

FAIR WORK AUSTRALIA*Fair Work Act 2009*

Section 158 Applications to vary, revoke or make a modern award

**National Retail Association
(AM 2010/226)**

-and-

Shop, Distributive and Allied Employees Association**STATEMENT OF (DR.) IAIN GRAEME CAMPBELL**

1. I am a Senior Research Fellow at the Centre for Applied Social Research (CASR) at RMIT University, where I am working on several research projects to do with working time patterns, job quality, temporary migrant labour and work-life balance.
2. My qualifications and research experience, including my research experience in relation to casual employment and the retail industry, are listed in Attachment A (paras 2-6).
3. The current case concerns an application from the National Retail Association (NRA) to vary the General Retail Industry Award 2010 to provide for a reduced minimum engagement for a selected group of casual employees, viz casual employees who are secondary school students (and who are working between 3 and 6.30pm on a day on which they are required to attend school). The application also refers to a process of individual agreement, in the sense that the reduction for this group would depend on the circumstance that "the employee agrees to work, and a parent or guardian of the employee agrees to allow the employee to work, a shorter period than three hours".
4. I submitted a statement in April 2010 in a previous case, concerning an employer application to vary the General Retail Industry Award 2010 to provide for a reduced minimum engagement for all casual employees. That statement is attached as Attachment A to this statement. In that statement I discussed the nature of casual employment, the principle and level of the minimum daily engagement, data on retail employment (including in particular casual employees) and aspects of the evidence offered by the employers in their applications. On the basis of my research, I suggested that minimum daily engagement requirements are important as a way of achieving a modicum of income and working-time security for all employees on reduced hours schedules. They serve to protect the income and time of employees, who – in order to take up a

shift of any length – need to expend income and time on travel, personal laundry and re-organization of other responsibilities (Attachment A, para 17). I suggested that protection was especially needed for casual employees, for vulnerable employees, for those reliant on income from the job, and for those trying to balance their working-time with other responsibilities (such as students and mothers with dependent children) (Attachment A, paras 18-20). I also suggested that such protections are particularly important in industries such as retail, with its trend towards fragmented part-time schedules, largely under casual conditions and largely driven by employer needs (Attachment A, paras 21 and 30-33).

5. In my 2010 statement I also suggested that arguments about the negative consequences of the generalisation of the three hour minimum in the modern award were weak. The employer argument focused on selected instances where the three hour minimum allegedly conflicted with the operational needs of the retail business. The argument pointed to a possible impact on a group of employed school children, who were previously employed on less than three hour shifts and who were allegedly disadvantaged by the introduction of the modern award. I suggested that this group, insofar as it existed, must be very small. I argued that – given the prevalence of provisions for a three hour minimum daily engagement prior to the introduction of the General Retail Industry Award and assuming reasonable levels of compliance with these provisions – the number of school children working in retail as casual employees after school on week days on two hour shifts must have been modest. Even amongst this small number, the number whose shifts could not be re-organised, eg because of early closing and the absence of other work, would have been even smaller. In short the number of employees allegedly disadvantaged by the generalisation of a three hour minimum was likely to be very small. On the other hand, I argued that the impact of a reduction in the three hour minimum was likely to be broad, disadvantaging many casual employees in retail.
6. The present application only applies a reduction to secondary school students (under certain circumstances), and the impact would therefore not be as broad. However, in my judgment granting the application would be a disadvantage to many secondary school students who are currently working shifts in retail of three hours or more. They or others yet to join the workforce might be obliged to accept reduced daily hours if the amendment was made.
7. The rationale for the current application for variation seems to me different to the earlier application. It is not focused so much on an alleged negative impact on employees but rather on a general argument about positive advantages for workforce participation. Nevertheless, much of what is in the previous statement is also relevant for this case, and I will not repeat it here. The issue of protecting income and working-time security through minimum daily engagement provisions remains important. Similarly the issue of assessing the impact of the variation remains important.

8. This statement builds on the previous statement, but it examines in more detail school children and their participation as casual employees in retail. I continue to draw on my knowledge of casual employment and the retail industry, which has been updated and extended through a new look at data sources and a review of the literature on school children and retail employment.
9. Because the case centres on school children and employment, it is important to review and assess available information. We are fortunate in having a rich volume of sources relevant to the case. We can draw on ABS data and analyses of these data (eg Foundation for Young Australians 2010), though it is important to keep in mind a few cautions. It is necessary to distinguish between secondary school students and tertiary students, who have distinct needs and interests. Moreover, it is important not to confuse school children – or indeed students in general – with the broader category of 'youth', which includes many non-students as well as students. Because of the difficulty in getting statistics according to educational attendance, some commentators use data that refer loosely to 'youth', whether this is defined as 15 to 19 year olds or even more broadly 15 to 24 year olds. But such data need to be handled carefully to take into account the fact that secondary school students may be only one part, sometimes even a small minority, of the population in the data.
10. Other useful sources for data on secondary school students and employment include independent surveys of school students. Though these are not as representative as the ABS surveys, many are competently organised and can provide useful information on relevant topics. Recent examples include an online survey conducted as part of the House of Representatives' inquiry into combining school and work (House of Representatives 2009), the 2007-2008 Queensland study of McDonald et al (2010), a NSW study commissioned by the NSW Teachers Federation (2007), the 2003 survey of children aged 12 to 16 organised by the NSW Commission for Children and Young People (Fattore 2005; see also NSW Commission 2009), and a 2000 survey in NSW and SA reported in Smith and Wilson (2002). More generally we can cite the rich secondary literature, which often includes additional empirical studies (eg Patton and Smith 2009; Smith and Patton 2009). The literature on school children and part-time employment stretches back at least twenty years (Ashenden 1990; see Robinson 1996, 1999), but it has grown markedly in the most recent period, in particular via the stimulus provided by the House of Representatives Inquiry into combining school and work (House of Representatives 2009).
11. My statement includes material relating to: 1) employment of school children; 2) employment of school children in retail; 3) the objective of increased workforce participation; 4) the wishes and interests of school children; 5) the proposed process of individual agreement; and 6) miscellaneous issues from the submissions in support of the NRA application.

1. Employment of school children

12. In examining the employment of school children, one starting question concerns the current number: how many school children are currently employed in Australia? The best figures on employment of secondary school students are in the submission of the Department of Education, Employment and Workplace Relations (DEEWR) to the House of Representatives Inquiry into combining school and work (DEEWR 2009; House of Representatives 2009, p. 10). The DEEWR submission used unpublished data from the ABS Survey of Education and Work (ABS various issues). The total number of persons aged 15-19 who were enrolled at school in May 2007 is given as 716,211, of whom 262,808 (36.7%) were estimated as in paid employment of one hour or more. The DEEWR submission notes a steady increase in the proportion employed since 1986, when it was 25%.
13. These data are the best we have. But they have two main limitations. First, they count persons who are employed in a reference week and miss those who are not employed at that point in time but who nevertheless have had or will have a job at some time over a longer period such as a year. As a result, the data underestimate the number and proportion of secondary school students who have had or will have experience of paid employment over the course of a year. One survey produced an estimate that over fifty percent had had employment experience over the course of a year (McDonald et al. 2010, p. 15). Second, the data are confined to school children aged 15 to 19 and therefore miss school children who are in paid employment but are under 15. The numbers in this latter category are likely to be relatively small and likely to be in different employment situations. We know from other ABS data that some 175,100 children aged 5 to 14 years worked at some time during the twelve months leading to June 2006, for example by delivering leaflets for an employer or cleaning or gardening for neighbours for payment. Only just over half worked for an employer and most worked for less than 12 weeks of the year (ABS 2006a).
14. The figures cited by DEEWR are for 2007. We do not have access to more recent unpublished data from the Survey of Education and Work (but see ABS 2010a, p. 3). However, if we want more recent figures, we can roughly update the DEEWR figures by using published data and some minor assumptions. The total number of persons in secondary education (aged 15 to 64) increased from 725,900 in 2007 to 755,700 in the latest ABS data for May 2010 (ABS various issues). If the proportion who were employed remained at around 36.7% this would give a figure of approximately 277,292 secondary school students who were employed in May 2010.
15. It is widely accepted that in international comparison, the overall proportion of school children in paid employment in Australia is higher than in most other OECD countries (House of

Representatives 2009, p. 10). Australia is one of the leading countries in the OECD for the employment of school children. This indicates that there are very few barriers to the employment of school children in Australia. Indeed, Australia is also characterised more generally by relatively high levels of youth employment, with relatively few demand-side barriers to youth employment (OECD 2009, 2010).

16. It is sometimes suggested that though there appear to be few barriers in aggregate there may be barriers in certain areas, eg outside the capital cities. Is there a different pattern of participation by school children in employment for metropolitan and non-metropolitan areas? In general, it is true that non-metropolitan areas, compared to metropolitan areas, have a narrower industry structure and weaker levels of labour demand (see The Australia Futures Task Force 2007). However, patterns of participation in employment vary according to age (and sex). For 15 to 19 year olds, the pattern tends to be the reverse of that shown by older age groups; thus the evidence points to *stronger* participation in employment in non-metropolitan areas for 15 to 19 year olds, largely due to stronger participation in full-time employment (Table 1).

Table 1: Employment rates[#], 15-19 year olds, by location, August 2010

	Persons		
	Full-time employment rate	Part-time employment rate	Total employment rate
Capital cities	10.7	31.5	42.2
Balance of states	17.2	29.4	46.5

[#] The full-time employment rate measures full-time employed persons as a percentage of the population in that group; the part-time employment rate measures part-time employed persons as a percentage of the population in that group; the total employment rate, which measures all employed persons as a percentage of the population in that group, is the sum of the full-time and the part-time employment rates.

Source: ABS (2011b) *Labour Force, Australia, Detailed – Electronic Delivery*, data cube: SuperTABLE, cat no. 6291.0.55.001, LM2 - Labour Force Status by Sex, Age, Capital City/Balance of State, viewed 17 March 2011.

17. The data in Table 1 are for 15 to 19 year olds and are subject to the cautions outlined above. Specific data for school students in non-metropolitan areas are patchier. However, the available evidence suggests an identical pattern of *stronger* participation in employment for school children in non-metropolitan areas. Smith and Wilson in their earlier survey of school students concluded that "rural students were more likely to work than urban students" (2002, p. 127; see also Fattore 2005, pp. 18-19). More recently, the DEEWR submission (2009, p. 9) uses unpublished ABS data to argue that the employment rate of school children is much higher in non-metropolitan areas (45%) compared to capital cities (32%). Thus the argument that there are particular barriers in regional areas is not supported by the evidence.

18. When do school students work? According to the NSW Teachers Federation study, students were most likely to be working at weekends, though substantial proportions were working Thursday and Friday evenings, between 5 and 9 pm (2007, p. 6; see also ABS 2006; McDonald et al. 2010, p. 16). Evening work partly reflects patterns of customer demand in fast food and patterns of late night closing in retail.
19. Do school students have a regular roster? Some do. However, McDonald et al. (2010, pp. 20-21) note that a substantial minority (25 percent) of the secondary school respondents to their Queensland survey had hours that 'always' varied a lot from week to week and a further 37 percent had 'sometimes' experienced this level of variation. The vast majority of school students are employed as casuals (McDonald et al 2010, p. 15).
20. How many hours do school children work? Patton and Smith report an average of nine hours per week (2009, p. 218). The House of Representatives report suggests that most are working 10 or fewer hours per week (2009, p. 10; see Smith and Wilson 2002, 129; McDonald et al. 2010, p. 15). The DEEWR submission uses unpublished ABS data to suggest that "most school students were working low to moderate hours, with a significant proportion working around six to ten hours per week" (2009, p. 9). Much of the debate on this issue concerns the danger of too many hours and the risk that this might interfere with school work. It seems generally agreed that, though a small minority of school children were working relatively long hours, it is not a widespread problem.
21. Little information exists on the average length of shifts for school children, although this will also be relevant to the issue of combining study and work. If nine or ten hours per week are spread over very short shifts it implies greater disruption to other aspects of life such as study. Short shifts may in turn be more likely to overlap with irregular shifts. Smith and Patton note that the short shifts characteristic of fast food and retail can cause problems of roster-filling and this in turn "leads to student workers frequently having to manage requests to work extra shifts at short notice" (2009, p. 27; House of Representatives 2009, pp. 69-71).
22. Any discussion of hours needs to incorporate an analysis of travel. In my previous statement (Attachment A, para 25) I referred to data for all employees from the VicWAL survey, which suggested a median time commuting to and from work of 50 minutes for metropolitan employees and 30 minutes for non-metropolitan employees. The ABS 2006 Time-Use Survey suggests an average of 55 minutes per day in work-related travel for participants in the labour force (ABS 2006b). Travel time is of course largely independent of the length of the shift. The shorter the shift, the more burdensome long travel times will appear. Unfortunately, we lack separate data on travel time for employed school children. However, ABS data for children under 15 who were

working suggests that the most common mode of travel – cited by around half of those working – was in a private motor car with parents (ABS 2006a). It is likely that this is also a major mode of travel to work for older children without a car licence or car.

