

CONFRONTING THE REALITY OF CASUALISATION IN AUSTRALIA. RECOGNISING DIFFERENCE AND EMBRACING SESSIONAL STAFF IN LAW SCHOOLS.

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Casualisation of academic staff in universities and law schools is a reality. It is argued that sessional academics in law schools are atypical of sessionals across the sector and need training, resourcing and encouragement, which value their particular contribution and worth. The creation of a more specific program at the school level is described, and it is argued to be effective as it assists sessional academics to engage with the students, thereby improving the quality of student learning and enhancing the experience for these academics. Adopting a one-size-fits-all program at the institutional level may be cost effective, but is less likely to achieve this aim.

I INTRODUCTION

For the sake of our students and to assure the quality of our institutions' teaching and learning practices, casualisation as a fact of the new tertiary agenda should be embraced and nurtured, rather than marginalised as a teaching backwater and lamented as an economic rationalisation.¹

This paper considers the nature of casualisation of the academic workforce in Australian universities and law schools. It specifically concerns a strategy to augment the educational development for sessional staff in an Australian law school, where casualisation of academic staff is accepted as a reality and 'embraced' as an opportunity to include many eminent and valued professionals as members of a team.

Over the past decade, there has been a significant growth in the number of sessional (casual) staff in universities in Australia, the United States of America (USA) and the United Kingdom (UK). Evidence for this can be found in the literature² and confirmed

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¹ S Kift, 'Assuring Quality in the Casualisation of Teaching, Learning and Assessment: Towards Best Practice for the First Year Experience' (2003) *UltiBASE Articles*, <<http://ultibase.rmit.edu.au/Articles/march03/kift1.pdf>> at 2 July 2009.

² As discussed in part III of this paper.

by an examination of the Department of Education, Employment and Workplace Relations (DEEWR) selected higher education statistics which provides clear evidence of an increase in the number teaching-only staff, employed on a casual basis in the period from 1996 to 2007.³

The growth has occurred in law schools, too. An examination of the typology of sessional staff in Australian universities is both useful and informative, however, it is argued that most sessional academics in law schools, are an atypical group who are assisted by training, resourcing and encouragement which values their particular contribution and is more suited to their needs. In some universities, including research intensive institutions, there has been a trend to assume responsibility for training and professional development to a centralised unit; a trend noted by Alisa Percy and Rosemary Beaumont.⁴ The resultant 'one-size-fits-all' training programs at this institutional level are routinely designed to assist tutors in the more generalist disciplines of Arts and Science, given that these tutors are usually novice academics - higher degree students augmenting their incomes. This generalist approach is appropriate in those circumstances given that postgraduate students are by far the biggest group in those disciplines. This approach can also be cost-effective and may even answer presumptions about the ability of professional development to remediate perceived teaching deficiencies, as well as provide evidence of 'quality'. It is less likely, however, to either improve the quality of student learning or enhance the experience for the sessional academics in other disciplines which lead to professional qualifications such as law, medicine or architecture.

The creation of a more specific approach, provided at the law school level is described, and it is argued to be more effective as it can assist sessional academics in law to engage with the students to achieve better student learning outcomes. This is not radical pedagogy:

The traditional model of educational development is an institutional-based one. However, it is argued here that for most academics, developing the scholarship of teaching will only bring about change in their priorities if it is embedded in disciplines and departments. This is because, firstly, for most academic staff their primary allegiance is to their subject or profession, and their sense of themselves as staff at a given institution is secondary. Secondly, there is a strong perception among staff that there are significant differences among disciplines in what academics do and how those activities are described and valued.⁵

³ See Australian Government, DEEWR, *Table 1.1- FTE for Full-time, Fractional Full-time and Estimated Staff by Casual Work Contract, 1996-2007* (2007) <http://www.dest.gov.au/sectors/higher_education/publications_resources/statistics/publications_higher_education_statistics_collections.htm#staffpubs> at 10 December 2008.

⁴ A Percy and R Beaumont, 'The Casualisation of Teaching and the Subject at Risk' (2008) 30(2) *Studies in Continuing Education* 145.

⁵ M Healey, 'Developing the Scholarship of Teaching in Higher Education: a Discipline-Based Approach' (2000) 19(2) *Higher Education Research & Development* 169, 172-3.

II A DEFINITION MATTERS

It is also argued that finding an appropriate definition for this group of academics does matter because in doing so it acknowledges that such faculty members are valued members of a larger teaching team. In Australia, teaching academics who do not hold permanent, tenured positions are variously called casual, non-continuous, sessional, or part-time staff. Referring to academics as 'casual' seems pejorative when their attitude to work is evidently anything but.⁶ Referring to them as non-continuous is also problematic given that is a negative term – they are simply the opposite of continuous, even though many are employed from session to session seemingly continuously. Nevertheless they are widely used terms. Defining academics 'by what they are not' can be a problem.

For Debra Herbert, Rachel Hannam and Denise Chalmers, definition matters:

If one considers the very different categories (of) graduate teaching assistants, postdoctoral fellows, adjunct faculty, and part-time faculty and asks what the individuals in them have in common, the answer is not much-except for one thing - they are all defined by what they are not: they are not 'regular' faculty. That would simply be a fact of life, not a problem, were it not for the propensity of our status-conscious regular faculty, and hence our institutions, to think of them and to treat them as if they were lesser species.⁷

According to Anne Junor easy distinctions can be made between casual and part-time staff:

The *Higher Education Contract of Employment Award 1998* ... codified long-standing and widely understood definitions of university academic and general staff employment modes. These definitions are reflected in institution-based collective agreements. A casual employee is defined in the industry as ... a person engaged by the hour and paid on an hourly basis that includes a loading related to award based benefits for which a casual employee is not eligible' (*HECE Award*, AIRC 1998: Clause 2.4). Part-time employment is defined as being for less than the normal full-time weekly ordinary time hours, and as attracting pro rata entitlement to relevant award/agreement benefits.⁸

For Debra Herbert and others, they are best defined as 'any university instructors who are not in tenured or permanent positions'.⁹ For the purposes of this paper, the term 'sessional' is used as the one which best describes the way in which the work is undertaken (on a session-by-session, usually part-time, teaching-only basis) and one which also less derogatory than the others, even if not perfect. This is consistent with both the *Recognition. Enhancement. Development. The contribution of sessional*

⁶ D Herbert, R Hannam and D Chalmers, *Enhancing the Training, Support and Management of Sessional Staff* (2002) Australian Association for Research in Education <<http://www.aare.edu.au/02pap/her02448.htm>> at 2 July 2009.

