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Women and Casual Employment: What Price Regulatory Support?

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Labour Market Alternatives

Women and casual employment: What price regulatory support?

The phenomenon of high rates of growth in casual employment in Australia is one of the most contested features of the labour market. The debate however turns not on the degree of casualisation in the Australian labour market – there is relative agreement on the descriptive features of casual job growth. The debate turns instead on the causes of casualisation, and perhaps even more on the desirability of this form of employment. Is the growth in casual work the outcome of workers and employers rationally calculating that their interests are best served by this form of employment? Or more acutely is casualisation the product of changes in the distribution of power in the labour market and a shift in the economic and political landscape that has particular consequences for women in paid employment?

This paper reports on a project conducted for the Evatt Foundation (Smith and Ewer, 1999) designed to assess why casual employment is such an entrenched feature of the Australian labour market and why women feature so prominently among the ranks of the casually employed. The findings of the project highlight not only the persistent and diverse nature of casual employment but also the restricted nature of the bargaining position open to women so employed.

Project Methodology

The project included a number of components.

- An overview of the available empirical material relevant to casual employment. Our intention was to examine the extent and pattern of casual employment in addition to assessing the available data on career experience, unemployment multiple job-holding, access to training and union membership.
- An assessment of casual employment provisions in both state and federal awards including the reasoning of industrial tribunals in setting the level of casual employment loadings and the access of casual employees to award entitlements. The scope of these provisions would provide one measure of attention to casual employment evident in the industrial system. The project also examined the efficacy of the loading in ten state and federal awards applicable in New South Wales.
- An assessment of casual employment in three sectors, retail, nursing and community services. In these sectors interviews were conducted with the industrial parties¹ in addition to interviews and focus groups with women working casually in these particular sectors. To that

end, the project was designed to make a modest contribution to filling an acknowledged gap in the research into casual employment. Research into the preferences of casual workers regarding their employment is under-developed². The consequence of this under-development is that there has been a tendency to read notions of 'acceptance' and 'choice' into official data, without supporting qualitative data.

Descriptive features of casual employment

The analysis of the available empirical data on casual employment highlights its pronounced nature. In August 1998 casual employment comprised 26.9 per cent of all employment - in 1984 the commensurate figure was 15.8 per cent (ABS, Cat. no. 6310.0). While casualisation is growing for both men and women, and most recently at a faster growth rate for men, the detailed pattern of casual employment indicates a gendered phenomenon. Thus, it is women who are disproportionately represented in casual employment, particularly part-time casual employment.

Close to one in three (32 per cent) of employed women and more than one in four (22.5 per cent) employed men are employed on a casual basis (ABS, Cat. no. 6310.0, August 1998). Seventy per cent of all casuals were employed on a part-time basis with men comprising 71.5 per cent of all full-time casuals while women comprised 66.7 per cent of all part-time casuals. Eighty four per cent of women and 52 per cent of men employed casually were engaged on a part-time basis (ABS, Cat. no. 6310.0, August 1997, unpublished data).

Casual employment is mostly commonly found in small businesses and a subset of industries and occupations. Casual employees, most particularly women, are more likely to be employed in the private sector in small non-unionised workplaces. Almost 40 per cent of casual employees worked in workplaces with less than 10 employees, compared to 24 per cent of all employees) (ABS, Cat. no. 6310.0, August 1997, unpublished data). Only 11.6 per cent of casual employees are unionised (ABS, Cat. No. 6310.0, August 1998).

There is a distinct prospect of employees being engaged casually if they are employed in the accommodation, cafes and restaurants (casual density 58.1 per cent), agriculture, forestry and fishing (55.9 per cent) and retail trade (46.1 per cent) sectors. Yet there are differences in the type of casual employment evident in these sectors. Thus in an industry such as agriculture, forestry and fishing the proportion of male full-time casual employment relative to female casual employment is high. In contrast industries such as retail trade and accommodation, cafes and

¹ With the exception of nursing where the relevant employer organisation declined to be interviewed.

² AWIRS95 does investigate preference issues but excludes from its analysis workplaces with less than 20 employees, an important demographic in the investigation of casual employment.

restaurants are characterised by part-time casual employment, predominantly for women but also for men.

Similar clustering characterises the occupational profile of casual employment. Workers engaged casually are most likely to be employed either in low paid clerical, sales and personal services related employment (41 per cent of all casuals) or in labouring and related work (17.6 per cent of all casuals) (ABS, Cat. No. 6310.0, August 1998).

