



**Submission to the
SecureJobs
concerning the**

***Independent Inquiry into
Insecure Work in Australia***

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Casualisation and Insecure Work in the Retail Industry

A. Introduction

The retail industry is the largest industry in Australia in terms of employment, and contains approximately 13% of Australia's total workforce.

The industry is exceedingly diverse, ranging from employees in supermarkets, department stores and discount department stores at one end of the spectrum, through category killer type stores and bulky goods stores to smaller chains and finally to individual businesses staffed mainly, if not exclusively, by owner operators and/or family members. The number of employees in a retail store varies enormously from large department stores to much smaller stores which are often staffed by just a single individual.

The Shop, Distributive and Allied Employees' Association (SDA) as a union, is well represented across a wide spectrum of the retail industry, and has in recent years been able to grow its membership despite all the difficulties.

The SDA has approximately 215,000 members around Australia, therefore, is in a good position to understand the level and causes of casualisation in the retail industry and how the problem might be resolved in the future.

B. Why Casualisation in the Retail Industry?

It is well known that there are many casual employees working in the retail industry, but this was not always the case.

Prior to 1972, the bulk of the retail industry was permitted to open, by laws enacted by state governments, over 5½ trading days, namely Monday to Friday and Saturday morning, usually to 12 noon; There were no late nights; There was no Saturday afternoon opening and Sunday and Public Holidays saw stores closed.

It was the extension of retail trading hours by state governments that led to the massive casualisation of the retail industry.

Traditionally retail stores had been staffed largely by permanent employees, many of them working full time with little need for casual or part time employment. However, the introduction of extended shopping hours meant that permanent employees,

particularly full time employees, could no longer staff the stores for the duration of the shop opening hours. Hence, part time and casual employment increased enormously.

A second factor which has caused the increased level of casualisation in the retail industry is the increasing fluctuation on retail trade over any given day, trading week and seasonal fluctuations over the whole trading year. These daily, weekly and seasonal fluctuations have a dramatic impact on the number of employees that the industry employs and on the number of hours worked by part time and casual employees. In particular, there is an enormous peak of retail trading at Christmas, which means an enormous increase in employment starting in September and reaching its peak at Christmas time.

To staff their stores in what retailers perceive as the optimum for efficiency, many retailers employ a minimum base of full time employees, and top this up with part time and casual employees to meet the daily, weekly and seasonal peaks of work.

A third cause of casualisation in retail stores is the desire of management for “flexibility”, even if it is never used. The claim of retailers for flexibility, even if it is not utilised, has led to a large degree of excessive casualisation in the industry. Retailers have the ability to adjust their workforce through the use of these casual employees, even though, many casuals work regular hours like a part time employee most of the time. It has even given rise to the term “permanent casual”. Therefore, casual employees are like a safety valve and provide comfort for the retailer in the event of a drastic impact on employment. The casuals bear the burden of an uncertain working life with minimal entitlements, while the retailer has a workforce with great potential flexibility which is rarely, if ever, utilised. The cost to the retailers is greater turnover, as casuals change jobs readily in order to find more hours of work and greater job security.

Casualisation levels differ among retailers, however, in some retail and fast food stores the level of casual employment exceeds 50%.

Casualisation leads to a range of issues for workers. By its very nature insecure work, there is no guarantee of on-going employment. In some cases there are casuals in the retail industry who have worked the same rosters for years but they have no guarantee of on-going employment.

In the retail industry casual employees generally are entitled to a range of benefits available to their full time colleagues. However there are also benefits available to their full time colleagues that are not available to the casual staff members.

A major problem for retail workers but especially for casual employees, is the constant changing of their rosters. This makes it very hard for such workers to be able to plan their futures and is a major impediment to the achievement of effective work/life balance. Such problems make life especially difficult for workers with family responsibilities. Some companies tend to change or only make rosters available on short notice which exacerbates this problem.

The predilection by some retailers to employ casuals limits opportunities for permanent part time workers to gain or retain sufficient rostered hours to earn an adequate income.

C. SDA Survey

In 2005 the SDA conducted a comprehensive independent survey of members.

