, are a key issue for women in insecure work. Women caring for a child alone will face restrictions on when they are available for paid work. There are special pressures associated with caring for children with disabilities and special needs.

The complexities of family life are a significant factor in many women's preferences for part-time and flexible work hours, but when the only work available that can meet these requirements involves casual employment, women face a choice between taking work that doesn't offer paid annual or personal leave, or not working at all. Rather than being family-friendly, insecure forms of work can make paid work more problematic for families.

WOMEN AND WORK

Aside from the challenges of balancing work and family responsibilities, women also face other barriers to finding and maintaining secure employment. A solution that addresses the needs of working parents needs to be found that is beyond the narrow range of alternative options that currently exist for women (and men) wanting to stay in their jobs and manage family and caring commitments.

Women especially suffer because breaks in workforce participation often also mean breaks in ongoing education and training. Upon returning to work many women find it difficult to maintain their skill development if opportunities to do so only exist outside of work hours. Women also face the reality that flexible working arrangements outside of insecure work are hard to find. The protections for women returning to work from parental leave or requesting flexible working arrangements are inadequate.

Consideration also needs to be given to the nature of a superannuation system and the adequacy of women's financial security in retirement. Employers are not required to pay for superannuation contributions to employees who earn less than the superannuation threshold of $450 in a calendar month. This, combined with the fact that women are the ones who take time off from the workforce to have and care for children, and the fact that women on average earn less than men, creates a circumstance where many women are not saving enough for retirement.

Women who experience family violence are more likely to have disrupted work patterns, receive lower incomes and find themselves in casual and part-time employment.

OLDER WORKERS

It is not unusual for people losing their jobs following long years of service to a single employer to find it difficult to regain permanent part time or full time work, and when they do find employment it is often in casual and insecure work.[3] The cost of not utilising the skills and experience of older Australians who want to work is up to $10.8 billion a year.[4]

Of course it is not just insecurity in the labour market that is preventing older Australians who may to work from doing so. Ageism and age discrimination, issues of insurance, compensation and superannuation, and the need to balance paid work with caring responsibilities all play a part. Older workers often face issues of "technological obsolescence", as rapid technological change alters the very nature of work in many industries. This highlights the need to continually invest in people's skills through their lifetime.

YOUNG PEOPLE, SKILLS AND UNEMPLOYMENT

It is widely recognised that younger people who do not complete secondary education are likely to find it much more difficult to find full time, permanent employment. These young people will face continuing higher levels of unemployment than their peers, a reduced likelihood of returning to full time education, more part-time and insecure work, a shorter working life, lower incomes and an increased likelihood of ending up in poor quality jobs with few opportunities for career development.

Non-employment impacts can include increased levels of depression, living in lower quality housing and a greater likelihood of early parenting.[5]

TRAINING AND INVESTING IN THE WORKFORCE

As Michael Keating, the former head of the Department of Prime Minister and Cabinet, has noted, when we think about where to focus our investment in the skills of our workforce those who are presently least competitive in the labour market are likely to deliver the biggest return:

The critical problem facing Australia is that there is a structural mismatch between the labour supply and the demand for labour. There is a shortage of skilled labour and a substantial excess supply of people with low education and skill levels.[6]

Further:

The cost of developing the capacities and skills of those people who are least competitive in obtaining employment will be high, running into billions of dollars over period of years.[7]

The size of the effort required can usefully be compared with the period immediately following World War Two, when a large proportion of the then Australian workforce was being demobilised and there was a widespread fear that this would prompt a return of the unemployment experienced in the 1930s. At the time the Australian government responded with a massive program of retraining and university education.

Unfortunately, the evidence we heard was that employers and Government are reverting to the use of temporary overseas workers as a substitute for investing in the Australian workforce. This move to a "guest worker" model of immigration is a stark shift away from post-war migration patterns, and will only offer the country a short-term escape from the need to skill-up our workforce.

The nature of the training required has also changed. Keating emphasises that:

In the past most training for people without post-school qualifications has largely been provided by their employers, at the employer's cost. But this approach to financing training biases its nature in favour of very job specific training, whereas in a world of constantly changing technology, people need more generic skills that enable them to change jobs and to engage in continuous learning.[8]

This points to the need for a focus on life-long learning that offers support not just to younger people but also older workers wanting to refresh learning and skills to extend their time in the workforce.

This approach could be delivered through individual learning accounts, an approach supported by the Brotherhood of St Laurence in their submission to our Inquiry which outlined how a life-long learning entitlement linked to in individual learning account could finance strengthening the skills of all workers, particularly the low-skilled.[9]

It has been argued by employers that increasing labour market flexibility in a manner that increases levels of insecure work is assisting Australia to address productivity. Contrary to this, it is our view that the most critical problem facing our labour market is the mismatch between the shortage of skilled labour and the substantial excess supply of people with low education and low skills.

In our view the most urgent need is to improve the skills of our workforce right across people's working lives – not just at the entry level. Unfortunately, this problem is exacerbated by the large numbers of people who find themselves unemployed, underemployed, and/or in insecure work when they are able to find employment, with little or no access to training.

To this end we are recommending that the ACTU and unions campaign on this issue in an effort to focus the national debate on productivity on the need for Government and employers to make greater efforts around life-long education and skills development.

The Inquiry recommends that:

- **The Federal Government recognise the need for a broader focus on work-life transitions, rather than the narrow preoccupation with the transition between unemployment and employment that has led to a focus on "welfare-to-work" initiatives.**
- **The ACTU investigate models for learning accounts that encourage life-long learning and investment in the capability of workers across their lifetime.**
- **The union movement recognise the benefits of people living longer and healthier lives and support ways of resisting ageism and age discrimination in the workplace.**
- **The Sex Discrimination Commissioner initiate a review into the gendered nature of job security and insecure work, with a focus on:**
  - **Assessing the gendered health and safety risks of insecure work;**
  - **Assessing the role of gender in enterprise bargaining outcomes;**
  - **Promoting work/life balance initiatives in all jobs; and**
  - **Promoting equal pay in annual earnings.**

UNEMPLOYMENT, SOCIAL SECURITY AND THE LABOUR MARKET

Large numbers of workers today are employed in insecure work for short periods punctuated by unemployment. These workers and their families are heavily dependent on Australia's income support payment system to top up low wages and provide a safety net during times of little or no paid work.

A number of submissions the Inquiry received, including from the Australian Council of Social Services (ACOSS), the Uniting Justice Australia, the Brotherhood of St Laurence and the National Welfare Rights Network (NWRN), highlighted the persistent influence of high levels of unemployment and underemployment in shaping the context in which insecure work is growing:

A larger number of underemployed workers – 876,000 or 7.3% of the labour force in mid-2011 – are seeking more work. More than half (59%) of the underemployed are women. More than one-third have been seeking additional hours of paid work for more than one year.

By comparison, about 30 years ago, the underemployment rate was only 2.6%. The present underutilisation rate (12.6%) of the labour force represents over 1.5 million Australians of working age. ***This is not a GFC outcome, as even at the peak of the boom there were over one million underutilised workers.*** *This figure represents a waste of valuable human capital and signals untapped potential to improve our economic productivity and reduce welfare outlays.*[10]

Governments in recent years have demonstrated an appetite for reform of Australia's social security and welfare systems. The introduction of compulsory superannuation in 1992 effectively created a two-tier system of retirement incomes policy, and the proposed National Disability Insurance Scheme will provide higher quality long-term care for the severely disabled.

In terms of support for people of working age, specific benefits such as the Newstart Allowance have been incrementally reformed but there has been nothing comparable to the reforms of social insurance that compulsory superannuation and the proposed NDIS represent.

Given the widespread changes that have occurred in the nature and distribution of work over the past 30 years, the Inquiry believes it may be necessary to consider more fundamental changes in our social security system, particularly to the Newstart allowance.

The Newstart Allowance today bears little resemblance to the unemployment and sickness benefit system first introduced in the 1940s, which was intended to provide income support for male breadwinners of working age who were unable to find work. The purpose of both unemployment benefits was to tide families over during brief periods of sickness or unemployment with the overriding priority being "full employment" in a male-dominated workforce.

As the name suggests, today Newstart is intended to operate as an integral part of an active labour market policy that assists people enter or re-enter the workforce, rather than simply provide a safety net to help people survive between jobs.

The Inquiry received a number of submissions that emphasised the continued need for active labour market approaches and reform of Australia's income support system to remove the disincentives people face in taking up paid work or increasing hours of work.

The Brotherhood of St Laurence's submission highlighted disincentives that Newstart recipients face in taking up paid work, such as increased effective marginal tax rates, a loss of concessions and increased rent for those in public housing. The BSL suggested the need for a reform package that should include

- Elimination of high effective marginal tax rates on earned income;
- A working credit measure for at least six months after job entry;
- A rental moratorium for at least one year for public housing tenants who take up paid work;
- Income averaging over a six month period to assess income support entitlements;
- Retention of concession entitlements including the health care card for one year after job entry.[11]

The National Welfare Rights Network (NWRN) pointed to the stark evidence that the Newstart Allowance is inadequate, noting that OECD has:

Warned that Australia's unemployment benefit was so low as to "raise issues about its effectiveness" in providing the financial resources needed to assist Australians to find employment or participate in skills acquisition, study or training.[12]

The NWRN made a powerful case that the inadequacy of the payment has the effect of driving people further into poverty.

The NWRN submission also recommended the abolition of the "Liquid Assets Waiting Period" which a number of allowances are subject to. The LAWP operates in addition income and asset tests and forces people to run down their savings before receiving income support. The call for LAWPs abolition is consistent with the Henry Review's report on Australia's future tax system, which argued that such a test is inconsistent with any incentive to save.[13]

Uniting Justice Australia's submission recommended addressing the disincentives in our tax and transfer system by adopting the principle that no persons should face an effective marginal tax rate higher than the top marginal tax rate. This submission pointed to the effect of overlapping income tests which deny people a reasonable income from taking up paid work.

Both ACOSS and the NWRN argued that in a casualised labour market it is very important to take labour force mobility into account when calculating income. For many people in insecure work, earnings vary greatly from month to month. Accurately reporting earnings, and calculating the level of income support a Centrelink recipient is entitled to becomes overly complex and prone to error. This leads to many cases of inadvertent over-claiming followed by prosecutions for social security fraud.[14] ACOSS' submission set out some ideas for addressing this problem:

JOEL'S STORY

CASUAL IN HEALTHCARE

Joel is a casual wards assistant at a hospital in the Australian Capital Territory. The casual staff are regarded by management as on-tap to fill gaps in the workforce at short notice.

"They want all casuals to be available 24/7 without exceptions, or risk not being called," Joel says.

"I have no control over my work and simply just have to wait for a call to go to work at the last minute.. This unknowing causes significant financial stress upon myself, which seems stupid when 99% of the time there is work available due to annual leave, ADO's, sick leave, etc. which could be filled in by one or 2 extra full time positions.

"Some weeks I will not work at all, and then sometimes I will not stop working for two weeks straight. This also affects my pay packet, with some weeks you are making zero dollars while others you are making $2000-plus in overtime.

"You never know if you are going to have enough to pay bills, and you need to prepare for the fact that you may not have any work for the next month, which does not suit me at all.

Joel says that when casual staff object to this arrangement, or indicate that they may not be unavailable for a period, they are dropped off the list and no longer receive calls to work.

Joel's plans to go to university to study to be a paramedic have been thrown into turmoil by his casual employment. If he cannot lock in some regular shifts, he will need to find another job as he does not believe he can continue working with the uncertainty of being a casual, while studying full-time.

"I have been saving hard, but have had to dip into savings to get by as I have had no work. This takes money away from education and makes me uncertain as to if I will be able to afford next month's bills.

"This also places social impacts on me, as I cannot afford to miss work when I would rather be going to a party with friends I have been looking forward to."

Joel made a submission to the inquiry.

"I have no control over my work and simply just have to wait for a call to go to work at the last minute."