The precariousness of casual employment is confirmed not only by the absence of secure job tenure, but also through the strong nexus between casual employment and unemployment. The length of time between periods of casual employment for casual employees who were not multiple job holders at the time of their last casual employment was 20 weeks³. For persons employed exclusively on a permanent basis the episodal average was half that for casual workers at 10 weeks (ABS, Cat. no. 6256.0, unpublished data). This disamenity is in addition to those usually associated with casual employment - fewer award entitlements, lower (despite the casual loading) and more volatile earnings, poor access to training and an increasing reliance on multiple job holding.

Women employed on a casual basis are far more likely than their permanent counterparts to be multiple job holders (9 per cent as opposed to 5 per cent). This finding is however also influenced by the overwhelmingly part-time nature of women's casual employment (ABS, *Multiple Jobholding*, Cat. no. 6216.0, unpublished data).

This statistical overview is not without its own complexity. The ABS in a more recent series adopts a new practice for the definition of casual employment and 'employees' and seeks to address the employment status of the owner manager. The resultant profile, which has been relied by the federal government (Reith, 1999a; Reith, 1999b), adds another layer to the research debate as it suggests a lower level of casual employment than that evident in other quantitative data. This new series however attributes casual status only to those who self identify as casuals and leaves to one side a somewhat interesting category of 'other employed persons' (ABS, Cat. no. 6359.0). This is perhaps a problematic analytical tool given the nebulous administrative arrangements that characterise the employment arrangements for casual workers (Romeyn, 1992).

Debates as to the determinants of casual employment

The research community tackles the topic of casual employment, often using the same data, but in very different ways. For neo-classical scholars, casual employment is the outcome of myriad choices within the labour market, made by employers calculating the relative cost and productivity between casual and permanent workers. Other researchers emphasise, not the intersection of supply and demand, but the institutional regimes that encourage the growth of casual jobs as an alternative to permanent jobs. Feminists take this institutional analysis further, to argue that the prominence of women among the ranks of low-paid and insecure casual workers is the result of a labour market that operates in a specifically gendered way.

The theoretical school with the greatest influence on labour market policy is undoubtedly neo-classical economics, and its labour market companion, human capital theory. Neo-classicism assumes that the size of the casual labour force reflects employer choices concerning the relative cost and productivity of casual and permanent labour employment (Dawkins and Norris, 1990; Wooden and Hawke, 1998). The growth in casual jobs therefore simply reflects the cost-effectiveness of this type of employment, relative to permanent jobs. In this model, demand for labour is inversely related to its cost - if casual and permanent workers are perfect substitutes for each other, the cost of each type of labour will determine an employer's preferences.

Human capital theory however, highlights the productivity differences between workers according to their work experience and qualifications. This means that as a general proposition, casual and permanent workers are unlikely to be perfect substitutes for each other, since permanent employers are more likely to have greater experience and training. This proposition is confirmed by labour market practice; casual workers have the poorest access to training opportunities (ABS, Cat. no 6278.0). The 'human capital' differences between casual and permanent workers mean that employers must calculate the relative cost between the two, but also their productivity, a calculation which will differ according to the particular characteristics of the industry in which they operate.

The principal weakness in the neo-classical account of casual work is that its emphasis on the rational calculation of means and ends in the marketplace tends to obscure the power differences between employers and casual workers, particularly in an era of persistent high unemployment. In neglecting power in the labour market, neo-classicists marginalise or even ignore gender as an explanatory variable. Thus, Wooden and Hawke (1998:100-101) conclude that the 'incidence of casual employment across workplaces and workers lies not so much in differences between

³The SEUP study cites this data as the episodal average. An episode is defined as a period of time during which a particular activity is undertaken (such as working, looking for work or absence from the labour

individuals, but in differences between workplaces, firms and industries'. For neo-classicists, the key determinants of casual work are therefore industry or workplace characteristics, including the pattern of demand and production, skill requirements, union presence and sector of employment.

Since these industry and workplace characteristics are the key determinants of casual employment, gender figures only as a supplementary issue, and then only through a concept of 'choice'. The age and sex of the individual are the principal anomalies in the demand-side analysis; both can be explained through the individual's preferences. Thus, the large numbers of young people in casual jobs is explained in terms of students balancing study and work, and the predominance of women in casual work in terms of their efforts to balance work and family responsibilities.

Explanations of casualisation based on choice need to be tested on several grounds. First, the use of 'choice' as an explanation for the labour market position of women (and indeed men), sits at odds with the available and limited data on preference. Where preference data does exist, it is predominantly limited to the preference for longer hours of work, rather than issues of tenure. Some measure is therefore provided by ABS data on the preference of part-time workers for a change in the hours (quantum) of work. This data shows a significant proportion of part-time workers (25.9 per cent⁴), although not the majority of part-time workers, would prefer longer hours of work than their current job offers (ABS, Cat. no. 6203.0). More recent data from ABS, albeit with a different conceptual framework, disaggregates tenure and hours and indicates that 45 per cent of part-time casual workers would prefer longer hours of work⁵.