2. Employment of school children in retail

23. It is useful to estimate how many secondary school children would be affected by the application to vary the General Retail Industry Award. This provides one perspective on the potential significance and impact of the application.
24. How many secondary school children are currently employed in retail? I canvassed in my previous statement some difficulties in collecting relevant data (Attachment A, para 28). In assembling data, we need to situate ourselves within the boundaries of the ABS definition of retail. Even within these boundaries, ready data on school children are difficult to find.
25. One approach to estimating the number of second school student in retail would be to use figures from independent surveys for the proportion of employed school children who state that they are employed in retail. Unfortunately these figures jump around. The most common estimate is around one third (32 % in Smith and Wilson 2002, p. 131; 35.5% in The Commission for Children and Young People and Child Guardian 2005, p. 11; 33% in NSW Teachers' Federation 2007, p. 6). The more recent House of Representatives student survey generated a figure of 48.4% for the proportion of employed students who were employed in retail (p. 15), but as this is an online survey open to all it is more vulnerable to response biases. If we applied a percentage of 33% to the figure cited above of the number of employed school children aged 15 to 19 (277,292), this would produce an estimate of around 91,500 school students currently employed in retail. If we applied the Teachers Federation percentage (48.4%), the figure would be much higher – around 134,200 school students currently employed in retail. It is probable that the true figure lies between the two guesstimates.
26. Another approach is to put together different ABS data sources. We have data for the number of 15 to 19 year olds employed part-time in retail. As I pointed out in my previous statement (Attachment A, para 38), the number of 15-19 year olds who were employed part-time in retail in the February quarter 2010 was 199,000. Of course, only some of these are secondary school students, while others are full-time tertiary students and still others are not studying full-time in any institution (they may be studying part-time or else not studying at all). We can make good guesstimates for the likely proportions (and the likely numbers) in these three categories, using other published ABS data and some minor assumptions.

27. The guesstimate works as follows. We know from other ABS data that the total number of 15 to 19 year olds employed part-time in March 2010 was 491,800, of whom 383,100 were full-time students (Table 2). In short, the proportion of 15 to 19 year old part-time employed persons in all industries who were full-time students was 78% in March 2010. We can assume that all employed secondary school students are enrolled full-time at school. If we pick up the figure for the number of employed secondary school students that we derived above (277,292) and insert it into these data, we reach a guesstimate that around 56.4% of 15 to 19 year old part-time employed persons in all industries would be full-time secondary school students. This would leave 21.6% who would be full-time tertiary students and another 22% who were not studying full-time in any institution.

Table 2: Employment participation of 15-19 year olds, by education attendance and sex, Australia, March 2010 ('000 persons)

	Male	Female	persons
Employed full-time, not in full-time education	133.7	68.0	201.7
Employed full-time, in full-time education	#4.6	#4.5	9.1
Total employed full-time			
Employed part-time, not in full-time education	45.9	62.8	108.7
Employed part-time, in full-time education	156.2	226.9	383.1
Total employed part-time	202.1	289.7	491.8
Total civilian population aged 15-19	764.4	730.1	1494.5

estimate is subject to sampling variability too high for most practical purposes

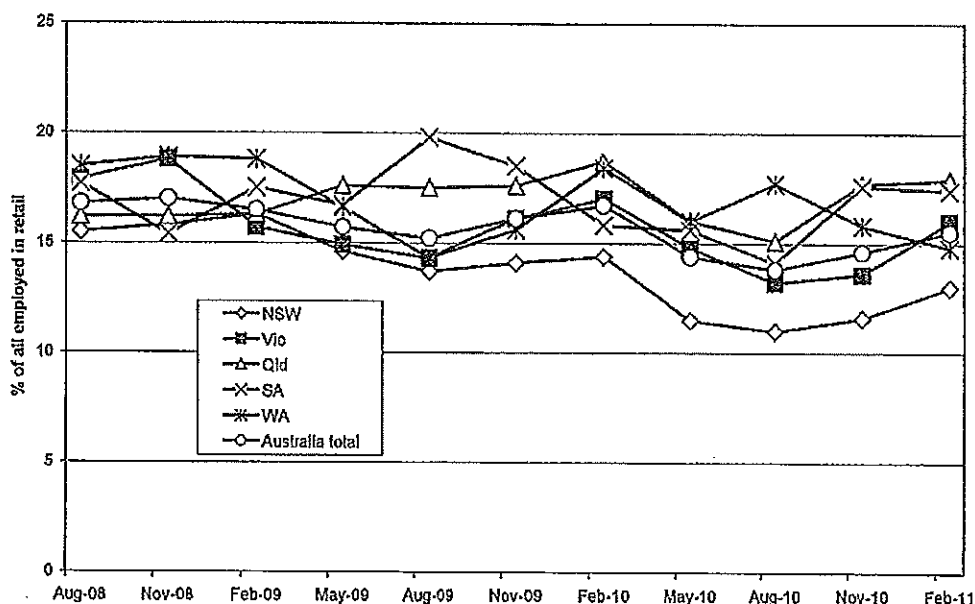
Source: ABS (2010b) *Labour Force, Australia – Detailed – Electronic Delivery*, Table 03a, Labour force status for 15-24 year olds by educational attendance and age and sex, March 2010, cat. no. 6291.0.55.001.

28. We then proceed under the assumption that the proportions are the same in retail as in all industries. As noted above, the number of 15-19 year olds who were employed part-time in retail in the February quarter 2010 was 199,000. A proportion of 56.4% produces a guesstimate for the number of full-time school students employed in retail of 112,236. A further 42,984 (21.6%) would be full-time tertiary students. The remaining 43,780 (22%) would be young people (15 to 19 years old) who are not studying full-time anywhere.

29. Our best guesstimate then is 112,236 for school children currently employed in retail. The figure is between the two estimates derived from independent surveys (see above). This is a substantial group. On this calculation school children would represent around nine percent of the total workforce in retail. We can assume that the vast majority are part-time *employees*. A small number may be permanent part-time, but it is likely that the overwhelming majority will be casual part-time and will be potentially directly affected by this case. If these assumptions and calculations are correct, secondary school students employed in retail are a major group, constituting around 30 percent of all casual part-time employees in retail (ABS 2010c).

30. Data for 15 to 19 year olds employed part-time in retail are also available by state. We need to keep in mind the caution that not all are secondary school students. However, the data can be used to throw some light on the situation of the Victorian retail industry, which had a two hour minimum daily engagement for casuals prior to the introduction of the General Retail Industry Award. As can be seen from Figure 1, there is no evidence that Victoria stood out in relation to a higher employment of teenage workers as part-time workers in retail over the period from August 2008.

Figure 1: 15-19 year old workers employed part-time in retail, by selected states, August 2008-February 2011 (% of all employed in retail)



Source: ABS (2010) Labour Force, Australia, Detailed Quarterly, data cube: SuperTABLE, cat. no. 6291.0.55.003, E12_Aug94_ANZSIC06.

3. The objective of increased workforce participation

31. A central rationale in the application for variation concerns an objective of 'promoting social inclusion through increased workforce participation'. Drawing on prior efforts in other OECD countries and the advocacy of bodies such as the OECD, the Australian government has made

this an important theme in recent initiatives. Moreover, it figures as an objective of the Fair Work Act.

32. Increased workforce participation is a worthwhile goal. The main groups usually cited as having a potential for increased workforce participation in Australia are the older age (55-64 years) groups as well as prime-age women. For such groups, one component in any strategy for increasing participation is better wages and conditions, including in particular better conditions of part-time work in order to overcome the major problem of underemployment and to develop good quality part-time jobs (Campbell 2003).
33. Secondary school children are not normally included in Australian discussions of the need to increase workforce participation. The only time I have read about such a connection has been in the context of employer applications to reduce the minimum daily engagement for casuals. Indeed I regard this connection as strange. Increased workforce participation seems to be understood here as an increased number of participants (rather than increased hours by the same participants). But, as noted above, the level of participation of school children in paid employment is regarded as high in international comparison. If we define social inclusion as having a job, then many school children are already well included. Even those without a current job are in full-time school and are commonly regarded as socially included. It is hard to see how school children could be viewed as a category of people that is in any way socially excluded.
34. This not to say that young people are omitted from all discussions of social inclusion and workforce participation. But insofar as there are concerns about youth and social inclusion, they are not to do with young people who are full-time students in secondary school. Instead the groups of youth identified as problematic are three groups that are defined in the literature and statistics as 'not fully engaged'. These are young people who are *not* studying full-time and are either 'not in the labour force', 'unemployed' or only 'employed part-time'. These groups are estimated to represent 6%, 5% and 8% respectively of all persons aged 15 to 24 (ABS 2010a; Pech, McNevin and Nelms 2009; Foundation for Young Australians 2010).
35. Would the high rates of participation in employment of school children be lifted higher by granting the application? To answer this question requires an understanding of the employment patterns of school children and an assessment of the nature of any barriers to their employment in retail. Most commentators are agreed that there are few barriers on the demand side; on the contrary there are strong incentives for employers to offer jobs to school children, since junior rates make the employment of young people highly attractive to cost-conscious employers. Since most school children are employed on a casual basis, their employment is highly flexible for employers. It is subject to few regulatory restrictions apart from regulations such as around occupational health and safety and apart from requirements in state legislation governing

minimum age. The current three hour minimum daily engagement is one of the few regulatory restrictions that apply for casual employees, but it does not appear to be a significant barrier to the employment of school children. It would only be a barrier in highly contingent circumstances.

36. Insofar as there are barriers to employment of school children they seem to be mainly on the supply side. One factor would be lack of interest, as a result of individual calculations that taking up a job is not worth the expenditure of time away from study or sport and social life. Granting the application and facilitating a move towards shorter shifts on school days has implications for such individual calculations. It may discourage those already employed as well as those thinking of taking up a job. In this sense it may consolidate a barrier to the workforce participation of school children.
37. Another major barrier to employment of school children is the availability and cost of transport (NSW Commission 2009, p. 7). This barrier will not be lowered as a result of granting the application. On the contrary, insofar as granting the application leads to a widespread introduction of shorter shifts for school children, then the problem of transport is likely to be exacerbated. Transport appears as a fixed cost to individual student-workers, which is borne either by the workers themselves or by their parents. If granting the application led to shorter shifts then this fixed cost would appear more burdensome in relation to the reduced gains from employment. In this sense granting the application could have the effect of erecting barriers to the workforce participation of school children.
38. In my judgment, granting the application is more likely to have a negative dampening effect on the workforce participation of school children than a positive uplifting effect.

4. The wishes and interests of school children in connection with paid employment

39. Why do schoolchildren work? ABS data for children under 15 who worked identified the most common reasons as 'money for spending' and 'money for saving' (ABS 2006a). It is widely agreed that these are also the key reasons for older school children. Thus money is important, though only a small minority say that they need to provide income for their families (House of Representatives 2009, p. 11). Instead it is money for spending or for saving for some future expense such as a car (House of Representatives 2009, pp. 11-12). As well as money, school students also speak of other factors such as gaining experience, developing independence and a sense of personal autonomy. Also important is the social element and the opportunity to make new friends (House of Representatives 2009, pp. 11-12; Smith and Wilson 2002, pp. 133-134; NSW Teachers Federation 2007, pp. 14-15; McDonald et al 2010, pp. 16-18).

40. There is no direct evidence on the length of shifts that school children prefer. There is no reason to think that they will differ significantly from other employees. They are likely to prefer a shift: i) that is sufficiently long to spread the (unpaid) cost of travel and other preparation time; ii) that will justify the opportunity cost of foregoing social life and other activities; and iii) that will generate a tidy sum of money for spending plans. For shifts in the afternoon or evening of school days, they are likely to prefer shifts that are not so long that they lead to fatigue and disrupt school demands.
41. According to the House of Representatives report there is a general consensus that combining school and work has many positive features. It can "enhance a student's confidence and self-esteem; contribute to their financial well-being; facilitate the development of social networks; allow students to gain useful knowledge and independence and exercise greater responsibility and self-reliance; instil a work ethic and attitude; and enable students to develop work and organisational skills, including time management skills" (2009, p. 24).
42. At the same time it is widely recognised that there can also be a negative side. One issue here is the risk of long hours of paid work disrupting study (House of Representatives 2009, pp. 18-19). In addition a negative side can emerge from poor quality features of a job, which may inhibit the realisation of positive benefits or may add risks. According to a South Australian study problems of young people in employment included pressure to work unpaid overtime, pressure to work while sick, pressure to work through meal breaks, unfair dismissal, and being fired or losing shifts after birthdays (Schluter and Houghton 2005; see also McDonald et al. 2007a, 2007b; House of Representatives 2009, pp. 69-71). With respect to school students, the NSW Teachers Federation study (2007, pp. 12-13) drew attention to the issue of age-related pay rates and the poor or fewer shifts that students felt they were given as they became older and more expensive. Similarly the House of Representatives report noted that some students complained of being held back after their shift had ostensibly finished (2009, p. 19). The Queensland school student survey conducted by McDonald et al. incorporated questions about conditions at work, and the report mentions complaints about cancellation of shifts after arriving at work, pressure to work through breaks, unreasonable requests at short notice to work shifts, and cutting of hours if the student had refused a shift (McDonald et al. 2010, pp. 18-24).
43. The distribution of such negative aspects is difficult to assess precisely. Smith and Patton (2009) review potential problems affecting school children in part-time employment. They argue that the two large organisations involved in their most recent case-study had procedures in place to handle these problems, and they suggest that risks tend to be more prominent in smaller companies (2009, p. 30). The retail sector includes both large firms and a large number of very small firms. In earlier work on school children and paid work, Smith and Wilson (2002, 133) refer to "evidence in the case studies that retail jobs offered low pay and poor working conditions". In

their study of complaints of young workers to the Young Workers Advisory Service, McDonald et al. suggest that the types of youth most vulnerable to experiencing problems in their employment were "young women, casual employees and those employed in retail and hospitality" (2007b, p. 76).

