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On-call and related forms of casual work in New Zealand and Australia

Iain Campbell

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and Working Conditions Branch

***On-call and related forms of casual work
in New Zealand and Australia***

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Preface

This report examines on-call and related forms of casual work in two selected industrialised societies: New Zealand and Australia.

New Zealand and Australia represent promising national case-studies for investigation of these forms of employment. Both are liberal market economies, which face problems of increased labour market inequality, including a high incidence of insecure or precarious work (Howe et al 2012; NZCTU 2013). Though insecure and precarious work can emerge in a bewildering variety of forms, what is called here on-call work, including zero-hour work, appears to be particularly prominent in both countries. Perhaps most important, both countries deserve extended discussion because of recent regulatory efforts aimed at tackling the negative effects of on-call and related forms of casual work. New Zealand has attracted international attention because of 2016 legislation that introduces a requirement for guaranteed minimum hours in certain employment contracts and thereby prohibits at least one version of zero-hour contracts. Australia has been reluctant to introduce statutory initiatives on employment standards, but has experimented with other regulatory measures, including a union claim before the Fair Work Commission, decided in mid-2017, which sought to strengthen and extend existing rights for casual workers, in terms of both minimum engagement periods and conversion to permanent employment after completion of a qualifying period.

The report is structured as follows. The next section (2) introduces the basic concepts used in this report. It defines on-call workers, distinguishing between ‘zero-hour’ and ‘minimum-hour’ versions of on-call work, and considers the overlap of on-call work with ‘casual’ work, both in a broad historical sense and in the more specific sense of casual as a distinct employment category within the regulatory structure in the two countries. Section 3 delves into extant quantitative and qualitative data in order to build an elementary descriptive profile of on-call and related forms of casual work in each country. Section 4 discusses the impact of on-call work for workers, using a framework couched in terms of six dimensions of (in)security. This section draws in particular on qualitative studies that reveal worker experiences of on-call work. Though the findings primarily concern negative effects, the section reports that some employees may achieve a degree of control over on-call schedules under certain circumstances, eg. when workers have scarce skills and labour market conditions are favourable. Section 5 explores causes for the developments outlined in the previous two sections, focusing on the importance of employer calculations and choices. Section 6 briefly considers consequences for business and society at large, concentrating on the discussion concerning short-term and long-term disadvantages for business of employer decisions to rely on on-call work. Section 7 considers recent regulatory initiatives that aim to combat the negative impacts of on-call and related forms of casual work. Section 8 offers a brief conclusion. A background discussion of employment regulation and employment law in each country is placed in Appendix A.

1. Key concepts: On-call, minimum-hour, zero-hour, casual workers

On-call workers

On-call workers are defined in this report as individuals who agree to be available for work and are then called in to work *as and when they are needed* (see ILO 2004; ILO 2016, 21, 28-30; Eurofound 2015, 46, 56-60). They could also be termed ‘on-demand’ workers. The category is limited to workers who follow work-on-demand schedules for *all* or at least *a large proportion* of their actual working hours; it does not include workers such as medical personnel, for whom just a small proportion of actual working hours result from on-call arrangements.¹

On-call workers can be divided into two groups, depending on whether or not a guarantee of a minimum number of hours per week is included in the employment contract. When a guarantee of minimum hours is present, the workers can be called ‘*minimum-hour*’ workers. This category comprises workers who have been guaranteed a small number of contractual hours each week, perhaps on a regular roster, but who are subject to an agreement or expectation that they will be available for a substantial number of additional hours of ‘flexing up’ at the discretion of the employer.² When a guarantee of minimum hours is absent, the workers can be called ‘*zero-hour*’ workers. In the latter case there are no contractual hours, but the workers are subject to an agreement or expectation that they will be available for an unspecified number of actual working hours at the discretion of the employer.

As the definition implies, contemporary forms of on-call work are linked to employer practices aimed at organizing a pool of labour (labour time) that can be deployed in accordance with business needs. The employing organization determines when a worker is needed and for how long, and it then initiates the call for workers to attend work, eg through text or phone message or by posting the roster on a software app or noticeboard.

On-call work is characterized by a large amount of employer control over an employee’s actual working-time. Control applies to both main dimensions of a working-time ‘schedule’ or ‘roster’: a) duration (number of hours); and b) position (the timing of working hours over the day or week). For employees, the outcome is a working-time pattern (schedule) in which working hours, as measured over a period of a week or perhaps longer, tend to be *variable in terms of duration and/ or position*. Because variability is on the basis of business needs, which may be framed in just-in-time terms with only short notice of changes, variability for the worker is in turn often linked with uncertainty and *unpredictability* of working hours.

In this report all on-call workers are seen as subject to variable working-time in response to business needs. Beyond this common feature, however, the precise patterns of actual working time can be diverse – for example, in terms of aspects such as the extent of variability, the extent of unpredictability, the usual duration of shifts, the usual duration of weekly hours, the extent of employee control, and the tenure of jobs or engagements. Partly as a result of this diversity, the implications of on-call work for workers can also be diverse.

¹ Persons who undertake on-call work in a second job but have regular schedules in a main job are not counted here as on-call workers. The issue of multiple job holding complicates analysis of on-call work, but it is not considered in this report, except in passing in section 4.

² When the minimum is accompanied by a definition of the maximum to which working hours can be flexed up, it is sometimes called a *min-max arrangement*.

On-call work arrangements are characterized by agreement on the part of the worker to be available for calls in to work during a specified period of the working week (ranging from ‘anytime’ to just one or two blocks of time). Such agreement is pivotal in establishing an employment relationship and in consolidating on-call work as a distinct form of employment. The agreement to be available may be formalized in a written contract (or statement of terms of employment). Alternatively, agreement can be part of the set of informal understandings, which exist either in conjunction with a written contract or instead of a written contract. Informal understandings are particularly important in the case of casual jobs, many of which lack a written contract in both New Zealand and Australia.

Concepts of ‘on-call’, ‘zero-hour’ and ‘minimum-hour’ work arrangements do not figure in labour regulation and labour statistics in New Zealand and Australia, thereby impeding the task of investigating these forms of employment. Similarly, vernacular understandings of the terms remain faint, with the one exception of ‘zero-hour contracts’ in New Zealand, which became a familiar everyday term in 2014-15, when the term was taken up at the start of a collective bargaining campaign aimed at securing better working-time conditions for employees in the major fast food chains (see section 7).

On-call and casual work

On-call work is connected to *casual work* (ILO 2016; Eurofound 2015). This is true in at least two ways. First, it is connected to a broad sense of ‘casual’ as a way of working/ working-time pattern, based on an incidental relationship between employer and employee. This connection is cited in historically-informed accounts, which note that contemporary forms of on-call work, especially zero-hour arrangements, often resemble the highly commodified working-time patterns, generally labeled as casual work or ‘day labour’, which were characteristic of the late nineteenth century. At that time, many employees supplied their labour time in return for hourly or daily wages and were dependent on employers on a recurrent day-to-day basis for offers of work and pay (Bosch 2006, 44-45; Stedman-Jones 1971).

Second, on-call work may be connected to a more specific sense of casual work as a distinct category of employment within national legal systems and national frameworks for labour statistics. These national categories, which present casual employment as one of several non-standard forms of employment, can vary widely in their content (de Stefano 2016b; ILO 2016). Both New Zealand and Australia use categories of ‘casual’ to denote a type of employment relationship that is alternative to both permanent (or ongoing or continuing) employment and fixed-term employment, and the term ‘casual’ is a familiar part of the vernacular in the two countries.

Legal understandings in New Zealand and Australia are reviewed in Appendix A, but it is useful here to introduce the statistical framework in each country and the place of ‘casual’ work within that framework:

- i) Official statistics in New Zealand, eg the March 2008 and December 2012 Survey of Working Life (SoWL) and the quarterly Household Labour Force Survey (HLFS), distinguish, within the group of employees, between permanent and temporary employees. A permanent employee is “an employee who is guaranteed continuing work. They can stay in their job until they decide to leave or their employer makes them redundant”. A temporary employee, on the other hand, is “an employee whose job only lasts for a limited time or until the completion of a project”. Temporary employees are sub-divided into five sub-categories: 1. Casual worker; 2. Temporary agency worker; 3. Fixed-term workers; 4. Seasonal worker (not further defined); or 5. Other temporary worker. In this framework, a casual worker is defined, similarly to the definition of an on-call worker adopted in this report, as

a temporary worker who only works when their employer asks them to, on an as-needed basis, whose work is typically done in short episodes. A casual worker may be asked to work a shift, for a few days or, less often, for several weeks at a time. Casual workers do not have any guarantee of regular ongoing work. (Statistics NZ 2014, 28).

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- ii) Official statistics in Australia generally distinguish, within the group of employees, between ‘permanent’ and ‘casual’ employees. The distinction is not defined in terms of a specific way of working but is instead, drawing on important aspects of the practice of casual employment (Campbell and Brosnan 2005, 4), framed in terms of access to paid leave entitlements, which is measured by means of survey questions on whether the employee is entitled in their job to paid annual leave and paid sick leave (where those who answered ‘no’ to both questions are classified as casual). The two categories have been re-labelled by the Australian Bureau of Statistics (ABS) as ‘employees with leave entitlements’ and ‘employees without paid leave entitlements’, but the categories are regarded as proxies for ‘permanent’ and ‘casual’ (ABS 2008, 2013). In this bipartite framework, fixed-term employees, understood as employees with an employment contract that terminates on a specified date or on completion of a set task, are swallowed up in one or other of the two main categories (mostly within the category of ‘employees with leave entitlements’). The failure to identify fixed-term work is widely regarded as unsatisfactory, and recent business surveys as well as non-ABS surveys such as the longitudinal Household, Income and Labour Dynamics in Australia (HILDA) survey, have moved towards a more sensible tripartite division of employees, which would separate out fixed-term employees.³

In both New Zealand and Australia on-call work and casual work are best seen as separate, albeit overlapping, categories. On-call workers are often casual employees, in the sense defined by the national system. The casual employment relationship offers a convenient framework for the development of on-call work, whether in the form of zero-hour or minimum-hour work. But this does not preclude the existence of on-call workers within other forms of employment. Discussion in the following sections considers on-call work that is organized through *temporary work agencies*, where the status of the worker – whether casual, fixed-term or self-employed – may be unclear. This in turn points to the shadowy area of disguised employment and *dependent contracting*, which has come back into the spotlight with the development of the ‘gig economy’, consisting of forms of on-call work, aptly described as ‘work on demand via apps’, which are reminiscent of casual employment and may be falsely presented as self-employment (de Stefano 2016a). Most importantly, the discussion also considers on-call work that is organized within the framework of a *permanent* employment contract. The fact that permanent employment status is compatible with variable and unpredictable schedules in accordance with business needs is perhaps surprising, but it can be seen as a reflection of the characteristics of working-time regulation in the two countries, especially in relation to part-time employees. In New Zealand it is possible for both zero-hour workers and minimum-hour workers to be employed within the framework of a permanent contract of employment. In Australia, the existence of certain working-time protections for permanent part-time employees excludes zero-hour workers, though it still leaves room for minimum-hour workers, from the sphere of permanent employment (see Appendix A for more detail).

In considering on-call work and casual work as overlapping categories, it is also important to note that the category of casual in both countries reaches beyond just on-call workers. As well as ‘*on-call casuals*’, it is possible to detect a remainder group of casual employees who have regular (and predictable) rosters and can be called ‘*regular casuals*’. The size of this latter group is particularly large in Australia. Though this report is primarily concerned with on-call work, whether casual or permanent, it regards regular casual work as a related phenomenon. The boundary between the on-call and regular casuals is not hard and fast, partly because variability and unpredictability can be seen as a question of degree and partly because any calculation of variability is sensitive to the time period chosen. Moreover, regular casuals may still experience substantial deficits in their working-time patterns, which serve to link them with on-call workers. Indeed, in Australia the group of regular (or ‘permanent’) casuals, which is seen as trapped

³ Temporary agency employees are counted in supplementary labour force surveys, which reveal that the overwhelming majority are casual employees and would therefore be included in labour force surveys within the category of workers without leave entitlements (ABS 2010). There is little information on seasonal workers, but they too would be incorporated into one or other of the two main categories (probably the category of casual).

in casual work and unfairly disadvantaged, is often taken as the main target for new regulatory initiatives (see section 7).

Other concepts

Other concepts that are often associated with on-call work include flexible work, precarious work and part-time work:

On-call work is sometimes designated as *flexible work*, perhaps as one of several types of ‘flexible work’. In particular, on-call and related forms of casual work are directly associated with *working-time flexibility*. Any meaningful discussion of flexibility needs, however, to carefully distinguish flexibility for employers (or employing organizations) from flexibility for employees, i.e what can be termed ‘employer-oriented’ and ‘employee-oriented’ flexibility (Chung and Tijdens 2013). On-call work involves employer control of the two fundamental dimensions of working-time – duration and position, and it can be seen as primarily to do with *employer-oriented flexibility*. Employee-oriented flexibility is hard to detect in on-call work, though scope does exist for a limited degree of employee control of working-time, which is discussed in section 4.

On-call work is sometimes described as *precarious work*. Precariousness is a synonym for labour insecurity, and precarious work is best understood as work that displays several dimensions of insecurity or precariousness (Campbell and Price 2016; Vosko et al. 2009). On-call work is often associated with high levels of insecurity for workers, and indeed on-call work or casual work in general has often been identified as the most precarious form of employment in contemporary industrialised societies (Broughton et al. 2016, 16-18; Eurofound 2015, 139-140; ILO 2016, 224; McKay et al. 2012, 77-79). The way in which and the extent to which on-call work in New Zealand and Australia is insecure or precarious is discussed in section 4.

In principle, on-call and related forms of casual work can involve either full-time or part-time weekly working hours (or indeed hours that fluctuate across the boundary). In both countries, however, on-call and related forms of casual work are most strongly associated with *part-time working hours*, understood in this report as working hours below 35 per week. In particular, on-call work is associated with what is usefully termed marginalized, as opposed to integrative, part-time work (Fagan and O’Reilly 1998; see also Messenger and Wallot 2015).

2. A Descriptive Profile

This section examines on-call and related forms of casual work in New Zealand and Australia in terms of incidence, trends, distribution by sector, occupation and size of enterprise, worker characteristics, and selected features of working-time patterns. It considers each country separately.

Unfortunately, robust quantitative data for these features are limited in both countries, especially New Zealand. It is possible to use responses to occasional questions in labour force surveys on variable working-time patterns in order to make rough estimates of the overall incidence of on-call workers as well as their distribution within specific forms of employment such as casual and permanent employment. But beyond this basic information it is difficult to develop a descriptive profile, and the report is obliged to take recourse in data on the overlapping category of casual employment, supplemented by what we know from the qualitative data and secondary studies.

New Zealand

Incidence

The best clue to incidence is in data from the latest (2012) Survey of Working Life (SoWL), where a question directly addresses the issue of on-call work by asking whether working hours vary to suit employer needs. Unfortunately, the question is confined to the omnibus group of temporary employees, who constituted a minority of only 10% of all employees.⁴ Nevertheless, the data are revealing. The majority (118,100) of temporary employees, including over 80% (74,100) of all casual employees, stated that their hours did vary to suit employer needs. In all, those who answered ‘yes’ to this question represented 6.4% of all New Zealand employees in 2012, up from 5.5% in 2008 (see Table 1).

Table 1. Temporary employees whose hours change from week to week to suit employer’s needs, New Zealand, 2008 and 2012 (thousands and percentages)*

Employment relationship (main job)	2008	2012
Casual ('000)	58.0	74.1
Fixed-term ('000)	15.0	Na
Temporary agency worker ('000)	6.9	Na
Seasonal worker not further defined ('000)	15.0	Na
All temporary employees ('000)	96.5	118.1
As % of all employees	5.5	6.4

*Persons who answered ‘yes’ or ‘sometimes’

Source: 2008 figures are calculated from Dixon 2009, 68; 2012 figures are from Statistics New Zealand, SoWL 2012.

A further question in SoWL 2012 on ‘usual working time’ revealed 66,400 permanent employees, i.e. 3.6% of all employees, who reported that they had ‘no usual working-time’ (SoWL 2012). If we put the answers to both questions together, we reach an estimate of 10% for all employees who had irregular

⁴ The proportion of New Zealand employees who are permanent is relatively stable at around 90%, while casual employees account for around 5% and other categories of temporary employees account for the remaining 5%. (SoWL 2012; Statistics New Zealand 2017),

working-time schedules in 2012, primarily as a result of variation to suit employer needs. It is possible to take this as a rough estimate of the proportion of on-call workers in the New Zealand waged workforce.

This should be regarded as an upper bound estimate. It successfully captures employees who have a regular on-call component in their weekly working hours, but it does not differentiate cases where the on-call component is all or most or just a small part of their actual weekly hours. The data do not, for example, allow us to distinguish zero-hour workers from minimum-hour workers. Nevertheless, the data strongly suggest that on-call work is a prominent element within New Zealand labour markets.

The data allow us to discuss the distribution of on-call workers amongst different types of employment. On-call workers are disproportionately found amongst casual employees. On-call casuals constitute 40.2% of the total estimate of on-call workers. Conversely, on-call casuals represent 80.1% of all casual employees, leaving a remainder group of around 20% who can be considered as 'regular' casual employees. The other categories of temporary work, such as fixed-term employees, temporary agency workers and seasonal employees, also contain some on-call workers, though their contribution to the overall estimate (23.8%) is not as significant as that of casual employees. The data also point to a substantial contribution of 36% from the ranks of permanent employees, although this represents only a small minority (4%) of the total number of permanent employees.

One item of interest here is the limited contribution of temporary agency workers, which are singled out as a separate category in New Zealand labour statistics. Around half (58%) of all temporary agency workers in 2008 stated that their hours vary to suit employers' needs (Dixon 2009, 68). But they make a limited contribution, because the overall number of temporary agency workers is low (Table 1). There may be some undercounting in official data, eg since survey questions are directed only to employees and they may miss cases, especially in blue-collar sectors such as horticulture, mining and construction, where workers organized by temporary work agencies are considered, whether rightly or wrongly, as self-employed. Nevertheless, most studies agree that, irrespective of any undercounting in the official data, the overall incidence of TAW in New Zealand is indeed low (Burgess et al. 2005).

The data do not allow any firm conclusions about the distribution of minimum-hour and zero-hour versions of on-call work across the different types of employment. But it is worth stressing here that both groups are likely to be found across the board.⁵ 'Minimum hours' or 'low hours' contracts have long been a familiar feature of permanent part-time employment in supermarkets (NZCTU 2013, 28; MBIE 2015b; see McLaughlin and Rasmussen 1998), but they are also likely to be found in temporary employment. Much of the initial controversy in New Zealand around zero-hour contracts derived from the practices of large firms in fast food, where employees were classified as permanent (see section 7). But other qualitative evidence (Hannif and Lamm 2005; C. King 2016b; NZCTU 2013) suggest that zero-hour work arrangements are also found within temporary, and in particular casual, employment. Indeed, it is likely that the major part of on-call casual work approximates to a zero-hour model – guided by (informal) understandings about availability and shared commitment to an employment relationship, but without any employer commitment to a guaranteed minimum number of working hours.

Trends

Data on trends for on-call workers are hard to find. The controversy around zero-hour contracts from 2014 onwards was accompanied by suggestions that they constituted a 'large and growing problem' (NZCTU 2015, 7; MBIE 2015b, 2; O'Meara 2014). One union source suggested that growth could be linked back to labour market deregulation in the 1990s:

⁵ A 2013 report from the central trade union body, the New Zealand Confederation of Trade Unions (NZCTU) (NZCTU 2013) includes worker testimonies that refer to on-call work arrangement organized as casual employment (housekeeper in hotel, waterfront worker), seasonal work (meatworkers), temporary agency work (white-collar 'temping') and permanent work (retail employee, cinema attendant).

