Introduction

Thirty years ago, a national meeting of industrial relations scholars might have discussed wage-relativities, earnings drift, incomes policy, the role of the industrial tribunals, wages policy and unemployment (see for example Niland and Isaac’s edited collection of 1967, republished in 1975). Social and economic changes since the 1970s have forced us to refine and extend the list of central topics in Australian industrial relations. One key aspect of change, underpinning any notion of ‘new industrial relations’, is the increased diversity of forms of employment, including the growth of some forms that deviate radically from the familiar frame of full-time, ongoing award-based employment. Thirty years ago the form of employment itself – the basis of the contract of employment and the reach of regulation – was not a prime focus of analysis and was largely taken for granted. Today, it is rightly at the heart of our research and it is increasingly moving into the centre of contemporary policy concern.

Some politicians and commentators blithely skip over this aspect of change. They argue that the diversification in forms of employment in Australia is unproblematic. They suggest that it represents an evolution that largely responds to the more diverse needs and preferences of a new workforce; it simply represents increased flexibility in contrast to the narrow rigidity imposed by labour regulation in the past. This paper advances a more nuanced view, based on the rich body of research conducted over the past decade (see also Pocock, 2003; Watson et al., 2003). We argue that some diversification is welcome and necessary; for example, we favour defending and extending options for good quality part-time work. However, other aspects such as the incursion of labour-hire arrangements into certain industries, increased casualisation, and the emergence of artificial arrangements of ‘dependent contracting’ are less welcome and less necessary. They are often associated with poor quality conditions of employment, and they are best seen as providing flexibility for employers, not for employees. Far from corresponding to the needs of the new workforce, they impede the realization of these needs and produce a cascading set of problems for workers, families, communities and indeed enterprises themselves.

In our opinion, the diversification of forms of employment is a major issue that
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requires careful analysis and innovative policy-thinking. This paper does not tackle all aspects of the issue. We allude to a broad policy program in the final sections. But the main body of the paper focuses just on one aspect – the rise of casual work. This form of employment is highly distinctive to Australia, and its rapid growth in the past twenty years to such a prominent part of the employment structure is a significant challenge to research and policy.

The first part of the paper briefly summarises the evidence on casual work, including ‘permanent casual’ work, and why it is a problem in Australia. The second part looks at the factors that have facilitated its growth. The third section considers the ways in which casual work has been regulated, with particular attention to some of the new developments in the past three years such as the right of conversion. Finally, in the fourth section, we sketch out some new policy initiatives.

The Problem

In Australia, as in most OECD countries, the twentieth century saw a slow process of accretion of rights and benefits within the standard employment relationship, starting with employment security but readily extending out to guaranteed minimum wages, standardised working-time arrangements and rights to collective representation. As in most OECD countries, the framework of protection and minimum standards in Australia covered the vast majority of jobs. Recent years, however, have seen two developments that seem to reverse the earlier achievements and to threaten a deterioration in the quality of jobs. On the one hand, the set of rights and entitlements for the core group of full-time, ongoing employees have been whittled away, in particular in the 1990s in the course of the pursuit of employer-oriented flexibility by means of ‘enterprise bargaining’. On the other hand, there has been a sharp increase in jobs that stand, whether at a greater or lesser distance, outside the framework of standard protection. These jobs are characterised by a shortfall in protection, whether large or small, in comparison with the majority of jobs within the framework of the protective system.

The main path for the growth of poorly protected jobs in Australia has been the category of ‘casual’ work. This is by no means the only site of problems, but it is certainly the site of some of the biggest problems. The category of casual covers the largest group of workers; it is growing rapidly; and the shortfall in rights and benefits in comparison with permanent work is particularly sharp.

The substantial size of the casual workforce is clear enough from the official statistics. According to one standard ABS measure, a ‘casual employee’ is defined as an employee who is not entitled in their main job to paid annual leave and paid sick leave. ‘Casual employees’ in this sense numbered around 2,160,000 persons in August 2002. This represented 27.3 percent of all employees (or 23.2 percent of the total employed labour force).

