ON-DEMAND WORK IN AUSTRALIA

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ABSTRACT

This chapter examines on-demand (or 'on-call') work in Australia, understood as work arrangements in which the worker agrees to be available for work and is called in to work as and when s/he is needed by the employer. We focus on the two main types of on-demand work: a) zero-hour work arrangements; and b) minimum-hour work arrangements. Both are highly precarious forms of work, linked to negative consequences for workers. On-demand work has been neglected in much employment relations research in Australia, but it embraces a substantial minority of the workforce and constitutes a significant challenge for research and policy. The chapter outlines the emergence of on-demand work within regulatory gaps associated with casual work and permanent part-time work. It summarises what is known about on-demand work and on-demand workers, drawing both on secondary labour force statistics and on case-study evidence in selected industries and enterprises. It concludes by noting the surprising lack of effective regulatory responses and by suggesting principles for future reform.

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1. Introduction

This chapter examines on-demand (or 'on-call') work in Australia, understood as comprising *work arrangements in which the worker agrees to be available for (paid) work for a certain period of the week – ranging from 'anytime' to just one or two blocks of time – and is then*

called in to work, generally within that zone of availability, as and when s/he is needed by the employer. On-demand work in Australia takes two main forms:

1. ***zero-hour work arrangements***: where the worker agrees to be available for (paid) work, and the employer does not agree to provide any hours of paid work; and
2. ***minimum-hour work arrangements,*** where the worker agrees to be available for (paid) work, and the employer guarantees a small number of hours of work each week (perhaps on a regular roster), but with the option of 'flexing up' a large number of extra hours.

This understanding of on-demand work fits with international definitions (Eurofound 2015; ILO 2004; ILO 2016). But it is worth stressing two points. First, the definition is couched in terms of the job as a whole and not in terms of components of the job. In other words, we are interested in work arrangements, where *all or most* of a worker's weekly working hours are on-demand hours in response to business needs, rather than work arrangements where only a small part of a worker's weekly working hours are on-demand hours and most hours are within a regular (part-time or full-time) schedule. Second, our definition is explicitly sociological rather than legal, i.e. it is oriented to the reality of workplace practices rather than the formal content of an employment contract. From a sociological perspective, the definition contains two main elements. The first refers to a specific set of actual working-time patterns – irregular schedules flowing from the irregular demands of employers for labour time. The second element refers to agreement on the part of the worker to be available for such irregular demands. Such agreement, which is pivotal in establishing an employment relationship and in consolidating on-demand work as a distinct form of employment, should also be seen sociologically. Thus, it can be either formal or informal, that is, it can be either formalized in a written contract (or statement of terms of employment) or, alternatively, it can simply be part

of a set of informal understandings, which exist either in conjunction with or instead of a written contract.

Though the reality of on-demand work is well-known in Australia, none of the central concepts ('on-demand', 'zero-hour' and 'minimum-hour') are common parlance.[1] Partly, as a result, the topic is rarely taken up in employment relations debates. It tends to be considered only in passing, usually in discussing the peculiar Australian phenomenon of casual work (Campbell 2004). It is true that on-demand work is closely associated with casual status (see below). However, subsuming on-demand work under the analysis of casual work deflects the analysis in at least two ways: a) it tends to blur the implications of on-demand working-time patterns within casual work, since these work-time patterns do not affect all casual employees but only one sub-group; and b) it overlooks the phenomenon of minimum-hour work arrangements, which are found within permanent or ongoing work as well as casual work. Neglect of minimum-hour arrangements within permanent work is particularly unfortunate, since such work, despite the 'permanent' label, is also precarious and is often associated with the same sort of negative consequences as on-demand casual work. Moreover, as we argue more fully below, these work arrangements appear to be increasing in importance in several sectors, including expanding areas such as home and community care for people with disability (Macdonald et al. 2018).

The chapter is organized as follows. Section 2 introduces the Australian labour market context. Section 3 examines the way in which zero-hour and minimum-hour work arrangements fit within the structure of protective labour regulation. We argue that these working arrangements emerge within 'protective gaps' that create deficits in protection for employees and enhanced

[1] 'On-call' is a familiar term, but it is interpreted narrowly to refer just to after-hours availability amongst professional workers such as medical personnel or IT consultants. We therefore prefer to use the less familiar synonym of 'on-demand' to refer to the subject-matter of this chapter.

discretion for employers (Grimshaw et al. 2016). The two most important gaps concern: a) casual work, which provides a conducive framework for both zero-hour and minimum-hour work arrangements; and b) permanent part-time work, which is a common setting for minimum-hour work arrangements. Section 4 summarises what is known about the distribution and main characteristics of on-demand work and on-demand workers, drawing both on secondary labour force statistics and on case-study evidence in selected industries and enterprises. Section 5 briefly considers the impacts of on-demand work on the workers involved, while section 6 identifies several factors that promote the expansion of on-demand work. The chapter concludes by noting the surprising absence of effective regulatory responses in Australia and by suggesting principles for future reform.

2. Australia: labour market context

Australia is a prosperous country with a developed economy. A severe recession in the early 1990s was succeeded by recovery and falling unemployment through the 1990s and much of the 2000s. The country was only lightly affected by the global financial crisis (GFC) of 2008-09. Current unemployment rates are relatively modest (5.3%), but they are joined by high rates of time-related underemployment (8.0%), indicating a persistent problem of labour underutilisation (ABS 2018). Average real wages are high and the country is prominent in aggregate measures of job quality (OECD 2014), but recent debates identify persistent problems of insecure work, rising inequality, wage stagnation, low productivity growth and high household debt (Howe et al. 2012; Watson 2016).