44. The discussion of the needs and interests of school children strongly suggests that, like most employees, they have a fundamental interest in income and working-time security. In my judgment they have, like most employees, a strong interest in provisions for adequate minimum daily engagements in order to protect their income and working-time security.
45. I see no reason why school students who are employed as casuals in retail should be given less protection than other employees who are employed as casuals in retail. On the contrary, almost all research in this area points to the needs for *greater* protection for school students or indeed young workers in general. Young workers are generally regarded as a *vulnerable group*, both by researchers (eg McDonald et al 2007a, 2007b) and by policymakers. A Fair Work Ombudsman best practice guide advises employers that "young workers can be a vulnerable section of the workforce and deserve particular protection" (nd, p.1). Such vulnerability is commonly acknowledged by employers (see McDonald et al 2010, pp. 48-49). Indeed the NRA submission also refers to "vulnerable groups such as juniors" (eg para 29).
46. 'Vulnerability' is a term that applies to employees (and their capacities) but also alludes to the workplace settings in which the employees find themselves. Thus 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).
47. In the case of young workers vulnerability is evidenced by features such as: low levels of employment relations knowledge, reluctance to report complaints, greater risk of being involved in accidents, vulnerability to bullying, and lack of confidence. The House of Representatives report reviews some of these features as they apply to school children and concludes that student workers can confront 'significant disadvantages' in the workplace (2009, p. 76).
48. Vulnerability and disadvantage implies a need for protection. Indeed the vulnerability of young people in employment is the starting point for several international conventions. Building on an aim of abolishing child labour is ILO Convention 138, which enjoins States to introduce a minimum age for admission into employment (though with special rules that allow employment for school children). According to the ILO the Australian government has argued that Australian law and practice met the Convention's objectives but that it had not ratified this Convention for 'technical reasons' (ILO 2008, p. 6). Another instrument is the International Covenant on

Economic Social and Cultural Rights, introduced by the UN in 1966. Similarly, the Convention on the Rights of the Child, introduced by the UN in 1989, requires States to set a minimum age or ages for admission to employment, as well as regulate the hours and conditions of work for young people.

49. Formal regulation in Australia has been recently reviewed by Stewart (2008), who notes the patchwork of provisions and sketches out some suggestions for 'best practice' in regulation. He refers to problems of exploitation. Though these are features of the adult labour market as well, he suggests that "children are peculiarly vulnerable to danger, harassment or exploitation at work" (2008, np).
50. This application threatens the interests of school children. School children need the protection of an adequate minimum daily engagement. In my judgment 1.5 hours is not adequate. It does not constitute a satisfactory safeguard for any employee.

5. The proposed process of individual agreement

51. The NRA application incorporates a proposed process for agreement between the individual employer and the individual secondary school student (and his/her parent or guardian). It is not clear to me whether the reduction in the minimum daily engagement is being justified as a variation that will provide beneficial flexibility for the individual employer or beneficial flexibility for the individual employee. Similarly, it is not clear to me whether the proposed process is seen as a process that is initiated by the employee or the employer.
52. Regulations that allow initiatives from individual employees to obtain employee-oriented flexibility in their working conditions, conditional on the agreement in some form of the employer, are a useful innovation, welcomed by many researchers (Murray 2005, 2008; Charlesworth and Campbell 2008). They promise to increase what is sometimes called the 'temporal autonomy' of employees (McCann 2007). One example would be the 'right to request flexible working arrangements' for parents that is included in the National Employment Standards (NES) (Creighton and Stewart 2010, p. 246).
53. But the academic literature suggests that we have to be careful in introducing avenues for individual agreements which entail opportunities for downward variation in wages and conditions (Lee and McCann 2006). In a context of power imbalance between the individual employee and the employer, there is a risk that what appears to be an individual agreement between the employee and the employer may be simply a vehicle for the imposition of individual employer preferences and the perforation of minimum labour standards. In the case of the UK Working Time Regulations 'individual opt-outs' were often taken up through general opt-out forms

presented to employees for signature at the time of their induction, thereby raising questions about the extent of individual employee choice (Barnard et al. 2004, p. 20). To prevent disadvantage for individual employees, there need to be safeguards against the abuse of any individual rights provisions by employers. This is especially necessary when we are dealing with vulnerable groups.

54. We can refer here to the negative experience of Australian Workplace Agreements (AWAs), which appeared to be individual agreements but in industries such as retail and hospitality often proved to be template agreements imposed on employees with the aim of reducing award wages and conditions and thereby lowering costs for employers (Creighton and Stewart 2010, p. 297). AWAs could be offered by employers on a 'take it or leave it' basis, suggesting that there was little bargaining and little opportunity for the individual employee to do anything except 'agree'. During the period when AWAs were permissible under federal law, concern was expressed in several studies about the disadvantage faced by vulnerable groups such as school students or young people in general (eg NSW Teachers Federation 2007; Victorian Workplace Rights Advocate 2007, pp. 95-97).
55. The Fair Work Act excludes new AWAs. But it requires flexibility terms in awards and agreements, which provide for an employee and his or her employer to agree on 'individual flexibility arrangements'. These agreements are covered by several safeguards built in to protect individual employees and to ensure that agreement is genuine (Creighton and Stewart 2010, pp. 279-281; Pittard and Naughton 2010, pp. 853-858). Thus 'individual flexibility arrangements' can only cover a limited number of matters. The agreement needs to be in writing and signed by both the employer and the employee. More substantively, 'undue influence or pressure' is excluded, the agreement can only be agreed after the commencement of employment, the employee must be better off overall, and the agreement can be terminated by mutual consent or by either side giving four weeks' notice. The introduction of a mandatory flexibility term has been criticised by some scholars as creating a situation for employees similar to that of AWAs (Murray and Owens 2009, pp. 61-62). But from the point of view of this case, what is striking is the number and nature of the safeguards built in to these 'individual flexibility arrangements'.
56. The NRA application centres on a reduction in protection for a vulnerable group of employees. The application foreshadows a process that could be called one of 'individual agreement'. But it is an impoverished version that lacks what would be needed to protect employees, especially vulnerable employees, from employer pressure. It lacks any of the standard safeguards that are included in the flexibility terms. To accede to the NRA application would be to allow this impoverished version for a particularly vulnerable group of workers, when we don't allow it for other workers.

6. Miscellaneous issues

57. Submissions in support of the application contain varied evidence and arguments. Survey data on employment issues and ABS labour market data fall within my area of expertise and I can offer some comments to assist in interpretation of this evidence.

The submission of the Victorian Minister for Employment and Industrial Relations

58. The submission of the Victorian Minister for Employment and Industrial Relations contains selected statistics, drawn from the House of Representatives report (2009) and from the ABS, on the incidence of school children in employment and the structure of the retail industry. There is a small mistake in para 22 (where it should be "37 per cent of school students aged 15 to 19" and *not* "37 per cent of young people aged 15 to 19 years"), but most of the statistics are uncontroversial and useful as background. I could not, however, find any statistical evidence that directly supports the application.
59. The Minister's submission does raise one significant issue that deserves extended discussion. The submission includes a statement that "the Applications, in our view, help to avoid the impact on educational outcomes, of working excessive hours" (para 38). No evidence or argument is offered for this assertion.
60. The Minister's submission points to the widespread consensus that young people's participation in paid employment is a good thing, so long as certain conditions are met, including in particular that the hours are not long or excessive (paras 36 to 42). The submission quotes the Brotherhood of St. Laurence on the need for "structures and safeguards ... to allow young people to maintain a healthy balance between part-time work and study" (para 42). This is uncontroversial and I agree. But the problem of excessive hours is commonly and rightly couched in terms of *weekly* hours (House of Representatives 2009, 28-33). Granting the Application would undoubtedly involve pressure towards shorter daily hours for individual school children, but the crucial issue must concern its impact on hours (and educational outcomes) over the more relevant measure of the week.
61. The impact of granting the Application on the total number of hours devoted to paid work by students, whether daily or weekly, is likely to be indirect and to be contingent on a variety of factors. However, in contrast to the assertion in the Minister's submission, it seems to me that granting the Application would be more likely to *amplify* rather than reduce the danger of excessive hours. We know that school students engage in paid work primarily in order to earn money (see para 39 above). This leads to a judgment that shorter daily shifts could have the

perverse effect of encouraging longer weekly hours. The arithmetic supporting this judgment is straightforward. *If the same income is to be achieved, shorter daily shifts ceteris paribus mean longer weekly hours (and more evenings disrupted by paid work).* For example we can imagine a school student currently working two after-school shifts of four hours, joined with modest travel and preparation time of around one hour per shift. This amounts to 10 hours devoted to paid work (including travel and preparation), spread over 2 evenings of the week. If the shifts were transformed from four hours to two hours, the student would have to work four evenings to earn the same gross income. This amounts to 12 hours devoted to paid work (including travel and preparation) spread over 4 evenings. Not only does the transformed arrangement involve more hours to obtain the same income, but it now interferes with study on four out of five week nights. If we take into account travel and preparation time as a monetary as well as a temporal cost the effect would be even worse for the individual student. To compensate for extra costs and to avoid a reduction in income in net terms the individual school child would feel under pressure to add another two hour shift on the fifth evening, leading to even more hours (15) devoted to paid work (and travel and preparation) and even more evenings (5) disrupted by the demands of paid work. In this scenario a modest and appropriate 10 hours over 2 evenings is turned into 15 hours over 5 evenings, at the probable expense of the student's opportunities for study and social life.

62. This scenario is couched in terms of a change to two hour shifts. The problem would be even worse with an increased predominance of one-and-a half hour shifts. It may be that some students, especially those involved in difficult or lengthy travel, will feel that it is not worth the effort. In this way the shorter shifts could have the perverse effect of discouraging workforce participation amongst school students.

The NRA submission

63. The NRA submission offers what it suggests is evidence drawn from two surveys, an earlier survey conducted and presented by the ARA (para 51) and its own survey from November 2010 (para 52 and in the Affidavit of Gary Black). In addition the NRA submission refers to ABS labour market data (in the Affidavit of Gary Black). In my judgment both surveys are poorly designed and executed, and the NRA interpretation of the findings is mistaken. Similarly, the use of ABS data is clumsy.

The ARA survey

64. In its submission (para 51) the NRA points to an earlier ARA survey. I won't examine here the design of this survey, though I do have significant concerns about the sample and the approach. I focus just on the five points that the NRA presents as findings from this survey (para 51). I have examined the survey results as they were presented in the original ARA submission (ARA 2010),

and it is evident to me that the NRA has misinterpreted most of these results. To demonstrate this I consider in turn each of the five points listed in para 51:

- a) "over 75% of retailers surveyed employed students". This refers to Q 3 "do you employ school and/or university students?" Of the 336 retailers surveyed 253 said 'yes' and 83 said 'no'. The NRA summary is acceptable as far as it goes, though it is important to note that the question is not just about school students but for some reason also includes tertiary students, who of course have quite distinct working-time needs.
- b) "of the 24.7% of retailers who don't employ students, over 61% said they could not give school students the minimum shifts required by the Award". This refers to Q 9 "why don't you employ school students?" But the NRA interpretation in this case is clearly wrong. The retailers who responded to this question *cannot* be the 24.7% who answered 'no' to Q3. As noted above in connection with the first point, 83 said 'no' to question 3, but the number of retailers who answered Q9 is given as 128. Before we can start to interpret the results of this question we need to know who these people were and where they came from. Indeed we also need to know how this answer ("I can't give school students the minimum shift required under the modern award") emerged. Is it an interpretation of words given by the respondents? Or was it part of a show card that was read out or presented in person? If it's the former we need to know who was doing the interpreting and according to what rules of interpretation. If it's the latter we need to know how many other responses were on the show card and what they were. In the absence of answers to these questions, the result summarised in this point has no significance.
- c) "over 70% of retailers closed between 5.00pm and 5.30 pm on weeknights (excluding late night shopping)". This refers to Q6, which asks "not including hours of operation for late night shopping, what time do you close for business Monday-Friday?" The question looks straightforward, but again the summary interpretation of the NRA is wrong. The main problem here is that the 'over 70%' figure doesn't refer to retailers or even to the retailers surveyed. It refers to the retailers *who answered the question*. According to the results 96 retailers out of the 336 'skipped' this question. This is worrying for any reader of the survey results. Why did so many skip this question? Who are the group that skipped the question and does their absence import some bias into the results? In the absence of an understanding of this group it is difficult to rely on the results of even this apparently straightforward question.
- d) "91% of students employed by the survey participants were not available to work a 3 hour shift after school on weekdays". This refers to Q7, which asks "taking travel and close of business into consideration, how many hours are school students available to work after

school?" The NRA interpretation of the results is completely wrong. The figure of 91% seems to have been obtained by adding up different answers from retailers who answered this question, up to and including those who said '2-3 hours'. The figure has nothing to do with 91% of students! But it is not even a figure based on retailers. It is illegitimate for the NRA to add answers to this question and present it as a percentage of the sample. The problem here – as perusal of the results reveals – is that the answers add up to more than 100%, suggesting that multiple answers were allowed (or perhaps there was some structure to the answers that we haven't been told about). Even if you could legitimately add up the answers, there is the previously-mentioned problem arising from the fact that 114 retailers apparently 'skipped' this question and we need to know what bias might be associated with their absence. Even if all these problems could be resolved, there is the additional problem that the question is to do with employers' perceptions of the 'availability' of school students. But the question is next to useless because it asks the employers to take 'close of business' into account in answering the question. To include this phrase in the question is to invite answers that no longer have anything to do with the availability of school students.