They became entrenched in the 1990s during the dark days of the Employment Contracts Act. They affect literally hundreds of thousands of workers in fast food, cinemas, hotels, home care, security, cleaning, hospitality and retail. (Treen 2015, 3; see also MBIE 2015b)

This suggestion finds some support in the academic literature. Rasmussen et al. (2004, 640) note that part-time employees, especially in private sector services, suffered blows to their wages and conditions owing to the disappearance of award protections after the *Employment Contracts Act* (ECA) in 1991, the rise in outsourcing, the liberalization of shop trading hours and the decline in collective bargaining. They draw attention to figures for time-related underemployment as one piece of evidence for a deterioration of working-time conditions for many part-time employees (2004, 641).

Given the strong overlap between on-call work and casual work, it is useful to consider whether trend data for casual employees can throw up any insights. The number of casual workers has grown over the past eight years but largely in line with the growth of the overall workforce, with the result that the proportion has remained much the same (Table 2). It is possible to construct a longer time-series by integrating data from an employer survey administered in New Zealand, Australia and South Africa in 1995, which uses a category based on the New Zealand category of casual. These data suggest that casual work constituted 5.4% of employees in 1995 (3.4% of male employees and 8 percent of female employees) (Brosnan and Walsh 1998, 30; see also Allan et al. 2001; Tucker 2002, 19-21). Thus, the available data suggest that casual employees as a proportion of employees has been relatively stable at around 5% for over twenty years.

Table 2. Casual employees, New Zealand, 2008-2016 (thousands and percentages)

	Casual						All employees '000
	Male		Female		Total		
	'000	% of male employees	'000	% of female employees	'000	% of all employees	
2008	*38.6	4.3	*46.5	5.5	85.1	4.9	1743.2
2012	36.2	3.9	55.3	6.1	91.6	5.0	1843.7
2016Q2	48.4	4.8	58.0	5.9	106.4	5.4	1987.9
2016Q3	44.1	4.3	52.7	5.3	96.8	4.8	2006.6
2016Q4	47.7	4.6	59.8	5.9	107.4	5.2	2059.9
2017Q1	47.2	4.6	54.9	5.4	102.1	4.9	2069.3

Source: 2008 calculated from Dixon 2009; 2012 from Statistics New Zealand, SoWL 2012; 2016 and 2017 from Statistics New Zealand, Infoshare, HLFS.

In short, the evidence for trends is inconclusive. Insofar as there is growth in on-call work, it is unfolding underneath the categories used in the official statistics.

Distribution by sector, occupation and size of enterprise

On-call workers are predominantly lower-skilled workers in a range of service sector industries. A consultation process, together with a review of clauses in selected agreements, in connection with the 2016 legislation indicated that "... zero hours contracts were being widely used in the Quick Service Restaurant (QSR) industry, as well as some food and beverage businesses, convenience stores and residential care businesses. Low-hours contracts were also found in supermarkets." (MBIE 2015b, 19, see also 2, 8).

The core industries for on-call workers are those in which casual employees are most strongly represented, such as agriculture, forestry and fishing and mining, and retail and accommodation and food services (Table 3; see Dixon 2009, 62; NZCTU 2013, 27-28). In agriculture, forestry and fishing, casual employees are joined by many seasonal employees, whose working-time conditions may be similar to

casual employees and may incorporate an on-call component. In retail trade, similarly, conditions for part-time permanent employees in sub-sectors such as supermarkets often have a strong on-call element. Again, in food services casual employees may be joined by part-time permanent employees on similar on-call work arrangements. Industries that do not figure in aggregate but deserve mention include transport services, where on-call versions of casual work have re-appeared on the waterfront (NZCTU 2013; Reveley 1999), and health care and social assistance, where on-call workers are found in sub-sectors such as domiciliary care for aged persons.

Casual employees are spread across several occupational categories, but they are most concentrated in lower-skilled occupations, especially labourers, community and personal service workers, and sales workers (Table 3). The same is likely to be true for all on-call workers.

It might be expected that casual workers would be concentrated in small enterprises (WEB Research 2004, 8, 61-2). SoWL data (not shown here) suggest a higher proportion of casual employees in small as opposed to large enterprises, but the difference is only slight and may be a sectoral effect, given the concentration of casual workers in industry divisions with a relatively high proportion of small enterprises (Dixon 2009, 62; SoWL 2012). Case-study research in selected industries in 2003 suggests that industry, ie the nature of the product and the process, rather than the size of the firm, is the decisive factor in explaining patterns of casual and temporary employment (WEB Research 2004, 61-62).

Table 3. Casual employees in New Zealand by occupation and industry, December 2012 (thousands and percentages)

	Casual employees ('000)	As % of all employees	All employees ('000)
<i>Selected industry divisions:</i>			
Agriculture, forestry and fishing and mining	9.2	11.2	82
Retail trade and accommodation and food services	23.0	7.8	296.3
Arts, recreation and other services	6.5	6.5	100.2
All other industry divisions	52.9	3.9	1365.2
<i>Selected occupation:</i>			
Community and personal service workers	16.4	8.0	203.8
Sales workers	11.2	6.5	172.8
Labourers	22.8	12.3	186.0
All other occupations	41.2	3.2	1281.1
Total	91.6	5.0	1843.7

Source: Statistics New Zealand, SoWL 2012.

Characteristics of Workers

Women are more likely than men to be on-call employees. They account for 55.7% of casual employees in December 2016, compared to less than half (49.3%) of all employees (HLFS 2016). As a result the share of female employees that is casual is higher than the share of male employees that is casual (Table 2). This is partly counterbalanced by the fact that male employees tend to be more concentrated in other forms of temporary work. On the other hand, women are heavily concentrated in the ranks of permanent part-time employees that can be considered on-call.

A strong pattern by age is evident, with 12.4% of young workers aged 15-24 in casual employment, as well as a share of almost 10% amongst the small group over 65, but with smaller shares for all other age groups (Table 4).

Table 4. Casual employees in New Zealand by age, qualifications and birthplace, December 2012 (thousands and percentages)

	Casual employees ('000)	As % of all employees	All employees ('000)
<i>Age:</i>			
15-24	37.3	12.4	300.7
65+	6.9	9.7	71.3
Other age groups	47.4	3.2	1471.7
<i>Qualifications:</i>			
No qualification	16.3	5.8	279.4
School	31.1	7.8	399.1
Vocational or trade	17.8	3.0	589.7
Bachelor's degree	17.6	5.6	313.9
Postgrad	5.0	3.2	157.9
Other post-school	3.8	4.6	82.0
<i>Birthplace:</i>			
Born in New Zealand	73.1	5.5	1338.8
Born overseas	18.5	3.7	504.6
Total	91.6	5.0	1843.7

Source: Statistics New Zealand, SoWL 2012.

The numbers in casual work are a small minority in all groups distinguished by qualification level. However, workers with no qualifications or school-based qualifications are more likely to be in casual employment, while workers with vocational or trade qualifications are the least likely to be in casual employment (Table 4).

Ethnicity is a significant labour market factor in New Zealand. Maori and Pacific workers are a substantial minority (around 16%) of all employees. They are spread across the workforce, but with higher proportions in casual and seasonal work (Statistics New Zealand 2017; see also Statistics New Zealand, SoWL 2012; NZCTU 2013, 26).

Employees born in New Zealand are more likely than employees born overseas to be in casual employment (Table 4). The data do not capture, however, the special situation of the increasing number of workers on a temporary work visa, many of whom would not be counted in the official statistics if their stay were short. It seems likely that temporary migrant workers in New Zealand are disproportionately incorporated into casualised work, including on-call work arrangements (Yuan et al. 2014, 76-77). Recent evidence using taxation records indicates that temporary migrant workers are concentrated in industry divisions where much casual work is found and that they constitute a significant proportion of the workforce in these industries. Working holiday makers and those in the dedicated programme for Pacific Island workers, the Recognised Seasonal Employer (RSE) scheme, are found in varied parts of agriculture, forestry and fishing, including in particular fruit and tree nuts, where temporary migrants accounted for 18% of months worked in 2011 (McLeod and Mare 2013, 18-21; see Bedford et al. 2017). Similarly, international students and working holiday makers are a major part of the workforce in accommodation and also in food services, where temporary migrants accounted for 14%

of months worked in 2011 (McLeod and Mare 2013, 18-21). Undocumented workers can also be considered as temporary migrant workers and are also likely to be found disproportionately in the same industry divisions. Within food services in 2013, temporary migrants were estimated at forty to fifty percent of all workers in the fast food industry and the overwhelming majority of managers (Treen 2013).

Average working hours and schedules

On-call work is heavily oriented to part-time hours. This feature is evident in the data for casual workers, who are predominantly engaged in part-time work, often 'short' part-time work of less than 20 hours per week (Table 5; see Dixon 2011, 8). If we extend the perspective to include on-call work outside of the boundaries of casual status, then the importance of part-time schedules becomes even more important, given on-call work in industries such as retail and fast food primarily takes the form of part-time permanent employment.⁶

Table 5. Casual, temporary and all employees in New Zealand, selected working-time patterns, December 2012 (number of hours and thousands)

	Casual employees	All temporary employees	All employees
<i>Mean number of usual hours</i>	21.5	27.6	36.6
<i>Median number of usual hours</i>	18.0	28.0	40.0
<i>Usual hours worked per week (main job) ('000 persons)</i>			
0-19	40.6	59.3	226.9
20-29	14.1	29.0	176.1
30-39	9.1	23.4	268.6
40+	16.4	64.8	1130.0
<i>Usual working time (all jobs) ('000 persons)</i>			
Usually worked all hours at standard times*	48.2	114.3	1219.4
Didn't usually work all hours at standard times	34.2	65.6	545.3
No usual time	8.9	11.8	78.2
<i>Advance notice of work schedule ('000 persons)</i>			
It varies	15.6	Na	Na
One day or less	20.3	Na	Na
Two to six days	10.4	Na	Na
>Six days	25.3	Na	Na
Always known	18.8	na	na
<i>Tenure (main job) ('000 persons)</i>			
Less than 6 months	40.0	75.1	240.6
6 months to less than 1 year	8.1	21.6	125.2
1 to less than 3 years	23.2	47.4	407.9
3+ years	20.2	48.2	1067.6
Total ('000 persons)	91.6	192.2	1843.7

*Standard is defined as usually working all hours in all jobs between 7am and 7pm, Monday to Friday.

Source: Statistics New Zealand, SoWL 2012.

⁶ The workforce in fast food, many of whom were on zero-hours contracts prior to 2016, was overwhelmingly (80%) part-time, according to union estimates (Treen 2017).

Schedules for on-call workers can vary in terms of position as well as duration, often involving work at non-standard (or ‘unsocial’) times, ie evenings, nights and weekends. Data from 2012 indicate that casual workers were more likely than workers in other forms of temporary work and much more likely than permanent workers to work at non-standard times (Table 5). The same is likely to be true for the on-call workers found outside the boundaries of casual status, eg. the group of permanent part-time employees in service industries with long operating hours such as retail and fast food.

Variable schedules for on-call workers are often characterized by short notice. Some 18.8% of casuals stated that they always knew what days and times they would be working. The others had differing degrees of notice of their schedules, with 22.2% stating that they only received one day or less advance notice (Table 5). For those with little notice it seems appropriate to speak not only of variability but also of high levels of unpredictability.

Tenure for on-call workers is likely to be shorter than for other workers. As Table 5 indicates, most casual workers (52.5%) have been in their main job for less than one year, and 43.7% for less than six months. But what is perhaps surprising, in view of the understanding of casual work as based on short engagements, is that many casual employees claim longer periods of job tenure, eg. more than a year or more than 3 years.

Australia

Incidence

Though Australia produces more extensive labour statistics and academic research than New Zealand, the challenge of exploring on-call and related forms of casual remains formidable. Table 6 shows selected items from ABS surveys which relate to variation in schedules.⁷ The items are far from adequate as a measure of on-call workers, partly because they fail to clearly identify variability to suit employer needs and partly because they are likely to pick up employees for whom variability only concerns a small proportion of their hours. Nevertheless, the data throw some light on the issue.

⁷ A question in supplementary ABS surveys asks employed persons whether they are “usually required to be on-call or standby”. 23.5% of casual employees answered ‘yes’. However, even larger proportions of owner-managers, with or without employees, as well as many permanent employees also answered ‘yes’, suggesting that ‘on-call’ was being interpreted in a way inconsistent with the understanding in this report – perhaps as a reference to after-hours availability by professionals such as medical personnel and IT consultants (ABS 2015). Because the question fails to separate out the group of on-call workers that constitutes the focus of this report, the answers are not used here.

Table 6. Casual and permanent employees (excluding owner-managers of incorporated enterprises [OMIEs]), selected employment conditions, Australia, August 2016 and August 2015 (thousands and percentages)

Selected employment conditions	Casual		Permanent		All employees
	'000	% of casual employees	'000	% of permanent employees	%
Did not usually work the same number of hours each week in main job a)	961.0	39.1	1125.3	15.3	21.2
Earnings/income (excluding overtime) varied from one pay period to the next in main job a)	1309.4	53.2	1129.4	15.4	24.8
Not guaranteed a minimum number of hours of work in main job a)	1426.2	58.0	496.3	6.7	19.6
Total a)	2460.9	100.0	7353.2	100.0	100 (9811.7)
Days of the week usually worked in all jobs varied b)	658.1	28.3	981.1	13.5	17.1
Total b)	2326.3	100.0	7251.0	100.0	100 (9575.4)

Source: a) ABS 2016a, Cat. No. 6333.0; b) ABS 2015, Cat. No. 6333.0.

The data indicate first that variation in working-time schedules is more common amongst casual employees than amongst permanent employees. This is unsurprising. At the same time the data indicate that variation is far from universal amongst casual employees. In short, the measures point towards the distinction between on-call casuals and regular casuals. The question on whether the employee usually works the same number of hours each week is perhaps the best measure of on-call casuals, since it is reasonable to presume that variation of hours for casual employees will be primarily to suit employer's needs. If we accept this argument, the data in Table 6 suggest that in August 2016 almost 40% of casuals could be regarded as on-call casuals and just over 60% could be regarded as regular casuals. These figures suggest that the proportion of casuals who could be called on-call casuals is smaller in Australia than in New Zealand.

Table 6 indicates that casual employees ('employees without leave entitlements') are a substantial part of the Australian workforce, comprising almost two-and-a half million employees in August 2016 – just over 25% of all employees (see also Table 7). Thus, casual work in Australia is almost five times as significant as a proportion of the waged workforce as the parallel category of casual work in New Zealand. Thus, even if on-call casuals in Australia are a smaller proportion of all casuals, they are likely to constitute a larger proportion of the overall waged workforce than in New Zealand.

Further evidence for the large size of the on-call casual workforce in Australia can be found in the results of a 1995 employer survey in New Zealand and Australia, which used a category of 'occasional' employee, defined as "employees hired on a periodic basis as need arises" (Brosnan and Walsh 1998, 29).⁸ This could be taken as a rough measure of on-call casual workers. The estimate of 'occasional'

⁸ The survey lists six main employment types, including 'occasional', 'permanent', 'apprentices', 'fixed term', 'temporary', and contractors/consultants'. There is some overlap between the category of 'occasional' and that of 'temporary', defined as "employees taken on for a relatively short but unspecified period". However, this does not significantly affect the relative comparison, since 'temporary' employees were of similar importance in the two countries - 2.6% of all employees in New Zealand and 2.4% in Australia (Brosnan and Walsh 1998, 29-30).

employees as a proportion of all employees was 5.4% for New Zealand and 9.9% for Australia (Brosnan and Walsh 1998, 30).⁹

It seems appropriate to suggest a rough guesstimate of 40% for the proportion of all casuals that are on-call casuals in Australia. This would be equivalent to just over 10% of all employees in Australia.

The discussion so far is confined to on-call workers who are casual employees. What about on-call workers who are located in other forms of employment? *Fixed-term employees* constitute around 4% of all employees, but they are generally full-time employees, often professionals employed in particular in education and training, and the category is unlikely to include many on-call workers. Official labour force data indicate that the category of *temporary agency employees* is larger than in New Zealand, constituting 1.36% of all employees in August 2016 (ABS 2016a). Temporary agency workers, usually called ‘labour-hire workers’ in Australia, are predominantly full-time workers (ABS 2016a), with women mainly in clerical and administrative positions and men in blue-collar occupations in industries such as manufacturing and construction. The length of placements is generally long, with the majority three months or more, suggesting that they are used as replacements for permanent full-time employees, sometimes through outsourcing and subcontracting, rather than as on-call workers (Underhill 2005, 33-4). Moreover, there is no need to add any extra numbers to the estimate of on-call workers cited above, since temporary agency workers are mainly (80%) casual employees (ABS 2010), who will already have been counted in the count of casual workers. *Dependent contractors* are workers who appear to be independent contractors, working with an ABN (Australian Business Number) and without most employment-related protections, but who closely resemble employees in being dependent on one employer and performing work under the direct control of that employer. One estimate from a 2007 survey suggests that ‘dependent contractors’ were 2.6% of the workforce (van Wanrooy et al. 2007, 20; see Shomos et al. 2013, 87-88). Most are workers employed on a regular roster, but a few are likely to be on-call workers, with variable hours. The on-call component amongst dependent contractors is likely to have grown recently as a consequence of the emergence of new forms of on-call work, which are mediated through apps and presented as self-employment, such as bicycle food delivery (Foodora, Deliveroo) (Hatch 2016; Stanford 2017).

On-call workers can also be found within the ranks of permanent employees. It is, however, difficult to estimate how many. One pointer is the estimated 202,000 employees in August 2016 – amounting to just over 2% of all employees – who were classified as permanent employees (‘employees with leave entitlements’) but identified themselves as casuals (ABS 2016a). Similarly, a recent qualitative study in regional areas uncovered a group of ‘permanent irregular’ workers, who had paid leave entitlements and therefore did not fit the main ABS category of casual; they nevertheless saw themselves as casual because they “all worked highly irregular and uncertain hours and their income fluctuated markedly from week to week” (McGann et al. 2012, 103; 2016, 771).

On-call workers who appear in the statistics as permanent employees may include some full-time employees (McGann et al. 2012, 2016), but they are most likely to be permanent part-time employees. Such workers are familiar in retail, especially supermarkets (Campbell and Chalmers 2008), but they can also be found in other sectors, such as residential and home-based care (Charlesworth 2012) and hotels (Knox 2006, 466-9).¹⁰ In comparison to New Zealand, on-call workers who are permanent part-time are likely to constitute a smaller proportion of the overall workforce. Though part-time employment in aggregate is more significant in Australia, most (53.5%) part-time employees are classified as casual rather than permanent (Table 7). If Australian employers desired or felt compelled to introduce an element of variability into part-time schedules, casual employment provides a more convenient

⁹ If we used this figure as an estimate of the number of on-call casuals in Australia, we could use the ABS statistics for all casual employees in 1995 to generate a rough estimate of the ratio of on-call casuals to regular casuals. Given that the overall proportion of casual employees in the official statistics was 22.7% in 1995 (ABS 2014, 6105.0), the results of the 1995 employer survey suggest that about 43% of all casuals in Australia could be called on-call casual and 57% could be called regular casuals. This is broadly consistent with the measures presented in Table 6.

¹⁰ Banking is also relevant, though in this case the on-call element that is present in the schedules of permanent part-time employees seems too small to qualify them as on-call workers in the sense used in this report (Junor 1998; Walsh 2007).

framework than permanent employment. For example, employment in the fast food chains in Australia, as in New Zealand, is mainly on part-time schedules with extensive employer-led variation in schedules, but whereas the employees are permanent part-time in New Zealand they are generally classified as casual part-time in Australia (Allan et al. 2002; Limbrey 2015).¹¹ Nevertheless, though relatively smaller than in New Zealand, the size of the permanent part-time workforce remains substantial in Australia, comprising almost 1.5 million employees in 2016 (15.3% of all employees), around 80% of whom were female (Table 7).

