

# Insecure Employment

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March 2012

## Introduction

1. The ACTU's *Secure Jobs. Better Future* campaign overstates the negative aspects of non-permanent work while failing to take account of its potential benefits. Employers and employees both stand to benefit from allowing greater choice in employment relationships; improved labour market flexibility can assist productivity growth and allow employees to better align their work and leisure priorities.
2. By labelling contracting and labour hire arrangements as well as casual and fixed term employment opportunities as 'insecure,' the ACTU campaign delegitimises all work arrangements other than permanent, full time work within regular business hours. This is not appropriate for a modern economy.
3. New industries have allowed workers an unprecedented level of choice about where they would like to work, but the ACTU campaign would restrict workers' choice when it comes to *how* they work.
4. At the height of unions' influence, permanent, full-time employment with long periods of time spent with one employer was the norm. This is no longer the case. New and evolving industries and work patterns demand different approaches to work. Insisting that employment relationships consistent with 1960s labour market and broader economic landscapes are still the ideal in the modern economy is short-sighted.
5. Many workers may still aspire to a nine-to-five permanent job. These sorts of jobs will still be appropriate for many industries.
6. By attempting to define which forms of work are valid as an industrial relations issue, unions are intruding into commercial transactions and the employer/employee relationship in unprecedented ways. The *Secure Jobs* campaign is an attempt by the ACTU to reassert its relevance by moving away from the union movement's traditional role as a defender of existing and agreed-upon employee entitlements and into the determination of what constitutes an employee right.
7. The *Secure Jobs* inquiry has been created with the intention of confirming the ACTU's position on 'insecure' employment. It privileges accounts that are sympathetic to this position. By contrast, this paper aims to clarify the benefits that flexible labour arrangements can have for employers and employees, providing an alternative to the ACTU's narrow characterisation of 'insecure work.'

## Defining Insecure Work

8. 'Insecure work' is an imprecise term that has been misappropriated to serve the ACTU's purpose. The ACTU admits the difficulty of finding a universal definition of 'insecure work,' and proceeds to put forth a definition that excludes almost all forms of work outside traditional, nine-to-five permanent employment.
9. The ACTU's *Secure Jobs* campaign defines insecure work:  
Indicators of insecure work include:

- Unpredictable, fluctuating pay;
- Inferior rights and entitlements, including limited or no access to paid leave;
- Irregular and unpredictable working hours, or working hours that, although regular, are too long or too few and/or non-social and fragmented;
- Lack of security and/or uncertainty over the length of the job;
- Lack of voice at work on wages, conditions and work organisation.<sup>1</sup>

10. The ACTU further states that 40 per cent of workers are insecurely employed; claiming that insecure work is associated with “casual work, fixed-term work, seasonal work, contracting and labour hire” as well as “a problem increasingly faced by workers employed part-time and workers in non-traditional workplaces.”<sup>2</sup>
11. Conveniently, this definition works to exclude almost all workers outside a traditional nine-to-five permanent role. Casual and contract work is singled out as insecure, but permanent part-time work is mentioned as an increasing problem, and the addition of “working hours that ... are ... non-social” also suggests that shift workers’ jobs are in some way ‘insecure.’
12. The ACTU definition of insecure employment is far too broad. Lumping permanent part-time and shift workers into the same ‘insecure’ category obscures workers who do face uncertainty as to the availability of future ongoing work and pay.
13. By broadening the definition of insecure work the ACTU overstates the potential problems that could arise from non-standard forms of employment, and fails to take account of the realities of the modern labour market.
14. The *Secure Jobs* campaign is also blinkered to the fact that employment is a trade-off. Casual work adds a loading to hourly rates because the trade-off is paid leave entitlements. Contract work allows workers to determine their hours of work and to select their clients. However, the trade-off is fluctuating income. The *Secure Jobs* campaign privileges the negative aspects of non-standard employment relationships without adequately addressing the positive side.
15. Further, the *Secure Jobs* campaign makes some sweeping assumptions about Australian workplaces and industries. An employment model that works for mining is not directly transferrable to education. An employment model that works for a large multinational firm will likely not work for a small business. A discussion of rural and regional employment markets is absent from the *Secure Jobs* literature – these are smaller markets with a greater degree of seasonal variation in employment requirements. This paper attempts to capture the diversity that exists within the Australian labour market.

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<sup>1</sup> ACTU, *Insecure Work, Anxious Lives: The Growing Crisis of Insecure Work in Australia*, 6.

<sup>2</sup> ACTU, *The Future of Work in Australia: Dealing With Insecurity and Risk*, 3.

## The Modern Labour Market

16. The ACTU's definition of insecure work relies on the idea that any form of work that is not a full time, permanent nine-to-five job is in some way 'insecure.' This is an outdated conception of the workplace.
17. In advocating the availability of permanent, full time employment for all workers, the ACTU ignores the realities of the modern labour market. Different industries have different employment requirements, and employees have different priorities when it comes to work.