1 In several recent irregular or occasional surveys the ABS uses a new measure of ‘self-identified casual’. Apart from minor changes, this involves two main changes in comparison with the standard measure based on leave entitlements. First, it removes owner-managers of incorporated enterprises from the count of employees. Second, amongst the remaining group of employees without leave entitlements it distinguishes those who identify themselves as casual and those who do not. The first change is very useful, but the introduction of a filter according to self-identification is hard to justify (see Campbell and Burgess, 2001b). It is true that the vast majority (88.8 percent in 2001) of employees without leave entitlements do in fact identify themselves as casual, but the fact that a small minority are removed from the figures introduces an unfortunate complication. In November 2001 self-identified casuals numbered 1,811,000 (24.8 percent of all employees) (ABS 6359.0).
point to a trajectory of rapid growth, the number having risen from 850,000 persons or 15.8 percent of all employees in 1984. In the 1990s the absolute number of full-time ‘permanent’ jobs declined while growth in casual employment accounted for most of the net growth in employment (Borland, Gregory and Sheehan, 2001: 11-12).

Casual jobs can of course be quite diverse. Around two thirds are part-time (representing approximately 60 percent of all part-time waged jobs), while the remaining one third are full-time jobs (representing approximately 13 percent of all full-time waged jobs). There is also diversity according to occupation, sector and industry. Casual work is concentrated in industries such as retail (where 45 per cent of employees were casual on a leave entitlement basis in 2002) and accommodation, cafes and restaurants industries (56 per cent), but large numbers can also be found in expanding industries such as property and business services (27.5 percent) and health and community services (22.5 percent). Moreover, casual employment has grown significantly in many industries since 1985, including manufacturing (from 8 per cent to 16 per cent), and construction (18 to 32 percent) (Watson et al. 2003: 69). Similarly, there can be diversity in terms of features of the job such as the regularity of the hours and the expectations of the employer and employee about the ongoing nature of the job.

Corresponding to the diversity in jobs is diversity in the social groups that take up the jobs. Part-time casual work is common both amongst young workers who are full-time students and – to a lesser extent – amongst women seeking to balance paid work with family responsibilities. Much of this concentration is to be explained in terms of preferences for reduced hours of paid work rather than in terms of any putative preference for casual conditions. While many women seek part-time work when they are caring for dependents, there is no evidence that they desire part-time work under inferior conditions (Pocock, 2003). In addition, casual work is expanding amongst most social groups, including in particular young persons who are not students and prime- and mature-aged men.

There can also be diversity in the patterns of participation in casual work. Some workers may have a casual job for a brief period of time before moving on to a permanent job (either in the same occupation or, more commonly, as in the case of students, in a completely different occupation). However, others may be locked into casual work for extended periods of their working lives. Workers can be trapped in either of two ways. First, they can be trapped in casual labour markets, where they cycle in and out of short-term casual jobs, periods of unemployment, periods of training, and periods out of the labour market altogether. Second, they can be trapped in the one casual job for a lengthy period of time. This second form of entrapment is linked to the fact that casual jobs in Australia are not always, as in some dictionary definitions of ‘casual’, short-term and irregular jobs. On the contrary they are often long-term and regular jobs, in which workers are able to build up lengthy periods of tenure. According to HILDA Wave 1 data, 57 per cent of casual workers have more than one year’s tenure, with the mean tenure amounting to 2.6 years (Wooden 2003: 3).

This draws attention to the peculiar phenomenon of what are sometimes called ‘permanent casuals’ (or ‘long-term’ or ‘ongoing’ casuals). In terms of selected features such as the regularity of schedules, number of hours and earnings and the expectation of ongoing employment, some casual jobs appear pretty much the same as those held by standard ‘permanent’ employees. Yet they differ markedly from
employees are trapped in such jobs for lengthy periods. The disadvantages for employees can in turn spill out into impacts upon families, communities, and the larger society. It might seem that costs for employees are counterbalanced by benefits for employers. But this is not necessarily the case. Certainly, employers can find advantages under headings such as cheaper labour costs, administrative convenience, greater ease of dismissal, ability to match labour-time to fluctuations in workload, and enhanced control. These advantages help to explain the dynamic behind the growth of casual employment (see below). However, they are often only short-term advantages, which come with long-term costs. There is evidence that over time the growth in casual employment, while it might increase control of the payroll and labour deployment and reduce costs, will result in poorer skill development and utilization (Hall et al., 2000). Similarly, highly flexible labour practices often operate at the expense of the innovation necessary for long-term viability at the enterprise or industry level (Michie and Sheehan, 2003). Moreover, recourse to casual employment can consolidate patterns of competition according to labour costs. This can create a vicious circle which compels other employers to follow suit, even against their better judgment. As such it can damage prosperity and productivity growth in the broader industry and indeed the economy as a whole.