Table 7. Casual and permanent employees (excluding OMIEs), Australia, August 2016 (thousands)

	Male	Female	Persons
<i>Casual:</i>			
Full-time	503.0	231.9	734.8
Part-time	663.4	1059.0	1724.7
Total	1166.8	1294.5	2460.9
<i>Permanent:</i>			
Full-time	3553.1	2300.2	5855.6
Part-time	300.4	1196.7	1498.0
Total	3853.5	3499.6	7353.2
<i>All employees:</i>			
Full-time	4056.6	2533.9	6590.5
Part-time	963.7	2258.9	3221.3
Total	5019.3	4792.3	9811.7

Source: ABS 2016a, Cat. No. 6333.0.

This discussion points to some tentative conclusions about the distribution of on-call workers amongst different types of employment. On-call work in Australia is overwhelmingly located within the category of casuals, though on-call casuals do not necessarily represent the majority of casuals. There is a substantial contribution from the ranks of permanent employees, though it is likely to be a smaller contribution than in the case of New Zealand.

What is the distribution of zero-hour and minimum-hour workers across these different categories of employment in Australia? Zero-hour work arrangements are likely to be the dominant form of on-call work within the framework of casual employment. Though some on-call casuals may have an informal understanding with the employer, which guarantees them a minimum number of hours of paid work, it seems likely that most on-call casuals, i.e. up to 10% of all employees, will have no guaranteed minimum hours and could be described as zero-hour workers. Extensive qualitative evidence points to the presence of zero-hour arrangements in casual work (eg. Bohle et al. 2004; Pocock et al. 2004a). This is supported by quantitative evidence, which indicates that the majority (58%) of casual employees in 2016 judged that they had no guaranteed minimum hours (Table 6). Though some of those who stated that they had no guaranteed minimum hours might be ‘regular casuals’ who felt insecure in spite of regular schedules, most are likely to stem from the category of on-call workers, who see their hours vary from week to week.

¹¹ A recent employer report reveals that in May 2015 McDonald’s in Australia employed 98,911 employees across its 943 restaurants (778 of which were operated by franchisees and 165 of which were company owned). Over three quarters were casual employees, while 16.4% were permanent part-time and 7% were permanent full-time. Most casual and permanent part-time employees were aged 14 to 18 and were combining a few shifts per week, generally in evenings and on weekends, with full-time study, generally at secondary school (Limbrey 2015). The rosters for permanent employees are not explained in the report, but it is clear that most casual employees are on-call casuals who state their availabilities when employed (subject to change during the course of their employment) and are then rostered to work within those periods in accordance with the fluctuating needs of the particular store.

On the other hand, zero-hour clauses in written permanent contracts are unknown in Australia. In contrast to New Zealand, on-call workers who are classified as permanent employees will generally be minimum-hour rather than zero-hour workers, since permanent part-time employees are generally required to be on a regular roster, even if only for a small part of their actual working hours (see Appendix A).

Trends

On-call working has been a component of the Australian workforce for several decades. Trends are, however, difficult to determine. Data are largely confined to the aggregate category of casual workers (in their main job). The size of the casual workforce increased rapidly in the 1980s and 1990s, rising to around 25% as a proportion of all employees in the early 2000s. Since then the proportion has stabilized around this level (ABS 2014, 2016a; see Lass and Wooden 2017a; Shomos et al. 2013, 79-81). Annual August data (ABS 2016a) suggest that the GFC exercised a dampening effect, with casual workers, as the more disposable part of the workforce, disproportionately hit in the downturn. However, the subsequent period has seen a slight rise in the proportion of casual employees back to 25.1% of all employees in 2016 – around the levels of the early 2000s (see also Watson 2017, 25 for two trend measures on casual workers from HILDA).

Within the overall category of casual, which has remained stable as a proportion of all employees, some limited evidence points to a relative increase in the on-call component of casual work. Thus, the proportion of casual employees reporting variable hours increased by five percentage points from 2007 to 2016, and this was matched by similar increases in the proportion reporting variable earnings and an absence of minimum guaranteed hours over that period (ABS 2016a, 2012).

Trends for the other components of the category of on-call work are difficult to determine. Recent figures for temporary agency work suggest a slight decline since 2001 (Shomos et al. 2013, 82-83). On the other hand, permanent part-time employees have been increasing steadily in recent decades, both as a proportion of all employees and as a proportion of part-time employees. They have been growing most strongly in the industry divisions in which minimum-hour on-call work is found, such as retail and care work. As in New Zealand, the on-call workers who are found within this group may be increasing as a proportion of all employees.

Distribution by sector, occupation and size of enterprise

Casual workers are spread throughout the employment structure, but they are concentrated in certain industries. Table 8 shows eight industry divisions in which casual work is used intensively, ie. where casual employees constitute more than one quarter of all employees. Casual intensity is strongest in accommodation and food services, where almost two thirds (65.4%) of all employees are casual rather than permanent, but it is also strong in retail and the small industry division of agriculture, forestry and fishing. Mention should also be made of other industry divisions which contain large numbers of casuals, although the proportion remains below the 25.1% for all industries – health care and social assistance (287,500 casuals), education and training (168,700 casuals), and manufacturing (145,800 casuals). In each of these industry divisions, casual work is strong in specific sub-sectors, though it may not appear prominent in the data for the entire division. For example, within the education and training industry division casual work is widely used in tertiary education (May et al. 2013), though not in the primary and secondary sectors (except in the case of ‘relief teachers’ – see Bamberry 2011). Within health care and social assistance, casual work is strong in aged care, both residential aged care and home care, where it supplements the even higher proportion of employees who are permanent part-time (King et al. 2012).

Data that are not tied to casual status are rare. But it is possible to draw on published HILDA data that refer to variability in the position of working hours across some of these industry sectors. The data point to a large minority of employees in retail and accommodation and food services who state that they work varying days in the week, rather than a regular roster of days. The minority increased substantially between 2006 and 2014 – reaching 22.5% in retail and 30.7% in accommodation and food services in 2014 (FWC 2016, 19). This indicates the strong presence of on-call work in both retail and accommodation and food services.

Casual employees are found in all occupations, but they tend to be most concentrated in lower-skilled occupations (Table 8). Only a small proportion of managers and professional are classified as casual but almost half (49.8%) of all labourers are casual.

Casual workers in general are disproportionately concentrated in smaller firms, with nearly a third (32.5%) of casuals employed in 2012 in firms with less than 20 employees as opposed to less than a quarter (23.3%) of all employees (ABS data cited in DoFE 2015). Nevertheless, they are distributed widely in firms of different sizes and can also be found in large firms. It is possible that on-call casuals are more likely than regular casuals to be found in the larger firms, since an on-call system requires an extra investment in organizing and rostering a peripheral workforce. Similarly, permanent part-time employees who can be called on-call workers are likely to be predominantly employed in larger firms.

Table 8. Casual and permanent employees (excluding OMIEs), Australia, by selected industry divisions and occupations, August 2016 (thousands and percentages)

	Casual		Permanent		All employee
	'000	% of casual employees	'000	% of permanent employees	%
<i>Selected industry divisions:</i>					
Agriculture, forestry and fishing	59.8	2.4	80.0	1.1	1.4
Construction	162.8	6.6	476.7	6.5	6.5
Retail trade	380.0	15.4	685.4	9.3	10.9
Accommodation and food services	491.2	20.0	258.4	3.5	7.7
Transport, postal and warehousing	124.1	5.0	343.3	4.7	4.7
Administrative and support services	109.2	4.4	212.0	2.9	3.3
Arts and recreation services	74.8	3.0	102.6	1.4	1.8
Other services	90.9	3.7	260.3	3.6	3.6
<i>Occupations:</i>					
Managers	71.1	2.9	913.7	12.4	10.1
Professionals	286.7	11.7	2052.2	27.9	23.9
Technicians and trades workers	241.6	9.8	1000.6	13.6	12.7
Community and personal service workers	479.9	19.5	673.8	9.2	11.8
Clerical and administrative workers	271.3	11.0	1215.9	16.5	15.1
Sales workers	428.9	17.4	534.2	7.3	9.8
Machinery operators and drivers	187.6	7.6	459.1	6.2	6.6
Labourers	492.9	20.0	499.5	6.8	10.1
Total	2460.9	100.0	7353.2	100.0	100.0 (9811.7)

Source: ABS 2016a, Cat. No. 6333.0.

Characteristics of workers

Women are more likely than men to be on-call employees. They are more likely than men to be casual workers, although they constitute only a minority of employees in total (Table 9). Casual employment appeared most clearly as a gendered phenomenon in the period after the Second World War, as increasing numbers of women sought to participate in the workforce on a part-time basis and found that part-time work was often available only with casual status and poor quality wages and conditions (Pocock et al., 2004b; Stewart 2015, 66-67). They were joined by many full-time secondary and tertiary students, who

also sought part-time schedules. Although the male share of casual employment has increased in recent decades, partly due to the increased participation of students, both male and female, in casual work and partly due to the spread of casual work amongst full-time blue-collar workers, women remain the majority amongst casual workers. As for casuals in general, so too for on-call casuals: women are likely to be the majority. In addition to the group of on-call casuals, it is also necessary to take account of the group of permanent part-time employees on minimum-hour arrangements, who – as in the case of permanent part-time employees in general – are likely to be overwhelmingly female.

With respect to age, it is possible to note that, as in the case of New Zealand, the young (15-19, 20-24) and the old (65+) are over-represented in casual work compared to their weight in the workforce as a whole (Table 9). Indeed, employed 15-19 year olds, many of whom will be full-time students, are overwhelmingly concentrated in casual jobs. Nevertheless, it would be mistaken to think that casual work is a phenomenon confined to these age groups; most casual workers, as indicated in Table 9, are in fact drawn from other age groups. Does on-call work have a similar age profile? It is difficult to determine whether the group of on-call casuals is more likely to come from the younger age groups. If they are full-time students, young workers may find it difficult to accommodate irregular schedules, but younger workers in general may have less capacity to resist employer imposition of irregular schedules. On the other hand, we can be more confident that the permanent part-time employees who are on minimum-hour arrangements are predominantly made up of partnered women, often with caring responsibilities, who come from older age groups.

Table 9. Casual and permanent employees (excluding OMIEs), Australia, by sex, age and qualifications, August 2016

	Casual		Permanent		All employees
	'000	% of casual employees	'000	% of permanent employees	%
<i>Sex:</i>					
Male	1166.8	47.4	3853.5	52.4	51.2
Female	1294.5	52.6	3499.6	47.6	48.8
<i>Age:</i>					
15-19	469.2	19.1	153.8	2.1	6.3
20-24	450.1	18.3	638.3	8.7	11.1
25-34	507.3	20.6	1954.7	26.6	25.1
35-44	368.0	15.0	1775.7	24.1	21.8
45-54	311.4	12.7	1626.3	22.1	19.8
55-64	265.1	10.8	1044.4	14.2	13.3
65 and over	90.1	3.7	159.3	2.2	2.5
<i>Qualifications:</i>					
Below year 12	652.0	26.5	973.2	13.2	16.6
Year 12	639.6	26.0	1165.2	15.8	18.4
Vocational certificate	444.5	18.1	1571.6	21.4	20.5
Advanced diploma/ diploma	222.4	9.0	836.2	11.4	10.8
Bachelor degree	326.3	13.3	1757.3	23.9	21.3
Graduate diploma/ graduate certificate	41.6	1.7	317.1	4.3	3.6
Postgraduate degree	90.3	3.7	616.3	8.4	7.2
Total	2460.9	100.0	7353.2	100.0	9811.7

Source: ABS 2016a, Cat. No. 6333.0.

Data for casual workers suggest a wide range of qualifications, though with a higher prevalence of lower qualifications (Table 9). Though it is not surprising that casual employees are more likely than permanent

employees to be less qualified, it is necessary to keep in mind the age profile of casual workers and the fact that many younger workers in casual employment will be students currently completing school or post-school courses. The qualification profile of on-call workers is likely to resemble that of casual workers.

The increasingly large number of temporary migrant workers appears only in part in the official statistics. Case-study evidence and occasional surveys indicate that temporary migrant workers are disproportionately concentrated in casual jobs in industries such as food services, horticulture and cleaning (Mares 2016). International students are similar in many ways to local tertiary students, often taking up casual part-time and indeed undeclared jobs as waiters and kitchen hands in cafes and restaurants in the large urban centres (Campbell et al. 2016). But they can also be found in cleaning and in parts of the retail sector, eg convenience stores and service stations. Working holiday makers are found in similar jobs, especially in food services, but they also join workers on the dedicated program for horticulture, the Seasonal Worker Program, in working as seasonal workers at harvest time, generally on a casual basis (Howe et al. 2017; Underhill and Rimmer 2016). It seems likely that much casual work for temporary migrant workers would be on-call. Certainly, variable schedules are a characteristic feature of work in food services, and variability in response to employer needs is a persistent source of complaint from employees. Harvest work is seasonal, with long daytime hours, but it also has an on-call element, as workers must wait around for employers to be ready and the harvest to begin, and they must interrupt their work if the weather turns bad or delivery trucks break down.

Average working hours and schedules

On-call work is oriented to part-time hours. This is true of course for the minority of permanent part-time employees that is included in the count of on-call workers. In addition, most (70.1%) casual employees are classified as part-time rather than full-time (Table 7), and it is likely that most on-call casuals, like all casuals, will be in part-time schedules. Data for non-managerial employees in May 2016 indicate that casual employees in aggregate, ie both part-time and full-time, had a weekly average of 19.4 hours paid for as opposed to 23.2 for permanent part-time employees and 39.2 for permanent full-time employees (ABS 2017c).

Table 10 indicates that a large minority of casual employees is involved in short hours or even marginal part-time work. Thus, a substantial minority (43.6%) usually worked less than 20 hours per week (in main job) in 2016, whereas this was true for only 5.7% of permanent employees. Similarly, just over a quarter (25.6%) usually worked only one or two days a week (in all jobs) in 2015, in comparison with 3% of permanent employees. This leaning to short hours defines a difference with permanent part-time employees, who are generally employed with more substantial part-time hours.

Table 10. Casual and permanent employees (excluding OMIEs), working-time patterns, Australia, August 2016 and August 2015 (thousands and percentages)

	Casual		Permanent		All employees
	'000	%	'000	%	%
<i>Hours usually worked (main job): a)</i>					
0-9	475.9	19.3	70.0	1.0	5.5
10-19	597.2	24.3	346.1	4.7	9.6
20-29	515.0	20.9	684.7	9.3	12.2
30-34	178.4	7.2	489.7	6.7	6.8
35-39	260.8	10.6	2257.8	30.7	25.7
40+	427.9	17.4	3505.4	47.7	40.1
Total	2460.9	100	7353.2	100	100 (9811.7)
<i>Number of days usually worked in all jobs: b)</i>					
1	202.6	8.7	51.1	0.7	2.7
2	393.9	16.9	170.3	2.3	5.9
3	414.8	17.8	425.9	5.9	8.8
4	282.6	12.1	641.2	8.8	9.6
5	799.2	34.4	5192.4	71.6	62.5
6	136.1	5.9	491.1	6.8	6.5
7	98.5	4.2	283.0	3.9	4.0
Total	2326.3	100	7251.0	100	100 (9575.4)
<i>Whether worked weekdays and/or weekends in all jobs: b)</i>					
Weekdays only	1153.8	49.6	5281.6	72.8	67.2
Weekends only	132.2	5.7	32.1	0.4	1.7
Both weekdays and weekends	1040.3	44.7	1937.4	26.7	31.1
Total	2326.3	100	7251.0	100	100 (9575.4)
<i>Continuous duration with current employer/ business: a)</i>					
Fewer than 6 months	584.4	23.7	548.0	7.5	11.3
6 months to under 12 months	434.8	17.7	572.6	7.8	10.3
1-2 years	691.9	28.1	1393.7	19.0	21.3
3+ years	748.8	30.4	4837.5	65.8	56.9
Total	2460.9	100	7353.2	100	100 (9811.7)

Source: a) ABS 2016a, Cat. No. 6333.0; b) ABS 2015, Cat. No. 6333.0.

Casual employees are more likely to work at non-standard times of the day and week than other employees. Weekend work has been an important focus of attention, because of sustained pressure from employer groups seeking a reduction in penalty rates for weekend work. ABS data (Table 10) indicate that casual employees were less likely to work on weekdays and more likely to work on weekends. This is consistent with recent analysis using HILDA data, which suggests that casual employees are more likely than other employees to usually work on the weekends and that they constitute over one third (35.5%) of employees who usually worked weekends (FWC 2016, 17). Weekend work is particularly prevalent in retail and accommodation and food services (FWC 2016, 18). Just as in other industries, casual employees were more likely than permanent employees to undertake the weekend work – constituting 40.9% of those who usually worked weekends in retail and 68.6% in accommodation and food services (FWC 2016, 21-22). We know little of the working-time conditions of these casuals. But HILDA data suggest that many workers in these two industries were on schedules in which the days

varied and that workers with varying days of the week were overwhelmingly engaged in weekend work (FWC 2016, 19-20). This suggests that the casuals involved in weekend work were likely to be on-call rather than regular casuals.

Data for casual employees indicate that many have been in the job for a relatively short time, with 23.7% in their job for less than six months in August 2016 (Table 10). However, as in the case of New Zealand, it is striking that many casual employees have been employed in their casual job for relatively long periods of time, just like permanent workers. On-call casuals are more likely to be found in jobs with short elapsed tenure, but we should not rule out the possibility that, like permanent employees and like regular casuals, some on-call casuals can build up periods of lengthy tenure in their casual job.

New Zealand and Australia: Similarities and differences

Descriptive profiles of on-call work for New Zealand and Australia are hampered by inadequate data. But the available information points to strong similarities, with a few differences.

Both New Zealand and Australia have a high incidence of on-call work. A guesstimate for New Zealand is around 10% of employees, while in Australia the proportion is likely to be even higher. Both countries offer wide opportunities for the development of on-call work patterns. These can emerge within the framework of temporary employment contracts, including in particular the category of casual. But they can also occur within the framework of permanent employment contracts. A close association of on-call work with casual work is evident in both countries. However, in New Zealand a substantial number of on-call workers are found in other forms of temporary work and in permanent part-time employment. In Australia, the overwhelming majority of on-call workers are in casual employment (where they are joined by an even larger group of 'regular' casuals), though there is an additional contribution – smaller than in New Zealand – from on-call workers in permanent part-time employment. Zero-hour work arrangements are present within both casual and permanent work in New Zealand, but they are confined to casual work in Australia.

The data do not allow any confident descriptions of trends for on-call work. Both countries show stability in the overall proportion of casual work, but growth may have occurred in areas hidden from the aggregate statistics. Data on job and worker characteristics are largely derived from data on casual employment and may therefore present a skewed picture. In New Zealand these data risk missing the many on-call workers outside the boundaries of the casual employment contract, while in Australia they risk conflating on-call casuals with the large group of regular casuals. Insofar as it is possible to make inferences from the data, the two countries have similar patterns, with on-call workers used most intensively in particular industries such as accommodation and food services and agriculture, forestry and fishing. The jobs are often, though not always, frontline service sector jobs and are generally associated with part-time schedules. On-call workers are often younger workers and/ or female workers with lower-level qualifications who are engaged in part-time work schedules, which often spill over into or are confined to non-standard times such as weekends.

3. Impact for workers

This section considers the impact of on-call and related forms of casual work for workers in New Zealand and Australia. It uses a range of evidence, including quantitative data, where they are available. But the main sources are first-hand accounts, programs of in-depth interviews and case studies in specific enterprises and industries. This qualitative evidence does not allow firm conclusions, but it succeeds in capturing many diverse experiences of on-call work. As such, it is useful for identifying descriptive patterns and causal mechanisms that can be further examined in later research.

