

Teachers in the precariat: fixed-term contracts and the effect on establishing teachers

A joint paper from the Auckland Region and the PPTA Establishing Teachers' Committee

SUMMARY

This paper addresses the insecure work faced by new and establishing teachers through the use of illegal fixed term contracts, and proposes that schools be encouraged to sign a pledge: *Commitment to Establishing Teachers*.

Teachers who are on fixed term contracts are vulnerable, and beginning teachers are disproportionately represented in that group. Left unchecked, the growing number of teachers in insecure work has the potential to affect the job satisfaction, stress, professional certification, professional development, and union activism of individual teachers. This, in turn, has a negative impact on the institutional knowledge and the development of the teaching workforce and strength in our union. We need to support the newest members of our profession to continue to have a strong profession and a strong union presence in the future.

RECOMMENDATIONS

- ~~1. That the report be received.~~
- ~~2. That PPTA endorse the *Commitment to Establishing Teachers*.~~
- ~~3. That executive develop a plan to promulgate and promote the *Commitment to Establishing Teachers*.~~
- ~~4. That PPTA work with the Ministry of Education, the New Zealand Schools Trustees Association, and other relevant organisations to monitor and curb the use of illegal fixed term appointments.~~



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1. Introduction

- 1.1 Increasingly, those entering the secondary teaching profession in Aotearoa New Zealand find themselves part of what can be referred to as the *precariat* - people employed but lacking job security. The Auckland Region and Establishing Teachers' Committee finds this situation deeply concerning and in urgent need of being addressed.
- 1.2 As a union, we have long been aware, anecdotally, of fixed-term and long-term relief (LTR) appointments being used as a way of trialling teachers and maintaining workforce flexibility within secondary schools. This practice has become widespread and it has a particular impact on provisionally certificated teachers (PCTs), and teachers establishing or re-establishing their careers (including those returning from maternity leave or sabbaticals)¹.
- 1.3 The Employment Relations Act 2000 (ERA) and our collective agreements both clearly specify that the employer must "have genuine reasons based on reasonable grounds" before they offer a fixed term position.² Appointments that are made outside of these specifications are illegal, but there are a growing number of such appointments being made by schools.
- 1.4 The implications of this practice becoming widespread are significant. It undermines the rights of workers in our profession. It adds to the workload of our establishing teachers who often feel pressure to show their value to a school rather than having the time to bed in their teaching practice, including waiving their right to the beginning teachers' time allowance. It makes it difficult for fixed-term teachers to participate in the activities of the union or to give an honest opinion about bad practice or changes within the organisation of a school. It also makes it difficult to maintain the professional status of the secondary teaching sector. It makes the both recruitment and retention even more challenging, and it has a disproportionate impact on the time that new and establishing teachers are able to spend with their families and life outside school.
- 1.5 The campaign against this practice must be multi-pronged. We need to ensure the PPTA are entering into robust discussions with relevant organisations on how to better monitor this issue. In this fight, we need to stand alongside our colleagues in primary schools and early childhood education. The NZEI has recently produced the *Beginning Teacher Charter*, which they are encouraging primary principals to sign. Schools that sign the *Beginning Teacher Charter* commit to supporting new and establishing teachers by "providing permanent employment in all situations, other than the specific exceptions outlined in the ERA."

¹ *The Tripartite Pay and Employment Equity Report* (2008, MOE, STA, PPTA, NZEI) identified this as a pay and employment equity issue having a disproportionate impact on women teachers.

² Section 66(2), ERA 2000; clause 3.2.3(b), STCA 2015-18; and clause 2.2.2A ASTCA 2016-2019.



1.6 We suggest that a similar initiative should be implemented by PPTA in the secondary sector. To this end, the PPTA's national Establishing Teachers' Committee has written a *Commitment to Establishing Teachers* (see **Appendix**), which the Auckland Region and Establishing Teachers' Committee recommends this Conference adopt. Although new and beginning teachers are primarily affected by this insidious practice, it is one which impacts us all. For the union to be truly strong, it needs to actively support its most vulnerable members.