The workforce (12.5 million) is characterised by a high proportion of employees, high rates of workforce participation amongst partnered women and students, and an increasing proportion of part-time employment. Employment in secondary industry has declined, but this has been balanced by rising employment in the service sector, encompassing both professional/

managerial and routine service sector jobs (Watson et al. 2003). It is a country of immigration, but the traditional pattern of permanent settler migration has been displaced in recent years by an increasing flow of temporary labour migration under four main visa programmes: two dedicated schemes, encompassing either skilled workers (throughout the economy) or lower-skilled workers (predominantly in horticulture), and two de facto schemes, embracing working holiday-makers and international students (Mares 2016; Wright and Clibborn 2017).

Australia was an early pioneer of the welfare state, but it took a distinctive path in which occupational welfare was stressed and state benefits were highly targeted and funded through general taxation (Whiteford and Heron 2018). Benefits for people of workforce age are currently low and increasingly difficult to access in the wake of workfare initiatives for the unemployed and tightened eligibility for single-parent and disability benefits (Wilson et al. 2013). However, social expenditure has increased in recent years, with particular emphasis on income transfers to families with children. At the same time, the targeted nature of the system has been diffused through the rise of benefits delivered, often to wealthier groups, via social tax expenditures (Spies-Butcher 2014).

3. Protective labour regulation

Protective labour regulation for workers in Australia is spread through a complex and layered system that includes common law, statute (eg. ten National Employment Standards [NES]), a network of 122 'Modern Awards' and a narrow segment of collective agreements (Bray and Stewart 2013). Awards have been retained, albeit in a residualised form,[2] but the overall system

[2] Awards are legally-binding documents specifying job classifications, minimum rates of pay and minimum conditions of employment for employees at industry or sector level. They are set down by permanent, independent quasi-judicial tribunals, such as the federal Fair Work Commission (FWC), generally in response to applications from interested parties, including trade unions and employer associations. In their heyday, awards were a vehicle for generalising gains, mainly achieved through collective bargaining by strongly organised workers, throughout the workforce. This dynamic was eliminated by reforms in the early 1990s, which reinterpreted awards as a safety net that was distinct from a new stream of 'enterprise bargaining'. The residualisation of awards offers a good example of 'institutional conversion' in the process of neoliberal change (Baccaro and Howell 2011; Buchanan

has been transformed by a slow and stuttering programme of labour market deregulation in the 1990s, with a further radical spurt under the 'Work Choices' regime in 2005-2007, before settling into its current form under the federal *Fair Work Act 2009*. Consistent with neoliberal philosophies (Baccaro and Howell 2011), deregulation removed many award protections, restricted trade union activities, narrowed collective bargaining to enterprise level, and enhanced management discretion, thereby helping to depress both union density and collective bargaining coverage (Bray and Rasmussen 2018; Wright and Lansbury 2016). On the other hand, partly as compensation, policy makers introduced a small set of general protections and consolidated a minimum hourly wage, which, when calculated net of tax and social contributions, was ranked in 2013 as the highest in the OECD (OECD 2015; Wilson 2017).

Formal working-time regulation is patchy and relatively weak, lacking standard features such as effective rules for maximum daily and weekly working hours, and it has been fragmented and weakened in the course of neoliberal reforms (Charlesworth and Heron 2012). One result is a marked polarization of working hours, with many full-time employees working very long weekly hours while many part-time employees are on very short hours (Charlesworth et al. 2011). The current working-time regime has a hybrid character. It is best characterized 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, protective regulation retains some purchase on working-time patterns through provisions, especially in awards, for matters such as breaks, penalty rates for work in non-standard times, and minimum engagement periods. Moreover, working-time continues to be the subject of broad contestation and debate, and some regulatory advances for employees have been achieved, generally through statutory

and Oliver 2016). Differences amongst awards remain important and contribute to uneven protection for employees (Bray and Underhill 2011; Charlesworth and Heron 2012).

provision, most notably paid parental leave and a (limited) right to request flexible work (Pocock et al. 2013).

The continued influence of protective regulation, backed up by social norms of 'fairness', inhibits the growth of on-demand working-time patterns within the mainstream of full-time, permanent waged work. However, on-demand work, in either zero-hour or minimum-hour versions, has been able to emerge and flourish in Australia within certain gaps in the system of protective regulation. On-demand work is strongly associated with two forms of employment that are only *partially protected* compared to the standard, primarily because of the operation of special rules and exemptions: a) casual employment; and b) permanent part-time employment. Because of their importance for on-demand work, we discuss each in turn, before briefly considering two additional gaps that influence the extent and content of on-demand work arrangements – bogus self-employment and employer non-compliance.

Casual employment

The most comprehensive and significant regulatory gap in Australia concerns *casual employment*, an officially sanctioned form of employment which was preserved and institutionalised in the first half of the 20th century as the main alternative to standard full-time permanent waged work (O'Donnell 2004). Casual employees, broadly defined in casual clauses in awards as employees who are 'engaged as such' or 'paid as such' (Stewart 2015, 66), are excluded from many of the rights and entitlements—such as paid leave entitlements—that were developed for permanent employees. Instead, their employment rights and entitlements are largely limited to a right to an hourly wage (together with a 'casual loading', currently set at 25% of the hourly wage specified in regulation for a permanent employee) in return for each hour of labour at the workplace.

The principle of exemption from rights and entitlements, together with the casual loading, is spelled out in casual clauses in awards and enterprise agreements. Casual clauses are found in almost all of the 122 Modern Awards and in over 90 per cent of federal collective agreements (DoE 2015, 8). The principle of exempting casual employees from rights and entitlements is also inserted into statutory regulation such as the NES, which, though often misrepresented as a safety net of statutory rights for all national system employees, explicitly excludes casual employees from its key provisions (Charlesworth and Heron 2012, 171-2).

