
From: Tim Dymond
Sent: Tuesday, 3 August 2021 4:27 PM
To: Committee, Job Security (SEN); Owen Whittle;
Subject: RE: Select Committee on Job Security - Questions on notice - 26 July 2021
Attachments: What-do-the-data-on-casuals-really-mean-v5.pdf

In response to the questions taken on notice (Question 1), please find attached an article published in November last year by David Peetz, Professor of Employment Relations at Griffith University. It is entitled 'What do the data on casuals really mean?'

This article contains a great deal of analysis of unpublished ABS data, however I would draw the Committee's attention to these paragraphs on page 24:

The popular term 'permanent casual' — itself an oxymoron — is more accurately phrased as 'permanently insecure'. Employment in these situations is not 'casual' but it is casualised, in that the features of it are shaped to make it look like casual employment. The commonly cited statistic that around 25% of employees are casuals, based on the incidence of leave deprived employment, is indeed a depiction of the proportion of employees in this form of precarious work, but it is not remotely a depiction of the proportion of employees in genuinely flexible casual employment.

Overall, we can picture the group that is normally described as 'casual' as having one defining characteristic and two broad elements: they all are deprived of certain core worker entitlements; and for most (especially those on lower incomes), the work is insecure and they lack power. For a small sub-group of that, flexibility in working hours or tenure is a requirement the employer faces (and their power is lower still). But for the majority of leave-deprived workers (popularly described as 'casuals'), this need for flexibility is more a rationale than a genuine explanation for their status and lack of entitlements.

I hope this is a use for the work of the Committee.

Regards

Tim Dymond

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What do the data on casuals really mean?

David Peetz

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27 November 2020

The author wishes to thank the Australian Bureau of Statistics (in particular, Scott Marley, from the Labour Supply and Dynamics section of the Labour Surveys Branch) for assistance in providing the data and useful comments, and the Mining and Energy Division of the Construction, Forestry, Mining and Energy Union for financial support of the project.

EXECUTIVE SUMMARY

Most observers treat the ABS measure of ‘workers without leave entitlements’ as representing casual employees. Yet this term ‘casuals’ is not one widely used in other countries. Approximately one quarter of Australian employees do not have leave entitlements. This is a very high number by international standards. In the USA, for only 23% of workers in 2018, the employer did not pay vacation leave.

This paper addresses three related questions about the Australian labour market: (1) How can we approximate the number of genuinely flexible casual employees? (2) What are the characteristics of work where employees are, or are not, likely to be genuinely flexible casuals? and (3) How many employees are compensated for the disutility of casual employment?

The debate over casual employment has peaked because the 2018 *Skene* and 2020 *Rossato* full Federal Court of Australia decisions. They showed that while casual employees do not receive leave, it did not follow that all employees without leave were casuals. The critical factor in determining ‘casual’ status is whether there is a firm advance commitment to continuing and indefinite work according to an agreed pattern of work. Low-wage casuals received a wage ‘penalty’, given their skills, experience and the like, even though the casual loading should have had the opposite effect, that is it should have led to their receiving a wage ‘premium’.

This paper uses several alternative definitions for casuals, with three ‘broad’ definitions and two ‘narrow’ ones. For this paper, a ‘narrowly-defined casual’ is a worker who: has been with the employer for less than twelve months, and who do not expect to be with same employer in twelve months time (that is, engaged in short-term work); and did not have the same hours and pay from week to week (that is, engaged in intermittent or variable work), or is on standby; and did not have leave entitlements. We draw on unpublished data from multiple ABS surveys over several years, in particular the Working Time Arrangements surveys in 2006, 2009 and 2012, the 2007 Survey of Employment Arrangements and Superannuation, and at times the August Employee Earnings, Benefits and Trade Union Membership (EEBTUM) surveys in 2009, 2010, 2011, 2012 and 2013, as well as some more recent published data for specific issues.

Only 6 per cent of leave-deprived workers (1.4% of all employees) are ‘narrowly-defined casuals’. We do not know the number of workers who would be defined as ‘casuals’ as a result of the *Rossato* and *Skene* decisions of the Federal Court. It seems likely, however, that it if it were like the concept of ‘genuinely flexible’ casuals it would be closer to the number of ‘narrowly-defined casuals’ than to any of the ‘broadly-defined’ estimates of casuals that were made in this paper, which ranged from 4.7% to 11.7% of employees.

The majority of leave-deprived workers have been with their employer for over a year. The majority expect to be with the same employer a year into the future. Around half have stable hours from one week to the next and are not on standby. The features of leave-deprived employees do not, on the surface, appear to be the characteristics of flexible, casual employment. The common feature appears to be low power. Employers may have the ability

to deploy them in all sorts of flexible ways, but often do not need to utilise that flexibility. 'Casual' employment reduces employee power and reduces employee entitlements (often without any offsetting 'loading') under the guise of providing necessary flexibility.

This does not mean that the employment of leave-deprived employees is secure, or that the problem of precarity in employment is exaggerated by the common labelling of leave-deprived employees as 'casuals'. Most leave-deprived workers are in an employment relationship that can be terminated without notice at the end of a shift. The popular term 'permanent casual' is more accurately phrased as 'permanently insecure'. The high rate of 'casual' employment enables Australia to have an internationally low level of leave coverage.

What do the data on casuals really mean?

David Peetz

Australia is seen as having one of the highest rates of casual employment in the world. Yet the Australian Bureau of Statistics (ABS), responsible for official economic and labour market data, does not publish official statistics on casual employees. It is thus left to users to interpret the data, leading to some widespread misconceptions of what the data mean.

Most observers treat the ABS measure of 'workers without leave entitlements' as representing casual employees. This seems to make sense, because casuals receive a casual loading and do not have leave entitlements. The ABS no longer measures how many workers receive a casual loading, following a rationalisation of household collections that led to some data being collected biennially and some not at all. 'Workers without leave entitlements' is the measure typically accepted by users in the absence of anything more explicitly about casuals. Workers will self-identify as 'casuals' because the employer has defined them that way because they lack leave entitlements. Yet the ABS no longer uses the term 'casuals' as a descriptor for 'workers without leave entitlements'.

This term 'casuals' is not one widely used in other countries' official statistics. There are no data from the Organisation for Economic Cooperation and Development (OECD) on casuals. The closest concept in OECD data is that of 'temporary employment'. The concept of 'workers without leave entitlements' does not rely upon whether employees are 'temporary'. Workers who have a temporary contract may be more likely to lack leave entitlements, but this is not always the case. Some temporary workers have leave entitlements (for example, researchers on fixed-term contracts at universities have leave entitlements). And some workers without leave entitlements may have been with the employer for many years, even in the same job. There is nothing inherently temporary about their contract of employment, but there is insecurity of tenure.

Approximately one quarter of Australian employees do not have leave entitlements. This is a very high number by international standards. In most OECD countries, there is a legislated entitlement to annual ('recreation') leave and/or to sick leave, and typically it is only genuinely temporary workers in quite specific circumstances who do not have access to leave. Globally, most countries (130 out of 163) require that temporary workers generally have the same leave entitlements as permanent workers, including 88% of high-income countries (Kuddo 2018). Such a standard is so common that the OECD does not, as a matter of course, publish comparative data on the proportion of the workforce with leave. Rather, comparative data focus on the number of weeks in that leave entitlement.

Amongst OECD countries, the USA and Korea lack a legislated leave standard. Nonetheless, many employers provide some form of leave entitlement anyway. In the USA, for 23% of workers in 2018, the employer did not pay vacation leave (though where they paid leave, it was normally for fewer weeks than Australian employers) (Maye 2019).