### Complexity of Work

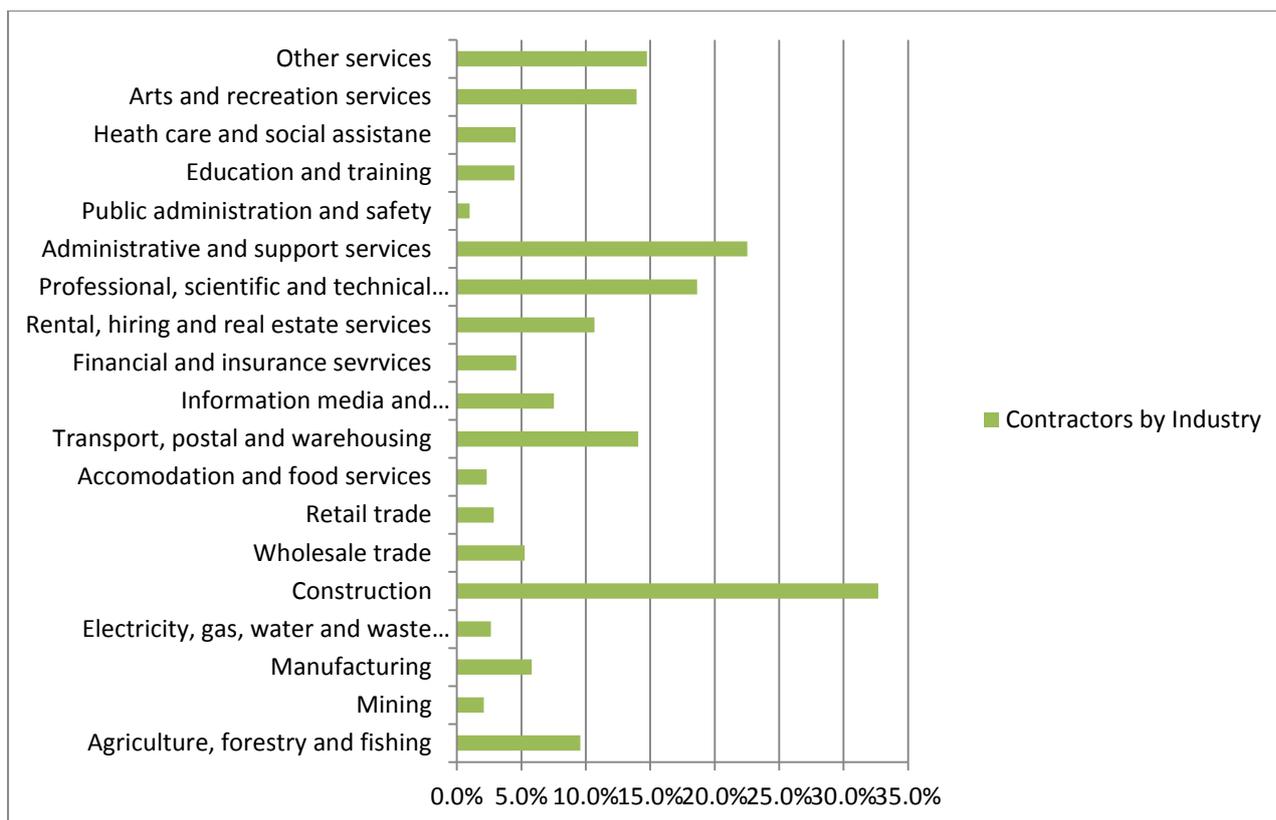
18. The *Secure Jobs* campaign decries the outsourcing of jobs traditionally performed in-house,<sup>3</sup> claiming that outsourcing allows "employers to access labour without obligation and to shift many of the costs and risks associated with employment onto workers."<sup>4</sup>
19. It is instructive to think about what sorts of functions a business would seek to outsource. By way of example, for many small-to medium-sized businesses it is impractical to have a dedicated IT department. Instead of employing one or several full time staff to manage the firm's website, analyse web traffic and social media metrics, and perform network maintenance, it makes more sense for an employer to outsource this work to an IT contractor.
20. The expectation that all business functions can be performed in house is not practical in the modern economy, especially since IT has transformed the way we work. It is not unreasonable to expect that highly specialised employment functions, which do not relate to the employer's key business, should be contracted out to experts and specialists.
21. The data bears out the truth of this statement. After the construction industry, administrative and support services show the highest rates of workers acting as contractors, with 22.5 per cent of workers in this sector employed in an independent contracting arrangement. A further 18.6 per cent of professional, scientific and technical services workers are also employed on a contracting basis as firms seek to outsource functions such as accounting and consulting.<sup>5</sup>

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<sup>3</sup> Ibid, 9.

<sup>4</sup> Ibid, 13.

<sup>5</sup> ABS, *Forms of Employment, Australia* (6359.0).



Source: ABS, Forms of Employment Survey (6359.0).

22. For small to medium sized businesses, the cost of employing and training people to perform work that is peripheral to the firm's core business is likely to be unacceptably high. By contracting out functions such as IT management and administrative services, small to medium sized businesses are better able to concentrate on key functions. This allows businesses to be more efficient and successful.
23. The ACTU seeks to inhibit any innovation in the way that we as a society approach methods of work. Industries are engaging in a rate of technological innovation that would have been unprecedented 20 years ago, and the union movement has been left behind by the rate of technological progress. Old methods of labour organisation are no longer applicable to many new industries, or new technologies.

### The Effect of Technology

24. Technology changes the way we work. Manufacturing jobs that existed forty, thirty, even twenty years ago have changed irrevocably due to increasing technological sophistication.
25. By way of example, in the ALAEA dispute with Qantas, engineers were demanding staffing arrangements that reflected historical aircraft maintenance requirements. However, with better technology applied to both the construction and maintenance of new aircraft, these staffing

arrangements were no longer applicable: a new A380 simply does not require the same level of ongoing maintenance as an older plane.<sup>6</sup>

26. It is important to recognise that as technology continues to develop and make work easier, this will inevitably lead to the consolidation of old roles. What also needs to be recognised is that our society's approach to workplace flexibility will have to undergo a similarly radical upheaval if Australia expects to remain competitive.

