

## **National Tertiary Education Union (NTEU)**

**Submission to the**

## **Senate Select Committee on Job Security**

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## Table of Contents

i. Executive Summary .....	3
ii. Recommendations: .....	5
1. Introduction .....	6
2. Insecure employment in higher education .....	7
2.1 The Flood of Insecure Employment in Higher Education .....	8
Trends in higher education employment: 2000 to 2019 .....	8
Gender and Insecure Employment .....	10
3. Insecure employment and the lives of higher education workers .....	12
3.1 Workload and burnout.....	12
3.2 Impact of devolved decision making .....	13
3.3 Implications for workers .....	13
Professional disaggregation, fragmentation, and career disadvantage .....	13
Financial Insecurity and insecure employment .....	14
Retirement savings.....	16
4. The impact of insecure work on the future higher education workforce .....	17
5. Implications for academic freedom .....	19
6. The causes of insecure employment in higher education .....	20
6.1 Issues with the regulation of insecure employment in higher education .....	20
Casual general staff.....	20
Casual academic staff.....	21
Fixed term employment.....	21
7. The risks of insecure work exposed as exacerbated by the COVID-19 crisis .....	23
8. The gig economy in higher education and wage theft .....	25
9. NTEU Recommendations on addressing the proliferation of insecure employment.....	27
9.1 Policy approaches to insecure employment and public accountability agreements (PAAs).....	27
Public Accountability Agreements .....	28
9.2 Other Industrial Reforms .....	29
Inadequate protection from adverse action.....	29
Inadequate Right of Entry Laws .....	29

## i. Executive Summary

***Tertiary education is characterised by one of the highest levels of precarious employment in Australia.*** The NTEU conservatively estimates that fewer than 36% of all university employees have continuing employment. The excessive use of casual and limited term employment in higher education does untold damage to the lives of thousands of Australian workers, as well as significant damage to the quality of provision of education, and to the public interest.

***The responsibility for this situation is twofold – in the first instance, blame is shifted by government onto universities, with the government rightly saying that universities are autonomous institutions responsible for their own industrial relations practices.*** Alternatively, the universities conveniently shift the blame for this situation onto government, rightly saying that the level of funding per student for teaching, and the way university research is funded, encourages systemic precarious employment.

The truth is that inadequate funding has combined with poor management practices, and the losers are Australia's students, the public, staff and universities themselves.

This submission finds that:

- ***Only a small minority of casual contract employment in universities is genuinely 'casual' in nature at all.*** The majority of work performed by staff employed on casual contracts is needed on an ongoing basis. Casual employment is used primarily to deny people the rights that come with continuing employment, to create a compliant workforce, and to cut costs. It is not a function of the nature of the employment itself;
- ***Fixed term employment in many cases is used in circumstances where it would not be necessary with a modicum of planning at the institutional or industry level.*** Many employees have been in work for many years on fixed term contracts. Many have broadly transferable skills and/or specialist skills clearly in ongoing demand in their institutions. Insecure employment arrangements in these circumstances are largely unnecessary for employers;
- ***In the case of academic employment, precarious employment is not consistent with one of the defining characteristics of university education – academic freedom.*** Academic freedom only exists when it is supported by both the culture of the institution and enforceable rights which give employees redress against breaches of academic and intellectual freedom. The existing regime, where two-thirds of academics do not enjoy these rights, and a majority of teaching is done by staff without these rights, seriously undermines the claim of Australian institutions that they provide a genuine university education experience;
- ***There is little transparency in the real numbers of workers employed in precarious work across the sector;*** public reporting by the Department of Education is in 'full time equivalent' (FTE) positions, which NTEU estimates to be between 4 and 6 individuals make up a single FTE casual position. Furthermore, there is no reporting at all of workers who are labour hire or third party contractors, which are used widely by the sector but largely hidden;
- The COVID-19 crisis has highlighted the existing flaws in the higher education system, including the over reliance on precarious employment. It has also brought into light questions

around issues such as pandemic leave, and what responsibilities employers have to ensure the workplace is safe for all workers, including those employed insecurely;

- Many staff were 'stood down' during COVID-19 by the private providers of higher education but had access to Job-keeper to keep the employment relationship intact. The exclusion of public universities from being eligible for Job-keeper meant that university staff who were not eligible for leave were forced on to unemployment benefits;
- The majority of precariously employed staff would like to have the option of conversion to secure employment. Furthermore, that insecure employment has a negative impact not only for the individual (eg career development, financial security, mental and physical health, but is undermining the development of the sector's future workforce.
- Industrial reforms are needed that will address the sector's approach to insecure work, particularly in relation to casual and fixed term work. Casual employment should be limited to work which is genuinely casual in nature, and employees should not be employed on a fixed term basis for years on end, or where there is an ongoing need for the work they do. Unfair dismissal laws need to be changed so that fixed term employees can challenge the unfair or capricious non-renewal of contract. Currently an employee with 15 years fixed term service can be "terminated" for no reason and with no explanation

The NTEU has always considered that a certain level of fixed term and casual employment in higher education is necessary. Casual employment is, for example, appropriate for expert lecturers who may present a series of lectures based on their active professional practice. Replacement staff on contract may also be used to fill positions that have arisen to leave situations, such as parental or long service leave. Nevertheless, on these few legitimate foundations has now been built an edifice of low-quality teaching and research and staff exploitation.

The NTEU has long argued that a regulatory approach is required to deal with the proliferation of insecure employment. Such a regulatory approach will focus the minds of senior university leaders, as well as government, on an appropriate funding regime necessary to meet minimum standards of decent employment and educational quality. The precarious employment experiences and labour practices imposed upon tertiary education staff, and in particular limited-term contract research staff and casual teaching focused academic staff, provide a disturbing precedent for other Australian workplaces. The overuse of insecure modes of employment in areas so crucial to the functions of Australian universities is not only against the interests of individual employees, but against the public interest of ensuring a high-quality tertiary education sector.

## ii. Recommendations

### **Recommendation 1: Clearly define casual employment**

There should be a definition of a casual employee, determined in the National Employment Standards or Award-by-award, as appropriate, which defines casual work, and limits its use to genuinely “casual” circumstances which cannot practically be offered on an ongoing basis. If there is a qualifying period, it should be no more than 6 months, upon which the employee ceases to be casual.

### **Recommendation 2: Adopt broad based fixed term employment conversion laws**

Fixed term employment is used on a systematic and ongoing basis. Broad national laws placing time limits on fixed term employment in the same role would significantly improve the lives of higher education workers.

### **Recommendation 3: Link University funding to continuing employment targets**

Universities left to their own devices have rapidly adopted the gig economy model, especially in undergraduate teaching. This level of casualisation should be unacceptable in public institutions. University performance funding needs to be directly linked to targets for increased continuing employment. This could be done through the NTEU’s proposed *Public Accountability Agreements* (PAA).

### **Recommendation 4: Mandate public reporting of employment statistics**

Universities have largely concealed the true nature of their workforce composition through vague reporting, and usage of outdated Full Time Equivalent measures. Publicly funded institutions should publicly report full employment statistics, including headcounts of staff by employment type and gender at regular intervals.

### **Recommendation 5: Pursue further industrial reforms**

Other areas of industrial reform that will benefit insecurely employed workers include the introduction of universal pandemic leave for all workers, and to address unfair provisions in existing unfair dismissal laws. Furthermore, unions should have restrictions on Right of Entry removed, be able to access wage records and related documents in the workplace, and right for trade unions to organise and advocate for workers protected under law.

## 1. Introduction

The National Tertiary Education Union (NTEU) welcomes the opportunity to make a submission to the Select Committee on Job Security on the impact of insecure and precarious employment within the higher education sector.

NTEU represents the industrial and professional interest of some 28,000 people working in tertiary education and research, including at universities, in vocational education and training, adult education, at private providers of higher education and at research institutions. NTEU members also have an interest in the welfare of students of tertiary education institutions who undertake paid work.

Insecure employment is the primary form of employment within the higher education sector, with only one job in three continuing. As such, the NTEU is well placed to comment on the impact of insecure and precarious employment in our universities, TAFEs and with private for-profit Higher Education Providers (HEPs).

While the Terms of Reference for the Inquiry are to review the extent and nature of insecure or precarious employment in Australia; the NTEU's submission will focus specifically on the higher education sector. That said, many of the issues we will raise will be similar, if not the same, as many other sectors of the economy where insecure employment is the primary form of employment, such as in hospitality and retail. These issues go to problems including the exploitation of vulnerable workers, underpayment and wage theft, and the growth of 'gig' economy.