Second, the labour market categories used by Wooden and Hawke (1998) obscure a range of power relations based on sex, that put a different perspective on women's casual employment. For example, the finding that 'high skill' jobs are less likely to be casual than 'low skill' jobs attaches an 'objective' reality to the institutionalised sexism of Australian skill formation. A large body of research has established how the interaction of Australian vocational training and industrial relations has operated to define women's work as 'unskilled', simply because it is work traditionally performed by women (see Game & Pringle 1983, O'Donnell and Hall 1988, Pocock 1988, Burton 1991). To say that 'unskilled' jobs are more likely to be casual than 'high skill' jobs therefore only attaches an apparently 'objective' explanation for entrenched sexism in the labour market.

market). An episode can occur within a reference period or can span more than a reference period.

⁴For men 36 per cent, for women 22.4 per cent (ABS, Cat. no. 6203.0).

⁵ We note again that AWIRS95 included an investigation of preference but excludes workplaces with less than 20 employees.

If the social construction of skill operates to devalue the paid work traditionally undertaken by women, the neo-classical reliance on 'human capital' to explain differences in an individual's productivity, and by implication their employment status, comes into question. As previously noted, neo-classical theory holds that employers determine the balance between permanent and casual workers through a calculation of their relative productivity and cost. In the abstract, this relative productivity should be determined by the 'investment' each individual has made in their education and training, and their work experience. However, the vast majority of studies that investigate the 'returns' on human capital find that women receive lower rates of return on their training and work experience than do men (Gregory & Ho 1985, Chapman & Mulvey 1986, Gregory, Daly & Ho 1986, Langford 1995, Preston 1997, Wooden, 1998b, Pocock, 1999).

In neo-classical terms, if women receive lower wage rates than their human capital endowments might entitle them to, it suggests that employers are miscalculating their relative productivity, an hypothesis that brings into question the 'rational' explanations put forward for women's prominence in the ranks of the casual workforce. What then of alternative explanations?

The challenge to neo-classicism can be found on two (related) fronts: the institutional critique developed particularly by Iain Campbell and John Burgess and the work of feminist scholars including Anne Junor and Belinda Probert.

These perspectives note a number of methodological and conceptual flaws in the neo-classical account of market choice. Such models do not distinguish preferences for casual as opposed to part-time employment, nor appropriately distinguish the working time interests of casual employees from a wider labour market interest in a reduction in working hours (Wolcott & Glezer, 1995; Probert and McDonald, 1996). Further they fail to adequately recognise that the most pressing choice for many casual employees is not one between permanent and casual work, but between casual work and unemployment (ACIRRT, 1999). Additionally the preference for part-time employment by some workers cannot be used to explain the growth of casual employment, and contributes little to explaining why two thirds of part-time employment is casual in nature (Campbell, 1996a).

Institutional analysts argue that the distinctiveness of the Australian experience relative to its international counterparts is attributable to the particular shape of labour market regulation in this country, a regulatory regime which has found expression for most of the past century in our system of arbitration and conciliation. From this perspective casual employment is viewed as unprotected employment that has 'survived and indeed flourished within gaps in the award system' (Campbell 1996a:79) – a state of affairs that reflects the social and cultural assumptions

about full-time, permanent work enshrined in the arbitration and conciliation system. As Campbell (1996a:49) notes, regulatory protection of work in Australia is written around full-time employees; the regulation of casual work in awards therefore is defined only by the exemptions from the standard benefits of full-time, permanent employment.

The exploration of these systemic deficiencies provides a bridge to feminist accounts of Australian labour market practice which note that the privileges that attach to full-time, permanent work in the Australian industrial relations system are gendered, to that extent that arbitration and conciliation were designed to underpin the male 'breadwinner' as a social and cultural norm (Mumford, 1989 and O'Donnell and Hall, 1988). From this perspective, the 'gap' in award regulation of casual work is not an oversight, but an intended result of an industrial relations system designed to privilege male workers. And it is the intended result not just of industrial relations tribunals, but of trade unions as well, that have historically operated to defend the full-time breadwinner, often a 'tradesman', against the threat of cheap, female labour, often casually employed.