2. The precariat

- 2.1 Teachers on fixed term contracts are vulnerable because they are in insecure work. They are part of an emerging class of people labelled "the precariat"³.
- 2.2 The precariat can be defined as a social class formed by people suffering from precarity: a condition of existence without predictability or security, affecting material or psychological welfare. The term precariat was first used in the 1980s by French sociologists to refer to temporary or seasonal workers.⁴ Professor Standing uses the term to refer to any member of the labour workforce who experiences a degree of precarity with their employment status, leading to a lack of work-based identity. Fixed-term workers fit within this category and can often be seen as a hidden 'career-less' class within a salaried profession such as teaching.⁵
- 2.3 Professor Standing elaborates on how the precariat has emerged over the last few decades as a result of neoliberal economic policies and globalisation in his book *The Precariat: A New Dangerous Class*⁶. In New Zealand we have seen this with zero-hour contracts and the erosion of workers' rights (such as law changes to restrict union activity, the 90 day probation period, limits on strike action, allowing the right to opt out of multi-employer collective agreements). All of these changes create insecurity in the workforce and are fundamental to a wider agenda of prioritising capital over the rights of working people.
- 2.4 What are the impacts? Standing identifies seven forms of labour-related security that the precariat is in danger of missing:

Labour market security – *Adequate income-earning opportunities; at the macro-level, this is epitomised by a government commitment to 'full employment'.*

Employment security – *Protection against arbitrary dismissal, regulations on hiring and firing, imposition of costs on employers for failing to adhere to rules and so on.*

³ Standing, G. *The Precariat: A Dangerous Class* (Bloomsbury Press, 2014).

⁴ Standing, G. (2014), pg 15

⁵ Ibid. pg 20

⁶ Bloomsbury Press., 2nd ed. 2014.



Job security – Ability and opportunity to retain a niche in employment, plus barriers to skill dilution, and opportunities for ‘upward’ mobility in terms of status and income.

Work security – Protection against accidents and illness at work through, for example, safety and health regulations, limits on working time, unsociable hours, night work for women, and compensation for mishaps.

Skill reproduction security – Opportunity to gain skills, through apprenticeships, employment training, and an opportunity to make use of competencies.

Income security – Assurance of an adequate stable income, protected through, for example, minimum wage machinery, wage indexation, comprehensive social security, progressive taxation to reduce inequality and to supplement low incomes.

Representation security – Possessing a collective voice in the labour market, through, for example, independent trade unions, with a right to strike.⁷

2.5 As a result, being in the precariat has the following impacts for workers (including teachers):

- No stable or predictable income;
- No economic certainty about their future (e.g. housing, the location of work);
- Being withheld from key aspects of their profession (e.g. Professional Learning and Development);
- Being excluded from employment benefits and protections (e.g. maternity leave and holiday pay);
- Having a truncated employment status and a limited social contract;
- Being left out of the occupation without the ability to progress or take up leadership opportunities (career-less jobs); and
- A lack of representation, security and the opportunity to organise and become active in their union.

2.6 The NZ Council of Trade Unions (CTU) confirms that insecure work affects at least 30 percent of New Zealand's workforce⁸ and that there is an indication that the same proportion of teachers are affected (see below). The effect on establishing teachers, however, as will be shown, is considerably more substantial.

2.7 We argue that the extent of this alarming crisis of employment insecurity for workers, and the severity of the individual concerns for members on illegal fixed-term contracts, should make curbing the practice of illegal fixed-term contracts a key focus for the PPTA.

⁷ Ibid. pg 17

⁸ *Under Pressure: A Detailed Report into Insecure Work in New Zealand*, CTU, 2013, pg 2



3. The Law

3.1 The ERA, reinforced by our collective agreements, clearly specifies the limitations of the use of fixed-term contracts in New Zealand schools.