27. The ACTU believes that 'workers in non-traditional workplaces' face greater insecurity, but the ability to work from home or while mobile is an important feature of business in the internet age. In the 2009-10 financial year, 90.1 per cent of all Australian businesses accessed the internet. Just ten years ago, in 1999-2000, this figure was 56 per cent.<sup>7</sup> The internet has fundamentally changed the way Australian businesses operate, and in 2009-10 it allowed employees enormous flexibility while providing a means to stimulate competition between firms:

	work from home	work from other locations	assessing or modifying range of products, services, processes or methods	development of new or improved products, services, processes or methods	monitoring competitors	identifying future market trends	Online training/learning
Employment size	%	%	%	%	%	%	%
0-4 persons	30.0	19.9	36.4	21.6	22.1	18.4	19.3
5-19 persons	32.4	27.4	41.2	24.4	28.3	19.7	27.3
20-199 persons	49.0	44.9	50.0	30.5	36.3	26.4	35.7
200 or more persons	79.8	80.9	53.4	42.1	46.7	39.5	69.4
<b>Total</b>	<b>32.8</b>	<b>25.0</b>	<b>39.3</b>	<b>23.5</b>	<b>25.6</b>	<b>19.7</b>	<b>23.8</b>

Source: ABS, *Business Use of Information Technology, Australia (8129.0)*.

28. Instead of attempting to shoehorn workers into inflexible categories of permanent full time work, as a nation and as a labour market we have to recognise that work patterns must adapt to take account of the fact that due to the internet and better technology, economic activity continues 24 hours a day, seven days a week, and that workers expect to have more choice and flexibility about their work/life balance.

## Flexibility

29. The ACTU dismisses the flexibility benefits that non-standard working arrangements can bring to employers and employees. Discussions of labour market flexibility and its importance for Australian economic growth is met with tired anti-market and anti-employer rhetoric. The ACTU believes that

<sup>6</sup> Alan Joyce, quoted on *Lateline*, ABC, 16 February 2012, <<http://www.abc.net.au/lateline/content/2012/s3432814.htm>>

<sup>7</sup> ABS, *Business Use of Information Technology, Australia (8129.0)*, 4.

labour market reform has resulted in “greater employer control over how, and the ways through which, labour is engaged.”<sup>8</sup>

30. In truth, flexible labour markets and flexible forms of employment offer economic benefits to both employers and employees. Flexible working arrangements allow employers the ability to hire labour when it is most needed, while employees are afforded the ability to alter working hours to suit their lifestyles.
31. The need for labour market flexibility becomes somewhat inevitable when we consider the ways industries have adapted and will continue to adapt in order to become more competitive, in both a local and a global sense.
32. Examples of changing work patterns can be found in a across industry sectors:
  - In finance, the idea of a conventional nine-to-five workday is largely meaningless. Business is conducted on a global scale, and this requires workers to be available outside ‘regular’ hours.
  - The ability of customers to shop online has changed the retail sector: customers expect to be able to shop at hours outside normal business hours. For retail workers as well, the nine-to-five workday is increasingly disappearing as opening hours become better attuned to customer preferences.
  - Capital and labour are mobile: inflexible working standards in one country will lead to offshoring of jobs. Permanent, full time work within normal business hours is not a model that works particularly well for telephone and internet providers – these jobs typically have high turnover rates, and customers expect to be able to access assistance and service on an almost 24-hour basis. A misplaced emphasis on inflexible working arrangements will likely accelerate the offshoring of jobs in this sector.

### **Benefits for Employees**

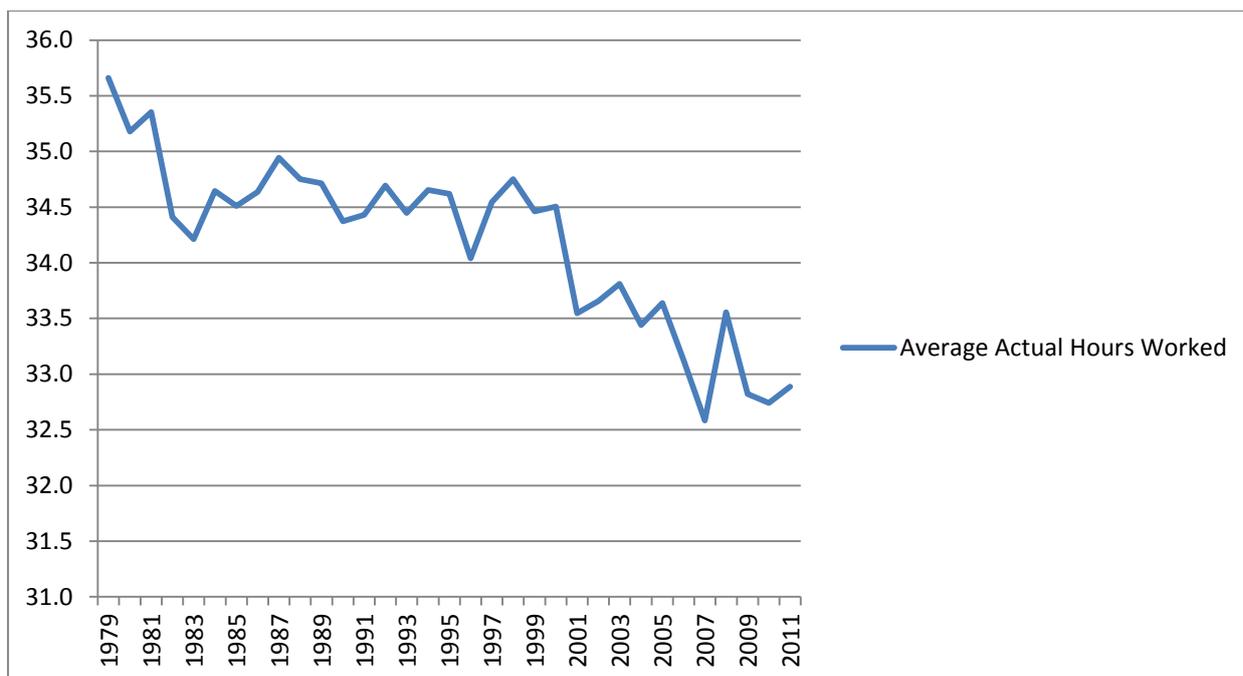
33. The ACTU tells us it is a myth that workers choose non-standard employment relationships in favour of greater choice and flexibility,<sup>9</sup> but even their own flawed research suggests that flexibility is an important consideration for some workers.
34. The importance of work/life balance should not be understated, but it does involve trade-offs. According to ABS estimates, some 14 per cent of workers would prefer to work more hours, while 21 per cent would prefer fewer.<sup>10</sup> The majority of Australians are quite happy with their average weekly working hours, and quite rightly: average actual weekly hours worked has decreased in Australia since the 1980s.