⁷ D Langenberg, 'The Subfaculty' (1998) 26(4) *New Directions for Higher Education: The Growing Use of Part-Time Faculty: Understanding Causes and Effects*, in *ibid.*

⁸ A Junor, 'Casual University Work: Choice, Risk, Inequity and the Case for Regulation' (2004) 14(2) *The Economic and Labour Relations Review* 276, 280 <http://www.unicasual.com.au/pdf/Junor_university.pdf> at 8 September 2009.

⁹ Herbert, Hannam and Chalmers, above n 6.

*teachers to higher education (RED)*¹⁰ and Bradley¹¹ Reports where it was said that such staff should be called ‘sessional teaching staff [and] defined as ‘any higher education instructors not in tenured or permanent positions, and employed on an hourly or honorary basis’ Getting the terminology right to begin with is important given that these academics have assumed a greater and greater role in the tertiary education sector. It also signals the worth (or otherwise) ascribed to an individual, as stated earlier.

III THE INCREASE IN THE NUMBER OF SESSIONAL STAFF

Casualisation of academic staff in all disciplines and universities is a reality. There has been a significant increase in the numbers of teaching-only, part-time, sessional academic staff in universities in Australia, the UK and the USA over the past decade. According to the literature, the growth is evident in all three jurisdictions.

In the US, Ronald Ehrenberg and Liang Zhang write about a ‘significant growth in the share of faculty members in American colleges and universities that are employed in part-time or full-time nontenure track positions’ over the ‘last two decades’,¹² citing the works of Anderson, Baldwin, Chronister, Conley, Lesley and Zimble in support. Charles Harrington and Timothy Schibik, argue that the ‘growing number of part-time personnel used as teaching faculty in the academy [is] an issue of increasing concern’ given that it has ‘serious implications for faculty work and institutional vitality’.¹³ They suggest that at the time of their writing (2001), 42.5 per cent of faculty were employed on a part-time capacity; an increase of 20 per cent since 1970.¹⁴ Exact numbers of such faculty are, of course, not easily found, given that universities are often shy about divulging them and the figures may differ from semester to semester. Judith Gappa, however, in reviewing the work of Chronister and Baldwin, cites a similar number of part-time teachers, and she draws attention to the fact that, effectively, 70 per cent of faculty in the US are in non-tenure positions.¹⁵ By 2006, Daniel Jacoby, was concerned that the ‘dramatic increase in the use of contingent or part-time faculty’ is ‘particularly pronounced at community colleges where part-time faculty provide virtually half of all instruction.’¹⁶

However one reads the figures, it would appear that the overall proportion of part-time faculty has risen in the 10 years since 1996, when Graham Gibbs noted that:

¹⁰ Australian Learning and Teaching Council (ALTC), *the RED Resource. Recognition. Enhancement. Development. The Contribution of Sessional Teachers to Higher Education* (2008).

¹¹ D Bradley et al, *Review of Australian Higher Education Report* (2008) Australian Government, DEEWR, [3.1.5], [4] <http://www.deewr.gov.au/he_review_finalreport> at 8 September 2009.

¹² R Ehrenberg and L Zhang, ‘Do Tenured and Tenure-Track Faculty Matter?’ (2005) *Journal of Human Resources* 647, 647.

¹³ C Harrington and T Schibik, ‘Is There a Relationship Between Part-Time Faculty Utilization and Student Learning Outcomes and Retention?’ (Paper presented at the 41st Forum of the Association for Institutional Research Long Beach, California, 3-6 June 2001) 4 <http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/19/36/52.pdf> at 18 September 2009.

¹⁴ Ibid.

¹⁵ See here, J Gappa, ‘Essay Review. Teaching Without Tenure’ (2002) 45(3) *Perspectives in Biology and Medicine* 449.

¹⁶ D Jacoby, ‘Effects of Part-Time Faculty Employment on Community College Graduation Rates’ (2006) 77(6) *Journal of Higher Education* 1081, 1081.

nearly 40% of faculty in the USA are part-time and on short-term contracts, and they are responsible for the majority of teaching: full-time and tenured faculty spend a much larger proportion of their time undertaking research or managing an army of part-timers than they do teaching (providing) a glimpse of the future in the UK.¹⁷

His vision of the future for the UK was prescient. As in the USA, there is a growing casualisation of teaching staff, with increased employment of teaching staff on part-time or fixed-term contracts in the UK. George Lueddeke, highlights the fact that the number of part-time academic staff employed in the UK has risen sharply since 1981. This is in response to the expansion of higher education (much greater student numbers) coupled with a reduction in government funding. Savings have had to be made. For instance, within Departments of Sociology, '[a]lthough exact numbers are hard to find, reports suggest that in some universities up to 38% of academic staff are paid by the hour'.¹⁸

It is a familiar story to academics in Australia who have, similarly, witnessed a burgeoning of the numbers of part-time, short-term contract faculty, again across all disciplines. This was acknowledged in the recent Bradley Report:

Australian universities are highly dependent on a casual workforce. According to the *RED Report*, published by The Australian Learning and Teaching Council (ALTC) in June 2008, all Australian universities depend heavily on sessional teaching staff, defined as 'any higher education instructors not in tenured or permanent positions, and employed on an hourly or honorary basis' (ALTC 2008, p 4). An estimated 40 to 50 per cent of all teaching in Australian higher education is conducted by sessional staff.¹⁹

Further confirmation of this trend towards casualisation can be found in the figures provided by the Australian Government Department, DEEWR (formally the Department of Education, Science and Training, DEST).²⁰ The data indicate an increase in the numbers of teaching-only staff employed as fractional full-time and on a casual basis in universities in Australia, from 1996 to 2008, as shown in Figure 1 below.

