



SA UNIONS

**Independent Inquiry into**

**Insecure**

**Work in Australia**

**Submissions of**

**SA Unions**

**January 2012**

# SECURE WORK – SA UNIONS SUBMISSION

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## **SA Unions**

SA Unions is the peak body representing most registered employee associations (Unions) in South Australia. It expresses the collective view of the union movement in this state and promotes the interests of working people through the political process, the media and community activity.

Affiliates of SA Unions have over 150,000 members working in the private sector, in not-for-profit organisations, and for local, state and federal governments.

SA Unions takes a particular interest in advocating on my behalf of low paid and precariously employed workers. It initiates proceedings on an annual basis to set minimum rates of pay and a minimum rate for casual employees. It has just concluded a test case before the state industrial commission increasing the casual loading under state awards from 20% to 25%.

In addition to its representative role on behalf of unions in South Australia, SA Unions conducts a workers compensation service and a young workers legal service that look after the specific needs of injured workers and young employees.

## **Acknowledgement**

We appreciate the excellent Options Paper developed by the ACTU, [THE FUTURE OF WORK IN AUSTRALIA -Dealing with Insecurity and Risk](#) . We adopt the observations made in that paper about the risks that insecure work arrangements pose to workers, their families, democratic structures and Australia's future economic prosperity.



## About South Australia – same, same but different.

In many ways the South Australian economy, workforce and community is not dissimilar to the rest of Australia but there are some regional differences.

### South Australian workforce

South Australia has a population of approximately 1.6 million people of which 245,700 (15.3%) were aged 65 years and over. This is higher than the national average of 13.2%. The median age of South Australians is 39 years which is older than the national average of 36.9.

If current trends continue, by 2016 the proportion of older people (17.9%) will be larger than the proportion of children (17.6%)<sup>1</sup>

South Australian employment is high in historical terms at 819,800 persons.<sup>2</sup>

The current unemployment rate of 5.4% is slightly higher than the rate for Australia overall (5.3%). The participation rate is 63.3% compared to 65.4% nationally<sup>3</sup>. The slightly lower participation rate is a long term trend linked to the older population.

There are some regional differences in unemployment and youth unemployment is generally higher than the Australian average:

REGION	UNEMPLOYMENT %	YOUTH UNEMPLOYMENT RATE %
Northern Adelaide	8.0	30.2
Western Adelaide	4.7	14.6
Eastern Adelaide	4.2	23.2
Southern Adelaide	4.4	18.5
<b>TOTAL ADELAIDE</b>	<b>5.5</b>	<b>23.4</b>
Northern and Western SA	4.6	16.1
Southern and Eastern SA	5.2	36.1
<b>Total balance of SA</b>	<b>5.0</b>	<b>27.0</b>
<b>TOTAL SOUTH AUSTRALIA</b>	<b>5.4</b>	<b>24.6</b>

SOURCE: ABS Labour Force Survey data on SuperTABLE<sup>4</sup>

According to the National Aboriginal and Torres Strait Islander Social Survey 2008 (NATSISS), the labour force participation rate for Indigenous Australians was slightly below the State

<sup>1</sup> [http://www.sa.gov.au/upload/franchise/Seniors/Office%20for%20the%20Ageing%20-%20Publications/Publications/FactSheet1\\_South\\_Australia's\\_ageing\\_population%20v1%20final.pdf](http://www.sa.gov.au/upload/franchise/Seniors/Office%20for%20the%20Ageing%20-%20Publications/Publications/FactSheet1_South_Australia's_ageing_population%20v1%20final.pdf)

<sup>2</sup> ABS Labour Force Survey Data (trend) December 2011

<sup>3</sup> Ibid.

<sup>4</sup> <http://www.workforceinfoservice.sa.gov.au/labourmarketdata#labourForce>



average (60.9% compared with 63.7%) and the Indigenous unemployment rate was significantly higher (18.7% for Indigenous South Australians compared with the State average of 5.6%).

South Australians have slightly lower educational qualifications (a reflection of the historical reliance on industries requiring less skilled workers and a relatively older workforce).

South Australian incomes are lower than the national average. Average Weekly Ordinary Time Earnings (AWOTE) in the August 2011 quarter in SA stood at \$1,211, the Australian average was \$1,322.

