

NES Exposure Draft Submission

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This submission in response to the proposed National Employment Standards, set out in the NES Exposure Draft Discussion Paper, is from Dr Larissa Bamberry, Dr Iain Campbell and Dr Sara Charlesworth from the Centre for Applied Social Research, RMIT University

In making the submission we draw on our extensive research experience, jointly and individually, in the areas of: changing forms and patterns of employment in Australia and internationally; employment regulation, including cross national comparison; casual employment; women and work, gender equality, including pay equity; job quality; work and family; collective bargaining and trade unions.

PREAMBLE

The proposed National Employment Standards (NES) represent a welcome step forward after the failed experiment of *WorkChoices*, in which existing gaps in the Australian labour regulation system were widened in order to open up more opportunities for individual employers to lower minimum standards. Our own research, together with the research of numerous other experts, pointed to the widespread distress and anxiety that *WorkChoices* generated for many employees covered by the (expanded) federal system (Elton et al 2007; Charlesworth and Macdonald 2007a, 2007b; Evesson et al 2007). Building on principles already outlined in the 1996 legislation, *WorkChoices* clearly led Australia away from accepted norms of international practice, as codified in ILO Conventions and Recommendations. It produced a system that was complex, prescriptive and biased to managerial prerogative. It seemed to derive most of its impetus from ideological principles and was only poorly adapted to the changing needs of a modern society. Though it undoubtedly enhanced the choices available to employers, it narrowed the scope for most employees, either individually or collectively, to exercise any control over their basic conditions of work. In addition to its impact on wages and conditions, especially for vulnerable workers, it posed a long-term threat to economic prosperity and social cohesion. It is fortunate that the federal election campaign of November 2007, in which discussion and debate over *WorkChoices* played an important role, has led to its promised demise.

After the end of *WorkChoices* Australia faces a valuable opportunity to renew its labour regulation system. It can develop a new labour regulation system, properly adapted to a modern workforce and a modern economy, drawing both on the best elements of our past and on the lessons of effective models developed by other industrialised countries. The foreshadowed architecture of the new system, in which legislated minimum standards underpin additional standards in ‘modern awards’ as well as collective bargaining agreements, seems to us a promising step in this direction of renewal.

A floor of statutory minimum labour standards in Australia

We welcome the proposal for legislated minimum standards in the National Employment Standards Exposure Draft, intended as one component of “an enforceable safety net that protects fair minimum wages and conditions for all working Australians” (para 2). Most successful modern societies use a robust statutory floor of minimum labour standards, as the foundation for more specific rules that are adapted to industry and enterprise conditions and designed to regulate collective bargaining between employers and trade unions. Such a floor generally touches on the three crucial elements of employment relations – employment security, wages and working-time arrangements (hours of work and leave) – and it generally defines basic rights and entitlements of workers at their workplaces in a modern society. The focus is on employees as human beings not commodities. The purpose of such a floor is not only to protect employees as a group, but also to help individual employees claim a degree of control over their conditions of work and in this way to achieve a decent working life and a proper work/life balance. The specific provisions in the floor are generally universal and transparent, carefully monitored and enforced, and subject to ongoing democratic discussion and incremental improvement in line with changing community standards.

The International Labour Organization rightly argues that minimum labour standards are crucial for all societies. They are the stepping-stone towards the achievement of what it calls ‘decent work’:

‘Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.’ (ILO 2007)

There seems little disagreement in Australia about the need for a statutory floor of minimum labour standards. Indeed the Coalition federal government felt obliged, as part of its *WorkChoices* package, to introduce five minimum standards incorporated in the Australian Fair Pay and Conditions Standard (AFPCS). Disagreement seems to concern the content of the statutory minima and the way in which they are articulated with more specific rules. The problem with the AFPCS was twofold: a) the five provisions were so weak and riddled with holes as to be ineffective and indeed to lack any claim to be ‘standards’; b) they were poorly articulated with other rules and regulations and seemed to be intended to work as the only standards for many workers.

We are advocates of a robust floor of statutory minimum labour standards in Australia, clearly articulated with opportunities for additional or more developed provisions through mechanisms such as awards and collective agreements. We welcome the NES as a valuable step forward in comparison with the AFPCS. It defines some useful rights, including several that seek to respond to the emerging needs of workers in a modern economy for more choice and better work/ life balance. Nevertheless, we have some major concerns. Our central concern is that several specific standards incorporate too many holes. In particular, they offer too many exemptions (and other paths of derogation) and too much opportunity for non-compliance. In this sense, the proposed NES share some of the weaknesses that undermined the AFPCS (and

indeed undermined the traditional award system). They are too weak, even in comparison with obvious comparators such as New Zealand and the United Kingdom, and as a result the standards may not be able to function effectively as a component of a safety net.

Simple and universal

We strongly agree that the NES should be “as simple as possible so that all employees and employers can understand and comply with their rights and obligations” (para 18). This means that the specific standards should be as universal as possible. Exemptions and opt-out clauses and what are sometimes called ‘flexibilities’ may sometimes be necessary, but as a general principle they should be minimised at this level, in order to preserve the legitimacy and enforceability of the system and its ability to function as a definition of basic rights and entitlements. Exemptions are better located at the level of modern awards or, perhaps more plausibly, at the level where enterprise and industry agreements are negotiated. The suggestion that exemptions are necessary to meet employer needs or to ‘balance’ employee needs with business needs reflects a fundamental misunderstanding of the rationale for minimum labour standards.

A focus on employees’ basic rights and entitlements does not mean that the floor must remain rudimentary. As the experience of other countries demonstrates, it is possible to have a solid floor of labour standards that extends over several areas, while still preserving ample room for employer-oriented ‘flexibility’ at higher levels of regulation.

The NES is intended to apply to all employees covered by the federal system. It has broader coverage than awards. This broad coverage is appropriate for regulation aimed at specifying basic rights and benefits. However, it may not be broad enough. Instead of exemptions, consideration needs to be given to ensuring that workers are not unfairly excluded from the specific provisions simply because they have been designated as non-employees. The Discussion Draft refers to a possible exemption for ‘managerial and high-income employees’. This is a poorly specified group which comprises individuals in a broad range of circumstances, and we see no plausible reason for exempting such a group at this level (though there may be a need for exemptions at the level of an extended award system for certain ‘autonomous senior managers’, as in the French legislation on hours of work). In the medium term, the coverage of modern awards needs to be broadened to correspond more closely with the coverage of the NES and to ensure a good articulation of the two sets of standards.