The problems caused by casual employment are most severe for ‘permanent casual’ employment. It is in this case that the disadvantages of casual employment threaten to have the most powerful long-term effect on employees. At the same time, this is the form of casual employment that is most clearly an abuse of the category of ‘casual’. Its use by employers cannot be related to any compelling need for labour to meet short-term, irregular needs. Instead it is most frequently used as a simple

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2 It is conventional in academic literature and industrial tribunals to use a simple bipartite division, which distinguishes ‘permanent’ (or ‘long-term’ or ‘regular’ or ‘ongoing’) casuals from ‘true’ (or ‘short-term’ or ‘irregular’) casuals (Creighton and Stewart 2000: 213-216; see Owens 2001). This dualistic division is useful as a starting point, but in the medium term it will be necessary to develop a richer typology of the differences in casual jobs in terms of regularity and tenure of employment.
equivalent to standard ‘permanent’ employment. The advantage of casual employment to employers in this case centres on its disadvantages for employees, i.e. the inferior rights and entitlements associated with casual status. In effect, casual status is being used – or more correctly abused – in order to evade the rights and benefits associated with standard employment. It is precisely this abuse of casual status associated with ‘permanent casuals’ that appears as the main scandal of the Australian system and the main challenge for research and policy.

What Explains the Growth in Casual Employment?

There is no room here for a comprehensive explanation of the growth of casual employment in Australia, which would need to canvas a wide range of factors on both the supply side and the demand side of labour markets. Here we confine ourselves to a few remarks on the importance of the regulatory framework.

The regulatory framework is important because it defines the opportunities for the growth of particular forms of employment. The fact that poorly protected employment has expanded in Australia in the distinctive form of ‘casual’ employment is clearly related to the distinctive features of the regulatory system. In contrast to most other labour regulation systems, the Australian system permits employees – with remarkably few controls – to be employed without rights and benefits as ‘casuals’. In the award system, rights and benefits were defined for most employees along the conventional axis of full-time ongoing employment, but special clauses allowed for workers to be employed under certain forms of employment that were exempted from the standard provisions. These forms of employment included probationary employment, fixed-term employment, part-time employment and apprenticeships. But the most frequently-found form was ‘casual’ employment. This form of employment was subject to a blanket exemption that covered almost all rights and benefits (but with a casual loading on the hourly rate of pay, partly intended as compensation for the foregone benefits).

No doubt this exemption was designed to allow room for employers in certain industries to deploy labour for short-term irregular work demands, as in the text book definition of ‘casual’. However, the award definition of casual was much broader. They are often defined in awards somewhat tautologically, as ‘casual’ because they are paid ‘as such’: form overrides practical substance as one industrial lawyer has put it (Stewart 2002: 10). Nor did the controls found in such clauses help much. Sometimes they sought to set a limit on the length of time workers could be employed under such contracts but more often they took the simple form of quotas for casuals (number of employees or number of hours). The broad definition and the poor design of the controls left room for the category of casual to be abused, in particular by means of the emergence of ‘permanent casuals’.

The existence of this exemption, in awards and also in statute, constitutes a type of gap in the regulatory system. It is complemented by other gaps, associated with the poor coverage of labour regulation and the poor enforcement of existing rules, which also provide fertile soil in which unprotected employment can survive and flourish. However, it is the first gap which is perhaps the most remarkable. It is hard to find any other industrialized society in the world which officially sanctions such free reign for employment without rights and benefits (Campbell and Burgess, 2001a).

The gaps in the regulatory system define opportunities. But they do not prescribe outcomes, which are dependent on how the opportunities are used by the major social actors. In this case, the crucial issue is the
response of employers. There is little evidence of a widespread demand amongst individual employees for employment without rights and benefits. In an environment of increasing competition, cost minimisation and public sector stringency, employer preferences have been decisive. They have taken advantage of the generous opportunities opened up by the gaps in the regulatory system in order to redesign jobs and replace standard permanent employment with casual employment under inferior conditions.

The result has been a disaster. Other OECD countries have modernized their regulatory system, upgrading standard ‘permanent’ employment, integrating part-time employment, and developing appropriate forms of non-permanent employment that can meet the needs of both employers and employees. In Australia by contrast an inadequate regulatory system has been preserved, and the gaps in the system simply widened through deregulation.

