8. The rise in precarious employment and union responses in Australia

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INTRODUCTION

Precariousness is a contested concept (Barbier, 2005). In this chapter precarious employment is understood as employment that is deficient in one or more aspects of labour security when compared with the societal standard for a decent job (Vosko et al., 2009). The rise in precarious employment in Australia refers to two distinct but overlapping processes. First, it refers to the resurgence of certain forms of non-standard employment that are characterized by substandard rights and benefits. Second, it refers to the spread of precariousness within sections of what has usually been regarded as the core workforce, supposedly protected by a full-time ‘permanent’ employment contract.

Not all non-standard forms of employment are precarious. The three forms that attract concern in Australia are: marginal self-employment, fixed-term waged work and casual waged work. Concerns with self-employment are focused on a group of independent contractors who are more properly regarded as ‘dependent’, that is, subordinate in practice to just one employer. They are often indistinguishable from employees in the way they work within the workplace, though they lack the standard rights and benefits of employees. The current size of this group is small – an estimated 2.6 per cent of the workforce (Table 8.1) – but dependent contracting is common in blue-collar industries such as transport and construction, where it is used by employers to avoid the costs associated with standard employment and union organization (Productivity Commission 2006, pp. 132–8).

Apart from small categories such as apprentices and trainees, the two main types of temporary, that is non-permanent, waged work in Australia are fixed-term and casual employment. Fixed-term employees, those with employment contracts that terminate on a specified date or on completion of a set task, are familiar in international comparison and differ from permanent employees mainly in terms of less employment security (Watson
et al., 2003, pp. 66–7). The category of fixed-term workers remains small – an estimated 5.3 per cent of the workforce (see Table 8.1) – but they are concentrated in sectors such as education and the public service.

The category of *casual* employment is more unusual in cross-national comparison (Campbell, 2004). Historically, this has been the type of employment specified in labour regulation as the main alternative to permanent employment (O’Donnell, 2004). Because casual employees enjoy little right to protection against unfair dismissal and no right to notice (or severance pay) in case of dismissal, they can be discharged with ease at almost any time. Most dramatically, casual employment is exempted from almost all rights and benefits that are attached to permanent as well as most fixed-term contracts, including even such basic entitlements as paid annual leave, sick leave and public holidays. The central feature of casual work is a simple entitlement to an hourly wage, enhanced in some cases by a so-called ‘casual loading’ on the hourly rate of pay. As a result, the deficit in rights and benefits separating these jobs from permanent employment is much larger than the deficit separating fixed-term from permanent employment. Casual work is most accurately regarded as a particularly degraded form of temporary employment.

Because casual work is lacking in rights and benefits, it is remarkably plastic in practice and can be used by employers in several ways. It can be full-time, though most of it is part-time (and indeed the majority of all part-time employees in Australia are classified as casual). Similarly, some casual employees can build up long periods of tenure in their job – earning the colloquial title of ‘permanent casuals’ (Owens, 2001) – but most are in short-term, irregular jobs characterized by high turnover and high levels of employment insecurity ((Australian Bureau of Statistics) ABS, 2006). Casual work is more significant in the employment structure than fixed-term employment, and at the latest count just over 2 million ‘casual’ employees made up 20 per cent of the Australian workforce (ABS, 2009, Table 1). Though there are major concentrations in private sector services, including retail and hospitality, casual employment can now be found throughout the employment structure, including in industries that had previously been dominated by standard employment, such as manufacturing and higher education.

Temporary agency work (‘labour hire’) is sometimes cited as an additional category of precarious work. Though information is sparse, we know that most agency workers are casual, while another small group are dependent contractors (Coe et al., 2009). Thus most would already have been counted in the previous estimates. The best estimate of the size of the temporary agency workforce is between 2.5 and 3 per cent of total employment (Hall, 2006). It is found in a variety of sectors, but controversy over
Globalization and precarious forms of production and employment

Table 8.1 Different types of employment, Australia 2007 (% of workforce)

<table>
<thead>
<tr>
<th>Weekly hours</th>
<th>Employment relationship</th>
<th>Employees</th>
<th>Self-employed workers</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Permanent</td>
<td>Casual</td>
</tr>
<tr>
<td>Full-time</td>
<td></td>
<td>48.6*</td>
<td>3.6</td>
</tr>
<tr>
<td>Part-time</td>
<td></td>
<td>12.3</td>
<td>15.2</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>61.0</td>
<td>18.8</td>
</tr>
</tbody>
</table>

Notes:
*Standard employment.
#Dependent contractors.