In principle, all exemptions, no matter how hallowed by long tradition, need to be carefully scrutinised to ensure that they do not undermine the effectiveness and legitimacy of the safety net. For example, we refer below to the frequent use of exemptions for casual employees, which in our opinion are increasingly inappropriate in a labour market where almost a quarter of Australian workers are employed on a casual basis (see Appendix 1 for a detailed analysis of the impact of the proposed NES on casual employees). Such exemptions should be removed and replaced where necessary by appropriate service thresholds for certain forms of leave. A similar point applies to exemptions ostensibly based around the notion of cashing out. Though sometimes presented as opening up a degree of choice for employees, cashing out in practice is more often a vehicle for unscrupulous employers to avoid basic rights and entitlements, taking advantage of the vulnerability of individual employees or groups of employees. We support the opening up of more room for individual choice, but such choices need to be guaranteed to ensure that they are free from employer coercion.

Enforced

Lack of enforcement is a major source of holes in regulatory systems. This can introduce unfairness and complexity into a system and can – in the long-term – undermine its legitimacy. We are concerned about the lack of detail about the way in which Fair Work Australia will

administer, monitor and enforce the NES. We advocate quick and readily accessible grievance mechanisms, extensive education about standards, and regular investigations or audits.

Improved over time

We are concerned about the absence of any clear provision for monitoring of the impact of the NES. Similarly, we are concerned about the absence of any clear mechanism for either improvement in the standards or introduction of new standards, as community expectations change. In our opinion, much can be learned from the recent experience of the United Kingdom in introducing legislated employment standards, which are incrementally improved over time based on comprehensive evaluation of their impact and wide-spread consultation about further improvements. Drawing on Australian traditions, we would also recommend use of a mechanism analogous to the Test Cases used to improve or introduce new standards in awards.

This submission does not consider all our concerns. It focuses on our main concerns about the detail of the proposed standards. In our opinion some of the provisions of the draft standards are useful, while others are less so and some need a complete revision.

THE PROPOSED NATIONAL EMPLOYMENT STANDARDS

1. Maximum weekly hours of work

Provision

This provision is the only one in the NES that deals with the crucial issue of the duration of work. It purports to set a maximum for weekly hours of work. The legislation starts by specifying that weekly hours for an employer “must not exceed 38 hours”. However, it immediately adds two main exceptions. First, it states that an employer may require the employee to work ‘reasonable additional hours in the week’. Second, it states that modern awards may include provisions for ‘averaging of hours of work up to 38 hours a week over a specified period’. Averaging produces weeks that are longer than 38 hours and – depending on the amplitude of the variation around the average – it can produce weeks that are a lot longer than 38 hours.

Comments

- This provision should not be called a maximum. It is more accurately likened to provisions that define the boundary between what can be called ‘standard’ hours and what can be called ‘extra hours’ or ‘overtime’. This is a traditional feature of working-time regulation. However, it should not be confused with the notion of a maximum.
- Even as a definition of a threshold between standard hours and ‘overtime’, this provision is deficient. The traditional purpose of such a provision would be to specify the conditions under which employers can request extra hours and to specify the compensation for the employee for agreeing to the request (extra money, often at premium rates, or time off, often at premium rates). This provision fails to provide compensation for extra hours. In addition it fails to specify any conditions on an employer’s request for extra hours, other than that the extra hours should be ‘reasonable’. Finally, we can note that the exception for averaging arrangements comes without any guidelines, even that these should be ‘reasonable’. On the contrary, the Discussion Paper hints that the very existence of an averaging arrangement could be taken as evidence of reasonableness (para 51) or perhaps could pre-empt an assessment of reasonableness Example, p. 8).
- The net effect of specifying 38 hours as a weekly standard but then: a) allowing for additional hours; b) failing to specify the need for compensation for additional hours; c) failing to impose conditions on additional hours (apart from their ‘reasonableness’); and

then d) leaving room for averaging arrangements in awards without any guidelines, is to open up countless holes within which the employer will enjoy the latitude to determine the duration of work. The employee has surprisingly few rights to control duration, except what they can achieve through union action to secure a collective agreement. The only constraint on the employer's freedom to impose a schedule seems to be the need to abide by 'reasonableness'. This is deliberately vague, without any clear procedure for determination, and is unlikely to have any effect. The net effect is to say that the weekly duration of work can be pretty much anything. It is hard to imagine a provision that could be further from the need for simplicity.

- Australia desperately needs some effective regulation of the duration of work, comparable to what is available in most other industrialised societies (McCann 2005). However the two main exceptions are so sweeping that the proposed provision does not deserve to be called a standard. It serves no protective purpose and fails to grant the individual employee any rights to control the length of their work.
- The provision has been largely taken over from the AFPCS, introduced as part of the *WorkChoices* package. There seems little improvement (apart from slight changes in what can be taken into account in the determination of 'reasonableness' and some slight tightening of the reference to averaging to specify 38 hours). This provision was widely criticised at the time as derisory (eg Campbell 2007, 54-55; Cooney, Howe and Murray 2006, 231-237). It has not become any more plausible in the current proposal.
- There is no protection for part-time employees in respect to minimum periods of engagement or minimum weekly hours.

A Better Standard:

As a statutory minimum, the NES should provide:

- Maxima for weekly hours (with provision for overtime and averaging), daily hours (including rest breaks) and for aggregate overtime.
- Tighter conditions on the imposition of overtime, with a clear right to refuse overtime (except under certain conditions) including for casual employees.
- Minima for both individual periods of engagement and weekly hours for part-time employees to ensure that part-time and casual workers cannot be required to work hours that are so short as to create a disadvantage for the worker.
- That workplace agreements cannot undercut state and industry based provisions in relation to minimum hours of work.

2. Requests for flexible work arrangements

Provision

The proposed NES provides the right for all employees who are parents or who have responsibility for employees with children under school age to request a change in working arrangements for the purpose of assisting the employee care for the child. Requests must be in writing and specify the change and reasons for the change sought. The employer must give the employee a written response within 21 days stating whether the employer grants or refuses the request. The employer can only refuse on reasonable business ground and where the employer refuses the request the response must specify the reason for the refusal.

Comments:

The proposed Standard improves on the 2005 AIRC Family Provisions Test Case decision in two main respects (Charlesworth and Campbell forthcoming).

- It broadens eligibility from parents returning from parental leave to all parents/ those with responsibility for a child under school age. However it is more limited than other right to request regulation which provides coverage to all employees (The Netherlands and Germany) or to certain categories of carers other than parents of under school age children (New Zealand and the United Kingdom, since 2007 after an extensive review of the 2003 right to request regulation).
- The Standard also broadens out the type of changes sought from part-time work to other (unspecified) working arrangements.

However in two critical respects the proposed Standard is weaker than the Test Case decision (Charlesworth and Campbell forthcoming).