The casual loading is sometimes interpreted as a 'wage premium' for workers, which should make casual work more expensive to employers. This is a misunderstanding (Campbell 2004). In recent times, the casual loading has been carefully calculated, generally by judicial tribunals, as a monetary equivalent for some, though not all, missing benefits such as paid annual leave, payment for public holidays, and paid sick leave. In principle, payment of an increment to casual employees is supposed to mean that the financial cost to the employer of one hour's labour at the workplace, or, conversely, the financial benefit to the employee of one hour's labour at the workplace, is roughly the same whether the labour is casual or permanent. But this principle of monetary equivalence is a formal notion, or less politely a figleaf, which screens the many financial advantages - quite apart from all other advantages - that employers can obtain from casual employees (Campbell 2004; Markey and McIvor 2018). In practice, casual workers tend to be cheaper, often dramatically cheaper, for employers, compared to other forms of employment. Far from earning a wage premium, most casual workers suffer a 'wage penalty' (Lass and Wooden 2017; Watson 2005). The cost advantage for employers is shaped by different factors, which vary from sector to sector and firm to firm, but the three major factors are: a) the relative ease with which employers can avoid complying with minimum standards for casual workers; b) the opportunities to use a low formal comparator, such as an award instead of an enterprise agreement, when calculating the hourly wage due to

the casual employee; and c) the marked advantages of casual work in terms of working-time flexibility, which mean *inter alia* that employers only need to pay for small fragments of intense labour rather than the longer hours of more conventional schedules. The existence of this multi-pronged cost advantage helps to explain both the high proportion of casual employees in the Australian workforce and the pattern of their distribution across the employment structure. Casual employees (in the main job) have become a substantial part of the workforce, constituting more than one in four employees (and more than one fifth of the total workforce) (ABS 2017). Most casual employees are directly employed, but a small minority are organised via temporary work agencies ('labour hire') (ABS 2010).

Working-time flexibility is a crucial feature of casual work. Because of the broad definition of casual, the wide-ranging exclusion from most protective regulations in awards, agreements and statute, and the removal in the course of labour market deregulation of regulatory limits such as bans and quotas, casual employees have been readily available to employers as a strikingly versatile ('flexible') working-time resource. They can be full-time or part-time, though most are part-time. They can build up long periods of tenure in one enterprise or they can be turned over rapidly and left to circulate through a succession of casual jobs. Most important for this chapter, they can be given regular schedules ('regular casuals'), similar to the regular schedules of many permanent employees, or they can be subject to on-demand working-time patterns. Members of the latter group, which we call 'on-demand casuals', are generally on zero-hour work arrangements, but they can also be organized through minimum-hour work arrangements.

Labour regulation does not leave casual employees completely unprotected. They are covered by statutory protections such as occupational health and safety (OH&S) regulation, rights to workers' compensation in case of injury or illness caused by work, and freedom of association and collective bargaining rights (O'Donnell 2004). Depending on the specific award, casual employees are generally entitled to breaks during lengthy shifts and some may have other

entitlements such as penalty rates of pay for work during non-standard times of the day or week. In addition, casual employees may acquire certain rights and entitlements, such as protection against unfair dismissal, if they fulfill a qualifying period of tenure and are in a job that is 'regular and systematic and… [with] a reasonable expectation of continuing employment'. Finally, they have been granted two *special protections* that, at least in principle, constrain employer use of their working-time:

1. Casual employees have the special protection of a *minimum shift engagement* when called in for work, designed to ensure that the time and money expenses of activities such as transport to work and organization of childcare are balanced by a reasonable period of paid work (or payment in lieu).[3] Under the terms of this protection, specified in awards, workers are entitled to payment for the minimum engagement period, even if the shift is cancelled or shortened after arrival at the workplace. Traditionally, the level of the minimum has varied amongst the different awards, and a few awards have not specified any minimum, while others range from one hour (in female-dominated areas such as homecare) up to four hours (in male-dominated areas such as manufacturing) (Charlesworth and Heron 2012, 173-5). A decision of the Fair Work Commission (FWC) in 2017 introduced a minimum shift engagement of two hours for casual employees into the 34 modern awards that previously contained no minimum (FWC 2017; Markey and McIvor 2018).

[3] 'Minimum shift engagements' constitute an important working-time protection but they should not be confused with guaranteed minimum hours. They only provide a guarantee of minimum payment *once the worker has been called in and commences work*. Moreover, a provision for minimum shift payments 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 the rules concerning notice of changes to rosters that are specified in the award (or agreement).

2. A second special protection was introduced in a minority of awards (and collective agreements) in the wake of a major industrial case in 2000. This entails a *right to request conversion*, whereby casual employees, other than 'irregular casual employees', after a certain qualifying period of tenure (generally six months), acquire a right to ask their employer to convert their contract of employment to standard full-time or part-time employment. Employers are required to give a casual employee notice of the right at five month's service but they are not obliged to grant the request and can refuse it (though not unreasonably) (Charlesworth and Heron 2012, 177; Stewart 2015, 68-69). Until recently, the right to request conversion only appeared in a minority of awards. However, a 2017 decision of the FWC has developed a model conversion provision for insertion into a further 85 modern awards. The qualifying period is set at 12 months, and the casual employee must have worked on a regular basis and with the prospect of ongoing employment (FWC 2017; Markey and McIvor 2018).

Permanent part-time employment

Permanent part-time employment can also be usefully discussed as a regulatory gap. In the past, many awards defined standard employment as full-time and failed to make provision for part-time jobs with full rights and entitlements, thereby pushing employees who wanted part-time hours, often women seeking to reconcile paid work and family responsibilities, into casual status. This was slowly remedied, and eventually 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 relevant provisions in awards and agreements have, however, generally been developed along the same lines as casual work, i.e. through special clauses tacked on to 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', and it generally goes on to specify that such employees are entitled

to the same benefits as permanent full-time employees on a *pro rata* basis. Beyond this, it is common to require, at commencement of the job, written agreement on a regular roster (number of weekly hours, days of the week and starting and finishing times), backed up by provisions requiring written agreement for variations in the regular pattern of work (FWC 2017). Most, though not all, permanent part-time employees are, like casual employees, entitled to minimum shift engagements, which are usually set at the same level as for casuals in the relevant award.

