



NEW SOUTH WALES TEACHERS FEDERATION

SUBMISSION TO

AUSTRALIAN COUNCIL OF TRADE UNIONS

ON

ACTU "SECURE JOBS – BETTER FUTURE" INQUIRY

Authorised by

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ACTU “Secure Jobs – Better Future” Inquiry

An overview of the union and the industry it operates in

The NSW Teachers Federation (NSWTF or “the Federation”) is a trade union which covers teachers employed across the NSW public education sectors.

The current membership sits at 62,395 members.

This coverage includes all teachers employed by the Department of Education and Communities, teachers employed by TAFE NSW, teachers working within the Department of Corrective Services, as well as teachers employed by the Board of Studies, a statutory government body.

The main type of work is teaching, but some members are employed in related administrative roles such as consultancy which provide advice and assistance to the employees and their workplaces.

The prevalence of insecure work in public education, and the reasons for its growth

The prevalence of insecure work within public education varies according to the sector.

Overall membership of the Teachers Federation currently sits at 62,395 members. In the schools sector, the total number of members is 56,307, comprising 41,075 female members and 15,232 who are male. Within that total, 12.1% of members are currently registered on our system as casual, just under 9.8% members are in the full time temporary category and approximately 3.5% are currently listed in the part time temporary category.

In the TAFE sector, the total number of members is 6,088, representing 2,744 men and 3,344 women members. Within the TAFE sector total, 34.3% are currently registered as casual, less than 4.6% registered as full time temporary and 1% as part time temporary.

In the post schools sector, particularly TAFE, the level of casualisation sits at around 70%. TAFE membership of Federation is dominated by full time members at the rate of two to one. It is difficult to recruit part time casual members. The 2011 Productivity Commission Inquiry into Vocational Education reported that there are 17,000 “trainers and assessors” employed by TAFE NSW (Productivity Commission, April 2011, p 347).

There are a number of reasons for this, but the practices of the employer have been such that hours allocated to part time casual teachers are such that permanent employment isn't available, but the semesterised programs allow for different allocations of hours each semester, thus minimising opportunities for teachers to pursue permanency.

The casualisation explosion in TAFE in NSW is directly related to the marketisation of the vocational education sector in Australia. The deregulation and restructuring of the eighties and nineties in Australia heralded the dominance of “market design” ideology, at the same time as pressure related to globalisation resulted in employers increasingly pushing costs and risks on to workers. Women joined the workforce in great numbers in these decades and by the new century families generally required two incomes to survive. Neo-liberalist governments have moved away from provision of public services and sought market solutions for their provision. This has resulted in dominant rhetoric around “user choice” which results in the individual paying for something which was once provided. The rhetoric around casualisation is also around “flexibility” and individual choice.

As a consequence, funding for the provision of public vocational education by state and federal governments has declined whilst competitive tendering has increased. Currently the NSW government is conducting a public consultation *Smart and Skilled*, which seeks to explore how the Council of Australian Governments' reform agenda for Vocational Education will be implemented in

NSW. The COAG proposal is to introduce full (100%) competitive tendering into the sector through the introduction of a so called "student entitlement" which consists of a voucher system which may significantly limit student participation in public vocational education, and the introduction of income contingent loans for students so they can access education and training in the new(ly), privatised settings.

Already, there is evidence from federally funded competitively tendered programs like the Language, Literacy and Numeracy program and the Adult Migrant English Program that this practice is leading to further loss of funding to TAFE in NSW, and that it is pushing predominantly casualised, and mostly female, teachers out of the TAFE system and into the significantly lower paid private sector.

Federation officers have received anecdotal reports of rates of pay in the private sector being around one third of the pay rate for casual teachers employed by TAFE NSW. This hourly rate does not include any holiday loading and requires the use of the teacher's own car. Teachers are also required to work "flexible" hours with no recognition or provision of time in lieu for work after hours or on weekends.

Employer attitudes and responses to insecure work

There are two aspects to the nature of insecure work: that which affects casual employees, and that which threatens insecurity for permanent employees.

In regard to permanent employees, the biggest challenge is to maintain a system of state wide staffing procedures. Over the past few decades, the NSW public school system has been staffed on the basis of state wide staffing, centrally managed by the employer by a dedicated staffing unit. New appointments, transfers and promotions are all processed and confirmed by the Staffing Services Unit. NSWTF has negotiated new staffing agreements over a number of years which seek to ensure that staff appointments are properly addressed, and that all schools across the state are able to have appropriately qualified teachers appointed to schools, regardless of location.