- While it similarly suggests that 'requests may only be refused on reasonable business grounds', what might be considered reasonable business grounds are not elaborated. It would appear that any adverse impacts on a business are grounds to refuse requests for flexible work arrangements. The Test Case decision provided examples of such grounds including 'cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service'. The failure to specify the type and nature of what might be reasonable business grounds in the proposed Standard also is in sharp contrast to right to request regulation in other countries which specify the types of business grounds that must be considered by employers. For example in the Netherlands, the right to request regulation provides that an employer can only reject a request if there are 'serious countervailing business reasons'. In providing protection for Victorian employees whose employer refuses to accommodate their family responsibilities recent amendments to the Victorian Equal Opportunity Act 1995 provide that as well as the effect on the workplace and the employers business, the consequences for the employee of refusing the request are also to be considered, along with the nature of the arrangements required to accommodate those responsibilities
- Perhaps most importantly, the new Standard provides no enforcement mechanism and there is no grievance procedure or process to provide redress where requests are unreasonably refused. The new 'independent umpire', Fair Work Australia, is to deal with disputes around the NES, presumably with a process of conciliation and arbitration, although this is still unspecified. However, in respect of employee request for flexible work, a dispute resolution process or what is termed 'third party involvement' in the Exposure draft is ruled out. Without an enforcement mechanism and no grievance procedure or process to provide redress where requests are unreasonably refused, the effect of the new standard is that employers will be able to refuse requests on any basis at all, reasonable or not.
- In contrast all other right to request regulation in other countries have explicit complaint processes and enforcement machinery. While there are some differences, employers are required to provide reasons for any refusal of a request in writing and there are rights of appeal provided, including to courts and tribunals – although in the case of the UK and New Zealand these rights of appeal are limited to procedural matters rather than the substance of any employer refusal of a request.

Evidence in both Australia and in the UK suggests that in some instances where employees successfully request to reduce their hours of work either after return from parental leave or more generally they suffer some detriment such as being forced to trade permanent status for casual

status, change work location or accept a job of lesser status (see Bamberly 2005; Charlesworth and Macdonald 2008; Charlesworth and Campbell forthcoming).

A Better Standard:

As a statutory minimum, the NES should ensure that in respect to employee requests for changes to work arrangements:

- Eligibility is extended to all carers and after a three year period of implementation, reviewed with a view to extending eligibility to all employees
- In determining what are 'reasonable' business grounds on which a request may be refused the following must be considered:
 - The capacity of the employer to accommodate the request and the effect on the workplace and the employer's business of accommodating the request,
 - The consequences for the employee of not accommodating the request
- Employees successfully requesting changes to their working time arrangements are not disadvantaged in terms, conditions or employment status.
- Quick accessible grievance mechanisms are available through Fair Work Australia where an employee believes an employer has unreasonably refused a request for changes to work arrangements

3. Parental leave and Related Entitlements

Provision

As is currently the case under the AFPCS, the proposed Parental Leave and Related Entitlements Standard will provide 52 weeks unpaid leave to employees (both ongoing employees and 'regular' casuals) with at least 12 months continuous service with the one employer and with an entitlement to return to the position they held prior to going on leave. The draft Standard proposes to increase this period of leave by an extra 12 months per couple, by providing each parent with a separate entitlement to up to 12 months' unpaid parental leave. There is also a right to request the additional 12 months unpaid parental leave where the family prefers one parent to take a longer period of leave. The 12 month extension on the 52 weeks can be refused by the employer on 'reasonable business grounds'. The proposed Standard also provides for unpaid pre-adoption leave, unpaid special maternity leave and transfer to a safe job and associated paid leave, where such a transfer cannot be effected, and consultation about workplace change.

Comments:

The proposed standard is an improvement on the AFPC standard in a number of respects, including unpaid pre-adoption leave and consultation about workplace change. There are, however, a number of areas where the proposed standard is inadequate as a statutory minimum entitlement. These include:

- Eligibility: Restricting eligibility to those with 12 months service or more means more than a quarter of all female employees (25.9%) are excluded from this minimum standard. Excluded female employees comprise almost a fifth of female employees working on a permanent basis (18.4%) and 44 % of female employees working on a casual basis. By

reducing the period of service required to 6 months, the Parental Leave Standard would cover 89.8% of all female employees based on 2006 data (see Appendix 2).

- Unpaid leave. Unpaid leave does not provide the necessary time off work for almost the two thirds of women without access to formal paid leave entitlements. The provision of a minimum 14 weeks paid parental leave as a national minimum employment standard would allow Australia to fully ratify and comply with its obligations under both CEDAW and the ILO Maternity Leave Convention.
- Right to request an extension of unpaid parental leave. As with the proposed Requests for Flexible Work Arrangements Standard, the proposed Parental Leave Standard fails to specify what constitute reasonable business grounds in refusing a request for an extension of unpaid parental leave or provide any basis for appeal, either substantive or procedural. The same issues raised in our comments above on the proposed Requests for Flexible Work Arrangements Standard apply.
- Return to work guarantee. The draft Standard requires only that the employee is entitled to return to 'an available position for which the employee is qualified and suited nearest in status and pay to the pre-leave position'. In effect this leaves the determination of whether both the pre-leave position and any alternative position are 'available' up to the employer. Recent research has highlighted the problem of the non-genuine redundancies where the pre-parental leave position is the sole position to be made redundant or 'not available' while the employee is on leave as well as forced transfer to casual and inferior positions and different work locations on return to work (Charlesworth and Macdonald 2007; McDonald and Dear 2006; Bambery 2005) The onus thus needs to be placed on employers to demonstrate that if the pre-leave position is not available it is a genuine redundancy and if this is the case to locate a position that is comparable in terms of remuneration and status.
- Antenatal leave: The draft parental leave standard does not provide for antenatal leave. While one of the draft standards is a personal/carer's leave and compassionate standard provisions – this leave is explicitly only available in the case of 'personal illness or personal injury, affecting the employee' or 'to provide support or care to a member of the employee's immediate family' because of personal illness, personal injury or an unexpected emergency affecting that member. A normal pregnancy does not involve either personal illness or injury (of the employee or of an immediate family member or unexpected emergencies. However, regular antenatal checks crucial to ensuring a healthy pregnancy, birth, mother and child.
- Pre Adoption leave: The Standard provides only 2 days unpaid pre-adoption leave, only where employees are unable to take another form of leave or their employer would prefer them t take that other form of leave. The realities of the typical adoption process make the provision of 2 days unpaid leave inadequate. Further, the provision is restricted to the adoption of children under school age. While less common, the adoption of children older than school age still occurs and it is unfair to those adopting parents and their prospective children to so limit the provision.
- Concurrent period of leave: For couples, the concurrent period of parental leave is only 3 weeks. This is less than the AIRC Family Provisions Decision test case standard under which award provisions, employees are were entitled to request a period of concurrent leave of up to 8 weeks.
- Lactation breaks: There is no provision for breastfeeding or lactation breaks in the proposed standard. Such breaks are important to allow mothers to combine breastfeeding with paid work.