A key problem with the operation of social security income tests for casual employment is the volatility of income from fortnight to fortnight. Even in cases where the income test is relatively liberal (for example, the pension income test), people are often discouraged from taking on casual work because of the uncertainty of the impact on their social security payments. This undermines the income stabilisation role of the social security system as well as work incentives. The earnings credit was designed to ease these problems by in effect allowing people to average their casual earnings over a longer period than a fortnight. However, the earnings credit is unnecessarily complex and poorly understood. It would be simpler, for example, to increase income test free areas for allowance payments and then allow people to store up their free area over longer periods than a fortnight. Administrative reforms such as the British "better off in work" calculations could also make the system easier to understand and negotiate for casual employees.[15]

The Inquiry recommends that

› **Australia's tax and transfer system be reformed to provide an adequate safety net that enables social participation for those on income support payments and encourages people in to work. This should include:**
- **Addressing the inadequacy of the Newstart Allowance by increasing the base Newstart payment to a level closer to the Sole Parent Pension or the Disability Support Pension;**
- **Simplifying income declaration systems and raising income test thresholds for allowance payments to address the income volatility faced by many who combine income support and insecure work;**
- **Allowing Newstart recipients to retain concession entitlements such as the Health Care Card for one year after job entry;**
- **Abolishing the Liquid Assets Waiting Period (LWAP);**
- **Reviewing the effectiveness of job-seeking requirements for Newstart recipients who are in intermittent and low-paid forms of insecure work; and**
- **Investigating the impacts of high effective marginal tax rates on earned income that create poverty traps for allowance recipients.**

PROVIDING BETTER SUPPORT FOR JOB-SEEKERS

Equally troubling was the evidence the Inquiry heard about the performance of some employment service providers contracted to provide support to job seekers through Job Services Australia.

We heard of a number of disturbing instances of for-profit labour hire agencies enjoying close relationships with contracted Job Services Australia providers. These agencies face a perverse incentive to "churn" vulnerable workers in and out of work in order to receive multiple assistance payments for placing the same job seeker in work on a number of occasions. The precarious nature of labour hire work makes this all the more possible, as employees enjoy little or no job security.

The anecdotal evidence put before our Inquiry that some providers "game" the Job Services Australia system was recently confirmed by the release of an independent audit (The Butterworth Review) of "Provider-Brokered Outcome" fees claimed by contracted agencies, which found that only 42% of claims could be confirmed by documentary evidence from the job seeker or employer. In the case of one agency, only 23% of the fees claimed could be verified.

To their credit, the Federal Government is committed to reforming the system, which is an improvement on the former Government's Job Network, which it replaced. The Government has adopted the Butterworth Review's recommendation that the Job Services Australia program be assessed to identify other areas of vulnerability – this review must examine the relationship between JSA providers and the labour hire industry.

The Inquiry recommends that:

› **The Federal Government examine the relationship between employment support providers contracted through the Job Services Australia program and the labour hire industry.**

TOWARDS A 21ST CENTURY APPROACH TO SOCIAL INSURANCE

Beyond these changes, we believe there is scope for more ambitious reform of our social security system to ensure it reflects the reality of today's labour market.

The central issue that needs to be addressed has been set out by the ACTU:

Australia's unemployment benefits system originated in an era when work was full-time and done by male bread winners and unemployment was transitory. Wages were for work and the dole was available in between jobs. Its good features are that it is publicly funded and universal. But in an era of rapid and continuous technological change skills become obsolete at an unprecedented pace, and workers increasingly hold a large number of different jobs over the working life.

In today's economy, Australian unemployment benefit replacement rates do not provide anywhere the degree of income security that is required to support economic flexibility. A new and comprehensive scheme is desperately needed to support social inclusion and economic dynamism.[16]

Broadly, three options for reforming are worth considering.

The first is to support incremental reforms that would address the inadequate payment levels and perverse incentives in Australia's existing system of income support payments. One approach would be to adopt the model set out by the McClure report in the early 2000s of a common base allowance with various supplements available that respond to caring obligations or compensate for disability. The objective would be to establish an adequate safety net that enables social participation for those on income support payments, and encourages people in to work.

A second approach would be to establish a comprehensive employment insurance scheme, administered in parallel or in conjunction with Australia's system of compulsory superannuation. This would deliver a national system of income protection that could underwrite income security throughout people's working lives, just as superannuation underwrites income security in retirement.

Funded by a mix of contributions, the scheme's establishment could coincide with any future increases in the superannuation guarantee – workers could be offered the choice between depositing the equivalent of any increases in the superannuation guarantee into an employment insurance account or their existing superannuation account. The principle advantage of this scheme is that greater income stability would be guaranteed over the course of people's lives, and the risks posed by unemployment would be reduced. The scheme could also provide support to help people manage other transitions throughout their lives, such as between caring roles, education and paid work.

A third option would be to link the idea of learning accounts with an employment insurance scheme to create a system that addresses the need to support people during transitions between paid work, family responsibilities and education, and provides support for life-long education and training, including support from government for learning accounts, or for employers that provide genuine broad-based training.

The Inquiry recommends that:

› **The ACTU investigate models for a comprehensive employment insurance scheme, noting that any scheme would need to be designed carefully so that it delivers fair and equitable outcomes and does not comparatively disadvantage lower-paid workers and/or women.**

CHAPTER 4
GOVERNMENT'S ROLE AS AN EMPLOYER

Governments are employers of influence as well as being among the largest employers of workers in Australia.

Governments should and must be examples and promoters of good employment practices – with their own workforces and in their funding and contract arrangements with commercial and not for profit employers which engage thousands of employees in the private and not for profit sectors to perform services on their behalf.

However, various submissions and witnesses to the Inquiry pointed out that public sector employment – at a national, state and local government level – is not immune from the drivers of insecure employment and that government itself can be a cause of insecure employment in other sectors of the economy.

The Inquiry was informed about the role of government as a facilitator of insecure employment in two major respects:

1. The growth of expenditure upon and engagement of non-continuing employees and workers in historically core activities of the public services of the Federal and state governments.
2. The current models of government contracting and funding of activities to private sector and not-for-profit sector organisations directly contributes to the adoption of insecure employment mechanisms by those entities.

The challenge to governments is to act to influence the adoption of fair and consistent employment practices, terms and conditions throughout their own internal operations and also in those services provided for and on their behalf through procurement and contract labour arrangements.

The challenge to the ACTU and the union movement more widely is to develop policy and campaign activities across all affiliates; not just those with immediate public sector membership but also with those affiliates whose memberships are involved in outsourced and funded activities carried out on behalf of governments at federal, state and territory levels.

THE CHANGING BASIS OF GOVERNMENT PUBLIC SERVICE EMPLOYMENT

The Australian Public Service (APS) is made up of 20 government departments of state, 80 statutory agencies and 6 executive agencies.

The public sector employment model has traditionally been based on "ongoing" employment, with "non-ongoing" employment the exception.[1]

We received and heard evidence that this has been changing in recent years. In addition to increased engagement of "non-ongoing" employees, the APS has engaged more labour hire employees and contractors in recent years, as well as outsourcing certain functions.

An indication of the size of the non-continuing workforce is given in a 2007 report of the Australian National Audit Office (ANAO)[2]. According to that report 19,000 non-APS workers were engaged by agencies as at 30 June 2006, compared with 146,000 APS employees (92% of whom were ongoing employees and 8% employed as non-ongoing employees).

On this basis, the total workforce supporting APS agencies was some 165,000 persons, with non APS workers representing more than 11% of this total workforce.

Agencies estimated the total expenditure on non-ABS workers was $2.2 billion in 2005-06. Over $709 million was for "dependant contract workers", engaged on a contract but with significant elements of their work arrangements consistent with APS employees.

While exact numbers are difficult to ascertain, the ANAO report shows an increase in the number of contracts for non-APS employees from approximately 3,000 in 2002 to around 9,000 in 2006.

Agencies advised ANAO that 49% (9,821) of these non APS workers had been engaged for a period longer than one year. However, 83% of all new contracts for non APS workers were for a period of less than one year.

When all of this is considered together, the extent of insecure employment in the APS is far more significant than it may first appear.

Tellingly, the ANAO Audit Report observed:

"It is likely that the engagement of non APS workers as an embedded element as distinct from an ad hoc adjunct, in the workforce of APS agencies will be an ongoing feature in public administration."

This data is supported by the 2010-11 Australian Public Service Commissioner (APSC) *State of the Service Report* [3] which found that over $1.6 billion, or at least 10.4% of total departmental expenses on labour, were being paid to non-departmental staff, such as contract workers. (These figures do not include labour hire employees.)

The *State of the Service Report* noted that the increase in overall employment during the year 2009-10 was mostly due to large increases in non-ongoing employment with only a slight increase in ongoing employment. At June 2010 the APS had a 0.4% increase in ongoing employment whereas non ongoing employment grew by 17.6%. The report stated that despite "the drop from June 2010, the number of non-ongoing employees is still high compared with most of the previous decade".[4]

At another level of government, the Community and Public Sector Union (CPSU) informed the Inquiry that the Australian Capital Territory and Northern Territory public services have even higher rates of non-ongoing employment, at 23.1% and 29.2% respectively.

In further support of this trend, the Public Service Association of New South Wales (PSA) extracted evidence through Freedom of information processes indicating that expenditure by the New South Wales state government in 2010-11 on labour hire support public service activity amounted to $500 million, employing nearly 12,000 *temporary* employees.[5]

The nature of the data is confronting because it reveals that governments have embraced the same strategies as the private sector to circumvent industrial relations legislation and to cause disadvantage to workers.

It is important to note also that the impact of this strategy is broader than in the private sector as it affects matters concerning transparency. Part of the intent appears to disguise the total number of people engaged in delivering services and other work and to obscure information to the community. In this way, public sector employers can deal with financial pressures on staffing levels by not recruiting new ongoing employees but by engaging contractor or labour hire employees.

For example, the CPSU advised that the Australian Taxation Office had established a business model goal of moving a third of its Operations workforce from secure to "flexible" employment. It seems that it has achieved this, with 36% of the workforce in operations identified as "non-ongoing" by March 2011. These insecure employees are doing work which would have previously been done by employees in ongoing positions.

Similarly the use of insecure work forms in smaller government agencies is clearly motivated by ongoing budget pressures, rather than particular skills shortages or peaks in work demand.

Of particular concern is the concentration of insecure employment in certain work areas and classification levels. Insecure employment often coincides with classes of people who are more likely to face disadvantage, for example Aboriginal and Torres Strait Islander employees, women and younger employees. It is also concentrated in lower classifications and specific work areas, such as call centres. These employees are generally in a poorer bargaining position with regard to their working arrangements.

At the Perth Inquiry hearing, unions and workers informed the Panel of the outsourcing of reception services in state government departments and the increasing use of rolling fixed, short-term contracts and labour hire to carry out government services. The impact on the lives of these workers and their families is the untold tragedy of these arrangements, with the anxiety and stress "of not knowing what's around the corner" eating into their well-being at work and at home.

There is another dimension to the problem for government as an employer.

The use of non-ongoing employment arrangements can in fact lead to additional financial and other costs – recruitment and training costs, the premium paid to labour hire companies, the increased expense of using contractors, the loss of corporate knowledge and business continuity, reduced security of information and accountability, reduction in the quality of services and lower staff morale.

Further to this, the Gershon Report in 2008[6] found that the extensive outsourcing of information and communication technology (ICT) had been frequently more expensive than engaging in-house employees. On average, a contractor cost an agency $186,000 per annum. This was $94,000 more than the average directly engaged ICT employee. While there has been less engagement of contractors in this manner since the report, third party service providers have been used instead as they do not appear in agency contractor numbers. This costs 20% to 28% more however.[7]

Governments should be held to a higher standard than the private sector in terms of providing transparency to the public. Such reporting should ensure management adheres to principles, values and codes of conduct that bring about quality public services which are sustainable and consistent with fair and decent work.

The Inquiry recommends that:

- **The Federal and state governments introduce measures to ensure public sector staff are employed according to the following specific categories of employment:**
  - **ongoing employment;**
  - **specific term or specified task employment;**
  - **genuine irregular or intermittent duty employment.**
- **Governments review and report to the community at large on public sector employment including in school, technical and tertiary education services across the Commonwealth, states and territories.**
- **That public service and government employment agencies be required to collect data and promptly report publicly on the use of labour hire and contract employment and contractor for services work, through mechanisms such as the Australian Public Service Statistical Bulletin, the Australian Public Service Commissioner State of the Service Report and relevant state and territory government reports.**

MODELS OF FUNDING AND INSECURE WORK

Governments fund public services such as education (early childhood, schools, universities and TAFEs), childcare, and health and aged care services.