Regulation of permanent part-time jobs was inspired by a principle of *equal treatment* for full-time and part-time workers, and such jobs have been conventionally regarded as a better quality alternative to casual part-time jobs. The regulatory rules around 'regular part-time work' are valuable and have sometimes succeeded in stimulating or consolidating improvements in the quality of part-time jobs. Unfortunately, it is increasingly clear that they fall short of what would be needed to guarantee 'good quality' or 'integrative' part-time work in the full sense (Chalmers et al. 2005; Fagan and O'Reilly 1998). In particular, we can note that the rules around regular part-time work do not prevent the subordination of workers to on-demand work arrangements. They inhibit zero-hour work arrangements, but they do not prevent a 'regular roster' being supplemented by a requirement for additional hours. This creates room for employers to design *minimum-hour work arrangements*, in which the regular roster is limited to just a few hours, which are then 'flexed up' by a large number of on-demand hours (Charlesworth and Heron 2012, 170). As a result, the notion of a 'regular roster' is preserved but drained of much of its meaning.

Though casual part-time work remains dominant, the number of permanent part-time employees has expanded rapidly in recent years, and they currently represent 15.2 per cent of all employees (ABS 2017). This is a development that demands careful scrutiny. Recent years have witnessed a drift away from the principle of equal treatment, as employers have begun to take advantage of the shortfall in protection for permanent part-time employees in order to

increase the on-demand component of the jobs. Employers in industries such as aged care and disability services and hospitality have, moreover, pursued new opportunities for on-demand hours by pressing for relaxation of the current award rules defining a regular roster and requiring employee agreement on changes (FWC 2017). For many employers, on-demand hours from permanent part-time employees are an attractive alternative to paid overtime from permanent full-time workers, given that the flexed-up hours are generally paid at ordinary time rates, and they can even appear preferable to casual work, given that the flexed-up hours are paid at a flat hourly wage rate without any obligation to pay a casual loading. Employer pressure for relaxation of the rules has already achieved some success. The FWC in 2017 introduced a new part-time clause in the award for the care sectors, which makes explicit that part-time employees can be offered and accept additional hours of work over their 'regular' shifts and also that a 'regular' roster does not necessarily mean the same guaranteed number of hours each week.The biggest change, however, was in the awards for hospitality and licenced clubs, where the regular part-time clause was amended by the FWC in 2017 so that it only requires written agreement on a guaranteed number of hours over the roster cycle (with the minimum equivalent to eight hours per week), which can now be rostered at the employer's discretion (so long as the worker has at least two days off each week and so long as the guaranteed minimum fits within the time period for which the worker has declared his or her availability). It was clarified that a roster can specify additional hours on top of the guaranteed minimum under the same conditions, but with the proviso that when the employee "has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed hours, the employee may request in writing that the employer agree to increase the guaranteed hours" (FWC 2017, paras 528-534). In this new form, the notion of 'regular part-time work' appears almost completely hollowed out, reduced to little more than a guarantee of a few paid hours each week.

In short, the division between casual and permanent part-time jobs is not as wide as it might appear at first glance, and it is narrowing, as working-time protections for permanent part-time employees are revised. As a result, casualised work practices are no longer confined to casual status, and at least some permanent part-time employees are turning into 'quasi casuals'. Employers in sectors such as hospitality argue that relaxing rules for permanent part-time would be a weapon against casualization in their sector (FWC 2017, para 414), but it could be argued more plausibly that such relaxation contributes to the spread of casualised work practices, albeit under a different label.

Bogus self-employment

A blurred boundary between employee and non-employee status in labour law has long been a feature of the Australian system. The issue has continued to attract attention in recent years as a result of the growth of fissured arrangements, such as labour hire, outsourcing, subcontracting and long supply chains (Johnstone and Stewart 2015) The opaqueness of the boundary offers incentives for employers to encourage their employees to take up status as an independent contractor, with an Australian Business Number (ABN), so that the employer can sidestep costly obligations regarding tax and employment rights (Stewart 2015). Though an offence of 'sham contracting' has been introduced into labour law, successful prosecutions have so far been few (Johnstone and Stewart 2015).

We refer to employees who are placed in this gap as the 'bogus self-employed'. Though most work regular rosters, some are involved in on-demand working-time schedules. The link is highlighted in the emerging discussion of the 'gig economy' (Healy et al. 2017), which points to prominent forms of 'gig work', such as food delivery work, that are examples of both bogus self-employment and on-demand working-time patterns. Nevertheless, such forms remain relatively small in numbers, and it is important to note that most on-demand workers in

Australia are organised within the framework of employee status, whether as casual employees or as permanent part-time employees (Stanford 2017).

Employer non-compliance

The discussion so far is largely confined to *lawful* work practices, but if we are to understand the full extent and nature of on-demand work, it is necessary to examine the *unlawful* work practices that are linked to employer non-compliance and limited enforcement of labour regulation. The available evidence is sparse, but it suggests that employer non-compliance in Australia is not only 'significant and sustained' but also increasing in prevalence (Maconachie and Goodwin 2010, 419-420; see Clibborn and Wright 2018).

Employer non-compliance is relevant to this discussion because of its effect on the terms and conditions of on-demand workers. The main impact is on casual employees, who are particularly susceptible to non-compliance because they generally lack the capacity to claim even the few rights and entitlements that they are granted under labour law. Because the employer is under no obligation to offer work, s/he holds the whip hand in dealings with casual employees, who are exposed to a constant threat of loss of shifts or loss of the job as a whole if they challenge employer practices, lawful or unlawful. Moreover, employment conditions for casual employees are often opaque, when they lack a written contract and find themselves in undeclared work, without a pay slip. The main effect is in relation to wages. An emerging body of evidence suggests that underpayments of casual workers are widespread and systematic, especially amongst vulnerable groups such as temporary migrant workers and young workers (Clibborn and Wright 2018; Pocock et al. 2004), depriving casual employees not only of a casual loading but also of a substantial part of their base hourly wage.[4] The risk

[4] The extent of non-compliance in relation to casual employees is reflected in ABS data on the casual loading. 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; see also Pocock et al. 2004, 130).

for on-demand casuals also extends to the meagre protections listed above, including the two special protections of a minimum shift engagement and a right to be informed of the opportunity to request conversion (Markey and McIvor 2018).