On the positive side South Australia is an "affordable" state in which to live, thanks in the main it to a higher level of social housing which keeps housing and rental prices below the national average.

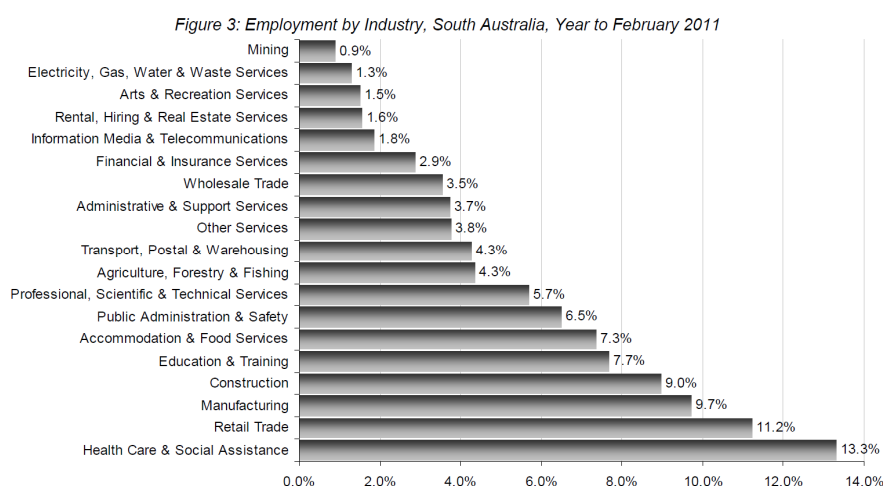
The transitioning South Australian economy.

Historically South Australia has had a strong agricultural economy. Following World War II the economy diversified into manufacturing based on steel production, shipbuilding, motor vehicles and white goods.

Today the agricultural economy remains important and in good years generates significant export earnings. The state is having some success in establishing a niche as a manufacturer of defence equipment but overall the manufacturing base continues to decline. The service sector (particularly education) is expanding.

The almost universal expectation is that a major expansion in the resources sector will underpin the State's economy for decades to come.

This is how the distribution of employment by industry currently looks<sup>5</sup>.



<sup>5</sup> ABS Cat. No. 6202.0



## The extent of insecure work in South Australia

Casualisation of the workforce has been increasing and now accounts for more than one quarter of all employment in South Australia. In 2009 the casual employment rate was 28.9% in South Australia (nationally the rate was 24.9%).<sup>6</sup>

Some industries contain a heavy concentration of casual employment. Retail (20% of all casuals) and accommodation and food services (19% of all casuals) stand out. Casual density is highest in accommodation and food (65% of all employees are casual)<sup>7</sup>

Casual work is high amongst young workers with 21% of all casual workers aged between 15 -19 years and just fewer than 60% of all casual workers under 35 years of age.<sup>8</sup>

Nationally women are more often casually employed than men (27.6% of all female employees are casual compared to 20.4% of male employees). Most part-time employees are engaged on a casual basis (55%).<sup>9</sup>

In South Australia women account for approximately 46% of the labour force however, women are much more likely to work part-time with 50.1% of employed women working part-time, compared to 17.0% of men.<sup>10</sup>

Even some sectors that are traditionally associated with secure employment, like state government, show high levels of casual employment. As at 30 June 2011 there were 12,180 public sector employees<sup>11</sup> engaged on a casual basis (out of a total workforce of approximately 100,000 employees). In addition to this the state government makes use of a large contractor workforce.

## Impact of Casual Work

On 11 January 2012 the Industrial Relations Commission of South Australia handed down a decision in the Casual Loading Case [2012] SAIRComm 1.

The Commission granted SA Unions application for an increase in the casual loading from 20% to 25%. The Commission listed the evidence supporting the application and noted; "...research findings that insecure employment<sup>12</sup> is increasing and accounts for the employment of approximately 40% of the workforce. Workers in insecure employment have

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<sup>6</sup>[http://www.workforceinfoservice.sa.gov.au/\\_\\_data/assets/pdf\\_file/0008/19709/LabourMarketOverview2011final.pdf](http://www.workforceinfoservice.sa.gov.au/__data/assets/pdf_file/0008/19709/LabourMarketOverview2011final.pdf)

<sup>7</sup> ABS, *Forms of Employment, November 2010*, Cat.6359.0.

