

What to do about casual work?

A critical review of ‘Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia’

A report prepared for The Chifley Research Centre by:
Barbara Pocock, Labour Studies, University of Adelaide
John Buchanan, ACIRRT, University of Sydney
Iain Campbell, Centre for Applied Social Research, RMIT

Richard Curtain
Curtain Consulting, Melbourne
www.curtain-consulting.net.au

Introduction

The issue of the rapid growth in casual work in Australia is now more than mere academic interest. Casual work has become a major public policy issue as several state governments, state and federal industrial relations tribunals and, most recently, the Australian Labor Party have taken up the issue. A report ‘*Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*’, commissioned by the ALP’s Chifley Research Centre, is the latest (April 2004) contribution to the debate about what policy response is appropriate to the issue of people employed as casuals.

However, I believe that the Chifley Research Centre report offers an outdated model of job security and how to achieve it. It is based on assumptions about work and social risks that applied to Australian society and economy in the first half of the twentieth century. The report is written by three academic researchers but it does not aim to be a balanced assessment of the issues. Its perspective and tone is one of advocacy with the selective use of evidence to bolster the arguments put. From a broader public policy perspective, the report is conceptually weak and narrow in the options it offers.

Basis for new ALP policy

The objective of the report is to encourage the ALP to adopt a stricter regulatory regime to limit the growth of casual work. In this endeavour, the report has been successful as a new ALP policy position to re-regulate casual work was launched on 19 April by Jenny Macklin, (Deputy Leader of the Opposition, Shadow Minister for Education, Employment and Training) and Craig Emerson (Shadow Minister for Workplace Relations).

The new policy will seek changes to award provisions to allow casuals employed regularly for a set period of time, which vary according to the industry, to ask to convert to permanent employment. The award changes sought will also require that employers be unable to refuse the request unreasonably. In determining reasonableness, the AIRC will be asked to consider issues like the size and nature of the business. The proposed policy will ensure that if long-term regular casuals do convert, they will gain the entitlements enjoyed by permanent workers such as access to sick leave and annual leave. In return

they will forego their casual loading. Employees who do not want to become permanent can remain casual.

The Australian Financial Review's Lenore Taylor describes the policy as using 'the lightest of regulatory touches' to give long-term casuals the right to request permanent work and the related policy of giving mothers returning from maternity leave the right to request part-time work

The ALP's sole reliance on the Chifley Research Centre report as its evidence base on casual work has locked it into a limited and partial set of options. The challenge for public policy is work out ways to enhance individual's employability while also not 'killing the goose that lays the golden eggs'.

Changing how industrial awards treat casual work in marginal ways is a blunt instrument. It does not address how to support individuals trying to negotiate their own employment security strategy in a labour market demanding different forms of flexibility as a condition for employment. More innovative regulation is needed which balances both the principles of employment flexibility for the enterprise and employment security for the individual.

Why the report is flawed

The report 'Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia' is based on a narrow framework does not address the new social risks of contemporary Australian society. The use of mandatory employment rights enshrined in industrial awards as the only instrument to achieve greater job security is flawed as awards still in many respects protect the primacy of the adult male wage earner as the household head. Public policy to improve an individual's security in the labour market needs to start from ways to promote enhanced employability, rather than a narrow focus on the individual's right to a particular job.

Job property rights offer an inadequate basis for social protection in the labour market as most jobs are in themselves not guaranteed as offering permanent tenure (except if you are a tenured academic). Use of mandated employment rights is a reactive one which is overly broad in its scope and extremely difficult to administer. It is a policy option that is not tailored to the needs of individual entities whether they are enterprises or individual employees.

Overlooked are other forms of social security available to protect individuals in a modern welfare state. One is the concept of employment security or employability which refers to an individual's capacity in the form of skills, relevant work experience and mobility to gain other work. Policy options exist to enable individuals to manage better the social risks of being trapped in a cycle of unemployment and low paid, temporary work. These include Individual Learning Accounts and access to vocational training linked to work but independent of any one employer.¹

¹ Curtin, R, 1996, *Meeting the Training Needs of Flexible Workers*. Report to the Australian National Training Authority, Canberra Institute of Technology, Canberra

Uncritical reference is made in the report to continental European practice which, in many cases, is also based on the primacy of the adult male wage earner as the household head. Recent efforts to move away from this model by seeking a balance between flexibility and security in the Netherlands and the Nordic countries such as Denmark offer a much better starting point for developing viable policy options for the new context Australia faces in the twenty first century. The Dutch ‘flexicurity’ approach (outlined further below), in particular offers a model for a more appropriate policy response. Before discussing what the key principles might be for the development of appropriate policy options, attention needs to be first directed at what the available evidence can tell us about the nature and extent of the issue.