At the present moment, the state government is attempting to roll out a policy called *Local Schools, Local Decisions*. This is a policy of devolution, to place responsibility for staffing at the local level, by the school principal, with budgetary responsibility at the school level as well. The same policy was attempted almost twenty years ago under the previous Coalition government, entitled *Your School's Right to Choose* (1992-3).

This policy, under the guise of allowing schools to select the most appropriate staff is designed to ensure that there is no security for permanent employees. Under the negotiated staffing agreements in a state wide system, when a school's student enrolments drop, and fewer staff are to be allocated under the staffing formula, some teachers will become "nominated transfers" to be transferred at the Department's convenience. They are still guaranteed ongoing employment. While there are issues about the transfers in some instances, permanency is never questioned. There are also "incentive transfers" available for those teachers who work in rural and remote locations, providing an opportunity to apply for an incentive transfer to a preferred area after a number of years' service in those remote locations. There are a number of similar options available for some other schools, such as "behaviour schools".

Finally, teachers are eligible to apply for service transfers upon completion of three years' service at their current workplace. These transfers are not automatic, but dependent upon the availability of suitable vacancies.

The proposed policy will remove the option of transfers, quite possibly in any form. This means that permanent teachers will only be permanent as long as it is determined as suitable for the needs of that school. This could change for any number of reasons: a change in curriculum focus, a need to save money for whatever reason, so reduce the number of classes and increase student numbers, or because of possible disagreement with the management of the school.

The Victorian schools system introduced a similar model under the Kennett government in the 1990's, under "self-governing schools". It still remains that 20% of all positions are filled under annual contracts, even though the positions continue year after year.

The other group of employees affected by insecure work are casual and temporary teachers. In fact, these employees are not recognised as "officers" under the *Teaching Services Act 1980 No. 23*. As casual employees, there are restrictions and a lesser set of working conditions than exist for their permanent counterparts. Casual employees are also subject to an incremental salary barrier regardless of experience and expertise.

The temporary category was introduced in 2001, and while it goes some way to improving the working conditions and salary of those teachers when employed in that category, these are essentially contract appointments which conclude at the end of each school year.

In the NSW TAFE sector the main group of employees impacted are part time casual teachers. "Part time casual" refers to a teacher engaged to teach on an hourly basis. Part time casual teachers are seldom allocated desks or computers, yet are expected to operate as a professional on the margins of the organisation. They rarely have storage space and carry their teaching resources with them. They often refer to themselves as "just a casual". There is no systematic equity in how work is allocated to part time casual teachers, creating a situation which is open to favouritism. In TAFE colleges the culture and organisational practice is such that there are two types of employee; the privileged permanent workers and the vulnerable stigmatized part time casual workers. The significant level of casualised work is culturally divisive, and interpersonal friction is not uncommon.

In 2011 Federation conducted an extensive "Not Just a Casual" survey of part time casual TAFE teachers in NSW. The survey revealed that significant numbers of part time casual teachers were not being paid their award entitlements by the employer and were frequently pressured not to claim their related duties.

It is in the interests of the employer for part time casual teachers to be unaware of their award entitlements. Consequently, part time casual teachers frequently have to challenge management to receive payment for travel or for carers leave. Commonly, part time casual teachers leave TAFE NSW employment without seeking their long service leave entitlement because, rather than a formal termination, part time casual teachers just "slip off" the employment suitability lists. Part time casual teachers are in a very vulnerable position because if they ask for their rights at work their line manager may stop offering them any work at all. Head teachers and institute managers have been trained about the "savings" that can be made by increasing the use of part time casual teachers.

Although they are called part time casual teachers, they are rarely "casual". The 2011 survey revealed over 63% had been employed on a non-permanent basis for five years or more, and over 36% had been employed on a non-permanent basis for ten years or more. Respondents indicated overwhelmingly (66%) that they wanted to be employed permanently. The majority of part time casual teachers are women (68%).

Another category of non-permanent employees are called "temporary" teachers. This means an officer or temporary employee employed on a full time or part time basis to teach for a defined period. This category of teacher receives the same entitlements as a full time teacher for the term of their contract.

