

# BEFORE THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Matter No. IRC 4330 of 2003

Application for Variation of Awards  
Re: Secure Employment Clause by the Labor Council of New South Wales

## Written Submissions of the Australian Young Christian Workers

1. Pursuant to a decision of the Industrial Relations Commission of New South Wales on 17 March 2004, the Australian Young Christian Workers movement (AYCW) was granted leave to intervene in this matter for the purpose of making written submissions.
2. The AYCW supports part (i) of the amended application (Ex 2) of the Labor Council of New South Wales, namely, the casual conversion element of the application.
3. The AYCW also supports the submissions of the Labor Council of New South Wales filed on 11 April 2005, in relation to the casual conversion element of the application. In addition to those submissions AYCW makes the following submissions.
4. Attached to our previous submission of 19 December 2003, which was filed and served on all parties, the AYCW presented its report *Don't Bother Coming In Today: Casual Work, Casual Nature* (2001). (AYCW Report)
5. As stated in our submission of 19 December 2003 (paragraph 4), the raw data collected for question nine of the survey, which the report is based on, found that 60 percent of young casual workers surveyed preferred to have the higher rate of pay, while 30 percent preferred the permanent features of employment including "permanent hours/paid holidays and paid sick days." These results were consistent across all States and Territories, including NSW. 10 percent of the respondents did not answer the question.

6. The report acknowledges its limitations on page 7 in that a high percentage of the survey participants were students and a high percentage of survey participants were fifteen to twenty years of age. On page 7 the report states: “*Representation of young people who are working casually and are **not engaged in any type of study** is limited.*” (bold emphasis added).

7. However, the AYCW’s submission of 19 December 2003 (paragraph 5), states a further analysis of the raw data revealed that of those respondents who are not studying at all, 52 percent preferred the permanent features of employment including “permanent hours/paid holidays and paid sick days.” This result would appear to go to the heart of the Labor Council’s claim for casual conversion, in that slightly more than half of those surveyed who are employed casually and who are not students indicated they would prefer permanent employment if it was offered. 30 percent of ‘student workers’ would also prefer permanency in their employment relationship.

8. The AYCW wishes to bring to the commission’s attention the effect economic restructuring has on young workers in the workplace and on their lives, and demonstrate why it believes the Labor Council’s amended application (Ex 2) should be supported.

9. The AYCW acknowledges a strong economy may be of benefit to society in the medium to long-term. However, the AYCW also believes unemployment is the shock buffer of an adjusting economy – and unemployment among young workers is “*particularly high*” (Lewis Ex 195 Par 57). Further, with an economic and labour market performance that has been “*one of the best in the world*” (Lewis Ex 195 Par 22), this shock buffer may also be realised in *under*employment, much of which is casual employment. The AYCW believes it is important the commission consider that the ‘adjustment burden’ of an economy in transition should not be borne alone by one group of workers (whether it be defined by age, employment status as temporary or permanent, skill level or gender).

10. In NSW, 54 percent of male employees and 50 percent of women employees in the 15 to 24 years age cohort are employed on a casual (no leave entitlements) basis (Hall, Ex 3, Figure 4). Casual work is only more prevalent amongst workers aged 65 and over. This is one of the reasons the AYCW sought leave to intervene in this case – because a significant number of young workers are, or soon will be, employed on a casual basis.

### **“Stepping Stone” hypothesis**

11. Professor Lewis cites the Department of Employment and Workplace Relations (DEWR) as reporting “*a substantial number of job seekers in low skilled jobs move to higher skilled jobs over time: (DEWR 2004).*” (emphasis added) (Lewis Ex 195 Par 38) This is known as the “Stepping Stone” hypothesis – a quaint label to describe the notion that casual work provides a worker with experience in an industry or occupation until they are more suitably qualified and/or experienced. The AYCW disputes the “stepping stone” hypothesis and believes it is more akin to a “desert island” hypothesis in which young workers are either: 1) stranded with no escape except a sea of underemployment or unemployment, 2) waiting for ‘job opportunity’ to come to the rescue on a favourable tide, or 3) left with no alternative but to build their own life-raft through self-paid training and further education. The *Don’t Bother Coming in Today: Casual Work, Casual Nature* report (AYCW report page 16) states: “...*young workers in casual jobs are unable to attain economic and social independence, because they get caught in a cycle of low-skilled, low-paid, insecure jobs.*”