4. Extent and characteristics

Assessing the extent and characteristics of on-demand work and workers in Australia is difficult. Some qualitative evidence, often from industry case studies, is available, and this is useful for sketching out the distribution of on-demand work across the economy, the varied forms of on-demand work, the diversity of the workforce, and the impacts on workers (see below). Robust quantitative evidence is, however, missing. Most surveys, including official labour force surveys from the Australian Bureau of Statistics (ABS), tend to be framed in terms of aggregate categories of employment such as 'casual' and 'permanent' and rarely drill down into the detail of working-time patterns within each category.[5]

Some limited data concerning casual employees and working-time patterns have been produced by the ABS (Table 1). One question concerns whether casual employees are guaranteed a minimum number of hours of work, with 58 per cent in 2016 answering 'no'. But perhaps the most relevant question concerns whether casual employees usually work the same number of hours each week. Given that variation of hours for casual employees are likely to be mainly in response to business needs, answers to this question could be taken as a basis for a rough estimate of the number of on-demand casuals in Australia. If we accept this argument, the data

[5] Official statistics in Australia generally distinguish, within the category of employees, two groups: 'permanent' and 'casual' employees. The distinction, drawing on important aspects of the practice of casual employment (Campbell and Brosnan 2005, 4), is 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 2013), and we continue to use the latter terms when referring to ABS data. 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 either one of the two main categories (mostly within the category of 'employees with leave entitlements').

suggest that in August 2016 almost one million employees were on-demand casuals. This represents almost 40 per cent of all casuals and just over 10 per cent of all employees in Australia. The data suggest that the proportion of casual employees who could be regarded as on-demand casuals has increased slightly (from 34.9% to 39.1%) over the past ten years.

Table 1: Casual employees, selected working-time conditions, selected years (thousands and percentages)

Selected working-time conditions	Year	Casual employees		
		'000	%	total casual ('000)
Did not usually work the same number of hours each week in main job	2007	736.0	34.9	***2109.0***
	2014	866.0	37.6	***2305.6***
	2016	961.0	39.1	***2460.9***
Earnings (excluding overtime) varied from one pay period to the next	2007	994.7	47.1	***2109.0***
	2009	1040.4	52.9	***1966.7***
	2012	1103.9	54.7	***2019.4***
	2014	1213.1	52.6	***2305.6***
	2016	1309.4	53.2	***2460.9***
Not guaranteed a minimum number of hours of work	2009	1083.2	55.1	***1966.7***
	2012	1166.0	57.7	***2019.4***
	2014	1345.4	58.4	***2305.6***
	2016	1426.2	58.0	***2460.9***
Days of the week usually worked in all jobs varied	2015	658.1	28.3	***2326.3***
	2017	694.6	27.3	***2542.1***

Source: ABS Cat.no. 6361.0, April to July 2007; ABS Cat. No. 6342.0, November 2009; November 2012; ABS Cat. No. 6333.0, August 2014, 2015, 2016, 2017.

Determining the extent of on-demand work within permanent employment is even more difficult. One pointer is the estimated 202,000 employees in August 2016 – amounting to just over 2 per cent of all employees – who were classified as permanent employees ('employees with leave entitlements') but identified themselves as casuals (ABS 2016). Another pointer comes from an interview-based study in regional areas, which uncovered a group of 'permanent irregular' workers, who had paid leave entitlements and therefore did not fit the main ABS

category of casual but who saw themselves as casual because they 'had highly uncertain work schedules and their income and shifts varied substantially from week to week' (McGann et al. 2016, 771).

As suggested in section 3, some on-demand workers can be found within the ranks of permanent part-time employees. We know from qualitative case-studies that sectors such as supermarkets (Campbell and Chalmers 2008) and accommodation (Knox 2006) as well as expanding sectors such as home and community care for people with disabilities (Macdonald et al. 2018), contain many permanent part-time workers with a strong component of on-demand hours in their schedules. However, it is difficult to distinguish the group that experiences minimum-hour work arrangements from the group that has no or just a small component of on-demand working hours in their schedules. It is also difficult to determine whether the group with minimum-hour work arrangements is increasing relative to other groups (Charlesworth and Heron 2012, 168). However, at least in the aged and disability care sectors it seems likely that on-demand (minimum hour) work will increase given that —as outlined above—the FWC has responded positively to employer demands for new regulatory rules governing permanent part-time work in these sectors.

The uneven but surprisingly widespread distribution of on-demand workers across different industry sectors can be inferred from the rich body of qualitative research. Experiences of on-demand working-time patterns in varied industries are cited in programmes of in-depth interviews (McGann et al. 2016; Pocock et al. 2004; Smith and Ewer 1999) and in rare first-hand accounts (Sidoti 2015). Several case studies detail on-demand working-time patterns in sectors such as accommodation (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), domiciliary disability care (Macdonald et al. 2018) and manufacturing (Brosnan and Thornthwaite 1998). Most qualitative studies are concerned with casual employment, where on-demand work surfaces in both small and large enterprises, predominantly in the private sector. Small firms may be attracted by the administrative convenience of casual work, while larger firms are often better equipped to manage on-demand rostering systems. A few qualitative studies cite examples of on-demand schedules within permanent part-time work, again mainly in the private sector. In the latter case, on-demand employment appears more characteristic of large firms, which can better manage the complex requirements of balancing the regular roster required by labour regulation and the additional on-demand hours.