There are three circumstances when a temporary teacher may be employed: to back fill a substantive position, for a specific project or new emerging "business" and, importantly for part time casual teachers if it is identified that a teacher will be required, on a non-permanent basis and within the one Institute, to deliver a program of 19 or more hours per week for 12 or more consecutive weeks in a semester, then recruitment action must be taken to employ a temporary

teacher. Further, if the temporary position exists for two years or more, as required under the *NSW Public Sector Management Act*, (PSM Act) the position must be rolled over into permanency.

However, the employer rarely abides by these requirements. Federation has had to identify the part time casual teachers who are working large hours. TAFE Institutes have encouraged greater recruitment of part time casuals in order to keep part time casual teachers below the 19 hour threshold. In fact, since Federation achieved "related duties" for part time casual teachers in the pro-rata case of 2004, increasingly TAFE Institutes keep part time casual teachers below the 10 hour threshold that is required to access this entitlement.

Another area of difficulty surrounds the processes to "roll" temporary teachers over into permanency. Although under the PSM Act this action is required of Institutes after two years, it is commonly the case that permanency is not achieved until the third or fourth year. Often temporary teachers do not have their contracts renewed after two years and find themselves back as part time casual teachers. This is a very distressing experience for those individuals who have had expectations of a "real" job.

What the NSW Teachers Federation has done to counter the spread of insecure work

The Federation has undertaken many steps over the years to address the issue of job insecurity, as well as seeking equality for casual employees.

During the 1950s and '60s other than some retired principals and district relief teachers, there were very few casual teachers. It could be two weeks or more before a casual teacher would be employed, and it was only because of industrial disputes undertaken by members at individual schools and local teachers associations that any breakthrough was achieved in the hiring of casual teachers. While this resulted in an increase in the numbers of casual teachers employed in the 1970s, they enjoyed few working conditions and very poor salary compared to their permanent colleagues.

The Federation mounted a campaign for equivalent salaries and conditions for casual teachers which led to the NSW Industrial Relations Commission (IRC) handing down a Salaries and Conditions Award for casual teachers in 1984: the "100 Day Casual Teachers Award" which represented the first award for casual workers in Australia.

While the award did not remove the incremental salary barrier for casual teachers, it did recognise long term casual teacher work which provided access to better salary and leave conditions.

Throughout the 1980s, through both campaigns and application through the IRC, the Federation sought to have the incremental barrier removed.

In 1995, the Federation funded a group of thirteen long serving, women casual teacher members to lodge individual complaints of discrimination by the employer with the NSW Anti-Discrimination Board (*Amery & Ors*). In March 2001 the Administrative Decisions Tribunal gave its judgement on the matter of *Amery & Ors v the State of New South Wales (2001) NSW ADT 37* (see Attachment 1).

Consequently, in that same year the creation of a new category of employment, the temporary teacher category, was introduced into the teachers' salaries award. This position provided for full pro-rata salaries and conditions for long term casual engagements, including the removal of the incremental salary barrier, such that eligible temporary teacher employees accessed the "top" step of the Common Incremental Salary Scale in 2005.

The Federation has continued to campaign for improvements in a number of matters for temporary teachers, including incremental progression when moving to permanent employment. This involves recognition for incremental purposes upon commencement as a permanent employee, with all previous casual and temporary service aggregated into full years of service, to determine at what

rate the permanent employee will be paid on the common incremental salary scale, of which there are, generally speaking, eight steps.

However, at this point, those employees who are not permanent are not able to aggregate their casual and temporary service for the purpose of improved salary increments, either as a casual or temporary employee. This remains an outstanding issue for the Federation in pursuing pay equity for these members.

During the mid-1990s, for those teachers who were working long term, for two years or more in part time casual position, and there was no permanent incumbent already in the position, the Federation successfully campaigned for those positions to be made permanent part time, and for those teachers to be given priority consideration if they chose to apply for conversion to permanent part time employment.

Further, in 2006 the Federation successfully lodged a Secure Employment Test Case in the NSW Industrial Relations Commission which resulted in the conversion of several hundred temporary positions to permanent positions. (see Attachment 2).