The NTEU's submission will address:

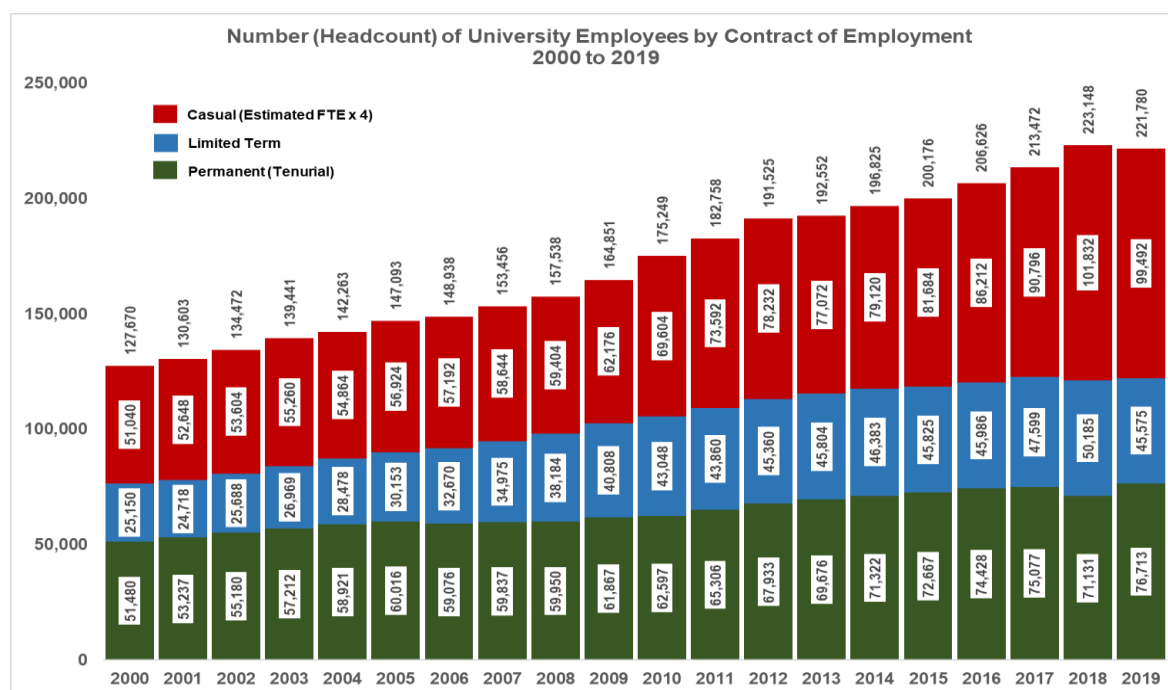
- the extent and nature of insecure or precarious employment in higher education
- the current regulation of precarious employment in the Higher Education Sector
- the risks of insecure or precarious work as exposed or exacerbated by the COVID-19 crisis;
- the impact of the 'gig' economy and wage theft in higher education;
- the impact of insecure work on the future higher education workforce
- the impact of insecure employment on higher education worker's lives and financial security including income and housing security, and dignity in retirement;

## 2. Insecure employment in higher education

Australia's higher education sector employs over 220,000 individuals, the majority of whom are highly educated and highly skilled. Yet, the higher education sector has become heavily reliant on fixed term contract and casual employment – and these forms of employment are growing.

The number of casual and fixed term staff in the sector has **increased by 89 percent since 2000**, while the number of continuing staff has increased by only 49 percent over the same period. **Together casual and fixed term staff now account for 66 percent of all persons working in higher education.** (see fig 1.)

Figure 1: The growth in insecure employment in higher education



Source: Department of Education, *Selected Higher Education Statistics Series*, multiple years<sup>1</sup>

Put simply, the current situation is that thousands of permanent jobs are being lost as the higher education sector seeks to address a multi-billion-dollar shortfall in revenue that would normally support teaching and research activities. At the same time, universities are required to teach more students, but with less government funding per student overall (and in some areas where increased enrolments are being encouraged, such as nursing, teaching and engineering, the shortfall in funding per student is deeply problematic). The inevitable result will be that while positions made redundant – both academic and general/professional staff – their replacements will be via cheaper, lower level, insecure employment.

<sup>1</sup> A Note about this Data: The department of Education publishes employment data for universities in numbers of Full Time Equivalent staff (FTEs), rather than number of persons employed. Figures above are based on the assumption that 1 FTE of casual employment equates to four persons (excluding those engaged on a one-off basis, such as occasional or guest lecturers or general staff employed for one day). This seems to be a fair, if conservative, estimate based on the analysis of the number of active superannuation accounts that correspond to casual employment, universities' reports to the Workplace Gender Equality Agency, and declarations made by employers in connection with the approval of enterprise agreements.

This overreliance on transitory forms of employment in the cutting edge of Australia's knowledge economy poses systemic risks to the sector and impacts on the lives and careers of the 145,000 staff currently engaged impermanently. However, the ongoing need for the majority of this work suggests that continuing employment in the sector could be significantly increased, bringing benefits to both employees and institutions.

## 2.1 The Flood of Insecure Employment in Higher Education

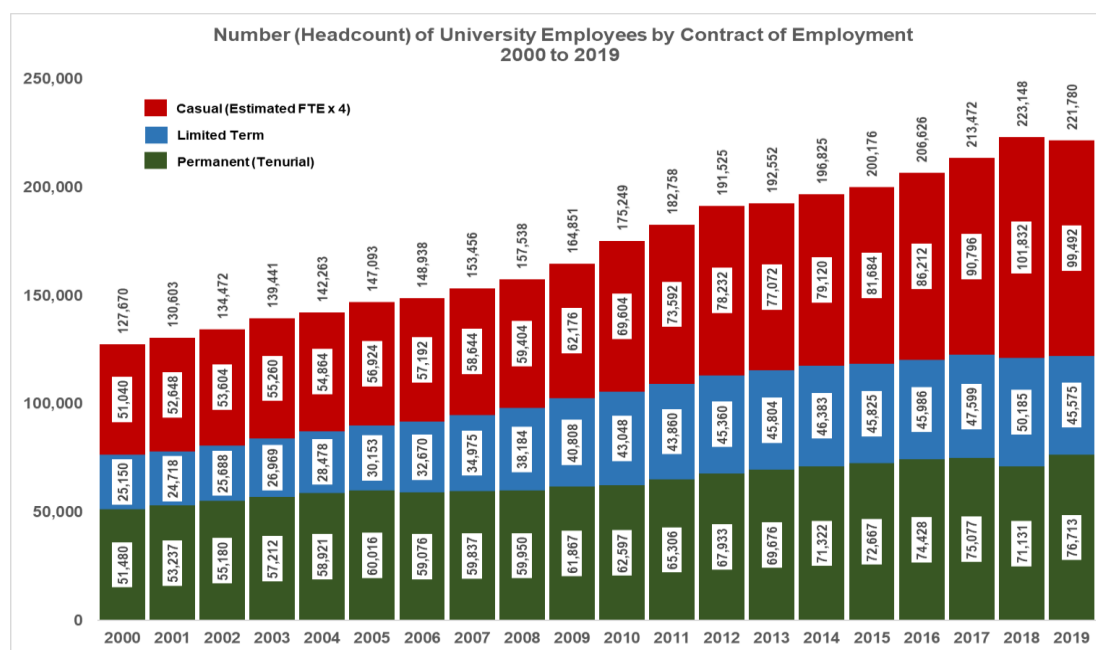
In 2018 the NTEU released a report titled *The Flood of Insecure Employment*, which documented in detail the staggering extent of casual and fixed term employment in the higher education sector. This report indicated that 68 percent of all university employees were employed insecurely in 2018.<sup>2</sup>

Using the latest available 2019 data on employment in Australian universities, it is clear that that insecure employment levels remain stubbornly high in higher education.

### Trends in higher education employment: 2000 to 2019

Figure 1 below shows the changes in total employment by staff headcount among the three main categories of employment. It shows that around 145,000 of the total 221,000 staff in the sector were insecurely employed in 2019, versus 76,000 out of 127,000 in 2000.