One achievement of the industry case-studies is to show the diversity of on-demand schedules in practice. This diversity goes well beyond a basic division between zero-hour and minimum-hour work arrangements. Temporal patterns differ in terms of aspects such as the extent of variability, the extent of unpredictability (i.e. the length of notice), the usual duration of shifts, the usual duration of weekly hours, the timing of the hours, the extent of employee control, and the tenure of jobs or engagements. Diversity in working-time patterns is strongly influenced by sector. On-demand work can include lengthy shifts approximate to a full-time day for groups such as casual nurses (Allan 1998) or emergency teachers (Bamberry 2011), whose schedules are adapted to the hours of other professionals in hospitals and schools. Shorter shifts apply for waiting staff and kitchenhands, whose hours are matched to peak periods of customer demand (Campbell et al. 2016). Shifts can be very short for home care workers, who must accommodate the needs of individual clients and the constraints of marketised funding models (Macdonald and Charlesworth 2016). In some sectors the length of shifts is uncertain, and unpaid time can stretch out beyond paid time, as in the case of room attendants, when employers impose workload quotas (number of rooms to be cleaned per hour) (Knox 2011; Oxenbridge and

Moensted 2011), and in the case of home care workers, when employers set notional times for allocated care tasks, which disregard the time necessary to undertake those tasks, to perform administration and reporting duties, and to travel between assignments (Charlesworth and Malone 2017, 289; Macdonald et al. 2018). Some industry sectors such as retail host a diversity of on-demand shift lengths and shift times, which range from very long days to short fragmented shifts.

On-demand workers come from all social groups, but young workers, women with caring responsibilities and temporary migrant workers are disproportionately represented. Demographic composition is often influenced by industry. Some sectors such as fast food (Limbrey 2015) and to a lesser extent supermarkets (Campbell and Price 2016), rely strongly on full-time secondary students, who are engaged in on-demand casual work and paid at junior rates of pay. On-demand casual work in cafes, restaurants and bars, especially in the lesser-skilled jobs as waiting staff and kitchen hands, draws heavily on full-time tertiary students, young workers looking for full-time work and an increasing number of young international students and working holiday-makers (Campbell et al. 2016). On the other hand, on-demand jobs as room attendants in hotels and as care workers in residential facilities and private homes, reflecting the influence of gender norms, are almost exclusively taken up by older women, often women with caring responsibilities (Knox 2011; Mavromaras et al. 2017).

5. Impacts

The impacts of on-demand work arrangements on workers are contingent. They are partly dependent on the nature of the work itself and the dimensions of precariousness in the job, for example, the temporal pattern and the levels of wages and employment conditions.[6] The

[6] It is necessary to keep in mind that any job is a bundle of different elements, some of which may well be appreciated by the workers, even if the on-demand aspects and wage levels are resented. For example, careworkers in disability services are often intensely committed to their job and appreciate the opportunity to make a difference to the lives of those who require care (Macdonald et al. 2018).

impacts are also partly dependent on factors outside the workplace, which can mediate, either by cushioning or amplifying, the effects of precariousness within the job. For example, access to alternative income (through household transfers, access to social security and savings) can *cushion* the impact of low and irregular income, while large burdens of financial responsibility and debt can *amplify* this impact (Campbell and Price 2016).

The impacts of on-demand work arrangements in Australia are diverse. Nevertheless, the overall evidence points to significant negative impacts. On-demand jobs tend to constitute a package of poor quality working conditions, which is markedly more precarious than most other forms of work. The central effect is working-time insecurity, which includes features such as dislocation of daily life, too few hours (underemployment), an increase of unpaid work and quasi-work time, and lack of control over schedules. These features are in turn associated with other labour insecurities such as earnings insecurity and employment insecurity.

Positive impacts are difficult to find. Workers may tolerate or acquiesce to precarious jobs (Campbell et al. 2016), but this is not the same as welcoming or indeed choosing elements of precariousness. It is true that on-demand workers may be able to impose a degree of schedule control in the initial negotiation of the timing of their availability. In addition, they may develop informal understandings with sympathetic supervisors, perhaps taking advantages of elements of reciprocity in the employment relationship, and in this way they may acquire more control over the terms and conditions of the on-demand job. But such understandings are generally only at the margins and are often fragile.

The one example in Australia of positive experiences in association with on-demand work arrangements arises from studies of nurses working either through a temporary work agency or a ‘casual bank’ maintained by a hospital (Allan 1998, 2000; Underhill 2005). The studies suggest that nurses were often able to achieve a significant degree of working-time control,

choosing their shifts and their planned and unplanned leave, earning higher pay (in the case of agency nurses) and accruing less stress. They constituted a group of casual employees who could and did reject offers of shifts without suffering sanctions from the employer. The crucial background factor in this case was favourable labour market conditions, which increased demand for the professional skills of nurses and boosted their 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-demand workers, 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 is unusual.

On-demand work, judged in terms of both job characteristics and impacts on workers, is one example of a growing problem of insecure (or precarious) employment in Australia (Carney and Stanford 2018; Howe et al. 2012). Especially in the form of zero-hour work arrangements, it is reminiscent of the highly commodified forms of work (‘casual work’, ‘daily hire’) prevalent in the nineteenth and early twentieth centuries, when a marked imbalance of power determined relations between employers and workers. Though in principle modern labour regulation should have corrected this imbalance of power and hindered the re-emergence of on-demand work, such work is clearly now widespread in different industry sectors in Australia.

6. Factors that drive on-demand work

Section 3 identifies gaps in formal labour regulation, either widened or newly opened up in the course of labour market deregulation, as a major factor in defining the opportunities for on-demand work in Australia. This points to the importance of state policy, which can have an effect in many ways. Because on-demand workers are only a small minority within government

employment, the state appears to be only a minor player as direct employer, but it can be highly influential as a 'lead employer' in complex supply chains produced by the privatisation and marketisation of services such as child care, education, aged and disability care. The importance of state funding regimes in consolidating on-demand work in the care sectors is evident in current changes to home care for people with disabilities (Macdonald and Charlesworth 2017; Macdonald et al. 2018).