Questionable facts form the basis of ALP policy

The ALP proposed ‘Plan to Support Casual Workers’ highlights the following seven ‘facts’ drawn from the Securing Quality Employment report to justify its new policy on casual workers. However, in the case of each ‘fact’, other more precise evidence can be produced or another, more substantiated interpretation offered.

Table 1: An assessment of the claims made about the position of casual workers in ALP policy statement Labor’s Plan to Support Casual Workers, 19 April 2004

Claim in ALP policy statement and/or the report Securing Quality Employment	Is this correct?
Australia now has more than 2.2 million casual workers —around 27 per cent of the workforce.	This confuses different meanings of ‘casual’. The data refer to being employed under casual provisions in industrial awards and not to the nature of the work. A direct question to all employed persons about job security suggests that less than 2 per cent of the workforce fear for their job (see below).
Full-time casual employment has grown 40 per cent under the Howard Government, compared with less than seven per cent growth in permanent full-time jobs.	This appears to be an overstatement as data from August 1998 to August 2003, using a broad definition of casual work, indicates only a 21 per cent increase.
Australia has one of the fastest rates of growth in insecure employment in the Western World.	The OECD source cited in the report does not support this claim.
It is projected that by 2010 one in three Australian workers will be employed as a casual.	Depends on definition of casual and population base (employees or total employed)
...the employment of casuals on a regular basis is being used to strip away basic working conditions.	Employed as a casual does not strip away basic working entitlements to collective bargaining, superannuation, OH&S protection such as workers’ compensation or equal opportunity standards. Nor does it take away, in most cases, an entitlement to unfair dismissal protection after employment for 6 months.
Casuals find it difficult to obtain mortgages and other bank loans. Those who do get bank loans usually pay higher interest rates.	There appears to be no systematic evidence other than anecdotal that casuals find it difficult to obtain mortgages and other bank loans.
Employers have little incentive to invest in training casual workers, when they know casuals are likely to leave if they find more secure jobs.	It is true that casual workers have less access to training opportunities. But this does not mean that they receive little or no training. Half of self identified casuals in 2000 received some form of training.

Key points of the report

The four main claims made by the authors of *Securing Quality Employment* are:

- Casual employees miss out on important employment conditions and have low hours and pay rates, limited job security, unpredictable earnings and hours, no paid sick or holiday leave, and limited access to other rights and forms of leave.
- The primary motive of employers is assumed to be cost cutting: ‘The evasion of rights through extended employment on casual conditions, cuts employment costs at the expense of long established rights and contributes to inefficiencies in the labour market’ (p3).
- The recommended options are based on the use of industrial law to obtain secure employment. This would involve passing national legislation to enable the Australian Industrial Relations Commission ‘to comprehensively regulate employment relationships, broadly defined, including new forms of employment’.
- Specifically, the authors recommend that industrial awards be amended to outlaw casual work except where the ‘work is truly short-term or irregular’. They also recommend that the gap between the terms of casual and ongoing employment be closed over time by improving the conditions of casual employment (eg paid leave, termination and other rights and conditions) and/or by realistic compensation for lost conditions (eg through increases in the casual pay loading).

Flawed uses of data in the report give a misleading impression of the nature of the work engaged in by people employed under casual work provisions of industrial awards. A more careful scrutiny of published ABS data shows that while some people employed as casuals are working irregular hours or are only in temporary work, many others (67 per cent) who are employed as casuals are in stable work working regular hours each week in their main job.² A large group of people employed as casuals are not working as temporary employees. They are better described in the unique Australian term as ‘permanent casuals’.

The reasons enterprises employ people under the casual work provisions in awards are obviously more complex than simply assuming it is to do with lower costs. With superannuation payments, it is likely that most people on casual rates are not less costly to employ than employees on ‘permanent’ employment conditions. Nor is avoidance of unfair dismissal entitlements likely to be a major factor as all casual employees employed for 6 months are entitled to use these provisions.

The report makes no acknowledgement that young people continue to experience severe difficulties in gaining access to full-time work. Despite buoyant economic conditions, young people in Australia from their teenage years to their mid twenties and beyond still find it very difficult to gain access to full-time jobs.

² ABS, 2001, *Survey of Employment Arrangements and Superannuation 2000*, Cat 6361.0, Table 7.