In regard to permanent employees experiencing insecurity about their employment, the Federation has engaged in regular consultations with the employer about individual cases and/or instances where the situation has implications for the broader workforce. The Federation has also requested the Department to undertake staffing audits at various worksites to determine the extent of temporary and casual appointments at the worksites, and whether these are in a relieving capacity for a permanent teacher on leave (or other duties), or whether the temporary/casual teacher is employed in an unfilled vacancy that was not notified to the Department's staffing unit for attention.

In 2008 there was a significant campaign to ensure that there would be a new staffing agreement in place when the then Director-General of Education and Training attempted to subvert any state wide process and allow individual school principals the right to locally fill substantive staff vacancies, thus avoiding the possibility of some more "desirable" schools to receive staff from other schools via the transfer schemes as described previously.

Again, there was significant local and state wide industrial action by members which eventually ensured that a new staffing agreement was achieved at the same time that a new salaries award was finalised.

For TAFE teachers, the Federation first applied to the NSW Industrial Relations Commission in the mid-1990s for pro rata pay, conditions and permanency for TAFE part time casual teachers. This claim was dismissed by the NSW Industrial Relations Commission because the application for permanency which formed a part of Federation's claim contravened Section 19 of the *NSW TAFE Commission Act*.

An amended Part-Time Award Variation was lodged in 1999 and was again unsuccessful. Finally, the Pro Rata Award Variation was lodged in the Commission in September 2003, on the third attempt. The award variation was handed down on Friday 3 June 2005 and came into effect from Semester 2, 2005. The variation included the new Temporary Teacher designation and new related duties payments on a sliding scale for part time casual teachers teaching 10 hours or more per week plus some additional extras such as the right to take sick leave as carer's leave.

As a part of Federation's campaign to increase permanency in TAFE, the Federation initiated a Staffing Agreement with the employer in 2002 to increase the numbers and proportion of permanent TAFE teachers to part time casual TAFE teachers.

Over three years each institute was to work towards a target of 55:45 permanent to casual, equivalent full time teacher positions by creating new, fully funded positions. A central monitoring committee and Institute specific monitoring committees were established to keep tabs on the staffing agreement process. The committees comprised Department, TAFE Institute and NSW Teachers Federation representatives. The Agreement was replicated between 2007 and 2009.

Whilst the agreement led to an increase in permanent teaching numbers, management reluctance to comply and attrition through the ageing of the workforce meant that the ratios between permanent and casual teachers continued to decline.

Federation continues to actively pursue improvement of conditions for part time casual TAFE teachers, and established a special interest group for part time casual TAFE teachers, with an officer allocated to the group, which works enthusiastically and diligently on this cause.

Options for solutions to insecure work – industrial and legislative

The Federation has never had a staffing agreement included in its salaries and conditions awards and with moves towards a Federal system currently underway for members in the TAFE sector.

In the current climate, the likelihood of successful legal solutions to the issues faced by many employees, both casual and permanent, would not be seen as a preferred option, and in fact, more likely to be a last option.

The lengthy process of appeals as experienced by *Amerly & Ors* does not provide guarantees, and can take many years before a result (either way) is known.

Industrial action has proven effective on many occasions: the achievement of improvements in the introduction of the temporary teacher category was the result of permanent teachers voting to take further industrial action for pay equity on behalf of their casual colleagues.

Of course many casual teachers, by the insecure nature of their employment (including dismissal with an hour's notice in short term employment) feel that they are not able to participate in industrial action for fear of jeopardising future employment. This is particularly true where they have enjoyed regular employment at a preferred workplace.

The other challenge for the Federation is the union's capacity to recruit casual employees as union members.

With a turnover of approximately 25% of teachers due to retirements, over the next five years or so, there are already reports of positions at some locations being filled on a casual basis for long periods of time, without advice to the central Staffing Unit for attention and permanent appointment.

The TAFE sector has already seen the employer 'gaming' around changes to policy and legislation. Prior to the state election in March 2011, the Federation ran a campaign calling on all politicians to sign a pledge to "Invest in TAFE for a Better State". One of the key pledges involved increasing permanency in the TAFE workforce. The current Minister signed the pledge.

Federation will continue to strongly push for a new Staffing Agreement for TAFE teachers in NSW. Federation is also considering negotiating for a "real" hourly rate for part time casual teachers to more accurately reflect their situation and their actual hours worked. It is hoped this would make part time casual workers more expensive for the employer and consequently, the employment of permanent workers more attractive and sustainable.