1000 members were telephone interviewed. They had been randomly selected in proportion to geographical and demographic representation of SDA membership in 2005. 60% of the respondents were casually employed. 23% worked part time.

46% of casually employed members had completed year 12 or in contrast with 24% of full time permanent members and 35% of permanent part time members. Contrastingly 42% of casuals completed year 11 or earlier and 46% of casuals completed education at or before year 11. Similarly 50% of part time members responded that they completed year 11 or less

Irregular Hours and Rosters:

64% of respondents worked 20 hours or less, including 21% who worked 10 hours or less each week.

37% of members indicated that they did not work regular hours each week; with younger members affected the most by irregular working hours. 51% of those aged 15-19, 39% of those aged 20-24, 27% of those 25-44, 20% of those aged 45-54 and 18% of those aged over 55; indicated that they receive irregular working hours each week.

13% did not consider their roster satisfactory.

When asked why rosters were not satisfactory, 35% not satisfied stated that the reason for this was because they did not have enough hours. A further 23% indicated that their hours were not regular. 21% also did not want to work unsociable hours such as holidays, at night, or weekends.

This was further supported by the direct question of whether members wanted more or less hours. In total, 32% of members were after more hours and 9% wanted fewer hours. 32% of casuals wanted more hours and similarly 31% of full time members wanted more hours; however part time members were the much more likely to want more hours with 40% of part timers after more work.

Reasons for working:

When asked the reasons for working, the most important reasons indicated by members were 72% to get income for basic necessities, to pay for home renovations 50% and to pay for school fees 40%.

Of members who wanted more hours 23% indicated that the reason was because they wanted to earn more money.

D. SDA Action

The SDA has made serious efforts to try to reduce the level of casualisation.

In recent years, these efforts may be categorised in four (4) different types of initiatives:

1. The conversion of casuals to part time employees

Efforts have been made to get agreement from companies to convert regular employees to part timers.

These efforts have had a significant impact. However, their effectiveness has been limited by two (2) considerations:

- (1) The casual who is invited to convert to part time employment must work a regular pattern of hours. Obviously a casual whose working hours are truly variable, not only in the times when work is performed, but in terms of the number of hours that may be worked per week, is not able to become a part time permanent employee under the normal definition of this term.

(2) In order for a casual to be converted to part time, the casual must also be working on a regular basis at least as many hours as the Enterprise Agreement provides to be the minimum part time hours per week. If, for example, an agreement provides that the part time minimum hours are ten (10) hours per week, and a regular casual is only working eight (8) hours per week, the casual cannot be converted to part time employment.

Despite these two (2) restrictions, significant numbers of casual employees have been converted to part- time employment in most of the major companies, particularly in the major supermarkets and discount department store chains. However, these efforts require constant policing to ensure that store management does not regress to higher casual levels over time.

2. Additional hours to part time employees before engaging new employees

Another strategy employed to maximise opportunities for more secure work has been to require employers, where regular part time employees are available and have the required skill mix to offer the current part time employees any additional hours of work which become available before new employees are engaged.

3. Work / Life balance consideration

We have also sought to ensure that when rosters are being set or changed that the family, study, sporting and safety concerns of employees are properly taken into consideration.

We have also sought to ensure more structured arrangements are in place for notification of rosters and roster changes.

Roster changers are a concern that our members raise. Often the issues stem from managers not having proper training in rostering or managers not having enough time to examine a store roster and respond to issues in an ad hoc manner.

Time, thought and training are important steps that help eliminate many issues members can have about roster changes. With these three (3) steps, there is a huge reduction in roster changes, there is greater consultation with employees and there is greater functionality at a store. All of these increase productivity, engage employees at the store (less absenteeism) and less turnover of staff.

4. Time off work

As there are no guarantees of ongoing work, many casuals are pressured not to take time off. Subtle or not so subtle threats are made about having hours reduced, hours not at regular time, or the roster changed to less convenient times, if a casual requests time off.

Study time, exam time, participating in family holidays or family responsibilities that arise at school holidays are examples of when a casual needs time off from work. The theory that casuals only work when they want in many cases is a myth and doesn't reflect the real world. An insecure job / hours are better than no hours.