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<sup>8</sup> ACTU, *The Future of Work in Australia*, 13.

<sup>9</sup> ACTU, *Insecure Work, Anxious Lives*, 19.

<sup>10</sup> ABS, *Australian Social Trends* (4102.0), December 2011.



Source: ABS, *Labour Force, Australia, Detailed, Quarterly* (6291.0.55.003).

35. Evidence exists that workers prefer to have some degree of flexibility in their working hours. A 2010 ABS study found that 41.9 per cent of workers in two-parent families with children in Victoria had requested changes to their work arrangements that involved more flexible hours or the ability to work from home, and a further 27.9 per cent had sought to work fewer hours or take leave.<sup>11</sup>
36. As might be expected, as the number of children aged under 15 in a household increased, the more likely a worker requesting changes to workplace arrangements was to request flexibility in hours:

	Type(s) of requested changes to work arrangements (%)				
	Flexibility of hours / location(a)	Reducing hours / Leave(b)	More work / More hours	Other(c)	Total(d)
Children aged under 15 in household					
Household with no children aged under 15	33.2	26.0	14.4	33.4	100.0
Household with one child aged under 15	37.8	35.5	11.9	23.4	100.0
Household with two or more children aged under 15	48.3	25.0	12.4	23.1	100.0
<b>Total</b>	<b>37.4</b>	<b>27.4</b>	<b>13.5</b>	<b>29.3</b>	<b>100.0</b>

(a) Includes To work flexi time / To work from home on a regular basis / Change work days / Flexibility to care for family/child.

(b) Includes Reduced hours for a limited period / To work part time / Purchased annual leave / Leave without pay

(c) Includes More money

(d) Components do not sum to total as more than one type of requested change could have been reported by the respondent.

Source: ABS, *Workforce Participation and Workplace Flexibility, Victoria* (6210.2).

<sup>11</sup> ABS, *Workforce Participation and Workplace Flexibility, Victoria* (6210.2).

37. Non-standard employment arrangements will not be suitable for every employee – or every employer in every industry. But if the ACTU is concerned about providing alternate arrangements to workers with family or caring responsibilities, it is difficult to see how this could be achieved in a labour market dominated by permanent, full time nine-to-five jobs. The option of contracting or casual work should be available as a means of providing flexibility to workers with caring commitments or higher preferences toward leisure time.

### **Female Workers**

38. The role of women in the labour force has changed since the height of union influence in the 1960s. In August 1961, women's labour force participation rate was 34 per cent – in August 2011 it had nearly doubled to 59 per cent.<sup>12</sup>

39. Women's labour force participation is still below that of their male counterparts – men in August 2011 had a labour force participation rate of 72 per cent.<sup>13</sup> If we believe that men's and women's labour force participation rates should be more equal, we must recognise the importance of flexible work options for all workers.

40. All relationships involve trade-offs, and employment relationships are no different. Work itself is a trade-off between remuneration and leisure. The *Secure Jobs* campaign fails to grasp that trade-offs are *the* defining characteristic of work. In the ACTU's idealised world, female – and increasingly male – workers would be able to take 12 months off at full pay in order to care for children or other relatives. But this utopian vision is unfeasible; we must acknowledge the centrality of the trade-off between work and other responsibilities.

41. Employment relationships that fall outside the permanent full time model are part of that trade off. Casual and contract work allow greater flexibility to meet caring and family responsibilities and attract higher hourly rates of payment, but this must necessarily come at the expense of other benefits such as annual leave. There is no one ideal employment arrangement. Each has benefits and trade-offs.

42. In the unions' ideal world women and men with family and caring responsibilities would not have to worry about employment trade-offs, they would become full time employees on paid parental leave, but not all businesses are in a position to offer generous parental leave schemes.

43. With women still disproportionately engaged in caring for children, removing access to casual, contract and part time employment would result in declining rates of labour force participation among women. Non-permanent, non-full time employment may have its negative points, but to limit its availability would limit employment opportunities for women, particularly those who have chosen to privilege family and caring responsibilities and are not the main source of family income.