A Better Standard:

As a statutory minimum, the NES should provide:

- That employees with at least 6 months service are protected by the Parental Leave and Related Entitlements Standard
- That eligible employees, including casual employees, are entitled to a minimum period of 14 weeks paid parental leave
- That in determining what are reasonable business grounds on which a request may be refused the following must be considered:
 - The capacity of the employer to accommodate the request and the effect on the workplace and the employer's business of accommodating the request,
 - The consequences for the employee of not accommodating the request
- Quick accessible grievance mechanisms are available through Fair Work Australia where an employee believes an employer has unreasonably refused a request for changes to work arrangements
- That in cases of genuine redundancy of the pre-parental leave position, employers are required to return the employee to a position nearest in status, location and remuneration to the pre-leave position
- 5 days paid pre-adoption leave related to the adoption of a child
- An entitlement to paid antenatal leave of up to 38 hours for pregnant employees and up to 10 hours for the partners of pregnant employees
- For a period of concurrent leave of up to 8 weeks
- For breastfeeding and lactation breaks on return to work.

4. Annual leave

Provision

The core clause of the legislation incorporates a provision for a minimum entitlement of four weeks of paid annual leave for each year of service. This entitlement accrues progressively according to ordinary hours of work. This is a familiar entitlement, both in Australia and in almost all industrialised countries. Four weeks is nowadays only a modest version of the entitlement (McCann 2005). However the main problem here, setting Australia apart from other countries, is the presence of two major holes in this entitlement. First casual employees are excluded. Second, provision for 'cashing out' of paid annual leave can be included in modern awards. The first exemption is a familiar part of Australian practice, but the second appears to be a new development.

Comments

- We can see no justification for these two holes. Apart from the United States, all industrialised countries recognise a minimum period of paid annual leave as a universal entitlement, justified in terms of basic human needs for recuperation from work,

opportunities for recreation, travel, and time with friends and family etc. It cannot in general be cashed out (though on termination of employment, employees may receive their entitlement in the form of cash). It cannot be denied to groups of employees because of their form of employment.

- It is hard to see how the annual leave standard can be called a true standard when it is directly denied to almost a fifth of the workforce, generally the most low-paid and vulnerable, and when even those who have enjoyed the entitlement up to now are threatened with a conversion of the entitlement into a component of the wage. The provision for awards to cash out annual leave means that the 'standard' even for non-casual employees is at risk of vanishing to zero. This assault on the universality of paid annual leave is out of kilter with the needs of a modern workforce, which has an increasing interest and need for blocks of time away from work, eg to spend with family during school holidays or to travel.
- The casual exemption is a long-held exemption in Australia. But it is becoming more and more anomalous as the proportion of workers who are casual grows and as many of these workers act as de facto permanent workers, employed on regular schedules for lengthy periods of time. It is unusual in international comparison that basic standards such as paid annual leave should be denied to such a large component of the workforce. Even in New Zealand, with a long history of award regulation and use of a category of 'casual', all employees have been covered for paid annual leave since the initial Holidays Act of 1946 (now succeeded by a new Holidays Act 2003 - Campbell 2004; Campbell and Brosnan 2005).
- It is hard to know the origin of the provision to allow awards to cash out annual leave. It may derive from awareness of the practice in some areas such as police where extra entitlements to paid annual leave are available – up to nine weeks in some cases – but individuals can cash out one or two weeks of this extra entitlement. But this is no justification for allowing a blanket provision for cashing out of all paid annual leave. This reference appears poorly thought out.
- The AFPCS offered a provision for a minimum entitlement of paid annual leave, which allowed up to two weeks of the entitlement for a full-time (non-casual) employee to be cashed out. The provision in the NES is unfortunately similar. It has shifted the opportunity for cashing out to the award system (and the AIRC), but it has added nothing substantive to the AFPCS standard. Indeed it appears to have weakened it significantly by opening the possibility of cashing out all the entitlement.
- These two holes should be filled. Casuals who are employed on a short-term basis may, like any employee, simply receive their entitlement in the form of cash, on termination of the job. There may be a need to consider special rules, as in New Zealand, to cover casuals on an irregular schedule. The casual loading for those casuals who receive it should stay in place, but its long-term future could be resolved through inquiries at the level of modern awards.

A Better Standard:

As a statutory minimum, the NES should provide:

- Access to paid annual leave of four weeks for casual employees.
- The basic entitlement of four weeks annual leave cannot be cashed out under any circumstances.

5. Personal/carer's leave and compassionate leave

Provision

The proposed NES will provide full-time employees with 10 days paid personal and carer's leave per year of service (pro rata for part-time employees). Employees would also be entitled to 2 days paid compassionate leave per occasion. There is no cap on access to accrued leave in any single year.

If paid leave entitlements are exhausted, all employees will be entitled to 2 days of unpaid personal leave for "genuine caring purposes and family emergencies". This unpaid leave will also be available to casuals.

Comments

- Under the proposal carer's leave is accessible through an employee's entitlement to personal or sick leave. Employees with caring responsibilities will, in the long-term, undermine their access to personal sick leave.
- The proposed NES should provide the universal minima for all employees. Casual employees should not be excluded from these forms of paid leave. Given the high proportion of casual employees who are women and who therefore bear the greater burden for caring within our society the extension of paid carer's leave, paid personal sick leave and paid compassionate leave to casual employees should be a high priority.
- It is important that the number of days of paid personal and carer's leave accessed in a single year is not capped. Under *WorkChoices* many collective workplace agreements specified that a maximum of 10 days per annum could be used for caring purposes (Workplace Research Centre, 2007).

A Better Standard:

As a statutory minimum, the NES should:

- Ensure all workers have access to separate entitlements for both personal sick leave and leave for caring responsibilities.
- Ensure casual employees have access to paid carer's leave, paid personal sick leave and paid compassionate leave
- Include provisions to ensure that such restrictions cannot be applied to this entitlement through the bargaining process.

6. Community service leave

Provision

Employees will be entitled to be absent from work to engage in prescribed community service activities. The entitlement would cover all periods the employee is required to provide the community service, including reasonable travelling time and time for rest immediately following the activity.

Community service leave will be unpaid leave, although employees (other than casuals) on jury service leave will be entitled to make-up pay.

Comments

- As noted above, the proposed NES should provide the universal minima for all employees. Casual employees should not be excluded from access to payment for jury leave.

A Better Standard:

As a statutory minimum, the NES should:

- Ensure casual employees have access to paid leave for jury service and access to community service leave on the same basis as permanent employees.

7. Long Service Leave

Provision

The proposed long service leave NES is intended to be in effect a codification of applicable award-derived long service leave entitlements, and the first step in harmonisation of different state-based provisions. However the details on any standard for long service leave have not yet been finalised.

Comments:

It is unclear the extent to which the proposed standard will interact with non-award state based long service leave entitlements.

As a minimum standard, applicable to employees who may not be award-covered or may have inadequate long service leave entitlements, it is important to specify the length of service and the long service leave entitlements that adhere to this service.

Given the shortening duration of periods of employment, it is important that the standard provides for portable long service leave entitlements

It should be noted that long-term casuals are explicitly included in state-based long service leave legislation. Any NES for long service leave will need to recognise state-based legislative provisions covering casual employment.