The Inquiry is most concerned about the issues raised across the nation about the damaging effects of the level and cycles of funding upon a host of different organisations and services.

The models of funding of these activities have contributed to the growth of insecure work. It is contended that these changes have resulted in a decline in quality of services as well as an increase in costs.

THE COMMUNITY SECTOR

As governments have increasingly outsourced the provision of services to community organisations, the drive for government savings has left the sector under–funded and facing increasing challenges to sustain the support they provide.

Among others, the Australian Council of Social Service (ACOSS) and Disability Employment Australia (DEA) submissions to the Inquiry and the Productivity Commission's report into the not-for-profit sector (2010) have influenced the Inquiry's thinking in this area.

The Productivity Commission[8] estimated that the not–for–profit sector generated $41 billion in 2006–07. This is comparable to the measured contribution to national income of the wholesale trade, transport and storage and government administration and defence industries combined.

Its report stated that the short-term nature of many funding agreements contributes to turnover as staff move to find more secure employment. It concluded that "substantial reform of the ways in which governments engage with and contract NFPs is urgently needed".

The Productivity Commission found that governments tend to fund only 70% of the costs of the services that they contract community organisations to provide. Government contracts have grossly undervalued inflation and so have driven a decline in funding in real terms, even as demand for services in many areas has increased.

ACOSS informed the Inquiry that the not-for-profit sector grew at more than twice the real growth rate of the national economy and provided 8.5% of total Australian employment in 2006–7. Community services make up a significant proportion of these figures, as the largest employer base within the broader not–for–profit sector.[9]

At the Melbourne Inquiry hearing, ACOSS stated that the lack of certainty around funding creates perverse incentives for managers in the community sector – managers avoid creating too many employment liabilities because of the fear of funding disappearing.

For employees, this means that they are moving from employer to employer in the community sector without accruing entitlements such as long service and personal leave because the new employer does not recognise previous service with other employers in the sector.

Compounding the funding shortfall is the persistent failure by governments to adequately index the level of funding. The average rates of indexation are significantly lower than basic Consumer Price Index, and fail to address wage and utility costs.

As with others, the Australian Services Union (ASU) pointed to the use of short term funding that is repeatedly rolled over instead of becoming recurrent funding as a contributing factor to the growth of insecure employment in government funded sectors.[10]

One other example noted from ACOSS is of an established organisation (existing for over 20 years) providing personal care, respite, counselling and other services to support older people and people with a disability. This organisation has nine staff in management, professional and administration roles only two of which are insecure (two admin staff are on contracts that are less than 12 months in duration). However, the direct client services, personal caring and other in home supports, which are the organisation's core business, are provided by over 100 subcontracted workers.

In some instances, such as the direct subsidy of funding to employers to provide work to disabled workers and migrants with low English proficiency the current model does not lead to permanent or decent work for the very people these organisations are funded to assist. There is evidence that employers churn these workers in order to receive another subsidised worker rather than provide decent jobs and ongoing work opportunities.

MANIEKA'S STORY

SHORT TERM CONTRACTS IN TEACHING

After training as a primary school teacher, Manieka moved from her home state of Tasmania to Victoria to find work four years ago. In this time she has had three contracts at the same school, each for 12 months, and is now on a six-month rolling contract at another school.

Manieka would like to be able to plan an overseas holiday and buy a house but is unable to without a secure teaching job.

She says finding herself out of work at the end of her 12 month contract was one of the most stressful periods of her life.

"After 69 job applications and several interviews, I was offered a 6 month position at the school I am at now," Manieka says.

"At the end of the 6 months I was required to go through the application and interview process again, in which I was offered another 6 months.

"Both schools I've worked at have had their period of growth and are now on a student number decline. This means that those teachers on contracts are the first to lose their jobs, even if they are high performing or doing a good job.

"This makes my life very stressful because while I'm trying to juggle the plethora of things I have to do as a teacher, I'm also worried about how I'm going to afford to pay my rent, make car payments and buy food if I can't obtain another job.

"It's also frustrating because I dedicate myself to my job, and it's something that I love – but if there aren't enough students at the school, I'm always the first to go because I'm on a contract. I'd love to buy a house and settle down, but to make that kind of commitment whilst on a contract is ridiculous."

The ongoing stress of short-term contracts and insecure work sometimes makes Manieka wonder whether she has chosen the right career.

Her situation is compounded by the fact that with each year of contract work, she gains more experience and moves further up the pay scale, but if she does not obtain an ongoing job, she will soon be too expensive for schools to employ as a contractor.

"I'd really love to not feel so stressed about where my next contract is coming from.

"I spend a considerable amount of time applying for jobs and going to interviews and it is a regular stress that I don't need and that I don't feel I deserve after how hard I work and the effort I put in.

"It's really disheartening to hear a Principal say to you: 'We'd love to keep you but unfortunately we can't afford it or there aren't enough students to warrant your position at the school, etc. You're doing a fantastic job, but because you're on contract and schools aren't funded enough, you don't have a job. Sorry'."

Manieka made a submission to the inquiry.


"I'd love to buy a house
and settle down,
but to make that
kind of commitment
whilst on a contract
is ridiculous."

Consequently, these funding and contract duration arrangements make it difficult to attract and retain the workforce the community sector requires and to deliver effective services.

ACOSS advised that the pay disparities between community service workers and comparable roles in the government and business sector was a key factor in not being able to attract and retain staff. As it said in its submission, high turnover and a lack of continuity "means experiential knowledge and expertise can be lost" and that directing resources at recruitment and training of staff members because of workforce churning "detracts from funds available for service provision".[11] The cost of constantly recruiting new employees must surely outweigh the benefits of competition.

In another example, Disability Employment Australia (DEA) informed the Inquiry at the Melbourne hearing that security of employment in the disability employment sector is of no more than 3 years due to contract changes, which means that workers have to requalify for entitlements like long service and maternity leave and employers are less inclined to invest in their workforce. It has estimated that there is a turnover of employment of 30% per annum in the sector.

Government funding guaranteed over longer periods which comes attached with stringent requirements to provide ongoing job security to those workers employed during the periods, including redundancy provisions, would mitigate the use of casual workers who are employed on the basis of the annual funding cycle.

PUBLIC AND TERTIARY EDUCATION

The role of the Federal and state governments in funding public education and universities is a critical investment in ensuring that Australians have access to high quality, accessible and affordable education.

As the Australian Education Union (AEU) stated:

"Overwhelmingly, public education workers are employees of state or territory governments and their agencies or substantially funded by and accountable to them. These employers…should be exemplary…and afford to their employees standards – including employment standards – of the highest order. This helps to ensure that public services – of which education and training is one – are produced, maintained and distributed according to exacting standards and for the benefit of the whole community, including its future generations." [12]

While there might appear to be a high proportion of ongoing employment in the public schools sector of approximately 80 to 90%, there is the downside of temporary and fixed term employment of up to 20%.

For many contract and temporary employees in education, Christmas and other school vacation periods are the most stressful as employment contracts end and future employment is not guaranteed. Often they do not know whether they have further employment until the new school year has begun.

As the union also submitted to the Inquiry, the story "or tragedy is all the more poignant in the TAFE sector where levels of casualisation can be staggering"; that is, about 70 % in the NSW post-schools sector, including the TAFE sector.[13]

Colleges and institutes have also started to use tender processes, on a year-by-year basis or up to three years. There are instances in Western Australia, such as the Adult Migrant Education scheme, that despite having been in existence for many years are subject now to a tendering system that has seen employment move in a very short space of time from predominantly permanent to predominantly casual and contract.

During the last 20 years Australian universities have been exposed to long periods of serious decline in public funding. From 1995-2005 public funding per student fell by 28% in real terms and universities adapted by cross-subsidising the costs of research and teaching through other funding sources, such as international education, or the entry of full-fee paying international students into the post-secondary student cohort including, but not limited to, universities.[14]

However, the current models of management and funding of universities have given rise to growth of insecure work (in particular, limited-term contract research staff and casual teaching focused academic staff), lower education outcomes, reduced quality of teaching based on non-payment of adequate time for lecturers and tutors to meet learning needs and generally greater emphasis on budgeting and accounting over education considerations.

Among the major industry groups, tertiary education is characterised by one of the highest levels of precarious employment in Australia. The National Tertiary Education Union (NTEU) submission[15] reveals the extent to which total employment at Australian universities has increased over the last decade and a half. The total number of employees (including NTEU estimates of the number of casuals) increased from about 120,000 in 1996 to over 183,000 in 2011 – an increase of about 63,000 employees or 53% over 15 years.

By contrast the number of:

- Continuing employees increased by only 37% (from 47,636 to 65,306)
- Limited-term employees increased by 47% (from 29,768 to 43,860)
- Estimated number of casual employees increased by 81% (from 40,740 to 73,592)

The NTEU submitted therefore that less than "36% of all university employees have continuing employment and the figure for all employees already excludes those employed on an ad hoc or occasional basis".[16]

To follow this, the evidence presented to the Inquiry at the hearings supported the union's contentions that only a small minority of casual employment in universities is genuinely casual and that many employees have been engaged continually on fixed term employment contracts.

At the Inquiry hearings we heard from many tertiary sector workers who had been engaged as casuals or on fixed terms doing essentially the same work year after year. A recent survey at the University of New South Wales (UNSW) highlighted issues with people going from one grant to the next or one contract to the next for over 15 years, never knowing what level of remuneration they will receive in the future.

This is not the way to respect education, workers and learning. This is debasing the major commitment educators, academics and the research community make to the public good. The system is surviving on their goodwill – they care about the students and they make the sacrifices but this is totally unsustainable and is a recipe for disaster.

At the Brisbane Inquiry hearing, the NTEU informed the Panel that many casual university employees "work at two or even three Universities in Brisbane in order to earn enough to live off" and that often a large portion of the workload is unpaid, such as marking time and student consultation hours.

As the NTEU observed, "the truth is that inadequate funding has combined with poor management practices, and the losers are Australia's students, the public interest, the staff and the universities themselves".[17]

These practices are far from unique to tertiary institutions but they provide a disturbing precedent for other Australian workplaces and the quality of our nation's tertiary education system.

The Inquiry recommends:

- **Federal and state governments review the effects of funding models and cycles on the implementation of decent employment, service quality and capability in commercial and not for profit organisations performing services for government.**
- **Amend the *Fair Work Act* to incorporate a Secure Employment Principle for Modern Awards and Enterprise Agreements to ensure that continuing employment is the normal form of employment.**
- **Make improvements to the bargaining system through the removal of existing restrictions on the content of agreements, particularly as they relate to the use of contractors and labour hire.**
- **Limit non-standard employment through bargaining and legislation through the use of clear and enforceable definitions and limits on the use of all forms of insecure employment.**
- **Ensure access to unfair dismissal remedies in circumstances where the purpose of the use of limited term employment is to avoid the employer's obligations.**
- **Investigate the potential for portability of entitlements within the not-for-profit sector.**
- **The Federal and state governments create a public policy regime that encourages tertiary education institutions to meet decent standards of employment and educational quality.**

EMPLOYMENT STANDARDS AND ENTITLEMENTS – AND THE HUMAN COST

Despite well-established requirements in statute, regulations, awards or agreements it is increasingly the case that public sector employers are undermining these staffing obligations and duties through the engagement of insecure work forms.

This has been brought about in large part by budget pressures and uncertainty, with agencies cutting back on staffing costs by engaging employees on a casual or short term basis which avoids or reduces certain employee entitlements.

The employment of the majority of the workforce supporting Australian Public Service agencies is governed by the Public Service Act 1999 (PS Act).

Under the *Fair Work Act*, non-ongoing employees are not entitled to the same protections and redress at the end of their engagement as if they were ongoing employees. They do not qualify for redundancy entitlements and have more limited access to unfair dismissal protections.

Non-ongoing employees in the APS do not have the same entitlements as ongoing employees. For example, casual employees, which represent 9.2% of all employees in the Australian Taxation Office, are not entitled to paid sick, carers or annual leave.

In addition the ATO Enterprise Agreement does not entitle non-ongoing employees to the same personal leave or penalty rates as ongoing employees and the ordinary hours of work are longer for non-ongoing employees.