- e) "56% of retailers surveyed said the impact of the 3 hour minimum shift was that they would either not employ students at all, or would not employ them after school. Only 4.7% of respondents said that they would pay students for the minimum 3 hours regardless of their actual time worked." This refers to Q 8, which asks "what does the three hours shift minimum for casual workers mean for your business?". The NRA interpretation is again wrong. Once again they have added up answers, failing to notice that the answers cannot be summed and presented as a percentage because the answers add up to more than 100%. And once again they have failed to notice that not all retailers surveyed answered the question and that we need to know about the 100 who 'skipped' the question. If we were taking this result seriously, we would have to note that this is a curious result, given that most retailers in the nation would have been operating with a three hour minimum prior to the development of the modern award. It seems likely, given what we know about the ARA survey, that the problem lies in the inadequacy of the survey rather than any purported weakness in the current modern award.

65. The overall result that the NRA seeks to extract from the ARA survey is completely unjustified. The survey offers no credible evidence that "the 3 hour minimum engagement period for casual workers was significantly impacting retailers". Even if the survey could be seen as representative, it is clear that the NRA's version of the findings do not stand up. In my judgment, points b, c, d, and e, and any inferences that might be drawn from these points, lack substance. Point a) is acceptable, but it is just a background point that would have been more useful to this case if the figure referred to school students rather than students in general.

66. Part of the responsibility for misinterpretation can be attributed to the original ARA submission (2010), which failed to provide necessary details on the nature of the survey – who, when, where, how – and which itself offered incorrect interpretations of the results of the questions. However, the NRA did not try to correct these errors and omissions. Moreover, it is noteworthy that they have added an extra layer of misinterpretation, eg by summing answers and presenting them as a percentage of respondents when the categories for the answers were not mutually exclusive.

The NRA survey

67. In addition to citing results from the ARA 2010 survey, the NRA offers results from its own survey, summarised in the Affidavit by Mr. Gary Black, the Executive Director of the National Retail Association Ltd. This survey is so poorly organised and presented that it does not merit the title of a survey. It is best regarded as just a series of notes drawn from conversations with NRA members.
68. The idea of a survey is to produce results that can be generalised to a population, in this case presumably retailers covered by the General Retail Award. To eliminate problems of sample bias and response bias, a survey needs procedures for drawing a sample, filtering out inappropriate cases, and then measuring refusals or non-responses. To avoid more substantive biases, it needs procedures for ensuring that the survey is introduced in a neutral way and that it excludes what are called leading questions designed to elicit a particular response (for general information on survey design see de Vaus 1995; Walter 2010).
69. There is no information to allow us to judge the quality of the NRA sample and the respondents. The most significant problem concerns the quality of the questions. We are not told how the 'survey' was introduced to those who were brought to the phone to answer the questions. Instead the submission simply gives notes about answers to five questions. Are they the only questions asked and were they in this format? If we assume that the questions were asked in the order they are presented, then question 1 is: "would the reduction in the minimum shift requirements from 3 hours to 1.5 hours on school days for casual employees make it easier for you to employ school kids after school". This is a strange question to lead off with, pegged as it is to a (wrong) version of the current NRA application. It strikes me as a classic 'leading' question, which does little more than in effect ask members whether they approve of the NRA case. Question 2 ("do you think parents want their school aged children working 3 hours after school?") is poorly worded and seems rather beside the point. Question 3 ("do you currently employ school aged children after school") seems to me alright, and indeed it could have been used as a neutral question to start a survey. For this case it would have been useful to follow up by asking employers who answered 'no' to explain 'why not' and perhaps to rank their reasons. However,

the follow up question 4 focuses just on those who say 'yes'. Again it would have been useful to ask this group why they employed school children (again perhaps with a ranking). If the NRA were interested in exploring disadvantages as well as advantages they could have phrased a question in terms of good points/ bad points about employing school children. Instead question 4 just asks another question, which seems designed to elicit a positive answer ("do you find it difficult to roster these employees for the required minimum three hour shift"). Finally, the survey finishes with question 5 ("would you employ more school aged children after school if a minimum 1.5 hour shift was implemented?"), which is more-or-less another version of question 1 – a leading question asking in effect whether the employer approves of the current NRA application.

70. What can be inferred from the results? It shows that many NRA members approve of the application, but why they do so remains unclear. The results do not constitute anything that can be called evidence.

NRA use of ABS labour force data

71. Gary Black's statement contains certain assertions about labour market statistics, especially in relation to employees employed in the retail sector (paras 4 and 7). Unfortunately, many points are wrong and need correction.
72. Para 4 starts by claiming (without reference) that there are approximately 1.2 million retail employees in Australia. This is incorrect and appears to be based on confusing employees and employed persons. There are approximately 1.2 million employed persons in retail, but the figure for employees is approximately 1 million (ABS 2010c). Para 4 is mainly devoted to speculation about SDA members as a proportion of retail employees. Such speculation is unnecessary because the ABS publishes readily-available annual data on estimated union membership by industry. The latest data indicate that 16 percent of retail employees (excluding owner managers of incorporated enterprises) (in main job) were union members (in main job) in August 2009 (ABS 2009). In food retailing the proportion was higher (28.9%) but it was lower (9.9%) in the branch of 'other store-based retailing'. Amongst casual employees, that is employees without paid leave entitlements, the figure for union density was 11.0 percent. This represents an estimated 45,200 casual employees in retail who are union members (ABS 2009).
73. Para 7 states that "approximately one young person in two relies on retail for a job or derives some level of income from employment in retail". This is unreferenced, and it is hard to imagine where the figure could have come from. Certainly, it is completely out of kilter with the reality of Australian labour markets. Retail employment is indeed important for young people but not to this extent! I do not know what Mr Black means by a 'young person', but if he means 15 to 19 year olds the correct figure is easily found. There are around 230,000 15 to 19 year olds

employed in retail (see Attachment A, Table 3) out of a total population of 15 to 19 year olds of around 1.5 million (see Table 2 above). This equates to 15.4% of young persons who rely on retail for a job. If Mr Black means by 'young person' a broader group of those aged 15-24, the proportion who are employed in retail would be even less.

74. Para 7 goes on to cite figures for 'youth' unemployment and underemployment, again without citing the source of the figures and without explaining what is meant by 'youth'. I think the figures are based on figures used in an ACCI issues paper on youth employment (2010). In this case 'youth' seems to mean the very broad group comprising 15 to 24 year olds.

REFERENCES

- ABS (various issues) *Education and Work, Australia*, May, cat. no. 6227.0.
- ABS (2006a) *Child Employment, Australia*, June, cat. no. 6211.0.
- ABS (2006b) *How Australians Use their Time 2006*, cat. no. 4153.0.
- ABS (2009) *Employee Earnings, Benefits and Trade Union Membership, Australia*, August, cat. no. 6310.0.
- ABS (2010a) 'Are young people learning or earning?' *Australian Social Trends*, March, cat. no. 4102.0.
- ABS (2010b) *Labour Force, Australia – Detailed – Electronic Delivery*, Table 03a, Labour force status for 15-24 year olds by educational attendance and age and sex, March 2010, cat. no. 6291.0.55.001.
- ABS (2010c) 'Type of employment', *Australian Labour Market Statistics*, July 2010, cat. no. 6105.0, Time series spreadsheet, viewed 6 April 2011.
- ABS (2011a) *Labour Force, Australia, Detailed – Electronic Delivery*, data cube: SuperTABLE, cat no. 6291.0.55.001, LM2 - Labour Force Status by Sex, Age, Capital City/Balance of State, viewed 17 March 2011.
- ABS (2011b) *Labour Force, Australia, Detailed Quarterly*, data cube: SuperTABLE, cat. no. 6291.0.55.003, E12_Aug94_ANZSIC06, viewed 6 April 2011.
- ACCI (2010) Issues Paper: Youth Employment, Sydney, ACCI, May.
- ARA (2010) Australian Retailers Association Submission, Matter No AM2010/39, 16 April.
- Ashenden, D. (1990) *The Student-Workers: The extent, character, consequences and possibilities of part-time work by secondary students*, Canberra, AGPS.
- Barnard, C., Deakin, S. and R. Hobbs (2004) *Opting Out of the 48-Hour Week – Employer Necessity or Individual Choice? An Empirical Study of the Operation of Article 18(1)(b) of the working Time Directive in the UK*, Working Paper no. 282, Centre for Business Research, University of Cambridge.
- Campbell, I. (2003) 'More and better jobs', *About the House: House of Representatives Magazine*, Issue 19, 26-28.

- Charlesworth, S. and Campbell, I. (2008) 'Right to Request Regulation: Two New Australian Models', *Australian Journal of Labour Law*, 21(2), 116-136.
- Commission for Children and Young People and Child Guardian (2005) *Queensland Review of Child Labour: Summary of Findings*.
- Creighton, B. and Stewart, A. (2010) *Labour Law*, 5th edition, Sydney, The Federation Press.
- De Vaus, D. (1995) *Surveys in Social Research*, 4th edition, Sydney, Allen and Unwin.
- DEEWR [Department of Education, Employment and Workplace Relations] (2009) Submission to the Inquiry into combining school and work, Submission no. 53, Canberra, DEEWR, February.
- Fattore, T. (2005) *Children at Work*, Sydney, NSW Commission for Children and Young People.
- Fair Work Ombudsman (nd) *Best practice Guide: An employer's guide to employing young workers*.
- Foundation for Young Australians (2010) *How Young People are Faring: The National Report on the Learning and Work Situation of Young Australians*, Melbourne, FYA.
- House of Representatives [House of Representatives, Standing committee on education and training] (2009) *Adolescent Overload? Report of the inquiry into combining school and work: supporting successful youth transitions*, Canberra, Commonwealth of Australia.
- ILO [International Labour Office] (2008) *Ratification and promotion of fundamental ILO Conventions*, ILO Governing Body, Committee on Legal Issues and International Labour Standards, GB.303/LILS/5, 303rd Session, Geneva, November.
- Lee, S. and McCann, D. (2006) 'Working time capability: Towards realizing individual choice', in J.-Y. Boulin, M. Lallement, J. Messenger and F. Michon eds., *Decent working time: New trends, new issues*, Geneva: International Labour Office, pp. 65-91.
- McCann, D. (2007) 'Temporal Autonomy and the Protective Individualisation of Working-Time Law: The Case of Overtime Work', *Labour and Industry* 17 (3), 29-43.
- McDonald, P., Backstrom, S. and Allegretto, A. (2007a) 'Underpaid and exploited: Pay-related employment concerns experienced by young workers', *Youth Studies Australia* 26 (3), 10-18.
- McDonald, P., Bailey, J., Oliver, D. and Pini, B. (2007b) 'Compounding Vulnerability? Young workers' Employment Concerns and the Anticipated Impact of the WorkChoices Act', *Australian Bulletin of Labour* 33 (1), 60-88.
- McDonald, P., Bailey, J., Pini, B. and Price, R. (2010) *Social Citizenship and Employment for Secondary School Students: Report to Partner Organisations*, Brisbane, May.
- Murray, J. (2005) 'Work and Care: New Legal Mechanisms for Adaptation', *Labour and Industry* 15 (3), 67-87.
- Murray, J. (2008) 'Time for a New Working-Time Convention? Ideas, Themes and Possibilities', *Labour and Industry* 18 (3), 1-18.
- Murray, J. and Owens, R. (2009) 'The Safety Net: Labour Standards in the New Era', in A. Forsyth and A. Stewart eds., *Fair Work: The New Workplace Laws and the Work Choices Legacy*, Sydney, The Federation Press, 40-74.
- NSW Commission [NSW Commission for Children and Young People] (2009) *Ask the Children: I want to work*, Sydney, NSW Commission for Children and Young People, available online:

- <http://kids.nsw.gov.au/kids/resources/publications/askchildren.cfm?itemID=15E1569BEA7D9677907E9375B1A996FA> accessed 6 April 2011.
- NSW Teachers Federation (2007) *'You're gold ... if you're 15 years old': The perceived impact of WorkChoices on Youth Employment and Education in NSW*, Sydney, NSW Teachers Federation.
- OECD (2009) *Jobs for Youth, Australia*, Paris: OECD Publishing.
- OECD (2010) *Off to a Good Start? Jobs for Youth*, Paris: OECD Publishing.
<http://dx.doi.org/10.1787/9789264096127-en>
- Patton, W. and Smith, E. (2009) 'Part-Time Work of High School Students and Impact on Educational Outcomes', *Australian Journal of Guidance and Counselling* 19 (2), 216-224.
- Pech, J., McNevin, A. and Nelms, L. (2009) *Young People with Poor Labour Force Attachment: A Survey of Concepts, Data and Previous Research*, Research Report no. 11/09, Australian Fair Pay Commission Secretariat.
- Pittard, M. and Naughton, R. (2010) *Australian Labour Law: Texts, Cases and Commentary*, 5th edition, Chatswood NSW, LexisNexis.
- Robinson, L. (1996) *School Students and Part-Time Work*, LSAY Research Report number 2, Melbourne, Australian Council for Educational Research.
- Robinson, L. (1999) *The effects of part-time work on school students*, LSAY Research Report number 9, Melbourne, Australian Council for Educational Research.
- Schluter, J. and Houghton, C. (2005) *Dirt Cheap and Disposable: A Report about the exploitation of young workers in South Australia*, Adelaide, SA Unions.
- Smith, E. and Patton, W. (2009) 'School students and part-time work: Workplace problems and challenges', *Youth Studies Australia* 28 (3), 21-30.
- Smith, E. and Wilson, L. (2002) 'Child Labour in the 21st Century: The Part-time School Student Workforce in Australia', *Australian Bulletin of Labour* 28 (2), 120-137.
- Stewart, A. (2008) *Making the working world better for kids: A Report for the NSW Commission for Children and Young People*, Sydney, NSW Commission for Children and Young People.
- The Australia Futures Task Force (2007) *Challenges and Directions for Australia's Urban and Regional Future*, Report no. 1 (Identifying the Key Issues). ARC Research Network in Spatially Integrated Social Science.
- TUC [Trades Union Congress] (2009) *Informing strategies for vulnerable workers*, Vulnerable Workers Project, Final report, London, TUC.
- Victorian Workplace Rights Advocate (2007) *Report of the Inquiry into the Impact of the Federal Government's Work Choices Legislation on Workers and Employers in the Victorian Retail and Hospitality Industries*, Melbourne, Office of the Workplace Rights Advocate.
- Walter, M. ed. (2010) *Social Research Methods*, 2nd edition, South Melbourne, Oxford.