A Better Standard:

When the standard is drafted, it is important that it be available for wide-spread consultation. However as the basis for a statutory minimum, any NES should ensure that:

- Casuals are eligible for long service leave
- Long service leave entitlements are portable between employers

8. Public Holidays

Provision

This provision takes its starting-point from the state and territory laws that declare public holidays. The standard then concerns: a) the form of payment on that day for workers who have taken that day as a public holiday; and b) the extent of the employee's right to be absent from work. The first aspect is defined in terms of an entitlement to be paid for ordinary hours that would have been worked on that day at the base rate of pay. The second aspect is defined in terms of a right for employees to refuse employer requests to work on the public holiday. However this right to refuse is constrained in that it must be either because the employer's request is not 'reasonable' or because the refusal is 'reasonable'.

Comments

- Despite its title, the proposed standard does not guarantee public holidays, which are provided through state and territory and not federal legislation. If an employee wants to know their public holiday entitlement, even in respect to the number of public holidays, s/he must consult elsewhere.
- The main thrust of the provision is to punch a hole in the conventional understanding of public holidays as a day which employees can take off, without substantial loss of income, in order to join with their families and communities "to celebrate important events and days of religious significance" (para 243). The effect of the provision is to establish that an employee does not have any such right. It states that an employer may request the worker to attend work on that day, so long as the request is 'reasonable'. As in the other examples in the NES where 'reasonableness' is invoked, the content of the notion and the process for determining reasonableness are left vague. However, we can note that amongst the considerations to be taken into account in determining 'reasonableness' is the 'nature of the employer's workplace or enterprise (including its operational requirements)'. We can also note that there is no insistence that a worker be compensated for being required to attend work on that day. On the contrary, the issue of whether there is to be any compensation is referred to 'modern awards'.
- It is hard to see in what way this could be described as a minimum standard for employees. The requirement that the employee be paid when absent might fit, but it is then compromised by the provision that the employee may not be able to take the day off (and may not achieve any additional compensation if required at work). As such it adds up to little more than a provision saying that the employee should be paid at least their ordinary rate on a designated public holiday. This provision is more accurately described as defining a right for employers rather than a right for employees. It has no place in a system of basic minimum standards.
- It is undoubtedly true that arrangements need to be made for rostered work on public holidays, eg in areas such as emergency services. However where such arrangements are made, most awards provide that employees are paid penalty rates to compensate them for working such unsocial hours.

A Better Standard:

As a statutory minimum, the NES should provide:

- A basic entitlement for all employees to a certain number of public holidays
- For mutual agreement or collective agreement to work on public holidays

- Extend the right to be absent from work on a day that is a public holiday to casual employees.
- That where arrangements to work on a public holiday are made employees should be adequately compensated

9. Notice of termination and redundancy pay

Provision

Eligible employees will be entitled to up to four weeks notice of termination of their employment (or pay in lieu of notice), based on their period of continuous service with an extra week for employees over 45.

In addition, employers who employ more than 15 employees will be obliged to make a severance payment to an employee terminated on the ground of redundancy of up to 16 weeks pay. The quantum of severance payment required is determined by the period of continuous service by the employee. Employees serving a qualifying period, those on a fixed term or seasonal contract and casual employees are excluded from this right.

Comments

- The proposed NES should provide the universal minima for all employees. Casual and temporary employees should not be excluded from termination and redundancy provisions. Long-term casual and temporary employment is a unique feature of the Australian labour market (Campbell and Burgess 1997) and long service should be recognised for all employees.
- There should not be an exemption to pay redundancy pay where there are less than 15 employees. Employees in small businesses are susceptible to downsizing and redundancy procedures. State-based legislation and industry-based awards currently do not include exemptions for small businesses.
- Best practice elements in redundancy processes include:
 - A commitment to a fair and equal process minimising disruption to employees' lives, summarised in a clear statement of objectives;
 - detailed consultation and communication process for employees (or their representatives) affected by the change;
 - Alternatives to redundancy to be explored including:
 - Natural attrition
 - Reduction in hours
 - Retraining, redeployment or relocation
 - Voluntary redundancy
 - Clear and transparent processes for selecting employees to be made redundant
 - Grievance or dispute processes for issues arising from the redundancy process

- Assistance for redundant employees including:
 - Leave to seek alternative employment
 - Support for re-skilling
 - Financial seminars and
 - A commitment to re-employ redundant employees should the company experience an upturn in profits (Workplace Research Centre 2006).

A Better Standard:

As a statutory minimum, the NES should ensure that:

- Casual and temporary employees are not excluded from termination and redundancy provisions
- Employees in all businesses have access to redundancy provisions regardless of the size of the business
- Redundancy provisions include consultation and communication processes for employees (or their representatives) affected by the change, including demonstration that there is a genuine need for redundancies
- A grievance or dispute process for issues arising from the redundancy process
- Leave to seek alternative employment.

10. Fair Work Information Statement

Provision

The proposed Standard will require employers to provide new employees with a simple statement of their general rights and entitlements after they commence employment. The Statement is also to provide contact details for Fair Work Australia.

Comments

- The information to be provided is useful but generic information. For employees to fully understand their rights and entitlements details of the specific awards or agreements on which the employee's rate of pay and conditions are based need to be included in the Fair Work Information Statement.
- The proposed standard excludes both prospective employees and those employees already employed as at January 2010.
- To ensure Fair Work Information Statements are relevant and accurate, reflecting current wages and conditions, they should be issued on an annual basis.

A Better Standard:

As a statutory minimum, the NES should ensure that:

- All employees are provided by their employer with a summary of their rights and entitlements under the NES, their classification, pay rates and their conditions of work under the relevant award and/or agreement on an annual basis
- Prospective employees should be provided with a summary of their rights and entitlements under the NES, their classification, pay rates and their conditions of work under the relevant award and/or agreement at the time they are offered a position.

REFERENCES

Bamerry, L. (2005) *Globalisation, gender and teachers' employment*. Unpublished PhD thesis, University of Sydney.

Campbell, I. (2007) 'Long Working Hours in Australia: Working-Time Regulation and Employer Pressures', *The Economic and Labour Relations Review* 17 (2), 37-68.

Campbell, I. (2004) 'Casual Work and Casualisation: How does Australia Compare?' *Labour and Industry* 15 (2), 85-111.

Campbell, I. and Brosnan, P. (2005) 'Relative Advantages: Casual Employment and Casualisation in Australia and New Zealand', *New Zealand Journal of Employment Relations* 30 (3): 33-45.

Charlesworth, S. and Campbell, I. (forthcoming) 'Right to Request Regulation: Two New Australian Models' paper submitted for consideration to the *Australian Journal of Labour Law*

Charlesworth, S. and Macdonald, F. (2007a) *Going Too Far: WorkChoices & the Experience of 30 Victorian Workers in Minimum Wage Sectors*, Industrial Relations Victoria, Melbourne.