Other issues

The other aspect of insecure work that relates to our membership is in regard to the students our members teach. Many students, both at school and post school study, are full time students but also part time or even full time workers, and more often than not, casual employees.

The insecurity of that work can have a significant impact on their study: last minute call-ins for work mean that assignments and study are disrupted, late or incomplete. Their capacity to organise and plan their study can be compromised and at risk.

The Teachers Federation, arising from its engagement in the Your Rights @ Work campaign a few years ago, established a website for students in recognition that this group were not only future workers, but many already were workers, with perhaps the least access to information about their rights than other workers.

The website is still maintained, but has not really been updated since that time (2008). The site can be viewed at <http://www.studentsatwork.org.au/>

Federation will also be running a campaign to alert communities and students of the impending changes in the TAFE sector. A media campaign will be linked to a website where people can take action. It is anticipated that the website will be called www.tafeistheanswer.com

Federation's Legal Action in Pursuit of Better Employment Pay/Conditions for Non Permanent School Teachers

- 1995** Thirteen individual complaints of discrimination were lodged by long serving women teachers in the NSW teaching service 'Amery & Ors', with the NSW Anti Discrimination Board.
- 1996** The Federation signed off a 1996 consent School Teachers Award and an annexure was gazetted which referred to casual school teacher matters which a competent tribunal may subsequently find discriminatory.
- 2001** On 12 March 2001, the Administrative Decision Tribunal gave its judgment in the matter of *Amery & Ors V The State of New South Wales* (2001) NSW ADT 37.
- The tribunal found that the *Amery* women teachers who were employed by the Department of Education and Training, (the Department) in the same casual school teaching position for a period of eight weeks or more performed work equivalent to work performed by their permanent colleagues and were victims of indirect discrimination based on their sex.
- The highest increment on the pay scale for casual school teachers is equivalent to an eighth of 13 increments of the pay scale applicable to permanent teachers.
- The '*Amery*' women teachers contended that they had been discriminated against on the grounds of sex under s.24 of the *Anti Discrimination Act 1977 (NSW)* because, as casual school teachers, they could not access the higher salary increments paid to permanent teachers, even though, in their case, they performed work of equal value.
- The '*Amery*' women each brought a claim for damages under the *Anti Discrimination Act* for the amount of the difference in the pay they earned as casual teachers and the pay they said they should have been paid, but for the discrimination.
- The '*Amery*' women were awarded damages.
- 2001** As a follow up to the *Amery* case win the Federation, in 2001, sent out, or made available in the journal '*Education*', pro forma applications for members to express interest in an Anti Discrimination Board representative matter it had commenced. Follow up questionnaires and signed undertakings from members were required to be provided to the Federation by 19 October 2001 and 18 January 2002 respectively.
- The separate representative action to the *Amery* case was brought to the Anti Discrimination Board and then to the Administrative Decisions Tribunal, it involved 688 women casual school teachers.
- A subsequent Administrative Decisions Tribunal action challenged the decision of the President of the Anti Discrimination Board to reject all those parts of the women casual school teachers' original claims that related to casual school teaching service done six months before the date of their complaint to the Anti Discrimination Board on the basis that they were 'out-of-time'.
- The bases of the claims in both the *Amery* case and the representative class

action were the same, that is, the Federation argued that pay rates for casual school teachers were indirectly discriminatory.

2001 In 2001 the Federation commenced an Industrial Relations Commission case for men and women casual school teachers and temporary school teachers, IRC 4347 of 2001. The case took a long time to commence because there were Industrial Relations Commission jurisdictional issues around the 'No Extra Claims' clause in the 2000 Teachers Award.

Essentially the Industrial Relations Commission claim was for full pro rata payment for a minimum of four weeks full time work, for a minimum of one day a week for eight weeks part time work and for recognition of all service to remove the separate incremental service provisions 'clocks' for casual school teacher, temporary school teacher and permanent school teacher work.

2003 On 12 June 2003, the Appeal Panel in the matter of *The State of New South Wales V Amery & Ors (2003)* [the Amery Case] overturned the decision of the Tribunal at first instance to, in effect, find that there had not been unlawful discrimination in respect of the employment of women casual school teachers.

2004 The women teachers involved in the *Amery* case lodged an appeal against the Administrative Decisions Tribunal Appeal Panel decision in the Supreme Court of Appeal. This matter was heard in June 2004 and judgment was reserved.