Figure 1 The growth in insecure employment



Source: Department of Education, *Selected Higher Education Statistics Series*, multiple years

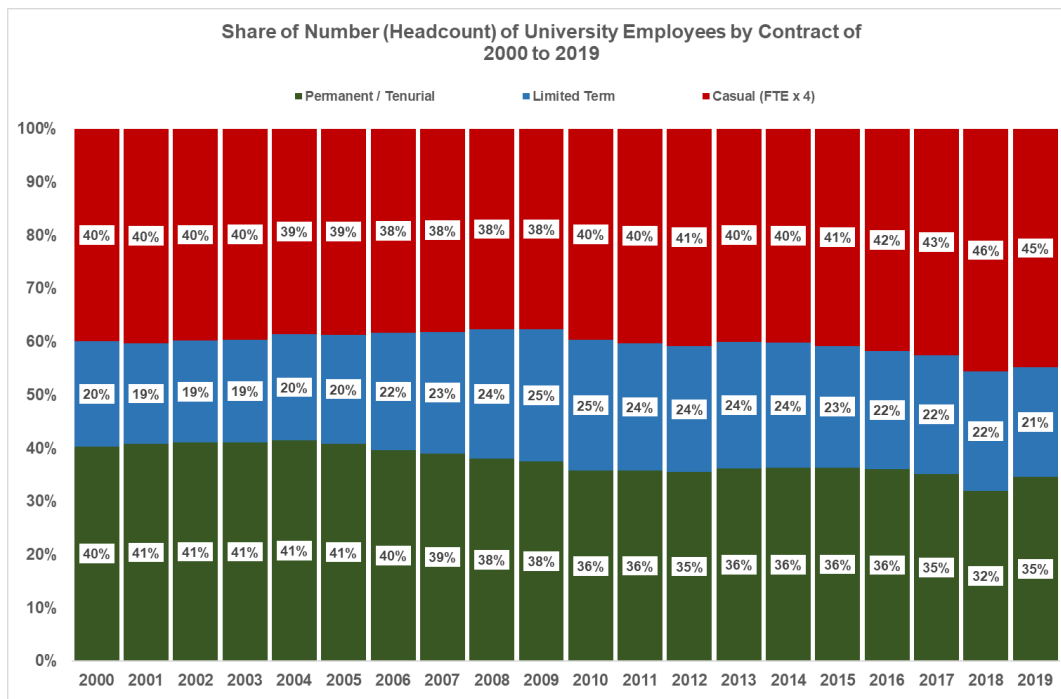
Figure 2, below, shows this trend by expressing each employment category as a total percentage of employed persons. It shows that an estimated 66 percent of persons working in higher education in 2019 were engaged in precarious, fixed term modes of employment, versus 60 percent in 2000.

<sup>2</sup> NTEU, *The Flood of Insecure Employment at Australian Universities*, 2018

<https://www.nteu.org.au/col/article/The-Flood-of-Insecure-Employment-20784>



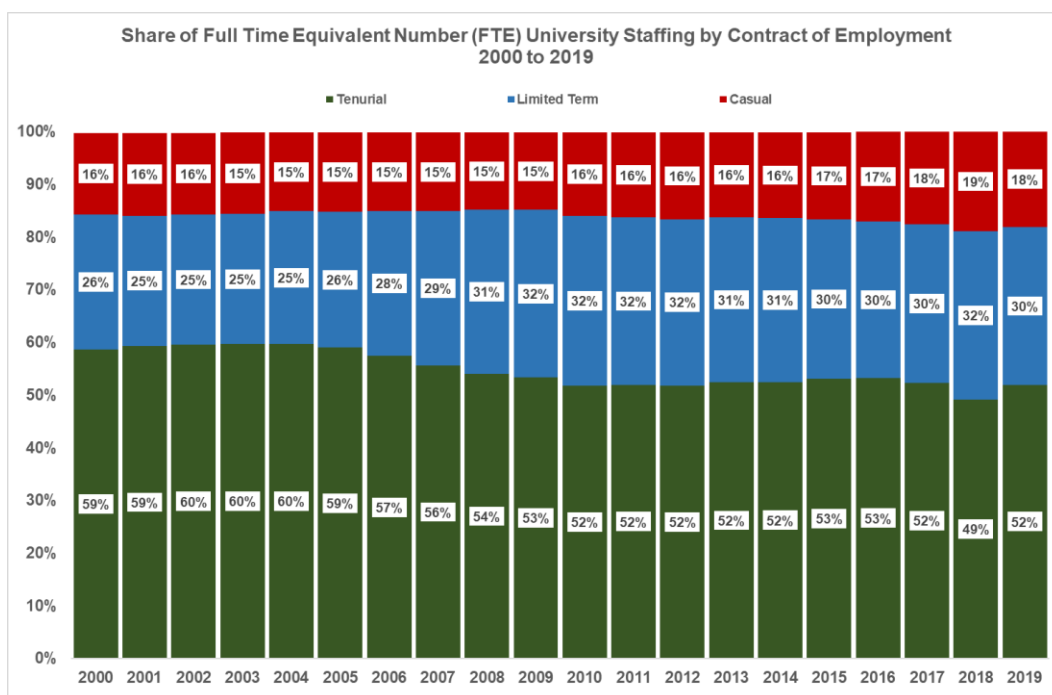
Figure 2: Share of employment by contract type (headcount)



Source: Department of Education, *Selected Higher Education Statistics Series*, multiple years

Figure 3 below shows that this trend has still been present when we look at Full Time Equivalent staff (FTEs) rather than persons. The difference between the proportions in figures 2 and 3 is largely the result of the smaller average employment fraction consumed by each insecure job.

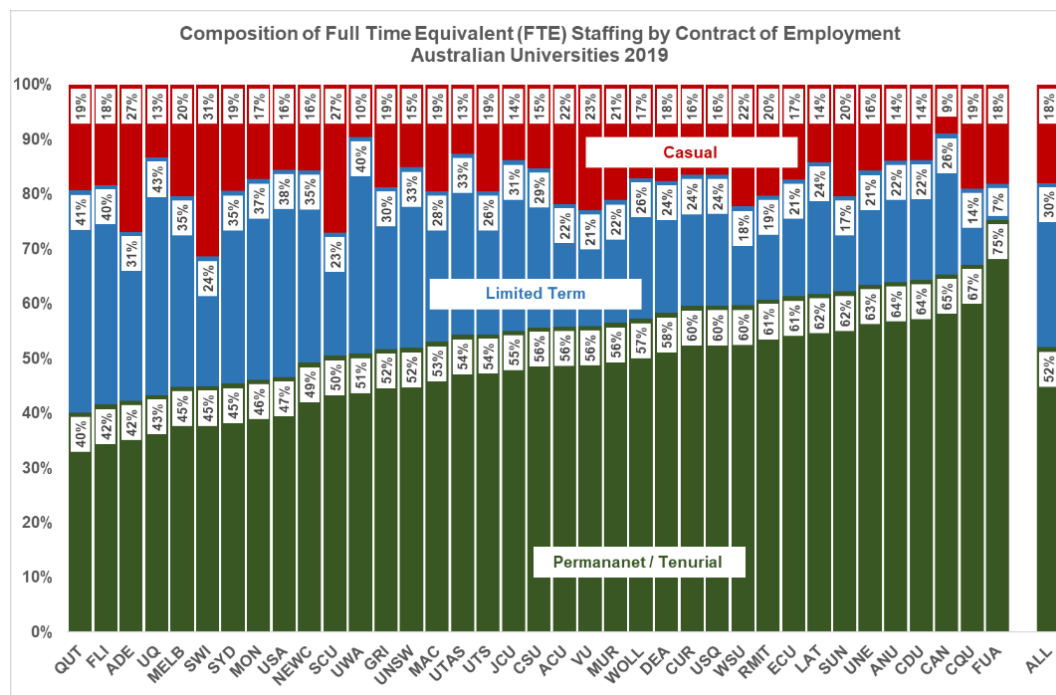
Figure 3: Share of employment by contract type (FTEs)



Source: Department of Education, *Selected Higher Education Statistics Series*, multiple years

It is important to note that the ratio of secure to insecure employment is not uniform across the sector. Figure 4, below, shows the mode of employment, by FTE, in each university. It shows that 75 per cent of all FTEs at Federation University are employed on a continuing basis, versus only 40 percent at Queensland University of Technology.

Figure 4: Share of employment by contract type and University (FTEs)



Source: Department of Education, *Selected Higher Education Statistics Series*, multiple years

Regardless, the overall trend for the levels of insecure employment in the sector is for it to continue to increase. Further, this trend will almost certainly be exacerbated by the thousands of permanent job losses that have occurred in 2020 and 2021, and the pressure for universities to teach more students with less funding per student.