New Zealand has produced useful first-hand accounts of on-call work (C. King 2016a, b; NZCTU 2013), a few case studies of on-call work patterns in sectors such as call centres (Hannif and Lamm 2005), and indirect evidence from the union campaign in fast food (Treen 2014, 2015). Qualitative research on on-call work in Australia is relatively rich. Studies include first-hand accounts (eg. Sidoti 2015), programs of in-depth interviews (McGann et al. 2012, 2016; Pocock et al 2004a; Smith and Ewer 1999), and case studies that describe on-call working-time patterns in key sectors such as hotels (Bohle et al. 2004; McNamara et al. 2011; Oxenbridge and Moensted 2011), licenced clubs (Lowry 2001), a theme park (Townsend et al. 2003), retail (Campbell and Chalmers 2008; Campbell and Price 2016; Price 2016; Whitehouse et al. 1997), relief teaching in secondary schools (Bamberry 2011), hospital nursing (Allan 1998, 2000), domiciliary aged care (Clarke 2015) and manufacturing (Brosnan and Thornthwaite 1998). Most qualitative studies in the two countries describe on-call casual work, but some cite examples from permanent work and from work organized through temporary agencies or as ‘sham contracting’.

The focus of this section is on objective characteristics of the job and the implications of these characteristics for workers. It is true that there are other levels of analysis that are also relevant to discussion of impacts on workers. These include subjective and objective factors associated with the social location of workers outside the workplace, such as the broader regulatory system for social protection in each country, household structures, and labour market conditions.¹² These factors are referred to in passing, but this section does not attempt to systematically incorporate them into the discussion.

Most analysis of on-call work describes poor quality job characteristics that imply negative impacts for on-call workers (ILO 2016). This section similarly canvases disadvantages that lead to negative impacts, but it also examines possible advantages, which might be associated with positive impacts for workers. The main potential advantage concerns individual employee control of working-time schedules, which in turn is seen as facilitating employee-oriented flexibility. This section therefore pays special attention to evidence concerning the extent and nature of employee control of on-call schedules.

To help in organizing the discussion of impacts for workers, this section uses a conceptual framework couched in terms of labour (in)security, disaggregating this into six dimensions: 1. Employment; 2. Earnings; 3. Occupational safety and health; 4. Training; 5. Representation; and 6. Hours (ILO 2016, 18-20). Control over schedules is an aspect of hours insecurity, but it is considered here in a separate subsection.

Employment

¹² Campbell and Price (2016) stress the difference between precarious work and precarious workers. They point to factors that can either cushion or amplify the insecurities that stem from objective characteristics of the job. For example, earnings insecurity due to low and irregular wages in an on-call job may be cushioned by access to an alternative source of income, such as household transfers from a parent or partner or individual access to savings or social security (an aged pension or unemployment benefits). Piasna et al. (2017) similarly speak of the need for analyses of job quality to separate levels of analysis, carefully distinguishing jobs, workers, the legal framework, welfare policy and structural features of the labour market.

Employment insecurity “centres on concerns over remaining employed, or the risk of losing income-earning work” (ILO 2016, 19). For on-call workers, employment insecurity comprises a twofold risk: a) the risk of losing the job; and b) the risk of losing paid hours within the job.

At first glance employment insecurity for on-call workers might appear to vary by the type of employment contract. Employment insecurity appears to be highest for casual employees, given that ease of dismissal (or failure to rehire) is central to the notion of casual work. Because the employer is under no obligation to offer work, on-call casuals are at constant risk of losing shifts and the job as a whole. In principle, on-call workers who have a permanent employment contract have higher employment protection (after completion of probationary periods), and they could bring either a personal grievance case (in New Zealand) or an unfair dismissal case (in Australia) in the event of unfair dismissal. Even if this were an easy process, it is noteworthy, however, that employment protection does not protect on-call workers with permanent contracts from employment insecurity in the second sense, ie. a partial loss of shifts that falls short of dismissal. A partial loss of paid hours is a constant risk for all employees with a large on-call component to their working patterns. If the loss pushes hours (and income) below the threshold that the worker wants or needs for survival, then it may be seen as equivalent to a complete loss of the job.

The risk of losing shifts is the most immediate and pervasive element of employment insecurity within on-call work. The qualitative literature in New Zealand and Australia points to a widespread awareness amongst on-call workers of their lack of protection against such loss. One consequence is that they are vulnerable to management use of shift allocation as a disciplinary device. The literature cites examples where paid hours recede (and perhaps even disappear), not because of fluctuations in demand but rather because of ‘punishment’ by managers after employees have refused a shift, called in sick, had an argument with a supervisor, or perhaps complained of underpayment or injury (Bamberry 2011, 59; Campbell et al. 2016, 290; Pocock et al. 2004a, 56-58, 104-105; Price 2016, 925). Controlling the number of hours of on-call workers, ie altering them either as punishment or reward, emerges from the qualitative literature as a central management mechanism for enforcing availability and ensuring compliance in the on-call workforce (Hannif and Lamm 2005, 337-338). Many on-call workers declare that they are acutely aware of these management practices and judge that they have little capacity to exercise ‘voice’ at the workplace or to exercise rights such as declining an unreasonable employer call-in for work (Bohle et al. 2004, 22; Oxenbridge and Moensted 2011, 19, 22). A cinema attendant cited in the NZCTU report, who was on a permanent contract with no guaranteed minimum, explained that “everyone knows that if you call in sick too often or get offside with the manager, they will slowly cut your shifts. They silently fire you.” (NZCTU 2013, 37).

One issue often linked to employment insecurity concerns the prospect that on-call and related forms of casual work might be a bridge to more regular employment. The issue is extensively discussed in Australia, primarily in relation to casual work. One study suggests that a casual job is better than unemployment as a stepping-stone to permanent work, at least for men (Buddelmeyer and Wooden 2011). A fuller analysis was conducted by Watson (2013), who uses longitudinal HILDA data to examine a wide range of transition probabilities for casual employees (excluding full-time students). HILDA records of forms of employment at annual intervals provide some evidence of individual movement into a permanent job, but there is also substantial continuity as well as substantial movement into joblessness (unemployment and withdrawal from the labour force) (2013, 12). Watson concludes that many casual employees are trapped in casual employment, whether continuous casual or just intermittent casual work within heavily casualised sectors such as accommodation and food services. His analysis indicates that the crucial factors affecting transition probabilities are not so much human capital factors such as education but rather systemic factors such as industry and region (2013, 12, 21-23). More recently, HILDA data have been used in an expansive way to look at longer-term pathways rather than just annual transitions. The analysis concludes that bridges and traps are roughly equally prevalent for casual employees, though demographic groups that are especially vulnerable, such as less-qualified women, are more likely to experience traps than bridges (McVicar et al. 2017).

Earnings

Earnings insecurity stems from “earnings that are so low that they do not provide a ‘minimum living wage’ or from uncertainty with respect to future earnings if, for example, work is uncertain” (ILO 2016, 19). As the definition suggests, earnings insecurity incorporates different components. The level of wages is one issue, composed of both low hourly rates and low aggregate weekly pay, but a second issue is the variability in aggregate weekly pay, which can drive earnings below a threshold needed for sustenance.

The qualitative literature suggests that low weekly earnings and irregularity of weekly earnings are more important than low hourly rates. One New Zealand worker with twelve years’ experience as a zero-hour worker in hospitality and other service sector jobs drew attention to the centrality of irregular hours and the limited relevance of efforts to address the problem of low wages by raising the hourly wage rate, as in the campaign for a ‘living wage’. Though such an increase would be helpful, she argues that the fundamental policy challenge is to do with the number and irregularity of hours (and income):

higher wages don’t mean anything if your employer cannot – or outright refuses – to guarantee you consistent hours. I have never had one employer in the service sector guarantee me even one hour of work a week. I once earned New Zealand’s living wage of \$19.25 an hour... at a [hospitality] job... My shifts at my ‘living wage’ job ranged from one hour of work to five. It cost me \$12 just to get to this job on public transport, so sometimes I’d come away from work at the end of the day having made almost no money at all. (C. King 2016b)

Earnings insecurity is a strong theme in the qualitative literature concerning on-call and related forms of casual work. It overlaps with and underpins the employment insecurity discussed in the previous subsection. Most on-call workers are low-wage workers, who – because their hours are variable – cannot rely on achieving an adequate number of hours each week in order to maintain living standards. This makes it difficult to plan financially. They feel vulnerable to downward movement in their hours and income, which would quickly start to squeeze their living standards. In effect, they continually confront time-related underemployment, whether as a current state or as a fearful future prospect. If they already see themselves as underemployed, they may be looking both ways at once – eager to secure more hours and income as well as fearful of a reduction in hours and income (Pocock et al. 2004a; Treen 2015).

Some studies (Campbell and Price 2016; Hannif and Lamm 2005; McGann et al. 2016; Pocock et al. 2004a) note that access to alternative income, generally through private household transfers, can cushion the negative impacts of on-call patterns of work for some on-call workers. The immediate effect is to cushion earnings insecurity (though the studies also suggest a more general effect in dampening negative attitudes to other insecurities). Access to an alternative income lessens the fear concerning downward variation in hours and income. It is important to note, however, that this is a feature of the social location of the worker, which does not alter the objective characteristics of the job; it merely lessens the salience of certain objective insecurities and strengthens the ability of some workers to tolerate poor quality work conditions. Moreover, as most studies point out, access to an alternative income is only relevant for a minority of on-call workers. For example, a program of interviews with 72 workers in casualised jobs in regional Victoria notes the presence of a minority of interviewees who were less reliant on income from their employment and tended to be positive about their work experiences (McGann et al. 2016, 772-3). The study suggests, however, that most interviewees were reliant on the job for income, and that lack of protection against dismissal and the uncertainty of the work scheduling had strong negative effects for these workers. Because workers were fearful of losing shifts, they often experienced stress and engaged in behaviour that undermined their own health and well-being, such as coming to work when sick, failing to report work-related injuries and not taking any (unpaid) leave. The authors conclude that “the combination of perceived job insecurity and the intermittent and uncertain scheduling of work patterns gives rise to psychosocial stress by depriving non-standard workers of the temporal and economic resources needed to plan their lives” (2016, 779).

On-call workers are often subject to forces that amplify rather than cushion earnings insecurity. One issue here is vulnerability to employer non-compliance, which can lead to underpayments (see Appendix A). Similarly, the fact of casual rather than permanent status can exacerbate earnings insecurity. Because casual workers, for example, lack access to protections that can smooth earnings and are only paid for hours at the workplace, they are particularly vulnerable to the implications of working-time variation

either as a result of employer decisions to change the number of hours or as a result of the intervention of outside events such as public holidays, bad weather, annual plant closedowns, sickness and personal emergencies.¹³

Aggregate weekly earnings for casual employees are briefly discussed in New Zealand. Data suggest that differences in weekly earnings are stark, with casual employees having median weekly earnings of \$340 compared to \$964 for permanent employees (Statistics New Zealand 2017, 10). There is a similar discussion in Australia, which demonstrates that mean and median weekly earnings for casual employees compared to permanent employees are much lower (Markey and McIvor 2015, 26-28; Markey et al. 2015, 26-35). A recent analysis using HILDA panel data finds that casual employment, compared to permanent employment, is associated with increased financial hardship (defined in terms of indicators such as inability to pay rent/ mortgage on time and asking friends/family for financial help) for both men and women. The key factors for explaining the link, especially for men, are the fewer hours of work and the higher vulnerability to employment shocks (job loss and job change) (Swami 2017; see also Buchler et al. 2009, 285).

Though hourly wages are less important than weekly earnings in defining the experience of low wages, data on hourly wages remain useful in indicating wage gaps or penalties that attach to particular types of employment. In New Zealand SoWL data for mean and median hourly earnings point to a large differential between casual employees (and temporary employees in general) and permanent employees (Dixon 2011, 11; SoWL 2012). Recent data for June 2016 confirm the differential, indicating that median hourly earnings for casual employees were \$16.67, for seasonal employees \$18.50, for temporary agency employees \$20.62 and for permanent employees \$24.00 (Statistics New Zealand 2017, 10). Recent analysis of hourly earnings using both waves of SoWL suggests that after controlling for characteristics of the worker, their job and their occupation/industry there was still a substantial unexplained wage gap for casual employees and temporary agency employees (Pacheco and Cochrane 2016; see Dixon 2011, 11-15).

In Australia the casual loading on the hourly rate (Appendix A) is sometimes touted as a major benefit for casual employees, indeed as a ‘wage premium’. This is at odds with the contemporary understanding of the casual loading, which sees it as a monetary equivalent to some, but not all, missing benefits of permanent employment – primarily paid leave (eg annual holidays, public holidays, sick leave, etc.) but also redundancy payments and termination notice and more-difficult-to-quantify benefits such as loss of promotion and training opportunities (Productivity Commission 2015, vol. 2, 805).¹⁴ In principle, therefore, a 25% increment for casual employees should express an *equal* financial compensation for casual and permanent employees. As it turns out in practice, the 25% casual loading is only a shadowy presence in the data. Data for total cash earnings of non-managerial employees in 2016 show that casual employees earned an average \$30 per hour, permanent part-time employees earned \$33.40 per hour and permanent full-time employees earned 39.40 per hour (ABS 2016c). Quantitative analysis indicates that hourly wage rates for casuals are well below the expected level, even after controlling for job

¹³ The in-depth interviews conducted by Pocock and her colleagues identified seven negative aspects of pay for casual workers: 1. unpredictable pay through irregular or inadequate work; 2. low pay arising from vulnerability to dismissal and arbitrary reductions in working hours; 3. lower pay through under-classification and low base rates; 4. lack of access to, and inadequacy of, the casual loading; 5. low pay through delays and gaps in being paid; 6. lower pay through labour hire employment; and 7. underpayment and enforcement of legal rates (Pocock et al. 2004a, 124-134).

¹⁴ The casual loading does not compensate for all detriments associated with casual employment. As the FWC points out: Although the casual loading for which modern awards provide notionally compensates for the financial benefits of those NES entitlements which are not applicable to casuals, this does not take into account the detriments which ... may attach to the absence of such benefits, particularly for adult long-term casuals who are financially dependent on their casual employment. These include, ... attending work while sick and not taking recreational leave because of concerns about whether any absence from work will endanger future employment, the incapacity to properly balance work and attending to personal and caring responsibilities and commitments, changes in working hours without notice, and potential for the sudden loss of what had been regular work without any proper notice or adjustment payment. Additionally, ... there are other detriments associated with casual employment of this nature, including the lack of a career path, diminished access to training and workplace participation, poorer health and safety outcomes and the inability to obtain loans from financial institutions. (FWC 2017, 160)

characteristics such as occupation and standard human capital differences such as age and qualifications. The analysis concludes therefore that casual workers can be seen to suffer a ‘wage penalty’ in comparison with equivalent permanent workers (Watson, 2005; see also Withers et al. 2015, 62-71). The wage penalty for casual employees is most pronounced at the bottom of the wages distribution, where most casual employees are concentrated, producing what one study describes as a multiple disadvantage: “these workers, who are not entitled to paid leave, who are more likely to experience fluctuating earnings and involuntary job loss, and already earn a relatively low wage, are further disadvantaged by the wage penalty compared to similar permanent workers” (Lass and Wooden 2017b, 17).¹⁵

Occupational safety and health

Insecurity in relation to occupational safety and health arises when workers are unprotected or insufficiently protected against hazards, work-related diseases and injuries (ILO 2016, 19).

A major 2008 report in New Zealand notes the link between temporary forms of employment and poorer health and safety outcomes for workers (Bohle et al. 2008, 59-71). The report refers to the literature on the risks associated with irregular hours, noting that the negative impact on health is intensified when control over schedules is low (Bohle et al. 2008, 56). This suggests that on-call workers, whose schedules are frequently adjusted, who must often adapt to new and perhaps unfamiliar work environments and who lack many basic rights and entitlements, are likely to be at higher risk of workplace injury and poor health outcomes compared to other workers in that occupation or industry. However, little research on the topic of variable schedules has taken place in New Zealand. Most attention has been on full-time blue-collar work and the risk of workplace injuries, exacerbated by contracting, in industries such as mining and forestry (Lamare et al. 2015).

In Australia, research often notes the connection between precarious forms of employment such a casual work and poor occupational safety outcomes (McNamara 2006). This is usefully extended to on-call patterns of work in subsequent studies. Bohle and his colleagues point to the negative impact of irregular schedules and lack of control on poor work-life balance, which can in turn lead on to unhealthy behavior and negative *health outcomes* (Bohle et al. 2004; see also McGann et al. 2016; Muurlink 2016; Oxenbridge and Moensted 2011).

Training

Training insecurity is to do with “not having access, or having inadequate access, to training opportunities that can develop skills to help promote professional development and career advancement” (ILO 2016, 20). Workers in on-call and related forms of casual work could be expected to have less access to employer-provided training than other workers, both because employers might see training such workers as unnecessary and because the conditions of on-call work make access to training more difficult (NZCTU 2013, 44). The evidence, however, for training insecurity in New Zealand is limited. One study, using 2008 SoWL data, found a significant association between temporary employment and a lower probability of having undertaken training (Dixon 2011, 17). Subsequent analysis of the pooled data from SoWL 2008 and 2012 found, except for seasonal work, no significant difference in the provision of employer-funded training between the varied forms of temporary employment and permanent employment (Blumenfeld 2016). In Australia, on the other hand, the evidence that casual employees lack

¹⁵ Several factors help to explain the shadowy presence of the casual loading in the data. Illegal practices of underpayment are part of the answer. It is likely that many casual employees in Australia are located in a zone of employer non-compliance, in which they are subject to various underpayments, including non-payment of the casual loading (see Appendix A). Thus, although a casual loading is prescribed in labour regulation, only half (49.1%) of all casual employees say that they receive a casual loading, while 34.3% say that they do not receive a casual loading and 16.5% say that they do not know if they receive it or not (ABS 2012, 6342.0; see also Pocock et al. 2004a, 130). Other factors include the fact that the permanent employee against whom the casual employee is compared is often just a nominal figure in an award document, who is rarely encountered in practice. Insofar as they exist, such comparable permanent employees will in practice be employed on higher job classifications, on over-award or enterprise rather than award rates, and with greater access to increments as a result of service, bonuses, overtime, and penalty rates for work in non-standard periods (see Markey and McIvor 2015, 26-28; see also Lass and Wooden 2017b, 16).

access to employer-provided training is strong (eg Draca and Green 2004; Markey and McIvor 2015, 18; Richardson and Law 2009, 374-380). This is likely to be especially true for on-call casuals, who tend to be seen as more disposable than regular casual employees.

Representation

Representation insecurity concerns “impediments faced by workers in exercising their rights to be represented by a trade union and protected by collective agreements, including having insufficient protection from reprisals over joining a union” (ILO 2016, 20). Representation insecurity is related to ‘voice’ and the ability of workers to have a say at work, individually and/ or collectively. On-call workers are unlikely to be able to exercise much individual power in their employment relations and are therefore particularly dependent on effective collective representation to acquire voice. Yet, with the exception of the UNITE campaign in New Zealand (see section 7), collective organization rarely figures in the qualitative literature on on-call work in the two countries.

Quantitative data provide indirect evidence of an overall decline in representation security. New Zealand, which was affected by the sudden change to a new regime of individual contracting in the early 1990s, has witnessed a steady decline in collective bargaining coverage and a decline of union density, down to 17.9% in December 2015 (Ryall and Blumenfeld 2016; see Statistics New Zealand 2017). The decline has particularly affected low-wage and less-skilled workers in industries such as retail and accommodation and food services, where on-call workers are concentrated. As a result, workers with little individual bargaining power and – especially in the case of temporary workers – limited employment rights, lack the ability to achieve voice through union representation. Nevertheless, unions aim to recruit and represent workers in low-wage industries, with at least some success, as the example of UNITE in fast food indicates (see section 7).