FAIR WORK AUSTRALIA*Fair Work Act 2009*

Section 158 Applications to vary, revoke or make a modern award

**National Retail Association
(AM 2010/16)****Master Grocers Association
(AM 2010/17)****Sandra Green
(AM 2010/36)****Australian Retail Association
(AM 2010/39)****Jim Whittaker
(AM 2010/44)****-and-****Shop, Distributive and Allied Employees Association****STATEMENT OF (DR.) IAIN GRAEME CAMPBELL****I. Qualifications and Research Background**

1. I am a Senior Research Fellow at the Centre for Applied Social Research (CASR) at RMIT University, where I am working on several research projects to do with working time patterns, job quality, temporary migrant labour, and work-life balance.
2. I have almost thirty years experience in research in areas related to employment. My research uses a wide range of methods, including analysis of secondary statistics, cross-national comparisons, industry case-studies, interviews, surveys, and regulatory research. I have a BA (Hons) and MA in sociology and a PhD in economic geography. The PhD thesis was supervised at the University of Melbourne and was on the topic of casual employment in Australia. I have continued to research and publish on casual employment in the period since the PhD was awarded

(March 1999), while also looking at related topics such as part-time work, precarious work and underemployment.

3. In the course of the past decade, I have participated in four industrial cases. Two of these involved expert witness statements in cases directly concerned casual employment (the South Australian Clerks Case in 1999-2000 and the Metals Casual Award Case in 2000). The other two involved commissioned research reports that were presented in Test Cases before a Full Bench of the Australian Industrial Relations Commission (the Reasonable Hours Test Case in 2001-2002 and the Family Provisions Test Case in 2004-05).
4. I have recently conducted research in the retail industry. As part of a project funded by the Australian Research Council (ARC) on the quality of part-time waged work in Australia, I examined, together with my colleague Dr. Jenny Chalmers, part-time work in the retail industry, with special attention to the occupational category of shop assistants. Dr Chalmers administered a mail-based survey in 2006 of retail workers in Victoria, which focused on working-time arrangements, followed up by twenty in-depth telephone interviews. The survey, entitled the Victorian Retail Survey 2006, attracted 493 responses, comprising 177 full-time and 316 part-time employees (with two thirds of the latter being 'permanent' part-time employees and the other one third being 'casual' part-time employees). Though not representative of the retail workforce as a whole, the survey produced valuable insights into the behaviour and attitudes of a range of retail employees, mainly those employed as sales assistants in Victorian food retailing. We defined part-time work in this project as employment at less than full-time weekly hours, and it thus included part-time employees who were casual part-time as well as part-time employees who were 'permanent or 'regular' part-time. Other occupational groups in the project were contract cleaners, police officers and solicitors. The results of the project are still being written up, but amongst the varied publications so far is one article on retail employees (Campbell and Chalmers 2008).
5. In the course of this project, we reviewed the dimensions that need to be considered when assessing the quality of jobs with part-time hours. We stressed the importance of working-time dimensions, because of the fact that many employees are working reduced hours in order to respond to rigidities in other aspects of their life and they are therefore particularly dependent on aspects such as regularity and predictability in the number and timing of their work schedules. In an early article from the project we outlined ten dimensions that we saw as important for an assessment of the quality of jobs with part-time hours: number of hours, schedules, flexibility in number of hours and schedules, the ability to move between part-time and full-time hours in the

one job, wages, employment benefits, employment security, access to training and career progression, employee voice and content of work (Chalmers, Campbell and Charlesworth 2005).

6. In following up this project, I have published an analysis of the official statistics on time-related underemployment in Australia (Campbell 2008). In addition, together with two colleagues, Dr. Sara Charlesworth and Professor Marian Baird, I am currently engaged in a research project, funded both by the ARC and by industry partners in the Victorian government, which looks at work-life balance in regional Victoria. As part of this project, we conducted in 2009 a telephone survey of 3000 employees in Victoria (approximately 1,000 in metropolitan Melbourne and 2,000 in non-metropolitan Victoria). The project is uncompleted and the results of this survey have been published so far only in the form of working papers. The survey includes 222 retail employees, but we have not yet analysed the results according to industry.

II. The nature of casual employment

7. Casual employment in Australia can be a clouded topic, subject to several contending definitions at the vernacular, contractual and regulatory levels (O'Donnell 2004). My research starts from the official statistics, where for the past two or three decades the ABS has deployed a useful conceptualisation of casual employment in terms of an absence of entitlements to paid annual leave and paid sick leave. Since 2000 these employees have been formally called 'employees without paid leave entitlements', but the ABS identifies this category as the proxy measure for casuals (ABS 2009a; see ABS 2008).
8. The official statistics indicate that casual employment is a large part of the employment structure in Australia. According to recent figures, the total number of employees without paid leave entitlements was 2,098,200, representing 20% of all employed persons (or 24.1% of all employees) in August 2008 (ABS 2009b, see Table 1).
9. There is now a large body of research on casual work in Australia; at latest count over one hundred academic books and articles have touched on one or another aspect of the topic. This research indicates that labour regulation has been crucial in shaping what we know as casual employment in Australia (O'Donnell 2004). In terms of labour regulation casual employment shares the common feature that it is employment without most standard rights and benefits. It is characterised by an entitlement to an hourly wage, often with a casual loading attached, but to very few of the other protections and entitlements that have been built up over the course of decades for standard, 'permanent' employees. Casual work tends to fall through holes in the

safety net created by protective labour law (Owens 2002, 218-223). As a result it is characterised by what can be called 'precariousness', defined in terms of low pay and high levels of labour insecurity (Campbell, Whitehouse and Baxter 2009). Precariousness is a concept that reaches across different dimensions of work and can be analysed at three different levels: vulnerability or risk as a result of the conditions of the employment contract; the employment practice; and the perceptions of the individual employee.

10. My research, together with that of other scholars, confirms that casual employment in practice in Australia is diverse, divided according to features such as whether it is full-time or part-time, and whether it is regular and long-term or irregular and short-term. In addition, the experience of casual employment can vary, depending in part on factors such as the individual employee's dependence on the casual wage for income and his/ her career intentions.
11. 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).
12. 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.

13. 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, ie 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).

14. To describe and explain the diverse experiences of casual employment, ABS data and other survey data have been supplemented by carefully-designed in-depth interviews. I have conducted interviews in the course of my own case-study research, but perhaps the most comprehensive and sensitive program of interviews with casual employees was carried out in 2004 by Professor Barbara Pocock and her colleagues (Pocock, Prosser and Bridge 2004). The authors interviewed 55 employees who were recently or currently employed as casuals. They concluded that the experience of casual work was negative for most casual employees and that most would prefer to be permanent – they were called 'reluctant casuals'. However, the authors also suggested that two factors seemed to lessen discontent and underpin feelings of relative satisfaction: a) when the employees had access to a back-up income and were not dependent on the low wages from casual work; and b) when the employees felt that they had a say over their working time through a 'reciprocal negotiating' relationship with their employer.

15. 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..."

III. The principle and level of the minimum daily engagement

16. This section considers the issue of a minimum daily engagement for casual employees. I consider both the principle and the level of minimum engagement, drawing on the background research as well as my own knowledge of the nature of casual employment and the problems involved in overly short hours.
17. Minimum daily engagement provisions in awards and agreements are an important protection for all employees on schedules of part-time hours, ie both casual and (regular) part-time employees. Within the framework of often-fragmented part-time schedules, both casual and regular part-time employees need a minimum engagement in order to achieve income and working-time security. To attend work on a particular day is to expend income and time on personal laundry, organization of other responsibilities (eg alternative childcare arrangements) and travel. There is a danger that "for some employees the time and expense of preparing for and travelling to and from work may in reality outweigh the remuneration and other benefits which such work provides" (NSWIRComm 1998, 26). The main rationale for minimum daily engagement provisions is to protect the income and time of the employee in this way.
18. The need for minimum daily engagement is stronger for casual employees than for (regular) part-time employees. In addition to a minimum daily engagement provision, (regular) part-time employees are governed by other provisions that serve to protect their income and working time. In the General Retail Industry Award, 'part-time employees' have a three hour minimum daily engagement, but they also have a more general right to a regular and predictable pattern of work — comprising notification of the days of the week of work, starting and finishing times, the number

of hours each day, and the times of taking and duration of meal breaks – all of which is embedded in writing and is accompanied by rights of notice of variation to the pattern of work and by employment security that is much the same as ‘full-time employees’. These protections give a platform of income and working-time security that helps to meet the needs of individual workers. In comparison to casual employees, such (regular) part-time employees are thereby able to achieve greater financial certainty and predictability of earnings. As a result there is less urgency concerning the income and time associated with each engagement or attendance.

19. Casuals, on the other hand, in this award, as in other awards, appear to have only the protection of the minimum daily engagement (three hours) and none of the other rights and benefits. As a result, they appear much more insecure in terms of income and working-time, from the point of view of both the text of regulation and the practice. Employers can vary their hours and schedules relatively easily, reducing them to zero in the extreme case. This in turn makes the provision for a minimum daily engagement more important. Each daily engagement for casuals tends to occur in a framework of fundamental uncertainty. When a casual employee accepts an engagement for a shift, often at short notice, they must rearrange their other activities and they must forgo other opportunities for work. They may be reluctant to reject even an unattractive offer, for fear of not receiving a subsequent offer. They are at heightened risk of being called in for six, seven or eight hours and then being sent home if circumstances change. In short, irrespective of the comparative cost of laundry, travel, etc., the cost of each engagement for casuals tends to be higher than for (regular) part-time employees. The benefits may be similar but the costs are higher for casuals rather than (regular) part-time employees. Casuals are not only disadvantaged in general, but they are likely to be more disadvantaged by short shifts and more in need of protection against overly short shifts.
20. The principle of minimum daily engagement is important. It is true that minimum daily engagement provisions are in practice more important for certain categories of employee than others. First, they are more important for employees that are vulnerable. Second, research indicates that they are particularly important for those reliant on the income from the job and for those seeking to balance their working-time with other responsibilities. The need to balance paid work with other activities is true for students, who must balance paid work with study. But it is particularly true for workers with caring responsibilities, such as mothers with dependent children. Caring responsibilities appear as rigidities in workers’ lives, which need to be carefully organised and scheduled in order to sustain participation in paid work (Chalmers, Campbell and Charlesworth 2008). Paid work needs a certain amount of employee-oriented flexibility in order to avoid too great an impact on the carefully scheduled caring responsibilities. In particular,

protections are needed in order to ensure, as much as possible, that paid work is predictable, regular and adequately compensates for the effort.

21. It is also true that minimum daily engagement patterns are needed more in some industries than in others. In industries that deploy large numbers of casual employees and (regular) part-time employees, and that rely heavily on schedules based on part-time hours, especially in short daily shifts, the provision will tend to have more impact and more relevance.
22. The strongest argument for the principle of minimum daily engagement is from the point of view of the employee. However, it could be argued that it discourages a careless use of labour power by employers, and in that sense it facilitates better employment practices that also benefit the employer and dynamic productivity growth in the economy as a whole. This argument is at the centre of new International Labour Organization (ILO) research that criticises the assumption that working-time regulation is necessarily inflexible and damaging to employers. Instead this research points to the many benefits that can flow from well-designed working-time regulation that serves to protect employee needs (eg. Lee and McCann 2008).
23. With respect to *the level*, the challenge is to determine what is fair and reasonable. There is an argument, at least for (regular) part-time employees, that if it is too high it acts as an indirect barrier to good quality part-time schedules. Thus a daily minimum engagement of seven or eight hours would allow only some forms of part-time schedules but not others that could equally well offer good quality jobs. But the major concern is that it not be too low. If it is too low it no longer fulfils its rationale of protection, and it risks leading to income and working-time insecurity.
24. A low level of minimum engagement would have bad consequences if it encouraged employers to offer shifts at this low level. The individual worker, especially when on a low hourly rate, needs to calculate the time and expense involved in preparation for work, travel, etc. A short daily shift could spill out to several more hours of preparation and re-organisation of schedules, thereby drastically reducing the effective hourly rate and the returns from paid work. For casual employees the extra costs, eg in forgoing the chance of other work, would also have to be considered. For casuals reliant on a welfare payment, the cost could indeed be even higher, and in this context short daily shifts could be seen as a factor tending to discourage participation in paid work.
25. Data on the time and cost of travel for employees are scattered. Our own 2009 VicWAL survey found that for metropolitan employees in Melbourne the median time for commuting to and from

work was 50 minutes while for non-metropolitan employees in regional Victoria the median time was 30 minutes (Haynes et al. 2010).