### Gender and Insecure Employment

Finally, the NTEU has long held concerns around the gender pay gap and the impact on women, but today the big issues for women working in higher education are both insecure employment and underemployment.

As the data has shown, insecure employment is a growing trend in higher education, with the largely unfettered use of casual, contract and agency employment arrangements. Underemployment is less obvious – and it often applies to part time workers who would prefer full time hours, but it also incorporates those who are skilled but confined to lower paid positions. Research has consistently shown that both insecure and under employment in tertiary education is gendered, with women over represented in all categories of casual and contract work (be this as academic, research, general or

professional and technical staff), in part time roles and, most persistently, in the lower levels of both academic, general/professional and technical classifications.<sup>3</sup>

Women in higher education are also less likely to be successful in academic promotion rounds, where many find themselves discriminated against for seeking to balance family and carer obligations with their career. It should be noted that for many women working in higher education, these issues are intersectional – for example, insecure and underemployment can be one and the same for casual academics, or a senior researcher with an impressive publications record may be passed over for promotions due to having taken time off for maternity leave, but could also be dealing with a precarious working life that goes from one research contract to the next.

In 2011, an Australian Research Council Linkage Grant (ARC) research project, led by Professor Glenda Strachan, Griffith University, examined gender and equity in higher education. The project had been proposed by the NTEU and was supported by industry partners, Universities Australia Executive Women and UniSuper.

The findings of the project, which drew upon more than 23,000 survey responses from staff at 19 Australian universities, were released in 2016 in a report entitled *Women, careers and universities: Where to from here?*<sup>4</sup> It's important to note that the research project was unique in that it included professional staff and staff employed on insecure contracts as well as academic and research staff; these staff had typically been excluded in previous research projects. As such, the research gives a comprehensive picture of the state of precarious employment in universities and gender bias.

The report found that universities are increasingly relying upon insecure forms of employment, usually in the form of fixed-term contracts and hourly paid teaching academics (casuals), as the major component of the university's workforce. Women are far more likely to be in this group than men. It should be noted that insecure employment is not only about there being uncertainty in on-going university employment; for those employed on serial fixed term contracts there are issues around professional development and many benefits, such as receiving additional pay for overtime or promotion or appointment at a higher level, are virtually non-existent. Furthermore, staff on fixed term contracts may not be able to access all gender equity and family leave policies, and casual staff (and labour hire staff) usually fall outside of these policies altogether.

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<sup>3</sup> See National Tertiary Education Union's submission to the Senate Finance and Public Administration References Committee *Inquiry into Gender segregation in the workplace and its impact on women's economic equality*. Submission 16, 15 February 2017. <https://www.apf.gov.au/DocumentStore.ashx?id=26b38bdc-0f43-48a1-927e-3f7260c8870d&subId=463767>

<sup>4</sup> Glenda Strachan (eds), *Women, careers and universities: Where to from here?* Brisbane, Queensland: Centre for Work, Organisation and Wellbeing, Griffith University, 2016

### 3. Insecure employment and the lives of higher education workers

Research on attitudes to Australian university employment have consistently indicated that both casual and fixed term contract staff want greater employment security, and that job security is a building block for regenerating a precariously-positioned academic workforce.<sup>5</sup>

Yet the current approach by university managements, together with the policy and funding drivers set by Government, would undermine this workforce regeneration. It is likely that the impacts we are currently seeing as a result of insecure employment, both for individuals and for the sector overall, will continue, or even become more profound.

#### 3.1 Workload and burnout

Pressures have intensified with frequent reviews and restructures, standardisation and external regulation, performance measures (of teaching, research, impact, and engagement), unmanageable workloads, and the abandonment of tenure in some universities. Research has suggested that almost 40% of Australian academics aged under 30 were not committed to an academic career or were planning to pursue other careers within 5-10 years, and 13-18% had immediate plans for departure.<sup>6</sup>

The NTEU's own research has shown that casual and sessional staff undertake substantial hours of unpaid work.<sup>7</sup> Below are comments from NTEU members who are insecurely employed, which not only highlights the impact of the unpaid work, but the expectation from their managers and supervisors that they will effectively work a portion of their time for free:

##### **A Worker's Story: Casual Academic, Health Sciences**

"I was told by my manager in writing that I should expect to do unpaid work and I should do it for the love of the job."

##### **A Worker's Story: Casual Academic, Design**

"The contracts assigned to us at the beginning of the semester have "anticipated hours" in them rather than the actual hours that will be worked."

##### **A Worker's Story: Casual Academic, Humanities**

"In 2018 I was sent an email detailing how much my time was worth in a consultation, and that I was required to have 12 a semester. The same email also made clear that I was not going to be paid for any student consultations. "

These experiences highlight the broader trend of workload overload that the NTEU has seen grow over time, and it seems inevitable that insecurely employed staff will continue to experience job burnout at high rates.

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<sup>5</sup> H. Coates and L. Geodegebuure (2010) The Real Academic Revolution; R. May (2011) "Casualisation; here to stay"; E. Bexley, R. James, and S. Arkoudis (2011) The Australian academic profession in transition.

<sup>6</sup> Ibid

<sup>7</sup> NTEU "State of the Uni Survey Summary Results", 2019, <https://www.nteu.org.au/stateoftheuni/2019>

### 3.2 Impact of devolved decision making

The devolved system of staff management of casual and sessional staff who are employed to teach has wider implications for the nature of academic work. In tertiary education, employers have been able to cut costs by shifting the risks of employment from employer to employee and, in particular, onto highly skilled workers who are indispensable to the daily operations of the institutions that employ them. This environment has created a lost generation of PhD graduates who have not been able to find continuous employment in tertiary education. While some doctoral graduates have moved onto fulfilling careers in other industries, others have been less fortunate and have taken work in service or retail (or in other areas of the 'gig' economy) in the anticipation that their irregular opportunities for teaching and research will lead one day to a more permanent career.

This environment has also created a generation of highly specialised research-focused experts who have been employed in some instances for decades on rolling contracts, periodically chasing funding grants, and who have neither had the opportunity to embed permanent careers, nor bring work/life balance into their lives.

### 3.3 Implications for workers

#### Professional disaggregation, fragmentation, and career disadvantage

Casual and sessional teaching is overwhelmingly characterised by the lack of professional development and collegial engagement. Barriers to career opportunities faced by casual and sessional teachers have given rise to labels such as the 'treadmill academic'; staff who participate in a range of short-term engagements to secure cost of living and academic experience.

The long-term casual worker is also usually denied access to the work-value-based incremental pay structures which are applicable to non-casual employees. Adding indignity to these injuries is the practice of universities requiring employees to inform the employer of their research publications, even when these have been done entirely in the employee's own unpaid time, and then claiming these publications as part of the University's research effort under various research-rewards schemes, with no remuneration flowing to the employee.

The reliance upon casuals discourages investment in teaching practices and the proper development of teachers; the onus on professional development shifts from the employer to the individual, even though it is the employer who overwhelmingly benefits from that investment. It is not unusual for casual staff to be recognised in teaching awards and other similar citations – yet the offer of permanent work remains elusive. The account below, from a female casual academic, shared recently with the NTEU, highlights the frustration of being recognised for teaching and research excellence, but not with permanent employment:

#### **A Worker's Story: Female Casual Academic – WA**

I've taught in Higher Ed since 2014, and my doctorate was conferred in 2015. I have been in and out of fixed term and casual contracts, had to teach 18 different units in that time (many only once), across three universities. I have learned that merit means nothing. I have won two fixed terms positions in competitive selection processes, and achieved outstanding results in these (significant measurable improvements in student retention, success and experience); supervised research theses; developed new curriculum; won a VC award for excellence in teaching; gained Fellowship status with Advance HE; published widely and collaborated with others on research projects; sat on national committees in my discipline; mentored junior staff - and in 6 years of this I am still a Level A Adjunct lecturer on a 6-month

contract. Each time a contract ends and isn't renewed I fall back to the starting line again - in my current 6-month contract I am ineligible for nomination to university committees or registration as a research supervisor, and excluded from research support - all experiences I need to progress professionally.

Insecure work inhibits me from taking pride in my achievements, building community with colleagues and taking positions of leadership that I have been ready for a long time. It limits my income, and makes me fearful of my future. I carry intense feelings of shame, that as a middle aged woman I have not progressed as I should have. After the cessation of one contract I was left numb, drained of the 'fight' to keep going, and thought frequently about stepping in front of a bus. Although I picked myself up again I am exhausted from having to perpetually strategise my career - manoeuvring and undertaking additional unpaid tasks to try and 'get ahead and get noticed'. I am tired of being told I need a mentor - as if I have failed to seek good advice and this is why I'm still on trainer wheels as an academic. I want an advocate to stand up and say - enough is enough - this woman has proved herself ten times over. Give her a job.