These feminist critiques also challenge one of the principal theoretical accounts for the behaviour of enterprises with respect to casual employment. This orthodox account posts that the 'flexible' firm retains a 'core' group of workers, and draws on a 'periphery' of casual workers as required (Burgess, 1995a). This 'core/periphery' model is a widely held view of how firms adjust to the market uncertainties of globalisation (for a sociological application of this model, see Harvey 1989). However, more recent feminist research (Junor 1998b, Probert, 1995) points to the use of casual work, not as peripheral element of organisational strategy, but as a central component of how firms organise their workforce. Thus, far from the connotation of casual work as temporary, feminists are now challenging the 'core/periphery' model because so many casual jobs are effectively 'permanent' and on-going.

Project Findings

The evidence from this project undertaken for the Evatt Foundation suggests that the higher rates of casual employment in workplaces in the private sector and/or with the lower rates of unionisation reflect the greater ease with which the existing regulatory framework is breached, rather than a rational consideration of the costs and productivity of labour. On the evidence available to this project, employer decisions to engage labour on a casual basis rest partly on a miscalculation of the costs of casual employment, an inappropriate assessment of their employment needs and the (incorrect) assumption that all casual employees could be terminated with greater ease.

Casual employment as it is experienced by the workers in this study contradicts the common law understanding of casual employment – that is, employment that is short term, irregular and uncertain, involving separate contracts of employment for each engagement (Brooks, 1985). A pattern of short and separate employment engagements is clearly the experience for a *proportion* of casual employees. In this form of employment casual labour is often employed in response to situations such as short term fluctuations in demand, seasonal products, emergency work requirements due to staff absences or unexpected periods of sick or family leave.

However, it is also clear that a number of casual employees have long and sustained periods of on-going casual employment which defy the conventional understanding of this job type (see Table 1). Among part-time casual employees 61.4 per cent of women and 46.9 per cent of men have been with their current employer for more than 12 months. These long periods of casual engagement are even more prevalent among full-time casual employees where 58 per cent of men and 64 per cent of men are so employed (ABS, Cat. no. 6310.0). The large number of casual employees engaged in long-term casual employment has been held by some policy makers to be indicative a greater depth and quality to casual employment (Reith, 2000a; Reith, 2000b). The startling assumption in this analysis is to conflate duration of employment with employment security, a linkage that conveniently ignores the one hours notice provisions that attach to casual employment.

What then of the claim that the level of casual employment is a reflection of personal preference. As already noted this proposition is difficult to test because the official data on job preferences does not test preference on job tenure. For a small number of women the ad hoc, almost ephemeral, nature of their experience of casual employment entirely suited their lifestyle choices. However, for a larger number of the women interviewed, their employment satisfaction was partly underpinned by the regularity of their employment and the consistency of the work they received, employment features that are at odds with common law notions of casual employment. This was illustrated by these women working the same hours and shifts for periods of 12 months or more.

Table 1: Length of time with current employer, permanent and casual employees by gender, Australia, November 1998 (per cent).

	Full-time, permanent employees	Part-time, permanent employees	Full-time, casual employees	Part-time, casual employees
Men				
Less than 1 year	16.1	26.3	35.8	53.2
Less than 6 months	8.4	16.1	26.7	37.9
6 and under 12 months	7.7	10.3	9.2	15.3
1 and under 3 years	20.1	34.1	23.2	26.4
3 and under 5 years	15.3	17.0	10.4	9.8
5 and under 10 years	18.9	13.6	12.0	6.4
10 years or more	29.7	9.0	18.7	4.3
Women				
Less than 1 year	18.0	16.1	41.6	38.7
Less than 6 months	8.9	8.6	29.2	26.4
6 and under 12 months	9.1	7.5	12.4	12.3
1 and under 3 years	22.6	23.5	22.2	27.5
3 and under 5 years	17.5	16.2	9.9	14.1
5 and under 10 years	20.7	21.5	13.6	12.3
10 years or more	21.2	22.7	12.6	7.5

Source: ABS, *Career Experience Australia*, November 1998, Cat. no. 6254.0.

The practice of long term casual employment was evident for these women in regular rostering and shift patterns and the anomalous classification of 'permanent casual'. In these instances casual employment was not an unintended outcome of a number of shorter periods of employment covering the absences of permanent employees, but forms part of on-going staffing arrangements. These women indicated that their primary preference was for part-time rather than full-time employment but that permanent employment was their preferred objective. Permanent part-time tenure, if offered to them, would be accepted.

Certainly casual work was initially preferred by some women workers interviewed because of the perceived flexibility it provided in combining work and family responsibilities. Yet their experience of casual work had alerted them to its frailties. Of particular concern to these women was that a refusal of an offer of casual employment for family oriented reasons would jeopardise future employment prospects.