12. The phrase “*over time*” used by DEWR and cited by Professor Lewis (Ex 195 Par 38) is worth consideration for a moment. Mary Vanderpol states: “*I have been employed by the Club for 15 years. Firstly as a casual employee for approximately 9 years and then I became a permanent part time employee on 6 January 1998.*” (Vanderpol Ex 63 Par 2) Allan Drew (Drew Ex 90 Par 40) states: “...*the employee in question, Ms Jan Ridhalgh has been employed on a casual basis for approximately 14 years and is part of the permanent roster system for OHNs.*” The AYCW report states: “*Derrick (36) was employed as a full-time casual for seven years in the newspaper/magazine industry before being made permanent.*” (AYCW report page 12). Mark Burraston (Burraston Ex

94 Par 8) states: *“I have been working as a casual employee for the company for almost 4 years.”* The AYCW report states: *“Shane (34) was employed as full-time casual (night shift) for a refrigeration transport company for four years before being made permanent.”* (AYCW report page 1) Richard Hall in his affidavit states: *“Recent analysis of the HILDA data by Wooden & Warren (2003: 9-14) noted the following characteristics of casual employees and casual employment (defined according to self-identification): “Just under **40 percent** have been in their current casual job for **more than 2 years**. **Almost 7 percent of casuals have been in their jobs for over 10 years.**”* emphasis added (Hall [Ex 3 or 4](#) Par 20)

13. Evidence submitted in this test case suggests one cannot conclude that a high proportion of young workers in casual employment use it as a “stepping-stone” into more permanent types of work. Mr. William Mitchell highlights problems with the “stepping-stone” claim, as the dataset combines two distinct groups: *“...(a) those that combine schooling and casual employment, that is, the work is instrumental and acting as a study subsidy and who do not rely on any skills developed in the casual work to gain permanent employment upon completion of their studies. This cohort already enjoys high probability of gaining permanent employment; and (b) those that are classified as non-student. Their results indicate of the casual workers (working less than full-time hours) in their sample in 1990, only 44.4 per cent had achieved full-time status by 1994. This estimate does not constitute a ‘high proportion’.”* (Mitchell [Ex 103](#) Par 35)

14. The increase in part-time and casual employment has, in short, *“...improved the flexibility of work arrangements for employers...”* (Lewis [Ex 195](#) Par 31) The AYCW accepts this position. Professor Lewis further contends: *“...a large proportion of people...are willing to supply labour on a part-time and casual basis...”* (Lewis [Ex 195](#) Par 31) Mr. Richard Hall indicates a division in the literature on whether this growth of part-time and casual employment is employer-driven or employee-driven. (Hall [Ex 3 or 4](#) footnote on page 16) He suggests: *“...employer demand has been a very significant driver of the growth of casual employment.”* (Hall [Ex 3 or 4](#) Par 36)

15. The AYCW argues the ‘willingness’ suggested by Professor Lewis above is illusory and not reflected in the AYCW’s own research, at least in regard to casual employment. 42 percent of those surveyed by the AYCW indicated they wanted more hours (AYCW report page 11), and between 52 percent (of non-students) and 30 percent (of students) wanted permanency. This suggests to us an *acceptance* rather than a willingness to work under the conditions indicated. Mr. William Mitchell in his affidavit states: “...while increasing casual work...is...in the interests of a proportion of the workforce, there remains an increasing number of part-time (casual) workers that are ‘forced’ into that status due to a lack of employment opportunities being generated by the Australian economy.” (Mitchell Ex 103 Par 24) Creighton and Stewart have observed: “...the question of choice is simply irrelevant when the only alternative to accepting casual work is unemployment.” (Munro J, Polites SDP, Lawson C *Re Metal, Engineering and Associated Industries Award 1998- Part 1* (2002) 110 IR 247 (at 286-291 par 107).