3.2 Section 66 of the ERA states (emphasis added):

- (1) *An employee and an employer may agree that the employment of the employee will end—*
 - (a) *at the close of a specified date or period; or*
 - (b) *on the occurrence of a specified event; or*
 - (c) *at the conclusion of a specified project.*

- (2) *Before an employee and employer agree that the employment of the employee will end in a way specified in subsection (1), the employer must—*
 - (a) **have genuine reasons based on reasonable grounds** for specifying that the employment of the employee is to end in that way; and
 - (b) **advise the employee of when or how his or her employment will end and the reasons for the employment ending in that way.**

- (3) *The following reasons are not genuine reasons for the purposes of subsection (2)(a):*
 - (a) *to exclude or limit the rights of the employee under this Act;*
 - (b) **to establish the suitability of the employee for permanent employment;**
 - (c) *to exclude or limit the rights of an employee under the Holidays Act 2003.*

- (4) *If an employee and an employer agree that the employment of the employee will end in a way specified in subsection (1), **the employee's employment agreement must state in writing—***
 - (a) *the way in which the employment will end; and*
 - (b) **the reasons for ending the employment in that way.**

The parts emphasised in bold are requirements that are frequently being either openly disregarded or incorrectly applied by a number of schools when fixed-term appointments are being made. In particular:

- Schools regularly do not state in writing the reasons that a position is fixed-term, as required by section 66(4)(b); and
- Schools do not make that decision for "genuine reasons based on reasonable grounds" as required by section 66(2)(a).



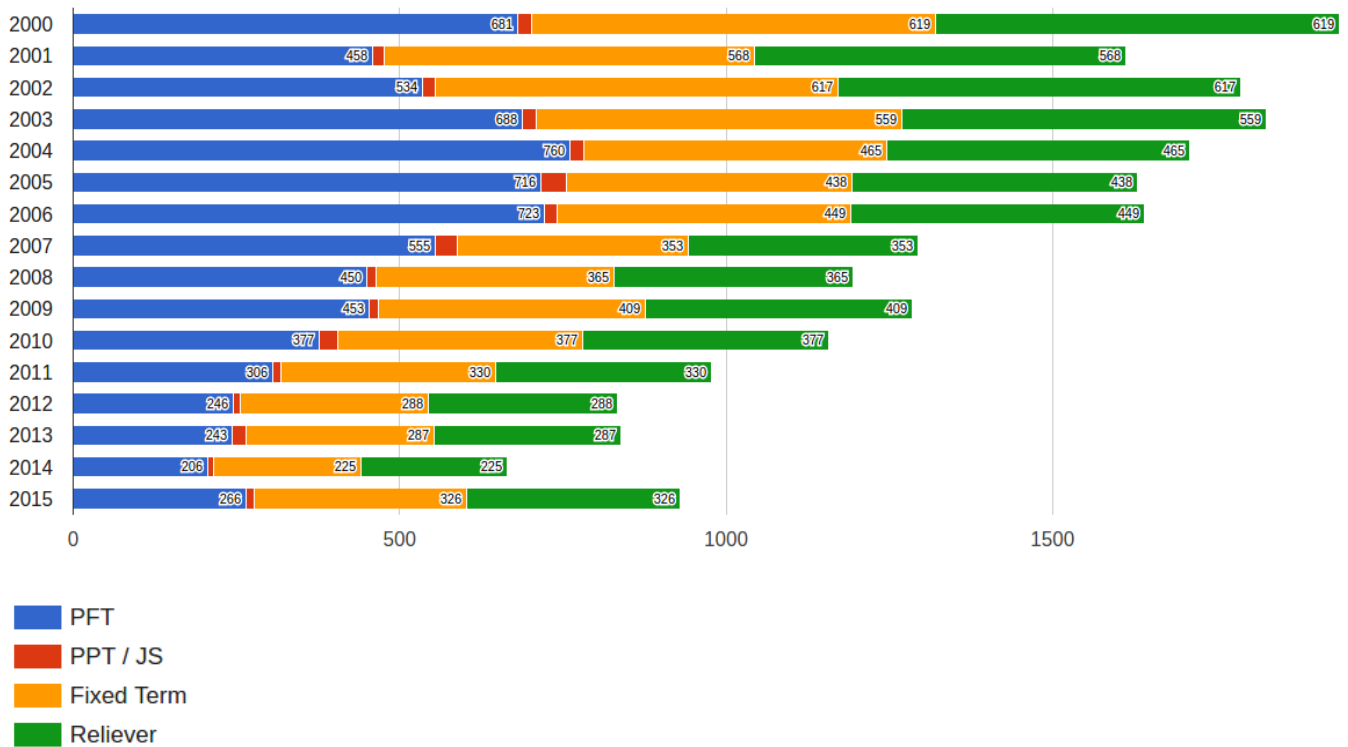
- 3.3 We are aware that there is some pressure on schools not to appoint permanent positions where there are falling rolls or where staffing is dependent on funding from international students. This speaks to a larger issue of resourcing in schools, including issues with the secondary and tertiary interface, staffing flexibility with class sizes and the Government's freeze on the school's operating budget.
- 3.4 However, it is also clear that many schools seem to be using fixed-term appointments as a way to "establish the suitability of the employee for permanent employment", something which is explicitly prohibited by the ERA.