The debate over casual employment has peaked because the 2018 *Skene* full bench decision of the Federal Court of Australia, confirmed in the 2020 *Rossato* full court decision, required

a labour hire firm to pay a long-term ‘casual’ annual leave (despite their seemingly receiving the leave loading) as a result of legislation introduced in 2009.¹ To employers this decision seemed absurd, as casuals had already received the ‘casual loading’, and so the decision meant that casuals were ‘double dipping’, being paid twice for the same thing. A common theme of these decisions, however, was that the determination of whether or not an employee was a casual did not rely on whether the employee was entitled to leave, or whether the casual leave loading was paid, or whether the parties described the employment as ‘casual’. The critical factor was whether there was a firm advance commitment to continuing and indefinite work according to an agreed pattern of work. Where the two decisions differed was in the extent to which this commitment was to be observed solely at the time the contract of employment is established, or whether it could be reassessed in light of the parties’ subsequent behaviour. (However, given the similarity in the circumstances of the central employees concerned in the two cases — both were employees of WorkPac Pty Ltd — this nuance did not alter the outcomes between the cases.) While casual employees do not receive leave, it did not follow that all employees without leave were casuals.

So, are the workers identified by the ABS concept of ‘workers without leave entitlements’ genuinely flexible casual employees? By this, we mean: do the people that many observers and participants think of as ‘casual’ really have no expectation of or commitment about continuing work, and do they show the other characteristics of genuine casual employment, such as variable pay and hours? This querying of the ‘genuine’ flexibility of casuals is not about challenging the widely observed precarity of this form of employment. Workers without leave entitlements can normally be easily dismissed. But holding a fear that they might be dismissed with minimal notice is not the same as expecting that their job will only last for the current shift, or a week or two, or involve different hours from one week to the next. In this sense, how many genuinely flexible casual employees are there in Australia? And, if the casual loading is meant to be compensation for the disutilities of being a casual employee, do all casual employees, however defined, receive such compensation? These issues are the focus of this paper, which addresses three related questions regarding the Australian labour market:

1. *How can we approximate the number of genuinely flexible casual employees?*
2. *What are the characteristics of work where employees are, or are not, likely to be genuinely flexible casual employees?*
3. *How many employees are compensated for the disutility of casual employment?*

We refer to ‘employees without leave entitlements’ by the shorthand term ‘leave-deprived employees’. Their opposite — employees with leave entitlements — we refer to as ‘leave-entitled employees’. The absence of an entitlement to leave is not actually what defines a casual employee anyway. It was only in 2010, with the passage of the Fair Work Act, that Australian employees received a general right to annual and sick leave. Prior to that, leave entitlements were only contained in awards, from which casual loadings also emerged. The Federal Court of Australia confirmed in 2011 that the term casual employee embraces ‘an employee who works only on demand by the employer’ and that ‘the essence of casualness

¹ WorkPac Pty Ltd v Skene [2018] FCAFC 131; WorkPac Pty Ltd v Rossato [2020] FCAFC 84.

is the absence of a firm advance commitment as to the duration of the employee's employment or the days (or hours) the employee will work'.² This was not new; it was also essentially the position in an earlier case.³ It is clear that many employees are not casual in the sense of lacking an advance commitment from the firm to the duration of employment (as specified by the Federal Court in 2011).

Many casual workers are amongst the lowest paid workers, and the casual loading does not actually guarantee them a higher hourly rate of pay. Hence a recent study in a leading international journal found that, in Australia, low-wage casuals received a wage 'penalty', given their skills, experience and the like, even though the casual loading should have had the opposite effect, that is it should have led to their receiving a wage 'premium' (Laß and Wooden 2019). This may reflect illegal underpayment by some employers who decline to pay the casual loading. Or they may be legally paid the loading but be placed on a lower base pay (perhaps no more than the award rate) by employers than they otherwise would be. The latter is consistent with, but not proven by, the fact that (amongst non-managerial adult employees) 38% of employer-described 'casuals' are paid only the award rate, while this is the case for just 12% of other employees (Australian Bureau of Statistics 6306.0).

If we aim to estimate the number of narrowly-defined casuals, it is first necessary to specify that definition. Casual employees are meant to demonstrate 'numerical flexibility' (Legge 1995), such that the employer can readily deploy them whenever, and at whatever times, suits the needs of the employer. That is, they can be hired and dismissed at short notice, and used for a few hours or many hours in any particular week. A casual's employment relationship with the employer only lasts for the duration of the shift. The Federal Court decisions mentioned above pointed to the absence of firm advance commitment to continuing and indefinite work. Information on this is not something that is, or can be, collected about individuals through ABS surveys, as it is something to be assessed in light of the circumstances of those individuals. Lacking specific ABS data on whether the employee works only on demand by the employer and has no commitment from the employer as to the duration or hours of work, we see the key quantifiable characteristics of genuinely flexible casual employment as being:

- work that is short-term;
- work that is intermittent or, at least, variable; and
- employment that lacks entitlement to annual or sick leave.

Because of the inability to precisely define 'genuinely flexible' casuals using ABS statistics, we refer to varying definitions of casuals that take account of the available ABS data, and that differ according to the strictness of the definitions. The strictest definition we use defines the 'most narrowly-defined casuals' as workers who:

- have been with the employer for less than twelve months, and who do not expect to be with same employer in twelve months time (that is, engaged in short-term work); and
- did not have the same hours and pay from week to week (that is, engaged in intermittent or variable work), or are on standby; and
- do not have leave entitlements; and

² Williams v. MacMahon Mining Services Pty Ltd [2010] FCA 1321

³ Hamzy v Tricon International Restaurants trading as KFC (2001) 115 FCR 78

- receive the casual loading.

A problem with this definition is that receipt of the casual loading is not a characteristic accepted by the courts as being a defining element of being a casual, and non-payment of the casual loading may reflect other factors such as underpayment or an actual wage well above the award minimum (discussed later). Accordingly, the definition we most commonly use excludes the last criterion. Thus a 'narrowly-defined casual' is a worker who:

- has been with the employer for less than twelve months, and who does not expect to be with same employer in twelve months time (that is, engaged in short-term work); and
- does not have the same hours and pay from week to week (that is, engaged in intermittent or variable work), or is on standby; and
- does not have leave entitlements.

So, central to the concept of a 'narrowly-defined casual' is that the employee's relationship with the employer is genuinely casual — the employee does not have a long-term relationship with the employer. The employee is not hired on a regular or predictable basis; instead, they are hired on demand by the employer. We do not make receipt of the casual loading a criterion for being defined as a casual, because this is a matter of employment pay policy, not the character of employment itself. A genuinely casual employee may miss out on the casual loading, either because the employer wants to pay below the award minimum and gets away with it, or pays so far above the award wage that it posits that payment of a separate casual loading is not necessary. The former is likely to be the reason amongst low-paid workers (something reinforced by the finding of the study by Laß and Wooden (2019) mentioned above), the latter amongst high-paid workers.

We also make use of two other, broader definitions that alternatively exclude part of the above criteria. Thus a 'broadly-defined casual (short term expected)' is someone who:

- did not expect to be with same employer in twelve months time; and
- did not have leave entitlements.

Likewise, a 'broadly-defined casual (short term experienced)' is someone who:

- had been with the employer for less than twelve months; and
- did not have leave entitlements.

Finally, a 'broadly-defined casual (variable work)' is someone who:

- did not have the same hours and pay from week to week (that is, engaged in intermittent or variable work), or is on standby; and
- did not have leave entitlements.

As is inherent in the nature of these definitions, a lot more people will be categorised as covered by the various 'broad' definitions than by the 'narrow' definitions. The definition that probably comes closest to the concept of 'genuinely flexible' casuals is that of 'narrowly-defined casuals', as it takes account of all three factors. However, the actual number who would meet the definition of casual implied through *Skene* or *Rossato* would probably be somewhere between it and one of the 'broadly-defined casual' definitions. That is because some workers whose working hours do not vary from week to week might still be classed as casuals.