Source: van Wanrooy et al. (2007, p. 20), with additional data supplied on request.

its role in lowering wages and conditions is focused on its use in unionized blue-collar areas such as construction and manufacturing.

What is the pace of growth of these forms of employment over the past twenty years? Data are rough, but it is probable that dependent contracting has increased relative to the workforce as a whole (though self-employment as a whole is stable). There is little evidence of any relative increase in fixed-term employment. However, casual work, the largest category of precarious work, has clearly expanded, in particular during the 1980s and early 1990s. In the period of strong employment growth from the mid-1990s to 2008, the expansion of casual employment slowed down, but even in this period it exceeded the growth in the workforce as a whole, with the proportion of casuals rising, according to one estimate, from 16.9 per cent in 1992 to 20 per cent in 2008 (ABS, 2009). Growth is evident for part-time casuals but it has been strongest amongst full-time casuals.

The rise of precarious employment can also be understood in a second sense, as a spread of precariousness within parts of the core or standard workforce. In the past, the category of standard work – identified as in Table 8.1 with full-time, permanent waged work – was largely characterized by an absence of precariousness. Standard work was a good marker for a rich institutional setting, usefully characterized in terms of the 'standard employment relation' (SER) (Bosch, 2006, p. 43), which erected barriers against precariousness and provided decent wages and conditions for many, though not all, employees. In recent years, however, the SER has experienced a fracturing, whereby workers may retain basic aspects
such as a ‘permanent’ employment contract and an elementary wage but lose other aspects. A stark example concerns working time, which was standardized under the traditional model with substantial protections, including compensatory payments and rights to paid leave, but is now extensively ‘flexibilized’ (Campbell, 2008, pp. 135–41).

In short, standard work can be a further site for the resurgence of precariousness, supplementary to the more obvious process of expansion in precarious forms of work such as casual work. Both processes signal a recommodification of labour power or what can be called a fragmentation of the employment structure (Watson et al., 2003; Campbell, 2008). Though more coherent than the mosaic of employment arrangements found in the United States, the employment structure in Australia is now more disaggregated than in most European countries.

Though the two processes making up the rise in precarious employment are similar in their broad effects, the causal mechanisms are different and the challenges they pose for trade unions also differ. Both processes have roots in economic developments and changing product and labour markets, including the resurgence of mass unemployment. But they differ in their relation to government policy. Erosion of working conditions within the core workforce can be directly linked to government policy, which since the mid-1980s has been heavily influenced by philosophies of neo-liberalism and has pursued a series of initiatives aimed at lowering labour standards and increasing labour market flexibility. In contrast, the rise of dependent contracting and casual employment cannot be so easily traced back to conscious, planned action by neo-liberal administrators. Admittedly, some of the growth in casual work is due to the prohibition of restrictive clauses and the insertion of casual clauses in awards where these had not existed before, as in black coal (Waring, 2003). But more was due to employers taking advantage of existing gaps in the labour regulation system (Stewart, 2002; Pocock et al., 2004, pp. 18–25).

IMPLICATIONS FOR TRADE UNIONS

The challenge of precarious employment for unions must be understood within an historical perspective which recognizes distinct national paths of development (Dufour and Hege, 2005). We allude to one part of that story in the previous section – the introduction of the model of the SER. As in other countries, the trade union movement in Australia led a struggle to establish and generalize this model, conscious that decommodification of labour power is central to its fundamental labour market interests in discouraging competition amongst workers (Offe, 1985). Although the
specific form of the SER was marked by its origins and can be rightly criticized as a gendered model that privileged the male breadwinner (Whitehouse, 2004; Vosko, 2005), its establishment represented a major historical achievement for trade unions. As it was consolidated and embedded within a structure of labour regulation, trade unions in turn came to organize around it, that is, to recruit and represent workers who met the criteria of a ‘standard worker’. In this way the model became central to the identity, internal structures and strategies of many trade unions.