Full-time jobs for adults aged 25 years and over between May 1995 and May 2003 increased by 12.1 per cent. However, over the same period, the number of full-time jobs taken by non-student young people aged 15 to 19 years and 20 to 24 years declined by 6.9 and 15.2 per cent respectively.³ This problem of a large group of young people who are labour market ‘outsiders’ trying to find ways to tap into a good job is a persistent one and a defining feature of contemporary Australia.

What are the alternatives to the ALP’s policy of seeking changes to permit those employed as casuals to ask to move to ‘permanent’ status? The key issue from a public policy perspective is what is the intended objective of the policy change being advocated? The starting point needs to be identifying the principles that the policy option is responding to.

Underlying principles to consider

Three sets of needs require consideration. The first refers to the needs of individuals in terms of access to work, their choice about whether to accept a particular job or not, and working conditions they are prepared to work. The second set of needs refer to those offering the jobs in terms of requirements for flexible deployment. The third set of needs refer to those of particular groups such as young people and married women who have suffered past discrimination in the labour market.

Meeting individual needs in relation to finding appropriate work depends on the economy’s capacity to generate jobs with characteristics that offer individuals choices. The level of economic prosperity is largely determined by how competitive and efficient enterprises are. A key element in enterprise competitiveness is the effective and efficient deployment of its employees. Flexibility in labour markets is especially important for small economies operating in highly competitive world markets.⁴ Fostering workforce flexibility needs to be a goal of any policy reform in this area.

A major test of any option to foster employee security needs to be how well does the proposed policy option allow enterprises to remain competitive? The proposed policy change needs to improve the operation of the labour market and not restrict or impede it. A legal entitlement to be treated fairly as an employee is a means to an end. The broader aim is to improve the relationship between employer and employee to enhance the enterprise’s capacity to survive and prosper.

The starting premise of the British Government’s White Paper on Fairness at Work is to ensuring that business is competitive and prosperous:

The keys to securing efficiency and fairness are employability and flexibility. Employability means ensuring that people are well prepared, trained and supported, both initially as they enter the labour market, and throughout their working lives. Flexibility means

³ Curtain, R; 2003, How Young People are Faring 2003: Learning, Work and In Between. Dusseldorp Skills Forum, Sydney, p23.

⁴ Katzenstein, P; 1985, Small States in World Markets: Industrial Policy in Europe. Cornell University Press, Ithaca, New York.

businesses being able to adapt quickly to changing demand, technology and competition. By enabling business success, flexibility promotes employment and prosperity (para 2.13, Fairness at Work, 1998).

Social protection for individuals in the labour market

What type of social risks do vulnerable individuals in the labour market face? How can individuals manage these social risks? One approach to labour market regulation based on the twin principles of flexibility and security is that the Netherlands. The policy has been dubbed ‘flexicurity’ and suggested as a new approach to labour market reform.⁵

The ‘flexicurity’ policy is a product of strong state intervention to promote job growth, undertake welfare reform while retaining industry and company level collective bargaining.⁶ The following account of the ‘flexicurity’ policy reforms needs to be seen against the background of the Dutch Government’s legislated changes between 1996 and 2000 to working time regulations, extension of parental right to leave and the right of individuals to reduce or extend their working week.⁷ Other changes included a relaxation of the dismissal procedures for open-ended contracts, and changes in the regulation of limited duration contracts.

The Dutch model of ‘flexicurity’ regulation⁸

The Netherlands has the largest percentage of agency workers in the labour force in the European Union. Temporary work agency collective agreements are widespread based on the regulatory framework put in place in 1999. The 1999 ‘flexicurity’ legislation guarantees temporary agency workers more secure employment, better pay and social security entitlements, as their duration of employment in this type of work increases. After 18 months with a single enterprise or 36 months with various enterprises, they are entitled to an open-ended contract with the temporary work agency.

Thus, it would appear that the regulators (and the trade unions) are prepared to yield to employer demands for numerical flexibility, with its ensuing precariousness for workers, only if there are guarantees that it will apply for a limited period only (Storrie 2002, p 25).

The new legislation balances the flexibility needs of enterprises with the security needs of employees. It does this through defining four distinct phases of employment defined by

⁵ Wilthagen, T; 1998, ‘Flexicurity: A New Paradigm for Labour Market Policy Reform?’ Discussion Paper, Social Integration by Transitional Labour Markets, Social Science Research Centre Berlin (Wissenschaftszentrum Berlin für Sozialforschung, WZB), Research Unit Labour Market Policy and Employment.

⁶ Visser, J and Hemerijck, A; 1997, *‘A Dutch Miracle: Job Growth, Welfare Reform and Corporatism in the Netherlands.* Amsterdam University Press, Amsterdam.