The Full Bench of the Industrial Relations Commission advised the Federation on 26 August 2004, having considered further submissions on the matter on 10 August 2004, that it had decided to reserve the Industrial Relations Commission decision until the judgment in the Court of Appeal proceedings had been delivered.

On 15 November 2004, the Supreme Court of Appeal in the *Amery* case *Amery & Ors V State of New South Wales (2004) NSWCA 404* brought down a significant decision finding in favour of the 'Amery' women. By a 2 to 1 decision, the decision overturned the Administrative Decisions Tribunal Appeal Panel decision.

The Supreme Court of Appeal found that the original tribunal did not err in law, that the decision of the original tribunal should be reinstated and further that the Department were to pay all costs.

The 'Amery' women were originally awarded damages of up to \$40,000 each. These payments, with interest, appeared assured under this decision, however, the Carr Labor Government decided in December 2004 to appeal the Supreme Court of Appeal decision to the High Court.

Despite the Supreme Court of Appeal decision in the 'Amery' women's favour and despite the Federation calling for the decision to be brought down, the Industrial Relations Commission withheld its decision.

2005 The Department / NSW government's Leave to Appeal to the High Court was heard in the High Court on 27 May 2005. The Department / NSW government were given Leave to Appeal. The matter was heard on 14 and 15 November 2005 in the High Court. The High Court decision was not expected until April 2006.

The matter concerning 'out-of-time' work was heard by the Administrative Decisions Tribunal and a decision made 7 July 2005 (NSW ADT 153 of 2005). The Administrative Decisions Tribunal found that it had no legislative power to

review the President of the Anti Discrimination Board's decision to reject some complaints as being lodged 'out-of-time'. They did not find that the Federation's actions were wrong. The Federation intended to appeal the decision to the Appeal Panel of the Administrative Decisions Tribunal.

In July 2005, the Industrial Relations Commission indicated it would either make a decision on or about 4 August 2005 or defer its decision until after the High Court outcome.

After five years in the waiting from application to decision the full bench of the Industrial Relations Commission on 28 July 2005, brought down a 140 page decision in the casual school teachers / temporary school teachers case for male and female teachers.

The Industrial Relations Commission dismissed the Federation's claim which was for all a teacher's service to be taken into account for placement as a temporary school teacher on the common incremental scale so that the separate service records or "clocks" (for casual school teacher, temporary school teacher and permanent school teacher work) would be eliminated. As well, the Federation applied for casual school teachers who teach in fractional positions for 8 weeks or more to be classified as temporary school teachers.

The crux of the Industrial Relations Commission dismissal of the Federation's case went to the Industrial Relations Commission accepting the Department's evidence, that it had budgeted for the temporary school teachers implementation for the life of the 2000 Award and the Department consented to the 2000 Award because these pay rates were locked in. Further, that a variation to the 2004 Award before the end of it (31 December 2005) did not seem warranted.

2006

April 2006 High Court Decision.

The High Court ordered that the NSW government's Appeal was allowed and the High Court set aside the orders of the Court of Appeal of the Supreme Court of New South Wales made on 10 December 2004 and, in their place, ordered that the appeal to the Court be dismissed with costs.

The Federation lost the matter at the High Court level and discontinued its other proceedings

Joyce Amery, Lyn Bovard, Margaret Douglas, Jenny Drury, Linda Freeman, Leonie Hancott, Jacki Irvine, Denise McHugh, Karen Mors, Cheryl O'Loan, Marion Platt, Megan Pursche and Marcia Skelton, are to be commended for their courage in taking this matter through ten years of proceedings. Some were involved in multiple proceedings.

These women Federation members kept casual school teacher matters at the forefront of tribunals for a decade of progressive action. Members owe them a great debt.

2007

The Federation negotiated, through the NSW Industrial Relations Commission a Secure Employment Test Case agreement with the Department that enabled temporary school teachers to apply, to make permanent, positions that they had occupied for two years.

In 2007 nearly 900 permanent/permanent part time positions were created under this agreement. A significant majority of the positions went to the temporary school teachers who had served in them.

In December 2007 the Federation negotiated an agreement with the Department concerned with retrospective payments in any conversion from casual school teacher to temporary school teacher status.