Data and method

Most tables here make use of unpublished data provided on request by the ABS. Because the ABS no longer collects data on casual loadings, it is necessary to use older data from the ABS to generate the answers to the questions asked here. The most recent survey in which ABS asked thorough questions about casual loadings and the issues identified above was the November 2012 Working Time Arrangements (WTA) survey (Cat No 6342.0).

However, there are two issues with using these data. First, it is rather dated. Second, it is based on a survey (essentially a supplement to the monthly labour force survey) and so is subject to sampling error. This is particularly important when cell sizes are smaller, for which the relative sampling error of estimates can be large.

We deal with both these problems by utilising multiple surveys over several years. The data for most tables come from unpublished data supplied by the ABS from related surveys undertaken in November 2006 (the WTA survey), April to July 2007 (the Survey of Employment Arrangements and Superannuation), and November 2009 (the WTA survey), as well as November 2012. Seasonal patterns may influence differences between 2007 and other years, but not between the three WTA surveys. In a small number of instances, the data are restricted to collections in three of those years (2006, 2009 and 2012) or even two (2009 and 2012). There are, however, some tables for which data are also available from the August Employee Earnings, Benefits and Trade Union Membership (EEBTUM) survey in 2009, 2010, 2011, 2012 and 2013, and so we have accessed unpublished data from this source for those years as well.

This method deals with the second problem by effectively multiplying the sample size several times over (in the majority of instances, quadrupling it). Showing the separate responses for each survey, as well as the average responses from all the surveys, also enables us to see how stable the results are between surveys, which tells us how robust the findings are likely to be. This method also deals with the first problem, by enabling us to see whether any trend over time can be observed. If the results are stable over the period concerned (which lasted for seven years), then a similar level of stability could be expected in the period since then (also seven years) unless there is some theoretical reason to believe that an external shock has changed the relevant circumstances. As it is, the tables below will indicate that most of the results do appear to be stable over time, and move within a fairly narrow band, although note is made of those results where there might be some time trend evident.

A notable proportion of people, when asked whether they received the casual loading, replied that they did not know. This proportion averaged 15.2% of leave-deprived workers in the WTA/SEAS surveys and 18.6 per cent in the EBTU surveys. For some items, we divide responses to the question about receipt of the loading into the three categories used by the ABS — in effect ‘yes’, ‘no’ and ‘don’t know’. The proportion of leave-deprived employees who said they did receive casual loading varied within a 1.7 percentage points across the nine surveys concerned, whereas the range within which those who said they did not receive a loading varied was 7.5 percentage points, similar to the 7.6 percentage point

range for the 'don't know' response. It thus appeared that the variation in the proportion of 'don't knows' more closely matched the variation in the proportion of 'nos'. Indeed, the correlation between 'no' and 'don't know' across the nine surveys was very high at $r=-.97$, whereas the correlation between 'yes' and 'don't know' was non-significant ($r=.16$). This relationship between 'don't know' and 'no' suggests that the majority of people who said they did not know about the casual loading probably did not receive it. In the last part of the paper, then, we divide leave-deprived into two categories: those who reported receiving the loading ('yes'), and those who did not report receiving the loading ('no' and 'don't know'). We call these two groups 'compensated' and 'uncompensated'. (Hence, those 'narrowly-defined casuals' who do not receive the casual loading are referred to in some tables in this paper as 'uncompensated narrowly-defined casuals'.)

It also makes intuitive sense to infer a majority of those who did not know whether they received casual loading did not, in fact, receive casual loading. Most workers would be expected to check their pay slips at least once in a while, and a casual loading would be recorded on the pay slip. Workers who saw it on their pay slip would report it, when asked, to the ABS. Some of those who did not see it on their pay slip, and did not notice its absence, may tell the ABS that they did not know. It is a breach of industrial law not to provide a pay slip, and so an employer who does not provide pay slips would also have a fairly high probability of not abiding by other industrial requirements such as providing a casual loading. That said, not every 'don't know' will be a 'no': some respondents, who answer the labour force survey on behalf of another household member, simply will not know if that person receives a loading.

This method of assigning 'don't know' to 'no' is consistent with ABS practice in other series, for example trade union members (someone who says 'don't know' is considered a non-member) and indeed workers with leave entitlements (someone who says 'don't know' is considered a worker without that leave entitlement, accounting for about 3% of all employees or about 12% of leave-deprived employees). There is another problem that may lead to an overstatement of the number of leave-deprived workers. The ABS data is based on responses to the question 'Does [your/name's] employer provide [you/him/her] with paid sick leave?' and 'Does [your/name's] employer provide [you/him/her] with paid holiday leave?' (questions are asked about both the respondent and other household members). Some employees in permanent jobs have not accrued leave until they have been in the job for a certain period, and people in such situations might have answered 'no' to one or both of these questions, even though they would ultimately be entitled to it in their job. This would only affect people who had been in their job for a short period and is not likely to be large in total.

We also distinguish, later in the paper, between 'narrowly-defined casuals' (leave-deprived employees who meet the definition above, that is they have been with the employer for less than twelve months, do not expect to be with same employer in twelve months time, and have variable pay and hours), and 'unsubstantiated casuals' (leave-deprived employees who do not meet those criteria). To be classed as a narrowly-defined casual both hours and pay have to vary: variable pay but not hours could reflect the effect of bonuses, tips or payment-by-results for waged employees; while variable hours but not pay could reflect the

conditions of salaried employees working to achieve a specific output, regardless of hours worked.

In most tables, the first data columns contain the percentages relevant to the years shown (say, 2006, 2007, 2009 and 2012). The penultimate column shows the average percentage across those years. The data column on the furthest right contains the average number of employees represented by that percentage. The ratios implied in that column are usually very close to, but not identical to, the previous column, as one is calculated as the average of the numbers of employees and the other is the average of percentages, and the two will not exactly align unless the total number of employees is identical each year.

In some cases, we are able to update our estimates with published data from the ABS for 2016 or later. These estimates, specified in the text, are a little larger than those from the earlier data, because of growth in the labour force, even though the proportion of leave-deprived employees amongst all employees has been fairly stable over most of the past two decades. In some other cases, we project from the earlier data to 2016, applying the ratios calculated through the earlier data to the aggregate estimates of leave-deprived employees published by the ABS for later years.

Compensated and uncompensated leave-deprived workers

Tables 1 and 2 show responses by leave-deprived employees to the question on whether they receive a casual loading. Table 1 uses data from WTS and SEAS, while Table 2 uses data from EEBTUM. In both sources, slightly below half (just under 49%) of leave-deprived employees receive the loading. The result is very consistent: in none of the nine surveys does a majority of leave-deprived employees receive the loading. The proportion of leave-deprived employees who know they do not receive the loading is 33% in EEBTUM and 36% in WTS/SEAS, while those who did not know they received the loading is 15% in WTS/SEAS and 19% in EEBTUM. In both WTS/SEAS and EEBTUM, 51% of leave-deprived employees do not report receiving the loading.

Table 1: Compensation of leave-deprived workers, WTS and SEAS.

Whether received casual loading as part of pay in main job	2006	2007	2009	2012	all years average %	average no. of employees ('000)
Received casual loading	48.1%	47.8%	49.1%	49.0%	48.5%	958.9
Did not receive casual loading	38.7%	36.3%	35.9%	34.5%	36.3%	717.6
Did not know whether received casual loading	13.2%	15.9%	15.1%	16.6%	15.2%	301.5
Total	100.0%	100.0%	100.0%	100.0%	100.0%	1,978.0

Population: Leave-deprived employees

Source: Unpublished ABS data from WTS and SEAS.

Table 2: Compensation of leave-deprived workers, EEBTUM.