4. The Data

- 4.1 Looking at the prevalence of fixed-term positions being offered, including those offered legitimately to cover, for example, those on maternity or study leave, we can see that in the *Education Gazette* in 2015, 38 percent of non-management teaching positions in state or state-integrated secondary schools that were advertised were specified as being on a fixed-term basis (bearing in mind that it is not uncommon for positions where tenure is unspecified in the Gazette to then be offered to the successful applicant on a fixed-term basis). Further, it can also be seen that 25 percent of positions advertised were on a fixed-term basis with no reason being stated as to why they were not permanent positions.
- 4.2 When we look specifically at establishing teachers the figures are particularly galling. According to a figure from the Ministry of Education, only 15 percent of new teaching graduates are employed into a permanent position on leaving study. This indicates that as many as 85 percent of graduates are either employed on a fixed-term or relieving basis, or don't succeed at finding employment in teaching at all.
- 4.3 Further figures provided by the Ministry of Education reveal a worrying trend. Since 2000, while the overall number of fixed-term and relieving positions has fallen slightly (on average they amount to 30 percent of all positions), the number of *new* teachers whose initial job type is non-permanent has risen considerably, from 65 percent in 2000 to 71 percent in 2015 (see graph below), when, we must remember, it was once the case that graduates could expect a permanent position on leaving teachers' college. We can also see that the number of new teachers employed overall has fallen dramatically, from around 2050 in the year 2000 to around 650 in 2014 and around 900 last year.



New Secondary Teachers Initial Job Type



This trend provides empirical evidence justifying our claim that schools appear to be regularly using fixed-term contracts as a way of trialling new teachers. And the problem is growing.

- 4.4 Other research indicates that 37 percent of teachers are leaving the profession within their first three years.⁹ Broken tenure is likely to be a factor influencing this decision. This will result in significant pipeline supply issues for teachers in future, given the ageing workforce of secondary teachers and concerns with the quality of induction programmes.¹⁰

5. Teachers in the precariat

- 5.1 While many schools only offer fixed-term or LTR positions legitimately - in the cases of maternity leave, study leave, or sabbaticals for example - we know that some schools are offering highly questionable and illegal fixed-term positions.

⁹ NZEI, NEN webpage.

¹⁰ 50 percent of induction programmes may not comply with requirements, according to the Teacher's Council (2008).