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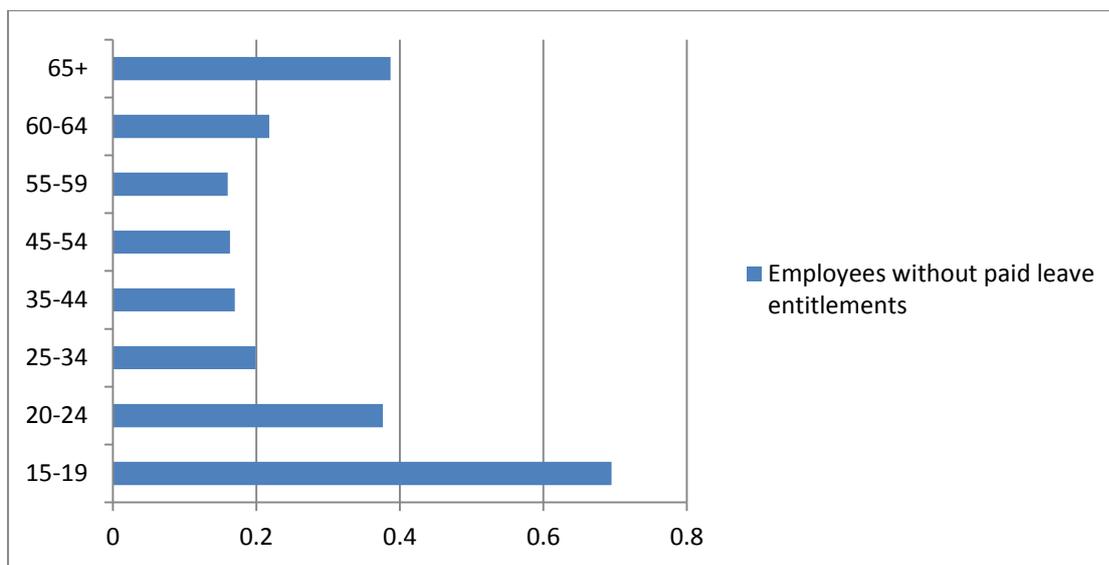
<sup>12</sup> ABS, 'Fifty Years of Labour Force', *Australian Social Trends* (4102.0), December 2011.

<sup>13</sup> *Ibid.*

44. Australian families consistently report cost-of-living as a priority concern,<sup>14</sup> but the *Secure Jobs* campaign does not address the logical conclusion of its campaign against non-standard forms of employment. Limiting employment opportunities for women – and men – with caring responsibilities by removing access to casual, contract and part time work will do little to ease cost-of-living pressures.

### Younger Workers and Older Workers

45. The ACTU tells us that 40 per cent of workers are in ‘insecure’ working arrangements. When we examine the age break down of workers without paid leave entitlements in August 2011, we find that the age groups that show the highest proportion of workers in so-called ‘insecure’ work arrangements are younger workers and older workers:



Source: ABS, *Employee Earnings, Benefits and Trade Union Membership (6310.0)*.

46. For younger workers, casual employment is a pathway into the workforce, and is often undertaken concurrently with study: 78.6 per cent of 15-19 year olds are still enrolled in formal learning, along with 40.6 per cent of 20-24 year olds.<sup>15</sup> When the ACTU demonises casual employment, it fails to recognise that many casually employed workers are young people who choose to combine study and casual work in order to enhance their future career prospects.

47. If casual retail, hospitality and administration jobs – the sectors showing the highest rates of ‘insecurity’ – are converted to permanent full time positions, young people will lose a valuable opportunity to enter the workforce from a young age, resulting in a generation of workers with little to no experience in basic workforce skills.

<sup>14</sup> See examples such as ‘Household costs top concerns for 2012’, *news.com.au*, 01 December 2011, <<http://www.news.com.au/money/cost-of-living/rising-costs-top-australian-concerns-for-2012/story-fnagkbpv-1226211292221>>; Nielsen news release, ‘Aussies Remain Cautious As Consumer Confidence Drops Two Points In Q1, 2011’ 01 June 2011, <<http://au.nielsen.com/site/documents/Q12011AustCCIMediaReleaseFinal.pdf>>

<sup>15</sup> ABS, *Education and Work, Australia (6227.0)*.

48. The ILO warns of a 'lost generation' of younger workers who are unable to access work: young people are three times more likely than adults to be unemployed, with over 75 million youth worldwide unable to find employment.<sup>16</sup>
49. In Australia, the extent of youth unemployment is disguised by the relatively good economy-wide employment figures. The ABS puts the youth unemployment rate in January 2012 at 12.4 per cent for people aged 15-24, well above the 5.2 per cent unemployment rate labour market-wide average.<sup>17</sup>
50. The *Secure Jobs* campaign takes as its starting point the fact that some casual employment relationships are exploitative. It then extrapolates this into the assumption that all casual work is negative. This assumption carries some unfortunate consequences that the *Secure Jobs* campaign fails to address. The consequences of reducing casual positions in favour of full time, permanent jobs disenfranchises young workers, particularly those who are studying and wish to work concurrently in order to gain labour market experience.
51. Casual work can be mutually beneficial to employers and young workers. It provides young workers with their first experience of the workforce, and gives them the opportunity to develop skills that future employers will look favourably upon. For employers, hiring a young worker on a casual basis allows greater flexibility and control over staffing arrangements. Casual positions allow employers to 'take a chance' on untried young workers, with minimal disruption arising should the worker prove incompatible with the organisation's culture or staffing needs.
52. Young workers are more vulnerable to exploitation. That is not being disputed. But the union movement is moving away from protecting these workers in the incident of exploitation.
53. The *Secure Jobs* campaign goes several steps beyond this traditional and legitimate union function by suggesting that all casual employment relationships carry the taint of exploitation. This is an unnecessary demonisation of employers, and the eventual outcome of reduced casual work will be fewer employment opportunities for young entrants to the labour market.
54. Casual work is important for young workers, but contract work, casual work and other non-standard employment relationships can provide older workers who are looking to transition out of the workforce with a gradual means of doing so. According to the ABS:

The proportion of independent contractors increases with age, with just 3% of 15-24 year old employed people working as independent contractors, compared with 20% of those aged 65 years and over ... This indicates that once people pass the traditional retirement age, they may move from being in employee positions to operating their own businesses, for example, as

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<sup>16</sup> ILO, 'The Youth Employment Crisis: Time for Action', Report V, <[http://www.ilo.org/wcmsp5/groups/public/ed\\_norm/relconf/documents/meetingdocument/wcms\\_175421.pdf](http://www.ilo.org/wcmsp5/groups/public/ed_norm/relconf/documents/meetingdocument/wcms_175421.pdf)>

<sup>17</sup> ABS, *Labour Force, Australia, Detailed – Electronic Delivery* (6291.0.55.001).