	2009	2010	2011	2012	2013	all years average %	average no. of employees (‘000)
Received casual loading	48.2%	48.9%	49.5%	49.1%	47.8%	48.7%	1,062.1
Did not receive casual loading	35.1%	34.0%	31.2%	32.0%	31.4%	32.7%	713.5
Did not know whether received casual loading	16.8%	17.2%	19.4%	18.9%	20.8%	18.6%	406.4
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	2,182.0

Population: Leave-deprived employees

Source: Unpublished ABS data from EEBTUM.

As explained in the preceding section, it is plausible that the majority of those who did not know whether they received casual loading did not, in fact, receive casual loading. Reasons for the lack of compensation may vary.

Broadly speaking, there are two reasons why a worker may not receive a casual loading. One reason is that the employee is simply paid an undifferentiated ‘all up’ rate that significantly exceeds their legal minimum rate of pay but does not specifically identify a casual loading. Whether this is an underpayment may depend on the circumstances of the case. The second reason is that some workers simply may be demonstrably underpaid. Non-compliance with industrial requirements is a significant problem. Another study (Peetz 2017) referred to the substantial numbers of establishments in retail and hospitality found to not be complying with awards in various audits during the 2010-2014 period. That study roughly estimated, for other purposes, that that around a sixth of workers in retail and a third of workers in retail and hospitality may have not received penalty rates to which they were entitled. These industries are amongst the worst for award breaches. So unlawful underpayments would likely account for a significant part of the above group not receiving casual loading, but probably not all of it.

Previous and expected duration with the employer

Part of the concept of a ‘genuinely flexible’ casual is that the employee does not have a long-term relationship with the employer — it is a casual relationship. By implication, an employee who has been with the employer for more than a year, or who expects in future to be with the employer for more than another year, would not be a genuinely flexible casual. In Tables 3 and 4, we look at for how long leave-deprived workers (the category of workers typically interpreted as being ‘casuals’) have actually been with the employer. It turns out that the majority of leave-deprived employees have been with the employer for more than a year. In Table 3, derived from WTS and SEAS, 57 per cent of leave-deprived employees had been with the employer for a year or more. The proportion did not show any upwards or downwards trend over the 2006-2012 period. Indeed, 41 per cent had been with the employer for two years or more — almost as many as the proportion whose job duration is less than a year. We do not have full job duration data for 2007, but the bottom part of the table has data for different job duration ranges beyond 2 years for the other

years and reveals that, in fact, an average of 17 per cent of leave-deprived employees (almost 300,000 workers) had been with their employer for five years or more, and 2 per cent (over 40,000 workers) had been with the employer for 20 years or more. Whatever term is used to describe those 340,000 employees' relationship with the employer, it could hardly be described as 'casual'.

Table 4 shows the data from the EEBTUM surveys, which used more restrictive ranges, but again it reveals a majority of leave-deprived employees had a completed job duration of a year or more. Indeed, 61% of leave-deprived employees in those surveys had been with the employer for a year or more.

Again, receipt of the loading did not make a great difference. On average, in the ETS and SEAS data, those without the loading were more likely than those with the loading to have shorter completed job duration, but this was not the case in two of the four years. An even smaller difference was apparent in the EEBTUM data, but it was also the opposite in two of the five years. There may have been a slight albeit uneven trend towards longer job duration for leave-deprived employees in the WTS and SEAS data, but this was not at all evident in the EEBTUM data, and so we conclude no overall trend over time.

A related and notable point from tables 3 and 4 is that many leave-deprived workers with duration with the employer of over a year did not receive the casual loading. In EEBTUM, for example, less than half of such workers said they received the loading.

The ABS published data on job duration of leave-deprived and leave-entitled employees from the 2016 Characteristics of Employment survey. In that, 41.4% of leave-deprived workers (1.02 million) had a job duration of less than 12 months, and 58.6% (1.44 million) had duration of a year or more. That is, the number of 'broadly-defined casuals (short-term experience)', at 1.02 million, was 41.4% of leave-deprived workers or 10.4% of all employees. From the earlier data (both WTS/SEAS and EEBTUM series), we can estimate that only 47% of 'broadly-defined casual (short-term experience)' employees received the casual loading.

Table 3: Job duration, leave-deprived employees, WTS and SEAS.

	2006	2007	2009	2012	all years average	average no. of employees (‘000)
Received casual loading						
Duration of current main job less than 1 year	43.3%	41.7%	39.4%	38.8%	40.8%	380.8
Duration of current main job 1 to less than 2 years	15.1%	17.3%	16.6%	16.5%	16.4%	152.2
Duration of current main job 2 years or more	41.6%	40.9%	43.9%	44.7%	42.8%	410.0
	100.0%	100.0%	100.0%	100.0%	100.0%	
Did not receive casual loading						
Duration of current main job less than 1 year	41.8%	45.4%	39.2%	43.0%	42.3%	289.7
Duration of current main job 1 to less than 2 years	16.2%	15.7%	16.4%	14.4%	15.7%	110.0
Duration of current main job 2 years or more	42.0%	38.9%	44.4%	42.7%	42.0%	301.8
	100.0%	100.0%	100.0%	100.0%	100.0%	
Did not know whether received casual loading						
Duration of current main job less than 1 year	54.5%	54.1%	47.1%	46.8%	50.6%	142.2
Duration of current main job 1 to less than 2 years	14.7%	17.4%	19.0%	15.6%	16.7%	48.0
Duration of current main job 2 years or more	30.8%	28.5%	33.9%	37.6%	32.7%	100.0
	100.0%	100.0%	100.0%	100.0%	100.0%	
All leave-deprived workers						
Duration of current main job less than 1 year	44.2%	45.0%	40.5%	41.5%	42.8%	812.7
Duration of current main job 1 to less than 2 years	15.5%	16.8%	16.9%	15.6%	16.2%	310.2
Duration of current main job 2 years or more	40.3%	38.2%	42.6%	42.8%	41.0%	811.9
- Duration of current main job 2 to less than 5 years	23.1%		25.6%	25.2%	24.6%	
- Duration of current main job 5 to less than 20 years	15.1%		14.9%	15.5%	15.2%	
- Duration of current main job 20 years or more	2.1%		2.1%	2.2%	2.1%	
	100.0%	100.0%	100.0%	100.0%	100.0%	

Population: Leave-deprived employees

Source: Unpublished ABS data from WTS and SEAS.

Table 4: Job duration, leave-deprived employees, EEBTUM.

	2009	2010	2011	2012	2013	all years average %	average no. of employees ('000)
Received casual loading							
Duration of current main job less than 1 year	38.9%	38.5%	39.8%	39.4%	38.2%	39.0%	397.0
Duration of current main job 1 year or more	61.1%	61.5%	60.2%	60.6%	61.8%	61.0%	623.2
Did not receive casual loading							
Duration of current main job less than 1 year	38.0%	39.0%	41.5%	39.6%	38.1%	39.2%	282.6
Duration of current main job 1 year or more	62.0%	61.0%	58.5%	60.4%	61.9%	60.8%	460.8
Did not know whether received casual loading							
Duration of current main job less than 1 year	44.8%	49.1%	48.8%	46.7%	44.9%	46.8%	159.0
Duration of current main job 1 year or more	55.2%	50.9%	51.2%	53.3%	55.1%	53.2%	196.0
Total							
Duration of current main job less than 1 year	39.6%	40.5%	42.1%	40.9%	39.6%	40.5%	838.7
Duration of current main job 1 year or more	60.4%	59.5%	57.9%	59.1%	60.4%	59.5%	1,280.0
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	

Population: Leave-deprived employees

Source: Unpublished ABS data from EEBTUM.