Non-ongoing employees are less likely to receive discretionary benefits, such as study assistance or additional training.

Similarly labour hire employees have fewer entitlements than ongoing staff, including reduced superannuation payments in comparison with directly employed staff. They are generally not covered by the same award or agreement arrangements. They may do the same work but not receive the same pay and conditions as ongoing employees.

This disparity is compounded by the impact of enterprise bargaining which has produced very different outcomes for different agencies, resulting in a broad expanse of diverse remuneration and conditions for workers doing the same work.

At the Canberra Inquiry hearing, for instance, CPSU informed the Panel of the situation of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).

AIATSIS is the third lowest paid agency in government, with a high proportion of female and Indigenous staff and a high proportion of non-ongoing employees – 62.8 %.

It appears that agencies that do well out of enterprise bargaining in the APS are those that whose work aligns with government priorities. AIATSIS and the Department of Human Services were not priorities under the previous federal government and did very poorly through enterprise bargaining. In contrast, Treasury and Finance did very well.

Associated with that insecurity are the same disadvantages encountered by other groups of insecure workers – lack of opportunity for advancement, training and payment or promotion consistent with classification practices ostensibly part of a merit based career system, insecure income, lack of access to credit and eligibility for loan finance, and insufficient retirement income.

The stories we heard from workers in the public education sector truly supported the AEU's statement that there "is a human story of unsustainable workloads and stress, of financial hardship and unsought career change, of resounding frustration and of deep distrust of management by the workforce." [18]

We received many examples of teachers who have worked continuously, without a break in service, for up to 20 years but have not achieved permanency. In many instances, these teachers have been filling in for someone else in a substantive position on fixed term contracts.

United Voice informed us of some teacher's aides in the Queensland Department of Education who had been on rolling temporary contracts for between five and 25 years. Over the past two enterprise bargaining rounds between United Voice and the department, teacher's aides have secured a system of "true permanent hours" which guarantees an entitlement to a minimum basic hourly workload in perpetuity.

Others have been engaged on continual fixed-term contracts that are "rolled over" at the expiry of each term. This prevents employees who are in effect permanent from accruing entitlements such as annual leave and long-service leave.

The CPSU –SPSF informed us of the situation of one example that is real for many of the difficulties of being on a fixed term contract:

"I can't access loans, and I have no long term security to assist with family planning ... I can't take maternity leave." [19]

And of others who have limited access to training and career development. One worker on short-term based project based funding had her contract renewed 22 times and was thereby frustrated by her inability to gain career development opportunities.[20]

At the Mackay hearing we were told about a teacher who was in his seventh year of contract teaching. He has since left the teaching service to work in mining because of the lack of security.

Pertinently, the AEU pointed to an overlooked issue concerning insecure work and work standards and entitlements in public sector education:

"It is not only concerns whether a person has a job at all or whether that job is permanent, temporary/fixed term or casual. It concerns also whether, in the job a person does have, there is access to reliable, safe and professionally rewarding conditions of employment." [21]

EWEN'S STORY

LABOUR HIRE IN THE CONSTRUCTION INDUSTRY

Ewen has been employed as a skilled labourer through labour hire on Melbourne's construction sites for the past six years. These roles are always casual. In those six years, he has only been offered directly employed full-time work once.

Ewen feels that he has become "conditioned" to the instability of work through labour hire.

"I have worked in the construction industry for over 33 years now and have seen how the industry has gone from secure work to insecure work... Where I used to be employed on a full-time basis, now I'm working for labour hire companies on a casual basis.

"I find there are 3 different pay structures in construction: full-time, casual and sub-contract (ABN), I have been employed under each one of these over the years. Although the pay structures may be different, the employment is the same, apart from the laws they abide to, where once the job has been completed the employer can terminate your position at will.

"Working for labour hire companies is like taking part in lotteries, you never know if you're going to land a day's work, two weeks' work, or six months' work and the gaps between employment can be anything from one day to two weeks or more. So depending on whether the industry is in boom or bust, where casual labour hire could once have been a "fill in" position when work was scarce, it has become for me a main source of employment.

"There were days when you could walk onto a building site and ask for a job and your chances of getting a start were pretty good, but now you just get a funny look and told to try labour hire... It is sink or swim for me, so I have had to adjust to be able to stay in my respected industry."

In one case, Ewen had two separate labour hire jobs within the same week, both ending abruptly.

"Later that week, the same labour hire company sent me to another roadworks project down Geelong way, about an hour and a half drive from my residence. I took it as I could pack a bag and stay with my friend who lives not far from there. It would be six days per week.

"I worked the first day no problems, got on well with the guys there and looked forward to the continuous work. The next morning I was rung by the labour hire company at 6am to tell me I wasn't needed on site that day because it was raining. I asked if I would be compensated with such short notice and told afraid not, that's just how it is.

"I thought about it, effectively if the rain looks set in for days I'd be sitting around not knowing when or even if I'd be going back. The uncertainty and being so far away from home was too much on this one so I rang up and made myself unavailable for the project. My employer wasn't happy at all with me and cut the conversation short. I got a text message shortly afterwards advising me to put my timesheet in; I have not heard back from them since doubt if I will again."

Insecure work has taken its toll on Ewen's personal life and his ability to form relationships. And it has preventing him settling down in other ways.

"Relationships are hard to keep with women; they don't understand the nature of my work. When I have to wait long periods in between work it causes tension and can't handle it and leave. I have had numerous relationships failed over the years because of this and now it's hard for me to be in a serious relationship because the conditioning of instability has become a part of me.

"As for a house loan, forget it. The one and only time I went for a house loan 3 years ago no bank would touch me. After talking to a mortgage broker I was advised to look at other investments, unless I got a full-time job for at least a year, or got married with 2 incomes coming in otherwise the risk is too great."

Ewen gave evidence at the inquiry hearing in Melbourne

"Working for labour hire companies is like taking part in lotteries."

It was contended that colleges and institutes save money through the use of contract and casual work by:

- Ceasing contracts over Christmas periods (saving approximately four weeks' pay);
- Alternating between contract and casual to extinguish accrued leave;
- Keeping lecturers on casual rates of pay and placing them on the lowest grade level on the contract / permanency scale when placed on a contract;
- Using short term contracts with breaks between contract periods;
- Greater use of casual hours.

The Australian School of Business – Industrial Relations Research Centre reminded us of the disturbing realities for the well-being of many casual teachers in the TAFE system and the threat to the quality of teaching services:

"Very many casual teachers lack a desk, a computer, internet access, an email address, a pigeon hole, access to a phone, a photocopying card, or a private office where they can interview students." [22]

But these workplace matters have an impact on people's lives; it is not just about reduced entitlements and benefits. There is a human cost.

These issues particularly affect women. Many women feel locked out of leadership and career opportunities because of the nature of their employment, their personal circumstances and their access to relevant and worthwhile training and professional development. They have limited rights and benefits in terms of leave and financial security including superannuation. Their financial security in retirement is ultimately impacted because of the nature of their employment and a history of discrimination against women.

The claim by employers and some commentators that casual work provides workers, especially women, with the flexibility to meet family and caring needs is not borne out by the evidence provided to the Inquiry by many individual workers. They are seeking flexibility within secure jobs.

It is difficult to see how tertiary institutions can provide quality for staff and students when two-thirds of the staff are engaged without basic employment rights and work in an environment without certainty of redress for an arbitrary or capricious non-renewal of employment.

The existing unfair dismissal regime contains a serious flaw which means a worker can be employed on a fixed term contract for (say) 15 years solely to avoid the unfair dismissal jurisdiction.

Insecure work arrangements are fundamentally used to deny people their employment rights, to cut costs and to create a compliant workforce.

The Inquiry recommends:

- **Federal and state governments review and expand existing employment principles to promote just and favourable work conditions across the entire sector for all government workers.**
- **Governments investigate the relationship between poorly funded departments and the level of insecure work.**
- **That Federal and state government employment principles and guidelines be reviewed to clearly stipulate that resort to labour hire, to contract employment and to contracts for services where work is effectively under the control of the agency is in breach of government fair employment and decent work principles.**
- **Where labour hire workers are utilised to perform the work for government agencies, the worker shall receive equivalent pay and conditions as if they were directly employed.**
- **Governments undertake research into the health effects of insecure work and identify the associated social costs.**

GOVERNMENT PROCUREMENT

The Australian Government is a significant purchaser of goods and services in Australia. Its procurement activities are worth around $24 billion per annum.[23]

Importantly, it needs to be noted that government procurement is not simply about roads and buildings. It involves people and services that are performed on behalf of government, such as aged care, health, employment, indigenous, disability and many other important social services.

Australian Government procurement is based on achieving *overall value for money; purchase price is not the only determining factor in assessing value for money. Agencies are not forced to choose lowest-cost suppliers when that choice would in the long-run cost the taxpayer more through the purchase of inferior quality goods or high ongoing service costs, or when that choice would have detrimental social or environmental effects.*[24]

Procurement at the Commonwealth level is governed by the Commonwealth Procurement Guidelines (CPGs). The CPGs apply to all core government agencies and to a number of Commonwealth companies whose operations are predominantly non-commercial.

These agencies must undertake procurement in a manner consistent with the principles contained in the CPGs:

(Clause) 6.20 Agencies should include contract provisions requiring contractors to comply with materially relevant laws and should, as far as practicable, require suppliers to apply such a requirement to sub-contractors. Contractors must also be able to make available details of all sub-contractors engaged in respect of the procurement contract.[25]

Compliance with the *Fair Work Act 2009* is a "condition of participation" for Australian Government procurement.

The Australian Government Fair Work Principles (FWPs) are an important mechanism by which the Federal Government requires compliance with the *Fair Work Act* throughout its own supply chain. They are intended to support "the creation of quality jobs and decent work by ensuring that procurement decisions are consistent with the *Fair Work Act* and its aims including promoting fair, cooperative and productive workplaces in which employees are treated fairly and with respect including respect for freedom of association and their right to be represented at work".[26]

The Inquiry received submissions outlining deficiencies in the way in which the Commonwealth funding of infrastructure and other major projects did not support decent work standards or even rational procurement for the benefit of Australian industry or society. These also expressed deep concern about the growing practice of governments outsourcing public services to contractors, including agencies or non-government organisations.

The current arrangements for monitoring and enforcement of compliance with the *FWP* also appear to be inadequate. In the experience of the *ASU*, government procurement policies did little to ensure secure employment practices are established and maintained in companies that receive public funding.

Even the Australian Government Procurement Statement 2009 noted that concerns "have been raised about some of the reported practices of sub-contractors to government suppliers, and the fact that in the past there has been no transparency around sub-contracting arrangements. This has created a gap in the information provided to the public on where taxpayer dollars are spent and has undermined the transparency of contracting arrangements".[27]

For this reason the Government implemented reforms to the CPGs to require agencies *to make available on request* details of all sub-contractors engaged in respect of the procurement contract.

However, "on request" falls short of adequate monitoring and transparency.

Furthermore, the use of contractors and sub-contractors complicates accountability and transparency, as the contracting authority, the contractor and sub-contracting entities point to the other as having responsibility through the terms of the contract and its financial constraints for the employment arrangements of workers.

In this context, "value for money" as a principle for government labour procurement does not support just and favourable conditions of work.

Commonwealth procurement should be based upon suppliers meeting a higher decent work and conditions standard than just bare compliance with employment standards. We acknowledge steps in the right direction with the issue of the Commonwealth Cleaning Services Guidelines last year but this is not all of government procurement activity.

Therefore, a form of decent work principles should be developed and given equal weight with the value for money principle currently influencing Commonwealth agency procurement. This should also be pursued at State, Territory and local government level. Suppliers must demonstrate compliance with this standard to be successful in their tender or funding bids.

A review of government procurement should also be carried out to cover the number of contractors, labour hire employees and other indirect employees engaged under third party arrangements, their length of service, the work being undertaken under the terms of the contract and cost of these arrangements.

There needs to be consistent monitoring to ensure that narrow value for money staffing shortcuts is not undermining public service values and standards and employee jobs and conditions.

It should also review whether current arrangements surrounding the engagement of labour through third party arrangements by agencies are consistent with the Australian Government Procurement Statement and other relevant government policies.

Government should consider the findings of that audit, in terms of identifying further savings and identifying ways in which current practices could be improved to ensure they are consistent with government policy and expectations.