It is important to note that for much of their history trade unions in Australia have been stronger and less market-oriented than unions in other Anglophone countries. They benefited in their early years from favourable labour markets and prosperous economic conditions. After the Great Depression and strikes of the 1890s, they gained from the class compromises negotiated in the course of federation in 1901, whereby tariff barriers aimed at protecting local manufacturing were linked with expectations of decent wages and conditions (Macintyre, 1989). Trade unions, often craft or occupationally based but with a generous mixture of larger general and industrial unions, were integrated into the rather peculiar Antipodean system of labour regulation, centred on compulsory conciliation and arbitration (Isaac and Macintyre, 2004). Under this system, disputes between employers and trade unions were settled by industrial tribunals and the results were codified in legally binding awards, which set down minimum wages and conditions within particular occupations or industries. This became the vehicle by which unions were able to build up and generalize the Australian version of the SER. Trade unions were assisted by the arbitration system – granted rights to recognition, protection from competitors, and occasional help in recruitment through provisions for a de facto post-entry closed shop – and in turn they adapted to working within the system, with back-up support through the Labor Party, which from the early twentieth century had won a powerful position in the state and federal legislatures. Many small unions were ‘arbitrationist’, oriented to legalistic process before the tribunals and with little workplace presence, but others were more readily recognizable as strong unions that relied on mobilizing their members in order to drive collective bargaining, either as a preliminary to securing an award or as a postscript designed to improve on award conditions in specific workplaces (Bramble, 2001).

Since the mid-1970s, the strength of trade unionism has been ground down by the familiar sequence of economic downturns and recoveries, accompanied by extensive economic and labour restructuring and high levels of unemployment. Economic changes have been exacerbated by political changes, in which the class settlement forged at the turn of the twentieth century was dismantled, initially through reductions of tariff
barriers, financial deregulation, privatization, corporatization and new competition policies. These political changes in turn reverberated back on the economic structure, helping to foster a more hostile employer class and encourage new management practices that undercut union membership both in traditional areas of strength such as manufacturing, transport and underground mining and in more recently organized areas such as public sector white-collar work. A decisive policy step took place in the early 1990s, when neo-liberal policies were extended to labour markets. This involved slowly displacing the award system with elements of a new system (labelled ‘enterprise bargaining’) which, as in North America, redefined the scope of unions, confined union activity to a narrow field of single-employer bargaining, expanded the scope of management prerogative in areas where unions were absent or weak, and installed a rather bare ‘safety net’ of legislated minimum labour standards. The displacement of awards in favour of this new system began under a federal Labor government (1983–96) but it then accelerated and acquired a more distinctive anti-union edge under the succeeding Liberal–National Party Coalition government (1996–2007) (Cooper and Ellem, 2008).

Trade unions are still struggling to respond to the new conditions. The gradual transition to the new regulatory system has had a major impact, though it remains poorly understood and its main features are rarely criticized. Under the system of single-employer bargaining, the interests of trade unions are fractured and they are confronted by increasingly combative employers. Union density plummeted from around 45 per cent of all employees in the mid-1980s to just 19 percent in August 2008 (ABS, 2008a). This is complemented by an equally catastrophic decline in collective bargaining coverage, which can be estimated to have fallen from around 80 per cent in 1990 to around 40 per cent today (ABS, 2008b; van Wanrooy et al., 2009). Unions have been catapulted from a position where they had a legitimate and central place in the society to a position where they are reviled by policy makers and are struggling to retain influence even in well-unionized workplaces. Declining resources are sapped by increasing demands. Unions have been forced to use their narrowing room for manoeuvre in order to search for paths of ‘revitalization’ or ‘renewal’ (Frege and Kelly, 2003; Fairbrother and Yates, 2003). One response, strongly encouraged by the peak union body, the Australian Council of Trade Unions (ACTU) in the late 1980s and early 1990s, was amalgamation (Hose and Rimmer, 2002). More recently, the ACTU, impressed by examples from the USA, has propounded an ‘organizing model’, seen as a way to revive trade union activism at grassroots level and to boost membership (ACTU, 1999; Cooper, 2003; Crosby, 2005). Several unions have
appropriated the rhetoric – and even the practice – of ‘organizing’ (Peetz et al., 2007), but it is fair to say that most either stumble on with traditional approaches or seek to invent alternative renewal strategies.

