

**The On-Demand Lives of Precarity in Academia  
Inquiry into the Victorian On-Demand Workforce  
NTEU Victorian Division Submission**

The National Tertiary Education Industry Union (NTEU) represents workers in the higher education, tertiary education, adult education and research institute sectors. The Victorian Division of NTEU represents approximately 9,300 members working in these sectors in Victoria.

NTEU members work across a diversity of employers. They include:

- Universities, established under Acts of State Parliament, and their subsidiaries;
- TAFEs, established by State Government and managed by Boards;
- Research Institutes, affiliated to or standing alone from universities, usually non-profit and largely publicly funded;
- Labour Hire agencies providing services to employers, particularly universities;
- Neighbourhood Houses and Adult Learning Centres, largely funded by Government;
- Private Providers such as “Navitas Limited” which provide services to or direct entry pathways for universities; and
- Student unions.

This submission will detail experiences of on-demand work existent in the tertiary education sector and provide recommendations to create greater job security for workers who are being exploited by legislative gaps. This submission is informed by the experience of staff working in the tertiary education sector, received through stories shared by our members.

This submission will draw on “newer” forms of on-demand work, such as the uberisation of work and the use of independent contracting out of work, but the NTEU implores the Inquiry to consider how on-demand employment is utilised in insecure work more generally. Casual and fixed term staff in tertiary education are often employed on the basis of what institutions claim is on-demand work (something we contend), and this should form an important element of this Inquiry. The on-demand work does not necessarily depend on electronic platforms, but instead is widespread in our sector.

NTEU is proudly affiliated to Victorian Trades Hall. We are generally supportive of the findings and recommendations of any submission that they put forward.

The tertiary education sector and insecure on-demand work

**University sector**

Insecure work is rampant in the tertiary education sector. The most recent Workplace Gender Equality Agency data shows that well under half of all people employed at universities are in secure ongoing work, with 64.4% of all people insecurely employed (NTEU, 2018).

A significant portion of those engaged in casual employment are teaching only staff. Casual teaching staff are employed on contracts that promote on-demand work. Many casual staff receive annual casual contracts but are not advised as to whether they will be required for the next semester, depending on how many students enrol in particular units. Indeed, many people find out days before semester begins whether or not they are employed for the semester. If employed, casual teaching staff are usually paid a “rolled up rate”, being allocated a set payment that combines preparation, student consultations and class time. Marking is often paid as a “piece rate”, with teaching staff allocated a period of time to mark each assessment without the complexities of marking and the actual time fully considered. As highlighted in *The Age* (2018) last year, there is a systemic problem with universities underpaying casual staff for the actual time worked despite Enterprise Agreements including provisions to pay additional money to cover work hours. The way in which universities operate these casual contracts can be classified as on-demand work.

Whilst ongoing academic employees receive greater job security, there has also been increasing on-demand performance indicator measures placed on them. Victorian Universities increasingly expect academics to obtain research grants as a measure of performance (Taylor, 2002). At universities such as Monash University, members have shared disturbing experiences of being emailed just prior to Christmas advising them that they must apply for an Australian Research Council grant by the beginning of February, which is simply impossible for many and does not factor in other workload allocations. Such expectations relate to decreasing university funding, with universities instead finding new streams of funding to cover expenses. Academics have been caught up with this on-demand approach to research, competing for the relatively small stream of money and face potential performance management if they do not “win” in the demand driven funding competition.

Further, it is becoming more and more common for university staff to employ on-demand apps such as AirTasker to outsource work they are unable to perform in their role due to intense and increasing workload pressure, particularly academic marking.

### ***Case study – English language testing industry***

NTEU has been disturbed to uncover inequitable working conditions in the area of English language assessment. There are five major English language tests which can be used for immigration purposes to Australia, and may be used for university entrance; these are IELTS, OET, Pearson, TOEFL IBT and Cambridge English: Advanced.