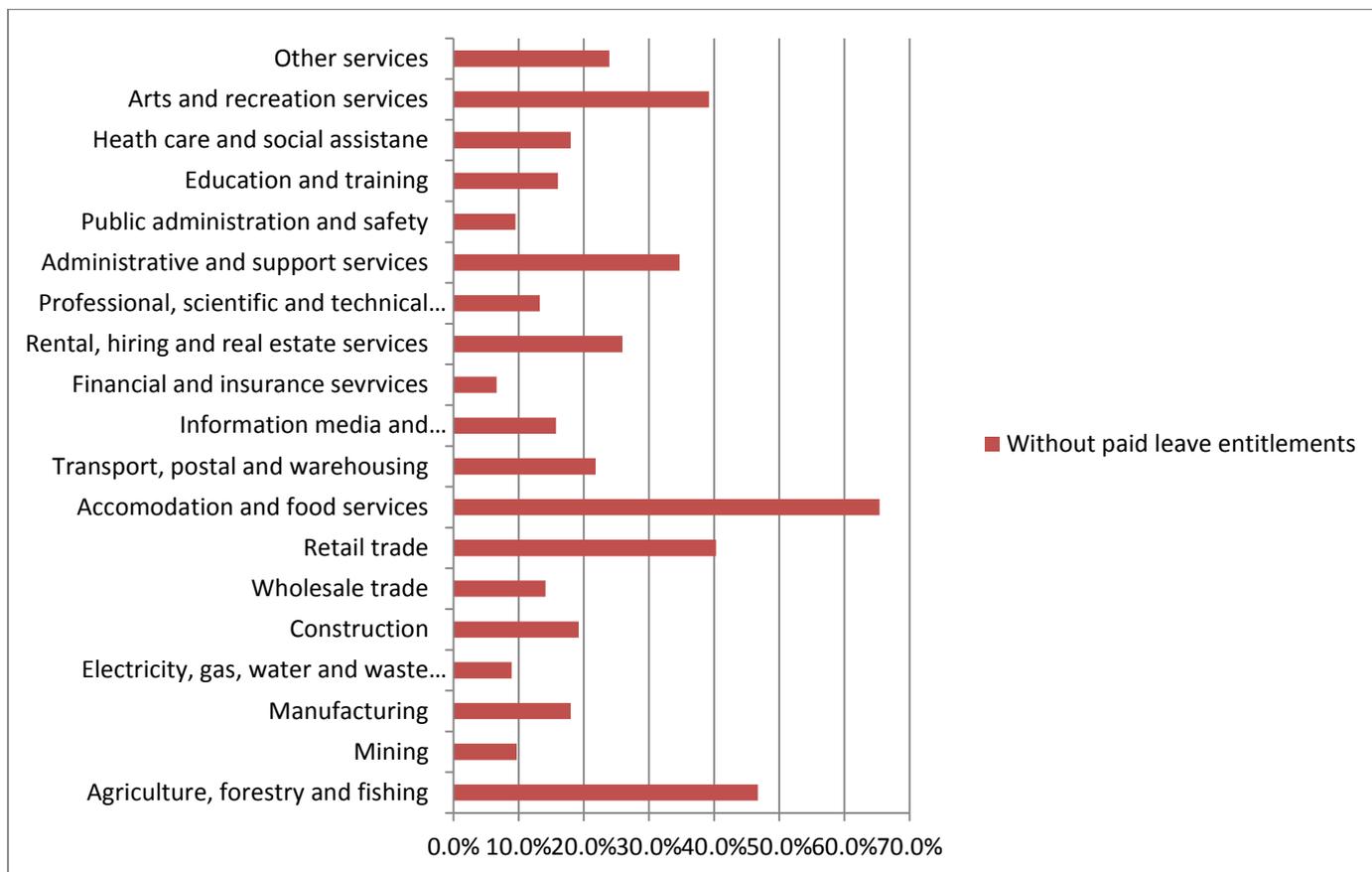
consultants. This may be due to their ability as independent contractors to choose the hours and conditions under which they work, particularly as part of a transition to retirement.<sup>18</sup>

55. Discounting contracting and casual work takes away employment opportunities and options from both younger and older Australians.

### Employers

56. Employers in some industries face seasonal variations in their labour requirements. It is true that seasonal and casual workers have insecure tenure. However, industry conditions afford little choice but to use these modes of work. In some rural areas seasonal work is an important contributor to the economic viability of the industries that operate in a region.

57. There is a correlation between industries that face seasonal variations in labour requirements and higher rates of casual employment:



Source: ABS, *Forms of Employment (6359.0)*.

58. The workforce-wide proportion of casual employees is 23.9 per cent.<sup>19</sup> The industries that have significantly higher rates of casualisation than this average display characteristics of seasonal or cyclical need for work:

<sup>18</sup> ABS, *Year Book Australia, 2009-10 (1301.0)*.

<sup>19</sup> ABS, *Forms of Employment, Australia (6359.0)*.

- Agriculture, forestry and fishing employment needs are highly cyclical, with employers requiring the flexibility to hire more employees during peak harvest and planting seasons than at other times during the year.
- Retail trade employers require more staff during the Christmas period than at other times of the year, necessitating the hiring of Christmas casuals.
- Accommodation and food services employers also experience seasonal peaks and troughs, as do arts and recreation employers.
- Employers may require more administrative and support services at certain times of the year, for example to assist with end-of-financial-year reporting obligations.