In the context of higher education, the over use of casual staff damages the quality of teaching at Australian universities, to the extent that there is a lack of effective training opportunities and professional development for these academics. That is not to say that casual and sessional staff lack professionalism or are not dedicated to their students, research and careers – but that without the support of their universities, investing in their staff and providing opportunities for career advancement, these staff are effectively being hamstrung in their efforts to deliver quality teaching and research.

#### Financial Insecurity and insecure employment

In tertiary education the casualisation of work is often tied to a simple labour cost economic argument. Traditionally, many weeks a year don't involve face to face teaching work. In universities there are many weeks of preparing for classes and marking assessments outside of the traditional face-to-face teaching periods as well.

However, this disguises very substantial direct cost savings related to casual academic staff in higher education compared to most other industries. The casual loading is generally intended to compensate for loss of minimum paid entitlements to annual leave, sick leave, carers leave, public holidays and redundancy. In the higher education sector, enterprise agreements are in place that cover all higher education workers at universities.

Those agreements provide paid conditions which generally are offset against what would otherwise have been higher wage arrangements. That is, workers are essentially paid a lower wage for beneficial conditions including:

- 17% superannuation;
- 26 to 38 weeks paid maternity leave;
- 26 to 38 weeks paid adoption leave;
- 10 to 15 days paid partner leave;
- Substantially higher than minimum-standard redundancy entitlements;
- Incremental advancement through classification pay levels; and
- Paid personal leave in excess of the statutory minimum.

The critical issue is that these arrangements are not applied (at all) to casual workers in the sector. Their wages are tied to the lower wages of non-casual staff, and although they receive a 25% loading, this is insufficient to make up for the beneficial conditions that they do not receive.<sup>8</sup>

Superannuation on its own is worth 7.5% of income. Should a casual academic staff member be converted to ongoing employment (even on a part-year or annualised hours model) they would immediately benefit from 7.5% better superannuation. Over time, this would offset the 25% casual loading – and the ex-casual staff member would be entitled to all the other benefits of non-casual work such as paid leave, redundancy and the like.

Semester-by-semester employment patterns, combined with the financial savings from casualisation, provide real incentives for employers to render employment insecure, while making it very difficult for casual workers in higher education to escape the insecure employment trap.

Of course, these arrangements do not come about by accident. We know the casual academic workforce has a much higher proportion of female and younger employees than the non-casual academic staff cohort. Research has identified a clear and unequivocal trend for casual workers to be younger, and much more likely to be women than non-casual academic staff workers<sup>9</sup>.

The impact of low income that is insecure has financial consequences. Casual workers find it difficult to obtain loans to make major purchases such as property, or even commit to leases or regular payments, such as private health insurance. Access to specialist health services (such as dental) are also out of reach financially for many:

#### **A Worker's Story: Female Casual Academic - QLD**

"After several years in the US, where I did my PhD while working as a tutor and research assistant, and subsequently a postdoctoral research position, I returned to Australia and have been scrabbling together an income in casual teaching positions since 2018. In the US, pay was very low, but at least consistent over the 9 months of the academic year. Back home, and I am living with my pensioner mother, because my income varies so wildly from semester to semester, not to mention the inevitable gaps between teaching periods. I try to supplement with side gigs, but these are similarly inconsistent, and schedules often clash. **I am in no position to sign a lease or make other financial plans. I also can't commit to anything that requires regular monthly payments, like private health cover.** I really don't want to think about how long it's been since I saw a dentist."

#### **A Worker's Story: Female Fixed Term Professional Employee - QLD**

"Working in the higher education sector for over eighteen years; I have been on contracts for seven. The contracts have been between 6mths to one year within three main universities in Queensland. **Being on contract affects my career progression, ability to afford a house, a car, take holidays, my superannuation, the ability to plan for family, being able to afford renovations and assist elderly**

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<sup>8</sup> Increments for a casual academic otherwise appointed to Level A Step 2 would be worth 28%, if they were permitted to incrementally progress to Level A Step 8 like non-casual academic staff. Similarly, other common non-casual pay point progressions would include Level A Step 6 to Level A Step 8 (worth 7%) and Level B Step 2 to Level B Step 6 (worth 14%.) Basic promotion from Level A to Level B could see (over 5 to 10 years) progression from Level A Step 2 to Level B Step 6, which is worth approximately 60%.

<sup>9</sup> Dr Robyn May as part of her Doctoral Thesis, "The determinants of the casualisation of academic employment in Australia, and implications for employees, university managements, and public policy" which was part of an ARC Linkage project: Gender and Employment Equity: Strategies for Advancement in Australian Universities.

**parents and obtaining a loan. Being on contract adds stress to your life.** The stress recently during a divorce, paying for lawyers, and wondering if I will be able to keep the roof over my head, and not having my contract renewed during this time due to a restructure in the University left me with stress-induced illnesses.

There are significant effects upon the health and well-being of staff experiencing insecure employment. Numerous casual and sessional staff report feelings of isolation from the university community and a lack of support networks. This kind of isolation and the lack of value invested in casual staff lead to higher levels of stress.

Sharni Chan, a union activist and tutor in industrial relations at Macquarie University, wrote about the nature of the heightened stress facing casual academics, highlighting that casual employment in universities impacts upon so many who would prefer to work in permanent positions but are locked into casual modes of employment. She notes that the “non-standard” characteristics of academic casuals are even extreme within the category of “non-standard employment” leading to increased levels of stress and suffering. She argues that this scenario also leads to university workers delaying when they start families.<sup>10</sup>

#### Retirement savings

It is inevitable that low income over time will see those who are insecurely employed have less to live on once retired from the workforce. We know that this will particularly impact on women. According to **UniSuper**, the industry superannuation fund for university staff, in 2015 the retirement saving gap between men and women who have worked in universities was around 37 percent.<sup>11</sup>

Those employed casually or as sessional do not receive the same level of employer contribution as their permanent colleagues (9.5% compared 17%). While this is concerning in itself, staff employed in non-secure modes of employment may not receive any superannuation at all, if they do not meet the minimum levels for monthly income earned under the Superannuation Guarantee provisions (even if they do in aggregate over a number of employers). This has a profound impact on their capacity to save for retirement.

#### **A Worker’s Story: Female Academic – fixed term and casual - QLD**

“As my jobs were short term I couldn’t get my own lease(s) for eight years. My super contributions and ability to plan/have holidays were affected. When I had regular fixed contracts I got a lease but there was still uncertainty and I couldn’t accrue long-service leave or plan holidays. Then, although student demand was high, the post wasn’t renewed so I cannot cover rent etc. and jobs are scarce.”

Casual employment cannot provide financial stability, with both casual and fixed term contract academics concerned with the lack of notice around future contracts, and the need to identify employment before the contract expires. They cannot plan for the future and their future retirement savings are negatively impacted by their insecure employment, which has a lower rate of employer contributions compared to their permanently employed colleagues.

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<sup>10</sup> S. Chan (2011) *You can’t raise a kid on a Casual income: The invisible risks of being a “non-standard” non-standard worker*, Connect Magazine, (4) 2: 12-13.

<sup>11</sup> Katie Frazer and Danielle Clarke, UniSuper, 2015, *Progressing our Careers Superannuation and Women* <http://www.nteu.org.au/library/view/id/6369>



## 4. The impact of insecure work on the future higher education workforce

The NTEU, along with others in the sector, have long argued there is an impending need to renew the academic workforce in Australia. The Group of Eight (Go8) coalition of Australian universities has previously estimated that by 2030, an additional 26,600 full-time teaching staff will be needed to meet growth demands, on top of the 16,400 to replace retirements.<sup>12</sup> However, there is little evidence of either universities or the government putting in place policies to address this impending need.

The current cohort of postgraduate students and early career academics, which are defined as 5 years post PhD, are the future workforce that will undertake teaching and research. While it is common for postgraduates to undertake casual and sessional teaching work while studying, early career academics are increasingly finding themselves caught in a loop of insecure employment, with the vast majority employed as sessional and casuals in teaching-only roles, and concentrated in the lowest appointment levels. As already noted, “teaching only” is the growth area of the sector, and reflects the increased specialisation of the university workforce, which extends to research only staff (primarily employed on rolling contracts) and new types of professional staff, which include labour hire employees (the numbers of which are unreported and go largely hidden) and the emergence of ‘practice professionals’ who teach but aren’t expected to contribute to the research endeavour.