In mid-2018, an employer which administers the OET test attempted to convert its entire cohort of well over a hundred casual staff into independent contractors, which would have meant the loss of their entitlement to superannuation and a requirement for contractors to take out personal liability insurance, *inter alia*. Fortunately the union was able to coordinate its members sufficiently, and contest what we alleged were sham contracting arrangements, to encourage the employer to instead redeploy these staff to home offices while retaining

their employment status as casuals. Despite being 'casual' some staff have worked regularly for the company for over ten years.

Redeployment to the home offices has had a significant impact upon our members, such as feeling isolated, having to deal with poor communication from a remote office, frequently sitting by their computers (unpaid) for hours on end, including the early morning, waiting in vain for work to be loaded onto the computer systems and – most concerning of all – being forced to compete with other staff in a kind of feeding frenzy for the four types of marking (reading, writing, listening and speaking) before their colleagues complete all the work. The result is that many of our members have reported losses of thousands of dollars compared with their usual income from previous test administrations.

Although the employer took the precaution of requiring an ergonomic set up of all home workstations, all of the casual staff found themselves effectively 'bench testing' new software for the company for free. The union surveyed its members and found that there were high levels of self-reported shoulder pain, back pain, repetitive strain injuries and eye strain, some of which was apparently caused by the stress around the implementation of the new system, and some to do with poorly designed software that required excessive mousing and navigation between screens.

The following statement from a member is typical of the uncertainty experienced by staff:

*My main concern remains the lack of an allocation system. This advantages those waiting on their keyboards for work and disadvantages those of us who log in when we can. We cannot choose when we work. The work is either there or not when we login. With the old paper system I knew & could plan the days and hours I would be working, now it's pot luck. I personally don't wish to work in the evenings but I am being pushed into doing this more often than not as it seems to be when the work becomes available. It would be great if [company name redacted] could assign papers to examiners to rate over a certain period of time. [Email communication to NTEU 23 January 2019].*

The NTEU reported the employer to WorkSafe without success because the inspector was unable to take into consideration the impact of night work on staff with other jobs, family carer responsibilities or health issues. Workplaces are assessed for compliance with the Act in isolation from each other. The union was told that WorkSafe could only issue a notice for an outright breach of the Act, but could not make recommendations in relation to 'best practice'. WorkSafe accepted the employer's position that the technical issues with the software were a 'work in progress' that would be corrected over time. Evidence of individual members of staff seeking medical treatment for injuries did not influence the outcome of the investigation. There are reports about staff being too scared to lodge a WorkCover claim for fear of losing future work.

The industrial rights of these casual staff are poor to non-existent. There is no Award which covers the work so the union is unable to enforce minimum standards or notify a dispute. The staff are reasonably well paid for the piece work but on the other hand they have not had more than one pay rise in the past decade. The union found late last year that staff had never

been paid for irregular on-site standardisation training. There is no practical way to organise these staff because due to their status as casuals they fear for their future employment. Although the union could use right-of-entry to deal with failure to pay for some work, the provisions of the *Fair Work Act 2009* would mean that members' names would be disclosed to the employer. If the union had needed to challenge sham contracting arrangements we would have been forced into an expensive court case due to the unavailability of the Fair Work Commission jurisdiction due to lack of an industrial instrument, or we would have needed to get individual members to seek a private ruling about their employment status from the Australian Tax Office.

### Outsourcing of education

The NTEU is deeply concerned about the outsourcing of tutorial and student support services, as is currently occurring at tertiary institutions across Australia. The union's national platform states the opposition to the:

*"Allocation of funding and equity subsidies to for-profit, third-party academic service providers. Third party services that are designed outside of, and are unaccountable to, systems of academic governance, erode the public education system's academic integrity, intellectual freedom and teaching standards. Universities' adoption of such so-called academic services is an example of outsourcing and offshoring of Australian tertiary sector jobs by stealth."*

Many universities have outsourced aspects of education provision to private providers. An example of this is the outsourcing of tutorial and assessment support to companies such as Studiosity. Studiosity provides on-demand subject and assessment support to students at universities that have signed up to the service. Students can send assessments to receive feedback in less than 24 hours or obtain on-demand support 6 days per week.