Similarly, in Australia labour market deregulation introduced restrictions on trade union recruitment and organizing, thereby compounding the negative impact of long-term structural changes on trade union strength and influence (Forsyth and Stewart 2016). Many legal restrictions remain in place. The decline of collective bargaining coverage has been marked, but it is not as severe as in New Zealand, partly because collective agreements apply to all workers in an enterprise and not just union members. Union density, on the other hand, has declined even more sharply in Australia than in New Zealand, falling from 40% of employees in 1992 to 15.6% in 2016 (ABS 2016a). The impact of the change is felt most strongly in areas of low-wage, less-skilled employment, where on-call workers are concentrated. Trade union density is lower amongst casual employees (4.8%) than amongst permanent employees (19.2%) (ABS 2016a). Only a few on-call workers are likely to be union members, though one exception may be casual nursing, given that union density for all nurses is over 90% (influenced by union provision of professional indemnity insurance).

Hours

Hours insecurity, or working-time insecurity, is a central feature of on-call work. It is a multi-faceted phenomenon, which can take markedly different forms. The dimension of number of hours can be summarily defined as “too few hours, too many hours, or hours that are constantly changing” (ILO 2016, 19). However, it is also important to consider the impact of on-call schedules that vary in terms of position and may be scheduled at non-social times of the day or week. Also relevant is the predictability of changes in working-time schedules. Also relevant are leave entitlements, given that lack of access to standard leave entitlements such as annual leave and sick leave can exacerbate hours insecurity.

The most prominent themes in relation to hours insecurity in the New Zealand and Australian literature relate to too few hours (underemployment) and dislocation of daily life. A related issue is lack of control over schedules, which is taken up as a separate topic in the next sub-section.

i) Too few hours

The problem of ‘too few hours’ is powerfully associated not only with hours insecurity but also with earnings and employment insecurity. The literature indicates that too few hours, or more technically ‘underemployment’, takes two powerful forms for on-call workers: on the one hand, it can be experienced as *a current state*; on the other hand, even if the worker is currently achieving sufficient hours (and income), the variability of hours to suit the needs of the employer implies *a potent threat* of underemployment. Underemployment in both senses features prominently in several case-studies (eg. Campbell and Chalmers 2008; Clarke 2015; Townsend et al. 2003) and is identified as the major aspect of hours insecurity for fast food workers in New Zealand (Treen 2015).

Underemployment as a current state is captured well in quantitative data measuring persons who are in part-time employment but who state that they would like, and are available, to work more hours (Statistics New Zealand 2017; ABS 2013). Figures for New Zealand indicate that underemployment is substantial, reaching 109,600 workers (4.3% of all employed persons) in early 2017. This can be compared with 124,800 unemployed workers in the same quarter. Underemployment is much higher among female workers (6.3% of employed) than amongst males (2.5%), partly reflecting the fact that more female workers are part-time. Underemployed part-time workers have slowly increased as a proportion of all part-time workers, rising from a low of 11.5% in 2006 to over 20% in recent quarters, indicating that the growth of underemployment reflects not only the growth of part-time workforce but also, most importantly, increasing problems of lack of control of hours amongst part-time workers (Statistics New Zealand HLFS Q1 2017 Infoshare). Though often linked with unemployment, the overall trajectory of growth is at odds with the trajectory of unemployment, failing to recede after the GFC.

Quantitative data in Australia indicate that underemployed persons in Australia numbered well over one million (1,106,800) in May 2017, and the underemployment rate, i.e. underemployed persons as a percentage of the labour force, reached 8.6% (ABS 2017, 6202.0). This was amongst the highest underemployment rates in the OECD – much higher than the equivalent rate in New Zealand and well above the unemployment rate in Australia of 5.4% in May 2017. The underemployment rate was higher for women (10.7%) than for men (6.7%), partly reflecting the greater weight of part-time employment amongst female workers (ABS 2017). Similarly, it was higher for workers in the 15-24 age group, again partly reflecting the strong presence of part-time employment in the employment patterns of young age groups (ABS 2016b). With respect to job characteristics, underemployment was higher for part-time workers on short weekly hours compared to longer part-time hours (Campbell et al. 2013, 27). Perhaps most relevant is the comparison between casual and permanent part-time employees. Unpublished HILDA data for 2015 suggest that almost half (48%) of all casual part-time employee reported that they wanted more hours of work. However, the proportion of part-time permanent employees that was underemployed was also high, at around one quarter, indicating that permanent status may offer better working-time conditions but it does not always offer an adequate level of control over hours (Watson 2017, 22; see also Markey and McIvor 2015, 29-30; Campbell et al 2013, 31-32).

The Australian data point to a very substantial problem of underemployment. Trend data suggest that the underemployment rate rose rapidly in the recession of the early 1990s but did not fall back in the subsequent recovery, and it has surged again in the wake of the GFC in 2008-2009 (Campbell et al. 2013, 23-25, 27). The increase in the number of underemployed persons partly reflects the increasing number of part-time workers in the workforce, but it also reflects the increasing proportion of part-time workers who are discontented with the insufficient number of their working hours. According to ABS data, underemployed persons as a proportion of all part-time employed has risen steadily in recent years, reaching 28.3% in May 2017 (ABS 2017). This was substantially higher than the comparable figure for New Zealand.¹⁶

¹⁶ Part-time workers who are underemployed may reluctantly take up a second or third job as a possible solution to the lack of hours and income. One New Zealand on-call worker notes:

Working multiple jobs at once is the only type of ‘job security’ I’ve ever had. You learn that an employer has less power over you economically if you have a Plan B. Working two or even three jobs means I have more chance of scrounging together enough cash to survive. (C. King 2016b; see also Pocock et al. 2004a, 67)

Australian data indicate that multiple jobholding affects around 6% of the total workforce, which is relatively high in cross-national comparison (Bamberry and Campbell, 2012, 295, 297) and slightly higher than comparable figures for New Zealand (Bohle et

ii) *Dislocation of daily life*

Qualitative studies often refer to concerns about a dislocation of daily life and disruption of time with family and friends. Schedules that vary from day to day or week to week, especially when they spill over into non-standard times, tend to disrupt regular non-work commitments (De Bruin and DuPuis 2004, 29-31). Especially when workers have little control and notice of schedule variation is short, planning life outside of work becomes difficult (Bohle et al. 2004). Workers' capacity to synchronize non-work activities, including time with family and friends, is reduced. This affects workers with caring responsibilities most heavily, but it also interferes with social life and friendship connections, as shown in the findings from a longitudinal study of young persons in precarious post-school employment in Australia (Woodman 2012). Since long hours of availability and waiting on a call into work also interfere with the normal rhythms of daily life, the problem extends beyond the variation in actual working hours.

An expanding quantitative literature in Australia examines the impact of job characteristics on work-life balance. Though the focus is often on characteristics such as long hours and work overload, together with work in non-standard times such as the weekend, irregular schedules and control over schedules (and workload) are also identified as important factors (eg. Allan et al. 2007; Bohle 2016; Skinner and Pocock 2014). A study using HILDA data suggests that weekend work and irregular shifts are linked to work-family conflict for employed fathers, though not for employed mothers (Hosking and Western 2008, 22).¹⁷

Leave arrangements, both paid and unpaid, are generally designed to assist workers in reconciling paid work with other aspects of life, especially caring responsibilities. Yet workers in on-call and related forms of casual work tend to have less access to paid and unpaid leave entitlements, such as annual leave, sick leave and parental leave. Moreover, they may be reluctant to take even the few leave arrangements to which they are entitled, for fear of being penalized by the employer and losing shifts or losing the job on their return to work. This lack of access to leave arrangements means that it is more difficult for on-call workers than for regular workers to match their paid work to their lives outside work.

One aspect of the dislocation of social life concerns the way in which on-call work adjusts the temporal boundaries normally associated with paid work. Most attention is given to the way in which the boundary between an employee's work time and his/her own time shifts and becomes more blurred, as varying schedules and requirements for long hours of availability spill over into the worker's own time. But it is also possible to note changes in other temporal boundaries, such as that dividing paid hours from all other hours. Whereas in standard jobs this boundary is situated outside the core hours of labour at the workplace, embracing additional paid hours for training, sickness, annual leave and other forms of leave, the zone of paid hours is drastically reduced in on-call and related forms of casual work, so that only hours of direct labour at the workplace tend to be remunerated and other periods – even when necessary for paid work – no longer qualify for payment. Indeed, in several respects the impact of on-call and related forms of casual work is even more radical, fostering in effect new hours of labour or quasi-labour that are deprived of payment. This is most obvious when agreements on availability require workers to undertake long hours of unpaid, quasi-work time waiting for text messages or phone calls from the

al. 2008, 62-63). It is unevenly distributed across forms of employment, with most multiple jobholders classified as part-time in their main job. HILDA data – which produce higher overall estimates of the significance of multiple jobholding – indicate that “in 2012, 12.3% of casual employees worked a second job, in comparison with 7.6% of permanent part-time employees and 6.2% of permanent full-time employees” (DofE 2015, 4). Qualitative interviews designed to explore reasons for taking up second or third jobs suggest, however, that only a small minority of the workers involved in multiple job holding could be considered on-call workers in their main job (Bamerry and Campbell 2012).

¹⁷ The same study notes that casual employment tends to be associated with less work-family conflict for both fathers and mothers, but this is largely due to the fact that casual work is more often part-time; once hours are controlled for the difference disappears (Hosking and Western 2008, 21). Other studies look directly at casual work, seeking to test whether casual work is indeed, as suggested by some arguments, more ‘family friendly’. After controlling for hours, studies using AWALI data on work-life interference support the results of the Hosking and Western study (Pocock and Charlesworth 2015, 115-118; Skinner and Pocock 2014, 34-35). Skinner and Pocock (2014, 35) conclude that “these findings show that casual employment contracts do not offer advantages to employees with regard to their work-life relationship”.

employer. Other examples of unpaid work time occur when on-call workers are called in to work but then stood down or sent home after only a few paid hours or indeed no paid hours at all. Other examples, often cited in domiciliary care, include waiting time between visits, time travelling between visits and any extra time with clients. Similarly, on-call workers may be expected to spend unpaid time setting up or closing down work. Thus working hours for on-call workers can in fact be far longer than might initially seem to be the case from a simple measure of paid working hours.¹⁸

Control of schedules

The extent and nature of employee control of schedules is a crucial issue in the assessment of on-call work. Control over schedules deserves special attention for a range of reasons. It is important both in itself (Kalleberg 2011, 158-9) and as it relates to other aspects of insecurity, given that lack of control within the job is commonly identified as a central channel for negative impacts of work on worker well-being (Bohle 2016; Lyness et al. 2012; Muurlink, 2016), and it figures as one axis of the influential job strain or demand-control model of Karasek (1979). It is also an important dimension of cross-national differences (Berg et al. 2004).

The fact that on-call work is defined in terms of working-time patterns that vary to suit business needs implies a substantial level of employer control over schedules, but this does not exclude the possibility of at least a modicum of employee control.¹⁹ The precise amount of employee control is likely to differ from one case to the next. On-call workers may be able to exercise some control through negotiation at the commencement of an agreement, eg. in announcing limits to their availability and aiming for agreed parameters that would encourage regularity in their rosters and allow some planning. Such negotiation is more likely amongst permanent part-time employees, especially in Australia, where such employees have a right to a regular roster. Nevertheless, even in the case of casual employees there is likely to be a process of informal negotiation around availability, in which employers can be more or less willing to accommodate employee time constraints and employees can be more or less confident about declaring their time constraints.

Within the job itself, employee control is likely to be greater when on-call schedules are joined with provisions such as extended notice of rosters, rights to adjust availability, rights to swap allocated shifts with other workers, minimum hours or minimum rosters, and good access to paid and unpaid leave arrangements. Such provisions can be formal or – more commonly – the result of informal understandings.

The quantitative evidence for both countries provides a mixed picture of employee control. Data on underemployment can be taken as a useful measure of lack of control for part-time workers over the duration of hours in a job (see Lyness et al. 2012). The data cited in the previous section suggests a substantial degree of underemployment amongst part-time workers, especially in Australia. But at the same time, it remains true most part-time workers in the two countries, whether temporary or permanent, do not state that they are currently underemployed.

Surveys sometimes include questions that relate to control over working-time. In response to a question in an ABS supplementary survey on whether employees felt able to choose when holidays were taken, the majority of casual employees stated that they could choose, but the proportion was markedly less than amongst permanent employees (ABS 2012; see also Campbell and Chalmers 2008, 496). Other ABS questions include whether casual employees ‘have any say in the days on which they work’. In 2012

¹⁸ In this light, on-call and related forms of casual work appear as expressions of a sharp *reversal* of the historical trend towards the partial de-commodification of labour; instead they represent a re-commodification of labour (Pocock et al. 2004a; see Frade and Darmon 2005).

¹⁹ The focus here is on employee control over schedules (number and position of working hours). Employee control can be present in other aspects. On-call workers, like all workers, generally retain some autonomy in determining the tempo of work, which is to do with the wage-effort bargain. They may also have a degree of task autonomy. More broadly, workers are able to exercise control through decisions on whether or not to take up the job. Similarly, in deciding whether or not to exit from the job, workers are able to exercise a degree of control, which can indeed influence employer decisions at work (Smith 2006).

60.5% of casuals replied ‘no’ (70.4% of full-time casuals; and 55.2% of part-time casuals) (ABS 2012, 6342.0; see also Wilson and Ebert 2013, 270). Also relevant is a question in a 2015 union-sponsored survey asking “how much say do you have over the hours you work?” 40% of casual employees replied ‘very little say’; 34% replied ‘some say’; and 26% replied ‘a lot of say’ (Markey and McIvor 2015, 21). Though these data suggest that many casual employees have limited control over their schedules, they also suggest that the extent of control may differ according to the dimension of working-time. Moreover, they indicate an element of internal differentiation, with at least a segment of casual employees, perhaps the regular casuals, claiming to have control over several dimensions of their schedules.

The qualitative literature suggests that most on-call workers lack control of their schedules. Case studies and in-depth interviews point to the dominance of employer-oriented flexibility over employee-oriented flexibility in the work patterns of the majority of on-call and casual workers (Bohle 2016, 96-98; Campbell and Chalmers 2008; Lowry 2001, 49, 56-57; McLaughlin and Rasmussen 1998; McNamara et al. 2011, 231). Lack of control and lack of employee-oriented flexibility are seen as spanning varied dimensions such as days of work, total hours, notice of changes, start and finish times and breaks (Pocock et al. 2004a, 58-67). The interview-based study of 72 workers in regional Victoria (McGann et al. 2016) argues strongly that insecurity made it difficult for the majority of these workers to control and plan their lives, exerting a coercive effect on agency and voice (2012, 112) and leading to a general sense of powerlessness (2016, 775; see also Pocock et al. 2004a, 69).

At the same time, the qualitative literature also confirms the existence of on-call workers who state that they enjoy a degree of control over their own schedules (Price 2016). For example, a program of in-depth interviews with 55 casual employees in Australia finds that, though the majority had little say over say over their working time, a minority group was able to “achieve a real say over working time through a reciprocal negotiating relationship with the employer” (Pocock et al. 2004a, 6). The crucial difference between this minority, which was able to negotiate changes and time off, and the majority was not, however, due to the presence of any enhanced employment rights; instead it could be attributed to the luck of having a supportive manager (a ‘good boss’) (2004a, 6, 68).

The qualitative literature in Australia provides one intriguing example of enhanced employee control amongst on-call workers – casual nurses who are employed through either temporary agencies or a casual ‘bank’ (pool). An early mixed-methods study from the mid-1990s (Allan 1998; see also 2000) shows how two private hospitals sought to introduce an on-call element into their workforce, with the objective of saving costs by matching labour time more economically to fluctuations, often unpredictable, in demand. The hospitals decided to expand their use of directly employed casual part-time nurses, but they found that conditions in the local labour markets, together with the need to preserve high levels of service quality, meant that the wishes of the nurses had to be carefully accommodated, in one case by offering inducements such as enhanced choice over where they worked, when they worked and for how long. Similarly, a 2003 survey of temporary agency workers, mainly unionized workers, uncovered a sharp divide between most respondents, who felt they had little choice in taking up work with a temporary agency, and a minority group composed of nurses, whose reasons were influenced by a desire for greater flexibility, better work-life balance and higher pay (Underhill 2005, 38). The key element in distinguishing the work experiences of casual nurses from other temporary agency workers was greater working-time control, composed of a greater ability to control total hours, a greater ability to take planned and unplanned leave and having better advance knowledge of schedules (Underhill 2005, 41-45). The fortunate situation of nurses is confirmed in subsequent qualitative studies, where many interviewees cite the “ability to choose shifts”, together with higher pay (for agency nurses) and a desire to avoid the stresses of regular nursing jobs (linked to shiftwork, unnecessarily inflexible schedules, high workloads and difficulties in accessing leave), as the reason for working as a casual nurse through either temporary agencies or a casual ‘bank’ (FitzGerald et al, 2007, 232; Lumley et al. 2004, 42; Maher 2013, 175-177; Skinner et al. 2011, 224).

The nursing studies agree that the crucial background factor was favourable labour market conditions, which increased demand for the professional skills of nurses. This enabled some nurses to distance themselves from what were seen as the poor working-time conditions associated with direct permanent jobs and to achieve additional employee-related flexibility through employment as a casual via an agency

or a nursing bank. Favourable labour market conditions provided increased individual bargaining power to supplement the collective support that nurses enjoyed as union members. The fact that these labour market conditions are rare and are absent for most on-call workers in other industries, who are generally less skilled, whose skills are less in demand, who have less individual or collective bargaining power, and who appear markedly more disposable, helps to explain why the example of casual nurses appears unusual.

Summary

The bulk of the evidence presented in this section, both qualitative and quantitative, points to negative impacts for workers across several objective characteristics of the on-call jobs. Hours insecurity is central, but income insecurity and employment insecurity are also prominent. There is little evidence of positive impacts for workers from on-call and related forms of casual work in either New Zealand or Australia. Beneath the rhetoric of 'flexible work', the reality in both countries is one of extensive employer-oriented flexibility. At the same time, the evidence points to a certain differentiation within the on-call workforce. It is difficult to capture this diversity in the absence of a dedicated large-scale survey. Nevertheless, it is clear that negative impacts are not uniform; on-call workers differ in their exposure to the various insecurities and it is possible that at least some on-call workers may escape the majority of negative impacts. The qualitative discussion points to certain factors that can widen the scope for employee control in on-call and related forms of casual work. Apart from formal protections, the literature points to the impact of considerate supervisors and enhanced bargaining strength due to favourable labour market conditions.

4. Employers and on-call work

Much of the current literature in New Zealand and Australia identifies employer decisions as the key factor in explaining the incidence of on-call and related forms of casual work. Employee choices play little role. In New Zealand an official document from the Ministry of Business, Innovation and Employment (MBIE) describes zero-hour contracts as the result of employer decisions, particularly in industries with intense price competition, fluctuated customer demand and lower-skilled workers, to “drive down costs for employers by shifting it [sic] towards their employees” (MBIE 2015b, 7; cf Tucker 2002, 41-42). It argues that a root cause of the problem is the inherent power imbalance between parties to the employment agreement, with young and inexperienced or low-qualified workers “less able to negotiate out of this risk being placed upon them” (MBIE 2015b, 5). In Australia, the focus is on casual employment, which is similarly explained primarily in terms of employer calculations and choices (Allan 2000; Shomos et al 2013; Weller et al. 1999).

Detailed information on employer decisions is difficult to find. Quantitative data sets have little to say directly. Unfortunately, the case-study evidence in New Zealand and Australia is also of limited assistance. Few case studies directly investigate employer labour-use practices, and even fewer reach beyond conventional Human Resource Management (HRM) practices such as supervision and training in order to consider the design of work organization and the choice of forms of employment. Case studies focusing on the workforce (see section 4) are suggestive, but they are subject to selection biases, generally comprising large firms who are intensive, strategic users and missing both smaller firms and the many firms that are only occasional users or non-users of on-call and related forms of casual work.