Staff who are precariously employed not only have greater job insecurity, but they have lowered access to support structures and often do not feel to be part of the collegial workforce. They are generally ignored when it comes to professional development and career advancement. Yet, they will juggle multiple demands and piecemeal contracts, excessive workloads which result in unpaid work, and occupational, financial and personal stress. The account below illustrates the impact of precarious employment for a female professional (general) staff member:

### **A Worker’s Story: Female Fixed Term Professional Employee - QLD**

Contract work is temporary and leaves you being the ‘backfill’ for permanent staff - on a continual basis. Being on contracts leaves you; feeling insecure and less confident as you are treated as a temporary staff member; sometimes you get stuck with the jobs no one else wants or expected to work above your level, you do, and count it as experience, if you don’t you risk having your contract cut short or that it won’t be extended; not getting Long Service Leave – unemployment is your Long Service Leave; no holidays – you are usually filling in for permanent staff – resulting in banking your leave which makes this additional money when paid out to live off if you are in between contracts, I haven’t had a holiday longer than 3 days in 7 years; progression is difficult, you are perceived as not ‘staying long’ in roles which is out of your control, I have trained staff over 10 years ago and starting a new contract get re-introduced to them and they are 4-5 levels higher; you aren’t covered for Parental leave which has made it impossible to start a family; you can’t update your car in case you are out of work and can’t maintain payments. A term picked up from a colleague, contract workers ‘pivot’. Pivot – *new role, learn this, Next! Pivot – new role, learn this...* and it goes on and on.”

The effect on the individual is to see the development of their expertise be undermined, and their career motivations and ambitions inhibited. Many will leave the sector, disillusioned. Research has suggested that almost 40% of Australian academics aged under 30 were not committed to an academic career or were planning to pursue other careers within 5-10 years, and 13-18% had

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<sup>12</sup> Group of Eight, Future demand for Higher Education in Australia *Go8 Backgrounder* (10) August 2010  
<https://files.eric.ed.gov/fulltext/ED536211.pdf>

immediate plans for departure.<sup>13</sup> General and professional staff will also leave the sector, particularly younger women, who may not be able to access the same leave provisions (such as parental leave) as their permanent colleagues.

There are irrevocable tensions that will continue to build in the university higher education workforce, between academic and professional staff who are appointed to ongoing positions with a career path and prospects, versus the short-term, contracted, sessional academic and limited professional/general appointments who are not offered a career path, creating a sense of existential precariousness with few future prospects.

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<sup>13</sup> Bexley, E., Arkoudis, S. & James, R. The motivations, values and future plans of Australian academics. *High Educ* **65**, 385–400 (2013). <https://doi.org/10.1007/s10734-012-9550-3>

## 5. Implications for academic freedom

Though the NTEU's concern for fair conditions of employment is central to this submission, public policy considerations arising from academic casual employment should also be noted in the context of this inquiry. One of the most important public policy considerations that is shaped by the proliferation of insecure employment is the capacity for universities to sustain and protect academic and intellectual freedom. Unless academic employees have security of employment, and that security is protected by legal means, there is no intellectual freedom. In contrast to many other kinds of tertiary education institutions, intellectual freedom is a defining factor of the university. Australia and many other countries are party to international instruments such as the UNESCO *Recommendation Concerning the Status of Higher Education Teaching Personnel* (1997) which has its origins not in labour law but in the advancement of the highest standards of excellence in higher education in all countries. For instance, the Recommendation states;

*Security of employment.*

*Tenure or its functional equivalent, where applicable, constitutes one of the major procedural safeguards of academic freedom and against arbitrary decisions. It also encourages individual responsibility and the retention of talented higher-education teaching personnel.*

*Security of employment in the profession, including tenure or its functional equivalent, where applicable, should be safeguarded as it is essential to the interests of higher education as well as those of higher-education teaching personnel. It ensures that higher-education teaching personnel who secure continuing employment following rigorous evaluation can only be dismissed on professional grounds and in accordance with due process. They may also be released for bona fide financial reasons, provided that all the financial accounts are open to public inspection, that the institution has taken all reasonable alternative steps to prevent termination of employment, and that there are legal safeguards against bias in any termination of employment procedure.*

*Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education.*

Given that two-thirds of academic staff in Australia do not have the types of protection afforded by continuing employment status, the argument that academic freedom is protected is difficult to maintain. It is often thought that cases of infringement of intellectual freedom are only those where an academic 'speaks out' on a controversial issue and then is victimised for this. But the current employment scenario impacts the very construction of the university learning process, with casual academic teachers less likely to introduce new or challenging ideas or concepts if taught in a climate that an employment relationship could just as easily be discontinued.

Noting that the intrinsic value of intellectual freedom was enshrined through the introduction of Commonwealth legislation in 2011, the use of insecure modes of employment in academic and research contexts (where work is not in fact irregular in nature) is a diminution of the very principle of intellectual freedom.

## 6. The causes of insecure employment in higher education

As noted in the introduction to this submission, most of the insecure employment in tertiary education is unnecessary. This is because most work done by fixed term and casual staff is core work which will be required by the university on an ongoing basis – the contracts may be contingent, but the work is not. For example, the same undergraduate courses are usually taught each year, and student numbers have been growing steadily. In grant-funded and project areas, there is no doubt a minority of positions which require a type of work or skills which are unlikely to be ongoing in demand, and in which the use of fixed term employment might be reasonable. However, most fixed term staff have high level transferrable skills like lab methodologies or data analysis which mean that they could readily be employed on an ongoing basis.

Prior to the COVID-19 crisis, the move towards insecure employment in the sector, therefore, has largely been driven by decisions occurring at the University level rather than any government policy or necessity. To some extent, universities have also been apathetic, rather than intentional, in the employment modes used. University leaders have devolved hiring decisions to lower level managers with little overarching vision or plan about future workforce composition. *As casual budgets get devolved further down the managerial chain, at the same time the university requires the schools and units to employ more casuals to teach and support growing numbers of staff. This sets the scene for underpayment of wages, often through either the misclassification of academic duties or unpaid work hours.*

This practice been coupled with a move towards labour specialisation, whereby specific staff perform teaching only in specific subjects, and other staff are engaged in particular research tasks. This has tended to involve the use of casual and fixed-term contracts to perform necessary ongoing work.

Overall, there is little public scrutiny, if any, of the hiring practices in public universities, and data on employment in universities is limited and difficult to interpret. For example, outside Victoria, no headcount of casuals is publicly available.

University managers claim that the costs of redundancies make continuing employment unattractive to them, because their spend on redundancies is too high, yet in normal times, the growth of the sector means that the need for genuine redundancies is limited. Rather, redundancies have been driven by a culture of constant restructuring, perhaps encouraged by the growth in the number of managerial positions in university administrations. Only a small proportion of the \$50-100m spent on redundancy payments each year by universities is related to *functions* becoming truly redundant.

### 6.1 Issues with the Regulation of insecure employment in the Higher Education Sector

#### Casual general staff

Casual general staff employment regulation is very similar to that found in the general workforce. Employees are entitled to paid for the hours of work actually performed, and under the Award (*Higher Education General Staff Award 2009*) they have a right to apply for conversion after a qualifying period of service. In the NTEU's experience with this group, nearly all employees who might qualify for conversion are too fearful to apply, as they would expect to be dismissed for doing so (often with good reason).

Casual general staff are employed under the same classification structure as those which apply to non-casual employees.

### Casual academic staff

Casual academic employees are paid according a unique system of regulation. For lectures and tutorials, the Award (*Higher Education Academic Staff Award 2020*) provides that employees are paid an “all-up rate” of (usually) 3 hours for the preparation and delivery of an hour of teaching, plus the associated marking and student consultation, irrespective of how long it takes for all that work to be performed.

Where the tutorial or lecture is a “repeat” of a lecture already given, the minimum payment is for two hours’ work.

The effective relative rate of pay for this work has fallen as a result of the enormous increase in the sizes of tutorials over recent decades. This has been offset in part by the Union negotiating in enterprise agreements that all marking is to be paid for separately from the class with which it is associated.

Marking and other work (such as re-writing a subject or course, research work) is not paid on an all-up rate but is required by the Award and Agreements to be paid on an hours-actually-worked basis (as for other casual employees). Despite this, there is considerable contention over management practices, where supervisors (or university computing systems) simply decree in advance how long marking or other work will take, and only pay for the time decreed. This leads to significant wage theft at some universities, as is reflected in the SOTUS which suggests that 72% of casuals who do marking report that they are not paid for the hours they do.