Charlesworth, S. and Macdonald, F. (2007b) *Hard Labour? Pregnancy, Discrimination and Workplace Rights*, Office of the Workplace Rights Advocate, Melbourne.

Charlesworth, S. and Macdonald, F. (2008) 'The Unpaid Parental Leave Standard: What Standard?', Refereed proceedings of the *21st Conference of AIRAANZ*, Melbourne, 6-8 February 2008.

Cooney, S., Howe, J. and Murray, J. (2006) 'Time and Money under *Work Choices*: Understanding the New Workplace Relations Act as a Scheme of Regulation', *UNSW Law Journal*, 29 (1), 215-241.

Evesson, J., Buchanan, J., Bamerry, L., Frino, E., & Oliver, D. (2007) '*Lowering the standards': from awards to Work Choices in retail and hospitality collective agreements*: Workplace Research Centre, University of Sydney.

Elton, J., Bailey, J., Baird, M., Charlesworth, S., Cooper, R., Ellem, B., Jefferson, T., Macdonald, F., Oliver, D., Pocock, B., Preston, A. and Whitehouse, G. (2007) *Women and WorkChoices: Impacts on the Low Pay Sector* Centre for Work + Life, University of South Australia.

International Labour Organisation [ILO] (2007) 'Decent work - the heart of social progress'. <http://www.ilo.org/public/english/decent.htm>.

McCann, D. (2005) *Working time laws: A global perspective*. Findings from the ILO's Conditions of Work and Employment Database, Geneva, ILO.

McDonald P. and Dear, K. (2006) 'Pregnancy discrimination in Queensland: internal labour market issues and progress to formal redress'. Paper given at *Our Work... Our Lives: National Conference on Women and Industrial Relations*, 12–14 July 2006, Brisbane: 124-136.

Workplace Research Centre. (2006) *ADAM Report. 49* University of Sydney

Workplace Research Centre. (2007) Unpublished data, *OLAA Database*. University of Sydney

APPENDIX 1: THE IMPACT OF THE PROPOSED NES ON CASUAL EMPLOYEES: RE-ENFORCING PERIPHERALISATION

The introduction of National Employment Standards (NES) by the Rudd Labor Government provides an opportunity to improve the working conditions of all Australians. These standards will provide a safety net of minimum conditions for all employees and will create a fairer, more balanced workplace for the future. However, the current formulation of the NES ignores the needs of a significant proportion of Australian workers, those employed on a casual basis. In August 2006, approximately a quarter (24.4%) of all Australian employees were employed on a casual basis (without access to annual or sick leave in ABS terms) (ABS, 2007a). This represents two million people across Australia. This paper examines the impact of the NES on this significant group of Australian workers.

For more than ten years academics have been documenting the detrimental effects of casual employment on employees (Burgess, 1994; Burgess & Campbell, 1998; Campbell, 1996, 2000; B. Pocock, Prosser, & Bridge, 2004; Smith & Ewer, 1999; Still, 1996; Watson, 2004; Whitehouse, Boreham, & Lafferty, 1997) and on the labour market in Australia (Buchanan, 2004; Pocock, Buchanan, & Campbell, 2004). In summary, the issues surrounding this form of employment include:

Casual employees miss out on important employment conditions with low hours and pay rates, limited job security, unpredictable earnings and hours, no paid sick or holiday leave, and limited access to other rights and forms of leave. The casual loading – where it is paid – compensates for a portion of these losses. Many have difficulty borrowing money, predicting childcare needs, and managing finances. Casual workers have less access to training, to internal career ladders, and often sit on the marginal sidelines of the workplace. Over time, an economy dependent upon a larger and larger slice of casual employees will face a deteriorating skills base, lower workforce stability and higher turnover costs. This is both inefficient and inequitable (Pocock, Buchanan, & Campbell, 2004).

The introduction of the Howard Government's *WorkChoices* legislation acted to further undermine the workplace entitlements of casual employees, particularly those employed in the retail and hospitality industries (Evesson et al., 2007a). The Rudd Labor Government has the opportunity to address these issues through the development of the NES.

A snapshot of casual workers

- More than half of all casual employees are women (56.3%).
- In 2006 more than half (56%) of all casual employees had been with the same employer for twelve months or more (ABS, 2007b).
- Half (50.5%) of all casual employees are located in just three industries,
 - Retail trade (27.7%)
 - Accommodation, cafes and restaurants (12.6%)
 - Property business services (predominantly in cleaning services) (10.2%) (ABS, 2007a).
- These industries have traditionally provided rates of pay equivalent to the minimum rates of pay in Australia and in collective bargaining have consistently had the lowest wage outcomes for employees (Workplace Research Centre, 1993-2007).

Minimising the use of casual employment

Casual employment, both full-time and part-time, has become the most frequently allowed form of non-standard employment in Australia (Campbell, 1996). Despite the assumption that casual employment is of minimal duration, casual employment can, in practice, encompass long-term, regular employment. Casual and part-time work is increasingly associated with unpredictable and unsociable hours. This is not desirable for workers with family responsibilities. Examining the preferences of workers with families for part-time and casual work, Glezer and Woolcott (1997) found that most prefer stable regular hours and conditions rather than the irregular and flexible hours that they are offered at short notice. Stable work patterns allow workers to make appropriate childcare arrangements.

Despite the fact that many casual employees receive a loading to compensate them for the tenuous nature of their employment, this loading is often based on the award rate of pay, rather than the rates of pay of their co-workers who may be covered by an enterprise agreement. The casual loading does not compensate workers for the lack of sick and holiday leave. Watson (2004, 13) reports that despite average loadings of 20 percent casual rates are on average only 10 percent higher than those of full-time employees. Casual employees frequently do not receive the overtime and penalty rates of pay that permanent workers receive. Whitehouse (2001, 75) argues that the deregulation of casual employment through the removal of protective provisions in awards and agreements and the increasing incidence of casual employment outside the formal sector has had a major impact on casual wages.

Better Standards:

- The NES need to confine casual employment to work of a limited and genuinely short-term, seasonal or unpredictable nature.
- Casual workers should be appropriately compensated for the short-term, seasonal, irregular and unpredictable nature of their work.
- The NES should provide casual workers with the right to request conversion to permanent status where their work is ongoing, with employers required to reasonably consider such requests and show good reason for refusal.

Casual rates of pay and loadings

WorkChoices actively operates to undermine the wages and entitlements of casual workers. S.185 of the legislation provides that any casual employee whose employment is covered by a workplace agreement, that is a collective workplace agreement or an Australian Workplace Agreement (AWA), is entitled to be paid only the default casual loading specified in the Act. S.186 specifies that the default casual loading is 20%, subject to the power of the AFPC to adjust the percentage. Through these sections, the legislation acts to undercut casual loadings provided in awards. This has been used to great effect in the retail and hospitality sectors as was shown in the *Lowering the standards* report:

While much attention has been devoted to the loss of penalty rates and loadings for things like overtime, a major change that has received little attention to date has been the reduction in the loadings paid for casual work. Casual loadings in 74 percent of Work Choices collective agreements have dropped from the previous rates. In the vast majority of cases the drop has been close to 5 percent, falling from 25 percent to the statutory standard of 20 percent (Evesson et al 2007a).