Nevertheless, it is possible to make a few points. Employer decisions need to be considered in context. Contextual factors can promote one set of employer choices over other alternative choices. As the MBIE suggests, industry factors are often important. In sectors such as food services, retail and care work, characterised by frontline service sector work, labour time must be delivered in the right quantities at just the right time, in line with fluctuations in the demand for the services (Allan 1998, 62-66; see also Boxall et al 2011). Firms are able to realise powerful labour cost savings if they can standardize labour and match labour time as closely as possible to any fluctuations in demand. Such matching is easier for large firms which can track and predict fluctuations in demand and can develop employment systems in which the work is standardized and simplified and made amenable to careful just-in-time scheduling. This draws attention to the important role of large firms, often in the context of trends to longer operating hours, which seek to use on-call work in a strategic way. It also draws attention to the role of technologies, eg new technologies that allow businesses to monitor labour demand by the minute. Technologies are also involved in recording availability and rostering, eg. scheduling software. On-call work today rarely requires the available worker to be physically present for shift allocation as in the ‘shape-up’ or ‘bull system’ for casual workers on the docks in the first half of the twentieth century (Ahlquist and Levi 2013); instead, employer decisions can now be communicated by telephone, text message or smartphone app.

Employer use of on-call workers in both countries is bound up with part-time schedules. One useful background account suggests that contemporary employer strategies in the use of part-time workers can be divided into three types: 1) integration; 2) optimal staffing; and 3) marginalization (Fagan et al. 2014, 17-18; ILO 2016, 160). The practice in New Zealand and Australia cannot be attributed to an integration strategy. Nor is it accurately characterized as the outcome of a marginalization strategy. Instead, it seems to fit most closely with a negative version of the optimal staffing strategy, in which part-time schedules are matched to fluctuations in demand. In examining more closely this negative version of the optimal staffing strategy, it could be useful to draw on the discussion of ‘fragmented time systems’, developed in the UK to analyse working-time changes in sectors such as retail and domiciliary care. Such ‘fragmented time systems’ are defined as ‘when employers use strict work scheduling to focus paid work hours at [periods of] high demand ... and do not reward or recognise work-related time between periods of high or direct customer demand’ (Rubery *et al.*, 2015: 754).

National and industry-level regulations can be a crucial influence on employer decisions (Berg et al 2014; Messenger 2004). Working-time regulation in each country is discussed in more detail in Appendix A. In general, it appears that working-time regulation in both countries presents few barriers to the emergence of employer strategies based on on-call work. Regulation contains several ‘protective gaps’ (Grimshaw et al. 2016) which facilitate low hourly rates and tight scheduling. Nevertheless, certain cross-national differences arise due to different national patterns of labour and social security regulation. The major example is the way in which differences in employment regulation create a divergence in the relative advantages of casual status for employers in the two countries, which in turn underpins the striking differences in the size of the casual workforce in the two countries (Campbell and Brosnan 2005, 8-11). However, also noteworthy is the different regulation around permanent part-time work, which, until recently, freely allowed employers in New Zealand to introduce zero-hour work arrangements within the framework of a permanent contract. In Australia by contrast this option was barred and employers could only introduce zero-hour work arrangements within the framework of casual employment.

As the examples of casual work and permanent part-time work indicate, labour regulation can be influential in determining the *relative advantage* to employers of on-call work vis-à-vis other forms of work. Though relative advantages can span several dimensions, cost is often the decisive element. Possible sources of cost differentials between different forms of employment are:

1. lower firing costs, often linked to regulatory reforms;
2. the impact of thresholds for employer contributions to social security;
3. lower wages and reduced benefits;
4. reduced influence of customary practices and enforcement, linked to the decline of trade unions; and
5. reduced costs in relation to screening hiring and training (ILO 2016, 161-164).

Though each of these factors contributes to the use of on-call work in New Zealand and Australia, it is generally agreed that the key source of cost differentials is the opportunity for ‘lower wages and reduced benefits’ (Campbell and Brosnan 2005; see Shomos et al. 2013). A lower aggregate wage bill can be based on lower hourly rates, eg. where on-call workers are used instead of overtime hours for full-time workers or where workers are underpaid and kept on lower job classifications. But, as suggested above, the major labour cost advantage for employers derives not so much from low hourly rate but rather from the opportunity for fragmented and variable scheduling, which allows close matching of the hours of on-call workers to demand patterns, eliminating the need to pay for idle time and thereby reducing the aggregate wage bill (Allan 2000, 189).

Contextual factors are influential, but it is also necessary to keep in mind the margin of discretion that continues to reside with individual firms. Faced by similar structural constraints, employers may use on-call work to differing degrees and in different ways. This is well exemplified in several case studies that consider multiple organizations. For example, a New Zealand study of two call-centres describes both as intensive users of on-call workers, but the study reveals important differences in their labour-use practices and the quality of the on-call jobs on offer (Hannif and Lamm 2005; see Oxenbridge and Moensted 2011).

5. Consequences for businesses and society at large

The consequences of on-call and related forms of work are the subject of competing arguments from business organizations and workers' unions in both New Zealand and Australia. On the one hand, business organizations tend to stress the theme of 'flexibility', pointing primarily to advantages for employers associated with these forms of work, which are in turn seen as leading to greater competitiveness and flow-on benefits for the economy and the society, eg. increased job opportunities. At the same time, they warn that tighter regulation may risk these advantages and flow-on benefits (eg BCA 2012; Lloyd 2012). On the other hand, workers' unions tend to stress a theme of insecurity or precariousness, pointing primarily to disadvantages for workers. They suggest that increased insecurity for individual workers has unfortunate flow-on effects on the economy and society, such as decreased productivity growth and increased inequality, and they argue for tighter regulation to restrict these forms of employment and to mitigate negative impacts (NZCTU 2013; ACTU 2015, 2016).

These competing sets of arguments often flow past each other without making contact: one side says flexibility; the other side says precariousness. However, the arguments do sometimes intersect. Thus business organizations may query the disadvantages for employees and argue that in fact on-call work offers advantages for employees. Just as it is flexible for employers, so too is it flexible for employees. On the other hand, workers' unions may query the advantages to employers and argue that on-call work in fact has both short-term and long-term disadvantages for businesses. Just as it is insecure for workers, so too is it insecure for businesses. The intersection of the arguments opens up an opportunity for fruitful debate.

This section briefly considers possible disadvantages for business. The argument in this case has two components. First, it is generally agreed that the introduction of on-call and related forms of work can offer powerful short-term advantages for businesses, especially in relation to actual and perceived cost savings and ease of management control (ACTU 2016, 32ff). However, these advantages may be accompanied by disadvantages such as decreased quality and customer service, increased difficulty of managing the workforce, reduced productivity, poor impacts on other workers, and problems of motivation, commitment and turnover in the on-call workforce. As a result, businesses must wrestle even in the short-term with tensions and contradictions in their employment practices (Allan 2000, 189-190). They must make difficult judgments, which are not always successful, especially in small firms that lack developed HRM systems and are perhaps more committed to ideologies of management prerogative. The second component of the argument opposes the short-term and the long-term. It is argued that even if firms succeed in resolving tensions in the short-term, they often face long-term problems as a consequence of the use of on-call and related forms of casual work, such as restricted capacity for innovation and reduced productivity growth (Buchanan 2004).

The New Zealand and Australian literature offers some support for the argument about potential short-term disadvantages for businesses in the use of on-call and related forms of casual work. The case-study in two Queensland private hospitals points to the way in which managers were forced to wrestle with the negative consequences for service quality of the decision to minimize costs by reducing full-time employment and expanding the on-call component (casual part-time) of the nursing workforce (Allan 1998). They were obliged to pursue solutions, eg. by targeting nurses from demographic groups that could more easily tolerate shortened shifts, short notice, and fluctuations in working hours, and then by building a long-term relationship with these groups. A subsequent case study in a Sydney not-for-profit hospital explores the management dilemmas of juggling multiple, contradictory goals in more depth. Again, the hospital moved to expand the casual nursing pool as a cost minimization mechanism but soon encountered a range of negative effects or 'hidden costs', including reduced service quality, demotivation of other staff and disruptions due to high turnover. The author points out that agency work, which involved sacrificing control over recruitment and selection, compounded the negative consequences of

casual work and that “the more tenuous the employment relationship, the greater the problems encountered” (Allan 2000, 199). The hospital tried several responses, including increased training and supervision but without fully resolving the problem (Allan 2000). Similarly, a study of HRM practices in one large cinema chain notes the tensions associated with the tightly routinised and standardized work of the casual cinema attendants, primarily full-time tertiary students, who were on on-call rosters. The study point to the management efforts to counter negative effects, including in particular high turnover, by “giving good performers more shifts and enhancing their career opportunities through promotion”, but it suggests that the most effective response was to encourage a supportive supervisory style at lower management levels (Boxall et al. 2011, 1514, 1527).

Similarly, long-term risks to business are frequently sketched out in the New Zealand and Australian literature. One argument suggests that use of on-call and related forms of casual work is associated with underinvestment in training and high turnover, which is likely to depress innovation and productivity growth in the long-term (Buchanan 2004; Markey and McIvor 2015, 16-17). Similarly, there is a danger that reliance on cost savings in the short-term through cheaper forms of employment discourages the search for new forms of work organization and new technologies that can enhance productivity (Markey and McIvor, 2015). Buchanan (2004) suggests that casualization may allow firms to achieve short-term productivity gains associated with tighter deployment of labour, but the issue in the long-term must be *sustainable* productivity growth by means of the better development of labour. The arguments are powerful, but hard to document at the level of individual firms.

The broader social impacts of on-call and related forms of casual work are discussed in terms of a risk of depressed productivity growth, which would weaken the entire economy in the long-term (Buchanan 2004). In New Zealand the MBIE warns that, in spite of their advantages to employers, zero-hour contracts carry many disadvantages, both to employees and the society as a whole. In particular, they caution that “the wider labour market may suffer longer term losses due to poor business practice and lowered labour productivity” (MBIE 2015b, 5). In both countries, there is concern that these forms of employment are contributing to increases in economic and social inequality (NZCTU 2013, 46-47; Watson 2016).

6. New regulatory initiatives

On-call work constitutes a major policy and political challenge in most industrialised countries. One aspect of the challenge concerns the substance of appropriate regulation. Scholars point to the difficulty of finding minimum standards appropriate for ‘flexible’ or casualised work situations in which working-time is highly fragmented (ILO 2016, 258-261; McCann and Murray 2014; Rubery 2015). Though no country offers a full package of protective measures, it is possible to find elements of good practice in individual cases. Proposed standards include *guaranteed minimum hours*, which would appear to be particularly relevant for zero-hour work arrangements (ILO 2016, 258-9; Ilsøe et al. 2017). Other standards include minimum periods of notice, minimum shift payments, specific compensation payments, and acquisition of rights and benefits (including conversion rights) after specified periods of employment (de Stefano 2016b, 440-441; ILO 2016). McCann and Murray (2014) mention incentives to employers to encourage more stable working-time patterns. More broadly, specific efforts to narrow the gaps or deficits separating on-call workers from other workers can be important in softening disadvantages (Rubery 2015; Grimshaw et al. 2016). Even more broadly, regulation can introduce restrictions on employer use of on-call work (eg by industry, only core activities, maximum proportion of the workforce, maximum duration and maximum hours), which often imply prohibitions in certain circumstances (de Stefano 2016b; ILO 2016, 272-3).²⁰

Another aspect of the challenge concerns the political level. How do good regulatory ideas get introduced, in a climate of neoliberalism, which is often hostile to state initiatives aimed at protecting workers? What is the role of social dialogue and collective bargaining? Is it possible to restore the old coalitions that pressed back casualised work in the past? Or is it necessary to find new coalitions?

One fundamental issue for regulatory design concerns whether on-call work in general, or perhaps specific forms such as zero-hour work arrangements, should be viewed as an unacceptable form of work (Fudge and McCann 2016, 70-73 and *passim*). Certainly, the structure of the zero-hour arrangement appears unbalanced and rather anomalous. If there is an ongoing employment relationship, why isn’t the employer under an obligation to continue to offer work? If zero-hour work arrangements were to be judged unacceptable, then they could be directly proscribed at national level. Alternatively, they could be subject to time limits on their duration, perhaps with a requirement that the worker is converted to a more stable contract, as in the regulatory approach to on-call contracts in the Netherlands (Eurofound 2015).

The regulatory system in both countries offers few barriers to the emergence of on-call work and few restrictions on the practice (Appendix A). Most temporal standards cited above are missing in New Zealand. However, minimum periods of engagement and limited conversion rights can be found in Australian awards and agreements. Moreover, the fact that permanent part-time employees in Australia have certain rights to a regular roster, which would equate to guaranteed minimum weekly hours, acts as a barrier to the emergence of zero-hour work within the framework of permanent employment.

Both countries have in recent years debated significant new regulatory initiatives in relation to on-call and related forms of casual work. It is useful to review the latest initiatives, in order to assess their potential for ameliorating negative impacts for workers.

New Zealand

A major new regulatory initiative in New Zealand is aimed at zero-hour contracts. The initiative proceeded in two phases: it began with a trade union campaign and collective bargaining agreements in

²⁰ The focus is on direct measures. Indirect measures can also be important. For example, raising the level of the minimum wage and improving provisions for enforcement of underpayments can be a major benefit for many on-call workers. In general, measures to strengthen collective bargaining, social protection and supportive macro-economic policies are useful, but are not considered here (ILO 2016, xxiv-xxv).

the fast food sector, before a wave of public concern pushed the issue into the national parliament, where amendments to existing employment legislation, contained in an omnibus *Employment Standards Legislation Bill*, were passed in March 2016.

i) *collective bargaining in fast food*

Trade union collective bargaining in the major fast food chains was the starting point for the debate on zero-hour contracts in New Zealand. The UNITE union had been organizing workers in fast food chains since 2005-06, using a skillful mix of traditional and new forms of campaigning in order to recruit and represent a high turnover workforce, which was overwhelmingly composed of young workers, including many temporary migrants (Treen 2014). The union picked up problems of hours insecurity amongst the workforce and took ‘secure hours’ as one of the central themes in its organising. Echoing similar complaints in other sectors, workers cited problems to do with irregular hours and schedules, short notice of changes, lack of control over schedules, and insufficient hours (Treen 2015). They referred to the use of shift allocation by supervisors as a disciplinary mechanism, with loss of shifts following on if workers called in sick or had an argument with the supervisor. One widely-resented feature of the work was the employer practice of hiring large numbers of workers, who were given just a few hours of paid work per week, generally well below what the individual workers needed and wanted. This ensured that employers had an abundant supply of labour conveniently on hand to cover absences, unexpected fluctuations in demand and mistakes in scheduling. This was a form of organised underemployment, which served to discipline workers and ensure that they offered ‘passive flexibility’ (Lehndorff and Voss-Dahm 2005). From the worker point of view, the main problem in their actual hours was not zero hours but rather too few hours. A UNITE official argues that ‘... overemploying and under rostering is the essence of the zero hours regime. It keeps workers willing to jump at offers of more hours’ (Treen 2015, 10).

Initially the union focused on obtaining clauses in collective agreements that required employers to offer shifts to existing employees before hiring new staff, backed up by requirements to give notice before hiring new staff (Treen 2014). But this regulatory solution proved difficult to enforce, and in the 2015 bargaining round the union moved to a new notion of ‘guaranteed minimum hours’, which would involve both more hours and more security in the hours (Treen 2014, 23). To assist the campaign, it drew on debates in the UK and framed the problem as one of ‘zero-hour contracts’, drawing attention to the written contracts of fast food employees. The contracts were for ‘permanent’ rather than ‘temporary’ employment, but they commonly contained clauses that required the employee to be widely available for employer-led rostering, at irregular times and without any right of refusal, in accordance with the needs of the business. For example, one pre-2015 contract from fast food stated (NZCTU 2015, 7):

- *Your hours of work will be displayed on a roster. As the business may be open up to 365 days per year you may be rostered on any day of the year.*
- *It is your responsibility to find out in advance the contents of the roster. You consent to work on the days and times rostered.*
- *Your remuneration [\$14.75 per hour] recognises that you may be required to work additional hours or outside of usual hours.*
- *You acknowledge that flexibility is essential to providing staff to cover variable demands and accordingly your times and days may be varied by the employer.*

While requiring the worker to be available, the contracts made no mention of any employer commitment to provide any hours of paid work. UNITE pointed out that such contracts clearly fitted a definition of ‘zero-hour contracts’, familiar from press reports of debates in the UK.

The union campaign succeeded in mobilising many workers in fast food outlets and building up extensive community and media support, and it eventually secured agreements that provided for guaranteed minimum hours. The precise outcome varied, but a common element was a formula of guaranteeing to current workers 80% of hours worked over the previous three months (with the calculation repeated every three months). New employees would be given an initial guarantee that would be reviewed after working

through a three-month block (Treen 2015, 10). This still left questions around the precise definition of ‘guaranteed minimum hours’ (see below), but it constituted a significant step away from the previous system of zero-hour contracts. It pushed back employer control over schedules and asserted at least an element of employee control.

ii) *legislation*

The union collective bargaining campaign achieved a good result for fast food workers, moving them away from zero-hour contracts, but it left untouched the similar arrangements in other industries. The campaign had aroused widespread public concern about the unfairness of all zero-hour contracts and pressure arose for action at national level.

Attention shifted to the national parliament, where the National Party, leading a minority government supported by three smaller parties, announced that it would restrict abuse of zero-hour work arrangements by means of amendments to existing employment legislation, contained in an omnibus *Employment Standards Legislation Bill*. The government outlined proposals to deal with zero-hour contracts, as well as other matters such as cancellation of shifts at short notice, restraint of trade provisions (exclusivity clauses) and unreasonable deductions from wages. In addition it proposed a general ban on unconscionable conduct. Many of the government’s proposals were welcomed, but the proposed response to zero-hour contracts proved contentious. The government conceded that the zero-hour contract involved an imbalance of risk, but instead of moving towards a principle of guaranteed minimum hours, as emphasised in the union campaign, it suggested that the imbalance could be remedied by requiring employers who incorporated an availability clause in employment contracts to *compensate* employees for their agreement to be available. In effect it proposed an on-call allowance, which would cover not only zero-hour contracts but also minimum-hour contracts that similarly included an availability clause. The proposal for unspecified ‘compensation’ is described by one academic as an element of “largely cosmetic changes which did not address the basic issue” (Nuttall 2016).

A chorus of public criticism, which swept up the other parties in parliament, suggested that the government proposals failed to rectify the imbalance of risk between employer and employee and could have the effect of entrenching zero-hour contracts (see eg NZCTU 2015). As it became clear that the minority National government would not be able to pass the legislation in this form, the Labour Party offered support in return for amendments, and the government agreed to accept the amendments. The amendments had the effect of requiring employment contracts with an availability clause to be accompanied by a guarantee of minimum hours, although, in contrast to the formula in the fast food collective agreements, there was no clear specification of the level of the minimum. The legislation preserved the requirement for an employer to pay compensation for the worker agreeing to be available above the guaranteed minimum, but it added new requirements that the employer must have genuine reasons based on reasonable grounds for including this kind of availability clause and that the compensation must be ‘reasonable’. The legislation was passed unanimously and the relevant amendments to the *Employment Relations Act 2000* came into operation on 1 April 2016.

iii) *assessment*

The two regulatory initiatives produced significant outcomes at the level of practice. The collective bargaining agreements signed by UNITE led to substantial – though still contested (see below) – changes in rostering practices in fast food. At first glance, the legislative amendments, applying to a broader group of workers, appear even more consequential, and indeed several commentators interpreted them as signaling a complete ban on zero-hour contracts (eg. Roy 2016). Though this interpretation is incorrect (see below), the legislation did have a significant practical effect, prompting many employers who used written contracts with an availability clause to review and amend the contracts, generally by ensuring that the contracts contained a provision for guaranteed minimum hours.²¹ It has been described as a “major

²¹ The other elements of the legislation are not considered here. The provisions concerning unreasonable deductions and exclusivity clauses are reasonably straightforward. The provisions aimed at regulating cancellation of shifts are potentially important for on-call workers and address the working-time insecurity that is caused by cancellation either at very short notice

improvement in the position of precarious workers” (Nuttall 2016). Both regulatory initiatives can be seen to have reduced the number of zero-hour workers in New Zealand and to have pushed back precariousness in employment for one part of the workforce.