26. If the minimum daily engagement for casuals in the General Retail Industry Award 2010 was reduced from three hours to two hours (or one-and-a half hours), it would stand substantially below the level set for part-time employees, which is three hours. This difference is hard to justify. As explained above, casual employees are more disadvantaged by short shifts and have a higher need for the protection of a minimum daily engagement. This has been acknowledged, as in the decision in the Metals Casual Award case (AIRC 2000, para 132), by setting a minimum daily engagement for casuals that was higher than for regular part-time employees. Alternatively, regulation could set the same minimum daily engagement in the interests of equitable treatment. But to set a lower level, especially one as low as two hours, is to hit already disadvantaged employees even harder. This could not only impact on the casual workers themselves but also in turn affect (regular) part-time workers in retail by creating an incentive to replace regular part-time employees with casuals.

IV. Evidence on retail employment

27. I have assembled data on employment in retail, in order to sketch the size of the industry, the reliance on part-time (often very short part-time) schedules, the trend towards an increased part-time share, the heavy reliance on casuals to supply these part-time schedules, the social composition of the retail workforce, the geographical distribution of employment, and the conditions of work (see also Pech et al. 2009; Peetz and Price 2007).
28. There are several problems in drawing on official statistics on the retail industry. Data on type of employment and working conditions within the industry division are limited. Another major problem concerns the definition of 'retail', which has changed as the industry classifications used in official statistics have changed. For example, in the change from ANZSIC 93 to ANZSIC 2006, 'retail trade' continued to be treated as an industry division, but its content changed. Under ANZSIC 2006 the 'retail trade' division shrank in employment size, mainly as a result of a reclassification of several industry groups oriented to takeaway food and repair and maintenance (of motor vehicles, household equipment, etc.), which were taken from the old retail trade division and distributed to other industry divisions. Moreover, the retail trade division, whether ANZSIC 93 or 2006, does not neatly match the coverage of the General Retail Industry Award 2010, which co-exists with separate awards for industries such as motor vehicle retailing and is therefore narrower in coverage than the industry division in the official statistics. Though, the match

remains imperfect, it is closer in the case of the more recent ANZSIC 2006. In what follows I use the ANZSIC 2006 classification as much as possible and I indicate when ANZSIC 93 has been used.

29. Retail is a major industry division, accounting for 1,150,000 workers in August 2009 (ABS 2009d). It is an industry division with a heavy reliance on part-time hours. Table 1, which presents figures on type of employment for August 2008, shows that almost half (48.9%) of all employed persons in retail were employed on part-time hours, compared to 28.4% for all industries. If we focus just on employees, we can see that more than half (52.5%) were on part-time hours in August 2008 (Table 1, ABS 2009b). The extent of part-time hours varies from branch to branch, but it is particularly strong in food retailing (58.3% in February 2010), and it is around half (49.7%) in other store based retailing (ABS 2009c). These two subdivisions account for around 85% of all employment in the retail trade division.

Table 1: Type of employment in retail trade and all industries*, August 2008 ('000 persons)

	Ftees with paid leave	Ftees without paid leave	All ft employed persons#	Ptees with paid leave	Ptees without paid leave	All pt employed persons#	Total employed persons#
Retail trade							
Males	260.5	19.1	346.9	34.6	113.6	154.6	501.5
Females	177.9	32.3	253.6	128.0	265.7	419.1	672.7
Persons	438.4	51.3	600.5	162.6	379.3	573.7	1174.2
All Industries							
Males	3469.0	424.8	4882.9	157.9	489.9	822.1	5705.0
Females	2112.1	219.2	2611.7	876.7	964.3	2155.8	4767.5
Persons	5581.1	644.1	7494.5	1034.6	1454.1	2977.9	10472.5

*ANZSIC 2006 industry classification

includes owner-managers

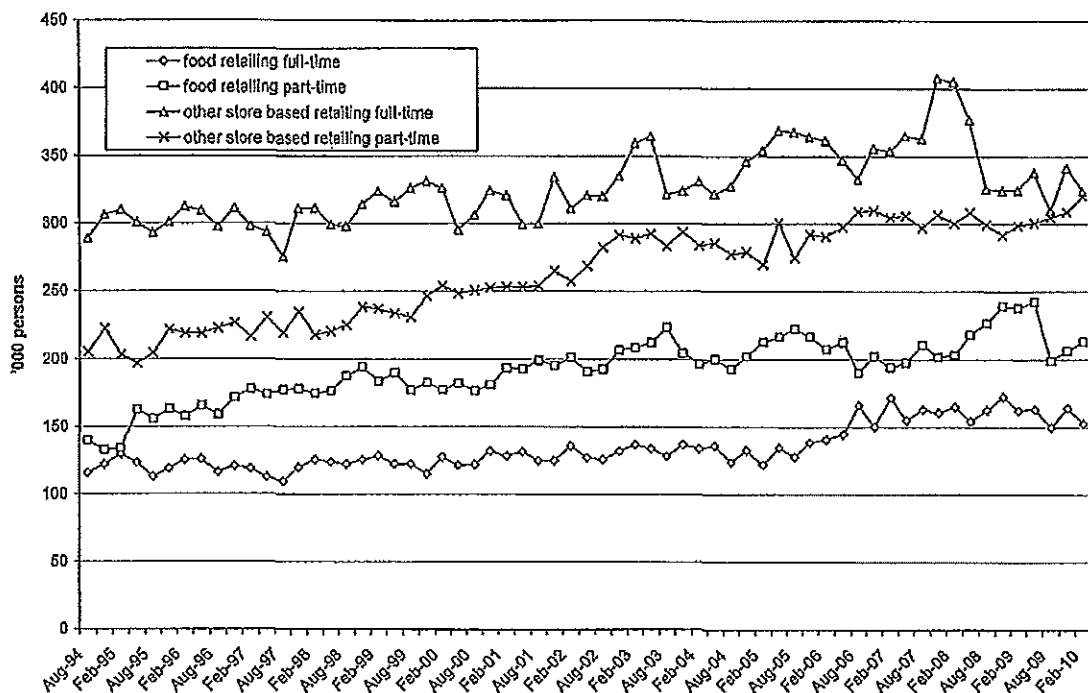
Source: ABS 6105.0, *Australian Labour Market Statistics*, July 2009

30. Historical figures suggest that, within a pattern of overall growth in employment in retail, there has been a strong trend towards a greater proportion of employment in part-time hours (Pech et al. 2009, 22-24; Peetz and Price 2007, 11). Already high part-time levels had been achieved by the early 1990s, but steady growth continues to unfold, eg. from 42.2% for the ANZSIC 93 retail trade in August 1994 to 48.8 percent in August 2008 (ABS 2009b). The figures for food retailing show an increase in the part-time share from 54.7% in August 1994 to 58.3% in February 2010, but the increase is sharper in other store based retailing, where the part-time component increased from 41.5% in August 1994 to 49.7% in February 2010 (ABS 2009c, see Figure 1). This trend

towards an increased part-time share is apparent in many industrialised countries, where it can be linked to employer responses to factors such as liberalisation of trading hours, cost pressures, and new technologies (Jany-Catrice and Lehdorff 2005). But it seems particularly advanced in Australia (Campbell and Chalmers 2008, 489).

31. Retail is characterised not only by a high proportion of workers engaged in part-time hours but also, within this framework, by a high proportion of workers engaged in short schedules of 1-15 hours per week. In August 2009 264,000 workers in retail, that is 23 percent of all workers in retail, were recorded as working 1 to 15 actual hours in the reference week, compared to only 12.4 percent for workers in all industries (ABS 2009d). It is likely that the vast majority of these workers will be casual employees. Australia figures in international comparison as a country with a high incidence of 'marginal' part-time employment (Lee 2004, 48), but the incidence is particularly high in a few industry division such as retail and accommodation and food services.

Figure 1: Employed persons in food retailing and other store based retailing*, Australia, August 1994–February 2010



*ANZSIC 2006 classification

Source: ABS *Labour Force, Australia, Detailed, Quarterly*, February 2010, Table 06, Employed persons by Industry Subdivision and Sex, cat. no. 6291.0.55.003, Time Series Workbook.

32. Part-time schedules in retail can be accurately described as fragmented. The trend to a greater share of employment in part-time hours has been accompanied by a proliferation of different part-

time schedules, with some matched closely to peaks in demand (eg lunchtime) and others, especially in the wake of the liberalisation of shop opening hours, designed around non-social periods such as nights and weekends (Campbell and Chalmers 2008). These schedules are often short and at varied times of the day and week. Drawing on UK case-studies Rubery, Ward and Grimshaw (2006) refer to a trend within existing part-time job areas, particularly in lower-skill service sector industries such as retail, to fragment agreed periods of working time into shorter discontinuous periods that are scheduled across the week or the year to match the requirements of employers. In this 'fragmented time regime', part-time work creates problems for many workers who have traditionally sought reduced hours in order to fit in with needs such as child care. Rubery, Ward and Grimshaw (2006) identify four elements of the move to fragmented time: greater attention to the planning of time schedules against demand; limited notice of change in working time schedules; requirements to be available for work over a larger share of the 24/7 week; and absence of, or low level of, premia for extra hours or unsocial hours. They accurately describe a trend that is also apparent in Australia (Campbell and Chalmers 2008).

33. Retail is an industry division with a high proportion of casual employees in its workforce.

Amongst all industry divisions it employs the largest number of casuals (430,600 in August 2008), and it ranks as the second most casualised industry division, behind accommodation and food services and just ahead of agriculture, forestry and fishing and arts and recreation services (ABS 2009b). A small number of these casuals (51,300) are full-time employees, but the main story of casual work is within the large and growing group of employees on part-time hours. Most retail employees on part-time hours are without paid leave entitlements, i.e. casual. As Table 1 suggests, 70 percent of retail employees on part-time hours are without paid leave entitlements (while 30 percent do have paid leave entitlements). This can be compared with a figure of 58.4% (and 41.6 %) for employees on part-time hours in all industries in Australia. As the industry has become more dominated by part-time schedules it has also become more casualised. Part-time schedules in retail are a familiar feature in cross-national comparison, but this predominance of casual status amongst part-time workers is more unusual (Campbell and Chalmers 2008, 490-491; see also Campbell 2004).

34. Employment on part-time hours may be taken up by workers who have been unable to find a full-time job. But most jobs with part-time hours are taken up by distinct categories of workers who do not want to work full-time hours, such as persons with caring responsibilities (predominantly mothers with dependent children), full-time students, either in secondary or tertiary education, and older workers seeking a phased retirement. The retail workforce is diverse and includes each of these groups.

35. As Table 1 indicates, part-time employees in retail are divided unevenly according to sex, with females accounting for 72.7 percent of all part-time employees. The female dominance is strongest amongst part-time employees with leave entitlements (78.7%), but it is still very strong within the large group of part-time employees without leave entitlements (70.1%).
36. It is harder to get data by age and school attendance according to industry. In our retail study (Campbell and Chalmers 2008, 490), we presented some specially requested data from the ABS that offered a picture of the composition of the part-time employee workforce in retail at the level of Australia as a whole in 2005-2006. This is reproduced as Table 2. We used the data to argue that part-time work in retail is important for women with caring responsibilities but that it also has a strong orientation to young workers, particularly young women. Not all young workers (aged 15-24) were full-time students, but it is clear from Table 2 that the majority of young retail workers in part-time work were in full-time secondary or tertiary education. Unfortunately, we did not distinguish school children and tertiary students. Nor did we distinguish casuals from (regular) part-time employees. In this table, the definition of retail is according to ANZSIC 93, but it is likely that the general picture also applies to retail defined according to ANZSIC 2006.

Table 2: Composition of the part-time employee workforce in retail*, by age, sex, educational status and presence of dependent children (%), Australia, 2005-2006**

	2005/2006*
Young workers (aged 15-24) who are full-time students:	
women	28.3
men	18.8
Young workers (aged 15-24) who are not in full-time education:	
women	9.0
men	4.9
Women aged 25-34 with dependent children,***	5.6
Women aged 35-44 with dependent children, ***	8.4
Women aged 45-54 with dependent children,***	2.1
Women (aged 25-54) without dependent children,****	11.4
Men, aged 25-54	4.6
Older women (aged 55+)	5.1
Older men (aged 55+)	1.8

<i>Total women</i>	<i>69.9</i>
<i>Total men</i>	<i>30.1</i>
<i>Total</i>	<i>100.0</i>

*ANZSIC 93 industry classification

** Average of the four Labour Force Survey quarter months; August 2005, November 2005, February 2006 and May 2006.

*** dependent children are children under the age of 15.

**** includes women whose family status is not recorded.

Source: specially requested ABS data, cited in Campbell and Chalmer 2008, 490.