The report also provided an extract (Figure 1.1) from the website of a workplace consultancy firm which actively encouraged employers to undercut pay for casual employees through the use of workplace agreements under *WorkChoices*.

Under *WorkChoices* collective agreements analysed, casual workers lost up to 12% of the weekly income in approximately 80% of all retail and hospitality agreements (Evesson et al., 2007a).

Figure 1.1 Extract from web site of IR consultants advertising the merits of *WorkChoices*

National Fast Food Retail Award 2000				
Grade 1	Permanent employee		Casual employee	
	Award	WorkChoices Agreement	Award	WorkChoices Agreement
Monday-Friday	\$14.30	\$14.30	\$17.88	\$17.16
Saturday	\$17.86		\$22.35	
Sunday	\$21.43		\$25.03	
Public Holidays	\$35.75		\$44.70	

Source: http://www.ei.net.au/work_choices.html, accessed 3/4/2007 (Evesson et al., 2007a)

Better Standards:

- The NES should ensure that it is not possible for collective workplace agreements to undercut award provisions in relation to casual loadings.

Maximum weekly hours

In terms of maximum weekly hours casual employees face many of the same issues as permanent workers. The long hours culture in Australia, in conjunction with the legislative provisions for 'reasonable additional hours' combine to give employees very little protection against work intensification.

Under *WorkChoices* many collective agreements in the retail and hospitality sectors specified that permanent employees had the right to refuse to work additional hours if these were unreasonable, however, in a significant proportion of agreements casual employees were excluded from these provisions (Workplace Research Centre, 2007).

Of equal importance to casual workers, especially those who work part-time hours, is a NES for minimum hours. Under *WorkChoices* employers were able to utilise collective workplace agreements and AWAs to undermine the minimum number of hours per day that part-time and casual employees could be required to work. The *Lowering the standards* report found that prior to the introduction of *WorkChoices* the award standard for minimum daily hours in the retail and hospitality industries was four hours for part-time and casual workers. Most of the agreements analysed for the report did not provide for minimum daily hours for part-time and casual work, moving this workplace condition into the realm of employer prerogative and giving employers considerable flexibility in how they could schedule labour. Where the agreements analysed did provide for minimum daily hours, the average was 2 hours for part-time workers and 1 hour for casual workers (Evesson et al. 2007b). The requirement to work such short periods does not consider factors such as workers' travel time and costs.

A Better Standard:

The NES should:

- Provide a clear maximum number of hours per week to ensure genuine occupational health and safety protection for employees.

- Explicitly extend the right to refuse additional hours if they are unreasonable to casual employees as well as permanent employees.
- Ensure that part-time and casual workers cannot be required to work hours that are so short as to create a disadvantage for the worker.
- Ensure that workplace agreements do not undercut state and industry based provisions in relation to minimum hours of work.

Requests for flexible working arrangements

The links between caring and casual or part-time employment have been clearly identified (ABS 2005). A high proportion of casual employees have caring responsibilities. Many employees with caring responsibilities have found that they must leave the workforce to meet their caring responsibilities (ABS 2005), while those who continue with paid employment find that it is necessary to change their hours of work or employment status (Pocock 2003). There is evidence to suggest that many employees seeking workplace flexibility are required to relinquish permanent status in order to access part-time hours (Bamerry 2005; Charlesworth & Macdonald 2008; Pocock, Buchanan, & Campbell, 2004).

A Better Standard:

- The NES should ensure that employees seeking part-time hours are not required to change their employment status from permanent to casual in order to access these provisions.

Parental leave

Casual employees face many of the same issues as permanent employees in terms of access to parental leave, the right to request an extension of parental leave, antenatal leave, pre-adoption leave, concurrent leave and lactation breaks. These issues are discussed in our main submission.

As is the case for permanent employees, the provision that casual employees must have worked for an employer for 12 months excludes many casual workers who need access to parental leave and a right of return to employment.

Casual employees do not currently have access to paid annual or sick leave, without these forms of leave the need for paid parental leave is crucial for casual employees. The provision of a minimum 14 weeks paid parental leave as a national minimum employment standard would ensure that casual employees would have adequate time away from the workplace on the birth of a child.

Casual employees have less security than permanent employees and have less access to redundancy and termination provisions. In this light a guaranteed right of return to a position of equal status and earnings within an appropriate geographical location is of utmost importance to casual employees.

A Better Standard:

The NES should:

- Ensure that casual employees who have at least 6 months service are protected by the Parental Leave and Related Entitlements Standard.
- Provide casual employees with a minimum period of 14 weeks paid parental leave.

- Ensure that employers are required to return casual employees to a position nearest in status, location and remuneration to the pre-leave position.

Annual leave

As noted in our main submission, casuals have long been exempted from paid annual leave in Australia. However the increasing use of casual employees for regular and ongoing work has undermined the justification for excluding them from this form of leave. Lack of access to paid leave for these workers is a social justice issue and may in fact be a form of indirect discrimination. Employees whose work is truly casual, that is short-term, irregular or seasonal, could be paid out their leave entitlements in cash on termination of employment.

A Better Standard:

- The NES should provide casual employees access to paid annual leave of four weeks per annum.

Personal/carer's leave and compassionate leave

Casuals have long been exempted from paid personal, carer's and compassionate leave in Australia. However the increasing use of casual employees for regular and ongoing work has undermined the justification for excluding them from these forms of leave. Lack of access to leave for these workers is a social justice issue and may in fact be a form of indirect discrimination. Given the high proportion of casual employees who are women and who therefore bear the greater burden for caring within our society the extension of paid carer's leave, paid personal sick leave and paid compassionate leave to casual employees should be a high priority. The proposed NES should provide the universal minima for all employees in Australia. Casual employees should not be excluded from these minima.

A Better Standard:

- The NES should ensure casual employees have access to paid carer's leave, paid personal sick leave and paid compassionate leave.

Community Service Leave

As noted above, the proposed NES should provide the universal minima for all employees. Casual employees should not be excluded from access to payment for jury leave.

A Better Standard:

- The NES should ensure casual employees have access to paid leave for jury service and access to community service leave on the same basis as permanent employees.

Long Service Leave

Details on the proposed standard for long service leave have not been finalised. However it should be noted that long-term casuals are explicitly included in state-based long service leave legislation. Any NES for long service leave will need to recognise state-based legislative provisions covering casual employment.

A Better Standard:

- The NES should ensure casual employees have access to paid long service leave on the same basis as permanent employees.

Public Holidays

Casual employees are currently not eligible to be absent from work on a day that is a public holiday and be paid for that day. If they are required to work on a public holiday they frequently do not have access to public holiday penalty rates that would be paid to permanent workers. Under *WorkChoices* many collective agreements in the retail and hospitality sectors specify that permanent employees have the right to refuse to work on public holidays if this is unreasonable, however, in a significant proportion of agreements casual employees are excluded from these provisions (Workplace Research Centre 2007).