In order to address casuals getting leave or time off, the SDA has negotiated with major employers provisions that explicitly give casuals the right to time off for certain matters e.g. study leave, but guarantee no disadvantage or recrimination in coming back to work.

Companies are encouraged to constantly review, in consultation with the union their future employment needs with the goal of maximizing full time or at least permanent employment.

The union recognises that casual employment will always be part of the retail industry because it is unavoidable, given the retail industry's unique characteristics. However, the level of casualisation remains unacceptably high and needs to be reduced.

E. Other Research

There has been extensive studies by various academics into the retail industry.

The SDA draws attention to 3 items:

1. "Lowering the standards": from Awards to Work Choices in Retail and Hospitality agreements [Evesson, et al] (*see Attachment 1*)
2. Witness Statement, Dr Ian Campbell [FWA 2011] (*see Attachment 2*)
3. Witness Statement, Dr Robin Price [FWA 2011] (*see Attachment 3*)

The Evesson et al paper found

“The majority of Agreements studied have discarded entitlements or had them reduced under Work Choices. While there has been an increased incidence of some provisions and some minor improvements in a small number of entitlements, these gains are far outweighed by the losses. There has been publicity about the loss of loadings and penalty rates (‘protected’ matters) for employees on AWAs. This study provides evidence that the loss of protected Award matters is also overwhelmingly the case in non-union collective agreements.

Furthermore, significant entitlements not ‘protected by law’ are also being discarded or reduced. Redundancy rights and severance pay have been largely eliminated, casual loadings have been significantly reduced, and part time workers in particular have lost important hours provisions to allow for work/family balance.

Nearly all of the changes in entitlement occurred as a by-product of the agreements working to shift employees off awards and onto the minimum standards specified in legislation.” [Pg. v]

Everson also found that retail workers suffered large losses of pay and conditions under WorkChoices:

“We looked at how earnings changed for sales assistants and food and beverage attendants as a result of Work Choices Agreements. The impact varied depending on the patterns of hours worked and whether employees were casual or permanent. The potential range of losses was estimated by modelling the impact of 10 rosters commonly used in each industry. This analysis revealed:

- (a) *Retail: on average the losses were between 2 and 18 percent. The potential average gains were never more than 0.5 percent.*
- *Casual part time sales assistants working a 12 hour week in retail lost on average 12 percent of their earnings.*
 - *Permanent part time workers on the same hours lost 18 percent.*
- (b) *Hospitality: the losses were between 6 and 12 percent. The only gains were in union agreements and at most these were just over 3 percent.*
- *Permanent part time waiting and bar staff in the hospitality industry working a 21 hour week of split shifts lost 12 percent on average.*

These averages conceal some very significant falls in earnings. The worst, those with losses greater than 10 percent, included the following:

- *Liquor stores: losses of between 11.9 and 31.1 percent*
- *Fast food: losses of between 12.5 and 21.3 percent*
- *Bakeries: losses of between 17.9 and 24.5 percent*
- *Restaurants: losses of between 10 and 12.8 percent*
- *Cafés: losses of between 10 and 15.7 percent.*

The most affected employees are those working part time, on a casual basis, on weekends and after usual standard hours.” [Pg. vi]

Dr. Campbell, in his witness statement, in a recent proceeding before Fair Work Australia reviewed research on casual and part time employment.

“Contemporary research indicates that casual employees can be considered as a relatively disadvantaged group, compared with permanent employees. This disadvantage starts with the lack of most standard rights and benefits, defined in the text of labour regulation, and it also extends into employment practice. Indeed in practice some casual employees lack the rights and benefits that are prescribed in labour regulation. For example, most casuals are formally entitled to a ‘casual loading’, but when asked whether they received a casual loading as part of their pay, only 48.3% said ‘yes’ (13.2% said they did not know and 38.5% said ‘no’) (ABS 2006). Part of the explanation for this shortfall is likely to lie with problems of regulatory non-compliance in the small workplaces where many casuals are employed. This suggests that disadvantage overlaps with vulnerability for some casual workers. A vulnerable worker has been usefully defined in a UK report as “someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse” (TUC 2009). [Pg. 360 – Paragraph 11]