The Inquiry recommends that:

- **The *Fair Work Act* be amended to specifically empower the Fair Work Ombudsman to monitor and enforce the Fair Work Principles.**
- **Australian Government Procurement and state government policies be amended to ensure that a decent work standard is demonstrated by organisations seeking to win tenders.**
- **Federal and state governments commit to conducting an audit of existing contracting and third party labour arrangements to identify the exact nature and level of their use, compliance with statutes, awards and agreements and to identify the impact on public sector employment levels and conditions.**

KAREN'S STORY

RETAIL CASUAL WORKER

Karen is a sole parent of a 13 year old child.

Karen's earlier working career – before having a child – had been in secure jobs as a secretary, a personal assistant and in childcare, and she has qualifications in those fields.

But in order to have flexibility for her family, she elected for casual retail work so she would not be leaving her son alone at home late at night or for long periods of time. Karen's story is typical of many working mothers whose options are limited and have no choice but to take a casual job.

She was initially employed for 15 hours a week as part of a funded training arrangement through Centrelink, but after the funding was exhausted, the major retailer she worked for cut her hours to one or two shifts a week of three to five hours, depending on their need.

> *"I don't have any choices available to me."*

"This was usually at least one afternoon shift and one weekend shift; both disrupting my family life, making my son travel alone home from school to an empty house," Karen says.

"During my time there I hurt my arm at work, but because I needed the work to pay my rent, and knew how other casual employees had been treated (i.e. no shifts if they complained), I didn't report it; rather, I reported it to someone off the record (at my job agency and at the company).

"I was also repeatedly given repetitive tasks, when the job agency had supposedly negotiated that I was to be trained in all areas of the department I was linked to.

"Eventually I left the job because my son became ill with whooping cough, and was off school for three weeks, and then on school holidays for another two, then off school for part of the sixth week (and still recovering)."

Although she had medical certificates for her son, and gave several days' notice that she was unable to work because of his illness, the employer did not offer her any further shifts.

"To gain secure employment of even only 10 hours per week would make a huge difference to me, my son and planning our life," Karen says.

"I don't have any choices available to me. I have to fulfil the requirements of Centrelink, but when you are looking for work you then have extra appointments to go to with your Centrelink job agency, Centrelink, and anyone else they require you to see.

"It eats into time that you could be working or looking for work. It has happened when I have been working that I've had to request days off that I may have been able to obtain shifts, just to go to these compulsory appointments.

"Anyone who believes that casual work is better than secure permanent part time or full time work has got to be someone who is highly paid and has never had to live with the daily threat of being a day away from losing everything."

Karen made a submission to the inquiry.

CHAPTER 5
CONFRONTING THE CHALLENGE OF INSECURE WORK

The challenge to develop a society that is just, fair and equitable has always been at the core of the trade union movement's agenda for change.

But the trade union movement is not alone in seeking to ensure that Australia is a decent country in which to live. A broad range of civil society organisations in Australia share similar values and understand the inextricable links between social justice and working life.

The depth of this interest was demonstrated in part by the range of organisations that made submissions to this Inquiry.

Additionally, the ongoing work of many academics and researchers who analyse and study contemporary experiences in Australian society assist both the trade union movement and civil society organisations in advocating an agenda for improving the future of Australia's people.

An important challenge for the labour movement will be to forge stronger and broader partnerships on the issues facing working people, and on broader questions of social justice.

As a whole and as individual trade unions, the union movement should be encouraged to strengthen ties with civil society organisations and find new ways of working collectively to achieve shared goals and advance our aspirations for the society that we live in.

The Inquiry heard a number of strong examples of unions adopting and implementing strategies to address some of the worst effects of insecure work.

The lessons from these successes need to be learnt and applied as part of a systematic and properly resourced effort to engage with vulnerable workers and communities and confront the challenge of insecure work.

Rather than make specific recommendations about how to pursue this, we hope that our report will provide a catalyst for further work to identify and develop solutions that will address the problems we've encountered. This will require a fuller debate both within the union movement and across the wider community, which the trade union movement must take the lead in encouraging.

The Inquiry recommends that:

› **The ACTU and the wider union movement commit to broader and deeper engagement with civil society organisations around issues of mutual concern. As an initial step the ACTU should host a national conference of civil society organisations before the end of 2012 to examine the issue of insecure work.**

BUILDING A BETTER UNDERSTANDING OF INSECURE WORK

Despite the significant changes that have occurred in the labour market over the past 20 years, many aspects of the growth of insecure work are poorly understood.

Our Inquiry has identified a number of areas where further work is required, particularly around the collection and dissemination of accurate statistical information about working life.

The labour movement has a strong interest in getting a better understanding of these issues – both for the purpose of understanding the changes that have occurred when advocating for working Australians, and for training its own officials and members.

But these issues are not just in the interest of workers or the trade union movement. Governments and business should also be concerned about improving our understanding of the changing nature of work and its varied impact on family and community life, women, people from culturally and linguistically diverse backgrounds, and economic productivity.

Information that tracks progress in pay and conditions comprehensively is limited and patchy, partly because the Australian Workplace Industrial Relations Survey – a large national survey of industrial relations conducted by the Commonwealth – has not been undertaken since 1995. While some longitudinal studies such as the Household, Income and Labour Dynamics in Australia (HILDA) Survey provide insights, the household-based nature of HILDA means questions about the workplace can yield limited results.

Similarly, despite the marked growth of part-time work in recent decade – both permanent and casual – the public does not have regular, detailed access to statistical information that would allow wages and earnings to be examined on an hourly basis. Statistical information about incomes such as the ABS measure of average weekly earnings for all employees do not adequately account for part-timers and a range of insecure workers with fluctuating working hours. An annual survey of hourly earnings for all workers, disaggregated by form of working arrangement, gender, age, industry and occupation would shed light on this.

As we noted in Chapter 1, legitimate concerns have been expressed regarding the accuracy of data on the extent of labour hire arrangements in Australia. ABS data indicates that, in 2011, around 605,400 or 5% of Australian workers obtained their jobs through labour hire firms or employment agencies, but less than a quarter of these (141,700 workers) continued to be paid directly by the labour hire firm.[1] The Productivity Commission, however, estimated in 2004 that up to 300,000 workers are engaged through labour hire. Their analysis was based on 2004 HILDA survey data.[2] We believe the ABS is underestimating the number of labour hire workers, partly because they may be missing dependent contractors organised through labour hire arrangements, and partly due to differences in methodology that may lead to survey respondents misreporting their employment status. This needs to be addressed.

We noted the recent inclusion of gender indicators in data releases by the ABS – an important step forward. However these changes largely affect the format and release of existing data collections rather than changes to survey method. There is a pressing need to build on this by collecting and releasing disaggregated information that recognises that women workers are a heterogeneous grouping where gender intersects with ethnicity, age and disability. Where feasible, these cross-tabulations should be released as a matter of course as part of the data packages that accompany many ABS reports.

These issues were canvassed in the Women in Social and Economic Research's 2006 report *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database,* which called for a "comprehensive research program systematically examining the wages and conditions in key industries and occupations in which women workers are employed"[3]:

... monitoring and research with respect to the federal minimum wage and its impact on particularly vulnerable groups of women employees with limited bargaining power, especially women with a disability, young women, women from CALD [culturally and linguistically diverse] and Indigenous backgrounds, and women working in less protected sectors of the labour market such as outworkers.[4]

The WESKI report also highlighted the need for commonly applied working definitions of terms such as "flexible" and "family friendly" provisions, without which many existing indicators have limited meaning and applicability.[5]

Similarly, there is a lack of hard evidence available for assessing the impact of insecure work on workers and communities from CALD backgrounds. Workers from CALD backgrounds have a long history of working in marginalised sections of the labour market, and the evidence we heard about outworker, violence against insecure workers from CALD backgrounds, and migrant worker experiences in particular industries such as manufacturing and construction confirmed this is still the case. We noted that international students, workers in Australia on 457 visas and itinerant workers are particularly vulnerable to exploitation in forms of insecure work.

LINKING RESEARCH TO ACTION

The specific recommendations we make here would contribute greatly to a better understanding of how and where insecure work is growing in our economy, and the impact it has on workers and their families. But better information about the nature of insecure work alone won't change anything. There is a broader challenge that the union movement must take up to use this information for ongoing campaigns aimed at improving working life.

The Inquiry recommends that:

- **The Federal Government reinstitute a large-scale survey of workplace relations along the lines of the Australian Workplace Industrial Relations Survey undertaken in the 1990s. This survey should be conducted every five years and the results made available to the public free of charge.**
- **The Australian Bureau of Statistics' Employee Earnings and Hours survey be expanded and conducted annually so that data is available annually on the hourly earnings of part-time and casual workers, disaggregated by sex, industry occupation, age and method of pay setting.**
- **The Australian Bureau of Statistics address gaps in the annual Forms of Employment survey that lead to the underreporting of the use of agency workers and labour hire.**
- **The Federal Government increase the resources allocated to the Australian Bureau of Statistics to ensure that it can provide adequate data on the earnings and conditions of people engaged in insecure work, including the creation of average hourly earnings series for all workers and for workers in various forms of employmentThe Australian Bureau of Statistics respond to the need for gender disaggregated data on the links between working conditions and work-family responsibilities, and for commonly applied definitions of "flexible" and "family friendly" working arrangements.**
- **To assist in understanding the impact of insecure work on workers and communities from CALD backgrounds, the Federal Government establish an independent, professional research body similar to the former Bureau of Immigration, Multicultural and Population Research.**

PENELOPE'S STORY

A PhD BUT NO PERMANENT JOB

Penelope has a PhD and is currently employed on two short-term contracts as a research assistant in two different departments at a Group of Eight university.

Although she has control over when she works, her jobs are very unstable and insecure. For example, one of the jobs, was initially a 50 hour contract, later extended by a further 80 hours. But there was a long delay in knowing whether it would be extended.

"This has become quite a stressful and anxious way to live," Penelope says.

Staff employed on short-term contracts are not provided with office space by the university. Penelope is fortunate that her superiors have offered her use of their own desks when they are not using them, but this is not conducive to working productively, so Penelope tends to work from home *"which of course then leads to feelings of isolation and as though I don't have a 'real job' with colleagues and a workplace".*

"I know I'm not the only one, and something really needs to change."

Her hours and pay-packet do change from week to week, depending on the demands of the two projects.

"As a casual employee I have no access to conditions like sick leave, paid parental leave, etc. I also have no access to funding to attend things like academic conferences, which are an important part of the academic career progression," Penelope says.

"A large proportion of the academic workforce in Australia are also on casual contracts – either teaching, researching or general staff. I know I'm not the only one, and something really needs to change.

"Career prospects are few and far between for someone in my position. I have a PhD but full-time positions are rare and extremely competitive. My current and previous roles (as a tutor and research assistant on various projects) have definitely developed my skills, but there is no clear pathway in terms of training and development that might lead to promotion or progression towards more secure employment.

"The impact on my social/family life is sometimes negative, particularly at those times when I might be facing unemployment again – it is stressful!

"If my partner weren't in a stable full-time job, I would have needed to have given up casual academia a long time ago. If I was single I would not be able to afford to rent where we live now. Some weeks I would, but other weeks I wouldn't – and it's this unpredictability which needs to change."

Penelope made a submission to the inquiry.

COLIN'S STORY

CASUAL IN THE OFFSHORE OIL AND GAS INDUSTRY

Colin has been employed as a mechanical tradesperson in the offshore oil and gas industry for the past 13 years. Although based at the same plant the entire time, he has been employed under three different contractors.

The first contractor, had a fully casualised workforce and Colin had no guaranteed hours and no leave entitlements. Through bargaining they managed to get semi-permanency with the second contractor, which meant that trades people could work as "weekly hire" employees which included annual leave, sick leave and a one week on/one week off roster. This "entitlement" has transferred over to the latest contractor Colin is working under.

The main problem with being a weekly hire employee is that you are only guaranteed work when there is a project for you to work on. Colin has looked at his tax statements and seen some years where the work has been good and he has therefore earned a good wage, and other years where he may only have worked for 15 weeks in a year.

This means Colin has to put aside money as a "rainy day nest egg" in case he is not given work.

"Twenty plus years after working for my first labour hire agency, I can accurately estimate the period of time I have spent in a permanent job as being 5 years," Colin says.