2008

The Federation negotiated a sunset clause provision for those temporary school teachers who were caught in the 2001 to 2005 taper of the introduction of the temporary school teacher classification and were receiving less pay than their service would provide them as permanent teachers. Temporary school teachers who have gained from the settlement will receive higher pay from 21 July 2008.

The settlement removed the anomalous pay situation, as well, the Federation settled the matter of the Department's non recognition for temporary school teachers of teacher service, in other states and territories and overseas. This service is now recognised.

The Federation had initially filed an application in the Industrial Relations Commission on 23 April 2008.

Secure employment test case settled

by Brenda Seymour

The Federation and the Department settled the Secure Employment test case matters for schools and Saturday schools before the President of the Industrial Relations Commission on July 27.

A comprehensive settlement for the schools sector and an award variation for the Saturday schools were described by His Honour as "matters of significance" and the parties were congratulated on the outcome of what have been complex negotiations in making the state test case fit the school and Saturday school teaching service. The Department of Education and Training (DET) will immediately advise teachers of the new arrangements for appointments in 2007.

Temporary school teachers who have been in engagements under the terms of the settlement will, for 2007, be appointed to positions ahead of the employment list. For the Saturday school those in regular positions under the terms of the award variation will have greater security. There is nothing that stops teachers having more than one permanent job so a school teacher can be a permanent school teacher and a "permanent" Saturday school teacher.

DET and Federation have agreed to a two tier position regarding long term temporary full time and part time employees' access to permanency and the filling of vacant school teacher positions.

The first tier consists of a one-off, long term temporary

placement process. Under this process, temporary teachers who were employed in the one position for the whole 2005 school year and who have a temporary engagement for the whole of the 2006 school year in the same position will be given the opportunity to apply for the position. Provided that it is an ongoing, vacant position, a temporary teacher who applies will be converted to permanency in that position from 2007 subject to there being no outstanding transfer applications. It is proposed that schools be advised of the first tier process early in term 3.

The second tier involves an audit process. From 2007 a review to identify all temporary engagements covering vacant positions will be conducted prior to the end of terms 2 and 3 each year. If there is no appropriate reason for a vacant position remaining unfilled on a permanent basis the Staffing Services Directorate will fill the position in accordance with the staffing agreement. The following considerations will underpin the implementation of this long term temporary placement process:

- Monitoring of the implementation of the provisions will occur through the DET/Federation Management Committee;
- To accommodate internal discussions between the parties DET will provide more detailed data on part time employment on 'without prejudice' and confidential bases;
- For any temporary teacher who is given the right to

apply for a position, the Department shall consent or refuse the application, but shall not unreasonably refuse and when deciding whether to consent or to refuse an application made in accordance with the Department's proposal of June 27, 2006, DET will not consent to conversion if conversion would result in the temporary teacher being appointed to a position which is already occupied by a permanent teacher who is on leave or otherwise absent, or because the temporary engagement is to fill a vacancy while permanent recruitment action is underway;

- Under the proposed long term temporary placement process, temporary teachers who were employed in the one position for the whole 2005 school year and who apply for conversion will be converted to permanency in that position from 2007 provided that it is an ongoing, vacant position and subject to there being no outstanding transfer applications. Where the position is not an ongoing, vacant position or there are outstanding transfer applications, the temporary teacher will be advised in writing. Any dispute about a refusal of an application to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition by the General Manager of Industrial Relations and Employee Services or his/her nominee and the General Secretary of the Federation or his/her nominee;

- Under the proposed long term placement process, temporary teachers who were employed in more than one part time position for the whole 2005 school year and who have a temporary engagement for the whole for the 2006 school year in the same positions will be given the opportunity to apply for the positions;
- Under the proposed long term temporary placement process, a temporary teacher who has worked on a full time basis in a position for all of 2005 and has an engagement for all of 2006 in the same position on a full time basis will be able to apply for conversion to a permanent full time employment in that position.
- Under the proposed long term temporary placement process, a temporary teacher who has worked on a part time basis in a position or positions for all of 2005 and has an engagement or engagements on a part time basis for all of 2006 in the same position or positions will be able to apply for conversion to permanent part time employment in that position or positions; on the basis of the same number of hours and times of work as previously worked unless other arrangements are agreed between the Department and the temporary teacher.

A part time temporary teacher must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this agreement.

Brenda Seymour is the Assistant General Secretary (Research and Industrial).