The data also demonstrated that most leave-deprived workers expected to still be with the same employer in 12 months time. This is shown in Tables 5 and 6. In both sources, over three quarters of leave-deprived employees expect this: in the WTS/SEAS data the estimate is 78% (Table 5), and in the EEBTUM data it is 80% (Table 6). There is no trend over time visible in either data source. Nor is there much difference between those who receive, and do not receive, the casual loading. If anything, those who receive the loading are slightly more likely to expect to be with the employer for a year or over, but the difference is very small and inconsistent.

ABS data from the 2016 Characteristics of Employment survey indicated that only 18.8% of leave-deprived workers (460,000) did not expect to be with the employer in a year, while 81.2% (2.00 million) expected to be there for over a year. That is, the number of 'broadly-defined casuals (short-term experienced)' is estimated at 460,000 in 2016, which was 18.8% of leave-deprived employees or 4.7% of all employees. The number of 'genuinely flexible' casuals would be less than this, as this number does not take account of data on the short actual duration of employment or variable hours or being on standby or other reasons for expecting short tenure (e.g. anticipating retirement or moving city). From the earlier data,

we can estimate that only around 46 to 48% of 'broadly-defined casuals (short-term experienced)' received the casual loading, which would likely be equivalent to 210-220,000 employees.

Table 5: Expected job tenure, leave-deprived employees, WTS and SEAS.

	2006	2007	2009	2012	all years average	average no. of employees ('000)
Received casual loading						
Expects to be working for employer/in business in 12 months time	78.5%	74.3%	79.5%	80.7%	78.3%	684.0
Does not expect to be working for employer/in business in 12 months time	21.5%	25.7%	20.5%	19.3%	21.7%	187.7
Total	100.0%	100.0%	100.0%	100.0%	100.0%	871.6
Did not receive casual loading						
Expects to be working for employer/in business in 12 months time	76.8%	73.9%	78.9%	80.7%	77.6%	537.5
Does not expect to be working for employer/in business in 12 months time	23.2%	26.1%	21.1%	19.3%	22.4%	162.4
Total	100.0%	100.0%	100.0%	100.0%	100.0%	699.9
Did not know whether received casual loading						
Expects to be working for employer/in business in 12 months time	74.8%	73.4%	79.7%	79.5%	76.8%	178.9
Does not expect to be working for employer/in business in 12 months time	25.2%	26.6%	20.3%	20.5%	23.2%	60.1
Total	100.0%	100.0%	100.0%	100.0%	100.0%	239.1
Total						
Expects to be working for employer/in business in 12 months time	77.3%	74.0%	79.3%	80.5%	77.8%	1,400.4
Does not expect to be working for employer/in business in 12 months time	22.7%	26.0%	20.7%	19.5%	22.2%	410.2
Total	100.0%	100.0%	100.0%	100.0%	100.0%	1,810.6

Population: Leave-deprived employees

Source: Unpublished ABS data from WTS and SEAS.

Table 6: Expected job tenure, leave-deprived employees, EEBTUM.

	2009	2010	2011	2012	2013	all years average	average no. of employees ('000)
Received casual loading							
Expects to be working for employer/in business in 12 months time	80.5%	79.4%	80.0%	81.4%	80.9%	80.4%	854.5
Does not expect to be working for employer/in business in 12 months time	19.5%	20.6%	20.0%	18.6%	19.1%	19.6%	207.6
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	1,062.1
Did not receive casual loading							
Expects to be working for employer/in business in 12 months time	80.4%	79.8%	79.5%	80.2%	80.9%	80.2%	572.0
Does not expect to be working for employer/in business in 12 months time	19.6%	20.2%	20.5%	19.8%	19.1%	19.8%	141.5
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	713.5
Did not know whether received casual loading							
Expects to be working for employer/in business in 12 months time	81.1%	77.5%	77.1%	82.8%	81.6%	80.0%	325.5
Does not expect to be working for employer/in business in 12 months time	18.9%	22.5%	22.9%	17.2%	18.4%	20.0%	81.0
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	406.4
Total leave-deprived employees							
Expects to be working for employer/in business in 12 months time	80.6%	79.2%	79.3%	81.3%	81.1%	80.3%	1,752.0
Does not expect to be working for employer/in business in 12 months time	19.4%	20.8%	20.7%	18.7%	18.9%	19.7%	430.0
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	2,182.0

Population: Leave-deprived employees

Source: Unpublished ABS data from EEBTUM.

Our particular interest is in people who both have only been in the job for 12 months and do not expect to be with the employer in 12 months time. Tables 3 to 6 only relate to one of those two criteria. There is, however, a non-random overlap between the two. Quarterly labour force data from August 2020 indicate that, of the 1.1 million employed persons (not just leave-deprived employees) who do not expect to be with current employer or business in 12 months, some 317,100 (29%) had only been with their current employer or business for fewer than 12 months. This represents 2.5% of all employees. Still, there can be many

reasons why people expect to not be in the same job, and only 59,500 said that this was because they were in a seasonal, temporary, fixed contract or casual job.

Variable hours and standby

The majority of leave-deprived employees did not have variable hours or pay and were not on call or standby (Table 7). On average, the WTS and SEAS data between 2006 and 2012 show that only 46.5% of leave-deprived workers had varying hours and pay, or were required to be on standby. There was a slight upward trend in this proportion — from 44.4% in 2006 to 48.7% in 2012, and although these estimates are subject to sampling error, it is plausible that if this trend continued than by 2020, leave-deprived workers would be fairly evenly split between those whose hours varied (or who were on standby) and those who were neither on variable hours not standby.

Table 7: Variable hours or leave-deprived status of leave-deprived employees.

	2006	2007	2009	2012	all years average	average no. of employees ('000)
Total						
Hours and pay varied weekly or was usually required to be on-call or standby	44.4%	45.6%	47.1%	48.7%	46.5%	919.7
Hours or pay did not vary weekly and was not required to be on-call or standby	55.6%	54.4%	52.9%	51.3%	53.5%	1,058.3
	100.0%	100.0%	100.0%	100.0%	100.0%	1,978.0

Population: Leave-deprived employees

Source: Unpublished ABS data from WTS and SEAS.

Uncompensated leave-deprived workers appeared less likely than their compensated counterparts to have variable hours or be on standby (Table 8). It is unknown whether this was because variable hours or use of standby was less common where workers were on 'all up' rates, or whether they were less common where they were being demonstrably underpaid.

Table 8: Variable hours or leave-deprived status of leave-deprived employees, by whether received casual loading.

	2006	2007	2009	2012	all years average	average no. of employees ('000)
Compensated						
Hours and pay varied weekly or was usually required to be on-call or standby	48.7%	49.7%	52.7%	52.5%	50.9%	488.8
Hours or pay did not vary weekly and was not required to be on-call or standby	51.3%	50.3%	47.3%	47.5%	49.1%	470.2
Total	100.0%	100.0%	100.0%	100.0%	100.0%	958.9
Uncompensated						
Hours and pay varied weekly or was usually required to be on-call or standby	40.8%	40.9%	41.9%	43.1%	41.7%	299.0
Hours or pay did not vary weekly and was not required to be on-call or standby	59.2%	59.1%	58.1%	56.9%	58.3%	418.6
Total	100.0%	100.0%	100.0%	100.0%	100.0%	717.6

Population: Leave-deprived employees

Source: Unpublished ABS data from WTS and SEAS.

The low incidence of variable hours or standby status is not surprising in the context of the hours worked by leave-deprived employees. In May 2020, one third (33.4%) of leave-deprived employees were employed full-time.

These two tables indicate that the number of 'broadly-defined (variable hours) casuals' is likely to be around only 47% of leave-deprived workers. The proportion of 'genuinely flexible' casuals would be less than this estimate, as it does not take account of data on the short actual or expected duration of employment. Projected to 2016, this would be equivalent to around 1.15 million employees, or about 11.7% of all employees.