The union movement was able in 2006–2007 to mount a vigorous campaign (‘Your Rights at Work’) against the provisions of the labour regulation system introduced by the federal Coalition government. Although the campaign proved influential in helping defeat the Coalition government in the 2007 election (Muir, 2008), the unions have not benefited as much as they may have hoped from the change to a Labor government. The structure of a US-style system, with a narrow base of single-employer collective bargaining and a minimalist ‘safety net’ of legislated labour standards, remains largely intact under the Labor government’s new framework, and weakened unions now face the added challenge of a major economic downturn (Forsyth and Stewart, 2009).

This brief historical sketch helps to clarify the nature and extent of the challenge that the rise in precarious employment poses for trade unions in Australia. Most immediately, this rise seems to place at risk a major historical achievement of the trade union movement and to restore conditions – albeit in a markedly different context – which trade unionism had fiercely opposed in its formative years. It foreshadows a disintegration of the traditional SER, opening the way for a dangerous recommodification of labour power.

Though it is by no means the only threat to trade unionism, the rise in precarious employment is indeed a significant menace. For example, the rise in precarious forms of work such as dependent contracting and casual work opens up a danger of unfair competition between groups of workers, unleashing downward pressure on wages and conditions and directly threatening to displace standard work and standard workers. The impact readily spills over from individual workplaces to affect broader industries and regions. In spite of expectations that precarious forms of work could work as a ‘buffer’ for the core workforce in industries such as retail (Carter, 1990, pp. 2–3, 47–8), this rarely proved true in practice. Even when limited in numbers, precarious forms of work threaten the good conditions of the majority section of the workforce. Similarly, where precarious employment has become strong, it can directly undermine the capacity of trade unions to take collective action, to improve wages and conditions, and to recruit and represent workers.

However, the growth of precarious forms of employment should not be considered just as a threat. Workers in precarious employment deserve and need the services of trade unions; they deserve practices of solidarity. As such, the challenge can also be seen as one of extending representation to vulnerable workers; an application of the traditional responsibilities of
a trade union movement, understood not just as a service organization but as a social movement. In a certain sense, the growth of precarious employment could even offer an opportunity for the trade unions. The pressure on the SER that is exerted by the rise in precarious employment can be seen as impetus for the trade union movement to modernize this component of its historical goals. Thus, the traditional form of the SER corresponded to a specific workforce, engaged in a particular pattern of participation in paid work, predominantly based on the male breadwinner household. The workforce and patterns of participation in paid work have changed, and as a result the SER also needs to be changed.

TRADE UNION RESPONSES

For much of the twentieth century precarious employment was not considered a pressing issue by Australian unions. Most full-time work was firmly integrated into an institutional setting of decent work, identified with the SER. Indeed the SER appeared to be steadily increasing its sway, as some discriminatory measures aimed at women and indigenous workers were abolished, and as new forms of part-time work in many industries were attached to the model as permanent part-time work. During the decades of economic boom after World War II most employers hesitated to use non-standard forms as a mechanism to impose cheaper forms of labour, and indeed the non-standard forms of most concern to unions seemed small and diminishing. In industries such as entertainment, sport, and visual arts and crafts, unions were obliged to deal with the dominance of intermittent freelance, contract and casual work (Crosby, 1992; Markey, 1996; Dabscheck, 1996), and the rather peculiar circumstances of the waterfront sustained casual labour as the leading form in that industry until the mid-1960s (Sheridan, 1998). But elsewhere, in areas where standard work prevailed, the union attitude to forms such as casual work tended to be one of indifference. The main action, in so far as there was any action, was by means of restrictive labour regulation, oriented to preventing casual clauses from being inserted into the award or, if that were not possible, limiting casual work through devices such as numerical quotas and perhaps operating an informal policy of exclusion from the workplace. Where casual work was permitted under regulatory rules, casual workers were rarely integrated into union membership or, if they were members, as in large retail workplaces, they were rarely represented effectively (Campbell, 1996).