Again, casual employees are reluctant to press their rights to be paid for the work they perform, as they believe they will lose their work if they do.

Casual academics are not employed according to the incremental and promotion-based classification structure applicable to other academic employees, but are paid fixed rates close to the bottom of the classification structure, with higher rates for lecturing, holding a PhD, or being responsible for subject co-ordination, all near the bottom of the classification structure.

Casual academics generally receive no pay whatever for the time they are required to spend – rarely less than 100 hours per annum – to maintain the skills necessary for the performance of their work in a professional manner. This work – generally called scholarship – is part of the paid work of full-time staff but is expected to be performed by unpaid for casual staff. This institutionalised and still quite legal “work appropriation” (if not wage theft) is worth something well in excess of \$100m per annum.

There are currently no criterion-based limitations on the use of casual employment in Awards or Agreements, and very limited conversion rights – found only in some Agreements and not in the Award.

### Fixed term employment

In an ordinary day-to-day sense, the regulation of fixed term employment most closely resembles that of ordinary continuing employment, with leave, hours of work and like provisions being the same.

The main legal difference is that employment ceases by the effluxion of time or the occurrence of an event, and the employee – even one with 20 years’ service – will, under the Award, only very rarely have any redress against arbitrary or capricious non-renewal of employment.

NTEU did obtain the *Higher Education Contract of Employment Award 1998* following an extensive Full Bench arbitration by the Australian Industrial Relations Commission. This provided for severance payments for a limited number of fixed term staff whose contracts were not renewed, but more

importantly set criteria for the use of fixed term employment, which limited a little the circumstances under which such contracts could be used, to:

- Specific tasks or project of limited duration;
- Externally funded positions (not being from operating grants from government or student fees);
- Research-only functions;
- Students undertaking work linked to their studies;
- Professionals with recent professional practice;
- Pre-retirement contracts; and
- Apprentices and trainees.

Even these very employer-friendly criteria have been fiercely resisted by employers, both by widespread non-compliance, and by their seeking to water down the restrictions through bargaining, in order to make fixed term employment the default type of employment for new employees. Many fixed term employees are reluctant to enforce their rights, for fear that a pretext will be found to not renew their employment when their contract comes to an end.

## 7. The risks of insecure work exposed as exacerbated by the COVID-19 crisis

As noted, insecure employment was endemic in the higher education sector prior to the COVID-19 crisis and the Union believes that the impact of COVID-19 will almost certainly supercharge these levels.

Modelling by Universities Australia shows that by 2023, universities stand to lose A\$16 billion in income due to the loss of international students.<sup>14</sup> Previous modelling by the Mitchell Institute shows universities stand to lose up to A\$19 billion by 2023. These losses do not account for the 15 per cent reduction in funding per student place implemented by the Federal Government from the 2021 teaching year and beyond.

While universities have declined to divulge full job loss figures among insecurely employed staff, the NTEU has been able to discover that *at least* 6,561 casual and fixed term staff have ceased employment in Victoria alone from March 2020 to December 2020. Implying significant job losses across the country.

Universities were able to use their large insecurely employed workforces to cushion themselves from reduced international student income.

In March 2020, the NTEU conducted a targeted phone survey of casual members to determine the impact of COVID-19 on their employment. Of the members we spoke with, 41% stated they had lost work due to COVID-19 in semester one, primarily due to course cancellations or less contact hours with courses moved online. Of the casual members who did have work, 28% stated their pays had already been negatively affected by COVID-19. It was clear that casual and sessional staff were very much involved in the move of courses online, with 81% stating that their courses were now being delivered online, and almost 60% saying they were working remotely. In many of the comments we received, members told us they were working additional hours which they believed were unlikely to be paid, and very few expressed that they were being adequately supported by the university in this process.

The NTEUs 2020 State of the Uni Survey has further revealed that a majority of casual university staff remaining in employment in November have received reduced paid work hours.

*Number of casually employed individuals receiving greater or fewer work hours in 2020 (of those also employed in 2019)*

	Academic	Professional
More than in 2019	21%	16%
<i>Less than in 2019</i>	55%	52%
About the same	23%	32%

<sup>14</sup> Universities Australia Media Release *COVID 19 to cost universities \$16 billion by 2023* 03.06.20  
<https://www.universitiesaustralia.edu.au/media-item/covid-19-to-cost-universities-16-billion-by-2023/>

The NTEU anticipated early in the COVID-19 crisis that there would very likely be campus closures. While the sector quickly moved to online teaching and working from home where possible, this was not feasible for all staff. The Union sought to lobby universities to guarantee paid COVID-19 leave for all staff members, particularly for casual and sessional staff. This became particularly important when the Federal Government excluded public universities from access to Job keeper subsidies. The Union did leverage agreement from several universities to support all staff, including casual and sessional staff, but this was not across the board, with some institutions like the University of the Sunshine Coast making it clear to casual and sessional staff that if they were impacted by the COVID-19 they must stay home and would not be paid.

The exclusion of long-term casual and sessional staff, many of whom have been working for the institution for many years, from access to leave should they be impacted by COVID-19 highlights not only the inherent inequity of the two-tier employment system, but the exposure of broader society to unnecessary risk. Staff are far less likely to stay home or seek testing if there has been suspected exposure to COVID-19, if the choice is between that or paying their bills. Indeed, many may not be in a financial position to lose any income and will seek work regardless. The Victorian government recognised this risk during the State's lockdown and put in place a limited payment scheme to support workers unable to access pandemic leave payments. While this initiative was welcome it was focused on Victoria only, and saw the responsibility for support of those insecurely employed shift from the employer, who benefits from the work of these precariously employed workers, to the social welfare system. The NTEU contends that pandemic leave should be available to all workers.



## 8. The gig economy in higher education and wage theft

From the outside, it would seem unlikely that Uber drivers and other ‘gig economy’ workers have much in common with academia. However, when the gig economy business model is examined, the link between insecure employment in higher education – and in particular, casual and sessional academic work – is clear. The ‘gig’ business model is simple yet exploitative: companies like Uber extract the maximum labour while offering the minimum employment rights in return. This is something they manage via a legal sleight of hand which lets them classify their workers as ‘self-employed contractors’ rather than ‘direct employees’, and while for the most part, casual and sessional workers are employed directly by the university, the other characteristics of the gig economy, where work is often poorly paid and usually offers few career prospects, is certainly present. Indeed, like the ‘gig economy’ businesses, universities employ a ‘flexible’ work model of highly precarious employment that typically uses short-term contracts and with workers with fewer rights that they can dismiss with relative ease.

This is particularly the case with ‘teaching-only’ sessional appointments, which are usually ‘fractional’ and resourced minimally, either with a shared ‘hot desk’ area or relies on the employee to work from home. In addition, these staff have no entitlement to training, access to the University maternity/paternity scheme or other entitlements. The pay rates rely on piece rate formulas and classifications that don’t reflect the nature, level or actual hours of work required and sees casual and sessional staff often effectively giving away much of their labour for free. It is even worse however, with the for-profit private providers, where the NTEU is aware of instances of lecturers have effectively been paid less than the minimum wage for the hours that they work.

As such, like other gig businesses, higher education providers (both public universities and private, for profit providers) have been found to have engaged in widespread instances of unpaid work and wage theft. While in a recent inquiry into wage theft, universities and the Australian Higher Education Industrial Association (AHEIA), an employer group representing universities, claimed that wage theft is not a systemic issue in Australian universities. AHEIA also disputed the link between insecure employment and underpayment by universities, despite the NTEU currently investigating allegations of wage theft, or there being an audit underway of potential underpayments, at 16 universities.

The NTEU contends however, that not only does wage theft exist, but it is directly related to precarious employment. The Union’s experience is that the lack of agency, power inequities and fear of reprisal (including the loss of work) that are typical of casual employment are directly related to affected workers being reluctant to raise complaints over underpayment, or to ask for compensation for hours worked for free.

The NTEU’s submission on the ***Inquiry into unlawful underpayment of employees’ remuneration*** is attached (Attachment A), but to surmise, the NTEU has to date assisted affected higher education workers claiming back several million dollars in unpaid wages. Most of these have been employed as casual and sessional staff.