### **Stranded on the “stepping stone”**

16. The incidence of employers leaving employees stranded on the “stepping stone” needs consideration by the commission. Evidence presented suggested that employees are being employed casually – in some cases for significant periods of time as indicated above - through oversight, administrative flaws in account mechanisms, or exclusions on award provisions rather than a deliberate strategy by employers to utilise casual or contract labour to meet demand. This evidence would appear to speak in favour of the application for casual conversion the Labor Council has made:

*“Q. Well, isn't it the case that your Association, together with the Union, has explicitly in the award recognized the existence of what's called regular and systematic casuals by making provisions which specifically apply to those casuals?”*

*A. We have, yes.*

*Q. And that's because it was identified that there was a proportion of employees, casual employees in the Local Government who have been employed long term on a regular and systematic basis, is that correct?”*

A. *That's my recollection. The results of that are in this survey.*

Q. *Perhaps I will take you back to paragraph 50 where you identify an issue with respect to an issue that you say arises under the amended application for the use of casuals for relief purposes. I think you say that Councils could in effect get around that by using labour hire casuals, isn't that what you say?*

A. *I am saying that's the potential outcome of the amended application.*

Q. *But isn't it also the case that it's open to Councils under the Local Government Act to replace members of staff on leave by employing person on a temporary basis over a period of up to 12 months?*

A. *They could do that, yes.*" (David Gibson T 17/09/04 P 1333 L 33-49)

17. The AYCW recognises in some instances employees are retained as casuals through administrative oversight, or inadequate means of tracking casual employees service to an organisation, rather than a deliberate employer strategy designed to meet peak or seasonal demand. In the view of the AYCW this highlights further the need for the Labor Council's application to be supported:

A. *"...There is no way we know centrally if a casual employee has gone over three months and one day. There is no way we are able to ascertain within the payroll system that has occurred.*

Q. *You cannot do that centrally; someone in the Authority can?*

A. *No, it is not possible.*" (RTA T 11/11/04 P 1751 L 6-12)

18. In some instances a failure to review or routinely audit an organisation's internal structures can lead to employees being employed on a casual basis, even in contradiction to the organisation's policies or award provisions:

*"Where councils do not take steps to review the incidence of casual work, employees may be left working on a casual basis for some years, effectively becoming permanent casual employees."* (Harris Ex 32 Par 17)

19. The Labor Council's amended application (Ex 2) would give employers and employees the opportunity to value the contribution of the worker to the workplace, to make the terms of employment a conscious decision rather than an administrative oversight, and grant workers in insecure employment an opportunity to exercise flexibility – in other words, a choice.

### **The effect of casual work on casual employees**

20. Further, the effect of casual employment on workers must be taken into consideration. Richard Hall cites research undertaken by the Australian National University Centre for Epidemiology and Population Health that shows individuals worried that their job is not secure “...are more likely to be depressed, have high levels of anxiety, to rank their own health as poor and to be in poor physical health.” (Hall Ex 3 or 4 Par 41) Hall also cites researcher Barbara Pocock who argues casual employees “...are more likely to view themselves as ‘on tap’ than ‘in charge’ of their working time. (2003: 172)” (Hall Ex 3 or 4 Par 39) This would suggest a questioning of the “work to live” or “live to work” imperative. The AYCW maintains that work is important to a person's identity, self-esteem and contribution to society. However, a requirement of mutual commitment between the employer and employee is required for this to come to full fruition. Casual work, short of unemployment, is the least likely employment relationship within which to achieve this.

21. The AYCW believes the evidence provided by Hall speaks in favour of casual employees being given the choice of either ongoing casual employment, or the security and benefits that are enjoyed by permanent employment. In its report the AYCW calls for casual workers who are employed by the same employer for more than six months on a regular basis to be given “...the opportunity to be made permanent.” In recognition, however, of the divergence of worker's lives the AYCW maintains: “...permanency should be the worker's decision.” (AYCW report page 21)

### **Weakened bargaining position of casuals**

22. Evidence presented in this test case and the AYCW report states: “*Casual employment...means that workers are in a weaker bargaining position to demand changes or to approach employers.*” (AYCW report page 19) The AYCW would contend this ‘weaker bargaining position’ places a greater emphasis on the need for industrial regulation to provide support to workers who are employed casually and who often believe they are not in a position to negotiate due to the precariousness of their employment. Further, the AYCW believes strongly that “*Young people’s experience of the labour market can establish their expectations for the rest of the career.*” (AYCW report page 15)

23. Indeed, while surveying young workers for its report, the AYCW noted a significant number of survey respondents who indicated they did not realise there was a distinction between casual employment and part-time employment – the two have become synonymous for many young workers. Casual work can have the effect of reducing workers knowledge of the workplace. The AYCW believes this gives the Labor Council’s amended application (Ex 2) greater urgency.