Since the mid-1980s the favourable conditions enjoyed by trade unions have been overturned. Of course, the situation of individual unions is
varied, dependent on a range of factors, including the nature and extent of the challenge posed by the rise in precarious employment. Nevertheless, in most cases, traditional union responses have proven to be ineffective and unions have been obliged to adapt and to search for new responses. As noted above, fracturing within the ranks of the core workforce has been one path for the rise in precarious employment. Most unions, in both public and private sectors, have been obliged to fight employer efforts to remove or differentiate standard conditions, in particular around working-time arrangements such as leave entitlements, controls over schedules and payments for overtime or work in non-social periods. This is a straightforward challenge but one that is by no means easy to meet. In the wake of the erosion of the award system, unions seeking to preserve or improve working-time conditions have been increasingly forced back either onto collective bargaining at single workplaces or onto whatever other campaigning methods have eluded legislative restraints. Vulnerable workforces have suffered the worst results, but the general story for many workers is one of widespread concessions and a trade-off of working-time conditions for wage rises. Even when unions have been successful in holding the line, differential success often exposes union ‘hot shops’, especially in the private sector, to intensified employer hostility and intensified efforts to de-unionize.

The 1997–98 waterfront dispute pointed to the potential of an approach that engages the community (Wiseman, 1998). Some unions, especially those with limited bargaining power at workplaces, have experimented with new organizing techniques that draw on community support. The Liquor, Hospitality and Miscellaneous Union (LHMU), inspired by the Justice for Janitors campaign in the USA, has campaigned to improve working-time conditions for cleaners working for contract cleaning companies. The campaigns often targeted the building owners or managers rather than the contract cleaning companies, aiming to shift the economic calculations that sponsor increased work effort and reduced hours for cleaners. The union has achieved some success using codes of practice and other forms of ‘soft’ regulation, initially in government schools in Victoria (Howe and Landau, 2009) and then, more recently, in office buildings in the Central Business District.

The Australian Nurses Federation (ANF) has defied overall trends and achieved a growth in membership over recent decades (Bartram et al., 2007). In 2000, in public hospitals in the state of Victoria, the ANF won a major victory as a result of the introduction, in the context of an arbitrated award, of nurse–patient ratios that require a shutting down of beds if the number of nurses on duty is insufficient (Buchanan and Briggs, 2005; Gordon et al., 2008, pp. 93–178). This regulatory initiative to stave off
work intensification is unusual in that it institutionalizes union influence at the crucial level of staffing numbers, and it has proved highly popular with rank-and-file nurses, who have fiercely defended it in subsequent collective bargaining rounds. The success in developing this new regulatory initiative was founded on membership mobilization and support, the relative lack of competitive pressures in public sector hospitals, the ability of the union to ‘pattern bargain’ across different hospital sites, and the election of a state Labor government. But problems remain and even with favourable conditions the union has not been able to generalize the Victorian model to other states.

The challenge to unions is more complex and blurred when increased precariousness takes the alternative path of an increase in precarious forms of work. Unions have experimented with initiatives both at the level of representation, comprising recruitment strategies, internal union structures, provision of services and representation in bargaining and grievance procedures, and at the level of regulation, targeted at informal regulation at the workplace or formal regulation through collective agreements and government action.