Given the conservative insistence that the level of casual employment reflects a rational consideration of the costs and productivity of different forms of employment there is some interest in the productivity benefits that accrue to industry of long term casual employers. Casual employees reported that they were given significant levels of responsibility, including the opening and closing of businesses, preparation of financial accounts, responsibility for other staff, supervision of a unit or a shift and coordination of projects. These employees reported that their employers benefited from the long term nature of their employment as this experience meant that they were well versed in customer and client service, in procedures, operations, services and products and in some instances worked quite independently.

Regulatory framework and policy implications

On the findings of this project there is evidence therefore of a new form of employment which is not casual in the common law sense (because of its regular and on-going nature), but nor is it permanent either, as the employees in question do not have access to the award entitlements that flow only to permanent employees. The emergence of this new form of employment focuses further attention on the model utilised by Australia's regulatory framework to address casual employment. This model is reflected in two-fold pattern of employment regulation. First, a series of award clauses that provide for casual employment, and in a limited number of instances limit its usage. But second, the regulation of this casual employment is defined mostly in terms of the payment of a casual loading to compensate casuals for the disamenities of this form of employment including the absence of entitlement to award conditions such as leave entitlements.

Imprecision and inconsistency characterise this regulatory framework. Casual employment is poorly defined and there are varying periods of engagement, a wide range of casual loadings and varying access by casual employees to penalties and loadings for working overtime, or evenings/weekends. Award provisions for casuals are not directly gendered, and on the findings of this project are not distinctly stronger in awards covering male-dominated employment. Similarly the disamenities of casual employment are experienced by both women and men alike. While the pattern of conditions and entitlements is not directly gendered, the regulatory framework is indirectly so because it inadequately protects a form of employment in which women are disproportionately represented.

There are some legal precedents for casual employees gaining access to a broader range of award entitlements, mostly notably unfair dismissal provisions. These court decisions have usually resolved that the casual employees in question were nominally classified as casual, but their employment was not casual in nature (*Reed v Blue Line Cruises*, 73 IR 420; *Australian Municipal, Administrative, Clerical and Services Union v Auscript*, FB of AIRC, Print no. P9721, 5/3/98; *Re School Assistants (Australian Capital Territory) Award 1986*, Print No. K6161, 6/1/93; *Ryde Eastwood Leagues Club Ltd v Taylor* 56 IR 385). The consideration by industrial tribunals of this issue, is somewhat fluid following the decision of the AIRC in the 'Bluesuits' case (*Graham v Bluesuits Pty Ltd t/as Toongabbie Hotel* Print no. S0282, 3/11/99) where the AIRC indicated the absence of a requirement to interpret the provisions of the *Workplace Relations Act 1996* (Cwth) by reference to the Convention Concerning Termination of Employment at the Initiative of the Employer.

Notwithstanding the debate over this contention and others like it, the potential to extend the earlier precedents as a wider policy response to casualisation would however appear to be limited by the low union representation among casuals, and the requirement for court or tribunal action to claim the entitlement. Short of being a right enshrined in award or agreement regulation, these entitlements have been won as a result of court proceedings, a course of action that is beyond many casual employees. The bargaining position of women employed casually is not only framed by their low levels of unionisation and the state of the regulation available to them, but also by their concerns over maintaining their existing hours of work and hence income security and more broadly their job security.

Conclusion

The findings of the project suggest that the existing regulation of casual employment needs reassessment, to halt the growth of a form of employment which while nominally casual is paradoxically neither casual nor permanent.

Here again there is divergence in the variety of policy responses that are proposed. A neo-classical analysis argues that labour market regulation should not intervene in this allocation between permanent and casual work. An institutional perspective in contrast argues that regulatory provisions should provide greater balance, reconciling the preference of some employees for casual work, and the need of employers for temporary forms of employment, but providing more effective protection to workers in casual and other forms of precarious employment. More acutely casual employment should be limited to employment that is short-term, irregular or seasonal. It should be an employment relationship that is entered into only to meet a temporary increase in staffing requirements. If an employer's need for casual labour is continuous, this should indicate that casual labour is an inappropriate response to the labour requirements of the organisation.

This latter perspective stands in some consequence to the pattern of industrial regulation evident in Australia and elsewhere since the mid-eighties (Wooden, 1998a; OECD, 1995). The pursuit of greater labour market flexibility has characterised this policy shift, an objective that is held to provide some promise for women in their efforts to combine work and family responsibilities. This notion of flexibility is however chameleon like – women's access to responsive work/family arrangements remains mixed. Of some consequence is the bargaining position from which women face this brave new world - in this respect the persistent level of casual employment with its attendant low levels of unionisation, job security and weak regulatory support remains more than a distinct concern.

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