Other flexibilities or controls

In the next sub-sections, we consider how other aspects of 'flexibility' or 'control' relate to leave-deprived employees. The supporting tables are contained in the Appendix. We start with choice of work days.

Choice of work days

The majority of leave-deprived workers did not have any say on days on which they worked (Appendix Table A1). This provides little evidence to support the idea that casualised employment promotes flexibility that benefits the employee. There was no clear pattern of

increase or decrease over time in this characteristic, with the averages over the four years similar to the proportions in the first year. This did not vary much by whether employees were compensated or not. In one year (2006) those who received the loading had a slightly lower incidence of having some say on their days worked, but in the other three years (and in the average) those who received the loading had a slightly higher capacity to choose their work days.

Guaranteed minimum hours

The majority of leave-deprived workers were not guaranteed minimum working hours (Appendix Table A2). Workers receiving the casual loading were slightly less likely to have a guarantee over their working hours. These data were only available for 2009 and 2012, but the estimates did not differ much between those two years.

We do not have data for that item for earlier years but the ABS could provide estimates for each year of what proportion of workers, whose hours varied weekly, also had guaranteed hours (found in Appendix Table A3). It shows that around seven tenths of workers with variable hours did not have any guarantee of minimum weekly hours. The proportion who had no such guarantee rose slightly over that period. There was no difference by receipt of the casual loading: among compensated workers who were leave-deprived, 28.9 per cent had a minimum hours guarantee and amongst such workers who were not compensated by the casual loading, 28.8 per cent had a minimum hours guarantee.

Amongst leave-deprived workers with variable hours (Appendix Table A3), an average of only 29 per cent had a guarantee of minimum hours. By contrast, among leave-entitled workers with variable hours, 88 per cent had a guarantee of minimum weekly hours.

Looked at another way, out of all leave-deprived workers, some 27 per cent had both variable hours and no guarantee of hours, but out of all leave-entitled workers, only 2 per cent had both variable hours and no guarantee of hours. That is, leave-deprived workers were more than 10 times as likely to have both variable hours and no guarantee of hours. But it was the latter, that not the former, that mostly drove this difference.

Leave-deprived workers were 1.8 times more likely than leave-entitled workers to have variable hours or be on standby, but leave-deprived workers with variable hours were 6.1 times more likely than leave-entitled workers with variable hours to have no guarantee of minimum hours. The difference in power (as indicated by the different access to minimum hours guarantees) between leave-entitled and leave-deprived workers was much stronger here than the difference in flexibility requirements (as indicated by the difference in variable hours).

Ability to choose holidays

A majority of leave-deprived workers could choose when to take their holidays. This was evident regardless of whether we took the data from WTS and SEAS (Appendix Table A4) or EEBTUM (Appendix Table A5). The ability to choose when to take holidays was only ten percentage points lower amongst leave-deprived employees than amongst leave-entitled

employees. Averaged across the series, this was a comparison between estimates of 66% and 76% for leave-deprived and leave-entitled employees respectively in WTS and SEAS, or between 65% and 75% in the EEBTUM series. There was no consistent pattern of change over time, and the differences between workers in receipt, and not in receipt, of the casual loading were minimal.

Narrowly-defined casuals and the four categories of leave-deprived employees

It is apparent from the above that many leave-deprived employees cannot be described as genuinely flexible casuals. A majority have been with the employer for a year or more. A majority expect to be with the same employer in a year's time. Half or more do not have variable working hours and are not required to be on standby. So it is desirable to get as close as we can to identifying who are the genuinely flexible casual employees. As previously explained, from these ABS data we see narrowly-defined casuals as employees who:

- have been with the employer for less than twelve months, and who do not expect to be with same employer in twelve months time (that is, engaged in short-term work); and
- did not have the same hours and pay from week to week (that is, engaged in intermittent or variable work), or is on standby; and
- do not have leave entitlements.

By these criteria, we divide leave-deprived employees into 'narrowly-defined casuals' and 'unsubstantiated casuals'. Previously, we also divided leave-deprived employees into those who did and did not receive the casual loading ('compensated' v 'uncompensated'). Putting these two criteria together enables us to create a four-way categorisation of leave-deprived employees:

- *compensated narrowly-defined casuals*, who meet the criteria for being a casual specified above (in terms of job duration, expected tenure, and variability of hours) and who are in receipt of the casual loading;
- *uncompensated narrowly-defined casuals*, who meet the criteria for being a narrowly-defined casual but do not receive the casual loading or do not know if they receive it (which, as was pointed out earlier, would mostly comprise people who do not receive the loading);
- *compensated unsubstantiated casuals*, leave-deprived employees who are not narrowly-defined casuals but who receive the casual loading; and
- *uncompensated unsubstantiated casuals*, leave-deprived employees who are not narrowly-defined casuals and who do not receive the casual loading.

Table 9 reveals how many leave-entitled employees appeared in each of these four categories, as well as in each of the dichotomous categories (narrowly-defined v unsubstantiated and compensated v uncompensated). The top half of the table expresses the numbers in each category as a proportion of the number of all employees, and the bottom half expresses it as a proportion of the number of leave-deprived employees. The proportions are calculated for each year and shown in the table, along with the averages of

those proportions. The average numbers of people in each of those categories are shown in the final column.

Table 9: Four-way categorisation of leave-deprived employees, WTS and SEAS.

	2006	2007	2009	2012	all years average %	average no. of employees ('000)
PROPORTION OF ALL EMPLOYEES						
narrowly-defined casuals	1.4%	1.7%	1.4%	1.2%	1.4%	119.9
unsubstantiated casuals	21.3%	23.7%	21.7%	20.7%	21.9%	1858.1
compensated casuals	11.0%	12.1%	11.3%	10.7%	11.3%	958.9
uncompensated casuals	11.8%	13.3%	11.8%	11.2%	12.0%	1019.1
'narrowly-defined compensated' casuals	0.6%	0.8%	0.7%	0.6%	0.7%	56.5
'uncompensated narrowly- defined' casuals,	0.8%	0.9%	0.7%	0.6%	0.8%	63.4
'compensated unsubstantiated' casuals	10.3%	11.4%	10.6%	10.2%	10.6%	902.4
'uncompensated unsubstantiated casuals',	11.0%	12.3%	11.1%	10.6%	11.3%	955.6
All leave-deprived employees	22.8%	25.4%	23.1%	22.9%	23.3%	1978.0
PROPORTION of LEAVE- DEPRIVED WORKERS						
narrowly-defined casuals	6.3%	6.7%	6.0%	5.3%	6.1%	119.9
unsubstantiated casuals	93.7%	93.3%	94.0%	94.7%	93.9%	1858.1
compensated leave- deprived workers	48.1%	47.8%	49.1%	49.0%	48.5%	958.9
uncompensated leave- deprived workers	51.9%	52.2%	50.9%	51.0%	51.5%	1019.1
'narrowly-defined compensated' casuals	2.8%	3.0%	3.1%	2.6%	2.9%	56.5
'uncompensated narrowly- defined' casuals,	3.5%	3.7%	2.9%	2.8%	3.2%	63.4
'compensated unsubstantiated' casuals	45.3%	44.8%	46.0%	46.4%	45.6%	902.4
'uncompensated unsubstantiated casuals',	48.4%	48.5%	48.0%	48.3%	48.3%	955.6

Population: All employees

Source: Unpublished ABS data from WTS and SEAS.