“Official ABS data suggest that many casual employees are subject to high levels of labour insecurity. A central feature of casual employment is employment insecurity as a result of ease of dismissal. Though some casual employees are in patterns of regular, long-term employment, many are in patterns of intermittent employment, characterised by brief intervals of employment in short-term jobs that are marked by

high turnover (see ABS 2009e). But labour insecurity readily extends beyond employment security to include aspects such as income insecurity and working time insecurity within individual jobs. Casual employees are in general low wage workers (ABS 2008b, see Watson 2004). In addition, ABS data suggest that nearly half (47%) of casual employees had earnings that varied from pay to pay (compared to 16% of employees with paid leave entitlements) (ABS 2007). Similarly, 35% of casuals stated that their hours varied from week to week, with the majority of those whose hours varied feeling that they had no minimum (ABS 2007, ABS 2006; see also ABS 2009a, 22). This variation is unlikely to be regular and predictable. Thus, even putting aside the uncertainty created by ease of dismissal, this large group of casual employees faced a fundamental lack of certainty about their income and hours.” [Pg. 360 – Paragraph 12]

“Another aspect of working-time insecurity, considered in our research on job quality for employees on part-time schedules, concerns the problem of ‘overly short days’, which can “impose unfair burdens on the individual workers, as a result of the fixed costs (both time and financial costs) associated with working, such as transport to and from work or childcare” (Chalmers, Campbell and Charlesworth 2005, 50-51). This seems to be a particular problem for casuals – in 2007 more than half (52.4%) of all employees without paid leave entitlements who usually worked less than 35 hours per week worked 1-15 hours per week (compared to only 15% of employees with paid leave entitlements) (ABS 2007a). Of course, some casuals would be content with the small number of hours. However, many appear discontented. Thus casuals who work part-time hours are more likely to say that they are underemployed than other part-time employees, i.e. to state that they would prefer to work more hours (28% and 16% respectively) (ABS 2009a, 22). Some persons try to ‘solve’ underemployment by adding another job to their inadequate main job (though this often creates new problems of juggling different and conflicting schedules). In this connection we can note that people who are casuals in their main job are more likely than other employees to have a second job (ABS 2009f).” [Pg. 360 – Paragraph 13]

“The study by Pocock, Prosser and Bridge points to the importance of control over working-time patterns in shaping the positive or negative experience of casual work. They suggest that most casuals feel powerless, and that the flexibility that they encounter is flexibility for employers rather than flexibility for employees. As examples of employee-led flexibility they refer to predictability, having a say about changes, knowing hours in advance, controlling unpaid overtime, and controlling long hours and

finish times. They also point to the importance of controlling overly short hours (2004, 63). Drawing on the results of the interviews, they argue:

“Access to minimum call-in periods is very important to many casuals. Without them, they can find themselves making trips to work for trivial periods. Their lack of power in refusing hours for fear of losing the job means that some work very short shifts, which they resent. In other cases, rules on minimum call-ins are ignored...” Paragraph 15 [Pg. 362]

*“In short, casual employees form a large part of retail workforce. They are mainly on part-time schedules. According to **Table 1**, casuals on part-time schedules in retail amounted to 379,300 persons – almost a third of the entire retail workforce. Linked with these were a further 51,300 who were full-time employees without leave entitlements (4.4%) and 162,600 who were part-time employees with paid leave entitlements (13.8%). Any change in labour regulation for casual employees in retail potentially affects a large number of employees and a large proportion of the retail workforce.” Paragraph 43 [Pg. 372]*

“Researchers agree that management practices are crucial in explaining job design and employment conditions. Unfortunately, management labour-use practices in retail are rarely examined directly. One small glimpse comes from a 2007 survey of 400 small and medium-sized retail and hospitality businesses in Victoria. This survey found a widespread lack of provision of key award conditions, such as the casual loading (not paid in 40% of cases) amongst employers who were subject to the award system. The authors concluded that “a significant proportion of employers who are subject to the award system are not ... complying with their employment obligations under the relevant award or awards” (Victorian Workplace Rights Advocate 2007, 47). This survey offers a hint of the power of employers and the vulnerability of many retail workers, especially casuals.” Paragraph 45 [Pg. 373]

“The Fair Work Ombudsman, Nicholas Wilson, has noted that the retail sector employs large number of workers who may be vulnerable, and he has recently suggested that this sector has generated more complaints than any other industry (Hannan 2010a).” Paragraph 46 [Pg. 373]

Dr. Price's comments highlighted the problems younger workers face, but these can also apply to older workers, especially those without tertiary education.