The New Zealand experience is relevant to the earlier discussion of the political and policy challenge of on-call work. Perhaps the strongest positive contribution of the New Zealand case is in relation to the process of change. The process, starting with a union campaign in one sector, stimulated an informed discussion and succeeded in shining a spotlight on one form of casualised work arrangements, which quickly lost legitimacy as its unfairness was exposed. As such the process was crucial to the outcomes, which unfolded with surprisingly little overt opposition. Though equipped with new elements, this process resembled those developed in earlier periods to combat casualised work; it incorporated union mobilization and bargaining in one industry, media campaigns, community support, and activism within a broad range of political parties. The New Zealand case suggests that collective bargaining and social dialogue remain important channels of regulatory change. Even under difficult circumstances for labour movements, traditional campaigning tools can still be effective.

It is true that several contingent elements also contributed to the success of the campaign. The union focus on working-time issues was linked to the fact that there was little pressure for large hourly wage rises. This could be partly attributed to the fact that minimum hourly wages had held up well, but perhaps more important was the recognition that lifting earnings for zero-hour workers relied on securing more and regular working hours rather than higher hourly rates. At the same time, the union was adept and experienced in its organising strategies. The campaign was able to rely on sympathetic voices in the media to sustain its message. Moreover, the choice to use the term ‘zero-hour contract’ itself contributed to building support. Further, as the campaign moved to the legislative level, it was able to draw on a sentiment that the practices were not only unfair but also anomalous. Many observers felt that the existence of zero-hour contracts within the framework of a permanent employment contract was at odds with the principle of mutual obligation in case law and therefore needed to be tidied up.²² Also relevant was the distinctive structure of government in New Zealand. On the one hand, the power of the government of the day to effect reforms is relatively large because it is a unitary system with only one chamber in the national parliament; on the other hand, this power is weakened by the Mixed-Member Proportional voting system, which replaced traditional first-past-the-post voting after a referendum in 1993 and has had the effect of promoting coalition or minority governments. The lack of a parliamentary majority for the National Party proved important. The government, which initially seemed to be aiming at little more than an impression of action, eventually stumbled into legislation that was more comprehensive because it lacked support from its supporting parties and because the omnibus bill was subject to a pressing timetable (Nuttall 2016).

The political process leading to the regulatory initiatives was an unqualified success (though it was not sustained). But the content of the initiatives remains more open to question. At least two problems are apparent.

One problem concerns the mechanism of guaranteed minimum hours, which was offered as the solution to zero-hour arrangements in both collective bargaining and legislation. The underlying principle is relevant and apt, reflecting an assessment that zero-hour contracts were an unacceptable form of work and needed to be replaced by other work arrangements that offered better temporal standards for workers. In both cases, however, the mechanism proposed revealed limitations. As it was defined in both initiatives, the notion of guaranteed minimum hours lacked adequate detail on crucial aspects such as the level of the minimum, whether the minimum hours were integrated into a regular roster, whether this minimum was adequate from the worker’s point of view, and who would determine the guaranteed

or indeed after workers have turned up for work. The provisions require a clause in the employment agreement specifying a reasonable notice period for cancellation of shifts and reasonable compensation if the right notice is not given.

²² According to this argument, obligation was not mutual because it fell exclusively on the worker, not on the employer. As a result, zero-hour contracts were identified as a strange hybrid, situated uneasily between a permanent employment relationship, in which obligation is for both parties, and a casual employment relationship, in which there is (allegedly) no obligation on either party (eg NZCTU 2013, 52).

minimum (and future adjustments in the minimum).²³ In addition, the regulatory initiatives failed to scrutinise what happens within the zone of availability that accompanies the minimum. How much notice is there for a call-in? How short or long are individual shifts? Is there a maximum that goes with the minimum? Partly because of the perceived limitations of the simple mechanism of guaranteed minimum hours, the union has indicated that it may move from guaranteed hours to *guaranteed shifts* in the next collective bargaining round (Treen 2017). Workers would be given a regular roster for the major part of their schedules and would only be available for on-call work for a limited period over and above the regular roster. If this were successful, workers would still be subject to an on-call component for a small proportion of their actual hours, but they would be shifted out of the category of zero-hour and indeed minimum-hour workers.

The New Zealand experience suggests that the substance of ‘guaranteed minimum hours’ needs to be detailed. It also needs to be supplemented with other measures. The idea of minimum guaranteed hours was usefully paired in the fast food agreements with periodic re-evaluation of the level of the minimum. This picks up the principle of acquisition of additional rights and benefits with tenure, which is used in regulation of on-call contracts in the Netherlands. But other useful ideas such as minimum shift payments and minimum notice periods appear to be missing from the New Zealand discussion. One central problem concerns how to redress the imbalance of power that seems fundamental to much on-call work. This is not so critical for workers in fast food, while they have access to collective representation through an active trade union, but it is a pressing problem for other on-call workers. Without individual or collective voice, workers are not able to claim or enforce employment rights, no matter how well designed.

The second problem concerns the reach and impact of the legislative amendments. Though widely heralded as banning zero-hour contracts, the legislation was not as far-reaching and effective as might appear at first glance. The amendments undoubtedly succeed in prohibiting some zero-hour work arrangements, ie those which involve a written contract in which the worker formally agrees to be available to the employer without any guarantee of paid work. However:

- They leave untouched other cases of zero-hour work arrangements which are not linked to a formal written agreement for the worker to be available. These other cases involve *informal* understandings of worker availability (including informal understandings that the worker may not receive any further offers if they refuse an employer’s offer of work, no matter how unreasonable). Such informal agreements, common amongst casual employees, are just as effective – perhaps even more effective – in generating on-call working-time patterns and pervasive insecurity. Because of the failure to tackle informal agreements the legislation cannot be interpreted as a comprehensive ban on zero-hour work arrangements.
- They successfully shift some permanent part-time employees away from zero-hour work arrangements. But many of these workers have merely been pushed into a different version of an on-call work arrangement, ie a minimum-hour arrangement. This brings permanent part-time employees in New Zealand closer to the situation prevailing in Australia. Though the number of zero-hour workers has been reduced, the overall number of on-call workers is unaffected. From the worker point of view, the shift to a minimum-hour arrangement is likely to represent an improvement in their situation, but they are still likely to suffer a range of negative impacts. At the worst, workers now have an assurance that that they will be given at least a small number of hours of paid work each week, but all their actual working hours may still be governed by on-

²³ Some of these issues surfaced in a personal grievance case in the Employment Court, as yet unresolved, which challenged the post-2015 agreements in the fast food chain McDonald’s. The McDonald’s agreements retained an availability clause but introduced – following the lead of the collective agreement and the legislation – a provision for guaranteed minimum hours. The latter are specified at what appears to be a reasonable level, but one central issue of dispute concerned the fact that the minimum hours were not integrated into regular rosters; instead, they were subject to employer rostering decisions across the range of hours and days specified in the worker’s availability agreement. As a result, *all* of the actual hours worked by McDonald’s workers remained on-call hours. The notification of rosters came with reasonable notice (at least one week), and the shift lengths were not overly short (a minimum of 3 hours), but workers were unable to refuse shifts and remained vulnerable to use of shift allocation as a disciplinary device. Thus workers remained subject to many of the negative impacts associated with on-call work.

call work arrangements. This might be of limited significance in mitigating the negative impacts of on-call practices.

These cautionary remarks suggest that the recent regulatory initiatives in New Zealand are best seen as a useful first step rather than a comprehensive answer to the challenge posed by on-call work. Much remains to be done in terms of refining and supplementing the notion of guaranteed minimum hours and in terms of developing measures to tackle the broader environment of precarious work arrangements.

Australia

Debates and regulatory initiatives in Australia in connection with insecure work have often started with forms of employment on the boundaries of employee status, such as ‘sham contracting’. The emergence of the ‘gig economy’ has renewed concern with this area (Stewart and Stanford 2017). Triangular relationships such as temporary agency work (labour hire) have also attracted attention, initially because of their use by host employers to bypass wages and conditions specified for direct-hire employees in union collective agreements (Hall 2006). Recent concerns include the role of labour-hire firms in organising temporary migrants for informal seasonal work in farms and food processing (Senate 2016; Underhill and Rimmer 2016), where scandals involving poor treatment of temporary migrant workers in industries such as horticulture, meat processing and cleaning have sparked renewed proposals to bring in a licensing arrangement for temporary work agencies (eg Forsyth 2016). Such proposals have been taken up by state governments under Labor administration, and they may eventually result in a national licensing scheme.

Insofar as regulatory initiatives have examined forms of waged work, they have usually concentrated on the category of casual work. This is understandable given the significance of casual work in the employment structure and the many negative impacts associated with it. Within this category, however, most initiatives have focused narrowly on long-term casuals on a regular roster – what are sometimes called ‘permanent casuals’ (Owens 2001). This focus is justified primarily in terms of an argument that this type of casual employment is where abuse or misuse of the category of casual employment is most heavily concentrated. Casual employment is accepted as a valid employer choice to meet very short-term, irregular work demands, but ‘permanent’ casual employment, generally defined in terms of the lengthy tenure of the employee, is seen as a misuse of the category in order to avoid standard rights and benefits for employees and to replace permanent or fixed-term workers (ACTU 2015, 2016). It is seen as an unfair arrangement which allows firms to opt out of a wide range of standard obligations to their employees by applying a label of ‘casual’. In this perspective, long-term regular casual work both disadvantages a large section of employees, who are in effect trapped in an inferior form of employment, and poses wider risks to other employees and the society as a whole, eg by threatening the floor or safety net of minimum labour standards (ACTU 2016, 42-43).

It is true that ‘permanent casual’ work, which is a category loosely related to the concept of regular casuals used in this report, is a much larger phenomenon in Australia than in New Zealand, and it clearly deserves careful attention. However, a focus just on this type of casual work is unduly narrow and risks skewing the debate and restricting consideration of appropriate regulatory solutions. It overshadows the substantial problems experienced by on-call workers, which would include groups that are not normally counted as ‘permanent casuals’, such as on-call casuals and minimum-hour on-call workers within the sphere of permanent part-time employment. It could be argued that on-call work is less of a problem in Australia than in New Zealand because of the existence of selected working-time protections for casual employees and permanent part-time employees (see Appendix A). These protections are relevant and do have an effect in reducing some potential insecurities, but, as this report indicates, they are not sufficient to eliminate all insecurities associated with on-call work in Australia.

Australian efforts to develop regulatory initiatives around on-call and related forms of casual work rely heavily on a somewhat narrow political process of change. As in New Zealand, the trade union federation, the Australian Council of trade Unions (ACTU), has highlighted the issue of insecure work (see Howe et al. 2012; Rafferty and Yu 2010) and individual unions have pursued occasional initiatives around

precarious work at industry level (Campbell 2010; Kaine and Brigden 2015). However, in contrast to New Zealand, and in contrast to Europe, no public campaign around insecure work has taken place in Australia (Tweedie 2013, 300-301; see also Rawling 2015). Moreover, in contrast to New Zealand, the trade unions appear reluctant to press for statutory regulation, preferring to pursue initiatives in the industrial tribunals that could result in new clauses in awards. It could be argued that this approach has been successful in the past, as indicated by the presence of working-time protections within awards. But it is noteworthy that few advances have been made through this highly legalized process in recent years. A major case in 2000 in the metal trades introduced a voluntary conversion right for some casual employees (see Appendix A) and this right was subsequently extended to other awards (27 out of the current 122 modern awards - ACTU 2015), but up until 2017 there were few signs of any further progress. Insofar as there have been changes to award protections, they have often been to the disadvantage of casual employees. For example, the three-hour minimum engagement for casual (and permanent part-time) employees in the General Retail Industry Award 2010 was reduced in 2011 to one-and-a half hours for casual secondary school students, largely justified by a belief that this would create more jobs for disadvantaged secondary school students (Carnie 2012).

The most recent regulatory initiative in Australia occurred as part of the first four-year review of the *Fair Work Act* and centred on a case brought by the ACTU and selected affiliated unions before a Full Bench of the Fair Work Commission (AM2014/196 and AM2014/197). The ACTU claim had three main components:

- a) extending and strengthening the provision in awards for a conversion right for casuals;
- b) standardizing the minimum engagement period for casual and permanent part-time employees in awards at 4 hours; and
- c) a clause requiring employers: i) to provide information on classification level and rate of pay to casuals; ii) to offer additional work to existing part-time or casual employees before putting on new part-time or casual employees; and iii) to refrain from engaging and re-engaging casual employees to avoid award obligations.²⁴

The decision in the case was handed down in mid-2017 (FWC 2017). The third component of the ACTU claim was rejected. The second component was also rejected, but the Commission agreed with the principle of minimum engagement periods for casual employees and suggested the introduction of a two-hour minimum for casuals in the 34 modern awards that previously did not contain a minimum. The first component was partially granted. The Commission endorsed the need for a casual conversion mechanism in order to avoid situations where the employer would be able without constraint to sidestep the safety net of wages and conditions. It developed a model clause for conversion rights which would be introduced into the 88 modern awards that previously did not contain a casual conversion provision. However, it rejected union arguments in favour of strengthening the provisions in order to overcome the reluctance of individual casual employees to request conversion for fear of antagonizing their employer (FWC 2017).

As this brief account indicates, the ACTU claim fell squarely within the traditional approach, which focuses on ‘permanent casuals’ and is oriented to convincing industrial tribunals about the need for new regulation. Moreover, it was a strikingly modest claim, the main components of which were targeted on already-existing protections in awards and contained no novel elements. The claim involved a major investment of time and resources from the union movement, stretching over almost three years of hearings and deliberations. Though the end-result might be seen as progress, it was strictly limited.

Varied efforts in Australia over the past twenty years to restrict precarious employment or to mitigate its effects have had only limited success (Hunter 2006, 303). Several new ideas and new approaches have been proposed, but there is little sign of any social or political momentum to carry the proposals forward. Interest has been expressed in pursuing ideas of portable entitlements for non-standard employees, along the lines of the portable long-service leave provisions pioneered in the construction industry (Howe et al.

²⁴ Several other claims, either by individual unions or by employer associations, were part of the case but are not considered here.

2012; Markey et al. 2016; Thornthwaite and Markey 2014). But it is not clear that on-call casual workers have a base of entitlements that could be carried from job to job. One critic of the conversion right argues that a “more equitable... and more secure approach... is to ensure that every worker is entitled on a *pro rata* basis to fundamental workplace rights, using reasonable probation thresholds to protect business’s legitimate interests in securing the right worker for the job” (Owens 2006, 348). An academic report to the Labor Party on policy options for casual work recommended approaching the deficits of casual work through new initiatives aimed at improving the conditions of all part-time employees, initially through ratification and then application of the principles of the ILO Part-Time Work Convention 1994 (no. 175) (Pocock et al. 2004b). However, neither of the latter proposals have been further elaborated.

Apart from any substantive issues, a case can be made for a re-examination of the favoured process of change in Australia. The current process relies heavily on trade unions bringing a case before the industrial tribunals and seeking a favourable judgment. The process has distinct advantages, eg in providing a forum for detailed evidence and argument, but it places a large burden on a sometimes divided and reluctant trade union movement, and, most important, it seems largely blocked as a channel for achieving substantial change in employment conditions for the many on-call and casual workers. Tribunals have tended to agree that misuse of casual status is indeed a problem but have argued that casual employment is a long-standing feature of the employment landscape, which would be difficult to alter without major cost and disruption to employers. There is a strong case for supplementing initiatives before the industrial tribunals with legislative proposals, backed up by public campaigns, as in the debate around zero-hour contracts in New Zealand. Certainly, the development of the National Employment Standards (NES) in the *Fair Work Act* as a legislated platform of minimum standards defines an obvious space for debate and new initiatives. Though some scholars suggest that the legislative sphere is blocked due to the dominance of neoliberal philosophy (Tweedie 2013), there are signs that any such blockage may be shifting. For example, the *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017*, which *inter alia* introduces new obligations on franchisors in respect of contraventions of employment law by franchisees and strengthens the enforcement powers of the Fair Work Ombudsman, was recently passed by the current parliament, with bipartisan support and supported by public opinion (*Workplace Express* 2017a).

7. Conclusion

Empirical evidence from labour force data and case-studies, though sparse, indicates that on-call (or ‘on-demand’) work is widespread in both New Zealand and Australia. It is characteristic of the work experiences of a substantial minority of the workforce, especially part-time employees. On-call working-time patterns are concentrated within the category of casual employment, which provides a conducive legal and economic framework for the development of variable schedules to suit business needs, but they can also be found in association with other types of employment, including even permanent (or ongoing) employment. Zero-hour work arrangements are the most prominent form of on-call work in the two countries, but also important are minimum-hour work arrangements, especially for a minority of permanent part-time employees. Though a lack of robust data makes cross-national comparisons difficult, it seems likely that on-call work is more prevalent in New Zealand and Australia than in many other comparable industrialised countries.

The report stresses that on-call work in New Zealand and Australia is diverse, influenced not only by the structure of the system of employment and social protection but also by factors such as employer choices, industry pressures and labour market conditions. The diverse characteristics of on-call work underpin a similar diversity in the extent and nature of the impacts on individual workers. However, in general, on-call work is characterised by a marked imbalance of risk, in which the worker is placed under an obligation to be ready for a call-in to work but the employer is free of any obligation to offer the hours of paid work. Case studies in both countries suggest that many on-call workers are exposed to significant elements of precariousness or labour insecurity in their working life, especially employment, earnings and hours insecurities. These insecurities are likely to have the strongest impact on vulnerable workers who lack individual or collective bargaining power, such as young workers and women with caring responsibilities.

Explanations for the development of on-call work need to look carefully at employer labour-use practices and the perceived advantages for firms in terms of flexibility. However, the report notes that on-call working-time patterns – in spite of their immediate attraction for some employers – may entail disadvantages for businesses in the short-term and the long-term. In addition, they are likely to involve disadvantages for society such as depressed productivity growth and increased economic inequality.

On-call work is beginning to attract more attention in New Zealand and Australia, as in several other industrialised countries. New Zealand recently hosted a major debate on zero-hour contracts, which led both to widespread condemnation of these contracts as unfair and to regulatory initiatives aimed at introducing ‘guaranteed minimum hours’ and abolishing such contracts. Though only partially successful, the regulatory initiatives in New Zealand – and the debate in which they were embedded – offer an important contribution to the international discussion of on-call work patterns. New regulatory initiatives are largely missing in Australia, but experiences with protective regulations that are lacking in New Zealand, such as requirements for a regular roster for part-time permanent employees, standards for minimum shift engagements for both permanent and casual employees and rights for casual employees to request conversion to permanent status, also make a useful contribution to the international discussion.

The report confirms the need for more research on on-call and related forms of casual work. In particular, it points to the need for more detailed research on trends, characteristics, dynamics and effects in different parts of the economy in order to better inform the emerging debate on policy measures to ameliorate the negative effects of on-call work.

APPENDIX A: Legal understandings in New Zealand and Australia

This appendix reviews selected aspects of employment law in New Zealand and Australia, focusing on the relation between formal working-time regulation and the different forms of waged work. It aims to facilitate an understanding of the way in which employment regulation in each country shapes the development of on-call patterns of work. This can in turn help in identifying regulatory initiatives that might be useful in lessening the negative impacts of on-call work.