⁷ Slomp, H; 2004, ‘The Netherlands; resilience in structure, revolution in substance’ in Harry C. Katz, Wonduck Lee and Joohee Lee, eds, *The New Structure of Labor Relations: Tripartism and Decentralisation.* Cornell University Press, Ithaca, New York.

⁸ The following summary is adapted from pp 9, 11, 24 of Storrie, D, 2002, *Temporary agency work in the European Union.* European Foundation for the Improvement of Living and Working Conditions, Dublin.

time periods working in temporary agency work.

Phase 1 is to last for 26 weeks and is described as ‘Employment at will’. The employment relationship ends with the assignment or with sickness. The worker is insured against unemployment and sickness. In relation to the latter, this can amount to up to 90 per cent of previous wages. A week during which at least one hour of work is performed is counted. The weeks do not have to be consecutive. Collective agreements can and sometimes do prolong this initial period for up to 52 weeks.

Phase 2 is to last for 6 to 12 months. This phase begins with an interview to ascertain training needs. Temporary agency employees over the age of 20 at this stage also start to accumulate pension rights.

Phase 3 is for a period of 12 to 18 months for work at a single enterprise and up to 36 months for work in various enterprises. Some employment security is introduced in this phase, at the least a fixed-term contract of three months (which may be renewed throughout Phase 3), and guaranteed pay (100 per cent) if no work is available. In case of sickness, payments are continued at 100 per cent until the limited duration contract expires, or, in the case of an open-ended contract, for a maximum of 52 weeks. After 18 months working at a single enterprise as a temporary agency worker or 36 months with various enterprises, the worker moves on to Phase 4.

Phase 4 refers to a period of 18 months in one enterprise or 36 months for work in various enterprises. The stage requires that the employee be offered an open-ended contract at the temporary work agency and the usual dismissal procedures must be observed.

In addition, an alternative system of ‘chain contracts’ exists. These arrangements refer to where an employer offers three consecutive fixed-term contracts of three months, or a number of fixed-term contracts of an accumulated duration of 36 months. In these cases, the worker is required to be employed on an open-ended contract, as required by the law governing fixed-term contracts in the Netherlands.

According to Storrie (2002), employment in Phases 1 and 2 in 1999 was roughly five times greater than in phases 3 and 4. Of the total of 189,000 full-time jobs provided by temporary work agencies in 1999, 156,000 were in either Phase 1 or 2; the remaining 33,000 were in Phase 3 or 4.

The Flexibility and Security Act also established the principle of equal pay with comparable workers in the user firm. If the user firm registers their collective agreement with a bipartite body, this agreement is the basis for determining the wage to be paid to the temporary agency worker. However, if no such registration takes place, then the wage is determined by collective agreements within the temporary work agency sector. Collective bargaining within the temporary work agency sector in the Netherlands is highly developed in terms of the broad range of issues covered and the detail with which they are regulated. Almost the entire temporary agency sector is covered by collective agreements.

Pay levels in the temporary work sector are based on the average of 50 other collective

agreements. This means that in practice, wages in the user and temporary work agency firms will not necessarily be equal for the same work. To ensure that wage rates do not exclude 'outsiders' seeking their initial stepping stone into the labour market, from 2001, temporary agency workers have been divided into two groups. Group 1 comprises those with a more marginal position in the labour market, for example, school-leavers, vacation workers, re-entrants to the labour market and long-term unemployed. Wages are lower in Group 1, but after a maximum period of a year, the worker is transferred to the higher paying Group 2. However, deciding the criteria for allocating agency workers into the first or the second groups was hotly contested issue between the unions and employers.

Conclusion

The highly competitive nature of the environment many enterprises operate within today means that the size of their core workforce is small. The capacity to expand and contract according to the demands of the business cycle is a key feature of the competitive strategy of many enterprises operating in world markets. Functional flexibility in terms of multi skilling and use of new forms of work organisation is one key element of new working arrangements. So also is the need for numerical flexibility which goes beyond changes in seasonal demand or other fairly predictable factors.

Many enterprises require a buffer workforce that sits between its core workforce and the use of short term temporary staff. This buffer workforce needs to be highly skilled to be able to work productively with the core workforce. It also needs to have access to the same working conditions in terms of OH&S training and support. However, because the need for the buffer is dependent on an unpredictable business cycle, it is not possible for this workforce to be engaged in the same way as an enterprise's core workforce.

The Dutch legislation, built on a balancing of the principles of employment flexibility for the enterprise and employment security for the individual, offers a valuable guide. It shows how appropriate regulatory arrangements can be put in place to cater specifically for the needs of enterprises in relation to their buffer workforce.