The NTEU is deeply concerned by the outsourcing of this support to private providers, who are unlikely to provide the working conditions that the union has successfully negotiated for tertiary education staff. This effectively undermines the NTEU's work to advance the working conditions of the tertiary education sector.

Given the on-demand nature of this work, the NTEU is concerned that such organisations have the potential to employ people in gig-type conditions. If this is the case, staff are likely to have lesser conditions, such as:

- Job insecurity
- Inconsistent income
- Lower/no superannuation contributions
- No access to leave entitlements
- No professional development support
- No compensation for using own resources (i.e. computer)

Such employment conditions effectively undermine the entire higher education profession. As the Bradley Review (Bradley et al, 2008) found, insecure work threatens the quality of the tertiary education sector and has resulted in less time spent with students and inadequate

feedback. Insecurely employed staff in the tertiary education sector are often required to deploy knowledge, but are not remunerated to develop and maintain this base (Brown et al., 2010).

### Impacts of on-demand work

This section will detail the impacts of on-demand work on workers in the tertiary education sector. This section draws on direct experiences from almost 100 submissions shared for the previous Inquiry into the Labour Hire Industry and Insecure Work. Many of these submissions highlight the great problems with insecure work, including on-demand work. The issues raised in these stories continue to exist in the tertiary sector, and in fact have gotten worse as the level of insecure on-demand work continues to grow in the sector.

Academic literature clearly articulates clearly the negative impacts of job insecurity in the tertiary education sector. The set of experiences shared below is an unprecedented snapshot of the gross exploitation in the tertiary education sector. It must be a catalyst for change.

### **Impacts of insecurity**

Respondents clearly articulated distressing examples of how insecure on-demand work impacts their lives:

*Many people in my position do not know whether they will get a contract for a semester (12 week teaching period) until immediately prior (e.g. the week before) or, sometimes, until after they've already started working. Even if I teach one semester, I have no idea whether I will receive a contract the following semester, or (if I do) how many hours per week it will consist of. [text redacted, worker name], Victoria University and Swinburne University*

*Because of the short term nature of this job there is basically no job security at all - you just have to wait and hope you get chosen for the next semester. [text redacted, worker name], Tertiary Education*

*Stress. Inability to plan. Insecurity about the future. Insecurity, concern and stress about the future. Stress around not having an idea of what to plan for in terms of schedule. Anxiety about whether I will be 'good enough' to get more stable employment. Anonymous, Monash University*

*I do not know whether I will be able to get another job once the current semester finishes. [text redacted, worker name], La Trobe University*

*There is no job security. Most terms I don't know if I'll get a class to teach, therefore I am not sure of income each term, until the last Thursday or Friday of the term break. Sometime not even till term commences. One term I lost my class after a month without prior warning that it was funded short term. I am never offered full time hours even though I usually state great flexibility and desire for more hours. I suffer extreme anxiety at the end of every term > not knowing if I will have a job the next term, waiting for a call, and then accepting whatever is*

*offered because the alternative might be nothing at all. Anonymous, Australian Migrant English Service (AMES)*

*I have not yet been guaranteed work next year. I am being hired each semester for different subjects, dependent on the work loads of permanent staff. If the roster will allow it, their workloads will be packed full and I will have nothing. Anonymous, Tertiary Education*

*My school at the university doesn't notify staff of their employment until a few weeks before semester begins. For semester 1 work, that is three months over summer without knowing if you are going to be working. At the beginning of this year, I was told at the very last minute I didn't have any work (while realistically, they could have told me many months prior). Anonymous, Tertiary Education*

*There was never any knowledge ahead of time as to whether I would have work in the next semester, even though I worked on large core first year courses. Not having secure work meant I was unable to plan for the future. [text redacted, worker name], Deakin University*

*Right now, I am unemployed, with no idea as to whether I'll be offered work next semester (March 2016). This makes budgeting for the months to come very difficult, and the uncertainty is also very distressing. Anonymous, Deakin University*

*Sometimes I was informed only a week ahead what day(s) I would be working. Anonymous, Monash University*

*Never knowing whether I would have work next semester until a few days before. [text redacted, worker name], Swinburne University of Technology*

Uncertainty and fear are central to the on-demand tertiary education system. Tertiary education institutions and providers exploit the desperation of these workers, which is completely unacceptable. Nobody should have to live in the ways that the workers above do.