As can be seen, only approximately 1.4% of employees were narrowly-defined casuals. This represented just over 6% of leave-deprived employees, and equivalent to around 120,000 employees. There was no consistent trend over time for the proportion of narrowly-defined

casuals amongst all employees to change. This reflects the way that no time trend was evident in the proportion of leave-deprived employees who are narrowly-defined casuals, and no time trend was evident in the proportion of employees who were leave-deprived. Indeed, since then there has also been no consistent time trend in the share of employees who are leave-deprived — the share of leave-deprived employees in total employment grew substantially between the mid 1980s and the early 2000s, but has been quite stable since then (despite the continuing growth in part-time employment).

It is also apparent that less than half of narrowly-defined casuals are compensated, that is they receive the casual loading. Only a small portion of compensated leave-deprived workers are narrowly-defined casuals.

How did some of the other characteristics we considered relate to these categorisations? Uncompensated narrowly-defined casuals were less likely to have variable hours than compensated casuals. Table 10 shows that narrowly-defined casuals were one and a half times more likely than unsubstantiated casuals to be unable to choose their holidays. This reflects the fact that they were employed more at the whim of the employer (and again highlights the prevalence of low flexibility *for* the employee when there is genuinely flexible casual employment for the employer). The group that had the least flexibility in this regard was uncompensated narrowly-defined casuals, of whom 39% could not choose their holidays (compared to 23% amongst unsubstantiated, compensated casuals). The inability to choose holidays and non-receipt of loading may both be reflective of low power held by these employees.

Table 10: Proportion of workers who are unable to choose their holidays, by four-way categorisation of leave-deprived employees, WTS and SEAS.

	2006	2007	2009	2012	all years average %	average no. of employees ('000)
narrowly-defined casuals	40.1%	32.7%	36.5%	36.3%	36.4%	43.4
unsubstantiated casuals	25.7%	22.5%	24.0%	24.3%	24.1%	447.0
compensated leave-deprived workers	24.3%	22.5%	23.3%	24.3%	23.6%	226.3
uncompensated leave-deprived workers	28.7%	23.8%	26.1%	25.6%	26.0%	264.2
'narrowly-defined compensated' casuals	36.5%	31.6%	33.9%	32.1%	33.5%	18.9
'uncompensated narrowly-defined' casuals,	43.0%	33.5%	39.4%	40.3%	39.0%	24.5
'compensated unsubstantiated' casuals	23.6%	21.9%	22.6%	23.9%	23.0%	207.4
'uncompensated unsubstantiated casuals',	27.6%	23.0%	25.3%	24.7%	25.2%	239.6

Population: All employees

Source: Unpublished ABS data from WTS and SEAS.

Narrowly-defined casuals were also more likely than unsubstantiated casuals to be not guaranteed minimum hours, as shown in Table 11. There was approximately a 20 percentage point difference in the likelihood these two groups in the likelihood of having guaranteed minimum hours. This is again suggestive of lower power amongst narrowly-defined casuals. Similarly, amongst workers with variable hours, narrowly-defined casuals were much more likely to lack guaranteed minimum hours.

Table 11: Proportion of workers who were not guaranteed minimum hours, by four-way categorisation of leave-deprived employees, WTS and SEAS.

	2009	2012	all years average %	average no. of employees ('000)
narrowly-defined casuals	70.9%	77.3%	74.1%	55.6
unsubstantiated casuals	54.1%	56.6%	55.4%	695.5
compensated casuals	57.9%	58.4%	58.2%	379.5
uncompensated casuals	52.4%	57.1%	54.7%	371.6
'narrowly-defined compensated' casuals	71.3%	80.3%	75.8%	28.2
'uncompensated narrowly- defined' casuals,	70.6%	74.6%	72.6%	27.3
'compensated unsubstantiated' casuals	57.0%	57.2%	57.1%	351.3
'uncompensated unsubstantiated casuals',	51.3%	56.1%	53.7%	344.3

Population: All employees

Source: Unpublished ABS data from WTS and SEAS.

Conclusions

The majority of leave-deprived workers have been with their employer for over a year. The majority expect to be with the same employer a year into the future. Around half have stable hours from one week to the next and are not on standby. The features of leave-deprived employees do not, on the surface, appear to be the characteristics of flexible, casual employment.

These workers do have some other characteristics that are relevant. A majority have no guaranteed minimum hours. A majority cannot choose the days on which they work. Only around half of them knowingly receive the casual loading. And all of them, by definition, have no annual or sick leave. The common feature appears to be low power. Employers may have the ability to deploy them in all sorts of flexible ways, but often do not need to utilise that flexibility. The low use of these flexibilities is indicated by the seeming stability of employment for many leave-deprived workers, stability which by its nature suits the employer. The implicit threat of having their hours cut, or being dismissed, enhances the potential power of the employer to exercise discipline. So 'casual' employment reduces

employee power and reduces employee entitlements (often without any offsetting ‘loading’) under the guise of providing necessary flexibility.

The data suggest, then, that ‘casual’ employment is something of a chimera. For one thing, only about half of leave-deprived employees, the group popularly depicted as casuals, receive the casual loading. Some may be illegally underpaid by employers — something that evidence from audits and cases undertaken by the Fair Work Ombudsman suggests happens. Even amongst those who do receive the casual loading, the wage penalty for casuals, identified by Laß and Wooden (2019), suggests that some (perhaps many) casuals are paid less than they otherwise would be if they were not casuals. The casual loading becomes part of their weekly pay that they depend upon and their weekly pay is frequently no higher than the legal minimum. This is not just the case for ‘narrowly-defined casuals’, it is a problem for all leave-deprived employees.

In addition, many leave-deprived workers are not ‘genuinely flexible’ casuals, since they have been with the employer for a long period, or expect to be in, or have, regular, predictable work hours that do not suggest anything casual about the relationship with the employer. While casual employees do not receive leave, not all employees without leave are genuinely flexible casuals. At least half of leave-deprived employees have neither variable hours nor a requirement to be on standby. Most leave-deprived employees could choose when they took holidays, though this was 10 percentage points less than leave-entitled employees. It is true that the majority have no control over the days on which they work, but that does seem at odds with the idea that casual work provides flexibility for the employee to work when it suits them. A majority did not have guaranteed minimum hours, reflecting their low power, something associated with their precarity more than any variable hours.

Only 6 per cent of leave-deprived workers are ‘narrowly-defined casuals’ — that is, they have been with their employer for less than a year, expect to be with the employer for less than a year, and have variable hours or are on standby. That thousands of ‘casual’ employees can be with the employer for 5, 10 or 20 years indicates that this is not a casual employment relationship. Less than half of these workers report receiving the casual loading, enabling them to meet the criteria for the ‘most narrowly-defined casuals’ group. However, this would be too strict a definition, as many ‘genuinely flexible’ casuals miss out on the loading simply because of illegal underpayment of entitlements.

We do not know the number of workers who would be defined as ‘casuals’ as a result of the Rossato and Skene decisions of the Federal Court. It seems likely, however, that if it were like the concept of ‘genuinely flexible’ casuals it would be closer to the number of ‘narrowly-defined casuals’ identified in the previous paragraph (1.4% of all employees) than to any of the ‘broadly-defined’ estimates of casuals that were made in this paper, which ranged from 4.7% to 11.7% of employees.

This does not mean that the employment of leave-deprived employees is secure, or that the problem of precarity in employment is exaggerated by the common labelling of leave-deprived employees as ‘casuals’. Their precarity is real. Most leave-deprived workers are in an employment relationship that can be terminated without notice at the end of a shift. We

do not know how many leave-deprived workers are in this situation of permanent insecurity. Its size would be presumably be signified by adding all of those workers who receive the casual loading, plus some portion of those who do not receive the loading but are treated as 'casual' by the employer (even if their employment is long-term and their hours are stable). That is, it would be the clear majority of leave-deprived employees. The popular term 'permanent casual' — itself an oxymoron — is more accurately phrased as 'permanently insecure'. Employment in these situations is not 'casual' but it is casualised, in that the features of it are shaped to make it look like casual employment. The commonly cited statistic that around 25% of employees are casuals, based on the incidence of leave-deprived employment, is indeed a depiction of the proportion of employees in *this form of precarious work*, but it is not remotely a depiction of the proportion of employees in genuinely flexible casual employment.