The increase in individual contractors, who can be substituted for employees as a way of cheapening labour costs, has long been a source of unease, especially for unions in industries such as road transport (Bray, 1991) and construction (Underhill, 1991; Beaton, 2007). In a slightly different way, concern also applies to home-based workers in the clothing industry (‘outworkers’), who were considered as non-employees (subcontractors) until the Clothing and Allied Trades Union (CATU) in 1987, abandoning its previous blanket hostility to outwork, was able to have them recognized as employees, to secure outworker provisions in the federal award, and to recruit some outworkers into the union (Ellem, 1991). In spite of occasional hesitation (see Beaton, 2007), most unions have followed a similar path, seeking to integrate contractors into union membership, perhaps with special membership sections, and then to pursue improved wages and conditions that can reduce exploitation and the risk of unfair competition based on different forms of employment.

Recruitment of contractors can be impeded by the desire for independence that is often linked with self-employment. Recruitment has been easiest in cases, such as amongst technicians in telecommunications or professional engineers in the utilities, where employees were pushed reluctantly into contracting as a result of privatization and outsourcing. Union representation of professional engineers who are non-employees remains largely confined to labour market advice and some specialist services (Macdonald and Campbell, 2008), but unions in other occupations or industries have succeeded in developing more robust approaches.
Regulation of contracting has been difficult, especially as most workplace restrictions are now prohibited (Stewart, 2008), but unions continue to pursue reforms. For example, the initial achievement of the clothing union in securing award provisions was merely the start of a series of struggles to deal with the powerful pressures generating outwork at poor pay and conditions. Modelled on global campaigns against corporations such as Nike and Benetton, recent Australian campaigns have used links with community groups (churches and ethnic women’s groups), pressure on retailers (shame campaigns), draft codes of practice, and lobbying of parliamentarians (Weller, 1999; 2007; Delaney, 2007). Similarly, many unions pursue general legislative reforms, seeking to shift the labour law definition of the boundary between employees and non-employees. They have achieved some piecemeal success at state level, through mechanisms that allow independent contractors to be ‘deemed’ to be employees or that allow ‘unfair work contracts’ to be set aside, but have not made much progress at federal level, even with the change to a Labor government (Stewart, 2008).

The issue of contractors overlaps with the problem of temporary agencies, since the latter can similarly function as a way for employers to avoid the costs of an employment relationship (Stewart, 2002, pp. 255–6). As in the case of contractors, unions have often pursued restrictive regulation through awards or agreements, and, following on from this approach, some have established their own labour hire companies in the quest to control the flow of agency workers and to equalize conditions at unionized work sites (Waring, 2003, pp. 93–94). But such workplace-based approaches are difficult to sustain (Australian Canter for Industrial Relations Research and Training (ACIRRT), 1999), and many initiatives have been swamped by legislative prohibitions and general labour market changes. Little progress has been achieved so far at other levels, though on occasion unions have been able to conclude collective agreements with larger labour hire companies, and they continue to pursue licensing regulation and other societal controls (Hall, 2006).

Fixed-term employment is concentrated in the public sector and in industries such as education. This form of employment has caused difficulties for unions, in particular in government schools in Victoria, where appointment of new teachers on short fixed-term contracts was encouraged in the course of neo-liberal reforms during the mid-1990s. Although the Australian Education Union (AEU) has since been able to improve conditions for fixed-term teachers, for example by restricting the practice of non-payment of salary in the summer holidays, it has not been able to reduce the high proportion (18 per cent) of fixed-term teachers in the workforce. In a context where employment decisions and finances are
devolved to individual principals, the cost advantages and enhanced flexibility that derive from hiring fixed-term employees at the bottom of the salary range have been a powerful barrier to any change. The issue continues to simmer, with evident dissatisfaction amongst teachers in fixed-term positions (AEU, 2007).

Because the deficit in wages and conditions is so large, casual employment is often particularly attractive to employers. Where casual employment is freely available to employers it can spread to dominate particular workplaces, occupations or industries. As a result casual employment is widely identified as the major threat to many trade unions, whether casual workers are directly employed or supplied through labour hire companies.