"The number of job applications for work of a permanent nature that I have filled out would be in the hundreds.

"My concern is that in the offshore industry in which I work, the client operator of the production facilities has engaged three different contractors over the past 12 years (during my term of tenure) to deliver the same or similar service to the offshore platforms in Bass Strait.

"I've had to apply for the same job on three separate occasions, been terminated once, made redundant once and now find myself in sporadic casual work where I have worked for just two weeks in the past three months.

"This financial year to date I've probably only worked six or seven full weeks (one week on, one week off) and I have no control over this. If we were able to cap the size of the casual pool in bargaining this wouldn't be so bad for us weekly hire 'permanents'."

It is also very difficult to plan one's life as a weekly hire employee as the only time he can guarantee he will be available for family functions or appointments is when he is at work (he can then guarantee that he will have the entire week after that free). During periods of non-work Colin must wait by the phone to find out when he will be working next.

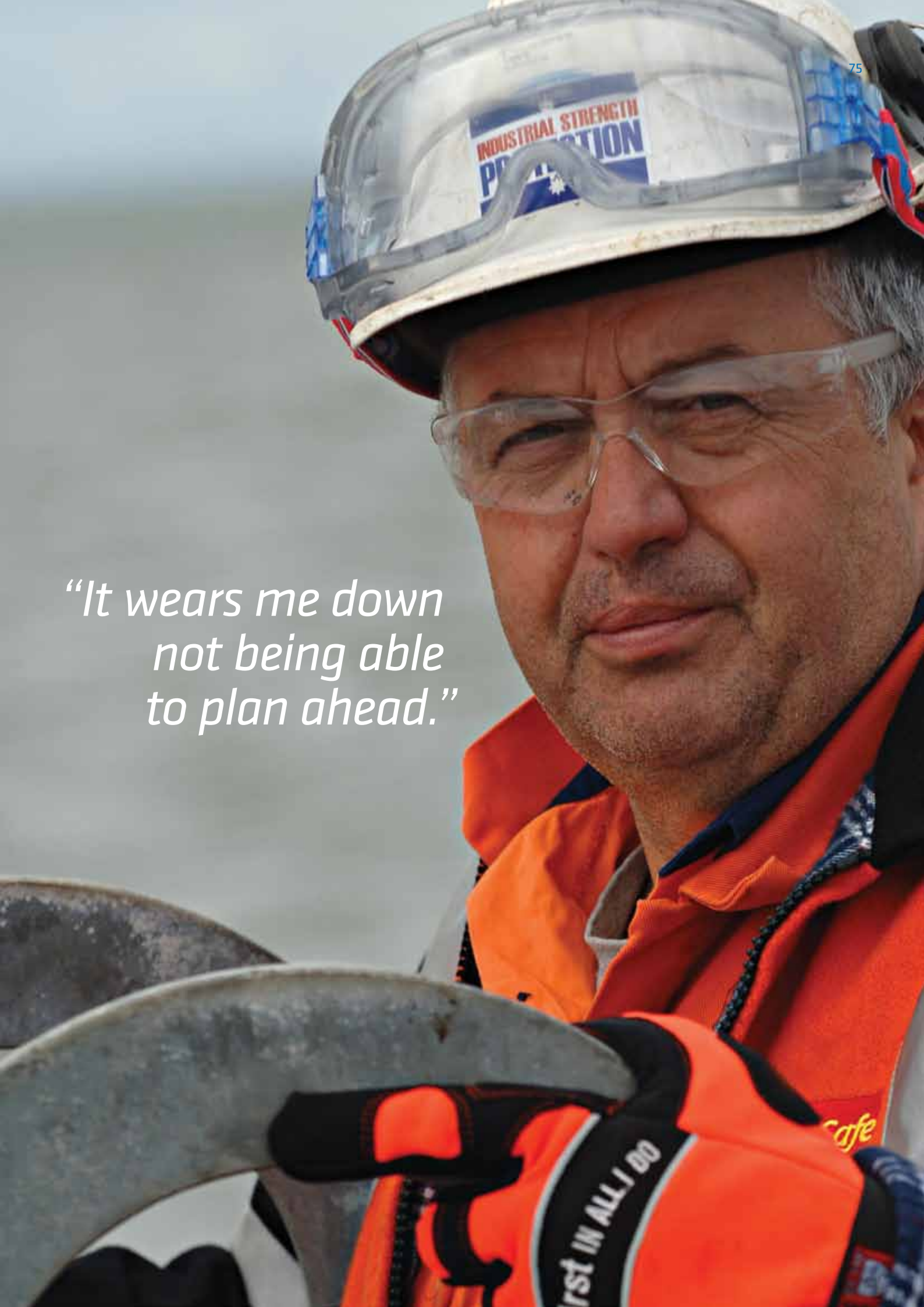
"I feel that with this arrangement I cannot control my lifestyle and it wears me down not being able to plan ahead," Colin says.

"Commitments to the most basic functions of everyday family life become stressful and I am stressed because I am continually letting people down due to work requirements or the prospect of having to respond to call to go to work.

"I can only plan my life for the week I am at work as I know (as determined by my EBA) that I will have the week after off. I can say I am unavailable I suppose but then I'll fall foul of my manager.

"I suppose I am on call really."

Colin made a submission to the inquiry.



"It wears me down not being able to plan ahead."

APPENDICES

APPENDIX A: TIMELINE OF THE INQUIRY

24 October *ACTU launches the Independent Inquiry into Insecure Work*
2 November *Inquiry opens for submissions*
20 January *Deadline closes for initial written submissions*
February & March *Inquiry panel conduct public hearings around Australia*
13 February *Brisbane*
14 February *Mackay*
15 February *Townsville*
20 & 21 February *Perth – Central Coast*
21 February *Newcastle – Perth*
22 February *Port Macquarie*
23 February *Darwin*
27 & 28 February *Sydney*
02 March *Hobart*
05 March *Penrith – Traralgon*
06 March *Bathurst*
07 March *Canberra*
09 March *Wollongong*
13 March *Bendigo – Tamworth*
14 March *Ballarat*
15 March *Geelong – Lismore*
20 March *Adelaide*
21 & 22 March *Melbourne*
18 April *National Press Club address by Brian Howe AO, the chair of the Independent Inquiry into Insecure Work in Australia*
15 May *Final report presented to ACTU Congress*

PANEL MEETINGS

Members of the panel also met with and heard evidence from academics, civil society groups, local indigenous leaders, national union leaders, representatives of The Productivity Commission and members of the roundtable for the Committee for Economic Development of Australia.
Three formal panel meetings were held during which the panel deliberated on our findings and recommendations.

APPENDIX B: WRITTEN SUBMISSIONS FROM ORGANISATIONS AND ACADEMICS

The Inquiry received 521 submissions, including the following 67 from unions, trades and labour councils, faith-based organisations, community organisations, academics, and research institutions:

- Anglicare Australia
- Anglicare Victoria
- Australian and International Pilots Association
- Australian Catholic Council for Employment Relations
- Australian Council of Social Services
- Australian Council of Trade Unions
- Australian Council of Trade Unions Women's Committee
- Australian Domestic and Family Violence Clearinghouse – Safe at Work Safe at Home project
- Australian Education Union – National
- Australian Education Union – NT Branch
- Australian Education Union– SA Branch
- Australian Education Union – Tasmanian Branch
- Australian Human Rights Commission – Age Discrimination Commissioner
- Australian Human Rights Commission – Sex Discrimination Commissioner
- Australian Institute for Employment Rights
- Australian Manufacturing Workers' Union
- Australian Nursing Federation
- Association of Professional Engineers, Scientists and Managers Australia
- Australian Service Union
- Asylum Seeker Resource Centre – Victoria
- Australian Workers' Union
- Australian Young Christian Workers
- Associate Professor Jill Murray, Law School, La Trobe University
- Beyond Blue
- Brotherhood of St Laurence
- Bryan Kavanagh, Land Values Research Group
- Carers NSW
- Catholic Social Services Australia
- Catalyst Australia
- Celia Briar and Anne Junor, Industrial Relations Research Centre, Australian School of Business, University of NSW
- Centre for Employment and Labour Relations Law, The University of Melbourne
- Centre for Work + Life, University of South Australia
- CEPU Communication Workers Union
- CEPU – Postal & Telecommunication, NSW
- CEPU – Postal & Telecommunications, Victoria
- CFMEU – Construction & General, National
- CFMEU – Construction & General, NSW
- CFMEU – Mining & Energy, Queensland
- Community and Public Sector Union – Civil Service Association WA
- Community and Public Sector Union – PSU Group
- Community and Public Sector Union – SPSF Federal Office
- Disability Employment Australia
- Dr Dan Woodman, School of Social and Political Sciences, University of Melbourne
- Dr David Peetz, Centre for Work, Organisation and Wellbeing, and Department of Employment Relations and Human Resources, Griffith University
- Dr Jeremy Moss & Dr Michael McCann, Social Justice Initiative, University of Melbourne
- Dr M. McGann (Melbourne University); Dr J. Moss (Melbourne University) and Dr K. White (Australian National University).
- Dr Terry Olesen, Doctoral Candidate, Psychology, Edith Cowan University
- Dr Veronica Sheen
- Employment Law Centre of WA
- Family Relationship Services Australia
- Federation of Community Legal Centres, Victoria
- Federation of Ethnic Community Councils of Australia
- Foundation for Young Australians
- Hanover Welfare Services
- Health and Community Services Union, Victoria
- Health Service Union – National
- Helen Hodgson, National Foundation for Australian Women
- Jesuit Social Services
- JobWatch
- Kingsford Legal Centre
- Marie Coleman and Helen Hodgson, National Foundation for Australian Women
- Media, Entertainment and Arts Alliance
- National Council of St Vincent de Paul
- National Tertiary Education Union – National
- National Tertiary Education Union (ACT Branch)
- National Union of Workers
- National Welfare Rights Network
- Network of Working Women's Centres
- NSW Teachers Federation
- Pay Justice Action
- Professor Rosemary Owens, Chair – South Australian Ministerial Advisory Committee on Work Life Balance
- Professor Rosemary Owens and Professor Andrew Stewart, Adelaide Law School, The University of Adelaide
- Queensland Council of Unions
- Queensland Nurses' Union
- Queensland Teachers' Union
- SA Council of Social Services
- SA Unions
- Scarlet Alliance
- Sharni Chan, PhD candidate, Macquarie University
- Shoalhaven Anti-Poverty Committee
- Shop Distributive and Allied Employees Association
- Social Accounting and Accountability Research Centre, University of Wollongong
- Social Justice Committee of the St Vincent De Paul Society of Queensland
- Tenants Union of Victoria
- Textile, Clothing & Footwear Union of Australia
- The Australia Institute
- The Foundation for Young Australians
- Transport Workers Union – National
- Transport Workers Union – NSW Branch
- Transport Workers Union – WA Branch
- Unions ACT
- UnionsNSW
- UnionsNSW Women's Committee
- Unions NT
- Unions Tasmania Women's Committee
- UnionsWA
- United Voice
- Uniting Justice Australia
- Workplace Research Centre, School of Business, The University of Sydney
- Youth Affairs Council of Victoria

In addition to these submissions, 458 were received from individual workers, many of whom requested anonymity.