Overall, we can picture the group that is normally described as 'casual' as having one defining characteristic and two broad elements: they all are deprived of certain core worker entitlements; and for most (especially those on lower incomes), the work is insecure and they lack power. For a small sub-group of that, flexibility in working hours or tenure is a requirement the employer faces (and their power is lower still). But for the majority of leave-deprived workers (popularly described as 'casuals'), this need for flexibility is more a rationale than a genuine explanation for their status and lack of entitlements.

Rather than seeing what is described in Australia as 'casual' employment as a source of flexibility for employer and employee, enabling short-term business needs to be met in the most efficient way, it may be more accurate to view it (for the majority of cases) as simply a means of depriving employees of their leave entitlements and promoting precarity and hence dependence on the employer's prerogative. The high rate of 'casual' employment enables Australia to have a level of leave coverage as low as that in the USA, a country with no legal obligations on employers to provide leave entitlements.

It is correct for the ABS to describe the employees that were the subject of this paper as 'workers without leave entitlements'. It is not correct to establish a regulatory framework that treats the withholding of leave entitlements for such people as the inevitable consequence of a 'casual' employment relationship.

APPENDIX

Data on Other flexibilities or controls

Table A1 Ability to choose working days for leave-deprived workers

	2006	2007	2009	2012	all years average	average no. of employees ('000)
All leave-deprived workers						
Had some say in days on which worked	44.6%	51.7%	41.2%	39.4%	44.2%	875.6
Did not have any say in days on which worked	55.4%	48.3%	58.8%	60.6%	55.8%	1100.1
Total	100.0%	100.0%	100.0%	100.0%	100.0%	1978.0
Received casual loading						
Had some say in days on which worked	45.0%	52.6%	43.1%	41.4%	45.5%	437.1
Did not have any say in days on which worked	55.0%	47.4%	56.9%	58.6%	54.5%	521.7
Total	100.0%	100.0%	100.0%	100.0%	100.0%	958.9
Did not receive casual loading						
Had some say in days on which worked	45.2%	48.7%	39.4%	38.1%	42.9%	308.0
Did not have any say in days on which worked	54.8%	51.3%	60.6%	61.9%	57.1%	408.5
Total	100.0%	100.0%	100.0%	100.0%	100.0%	717.6

Population: Leave-deprived employees

Source: Unpublished ABS data from WTS and SEAS.

Table A2: Whether leave-deprived workers had guaranteed minimum hours

	2009	2012	all years average	average no. of employees ('000)
Total				
Guaranteed minimum hours	44.9%	42.3%	43.6%	870.2
Was not guaranteed minimum hours	55.1%	57.7%	56.4%	1,126.6
Total	100.0%	100.0%	100.0%	
Received casual loading				
Guaranteed minimum hours	42.1%	41.6%	41.8%	409.5
Was not guaranteed minimum hours	57.9%	58.4%	58.2%	569.3
Total	100.0%	100.0%	100.0%	
Did not receive casual loading				
Guaranteed minimum hours	46.6%	44.8%	45.7%	321.2
Was not guaranteed minimum hours	53.4%	55.2%	54.3%	381.1
Total	100.0%	100.0%	100.0%	

Population: Leave-deprived employees

Source: Unpublished ABS data from WTS.

Table A3: Whether leave-deprived workers with variable hours had guaranteed minimum hours

	2006	2007	2009	2012	all years average	average no. of employees ('000)
Guaranteed minimum hours and hours varied weekly	31.4%	30.7%	27.6%	25.4%	28.8%	217.7
Was not guaranteed minimum hours and hours varied weekly	68.6%	69.3%	72.4%	74.6%	71.2%	543.0
Total	100.0%	100.0%	100.0%	100.0%	100.0%	760.7

Population: Leave-deprived employees with hours varying weekly

Source: Unpublished ABS data from WTS and SEAS.

Table A4: Ability to choose holidays, WTS and SEAS.

	2006	2007	2009	2012	all years average %	average no. of employees ('000)
Received casual loading						
Could choose when holidays were taken	66.2%	67.7%	66.6%	66.6%	66.8%	640.5
Could sometimes choose when holidays were taken	9.5%	9.8%	10.1%	9.1%	9.6%	92.2
Could not choose when holidays were taken	24.3%	22.5%	23.3%	24.3%	23.6%	226.3
Total	100.0%	100.0%	100.0%	100.0%	100.0%	
Did not receive casual loading						
Could choose when holidays were taken	64.1%	67.6%	66.1%	64.7%	65.6%	471.3
Could sometimes choose when holidays were taken	7.9%	8.2%	7.6%	9.8%	8.4%	60.1
Could not choose when holidays were taken	28.0%	24.2%	26.3%	25.5%	26.0%	186.2
Total	100.0%	100.0%	100.0%	100.0%	100.0%	
Did not know whether received casual loading						
Could choose when holidays were taken	56.1%	67.5%	63.4%	62.0%	62.2%	189.0
Could sometimes choose when holidays were taken	13.5%	9.7%	11.0%	12.2%	11.6%	34.5
Could not choose when holidays were taken	30.5%	22.8%	25.6%	25.8%	26.2%	77.9
Total	100.0%	100.0%	100.0%	100.0%	100.0%	
Total						
Could choose when holidays were taken	64.0%	67.6%	65.9%	65.2%	65.7%	1,300.8
Could sometimes choose when holidays were taken	9.4%	9.2%	9.3%	9.9%	9.4%	186.8
Could not choose when holidays were taken	26.6%	23.2%	24.7%	24.9%	24.9%	490.4
Total	100.0%	100.0%	100.0%	100.0%	100.0%	

Population: Leave-deprived employees

Source: Unpublished ABS data from WTS and SEAS.

Table A5: Ability to choose holidays, EEBTUM.

	2009	2010	2011	2012	2013	all years average %	average no. of employees ('000)
Received casual loading							
Could choose when holidays were taken	63.9%	67.1%	66.1%	66.6%	64.7%	65.7%	697.9
Could sometimes choose when holidays were taken	9.4%	11.0%	10.7%	8.9%	12.1%	10.4%	110.6
Could not choose when holidays were taken	26.7%	21.9%	23.2%	24.5%	23.2%	23.9%	253.6
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	
Did not receive casual loading							
Could choose when holidays were taken	60.5%	62.6%	64.4%	66.6%	65.5%	63.9%	455.7
Could sometimes choose when holidays were taken	9.5%	11.3%	10.9%	10.5%	12.8%	11.0%	78.4
Could not choose when holidays were taken	30.0%	26.1%	24.7%	22.9%	21.6%	25.1%	179.3
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	
Did not know whether received casual loading							
Could choose when holidays were taken	61.8%	64.2%	63.2%	67.0%	59.6%	63.2%	256.4
Could sometimes choose when holidays were taken	11.9%	12.9%	11.2%	11.9%	18.1%	13.2%	54.4
Could not choose when holidays were taken	25.7%	22.5%	25.4%	20.8%	21.8%	23.2%	94.1
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	
All leave-deprived workers							
Could choose when holidays were taken	62.3%	65.1%	65.0%	66.7%	63.9%	64.6%	1,410.1
Could sometimes choose when holidays were taken	9.9%	11.4%	10.8%	10.0%	13.6%	11.1%	243.4
Could not choose when holidays were taken	27.7%	23.4%	24.1%	23.3%	22.4%	24.2%	527.0
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	

Population: Leave-deprived employees

Source: Unpublished ABS data from EEBTUM.

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