Full-time Equivalent (FTE) Loads for Full-time, Fractional and Casual Staff
Figure 1:²¹

¹⁷ G Gibbs, 'Who Shall Teach the Teachers?' (1996) 3 *Managing HE* 20, in G Lueddeke, 'Training Postgraduates for Teaching: Considerations for Programme Planning and Development' (1997) 2(2) *Teaching in Higher Education* 141, 142.

¹⁸ A Smith, R Whitecross and D Mills, *Professional Apprenticeship or Contract-Labour? A Survey Report on the Use of Teaching Assistants within UK Sociology Departments* (2003) The Higher Education Academy <<http://www.c-sap.bham.ac.uk/resources/publications/samples/SOCIOLOGYTASURVEYFINAL.RTF>> at 13 October 2009.

¹⁹ Bradley et al, above n 11, [3.1.5].

²⁰ Australian Government, DEEWR, *Table 1.1- FTE for Full-time, Fractional Full-time and Estimated Staff by Casual Work Contract, 1996-2007*, above n 3.

²¹ Ibid.

Figure 1: FTE for Full-time, Fractional Full-time and Estimated Casual Staff by Work Contract, 1996 to 2008

| Year | Full-time | | Fractional Full-time | | Estimated Casual | | Total | |
|---------------------|-----------|---------------------------|----------------------|---------------------------|------------------|---------------------------|---------|---------------------------|
| | FTE | % change on previous year | FTE | % change on previous year | FTE | % change on previous year | FTE | % change on previous year |
| 1996 | 65,254 | | 7,449 | | 10,185 | | 82,888 | |
| 1997 | 62,771 | -3.8% | 7,910 | 6.2% | 10,723 | 5.3% | 81,404 | -1.8% |
| 1998 | 61,284 | -2.4% | 8,290 | 4.8% | 10,711 | -0.1% | 80,285 | -1.4% |
| 1999 | 61,192 | -0.2% | 8,059 | -2.8% | 11,580 | 8.1% | 80,832 | 0.7% |
| 2000 | 61,568 | 0.6% | 7,973 | -1.1% | 12,760 | 10.2% | 82,301 | 1.8% |
| 2001 | 61,713 | 0.2% | 8,911 | 11.8% | 13,162 | 3.2% | 83,786 | 1.8% |
| 2002 | 63,462 | 2.8% | 9,478 | 6.4% | 13,401 | 1.8% | 86,341 | 3.0% |
| 2003 | 66,301 | 4.5% | 9,254 | -2.4% | 13,815 | 3.1% | 89,370 | 3.5% |
| 2004 | 68,358 | 3.1% | 9,831 | 6.2% | 13,716 | -0.7% | 91,905 | 2.8% |
| 2005 | 70,123 | 2.6% | 10,341 | 5.2% | 14,231 | 3.8% | 94,695 | 3.0% |
| 2006 | 71,089 | 1.4% | 10,692 | 3.4% | 14,298 | 0.5% | 96,079 | 1.5% |
| 2007 | 72,642 | 2.2% | 11,152 | 4.3% | 14,661 | 2.5% | 98,455 | 2.5% |
| 2008 | 74,781 | 2.9% | 11,843 | 6.2% | 14,851 | 1.3% | 101,475 | 3.1% |
| % of total FTE 2008 | 73.7% | | 11.7% | | 14.6% | | 100.0% | |

Even though these figures are for staff across all disciplines, they warrant a deeper analysis than can be afforded here. On a superficial reading, there is an apparent fluctuation in the numbers of fractional full-time and casual staff. In 1999, for instance, the figure shows 2.8% decrease in staff employed as fractional full-time but an 8.1% increase in the numbers employed casually. Nevertheless, the overall trend, 1996-2008, is a proportional increase in the combined numbers of fractional full-time and casual staff as compared to full-time staff on continuous contracts.²²

Further, in an earlier (2005) document produced by DEEWR's predecessor, DEST, notes an interesting change in the nature of these work contracts:

A previous table shows the increase of staff employed on a casual basis (of more than 10 percentage points) from 1996 to 2005, and the corresponding decrease of those employed with a full-time contract. This can be aligned with the trends highlighted in changing work contracts for staff as a whole.

Staff engaged in a 'research only' function accounted for 12.1% of total full-time equivalence in 2005. This was an increase of more than two percentage points since 1996, which equated to around 2,000 extra staff employed undertaking 'research only' functions. Unlike 'teaching only' staff, the majority of staff in this function (76.5%) were employed on a full-time basis. This level has remained steady since 2000.²³

²² Figures are available broken down into Academic Organisational Unit Groups, however, Law is not one of those groups, so statistics which relate specifically to law schools are unavailable at the national level from DEEWR. See Australian Government, DEEWR, *Appendix 2 - Academic Organisational Unit Group* (2008) <http://www.dest.gov.au/sectors/higher_education/publications_resources/profiles/Staff_2008_selected_higher_education_statistics.htm> at 13 January 2010.

²³ Australian Government, DEEWR, *Selected Higher Education Statistics - Staff 2005* (2005) <http://www.dest.gov.au/NR/rdonlyres/6C964624-8DBD-4502-AB81-16366B6C915A/18823/Staff2005_SelectedHigherEducationStatistics.pdf> at 10 December 2008.

As Anne Junor notes:

Australian universities have strongly embraced the international trend towards increased use of non-continuing staffing to mitigate the costs of moving from an elite to a mass higher education system in a context of public funding constraint.²⁴

Thus in Australia from the mid-1990s, and in response to vastly increased student enrolments (accompanied by a loss of full-time continuing staff),²⁵ the above figures confirm the growth in employment of part-time, casual, fractional full-time, non-continuous, sessional academic staff. The growing phenomenon of casualisation suggests that this is not a form of employment which is about to disappear. The progressive casualisation of the Australian academic workforce is a reality. Moreover, it is across the board and includes all faculties. The next part considers why this is the case.