### **Loss of voice**

Tertiary education workers consistently expressed how the insecure work contracts that they held meant that they had no voice to raise issues about current work experiences:

*I didn't want to query this arrangement for fear of not being employed again. [text redacted, worker name], Tertiary Education*

*And because I am starting to take issue with the way we are treated at work I think I am less likely to get work next year. [text redacted, worker name], Tertiary Education*

*The casual workers were competing for contracts and so no one wanted to speak up about the precariousness of it all. Anonymous, University of Melbourne*

*RMIT is not handling OH&S as it should be. If you say something you will become an unwanted person who always make complaints. They want people to be silent and do what they are asked to do. Anonymous, RMIT*

*You have to be constantly pleasing and can't complain because you can have your hours cut or be removed from the program. I worked like this for many years. Anonymous, Victoria University*

*There are many sessional academics applying for work. If I cause headaches then they wouldn't hire me in the future. Sessional academics can't rock the boat. Anonymous, Tertiary Education*

*Can't make an issue or again, no more work offers. Annabelle, [text redacted]*

*I have felt that raising this kind of thing or refusing would suggest I have a bad attitude, am not committed to my work or my students (which is far from the case), and might result in me not being offered work again in future semesters. On a number of occasions I have also felt bullied by colleagues in more secure positions, which I've also felt unable to raise without compromising my future work prospects. At times, I've felt physically sick going to work, over issues I don't feel confident raising formally given my casual status (i.e. given that I am disposable). Anonymous, Deakin University*

*I complained of workplace bullying and was told there would be no future work for me after complaining. I have 3 children and a mortgage to support. I am now without employment since I complained about the unreasonable expectations placed upon me and workplace bullying. Anonymous, University of Melbourne*

It is important to note that these experiences exist despite legal protections that prevent discrimination on the grounds of trade union membership. What these case studies clearly show is that existing laws are inadequate to protect workers. At the heart of the issue is the contracts themselves. While employers can terminate contracts without a reason, or by making up an alternative reason, on-demand workers will continue to be grossly exploited.

### **Bargaining challenges**

Finally, the NTEU faces significant challenges in addressing the outsourcing of education due to the ability for tertiary institutions to undermine working conditions that the NTEU has negotiated over many decades. This is wrong. All workers at tertiary institutions deserve to be covered by the same Enterprise Agreement, to prevent the outsourcing of work to gig economy facilitators.

The Victorian Government must take serious action on this matter to prevent the normalisation of sub-par working conditions.

### **Challenging the employer Argument of Short Term Need**

At a micro level, many casual staff believe employer rhetoric that ‘class numbers’ are unknown until shortly before teaching periods commence. While ‘final class numbers’ won’t be known, a broad understanding of class numbers are known well ahead of teaching periods and cyclically can be understood with more certainty than the work security variables in other sectors.

For example, Southern University knows it will teach Engineering in 2016. It knows it will have between x and z tutorial classes in particular units. The argument the actual classes (y) is unknown does not prevent Southern University staffing x number classes well before teaching periods commence – even a year before could be reasonably foreseen. Universities can plausibly predict student numbers well in advance.

Furthermore, the risks associated with future demand should not be placed on vulnerable workers. It is the employer who should bear the risk of changes to student numbers. This is the principle that guided employment in much of the 20<sup>th</sup> century (Kalleberg, 2000), and is the principle that should be returned to in order to create decent work for all in the 21<sup>st</sup> century.