A Better Standard:

The NES should explicitly:

- Extend the right to be absent from work on a day that is a public holiday and to be paid for that day to casual employees.
- Extend the right to refuse work on a public holiday if it is unreasonable to casual employees as well as permanent employees.

Notice of termination and redundancy pay

The proposed NES should provide the universal minima for all employees. Casual and temporary employees should not be excluded from termination and redundancy provisions. Long-term casual and temporary employment is a unique feature of the Australian labour market and should be recognised in termination and redundancy provisions.

A significant proportion of casual employees are employed in small to medium businesses. Employees in small businesses are susceptible to downsizing and redundancy procedures, and casuals, without access to termination and redundancy are extremely vulnerable. There should not be any exemption to pay redundancy pay where there are less than 15 employees. State-based legislation and industry-based awards currently do not include exemptions for small businesses.

A Better Standard:

The NES should ensure that:

- Casual and temporary employees are not excluded from termination and redundancy provisions.
- Employees in all businesses have access to redundancy provisions regardless of the size of the business.

References

ABS. (2005) *Australian Social Trends* (Cat. No. 4102.0) Canberra.

ABS. (2007a) *Australian Labour Market Statistics* (Cat. No. 6105.0) Canberra.

ABS. (2007b) *Labour Mobility Australia 2006* (Cat. No. 6209.0) Canberra.

Bamberry, L. (2005) *Globalisation, gender and teachers' employment*. Unpublished PhD thesis, University of Sydney.

Buchanan, J. (2004) *Paradoxes of significance: Australian casualisation and labour productivity* (acirrt Working Paper No. 93) Sydney: acirrt, University of Sydney.

- Burgess, J. (1994) Non-standard and precarious employment: a review of Australian workforce data. *Labour Economics and Productivity*, 6(2), 118-129.
- Burgess, J., & Campbell, I. (1998) Casual employment in Australia: growth, characteristics, a bridge or a trap? *Economic and labour relations review*, 9(1), 31-54.
- Campbell, I. (1996) Casual employment, labour regulation and Australian trade unions. *Journal of Industrial Relations*, 38(4), 571-599.
- Campbell, I. (2000) The spreading net: age and gender in the process of casualisation in Australia. *Journal of Australian Political Economy* (45), 68-98.
- Charlesworth, S. and Macdonald, F. (2008) 'The Unpaid Parental Leave Standard: What Standard?', Refereed proceedings of the *21st Conference of AIRAANZ*, Melbourne, 6-8 February 2008.
- Evesson, J., Buchanan, J., Bamberly, L., Frino, E., & Oliver, D. (2007a) '*Lowering the standards*': from awards to Work Choices in retail and hospitality collective agreements: Workplace Research Centre, University of Sydney.
- Evesson, J., Buchanan, J., Bamberly, L., Frino, E., & Oliver, D. (2007b) *What do Work Choices agreements look like?* Unpublished report. Workplace Research Centre, University of Sydney.
- Glezer, H., & Wolcott, I. (1997) Work and family values, preferences and practice. *Australian Family Briefing* (4), 1-4.
- Pocock, B. (2003) *The work - life collision: what work is doing to Australians and what to do about it*. Annandale, N.S.W.: Federation Press.
- Pocock, B., Buchanan, J., & Campbell, I. (2004) *Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*. Sydney: Chifley Research Centre.
- Pocock, B., Prosser, R., & Bridge, K. (2004) '*Only a casual...*': How casual work affects employees, households and communities in Australia. Adelaide: Labour Studies, University of Adelaide.
- Smith, M., & Ewer, P. (1999) *Choice and coercion: women's experience of casual employment*. Coogee: Evatt Foundation and New South Wales Department for Women.
- Still, L. V. (1996) *Brave new world? - women and part-time employment: the impact on career prospects and employment relations* (Women and leadership series paper No. 5) Perth: Edith Cowan University.
- Watson, I. (2004) Wages of part-time workers in Australia: an initial appraisal using HILDA. Paper presented at the acirrt in-house seminar.
- Whitehouse, G. (2001) Recent trends in pay equity: beyond the aggregate statistics. *Journal of Industrial Relations*, 43(1), 66-78.
- Whitehouse, G., Boreham, P., & Lafferty, G. (1997) From casual to permanent part-time? non-standard employment in retail and hospitality. *Labour and Industry*, 8(2), 33-49.
- Workplace Research Centre. (1993-2007) *ADAM Report*. University of Sydney.
- Workplace Research Centre. (2007) Unpublished data, OLAA Database. University of Sydney.

APPENDIX 2: CONTINUOUS DURATION WITH CURRENT EMPLOYER/ BUSINESS BY FORM OF EMPLOYMENT AND SEX, NOVEMBER 2006

Males	'Permanent'	'Casual'	All employees	Owner-managers incorporat'd enterprises	Owner-managers unincorp'd enterprises	All workers
Less than 1 year	18.6	47.7	24.8	6.2	11.2	21.2
Less than 3 months	4.0	17.1	6.9	*0.9	3.1	5.8
3 and under 6 months	4.8	14.1	6.8	1.7	3.3	5.9
6 and under 12 months	9.7	16.5	11.2	3.6	4.9	9.6
1 and under 5 years	42.6	43.3	42.7	30.5	35.3	40.6
5 and under 10 years	13.2	3.7	11.2	13.4	10.9	11.3
10 years or more	25.6	5.2	21.2	49.9	42.5	26.8
Total ('000)	3352.3	917.7	4269.9	477.7	821.7	5569.3

Females	'Permanent'	'Casual'	All employees	Owner-managers incorporat'd enterprises	Owner-managers unincorp'd enterprises	All workers
Less than 1 year	18.4	44.0	25.9	8.1	15.6	24.2
Less than 3 months	4.1	15.4	7.3	*0.9	3.3	6.7
3 and under 6 months	5.2	12.4	7.3	3.8	3.7	6.8
6 and under 12 months	9.2	16.2	11.2	3.5	8.6	10.7
1 and under 5 years	43.7	42.7	43.4	34.1	39.3	42.7
5 and under 10 years	14.1	5.7	11.7	15.0	12.3	11.9
10 years or more	23.7	7.7	19.1	42.8	32.8	21.3
Total ('000)	2818.2	1155.1	3973.3	196.0	409.3	4578.6

Source: ABS, Forms of Employment Australia, November 2006, Cat. no. 6359.0.

'Casual' = employees who were not entitled to either annual leave or sick leave in their main job'. From August 2000, the terms 'permanent' and 'casual' were replaced with new terms: 'with leave entitlements' and 'without leave entitlements' respectively (see ABS, Employee Earnings, Benefits and Trade Union Membership, August 2000, Cat. No. 6310.0, 48).