It is useful to note that for most of the twentieth century both countries had a reputation for high wages and comprehensive measures of social protection, anchored in a distinctive Antipodean system of compulsory conciliation and arbitration (Castles 1985). In this system, common law was supplemented not only by statute and collective bargaining agreements but also by legally binding awards set down by judicial tribunals (Anderson and Quinlan 2008). Both countries embarked on economic and financial liberalization in the 1980s, but their paths subsequently diverged. New Zealand went on to abolish its award system in the 1990s in the course of a sudden and radical experiment in labour market deregulation, while Australia, after some hesitation and slow steps in the direction of labour market deregulation in the 1990s, followed by the radical ‘Work Choices’ experiment in 2005-2007, retained a modernized award system that underpins a system of single-employer collective bargaining (Anderson and Quinlan, 2008; Wailes 2011). Thus, while New Zealand moved towards greater emphasis on common law, Australia retained a ‘complex and layered’ regulatory system that preserved the principles of award regulation (Anderson et al. 2011-12; Bray and Stewart 2013).

New Zealand

Working-time protection for all employees in New Zealand has always been relatively light, and it was further weakened as a consequence of the introduction of the *Employment Contracts Act* (ECA) in 1991, which abolished the award system, imposed restrictions on trade union action, and initiated a turn to a system based on individual contracts, though with some space for a small component of collective bargaining, generally at single-employer level (Anderson and Quinlan, 2008; Wailes 2011).²⁵ A statutory minimum wage (*Minimum Wage Act 1983*) together with statutory leave provisions such as three weeks’ annual leave and five days’ sick leave were retained for all employees, but award provisions such as penalty rates for overtime and work in non-standard times of the day were lost and were not subsequently recuperated through collective agreements (or individual agreements) (Harbridge and Walsh 2002; see also Anderson et al. 2011-12, 150-152). The subsequent evolution of regulatory policy has been unsteady, partly shaped by the political complexion of successive governments, but the overall picture is one of continuity. The Fifth Labour Government (1999-2008) improved the statutory minimum code by increasing minimum wages, improving annual leave entitlements (now four weeks) and introducing a paid parental leave scheme, but its *Employment Relations Act* (ERA), which replaced the ECA, did not reverse the central thrust of the employment relations reforms. Although work-life balance and flexible working arrangements became an important theme under this government, and family payments were boosted, little was produced in relation to working-time protection apart from the introduction of a limited individual right to request flexible work (Donnelly et al. 2012, 185-188). The subsequent National government (2008-2017) introduced some minor measures of retrenchment, especially in relation to tighter workfare measures, but the overall picture of continuity after the shocks of the 1980s and 1990s remains largely unchanged. The level of the minimum wage has held up well. A recent assessment suggests that social protection has not been abandoned over the period since the mid-1990s but neither has it been refurbished; instead the best characterisation is one of ‘hollowing-out’ (Wilson et al. 2013).

²⁵ Reductions in employment protection were accompanied by cuts in social welfare expenditure (though not the aged pension) and moves towards workfare reforms for the unemployed and recipients of other benefits (Wilson et al. 2013).

The current working-time regime is best described as a ‘unilateral’ regime, in which the most important level for the determination of working-time patterns is at the workplace (Eurofound 2016, 7-8). Key working-time standards for most employees are set by individual employers, though there is a minority of the workforce that is able to engage in (single-employer) collective bargaining.

The weakness of working-time regulation in New Zealand applies to ‘permanent’ or ongoing employees as well as temporary employees. Most aspects of working time are left to agreement with the employer. Except indirectly through health and safety regulation, there is no regulatory standard for usual full-time working hours, maximum daily and weekly hours, and overtime. This weakness in turn creates opportunities for casualised working-time conditions to be reproduced within the framework of the permanent contract. The situation of part-time permanent employees deserves special mention. Whereas full-time employees are conventionally placed on a regular roster framed in terms of 40 hours per week, part-time schedules can be markedly diverse in terms of the duration and position of the weekly working hours and in terms of the stability of the roster, largely in conformity with employer preferences. Without any special protections, such as requirements for equal treatment, as in EU countries, or the requirements for minimum engagement periods and an agreed regular roster, as in Australia, part-time permanent employees in New Zealand appear particularly vulnerable to risks of working-time insecurity associated with on-call work. Recent regulation has aimed to lessen such vulnerability, with some success (see Section 7).

In OECD measures, New Zealand is characterized by a liberal and permissive approach to ‘non-regular employment’ (OECD 2014). Fixed-term work has attracted some regulation in order to ensure that it is ‘used for genuine reasons based on reasonable grounds’ (Anderson and Hughes, 2014, *16-23). Temporary agency work on the other hand remains largely unregulated, and the legal situation of temporary agency workers remains blurred. They may be treated either as employees of the temporary agency (generally fixed-term or casual employees) or as independent contractors (Burgess et al. 2005). This points to the general lack of clarity around the boundary between employee and non-employee status, which can result in employees being pushed into sham contracting arrangements in order to avoid costs associated with employee status (Lamare et al. 2015).

Casual work is the major form of temporary work in New Zealand. The category of casual has a long history, reaching back to the nineteenth century, and it often appears in legal documents, but its legal definition remains imprecise. Both the definition and the practice has traditionally been narrower in New Zealand compared to Australia. This can be traced back to the (now-abolished) award system, which incorporated casual clauses, with definitions of casual workers, as distinct from permanent workers, that were framed in terms of short engagements (Campbell and Brosnan 2005, 5-6). This tighter and more specific definition tended to be reproduced in collective agreements and in some legislation. In developing case law, New Zealand courts have drawn heavily in recent years on UK doctrines of ‘mutual obligation’ to represent casual work as an open-ended series of fixed-term engagements, in which the worker is engaged for a short time for a specific purpose, but in which no obligation on the part of either employer or employee exists for the period in between the engagements (Anderson and Hughes 2014; NZCTU 2013, 52-54; NZCTU 2015, 8-9). A pivotal 2009 judgment (*Jinkinson v Oceana Gold (New Zealand) Ltd.*) stated that

the distinction between casual employment and ongoing employment lies in the extent to which the parties have mutual employment related obligations between periods of work. If those obligations only exist during periods of work, the employment will be regarded as casual. If there are mutual obligations which continue between periods of work, there will be an ongoing employment relationship. (cited in Anderson and Hughes 2014, *25)

Casual employees are entitled to payment for each hour worked. Casual loadings existed in the past as award provisions, but these largely disappeared with the abolition of the award system. Though casual employees enjoy few special protections, they are entitled to several statutory rights and benefits specified for all employees. This extends beyond rights such as minimum wage, occupational health and safety protection and workers’ compensation to include many forms of leave. Thus casual employees are

entitled to paid annual leave and paid days off on public holidays, paid sick leave, bereavement leave and parental leave (unpaid and paid) (Campbell and Brosnan 2005, 10; MBIE 2015a, b).²⁶

Employment regulation, whether weak or strong, can be undercut by employer non-compliance. A recent MBIE report points to a high level of non-compliance with employment standards in New Zealand and “growing concerns that breaches are becoming more serious, systemic and widespread” (2015c, 8).²⁷ It suggests that there are three main problems: i) employees who are not given a written employment agreement; ii) employees who are underpaid; and iii) employees who are denied their holiday entitlements (MBIE 2015c). The available evidence suggests that casual employees and other employees in low-wage sectors such as horticulture and hospitality are the groups most vulnerable to employer non-compliance (Statistics New Zealand 2016; Stringer 2016; see also Searle et al. 2015).

Australia

As in the case of New Zealand, the working-time regime is best described as a unilateral regime, in which the most important level for the determination of working-time patterns is at the workplace (Eurofound 2016, 7-8). Nevertheless, in comparison with New Zealand, working-time protections for employees, whether permanent or casual, appear somewhat stronger.

Though working-time protections for permanent employees in Australia are patchy in comparison with European models, they remain more elevated than for permanent employees in New Zealand (Anderson et al. 2011-12, 161-2). Such protections are found mainly in awards and agreements, and sometimes in statute. Though crucial working-time protections in awards were eroded during deregulation in the 1990s, measures such as penalty payments for work outside standard hours are still in place within awards and agreements for most permanent, and indeed casual, employees (Charlesworth and Heron, 2012, 170).²⁸ The period after the 1990s witnessed an unsteady development, characterized on the one hand by efforts from employer groups to dismantle surviving protections in awards and to develop new provisions for employer-oriented flexibility and on the other hand by the consolidation of a floor of minimum standards, including a relatively high minimum wage, and by the introduction, generally under the banner of work-family balance, of new employee-oriented measures such as a comprehensive paid parental leave scheme and a right to request flexible work arrangements (Pocock et al. 2013). The *Fair Work Act* 2009 brought together a rather bare set of minima known as the National Employment Standards (NES) (Stewart 2015, 116-119). Subsequent legislation in 2013 amended the *Fair Work Act* to widen eligibility for the right to request flexible work and provided for the insertion in awards and agreements of a clause requiring employers to consult employees about a change to their regular roster or ordinary working hours. The latter provision may appear relevant to on-call work, but the reach of the provision has been limited, so that the award clause does not apply where an employee has ‘irregular, sporadic or unpredictable working hours’ (Stewart 2015, 235). Moreover, the content is weak, designed only to require the employer to: a) provide information about a change; b) invite employees to give their views about the impact of the change; and then c) to consider any views given by employees (FWC 2013).

The situation of permanent part-time employees requires special attention. In the past, many awards failed to make provision for permanent part-time employment, thereby pushing employees who wanted part-

²⁶ Leave entitlements come with thresholds which would exclude some casual employees, eg paid parental leave, which requires at least 10 hours per week employment for the prior 6 months. Moreover, in the case of annual leave, employers may pay fixed-term workers or workers who work intermittently and irregularly an extra 8% of gross earnings in lieu of providing the paid leave.

²⁷ The precise extent of non-compliance is difficult to estimate. The MBIE report (2015c, 8) notes that ten percent of employers in an employer survey, mainly small employers, reported that not all of their employees had an employment agreement. On the other hand, 8.6% of employees in December 2016 stated that they did not have a written employment agreement, and a further 2.8% stated that they didn’t know if they had a written employment agreement (Statistics New Zealand 2016).

²⁸ In contrast to New Zealand, penalty rates for work in non-standard times are still a feature of employment in Australia for both permanent and casual employees (though calculation of casual rates differs according to the award or enterprise agreement – Productivity Commission 2015, 1121-1125). Penalty rates for weekend work are a longstanding source of debate and argument (Productivity Commission 2015). In response to claims from employer groups, the FWC (AM2014/305) recently reduced penalty rates for Sunday work for employees in retail and pharmacy and hospitality and fast food, to be phased in from 1 July 2017 (*Workplace Express* 2017b).

time jobs into casual status. This was slowly remedied, and in 1996 all federal awards were required to provide for permanent part-time employment, defined as *regular part-time work* (Stewart 2015, 66-67). The resulting provisions for part-time permanent employment in awards and agreements have generally been developed along the same lines as casual work, ie through special clauses tacked onto the main text of the regulation. A common template starts with a definition of a regular part-time employee as an employee who works less than 38 hours per week and has “reasonably predictable hours of work” (General Retail Industry Award 2010), and it generally goes on to specify that employees are entitled to the same benefits as permanent full-time employees, though on a *pro rata* basis. Beyond this, it is common to have requirements for written agreement between employer and employee on a regular roster, together with provisions that require written agreement for variations in schedules. The substance of regular part-time clauses varies amongst the 122 modern awards, but they all provide in effect for a guarantee of hours, generally within the framework of a regular roster.

Permanent part-time employees also generally enjoy the special protection of a *minimum shift engagement* when called in for work, in order to ensure that the time and money expense of transport to work, organization of child care, etc. are balanced by a reasonable period of paid work. Under the terms of this protection, workers are entitled to payment for the minimum engagement period, even if the shift is cancelled or shortened after arrival at the workplace.²⁹ Again, however, the level of the minimum can vary amongst the different awards.

These regulatory protections for permanent part-time employees are important and do have an effect. They establish a clear difference between Australia and New Zealand in the situation of permanent part-time employees. In particular, award provisions for regular rosters impede the introduction of zero-hour work arrangements within the sphere of permanent employment. Nevertheless, the regulatory protections cited here are insufficient to establish ‘good quality’ part-time work; instead, they remain compatible with ‘poor quality’ part-time work and inferior wages and working-time conditions in comparison with permanent full-time employees.³⁰ For example, though these working-time protections hinder zero-hour work arrangements, they are compatible with ‘minimum-hour’ work arrangements, in which workers are given a regular roster with very few hours and are available for ‘flexing up’ in hours (Charlesworth and Heron 2012, 170).

In OECD measures, Australia has an even more liberal and permissive approach to ‘non-regular employment’ than New Zealand (OECD 2014). This is true not only for casual work but also for other forms of non-permanent work. Fixed-term contracts are largely unregulated, except through rare clauses in awards and agreements (Stewart 2015, 334). There is no specific regulation of TAW, and, as in New Zealand, temporary agency workers can be either employees of the temporary agency (generally casual but sometimes fixed-term) or independent contractors (Stewart 2015, 71-75). Similarly, ‘sham contracting’ or dependent contracting, whereby firms of all types take advantage of the blurred boundary between employee and self-employed in order to reduce labour costs (Johnstone et al. 2012; Stewart 2015, 49-64), is characterized as a ‘major weakness’ of the Australian system (Johnstone and Stewart 2015-16, 68).

The most important category of temporary work in Australia is that of ‘casual work’. Casual is a long-established, though poorly defined, category in Australian labour law (O’Donnell, 2004). The category is deeply embedded in awards, where – in contrast to New Zealand – it was given a broad interpretation, with casuals generally defined in casual clauses as employees who are ‘engaged as such’ or ‘paid as such’ (Stewart 2015, 66). Casual clauses are found in almost all 122 modern awards and over nine in ten federal collective agreements (DoE 2015, 8). Such casual clauses are relatively bare, serving primarily as an officially sanctioned gap in employment protection, which allows employers to engage workers without

²⁹ The provision does not resolve problems of short notice of changes, including cancellation of shifts, which are communicated before the worker arrives at the workplace. Protection in this respect will depend on whether minimum notice periods of changes to rosters are specified in the award (or agreement).

³⁰ Australia has ratified the ILO Part-Time Work Convention 1994 (no. 175), though without using it as a platform for any legislative action. Inaction is justified with an argument that the Convention allows exemptions for casual work, and that therefore it is only relevant to permanent part-time work, which is held to be in conformity with the Convention.

standard rights and entitlements. After the definition, the clauses generally state an hourly wage (with a casual loading) for each hour of work at the workplace, together with provisions for the time and frequency of payment. Casuals may also be entitled to disamenity payments ('penalty rates') for overtime and work during non-standard hours such as nights and weekends. Though bare, casual clauses in awards may also add on regulatory controls and special protections. In the past, *limitations* were prominent, with casuals not allowed in some sectors and subject to quantitative limits (e.g. maximum proportions of casuals) in other sectors. However, such limitations have largely vanished in the course of labour market deregulation, with most quantitative limits in awards proscribed since 1996 (Campbell and Brosnan 2005). The *casual loading*, which specifies an increment on the hourly wage, remains in place. It was intended both as a limitation (a disincentive for employers) and as compensation to casual employees for the disadvantages of casual work; currently interpreted as compensation for missing NES entitlements such as paid leave, it has been standardized at a level of 25%.

Two main working-time protections for casuals can be found in awards. First is a *minimum shift engagement*. This is parallel to the provision that applies to permanent part-time employees, as described above, and it is often, though not always, defined within an award at the same level for both groups of workers. A recent decision of a Full Bench of the Fair Work Commission (FWC) left untouched the majority of awards, where a minimum daily engagement period for casual employees was already specified, but it improved conditions for the remaining group of casual employees by introducing a new minimum of two hours into 34 modern awards that previously contained no minimum (FWC 2017).

The second regulatory protection, introduced in a minority of awards (and collective agreements) in the wake of a major industrial case in the metal trades in 2000, is a *conversion right*, whereby after a certain period (generally six months) casual employees, other than irregular casual employees, have a right to elect to have their contract of employment converted to standard full-time or part-time employment. Employers are required to give a casual employee notice of the conversion right at five month's service, but they have a right to refuse any request (though not unreasonably) (Charlesworth and Heron 2012, 177; Stewart 2015, 68-69). Until recently, the conversion right only appeared in a minority of awards. However, a recent decision of the FWC has developed a model conversion provision for insertion into the many modern awards without such a provision. In this case, the qualifying period is set at 12 months, with an added criterion that the employee should have worked "a pattern of hours on an ongoing basis which, without significant adjustment, could continue to be performed in accordance with the [permanent] full-time or part-time employment provisions of the relevant award". In addition, the model provision sets out the grounds on which an employer can refuse a request for conversion (FWC 2017).

Statutory protections for casual employees are limited, except for occupational health and safety (OH&S) rules and rights to workers' compensation in case of injury or illness caused by work, and freedom of association and collective bargaining rights (O'Donnell 2004). Other entitlements are also limited (Productivity Commission 2015, 804). Casual employees have no rights to notice for termination or redundancy pay. They appear as highly disposable workers, who are generally excluded from protection against 'unfair dismissal' (termination that is harsh, unjust or unreasonable). However, they may be able to bring a case for protection if they can demonstrate that they meet the minimum qualifying period (six months or twelve months in enterprises with fewer than 15 employees) and that their employment was "regular and systematic and they had a reasonable expectation of continuing employment". When paid leave for non-work periods such as annual holidays was introduced, casual employees – following the model of their exemption from sick leave payments and payment for public holidays – were explicitly exempted from such entitlements. They continue to be excluded from most working-time standards and paid leave today, as in the paid leave provisions in the NES (Charlesworth and Heron 2012). However, casuals who have been employed for at least 12 months on a 'regular and systematic basis' are eligible to request flexible work arrangements. Moreover, they have certain entitlements under the NES to *unpaid* leave. They may take unpaid carer's leave, compassionate leave or community service leave, or reasonably seek a day off on a public holiday. After meeting the threshold of 12 month's service they are entitled to the same amount of unpaid parental leave as permanent employees (Stewart 2015, 67; Charlesworth and Heron 2012, 171-172). Under state and federal legislation, they may even have a claim to paid long service leave.

As the above discussion indicates, casuals can in principle claim certain rights and entitlements after regular work for a certain period of time (6 months or 12 months). The phrasing of the criteria for claiming rights and entitlements varies, but commonly it refers to ‘regular and systematic’ work. The tenure requirement is straightforward, but what constitutes ‘regular and systematic’ casual work in contrast to irregular and/ or unsystematic casual work is more opaque. The distinction is relevant to this report, but it is not clearly defined. The notion is subject to the development of case law. One workers’ compensation case suggests that ‘regular and systematic’ refers to the engagement rather than the pattern of actual working hours (*Yaraka Holdings Pty Ltd v Giljevic (2006)*), and the logic of this judgment was also taken up by the FWC in a subsequent unfair dismissal case (*Pang Enterprises Pty Ltd v Sawtell (2009)*). If this interpretation of ‘regular and systematic’ holds, then it might apply not only to regular casuals but also to many on-call casuals who could demonstrate continuity in their engagement. However, the significance of the decisions remains unclear.

Employer non-compliance may undermine the effectiveness of any employment regulation. The enforcement regime, now administered through the Fair Work Ombudsman (FWO), has been strengthened in recent years. But employer non-compliance, described as “both significant and sustained” in the past (Maconachie and Goodwin 2010, 419-420), remains seen as “a major and ongoing challenge” in the present (Howe et al. 2013, 10). In contrast to New Zealand, employer non-compliance is not associated with failure to provide a written contract, since the presence of a verbal rather than a written contract of employment is not illegal. Employer non-compliance in Australia is primarily to do with underpayment or non-payment of wages (extending to non-payment of leave entitlements, penalty rates for work in non-standard times, and compulsory superannuation contributions). This can range from direct underpayment to more elaborate methods, such as varied forms of unpaid work experience or internships (Oliver et al. 2016) or ‘phoenix operations’ in which the firm disappears while owing wages to employees (but re-appears shortly after with a new title) (Anderson et al. 2015). Employer non-compliance is often associated with ‘cash-in-hand work’, which is concentrated amongst casual employees who are employed in small firms in sectors such as food services (Campbell et al. 2016; Li 2017).

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