Furthermore, after the ABC aired the story of our allegations of sham contracting at JMC Academy and highlighted the serious impact this had on one employee (<https://www.abc.net.au/news/2020-10-16/university-wage-theft-case-hits-federal-court-union-claim/12771128>) the NTEU established a hotline and webpage for people working in the sector to report underpayments.

The Union received over 3000 calls and submissions within the first 7 days, covering universities in all states and territories. A considerable number of these were from individuals who wanted to know

whether we could pursue their claims anonymously, demonstrating the fear that prevents casual staff in this sector from pursuing wage justice.

Furthermore, in September 2020, the NTEU surveyed staff on the impact of COVID-19 in their workplace. Over 1200 academic casuals responded to the sector-wide survey and reported that while the average hours that they were paid for each week in first semester was 14 hours, the average number they actually worked was 24 hours, equivalent to underpayment of around 40%.

The Union's direct experience leaves us with no doubt that underpayment is widespread in the higher education sector and has been for some time. An under-funded system that is riding on the backs of the precariously employed, and which has incentives to cut costs at every turn, is ultimately to nobody's benefit. It also undermines the future of a quality higher education sector.

## 9. NTEU recommendations on addressing the proliferation of insecure employment

The NTEU's experience of insecure employment is that it is broadly exploited within our sector as a mechanism to drive down costs, with little recognition of the impact it has on both the individual workers and their colleagues, or on the quality of our universities. The unchecked proliferation of casual and sessional academic staff in particular has created a subset of university workers, who have a precarious existence and an uncertain future yet perform the bulk of university teaching.

### 9.1 Policy Approaches to Insecure Employment and Public Accountability Agreements (PAAs)

The NTEU believes that the impact of the COVID-19 crisis which has resulted in mass redundancies in the sector (already at around 17,000 job losses) together with the Government's policy changes that have forced universities into teaching more students for less, will incentivise universities to increase their levels of insecure employment even further.

Therefore the NTEU believes that there must be both regulatory and industrial reform to solve insecure employment in higher education.

All of the higher education sector receives Federal Government funding in some form. In the case of tertiary education NTEU, recommends the following actions to address the proliferation of insecure employment:

- 1. Clearly define casual employment**

There should be a definition of a casual employee, determined in the National Employment Standards or Award-by-award, as appropriate, which defines casual work, and limits its use to genuinely "casual" circumstances which cannot practically be offered on an ongoing basis. If there is a qualifying period, it should be no more than 6 months, upon which the employee ceases to be casual.

- 2. Adopt broad based fixed term employment conversion laws**

Fixed term employment is used on a systematic and ongoing basis. Broad national laws placing time limits on fixed term employment in the same role would significantly improve the lives of higher education workers.

- 3. Link University funding to continuing employment targets.**

Universities left to their own devices have rapidly adopted the gig economy model, especially in undergraduate teaching. This level of casualisation should be unacceptable in public institutions. University performance funding needs to be directly linked to targets for increased continuing employment. The NTEU recommends that all higher education providers who receive funding from the Federal Government (including FEE-HELP income) be required to demonstrate historical and ongoing compliance with core labour standards, including rates of pay, and to justify levels of insecure employment. This could be achieved using **Public Accountability Agreements** (see below).

**4. Mandate transparency in public reporting.**

Universities should be required to report accurate figures for insecure (contract and casual) employment, including by function and gender, such is currently collected for fixed term and ongoing staff, by headcount. The levels of labour hire and third party contract staff working within our universities should also be accounted for.

**5. Pursue further Industrial reforms**

Other areas of industrial reform that will benefit insecurely employed workers include the introduction of universal pandemic leave for all workers, and to address unfair provisions in existing unfair dismissal laws. Furthermore, unions should have restrictions on Right of Entry removed, be able to access wage records and related documents in the workplace, and right for trade unions to organise and advocate for workers protected under law.

### Public Accountability Agreements

The NTEU has proposed an alternative funding policy framework for higher education, outlined in our 2015 Federal Budget Submission [Towards a sustainable policy framework for Australian higher education](#).<sup>15</sup> In short, we have put forward a flexible but coordinated model for the allocation of public funding in universities, primarily through changes to the framework for Commonwealth Supported Places (CSPs). In the proposed framework, excessive red tape associated with the funding and regulation of universities would be reduced by replacing a number of existing planning and funding agreements with revised versions of the current University compacts.

Under the NTEU proposal, these compacts would be known as Public Accountability Agreements (PAAs) and be negotiated and administered by an independent agency or council with statutory planning and funding responsibilities. Within such a framework, universities would exercise control over how many students they enrol (and are thus funded for) while the Commonwealth would be assured that all students enrolling in a public university receive a high quality education and the opportunity to succeed.

Importantly, the PAAs would be a mechanism where the university would need to provide evidence to prove they have met a set of agreed of performance criteria (which could include public reporting of data) as well as demonstrate that they have the capacity to accommodate any proposed increase in enrolments in a sustainable way.

The criteria would be negotiated and may well differ between institutions based on their specific circumstances, goals and objectives. However, there would be common areas for all institutions, which may incorporate workforce planning. As an example, for a proposed increase in enrolments, an institution might include evidence that involves a number of factors including:

- physical resources to teach
- staff to student ratios,
- having enough appropriately qualified staff, and

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<sup>15</sup> In addition, the Union is also calling for an increase in the level of public funding to 1% of GDP over 4 years to bring Australia's investment in tertiary education in line with the OECD average.

- the proportion of teaching undertaken by casually employed academic staff.

Thus, the PAAs could be used as a mechanism to help achieve sector based goals and objectives that a universities or the government may determine as being critical, such as addressing important equity issues, especially amongst under represented student groups, or dealing with workforce issues, (noting that the increasing levels of casual employment is a recognised risk to quality under Higher Education Standards Framework (Threshold Standards) 2015, monitored by Tertiary Education Quality and Standards Agency (TEQSA)).

## 9.2 Other Industrial Reforms

The combination of weak adverse action protections and the removal of the threat of an inspection of time and wages records being undertaken by a union at any time means employers who steal wages have a level of comfort that they will not be detected. In addition, time and wages inspections by unions that are now limited to union members, and places the employee at risk of being victimised by their employers. These are the two most substantial impediments to the discovery and remedying of wage theft and other breaches of employment rights in our sector.

### Inadequate protection from adverse action

As noted, workers who are insecurely employed are often unwilling to lodge any type of complaint for fear of losing their employment or not being engaged for further work. The current situation whereby the employer can make an assertion as to the reason for the adverse action and the effective onus of proof is on the employee to prove what was in the mind of the decision maker, now means that the NTEU, in many circumstances, cannot in good conscience advise members in precarious employment to pursue underpayments, given the incapacity of the law to protect them from victimisation. This is compounded by the fact that most of these workers hold casual jobs across multiple employers, and, while it is arguable that the employer subject to a complaint of underpayment could be held to account for subsequently refusing to employ that person, word travels fast and other employers are not prevented from discriminating against those who have sought wage justice at another institution.

### Inadequate Right of Entry Laws

The current regime of right-of-entry laws prevents the NTEU from uncovering much of the unlawful behaviour involved in the sector.

The current laws might as well have been designed with the intention of ensuring that in most circumstances wage-theft cannot be uncovered by union investigation. Union access to wages records is vital to the discovery and remedying of wage theft. Unions have specialist knowledge of the industries within which their members work which is not available to government inspectors and bodies such as the Fair Work Ombudsman.

Understanding and enforcing the particularity of wage and remuneration structures in tertiary education requires a degree of specialist knowledge about what questions need to be asked. For example, in higher education, determining whether wage theft is occurring may require assessment of work against classification standards specific to the sector or determining whether an academic employee is required to exercise various levels of academic judgement.

The NTEU's view is that higher education employers should understand their industry sufficiently to be able to apply the enterprise agreements that they have negotiated. There cannot, however, be an expectation that an inspector for the Fair Work Ombudsman could do so. This problem underlines the critical importance of union officials having proper access to employee records as a matter of course. More than any other single measure, reforms to address the inadequate right of entry laws would address many of the problems in tertiary education.

Finally, as noted already, the COVID-19 crisis highlighted the vulnerability of insecurely employed workers, not only to the loss of hours or employment, but to also feel pressure to continue to work where it may not be safe to do so. On this basis alone, there is justification for the introduction of universal pandemic leave for all workers

Examples of previous or current legislative and award provisions that if inserted into the Fair Work Act would significantly reduce Wage Theft are provided in **Attachment A**.

## Attachment A

NTEU Submission to the Senate Economics References Committee on Unlawful underpayment of employees' remuneration.