37. Table 3 shows more recent data for employment in retail (ANZSIC 2006) by age. As can be seen 230,000 employed persons in retail were aged 15 to 19 years, with 199,000 of these employed part-time. This represents almost one in five of every retail worker. A further substantial group were aged 20 to 24 years. Not all of these young workers would be full-time students.

38. School children in Australia have relatively high employment rates in cross-national comparison (House of Representatives 2009, 10). Most are working 10 or fewer hours per week (House of Representatives 2009, 16-17). Table 4 presents aggregate ABS data for employment of 15 to 19 year olds, differentiated according to educational attendance and full-time or part-time employment status. This underlines two important points. First, those in fulltime education and employed on part-time hours were almost equalled by a substantial number who were not in full-time education and were employed either full-time or part-time. Second, the 199,000 15 to 19 year olds employed part-time in retail (Table 3) are clearly a substantial part (around 40%) of the overall group of 15 to 19 year olds who are employed part-time in all industries. In short, retail is the major site of employment for 15 to 19 year olds, including full-time school children.

Table 3: Employed persons in retail trade*, by sex and age, Australia, February quarter 2010 ('000 persons)

	males		females		persons	
	Full-time	Part-time	Full-time	Part-time	Full-time	Part-time
15-19	16	75	15	124	31	199
20-24	47	38	44	66	91	104
25-34	97	19	58	50	155	69
35-44	72	13	54	62	125	74
45-54	65	8	56	67	121	76
55-59	23	3	18	23	41	26
60-64	15	4	6	18	21	21
65+	11	8	3	6	14	14
Total	345	168	253	416	599	584

*ANZSIC 2006 industry classification

Source: ABS, *Labour Force, Australia, Detailed, Quarterly*, February 2010, E12_aug94, Employed persons by industry, sex, state, age, cat. no. 6291.0.55.003.

Table 4: Employment participation of 15-19 year olds, by education attendance and sex, Australia, March 2010 ('000 persons)

	male	female	persons
Not in full-time education and employed full-time	133.7	68.0	201.7
Not in full-time education and employed part-time	45.9	62.8	108.7
In full-time education and employed full-time	#4.6	#4.5	9.1
In full-time education and employed part-time	156.2	226.9	383.1
Total civilian population	764.4	730.1	1494.5

estimate is subject to sampling variability too high for most practical purposes

Source: ABS, *Labour Force, Australia – Detailed – Electronic Delivery*, Table 03a, Labour force status for 15-24 year olds by educational attendance and age and sex, March 2010, cat. no. 6291.0.55.001.

39. Scholars agree that a key factor in the employment of young workers in retail is the availability of junior rates of pay, which makes the employment of very young workers highly attractive to cost-conscious employers. Young workers employed as part-time employees in retail are likely to be mainly employed under junior rates. Moreover, they are likely to be mainly employed as casuals.
40. In the Victorian Retail Survey 2006, employees were asked about their schedules and when they usually worked in their main job in retail (Table 5). Respondents were offered a checklist of options and could tick all the options that applied to them. The results hint at the existence of numerous fragmented schedules. They also suggest that different categories of employees tend to be used at different times, according to their availability. Thus, amongst the part-time workers, school children most often ticked weekday evenings (6pm to 10 pm) but almost as many ticked weekends during the day (5am to 6pm) and others ticked weekend evenings (6pm to 10pm). This pattern was different to that of mothers with dependent children.

Table 5: Position of shifts in retail, by select type of worker, Victoria 2006

	Week-days during the day	Week-days evening (6pm-	Weekends during the day	Weekends evening (6pm-	Sunday	Nights (10pm-
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	(5am-6pm)	10pm)	(5am-6pm)	10pm)		5am)
Full-time (162)	93.2	20.4	29.6	5.6	18.2	9.9
Part-time						
High school students (39)	25.6	87.2	71.8	33.3	56.1	0.0
Other full-time students (45)	44.4	68.9	75.6	44.4	56.5	11.1
Mothers with children at primary school (66)	83.3	20.6	31.8	13.6	26.1	10.6
Mothers with older children (19)	89.5	15.8	26.3	10.5	20.0	10.5
Older women, no children (75)	94.7	9.3	28.0	1.3	14.8	2.5
Young women, childless and not studying (37)	62.2	32.4	35.1	16.2	37.5	17.5
All part-time (298)	69.1	35.9	44.0	18.8	32.9	8.4

Source: Victorian Retail Survey 2006.

41. Limited data on retail employment are available by geographical location. These show few spatial differences in the basic nature and composition of retail employment. The data suggest that retail employment is spread widely and that it roughly corresponds, as could be expected, to population patterns. If we look at different states, we can see that Victoria had a total of 274,000 retail workers in August 2009. Within Victoria we can compare Melbourne and the balance of the state. Melbourne was the major site for employment, with 201,000 retail workers (90,000 males and 111,000 females) in the metropolitan area and 73,000 (30,000 males and 44,000 females) in the balance of the state (ABS 2009d). Of course 'the balance of the state' is itself a heterogeneous category, composed of major regional centres with a population above 50,000, such as Geelong, Bendigo and Ballarat, as well as many small country towns.
42. Data on retail employment by age in different states suggest few differences in the employment of 15 to 19 year olds (ABS 2009g). Thus, the figure for 15 to 19 year olds employed on part-time hours as a proportion of all part-time workers in retail was much the same in all states in the February quarter 2010. Victoria did not stand out, sitting at almost exactly the average for all states (34 %) (ABS 2009g).
43. 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.

44. The wages and conditions of retail workers have been described in a recent report (Pech et al. 2009, 21, 26-31). Retail is an industry with a high rate of award reliance. According to a 2008 ABS employer survey, 28.9% of employees in retail had their pay set only by an award or pay scale, compared to 16.5% for employees in all industries (ABS 2008c). Low wages are evident. Junior rates are estimated to cover around ten percent of all retail employees, while hourly earnings of adult employees in retail much more concentrated towards the lower end of the wage distribution than the earnings of adult employees as a whole (Pech et al. 2009, 28-30; see also Peetz and Price 2007, 48-49). The report also points to other features such as short job tenure, underemployment and variable earnings.
45. 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.
46. 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).
47. Casuals in retail can be expected to share many of the features identified for all retail workers, but, as in the case of casuals in all industries, they can also be expected to suffer a relative disadvantage compared to full-time employees or (regular) part-time employees. The official labour force data rarely allow this level of disaggregation, but some scattered information on the experiences of casuals can be found in individual studies. Most academic studies of casuals in

retail date from more than ten years ago, but there are a few more recent studies (Price 2006, 2007; Campbell and Chalmers 2008).

48. In the Victorian study written by Dr. Jenny Chalmers and myself, we examine three crucial problems for employees on part-time hours in retail – underemployment, variation in hours and schedules, and a lack of employee control over hours and schedules (Campbell and Chalmers 2008, 493-497). Using evidence from the Victorian Retail Survey 2006, we conclude that (regular) part-time employees suffered difficulties in each of these areas but that casuals were worse off. They were much more likely to experience variation in hours and schedules and also more likely to be underemployed. The evidence on perceived control over hours and schedules, measured according to three items (say over number of hours, scheduling of hours during the week, and when to take holidays), showed more equivalence between the two groups of employees. We explain this result by pointing first to the fact that levels of perceived control for both were not high. Moreover, (regular) part-time employees sometimes have less control than what may be imagined – primarily because their regular schedules may be imposed rather than chosen – and some casuals feel that they have an ability to take school holidays and exam periods off with a clear conscience (Campbell and Chalmers 2008, 496-497; see also Price 2006).
49. Is Victoria different to other states? The ABS data suggest few substantial differences amongst the states in terms of the basic nature and composition of retail employment (eg how many are employed, the balance of part-time and full-time). However, the ABS labour force data are not fine-grained enough to uncover any differences amongst the states in the wages and conditions of employees on part-time schedules or on casual contracts. The Victorian study that we conducted does not allow any firm comparison with other states.
50. The issue of time-related underemployment is clearly relevant to discussion of short shifts. The issue has been neglected for many years, but it is now attracting more attention from labour market researchers, who recognise its importance both for the workers affected and the assessment of labour market conditions. There are several definitions of underemployment in Australia – a simple definition based on the number of part-time workers who state that they want more hours and a more nuanced definition, recommended by the ILO, which is based on part-time workers who state that they want more hours but subtracts those who were not available to work longer hours and adds in a small group of full-time workers who were working less than full-time hours because of ‘economic’ reasons (see Campbell 2008). Along with most labour market researchers, I argue that underemployment is a major problem, related to that of unemployment, and that it undercuts claims that Australia had been approaching full employment prior to the global

economic downturn. Underemployment stands at a high level in Australia, compared to other OECD countries (Campbell 2008). This high level has been apparent since the mid-1990s but it has jumped again during the recent global economic downturn.

Table 6: Underemployment in retail trade and all industries*, Australia, February 2009-February 2010
males

	Retail			All industry		
	Empl (‘000)	Underempl (‘000)	Proportion underempl (%)	Empl (‘000)	Underempl (‘000)	Proportion underempl (%)
February 2009	521.9	50.9	9.8	5860.5	354.6	6.1
May 2009	532.7	61.2	11.5	5841.1	401.9	#6.9
August 2009	506.2	54.8	10.8	5833.5	368.3	#6.3
November 2009	521.3	62.6	12.0	5895.2	370.5	#6.3
February 2010	513.3	62.0	12.1	5988.9	379.9	#6.3

females

	Retail			All industry		
	Empl (‘000)	Underempl (‘000)	Proportion underempl (%)	Empl (‘000)	Underempl (‘000)	Proportion underempl (%)
February 2009	694.5	122.7	17.7	4911.6	518.8	10.6
May 2009	676.8	104.2	15.4	4940.5	477.7	9.7
August 2009	644.0	111.1	17.3	4873.0	490.8	10.1
November 2009	674.7	118.8	17.6	4953.6	512.7	10.4
February 2010	668.8	120.9	18.1	4955.5	530.4	10.7

persons

	Retail			All industry		
	Empl (‘000)	Underempl (‘000)	Proportion underempl (%)	Empl (‘000)	Underempl (‘000)	Proportion underempl (%)
February 2009	1216.4	173.6	14.3	10772.1	873.5	8.1
May 2009	1209.5	165.4	13.7	10781.6	879.6	8.2
August 2009	1150.2	166.0	14.4	10706.5	859.1	8.0
November 2009	1196.0	181.3	15.2	10848.8	883.2	8.1
February 2010	1182.1	183.0	15.5	10944.4	910.3	8.3

*ANZSIC 2006 industry classification

#estimate is subject to sampling variability too high for most practical purposes

Source: ABS, *Australian Labour Market Statistics*, 6105.0, various issues

51. ABS data complement the data from the Victorian Retail Survey 2006 by showing that, in comparison with other industry divisions, underemployment is a particularly major problem for workers in retail. The problem is not new, and data for retail trade (ANZSIC 93) from 1994 to 2006 show a consistently high level of underemployment in retail, growing steadily as the

workforce incorporated more regular part-time employees and more casuals (data obtained on request). Table 6 shows data for the past year for all industries and for retail (ANZSIC 2006). We can see that underemployment now reaches 8.3% of all workers, including a substantial 10.7% of female workers, in all industries. This easily dwarfs the numbers counted as unemployed. But the figure in retail is even higher, accounting for 15.5% of all retail workers and 18.1% of all female retail workers. According to these figures, around one in every three part-time worker in retail considers himself or herself to be underemployed. As in other industries, it is likely that underemployment is concentrated amongst workers engaged in 'marginal' part-time schedules and amongst those classified as casuals.

52. What does this high rate of underemployment in retail indicate? Underemployment means that workers on part-time schedules want more hours than they are currently working. Thus the high rate in retail it signals a widespread mismatch between worker preferences and what they have been offered by employers in their job. It is itself one indicator of a lack of control over working-time patterns. From the point of view of the worker, underemployment signals that there is a deficiency in the quality of their part-time job – the hours are felt to be too short. The time scale for this assessment is not specified. But we can safely assume that most employees who feel that their hours are too short apply this judgment to the day as well as the week or some longer period. In other words, the high rate of underemployment in retail suggests there is a distinctive problem in retail with hours in part-time schedules that are too short. Insofar as this affects the debate on minimum daily engagements, it would seem to imply a need for better protection for employees and a higher rather than a lower minimum daily engagement provision.

V. Evidence in relation to elements of the arguments

53. It is possible to give an expert opinion on some elements of the arguments raised in connection with this case.
54. The application from the National Retail Association (NRA) says: "The unintended consequence of the imposition of a three hour minimum shift in the Award is that it threatens the employment prospects of particular groups of employees. Prominent among these are young people performing work after school. Given a vast majority of retail stores, particularly in regional areas, cease trading between 5.00pm and 5.30pm, and school hours generally cease at or around 3.00pm, a three hour minimum shift is an insurmountable barrier to the engagement of young people in after school employment."