IV THE ‘TRANSMISSION BELT FOR CASUALISATION’

The first explanation as to why there are so many sessional staff employed in Australian universities relates to funding – or lack of it:

Labour market flexibility, based on casualisation, has been a means to under-funded staffing growth. Since 1995, the federal government has imposed a higher education productivity dividend, replacing full cost adjustments to the staffing component of operating grants with funding increases indexed only to minimum national wage case movements.²⁶

As the earlier DEEWR figures indicate, the numbers of full-time continuous appointments are falling, even though student numbers are rising. This is coupled with a decrease in government funding such that the shortfall can most easily be accommodated by increasing the numbers of sessional teaching staff. Again, according to Anne Junor, ‘Within universities, devolved management of the resulting tight budgets has been a transmission belt for casualisation.’²⁷ For many writers,²⁸ this ‘transmission belt’ can sound the alarm bells, given that a conveyer belt metaphor implies a model of diminished quality.

The employment of sessional staff also fits well with the “flexible” human resources model in the “corporate” university.²⁹ Much has been written about the modern ‘corporate’ university and the reasons for its evolution. It is beyond the scope of this paper, however, to go further. Suffice to say that universities in Australia, and other parts of the world, now adhere to the management practices (and language) of the

²⁴ Junor, above n 8, 278.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ See, for example, Percy and Beaumont, above n 4, 146; and P Bassett, ‘Sessional Academics: A Marginalised Workforce’ (Paper presented at the HERDSA Annual International Conference, Auckland, 7-10 July 1998)
<<http://www.herdsa.org.au/wp-content/uploads/conference/1998/PDF/Global/BASSETT.pdf>> at 17 September 2009.

²⁹ See, for example, J Scott, ‘The Mission of the University: Medieval to Postmodern Transformations (Educational Changes)’ (2006) 77(1) *Journal of Higher Education* 1; and Bassett, above n 28.

corporate world which has closely embraced a different model of employment to the traditional. According to Alisa Percy and Rosemary Beaumont:

the growing phenomenon of casual teaching has been materially produced as a cost-effective device for fiscally constrained universities, and symbolically produced as key indicator of flexibility and productivity through the Australian Government's recent workplace reforms.³⁰

The academic workforce is now 'flexible' because much of it is outsourced, a process which started in Australia with university services such as food, cleaning and security but which has moved on. By 2004, in the USA, Timothy Schibik and Charles Harrington had been anticipating the same, when they said that 'since it is possible to privatise or outsource most university services, it stands to reason that the outsourcing of lectures is next.'³¹

It is acknowledged, however, that there are many benefits to casualisation. The key benefit, particularly for law and other professional schools, is employment of high profile industry or professional experts, which allows the university (and students) to gain access to very valuable knowledge. This is even more important in circumstances where, without such a specialist, a course may not be offered at all. Other benefits include the ability of universities to respond to fluctuations in student numbers more quickly than hiring permanent staff or providing a way to give a potential permanent staff member a 'trial run'. Employment of sessional staff can also facilitate a more congenial work/life balance for full-time staff where sessionals teach the evening, early morning or even weekend classes where they are offered. For postgraduate students it is also a way to earn extra cash. There is also an argument that such employment frees the full-time, tenured staff to pursue research or other necessary tasks.³²

However, there are inherent costs in any such an arrangement, many of which are often glossed over or are not addressed. The biggest cost comes with administering sessional staff to ensure quality, given, first, that not all sessional staff are world-class experts and, second, many sessional staff are inexperienced teachers.³³ The administrative costs inevitably fall to the tenured staff, effectively negating the time freed for research. Accordingly, the fact of casualisation can either be 'lamented' or the net benefits embraced.

V THE TYPOLOGY OF SESSIONAL STAFF

In order to minimise costs and to develop a strategy of professional development, it is important to break down the profile of the sessional teachers because it cannot be assumed that they are part of an homogenous group. For instance, there is an assumption held by some, particularly in the more generalist disciplines, of the typical profile of a sessional academic that is not necessarily borne out by the research; the first is a belief that such faculty are young women who work under unrewarding

³⁰ Percy and Beaumont, above n 4, 145.

³¹ T Schibik and C Harrington, 'The Outsourcing of Classroom Instruction in Higher Education' (2004) 26(3) *Journal of Higher Education and Policy Management* 394, 395.

³² Ibid 396.

³³ See here, Junor, above n 8, 279. Some of the problems which beset sessional staff (such as recruitment and employment) are effectively industrial issues, which although serious, are not the focus of this paper.

circumstances while waiting for more permanent academic career opportunities; the second is that such a manner of employment is made by choice.³⁴ The first belief is largely unsubstantiated. Anne Junor, questions the second, as to whether this is a matter of choice, providing evidence that the duration of the contract alters how a sessional employee feels about his or her position. In her survey of 1337 sessional academics, she asked directly, 'If you could choose your mode of employment in this university, which of the following would be your first preference?'³⁵ The responses contradicted earlier studies where preferences for casual employment were inferred from more general questions.

Whereas 40 per cent of casual general staff respondents preferred casual employment, only 28 percent of casual academics did so ... Amongst academic and general staff on contracts of less than a year, well over 80 per cent wanted continuing work, either part-time or full-time ... [However], overall, casual academics had a higher preference than casual general staff respondents for remaining in university and education industry work.³⁶

Such initial enthusiasm shown by academics for casual employment whittled over time, so that the longer they remained as part-time, sessional workers, the more the preference for this type of work fell.