<sup>8</sup> ABS, *Employee Earnings, Benefits and Trade Union Membership*, Cat 6310.0, 2010

<sup>9</sup> ABS, *Forms of Employment, November 2010*, cat 6359.0

<sup>10</sup>[http://www.workforceinfoservice.sa.gov.au/\\_\\_data/assets/pdf\\_file/0008/19709/LabourMarketOverview2011final.pdf](http://www.workforceinfoservice.sa.gov.au/__data/assets/pdf_file/0008/19709/LabourMarketOverview2011final.pdf)

<sup>11</sup> Submission of the Chief Executive - *Casual Loading Case 2011*

<sup>12</sup> Including casual employment, employment on short term contracts and labour hire of employees.



been found to have fewer rights and entitlements at work, are more likely to be award reliant and earn on average less than permanent employees."<sup>13</sup>

The Commission referred to witness evidence that;

"...referred to research that indicates that insecure work; undermines the long term productivity of workplaces through reduced training and skills development; results in lower levels of employee commitment; leads to high labour turnover and lower occupational health and safety standards... (and) has negative consequences on the quality of working and family life of employees engaged in this form of employment."<sup>14</sup>

The "negative consequences" included;

- unpredictable and fluctuating pay
- difficulty in predicting earnings and borrowing money
- problems for workers with caring responsibilities
- reduced control over working arrangements
- less access to skill development opportunities
- greater risk of injury and illness
- less understanding of workplace rights or ability to enforce them.

## **The Causes of Insecure Work**

The causes of insecure work in South Australia are those identified by the ACTU in their options paper The Future of Work in Australia<sup>15</sup>.

Intensified global competition has been used as the rationale to drive labour market reforms directed at increasing "flexibility". The scope for employers to access labour without obligation and to shift many of the costs and risks associated with employment onto workers has increased significantly.

Outsourcing of services and other functions by all levels of government and periodic tendering has been a significant contributor.

This risk transfer has been achieved through practices such as casualisation, subcontracting in outsourcing. It has also been done through the weakening protections that workers have in "standard" employment relationships, such as minimum periods of engagement and penalty rates.

We agree with the ACTU observation "there are no distinctive features of the Australian economy that necessitate high levels of job and income insecurity"

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<sup>13</sup> *Casual Loading Case* [2012] SAIRComm 1, page 5.

<sup>14</sup> *Ibid*

<sup>15</sup> THE FUTURE OF WORK IN AUSTRALIA - Dealing with Insecurity and Risk, September 2011 pages 12-14



International competition which is often cited as a reason for driving down employment standards and job security affects a relatively small proportion of the workforce. In many cases it is the high Australian dollar rather than labour costs that has the greatest impact on our international competitiveness.

The view that cost savings can be achieved by employing a minimal core of permanent employees and supplementing that workforce with casual labour is widespread.

In South Australia as elsewhere, the structure and delivery of government funding as well as the lack of adequate funding has promoted the rise of insecure work. This is particularly prevalent in the community sector, education and health care.

South Australia is on the cusp of a massive expansion in the resources industry. There is considerable apprehension about the impact that huge mining developments will have on secure employment. These major developments have complex outsourcing arrangements and contracting chains. There is great concern that these supply chains will be used to maximise profit and minimise liabilities such as the risks and costs associated with employment. It is expected that widespread use will be made of contracting arrangements at the expense of permanent jobs.

As a union movement we are concerned that some employers welcome insecure work arrangements, such as labour hire, as a means of avoiding union presence or union negotiated collective agreements. Not only do they expect to get a cheaper workforce but also one that is a more compliant.

It is sometimes said that the growth in casual employment has been driven by employee preference. ABS data shows that the majority of employees would prefer permanent employment.<sup>16</sup>

### **Who is most at risk of insecure work?**

In South Australia women and young people have traditionally undertaken the majority of casual work.

Young workers employed in hospitality (65% casual) and retail (40% casual) are particularly vulnerable to exploitation.