State policies in areas such as immigration, education and social welfare also indirectly shape the extent and nature of precarious work (Peck and Theodore 2010). Taxation in Australia has only weak effects, but changes in the welfare system, which increasingly push workers into precarious work while directing funds to wage subsidies for employers, have been significant in promoting varied forms of insecure work. Unemployment support lacks a social insurance component, and the level of the unemployment benefit is amongst the lowest in the OECD. Moreover, workfare reforms such as onerous requirements for detailed job records, frequent sanctions for breaches, and long mandatory waiting periods, which make it difficult to combine benefits with irregular incomes, have amplified the negative impacts of on-demand schedules and enhanced the power of employers. Also important are state policies that weaken the capacity for collective action to challenge on-demand work through collective bargaining and other trade union action. At the same time, individual bargaining power, especially for less-skilled workers, has been eroded, as labour markets remain characterised by extensive labour over-supply, reflected both in the unemployment rate and in the extremely high underemployment rate. Weak bargaining power is compounded by an increased supply of vulnerable workers, including young local workers (both debt-ridden students and non-students), persons pushed off state benefits under workfare reforms, and the rapidly expanding supply of temporary migrant workers, including those who are in Australia as international students and working holiday makers (McDonald 2017; Mares 2016).

Contextual factors shape the opportunities for the emergence and flourishing of on-demand work. But it is important not to lose sight of the central role of human agents. On-demand work, defined here in terms of irregular schedules in response to business needs, signals the crucial role of individual employers, rather than labour regulation or worker choice, in determining working-time patterns. It is true that employer agency must be situated in the context of structural constraints such as product market competition, but even in highly competitive circumstances individual firms continue to enjoy a margin of discretion that allows them to choose from amongst different employment practices (see Oxenbridge and Moensted 2011).

Unit costs are central to any analysis of employer practices, in both private and public sector organisations. Particularly important for on-demand work is the opportunity for 'lower wages and reduced benefits' (ILO 2016). A lower aggregate wage bill can be based on lower hourly rates, for example when on-demand workers are used instead of overtime hours for full-time workers or when workers are paid less than other workers as a result of non-compliance or clever use of alternative regulatory instruments. But the major labour cost advantage for employers derives from the opportunity for fragmented and variable scheduling, which allows close matching of the hours of on-call workers to demand patterns, ensuring that workers are paid only 'as and when required' and thereby reducing the aggregate wage bill (Allan 2000, 189).

7. Regulatory responses

On-demand work is a large and significant problem in Australia. Yet adequate regulatory responses have been either missing or misdirected. Protections inherited from the past, such as minimum shifts engagements, the right to request conversion from casual to permanent, and requirements for a regular roster for permanent part-time employees, have failed to prevent the spread of on-demand work. However, there is little sign of any comprehensive debate, which

could generate new ideas and new initiatives to limit on-demand work and combat its negative impacts.

Why is there so little discussion and active response? Certainly, there is little appetite for legislative action from governments, which have traditionally relied on industrial tribunals to set employment standards. Employment regulation after 2005 was shifted largely into the federal system, where the FWC is now the key institution. In addition to the inherited tradition of dependence on tribunals, federal governments of all political complexions have been heavily influenced by neoliberalism and have been guided by the consistent hostility of employer associations to any new regulation.

A crucial condition for state inaction is the absence of pressure from trade unions and other social actors around problems of on-demand work. This is harder to explain, but it appears to be the product of several factors. Like governments, trade unions have been accustomed to pursuing claims before industrial tribunals. An added consideration is the difficult situation of trade unions, who have been weakened not only by structural changes in the economy but also by deregulation, the growth of insecure work and employer anti-union strategies (Bowden 2011; see also Peetz and Bailey 2012). Trade union density has steadily fallen to 14.5 per cent (OECD 2018), shrinking to sectors where few on-demand workers are present, and many individual unions prioritise short-term survival, focusing on meeting the demands of single-employer collective bargaining and trying to achieve or preserve gains for their members in surviving sectors of strength.

The trade union federation, the Australian Council of Trade Unions (ACTU), seeks to articulate and pursue long-term common interests. It led the 'Your Rights at Work' campaign that helped to defeat the conservative government in 2007, but it was unable to build on this success with the incoming Labor government (Peetz and Bailey 2012). The growing threat of insecure work

was identified, and the ACTU helped to publicise the issue by sponsoring an independent inquiry, which produced an important report with several proposals for action (Howe et al. 2012). But much union discussion of insecure work tends to focus on bogus self-employment, while discussion of casual work is less prominent, and permanent part-time employment attracts almost no attention at all. Moreover, the analysis of casual work is dominated by concern with so-called 'permanent casuals', who have regular rosters and extended job tenure and who are used by employers in much the same way as permanent employees, though without standard rights and entitlements. Special attention to this latter group is certainly justifiable, and indeed action to rectify the injustice of their employment conditions needs to go beyond the tentative and ineffective efforts that have been mounted in the past (Markey and McIvor 2018). But one unfortunate consequence of the emphasis on 'permanent casuals' is that the topic of on-demand work, both within casual work and within permanent part-time employment, is overshadowed and obscured.

A puzzling absence, in contrast to several other countries, is independent mobilization by workers or other social groups. This may be partly attributed to the fact that many individual workers see the precariousness of their work as natural or immutable (Tweedie 2013). Young workers in particular often view on-demand casualised work as a necessary stage or a rite of passage (Sidoti 2015). Even though the appeal of such 'narratives' readily fades as workers become trapped in precarious work and find that poor wages and conditions are increasingly difficult to balance with adult needs, the very diversity of on-demand schedules means that labour insecurity tends to interpreted as an individual problem that requires individual solutions (Sidoti 2015).