Union responses to the rise in casual employment span the two levels of representation and regulation. Casual workers are hard to recruit into trade unions, partly because of characteristics such as dispersion amongst small establishments, short hours and irregular schedules and high turnover, but also because their lack of rights makes them vulnerable to employer reprisals in the form of reduction of hours or dismissal (Campbell, 1996, pp. 587–8; Walsh, 2002). These factors can foster a passivity that impedes the chances of mobilization inside or outside unions. Nevertheless, some approaches give strong priority to organizing casual workers. One group in Melbourne (UNITE), emerging from the socialist movement, and building on previous experiences in New Zealand, has pursued innovative ways of organizing that are trade unionist in form but fall outside the framework of official bargaining. The union draws on community support but also seeks to sponsor self-organization, using low fees to enrol workers, generally young workers employed as casuals in retail outlets such as fast food, convenience shops and book shops. It has successfully publicized illegal practices such as underpayment and has exposed individual employers to public shame campaigns, but it is unclear whether this model can be sustained in the medium term.

Casual (‘sessional’) academics in universities have been targeted in one recent campaign. As part of their current collective bargaining round the National Tertiary Education Union (NTEU) has aimed to mobilize casual academics, using low membership fees, conferences and meetings, and encouragement of casual committees (May et al., 2008). The campaign is unfinished, but it seems to be stalling, partly because of the traditional problems of mobilizing casual workers who are vulnerable to employer reprisals but also because of the heterogeneous structure and diverse interests of the casual academic workforce. Although studies show substantial dissatisfaction amongst casual academics, most of whom would prefer
ongoing employment, it has proved difficult to aggregate their diverse interests and to build a bridge to the interests of permanent full-time staff.

Trade union campaigns around casual work take different forms. They sometimes appear as ‘organizing’ campaigns, designed according to a template, ultimately derived from the United States, which seems to prioritize recruitment at the expense of other aspects of union practice (Brown, 2009). Apart from other objections, this risks overlooking the specific Australian context. The point is underlined in a study of the early efforts of the LHMU in organizing homecare workers in Australia since the 1980s. Walsh (2002) stresses the importance of a regulatory dimension to organizing efforts and suggests that the success of the LHMU in this sector was founded on the ability of the union to win a federal award and then to use the award as an instrument to regulate the structure of home-care work. In this way the union could transform the working conditions of the casual homecare workers, who were initially vulnerable because their hours could be cut and they could be dismissed without notice. The conversion of the workers to permanent part-time provided the foundation for the ongoing organizing that is essential in the Australian context, where unions lack the capacity to close off membership through winning elections at workplace level.

Varied approaches to shaping casual work through regulation have been tried. The main option has been a limitations approach, aimed at ‘decasualization’. Where they could not achieve a complete ban, unions have pursued mechanisms such as numerical quotas, time limits for employment of casuals, and restraints on methods of use. Union policy slowly turned to an emphasis on time limits in the 1990s, with the aim of confining casual employment to short-term engagements and cutting back the phenomenon of ‘permanent casuals’. This in turn often implied a conversion of casual workers to permanent status after a certain time in the job. Although most quantitative limitations were prohibited in awards under the federal legislation introduced by the Coalition government in 1996, unions continued to seek regulations that would require or allow conversion from a casual to a permanent contract after a certain period. In the late 1990s, initially in a case involving clerks in South Australia and then in a case involving one of the most important federal awards, the Metals, Engineering and Associated Industries Award 1998 (the ‘Metals Award’), unions were able to win a provision that granted a constrained right to individual casual employees with at least six months’ regular and systematic service to ‘elect’ to become an ongoing employee (Owens, 2001, 2006). Employers could refuse but not ‘unreasonably’. Though this regulatory provision is generally seen as a step forward, it is undermined by
several problems (Owens, 2006, pp. 346–9). In particular, the reliance on individual choice by the worker can be criticized as providing only a ‘weak right’ that is unlikely to be effective in a context where casuals remain vulnerable to employer actions and are understandably reluctant to press demands on their employer (Pocock et al., 2004, p. 45; see also pp. 43–44, 49–50). Certainly, the right has in practice only been lightly used by casual workers.