### **Less training equates to poorer quality work and poorer quality workers**

24. In its report, the AYCW referred to inadequate training provision by some employers particularly regarding Occupational Health and Safety (OH&S) (AYCW report pages 4, 9-11): “*23 percent of surveyed respondents had not been informed of Workplace Health and Safety issues.*” (AYCW report page 10) These issues may be beyond the scope of the commission to address in this test case, but the AYCW wishes to bring to the commission’s attention two aspects to the question of training – the long-term effects and the immediate effects.

25. Mr. William Mitchell in his affidavit presents an argument that productivity gains will be reached through “*...higher skill labour inputs, higher capital intensity, and higher total factor productivity (technology).*” (Mitchell Ex 103 Par 53) He goes on to cite Banks (2002: 14), Chairman of the Productivity Commission, as saying: “*... the closer*

*that the Australian economy gets to its technological and productive frontier, the more important will innovation be to our continuing progress ... Ultimately how well we do it depends on the intellectual qualities and attitudes of the managers and workforces in Australian enterprises. That in turn largely depends on the effectiveness of our education and training systems. Ensuring that those systems work well – and there is growing evidence to the contrary – will be one of the key challenges in sustaining Australia’s productivity performance in the future.’*

*“So in his evaluation of the future, Banks is stressing the quality of the workforce. The ‘low road’ approach of casualisation and low pay is far removed from this vision.”*  
(Mitchell Ex 103 Par 55)

26. Training is everything for young workers. In an environment where much political consideration is being given to a future ‘skills shortage’ in Australia, the AYCW would argue the provision of training must be given more thorough consideration. The AYCW would contend that casual employment *reduces* the likelihood of adequate training being provided to employees. Hall states in his affidavit: *“In general, casual employment is more prevalent in lower skill occupations, and jobs in these lower skill occupations are more likely to be casual. According to HILDA data, 58.4 percent of elementary clerical, sales and service workers are casual (about 169 000), as are 52.1 percent of labourers (about 92 000).”* (Hall Ex 3 or 4 Par 21)

27. The combination of casual employment with a low level of training can be one source of the higher turnover of casual employees compared with permanent employees. Rather than casual workers exercising a preference, many casual employees may leave their employer due to feeling undervalued, believing they are inadequately trained for the job they are asked to perform, and experiencing *“higher levels of anxiety”* (Hall Ex 3 or 4 Par 41) as a result. None of the evidence presented would appear to contradict this interpretation and the AYCW’s report provides instances of worker dissatisfaction as a result of being employed casually:

*“David (26) has been employed by the same company for the past 16 months as a ‘full-time’ casual...David has not been informed of any workplace practices or meetings since he began his work. ‘As a worker I feel worthless and uninformed. No one bothers to tell us what is going on in our workplace...I find it very difficult to feel committed and loyal to my employer. After all they can dispense of me whenever they feel like it.” (AYCW report page 5)*

28. All of these longer-term effects mask the immediate situation of many casuals where the irregularity of employment, the communication strategies within organisations to inform its workers, and the tenuous relationship between employer and employee contribute to a lowest-common denominator approach to workplace safety, training, communication in the workplace and the forming of workers into more responsible employees. Hall states: *“The reasons for casuals receiving less training than permanents were addressed by Curtain (1996) and supported by Hall, Bretherton & Buchanan (2000: 53-56). They included:*

- employers believing that it was not their responsibility;*
- employer uncertainty as to whether they would re-coup the cost of training because of the employee’s casual status and higher propensity to quit;*
- lack of time, money and opportunity for employees, and;*
- a lack of clear career paths for casuals to motivate training.” (Hall Ex 3 or 4 Par*

38)

29. The AYCW maintains that the casual conversion clause of the Labor Council’s amended application (Ex 2) might go some way to arresting this trend of lower training standards within the workplace. If this is an overstated claim, then the application would certainly not affect it negatively and therefore it is our belief that it provides another reason for the application to be supported.