An audit undertaken by the Federal Workplace Ombudsman in industries that traditionally employ young people. Wage records, pay slips and holiday entitlement of employees were examined. The audit was finalised in September 2008 and of the 399 compliance audits undertaken 234 (59%) of employers were found to be compliant and 165 (41%) were found to be in breach of entitlements.

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<sup>16</sup> ABS *Employment Arrangements, Retirement and Superannuation, Australia*, Cat. 6361.0 2007





Identified breaches mainly related to wages (60%) followed by weekend penalty a rates (18%). The majority of breaches were found in the retail trade (46%) and accommodation, and food services (41%) industry sectors.<sup>17</sup>

Women and young people remain vulnerable to the rapid growth of casual employment but devices like sham contracting, working from home, labour hire and fixed term employment mean that very few areas of employment are immune from the expansion of insecure work.

### **Compliance with applicable labour laws and barriers to their enforcement**

The fact that casual workers, outworkers, contractors and employees on fixed contracts have fewer legal rights than permanent employees is by design and an outcome that employer interests wish to maintain.

Nevertheless the limited rights that precariously employed workers have in our seldom enforced adequately.

In our experience the Federal organisation charged with enforcing the Fair Work Act 2009 concentrates on its role as an information provider and telephone advice service. It adopts a "gentle" approach to enforcing the law. The most recent annual report shows an underwhelming determination to get tough on employers breaching awards and agreements award and conditions breaches. The Fair Work Ombudsman

- Achieved voluntary compliance through 11 Enforceable Undertakings.
- Addressed serious, wilful and repeated non-compliance through 55 civil penalty litigations
- Achieved court ordered penalties in 40 matters decided<sup>18</sup>

When the audits conducted by the Fair Work Ombudsman (or predecessor) showed that 40% of employers in hospitality and retail are not complying with award conditions it may be inferred that hundreds of thousands of workers are being denied entitlements and rights under the Act.

A few strategic publicised court cases is not the answer.

Compliance with the law will improve only when those breaching employee entitlements believe there is a risk they will be caught and punished.

### **Secure Employment Options**

We support options identified by the ACTU as having the potential to improve the security of employment for Australian workers.

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<sup>17</sup> [www.wo.gov.au/asp/index.asp?sid=7407&page=audits-campaigns-results-view&cid=5387&id=1279](http://www.wo.gov.au/asp/index.asp?sid=7407&page=audits-campaigns-results-view&cid=5387&id=1279)

<sup>18</sup> Annual Report Fair Work Ombudsman 2010 -11 Page 31



## Work and family

The quality of work for part-time employees with caring responsibilities could be improved by extending the Right to Request Flexible Working Arrangements and making denials of those requests subject to challenge in Fair Work Australia.

## Contractors

Contractors should have rights to bargain collectively and should be entitled to union representation through amendments to the *Australian Competition and Consumer Act 2010*

## Changes to Bargaining Arrangements

Restrictions on the bargaining and the content of Agreements limit efforts to deal with insecure work. Allowing a greater multi-employer bargaining and removing unnecessary restrictions on the content of agreements would be a good start. Agreements should also apply to indirectly engaged workers e.g. labour hire. Mandatory arbitration should be included in agreements, awards and the NES.

## Improving Wages and Conditions

SA Unions has used State Wage Case proceedings to improve conditions and loadings for casual workers. In our view strengthening minimum standards assists in removing cost incentives that drive employers to engage casual employees.

## Conversions to Permanent Employment

There has been some success recently in the community sector and in schools in the conversion of casual positions into permanent employees.

Including clauses within awards and agreements that allow individuals to initiate a process for conversion should be issued.

Maximum periods of engagement for regular casuals should be followed by an automatic transition to ongoing employment.

## Redefine Casual Work

A statutory presumption within the Fair Work Act should be that a person who contracts to work for another is an employee. This would assist in combating sham contracting.

Definitions of casual employment should be clear and ensure that it is confined to short term, irregular employment and/or sets out the circumstances under which the casual employment can be used.



Fixed term employment should set out specific circumstances under which it can be used and there should be provision is that allow a worker to automatically transition to ongoing employment.

### **Further submissions**

SA Unions welcomes the opportunity to supplement these submissions and make further representations when the Inquiry Panel is in Adelaide.

This material was prepared by Angas Story on behalf of SA Unions.

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