Other regulatory initiatives include efforts to extend protections and improve conditions for casual workers, thereby reducing the deficit that separates casual and permanent employment. Action in this direction, especially for long-term casuals, has been taken at a several levels, including in federal and state legislation (Hunter, 2006, pp. 295–300). One obvious path forward would be through the new legislated ‘safety net’ of minimum conditions, but this net is riddled with exemptions that continue to exclude casual workers (Murray and Owens, 2009, p. 43). Some unions are committed to a further approach, which entails increasing the ‘casual loading’ on the hourly rate of pay prescribed for casuals. Though often justified as a form of compensation for employees for loss of entitlements, the casual loading has also been attractive for unions as another way of limiting casual employment, in this case by imposing a monetary penalty on the employer who chooses casual employment. The unions have achieved some success in raising the loading, but – apart from other objections (difficulty of enforcement and implicit endorsement of the unfortunate principle of ‘cashing out’ entitlements) – it is a blunt weapon for limiting casual employment, since it cannot successfully cover the many sources of cost advantage to employers, for example, as a result of only deploying casual labour during peak periods, keeping casual workers on the bottom of classification scales, and not paying penalty rates for work during unsocial hours.

CONCLUSION

This chapter reviews the varied responses of Australian unions to the rise in precarious employment. None has succeeded yet in reversing or even pausing the two processes that have been identified. Nevertheless, it is possible to detect at least a few promising initiatives and a certain amount of experimental energy.

Experimental energy will continue to be needed in the current phase of hesitant recovery from economic downturn. Economic conditions are likely to fuel a continued rise of precarious employment. In particular, as job losses impact disproportionately on full-time permanent workers, and
as employers look for less costly and more flexible alternatives, we can expect a resumption of the rapid relative growth of casual workers, both part-time and full-time.

One missing element in the current debate, both at the level of individual unions and at the level of the union movement as a whole, is a strategic perspective that could confidently identify the most promising initiatives, the conditions of success or failure, and the methods for generalizing successful models. Some commentators offer the ‘organizing model’ as if it were such a strategy for the union movement (Crosby, 2005). The spirit of organizing is welcome, in contrast to some previous traditions of union representation, and it is necessary in a hostile environment where unions have been deprived of much state and employer support (Boxall and Haynes, 1997; Frege and Kelly, 2003, p. 16). But in the Australian context ‘organizing’ often appears as just a set of techniques designed to improve the flow of recruitment into individual unions. In this sense, it is best seen as a set of tactics that may or may not be applicable to individual unions (Buchanan and Briggs, 2005, pp. 5–6; Probert and Ewer, 2003); at worst it can be criticized as a form of union adaptation to the constraints of enterprise bargaining – a ‘recipe for local success within general decline’ (Smith and Ewer, 2003, p. 46).

To be fully effective, organizing needs to be anchored in a broader perspective, which extends beyond recruitment in individual unions to an engagement with labour movement politics and with ideas and principles of labour regulation. The need for a broader perspective is especially relevant for unions confronted by the challenge of precarious employment. When the rise in precarious employment appears as a fracturing in the core, it is possible to see the importance of designing controls on intensity, staffing numbers, and caps on overtime. When the rise in precarious employment appears as an increase in forms of employment such as dependent contracting and casual work, it is possible to see the need to determine the appropriate forms of employment in a modern society, the conditions that should attach to these forms, and the balance between flexibility and security. One crucial pivot for new strategic thinking must be the institutional setting of the SER. As Bosch rightly argues (2006), the so-called erosion of the SER under pressures such as those identified above does not imply that it should be jettisoned. The challenge is to preserve the substance, which provides valuable securities for workers, but to redefine the forms, which need to be separated from a male breadwinner model and instead adapted to a more diverse workforce. This will entail re-regulation and the move to a new, more flexible SER, as can be found in some Scandinavian countries (Bosch, 2006).
NOTE

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