59. Campaigning for full time employment at the expense of the flexibility to employ casual workers according to seasonal and cyclical requirements will result in an unnecessary cost burden for employers. By targeting casual and seasonal workers in its insecure employment campaign, the ACTU is insisting that employers should bear the cost of employing a full time worker when this labour is not required.

60. The flow-on effects for the economy are not difficult to imagine. If an agricultural employer is unable to access casual labour, delays to crop harvests occur, impacting food prices and availability for Australian consumers. If a retail employer can't employ sufficient casual staff during the Christmas period, permanent staff will have to work excessive hours to cover the shortfall – an outcome that presumably the ACTU would not find ideal. And if a restaurant is expected to operate with full time staff no matter how busy it is, this will necessarily mean higher meal prices as the employer struggles to cover the extra labour costs.

61. The mix of permanent and non-permanent work that achieves the best outcomes for employers and employees is difficult to achieve. By reducing questions about the optimal composition of the labour market into 'workers v bosses' rhetoric, the ACTU runs the risk of compromising Australian businesses' productivity, Australian labour productivity, and ultimately Australian economic performance. A more nuanced conception of the ideal labour market is required than the ACTU's simplistic idea that all non-permanent work is an employer-led push for higher profits at the expense of workers.

## The Role of Unions

62. The *Secure Jobs* campaign is emblematic of a union movement that no longer sees its role strictly in terms of protecting workers. The union movement is recasting itself as a force that can penetrate and influence firms' business decisions. Instead of protecting agreed-upon entitlements, unions are attempting to recast their role as the determiners of positive rights, to the exclusion of employer voices.

63. Union membership has declined steadily since the 1960s. In 1962, 61 per cent of employees were members of a trade union.<sup>20</sup> In 2010, just 18 per cent of Australian workers were trade union members; in the private sector, this figure is closer to 14 per cent.<sup>21</sup>

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<sup>20</sup> ABS, *Employee Earnings, Benefits and Trade Union Membership* (6310.0).

64. As membership-based organisations, unions face a difficult task asserting their continued relevance and influence in the industrial relations debate with such low levels of membership. They must either attract new members while retaining existing membership levels, or they must seek to become independently relevant, beyond the scope of what strictly qualifies as their members' interests.
65. The ACTU labels casual work and independent contracting as the largest categories of insecure employment in Australia. The ACTU cites ABS statistics that put the proportion of Australian workers engaged of casual employment at 27.7 per cent in 2004.<sup>22</sup> Further to this, the ACTU claims that 10 per cent of the Australian workforce is comprised of contractors, and estimates that 40 per cent of these contractors are 'dependent' in that 'they have no authority over their own work.'<sup>23</sup>

### **Contractors**

66. The ACTU's targeting of casual and contracting work is unsurprising in the context of union membership levels in those forms of employment. Employees without paid leave entitlements – a key ACTU indicator of job insecurity – are far less likely to be members of a trade union. In 2010, just 7 per cent of employees without paid leave entitlements were members of a trade union, as opposed to 18 per cent of all employees.<sup>24</sup>
67. Some 41 per cent of male independent contractors work in the construction industry, an industry that has historically seen high levels of union influence and engagement. However, among workers employed in the construction industry, levels of unionisation have been dropping. ABS data shows that for the period 1993-2005, unionisation rates in the construction industry often exceeded total rates of unionisation among Australian workers. In contrast, more recently, construction industry unionisation rates are dropping in line with total unionisation rates.

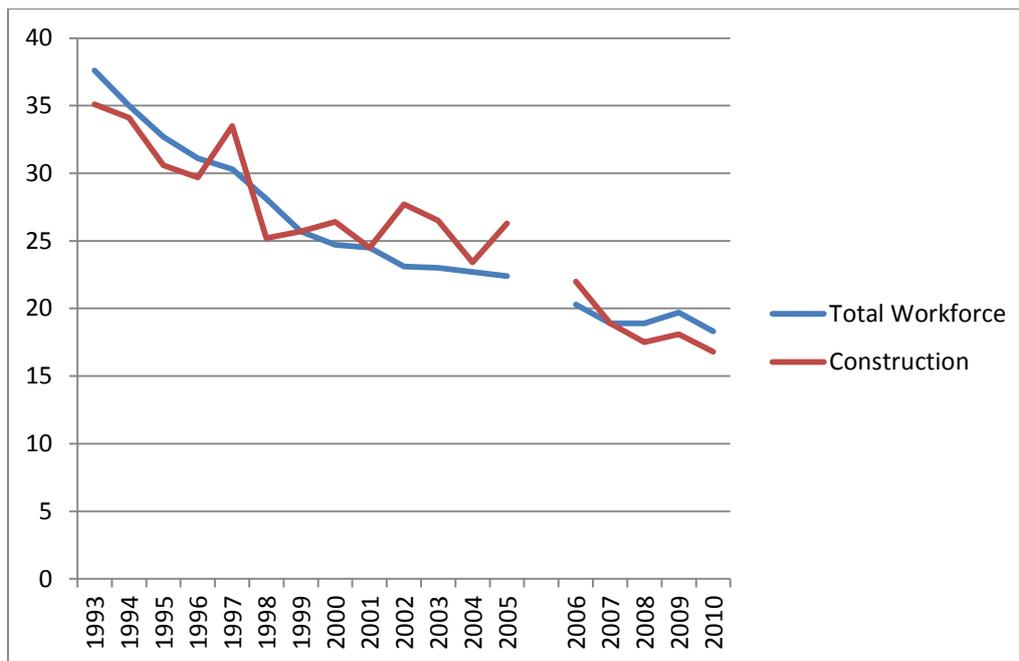
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<sup>21</sup> Ibid.