At least one part of that story is correct. It is not a myth that there are more females than males employed casually in Australian universities and the DEEWR figures evidence this.³⁷ Australia-wide, there is more than double the number of casually employed women academics.³⁸ We do not know, however, if they are also young women, for while 'casual staff data is always reported in terms of full-time equivalence' there are some 'data elements ... not collected for casual staff, including age and indigenous status.'³⁹

The gender imbalance can be a cause for concern. In his 2005 demographic study of the Australia's academic workforce, Graeme Hugo noted that, while improving, there is still a gender imbalance in the overall academic workforce, most particularly amongst older academics where there are 'four men for every woman aged over 55.'⁴⁰ Further, the data re sessional staff are not encouraging for women. The experience from overseas is, again, similar. For example, Marina Angel writes about two studies of women in legal education from 1988, where she claims that both studies found that women were

³⁴ This mode of employment is held up as a 'key indicator of flexibility and productivity'. See Percy and Beaumont, above n 4, 145.

³⁵ Junor, above n 8, 284.

³⁶ Ibid.

³⁷ Australian Government, DEEWR figures - *Table 2.5 Number of Full-time and Fractional Full-time Staff by State, Higher Education Provider, Work Contract and Gender* (2008) <<http://www.dest.gov.au/NR/rdonlyres/7D7AC7D2-C71E-462B-A778-D4814776E729/25898/Numbers.xls#Table 2.5!A1>> at 13 January 2010.

³⁸ NSW has nearly twice as many; Vic and ACT have nearly three times as many; Qld and Tas have more than twice as many; WA, NT and SA have more than three times as many; the Australian Catholic University, with campuses across several states has more than 4.6 as many.

³⁹ See Australian Government, DEEWR, *Explanatory Notes* (2005) <http://www.dest.gov.au/NR/rdonlyres/6C964624-8DBD-4502-AB81-16366B6C915A/18823/Staff2005_SelectedHigherEducationStatistics.pdf> 10 December 2008.

⁴⁰ G Hugo, 'Demographic Trends in Australia's Academic Workforce' (2005) 27(3) *Journal of Higher Education Policy and Management* 327, 333.

‘disproportionately represented in non-tenure-track ... positions’.⁴¹ In a more recent study, Ernie Barrington, claims that the gender imbalance is evident in New Zealand too with ‘women making up a disproportionate percentage of part-timers and the more lowly paid.’⁴² While there are many texts which discuss the participation of women in the legal profession generally in Australia,⁴³ there is less literature about women’s experience as academics in law schools in Australia. What we do have, however, corroborates the above findings ‘and points to a more competitive and harsher economic environment in the universities affecting the academic climate overall. The suggestion is that this climate is not conducive to women’s advancement.’⁴⁴

Apart from gender, however, the story is a little more complex. In her study, based on questionnaire responses from casual academic and general staff on contracts for less than one year’s duration, Anne Junor divided casual academics ‘into postgraduate students seeking academic or outside industry careers, qualified academic jobseekers, various groups whose main work lay outside the university, and retirees’⁴⁵ as indicated below in figure 2.

Figure 2: Typology of Casual Academic Survey Respondents

| Shorthand Term | Abbreviation | Number | Definition |
|----------------------------------|--------------|--------|---|
| Academic Apprentice | AA | 222 | Enrolled full-time or part-time in a postgraduate degree; seeking an academic career |
| Industry Professional Apprentice | IPA | 142 | Enrolled full-time or part-time in postgraduate degree, seeking career in an industry outside education |
| Qualified Academic Jobseeker | QAJ | 161 | Holds higher degree; has a preference for continuing full-time or fractional academic work |
| Outside Industry Expert | OIE | 247 | Holds a full-time position in an industry other than education |

⁴¹ M Angel, ‘The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure’ (2000) 50(1) *Journal of Legal Education* 1, 7.

⁴² E Barrington, ‘Catching Academic Staff at the Start: Professional Development for University Tutors’ (1999) (Paper presented at the HERDSA Annual International Conference, Melbourne, 12-15 July 1999) 2 <<http://www.herdsa.org.au/wp-content/uploads/conference/1999/pdf/Barring.PDF>> at 18 September 2009. See footnote 3 ‘At the University of Auckland, NZ, for example, a 1997 *Equal opportunities Review* revealed that 47% of women worked part-time compared with 28% of men and that 73% of women were employed as GTAs, assistant lecturers, tutors, senior tutors and lecturers, whereas only 42% of men are employed at these levels.’

⁴³ See, for example, M Davies, *Asking the Law Question* (Lawbook Co, 2nd ed, 2001); and R Graycar and J Morgan, *The Hidden Gender of Law* (The Federation Press, 2nd ed, 2002).

⁴⁴ T Hutchinson, ‘Women in the Legal Profession in Australia. A Research Start.’ Author’s own version of the paper, 12 and 13 <<http://eprints.qut.edu.au/2339/1/2339.pdf>> at 15 January 2010. Later published as T Hutchinson, ‘Women in the Legal Profession in Australia’ (2005) 12(2) *Australian Law Librarian* 23.

⁴⁵ Junor, above n 8, 286.

| | | | |
|--|-----|-------|--|
| Cross Sectoral Non-Casual Education Worker | XS | 83 | Holds a full-time position in a non-university education sector |
| Self-Employed | SE | 267 * | Own business is a main or further source of income in addition to casual academic job |
| Retiree | R | 95 * | Aged over 54; income from superannuation or pension, and agreed that 'as a retiree I like this work' |
| Multiple Part Time/Casual Jobholder | MPC | 558 | Holds other part-time and/or casual positions, but no full-time continuing position (overlap of 146 with SE) |
| Casual Academic Only | CAO | 401 | Holds no other paid employment |

5 universities; n=1337 unless otherwise stated; * 4 universities; n=1236

According to these figures, the greatest number of sessional academics was for multiple part-time, casual jobholders. Their age and gender, however, are not revealed, nor do the figures relate specifically to law schools.

The focus of this paper concerns sessional academics and law schools in Australia. According to Anne Junor's study, the Casual Academics Only (CAO) account for nearly 30 per cent of the whole. Of interest here, and pertinent to law schools, are the sessionals she calls Academic Apprentices (AA), Outside Industry Experts (OIE) and Retirees(R). Their combined numbers in Junor's study were 564 out of a total of 1337, which is a little over 42 per cent of the whole,⁴⁶ of which Academic Apprentices (AAs) account for over one third.