This short summary points to some important conclusions for policy. The expansion of casual employment in Australia has not been the outcome of any specific public policy program: it is the unplanned outcome of the evolution of work within an imperfect regulatory regime. Most important, it is not only unplanned but also unwelcome and unnecessary. The challenge for policy is to develop regulatory initiatives that can lead to more positive developments.

**Past Responses to Casual and Part-time Employment in Australia**

We refer to a failure to modernize the regulatory system. But this does not mean that there has been an absence of efforts, at whatever level (employer rules or codes of practice, informal trade union action, awards and collective agreements, statute, etc), to deal with the problems. Indeed there has been a long history of tinkering with regulation, accelerating in the most recent period as the problems have become more pressing. However, these attempts have so far met with little success, and casual employment continues to expand and cause difficulties.

Three different approaches can be used in seeking to deal with the problem of casual employment through regulation: a limitation approach, a compensatory/cost approach, and a conditions-attachment approach.

Under the first approach, a set of measures have aimed to limit the number of non-standard workers like casuals and part-timers directly, either by means of quotas and ratios or by means of limits on the length of employment of casuals. In the Full Bench Decision issued by the Commission on 29 December 2000 it was noted that nearly half of 86 awards in manufacturing provide ‘for a maximum period of engagement for casuals of two to four weeks, and 69 percent provide for eight weeks or less’ (print T4991: 23). Such limitations are concentrated in male-dominated areas of employment. The second set of compensatory or cost measures have centred on the casual loading, primarily aimed at compensating employees for the disadvantages of casual status. This loading currently varies from 15 to 33 per cent. The third conditions-attachment approach attempts to narrow the shortfall in conditions of casual employment by attaching existing or emergent employment conditions to at least some groups of casual employees.

In the past the main emphasis in the award system was on the limitation approach, with some effort to adjust casual loadings (itself often seen as an indirect limitation because of its effect as a disincentive to employer). More recently, attention has also been given to attaching conditions such as rights to unpaid parental leave or rights to make claims for unfair dismissal, at least to long-term casuals. This has helped to draw attention to the plight of ‘permanent casuals’.
In the most recent period several trade unions have pursued new award regulation. This includes improvement in conditions for casuals, but it also includes some rethinking of limitations. Limitations such as quotas are proscribed under the *Workplace Relations Act*, but it remains possible in principle to pursue other restrictions such as limits on the length of time that workers can be employed as casuals (with automatic conversion to ‘permanent’ employment when this period is elapsed). In 2000, clerks in the South Australian private sector were given the right to request to become permanent after a year of ongoing and regular casual employment. This request can be refused by the employer but should not be ‘unreasonably’ refused. The Australian Manufacturing Workers Union (AMWU) won a similar, constrained right for workers to request conversion from casual to permanent work after six months regular systematic employment (with the employer having a right to refuse but not unreasonably).

The right of conversion is best seen as a weakened form of the traditional regulation in terms of maximum periods of engagement (Owens, 2002). In this case, the elapse of time does not trigger an automatic conversion but only the possibility of a claim for conversion. Unfortunately, early anecdotal evidence suggests that this right has been only lightly used, probably because of the weak position of casuals (and perhaps because of the attraction of a casual loading to low paid workers).

Recent efforts have several positive features. Attaching standard benefits to workers on long-term casual contracts can help to improve conditions for these workers. Improvements in other conditions such as minimum start periods are steps in the right direction, though increases in the casual loading are more open to criticism as inconsistent with longstanding principles (Whitehouse and Rooney, 2003). The search for more appropriate limits on casual employment, aimed at restricting casual employment to ‘true’ casual work (that is short term or unpredictable), is particularly welcome.

However, the results remain limited. Regulatory gains have been modest, and they have done little to inhibit the growth in casual employment, including ‘permanent casual’ employment.

**Time for A Renewed Effort: Policy Objectives and Options**

Casual employment has grown in an environment of patchy agreement limitations on the numbers or length of employment of casuals, a general retreat from award restrictions, and weak enforcement (assisted by declining union density). Neither enterprise bargaining, individual agreements, reform of awards, *ad hoc* legislative changes nor reliance on employer goodwill and voluntary action have adequately met the growing problem of casual employment in contemporary Australia.