In essence, the seasonal nature of teaching periods, and the minor variation in class numbers, should not be impediments to finding solutions which deal with the harsh, unfair, unreasonable and unjust experience of tens of thousands of Victorian workers in the tertiary education sector.

#### Exploitation of tertiary education students

Beyond the tertiary education workforce, the NTEU expresses concern at students at our institutions working on-demand jobs. The vast majority of students are employed during semester while studying (Devlin et al., 2008). Much of this work is casual, with 60% of all casual workers under 35 years of age (ACTU, 2012). Given the nature of insecure work, it is plausible that young people may be a significant portion of these engaged in on-demand employment.

The NTEU is concerned about students who are not given the opportunity to be employed in decent work. Any poorly paid or insecure work that students engage in is likely to impact the education outcomes of students in tertiary education (Burston, 2017). The NTEU therefore calls for strengthened regulation of on-demand work to ensure that workers are engaged in quality work.

Furthermore, many students working in these employment types may have never had exposure to a trade union or may have limited knowledge of what a trade union is. This is likely to feed a cycle of exploitation.

#### Conclusion: Creating decent work in tertiary education

Based on the abovementioned discussion, the following issues are most pertinent for the on-demand Inquiry to consider:

- The on-demand nature of casual work in tertiary education and its impacts on workers;
- The move of tertiary education institutions towards on-demand performance measures for securely employed staff;
- The outsourcing of tertiary education to companies who may employ people on gig-type contracts;
- The impacts of poor quality on-demand work on tertiary education students.

NTEU members are deeply concerned about the rise of insecure work in tertiary education. For far too long, insecure employment has created far too much stress and uncertainty for workers. The On-Demand Inquiry has an important role to play in reversing these trends.

The NTEU urges the Inquiry to go beyond the Uberisation of work to understand how on-demand work is also pervasive in casual contracts. As shown above, tertiary education employers often use a false narrative of on-demand work to justify unacceptable working conditions. Furthermore, the outsourcing of work from tertiary institutions to private providers is a further example of the problems of on-demand work.

#### NTEU recommendations

The status quo of on-demand work is unacceptable. Workers are being exploited with poor working conditions while employers are lining their pockets. The NTEU condemns all forms of insecure work given its impact on working people but is particularly disturbed by the use of insecure employment in publicly funded tertiary institutions. The public sector should lead by example and provide decent work to employees, not be amongst the worst in rates of insecure work.

The NTEU makes the following recommendations to address the key issues raised:

- 1) **That the State Government establish a Secure Work Ombudsman/Commissioner** which:
  - has responsibility to pursue actions which reduce precarious work (including on-demand work) and increase secure work;
  - regularly audits all public entities, including all universities and TAFE institutions, to identify the extent of on-demand work in these entities, including the level of reliance on precarious on-demand work by those entities
  - monitors the changing nature of work, including new forms of on-demand employment;
  - advocates for secure work in all sectors of the Victorian economy;
  - investigates employers exploiting precarious workers;
  - resources prosecutions against employers exploiting precarious workers;
  - assists precarious workers and their unions obtain more secure work, including through securing and enforcing conversion provisions;

- shares successful experiences; and
  - reports on compliance by employers.
- 2) **That the State Government require all public entities** to report levels of outsourcing annually in their annual reports, including how much is paid to outsourcing companies and the working conditions of externally used organisations.
  - 3) **That the State Government prohibits outsourcing in agencies or entities** funded by the State Government.
  - 4) **That the State Government requires all public entities to promote their respective trade union**, with trade unions having direct access to all workers at all times.
  - 5) **That the State Government provides additional resources and legislative changes** that would allow WorkSafe to adequately address the complexities of on-demand environments as revealed in the current inquiry.
  - 6) **That the State Government establishes a “Working Lives” school and tertiary program** to educate secondary and tertiary school students on workers’ rights, trade unions and how to respond to exploitative practices.

## References

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