There is a different demography at the University of New South Wales (UNSW), where of 80 professionals employed as sessional staff, only nine (approximately 1/10th) can be described as Casual Academics Only (CAO), whose teaching loads vary from several hours a week to a full-time load. According to Anne Junor's figures, this cohort made up approximately 30 per cent. The difference here is significant.

At this law school, which is both large and urban, the AAs, OIEs and Retirees make up the other 90 per cent. There are seven Academic Apprentices - all PhD students. Several formerly full-time members of staff are now sessional academics (six). They are the Retirees. Approximately 75 percent (the vast majority), however, are OIEs. They are barristers or solicitors either in private practice, working within the court system or a government agency (eg Australian Securities and Investments Commission (ASIC), the Public Defenders Office, Crown Solicitors Office, and the Offices of Public Prosecutions (State and Commonwealth). There are several members of the bench, most retired, one still serving, and including a retired judge from South Africa. Twelve are visitors from overseas and/or academics from other universities, as well as two from the

⁴⁶ Note that this closely aligns with figures provided by Judith Gappa at 42%, above n 15, and Graham Gibbs at 40%, above n 17.

United Nations. Contrary to the national trend, less than one quarter of this cohort is female.

Figures from other law schools throughout Australia are difficult to obtain. Again this is usually because universities (and law schools) are often shy about divulging them and the figures may differ from semester to semester. However, evidence from three large urban universities in three different eastern Australian states suggests that, at least for the larger, urban universities, this is not an aberration. The first university reported that in the LLB program around 40 per cent of face-to-face contact (mostly as tutorials) is done by sessionals. Only about a quarter of the sessional tutors are postgraduate students, the rest are practitioners, some retired and some still working. The percentage of practitioners teaching into the LLM is much higher. The second university was unable to provide exact percentages but confirmed that the majority of its sessional teachers were not postgraduate students, but were either full-time or part-time practitioners many of whom who had been teaching on a sessional basis for many years.

Again the picture for the third university is similar. In this third law school, the undergraduate program is estimated to have about a thousand students and most teaching is undertaken by permanent academic staff (who number around 80). This school prides itself on the fact that the students are mostly taught by permanent academic staff in a seminar-class model. Where there are gaps, such as when permanent staff are awarded research grants or other leave, a small number of sessional teachers are employed. Some of these sessionals are practitioners with prior connections to the law school; a smaller number are postgraduate students with expertise in the subject area. In Masters program, however, the majority of the subjects are taught by sessionals in intensive format, but these are practitioners or international scholars with particular subject expertise and often a long-established connection to the law school.

Clearly, location in cities allows easy access to the wider legal profession, who are the experts (OIEs) for legal education. It is most likely that the smaller regional and rural law schools, however, do not have the same easy access. Further, there are differences inherent in the discipline of law (and confirmed by the information provided above) which were noted by Sally Kift in relation to the law faculty in a comparable university to UNSW, the Queensland University of Technology:

From the perspective of legal education, it is particularly noteworthy that the discipline does not have access to large numbers of postgraduate students to take on the casual teaching role (though we do have some postgraduate students and they do take up positions with us). Mostly, our casual pool is drawn from the practicing [sic] profession, importantly supplemented by a number of women practitioners who have primary childcare responsibilities.⁴⁷

Knowing who sessional teachers are is critically important when crafting appropriate teaching and learning development policy. By far the biggest group for UNSW is the OIEs and many of these professionals see teaching law as a way of giving back to the community and they bring with them worlds of experience and skills.⁴⁸ Their legal expertise and life experience is often astounding: their teaching experience, however, can be less. The challenge is, therefore, to recognise and harness the wealth of

⁴⁷ Kift, above n 1.

⁴⁸ It is suggested that the comparatively poor monetary reward cannot be a motivating factor here.

professional experience and assist them to engage with the students thus enhancing the quality of their contribution to professional teaching and learning.

VI ENSURING QUALITY BY PROVIDING TRAINING, RESOURCES AND ENCOURAGEMENT TO SESSIONAL TEACHERS

There need never be any excuse for it: every teacher can learn how to do better. Anyone who has seen really good teaching in action will not need to invoke the exigencies of performance appraisal and maintaining academic standards as reasons for improvement.
Paul Ramsden⁴⁹

The literature suggests that professional development in the form of training in teaching and learning can and does affect students' approaches to learning. For instance, following a study of 20 trainee teachers from 20 universities, Graham Gibbs and Martin Coffey reported that:

Training can increase the extent to which teachers adopt a Student Focus ... Without the support of training, teachers may move in the opposite direction and reduce the extent to which they adopt a Student Focus. A Student Focus approach is known to be associated with students taking a deep approach to a greater extent, and hence to improved quality of student learning outcomes ... Without the support of training no such positive change in student learning is evident.⁵⁰

Conversely, the provision of institution-based sessional teacher training has been argued by Alisa Percy, Rosemary Beaumont and Erica McWilliam (in two separate articles)⁵¹ to be predicated on two, provocative presumptions. First is that 'academics are deficient as teachers, and that ... [professional development in the form of training in teaching and learning] can remediate that deficiency'⁵². The second is that there is the:

imperative driven by Universities' regulated requirement to 'perform quality': it must be demonstrated, so that it must be performed in ways that can be measured ... evidence of attendance and bureaucratic attentiveness is presumed to be evidence of new learning.⁵³

As to the first presumption, 'deficient' is a highly emotive word which should be seen in the context of Erica McWilliam's argument that academics have little knowledge of the 'new' teaching technologies. This is often true, particularly when the only role model that a sessional teacher may have on hand is memory of his or her own legal education in a large lecture setting where the most up-to-date technology was an overhead projector. To be equally provocative in response to Erica McWilliam's claim, lawyers are part of a profession dependent upon their skilful use of words to communicate their knowledge (both specialised and esoteric). 'Deficient' in terms of communication is not an appropriate description for this group. It would be an over-generalisation to say that

⁴⁹ P Ramsden, *Learning to Teach in Higher Education* (Routledge, 1992) 3.