A new effort is necessary if the current trajectory is to be arrested. In developing policy objectives and policy options, we start with casual employment. However, it is necessary to broaden out the discussion to take into account the need to improve the quality of part-time work, to plug other gaps in the regulatory system and to develop an overall commitment to more and better jobs (‘decent work’).

We propose four distinct objectives that need to be pursued.

The *first* objective is to *limit casual employment so that casual status is not misused*. Casual employment with few rights and benefits can be justified as a minor component of the employment structure, to be used as a way of meeting very short-term or irregular work demands. The direct reform of casual employment in Australia must centre on making sure that casual conditions are confined to such work. In other words, the objective is to eliminate the
current over-use of the category of casual, whereby ‘permanent casuals’ are substituted for employees with standard rights and benefits.

The second objective is to raise the quality of part-time work. The central objective here is to remove some of the problems that are associated with part-time work in Australia and to improve its quality. This in turn entails subsidiary objectives such as: increasing the availability of part-time work with substantial hours; increasing access to part-time work for men and women; establishing the same protections as full-time work in respect to job protection, predictability of hours, working beyond contracted hours and discrimination; pro rata wages and access to benefits; equal access to training and career progression; and increasing the ability for employees to transfer either way between full-time and part-time status according to their needs. Improving the quality of part-time work functions as a very important indirect way of reforming a large portion (around two-thirds) of all casual work. But it would also reach out to tackle some of the problems that also affect ‘permanent’ part-time work (Junor, 2000).

The third objective is to improve enforcement and extend coverage to ensure adequate minimum labour standards. Quite apart from the detail of provisions for casual and part-time work, employment without rights and benefits can flourish in Australia as a result of other gaps in the regulatory system. The two most important additional gaps are the poor enforcement of existing regulations and the limited coverage offered by regulatory instruments such as awards and legislation built around a narrow definition of ‘employee’. A comprehensive approach needs to close these gaps as well.

The fourth objective is to contribute to a new approach to working life: ‘decent’ work for all Australians. The problems associated with casual and part-time work are not unfortunate anomalies existing within an essential sound policy mix. Rather, they are merely the most obvious problems concerning work and quality employment. They are the result of an inadequate approach to the arrangements governing Australian working life today. Consequently, even perfect policies on casual and part-time work will be ineffectual if they are not implemented in a broader policy mix that engages with the key challenges of working life at large. Without doubt these are unemployment, the lack of quality jobs for many of those in paid work, and the lack of ‘voice’ for many workers.

**Policy Options**

There is no room to discuss the options that correspond to each of these objectives. We concentrate just on a few points in connection with the first objective – the reform of casual employment.

We recommend an approach that directly tackles the problem of employment without rights or benefits and that complements established approaches (eg enterprise agreements, employer initiatives) with increased use of legislation and existing industrial machinery to achieve systemic change. Greater use of regulatory initiatives, including awards and agreements is required to ensure more appropriate use of casual employment so that only workers appointed for short periods (for example, less than three months), or working on an irregular (for example, relief) basis - that is ‘true casuals’ - can be employed on a casual basis. All other employees should have access to the protections, rights, entitlements and obligations associated with ongoing or fixed-term employment.

The principle of a conversion right (from casual to ongoing status), as it is currently framed in a growing number of awards, is a very small step forward. This relatively new award right has only been lightly used. An individualised conversion approach, reliant on action by insecure
casuals and at the price of their casual wage loading, will not remedy the current systemic misuse of ‘permanent casuals’. Conversion rights are weaker and less effective than an approach that constrains the use of casuals directly, ‘at source’.

We also recommend as a transitional measure the protection of existing arrangements for all employees currently working as ‘permanent casuals’. They should have a right - but no obligation - to convert to ongoing status. This is especially important to ensure that those currently employed as casuals – even where, in substance, they are ongoing – do not lose current loadings around which consumption norms and financial obligations are established.

Specifically we recommend reforming casual work through the following measures:

- Introducing a new object of industrial law: employment security and an expansive employment safety net
- Extending the powers of the Australian Industrial Relations Commission.
- Clarifying legal definitions of employment forms.
- Strengthening conversion rights
- Introducing a comprehensive schedule of minimum employment provisions
- Upgrading awards
- Reviewing the Casual Loading
- Encouraging a complementary state/federal strategy
- Ensuring no disadvantage to current casuals

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