- 5.2 There are numerous instances of fixed-term appointments being offered with no reason being stated in the successful applicant's cover letter. Some schools have been dubiously offering positions on a fixed-term basis due to “roll fluctuation”, even when there is no valid reason to expect the school roll to fall. Other instances have included several full-time teachers in a school being on long-term relief when only one teacher is on maternity leave or other long term leave. An unnamed school in Auckland, for example, has been anecdotally seen to have as many as at least one fixed-term position in each department.
- 5.3 This appears to be too often used for the convenience of school leadership at the expense of beginning teachers. These situations may allow for flexibility with classes and the ability to easily let teachers go when they are no longer deemed to be necessary, but we must highlight the effect that being on a fixed-term contract (or several in a row, which is not uncommon) has on individual teachers. This ‘convenience’ cannot be considered acceptable at the expense of compromising the legal rights of employees to job security and access to professional support.
- 5.4 When a teacher is part of the precariat, their entire life is affected. As Guy Standing shows, being in the precariat brings with it a range of economic and psychological disadvantages. Teaching is hard enough and challenging enough as it is, without new teachers having to worry about whether they'll have a job next year, or even next term. It makes building those all-important classroom relationships difficult. It makes career progression very often impossible. It makes settling down pointless. It is enough to keep some teachers awake at night. Being part of the precariat means teachers' professional and personal existence is, quite literally, precarious.
- 5.5 In writing this paper, we met dozens of members who:
- Lack the employment stability to plan teaching programmes that will be used the following year;
 - Do not feel empowered to include themselves in the full life of their school, knowing they are only there temporarily;
 - Do not feel confident challenging their employer on their job status, or even involve their union, for fear of not getting a further position after their current fixed term expires;
 - Refrain from being involved actively in the union from fear of ‘ruffling feathers’ while they feel they are still on trial;
 - Lose out on holiday pay, special leave, or other conditions due being in a fixed-term position;
 - End up having to move several times during their provisional certification;
 - Have complications over their certification due to broken tenure;
 - End up working in a school a significant distance from where they are settled;
 - Miss out on collective agreement entitlements like the maternity grant, where they are fixed term and part-time; and
 - Have difficulty securing a mortgage due to uncertainty with their future income.



5.6 We know that when establishing teachers are on several fixed-term contracts in a row (regardless of their legitimacy) they become increasingly likely to leave the profession. New Zealand needs quality teachers, and with a widespread teacher shortage looming, we cannot afford to squander professionals who are ready to commit themselves to education. We must support new teachers into permanent positions whenever possible.

6. Conclusion: What Can Be Done?

6.1 We need to see this situation as the crisis that it is. What may have started as an isolated concern has gradually become an insidious attack on workers' rights in our profession.

6.2 We are currently fighting fires on this issue one at a time - with our Field Officers across the country, particularly in major centres, spending large amounts of their time (at huge expense to our Association and our members) challenging questionable fixed-term positions individually. What we need urgently is a coordinated approach and a clear central voice condemning the practice of illegal fixed-term contracts.

6.3 Both PPTA¹¹ and New Zealand Schools Trustees Association¹² have guidance that is publicly available, which sets out the requirements for when fixed term agreements are able to be used lawfully - so the solution is not to be found in either of those organisations producing more information. There are, however, situations where the Ministry of Education could be more proactive, such as vetting advertisements in the *Education Gazette* before it is published, and making clearer the process that schools need to follow when considering permanent appointments in a falling roll/surplus staffing environment. The Ministry does advise individual schools that if permanent appointments are to be made under these conditions then concurrence/permission from the Secretary of Education may be required; however experience suggests schools find this a difficult process to navigate. The Association and field service will therefore continue to push the Ministry to be more proactive in addressing these particular matters of concern.

6.4 It is important to note that this issue is not limited to the secondary sector. Research undertaken by the New Educators Network in NZEI also found prevalence of new primary teachers on fixed-term contracts. Their response has included the formation of the *Beginning Teacher Charter*¹³ to empower branches to ask for a commitment from their principals and boards to always offer permanent positions unless there are clearly defined reasons otherwise. Over 200 primary school have already signed up.

¹¹ www.ppta.org.nz/resources/publication-list/36-s66 (last accessed 25 July 2016).

¹² www.nzsta.org.nz/employer-role/appointment-process/fixed-term-appointments (last accessed 25 July 2016).