⁵⁰ G Gibbs and M Coffey, 'The Impact of Training of University Teachers on the Teaching Skills, the Approach to Teaching and the Approach to Learning of their Students' (2004) 5 *Active Learning in Higher Education* 87, 98. See also Barrington, above n 42; and M Coffey and G Gibbs, 'Can Academics Benefit from Training? Some Preliminary Evidence' (2000) 5(3) *Teaching in Higher Education* 385.

⁵¹ Percy and Beaumont, above n 4; and E McWilliam, 'Against Professional Development' (2002) 34(3) *Education Philosophy and Theory* 289.

⁵² McWilliam, above n 51, 295.

⁵³ Percy and Beaumont, above n 4, 151, quoting McWilliam, *ibid* 296.

all lawyers are good communicators, however, it would not be too fanciful to propose that most lawyers are good communicators. Good communicators make good teachers and any training program therefore needs to value the knowledge and status of these highly experienced professionals while harnessing their evident communication skills. What is lacking for many law sessionals is experience as the facilitator in a classroom as all too often such professionals are guided solely by their own experience as students. Again, with rare exceptions, this is because most will remember being part of very large groups attending teacher-focussed, impersonal and perhaps even intimidating lectures in circumstances reminiscent of the scenes portrayed in the film *The Paper Chase*.⁵⁴

Percy and Beaumont argue the need for the provision of training that is more than merely ‘politically expedient’⁵⁵ by embedding it at the teaching team level. It is at this level that it is more likely that the evident skills and knowledge will be recognised. It is argued here that adopting a one-size-fits-all approach to the training and professional development of sessional staff provided *at the institutional level*, may be cost effective but is unlikely to either improve the quality of student learning or enhance to the experience for the academics.⁵⁶ Moreover, by removing training from the generic, central approach and giving it a faculty, a legal education focus can still address the ‘imperative driven by Universities’ regulated requirement to ‘perform quality’. To be effective, such training needs relevance and context, recognising not only that not all sessional academics are the same, but that there are significant differences between the disciplines. This is, of course, consistent also with Mick Healey’s view when he wrote that:

It is important, therefore, that the scholarship of teaching in higher education is not divorced from the content of the discipline being taught. As Rice (1995, p. vi) notes: ‘improvement of teaching needs to be rooted in the intellectual substance of the field’.⁵⁷

VII THE LAW SCHOOL APPROACH

Percy and Beaumont rightly argue the advantages of situating professional development and training at the teaching team level where there is real relevance and context. In the large ‘core’, undergraduate subjects this is a natural fit, but many sessionals in this school are not part of such a teaching team, particularly if they are the sole teacher of a postgraduate or undergraduate elective course. The program of training, development and encouragement, therefore, must be assumed at the school or faculty level. For best effect also, the pedagogic management should fall to one person; in this case by the Learning and Teaching Fellow for the Faculty of Law. It starts with an introduction to the school culture, a process Sally Kift describes as ‘acculturating casual staff to the new student-focussed learning agendas’.⁵⁸

⁵⁴ J J Osborn Jr, *The Paper Chase* (Whitston Publishing Co Inc, 1970). This novel, written in 1970, was made into a film in 1973. The author was a graduate of Harvard Law School, where the film was set. The storyline hinges on the professor’s inability or unwillingness to recognise and name his students, despite fostering seemingly personal relationships.

⁵⁵ Percy and Beaumont, above n 4, 150.

⁵⁶ See also T Hutchinson and F Hannah, ‘Training Needs for Law Teachers: Being Strategic’ (2002) 13 *Legal Education Review* 169. Specifically, pages 184–5 concern training for permanent law teachers.

⁵⁷ Healey, above n 5, 173.

⁵⁸ Kift, above n 1.

At the UNSW law school, law is ‘taught not in the conventional large lecture and tutorial format, but in small and medium sized seminar-style classes based on interactive dialogue between lecturer and students rather than the transmission of information.’⁵⁹ There are no lectures and no tutorials, so the goal is to provide training, resources, and encouragement to sessional teachers to engage students in the learning process and to improve student learning. The practice of using student-centred active learning as a teaching paradigm is well accepted.⁶⁰ In such a model, the student is actively engaged in the learning process, as opposed to the traditional lecture paradigm where students are passively receiving information from the lecturer. It is a guiding philosophy of the law school and has been since its inception.

We recognise that by far the largest cohort of our sessional teachers is that made up of those scholars and practitioners from outside of the university which necessitates a different approach to that which is taken by other faculties. The law school program, nevertheless, starts with an induction session. There is nothing unusual here. It is standard practice for most universities (and law schools) to bring new teachers together to provide ‘house-keeping’ information. *Every* new teacher, sessional and permanent, is encouraged, but not compelled, to attend. The reasoning behind this is evident. Most of our sessional teachers are busy legal practitioners and they have little time to spare. In the spirit of internationalisation, many of them, also, live and work overseas. It would be impractical to insist on attendance but it is highly encouraged and we are gratified that so many do attend. Nor do the PhD students have unlimited time, although they are available and encouraged to attend further workshops and other activities which are held throughout the teaching semester. The induction workshop is, accordingly, only a matter of three hours in length and is conducted in the law building where most of the teaching occurs. This allows familiarisation of the physical facilities as well as an introduction to the ethos of the school.

So the question has been how to capture the moment (and the audience) most effectively? Starting the relationship between our OIEs and the faculty off on a good footing is vital. Recognising that for some this may be the only, but is certainly the first, opportunity we need to stress the importance of interactive teaching in our law school. We went back to first principles and bore in mind Paul Ramsden’s words about the power of observing good teaching in action.⁶¹ An appropriate response for this law school, given the resources and time available, was to develop a lasting and portable asset to assist with professional development. Accordingly, we identified some ‘modellers’ of good teaching practice and, with the permission of students and the three teachers involved, filmed six hours of law classes. We then interviewed those teachers asking them to describe their teaching style, methodology and philosophy; the strategies they adopt to encourage student interaction; and, the ways in which technology assists their teaching. The filmed answers to those questions were then illustrated and interwoven with selected footage of classes in action. The result is a DVD now entitled, *Engaging Law Students: Teaching Law at UNSW*, which is nearly 45 minutes long.