### **Casual workers for casual work**

30. The evidence of some employers would appear to the AYCW to provide instances of the appropriate use of casual employment. David Arnell of 1<sup>st</sup> Fleet explains the peak nature of 1<sup>st</sup> Fleet's packing requirements due to circumstances in Iraq:

*“Q. Is there any other cases where 1st Fleet would use casuals on a long-term basis 6 months or more?”*

*A. Yes, for instance, right at the moment we store and pack and district for the army. We have numerous casuals working on the site because of what is happening over in Iraq. We have an excess of the amount of work so we are using casuals because when the war finishes or when it depletes, it will come back to a normal basis again. So we couldn't give them permanent employment because it's a peak at the moment and has been for a while because of what's happening in Iraq.”* (David Arnell T 10/11/04 P1676 at L 31 to 51)

31. The AYCW argues the use of casuals in the labour force must be far more selective than is the case at present, and must reflect the casual nature of the work at hand – that is work that is of a short-term duration, intermittent and/or irregular. The evidence provided to the commission regarding seasonal workers in certain industries is another instance in which the AYCW believes the use of casuals *may* be appropriate. However, the AYCW wishes to point out that there are other employment options available including temporary contract, and part-time permanent employment which still provides the employer with the desired flexibility and the employee with a level of security.

### **‘Onus of proof’ to employ casually**

32. However, as the AYCW believes the instances in which workers are employed on a casual basis must reflect the casual requirement of the work at hand, as stated above, it follows that the onus of proof must be on the employer to demonstrate the need to employ a worker/s on a casual basis. Otherwise the employee must be provided with the option of permanent employment:

*“Reporting on their December 2000 decision on the Metal, Engineering and Associated Awards – 1998 Part 1, the AIRC (AIRC Annual Report, 2000-2001, Significant Cases 03) said that “a considerable and justifiable use of casual employment, primarily related to*

*operational circumstances where uncertainty or contingencies necessitate workforce size flexibility.” AIRC (2000-2001) also considered it desirable that the use of “casual employment be justified, in order to discourage avoidance of conditions attached to full-time employment. Unfettered access to casual employment did not justify a unilateral extension of casual engagements over indefinite periods. Such a notion detracts from the integrity of a safety net in which standards for annual leave, paid sick leave, paid public holidays and personal leave were fundamental.” (Mitchell Ex 103 Par 30)*

### **The likely industrial effect of casual conversion**

33. The AYCW wishes to reiterate the evidence provided in Mr. William Mitchell’s affidavit regarding the actual take-up rate of casual conversion to permanent employment when it has been offered to casual employees. Rather than a dearth of casual employees converting to permanent work, the available evidence to date of casual employees who have been given the option of converting to permanent work indicates a low take-up of the conversion to permanency. *“The reality has been that very few employees have sought to use these rights. Pocock et al (2004: 43-44) summarise a presentation given by Heather Ridout, Executive Offer from AIG at the ‘Future of Work’ Conference in June 2003, saying that “having geared up for a rush of conversion requests following the metal’s award decision - their member organisations reported almost no activity.”* (Mitchell Ex 103 Par 81)

34. The understated response by employees to the option of casual conversion based on the evidence to date would appear to quell the more strident claims of the employers in this matter. Once again the AYCW believes this evidence speaks strongly in favour of the application for a casual conversion clause sought by the Labor Council, and shows that if the clause were introduced it would not cause damage to the economy at large or to firms in particular.

## **Conclusion**

35. The AYCW urges the commission to consider part (i) the casual conversion clause, of the Labor Council's amended application (Ex 2). The AYCW believes it would reduce the incidence of casual workers being stuck on the "stepping-stone", would provide workers with the 'flexibility' of choice regarding their employment conditions, would lessen the incidence of depression, anxiety and the self-perception among casual workers of poor mental and physical health. It would also set New South Wales on a course toward a participatory and involved workforce in which workers are "...*respected and their work dignified with conditions that allow equal participation.*" (AYCW report page 23)

36. The AYCW also asks the commission to consider the incremental erosion of permanent employment provisions through the prevalence of casual employment. The AYCW asks the commission to consider the impact on training both in the immediate term in which employees are inadequately trained leading to low level customer satisfaction, low level productivity, low level employee satisfaction, low level employer satisfaction, low level training especially in the area of Occupational Health and Safety; as well as the longer-term impact in which productivity and economic growth is inhibited. This is during a time when there is great speculation about a future "skills shortage" in Australia, and a time in which young workers are required to pay for their own training leading to the delay of other lifetime aspirations, such as owning a home and starting a family.

37. The AYCW submits that casual workers should only be utilised in the instance of genuine casual work. This should be a limited use of a specific type of employment for a limited duration. In all cases the onus of proof should shift to the employer to demonstrate why it is necessary to employ staff on a casual basis. We do not believe the Labor Council's amended application (Ex 2) regarding the casual conversion clause places too great a burden on employers in this regard.