Dr. Price reported on the lack of knowledge of working conditions:

“Levels of employment relations (“ER”) literacy / knowledge were extremely low (Price, Bailey, McDonald 2010). This was especially the case for knowledge of the role of unions, restrictions on working hours and when injuries should be reported, as well as understanding of industrial agreements. Students had a poor understanding of their ‘rights at work’ compared to their ‘responsibilities at work’ (this was apparent in the focus group interviews too). Even when rights were understood, there were low rates of reporting complaints where problems occurred and infrequent use of grievance mechanisms. This is undoubtedly linked to the precariousness of youth employment, power issues in employment relationships, and developmental immaturity.” [Paragraph 17] and

“This paper used empirical evidence from a survey of Queensland secondary school students to examine their knowledge about their wages and working conditions. It did so within the theoretical lens of the Gagne (or Gagne-Briggs) theory of instruction, which centres on the content of learning and how learning is acquired (Gagne, Briggs & Wager, 1988). While Gagne articulates five categories of learning, our focus here was on verbal information or declarative knowledge (facts that people can declare). We showed that student workers know little about the instruments governing their employment, or their workplace entitlements. Of the total sample of year 9 and year 11 students surveyed (n=892), those students who worked, or who had worked in the past year (n=438), were asked to identify whether they were employed under an award, collective agreement or AWA. Eighty three per cent of students did not know which industrial instrument set their wages, and there were significant gaps in their knowledge about a range of issues, with some issues better understood than others. We argued that if young workers do not have declarative knowledge of their entitlements, nor basic procedural knowledge about redress, then they are not in a position to deploy Gagne’s ‘cognitive strategies’ that would enable them to take action to ensure their working conditions meet legal minima. We advocated that young workers should be given summary information on their wages and other entitlements on appointment and that such summary information should be readily available on employers’ noticeboards and electronically on company websites, and that the information should include a brief summary of avenues for redress.” [“Paragraph 21” with the heading]

Dr. Price has also studied the affects of longer trading hours.

“This paper highlighted some of the changes to working time arrangements in Australia over recent decades. In particular, the extension of operating hours in the retail

industry from 40 hours per week to upwards of 84 hours per week in Queensland is outlined. The findings from a survey of 272 supermarket employees were used to examine satisfaction with working time arrangements in the retail industry. The findings indicated a diverse range of employee views in relation to changes in working time arrangements in retailing. Permanent workers wanted permanent jobs, but a sizeable minority of casual workers (34 per cent) also wanted permanent jobs. A majority (51 per cent) of casual workers wanted longer working hours, as did a number of permanent part-time workers. It was noted that those workers who felt they were able to influence their working time were more satisfied with their employment. This survey indicated that many part-time employees, both permanent and casual, want longer working hours and thereby higher levels of income and many full-time employees want shorter working hours. The paper raised issues about control over working time and identified that of the casual part-time employees, the majority of the student group wished to remain casual to give them the right of refusal over hours and a highly hourly wage, whereas the non-student group of casual workers were more inclined to want longer hours and permanent employment.” [“Paragraph 22”]

Dr. Price, through various studies of retail employers, made the following observation:

“Retailers take full advantage of every regulatory option to reduce their wage costs.” [“Paragraph 27”]

These papers reinforce the understandings that the SDA has concerning insecure work practices in the retail industry.

F. Conclusion

Companies are encouraged to constantly review, in consultation with the union, their future employment needs with the goal of maximizing full time or at least permanent employment.

The union recognises that casual employment will always be part of the retail industry because it is unavoidable, given the retail industry’s unique characteristics. However, the level of casualisation remains unacceptably high and needs to be reduced.