APPENDIX C: HEARING PROGRAM

MONDAY, 13 FEBRUARY 2012
BRISBANE CONVENTION CENTRE, BRISBANE, QLD

Panel
Brian Howe (chair), Paul Munro, Sara Charlesworth, Jill Biddington

Witnesses
- Ron Monaghan – *Secretary, Queensland Council of Unions*
- Scott Connolly – *Assistant National Secretary, Transport Workers Union*; Grant Mitchell – *Qantas employee/ Transport Workers Union member*
- Margaret Lee – *National Tertiary Education Union;* Marianne Treuen – *Academic at University of Queensland / National Tertiary Education Union member*
- Kerriann Dear – *Queensland Working Women's Service*
- Kim Sunajana, Peggy Mager – *Together members*
- Lisa Treston – *Synapse Brain Injury Association*
- Robert McDonald – *National Union of Workers member*
- Nick Holiday – *Queensland Independent Education Union organiser;* Arun Warsawski, Judith White – *Queensland Independent Education Union members*

TUESDAY, 14 FEBRUARY 2012
MACKAY REGIONAL COUNCIL RECEPTION ROOM, MACKAY, QLD

Panel
Paul Munro (chair), Jill Biddington

Witnesses
- John Battams – *President, Queensland Council of Unions*
- Serah-Jane Morgan – *Together member*
- Jim Pearce – *Mining Communities advocate*
- Nicola Hinder – *Queensland Teachers Union member*
- Loris Gaffney – *Regional Organiser, United Voice*
- Mandy Fisher – *Together member*
- Wilma Grant – *United Voice member*

WEDNESDAY, 15 FEBRUARY 2012
RYDGES SOUTHBANK, TOWNSVILLE, QLD

Panel
Paul Munro (chair), Jill Biddington

Witnesses
- Les Moffit – *President, QCU Townsville*
- Lesley Henderson – *United Voice*
- Mark Harrison – *Electrical Trades Union*
- Peter Walley – *Thompson, James Cook University branch organiser, National Tertiary Education Union*
- Jill O'Sullivan – *National Tertiary Education Union member*
- Peter Hindle – *Sub-Branch President, CFMEU (Construction & General)*
- Meagan Richardson – *United Voice member*

MONDAY, 20 FEBRUARY 2012
ERINA TRUST COMMUNITY HALL, GOSFORD, NSW

Panel
Brian Howe (Chair) and Jill Biddington

Witnesses
- Deb Westacott – *Secretary, Central Coast Unions and organiser NSW Teachers Federation National Tertiary Education Union four casual academics University Newcastle*
- United Voice NSW member and partner – *school canteen worker*
- Laurie Maher – *Mayor of Gosford and CEO of Coast Shelter, emergency accommodation centre*
- Joe Saez – *Electrical linesman Ausgrid, ETU delegate and* Steve Butler – *ETU NSW branch official*
- Rob Long and Sharryn Usher – *NSW Teacher's Federation TAFE organisers,* and Terry Quinlan – *TAFE teacher, NSW Teacher's Federation member*
- Health Services Union East member, local hospital
- Scott Rickard – *organiser Finance Sector Union NSW Branch and banking sector member*
- Shane Silver – *Operations Manager Shelta Central Coast*

MONDAY, 20 FEBRUARY 2012
STATE LIBRARY OF WESTERN AUSTRALIA, PERTH, WA

Panel
Sara Charlesworth

Witnesses
- Simone McGurk – *Secretary, Unions WA*
- Pat Branson – *Assistant Secretary, Australian Services Union (WA Branch)*
- Toni Walkington – *Secretary, Community and Public Sector Union/Civil Service Association; CSA members*
- Youth Affairs Council of WA
- John O'Donnell – *President, Communications Electrical and Plumbing Union (Communications Workers Union Division);* CEPU members
- Irina Cattalini – *CEO, WA Council of Social Services;* Chris Twomey, *Director of Social Policy, WACOSS*
- Alex Falconer – *National Union of Workers;* NUW members
- Sara Kane – *Manager, Employment Law Centre of WA;* Jessica Smith – *Acting Principal Solicitor; Employment Law Centre Client*

TUESDAY, 21 FEBRUARY 2012
STATE LIBRARY OF WESTERN AUSTRALIA, PERTH, WA

Panel
Sara Charlesworth

Witnesses
- Simone McGurk, Tim Dymond – *Unions WA*
- Carolyn Smith – *Assistant Secretary, United Voice;* United Voice members
- Natalie Jaques – *State School Teachers Association*
- Terry Oleson – *Doctoral Candidate, Edith Cowan University*

TUESDAY, 21 FEBRUARY 2012
NEWCASTLE CITY HALL, NEWCASTLE, NSW

Panel
Brian Howe (chair), Jill Biddington

Witnesses
- Gary Kennedy – *Secretary, Newcastle Trades Hall Council*
- National Tertiary Education Union two casual and one permanent academic – *University Newcastle*
- Tony Callinan – *Australian Workers Union, President Newcastle & Northen Regions Branch;* three AWU members – *labour hire traffic controllers*
- Harry Williams – *university student and AMWU member*
- Dennis Outram – *Deputy Secretary Maritime Union of Australia, Northern NSW Branch;* Phil Crosbie – *MUA member and stevedore labour hire worker*
- Rob Long and Sharryn Usher – *NSW Teacher's Federation TAFE organisers,* and two casual TAFE teachers – *NSW Teacher's Federation members*
- Barbara Nebart – *Secretary Shop Distributive and Allied Employees Association Newcastle and Northern Branch and retail sector worker*
- Jim O'Neill – *Australian Manufacturing Workers Union Newcastle official*
- two AMWU members – *boilermaker and labour hire workers*
- Ron Hunter – *Community and Public Sector Union (SPSF Group) organiser and University of Newcastle admin worker*
- Mid-wife – *NSW Nurses Association member*

WEDNESDAY, 22 FEBRUARY 2012
PORT MACQUARIE LIBRARY, PORT MACQUARIE, NSW

Panel
Jill Biddington

Witnesses
- Jim Hutcheon – *Unions Mid-North Coast President, CFMEU (C&G) Northern NSW Organiser*
- Mark Hughes – *Australian Workers Union, Newcastle & Northen Regions Branch Organiser;* AWU member – *labour hire traffic control*
- Narelle Rich – *United Services Union Organiser*
- Kathy Nicholson – *NSW Teachers Federation TAFE Organiser;* two casual TAFE lecturers
- Rev. Elizabeth Raine and Rev. John Squires – Uniting Church Australia, NSW Synod, *The Mid-North Coast Presbytery, Wauchope & District Congregation*
- Michael Jones – *small business owner representing wife and daughter health care workers*
- Lynda Binskin – *Registered Nurse public health system, NSW Nurses Association representative*
- Lance Thompson – *local employer brush factory owner*
- Retail and hospitality casual worker – *local club*

THURSDAY, 23 FEBRUARY 2012
DARWIN CONVENTION CENTRE, DARWIN, NT

Panel
Brian Howe (chair), Sara Charlesworth
Witnesses
- Heinz Schmitt – *President, Unions NT'*
- Matthew Gardiner – *NT Branch Secretary, United Voice*
- Mick Huddy – *NT Organiser, Construction, Forestry, Mining and Energy Union*
- Mark Crossin – *Australian Manufacturing Workers Union*
- Yvonne Falckh – *NT Branch Secretary, Australian Nursing Federation*
- Rob Hitchcock
- Rachael Uebergang – *Co-ordinator, NT Working Women's Centre*
- Peter Clisby, *NT Branch Secretary*; Nadine Williams, *NT Branch Organiser – Australian Education Union*
- Kay Densley – *NT Regional Director, Community and Public Sector Union*

MONDAY, 27 FEBRUARY 2012:
STATE LIBRARY OF NEW SOUTH WALES, SYDNEY, NSW

Panel
Brian Howe (chair), Paul Munro, Jill Biddington, Sara Charlesworth
Witnesses
- Professor John Buchanan – *Director, Workplace Research Centre, University of Sydney*
- Genevieve Kelly – *NSW Secretary, National Tertiary Education Union;* casual lecturer – *University Western Sydney;* casual lecturer – *University of NSW*
- Anne Junor – *Deputy Director, Industrial Relations Research Centre, University of NSW*
- Lina Cabaero, *Co-ordinator*; Angela Zhang, *Chinese community worker – Asian Women at Work and "Helen" outworker*
- Joanne Copper, *Lead Organiser and Gina Agius Organiser Finance Sector Union*; three Westpac workers
- Chris Warren – *Federal Secretary, and Bede Payne, Media, Entertainment & Arts Alliance*
- Mark Lennon – *Secretary, Unions NSW*; Emma Maiden – *Deputy Secretary Unions NSW*
- Jim Metcher, NSW Branch Secretary – *Communications Division , P&T Group, Communications, Electrical and Plumbing Union;* Phillip Kessey
- Branch Official – *NSW P&T Branch of the CEPU*
- Tony O'Donnell – *Organiser, National Union of Workers, NSW Branch*

TUESDAY, 28 FEBRUARY 2012
STATE LIBRARY OF NEW SOUTH WALES, SYDNEY, NSW

Panel
Brian Howe (chair), Paul Munro, Jill Biddington, Sara Charlesworth
Witnesses
- Elizabeth Meyer – *Solicitor, Kingsford Legal Centre, University of NSW*; Jo Montgomery, David McGill – *students Law Faculty, UNSW*
- Jenny Diamond – *Secretary, NSW Teachers Federation;* Rob Long, *NSW Teacher's Federation TAFE organiser;* casual TAFE lecturer
- Chikmann Koh – *Construction, Forestry, Mining and Energy Union (C&G) NSW Branch Korean construction worker organiser*
- Leah Tucker – *Australian Workers Union Greater NSW Branch organiser, former mushroom production seasonal worker*
- Hung Nguyen – *Textile, Clothing and Footwear Union of Australia organiser*; two Vietnamese women garment makers
- Paul Reid – *United Services Union organiser and Holroyd Council delegate Raffaele Catanzariti*
- Pino Migliorino – *Chair, Federation of Ethnic Communities' Councils Australia*; Dr Loucas Nicolaou – *Director, FECCA*
- Elenie Poulos – *CEO, Uniting Justice Australia; Siobhan Marren, Senior Policy Officer, Uniting Justice Australia*; Lynette Brady – *Wesley Mission*
- Maree O'Halloran – *President National Welfare Rights Network*, and Gerard Thomas – *Policy & Media Officer National Welfare Rights Network*
- Jo Schofield – *Executive Director Catalyst Australia Inc*
- George Simon – *Australian Manufacturing Workers Union NSW organiser*
- Steve Turner – *Assistant Secretary, Public Service Association;* Petra McNeilly Rutledge – *PSA organiser;* two education sector workers

FRIDAY, 2 MARCH 2012
THE WOOLSTORE, HOBART, TAS

Panel
Brian Howe (chair), Sara Charlesworth
Witnesses
- Angela Briant – *Acting Convenor, TLC Women's Committee*
- Dr Megan Alessandrini – *Researcher at University of Tasmania*
- Tom Lynch – *President, Unions Tasmania*
- John Short – *State Secretary, Australian Manufacturing Workers Union*
- Neroli Ellis – *State Secretary, Australian Nursing Federation;* ANF members
- Jill Batt – *National Union of Workers Organiser;* NUW members
- Paul Griffin – *State Secretary, Shop Distributive and Allied Employees Association;* SDA member
- Jeff Garsed – *Research Officer, Australian Education Union;* AEU members

MONDAY, 5 MARCH 2012
CENTURY INN, TRARALGON, VIC

Panel
Brian Howe
Witnesses
- John Parker – *Secretary, Gippsland Trades & Labour Council*
- Anne Murphy, Lisa Price – *GTLC Women's Action Coalition*
- Dr Larissa Bamberry – *RMIT University*
- CFMEU (Construction & General) member
- Emma Kerin – *National Union of Workers;* NUW member

MONDAY, 5 MARCH 2012
PENRITH PANTHERS, PENRITH, NSW

Panel
Paul Munro, Jill Biddington
Witnesses
- Linda Everingham – *Penrith Valley Community Unions and Organiser Australian Manufacturing Workers Union;* Mary Yaager – *Campaign Director Unions NSW*
- Brad Parker – *Construction, Forestry, Mining and Energy Union (C&G) NSW Branch organiser;* Stephen Keenan – *traffic control labour hire worker and CFMEU member*
- Mark Ptolemy – *National Union of Workers NSW Branch official*
- Paul McAllister – *United Voice NSW Branch "Clean Start" organiser;* United Voice member – *retail cleaner*
- Phil Walker – *Shop Distributive and Allied Employees' Union NSW Branch organiser;* retail worker SDA delegate
- Cecil Bodnar – *Australian Workers Union Greater NSW Branch organiser*; egg farm worker – *AWU delegate*
- Sharon Vasser – *Public Service Association organiser; public sector worker on rolling contracts*; two public schools assistants –*PSA members*
- Marina Findeis – *Fire-fighter Fire Brigade Employees' Union Retained fire-fighters delegate*
- National Tertiary Education Union casual – *academic University Western Sydney*
- Public school teacher non-permanent, *NSW Teachers Federation member*