⁵⁹ UNSW Faculty of Law website <http://www.law.unsw.edu.au/About_Us/> at 20 January 2010.

⁶⁰ See, for example, the writings of Ramsden, above n 49; J Biggs, ‘Individual Differences in Study Processes and the Quality of Learning Outcomes’ (1979) 8 *Higher Education* 381; and K Trigwell, M Prosser and P Taylor, ‘Qualitative Differences in Approaches to Teaching First Year University Science’ (1994) 27 *Higher Education* 75.

⁶¹ Ramsden, above n 49, 3. There is an echo of medical education’s ‘See one, do one, teach one’ here too.

Teaching is often described as ‘a lonely activity [performed in universities which] fall far short of creating communities of learning and teaching, even failing to create effective teaching networks.’⁶² The opportunity to observe *any* teaching, let alone examples of best teaching practice, is rare, particularly for our EIOs. Such opportunity is further diminished if the window is narrowed by time. Importantly, what is showcased here are three excellent, but entirely different, approaches to teaching as demonstrated by experienced, ‘award-winning’ academics. The evident message is that teaching is a personal matter and that there are many ways to develop excellence. Above all, the examples shown are of students engaged in the learning process, actively participating in the class discussion and their own learning. We know our audience and it is important also that we do not patronise. Our solution is to provide an example of ‘really good teaching in action’ to stimulate and encourage teaching innovation and excellence.

The emphasis on an induction session, which includes the showing and discussion of the DVD, does not mean that we ignore the ongoing needs of any of our sessional teachers. There is a need for continued communication, provision of resources and follow up of concerns. Our smaller group of nine CAOs and the six Retirees, however, have been working at the law school for many years and with few exceptions have completed graduate certificates in higher education. Our AAs are also encouraged to complete such qualifications and are subsidised to do so. This smaller group of 22 is also more integrated into the academic life of the faculty, and able to attend the regular workshops and seminars that are presented during the teaching term. They are well acculturated to the learning agenda of the law school. Our EIOs are also invited to all activities and materials and information made available at these workshops are disseminated to all.

The DVD is, of course, only one part of the educational development armoury, but given the specific needs of all our sessionals, and the time available, it is the lynchpin. It is part of the training, given that it provides an opportunity to observe and discuss really good teaching in action, which for most of our sessional academics would not ordinarily be possible. It is a lasting resource which can be viewed several times. It is encouraging because it shows that really good teachers are good communicators who are engaging and comfortable with their teaching, which are all attainable attributes. We see it as a good beginning and it is argued that it goes a long way towards:

counteracting what [is described] as ‘uncaring and subject-centred attitudes in legal education’ and to present legal education ‘as it is personally experienced, as individual students “see” it, “feel” it, and make it part of their lives’.⁶³

It has become another part of the ongoing support and encouragement program given that as well as a copy of the DVD, each sessional teacher is provided with a ‘kit’ of resources which includes information about the library, a booklet (*Preparing for*

⁶² M Wright, ‘Always at Odds?: Congruence in Faculty Beliefs about Teaching at a Research University’ (2005) 76(3) *Journal of Higher Education* 331 in J Cowley, ‘Recognising and Valuing Teaching Excellence in Law Schools and Teaching-Intensive Appointments’ (2008) 1 (1 & 2) *Journal of the Australasian Law Teachers Association* 275, 278.

⁶³ J Elkins, ‘Rites of Passage: Law Students “Telling their Lives”’ (1985) 35 *Journal of Legal Education* 27, in K Hinett, *Developing Reflective Practice in Legal Education (UKCLE Guidance Note)* (2002) 4, UK Centre for Legal Education
<<http://www.ukcle.ac.uk/resources/tlr/reflection/drpf.pdf>> at 13 November 2009.

Teaching) which includes details of assessment policy and practice, a list and links to administrative information and a reference list of relevant and scholarly articles and texts for those who might want to read more widely about the scholarship of learning and teaching. In this way information can be found at the time that it is needed. Eventually the film will be made available to all academics, both sessional and full-time. The best ways to do this are yet to be determined, however. It is likely that excerpts will be launched on UNSWTV and on a newly formatted staff intranet, but copies of the DVD will also be distributed.

The DVD is a new resource and the positive, anecdotal feedback⁶⁴ has been very encouraging, suggesting that it is both effective and timely. It will be shown again at the induction of new sessional teachers at the beginning of the new academic year. A more formal assessment of its effectiveness will be conducted later in the year, as well as continued reference to it in emails and other communications. In this way it is also hoped that in the future it will assist in the development of reflective teaching practice as described by Biggs, 'A reflection in a mirror is an exact replica of what is in front of it. Reflection in professional practice, however, gives back not what it is, but what *might* be, an improvement on the original'.⁶⁵

VIII CONCLUSION

The sessional academics at this law school are valued highly. We have taken the time to determine who they are and confirmed that they are mostly busy legal professionals, which is atypical of sessionals across the sector. As in other large urban law schools they constitute our largest group of sessional academics. We recognise that they have limited time to attend professional development sessions and have developed a strategy to address their specific needs.

We believe that *all* our academics can benefit from observing 'really good teaching in action'. As the literature and other data suggest, the numbers of sessional academics are growing. This is also true for law schools. Accordingly, they 'should be embraced and nurtured'.⁶⁶ Their pedagogic management has been effectively assigned to one person and we have taken a lateral approach to the design of a different but specific program to assist. By not adopting a one-size-fits-all, institution-based, approach to the training and professional development of legal sessional staff it is still cost-effective. It also answers the presumptions about the ability of professional development to remediate teaching deficiencies and provides evidence of 'quality'. It is further hoped to improve the quality of student learning and enhance the experience for the academics.

⁶⁴ By way of informal conversations with and emails to this writer.

⁶⁵ J Biggs, *Teaching for Quality Learning at University* (1999) 6.

⁶⁶ Kift, above n1.