The question remains: what is the best path forward? We can make a few brief comments. It would be helpful if the state as the lead employer in supply chains took action to help improve poor wages and conditions for workers at the end of the chain. Similarly, the current ACTU

campaign to ‘Change the Rules’, which demands removal of the most severe constraints on trade union action and collective bargaining, is appropriate and its success would be helpful for many low-wage workers. In the context of new pressures from employers for on-demand work, particularly in the rapidly growing care sectors, the strengthening of working-time protections will be difficult without some strengthening of workers’ collective rights.

Consistent with the analysis in this chapter, we argue that action to close the key regulatory gaps is needed. This involves reducing opportunities for bogus self-employment and lessening employer non-compliance (perhaps via provisions for trade unions to resume some of their enforcement functions). The main challenge, however, concerns the gaps associated with casual status and permanent part-time status.

With respect to permanent part-time status, the challenge is straightforward. Provisions for ‘regular rosters’ in awards need to be strengthened not weakened. In place of the drift towards casualised work practices, based on inserting on-demand hours as a substantial component of rosters for permanent part-time employees, the principle of equal treatment with full-time permanent employees needs to be reaffirmed and more vigorously pursued.

With respect to casual status, the challenge of any new regulatory initiative is twofold, corresponding to the division between regular and on-demand casual employees. First, as long argued by the trade union movement and academic commentators, the existence of casuals on regular rosters with long periods of tenure is anomalous and represents a loophole that threatens standard rights and entitlements for employees. The remedy should address two main points of leverage. On the one hand, as argued by the ACTU in the recent FWC case, regular casuals who have built up tenure in their job, should be converted to a more secure status in a practicable way that does not disadvantage the worker (Markey and McIvor 2018). On the other hand, new regulation is needed to limit and indeed eliminate regular casual work at the

commencement of a job. At the commencement of a job, a regular roster should imply either permanent or fixed-term status (with appropriate periods of probation). One mechanism would be introduction of a definition of casual status in legislation and awards that restricts the use of casual employment to irregular rosters which are justified by an objective need for work that is short-term and irregular. This could be supplemented by imposing greater transparency and accountability at the point of recruitment through requirement for a written statement of terms and conditions, including the roster for the job and the conditions governing overtime.

Second is the question of on-demand casual workers. As we argue in this chapter, this is a large group that tends to be neglected in current discussion, but they too need a floor of protective regulation to limit the negative impacts of irregular schedules and to restrict the incidence of poor quality schedules that lack an appropriate balance between the needs of employers and employees. As implied above, we accept that employment with casual status should be permissible in circumstances in which there is a justifiable objective need for work that is short-term and irregular, for example when enterprises experience unpredictable variations in demand that cannot be met through standard measures such as overtime. But even in this case there is a need for regulatory parameters that balance the needs of employer and employee. Zero-hour work arrangements, in which the worker agrees to be available but the employer does not guarantee any hours of paid work, fails the test of balance and should be proscribed. Regulatory controls on irregular schedules need to start with guaranteed minimum hours but then to supplement this principle with attention to issues such as the extent of irregularity, the timing of working hours and the extent of employee control. Also important, if employment persists into the medium term, is acquisition of rights and entitlements by the employee, so that the employer is encouraged to monitor and respond to changes in economic circumstances and so that the negative impacts of irregular schedules for the employee are not allowed to compound.

Discussion of on-demand work in Australia has been insular and could benefit from consideration of international standards and international debates. One regulatory option would be to use International Labour Organization (ILO) conventions as a way of mobilising around worker rights (see chapter X for discussion of ILO instruments). In 2011, Australia ratified *ILO Convention 175 Concerning Part-time Work* (1994), which elevates a principle of equal treatment of full-time and part-time work. The Convention has been criticised for its weakness and for its exemption of casual work (Murray 1999). Nevertheless, in the Australia context comparisons can be made between the conditions of permanent full-time and part-time workers in similar work and industries. For example, almost all permanent full-time workers in retail, hospitality and social care work according to fixed rosters and are entitled to overtime rates when they work over 38 hours a week. Permanent part-time workers in similar work in the same sectors may have rosters that are more flexible or likely to be changed and are required to work up to 38 hours a week before they are entitled to overtime. Such situations suggest that Australia may be in breach of its obligations under ILO 175 to ensure and enforce part-time workers' entitlement to pro-rata full-time working-time conditions. While the effective pursuit of action under Conventions is limited in practice, ratifying member states are held accountable by the Committee of Experts, and Australian obligations could be used by parties in matters before the FWC and by sector unions as a basis for mobilisation.

On-demand work centres on irregular, often fragmented, hours at the workplace, but it also implies hours spent within a zone of availability, when the worker has agreed to be available for work but is not actually clocked in for paid work. These hours, which readily appear to workers as labour or quasi-labour, though they are unpaid, is an important challenge for protective regulation. Scholars argue that time spent being available for work is indeed a form of work, since it is 'time out of life', when employees are unable to devote time to their own lives, including taking up other employment or caring responsibilities (McCann and Murray

2010, 29–30; see also 2014, 325). McCann and Murray develop this principle in their Model Working Time Law for Domestic Workers, which formed part of the discussion associated with the introduction in 2011 of ILO Convention 189 (*Decent Work for Domestic Workers*). To improve the working-time conditions of domestic workers, they advocate a 'framed flexibility' model of working-time regulation, which combines 'framing standards' and 'flexibility standards'. Framing standards, which are fixed non-negotiable standards, include written agreement to hours and, importantly, to changes to hours, premium payments for night work, work on rest days and public holidays, payment for travel time, a two-hour minimum engagement, and an absolute prohibition on employment on a casual or 'as and when required' basis (McCann and Murray, 2010, 44-54). The 'flexibility standards' are intended to recognise and facilitate unpredictable demands while ensuring protection for workers (McCann and Murray 2010, 28). For example, one of these standards provides that where a worker is required to be available for work but is not called out to work, s/he must be paid at least 25 per cent of the hourly wage (McCann and Murray 2010, 51). This discussion is highly relevant to a wide range of modern employment situations, including those of on-demand workers in Australia (Charlesworth and Malone 2017).

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