¹³ NZEI website, NEN page



- 6.5 If we were to take on a similar measure, as has been recommended by the Establishing Teachers' Committee with the *Commitment to Establishing Teachers* (see **Appendix**), it would enable us to send a strong, positive message to the community that our schools do value our teachers. This, coupled with communication and concerted work with relevant organisations to encourage the monitoring of schools suspected of operating with questionable employment practices, could see a real culture change around supporting our teachers. This could also help to put pressure on the Ministry of Education to take on more of a leadership role in this area and do their part to stop illegal fixed term contracts being allowed to proliferate.
- 6.6 Establishing teachers are the experienced teachers of the future – we need to look after them and support them. Without supporting them we aren't supporting students. A strong public education system needs to start by nurturing those who teach.

Recommendations

- ~~1. That the report be received.~~
- ~~2. That PPTA endorse the *Commitment to Establishing Teachers*.~~
- ~~3. That executive develop a plan to promulgate and promote the *Commitment to Establishing Teachers*.~~
- ~~4. That PPTA work with the Ministry of Education, the New Zealand School Trustees Association, and other relevant organisations to monitor and curb the use of illegal fixed term appointments.~~



Appendix: Commitment to Establishing Teachers

Our commitment to teachers at the start of their careers¹⁴ in New Zealand secondary and area schools:

The principal and Board of Trustees are dedicated to supporting new and establishing teachers, and will ensure the best start in their career by:

- Providing permanent employment in all situations other than the exceptions outlined in the ERA, namely in place of a permanent staff member who is absent on approved leave or undertaking a specific project; and
- Ensuring that establishing teachers receive their entitlements under the relevant collective agreement.

We recognise that the induction and mentoring process is a critical part of the development of new teachers and will:

- Identify the support and resources needed to provide high quality induction and mentoring;
- Appoint appropriately trained, supported and resourced mentor teachers to induct and mentor provisionally certificated teachers through to full certification; and
- Ensure planned and purposeful induction and mentoring programmes, building on the knowledge and skills the new teacher developed in their initial teacher education.

We will support establishing teachers by:

- Having them work alongside school leaders and colleagues who are welcoming and inclusive;
- Acknowledging and supporting their talents and contributions; and
- Providing ample opportunities and resourcing for them to learn and grow.

We endeavour to ensure that establishing teachers in our school will:

- Only teach classes in subject areas that they are trained to teach in; and
- Have a home teaching space that they can be based in to get established in their practice, having to accustom themselves to as few teaching spaces as practicable.

We also commit to offering these provisions, when practicable, to new and establishing teachers who are employed as short or long term relievers.

¹⁴ Teachers who have not yet achieved full certification.

2016 Annual Conference Minutes

Minutes of the Annual Conference of the New Zealand Post Primary Teachers' Association (Inc) held at the Brentwood Hotel, Kilbirnie, Wellington, commencing at 9.45 a.m. on Tuesday 27 September, continuing at 9.00 a.m. on Wednesday 28 September and 9.00 a.m. on Thursday 29 September 2016.

Teachers in the precariat: fixed term contracts and the effect on establishing teachers

C16/71/17

1. THAT the report be received.
2. THAT PPTA endorse the Commitment to Establishing Teachers.
3. THAT executive, in consultation with the Establishing Teachers' Committee, finalise the Commitment to Establishing Teachers, and develop a plan to promulgate and promote it.
4. THAT PPTA work with the Ministry of Education, the New Zealand Schools Trustees Association, and other relevant organisations to monitor and curb the use of illegal fixed-term appointments.
5. THAT PPTA urge the Ministry of Education to only publish advertisements for fixed-term positions, including long-term relieving positions, in the Education Gazette where a genuine reason based on reasonable grounds is provided in the advertisement for why that tenure is not permanent.
6. THAT PPTA develop an action plan which would encourage school leadership to make fixed term appointments permanent in their schools.
7. THAT PPTA pursue strategic litigation through the legal cases committee to target the use of illegal fixed-term employment agreements.

Carried