<sup>22</sup> ACTU, *Insecure Work, Anxious Lives*, 6-7.

<sup>23</sup> Ibid, 8.

<sup>24</sup> ABS, *Employee Earnings, Benefits and Trade Union Membership* (6310.0).



Source: 6310.0 Employee Earnings, Benefits and Trade Union Membership

68. In light of falling unionisation rates and increasing use of contractors in a traditionally union dominated industry, it is unsurprising that the ACTU has acted to preserve its influence over the construction industry by labelling contract work as ‘insecure.’
69. Unions now are seeking to limit the use of contract labour through highly restrictive clauses in enterprise agreements. Typical of the agreements in construction is the agreement applying to the troubled Wonthaggi desalination plant project. In the Wonthaggi Desalination Plant Greenfields Agreement, the use of contract labour is restricted by the requirement that contractors are employed at wages and conditions that are ‘no less favourable’ than those guaranteed for employees by the greenfields agreement.<sup>25</sup> In addition, Clause 6 of the agreement states that union leaders must be given the details of any contractors employed on the desalination plant project.<sup>26</sup> Clauses such as this are intended to intimidate the employer into not employing contract labour.

### Casuals

70. The ACTU’s *Secure Jobs* campaign makes the ‘insecurity’ of non-standard work arrangements more of a problem than it needs to be. By doing so, the ACTU places itself in a position to advertise the benefits of the union movement to a subsection of workers who currently do not see the value provided by membership of a union.
71. The ACTU also seeks to demonise employers who utilise casual and contract labour. According to the *Secure Jobs. Better Future* campaign material, ‘the growth in insecure work is driven by employers

<sup>25</sup> Thiess Degremont and AMWU, AWU, CEPU & CFMEU Victorian Desalination Project Greenfields Agreement 2009, <<http://www.etu.asn.au/files/pdfs/2010/EBA.2009.Thiess%20Degremont%20Joint%20Venture.Desalination%20Plant%20Site%20Agreement.pdf>> 16.

<sup>26</sup> Ibid, 17.

trying to realise short-term savings and higher profits by avoiding costs ... such as paid leave, workers' compensation, long service leave and superannuation.<sup>27</sup>

72. This anti-employer sentiment is a well-worn thread in union rhetoric. The *Secure Jobs* campaign targets employers who value flexibility and the ability to adjust to seasonal or business-cycle driven fluctuations in labour requirements, and in doing so, targets employers who employ mostly non-union labour. This limits the ability of unions to impose conditions on these employers.
73. It also fails to take into account the idea that the labour market is diverse. Some casual employees prefer full time work. Some casual employees prefer the flexibility that casual work provides.
74. Studies have shown that some workers prefer casual to full time permanent employment. Many choose to remain in casual employment even when they have an entitlement to transfer to full time employment. This reinforces the desirability of ensuring reasonable choice about working arrangements is retained. Regulation strongly mandating full time permanent employment would be wrong.
75. The labour market is not homogenous, and in an effort to reassert its once-held dominance over the hopes and ideals of Australian workers, the union movement misses this essential point.

### **A Broader Union Strategy**

76. By taking on the 'issue' of insecure employment, unions tip the balance of industrial relations influence back in their favour: it is no longer necessary for an employee to be a union member for the union to influence the employee/employer relationship.
77. The insecure employment campaign is part of a broader union effort to cast commercial decisions in an industrial relations context. The Fair Work Act has increased unions' power out of proportion to unions' relevance to workers. To return to the example of contract labour, under previous legislation, terms that restricted an employer's ability to utilise contractors or labour hire were explicitly not permitted.<sup>28</sup>
78. Under the FW Act, matters pertaining to the relationship between employers and unions may be included in enterprise agreements.<sup>29</sup> Further, there is a mandatory consultation term that requires the employer to consult with employees about 'major workplace changes'; this term must also allow for employees to be represented by a union or other employee representative at this consultation.<sup>30</sup>
79. The inclusion of such terms is a powerful signal to unions that business' employment decisions – once regarded as strictly a commercial matter for the firm – have now entered the realm of industrial relations law. In light of this, it is unsurprising that unions have responded by seeking to exert pressure on employers regarding hiring decisions.

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<sup>27</sup> ACTU, *Insecure Work, Anxious Lives*, 12.

<sup>28</sup> IPA Occasional Paper, *Work Choices*, 7.

<sup>29</sup> Fair Work Act, 172: 1(b).

<sup>30</sup> *Freehills Employment and Workplace Relations Guide 2011*, 112-3.

80. Unions have a role to play in the labour market, but their recent continued attempts to influence firms' business decisions have gone too far.
81. The *Secure Jobs* campaign is yet another example of unions seeking to expand their influence over firms' labour requirements, despite their decreasing relevance among workers. The FW Act has blurred the role of unions in the labour market, giving them greater power over employer-employee relationships.
82. And the ACTU's solution to the phenomenon of insecure employment is quite explicit: increase the scope of the FW Act, and increase union power.
83. The ACTU states that it is unclear whether the current system permits clauses requiring the employer to pay contractors more than employees, or clauses that restrict the use of contractors/labour hire to situations where the employer cannot find employees.<sup>31</sup>
84. In their efforts to extend union control, the ACTU is making recommendations that completely fail to acknowledge the economic and labour market realities faced by businesses. Businesses in one industry are not homogenous entities – they face different profit outlooks and have different labour requirements.
85. A model of the labour market that unduly privileges permanent, full time jobs with full leave entitlements is a model that is incompatible with the modern workforce. Flexible working options are the best means of aligning employer and employee preferences when it comes to work, caring responsibilities and leisure.

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<sup>31</sup> ACTU, *The Future of Work in Australia*, 26.