TUESDAY, 6 MARCH 2012
BATHURST ENTERTAINMENT CENTRE, BATHURST, NSW

Panel
Paul Munro, Jill Biddington
Witnesses
- National Tertiary Education Union member, Charles Sturt University, Bathurst – *academic*
- Dusty Miller –*Construction, Forestry, Mining and Energy Union (Forestry Division) Southern NSW organiser (via phone)*
- Greg Matthews – *Fire-fighter part-time/retained Fire Brigade Employees' Union member;* Greg Mitchell – *organiser FBEU Fire-fighter part-time/retained*
- IT worker Bathurst NSW public sector – *Public Service Association member*
- Retail & payroll contract worker, Blue Mountains
- Casual worker health & community sector, volunteer with Rural Fire Service
- Gwen Arger –*casual public school teacher NSW Teachers Federation member*
- Central West Union Alliance and PSA delegate

WEDNESDAY, 7 MARCH 2012
THE GRIFFIN CENTRE, CANBERRA, ACT

Panel
Paul Munro, Jill Biddington
Witnesses
- Kim Sattler – *Secretary, Unions ACT*; Peter Dunn, *Unions ACT Youth Officer*, William Mudford
- Lea Powell – *NSW Teachers Federation member*
- Stephen Darwin – *National Tertiary Education Union ACT Division Secretary;* NTEU members
- Louise Persse – *Community Public Sector Union Assistant National Secretary;* CPSU member
- Damien Kirkwood – *CEPU (Plumbers Division) ACT Secretary*
- Glenn Fowler – *Australian Education Union ACT Branch Acting Secretary*; Mike Fitzgerald – *AEU Organiser;* AEU Member
- Yvette Berry – *United Voice*
- Marie Coleman – *National Foundation for Australian Women*

FRIDAY, 9 MARCH 2012
WOLLONGONG TOWN HALL, WOLLONGONG, NSW

Panel
Brian Howe (chair), Paul Munro, Jill Biddington
Witnesses
- Arthur Rorris – *Secretary, South Coast Labour Council*
- Simon Pomfret – *Executive Director, Illawarra Regional Information Service*
- Tony Sheldon – *National Secretary, Transport Workers Union;* Andrew Jones – *Qantas catering TWU delegate*
- Barry Jackson – *Qantas pilot and Australian & International Pilots Association*

- Mark Pannowitz – *Organiser, Finance Sector Union;* two finance sector workers FSU members
- Lee Moerman – *academic Social Accounting and Accountability Research Centre,University of Wollongong*
- Scott Carter – *Honorary Deputy Branch Secretary, Maritime Union of Australia;* MUA member –*full time deckhand;* Phillip Hawke – *MUA member*
- Lorraine Watson, TAFE lecturer, *NSW Teachers Federation member*
- Judith Reardon – *Coordinator, East Nowra Neighbourhood Centre/Shoalhaven Anti-Poverty Group*
- Community and Public Sector Union (PSU Group) delegate and organiser for Department of Human Services
- Wollongong Lord Mayor Councillor Gordon Bradbery OAM
- National Tertiary Education Union member, *casual academic University of Wollongong*
- Wayne Phillips –*Official Australian Workers Union, Port Kembla South Coast & Southern Highlands Branch;* three AWU members in the steel and manufacturing industry

TUESDAY, 13 MARCH 2012: TAMWORTH REGIONAL LIBRARY AND GALLERY, TAMWORTH, NSW

Panel
Jill Biddington
Witnesses
- Casual bus driver - *Transport Workers Union NSW Branch member and wife, public sector worker and PSA member*
- Denise McHugh, school teacher – *Independent Education Union delegate*
- Chris Preston – *Organiser, United Services Union*
- Australian Workers Union delegate, food production
- University of New England two casual academics - *National Tertiary Education Union members*
- Mel Smith – *Organiser, NSW Teachers Federation*
- Steve Mears – *Organiser, Public Service Association*
- Job Services Australia (JSA) employment services provider - *Case worker*
- Larry Apthorpe – *Anglicare Northern Inland (via phone)*
- Job Services Australia (JSA) employment services specialist disability provider - *Case worker*

TUESDAY, 13 MARCH 2012 BEST COMMUNITY DEVELOPMENT, BENDIGO, VIC

Panel
Brian Howe (chair), Sara Charlesworth
Witnesses
- Karen Kyle – *Secretary, Bendigo Trades Hall Council*
- National Union of Workers member
- Local Bendigo workers
- Australian Education Union member
- Lisa Chesters – *United Voice organiser;* United Voice members

WEDNESDAY, 14 MARCH 2012 BRACE EDUCATION AND TRAINING, BALLARAT, VIC

Panel
Brian Howe (chair), Sara Charlesworth
Witnesses
- Brett Edgington – *President;* Paul Clempson, *Secretary – Ballarat Trades Hall Council*
- Deb Vallance – *National Occupational Health & Safety Co-ordinator, Australian Manufacturing Workers Union*
- Gabrielle Whitehead
- Kevin Ziball – *CEO, Child and Family Services Ballarat*
- Angela McCarthy – *Organiser, Australian Manufacturing Workers Union*
- Steve Abboushi – *Organiser Community and Public Sector Union; CPSU member*
- United Voice member
- Australian Education Union member

THURSDAY, 15 MARCH 2012 GEELONG WEST TOWN HALL, GEELONG, VIC

Panel
Sara Charlesworth
Witnesses
- Tim Gooden – *Secretary, Geelong Trades Hall Council*
- Welfare sector worker
- Christine Couzens – *Geelong Trades Hall's Womens' Unionist Network*
- Peter Dorling – *Northern Futures / Executive Director, Committee for Geelong*
- Emma Kerin – *National Union of Workers; NUW member*
- Gary Ryan – *Deakin University Organiser, National Tertiary Education Union*
- Kirsten Hargreaves – *Employment Manager, Diversitat*
- Australian Education Union member

THURSDAY, 15 MARCH 2012: SOUTHERN CROSS UNIVERSITY, LISMORE, NSW

Panel
Jill Biddington
Witnesses
- Ron Birch - *United Voice NSW Branch retired organiser & representative Far North Coast Alliance*
- Craig Chandler – *Organiser, United Services Union*
- Angela Pollard – *CEO, Northern Rivers Community Legal Centre*
- Casual worker public health administration – *Health Services Union member*
- Southern Cross University seven casual academics – *National Tertiary Education Union members*
- Katrina Luckie – *CEO, Northern Rivers NSW Regional Development Authority*
- Public school language support tutor for aboriginal students

TUESDAY, 20 MARCH 2012 ADELAIDE TOWN HALL, ADELAIDE, SA

Panel
Brian Howe (chair), Sara Charlesworth
Witnesses
- Janet Giles – *Secretary, SA Unions*
- United Voice member
- National Tertiary Education Union members
- Anne Purdy – *Industrial Advocate, Young Workers Legal Service;* individual workers
- Tim Hardie – *Legal & Industrial Officer, Australian Manufacturing Workers Union*
- Dr Catherine Earl
- National Tertiary Education Union members
- Correna Haythorpe – *Branch President, Australian Education Union;* AEU members
- Tim Palmer – *National Union of Workers organiser;* NUW members
- Dr Natalie Skinner – *Centre for Work + Life, University of South Australia*
- Professor Rosemary Owen – *University of Adelaide Law School*
- Ross Womersley – *Executive Director, SA Council of Social Services*

WEDNESDAY, 21 MARCH 2012 MELBOURNE TOWN HALL, MELBOURNE, VIC

Panel
Brian Howe (chair), Paul Munro, Jill Biddington, Sara Charlesworth
Witnesses
- David Cragg – *Assistant Secretary, Victorian Trades Hall Council;* Luke Hilakari – *Industrial and Campaigns Officer, VTHC*
- Gabrielle Marchetti – *Job Watch*
- Dr Lucas Walsh – *Director of Research and Evaluation, Foundation for Young Australians*
- Dr Veronica Sheen – *Monash University*
- Lisa Heap – *Executive Director, Australian Institute of Employment Rights*
- Lynette May – *CEO, Disability Employment Australia;* Bevan Burkin – *Policy Officer, DEA*
- Associate Professor John Howe – *Director of the Centre for Employment and Labour Relations Law, Melbourne Law School*
- Dan Dwyer – *National Secretary, Communication Electrical and Plumbing Union (Communication Workers Union Division);* Len Cooper – *National President & Victorian Branch Secretary, CEPU (CWU);* Ros Eason – *National Industrial Officer, CEPU (CWU)*
- Cassandra Goldie – *CEO, Australian Council of Social Services;* Peter Davidson – *Senior Policy Officer, ACOSS*
- Lucie O'Brien – *Policy Officer, Federation of Community Legal Centres;* Denis Nelthorpe – *Footscray Community Legal Centre*
- Ewen Kloas – *CFMEU member*

THURSDAY, 22 MARCH 2012 MELBOURNE TOWN HALL, MELBOURNE, VIC

Panel
Brian Howe (chair), Paul Munro, Jill Biddington, Sara Charlesworth
Witnesses
- Charlie Donnelly – *National Secretary, National Union of Workers;* Tim Nelthorpe – *Researcher, NUW*
- Anthony O'Donnell – *La Trobe University Law School*
- Dr Iain Campbell – *Global Studies, Social Science & Planning, RMIT University*
- Dr Dan Woodman – *Melbourne University Life Patterns project*
- Sharon Parkinson – *RMIT; Toby Archer – Tenants Union of Victoria;* Kate Colvin – *Australians for Affordable Housing*
- Ingrid Stitt – *Secretary, Australian Services Union (Victorian Private Sector Branch);* ASU members
- Jeannie Rea – *President, National Tertiary Education Union;* Ken McAlpine, *Senior Industrial Officer, NTEU;* NTEU members
- Robyn May – *PhD Candidate, University of Queensland*

The Panel wishes to thank the dozens of workers who gave evidence at the hearings but have not been named here because they requested anonymity.

FOOTNOTES

CHAPTER 1

[1] ABS, Forms of Employment, November 2011 (Released April 2012), Cat 6359.0

[2] J Burgess, I Campbell and R May "Pathways from Casual Employment to Economic Security: the Australian Experience", *Social Indicators Research* (2008), 88, 161, 165, supplemented by ABS, *Forms of Employment*, November 2010, Cat. 6349.0

[3] ABS, *Forms of Employment*, November 2011, Cat 6359.0

[4] J Burgess, I Campbell and R May "Pathways from Casual Employment to Economic Security: the Australian Experience", *Social Indicators Research* (2008), 88, 161, 165, supplemented by ABS, Forms of Employment, November 2011, Cat. 6349.0

[5] ABS, *Employee Earnings, Benefits and Trade Union Membership*, Cat 6310.0, 2011

[6] ABS, *Forms of Employment*, November 2011, Cat 6359.0

[7] ABS, *Employment Arrangements, Retirement and Superannuation*, Cat 6361.0, 2007

[8] ABS, *Measures of Australia's Progress 2010: Casual Employees*, 2010

[9] ABS, *Forms of Employment*, November 2011, Cat 6359.0

[10] ABS, *Forms of Employment*, November 2011, Cat 6359.0

[11] ABS, *Forms of Employment*, November 2011, Cat 6359.0

[12] *Race to the Bottom: Sham Contracting in Australia's Construction Industry*, A Report by CFMEU Construction & General, March 2011, 2

[13] ABS data only covers employees and not dependent contractors organised through labour hire arrangements. Underestimation can also result because people misunderstand and report their employment status.

[14] HILDA (Household, Income and Labour Dynamics in Australia), 2002. *HILDA Survey Annual Report 2002*. Melbourne Institute of Applied Economic and Social Research, The University of Melbourne, produced in R Hall, "Temporary Agency Work and HRM in Australia: Cooperation, Specialisation and Satisfaction for the Good of All?" *Personnel Review*, 35(2), 158, 2006; and Productivity Commission, "The Growth of Labour Hire Employment in Australia", Laplagne, P, Glover, M and Fry, T, February 2005

[15] Productivity Commission, "The Growth of Labour Hire Employment in Australia", Laplagne, P, Glover, M and Fry, T, February 2005

[16] Federation of Community Legal Centres, *Submission*

[17] ABS, *Labour Force, Australia, Detailed, Quarterly*, Cat. 6291.0.55.01, July 2011

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