55. Similarly, the application from Master Grocers Australia (MGA) states: "The imposition of a three hour minimum for casual employees does not take into account school aged employees who are only able to work two hours at a time. This is particularly relevant in the regional areas of Australia where retail stores close between 5.30pm and 6.00pm.... The requirement that all casuals be engaged for a minimum of three hours impedes a young person's opportunity to enter the labour market."
56. These arguments from the employer associations suggest that the minimum daily engagement provision of three hours for casuals in the General Retail Industry Award 2010 has had and will have a severe negative impact on both employees and employers, causing disadvantage to employees and increasing costs for employers.
57. The argument about the disadvantage to employees seems to start with the alleged negative impact of a transition from a two hour minimum to a three hour minimum in Victoria. The argument focuses on one particular group – certain school children employed as casuals in retail outlets in regional Victoria. The employees who are alleged to suffer these consequences represent a tiny proportion of all retail workers. It is difficult to estimate exactly how many school children would be employed as casuals on two hour shifts in retail outlets in regional Victoria. But it is unlikely to be many. As noted earlier, recent figures suggest 73,000 employed persons in the retail trade division in non-metropolitan Victoria (though it is also necessary to keep in mind that many of these will be in major regional centres where the pattern of shop hours resembles metropolitan Melbourne). If the composition of the retail workforce in regional areas paralleled the average, we could expect around 16.8% of this workforce to be 15 to 19 year olds who are employed on part-time schedules (see Table 3). We could expect just over three quarters (77.9%) of these to be full-time school children. This gives a figure of around 9,553 persons. It is safe to assume that the vast majority would be employed as casuals. But how many would be employed as casuals on two hour shifts that cannot be re-organised? In my judgment the majority would be employed on longer shifts; some will be employed on longer shifts at the weekend and some will be employed in retail outlets, such as supermarkets in regional centres, which readily accommodate longer periods of after school work. Even if some are currently employed on two hour shifts, it is likely that many of the shifts in question could be easily re-organised to comply with the minimum provision of three hours. Thus, the final estimate of those who suffer the hypothetical negative impact must be substantially less than 5,000 persons, out of a total group of those affected by the provision, that is casual employees engaged in part-time hours, of 379,300 (see Table 1).

58. It is argued that the current three hour minimum, as it applied in most states other than Victoria, represents a barrier to the employment of full-time school children. This flies in the face of evidence that points to both a high rate of employment of school children in Australia compared to other countries and a strong presence of full-time school children in retail employment in all states of Australia. Retail is widely acknowledged as the leading industry for the employment of full-time school children. According to one recent survey, almost half (48.4%) of all employed school children in Australia were employed in retail (House of Representatives 2009, 16; see also Tables 3 and 4). A three hour minimum engagement in retail is clearly quite compatible with the employment of many school children.
59. It is suggested that school children *need* two hour but not longer daily shifts. This is grounded in an argument that paid work should not interfere with studies. A good balance between paid work and study is indeed important, but research suggests that it is best assessed over the longer term of the week, the term or the year rather than on a day-by-day basis. The AFEI submission (para 14) correctly notes that “there is a delicate balance between work and study and there is a point where increased working hours will deteriorate a student’s school performance”. However, I am not aware of any research that suggests that the point of deterioration is located between two and three working hours. As I read the research, there is a reluctance to set a firm limit, but concerns tend to arise when working hours of school students are above 10-15 hours per week (House of Representatives 2009).
60. Do employees currently working as casuals, irrespective of whether or nor they are school children, *want* to work fewer hours per day? Are they being forced, as a result of the minimum daily engagement provision, to work more hours than they want? There is no evidence that this is the case for any significant number of employees. But there is powerful evidence that a large proportion of retail employees on part-time schedules, mainly casuals, want to work *more* hours per day. They feel that they are obliged to work fewer hours than they want. As noted above (para 51), underemployment is a significant issue for retail employees on part-time hours, affecting around one in every three retail workers on part-time hours. This amounts to 183,000 workers.
61. The casual workforce in retail is made up of more than just school children. One significant group is composed of workers with family responsibilities. This is a particularly important group from the point of view of public policy aimed at promoting increased workforce participation, since it includes mothers with young children – a major group in Australia showing a lagging participation rate in cross-national comparison (eg ABS 2007b). This group needs and wants part-time schedules, but the schedules must have a modicum of working-time security if they are to be

truly compatible with caring responsibilities (Chalmers, Campbell and Charlesworth 2005). Reducing protections for casuals would tend to discourage not encourage the participation of workers with family responsibilities.

62. The precise impact in practice of a reduction of the minimum daily engagement for casuals from three hours to two hours depends in the main on the response of employers. The evidence suggests that the majority of daily shifts for casuals are likely to stay longer than two hours (or indeed longer than three hours). However, retail is an industry characterised by substantial employer pressure towards short part-time schedules and a fragmentation of labour as well as by a large number of vulnerable workers. Some employers are pressing at the current daily limit, and newspaper reports have recently highlighted one Victorian case where the employer implemented very short shifts that undercut the award minimum (Hannan 2010b). It is likely that some employers nationwide will welcome the opportunity to design short shifts based on a two hours block, where they feel that demand conditions warrant this and where they feel there is a supply of labour prepared to tolerate the conditions.
63. If the variation was granted, some employers are likely to move to introduce two hour shifts more widely than at present. This threatens the conditions of many casual employees, who have been subject to a minimum daily engagement of three hours for years. As a result, there is a risk of many casual employees being obliged to work two hours when they want more hours. There is a risk of exacerbating the already substantial problem of underemployment in the retail trade.
64. The main arguments in this case concern the impact of award provisions on the interests of employees and potential employees. But one argument refers to an alleged impact on labour costs, for the small minority of retail employers who are currently employing casual employees on two hour shifts. These employers must re-organise to comply with the three hour minimum, but this is likely to be only a slight re-organization and, apart from the transition costs of re-organization, it is unlikely to lead to an increase in labour costs. The hours that are currently in two hour shifts can be redistributed into a fewer number of three hour shifts. So long as the three hour shifts correspond to three hours work and as long as the work is performed by the same set of workers, entitled to the same hourly rate, then labour costs should remain about the same.

VI. Conclusion

65. Available research suggests that the long-term trend in retail employment, both in Australia and in other industrialised societies, is towards more part-time schedules. Accompanying this process in

Australia is an increase in casualisation. Casual employees are numerous. They appear as a relatively disadvantaged group, with relatively few rights and entitlements under the terms set down in awards and agreements, including in particular little protection for their working-time arrangements. Many appear as vulnerable workers.

66. The workforce on part-time schedules in retail, the vast majority of which is casual, is large and made up of disparate groups, including full-time school children, full-time tertiary students, other young workers, mothers with dependent children, older women without dependent children, and older men. These workers need protection of their working-time in order to achieve income and working-time security.
67. Casual employees can be seen to have a particularly strong need for the working-time and income security provided by the minimum daily engagement provision. A reduction in the level of the minimum daily engagement for casuals would reduce the protection associated with the current level of three hours. It would threaten to exacerbate the disadvantages faced by casuals in practice, including in particular underemployment.

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References

- ABS (2006) *Working Time Arrangements, Australia*, November 2006, cat. no. 6342.0.
- ABS (2007a) *Employment Arrangements, Retirement and Superannuation, Australia*, April to July, cat. no. 6361.0.
- ABS (2007b) 'Labour force participation – an international comparison', *Australian Social Trends*, cat. no. 4102.0.
- ABS (2008a) 'Measures of Casual Employment', *Australian Labour Market Statistics*, October 2008, cat. no. 6105.0.
- ABS (2008b) *Employee Earnings, Benefits and Trade Union Membership, Australia*, August 2008, cat. no. 6310.0.
- ABS (2008c) *Employee Earnings and Hours, Australia*, August 2008, cat. no. 6306.0.
- ABS (2009a) 'Casual employees', *Australian Social Trends*, June 2009, cat. no. 4102.0.
- ABS (2009b) 'Type of employment', *Australian Labour Market Statistics*, July 2009, cat. no. 6105.0, Time series spreadsheet, viewed 15 April 2010.
- ABS (2009c) 'Table 06, Employed persons by industry subdivision and sex', *Labour Force, Australia, Detailed, Quarterly*, February 2010, cat. no. 6291.0.55.003, Time series spreadsheet, viewed 15 April 2010.
- ABS (2009d) *Labour Force, Australia, Detailed Quarterly*, data cube: SuperTABLE, cat. no. 6291.0.55.003, E03_Aug94_ANZSIC06, viewed *31 October 2009.
- ABS (2009e) *Job Search Experience, Australia*, July 2009, cat. no. 6222.0.
- ABS (2009f) 'People with more than one job', *Australian Social Trends*, September 2009, cat. no. 4102.0.

- ABS (2009g) *Labour Force, Australia, Detailed Quarterly*, data cube: SuperTABLE, cat. no. 6291.0.55.003, E12_Aug94_ANZSIC06, viewed 26 April 2010.
- AIRC (2000) *Metals Casual Award case – Print T4991*, 29 December.
- Campbell, I. (2004) 'Casual Work and Casualisation: How does Australia Compare?' *Labour and Industry* 15 (2), 85-111.
- Campbell, I. (2008) 'Pressing Towards Full Employment? The Persistence of Underemployment in Australia', *Journal of Australian Political Economy* no. 61, 156-180.
- Campbell, I. and Chalmers, J. (2008) 'Job quality and part-time work in the retail industry: An Australian case study', *The International Journal of Human Resource Management* 19 (3), 487-500.
- Campbell, I., Whitehouse, G., and Baxter, J. (2009) 'Australia: Casual Employment, Part-time Employment and the Resilience of the Male-Breadwinner Model' in L. Vosko, M. MacDonald and I. Campbell eds., *Gender and the Contours of Precarious Employment*, London, Routledge, 60-75.
- Chalmers, J., Campbell, I. and Charlesworth, S. (2005) 'Part-time Work and Caring Responsibilities in Australia: Towards an Assessment of Job Quality', *Labour and Industry* 15 (3), 41-66.
- Hannan, E. (2010a) 'Retailers attack watchdog audit', *The Australian* 1 April.
- Hannan, E. (2010b) 'Boss may owe youths back pay after workplace audit', *The Australian*, 20 February.
- Haynes, K., Charlesworth, S., Baird, M., Bamberly, L. and Campbell, I. (2010 in press) *A regional perspective on work, family and community balance in Victoria: Preliminary results of the VicWAL survey*, Melbourne, CASR.
- House of Representatives, Standing committee on education and training (2009) *Adolescent Overload? Report of the inquiry into combining school and work: supporting successful youth transitions*, Canberra, Commonwealth of Australia.
- Jany-Catrice, F. and Lehndorff, S. (2005) 'Work organization and the importance of labour markets in the European retail trade', in Bosch G. and Lehndorff S. (eds) *Working in the Service Sector: A tale from different worlds*, London, Routledge, pp. 211-36.
- Lee, S. (2004) 'Working Hour Gaps: Trends and Issues', in J. Messenger ed., *Working Time and Workers' Preferences in Industrialized Countries: Finding the balance*, London, Routledge, 2004, 29-59.
- Lee, S. and McCann, D. (2008) 'Measuring labour market institutions: conceptual and methodological questions on "working hour rigidity"', in J. Berg and D. Kucera eds., *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World*, Geneva and London, ILO and Palgrave.
- NSWIRComm (1998) *State Part-time Work Case – NSWIRComm 142*, 26 March.
- O'Donnell, A. (2004) '"Non-standard" workers in Australia: counts and controversies', *Australian Journal of Labour Law*, 17 (1), 89-116.
- Owens, R. (2002) 'Decent Work for the Contingent Workforce in the New Economy', *Australian Journal of Labour Law* 15 (3), 209-234.
- Pech, J., Nelms, L., Yuen, K. and Bolton, T. (2009) *Retail Trade Industry Profile*, Report Commissioned by the Australian Fair Pay Commission, Research report no. 7/09, Melbourne, Australian Fair Pay Commission.
- Peetz, D. and Price, R. (2007) *Profile of the Retail and Hospitality Industries*, Report prepared for the Office of the Victorian Workplace Rights Advocate, Brisbane, QUT Digital Repository.
- Pocock, B., Prosser, R. and Bridge, K. (2004) *Only a Casual...: How Casual Work Affects Employees, Households and Communities in Australia*, Labour Studies, University of Adelaide.
- Price, R. (2006) 'Doing Time in the Retail Industry', in B. Pocock, C. Provis and E. Willis eds., *21st Century Work: High Road or Low Road? Proceedings of the 20th Conference of AIRAANZ*, Vol. 1 Refereed Papers, Adelaide, AIRAANZ, 435-445.
- Price, R. (2007) 'The Ballroom Tango of Youth Temporary Employment', in *Proceedings 23rd EGOS Colloquium*, Vienna.

- Rubery, J., Ward, K. and Grimshaw, D. (2006) 'Time, work and pay: understanding the new relationships'. In Boulin, J.-Y., Lallement, M., Messenger J. and Michon F. (eds) *Decent working time: New trends, new issues*. Geneva: ILO, pp. 123-51.
- TUC (2009) *Informing strategies for vulnerable workers*, Vulnerable Workers Project, Final report, London, TUC.
- Victorian Workplace Rights Advocate (2007) *Report of the Inquiry into the Impact of the Federal Government's Work Choices Legislation on Workers and Employers in the Victorian Retail and Hospitality Industries*, Melbourne, Office of the Workplace Rights Advocate.
- Watson, I. (2005) 'Contented Workers in Inferior Jobs? Re-assessing Casual Employment in Australia', *Journal of Industrial Relations* 47(4), 371-392.